

Stalking

Final Report

VICTORIAN
**LAW
REFORM***
COMMISSION

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This report reflects the law at 30 April 2022.

The Commission notes that the Victims of Crime (Financial Assistance Scheme) Act 2022 was assented to on 7 June 2022. It establishes a new administrative financial assistance scheme to assist victims of crime in their recovery from acts of violence.

Stalking: Final Report

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A note on the cover design

On the cover the word *stalking* appears on the diagonal, highlighted by a beam of light. This indicates the mission of the Commission to throw light on the subject of *stalking*. The intersecting horizontal words are examples of behaviour which might constitute *stalking*. They are confronting words, indicating that *stalking* behaviour is serious and can be very damaging to people who experience it. The intersecting words are included because the Commission was told that many people are not aware that such conduct could amount to *stalking*. They form a pattern, intended to communicate that *stalking* is a pattern of behaviour.

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Final Report

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Preface

This inquiry has revealed the dreadful consequences of stalking on people who have experienced it. It has also revealed that the problem predominantly affects women. At the same time the inquiry demonstrated that our knowledge of what causes people to engage in stalking behaviour and, hence, how it can be addressed, has significant gaps. This inquiry showed, as did our recent inquiry into the Response of the Justice System to Sexual Offences, that there is still much to be done to protect victim survivors who report the matter to the police and eventually participate in the prosecution in court.

The recommendations made in this report chart a passage to improve the way people who have experienced stalking are treated. They also seek to address how people who engage in stalking behaviour might be diverted from that conduct.

The recommendations suggest creative and innovative ways to improve the system of responding to stalking, drawing on international practice. For example, we suggest that a victim survivor of stalking should be supported by a person who can guide them from reporting, to the availability of support services, and through any court actions.

A special acknowledgement should be reserved for Aggie Di Mauro. In the depth of her despair from the death of her daughter Celeste Manno under terrible circumstances, she successfully pressed the Attorney-General to investigate the law relating to stalking to save others the grief which she has suffered. I have had the privilege of meeting with her during this inquiry. She has brought a perspective which has contributed to the scope and depth of the examination. Her relentless pursuit of justice has been an inspiration. She often said that nothing would bring Celeste back, but this report will be a fitting legacy of her lovely daughter.

A feature of this report has been the large number of people who have experienced stalking who responded to our call to tell us their stories. Hundreds did so online, and we met with others. Their voices were critical to our understanding, and we trust we have reflected their concerns in our report.

We have received generous cooperation from a wide range of stakeholders. Thank you to all of them who, like all of us in our community, have had to adapt to the strictures placed upon us by the COVID pandemic, including budget restrictions which meant that they had to provide input into our work with strained resources. We are most appreciative of the work of the Sentencing Advisory Council, which produced three excellent reports to inform the inquiry.

It is usual in a preface such as this to thank the research team which produces the report. The circumstances of this report call for particular recognition. Whilst Dr Madeleine Ulbrick has been a member of the team since inception, and was largely responsible for writing the interim report, the rest of the team, Dr Emma Larking, Natalie Lilford, Hana Shahkhan and Marcus Hickleton, together with the team leader, Jacinth Pathmanathan, all took over the project after the delivery of the interim report. That was an unusual challenge and they rose to it with great skill and grace. The team was guided by the exceptional leadership of Jacinth characterised by

her tolerance, patience and understanding, as well as her personal application to the subject matter. Their achievement was even greater because most of them had just completed the highly taxing job of completing the inquiry into the Response of the Justice System to Sexual Offences. And all that work was completed under the constraints imposed by COVID. This team built upon the research, consultations and thinking of the original team responsible for the consultation paper, and I thank them for their hard work. Nick Gadd, the Communications Manager and Gemma Walsh, the Information and Communications Officer, greatly assisted in the final stages with editing and proofreading.

The Commission is composed of eight Commissioners and me. We perform a very active role in the production of the reports and are ultimately responsible for their contents. Each of the Commissioners scrutinises the draft report in detail and provides written comments. They bring very diverse expertise to the task. I wish to thank Liana Buchanan, the Hon. Jennifer Coate AO, Kathleen Foley SC, Bruce Gardner PSM, Professor Bernadette McSherry, Dan Nicholson, Gemma Varley PSM and Dr Vivian Waller for their input and particularly for the generous and collegiate way in which they approached the task.

Merrin Mason PSM, the CEO of the Commission, as usual provided a wise and steady hand on the administration of the project, calming frazzled COVID nerves at times, and contributing valuable insights into the substance of the work. The project could not happen without the administrative assistance of the Finance and Office Manager, Jennifer Joyner, my Executive Assistant, Monika George, and our Office Administrator Janis Dunk. I am very grateful for the efforts of each of them.

I trust you will find the report engaging to read and helpful to plot the future for the development of the law relating to stalking.



The Hon. Anthony North QC

Chairperson

Victorian Law Reform Commission

June 2022

Terms of reference

Reference under section 5 of the *Victorian Law Reform Commission Act 2000*.

Responses to stalking, harassment and similar conduct, and the related use of Personal Safety Intervention Orders

Stalking is a set of behaviours that can cause great harm to victims' mental and physical health. If not addressed, it can also escalate to include other types of serious offending, more serious offending, including serious violence and—tragically—homicide and suicide.

Due to technological advancements, types of stalking behaviour have evolved and can be carried out remotely, without physical proximity to the victim.


The VLRC is asked to review and report on Victoria's legal responses to stalking, harassment and similar conduct, including the statutory framework for and operation of the Personal Safety Intervention Order (PSIO) system, drawing upon best practice from the family violence system, criminological research and victim support services. The review should identify barriers to current law effectively responding to stalking, harassment and similar conduct, and make recommendations to address these barriers and improve the justice system's response, with victim safety and wellbeing the paramount consideration.

Stalking behaviours can occur in both a family violence and non-family violence context. However, while a specialist, cohesive approach to these behaviours has been developed in a family violence context, less attention has been devoted to the non-family violence response. Additional measures may be required to maximise victim safety and wellbeing and perpetrator accountability, and to allow for more effective early interventions in cases of high or escalating risk. The review may consider mechanisms from the family violence context, such as family violence safety notices and the prohibition on cross-examination by the respondent/accused person. New measures responding to stalking in both family violence and non-family violence contexts should also be considered, such as electronic monitoring as a condition of an intervention order, and responses that address technology-facilitated abuse.

While stalking is committed by people of all genders, the VLRC is requested to note that most perpetrators of stalking are men, and most victims of stalking are women.

The review should consider:

- the law on stalking, harassment or similar conduct including:
 - operation of the *Personal Safety Intervention Orders Act 2010 (Vic)*, including consideration of how the legislative framework and operation differs from the scheme for Family Violence Safety Notices and Family Violence Intervention Orders under the *Family Violence Protection Act 2008*
 - how breaches of personal safety intervention orders are treated under the relevant legislation and responded to within the context of those statutory frameworks

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- the existing criminal offences applying to stalking, harassment and similar conduct, including consideration of the scope, elements and adequacy of the offence of stalking in the *Crimes Act 1958* and the evidence required to establish the offence
 - how the law could be strengthened to promote and enhance victim safety and wellbeing
 - the interaction between existing laws where the conduct occurs online
 - ancillary laws of evidence and procedure
 - barriers to reporting for victims of stalking
 - sentencing practices and available sentencing options.

In conducting this review, the Commission should have regard to:

- The findings of the Royal Commission into Family Violence (2016) and the actions taken by the Victorian Government and justice system in response to the Royal Commission's recommendations.
- Reports of the Royal Commission into Victoria's Mental Health System (2019).

The VLRC is required to:

- prepare an interim report by 31 December 2021, with the content of such a report to be determined by the Commission, in consultation with the Department of Justice and Community Safety; and
- prepare a final report on the reference by 30 June 2022.

Executive summary


- 1 This report recommends ways to improve the justice system's response to non-family violence stalking.
- 2 People who experience stalking can be trapped in a frightening situation that is hard to identify and escape. Many do not report it to police, and they may not even realise that stalking is a crime.
- 3 If they do report stalking, they may not get the response they need from the justice system.
- 4 Getting help through the justice system in court can be a long, frustrating and traumatic experience.
- 5 Too often people who stalk do not change their behaviour. They may stalk with no consequence.
- 6 The law and justice system must change so that:
 - People who experience stalking are protected by adequate safety measures.
 - The justice system responds to the justice needs of victim survivors.
 - People who stalk are accountable for their behaviour and are given the opportunity to address it.

Understanding and responding to stalking

- 7 Stalking is not well understood. Information about stalking is hard to find, incomplete or not clear enough.
- 8 There should be education about stalking for people in the community and those who work in the justice system.
- 9 People need to know more about what stalking is, how best to respond to it and the justice and support options available.
- 10 For people who work in the justice system, education should include practical information that will help them respond to stalking effectively.

Supporting people who experience stalking

- 11 It can be isolating, all-consuming and frightening to be stalked. People who experience stalking should be well supported.
- 12 People who experience stalking need quick, practical and ongoing support which might be different to other victims of crime. For example, those who experience cyberstalking may need tracking software removed from their phones.

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- 13 Victoria has the foundations of a strong support system. But it needs to be improved to make it accessible and effective for stalking victim survivors.
 - 14 The Victorian Government should implement recommendations on victim support from recent inquiries. It should remove any barriers to eligibility that victim survivors of stalking face.
 - 15 It should fund a stream of quick financial assistance to help victim survivors pay for practical things such as home security.
 - 16 People who experience stalking should be quickly connected with the services that can support them.
 - 17 Independent advocates should provide victim survivors with ongoing and 'joined up' support and information, to help meet their needs and enable them to feel safe. The ever-present nature of stalking makes it the kind of crime that justifies this intensive support.

The civil response and stalking

- 18 The main civil response to non-family violence stalking, the personal safety intervention order (PSIO) system, is under strain. This makes it challenging for all stalking matters to get the attention they need.
- 19 The civil response should be more focused than it is now. We recommend developing evidence-informed guidance for identifying and prioritising stalking matters.
- 20 The Magistrates' Court should apply the guidance to identify stalking matters that need a specialised approach.
- 21 A specialised approach—which could include a specialist workforce, court infrastructure and supports—would help make the response to stalking more effective, efficient and less traumatic for victim survivors than it is now.
- 22 A potential way to implement a specialised approach for non-family violence stalking matters is through the current system of family violence courts. If that is done, these matters should be separate and clearly identified as non-family violence matters.
- 23 Mediation should be used for cases that are assessed as not involving stalking or other serious harm. This would free up the civil response to focus on stalking and other serious harm.
- 24 People who experience stalking should be treated fairly, be able to present their best evidence and avoid further distress. This means:
 - expanding the ban on publishing what happens in court, with some exceptions
 - preventing respondents from personally cross-examining protected witnesses in court, and funding Victoria Legal Aid to conduct the cross-examination
 - expanding access to legal advice and representation for PSIO applicants.
- 25 Respondents, not just applicants, in PSIO matters should have access to legal advice and representation.
- 26 Other changes could be made to help the civil response run efficiently and safely:
 - The recent implementation of online applications for PSIOs should be monitored and evaluated.
 - The court should be able to choose to make orders even when no one has applied.
 - Higher courts should rely on material from the lower courts for PSIO appeals.


- 27 The response to children in the PSIO system must take into account evidence about their development and try to prevent long-term contact with the justice system.
- 28 PSIOs should not be made against children under the age of 14.
- 29 Alternative pathways should be available for children aged 14 and over who engage in stalking behaviour. The law should require that these pathways be explored before making a final PSIO against child respondents.
- 30 Access to legal advice and representation should be expanded for child applicants and respondents in PSIO matters. Courts should be able to order that a child is legally represented.

The criminal response and stalking

- 31 The criminal justice system is not dealing effectively with stalking.
- 32 People who work in the justice system can find the stalking offence hard to understand and apply. Some of them think the offence is hard to investigate and prove.
- 33 The stalking offence should be drafted clearly so that it is more easily understood.
- 34 Victoria Police should ensure that guidance and training are given to police to strengthen stalking investigations.
- 35 Victim survivors are often told to stop using their devices to prevent cyberstalking. 'Unplugging' is not the appropriate solution. Victoria Police should improve its capability to respond to cyberstalking.
- 36 There is no need for new criminal offences for breaches of PSIOs.
- 37 While the police are increasingly responding to breaches, there are still some victim survivors who feel let down by the justice system. Victoria Police should improve how it responds to breaches. If it decides not to file a charge for a breach, it should provide its reasons to the victim survivors.
- 38 People who experience stalking should have extra protections in criminal proceedings:
 - They should have access to alternative arrangements that make it less difficult and less traumatic to give their evidence than it is now.
 - Court infrastructure and facilities should be designed to protect them.
 - The accused should be prevented from personally cross-examining protected victims, and Victoria Legal Aid should receive funding to conduct the cross-examination.

Responding to people who stalk

- 39 For too long the response to stalking has focused on what the victim survivor is expected to do to avoid being stalked. The focus should shift to the people who commit the crime.
- 40 There is some evidence that therapeutic treatment may reduce the risk of re-offending.
- 41 People who stalk need to get the appropriate intervention early to stop their behaviour. But reforms, including early intervention, will only work if there are services in place.
- 42 To protect victim survivors and the community there should be a coordinated, system-wide response to stalking behaviour, focusing on early intervention.

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- 43 The response should deliver accessible and effective treatment and support programs to people who stalk.
 - 44 If in the future there are strong indicators that compelling people to have treatment is an effective response to stalking in the PSIO system, the Victorian Government should consider introducing court-ordered treatment.
 - 45 In Australia, Victoria has the highest maximum penalty for the offence of stalking. Changes to sentencing legislation are not needed, but courts should have guidance on sentencing people who stalk.

Future improvements

- 46 Relevant data and research about stalking is urgently needed. The Victorian Government should address gaps in data and research on stalking and the justice system's response to it.
- 47 As the knowledge base on stalking improves, so should the response to stalking.

Glossary

Accused	A person charged with a criminal offence or offences. Also known as the defendant.
Appeal	A party to a legal proceeding may be unhappy with the outcome, or with a particular ruling made by the judicial officer hearing the matter; usually, they can apply (appeal) to a higher court to have that outcome or ruling changed.
Affected family member	A person in need of protection under a family violence intervention order or a family violence safety notice .
Affected person	A person in need of protection under a personal safety intervention order .
Applicant	A person applying for a legal order , such as a personal safety intervention order , or for financial assistance at the Victims of Crime Assistance Tribunal (VOCAT) .
Balance of probabilities	The standard of proof in civil proceedings . Often described as 'more likely than not' or 'more probable than not'. A lower standard than ' beyond reasonable doubt '.
Beyond reasonable doubt	The standard of proof in criminal proceedings . A higher standard than the ' balance of probabilities '.
Breach	A contravention of an order or a law—when a person does something that the order or law says they must not do.
Brief of evidence	The material relied on by the prosecution to prove the charges in a criminal case.
Charge	Details of a crime a person is accused of committing.
Child	A person under the age of 18 years. See young person .
Children's Court of Victoria	A specialist court that hears and decides cases involving children and young people.
Civil proceeding	A case under civil (non-criminal) law, where one person or organisation sues another for breaching their legal rights or failing to do something they are legally obliged to do. Also includes applications for protective court orders , such as personal safety intervention orders or family violence intervention orders .

Complainant	A technical term used to describe the victim/victim survivor in a criminal prosecution before it has been proved whether or not the accused committed the crime.
County Court of Victoria	The County Court sits above the Magistrates' Court and below the Supreme Court in the Victorian court hierarchy. In its criminal jurisdiction it hears indictable criminal cases, except the most serious offences, which are heard in the Supreme Court. Criminal trials in the County Court are usually heard by a judge and jury.
Court list	A schedule of the cases listed for hearing in a court on a particular day. Also refers to the specialist management of some cases (for example, cases involving sexual offences) by a dedicated group of judicial officers who actively engage with the parties or their legal representatives to reduce delay, see if cases can be resolved, or ensure proper preparation for and conduct of trials.
Criminal proceeding	A case against a person accused of a criminal offence, or a part of the case, including preliminary hearings and procedures.
Cross-examination	When a witness for one party (for example, the prosecution) is asked questions in court by the lawyer for the other party (for example, the accused) to test the evidence the witness has already given.
Cyberstalking	Stalking using information and communication technology.
Defence	A term used to describe the accused person's legal team and how they defend the charges .
Director of Public Prosecutions (DPP)	The official who makes decisions about whether to prosecute serious criminal matters, and who is independent of government. The Victorian DPP is responsible for prosecuting criminal offences under Victorian law. The Office of Public Prosecutions conducts these prosecutions on behalf of the DPP.
Evidence-in-chief	The evidence given by a witness for the party who called the witness.
Family member	Defined in the <i>Family Violence Protection Act 2008 (Vic)</i> to include current or former partners, people who are or have been in intimate relationships (and their children), current or former relatives, and children who normally or regularly live (or previously lived) with the relevant person. May also include people who are or were thought of as being family members, given the overall circumstances of the relationship (for example, a carer or someone culturally recognised as a relative).
Family violence	Defined in the <i>Family Violence Protection Act 2008 (Vic)</i> to include a wide range of abusive, threatening and coercive behaviours by someone to a family member , or acts that cause a child to be exposed to such behaviours. It covers physical, sexual, emotional, psychological and economic abuse.

Family violence intervention order (FVIO)	An interim or final order issued by the Magistrates' or Children's Court to protect a person from family violence .
Family violence safety notice (FVSN)	A temporary notice issued by police to protect a person from family violence until a court can decide whether to issue an interim or a final family violence intervention order .
Financial assistance	Money paid by the state to people who have been injured as a result of a crime.
Higher courts	In Victoria, the County Court and the Supreme Court .
Indictable offence	A serious crime that is usually tried in a higher court before a judge and jury.
Interim	Temporary. For example, an order that applies until a judicial officer has an opportunity to fully consider the matter.
Judicial officer	A judge, magistrate , or judicial registrar . Judicial officers can make decisions and directions about the law. They can also impose sentences .
Justice system	The system that responds to criminal behaviour and other harms, including breaches of civil law (see civil proceeding). It includes the criminal and civil courts, and the Victims of Crime Assistance Tribunal .
Legal representation	The lawyers providing advice to or acting on behalf of the parties in a criminal proceeding or a civil proceeding . Affected persons and affected family members may also have legal representation.
Magistrate	A person who hears (considers and decides on) cases in the Magistrates' Court or in the Children's Court , or who decides applications for assistance in the Victims of Crimes Assistance Tribunal .
Magistrates' Court of Victoria	A lower court that hears less serious matters without a jury. It is responsible for hearing and determining summary offences and some indictable offences that can be tried summarily.
Mediation	A process where people who have a dispute (disagreement) try to reach a mutually-acceptable agreement through discussion, with the help of a trained facilitator (assistant) who is impartial (does not have an interest in the outcome of the dispute).
Offender	A person who has been found or has pleaded guilty to a criminal offence.
Office of Public Prosecutions (OPP)	The agency that is independent of government and that prepares and conducts criminal prosecutions on behalf of the Director of Public Prosecutions.
Order	A binding direction by a court or tribunal in a legal proceeding.
Parties	The prosecution and the accused in a criminal proceeding ; the plaintiff and the defendant, or the applicant and respondent , in a civil proceeding .


Person with a cognitive impairment	The <i>Criminal Procedure Act 2009</i> (Vic) defines 'cognitive impairment' to include 'impairment because of mental illness, intellectual disability, dementia or brain injury'. In this report, the term 'person with a cognitive impairment' is used when we discuss support programs authorised by the Criminal Procedure Act and other similar initiatives. More generally, the term 'person with a cognitive disability' is used.
Personal safety intervention order (PSIO)	An interim or final order issued by the Magistrates' or Children's Court to protect a person from stalking , assault, harassment, property damage and other prohibited behaviour by another person who is not a family member .
Plea	When the accused person tells the court whether they are guilty or not guilty of the charge.
Prosecution	The lawyers, individual (for example, the Director of Public Prosecutions) or agency (for example, the Office of Public Prosecutions) conducting a criminal case before the court on behalf of the investigating agency. In the Magistrates' Court , the investigating agency, such as Victoria Police, may itself conduct a criminal case. A 'prosecution' may also refer to the case against a person accused of a criminal offence.
Protected person	A person who is protected by an order , such as a family violence intervention order or a personal safety intervention order .
Registrar	A person who is responsible for the administrative work of courts. Registrars process court documents, answer enquiries, and manage court lists . A judicial registrar helps manage a court's workload by hearing (considering and deciding on) certain matters. For example, in the Magistrates' Court , judicial registrars can hear personal safety intervention order applications.
Respondent	A person who has had an order , or an application for an order (such as a personal safety intervention order or a family violence intervention order), made against them.
Sentence	The penalty given to an offender by a court. For example, a fine or a term of imprisonment.
Stalking	A crime involving one or more of a range of behaviours, done more than once or for an extended period. Examples of behaviours include following a person, tracing their internet use, or keeping them under surveillance. The behaviours on their own may not be illegal, but when they come together in a 'course of conduct' directed at a person, with a specific intent, the behaviour becomes criminal. Family violence stalking is stalking that is linked to family violence . For example, stalking by a partner or ex-partner. Non-family violence stalking is stalking by a person outside a family violence context. For example, stalking by an acquaintance, colleague, or neighbour. In this report, our focus is on non-family violence stalking.

Standard of proof	<p>The level of certainty and the degree of evidence necessary to establish that a criminal or civil case has been proved.</p> <p>The standard of proof for criminal cases is beyond reasonable doubt; for civil cases it is the balance of probabilities.</p>
Summary offence	<p>A criminal offence that may be dealt with 'summarily' by a magistrate, without a jury. Less serious than an indictable offence.</p>
Supreme Court of Victoria	<p>The highest court in Victoria that deals with the most serious criminal offences. The Court of Appeal is a division of the Supreme Court and it hears criminal appeals from the Supreme Court or County Court.</p>
Therapeutic intervention	<p>Problem-solving approaches that try to address the issues or causes contributing to a person's unlawful or criminal behaviour.</p>
Victim/victim survivor	<p>In a criminal proceeding, a victim is a person who has suffered harm as a result of a crime.</p> <p>In this report, the term applies to a person alleged by the prosecution to be a victim before the accused has been found guilty, as well as a person who has suffered due to an offence (such as stalking) for which the offender has been found guilty. It may also refer to a person who has experienced a crime (such as stalking) that was not reported or prosecuted.</p> <p>Victim survivor is sometimes used instead of victim.</p>
Victim impact statement	<p>A statement in which a victim can tell the court how the crime affected them. The statement is provided to the court at a sentencing hearing, after the offender has been found guilty.</p>
Victims of Crime Assistance Tribunal (VOCAT)	<p>A body established by legislation to hear and determine applications for financial assistance made by victims of violent crime committed in Victoria.</p>
Witness	<p>A person who gives evidence in a case.</p>
Young person/young people	<p>In this report, 'young person' is used to refer to someone over 18 years of age but under 25 years of age.</p>


Recommendations

1. The Victorian Government should:
 - a. identify gaps in data and research on non-family violence stalking and the justice system's response to it
 - b. identify shortcomings in existing data and research on non-family violence stalking and the justice system's response to it
 - c. support additional data collection and research to fill these gaps and address these shortcomings
 - d. monitor the emerging data and research on non-family violence stalking and the justice system's response to it
 - e. ensure that any emerging data and research gaps are filled and shortcomings addressed.
2. In implementing Recommendations 1-9 of the interim report, Victoria Police should ensure that frontline and specialist police improve their capability to identify, investigate and respond to non-family violence cyberstalking.
3. In implementing Recommendation 8 of the interim report, Victoria Police should ensure that referrals are made efficiently to services that provide technical support for non-family violence cyberstalking for victim survivors, as set out in Recommendation 7 of this report.
4. a. The Victorian Government should resource and support public education about non-family violence stalking and cyberstalking. This education should be based on relevant research. It should include material on:
 - identifying stalking and how it is a crime
 - the harms caused by stalking
 - the different forms stalking can take
 - how stalking is different from harassment and similar conduct
 - common stalking myths
 - how people engaging in stalking can get help to stop what they are doing
 - how people who experience stalking can respond, including options available through the eSafety Commissioner
 - the available support options and what to expect from these
 - the available justice options and what to expect from these.

- b. Public education should:
 - be ongoing and adequately resourced
 - be accessible
 - include strategies and material tailored to reach diverse communities
 - equip family and friends to respond constructively to disclosures
 - include a focus on children and young people and be delivered in schools and higher education settings, as well as to the broader community
 - equip health providers to respond constructively to disclosures.
5. a. The Victorian Government should provide funding and support to the Judicial College of Victoria, and other agencies if appropriate, to develop and deliver ongoing training, based on relevant research, for judicial officers, judicial registrars, court staff and prosecutors to improve their response to non-family violence stalking and cyberstalking. Education should address:
 - barriers to accessing the justice system and responding to diverse experiences of stalking
 - the nature and dynamics of stalking
 - the effects of trauma from being stalked and how to respond in a trauma-informed way
 - support and justice options for stalking victim survivors
 - assessment and referral pathways for people who stalk.
- b. Education for prosecutors should also include the possible adverse effects of negotiating away stalking charges.
- c. Education for judicial officers, judicial registrars and court staff should also include:
 - identifying stalking behaviour
 - the impact of personal safety intervention orders on children
 - how to frame conditions of personal safety intervention orders for cyberstalking
 - when to order a pre-sentence assessment report.
6. The Victorian Government should implement the victim support recommendations in the Centre for Innovative Justice *Strengthening Victoria's Victim Support System: Victim Services Review* report and recommendations in the Legislative Council Legal and Social Issues Committee *Inquiry into Victoria's Criminal Justice System*, especially recommendations 36, 37, 40, 42, 49 and 50.
7. a. In implementing reforms to victim support, the Victorian Government should ensure that victim survivors of non-family violence stalking receive support that is practical, timely and ongoing.
- b. For victim survivors of non-family violence cyberstalking the Victorian Government should also ensure that the support provided by private technology companies is regulated and safe.
- c. The Victorian Government should ensure that for victim survivors of non-family violence stalking, including cyberstalking:
 - pathways to early support are developed
 - any barriers to eligibility are addressed
 - access to support is improved for underserved groups
 - guidelines and training are provided to victim support staff on stalking.

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8. The Victorian Government should fund a stream of timely financial assistance so that victim services can administer flexible support packages or brokerage to assist victim survivors of non-family violence stalking, including cyberstalking. This should include financial assistance to implement safety plans.
 9.
 - a. The Victorian Government should consult on and co-design a model of victim support that uses advocates to provide continuous support for people who have experienced non-family violence stalking. These independent advocates should:
 - provide information about justice options and progress through the justice system
 - support victim survivors to understand and exercise their rights
 - assist with planning for their safety when they are experiencing stalking
 - support their individual needs
 - liaise with, and advocate for victim survivors to, services and the justice system.
 - b. The model of an independent advocate should:
 - be available as soon as a disclosure of stalking is made and not depend on a person's engagement with the criminal justice system
 - include diverse points of referral and access to such support
 - enable advocates to provide individualised support, including specialised expertise and understanding of working with people from diverse backgrounds
 - give priority to people who are currently underserved.
 10. The Victorian Government should provide all necessary assistance to the Magistrates' Court of Victoria to enable the Court to develop evidence-informed guidance for identifying and prioritising non-family violence stalking in personal safety intervention order matters.
 11. The Magistrates' Court of Victoria should apply the guidance developed in Recommendation 10 to identify non-family violence stalking personal safety intervention order matters that require a specialised approach. The Magistrates' Court of Victoria should implement a specialised approach to these matters.
 12. The Magistrates' Court of Victoria should consider the extent to which the specialist family violence courts should be used for non-family violence stalking personal safety intervention order matters, and how the non-family nature of those cases should be differentiated within the current system.
 13. The Victorian Government should resource the Magistrates' Court of Victoria to implement Recommendation 11.
 14. The Victorian Government should strengthen pathways from the personal safety intervention order system to mediation, in non-stalking matters only, by:
 - a. making the Dispute Settlement Centre of Victoria (DSCV) mediation guidelines more available to police, magistrates, judicial registrars and court staff
 - b. funding the DSCV police referral program to re-establish referrals directly from police
 - c. funding DSCV to increase Dispute Assessment Officer attendance, and ensuring that as many matters as possible and appropriate have access to the personal safety intervention order mediation program, with a focus on enhancing resources for matters in rural and regional Victoria.

15. In implementing Recommendations 1 and 3 of the interim report, Victoria Police should ensure that appropriate referrals to mediation are made for people who are not victim survivors of stalking.
16. The Victorian Government should amend section 123 of the *Personal Safety Intervention Orders Act 2010* (Vic) to extend the prohibition on publication to matters involving adults.
17. The Victorian Government should include a provision in the *Personal Safety Intervention Orders Act 2010* (Vic) to the effect of section 169 of the *Family Violence Protection Act 2008* (Vic) to provide for judicial discretion to make an order allowing publication when the court reasonably considers that it is:
 - a. in the public interest
 - b. just in the circumstances.
18. The Victorian Government should include a provision in the *Personal Safety Intervention Orders Act 2010* (Vic) to the effect of section 169B of the *Family Violence Protection Act 2008* (Vic) to enable victims to consent to publication, with appropriate safeguards.
19.
 - a. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to provide for a category of 'protected witnesses' as in the *Family Violence Protection Act 2008* (Vic) that bars respondents from personally cross-examining protected witnesses.
 - b. In determining whether to declare a person a 'protected witness' for the proceeding the court should consider the following circumstances:
 - the nature or seriousness of the alleged prohibited behaviour
 - relationship between the affected person and respondent
 - the level of fear of the affected person
 - whether cross-examination could perpetuate stalking
 - any specific needs of the affected person.
20. The *Personal Safety Intervention Orders Act 2010* (Vic) should include an equivalent provision as in section 71 of the *Family Violence Protection Act 2008* (Vic) for the court to order Victoria Legal Aid to represent otherwise unrepresented respondents for cross-examination of the protected witness.
21. The *Personal Safety Intervention Orders Act 2010* (Vic) should include an equivalent of section 72 of the *Family Violence Protection Act 2008* (Vic) for the court to order Victoria Legal Aid to represent otherwise unrepresented applicants or protected witnesses for cross-examination of the protected witnesses.
22. Victoria Legal Aid should be funded to provide the legal representation described in Recommendations 20 and 21.
23. The Victorian Government should provide funding to community legal centres, Aboriginal-controlled legal services and Victoria Legal Aid to expand access to legal advice and representation for applicants and respondents in relation to non-family violence stalking personal safety intervention order matters.
24. Eligibility for access to legal advice or representation for applicants and respondents in non-family violence stalking personal safety intervention order matters should be determined based on the guidance developed in Recommendation 10.
25. The Victorian Government should monitor and evaluate the implementation of online applications for personal safety intervention order matters. Findings should inform the use of online applications to ensure it is safe for use in non-family violence stalking matters and does not reduce the capacity of the court to provide an effective response to these matters.

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26. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to allow for interim orders to be made on the court's own motion as is the case in the *Family Violence Protection Act 2008* (Vic).
 27. The Victorian Government should amend the appeals process that applies to personal safety intervention orders to align with the amendments in the *Justice Legislation Amendment (Criminal Appeals) Act 2019* (Vic) to de novo appeals from the summary jurisdiction.
 28. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to prevent personal safety intervention orders being made against respondents under the age of 14 years.
 29.
 - a. The Victorian Government should establish and fund an evidence-informed therapeutic program to respond to children engaging in non-family violence stalking behaviour.
 - b. A purpose of the program should be to avoid the need for a personal safety intervention order being made against a child respondent.
 - c. The Victorian Government should evaluate the effectiveness of the program and improve the program based on the findings of the evaluation.
 30. The Victorian Government should include a legislative presumption against the making of a final personal safety intervention order against child respondents 14 years and over in the *Personal Safety Intervention Orders Act 2010* (Vic).


PSIOs should only be available against respondents of this age where:

 - a. a therapeutic process (such as the one developed under Recommendation 29) has been undertaken but was unsuccessful, or
 - b. in cases where the therapeutic process is inappropriate in all the circumstances of the case.
 31. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to include a provision similar to section 62 of the *Family Violence Protection Act 2008* (Vic), empowering the court to order that a child who is neither an applicant nor respondent be legally represented.
 32. The Victorian Government should provide funding to community legal centres, Aboriginal-controlled legal services and Victoria Legal Aid to expand access to legal advice and representation for child applicants and respondents in relation to non-family violence stalking personal safety intervention order matters.
 33. The Victorian Government should amend the stalking offence in section 21A of the *Crimes Act 1958* (Vic) to improve its clarity and practical application.

The amendments should:

 - a. clarify the meaning of the 'course of conduct' element based on established case law principles
 - b. redraft the offence to create three offences based on intentional, reckless and 'objective fault' forms of stalking, with the elements clearly laid out and the different degrees of culpability clearly shown.
 34. In implementing Recommendations 1-4, 6 and 9 of the interim report, Victoria Police should ensure that sufficient guidance and training is given to frontline and specialist police to facilitate strong and effective investigative and evidentiary practices when considering and authorising stalking charges under section 21A of the *Crimes Act 1958* (Vic).

35. The Crime Statistics Agency should conduct a qualitative review to identify reasons for the attrition of the stalking offence in the criminal justice system. The review should examine:
 - a. police and prosecution stalking files
 - b. judicial reasons for not finding charges are proved in contested hearings in the Magistrates' Court of Victoria.
36.
 - a. Victoria Police should review its operational policy and practice material to develop clear guidance for police members to follow when responding to alleged breaches of personal safety intervention orders in relation to victim survivors of non-family violence stalking.
 - b. Victoria Police should ensure that responses to alleged breaches are timely and capable of meeting the safety needs of victim survivors.
37.
 - a. Where an alleged breach of a personal safety intervention order has occurred, but upon investigation Victoria Police decides not to file a charge, Victoria Police should provide an explanation for its decision not to charge to the person protected by the order.
 - b. If requested by the protected person, this decision should be provided in writing.
38. The Victorian Government should implement Recommendations 37, 40 and 41 from the Victorian Law Reform Commission's *The Role of Victims of Crime in the Criminal Trial Process* report to amend the *Criminal Procedure Act 2009* (Vic) to include a 'protected victim' category and provide protections in the form of alternative arrangements for giving evidence.
39. The Victorian Government should introduce measures under the *Criminal Procedure Act 2009* (Vic) to allow 'protected victims' to give their evidence in the form of a pre-recording.
40. The Victorian Government should implement Recommendation 43 of the Victorian Law Reform Commission's *The Role of Victims of Crime in the Criminal Trial Process* and Recommendation 85 of the *Improving the Justice System Response to Sexual Offences* reports to strengthen measures to protect victim survivors of stalking attending court.
41. The Victorian Government should amend Part 8.2, Division 3 of the *Criminal Procedure Act 2009* (Vic) so that the Division on cross-examination of protected witnesses applies to a criminal proceeding that relates (wholly or partly) to a charge for stalking.
42. The Victorian Government should ensure that Victoria Legal Aid is resourced to provide legal representation to unrepresented accused in accordance with section 357(2) of the *Criminal Procedure Act 2009* (Vic).
43. The Victorian Government should develop a coordinated response to non-family violence stalking to deliver accessible and effective treatment and support programs to people who stalk. The coordinated response should involve:
 - a. ongoing research on the effectiveness of and ways to improve responses to stalking behaviour
 - b. increasing the availability of general treatment and support in the community and justice system
 - c. support that is tailored to the person's individual needs
 - d. improving access to and availability of early intervention programs for people who stalk, especially in rural and regional Victoria
 - e. improving access to and availability of prison-based rehabilitation and reintegration programs
 - f. strengthening assessment and referral pathways from police, lawyers and courts.

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44. If there are strong indicators that compelling treatment is an effective response to non-family violence stalking in the personal safety intervention order system, the Victorian Government should consider introducing court-ordered therapeutic orders, as is the case in the *Family Violence Protection Act 2008* (Vic).
 45. The Judicial College of Victoria should develop guidance for sentencing breaches of personal safety intervention orders, similar to the guidance that exists for sentencing breaches of family violence intervention orders and family violence safety notices under the *Family Violence Protection Act 2008* (Vic).

CHAPTER
01

Introduction

- 2 Our terms of reference
- 3 Our interim report and this report
- 3 Our process
- 4 An acknowledgement
- 4 Why does the response to stalking need to change?
- 5 How does the response to stalking need to change?
- 6 What is our approach to reform?
- 9 The process from here

1. Introduction

A note on language

Stalking is a crime in Victoria. The **stalking offence** makes it a crime to engage in one or more of a range of behaviours, more than once or for an extended period. Examples of behaviours include following a person, tracing their internet use or keeping them under surveillance. The behaviours on their own may not be illegal, but when they come together in a 'course of conduct' directed at a person, with a specific intent, the behaviour becomes criminal.

Family violence stalking and non-family violence stalking

Family violence stalking refers to **stalking** that is linked to family violence (for example, **stalking** by a partner or ex-partner).

However, in this report we are mostly concerned with **non-family violence stalking**. This is **stalking** by a person outside a family violence context, for example **stalking** by an acquaintance, colleague or neighbour—or even someone unknown. When we use the word 'stalking' in this report, that is what we mean. When we do refer to **family violence stalking**, the words we use will make that clear.

The courts

References in this report to the Magistrates' Court, the County Court and the Supreme Court refer to the Victorian courts unless otherwise noted.

For definitions of terms used in this report, see the Glossary on page xvi.

Our terms of reference

- 1.1 The Victorian Law Reform Commission was asked to review Victoria's legal responses to stalking, harassment and similar conduct.
- 1.2 We were guided by our terms of reference given to us by the Attorney-General, the Hon. Jaclyn Symes MP, on 17 February 2021 (see page x).
- 1.3 Our terms of reference focus on non-family violence stalking and ask us to look at:
 - the personal safety intervention order (PSIO) system
 - what prevents the law from effectively responding to stalking, harassment and similar conduct
 - how to improve the law and the justice system's response.

Our interim report and this report

- 1.4 The Attorney-General asked us for an interim report and a final report. We delivered our interim report on 22 December 2021. It was tabled in the Victorian Parliament on 6 April 2022. The interim report focused on improving the police response to stalking.
- 1.5 This report deals with other parts of our terms of reference.

Our process

- 1.6 Our interim report describes this inquiry's process in more detail.¹ In summary:
- We received 115 written submissions (see Appendix A).
 - We held 36 consultations, including five after delivery of the interim report (see Appendix B).
 - We received 254 responses to our online form on Engage Victoria. We used this form to seek views from people who had experienced stalking.
- 1.7 The Sentencing Advisory Council published three reports to assist this inquiry:
- *Sentencing Breaches of Personal Safety Intervention Orders in Victoria*²
 - *Sentencing Stalking in Victoria*³
 - *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices: Third Monitoring Report*.⁴
- 1.8 The Crime Statistics Agency conducted a study about what happens after a stalking incident is reported to police: *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System*.⁵
- 1.9 We received helpful data from the Dispute Settlement Centre of Victoria and Victoria Legal Aid.
- 1.10 These reports and data gave us new insights into the response to stalking. We refer to them throughout this report.
- 1.11 We invited input from the Office of Public Prosecutions, which was unable to provide it because of its resourcing constraints.
- 1.12 There are some issues we do not cover in this report. We have focussed on responding to stalking after it happens to prevent it from happening again. We do not make many recommendations about preventing stalking before it happens. We also focused on the justice system response, rather than other systems, such as education and health. So we have not made findings about information sharing between agencies.⁶

1 We have Commissioners who guide and make decisions about the inquiry. The Commissioners come from varied professional backgrounds. Commissioners are required to declare any potential conflicts of interest where they may intersect with the Commission's work, including the development of recommendations. It may be appropriate for a Commissioner to recuse themselves from engaging with the decision-making around a particular issue when a potential conflict of interest arises. In this reference, Dan Nicholson, Executive Director, Criminal Law at Victoria Legal Aid, declared potential conflicts of interest and did not engage in decision-making in relation to Recommendations 22, 23, 32 and 42. These recommendations relate to Victoria Legal Aid.

2 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022).

3 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022).

4 Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022).

5 Sarah Bright, Lauren Barnaba and Melanie Millsteed, *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System* (Data Snapshot, Crime Statistics Agency, forthcoming).

6 However, this issue was addressed in our consultation paper.

An acknowledgement

- 1.13 At the heart of this reference is the death of Celeste Manno in November 2020. This report does not discuss the details of Ms Manno's death because a criminal case is currently before the courts. But it was in response to her death that the Attorney-General asked us to conduct this review.
- 1.14 We thank everyone who contributed to this inquiry, especially victim survivors and concerned members of the public. Many people were motivated to write to us in support of Celeste Manno.⁷ Many respondents shared their experiences and views to improve the response to stalking.

Why does the response to stalking need to change?

- 1.15 Stalking is a criminal offence. It is also grounds for a PSIO in the civil system.⁸ Some support and financial assistance is available for people who have experienced stalking.⁹
- 1.16 Since the Royal Commission into Family Violence was completed in 2016, a range of measures have been implemented to better respond to family violence stalking.¹⁰ But we found problems with the way the justice system responds to stalking that is not related to family violence, which is the focus of our inquiry.
- 1.17 People who experience stalking can be trapped in a cycle of abuse that is hard to identify, prove, and remove themselves from. The justice system process—often long, frustrating and traumatic—can make the experience worse.

Stalking is different to other offences

- 1.18 There are a few reasons for the problems. Stalking is different to most criminal offences that focus on physical violence, because it is made up of repeated incidents, not just one event.¹¹ Also, the behaviours that amount to stalking can be legal on their own.¹²
- 1.19 It can be challenging for people who work in the justice system, and for members of the community in general, to understand what is happening and know what to do about it.
- 1.20 When people who experience stalking make a report, their experience can be minimised. They often do not get the response they need.

The response is not tailored enough

- 1.21 The response to stalking is not tailored enough. For example:
- PSIOs can be taken out for many other matters, often less serious than stalking.
 - Children and young people do not receive a tailored, age-appropriate response.
 - Stalking behaviour gets charged as other offences—for example, property or assault offences—which police might believe are easier to prove. This is partly why stalking does not receive specialist management in prison or the community corrections system.

We discuss these issues in Chapters 6, 7 and 8.

7 See, eg, Submissions 10 (Rochelle Carli), 14 (George Hart), 19 (Lyn Crocker), 22 (Name withheld), 25 (Deborah), 27 (Name withheld), 28 (Name withheld), 30 (Name withheld), 33 (Name withheld), 40 (Name withheld), 42 (Name withheld), 43 (Name withheld), 53 (Barbara Jackson), 69 (Daniel Petrovski), 88 (Name withheld), 92 (Name withheld), 101 (Michael Buckman), 113 (Name withheld).

8 See Chapters 6 and 7 of this report.

9 See Chapter 5 of this report.

10 Stalking by partners or former partners falls within a specialist system, which has processes to assess the risk posed to victim survivors and plan for victim safety and recovery.

11 Marilyn McMahon, Paul McGorery and Kelley Burton, 'Prosecuting Non-Physical Abuse between Current Intimate Partners: Are Stalking Laws an Under-Utilised Resource?' (2019) 42(2) *Melbourne University Law Review* 551, 551. In Chapter 7, we discuss the challenges associated with investigating the stalking offence.

12 See Chapter 7.

- 1.22 The response to stalking does not acknowledge the specific needs of victim survivors of stalking, unlike the victim survivors of family violence and sexual violence. But family violence, sexual violence and stalking have some things in common. They can all involve the exercise of power by one person over another.¹³ Many of the impacts can be similar, including isolation from others and fear.¹⁴
- 1.23 The victim survivors of family violence and sexual violence receive special protections in the justice system. They are supported to give their best evidence. But people who have experienced non-family violence stalking have far less protection and support.¹⁵ This should change. We discuss this further in Chapters 6 and 7.

It is unclear how effective the response is

- 1.24 Finally, there has been little evaluation of how effective the criminal or civil responses are to prevent stalking.¹⁶ There are signs that these responses are not working well. Half of all people sentenced for stalking reoffend within four years.¹⁷ And PSIOs, which are the main civil response to stalking, are often breached.¹⁸ Our recommendations aim to make the response to stalking more effective.

How does the response to stalking need to change?

- 1.25 To help people understand stalking and know what to do about it:
- We recommend community education on stalking, and training about stalking for people who work in the justice system (see Chapter 4).
 - We recommend improving how the stalking offence is applied and how the police respond to breaches (see Chapter 7).
 - We recommend guidance and training for police to help them identify and investigate stalking, as we stated in our interim report.¹⁹
- 1.26 To provide a more tailored response:
- We make recommendations for the civil response to stalking to be more focused and specialised than it is now (see Chapter 6).
 - We recommend new protections in the civil and criminal justice system for people who experience stalking (see Chapters 6 and 7).
 - We propose building alternative pathways for children and young people who engage in stalking behaviour (see Chapter 6).
 - We highlight issues that have not been reform priorities up to now, such as cyberstalking (see Chapter 3) and responding to people who stalk (see Chapter 8).
- 1.27 But there is a limit to what can be done to improve the response to stalking because not enough is known about it. In Chapters 2, 6, 7 and 8 we identify opportunities to build the knowledge base on stalking, so future reforms are informed by strong research and data.

13 Bonnie Brandl, Candace J Heisler and Lori A Stiegel, 'The Parallels between Undue Influence, Domestic Violence, Stalking, and Sexual Assault' (2005) 17(3) *Journal of Elder Abuse and Neglect* 37, 44.

14 Ibid 46.

15 This imbalance is starting to change. Reforms to the *Victims of Crime Assistance Act 1996* (Vic) were passed on 9 March 2022. The amendments ensure that alleged stalking offenders will no longer be notified of, or able to attend hearings at the Victims of Crime Assistance Tribunal (VOCAT). We discuss reforms to VOCAT in Chapter 5.

16 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 4, 70. The Centre for Forensic Behavioural Science told us that research indicates that intervention orders can be effective in stopping stalking, but in some cases fail to protect the applicant and make the situation worse: Submission 32 (Centre for Forensic Behavioural Science).

17 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xii.

18 The police record breaches at a rate of around 20% of overall orders each year (see Chapter 7).

19 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) Recommendations 1-3.

What is our approach to reform?

Victim safety is the main concern

- 1.28 The stalking offence and the PSIO system were introduced to protect victim survivors.²⁰ Our terms of reference ask us to make 'victim safety and wellbeing the paramount consideration'. Accordingly, many of our recommendations are about keeping victim survivors safe.

Victim survivors have a range of justice needs

- 1.29 Importantly, stalking victim survivors have a specific need: for the stalking to stop and to feel safe.²¹ As one study noted, 'As long as their safety is increased, some victims care little about the means by which this result was achieved.'²²
- 1.30 Some victim survivors, however, see the need for people who stalk to receive longer sentences, for the protection of the people who were stalked or to ensure those responsible are held to account. Others call for the people who stalked them to receive treatment.²³
- 1.31 In our reports *The Role of Victims of Crime in the Criminal Trial Process* (2016) and *The Response of the Justice System to Sexual Offences* (2021) we summarised a range of justice needs that victims of crime have:
- to be treated with respect and supported in justice system processes
 - to be given information about the progress of their case
 - to participate in justice system processes, including decision making about their case
 - to be protected from trauma, intimidation and distress, for example when being cross-examined
 - to have their privacy respected as much as possible
 - to apply for compensation for the harm they have experienced
 - to feel validated and have their story believed
 - for the harm to be recognised and for the person responsible to be held to account.²⁴
- 1.32 In this inquiry, people who have experienced stalking told us they have similar justice needs. And research indicates that people who experience stalking need to feel believed, supported and to have information.²⁵
- 1.33 Our recommendations are designed to meet these needs. For example, see Chapter 5 on support for victim survivors and Chapter 8 on responding to stalking behaviour.

20 Victoria, *Parliamentary Debates*, Legislative Assembly, 20 October 1994, 1884, 1887 (Geoffrey Coleman); Victoria, *Parliamentary Debates*, Legislative Assembly, 9 June 2010, 2226 (Rob Hulls, Attorney-General).

21 Carolina Villacampa and Marc Salat, 'Stalking: Victims' and Professionals' Views of Legal and Institutional Treatment' (2019) 59 *International Journal of Law, Crime and Justice* 100345:1–14, 10; Holly Taylor-Dunn, Erica Bowen and Liz Gilchrist, *The Victim Journey: A Participatory Research Project Seeking the Views and Experiences of Victims of Stalking and Harassment* (Report, Centre for Violence Prevention, University of Worcester, July 2017) 4; Mary P Brewster, *An Exploration of the Experiences and Needs of Former Intimate Stalking Victims* (Final Report Submitted to the National Institute of Justice, US Department of Justice, May 1999) 9, 53. We note that family violence and sexual violence victim survivors can also have a need for the abuse to stop and to feel safe.

22 Suzan van der Aa and Anne Groenen, 'Identifying the Needs of Stalking Victims and the Responsiveness of the Criminal Justice System: A Qualitative Study in Belgium and the Netherlands' (2010) 6(1) *Victims & Offenders* 19, 28.

23 Jenny Korkodeilou, 'Dealing with the Unknown: Learning from Stalking Victims' Experiences' (2014) 16(4) *Crime Prevention and Community Safety* 253, 260.

24 Some of these needs now align with Victorian legislation such as the *Victims' Charter Act 2006* (Vic); *Criminal Procedure Act 2009* (Vic). See Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 32; Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021). The victim survivors we heard from in the sexual offences inquiry highlighted the need for the information to be timely.

25 Mary P Brewster, *An Exploration of the Experiences and Needs of Former Intimate Stalking Victims* (Final Report, National Institute of Justice, US Department of Justice, May 1999) 9, 53; Jenny Korkodeilou, 'Dealing with the Unknown: Learning from Stalking Victims' Experiences' (2014) 16(4) *Crime Prevention and Community Safety* 253, 258–65; Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 760; Suzan van der Aa and Anne Groenen, 'Identifying the Needs of Stalking Victims and the Responsiveness of the Criminal Justice System: A Qualitative Study in Belgium and the Netherlands' (2010) 6(1) *Victims & Offenders* 19, 19.

The response to stalking must recognise the diversity of experiences

- 1.34 In our interim report we recognised that just as our community is diverse, so are people's experiences of stalking and seeking justice. Some people are more likely to experience stalking than others. Some people find it harder to access the justice system than others (see Chapter 2).
- 1.35 Our recommendations aim to make changes that give everyone access to justice and allow the justice system to respond flexibly to diverse needs. For example, we recommend that:
- Community education should be tailored to diverse audiences (Chapter 4).
 - Victim advocates should be introduced, giving priority to the people who need them the most, including children and people with disabilities (Chapter 5).
 - The PSIO system is improved for children. An alternative pathway should be built for children within the PSIO system (Chapter 6).
 - Responses should give priority to rural and regional Victoria, which has a large share of PSIO applications and breaches (see Chapters 5, 6 and 8).²⁶

People who stalk should be accountable

I feel that I have to constantly make changes to fit the stalker. Not to upset them. ... My presence is upsetting the stalker, not that the stalker has a problem and ... needs to be made accountable?²⁷

- 1.36 The response to stalking has usually focused on what the victim survivor is expected to do to avoid being stalked. Such a focus can perpetuate victim-blaming, which can be a feature of the justice system response.²⁸
- 1.37 This focus means that people who stalk often do not get the help they need to address their behaviour. Too many continue their stalking behaviour without any consequence.
- 1.38 This imbalance needs to be corrected. It is not the victim survivor's responsibility to change their behaviour to stop the stalking.²⁹ An effective response to stalking must focus on the people who commit the crime.
- 1.39 However, what 'accountability' means for stalking has not been explored in any detail.³⁰ As we heard in this inquiry, and as research suggests, some victim survivors view accountability as a matter of prosecuting people who stalk and imprisoning them.³¹
- 1.40 We see accountability as a way of making sure that people who stalk take responsibility for their behaviour and take steps to address it. We also see it as a way for the community to acknowledge stalking as a harm and denounce it. It may mean civil or criminal sanctions. It may mean therapeutic intervention.³²

26 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) xii.

27 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

28 See, eg, Holly Taylor-Dunn, Erica Bowen and Elizabeth A Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2021) 36(11–12) *Journal of Interpersonal Violence* 10.1177/0886260518811423:1–29.

29 Submission 49 (Victims of Crime Commissioner).

30 There has been some indication that the response needs to emphasise more the behaviour of the person who stalks. In 2003, for example, the original stalking offence was amended to remove the requirement that the victim experience a negative impact from the stalking—all that mattered was that the person stalking had engaged in the behaviour and had the required intent. The government said at the time, 'The offence of stalking should focus on the behaviour of the offender rather than the response of the victim': Victoria, *Parliamentary Debates*, Legislative Assembly, 27 March 2003, 693 (Rob Hulls, Attorney-General).

31 See, eg, Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 762.

32 Legal sanctions may not be enough to stop the stalking. See Chapter 8.

- 1.41 Family violence and sexual violence have different dynamics to non-family violence stalking. However, some of the ways we respond to family violence and sexual violence could also hold accountable people who stalk, including:
- improving victim safety
 - keeping the person responsible in view
 - using the justice system to help ensure the person responsible complies with the law
 - measuring the right things, for example collecting data on how effective the system is
 - keeping every part of the system responsible.³³
- 1.42 We consider these responses along with other factors such as the rates of mental disorders amongst people who stalk (see Chapter 8) and the serious impacts of justice system contact at a young age (see Chapter 6). A fair process is also important for the accused. This includes the right to be presumed innocent until proved guilty and the right to test evidence.³⁴
- 1.43 Other chapters of this report include recommendations about:
- improving how criminal offences are applied (see Chapter 7)
 - enforcing breaches effectively (see Chapter 7)
 - improving legal representation for people who stalk (see Chapter 6)
 - developing alternative pathways for children and young people (see Chapter 6)
 - examining why cases do not progress through the criminal justice system (see Chapter 7)
 - encouraging research into interventions that work for people who stalk (see Chapter 8).

Other reforms should be built upon

- 1.44 We take into account other reforms and the findings of other inquiries. These include:
- The Royal Commission into Family Violence—Our terms of reference ask us to take this work into account. We discuss the family violence reforms in more detail in Chapters 3, 6 and 8.
 - The Royal Commission into Victoria's Mental Health System—Our terms of reference ask us to take this work into account. In Chapter 8, we discuss its recommendations about supporting the mental health and wellbeing of people in contact with the criminal justice system.³⁵
 - National principles addressing coercive control—We considered the Australian Government and Victorian work on coercive control, including potential system reforms and overlaps with this inquiry.³⁶
 - Review of Victoria's victim services—The Victorian Government has committed to reforming the support system for victims.³⁷ We build on this work in Chapter 5.
 - Australian Government reforms—We considered reforms in the federal jurisdiction, including new powers of the eSafety Commissioner, in Chapter 3.

33 Centre for Innovative Justice, RMIT University, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View* (Report, March 2015) 88.

34 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 24, 25.

35 *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) vol 3, 347, Recommendation 37.

36 'Development of National Principles on Addressing Coercive Control: Terms of Reference', *Attorney-General's Department* (Web Page, 9 July 2021) <<https://www.ag.gov.au/families-and-marriage/publications/development-national-principles-addressing-coercive-control>>; Jewel Topsfield, 'Debate Rages among Family Violence Campaigners over Criminalising Coercive Control', *The Sydney Morning Herald* (online, 26 November 2020) <<https://www.smh.com.au/national/debate-rages-among-family-violence-campaigners-over-criminalising-coercive-control-20201126-p56ig1.html>>.

37 Department of Justice and Community Safety (Vic), *Victim Support Update* (Report, December 2021) 7.

- 1.45 We were influenced by developments and what has been learned from family violence and sexual violence reforms. For example, we relied on the recommendations of our sexual offences report which acknowledged the benefits of specialisation, access to a lawyer and the clear drafting of offences.³⁸ We apply what we learnt in Chapters 6 and 7.
- 1.46 We have aimed to develop a tailored response to stalking. But we have also tried to use arrangements that are already in place. While non-family violence stalking is a serious crime with serious impacts, it is less common than family violence stalking. We have built on what is already in place in the 'generalist' system, with extra features for people who have experienced stalking. For example, in Chapter 5, we suggest an enhanced generalist model of victim support.
- 1.47 We have learned from and built on the family violence reforms (see box).

The family violence reforms

While family violence stalking and non-family violence stalking can look similar, the contexts are different and call for different responses. The response to non-family violence stalking therefore cannot be subsumed within family violence reforms. In Chapter 6, we recommend a separate, specialised approach to responding to non-family violence stalking in the PSIO system.

But there is value in learning from and building on some family violence reforms. In Chapter 6, we recommend bringing over some of the protections that exist under the *Family Violence Protection Act 2008* (Vic) to also apply in PSIOs for non-family violence stalking. One potential avenue of reform that could be used to improve the civil response is the specialist family violence courts that were set up to reduce the trauma of court proceedings (see Chapter 6).

There are areas, however, where reforms should diverge. The PSIO system is under strain from thousands of applications, which could result in issues such as police not responding to breaches (see Chapter 7). Bringing over family violence reforms such as police-issued safety notices may only strain the system even more, making the response less effective rather than better (see Chapter 6).

The process from here

- 1.48 We will deliver this report to the Attorney-General by 30 June 2022.
- 1.49 The death of Celeste Manno in November 2020 was a sign that the response to stalking needed reform. There is an opportunity now to propel forward the response to stalking so it is more effective, supportive and fair.
- 1.50 There is, however, a lot we still do not know about stalking. As the knowledge base changes, the responses should also evolve and improve. The recommendations in this report are the start of the work that needs to be done, but not the end.

Stalking and justice

12 Overview

12 How is stalking defined?

14 How does stalking affect people who experience it?

15 What does research suggest about stalking and the justice response to it?

23 There is a need for additional research and data on stalking

24 Some communities appear to experience stalking at higher rates than average

27 What are the barriers to reporting stalking and getting justice?

2. Stalking and justice

Overview

- Stalking is a serious criminal offence that causes lasting harm but it can be difficult to identify. Actions that together amount to stalking can be legal on their own.
- Our work has been shaped by what we know about stalking. However, what we know is limited. There is a need for additional data and research on stalking.
- Stalking occurs in many different contexts but people from some communities appear more likely to be harmed and may find it especially hard to get justice.
- There are barriers to reporting stalking and getting justice.

How is stalking defined?

- 2.1 Under the law, stalking can include a range of behaviours that:
 - are intended or likely to harm or frighten a person
 - amount to 'a course of conduct'.¹
- 2.2 A 'course of conduct' involves doing something more than once or for an extended period.²
- 2.3 These are examples of behaviour that could be stalking if repeated with the intention of causing harm or fear (or being reckless about doing so):
 - following a person
 - contacting them
 - threatening them
 - publishing information about them
 - interfering with their property or possessions
 - tracing their use of information or communication technology or keeping them under surveillance.³
- 2.4 Cyberstalking is stalking using information and communication technology. We discuss cyberstalking in Chapter 3.
- 2.5 Stalking can involve or lead to physical violence, but this is not always the case.⁴

1 *Crimes Act 1958 (Vic) s 21A*: see generally Chapter 7 of this report. See also *Personal Safety Intervention Orders Act 2010 (Vic) s 10*.

2 See the discussion in Chapter 7 of this report.

3 *Crimes Act 1958 (Vic) s 21A*. See also the examples of stalking behaviour used in the Personal Safety Survey: Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Web Page, 11 August 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>.

4 Troy McEwan, Paul E Mullen and Rosemary Purcell, 'Identifying Risk Factors in Stalking: A Review of Current Research' (2007) 30(1) *International Journal of Law and Psychiatry* 1, 2.

- 2.6 Sometimes stalking is limited to actions that in other contexts would be legal or even welcome. For example, if someone repeatedly gives another person unwanted gifts and will not stop when asked, this could be stalking.⁵ It is intrusive and disrespects the wishes of the person targeted. It deprives them of power over their own life, potentially causing distress and fear.⁶
- 2.7 Usually people are stalked by someone they know, such as a partner or former partner, someone they have dated, a colleague or an acquaintance. People may also be stalked by strangers, but this is less common. We discuss this further below.
- 2.8 The justice response to stalking includes both criminal and civil (non-criminal) responses.
- 2.9 The civil law response deals separately with family violence stalking and non-family violence stalking.
- 2.10 Stalking by family members, including former partners, can be grounds for a family violence intervention order (FVIO).⁷ This is a civil court order, but it is a criminal offence to breach it.⁸
- 2.11 Non-family violence stalking can be grounds for a personal safety intervention order (PSIO).⁹ Again, this is a civil court order, but it is a criminal offence to breach it.¹⁰
- 2.12 We discuss the civil law response to stalking in Chapter 6 and the criminal law response in Chapter 7.
- 2.13 In this chapter we consider the effects of stalking, which can be devastating. We summarise what the available data indicates about stalking and the justice system's response to it. We highlight the need for more research and data on stalking. We note that some communities may be more likely than others to experience stalking and we describe the barriers to reporting stalking and getting justice.
- 2.14 Stalking by anyone is a serious crime. Research suggests that stalking by partners or ex-partners is more likely to lead to extreme violence than other kinds of stalking.¹¹ But family violence stalking has distinct dynamics, and a specialised response to family violence already exists (see Chapter 1). Less is known about other kinds of stalking and how to improve the legal response to this behaviour. Our focus here and throughout this report is on non-family violence stalking.

5 See, eg, Emma Ogilvie, *Stalking: Legislation, Policing and Prosecution Patterns in Australia* (Research and Public Policy Series Report No 34, Australian Institute of Criminology, 2000) xii, 1–2; Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 1.

6 Paul E Mullen, Michele Pathé and Rosemary Purcell, 'Stalking: New Constructions of Human Behaviour' (2001) 35(1) *Australian and New Zealand Journal of Psychiatry* 9, 9–11.

7 *Family Violence Protection Act 2008* (Vic) pt 4. The Family Violence Protection Act does not specifically address stalking but how it defines 'family violence' is broad enough to include stalking behaviours. Family violence is behaviour directed at a family member that is physically, sexually, emotionally, psychologically or economically abusive; threatening; coercive; or 'in any other way controls or dominates' the family member and causes that family member to feel fear for their safety or wellbeing or that of another person: at s 5(1). See also s 176G(1)(a)(ii). 'Family members' are defined to include current or former partners, people who are or have been in intimate relationships (and their children), current or former relatives, children who normally or regularly reside (or previously did so) with the relevant person, or a person who is or was reasonably regarded as being a family member, given the overall circumstances of the relationship (for example, a carer or someone culturally recognised as a relative): at s 8. See also Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) [2.4].

8 *Family Violence Protection Act 2008* (Vic) ss 123, 123A, 125A.

9 *Personal Safety Intervention Orders Act 2010* (Vic) ss 1, 10.

10 *Ibid* s 100.

11 Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 756–7; Jeff Gavin and Adrian J Scott, 'The Influence of the Sex of and Prior Relationship between the Perpetrator and Victim on Perceptions of Stalking: A Qualitative Analysis' (2016) 23(5) *Psychiatry, Psychology and Law* 716, 718; Troy E McEwan and Michael R Davis, 'Is There a "Best" Stalking Typology?: Parsing the Heterogeneity of Stalking and Stalkers in an Australian Sample' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 115, 132; Troy McEwan, Paul E Mullen and Rosemary Purcell, 'Identifying Risk Factors in Stalking: A Review of Current Research' (2007) 30(1) *International Journal of Law and Psychiatry* 1, 2–3; Adrian J Scott and Lorraine Sheridan, '"Reasonable" Perceptions of Stalking: The Influence of Conduct Severity and the Perpetrator-Target Relationship' (2011) 17(4) *Psychology, Crime and Law* 331, 332; Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xi [2.15]–[2.16]. Other factors that may increase the likelihood or seriousness of harms arising from stalking include threatened or actual violence; whether the offender has substance abuse issues; whether the offender has a history of property damage (especially for former partners); whether the offender has physically approached the victim; and the gender of the offender and the victim: with male stalkers being more common than female stalkers, female victims being more common than male victims, and female victims of male stalkers experiencing more fear: at [2.16].

How does stalking affect people who experience it?

I didn't know how to express the fear I felt.¹²

I became a prisoner in my own home.¹³

I developed insomnia. He turns my dreams into nightmares.¹⁴

I am always on and hypervigilant. I can't relax, rest or feel safe. I haven't slept more than a few hours in many years.¹⁵

- 2.15 Being stalked can make people feel alone, ashamed, and afraid. It can cause fear and distress and leave scars that take years to heal.¹⁶
- 2.16 People who have experienced stalking told us about its many negative effects on their:
- physical health
 - mental health, with some saying it had made them suicidal
 - relationships
 - daily routines and sense of freedom and safety.
- 2.17 Many people described:
- the need for increased home security
 - not being able to go to work or move freely in the community
 - not being able to use social media.¹⁷
- 2.18 Many emphasised the effects of stalking on their relationships and families, including children. One person told us:

I don't think anyone who has not experienced stalking, actually understand[s] the fear, the pain and suffering that you experience, let alone your partner and the fear your children experience ... Both my daughter[s] still suffer and bring it up constantly ... even my son ... could not sleep in his own bed for years.¹⁸

- 2.19 Research indicates that people who stalk often harass the friends, families and acquaintances of the person they are stalking.¹⁹
- 2.20 The serious and lasting effects of stalking that we heard about are supported by other research.²⁰

12 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

13 Ibid.

14 Ibid.

15 Ibid.

16 Lise Linn Larsen, Dianna Bomholt and Helle Hundahl, 'Stalking as a Phenomenon in a Danish Context' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: International Perspectives* (John Wiley and Sons, 2020) 195, 201–2; Submission 32 (Centre for Forensic Behavioural Science); Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

17 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

18 Submission 21 (Antoinette Lim).

19 In a study of 143 females who experienced stalking, Assistant Professor Matthew Raj found that in 45% of cases the person who stalked harassed not just the main victim survivor but also people around them such as friends, children, partners, neighbours, or work colleagues: Submission 51 (Matthew Raj).

