

Stalking

Interim Report

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Stalking

Interim Report

December 2021

Stalking

Interim Report

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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.

Recommendations

Chapter 2

- 1 Victoria Police should engage with appropriate experts to provide training to enhance the understanding of frontline police to identify stalking behaviours as set out in the Act.
- 2 Victoria Police should develop guidance for frontline police on interviewing and communicating with victim survivors of stalking, with the aim of improving the gathering, recording, and management of evidence and the investigation of cases.

Chapter 3

- 3 Victoria Police should develop guidance for identifying and gathering information about stalking for frontline police.
- 4 Victoria Police should record every presentation to police with a report of stalking (and related conduct) on the appropriate Victoria Police information management system(s), including in instances where stalking is alleged but no offence has been detected.
- 5 Victoria Police should be the agency responsible for initiating PSIO applications on behalf of victim survivors.
- 6 Victoria Police should refer complex cases to specialist police within existing criminal investigation units for investigation where required.
- 7 Victoria Police should refer stalking matters where necessary to appropriate external agencies.
- 8 Victoria Police should refer victim survivors of stalking to appropriate external services.

Chapter 5

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

CHAPTER 01

Introduction

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1. Introduction

The terms of reference

- 1.1 The Attorney-General, the Hon. Jaclyn Symes MP, provided the Commission with the terms of reference for the Stalking inquiry on 17 February 2021. See page v for the terms of reference.

Interim report

- 1.2 The Commission was asked to provide an interim report and a final report. The focus of the interim report (this report) is on improving the identification of and responses to stalking by Victoria Police. Our recommendations are aimed at making a major difference both to victim survivors and those who engage in stalking. We focus on and consider how early intervention can effectively protect those experiencing stalking.
- 1.3 We highlight issues that have not traditionally been a priority of stalking reforms—such as a victim-centred process for taking disclosures seriously, supporting people who have experienced stalking, and investigating where appropriate (recognising that not all victim survivors desire a formal investigation).
- 1.4 The focus of this report is responding to stalking after it happens. However, we understand the importance of preventing stalking and that a strong response to stalking also requires more than just a strong police response. The problem of stalking begins with the offending conduct. Therefore, the focus of the final report and the basis for change is to address the conduct of those who engage in stalking behaviour. This interim report focuses on one way to address stalking conduct, which is to improve police responses and to provide earlier intervention in stalking situations. Improved understanding of what constitutes stalking underpins this.
- 1.5 The recommendations in this interim report, and those to come in the final report, seek to achieve the following improvements to the way the police and broader criminal justice system respond to stalking:
 - making it easier than it is now to disclose stalking at the earliest opportunity—especially for people who face greater barriers to reporting than others
 - improving how police understand, identify, and respond to reports of stalking
 - ensuring that every presentation to police involving alleged stalking is consistently and centrally recorded, which will reduce the potential for fragmentation of evidence
 - prioritising a focus on early intervention that is fair for people engaging in stalking, and that addresses the conduct to protect the victim and reduce recurrence of the behaviour
 - having structures to ensure that the justice system responds effectively to stalking and continues to improve its response.

Final report

- 1.6 The final report will review and report on Victoria's legal responses to stalking, including:
- 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* (Vic).
 - 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 well being
 - 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 will consider what might be learnt from:
 - 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).

Our process

Our leadership

- 1.7 The Hon. Anthony North QC was the Commission's Chair during this inquiry.
- 1.8 The Chair established a Division to guide and make decisions about the inquiry. All our Commissioners were Division members. Their names are listed on the inside front cover.

What we published

- 1.9 On 20 June 2021 we published a consultation paper to seek views on how the justice system was working and what could be improved. We invited submissions by 5 August 2021.
- 1.10 Alongside the consultation paper, we released a survey to assist those who have experienced stalking to engage with the reference by sharing their views anonymously.

Submissions we received

- 1.11 We received 115 written submissions (see Appendix A). We published the submissions on our website, apart from those that were confidential.

Consultations we held

- 1.12 We held two stages of consultations. First, we held preliminary meetings with people who worked in the justice system, such as members of Victoria Police and the courts, to help us understand the main issues and start identifying areas for reform. We also spoke to academics and forensic psychologists who had studied this area. Along with our own research, these meetings helped us develop our consultation paper.
- 1.13 Second, after the release of the consultation paper, we held formal consultations with a wide range of people, including victim survivors, community and victim advocacy and support organisations, disability services, academics, Victoria Police, the legal profession, and the courts. We met with people who could tell us about innovative responses to stalking in other jurisdictions.
- 1.14 We held 31 consultations (see Appendix B).
- 1.15 We organised roundtables on the topic of identifying and managing risk of serious harm and cyberstalking. We also held small group meetings with multicultural organisations, and organisations working alongside young people and people with disability.
- 1.16 Due to coronavirus (COVID-19) restrictions, most of our consultations were held online.
- 1.17 We had planned to meet with people who had engaged in stalking behaviour, but the process needed to run these meetings ethically could not be managed in our interim report's timeframe. We intend to discuss these issues in the final report.
- 1.18 We received valuable informal advice and help from many people who work in the area of stalking research, forensic mental health, and the justice system more broadly. We are grateful to these people for contributing to our inquiry.
- 1.19 We extend our special thanks to all the people who have experienced stalking who contributed to our inquiry. We appreciate the thought, care and courage that went into what they told us. Their ideas and voices are in this report. We expect they will shape changes that will benefit others.

Our broader public engagement on Engage Victoria

- 1.20 In addition to submissions and consultations, people who had experienced stalking could tell us their views through an online form, available on the Engage Victoria website from 24 June 2021 to 18 August 2021.
- 1.21 The form could be completed anonymously. It consisted of 22 questions, including questions about experiences of reporting stalking to police, and ideas about how to improve early intervention. We received 254 contributions from 228 contributors.
- 1.22 Most respondents identified as female (202). We received 22 responses from people identifying as LGBTQIA+, 31 people identifying as disabled, 40 people living in a rural or regional community, 29 young people (18–25 years), seven older people (65 years and older) and four people identifying as working in the sex industry. We received responses from 12 people identifying as migrants or refugees, and six as Aboriginal and Torres Strait Islander people.
- 1.23 The valuable insights we gained from those who completed the survey inform this report and its recommendations. We are grateful to everyone who responded.

How we made sure our process was ethical

- 1.24 We developed an ethical governance framework for working with people who have experienced stalking. This included:
- prioritising engagement with people who have experienced stalking
 - prioritising engagement with people who face greater barriers to accessing justice because of factors such as race, gender, socio-economic position, visa status and/or disability
 - training and support for the research and policy team on responding to stalking victim/survivors who may have a high level of unresolved trauma
 - including content warnings in our publications.

The scope of this inquiry

- 1.25 Our focus has been on issues that have not been recently reviewed. For example, the Royal Commission into Family Violence (2016) considered the issue of stalking in the context of family violence and post-separation. We have regard to this work but focus explicitly on non-family violence stalking.
- 1.26 While we make some recommendations about Personal Safety Intervention Orders (PSIOs) in this report, the final report will be the document in which we address the underpinning statutory framework for PSIOs.
- 1.27 This report focuses on stalking. We distinguish stalking from other conduct, such as harassment or interpersonal disputes, that can form the basis of a PSIO.

Key terms

- 1.28 In the paragraphs below, we explain some key terms that we use in this report.
- 1.29 We understand that the best terms to use can change and people often disagree about the right terms to use. For example, we used victim survivor (a term recognising their resilience as well as their victimisation) throughout our report to refer to those who have experienced stalking. However, we recognise that experiencing violence does not and should not define a person's life and that some people may prefer other terms to describe their experience.
- 1.30 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 impacts of stalking, which is a serious crime in our community.
- 1.31 We use a gendered lens in our report. While anyone can experience stalking regardless of gender, it is a gendered crime, disproportionately perpetrated by cis-gender men against women, other men, and people on the gender spectrum.¹ Such gendered violence is enabled by the unequal structures of society.²

Our approach to reform for this interim report

- 1.32 In developing our recommendations, we were guided by our terms of reference, which define the scope of this inquiry. We have also developed key considerations for our reforms based on what we know about stalking and the justice system, past reforms, and what the evidence suggests works in responding to such violence.

¹ Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) 4.

² Jacqui True, 'The Political Economy of Violence against Women: A Feminist International Relations Perspective' (2010) 32(1) *Australian Feminist Law Journal* 39.

- 1.33 In making our recommendations for reform, these were the guiding considerations:
- Reporting stalking should be made straightforward for victim survivors.
 - The police response to stalking should identify and respond promptly and effectively to stalking, taking into account the diverse needs of victim survivors and those who engage in stalking.
 - The police should focus on early intervention where possible.

Recognising the diversity of experiences

- 1.34 We recognise that our community is diverse and so are people's experiences of stalking and seeking justice. Each person who has experienced stalking will have different personal and structural factors that impact their experience.
- 1.35 We also recognise that Aboriginal and Torres Strait Islander people are more likely to experience victimisation than non-Indigenous people and are overrepresented in custody. Aboriginal and Torres Strait Islander people are seven times more likely to be charged with a criminal offence and appear before the courts than non-Indigenous people.³
- 1.36 Further, Aboriginal and Torres Strait Islander young people are more likely to be arrested than non-Indigenous young people, and less likely to be cautioned or to receive a summons than non-Indigenous young people.⁴
- 1.37 Police must ensure that discretion is exercised appropriately where it comes to arrest, particularly in regard to Aboriginal and Torres Strait Islander peoples. Police must ensure that arrest remains an action of genuine 'last resort'.⁵
- 1.38 The best way of ensuring this is through appropriate and effective early intervention to reports of stalking. This means using a range of alternatives such as warnings or cautions. These alternatives are outlined in legislation and guidance manuals for police.⁶
- 1.39 It is more difficult for some people and groups to access the justice system than others. They might find it harder than others to report their experience. They might find it harder than others to be heard and believed, and to get a just outcome. This might be because they did not realise what happened to them was a crime, or because the justice system has treated them unfairly in the past. It could be because our justice system is still based on the experiences of some groups, but not others.
- 1.40 There is very little research on how victim survivors of stalking understand justice, including what they expect from police and the justice system, and where they believe the policing response to stalking has succeeded or failed. It can be difficult to prove stalking to the criminal law standard of beyond reasonable doubt. Often this difficulty is made worse by police not taking reports seriously from the first disclosure or presentation. In this inquiry we heard from victim survivors about their experiences of reporting stalking to police. We refer to those experiences in our report.
- 1.41 This is an opportunity to deliver changes that will fundamentally improve responses to stalking. Our report proposes systemic improvements to the way police deal with the crime of stalking, specifically:
- interviewing and communicating with victim survivors
 - gathering, recording, and managing evidence
 - the investigation of cases.

3 Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) <<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/executive-summary-15/disproportionate-incarceration-rate/>>.

4 Ibid.

5 Ibid.

6 Ibid.

- 1.42 We have prioritised our recommendations in terms of early intervention. People who report stalking to police should receive a response that results in early intervention and stops the stalking situation. Informing people about these improvements might also encourage reporting. Therefore, priority should be given to those reforms that will improve what happens when stalking is first reported, and lead to effective early intervention by Victoria Police and the criminal justice system.

Our recommendations for change

- 1.43 At the heart of this reference is the death of Celeste Manno. The tragic death of a young Victorian reminds us of the importance of this law reform work.
- 1.44 During the course of this reference it became clear that stalking is an invisible crime, frequently not recognised by police and even by those who experience it. It is often minimised or trivialised, and victim survivors are often expected to manage the situation on their own.
- 1.45 The Commission has been requested by the Attorney-General to produce two reports as part of this reference: an interim report (this report) and a final report, which is due to be provided to the Attorney-General by 30 June 2022. This interim report contains recommendations on the topic of strengthening police responses to stalking. We heard from victim survivors, and through submissions received, that stalking is often not identified by Victoria Police at the point of first disclosure of a distressing experience by victim survivors. This undermines the police response as an early intervention.
- 1.46 For that reason, the interim report focuses on improving practices within Victoria Police. We recommend changes to the entire process of a report to police of stalking, including:
- implementing specialised interviewing and gathering of evidence
 - improving communications with victim survivors of stalking
 - strengthening record keeping
 - implementing guidance for what action should be taken.
- 1.47 Providing for early intervention to prevent persistent stalking, escalation, and serious harm and/or outcomes, would be a tangible acknowledgement by the government and Victoria Police of the community's concern.

The process from here

- 1.48 This interim report will be delivered to the Attorney-General by 31 December 2021. The final report is due by 30 June 2022.

CHAPTER
02

Identifying stalking and taking it seriously

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2. Identifying stalking and taking it seriously

Overview

- The focus of this report is on early intervention and timely and appropriate police responses to stalking behaviour
- Our work has been shaped by what is known from the existing research, and what stakeholders and victim survivors told us in this inquiry
- There is little research into the police response to non-family violence stalking, or victim survivors' experiences in reporting stalking to police. This reference contributes new knowledge to this important yet understudied topic.
- This chapter identifies the main issues police encounter in identifying and responding to reports of stalking. We aim to address these issues through our reforms
- We heard that stalking is not always identified by police or by victim survivors themselves
- We heard from victim survivors that people, including police, often dismiss or minimise their experience of stalking
- We also heard from victim survivors that police do not always formally record reports of stalking. This was echoed in submissions from organisations who provide free legal assistance
- Our recommendations focus on meeting the needs of victim survivors of stalking.

Defining and understanding stalking

- 2.1 Stalking is a social problem that is not widely understood. The material covered in this section will be discussed in more detail in the final report. However, we have endeavoured to provide sufficient detail here to contextualise the interim report.
- 2.2 Stalking involves intrusive behaviour often in the form of unwanted communication.¹ It can involve unwanted contact, property damage, and entering the victim survivor's home.²
- 2.3 Stalking is a complex crime because some of the behaviours are lawful under ordinary circumstances, such as sending text messages or leaving gifts. However, when such otherwise lawful behaviours are uninvited, intrusive, or persistent, they may constitute the offence of stalking.
- 2.4 In Victoria a person stalks another person if they engage in a course of conduct 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. 'Course of conduct' has been interpreted by the courts to mean that the accused's acts must have shown a 'continuity of purpose' in relation to the victim.³

1 Troy E McEwan, Paul E Mullen and Rachel MacKenzie, 'A Study of the Predictors of Persistence in Stalking Situations' (2009) 33(2) *Law & Human Behavior* 149.

2 *Ibid.*

3 *Berlyn v Brouskos* [2002] VSC 377, (2002) 134 A Crim R 111.

At the minimum this requires the acts to have been committed on more than one occasion, or to have been protracted.⁴ A course of conduct is not simply about the duration or intensity of the conduct. The continuity of purpose is needed as well.⁵

2.5 The Victorian legislation provides an extensive list of the types of acts that could be part of a course of conduct. Some of the behaviours are not offences individually, for example, contacting or following someone is not a crime in itself. This can make it a challenge to recognise, investigate and prove stalking.

