

Stalking

VICTORIAN
**LAW
REFORM***
COMMISSION

Consultation
Paper

June 2021

Published by the Victorian Law Reform Commission

The Victorian Law Reform Commission was established under the *Victorian Law Reform Commission Act 2000* (Vic) as a central agency for developing law reform in Victoria.

© Victorian Law Reform Commission 2021

This publication of the Victorian Law Reform Commission follows the Melbourne University Law Review Association *Australian Guide to Legal Citation* (4th ed, 2017).

This consultation paper reflects the law at 17 June 2021.

Stalking: Consultation Paper

ISBN 978-0-6489904-9-9

Chair

The Hon. Anthony North QC

Commissioners

Liana Buchanan

The Hon. Jennifer Coate AO

Kathleen Foley

Bruce Gardner PSM

Professor Bernadette McSherry

Dan Nicholson

Alison O'Brien

Gemma Varley PSM

Dr Vivian Waller

Chief executive officer

Merrin Mason PSM

Reference team

Marie Barnard (*team leader*)

Ann Jorgensen (*senior research and policy officer*)

Michelle McDonnell (*senior research and policy officer*)

Dr Madeleine Ulbrick (*senior research and policy officer*)

Bethia Burgess (*research assistant*)

Cover design

Letterbox

Text layout

GH2 Design

Stalking

Stalking

Consultation Paper

GPO Box 4637
Melbourne
Victoria 3001
Australia

Level 3
333 Queen Street
Melbourne
Victoria 3000
Australia

Telephone
+61 3 8608 7800

Freecall
1300 666 555
(within Victoria)

Fax
+61 3 8608 7888

Email
law.reform@lawreform.vic.gov.au

lawreform.vic.gov.au

Printed on 100% recycled paper

Contents

How to tell us your views.....	v
Giving feedback online.....	v
Making a submission	vi
Important details about making a submission	vi
Formal consultations.....	vi
Key terms	vi
What we will do with your responses	vii
Our process from here.....	vii
Terms of reference.....	viii
Questions	x
Chapter 1. Nature and dynamics of stalking.....	2
Introduction	2
What is stalking?.....	2
Measuring the prevalence of stalking: who is stalked, how and why?.....	4
Who stalks, how and why?	6
Impact of stalking on victim survivors.....	8
Chapter 2. Recognising and reporting stalking.....	10
Introduction	10
How is stalking understood in the community?.....	10
Recognising stalking.....	12
Deciding whether to report stalking to police	12
What kinds of stalking cases are reported to police?	12
Barriers to reporting stalking to police	13
Chapter 3. Understanding and responding to stalking	16
Introduction	16
How should agencies identify the risk of serious harm posed by a person committing stalking?	16
Indicators of risk of serious harm in stalking	16
How can risk of serious harm be assessed?	17
How is risk of serious harm assessed and managed in family violence?.....	18

What information do police need to assess the risk of serious harm posed by a person committing stalking?	19
Getting the whole story from the victim survivor.....	19
Getting the whole story from the rest of the system	20
Who should conduct in-depth risk assessments?.....	21
What actions can police take?	21
No action.....	21
Advise the victim survivor to apply for a personal safety intervention order	22
Apply for a personal safety intervention order on behalf of the victim survivor	22
File criminal charges	23
Refer the victim survivor to services.....	23
What guidance helps police to decide which action to take?.....	23
Should there be options for urgent protection?.....	23
Chapter 4. The personal safety intervention order system.....	26
Introduction	26
Online applications.....	27
Cross-examination	28
Counselling orders	29
Making orders against people with cognitive impairments.....	29
Contraventions of intervention orders.....	29
Restrictions on publication of proceedings	30
Legal representation	30
Appeals	31
Chapter 5. Criminal law responses to stalking	34
Introduction	34
The criminal offence of stalking.....	34
Elements of the offence of stalking	37
Overlap between stalking and other offences.....	38
Criminal procedure and protection of victim survivors	40
Prohibition against cross-examination.....	40
Alternative arrangements for giving evidence	40
Pre-recording of evidence-in-chief	40
Broadening the scope of witness protections	41
How stalking is sentenced in Victoria	41
Sentencing and risk assessment.....	42
Electronic monitoring	42
Chapter 6. Responding to people who experience stalking	46
Introduction	46
The needs of victim survivors.....	46
Support for people who have experienced stalking.....	47
Financial needs of people who experience stalking	50
Working with other services and systems.....	51

Chapter 7. Responding to people who commit stalking.....	54
Introduction	54
Diverse needs	54
Responding to offending behaviour	56
Rehabilitation.....	56
Reintegration	56
Are there learnings from family violence reforms?.....	57
Chapter 8. Responses to cyberstalking	60
What is cyberstalking?	60
How is cyberstalking experienced by victim survivors?	61
Barriers to victim survivors seeking help for cyberstalking	61
What makes cyberstalking difficult to regulate?.....	61
Detecting cyberstalking.....	61
Jurisdictional issues	62
Technological issues	62
How is cyberstalking regulated?	62
Surveillance.....	62
Repetition	62
Intrusion (hacking)	63
Denigration.....	63
Removing cyberstalking material from the internet.....	64
Selling or supplying goods or services that can be used for cyberstalking	64

How to tell us your views

- 1 The Victorian Law Reform Commission would like to hear from you. We would like to know your thoughts about the current stalking system and what needs to change. The deadline for submissions is 5 August 2021.
- 2 We will hear from people in three ways:
 - 1) an online form (for people who have experienced stalking and those that have supported them)
 - 2) submissions (written responses to our consultation paper or terms of reference)
 - 3) formal consultations.
- 3 We explain these processes below.
- 4 If you or someone you know has experienced stalking and you would like to give feedback in another way, please contact us. We will arrange another way for you to share your views.
- 5 Please note that we do not provide legal advice. If you need help with a legal issue, you can contact Victoria Legal Aid, a community legal centre or a solicitor.
- 6 You may find it difficult or upsetting to discuss experiences of stalking and seeking justice. We encourage you to seek support from the organisations listed in the Victims of Crime Stalking information sheet.¹ If your safety is at risk, please contact police by calling 000.

Giving feedback online

- 7 We have tried to make it easier for people who have experienced stalking, or helped someone who has, to give us feedback through a short online form at the website of Engage Victoria (<https://engage.vic.gov.au/stalking-laws>).
- 8 If you also want to provide feedback to the questions in the consultation paper, you can make a submission (see below).
- 9 We will not publish anyone's individual responses to the online feedback form. We will publish a summary of responses that will not identify anyone.

1 State Government of Victoria, 'Stalking', *Victims of Crime* (Web Page, June 2021) <<https://www.victimsofcrime.vic.gov.au/the-crime/types-of-crime/stalking>>.

Making a submission

- 10 You can tell us your views by sending us a submission. A submission is a written response to this inquiry. It does not need to be a formal document. It can be an email (to stalking@lawreform.vic.gov.au). The important thing is that we hear your thoughts. There is no standard format for submissions, but we prefer them to be in writing.
- 11 Our consultation paper contains questions. You can answer as many questions as you like, or you can respond to our terms of reference more generally without using the questions.
- 12 You can see a list of the questions on page x.
- 13 If you need assistance, you can make a submission verbally to one of the Commission staff. Please contact us if you need an interpreter or other assistance.

Important details about making a submission

- 14 When you make a submission, you must tell us if you want your submission to be public or confidential. If you do not tell us you want your submission to be confidential, we will treat it as public. That means that we may refer to it in our reports, upload it to our website and make it available to the public to read in our offices.
- 15 Your submission should include your name or organisation. If it does not have a name attached, it may be difficult for us to use the information. You can ask us not to publish your name in our report, but otherwise we will publish your name in our list of submissions, subject to any laws that apply.
- 16 **Please make your submission by 5 August 2021.** You can make your submission by:
 - Sending your submission by email: stalking@lawreform.vic.gov.au
 - Sending your submission by mail: GPO Box 4637, Melbourne Vic 3001
 - Phone: (03) 8608 7800, 1300 666 557 (TTY) or 1300 666 555 (cost of a local call).

Formal consultations

- 17 We will speak with people who have experienced stalking, making contact through interested organisations. We will also meet with people who support or advocate for people who have experienced stalking.
- 18 We will meet with people and organisations who respond to stalking, such as judges, government departments, police and lawyers.

Key terms

- 19 In the paragraphs below, we explain some key terms that we use in our consultation paper.
- 20 We understand that the best terms to use can change and people often disagree about the right terms to use. If you have views on the terms that we are using, please tell us in your online feedback or submission.
- 21 **People who are stalked:** We mainly refer to 'people who are stalked'. This is to recognise that being stalked is an experience, rather than who someone is. It also recognises that people who have been stalked do not have one shared identity. We sometimes refer to people who have been stalked as 'victim survivors' (a term recognising their resilience as well as their victimisation) or as 'complainants' (which is a legal term).

-
- 22 **People who have committed or engaged in stalking:** We refer to ‘a person who has committed’ or ‘been convicted of’ or ‘engaged in stalking’ rather than ‘stalkers’. This recognises that stalking is a problem of someone’s behaviour, rather than of who they are. This is not meant to minimise the seriousness of stalking, which is among the most serious crimes in our community. We also refer to people who have been charged, but not convicted, as ‘the accused’.

What we will do with your responses

- 23 We will publish public submissions on our website, unless they include comments that are offensive or potentially defamatory, or are outside the scope of the review. However:
- we will remove personal addresses and contact details
 - we will remove the name of the person making the submission if the person requests this (this will be securely stored as confidential information and not publicly released).
 - we may remove information that might identify someone (in submissions that discuss specific cases or the personal circumstances of people).
- 24 Confidential submissions are not made available to the public and are not referred to in our reports. However, if someone requests a submission under the *Freedom of Information Act 1982* (Vic), the request will be determined in accordance with the Act.
- 25 The Act has provisions designed to protect personal information and information given in confidence. Further information can be found at www.ovic.vic.gov.au.
- 26 The views in the submissions are those of the people or organisations who submit them. Their publication does not mean that the Commission accepts or agrees with those views.
- 27 We archive hard copies of submissions and send them to the Public Record Office Victoria.

Our process from here

- 28 We will consider all the responses we receive together with our own research. We will write interim and final reports for the Attorney-General including our recommendations on what should be done. The interim report is due by 31 December 2021. The final report is due by 30 June 2022. Within 14 sitting days of receiving our report, the Attorney-General must put it before the Victorian Parliament. It is up to the Victorian Government to decide what it will do in response to our report, and if the law is to be changed it is the role of the Victorian Parliament to make the changes.
- 29 To help us prepare the consultation paper we spoke informally with people and organisations including judges, staff of government departments, lawyers, academics and those who support or advocate for people who experience stalking. We are grateful for their assistance.

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
 - 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.

Questions

- 1 What are the factors that influence whether people who experience stalking report their experiences to police? Are there barriers to reporting that need to be addressed?
- 2 Should a risk assessment framework be developed to help police and courts identify the course of conduct and manage risk of serious harm in the context of stalking? If so, how should it work?
- 3 What else might help agencies to identify the risk of serious harm in a stalking situation? For example, should there be special training or guidelines, or expert advice?
- 4 What approaches or techniques should be used by law enforcement agencies when investigating stalking complaints?
- 5 In the family violence intervention order system, information sharing is allowed. Should there be a similar framework for information sharing between agencies providing services for stalking? If so, how should it work?
- 6 Should there be a specific police Code of Practice for reports of stalking? If so, what should it cover?
- 7 Should there be an option under the *Personal Safety Intervention Orders Act 2010* (Vic) for police to be able to issue the equivalent of a Family Violence Safety Notice? Why/why not?
- 8 Should a person making an application for a personal safety intervention order be able to do so online? If yes, in what circumstances?
- 9 Should respondents be prevented from personally cross-examining the affected person in some personal safety intervention order matters? If so, in what circumstances?
- 10 Should courts be able to order respondents to personal safety intervention order applications to attend treatment programs? If so, what kinds of programs and in what circumstances?
- 11 Should there be additional offences in the *Personal Safety Intervention Orders Act 2010* (Vic) to address more serious breaches? If so, what should they cover?
- 12 Should the restrictions on publication in the *Personal Safety Intervention Orders Act 2010* (Vic) be expanded to cover adults?
- 13 Should there be free legal representation in some personal safety intervention order matters? If yes, what eligibility criteria should apply?
- 14 Should the appeals process for intervention orders be changed to improve the experience of victim survivors? If so, how?

-
- 15 Are there any other aspects of the *Family Violence Protection Act 2008* (Vic) that should be replicated in the *Personal Safety Intervention Orders Act 2010* (Vic)?
 - 16 Can the criminal law response to stalking be improved?
 - 17 You might like to consider whether:
 - (a) there are any challenges in identifying when a person has engaged in a course of conduct or in obtaining evidence to demonstrate a course of conduct
 - (b) the list of conduct in section 21A(2) of the *Crimes Act 1958* (Vic) covers all types of stalking behaviour
 - (c) cyberstalking is adequately covered
 - (d) the law presents any barriers to investigating, charging and prosecuting offenders for stalking conduct.
 - 18 Should there be more protections for victim survivors in stalking prosecutions? If so, what kind?
 - 19 Should the court be able to request specialist risk assessment reports for stalking? If yes, in what circumstances?
 - 20 Should electronic monitoring be introduced to monitor people who have been assessed as posing a high risk of ongoing stalking behaviour? If yes, in what circumstances?
 - 21 How can we improve victim services so that people who experience stalking have their needs met?
 - 22 How can the financial support scheme for victims of crime be improved so that it better meets the needs of victim survivors of stalking?
 - 23 How can we better integrate victim services with relevant public and private services and systems so that people are supported while they are being stalked?
 - 24 How responsive are rehabilitation and reintegration interventions to the diverse needs of people who commit stalking?
 - 25 Could some specialist courts and programs help address some of the issues that may co-occur alongside stalking behaviour? If so, how?
 - 26 How well are prison and post-prison rehabilitation or reintegration measures working for people who have committed stalking? How can they be improved?
 - 27 Are there relevant learnings from the reforms to the family violence system that could be applied to the way the system responds to people who commit stalking?
 - 28 What are the barriers that some victim survivors experience when seeking help for cyberstalking?
 - 29 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?
 - 30 In what ways can apps and smart devices be used to facilitate stalking? What controls could be put in place to prevent apps and smart devices being used to facilitate stalking?

Nature and dynamics of stalking

- 2** Introduction
- 2** What is stalking?
- 4** Measuring the prevalence of stalking: who is stalked, how and why?
- 6** Who stalks, how and why?
- 8** Impact of stalking on victim survivors

1. Nature and dynamics of stalking

Introduction

- 1.1 Stalking is often a terrifying crime. People who are stalked can feel constantly unsafe, anxious and vulnerable. Whether it involves physical violence or not, stalking can cause significant fear and distress.
- 1.2 While the phenomenon of stalking has existed for many years, it has only been recognised as a crime relatively recently. For that reason it is not always well-understood, either by the people experiencing stalking or the system that is meant to respond to it. Victim survivors and system operators can be unsure how to stop the stalking and start the recovery process.
- 1.3 Stalking has been recognised in the family violence context. The Royal Commission into Family Violence made recommendations to develop a comprehensive family violence system. Stalking by partners or former partners falls within this specialist system, which has processes in place to assess the risk posed to victims, hold people who stalk to account and plan for victim safety and recovery.
- 1.4 The death of Celeste Manno in November 2020 shows that the non-family violence stalking system also needs significant reform and led to this Victorian Law Reform Commission reference. This consultation paper does not discuss the details of Ms Manno's death because it is currently before the courts. But the non-family violence stalking system is the focus of this consultation paper.

What is stalking?

- 1.5 Stalking is defined in law. It has also been defined by psychiatrists in clinical settings, and forensic psychologists and criminologists in academic research. Stalking can include:
 - Surveillance: a person who stalks may obsessively monitor the person they are stalking. They may follow the person they are stalking, track them using technology, or loiter around their home or workplace.¹
 - Repetition: a person who stalks contacts the person they are stalking multiple times. Stalking can happen over the course of one day, for a few weeks, or many years.²
 - Degradation: a person who stalks may verbally abuse the person they are stalking, post denigrating comments or images online about them,³ or humiliate them in public.

1 Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244, 1244.

2 Lorraine Sheridan and Graham M Davies, 'Stalking: The Elusive Crime' (2001) 6(2) *Legal and Criminological Psychology* 133; Lorraine Sheridan and Graham M Davies, 'What Is Stalking? The Match between Legislation and Public Perception' (2001) 6(1) *Legal and Criminological Psychology* 3; Lorraine P Sheridan, Eric Blaauw and Graham M Davies, 'Stalking: Knowns and Unknowns' (2003) 4(2) *Trauma, Violence, & Abuse* 148; Lorraine Sheridan and Karl Roberts, 'Key Questions to Consider in Stalking Cases' (2011) 29(2) *Behavioral Sciences & the Law* 255.