20 See, eg, Jenny Korkodeilou, 'No Place to Hide'—Stalking Victimisation and Its Psycho-Social Effects' (2017) 23(1) *International Review of Victimology* 17; Adrian J Scott et al, 'Public Familiarity and Understanding of Stalking/Harassment Legislation in Australia, the United Kingdom, and the United States' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 137, 138; Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) [2.14]–[2.16]; Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 12.

What does research suggest about stalking and the justice response to it?

- 2.21 Although we know about its impacts, stalking is still not well understood, either by the people who experience it or people who respond to it.²¹ There is a need for more research on stalking and for better education about identifying and responding to it. We discuss the need for education in Chapter 4.
- 2.22 In this report, we use these sources of data and analysis:
- the 2016 Personal Safety Survey by the Australian Bureau of Statistics, which provides the most recent information available from adult men and women in Australia about stalking experienced since the age of 15²²
 - Crime Statistics Agency data on stalking offences recorded in Victoria from 2012–2021²³
 - *Sentencing Stalking in Victoria*, by the Sentencing Advisory Council, including data on stalking reported to police and sentenced in Victorian courts from 2011–2020²⁴
 - *Sentencing Breaches of Personal Safety Intervention Orders in Victoria*, by the Sentencing Advisory Council, including data on breaches of these orders recorded by police and sentenced in Victoria from 2011–2020²⁵
 - *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices*, by the Sentencing Advisory Council, including data on breaches of these orders recorded by police and sentenced in Victoria from 2011–2020²⁶
 - *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System*, by the Crime Statistics Agency, containing data on how stalking offences recorded in Victoria from 2016–2018 progressed through the justice system.²⁷
- 2.23 These sources do not provide a complete picture of stalking. We explain their limitations below. However, they do indicate:
- how common stalking is
 - who is responsible for it
 - who is affected by it
 - how the law deals with it.

21 Submissions 32 (Centre for Forensic Behavioural Science), 39 (Victorian Pride Lobby), 49 (Victims of Crime Commissioner); Consultation 17 (Small group meeting on stalking and young people); Cleo Brandt and Bianca Voerman, 'The Dutch Model: A New Approach to Policing Stalking' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 251, 256–61. In relation to the criminal offence of stalking, a study conducted by Scott et al found that less than one-fifth (17%) of Victorians said they were familiar with the legislation regulating stalking. Among those who said they were familiar with the provisions of the Crimes Act, the authors assessed this familiarity as 'extremely rudimentary': Adrian J Scott et al, 'Public Familiarity and Understanding of Stalking/Harassment Legislation in Australia, the United Kingdom, and the United States' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 137, 141, 144, 152.

22 'Adult' men and women are aged 18 years or over: Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Web Page, 11 August 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>. The survey defined stalking as involving 'various behaviours, such as loitering and following, which the person [who reported being stalked] believed were ... undertaken with the intent to cause them fear or distress. To be classified as stalking more than one type of behaviour had to occur, or the same type of behaviour had to occur on more than one occasion.': Australian Bureau of Statistics, *Personal Safety, Australia Methodology 2016* (Web Page, 8 November 2017) Glossary <<https://www.abs.gov.au/methodologies/personal-safety-australia-methodology/2016>>. Note that a separate Australian Bureau of Statistics source uses data from the previous 2012 Personal Safety Survey: Australian Bureau of Statistics, *Stalking—In Focus: Crime and Justice Statistics* (Web Page, 14 June 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/focus-crime-and-justice-statistics/june-2017>>.

23 'Recorded Offences', *Crime Statistics Agency (Vic)* (Web Page, March 2022) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2>>.

24 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022).

25 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022).

26 The report considers family violence safety notices issued by police between 2012 and 2020 (the nine years during which data was available) and FVIOs issued by courts over the 10-year period from 2011 to 2020: Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) [3.1].

27 Sarah Bright, Lauren Barnaba and Melanie Millsteed, *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System* (Data Snapshot, Crime Statistics Agency, forthcoming).

Stalking is widespread, gendered, and mostly linked to family violence

- 2.24 The data on stalking suggest it is:
- widespread
 - gendered
 - mostly linked to family violence.
- 2.25 The Personal Safety Survey estimated that nationwide, one in six women (17 per cent) and one in 15 men (7 per cent) have experienced stalking since the age of 15.²⁸
- 2.26 Of women who were stalked, a large majority (94 per cent) were stalked by a male, while men were almost equally likely to have been stalked by a female as by a male.²⁹
- 2.27 Most people were stalked by someone they knew, such as an intimate partner or former partner, work colleague, or acquaintance.³⁰
- 2.28 Among women who were stalked by a male, just under half (45 per cent) were stalked by an intimate partner or former partner.³¹ A quarter (25 per cent) did not know or have a past relationship with the person.³²
- 2.29 Men were much more likely to know the person stalking them (95 per cent) if that person was a female.³³

Most people who are stalked do not contact the police about it

- 2.30 The Personal Safety Survey found that half of all women who experienced stalking thought that the behaviour was wrong, but not a crime.³⁴ Most did not contact the police about it.³⁵
- 2.31 Men were more likely to think being stalked was a crime (49 per cent) if they experienced stalking by a male.³⁶ Most did not contact the police, although close to half (47 per cent) of men stalked by another man contacted the police about it.³⁷
- 2.32 Reasons women had for not contacting the police about stalking by a male included:
- feeling that they could deal with it themselves
 - not regarding it as a serious offence
 - thinking there was nothing police could do about it
 - thinking police would not do anything about it
 - not knowing or thinking it was a crime.³⁸

28 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Web Page, 11 August 2017) Experience of Stalking <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>; Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 34.3. Throughout this chapter, percentages of 0.5 and above are rounded up and 0.4 and below are rounded down. For example, 6.5% becomes 7% and 6.4% becomes 6%.

29 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Web Page, 11 August 2017) Experience of stalking <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>; Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 34.3.

30 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Web Page, 11 August 2017) Experience of stalking <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>; Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Tables 35.3, 36.3.

31 Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 35.3. In the Personal Safety Survey, 'intimate partner' is defined as including 'current partner (living with), previous partner (has lived with), boyfriend/girlfriend/date and ex-boyfriend/ex-girlfriend (never lived with)'. Australian Bureau of Statistics, *Personal Safety, Australia Methodology 2016* (Web Page, 8 November 2017) Glossary <<https://www.abs.gov.au/methodologies/personal-safety-australia-methodology/2016>>.

32 Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 35.3.

33 It was almost equally likely that they knew (54%) or did not know (48%) the male person stalking them: *ibid* Table 36.3. The Australian Bureau of Statistics explains why these figures do not add up to 100%: 'Cells in this table have been randomly adjusted to avoid the release of confidential data. Discrepancies may occur between sums of the component items and totals.'

34 *Ibid* Table 35.3. The figures are similar regardless of whether the stalking was by a male (48% of women thought the stalking was wrong but not a crime) or a female (51% of women thought the stalking was wrong but not a crime).

35 29% of women contacted police about stalking by a male and 37% contacted police about stalking by a female: at Table 37.3.

36 *Ibid* Table 36.3.

37 *Ibid* Table 37.3. Only 18% of men contacted the police about stalking by a female.

38 *Ibid*.

- 2.33 The most common reason men had for not contacting police about stalking by a female was the feeling that they could deal with it themselves.³⁹
- 2.34 Stalking rates seem to be similar in comparable places overseas, such as the United Kingdom⁴⁰ and the United States.⁴¹ Low rates of reporting also appear to be common overseas.⁴²

Around two-thirds of stalking offences reported to police resulted in charges—one-third resulted in a finding of guilt

- 2.35 The Crime Statistics Agency found that of stalking offences reported to police between January 2016 and December 2018, around a third (33 per cent) did not result in charges.⁴³ Another third (31 per cent) were charged and resulted in a finding of guilt.⁴⁴ We discuss why stalking cases may not progress in Chapter 7.
- 2.36 For cases that went to court, almost half (49 per cent) resulted in a guilty finding for the stalking charges. Another 42 per cent resulted in a guilty finding for a non-stalking charge in the same case.⁴⁵

Figure 1: Attrition of stalking incidents through the Victorian criminal justice system, police-recorded incidents, 2016–2018⁴⁶



39 Ibid.

40 According to the Suzy Lamplugh Trust, around one in five women and one in 10 men will experience stalking in their lifetimes in the United Kingdom: Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 3.

41 Data from the United States suggests that around one in six women and one in 17 men have been stalked at least once in their lives: Adrian J Scott et al, 'Public Familiarity and Understanding of Stalking/Harassment Legislation in Australia, the United Kingdom, and the United States' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 137, 138; Erica R Fissel, Bradford W Reys and Bonnie S Fisher, 'Stalking and Cyberstalking Victimization Research: Taking Stock of Key Conceptual, Definitional, Prevalence, and Theoretical Issues' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 11, 17. McKeon et al cite research published in 2010 suggesting that around 20% of people in English-speaking industrialised nations report having experienced stalking in their lifetime: Bronwyn McKeon, Troy E McEwan and Stefan Luebbers, 'It's Not Really Stalking If You Know the Person': Measuring Community Attitudes That Normalize, Justify and Minimise Stalking' (2015) 22(2) *Psychiatry, Psychology and Law* 291, 291.

42 For example, a recent survey of people who had experienced stalking in England and Wales found that more than a third (37%) of respondents had not reported the stalking to the police: Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 8, noting that 63% did report the stalking to police. In the United States, most stalking cases are not reported to the police: Erica R Fissel, Bradford W Reys and Bonnie S Fisher, 'Stalking and Cyberstalking Victimization Research: Taking Stock of Key Conceptual, Definitional, Prevalence, and Theoretical Issues' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 11, 18.

43 Sarah Bright, Lauren Barnaba and Melanie Millsteed, *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System* (Data Snapshot, Crime Statistics Agency, forthcoming).

44 Ibid 1. A finding of guilt may follow from the accused entering a guilty plea or the court finding the accused guilty based on the evidence.

45 Ibid.

46 Graphic taken from: ibid 1, Figure 1.

More stalking cases now relate to family violence

2.37 The number of stalking offences recorded by police in Victoria each year has not risen dramatically since 2012. However, the share of these offences that relate to family violence has increased since 2012 (see Table 1). This probably reflects an improved understanding in the community about family violence and increased reporting of it.⁴⁷

Table 1: Comparison of recorded stalking offences in Victoria, 2012 & 2021⁴⁸

Year to December	Total police recorded stalking offences	Family violence-related	Non-family violence-related
2012	2,312	40%, or 16.3 offences for every 100,000 people	60%, or 24.6 offences for every 100,000 people
2021	2,669	58%, or 23 offences for every 100,000 people	43%, or 17 offences for every 100,000 people

2.38 Most stalking recorded by police since 2011 (52 per cent)⁴⁹ and sentenced in Victorian courts since 2015 (68 per cent)⁵⁰ has been part of family violence.

2.39 Just under one-fifth of stalking offences recorded by police since 2011 (17 per cent) involved strangers.⁵¹

2.40 Compared to some other crimes against the person, stalking offences are recorded less often. For example, in 2021, family violence-related common assaults represented 240 offences for every 100,000 people, compared to 23 family violence-related stalking offences for every 100,000 people. Non-family violence-related common assaults represented 174 offences for every 100,000 people, compared to 17 non-family violence-related stalking offences for every 100,000 people.⁵²

What else does the data suggest about stalking offences in Victoria?

2.41 Table 2 sets out data analysed by the Sentencing Advisory Council in its report on stalking offences recorded by police and sentenced by courts from 2011 to 2020 in Victoria.⁵³

47 The Sentencing Advisory Council attributes a marked increase in family violence orders and police recorded and sentenced breaches of these orders over the decade to 2020 to the same factors: Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) 5–6.

48 'Recorded Offences', *Crime Statistics Agency (Vic)* (Web Page, March 2022) Table 1 (Offences recorded and rate per 100,000 population by offence type, 2012 to 2021) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2>>. Percentages for the year 2021 in this table do not add to 100 because they have been rounded up.

49 Of stalking offences recorded by police from 2011 to 2020: Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) [3.11].

50 Of stalking cases sentenced in the Magistrates' Court from 2015 to 2020: *ibid* [5.4].

51 *Ibid* [3.11]. We do not have figures for the percentage of stalking cases sentenced in the Magistrates' Court that involved strangers. This level of detail is not flagged in court data about the cases. The volume of cases in the Magistrates' Court prevented analysis in the reports we commissioned from the Sentencing Advisory Council. The Sentencing Advisory Council analysed 69 stalking cases sentenced in the higher courts between 2011 and 2020 where the relationship was discernible. Among these, the most common relationship was former intimate partners (52%), followed by acquaintances with no prior romantic relationship (25%) and strangers (13%): at [6.13].

52 'Recorded Offences', *Crime Statistics Agency (Vic)* (Web Page, March 2022) Table 1 (Offences recorded and rate per 100,000 population by offence type, January 2012 to December 2021) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2>>.

53 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) ix.

Table 2: Stalking recorded by police and sentenced in Victoria from 2011–2020

Stalking offences recorded by police⁵⁴	25,130 offences: around 2,513 each year. ⁵⁵
Length of stalking recorded by police	Close to half of all offences lasted a week or less, nearly a fifth (around 488 each year) lasted longer than 12 weeks. ⁵⁶
Stalking offences sentenced in the criminal courts	Around 683 charges each year. ⁵⁷ 95% of stalking cases were sentenced in the Magistrates' Court, with close to 3% each sentenced in the Children's Court and higher courts. ⁵⁸
Recorded and sentenced stalking offences were gendered	People responsible for stalking were mostly male: 87% for police-recorded offenders, ⁵⁹ 80% of police-recorded stalking victims were female. ⁶⁰ 88% of stalking offenders sentenced in the Magistrates' Court were male. The average age of stalking offenders was 37, but for female offenders, the greatest proportion were in the 18-to-24 age group. ⁶¹ We do not have data on the gender of stalking victims in these cases. There were very few stalking cases in the Children's Court. Of 155 cases in which stalking charges were sentenced (around 16 cases each year), 69% of those responsible for stalking were male. ⁶² As in the Magistrates' Court, the most common ages for females who were sentenced was younger (14, 15 and 16) than it was for males (16, 17 and 18). We do not have data on the gender of stalking victims in the Children's Court, but earlier research indicates most victim survivors of stalking in cases sentenced there are female. ⁶³
Gippsland was over-represented in relation to Magistrates' Court stalking cases	The Sentencing Advisory Council found an overrepresentation of stalking charges sentenced in Gippsland. Gippsland has 4% of Victoria's adult population but 12% of sentenced stalking charges involving adults. The Council was told that 'Gippsland suffers from higher-than-average levels of economic disadvantage, unemployment, mental illness, family violence, methylamphetamine use and intergenerational trauma, and that accessing support services there can be difficult'. ⁶⁴

54 These are reported offences that may or may not be charged. Note as well that not all reports to police are recorded (see Figure 1).

55 The figures for each year during the reference period were relatively stable, with a low of 1,760 in 2011 and a high of 2,963 in 2014. After 2011, the number of recorded offences did not fall below 2,312, which was the number of offences recorded in 2012: Sentencing Advisory Council (Vic), Sentencing Stalking in Victoria (Report, March 2022) 21, Figure 2.

56 Ibid x, 23, Figure 4.

57 'Between 2011 and 2020, Victorian courts sentenced 6,832 stalking charges in 5,444 cases': ibid x.

58 Ibid.

59 These figures cover all age categories from 10 to 55 and over. However, while males accounted for between 85% and 90% of all recorded stalking offenders in almost every age category, the percentage dropped to 72% of recorded stalkers aged 10 to 19. The Sentencing Advisory Council suggests 'This is probably partially explained by lower rates of intimate partner violence, which is strongly gendered, among this age group': ibid [3.9], Figure 5.

60 Ibid [3.10].

61 Ibid [5.5]–[5.6], Figure 12.

62 Ibid [4.2]–[4.3].

63 Ibid [4.5], citing Purcell's review of 299 restraining order applications in the Melbourne Children's Court that were filed in response to stalking behaviour in the late 2000s.

64 Ibid [5.16].

What does the data suggest about personal safety and family violence orders?

- 2.42 We heard that rather than file stalking charges, police tend to respond to stalking by a non-family member by suggesting that the person being stalked should apply for a PSIO.⁶⁵ Police may also apply for a PSIO on behalf of the person reporting. The data suggests they are increasingly doing this: police made 23 per cent of PSIO applications in 2014–2015, rising to 41 per cent of PSIO applications in 2019–2020.⁶⁶
- 2.43 If a family member is involved, the person being stalked or the police can apply for a FVIO.⁶⁷ The police can also issue a family violence safety notice—a temporary measure in place until a court can decide if it will issue an interim or final FVIO.⁶⁸
- 2.44 Table 3 shows trends in PSIOs⁶⁹ and FVIOs from 2011 to 2020, and in family violence safety notices from 2012 to 2020, when they were introduced.⁷⁰

Table 3: Personal safety intervention orders (PSIOs) (2011–2020) and family violence intervention orders (FVIOs) (2011–2020) in Victoria

Number of orders made	PSIO	FVIO
	105,581 applications: around 11,316 each year. ⁷¹	373,122 applications: around 37,000 each year. ⁷⁴
	92% of applications were heard in the Magistrates' Court and 8% in the Children's Court. ⁷²	90% of applications were heard in the Magistrates' Court and 10% in the Children's Court. ⁷⁵
	Nearly 70,000 interim PSIOs (around 7,470 each year) and close to 60,000 final PSIOs (around 6,200 each year) were issued. ⁷³	243,121 interim FVIOs (around 24,312 each year) and 294,591 final FVIOs (around 29,459 each year) were issued. ⁷⁶ 93,510 family violence safety notices were issued (around 10,390 each year). ⁷⁷

65 Advocacy and peak bodies for young people told us, 'The general feedback [from young people] is that when they go to the police, they are told an intervention order is the only option at this stage and that it is in their own hands: Consultation 17 (Small group meeting on stalking and young people). Victoria Police noted that 'Course of conduct offending is particularly problematic for police. This could be because it requires a more sophisticated understanding of the offence and the time involved. It can be more straightforward to advise a person to obtain an intervention order and then charge for a breach of intervention order if the behaviour continues': Consultation 3 (Victoria Police (No 1)). The Centre for Forensic Behavioural Science told us that 'it is our experience that police frequently advise people to obtain a personal safety intervention order (PSIO) as a first response, even when there is ample evidence of a course of conduct causing psychological harm': Submission 32 (Centre for Forensic Behavioural Science). See also Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [4.3].

66 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) xi [4.3].

67 *Family Violence Protection Act 2008* (Vic) pt 4; Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) [2.9].

68 *Family Violence Protection Act 2008* (Vic) pt 3 div 2; Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) [2.2], [2.5]–[2.8].

69 To obtain the annual figures for PSIOs in this table, the total was divided by 9.33, representing the nine years and four months covered by the data (from September 2011, when the PSIO framework came into effect, to 31 December 2020): Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) ix.

70 All data on PSIOs from Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022). All data on FVIOs from Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022).

71 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) ix (combined Magistrates' and Children's Court applications). While the overall number of PSIO applications in the Magistrates' Court increased from year to year, from 9,566 in 2012 to 11,647 in 2020, the per capita rate of applications was steady: *ibid* [4.2], Figure 8.

72 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) ix.

73 *Ibid* viii.

74 Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) viii (combined Magistrates' and Children's Court applications).

75 Based on the figures in *ibid* viii.

76 *Ibid*.

77 93,510 divided by nine; covering the period 2012–2020: *Ibid*.

<p>Number of orders breached</p>	<p>26,329 breach offences recorded by police: around 2,822 each year.⁷⁸</p> <p>This represents around a fifth of all PSIOs made each year (interim and final).</p>	<p>316,668 breach offences recorded by police: around 31,669 each year.⁷⁹</p> <p>This represents about half of FVIOs made each year (family violence safety notices and interim and final FVIOs).⁸⁰</p>
<p>Number of breaches sentenced</p>	<p>9,354 breach offences (around 1,003 each year) were sentenced. This is roughly a third of police recorded breach offences.⁸¹</p> <p>94% of cases were sentenced in the Magistrates' Court, 6% in the Children's Court and less than 1% in the County Court.⁸²</p>	<p>112,988 breach offences (around 11,299 each year) were sentenced. This is roughly a third of police recorded breach offences.⁸³</p> <p>97% of offences were sentenced in the Magistrates' Court, 3% in the Children's Court and less than 1% in the higher courts.⁸⁴</p>
<p>Rural and regional Victoria is over-represented</p> <p>Around a quarter of Victoria's population lives in rural and regional areas⁸⁵</p>	<p>Rural and regional areas accounted for:</p> <ul style="list-style-type: none"> • 41% of PSIO applications, 34% of interim PSIOs and 41% of final PSIOs issued in the Magistrates' Court⁸⁶ • 47% of PSIO applications, 54% of interim PSIOs and 45% of final PSIOs in the Children's Court.⁸⁷ <p>Gippsland and Loddon Mallee were even more over-represented than other areas for both children and adults.⁸⁸</p>	<p>Rural and regional areas accounted for:</p> <ul style="list-style-type: none"> • 35% of FVIO applications in the Magistrates' Court⁸⁹ • 45% of FVIO applications, 38% of interim FVIOs and 48% of final FVIOs in the Children's Court.⁹⁰ <p>The Sentencing Advisory Council noted 'A child in rural and regional Victoria is effectively more than twice as likely as a child in the Greater Melbourne area to be a respondent to a FVIO, especially in Gippsland, Loddon Mallee and Barwon South West.'⁹¹</p>

78 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [5.2], Figure 16.

79 Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) [4.2]. The Sentencing Advisory Council cites an annual figure of 'about 32,000'.

80 Based on the figures in *ibid* viii.

81 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) ix.

82 *Ibid*.

83 Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) [5.2].

84 *Ibid*.

85 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [3.9], [4.14].

86 *Ibid* [4.14].

87 *Ibid* [3.9].

88 *Ibid* [3.9], [4.14].

89 Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) [3.15].

90 *Ibid* [3.27].

91 *Ibid* [3.27].

When they involve adults, PSIOs are ...	
Rarely made against strangers	<p>The majority of PSIOs related to people who knew each other:</p> <ul style="list-style-type: none"> • 27% were neighbours • 20% were children of a primary affected person • 14% were friends, former friends or acquaintances • 3% were a former partner's associate, relative or new partner • 3% were co-tenants and borders • 3% were an employer, employee or work colleague • 3% were a former partner's associate, relative or new partner • 2% were a current partner's former partner • 21% were other categories of people (neither strangers nor any of the people listed above). <p>3% of PSIOs provided protection against strangers.⁹²</p>
Gendered but less strikingly than family violence orders or stalking offences charged under the Crimes Act	<p>Just over half of adults protected by a PSIO were female (55%), and two-thirds (67%) of respondents were male.⁹³</p> <p>In contrast, 82% of FVIO respondents were male and 80% of protected persons for FVIOs issued in the Magistrates' Court were female.⁹⁴</p> <p>The fact that gender plays less of a role in PSIO cases may reflect:</p> <ul style="list-style-type: none"> • the wider range of conduct covered • that family violence is less often a factor in these cases.⁹⁵
When they involve children, PSIOs are ...	
Often connected to a school or friend relationship and rarely made against strangers	<p>27% of PSIOs related to school-based relationships, and another 25% related to friends or former friends (some of whom may also have had school-based connections).⁹⁶</p> <p>Only 4% of PSIOs provided protection against strangers.⁹⁷</p>
Gendered	<p>Most people (adults and children)⁹⁸ protected by a PSIO were female (67%) and the majority of respondents (likely all children or young people) were male (57%).⁹⁹</p>

92 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [4.9]–[4.10], Figure 14.

93 Ibid [4.7]–[4.8].

94 Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) xii.

95 However, the Sentencing Advisory Council points out that 'while PSIOs are in theory designed for non-family violence contexts, almost one-third of people who breach them are also family violence offenders.' Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [7.6]. For discussion of the sometimes 'blurred line between family and non-family members': see Ibid [2.3].

96 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [3.8], Figure 7.

97 Ibid.

98 Most protected persons were aged 10 to 19, but a proportion were females aged 30 to 49. Stakeholders suggested to the Sentencing Advisory Council that these protected persons would mostly be the child respondent's teachers and other school staff: *ibid* [3.6].

99 The Sentencing Advisory Council says it is possible in theory for the Children's Court to have jurisdiction over a case involving an adult respondent and a child applicant. 'But the legislation seems to suggest that the Children's Court jurisdiction is primarily directed towards circumstances where the *respondent* is a child': *ibid* [3.7] (emphasis in original).

There is a need for additional research and data on stalking

- 2.45 The only available nationwide data on stalking comes from the Personal Safety Survey. However, the survey:
- does not specifically separate out family violence and non-family violence stalking¹⁰⁰
 - does not provide information on the prevalence of stalking among some communities that may find it especially difficult to get justice. For example, children under 15 years, LGBTIQ+ people, sex workers, people living in detention and other institutional environments, and people with uncertain migration status.¹⁰¹
- 2.46 In Chapter 3 we note that the prevalence of cyberstalking among these communities is also a data gap.
- 2.47 The Personal Safety Survey is now dated. The next survey has not been scheduled.¹⁰² More recently published nationwide crime statistics do not include stalking data.¹⁰³
- 2.48 The Crime Statistics Agency and Sentencing Advisory Council reports and analysis (summarised earlier) help improve our understanding of stalking in Victoria. But issues remain:
- Little is known about stalking that is not reported to or recorded by police.¹⁰⁴
 - Stalking behaviour may be prosecuted as other criminal offences, so it is not captured in statistics about criminal prosecutions.¹⁰⁵
 - We have little insight into stalking cases that are the subject of a PSIO because the data on applications and breaches does not separate out stalking.
 - We have little insight into stalking that is the subject of a FVIO because the data does not separate out stalking.¹⁰⁶
 - Not much is known about the different forms of non-family violence stalking sentenced in the courts: for example, stalking by an acquaintance versus stalking by a stranger. We have little insight into any trends such as how long the stalking lasted and the levels of violence involved.¹⁰⁷

100 However, stalking by intimate partners and by relatives and in-laws can be separated out: Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Tables 35.1, 36.1.

101 The survey is limited to people living in private dwellings: Australian Bureau of Statistics, *Personal Safety, Australia Methodology 2016* (Web Page, 8 November 2017) [9] <<https://www.abs.gov.au/methodologies/personal-safety-australia-methodology/2016>>. However, information is available in relation to, among other things, various age brackets, socio-economic status, whether born overseas (in an English or non-English speaking country) and disability status: Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 38.1.

102 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Web Page, 11 August 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>.

103 Australian Bureau of Statistics, *Crime Victimisation, Australia, 2020–21 Financial Year*, (Web Page, 22 February 2022) <<https://www.abs.gov.au/statistics/people/crime-and-justice/crime-victimisation-australia/latest-release>>.

104 The data on personal safety intervention orders provides some indication of how widespread unreported stalking is, given most of these orders contain conditions covering stalking as well as other behaviours and more than half are sought by private individuals rather than the police. But this measure is rough, because these orders can cover a range of non-stalking as well as stalking behaviours. 'Eight conditions were almost always attached to PSIOs in the Magistrates' Court, including barring the respondent from engaging in prohibited behaviour against the protected person (98% of final PSIOs) ... land] stalking the protected person (95%...': Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) xi [4.11], Figure 15. As discussed earlier, the Personal Safety Survey found that most people who had experienced stalking did not contact the police about it: Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 35.3.

105 The Sentencing Advisory Council points out that 'Stalking-like behaviours are very frequently charged or sentenced as a combination of incident-based offences (such as property damage, breach of an intervention order and making a threat to kill) without a stalking charge.': Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xiii. For a discussion of why stalking offences are sometimes charged but dropped in plea negotiations: *Ibid*.

106 Stalking may be charged as a separate offence alongside breaches of family violence orders but we do not have data on how often this occurs. For an example of a case where stalking was charged alongside breach of a family violence order and other offences, see the case study of *DPP v Brien* [2017] VCC 89 in Sentencing Advisory Council (Vic), *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices* (Report, May 2022) 53. As noted earlier, the Family Violence Protection Act does not specifically address stalking but how it defines 'family violence' is broad enough to include stalking behaviours. Family violence is behaviour directed at a family member that is physically, sexually, emotionally, psychologically or economically abusive; threatening; coercive; or 'in any other way controls or dominates' the family member and causes that family member to feel fear for their safety or wellbeing or that of another person: *Family Violence Protection Act 2008* (Vic) s 5(1); see also s 176G(1) (a)(ii).

107 However, the Crime Statistics Agency provides information on the numbers and types of non-family violence stalking offences recorded by police: 'Recorded Offences', *Crime Statistics Agency (Vic)* (Web Page, September 2020) Table 5—Selected offences by offence code and description, 2012 to 2021 <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2>>. The elements of the stalking offence charged can provide insights but this kind of information is not captured in most data analysis. For some insights: Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) [5.8].

- 2.49 At the moment, our understanding of stalking is limited. If the data was more detailed and extensive it would be easier to design responses that are effective and tailored for the people who experience stalking and those who engage in it. Therefore we recommend the Victorian Government provide support for additional research on stalking.
- 2.50 Later in this report we discuss the need for more research on responding to stalking, including alternative pathways for children (Chapter 6), the progress of stalking offences through the criminal justice system (Chapter 7) and interventions for people who stalk (Chapter 8).

Recommendation

1. The Victorian Government should:
 - a. identify gaps in data and research on non-family violence stalking and the justice system's response to it
 - b. identify shortcomings in existing data and research on non-family violence stalking and the justice system's response to it
 - c. support additional data collection and research to fill these gaps and address these shortcomings
 - d. monitor the emerging data and research on non-family violence stalking and the justice system's response to it
 - e. ensure that any emerging data and research gaps are filled and shortcomings addressed.

Some communities appear to experience stalking at higher rates than average

- 2.51 From the limited data available, it appears that some communities are more likely to experience stalking than others.
- 2.52 People in these communities can face serious barriers to reporting and getting justice. This can be because of discrimination and the justice system's failure to take their needs into account.¹⁰⁸
- 2.53 Djirra pointed out that Aboriginal women with acquired brain injuries are more likely to experience violence, including stalking. But they are often wrongly identified by police as perpetrators of violence.¹⁰⁹
- 2.54 There is little data on Aboriginal people's experience of stalking, but it is likely that Aboriginal women and girls experience higher rates and more extreme forms of stalking than non-Indigenous women.¹¹⁰ While Aboriginal people make up roughly one per cent of Victoria's population,¹¹¹ 2.2 per cent of people who were reported to have experienced stalking in Victoria between 2016 and 2018 were Aboriginal.¹¹²

108 Submission 49 (Victims of Crime Commissioner); Consultation 8 (eSafety Commissioner).

109 Submission 41 (Djirra).

110 See generally K Cripps et al, *Attitudes towards Violence against Women and Gender Equality among Aboriginal People and Torres Strait Islanders—Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS)* (ANROWS Insights No 3, 2019) 10.

111 Based on figures in Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Web Page, 31 August 2018) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release>>.

112 Sarah Bright, Lauren Barnaba and Melanie Millsteed, *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System* (Data Snapshot, Crime Statistics Agency, forthcoming).

- 2.55 One-fifth of all people protected by PSIOs made in the Magistrates' Court are children (though these are not all stalking cases).¹¹³ Children and young people in regional and rural areas are over-represented in PSIO Children's Court applications, both as protected persons and as respondents.¹¹⁴
- 2.56 Children and young people are often the targets of cyberstalking (see Chapter 3).
- 2.57 LGBTIQ+ young people may be at higher risk of being stalked than heterosexual youth.¹¹⁵ The Victorian Pride Lobby told us that even though young LGBTIQ+ people experience stalking at a higher rate, reports to police are limited.¹¹⁶
- 2.58 The Personal Safety Survey found that young adults are more likely to experience stalking than older people. The likelihood of being stalked appears to decrease with age (see Table 4).¹¹⁷

Table 4: Proportion of people who experienced stalking in the last 12 months by age bracket

Age	Proportion who experienced stalking in the last 12 months
18–24	3.8%
25–34	3.2%
35–44	3.1%
45–54	2.4%
55–64	1.2%
65 and over	0.8%

- 2.59 People with disabilities or long-term health conditions may be more likely to experience stalking than people without these conditions: the Personal Safety Survey found that 3.1 per cent of people with disabilities or long-term health conditions experienced stalking over a 12-month period, compared to 2.1 per cent of people without disability or a long-term health condition.¹¹⁸
- 2.60 People with disabilities or long-term health conditions may find it particularly difficult to get police to take their reports of stalking seriously. As one victim survivor told us:

They don't believe you if you're disabled.¹¹⁹

113 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [4.10].

114 Ibid [3.9].

115 Gianna E Davis, Denise A Hines and Kathleen M Palm Reed, 'Routine Activities and Stalking Victimization in Sexual Minority College Students' [2021] *Journal of Interpersonal Violence* 10.1177/0886260521991879:1–29, 1; Erica R Fissel, Bradford W Reynolds and Bonnie S Fisher, 'Stalking and Cyberstalking Victimization Research: Taking Stock of Key Conceptual, Definitional, Prevalence, and Theoretical Issues' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 11, 21. Research also shows they are at higher risk of cyberbullying by comparison to their heterosexual peers: Roberto L Abreu and Maureen C Kenny, 'Cyberbullying and LGBTQ Youth: A Systematic Literature Review and Recommendations for Prevention and Intervention' (2018) 11(1) *Journal of Child and Adolescent Trauma* 81, 81.

116 Consultation 28 (Victorian Pride Lobby).

117 Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 38.1.

118 Ibid Table 38.3. The figures do not distinguish between family violence and non-family violence stalking. Women with disability are more likely to experience stalking (3.7% in the last 12 months) than men with disability (2.5% in the last 12 months): at Table 38.3.

119 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

- 2.61 Red Files operates a harm prevention service for sex workers. Stalking-related offences are among the top three to five crimes reported to it. Stalking ranks higher on this list than rape.¹²⁰ But sex workers may not report stalking because of negative experiences with police.

Due to the fact I was a sex worker they did not care. When I showed them evidence their response was 'Oh some things you just CAN'T explain'.¹²¹

- 2.62 We were told that stalking is a problem for people from some multicultural communities. They may not seek help because they do not trust the police or they may fear other outcomes, such as community backlash.¹²²

I was an international student at the time, and my stalker was also one. I was afraid to report it to the police as I was afraid of the consequences that it would trigger for both me and him.¹²³

- 2.63 People born in other countries reported lower rates of stalking in the Personal Safety Survey (two per cent in the past 12 months) than people born in Australia (three per cent in the past 12 months).¹²⁴ This could be because they are less familiar with what stalking is. They may also be more wary of reporting to authorities. We discuss what people know about stalking in Chapter 4, and barriers to reporting are discussed below.
- 2.64 Older people do not appear to be statistically at risk of being stalked. This may reflect low reporting rates, and barriers they face to seeking justice. The Royal Commission into Aged Care Quality and Safety emphasised 'how vulnerable older people were to the actions of others, many of whom they depended on for support, care and their quality of life'.¹²⁵
- 2.65 Males are less likely than females to experience stalking.¹²⁶ However, when they do, they may be less likely to seek help from friends or family,¹²⁷ and less likely to report the stalking to police.¹²⁸ They may find the experience of reporting particularly difficult.¹²⁹ We heard from male victim survivors who had difficult experiences with the police.

120 Consultation 28 (Victorian Pride Lobby). The Victorian Pride Lobby also noted that 'A move away from the criminalisation of sex work and a change in police culture to improve relations with sex workers will improve the reporting rates and personal safety of sex workers'.

121 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

122 Consultations 30 (Roundtable with multicultural and multifaith lawyers and legal stakeholders), 31 (Roundtable with multicultural and multifaith community organisations); Letter from Centre for Multicultural Youth to Victorian Law Reform Commission, 25 November 2021. See also Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) 5 [1.19]. Research conducted in the United States showed that Anglo-Saxon females were more likely to seek informal help for stalking and to report the stalking to police than people of other races and genders: Bradford W Reys and Christine M Englebrecht, 'Informal and Formal Help-Seeking Decisions of Stalking Victims in the United States' (2014) 41(10) *Criminal Justice and Behavior* 1178, 1189.

123 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

124 Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 38.3 (Experience of stalking in the last 12 months by sociodemographic characteristics, proportion of persons).

125 *Royal Commission into Aged Care Quality and Safety* (Final Report, Summary and Recommendations, 1 March 2021) vol 1, 34.

126 See, eg, Australian Bureau of Statistics, 'Experience of stalking', *Personal Safety, Australia, 2016* (Web Page, 11 August 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>; Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 34.3; Harald Dressing et al, 'The Prevalence and Effects of Stalking' (2020) 117(20) *Deutsches Ärzteblatt International* 347, 348.

127 Bradford W Reys and Christine M Englebrecht, 'Informal and Formal Help-Seeking Decisions of Stalking Victims in the United States' (2014) 41(10) *Criminal Justice and Behavior* 1178, 1186.

128 If they are experiencing stalking by a female: Australian Bureau of Statistics, *Experience of Stalking—Personal Safety, Australia, 2016* (Data Table No 49060DO0007, 8 November 2017) Table 37.3. See also discussion in this chapter.

129 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021); Submission 56 (Derryn Hinch's Justice Party).

It was the hardest thing reporting as a male that a female was stalking me. Basically [the police] didn't believe me even though I had so much proof via my phone, via public media posts. The police absolutely did not understand. It took about 3 years of hell to be believed.¹³⁰

- 2.66 In our interim report we made recommendations to improve the police response to stalking reports.¹³¹

What are the barriers to reporting stalking and getting justice?

- 2.67 Table 5 sets out what we know about barriers to reporting stalking and getting justice, based on data, research, and what we were told during this inquiry.

Table 5: A sample of barriers to reporting

Barrier	Discussion and examples
It is difficult to identify stalking.	<p>People are often unclear about whether what they have experienced is stalking.¹³² This experience is widespread, especially for children and young people.¹³³</p> <p>People may be concerned they do not have enough evidence.¹³⁴ Some do not report because they think the behaviour is 'minor' or it is 'a personal matter', or because of misconceptions about it being romantic.¹³⁵</p> <p>Some people do not know that stalking is a criminal offence.¹³⁶ This can be a barrier to reporting in some migrant communities.¹³⁷</p> <p>Police and other professionals may not understand the nature of stalking or identify it.¹³⁸</p>

130 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

131 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021).

132 For example, a respondent to a survey in England and Wales who had experienced stalking said, 'It was quite subtle at first and took me a while to figure out what was occurring', while another said, 'I didn't think it was serious enough [to report] and I could be over reacting'; Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 9. In its submission, Djirra pointed out that 'stalking behaviour is cumulative and may not be easily identified by the victim, which can make it difficult to report': Submission 41 (Djirra). See also Submissions 32 (Centre for Forensic Behavioural Science), 95 (Springvale Monash Legal Service Inc.), 97 (Federation of Community Legal Centres), 98 (Law Institute of Victoria), 100 (Forensicare); Consultation 27 (Kulturbrille).

133 Consultations 5 (Harmful Sexual Behaviours Network), 8 (eSafety Commissioner), 16 (Centre for Excellence in Child and Family Welfare: Young People and Stalking).

134 This was a concern for a small number of survey respondents who had experienced stalking in England and Wales: Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 9.

135 Adrian J Scott et al, 'Public Familiarity and Understanding of Stalking/Harassment Legislation in Australia, the United Kingdom, and the United States' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 137, 138. See also Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare); Consultations 4 (Sexual Assault Services Network), 17 (Small group meeting on stalking and young people).

136 Submission 32 (Centre for Forensic Behavioural Science); Consultation 30 (Roundtable with multicultural and multifaitlh lawyers and legal stakeholders).

137 Consultations 30 (Roundtable with multicultural and multifaitlh lawyers and legal stakeholders), 31 (Roundtable with multicultural and multifaitlh community organisations).

138 Submissions 32 (Centre for Forensic Behavioural Science) 49, (Victims of Crime Commissioner), 100 (Forensicare); Consultations 4 (Sexual Assault Services Network), 8 (eSafety Commissioner); Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 9.

Barrier	Discussion and examples
People worry they will not be taken seriously or believed. ¹³⁹	We heard of victim survivors, for example, some women with disabilities, ¹⁴⁰ telling police about their experience of stalking and not being believed. ¹⁴¹ We also heard from victim survivors that people, including police, often dismiss or minimise their experience of stalking. We were told that police do not always formally record reports of stalking. ¹⁴²
Victim survivors do not want to have to repeat their story to lots of different people.	Research suggests that victim survivors find it frustrating and stressful to have to explain what is happening to them to different people. ¹⁴³
Victim survivors may fear the person stalking them. ¹⁴⁴	Victim survivors who know they are being watched, or who fear their phones and other devices have been hacked, can be too afraid to report their situation or seek help. They might be concerned that this would make the stalking worse. ¹⁴⁵
People who experience stalking are sometimes blamed for what is happening. ¹⁴⁶ Some may feel they have contributed to the stalking. ¹⁴⁷	We heard that the person experiencing stalking can be 'blamed for encouraging the behaviour'. ¹⁴⁸ We were told that 'People who are stalked ... often report feelings of guilt or shame that stop them from reporting it'. ¹⁴⁹
Victim survivors may think that reporting stalking does not lead to improved protections. ¹⁵⁰	Research from other jurisdictions suggests that even when police take reports of stalking seriously, their responses are often viewed as ineffective. ¹⁵¹

139 Consultation 19 (Community legal sector roundtable); Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 8.

140 Consultation 21 (Small group meeting on stalking and women with disabilities).

141 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

142 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021). See also Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 55–6; Consultation 4 (Sexual Assault Services Network); Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [2.37]–[2.45].

143 Suzan van der Aa and Anne Groenen, 'Identifying the Needs of Stalking Victims and the Responsiveness of the Criminal Justice System: A Qualitative Study in Belgium and the Netherlands' (2010) 6(1) *Victims & Offenders* 19, 30. See also Submission 32 (Centre for Forensic Behavioural Science); Cleo Brandt and Bianca Voerman, 'The Dutch Model: A New Approach to Policing Stalking' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 251, 267–8.

144 Submissions 32 (Centre for Forensic Behavioural Science), 56 (Derryn Hinch's Justice Party); Consultation 19 (Community legal sector roundtable); Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 755; Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 9.

145 See, eg, Submission 32 (Centre for Forensic Behavioural Science); Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 9.

146 Bronwyn McKeon, Troy E McEwan and Stefan Luebbers, 'It's Not Really Stalking If You Know the Person': Measuring Community Attitudes That Normalize, Justify and Minimise Stalking' (2015) 22(2) *Psychiatry, Psychology and Law* 291, 300.

147 Submission 51 (Matthew Raj). See also Consultation 4 (Sexual Assault Services Network).

148 Consultation 4 (Sexual Assault Services Network).

149 Submission 32 (Centre for Forensic Behavioural Science).

150 A survey in England and Wales found that among respondents who reported stalking behaviour to police, most (60%) did not have any civil or criminal law protections put in place following the report: Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 11.

151 Submission 32 (Centre for Forensic Behavioural Science); Harald Dressing et al, 'The Prevalence and Effects of Stalking' (2020) 117(20) *Deutsches Ärzteblatt International* 347, 352.

Barrier	Discussion and examples
Police often do not file a charge for the criminal offence of stalking.	Police appear to prefer to use PSIOs to respond to stalking, instead of charging the person with the stalking offence. They will then bring charges if a PSIO is breached. ¹⁵²

2.68 In the following chapters, we make recommendations designed to overcome these barriers. Our interim report, published in April 2022, focused on addressing barriers that relate to police.

Responses to cyberstalking

- 32** Overview
- 33** Cyberstalking is a growing social problem
- 33** What is cyberstalking?
- 35** Cyberstalking can have serious effects
- 35** What do we know about cyberstalking in the community?
- 38** What are the legal and regulatory responses to cyberstalking?
- 41** What are the barriers to seeking help for cyberstalking?
- 41** There should be public education about cyberstalking
- 43** Where can people get help and support for cyberstalking?
- 45** People who experience cyberstalking need more support
- 47** Police responses to cyberstalking need to improve
- 51** Work is under way to keep people safe online

3. Responses to cyberstalking

Overview

- Cyberstalking is stalking using information and communication technology. In Victoria, cyberstalking is covered by the stalking offence, which is 'technologically neutral'.¹
- People who experience cyberstalking face barriers to disclosing and reporting it and getting an outcome in the justice system.
- Cyberstalking is a crime that is not well understood. People need to know more about what it is, how to stay safe online, and who can help.
- People who experience cyberstalking need quick and practical support, including replacement phones and services to check digital safety.
- The police response to cyberstalking needs to improve and must be part of the response to stalking.
- Australian Government work on online safety and countering technology-facilitated abuse is part of the response to cyberstalking.

A note on language

- **Information and communication technology (ICT)** refers to a range of electronic and digital technologies for communicating and sharing information, including computers, smartphones, social media, email, instant messaging, software and apps.
- **Technology-facilitated abuse** means using technology to harm people and commit crimes.² Examples include stalking and intimate image-based abuse.³
- **Online service providers** are 'third parties' such as social media platforms, electronic messaging services, search engines, app distribution services, internet service providers and hosting service providers.

1 *Crimes Act 1958 (Vic)* s 21A; Submissions 56 (Derryn Hinch's Justice Party), 98 (Law Institute of Victoria).

2 Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426.1–15, 6.

3 *Summary Offences Act 1966 (Vic)* div 4A; *Crimes Act 1958 (Vic)* s 21A.

Cyberstalking is a growing social problem

- 3.1 Cyberstalking is a type of technology-facilitated abuse. It is stalking that uses information and communication technology.⁴
- 3.2 Cyberstalking can occur alongside stalking behaviours that do not involve technology. Cyberstalking that begins online may turn into stalking in person or physical violence, or vice versa.⁵
- 3.3 Technology is changing rapidly, and people, businesses and governments are becoming more dependent on technology, social media and other online systems. At the same time, cyberstalking is becoming a significant and growing social problem.⁶
- 3.4 Technology enables people who stalk to 'infiltrate deeper into victims' lives.⁷ People may be targeted in many unfamiliar ways, sometimes without their knowledge.
- 3.5 Cyberstalking can feel impossible to escape, creating 'a sense of omnipresence'. It can remove the usual boundaries of physical space and make a person feel unsafe.⁸
- 3.6 Cyberstalking is under-reported in part because it is not well understood.⁹
- 3.7 This chapter is about the challenges of responding to cyberstalking and how to improve the response. Challenges include:
- The Office of the eSafety Commissioner (eSafety),¹⁰ state and federal governments all need to be involved in regulating and responding to this harm.¹¹
 - The role and responsibilities of online service providers need to be considered, especially their responsibilities for making their services and platforms safe and responding to reports of cyberstalking.¹²
 - For the police, cyberstalking requires a shift in how they think about stalking, and new methods of investigation.

What is cyberstalking?

- 3.8 Cyberstalking has been defined by some researchers as repetitive and unwanted contact with a person using information and communication technology, and causing that person to feel fear.¹³ Cyberstalking becomes a crime when this contact forms a 'course of conduct' with a specific intent to cause harm or fear.¹⁴ (We discuss the stalking offence and its elements in Chapter 7.)
- 3.9 While the defining characteristics of stalking and cyberstalking are the same,¹⁵ the methods used are different.

4 Cyberstalking may also be known as 'online stalking' or 'Internet stalking'.

5 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 12; Bradford W Reys and Bonnie S Fisher, 'The Relationship Between Offline and Online Stalking Victimization: A Gender-Specific Analysis' (2018) 33(4) *Violence and Victims* 769, 781.

6 Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 6.

7 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 10.

8 *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016) vol 1, 31; Delanie Woodlock, 'The Abuse of Technology in Domestic Violence and Stalking' (2017) 23(5) *Violence Against Women* 584, 598.

9 Billea Ahlgrim and Cheryl Terrance, 'Perceptions of Cyberstalking: Impact of Perpetrator Gender and Cyberstalker/Victim Relationship' (2021) 36(7–8) *Journal of Interpersonal Violence* NP4074, NP4077.

10 The Office of the eSafety Commissioner is Australia's independent regulator for online safety.

11 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 44.

12 Office of the eSafety Commissioner (Cth), *Safety by Design* (Report, 2019) 7–8; Herman T Tavani and Frances S Grodzinsky, 'Cyberstalking, Personal Privacy, and Moral Responsibility' (2002) 4(2) *Ethics and Information Technology* 123.

13 Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 1, 2; Laurence Miller, 'Stalking: Patterns, Motives, and Intervention Strategies' (2012) 17 *Aggression and Violent Behavior* 495, 501. See also Majeed Khader and Stephanie Chan, 'Unwanted Attention: A Survey on Cyberstalking Victimization' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 77, 79; 'Cyberstalking', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/key-issues/domestic-family-violence/technology-facilitated-abuse/cyberstalking>>.

14 *Crimes Act 1958* (Vic) s 21A.

15 Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) [8.2].

- 3.10 People who cyberstalk may use a range of online and offline technologies:
- global positioning system (GPS) trackers
 - keyloggers¹⁶
 - hidden cameras or webcams
 - audio bugs, microphones, telephones
 - location-based dating apps
 - spyware, mobile stalker apps
 - email accounts
 - social media
 - online maps¹⁷
 - reverse image searches¹⁸
 - 'find my device' services
 - bluetooth.¹⁹
- 3.11 Examples of cyberstalking behaviours include:
- sending or posting offensive online messages, images or personal information
 - impersonating someone online
 - following, monitoring or tracking a person's location and activities.²⁰
- 3.12 People who stalk may be part of underground or 'dark web' groups where they share new methods of technology-facilitated abuse.²¹
- 3.13 Cyberstalking can occur in different contexts, such as family violence, intimate partner violence, sexual violence and workplace bullying.²²
- 3.14 Cyberstalking shares elements of stalking: surveillance, repetition, intrusion and degradation. We explained these concepts in our consultation paper.²³
- 3.15 Cyberstalking can overlap with cyberbullying, image-based abuse and online harassment.²⁴ It is defined by the technology-facilitated behaviours being repeated and persistent.
- 3.16 A course of conduct for stalking can be made up of the same conduct as other standalone offences, such as intimate image-based abuse offences.²⁵ Cyberbullying and online harassment, which is bullying and harassment over digital devices and platforms, are covered under the stalking offence.²⁶

16 This is a type of monitoring software designed to log computer keystrokes.

17 For example, location sharing and tracking features that show a user's live location can be used for stalking.

18 For example, running a person's photo through Google's image search function to find where else the photo appears online, including other websites or platforms that contain personal information.

19 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 10–11.

20 Ibid.

21 Consultation 23 (Cyberstalking roundtable).

22 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 26; Nicola Henry et al, 'Technology-Facilitated Domestic Violence against Immigrant and Refugee Women: A Qualitative Study' [2021] *Journal of Interpersonal Violence* 10.1177/08862605211001465:1–27, 5–6; Delanie Woodlock et al, *Second National Survey on Technology Abuse in Australia* (Report, 24 November 2020).

23 Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) 60. See also Office of the eSafety Commissioner (Cth), *eSafety for Women from Culturally and Linguistically Diverse Backgrounds* (Summary Report, 18 February 2019)

24 Consultations 4 (Sexual Assault Services Network), 10 (Victorian Aboriginal Legal Service), 23 (Cyberstalking roundtable).

25 *Summary Offences Act 1966* (Vic) div 4A.

26 Department of Justice and Community Safety (Vic), 'What Is Brodie's Law', *Bullying—Brodie's Law* (Web Page, 13 August 2021) <<https://www.justice.vic.gov.au/saynotobullying>>; *Crimes Act 1958* (Vic) s 21A(2).

Cyberstalking can have serious effects

- 3.17 Victim survivors of cyberstalking experience similar serious effects to people who experience other kinds of stalking;²⁷ anxiety, depression and post-traumatic stress disorder. (See Chapter 2.)
- 3.18 The 'sense of omnipresence' that cyberstalking creates can make people feel unsafe and unable to use technology freely. They may isolate themselves from their social and support networks.²⁸
- 3.19 People who experience cyberstalking may carry a financial burden, such as the cost of increased security measures.²⁹
- 3.20 The Alannah and Madeline Foundation told us that children who experience cyberstalking can become disengaged from school and education.³⁰
- 3.21 People from culturally diverse communities may experience additional impacts. For example, women who wear head coverings for religious or cultural reasons might experience shame from having their photographs posted online without their head covering. They may also experience honour-based threats or violence.³¹

What do we know about cyberstalking in the community?

- 3.22 There have been increasing efforts to understand stalking and technology-facilitated abuse in a family violence context.³² Less attention has been given to non-family violence cyberstalking.
- 3.23 Some valuable research exists on non-family violence cyberstalking, but it has limitations such as small sample sizes and different definitions of cyberstalking.³³ More in-depth research is needed.³⁴
- 3.24 In the meantime, research on technology-facilitated abuse in general, as well as cyberstalking research from different parts of the world, can help us understand the problem.

27 Submission 65 (Code Black Threat Management); Erica R Fissel and Bradford W Reynolds, 'The Aftermath of Cyberstalking: School, Work, Social, and Health Costs of Victimization' (2020) 45(1) *American Journal of Criminal Justice* 70, 71; Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 2.

28 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 39. See also Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 7.

29 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 11; Chanelle Wilson, Lorraine Sheridan and David Garratt-Reed, 'What Is Cyberstalking? A Review of Measurements' (2022) 37(11–12) *Journal of Interpersonal Violence* NP9763, NP9764.

30 Submission 104 (Alannah and Madeline Foundation).

31 Office of the eSafety Commissioner (Cth), *eSafety for Women from Culturally and Linguistically Diverse Backgrounds* (Summary Report, 18 February 2019).

32 See, eg, Hadeel Al-Alosi, 'Cyber-Violence: Digital Abuse in the Context of Domestic Violence' (2017) 40(4) *UNSW Law Journal* 1573; Nicola Henry et al, 'Technology-Facilitated Domestic Violence against Immigrant and Refugee Women: A Qualitative Study' [2021] *Journal of Interpersonal Violence* 10.1177/08862605211001465:1–27; Delanie Woodlock, 'The Abuse of Technology in Domestic Violence and Stalking' (2017) 23(5) *Violence Against Women* 584; *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016) vol 1, ch 2.

33 Cristina Cavezza and Troy E McEwan, 'Cyberstalking versus Off-Line Stalking in a Forensic Sample' (2014) 20(10) *Psychology, Crime and Law* 955, 956; Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15; Catherine D Marcum and George E Higgins, 'A Systematic Review of Cyberstalking Victimization and Offending Behaviors' (2021) 46(6) *American Journal of Criminal Justice* 882; Chanelle Wilson, Lorraine Sheridan and David Garratt-Reed, 'What Is Cyberstalking? A Review of Measurements' (2022) 37(11–12) *Journal of Interpersonal Violence* NP9763, NP9778–9.

34 Billea Ahlgrim and Cheryl Terrance, 'Perceptions of Cyberstalking: Impact of Perpetrator Gender and Cyberstalker/Victim Relationship' (2021) 36(7–8) *Journal of Interpersonal Violence* NP4074, NP4077; Cristina Cavezza and Troy E McEwan, 'Cyberstalking versus Off-Line Stalking in a Forensic Sample' (2014) 20(10) *Psychology, Crime and Law* 955, 956; Chanelle Wilson, Lorraine Sheridan and David Garratt-Reed, 'What Is Cyberstalking? A Review of Measurements' (2022) *Journal of Interpersonal Violence* 37(11–12) NP9763, NP9778–9.

How common is cyberstalking?

- 3.25 Studies provide very different estimates of how common cyberstalking is, ranging from 3.7 per cent to 82 per cent of victimisation in the groups studied.³⁵ Cyberstalking studies in university settings around the world indicate rates of victimisation ranging from one per cent to 41 per cent.³⁶
- 3.26 Studies on technology-facilitated abuse or online harassment can provide a sense of how common cyberstalking is. For example:
- A 2020 report from eSafety found that 67 per cent of Australian adults had had a negative experience online in a recent one-year period, which included cyberstalking-related behaviour.³⁷
 - In a report on girls' and young women's online experiences across 32 countries, including Australia, more than half had experienced online harassment or abuse, including cyberstalking.³⁸
- 3.27 In a recent survey of victim support workers across Australia, the most common types of technology-facilitated abuse reported were 'monitoring, stalking or controlling'.³⁹
- 3.28 The true prevalence of cyberstalking is unknown, but research suggests that it is likely to be greater than what is reported.⁴⁰

Cyberstalking is gendered

- 3.29 Research indicates that cyberstalking is gendered, which is consistent with patterns of family violence and sexual violence and harassment. It is often carried out by men against women and girls.⁴¹
- 3.30 This is also consistent with broader research on technology-facilitated abuse. Around 70 per cent of the online harm reports that eSafety receives are from Australian women and girls.⁴²
- 3.31 As the United Nations Special Rapporteur on Violence against Women explains, while technology can empower women and girls, they have also 'increasingly voiced their concern at harmful, sexist, misogynistic and violent content and behaviour online'.⁴³

35 Majeed Khader and Stephanie Chan, 'Unwanted Attention: A Survey on Cyberstalking Victimization' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 77, 79–80; Harald Dressing et al, 'Cyberstalking in a Large Sample of Social Network Users: Prevalence, Characteristics, and Impact upon Victims' (2014) 17(2) *Cyberpsychology, Behavior and Social Networking* 61, 61. Studies may not distinguish between family violence and non-family violence stalking.

36 Cristina Cavezza and Troy E McEwan, 'Cyberstalking versus Off-Line Stalking in a Forensic Sample' (2014) 20(10) *Psychology, Crime and Law* 955, 956.

37 Office of the eSafety Commissioner (Cth), *Adults' Negative Online Experiences* (Report, 2020) 4.

38 This includes non-family violence stalking: see Plan International, *Free to Be Online* (Report, 2020) 7 <<https://www.plan.org.au/publications/free-to-be-online/>>.

39 For example, keeping track of the victim survivor's movements and interactions; maintaining unwanted contact or hacking the victim survivor's personal accounts: Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 21.

40 Majeed Khader and Stephanie Chan, 'Unwanted Attention: A Survey on Cyberstalking Victimization' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 77, 79–80.

41 Billea Ahlgrim and Cheryl Terrance, 'Perceptions of Cyberstalking: Impact of Perpetrator Gender and Cyberstalker/Victim Relationship' (2021) 36(7–8) *Journal of Interpersonal Violence* NP4074; Harald Dressing et al, 'Cyberstalking in a Large Sample of Social Network Users: Prevalence, Characteristics, and Impact upon Victims' (2014) 17(2) *Cyberpsychology, Behavior and Social Networking* 61; Suzie Dunn, 'Technology-Facilitated Gender-Based Violence: An Overview' (Centre for International Governance Innovation: Supporting a Safer Internet Paper No 1, Social Science Research Network, 2020) <<https://papers.ssrn.com/abstract=3772042>>; House of Representatives Select Committee on Social Media and Online Safety, Parliament of the Commonwealth of Australia, *Social Media and Online Safety* (Report, March 2022) 36; Anastasia Powell, Adrian J Scott and Nicola Henry, 'Digital Harassment and Abuse: Experiences of Sexuality and Gender Minority Adults' (2020) 17(2) *European Journal of Criminology* 199, 204.

42 Office of the eSafety Commissioner (Cth), 'Domestic and Family Violence', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/key-issues/domestic-family-violence>>.

43 Dubravka Simonović, Special Rapporteur, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on Online Violence Against Women and Girls from a Human Rights Perspective*, Human Rights Council, UN Doc A/HRC/38/47 (14 June 2018) 5 [14].

- 3.32 Men also experience cyberstalking.⁴⁴ Some research suggests that women cyberstalk more than men, and that men report more online victimisation than women.⁴⁵

Cyberstalking affects a range of people

- 3.33 People who experience cyberstalking may be targeted because of their gender identity, sexuality, race or ability.⁴⁶
- 3.34 The Victorian Pride Lobby highlighted research that indicates cyberstalking among gay and bisexual men is common.⁴⁷ It said that people in the public eye, such as political candidates and those with online platforms, can be targets of cyberstalking based on their sexual orientation.⁴⁸
- 3.35 One 2020 study suggests that transgender people experience more technology-facilitated abuse and harassment compared with heterosexual cisgender individuals.⁴⁹
- 3.36 For Aboriginal and Torres Strait Islander women living in remote and regional areas, cyberstalking appears to be one of the most common types of technology-facilitated abuse they experience. Aboriginal women living in urban areas also experience technology-facilitated abuse, including cyberstalking.⁵⁰
- 3.37 One study in a family violence setting found that culturally and linguistically diverse and refugee women who experience technology-facilitated abuse may be taken advantage of due to their circumstances. These circumstances may include uncertain residency status, language barriers or lack of awareness about laws.⁵¹
- 3.38 Women with intellectual or cognitive disabilities may experience technology-facilitated abuse more than other people. For example, any communication difficulties they have could be exploited by the person who stalks. The victim survivor may also depend for their care on the person who is stalking them.⁵²
- 3.39 There are, of course, many more communities whose experiences matter. The communities we discuss here are themselves diverse. More research into the frequency of cyberstalking in diverse communities is needed.⁵³ In Chapter 2, we recommend the Victorian Government improve data on stalking.

Children and young people have a different experience of cyberstalking

- 3.40 A 2016 study suggested that the most common forms of technology-facilitated abuse against children and young people are monitoring and stalking behaviours.⁵⁴

44 Billee Ahlgrim and Cheryl Terrance, 'Perceptions of Cyberstalking: Impact of Perpetrator Gender and Cyberstalker/Victim Relationship' (2021) 36(7–8) *Journal of Interpersonal Violence* NP4074; Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 19, 38.

45 Suzie Dunn, 'Technology-Facilitated Gender-Based Violence: An Overview' (Centre for International Governance Innovation: Supporting a Safer Internet Paper No 1, Social Science Research Network, 2020) 14 <<https://papers.ssrn.com/abstract=3772042>>; Anastasia Powell, Adrian J Scott and Nicola Henry, 'Digital Harassment and Abuse: Experiences of Sexuality and Gender Minority Adults' (2020) 17(2) *European Journal of Criminology* 199, 204.

46 Consultation 28 (Victorian Pride Lobby).

47 Ibid, citing W Spencer Scott, 'Electronic Boundary Violations Among Gay and Bisexual Men' (Doctoral Project, Roosevelt University, 2016).

48 Consultation 28 (Victorian Pride Lobby), citing W Spencer Scott, 'Electronic Boundary Violations Among Gay and Bisexual Men' (Doctoral Project, Roosevelt University, 2016).

49 Anastasia Powell, Adrian J Scott and Nicola Henry, 'Digital Harassment and Abuse: Experiences of Sexuality and Gender Minority Adults' (2020) 17(2) *European Journal of Criminology* 199.

50 Office of the eSafety Commissioner (Cth), *Technology-Facilitated Abuse among Aboriginal and Torres Strait Islander Women* (Report, 2021); Office of the eSafety Commissioner (Cth), *Online Safety for Aboriginal and Torres Strait Islander Women Living in Urban Areas* (Report, October 2019).

51 Nicola Henry et al, 'Technology-Facilitated Domestic Violence against Immigrant and Refugee Women: A Qualitative Study' [2021] *Journal of Interpersonal Violence* 10.1177/08862605211001465:1–27, 17–18.

52 Office of the eSafety Commissioner (Cth), *Technology-Facilitated Abuse of Women with Intellectual or Cognitive Disability* (Report, 2021) 4.

53 Consultation 28 (Victorian Pride Lobby).

54 Laura Fazio, 'Young People and Cyberspace: Introduction' (2016) 22(2) *European Journal on Criminal Policy and Research* 211, 211.

- 3.41 It appears that children and young people are more likely to experience cyberstalking compared to adults and older people.⁵⁵ As 'digital natives',⁵⁶ children and young people are in an online environment every day, navigating 'issues of relationships, identity, and intimacy'.⁵⁷ They may therefore be more prone than adults to experiencing this harmful behaviour.⁵⁸
- 3.42 For children and young people, cyberstalking may be an extension of cyberbullying.⁵⁹ It is estimated that one in five young Australians has experienced cyberbullying behaviour.⁶⁰ Research by eSafety indicates that 30 per cent of teenagers reported cyberbullying at school.⁶¹
- 3.43 We heard that cyberstalking became worse during coronavirus (COVID-19) lockdowns.⁶² This affected children and young people more than others because they were relying on technology for their education and social connection.⁶³

What are the legal and regulatory responses to cyberstalking?

- 3.44 The response to cyberstalking includes legal avenues through criminal and civil law and a regulatory response through eSafety (see Table 6).

Table 6: Examples of legal and regulatory responses to cyberstalking

Legal or regulatory response	Jurisdiction
Offence to use listening, optical surveillance and tracking devices without the consent of the person who is being tracked under the <i>Surveillance Devices Act 1999</i> (Vic). ⁶⁴	Victoria (Criminal)
Offences related to intimate image-based abuse under the <i>Summary Offences Act 1966</i> (Vic). ⁶⁵	Victoria (Criminal)
Personal safety intervention orders (PSIOs) can include conditions to stop the respondent from cyberstalking under the <i>Personal Safety Intervention Orders Act 2010</i> (Vic). PSIOs are discussed in more detail in Chapter 6.	Victoria (Civil)
Offence to use a carriage service to menace, harass or cause offence, or to make threats to kill or harm under the <i>Criminal Code Act 1995</i> (Cth). ⁶⁶	Federal (Criminal)
Offence to intercept telecommunications under the <i>Telecommunications (Interception and Access) Act 1979</i> (Cth). ⁶⁷	Federal (Criminal)

55 Consultations 4 (Sexual Assault Services Network), 20 (Law Institute of Victoria), 27 (Kulturbrille); Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 10–11; Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 8–10; Catherine D Marcum and George E Higgins, 'A Systematic Review of Cyberstalking Victimization and Offending Behaviors' (2021) 46(6) *American Journal of Criminal Justice* 882, 905–6; Chanelle Wilson, Lorraine Sheridan and David Garratt-Reed, 'What Is Cyberstalking? A Review of Measurements' (2022) 37(11–12) *Journal of Interpersonal Violence* NP9763, NP9764.