2.6 As defined under section 21A of the *Crimes Act 1958* (Vic), a person stalks another person if they engage in a course of conduct which includes any of the following:

- following the victim or any other person
- 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;
- publishing on the internet or by 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;
- causing an unauthorised computer function in a computer owned or used by the victim or any other person;
- tracing the victim's or any other person's use of the internet or e-mail or other electronic communications;
- 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;
- interfering with property in the victim's or any other person's possession;
- making threats to the victim;
- using abusive or offensive words to or in the presence of the victim;
- performing abusive or offensive acts in the presence of the victim;
- directing abusive or offensive acts towards the victim;
- 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;
- keeping the victim or any other person under surveillance
- 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—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.

2.7 Stalking can have a debilitating impact on those who experience it. It can cause significant harm to victim survivors' mental and physical health. If not addressed, stalking can escalate to other types of serious offending, including explicit threats, or serious physical and/or sexual violence.⁶

2.8 While there have been increasing efforts to understand and address the issue of stalking in a family violence or post-separation intimate partner context, less attention has been given to non-family violence stalking.

4

Ibid.

5

Crimes Act 1958 (Vic) s 21A(2); *Nadarajamoorthy v Moreton* [2003] VSC 283.

6

Troy E McEwan, Paul E Mullen and Rachel MacKenzie, 'A Study of the Predictors of Persistence in Stalking Situations' (2009) 33(2) *Law & Human Behavior* 149.

- 2.9 Stalking is a serious and relatively common crime. It is estimated that from the age of 14, 17 per cent of women and 6.5 per cent of men have been a victim of stalking at least once in their lifetime.⁷ Men are more likely to be stalked by another male than by a female.⁸ Although stalking can be experienced by anyone regardless of gender, race, age, sexuality, disability, or socioeconomic position, barriers to reporting and recovery are greater for some groups.⁹ Stalking can also be experienced differently by different people. For example:
- The prevalence of stalking victimisation is higher for Aboriginal and Torres Strait Islander women than non-Indigenous women and has a unique and far-reaching impact upon Aboriginal and Torres Strait Islander women, their families, and their communities.¹⁰
 - Women with disability or long-term health conditions are more likely than women without disability or long-term health conditions to experience stalking.¹¹
 - It is not uncommon for migrant women to experience stalking from more than one person.¹²
 - Transgender, bisexual, and queer people have the highest lifetime prevalence rates of stalking victimisation of LGBTIQIA+ communities yet the lowest rates of reporting their victimisation to police.¹³
- 2.10 The impacts of stalking on victim survivors are not well known. Stalking is often normalised in popular culture, with romanticised portrayals in film and television.¹⁴ However, the impacts can be devastating and enduring. They can include psychological symptoms and mood disturbances such as post-traumatic stress disorder, depression, anxiety, intrusive recollections and flashbacks, and difficulties sleeping.¹⁵ Stalking is also associated with physical symptoms such as gastrointestinal problems, nausea, fatigue, chronic pain, 'and exacerbations of pre-existing medical conditions like asthma, hypertension and psoriasis'.¹⁶ In tragic, although rare, situations stalking can result in suicide and homicide.¹⁷
- 2.11 Many people think that stalking can only be reported once it has reached a point of escalation; that only then will the report to be believed and acted on. This means that many of those who have committed stalking are not held accountable. It also suggests that the behaviours that constitute stalking are not well understood.

7 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Catalogue No 4906.0, 8 November 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>.

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

9 Nicola Henry et al, 'Technology-Facilitated Domestic Violence against Immigrant and Refugee Women: A Qualitative Study' (2021) *Journal of Interpersonal Violence* DOI 08862605211001465: 1–27.

10 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>>.

11 Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Catalogue No 4906.0, 8 November 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>.

12 Nicola Henry et al, 'Technology-Facilitated Domestic Violence against Immigrant and Refugee Women: A Qualitative Study' (2021) *Journal of Interpersonal Violence* DOI 08862605211001465: 1–27.

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

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

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

16 Michele Pathé, Paul E Mullen and Rosemary Purcell, 'Management of Victims of Stalking' (2001) 7(6) *Advances in Psychiatric Treatment* 399, 401.

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

The challenges in identifying stalking

I think the line between what is stalking and what is just being 'overly friendly' is blurred, so that I didn't want to speak to the police, because I didn't know if they'd say 'oh, that's not stalking, don't be ridiculous' [...] I was told point blank that there was not enough evidence despite me having witnesses, including a lecturer and having social media messages. I tried more than once to report it but was shut down every time, despite living in fear, that my experiences weren't 'enough' to proceed with.¹⁸

- 2.12 This was the experience of a young LGBTIQ+ women living in regional Victoria who reported being stalked at her university by another student.
- 2.13 As illustrated above, because the offence of stalking is not widely understood, it can be difficult to identify.
- 2.14 Victoria Police is responsible for preventing crime and identifying and investigating offences, including stalking. A comprehensive policing response to stalking must place the victim survivor at the centre, with a focus on:
- de-escalating the stalking situation
 - preventing future harm
 - holding accountable people who commit stalking
 - reducing reoffending and serious outcomes
 - making appropriate referrals to address the service needs of victim survivors, as well as those who have committed stalking.
- 2.15 We heard from the Victims of Crime Commissioner and other stakeholders that 'the primary challenge for frontline police is identifying the course of conduct/behaviours that constitute stalking'.¹⁹
- 2.16 According to submissions, 'foremost among these systemic problems is the notion that it has traditionally proved difficult, almost universally, for the relevant authorities to recognise what specifically constitutes the crime of stalking—let alone how they might respond to it'.²⁰
- 2.17 We were also told that victim survivors themselves 'frequently do not identify their experience as stalking'.²¹
- 2.18 Organisations which provide free legal assistance gave us examples highlighting that 'clients may not report earlier instances of stalking behaviour as the conduct may be subtle and may only be understood as forming part of a pattern of stalking behaviour when viewed in retrospect. This may later create difficulties in building the evidence needed to prove there has been a course of conduct'.²²

18 Victorian Law Reform Commission, *Stalking: Summary of Responses to Online Feedback Form from People with Experience of Stalking* (Report, December 2021); Kellie R Lynch and TK Logan, 'Police Officers' Attitudes and Challenges with Charging Stalking' (2015) 30(6) *Violence and Victims* 1037; 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.

19 Submission 100 (Forensicare); Submission 33 (Victims of Crime Commissioner).

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

21 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, 2020) 22; Submissions (Centre for Forensic Behavioural Science), (Forensicare).

22 Submission 95 (Springvale Monash Legal Service).

Barriers to reporting stalking and receiving a police response

- 2.19 Stalking can be difficult to disclose because of unsupportive community attitudes, which minimise and hide the real harms of stalking.
- 2.20 Research suggests the police response to stalking requires improvement.²³ Studies have linked negative experiences and inadequate police responses to police misconceptions about what behaviours constitute stalking.²⁴
- 2.21 As Forensicare explained, the consequence is 'that stalking is not recognised at court or by correctional services, and so does not receive specialist assessment or treatment through the correctional system'.²⁵
- 2.22 Due to the 'problems identifying stalking at every point of the criminal justice and mental health response', Forensicare told us that it is 'essential that [those responding] to stalking take a behavioural approach to identifying the problem rather than relying on the person being stalked identifying it "correctly" or relying on the presence of a stalking charge'.²⁶
- 2.23 The importance of identifying stalking was further emphasised by Forensicare:
failure to accurately identify stalking at the earliest opportunity means that victim safety will not be sufficiently prioritised ... and the person who is stalking will not be offered relevant services to help them stop the behaviour.²⁷
- 2.24 In order to address the needs of victim survivors and manage the harms experienced, we were told that 'the initial identification of stalking is very important'.²⁸
- 2.25 The Magistrates' Court of Victoria told us that accurate early identification is critical for making appropriate orders at court, which may de-escalate the situation:
it is about identifying if it is stalking and if it is, what kind of stalking it is. The police need to raise these flags with the court by highlighting that in their application. That information could assist the magistrate in making a tailored order.²⁹
- 2.26 This may include attaching specific conditions on PSIOs, such as, for example, an order setting out exclusion zones to prevent the person who has engaged in stalking behaviour from attending certain areas and premises.
- 2.27 It is also crucial for police to recognise the seriousness of stalking behaviour.³⁰

Stalking is not always treated by police as a serious crime

- 2.28 The evidence base on policing stalking in Victoria (and Australia) is limited. However, evidence indicates that police in other countries 'often underestimate the severity of stalking and fail to respond adequately to protect victims'.³¹

23 Jenny Korkodeilou, 'Stalking Victims, Victims of Sexual Violence and Criminal Justice System Responses: Is There a Difference or Just "Business as Usual"?' (2016) 56(2) *British Journal of Criminology* 256.

24 Ibid; 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; Lorraine Sheridan and Graham M Davies, 'What Is Stalking? The Match between Legislation and Public Perception' (2001) 6(1) *Legal and Criminological Psychology* 3.

25 Submission 100 (Forensicare).

26 Ibid.

27 Ibid.

28 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

29 Consultation 6 (Magistrates' Court of Victoria).

30 Tim Boehnlein et al, 'Responding to Stalking Victims: Perceptions, Barriers, and Directions for Future Research' (2020) 35(7) *Journal of Family Violence* 755; Kritika Jerath, Lisa Tompson and Jyoti Belur, 'Risk Management in Stalking Victims: A Multi-Agency Approach to Victim Advocacy' (2020) *Journal of Interpersonal Violence* DOI 10.1177/0886260520980402: 1-27; TK Logan and Robert Walker, 'Stalking: A Multidimensional Framework for Assessment and Safety Planning' (2017) 18(2) *Trauma, Violence, & Abuse* 200; AJ Nichols, 'Advocacy Responses to Intimate Partner Stalking: Micro, Mezzo, and Macro Level Practices' (2020) 35(7) *Journal of Family Violence* 741; 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* NP5965.

31 Kellie R Lynch and TK Logan, 'Police Officers' Attitudes and Challenges with Charging Stalking' (2015) 30(6) *Violence and Victims* 1037, 1037.

- 2.29 Stalking is often only reported to police by the person being stalked when the stalking has escalated or persisted for some time.³² One survey found that 77 per cent of victim survivors do not report stalking until the hundredth incident.³³
- 2.30 This was acknowledged by Victoria Police in its submission:
 victims often seek help and choose to report stalking to police at a point in time when behaviours towards them have already escalated, and they are in fear of their physical or mental safety.³⁴
- 2.31 Similarly, we heard from stakeholders that because what constitutes stalking is not well understood, people, including police, 'fail to take it seriously until it involves explicit threats or violence'.³⁵
- 2.32 One international study found that victim survivors criticise the way police treat disclosures of stalking,³⁶ claiming that:
- early intervention is rare
 - inadequate support is provided by police at the point of disclosure
 - victim survivors face a significant challenge in convincing police of the seriousness of the behaviour experienced.³⁷
- 2.33 This suggests a lack understanding of the harms of stalking among police.
- 2.34 Victim survivors also perceive that police will not take action upon reporting, which contributes to low reporting rates.³⁸
- 2.35 The traditional incident-based model of policing has meant that stalking is often not considered serious enough to warrant police attention.³⁹
- 2.36 This was a consistent theme in consultations with, and survey responses from, victim survivors. They told us that often their reports of stalking were dismissed by police, or not taken seriously.
- 2.37 Victim survivors told us that when they report stalking to police, they are often told that no crime has occurred, that what they are reporting is not serious enough for police to take action, or to apply for a PSIO themselves, which can compromise their safety. This can be clearly seen in the following statements from victim survivors.

Each time I went to my local station, all they would do was say, 'he hasn't broken any laws so we can't do anything'.⁴⁰

The general reaction from police was that I was an older anxious woman who lived alone and not worth their time. That I was wasting their time.⁴¹

32 Patrick Brady, Bradford Reyns 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.

33 Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, *Living in Fear: The Police and CPS Response to Harassment and Stalking* (Report, July 2017) 5.

34 Submission 115 (Victoria Police).

35 Lorraine Sheridan and Adrian J Scott, 'Perceptions of Harm: Verbal versus Physical Abuse in Stalking Scenarios' (2010) 37(4) *Criminal Justice and Behavior* 400; Submission 100 (Forensicare).

36 Jenny Korkodeilou, 'Stalking Victims, Victims of Sexual Violence and Criminal Justice System Responses: Is There a Difference or Just "Business as Usual"?' (2016) 56(2) *British Journal of Criminology* 256.

37 Ibid.

38 Ibid 4.

39 Thomas Holt et al, 'Examining Perceptions of Online Harassment among Constables in England and Wales' (2019) 2(1) *International Journal of Cybersecurity Intelligence & Cybercrime* 24.

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

41 Ibid.

- 2.38 The issue of not being believed by police was particularly acute for victim survivors living in regional, rural, or remote areas:
- In a small regional town where the police are related to many older residents of the town, newcomers like me are severely hampered and not believed.⁴²
- 2.39 This issue was also highlighted in submissions by organisations which provide free legal assistance:
- [clients often perceive] that police have not taken their complaints seriously. Clients frequently report police declining to take a statement, or declining to charge the person, usually on the grounds that there is insufficient evidence.⁴³
- 2.40 The Law Institute of Victoria expressed concern that 'stalking complaints are not afforded serious consideration by law enforcement agencies, particularly as a course of conduct can involve behaviour which would otherwise be lawful'.⁴⁴
- 2.41 Victim survivors spoke of instances where police had minimised the stalking even where it involved a physical attack.

