



**Contacts:**

Whilst we are critical throughout this submission on current practices in response to stalking allegations, you are always advised to share your experiences with authorities or someone you trust, where safe to do so.

If you are in immediate danger of stalking or associated controlling behaviours, call 000 immediately.

You can also attend your [local police station](#) in person if you would prefer to speak to someone face-to-face or you feel this is safer.

The Victims of Crime Helpline (1800 819 817) can also provide advice and support to you if you're not ready to make a formal police report or if you're unsure what action to take.

If you would like to share your story with our Party and are within Victoria, our office contact details are:

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**Acknowledgements:**

Derryn Hinch's Justice Party, and particularly its two Victorian Members of Parliament, Tania Maxwell MP and Stuart Grimley MP would like to acknowledge the survivors of stalking crimes who have contributed to this submission. Without your courage and bravery in sharing your experiences with us, our submission would lack the firsthand knowledge of those who have experienced horrible crimes and the long, arduous process that currently follows such a crime.

We would like to extend our thoughts to other stalking survivors whom we have not yet met and who may never come forward.

**Terminology:**

During this submission, we will refer to those who have been affected by stalking as 'victim-survivors'. We use this term reflective of that contained within the VLRC consultation paper, which is a term that acknowledges the bravery and resilience of those experiencing various crimes, as well as their victimisation. We acknowledge that some prefer to be recognised as victims, as survivors or other terms that reflect their individual experiences and we respect this.



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## INTRODUCTION

Derryn Hinch's Justice Party believes that this inquiry is very important not only for the many thousands of Victorians currently experiencing stalking, but it is also of great significance to many victim-survivors of stalking, and to the families and friends of those Victorians who have been killed by stalkers. In turn, it has the potential to play a crucial role in helping to minimise the number of people who will be impacted by this awful crime in the future.

Moreover, as we observe in greater detail later in this submission, a more proactive approach in stalking cases is likely to prevent other criminal offences from potentially occurring as well.

As the political party that arranged the meeting that set the stage for the establishment of this inquiry, we obviously have a very close and direct interest in your work.

As you will know, the office of one of our MLCs (Tania Maxwell) facilitated a meeting with former Attorney-General, the Hon Jill Hennessy MLA, on 9 December 2020 for the family of Celeste Manno. Celeste had been killed on 16 November 2020 at her home in Mernda, allegedly by her stalker, and it was following Ms Hennessy's conversation with the family that she referred this inquiry to the VLRC.

The approach we have taken in this submission is to broadly respond to the Terms of Reference of the inquiry and the 30 questions listed on pages x and xi of the Consultation Paper that was publicly released on 25 June 2021. For many of the questions, we have answered them in a collated rather than individually.

We do not regard ourselves as possessing a sufficiently specialised level of expertise so as to be able provide anywhere near an exhaustive list of all of the potential solutions to the problem of stalking in Victoria.

Nevertheless, this submission does contain a number of observations, insights and recommendations that are founded on substantial research and a considerable degree of experience with people who have directly or indirectly experienced stalking.

Our close relationship with Celeste Manno's family is reflective of a bond that we have established with many victims of crime and/or their families and friends. We frequently interact with (and are approached by) many people whose lives have been directly and significantly impacted by crime. This includes numerous Victorians who have been profoundly affected by stalking.

We therefore come to this inquiry with a clear philosophy that an improved approach to the management and minimisation of stalking in Victoria should centre, above all, on the requirements and interests of the victim-survivors of this harrowing and brazen crime. We also come to the inquiry with a substantial awareness and understanding of stalking cases – and the ways in which they have been handled. We are therefore confident that we are well placed to reflect upon (and to suggest potential options to counteract) the current flaws in Victoria's approach to stalking, particularly from a legislative and policy perspective.



## **EXECUTIVE SUMMARY**

As a political party that possesses a deep understanding of the operation of the State's criminal justice system, we believe that a range of changes need to be made to the handling of stalking cases.

Acts of stalking and their ramifications are neither satisfactorily detected nor understood. This is a terrifying crime that not only generates severe psychological harms and injuries but also often leads to serious physical injuries and even, in some cases, to murder or attempted murder.

Yet, as we observe in greater detail throughout this submission, the (direct and indirect) victim survivors of this crime are rarely taken seriously – or at least seriously enough. Even when stalking crimes are committed and/or orders are breached, the perpetrators are rarely punished, managed or treated effectively. Inevitably, this terrible failure of the Victorian Criminal Justice system spurs re-traumatisation and secondary victimisation as well as a continuation (and, often, an escalation) of the offending.

Across the pages that follow, we have therefore proposed each of the following recommendations and we ask the VLRC Reference Team to closely consider them in the name of making meaningful, valuable and desperately needed improvements in Victoria.

## **SUMMARY OF RECOMMENDATIONS**

**Recommendation 1: Multiple barriers exist, and need to be minimised, for the reporting of stalking offences.**

**Recommendation 2: Work needs to be undertaken across Victoria to promote more community awareness of the problem of stalking, including potentially through anti-stalking education at the State's schools.**

**Recommendation 3: More police resourcing and coverage needs to be provided in the State's rural and regional areas.**

**Recommendation 4: A new risk assessment framework should be devised in relation to stalking in order to aid Victorian police and courts.**

**Recommendation 5: Victoria should consider the adoption of the Netherlands' model of policing stalking offences.**

**Recommendation 6: Dedicated (and ideally mandatory) training modules and programs on stalking should be introduced for police and court officials.**

**Recommendation 7: Any new information sharing scheme on stalking in Victoria should be based on a successful scheme in existence in another jurisdiction.**

**Recommendation 8: Specialist forms of police resourcing, such as a stalking unit, should be created and should be introduced as part of a suite of structural and operational reforms across a number of Victorian systems and agencies.**



**Recommendation 9:** A system similar to the United Kingdom's Stalking Protection Orders model should be introduced.

**Recommendation 10:** Personal Safety Intervention Orders (PSIOs) should be subdivided into different streams, and one of the new standalone streams should be used only for stalking cases.

**Recommendation 11:** The penalty system for breaches of PSIOs should be remodelled and strengthened, including through more minimal recourse to fines.

**Recommendation 12:** Free legal representation should be more widely available than is currently the case for people affected by stalking.

**Recommendation 13:** Relevant provisions of Victorian laws in relation to stalking should be reviewed on a regular basis, including through ongoing dialogue with victims and victim-survivors.

**Recommendation 14:** Given that only around 36% of perpetrators receive custodial sentences (and that only around 18% of them are imprisoned for more than a year), sentencing guidelines and penalties for stalking offences should be revisited.

**Recommendation 15:** The current maximum penalty in the Magistrates Court of two years imprisonment for anyone found guilty of stalking should be reconsidered.

**Recommendation 16:** Information about a stalking perpetrator's previous behaviour should be allowed to be disclosed in court, particularly in pre-sentence reports.

**Recommendation 17:** More weight should be given in stalking cases to Victim Impact Statements.

**Recommendation 18:** The provisions relating to mental impairment defences should be reviewed for stalking cases.

**Recommendation 19:** The (delayed) changes in the *Justice Legislation Amendment (Criminal Appeals) Act 2019* should be urgently delivered by the State Government.

**Recommendation 20:** Any changes that are recommended and/or made to Victoria's stalking laws as a result of this inquiry should be named 'Celeste's Law'. This would be in memory of Celeste Manno, in honour of her family, and in recognition of the central importance of her case in instigating this crucial process of reshaping stalking responses in Victoria.

**Recommendation 21:** There should be a stronger trauma-informed approach adopted within the criminal justice system that not only ensures a fair process for the accused but also upholds the rights and entitlements of victims of crime.

**Recommendation 22:** Victoria's Office of Public Prosecutions needs to provide greater victim support, especially in keeping with the obligations set out in the State's Victims' Charter.



**Recommendation 23:** At least one specialist agency, based on any of a wide range of models overseas, should be established in Victoria to specifically provide help, advice and support to anyone adversely impacted by stalking activity.

**Recommendation 24:** The State's evidence base on the experiences of people who have reported stalking to police in Victoria needs to be dramatically strengthened.

**Recommendation 25:** Specialist risk assessment reports for stalking should be made available to courts.

**Recommendation 26:** Particularly in view of its technical suitability to reducing this form of crime and its many associated risks, electronic monitoring of stalking offenders should be introduced.

**Recommendation 27:** A program replicating, or similar to, Tasmania's 'Project Vigilance' model should be established in relation to stalking offenders in Victoria.

**Recommendation 28:** A new structure of assistance for crime victims should be implemented to replace the current model legislated as part of the *Victims of Crime Assistance Act 1996*.

**Recommendation 29:** The State Government should expedite its response to the 2018 VLRC review of victims of crime assistance.

**Recommendation 30:** The State Government should also act upon many of the changes to victim support suggested in the 'Strengthening Victoria's Victim Support System: Victim Services' review, authored by RMIT's Centre for Innovative Justice.

**Recommendation 31:** The current, early scope and resourcing of Victoria's Victims Legal Service should be significantly expanded.

**Recommendation 32:** Any new specialist courts for stalking should be expertly-staffed and their work would need to be suitably trauma-informed.

**Recommendation 33:** Offender rehabilitation and reintegration should never be seen as a substitute or replacement for significant sentencing outcomes where serious stalking offences have been committed.

**Recommendation 34:** Consideration should be given to allowing the Victorian Attorney-General to expedite the addition of more forms of stalking offences to the *Crimes Act 1958* by regulation.

**Recommendation 35:** Further work should be conducted on the Australian Law Reform Commission's proposal to develop a Federal or State Harassment Act that might consolidate and centralise all of the country's (or relevant State's) existing criminal laws in relation to harassment.

**Recommendation 36:** The State Government should negotiate agreements and/or a Code of Conduct with internet and social media companies in order to better regulate, and protect users from, cyberstalking.



## RESPONSES TO THE CONSULTATION PAPER QUESTIONS

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

As is the case for many of the other 29 questions listed in the Consultation Paper, the most relevant and consequential answers to Question 1 will come from victim-survivors of stalking and from the family members and friends of deceased victims of stalking. Clearly, they are the people who can speak the most directly and incisively about what encourages or discourages the reporting to police of stalking events.

