

IS STALKING LEGISLATION EFFECTIVE IN PROTECTING VICTIMS?

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Introduction

Following the introduction of the stalking legislation, the former Government committed to assess the effectiveness of the legislation after it had been in operation for several years.

The study was conducted within the Department of Justice. As part of the open Government agenda adopted by the Labor Government in Victoria, this paper is also being made available to the public for information purposes.

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Executive Summary

Introduction

Stalking legislation was introduced in Victoria by the *Crimes (Amendment) Act 1994*. Section 21A of the *Crimes Act 1958* provides that it is an offence for a person to stalk another person. It is punishable by a maximum of 10 years imprisonment. Section 21A(5) of that Act provides that a person who is being stalked by another person can apply under the *Crimes (Family Violence) Act 1987* for an intervention order against that person.

The purpose of this study is to examine the impact of the stalking legislation on the criminal justice system in the four years from its introduction in Victoria in 1994. The study specifically aimed to:

- assess the extent to which the legislation is being used for the purposes intended;
- assess the impact of the legislation and its implementation on the justice system;
- identify specific issues which might affect the effective use of the legislation.

This report presents the findings of the study. It examines the implementation criminal and civil components of stalking legislation in the four years since its introduction in 1995 through:

- an overview of stalking legislation in Victoria and other parts of Australia;
- literature analysis
- analysis of trends in police and magistrates' court statistics;
- a survey of 245 police and 16 magistrates on their knowledge of and experience with stalking`
- analysis of representations of stalking in the media

Stalking legislation

- The criminal offence of stalking was introduced into Australian jurisdictions between 1993 and 1996. All jurisdictions have a civil remedy specifically aimed at stalking behaviour, with the exception of the Northern Territory which retains a peace and good behaviour order.
- Differences exist between jurisdictions in regard to the components of the offence and the maximum penalty.

Literature about stalking

- Issues identified by the literature reviewed relate to:
 - The association between domestic violence and stalking.
 - The inadequacy of traditional remedies in addressing stalking behaviour.
 - Suggested links between stalking and mental illness of offenders.
 - Evidentiary and definitional issues in respect of stalking legislation.

Trends in police statistics

- The number of offenders processed by police for stalking rose from 265 in 1995-96 to 738 in 1997-98.
- The rate of stalking charges cleared by police increased from 69.7 per cent in 1995-96 to 74.3 per cent in 1998-99.
- Police statistics indicate the vast majority (87.7 per cent^{*}) of stalking offenders are male. The majority (82.4 per cent) of stalking victims are female.
- Both men and women were more likely to stalk women (86.0 per cent and 57.1 per cent respectively) than men.
- According to police statistics, most stalking offenders are between 20 and 39 years old (67.6 per cent). Most male stalking victims were between 20 and 49 years old (75.8 per cent) while most female stalking victims were under 39 (81.7 per cent).

Trends in court statistics

Criminal offence

- Most stalking offences are dealt with in the Magistrates' Court. The number of stalking charges finalised in the Magistrates Court increased from 72 in 1995 to 521 in 1998. Seven offenders were convicted of stalking in the higher courts over the same period.
- Of the stalking offences brought in the Magistrates' Court between 1995 and 1998, 50.3 per cent were not proven (compared to 25.0 per cent of all offences).
- The number of defendants with proven charges increased from 11 in 1995 to 127 in 1998.
- Between 1995 and 1998, the most common sentences imposed for stalking in the Magistrates' Court were community based orders (and average of 23.6 per cent) or a suspended sentence (20.7 per cent) or a fine (19.3 per cent). A smaller number of offenders received custodial sentences (11.8 per cent).
- Most stalking offenders are male (86.5 per cent).
- Most stalking offenders recorded in Magistrates' Court statistics are between 21 and 40 years old (64.1 per cent).

Intervention Orders

- Intervention orders have predominated over criminal actions in the courts. Over the last three years, for every criminal offence of stalking heard in the Magistrates' Court there were more than 50 applications for an intervention order relating to stalking.
- The number of stalking intervention order hearings has been steadily increasing from 480 hearings in the second half of 1995, to 2,274 hearings in the first half of 1998. Orders were granted in more than half of cases (58.6 per cent).
- Most intervention order applications are made by women (63.5 per cent), and are made in respect of male respondents (60.2 per cent).
- Men comprised 36.5 per cent of intervention order applicants, despite comprising only 17.6 per cent of victims in criminal prosecutions for stalking.