The perpetrator had me bailed up in the garage—the 000-operator listened, and then informed me that he wouldn't send the police as I was wasting police time. And they had better things to do. This is actually what he said as I was sobbing for help and a 6-foot-4 man was rattling the door. And he had already attacked me.⁴⁵

I called 000 and went to the local police station as that was what I was advised to do. When I presented at the counter, I was terrified as it had just happened—and right outside the police station. When I asked her what I needed to do, the policewoman yelled at me and said, 'What am I supposed to do?'.⁴⁶

- 2.42 Submissions from members of the public informed us that 'police are often busy and "flippant" in their attitude to a "minor" stalking matter'.⁴⁷
- 2.43 We were also told in submissions that police need to be 'less victim blaming'.⁴⁸ One submission provided the example of a client who 'was berated by police for having CCTV footage of the front footpath [which] clearly showed stalking behaviour from the offender, however that wasn't the police officer's focus'.⁴⁹
- 2.44 Organisations which provide free legal assistance explained that this lack of police response is compounded for certain groups:
- we have encountered instances whereby clients who experience intersectional disadvantage based on, for example, their gender, race, disability, or low proficiency in English, have felt they have not been taken seriously by police. There does seem to be inconsistencies in the way that police interact with particular cohorts of complainants.⁵⁰

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

43 Submission 95 (Springvale Monash Legal Service).

44 Submission 98 (Law Institute of Victoria).

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

46 Ibid.

47 Submission 6 (name withheld).

48 Ibid.

49 Ibid.

50 Submission 95 (Springvale Monash Legal Service).

- 2.45 Similarly, Victorian Pride Lobby told us of the particular 'minimisation of LGBTIQ+ people's experiences of stalking and harassment'.⁵¹ Given people within these communities have the lowest rates of reporting stalking to police, the safety and justice response potentially offered through reporting stalking to police, are not equally accessible for all Victorians.
- 2.46 We were told that victim survivors of stalking 'who experience intersectional disadvantage based on, for example, their gender, race, disability, or low proficiency in English', may decide 'not to pursue their matter further given their past interactions with police ... [and losing] their sense of confidence in law enforcement and our legal system'.⁵²
- 2.47 If police do not act on complaints of stalking, or otherwise underestimate their seriousness, it can place people at risk of significant harm, especially where the victim of stalking is reporting a situation that is persistent and/or escalating.
- 2.48 Rather than dismissing and minimising allegations of stalking, Victoria Police must ensure that all disclosures of stalking are taken seriously. There is a need for further education on what constitutes stalking and the nature and extent of the harms, in order to overcome dominant misconceptions.

Key misconceptions

- 2.49 A key misconception is that 'real' stalking is perpetrated by a person who is a stranger to the victim.
- 2.50 One study suggests that there are parallels between perceptions of stalking and perceptions of rape. Victim survivors of rape are more likely to be considered credible where the perpetrator is a stranger.⁵³
- 2.51 Similar myths and misunderstandings persist in the context of stalking, despite stranger-related stalking being the least common form. Most stalking is perpetrated by someone known to the victim, is more likely to persist over a longer duration, and less likely to result in conviction.⁵⁴

The differences between family violence stalking and non-family violence stalking

- 2.52 To address the issue of misconceptions, in some international jurisdictions stalking cases are handled by specialist domestic violence units within police departments.⁵⁵
- 2.53 However, there are good reasons not to draw resources from specialist domestic violence services. Non-family violence stalking is a distinct crime requiring a distinct response.⁵⁶
- 2.54 We were told that 'while there is some overlap between family violence and stalking, the dynamics typically differ' and the specialist family violence response 'will not effectively address the stalking situation'.⁵⁷
- 2.55 Furthermore, 'stalking will not have the same volume of cases as family violence to warrant the same scope of specialist response',⁵⁸ and using 'such resources will not be appropriate for many of those stalked by strangers or acquaintances'.⁵⁹

51 Submission 39 (Victorian Pride Lobby).

52 Submission 95 (Springvale Monash Legal Service).

53 Michelle Weller, Lorraine Hope and Lorraine Sheridan, 'Police and Public Perceptions of Stalking: The Role of Prior Victim-Offender Relationship' (2013) 28(2) *Journal of Interpersonal Violence* 320, 323.

54 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.

55 Michelle Weller, Lorraine Hope and Lorraine Sheridan, 'Police and Public Perceptions of Stalking: The Role of Prior Victim-Offender Relationship' (2013) 28(2) *Journal of Interpersonal Violence* 320.

56 Ibid.

57 Submission 32 (Centre for Forensic Behavioural Science).

58 Consultation 1 (Centre for Forensic Behavioural Science).

59 Ibid.

- 2.56 It is therefore important to examine how '[police]—particularly those who are not located within specialist units—perceive stalking and the extent to which prior relationship mediates their assessment of the situation'.⁶⁰
- 2.57 Research on police responses to stalking indicates that experience in handling stalking cases 'mitigated some prevalent stereotypical beliefs concerning stalking (e.g., victim responsibility)'.⁶¹
- 2.58 This gives weight to the suggestion 'that further training is necessary to combat common misconceptions surrounding stalking'.⁶² It also suggests that traditional incident-based responses from police may not be suitable for stalking, which involves a course of conduct.⁶³ Traditional incident-based responses typically involve individual offences, whereas the course of conduct underlying stalking often includes one or more of the (individually) lawful behaviours listed in s.21A(2).

Training

- 2.59 It was submitted that victim survivors of stalking:
- may describe the behaviour they are experiencing as stalking, but often people report particular behaviours that are causing them fear or distress or a particular incident that has caused them to seek help. It is therefore important that the person receiving the report knows to ask about a potential course of conduct to ascertain if stalking is present.⁶⁴
- 2.60 We heard from victim survivors about instances where what they reported was not responded to as stalking, or where police were dismissive of the report.

I told my husband that the new neighbour was stalking me. He was parking up the road for up to 3 hours at a time. My phone was being rung at all hours of the night. I had to take message bank off my phone because there were vile messages left. There were death threats, enquiry by funeral parlour and there was life insurance company that contacted me, when I had not requested that. [...] Police said there was nothing they could do unless something happened.⁶⁵

- 2.61 This was the experience of an Aboriginal woman living in regional Victoria who tried to report stalking to her local police station.
- 2.62 The Federation of Community Legal Centres stated that 'police responses to stalking could be strengthened by increasing police training on stalking'.⁶⁶
- 2.63 The need for further training is highlighted in the following survey response from a victim survivor: 'You cannot talk to untrained officers about this subject as they DON'T understand the seriousness'.⁶⁷
- 2.64 This point was similarly emphasised by experts on stalking and the risk of serious harm and/or outcomes.

60 Michelle Weller, Lorraine Hope and Lorraine Sheridan, 'Police and Public Perceptions of Stalking: The Role of Prior Victim-Offender Relationship' (2013) 28(2) *Journal of Interpersonal Violence* 320, 325.

61 *Ibid.* 320.

62 *Ibid.*

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

64 Submission 32 (Centre for Forensic Behavioural Science).

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

66 Submission 97 (Federation of Community Legal Centres).

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

- 2.65 As one stakeholder explained:
- Extensive training on identification of stalking should be mandatory for all professionals working with victims of stalking, including police and the courts. Training should also identify trigger points of escalating behaviour that do not fit conventional stalking behaviours ... We need to identify that there are barriers to reporting as well, particularly for Aboriginal and Torres Strait Islander women. Police must be required to investigate all complaints of stalking and avoid making judgments based on the victim's evidence or lack thereof.⁶⁸
- 2.66 While police receive intensive training in family violence, stakeholders submitted that:
- even then, they are not always consistent. The lessons from family violence training are the need for simple tools that make it easy for police to identify when they are in a scenario where a specific approach is required.⁶⁹
- 2.67 Some stakeholders supported the idea of stalking specialisation within Victoria Police, but others queried the need for specialist police: 'A better approach might be to train the existing service. Stalking is not an isolated crime and may also be part of other crimes perpetrated against the same woman'.⁷⁰
- 2.68 It is evident based on the examples provided from victim survivors above that further training and cultural change is needed within Victoria Police. Police should understand the nature and dynamics of stalking, and the associated factors which may give rise to risk of harm and/or serious outcomes.⁷¹
- 2.69 Through cultural change within Victoria Police, greater recognition of stalking may filter into the community. Those who experience stalking may be able to make a report sooner than is currently the case, and they may access intervention and safety earlier.
- 2.70 However, stalking cases are difficult for police to effectively identify and respond to. We were told in submissions that 'there are barriers to recognising stalking at every point in the intervention process'.⁷²
- 2.71 Submissions stated that 'it may not be possible for everyone to receive specialist training', and in recognition of the limitations of training alone, it was submitted that guidance should be provided. We were told that police should be 'given enough information to know how to identify stalking and what the referral process [after stalking is identified] should be'.⁷³
- 2.72 As the Centre for Forensic Behavioural Science submitted:
- it is important to differentiate between frameworks for identifying stalking and gathering necessary information about it, and risk assessment. It can be useful for agencies to have a standardised framework to help them identify when stalking might be present, and then gather information about the stalking that is necessary to provide useful advice to the person being stalked, and to inform later risk assessment.⁷⁴
- 2.73 The first step is therefore improving the identification of stalking conduct. We discuss the need for specific guidance in the next chapter.

68 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

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

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

71 Bethany L. Backes et al., 'The Criminal Justice System Response to Intimate Partner Stalking: A Systematic Review of Quantitative and Qualitative Research' (2020) 35(7) *Journal of Family Violence* 665; Patrick Q Brady and Matt R Nobles, 'The Dark Figure of Stalking—Examining Law Enforcement Response' (2017) 32(20) *Journal of Interpersonal Violence* 3149; Nelli Purovarsi, Viivi Ruotanen and Juha Holma, 'Female Survivors' Experiences of Authorities' Actions in Cases of Partner Stalking' (2020) 4(2) *Journal of Gender-Based Violence* 173.

72 Submission 100 (Forensicare).

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

74 Submission 32 (Centre for Forensic Behavioural Science).

Recommendations

- 1 Victoria Police should engage with appropriate experts to provide training to enhance the understanding of frontline police to identify stalking behaviours as set out in the Act.
- 2 Victoria Police should develop guidance for frontline police on interviewing and communicating with victim survivors of stalking, with the aim of improving the gathering, recording, and management of evidence and the investigation of cases.

Guidance to assist police to identify stalking

- 22** Overview
- 22** Police need better guidance for identifying and responding to stalking
- 23** Step one: Identifying stalking
- 23** Step two: Getting the whole story from the victim survivor
- 25** Step three: Deciding the appropriate response
- 27** Step four: Making appropriate external referrals

3. Guidance to assist police to identify stalking

Overview

- We heard in this inquiry that guidance should be developed for Victoria Police to identify stalking behaviour.
- Many stakeholders, including Victoria Police, suggested a tiered approach to identifying and responding to stalking is required.
- This chapter discusses the relevant information this guidance should contain.

Police need better guidance for identifying and responding to stalking

- 3.1 Victoria Police has only minimal guidance for identifying and responding to stalking.
- 3.2 We were told that 'there [can] be no doubt that serious changes need to be made to the ways in which stalking cases are viewed and handled by the relevant authorities'.¹ This view was expressed in several submissions.
- 3.3 Forensicare suggested that 'internal procedures [are] required to facilitate identification and routine risk assessment and management of stalking cases'.²
- 3.4 The Centre for Forensic Behavioural Science submitted:
approaches for identifying stalking will differ depending on the agency involved. In agencies or organisations that have a primary responsibility for responding to stalking (eg police), there is an argument for having a standardised system to guide information seeking so that stalking is routinely identified.³
- 3.5 Guidance 'may take the form of a tiered approach in both police and victim services to ensure victim survivors receive the right support and response'.⁴
- 3.6 Similarly, Forensicare advocated a tiered approach:
stalking is by definition harmful and so should receive a response regardless of whether a risk of serious harm is identified. ... [responses] need to be tiered so that appropriate levels of information and support are offered in cases where the risk of serious harm is lower, while more intensive risk management and treatment of the person who is stalking is applied in cases where the risk of serious harm is higher.⁵

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

2 Submission 100 (Forensicare).

3 Submission 32 (Centre for Forensic Behavioural Science).

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

5 Submission 100 (Forensicare).

A four-step process

3.7 Forensicare provided a clear overview of what a tiered approach would look like:

[a tiered approach] would involve relatively rapid information gathering and screening for immediate concern at the first level ... Cases screened as being of standard concern go on to receive a routine response and very basic preventative responses (eg providing information to the person reporting, possibly a stop conversation or PSIO), while those at elevated concern receive additional ongoing case management to manage risk (with varying degrees of urgency) and potentially further specialist comprehensive assessment to guide subsequent interventions. The highest risk stalking cases will require some level of multi-agency cooperation to manage effectively and prevent harm to the person being stalked.⁶

Step one: Identifying stalking

3.8 Victoria Police similarly explained that 'a tiered responses is needed'.⁷ The first step is to identify the presence of stalking by asking the right questions to elicit sufficient information about the situation.⁸

3.9 The Centre for Forensic Behavioural Science suggested that guidance for police:

might involve having certain triggers for using a structured framework or decision tree that can guide the assessor to identify the key components of stalking (eg repetition, unwanted nature of contact, fear/distress in the target) and determine whether stalking is present or not.⁹

3.10 The Centre for Forensic Behavioural Science also suggested:

once stalking is reported and recognised, it needs to be immediately assessed with the victim's safety in mind. This requires adequate knowledge on the part of the professional receiving the report, but also a system that will allow professionals to screen for the presence of stalking and level of risk or concern.¹⁰

3.11 The exact process for identifying stalking behaviours and assessing the level of concern in a given stalking situation is a contentious issue. This will be discussed in detail in Chapter 4.

Step two: Getting the whole story from the victim survivor

3.12 Step two, once stalking has been identified, is for police to 'go on to gather further information about the stalking episode'.¹¹

3.13 Currently, there is no specific framework for gathering further evidence in the context of stalking. We make recommendations about this process in Chapter 5, where we discuss in detail the Whole Story investigation framework. Here we discuss the current difficulties and limitations in gathering information about stalking.

3.14 The Centre for Forensic Behavioural Science submitted that:

in addition to implementing [guidance for the identification of stalking behaviours, and information gathering] for [police], it is essential that this information is recorded in an accessible and communicable way. Research has shown that people who are being stalked report that having to repeatedly explain what is happening to them to a new person is frustrating and stressful and contributes to failure to report stalking.¹²

6 Submission 100 (Forensicare).

7 Consultation 3 (Victoria Police).

8 Ibid.

9 Submission 32 (Centre for Forensic Behavioural Science).

10 Ibid.

11 Ibid.

12 Ibid.

- 3.15 This is important given that, legally, 'stalking is not a discrete event'. Therefore:
requiring victims to repeatedly speak to different people who have no knowledge of their previous police reports also means information is fragmented and potentially lost, including information that could be crucial to assessing the level of risk or concern.¹³
- 3.16 Victim survivors similarly highlighted the issue of being required to repeatedly recount their traumatic experiences. One victim survivor explained:
it took a really long time to get [the Victoria Police Criminal Investigation Unit] involved to get the evidence to tie it all together. It took a long time to get a case worker with the police—it took two IVOs and so many statements to different police ... Police weren't talking to each other. Once you give them evidence, it goes into their 'lock up' ... Then [the case worker] was collating everything with the 28 charges and was waiting on the [evidence] I had given another police member. There were so many missing reports. Other witnesses involved were going to [another] police station and lodging their own complaints in relation to [one of the] stalking incidents. They had made formal complaints with statements and we don't have them.¹⁴
- 3.17 The Victims of Crime Commissioner noted the potential benefits of having a single point of contact within Victoria Police for reports of stalking:
Victoria Police's ability to provide a single point of contact for stalking victims should also be explored. Firstly, this would improve police capacity to monitor risk and observe potential escalation in behaviour. Secondly, it would also minimise the burden on victims to continually re-tell their story.¹⁵
- 3.18 Other submissions similarly suggested that the third step of the tiered approach should be that:
people who are identified as being stalked be assigned a contact within the agency they are reporting to who knows the case. This can be supplemented by IT systems that ensure that stalking victims are flagged so that summary information is easily accessed as soon as a further report is made.¹⁶
- 3.19 It was acknowledged that 'this can be complex in criminal justice systems that are typically incident based rather than facilitating recording of a course of conduct that persists over time'.¹⁷
- 3.20 Nevertheless, the Centre for Forensic Behavioural Science said:
creating flags in police systems and court records that allow easy identification of the course of conduct and the need to respond in kind is essential to ensuring that changes in risk can be monitored and risk management adapted appropriately.¹⁸
- 3.21 Furthermore:
effective case management in a stalking situation requires a designated person being responsible for oversight of the case, who can conduct ongoing assessments about the level of concern that is present in the case over time.¹⁹
- 3.22 However, although there may be benefits in assigning a single point of contact within Victoria Police for reports of stalking, the benefits are likely outweighed by the practical difficulties. Instead, a more achievable option would be for Victoria Police to ensure that all reports of stalking are recorded, including where no offence is detected. Victoria Police must also ensure that reports are accessible and can be retrieved when a new police member is dealing with a victim survivor who has made a previous report. This would reduce the need for victim survivors to re-tell their story. Improved recording of stalking reports, alongside use of the Whole Story framework for investigating stalking (see Chapter 5), could achieve the intended aims of assigning a single point of contact.