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

- Intrusion: the person who stalks repeatedly approaches the person they are stalking, interferes with their property, or enters their home or workplace.⁴ Stalking involves making 'one's presence felt where it would not otherwise exist'.⁵
- 1.6 Stalking can involve violence towards the person being stalked or damage to their property.
- 1.7 Not all stalking results in physical violence. Stalking can involve actions that would, in another context, be legal or even welcome. For example, gift-giving is usually legal. But if someone repeatedly gives another person unwanted gifts and will not stop when asked, this can be stalking.⁶ Even though it can involve seemingly everyday behaviour, it feels intrusive and can induce distress and fear.⁷

Example: escalation with threats of violence⁸

A man obsessively threatened, harassed and stalked a woman who would not date him. The man had known his victim for over a year and had been stalking her for almost the entire duration, causing her to move house multiple times and change her routine.

He repeatedly followed her home and on one occasion he assaulted her, causing injury. He also gave her gifts and made declarations of love.

He became increasingly aggressive, taking her phone and searching her texts, and telling her 'I'm going to rape you and I'm going to kill you'.

After she moved house a further time, the man's threats escalated when he couldn't find her. Police arrested the man. At his bail application, he continued to maintain the delusion that the woman was his partner.

- 1.8 Stalking can involve using (and misusing) legal and/or complaints processes (such as complaining to the Ombudsman) to maintain access to the person being stalked. This can result in a person being endlessly tied to the person who is stalking them.
- 1.9 As evidenced in other jurisdictions, stalking may also be facilitated by licensed private investigators.⁹ Victoria has a statutory scheme for licensing private investigators.¹⁰ We are interested to understand if and how these services are used in the context of non-family violence stalking.
- 1.10 Stalking is illegal. In Victoria, it is a criminal offence with a maximum penalty of ten years imprisonment. In Victorian legislation, a course of conduct constituting stalking is two or more acts or one single protracted act. Section 21A of the *Crimes Act 1958* contains an extensive, but non-exhaustive, list of behaviours defining stalking. These include:
- following the person being stalked
 - contacting the person being stalked by any means
 - publishing material about or purporting to originate from the person being stalked

4 Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244, 1247.

5 Troy McEwan and Michele Pathé, 'Stalking' in Gerben Bruinsma and David Weisburd (eds), *Encyclopedia of Criminology and Criminal Justice* (Springer New York, 2014) 5026-5027.

6 Emma Ogilvie and Australian Institute of Criminology, *Stalking: Legislation, Policing and Prosecuting in Australia* (Australian Institute of Criminology, 2000); Michelle Sibenik, 'A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia' (PhD Thesis, Monash University, 2018).

7 J Reid Meloy and Shona Gothard, 'Demographic and Clinical Comparison of Obsessional Followers and Offenders with Mental Disorders' (1995) 152(2) *American Journal of Psychiatry* 258; Paul E Mullen, Michele Pathé and Rosemary Purcell, 'Stalking: New Constructions of Human Behaviour' (2001) 35(1) *Australian & New Zealand Journal of Psychiatry* 9.

8 Based on a real case heard in a Magistrates' Court in Victoria, with some details changed to protect anonymity.

9 'Killer Dad's Emails to Disgraced Private Eye', *NewsComAu* (Web Page, 16 May 2021) <<https://www.news.com.au/national/nsw-act/courts-law/killer-dad-john-edwards-emailed-to-private-eye-organisation-spousebusters-to-spy-on-wife-inquest/news-story/69e03348b3c1f8338248da23b4c8c942#.8skp2>>.

10 *Private Security Act 2004* (Vic).

- tracking the person being stalked
 - making threats
 - keeping the person being stalked under surveillance
 - technology-facilitated abuse.
- 1.11 Stalking can be grounds for an intervention order under the *Personal Safety Intervention Orders Act 2010* (Vic) (PSIO Act).¹¹ Despite these laws, stalking can entrap victim survivors in a cycle of abuse that is difficult to identify, prove, and remove themselves from.
- 1.12 Because stalking has such a wide definition, these laws have been criticised as potentially capturing behaviour that is not ‘true’ stalking, drawing more people into the criminal justice system for relatively low-level offending.¹²

Measuring the prevalence of stalking: who is stalked, how and why?

- 1.13 Anyone can experience stalking regardless of gender, race, sexuality, disability or socioeconomic status. However, stalking is a gendered crime, disproportionately perpetrated by men against women. Such gendered violence is enabled by the unequal structures of society.¹³
- 1.14 It is difficult to measure how common stalking is. New technology has led to new ways of stalking, making it even harder to measure.¹⁴ However, the most recent statistics from the Crime Statistics Agency reveal a significant upward trend over the last 24 months for the offence of stalking.¹⁵
- 1.15 The most recent statistics indicate 13,872 stalking offences were recorded by police in Victoria. This includes:
- family violence stalking
 - non-family violence stalking.¹⁶
- 1.16 Stalking in the context of family violence is reported at a slightly higher rate than non-family violence stalking.¹⁷
- 1.17 Fewer personal safety order applications were finalised in the Magistrates’ Court of Victoria in 2018–2019 compared to previous years.¹⁸
- 1.18 The following statistics demonstrate the available prevalence rates for stalking:¹⁹
- From the age of 15, 17 per cent of women and 6.5 per cent of men have been a victim of stalking at least once during their lifetime.²⁰
 - Men are more likely to be stalked by another male than a female.²¹

11 *Personal Safety Intervention Orders Act 2010* (Vic) s 10.

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

13 Jacqui True, ‘The Political Economy of Violence Against Women: A Feminist International Relations Perspective’ (2010) 32(1) *Australian Feminist Law Journal* 39.

14 Heng Choon (Oliver) Chan and Lorraine L Sheridan, *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley & Sons, 2020).

15 Crime Statistics Agency (Vic), ‘Key Figures: Year Ending December 2020’, *Crime Statistics Agency* (Web Page, March 2021) <<https://www.crimestatistics.vic.gov.au/media-centre/news/key-figures-year-ending-december-2020>>.

16 The Crime Statistics Agency also captures harassment, private nuisance and threatening behaviour as part of these figures. Crime Statistics Agency (Vic), ‘Recorded Offences’, *Crime Statistics Agency* (Web Page, September 2020) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/>>.

17 Crime Statistics Agency (Vic), ‘Key Figures: Year Ending March 2020’, *Crime Statistics Agency* (Web Page, June 2020) <<https://www.crimestatistics.vic.gov.au/media-centre/news/key-figures-year-ending-march-2020>>.

18 Magistrates’ Court of Victoria, *Annual Report 2018–19* (Report) 41, 52.

19 This refers to the number of stalking matters recorded in the Victoria Police LEAP database.

20 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Catalogue No 4906.0, 8 November 2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>.

21 Heng Choon (Oliver) Chan and Lorraine L Sheridan, *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (John Wiley & Sons, 2020); Michelle Sibenik, ‘A Critical Analysis of the Applications of Anti-Stalking Legislation in Victoria, Australia’ (PhD Thesis, Monash University, 2018).

- Women with disability or long-term health conditions are more likely than women without disability or long-term health conditions to experience stalking (3.7 per cent compared to 2.7 per cent over a 12-month period).²² Women with disabilities also experience greater barriers to reporting and access to services for various reasons, including dependence on the person using stalking for care. This complicates recovery.²³
- Rates of stalking victimisation for LGBTIQ individuals are high (15 per cent). Transgender, bisexual, and queer people have the highest lifetime prevalence rates of stalking victimisation of the LGBTIQ community. They also have the lowest rates of reporting their victimisation to police, 'attributed to the risk of discrimination, fear of being outed, fear of homophobic/biphobic/transphobic treatment, and fear that police and the justice system might not recognise the problem.'²⁴
- There is a lack of accurate prevalence data for rates of stalking among young people. However, previous Australian research has shown the majority of people under 18 years of age who commit stalking are male (64 per cent) while people who are stalked are predominantly female (69 per cent).²⁵

1.19 It is less clear from the available evidence how culturally and linguistically diverse communities and Aboriginal and Torres Strait Islander people experience stalking. However, we do know that:

- Stalking is more prevalent among, and has a particular and far-reaching impact upon, Aboriginal and Torres Strait Islander women and girls, their families and their communities. Such violence may be perpetrated by non-Indigenous men as well as Aboriginal and Torres Strait Islander men.²⁶
- Stalking offences for the Aboriginal and Torres Strait Islander population are predominantly attributable to family incidents, which increased by 212.5 per cent in the period 2005–2016.²⁷
- By contrast, non-family related crimes against the person in Aboriginal and Torres Strait Islander communities decreased over the same period by 7.2 per cent. We are interested to understand whether this indicates possible reluctance to report non-family violence stalking victimisation by Aboriginal and Torres Strait Islander people, and/or inconsistent police responses.
- While it is not clear whether women from culturally and linguistically diverse communities experience stalking at higher rates, the structural, familial and language barriers to accessing support are greater.²⁸ Multiple people committing stalking may also be involved in this context, and there may be threats of deportation and/or separation from children, making access to the legal system and safety planning more difficult.²⁹

22 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Catalogue No 4906.0, 8 November 2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>.

23 Australian Bureau of Statistics, *Experiences of Violence and Personal Safety of People with Disability* (Catalogue No 4431.0.55.003, 28 November 2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/4431.0.55.003?OpenDocument>>.

24 Lisa Langenderfer-Magruder et al, 'Stalking Victimization in LGBTQ Adults: A Brief Report' (2020) 35(5–6) *Journal of Interpersonal Violence* 1442, 1443.

25 Rosemary Purcell, Teresa Flower and Paul Mullen, 'Adolescent Stalking: Offence Characteristics and Effectiveness of Intervention Orders' (Trends & Issues in Crime and Criminal Justice 369, Australian Institute of Criminology, March 2009) <<https://www.aic.gov.au/publications/tandi/tandi369>>.

26 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, 2019) <<https://nla.gov.au/nla.obj-1797750465>>.

27 Crime Statistics Agency (Vic), '12-Year Trends in Aboriginal or Torres Strait Islander Offending in Victoria', *Crime Statistics Agency* (Web Page, July 2020) <<https://www.crimestatistics.vic.gov.au/12-year-trends-in-aboriginal-or-torres-strait-islander-offending-in-victoria>>.

28 Nicola Henry et al, 'Technology-Facilitated Domestic Violence Against Immigrant and Refugee Women: A Qualitative Study' (2021) *Journal of Interpersonal Violence* 1–27 <<https://journals.sagepub.com/doi/abs/10.1177/08862605211001465>>.

29 Marie Segrave, *Temporary Migration and Family Violence: An Analysis of Victimization, Support and Vulnerability* (Report, School of Social Sciences, Monash University, 10 December 2017) <<https://apo.org.au/node/114311>>; Marie Segrave and Naomi Pfitzner, *Family Violence and Temporary Visa Holders during COVID-19* (Report, Monash Gender and Family Violence Prevention Centre, Monash University, 24 September 2020) <https://bridges.monash.edu/articles/online_resource/Family_violence_and_temporary_visa_holders_during_COVID-19/12987938>.

- Migrant women with temporary visa status are at heightened risk of technology-facilitated abuse, such as being kept under surveillance.³⁰ Migrant women commonly experience tracking of their physical movements via location services through social media or applications on smartphones, along with other devices such as car tracking/spyware devices.³¹ There is limited research on stalking experienced by migrant women in a non-family violence context.

1.20 The evidence base is also very limited in terms of prevalence rates of stalking committed against public figures or health practitioners. However, what is known is that stalking can continue for many months before the public figure becomes aware of the behaviour, and in most situations where the stalking escalates to physical violence, the person stalking typically does not communicate a threat beforehand.³² Accurately measuring the risk factors for stalking violence towards prominent people or people with a public profile (such as health practitioners) 'is difficult because of low base rates'.³³

Who stalks, how and why?

1.21 People who stalk 'represent an extremely diverse population'.³⁴ Typologies classifying people who stalk have been developed by forensic psychiatrists to help understand the context surrounding stalking behaviour, and to guide assessment and management of individuals who stalk.³⁵ The typologies also 'act as a kind of shorthand by summarising the risks associated with stalkers from each category'.³⁶ Researchers have described the three common typologies including the following intersecting characteristics:³⁷

- 1) underlying mental health condition (including comorbidities and dual diagnoses such as substance use disorders)
- 2) relationship contexts such as intimate partner (current/former), friend (current/former), neighbour, acquaintance, work colleague, school associate or no relationship (stranger)
- 3) primary motivation (see below).

1.22 'Primary motivation' refers to the main factors contributing to stalking. Emeritus Professor Paul Mullen and colleagues devised the following categories of primary motivations, which capture the diversity of both those who stalk and the possible motivations:³⁸

- *Rejected stalkers* are those with a primary motivation of seeking revenge against, or reconciliation with, the person they are stalking.³⁹ Rejected stalkers are more likely than any other category of stalker to make threats.⁴⁰
- *Intimacy seekers* want an intimate relationship with the person they are stalking. This includes people with morbid infatuations and erotomaniac delusions.⁴¹ People who fall within in this category are commonly isolated and socially inept. Intimacy seekers are more likely than any other category to be diagnosed with a mental illness characterised by features of psychosis.⁴²

30 Bridget Harris, Heather Douglas and Molly Dragiewicz, 'Migrant Women Are Particularly Vulnerable to Technology-Facilitated Domestic Abuse', *The Conversation* (Web Page, 1 February 2019) <<http://theconversation.com/migrant-women-are-particularly-vulnerable-to-technology-facilitated-domestic-abuse-110270>>.

31 Nicola Henry et al, 'Technology-Facilitated Domestic Violence Against Immigrant and Refugee Women: A Qualitative Study' (2021) *Journal of Interpersonal Violence* 127 <<https://doi.org/10.1177/08862605211001465>>.

32 J Reid Meloy, Lorraine Sheridan and Jens Hoffmann, *Stalking, Threatening, and Attacking Public Figures: A Psychological and Behavioral Analysis* (Oxford University Press, 2008) 6.

33 R Ashmore et al, 'A Survey of Mental Health Nurses' Experiences of Stalking' (2006) 13(5) *Journal of Psychiatric and Mental Health Nursing* 562; David V James et al, 'Stalkers and Harassers of British Royalty: An Exploration of Proxy Behaviours for Violence' (2011) 29(1) *Behavioral Sciences & the Law* 64, 64.

34 Daniel Shea, 'Stalking Recidivism and Risk Assessment' (Monash University, 2015) 23.

35 Kris Mohandie et al, 'The RECON Typology of Stalking: Reliability and Validity Based Upon a Large Sample of North American Stalkers' (2006) 51(1) *Journal of Forensic Sciences* 147; Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244.

36 Daniel Shea, 'Stalking Recidivism and Risk Assessment' (Monash University, 2015) 23.

37 Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244.

38 Ibid; Christopher Racine and Stephen Billick, 'Classification Systems for Stalking Behavior' (2014) 59(1) *Journal of Forensic Sciences* 250.

39 Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244.

40 Rachel Mackenzie et al, 'Stalkers and Intelligence: Implications for Treatment' (2010) 21 *Journal of Forensic Psychiatry & Psychology* 852.

41 Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244.

42 Rachel Mackenzie et al, 'Stalkers and Intelligence: Implications for Treatment' (2010) 21 *Journal of Forensic Psychiatry & Psychology* 852.

- *Entitlement to relationship (incompetent suitors)*⁴³—This category includes people who feel entitled to a relationship with the person they are stalking. They do not understand that the person they are stalking does not want a relationship with them.⁴⁴
- *Resentful stalkers* feel wronged by the person they are stalking. Like the rejected stalker, this type is very likely to make threats with the intention of causing fear. They do this to maintain a sense of control.⁴⁵ This type of stalker is generally more highly educated than the other types.⁴⁶ A distinction found in studies of young people is their potential engagement in stalking behaviours as an extension of bullying or as a more immediate retaliation to a perceived harm, while resentful stalking can be a more long-term behaviour in adults.⁴⁷
- *Predatory stalkers* target a person with the intention of perpetrating an assault that is typically sexual.⁴⁸ These stalkers are almost always men, often with a criminal history.

Example: Entitlement to relationship⁴⁹

A man faced the Magistrates' Court after breaching bail conditions by continuing to stalk a woman. The man left love letters and approximately 100 Facebook messages for a woman within days of being granted bail. The man was already facing allegations of stalking, assault, abuse using a carriage service and sexual assault against the same woman. The man told police he did not believe his actions would cause fear, and that he loved her.