^{*} Unless otherwise stated, per cent figures in the executive summary relate to the entire review period.

- Both male and female applicants were most likely to obtain intervention orders in respect of male respondents (74.3 per cent and 52.2 per cent respectively).
- Most applicants for intervention orders are between 20 and 49 years old (74.4 per cent) as were most respondents (79.2 per cent).

Police perceptions

- A representative sample (672) of police were invited to participate in the survey. The response rate was 35 per cent – caution is advised in interpreting the results given the relatively low response rate.
- Over half (64.7 per cent) of police participating in the survey indicated they had experience with a stalking case since the introduction of the legislation.
- 80.6 per cent of police sampled said that they were reasonably or very familiar with the criminal offence of stalking and 78.5 per cent of police said that they were reasonably or very familiar with the civil remedy for stalking.
- 68.5 per cent of police surveyed stated that overall the legislation (criminal and civil) was very or fairly effective.
- Police believed that the stalking legislation was most effective as a policing tool and in preventing stalking behaviour.
- Issues identified in dealing with stalking cases included: corroboration of evidence, locating the offender, surveillance of the offender, the offender's mental state or intellectual capacity and a lack of clarity in the terms of the legislation.
- A minority of police responding to the survey identified issues in obtaining evidence of intent to harm (30.2 per cent) and of the harmful effect on the victim (21.3 per cent).
- Suggested improvements by police who participated in the survey to the criminal offence of stalking included: removing 'intention to cause apprehension or fear', more specific definitions (especially 'course of conduct'), and harsher penalties. In respect of the operation of the legislation, suggestions included the victim enabled to legally tape phone calls.
- Suggested improvements by police in the sample to intervention orders included: after hours access and timeliness, harsher penalties for breaches, increased police powers and making orders more difficult to obtain. In respect of the operation of the legislation, issues identified included difficulties in proof and ease in obtaining order.

Most recent stalking case

- In the recent case cited by police who responded to the survey, the offender was most frequently identified as knowing the victim (35.4 per cent), as a stranger (24.8 per cent), or as a previous partner of the victim (22.9 per cent).
- The most recent case was most likely to have involved telephoning (14.9 per cent), watching (14.9 per cent), or following (14.7 per cent) the victim.
- Police surveyed most frequently identified sexual attraction or infatuation (32.0 per cent) and inability to handle rejection or break-up of a relationship (33.3 per cent) as the motive for stalking in their most recent case. Less frequent motives included neighbourhood disputes (3.4 per cent) and 'road rage' situations (2.0 per cent).
- Police who participated in the survey most often indicated that their recent stalking case occurred at the home of the victim (31.3 per cent) or in the street (28.4 per cent).
- Most police surveyed indicated that to the best of their knowledge, stalking had ceased in their most recent case (74.5 per cent).

Magistrates' perceptions

- All magistrates (95) were invited to respond to the survey – 16 were returned, indicating that extreme caution is strongly advised given the very low response rate
- All magistrates participating in the survey, with one exception, indicated they had experience with a stalking case since the introduction of the legislation.
- 81.3 per cent of magistrates surveyed said that they were reasonably or very familiar with the stalking legislation – in the case of both the criminal and civil components.
- 81.3 per cent of magistrates responding to the survey stated that the legislation was very or fairly effective.
- Magistrates believed the stalking legislation was most effective in protecting the victim and as a means of preventing stalking behaviour
- Few magistrates responding to the survey identified problems in obtaining evidence of intent to harm (31.3 per cent).

Most recent stalking case

- In the recent case cited by magistrates participating in the survey, the offender was most frequently identified as a stranger (60.0 per cent), a previous partner (20.0 per cent) or some other known person (6.7 per cent).
- The most recent case was most likely to have involved watching (18.4 per cent) or following the victim (12.2 per cent), or loitering around the home of the victim (12.2 per cent).
- Magistrates surveyed most often indicated that their recent stalking case occurred at the home of the victim (36.0 per cent) or in the street (28.0 per cent).
- Most magistrates in the sample indicated they did not know whether the stalking had ceased (81.3 per cent).