13 Ibid.
14 Submission 70 (Di McDonald).
15 Submission 49 (Victims of Crime Commissioner).
16 Submission 32 (Centre for Forensic Behavioural Science).
17 Ibid.
18 Ibid.
19 Ibid.

- 3.23 It was explained that 'assessing immediate level of concern ... does not connote any judgement about the likelihood of future behaviour, merely that there is increased concern that something might occur based on what is known at a given point in time'.²⁰ We were told that this can be done based on the information available.²¹ As such, the VLRC considers the most evidence-based method for police to determine the level of concern in a given stalking situation is through the use of the Whole Story framework.

Step three: Deciding the appropriate response

- 3.24 The third step is assessing the appropriate response to a given stalking situation. Victoria Police has a wide range of options available to respond to stalking. The options take into account various issues, including over-policing in Aboriginal and Torres Strait Islander communities. The police response can include:

- cautions
- applying for a PSIO (a court order to protect a person, their children and their property from another person's behaviour)
- further investigating the situation
- filing charges.

- 3.25 To decide the appropriate response, the Centre for Forensic Behavioural Science discussed the need to determine the level of concern in a stalking situation. It explained that the 'level of concern' or the 'identification of escalation of risk' is a useful way of guiding what intervention options police should use. It submitted that the risk of 'serious harm ... should be defined broadly as the risk of persistent stalking, the risk of physical violence (including sexual violence), or the risk of the stalking recommencing'.²²

- 3.26 However, while risk and the escalation of risk may be relevant to procedural discretions, such as bail, it is technically less relevant to the question of whether the available evidence (about incidents of certain behaviours) is enough to justify applying for a PSIO, further investigating the stalking, or filing a charge. It is important to note that the role of police is not to decide the level of concern, but whether those responses are justified.

- 3.27 In relation to PSIOs, we were told that victim survivors are advised, as a 'default response' by police, to apply for a PSIO as a protected person.²³ This is despite the fact that police can apply for a PSIO when they believe that a person needs protection. Police can apply even if the protected person does not want an order to be made.

- 3.28 The Centre for Forensic Behavioural Science submitted that police advise victim survivors to apply for a PSIO 'rather than considering whether stalking is actually present',²⁴ and that victim survivors are frequently advised by police 'to apply for a PSIO as a first step'.²⁵ The Centre for Forensic Behavioural Science explained:

This is problematic as there is no consideration of the characteristics of the individual case, meaning that people who are being stalked may have an inaccurate sense that they are safe due to the order, even though the order could actually exacerbate their risk. Putting an order in place also places the onus of responding on the victim, who must observe the breach, notify police, and often collect evidence that the breach occurred. Even when people are able to do these things, police are often slow to react to reports and lack knowledge about effective enforcement options, which is frustrating for victims and can contribute to distrust of the police.²⁶

20 Ibid.
 21 Ibid.
 22 Ibid.
 23 Ibid.
 24 Ibid.
 25 Ibid.
 26 Ibid.

- 3.29 Several victim survivors expressed dissatisfaction with police where police did not apply for the PSIO on their behalf. Victim survivors explained that this made them feel as though they were expected to manage the stalking situation on their own.

I told the police officer on the phone that my stalker had said they were going to send me to my grave but that isn't detailed enough for them to act.²⁷

The police sounded as though I was bothering him and his only advice to me was to go to a local magistrates' court and get an intervention order. The police officer also asked me if the stalker knew where I lived, and I said, "yes". He advised me if I see his car around my house then to call 000. Well, if it comes to that, it's too late, isn't it?²⁸

I think more than anything a police officer could act as though they are concerned for me and investigate into the stalker that I am reporting instead of just telling me to go and get an intervention order.²⁹

The second officer [I saw], made an appointment for me to come in the next day so I could give a statement and he would help me to get a PSIO ... However, he was called out of the station when I got there. The constable who came to reception said, 'there's no appointment. Go home' ... I ended up just physically going into the court and applying for the IVO myself. I don't blame the officer for being called out of the station. I am angry that other officers do not take stalking seriously and treat victims like they are behaving irrationally. What worked? One officer was willing to help me get an IVO, even if it didn't happen via police, and he spoke to me like he genuinely cared, wanting to be helpful.³⁰

The sixth officer [I saw] has taken all the evidence, walked me through the process of making a statement and how they will investigate and finally [it] feels like I will get somewhere.³¹

- 3.30 To address this issue, the Centre for Forensic Behavioural Science submitted that victim survivors 'should be provided with advice and guidance if a PSIO is issued and potential risks and benefits weighed and managed'.³²

- 3.31 Although there is limited research on the topic, there is some research that suggests intervention orders can be an effective protection measure in some circumstances.³³

- 3.32 It was submitted that the effectiveness of PSIOs is 'dependent upon the nature of the stalking situation'. For example:

In low concern cases they can act as a formal 'warning', indicating that people have noticed the behaviour and that it will not be tolerated. This is likely to be effective in bringing the stalking to a halt ... In more concerning cases however, an intervention order is likely to be less effective as a protective measure and may simply be a tool that allows police to pursue criminal charges when the order is breached.³⁴

- 3.33 The Centre for Forensic Behavioural Science further stated that 'PSIOs can be useful if they are viewed as one [tool in] a suite of tools and strategies ... to deal with stalking cases [where] they are used in a targeted way'.³⁵

- 3.34 We were told in submissions and in responses to our survey that instead of the default position of police advising victim survivors to apply for a PSIO, a better approach is for

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

28 Ibid.

29 Ibid.

30 Ibid.

31 Ibid.

32 Ibid.

33 J Reid Meloy et al. 'Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence toward Protectees.' (1997) 34(4) *Psychotherapy: Theory, Research, Practice, Training* 447.

34 Submission 32 (Centre for Forensic Behavioural Science).

35 Ibid.

police to initiate applications.

- 3.35 Victoria Police embraced the notion of police-initiated PSIO applications. However, Victoria Police also expressed caution, agreeing with the Centre for Forensic Behavioural Science that in some stalking situations a PSIO can exacerbate the situation and heighten the risk of harm to the victim survivor.³⁶ Victoria Police agreed that careful consideration as to the appropriate interventions should be given to reports of stalking.
- 3.36 Victoria Police should be the agency responsible for initiating PSIO applications on behalf of victim survivors, where the reporting of a stalking matter to police justifies the immediate protection of a PSIO, and where it is safe to do so. A more detailed consideration of the procedure relating to PSIOs will be covered in the final report. The discussion about PSIOs provided here is the basis for the recommendations made in this interim report.

Step four: Making appropriate external referrals

- 3.37 The fourth step requires Victoria Police to make referrals to appropriate external agencies and/or services. Victoria Police should refer victim survivors to appropriate external services for support. It should also refer cases requiring a more comprehensive assessment to appropriate external agencies. This was supported by organisations with expertise in the area of stalking.³⁷
- 3.38 Organisations providing free legal assistance submitted that individuals who engage in stalking should receive 'timely access to tailored, high-quality treatment where it is identified that it may be effective in addressing any underlying health concerns which may drive stalking behaviour'.³⁸ Timely access to treatment and services is key to early intervention. It is also key to police using cautioning and diversionary tools in appropriate cases. Most importantly, it focuses on addressing the behaviour of those who engage in stalking behaviours and not just through more policing.
- 3.39 The Centre for Forensic Behavioural Science echoed this point:
- Referral pathways to assessment and treatment for people in the criminal justice system should be reviewed to ensure that people are able to access specialist assessment and treatment in a timely way ... It is essential to improve pathways into treatment for people whose stalking has not brought them into contact with the criminal justice system. Victoria is unique internationally in already having a specialist service that provides such treatment, but its availability is limited by resources.³⁹
- 3.40 This was also emphasised by Forensicare which explained that 'a key principle of effective intervention in stalking cases is that more management and treatment are directed towards cases that are assessed as being of greater concern or risk of serious harm, while those assessed as being of standard concern or risk receive a routine level of intervention'.⁴⁰
- 3.41 That is not to suggest 'that standard cases receive no response, [rather] that the response they receive is less intensive and urgent, and not as tailored to their specific circumstances'.⁴¹
- 3.42 Ultimately, the purpose of any guidance developed is to provide all victims of stalking with a response, and to prioritise police resources effectively and appropriately.
- 3.43 The following chapters discuss some of the issues that arise in the four-step process described in this chapter. While the four-step process reflects good practice, Victoria Police acknowledged that there are impediments to good practice.

36 Ibid.

37 Submission 100 (Forensicare).

38 Submission 95 (Springvale Monash Legal Service).

39 Submission 32 (Centre for Forensic Behavioural Science).

40 Submission 100 (Forensicare); TE McEwan, 'Stalking Threat and Risk Assessment' in *International Handbook of Threat Assessment* (Oxford University Press, 2nd ed, 2021); 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.

41 Submission 100 (Forensicare).

- 3.44 For example, Victoria Police noted that a potential impediment to implementing specific stalking guidance is the fact that stalking 'is often associated with other defined types of criminal offending, many of which are already supported by considerable operational guidance and tailored practice direction'.⁴² Victoria Police expressed concerns about creating 'confusion about intervention options'.⁴³

Recommendations

- 3 Victoria Police should develop guidance for identifying and gathering information about stalking for frontline police.
- 4 Victoria Police should record every presentation to police with a report of stalking (and related conduct) on the appropriate Victoria Police information management system(s), including in instances where stalking is alleged but no offence has been detected.
- 5 Victoria Police should be the agency responsible for initiating PSIO applications on behalf of victim survivors.
- 6 Victoria Police should refer complex cases to specialist police within existing criminal investigation units for investigation where required
- 7 Victoria Police should refer stalking matters where necessary to appropriate external agencies.
- 8 Victoria Police should refer victim survivors of stalking to appropriate external services.

CHAPTER
04

How can police identify the risk of serious harm in stalking situations?

- 30** Overview
- 30** Should a stalking-specific risk assessment tool be developed for Victoria Police?
- 32** Actuarial risk assessment tools
- 34** Stalking-specific risk assessment tools
- 35** The ethical concerns of risk assessment
- 38** The benefits of a risk screening tool
- 40** The limitations of risk screening: reducing police discretion

4. How can police identify the risk of serious harm in stalking situations?

Overview

- A key concern in this inquiry is how police can identify risk of serious harm and/or outcomes in stalking situations at the earliest opportunity.
- This chapter discusses the purpose of risk assessment, in the context of stalking. Broadly, the purpose of risk assessment in the context of stalking is to:
 - assist in identifying whether stalking has already occurred
 - assess if existing non-criminal behaviour may escalate to actual stalking
 - assist in prioritising limited investigative resources
 - assess the degree or type of support or protection a victim may need
 - be used for bail and sentencing purposes (including appropriate rehabilitation measures)
 - assist in understanding the likelihood of stalking recidivism.
- This chapter considers the benefits and limitations of risk assessment tools.
- There was disagreement among stakeholders in consultations we held, and in submissions received, about whether or not a stalking-specific risk assessment tool should be developed for Victoria Police.
- We heard that there are two existing stalking-specific risk assessment and risk screening tools. Both have been subjected to some evaluation, with promising results.
- However, more research is needed about the nature, dynamics, and risk factors of stalking before any risk assessment tool should be used by Victoria Police.

Should a stalking-specific risk assessment tool be developed for Victoria Police?

- 4.1 This inquiry focusses on early intervention in stalking. However, it is a complex task to decide the most appropriate and effective way of providing early intervention.
- 4.2 Victoria Police submitted that it 'is actively exploring a number of opportunities to enhance its risk identification and assessment capabilities'.¹
- 4.3 For example, Victoria Police:
is currently considering a range of individual risk assessment tools and models, including tools and models used by other jurisdictions, designed to assist both general duties and specialist police to identify risk factors more easily and consistently.²

- 4.4 Victoria Police stated that:
- by assessing the responses to a series of questions about particular behaviours, such tools would help our members to prioritise their immediate response and consider any ongoing risk mitigation strategies.³
- 4.5 In particular, Victoria Police noted:
- that investment in tools to better identify patterns of behaviour indicative of escalation (or continuation) of an offender's behaviour would provide useful support to police, victims and other agencies when considering risk, and any need for immediate interventions.⁴
- 4.6 However, as Forensicare submitted:
- a stalking risk assessment instrument will only be useful if stalking can be routinely identified by responding agencies ... Equally, risk assessment is only useful if cases identified as being at higher risk then go on to receive effective risk management.⁵
- 4.7 This chapter explores the benefits and limitations of various risk assessment tools, based on stakeholder submissions and consultations.
- 4.8 Research suggests risk to victim survivors of stalking encompasses three areas:
1. Whether the stalking will continue, or, if it has stopped, will recur;
 2. Whether the victim will suffer significant psychological and/or social damage, which may include suicidal ideation or behaviour;
 3. Whether the stalking will escalate to physical and/or sexual assault.⁶
- 4.9 As experts explained in our small group meeting on stalking and risk of serious harm and/or outcomes, 'stalking involves a varied group of people and it is not possible to produce a one-size fits all approach'.⁷
- 4.10 Police come into contact with a broad range of stalking and stalking-like behaviour. They may be 'dealing with vexatious litigants, neighbourhood disputes, or the large cohort of people with some form of mental health issue', who all 'require different approaches'.⁸
- 4.11 In terms of determining risk of serious harm and/or outcomes in stalking, there was support for the notion that 'the [immediate] police response should be two-pronged'.⁹ For example, first 'deciding if a crime has occurred and what should be done, [and second] interventions to keep victims safe and to give them what they need'.¹⁰
- 4.12 In order to decide how to respond to a stalking situation, there was some support for the use of either:
- a stalking specific risk assessment tool, or
 - a risk screening tool.