From Derryn Hinch's Justice Party's perspective, and especially on the basis of having spoken with a number of people in those two categories, we believe that there are a very wide range of barriers that adversely affect the ability and willingness of stalking victim-survivors to formally report their experiences. We do not propose to cover them in extensive or exhaustive detail in this submission; instead, we touch below merely on what we consider to be the most significant problems in a Victorian context.

In the first instance, many people (at least in the initial stages of stalking) will neither realise they are being targeted nor fully comprehend the risks attached to such behaviour.<sup>1</sup>

Partly, this may be a legacy of the problem that the word and the concept of 'stalking' also often tend to be (unknowingly and innocently) trivialised, in a light-hearted fashion in many conversations. Given this legacy, we suspect there may potentially be value in promoting more community awareness of the problem of stalking across Victoria, including possibly in some form of anti-stalking education in Victorian schools.

In a similar vein, many of the elements of stalking are not necessarily criminal offences in themselves, especially when they are not perceived to be part of a broader, sustained pattern of conduct. Often, this means that stalking victim-survivors are initially more inclined to use informal coping mechanisms and strategies than formally reporting what has happened to them. That is, they seek the help and advice of family and friends and/or take steps such as adjusting their own routines and activities, changing their phone numbers and/or email addresses, and/or moving to another location.<sup>2</sup>

In Britain, studies have revealed that, on average, victim-survivors suffer around 100 different stalking incidents before they even report the crime – and we have no immediate reason not to accept that the numbers might well be similar in Victoria.<sup>3</sup>

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<sup>1</sup> BW Reyns and CM Englebrecht, 'The Stalking Victim's Decision to Contact the Police – A Test of Gottfredson and Gottfredson's Theory of Criminal Justice Decision Making' (2010): 38 (5), *Journal of Criminal Justice* 998.

<sup>2</sup> J Korkodeilou, 'No Place to Hide: Stalking Victimization and Its Psycho-Social Effects' (2017): 23(1), *International Review of Victimology* 17.

<sup>3</sup> Crown Prosecution Service (UK), 'Stalking analysis reveals domestic abuse link' (online, 4 December 2020) <<https://www.cps.gov.uk/cps/news/stalking-analysis-reveals-domestic-abuse-link>>.



Also common among many victim-survivors' families and friends and many victim-survivors themselves is a fear that reporting stalking offences will actually only serve to inflame the situation.<sup>4</sup>

There are numerous different reasons for this fear, but one of the most obvious is a very real and understandable sense of anxiety that this course of action will inevitably provoke some form of (additional and/or even more aggressive) retaliation and reprisals from the perpetrator.

Another cause of the fear is the recurring perception that stalking is generally afforded a lower priority by law enforcement officials than various other offences. As just one of many examples of this, we would point to the case of Di McDonald, an extremely brave and courageous victim-survivor of serial stalker, Max Gardiner.

Some of Ms McDonald's story has been recounted by various media outlets. However, in the context of the frustrations and difficulties of reporting stalking incidents and/or the potential danger for more of them to occur in the future (even in cases with a considerable history), we particularly note her comments in an interview with the Australian Broadcasting Corporation in January 2021. In that interview, Ms McDonald said that Victoria Police in her case had reverted to the same modus operandi over and over again:

"I was told that I should leave my home if I feel like I am in danger that I needed to go to Safe Steps [Family Violence Response Centre] or a women's refuge. Same old BS. I asked if I call triple 0 that someone will actually attend if Max is here. He told me to go into the station and make a report if Max turns up and they will look into it. Nothing changes. No help from police again."<sup>5</sup>

We also wish to reinforce a number of points that were canvassed in the VLRC's 'Guide to Our Issues Papers' document that was published in 2020 for its 'Improving the Response of the Justice System to Sexual Offences' inquiry. In particular, these include the notion that it is typically more challenging for victim-survivors from some groups and backgrounds to access the justice system than others. That has again been reinforced in the Consultation Paper for this inquiry,<sup>6</sup> particularly on pages 4 to 6.

Additionally, in the case of stalking, it is also worth noting that male victim-survivors (probably largely as a reflection of the fact that they represent a significant minority among those people who are stalked) frequently face a number of very specific and difficult challenges in being taken seriously.<sup>7</sup>

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<sup>4</sup> MS Greenberg and RB Ruback, *After the crime: victim decision making* (Springer Science & Business Media, 2012).

<sup>5</sup> C Hall, 'Stalking victim Di McDonald wants Max Gardiner forced to wear tracker on release from prison', *ABC News* (online, 9 January 2021) <<<https://www.abc.net.au/news/2021-01-09/di-mcdonald-stalker-max-gardiner-release/13041912>>.

<sup>6</sup> See Victorian Law Reform Commission, 2021, *Stalking: Consultation Paper*, 4-6.

<sup>7</sup> As one specific reflection on this phenomenon from a male victim-survivor in Britain (and the accompanying words from the Suzy Lampugh Trust), see: <https://twitter.com/MillsNanyn/status/1388572175469367303>.





There is also now steadily-mounting awareness globally that far more work needs to be undertaken in understanding and limiting the damage that stalking can inflict on children and young people.<sup>8</sup> In a Victorian context, the need for this action is underlined in many examples – including through what appears to be growing numbers of reports of police needing to investigate stalking among these age groups.<sup>9</sup>

Another point that we specifically wish to bring to the VLRC's attention is the not-insignificant level of stalking activity in the State's rural and regional areas.

According to the latest official figures released by the Crime Statistics Agency, a total of 16% of the State's reported incidents of stalking, harassment and threatening behaviour occurred there during the year to 31 March 2021.<sup>10</sup>

We suspect that the numbers of stalking cases in these areas may be a very direct reflection of their relative lack of police stations, and the associated difficulty in accessing police at all hours of the day. We do not want to make this link too assertively as it is difficult to establish without having access to the necessary internal information and statistics about these matters from within Victoria Police.

As Tania Maxwell observed in the Legislative Council on 30 April 2019, there is considerable frustration within electorates such as hers (Northern Victoria Region) with what local residents regard as seriously inadequate police resourcing. She said that "many crimes (are) going unreported altogether, especially in locations where a local police station is shut for the night and/or remains unmanned for many hours".<sup>11</sup>

Ms Maxwell's calculations at the time showed that there were 397 police stations within Victoria. Of the 107 of those that were based in her electorate of Northern Victoria, just 11 were manned for the full 24 hours of each day. She said that this quite extraordinarily meant that, by night time, each of those few stations that was actually still open was, on average, responsible for the safety of over 72,000 residents and for responding to call-outs across an area of more than 9,000 square kilometres.

If we are to be serious in Victoria about better protecting stalking victim-survivors and encouraging them to report, then this is yet another glaring problem that needs to be addressed.

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<sup>8</sup> For two of the many studies of this trend, see: G Margolin, 'Children's exposure to violence: exploring developmental pathways to diverse outcomes' (2005): 20 (1), *Journal of Interpersonal Violence* 72; A Nikupeteri and M Laitinen, 'Children's Everyday Lives Shadowed by Stalking: Post separation Stalking Narratives of Finnish Children and Women' (2015): 30 (5), *Violence and Victims* 830.

<sup>9</sup> For one of the many such reports, see: A Hamblin, 'Young children investigated by police over bullying, stalking', *Herald Sun* (online, 5 November 2018) <<https://www.heraldsun.com.au/news/special-features/news-in-education/young-children-investigated-by-police-over-bullying-stalking/news-story/f76281912350f4cc72f6cba2f36308db>>.

<sup>10</sup> Crime Statistics Agency (Vic), 'Latest Victorian Crime Data', *Crime Statistics Agency* (web page, July 2020) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/download-data>>.

<sup>11</sup> Victoria, *Parliamentary Debates, Legislative Council*, 30 April 2019, 1113 (Tania Maxwell).



**Recommendation 1: Multiple barriers exist, and need to be minimised, for the reporting of stalking offences.**

**Recommendation 2: Work needs to be undertaken across Victoria to promote more community awareness of the problem of stalking, including potentially through anti-stalking education at the State's schools.**

**Recommendation 3: More police resourcing and coverage needs to be provided in the State's rural and regional areas to ensure stalking complaints can be responded to appropriately and without unnecessary delay..**

***Question 2: Should a risk assessment framework be developed to help police and courts identify the course of conduct and manage risk of serious harm in the context of stalking? If so, how should it work?***

***Question 3: What else might help agencies to identify the risk of serious harm in a stalking situation? For example, should there be special training or guidelines, or expert advice?***

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

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

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

Clearly, these five questions centre on some of the most crucial issues that need to be considered in this inquiry. That is because there should 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.

That statement should not be regarded as a wholesale criticism of Victoria Police or of magistrates and judges in the State. Instead, it should be seen as a reflection of the fact that there remain numerous legal, operational and policy challenges in the field of stalking in Victoria – even 27 years beyond the introduction of stalking as a specific offence in Victorian legislation.

We would add that these are problems that are not unique to Victoria. Nationally and internationally, many cases, studies and inquiries have laid bare that these challenges are very significant across most parts of the world. 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 then respond to it.

In some cases, these failures have become so manifest that the families of some victim-survivors have even started bringing their own legal actions against the relevant officials involved in the



case.<sup>12</sup> So it is arguably not beyond the realms of possibility that, without serious improvement in official responses in the future, then the police force and/or other government agencies in Victoria may soon find themselves on the end of similar, very serious legal consequences and liabilities as well.

We are certainly of the view that, in Victoria's case, different approaches (including a new risk assessment framework and dedicated training modules and programs) should be developed and implemented. We believe that, if these are carefully and sensibly developed and implemented, they will assist police, in particular, to better identify the course of conduct and manage the risk of serious harm in the stalking context.

To be more specific about how these could look in practice, we are particularly attracted to the current Dutch model of policing these offences.

This model, based as it is on years of extensive evidence and research, has fundamentally shifted the focus of police investigations of stalking – from a substantially reactive approach to one that is more proactive and more centred on early intervention. It is underpinned by the philosophy that crime prevention and victim safety are crucial in the minimisation of stalking risk, and that police need to be focused on early harm attenuation.<sup>13</sup>

Since 2015, crucial changes have become clearly evident in the Netherlands' policing of stalking in four main forms.