Media Representations

- An analysis of media articles published indicates a general accuracy in reporting on the issue of stalking. This was confirmed by comparing media data with survey and statistical information.
- The media appears to keep the public relatively well informed about the nature of stalking and available means of redress. Other information available to the public on stalking includes leaflets distributed by victim support services, aimed at applicants for, and respondents to, intervention orders, concerning their rights and responsibilities.

Issues for Discussion

- Overall, both police and magistrates participating in the survey considered the Victorian stalking legislation to be effective. There appear to have been few difficulties in integrating the stalking legislation into the Victorian justice system.
- A small number of areas, namely neighbourhood disputes and 'road rage' incidents, were not considered to be 'true' stalking by police and magistrates, but are nevertheless dealt with in practice by the stalking provisions, particularly intervention orders.
- A possible area for reform is to enable the legislation to deal more directly with an offender who engages in a pattern of conduct which may not currently constitute stalking due to the fact that the offender does not target the same victim more than once. Another area identified for possible reform is to ensure that stalking legislation effectively protects individuals who are not aware that they are being stalked.

Section 1: Stalking – the legislation

Summary of Section 1

The *Crimes (Amendment) Act 1994* Second Reading Speech suggested that the new offence of stalking would fill a void in the criminal law, providing protection for people who were followed, placed under surveillance, contacted or sent offensive items in circumstances where the offender intended to cause the person physical or mental harm, or apprehension or fear for the person's safety. The stalking legislation was intended to bring Victoria into line with other Australian jurisdictions and provide greater physical and mental safety for members of the community.

Course of conduct

Victorian legislation defines stalking as 'a **course of conduct**' that is intended to cause (and has the effect of causing) physical or mental harm to the victim, or fear in the victim for their own safety, or that of another (*Crimes Act 1958*, subsection 21A(2)). While the conduct itself is described in the legislation, the section does not provide a time frame for determining what constitutes a 'course of conduct'.

Intent

An offender is considered to have **intended to stalk** where the offender knows, or ought to have understood (in all the particular circumstances), that engaging in a course of conduct of the kind undertaken would be likely to cause harm or arouse apprehension; and the conduct had that result (sub-section 21A(3)).

Official duties excluded

The legislation specifically excludes from its operation persons **performing official duties** including those in relation to law enforcement, the execution of a warrant or the protection of public revenue. It does not go so far as to protect private investigators engaged by members of the public.

The use of bail conditions for stalking in Victoria

Changes to the *Bail Act 1977* (Vic.) provide for a **reversal of the onus of proof in respect of bail proceedings**, in special circumstances, where an accused has been charged with stalking under section 21A of the *Crimes Act 1958* or with a breach of an order under the *Crimes (Family Violence) Act 1987*.

Stalking provisions in other Australian jurisdictions

Victorian stalking legislation was introduced at about the same time as similar legislation in New South Wales (1994), after Queensland (1993) and the Northern Territory and South Australia (1994).

The use of civil intervention orders in Victoria

Subsection 21A(5) allows the court to make an intervention order under the *Crimes (Family Violence) Act 1987* when satisfied on the **balance of probabilities** that the defendant has stalked a person and is likely to continue to do so.

The purpose of the *Crimes (Family Violence) Act 1987* was originally to 'provide for intervention orders in cases of family violence'. The *Crimes (Amendment) Act 1994* enabled a stalking victim to be deemed a 'family member' and thereby have the capacity to apply for an intervention order against the stalker. It also **broadened the definition of family member** from blood relatives, spouses and household members, to include persons who have had 'an intimate personal relationship with [the stalker]'. An interim intervention order is also available for stalking victims.

1. Introduction

The stalking provisions were introduced in Victoria by the *Crimes (Amendment) Act 1994*. The provisions were intended to remedy an long existing inadequacy in the criminal law – the lack of an appropriate remedy for women who had been harassed or followed over a period of time.

The new offence was intended to provide protection for people who were followed, placed under surveillance, contacted or sent offensive items in circumstances where the offender intended to cause the victim personal physical or mental harm, apprehension or fear the person's safety. The stalking provisions were deliberately not limited to any one group of people although it was expected that they would protect women in particular, from various types of unwanted behaviour. It was intended that the court would be able to consider factors such as the age, intellectual capacity and cultural background of the alleged offender in considering whether a person should be convicted of stalking. (Second Reading Speech, Legislative Assembly, October 1994).