- 1.23 The following factors have been shown to increase the risk of non-family violence stalking:
- substance misuse by the person committing stalking
 - prior history of violent offending
 - explicit threats
 - situations where the person committing stalking is driven by rejection.⁵⁰
- 1.24 No significant differences have been found between stalker types regarding substance misuse.⁵¹
- 1.25 A large proportion of people who stalk have not completed high school.⁵² Almost half of the stalkers in a large Australian study fell in the low average range or below in tested intelligence scores. This contradicts the stereotype of stalkers being more intelligent than people who commit other kinds of crime.⁵³ Nevertheless, intimacy seekers and predatory stalkers are more likely to have similar intellectual functioning as the general population.⁵⁴

43 The term 'incompetent suitor', is a term from the literature used to describe the motivations for stalking. It is not intended to describe the impact on victim survivors, which can be significant.

44 Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244.

45 Ibid.

46 Rachel Mackenzie et al, 'Stalkers and Intelligence: Implications for Treatment' (2010) 21 *Journal of Forensic Psychiatry & Psychology* 852.

47 Rosemary Purcell, Michele Pathé and Paul Mullen, 'Gender Differences in Stalking Behaviour among Juveniles' (2010) 21(4) *The Journal of Forensic Psychiatry & Psychology* 555, 559.

48 Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *The American Journal of Psychiatry* 1244.

49 Based on a real stalking case heard in a Magistrates' Court in Victoria, with some details changed to protect anonymity.

50 Frances P Churcher and Marc Nesca, 'Risk Factors for Violence in Stalking Perpetration: A Meta-Analysis' (2013) 7(2) *FWU Journal of Social Sciences* 100; TE McEwan et al, 'Violence in Stalking Situations' (2009) 39(9) *Psychological Medicine* 1469; Troy E McEwan et al, 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38; 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.

51 Rachel Mackenzie et al, 'Stalkers and Intelligence: Implications for Treatment' (2010) 21 *Journal of Forensic Psychiatry & Psychology* 852.

52 Ibid.

53 Ibid.

54 Ibid.

- 1.26 There are higher rates of intellectual disability among people who engage in stalking than previously understood. It is important that appropriate assessments are conducted so that the right treatment programs are identified to meet the needs of the individual who has used stalking.⁵⁵

Impact of stalking on victim survivors

- 1.27 Stalking can cause long-term psychological harms⁵⁶ such as depression, anxiety, complex post-traumatic stress disorder, dissociation, eating disorders, and increased suicidality.⁵⁷
- 1.28 Stalking can affect a person's quality of life in other ways, including financially, as well as chronic health consequences such as:⁵⁸
- increased risk of gastrointestinal syndromes⁵⁹
 - pelvic problems and/or pain during sex
 - sleep disorders.⁶⁰
- 1.29 Victim survivors often experience significant lifestyle changes, such as:⁶¹
- avoiding places where their stalker might be
 - changing routines
 - distrust and feelings of lack of safety
 - taking additional safety measures
 - agoraphobia,⁶² social isolation, withdrawal, or attachment problems
 - quitting school or their job
 - relocating.

55 Ibid.

56 Jenny Korkodeilou, "'No Place to Hide": Stalking Victimisation and Its Psycho-Social Effects' (2017) 23(1) *International Review of Victimology* 17.

57 Ibid.

58 Paul E Mullen, Michele Pathé and Rosemary Purcell, *Stalkers and Their Victims* (Cambridge University Press, 2008).

59 Daniela Acquadro Maran et al, 'Characteristics of the Stalking Campaign: Consequences and Coping Strategies for Men and Women That Report Their Victimization to Police' (2020) 15(2) *PLOS ONE* e0229830: 1–14.

60 Ibid.

61 Jenny Korkodeilou, "'No Place to Hide": Stalking Victimisation and Its Psycho-Social Effects' (2017) 23(1) *International Review of Victimology* 17.

62 Daniela Acquadro Maran et al, 'Characteristics of the Stalking Campaign: Consequences and Coping Strategies for Men and Women That Report Their Victimization to Police' (2020) 15(2) *PLOS ONE* e0229830: 1–14.

Recognising and reporting stalking

- 10** Introduction
- 10** How is stalking understood in the community?
- 12** Recognising stalking
- 12** Deciding whether to report stalking to police
- 12** What kinds of stalking cases are reported to police?
- 13** Barriers to reporting stalking to police

2. Recognising and reporting stalking

Introduction

- 2.1 This chapter looks at community attitudes to stalking. Community attitudes influence how stalking is recognised, regarded, reported and responded to. We ask if there is a need to raise community awareness about stalking.
- 2.2 We also look at reasons why people might not identify stalking and ask what could be done to help people recognise stalking and take action to stop it.
- 2.3 We ask how to make it easier for people who have been stalked to get the information they need, in a way that they understand, so they can decide whether to report stalking to the police.
- 2.4 Finally, we discuss why some people do not report stalking to the police and what can be done to overcome this.

How is stalking understood in the community?

- 2.5 It is important to understand how stalking is understood in the community because community attitudes affect:
 - whether a person who is being stalked recognises the behaviour as stalking
 - how support and service providers, family members and friends respond to a person's experience
 - how some people who commit stalking might not understand that their behaviour is a crime.¹
- 2.6 Studies have found that 'stalking myths' can minimise stalking and blame the person who experiences being stalked. Common stalking myths include:
 - that the person being stalked is misinterpreting innocent expressions of interest
 - that if the person being stalked ignores it, it will go away
 - that the people being stalked secretly likes the attention
 - that the person being stalked made the stalking happen by leading the person stalking on
 - that the person being stalked is imagining it.²

1 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; 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.

2 Gary Copson and Nicola Marshall, 'Police Care and Support for Victims of Stalking' in *Stalking and Psychosexual Obsession* (John Wiley & Sons, 2002) 49; 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, 293.

- 2.7 Community attitudes to stalking influenced by stalking myths may affect whether a person's experience is taken seriously and the standard of the victim service response and investigation.³
- 2.8 Little is known about young people's attitudes towards stalking due to the limited empirical research that exists on the topic.

Table 1: Examples of stalking myths

The belief	Why it is false
'That the person being stalked has just misinterpreted an innocent gesture'	Stalking can involve actions that would, in another context, be legal or even welcome. But if someone repeatedly gives another person unwanted gifts and will not stop when asked, this can be stalking (discussed in Chapter 1)
'That if the person being stalked just ignored the unwanted behaviour, the person committing stalking would just go away'	Research suggests that stalking that has already continued beyond two weeks is a risk factor for continued stalking (stalking persistence). ⁴ For this reason, it is important that people who experience stalking can identify it as stalking as soon as it starts happening so they can take action to try to prevent it continuing or escalating (discussed in this chapter)
'That the person being stalked secretly likes the attention they get from the person committing the stalking'	Stalking is unwanted behaviour which can cause long-term psychological harms such as depression, anxiety, complex post-traumatic stress disorder, dissociation, eating disorders, and increased suicidality. Victim survivors often experience significant lifestyle changes including avoiding places where their stalker might be and changing routines.

- 2.9 There is no national or Victorian campaign that specifically raises awareness around stalking.
- 2.10 In contrast, the United States of America has an established centre funded by the federal government.

Stalking Prevention, Awareness, Resource Centre (SPARC) is a project funded by the US Justice Department. It conducts public awareness-raising campaigns including an annual national stalking awareness month. This campaign operates across social media platforms, encouraging the community to 'speak up when you see stalking minimised'.

SPARC's 'Know It, Name It, Stop It' public awareness program provides tools and strategies to incorporate stalking awareness education into existing programs on issues such as family violence. These include webinars, videos and fact sheets on how to support a family member or friend who has experienced stalking.

SPARC provides training on stalking for multi-disciplinary professionals so that they have the skills to identify and respond to stalking.⁵

3 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, 303.

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, 7.

5 Stalking Prevention, Awareness, & Resource Centre, 'Our Mission', SPARC (Web Page, 2020) <<https://stalkingawareness.org/>>.

Recognising stalking

- 2.11 It is not always easy to identify stalking. It can take time to understand what is happening. For example, if someone keeps turning up whenever you are shopping or out with friends, at first it might seem like a harmless coincidence, not a crime.
- 2.12 A person being stalked might ask a friend for advice on how to respond. If their friend minimises the behaviour, or blames the person being stalked (because of stalking myths), they are less likely to identify the behaviour as stalking and report it to police.⁶
- 2.13 Research suggests that stalking that has continued beyond two weeks is a risk factor for continued stalking (stalking persistence).⁷ So it is important that people who experience stalking identify it as stalking as soon as it starts, so they can take action to prevent it continuing or escalating.
- 2.14 In the United Kingdom, the national stalking helpline has an online tool, 'Am I being stalked?' The online assessment helps a person understand if what they are experiencing is stalking.⁸ The tool also provides information about local specialised services based on the information the person provides. However, it is not a substitute for personal advice, and also advises people to contact the national stalking helpline for tailored advice.

Deciding whether to report stalking to police

- 2.15 Some people who experience stalking might not go straight to the police. They might try to get other support and practical help first.
- 2.16 Supports include helplines such as the Victims of Crime helpline, health services, community services, and IT services for cyberstalking. (See Chapter 6).
- 2.17 These supports and services are often the first place where someone may learn that stalking is a crime or think about reporting their experience to police.
- 2.18 We want to hear how to make it easier for people to get the information they need from support services so that they can decide whether to report stalking to the police.
- 2.19 We also want to know how to improve the response for those who face greater barriers, such as people with disability or those from culturally and linguistically diverse communities.

What kinds of stalking cases are reported to police?

- 2.20 Stalking is often only reported to police by the person being stalked when the stalking has escalated or persisted for some time.⁹ One survey found that 77 per cent of victim survivors do not report stalking until the 100th incident.¹⁰
- 2.21 The more serious the stalking incident, the more likely the person is to contact police.¹¹ This means that stalking incidents involving weapons, breaking into a person's car or home, property damage or threats, are more likely to come to the attention of police.

6 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, 303.

7 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, 7.

8 'Am I Being Stalked', *Suzy Lamplugh Trust* (Web Page, 2019) <<https://www.suzylamplugh.org/am-i-being-stalked-tool>>.

9 Patrick Brady, Bradford Reynolds and Rebecca Dreke, 'A Sign of the Crimes: Examining Officers' Identification of, and Arrest for, Stalking in Domestic Violence Complaints' (2020) 23(4) *Police Quarterly* 500.

10 Homa Khaleeli, 'Stalkers Are Criminals—Not "Incompetent Suitors"', *The Guardian* (Online, 29 January 2010) <<http://www.theguardian.com/lifeandstyle/2010/jan/29/stalkers-are-criminals>>.

11 Patrick Q Brady and Bradford W Reynolds, 'A Focal Concerns Perspective on Prosecutorial Decision Making in Cases of Intimate Partner Stalking' (2020) 47(6) *Criminal Justice and Behavior* 733.

- 2.22 People other than the direct victim survivor of stalking may report stalking to police. For example, a friend, parent or guardian, or a carer for someone with a disability may report it. Bystanders are more likely to report to police if the person being stalked has experienced other crimes as well.¹²
- 2.23 People who recognise that they are being stalked are more likely to report to police.¹³ This is significant, given that like other non-physical forms of violence, often the person themselves is unaware that the concerning behaviour is a crime.

Barriers to reporting stalking to police

- 2.24 The evidence base on the experiences of people who have reported stalking to police in Victoria is limited. However, internationally, police responses, including inaction or inappropriate action, have been identified by researchers as barriers to reporting or seeking help for different types of stalking (including cyberstalking, to be discussed in Chapter 8). Fear of retaliation from the person engaging in stalking is also understood as a barrier to reporting or seeking help.¹⁴
- 2.25 Australian research indicates that in general police responses to interpersonal violence have been inconsistent for some communities, such as Aboriginal and Torres Strait Island communities, culturally and linguistically diverse communities, and people with disabilities.¹⁵ These communities experience higher rates of policing issues, such as incorrect identification of the predominant aggressor of family violence and child removal and incarceration, resulting in police mistrust.¹⁶ Research suggests that people from diverse communities might be reluctant to involve police when they experience victimisation.¹⁷
- 2.26 Victim survivors may be reluctant to report if they think:
- police will not believe them¹⁸
 - their experience will be viewed as a personal dispute rather than a crime
 - police will not be able to do anything about it
 - it is not 'serious' enough to need police attention.

12 Fawn T Ngo, 'Stalking Victimization: Examining the Impact of Police Action and Inaction on Victim-Reported Outcome' (2020) 35(2) *Journal of Police and Criminal Psychology* 146.

13 Bradford W Reynolds 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.

14 Holly Taylor-Dunn, Erica Bowen and Elizabeth A Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) 36(11–12) *Journal of Interpersonal Violence* 1; Tim Boehnlein, Jeff Kretschmar, Wendy Regoeczi and Jill Smialek, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research', 35(7) *Journal of Family Violence* 755, 755.

15 Marcia Langton et al, 'Family Violence Policies, Legislation and Services' (ANROWS Research Report 26/20, Australia's National Research Organisation for Women's Safety, 2020) 124; JaneMaree Maher et al, *Women, Disability and Violence—Barriers to Accessing Justice: Final Report* (Horizons No 02/2018, ANROWS Australia's National Research Organisation for Women's Safety, 27 April 2018) <<https://apo.org.au/node/173826>>; Dr Cathy Vaughan footnote item to: Cathy Vaughan et al, 'Promoting Community-led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia. The ASPIRE Project: Key Finding and Future Directions', (Compass No 8, ANROWS Australia's National Research Organisation for Women's Safety, December 2016) 10.

16 Marcia Langton et al, 'Family Violence Policies, Legislation and Services' (Research Report 26/20, ANROWS Australia's National Research Organisation for Women's Safety, 2020) 124.

17 Marie Segrave, *Temporary Migration and Family Violence: An Analysis of Victimization, Support and Vulnerability* (Report, School of Social Sciences, Monash University, 10 December 2017 <<https://apo.org.au/node/114311>>; Dr Cathy Vaughan footnote item to: Cathy Vaughan et al, 'Promoting Community-led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia. The ASPIRE Project: Key Finding and Future Directions', (Compass No 8, ANROWS Australia's National Research Organisation for Women's Safety, December 2016) 10.

18 Bradford W Reynolds 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.

- 2.27 Victim survivors may also be reluctant to report stalking to police due to fear of how the police might respond or the possibility of making the stalking worse.¹⁹ For example:
- LGBTIQ people might not report crimes due to a fear that the police officer to whom they report might hold transphobic, homophobic or heterosexist views.²⁰
 - Young people might not report stalking (including cyberstalking) due to fear of reprisals from peers or other negative consequences such as attracting police attention or escalating the situation.²¹
 - Public figures (including health practitioners) may choose to respond to their experiences using other means to avoid any media attention that may result from engaging in court proceedings.
- 2.28 Community perceptions of what ‘real’ stalking looks like—where some kinds of stalking are perceived as criminal (for example, involving damage, violence or threats) while others are not—may discourage reporting.²²
- 2.29 Those who are stalked by an acquaintance or a stranger, those whose stalking experience did not involve threats, and those whose experience did not fit the ‘classic’ (that is, the most extreme) example of stalking, are less likely to report to police.²³

Question

- 1 What are the factors that influence whether people who experience stalking report their experiences to police? Are there barriers to reporting that need to be addressed?

19 Fawn T Ngo, ‘Stalking Victimization: Examining the Impact of Police Action and Inaction on Victim-Reported Outcome’ (2020) 35(2) *Journal of Police and Criminal Psychology* 146.

20 Angela Dwyer, ‘Policing Lesbian, Gay, Bisexual and Transgender Young People: A Gap in the Research Literature’ (2011) 22(3) *Current Issues in Criminal Justice* 415, 416. See also *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 5, 145–146 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.

21 Michele Grossman and Jenny Sharples, *Don’t Go There: Young People’s Perspectives on Community Safety and Policing* (Collaborative Research Project with Victoria Police: Region 2, Victoria University, May 2010) 108 <<https://www.vu.edu.au/sites/default/files/mcd/pdfs/dont-go-there-study-may-2010.pdf>>.

22 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.

23 Fawn T Ngo, ‘Stalking Victimization: Examining the Impact of Police Action and Inaction on Victim-Reported Outcome’ (2020) 35(2) *Journal of Police and Criminal Psychology* 146.

Understanding and responding to stalking

- 16** Introduction
- 16** How should agencies identify the risk of serious harm posed by a person committing stalking?
- 19** What information do police need to assess the risk of serious harm posed by a person committing stalking?
- 21** Who should conduct in-depth risk assessments?
- 21** What actions can police take?
- 23** What guidance helps police to decide which action to take?
- 23** Should there be options for urgent protection?