Firstly, there has been a pronounced increase in the education and training of police on the practice of stalking and its many accompanying dangers. Most notably, this has been reflected in the inclusion within the basic training for all new police officers of detailed information on stalking; the creation and dissemination of a practical handbook about how to manage stalking cases; and easily accessible continuing education and advice through an online training program, workshops, training sessions and internal communication.<sup>14</sup>

Secondly, a detailed internal checking system is utilised in order to ensure that no stalking cases are missed or misidentified.<sup>15</sup> At the end of each 24 hour period, an internal electronic tracker trawls information entered into the official police computer system and flags cases that feature certain words, phrases and combinations of them that are associated with stalking. It also trawls information from other police systems and combines the two where there is a potential link or match. These cases are all then checked by a police officer, who assesses whether any of them is stalking-related but has not been marked as such when it was first entered into the system.

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<sup>12</sup> For one prominent recent example, see: C Tanner, 'University of Utah agrees Lauren McCluskey's murder was 'preventable,' will pay her parents \$13.5 million', *The Salt Lake Tribune* (online, 23 October 2020) <<https://www.sltrib.com/news/education/2020/10/22/lauren-mccluskeys-parents/>>.

<sup>13</sup> C Brandt and B Voerman, 'The Dutch Model: A New Approach to Policing Stalking' in *Psycho-Criminological Approaches to Stalking Behaviour – An International Perspective* (John Wiley & Sons, 2020), p.259.

<sup>14</sup> *Ibid*, p.260.

<sup>15</sup> *Ibid*, p.259.



Brandt and Voerman observe that this system was road-tested on past cases, including that of 28-year-old nurse, Linda van der Giesen.<sup>16</sup> She was murdered in the city of Waalwijk in 2015 by her ex-boyfriend, who it transpired possessed a long history of stalking, harassing and threatening his ex-girlfriends. This was despite the fact that she had consistently presented to the local police, warned them multiple times of his actions and her fears about them, and that a so-called 'notification code' had been placed on her address to supposedly ensure a fast response in the event of new information and/or an emergency call.

Brandt and Voerman say that, as part of the road-testing, the van der Giesen case not only showed up in the results generated by the new system but that "it also showed that the offender had previously stalked another victim in a different police region. (Previously,) a police officer would have had to actively go looking to see if there was information on the offender in other police systems meaning that if they didn't, they wouldn't be aware of it".<sup>17</sup>

Thirdly, the new Dutch approach places far greater attention on victim protection and safety, chiefly through the SASH (Screening Assessment for Stalking and Harassment) screening model developed and progressively refined by a team of Australian, British and Swedish clinicians and researchers. This model allows police officers to conduct screening of cases on the basis of considering and scoring a range of risk factors. This ultimately leads to an assessment result that specifically weighs risk in the context of the likely future persistence and escalation of the incidence of stalking and/or the manifestation of violence against each victim.

Fourthly, there is substantially enhanced communication and co-operation between police and other agencies. There is a dedicated system of case management through which a police officer(s) responsible for the case monitors it through to completion and, in the meantime, oversees which agencies are (and need to be) involved, as well as the actions that are being taken or still need to be taken.

There are many lessons from those new policing techniques that have particular relevance for Victoria. The most critical of them is that, traditionally, there has not been sufficient education and training in Victoria on stalking for police officers and court officials.

This education and training needs to be urgently introduced and, ideally, on a mandatory basis. Predominantly, it should focus on helping the trainees deal with all aspects of stalking, especially in assisting them to recognise the warning signs and triggers and learning to how most effectively respond to such cases. Moreover, it should equip them with a significantly enhanced understanding of how to detect stalking activity and to address the problem, particularly before it escalates further and/or spills over into other forms of crime.

To quote from a tweet from the Stalking Prevention, Awareness, and Resource Center in the United States on 9 January 2021, many professionals tasked with charging offenders and/or supporting

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<sup>16</sup> Ibid, pp.249-250.

<sup>17</sup> Ibid, p.260.



survivors have little or no training on stalking, and multiple studies have found that training dramatically improves their response.<sup>18</sup>

On a related front, we recognise that, within Victoria itself, there has been considerable collaboration between law enforcement, forensic mental health and academia on improving Victoria Police's risk assessment and management of family violence.<sup>19</sup> This has led to some very promising advances in both knowledge and practice. We recommend that this collaboration be expanded to the context of stalking.

Accordingly, we would be supportive of the idea of the VLRC Reference Team further exploring the potential for this type of work to be adapted or translated specifically to a stalking context. If any steps can be taken to enhance risk assessment, then we would naturally be well disposed to this outcome – whether that was to be reflected in a new Code of Practice, in far more 'stop conversations' ahead of any escalation in violence, or in any other form. We would hasten to add, though, that it is critically important that assessments of stalking are made in their own right, rather than being unduly or heavily based on models that have been developed for other crimes. Thus the need for this form of collaboration and its outcomes to be guided by properly directed and resourced research.

We also certainly agree with the suggestion that there should be a comprehensive information sharing framework between agencies providing services for stalking. We therefore recommend that the government take steps to develop interagency and inter-portfolio mechanisms to ensure the minimisation of barriers to information sharing to enhance government agencies capacity to develop and implement responses to stalking.

We are unable to proffer suggestions feedback on how a new information sharing scheme might work precisely because there is insufficient information and evidence about these practices on the public record for us to be able to comment appropriately.

There may be benefits in replicating elements of the State's family violence information sharing scheme and the Family Violence Multi-Agency Risk Assessment and Management (MARAM) for this purpose. However, in connection with this inquiry we recommend that any new information sharing scheme in relation to stalking in Victoria should be based on a similar scheme in another jurisdiction that has proven to be successful specifically in relation to stalking. (The Dutch version of case management referred to above would certainly provide a very useful starting point.) Stalking incidents are too often subsumed under the broader categories of domestic and family violence – and whilst some stalking incidents can form part of domestic violence or coercive control-type behaviour, we would not want that to occur in relation to an information sharing model.

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<sup>18</sup> Stalking Prevention, Awareness, and Resource Center, 9 January 2021, *Tweet*, <<https://twitter.com/followuslegally/status/1347528843914051585>>.

<sup>19</sup> T McEwan, S Bateson and S Strand, 'Improving police risk assessment and management of family violence through a collaboration between law enforcement, forensic mental health and academia' (2017): 3 (2), *Journal of Criminological Research Policy and Practice*.



We add that many other jurisdictions in addition to Victoria and the Netherlands have faced these same challenges (and are increasingly identifying and implementing solutions to them) and can therefore potentially offer Victoria possible opportunities to help make improvements in our processes.

We realise there was media speculation, at the time of the release of the Consultation Paper, that one of the final recommendations of the VLRC in this inquiry may be that a specialist stalking unit should be created. If these reports are true, then we would welcome such a development and therefore recommend that a specialist stalking unit be created within Victoria Police. The creation of dedicated, specialist forms of police resourcing specifically committed to investigating and tackling stalking cases would clearly represent a major and important advance on past and existing practice.

However, we would also sound a note of caution in relation to this. Any changes to the practices of Victoria Police in relation to stalking offences will work best if accompanied by other important, complementary reforms, and are regarded only as one set of elements among a number of structural and operational changes that should be made.

We share the view, expressed by Sheridan and Chan, that there is a “need for a variety of actors to be involved in preventing and responding to stalking, and that coordination is required between the family, education systems, commerce, police, and the justice system ... (and) that the management and assessment of risk requires clear communication between the police and other agencies to ensure that differing motivations and mandates do not get in the way of victim protection”.<sup>20</sup>

**Recommendation 4: A new risk assessment framework should be devised in relation to stalking in order to aid Victorian police and courts.**

**Recommendation 5: Victoria should consider the adoption of the Netherlands’ model of policing stalking offences.**

**Recommendation 6: Dedicated (and ideally mandatory) training modules and programs on stalking should be introduced for police and court officials.**

**Recommendation 7: Any new information sharing scheme on stalking in Victoria should be based on a successful scheme in existence in another jurisdiction.**

**Recommendation 8: Specialist forms of police resourcing, such as a stalking unit, should be created and should be introduced as part of a suite of structural and operational reforms across a number of Victorian systems and agencies.**

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<sup>20</sup> L Sheridan and O Chan, ‘Conclusions’ in *Psycho-Criminological Approaches to Stalking Behaviour – An International Perspective* (John Wiley & Sons, 2020), p.384.



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

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

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

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

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

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

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

***Question 14: Should the appeals process for intervention orders be changed to improve the experience of victim survivors? If so, how?***

***Question 15: Are there any other aspects of the Family Violence Protection Act 2008 (Vic) that should be replicated in the Personal Safety Intervention Orders Act 2010 (Vic)?***



Restraining and intervention orders are frequently sought and issued in Victoria – but there are far too many cases in which they fail to discourage an offender's behaviour: In many stalking situations, they only seem to embolden it. We regularly hear (and agree with) the complaint that, often, an intervention order is regarded by the stalking perpetrator as nothing more than a 'piece of paper'.

As one measure to help to redress this, we recommend that there should be an avenue through the *Personal Safety Intervention Orders Act 2010* for police to be able to issue the equivalent of a Family Violence Safety Notice. In this respect, we would actually recommend the potential adoption of something akin to the specialised, and relatively recently introduced, Stalking Protection Orders system that is now in force across in the United Kingdom.<sup>21</sup>

One of the biggest problems in Victoria in relation to applications for, and the use of, intervention orders, is the difficulty in separating the serious from the trivial. Through some well-intentioned law changes that were enacted in 2010, the then State Government sought to prioritise the more urgent, serious cases requiring high-level involvement and management, particularly from Victoria Police, and to siphon many of the less serious cases to the Dispute Settlement Centre of Victoria.

However, in practice, this longstanding difficulty has persisted. In short, the importance of issuing and enforcing intervention orders in stalking cases tends to become lost among the significant volume of requests for intervention orders in relation to many other issues.

We acknowledge that there are a range of incredibly difficult dilemmas tied especially to trying to err on the side of caution and minimising the possibility of escalation into even more serious disputes. We also recognise that this inquiry's Terms of Reference on these points are fairly specific and confined in their focus and scope.