56 Laura Fazio, 'Young People and Cyberspace: Introduction' (2016) 22(2) *European Journal on Criminal Policy and Research* 211, 211.

57 Ibid 212.

58 Ibid 211.

59 Submission 104 (Alannah and Madeline Foundation).

60 House of Representatives Select Committee on Social Media and Online Safety, Parliament of the Commonwealth of Australia, *Social Media and Online Safety* (Report, March 2022) 28.

61 Office of the eSafety Commissioner (Cth), *Digital Lives of Aussie Teens* (Report, February 2021) 5.

62 Submissions 56 (Derryn Hinch's Justice Party), 104 (Alannah and Madeline Foundation); Consultation 23 (Cyberstalking roundtable).

63 Submission 104 (Alannah and Madeline Foundation).

64 *Surveillance Devices Act 1999* (Vic) pt 2.

65 *Summary Offences Act 1966* (Vic) div 4A.

66 *Criminal Code Act 1995* (Cth) ss 474.17, 474.17A(1)–(3), 474.15(1)–(2).

67 See, eg, *Telecommunications (Interception and Access) Act 1979* (Cth) s 105.

Legal or regulatory response	Jurisdiction
<i>Cyber abuse scheme for adults:</i> eSafety can issue notices to online service providers or end-users to remove within 24 hours material related to adult cyber abuse. ⁶⁸ Penalties apply if the content is not removed. ⁶⁹	Federal (Regulatory)
<i>Cyberbullying scheme for children:</i> eSafety can issue notices to online service providers or end-users to remove within 24 hours material related to cyberbullying. ⁷⁰ Penalties apply if the content is not removed. ⁷¹	Federal (Regulatory)
<i>Image-based abuse scheme:</i> eSafety can issue notices to online service providers or end-users to remove intimate images within 24 hours. Penalties apply if the content is not removed. ⁷²	Federal (Regulatory)
<i>Investigative powers:</i> eSafety has investigative powers including the ability to compel a person to answer questions and produce documents or information. eSafety also has information-gathering powers to obtain end-user identity and contact information from the provider of an online service. ⁷³	Federal (Regulatory)

- 3.45 Cyberstalking can fall under the criminal offence of stalking in the *Crimes Act 1958 (Vic)*, and is investigated by Victoria Police. In Chapter 7 we outline the stalking offence in more detail.
- 3.46 Victoria's stalking offence is sufficiently 'technologically neutral' to cover cyberstalking.⁷⁴
- 3.47 Other possible legal responses to cyberstalking are outlined in Table 6 above. Federal offences are investigated by the Australian Federal Police, and sometimes federal offences are pursued instead of the Victorian offence.⁷⁵ However, our focus is Victorian law, and when we refer to 'police' we mean Victoria Police.
- 3.48 eSafety is an Australian Government authority responsible for keeping Australians safe online. It provides a regulatory response to some technology-facilitated harms under the *Online Safety Act 2021 (Cth)*. Its functions include:
- promoting online safety for Australians
 - managing a complaints system for cyberbullying material
 - managing a complaints system for cyber-abuse material
 - managing a complaints and objections system for non-consensual sharing of intimate images.⁷⁶
- 3.49 eSafety has a range of powers to help adults and children deal with harmful behaviours such as intimate image-based abuse and cyberbullying (see Table 6). People can contact eSafety directly for help and information.

68 Adult cyber abuse material is 'the most severely abusive material' intended to cause serious harm and be menacing, harassing or offensive. This includes material that is realistically threatening and unrelenting, including in situations of cyberstalking: Consultation 8 (eSafety Commissioner); Office of the eSafety Commissioner (Cth), *Adult Cyber Abuse Scheme* (Regulatory Guidance No eSC RG 3, December 2021) 3.

69 *Online Safety Act 2021 (Cth)* pt 7.

70 Cyberbullying material is 'online communication to or about an Australian child that is seriously threatening, seriously intimidating, seriously harassing or seriously humiliating': Office of the eSafety Commissioner (Cth), *Cyberbullying Scheme* (Regulatory Guidance No eSC RG 1, November 2021) 3.

71 *Online Safety Act 2021 (Cth)* pt 5.

72 Ibid pt 6. Image-based abuse means sharing online, or threatening to share, an intimate image without the consent of the person shown: Office of the eSafety Commissioner (Cth), *Image-Based Abuse Scheme* (Regulatory Guidance No eSC RG 2, November 2021) 4 <<https://www.esafety.gov.au/about-us/who-we-are/regulatory-schemes#cyberbullying-scheme>>.

73 *Online Safety Act 2021 (Cth)* pt 13–14.

74 Submissions 56 (Derryn Hinch's Justice Party), 98 (Law Institute of Victoria).

75 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 131, 157–8.

76 *Online Safety Act 2021 (Cth)* s 4.

- 3.50 In some cases, eSafety can help remove the harmful content from online platforms.⁷⁷
- 3.51 eSafety has online information on how to identify technology-facilitated abuse and develop an online safety plan.⁷⁸
- 3.52 Even with these legal and regulatory options, cyberstalking can be difficult to address. The reasons for this are discussed next.

Complexities of the legal and regulatory responses

- 3.53 To collect evidence of cyberstalking, it is essential that service providers cooperate. They have access to key information about incidents that could be used to address cyberstalking behaviour.⁷⁹
- 3.54 We heard support for increasing regulation of online service providers and improving their cooperation with police officers.⁸⁰ This would assist police to progress investigations.⁸¹
- 3.55 In a roundtable discussion on cyberstalking we heard that some providers cooperate with police officers, but are not legally required to. They are also not required to do anything differently if their platform is being used for stalking.⁸²
- 3.56 Victoria Police stated that reform is needed to ensure they can get the information they need from online service providers in a timely way.⁸³ Suggestions included:
- enforceable responsibilities on providers to support police investigations⁸⁴
 - agreements with technology companies in relation to cyberstalking against any Victorian
 - a code of conduct for internet and social media companies⁸⁵
 - transparency around the policies and practices an online company will follow in responding to reports.⁸⁶
- 3.57 There is a limit to what we can recommend in this area:
- Many of these issues are regulated by federal laws and sit outside the Victorian jurisdiction. The Australian Government is also involved in the response to cyberstalking. Our focus is on Victorian law and what the Victorian Government can do in response.
 - Cyberstalking overlaps with other technology-facilitated harms, online safety issues, privacy and data protection.⁸⁷ It is a feature of family violence and sexual violence. The scope of our inquiry is limited to stalking.
- 3.58 A broad, systemic and cross-jurisdictional response is needed to properly tackle technology-facilitated abuse in all its forms.

77 Office of the eSafety Commissioner (Cth), 'What You Can Report to eSafety', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/report/what-you-can-report-to-esafety>>.

78 Office of the eSafety Commissioner (Cth), 'Online Safety Planning', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/key-issues/domestic-family-violence/online-safety-planning>>.

79 Puneet Kaur et al., 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 7 (citations omitted).

80 Submissions 56 (Derryn Hinch's Justice Party), 115 (Victoria Police); Consultation 23 (Cyberstalking roundtable).

81 Wei-Jung Chang, 'Cyberstalking and Law Enforcement' (2020) 176 *Procedia Computer Science* 1188, 1192.

82 Consultation 23 (Cyberstalking roundtable).

83 Submission 115 (Victoria Police).

84 Ibid. Victoria Police pointed to its earlier submission to our sexual offences inquiry, in which it discussed jurisdictional issues that can arise where online providers are based overseas, and stated: 'Victoria Police would welcome consideration of a place-of-consumption approach, whereby statutory obligations are automatically imposed on all providers which choose to make their platforms available to Victorian consumers ... With this, requirements for providers to verify the identity of individuals creating profiles on these platforms, and to retain this information, would be both necessary and appropriate'.

85 Submission 56 (Derryn Hinch's Justice Party).

86 Submission 104 (Alannah and Madeline Foundation).

87 Participants in a roundtable discussion stated that there may be critical work required around the *Privacy and Data Protection Act 2014* (Vic) that can strengthen these safety reforms: Consultation 23 (Cyberstalking roundtable).

What are the barriers to seeking help for cyberstalking?

- 3.59 There are significant barriers to people seeking help for technology-facilitated abuse.⁸⁸ Seeking help could include reporting the behaviour to police or contacting support services. In our consultation paper we asked about these barriers.⁸⁹
- 3.60 The barriers to seeking and getting help for cyberstalking we heard about included:
- *Lack of knowledge about the technology*⁹⁰—People may be monitored or tracked without their knowledge.⁹¹ A lack of knowledge about cyberstalking technology may be more pronounced in some communities, such as amongst Aboriginal women.⁹²
 - *Cyberstalking may be treated as bullying*—This often results in disciplinary actions within a school setting, rather than a legal response to stalking.⁹³ (However, as we discuss in Chapter 6, alternative pathways for children and young people might be better than a legal response.)
- 3.61 Most other barriers to seeking help for cyberstalking are similar to the barriers for stalking (see Chapter 2). These include:
- people not being aware that the behaviour they are experiencing is cyberstalking
 - people minimising the harm they are experiencing—for example, among young people, some controlling and harassing behaviours online may be normalised⁹⁴
 - fear of feeling shame or embarrassment, or of being blamed
 - fear that reporting the behaviour will lead to bad consequences—for example, in the case of young people at school, having their devices taken away⁹⁵
 - difficulty in finding up-to-date, relevant information and help⁹⁶
 - doubt that help is possible, especially where the identity of the person cyberstalking is unknown.⁹⁷
- 3.62 We heard that some communities do not trust police, especially if they have faced discrimination in the past, such as Aboriginal people and LGBTIQ+ people.⁹⁸

There should be public education about cyberstalking

- 3.63 Lack of awareness is a barrier to people seeking help for cyberstalking. Many community members do not know what cyberstalking is, how it is committed, where to get help and how to stay safe.⁹⁹
- 3.64 In response to the question in our consultation paper, '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?', one victim survivor replied, 'That is an excellent question, and I wish I [had] the answer for it, so I can help myself'.¹⁰⁰
- 3.65 In Chapter 4 we discuss why more education is needed on stalking, including cyberstalking, so that people who are being harmed by cyberstalking can speak up and seek support or justice.

88 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 5.

89 Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) Question 28.

90 Submissions 41 (Djirra), 98 (Law Institute of Victoria).

91 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

92 Submission 41 (Djirra).

93 Consultation 29 (Alannah & Madeline Foundation).

94 Ibid: Consultation 28 (Victorian Pride Lobby).

95 Submission 104 (Alannah and Madeline Foundation); Consultation 10 (Victorian Aboriginal Legal Service).

96 Consultation 23 (Cyberstalking roundtable); Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 13–14.

97 Submission 98 (Law Institute of Victoria).

98 Consultations 8 (eSafety Commissioner), 10 (Victorian Aboriginal Legal Service), 23 (Cyberstalking roundtable), 28 (Victorian Pride Lobby).

99 Submissions 41 (Djirra), 98 (Law Institute of Victoria), 104 (Alannah and Madeline Foundation); Consultation 10 (Victorian Aboriginal Legal Service).

100 Submission 36 (Ahmad Masri).

What information about cyberstalking is important?

- 3.66 In Chapter 4 we outline information about stalking that should become common knowledge, which should include information about cyberstalking. People should be able to identify cyberstalking as a crime, know how to report it to the police, and understand where else they can seek help.¹⁰¹
- 3.67 Information on the support and justice options for people who are stalked, and what steps they can take, should include options specific to cyberstalking,¹⁰² including ways to self-help. As one person who experienced stalking told us:

Another thing I would find hugely helpful is to have information made available on the net on how to determine if spyware has been attached to your phone and how to disable it if so. How can you prove that your phone is being monitored and what can you do to stop this happening?¹⁰³

- 3.68 Information about support and justice options is especially important in relation to cyberstalking, given the complexity of the legal and regulatory responses (see Table 6). A victim survivor may need to understand their options at a federal and state level, and through legal and regulatory avenues, which is a challenging task. As we discuss in Chapter 4, the information is found in different places and it is hard for a person to form a complete picture of their options.
- 3.69 We heard that the Office of the eSafety Commissioner is a useful source of information and help, but not everyone in the community knows about it.¹⁰⁴
- 3.70 The eSafety website describes cyberstalking as a type of online abuse, and lists examples of cyberstalking behaviours. It explains that those experiencing cyberstalking should immediately contact their local police.¹⁰⁵ However, there are gaps in the information on eSafety's website. For example:
- It only discusses family violence stalking.
 - The list of 'classroom resources' covers a range of related topics, including 'unwanted contact' and 'cyberbullying', but does not address cyberstalking specifically.¹⁰⁶
 - General resources, such as the 'YeS Project' workshop handbook, contain only very brief references to stalking and the fact that it is a crime.¹⁰⁷

How should public education be delivered?

- 3.71 Children and young people appear to be more likely than adults to be cyberstalked, so they should receive more tailored information on cyberstalking.
- 3.72 Improving digital literacy and awareness about online safety measures is a critical part of responding to cyberstalking. Improving parents' digital literacy and awareness would help children and young people who are experiencing cyberstalking.¹⁰⁸

101 Wei-Jung Chang, 'Cyberstalking and Law Enforcement' (2020) 176 *Procedia Computer Science* 1188, 1192. See also Cassandra Cross and Thomas Holt, *Responding to Cybercrime: Results of a Comparison between Community Members and Police Personnel* (Trends & Issues in Crime and Criminal Justice No. 635, Australian Institute of Criminology, 19 August 2021) 15 <<https://www.aic.gov.au/publications/tandi/tandi635>>.

102 Consultation 8 (eSafety Commissioner).

103 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

104 Consultation 29 (Alannah & Madeline Foundation).

105 'Cyberstalking', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/key-issues/domestic-family-violence/technology-facilitated-abuse/cyberstalking>>.

106 Office of the eSafety Commissioner (Cth), 'Classroom Resources', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/educators/classroom-resources>>.

107 Natalie Hendry, Jenny Walsh and Sharyn Leahy Hatton, *The YeS Project* (Workshop Handbook, Office of the eSafety Commissioner (Cth), 2018) 46.

108 Consultation 29 (Alannah & Madeline Foundation). See also Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking. An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 7.

- 3.73 The Alannah and Madeline Foundation suggested that digital literacy and awareness could be included in existing school-age programs and curricula such as the Respectful Relationships curriculum. It suggested further work needed to be done on stalking, such as:
- being an active bystander
 - supporting friends who are experiencing harm
 - making ethical choices
 - knowing when to encourage someone to seek help
 - knowing how to respond to something that is disturbing you.¹⁰⁹
- 3.74 Existing education programs on digital literacy and cyberstalking may provide a starting point (see box).

Examples of existing programs and resources to improve digital literacy and online safety¹¹⁰

- eSmart Digital Licence Program is an award-winning interactive gamified digital literacy model that supports children aged 10–14 to reflect on their values, ethical choices and social behaviours online.¹¹¹
- eSafety training sessions and resources inform people of the common ways they may be exposing personal details online.¹¹²
- The Safety Net Project, based in the United States and run by the National Network to End Domestic Violence (NNEDV), 'focuses on the intersection of technology and domestic and sexual violence [including stalking] and works to address how it impacts the safety, privacy, accessibility, and civil rights of victims'.¹¹³ NNEDV also has a 'Technology Safety' website,¹¹⁴ and an app called Tech Safety which 'offers information and tips for someone who might be stalked or harassed through [technology]'.¹¹⁵ Resources available include tips on how to document abuse, a 'survivor's guide to location tracking' and technology safety plans.¹¹⁶

Where can people get help and support for cyberstalking?

- 3.75 There are no support services that specialise in helping people who are experiencing non-family violence stalking. In contrast, people who experience stalking in situations of family or sexual violence can access support through specialist services.
- 3.76 We heard that there is a gap in victim support where people experience cyberstalking but do not also experience family or sexual violence. They cannot access victim support for technology-facilitated abuse.¹¹⁷
- 3.77 In our consultation paper we asked where people can go for help if they are being cyberstalked. These avenues are described in Table 7 below.

109 Submission 104 (Alannah and Madeline Foundation).

110 Alannah & Madeline Foundation, 'Cyber and Digital Literacy Resources', *eSmart* (Web Page, 2022) <<https://www.esmart.org.au/esmart-libraries/cyber-and-digital-literacy-resources/>>.

111 Alannah & Madeline Foundation, 'eSmart Digital Licence+', *eSmart* (Web Page, 2022) <<https://digitalllicenceplus.org/>>.

112 Consultation 23 (Cyberstalking roundtable).

113 'The Safety Net Project', *National Network to End Domestic Violence (NNEDV)* (Web Page) <<https://nnedv.org/content/technology-safety/>>. See also Women's Services Network (WESNET), 'WESNET Safety Net Australia Service', *Technology Safety Australia* (Web Page) <<https://techsafety.org.au/about/>>, established in 2011 and working closely with the US Safety Net Project.

114 'Technology Safety', *National Network to End Domestic Violence* (Web Page) <<https://www.techsafety.org>>.

115 'Tech Safety App', *Tech Safety* (Web Page) <<https://www.techsafetyapp.org/home>>.

116 'Technology Safety & Privacy: A Toolkit for Survivors', *National Network to End Domestic Violence* (Web Page) <<https://www.techsafety.org/resources-survivors>>.

117 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

Table 7: Victim support for cyberstalking

Organisation	About the organisation	Help provided to people who experience cyberstalking
Protective Services ¹¹⁸	<ul style="list-style-type: none"> • National organisation aimed at keeping people safe from technology-facilitated abuse. • Receives referrals from family violence services such as Safe Steps or Orange Doors. • People can also contact Protective Services directly. • Services are government-funded so that they can remain low-cost. • Due to funding structure is unable to help with requests where cyberstalking is outside a family violence context. 	<ul style="list-style-type: none"> • Technical sweeps of homes and vehicles. • Removing cyberstalking threats such as spyware and hidden cameras. • In-office computer and phone scans. • Password management. • Can support police in criminal investigations by documenting and collecting the evidence.
WESNET ¹¹⁹	<ul style="list-style-type: none"> • National peak body for specialist women's family violence services. • SafeConnections program supports people experiencing technology-facilitated abuse such as cyberstalking. • The program is limited to people who are connected with 'participating frontline agencies to survivors of domestic and family violence, sexual assault, and other forms of violence against women'.¹²⁰ 	<ul style="list-style-type: none"> • Providing new smartphones and setting up new accounts.
IDCARE ¹²¹	<ul style="list-style-type: none"> • Charitable organisation operating across Australia and New Zealand that helps people with online identity and cyber security concerns. • Also helps people in non-family violence stalking matters.¹²² • Victoria is the only jurisdiction in Australia where police cannot refer victim survivors due to the government funding being stopped. • Receives funding through member organisations' paid subscriptions. 	<ul style="list-style-type: none"> • Expert and specialised support and tailored advice from identity and cyber security case managers for a range of technology-facilitated harms such as hacking, ransomware and remote access of devices.¹²³

118 Consultation 23 (Cyberstalking roundtable).

119 Ibid.

120 Women's Services Network (WESNET), 'About Safe Connections', *Safe Connections 2.0* (Web Page) <<https://phones.wesnet.org.au/safeconnections/>>.

121 Consultation 23 (Cyberstalking roundtable).

122 Ibid.

123 IDCARE, *Individual Support Services* (Web Page, 2022) <<https://www.idcare.org/support-services/individual-support-services>>.

People who experience cyberstalking need more support

- 3.78 While cyberstalking appears to be a growing problem,¹²⁴ Table 7 indicates that support is limited and often only available to victim survivors of family violence.
- 3.79 For the services that do exist, it is difficult to keep up with the demand. More resources and investment are needed. WESNET told us about the 'large gap' between its capacity and public demand.¹²⁵
- 3.80 Expanding and funding support for everyone who experiences cyberstalking should be a priority for government. This support should be practical, timely and safe, and include:
- safety checks on devices and online networks to detect and stop the cyberstalking
 - access to replacement devices
 - support to collect evidence, if needed.
- 3.81 This is similar to support and services already available for people who are cyberstalked in family violence contexts.

Support needs to be practical

- 3.82 In our consultation paper we asked what kind of help a person needs if they suspect they are being cyberstalked.
- 3.83 One person told us about the practical and financial burden of being cyberstalked:

I would like a cheaper, easier method of being able to determine if your phone is being monitored. It's enormously difficult being able to determine how your mobile phone is being monitored. I've reset my mobile phone back to its factory settings on 16 separate occasions, trying to delete any stalker ware that may have been installed. I've purchased a new mobile phone 8 months ago. I've purchased equipment to detect whether or not a GPS has been attached to my car, all of which have been very expensive.¹²⁶

- 3.84 A participant at the cyberstalking roundtable told us that they very commonly receive requests for practical help from frontline support workers and victim survivors, including requests for:¹²⁷
- safety check services (for example, 'tech-sweeping' or device cleaning services)¹²⁸
 - removal of physical or digital tracking devices¹²⁹
 - replacement device services¹³⁰ (for example a replacement phone).
- 3.85 People experiencing cyberstalking need these practical supports to identify and stop the abuse so that they can move forward with their lives. Some might need help collecting evidence and a forensic analysis.¹³¹ We also heard that people need help with accessing safe technology so that they can participate safely in social and economic life.¹³²

124 Delanie Woodlock et al. *Second National Survey on Technology Abuse in Australia* (Report, 24 November 2020).

125 Consultation 23 (Cyberstalking roundtable).

126 Victorian Law Reform Commission. *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

127 Consultation 23 (Cyberstalking roundtable).

128 These services detect and remove surveillance devices or software, such as spyware, tracking devices or vulnerabilities to hacking.

129 Submission 115 (Victoria Police—supplementary response).

130 Submission 49 (Victims of Crime Commissioner); Consultations 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria), 23 (Cyberstalking roundtable).

131 Consultation 23 (Cyberstalking roundtable).

132 Ibid.

- 3.86 The Victims of Crime Commissioner recommended that victim support services be 'bolstered to enhance the availability of ongoing technology support as a key part of safety planning'. The Commissioner recommended the 'provision of flexible support packages' of practical technical support.¹³³

Support needs to be timely

- 3.87 We heard that the services in place for cyberstalking are not frontline crisis response services. There may be a gap in services where a victim survivor's safety is under imminent threat.¹³⁴
- 3.88 We heard that Victoria Police has invested considerably in its forensic capabilities. This has resulted in a shorter wait time for victim survivors to have their phones analysed, from 31 months to just over 12 months. This is still a long wait and victim survivors may choose not to bother. Victoria Police told us that it does not have capacity to meet all the requests it gets for analysis of phones. In 2020 alone, there was an increase of 67 per cent in requests for digital forensic services, compared to 2018.¹³⁵
- 3.89 Practical support must be timely so that victim survivors are not disconnected from online spaces and their devices for long periods of time. These are their links to family, friends, services and the justice system. For some people, they might be a lifeline.
- 3.90 As we discuss in Chapter 5, timely support also means the cyberstalking can be detected and stopped as soon as possible.

Support needs to be regulated and safe

- 3.91 We heard that private technology companies can take advantage of victim survivors by price gouging.¹³⁶ We heard of companies charging roughly \$5000–6000 to check cars and phones.¹³⁷
- 3.92 eSafety told us that while practical support such as tech-sweeping services are critical, this support lacks a coordinated approach:
- there is a gap in service provision for circumstances where there are unsafe intentions and a fear that a device may be corrupted with tracking software or worse, that there is physical tracking occurring, or a camera located in the house, car, or amongst personal possessions. Where do people, mainly women, take these belongings to have them scanned or swept to see if anything malicious is there? There are some services available, but they are not coordinated under an umbrella, or central referral point. There is no accreditation to that.¹³⁸
- 3.93 Some people we consulted suggested more regulation in this area, and 'a consumer review process' for these services overseen by experts or victim support organisations.¹³⁹ Domestic Violence Victoria and Domestic Violence Resource Centre Victoria stated that regulation is needed to 'safeguard against perpetrators infiltrating their systems'.¹⁴⁰ Victoria Police noted that services which help with the identification and removal of tracking devices should not also be able to offer installation services to anyone.¹⁴¹
- 3.94 Victim survivors need to know that when they seek help they will be treated in a respectful and fair way and will not be subject to further harm. We recommend that for victim survivors of cyberstalking, support is also regulated and safe (see Chapter 5).

133 Submission 49 (Victims of Crime Commissioner).

134 Consultation 23 (Cyberstalking roundtable).

135 Ibid.

136 Consultations 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria), 23 (Cyberstalking roundtable).

137 Consultation 23 (Cyberstalking roundtable).

138 Consultation 8 (eSafety Commissioner).

139 Consultation 23 (Cyberstalking roundtable).

140 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

141 Submission 115 (Victoria Police—supplementary response).

Police responses to cyberstalking need to improve

- 3.95 Victim survivors report cyberstalking to police to 'gain support and to provide evidence for investigation'.¹⁴² But research suggests that the support and response they receive can be inadequate.¹⁴³

What we heard about the police response to cyberstalking

One person who reported cyberstalking to the police in the last 2–5 years told us:

The police saw 'online stalking' as not a serious matter and too difficult to investigate further due to the stalker using fake online accounts and we couldn't confirm their identify. I had submitted many written statements to police, and they questioned me whether it was the same person or a 'new stalker' as there was no evidence to say it was the same person. The police would not follow up once statements were submitted and they advised me that they didn't feel the need to complete an intervention order due to the nature of the stalking being majority online—which made me feel unsafe at home and within the community ... The process was exhausting and I felt like I was alone and no one was listening to me. There was at least 5 times I went to the police before giving up.¹⁴⁴

Another person who reported cyberstalking to the police in the last 2–5 years told us:

[The police were] very dismissive on the basis of the online stuff would be too hard to track down.¹⁴⁵

Another person who lived in a rural or regional community who reported cyberstalking to the police in the last 2–5 years told us:

The police were dismissive and victim blaming. Their attitude was horrendous. They refused to look at screenshots of online abuse and death threats and said I could have faked them. They kept asking me if I had a sexual relationship with my stalker because 'why else would he be targeting you?' One detective just kept repeating 'get off social media and get a life'.¹⁴⁶

Dianne Russell, a mother, speaking about her daughter's experience of reporting cyberstalking to the police told us:

My daughter's cyberstalking experience began in 2015 through the Social Media platform. She was harassed on and off for 3 years with numerous obscene messages and threats.

This person was unknown at the time to her as several fake identities were used to avoid tracing.

This was reported to the local police station, a written statement was given, however no further action was taken and she was asked to ignore the messages or delete her Facebook.

This was not taken seriously and left her and myself very frustrated with the lack of support given by the Constable.

He clearly had no interest in her concerns and she felt like this was her fault.

This caused severe anxiety, trying to live each day in fear due to the lack of power the Victorian Police have in regards to stalking and protection.¹⁴⁷

142 Joanne D Worsley et al. 'Victims' Voices: Understanding the Emotional Impact of Cyberstalking and Individuals' Coping Responses' (2017) 7(2) *SAGE Open* 10.1177/215824401771029:1–13, 10.

143 Wei-Jung Chang. 'Cyberstalking and Law Enforcement' (2020) 176 *Procedia Computer Science* 1188; Joanne D Worsley et al. 'Victims' Voices: Understanding the Emotional Impact of Cyberstalking and Individuals' Coping Responses' (2017) 7(2) *SAGE Open* 10.1177/215824401771029:1–13, 10.

144 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

145 Ibid.

146 Ibid.

147 Submission 60 (Dianne Russell).

Di McDonald, a person who experienced stalking, said:

I had a tracker on my phone, when I asked Police to check years ago, I was dismissed.¹⁴⁸

Another who had reported to the police less than a year ago said:

When I spoke to the police they said there wasn't much they could do as it was and is social media that I continue to be stalked on.¹⁴⁹

The police response too often includes 'unplugging'

- 3.96 We heard that it is common for victim survivors to be told by police to stop using their device or participating in online spaces to stop the cyberstalking.¹⁵⁰ This is consistent with feedback we received from victim survivors. A reason for this might be that police lack enough awareness of cyberstalking, so they do not identify the behaviour or know how to assist victim survivors.¹⁵¹
- 3.97 As a number of organisations told us, 'unplugging' is not the right solution for victim survivors.¹⁵² The Alannah and Madeline Foundation explained:
- The advice to withdraw from technology or cyber spaces is not appropriate as it is punishing the person being stalked, which isn't fair to them. It is increasingly not an option to be offline, and the idea of shutting down social media profiles, especially for young people, often isn't a viable option.¹⁵³
- 3.98 The Victorian Pride Lobby similarly told us that for LGBTIQ+ people running for political office, the police might see the experience of cyberstalking as 'expected' when you 'put yourself out there'. They saw this as leading to advice that victim survivors stop or adapt their behaviour, instead of police stopping the behaviour of the people who stalk.¹⁵⁴
- 3.99 Recent research indicates that victim support services may be reluctant to refer victim survivors of cyberstalking to police because of concerns about their response.¹⁵⁵ The Victorian Aboriginal Legal Service reported that it has 'struggled to refer young people to areas of the police that we are comfortable would be appropriately trained to deal with offences such as cyber stalking and online blackmail'.¹⁵⁶

Cyberstalking can be difficult for police to investigate

- 3.100 When police do identify cyberstalking behaviours and decide to investigate, they may face practical difficulties, as outlined in Table 8 below.

148 Submission 70 (Di McDonald).

149 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

150 Submission 32 (Centre for Forensic Behavioural Science). See also Holly Taylor-Dunn, Erica Bowen and Elizabeth A Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2021) 36(11-12) *Journal of Interpersonal Violence* 10.1177/0886260518811423:1-29, 8.

151 Wei-Jung Chang, 'Cyberstalking and Law Enforcement' (2020) 176 *Procedia Computer Science* 1188, 1191 (citations omitted); Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 40.

152 Submissions 32 (Centre for Forensic Behavioural Science), 39 (Victorian Pride Lobby), 56 (Derryn Hinch's Justice Party), 65 (Code Black Threat Management); Consultation 29 (Alannah & Madeline Foundation).

153 Consultation 29 (Alannah & Madeline Foundation).

154 Submission 39 (Victorian Pride Lobby).

155 Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021), citing Delanie Woodlock et al, *Second National Survey on Technology Abuse in Australia* (Report, 24 November 2020).

156 Consultation 10 (Victorian Aboriginal Legal Service).

Table 8: Why cyberstalking can be difficult to address through a criminal justice response

Reason	Description
Not being able to identify the person who is cyberstalking	Finding out the identity of the person who stalks and collecting evidence can be challenging because they may use fake online profiles or other people's accounts. ¹⁵⁷
Not being able to detect cyberstalking	A person who is being cyberstalked may not be aware of it, because surveillance devices can be hidden.
Jurisdictional issues	Many online service providers that produce devices, applications or software, or host online content, are in different parts of the world. This makes it hard to get evidence and data stored overseas. Victorian laws and regulations do not apply to these providers. ¹⁵⁸ Police may also be less likely to investigate these cases, even though Victoria's stalking offence applies when the accused is located elsewhere. ¹⁵⁹
Difficulties collecting evidence	Collecting evidence of stalking can be challenging where the person who stalks has used 'self-destructing' messaging systems such as Snapchat. ¹⁶⁰ Covert stalking or encrypted apps and platforms can make it difficult for police to collect evidence. ¹⁶¹ It can also be difficult for police to collect digital evidence in a form that is admissible in court. ¹⁶² Police may expect victim survivors to have kept evidence of all interactions they had with the person who stalked them. This may not be possible, especially where, at the time, they were not seen as significant or problematic. ¹⁶³
Technological issues	It can be challenging to keep up with rapidly changing new devices, apps and software. Forensic technical expertise can be difficult to build and maintain. ¹⁶⁴
Difficulty applying the stalking offence	Even though Victoria's stalking offence is viewed as 'technologically neutral', ¹⁶⁵ police may find it challenging to establish the stalking offence, especially the 'course of conduct' element. Police may focus more on 'extreme' cases, such as those with intimate image-based abuse, instead of more subtle unwanted contact. ¹⁶⁶

- 157 Submissions 55 (Springvale Monash Legal Service), 65 (Code Black Threat Management), 97 (Federation of Community Legal Centres); Consultations 10 (Victorian Aboriginal Legal Service), 13 (Victoria Legal Aid), 20 (Law Institute of Victoria); Luke Bartlett and Annabel Chan, 'Hashtag You're It: Limitations of PsychoLegal Responses to Online Interpersonal Harm' in Heng Choon Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 287, 298–9.
- 158 Submissions 32 (Centre for Forensic Behavioural Science), 56 (Derryn Hinch's Justice Party), 97 (Federation of Community Legal Centres), 115 (Victoria Police); Consultations 13 (Victoria Legal Aid), 23 (Cyberstalking roundtable); Asher Flynn, Anastasia Powell and Sophie Hindes, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (Research Report No 2, ANROWS, July 2021) 40; Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021). See also Puneet Kaur et al, 'A Systematic Literature Review on Cyberstalking, An Analysis of Past Achievements and Future Promises' (2021) 163 *Technological Forecasting and Social Change* 120426:1–15, 7.
- 159 *Crimes Act 1958* (Vic) s 21A(6).
- 160 Submissions 55 (Springvale Monash Legal Service), 97 (Federation of Community Legal Centres); Consultations 10 (Victorian Aboriginal Legal Service), 13 (Victoria Legal Aid), 20 (Law Institute of Victoria).
- 161 Consultations 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria), 23 (Cyberstalking roundtable).
- 162 Consultation 8 (eSafety Commissioner).
- 163 Consultation 23 (Cyberstalking roundtable).
- 164 Submissions 56 (Derryn Hinch's Justice Party), 97 (Federation of Community Legal Centres).
- 165 Submission 98 (Law Institute of Victoria).
- 166 Consultation 29 (Alannah & Madeline Foundation).

Responses to cyberstalking should be part of the police response to stalking

- 3.101 As discussed above, cyberstalking falls within the legal definition of stalking.
- 3.102 Yet it is often viewed differently from more traditional forms of stalking and may not be considered by some to be stalking at all.¹⁶⁷ As one person who reported cyberstalking to the police in the last 2–5 years said, 'The victims should be made to feel safe and offered [an intervention order] even if it is online only.'¹⁶⁸
- 3.103 A number of organisations were in favour of building police capacity to respond to cyberstalking through:
- increasing the use of digital forensic expertise to investigate cyberstalking¹⁶⁹
 - evidence-based training on the nature of cyberstalking and collecting evidence¹⁷⁰
 - collaborating with eSafety and other online safety experts.¹⁷¹
- 3.104 In our interim report we made recommendations to improve how Victoria Police identifies and responds to reports of stalking by:
- training frontline officers to enhance their understanding of stalking behaviours as set out in the *Crimes Act 1958* (Vic)
 - developing guidance for frontline officers for interviewing and communicating with victim survivors of stalking
 - developing guidance for identifying and gathering information about stalking for frontline police
 - referring complex cases to specialist police for investigation where required
 - referring victim survivors of stalking to external services, including victim support
 - using 'The Whole Story' investigative framework for stalking reports.¹⁷²
- 3.105 These recommendations should also apply to improving police responses to cyberstalking when victim survivors make reports. Further training would help the police:
- avoid inadequate responses, such as telling victim survivors to 'unplug'
 - make decisions about how to progress a report, for example by referring a case on to a specialist team or victim support services
 - collect digital evidence to support a PSIO or criminal charge.¹⁷³
- 3.106 Training for cyberstalking could include:
- improving officers' technological skills and expertise
 - understanding advances in technology
 - methods and tools used by people to cyberstalk
 - cyberstalking behaviour patterns¹⁷⁴
 - improving officers' understanding of how a 'course of conduct' translates to online behaviour.¹⁷⁵

167 See, eg, Submission 32 (Centre for Forensic Behavioural Science).

168 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

169 Submission 32 (Centre for Forensic Behavioural Science).

170 Submissions 49 (Victims of Crime Commissioner), 76 (Australian Association of Social Workers), 97 (Federation of Community Legal Centres).

171 Submission 97 (Federation of Community Legal Centres).

172 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021). The Whole Story approach is a way to improve the identification of stalking behaviour and enhance the ability of police to respond appropriately. It provides a more complete picture of any identifiable course of conduct, allowing more informed decisions to be made about interventions.

173 Submission 32 (Centre for Forensic Behavioural Science); Chris Todd, Joanne Bryce and Virginia NL Franqueira, 'Technology, Cyberstalking and Domestic Homicide: Informing Prevention and Response Strategies' (2021) 31(1) *Policing and Society* 82, 92.

174 Wei-Jung Chang, 'Cyberstalking and Law Enforcement' (2020) 176 *Procedia Computer Science* 1188, 1192.

175 For the elements of the stalking offence with the most obvious connection to online behaviour (and therefore cyberstalking): see *Crimes Act 1958* (Vic) s 21A(2)(b), (ba), (bb), (bc), (f).

- 3.107 The Whole Story approach could help police officers by giving them a complete picture of how a victim survivor is being harmed using technology.
- 3.108 Experts on cyberstalking stress the need for police officers to have the right tools and technology at their disposal for an effective investigation.¹⁷⁶
- 3.109 The police response should include a pathway to services that provide technological support for cyberstalking. These services should be able to accept referrals from police to assist people who experience non-family violence stalking.¹⁷⁷
- 3.110 These recommendations would complement Victoria Police's cybercrime division, launched in 2021 to build Victoria Police's capacity to fight cyber and technology-enabled crime.¹⁷⁸
- 3.111 Victoria Police told us that intimate image-based abuse can occur in the context of cyberstalking, and that intimate image-based abuse offences should be reviewed 'to ensure police are sufficiently empowered to investigate and enforce these crimes'.¹⁷⁹
- 3.112 In our report *Improving the Justice System Response to Sexual Offences* (2021), we recommended that intimate image-based abuse offences be upgraded from summary offences to indictable offences. One of the reasons we suggested this change is to increase Victoria Police's powers to investigate these matters, issue warrants and collect digital evidence.¹⁸⁰ Implementing this recommendation would also strengthen police investigative powers in relation to cyberstalking when it includes intimate image-based abuse.

Recommendations

2. In implementing Recommendations 1-9 of the interim report, Victoria Police should ensure that frontline and specialist police improve their capability to identify, investigate and respond to non-family violence cyberstalking.
3. In implementing Recommendation 8 of the interim report, Victoria Police should ensure that referrals are made efficiently to services that provide technical support for non-family violence cyberstalking for victim survivors, as set out in Recommendation 7 of this report.

Work is under way to keep people safe online

- 3.113 Work is being done at the state and federal levels in Australia to tackle technology-facilitated abuse, cybercrime and improve online safety.¹⁸¹
- 3.114 For example, Victoria's Cyber Strategy 2021–26 aims to create 'a cyber safe place to work, live and learn'.¹⁸² The priorities under this strategy include:
- providing practical advice to Victorians about how to reduce cyber risks
 - supporting police officers to prevent, detect, disrupt and prosecute cybercrime and other technology-facilitated crimes.¹⁸³

¹⁷⁶ Wei-Jung Chang, 'Cyberstalking and Law Enforcement' (2020) 176 *Procedia Computer Science* 1188, 1192.

¹⁷⁷ Submission 115 (Victoria Police—supplementary response).

¹⁷⁸ John Silvester, 'Cyber-Crime: How Police Are Rebooting Methods for a New Era', *The Age* (online, 15 October 2021) <<https://www.theage.com.au/national/victoria/cyber-cops-the-new-frontier-20211014-p58zuv.html>>.

¹⁷⁹ Submission 115 (Victoria Police).

¹⁸⁰ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) [14.114] Recommendations 52–55.

¹⁸¹ Consultation 29 (Alannah & Madeline Foundation); Delanie Woodlock et al, *Second National Survey on Technology Abuse in Australia* (Report, 24 November 2020) 7–8.

¹⁸² Department of Premier and Cabinet (Vic), *Victoria's Cyber Strategy 2021* (Strategy, 2021) 8.

¹⁸³ *Ibid* 11.

- 3.115 The Australian Government has established an Online Safety Charter which sets out expectations for the technology industry to protect Australians from harmful online experiences and to take meaningful action to address online harms to people using their products or services.¹⁸⁴
- 3.116 In the context of intimate image-based abuse crimes, eSafety has a memorandum of understanding (MOU) with the Australian Federal Police. MOUs with state police are also being developed.¹⁸⁵
- 3.117 A recent report by the federal parliamentary committee on social media and online safety made recommendations including a review of the Online Safety Act¹⁸⁶ and a review of the legislative framework and regulation in relation to the digital industry.¹⁸⁷
- 3.118 We also note that the new *Telecommunications Legislation Amendment (International Production Orders) Act 2021* (Cth) has the potential to speed up requests for police to obtain Australians' telecommunications data held offshore in the United States.

184 Commonwealth of Australia, *Online Safety Charter* (Charter, 2019).

185 Consultation 8 (eSafety Commissioner).

186 House of Representatives Select Committee on Social Media and Online Safety, Parliament of the Commonwealth of Australia, *Social Media and Online Safety* (Report, March 2022) [1.23] Recommendation 1.

187 Ibid Recommendation 18.

CHAPTER
04

Understanding and responding effectively to stalking

- 54** Overview
- 54** Stalking requires a community response
- 55** What information about stalking needs to be common knowledge?
- 56** Stalking is not well understood
- 59** Current sources of information are limited
- 60** There should be a commitment to public education about stalking
- 66** Education about stalking for people working in the justice system

4. Understanding and responding effectively to stalking

Overview

- The community needs education about stalking, harassment and similar conduct, and how to respond to disclosures.
- Education should make it clear that stalking is a serious criminal offence.
- Education should address myths about stalking and emphasise that people who experience stalking are not responsible for it.
- People working in the justice system need to understand stalking and how best to respond to it.

Stalking requires a community response

- 4.1 Research suggests stalking is widespread (see Chapter 2), but as a community we appear to be ignoring the problem. This means that:
- people who engage in stalking may not know that what they are doing is a crime or fully understand its impacts
 - people who are experiencing stalking may not know how to name what is happening to them, how to get support or access the justice system.
- 4.2 Education is required so that the community can respond appropriately to stalking.
- 4.3 A community that understands stalking may help:
- meet victim survivors' justice needs, including needs for information or to be believed (see Chapter 1)
 - overcome the barriers to reporting stalking (see Chapter 2).
- 4.4 Education may also play a role alongside early intervention to prevent stalking behaviour.¹
- 4.5 Targeted education is required for people working in the justice system, so they can respond appropriately.
- 4.6 In our interim report we made recommendations to improve police understanding of stalking.² In this chapter we discuss improving the understanding of everyone who works in the civil and criminal justice systems.

1 We discuss alternative pathways to the justice system for children and young people in Chapter 6. We discuss early intervention for adults in Chapter 8.

2 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021).

What information about stalking needs to be common knowledge?

- 4.7 Guided by existing and ongoing research, education should challenge and correct common myths about stalking. We identify some of these myths below (see Table 9).
- 4.8 On the basis of the available research, everyone in the community should be able to:
- identify stalking and know it is a criminal offence
 - know the different forms stalking can take, including in a family violence context and cyberstalking³
 - know how stalking is different from harassment and similar conduct⁴
 - know what people can do to protect themselves if they experience stalking, and who to speak to about safety planning and collecting evidence.⁵
- 4.9 Education should help people who experience stalking to make informed choices about:
- getting help and accessing victim support
 - reporting and what this involves, including what will happen if the police charge someone with a criminal offence.⁶
- 4.10 Education should help family, friends, and others in the community know how to:
- support someone who is being stalked
 - respond if they become aware of behaviour that might involve stalking.
- 4.11 Education should make it clear that people who stalk are accountable for their behaviour (see Chapter 1).
- 4.12 One member of the public told us:
- 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.⁷
- 4.13 People who stalk, or whose behaviour could turn into stalking, should be able to recognise what they are doing, know that it is wrong or illegal, and know where they can get help to prevent or change their behaviour.⁸ In Chapter 8 we discuss improving treatment and support for people who stalk.
- 4.14 In Chapter 3 we discuss what public education on cyberstalking should cover.

3 Consultation 8 (eSafety Commissioner).

4 Harassment can be distinguished from stalking because it is not necessarily ongoing, the intention of the person harassing is irrelevant to establishing the harassment, and it may be suitable for mediation or conciliation. See, eg, 'Sexual Harassment', *Victorian Equal Opportunity and Human Rights Commission* (Web Page) <<https://www.humanrights.vic.gov.au/for-individuals/sexual-harassment/>>.

5 Submission 100 (Forensicare). Victoria Police told us about the challenges that can arise if people who experience stalking do not keep details of interactions they have had with the person who is stalking them: Submission 115 (Victoria Police).

6 Submissions 32 (Centre for Forensic Behavioural Science), 51 (Matthew Raj). Assistant Professor Raj also suggested it would be useful to identify conduct that is counter-productive, such as physically confronting the person stalking you, or blaming yourself for the stalking.

7 Submission 11 (Anonymous). See also Submission 51 (Matthew Raj).

8 See generally Submission 100 (Forensicare); Consultation 31 (Roundtable with multicultural and multifaith community organisations). Some people who stalk may not be aware that what they are doing is stalking and illegal: see generally Adrian J Scott et al, 'International Perceptions of Stalking and Responsibility: The Influence of Prior Relationship and Severity of Behavior' (2014) 41(2) *Criminal Justice and Behavior* 220.

- 4.15 It may be useful for information sources to provide clear summaries of how to recognise and respond to stalking.⁹ For example, the 'rules' below are used in Germany. After suitable evaluation, they could be adapted to suit the needs of people who experience stalking in Victoria (see box).¹⁰

Anti-stalking rules

- 1 Explain only once, but with absolute clarity, that no contact is wanted.
- 2 Ignore completely all further attempts at contact.
- 3 Make public what is going on, ie inform neighbours, colleagues and friends.
- 4 Document all events in a stalking diary.
- 5 Do not delete text messages and e-mails: they constitute evidence.
- 6 Do not cancel your telephone number, but record the stalker's calls on an answering machine. Use a secret number for all other calls.
- 7 Do not return any presents the stalker may send, but keep them as evidence. Sending them back establishes contact.
- 8 Talk to the police at an early stage.
- 9 Seek early advice from a specialized attorney.

Stalking is not well understood

I only realised I was being stalked after I reported it to the university services and they took me through the different features of a stalking case, and I realised how I was able to relate to almost all of them.¹¹

I knew nothing.¹²

I had no idea about what support was available—indeed, I still have no idea what help is available.¹³

9 The Suzy Lamplugh Trust (a charity that runs the UK's National Stalking Helpline) has a page on its website, 'Get stalking advice and help', with an online tool that can be used 'to better understand if you are being stalked and what support [there is]': 'Get Stalking Advice and Help', *Suzy Lamplugh Trust* (Web Page, 2019) <<https://www.suzylamplugh.org/Pages/Category/get-stalking-advice-and-help>>. 'Victim Support' in the United Kingdom also has a 'Stalking and harassment' web page, with information about how to identify stalking; practical ideas, including keeping a diary of events; and how to get help from Victim Support. The page has links to other resources, including to information and safety tips for people experiencing cyber-stalking: 'Stalking and Harassment', *Victim Support* (Web Page) <<https://www.victimsupport.org.uk/crime-info/types-crime/stalking-and-harassment/>>.

10 The rules are reproduced in: Harald Dressing et al, 'The Prevalence and Effects of Stalking' (2020) 117(20) *Deutsches Ärzteblatt International* 347, 349. One way they could be adapted for use in Victoria would be by recommending calling the Victims of Crime helpline rather than contacting a 'specialized attorney' (point 9).

11 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

12 A victim survivor of stalking who identified as having a disability: Ibid.

13 A victim survivor of stalking who identified as a refugee or migrant: Ibid.

- 4.16 Victim survivors told us about gaps in knowledge and information, including:
- how to identify stalking and the different types of stalking¹⁴
 - that stalking is against the law¹⁵
 - how to stay safe¹⁶
 - how to take action.¹⁷
- 4.17 These gaps were also identified by other submissions and consultations. The Centre for Forensic Behavioural Science told us:
- there is a need to provide information and support to victims of stalking, particularly those who experience non-family stalking, for which very few resources exist.¹⁸
- 4.18 Stalking behaviours are sometimes viewed as normal or romantic.¹⁹ Popular culture can perpetuate the myth that 'the stalker was actually the right person all along'.²⁰
- 4.19 As a male victim of stalking told us:

The whole understanding of a stalker needs to be taken very seriously. Most people still see it as a harmless act, indeed to some point as almost complimentary, to be stalked. The public should be informed in the same degree as to domestic violence.²¹

- 4.20 We summarise what appear to be common myths about stalking in Table 9 below.

Table 9: Common myths about stalking

Myth	What the research suggests
Stalking behaviour is romantic or a sign of affection. ²²	Stalking is about control. It is unwelcome and intrusive, and may cause fear and distress. ²³

14 Ibid.

15 Submission 4 (Name withheld).

16 Submission 59 (Name withheld).

17 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

18 Submission 32 (Centre for Forensic Behavioural Science). We were told in numerous submissions and consultations that people are often unable to identify they are being stalked and do not know where to go for help: see, eg, Consultations 4 (Sexual Assault Services Network), 17 (Small group meeting on stalking and young people), 30 (Roundtable with multicultural and multifaith lawyers and legal stakeholders), 31 (Roundtable with multicultural and multifaith community organisations). See also Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [2.17]–[2.18]; Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755–764.

19 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 49, 57, 61–2.

20 Consultation 4 (Sexual Assault Services Network).

21 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

22 Laurence Miller, 'Stalking: Patterns, Motives, and Intervention Strategies' (2012) 17 *Aggression and Violent Behavior* 495–496; Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 49, 57, 61–2. See also Bronwyn McKeon, Troy E McEwan and Stefan Luebbers, 'It's Not Really Stalking If You Know the Person': Measuring Community Attitudes That Normalize, Justify and Minimise Stalking' (2015) 22(2) *Psychiatry, Psychology and Law* 291, 292–3, 300–1.

23 See, eg, Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021); Submission 32 (Centre for Forensic Behavioural Science); Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 764; Lise Linn Larsen, Dianna Bomholt and Helle Hundahl, 'Stalking as a Phenomenon in a Danish Context' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: International Perspectives* (John Wiley and Sons, 2020) 195, 201–2.

Myth	What the research suggests
For stalking to be a crime, it must involve explicit threats or violence. ²⁴	Most stalking involves acts that are part of everyday life, such as calling and messaging. If these acts are repeated over time and intended (or reasonably likely) to cause harm or fear, they are stalking, which is a crime. ²⁵
If you ignore the unwanted behaviour, it will just go away. ²⁶	Once stalking continues beyond two weeks, there is a risk it will go on for much longer. ²⁷
It is better to wait until you have collected detailed evidence or the stalking has escalated to physical threats before seeking help. ²⁸	It is important to seek help at an early stage. People who are being stalked can be assisted with safety plans and other supports. An early legal response may be appropriate. ²⁹
Strangers are more likely than partners or ex-partners to threaten and use violence as part of stalking. ³⁰	While our focus in this report is on non-family violence stalking, it is important to be clear that partners or ex-partners appear to be more likely than strangers to threaten and use violence as part of stalking. ³¹
The person being stalked secretly likes the attention. ³²	Stalking is unwanted behaviour that may have serious and long-lasting negative effects (see Chapter 2). ³³

- 24 Submission 32 (Centre for Forensic Behavioural Science); Bronwyn McKeon, Troy E McEwan and Stefan Luebbbers, "It's Not Really Stalking If You Know the Person": Measuring Community Attitudes That Normalize, Justify and Minimise Stalking' (2015) 22(2) *Psychiatry, Psychology and Law* 291, 292; Adrian J Scott et al, 'International Perceptions of Stalking and Responsibility: The Influence of Prior Relationship and Severity of Behavior' (2014) 41(2) *Criminal Justice and Behavior* 220, 221–2.
- 25 Brandt and Voerman point out that 'The majority of stalking cases do not involve violence ... but serious and sometimes fatal incidents of violence happen during a small number of stalking cases': Cleo Brandt and Bianca Voerman, 'The Dutch Model: A New Approach to Policing Stalking' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 251, 253. However, Dressing and his co-authors found a higher incidence (over 50%) of physical and/or sexual violence in their 2003 and 2018 studies of stalking in Germany. These studies did not distinguish between family/intimate partner stalking and non-family stalking: Harald Dressing et al, 'The Prevalence and Effects of Stalking' (2020) 117(20) *Deutsches Ärzteblatt International* 347. The Centre for Forensic Behavioural Science points out that 'both the general community and professionals are prone to misperceptions about the nature, impact, risk and severity of stalking, which in turn influences whether they perceive stalking to be present. In general, people incorrectly rely on extreme behaviours that are crimes in and of themselves (eg threats or physical violence) to determine whether stalking is present': Submission 32 (Centre for Forensic Behavioural Science).
- 26 Submission 32 (Centre for Forensic Behavioural Science); Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).
- 27 Troy McEwan, Paul E Mullen and Rosemary Purcell, 'Identifying Risk Factors in Stalking: A Review of Current Research' (2007) 30(1) *International Journal of Law and Psychiatry* 1, 6. Other researchers have suggested that persistence beyond a period of two to four weeks means the behaviour is then likely to continue for six months or more: Laurence Miller, 'Stalking: Patterns, Motives, and Intervention Strategies' (2012) 17 *Aggression and Violent Behavior* 495, 496. See also Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 756.
- 28 Sometimes people who are being stalked don't want to go to the police because they are worried the stalking behaviour is not serious enough or they don't have enough evidence to show it is happening: Submission 32 (Centre for Forensic Behavioural Science); Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 9.
- 29 Submission 32 (Centre for Forensic Behavioural Science).
- 30 Jeff Gavin and Adrian J Scott, 'The Influence of the Sex of and Prior Relationship between the Perpetrator and Victim on Perceptions of Stalking: A Qualitative Analysis' (2016) 23(5) *Psychiatry, Psychology and Law* 716, 718; Bronwyn McKeon, Troy E McEwan and Stefan Luebbbers, "It's Not Really Stalking If You Know the Person": Measuring Community Attitudes That Normalize, Justify and Minimise Stalking' (2015) 22(2) *Psychiatry, Psychology and Law* 291, 292, 294; Adrian J Scott et al, 'International Perceptions of Stalking and Responsibility: The Influence of Prior Relationship and Severity of Behavior' (2014) 41(2) *Criminal Justice and Behavior* 220, 221.
- 31 Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 756–7; Troy E McEwan and Michael R Davis, 'Is There a "Best" Stalking Typology?: Parsing the Heterogeneity of Stalking and Stalkers in an Australian Sample' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 115, 132; Troy McEwan, Paul E Mullen and Rosemary Purcell, 'Identifying Risk Factors in Stalking: A Review of Current Research' (2007) 30(1) *International Journal of Law and Psychiatry* 1, 2–3; Bronwyn McKeon, Troy E McEwan and Stefan Luebbbers, "It's Not Really Stalking If You Know the Person": Measuring Community Attitudes That Normalize, Justify and Minimise Stalking' (2015) 22(2) *Psychiatry, Psychology and Law* 291, 292; Adrian J Scott and Lorraine Sheridan, "Reasonable" Perceptions of Stalking: The Influence of Conduct Severity and the Perpetrator–Target Relationship' (2011) 17(4) *Psychology, Crime and Law* 331, 332.
- 32 See Bronwyn McKeon, Troy E McEwan and Stefan Luebbbers, "It's Not Really Stalking If You Know the Person": Measuring Community Attitudes That Normalize, Justify and Minimise Stalking' (2015) 22(2) *Psychiatry, Psychology and Law* 291, 297.
- 33 Lise Linn Larsen, Dianna Bomholt and Helle Hundahl, 'Stalking as a Phenomenon in a Danish Context' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: International Perspectives* (John Wiley and Sons, 2020) 195, 201; Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021); Submission 32 (Centre for Forensic Behavioural Science).

People who experience stalking may feel alone

I talked to my partner and our friends. No-one took what I said seriously. They thought her behaviour was funny. No-one did anything. That was almost as distressing as the stalking. I felt so stupid. I felt like I was overreacting and being silly ... Once I fell apart, everyone took me seriously. I felt like it shouldn't have gone that far and that I shouldn't have had to fall apart for someone to do something.³⁴

- 4.21 People who are stalked may feel alone. They may not understand what is happening to them. They may be unsure whether they will be supported if they tell someone about it.
- 4.22 People who are stalked should not have to deal with the situation on their own, nor be made to feel they have brought it on themselves. Yet the myths about stalking that we identified above appear to be widespread, and it is common for people who are stalked to feel responsible.
- 4.23 This means that their justice needs are not being met, such as the need for information or to be believed (see Chapter 1).

Current sources of information are limited

- 4.24 The Victorian Government's Victims of Crime website and the national 1800RESPECT website have information about stalking and the justice system's response to it.³⁵
- 4.25 This information is clear and practical, but people may not know it exists or where to find it. While both websites appear at the top of an online search using the phrase 'stalking get help', this will not help people who do not know that what they are experiencing is stalking. Nor does the Victims of Crime website emphasise that people who experience stalking are not responsible for the behaviour.³⁶ This important point is highlighted on the 1800RESPECT website.³⁷
- 4.26 The information is found in different places and does not give people a complete picture of their options. For example, information about personal safety intervention orders (PSIOs) is available on Victoria Legal Aid's 'Violence, abuse and personal safety' webpage, but this page does not include information about the criminal offence of stalking.³⁸
- 4.27 Other information, while helpful, may not be clear enough for people who experience stalking. As we discuss in Chapter 3, certain forms of technology-facilitated abuse, including cyberstalking, can be reported to the eSafety Commissioner who can take action. But the information on its website about these options and what a person should do (for example, collect evidence) does not make it clear that it applies to people experiencing stalking.³⁹

34 A person with a disability who lives in a rural/regional community: Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

35 Victorian Government, 'Stalking', *Victims of Crime—Victorian Government Support for Victims* (Web Page, 10 June 2021) <<https://www.victimsofcrime.vic.gov.au/the-crime/types-of-crime/stalking>>; 'Stalking', 1800RESPECT (Web Page) <<https://www.1800respect.org.au/violence-and-abuse/stalking>>. There are also Victims of Crime and 1800RESPECT phone lines, and the 1800RESPECT website has an online chat service.

36 The Victims of Crime website provides mainly generic information about the traumatic effects of crime under the heading 'Understanding the traumatic effects of stalking': Victorian Government, 'Stalking', *Victims of Crime—Victorian Government Support for Victims* (Web Page, 10 June 2021) <<https://www.victimsofcrime.vic.gov.au/the-crime/types-of-crime/stalking>>.

37 Under the heading, 'Who is responsible for stalking?' After explaining that stalking can be perpetrated by strangers or people you barely know, as well as by people you have a relationship with (including carers or support workers, and adult children), it states clearly, 'None of these people has the right to scare and control you with unwanted attention': 'Stalking', 1800RESPECT (Web Page) <<https://www.1800respect.org.au/violence-and-abuse/stalking>>.

38 Victoria Legal Aid, 'Violence, Abuse and Personal Safety', *Helping Victorians with their Legal Issues* (Web Page, 18 May 2022) <<https://www.legalaid.vic.gov.au/violence-abuse-and-personal-safety>>.

39 'How to Report Abuse or Content to eSafety', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/report/how-to-report-serious-online-abuse-illegal-restricted-content>>.

- 4.28 These websites have information in a variety of languages. But aside from the eSafety Commissioner's website, they do not address the needs of people who face additional barriers to justice. For example, they do not provide links to Aboriginal service providers.

There should be a commitment to public education about stalking

- 4.29 The Victorian Government should fund public education to strengthen the community response to stalking, challenge mistaken beliefs about it, and help meet the justice needs of people experiencing stalking.
- 4.30 Public education should highlight the information that is already available and fill the gaps.
- 4.31 In the feedback we received, many people emphasised the need for education: people who had experienced stalking,⁴⁰ other members of the public,⁴¹ advocacy and peak bodies,⁴² lawyers and others working in criminal justice,⁴³ and researchers.⁴⁴
- 4.32 As we discussed in Chapter 2, most people who experience stalking do not report it. But people who identify behaviours as stalking are more likely to seek support and to report it to the police than those who are unclear about what is going on.⁴⁵
- 4.33 People who receive a supportive response when they first disclose stalking may also be more likely to recognise its seriousness and report it to police.⁴⁶
- 4.34 In Chapter 3 we discuss the need for public education to include education on cyberstalking.

Education about stalking should be guided by the latest research

- 4.35 As we discussed in Chapter 2, the research and data currently available on stalking is limited. Because our knowledge is limited it may be difficult to appropriately educate people about stalking or identify mistaken ideas.
- 4.36 In Chapter 2 we made recommendations to strengthen stalking data and research. However, where the research and data are inadequate, this should be openly acknowledged.
- 4.37 Public education about stalking should be guided by the latest research and data, and educational resources should be continually updated.

40 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

41 Ibid.

42 See, eg, Submissions 49 (Victims of Crime Commissioner), 93 (Royal Australian and New Zealand College of Psychiatrists); Consultations 4 (Sexual Assault Services Network), 27 (Kulturbrille).

43 See, eg, Consultations 13 (Victoria Legal Aid), 30 (Roundtable with multicultural and multifaitth lawyers and legal stakeholders); Submission 97 (Federation of Community Legal Centres).

44 Submissions 32 (Centre for Forensic Behavioural Science), 51 (Matthew Raj).

45 Submission 32 (Centre for Forensic Behavioural Science); Bradford W Reys and Christine M Englebrecht, 'Informal and Formal Help-Seeking Decisions of Stalking Victims in the United States' (2014) 41(10) *Criminal Justice and Behavior* 1178, 1182, 1189–1192; Bradford W Reys and Christine M Englebrecht, 'The Stalking Victim's Decision to Contact the Police: A Test of Gottfredson and Gottfredson's Theory of Criminal Justice Decision Making' (2010) 38(5) *Journal of Criminal Justice* 998, 999, 1003.

46 We know this is the case in relation to sexual violence, however, Reys and Englebrecht were unable to establish a causal link between informal help seeking and reporting to police among people who experienced stalking: Bradford W Reys and Christine M Englebrecht, 'Informal and Formal Help-Seeking Decisions of Stalking Victims in the United States' (2014) 41(10) *Criminal Justice and Behavior* 1178, 1190–1. In relation to sexual violence: see Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) 37 [3.7]; Denise Lievore, *No Longer Silent: A Study of Women's Help-Seeking Decisions and Service Responses to Sexual Assault* (Report, Australian Institute of Criminology (Cth), June 2005) v.

How should public education be delivered?

- 4.38 Suggestions we received about how to deliver public education included:
- providing a central information point (for example, 'Stop Stalking' in Germany)⁴⁷
 - an information campaign including annual events (for example, a National Stalking Awareness Week and the 'FOUR' campaign in the United Kingdom, which encourages people to identify stalking on the basis it is Fixed, Obsessive, Unwanted and Repeated)⁴⁸
 - local community outreach⁴⁹
 - community legal education⁵⁰
 - a stalking resource centre.⁵¹
- 4.39 In Chapter 3 we discuss potential models of public education for cyberstalking.
- 4.40 These are potential models to explore for educating the public about stalking. We do not endorse a particular model here. However, in our report *Improving the Justice System Response to Sexual Offences* (2021) we noted that successful community education needs an ongoing commitment and enough resources. As we stated in that report, it is important that education strategies:
- use community-level strategies as well as mass media
 - tailor communications for diverse audiences
 - build on positive behaviour rather than focusing only on what is going wrong
 - use peers and leaders to champion good behaviour.⁵²

What groups and settings should be a focus?

Families and friends

- 4.41 Research indicates that people who experience stalking are more likely to seek help from friends or family than report the matter to police.⁵³ This finding was supported by the Sexual Assault Services Network and others:

Victim survivors are most likely to tell friends and family first—trusted people. They may tell work colleagues if the behaviour is occurring in that environment.⁵⁴

47 Submission 100 (Forensicare). See also 'Mission Statement', *STOP—STALKING* (Web Page) <<https://www.stop-stalking-berlin.de/en/general-information-2/mission-statement-2/>>. Forensicare suggested this should be part of a broader service providing victim advocacy and support, and organisational training programs on recognising and responding to stalking. We discuss victim support in Chapter 5.

48 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare). See also 'Lincolnshire Stalking Campaign', *Crime Stoppers (UK)* (Web Page) <<https://crimestoppers-uk.org/campaigns-media/campaigns/lincolnshire-stalking-campaign>>.

49 Consultation 31 (Roundtable with multicultural and multi-faith community organisations); Letter from Centre for Multicultural Youth to Victorian Law Reform Commission, 25 November 2021.

50 The Victorian Aboriginal Legal Service told us that 'Community Legal Education is ... critical to break down barriers and empower communities. Lack of knowledge about rights, the legal system and access to legal assistance may be one other reason for an individual not to approach police or pursue an issue': Consultation 10 (Victorian Aboriginal Legal Service).