3 Ibid.

4 Ibid.

5 Submission 100 (Forensicare).

6 Paul E Mullen et al, 'Assessing and Managing the Risks in the Stalking Situation' (2006) 34(4) *Journal of the American Academy of Psychiatry and the Law Online* 439, 440.

7 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

8 Ibid.

9 Ibid.

10 Ibid.

Actuarial risk assessment tools

- 4.13 Risk assessment tools based on statistical or actuarial risk factors were developed in the mid-1980s. In the criminal justice field, the developers of these tools code a range of possible risk factors associated usually with violent or sexual offending and then engage in a process of validating these factors against data obtained from groups of people that have committed such crimes.¹¹
- 4.14 Such tools were originally developed to support professional judgment 'in predicting and managing risky behaviour in a number of different contexts', on the basis that the practice was considered more accurate, objective, and neutral than professional judgment alone.¹²
- 4.15 While the 'social control of so called "risky populations" has always been a goal of criminal justice policy',¹³ predictive risk assessment tools have garnered unprecedented interest in recent years. Indeed, 'the assessment of "risk" 'is of such significance that it has been viewed as a core organising concept of the Western world'.¹⁴
- 4.16 Linked to this prism of risk, and risk aversion, through which 'individuals increasingly live their lives ... a risk management industry has emerged, which includes various modes of classification and categorisation [more] recently adopted in criminal justice spheres'.¹⁵
- 4.17 The use of risk assessment tools is based on the idea that 'like other social problems, crime is ... a calculable, avoidable, governable risk'.¹⁶ This is despite the fact that generally, 'risk-assessment tools and criteria pay little attention to violence'.¹⁷
- 4.18 Nevertheless, individuals who commit offences 'are characterised as a risky population to be efficiently managed by the state, as well as by citizens and a host of non-state agencies'.¹⁸
- 4.19 Individuals who commit offences are routinely 'categorised and classified according to levels of risk (such as high, medium, or low). Certain offender groups are perceived to be exceptionally risky, requiring special legislative control (such as sex offenders)'.¹⁹
- 4.20 Typically, the practice of risk assessment has 'very much [been] the domain of psychologists and psychiatrists [who] attempt to assess, manage, control and treat "risk" within the individual'.²⁰ And risk assessment tools have generally been used in the context of post-sentencing, and more recently, preventive detention.²¹
- 4.21 However, 'risk creep' has now placed a duty on police to identify risk. Risk assessment tools are routinely used in many jurisdictions by police to inform decisions of arrest or other pre-trial measures.²²

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

12 Nicola S Gray, Judith M Laing and Lesley Noaks, *Criminal Justice, Mental Health and the Politics of Risk* (Taylor & Francis Group, 2001) 5.

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14 Nicola S Gray, Judith M Laing and Lesley Noaks, *Criminal Justice, Mental Health and the Politics of Risk* (Taylor & Francis Group, 2001); Bernadette McSherry, *Risk Assessment by Mental Health Professionals and the Prevention of Future Violent Behaviour* (Report, 20 July 2004) 8 <<https://www.aic.gov.au/publications/tandi/tandi281>>; Nikolas Rose, 'Governing Risky Individuals: The Role of Psychiatry in New Regimes of Control' (1998) 5(2) *Psychiatry, Psychology and Law* 177.

15 Nicola S Gray, Judith M Laing and Lesley Noaks, *Criminal Justice, Mental Health and the Politics of Risk* (Taylor & Francis Group, 2001) 5.

16 Kelly Hannah-Moffat, 'Criminogenic Needs and the Transformative Risk Subject: Hybridizations of Risk/Need in Penalty' (2005) 7(1) *Punishment & Society* 29, 30.

17 Kelly Hannah-Moffat, Paula Maurutto and Sarah Turnbull, 'Negotiated Risk—Actuarial Illusions and Discretion in Probation' (2009) 24(3) *Canadian Journal of Law and Society* 391, 402–403.

18 Kelly Hannah-Moffat, 'Criminogenic Needs and the Transformative Risk Subject: Hybridizations of Risk/Need in Penalty' (2005) 7(1) *Punishment & Society* 29, 30.

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20 Nicola S Gray, Judith M Laing and Lesley Noaks, *Criminal Justice, Mental Health and the Politics of Risk* (Taylor & Francis Group, 2001) 6.

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

22 Nicola S Gray, Judith M Laing and Lesley Noaks, *Criminal Justice, Mental Health and the Politics of Risk* (Taylor & Francis Group, 2001); Melissa Hamilton, 'The Sexist Algorithm' (2019) 37(2) *Behavioral Sciences & the Law* 145.

- 4.22 Despite the fact that 'much of the 1990s discourse on risk was concerned with rationing resources towards the most risky, what has actually occurred ... is an ever-increasing and ever-expanding risk agenda'.²³
- 4.23 The practical reality is that this supposed 'rationing mechanism has become a beast requiring ever more resources, [with] demand never satisfied'.²⁴
- 4.24 In Victoria, risk assessment "tools" are used by many government agencies, but this term is used broadly and can encompass checklists and guidelines that may not have gone through a process of validation. They differ from the tools developed by mental health professionals that are designed to produce information for managing the risk of reoffending. The Police, for example, may use screening tools to help identify complex crimes and enable the assessment of behaviour in a structured, evidence-based way.²⁵
- 4.25 Similarly, risk assessment instruments have been used in international jurisdictions in the context of stalking and have been considered by some to be 'an effective way of improving police responses to crimes like stalking and [family violence] that require proactive, preventative policing'.²⁶
- 4.26 In this inquiry, we heard from stakeholders that the risk assessment tools used in family violence may also be relevant in [or applicable to] the context of stalking.
- 4.27 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 with the victim survivor.
- 4.28 We heard from the Law Institute of Victoria that:
- the Family Violence MARAM Training, and the previous Common Risk Assessment Framework (CRAF) Training, has provided some relevant approaches and techniques that could be applied to stalking complaints. However, stalking can involve behaviour that is more unpredictable than family violence and is not generally tied to a significant event or action. Conduct that constitutes stalking ... is not so readily identified by risk factors that are evident in family violence, including for example, pregnancy, recent birth, or relationship breakdown.²⁷
- 4.29 Similarly, Forensicare submitted that 'stalking of strangers and acquaintances is a substantially different phenomenon to stalking of former intimates, with different risk factors for violence and persistence, different risk management strategies, and quite different needs for multi-agency work'.²⁸ This is confirmed by a growing body of evidence.²⁹
- 4.30 Experts told us that:
- the tools and checklists that are used from terrorism to family violence have no demonstrated validity in stalking. If risk assessment tools are to be used, we need to be using validated risk assessment tools.³⁰
- 4.31 Forensicare emphasised that it is:
- essential that stalking is kept separate to family violence responses so that stalking situations that do not involve former intimates, or which involve male victims, receive an equivalent service response.³¹

23 Hazel Kemshall, 'A Critical Review of Risk Assessment Policy and Practice since the 1990s, and the Contribution of Risk Practice to Contemporary Rehabilitation of Offenders' in *The Routledge Companion to Rehabilitative Work in Criminal Justice* (Taylor & Francis Group, 2019) 227.

24 Ibid.

25 Benjamin Spivak et al, 'Implementing Evidence-Based Practice in Policing Family Violence: The Reliability, Validity and Feasibility of a Risk Assessment Instrument for Prioritising Police Response' (2021) 31(4) *Policing and Society* 483.

26 Kirsten Hehemann et al, 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164, 166.

27 Submission 98 (Law Institute of Victoria).

28 Submission 100 (Forensicare).

29 David V James and Lorraine P Sheridan, 'What Works in Risk Assessment in Stalking Cases' in *The Wiley Handbook of What Works in Violence Risk Management* (John Wiley & Sons, 2020) 527; Troy E McEwan et al, 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38.

30 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

31 Submission 100 (Forensicare).

Stalking-specific risk assessment tools

- 4.32 Expert stakeholders³² referred to existing risk assessment tools designed to assist mental health professionals in identifying the risk of future stalking, such as the Stalking Risk Profile³³ (SRP) and the Guidelines for Stalking Assessment and Management³⁴ (SAM).
- 4.33 They also referred to tools that may be used to assist police decision-making about stalking behaviours such as the Stalking Assessment Indices³⁵ (SAI) and the Screening Assessment for Stalking and Harassment (SASH) tool.³⁶
- 4.34 None of these tools is currently used by Victoria Police. However, the SASH tool was tested by the Netherlands National Police in 2016.³⁷ Following evaluation of SASH, in 2017 'a new work process for stalking cases [was] implemented across the Netherlands National Police [including] a new process for intake, changes to data systems, case management, and use of the SASH as part of screening and assessment'.³⁸
- 4.35 Organisations with expertise in stalking highlighted these tools in their submissions. The Centre for Forensic Behavioural Science submitted that:
- structured assessments for assessing the ranges of risks present in stalking situations exist and all have been subject to some level of validation. These assessment instruments range from a quick set of 10-16 questions that can be used to conduct an immediate threat assessment based on limited information (ideal for frontline settings such as police), to comprehensive structured professional judgement guidelines that require specialist knowledge and training (ideal for forensic mental health and specialist assessments and advice in the criminal justice system such as courts, corrections and policing).³⁹
- 4.36 Evaluations of the SASH tool suggest it 'can help officers to recognise, prioritise, and respond to stalking appropriately'.⁴⁰
- 4.37 This study acknowledges that because tools such as the SRP and SAM 'require a level of specialist knowledge' they are unsuitable for 'first responders to initial reports of stalking who have no specific expertise and limited time to make decisions about their immediate responses'.⁴¹
- 4.38 This was confirmed by experts who stated that 'risk assessments are a very specialist area of practice and cannot be done by just any mental health professional', let alone frontline police.⁴²
- 4.39 Furthermore, one study suggests that 'relying on individual risk factors in isolation [leads] to moderate rates of error'.⁴³ The study identified that combining risk factors resulted 'in a more sophisticated understanding of stalking violence'.⁴⁴
- 4.40 The study suggests that there are 'many and varied pathways to violence', which means that 'even the most well-established risk factors have moderate rates of error when considered in isolation'.⁴⁵ There is 'strong evidence for cumulative risk, whereby

32 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

33 Rachel D MacKenzie et al, *Stalking Risk Profile: Guidelines for Assessing and Managing Stalkers* (StalkInc and Centre for Forensic Behavioural Science, 2019).

34 P Randall Kropp, Stephen D Hart and David Robert Lyon, *Guidelines for Stalking Assessment and Management (SAM)* (ProActive Resolutions Inc, 2008).

35 Troy E McEwan et al, 'Measuring Stalking—the Development and Evaluation of the Stalking Assessment Indices (SAI)' (2020) *July Psychiatry, Psychology and Law* 1.

36 Kirsten Hehemann et al, 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164.

37 Ibid 166.

38 Ibid 175.

39 Submission 32 (Centre for Forensic Behavioural Science).

40 Kirsten Hehemann et al, 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164, 164.

41 Ibid 166.

42 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

43 Carleen M Thompson, Anna L Stewart and Susan M Dennison, 'Using Dynamic Contextual Factors to Better Understand the Etiology and Escalation of Stalking Violence' (2020) 47(1) *Criminal Justice and Behavior* 99, 114–115.

44 Ibid.

45 Ibid 117.

- the more risk factors that accrue, the greater the likelihood of violence'.⁴⁶
- 4.41 Risk factors that have been associated with the likelihood of violence are:
- the person stalking has a history of violence
 - explicit threats have been made
 - situational or disinhibiting factors escalate the situation, such as substance abuse.⁴⁷
- 4.42 Even stalking situations where there are few established risk factors 'may still escalate to violence in the context of certain situational stressors'.⁴⁸
- 4.43 Risk assessment tools need careful evaluation in relation to stalking outside of the context of family violence and usually require specialised knowledge. Therefore it would be premature to recommend the use of specific risk assessment tools by the police.
- 4.44 Despite the illusion of objectivity and the promise of certainty, research highlights the inherent difficulties in attempting to predict risk.⁴⁹
- 4.45 We also heard from experts that 'there are ethical issues raised in relation to risk assessment'.⁵⁰

The ethical concerns of risk assessment

- 4.46 We were told that it is important to balance individual rights with public protection. The former may be undermined by the use of risk assessment tools.
- 4.47 Liberty Victoria submitted that 'the assessment of risk of future harm based on past behaviour is notoriously problematic'.⁵¹ This is supported by the literature outlining the limitations of the use of risk assessment tools for predictive purposes rather than treatment in a clinical environment.⁵²
- 4.48 The practice of risk assessment has also been strongly criticised in case law. Liberty Victoria pointed out that 'the Human Rights Committee of the United Nations in *Fardon v Australia* and *Tillman v Australia* criticised the capacity for psychiatric experts to properly predict dangerousness'.⁵³
- 4.49 Predictive risk assessment was similarly criticised in *Director of Public Prosecutions [WA] v Samson*, in which Justice McKechnie remarked: 'There has been a growth in risk assessment calculators purporting to be tools with which specialist psychiatrists can make more accurate predictions of risk ... The efficacy of some of these tools remains controversial'.⁵⁴
- 4.50 Ethical concerns arise due to the low base rates (the naturally occurring frequency of a phenomenon in a population) associated with the crime of stalking, which make it impossible to accurately measure risk factors or apply group aggregate data at the individual level.⁵⁵

46 Troy E McEwan et al, 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38; Carleen M Thompson, Anna L Stewart and Susan M Dennison, 'Using Dynamic Contextual Factors to Better Understand the Etiology and Escalation of Stalking Violence' (2020) 47(1) *Criminal Justice and Behavior* 99, 114–115.

47 S Strand and TE McEwan, 'Violence among Female Stalkers' (2012) 42(3) *Psychological Medicine* 545; Carleen M Thompson, Anna L Stewart and Susan M Dennison, 'Using Dynamic Contextual Factors to Better Understand the Etiology and Escalation of Stalking Violence' (2020) 47(1) *Criminal Justice and Behavior* 99, 117.

48 Carleen M Thompson, Anna L Stewart and Susan M Dennison, 'Using Dynamic Contextual Factors to Better Understand the Etiology and Escalation of Stalking Violence' (2020) 47(1) *Criminal Justice and Behavior* 99, 117–118.

49 Kelly Hannah-Moffat, Paula Maurutto and Sarah Turnbull, 'Negotiated Risk—Actuarial Illusions and Discretion in Probation' (2009) 24(3) *Canadian Journal of Law and Society* 391.