However, there needs to be a better means of distinguishing the relative importance of these cases. Clearly, the vast majority of Victorians would want to see less intervention orders sought and granted for trivial and/or even false claims and increased priority resourcing and attention devoted to those orders where genuine risk and danger exist.

As one potential step forward, we would recommend a rewording of the relevant parts of the *Personal Safety Intervention Orders Act 2010* and/or a further subdivision of the structure of intervention orders in Victoria.

To be more specific, we recommend that personal safety intervention orders (PSIOs) should be separated into further, clearer streams. One of those streams, which could be modelled on the UK's Stalking Protection Order system, should be explicitly for stalking cases.

It is also absolutely critical that the penalties for breaches of PSIOs are made more punitive, and indeed much more rigorously enforced. We would also be inclined to suggest that the use of fines as penalties should be minimised, as they are imposed in around 15% of cases that reach sentencing

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<sup>21</sup> For two online references to this system, see: <https://www.cps.gov.uk/legal-guidance/stalking-protection-orders> and <https://www.suzylamplugh.org/blog/stalking-protection-orders-one-year-on>.





stage in the Magistrates Court yet do not seem to represent enough of a deterrent to ongoing stalking.<sup>22</sup>

As part of the data-gathering work for this inquiry, we would recommend that detailed analysis also be undertaken as to how many PSIOs are granted relative to how many applications are made, and how these respective numbers compare with those in other relevant jurisdictions. Moreover, we suggest that it scrutinise the numbers of breaches of intervention orders specifically in stalking cases, and the penalties that have been imposed for these breaches be collated, and that information be made public in order to inform the development of strategies to respond to stalking. Overall, the most recent Victorian crime statistics indicate there were as many as 2,798 breaches of intervention orders during the year to 31 March 2021.<sup>23</sup>

In relation to Question 8, it is an attractive idea that a person making an application for a personal safety intervention order should be able to do so online. **However**, in cases of stalking, this is a much more complex and problematic issue in practice than it might at first seem.

There is certainly an argument to be made – as is suggested on page 27 of the Consultation Paper – that some valuable benefits might potentially be derived from the introduction of an online application option.

In determining whether and how such a resource be made available, it needs to be borne in mind that a large proportion of stalking cases feature some kind of online surveillance. Accordingly, where a stalking perpetrator has some form of access to, or some type of capacity to at least monitor, their victim's electronic activity, then the exercise of completing an intervention order online could potentially generate a number of risks to the victim.

We agree with the point made on page 27 that an online application process would also potentially make it harder for applications to be appropriately filtered and tested.

Some victim-survivors have also told us that they felt that they benefited from their initial attendance at a courtroom, especially where they were able to pose a number of their (detailed) questions in-person to a clerk and/or to front a magistrate relatively quickly for a hearing.

That said, we support the idea that respondents should be precluded from personally cross-examining the affected person in some personal safety intervention order matters and therefore recommend that appropriate changes be made to the relevant Acts and regulations to ensure this occurs. We do not believe that this prospect of allowing cross-examination by the respondent would add significant value to such proceedings. We believe that it would instead create a considerable risk of the further traumatisation of those people who are seeking the orders.

As far as we are aware, only a very low percentage of the people affected by stalking in Victoria currently receive any type of free or subsidised legal advice or help. We therefore endorse the

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<sup>22</sup> Sentencing Advisory Council (Vic), 'SAC Stat – Stalking', *Sentencing Advisory Council* (web page, July 2020) <[https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates\\_court/6231\\_21A.html](https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/6231_21A.html)>.

<sup>23</sup> Crime Statistics Agency (Vic), 'Latest Victorian Crime Data', *Crime Statistics Agency* (web page, July 2020) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/download-data>>.



provision of free legal representation in some PSIO matters, and recommend that appropriate statutory and regulatory changes are made and resources are made available to provide this service.

We are supportive of this change particularly on the basis that we are aware of a number of cases in which the cost and the complexities of legal proceedings have been substantial. Given that stalking cases are often strongly contested by defendants, navigating the legal system for (often highly traumatised) stalking victim-survivors is always a fraught and complicated exercise.

Insofar as criteria would need to be developed in order to establish which victim-survivors should have priority access to this support, we think it should be developed and applied premised on the results of the risk assessments recommendations we have made in the previous section of this document. The cases involving the highest risk (and those that have already ended in fatalities, where families of a deceased victim are seeking legal assistance) should be the ones afforded precedence.

We would add that the expansion of Victoria's fledgling Victims' Legal Service could play a vital role in this respect, and this is a point to which we will return later in this document.

**Recommendation 9: A system similar to the United Kingdom's Stalking Protection Orders model should be introduced.**

**Recommendation 10: Personal Safety Intervention Orders (PSIOs) should be subdivided into different streams, and one of the new standalone streams should be used only for stalking cases.**

**Recommendation 11: The penalty system for breaches of PSIOs should be remodelled and strengthened, including through more minimal recourse to fines.**

**Recommendation 12: Free legal representation should be more widely available than is currently the case for people affected by stalking.**

**Question 16: Can the criminal law response to stalking be improved?**

**Question 17: You might like to consider whether:**

**(a) there are any challenges in identifying when a person has engaged in a course of conduct or in obtaining evidence to demonstrate a course of conduct**

**(b) the list of conduct in section 21A(2) of the Crimes Act 1958 (Vic) covers all types of stalking behaviour**

**(c) cyberstalking is adequately covered**

**(d) the law presents any barriers to investigating, charging and prosecuting offenders for stalking conduct.**

At the outset of answering these two questions, we would make the general point that it is very clear to us, as a political party, that there is a considerable lack of community confidence in the



effectiveness and responsiveness of Victoria's criminal justice system. This lack of faith is often marked by a sense of complete helplessness among those who have directly or indirectly suffered crimes against them. There is likewise a very commonly-held view that the system routinely fails to dispense an appropriate level of punishment and/or corrective action to the offender. Indeed, many people in the State feel a deep sense of frustration about a system that has both long and widely been perceived as tilting the scales of justice too heavily in favour of the perpetrators of crimes over their victims.

To us, these are very important points that should be kept at the front of mind throughout the course of this inquiry. In our view, these are the considerations that will best inform a more holistic criminal law response to stalking – and one, crucially, that far more adequately takes into account and reflects the impacts of stalking crimes on their victims.

There are a range of challenges in identifying when a person has engaged in a 'course of conduct' (ie stalking) or in obtaining evidence to demonstrate that a person has engaged in such a course of conduct. Given that stalking can (and often does) take so many different forms, and comprise so many different individual acts and events, it can be near-impossible for victim-survivors to accurately recount and/or demonstrate the full extent and scale of what they have endured.

In turn, this means it can also be extremely difficult for police and court officials to establish the context of each individual incident and the wider pattern of behaviour involved – and restating an earlier point, can often feed into the culture of some authorities not taking allegations seriously. Especially in those situations where the individual acts are reported at different times and/or to different police officers, the result is usually that the links between them are missed or not fully contextualised.<sup>24</sup>

Nevertheless, it is worth reflecting on the notion that many stalkers ultimately come to add a number of other offences to their list of crimes. These frequently include sexual assault, breaking and entering, destruction of property and vandalism – as well as murder, attempted murder and/or manslaughter in some cases.

However, according to the Stalking Prevention, Awareness, and Resource Center in the United States, the majority of male intimate partners who kill (or try to kill) their female partners or ex-partners actually stalk them for a considerable period of time before they do so.<sup>25</sup> It is not fully clear whether this is also true in Victoria, but until proper data is collected and collated, this fact seems to ring true to the experience many of those victims who have not survived, or have luckily survived, such assaults in Victoria

Given these connections between stalking offences and other crimes, more must be done in the course of criminal investigations to try to detect (or, more to the point, prevent) this additional offending.

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<sup>24</sup> C Brandt and B Voerman, 'The Dutch Model: A New Approach to Policing Stalking' in *Psycho-Criminological Approaches to Stalking Behaviour – An International Perspective* (John Wiley & Sons, 2020), p.252.

<sup>25</sup> <https://twitter.com/followuslegally/status/1354440149204160512>.



It is not clear that the forms of conduct listed in section 21A(2) of the *Crimes Act 1958* exhaustively cover every conceivable form of stalking behaviour; we believe that is very unlikely. However, and as has been scrutinised in detail in many other settings, inquiries and studies, it still remains quite difficult to formulate a perfect stalking provision and/or a perfect list or definition of stalking behaviours anywhere in the world.

One potential way around this problem may be to follow the example created in Scotland in 2010. There, lawmakers created a caveat that the stalking behaviours listed in the relevant Act were not exhaustive and that they instead merely provided a basic framework of some of the actions that may be considered to constitute stalking.<sup>26</sup>

We do not think there is simply an imperative to extensively revise the Crimes Act itself in order to minimise the barriers in Victoria to investigating, charging and prosecuting offenders for stalking conduct. Rather, it is also the interpretation, application and enforcement of the law from which many of the current problems emanate. Accordingly, our recommendations in this area are not based only on an expansive list of revisions to the wording of existing Acts; instead, we would like to urge the VLRC to contemplate a range of broader changes.

#### Cyber-stalking

Among the submissions to this inquiry, we envisage that there will also probably be some different views expressed to ours on whether the wording of the Crimes Act needs to be altered in any way to better cover *cyberstalking*. We believe that at this point the current wording is adequate. The key point is that the laws need to be better *enforced* and that there needs to be mechanism/s through which the relevant provisions of the Act are reviewed on a regular basis so as to be able to keep pace with the ever-changing online landscape.

#### Consultations with victims and other impacted

As part of this, there should also be regular contact with stalking victim-survivors and the families and friends of deceased victims in order to help evaluate whether any changed tactics, laws, policies and/or programs are actually working in a practical sense.