The stalking legislation was intended to bring Victoria in line with other Australian jurisdictions and provide greater physical and mental safety for members of the community.

The crime of stalking is one of international concern. The United Kingdom and the United States of America, as well as Australia, have enacted stalking legislation in recent years. The death of Princess Diana in 1997 gave rise to a media focus on "stalking" of public figures by the paparazzi, however the crime of stalking deals with a wide variety of circumstances, with "true stalking" considered generally to be the watching, harassment and following of a victim by a person not known to the victim.

The purpose of this study is to examine the impact of stalking legislation on the criminal justice system in the four years since its introduction in Victoria in 1994. In particular, the objective is to consider whether and how the two complementary approaches to dealing with stalking behaviour– the criminal offence of stalking under section 21A of the *Crimes Act 1958* and associated provisions for a civil remedy (ie. an intervention order) in the *Crimes (Family Violence) Act 1987* – have achieved their intended purpose (see attachment 1).

Included are:

- A review of stalking legislation in Victoria, in other jurisdictions in Australia and internationally (section 1).
- A review of the literature on the topic of stalking (section 3).
- An analysis of police and court statistics relating to stalking (section 4).
- A survey of police and magistrates on their views of the stalking legislation (section 5).
- An analysis of the representation of stalking in the media, comparing reports before and after introduction of the legislation (section 6).
- A discussion on the impact of the stalking legislation (section7).

CASE STUDY – prior to the introduction of stalking legislation

'SUSAN'

Susan was being followed from the train station to work each day. The man following her had started at a distance and had reached the stage where he now walked beside her. Susan changed the way she went to work but the man continued to follow her, or waited on a corner where he knew she would appear.

Though the behaviour had seemed harmless enough initially, the longer the behaviour went on the less Susan thought, 'this guy is weird' and the more she was thinking 'this is creepy'. Susan started to become obsessed with locating the man who was following her. She wondered when he would turn up next and whether following her was all he was going to do, and if she was going to be attacked.

After three months, Susan called the police. They told her there was nothing they could do other than confront the man and ask what he was doing. The man's response to the police was to take a swing at one of them. Charged with assaulting a police officer, the man was bailed on condition that he kept away from Susan. The man stopped harassing Susan for a short time before he recommenced following her before and after work and at lunch time.

At this stage (prior to the introduction of section 21A) the police suggested that they attempt to prosecute the man under section 18 of the *Crimes Act 1958* – intentionally or recklessly causing injury. During the court case it came out that the man had followed other women before Susan; however, the man was not convicted.

Susan suggested there is a fine line between curiosity in others and invading privacy. She felt she had lost control over her life, her personal space and her privacy. She changed her place of work. The relationship she was in broke down. She has been seeing a psychologist as a result of the stalking.

Source: *Verbal report from stalking victim on experiences prior to introduction of the legislation, November 1998. Name has been changed to protect the victim's identity.*

Before the introduction of stalking legislation in Victoria in January 1995, the experience of 'Susan' may have been the typical story of stalking victims in this state. The level of use of the stalking provisions since their introduction indicates that the legislation was highly necessary. Indeed, comments from both Magistrates and police about the legislation indicate that it was a much needed reform.

As indicated earlier, the stalking legislation was intended to close a 'loophole' in the criminal law. Prior to the introduction of the legislation there was no legal redress available where no actual threat or physical assault had occurred. The new legislation aimed to provide protection to people who were 'followed, placed under surveillance, contacted, or sent offensive items in circumstances where the offender intends to cause physical or mental harm or apprehension' (Second Reading Speech).

Table 1 sets out the list of offences against the person that were available to the police prior to the introduction of the stalking legislation, and which are of course still available today.

The penalty for stalking (10 years imprisonment (level 5)) is equivalent to the penalty level for the offences of intentionally causing injury or making a threat to kill.

1.1 Making stalking an offence

The Concise Oxford Dictionary definition of 'stalk' is to 'stealthily pursue or hunt (animal) game'. Related to this idea of the hunter and the hunted, the term stalking is now broadly used to describe anti-social conduct that may include following, surveillance, or any persistent and unwanted contact. What precisely forms stalking behaviour in a legal sense remains a matter for some debate as different jurisdictions have different definitions of the requisite harm, intent and time frame characterising such behaviour. Not surprisingly, different jurisdictions have adopted a range of legislative approaches to dealing with stalking behaviour.