50 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes); Bernadette McSherry, *Risk Assessment by Mental Health Professionals and the Prevention of Future Violent Behaviour* (Report, 20 July 2004) 9 <<https://www.aic.gov.au/publications/tandi/tandi281>>.

51 Submission 47 (Liberty Victoria).

52 Bernadette McSherry, 'Throwing Away the Key—the Ethics of Risk Assessment for Preventive Detention Schemes' (2014) 21(5) *Psychiatry, Psychology and Law* 779; Paul E Mullen et al, 'Assessing and Managing the Risks in the Stalking Situation' (2006) 34(4) *Journal of the American Academy of Psychiatry and the Law Online* 439.

53 Submission 47 (Liberty Victoria).

54 *DPP (WA) v Samson* [2014] WASC 199, 51.

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

- 4.51 This has also been criticised in case law. Justice Barr in the Supreme Court of the Northern Territory remarked:
- [Practitioners] have very limited ability to predict the future behaviour of any individual, because the science of behaviour prediction is weak. This weakness is because the base rates of serious adverse events are low, and those events are not so much due to the effect of enduring traits as they are the result of circumstances which arise, and which are difficult or impossible to predict.⁵⁶
- 4.52 There are specific ethical concerns of risk assessment relating to gender and race. This is because risk assessment involves applying group aggregate data to individuals. This data is based on a predominantly white, cis-gender, heterosexual, often institutionalised, male population.⁵⁷
- 4.53 According to research, such data 'inescapably mirrors social inequality, and [is extracted by] processes that reinforce and introduce new biases to the model, thereby recreating disadvantage'.⁵⁸
- 4.54 Poor accuracy in risk assessment tools is 'especially common in minority ethnic groups', who are frequently incorrectly classified as 'high risk' of offending.⁵⁹ It has been suggested that attempting to predict future offending through the use of risk assessment tools may criminalise profiled populations.⁶⁰
- 4.55 This disproportionately affects racialised communities, as well as individuals who experience issues such as substance abuse, poverty or mental illness or personality disorders.
- 4.56 One study suggests that 'prediction-oriented notions of risk can act as a "self-fulfilling prophecy" that justifies and widens the net of social control over marginalised populations'.⁶¹
- 4.57 In this way, Aboriginal youth may be over-scored on risk assessment tools, and such tools 'fail to adequately address the broader socio-cultural context of Aboriginal peoples and their unique issues'.⁶² This compromises the legitimacy of risk assessment practices.
- 4.58 These ethical issues were reflected in several submissions. Liberty Victoria acknowledged 'the difficulty associated with calculating risk of future harm and escalation with regard to stalking behaviour'.⁶³ It noted that:
- actuarial risk assessment tools have been developed and tested on predominantly non-Indigenous populations and can be biased against Indigenous and culturally and linguistically diverse communities meaning Aboriginal people are more likely to be classified as high-risk than non-Aboriginal people, which limits the utility of actual risk assessment tools in accurately reflecting risk. As such, use of actuarial risk assessment tools should be approached with caution.⁶⁴

56 *A-G (NT) v JD (No 3)* [2017] NTSC 48, 26.

57 Kelly Hannah-Moffat, 'The Uncertainties of Risk Assessment—Partiality, Transparency, and Just Decisions' (2015) 27(4) *Federal Sentencing Reporter* 244.

58 Fernando Ávila, Kelly Hannah-Moffat and Paula Maurutto, 'The Seductiveness of Fairness: Is Machine Learning the Answer?—Algorithmic Fairness in Criminal Justice Systems' in *The Algorithmic Society* (Routledge, 2020) 88.

59 Thomas Douglas et al, 'Risk Assessment Tools in Criminal Justice and Forensic Psychiatry: The Need for Better Data' (2017) 42 *European Psychiatry* 134, 135.

60 Chelsea Barabas et al, 'Interventions over Predictions: Reframing the Ethical Debate for Actuarial Risk Assessment' in *Proceedings of Machine Learning Research* (Conference Paper, Conference on Fairness, Accountability, and Transparency, 2018) 4.

61 Submission 47 (Liberty Victoria).

62 Kelly Hannah-Moffat, Paula Maurutto and Sarah Turnbull, 'Negotiated Risk—Actuarial Illusions and Discretion in Probation' (2009) 24(3) *Canadian Journal of Law and Society* 391, 404; Stephane M Shepherd and Cynthia Willis-Esqueda, 'Indigenous Perspectives on Violence Risk Assessment: A Thematic Analysis' (2018) 20(5) *Punishment & Society* 599.

63 Submission 47 (Liberty Victoria).

64 *Ibid* 5–6.

- 4.59 We were also told by experts that for Aboriginal and Torres Strait Islander communities 'some risk factors will get over-endorsed, such as substance abuse issues, or socioeconomic issues, because of systemic inequalities' connected to historical and ongoing colonial violence.⁶⁵
- 4.60 Judges have raised specific concerns about the use of risk assessment instruments in the context of Indigenous accused persons. Justice Lyons remarked, 'risk assessment instruments may not be valid for Australian Indigenous communities'.⁶⁶
- 4.61 Similarly, Justice Hasluck expressed 'grave reservations as to whether [Indigenous people] can be easily fitted within the categories of appraisal presently allowed for by these assessment tools'.⁶⁷
- 4.62 This has significant implications. As one expert explained, 'there are already profound levels of mistrust of the police and fear of child removal and incarceration amongst Aboriginal and Torres Strait Islander women. Without the identifiable improvement of police responses and acknowledgement of victims' experiences of harm, the issues are unlikely to improve'.⁶⁸
- 4.63 Djirra, a state-wide Aboriginal community controlled organisation, raised concerns in relation to the potential acceleration of incarceration in the context of race and gender. Specifically, high (and increasing) numbers of Aboriginal women have been incorrectly identified by police as perpetrators of violence, when they are in fact the victim.⁶⁹
- 4.64 Over-representation of Aboriginal people in the criminal justice system has also been acknowledged in the courts in the context of the use of risk assessment tools.⁷⁰
- 4.65 Concerns were also raised in terms of due process rights. Liberty Victoria noted 'that police and Courts responding to allegations [of stalking] should be wary of inverting the presumption of innocence by making assessments of risk based on assertions that have not yet been proven'.⁷¹
- 4.66 It was further asserted that 'any expansion of the use of risk tools to curtail particular rights, such as the right to privacy and the right to a fair hearing, should be approached cautiously'.⁷²
- 4.67 Liberty Victoria recognised the desirability of seeking to 'ascertain whether the risk of serious harm following stalking behaviour can be accurately identified sufficiently to enable an alternative model for dealing with cases where stalking behaviour escalates severely and irreparably'.⁷³ However, it expressed concern about 'any proposal [which may] erode people's right to privacy, especially where current methods of assessing future harm are notoriously unreliable and can be racially and socially biased'.⁷⁴
- 4.68 In light of these concerns 'about potential breaches of human rights and the imperfect nature of risk assessment techniques',⁷⁵ the Commission is of the view that the use of risk assessment tools to inform decisions of arrest or other criminal justice interventions where liberty is stake cannot be justified in the context of stalking.

65 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

66 *A-G (Qld) v Jacob* [2015] QSC 273, 22.

67 *DPP (WA) v Mangolamara* [2007] WASC 71, (2007) 169 A Crim R 379, 166.

68 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

69 Submission 41 (Djirra).

70 *DPP (WA) v GTR* [2007] WASC 318.

71 Submission 30 (Liberty Victoria).

72 *Ibid.*

73 *Ibid.*

74 *Ibid.*

75 Bernadette McSherry, *Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment* (Taylor & Francis Group, 2013) 209.

- 4.69 An accumulating body of evidence suggests risk assessment tools are 'at odds with the interests of the assessed individual',⁷⁶ and only ethical where there is a therapeutic benefit,⁷⁷ or where 'it may provide the evidence necessary to secure an end to detention'.⁷⁸ Scholars have suggested practitioners should be discouraged 'from using them in a manner that is not legally and ethically defensible'.⁷⁹
- 4.70 However, there is promising research into what factors may give rise to stalking recidivism, based on the clinical files of 70 people who had engaged in stalking behaviour in the Netherlands.⁸⁰ Work is underway to develop and evaluate items to measure stalking behaviour.⁸¹
- 4.71 Nevertheless, risk assessment tools or instruments take time to develop, and must be carefully developed, to avoid the criticisms set out in this chapter.
- 4.72 We now turn to the stalking-specific screening tool which was developed 'to meet the needs' of frontline police, given the acknowledged unsuitability of risk assessment tools for this group.⁸²

The benefits of a risk screening tool

- 4.73 Risk assessment tools are different to risk screening tools. A risk assessment tool is designed for assessing risks and guiding risk management in a clinical setting. A risk screening tool is designed for the use of frontline police. It is intended to 'help police assess a stalking case based on the information provided in the first report ... [and to] help [police] who are not specialised in making risk assessments to screen and prioritise stalking cases'.⁸³
- 4.74 Victoria Police submitted that 'ultimately, an accurate point-in-time assessment is needed to inform specific decisions made by a court or another agency'.⁸⁴
- 4.75 Studies surveying police evaluations of screening tools have suggested that such tools are viewed by police as 'offering a layer of protection and "professional risk management" that insulates practitioners and provides them with more defensible decision making'.⁸⁵
- 4.76 A specific screening tool for stalking already exists and was originally developed by Australian researchers Troy McEwan, Susanne Strand, Rachel MacKenzie and David James in 2010.⁸⁶ The team further revised the tool in 2015,⁸⁷ and it was evaluated and implemented for use by Netherlands National Police from 2017. The Screening Assessment for Stalking and Harassment (SASH) is a brief, evidence-based triage assessment tool that can be used to inform immediate decision making by frontline police in cases of stalking.⁸⁸

76 Thomas Douglas et al, 'Risk Assessment Tools in Criminal Justice and Forensic Psychiatry: The Need for Better Data' (2017) 42 *European Psychiatry* 134, 134.

77 Bernadette McSherry, *Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment* (Taylor & Francis Group, 2013).

78 Thomas Douglas et al, 'Risk Assessment Tools in Criminal Justice and Forensic Psychiatry: The Need for Better Data' (2017) 42 *European Psychiatry* 134, 135.

79 Alfred Allan et al, 'Assessing the Risk of Australian Indigenous Sexual Offenders Reoffending: A Review of the Research Literature and Court Decisions' (2019) 26(2) *Psychiatry, Psychology and Law* 274, 294.

80 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.

81 Troy E McEwan et al, 'Measuring Stalking—the Development and Evaluation of the Stalking Assessment Indices (SAI)' (2020) July *Psychiatry, Psychology and Law* 1.

82 Kirsten Hehemann et al, 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164, 166.

83 *Ibid.*

84 Submission 115 (Victoria Police).

85 Kelly Hannah-Moffat, Paula Maurutto and Sarah Turnbull, 'Negotiated Risk—Actuarial Illusions and Discretion in Probation' (2009) 24(3) *Canadian Journal of Law and Society* 391, 394.

86 Troy McEwan et al, *Screening Assessment for Stalking and Harassment (SASH)—Guidelines for Application and Interpretation* (StalkInc Pty Ltd, 2017).

87 *Ibid.*

88 Kirsten Hehemann et al, 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164; Troy E McEwan et al, 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38; Lorraine Sheridan and Karl Roberts, 'Key Questions to Consider in Stalking Cases' (2011) 29(2) *Behavioral Sciences & the Law* 255.

- 4.77 The SASH tool, for use in the non-family violence stalking context, incorporates at least 13 questions 'based on information usually available at first presentation of a stalking complaint to frontline agencies'.⁸⁹ The questions cover:
- threats/intimidation/aggression
 - unauthorised entry
 - property damage/theft
 - breaching legal boundaries
 - escalation
 - last-resort thinking
 - unavoidable contact
 - previous stalking/harassment
 - previous violence
 - mental health problems
 - problematic substance use
 - significant loss.
- 4.78 The objective of the SASH tool is to enable initial exploration of the stalking report 'with a view to informing subsequent decision-making'.⁹⁰
- 4.79 Forensicare submitted that the SASH tool assists frontline police to screen and prioritise cases. Police can decide, based on the information provided in the initial report, whether immediate action is required to ensure victim safety. It also helps them decide whether the case requires further, more detailed, clinical risk assessment to be conducted by external agencies. This guides the management of situations where there is a high level of concern.⁹¹
- 4.80 The tool requires training for effective use 'to ensure that item scores [relating to the stalking behaviour, characteristics of the perpetrator's history and the victim's situation] are correctly translated into the appropriate level of concern'. It is crucial that police:
- are able to recognise stalking when it is reported, have a basic understanding of the associated risks, and can identify when they should implement immediate protective actions and ask for further comprehensive assessment.⁹²
- 4.81 Experts told us that:
- risk assessment is possible [but it] will never be perfectly accurate. Screening, on the other hand, can be done with a modicum of accuracy, but it does require people to understand the behaviour they are dealing with ... This is why SASH works, because it begins by trying to understand what is going on, and the risk factors flow on from that. Because this is a very specialised field of expertise, the best approach is having well-trained police using a screening process. This could then be supplemented with a more clinical approach for those that are deemed to pose a higher risk.⁹³
- 4.82 Research evaluating the SASH has concluded that the tool provides holistic yet individualistic assessments to aid interventions and service delivery.⁹⁴
- 4.83 The research claims that SASH provides a way of effectively identifying risk of harm, allocating scarce police resources and more accurately targeting interventions.⁹⁵

89 Kirsten Hehemann et al. 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164.

90 Ibid 166.

91 Submission 100 (Forensicare).

92 Kirsten Hehemann et al. 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164, 175.

93 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

94 Kirsten Hehemann et al. 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164.

95 Ibid.

- 4.84 There has been minimal evaluation of the SASH tool. But the evaluation has produced encouraging results, and SASH is used by police in the Netherlands.⁹⁶
- 4.85 In contrast to risk assessment tools which focus on the risk of future offending, the core benefit of the SASH tool is that it allows police to focus on patterns of behaviour rather than discrete incidents, and to respond at the earliest opportunity for intervention. This is important in stalking where a course of conduct needs to be proven.
- 4.86 SASH provides guidance to ensure police attend to the wider surrounding circumstances 'that have been associated with negative outcomes for victim/survivors' and use this information to inform their decision-making.⁹⁷
- 4.87 However, on balance, the screening of 'risk' remains controversial and fraught with a number of problems.