On a similar theme, we strongly recommend that the penalties and the sentencing guidelines for stalking offences be urgently revisited. The most recent publicly-accessible Sentencing Advisory Council statistics reveal that, from 2016-17 to 2018-19, only 35.8% of stalking perpetrators who were sentenced in the Magistrates Court received prison terms.<sup>27</sup> Of those who were imprisoned, 82.3% received a term of 12 months or less.<sup>28</sup>

There is simply no question that the imposition of stronger sentences (and, through them, the delivery of much clearer and less ambiguous deterrents to anyone else contemplating carrying out this crime) will represent a crucial catalyst to reducing the incidence of future stalking in Victoria.

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<sup>26</sup> S.Middlemiss, 'Let the Stalker Beware? Analysis of the Law of Stalking in Scotland' (2014): 78 (5), *Journal of Criminal Law* 407.

<sup>27</sup> Sentencing Advisory Council (Vic), 'SAC Stat – Stalking', *Sentencing Advisory Council* (web page, July 2020) <[https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates\\_court/6231\\_21A.html](https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/6231_21A.html)>.

<sup>28</sup> *Ibid.*



In that context the current maximum penalty in the Magistrates Court of two years imprisonment for anyone found guilty of stalking should be increased.

We also recommend the government give consideration to amending the Sentencing Act so that offences committed in the course of stalking be considered *aggravated* offences and thereby attract increased penalties.

In the same way that committing offences against, for instance, emergency workers, attracts a higher minimum sentence, we recommend that an offence committed in the course of committing the crime of stalking<sup>29</sup> would result in a situation where a court must impose a term of imprisonment and fix a non-parole period of not less than the period specified in an amendment to the Sentencing Act which is a significant amount higher than that imposed for the 'base crime'.<sup>30</sup>

### Sentencing

We also recommend that there should be changes made to the *Sentencing Act*<sup>31</sup> (and any other relevant legislation) that would allow for information about a stalking perpetrator's prior behaviour to be disclosed in court, particularly in pre-sentence reports, and that would require the Court to take account of such prior behaviour in imposing a sentence. It is anticipated that relevant sentencing guidelines would need to be reviewed and amended to facilitate this. Given that an awareness of past and ongoing courses of conduct (and/or some forms of tendency evidence) is central to understanding the full gamut of a stalker's behaviour, there is no obvious reason that this should not become a more consistent component of stalking hearings and where appropriate, trials. Allied to this must be a change in focus and culture that ensures that more weight is placed on the importance of Victim Impact Statements in stalking proceedings. Given that the purpose of a stalker is to engage in behaviour that is intended to induce feelings of fear and terror in their victim, the impact on that individual victim should be paramount in determining the seriousness of the offending behaviour and the concomitant sentence..

Notwithstanding our comments above about extensive changes to existing law, we are also of the view that consideration should be given to the merit of potentially splitting section 21A(2) of the Crimes Act into two parts. This course of action was followed in Scotland, and has provided the police and prosecutors with considerably more certainty in charging and convicting stalkers. Scotland's complementary work in affording the Secretary of State (in Victoria's case, this would be the Attorney-General) the power, by regulation, to add further stalking behaviours to the existing list may also be worthy of scrutiny as part of this inquiry.

### Mental Impairment

Too many stalkers are also citing and/or relying on mental impairment defences as a means of seeking acquittals and shorter sentences. We envisage that this would be contributing significantly to the relatively low numbers of successful prosecutions and average lengths of sentences for those Victorians charged with stalking offences.

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<sup>29</sup> *Crimes Act 1958 (Vic)* s 21A.

<sup>30</sup> See for instance, the operation of s 10AA of the *Sentencing Act 1991 (Vic)*.

<sup>31</sup> *Sentencing Act 1991 (Vic)*.



We are obviously well aware that the VLRC has previously completed an extensive body of work on the *Crimes (Mental Impairment and Fitness to be Tried) Act 1997*. We agree with a number of the observations, findings and recommendations that emerged from that review. In that context, we would also recommend that the VLRC take into account the views and recommendations made in its previous work in relation to mental impairment in developing recommendations in this review.

(We would also say that most stalkers have to be cognitively-deficient in some form. By definition, it is not normal for a person to even reach the point that they should become so fixated with anyone else as to think it is acceptable to begin stalking them.)

In our view, the 'initial thought process' of a stalker is quite a separate issue to the mindset that allows a stalker to perpetuate their crime over an extended period of time. The act of talking a victim, across multiple incidents and often a considerable period of time, is very deliberate and calculated. In almost all such cases, this is **not** a one-off, snap decision made at a confused moment. It is a decision that is not only knowingly made but it is also one that is repeated and replicated over and over again. We therefore recommend that further investigation occur in relation to how the mental impairment defence should apply to the offence of stalking and whether any legislative changes are appropriate in this area.

We are also highly dismayed by the point that, whenever a potential mental impairment defence is invoked, this materially delays the date on which the case reaches a hearing or trial. This almost inevitably, and completely undesirably, increases the levels of trauma and grief being experienced by the victim(s) in every one of these cases. We recommend, therefore, that the government determines an appropriate streamlined process to ensure, where a mental impairment defence is raised that this does *not* significantly add to the length of a trial.

Delay in *Justice Legislation Amendment (Criminal Appeals) Act 2019* amendments  
Whilst we acknowledge that these issues are raised in relation to the earlier Questions 14 and 15 in the Consultation Paper, we also think it is worth mentioning at this point of our submission an issue in relation to the operation of the *Justice Legislation Amendment (Criminal Appeals) Act 2019*. It should be noted that the implementation of the changes that were passed by virtue of this Act, in the current term of Parliament, has been delayed. These changes were intended to substantially improve the appeals process for crime victim-survivors. We recommend that the State Government expedites delivery of these reforms as a matter of urgency to prevent the very problems that are canvassed in point 4.39 on page 31 of the Consultation Paper.

#### Naming any amending legislation

Insofar as any changes are recommended and/or made to Victoria's stalking laws as a result of this inquiry, then we would also strongly advocate for them being named 'Celeste's Law'. This would be in memory of Celeste Manno, in honour of her family, and in recognition of the central importance of her case in instigating this crucial process of reshaping stalking responses in Victoria. Linking these reforms to Celeste's (well-known) name would also be likely to help promote increased community awareness and recognition of the new laws than would be the case if her name was not associated with them.



**Recommendation 13:** Relevant provisions of Victorian laws in relation to stalking should be reviewed on a regular basis, including through ongoing dialogue with victims and victim-survivors.

**Recommendation 14:** Given that only around 36% of perpetrators receive custodial sentences (and that only around 18% of them are imprisoned for more than a year), sentencing guidelines and penalties for stalking offences should be revisited.

**Recommendation 15:** The current maximum penalty in the Magistrates Court of two years imprisonment for anyone found guilty of stalking should be reconsidered.

**Recommendation 16:** Information about a stalking perpetrator's previous behaviour should be allowed to be disclosed in court, particularly in pre-sentence reports.

**Recommendation 17:** More weight should be given in stalking cases to Victim Impact Statements.

**Recommendation 18:** The provisions relating to mental impairment defences should be reviewed for stalking cases.

**Recommendation 19:** The (delayed) changes in the *Justice Legislation Amendment (Criminal Appeals) Act 2019* should be urgently delivered by the State Government.

**Recommendation 20:** Any changes that are recommended and/or made to Victoria's stalking laws as a result of this inquiry should be named 'Celeste's Law'. This would be in memory of Celeste Manno, in honour of her family, and in recognition of the central importance of her case in instigating this crucial process of reshaping stalking responses in Victoria.

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

There must be more support and protections for victim-survivors in stalking prosecutions.

Most victim-survivors receive little or no support from the criminal justice system. In stalking cases, there is a very real risk and danger of retaliation against and further aggression towards the victim as a consequence of them having launching a legal action against the perpetrator.

To exacerbate these issues, victim-survivors are then often forced to wait years for the resolution of the prosecution, many of which also ultimately result (as noted above) in sentencing outcomes that they regard as far too lenient. To put it bluntly, we hold many grave reservations about how the current system routinely treats victim-survivors.

Best practice would clearly demand that these problems receive urgent attention, and that the system needs to be overhauled in these respects.



We endorse a number of the points made by the Victorian Victims of Crime Commissioner, Fiona McCormack, in her submission to the separate recent VLRC inquiry into the justice system's response to sexual offences. More specifically, we echo her call for the adoption, to the maximum extent possible, of a trauma-informed approach within the justice system that not only ensures a fair process for the accused but also that upholds the rights and entitlements of victims.<sup>32</sup>

We regret to have to add that we believe that the Office of Public Prosecutions (OPP) needs to provide greater victim support, especially in keeping with the obligations set out in the Victorian Victims' Charter. In numerous cases, we have heard what we would describe as 'horror stories' about that office's interaction with victims of crime and its (lack of) representation or acknowledgment of their best interests.

Whilst we recognise that the overwhelming focus of the OPP's work is necessarily legal rather than what might be termed the provision of personal support, we equally believe that there is at least a basic obligation for the OPP to actively prosecute offenders to the full extent of the law – and we are frustrated by the regular downgrading of charges and early settlements of cases in Victoria. We have particularly grave concerns in relation to many aspects of the prosecution of perpetrators who seek to use mental impairment defences.

Regrettably, we have heard repeatedly from victim-survivors that their interaction with the OPP has been deeply unsatisfying, unrewarding and even retraumatising.

We would return to Ms McCormack's words in this respect, and fully support her call for policies and practice (in this case, in relation to stalking) to be reviewed "according to the extent to which it is trauma-informed, including whether it:

- realises the impact of trauma and recognises the signs of trauma;
- actively seeks to reduce re-traumatisation;
- emphasises physical, psychological, and emotional safety for victims;
- provides victims with voice and choice, including different ways to engage to minimise harm;
- creates opportunities for victims to rebuild a sense of control and empowerment;
- recognises that trauma may impact victims' engagement with the process;
- is responsive to victims' diversity; and
- promotes trust and transparency in process and decision making."<sup>33</sup>

In this area, there is again much for Victoria to learn from elsewhere. Especially in overseas jurisdictions, there are a multitude of dedicated organisations, agencies and specialised helplines that have been established specifically for anyone affected by stalking. These include bodies that

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<sup>32</sup> Victims of Crime Commissioner (Vic), 'Submission to the Victorian Law Reform Commission Inquiry into Improving the response of the justice system to sexual offences – January 2021' <viewed online at: <https://files.victimsofcrimecommissioner.vic.gov.au/2021-04/Submission%20to%20the%20Victorian%20Law%20Reform%20Commission%20-%20Improving%20the%20Response%20of%20the%20Justice%20System%20to%20Sexual%20Offences%20-%202021%20January%202021.pdf>>.