3. Understanding and responding to stalking

Introduction

- 3.1 Victoria Police is responsible for preventing crime and detecting and investigating offences, including stalking. A comprehensive policing response to stalking places the victim survivor at the centre and focuses on:
- prevention of future harm
 - holding people who commit stalking accountable for their conduct
 - reducing reoffending and severe outcomes
 - making appropriate referrals to address the service needs of victim survivors, as well as those who have committed stalking.
- 3.2 In this chapter we ask if police are meeting these aims, and if not, how we can improve the police response to stalking.
- 3.3 In the context of family violence, a risk management framework was developed to enable police, practitioners, and organisations to identify risk of serious harm in family violence and provide helpful and timely responses to victim survivors. The framework is used by a wide range of professionals who come into contact with victim survivors of family violence. Currently, identifying stalking and the risk of serious harm is almost the exclusive responsibility of Victoria Police. We ask whether there should be a multi-agency risk management framework for stalking.

How should agencies identify the risk of serious harm posed by a person committing stalking?

Indicators of risk of serious harm in stalking

- 3.4 Stalking is very serious and can cause lasting psychological harm. However not all stalking leads to physical violence. We are interested to know how police can identify people who pose a real risk of causing serious injury, significant ongoing harm, or death during the course of their stalking.
- 3.5 There is limited statistical information about risk of serious harm and recidivism in the context of stalking as research is still emerging. However, research has shown that it is difficult for police to assess and manage the risks of serious harm associated with stalking.¹ The primary challenge for frontline police is identifying the course of conduct constituting stalking, and understanding what factors may indicate the stalking behaviour is likely to either continue or escalate.

- 3.6 Factors associated with increased risk of serious outcomes include:²
- Relationship type (specifically former intimate partner), explicit threats, and previous property damage are associated with a higher likelihood of stalking violence.³
 - Psychiatric diagnosis, personality disorder, substance misuse, criminal history, a prior acquaintanceship and erotomanic delusions may predict stalking recurrence.⁴
 - Previous acquaintanceship and the presence of delusional beliefs may predict stalking persistence.⁵
 - Stalking committed by a stranger that is brief in duration may also involve increased risks of physical and/or sexual violence.⁶
- 3.7 Identifying risk of serious harm is difficult because stalking usually involves behaviours that would otherwise be considered non-threatening, non-violent, and even legal. For example, in a non-stalking context, leaving a gift at someone's house might be a thoughtful gesture. But in a stalking situation, it could be threatening.

How can risk of serious harm be assessed?

- 3.8 The evidence base on policing stalking in Victoria (and Australia) is limited. Evidence indicates that police in other countries 'often underestimate the severity of stalking and fail to respond adequately to protect victims'.⁷ Research suggests that police can lack training and resources to conduct the kind of assessments necessary to identify stalking cases that present increased risk of serious harm.⁸ Research also suggests that 'police find it challenging to respond to stalking in a timely way'.⁹
- 3.9 Dedicated training of police on the dynamics of stalking and risk management is being implemented in international jurisdictions.¹⁰
- 3.10 Actuarial risk assessment tools have been developed to support professional judgment of risk of serious harm, also referred to as 'structured professional judgment'.¹¹ 'Actuarial risk assessment' refers to the practice of screening and assessment to identify risk, consistent with established evidence-based risk factors (such as those outlined above in 3.6).¹² It involves a statistical method of estimating risk which is considered more accurate when used in conjunction with clinical or professional judgment, rather than such judgment alone.

2 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.

3 Troy E McEwan et al, 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38.

4 Troy E McEwan et al, 'Risk Factors for Stalking Recidivism in a Dutch Community Forensic Mental Health Sample' (2020) 19(2) *International Journal of Forensic Mental Health* 127; Troy E McEwan et al, 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38; 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.

5 Troy E McEwan et al, 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38.

6 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.

7 Kellie R Lynch and TK Logan, 'Police Officers' Attitudes and Challenges With Charging Stalking' (2015) 30(6) *Violence and Victims* 1037; TE McEwan, 'Stalking Threat and Risk Assessment' in J Reid Meloy and Jens Hoffman (eds), *International Handbook of Threat Assessment* (Oxford University Press, 2nd ed, 2021) 3; Lorraine P Sheridan, Adrian J Scott and Amy M Campbell, 'Perceptions and Experiences of Intrusive Behavior and Stalking: Comparing LGBTIQ and Heterosexual Groups' (2019) 34(7) *Journal of Interpersonal Violence* 1388; Holly Taylor-Dunn, Erica Bowen and Elizabeth A Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) 36(11-12) *Journal of Interpersonal Violence* 1 <<https://doi.org/10.1177/0886260518811423>>.

8 TE McEwan, 'Stalking Threat and Risk Assessment' in J Reid Meloy and Jens Hoffman (eds), *International Handbook of Threat Assessment* (Oxford University Press, 2nd ed, 2021).

9 Troy E McEwan et al, 'Risk Factors for Stalking Recidivism in a Dutch Community Forensic Mental Health Sample' (2020) 19(2) *International Journal of Forensic Mental Health* 127, 139.

10 Cleo Brandt and Bianca Voerman, 'The Dutch Model: A New Approach to Policing Stalking' in *Psycho-Criminological Approaches to Stalking Behaviour—An International Perspective* (Wiley, In Press); TE McEwan, 'Stalking Threat and Risk Assessment' in J Reid Meloy and Jens Hoffman (eds), *International Handbook of Threat Assessment* (Oxford University Press, 2nd ed, 2021).

11 Bernadette McSherry, 'Risk Assessment, Predictive Algorithms and Preventive Justice' in John Pratt and Jordan Anderson (eds), *Criminal Justice and the Revolt Against Uncertainty* (Palgrave Macmillan, 2020).

12 'Stalking Threat Assessment Centre', Mayor of London: London Assembly (Web Page, 4 November 2019) <<https://www.london.gov.uk/questions/2019/20366>>.

- 3.11 However, actuarial risk assessment tools have been the subject of criticism. For example, actuarial risk assessment tools are typically ‘developed and tested on predominantly non-Indigenous populations’ and can be biased against Indigenous and culturally and linguistically diverse communities.¹³ Indigenous people ‘have higher rates of childhood abuse victimisation and early substance abuse, both of which are included as factors associated with high-risk status in many risk assessment instruments’.¹⁴ This means that Aboriginal people are more likely to be classified as high-risk than non-Aboriginal people.
- 3.12 Given the relatively low prevalence rates of stalking, an actuarial risk tool may not be an accurate method of assessing the risks of serious harm associated with stalking. They are also not a certain measure of risk of serious harm.¹⁵
- 3.13 Research suggests that risk assessment should be supplemented with person-centred information. As identified in the family violence context, a risk tool alone cannot resolve the complexity involved in accurately assessing and managing risk of serious harm.¹⁶

How is risk of serious harm assessed and managed in family violence?

- 3.14 In the family violence context, the multi-agency risk assessment and management (MARAM) framework was designed to support relevant services to identify, assess and manage family violence risk. There are three levels of MARAM, which define roles and responsibilities assessing and managing risk:¹⁷
- Level 1 – Screening and identification: provides guidance for practitioners who may come in contact with family violence victim survivors whilst providing universal services. This level requires respectful, sensitive and safe engagement, to enable identification of family violence and for seeking consultation for comprehensive risk assessment, risk management and referrals.
 - Level 2 – Brief and Intermediate: provides guidance for practitioners who have some contact with people experiencing family violence but where responding to family violence is not their core function. This level requires the same processes as Level 1 but also involves intermediate risk assessment and management.
 - Level 3 – Comprehensive: provides guidance for specialist family violence practitioners and involves all aspects of Levels 1 and 2, but requires comprehensive risk assessment, risk management and safety planning.
- 3.15 Victoria Police members are also required to complete a Family Violence Report (‘FVR(L17)’) when attending an incident (such as family violence, interfamilial-related sexual offences, and child abuse). An FVR(L17) is an actuarial risk assessment and risk management tool.¹⁸

13 Bernadette McSherry, ‘Risk Assessment, Predictive Algorithms and Preventive Justice’ (Palgrave Macmillan, 2020).

14 Ibid.

15 Ibid.

16 Jude McCulloch et al, *Review of the Family Violence Risk Assessment and Risk Management Framework (CRAF): Final Report* (School of Social Sciences, Monash University, September 2016).

17 *Family Violence Multi-Agency Risk Assessment and Management Framework— DHHS Service Providers* (Web Page) <<https://providers.dffh.vic.gov.au/family-violence-risk-assessment-and-risk-management-framework>>.

18 Victoria Police, *Information for External Stakeholders, the New Family Violence Report L17* (Factsheet, March 2019) <<https://www.nifvs.org.au/wp-content/uploads/2019/04/Vic-Pol-External-Stakeholders-Information-Sheet-re-L17s.pdf>>; Victorian Government, *The Orange Door Service Model* (Report, December 2019) <<http://www.vic.gov.au/orange-door-service-model>>.

- 3.16 The approach to understanding family violence is set out in the MARAM Practice Guides. The approach to risk assessment combines professional judgment (of practitioners and/or police), the victim survivor's own assessment of level of risk and evidence-based risk factors. The family violence system also involves risk assessment and management panels (RAMPs), for managing complex risk. A RAMP is 'a formally convened meeting, held at a local level, of nine key agencies and organisations that contribute to the safety of women and children experiencing serious and imminent threat from family violence.'¹⁹ No equivalent framework exists for stalking.
- 3.17 We ask whether the responsibility for comprehensive risk assessment and risk management should be shared and integrated with other relevant services such as health, legal, victim support and the courts.²⁰ A specific risk assessment tool for use by multiple services, such as the MARAM framework, may be required.

Questions

- 2 Should a risk assessment framework be developed to help police and courts identify the course of conduct and manage risk of serious harm in the context of stalking? If so, how should it work?
- 3 What else might help agencies to identify the risk of serious harm in a stalking situation? For example, should there be special training or guidelines, or expert advice?

What information do police need to assess the risk of serious harm posed by a person committing stalking?

Getting the whole story from the victim survivor

- 3.18 If police do not act on complaints of stalking, it can place people at risk of serious harm, especially where the victim survivor is reporting stalking that is persistent and/or escalating.²¹
- 3.19 If people experiencing stalking report only a single incident in a wider pattern of stalking, these cases might not be identified as stalking by police.²² For police to be able to accurately assess risk of serious harm, they need to ask victim survivors the right questions to elicit the whole story.²³

19 Families Fairness and Housing (Vic), 'Family Violence Multi-Agency Risk Assessment and Management Framework', *Children, Youth & Families* (Web Page) <<https://providers.dffh.vic.gov.au/family-violence-risk-assessment-and-risk-management-framework>>.

20 Ibid.

21 Fawn T Ngo, 'Stalking Victimization: Examining the Impact of Police Action and Inaction on Victim-Reported Outcome' (2020) 35(2) *Journal of Police and Criminal Psychology* 146.

22 Troy E McEwan et al, 'Measuring Stalking—the Development and Evaluation of the Stalking Assessment Indices (SAI)' (2020) July *Psychiatry, Psychology and Law* 1 <<https://doi.org/10.1080/13218719.2020.1787904>>.

23 Patrick Tidmarsh, 'Training Sexual Crime Investigators to Get the "Whole Story"' (PhD Thesis, Deakin University, 2016) <<http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>>; Patrick Tidmarsh, Martine Powell and Elli Darwinkel, 'Whole Story: A New Framework for Conducting Investigative Interviews about Sexual Assault' (2012) 4(2) *II-RP Journal* 35; Patrick Tidmarsh, Stefanie Sharman and Gemma Hamilton, 'The Effect of Specialist Training on Sexual Assault Investigators' Questioning and Use of Relationship Evidence' (2021) *Journal of Police and Criminal Psychology* <<https://doi.org/10.1007/s11896-021-09446-x>>.

- 3.20 The ‘whole story’ investigative framework is part of the Victoria Police five-year strategic plan to address family violence, sexual offences and child abuse.²⁴ It is an approach developed for the investigation of sexual offences, recognising that the context surrounding the abuse was often missing from police statements.²⁵ Questions about context such as the relationship between the victim survivor and person who committed the sexual offence, the power dynamics, and any other circumstances about the events leading up to the abuse, were generally not asked by police.²⁶ The ‘whole story’ framework requires investigators to ask the right questions to understand the whole story of how the abuse occurred, rather than focusing on individual details.²⁷
- 3.21 A key issue for police is identifying stalking behaviour (the course of conduct). The international evidence suggests police tend to rely on an incident-based model for responding to stalking. Traditional incident-based responses from police may not be suitable for stalking which involves a course of conduct.²⁸

Question

- 4 What approaches or techniques should be used by law enforcement agencies when investigating stalking complaints?

Getting the whole story from the rest of the system

- 3.22 Police might not be aware that a person committing stalking has interacted with other agencies or that the victim survivor has sought help from other agencies. This might mean that police do not have a complete picture when completing their risk assessment.
- 3.23 Victim survivors might be required to retell their story with each new stalking incident. The Royal Commission into Family Violence found that information sharing may reduce the need for victim survivors to retell their story to multiple service providers.²⁹
- 3.24 The *Family Violence Protection Act 2008* (Vic) (FVP Act) contains a legislative regime for information sharing in family violence situations. In the context of family violence, information-sharing entities must use the MARAM framework under the Family Violence Information Sharing Scheme to identify, assess and manage family violence risk to children and adults.³⁰ This information sharing framework was introduced in response to findings from the Royal Commission into Family Violence that the range of specialist services likely to be involved in working with a victim, perpetrator and children required those services to ‘pool’ information to fully inform risk assessment.³¹
- 3.25 No equivalent regime exists under the Personal Safety Intervention Orders Act. Information sharing regimes have implications for people’s privacy and require substantial resources to implement. We are interested to understand whether there are good reasons for a similar regime in the context of stalking.

24 Victoria Police, ‘Family Violence, Sexual Offences and Child Abuse Strategy’, *Policy and Publications* (Web Page, June 2021) <<http://www.police.vic.gov.au/family-violence-sexual-offences-and-child-abuse-strategy>>.

25 Patrick Tidmarsh, ‘Training Sexual Crime Investigators to Get the “Whole Story”’ (PhD Thesis, Deakin University, 2016) <<http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>>.

26 Nicole Brady, ‘Telling the Whole Truth’, *The Age* (Online, 29 September 2012) <<https://www.theage.com.au/national/victoria/telling-the-whole-truth-20120929-26sft.html>>.

27 Patrick Tidmarsh, Stefanie Sharman and Gemma Hamilton, ‘Police Officers’ Perceptions of Specialist Training, Skills and Qualities Needed to Investigate Sexual Crime’ (2021) 22(1) *Police Practice and Research* 475.

28 Patrick Q Brady and Matt R Nobles, ‘The Dark Figure of Stalking—Examining Law Enforcement Response’ (2017) 32(20) *Journal of Interpersonal Violence* 3149.

29 *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016) <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.

30 Family Safety Victoria, *Family Violence Information Sharing Scheme* (Guidance for Information Sharing Entities, September 2018) <<https://www.vic.gov.au/sites/default/files/2019-01/Ministerial%20Guidelines%20-%20Family%20Violence%20Information%20Sharing%20Scheme.pdf>>.

31 *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016) 19–20 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.

Question

- 5 In the family violence intervention order system, information sharing is allowed. Should there be a similar framework for information sharing between agencies providing services for stalking? If so, how should it work?

Who should conduct in-depth risk assessments?

- 3.26 Once a front-line police officer has identified a concerning course of conduct, they might need to refer the matter to a specialist unit for in-depth assessment.
- 3.27 A specialised, multi-disciplinary stalking unit could support police to classify stalking correctly, triage and assess risk of serious harm, make referrals, and properly investigate stalking.
- 3.28 In the United Kingdom, the Stalking Threat Assessment Centre is a multi-agency specialist unit dedicated to addressing stalking. It is a partnership between police, court services, and other non-government services. It improves responses to stalking across the criminal justice system and the health sector through increased reporting, victim survivor advocacy, better criminal justice responses and rehabilitative interventions.³²
- 3.29 Because a specialist, multi-disciplinary approach is time and resource intensive, only cases categorised as posing a risk of serious harm should be referred to it, so that it uses its resources 'where they can have the most impact'.³³

What actions can police take?

- 3.30 Once Victoria Police have identified a course of conduct that may amount to stalking, what actions can they take? Their options are:
- no action
 - advise the person being stalked to apply for a personal safety intervention order (PSIO) (PSIOs will be discussed in detail in the next chapter)
 - apply for a PSIO on behalf of the person being stalked
 - file criminal charges where appropriate, including for breaches of PSIOs
 - refer people being stalked to support services.
- 3.31 We will discuss each of these actions in turn.