Stalking laws were originally introduced in 1990, in California, USA. The motivation for this legislation was to protect celebrities from their crazed fans. In Victoria, legislation was introduced in 1994, taking effect in January 1995. The legislation was intended to be 'particularly useful in protecting women from harassment and other threats to their physical and mental safety by former partners and strangers' (Second Reading Speech).

Stalking Laws in the USA and UK

Since the introduction of stalking legislation in California in 1990 (Cal.Penal Code § 646.9 West 1990), stalking legislation has been introduced in many other American states (See: Sohn, 1994, for a comprehensive list of American provisions). The extent and diversity of this legislation prohibits further consideration in this paper but are largely reflected in subsequent Australian approaches.

One of the more recent jurisdictions to introduce stalking legislation is the United Kingdom. Prior to the introduction of the legislation in 1997, criminal cases had seen the definition of grievous bodily harm expanded to include psychiatric harm caused by stalking*. Applying to England and Wales, the *Protection from Harassment Act 1997* (UK) prohibits a course of conduct that amounts to harassment of another (section 1(1)) or which causes another to fear (on at least two occasions) that violence will be used against them (section 4(1)). The course of conduct must have been known, or ought to have been known**, to have that effect. Where a jury has found a person not guilty of an offence under section 4 (causing fear), it may find them guilty of an offence under section 2 (harassment). Harassment is said to include alarming a person or causing them distress while conduct includes speech. A course of conduct must involve behaviour on at least two occasions. Interestingly, any actual or apprehended breach of the legislation may also be the subject of civil proceedings. Damages may be awarded for any anxiety or financial loss caused by the harassment (subsection 3(2)), and the court may grant an injunction restraining the accused from pursuing any conduct amounting to harassment (subsection 3(3)).

* See for example *R v Burstow* [1997] Crim LR 452; *R v Constanza* [1997] Crim LR 576; *R v Smith* [1997] Crim LR 614.

** If a reasonable person in possession of the same information as the accused would think the conduct amounted to harassment.

Table 1: Other offences relevant to stalking behaviour

Section	Offence	Penalty
<i>Crimes Act 1958 (Vic.)</i>		
16	Intentionally causing serious injury	20 years imprisonment (level 3)
17	Recklessly causing serious injury	15 years imprisonment (level 4)
18	Intentionally causing injury	10 years imprisonment (level 5)
18	Recklessly causing injury	5 years imprisonment (level 6)
19	Causing a person to take some substance capable of interfering substantially with their bodily functions, without their consent	5 years imprisonment (level 6)
20	Making a threat to kill, intending the other person fear the threat, or being reckless as to whether the other would fear the threat	10 years imprisonment (level 5)
21	Making a threat to inflict serious injury, intending the other person fear the threat, or being reckless as to whether the other would fear the threat	5 years imprisonment (level 6)
22	Conduct engaged in recklessly that endangers the life of another	10 years imprisonment (level 5)
23	Conduct engaged in recklessly that endangers the person of another Negligently causing serious injury to another	5 years imprisonment (level 6)
24	Intentionally or recklessly making a trap to cause death	5 years imprisonment (level 6)
25	Intentionally or recklessly making a trap to cause serious injury	15 years imprisonment (level 4)
26	Sexually penetrating another without their consent	10 years imprisonment (level 5)
38	Indecently assaulting another without their consent	25 years imprisonment (level 2)
39	Assaulting someone with intent to commit rape	10 years imprisonment (level 5)
40	Intentionally destroying or damaging any property	10 years imprisonment (level 5)
197(1)	Intentionally destroying or damaging any property intending to endanger life	10 years imprisonment (level 5)
197(2)	Making a threat to destroy or damage the property of another, intending the other person fear the threat	15 years imprisonment (level 4)
198		5 years imprisonment (level 6)

Table 1 (continued)