51 Submission 32 (Centre for Forensic Behavioural Science). The submission stated that this should be supported by, or co-located with, advocacy and support services for victims of stalking (see our discussion of victim advocates in Chapter 5). It also said the research centre should partner with university groups 'who can collaborate on research and service evaluation'. The Victims of Crime Commissioner called for a Centre for Excellence in responses to stalking, which could focus on research and evaluation: Submission 49 (Victims of Crime Commissioner). In response to their finding that public familiarity with stalking legislation is very low in Victoria, Scott et al suggest media coverage should play an important role and 'provide education regarding the reality of stalking in order to increase the likelihood of victims, as well as their family and friends, identifying experiences as stalking and reporting them to the police where appropriate': Adrian J Scott et al, 'Public Familiarity and Understanding of Stalking/Harassment Legislation in Australia, the United Kingdom, and the United States' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 137–154.

52 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) 39–40 [3.18]. See also, Pamela Cox J et al, 'The Rape Prevention and Education (RPE) Theory Model of Community Change: Connecting Individual and Social Change' (2010) 13 *Journal of Family Social Work* 297; Maury Nation et al, 'What Works in Prevention: Principles of Effective Prevention Programs' (2003) 58(6/7) *American Psychologist* 449.

53 Bradford W Reynolds and Christine M Englebrecht, 'Informal and Formal Help-Seeking Decisions of Stalking Victims in the United States' (2014) 41(10) *Criminal Justice and Behavior* 1178, 1179, 1182.

54 Consultation 4 (Sexual Assault Services Network). See also Submission 100 (Forensicare).

- 4.42 Many people who had experienced stalking told us that they chose to tell a friend or family member before approaching anyone else for help.⁵⁵ While most friends and family responded positively, there were also negative responses. One person told us about her experience disclosing her experience to her parents:

It was like I wasn't believed, like my word wasn't enough. I started to try to prove to my parents that it was happening, but they said I should stop stirring the pot. Like I was an attention seeker. It made me feel they were taking their side over mine because they knew this person and he couldn't possibly be doing the things I've said.⁵⁶

- 4.43 Advocacy and peak groups for young people said:
- [an] underlying theme for young people experiencing stalking, particularly when it is online, is that some families struggle to understand what is going on and undermine what is really happening and the implications of it.⁵⁷
- 4.44 It is important that friends and family members know how to identify stalking and where people can get help, and that publicly available information is accurate and comprehensive.
- 4.45 If friends and family members do not respond positively or know how to help children or young people who report stalking, this can place too much reliance on teachers and schools.⁵⁸ Everybody in the community should know what stalking involves and where someone who is being stalked can go to get legal and other forms of support.⁵⁹

Schools and higher education

- 4.46 Schools and universities are important settings for education about stalking because of how common it is among young people (see Chapter 2) and its effects on them. The Sexual Assault Services Network told us that 'The pursuit mentality begins in primary school ("girls like the chase") and this is where interventions need to begin.'⁶⁰ The Alannah and Madeline Foundation emphasised the negative effects on children and teens including reduced 'physical and mental health, school disengagement and/or suicidal ideation'.⁶¹
- 4.47 Some children and young people may feel more comfortable disclosing to a trusted adult in schools and universities than elsewhere.⁶²
- 4.48 We were told that there are no stalking-specific teaching resources in the Victorian public education curriculum, although teachers may cover stalking as part of respectful relationships education.⁶³
- 4.49 The Alannah and Madeline Foundation stressed the need for:
- comprehensive, evidence-based, well evaluated education for children and teens about respectful relationships (including online) and digital intelligence.⁶⁴

55 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

56 Ibid.

57 Consultation 17 (Small group meeting on stalking and young people).

58 Ibid.

59 Ibid.

60 Consultation 4 (Sexual Assault Services Network).

61 Submission 104 (Alannah and Madeline Foundation).

62 For example, the Harmful Sexual Behaviours Network told us that children often report stalking behaviour to a welfare coordinator or school counsellor with whom they have a good relationship, 'before reaching out to the parents': Consultation 5 (Harmful Sexual Behaviours Network).

63 Email from Associate Professor Debbie Ollis to Victorian Law Reform Commission, 5 April 2022.

64 Submission 104 (Alannah and Madeline Foundation).

- 4.50 Advocacy and peak bodies representing young people said young people need tailored education about stalking.⁶⁵
- 4.51 The Office of the eSafety Commissioner has developed cyberbullying resources that address the needs of young people using relevant and age-appropriate scenarios (see box).

The eSafety Commissioner's 'YeS Project'

This resource provides students with a scenario involving a 15-year-old girl and her 18-year-old former partner who is messaging her constantly, even though she has asked him to stop.

It explains that this may be stalking and illegal. Students are encouraged to get help if they encounter a similar situation and are given a list of resources and supports.⁶⁶

- 4.52 School programs and educational resources should be developed in collaboration with young people:
- Young people want to be involved and they want to hear presentations from people about their experiences, rather than receiving a Powerpoint presentation about the law.⁶⁷
- 4.53 Several people suggested that information on stalking for children and young people could be introduced into the respectful relationships curriculum.⁶⁸ In our sexual offences report we recommended that the government review the content and implementation of Victoria's respectful relationships and sexuality education.⁶⁹ Considering the need for teaching resources about stalking could be part of this review process. Stalking education could also be included in programs introduced in response to the Royal Commission into Victoria's Mental Health System. The Royal Commission recommended that the government fund anti-stigma and anti-bullying programs to help schools support students' mental health and wellbeing.⁷⁰
- 4.54 It is important that schools know what to do if they identify stalking or a student discloses stalking at school. We heard about schools not doing enough to respond to stalking. One young person told us:

There was support within the school but the help they could give was minimal and it didn't do much. I took a long time to get any help and even then the most they did was separate us during classes.⁷¹

65 Consultation 17 (Small group meeting on stalking and young people).

66 Office of the eSafety Commissioner (Cth) et al, *The YeS Project: Workshop Handbook* (Report, 2018) 46.

67 Consultation 17 (Small group meeting on stalking and young people).

68 See, eg, *ibid*: Consultations 3 (Victoria Police (No 1)), 5 (Harmful Sexual Behaviours Network).

69 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) Recommendation 2.

70 *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) Recommendation 17(1). Information about the Victorian Government's implementation of recommendation 17 is available on the Department of Health's website: Department of Health (Vic), 'Good Mental Health Where People Live, Work, and Learn— Recommendation 17', *Health.vic* (Web Page, 17 March 2022) <<http://www.health.vic.gov.au/mental-health-reform/recommendation-17>>.

71 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

4.55 A person describing the experience of their school friend said:

When she told the Vice Principal, he obviously didn't take the situation seriously as the stalker was only given a mild slap on the wrist and they were not allowed to sit with one another in class. This was never followed up by the Vice Principal and the friend being stalked felt like her voice wasn't being heard by someone who was meant to protect her and her fellow students.⁷²

4.56 In Chapter 6 we discuss alternative pathways to the justice system for children and young people.

4.57 Universities play an important role.⁷³ As noted in Chapter 2, studies in the United States indicate higher rates of stalking among enrolled college students compared to the general population.⁷⁴

4.58 One LGBTIQ+ young person with a disability told us:

I first spoke to a woman in my uni course after I started to feel uncomfortable about a fellow student. I asked her if what he was doing was something worth speaking to a lecturer about and she said it absolutely was, and was horrified that I didn't realise how serious it already was. She told me I should tell a lecturer immediately, and said she was more than happy to be there with me.⁷⁵

4.59 For one international student, the university was able to stop the stalking without it needing to reach the justice system:

... my criminal law lecturer ... directed me to the University Support services and also gave me details on how to apply for a Personal Safety Intervention Order. The University Support services asked me to block his contact details and advise them if he tried to contact me in another manner. When he did, I reported it to the University Support service who then sent the perpetrator a warning letter to ban him from the university campus if he tried to contact me again. I never heard from him after that and I didn't need to report it to the police.⁷⁶

4.60 On the other hand, we also heard about the need for improved and more consistent responses to stalking by universities.⁷⁷

Health providers

4.61 Health providers such as maternal and child health services and general practitioners are widely accessible. Submissions from Forensicare and the Centre for Forensic Behavioural Science emphasised that if people working in these sectors can identify stalking they will be able to help victim survivors who interact with them.⁷⁸

72 Ibid.

73 A participant in a roundtable with multicultural and multifaith lawyers and legal stakeholders suggested that 'universities are in a good position to work with local communities': Consultation 30 (Roundtable with multicultural and multifaith lawyers and legal stakeholders).

74 Erica R Fissel, Bradford W Reys and Bonnie S Fisher, 'Stalking and Cyberstalking Victimization Research: Taking Stock of Key Conceptual, Definitional, Prevalence, and Theoretical Issues' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psychological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 11, 21.

75 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

76 Ibid.

77 Consultation 17 (Small group meeting on stalking and young people).

78 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare).

- 4.62 The attitudes held by health providers influence their behaviour.⁷⁹ If they are informed about stalking and recognise the dangers they will be more likely to help anyone who discloses it. It also makes a difference if they consider stalking 'an appropriate area for intervention on their part'.⁸⁰
- 4.63 Service providers need to respond to the needs of diverse communities.⁸¹ The Victorian Pride Lobby said staff should be informed and aware about LGBTIQ+ issues and should include people from diverse backgrounds.⁸²

Recommendation

4. a. The Victorian Government should resource and support public education about non-family violence stalking and cyberstalking. This education should be based on relevant research. It should include material on:
 - identifying stalking and how it is a crime
 - the harms caused by stalking
 - the different forms stalking can take
 - how stalking is different from harassment and similar conduct
 - common stalking myths
 - how people engaging in stalking can get help to stop what they are doing
 - how people who experience stalking can respond, including options available through the eSafety Commissioner
 - the available support options and what to expect from these
 - the available justice options and what to expect from these.
- b. Public education should:
 - be ongoing and adequately resourced
 - be accessible
 - include strategies and material tailored to reach diverse communities
 - equip family and friends to respond constructively to disclosures
 - include a focus on children and young people and be delivered in schools and higher education settings, as well as to the broader community
 - equip health providers to respond constructively to disclosures.

79 Jan H Kamphuis et al. 'Stalking—Perceptions and Attitudes amongst Helping Professions. An EU Cross-National Comparison' (2005) 12(3) *Clinical Psychology and Psychotherapy* 215, 216.

80 Ibid.

81 Consultation 30 (Roundtable with multicultural and multifaith lawyers and legal stakeholders).

82 Submission 39 (Victorian Pride Lobby).

Education about stalking for people working in the justice system

- 4.64 We heard about gaps in knowledge about stalking in the criminal and civil justice systems, including amongst:
- police
 - prosecuting lawyers in criminal cases
 - judicial registrars⁸³
 - court staff such as registrars
 - judicial officers such as magistrates or judges.
- 4.65 This is not surprising given the limited data and research on stalking (see Chapter 2) and the general community's lack of knowledge about it. Also, because stalking may involve acts that would be legal in other contexts, it can be hard for people working in the justice system to identify it and know how to respond (see Chapters 1 and 2).
- 4.66 People who have experienced stalking have diverse needs. They may have experienced significant trauma from the stalking behaviour (see Chapters 1 and 2). The response of people in the justice system can sometimes ignore their experience.
- 4.67 We recommend providing education and training about stalking for people working in the justice system. This is critical to ensuring their response to stalking is effective.⁸⁴
- 4.68 Research suggests that education helps people working in the justice system:
- understand stalking
 - identify it
 - know what legal options are available for victim survivors.⁸⁵
- 4.69 Education may have other benefits, such as:
- correcting myths about stalking
 - ensuring the law is interpreted and applied well
 - meeting the justice needs of victim survivors (see Chapter 1)
 - reducing the likelihood of the justice process being traumatic
 - making sure the response to stalking keeps the victim survivor safe and addresses the stalking behaviour.
- 4.70 Clarifying the law relating to stalking (see Chapter 7), and introducing the other reforms we recommend in this report and in our interim report,⁸⁶ will not achieve meaningful change unless the people who apply the law also change their attitudes and understanding. Education is needed to support cultural change.⁸⁷
- 4.71 We identify how best to provide education and specific areas to focus on in the next section. As we discuss in Chapter 3, it is important that this education includes cyberstalking.

83 Judicial registrars help manage the court's workload by hearing matters prescribed by the *Magistrates' Court (Judicial Registrars) Rules 2015* (Vic) including matters under the *Personal Safety Intervention Orders Act 2010* (Vic).

84 Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, *Living in Fear: The Police and CPS Response to Harassment and Stalking* (Report, July 2017) 82–4.

85 With reference to family violence stalking: see Bethany L Backes, Lisa Fedina and Jennifer Lynne Holmes, 'The Criminal Justice System Response to Intimate Partner Stalking: A Systematic Review of Quantitative and Qualitative Research' (2020) 35(7) *Journal of Family Violence* 665, 668–71, 674, 676. See generally Ronnie B Harmon et al, 'The Impact of Anti-Stalking Training on Front Line Service Providers: Using the Anti-Stalking Training Evaluation Protocol (ASTEP)' (2004) 49(5) *Journal of Forensic Sciences* JFS2003354:1-7; Suzy Lamplugh Trust, *Unmasking Stalking: A Changing Landscape* (Report, April 2021) 10–1.

86 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021).

87 Nicole Bluett-Boyd and Bianca Fileborn, *Victim/Survivor-Focused Justice Responses and Reforms to Criminal Court Practice* (Research Report No 27, Australian Institute of Family Studies (Cth), April 2014) 50–1.

Education for police

- 4.72 Police are a critical part of the response to stalking. As well as providing emergency responses they act as a gateway to the criminal justice system and can facilitate access to the civil justice system (see Chapters 6 and 7). If they do not identify and record stalking, investigate it and file charges, or prosecute personal safety intervention order (PSIO) breach offences, stalking will be ignored by the justice system.
- 4.73 In our interim report we made recommendations to improve the ways that Victoria Police identifies and responds to stalking, including through education and training (see box).

Recommendations on police education and training from our interim report on stalking⁸⁸

Recommendation 1: Victoria Police should engage with appropriate experts to provide training to enhance the understanding of frontline police to identify stalking behaviours as set out in the Act.

Recommendation 2: Victoria Police should develop guidance for frontline police on interviewing and communicating with victim survivors of stalking, with the aim of improving the gathering, recording, and management of evidence and the investigation of cases.

Recommendation 3: Victoria Police should develop guidance for identifying and gathering information about stalking for frontline police.

Recommendation 9: The Whole Story investigation framework should be used by Victoria Police for reports of stalking.⁸⁹

Education for other people working in the justice system

- 4.74 Everyone who works in the justice system should receive some education. We discuss these general areas next. Later in the chapter we identify specific areas of focus for prosecutors and judicial officers, judicial registrars and court staff.

Awareness of barriers to justice and victim survivor needs

- 4.75 Most people face barriers to reporting and disclosing stalking (see Chapter 2) and cyberstalking (see Chapter 3). However, it is important that people working in the justice system understand that some groups or communities face additional barriers to justice.
- 4.76 We were told that 'the whole court system' could benefit from an improved understanding of the barriers faced by people from culturally and linguistically diverse backgrounds.⁹⁰ Concerns included a lack of empathy for victim survivors and 'a failure to understand ... cultural mannerisms' on the part of people working in the justice system.⁹¹
- 4.77 People who have experienced stalking may have also suffered serious trauma (see Chapter 2). Yet we heard that the responses they received from people working in the justice system were not sensitive to their experience.

⁸⁸ Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021).

⁸⁹ The Whole Story approach is a valuable way to improve the identification of stalking behaviour and enhance the ability of police to respond appropriately. It provides a more complete picture of any identifiable course of conduct. At this point an informed decision can be made about interventions: *ibid* ch 5.

⁹⁰ Consultation 30 (Roundtable with multicultural and multifaitlh lawyers and legal stakeholders).

⁹¹ *Ibid*.

4.78 One young person told us about her experience in court:

During our hearing it was very clear that I did not know my stalker and although I had voiced this and all my evidence stated this, the judge still asked me in front of a full courtroom if I had ever had sex with my stalker. I felt extremely disrespected because whether a person has had a relationship with their stalker or not this SHOULD NOT dilute the severity of the stalking!⁹²

4.79 Another, who had engaged with the courts to get a civil justice response in the last 1–2 years, said:

The magistrate who issued the order in perpetuity stated in court that the stalker and I should 'grow up'.⁹³

4.80 We heard similar complaints about prosecuting lawyers. Derryn Hinch's Justice Party reported hearing 'repeatedly from victim-survivors that their interaction with the Office of Public Prosecutions (OPP) has been deeply unsatisfying, unrewarding and even retraumatising'.⁹⁴

4.81 It is important that people who work in the justice system understand:

- the impact of trauma on victim survivors
- how victim survivors might present as a result of the trauma
- how best to respond to the trauma.⁹⁵

4.82 The Office of the eSafety Commissioner explained the impact of trauma in a cyberstalking context:

Victim survivors are in a state of high stress, so it is important to be able to recognise trauma, when people are coming to you to report, and to actually sit and listen and believe them by default—because they often can't string together an actual story, but they don't necessarily recognise everything that's happening either. They just know that someone is following them and knows something about them...⁹⁶

4.83 The Victims of Crime Commissioner stated that the justice system 'should adopt a trauma-informed approach'.⁹⁷

4.84 In our *Committals* report we said:

A trauma-informed approach recognises the barriers that [victim survivors] who have been through traumatic events may confront during their participation in criminal proceedings, such as difficulties discussing the traumatic events, impaired recollection, fear of being blamed or not believed, and distrust of authority figures.⁹⁸

92 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

93 Ibid.

94 Submission 56 (Derryn Hinch's Justice Party).

95 Submissions 49 (Victims of Crime Commissioner), 56 (Derryn Hinch's Justice Party); Consultation 8 (eSafety Commissioner).

96 Consultation 8 (eSafety Commissioner).

97 Submission 49 (Victims of Crime Commissioner).

98 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) [1.53], citing Judicial College of Victoria, *Victims of Crime in the Courtroom: A Guide for Judicial Officers* (Online Guide, 2019) 4.

- 4.85 We continue to think that a 'trauma-informed' approach in the justice system could:
- reduce further trauma for victim survivors
 - build victim survivors' trust in the justice system
 - empower victim survivors to participate in the system.⁹⁹
- 4.86 While we make this recommendation in relation to stalking, we note that education about barriers to accessing justice and responding to trauma will likely help improve the justice system response to all victim survivors of crime.¹⁰⁰

The nature of stalking

- 4.87 People who respond to stalking need to understand its nature and dynamics to respond in an effective and supportive way.
- 4.88 A small study in the United States found that people who had received training about stalking were less likely to believe myths about it than before they received the training.¹⁰¹
- 4.89 In Chapter 6 we recommend that guidance should be developed to support courts to identify stalking. This should be the subject of education when the guidance is in place. Being able to recognise stalking may help people in the justice system respond to it.¹⁰²
- 4.90 Education on the nature of stalking should include information about:
- technology-facilitated abuse related to stalking (cyberstalking),¹⁰³ including its nature and impacts.¹⁰⁴
 - other behaviours connected to stalking such as intimate image-based abuse and cyberbullying.¹⁰⁵
- 4.91 Education on these topics could improve:
- how people in the criminal justice system apply and understand the stalking offence (see Chapter 7).¹⁰⁶
 - how protection order conditions are crafted, including conditions on the use of technology (see below).¹⁰⁷

Options and pathways in the justice system

- 4.92 As there are both civil and criminal legal responses to stalking, it might be difficult for people working in the justice system to decide which option is most suitable in a particular case. Education should cover the different options and pathways in the justice system and give people enough information to make a decision.
- 4.93 This should include:
- support and justice options for stalking victim survivors, including for cyberstalking (see Chapter 3)

99 Submission 49 (Victims of Crime Commissioner); Judicial College of Victoria, *Victims of Crime in the Courtroom: A Guide for Judicial Officers* (Online Guide, 2019) 3–5, note 2 <<https://www.judicialcollege.vic.edu.au/resources/victims-crime-courtroom>>. See generally Cathy Kezelman and Pam Stavropoulos, *Trauma and the Law: Applying Trauma-Informed Practice to Legal and Judicial Contexts* (Background Paper, Blue Knot Foundation, 2016); Nicole C McKenna and Kristy Holtfreter, 'Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness' (2021) 30(4) *Journal of Aggression, Maltreatment and Trauma* 450.

100 Submission 56 (Derryn Hinch's Justice Party). See also Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 196–291. The Royal Commission into Victoria's Mental Health System also recommended education and training to support the mental health and wellbeing workforce to deliver trauma-informed care: *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) Recommendation 2(b).

101 The study identified a range of pre-training beliefs held by some participants that were at odds with 'the prevailing research literature', such as 'Stalkers who are strangers to their targets are more dangerous than known stalkers.' We have referred to these beliefs as 'myths'. The study found participants were less likely to hold these beliefs following training: Ronnie B Harmon et al, 'The Impact of Anti-Stalking Training on Front Line Service Providers: Using the Anti-Stalking Training Evaluation Protocol (ASTEP)' (2004) 49(5) *Journal of Forensic Sciences* JFS2003354:1–7, 3; see also 3–6.

102 Submissions 76 (Australian Association of Social Workers), 97 (Federation of Community Legal Centres), 98 (Law Institute of Victoria).

103 Submission 76 (Australian Association of Social Workers); Consultations 8 (eSafety Commissioner), 23 (Cyberstalking roundtable).

104 Consultation 8 (eSafety Commissioner).

105 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 201.

106 Submission 98 (Law Institute of Victoria).

107 Consultation 8 (eSafety Commissioner).

- when mediation should be used in cases of harassment or other behaviour instead of applying for an intervention order (see Chapter 6)
- what treatment or support is available for people who stalk and how to refer people to these services (see Chapter 8)¹⁰⁸
- when an assessment for people who stalk might be appropriate¹⁰⁹ (see Chapter 8).

Education about dropping stalking charges

- 4.94 The stalking offence and its 'course of conduct' element is commonly described as complex and difficult to apply in practice (see Chapter 7).
- 4.95 We heard that charges for stalking may be discontinued because of plea-bargaining and negotiation. Victoria Police prosecutors or the Director of Public Prosecutions (DPP) may withdraw or downgrade charges during negotiations with the defence or as a result of their own case review.¹¹⁰
- 4.96 The Sentencing Advisory Council explains how these negotiations may play out in practice and why:
- The decision of which charges to apply to stalking-like behaviour turns on a combination of prosecutorial discretion and plea negotiations ... even if stalking charges are laid by police and prosecutors, those charges are often the focus for defence lawyers in plea negotiations, given the high maximum penalty for the stalking offence (10 years' imprisonment), and often are dropped by prosecutors, given the comparative ease of proving incident-based offences or breaches of intervention orders.¹¹¹
- 4.97 Derryn Hinch's Justice Party told us that there is:
- at least a basic obligation for the OPP to actively prosecute offenders to the full extent of the law—and we are frustrated by the regular downgrading of charges and early settlements of cases in Victoria.¹¹²
- 4.98 There can be valid reasons for dropping stalking charges, such as revised assessments of the evidence or new evidence coming to light. Early resolution of cases may be welcomed by some victim survivors. But the practice of discontinuing or withdrawing stalking charges in plea negotiations may also have negative outcomes:
- It may be traumatic for victim survivors who feel the harm is not being taken seriously or is being dismissed.¹¹³
 - It may limit the availability of treatment or rehabilitation programs (see Chapter 8).¹¹⁴
- 4.99 The Sentencing Advisory Council noted the need to 'improvel awareness of the consequences of negotiating away stalking charges'.¹¹⁵
- 4.100 Given the potential negative outcome of negotiations, this should be a focus of education for prosecutors.
- 4.101 In previous reports we have discussed charging practices, plea negotiating processes, and the benefits of consulting with victim survivors about decisions to withdraw or discontinue charges.¹¹⁶ In our Committals report we recommended charging training for police officers and earlier involvement of the DPP in charging decisions.¹¹⁷

108 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) [8.6].

109 Ibid.

110 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) [8.3].

111 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xiii.

112 Submission 56 (Derryn Hinch's Justice Party).

113 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) [8.35]–[8.39].

114 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) [2.26].

115 Ibid [8.6].

116 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) [17.130]–[17.177]; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) [4.148]–[4.207], [7.10]–[7.60].

117 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) Recommendations 19–22.

- 4.102 Education for prosecutors should include the DPP's obligations under the *Victims' Charter Act 2006* (Vic) to seek the views of, and provide reasons to, victim survivors about any decision to substantially modify the offences charged, discontinue charges or accept a plea of guilty to a lesser charge.¹¹⁸
- 4.103 These obligations do not currently apply to other prosecuting agencies such as Victoria Police. We have previously recommended that they should apply to all prosecuting agencies.¹¹⁹ Regardless of their legal obligation to consult with victim survivors, prosecutors should be educated about the benefits for victim survivors of doing so.
- 4.104 In Chapter 7 we discuss the need for research on why stalking charges may not proceed through the justice system.

Specific education for judicial officers, registrars and court staff

- 4.105 Judicial officers involved in stalking cases include magistrates in civil and criminal jurisdictions of the Magistrates' Court and Children's Court.
- 4.106 Judges of the County Court also deal with stalking in criminal cases, but this is less common due to:
- barriers to reporting (see Chapter 2)
 - a drop-off in cases in the justice system (see Chapter 2)
 - most stalking charges being prosecuted as summary charges (see Chapter 7).¹²⁰
- 4.107 In addition to the areas described above, judicial officers could benefit from specific education and training about:
- the impact of PSIOs on children, given their developmental phases (see Chapter 6)¹²¹
 - how to frame the conditions of intervention orders to respond to cyberstalking (see Chapter 3).¹²²
- 4.108 The Judicial College of Victoria told us that judicial registrars may manage PSIO matters, but they cannot access the Judicial College of Victoria's education programs related to stalking.¹²³
- 4.109 Court staff, especially registrars, do not receive much training on stalking even though they are a critical part of responding to it:
- Registrars play an important role in triaging the court list and identifying appropriate services for referral so they need to be supported to identify stalking and levels of risk within the multitude of matters that come before them.¹²⁴
- 4.110 The Magistrates' Court noted the importance of training on stalking for magistrates, judicial registrars, registrars and court staff.¹²⁵
- 4.111 We recommend that judicial registrars and court staff are included in education and training efforts.
- 4.112 Education for judicial officers on when to order a pre-sentence assessment report could be valuable. Making courts aware of the need for assessments would help people who stalk get treatment and support to address their behaviour. We also recommend guidance be developed for sentencing breaches of PSIOs (see Chapter 8).

118 *Victims' Charter Act 2006* (Vic) s 9B.

119 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) Recommendation 24.

120 The Sentencing Advisory Council found that between 2011 and 2020, 95% of stalking cases were sentenced in the Magistrates' Court, with close to 3% each sentenced in the Children's Court and higher courts: Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) x. See also Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 94.

See, eg, Submission 98 (Law Institute of Victoria); Consultation 13 (Victoria Legal Aid).

122 Consultation 8 (eSafety Commissioner).

123 Consultation 9 (Judicial College of Victoria).

124 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

125 Consultation 34 (Magistrates' Court of Victoria (No 2)).

What education is available now?

- 4.113 For judicial officers, the Judicial College of Victoria has education initiatives on stalking and responding to victims of crime (see box).

Current training and education for judicial officers through the Judicial College of Victoria

The Judicial College of Victoria (JCV) provides resources and training to judicial officers in Victoria. There are two key resources on stalking:

- the *Criminal Charge Book* includes information that judges must give to juries and other material¹²⁶
- the *Personal Safety Intervention Orders Bench Book* describes processes and tests in the PSIO System.¹²⁷

The JCV has arranged education programs focussed on stalking. For example, an education program on stalking for lead specialist family violence magistrates. This covered:

- definitions
- impacts on victim survivors
- legislation and challenges in the judicial system
- the use of court processes to perpetrate stalking.

This program is being modified for a wider audience and will be made available online across jurisdictions.¹²⁸

Another example is the JCV's 'twilight program' on technology-facilitated abuse, conducted with the Office of the eSafety Commissioner. This included developing understanding of the impact of technology-facilitated abuse and practical tips for identifying and responding to the abuse.¹²⁹

JCV has developed materials related to the broader treatment of victims of crime. For example the 'Victims of Crime in the Courtroom' guide and specific programs on trauma-informed practice.¹³⁰

- 4.114 There are several Magistrates' Court professional development days throughout the year, including on family violence stalking. A recent session covered PSIOs.¹³¹

How should education be delivered?

- 4.115 Education and training on stalking could build on the education initiatives that are already in place. The Magistrates' Court suggested that training could be delivered online and recorded, which would allow for greater participation than if training is held solely in-person.¹³²

126 Judicial College of Victoria, *Criminal Charge Book* (Online Manual, 2017) <<https://www.judicialcollege.vic.edu.au/eManuals/CCB>>.

127 Judicial College of Victoria, *Personal Safety Intervention Orders Bench Book* (Online Manual, 1 September 2011) <<https://www.judicialcollege.vic.edu.au/eManuals/PSIO>>.

128 Consultation 9 (Judicial College of Victoria).

129 Ibid.

130 Ibid; Judicial College of Victoria, *Victims of Crime in the Courtroom: A Guide for Judicial Officers* (Online Guide, 2019) <<https://www.judicialcollege.vic.edu.au/resources/victims-crime-courtroom>>.

131 Consultation 34 (Magistrates' Court of Victoria (No 2)).

132 Ibid.

- 4.116 We heard, however, that the non-specialist approach for non-family violence stalking makes it difficult to identify judicial officers who come across stalking matters. It may be difficult to encourage judicial officers who need more targeted education and training to participate. In reality, it might be several years before they come across a stalking offence.¹³³
- 4.117 Our recommendations in Chapter 6, which call for a specialised approach to stalking, could help address this issue, at least in relation to the PSIO system. The Judicial College of Victoria suggested that a target group for stalking training could be identified based on judicial officers who have the most contact with PSIO matters.¹³⁴
- 4.118 As a general principle, education on stalking could be included in non-specialised programs and educational efforts. This would bring knowledge on stalking into the mainstream and would be more resource efficient, given the low numbers of non-family violence stalking cases, especially in the criminal justice system.
- 4.119 As most stalking matters are in the PSIO system and Magistrates' Court, we suggest that any education initiatives focus on these avenues first, and on OPP prosecutors who are the gatekeepers for stalking cases heard in the County Court. If prosecutions for stalking offences increase, it would be sensible to expand this education to judges in the County Court.
- 4.120 Education and training should also cover any other reforms implemented from the interim report and this report.

Recommendation

5. a. The Victorian Government should provide funding and support to the Judicial College of Victoria, and other agencies if appropriate, to develop and deliver ongoing training, based on relevant research, for judicial officers, judicial registrars, court staff and prosecutors to improve their response to non-family violence stalking and cyberstalking. Education should address:
- barriers to accessing the justice system and responding to diverse experiences of stalking
 - the nature and dynamics of stalking
 - the effects of trauma from being stalked and how to respond in a trauma-informed way
 - support and justice options for stalking victim survivors
 - assessment and referral pathways for people who stalk.
- b. Education for prosecutors should also include the possible adverse effects of negotiating away stalking charges.
- c. Education for judicial officers, judicial registrars and court staff should also include:
- identifying stalking behaviour
 - the impact of personal safety intervention orders on children
 - how to frame conditions of personal safety intervention orders for cyberstalking
 - when to order a pre-sentence assessment report.

CHAPTER
05

Supporting people who experience stalking

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5. Supporting people who experience stalking

Overview

- People who experience stalking may be subject to constant, intrusive behaviour that leaves them feeling trapped and terrified.
- Yet victim survivors of stalking do not have access to specialised or tailored support, unlike victims of other types of crime.
- They need support that is practical, timely and ongoing.
- They need specific types of support that are different to many other victims of crime—for example, with safety planning, security devices and new phones.
- Victoria has the foundation of a strong support system. But it needs to be enhanced for victim survivors of non-family violence stalking.
- We recommend expanding support and an independent advocate model for victim survivors of non-family violence stalking.

Victim survivors of stalking need more support

Having a support base is integral and there wasn't one. So, knowing there's people who care ... it's such a big thing; at least now I see that there are people who care.¹

- 5.1 People who experience non-family violence stalking have diverse and complex needs for support. But the victim support system was not designed with them in mind.
- 5.2 They are expected to identify, manage and meet their own support needs. They have to find and navigate services on their own. They collect their own evidence. They manage their safety, often installing security measures at their own expense.² If they get a personal safety intervention order (PSIO), it is they who alert the police if it is breached (see Chapter 7).
- 5.3 The repetitive and constant nature of stalking may make all this a significant burden.³ Victim survivors should not have to carry the burden alone.
- 5.4 One of the most important things that needs to change is for victim survivors of non-family violence stalking to receive more support. For many people 'justice' is not about what happens at the end, but about how they experience the process. As we discuss in Chapter 1, victim survivors may see support as a form of justice.

1 Consultation 11 (Members of the Victims of Crime Consultative Committee).

2 Submission 70 (Di McDonald).

3 Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 762.

- 5.5 It may be less traumatic for people to navigate and engage with the justice system if they have more support.
- 5.6 Over time, victim support systems have been adapted and improved for victims of different types of offending. For example, in 2016 the Royal Commission into Family Violence identified challenges that victim survivors of family violence stalking face when they try to access support and the justice system. A range of measures have been implemented since then to address these issues.
- 5.7 We are recommending that these adaptations and improvements should also be implemented for victim survivors of non-family violence stalking. For example, victim survivors of family violence stalking have access to support that includes safety planning and flexible support packages. Victim survivors of non-family violence should also receive this support.
- 5.8 In Chapter 4 we address their need for information. In Chapter 6, we discuss legal support. In this chapter, we make recommendations intended to make sure that victim survivors will no longer have to meet their therapeutic, financial, and other practical needs alone.

Where can people get support for stalking?

- 5.9 Victim survivors of stalking can access some services for support, including the Victims of Crime helpline and the Victims Assistance Program (VAP). These are available to all victims of violent crime.⁴ A victim does not need to have reported a crime to access VAP services.⁵
- 5.10 Most people access the VAP through the Victims of Crime Helpline which is the 'gateway to the victim support system'. Victims of crime are commonly referred to the helpline by Victoria Police, and sometimes by specialist services and community agencies.⁶
- 5.11 VAP comprises a network of community-based agencies around Victoria which deliver support services to victims of crime. It is funded by the Department of Justice and Community Safety. Through program agencies, it provides flexible and tailored case management services that aim to:
- address the needs of victims of crime, including emotional and psychological needs
 - help manage the impacts of experiencing a violent crime
 - promote the recovery process.⁷
- 5.12 Services are based on the needs of the victim, but can include:
- assistance with communicating with Victoria Police and making a report
 - risk assessment and safety planning
 - organising counselling, transport or medical services
 - support to help a victim of crime prepare for court
 - helping to prepare a victim impact statement
 - assisting with finding information about the person who committed the offence.⁸
- 5.13 We discuss the new financial assistance scheme for victims later.

4 Email from Victim Services, Support and Reform, Department of Justice and Community Safety (Vic) to Victorian Law Reform Commission, 6 May 2022: *Victims of Crime Assistance Act 1996* (Vic) s 3 ('relevant offence' which includes stalking). Under the legislation implementing a new financial assistance scheme to replace VOCAT, stalking is also recognised as a 'relevant offence': *Victims of Crime (Financial Assistance Scheme) Bill 2022* (Vic) cl 3.

5 Centre for Innovative Justice, RMIT University, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 110.

6 Email from Victim Services, Support and Reform, Department of Justice and Community Safety (Vic) to Victorian Law Reform Commission, 6 May 2022.

7 Ibid.

8 Ibid.

- 5.14 The length of the service provided by VAP is flexible and based on the individual support needs of the victim. VAP also facilitates referrals to other specialist support services when clients exit a VAP service to ensure their long-term support and safety needs are being met.⁹
- 5.15 We received mixed feedback about the response of the Victims of Crime helpline and VAP. For example, one victim survivor reported a positive experience:

Do ring Victims of Crime. This was the only organisation I found did something practical and who really knew what stalking is about. They arranged a psychologist for me for the trauma and a real lawyer to review my case ... They were supportive and practical.¹⁰

- 5.16 However, a person with a disability, reflecting on her experience in 2021, told us about a poor experience:

VAP [the Victims Assistance Program] made a phone consultation with a support worker . She also emailed the 2 police officers, but no reply was received. She contacted DHHS in May 2021 and received no reply and my case file has been closed this week.¹¹

- 5.17 There is some specific support to engage with the justice system, for example Court Network, the Child Witness Program, and (in the higher courts) the Victims and Witness Assistance Service (VWAS).¹² Given 95 per cent of stalking charges are sentenced in the Magistrates' Court,¹³ the VWAS will not be available for most victim survivors of stalking.
- 5.18 Some organisations provide services for people who have experienced cyberstalking. But these are often only available to people who experience family violence stalking, or they need to be paid for by the user (see Chapter 3).
- 5.19 Aside from the Victims of Crime Helpline and VAP, there are no agencies in Victoria that address the broad needs of people who experience non-family violence stalking.

People who experience stalking need specific kinds of support

- 5.20 People who experience stalking may have additional or different needs to victims of other crimes. This may be because of:
- the nature of stalking—for example, they may interact with the police after each stalking incident and over a longer period of time¹⁴
 - the lack of awareness about stalking—it may be harder to understand that a crime has happened or to know what to do (see Chapter 4)

9 Ibid.

10 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

11 Ibid.

12 Court Network is a service provided by volunteers that helps court users, including victims, in the lower courts. Court Network volunteers can explain how the courts operate, accompany victims in the courtroom, and explain decisions that affect them. The Child Witness Service provides support and preparation for children and young people, including victims, who may be required to give evidence at court in cases that involve a violent crime: Department of Justice and Community Safety (Vic), *Improving Victims' Experience of Summary Proceedings* (Final Report, 2021) 40–41. The Witness Assistance Service is run by the Office of Public Prosecutions. It supports adult victims and witnesses of serious crime through the court process, including by giving them information about how courts work and providing practical support. The service gives priority 'to families who have lost loved ones; victims and witnesses in sexual assault and family violence matters; and vulnerable victims': Office of Public Prosecutions (Vic), *Witness Assistance Service: We Can Help You* (Brochure, 2014).

13 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) x.

14 Suzan van der Aa and Anne Groenen, 'Identifying the Needs of Stalking Victims and the Responsiveness of the Criminal Justice System: A Qualitative Study in Belgium and the Netherlands' (2010) 6(1) *Victims & Offenders* 19, 20.

- the support they have available—they may not be taken seriously by friends and family (see Chapter 4)
 - the impacts of stalking—stalking may have a range of negative impacts including economic, social, physical and psychological impacts¹⁵ (see Chapter 2).
- 5.21 These needs call for practical, timely and ongoing support. In Chapter 3 we discuss why support for cyberstalking must also be regulated and safe.

Support needs to be practical

- 5.22 People who experience stalking need support that is tailored to their specific needs (see Table 10). This should include support for safety planning and safety interventions, financial assistance and therapeutic support.

Table 10: Practical support for stalking

Type of support	Description
Safety planning	<p>Victim survivors may be mainly concerned with being protected from the person stalking them.¹⁶</p> <p>'Safety planning' needs to be part of the support given to victim survivors. As Forensicare told us, if victim survivors can get advice and help, there are things they can do to reduce the harm from stalking.¹⁷ But as the Victims of Crime Commissioner pointed out, this should not result in victim blaming or putting the burden back on the victim survivor to change their behaviour.¹⁸</p> <p>For safety planning and service provision to work, it needs to be tailored to the unique needs of the individual.¹⁹ This includes recognising that what helps can 'change over time'.²⁰ Safety planning should be practical and might include interventions across police, courts and victim support.²¹</p>
Safety interventions	<p>We heard from victim survivors who had changed their phone numbers or moved house to escape being stalked.²² Victim survivors of family violence stalking can access support to change their locks, get a new phone or install security devices.²³ Victim survivors of non-family violence should also be able to access these services more easily and have help re-locating or with housing if needed.²⁴</p> <p>In Chapter 3, we discuss the safety interventions victim survivors need for cyberstalking.</p>

15 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27, 12; Emily Spence-Diehl, 'Intensive Case Management for Victims of Stalking: A Pilot Test Evaluation' (2004) 4(4) *Brief Treatment and Crisis Intervention* 323, 327; Lisa Tompson, Jyoti Belur and Kritika Jerath, *MASIP Evaluation* (Final Report, Multi-Agency Stalking Intervention Program, University College London, 2020) 8.

16 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27, 1–2, 16–22.

17 Consultation 15 (Forensicare (No 1)).

18 Submission 49 (Victims of Crime Commissioner).

19 See generally Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27, 1–2, 16–22.

20 Submission 49 (Victims of Crime Commissioner); Centre for Innovative Justice, RMIT University, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 222.

21 Submission 49 (Victims of Crime Commissioner).

22 Submission 21 (Antoinette Lim); Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

23 Submission 98 (Law Institute of Victoria).

24 Submission 49 (Victims of Crime Commissioner).

Type of support	Description
Financial assistance	<p>Support should include financial assistance. We were told that people who experience stalking often face economic and social losses because of safety planning and forced lifestyle changes.²⁵ They may have to pay to install safety measures, or they may lose income because the stalking causes them to miss work or impacts their productivity. They may have to pay for legal fees, mental health treatment²⁶ and safe housing.²⁷</p> <p>Di McDonald, a victim survivor of stalking, told us about having to pay for damage to her property by the person who stalked her.²⁸ Interference with property has been acknowledged in stalking research.²⁹</p> <p>In Chapter 3, we discuss the financial assistance victim survivors of cyberstalking need.</p>
Therapeutic support	<p>Support should be therapeutic. A number of victim survivors called for improved access to counselling or psychological support.³⁰ As Code Black Threat Management told us, victim survivors should have the opportunity to 'psychologically rehabilitate' to 'pre-stalking' levels of functioning.³¹</p>

Support needs to be timely

- 5.23 Victim survivors of stalking should get the support they need as early as possible. That was a strong theme in this inquiry, and is supported by research.³² In our interim report we recommended that police refer victim survivors to services so that they receive support early.³³
- 5.24 An aim of victim support should be to 'reduce the probability of issue escalation'.³⁴ Without timely support, the negative impacts of stalking can become more serious.³⁵ As the Federation of Community Legal Centres told us:
- Without access to legal assistance and other supports at an early stage, victim survivors of stalking can be left to manage the stalking alone, which can place them at heightened risk and increased distress levels.³⁶
- 5.25 Timely support also means the stalking may be stopped as soon as possible.

25 Ibid.

26 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27, 14.

27 Submission 49 (Victims of Crime Commissioner).

28 Submission 70 (Di McDonald).

29 Michele Pathé and Paul E Mullen, 'The Impact of Stalkers on Their Victims' (1997) 170(1) *The British Journal of Psychiatry* 12.

30 Submissions 26 (KB), 31 (Name withheld), 59 (Name withheld), 70 (Di McDonald).

31 Submission 65 (Code Black Threat Management).

32 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 60–61.

33 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [3.37] Recommendation 8.

34 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 98.

35 Submission 70 (Di McDonald); Consultation 14 (Confidential). See also Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27.

36 Submission 97 (Federation of Community Legal Centres). The Australian Association of Social Workers also submitted that the Victorian Government recognise the importance of early support and provide victim survivors with support before their situation escalates; Submission 76 (Australian Association of Social Workers). This submission primarily addresses the issue of family violence stalking, although it also discusses the problem of social workers being stalked by clients.

- 5.26 Emerging research suggests other benefits of early support, which include reducing:
- the long-term effects of victimisation³⁷
 - pressure on other parts of the service system³⁸
 - costs to government and victim survivors.³⁹
- 5.27 However, we heard that victim survivors of stalking rarely get the early support they need.⁴⁰
- 5.28 In Chapter 3 we discuss why support must be timely for people who experience cyberstalking.

Support needs to be ongoing

- 5.29 The impacts of stalking are serious (see Chapter 2). There may be a need for support long after the stalking has stopped.⁴¹ We heard from friends of Celeste Manno about her 'harrowing ordeal', their continuing grief and sadness at her loss, and the need for stalking 'to be viewed as a serious crime that has serious consequences'.⁴²
- 5.30 Di McDonald, a victim survivor, told us about the patchy support she received:

I was referred to Merri Health. I had only one meeting at Sunbury Police Station. Sadly, any further advice ceased. Years later Berry Street helped me financially and replaced my cameras when the original ones stopped recording ... So, services need to be more consistent, victims need to know they are supported and not on their own.⁴³

- 5.31 It can take a long time to get an outcome in the justice system. The need for support does not start or end with the formal criminal justice process; support is needed before and after (and at times without) a criminal justice outcome. We agree that people who experience stalking need ongoing support.

Reforms of victim services are under way

- 5.32 In November 2020, a major review of Victoria's victim services published by the Centre for Innovative Justice (CIJ), *Strengthening Victoria's Victim Support System: Victim Services Review* (the CIJ review), recommended doubling the Victorian Government's investment in victim support services.⁴⁴
- 5.33 The Victorian Government has acknowledged that the CIJ review 'suggests an ambitious "once in a generation" reform agenda that will take time to fully consider and implement'.⁴⁵ It has taken 'the first critical steps for progressing these reforms'.⁴⁶
- 5.34 The CIJ review proposed a new model based on three tiers of support:
- A Victims Support Centre to replace the current Victims of Crime Helpline. The service would go beyond its current focus on referrals by providing a risk and needs assessment, psychological first aid, and funds to meet immediate needs.⁴⁷

37 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 60, 76–7.

38 Ibid 77.

39 See Submission 97 (Federation of Community Legal Centres).

40 Submission 70 (Di McDonald); Consultation 14 (Confidential).

41 Submission 70 (Di McDonald); Consultation 14 (Confidential).

42 Submission 61 (Naciyelara Erel).

43 Submission 70 (Di McDonald).

44 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 18–19.

45 Department of Justice and Community Safety (Vic), *Victim Support Update* (Report, December 2021) 41.

46 Ibid. For example, it has committed funds for the establishment of a new Victims Legal Service, as we discuss below, and has developed a 'Victim Support Workforce Capability Framework': at 13, 17.

47 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 16, 82–8.

- The service has the capacity to provide 'light touch' case coordination to victim survivors who 'do not require referral into more intensive case coordination'.⁴⁸
- Clients with ongoing or complex needs would be connected to the Victims Support and Recovery Program. This would replace the existing Victims Assistance Program and would provide more active case management.⁴⁹
 - A specialised service for bereaved family members.⁵⁰
- 5.35 The model would include a Victims Legal Advice Service consisting of a network of funded legal services co-located with the Victims Support Centre and Victims Support and Recovery program providers.⁵¹ In May 2021, the Victorian Government announced funding for a Victims Legal Service.⁵² However, this is more limited than what the review called for. We discuss legal support in Chapter 6.
- 5.36 We received submissions urging the Victorian Government to implement the recommendations of the review.⁵³ The Victims of Crime Commissioner told us that if these and the financial assistance scheme reforms (discussed later) were implemented, they would 'undoubtedly improve access to more timely and appropriate support for victims of stalking, helping them stay safe and assisting them in their recovery process'.⁵⁴
- 5.37 In March 2022, the Legal and Social Issues Committee of the Victorian Parliament published its report, *Inquiry into Victoria's Criminal Justice System* (Criminal Justice Inquiry). It endorsed the model proposed in the CIJ review⁵⁵ and recommended that the Victorian Government:
- fund VAP to meet demand
 - expand service availability, especially in regional and rural Victoria
 - improve accessibility, including by increasing culturally safe services and more Koori Engagement Workers to support Aboriginal Victorians
 - improve referral pathways
 - give training and guidance to key agencies on referring victims of crime to VAP sooner.⁵⁶
- 5.38 The Victorian Government is developing a dedicated Aboriginal victims of crime strategy and working on safe and inclusive services for LGBTIQ+ victims of crime.⁵⁷

The financial assistance scheme for victims of crime is the subject of current reforms

- 5.39 On 6 April 2022, the Victorian Government introduced laws into Parliament to set up a new financial assistance scheme for victims of crime. The Victims of Crime (Financial Assistance Scheme) Bill 2022, when enacted, will see the Victims of Crime Assistance Tribunal (VOCAT) replaced with an administrative Financial Assistance Scheme built around the needs of victims.
- 5.40 The reforms were informed by the recommendations made in our report *Review of the Victims of Crime Assistance Act 1996* (2018),⁵⁸ which addressed a recommendation of the Royal Commission into Family Violence.⁵⁹
- 5.41 The proposed scheme would make the process of getting financial assistance easier for victims. The scheme includes:

48 Ibid 82.

49 Ibid 16, 109–138.

50 Ibid 17, 138–46.

51 Ibid 17, 147–55.

52 Natalie Hutchins, Minister for Corrections, Crime Prevention, Victim Support and Youth Justice (Vic), 'Better Outcomes for Victims and Young People' (Media Release, 20 May 2021).

53 Submission 56 (Derryn Hinch's Justice Party).

54 Submission 49 (Victims of Crime Commissioner).

55 Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report No 326, Session 2018–2022, March 2022) Recommendation 48.

56 Ibid Recommendations 36, 37: see also 311.

57 Department of Justice and Community Safety (Vic), *Victim Support Update* (Report, December 2021) 12, 17, 28–9.

58 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 36, July 2018).

59 *Royal Commission into Family Violence: Summary and Recommendations* (Report, March 2016) Recommendation 106.

- victim survivors receiving a victim recognition statement that acknowledges the effects of the crime
 - victim survivors being able to request a victim recognition meeting where they can talk about the harm caused to them and have their experience acknowledged on behalf of the government
 - financial assistance for counselling services, medical expenses, loss of income and 'safety-related' expenses.⁶⁰
- 5.42 Under the Bill, victim survivors of stalking can receive financial assistance.⁶¹
- 5.43 The scheme would sit within the Department of Justice and Community Safety. This would help streamline and coordinate financial assistance with other parts of the victim support system.⁶²
- 5.44 If the Bill is passed, the scheme is expected to start operating in the second half of 2023.⁶³ In the meantime, the government has announced funding to clear the VOCAT backlog.⁶⁴ Recently, protections for victim survivors of stalking in the VOCAT process were also introduced, preventing people accused of stalking from being notified about, or appearing at VOCAT hearings.⁶⁵
- 5.45 Together, if implemented, the reforms from the CIJ review, the Criminal Justice Inquiry and the new financial assistance scheme would greatly improve support for people who experience stalking. These reforms would:
- help people to find and navigate services
 - improve the quality of the responses, including therapeutic support and financial assistance
 - result in more recognition of the harm they have experienced.
- 5.46 Some victim survivors need more intensive support. The proposed Victims Support and Recovery Program in the CIJ review could be a way of meeting their needs.
- 5.47 The Victorian Government should implement these reforms with enhancements for people who have experienced stalking (discussed next).

We recommend enhanced support for victim survivors of stalking

- 5.48 In our consultation paper, we asked about the best way to provide support to victim survivors of stalking.
- 5.49 We received suggestions on potential models of victim support, ranging from building a stalking-focused victims' service⁶⁶ to building on current models of victim support.⁶⁷
- 5.50 We decided against recommending a standalone, stalking-focused victim service. Stalking often occurs alongside other offences (see Chapter 7) so it would make sense for any victim support to also meet the support needs that other crimes might give rise to. Further, while non-family violence stalking is a serious crime with serious impacts, it is less common than stalking that occurs as part of family violence,⁶⁸ reducing the need for a standalone service.

60 Explanatory Memorandum, Victims of Crime (Financial Assistance Scheme) Bill 2022 s 10(2)(e).

61 Victims of Crime (Financial Assistance Scheme) Bill 2022 (Vic) cl 3(1) 'relevant offence' (e).

62 Victoria, *Parliamentary Debates*, Legislative Assembly, 7 April 2022 1418 (Natalie Hutchins, Minister for Victim Support).

63 Natalie Hutchins, Minister for Victim Support, 'Landmark Reforms To Support Victims Of Crime' (Media Release, 6 April 2022).

64 Department of Justice and Community Safety (Vic), *Victim Support Update* (Report, December 2021) 7, 16.

65 *Victims of Crime Assistance Act 1996* (Vic) ss 34(4)(aa), 35(1A).

66 Consultation 15 (Forensicare (No 1)).

67 See, eg. Submission 49 (Victims of Crime Commissioner).

68 As discussed in Chapter 2 of this report, most stalking recorded by police since 2011 (52 per cent) and sentenced in Victorian courts since 2015 (68 per cent) has been part of family violence: Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) [3.11], [5.4] (stalking cases sentenced in the Magistrates' Court). See also xi.

- 5.51 We were cautious about expecting a family violence agency or the family violence sector to provide support to people who experience non-family violence stalking. This would add pressure to these services, which are already under strain. It is also important that victim support for non-family violence stalking feels accessible to male victim survivors.⁶⁹
- 5.52 Finally, we are keen to make sure the response is flexible. For example, some people may want to engage with a private security firm for safety interventions, rather than the police.⁷⁰ The police do not have the capacity to do all the safety work needed (see Chapter 3).⁷¹
- 5.53 The best way to provide support to victim survivors of non-family violence stalking is through an enhanced generalist model of victim support. This is a model based on the CIJ review and the Victims of Crime Commissioner's submission.⁷² The main components are:
- an improved victim support service model, as outlined in the CIJ review
 - a new Financial Assistance Scheme, implementing recommendations in our report on financial assistance⁷³
 - support that is practical, timely, tailored and ongoing for people who experience stalking (discussed earlier)⁷⁴
 - specialist support through victim advocates (discussed below).
- 5.54 These components would address the support needs of victim survivors, while fitting in with reforms under way. The model would be flexible enough to bring in other services, such as private security services, that could address stalking. It would also allow for an intensive response in especially serious cases.⁷⁵
- 5.55 In the next section we discuss design features the government should consider in implementing this model. They are in line with the research on what is important for victim support in stalking, and focus on making sure that support is integrated, immediate, accessible and informed.⁷⁶

Support should be integrated

- 5.56 The current model for supporting victim survivors of stalking has some limitations. Most referrals happen through Victoria Police, so when a victim survivor does not contact police they are less likely to get the support they need.⁷⁷
- 5.57 In implementing reforms, the government should make sure that pathways to support are available to people experiencing stalking, including cyberstalking, whether or not they report to police. The connection to services needs to happen as early as possible.
- 5.58 When victim survivors seek support, they should receive a consistent and integrated response. As supporters of Celeste Manno told us, victim survivors 'need to receive useful advice that is best going to protect them'.⁷⁸ Research indicates that victim survivors of stalking often 'receive conflicting advice from traditional sources of help'.⁷⁹

69 Submission 100 (Forensicare).

70 Submission 49 (Victims of Crime Commissioner); Consultation 8 (eSafety Commissioner).

71 Submission 49 (Victims of Crime Commissioner).

72 Ibid.

73 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 36, July 2018).

74 Submission 49 (Victims of Crime Commissioner).

75 The Victims of Crime Commissioner suggested that the Victorian Government should consider integrating within existing services a specialised support service for high risk victims of stalking: Ibid.

76 See, eg, Michele Pathé and Paul E Mullen, 'The Impact of Stalkers on Their Victims' (1997) 170(1) *The British Journal of Psychiatry* 12.

77 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 70.

78 Submission 54 (Riana Leonardi, Hannah Smith, Dahlia Mahmoud, Melissa Caligiore).

79 Michele Pathé and Paul E Mullen, 'The Impact of Stalkers on Their Victims' (1997) 170(1) *The British Journal of Psychiatry* 12, 16.

- 5.59 The lack of integrated support for victim survivors of stalking has been acknowledged for decades by researchers, practitioners and policymakers in the United Kingdom,⁸⁰ the United States⁸¹ and Australia.⁸²
- 5.60 An integrated response to stalking provided by 'professionals with a range of skills and expertise', may enable a 'holistic service response'⁸³ tailored to victim survivors' individual support needs.
- 5.61 Integrated support is especially important for victim survivors of stalking because they may have to frequently and simultaneously manage 'their emotional wellbeing, practicalities around legal decisions ... and physical safeguarding'.⁸⁴
- 5.62 We note that the CIJ review model is meant to be integrated, so that as victims 'step through' the model, 'they experience it as a single, seamless service'.⁸⁵

Financial assistance should be immediate

- 5.63 As the Victims of Crime Commissioner told us, it is important that financial assistance happens fast, because safety planning is an urgent matter.⁸⁶ We agree that victim survivors of stalking should have access to fast financial assistance while the new financial assistance scheme is being implemented.⁸⁷
- 5.64 In our *Victims of Crime Assistance Act* report we recommended that the new financial assistance scheme include help with immediate needs.⁸⁸ The Victims of Crime (Financial Assistance Scheme) Bill 2022 provides for a duty for decision makers to 'act expeditiously' (ie quickly) and for safety-related expenses that have not yet been incurred.⁸⁹ But whether victim survivors will receive financial assistance immediately under the scheme is unclear.
- 5.65 In its model, the Centre for Innovative Justice also identified opportunities to integrate financial assistance and victim support services.⁹⁰
- 5.66 Victim survivors should have access to a flexible support package or a small grant of financial aid, known as 'brokerage', to meet their practical needs, such as buying a replacement phone (which they may need if they have been cyberstalked). Currently the amount of brokerage available seems to be quite limited.

Any barriers to eligibility should be removed

- 5.67 The Department of Justice and Community Safety, which runs VAP, told us that victims of violent crimes can access VAP whether or not they have made a police report. VAP can pay for small expenses for victims related to the impact of crime, such as home security, immediate counselling and travel to and from court hearings.⁹¹
- 5.68 In this inquiry a few victim survivors told us they did not get the support they needed because they were not eligible. For example, one person with a disability, who lived in a rural or regional community, reflecting on her experience in 2020, said:

80 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27, 3.

81 Emily Spence-Diehl, 'Intensive Case Management for Victims of Stalking: A Pilot Test Evaluation' (2004) 4(4) *Brief Treatment and Crisis Intervention* 323, 324.

82 Michele Pathé and Paul E Mullen, 'The Impact of Stalkers on Their Victims' (1997) 170(1) *The British Journal of Psychiatry* 12, 15–16. Submission 97 (Federation of Community Legal Centres).

84 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27, 23.

85 Centre for Innovative Justice, RMIT University, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 17.

86 Submission 49 (Victims of Crime Commissioner).

87 Ibid.

88 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 36, July 2018) xxxv, Recommendation 34.

89 Victims of Crime (Financial Assistance Scheme) Bill 2022 (Vic) cls 10(2)(e), 29.

90 Centre for Innovative Justice, RMIT University, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 18.

91 Email from Victim Services, Support and Reform, Department of Justice and Community Safety (Vic) to Victorian Law Reform Commission, 6 May 2022.

Victims of Crime say that they can only give me further help if he's been charged. So, he gets charged and is placed on bail conditions. I call Victims of Crime to tell them that he has, finally, been charged, and they tell me, 'No we can only give you further help if he's been charged with assault'. He was charged for breaching the [intervention order]. Victims of Crime needs better funding.⁹²

- 5.69 Another person, who lived in a rural or regional community, reflecting on her experience with police in 2021, said:

[The police] then referred me to Victims of Crime and when meeting with them for support they advised stalking is only a minor crime ...⁹³

- 5.70 As the Criminal Justice Inquiry noted, VAP is likely to be 'subject to overall case load and resources'.⁹⁴
- 5.71 The Department of Justice and Community Safety noted that victims can access VAP support for as long as required.⁹⁵ However, one victim survivor, reflecting on their experience, said that VAP is 'restricted by funding constraints (staff and case load) to assist in lengthy matters'.⁹⁶
- 5.72 Victim survivors are required to have reported to police within a reasonable time or else explain in a statutory declaration why they did not.⁹⁷ In our Victims of Crime Assistance Act report we recommended removing the reporting requirement.⁹⁸ While the new Bill retains the reporting requirement, it says a report is not necessary if there were special circumstances for not reporting, or if the victim is in a prescribed category.⁹⁹
- 5.73 It is important to remove the barriers that stop victim survivors of stalking from getting support. Anyone who has experienced stalking should be able to get victim support. It should be ongoing because, unlike many other crimes, the risks to safety may still be present.

Some groups are under-served and need more support

- 5.74 Some victim survivors may need more support than others. For example, those living in regional and rural Victoria may be more isolated and need additional support to access services.¹⁰⁰
- 5.75 Unmet demand for support is especially serious for victims of crime in regional and rural Victoria where often there are limited services.¹⁰¹ The lack of victim support services is compounded by gaps in other services such as health and mental health.¹⁰²

92 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

93 Ibid.

94 Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report No 326, Session 2018–2022, March 2022) vol 1, 309.

95 Email from Victim Services, Support and Reform, Department of Justice and Community Safety (Vic) to Victorian Law Reform Commission, 6 May 2022.

96 Submission 6 (Name withheld).

97 Victims of Crime, Department of Justice and Community Safety (Vic), *Applying for Financial Assistance from Victims of Crime Assistance Tribunal* (Web Page, 2022) <<https://www.victimsofcrime.vic.gov.au/going-to-court/applying-for-financial-assistance-from-victims-of-crime-assistance-tribunal>>. This is consistent with the requirements under the new Bill.

98 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 36, July 2018) Recommendations 59(b) and 60.

99 Victims of Crime (Financial Assistance Scheme) Bill 2022 (Vic) cls 22(2), 31(2).

100 TK Logan et al, 'Victim Service and Justice System Representative Responses About Partner Stalking: What Do Professionals Recommend?' (2006) 21(1) *Violence and Victims* 49, 50–1.

101 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 113.

102 Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report No 326, Session 2018–2022, March 2022) vol 1, 309.

- 5.76 We heard about gaps in therapeutic psychological support for young people, particularly in regional Victoria.¹⁰³
- 5.77 This gap is serious given how common PSIOs are in regional and rural Victoria, especially for children (see Chapter 2).
- 5.78 A general gap in services for children was noted by the Alannah and Madeline Foundation:
- The [VAP] does enable families to access good support services, but it is not specifically designed to work directly with children. For instance, the program does not include brokerage for counselling for children.¹⁰⁴
- 5.79 The way people living with disability are treated by victim support services also needs to improve. We were told that people with disabilities (particularly those in psychiatric units) who report stalking are:
- often not believed or viewed as 'too unwell to determine what is real'¹⁰⁵
 - often not listened to, given resources, or supported¹⁰⁶
 - told that reporting is a 'police response' rather than a service provider response.¹⁰⁷
- 5.80 When it implements victim support reforms, the Victorian Government should focus on strengthening support for under-served groups, especially:
- people in rural and regional Victoria
 - children
 - people with disabilities.
- 5.81 The support services should take advantage of advancements in technology, especially following the coronavirus (COVID-19) pandemic, where appropriate and if this is what the victim survivor prefers. For example, victim survivors could access services online via video-conferencing.

Victim support staff must be supported to understand stalking

- 5.82 As we discuss in Chapter 4, stalking is not well understood. It is important that any victim support service is staffed with people who understand stalking, including what it is, how it presents,¹⁰⁸ and its effects.¹⁰⁹ This would help guide the victim survivor to the right services and get them the support they need.¹¹⁰

103 Consultation 16 (Centre for Excellence in Child and Family Welfare: Young People and Stalking).

104 Consultation 29 (Alannah & Madeline Foundation).

105 Consultation 22 (Small group meeting on stalking and people with disabilities).

106 Ibid.

107 Ibid.

108 Consultation 15 (Forensicare (No 1)).

109 Submission 93 (Royal Australian and New Zealand College of Psychiatrists).

110 Ibid.

Recommendations

6. The Victorian Government should implement the victim support recommendations in the Centre for Innovative Justice *Strengthening Victoria's Victim Support System: Victim Services Review* report and recommendations in the Legislative Council Legal and Social Issues Committee *Inquiry into Victoria's Criminal Justice System*, especially recommendations 36, 37, 40, 42, 49 and 50.
7.
 - a. In implementing reforms to victim support, the Victorian Government should ensure that victim survivors of non-family violence stalking receive support that is practical, timely and ongoing.
 - b. For victim survivors of non-family violence cyberstalking the Victorian Government should also ensure that the support provided by private technology companies is regulated and safe.
 - c. The Victorian Government should ensure that for victim survivors of non-family violence stalking, including cyberstalking:
 - pathways to early support are developed
 - any barriers to eligibility are addressed
 - access to support is improved for underserved groups
 - guidelines and training are provided to victim support staff on stalking.
8. The Victorian Government should fund a stream of timely financial assistance so that victim services can administer flexible support packages or brokerage to assist victim survivors of non-family violence stalking, including cyberstalking. This should include financial assistance to implement safety plans.

A new model of victim advocates could provide ongoing support

- 5.83 We recommend that the Victorian Government move towards a model of victim advocates who are trained to provide holistic and individualised support for people who have experienced non-family violence stalking. This would bolster the support provided through the generalist victim support model.
- 5.84 Ideally, the model would provide for one victim advocate who would assist the victim survivor throughout the process of seeking support and the justice system.
- 5.85 'Victim advocate' does not mean a legal advocate or lawyer, but a person who gives information, helps people navigate a range of services and supports, and ensures they get their rights and entitlements.