No action

- 3.32 Police operate with limited resources. They are often asked to prioritise their time between multiple allegations of criminal activity. Not every matter is followed through to the same extent.
- 3.33 At present, it can be challenging for police to determine whether a complaint represents stalking compared with, for example, a dispute that would be better resolved by mediation or some other intervention.
- 3.34 This problem can be compounded by the fact that the person may also not be aware of all the stalking that has occurred or mention all of the stalking that has occurred.

32 'Stalking Threat Assessment Centre', *Mayor of London: London Assembly* (Web Page, 4 November 2019) <<https://www.london.gov.uk/questions/2019/20366>>.

33 Troy E McEwan, Stuart Bateson and Susanne Strand, 'Improving Police Risk Assessment and Management of Family Violence through a Collaboration between Law Enforcement, Forensic Mental Health and Academia' (2017) 3(2) *Journal of Criminological Research, Policy and Practice* 119.

3.35 In such cases, police might give general advice (eg: block the person committing stalking on social media) and tell the victim survivor to come back if the problem gets worse.

3.36 The risk is that the stalking might continue or escalate.

Advise the victim survivor to apply for a personal safety intervention order

3.37 Police can advise the person being stalked to apply for a PSIO to protect their safety.

3.38 A PSIO can provide reassurance that there is a level of protection in place. It can also prompt police action if it is breached.

3.39 However, it can be intimidating for the person being stalked to go to court. There are few free legal services to assist them with their application.

3.40 Victim survivors can also face barriers to accessing courts. For example, the courts might not be experienced as culturally safe.

3.41 If the person being stalked is the applicant for the PSIO, this could also escalate the stalking behaviour.

3.42 Although there is little evidence of how effective the PSIO system is in reducing the crime of stalking, international research suggests that even where there are court interventions in place, people who commit stalking against a former partner are more likely to reoffend than those who commit stalking against a non-partner.³⁴ This may suggest that protection orders have some impact on reducing stalking. But in other cases, protection orders may give the person being stalked a false sense of security, or enrage the person committing stalking, resulting in further and increased safety risks.

Apply for a personal safety intervention order on behalf of the victim survivor

3.43 Police have the power to apply for a PSIO on behalf of the person being stalked.

3.44 Police applications can take the pressure off the victim survivor to be their own advocate. They can reduce the risk of the victim survivor being blamed by the person stalking for the intervention order being imposed.

3.45 However, surveys show that victims of stalking often perceive that the intervention order system does not protect them.³⁵

3.46 Due to the lack of data, it is not known whether, or in what circumstances, PSIOs actually protect victims. And if they do, it is not known whether their effectiveness depends on:

- the motivation of the person who is stalking (eg: revenge, relationship-seeking)
- characteristics of the person who is stalking (eg: drug or alcohol issues, mental health issue, or cognitive impairment/intellectual disability).

3.47 It is also not known whether, or in what circumstances, PSIOs give people who are stalked a false sense of security because they believe they are protected by the order.

34 Patrick Q Brady and Bradford W Reynolds, 'A Focal Concerns Perspective on Prosecutorial Decision Making in Cases of Intimate Partner Stalking' (2020) 47(6) *Criminal Justice and Behavior* 733.

35 Paul E Mullen, Michele Pathé and Rosemary Purcell, *Stalkers and Their Victims* (Cambridge University Press, 2008); Michele Pathé, Rachel Mackenzie and Paul Mullen, 'Stalking by Law: Damaging Victims and Rewarding Offenders' (2004) 12(1) *Journal of Law and Medicine* 103.

File criminal charges

- 3.48 Police can investigate and file criminal charges where they believe there is enough evidence. This is explored in Chapter 5.
- 3.49 Criminal charges can be pursued alongside a PSIO application.

Refer the victim survivor to services

- 3.50 Victim survivors of stalking can be traumatised by their experience and might need help with safety planning. Referrals to support services can help victim survivors recover. This is covered in Chapter 6.

What guidance helps police to decide which action to take?

- 3.51 Police have limited written guidance on how to manage non-family violence stalking offences.
- 3.52 By contrast, Victoria Police has a Code of Practice to guide decision making in situations of family violence.³⁶
- 3.53 The family violence Code of Practice requires police to respond to all reports of family violence by thoroughly assessing and managing risk and applying for civil protection orders. The Code requires that police:
- apply for Family Violence Intervention Orders (FVIO) or Family Violence Safety Notices (FVSN)
 - investigate and file criminal charges where appropriate, including for contraventions of FVIO and FVSN
 - increase successful prosecutions
 - minimise the trauma experienced by victim survivors and the support people during the process of police intervention
 - make appropriate referrals.³⁷

Question

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

Should there be options for urgent protection?

- 3.54 Under the Family Violence Protection Act police can make police can make an FVSN, which provides urgent and temporary protection until the court can make an interim or final intervention order. There is no equivalent provision in the PSIO Act.

36 Victoria Police, 'Code of Practice for the Investigation of Family Violence', *Policy and Publications* (Web Page, June 2021) <<http://www.police.vic.gov.au/code-practice-investigation-family-violence>>.

37 Ibid.

- 3.55 A police officer who responds in person to a family violence incident may apply to a more senior officer for a FVSN if they believe on reasonable grounds that a FVSN is necessary to:
- ensure the safety of the person who needs protection
 - preserve property of that person
 - protect a child who has been subjected to family violence by the person using family violence.³⁸
- 3.56 It is an offence to contravene a FVSN.³⁹
- 3.57 Where an FVSN is issued, it is considered an application for an FVIO by the police officer who applied for it, and a summons for the person using family violence to attend court.⁴⁰
- 3.58 FVSNs were introduced to address the need to put urgent protection in place for those experiencing family violence until a matter can come before a court. They complement police powers to arrest someone who has committed a criminal offence as a form of family violence.
- 3.59 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, to preserve their property or to ensure that the respondent attends court.⁴¹ 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.⁴²
- 3.60 There is a risk if that FVSNs were introduced in the PSIO context, police might use FVSNs instead of referring matters to mediation where mediation is more appropriate. Aggrieved members of the public might view FVSNs as a more acceptable response than being told they should mediate their problems. FVSNs might therefore be an 'easier sell' for time-poor police than persuading feuding neighbours to try mediation.
- 3.61 If FVSNs were introduced in the PSIO system it creates a risk that more interpersonal disputes might end up being managed through intervention orders, rather than being resolved by mediation.
- 3.62 A flood of PSIOs into the court system that would be better resolved by mediation might hide stalking cases, where there is a risk of escalation or continuation, that need careful court attention.
- 3.63 As with family violence, police may incorrectly identify the victim survivor as the person committing stalking. This might mean that the victim survivor is the one that must comply with the FVSN, not the person using stalking, until the matter can be brought before a magistrate.

Question

- 7 Should there be an option under the *Personal Safety Intervention Orders Act 2010* for police to be able to issue the equivalent of a Family Violence Safety Notice? Why/why not?

38 *Family Violence Protection Act 2008* (Vic) s24.
39 *Ibid* s37(2).
40 *Ibid* s31(1).
41 *Personal Safety Intervention Orders Act 2010* (Vic) s 21(1).
42 *Ibid* s 21(2).

The personal safety intervention order system

- 26** Introduction
- 27** Online applications
- 28** Cross-examination
- 29** Counselling orders
- 29** Making orders against people with cognitive impairments
- 29** Contraventions of intervention orders
- 30** Restrictions on publication of proceedings
- 30** Legal representation
- 31** Appeals

4. The personal safety intervention order system

Introduction

- 4.1 In Victoria there are two types of intervention orders: family violence intervention orders (FVIOs) and personal safety intervention orders (PSIOs). FVIOs cover situations where the parties are family members, including former intimate partners and some carers. PSIOs cover all other relationships.¹
- 4.2 FVIOs and PSIOs used to be covered by the same piece of legislation—the *Crimes (Family Violence) Act 1987* (Vic). The intention of this legislation was to provide a system of civil restraining orders for family violence and non-family violence stalking. The dynamics of family violence and non-family violence stalking are in some ways similar—often an ongoing pattern of behaviour which controls or dominates the victim or causes them to feel fear.²
- 4.3 However, the definition of stalking needs to be broad to capture all the ways that stalking can manifest—for example, contacting the victim survivor, interfering with their property or using abusive or offensive words towards them. The problem is that this broad definition of stalking captures other behaviour that is not ‘true’ stalking—for example, neighbourhood disputes over a fence or rubbish bins. This causes a dilemma for policy makers: if we narrow the definition of stalking too far it might prevent victim survivors of stalking from getting help; but leaving it broad means that a lot of matters that are not stalking are caught up in the ‘stalking’ system.
- 4.4 For this reason, the Victorian Law Reform Commission recommended in 2006 that family violence intervention orders be governed by a stand-alone piece of legislation which addresses the particular dynamics of family violence and does not include neighbourhood disputes.³ *The Family Violence Protection Act 2008* (Vic) implemented that recommendation.
- 4.5 The *Personal Safety Intervention Orders Act 2010* (Vic) (the PSIO Act) was subsequently introduced to provide for a system of non-family violence intervention orders. It faced the awkward challenge of providing safety for those victims of non-family violence stalking, whose situation is similar to those experiencing family violence, but also providing a response to those whose interpersonal disputes are caught up in the broad definition of stalking. It sought to address this challenge in two ways.

1 *Family Violence Protection Act 2008* (Vic) ss 5-8; *Personal Safety Intervention Orders Act 2010* (Vic) s 61.

2 *Family Violence Protection Act 2008* (Vic) s 5.

3 Victorian Law Reform Commission, *Review of Family Violence Laws* (Report No 10, March 2006) xxvii < <https://www.lawreform.vic.gov.au/all-projects/family-violence> >.

- 4.6 Firstly, it broadened the grounds for obtaining a non-family violence intervention order to include ‘prohibited behaviour’ which means assault, sexual assault, harassment, property damage or interference or making a serious threat.⁴ It was hoped that by explicitly capturing the non-stalking behaviour that had come to be encompassed by the definition of ‘stalking’, the word ‘stalking’ might shrink back to its natural meaning.⁵
- 4.7 Secondly, the PSIO Act introduced a structured system to refer interpersonal disputes to mediation. The aim was to ‘ensure that people in low-level neighbourhood disputes are encouraged to use mediation to find long-lasting solutions to conflict, while people at risk from future harm are kept safe by personal safety intervention orders, enforced by police and courts.’⁶
- 4.8 So in summary, the PSIO Act covers a broad spectrum of behaviour—from non-family violence stalking, the dynamics of which are close to family violence, to interpersonal disputes which are quite different to family violence.
- 4.9 Our terms of reference ask us to consider which protections from the family violence system should be applied to the PSIO system. However, if we apply the protections of the family violence system to interpersonal disputes, we will lose the specialist response to family violence and stalking.
- 4.10 These issues are discussed further in this chapter.

Online applications

- 4.11 A person who is not a police officer can apply for a family violence intervention order online through the Magistrates’ Court of Victoria website. The Family Violence Protection Act allows an applicant to make a ‘declaration of truth’ in place of an oath or affirmation. A declaration of truth does not need to be witnessed by, or executed before, any other person.⁷
- 4.12 A person who is not a police officer cannot apply online for a PSIO. They must apply in person at the Magistrates’ Court, where a registrar will assist them.
- 4.13 If online applications were available for PSIOs, people who have been stalked could apply in the comfort and safety of their own home, at a time that suits them.
- 4.14 However, the risk with online applications is that people who stalk might make online applications for PSIOs against the person they are stalking. There might not be a process by which the registrar could filter inappropriate applications. This might make it easier for people to perpetrate ‘stalking through the courts’.

Question

- 8 Should a person making an application for a personal safety intervention order be able to do so online? If yes, in what circumstances?

4 *Personal Safety Intervention Orders Act 2010* (Vic) s 5.
 5 Victoria, *Parliamentary Debates*, Legislative Assembly, 9 June 2010, 2227 (Rob Hulls, Attorney-General).
 6 *Ibid* 2225.
 7 *Family Violence Protection Act 2008* (Vic).

Cross-examination

- 4.15 The Family Violence Protection Act bans the respondent from personally cross-examining protected witnesses. This ban stops a person who has experienced family violence from being directly questioned by the person who allegedly did it. This same protection does not exist in the PSIO Act.
- 4.16 Under the Family Violence Protection Act, a 'protected witness' is:
- the affected family member or the protected person
 - a child
 - any family member of a party to the proceeding
 - any person declared by the court to be a protected witness because they have a cognitive impairment or otherwise need the protection of the court.⁸
- 4.17 A protected witness must not be personally cross-examined by the respondent unless:
- they are an adult; and
 - they consent to being cross-examined by the respondent or, if they have a guardian, the guardian has consented; and
 - if they have a cognitive impairment, they understand the nature and consequences of giving consent and are capable of giving evidence; and
 - it would not have a harmful impact on the protected witness to be cross-examined by the respondent.⁹
- 4.18 If a respondent who is prohibited from cross-examining a protected witness does not have a lawyer, and does not get one, the court must order Victoria Legal Aid to provide a lawyer to cross-examine the protected witness.¹⁰
- 4.19 If the respondent has a lawyer, the court must order Victoria Legal Aid to provide a lawyer for the protected witness for the cross-examination.¹¹
- 4.20 At present, a person who has experienced stalking can be cross-examined by the person that stalked them. People who stalk might be rewarded for cross-examining the person they are stalking because it allows them to maintain contact with them. The PSIO system might therefore help the stalking behaviour to continue. This could be traumatic for victim survivors and discourage them from applying for a PSIO.
- 4.21 The difficulty in banning personal cross-examination in PSIO matters is that there are so many of them and they cover a wide range of non-stalking behaviours. If cross-examination by respondents was banned in all PSIO matters, this could mean that a lot of public money would be spent on lawyers, even for matters that should be sorted out by mediation, not in court.

Question

- 9 Should respondents be prevented from personally cross-examining the affected person in some personal safety intervention order matters? If so, in what circumstances?

8 Ibid s70(1).
9 Ibid s70(3).
10 Ibid s71.
11 Ibid s72.

Counselling orders

- 4.22 Under the Family Violence Protection Act, the court can order a respondent to attend counselling. Only some specialist Magistrates' Courts can make counselling orders. The purpose is to increase the respondent's acceptance of responsibility for the violence against a family member and encourage the respondent to change their behaviour.
- 4.23 Counselling orders are separate from FVIOs and can continue even if an intervention order is varied or revoked. Failure to comply with the order is an offence.
- 4.24 The PSIO Act does not provide this option to make counselling orders to address the behaviours of respondents.
- 4.25 Counselling orders under the Family Violence Protection Act are to attend group programs, known as men's behaviour change programs. It is questionable whether these programs, which focus on ending problematic behaviour in existing relationships, are effective at treating people who commit stalking. (See Chapter 7).
- 4.26 People who engage in stalking can also have alcohol or mental health issues, or other factors that can contribute to their behaviour.

Question

- 10 Should courts be able to order respondents to personal safety intervention order applications to attend treatment programs? If so, what kinds of programs and in what circumstances?

Making orders against people with cognitive impairments

- 4.27 Under the PSIO Act, the court can only make a PSIO if it is appropriate to do so. In making its decision, the court can consider whether a person with a cognitive impairment is able to understand and comply with the order.
- 4.28 This provision is designed to stop orders being made in circumstances where they will not work. If a person cannot understand or comply with a PSIO, there is little point in subjecting them to an order.
- 4.29 However, without other interventions for the person using stalking, it might lead to a gap in protection for the person being stalked, as well as a gap in addressing the treatment needs of the person using stalking.

Contraventions of intervention orders

- 4.30 It is an offence under both the PSIO Act and the Family Violence Protection Act to breach an intervention order.¹² The penalty for both is level 7 imprisonment (two years maximum and/or a fine).
- 4.31 The Family Violence Protection Act has an additional two offences for more serious breaches of intervention orders. They have higher penalties (level 6 imprisonment/five years maximum). There are no additional breach offences under the PSIO Act.

- 4.32 It is an offence under the Family Violence Protection Act to breach an order with the intention to cause, or knowing that the conduct will probably cause, physical or mental harm to the protected person, or make the protected person fear for their safety or another person's safety.¹³
- 4.33 There is also an offence of persistent contravention of a family violence intervention order. The offence occurs when a person has breached an order and has also done so at least twice in the previous 28 days (in relation to the same protected person or the same FVIO/ FVSN), and on each occasion the accused knew or ought to have known that the conduct was a contravention.

Question

- 11 Should there be additional offences in the *Personal Safety Intervention Orders Act 2010 (Vic)* to address more serious breaches? If so, what should they cover?