Section	Offence	Penalty
Road Safety Act 1966 (Vic.)		
64	Driving a vehicle in a manner dangerous to the public	2 years imprisonment, \$24,000 fine (240 p.u*) and cancellation of licence for such time as the court thinks fit (not less than 6 months)
65	Driving a vehicle on a highway carelessly	<i>1st offence:</i> \$1,200 fine (12 p.u); <i>Subsequent offence:</i> \$2,500 fine (25 p.u)
70	Tampering with another person's vehicle	14 days imprisonment or \$200 fine (2 p.u)
Summary Offences Act 1966 (Vic.)**		
7	Throwing or discharging a missile (stone, arrow) to cause injury or danger of injury to a person or damage to property	6 months imprisonment or \$2,500 fine (25 p.u)
9(c)	Willfully doing less than \$500 injury or damage to property	6 months imprisonment or \$2,500 fine (25 p.u)
9(d)-(f)	Willfully entering a place without authority and without lawful excuse	6 months imprisonment or \$2,500 fine (25 p.u)
9(g)	Entering a place in a manner likely to cause a breach of the peace	6 months imprisonment or \$2,500 fine (25 p.u)
17(1)	Using indecent words, writing or drawing indecent figures, singing an obscene song or behaving in a riotous, indecent, offensive or insulting manner, in or near a public place	<i>1st offence:</i> 2 months imprisonment or \$1,000 fine (10 p.u); <i>2nd offence:</i> 3 months imprisonment or \$1,500 fine; <i>Subsequent offence:</i> 6 months imprisonment or \$2,500 fine
23	Unlawfully assaulting or beating another person	3 months imprisonment or \$1,500 fine (15 p.u)
23	Aggravated assault, perpetrated against any female or a boy under 14	6 months imprisonment or \$2,500 fine (25 p.u)
23	Aggravated assault involving kicking, a weapon or another instrument	2 years imprisonment
Crimes Act 1914 (Cwlth.)		
85S	Knowingly or recklessly using a postal or carriage service to menace or harass another person	1 year imprisonment
85ZE	Knowingly or recklessly using a postal or carriage service in such a way that a reasonable person may consider it offensive	1 year imprisonment
Common law		
	Intentionally or recklessly causing a person to apprehend imminent physical harm	5 years imprisonment

* P.u. refers to penalty units

** Section 60 of the *Summary Offences Act* provides that if a summary offence is charged and the Magistrates' Court is satisfied that an offence of a more serious or heinous kind has been committed, the court may proceed as if the more serious offence has been charged

1.2 The criminal offence of stalking in Victoria

In Victoria, the offence of stalking is proscribed by section 21A of the *Crimes Act* 1958 with a maximum penalty of 10 years (level 5) imprisonment. Section 53 of the *Magistrates' Court Act* 1989 provides that, with the defendant's consent, the court may determine the charge summarily. If the charge is disposed of summarily, the maximum penalty is two years (*Sentencing Act* 1991, section 113).

Course of conduct

The section defines stalking as 'a course of conduct' that is intended to cause (and has the effect of causing) physical or mental harm to the victim; or fear in the victim for their own safety, or that of another (subsection 21A(2)).

A non-exhaustive list of such conduct (contained in sub-section 21A(2)) includes:

- Following the victim or another.
- Telephoning or otherwise contacting (includes electronic messages) the victim or another.
- Entering or loitering outside or near a place frequented by the victim or another.
- Interfering with the property in the possession of the victim or another.
- Giving offensive material to the victim or another or leaving it where it would be found by or given to the victim or another.
- Keeping the victim or another under surveillance.
- Acting in a way that could reasonably be expected to arouse apprehension or fear in the victim for their own safety or that of another.

The Second Reading Speech suggested that the reference to an 'other person' might refer to 'a person about whose health or custody the victim would reasonably be expected to be concerned', particularly the child or spouse of the victim.

While conduct itself is outlined in the legislation, the section does not provide a time frame for determining what constitutes a 'course of conduct'. In *Gunes v Pearson and Tunc v Pearson* (1997) 21 A Crim R 297, McDonald J found that a 'course of conduct' encompasses conduct that is protracted or which is engaged in on more than one separate occasion.

In the South Australian case of *Police v Flynn* (1997) 191 LSJS 197, Duggan J found that where an incident occurs outside the period of stalking relied on by the prosecution, this incident may not appear as a particular of the charge, and therefore the incident involves a separate and distinct offence.

Further, in *R v Hubbuck* (unreported, 17 February 1998 QldCA CA358/97), a discussion of section 359A *Criminal Code Act* 1899 (Qld), Pincus, McPherson J J A and Moynihan J held that the trial judge must direct the jury that it must agree on the identity of the specific acts constituting the course of conduct.