<sup>33</sup> Ibid.





offer full throughcare support. By some contrast, such agencies are virtually non-existent in Victoria and we would recommend that at least one be founded.

One of the most telling points in the Consultation Paper for this inquiry appears on page 13 that "the evidence base on the experiences of people who have reported stalking to police in Victoria is limited". It should probably come as little surprise, in such circumstances, that stalking victim-survivors are not appropriately recognised or supported within the Victorian criminal justice system.

This problem requires resolution in a host of ways: not only does more evidence need to be collected as a matter of urgency but there also needs to be a fundamental cultural shift that ensures that victim-survivors and their requirements are treated with far greater levels of attention and respect.

We therefore recommend that (1) the research required to determine the appropriate data that needs to be collected in order to determine how best to craft the changes necessary to make the Criminal Justice System (and particularly prosecution processes) more trauma-oriented is conducted, and (2) from such data determine the changes necessary to make the Criminal Justice System (and particularly prosecution processes) more trauma-oriented, and then (3) implement those changes.

**Recommendation 21: There should be a stronger trauma-informed approach adopted within the criminal justice system that not only ensures a fair process for the accused but also upholds the rights and entitlements of victims of crime.**

**Recommendation 22: Victoria's Office of Public Prosecutions needs to provide greater victim support, especially in keeping with the obligations set out in the State's Victims' Charter.**

**Recommendation 23: At least one specialist agency, based on any of a wide range of models overseas, should be established in Victoria to specifically provide help, advice and support to anyone adversely impacted by stalking activity.**

**Recommendation 24: The State's evidence base on the experiences of people who have reported stalking to police in Victoria needs to be dramatically strengthened.**

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

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

Specialist risk assessment reports

The unequivocal answer for us to these two questions is 'yes'. We recommend that specialist risk assessment reports for stalking should be made available to courts. This is a critical part of identifying the extent of the likelihood that the relevant offender will cause further harm to their



victim(s) in the future. Accordingly, we recommend that the capacity to request these assessments in as wide a range of circumstances as possible should be facilitated.

#### Electronic Monitoring Devices

In relation to electronic monitoring devices, we recognise that there are a number of complexities around the cost and the selection of the individuals who should be fitted with them. We also acknowledge that, within Australia there are some people who criticise the use of electronic monitoring by citing civil liberties concerns and by suggesting that their use does not necessarily prove to be successful.

However, we recommend the introduction of electronic monitoring in the cases specifically of stalking offenders.

Electronic monitoring is, unarguably, a form of supervision and surveillance that is very suitable in a technical sense to stalking offenders. This is not just because their use alleviates the general difficulty, otherwise, of tracing their often surreptitious and ubiquitous movements. It is also because it is generally an easy and obvious exercise to identify their likely victim(s) – and therefore because such monitoring offers great potential utility in providing vitally-important early warnings, alerts and notifications to those who may be in danger from them.

We would also note that there is a rapidly-growing realisation around the world among many governments, and law enforcement authorities, of the benefits that the electronic monitoring of high-risk individuals (across a range of criminal categories) can provide.

Within an Australian context, there has been considerable work in Queensland, in particular, in piloting and trialling many different forms of this monitoring – especially in a family violence context. Across most of the States and Territories, there has also been a notable increase over the past decade in its application to people on bail and sexual offenders

Nevertheless, we should add that it is one thing to pilot and trial this work. It is quite another to actually commit to its full implementation. One of the reasons that we make this point is that we have recently uncovered that only seven offenders have been fitted with electronic monitoring devices as a condition of a community correction order (CCO).<sup>34</sup> This is despite a clear commitment made by the Government, back in April 2020, that it would actively pursue such monitoring of these offenders for at least as long as COVID-19 specific measures and restrictions were needed.

Furthermore, as part of an answer on 22 June 2021 to a Question on Notice from Tania Maxwell, the Government also noted that “there is no offence for breach of an electronic condition of a CCO”.<sup>35</sup>

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<sup>34</sup> Victoria, *Questions on Notice, Legislative Council*, Question 3455 (18 March 2021) <viewed online at: <http://gon.parliament.vic.gov.au/PARLIAMENT/general/gon/prod/gon.nsf/viewQuestion.xsp?action=openDocument&documentId=B8317894D860BCBDCA25869C001DA9F8>>.

<sup>35</sup> *Ibid.*



We would recommend that a program replicating - or at least similar to - Tasmania's 'Project Vigilance' model should be introduced and applied to certain, high-risk, stalkers or suspected stalkers.

This trial, run and administered by Tasmania Police and the State's Department of Justice, commenced in 2018 and applied specifically to family violence offenders.<sup>36</sup> It is a model that we believe would have great transferability to stalkers.

Through the use of ankle bracelets and body-worn cameras, the police concentrated in that trial on a group of perpetrators who were each subjects of a family violence order. Through their family violence risk assessment processes, they further shortlisted the candidates on the basis of which of them were most prone to making serious threats and/or engaging in high level emotional abuse and/or committing physical violence – that is, the likely level of safety risk they potentially represented to their victims.

The bracelets and/or cameras were linked to alarms that would begin sounding immediately if and when the tracked individual entered any of two (wider) warning zones and a one kilometre exclusion zone around a victim's location. These alarms alerted the relevant victim (through a small portable device) and the staff in a dedicated 24/7 monitoring unit.

**The preliminary results of the trial, across 52 of the participants, demonstrated a 70% reduction in assaults, 80% decrease in threats, an 82% reduction in high-risk family violence incidents, an 89% fall in allegations of emotional abuse, and a 100% decrease in reports of stalking.<sup>37</sup>**

A more recent analysis of the actions of 39 of the participants in the trial also showed that at least 69% of them committed no violence and/or only technical offences whilst they were electronically monitored. There also continued to be a notable reduction in family violence offending across the participants in the period following the trial.<sup>38</sup>

In reflecting on those trends, it also needs to be remembered that this was a group of perpetrators who were specifically identified as being high-risk, with every single one of them having committed serious family violence offence(s) prior to being monitored.

At a broader level, there are also now many more general examples around the world of the utility of electronic tracking and monitoring devices in relation to stalking.

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<sup>36</sup> M Shelton, Minister for Police, Fire and Emergency Management (Tas), 'Electronic monitoring trial delivers real results in supporting victims of family violence', 20 August 2020 <viewed online at: [http://www.premier.tas.gov.au/releases/electronic\\_monitoring\\_trial\\_delivers\\_real\\_results\\_in\\_supporting\\_victims\\_of\\_family\\_violence](http://www.premier.tas.gov.au/releases/electronic_monitoring_trial_delivers_real_results_in_supporting_victims_of_family_violence)>.

<sup>37</sup> Ibid.

<sup>38</sup> Tasmania Police, 'Submission to the New South Wales Joint Select Committee On Coercive Control – 27 January 2021' <viewed online at: <https://www.parliament.nsw.gov.au/ladocs/submissions/70375/Submission%20-%202019.pdf>>.



Electronic devices, or apps, are also rapidly increasing in popularity and usage by victim-survivors. The Hollie Guard app and the doosra number are arguably two of the best known aids in this field.<sup>39</sup>

As another of these initiatives, the celebrity, Lenora Claire, is also working in the United States on a “program where we give victims an app that notifies them if their offender is in [close] proximity; an alert that they're in danger”.<sup>40</sup> Alongside work with local authorities in Los Angeles on the creation of a Bill empowering stalking victim-survivors in a number of different forms, Claire is also partnering with a company called Flare Jewelry that manufactures “an unassuming-looking ‘safety bracelet’ that tracks your GPS and alerts your most trusted contacts if you press a button indicating you're in danger”.<sup>41</sup>

In short, it has become obvious to many people that there is a clear and compelling need to take advantage of advances in technology to aid stalking victim-survivors.

In an era in which it has become possible to follow in real-time the progress of a rideshare vehicle or a takeaway food delivery driver, for instance, it surely should not be difficult to offer stalking victim-survivors more safety by tracking those who are pursuing them.

Nevertheless, we should add that it is one thing to pilot and trial this work. It is quite another to actually commit to its full implementation: Only seven offenders have been fitted with electronic monitoring devices as a condition of a community correction order (CCO) in Victoria.<sup>42</sup> This is despite a clear commitment made by the Government in April 2020, that it would actively pursue monitoring of these offenders for at least as long as COVID-19 specific measures and restrictions were needed.

As part of an answer on 22 June 2021 to a Question on Notice from Tania Maxwell, the Government also noted that “there is no offence for breach of an electronic condition of a CCO”.<sup>43</sup>

Although s 48LA(8)(c) of the Sentencing Act 1991 prohibits an offender from ‘tamper[ing] with, damag[ing], disabl[ing] or remov[ing] any electronic monitoring device or equipment used for the electronic monitoring and s 83AD of that Act makes it an offence to contravene ‘an order’, it is not clear that the offence provisions would unequivocally apply to a contravention of a ‘condition’ imposed by s 48LA(8)(c). At any rate, the penalty for such a contravention is a maximum term of three months in prison. Given the seriousness of such a contravention (which can obviously result in an offender resuming or escalating their criminal course of conduct) this penalty is inadequate.

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<sup>39</sup> See: <https://hollieguard.com/> and <https://www.doosra.com/blog/doosra-your-first-step-towards-safety> for basic details of these aids.

<sup>40</sup> L.Barcella, ‘After Receiving Death Threats from Notorious Celebrity Stalker, Activist Fought Back’, *people.com* (online, undated) <<https://people.com/crime/lenora-claire-anti-stalking-advocate-protects-victims/>>.

<sup>41</sup> *Ibid.*

<sup>42</sup> Victoria, *Questions on Notice, Legislative Council*, Question 3455 (18 March 2021) <viewed online at: <http://gon.parliament.vic.gov.au/PARLIAMENT/general/gon/prod/gon.nsf/viewQuestion.xsp?action=openDocument&documentId=B8317894D860BCBDCA25869C001DA9F8>>.