Restrictions on publication of proceedings

- 4.34 The media can report on PSIO matters that come before the Magistrates' Court. This may act as a barrier to people applying for PSIOs, especially if they have a public profile.
- 4.35 Under the Family Violence Protection Act there are restrictions on what information can be published about what happens in court so that people cannot be identified and their pictures cannot be used.¹⁴ There are restrictions on publication in the PSIO Act as well but they only apply to children.¹⁵ Restrictions on publication might help people who have been stalked feel that their privacy is protected so that they can seek protection through a PSIO application. This might be particularly useful for public figures who are being stalked and do not want to draw public attention to the stalking. In these situations, media attention might compound the sense of intrusion into the victim survivor's private life. However, any restriction on publication needs to be balanced against the public interest in the transparency of justice.

Question

- 12 Should the restrictions on publication in the *Personal Safety Intervention Orders Act 2010 (Vic)* be expanded to cover adults?

Legal representation

- 4.36 There are few options for applicants and respondents in PSIO matters to be represented by free lawyers.
- 4.37 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. A person will come within this guideline if they have a language or literacy problem or have an intellectual or psychiatric disability. In some limited circumstances a grant of legal assistance may be made for an applicant child over 14 or a respondent child under 18.

13
14
15

Family Violence Protection Act 2008 (Vic).
Ibid s 166.
Personal Safety Intervention Orders Act 2010 (Vic) s 123.

- 4.38 Not having a lawyer to help you with legal matters can be traumatic for anyone and can adversely impact upon the legal rights of respondents. However, publicly funded legal services are limited, and cannot provide a lawyer for everyone. In particular, we ask whether it is appropriate to provide a lawyer for parties to an interpersonal dispute whose matter might be better suited to mediation.

Question

- 13 Should there be free legal representation in some personal safety intervention order matters? If yes, what eligibility criteria should apply?

Appeals

- 4.39 A decision to make a final PSIO can be appealed to the County Court. At present the appeal judge hears all of the evidence again before making a fresh decision. This means that a person who has experienced stalking may have to appear as a witness for a second time. There is also the possibility that they may be cross-examined again by the person who stalked them. There is a risk that appeals can be used by a person who stalks to extend contact with the victim survivor.
- 4.40 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.

Questions

- 14 Should the appeals process for intervention orders be changed to improve the experience of victim survivors? If so, how?
- 15 Are there any other aspects of the *Family Violence Protection Act 2008* (Vic) that should be replicated in the *Personal Safety Intervention Orders Act 2010* (Vic)?

Criminal law responses to stalking

- 34** Introduction
- 34** The criminal offence of stalking
- 38** Overlap between stalking and other offences
- 40** Criminal procedure and protection of victim survivors
- 41** How stalking is sentenced in Victoria
- 42** Sentencing and risk assessment
- 42** Electronic monitoring

5. Criminal law responses to stalking

Introduction

- 5.1 This chapter looks at how the criminal law deals with stalking. It focusses primarily on the criminal offence of stalking and considers how it interacts with other offences.

The criminal offence of stalking

- 5.2 Stalking is a criminal offence in all Australian states and territories.¹ In Victoria stalking is an indictable offence that can be heard and determined summarily.² This means that it can be tried in the Magistrates' Court. Most stalking offences in Victoria are tried in the Magistrates' Court.³
- 5.3 Stalking was first introduced as an offence in Victoria in 1994.⁴ The offence was introduced in response to an identified gap in the law in situations where a person had not been threatened or physically attacked but had been 'followed, placed under surveillance, contacted or sent offensive items'.⁵ The legislation was broadly drafted to recognise the 'diversity of situations where people have been stalked'.⁶
- 5.4 The offence of stalking has since been amended to cover a broader range of conduct including technology-based behaviours⁷ and some types of bullying.⁸
- 5.5 A wider range of harms to the victim have been included so that self-harm, psychological harm and suicidal thoughts are recognised.⁹ The legislation also now covers situations where the victim was not harmed or did not feel fear or apprehension where the accused person intended to cause harm or arouse fear or apprehension or knew that it was likely that this would be the result of their conduct.¹⁰

1 *Crimes Act 1900* (ACT) s 35; *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 13; *Criminal Code 1913* (WA) s 338E; *Criminal Code Act 1899* (Qld) s 359B; *Criminal Code Act 1924* (Tas) s 192; *Criminal Law Consolidation Act 1935* (SA) s 19AA.

2 *Criminal Procedure Act 2009* (Vic) s 28(1)(b).

3 Sentencing Advisory Council (Vic), 'Stalking', *SACStat Magistrates' Court* (Web Page, 31 October 2019) <https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/6231_21A.html>; *ibid*.

4 *Crimes (Amendment) Act 1994* (Vic).

5 Victoria, *Parliamentary Debates*, Legislative Assembly, 20 October 1994, 1384 (Geoffrey Coleman).

6 *Ibid*.

7 *Crimes (Stalking) Act (2003)* (Vic).

8 *Crimes Amendment (Bullying) Act 2011* (Vic).

9 *Ibid*.

10 *Crimes (Stalking) Act (2003)* (Vic).

Section 21A of *The Crimes Act 1958* (Vic)

- (1) A person must not stalk another person. Penalty: Level 5 imprisonment (10 years maximum).
- (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.
- (4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of—
 - (a) the enforcement of the criminal law; or
 - (b) the administration of any Act; or
 - (c) the enforcement of a law imposing a pecuniary penalty; or
 - (d) the execution of a warrant; or
 - (e) the protection of the public revenue— that, but for this subsection, would constitute an offence against subsection (1).
- (4A) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice—
 - (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
 - (b) for the purpose of an industrial dispute; or
 - (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.
- (6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria.
- (8) In this section—

mental harm includes—

 - (a) psychological harm; and
 - (b) suicidal thoughts.

5.6 Stalking laws in some other jurisdictions have gaps which have already been addressed in the Victorian legislation. For example, stalking laws have been criticised for failing to address situations where a person being stalked is not aware of the stalking or where an accused does not understand the consequences of their conduct.¹¹ These situations are covered in Victoria.

11

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

- 5.7 The accused does not need to understand the consequences of their conduct for the offence to apply. It is enough if the court considers they ought to have understood those consequences in the particular circumstances.¹² This ‘enables the court to consider factors such as the alleged offender’s age, intellectual capacity and cultural background when determining culpability’.¹³
- 5.8 If the accused intended to cause harm or arouse apprehension or fear in the mind of the victim, they have committed the offence, even if the victim was not actually afraid or was unaware of the stalking.¹⁴
- 5.9 The Victorian laws provide a detailed list of stalking behaviour and a general catch-all provision of ‘acting in any other way that could reasonably be expected 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’.¹⁵
- 5.10 Whilst the offence provision is comprehensive, it is also long and detailed. This might lead to confusion about how the offence works.

Elements of the offence of stalking

- 5.11 The offence of stalking requires that the accused person:
- engaged in a course of conduct that included particular types of actions; and
 - had the necessary state of mind when engaged in that course of conduct.

Course of conduct

- 5.12 A person stalks another person if they engage in a ‘course of conduct’ that includes any of the types of acts set out in 21(A)(2) of the Crimes Act. A ‘course of conduct’ is referred to only in the Victorian and Tasmanian legislation.
- 5.13 The types of conduct that are included are not necessarily unlawful on their own. It is when these actions come together in a course of conduct directed to a person with a specific intent that the behaviour becomes a criminal offence.
- 5.14 A course of conduct is not defined in the Victorian legislation. The courts have interpreted it as a pattern of conduct showing a continuity of purpose in relation to the victim. At a minimum it requires the acts to have been committed on more than one occasion or to have been protracted in nature.¹⁶
- 5.15 In Tasmania, a person is said to pursue a course of conduct if the conduct is sustained or the conduct occurs on more than one occasion.¹⁷
- 5.16 In most other states and territories, the intensity and duration required for the relevant conduct is specified in the legislation without any reference to a course of conduct. The South Australian legislation refers to ‘at least two separate occasions’.¹⁸ In Queensland conduct must be ‘engaged in on any one occasion if the conduct is protracted or on more than one occasion’.¹⁹ Western Australian legislation refers to pursuing another person through a list of behaviours that occur ‘repeatedly’ (although repeated behaviour is not necessary if the conduct is in breach of a restraining order or bail condition).²⁰ The requirements in these jurisdictions may be easier to understand and apply than those in Victoria.

12 *Crimes Act 1958* (Vic) s 21A(3)(b).

13 Victoria, *Parliamentary Debates*, Legislative Assembly, 20 October 1994, 1384 (Geoffrey Coleman).

14 *Crimes Act 1900* (ACT) s 35.

15 *Crimes Act 1958* (Vic) s 21A(2)(g).

16 *Gunes v Pearson* (1996) 89 A Crim R 297, 306, (Supreme Court of Victoria, McDonald J, 31 October 1996) 51.

17 *Criminal Code Act 1924* (Tas) s 192.

18 *Criminal Law Consolidation Act 1935* (SA) s 19AA.

19 *Criminal Code Act 1899* (Qld) s 359B.

20 *Criminal Code Act Compilation Act 1913* (WA) s 338E.

Type of conduct covered

- 5.17 The legislation contains a broad list of stalking conduct. For example, following the victim and contacting the victim can be stalking acts.
- 5.18 Individual types of conduct are broadly described. One example is contacting the victim by telephone, fax, text message, email or other electronic means or 'by any other means whatsoever'.²¹
- 5.19 The offence also includes 'acting in any other way' that could 'reasonably be expected' to cause physical or mental harm to the victim (including self-harm) or to arouse fear or apprehension in the victim.²²
- 5.20 Technology-based stalking provisions were introduced in 2003²³ and there have been significant technological developments since then. The capabilities of mobile phones and other personal electronic devices have expanded substantially. The provisions are broadly framed and do not specify technology types. They appear to cover new technologies and new uses of existing technologies.

The state of mind of the accused

- 5.21 The prosecution must prove that when the accused committed the course of conduct, he or she intended to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for their own safety or that of another person.²⁴
- 5.22 The three ways in which the prosecution can do this are by proving that the accused:
- actually intended to cause apprehension or fear;²⁵ or
 - knew that engaging in a course of conduct of that kind would be likely to cause harm, or arouse apprehension or fear;²⁶ or
 - ought to have understood, in all the circumstances, that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and that actually happened.²⁷
- 5.23 The first two tests look solely at the subjective state of mind of the accused. It does not matter whether the actions of the accused did cause harm, apprehension or fear.
- 5.24 The third test is objective and considers what the accused should have understood and the effect the accused's actions actually had on the victim.

Overlap between stalking and other offences

- 5.25 Stalking is an offence that involves repetitive or sustained behaviour. Some individual actions that make up stalking behaviour are criminal offences in their own right, others are not.
- 5.26 Behaviour that constitutes stalking can overlap with a range of other individual offences. They include breach of an intervention order, property crimes, assault and sexual assault. This overlap makes it difficult to consistently respond to stalking behaviour and identify the prevalence of stalking in criminal courts.
- 5.27 Stalking may not be charged in the first place, for various reasons, such as:
- There are difficulties gathering evidence.

21 *Crimes Act 1958 (Vic)* s 21A(2)(b).
22 *Ibid* s 21A(2)(g); *Crimes Act 1958 (Vic)*.
23 *Crimes Act 1958 (Vic)* s 21A(ba)-(bc).
24 *Ibid* s 21A(2).
25 *Ibid*.
26 *Ibid* s 21A(3)(a).
27 *Ibid* s 21A(3)(b).

- Charges are filed for lesser offences that require only one-off behaviour.²⁸
 - Police may make incident reports or arrest for lower level offences, such as harassment, or threats, rather than stalking.²⁹
 - When stalking occurs alongside more serious offences, only the serious offences may be prosecuted.
 - Where stalking charges are filed, they may not always be prosecuted, for example, because they are withdrawn as part of a negotiated guilty plea.
- 5.28 There may be several reasons for charging other offences instead of stalking:
- The person being stalked might report only one incident and it may not be clear that it is part of a wider pattern of behaviour.
 - It might be easier to prove a more straightforward offence rather than stalking which requires proof of a 'course of conduct'.
 - The elements of the offence of stalking may not be clearly understood.
- 5.29 People experiencing stalking might want the stalking to be recognised by the criminal process. If an accused is not charged with stalking it might be traumatic for the person who was stalked.
- 5.30 Stalking might also have a higher maximum penalty than alternative criminal charges. The harm of stalking needs to be reflected in charges and sentencing.
- 5.31 For reasons including those discussed above, statistics about the actual conviction rate for the state offence of stalking are a poor guide to the actual prevalence of stalking-type behaviour in the community.
- 5.32 Victoria's stalking laws also overlap with a number of Commonwealth offences. Commonwealth offences include, for example, using the postal service³⁰ or a carriage service (such as a fixed or mobile telephone service, an internet service, or an intranet service)³¹ to menace, harass or cause offence. Stalking conduct that involves mailing items or letters, making telephone calls or sending emails or other electronic messages could be charged as an offence under Commonwealth laws. (See Chapter 8 for further discussion of Commonwealth offences relating to cyberstalking).

Question

- 16 Can the criminal law response to stalking be improved?
- 17 You might like to consider whether:
- there are any challenges in identifying when a person has engaged in a course of conduct or in obtaining evidence to demonstrate a course of conduct
 - the list of conduct in section 21A(2) of the *Crimes Act 1958* (Vic) covers all types of stalking behaviour
 - cyberstalking is adequately covered
 - the law presents any barriers to investigating, charging and prosecuting offenders for stalking conduct.

28 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.

29 Patrick Q Brady and Matt R Nobles, 'The Dark Figure of Stalking—Examining Law Enforcement Response' (2017) 32(20) *Journal of Interpersonal Violence* 3149.

30 *Criminal Code Act 1995* (Cth) s 471.12.

31 *Ibid* s 474.17.

Criminal procedure and protection of victim survivors

- 5.33 It is important that court processes are safe for people who experience stalking, do not further traumatise them, and do not give accused persons new opportunities to cause harm.
- 5.34 Changes have been made to criminal procedure to better protect victims of serious crimes against the person. The changes have focussed on family violence and sexual offences. For people that have experienced stalking by non-family members, there are few protections in place.
- 5.35 This lack of protection is particularly concerning as the court process can become an extension of the stalking activity. This 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.

Prohibition against cross-examination

- 5.36 In family violence and sexual offence proceedings, protected witnesses cannot be cross-examined by the accused in person.³² If the accused is unable to obtain a lawyer for cross-examination, Victoria Legal Aid can be ordered to provide one.³³
- 5.37 A protected witness is the complainant, a family member of the complainant, a family member of the accused, or any other witness whom the court declares to be a protected witness.³⁴
- 5.38 This protection does not apply in non-family violence stalking matters.

Alternative arrangements for giving evidence

- 5.39 The court may direct alternative arrangements to be made for witnesses in a criminal proceeding that relates (wholly or partly) to a charge for a sexual offence, family violence offence or certain other offences.³⁵ It does not apply to non-family violence stalking.
- 5.40 The alternative arrangements include:
- permitting evidence to be given at a place other than the courtroom by closed circuit television or other facilities
 - using screens to shield the witness
 - permitting a support person to sit with the witness for emotional support
 - permitting only persons specified by the court to be present while evidence is being given
 - requiring legal practitioners not to wear robes
 - requiring legal practitioners to be seated while cross-examining.³⁶

Pre-recording of evidence-in-chief

- 5.41 Witnesses who are children or who have a cognitive impairment can give evidence-in-chief by Video Audio Recording of Evidence (VARE) in certain proceedings.³⁷ The evidence-in-chief is filmed before the court proceedings and the recording is played in court.

32 *Criminal Procedure Act 2009* (Vic) s 356.
33 *Ibid* s 357.
34 *Ibid* s 354.
35 *Ibid* s 359.
36 *Ibid* s 360.
37 *Ibid* s 367.

- 5.42 A broader range of proceedings are covered by this provision. They include those relating to a sexual offence, family violence offence or an indictable offence which involves an assault on, or injury or a threat of injury to a person.³⁸ This last category includes stalking.³⁹

Broadening the scope of witness protections

- 5.43 The Commission considered the protections available for witnesses in its 2016 report *The Role of Victims of Crime in the Criminal Trial Process*. The Commission recommended that protective procedures for witnesses should be available to protected victims rather than to particular categories of offences or types of victims (other than children).

- 5.44 The Commission made the following recommendation:

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.⁴⁰

Question

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

How stalking is sentenced in Victoria

- 5.45 A judge or magistrate sentences an accused person after they have pleaded guilty or been found guilty of a crime. Sentences can include imprisonment, community corrections orders, fines, or formal warnings.
- 5.46 To decide on the appropriate sentence, the judge or magistrate weighs up factors including:
- whether the person pleads guilty (and when)
 - the maximum penalty
 - the type of offence
 - whether the crime was motivated by hatred or prejudice
 - any mitigating and aggravating factors
 - the impact of the offence on the victim survivor.⁴¹

38 Ibid s 366.

39 *R v Anders* [2009] VSCA 7, (2009) 20 VR 596.