Intent

An offender is considered to have intended to stalk where the offender knows, or ought to have understood (in all the particular circumstances), that engaging in a course of conduct of the kind undertaken would be likely to cause harm or arouse apprehension, and the conduct had that result (subsection 21A(3)). In *Gunes and Tunc*, McDonald J held that it was the course of conduct that must be engaged in with relevant intent, not conduct of a particular type. McDonald J was further of the view that the element of intent could also be satisfied by "admission or as a matter of inference".

In all the particular circumstances

The reference to the particular circumstances of the case was intended to enable a court to consider factors such as the offender's intellectual capacity, cultural background and age in determining culpability (Second Reading Speech). The intended effect of the phrase is to prevent persons 'incapable of understanding' (Second Reading Speech) the effect of their behaviour (whether by virtue of mental disability or other considerations), from being charged with stalking.

Official duties

The Act also specifically excludes from its operation persons performing official duties in relation to the enforcement of the criminal law, the administration of an Act, the enforcement of a law imposing a penalty, the execution of a warrant, or the protection of public revenue (subsection 21A(4)). It does not go so far as to protect private investigators engaged by members of the public.

The use of bail conditions for stalking in Victoria

Ordinarily, under the *Bail Act 1977* (Vic), an accused person must be granted bail if certain requirements are met. Changes to the *Bail Act 1977* (Vic) by the *Crimes (Amendment) Act 1994* provide for a reversal of the onus of proof in respect of bail proceedings where an accused has been charged with stalking under section 21A of the *Crimes Act 1958* or with a breach of an order under the *Crimes (Family Violence) Act 1987*. This means that the accused will not be granted bail and will be detained in custody unless he or she is able to demonstrate to the court why this should not occur.

The court should refuse bail (unless the accused can show why their detention is not justified) if the accused has allegedly used or threatened to use violence in the course of the impugned behaviour and either:

- The accused has been convicted of an offence under section 21, in the last 10 years, in the course of which they used or threatened to use violence against a person; or
- The court is satisfied that the accused on a previous occasion used or threatened to use violence against the victim of the alleged stalking.

Violence was accepted as involving 'threats or menaces to induce fear or terror or to intimidate in order to remove or nullify resistance' as well as 'actual force used to overcome or nullify resistance' in a stalking context by O'Sullivan J in *R v Derbogossian* (unreported, 8 July 1996, Brisbane District Court).

These bail provisions provide for the imposition of special conditions to be attached to bail orders where a court considers they are necessary in certain circumstances. One such circumstance is to ensure that the accused person does not endanger the safety or welfare of other persons.

1.3 Stalking provisions in other Australian jurisdictions

Victorian stalking legislation was introduced at about the same time as legislation in New South Wales and Western Australia (1994), after legislation in Queensland (1993), the Northern Territory and South Australia (1994), and before legislation in Tasmania (1995) and the Australian Capital Territory (1996). In all jurisdictions other than New South Wales, the offence is known as stalking or unlawful stalking. The legislation in New South Wales, Western Australia and Victoria covers the same behaviour but uses very different approaches.

In **New South Wales** the offence is encompassed in the offence of apprehended violence, which was introduced in 1994. Section 562AB of the *Crimes Act 1900* (NSW) provides that a person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is liable to imprisonment for 5 years or a fine of 50 penalty units, or both. "Stalking" is defined in section 562A of the NSW legislation as following a person, or watching or frequenting the vicinity of a person's place of residence, business or work or any place that a person frequents

for the purposes of any social or leisure activity. “Intimidation” is defined as conduct amounting to harassment or molestation, making repeated telephone calls, or any conduct that causes a reasonable apprehension of injury to a person, or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.

In **Western Australia**, the *Criminal Code Compilation Act 1913 (WA)* provides in section 338D that any person who stalks another person with intent to:

- prevent or hinder the doing of an act by a person who is lawfully entitled to do that act;
- compel the doing of an act by a person who is lawfully entitled to abstain from doing that act; or
- cause physical or mental harm to a person or apprehension or fear in a person, is guilty of a crime. It is a defence to a charge under the WA stalking legislation to prove that the accused person acted with lawful authority or a reasonable excuse. “Stalking” is defined in section 338E of the *Criminal Code Compilation Act 1913 (WA)* as persistently following or telephoning a person, depriving a person of possession of any property or hindering a person in the use of any property, or watching or besetting the person's dwelling, place of employment or business, or any place where the person happens to be. Section 338E also provides that attendance in order merely to receive or communicate information is not “watching or besetting”, and that sending unsolicited gifts to a place or leaving unsolicited gifts at a place is “besetting” for the purposes of the WA legislation.