Having that formal victim advocate ... [to help] navigate the systems and provide a level of case management would be crucial, because victims are often so overwhelmed by the processes. If I had only known certain things earlier, it would have made a huge difference, and there are people who know these things and can help make that pathway less treacherous to travel. At the moment it is like walking up a mountain track with the precipice right beside you and rocks falling down—but having that guide, that victim advocate, it becomes safer and less stressful, and you don't carry the entire burden on your own.¹¹¹

- 5.86 People who experience stalking may need more intensive support. Stalking can be ongoing and it is challenging to collect evidence on every stalking incident. Victim survivors might need to navigate a range of criminal and civil processes and services.
- 5.87 The negative mental health impacts of stalking can make it difficult, if not impossible, for victim survivors to navigate all these things on their own. Stalking affects physical and mental health, sometimes in unexpected ways.¹¹² This prevents people from seeking help or carrying out risk management (for example, following up with referrals or documenting the evidence).¹¹³ An independent advocate could assist with these matters.
- 5.88 Victim advocates could help to identify what is happening to the victim survivor and help make sure that timely action is taken to stop the stalking and any risk of harm.¹¹⁴
- 5.89 Victim advocates could provide the ongoing, 'joined up' support that victim survivors need. Coordination with services is 'associated with victim reports of more helpful services'.¹¹⁵
- 5.90 In our report *Improving the Justice System Response to Sexual Offences* (2021), we recommended a similar model of victim advocates.¹¹⁶ We made this recommendation partly because research indicates that victim advocates help keep victims engaged with the justice system.¹¹⁷
- 5.91 Victim engagement with the justice system is needed to support prosecutions and convictions. If the person who stalks is not prosecuted and convicted, where appropriate, they might offend again. So by supporting victims, we are likely to get better justice outcomes. Resources dedicated to improving victim support are cost-effective, when assessed holistically across the criminal justice system.
- 5.92 Research has similarly indicated that victim advocates can help address the support needs that people have beyond the criminal justice system, which can minimise the negative impacts of stalking.¹¹⁸
- 5.93 One study found that victims perceive the crisis intervention provided by victim advocates as 'validating and empowering'.¹¹⁹ Other benefits include reduced feelings of isolation and reframed perceptions of fear.¹²⁰
- 5.94 The evaluation of victim advocates for stalking in England and Wales (discussed later) indicated that 'intervening in high-risk stalking cases was cost-beneficial to the state ... and was often cost-beneficial to the victims too'.¹²¹

112 For example, the impacts can include gastrointestinal issues, dental issues (from excessive jaw clenching), pelvic issues, hypervigilance, chronic sleep disturbance, headaches, intrusive recollections, and the onset or worsening of physically debilitating conditions such as psoriasis or asthma attacks: see Michele Pathé and Paul E Mullen, 'The Impact of Stalkers on Their Victims' (1997) 170(1) *The British Journal of Psychiatry* 12, 14.

113 Lauren Bennett Cattaneo, Sarah Cho and Shelly Botuck, 'Describing Intimate Partner Stalking Over Time: An Effort to Inform Victim-Centered Service Provision' (2011) 26(17) *Journal of Interpersonal Violence* 3428, 3448.

114 Submission 49 (Victims of Crime Commissioner).

115 Lauren Bennett Cattaneo, Sarah Cho and Shelly Botuck, 'Describing Intimate Partner Stalking Over Time: An Effort to Inform Victim-Centered Service Provision' (2011) 26(17) *Journal of Interpersonal Violence* 3428, 3448.

116 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) Recommendation 45.

117 Oona Brooks-Hay et al, *Evaluation of the Rape Crisis Scotland National Advocacy Project* (Briefing No 01/2018, Scottish Centre for Crime and Justice Research, January 2018) 3 <<https://www.sccjr.ac.uk/publications/evaluation-of-the-rape-crisis-scotland-national-advocacy-project-summary-report-jan-2018/>>; Victims' Commissioner for England and Wales, *Victim Advocates: A Rapid Evidence Assessment* (Report, February 2019) 6 <<https://victimscommissioner.org.uk/published-reviews/victim-advocates-a-rapid-evidence-assessment/>>.

118 Emily Spence-Diehl, 'Intensive Case Management for Victims of Stalking: A Pilot Test Evaluation' (2004) 4(4) *Brief Treatment and Crisis Intervention* 323, 338.

119 Ibid.

120 Ibid.

121 Lisa Tompson, Jyoti Belur and Kritika Jerath, 'A Victim-Centred Cost-Benefit Analysis of a Stalking Prevention Programme' (2021) 10(1) *Crime Science* 21, 9.

Victim advocates have worked well overseas

- 5.95 Advocates for stalking victim survivors exist in international jurisdictions such as England and Wales,¹²² Denmark,¹²³ and the United States.¹²⁴
- 5.96 In England and Wales the Multi-Agency Stalking Intervention Program includes victim advocates (see box). England and Wales also has the smaller scale Independent Stalking Advocacy Caseworkers.¹²⁵

The Multi-Agency Stalking Intervention Program (MASIP)¹²⁶

MASIP aimed to support the identification, treatment and prevention of stalking by providing support and interventions for victim survivors and people who stalk.

Victim survivors were assigned to a victim advocate. Support was in the form of a single point of direct and consistent contact between the victim advocate and the victim survivor. The victim advocate's role included:

- providing information on legal options
- providing advice on limiting contact with the person stalking
- safety planning, including at court
- contacting other services, such as social services
- diversion into other agencies—for example, to assist with mental health or with other health problems due to stalking.

MASIP also provided relocation assistance, advice on how to document the stalking behaviours and assistance with reporting to police or getting a civil intervention order.

The final evaluation of MASIP was published in April 2020 and concluded that victim advocacy was a valuable support tool for victims. It found that victim advocacy provided victim survivors with emotional and pragmatic support and equipped them with the knowledge and confidence needed to keep them engaged with the justice system. It allowed victim survivors to participate actively in managing safety risks.

The advocate functioned as the victim survivor's voice across interactions with support services and the justice system. For example, at court, victim advocates requested specific clauses in civil intervention orders, which allowed courts to put physical limits in place between the victim survivor and the person stalking. They also supported victim survivors to better understand what was happening as their case moved through the criminal justice system, which was a major information gap.

The evaluation made some findings for improvement, including a need for more mental health provision to help victim survivors cope with the negative impacts of being stalked.

122 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' [2020] *Journal of Interpersonal Violence* 10.1177/0886260520980402:1–27, 3.

123 Heng Choon Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (Wiley, 2020) chs 197, 199.

124 The VictimConnect Resource Centre provides information and assistance to victim survivors of stalking: 'Stalking', *Victim Connect Resource Center* (Web Page, 2022) <<https://victimconnect.org/learn/types-of-crime/stalking/>>.

125 Paladin Service, *Paladin Vision* (Web Page, 2022) <<https://www.paladinservice.co.uk/our-mission>>.

126 Lisa Tompson, Jyoti Belur and Kritika Jerath, *MASIP Evaluation* (Final Report, Multi-Agency Stalking Intervention Program, University College London, 2020).

Victim advocates 'would be a game changer'¹²⁷

- 5.97 There was strong support in this inquiry for an advocacy role for victim survivors.
- 5.98 Some victim survivors called for support to come in the form of a support person.¹²⁸ Erin Scrimshaw, a close friend of Celeste Manno, who has also experienced stalking, told us that case workers should be 'assigned to victims of stalking ... who follow up and stay in contact with victims throughout the process of getting an [intervention order] to provide support, advice and easy access to escalating further reports'.¹²⁹
- 5.99 Another victim survivor, who identified as a migrant, told us:

Being stalked creates an overwhelming feeling of powerlessness. You are constantly watching wherever you go, the rear vision mirror in your car, you don't feel safe in your own home. The most important initial support would be for someone to take you seriously and to help you work out what to do without judgement and to help you work out practical steps you can take.¹³⁰

- 5.100 Di McDonald, a person who experienced stalking, suggested:

Assign a victim a support person that will see them through all of the processes. Police, Victim Services and Court. They may not have anyone to be there for them, so their own personal support person, who deals with all the legal things would be a godsend...¹³¹

- 5.101 We also heard support for an advocacy role from the Victims of Crime Commissioner, Victims of Crime Consultative Committee, Springvale Monash Legal Service, the Centre for Forensic Behavioural Science and Forensicare.¹³² We heard from multicultural and multifaith lawyers and legal stakeholders that 'sometimes victims need someone to talk to rather than having someone prosecuted'.¹³³
- 5.102 The Victims of Crime Commissioner supported the introduction of advisers based on the model in England and Wales.¹³⁴
- 5.103 However, a participant in a small group meeting on stalking and people with disabilities noted that even with a victim advocate, police could shut a complaint down. In our interim report we made recommendations to improve the police response to stalking.
- 5.104 Others we consulted identified potential problems with victim advocate programs. A participant at a meeting with multicultural and multifaith organisations noted potential problems if the advocate did not understand the person they are working with, such as their faith, culture, or barriers they might be facing. It was also noted that a government-run advocacy program would need to build trust with the community.¹³⁵

127 Consultation 11 (Members of the Victims of Crime Consultative Committee).
 128 Submission 70 (Di McDonald); Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).
 129 Submission 67 (Erin Scrimshaw).
 130 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).
 131 Submission 70 (Di McDonald).
 132 Submissions 32 (Centre for Forensic Behavioural Science), 49 (Victims of Crime Commissioner), 55 (Springvale Monash Legal Service), 100 (Forensicare); Consultation 11 (Members of the Victims of Crime Consultative Committee).
 133 Consultation 30 (Roundtable with multicultural and multifaith lawyers and legal stakeholders).
 134 Submission 49 (Victims of Crime Commissioner).
 135 Consultation 31 (Roundtable with multicultural and multifaith community organisations).

5.105 The Centre for Multicultural Youth, which works with young people from culturally diverse backgrounds, told us that victim advocates should work collaboratively with multicultural specific services, have experience working with people from culturally and linguistically diverse backgrounds, and be hired from various cultural backgrounds.¹³⁶ We discuss accessible design next.

What should be the features of an independent advocate model?

5.106 We do not propose to design specific models of service delivery. These matters require close consultation, community engagement and co-design with victim survivors.

5.107 However, a lot can be learned from the model of victim advocacy used in the United Kingdom by MASIP (discussed earlier).

5.108 Based on the research and what people told us, we consider these features to be important:

- The victim advocate should be available as soon as a disclosure of stalking is made.¹³⁷
- Eligibility should not depend on engagement with the justice system, as many victim survivors do not report to police (see Chapter 2).¹³⁸
- Victim survivors should be able to access victim advocates using strengthened referral pathways (discussed earlier).
- Pathways should also be built from the victim advocate to other services, such as legal services.¹³⁹
- The program should be accessible and designed with people from diverse backgrounds in mind.¹⁴⁰

5.109 Building on the MASIP victim advocacy role, the role of the victim advocate should include:¹⁴¹

- providing information on justice options and progress through the justice system
- supporting victim survivors to understand and exercise their rights, including their rights to information about the progress of their cases under the *Victims' Charter Act 2006* (Vic)
- safety planning, for example helping victim survivors to think about how to be safer when experiencing stalking, such as changing normal routines, having a safe place to go and having a code word with a trusted person so that calls can be made (in the case of phone tapping)¹⁴²
- supporting their individual needs, such as advice on documenting stalking behaviour or help reporting to police or applying for a PSIO
- liaising with, and advocating for them to, services and the justice system.

5.110 In cases in which the victim survivor engages with the criminal justice system, victim advocates should have a role in providing victim survivors with information on their case. As was the case in the United Kingdom, we heard that victim survivors in Victoria lacked information about the progress of their case:

136 Email from Centre for Multicultural Youth to Victorian Law Reform Commission, 25 November 2021.

137 Consultation 11 (Members of the Victims of Crime Consultative Committee).

138 Submission 49 (Victims of Crime Commissioner).

139 Submission 95 (Springvale Monash Legal Service).

140 Email from Centre for Multicultural Youth to Victorian Law Reform Commission, 25 November 2021.

141 Submission 49 (Victims of Crime Commissioner).

142 'Safety Planning Checklist', *1800RESPECT* (Web Page) <<https://www.1800respect.org.au/help-and-support/safety-planning/checklist>>.

It was frustrating the Magistrates' Court wouldn't tell me anything about my stalker when he was charged. They told me to call up my officer to find out the results which I did but didn't hear from my officer straight away. It was a few days later. I almost wish I was allowed to go to court on the day my stalker was charged so I could hear the results then and there.¹⁴³

- 5.111 As victim survivors told us, the role might include checking in with victim survivors on the phone regularly or attending appointments with them.¹⁴⁴

Under-served groups should be a focus

- 5.112 As we recommended in the sexual offences report, the design of the model should prioritise those who are under-served by existing services and the justice system.¹⁴⁵ These people often face the most complex interactions between services and systems and therefore need more support in navigating them.
- 5.113 In stalking, we have identified people in rural and regional Victoria,¹⁴⁶ children and young people,¹⁴⁷ LGBTIQ+ people,¹⁴⁸ people with disabilities,¹⁴⁹ Aboriginal people,¹⁵⁰ and people from culturally and linguistically diverse backgrounds¹⁵¹ as priority groups.
- 5.114 The Child Witness Service also acts as an independent advocate for the children's voices and wishes. However, the service does not include support before charges are laid, and its scope of advocacy is narrower because its focus is on supporting a person to give evidence.¹⁵²
- 5.115 The model should be built with diverse access points in mind, in consultation with those communities.

143 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

144 Ibid.

145 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) Recommendation 45.

146 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [4.14].

147 Consultations 16 (Centre for Excellence in Child and Family Welfare: Young People and Stalking), 17 (Small group meeting on stalking and young people).

148 Submission 39 (Victorian Pride Lobby).

149 Consultation 22 (Small group meeting on stalking and people with disabilities).

150 Submission 41 (Djirra).

151 Consultation 31 (Roundtable with multicultural and multifaith community organisations).

152 'Child Witness Service', *Victims of Crime* (Web Page, 10 June 2021) <<http://www.victimsofcrime.vic.gov.au/going-to-court/child-witness-service>>.

Recommendation

9. a. The Victorian Government should consult on and co-design a model of victim support that uses advocates to provide continuous support for people who have experienced non-family violence stalking. These independent advocates should:
- provide information about justice options and progress through the justice system
 - support victim survivors to understand and exercise their rights
 - assist with planning for their safety when they are experiencing stalking
 - support their individual needs
 - liaise with, and advocate for victim survivors to, services and the justice system.
- b. The model of an independent advocate should:
- be available as soon as a disclosure of stalking is made and not depend on a person's engagement with the criminal justice system
 - include diverse points of referral and access to such support
 - enable advocates to provide individualised support, including specialised expertise and understanding of working with people from diverse backgrounds
 - give priority to people who are currently underserved.

CHAPTER
06

Personal safety intervention orders and the civil response to stalking

- 96** Overview
- 96** The main response to stalking
- 97** How does the PSIO process work?
- 101** Identifying stalking among PSIO cases
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- 110** System improvements should be based on family violence legislation
- 116** Legal representation and support should be strengthened
- 120** Efficient protections and procedural fixes should be introduced
- 123** The need for a different approach for children and young people

6. Personal safety intervention orders and the civil response to stalking

Overview

- The personal safety intervention order (PSIO) system, the main civil response to non-family violence stalking, is under strain. This makes it challenging for stalking matters to get the attention they need.
- The response must become focused and specialised to make sure that victim survivors can access justice and their safety is prioritised.
- We recommend:
 - guidance for courts to identify non-family violence stalking cases
 - a specialist approach to non-family violence stalking
 - using mediation to free up the PSIO system to focus on stalking and other serious harm.
- The family violence civil response has improved protections, support and legal representation. Where appropriate, this should be matched for people who experience non-family violence stalking.
- For children, the civil response might be their first interaction with the justice system. The response to children needs to recognise evidence about their development and emphasise alternative pathways to prevent long-term contact with the justice system.

The main response to stalking

- 6.1 The current personal safety intervention order (PSIO) system started in 2011. A person can apply to the Magistrates' or Children's Court for a PSIO to protect themselves, their children or their property from stalking behaviours by a non-family member.¹ The behaviours covered include assault, harassment and property damage.²
- 6.2 PSIOs are a civil, as opposed to a criminal, response to non-family violence stalking. However, breaching a PSIO is a criminal offence (see Chapter 7).
- 6.3 A PSIO is the most common response by the justice system to non-family violence stalking. It is how the state recognises the harm the person who stalks is causing, and puts conditions in place to keep the victim survivor safe.
- 6.4 When a PSIO is granted, that is often a point in the justice system where the justice needs of victim survivors—for example, to feel believed, supported and safe—can be met (see Chapter 1). It is a significant opportunity to address the behaviour of the person who stalks (see Chapter 8).

¹ As discussed in Chapter 2, family violence intervention orders (FVIOs) protect people from violence by a family member.
² *Personal Safety Intervention Orders Act 2010* (Vic) s 10(1)(b).

- 6.5 However, it is clear that the civil response is not working as well as it should. PSIOs are often breached, which indicates that the behaviour is not being adequately addressed, and we heard the police response to those breaches is not consistent (see Chapter 7).³ People who are subject to PSIOs often re-offend.⁴
- 6.6 We heard from many victim survivors who said they felt unsafe even after they were granted a PSIO.⁵ Some think of it as nothing more than a 'piece of paper'.⁶
- 6.7 The civil response needs to improve. In this chapter we explain how to re-focus the system on non-family violence stalking matters and make sure these matters get a safe, supported and tailored response.
- 6.8 This chapter, like our report in general, is about non-family violence stalking. When we use the word 'stalking', that is what we mean.

How does the PSIO process work?

- 6.9 Stalking has the same definition in the PSIO system as under the *Crimes Act 1958*.⁷ Stalking means engaging in a 'course of conduct' against a person with the intention of:
- causing physical or mental harm, or
 - arousing apprehension or fear in the victim for their own or another's safety.⁸
- 6.10 The list of behaviours included in a 'course of conduct' is very broad, for example:
- following the person
 - hacking their computer
 - loitering outside their home
 - making threats.⁹
- We discuss the offence in more detail in Chapter 7.
- 6.11 While we do not know exactly how many PSIO matters involve stalking, we know that for adults they commonly restrain people living in close proximity to one another, such as neighbours (27 per cent of 'protected persons' under a PSIO) or 'friends, former friends or acquaintances' (14 per cent of protected persons).¹⁰ There are more PSIOs made in regional and rural Victoria compared to metropolitan Melbourne.¹¹ We explore data on PSIOs in more detail in Chapter 2.
- 6.12 A victim survivor (or 'affected person') can apply for a PSIO themselves or consent to someone else applying on their behalf. Police officers can apply for a PSIO for them.¹² The person who applies for the PSIO is the 'applicant'. PSIOs are made against a 'respondent'.
- 6.13 The Magistrates' Court hears the application, but if any of the parties (the applicant, affected person or respondent) is a child then the Family Division of the Children's Court hears the application.¹³

3 Submission 70 (Di McDonald); Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021). Police data on PSIO breach offences recorded by police in the 10 years from 2011 to 2020 shows that there were 26,329 recorded PSIO breach offences during this period. The number of PSIO breaches recorded per recent years includes 3,553 in 2018, 4,000 in 2019 and 4,343 in 2020: Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [5.2].

4 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) xiii.

5 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

6 Submission 56 (Derryn Hinch's Justice Party).

7 *Personal Safety Intervention Orders Act 2010* (Vic) s 10; *Crimes Act 1958* (Vic) s 21A.

8 *Personal Safety Intervention Orders Act 2010* (Vic) s 10(1)(a).

9 *Ibid* s 10(1)(b).

10 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) xi, in relation to PSIOs made in the Magistrates' Court.

11 *Ibid* [10.3].

12 *Personal Safety Intervention Orders Act 2010* (Vic) s 15.

13 *Ibid* ss 102–4.

- 6.14 After a PSIO is applied for, a court may make an 'interim PSIO' if on the balance of probabilities it is needed to:
- ensure the safety of the affected person(s), or
 - preserve their property, and
 - it is appropriate in the circumstances.¹⁴
- 6.15 An interim PSIO is designed to provide urgent short-term protection. Its aim is to protect the affected person until the court can consider whether to make a final order. For this reason, interim orders can be made without serving a copy of the application to the respondent and without them being present when the interim order is made ('ex parte').¹⁵
- 6.16 The court can also make an interim PSIO if the parties agree to the order.¹⁶
- 6.17 The interim PSIO stays in effect until the court makes or refuses to make the final order, or someone withdraws the application, or the interim order is revoked by the court.¹⁷
- 6.18 The court may grant a final PSIO if satisfied on the balance of probabilities that the respondent:
- has committed prohibited behaviour against the affected person and is likely to continue to do so or do so again, and that behaviour would cause a reasonable person to fear for their safety, or
 - has stalked the affected person and is likely to continue to do so or do so again, and
 - the respondent and the affected person are not family members,¹⁸ and
 - it is appropriate in all the circumstances.¹⁹
- 6.19 An interim or final PSIO can include conditions a court views as 'necessary or desirable' in the situation, for example:
- prohibiting the respondent from stalking
 - prohibiting the respondent from approaching or contacting the protected person
 - prohibiting the respondent from being within a specified distance of the protected person or a specified place
 - revoking or suspending a weapons approval held by the respondent.²⁰
- 6.20 The difference between family and non-family members can sometimes be unclear under the legislation. For example, someone's current or former intimate partner counts as a family member, but anyone associated with that person—such as their family or new partner—does not. In these situations affected non-family members can be protected by family violence intervention orders but PSIOs are also used.²¹

The need for a focused response

In reality the Personal Safety Intervention Order[s] Act appears to be a sharp, shiny sword, but when you pick the sword up to examine it, both edges are blunt and the blade is made of styrofoam.²²

14 Ibid s 35(1).

15 Ibid s 37.

16 Ibid s 35(2).

17 Ibid s 43.

18 In family violence cases, the relevant order is a Family Violence Intervention Order (FVIO) under the *Family Violence Protection Act 2008* (Vic).

19 *Personal Safety Intervention Orders Act 2010* (Vic) s 61(1).

20 Ibid s 67.

21 *DPP v Banks (a pseudonym)* [2019] VCC 1185, [22]; *Family Violence Protection Act 2008* (Vic) s 76.

22 Submission 107 (J Starr).

- 6.21 Under the previous legislative scheme, set out in the *Stalking Intervention Orders Act 2008* (Vic), the only ground for seeking an intervention order was stalking.²³ Over time, applications under that Act became concerned with other kinds of behaviours that could fit within the broad definition of stalking, including neighbourhood issues, as well as serious and harmful non-stalking behaviour.
- 6.22 When it was recognised that the stalking intervention order system was being stretched beyond its original, narrow purpose, the *Personal Safety Intervention Orders Act 2010* (Vic) was brought in.²⁴
- 6.23 Under the new Act, the grounds for an order were expanded to 'explicitly recognise some of the other forms of behaviour that had come to be covered by stalking intervention orders—such as harassment and property damage or interference'.²⁵
- 6.24 The PSIO Act was also intended to promote mediation for the less serious matters, while reserving court intervention for stalking cases and serious matters such as assault and sexual assault.²⁶
- 6.25 These reforms were clear, well-intentioned and justified. However, the understanding of stalking behaviours has continued to evolve, and it is clear that there needs to be a further focus on the high harm and risk behaviours that may feature in stalking.
- 6.26 We were told that PSIOs are used too often as a response to matters that may not require their use. For example, Jim Shaw, from the Criminal Bar Association, told us:
- Magistrates tend to err on the side of caution and it is not difficult to get an intervention order.²⁷
- 6.27 Similarly, we heard from the Law Institute of Victoria:
- A risk averse approach is being taken and there is a reluctance to refuse to make an order. No one wants to risk that they said no to an order, and something happens later.²⁸
- 6.28 While the system allows for mediation to free up court hearings, in practice mediation is rarely used (see below).
- 6.29 The volume of PSIOs leads to problems. Derryn Hinch's Justice Party told us that it becomes difficult to '[separate] the serious from the trivial'.²⁹ Jason Gullaci, from the Criminal Bar Association, explained that using intervention orders 'for collateral purposes in other ways' makes it difficult to know which cases 'will become serious stalking matters'.³⁰ The Law Institute of Victoria stated that the number of PSIOs makes them harder to police, and victim survivors of stalking may not get the support they need.³¹ We were also told that it is important to identify and intervene early in the cases that need to be escalated among the 'large volume of personal safety matters'.³²
- 6.30 Other problems include:
- court backlogs and delays³³
 - wasting police and court resources³⁴
 - not charging stalking as a criminal offence where it should be (see Chapter 7).

23 *Stalking Intervention Orders Act 2008* (Vic) ss 1, 7, as repealed by: *Personal Safety Intervention Orders Act 2010* (Vic) s 186.

24 Victoria, *Parliamentary Debates*, Legislative Assembly, 9 June 2010, 2226 (Rob Hulls, Attorney-General).

25 *Ibid* 2227.

26 *Ibid* 2226–7.

27 Consultation 24 (Criminal Bar Association).

28 Consultation 20 (Law Institute of Victoria).

29 Submission 56 (Derryn Hinch's Justice Party).

30 Consultation 24 (Criminal Bar Association).

31 Consultation 20 (Law Institute of Victoria).

32 Consultation 34 (Magistrates' Court of Victoria (No 2)).

33 Consultation 10 (Victorian Aboriginal Legal Service). The Victorian Aboriginal Legal Service told us that the 'significant detrimental impact on the health and wellbeing of the respondent' can be compounded by court delays.

34 Consultation 20 (Law Institute of Victoria).

- 6.31 There is also the question of whether PSIOs 'run a risk of smashing a walnut with a sledgehammer'.³⁵ In some cases, a PSIO may be a 'disproportionate'³⁶ and ineffective way of stopping the stalking.³⁷ It risks criminalising people from groups who are overrepresented in the justice system, when there might be another way of managing the behaviour (see Chapter 8).
- 6.32 The civil response to managing stalking should be more focused. This would achieve two things:
- make the process less traumatic for victim survivors
 - provide more attention to the cases that really need it.³⁸

The need for a specialised response

- 6.33 Stalking is complex. It is a crime made up of repeated incidents.³⁹ It is hard for people working in the justice system to identify it and know how best to manage it (see Chapter 4). Victim survivors may have experienced serious trauma and may require intensive support from the people responding to the stalking behaviour (see Chapter 5).
- 6.34 It is becoming common to encourage a specialist response in complex areas of law or crime such as sexual offences, family violence and drugs.⁴⁰ In family violence and sexual violence, this approach has resulted in a more tailored and supportive response.
- 6.35 We see value in taking a specialised approach to non-family violence stalking in the courts. If people who worked on the response to stalking understood it better, they would be able to manage it more effectively. Specialist court infrastructure and victim-centred design (discussed below) could help victim survivors to feel safe and prevent contact between the parties continuing through the justice system.
- 6.36 The general benefits of specialisation also include:
- efficiency—specialists tend to work faster than generalists because they are more familiar with the tasks⁴¹
 - improved decision making—specialists are more likely to make knowledge-informed decisions than generalists⁴²
 - improved case management—cases can be managed more effectively (because specialisation can improve rates of resolution)⁴³ and processes are sensitive to the needs of court users.
- 6.37 In terms of improved case management, it would be easier to:
- more quickly and accurately identify the stalking cases among the other PSIO matters
 - make sure enough time and attention is given to more complex or serious cases and make safety issues more visible
 - develop expertise amongst magistrates and court staff in stalking, for example, in crafting effective conditions in PSIOs
 - provide physical facilities (for example, separate waiting rooms) and technology (such as remote witness facilities) to make sure victim survivors feel safe at court
 - identify barriers to participation some people might face, and address them (such as a need for an interpreter)

35 Consultation 1 (Centre for Forensic Behavioural Science).

36 Consultation 10 (Victorian Aboriginal Legal Service).

37 Consultation 1 (Centre for Forensic Behavioural Science).

38 Submission 56 (Derryn Hinch's Justice Party).

39 Marilyn McMahon, Paul McGorery and Kelley Burton, 'Prosecuting Non-Physical Abuse between Current Intimate Partners: Are Stalking Laws an Under-Utilised Resource?' (2019) 42(2) *Melbourne University Law Review* 551, 575.

40 Patrick Parkinson, *Specialist Prosecution Units and Courts: A Review of the Literature* (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, March 2016) 6–7.

41 *Ibid* 11.

42 *Ibid* 12.

43 *Ibid* 13.

- link services into the court process and enable victim survivors to access them
- facilitate information exchange between agencies.

6.38 The reforms proposed in this chapter aim to build a more focused and specialised system.

Identifying stalking among PSIO cases

6.39 The PSIO system needs to become more focused⁴⁴ to be able to distinguish ‘the relative importance of cases.’⁴⁵ It is essential to identify stalking cases in the court system so that they can receive a specialised and tailored response.

6.40 Several organisations and experts proposed that a risk assessment framework,⁴⁶ or screening or ‘triage’ system,⁴⁷ should be developed. We heard this would:

- help identify stalking and how to manage it⁴⁸
- help identify which disputes are suitable for mediation (discussed next)⁴⁹
- ensure that the PSIO system deals with cases where personal safety is at risk.⁵⁰

6.41 A number of organisations saw value in developing a framework similar to the Family Violence Multi-Agency Risk Assessment and Management (MARAM) framework for stalking.⁵¹ The MARAM is designed to support services and practitioners to identify, assess and manage family violence risk to the victim survivor.⁵²

6.42 The Magistrates’ Court strongly supported a framework that could enable all parts of the system—including the court—to identify high risk stalking and provide a more resource-intensive, specialist response for these matters. It said:

We need a way to identify flags indicating risk that might come up in a particular case. When [Magistrates’ Court] staff see these flags, they have a sense of the risk. But we need greater rigour around that.⁵³

6.43 Forensicare and the Centre for Forensic Behavioural Science suggested that a multi-agency panel could ‘provide assessment and management guidance’ for cases that are highly complex or concerning.⁵⁴

Guidance for courts should be developed

6.44 In our interim report we recommended guidance should be developed for Victoria Police to identify stalking behaviour. This guidance should contain key components for identifying stalking (such as repetition and the unwanted nature of contact).⁵⁵

6.45 In line with our interim report, we recommend that guidance be developed to help courts to identify stalking behaviour. This guidance would serve an administrative function and assist the court and registry staff to ensure these cases are dealt with appropriately.

44 Submission 98 (Law Institute of Victoria); Consultation 15 (Forensicare (No 1)).

45 Submission 56 (Derryn Hinch’s Justice Party).

46 Submissions 76 (Australian Association of Social Workers), 97 (Federation of Community Legal Centres), 98 (Law Institute of Victoria); Consultation 7 (Risk roundtable).

47 Consultations 13 (Victoria Legal Aid), 18 (County Court of Victoria), 34 (Magistrates’ Court of Victoria (No 2)).

48 Submissions 97 (Federation of Community Legal Centres), 98 (Law Institute of Victoria).

49 Submission 98 (Law Institute of Victoria); Consultation 18 (County Court of Victoria).

50 Consultation 18 (County Court of Victoria).

51 Submission 76 (Australian Association of Social Workers); Consultation 34 (Magistrates’ Court of Victoria (No 2)).

52 The Family Violence Multi-Agency Risk Assessment and Management (MARAM) is established under *Family Violence Protection Act 2008* (Vic) pt 11.

53 Consultation 34 (Magistrates’ Court of Victoria (No 2)).

54 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare); Consultation 1 (Centre for Forensic Behavioural Science).

55 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [3.8]–[3.11] Recommendation 3.

- 6.46 However, we do not endorse a particular risk assessment or screening tool or framework. As we noted in the interim report, more research is needed about the nature, dynamics and risk factors of stalking before these are used.⁵⁶ Again, we note concerns about risk assessment tools, including ethical concerns.⁵⁷ We also note their limits. For example, risk screening tools:
- may leave little room for decision makers to apply their own professional judgment
 - are not statistically reliable
 - tend to disproportionately capture people from marginalised backgrounds.⁵⁸
- 6.47 As was our approach with police, the purpose of the guidance is to provide a clear, logical framework for magistrates, judicial registrars and court staff. It should enable the court to identify stalking, the potential for serious harm or outcomes to the community and the need for services.⁵⁹
- 6.48 In designing the guidance, we consider the following features to be important:
- Identification of stalking should be informed by evidence-based criteria for defining stalking.⁶⁰
 - It should not require magistrates or court staff to perform a task that should be done by trained clinicians.⁶¹ However, magistrates and court staff should be clear on when they need to ask for an assessment or which services people should be referred to (see Chapter 4).⁶²
 - The criteria should inform eligibility for a specialised or tailored response—this might include safety plans for court appearances and alternative arrangements.⁶³
 - Magistrates, judicial registrars and court staff, especially registrars who play an important role in triaging the court list, should have training and support to apply the guidance (see Chapter 4).⁶⁴ Guidance could also be included in the PSIO Bench Book.⁶⁵
 - The criteria should ensure that the process appropriately funnels matters to mediation (discussed next).⁶⁶
 - However, the violence protection focus of the PSIO system should be maintained, given there is serious non-stalking behaviour that the civil response also needs to address.⁶⁷
- 6.49 Some criteria exist under the Dispute Settlement Centre of Victoria (DSCV) guidelines to identify matters that are unsuitable for mediation (for example, the existence of 'pursuit-type stalking' and factors such as 'fear or concern expressed by either party').⁶⁸
- 6.50 We note that recommendations made in the interim report will likely also help flag stalking cases to the court,⁶⁹ especially if police apply for PSIOs more often and record them systematically.
- 6.51 In the interim report we discussed the Screening Assessment for Stalking and Harassment (SASH) tool used by the Netherlands Police.⁷⁰ It identifies and prioritises

56 Ibid [4.100].

57 Ibid [4.461]–[4.72].

58 Ibid [4.88]–[4.94].

59 Ibid [4.102].

60 Submission 100 (Forensicare).

61 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [4.101].

62 Consultation 36 (Forensicare (No 2)).

63 Submission 100 (Forensicare).

64 Submission 97 (Federation of Community Legal Centres); Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

65 Consultation 36 (Forensicare (No 2)).

66 Submission 98 (Law Institute of Victoria).

67 Consultation 34 (Magistrates' Court of Victoria (No 2)).

68 Dispute Settlement Centre of Victoria, *DSCV Assessing Suitability Criteria* (Guideline, undated). These guidelines for assessing suitability for mediation of matters referred to DSCV by the court are issued under *Personal Safety Intervention Orders Act 2010* (Vic) s 34.

69 Forensicare considered that it was important for police to put a 'flag' on stalking cases and for this to carry through to the court system: Consultation 15 (Forensicare (No 1)). In our interim report we make a recommendation to improve the recording of stalking matters by police: Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) Recommendation 4.

70 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [4.34].

cases, and guides management of situations where there is a high level of concern.⁷¹

6.52 We note that Victoria Police is now piloting the SASH screening tool in two stations.⁷²

6.53 Victoria Police cautioned against using tools intended for use by police in other parts of the justice system, because police and courts require information for different purposes and may consider the case at different times.⁷³ Forensicare also noted that the SASH tool might not be appropriate for magistrates.⁷⁴

Recommendation

10. The Victorian Government should provide all necessary assistance to the Magistrates' Court of Victoria to enable the Court to develop evidence-informed guidance for identifying and prioritising non-family violence stalking in personal safety intervention order matters.

A specialised approach should be adopted

6.54 The guidance that is put in place should inform the way that magistrates, registrars and court staff respond to PSIO matters. The question is then: What should be the features of this response?

6.55 We agree with the Magistrates' Court that the 'infrastructure, systems, people, processes and programs' that exist to respond to family violence are a useful model for non-family violence stalking.⁷⁵ At their core both family violence and stalking can involve the exercise of power by one person over another.⁷⁶ Many of the impacts are the same, including isolation from others and fear.⁷⁷ Victim survivors of both have many of the same support needs.

6.56 We consider that the approach to non-family violence stalking should draw on the features of the family violence approach. This includes a specialist team (specially trained magistrates, court registrars and practitioners), environments that maximise safety and choice, and connections with services. See Table 11 for some features of family violence courts that we think could also apply in a stalking context.

Table 11: Features of family violence courts

Feature	Description
Pre-court engagement	A pilot program service engages early with court users to facilitate referrals to appropriate legal and support services and to prepare them for intervention order matters.
Applicant practitioners	They provide non-legal information, support and referrals for people applying for an intervention order or who are affected by one. They develop safety plans and make referrals to appropriate agencies for support, counselling and longer-term safety planning.

71 Ibid [4.78]–[4.79].

72 Victoria Police, *Stalking* (Web Page, 4 April 2022) <<https://www.police.vic.gov.au/stalking>>.

73 Submission 115 (Victoria Police).

74 Consultation 36 (Forensicare (No 2)).

75 Consultation 34 (Magistrates' Court of Victoria (No 2)).

76 Bonnie Brandl, Candace J Heisler and Lori A Stiegel, 'The Parallels between Undue Influence, Domestic Violence, Stalking, and Sexual Assault' (2005) 17(3) *Journal of Elder Abuse and Neglect* 37, 44; *Royal Commission into Family Violence: Summary and Recommendations* (Report, March 2016) 17. See also *Family Violence Protection Act 2008* (Vic) s 5.

77 Bonnie Brandl, Candace J Heisler and Lori A Stiegel, 'The Parallels between Undue Influence, Domestic Violence, Stalking, and Sexual Assault' (2005) 17(3) *Journal of Elder Abuse and Neglect* 37, 47–8.

Feature	Description
Respondent practitioners	They provide non-legal information, support and referrals for respondents to an intervention order application. They may conduct assessments, make referrals for support, case management and programs to help address risk of further family violence (such as behaviour change programs).
Accessibility	For example, a culturally-safe program offers support, information and referrals to Aboriginal and Torres Strait Islander families. LGBTIQ+ family violence practitioners receive specific training on the needs of LGBTIQ+ court users.
Supportive infrastructure	For example, screens and safe waiting areas in court and remote witness facilities.
Multi-agency cooperation	Regular coordination happens between different agencies including a daily coordination meeting where issues of risk and needs are discussed if appropriate. ⁷⁸

6.57 It is important to keep in mind, however, that there are fewer PSIO matters compared to family violence intervention order matters (see Chapter 2). It may be more sensible to use existing court structures and resources to implement a specialised approach instead of building new structures from the ground up.

6.58 There are also risks to implementing a specialised approach, which would need to be managed.⁷⁹ In our report *Improving the Justice System Response to Sexual Offences* (2021), we noted the risks of strengthening specialisation through a specialist court, including the risk of 'burn out' and vicarious trauma.⁸⁰

6.59 To implement these features, we considered two options:

- making use of the specialist family violence courts' facilities and approach, and
- a court list for stalking matters (noting that these are not mutually exclusive).

6.60 We think that both these options should be considered if our recommendation is adopted.

Learning from the specialist family violence courts

6.61 The specialist family violence courts have particular features, infrastructure and regional reach. We considered whether to bring into these courts the (probably small) number of non-family violence stalking cases that require a specialised response.

6.62 We were told many of the features of the family violence courts would work well for stalking matters—for example, dedicated magistrates and case management,⁸¹ and connections with services.⁸² The family violence courts were viewed as well suited to deal with the issues that commonly arise in stalking matters.⁸³

6.63 The Magistrates' Court told us about aspects of the specialist family violence approach that might be replicated and useful in the management of stalking cases:

78 Consultation 34 (Magistrates' Court of Victoria (No 2)). The Magistrates' Court also emphasised as a key feature the integration of the MARAM framework.

79 The obligation of employers to take precautions to manage risks to the health and safety of employees, including those arising from the nature of the work was considered in *Kozarov v Victoria* [2022] HCA 12, (2022) 399 ALR 573. That case concerned a negligence claim by a former solicitor of the Victorian Office of Public Prosecutions who had worked in its Specialist Sexual Offences Unit.

80 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) [18.29].

81 Consultation 7 (Risk roundtable).

82 Consultation 13 (Victoria Legal Aid).

83 Submission 98 (Law Institute of Victoria).

- pre-court engagement
 - applicant and respondent practitioners
 - supportive infrastructure, such as safe waiting areas
 - access to legal advice and representation.⁸⁴
- 6.64 The Court emphasised that more resources would be needed if the scope of the relevant referrals and supports was extended to stalking matters.⁸⁵
- 6.65 The Victims of Crime Commissioner was clear that court infrastructure should accommodate the needs of all victims, regardless of crime type.⁸⁶
- 6.66 Victoria Police noted that while there might be benefit in a specialist court, 'a number of opportunities already exist to extract similar benefits in mainstream courts', for example through training or court design.⁸⁷
- 6.67 However, while Forensicare agreed that victim survivors of stalking need special protections and arrangements, their view was that the 'family violence courts are not the right place for non-family violence stalking'.⁸⁸
- 6.68 It expressed concerns about the volume of cases already in the family violence courts, and noted that stalking cases needed a level of attention that would be impossible to achieve in the family violence courts. They also said that it would be inappropriate to put non-family violence stalking cases in an environment with a strong family violence 'culture'.⁸⁹
- 6.69 Forensicare preferred a stalking list outside family violence courts (discussed next).

A specialist stalking PSIO list

- 6.70 Regardless of whether the family violence courts are used to manage non-family violence stalking matters, there may be value in creating a clear administrative grouping around non-family violence stalking cases.
- 6.71 The Victims of Crime Commissioner suggested that consideration should be given to whether a specialist stalking list (or division) should be established in the Magistrates' Court. This would enable high-risk cases to be centralised and dealt with by specialist magistrates.⁹⁰ We agree that centralisation would be helpful for several reasons:
- Cases that need active case management may be more easily identified than is currently the case.
 - Victim and respondent services could attend court on list days, improving referrals to services.
 - It may be less traumatic for victim survivors if they are in the presence of other victims of stalking (if they were to go to court) instead of in the mix of other matters.
- 6.72 As one victim survivor told us:

There were heaps of IVO disputes at the time between friends/neighbours/colleagues but an IVO for stalking is more serious (victims have died) and should be treated as such.⁹¹

84 Consultation 34 (Magistrates' Court of Victoria (No 2)).

85 Ibid.

86 Submission 49 (Victims of Crime Commissioner).

87 Submission 115 (Victoria Police).

88 Consultation 36 (Forensicare (No 2)).

89 Ibid.

90 Submission 49 (Victims of Crime Commissioner).

91 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

- 6.73 It could assist with the smooth running of matters, again making the process less traumatic for people who experience stalking.

The amount of times I took the day off work, to show up to court and find it had been changed was infuriating.⁹²

- 6.74 If PSIO stalking matters are dealt with using specialist family violence court infrastructure, they should be clearly differentiated from family violence matters. Using the 'family' or partner label could be very uncomfortable for affected persons who do not wish to be associated with the person stalking them in this way, especially if the person stalking them is trying to perpetuate that association.
- 6.75 Importantly, the Magistrates' Court did not support the creation of a specialist stalking list. They told us that a 'risk framework' to identify cases that need to be escalated for a specialist approach would be preferable.⁹³
- 6.76 The Court was also concerned that the small numbers of non-family violence stalking matters that occur all over Victoria could not justify a list at any one court venue.⁹⁴ We note that when courts and police get better at identifying stalking matters amongst PSIOs, these numbers may increase.
- 6.77 We think there are ways of addressing these concerns while still achieving the benefits of a specialist list, especially given the shifts in court practice during the pandemic. For example, the Court could centralise matters in some court locations and hear them remotely.
- 6.78 In this instance, the Court is best placed to determine how a specialist approach to these matters might be most effectively implemented.

Recommendations

11. The Magistrates' Court of Victoria should apply the guidance developed in Recommendation 10 to identify non-family violence stalking personal safety intervention order matters that require a specialised approach. The Magistrates' Court of Victoria should implement a specialised approach to these matters.
12. The Magistrates' Court of Victoria should consider the extent to which the specialist family violence courts should be used for non-family violence stalking personal safety intervention order matters, and how the non-family nature of those cases should be differentiated within the current system.
13. The Victorian Government should resource the Magistrates' Court of Victoria to implement Recommendation 11.

⁹² Ibid.
⁹³ Consultation 34 (Magistrates' Court of Victoria (No 2)).
⁹⁴ Ibid.

Mediation of non-stalking matters

- 6.79 The current PSIO system was designed to direct less serious cases to mediation through the free, government-run Dispute Settlement Centre of Victoria (DSCV).⁹⁵ It does not provide for stalking matters to be mediated.
- 6.80 As the then Attorney-General noted:
- Mediation is no longer an adjunct to the justice system ... [it] is a core part of court business ... where safety is not at risk. It is time to stop seeing mediation as an 'alternative' form of dispute resolution -- it is now an integral part of the justice system and an 'appropriate' form of dispute resolution.⁹⁶
- 6.81 We do not suggest that stalking matters should be dealt with by mediation. That is not appropriate, given everything we know about stalking. As the Centre for Forensic Behavioural Science explained:
- Mediation is not a suitable solution in stalking cases and may in fact enable the stalker to continue stalking their victim through the mediation process.⁹⁷
- 6.82 The nuanced criteria applied by DSCV to identify which matters are appropriate for mediation expressly exclude stalking.⁹⁸ However, using mediation for more non-stalking PSIO matters could have an indirect benefit for the management of stalking cases by freeing up court time and resources.
- 6.83 The PSIO Act gives magistrates the power to direct parties to attempt mediation.⁹⁹ The outcomes of the mediation process, and whether or not the parties attend mediation, can be taken into account by the magistrate when deciding whether to make a final order.¹⁰⁰
- 6.84 To smooth the process, DSCV set up referral protocols with the Magistrates' Court. For example, registrars have mediation referral forms they can fill in which will result in DSCV making contact with the parties to talk about the issues they need to resolve, instead of a process that leads to a PSIO being made.¹⁰¹
- 6.85 Early in the development of the DSCV PSIO program, they established a police referral pilot. This involved DSCV staff training police and providing a clear pathway for police members to directly refer people in dispute to DSCV for mediation. This program ended in 2019 due to limited funding, but DSCV told us that it would be valuable to re-instate it, given the frequent police involvement in lower-level PSIO disputes and their potential suitability for mediation.¹⁰²
- 6.86 Ideally, there are also DSCV Dispute Assessment Officers (DAOs) physically present at courts to receive referrals from registrars or magistrates. The DAO can complete an assessment of the matter's suitability with the parties on the spot, and can sometimes conduct the mediation on the same day. Although the numbers of DAOs have been greatly reduced due to the coronavirus (COVID-19) pandemic, DSCV told us they were aiming to re-instate this workforce.¹⁰³

95 Victoria, *Parliamentary Debates*, Legislative Assembly, 9 June 2010, 2226-7 (Rob Hulls, Attorney-General).

96 *Ibid* 2226.

97 Submission 32 (Centre for Forensic Behavioural Science).

98 Dispute Settlement Centre of Victoria, *DSCV Assessing Suitability Criteria* (Guideline, undated).

99 *Personal Safety Intervention Orders Act 2010* (Vic) s 26.

100 *Ibid* s 33.

101 Consultation 32 (Dispute Settlement Centre of Victoria).

102 *Ibid*.

103 *Ibid*.

6.87 While there was much energy behind the mediation pathway when the reforms first came in, the use of mediation seems to be on the decline, especially since the pandemic started. DSCV shared data with us indicating this trend (see Figure 2).¹⁰⁴

Figure 2: Referrals from courts to DSCV over time



6.88 We heard some support for promoting mediation as an option in non-stalking matters.¹⁰⁵ The Magistrates' Court told us that more could be done to encourage mediation in cases where it was safe.¹⁰⁶

6.89 Strengthening pathways to mediation for non-stalking PSIO matters could relieve pressure on the PSIO system. It would give the system a stronger focus on stalking and more serious matters.

6.90 Data from the DSCV confirms that referring disputes to the DSCV saves court days and reduces delays for other matters.¹⁰⁷ The DSCV told us that it has capacity to take on more mediations.

6.91 Rather than 'downgrading' or giving these disputes a lesser form of justice (than the courts), mediation may in fact lead to better outcomes. An example of this is where there is an existing relationship to be preserved, such as in neighbour dispute matters.

6.92 Pathways to mediation can be strengthened using existing law and structures to ensure that as many matters as possible and appropriate have access to DSCV's bespoke mediation service. We recommend:

- making guidelines on mediation more widely available including to police, magistrates, judicial registrars and court staff—for example, its use, benefit and limits could be included in the PSIO bench book or on the Magistrates' Court website on PSIOs
- re-establishing referral pathways where they have ended—for example, the previously-funded direct police referral program¹⁰⁸
- education for police, magistrates, judicial registrars and court staff on the benefits of mediation and when it should be used (see Chapter 4)¹⁰⁹

104 Information provided by Dispute Settlement Centre of Victoria to Victorian Law Reform Commission, 16 March 2022. Data unavailable for 2016/17.

105 Submission 98 (Law Institute of Victoria); Consultation 10 (Victorian Aboriginal Legal Service).

106 Consultation 34 (Magistrates' Court of Victoria (No 2)).

107 While we do not have current data on this, to illustrate, in 2015/16 it is estimated that 367 court days were saved: Information provided by Dispute Settlement Centre of Victoria to Victorian Law Reform Commission, 16 March 2022.

108 Consultation 32 (Dispute Settlement Centre of Victoria).

109 Ibid.

- staffing more courts with DAOs—in the past higher numbers of referrals were received where a DAO was present on the day PSIO matters were listed.¹¹⁰ There should be a focus on rural and regional Victoria, given the higher rates of PSIO applications there.¹¹¹

Recommendations

14. The Victorian Government should strengthen pathways from the personal safety intervention order system to mediation, in non-stalking matters only, by:
 - a. making the Dispute Settlement Centre of Victoria (DSCV) mediation guidelines more available to police, magistrates, judicial registrars and court staff
 - b. funding the DSCV police referral program to re-establish referrals directly from police
 - c. funding DSCV to increase Dispute Assessment Officer attendance, and ensuring that as many matters as possible and appropriate have access to the personal safety intervention order mediation program, with a focus on enhancing resources for matters in rural and regional Victoria.
15. In implementing Recommendations 1 and 3 of the interim report, Victoria Police should ensure that appropriate referrals to mediation are made for people who are not victim survivors of stalking.

There are future options for specialisation

- 6.93 We received other suggestions for reform. Derryn Hinch's Justice Party suggested introducing specialist orders based on the civil Stalking Protection Orders in the United Kingdom to help separate stalking matters out from other matters requiring some form of protection.¹¹² At this stage we do not recommend stalking protection orders, however the recommendations we do propose would achieve the aim of separating stalking matters out.
- 6.94 In the consultation paper we asked about the need for the equivalent of a family violence safety notice (FVSN), which is issued by police who attend family violence incidents. FVSNs provide urgent and temporary protection until the court can make an interim or final order.¹¹³ The PSIO Act does not have an equivalent police-issued notice.
- 6.95 Under the PSIO Act, police have the power to apply to the court for a warrant to arrest the respondent if the court believes on reasonable grounds it is necessary to:
- keep the victim survivor safe
 - preserve their property, or
 - ensure that the respondent attends court.¹¹⁴

110 Ibid. DSCV told us that while they used to have 10–12 DAOs they only have one now, as many of their DAOs have been moved to the residential tenancy space because of COVID-19.

111 'Rural and regional Victoria made up a disproportionately large share of PSIO applications in Victoria: while 24% of Victorians live in rural and regional areas, these areas accounted for 42% of applications (41% in the Magistrates' Court and 53% in the Children's Court). This overrepresentation carried through to interim and final orders made and sentenced PSIO breaches, with 42% of cases in the Magistrates' Court and 65% in the Children's Court being sentenced in rural and regional locations. While regional Victoria is often overrepresented in a number of measures relating to criminal justice, the extent of the disparity in this instance is particularly apparent, especially in Gippsland and Loddon Mallee.' Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [10.3]–[10.4].

112 Submission 56 (Derryn Hinch's Justice Party); *Stalking Protection Act 2019* (UK) s 1.

113 Police may issue family violence safety notices (without application to the court) if they believe on reasonable grounds that the notice is necessary to ensure the safety, or preserve the property, of the affected family member, or to protect a child who has been subjected to family violence. A family violence safety notice is taken to be an application for a family violence intervention order: *Family Violence Protection Act 2008* (Vic) ss 24, 26, 31.

114 *Personal Safety Intervention Orders Act 2010* (Vic) s 21.

- 6.96 If the court grants the application, police can then arrest the respondent and bail them with conditions that protect the victim survivor until the matter can be brought before a magistrate.
- 6.97 There was some support for having a police-issued notice in the PSIO system, especially in rural and regional Victoria,¹¹⁵ because such a notice could be issued speedily.¹¹⁶ However, others saw no need for it. Reasons included:
- the context of serious violent acts, where there was not enough time for an intervention order to be put in place, was less relevant in PSIO matters than in the family violence system¹¹⁷
 - potential unintended consequences depending on the situation¹¹⁸
 - interim orders can be obtained quickly enough already.¹¹⁹
- 6.98 There are concerns about the implementation of FVSNs, including well-documented and increasingly common issues where police misidentify the primary aggressor.¹²⁰ It may be difficult for police at the scene of a matter to avoid issuing notices if under pressure from parties to do so, for example, at a heated dispute between neighbours. If police had similar powers in the PSIO system, the same problems might arise.
- 6.99 Further, if (as with FVSNs) a police-issued notice is treated as an application for an intervention order, this would lead to even more PSIO applications. This would make it difficult to identify serious stalking matters.¹²¹
- 6.100 If clear guidance is developed to identify stalking cases, it may become possible to target police-issued notices sufficiently to avoid those risks. However at this stage we do not make a recommendation to introduce a police-issued notice in the PSIO system.

System improvements should be based on family violence legislation

- 6.101 The PSIO process can be long, frustrating and traumatic for people who experience stalking. This could be a barrier to reporting the stalking behaviour.
- 6.102 It may also mean that victim survivors are not equipped to present their best evidence. It can be frightening for victim survivors to be part of a process when the person who stalks them is also part of it.
- 6.103 The PSIO process can even make matters worse, enabling people who stalk to do more of it through the justice system.
- 6.104 There is a public interest in making sure that victim survivors are treated fairly, supported and not subjected to unnecessary distress through the court process.
- 6.105 The PSIO Act, like the *Family Violence Protection Act 2008* (Vic) (FVPA), provides for 'alternative arrangements' to be made in PSIO proceedings. The court has a broad power to order changes that can include:
- allowing parts of the proceeding to happen remotely, like a witness giving evidence by CCTV
 - using screens to block the respondent from a party or witness's sight
 - allowing a support person to sit beside a witness while they give evidence

115 Submissions 56 (Derryn Hinch's Justice Party), 97 (Federation of Community Legal Centres), 98 (Law Institute of Victoria). The Federation of Community Legal Centres stated that the benefits of police-issued notices need to be balanced against risks such as the potential for these notices to be issued in matters where mediation would have been more appropriate and increasing the number of PSIO matters in court: Submission 97 (Federation of Community Legal Centres). The Law Institute of Victoria noted that it would not support these notices being made against children: Submission 98 (Law Institute of Victoria).

116 Submission 98 (Law Institute of Victoria).

117 Consultations 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria), 13 (Victoria Legal Aid).

118 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

119 Consultations 6 (Magistrates' Court of Victoria (No 1)), 13 (Victoria Legal Aid).

120 Submission 97 (Federation of Community Legal Centres); Consultations 10 (Victorian Aboriginal Legal Service), 13 (Victoria Legal Aid). For example, Victoria Police and Women's Legal Service provide that misidentification rates are around 12 percent and 10 percent respectively: Office of the Family Violence Reform Implementation Monitor, *Monitoring Victoria's Family Violence Reforms: Accurate Identification of the Predominant Aggressor* (Report, December 2021) 11 <www.fvrim.vic.gov.au>.

121 Submission 97 (Federation of Community Legal Centres); Consultation 6 (Magistrates' Court of Victoria (No 1)).

- requiring lawyers to stay seated, rather than standing to speak
 - any other arrangements the court considers appropriate.¹²²
- 6.106 In making these orders, the court must consider the witnesses' wishes, their age and maturity, the facilities available to the court, and anything else it considers relevant.¹²³
- 6.107 We heard that there are other aspects of the Family Violence Intervention Order (FVIO) system that would improve the PSIO system response to stalking. The FVIO system has specific protections for victim survivors of family violence, and supports them to give their best evidence. People who have experienced non-family violence stalking have less protection and support.¹²⁴
- 6.108 We propose that maximum advantage should be taken of those aspects of the FVIO system, so that victim survivors of stalking also benefit from the huge progress that has been made in Victoria. As the County Court told us:
- Both personal safety and family violence intervention orders involve the question of an individual's safety, so for this reason there should be a consistent approach to the protections on offer. If there was to be a difference it would be by way of assessment of the degree of risk, but there is no reason that a complainant under either of these systems should be any less advantaged than the other.¹²⁵
- 6.109 However, the Magistrates' Court emphasised that impact on demand and resourcing should be carefully considered before implementing any new measures. It cautioned against applying them too broadly across the entire range of PSIOs.¹²⁶

Restrictions on publication should cover adults

My biggest concern was my privacy and not wanting my story to get out in court by reporters. I kept it to myself for a long time because I didn't want my husband knowing about my stalker or getting involved at court by his lawyer.¹²⁷

- 6.110 One of the hallmarks of stalking is an invasion of privacy. Participating in public court processes can raise privacy concerns. The PSIO Act makes it an offence to publish reports of proceedings or details of orders that may lead to the identification of parties, but only in matters where a party or witness is a child.¹²⁸ The equivalent limitations in the FVPA apply to parties more generally, not just children.¹²⁹
- 6.111 There are broad restrictions, under both the FVPA and the PSIO Acts, on the types of information that can be published about what happens in court. Children cannot be identified and their pictures cannot be used.¹³⁰ This goes further than simply restricting the use of the parties' names and details. It extends to other kinds of 'identifying particulars' (for example, about their education, employment, physical appearance, recreational interests and beliefs).¹³¹

¹²² *Personal Safety Intervention Orders Act 2010* (Vic) s 52; *Family Violence Protection Act 2008* (Vic) s 69.

¹²³ *Personal Safety Intervention Orders Act 2010* (Vic) s 52(3). See also *Family Violence Protection Act 2008* (Vic) ss 1A–3 which sets out similar considerations for family violence orders proceedings.

¹²⁴ *Family Violence Protection Act 2008* (Vic) s 69. This imbalance is starting to change: see, eg, Kieran Rooney, 'New Changes Introduced to Provide Protection to Victims of Stalking and Threats to Kill', *Herald Sun* (online, 9 March 2022) <<https://www.heraldsun.com.au/news/victoria/new-changes-introduced-to-provide-protection-to-victims-of-stalking-and-threats-to-kill/news-story/cd9d2339eb8b2c5d3d74ebc62ec9a8bc>>; Victims of Crime (Financial Assistance Scheme) Bill 2022 (Vic).

¹²⁵ Consultation 18 (County Court of Victoria).

¹²⁶ Consultation 6 (Magistrates' Court of Victoria (No 1)).

¹²⁷ Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

¹²⁸ *Personal Safety Intervention Orders Act 2010* (Vic) s 123(2).

¹²⁹ *Family Violence Protection Act 2008* (Vic) s 166(2).

¹³⁰ *Personal Safety Intervention Orders Act 2010* (Vic) s 123(2); *Family Violence Protection Act 2008* (Vic) s 166(2).

¹³¹ *Personal Safety Intervention Orders Act 2010* (Vic) s 125; *Family Violence Protection Act 2008* (Vic) s 169.

- 6.112 We heard support for increased protections of adults' privacy in the PSIO Act. A person who experienced stalking told us they supported publication bans in relation to adults, especially those who were 'vulnerable'.¹³² Djirra supported expanding the restriction on publication in the PSIO Act to cover adults and protect the safety and privacy of Aboriginal and Torres Strait Islander people who have experienced stalking.¹³³
- 6.113 Benefits to victim survivors could include:
- preventing further trauma
 - protecting their own and others' privacy
 - addressing a potential barrier to victim survivors applying for a PSIO.
- 6.114 Victoria Police told us that publication of information about PSIO matters could also provide people who stalk with 'perverse affirmation' of their offending, and even a sense of additional power over their victim.¹³⁴
- 6.115 As with all restrictions on publication of court matters, this must be balanced against the public interest in transparency of justice. PSIOs can cover a wide range of behaviours aside from stalking, some of which may relate to public interest issues that justify publication. We consider that this issue should be managed by judicial discretion.
- 6.116 Importantly, the FVPA provides an exception to the restriction on publication when adult parties consent.¹³⁵
- 6.117 Under the FVPA, the court may allow publication of identifying particulars or a picture, if it reasonably considers that:
- it is in the public interest to allow publication
 - it is just to allow it in the circumstances.¹³⁶
- 6.118 We recommend that the restriction in the PSIO Act on publication be extended to cover adults. Judicial discretion to allow publication should be included, similar to section 169 of the FVPA, and adult victims should be permitted to consent to publication, with appropriate safeguards, along the lines of section 169B of the FVPA.
- 6.119 Under recent amendments to the *Judicial Proceedings Reports Act 1958 (Vic)*, exceptions can be made to prohibitions against publication of details about victims of sexual offending.¹³⁷ This includes where the victim is a child. A child may give (usually written) permission for publication of particulars, if permission is accompanied by a statement from a relevant person (usually a doctor or psychologist) that attests that the child understands:
- what it means to be identified as a victim of a sexual offence
 - the consequences of losing their anonymity.
- 6.120 The child may also set limits on the extent of publication that they will permit.¹³⁸
- 6.121 We recommend that, consistent with this approach, the relevant provision in the PSIO Act include a provision to allow for victims under 18 years of age to consent to publication and that adequate safeguards are included.

132 Submission 36 (Ahmad Masri).

133 Submission 41 (Djirra).

134 Submission 115 (Victoria Police).

135 *Family Violence Protection Act 2008 (Vic)* s 169B(1)(b). The Act was amended to include this exception in 2014, in order to protect victims' rights to tell their stories without having to seek court permission, to allow honest and open reporting about the extent of family violence and its impact, and to contribute to perpetrator accountability: Victoria, *Parliamentary Debates*, Legislative Council, 20 August 2014, 2622 (Edward O'Donohue, Minister for Liquor and Gaming Regulation).

136 *Family Violence Protection Act 2008 (Vic)* s 169(1).

137 *Justice Legislation Amendment (Supporting Victims and Other Matters) Act 2020 (Vic)* s 3.

138 *Ibid* s 3(1BB)(b).

Recommendations

16. The Victorian Government should amend section 123 of the *Personal Safety Intervention Orders Act 2010* (Vic) to extend the prohibition on publication to matters involving adults.
17. The Victorian Government should include a provision in the *Personal Safety Intervention Orders Act 2010* (Vic) to the effect of section 169 of the *Family Violence Protection Act 2008* (Vic) to provide for judicial discretion to make an order allowing publication when the court reasonably considers that it is:
 - a. in the public interest
 - b. just in the circumstances.
18. The Victorian Government should include a provision in the *Personal Safety Intervention Orders Act 2010* (Vic) to the effect of section 169B of the *Family Violence Protection Act 2008* (Vic) to enable victims to consent to publication, with appropriate safeguards.

Protection from cross-examination by the respondent

- 6.122 Under the PSIO Act, people who experience stalking can still be personally cross-examined by the person who has stalked them. The FVPA prohibits this based on relevant criteria. We recommend that victims of stalking should also be protected from cross-examination by the respondent in PSIO matters.
- 6.123 The FVPA lists people considered 'protected witnesses'. Under the FVPA, a protected witness must not be personally cross-examined by the respondent unless:
- they are an adult
 - they consent to being cross-examined by the respondent or, if they have a guardian, the guardian has consented
 - if they have a cognitive impairment, the court is satisfied that they understand the nature and consequences of giving consent and would be competent to give evidence, or
 - the court decides that it would not have a harmful impact on the protected witness for the protected witness to be cross-examined by the respondent.¹³⁹

- 6.124 Protected witnesses under the FVPA are:
- the affected family member or the protected person¹⁴⁰
 - a child
 - any family member of a party to the proceeding
 - any person declared by the court to be a protected witness for the proceeding because the court is satisfied of particular circumstances.¹⁴¹
- 6.125 The court's general power or obligation to prevent improper questioning of witnesses under the *Evidence Act 2008* (Vic) also applies to proceedings for an FVIO and PSIO.¹⁴²
- 6.126 There was support for introducing limits on the respondent personally cross-examining the affected person in PSIO matters that mirror the FVPA provisions.¹⁴³
- 6.127 We heard concerns that the legal process would be used to perpetuate the abuse,¹⁴⁴ and about the risk of traumatising the affected person.¹⁴⁵ As Sexual Assault Services Victoria said:
- Being able to cross-examine the victim survivor is giving the perpetrator what they are seeking in controlling or making the victim survivor fearful.¹⁴⁶
- 6.128 Victoria Police told us that one reason why people do not report stalking is the fact that they can 'expect no protection' from being cross-examined by the person stalking them.¹⁴⁷
- 6.129 While the Magistrates' Court could not recall a case of a 'high risk, high harm' respondent cross-examining a victim survivor, they said 'it could happen, and that would be undesirable'.¹⁴⁸
- 6.130 We agree with these views. Being personally cross-examined by the person who has stalked them could be distressing for the applicant, and prevent them from giving their evidence effectively, which does not make for a fair process. We agree it could present a barrier to reporting. We recommend that the PSIO Act be amended to prohibit the respondent personally cross-examining the applicant in PSIO matters.
- 6.131 In Chapter 7 we discuss a ban on personal cross-examination in criminal cases.

What should the criteria for protection be?

- 6.132 A ban on personal cross-examination would have resource implications, because there would be more need for legal aid, which could also lead to delays.¹⁴⁹ So the ban should not be total. We consider that there should be criteria to decide who is a 'protected witness', subject to judicial discretion.

140 An 'affected family member' is, broadly, the person the subject of the application for a family violence intervention order. A 'protected person' is 'a person who is protected by a family violence intervention order or a family violence safety notice or a recognised DVO': *ibid* s 4 (definition of 'affected family member' and 'protected person').

141 *Ibid* s 70(1)-(2).

142 *Evidence Act 2008* (Vic) s 41; *Personal Safety Intervention Orders Act 2010* (Vic) s 47(2); *Family Violence Protection Act 2008* (Vic) s 65(2).