The limitations of risk screening: reducing police discretion

- 4.88 One study indicates that screening tools can diminish police discretion, leaving little room for police input or judgment.⁹⁸
- 4.89 A study surveying police on the use of risk assessment and screening tools revealed that 'respondents raised concern about relying too much on [risk tools] and other classification schemes rather than their own judgement about who should be managed and how'.⁹⁹
- 4.90 A key complaint among respondents was that such tools restrain 'police action yet still holds them accountable for it'.¹⁰⁰
- 4.91 Predicting or screening either the risk of future offending or the risk of serious harm and/or outcomes, 'is precarious, nuanced, and difficult to measure'.¹⁰¹ There are 'no short cuts to assessing risk of any kind'.¹⁰²
- 4.92 The information derived from risk screening tools 'constitutes only "a piece of the pie"'. It is often considered by police to be a starting point, which is then supplemented by their own professional assessment.¹⁰³
- 4.93 This was reflected by experts in our small group meeting on the risk of serious harm and/or outcomes in stalking. One stakeholder explained that 'the important first step of recognising whether something is stalking behaviour or not ... can be done by police without going through a formal risk assessment'.¹⁰⁴
- 4.94 Indeed, it was emphasised that the starting point for police 'is to first identify whether stalking is occurring, let alone whether it is escalating'.¹⁰⁵
- 4.95 There was a level of disagreement among the experts we consulted as to how the police should identify the risk of serious harm and/or outcomes. Some advocated for the use of a risk screening tool, while others were opposed.¹⁰⁶

96 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, 2020) 22; Kirsten Hehemann et al, 'The Reliability and Predictive Validity of the Screening Assessment for Stalking and Harassment (SASH)' (2017) 4(3) *Journal of Threat Assessment* 164.

97 Benjamin Spivak et al, 'Implementing Evidence-Based Practice in Policing Family Violence: The Reliability, Validity and Feasibility of a Risk Assessment Instrument for Prioritising Police Response' (2021) 31(4) *Policing and Society* 483, 4.

98 James Hoggett, Kieran McCartan and Jack O'Sullivan, 'Risk, Discretion, Accountability and Control—Police Perceptions of Sex Offender Risk Management Policy in England and Wales' (2020) 20(4) *Criminology & Criminal Justice* 433.

99 Ibid 446.

100 Ibid.

101 Kelly Hannah-Moffat, 'A Conceptual Kaleidoscope: Contemplating "Dynamic Structural Risk" and an Uncoupling of Risk from Need' (2016) 22(1–2) *Psychology, Crime & Law* 33, 35.

102 Sally Kelty and Roberta Julian, *Interfaces 2: Flowcharting the Interface between Forensic Science, Medicine and Law in Adult and Child Sexual Assault Investigations* (Final Report, Australia New Zealand Policing Advisory Agency, 2016) 76, 10.

103 James Hoggett, Kieran McCartan and Jack O'Sullivan, 'Risk, Discretion, Accountability and Control—Police Perceptions of Sex Offender Risk Management Policy in England and Wales' (2020) 20(4) *Criminology & Criminal Justice* 433, 405.

104 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).

105 Ibid.

106 Ibid.

- 4.96 However, even proponents of a risk screening tool conceded that while 'assessing risk in stalking is possible ... it can [only] be done by police in particular circumstances' and that 'most importantly, the risk assessment [would need] to be preceded by proper identification of stalking, which is the bigger challenge'.¹⁰⁷
- 4.97 The use of risk assessment or risk screening tools, in this way, would need 'to be managed by a proper system ... that can identify cases of concern, and then it should be a relatively small group of people conducting the actual risk assessment. There needs to be a proper system for managing cases at different levels of risk with appropriately trained people'.¹⁰⁸
- 4.98 We were told that identifying the level of risk in a stalking situation may more appropriately be a matter for 'the magistrate [to] make a decision about' if a PSIO or criminal charges are pursued.¹⁰⁹
- 4.99 As one expert explained, 'I think magistrates are recognising the need for specialists to conduct risk assessments. I have been receiving more and more reports from magistrates who are specifically requesting that the risk assessment is done by a specialist'.¹¹⁰
- 4.100 The criticisms outlined in this interim report are not to suggest that evidence-based risk assessment or screening should be abandoned. However, there needs to be further research conducted on developing and evaluating risk assessment and screening tools for stalking outside of the context of family violence.
- 4.101 The task is therefore to develop guidance that uses, rather than reduces, police discretion, and which does not require police to perform a role that is more properly the domain of appropriately trained clinicians.¹¹¹
- 4.102 We outlined the need for such guidance in Chapter 3. The VLRC recommends that such an approach should focus on police accountability and provide a clear, logical framework for police to use. It should enable police to identify stalking, identify the risk of serious harm and/or outcomes to the community, and the need for services.
- 4.103 Serious consequences could flow from risk assessments and risk screening, which as Liberty Victoria submitted can infringe civil liberties.¹¹² However, serious consequences can and have been the result of police not responding appropriately to stalking. Therefore Victoria Police must ensure a timely and effective response to victim survivors of stalking, whilst balancing the need to ensure the rights of those alleged to be engaging in stalking behaviour are observed.
- 4.104 The VLRC is of the view that further research to understand the risk factors of stalking is required before such risk tools can be used by Victoria Police in the context of stalking.
- 4.105 The VLRC acknowledges there was some support in submissions for a risk assessment framework. However the support was generally directed towards providing police guidance to 'better identify the course of conduct',¹¹³ and the 'pattern of behaviour',¹¹⁴ to 'manage the risk of serious harm in the stalking context'.¹¹⁵
- 4.106 Further evaluation of risk assessment and risk screening tools is necessary to validate their use by frontline police in Victoria in the context of stalking.¹¹⁶ This was acknowledged by the Centre for Forensic Behavioural Science, which co-authored the SASH risk screening tool.¹¹⁷

107 Ibid 3.

108 Ibid.

109 Ibid 15.

110 Ibid 8.

111 James Hoggett, Kieran McCartan and Jack O'Sullivan, 'Risk, Discretion, Accountability and Control—Police Perceptions of Sex Offender Risk Management Policy in England and Wales' (2020) 20(4) *Criminology & Criminal Justice* 433, 448.

112 Submission 47 (Liberty Victoria).

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

114 Submission 97 (Federation of Community Legal Centres).

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

116 Daniel Shea, 'Stalking Recidivism and Risk Assessment' (PhD Thesis, Monash University, 2015).

117 Consultation 1 (Centre for Forensic Behavioural Science).

- 4.107 The VLRC recognises that 'understanding of risk comes at a cost, namely time and resources'.¹¹⁸
- 4.108 However, 'adequately understanding risk and formulating strategies for intervention cannot at this stage be conducted using a simple checklist, rather it must take place with careful consideration of characteristics and relationship dynamics at the individual level'.¹¹⁹
- 4.109 There are various forms of legitimate knowledge about risk, other than those based merely upon risk assessment. A starting point is for police to ask questions that may elicit a wider context than afforded by risk assessment.

118 Benjamin Spivak et al, 'Implementing Evidence-Based Practice in Policing Family Violence: The Reliability, Validity and Feasibility of a Risk Assessment Instrument for Prioritising Police Response' (2021) 31(4) *Policing and Society* 483, 499.

119 Ibid.

The Whole Story model for identifying risk in stalking situations

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44 It is important for police to hear the whole story

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5. The Whole Story model for identifying risk in stalking situations

Overview

- This chapter focuses on the Whole Story approach to investigating complex crimes such as family violence, sexual offences, and child abuse.
- The Whole Story approach is a valuable way to improve the identification of stalking behaviour and enhance the ability of police to respond appropriately. It provides a more complete picture of any identifiable course of conduct. At this point an informed decision can be made about interventions.
- A key aim of this inquiry is to facilitate early intervention and de-escalation in stalking reports made to police.
- Early intervention requires proper interviewing and recording of statements.
- Appropriate referrals to specialist police within existing criminal investigation units (CIUs) should be made by Victoria Police.
- In this chapter we present an alternative model for identifying risk of serious harm and/or outcomes in stalking that is more firmly established in research and current police practice.

It is important for police to hear the whole story

5.1 Experts informed us that 'a barrier at the recognition stage [of stalking] is the police response to the initial victim report, which tends to be triggered by the victim's identification of their level of fear'.¹

5.2 It was explained that:

the way victims tell their story may not accord with the neat package that a police officer expects to hear to satisfy the proof of crime ... if we look at stalking cases that end tragically, the misidentification of the seriousness of behaviour has potentially arisen in that original victim-police interaction ... It is about equipping the victim to give their story the best chance and equipping the police to hear the story the best way.²

5.3 We were told that:

the literature is quite clear that victim statements of their own risk have a degree of predictive validity [and that police] do need to take them seriously. The heterogenous nature of stalking makes it difficult to prove the predictive validity for stalking, so we need to keep in mind that if a victim doesn't feel like they are in danger this doesn't mean the behaviour isn't to be taken seriously. However, we certainly need to give priority to victims' assessments that they feel unsafe.³

1 Consultation 7 (Small Group Meeting on stalking and risk of serious harm and or outcomes).
2 Ibid.
3 Ibid.

- 5.4 Experts stated that:
- police already have certain triggers that will lead to them taking certain decisions, we just need to change what they do with these triggers. At the moment, the trigger response may be to get a PSIO and then charge a breach when it occurs.⁴
- 5.5 We were also told that a further barrier at the identification stage is that evidence gathering can create challenges for police. Victoria Police submitted that 'a victim may not typically record or retain details of interactions they have had with their stalker or otherwise retain certain physical or digital evidence that can later be used to illustrate a pattern of behaviour' and that 'legislative barriers exist for police in acquiring evidence from third parties (such as dating apps, and social media platforms)'.⁵
- 5.6 If people report only a single incident in a wider pattern of stalking, these cases might not be identified as stalking by police. For police to be able to accurately identify stalking, and prevent serious harm and/or outcomes, they need to ask victim survivors enough questions—and the right questions—to elicit the whole story.

The Whole Story framework for investigating stalking

- 5.7 In any type of offending, the focus for police should be on obtaining useful, valid, ethically sound information that is probative and not prejudicial. It is key that the focus is on the individual. This also applies to assessments of risk of harm.
- 5.8 As Dr Patrick Tidmarsh—the author of the Whole Story framework—explains:
- Whole Story is *not* an interview framework. It provides a professional knowledge base to guide information gathering from victims, investigation of the elements of the alleged crime, the subsequent interview with the suspect, presentation of evidence at court (including legal argument regarding relevance, probative vs prejudicial value, tendency, uncharged acts, etc), and decision-making by jurors.⁶
- 5.9 A key benefit of the Whole Story framework, in the context of stalking, is that it would enable police to gather sufficient evidence—primarily from the victim survivor—to satisfy the evidentiary requirements of section 21A(2). The Whole Story framework should gather evidence and information going well beyond formal elements of proof. It must also ensure that all formal points of proof are in fact addressed, as part of the broader narrative given by the victim.
- 5.10 The questions police ask could incorporate (without being limited to) the 13 questions devised for the SASH tool.
- 5.11 This chapter focuses on how police can make principled and informed decisions about interventions.
- 5.12 The Victims of Crime Commissioner submitted that guidance for police should 'include ways in which police can better respond to course of conduct offences like stalking and build a holistic picture of a victim's experience through:
- minimising a victim's need to continually tell/re-tell their story to a new police officer each time they wish to report
 - minimising the need for victims to contextualise their stalking experience each time they engage with police
 - ensuring Victoria Police's recording system can capture and record 'course of conduct' information in ways that support victims, as well as any increased escalation in behaviour or risk.⁷

4 Ibid.

5 Submission 115 (Victoria Police).

6 Patrick Tidmarsh, 'Training Sexual Crime Investigators to Get the "Whole Story"' (PhD Thesis, Deakin University, 2016) 53 <<http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>>.

7 Submission 49 (Victims of Crime Commissioner).

- 5.13 We were told by organisations which provide specialist domestic violence services that 'police interview techniques such as the "Whole Story" method of taking a victim's statement would be applicable to non-family violence stalking'.⁸
- 5.14 This was supported in a consultation with the Children's Court, which explained that:
the initial police contact, and the method of extracting information is vital to achieving a positive outcome. If someone goes into a busy watchhouse to report stalking, they are confronted with an environment with a lot of noise, visual stimulus, and activity. It doesn't instil confidence in people to make a statement. The person coming forward needs the right environment to provide encouragement and know that they are being taken seriously.⁹
- 5.15 The need to elicit the Whole Story was first identified by Patrick Tidmarsh and was developed in the Specialist Development Unit of the Sexual Offence and Child Abuse Investigation Team (SOCIT) Project within Victoria Police.¹⁰
- 5.16 It was developed because child sexual abuse does not always result in physical evidence, and often there are complex surrounding circumstances—often pertaining to the relationship between the victim survivor and the perpetrator—that are not otherwise reported to police.
- 5.17 It was also developed to overcome other evidentiary issues. Research suggests that victims of violent offences, and specifically gendered violence, often suffer fragmentation of their memories, making it difficult to provide complete accounts of their experiences to police.¹¹ As Tidmarsh explains, 'these fragilities of episodic memory, compounded by the trauma of the offending, can become problematic when investigators ask victims to particularise different offences'.¹²
- 5.18 The Whole Story framework focuses on listening to the stories of complainants rather than forcing the particular experience to fit within traditional constructs of criminal offending. As scholars have explained, 'when we listen to the voices of women who are experiencing or have survived ... violence... [we see] how much of the abuse they experienced bore little or no resemblance to conventional notions of crime'.¹³
- 5.19 The framework is also considered to be culturally sensitive by some Indigenous representatives 'because the "Whole Story" was designed with a focus on listening to the stories of complainants', and Indigenous justice models are based on listening.¹⁴ It also provides avenues to a variety of justice outcomes.
- 5.20 The framework has practical application in the context of stalking. Research that explores police perceptions of stalking has 'identified a number of difficulties [for police] when dealing with cases of stalking', such as:
- insufficient evidence
 - victim retraction
 - the likelihood of the case being dropped by [prosecution services].¹⁵
- 5.21 Police interviewed for this research explained that stalking is a 'really difficult crime to deal with as it can go on for such a long time before we can get evidence that we can use' and that 'victims often get rid of evidence or do not collect it [which] makes it very hard to take any further'.¹⁶

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

9 Consultation 2 (Children's Court).

10 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, 476.

11 A Hardy, K Young and E Homes, 'Does Trauma Memory Play a Role in the Experience of Reporting Sexual Assault during Police Interviews? An Exploratory Study' (2009) 17 *Memory* 783.

12 Patrick Tidmarsh, 'Training Sexual Crime Investigators to Get the "Whole Story"' (PhD Thesis, Deakin University, 2016) 46–47 <<http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>>.

13 Nicole Westmarland and Liz Kelly, 'Domestic Violence: The Increasing Tensions Between Experience, Theory, Research, Policy and Practice' in Roger Matthews (ed), *What Is to Be Done About Crime and Punishment?* (Palgrave Macmillan UK, 2016) 31, 42–43.

14 Dr Patrick Tidmarsh and Dr Gemma Hamilton, Submission No 44 to Victorian Law Reform Commission inquiry, *Improving the Response of the Justice System to Sexual Offences* (2020).