40 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xxvi <<https://www.lawreform.vic.gov.au/>>.

41 *Sentencing Act 1991* (Vic) s 5(2).

- 5.47 The maximum penalty for stalking in Victoria is 10 years imprisonment.⁴² If the offence is tried in the Magistrates' Court, the maximum penalty that can be imposed is two years imprisonment.⁴³
- 5.48 The Sentencing Advisory Council is researching sentencing trends for stalking offences and breaches of PSIOs, FVIOs and FVSNs in Victoria. The outcomes of its research will be discussed in our final report.

Sentencing and risk assessment

- 5.49 Some sentencing principles relate to risk of future harm. The judge or magistrate must consider how to:
- deter the person or other people from committing the same or similar offences
 - rehabilitate the person
 - protect the community.
- 5.50 Sometimes magistrates or judges are provided with reports from psychologists, drug and alcohol workers and other health professionals. These reports are meant to help the magistrate or judge decide if the person is likely to reoffend. These reports can be provided by the prosecution or the defence.
- 5.51 Expert evidence about 'risk' is an emerging field and the quality of assessments is variable. Stalking is a specialist area of psychology, and a general psychological report may not meet the needs of the court for the purposes of sentencing stalking offences.⁴⁴

Question

- 19 Should the court be able to request specialist risk assessment reports for stalking? If yes, in what circumstances?

Electronic monitoring

- 5.52 We are considering whether electronic monitoring of people who commit stalking and are assessed as being at a high risk of reoffending could assist with protecting the community.
- 5.53 A person who is being 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. 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 or a battery going flat. The monitoring centre determines what response is needed and who needs to follow up.
- 5.54 Currently electronic monitoring is used to monitor compliance with community corrections orders, parole orders and post-sentence supervision orders for some serious sexual and violent offenders. People in custody can also be subject to electronic monitoring. It is only used in Victoria after people have been convicted. It cannot be imposed as a bail condition.

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

43 *Sentencing Act 1991* (Vic) s 113.

44 Troy E McEwan et al, 'The Reliability and Predictive Validity of the Stalking Risk Profile' (2018) 25(2) *Assessment* 259.

- 5.55 Victoria's Royal Commission into Family Violence suggested further consideration should be given to electronic monitoring as part of an overall approach to family violence. But it did not recommend changing the law.⁴⁵
- 5.56 New South Wales, Tasmania, South Australia and Western Australia have trialled electronic monitoring for people who have committed significant family violence. Queensland amended bail laws to provide for electronic monitoring as a bail condition, following evaluation.
- 5.57 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. In other states it is used only in the criminal law setting.
- 5.58 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 associated with imprisonment)
 - victim survivors report an increased sense of safety.⁴⁶
- 5.59 Electronic monitoring has not been used as a case management response to non-family violence stalking in Australia. There is not enough evidence to show whether electronic monitoring would work in this context.
- 5.60 The use of electronic monitoring raises issues that must be considered:
- The more people that are subject to electronic monitoring, the harder it is to monitor them all intensively. This could lead to safety risks.
 - Electronic monitoring is a significant incursion into civil liberties. This might not be justified for convicted persons who do not pose a risk of serious harm.
 - Significant involvement of private companies in providing equipment could create a commercial incentive to push for broader use.
 - 'False alerts' and other system deficiencies are possible.
 - There is a lack of awareness of the limitations of electronic monitoring (in general public and decision-makers).

Question

- 20 Should electronic monitoring be introduced to monitor people who have been assessed as posing a high risk of ongoing stalking behaviour? If yes, in what circumstances?

45 Royal Commission into Family Violence, *Summary and Recommendations* (Report, March 2016) <https://www.parliament.vic.gov.au/file_uploads/1a_RFV_112ppA4_SummaryRecommendations.WEB_DXQyLhqv.pdf>.

46 Heather Nancarrow and Tanya Modini, 'Electronic Monitoring in the Context of Domestic and Family Violence: Report for the Queensland Department of Justice and Attorney-General' (ANROWS Australia's National Research Organisation for Women's Safety, 2018).

Responding to people who experience stalking

- 46** Introduction
- 46** The needs of victim survivors
- 47** Support for people who have experienced stalking
- 50** Financial needs of people who experience stalking
- 51** Working with other services and systems

6. Responding to people who experience stalking

Introduction

- 6.1 In this chapter, we look at how the system responds to the needs of people who have been stalked. We ask how well existing programs support people, how future reforms to victim services might improve support, and if there is a need for specialist support services.
- 6.2 We would also like to know how other services and systems work to support people experiencing stalking.

The needs of victim survivors

- 6.3 In general, victim survivors have four categories of needs:
- practical support needs such as safety and security
 - therapeutic needs, including early access to specialist trauma recovery support
 - justice needs, such as understanding how the system operates
 - information needs, including timely and accurate information about supports and entitlements.¹
- 6.4 People who experience stalking have specific needs, including:
- the need to be believed
 - the need to have their feelings validated and given proper weight.²
- 6.5 There are also practical support needs such as:
- safety planning
 - help with relocating
 - advice on how to document the stalking
 - advice on how to get the behaviour to stop
 - help with getting personal safety intervention orders.³

1 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 222 <<https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>>. See Figure 16.

2 Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755, 760.

3 Ibid.

Support for people who have experienced stalking

6.6 In Victoria there are general support programs for victims of crime (see Table 2).

Table 2: General supports for victims of crime

Program	About the service	Target group
Victims Support Agency, Department of Justice and Community Safety	The agency runs the Victims of Crime Helpline and funds the Victims Assistance Program (VAP) across the state to support victims, including through counselling and referrals to other services.	Victims who have experienced crimes against the person. This includes people experiencing physical injury, emotional injury or financial loss.
Victims and Witness Assistance Service, Office of Public Prosecutions	This service supports victims through the process of giving evidence, including by giving them information about how courts work and providing practical support.	Adult victims, with priority to victims in sexual offence and family violence matters, and others who need more support.
Court Network	Trained volunteers provide information, support and referral within courts across Melbourne and regional Victoria.	Victims, accused persons, witnesses and their families and friends.
Translation and interpretation services	Victorian courts provide translation and professional interpreter services on request.	All victims.

6.7 There are no specific specialist support services for people who experience stalking.

6.8 There are specialist support programs for people who have experienced sexual harm and/or family violence. Some of these programs result from the reforms that followed the 2016 Royal Commission into Family Violence (see Table 3). They include:

- a national 24-hour support helpline
- tailored support for people from diverse backgrounds
- crisis support and accommodation.

Table 3: Examples of some specialist supports for family and sexual violence

Program	About the service	Target group
Safe Steps	24-hour family violence response centre for crisis support, information and accommodation.	People who are experiencing or afraid of family violence.
The Orange Door	A range of family violence and family services in a 'one stop shop'.	Adults, children and young people who are experiencing or have experienced family violence and families who need extra support with the care, wellbeing and development of children.
With Respect	Resources and advice.	LGBTIQ people on having and maintaining healthy relationships as well as support for those experiencing family violence.
InTouch—Multicultural Centre Against Family Violence	Free and confidential support services.	Migrant and refugee women experience family violence.
Djirra	Legal and non-legal support.	Aboriginal people who are experiencing or have experienced family violence.
Sexual Assault Crisis Line	Crisis counselling service.	People who have experienced both past and recent sexual assault.
National Sexual Assault and Domestic Violence Help 1800 RESPECT	Information, counselling and support service.	People experiencing sexual, domestic or family violence.
Victorian Centres Against Sexual Assault (CASA)	Support and intervention.	Women, children and men who have experienced sexual assault.
Seniors Rights Victoria	Confidential support services.	Older people experiencing abuse.

6.9 In general, people who experience stalking but do not also experience sexual harm or family violence cannot access these support programs.

6.10 In contrast, the United Kingdom has a national support helpline specifically for people experiencing stalking.⁴ (See box).

- 6.11 In 2020, the Centre for Innovative Justice at RMIT University published a review of Victoria's victim services. The review identified the following problems:
- some victims who could not access support through specialist services also had difficulty in getting appropriate support from generalist services.⁵
 - not all victims access victim services and the response does not always match their need.⁶
 - the Victims of Crime Helpline response is focused on victims of violent crime against the person.⁷
- 6.12 The review proposed a new service model 'that is flexible enough to respond to a range of circumstances and needs'.⁸
- 6.13 As part of this inquiry, we are considering a program that directly advocates for people experiencing stalking and helps them navigate the criminal justice process. Scotland and the United Kingdom have services of this kind (see box).
- 6.14 We want to hear how well existing programs support people who have experienced stalking, and how they can be improved. We are interested in how well support services respond to the diverse needs of people who have experienced stalking, including people who face greater barriers in accessing justice.

Action Against Stalking⁹

This is a not-for-profit organisation in Scotland that focuses exclusively on helping people who experience stalking. It offers a Stalking Support Service all the way through a person's experience with the justice system. It acts as an intermediary between the victim and justice system. The intermediary;

- provides information and advice
- directs people to support agencies
- works with multiple agencies to provide a wholly integrated service.

The National (United Kingdom) Stalking Support Service¹⁰ operated by the Suzy Lamplugh Trust has a national stalking helpline. The service also provides an advocate who acts as a representative for people who experience stalking in London. The advocate:

- makes sure that the police investigate, collect evidence and apply for protection orders
- undertakes a risk assessment and safety plan
- links the person experiencing stalking with any other support as needed.

Some advocates are being trained to provide trauma-informed psychological support.

5 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) <<https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>>.

6 Ibid 14.

7 Ibid 85.

8 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, 2020) 26 <<https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>>.

9 'Action Against Stalking', *AAS Website* (Web Page) <<https://www.actionagainststalking.org/about>>.

10 'National Stalking Helpline', *Suzy Lamplugh Trust* (Web Page, 2019) <<https://www.suzylamplugh.org/pages/category/national-stalking-helpline>>.

Question

- 21 How can we improve victim services so that people who experience stalking have their needs met?

Financial needs of people who experience stalking

- 6.15 People who are victims of crime can apply for financial assistance from the Victims of Crime Assistance Tribunal (VOCAT). Financial payments can be made for expenses such as:
- counselling
 - medical needs
 - personal safety
 - lost income (from not being able to work because of the crime)
 - some other reasonable expenses.¹¹
- 6.16 In 2018, in an inquiry into the *Victims of Crime Assistance Act 1996* (Vic), the Victorian Law Reform Commission made recommendations to improve the way the government provides financial assistance to victims of crime.¹² We recommended that a more flexible state-funded compensation scheme be established to replace VOCAT, administered by the Victims of Crime Commissioner. This scheme would also provide a forum for acknowledging the harms caused by the crime.
- 6.17 The government accepted our recommendations in principle and committed to progress them. VOCAT is now being replaced with a more accessible, trauma-informed system.¹³
- 6.18 We want to hear your views about the new scheme that is being introduced to provide financial support to victims of crime, especially as it relates to people who have been stalked.

Question

- 22 How can the financial support scheme for victims of crime be improved so that it better meets the needs of victim survivors of stalking?

11 Office of Public Prosecutions (Vic), *Financial Assistance, Compensation and Restitution for Victims of Crime* (Brochure, 2013) <<http://www.opp.vic.gov.au/News-and-Media/Newsletters/December-2013/c-Financial-assistance-brochure-for-victims>>.

12 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 36, September 2018) <<https://www.lawreform.vic.gov.au/>>.

13 Natalie Hutchins, Minister for Crime Preventions, Minister for Victim Support and Minister for Youth Justice, 'Better Outcomes for Victims and Young People' (Media Release, 20 May 2021) 1 <<https://www.premier.vic.gov.au/sites/default/files/2021-05/11a%20-%20Better%20Outcomes%20For%20Victims%20And%20Young%20People.pdf>>.

Working with other services and systems

- 6.19 People who are stalked often need to deal with a range of services and systems to address their needs. These include services provided by government agencies, for example:
- eSafety (advice on technology facilitated stalking)
 - the health system, including mental health services, drug and alcohol services, general practitioners and hospitals
 - the legal system
 - institutions, such as schools and universities (which can be places where people experience stalking)
 - services specific to groups (for example, settlement services for refugees, disability services, or Aboriginal-controlled organisations)
 - housing services.
- 6.20 People who are being stalked might also access services provided by private companies, for example:
- security system companies (CCTV and home alarms)
 - mobile phone companies and repairers (spyware removal and debugging).
- 6.21 These services and systems can support someone while they are being stalked.
- 6.22 We want to hear if there are ways to improve how these services and systems work together to support people who are being stalked.

Question

- 23 How can we better integrate victim services with relevant public and private services and systems so that people are supported while they are being stalked?

Responding to people who commit stalking

- 54** Introduction
- 54** Diverse needs
- 56** Responding to offending behaviour
- 57** Are there learnings from family violence reforms?

7. Responding to people who commit stalking

Introduction

- 7.1 Victoria's response to reported offences, including stalking, focuses on:
- holding people who have committed offences accountable and denouncing the harm
 - rehabilitating and reintegrating people who have committed offences
 - protecting the community from further harm.
- 7.2 In this chapter we ask if these aims are being met, and if not, how to improve our system.
- 7.3 We also ask whether there are any learnings from the recommendations from the Royal Commission into Family Violence in 2016, and the Royal Commission into Victoria's Mental Health System in 2021, which might be effective in holding people who stalk to account.

Diverse needs

- 7.4 People commit acts of stalking in different ways and contexts. Stalking can be committed by people who are strangers, acquaintances, work colleagues or ex-partners. Stalking can take place online, in public places, workplaces and in homes.
- 7.5 People who commit stalking offences are diverse in their behaviour and characteristics.¹ Some people may be more likely to reoffend than others.² Some have complex needs and require mental health or substance misuse support.³
- 7.6 Interventions for people who have committed offences must be responsive to their diverse needs and experiences. For example, specialised responses may be needed for Aboriginal people, people with disability, and people from culturally and linguistically diverse communities.⁴

Question

24 How responsive are rehabilitation and reintegration interventions to the diverse needs of people who commit stalking?

1 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders* (Routledge, 1st ed, 2018) 400.

2 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.

3 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland, Carol A Ireland and Philip Birch (eds), *Violent and Sexual Offenders* (Routledge, 1st ed, 2018) 400.

4 On the general need for perpetrator interventions to respond to diverse needs and experiences, see Donna Chung et al, *Improving Accountability: The Role of Perpetrator Intervention Systems—Key Findings and Future Directions* (ANROWS Research Report 20/2020, Australia's National Research Organisation for Women's Safety, 2020) 9 <<https://www.anrows.org.au/publication/improved-accountability-the-role-of-perpetrator-intervention-systems/>>; *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 3, 278–280 <<http://rcfv.archive.royalcommission.vic.gov.au/ReportRecommendations.html>>.

- 7.7 We want to hear if interventions and services are accessible to people who have committed stalking offences and respond to their diverse needs and contexts.

Sussex Perpetrator Intervention Program

This is a pilot program in the United Kingdom. It brings together local police, rehabilitation and post-prison reintegration service providers and a local stalking advocacy service. The program is for people who commit stalking offences. It includes individual psychological therapy sessions and is aimed at addressing and modifying problem behaviour. The program also teaches pro-social interpersonal skills and aims to improve participants' ability to manage their behaviour during an emotional crisis.⁵

- 7.8 In Victoria there are specialist courts and court programs outside the mainstream court system.⁶ Special features of some of these courts include intensive case management, court supervision and cultural safety. While they do not directly manage stalking behaviour, they can address some of the issues that can co-occur alongside stalking and/or provide a more supported environment for some people who commit stalking to understand the impact of their behaviour. They include:
- Assessment Referral Court (ARC): deals with some charges where a person who has been charged has been diagnosed with a mental illness and/or a cognitive impairment.
 - Drug Court: deals with some alleged offences where a person was dependent on drugs and/or alcohol and this contributed to their offending.
 - Koori Court: is for Aboriginal people and has Aboriginal Elders as part of the sentencing hearing and aims to provide a culturally safe court experience.
 - Neighbourhood Justice Centre: provides local support services for people charged with certain offences. These services address the underlying reasons why they were charged.
 - Specialist Family Violence Courts provide for enhanced safety features, such as separate entrances for victim survivors and remote hearing facilities; magistrates and court staff with training in family violence; processes that give victim survivors more choice about how they want to participate in their court proceedings, for example, in person or remotely; magistrates who have powers to mandate that perpetrators of family violence engage in programs to change their behaviour; and a dedicated service for Aboriginal Victorians.⁷
 - Court Integrated Services Program is a court program that addresses underlying causes of offending. Participants undergo a risk assessment and have a case manager and receive specialist support across a range of needs. These include drug and alcohol treatment, crisis and supported accommodation and mental health treatment.
- 7.9 These courts and programs sometimes deal with people who are charged with stalking who meet the requirements for the specialist court to hear the case.
- 7.10 We want to hear about how the specialist courts and programs respond to people who are charged with stalking.