143 Submissions 41 (Djirra), 65 (Code Black Threat Management), 97 (Federation of Community Legal Centres), 98 (Law Institute of Victoria); Consultations 2 (Children's Court of Victoria (No 1)), 19 (Community legal sector roundtable).

144 Submissions 97 (Federation of Community Legal Centres), 98 (Law Institute of Victoria).

145 Submissions 56 (Derryn Hinch's Justice Party), 97 (Federation of Community Legal Centres); Consultation 19 (Community legal sector roundtable).

146 Consultation 4 (Sexual Assault Services Network).

147 Submission 115 (Victoria Police). The Federation of Community Legal Centres also stated 'confrontation with the respondent in court can cause significant distress for victim survivors and can discourage people from applying for a PSIO or continuing with PSIO proceedings.': Submission 97 (Federation of Community Legal Centres).

148 Consultation 6 (Magistrates' Court of Victoria (No 1)).

149 *Ibid*: Consultations 13 (Victoria Legal Aid), 19 (Community legal sector roundtable).

- 6.133 We heard suggestions about the factors that courts should consider in deciding whether cross-examination should be banned in a particular PSIO matter. They included:
- the nature or seriousness of the alleged conduct¹⁵⁰
 - the relationship between the affected person and the respondent¹⁵¹
 - the level of fear of the affected person¹⁵²
 - whether cross-examination would perpetuate stalking behaviour¹⁵³
 - the 'vulnerabilities' of the affected person,¹⁵⁴ for example if they have a cognitive impairment.
- 6.134 We consider this set of criteria to be appropriate in deciding who is a 'protected witness' in PSIO matters.
- 6.135 It narrows down who is eligible for legal aid (discussed below), while ensuring that the people most likely to experience distress from being personally cross-examined are protected. The criteria could potentially catch witnesses in other types of serious, non-stalking PSIO matters, but they would also benefit by being protected from cross-examination.
- 6.136 We note other suggestions that the prohibition could apply to 'more serious stalking offences'¹⁵⁵ or be based on a risk assessment.¹⁵⁶ The guidance criteria in Recommendation 10 could eventually be aligned with the criteria here to more closely target stalking-type behaviours.

Legal representation for cross-examination

- 6.137 Respondents are entitled to a fair process and to test the evidence against them. Under the FVPA, if a respondent who is banned from cross-examining a protected witness does not have a lawyer, the court must order Victoria Legal Aid to provide one to cross-examine the protected witness.¹⁵⁷
- 6.138 If the FVPA provisions were mirrored in the PSIO Act, the court would have a similar power to ensure respondents could get a lawyer for the purposes of cross-examination.
- 6.139 We recommend that unrepresented applicants or protected persons should have the same protection, and be provided with a lawyer by Legal Aid if they are going to be cross-examined by a lawyer for the respondent. This protection also exists in the FVPA.¹⁵⁸
- 6.140 Victoria Legal Aid should be funded to provide this representation in PSIO matters.

150 Submission 97 (Federation of Community Legal Centres); Consultation 19 (Community legal sector roundtable).

151 Consultations 13 (Victoria Legal Aid), 19 (Community legal sector roundtable).

152 Consultation 13 (Victoria Legal Aid).

153 Ibid.

154 Submission 97 (Federation of Community Legal Centres); Consultations 13 (Victoria Legal Aid), 19 (Community legal sector roundtable).

155 Consultation 19 (Community legal sector roundtable).

156 Consultation 13 (Victoria Legal Aid).

157 *Family Violence Protection Act 2008* (Vic) s 71(1).

158 Ibid s 72.

Recommendations

19.
 - a. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to provide for a category of 'protected witnesses' as in the *Family Violence Protection Act 2008* (Vic) that bars respondents from personally cross-examining protected witnesses.
 - b. In determining whether to declare a person a 'protected witness' for the proceeding the court should consider the following circumstances:
 - the nature or seriousness of the alleged prohibited behaviour
 - relationship between the affected person and respondent
 - the level of fear of the affected person
 - whether cross-examination could perpetuate stalking
 - any specific needs of the affected person.
20. The *Personal Safety Intervention Orders Act 2010* (Vic) should include an equivalent provision as in section 71 of the *Family Violence Protection Act 2008* (Vic) for the court to order Victoria Legal Aid to represent otherwise unrepresented respondents for cross-examination of the protected witness.
21. The *Personal Safety Intervention Orders Act 2010* (Vic) should include an equivalent of section 72 of the *Family Violence Protection Act 2008* (Vic) for the court to order Victoria Legal Aid to represent otherwise unrepresented applicants or protected witnesses for cross-examination of the protected witnesses.
22. Victoria Legal Aid should be funded to provide the legal representation described in Recommendations 20 and 21.

Legal representation and support should be strengthened

Gaps exist for applicants and respondents to PSIOs

The court lawyer was fantastic and felt like the only person on our side until the magistrate approved the application without hesitation.¹⁵⁹

- 6.141 There are broader issues of access to legal information, advice and representation in court in PSIO matters. This has a significant impact on those who seek PSIOs to address stalking. For some applicants in PSIOs, not having a lawyer can be a barrier to securing an outcome in the justice system. One person who had reported her stalking experience 5–10 years ago told us:

The other person ended up hiring a top lawyer and I didn't have the money to spend on a lawyer so I ended up not getting the final intervention order as the person contested it. I was so devastated.¹⁶⁰

159 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).
160 Ibid.

- 6.142 A lack of legal representation can add to the feeling of helplessness people often feel within the justice system. One person who made a report of stalking to police 2–5 years ago told us:

I had no idea what was going to happen, there [was] no duty lawyer or community legal help for PSIO.

- 6.143 Di McDonald, a person who experienced stalking, told us:

My Aunt [and] I waited hours to speak to Legal Aid. I was concerned about being called into the [courtroom] not having any advice on what I needed to do. The [l]awyer for Legal Aid was extremely rude advising me they only help respondents, not applicants. I was so upset as no one would be helping me through this, I had never been inside a court before and had no idea what to do. ... All I had with me was the flyer that was given to me the night before.¹⁶¹

- 6.144 We heard that legal support for non-family violence stalking victim survivors tends not to be ongoing¹⁶² or receives insufficient funding.¹⁶³ Domestic Violence Victoria and the Domestic Violence Resource Centre Victoria told us:

Community legal centres are a good existing resource where the public can go to understand their legal rights and obligations and the legal implications of stalking but they have limitations in the services they can provide due to funding constraints.¹⁶⁴

- 6.145 The Federation for Community Legal Centres highlighted the difference in legal assistance for victims between family violence and non-family violence stalking matters:

While community legal centres (CLCs) provide legal assistance in family violence matters (pre-court and through court duty services), there is no corresponding government funding for personal safety intervention order (PSIO) matters. This has created a discrepancy in the legal assistance available for victim survivors of family violence and victim survivors of (non-family violence) stalking and those at risk of harm, threat or violence. This is an area of unmet legal need.¹⁶⁵

- 6.146 Djirra explained that there are no Aboriginal community-controlled legal services for Aboriginal and Torres Strait Islander people who need assistance with PSIOs, and that many 'cannot afford a private lawyer'.¹⁶⁶

- 6.147 The eligibility requirements for legal aid grants for PSIO matters are also narrow.¹⁶⁷ Under Victoria Legal Aid's guidelines, people over the age of 18 are not eligible to have a lawyer in PSIO matters unless they come within the state's special circumstances guideline—that is, they have a low level of 'language or literacy' or have an 'intellectual or psychiatric disability'.¹⁶⁸

- 6.148 Liberty Victoria told us it is often difficult to have funding by Victoria Legal Aid approved for the preliminary steps in a PSIO proceeding or a contested hearing.¹⁶⁹ There are few options for respondents in PSIO matters to be represented by free lawyers.

161 Submission 70 (Di McDonald).

162 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

163 Submission 41 (Djirra).

164 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

165 Submission 97 (Federation of Community Legal Centres).

166 Submission 41 (Djirra).

167 Submission 97 (Federation of Community Legal Centres).

168 Victoria Legal Aid, '15 Special Circumstances—The State's Special Circumstances', *Handbook for Lawyers* (Online Handbook, 18 February 2022) <<https://www.handbook.vla.vic.gov.au>>.

169 Submission 47 (Liberty Victoria).

- 6.149 Victoria Legal Aid confirmed that it had reduced duty lawyer advice and in-court advocacy services for PSIOs. It only provides those services to adults who have a 'cognitive or neurological disability' or have a related FVIO matter listed on the same day. They said this was because of the high volume of PSIO matters and the 'blurring of low-risk matters with those that are potentially high risk'.¹⁷⁰
- 6.150 We note that Victoria Legal Aid provides information about the PSIO process on its website, and has produced legal information 'self-help' packages for both applicants and respondents to PSIOs.¹⁷¹

The need for legal advice and representation

- 6.151 Springvale Monash Community Legal Centre described an 'urgent and critical need' for legal advice and representation for parties to PSIOs.¹⁷² We heard about problems that may be created by the gap in legal support for applicants and respondents:
- It could be a barrier to victim survivors pursuing a PSIO application—they might feel overwhelmed and withdraw.¹⁷³
 - Navigating the legal system can be a complicated and traumatic exercise for victim survivors.¹⁷⁴
 - People experiencing 'disadvantage' or 'vulnerability' might be even more 'at risk of exposure to the criminal justice system' without lawyers to adequately explain their rights and obligations.¹⁷⁵
 - Unrepresented respondents are likely to increase delay in proceedings because courts have additional responsibilities to ensure that the proceedings are fair.¹⁷⁶
 - Lawyers for respondents can connect their clients to appropriate services and programs, which may assist in addressing the underlying causes of their behaviour.
- 6.152 There are clear benefits of more legal support. For example:
- Neighbourhood disputes could be more efficiently diverted to appropriate alternative pathways.¹⁷⁷
 - Courts would be properly assisted so that PSIO proceedings run smoothly.¹⁷⁸
 - It would help meet the justice needs of victim survivors—for example, the need for information and support (see Chapter 1). They could be protected against inappropriate questions in court.
 - With family violence intervention orders, respondents are more likely to follow those orders if they feel that they have been treated with fairness and respect.¹⁷⁹ The same may be true for PSIOs.
- 6.153 The Federation of Community Legal Centres stated:¹⁸⁰
- Where both parties are legally represented, this can promote early resolution of matters. This is because both parties are advised by their lawyers about the most appropriate course of action in their matter; and are assisted with reaching an agreed outcome (where possible and appropriate). Early resolution avoids a drawn out and stressful court process (which can fuel conflict and heighten safety risks) while also reducing pressure on an already overburdened court system.

170 Consultation 13 (Victoria Legal Aid).

171 Victoria Legal Aid, *Personal Safety Intervention Orders: Mention Hearing (Self-Help Guide for Applicants)*, July 2020.

172 Submission 95 (Springvale Monash Legal Service).

173 Submission 97 (Federation of Community Legal Centres).

174 Submission 56 (Derryn Hinch's Justice Party).

175 Submission 95 (Springvale Monash Legal Service). For example 'clients living with a mental illness or a learning disability or clients from [culturally and linguistically diverse] backgrounds.'

176 Submission 47 (Liberty Victoria).

177 Submission 95 (Springvale Monash Legal Service).

178 Submission 47 (Liberty Victoria).

179 Submission 49 (Victims of Crime Commissioner).

180 Submission 97 (Federation of Community Legal Centres).

- 6.154 We heard support for access to legal advice and representation for both respondents¹⁸¹ and affected persons in PSIO matters.¹⁸²
- 6.155 Suggestions included:
- funding for Aboriginal community-controlled organisations to provide legal advice and representation to Aboriginal and Torres Strait Islander women and children experiencing non-family violence stalking¹⁸³
 - funding to Victoria Legal Aid and community legal centres to provide advice and representation¹⁸⁴
 - expanding Victoria's victims' legal service.¹⁸⁵
- 6.156 The Victims of Crime Commissioner advocated for victims to have access to a government-funded legal service. In the context of stalking, it would assist victims:
- to identify the options available to address stalking
 - to advocate for appropriate interventions, including applying for PSIOs.¹⁸⁶
- 6.157 We note that the scope of the victims' legal service announced by the Victorian Government is limited to providing legal advice and assistance to victims applying for financial assistance and restitution and compensation orders.¹⁸⁷
- 6.158 Legal representation for children is discussed below.
- 6.159 We agree that legal support and representation needs to be strengthened for both applicants and respondents to PSIOs in matters that involve non-family violence stalking. This would lead to smoother proceedings, reduced delays, better evidence and a higher rate of resolution. It would probably represent an overall saving to the justice system.
- 6.160 The services identified in this inquiry—mainly community organisations, legal centres and Victoria Legal Aid—must be adequately funded to deliver comprehensive legal support and representation.
- 6.161 Comprehensive legal advice and representation would likely include:
- advice on legal options and prospects of success
 - referrals to mediation (where appropriate)
 - assistance with applications
 - lawyers to represent people in PSIO matters (or support to self-represent)
 - advice on protections such as alternative arrangements or protections of privacy.
- 6.162 One person who had experienced stalking supported free legal representation in some PSIO matters, especially for 'new arrivals to the country', people with disabilities, Aboriginal people and people who were 'disadvantaged'.¹⁸⁸
- 6.163 Derryn Hinch's Justice Party suggested that eligibility for legal representation should give priority to the cases that carry the highest risk.¹⁸⁹
- 6.164 If guidance for sorting stalking matters from other PSIO matters was developed (discussed above), these criteria could be used by legal services providers to determine who was eligible. In the meantime, eligibility should be based on their internal assessment of need.

181 Submissions 47 (Liberty Victoria), 95 (Springvale Monash Legal Service).
 182 Submissions 47 (Liberty Victoria), 56 (Derryn Hinch's Justice Party), 95 (Springvale Monash Legal Service).
 183 Submissions 41 (Djirra), 47 (Liberty Victoria).
 184 Submission 47 (Liberty Victoria).
 185 Submissions 49 (Victims of Crime Commissioner), 56 (Derryn Hinch's Justice Party).
 186 Submission 49 (Victims of Crime Commissioner).
 187 Department of Justice and Community Safety (Vic), *Victim Support Update* (Report, December 2021) 23.
 188 Submission 36 (Ahmad Masri).
 189 Submission 56 (Derryn Hinch's Justice Party).

Recommendations

23. The Victorian Government should provide funding to community legal centres, Aboriginal-controlled legal services and Victoria Legal Aid to expand access to legal advice and representation for applicants and respondents in relation to non-family violence stalking personal safety intervention order matters.
24. Eligibility for access to legal advice or representation for applicants and respondents in non-family violence stalking personal safety intervention order matters should be determined based on the guidance developed in Recommendation 10.

Efficient protections and procedural fixes should be introduced

Online applications are available for individuals

- 6.165 In our consultation paper we asked whether, and in what circumstances, a person making an application for a PSIO should be able to do so online. FVIOs at the time could be made online.
- 6.166 We heard support for online applications but this was mostly qualified support, emphasising the need for safeguards.¹⁹⁰
- 6.167 We heard concerns that online applications could:
- increase the number of vexatious or inappropriate applications¹⁹¹
 - reduce the capacity of the court to filter PSIO applications¹⁹²
 - risk the person stalking gaining knowledge of the online application if they were monitoring the victim survivor online, which could cause their behaviour to escalate.¹⁹³
- 6.168 The Law Institute of Victoria raised concerns about online applications potentially adding to the overuse of PSIOs, but said it would support them if a process for attesting to the truth of the application were included.¹⁹⁴ Victoria Legal Aid said a system was needed to vet applications to ensure there was minimal risk to the people using the system, otherwise it would not support online applications.¹⁹⁵
- 6.169 Since our consultation paper, the *Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters Act) 2022* (Vic) has passed. It amended the PSIO Act to allow applications to be made by phone, fax or other electronic communication, which would enable the making of online applications.¹⁹⁶
- 6.170 The Magistrates' Court has informed us that the online application form was carefully designed.¹⁹⁷ For example, it has built-in flags that will help prioritise matters according to risk level. Those applications will be vetted by the registrar. They also noted that the form requires the applicant to sign a declaration of truth.¹⁹⁸
- 6.171 It is unclear whether monitoring or evaluation has been built into the implementation of the process. We consider the reforms should be monitored to ensure that the process is safe for victim survivors and that online applications do not put the PSIO system

190 Ibid; Submissions 97 (Federation of Community Legal Centres), 115 (Victoria Police).

191 Submission 97 (Federation of Community Legal Centres); Consultation 13 (Victoria Legal Aid).

192 Submission 97 (Federation of Community Legal Centres). The Federation of Community Legal Centres explained that filtering 'occurs through the in-person application process.'

193 Submissions 56 (Derryn Hinch's Justice Party), 115 (Victoria Police).

194 Submission 98 (Law Institute of Victoria).

195 Consultation 13 (Victoria Legal Aid).

196 *Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022* (Vic) s 119.

197 Consultation 34 (Magistrates' Court of Victoria (No 2)).

198 Consultation 6 (Magistrates' Court of Victoria (No 1)).

under further stress. A glut of online applications could result in even less time and resourcing to identify and deal with stalking PSIOs.

Recommendation

25. The Victorian Government should monitor and evaluate the implementation of online applications for personal safety intervention order matters. Findings should inform the use of online applications to ensure it is safe for use in non-family violence stalking matters and does not reduce the capacity of the court to provide an effective response to these matters.

Allowing interim orders on the Court's own motion

- 6.172 Under the Family Violence Protection Act, the court may make an interim intervention order on its own motion where neither the affected person nor police have applied for it. It can do this where satisfied (on the balance of probabilities) that an order is needed to:
- ensure the safety of the affected family member
 - preserve property
 - protect an affected family member who is a child.¹⁹⁹
- 6.173 The court may also make an interim order in some situations, including where the parties to the FVIO application have consented to it or do not oppose it.²⁰⁰
- 6.174 The Magistrates' Court told us that it would be desirable to have a similar power in the PSIO Act as part of a bail application.²⁰¹ The Children's Court did not see a need for it as it was of the view that police would apply for the order and the provision was not likely to be used by the court.²⁰²
- 6.175 We see no reason why the FVPA provision should not also be replicated in the PSIO Act, given the Magistrates' Court has identified the need for it in some cases. Such a change is likely to promote the safety of people who experience stalking. It provides a safeguard, allowing for a PSIO to be made when no one applies for it.
- 6.176 Notwithstanding the information provided by the Children's Court, we anticipate there may be situations where police have not applied for an interim PSIO, but the Court considers it appropriate to put an order in place.

Recommendation

26. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to allow for interim orders to be made on the court's own motion as is the case in the *Family Violence Protection Act 2008* (Vic).

199 *Family Violence Protection Act 2008* (Vic) s 53(1), (1C).

200 *Ibid* s 53(1)(b).

201 Consultation 34 (Magistrates' Court of Victoria (No 2)). For example where the bail conditions may not adequately protect a person from the stalking behaviour.

202 Consultation 35 (Children's Court of Victoria (No 2)).

Appeals *de novo*

- 6.177 A decision to make a final PSIO can be appealed to the County Court. At present the appeals are heard *de novo*, that is, the appeal court hears the matter from the beginning.²⁰³ The original applicant must present and prove their case, and the original respondent is not required to prove that the decision was wrong.²⁰⁴ The appeal court can uphold the decision, set the decision aside, or vary the decision.²⁰⁵ The new decision is final.²⁰⁶
- 6.178 In this type of appeal, the person who experienced stalking may:
- be required to appear as a witness for a second time
 - be cross-examined again.
- 6.179 Experts have long discussed the risk of *de novo* appeals re-traumatising victims. In 2006, for example, the Victorian Parliamentary Law Reform Committee (focused on the criminal context) recounted strong arguments to this effect.²⁰⁷
- 6.180 Recently the *Justice Legislation Amendment (Criminal Appeals) Act 2019* (Vic) changed the way that appeals of criminal cases will be decided in the County Court. Instead of a fresh hearing, appeals will be decided using a transcript of the evidence from the original hearing in the Magistrates' Court. The County Court will only hear additional evidence if it considers this to be in the interests of justice.²⁰⁸
- 6.181 Future appeals from the Magistrates' Court to the County Court from summary criminal convictions for stalking will be heard under the new scheme.
- 6.182 As set out by Dr Steven Tudor and Greg Byrne, the policy framework outlined a balance between the importance of an appeal, the modernisation of the courts, and 'avoiding unnecessary re-traumatisation of victims and witnesses'.²⁰⁹ These considerations are equally relevant to the PSIO system.²¹⁰
- 6.183 However, not everyone supports abolishing *de novo* appeals. Some argue that victims already have appropriate protections while giving evidence on appeal.²¹¹
- 6.184 In the context of stalking, however, the experience of the victim and importance of limiting contact is critical. Concerns about re-traumatisation are especially serious in situations where victims may be experiencing long campaigns of harassment and intimidation. Alternative arrangements for giving evidence,²¹² while valuable, are not enough to override the harm that might be caused to the victim.
- 6.185 Given that a criminal stalking charge would likely be dealing with substantially similar conduct as a stalking PSIO (including the similar issues relating to victim welfare and trauma), we consider that different appeal regimes should not apply only because one matter is criminal and the other is civil.
- 6.186 The appeals provisions in the PSIO Act should be amended to align with the new provisions on criminal appeals. Specifically, when hearing appeals against final PSIOs, the court should rely on the original transcript of evidence instead of hearing the matters *de novo*. Aligning PSIO appeals with the new criminal appeals system will promote consistency across the justice system.

203 Law Reform Committee, Parliament of Victoria, *De Novo Appeals to the County Court* (Parliamentary Paper No 230, October 2006) 7–8.

204 Judicial College of Victoria, *Personal Safety Intervention Orders Bench Book* (Online Manual, 1 September 2011) <<https://www.judicialcollege.vic.edu.au/eManuals/PSIO>>.

205 *Personal Safety Intervention Orders Act 2010* (Vic) s 96(2)(a)–(c) The court can also make a determination under the *Family Violence Protection Act 2008* (Vic), or order mediation: s 96(2)(d)–(e).

206 *Ibid* s 97(1).

207 Law Reform Committee, Parliament of Victoria, *De Novo Appeals to the County Court* (Parliamentary Paper No 230, October 2006) 4, 191–92. Despite recognising these concerns, the Committee ultimately found that 'de novo appeals do not disadvantage victims of crime to the extent that would justify a restriction of existing appeal rights', 'primarily' because 'serious matters involving victims of crime are largely not determined in the Magistrates' Court': at 194.

208 *Justice Legislation Amendment (Criminal Appeals) Act 2019* (Vic) s 24; see ss 265A, 265E to be inserted in the *Criminal Procedure Act 2009* (Vic). See also Victorian Government, 'Modernising Victoria's Appeals System' (Press Release, 16 October 2019).

209 Victoria, *Parliamentary Debates*, Legislative Assembly, 17 October 2019, 3686 (Jill Hennessy, Attorney-General).

210 Submission 106 (Dr Steven Tudor & Greg Byrne PSM).

211 They cite the *Criminal Procedure Act 2009* (Vic) and *Evidence Act 2008* (Vic) in highlighting the admissibility of recorded evidence and prohibition on inappropriate cross-examining: see Michael Stanton and Paul Smallwood, 'Pause for Thought? The Case for Reversing the Abolition of De Novo Criminal Appeals' (2021) 169 *Victorian Bar News* 46, 48.

212 *Criminal Procedure Act 2009* (Vic) s 360.

Recommendation

27. The Victorian Government should amend the appeals process that applies to personal safety intervention orders to align with the amendments in the *Justice Legislation Amendment (Criminal Appeals) Act 2019* (Vic) to de novo appeals from the summary jurisdiction.

The need for a different approach for children and young people

- 6.187 The PSIO Act permits an intervention order to be made against a child aged ten or older.²¹³
- 6.188 A significant number of PSIOs involve children, with the Children's Court issuing around 8 per cent of PSIOs.²¹⁴
- 6.189 At least 27 per cent of protected persons had school-related relationships, meaning the PSIOs were against a schoolmate, a student or a teacher.²¹⁵ Another 25 per cent were friends or former friends, some of whom may also have had school-related relationships.²¹⁶
- 6.190 The PSIO legislation recognises that children should be treated differently to adults.²¹⁷ But the approach does not go far enough in emphasising their different developmental stage and the value of early intervention and therapeutic pathways.
- 6.191 The criminal justice system has long recognised the reduced culpability of children compared to adults, and the important role of early and therapeutic interventions.²¹⁸ We consider a similar approach to be appropriate for stalking matters in the civil justice system.
- 6.192 There are evidence-based, developmental reasons for a different response to children. Children might not understand what stalking behaviour is or the risks of doing it.²¹⁹ Because children's capacity for consequential thinking is still developing, an intervention order is likely to be less effective. This is a major reason to avoid bringing children into the justice system through PSIOs.
- 6.193 Some children and young people have complex needs. They may have cognitive issues, acquired brain injuries or intellectual or developmental disabilities. These may sometimes make it difficult to be aware of the impact of their behaviour on the victim survivor.²²⁰
- 6.194 Forensicare noted that people with autism spectrum disorders were over-represented among those under 18 who are involved in stalking.²²¹ Victoria Legal Aid told us about PSIOs being used by institutions to manage challenging behaviours in children, including those in state care.²²² For these children, managing their behaviour is best achieved outside the justice system.

213 *Personal Safety Intervention Orders Act 2010* (Vic) s 18.

214 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [3.1].

215 Relating to PSIO applications heard in the Children's Court.

216 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [3.8].

217 Including in limiting the duration of final orders to 12 months, and requiring the Court to have regard to all the circumstances of the case before including a condition that would exclude them from their residence: *Personal Safety Intervention Orders Act 2010* (Vic) ss 71, 78. Although the Children's Court told us that it would be very rare to have a condition excluding a child from their residence: Consultation 2 (Children's Court of Victoria (No 1)).

218 See, eg, *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Report Overview, November 2017).

219 Consultation 5 (Harmful Sexual Behaviours Network).

220 Consultation 17 (Small group meeting on stalking and young people).

221 Consultation 36 (Forensicare (No 2)).

222 Consultation 13 (Victoria Legal Aid).

- 6.195 However, stalking behaviour in children must still be taken seriously. The approach to child respondents must of course include a focus on ensuring the victim's safety. We have heard about the serious risk of violence in this context.²²³ As one study argues, child stalking is 'too commonly trivialised as harmless or inoffensive', when 'the rates of threats ... and assault ... [can be] higher than those reported in adult samples'.²²⁴ The potential negative impacts on child victims can be lasting and severe.²²⁵

PSIOs should be prohibited for those under 14

- 6.196 In the context of the discussion to raise the age of criminal responsibility and the principle of *doli incapax* ('incapable of crime'²²⁶) we heard support for a ban on (or at least a presumption against) PSIOs being made against anyone under the age of 14 years. We also heard a therapeutic response should be preferred over a justice response.²²⁷
- 6.197 We recommend that the PSIO Act be amended to prohibit a PSIO being made against a person under the age of 14, for reasons outlined in the next section.

PSIOs are not an effective safety measure for those under 14

- 6.198 The Law Institute of Victoria (LIV) noted the presumption of *doli incapax*, arguing that 'children do not sufficiently understand the consequences of their actions [below] this age'.²²⁸ The Victorian Aboriginal Legal Service shared this concern, describing PSIOs as an unsuitable and overused response for young people.²²⁹
- 6.199 The underlying principle of *doli incapax* is that a child below 14 years of age is 'not sufficiently intellectually and morally developed to appreciate the difference between right and wrong'.²³⁰ The *doli incapax* presumption generally applies in the criminal context.
- 6.200 However, emerging neuroscience research has supported its central premise about child development, in the context of public debate on the age of criminal responsibility.
- 6.201 Dr Enys Delmage notes that 'there is a strong base of emerging evidence highlighting consistent and universal differences in the judgment and consequential thinking processes between children and young people and adults'.²³¹ Professor Chris Cunneen asserts that children and young people lack the maturity of adults and this reduces their ability to make appropriate decisions.²³²

223 For example, the Children's Court provided us with a case study that detailed ongoing behaviours between two 13-year-old boys, which was of sufficient seriousness to warrant an urgent interim PSIO being made ex parte. It included physical and verbal abuse, racial slurs, publishing personal details and the address of the victim: Consultation 35 (Children's Court of Victoria (No 2)).

224 Rosemary Purcell, Teresa Flower and Paul E Mullen, *Adolescent Stalking: Offence Characteristics and Effectiveness of Criminal Justice Interventions* (Final Report to Criminology Research Council, November 2008) 24. For a discussion on this study and its findings: see Karl Roberts, Marina Tolou-Shams and Kaila Madera, 'Adolescent versus Adult Stalking: A Brief Review' (2016) 16(4) *Journal of Forensic Psychology Practice* 236, 247.

225 Rosemary Purcell, Teresa Flower and Paul E Mullen, *Adolescent Stalking: Offence Characteristics and Effectiveness of Criminal Justice Interventions* (Final Report to Criminology Research Council, November 2008) 25. For a discussion on this study and its findings: see Karl Roberts, Marina Tolou-Shams and Kaila Madera, 'Adolescent versus Adult Stalking: A Brief Review' (2016) 16(4) *Journal of Forensic Psychology Practice* 236, 248.

226 *R v ALH* [2003] VSCA 129, (2003) 6 VR 276, [75].

227 Consultation 13 (Victoria Legal Aid).

228 Submission 98 (Law Institute of Victoria).

229 Consultation 10 (Victorian Aboriginal Legal Service).

230 *RP v The Queen* [2016] HCA 53, (2016) 259 CLR 641, [8].

231 Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13(2) *Youth Justice* 102, 108. For her review of this evidence, tracing the evolution of neuroscience, particularly child brain development in the last few decades: see *ibid* 105–7.

232 Chris Cunneen, *Arguments for Raising the Minimum Age of Criminal Responsibility* (Research Report, Comparative Youth Penalty Project, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, February 2020) 12. For similar conclusions: see Nicholas J Lennings and Chris J Lennings, 'Assessing Serious Harm under the Doctrine of *Doli Incapax*: A Case Study' (2014) 21(5) *Psychiatry, Psychology and Law* 791, 794; Nicola C Newton and Kay Bussey, 'The Age of Reason: An Examination of Psychosocial Factors Involved in Delinquent Behaviour' (2012) 17(1) *Legal and Criminological Psychology* 75, 86–87 (this study found that a large majority of children 'demonstrated sophisticated knowledge of what is right versus wrong involving criminal transgressions', but that even with this knowledge 'children and adolescents ... can be hindered from making intelligent decisions through the influence of psychosocial factors involved in criminal decision-making'); Barry Goldson, "'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales' (2013) 13(2) *Youth Justice* 111, 117 (broadly making the point about the development of scientific literature that enables us to see the complex influences on child development, and the troubling implications for a low age of criminal responsibility); Wendy O'Brien and Kate Fitz-Gibbon, 'The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform' (2017) 17(2) *Youth Justice* 134, 138–40, 143; Thomas Crofts, 'A Brighter Tomorrow: Raise the Age of Criminal Responsibility' (2015) 27(1) *Current Issues in Criminal Justice* 123, 127–8; National Legal Aid, *Council of Attorneys-General—Age of Criminal Responsibility Working Group Review* (Submission, 28 February 2020) 5–7.

- 6.202 The Sentencing Advisory Council highlights evidence suggesting that the natural process of child brain development is associated with lower impulse control, attraction to risk, and greater vulnerability to peer pressure.²³³
- 6.203 Overall the evidence indicates that it is inappropriate to sanction children for actions that they are unable to fully understand.
- 6.204 Crucially, a child's lessened ability to understand the consequences of their decisions also suggests that the deterrent effect of PSIOs is likely to be limited.²³⁴ When the respondent's compliance with the conditions of a PSIO is the very thing that is intended to afford protection to the victim survivor (by putting a stop to the behaviour), this is a serious concern.

PSIOs risk further contact with the justice system

- 6.205 The Sentencing Advisory Council found that over the period 2011–2020 there were 8115 PSIO applications to the Children's Court of Victoria, resulting in 6379 interim PSIOs and 4399 final PSIOs.²³⁵
- 6.206 PSIOs carry serious consequences for child respondents, such as restrictions to their freedom of movement.²³⁶ The Victorian Aboriginal Legal Service told us that PSIOs may even force a child to withdraw from school due to bullying and the weight of the legal process.²³⁷
- 6.207 Breaching a PSIO is a criminal offence (see Chapter 7). For that reason, a PSIO against a child may act as a gateway into the criminal justice system and its related negative outcomes: greater risk of reoffending and ongoing justice system contact, poor future health and educational outcomes, and other long-term disadvantages.²³⁸
- 6.208 With the legal responses to stalking producing potentially devastating consequences for many child respondents, we consider there is a public interest to consider less punitive (and arguably more effective) pathways for children under 14 years who engage in stalking behaviours.

Some concerns were raised about changing the age limit

- 6.209 We note the Children's Court's position that it does not see the presumption of *doli incapax* as preventing the court from considering PSIO applications against those under 14 years. One magistrate told us:
- I don't think I've met a child that doesn't know what an intervention order is—they have a very easy, accessible lens of what an intervention order is—they've heard the terms and they do seem to know.²³⁹
- 6.210 The Children's Court does not support prohibiting PSIOs under the age of 14. In its view, serious questions of safety do arise in this cohort, and interim PSIOs are one of the few tools available to protect those who might be at risk.²⁴⁰

233 Sentencing Advisory Council (Vic), *Sentencing Children and Young People in Victoria* (Report, April 2012) 11.

234 The Sentencing Advisory Council explains that 'ultimately, the assumption (underlying the concept of deterrence) that child offenders make a rational choice to engage in a particular course of conduct does not sit well with ... the research on adolescent brain development ... Children are assumed to "lack the degree of insight, judgement and self-control that is possessed" by adult (rational) persons and may act impulsively "on the 'spur of the moment'" without weighing up the consequences of their actions': *ibid* 60–1 (citations omitted). See also Andrew McGrath, 'Offenders' Perceptions of the Sentencing Process: A Study of Deterrence and Stigmatisation in the New South Wales Children's Court' (2009) 42(1) *Australian and New Zealand Journal of Criminology* 24, 42 ('while a court appearance does appear to have some deterrent effect [on youth offenders], it also has the potential to exacerbate subsequent offending by stigmatising individual offenders').

235 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) 15.

236 *Personal Safety Intervention Orders Act 2010* (Vic) s 67.

237 Consultation 10 (Victorian Aboriginal Legal Service).

238 Sentencing Advisory Council (Vic), *Reoffending by Children and Young People in Victoria* (Report, December 2016) 30–1; National Legal Aid, Submission to Council of Attorneys-General, *Age of Criminal Responsibility Working Group Review* (28 February 2020) 10–11; Chris Cunneen, *Arguments for Raising the Minimum Age of Criminal Responsibility* (Research Report, Comparative Youth Penalty Project, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, February 2020) 19–21, 26; Wendy O'Brien and Kate Fitz-Gibbon, 'The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform' (2017) 17(2) *Youth Justice* 134, 135.

239 Consultation 35 (Children's Court of Victoria (No 2)).

240 *Ibid*.

- 6.211 The Court explained the approach that it takes, which includes asking for detailed reports, services and legal representation. It stressed that while interim orders are a necessary safety tool, it avoids making final orders against young people where possible.²⁴¹
- 6.212 The Court told us:
- We have interim [orders] in place while we explore other mechanisms—that is really important—interim orders are made urgently *ex parte* in the absence of the respondent for the protection of the person.²⁴²
- 6.213 We understand these concerns, and that the Court wishes to retain the tools it has to protect victims' safety. However, we note again that it is questionable how effective PSIOs are in deterring children from the behaviour the subject of the order.
- 6.214 While we acknowledge the proactive approach taken by the Court in seeking to avoid making final orders, over half the applications made in the last 10 years in the Children's Court resulted in final orders, which risk extending contact with the justice system. Importantly, both interim and final orders are subject to the criminal offence of breach of a PSIO, so both options can result in contact with the criminal justice system.²⁴³
- 6.215 We appreciate the need to manage serious behaviour quickly, but this cannot be a reason to maintain the current age minimum. Instead we should look to change a system where interim orders are the only thing courts can do to address these behaviours.²⁴⁴ We propose an alternative, more effective response which does not increase the risks of young children becoming criminalised. We discuss our recommendation for a pathway to address stalking behaviour in children below.

Recommendation

28. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to prevent personal safety intervention orders being made against respondents under the age of 14 years.

Alternative pathways are needed

- 6.216 There are no formal pathways for child respondents in stalking cases.²⁴⁵
- 6.217 While there are youth community forensic services, these cover a range of problem behaviours and do not have enough resources to meet demand.²⁴⁶ They also tend to provide services based on a young person having had existing contact with the justice system.²⁴⁷ There are no specific programs to address stalking behaviours in children.²⁴⁸
- 6.218 Forensicare noted that it receives many requests for treatment for people under 18 but is not funded to treat them.²⁴⁹
- 6.219 Victoria Legal Aid submitted that there needs to be a greater focus on responding to problem behaviour at an earlier stage through supports that 'address the behaviours and underlying causes'.²⁵⁰

241 Ibid. For the number of interim and final PSIOs issued in the Children's Court: see Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) 16, Figure 3.

242 Consultation 35 (Children's Court of Victoria (No 2)).

243 *Personal Safety Intervention Orders Act 2010* (Vic) s 100.

244 As is the approach in the Children's Court: Consultation 35 (Children's Court of Victoria (No 2)).

245 Ibid: Consultation 36 (Forensicare (No 2)).

246 Consultation 36 (Forensicare (No 2)).

247 Ibid.

248 Ibid.

249 Ibid.

250 Consultation 13 (Victoria Legal Aid).

- 6.220 This was also the view expressed at a meeting on children and young people. The meeting expressed support for civil diversionary options before PSIO applications are issued against a young person.²⁵¹
- 6.221 As there is a 'scarcity of programs and options to help the young person understand the impact of their behaviours', we heard that schools could be a good place to implement diversionary options.²⁵²
- 6.222 We agree with these views and recommend a therapeutic program be developed to address stalking behaviour in children. The program should provide an alternative pathway instead of an interim or final PSIO against the child.
- 6.223 Early intervention with this group is an area of opportunity. As Purcell et al observe:
 Intervening at the first signs of stalking behaviours offers the best chance to reduce stalking recidivism in the perpetrator, and arguably to stem any progression to more entrenched or serious forms of interpersonal violence in later life, including domestic abuse or sexual assault.²⁵³
- 6.224 Appropriate and effective interventions could:
- reduce the impact of adolescent stalking
 - prevent young people from continuing to stalk as adults²⁵⁴
 - avoid the risk of PSIOs extending a child's contact with the justice system.
- 6.225 Developing an alternative pathway will be challenging. Further research is needed on adolescent stalking, especially outside the context of an intimate relationship.²⁵⁵ There is an especially small amount of research on interventions for this group.
- 6.226 However, the clinical management strategies for adult offenders could be used as a guide for responding to young people who stalk.²⁵⁶
- 6.227 Forensicare noted that the therapeutic treatment order model was very effective and could be adapted for stalking matters.²⁵⁷
- 6.228 The Children's Court said that it would appreciate any alternatives, but noted that it would not order alternatives that criminalise a child's non-attendance or failure to participate.²⁵⁸

Recommendation

29. a. The Victorian Government should establish and fund an evidence-informed therapeutic program to respond to children engaging in non-family violence stalking behaviour.
- b. A purpose of the program should be to avoid the need for a personal safety intervention order being made against a child respondent.
- c. The Victorian Government should evaluate the effectiveness of the program and improve the program based on the findings of the evaluation.

251 Consultation 17 (Small group meeting on stalking and young people).

252 Ibid.

253 Rosemary Purcell, Teresa Flower and Paul E Mullen, *Adolescent Stalking: Offence Characteristics and Effectiveness of Criminal Justice Interventions* (Final Report to Criminology Research Council, November 2008) 29.

254 Sinead Cloonan-Thomas, Elizabeth S Daff and Troy E McEwan, 'Post-Relationship Stalking and Intimate Partner Abuse in a Sample of Australian Adolescents' [2021] *Legal and Criminological Psychology* 10.1111/lcrp.12206:1–22, 20.

255 See *ibid.*

256 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400, 411.

257 Consultation 36 (Forensicare (No 2)). A therapeutic treatment order is an order issued by the family division of the Children's Court of Victoria. It requires a child aged at least 10 years and under 15 years of age to attend community-based treatment for problem sexual behaviours. The child does not need to be charged or found guilty of a sexual offence: *Children, Youth and Families Act 2005* (Vic) ss 248–9.

258 Consultation 35 (Children's Court of Victoria (No 2)).

Other protections may be necessary

- 6.229 The PSIO Act contains a number of specific protections for child respondents.
- 6.230 To make a final order, the court must be satisfied that it is 'appropriate in all the circumstances'.²⁵⁹ For children, the court may consider the child's ability to understand the nature and effect of a final order, and to comply with its conditions. The court considers this in the context of their age and maturity.²⁶⁰
- 6.231 In considering whether to make a final PSIO, the court may order an assessment report about the child respondent.²⁶¹ This report must include matters that the court considers relevant, including any psychological or psychiatric assessment.²⁶²
- 6.232 For child respondents, and unlike the case for adults, orders may not be made by the consent of the parties only.²⁶³
- 6.233 The PSIO Act also places limits on conditions that affect a child respondent's housing, and outlines factors that a court must consider before granting an interim order against a child respondent.²⁶⁴ Before including a condition that excludes the child respondent from a residence, the court must consider all the circumstances of the case and issues such as:
- the respondent being supported to gain access to appropriate educational and health services
 - allowing the education, training or employment of the respondent to continue without interruption.
- 6.234 The PSIO Act limits conditions that would affect a child's access to education. Before including any condition that would prevent a child respondent from approaching an affected person or attending a school premises, the court must consider if that condition may prevent the respondent attending their current school, or one they wish to attend.²⁶⁵
- 6.235 Some stakeholders suggested that these provisions could be taken a step further. Suggestions we heard included:
- a legislative presumption against interim orders for children.²⁶⁶
 - a ban on interim orders made against children in their absence²⁶⁷
 - stronger legislative presumptions against excluding children from school, and 'genuine and meaningful management by the [Department of Education and Training]' where exclusion is sought.²⁶⁸
 - a requirement for decision makers to consider the broader consequences of the impact of an order on where the child is living or whether an order will prevent a child from attending school.²⁶⁹
- 6.236 We do not propose to recommend restricting the use of interim orders in light of the Children's Court's comments about the need to act quickly for safety reasons in these matters.²⁷⁰
- 6.237 Similarly, we heard from the Children's Court that bringing matters on *ex parte* was often unavoidable, and formed part of its ability to hear interim orders quickly in matters where serious safety issues existed.²⁷¹

259 *Personal Safety Intervention Orders Act 2010* (Vic) s 61(1)(c).
260 *Ibid* s 61(2).
261 *Ibid* s 53.
262 *Ibid* s 57.
263 *Ibid* s 64(2).
264 *Ibid* s 71.
265 *Ibid* ss 74–5.
266 Consultation 13 (Victoria Legal Aid).
267 *Ibid*.
268 *Ibid*.
269 Submission 98 (Law Institute of Victoria).
270 Consultation 35 (Children's Court of Victoria (No 2)).
271 *Ibid*.

- 6.238 We consider that the provisions to guide decision making in relation to impact on a child's housing or education are already quite strong. The relevant provisions of the *Family Violence Protection Act 2008 (Vic)* are quite similar.²⁷²
- 6.239 However, we consider that final PSIOs against children 14 and over should be an order of last resort.
- 6.240 There is no requirement to consider an alternative pathway for children before making an order in the PSIO Act (or for that matter, under the FVPA). There is no presumption against an order being made.
- 6.241 Victoria Legal Aid said a justice response should be avoided when there could be a therapeutic response.²⁷³
- 6.242 We agree that therapeutic pathways for children should be preferred. The response to children needs to evolve to recognise evidence about their development and prevent long-term contact with the justice system. Early intervention should be used to stop the stalking behaviour, for the benefit of both the child respondent and the community.
- 6.243 Stalking among adolescents can be serious and include threatening and violent forms of pursuit. Adolescent stalking should be taken seriously, given the 'even greater potential for disruption to the victim's life and the risks of being attacked.'²⁷⁴
- 6.244 To acknowledge the potentially serious impacts of adolescent stalking we propose that there is a legislative presumption against making a final PSIO unless:
- a therapeutic process was attempted and was unsuccessful
 - the therapeutic process is inappropriate in all the circumstances of the case.
- 6.245 Such a legislative presumption would effectively strengthen protections on education and housing issues as well.
- 6.246 To support a therapeutic approach to children, we recommend education for judicial officers, judicial registrars and court staff on the impact of PSIOs on children, taking into account their developmental needs.

Recommendation

30. The Victorian Government should include a legislative presumption against the making of a final personal safety intervention order against child respondents 14 years and over in the *Personal Safety Intervention Orders Act 2010 (Vic)*. PSIOs should only be available against respondents of this age where:
- a. a therapeutic process (such as the one developed under Recommendation 29) has been undertaken but was unsuccessful, or
 - b. in cases where the therapeutic process is inappropriate in all the circumstances of the case.

Legal assistance for children is a priority

- 6.247 As discussed earlier, legal support for both applicants and respondents in the PSIO system is important. It is especially important for children, who have little knowledge of their legal rights or available avenues or remedies.²⁷⁵

²⁷² *Family Violence Protection Act 2008 (Vic)* ss 82–4.

²⁷³ Consultation 13 (Victoria Legal Aid).

²⁷⁴ Rosemary Purcell, Teresa Flower and Paul E Mullen, *Adolescent Stalking: Offence Characteristics and Effectiveness of Criminal Justice Interventions* (Final Report to Criminology Research Council, November 2008) 6.

²⁷⁵ Submission 49 (Victims of Crime Commissioner).

- 6.248 The Children's Court told us that child respondents are always represented.²⁷⁶ Although eligibility for grants of legal aid to adults in PSIO matters was reduced in 2020, Victoria Legal Aid did not cut eligibility for children, who continue to be eligible for legal representation 'at all stages of proceedings':
- Changes to our guidelines for legal assistance will help to ensure that children, both applying for orders and responding to applications, understand the process, and are supported to achieve safe and appropriate outcomes for their individual circumstances.²⁷⁷
- 6.249 It is encouraging to see that legal representation for children in PSIO matters is being prioritised.
- 6.250 The Children's Court, however, noted that under the FVPA, the Court can allow that a child (who is not the applicant) be separately represented, where the court considers it appropriate.²⁷⁸ A similar provision does not exist in the PSIO Act.
- 6.251 The LIV raised a concern about a lack of legal representation for children, especially at regional and metropolitan courts.²⁷⁹ Given the importance of having a lawyer, we recommend that any gaps in legal representation for applicant and respondent children be mapped and addressed. This includes amending the PSIO Act to enable the court to order that a child who is neither the applicant nor respondent (another child party) be represented.²⁸⁰ We consider that in cases where the child is not the applicant (for example, where a parent or police officer has applied for a PSIO on their behalf), that child should still be afforded the benefits of legal representation, which include having a voice in the proceedings, and having the outcomes and ramifications of any order and conditions made clear to them by their lawyer.
- 6.252 The increase in demand for providers such as Aboriginal-controlled legal organisations, community legal centres and Victoria Legal Aid should be assessed and funding should be delivered accordingly.

Recommendations

31. The Victorian Government should amend the *Personal Safety Intervention Orders Act 2010* (Vic) to include a provision similar to section 62 of the *Family Violence Protection Act 2008* (Vic), empowering the court to order that a child who is neither an applicant nor respondent be legally represented.
32. The Victorian Government should provide funding to community legal centres, Aboriginal-controlled legal services and Victoria Legal Aid to expand access to legal advice and representation for child applicants and respondents in relation to non-family violence stalking personal safety intervention order matters.

²⁷⁶ Consultation 35 (Children's Court of Victoria (No 2)).

²⁷⁷ Victoria Legal Aid, *Prioritising Help for Children in Personal Safety Intervention Order Matters* (Web Page, 21 July 2020) <<https://www.legalaid.vic.gov.au/prioritising-help-children-personal-safety-intervention-order-matters>>.

²⁷⁸ Consultation 35 (Children's Court of Victoria (No 2)). See *Family Violence Protection Act 2008* (Vic) s 62.

²⁷⁹ Consultation 20 (Law Institute of Victoria).

²⁸⁰ The equivalent provision in the family violence context is *Family Violence Protection Act 2008* (Vic) s 62. In the family violence terminology, the child is an affected family member.

Criminal law responses to stalking

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7. Criminal law responses to stalking

Overview

- The criminal justice response to stalking is based on the stalking offence and offences relating to breaches of personal safety intervention orders (PSIOs).
- The core elements of the stalking offence are appropriate and do not need to fundamentally change.
- However, the offence should be amended to make it clear and more readily understood.
- There are problems with how the offence is applied in practice.
- Police need guidance on how to apply the offence.
- Further research is needed to understand why stalking cases do not progress from when they are reported and through other stages of the criminal justice system.
- There is no need for new breach offences under the *Personal Safety Intervention Orders Act 2010* (Vic). But Victoria Police should improve how they respond to breaches. This should include explaining to victim survivors why they have not responded to an alleged breach.
- People who experience stalking should be provided with more protections in criminal proceedings.
- They should have access to alternative arrangements that make it easier and less traumatic to give their evidence than is currently the case.
- Court infrastructure and facilities should be designed to protect victim survivors.
- The accused should not be allowed to cross-examine victim survivors personally.

Stalking is a crime and should be treated as such

- 7.1 Stalking is a serious criminal offence in Victoria with a maximum penalty of 10 years imprisonment.¹
- 7.2 The stalking offence makes it a crime to engage in one or more of a range of behaviours more than once, or for an extended period.²
- 7.3 A stalking case enters the criminal justice system if a stalking offence is reported to police. Police may then charge the accused and the matter might go to court.³

1 *Crimes Act 1958* (Vic) s 21A(1).

2 *Ibid* s 21A(2); Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) ix; Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [2.4]. See also Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 2, 75–6.

3 Under *Criminal Procedure Act 2009* (Vic) s 28(1)(b), offences (such as stalking) that are punishable by Level 5 imprisonment are, under certain conditions, able to be 'heard and determined summarily' by the Magistrates' Court of Victoria. For this reason, most stalking cases that proceed to court are heard here.

- 7.4 The criminal justice system provides a way to stop the stalking behaviour and protect the person who is experiencing stalking. It enables stalking to be recognised as a harm in the community, providing a public forum to test evidence, hold an offender accountable and sanction the harm.
- 7.5 However, the criminal justice system is not dealing effectively with the stalking offence. There are barriers that prevent the offence progressing through the criminal justice system.
- 7.6 Participating in the criminal justice system can be a traumatic experience for victim survivors, especially when giving evidence. Previous reforms have focussed on making criminal trials less traumatic and safer for victim survivors in sexual offence and family violence matters. But people who experience stalking have less protection.
- 7.7 This chapter is about:
- making the stalking offence clear and more readily understood, and improving the ways it is applied
 - prosecuting stalking cases more effectively
 - police taking breaches of personal safety intervention orders (PSIOs) more seriously
 - protecting victim survivors of stalking in criminal proceedings.

The criminal offence of stalking

- 7.8 Stalking was introduced as an offence in Victoria in 1994.⁴
- 7.9 The law has been amended several times, for example, to include cyberstalking (see Chapter 3) and some types of bullying.⁵

Table 12: The stalking offence and what must be proved

Element	What must be proved	Description
Physical element	The accused person engaged in a 'course of conduct' ⁶	A range of acts and behaviours that must be committed on more than one occasion. For example, contacting the victim survivor, making threats, interfering with property, and entering or loitering outside a place of residence or business (see Appendix C for full list) ⁷

4 *Crimes (Amendment) Act 1994* (Vic) s 3. See also Victoria, *Parliamentary Debates*, Legislative Assembly, 20 October 1994, 1383, 1384 (Geoffrey Coleman).

5 *Crimes (Stalking) Act 2003* (Vic) s 3 (cyberstalking); *Crimes Amendment (Bullying) Act 2011* (Vic) s 3 (bullying). See also Department of Justice and Community Safety (Vic), 'What Is Brodie's Law', *Bullying—Brodie's Law* (Web Page, 13 August 2021) <<https://www.justice.vic.gov.au/saynotobullying>>.

6 *Crimes Act 1958* (Vic) s 21A(2)–(3).

7 *Ibid* s 21A(2).

Element	What must be proved	Description
Fault element	<p>The accused intended to cause:</p> <ul style="list-style-type: none"> physical or mental harm, or to arouse fear in the victim for their own safety or the safety of another⁸ <p>Mental harm includes psychological harm and suicidal thoughts.⁹</p>	<p>Intention may be proved in three ways. The accused:</p> <ul style="list-style-type: none"> actually intended to cause the harm ('intention'), or arouse apprehension or fear¹⁰ knew that their actions were likely to cause the harm, or arouse apprehension or fear ('recklessness')¹¹ ought to have understood that their actions would be likely to cause the harm, or arouse apprehension or fear ('objective fault element'), and their actions did actually have that result¹²

- 7.10 Establishing a 'course of conduct' is key to proving the physical element of the offence. The legislation has a detailed list of stalking behaviours that can comprise a course of conduct (see Appendix C). The behaviours are broad and 'not always the same as the behaviour patterns forensic psychologists might define as stalking'.¹³
- 7.11 The list also has a general 'catch-all' provision that includes acting in any other way that could reasonably be expected to:
- cause physical or mental harm to the victim, including self-harm, or
 - arouse apprehension or fear in the victim for their safety or the safety of someone else.¹⁴
- 7.12 The behaviours listed are not necessarily illegal on their own. But when the behaviours come together in a course of conduct directed at a victim survivor, with a specific intent, the behaviour becomes a crime.
- 7.13 It is the course of conduct that must have been committed with the required state of mind, not the individual behaviours making up the course of conduct.
- 7.14 For the accused to have the required state of mind, they must have an intention to cause the harm that can be established in any one of three ways (see Table 12).¹⁵
- 7.15 The stalking offence applies even if the victim survivor was outside Victoria, as long as the course of conduct was in Victoria.¹⁶

8 Ibid.

9 Ibid s 21A(8).

10 Ibid s 21A(2); Judicial College of Victoria, '7.4.12 Stalking', *Victorian Criminal Charge Book* (Online Manual, 12 September 2013) [41] <<https://www.judicialcollege.vic.edu.au/eManuals/CCB>>.

11 *Crimes Act 1958* (Vic) s 21A(3)(a); Judicial College of Victoria, '7.4.12 Stalking', *Victorian Criminal Charge Book* (Online Manual, 12 September 2013) [41] <<https://www.judicialcollege.vic.edu.au/eManuals/CCB>>.

12 *Crimes Act 1958* (Vic) s 21A(3)(b); Judicial College of Victoria, '7.4.12 Stalking', *Victorian Criminal Charge Book* (Online Manual, 12 September 2013) [41] <<https://www.judicialcollege.vic.edu.au/eManuals/CCB>>.

13 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) ix.

14 *Crimes Act 1958* (Vic) s 21A(2)(g).

15 Ibid s 21A(2), (3)(a)–(b); Judicial College of Victoria, '7.4.12 Stalking', *Victorian Criminal Charge Book* (Online Manual, 12 September 2013) [41] <<https://www.judicialcollege.vic.edu.au/eManuals/CCB>>.

16 *Crimes Act 1958* (Vic) s 21A(7).

How well is the stalking offence working?

- 7.16 Criminalising stalking has inherent difficulties because it can involve actions that are not criminal by themselves, such as calling someone on the phone or sending gifts.¹⁷
- 7.17 Stalking offences in other jurisdictions have gaps that Victoria has already addressed. For example, stalking offences elsewhere have been criticised for not covering situations where the person stalked is not aware of the stalking, or where an accused does not understand the effects of their conduct. These situations are covered in Victoria.¹⁸
- 7.18 In 2003 the Victorian Government introduced technology-based stalking provisions. For example, publishing information about a person online is on the list of behaviours that can make up a course of conduct.¹⁹ The provisions do not specify what technology needs to be used.
- 7.19 In Chapter 3 we discuss responses to cyberstalking. We note the feedback we received that the stalking offence is technologically neutral enough to cover cyberstalking.

The fault element is working well in practice

- 7.20 We heard that the fault element of the stalking offence (set out above in Table 12) is working well.²⁰ Jim Shaw, from the Criminal Bar Association, told us that if a course of conduct (the physical element) can be proved, 'there is normally no problem with the mental state elements'.²¹

Course of conduct can be difficult to understand

- 7.21 We heard that a major source of difficulty with the stalking offence is applying the course of conduct element to the case to establish stalking.²²
- 7.22 Even those who thought the stalking offence was adequate acknowledged that the course of conduct element was vague and could be clearer in legislation than it is now.²³ It can be unclear what exactly is needed for a course of conduct.
- 7.23 We were also told that people can be charged with the stalking offence even when what they have done is not really stalking.²⁴
- 7.24 It is challenging to get the balance right between legislation that is wide enough to capture behaviour that is stalking but narrow enough to exclude behaviour that is not.²⁵ Even though the course of conduct element is 'a somewhat vague concept', we consider that its breadth is needed to cover the range of situations in which stalking arises.²⁶
- 7.25 However, we acknowledge that this can make it difficult to understand what a course of conduct is.

17 Troy E McEwan, Paul E Mullen and Rachel Mackenzie, 'Anti-Stalking Legislation in Practice: Are We Meeting Community Needs?' (2007) 14(2) *Psychiatry, Psychology and Law* 207, 208; Emma Ogilvie, *Stalking: Legislation, Policing and Prosecution Patterns in Australia* (Research and Public Policy Series Report No 34, Australian Institute of Criminology, 2000) xii, 1–2.

18 *Crimes Act 1958* (Vic) s 21A(3); Troy E McEwan, Paul E Mullen and Rachel Mackenzie, 'Anti-Stalking Legislation in Practice: Are We Meeting Community Needs?' (2007) 14(2) *Psychiatry, Psychology and Law* 207, 209–212. See also Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 190–191. We note Dr Steven Tudor and Greg Byrne's suggestion 'for the offence of stalking to more clearly make room for cases of intentional covert stalking': Submission 106 (Dr Steven Tudor & Greg Byrne PSM). We discuss this suggestion later in this chapter.

19 *Crimes Act 1958* (Vic) s 21A(ba)–(bc).

20 Consultations 18 (County Court of Victoria), 24 (Criminal Bar Association); Submission 98 (Law Institute of Victoria).

21 Consultation 24 (Criminal Bar Association).

22 Consultations 2 (Children's Court of Victoria (No 1)), 19 (Community legal sector roundtable).

23 Consultations 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria), 13 (Victoria Legal Aid), 20 (Law Institute of Victoria).

24 Consultation 13 (Victoria Legal Aid).

25 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 76–7.

26 Submission 106 (Dr Steven Tudor & Greg Byrne PSM).

The stalking offence should be redrafted

- 7.26 The core elements of the stalking offence are appropriate and do not need to fundamentally change. However, we consider that the definition of stalking in the law could be clearer, especially the course of conduct element. If the law is clear, it is more likely that people will understand it and be able to use it effectively. It will also avoid some of the problems we discuss later, such as missed opportunities for prosecution.
- 7.27 Many people told us that the way the stalking offence is applied should be improved.²⁷ This can be mostly achieved through changes in practice (discussed later).

Improving the course of conduct element

- 7.28 A course of conduct is not defined in the Victorian legislation. Instead, it is indirectly explained through the behaviours listed (Appendix C).²⁸ But case law defines the term 'course of conduct' to mean:
- acts committed on at least two occasions or a single 'protracted' incident (for example, an extended act of surveillance)²⁹
 - a pattern of conduct showing a 'continuity of purpose' in relation to the victim survivor.³⁰
- 7.29 We recommend adding these case law principles into the legislation to help clarify the course of conduct element. As Victoria Legal Aid told us in relation to the requirement for repeated acts, 'it may be helpful to make this more explicit in the legislation.'³¹
- 7.30 Domestic Violence Victoria suggested:
- It may be useful to bring the case law principles that sit behind the law into the legislation to improve police responses through clearer understanding of the purpose of the legislation. The law is a blunt instrument and will not work for everyone, but the easier it can be made for those enforcing the law, the greater the benefit.³²
- 7.31 At this stage we do not recommend changing the scope of the course of conduct element. As the County Court cautioned, 'care needs to be taken to avoid unintended consequences such as capturing behaviours within too short a period of time (for example, three calls within an hour), or too far apart (for example, three years apart).'³³
- 7.32 We agree with this view. Bringing the case law definition into legislation would consolidate the law in one place but it would not significantly change the substantive offence or create additional issues with the scope of the offence.
- 7.33 Dr Steven Tudor and Greg Byrne did not consider it necessary to include the case law principles in the legislation. But if there is an attempt to do so, they suggested this legislative formulation, which we regard as useful:
- A person (A) engages in a course of conduct in relation to another person (B) if A's acts are:
- (a) committed on more than one occasion or are protracted in nature; and
 - (b) amount to a pattern of conduct that shows a continuity of purpose in relation to B.³⁴

27 Submissions 32 (Centre for Forensic Behavioural Science), 56 (Derryn Hinch's Justice Party); Consultations 2 (Children's Court of Victoria (No 1)), 13 (Victoria Legal Aid), 18 (County Court of Victoria), 24 (Criminal Bar Association).

28 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 75.

29 Expressed by McDonald J as 'conduct which is protracted or conduct which is engaged in on more than one separate occasion' in *Gunes v Pearson* (1996) A Crim R 297, 306, (Supreme Court of Victoria, McDonald J, 31 October 1996) 18; Judicial College of Victoria, '7.4.12 Stalking', *Victorian Criminal Charge Book* (Online Manual, 12 September 2013) [10] <<https://www.judicialcollege.vic.edu.au/eManuals/CCB>>.

30 *Berlyn v Brouskos* [2002] VSC 377, (2002) 134 A Crim R 111, [24].

31 Consultation 13 (Victoria Legal Aid).

32 Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

33 Consultation 18 (County Court of Victoria): see also Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 192.

34 Submission 106 (Dr Steven Tudor & Greg Byrne PSM).

- 7.34 We note the point made by the Law Institute of Victoria that while the case law clarifies what a course of conduct is, it 'is not necessarily helpful for those who are not lawyers'.³⁵
- 7.35 When drafting the new provisions, the government could also consider modernising the language of the offence and using definitions that are plainer than they are now.
- 7.36 We note that some other Australian states and territories describe the required frequency, rather than requiring a 'course of conduct'.³⁶
- 7.37 Some legislation uses examples to explain how the law applies. To illustrate, 'single punch' manslaughter in the *Crimes Act 1958* (Vic) includes the following example:
- If a person punches another person to the head, and that other person falls, hits their head on the road, and dies from the injury resulting from their head hitting the road, the punch may be the cause of their death.³⁷
- 7.38 The government could also consider if examples would help make the course of conduct element clear.

Redrafting the offence to make it clear

- 7.39 More broadly, the stalking offence should be redrafted to make it clear and readily understood.
- 7.40 Tudor and Byrne identified problems with the overall drafting of the stalking offence: 'It is commonly agreed that the current drafting of s 21A, *Crimes Act 1958* (Vic) is far from ideal'. They described the current drafting as 'conceptually garbled and confused'.³⁸
- 7.41 They made a number of suggestions including to redraft the offence into three offences, based on intentional, reckless and 'objective fault' forms of stalking, so that the elements are clearly laid out and the different degrees of culpability clearly shown.³⁹
- 7.42 The specific revisions proposed by Tudor and Byrne are in Table 13. These suggestions should inform the redrafting.

Table 13: Redrafting suggestions for the stalking offence under section 21A of the *Crimes Act 1958* (Vic)⁴⁰

Element or provision to be clarified through redrafting	Redrafting suggestion
Intentional or reckless stalking	A person (A) commits an offence if: <ul style="list-style-type: none"> (a) A stalks another person (B); and (b) A intends to cause or believes that their conduct will probably cause: <ul style="list-style-type: none"> i. physical or mental harm to B; or ii. B to believe that there is a risk to the safety of B or of another person.

35 Consultation 20 (Law Institute of Victoria).

36 *Criminal Law Consolidation Act 1935* (SA) s 19AA; *Criminal Code Act Compilation Act 1913* (WA) s 338E; *Criminal Code Act 1899* (Qld) s 359B.

37 *Crimes Act 1958* (Vic) s 4A(4).

38 Submission 106 (Dr Steven Tudor & Greg Byrne PSM).

39 *Ibid.*

40 *Ibid.* (emphasis omitted).

Element or provision to be clarified through redrafting	Redrafting suggestion
'Objective fault' stalking	A person (A) commits an offence if: (a) A stalks another person (B); and (b) A's conduct causes: i. physical or mental harm to B; or ii. B to believe that there is a risk to the safety of B or of another person; and (c) a reasonable person in A's position would know that their conduct would probably cause such a result. ⁴¹
A separate definition of the physical element	A person (A) stalks another person (B) if A engages in a course of conduct which includes any of the following: <i>[then adopt the list found in s 21A(2)(a)-(g)]</i>
The 'catch-all' provision in 'course of conduct' (s 21A(2)(g))	Acting in any way that could reasonably be expected to cause: (a) physical or mental harm to B; or (b) B to believe that there is a risk to the safety of B or of another person.
Using the word 'belief' instead of 'apprehension or fear'	'The key matter should be what the victim <i>believes</i> about their safety or that of another. The person need not be experiencing the emotion of fear, and "apprehension" is unhelpfully ambiguous—it can mean either belief or fear. Casting the matter in terms of belief that there is a risk to the safety of B or another person is simpler and clearer.'
Additional clarification that physical harm includes self-harm	Physical harm includes physical injury and self-harm.