15 Michelle Weller, Lorraine Hope and Lorraine Sheridan, 'Police and Public Perceptions of Stalking: The Role of Prior Victim–Offender Relationship' (2013) 28(2) *Journal of Interpersonal Violence* 320, 330.

16 *Ibid.*

5.22 This was similarly reflected in the submission from Victoria Police (see Chapter 3).

Poor record keeping is the opposite of getting the whole story

5.23 A theme emerging in this inquiry was that record-keeping and evidence management by Victoria Police should be improved. There is a clear relationship between use of the Whole Story framework and improved evidence-gathering and management.¹⁷

5.24 While Whole Story is ideally suited to stalking because of the 'course of conduct' evidentiary basis of the offence, it may be used in practice in two different situations: first, where there has already been (as at the first report) a sufficient history of behaviour to justify investigation and charging, and second, where individual incidents are reported over time, which (individually) may not initially justify intervention, but which when assessed collectively, do constitute evidence of the course of conduct required.

5.25 Research has emphasised that police should take detailed statements at the point of first disclosure, rather than placing responsibility for collecting and maintaining evidence on the victim survivor.¹⁸

5.26 Similarly, we heard from victim survivors that it was not a consistent practice by Victoria Police to take detailed or formal statements from victim survivors disclosing stalking. This is highlighted in the excerpts below:

The police could start by taking it seriously. I was stalked for like eight years. I've lost count of the police reports. Not once was I given a proper opportunity to adequately get my story across. Frankly, I don't know why I'm wasting my time now.¹⁹

Every time I went to the Police [in my small regional town], no notes were ever taken and generally I felt as if I simply wasn't believed. Every single time I saw someone new [at the station], and never could I understand why the Police simply felt every incident [I reported] was just a one off.²⁰

5.27 We were told by organisations with expertise in the area that if stalking is not identified or recorded as such by police, this can lead to fragmentation of evidence. Victim survivors may be required to re-tell their stories to a new police member each time they report a new incident.²¹

5.28 The Federation of Community Legal Centres submitted that:

where victim survivors make an initial complaint to the police, but are not invited to, or are deterred from, making a formal statement to the police, this can result in there being no record of the initial complaint. Victim survivors would then not be able to rely on their initial complaint to the police as evidence of ongoing stalking.²²

5.29 Consultations and submissions revealed that police do not consistently record complaints of stalking on the appropriate Victoria Police information management system(s). Multiple victim survivors described experiences where their reports of stalking reports were lost. This is illustrated in the following statements.

17 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>>.

18 Michelle Weller, Lorraine Hope and Lorraine Sheridan, 'Police and Public Perceptions of Stalking: The Role of Prior Victim-Offender Relationship' (2013) 28(2) *Journal of Interpersonal Violence* 320, 330.

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

20 Ibid.

21 Submission 32 (Centre for Forensic Behavioural Science).

22 Submission 97 (Federation of Community Legal Centres).

I needed police to take this seriously. We live in a small regional town, yet every time we called to report another incident, we had to explain the entire situation as no records were kept of any of our calls, or even of the person having been visited and spoken to by police. When we asked why there was no record, we were told if they recorded everything people called in about, they'd never get any work done.²³

To make it worse, it was my understanding that each time I spoke with an officer at the station and reported the stalking that they were recording the information. Finally, I came into the [police] station hysterical and spoke with an officer I had never dealt with before. I was told there was no record of me ever coming into the station the countless times I thought I was reporting the stalking were never recorded.²⁴

- 5.30 It is important to note that where the stalking situation is ongoing, it is critical that police have evidence-management systems in place to ensure that the whole story is cumulatively gathered and recorded by them. This will reduce the need for victim survivors to re-tell the whole story (to date) every time and would also assemble the body of evidence from which the police can properly conclude that a sufficient course of conduct can be proven.

How the Whole Story investigative framework can help police

- 5.31 The Whole Story framework is one way of improving police attitudes and culture in the investigation of stalking that has been tested in other contexts, such as sexual offending and family violence.
- 5.32 The underlying premise of the Whole Story training is that police must understand the nature and dynamics of abusive relationships. They must also understand the psychology and behaviour of individuals who stalk.
- 5.33 Tidmarsh suggests this approach assists 'in countering any myths and misconceptions' police may hold about these types of offences, and in 'explaining victim behaviour that may [otherwise] be interpreted as "counter intuitive", such as delay of complaint, a lack of injury, or a continued relationship with the alleged perpetrator'.²⁵
- 5.34 Victim survivors may behave in counter-intuitive ways because they are not aware of the entirety of the offending. It therefore 'requires a skilled interviewer to elicit' sufficient information about the very beginning of the offending from the victim survivor.²⁶
- 5.35 The Whole Story framework requires police to focus on the whole context rather than on individual details or discrete incidents as in traditional police approaches.
- 5.36 The framework is already part of the Victoria Police five-year strategic plan to address family violence, sexual offences and child abuse.²⁷

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

24 Ibid.

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 Ibid.

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

- 5.37 The Whole Story approach could help to inform police of what action should be taken in a given stalking situation, such as whether to:
- appoint a single point of contact for victim survivors of stalking
 - conduct a 'stop conversation' with the person committing stalking
 - refer the victim survivor or the person committing stalking to appropriate external services
 - apply for a PSIO to protect the victim survivor.
- 5.38 According to Tidmarsh, evaluations of the framework have indicated that 'a narrative approach that allows interviewees to recount their stories at their own pace, with minimal interruption, increases the number of details that they report compared to when they are not interviewed in this way'.²⁸
- 5.39 The framework provides 'an accurate knowledge base from which to work, victim-supportive attitudes, as well as empathetic attitudes towards suspects'.²⁹
- 5.40 The elements that would need to become part of this framework to be effective in the context of stalking include:
- improved understanding among police of what behaviours constitute stalking
 - 'an understanding of enhanced evidence gathering and case building, and a clear re-examination of all aspects of investigation and prosecution'.³⁰
- 5.41 The Whole Story approach is a victim-centred framework that asserts that offending begins 'in the mind of the offender' and that 'offenders are always the initiators and victims always the reactors'.³¹
- 5.42 The framework has been associated with improved 'definitions of success and victim satisfaction [and] improvements to training in complainant and suspect interviews'.³²
- 5.43 Because the framework gathers, particularises and records more detailed and complete evidence, it has also been associated with higher rates of 'brief authorisation', which plays a 'pivotal gate-keeping role in the prosecutorial process'.³³
- 5.44 This approach may result in more individuals choosing to report their experiences of stalking to police. Individuals are 'more likely to report their concerns [when it is clear that] more positive action [is] being taken by the police in stalking cases'.³⁴
- 5.45 For example, 'increased publicity of successful prosecutions' has been shown to correspond with increased confidence to report to police.³⁵
- 5.46 Importantly, the Whole Story framework is premised on fairness to both the victim survivor and the accused person.³⁶
- 5.47 Evaluation of the use of Whole Story in the context of stalking will be important to ensure it achieves its aims. These are:
- that Victoria Police responds efficiently and effectively to stalking
 - that there is less need for people to re-tell their stories and manage the stalking situation on their own
 - that escalation of stalking is prevented.

28 Patrick Tidmarsh, 'Training Sexual Crime Investigators to Get the "Whole Story"' (PhD Thesis, Deakin University, 2016) 49 <<http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>>.

29 Ibid 61.

30 Ibid 62.

31 Ibid 66.

32 Ibid 157.

33 Ibid.

34 Michelle Weller, Lorraine Hope and Lorraine Sheridan, 'Police and Public Perceptions of Stalking: The Role of Prior Victim-Offender Relationship' (2013) 28(2) *Journal of Interpersonal Violence* 320, 330.

35 Ibid.

36 Dr Patrick Tidmarsh and Dr Gemma Hamilton, Submission No 44 to Victorian Law Reform Commission inquiry, Improving the Response of the Justice System to Sexual Offences (2020).

Recommendation

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

Appendices

Appendix A: Submissions

1	Confidential
2	Confidential
3	Confidential
4	Name withheld
5	Cheryl Brown
6	Name withheld
7	Confidential
8	Name withheld
9	Confidential
10	Rochelle Carli
11	Anonymous
12	Confidential
13	Confidential
14	George Hart
15	Confidential
16	Confidential
17	Confidential
18	Confidential
19	Lyn Crocker
20	Jennifer Rosewarne
21	Antoinette Lim
22	Name withheld
23	Confidential
24	Confidential
25	Deborah
26	KB
27	Name withheld
28	Name withheld
29	Confidential
30	Name withheld
31	Name withheld

32 Centre for Forensic Behavioural Science
33 Name withheld
34 Confidential
35 Confidential
36 Ahmad Masri
37 Confidential
38 Confidential
39 Victorian Pride Lobby
40 Name withheld
41 Djirra
42 Name withheld
43 Name withheld
44 Confidential
45 Confidential
46 Confidential
47 Liberty Victoria
48 Confidential
49 Victims of Crime Commissioner's Office
50 Confidential
51 Matthew Raj
52 Confidential
53 Barbara Jackson
54 Dahlia Mahmoud, Riana Leonardi, Hannah Smith, Melissa Caligiore
55 Bianca Adams
56 Derryn Hinch's Justice Party
57 Name withheld
58 Confidential
59 Name withheld
60 Dianne Russell
61 Naciye Lara Erel
62 Name withheld
63 Madison
64 Phillip Castagna
65 Code Black Threat Management
66 Confidential
67 Erin Scrimshaw
68 Natasha Walters
69 Daniel Petrovski
70 Di McDonald
71 Confidential
72 Sarah Pervaiz
73 Confidential

74	Confidential
75	Confidential
76	Australian Association of Social Workers
77	Confidential
78	Confidential
79	Confidential
80	Confidential
81	Confidential
82	Tring Nguyen
83	Confidential
84	Confidential
85	John Raphael Violeta
86	Confidential
87	Confidential
88	Name withheld
89	Confidential
90	Carmela Melinda Di Mauro
91	Name withheld
92	Name withheld
93	(RANZCP) Royal Australian and New Zealand College of Psychiatrists
94	Name withheld
95	(SMLS) Springvale Monash Legal Service
96	Confidential
97	Federation of Community Legal Centres
98	Law Institute of Victoria
99	Confidential
100	Forensicare
101	Michael Buckman
102	Confidential
103	Confidential
104	Alannah and Madeline Foundation
105	Name withheld
106	Dr Steven Tudor & Greg Byrne PSM
107	J Starr
108	Confidential
109	Name withheld
110	Name Withheld
111	Confidential
112	Confidential
113	Confidential
114	Confidential
115	Victoria Police

Appendix B:

Consultations

- 1 Centre for Forensic Behavioural Science
- 2 Children's Court
- 3 Victoria Police
- 4 Sexual Assault Services Network
- 5 Harmful Sexual Behaviours Network
- 6 Magistrates' Court of Victoria
- 7 Small Group Meeting on stalking and risk of serious harm and or outcomes
- 8 eSafety Commissioner (eSafety)
- 9 Judicial College of Victoria
- 10 Victorian Aboriginal Legal Service
- 11 Members of the Victims of Crime Consultative Committee (VOCCC)
- 12 Domestic Violence Victoria and Domestic Violence Resource Centre Victoria
- 13 Victoria Legal Aid
- 14 Confidential
- 15 Forensicare
- 16 Centre for Excellence in Child and Family Welfare: Young People and Stalking
- 17 Small Group Meeting: Young People and Stalking
- 18 County Court of Victoria
- 19 Community Legal Sector
- 20 Law Institute of Victoria
- 21 Small Group Meeting on stalking and women with disabilities
- 22 Small Group Meeting on stalking and people with disabilities
- 23 Cyberstalking Roundtable
- 24 Criminal Bar Association
- 25 Victoria Police - Intelligence and Covert Support Command
- 26 Victoria Police - Authorising officers and Fixed Threat Assessment Centre
- 27 Kulturbrille
- 28 Victorian Pride Lobby
- 29 Alannah & Madeline Foundation
- 30 Roundtable with Multicultural Lawyers and Legal Stakeholders
- 31 Roundtable with Multicultural and Multifaith Community Organisations

Reports published by the Victorian Law Reform Commission

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|----|---|----|---|
| 1 | Criminal Liability for Workplace Death and Serious Injury in the Public Sector (2002) | 26 | Succession Laws (2013) |
| 2 | Disputes between Co-owners (2002) | 27 | Jury Empanelment (2014) |
| 3 | Failure to Appear in Court in Response to Bail (2002)* | 28 | Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (2014) |
| 4 | People with Intellectual Disabilities at Risk: A Legal Framework for Compulsory Care (2003) | 29 | The Forfeiture Rule (2014) |
| 5 | Sexual Offences (2004) | 30 | Trading Trusts—Oppression Remedies (2015) |
| 6 | Defences to Homicide (2004) | 31 | Photographing and Filming Tenants' Possessions for Advertising Purposes (2015)* |
| 7 | Workplace Privacy (2005) | 32 | Medicinal Cannabis (2015) |
| 8 | Implementing the Uniform Evidence Act 1995 (2006) | 33 | Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries (2016) |
| 9 | Uniform Evidence Law (2006) | 34 | The Role of Victims of Crime in the Criminal Trial Process (2016) |
| 10 | Review of Family Violence Laws (2006) | 35 | Funeral and Burial Instructions (2016)* |
| 11 | Residential Tenancy Databases (2006)* | 36 | Review of the Adoption Act 1984 (2017) |
| 12 | Assisted Reproductive Technology and Adoption (2007) | 37 | Access to Justice—Litigation Funding and Group Proceedings (2018) |
| 13 | Review of the Bail Act 1997 (2007) | 38 | Review of the Victims of Crime Assistance Act 1996 (2018) |
| 14 | Civil Justice Review (2008) | 39 | Neighbourhood Tree Disputes (2019)* |
| 15 | Law of Abortion (2008) | 40 | Contempt of Court (2020) |
| 16 | Assistance Animals (2008)* | 41 | Committals (2020) |
| 17 | Jury Directions (2009) | 42 | Improving the Justice System Response to Sexual Offences (2021) |
| 18 | Surveillance in Public Places (2010) | 43 | Improving the Justice System Response to Sexual Offences: Supplementary Report on 'Grab and Drag' Conduct (2021) |
| 19 | Protection Applications in the Children's Court (2010) | 44 | Stalking: Interim Report (2021) |
| 20 | Review of the Property Law Act 1958 (2010) | | |
| 21 | Supporting Young People in Police Interviews (2010)* | | |
| 22 | Easements and Covenants (2010) | | |
| 23 | Sex Offenders Registration (2011) | | |
| 24 | Guardianship (2012) | | |
| 25 | Birth Registration and Birth Certificates (2013)* | | |

* *Community law reform project.*

For a full list of publications, and to access the above reports, see www.lawreform.vic.gov.au

Stalking

Interim Report

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