<sup>43</sup> *Ibid.*



We therefore recommend that ss 48LA(8)(c) and 83AD of the *Sentencing Act 1991* be amended to clarify that a contravention of s 48LA(8)(c) amounts to an offence under s 83AD.

We further recommend that consideration be given to the implementation of one or both of the following:

That s 83AD be amended such that an contravention of s 48LA(8)(c), which occurs where there has been an order made under s 48LA(1) pursuant to an offence committed under s 21A of the *Crimes Act 1958* attracts a significantly higher penalty, and/or;

That the *Sentencing Act 1991* be amended such that where a person has, in relation to an offence under s 21A of the *Crimes Act* been sentenced to a CCO pursuant to s 37 of the *Sentencing Act 1991*, and as part of that CCO has had a condition attached to that order pursuant to s 48LA(1) and has breached that condition pursuant to s 48LA(8) that that person be returned to the Court in which the original sentence was imposed and that the sentence be *reconsidered*. Sentencing guidelines should be amended to indicate that where such a contravention has occurred that a higher base sentence should be imposed in relation to the s 21A offence than was imposed in the original sentence (the s 37 sentence).

**Recommendation 25: Specialist risk assessment reports for stalking should be made available to courts.**

**Recommendation 26: Particularly in view of its technical suitability to reducing this form of crime and its many associated risks, electronic monitoring of stalking offenders should be introduced.**

**Recommendation 27: A program replicating, or similar to, Tasmania's 'Project Vigilance' model should be established in relation to stalking offenders in Victoria.**

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

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

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

As was articulated in the parliamentary motion moved Tania Maxwell MLC on 26 May 2021, we have long believed that there is an urgent imperative in Victoria for considerably-improved forms of victim assistance.<sup>44</sup>

Whether it be for victim-survivors of stalking or other crimes, this new structure of assistance should include simplified victims of crime award categories in the *Victims of Crime Assistance Act 1996* that better define who should receive assistance and in what form.

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<sup>44</sup> Victoria, *Parliamentary Debates, Legislative Council*, 26 May 2021, 1859 (Tania Maxwell).



Furthermore – and as was also expressed in that motion –there is a clear and urgent need for the State Government to expedite its response to the VLRC's 2018 review of the *Victims of Crime Assistance Act*.<sup>45</sup> This is especially true in relation to the implementation of the critically important recommendations in Chapter 13 of the review relating to restructured forms of assistance. However, in the course of the three years since the VLRC report was tabled, the recommendations have regrettably still not been practically implemented.

This is notwithstanding the point that it compellingly made the case for a comprehensive overhaul of the current system in the name of introducing more transparent, more predictable, less confusing and fairer assistance.

We consider that, if these changes were made, then victim-survivors of stalking would decisively benefit from what would be a model that is far more closely based on their individual priorities rather than being constrained by arbitrary, predefined limits, caps and other restrictions.

We recommend that as a priority, the Government should proceed with implementing the recommendations of the 'Strengthening Victoria's Victim Support System: Victim Services' review, authored by RMIT's Centre for Innovative Justice.<sup>46</sup>

This review, published in November 2020, recommends sweeping change to victims' services in Victoria – including through the:

- creation of new access points that may help overcome barriers to crime reporting, particularly from disadvantaged individuals and communities;
- provision of independent, victim-dedicated legal advice;
- enhancement of information sharing and referral links and processes; and
- establishment of clear, single points of contact for most victims.

On a related front, we should note that we were heartened by the Victorian Government's establishment of the State's first-ever dedicated Victims' Legal Service as part of its 2021-22 Budget. We have been lobbying as a party for the introduction of such a scheme for a considerable time. Indeed, the State Leader of our Party in Victoria, Stuart Grimley MLC, has been particularly active in pushing for, and supporting, the establishment of such a model – as was reflected in his comments in Parliament on 10 June 2021.<sup>47</sup>

However, in our view, the breadth and resourcing of this service still needs to be significantly expanded.

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<sup>45</sup> Ibid; Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996: Report* <viewed online at: <https://www.lawreform.vic.gov.au/publication/review-of-the-victims-of-crime-assistance-act-1996-report/>>.

<sup>46</sup> RMIT Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review - Final Report, November 2020* <viewed online at: <https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>>.

<sup>47</sup> Victoria, *Parliamentary Debates, Legislative Council*, 10 June 2021, 2175 (Stuart Grimley).



A fully-functional Victims' Legal Service, underpinned by ongoing State Government funding, would fill a major void in Victoria, and we recommend that such a service be fully formed and funded. This is because victim-survivors' interests are rarely adequately or fully represented or expressed in courts amid the traditional prosecution-defence dynamic – or even through the legal system more generally. Instead, and notwithstanding that they typically face many legal interests or problems that need to be addressed, they are currently largely left to fend for themselves in trying to navigate, and cope with, an often overwhelming system. Even where a dedicated support worker is assigned to them by the State, it is relatively rare for them to interact with just the one worker rather than have multiple people alternating in and out of their case.

One of the grounds on which we have advocated for a specific legal service for victim-survivors (and we believe this would be particularly relevant to stalking cases) is that it would enable them to receive crucial information, advice and support throughout the criminal trial process, especially where this is not otherwise readily available or accessible.

It is a well-established and widely accepted principle that, where appropriate support is not made available to victim-survivors (including in a legal or financial sense), this can exacerbate their trauma and their ability to recover in any meaningful way.

**Recommendation 28:** A new structure of assistance for crime victims should be implemented to replace the current model legislated as part of the *Victims of Crime Assistance Act 1996*.

**Recommendation 29:** The State Government should expedite its response to the 2018 VLRC review of victims of crime assistance.

**Recommendation 30:** The State Government should also act upon many of the changes to victim support suggested in the 'Strengthening Victoria's Victim Support System: Victim Services' review, authored by RMIT's Centre for Innovative Justice.

**Recommendation 31:** The current, early scope and resourcing of Victoria's Victims Legal Service should be significantly expanded.



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

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

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

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

In responding to these four questions, we would refer the VLRC to a number of the points that Tania Maxwell MLC made in Parliament in a speech on 3 June 2020 regarding Victoria's criminal justice system.<sup>48</sup>

This speech reflected our party's longstanding concern that Victoria's corrections system is not proving 'sufficiently corrective'. Reference was made to the State's persistently high rates of criminal recidivism. More than 50 per cent of people incarcerated in Victoria subsequently reoffend and that, even more worryingly, 43 per cent of all Victorian prisoners are back in custody again within just two years of being released.

The speech also noted the fact that "some inmates are not being imprisoned for long enough to keep the broader community adequately safeguarded from them. Nor is Victoria most effectively using what is often the last best chance to break what has typically become an entrenched downward spiral for many people who have found their way to jail (or devoting) more work and investment (to) early interventions and programs to divert (people) from a trajectory of offending".

Whilst it is difficult to locate statistics that specifically show how many stalkers reoffend in Victoria, it is our experience that many of these observations would be particularly applicable to stalking offenders.

It is likely, in particular, that the typically short sentences imposed on them would mean that many stalking perpetrators would simply not be detained for long enough to actually be directed to adequate rehabilitation or reintegration diversions, interventions or programs.

There are major and ongoing structural problems that mean that prison and post-prison rehabilitation or reintegration measures are not working as well as they should in Victoria in respect of people who have committed stalking.

We recommend that research should be undertaken and data collected on an ongoing basis on the percentage of offenders found guilty of stalking and/or subjected to an intervention order who receive any kind of sustained, corrective treatment.

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<sup>48</sup> Victoria, *Parliamentary Debates, Legislative Council*, 3 June 2020, 1660 (Tania Maxwell).





Given that a number of the recommendations of the Royal Commission into Family Violence are still to be delivered and/or are in the early stages of implementation, we do not yet feel completely confident about advocating for a translation of the relevant learnings from those reforms to the management of stalking perpetrators.

Instead, we would be inclined to look to the mounting number of studies and overseas models in this field for guidance. However, we also note the fact that we are not experts qualified to delve in any particular detail into psychological, therapeutic, cognitive and behavioural techniques or therapies in this area.

One highly-problematic issue that persists is that there is no such thing as a quintessential or archetypal stalker. As Siepelmeyer and Ortiz-Muller assert, “stalking in each case has a very personal character depending on the situation, and on the personality and coping mechanisms of its target. For this reason, one can hardly speak about one more or less unified treatment method for people who stalk”.<sup>49</sup>

Nevertheless, those two authors cite Germany’s ‘Stop-Stalking’ as a clear example of a program that has worked effectively with stalking suspects and offenders in curbing their proclivities, motivations and actions. Opened in 2007 and fully government-financed, Stop-Stalking has counselled an average of around 100 stalkers and 500 stalking victim-survivors annually.

The organisation has established deep networks with other counselling institutions, public offices and law enforcement agencies, and its work with stalkers is predicated on trying to discern the roots of the stalking behaviour in each case. Its basic philosophy is that “self-management and new behavioural patterns need to be learned and trained” in a stalker.<sup>50</sup>

It is possible that specialist courts could also prove to be useful in helping Victoria address some of the very many problems associated with stalking activity. However, the courts would need to be expertly staffed and their work would need to be suitably trauma-informed. Likewise, the courts would need to be presided over by magistrates with specialist backgrounds and/or knowledge of stalking.

All of this said, however, we would again make the point that rehabilitation and reintegration should never be seen as a substitute or replacement, in the first instance, for significant sentencing outcomes where serious stalking offences have been committed.

**Recommendation 32: Any new specialist courts for stalking should be expertly-staffed and their work would need to be suitably trauma-informed.**

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<sup>49</sup> O Siepelmeyer and W Ortiz-Muller, ‘Stop Stalking – But How’ in *Psycho-Criminological Approaches to Stalking Behaviour – An International Perspective* (John Wiley & Sons, 2020), p.309.

<sup>50</sup> *Ibid*, p.329.



**Recommendation 33: Offender rehabilitation and reintegration should never be seen as a substitute or replacement for significant sentencing outcomes where serious stalking offences have been committed.**

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

**Question 29: If a person suspects that they are being kept under surveillance using cyberstalking, what kind of help do they need to ensure that they are safe?**

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

The barriers to help for victim-survivors of cyberstalking are generally similar to those whom we referred to in response to Question 1 above.