7.43 Redrafting the offence would not result in any 'major changes to the basic meaning of the elements.' The point of redrafting is to make the legislation clear.⁴²

7.44 There have been efforts over recent years to redraft other offences, such as sexual offences, to improve their clarity. Sexual offences were redrafted using a new drafting style with a focus on 'clearly defining the relevant offence'. The benefits of the new style include making clear 'the facts that the prosecution must prove in a trial for the offence'.⁴³ A similar approach should be taken to the stalking offence.

41 Tudor and Byrne explain: 'The phrase currently used in s 21A, "ought to have understood", is relatively uncommon as an objective fault element. Usually, objective fault is defined in terms of some sort of reasonableness standard, rather than by use of the word "ought". In this context, "ought" is somewhat ambiguous... [I]t seems much simpler and clearer to avoid the ambiguity of "ought" and make the objective fault element a more straightforward reasonable person test, as proposed above. This would be clearer and more consistent with other criminal offences.' Ibid.

42 Ibid.

43 Department of Justice and Regulation (Vic), *Victoria's New Sexual Offence Laws: An Introduction* (Report, Criminal Law Review, June 2015) 8. See also ch 4.

Recommendation

33. The Victorian Government should amend the stalking offence in section 21A of the *Crimes Act 1958* (Vic) to improve its clarity and practical application.

The amendments should:

- a. clarify the meaning of the 'course of conduct' element based on established case law principles
- b. redraft the offence to create three offences based on intentional, reckless and 'objective fault' forms of stalking, with the elements clearly laid out and the different degrees of culpability clearly shown.

Other suggestions about the stalking offence

7.45 We heard a range of other suggestions for improving the stalking offence. Suggestions included:

- clarifying that the list of stalking behaviours in the Crimes Act is not exhaustive⁴⁴
- adding 'humiliation' to the list of stalking behaviours.⁴⁵

7.46 However, there is already a 'catch-all' provision in the list of behaviours, and most stakeholders told us that that the list is broad, comprehensive, and not causing any major problems.⁴⁶ Therefore we do not recommend changing the list of stalking behaviours.

7.47 The Children's Court told us about difficulties applying the stalking offence to children. They said that children may not realise the impact of their actions and it can be difficult to prove the required state of mind.⁴⁷ We agree with these observations. We do not consider this to be a difficulty with the law, however. It highlights the challenge of using sophisticated developmental concepts in the criminal law, which may be beyond children and young people at their stage of development. If a court is satisfied in a particular case that a child does have that developmental understanding, and the other elements of the offence are established, then the offence will be proved. Otherwise, methods more appropriate to address the behaviour of children should be used, rather than the criminal law. In Chapter 6, we discussed the importance of therapeutic approaches for children who engage in stalking behaviour.

7.48 Victoria Legal Aid said there might be a need to 'elevate' the victim survivor's apprehension or fear in the offence 'so that it is clear that the victim needs to have an apprehension or fear'.⁴⁸ However, we do not consider this appropriate because this 'may disqualify victims who are considered less likely to be fearful'.⁴⁹ Other serious crimes in which victims likely experience fear do not require an impact on the victim to be proved.⁵⁰

7.49 Tudor and Byrne proposed creating a new offence of 'covert stalking' which would more clearly cover cases where a person stalks someone intending that their conduct will not be discovered.⁵¹ They explained that there is a possible gap in the law where an accused person charged with 'reckless stalking' could argue that 'because they took great care not to be noticed by the person they stalked, it was *not* probable that

44 Submission 56 (Derryn Hinch's Justice Party).

45 Submission 106 (Dr Steven Tudor & Greg Byrne PSM).

46 Consultations 18 (County Court of Victoria), 20 (Law Institute of Victoria), 24 (Criminal Bar Association).

47 Consultation 2 (Children's Court of Victoria (No 1)).

48 Consultation 13 (Victoria Legal Aid). The law does not require victim impact to be proven where the accused person intends to raise fear or apprehension, or knew their conduct would likely raise fear or apprehension.

49 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 82.

50 Crimes such as sexual offences and assault: *Ibid.*

51 Submission 106 (Dr Steven Tudor & Greg Byrne PSM).

the victim would be caused relevant harm or fear'.⁵² While this may be a gap, we did not receive any feedback that this was causing any problems or that an offence was needed to recognise this type of offending.

- 7.50 A 'harassment' offence was also suggested.⁵³ Currently harassing behaviour can be charged as stalking if it forms a 'course of conduct'. We consider that an additional offence of harassment would not be appropriate, given the existing stalking offence, by itself, is confusing and challenging to apply.
- 7.51 We note that in England and Wales there is a harassment offence.⁵⁴ But that legislation has been criticised on a number of bases, including that it has caused confusion about whether certain behaviour amounts to harassment or stalking.⁵⁵ We do not propose to pursue this idea further.

The stalking offence is not applied well in practice

- 7.52 A major theme in this inquiry was that there are problems with how the stalking offence is applied in practice.⁵⁶
- 7.53 We heard that police may be unfamiliar with the stalking offence or find it difficult to apply to the facts of a case.⁵⁷ This leads to a perception that the stalking offence is too difficult to prove in court (discussed next). It also leads to variation in how police apply the offence.⁵⁸
- 7.54 For its part, Victoria Police said that it saw 'In]o substantive issues ... [with] the construction of the stalking offence'.⁵⁹ It stated that 'the most difficult aspect is gathering sufficient evidence to charge and then particularise and prove the offence (including demonstrating a course of conduct)'.⁶⁰ We heard from them that 'It] is more common for police to charge the substantive offences that make up the stalking behaviour than to charge the course of conduct as stalking'.⁶¹

There is a perception that the offence is hard to prove

- 7.55 The Children's Court explained that it 'is seen as quite prohibitive on police to prove a stalking offence'. Even with evidence which corroborates the victim survivor's account, the Court questioned whether police felt confident about getting a conviction.⁶²

52 Ibid (emphasis in original).

53 Submission 32 (Centre for Forensic Behavioural Science). Derryn Hinch's Justice Party recommended building 'on the recent work of the Australian Law Reform Commission in relation to the conception of a Federal (or State) Harassment Act that might consolidate and centralise all of the country's (or relevant State's) existing criminal laws in relation to harassment'. Submission 56 (Derryn Hinch's Justice Party), citing Australian Law Reform Commission, *Serious Invasions Of Privacy In The Digital Era* (Discussion Paper No 80, 2014) Proposal 14.

54 In England and Wales, harassment is 'criminal conduct which causes alarm or distress or puts people in fear of violence'. It is an offence to intentionally pursue a course of conduct that amounts to harassment. A 'course of conduct' in the case of harassment of a single person must involve conduct on at least two occasions. A course of conduct in relation to two or more persons means conduct on at least one occasion in relation to each of those persons: *Protection from Harassment Act 1997* (UK) ss 1–2, 4, 7(2)–(3); Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, *Living in Fear: The Police and CPS Response to Harassment and Stalking* (Report, July 2017) 18–19, 97. See also Director of Public Prosecutions (UK), 'Stalking and Harassment', *Prosecution Guidance* (Online, 23 May 2018) <<https://www.cps.gov.uk/legal-guidance/stalking-and-harassment>>.

55 Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, *Living in Fear: The Police and CPS Response to Harassment and Stalking* (Report, July 2017) 7, 24; see also at 26, 89 (recommending that the UK Home Office clarify the definition of stalking to reduce this confusion). While the *Stalking Protection Act 2019* (UK) has since been introduced, note that 'It]here is [still] no specific legal definition of stalking' in the UK: Director of Public Prosecutions, 'Stalking Protection Orders', *Prosecution Guidance* (Online, 20 January 2020) <<https://www.cps.gov.uk/legal-guidance/stalking-protection-orders>>. See also Submission 32 (Centre for Forensic Behavioural Science), noting that 'The bifurcation of harassment and stalking has led to problems in some jurisdictions, such as the United Kingdom, but this is because the two concepts and patterns of behaviour are not clearly distinguished in the relevant legislation'.

56 Consultation 13 (Victoria Legal Aid). See also Submission 56 (Derryn Hinch's Justice Party); Consultations 6 (Magistrates' Court of Victoria (No 1), 30 (Roundtable with multicultural and multifaitth lawyers and legal stakeholders).

57 Submissions 32 (Centre for Forensic Behavioural Science), 56 (Derryn Hinch's Justice Party); Consultations 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria), 13 (Victoria Legal Aid), 18 (County Court of Victoria); Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 89.

58 Consultation 13 (Victoria Legal Aid).

59 Submission 115 (Victoria Police).

60 Ibid.

61 Consultation 25 (Victoria Police (No 2)).

62 Consultation 2 (Children's Court of Victoria (No 1)).

- 7.56 Research suggests that stalking might need to escalate to 'a perceptible degree of seriousness' before victims notify the police, or before police decide to charge someone.⁶³
- 7.57 Victoria Police acknowledged 'challenges in translating [stalking] behaviours into the brief and portraying the behaviours ... within the parameters of the crime', and that 'The question of whether the evidence is insufficient to secure a conviction is always front of mind'.⁶⁴
- 7.58 Forensicare told us that 'there is an issue around psychological harm and how this is proven in the stalking law'.⁶⁵ Victoria Police similarly noted that 'Mental harm on its own can be difficult to present to the courts'.⁶⁶ The legislation clearly recognises 'mental harm' and further defines it to include 'psychological harm' or 'suicidal thoughts'.⁶⁷ Courts have also acknowledged the psychological impacts of stalking behaviour.⁶⁸
- 7.59 The Children's Court stated that police do not rely on the psychological harm experienced by the victim survivor to establish the stalking offence.⁶⁹ We also heard that police probably do not consider making use of expert evidence in stalking cases to establish psychological harm.⁷⁰

There are challenges with collecting evidence

- 7.60 Police may focus too much on collecting physical or digital evidence of the stalking behaviour, such as records of text messages, online communication or CCTV footage. Participants in a community legal sector roundtable explained:

Drawing from experiences with clients where the matter has reached the courts, there appears to be a preference by police for 'hard' evidence.⁷¹

- 7.61 However, some stalking behaviours may not leave a trace and the strongest evidence may come from the victim survivor's recounting of events.
- 7.62 One victim survivor reflecting on the legal response to stalking told us:

The legal system doesn't understand how to deal with stalking. Because it is all about the 'proof' rather than the 'truth'. How do you prove stalking? Most often the person hides away and threatens you from behind the scenes. For example, they call you with a blocked number several times and when you pick up it is them with heavy breathing but they know you can't prove it is them.⁷²

- 7.63 The person being stalked might report only one incident and police might not dig down to get the whole story.⁷³ The full picture can be missed especially if individual acts are reported at different times or to different police officers.⁷⁴

63 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 97.

64 Consultation 25 (Victoria Police (No 2)).

65 Consultation 36 (Forensicare (No 2)).

66 Consultation 25 (Victoria Police (No 2)).

67 *Crimes Act 1958* (Vic) s 21A(8).

68 See generally *DPP v Sutcliffe* [2001] VSC 43. See also Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 82.

69 Consultation 2 (Children's Court of Victoria (No 1)).

70 Ibid.

71 Consultation 19 (Community legal sector roundtable).

72 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

73 Submission 56 (Derryn Hinch's Justice Party).

74 Ibid.

7.64 Victoria Police explained how collecting evidence of stalking can be 'the most difficult aspect' of investigating the stalking offence:

This can be challenging due to difficulties for victims and others in identifying stalking behaviours, and difficulties in victims retaining evidence of interactions which, together, would demonstrate a course of conduct. Gathering evidence is also often a huge undertaking for police for stalking cases, particularly when it involves conduct online.⁷⁵

Application of the stalking offence must improve

7.65 The challenges described above result in negative outcomes, including:

- The behaviour may be characterised as other offending—for example, property or assault offences—which police believe is easier to prove, rather than as the stalking offence.⁷⁶
- Police may pursue a civil justice response when the behaviour should be charged as a criminal offence.⁷⁷ For example, police may use the breach of an intervention order to pursue criminal action.⁷⁸ This minimises the gravity of the stalking conduct, thereby undermining the justice system's broader aim of preventing this behaviour in the community.

7.66 A similar approach may be taken at the prosecution stage. Even if stalking charges are laid by police and prosecutors, those charges are often dropped by prosecutors, because it is easier to prove incident-based offences or breaches of intervention orders.⁷⁹ We discuss education on plea negotiations in Chapter 4.

7.67 These outcomes fail to reflect the severity of this criminal conduct. They can also have negative consequences for the safety of victim survivors, and for their faith in the justice system. In some cases, the civil response may not be enough to keep a victim survivor safe. In addition, victim survivors may be extremely disappointed when stalking offences are not charged or prosecuted.

7.68 Stalking is 'likely to be concealed in the recording of other crimes'.⁸⁰ This has implications for the interventions available for the accused (see Chapter 8) and judicial decision making—for example, bail decisions may be based on an incomplete picture of risk.⁸¹ It might also distort our understanding of the levels of funding required for stalking-related support services, or see victim survivors of stalking not meeting the eligibility criteria for such supports.

7.69 As the Sentencing Advisory Council explained, this approach compromises the accuracy of criminal justice statistics in 'presenting a reliable estimate of the prevalence of stalking in Victoria's criminal justice system'.⁸²

7.70 Finally, not using the stalking offence could lead to failure to recognise and prosecute this harm. It is important that the criminal law perform its 'base functions', which include deterring crime, denouncing the harm and protecting the community.⁸³ For the criminal law to succeed in this, it needs to be applied predictably.

75 Submission 115 (Victoria Police).

76 Consultations 18 (County Court of Victoria), 28 (Victorian Pride Lobby); Leana A Bouffard et al, 'Still in the Shadows: The Unresponsiveness of Stalking Prosecution Rates to Increased Legislative Attention' (2021) 73 *Journal of Criminal Justice* 101794:1–10, 2; Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xiii; Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 89.

77 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 89. See also Consultation 2 (Children's Court of Victoria (No 1)).

78 Consultations 2 (Children's Court of Victoria (No 1)), 24 (Criminal Bar Association).

79 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xiii.

80 Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 90. See also Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xiii; Consultation 18 (County Court of Victoria).

81 Consultation 6 (Magistrates' Court of Victoria (No 1)).

82 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xiii.

83 Marilyn McMahon, Paul McGorrey and Kelley Burton, 'Prosecuting Non-Physical Abuse between Current Intimate Partners: Are Stalking Laws an Under-Utilised Resource?' (2019) 42(2) *Melbourne University Law Review* 551, 584.

Police need improved guidance and training

- 7.71 The County Court, Magistrates' Court, Victoria Legal Aid and others highlighted a need to improve the practical application of the stalking offence through more guidance and training for police.⁸⁴
- 7.72 We consider this to be the main way to improve how the stalking offence is applied. Research indicates that education results in frontline staff understanding better:
- the stalking offence
 - what legal options victim survivors have
 - what actions will keep victim survivors safe.⁸⁵
- 7.73 Education is also important to the success of the reforms that are in place and those to come.
- 7.74 Suggestions on what the guidance or training should consist of included:
- how to characterise stalking behaviours and understand when the offence should be used⁸⁶
 - how to assess and apply the course of conduct element.⁸⁷
- 7.75 The Magistrates' Court described a need for police training 'in terms of stalking being charged and pursued'.⁸⁸ However, separately in the civil context, the Court stated that 'There is a distinction between criminal charges in relation to stalking and the need for safety and protection [through the civil system]. Sometimes they merge and sometimes they are dealt with differently. This needs to be given attention'.⁸⁹ We agree with this assessment, and consider that this could also be a useful area for police training.
- 7.76 Victoria Legal Aid noted that police apply the 'layman's understanding of stalking'—with too great a focus on the physical conduct, at the expense of the offence's mental elements—and are inconsistent in their use of the stalking offence.⁹⁰ We heard that this inconsistency can be seen in relation to the course of conduct element, which police officers 'are interpreting ... widely'.⁹¹
- 7.77 Victoria Police submitted that while it had not identified any issues with the stalking offence, 'the most difficult aspect is gathering sufficient evidence to charge and then particularise and prove the offence (including demonstrating a course of conduct)'. It acknowledged that 'stalking cases do require significant professional judgement ... [and are an area that] can be challenging ... because stalking behaviours can be so varied and are very contextual'.⁹² These could also be areas of focus for guidance and training.
- 7.78 In our interim report we make recommendations that would help improve how the stalking offence is applied:
- Victoria Police should engage with appropriate experts to provide training to enhance the understanding of frontline police to identify stalking behaviours
 - Victoria Police should develop guidance for frontline police on interviewing and communicating with victim survivors of stalking
 - Victoria Police should develop guidance for identifying and gathering information about stalking for frontline police
 - Victoria Police should record every presentation to police with a report of stalking

84 Consultations 6 (Magistrates' Court of Victoria (No 1)), 13 (Victoria Legal Aid), 18 (County Court of Victoria).

85 See generally Patrick Q Brady and Matt R Nobles, 'The Dark Figure of Stalking—Examining Law Enforcement Response' (2017) 32(20) *Journal of Interpersonal Violence* 3149; Ronnie B Harmon et al, 'The Impact of Anti-Stalking Training on Front Line Service Providers: Using the Anti-Stalking Training Evaluation Protocol (ASTEP)' (2004) 49(5) *Journal of Forensic Sciences* JFS2003354:1–7; Patrick Tidmarsh, 'Training Sexual Crime Investigators to Get the "Whole Story"' (PhD Thesis, Deakin University, 2016).

86 Consultation 13 (Victoria Legal Aid).

87 Consultation 18 (County Court of Victoria).

88 Consultation 6 (Magistrates' Court of Victoria (No 1)).

89 Consultation 34 (Magistrates' Court of Victoria (No 2)).

90 Consultation 13 (Victoria Legal Aid). Victoria Legal Aid also noted that police 'could do better in giving attention to the apprehension or fear element and the mental state of the accused. This would not require changing the legislation'.

91 *Ibid.*

92 Submission 115 (Victoria Police).

- Victoria Police should refer complex cases to specialist police in criminal investigations units
- Victoria Police should use the Whole Story investigation framework for reports of stalking.⁹³

7.79 As the problems extend into the prosecution stage, it is important to ensure that the guidance and training is delivered to authorising officers and specialist police, not just frontline police.

Recommendation

34. In implementing Recommendations 1-4, 6 and 9 of the interim report, Victoria Police should ensure that sufficient guidance and training is given to frontline and specialist police to facilitate strong and effective investigative and evidentiary practices when considering and authorising stalking charges under section 21A of the *Crimes Act 1958* (Vic).

What are other barriers to stalking offences progressing in the justice system?

7.80 Attrition studies follow the progress of cases through the stages of the justice system from report to prosecution, and to when they are finalised in court.

7.81 The Crime Statistics Agency conducted an attrition study of the stalking offence. It followed stalking cases from the police stage through to the court stage in the Magistrates', Children's, County and Supreme Courts, in the three years from 1 January 2016 to 31 December 2018. (We discuss the study briefly in Chapter 2).

7.82 The study made a number of findings, including:

- 'most stalking incidents result in proven charges of some kind, although in many cases the stalking charges themselves are withdrawn, struck out or dismissed at court'.⁹⁴
- Incidents with a co-occurring offence had a higher proven rate (41 per cent) than those without (10 per cent).⁹⁵
- Stalking incidents that were family violence-related had higher proven rates (34 per cent) than those that were not family violence-related (27 per cent).⁹⁶

7.83 These issues could be an area for further exploration. For example, if non-family violence stalking is more difficult to prove than family violence stalking, there might be benefits in addressing why.

7.84 Feedback in this inquiry and research points to the following reasons for cases not progressing in the justice system, some of which overlap with the discussion above. We also discuss barriers to reporting in Chapter 2.

93 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) Recommendations 1-4, 6, 9.

94 Sarah Bright, Lauren Barnaba and Melanie Millsteed, *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System* (Data Snapshot, Crime Statistics Agency, forthcoming).

95 Ibid.

96 Although non-family violence incidents include incidents where no offender is recorded i.e. where the offender is 'not identified': Ibid.

Criminal justice stage	Reasons for cases not progressing in the justice system
Police stage	<ul style="list-style-type: none"> • pursuing criminal charges for other offences, perceived as easier to prove in court⁹⁷ • pursuing a civil response⁹⁸ • challenges with collecting evidence or too much of a focus on getting physical or digital evidence of stalking⁹⁹ • difficulties understanding and applying the offence¹⁰⁰ • the victim survivor not wanting to go through the criminal justice process¹⁰¹ • cases involving some people, such as people with disabilities, may be seen as 'too difficult'.¹⁰²
Prosecution and court stage	<ul style="list-style-type: none"> • preferring to prosecute other offences instead¹⁰³ • charges may be withdrawn by the prosecution before a hearing or trial due to negotiations or guilty pleas for other offences.¹⁰⁴

There is more to learn about why cases do not progress in the justice system

7.85 The findings on attrition, and information on why cases may not progress in the justice system, are useful and point to other areas that would be worth exploring.

7.86 We have a general understanding of why the stalking offence may not proceed. But there are other factors we have not been able to enquire into, for example:

- if some patterns of abuse are less likely to be prosecuted than others
- if some people or groups face more serious barriers to their case progressing than others
- if there are good reasons the stalking offence is not being authorised or dropped (we invited input from the Office of Public Prosecutions, which was unable to provide it because of its resourcing constraints)
- if there are common themes in what police find difficult in collecting evidence to support a stalking offence.

7.87 Knowing these things could help people who work in the justice system respond to cases of stalking using the criminal law. For example, it could identify:

- opportunities to provide victim survivors with more support, if lack of it means that they are not engaging with, or disengaging from, the criminal justice system¹⁰⁵
- any need to address myths that might influence the way police and prosecuting lawyers respond to stalking¹⁰⁶
- ways of improving capability or the resourcing available to police in investigating stalking offences¹⁰⁷

97 Consultations 18 (County Court of Victoria), 28 (Victorian Pride Lobby); Leana A Bouffard et al, 'Still in the Shadows: The Unresponsiveness of Stalking Prosecution Rates to Increased Legislative Attention' (2021) 73 *Journal of Criminal Justice* 101794:1–10, 2; Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 89.

98 Consultation 2 (Children's Court of Victoria (No 1)); Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 89.

99 Submission 56 (Derryn Hinch's Justice Party); Consultation 19 (Community legal sector roundtable).

100 Submission 56 (Derryn Hinch's Justice Party); Consultation 13 (Victoria Legal Aid).

101 Michelle Weller, Lorraine Hope and Lorraine Sheridan, 'Police and Public Perceptions of Stalking: The Role of Prior Victim-Offender Relationship' (2013) 28(2) *Journal of Interpersonal Violence* 320, 330.

102 Consultation 21 (Small group meeting on stalking and women with disabilities).

103 Consultation 25 (Victoria Police (No 2)).

104 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) [2.25].

105 Submission 49 (Victims of Crime Commissioner).

106 Ibid.

107 Ibid.

- opportunities to provide more guidance to the prosecution, such as prosecutorial guidelines on the stalking offence, as exist in the United Kingdom¹⁰⁸
 - further improvements to the law on stalking.
- 7.88 We recommend that the Crime Statistics Agency conduct a qualitative review of police and prosecution stalking files to identify reasons for the attrition of the stalking offence in the criminal justice system.
- 7.89 A manual review of police and prosecution narratives of file closures may improve the understanding of why cases do not progress.
- 7.90 In addition, the review should include a qualitative review of the judicial reasons for not finding charges are proved if they go to contest in the Magistrates' Court.
- 7.91 The review should also identify:
- the quality of existing data on the reasons for closing cases
 - ways to improve the consistency of the data
 - proposed future changes to data systems.

Recommendation

35. The Crime Statistics Agency should conduct a qualitative review to identify reasons for the attrition of the stalking offence in the criminal justice system. The review should examine:
- a. police and prosecution stalking files
 - b. judicial reasons for not finding charges are proved in contested hearings in the Magistrates' Court of Victoria.

Breaching intervention orders: are new offences needed?

What was the point of the days spent compiling evidence, preparing the PSIO application twice (as an Undertaking was also breached), 2 days attending court, months of being in fear of our safety, for nothing. Just to feel as vulnerable, unsafe and unprotected as ever. No wonder people don't bother.¹⁰⁹

- 7.92 The civil response to non-family violence stalking is through the use of PSIOs (see Chapter 6). PSIOs are civil orders granted by the court to ensure the safety of victims of particular behaviours, including stalking.
- 7.93 The PSIO system provides a civil justice response to stalking, but it is a criminal offence to breach the conditions of a PSIO.¹¹⁰ For example, it is an offence to contact a protected person, or be within a certain distance of them, when this is prohibited under a PSIO.¹¹¹

108 Director of Public Prosecutions (UK), 'Stalking and Harassment', *Prosecution Guidance* (Online, 23 May 2018) <<https://www.cps.gov.uk/legal-guidance/stalking-and-harassment>>.

109 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

110 *Personal Safety Intervention Orders Act 2010* (Vic) s 100.

111 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [2.8] (listing examples of conditions a court may include in an interim or final PSIO), [2.9].

- 7.94 Breaching a PSIO is a summary offence with a maximum penalty of two years imprisonment.¹¹² PSIO breaches are mostly prosecuted in the Magistrates' Court.¹¹³ But the charge may be heard in the higher courts if the person who has breached the order is charged with serious offences that are related to the breach.¹¹⁴

What do we know about PSIO breach offences?

- 7.95 Between 2011 and 2020, 26,329 PSIO breach offences were recorded by police. Of these, 9,354 PSIO breach offences were sentenced in 5,006 cases.¹¹⁵ Approximately 20 per cent of PSIOs issued result in reports to police of alleged breaches.¹¹⁶
- 7.96 Sentencing for PSIO breach offences was overrepresented in rural and regional areas. Even though only 24 per cent of Victorians live in rural and regional areas, 'regional court locations accounted for 43 [per cent] of all cases involving PSIO breach offences in the Magistrates' Court.'¹¹⁷
- 7.97 As explained in Chapter 2, children in rural and regional areas are overrepresented in PSIOs. This disparity persists for breach offences sentenced. The Sentencing Advisory Council found that for PSIO breaches in the Children's Court of Victoria, 'two-thirds of charges (65 per cent) and cases (66 per cent) were sentenced in rural and regional Victoria, with only one-third sentenced in the Greater Melbourne area.'¹¹⁸
- 7.98 The Sentencing Advisory Council found that there has 'been a steady and considerable increase in recorded PSIO breach offences since 2016'. It observed this could be because of:
- increased breach behaviour
 - increased reporting of breaches, or
 - increased police responsiveness to breaches.¹¹⁹

New PSIO breach offences are not needed

- 7.99 In our consultation paper we asked whether there should be additional offences in the *Personal Safety Intervention Orders Act 2010* (Vic) (PSIO Act) to address more serious breaches and, if so, what they should cover.¹²⁰
- 7.100 The *Family Violence Protection Act 2008* (Vic) (FVPA) has an additional two offences for more serious breaches of intervention orders, with higher penalties (see box). By contrast there are no additional breach offences under the PSIO Act with higher penalties that consider any aggravating circumstances, such as persistent breaches or intent to cause harm or fear.¹²¹

112 *Personal Safety Intervention Orders Act 2010* (Vic) s 100(2).

113 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) xii.

114 *Criminal Procedure Act 2009* (Vic) s 242. A higher court may hear a charge against an accused for a summary offence that is unrelated to the indictable offence before the court, but only if the accused consents and intends to plead guilty to the charge for the summary offence: at s 243.

115 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) ix.

116 69,703 interim PSIOs and 57,890 final PSIOs were issued. Out of the combined total (127,593) issued, 26,329 PSIO breach offences were recorded by police: *Ibid.*

117 *Ibid.* xii.

118 *Ibid.* [6.3].

119 *Ibid.* [5.2].

120 Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) Question 11.

121 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [2.10].

Additional breach offences under the *Family Violence Protection Act 2008* (Vic)

Contravention of order intending to cause harm or fear for safety, s 123A

This prohibits contravention of the order intending to cause, or knowing that the conduct will probably cause, physical or mental harm or apprehension of fear in the protected person. Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

Persistent contravention of notices and orders, s 125A

This covers persistent contravention of notices and orders. It stipulates that a person must not persistently contravene a Family Violence Safety Notice or Family Violence Intervention Order. The conduct constituting the breach must have occurred on at least two other occasions in a 28-day period. Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

- 7.101 The Law Institute of Victoria (LIV) supported the inclusion of a section 125A equivalent in the PSIO Act. Victoria Police supported the inclusion of equivalents of sections 125A and 123A.¹²²
- 7.102 The LIV explained:
- The nature of stalking involves multiple instances of prohibited behaviour against the affected person and can be severely traumatic for victim survivors. It is particularly concerning that penalties are not available for the persistent contravention of an order or safety notice where a risk of safety for the affected person has already been established.¹²³
- 7.103 One person who experienced stalking supported additional offences in the PSIO Act to address more serious breaches.¹²⁴ Another suggested that if more than three breaches occur, police should lay charges automatically.¹²⁵
- 7.104 On the other hand, Victoria Legal Aid and Liberty Victoria opposed the addition of offences. They said that this:
- would result in 'net widening' and entrench more people in the criminal justice system¹²⁶
 - any additional offending would be covered by existing offences¹²⁷
 - judicial discretion in sentencing is enough to address the breach and behaviour.¹²⁸
- 7.105 The Victims of Crime Commissioner submitted that if including equivalent breach offences from the FVPA, 'consideration would need to be given to how such offences might overlap with the criminal law offence of stalking'. The Commissioner explained that 'a "persistent" contravention might be captured under the criminal offence of stalking'.¹²⁹
- 7.106 Experiences of stalking should be taken seriously, just as family violence is. Victim survivors of stalking should receive an appropriate response and protection when a PSIO is breached.

122 Submissions 98 (Law Institute of Victoria), 115 (Victoria Police).

123 Submission 98 (Law Institute of Victoria).

124 Submission 36 (Ahmad Masri).

125 Submission 62 (Name withheld).

126 Consultation 13 (Victoria Legal Aid).

127 Submission 47 (Liberty Victoria); Consultation 13 (Victoria Legal Aid).

128 Submission 47 (Liberty Victoria).

129 Submission 49 (Victims of Crime Commissioner).

- 7.107 However, we do not recommend introducing new breach offences. In our view they are not needed for non-family violence stalking under the PSIO system because the existing law can cover and sanction breaches adequately. As the Victims of Crime Commissioner stated, persistent breaches of PSIOs are likely to be captured by the stalking offence.
- 7.108 New offences are also unlikely to change the outcome. In cases 'where a substantive offence is committed in breach of an intervention order', the breach, even if not charged, may be considered 'an aggravated circumstance of the commission of the substantive offence' for the purposes of sentencing.¹³⁰
- 7.109 A 2008 report by the Sentencing Advisory Council explains:
- It may be that the circumstances in which the offence was committed are sufficient to charge the offender with a further substantive offence (such as criminal damage to property, assault or making threats to kill). In these situations, it is arguable that there is no need for an aggravated offence of breach of an intervention order because the relevant behaviour is covered by another criminal charge.¹³¹
- 7.110 We agree with these comments. Further, a breach may be relied on to establish the 'course of conduct' element in stalking. This means that stalking behaviour can be addressed through both a PSIO and a criminal offence. Even though the FVPA contains additional breach offences, in contrast, there is no equivalent 'family violence offence'.¹³²
- 7.111 The value and protection of PSIOs are only as good as the effectiveness of the enforcement of breaches. Adding further offences, in circumstances where the enforcement of breaches is neither consistent nor transparent, does not solve the problem of enforcing them.
- 7.112 Although introducing new breach offences under the PSIO Act might have symbolic value for victim survivors of non-family violence stalking, we conclude that it would be better to improve responses to and enforcement of breaches by police.

Improving police responses to PSIO breaches

- 7.113 Victim survivors feel frustrated about the police response to PSIO breaches because it is not made clear to them why the police do not respond. This is a problem with how police respond, not a problem with the law.
- 7.114 Multiple victim survivors told us about the poor enforcement of breaches by police, as well as poor explanations about why reported breaches were not enforced (see box).

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Andrea David et al, *Breaching Intervention Orders* (Report, Sentencing Advisory Council, 2008) [5.2.19].

Ibid [5.2.14].

See generally Heather Douglas, 'Do We Need a Specific Domestic Violence Offence?' (2015) 39 *Melbourne University Law Review* 434.

What we heard about the police response to breaches

One person who experienced stalking told us:

The process up to issuing the safety order works. What doesn't work is the dismissing of all the breaches e.g. taunting, noises in the middle of the night to wake me from deep sleep, waiting for me in the dark as I arrived home. Sure he kept his distance of 3 metres, but he was there all the same, staring, fuming. ... The breaches amounted to more than 3 and he would have been jailed or fined on that basis, but the police didn't think these were breaches.¹³³

One person who had reported her experience of stalking in the last 1–2 years said:

It makes you feel worthless when you have been granted a PSIO, go to the police to lodge a report of breach, and they don't follow through/never follow up. ...

Some police were good, others less so. Calling 000 to report a breach and being told that there was no police available to attend is disheartening when you have someone standing on the nature strip outside your house at 3am in the morning. I was even threatened to be shot by my offender and the police called me back advising that he didn't have a gun and to calm down.¹³⁴

One person with a disability who lived in a rural or regional community, reflecting on her experience in 2020, said:

Last week ... I went to my local police station—again—because the stalker had breached the IVO again. The police officer was incredibly rude and accused me of lying. He literally said, 'I don't believe that to be true', even when I showed him footage of [the] stalker breaching the IVO. ... Largely, police don't care and do not do anything when [a] stalker has breached the IVO. Whenever he breaches the IVO, police try to minimise it down to nothing or they try to blame me.¹³⁵

One person with a disability who had reported to police 2–5 years ago said:

The police were antagonistic in enforcing the protection order.

The perpetrator kept stalking me in my home, the apartment complex and local community. There was evidence of continuing stalking. They refused to act. The Magistrate then ordered the police to act to enforce the protection order.

The police continued refusing to do so.¹³⁶

One person who had reported to police 2–5 years ago told us:

My neighbour who was stalking (56 year old female) was breaching the interim PSIO daily, but the Police just said 'she sounds nice' or would come to the property and tell her to stop and then advise me they warned her. She was breaching the interim order daily over a 4 month period and at the point of reporting all of the breaches (daily), there was not any consequences against my stalker.¹³⁷

133 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

134 Ibid.

135 Ibid.

136 Ibid.

137 Ibid.

One person who identified themselves as living in a rural or regional community told us:

I now need the police to take a breach of an intervention seriously. Negotiations took place between lawyers on the day of our PSIO hearing regarding the distance allowed by the respondent from our house, school, place of work, including her ability to get around town without being allowed to drive on those roads. Yet when we've reported the person is frequently driving past, the police have advised that driving past is not a breach and, again, if they were to respond to every breach of a PSIO of someone driving past, they'd be doing that all day.¹³⁸

- 7.115 It is important that breaches be dealt with for the system to have credibility. As one victim survivor who was granted a PSIO in 2020 explained:

He keeps breaching it and doesn't care anymore because he doesn't care about police and he knows he'll only get a slap on the hand so he keeps doing it.¹³⁹

- 7.116 Di McDonald, a person who experienced stalking, suggested:

Police should attend when called, not just advise you to ask your neighbours to make a citizen's arrest, tackle him to the ground and rip off the balaclava, then call Police.¹⁴⁰

- 7.117 However, data we received from the Sentencing Advisory Council might suggest, at least in part, an 'increased police responsiveness to breaches' since the PSIO scheme entered into force in 2011. Whereas police recorded only 919 breach offences in 2012 (the first full year of the scheme's operation), they recorded 4,343 in 2020.¹⁴¹
- 7.118 Even if these figures do reflect greater police responsiveness, there are still victim survivors who feel let down by the justice system. The police response to breaches needs to be more consistent.
- 7.119 Failure to respond to breaches could also compromise victim survivor safety and 'add ... to their distress and lack of trust in police'.¹⁴²
- 7.120 As we explained in our report *Review of Family Violence Laws* (2006), if police do not respond adequately to breaches, intervention orders will be perceived as 'not worth the paper they are written on' by victims and people who stalk.¹⁴³
- 7.121 Victoria Police should review its operational policy and guidance on responding to breaches of PSIOs and ensure that alleged breaches are responded to efficiently and effectively.
- 7.122 There is a clear imperative under section 101 of the PSIO Act for police to enforce the law. Police are given powers to arrest and detain a person in breach of a PSIO without a warrant (see box).

138 Ibid.

139 Ibid.

140 Submission 70 (Di McDonald).

141 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) [5.2] Figure 16. In fact, with the exception of 2016, recorded breach offences increased every year. The other two potential explanations offered by the Sentencing Advisory Council for these increasing numbers were increased breaching behaviour and increased reporting: at [5.2].

142 Submission 32 (Centre for Forensic Behavioural Science).

143 Victorian Law Reform Commission, *Review of Family Violence Laws* (Report No 10, 2006) 372 [10.67].

Personal Safety Intervention Orders Act 2010 (Vic), section 101 - arrest for contravention of personal safety intervention order

If a police officer believes on reasonable grounds that a person has committed an offence against section 100, the officer may, without warrant, arrest and detain the person.

- 7.123 The Victoria Police Manual is limited in its guidance on responding to breaches of PSIOs. It states only that 'Members may exercise a power to arrest without warrant under s.101 [PSIO Act], if there are reasonable grounds to suspect that a person has breached a condition of the order'.¹⁴⁴
- 7.124 In contrast, the manual has more detailed guidance on responding to breaches of family violence intervention orders (FVIOs). For example, the manual states that 'conditions within an intervention order are to be strictly interpreted and enforced. There is no such thing as a "technical" breach ... If evidence of contravention exists, members need to consider prosecution. In all cases, the matter must be investigated and a brief of evidence submitted'.¹⁴⁵
- 7.125 Good examples of police guidance are also available overseas (see box).

Guidance for police on dealing with breaches in the United Kingdom

In the United Kingdom where stalking protection orders (SPO) exist, there is guidance for police for dealing with breaches. For example:

- 'police should act swiftly when a breach has occurred and need to fully investigate the offence'¹⁴⁶
- 'It is important to be proactive [and make an arrest at the first opportunity], as any delay may (a) lead to a loss of the victim's confidence in the efficacy of the order; and (b) defeat the purpose of the order of preventing the stalking from causing further harm'¹⁴⁷
- any delays in making an arrest 'may signal to the respondent that they will be permitted by the police to continue breaching ... and stalking their victim without action by police'¹⁴⁸
- The UK College of Policing has issued guideline documents for dealing with stalking. For breaches, guidance states that 'police will take prompt and robust action to deal with the breach and consider any further stalking or harassment offences'.¹⁴⁹

- 7.126 Where a decision has been made not to file a charge for a breach offence, victim survivors need to know why. We consider this to be important to meet the justice needs of victim survivors, including to have information and to feel safe and believed (see Chapter 1).
- 7.127 This is recognised in the *Victims' Charter Act 2006* (Vic). The Charter requires an investigatory agency to 'inform a victim, at reasonable intervals, about the progress of an investigation into a criminal offence unless the disclosure may jeopardise any investigation of a criminal offence'.¹⁵⁰

144 Victoria Police, 'Responses to Non Family Violence Disputes', *Victoria Police Manual* (Electronic Manual, January 2022) 8 [12].
145 Victoria Police, 'Family Violence', *Victoria Police Manual* (Electronic Manual, January 2022) 17 [12.1].
146 UK Home Office, *Stalking Protection Orders: Statutory Guidance for the Police* (Report, January 2021) 22 [102].
147 Ibid 22 [103].
148 Ibid 22 [104].
149 College of Policing (UK), *Stalking or Harassment: Advice for Investigators on Effective Investigation* (Report, November 2020) 9.
150 *Victims' Charter Act 2006* (Vic) s 8(1).

- 7.128 The Charter also requires the prosecuting agency, as soon as reasonably practicable, to give a victim information about:
- the offences charged against the person accused
 - if no offence is charged against any person, the reasons why
 - if offences are charged, any decision to substantially modify or discontinue charges, or accept a guilty plea to a lesser charge.¹⁵¹
- 7.129 In our interim report, and Chapter 6 of this report, we recommend guidance be developed to help identify stalking cases. In Chapter 8 we recommend the response to stalking focus on early intervention. These recommendations could support more targeted and effective responses to breaches.

Recommendations

36. a. Victoria Police should review its operational policy and practice material to develop clear guidance for police members to follow when responding to alleged breaches of personal safety intervention orders in relation to victim survivors of non-family violence stalking.
- b. Victoria Police should ensure that responses to alleged breaches are timely and capable of meeting the safety needs of victim survivors.
37. a. Where an alleged breach of a personal safety intervention order has occurred, but upon investigation Victoria Police decides not to file a charge, Victoria Police should provide an explanation for its decision not to charge to the person protected by the order.
- b. If requested by the protected person, this decision should be provided in writing.

The criminal trial process should be improved for stalking victim survivors

7.130 Victim survivors of stalking are witnesses for the prosecution in criminal proceedings. They are participants in criminal proceedings who have an inherent interest in the response of the criminal justice system.¹⁵² This is reflected in the *Victims' Charter Act 2006* (Vic).¹⁵³

7.131 While all victims respond differently to stress, even well-conducted criminal proceedings and proper cross-examination can be traumatic and challenging. As we stated in our report *The Role of Victims of Crime in the Criminal Trial Process* (2016):

By far the most challenging [form of participation in the criminal trial process for victim survivors] is to give evidence as a witness for the prosecution. Some victims are able to meet the challenge with relative ease. For others, the experience can be harrowing. Their private lives may be exposed to public scrutiny. They may be traumatised by seeing the accused in court and may find the courtroom environment intimidating and stressful. Cross-examination in particular can cause victims distress and further emotional harm.¹⁵⁴

7.132 This must be considered together with the accused's right to a fair trial and the right to make a full and proper defence.¹⁵⁵

¹⁵¹ Ibid s 9(a)–(c).

¹⁵² Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016): [17]–[18], [3.20]–[3.26].

¹⁵³ *Victims' Charter Act 2006* (Vic) ss 4(1)(ba), 7A.

¹⁵⁴ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) [8.1].

¹⁵⁵ *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 24(1), 25(2); Liberty Victoria also referred to the accused's right in section 25 of the Charter to be presumed innocent when charged with criminal offending: Submission 47 (Liberty Victoria).

- 7.133 It is important that court processes:
- are safe for people who experience stalking
 - do not further traumatise them
 - do not give accused persons new opportunities to cause harm
 - enable people who experience stalking to give a reliable and accurate account of their evidence.
- 7.134 In Victoria, procedures are designed to minimise the trauma and distress involved in giving evidence for certain groups of victims.¹⁵⁶ In this report, we refer to these as 'special protections'.¹⁵⁷
- 7.135 Special protections have been introduced to protect victims in criminal proceedings. These changes have focussed on children, people with a cognitive impairment and victim survivors of family violence and sexual offences.
- 7.136 In Chapter 6 we discuss similar protections for victim survivors of stalking in the civil justice system.

A 'protected victim' category for victim survivors of stalking

7.137 The special protections in Victoria are summarised in Table 14.

Table 14: Special protections for witnesses under the *Criminal Procedure Act 2009* (Vic), pt 8.2

Special protection procedure	Description	Applicable cases relating wholly or partly to	Applicable witnesses
Alternative arrangements Div 4	The use of physical arrangements such as: <ul style="list-style-type: none"> • allowing witnesses to give evidence outside the courtroom in special 'remote witness facilities' • using support people • screens between the accused and the victim survivor in court. 	<ul style="list-style-type: none"> • a sexual offence • family violence. Not available for stalking cases.	All witnesses, including complainants.
Visual and Audio Recorded Evidence (VAREs) Div 5	A recording of interviews with police to be used in court as evidence-in-chief.	<ul style="list-style-type: none"> • a sexual offence • family violence • an indictable offence involving assault, injury or threat of injury, including stalking. 	All witnesses, including complainants, who are: <ul style="list-style-type: none"> • children • people with a cognitive impairment Not available for adults without a cognitive impairment.

¹⁵⁶ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) [8.6]–[8.23].

¹⁵⁷ This is not a term used in legislation.

Special protection procedure	Description	Applicable cases relating wholly or partly to	Applicable witnesses
<p>Special hearings</p> <p>Div 6</p>	The complainant is cross-examined and re-examined in a remote witness facility in a 'special hearing', which is recorded and can be played later at trial (along with the VARE).	<ul style="list-style-type: none"> a sexual offence <p>Not available for stalking cases.</p>	<p>Complainants who are:</p> <ul style="list-style-type: none"> children people with a cognitive impairment <p>Not available for adults without a cognitive impairment.</p>

7.138 Table 14 indicates that Visual and Audio Recorded Evidence (VAREs) is the only special protection available for stalking, and then only for witnesses, including complainants, who are children or have a cognitive impairment.

7.139 This lack of protection is particularly concerning as the court process may extend stalking activity.¹⁵⁸ It may act as a disincentive for victim survivors to engage with the criminal justice system, and cause further fear and harm to those victim survivors who do.

7.140 In our report *The Role of Victims of Crime in the Criminal Trial Process* (2016) we explained how special protections can benefit victims of crime more broadly:

Ultimately, special protections are about protecting victims from unnecessary trauma, intimidation and distress, and ensuring they are able to give their best evidence. This rationale should form the basis of any expansion of existing special protections.¹⁵⁹

7.141 In that report, we recommended extending special protections to a new category of 'protected victims'.¹⁶⁰ We recommended that protected victims should include people who are likely to 'suffer severe emotional trauma', or 'be so intimidated or distressed' that they cannot give evidence or give evidence fairly.¹⁶¹

7.142 Our recommendations did not depend on the type of offence. Whether a person would fit into this category would be decided on a case-by-case basis by the judicial officer, if they meet the threshold and other legislative criteria.¹⁶²

7.143 We also recommended that all child victims should be considered protected victims and be able to use special protections because 'the child's age alone is sufficient reason to protect them from the distress of giving oral evidence, and being cross-examined, in the courtroom in front of the accused'.¹⁶³

158 Consultation 4 (Sexual Assault Services Network); Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018) 29–30; Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021) [1.8]. See also Cleo Brandt and Bianca Voerman, 'The Dutch Model: A New Approach to Policing Stalking' in Heng Choon (Oliver) Chan and Lorraine Sheridan (eds), *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley and Sons, 2020) 251, 266 noting that legal disputes 'may prolong the stalking behaviour' in cases of family violence stalking.

159 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) [8.41].

160 Ibid Recommendations 38, 40.

161 Ibid Recommendation 37. This is similar to the definition of 'vulnerable adult' used in the Australian Capital Territory: *Evidence Act (Miscellaneous Provisions) Act 1991* (ACT) s 42.

162 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) Recommendation 38, [8.41]–[8.42].

163 Ibid [8.43]. See also Recommendation 38.

7.144 We also recommended a guiding principle to ensure that special protections are consistently applied and to assist courts in interpreting the provisions (see box).¹⁶⁴

Our recommendations for a new 'protected victim' category and for extending special protections from *The Role of Victims of Crime in the Criminal Trial Process* (2016)

Recommendation 37: The *Criminal Procedure Act 2009* (Vic) should be amended to include a definition of protected victim. A protected victim should be defined as a victim who is likely to suffer severe emotional trauma or be so intimidated or distressed as to be unable to give evidence or give evidence fairly.

Factors relevant to determining whether a victim is a protected victim should include:

- a. the nature of the offending perpetrated against the victim
- b. the victim's relationship with the accused
- c. the subject matter of the evidence the victim is expected to give
- d. the victim's views
- e. and any other factor the court considers relevant.¹⁶⁵

Recommendation 38: Eligibility for protective procedures under section 123 and Divisions 5 and 6 of Part 8.2 of the *Criminal Procedure Act 2009* (Vic) should be extended to also apply to protected victims. All child victims other than child victims of sexual offences should be considered protected victims unless the court is satisfied that the child victim is aware that the protective procedures are available and does not wish to use them.

Recommendation 40: The *Criminal Procedure Act 2009* (Vic) should be amended so that the court must order the use of alternative arrangements set out in section 360 of the Act for:

- a. child victims and victims with a cognitive impairment
- b. victims determined to be protected victims in accordance with Recommendation 37,
 - unless the court is satisfied that the victim is aware of their right to use those arrangements and is able and wishes to give evidence without them.

Recommendation 41: The *Criminal Procedure Act 2009* (Vic) should be amended to include a guiding principle that, in interpreting and applying Part 8.2, courts are to have regard to the fact that measures should be taken that limit, to the fullest practical extent, the trauma, intimidation and distress suffered by victims when giving evidence.

7.145 In our report *Committals* (2020) we recommended amendments to the Criminal Procedure Act so that 'the court may make directions for alternative arrangements for taking the evidence of any witness where the interests of justice so require, and taking into account the need to minimise trauma for victims and witnesses.'¹⁶⁶ The Victorian Government has not yet implemented these recommendations.

7.146 During the current inquiry we heard support for protections for victim survivors of stalking in general court processes.¹⁶⁷ This included giving the victim the option of not appearing in person.¹⁶⁸

164 Ibid [8.97] Recommendation 41.

165 Ibid xxvi.

166 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) Recommendation 48.

167 Submissions 32 (Centre for Forensic Behavioural Science), 56 (Derryn Hinch's Justice Party), 65 (Code Black Threat Management), 98 (Law Institute of Victoria); Consultations 4 (Sexual Assault Services Network), 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

168 Submissions 32 (Centre for Forensic Behavioural Science), 65 (Code Black Threat Management); Consultation 12 (Domestic Violence Victoria and Domestic Violence Resource Centre Victoria).

- 7.147 In particular, the Victims of Crime Commissioner supported implementation of our recommendation for protected victims made in our report *The Role of Victims of Crime in the Criminal Trial Process* (2016).¹⁶⁹
- 7.148 Recently, the Victorian Parliament recognised the need for specific protections for victims of stalking in Victims of Crime Assistance Tribunal (VOCAT) hearings.¹⁷⁰
- 7.149 Our previous recommendations for a protected victim category and special protections should be implemented. The category would be broad enough to include victim survivors of stalking who meet the criteria. As the recommendations intended, it will also benefit victims of other crimes who fit the protected victim category.
- 7.150 Under this model, once a judicial officer determines that the protected victim category applies, victim survivors of stalking would benefit from special protections, such as alternative arrangements. This would fill current gaps in access to these special protections (see box above).
- 7.151 In line with our previous recommendations, the court should order the use of alternative arrangements for victims who are children, or who the court decides are protected victims, unless the court is satisfied that the victim is aware of their right to use those arrangements and is able and wishes to give evidence without them.
- 7.152 We have acknowledged the resource implications of extending all special protections to protected victims in our previous reports.¹⁷¹ We suggest limiting the special protections to the use of alternative arrangements at first. In this inquiry, that was the protection that we heard was most needed.
- 7.153 We have also noted potential issues with the quality of VAREs in our report *Improving the Justice System Response to Sexual Offences* (2021) and the value of 'pre-recording' all of the complainant's evidence (instead of using VAREs and special hearings).¹⁷²
- 7.154 In that report we recommended a procedure to allow victim survivors in sexual offence trials to give their evidence in the form of a pre-recording. We suggested that the procedure should apply and operate in similar ways to other alternative arrangements. A similar approach should be adopted for victim survivors in stalking matters. The court should order pre-recording of evidence and its use in trial if the victim survivor wishes. The recording should be made available for appeals and any retrials.
- 7.155 It is likely that such an arrangement will be easier to make now than it used to be. In recent times there has been more flexibility in courtrooms through the use of technology (for example, due to coronavirus (COVID-19)). This flexibility should be used to protect victim survivors in stalking matters.
- 7.156 As we stated in our report on sexual offences, the process should be developed to ensure continuity of counsel and judge or magistrate through the pre-recorded evidence procedure and trial. Strong case management should ensure matters are resolved as much as possible before the protected victim completes their pre-recorded evidence.¹⁷³

169 Submission 49 (Victims of Crime Commissioner).

170 As a result of legislative amendments that came into effect in March 2022, people accused of stalking must not be notified about, and do not have a right to appear and be heard at VOCAT hearings involving the people they are accused of stalking: *Victims of Crime Assistance Act 1996* (Vic) s 34(4)(aa), 35(1A).

171 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) [11.79]–[11.81] Recommendation 44; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) [8.50]–[8.53].

172 We preferred a procedure for pre-recording all of the complainant's evidence to expanding the use of VAREs after hearing concerns about the quality of VAREs currently used for children and people with a cognitive impairment: Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) [21.90]–[21.101] Recommendation 86.

173 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) [21.102].

Recommendations

38. The Victorian Government should implement Recommendations 37, 40 and 41 from the Victorian Law Reform Commission's *The Role of Victims of Crime in the Criminal Trial Process* report to amend the *Criminal Procedure Act 2009* (Vic) to include a 'protected victim' category and provide protections in the form of alternative arrangements for giving evidence.
39. The Victorian Government should introduce measures under the *Criminal Procedure Act 2009* (Vic) to allow 'protected victims' to give their evidence in the form of a pre-recording.

The courtroom experience should be safe for victim survivors

- 7.157 We heard about the need for a safe courtroom experience for victim survivors of stalking. This included safe infrastructure and design in courtrooms,¹⁷⁴ including for children.¹⁷⁵
- 7.158 These issues were also addressed in our report *The Role of Victims of Crime in the Criminal Trial Process* (2016). In that report, we observed that the design and physical infrastructure of courts can make it difficult to minimise contact between a complainant and the accused.¹⁷⁶ We recommended measures to protect victim survivors attending court in indictable criminal trials (see box).

Our recommendation for protecting victims attending court in indictable criminal trials from *The Role of Victims of Crime in the Criminal Trial Process* (2016)

Recommendation 43: Court Services Victoria, in consultation with investigatory, prosecuting and victims' services agencies, should implement measures to protect victims attending court proceedings on indictable criminal matters, including by:

- a. ensuring that victims can enter and leave courthouses safely, including, where possible, allowing them to use a separate entrance and exit
- b. making available separate rooms for victims to wait in at court and ensuring victims know where they are
- c. establishing remote witness facilities that are off-site or accessed via a separate entry to that used by other court users
- d. using more appropriate means to screen victims from the accused when giving evidence in the courtroom.

- 7.159 In our report *Improving the Justice System Response to Sexual Offences* (2021) we acknowledged that some progress has been made on this front.¹⁷⁷ Technology in courtrooms has been upgraded and there are more remote witness facilities.¹⁷⁸ In that report, however, we found that more needs to be done.¹⁷⁹ We recommended that court infrastructure and facilities should be equipped with technology that provides for the best quality evidence and so contributes to a fair trial (see box).¹⁸⁰

174 Submission 49 (Victims of Crime Commissioner).

175 Consultation 29 (Alannah & Madeline Foundation).

176 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) [8.112]–[8.116].

177 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) [21.77]–[21.80].

178 Ibid; Jaclyn Symes, Attorney-General (Vic), 'Supporting Our Courts To Drive Down COVID-19 Backlogs' (Media Release, 13 May 2021).

179 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) [21.81].

180 Ibid [21.84].

Our recommendation for protecting complainants in sexual offence cases attending court from *Improving the Justice System Response to Sexual Offences* (2021)

Recommendation 85: The Victorian Government should fund the courts to strengthen measures to protect complainants in sexual offence cases by:

- a. ensuring that they can enter and leave courthouses safely, including, where possible, allowing them to use a separate entrance and exit
- b. using appropriate means to screen complainants from the accused when giving evidence in the courtroom
- c. ensuring technology is reliable to support complainants to present their best evidence.

7.160 Although these recommendations were not developed with victim survivors of stalking in mind, they would make it safer for this group to attend court or give evidence in proceedings. A safe courtroom experience is important to avoid the frightening prospect of coming face-to-face with the person who is stalking them and being stalked through the justice system.

Recommendation

40. The Victorian Government should implement Recommendation 43 of the Victorian Law Reform Commission's *The Role of Victims of Crime in the Criminal Trial Process* and Recommendation 85 of the *Improving the Justice System Response to Sexual Offences* reports to strengthen measures to protect victim survivors of stalking attending court.

Victim survivors should not be personally cross-examined by the accused

7.161 In the criminal justice system, the law prevents a person who is a protected witness from being personally cross-examined by the accused in sexual offence or family violence cases.¹⁸¹

7.162 A protected witness is defined as:

- the complainant
- a family member of the complainant
- a family member of the accused
- any other witness whom the court declares to be a protected witness.¹⁸²

7.163 This protection does not apply in non-family violence stalking matters.

7.164 There was agreement in submissions and consultations that people who have experienced stalking should be protected during cross-examination.¹⁸³

¹⁸¹ *Criminal Procedure Act 2009* (Vic) ss 353, 354, 356.

¹⁸² *Ibid* ss 354, 355.

¹⁸³ Submission 47 (Liberty Victoria); Consultations 2 (Children's Court of Victoria (No 1)), 24 (Criminal Bar Association).

- 7.165 For example, Sexual Assault Services Network suggested that cross-examining the victim survivor 'is giving the perpetrator what they are seeking'.¹⁸⁴ Jim Shaw, from the Criminal Bar Association, noted that the court's power to prevent inappropriate cross-examination is not enough in these situations:
- Stopping the accused from asking inappropriate questions does not solve the problem. It is the mere fact that the person is asking the question that is the problem.¹⁸⁵
- 7.166 Court proceedings could be used by the accused to perpetuate the stalking behaviour, and extend the trauma and distress for the victim survivor. This fact justifies a ban on the accused being able to personally cross-examine the victim survivor.
- 7.167 The ban already exists for victim survivors of family and sexual violence, where there are high risks of re-traumatisation. As we acknowledge in Chapter 1, family violence, sexual violence and stalking can all involve the exercise of power by one person over another.¹⁸⁶ Many of the impacts can be similar, including fear of the person harming them.¹⁸⁷
- 7.168 But stalking charges may be prosecuted alongside other criminal charges. It is important not to limit the ban on cross-examination to cases that only have stalking charges. Extending the ban to cases that are 'wholly or partly' related to a stalking charge is consistent with the approach in the Criminal Procedure Act to sexual offences or family violence.¹⁸⁸
- 7.169 The law states that if the accused does not obtain legal representation to cross-examine a protected witness (after being given a reasonable opportunity to do so), the court must order Victoria Legal Aid to represent the accused for that purpose.¹⁸⁹ This protects the accused's right to test the evidence against them.
- 7.170 We recommend that Victoria Legal Aid should be adequately resourced to provide this representation.

Recommendations

41. The Victorian Government should amend Part 8.2, Division 3 of the *Criminal Procedure Act 2009* (Vic) so that the Division on cross-examination of protected witnesses applies to a criminal proceeding that relates (wholly or partly) to a charge for stalking.
42. The Victorian Government should ensure that Victoria Legal Aid is resourced to provide legal representation to unrepresented accused in accordance with section 357(2) of the *Criminal Procedure Act 2009* (Vic).

184 Consultation 4 (Sexual Assault Services Network).

185 Consultation 24 (Criminal Bar Association).

186 Bonnie Brandl, Candace J Heisler and Lori A Stiegel, 'The Parallels between Undue Influence, Domestic Violence, Stalking, and Sexual Assault' (2005) 17(3) *Journal of Elder Abuse and Neglect* 37, 44.

187 *Ibid* 46.

188 *Criminal Procedure Act 2009* (Vic) s 353(1).

189 *Ibid* s 357.

CHAPTER
08

Responding to people who stalk

162 Overview

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8. Responding to people who stalk

Overview

- People who stalk should be accountable for their behaviour.
- Complex factors contribute to stalking.
- There is some evidence that therapeutic treatment may reduce the risk of re-offending.¹
- People who stalk need to get the right intervention, early, to stop their behaviour. But reforms, including early intervention, will only work if the services actually exist.
- Electronic monitoring is a controversial criminal justice measure. It is unlikely to achieve its intended goal of keeping people safe. It may also have adverse consequences for people who wear these devices.
- The response to stalking should be coordinated, system-wide, and focus on early intervention. This will help protect people who experience stalking and the community.
- If there are strong indicators that compelling people to have treatment is an effective response to stalking, the Victorian Government should consider introducing court-ordered therapeutic orders.
- Victoria has the highest maximum penalty for the sentencing of stalking. We do not need to change the sentencing laws but courts should be given more guidance on sentencing people who stalk.

The current response to stalking demands too much from victim survivors

- 8.1 People who experience non-family violence stalking must do a range of things if they seek support from the justice system:
- identify the stalking
 - collect evidence
 - make a report
 - apply for an intervention order
 - plan for their safety
 - manage their risk of harm.²

1 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Treating and Managing Stalking Offenders: Findings from a Multi-Agency Clinical Intervention' *Psychology, Crime & Law* 10.1080/1068316X.2022.2057981:1-25.
2 Ibid.

- 8.2 We heard from victim survivors that they are often the ones who have to change their behaviour:

Victims should not have to shut down their social media, wipe any trace of themselves/their identity from the world or leave their job and move interstate to escape a stalker. [Everyone] should be able to go about [their] lives normally.³

- 8.3 Stalking is a criminal offence in Victoria. It can be grounds for a personal safety intervention order (PSIO), and it is a criminal offence to breach such an order.
- 8.4 The Sentencing Advisory Council report found that 57 per cent of people sentenced for a breach of PSIO were sentenced again within four years.⁴ The Council concluded that the rate of reoffending among those convicted of breach of PSIO 'is significantly higher than Victoria's general reoffending rate'.⁵
- 8.5 Of the 57 per cent of people sentenced for a breach of PSIO who were sentenced again within four years, one quarter were sentenced for a violent offence. Four per cent were sentenced for a stalking offence.⁶ This indicates that legal sanctions alone cannot address the underlying factors that contribute to offending behaviour.
- 8.6 The response to stalking should shift the burden away from victim survivors who have had the responsibility for action for too long. The focus must be on what people who stalk can do to stop their behaviour.
- 8.7 Shifting the focus onto people who stalk will also recognise the behaviour as a serious harm.
- 8.8 Potential benefits of shifting the focus onto people who stalk are:
- stopping the stalking
 - keeping victim survivors safe
 - preventing stalking from happening again.
- 8.9 Focusing on stopping the stalking can be a form of justice for victim survivors (see Chapter 1).
- 8.10 In this chapter, we consider a range of reforms that are needed to strengthen the response to people who stalk.

What do we know about people who stalk?

- 8.11 Responses to people who stalk should be informed by what we know about them. In this chapter, we consider the key issues that make the prevention, treatment, and management of stalking a challenging task.

People who stalk are diverse

- 8.12 People who stalk 'represent an extremely diverse population'.⁷ They are diverse in:
- behaviour and characteristics⁸
 - motivations

3 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

4 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) 65.

5 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) 63.

6 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) 67.

7 Daniel Shea, 'Stalking Recidivism and Risk Assessment' (PhD Thesis, Monash University, 2015) 23.

8 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Treating and Managing Stalking Offenders: Findings from a Multi-Agency Clinical Intervention' *Psychology, Crime & Law* 10.1080/1068316X.2022.2057981:1–25, 2.

- how likely they are to re-offend⁹
 - their needs, which can include mental health or substance misuse support.¹⁰
- 8.13 Interventions for people who stalk must respond to their diversity. A one-size-fits-all approach is likely to be ineffective.
- 8.14 Specialised responses may be needed for some people, such as Aboriginal people, people with disability, and people from culturally and linguistically diverse communities.¹¹
- 8.15 Adolescent stalking is a different and complex form of stalking requiring a different response.¹² We discuss the need for alternative pathways for children and young people (in the civil context) in Chapter 6.

Addressing an association between severe mental disorders and stalking

- 8.16 Forensicare submitted that the most common severe mental disorders associated with stalking are those characterised by psychosis, depression, and substance use disorder.¹³ Forensicare also noted that personality disorder is commonly associated with stalking.¹⁴
- 8.17 We heard that there may be an association between some forms of intellectual disabilities and stalking behaviour.¹⁵ The Law Institute of Victoria submitted that some 'people with intellectual disabilities may not understand appropriate relationship boundaries or that their behaviour is causing harm.'¹⁶
- 8.18 Some forms of severe mental illness and poor mental health may be more prevalent in cases of non-family violence stalking compared with family violence stalking.¹⁷ For example, some studies suggest that psychosis is more prevalent in non-family violence stalking than family violence stalking.¹⁸ Because of this association, 'effectively managing the mental disorder is a critical part of any response to reduce (if not eliminate) the stalking behaviours'.¹⁹
- 8.19 Research has emphasised the importance of therapeutic or psychological intervention for people who stalk.²⁰ We received similar feedback from Forensicare²¹ and the Centre for Forensic Behavioural Science.²²
- 8.20 However, the association between severe mental disorders and stalking needs further research. Other factors associated with such behaviour may also need to be addressed.²³

9 Marijke Malsch, Jan W de Keijser and Sofia EC Debets, 'Are Stalkers Recidivists? Repeated Offending by Convicted Stalkers' (2011) 26(1) *Violence and Victims* 3; Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022).

10 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400.

11 On the general need for perpetrator interventions to respond to diverse needs and experiences: Donna Chung et al, *Improved Accountability: The Role of Perpetrator Intervention Systems* (Research Report No 20, ANROWS, June 2020) 9; *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016) vol 3, 278–280.

12 Consultation 36 (Forensicare (No 2)); Rosemary Purcell et al, 'Stalking among Juveniles' (2009) 194(5) *British Journal of Psychiatry* 451.

13 Submission 100 (Forensicare).

14 Ibid.

15 Submission 98 (Law Institute of Victoria); Consultation 13 (Victoria Legal Aid); Rachel Mackenzie et al, 'Stalkers and Intelligence: Implications for Treatment' (2010) 21 *Journal of Forensic Psychiatry & Psychology* 852; Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) 48.