5 Sussex Police, 'New Scheme to Reduce Harm Caused by Stalking in Sussex', *Force News* (8 March 2021) <<https://www.sussex.police.uk/news/sussex/news/force-news/new-scheme-to-reduce-harm-caused-by-stalking-in-sussex>>.

6 Specialist courts in Victoria are Divisions of another Court (usually the Magistrates' Court of Victoria) rather than standalone courts. See, for example, 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.

7 Courts (Web Page) <<http://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023/priorities-for-2020-2023/courts>>.

Question

- 25 Could some specialist courts and programs help address some of the issues that may co-occur alongside stalking behaviour? If so, how?

Responding to offending behaviour

- 7.11 Rehabilitation and reintegration are guiding principles of the correctional system. This includes measures that apply before, during and after a person's sentence.⁸ Rehabilitation and reintegration are both important measures that aim to stop future offending and victimisation.

Rehabilitation

- 7.12 Treatment programs are one form of rehabilitation. There continues to be discussion about how effective they are and for whom. For example, it is not clear whether existing programs are suitable for people who commit stalking whose behaviour does not include physical or sexual violence.⁹
- 7.13 However, it appears that treatment programs are most successful when they are made to fit the needs of individuals.¹⁰

Reintegration

- 7.14 The correctional system aims to support people who have been in prison to reintegrate into the community. This should start before they are released from prison and continue after their release at the end of their sentence or while they are on parole.¹¹
- 7.15 To reintegrate into the community successfully, a person will need a range of supports that respond to their specific needs.
- 7.16 Corrections Victoria Reintegration Pathway provides pre-release assessments and pre-and-post release support programs.
- 7.17 To be responsive to each person's transition needs, the pathway needs to target seven critical domains for successful reintegration:
- housing
 - employment
 - education and training
 - alcohol and other drug support
 - mental health support
 - independent living skills
 - community and family connection.¹²

8 Corrective Services Administrators' Council (CSAC), *Guiding Principles for Corrections in Australia* (Factsheet, Government of Australia, 2018) 23 <<https://www.corrections.vic.gov.au/guiding-principles-for-corrections-in-australia>>.

9 Rosemary Purcell and Troy McEwan, 'Treatment Approaches for Stalking' in Jane L Ireland and Philip Birch (eds), *Violent and Sexual Offenders* (Routledge, 1st ed, 2018) 400, 402.

10 Rachel D MacKenzie and David V James, 'Management and Treatment of Stalkers: Problems, Options, and Solutions' (2011) 29(2) *Behavioral Sciences & the Law* 220.

11 Corrective Services Administrators' Council (CSAC), *Guiding Principles for Corrections in Australia* (Factsheet, Government of Australia, 2018) 24 <<https://www.corrections.vic.gov.au/guiding-principles-for-corrections-in-australia>>.

12 Department of Justice (Vic) 'Transition and Reintegration Unit Brochures', *Corrections, Prisons and Parole* (Web Page, May 2018) 2 <<https://www.corrections.vic.gov.au/transition-and-reintegration-unit-brochures>>.

- 7.18 Having regard to the Royal Commission into Victoria’s Mental Health System, we reiterate the importance of a collaborative, well-integrated and coordinated mental health service system that responds to a person’s whole needs.¹³

Question

- 26 How well are prison and post-prison rehabilitation or reintegration measures working for people who have committed stalking? How can they be improved?

Are there learnings from family violence reforms?

- 7.19 Our terms of reference ask us to consider the recommendations of the Royal Commission into Family Violence in 2016.
- 7.20 We want to know if there are any lessons we can draw from these reforms, in terms of responding to people who commit stalking.
- 7.21 The Royal Commission identified the need to improve interventions for people who commit family violence. It concluded that assisting people who commit family violence to change their behaviour was essential to reducing family violence.¹⁴
- 7.22 For example, the Royal Commission recommended that the Victorian Government trial and evaluate interventions that provide individual case management for people who commit family violence.¹⁵
- 7.23 The Royal Commission also identified the need to develop a collective responsibility for improving family violence interventions. It recommended that the Victorian Government map the roles and responsibilities of all agencies and service providers that have contact with people who commit family violence.¹⁶

Question

- 27 Are there relevant learnings from the reforms to the family violence system that could be applied to the way the system responds to people who commit stalking?

13 *Royal Commission into Victoria’s Mental Health System* (Final Report, 2021) vol 1, 242.

14 *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) Recommendations 89–93 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>; *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) Recommendations 89–93 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>. See also *Report of the Family Violence Reform Implementation Monitor* (Report, November 2020) <https://content.vic.gov.au/sites/default/files/2021-05/Report%20of%20the%20Family%20Violence%20Reform%20Implementation%20Monitor%20-%20as%20at%201%20November%202020_1.pdf>.

15 Recommendation 87.

16 Recommendation 85.

Responses to cyberstalking

- 60** What is cyberstalking?
- 61** How is cyberstalking experienced by victim survivors?
- 61** Barriers to victim survivors seeking help for cyberstalking
- 61** What makes cyberstalking difficult to regulate?
- 62** How is cyberstalking regulated?

8. Responses to cyberstalking

What is cyberstalking?

- 8.1 Cyberstalking is stalking that can be perpetrated using technology. Another name for it is ‘technology-facilitated abuse’. With rapid changes in technology, and the increasing importance of our online identities, cyberstalking has become a significant and growing social problem.
- 8.2 Cyberstalking is a type of stalking. It shares the elements of general stalking, namely:
- Surveillance: a person who uses cyberstalking might use tracking devices or spyware. They might also use lawful technology, such as ‘find my device’ apps and social media to keep track of the person they are stalking. This is especially common in family violence cyberstalking.
 - Repetition: modern technology makes it easier to repeatedly contact a person, for example by text message, email and social media chat. Blocking a person’s phone number, email address or social media account does not always stop the cyberstalking, as the person who uses stalking might set up multiple accounts to contact the person being stalked.
 - Intrusion: given the importance of online identities, repeated messaging through social media can feel like the stalker can access you anywhere. Spyware is also a highly intrusive form of abuse, giving the person who is stalking access to information about a person’s movements, or even video access into their home. With the increasing number of ‘smart devices’ in people’s homes, a person who uses stalking may hack into the victim survivor’s television or even turn their lights on and off. This can make the person being stalked feel unsafe in their home.
 - Denigration: posting denigrating comments or images of a person online can be a very damaging form of cyberstalking. Examples include defamatory statements, posting intimate images, or posting images of a Muslim person without their hijab or other religious covering.¹

Example 1: Cyberstalking²

A man was charged with several counts of stalking a public figure via Instagram, and for breaching bail conditions. The man contacted the public figure more than 100 times via Instagram, email, text messages, voicemail, and sent pictures of himself. It was alleged that he was motivated by a desire to form a sexual relationship with her.

1 Office of the eSafety Commissioner (Cth), *eSafety for Women from Culturally and Linguistically Diverse Backgrounds: Summary Report* (Report, Office of the eSafety Commissioner (Australia), 18 February 2019) <<https://apo.org.au/node/224186>>.
2 Based on a real stalking case heard in a Magistrates’ Court in Victoria, with some details changed to protect anonymity.

Example 2: Cyberstalking³

Several years after leaving a religious group, a woman began receiving a barrage of abusive, manipulative and threatening text messages, with the abuse spanning more than a decade. The person stalking used every social media platform available to send messages to their victim and would create new accounts when blocked. The person stalking sent messages threatening suicide, as well as messages imploring the victim to self-harm.

How is cyberstalking experienced by victim survivors?

- 8.3 The diversity of victim survivors means that cyberstalking can manifest for different people in different ways. For example:
- Women who wear head-coverings for religious or cultural reasons experience shame from having a photograph of them posted online without their head-covering. They may also experience threats of honour killings online or racist trolling.⁴
 - Aboriginal victim survivors might experience the risk of being socially isolated from kinship networks and fear of shaming and family retribution from cyber abuse.⁵
 - There is a lack of recent data on young people's experiences of cyberstalking, however the rise of online platforms and increased use of technology by young people potentially exposes them to cyberstalking.⁶

Barriers to victim survivors seeking help for cyberstalking

- 8.4 The diversity of victim survivors can also mean that some people who are stalked may experience particular barriers to seeking help. For example some people may have lower levels of digital literacy and may not realise that technology-facilitated stalking is a form of abuse.

Question

- 28 What are the barriers that some victim survivors experience when seeking help for cyberstalking?

What makes cyberstalking difficult to regulate?**Detecting cyberstalking**

- 8.5 A person who is being kept under surveillance using cybertechnology may not be aware of it. Cyberstalking surveillance devices can be hidden. For example, someone may be using a tracking device or spyware to track a person's movements. A person's only clue that they are being kept under surveillance may be that they seem to run into the person stalking them everywhere.

3 Based on a real stalking case heard in a Magistrates' Court in Victoria, with some details changed to protect anonymity.

4 Office of the eSafety Commissioner (Cth), *eSafety for Women from Culturally and Linguistically Diverse Backgrounds: Summary Report* (Report, Office of the eSafety Commissioner (Australia), 18 February 2019) <<https://apo.org.au/node/224186>>.

5 'Online Safety for Aboriginal and Torres Strait Islander Women Living in Urban Areas', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/about-us/research/online-safety-aboriginal-and-torres-strait-islander-women-living-urban-areas>>.

6 Rosemary Purcell, Teresa Flower and Paul Mullen, 'Offence Characteristics and Effectiveness of Intervention Orders' (Trends & Issues in Crime and Criminal Justice 369, Australian Institute of Criminology, March 2009) <<https://www.aic.gov.au/publications/tandi/tandi369>>.

Example: GPS tracking⁷

A man stalked his ex-partner and her new partner for more than two months. The person stalking kept both of his victims under surveillance, including by using a GPS tracker. The person stalking made repeated telephone contact, tampered with the brakes on one of the victim's cars, threw an explosive device at one of the victim's residence, and fired shots at both victims' residences.

Question

- 29 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?

Jurisdictional issues

- 8.6 Cyberstalking is difficult to prevent because many companies that produce the devices or applications that are used to perpetrate the abuse are international. Data is stored in a number of countries, which makes it hard to identify and obtain evidence stored overseas for criminal prosecutions.
- 8.7 It can be difficult to get a global company to modify its products or services in response to regulation in Victoria. Even if Victoria were to ban such products, they could be imported undetected.

Technological issues

- 8.8 Forensic technical services are needed to get files that might be evidence of cyberstalking from devices to be used in prosecutions. The ever-increasing number of devices and files such as photos and texts on those devices makes this resource intensive.

How is cyberstalking regulated?

- 8.9 Cyberstalking is regulated through criminal laws and civil laws, which are a combination of state and Commonwealth laws.

Surveillance

- 8.10 The criminal offence of stalking in section 21A of the Crimes Act forbids 'tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications'⁸ and 'keeping the victim or any other person under surveillance'.⁹
- 8.11 The *Surveillance Devices Act 1999* (Vic) forbids the use of listening devices, optical surveillance devices and tracking devices without the consent of the person who is being tracked.¹⁰

Repetition

- 8.12 The criminal offence of stalking in the Crimes Act¹¹ explicitly captures the repetitive nature of stalking.

7 Based on a real stalking case heard in the County Court of Victoria, with some details changed to protect anonymity.
8 *Crimes Act 1958* (Vic) s 21A(2)(bc).
9 *Ibid* s 21A(2)(f).
10 *Surveillance Devices Act 1999* (Vic) 123.
11 *Crimes Act 1958* (Vic) s 21A(2).

Intrusion (hacking)

- 8.13 Intrusion into a person's life is often achieved by hacking. Hacking often involves both surveillance and intrusion.
- 8.14 Section 21A of the Crimes Act forbids 'causing an unauthorised computer function ... in a computer owned or used by the victim or any other person'.¹² It is not clear whether a 'computer' includes a smartphone.
- 8.15 The Crimes Act forbids unauthorised modification, impairment and access to restricted (private) data,¹³ and identity theft.¹⁴
- 8.16 Commonwealth law forbids:
- interception of communication¹⁵
 - use and supply of interception devices¹⁶
 - unauthorised access to, or modification of, restricted data¹⁷
 - unauthorised impairment of electronic communication.¹⁸

Denigration

- 8.17 Denigration can include posting degrading comments or images of the victim survivor online. It can be very difficult to combat, as online material can be easily copied and shared, and social media platforms can have lax privacy complaint processes.
- 8.18 The Crimes Act forbids:¹⁹
- publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material relating to the victim or any other person or purporting to relate to, or to originate from, the victim or any other person.
 - making threats to the person being stalked.
 - using abusive or offensive words to or in the presence of the person being stalked.
 - performing abusive or offensive acts in the presence of the person being stalked.
 - directing abusive or offensive acts towards the person being stalked.
 - giving offensive material to the person being stalked or any other person or leaving it where it will be found by, given to or brought to the attention of, the person being stalked or the other person.
- 8.19 The Commonwealth Criminal Code contains a number of offences related to using the internet or a telephone to perpetrate abuse. They include using the internet or a telephone:
- to make a threat to kill²⁰
 - to make a threat to cause harm²¹
 - to menace, harass or cause offence.²²
- 8.20 The *Summary Offences Act 1966* (Vic) and the Crimes Act also include a number of offences around the production and distribution of intimate images and child abuse material.

12 *Crimes Act 1958* (Vic) s 21A(2)(bb).

13 *Crimes Act 1958* (Vic).

14 *Ibid.*

15 *Telecommunications (Interception and Access) Act 1979* (Cth) s 7.

16 AG, *Criminal Code Act 1995* (Web Page) <https://www.legislation.gov.au/Details/C2020C00245/Html/Volume_1, <http://www.legislation.gov.au/Details/C2020C00245>>.

17 *Ibid.*

18 *Ibid* s 477.3.

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

20 *Criminal Code Act 1995* (Cth) s 474.4.

21 *Ibid* s 474.15(2).

22 *Ibid* s 474.17.

Removing cyberstalking material from the internet

- 8.21 Personal safety intervention orders can include conditions to stop the respondent from cyberstalking.
- 8.22 However, once material has been posted online, how can a victim survivor have it removed?
- 8.23 The Commonwealth eSafety Commissioner has powers with respect to cyberbullying material targeted at children, which overlap with cyberstalking. Children under 18 can make a complaint to the eSafety Commissioner about cyberbullying. A complaint to the social media service should be made in the first instance.
- 8.24 The *Enhancing Online Safety Act 2015* (Cth) establishes a scheme for the rapid removal of cyberbullying material targeting children on participating social media services. The eSafety Commissioner primarily works directly with social media services to have content removed.
- 8.25 The Commissioner also has powers to issue notices to individuals who post cyberbullying material requiring them to take the material down, refrain from posting further cyberbullying material or apologise for posting the material. An injunction can be sought.
- 8.26 At present there is no legislative scheme for addressing cyberbullying of adults. However, the Online Safety Bill 2021, currently before the Australian Parliament, would, if passed, expand the eSafety Commissioner's powers against cyberbullying to adults.
- 8.27 The eSafety Commissioner also has powers to respond to image-based abuse. This is not limited to children. Image-based abuse may be a component of stalking behaviour.
- 8.28 The legislation uses the term 'non-consensual sharing of intimate images'. The scheme gives the eSafety Commissioner the power to give enforceable removal notices to social media services, websites, hosting providers and perpetrators, requiring the removal of intimate material.

Selling or supplying goods or services that can be used for cyberstalking

- 8.29 Many devices or apps that can be used to facilitate cyberstalking are lawful to sell or possess because they can be used for legitimate purposes. For example:
- Apps can be lawfully used to keep track of a friend or family member's location with their consent.
 - Small tracking devices can be put in a person's wallet to help them find it when they lose it.

Question

- 30 In what ways can apps and smart devices be used to facilitate stalking? What controls could be put in place to prevent apps and smart devices being used to facilitate stalking?

Stalking

Consultation Paper

GPO Box 4637
Melbourne
Victoria 3001
Australia

Level 3
333 Queen Street
Melbourne
Victoria 3000
Australia

Telephone
+61 3 8608 7800

Freecall
1300 666 555
(within Victoria)

Fax
+61 3 8608 7888

Email
law.reform@lawreform.vic.gov.au

lawreform.vic.gov.au

Printed on 100% recycled paper