Cavezza and McEwan have stated that “the majority of cyber stalkers also used off-line stalking tactics (and) that there are relatively few differences between cyber stalkers and off-line stalkers”.<sup>51</sup> As these authors note, “once the motivation of the stalker is considered, treatment and management strategies for cyberstalking and off-line stalking are likely to be similar”.<sup>52</sup>

In addition, Bartlett and Chan have noted, that “while it is undeniable that technology has expanded the forms and avenues of threatening behaviours, the offence under law should emphasise the conduct and state of mind of the offender and target, not the technology used to carry out the act”.<sup>53</sup>

Nevertheless, very few policing or criminal justice systems around the world are sufficiently agile or adaptable to efficiently respond or keep pace with advances in the kinds of technology often used by stalkers. There are now a multitude of different devices, apps and other forms of software (even including spyware and stalkerware) on the market for potential use by stalkers.

Further complications are created by the generally more-cavalier attitude of people online, and by the problem that a cyber stalker is not always resident in the same jurisdiction as the target of their stalking and so they can therefore each be subject to different laws.

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<sup>51</sup> C Cavezza and T McEwan, ‘Cyberstalking versus off-line stalking in a forensic sample’ (2014): 10, *Psychology, Crime & Law* 955.

<sup>52</sup> Ibid.

<sup>53</sup> L Bartlett and A Chan, ‘Hashtag You're It: Limitations of Psycho-Legal Responses to Online Interpersonal Harm’ in *Psycho-Criminological Approaches to Stalking Behaviour – An International Perspective* (John Wiley & Sons, 2020), p.288.



In short, as Sheridan and Chan say, “stalking can be mediated, facilitated and amplified by the availability of online tools and media, and ... (there are also serious) challenges associated with making people accountable for their online actions”.<sup>54</sup>

In order to better respond to these realities and developments, we would reiterate our earlier point that there may be merit in considering allowing the Victorian Attorney-General to expedite the addition of more forms of stalking offences to the Crimes Act by regulation.

Additionally, we envisage there may be scope – as part of this inquiry – to build on the recent work of the Australian Law Reform Commission in relation to the conception of a Federal (or State) Harassment Act that might consolidate and centralise all of the country’s (or relevant State’s) existing criminal laws in relation to harassment.<sup>55</sup>

At a very local level, we would also point to the work that has been undertaken in Chippewa County, in Wisconsin, as representing one of many practical examples of how laws can potentially be quickly adjusted to add new offences and/or definitions in respect of online bullying and stalking where gaps have become apparent.<sup>56</sup>

It is also worth noting that, for as long as COVID-19 restrictions and lockdowns are enforced in Victoria, then it is almost inevitable that cyberstalking will exponentially increase. This has certainly been the experience in other jurisdictions – and it would be very unlikely that the same trend would not have occurred in Victoria.

The National e-Safety Commissioner, Julie Inman Grant, revealed in April 2020 that, in relation to cyberbullying, image-based abuse and sex-based extortion, there had been a 40 per cent increase across Australia in these three forms of abuse from the time that COVID-19 movement restrictions began in March.<sup>57</sup>

Moreover, across the globe, various reports, statistics and studies have already made clear that, although restrictions and lockdowns theoretically limit physical movement, stalkers’ activity and their power over their victims has substantially increased amid COVID. Regrettably, by largely confining people to their homes, these restrictions and lockdowns have made the whereabouts of stalking victim-survivors much easier to pinpoint and to monitor for stalking perpetrators.<sup>58</sup>

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<sup>54</sup> L Sheridan and O Chan, ‘Conclusions’ in *Psycho-Criminological Approaches to Stalking Behaviour – An International Perspective* (John Wiley & Sons, 2020), p.383.

<sup>55</sup> For an online summary of the ALRC’s work on this issue, see: <https://www.alrc.gov.au/publication/serious-invasions-of-privacy-in-the-digital-era-dp-80/14-harassment/a-commonwealth-harassment-act/>.

<sup>56</sup> C Vetter, ‘It’s not like the old days: New law adds virtual harassment activities to definition of stalking’, *The Chippewa Herald* (online, 28 April 2021) <[https://chippewa.com/news/local/its-not-like-the-old-days-new-law-adds-virtual-harassment-activities-to-definition-of/article\\_62faadae-7c05-5c43-bb75-f96bf4e504a9.html](https://chippewa.com/news/local/its-not-like-the-old-days-new-law-adds-virtual-harassment-activities-to-definition-of/article_62faadae-7c05-5c43-bb75-f96bf4e504a9.html)>.

<sup>57</sup> C Fitzsimmons, ‘Online abuse surges along with screen use during virus pandemic’, *Sydney Morning Herald* (online, 6 April 2020) <<https://www.smh.com.au/technology/online-abuse-surges-along-with-screen-use-during-virus-pandemic-20200403-p54gz3.html>>.

<sup>58</sup> For some of a wealth of online articles on this subject, see:

<https://link.springer.com/article/10.1007/s10896-020-00201-0#Sec2> ;

<https://onlinelibrary.wiley.com/doi/10.1111/jan.14820> ; <https://www.bbc.com/news/uk-england-56511053> ;



Not being members of the Australian Labor Party, we will not pretend to know how amicable the Andrews Government's professional relationships with technology companies may currently be. One potential avenue for reform in this area may be the development of agreements with technology companies in relation to the practice of cyberstalking against any Victorian. Moreover, we would recommend that consideration be given to the potential negotiation of a Code of Conduct to which internet and social media companies would be asked to adhere.

Self-regulation and existing laws are not providing anything like sufficient victim protection as things currently stand. Indeed, one of the most common responses, historically, by law enforcement officers to anyone who reports cyberstalking of any kind is to suggest that they take steps to shut down their own accounts, activity and presence online.

As Tania Maxwell MLC said at a press conference at Parliament House in Melbourne on 9 December 2020, that process and thinking is completely backward and it should be the offenders who are the ones made to change their behaviour and not the victims.

We also recommend that consideration be given to amending the *Crimes Act 1958* with an insertion of a section similar to s 6 of the *Domestic Abuse Act 2021* (UK) which will insert s 39A into the *Criminal Justice and Licensing (Scotland) Act 2010*. This would at least partially address the issue of a person stalking a victim in Victoria, where the person is outside of Victoria, and the person is undertaking the acts of stalking (at least) over the internet. If the Act is committed in other Australian jurisdictions, such an amendment would allow the person to be extradited to Victoria for trial. If the acts were committed outside of Australia there may be the potential to seek international extradition to try them in Victoria. We reproduce this section below, amended to be appropriate to the Crimes Act 1958:

### Offence of stalking committed outside Victoria

(1) If—

- (a) a person's course of conduct consists of or includes conduct in a jurisdiction outside Victoria, and;
- (b) the course of conduct would constitute the offence of stalking if it occurred in Victoria, and;
- (c) the person who is the target of the stalking offence is resident in Victoria,

then the person commits that offence.

(2) If a person's course of conduct consists entirely of conduct in a jurisdiction outside Victoria —

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<https://www.psychiatrist.com/pcc/covid-19/stalking-and-covid/> ; <https://timesofindia.indiatimes.com/life-style/spotlight/beware-cyberstalking-is-on-the-rise-during-the-pandemic/articleshow/81924158.cms> ; <https://www.usatoday.com/story/tech/2021/03/24/asian-american-hate-crimes-covid-harassment-atlanta-google-facebook-youtube/6973659002/> .



- (a) the person may be prosecuted, tried and punished for an offence of stalking by virtue of this section in any relevant Court in Victoria when such a person is apprehended or is in custody in Victoria and;
- (b) the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed entirely in Victoria.

**Recommendation 34:** Consideration should be given to allowing the Victorian Attorney-General to expedite the addition of more forms of stalking offences to the *Crimes Act 1958* by regulation.

**Recommendation 35:** Further work should be conducted on the Australian Law Reform Commission's proposal to develop a Federal or State Harassment Act that might consolidate and centralise all of the country's (or relevant State's) existing criminal laws in relation to harassment.

**Recommendation 36:** The State Government should negotiate agreements and/or a Code of Conduct with internet and social media companies in order to better regulate, and protect users from, cyberstalking.



## **CONCLUSION**

There can be little disagreement that stalking has become a serious problem in Victoria. Many thousands of cases are reported every year, and it is likely that many thousands more are going unreported.

Given the extent of the damage that this crime typically inflicts on its victim-survivors, this is clearly a completely unacceptable state of affairs – and one that needs to be tackled with determination and urgency. Indeed, there is considerable cause for despondency about the frequency with which Victorians are stalked, and therefore subjected to any or all of the terrifying repercussions that accompany this insidious crime.

In this submission, we have reflected on the reasons for the disturbing proliferation of stalking activity in Victoria and other parts of the world, and sought to identify and recommend what we believe to be a range of potential best-practice remedies. In our view, there are numerous worthy pathways (and guideposts, especially from overseas) to reform. Some of those, including the prospective adoption of Netherlands' new model of policing stalking offences, have therefore been included among our list of recommendations.

From our party's perspective, it is absolutely crucial that the Commission's work and its own recommendations are heavily based on the direct, real, authentic experiences of victim-survivors of stalking and the families and friends of deceased victims of stalking. They will not only be able to provide the most relevant practical insights on the practice of stalking and its effects, but they are also the people best placed to help inform future responses and solutions. In our view, this inquiry will not provide a successful path forward unless its findings and recommendations are genuinely premised, in the first instance, on a thorough understanding of the experiences and needs of those have been affected by stalking.

Ultimately, those in positions of power in politics, law enforcement and the criminal justice system also all need to comprehend and accept that far too many Victorians have been left exposed to what have clearly been major flaws in the State's capacity to protect them.

As a State, we simply have to do better and we must elevate the consequences for anyone who deliberately taunts, follows or inflicts fear and harm on others.

Particularly for the family of Celeste Manno, whose death was the catalyst for this inquiry, and for the many thousands of other individuals and families who have been affected by the horror of stalking, we cannot wait for the next fatality before implementing sweeping changes.