16 Submission 98 (Law Institute of Victoria).

17 Troy E McEwan and Susanne Strand, 'The Role of Psychopathology in Stalking by Adult Strangers and Acquaintances' (2013) 47(6) *Australian and New Zealand Journal of Psychiatry* 546, 547.

18 Ibid 547.

19 Submission 100 (Forensicare).

20 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Treating and Managing Stalking Offenders: Findings from a Multi-Agency Clinical Intervention' *Psychology, Crime & Law* 10.1080/1068316X.2022.2057981:1–25; Rachel D MacKenzie and David V James, 'Management and Treatment of Stalkers: Problems, Options, and Solutions' (2011) 29(2) *Behavioral Sciences & the Law* 220; Britta Ostermeyer et al, 'Stalking and Violence' (2016) 39(4) *Psychiatric Clinics* 663; Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400.

21 Submission 100 (Forensicare).

22 Submission 32 (Centre for Forensic Behavioural Science).

23 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400, 503.

A coordinated response to stalking is needed

- 8.21 People who stalk may have intersecting support needs. Some may need treatment for mental illness and substance misuse or addiction.²⁴ Because therapeutic or psychological interventions are critical to addressing stalking, a 'multifaceted approach' is required.²⁵ The response must draw on the health, community service and justice sectors, and generalist and specialist interventions.
- 8.22 However, we heard that these systems are often disjointed and the evidence base and services are lacking.²⁶
- 8.23 We recommend the government develop a coordinated response to non-family violence stalking that links relevant parts of the health, community service and justice sectors, to overcome the current fragmented response. This gives the system the best chance of stopping stalking and doing so early.
- 8.24 The Royal Commission into Victoria's Mental Health System identified the need for more 'integrated' treatment and made recommendations to address this gap. For example, there are needs:
- for people to receive the most appropriate treatment, care, and support for their needs at any given point
 - for mental health treatment, care, and support to be integrated with support for substance use or addiction
 - for mental health and wellbeing services for adults to provide consistent treatment, care, and support to people in contact or at risk of contact with the criminal justice system
 - for a program for people in prison living with mental illness to transition from correctional setting support to the mental health and wellbeing system when they are released.²⁷
- 8.25 The Victorian Government has committed to adopting all the recommendations of the Royal Commission,²⁸ which will provide a strong framework for developing a coordinated response to non-family violence stalking.
- 8.26 Reforms to mental health service delivery, including establishing service delivery across Victoria at local, area-based, and statewide levels operating at extended hours and delivered in a variety of settings,²⁹ will produce benefits to the whole community, including people who stalk. Such reforms will enable them to access the services they need, more easily.³⁰
- 8.27 Next we identify key components of a coordinated response, some of which we have drawn from approaches to family violence:³¹
- building the research base
 - making services and funding available in a coordinated way
 - building pathways to services.

24 Consultation 1 (Centre for Forensic Behavioural Science).

25 Jenny Korkodeilou, "And Where You Go, I'll Follow": Stalking and the Complex Task of Preventing It' in Stephanie Kewley and Charlotte Barlow (eds), *Preventing Sexual Violence* (Bristol University Press, 1st ed, 2020) 63.

26 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare).

27 *Royal Commission into Victoria's Mental Health System* (Final Report, 3 February 2021) Recommendation 37.

28 Department of Health (Vic), 'A New Mental Health and Wellbeing Act for Victoria', *Mental Health and Wellbeing Reform* (Web Page, 18 March 2022) <<http://www.health.vic.gov.au/mental-health-reform/a-new-mental-health-and-wellbeing-act-for-victoria>>.

29 *Royal Commission into Victoria's Mental Health System* (Final Report, 3 February 2021) Recommendation 3(2).

30 Consultation 15 (Forensicare (No 1)).

31 See generally the RCFV recommendations relating to perpetrators of family violence: *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016) Recommendations 85–92.

A research base should be established

- 8.28 In recommending a program of perpetrator interventions for family violence, the Royal Commission into Family Violence proposed a staged process. It started with building a knowledge base of initiatives before implementing a coordinated approach to perpetrator interventions. The approach resulted in significant research outcomes.³²
- 8.29 We consider a similar approach would be valuable for stalking. The Victorian Government should start by building a knowledge base of initiatives, using that to inform the design and funding of programs.³³
- 8.30 Once a strong legal, policy and service framework is in place, then services can be expanded. However, ongoing research and evaluation is required to improve understanding of what works in treating and preventing stalking.
- 8.31 Later in the chapter we discuss areas that require further research.

Services and funding should be available

Increasing the availability of general services and support

- 8.32 The Royal Commission into Victoria's Mental Health System paints a picture of a mental health service system under increasing pressure, with dramatically increasing demand for treatment for those who use violence.³⁴
- 8.33 The Royal Commission identified barriers to accessing services and a lack of services in the community. This included barriers for low-income earners who may not be able to afford treatment, care and support, and barriers to accessing treatment and care in rural and regional Victoria.³⁵
- 8.34 The Royal Commission made recommendations to make it easier than at present for people to access the services they need, when and where they need them.³⁶ Implementing these recommendations would increase the treatment, care and support available to people who stalk, and address the factors contributing to stalking.
- 8.35 Victoria has specialist courts and court programs outside the mainstream court system.³⁷ While they do not directly manage stalking behaviour, they can address some of the issues that can occur alongside it. They include:
- The Assessment and Referral Court (ARC), which deals with some charges where the person charged is living with a mental illness or a cognitive impairment.
 - The Drug Court, which deals with some alleged offences where a person was dependent on drugs or alcohol, and this was associated with their offending.
 - The Court Integrated Services Program, which is a court program that addresses underlying causes of offending. Participants undergo a risk assessment, have a case manager, and receive specialist support across a range of needs including drug and alcohol treatment, mental health treatment and accommodation.
- 8.36 These courts and programs sometimes deal with people who are charged with stalking, if they meet the requirements for the specialist court to hear the case. Supporting these courts and programs would increase access to treatment, care and support for people who stalk.
- 8.37 The Royal Commission into Victoria's Mental Health System recommended expanding the Assessment and Referral Court to each of the 12 headquarter magistrates' courts to meet demand at existing and new locations.³⁸

32 Ibid Recommendations 85–6, 88.

33 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare).

34 *Royal Commission into Victoria's Mental Health System* (Final Report, 3 February 2021).

35 Ibid.

36 Ibid Recommendation 6(3).

37 Specialist courts in Victoria are divisions of another Court (usually the Magistrates' Court of Victoria) rather than standalone courts: see, eg, the *Magistrates' Court Act 1989* (Vic), which provides for the establishment of the Drug Court Division, Koori Court Division, Specialist Family Violence Court Division, Neighbourhood Justice Court Division and the Assessment and Referral Court List.

38 *Royal Commission into Victoria's Mental Health System* (Final Report, 3 February 2021) Recommendation 37(1).

Increasing the availability of specialist treatment

What treatments exist for stalking?

- 8.38 A broad range of therapeutic interventions are needed for people who stalk.
- 8.39 Treatment for stalking might include:
- interpersonal skill building
 - cognitive behavioural therapy
 - anger management³⁹
 - psychiatric treatment⁴⁰
 - medication.⁴¹
- 8.40 Dialectical Behaviour Therapy (DBT) is one form of therapeutic intervention used in the context of non-family violence stalking.⁴² It emphasises concrete skills and supports learning to manage 'strong emotions and urges'.⁴³ An evaluation of DBT suggests some 'very preliminary' positive results on its use.⁴⁴
- 8.41 However, we were told there is insufficient research into effective treatments for stalking.⁴⁵ Only a handful of studies (Australian and international) have 'attempted to describe a treatment model for stalking behaviours, and fewer still have evaluated such treatments'.⁴⁶
- 8.42 In relation to DBT, Forensicare submitted: 'There was no significant treatment effect of DBT ... [although] this could be because the control treatment was also effective'.⁴⁷
- 8.43 Di McDonald, a person who experienced stalking, was sceptical about how effective treatment programs are for stalking. Di McDonald explained:

In regard to treatment programs, my stalker has done them all over 30 years of treating women like this. Nothing has prevailed. He has a high sense of entitlement and will project and blame the victim for his actions ... He is a recidivist and ... his record shows these treatment programs haven't helped him or his victims' situation.⁴⁸

- 8.44 The lack of research on effective treatment is both surprising and concerning, given certain studies suggest the high re-offending rates of those who stalk. We consider this to be a priority area. There is a need for research into the effectiveness of treatment and an evidence-informed therapeutic response to stalking.⁴⁹

39 Consultation 15 (Forensicare (No 1)).

40 Rachel D MacKenzie and David V James, 'Management and Treatment of Stalkers: Problems, Options, and Solutions' (2011) 29(2) *Behavioral Sciences & the Law* 220; Troy E McEwan and Susanne Strand, 'The Role of Psychopathology in Stalking by Adult Strangers and Acquaintances' (2013) 47(6) *Australian and New Zealand Journal of Psychiatry* 546, 553.

41 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400.

42 Ibid 505.

43 Barry Rosenfeld et al, 'Dialectical Behavior Therapy (DBT) for the Treatment of Stalking Offenders: A Randomized Controlled Study' (2019) 43(4) *Law and Human Behavior* 319, 320.

44 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400, 505.

45 Submission 32 (Centre for Forensic Behavioural Science); Consultation 15 (Forensicare (No 1)).

46 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Treating and Managing Stalking Offenders: Findings from a Multi-Agency Clinical Intervention' *Psychology, Crime & Law* 10.1080/1068316X.2022.2057981:1-25, 5. Examples of those studies include: Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400; Barry Rosenfeld et al, 'Dialectical Behavior Therapy (DBT) for the Treatment of Stalking Offenders: A Randomized Controlled Study' (2019) 43(4) *Law and Human Behavior* 319; R Wheatley, B Winder and DJ Kuss, 'What Are the Features of Psychopathology for Men Who Commit Stalking Offences? A Systematic Review' (2020) 55 *Aggression and Violent Behavior* 101461:1-15.

47 Submission 100 (Forensicare).

48 Submission 70 (Di McDonald).

49 Submission 32 (Centre for Forensic Behavioural Science); Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400, 505.

- 8.45 Purcell and McEwan have identified that the treatment of stalking should be guided by (among other things) the following principles:
- Treatment should be shaped by an assessment of the specific needs of the person who stalks, the context in which the stalking occurs, and their behaviour.
 - Treatment should focus on addressing the behaviour of the person who stalks by using cognitive behavioural approaches.
 - Pharmacological intervention is the first-line treatment response in some circumstances.
 - In addition to rehabilitative treatment, there may need to be other appropriate legal sanctions to protect the stalking victim and deter the person who stalks.⁵⁰
- 8.46 However, the sentencing principle of deterrence will be of less significance in cases involving a mental condition that, while falling short of an excuse at law, contributes to the commission of the offence.⁵¹

What treatment is available in Victoria for stalking?

- 8.47 In Victoria, the main therapeutic treatment available for people who stalk is the Problem Behaviour Program (PBP) run by Forensicare.

Problem Behaviour Program

The Problem Behaviour Program (PBP) is a community-based service that provides assessment and treatment to individuals with high-risk problem behaviours, including stalking, sexual offending, violence and threatening behaviour. It is delivered through the Community Forensic Mental Health Service, located in Victoria's northern suburbs.

Since 2004, referrals of people for stalking have accounted for about one third of all PBP clients.

The program includes psychiatric and psychological consultation and treatment for adults aged 18 years and over. It provides primary and secondary consultations, together with ongoing treatment for clients assessed as needing specialist forensic intervention.

The PBP is focused on stopping the stalking. It does this by addressing the needs of the person stalking, as well as common issues such as emotional dysregulation, victim-blaming attitudes, and developing skills for responding to triggering events.

Individuals may be referred as a condition of a parole order. Alternatively, anyone may make a referral on behalf of another person, with their consent, or a person may self-refer.

An evaluation of the PBP, authored by Jennifer McCarthy, James Ogloff and Troy McEwan, who are connected with Forensicare, published the following results:

- The majority (66 per cent) of clients who attended the PBP for assessment did not have further charges in the follow-up period (2006–2011).
- There was a significant reduction in the number of acute mental health contacts by clients after assessment or treatment.
- Clients reported overall high levels of satisfaction with the service and identified that it assisted them in understanding and managing their behaviour.⁵²

50 Paraphrased from Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400, 506.

51 'Mental Impairment and Sentencing', *Sentencing Advisory Council* (Web Page, February 2021) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/mental-impairment-and-sentencing>>.

52 Consultation 15 (Forensicare (No 1)); Jennifer McCarthy, James Ogloff and Troy McEwan, 'An Evaluation of the Problem Behaviour Program: A Community Based Model for the Assessment and Treatment of Problem Behaviours', *Forensicare* (Web Page) <<https://www.forensicare.vic.gov.au/an-evaluation-of-the-problem-behaviour-program-a-community-based-model-for-the-assessment-and-treatment-of-problem-behaviours/>>.

Stalking treatment should be widely available

- 8.48 We received submissions supporting the delivery of early and effective treatment for stalking.⁵³ Treatment should not be viewed as a substitute for legal sanctions in appropriate circumstances, but exist alongside them.⁵⁴
- 8.49 Specialist treatment for stalking behaviour needs to be available,⁵⁵ especially in rural and regional Victoria (see below).
- 8.50 It needs to be developed based on research (see above), funded,⁵⁶ and responsive to diverse needs and experiences. For example, support should be tailored to the individual needs of all members of the community, including Aboriginal people, people from culturally diverse communities, LGBTIQ+ people, and people with disabilities.
- 8.51 However, we heard about the following gaps in therapeutic and targeted treatment for people who stalk:
- There is a general lack of services, and significant waiting periods, for example for treatment at the Problem Behaviour Clinic.⁵⁷
 - There is a lack of services for those living in regional and rural areas.⁵⁸ The Problem Behaviour Clinic is located in Melbourne and not accessible state-wide.⁵⁹
 - Treatment may not be affordable.⁶⁰
 - Treatment may not be culturally appropriate or respond to diverse needs. For example, it may not be tailored to people from culturally and linguistically diverse backgrounds,⁶¹ or people with disabilities.⁶²
- 8.52 The lack of services was reflected on by some victim survivors. One young person told us:

The police/courts need better services for people with mental health [issues]. This guy wasn't mentally [well] ... If the court had ordered an assessment earlier it may have been picked up, instead of continuing for a few years and damaging myself more and impacting others.⁶³

- 8.53 Forensicare submitted that 'in the absence of specific programs for people who stalk, some may be appropriately referred to treatment programs for higher risk violent or sexual offenders'.⁶⁴ However, Forensicare noted that 'it is likely that programs for violent and sexual offenders are not appropriate for the majority of stalkers whose behaviour does not involve sexual or physical violence'.⁶⁵
- 8.54 One way of ensuring that help is available for those who need it would be to fund programs providing specific treatment and support for people who stalk. Better assessment is also needed before referrals to treatment services are made. We discuss this later.

53 Submissions 55 (Springvale Monash Legal Service), 97 (Federation of Community Legal Centres).
 54 Submission 56 (Derryn Hinch's Justice Party).
 55 Submissions 32 (Centre for Forensic Behavioural Science), 98 (Law Institute of Victoria); Consultations 13 (Victoria Legal Aid), 15 (Forensicare (No 1)).
 56 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare).
 57 Consultation 15 (Forensicare (No 1)).
 58 Submission 41 (Djirra); Consultation 16 (Centre for Excellence in Child and Family Welfare: Young People and Stalking).
 59 Consultation 6 (Magistrates' Court of Victoria (No 1)).
 60 Submission 97 (Federation of Community Legal Centres).
 61 Submissions 98 (Law Institute of Victoria), 97 (Federation of Community Legal Centres).
 62 Consultation 22 (Small group meeting on stalking and people with disabilities).
 63 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).
 64 Submission 100 (Forensicare).
 65 Ibid.

Early intervention should be a priority

- 8.55 Early intervention programs support or treat people who may offend in the future or become engaged with the criminal justice system. Such people may have thought of offending but have not done so. Others may identify themselves as needing help.
- 8.56 Early intervention programs can address their potential for offending and contributing factors such as substance misuse, mental health issues or housing insecurity.
- 8.57 Early intervention encourages people to take responsibility for their behaviour and address it. This benefits both people who experience stalking and people who stalk.
- 8.58 The criminal justice system often does not intervene until after there has been a significant escalation in behaviour. In these cases, while it might help to prevent further harm and re-offending, it cannot stop the harm that has already occurred or the serious consequences of it.⁶⁶ It has been acknowledged in the United Kingdom that a 'late intervention culture' increases the 'costs of failure'.⁶⁷
- 8.59 We received some support for early intervention.⁶⁸
- 8.60 There have been very few evaluations of stalking-specific early intervention programs. We note the promising evaluation of the Problem Behaviour Program (PBP) above, which also acts as an early intervention program.
- 8.61 Similarly an evaluation of the Multi-Agency Stalking Intervention Programme (MASIP), which was developed and used across three sites in England and Wales and which has elements of early intervention, reported some evidence of improvements for people who stalk, including developing motivation and strategies to manage stalking behaviour.⁶⁹
- 8.62 The evaluation noted however that more research and evaluation of multi-agency programmes is required to validate the findings of the study.⁷⁰
- 8.63 Given the potential effectiveness of early intervention, this is another area for further research and evaluation to determine what initiatives work best for non-family violence stalking.
- 8.64 Informed by these preliminary evaluations, the Victorian Government should increase the availability of early intervention programs for stalking.
- 8.65 There are not enough early intervention services for stalking in Victoria.⁷¹ Regional and rural Victoria should be a priority, where there tend to be more service gaps and a disproportionate number of intervention orders.⁷²
- 8.66 Early intervention programs should be conducted safely, supported by strong risk management and safety plans. People told us that early intervention programs needed to:
- be victim-centred and protect community and victim safety—for example by taking a multidisciplinary, system-wide approach⁷³
 - effectively manage risk of serious harm in stalking situations—for example through assessments, processes for contacting authorities and sometimes longer-term programs⁷⁴
 - target what is motivating the stalking as well as psychological factors⁷⁵

66 See Centre for Innovative Justice, RMIT University, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View* (Report, March 2015) 27–8.

67 Graham Allen, *Early Intervention: Smart Investment, Massive Savings* (Second Independent Report to Her Majesty's Government, July 2011) <<https://www.gov.uk/government/publications/early-intervention-smart-investment-massive-savings>>.

68 Consultations: 13 (Victoria Legal Aid), 22 (Small group meeting on stalking and people with disabilities).

69 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Treating and Managing Stalking Offenders: Findings from a Multi-Agency Clinical Intervention', *Psychology, Crime & Law* 10.1080/1068316X.2022.2057981:1–25.

70 Ibid.

71 Submissions 32 (Centre for Forensic Behavioural Science), 98 (Law Institute of Victoria), 93 (Royal Australian and New Zealand College of Psychiatrists); Consultations 13 (Victoria Legal Aid), 15 (Forensicare (No 1)).

72 Submission 32 (Centre for Forensic Behavioural Science); Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022).

73 Submission 49 (Victims of Crime Commissioner).

74 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare).

75 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare); Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022).

- address the accountability of people who stalk⁷⁶
- be tailored to diverse needs⁷⁷
- be accessible and affordable, particularly in regional and rural areas (specifically Gippsland), where there appear to be disproportionate rates of stalking.⁷⁸

8.67 A 'highly specialist workforce' is also needed.⁷⁹

8.68 These principles should inform the approach to early intervention in stalking.

8.69 Many of these principles reflect the Headline Standards in the National Outcome Standards for Perpetrator Interventions,⁸⁰ as well as research and practice in treating stalking.

Rehabilitation and reintegration programs should be a priority

8.70 Rehabilitation and reintegration support helps people in prison to rejoin the community successfully. To do so a person needs a range of supports such as housing, employment and social support.⁸¹

8.71 Rehabilitation and reintegration support is crucial to ensure people convicted of stalking offences transition successfully back into the community, and do not offend again.⁸²

8.72 The correctional system aims to support people who have been in prison to reintegrate into the community. This may start before they are released from prison and continue after their release, at the end of their sentence or while they are on parole.⁸³ Corrections Victoria targets domains such as housing, employment, alcohol and drug support, independent living skills and community and family connection.⁸⁴

8.73 However, there are barriers for people accessing rehabilitation and reintegration programs:

- People who stalk are poorly identified in the criminal justice system⁸⁵—for example, because stalking is not charged (see Chapter 7).⁸⁶
- If charges are pending, information disclosed during treatment is not protected and could be subpoenaed, affecting the accused's ability to engage with treatment.⁸⁷
- Specialist treatment, such as the PBP, is difficult to access from prison.⁸⁸

8.74 The availability of the PBP could be enhanced by better funding. Currently, the PBP is inaccessible to people charged with stalking who are either on remand in custody or on bail in the community. The PBP is also not available for individuals who are on parole, or post-sentence.⁸⁹ Forensicare said that more funding for in-reach services from the PBP could enable Forensicare to provide assessment and treatment in prison.⁹⁰

8.75 We were told there are not enough services in the pre-sentence and post-release contexts to support those who stalk to manage their behaviour.⁹¹ It is also unclear whether programs in prison are suitable for people who stalk, if their behaviour does

76 Submission 56 (Derryn Hinch's Justice Party).

77 Submission 98 (Law Institute of Victoria); Consultation 13 (Victoria Legal Aid).

78 Submission 32 (Centre for Forensic Behavioural Science); Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022).

79 Consultation 15 (Forensicare (No 1)).

80 Department of Social Services (Cth), *National Outcome Standards for Perpetrator Interventions* (Baseline report 2015–16, 21 November 2015).

81 Elena Campbell, Centre for Innovative Justice, RMIT University, *Integrating the Indefensible—What Role Should the Community Play?* (Issues Paper, December 2017).

82 Corrective Services Administrators' Council (Cth), *Guiding Principles for Corrections in Australia* (Guidelines, 2018).

83 Ibid.

84 Corrections Victoria, 'Transition and Reintegration Unit Brochures', *Corrections, Prisons and Parole* (Web Page) <<https://www.corrections.vic.gov.au/transition-and-reintegration-unit-brochures>>.

85 Consultation 15 (Forensicare (No 1)); Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Treating and Managing Stalking Offenders: Findings from a Multi-Agency Clinical Intervention' *Psychology, Crime & Law* 10.1080/1068316X.2022.2057981:1–25, 5.

86 Submission 100 (Forensicare); Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021).

87 Submission 100 (Forensicare).

88 Ibid.

89 Ibid.

90 Consultation 15 (Forensicare (No 1)).

91 Submission 32 (Centre for Forensic Behavioural Science); Consultation 33 (VACRO).

not include physical or sexual violence.⁹²

- 8.76 There is a need for improved prison-based services, as well as reintegration programs that specifically address stalking behaviour.⁹³ This is particularly important given the high rates of re-offending. The Sentencing Advisory Council has suggested expanding prison-based programs.⁹⁴

Building pathways to treatment and support

- 8.77 Every time a person who stalks interacts with the justice system, there is an opportunity to influence behaviour change. This may prevent the stalking from escalating⁹⁵ and prevent serious harm.⁹⁶ It is critical that the right intervention happens early.
- 8.78 Once evidence-informed services are in place, people who stalk should be able to access them from the justice system. There are two components to facilitating this access:
- identifying stalking
 - making sure referral pathways are in place.⁹⁷
- 8.79 Without effective identification of stalking by police, in the first instance, and by courts, 'many people who need treatment for their behaviour are not able to access it'.⁹⁸
- 8.80 In the interim report and Chapter 6 we made recommendations about the police and courts improving their identification of stalking. This is a crucial first step in ensuring individuals who need help to stop stalking are given appropriate referrals early.
- 8.81 As part of the coordinated response to stalking, the government should ensure that referral pathways to treatment and support for people who stalk are in place.

Police as a point of intervention

- 8.82 In our interim report we recommended that Victoria Police identify stalking and make appropriate referrals, including for treatment.⁹⁹
- 8.83 The police should make appropriate referrals for assessment. These assessments are important to identify the right treatment programs for the person who stalks.¹⁰⁰

Lawyers as a point of intervention

- 8.84 Lawyers representing people who stalk can play an important role in early intervention. Much work has been done in this area in the context of family violence, following the Royal Commission into Family Violence.¹⁰¹ Some of the key actions involve equipping lawyers to:
- identify risk of harm to clients
 - properly represent clients without engaging in colluding behaviour
 - identify and make appropriate referrals for clients to programs that can address the underlying causes of stalking conduct (either away from court or as part of community orders).

Courts as a point of intervention

- 8.85 It is preferable that early intervention takes place before a matter gets to court. However the courts still have a role to play as a point of intervention.

92 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders: Assessment, Treatment and Management* (Routledge, 2nd ed, 2018) 400.

93 Consultation 33 (VACRO).

94 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022).

95 Submission 32 (Centre for Forensic Behavioural Science).

96 Consultation 7 (Risk roundtable).

97 Submissions 32 (Centre for Forensic Behavioural Science), 100 (Forensicare).

98 Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Treating and Managing Stalking Offenders: Findings from a Multi-Agency Clinical Intervention' *Psychology, Crime & Law* 10.1080/1068316X.2022.2057981:1-25, 3.

99 Victorian Law Reform Commission, *Stalking* (Interim Report No 44, December 2021).

100 Consultation 13 (Victoria Legal Aid); Rachel Mackenzie et al, 'Stalkers and Intelligence: Implications for Treatment' (2010) 21 *Journal of Forensic Psychiatry & Psychology* 852.

101 See, eg, Victoria Legal Aid, *Family Violence—Our Response* (Web Page, 2022) <<http://www.legalaid.vic.gov.au/node/9836>>.

- 8.86 In Chapter 6 we recommend improving the ways that courts identify stalking to facilitate a range of measures, including court referrals of people to treatment and support.
- 8.87 As the Centre for Forensic Behavioural Studies submitted, in PSIO cases, if the court recognised that a person present may be experiencing severe mental illness, they could access the Mental Health Advice and Response Service in court or make a referral to the local mental health service for an assessment.¹⁰²
- 8.88 Further, the *Personal Safety Intervention Orders Act 2010* (Vic) enables the court (in explaining the final order) to provide information about any relevant services that may be available to the respondent, including counselling, disability, mental health and drug and alcohol services.¹⁰³
- 8.89 Another point of intervention is at the pre-sentence stage. The Royal Australian and New Zealand College of Psychiatrists and Forensicare both submitted that because of a perceived association between severe mental disorders and stalking, a request for a pre-sentence forensic mental health assessment should be routine in cases of stranger or acquaintance stalking.¹⁰⁴
- 8.90 In its report on sentencing stalking, the Sentencing Advisory Council notes that people who stalk:
- ‘are only required to be assessed for suitability to participate in the [Problem Behaviour Program] if it is an express condition of a CCO [Community Corrections Order], or if a Corrections Victoria case manager deems it appropriate that the [person] be assessed [on the basis of] a more generic CCO condition requiring participation in treatment and rehabilitation’.¹⁰⁵
- 8.91 Making the courts aware of the need for assessment and referral and the pathways available would help people who stalk to get the treatment and support they need. We recommend that education to improve awareness of when and how to get an assessment or make a referral be implemented (see Chapter 4). This should include pre-sentence assessments.
- 8.92 The Sentencing Advisory Council noted that while ‘courts are often alert for signs that a referral might be appropriate, even without a stalking charge, the likelihood of an appropriate referral being made is increased if there is a stalking charge’.¹⁰⁶ In Chapter 4 we also recommend improving awareness of lawyers about the consequences of negotiating away stalking charges, and programs available, in line with the findings of the Sentencing Advisory Council.¹⁰⁷
- 8.93 The Magistrates’ Court suggested the need for assessments (including risk assessment) to be available to courts at the bail or pre-plea stage.¹⁰⁸ The *Bail Act 1977* (Vic) already involves the bail decision-maker assessing risk to any person, including the complainant.¹⁰⁹
- 8.94 Forensicare stated that there would be too many practical challenges to implement such a process, such as overwhelming demand of their service, and the potential for self-incrimination for the accused.¹¹⁰ However, Forensicare explained that one way that it can assist is where they receive ‘referrals from court for pre-sentence reports’.¹¹¹

102 Submission 32 (Centre for Forensic Behavioural Science).
 103 *Personal Safety Intervention Orders Act 2010* (Vic) s 76(4).
 104 Submissions 93 (Royal Australian and New Zealand College of Psychiatrists), 100 (Forensicare).
 105 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022) xiii.
 106 Ibid xiii.
 107 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022).
 108 Consultation 34 (Magistrates’ Court of Victoria (No 2)).
 109 *Bail Act 1977* (Vic) s 4E.
 110 Consultation 36 (Forensicare (No 2)).
 111 Ibid.

Recommendation

43. The Victorian Government should develop a coordinated response to non-family violence stalking to deliver accessible and effective treatment and support programs to people who stalk. The coordinated response should involve:
- ongoing research on the effectiveness of and ways to improve responses to stalking behaviour
 - increasing the availability of general treatment and support in the community and justice system
 - support that is tailored to the person's individual needs
 - improving access to and availability of early intervention programs for people who stalk, especially in rural and regional Victoria
 - improving access to and availability of prison-based rehabilitation and reintegration programs
 - strengthening assessment and referral pathways from police, lawyers and courts.

The use of 'stop conversations' by Victoria Police as a form of early intervention

- 8.95 We heard that 'stop conversations' may be a way to intervene early in stalking situations.¹¹² 'Stop conversations' involve police formally notifying the person stalking that their behaviour could lead to criminal charges.¹¹³
- 8.96 Stop conversations are different to police-issued cautions, which already exist as part of the operational policy of Victoria Police. Cautions are infrequently used in the context of stalking. Victoria Police told us that PSIOs are the appropriate police response where there is a genuine and immediate risk to a person's safety.¹¹⁴
- 8.97 The Centre for Forensic Behavioural Science submitted that in 'low concern cases' it is possible that stop conversations 'would be equally as effective [as a PSIO] ... without the resource implications of having a formal order issued by a court'.¹¹⁵
- 8.98 There was some support from victim survivors for cautions or stop conversations as a form of early intervention. One person said, 'it would be great if police would knock on [the] stalker's door and tell them to back off or it would be taken further'.¹¹⁶
- 8.99 Another person who spoke of her experience with police 5–10 years ago said:

The police advised that they would bring the stalker into the station again and have another chat. Subsequently I was informed that the chat had occurred. Subsequently the following appears to have stopped ... I do run into the stalker from time to time in shopping areas or Bunnings ... but he appears to keep his distance.¹¹⁷

112 Submissions 32 (Centre for Forensic Behavioural Science), 51 (Matthew Raj); Consultation 7 (Risk roundtable).

113 Submission 32 (Centre for Forensic Behavioural Science).

114 Submission 115 (Victoria Police—supplementary response); Sarah Bright, Lauren Barnaba and Melanie Millsteed, *Attrition of Stalking Offence Incidents through the Victorian Criminal Justice System* (Data Snapshot, Crime Statistics Agency, forthcoming).

115 Submission 32 (Centre for Forensic Behavioural Science).

116 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

117 Ibid.

- 8.100 Assistant Professor Matthew Raj from Bond University highlighted in his submission a 'harassment warning letter' used by Hampshire Constabulary in the United Kingdom. The letter would make the person who was stalking aware that their behaviour was an offence.
- 8.101 While he said such letters could prevent the PSIO system from being overwhelmed (see Chapter 6), he said that police should have proper guidelines to issue these letters.¹¹⁸
- 8.102 He noted that 'no robust empirical data exist in relation to its use, frequency and rate of success in deterring unwanted behaviour'.¹¹⁹
- 8.103 In 2018, a briefing paper published by the House of Commons recommended that police-issued early warning notices in England and Wales should end.¹²⁰ A review found 'many examples of inappropriate use ... where what was required was a robust investigation with [action taken] to protect the vulnerable victim'.¹²¹ The review noted that removing early warning notices would result in improved police responses to stalking.¹²²
- 8.104 Another study reported: 'In a number of cases, victims prefer an informal response from police like a warning or conversation with the perpetrator'.¹²³ But in interviews with victim support practitioners about the practice, most felt that the use of stop conversations as a first intervention was 'problematic'.¹²⁴ Their concerns included that the practice can minimise the experience of stalking and risk escalating the behaviour once the person stalking knows police are involved.¹²⁵
- 8.105 Forensicare explained that stop conversations are only useful in 'very low-level cases'; where all the victim survivor wants is for the police to tell the person stalking them to stop.¹²⁶
- 8.106 Victoria Police is trialling stop conversations as part of its stalking pilot. Their use is being explored in the context of broadening the tools available for frontline and specialist police when responding to lower-risk stalking.¹²⁷
- 8.107 Victoria Police said that as part of its evaluation it will consider the value of stop conversations and whether they are an appropriate response to stalking.¹²⁸
- 8.108 Based on the issues identified in this inquiry, and the lack of research and evaluation on stop conversations, we do not make recommendations endorsing the practice.
- 8.109 However, if stop conversations are to become part of the police response to stalking in Victoria, we would suggest putting in place strong oversight and guidance to avoid unintended outcomes. It would be important for data to be collected and published (for example, in Crime Statistics Agency reports about the outcomes of offences). Documenting the conversation may also assist. If the behaviour does not stop following the conversation, this may assist in building a case that could result in charges.¹²⁹
- 8.110 Victoria Police submitted that there is 'no statutory instrument' underpinning the trial of stop conversations. They said such an instrument would be needed if the use of such conversations was formalised in police practice.¹³⁰

118 Submission 51 (Matthew Raj).

119 Ibid.

120 Pat Strickland, *Harassment: 'Police Information Notices' or 'Early Harassment Notices' in England and Wales* (House of Commons Library Research Briefing No 06411, 29 June 2018).

121 Ibid 12.

122 Pat Strickland, *Harassment: 'Police Information Notices' or 'Early Harassment Notices' in England and Wales* (House of Commons Library Research Briefing No 06411, 29 June 2018).

123 Tim Boehnlein et al. 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 757.

124 Ibid 761.

125 Ibid.

126 Consultation 36 (Forensicare (No 2)).

127 Submission 115 (Victoria Police—supplementary response).

128 Ibid.

129 Tim Boehnlein et al. 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 761.

130 Submission 115 (Victoria Police—supplementary response).

Court-ordered therapeutic orders for PSIOs

- 8.111 This section considers the making of a therapeutic order as a condition of a PSIO. This section does not consider court responses to a charge of criminal stalking under the *Crimes Act 1958* (Vic).
- 8.112 In 2009, the *Family Violence Protection Act 2008* (Vic) (FVPA) was amended to enable the court to order respondents against whom an intervention order has been made to:
- be assessed for counselling
 - if assessed as eligible, attend counselling.¹³¹
- 8.113 The purpose is to encourage the respondent to accept responsibility for the family violence and encourage them to change their behaviour.¹³² Failure to comply with the order is an offence.¹³³
- 8.114 Coercive measures are generally reserved for the criminal justice system, rather than flowing from civil orders, where the standard of proof is lower. The amendment to the FVPA engaged and limited the protection from torture and cruel, inhuman or degrading treatment in the *Charter of Human Rights and Responsibilities Act 2006* (Vic).¹³⁴ The Charter provides that a person must not be subject to medical treatment without their full, free, and informed consent.¹³⁵
- 8.115 However, in amending the FVPA, consideration was given to the importance of the purpose of the limitation.¹³⁶ The limitation was considered important as it operates to change a person's violent behaviour and to protect families and children.¹³⁷ It also operates indirectly to promote the right to life. In this regard, the limitation on human rights was deemed 'reasonable' and 'demonstrably justifiable' to its purpose.¹³⁸
- 8.116 Unlike the FVPA, the PSIO Act does not provide for court-ordered therapeutic orders. In our consultation paper we asked whether there should be an equivalent provision for court-ordered therapeutic orders in the PSIO Act.
- 8.117 We heard some support from victim survivors and members of the public for compulsory treatment programs for people who stalk.¹³⁹
- 8.118 The Victims of Crime Commissioner submitted that there may be benefit in court-ordered treatment but only if there is sufficient evidence to support it.¹⁴⁰ She pointed to stalking protection orders in the United Kingdom which can include requirements such as attendance at a perpetrator intervention program or a drug and alcohol program.¹⁴¹
- 8.119 However, the Victims of Crime Commissioner concluded that 'there would need to be a sound evidence base for compelling respondents in civil matters to engage in mandatory counselling or behaviour change'.¹⁴²
- 8.120 Victoria Police also noted the value of a mechanism in the PSIO system that would provide people who stalk with access to therapeutic interventions.¹⁴³ It noted that 'it is not uncommon for a victim of stalking ... to express a genuine desire that they wish the offender could "get the help they need"'.¹⁴⁴

131 *Family Violence Protection Act 2008* (Vic) s 127(b), 130.

132 *Ibid* s 127(b)(i), (ii).

133 *Ibid* s 130(4).

134 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

135 *Ibid* s 10(c).

136 *Parliamentary Debates*, Legislative Council, 25 June 2009, 2158 (Robert Hulls).

137 *Ibid*.

138 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

139 Submissions 10 (Rochelle Carli), 62 (Name withheld).

140 Submission 49 (Victims of Crime Commissioner).

141 *Stalking Protection Act 2019* s 2(64).

142 Submission 49 (Victims of Crime Commissioner).

143 Submission 115 (Victoria Police).

144 *Ibid*.

- 8.121 A number of organisations opposed court-ordered therapeutic orders for reasons including:
- There are human rights concerns about forcing a respondent to a PSIO to undergo treatment,¹⁴⁵ given the lower evidentiary threshold in civil proceedings.
 - There are resource implications, given the high number of PSIOs issued and lack of services.¹⁴⁶
 - Mandated programs may reduce flexibility in identifying the most appropriate program.¹⁴⁷
 - There is a lack of evidence on the effectiveness of treatment.¹⁴⁸
 - It is unclear if treatment is effective if it is mandated instead of voluntary.¹⁴⁹
- 8.122 The community legal sector emphasised that respondents to PSIOs would be 'better supported by early intervention services' than court-ordered treatment.¹⁵⁰
- 8.123 Organisations working with young people said that if a court-ordered therapeutic order is needed, that is a sign that 'we are not intervening early enough'.¹⁵¹
- 8.124 We acknowledge the lack of evidence on the effectiveness of treatment for stalking. We consider that compelling treatment in a civil context cannot be justified based on current research and the treatment programs available. In the absence of a strong evidence base, the immediate focus should be on connecting people who stalk to services, which we recommend as part of our coordinated response to stalking.
- 8.125 However, as a matter of principle, problem-solving approaches in the court system should be strengthened. Problem-solving approaches seek to combine a justice response with a therapeutic response to address the drivers of offending. Stalking is the kind of offending that could be suitable for a problem-solving approach.
- 8.126 If sufficient research is undertaken and the treatment for stalking is developed to the point there are strong indicators that compelling such treatment is effective, then the Victorian Government should consider connecting the PSIO response with a requirement to attend treatment, as is the case under the FVPA.

Recommendation

44. If there are strong indicators that compelling treatment is an effective response to non-family violence stalking in the personal safety intervention order system, the Victorian Government should consider introducing court-ordered therapeutic orders, as is the case in the *Family Violence Protection Act 2008 (Vic)*.

145 Submission 47 (Liberty Victoria); Consultation 15 (Forensicare (No 1)).

146 Submissions 98 (Law Institute of Victoria), 100 (Forensicare).

147 Submission 97 (Federation of Community Legal Centres).

148 Consultation 15 (Forensicare (No 1)).

149 Submissions 47 (Liberty Victoria), 93 (Royal Australian and New Zealand College of Psychiatrists), 95 (Springvale Monash Legal Service).

150 Consultation 19 (Community legal sector roundtable). Springvale Monash Legal Service told us that 'court imposed treatment orders should be considered as a last resort and if imposed, be in the least restrictive form': Submission 95 (Springvale Monash Legal Service).

151 Consultation 17 (Small group meeting on stalking and young people).

Electronic monitoring

What is electronic monitoring?

- 8.127 This section considers the use of electronic monitoring as a condition on PSIOs.
- 8.128 A person who is electronically monitored wears a device that cannot be removed (usually around their ankle) that allows authorities to track their location using global positioning system (GPS) and radio frequency (RF) technologies.¹⁵² The devices are programmed to communicate to a monitoring centre when certain things occur, such as a person going to a place they should not.¹⁵³
- 8.129 Electronic monitoring is now used to monitor compliance with community corrections orders,¹⁵⁴ parole orders,¹⁵⁵ and post-sentence supervision orders for some serious sexual and violent offenders.¹⁵⁶ People in custody can also be subject to electronic monitoring. In Victoria this only happens after people have been convicted.
- 8.130 The Royal Commission into Family Violence suggested further consideration be given to electronic monitoring as part of an overall approach to family violence. But it did not recommend changing the law.¹⁵⁷
- 8.131 New South Wales,¹⁵⁸ Tasmania,¹⁵⁹ South Australia,¹⁶⁰ and Western Australia¹⁶¹ have trialled electronic monitoring for people who have committed significant family violence.
- 8.132 Tasmania is the only state that provides for electronic monitoring to be included as a condition of a civil protection order if there is a history of family violence.¹⁶² In other states it is used only in the criminal law setting.
- 8.133 International research has identified some benefits of electronic monitoring in the context of family violence:
- enhanced community safety
 - reduction in repeat offending
 - reduced imprisonment rates (and reduced costs of imprisonment)
 - increased sense of safety in victim survivors.¹⁶³
- 8.134 Electronic monitoring is a controversial criminal justice measure which can be seen as a form of increased penalty.¹⁶⁴ It is used in Victoria in the context of bail for those suspected of terrorism, for those convicted of sex offences, and to monitor some requirements for those convicted of serious violence offences.¹⁶⁵

152 Lorana Bartels and Marietta Martinovic, 'Electronic Monitoring: The Experience in Australia' (2017) 9(1) *European Journal of Probation* 90.

153 Ibid.

154 *Sentencing Act 1991* (Vic) s 48LA.

155 'Parole Conditions', *Adult Parole Board Victoria* (Web Page) <<https://www.adultparoleboard.vic.gov.au/parole-process/parole-conditions>>.

156 *Serious Offenders Act 2018* (Vic) s 141.

157 *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016).

158 Standing Committee on Social Issues, Parliament of New South Wales, *Domestic Violence Trends and Issues in NSW* (Report No 46, August 2012).

159 Mark Shelton, Minister for Police, Fire and Emergency Management (Tas), 'Electronic Monitoring Trial Delivers Real Results in Supporting Victims of Family Violence' (Media Release, 20 August 2020).

160 'Domestic Violence Offenders in SA to Be GPS Tracked', *ABC News* (online, 17 April 2017) <<https://www.abc.net.au/news/2017-04-18/domestic-violence-offenders-to-be-gps-tracked-in-sa/8448666>>.

161 Department of Justice (WA), 'Family and Domestic Violence Offenders Face GPS Tracking', *WA.Gov.Au* (Web Page, 18 August 2020) <<https://www.wa.gov.au/government/announcements/family-and-domestic-violence-offenders-face-gps-tracking>>; *Family Violence Legislation Reform (COVID-19 Response) Act 2020* (WA).

162 *Family Violence Act 2007* (Tas) s 16(3)(c).

163 Heather Nancarrow and Tanya Modini, *Electronic Monitoring in the Context of Domestic and Family Violence* (Report for the Department of Justice and Attorney-General (Qld), ANROWS, 2018).

164 Jyoti Belur et al, 'A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders' (2020) 68 *Journal of Criminal Justice* 101686:1–18.

165 Ibid.

How effective is electronic monitoring?

- 8.135 Electronic monitoring may be used to positive effect:
- for certain offenders (such as sex offenders)¹⁶⁶
 - at certain points in the criminal justice process (post-trial, for home detention or curfews)¹⁶⁷
 - when combined with exclusion zones and therapeutic components.¹⁶⁸
- 8.136 However, other 'studies indicate little or no positive impact of electronic monitoring'.¹⁶⁹ For example, a reconviction study in England and Wales with a sample of approximately 64,000 participants found that offenders subject to electronic monitoring while on home detention were no more likely to be convicted again than those on home detention not subject to electronic monitoring.¹⁷⁰
- 8.137 Preliminary results from the Tasmanian family violence trial, which tracked the movements of 52 family violence intervention order respondents, indicated:
- 70 per cent reduction of assaults
 - 80 per cent reduction of threats
 - 89 per cent decrease in allegations of emotional abuse
 - 100 per cent decrease in reports of stalking.¹⁷¹
- 8.138 Despite the promising results, the author of the evaluation concluded that 'further research and data analysis over a longer period of time' is required.¹⁷²
- 8.139 While there has been some research and evaluation of electronic monitoring in a family violence context, no research has been conducted about its use in the context of non-family violence stalking.

Support for electronic monitoring

- 8.140 Di McDonald, a person who experienced stalking, pointed out that instead of the person who stalked her being electronically monitored, she has needed to wear an electronic monitor to protect herself:

So instead of the criminal wearing a monitor, I do now. It's a safety watch which alerts 5 people that I am in danger, for them to call police. ... This is so I can feel safe knowing that if I'm attacked, I have help at hand, and hopefully police will attend before I'm hurt. So even given his extensive history, the laws are still protecting him not me.¹⁷³

- 8.141 Di McDonald suggested that electronic monitoring would free up police time, as there were three police stations needing to keep an eye on the person who stalked her.¹⁷⁴

166 Ibid.

167 Heather Nancarrow and Tanya Modini, *Electronic Monitoring in the Context of Domestic and Family Violence* (Report for the Department of Justice and Attorney-General (Qld), ANROWS, 2018) 2.

168 Jyoti Belur et al. 'A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders' (2020) 68 *Journal of Criminal Justice* 101686:1–18.

169 Ibid; Heather Nancarrow and Tanya Modini, *Electronic Monitoring in the Context of Domestic and Family Violence* (Report for the Department of Justice and Attorney-General (Qld), ANROWS, 2018) 29.

170 A Hucklesby and E Holdsworth, *Electronic Monitoring in England and Wales* (Report, 2016).

171 Romy Winter et al, *Evaluation of Project Vigilance: Electronic Monitoring of Family Violence Offenders* (Final Report, University of Tasmania, Tasmanian Institute of Law Enforcement Studies, July 2021) 49.

172 Ibid.

173 Submission 70 (Di McDonald).

174 Ibid.

- 8.142 There was support for electronic monitoring in some submissions received.¹⁷⁵ For example, Derryn Hinch's Justice Party suggested using the Tasmanian 'Project Vigilance' model for 'certain high-risk stalkers or suspected stalkers'.¹⁷⁶
- 8.143 The Victims of Crime Commissioner suggested that electronic monitoring be 'explored as a potential option to increase the safety of victims'.¹⁷⁷ The Victims of Crime Commissioner noted that 'benefits to victim survivors include peace of mind knowing a perpetrator is being monitored and relief from cessation of behaviours'.¹⁷⁸
- 8.144 In relation to electronic monitoring, victim survivors who expressed support for it thought it would ensure victims felt or were protected.¹⁷⁹ They also thought it might deter people who stalked from becoming violent.¹⁸⁰
- 8.145 Concerned members of the community felt that electronic monitoring could be a form of 'early intervention'¹⁸¹ or serve as a surveillance system,¹⁸² especially for 'high-risk offenders',¹⁸³ and 'repeat offenders'.¹⁸⁴ One went so far as to say, 'this is the only way I can see how to prevent and protect these women'.¹⁸⁵ Another felt that electronic monitoring 'has the potential to save lives'.¹⁸⁶

Opposition to electronic monitoring

- 8.146 However, many organisations opposed electronic monitoring, reporting the following concerns:
- Analysis of electronic monitoring data is not always immediate, which limits the ability of the technology to keep victim survivors safe.¹⁸⁷
 - There is a possibility of alerting the person wearing the device of the whereabouts of the victim through the use of exclusion zones.¹⁸⁸
 - It can create a false sense of security for victim survivors if they have expectations of the technology that exceed its capability.¹⁸⁹
 - The possibility of 'false' alerts and other system deficiencies.¹⁹⁰
 - Exclusion zones are difficult to impose in regional and rural areas, where people are more likely to come across each other.¹⁹¹
 - It can cause hypervigilance in victim survivors.¹⁹²
 - Further evaluation of electronic monitoring is needed before implementing such a reform, to improve understanding of how and when it is most effective.¹⁹³
 - Electronic monitoring can be very expensive and Corrections Victoria has limited capacity to expand this measure further.¹⁹⁴

175 Submissions 10 (Rochelle Carli), 54 (Riana Leonardi, Hannah Smith, Dahlia Mahmoud, Melissa Caligiore), 55 (Bianca Adams), 56 (Derryn Hinch's Justice Party), 60 (Dianne Russell), 61 (Naciyelara Erel), 63 (Madison), 64 (Phillip Castagna), 67 (Erin Scrimshaw), 68 (Natasha Walters), 72 (Sarah Pervaiz), 85 (John Raphael Violeta), 90 (Carmela Melinda DiMauro).

176 Submission 56 (Derryn Hinch's Justice Party).

177 Submission 49 (Victims of Crime Commissioner).

178 Submission 49 (Victims of Crime Commissioner).

179 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

180 Ibid.

181 Submission 26 (KB).

182 Submissions 10 (Rochelle Carli), 60 (Dianne Russell), 64 (Phillip Castagna), 85 (John Raphael Violeta).

183 Submissions 54 (Riana Leonardi, Hannah Smith, Dahlia Mahmoud, Melissa Caligiore), 68 (Natasha Walters), 72 (Sarah Pervaiz), 90 (Carmela Melinda DiMauro).

184 Submission 36 (Ahmad Masri).

185 Submission 60 (Dianne Russell).

186 Submission 67 (Erin Scrimshaw).

187 Consultation 3 (Victoria Police (No 1)).

188 Ibid.

189 Ibid.

190 Ibid.

191 Consultation 26 (Victoria Police (No 3)).

192 Ibid.

193 Submission 97 (Federation of Community Legal Centres).

194 Consultation 26 (Victoria Police (No 3)).

- There are human rights concerns in relation to limiting the liberty of people who have not been convicted of a crime.¹⁹⁵ The Victorian Aboriginal Legal Service noted the 'scant evidence' being produced at the PSIO stage and the low threshold for making an order.¹⁹⁶
 - Wearing an electronic monitoring device may be stigmatising,¹⁹⁷ and can affect access to treatment and housing.¹⁹⁸ For example, some housing providers will not accept people who are being electronically monitored.¹⁹⁹
- 8.147 It was submitted that electronic monitoring is 'only appropriate once an individual has been convicted of serious criminal offending'.²⁰⁰
- 8.148 Victoria Police submitted that 'Implementation of electronic monitoring conditions pre-sentence or in a civil setting without charge would be a significant departure from the current model'.²⁰¹

Conclusion on electronic monitoring

- 8.149 Electronic monitoring is primarily used after sentencing, and after proof of a criminal offence, which uses a higher standard than what is needed to establish grounds for a personal safety intervention order in the civil system.²⁰²
- 8.150 We are concerned about its use in a civil context, and its net-widening effect, especially of people who do not pose a risk of escalation or reoffending.²⁰³
- 8.151 While we acknowledge that an electronic monitoring condition could be applied only to the most risky or serious cases, there is not enough evidence to show that it would work in a stalking context. It might not achieve the aims of keeping victim survivors safe or deterring people who stalk. It could in fact do the opposite.
- 8.152 Electronic monitoring is an intelligence tool, which only provides real-time monitoring of people wearing monitoring devices, if there are people monitoring those wearing the devices, in real time.²⁰⁴ Real-time monitoring of those subject to a PSIO would be prohibitively expensive and resource-intensive. This means that electronic monitoring is unlikely to protect victims of stalking or prevent a crisis situation from occurring. The best way to do this is by intervening early and identifying the most appropriate individual response. If a person who stalks needs to be restricted beyond what a PSIO can achieve, then criminal charges should be filed.
- 8.153 Further, electronic monitoring is a significant limitation on the right to privacy in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.²⁰⁵ Such a limitation must be justified, taking into account factors such as the purpose of the limitation.²⁰⁶ The purpose of the limitation in this context, the safety of victim survivors, is very important. However, on the limited available evidence and the balance of submissions received, we do not consider electronic monitoring to be a 'reasonable' and 'demonstrably justifiable' way of achieving that purpose.²⁰⁷
- 8.154 We acknowledge the need for enhanced protections for victim survivors of non-family violence stalking. All Victorians have a right to live free from violence and from the perpetual fear of violence that is so often experienced by victim survivors in the aftermath of being stalked. We acknowledge the appeal of electronic monitoring in achieving the goal of keeping victim survivors and the community safe.

195 Submissions 47 (Liberty Victoria), 98 (Law Institute of Victoria), 95 (Springvale Monash Legal Service), 97 (Federation of Community Legal Centres); Consultations 13 (Victoria Legal Aid), 10 (Victorian Aboriginal Legal Service), 30 (Roundtable with multicultural and multifaith lawyers and legal stakeholders).

196 Consultation 10 (Victorian Aboriginal Legal Service).

197 Ibid; Consultation 13 (Victoria Legal Aid).

198 Consultation 13 (Victoria Legal Aid).

199 Submission 27 (Victoria Legal Aid); Consultation 10 (Victorian Aboriginal Legal Service).

200 Submission 27 (Victoria Legal Aid).

201 Consultation 3 (Victoria Police (No 1)).

202 Jyoti Belur et al. 'A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders' (2020) 68 *Journal of Criminal Justice* 101686:1-18.

203 Ibid.

204 Consultation 3 (Victoria Police (No 1)).

205 *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 13.

206 Ibid s 7(2).

207 Ibid.

8.155 But electronic monitoring is a controversial criminal justice measure and at the civil intervention order stage the disadvantages outweigh the benefits. We make no recommendation in relation to electronic monitoring.

Sentencing stalking

How is stalking sentenced in Victoria?

- 8.156 The offence of stalking is set out in section 21A of the *Crimes Act 1958* (Vic) (see Chapter 7).
- 8.157 The maximum penalty for stalking in Victoria is 10 years imprisonment.²⁰⁸ However, the maximum 10 years imprisonment applies only in the higher courts. If heard summarily in the Magistrates' Court, the maximum penalty that can be imposed following conviction is two years imprisonment.²⁰⁹ Decisions made by prosecutors on whether a charge should be determined summarily in the Magistrates' Court can therefore have a major effect on sentencing.
- 8.158 The maximum penalties for stalking offences are different across Australia: five years imprisonment in the Northern Territory, South Australia, New South Wales and the Australian Capital Territory; up to eight years imprisonment in Western Australia; and up to 10 years imprisonment in Queensland.²¹⁰
- 8.159 The Sentencing Advisory Council report on sentencing stalking in Victoria states that 'most jurisdictions' maximum penalties only apply if there are aggravating circumstances present, such as if the offending occurred in breach of a court order or while the offender was in possession of a weapon'.²¹¹
- 8.160 In Victoria, however, the 10-year maximum penalty applies in all circumstances, making it effectively the highest maximum penalty for stalking in Australia. The maximum penalty for stalking in Victoria is higher than in most common law countries.²¹²
- 8.161 The SAC report reveals that:
- immediate custodial sentences were the most common outcomes for stalking charges in the Magistrates' Court (32 per cent) and in the higher courts (82 per cent)²¹³
 - the average prison sentence for the stalking offence in the higher courts was 14 months imprisonment (half were between six months and less than 18 months)²¹⁴
 - prison sentences were more common where a stalking charge was co-sentenced with an assault offence (47 per cent), a bail-related offence (46 per cent) or a breach of an intervention order (41 per cent)²¹⁵
 - community correction orders (CCOs) were the next most common outcomes in both the Magistrates' Court (31 per cent) and the higher courts (13 per cent), with most CCOs having an assessment and treatment condition (91 per cent), especially when the CCOs were combined with imprisonment (97 per cent).²¹⁶

208 *Crimes Act 1958* (Vic) s 21A(1). When the offence is tried summarily (in the Magistrates' Court), it is subject to the standard restrictions for offences tried summarily. That is, the maximum penalty for a single charge is two years' imprisonment, and the maximum cumulation or aggregate sentence where there are multiple charges in a case is five years' imprisonment: *Sentencing Act 1991* (Vic) ss 113A, 113B.

209 *Sentencing Act 1991* (Vic) s 113.

210 Sentencing Advisory Council (Vic), *Sentencing Stalking in Victoria* (Report, March 2022).

211 *Ibid* 8. See, eg, *Criminal Code Act 1983* (NT) s 189(2)(b)

212 *Ibid* 9.

213 *Ibid* 55.

214 *Ibid* 56 Due to data availability and reliability, this report does not provide sentence lengths for prison sentences imposed in the Magistrates' Court.

215 *Ibid* 46.

216 *Ibid* 67.

Support for increased sentences

- 8.162 We heard about the need for stronger outcomes for people who stalk from victim survivors and the people who support them. There was support from this group for an increase in sentences.²¹⁷ Other suggestions include requirements to regularly report to a local police station, curfews, and a stalking offenders register.²¹⁸ The Victims of Crime Commissioner also suggested the government consider expanding the sexual offenders register to include stalking.²¹⁹
- 8.163 Derryn Hinch's Justice Party 'strongly recommend[ed] that the penalties and the sentencing guidelines for stalking offences be urgently revisited'.²²⁰ Their recommendations included that the maximum penalty in the Magistrates' Court 'be significantly increased'.²²¹ It submitted that strong sentences would help deter stalking behaviour.²²²
- 8.164 Members of the public called for the response to stalking to be strengthened, including through an increase in punishment, such as prison sentences,²²³ with two submissions calling for the re-introduction of the death penalty.²²⁴
- 8.165 One mother who told us about her daughter's experience of being stalked was disappointed in the sentencing outcome (this person was charged 2–5 years ago):

The legal system is pathetic. It failed my daughter and her three friends who were also stalked.

He was sentenced to eight months jail by the Magistrate and after he appealed and the matter was heard in the County Court it was overturned by the Judge. Very disappointing outcome and total waste of taxpayers' money.²²⁵

Guidance on sentencing should be introduced

- 8.166 While we acknowledge the sentiment of some victim survivors and members of the public on this issue, changes to the maximum sentence for stalking in Victoria are not needed.
- 8.167 Stalking has a high penalty in Victoria. Other things we have recommended such as early intervention are more likely to achieve the aims of stopping stalking behaviour.
- 8.168 However, the Sentencing Advisory Council noted that Magistrates' Courts now have significant guidance about sentencing breaches of family violence intervention orders (FVIOs) and safety notices (FVSNs).²²⁶
- 8.169 In contrast, there is less guidance on sentencing breaches of PSIOs. Although some of the family violence-specific guidance may be relevant to sentencing breaches of PSIOs (especially where they involve family violence), they are typically directed to the 'unique dynamics of family violence' and are not always applicable.²²⁷ Given the increasing prevalence of sentenced non-family violence breaches, there may be a need for

217 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021); Submissions 26 (KB), 31 (Name withheld), 36 (Ahmad Masri), 60 (Dianne Russell), 70 (Di McDonald).

218 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

219 Submission 33 (Victims of Crime Commissioner).

220 Submission 56 (Derryn Hinch's Justice Party).

221 Ibid.

222 Ibid.

223 Submissions 30 (Name withheld), 54 (Riana Leonardi, Hannah Smith, Dahlia Mahmoud, Melissa Caligiore), 57 (Name withheld), 61 (Naciyelara Ereli), 82 (Tring Nguyen), 90 (Carmela Melinda DiMauro).

224 Submissions 64 (Phillip Castagna), 90 (Carmela Melinda DiMauro).

225 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, August 2021).

226 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) 14; Judicial College Victoria, *Family Violence Bench Book* (Online Manual) <<https://www.judicialcollege.vic.edu.au/eManuals/FVBB>>.

227 Sentencing Advisory Council (Vic), *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (Report, February 2022) 14.

similar guidance to be developed for the non-family violence context.²²⁸ We agree with the Sentencing Advisory Council and recommend specific guidance for sentencing breaches of PSIOs.

Recommendation

45. The Judicial College of Victoria should develop guidance for sentencing breaches of personal safety intervention orders, similar to the guidance that exists for sentencing breaches of family violence intervention orders and family violence safety notices under the *Family Violence Protection Act 2008* (Vic).

Appendices

186 Appendix A: Submissions

189 Appendix B: Consultations

190 Appendix C: 'Course of conduct' element for stalking offence under
s 21A of the *Crimes Act 1958* (Vic)

Appendix A: Submissions

1	Confidential
2	Confidential
3	Confidential
4	Name withheld
5	Cheryl Brown
6	Name withheld
7	Confidential
8	Name withheld
9	Confidential
10	Rochelle Carli
11	Anonymous
12	Confidential
13	Confidential
14	George Hart
15	Confidential
16	Confidential
17	Confidential
18	Confidential
19	Lyn Crocker
20	Jennifer Rosewarne
21	Antoinette Lim
22	Name withheld
23	Confidential
24	Confidential
25	Deborah
26	KB
27	Name withheld
28	Name withheld
29	Confidential
30	Name withheld
31	Name withheld
32	Centre for Forensic Behavioural Science
33	Name withheld
34	Confidential
35	Confidential
36	Ahmad Masri

37	Confidential
38	Confidential
39	Victorian Pride Lobby
40	Name withheld
41	Djirra
42	Name withheld
43	Name withheld
44	Confidential
45	Confidential
46	Confidential
47	Liberty Victoria
48	Confidential
49	Victims of Crime Commissioner
50	Confidential
51	Matthew Raj
52	Confidential
53	Barbara Jackson
54	Dahlia Mahmoud, Riana Leonardi, Hannah Smith, Melissa Caligiore
55	Bianca Adams
56	Derryn Hinch's Justice Party
57	Name withheld
58	Confidential
59	Name withheld
60	Dianne Russell
61	Naciyelara Erel
62	Name withheld
63	Madison
64	Phillip Castagna
65	Code Black Threat Management
66	Confidential
67	Erin Scrimshaw
68	Natasha Walters
69	Daniel Petrovski
70	Di McDonald
71	Confidential
72	Sarah Pervaiz
73	Confidential
74	Confidential
75	Confidential
76	Australian Association of Social Workers
77	Confidential
78	Confidential
79	Confidential
80	Confidential
81	Confidential
82	Tring Nguyen
83	Confidential
84	Confidential

85	John Raphael Violeta
86	Confidential
87	Confidential
88	Name withheld
89	Confidential
90	Carmela Melinda Di Mauro
91	Name withheld
92	Name withheld
93	Royal Australian and New Zealand College of Psychiatrists
94	Name withheld
95	Springvale Monash Legal Service
96	Confidential
97	Federation of Community Legal Centres
98	Law Institute of Victoria
99	Confidential
100	Forensicare
101	Michael Buckman
102	Confidential
103	Confidential
104	Alannah and Madeline Foundation
105	Name withheld
106	Dr Steven Tudor & Greg Byrne PSM
107	J Starr
108	Confidential
109	Name withheld
110	Name Withheld
111	Confidential
112	Confidential
113	Confidential
114	Confidential
115	Victoria Police
	Victoria Police—supplementary response

Appendix B:

Consultations

1	Centre for Forensic Behavioural Science
2	Children's Court of Victoria (No 1)
3	Victoria Police (No 1)
4	Sexual Assault Services Network
5	Harmful Sexual Behaviours Network
6	Magistrates' Court of Victoria (No 1)
7	Risk roundtable
8	eSafety Commissioner
9	Judicial College of Victoria
10	Victorian Aboriginal Legal Service
11	Members of the Victims of Crime Consultative Committee
12	Domestic Violence Victoria and Domestic Violence Resource Centre Victoria
13	Victoria Legal Aid
14	Confidential
15	Forensicare (No 1)
16	Centre for Excellence in Child and Family Welfare: Young People and Stalking
17	Small group meeting on stalking and young people
18	County Court of Victoria
19	Community legal sector roundtable
20	Law Institute of Victoria
21	Small group meeting on stalking and women with disabilities
22	Small group meeting on stalking and people with disabilities
23	Cyberstalking roundtable
24	Criminal Bar Association
25	Victoria Police (No 2)
26	Victoria Police (No 3)
27	Kulturbrille
28	Victorian Pride Lobby
29	Alannah & Madeline Foundation
30	Roundtable with multicultural and multifaitlh lawyers and legal stakeholders
31	Roundtable with multicultural and multifaitlh community organisations
32	Dispute Settlement Centre of Victoria
33	VACRO
34	Magistrates' Court of Victoria (No 2)
35	Children's Court of Victoria (No 2)
36	Forensicare (No 2)

Appendix C: 'Course of conduct' element for stalking offence under s 21A of the *Crimes Act 1958* (Vic)

- (2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following—
- (a) following the victim or any other person;
 - (b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;
 - (ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material—
 - (i) relating to the victim or any other person; or
 - (ii) purporting to relate to, or to originate from, the victim or any other person;
 - (bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person;
 - (bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;
 - (c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;
 - (d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);
 - (da) making threats to the victim;
 - (db) using abusive or offensive words to or in the presence of the victim;
 - (dc) performing abusive or offensive acts in the presence of the victim;
 - (dd) directing abusive or offensive acts towards the victim;
 - (e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;
 - (f) keeping the victim or any other person under surveillance;
 - (g) acting in any other way that could reasonably be expected—
 - (i) to cause physical or mental harm to the victim, including self-harm; or
 - (ii) to arouse apprehension or fear in the victim for his or her own safety or that of any other person—

with the intention of causing physical or mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.

- (3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim, including self-harm, or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if—
- (a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or
 - (b) the offender in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.

Note that under s 21A(4A), it is a defence to a stalking charge where the accused engaged in a course of conduct 'without malice'. For example, engaging in the normal course of lawful business, trade, profession or enterprise; or engaging in political activities or discussion. The accused bears the burden of proof in establishing this defence.

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