Notable similarities exist between Victorian stalking legislation and equivalent legislation in the **Northern Territory**. Pursuant to section 189 of the Criminal Code (NT), a person is guilty of a crime if that person, with the intention of causing another person physical or mental harm, apprehension or fear, stalks the other person. Stalking is defined as following the person or a third person, loitering outside the person's residence or the residence of a third person or another place frequented by the other person or a third person, entering or interfering with property of the person or a third person, keeping the other person or a third person under surveillance, giving offensive material to, or leaving offensive material where it is likely to be found by, given to or brought to the attention of, the person or a third person, or acting in any other way that could reasonably be expected to arouse the person's apprehension or fear.

The concept of a “course of conduct” in section 21A of the *Crimes Act 1958 (Vic)* is similar to the language of stalking legislation in **Queensland**. Section 359A of the *Criminal Code Act 1899 (Qld)* provides that a person (the first person) unlawfully stalks another person (the second person) if each of the following elements are met:

- the first person engages in a course of conduct involving doing a “concerning act” on at least 2 separate occasions to another person or other persons;
- the first person intends that the second person be aware that the course of conduct is directed at the second person, even if the concerning acts or particular concerning acts are done to, or to the property of, a person other than the second person;
- the second person is aware that the course of conduct is directed at the second person; and
- the course of conduct would cause a reasonable person in the second person's circumstances to believe that an offensive act (an unlawful act of violence against the second person's person or property, or against the person or property of another person about whose health or custody the second person would reasonably be expected to be concerned if the act were done) is likely to happen.

It is a defence to a charge of unlawful stalking to prove that the course of conduct was engaged in for the purposes of a genuine industrial dispute or a political or other public dispute or issue carried on in the public interest. A “concerning act” is defined in the Queensland legislation to mean following, loitering near, watching or approaching another person, telephoning or otherwise contacting another person, loitering near, watching, approaching or entering a place where another person lives, works or visits, interfering with property in the possession of another person, leaving offensive material where it will be found by, given to or brought to the attention of, another person, giving offensive material to another person, directly or indirectly, an act of harassment, intimidation or threat against another person, or an unlawful act committed against the person or property of another person.

Similarly, in **South Australia**, section 19AA of the *Criminal Law Consolidation Act 1935* (SA) provides that a person is guilty of an offence where the person stalks another person with intent to cause serious physical harm to that person or a third person, or to cause serious apprehension or fear. “Stalking” is defined as, on at least two occasions, following a person, loitering outside the person’s place of residence or another place frequented by the person, entering or interfering with property in the possession of the person, giving offensive material to the person, keeping the person under surveillance, or acting in a way that could reasonably be expected to arouse the person’s apprehension or fear.

Stalking legislation in Tasmania and the Australian Capital Territory is in very similar terms to section 21A of the *Crimes Act 1958* (Vic).

Legislative provisions introduced in other Australian jurisdictions in respect of stalking offences are summarised in Table 2.

Penalty

The maximum penalty for stalking behaviour in other jurisdictions generally does not exceed five years imprisonment. In Victoria, the maximum penalty is 10 years imprisonment or two years if the charge is heard summarily. In a number of other jurisdictions (ACT, NSW, Queensland and SA), there are two sentencing levels. There is a five-year maximum where an offender contravenes a court order or is in possession of an offensive weapon (during the stalking period) and a two-or three-year maximum in any other case. In Western Australia there are four sentencing levels that are indictable and summary offence versions of the levels in the other States. Where stalking behaviour is intentional and aggravated, the maximum penalty there is eight years imprisonment.

Conduct

Several jurisdictions specify that conduct must occur on at least two separate occasions (Northern Territory, Queensland, South Australian and Commonwealth). In Western Australia, stalking behaviour is required to be ‘repeated’. Apart from a slight variation in the terms used, the conduct covered in all jurisdictions is essentially the same.

Intent

Queensland, New South Wales and Western Australia have an intent requirement other than to cause physical or mental harm, apprehension or fear. Queensland requires that the offender intended the victim to be aware of the course of conduct. New South Wales requires an intention to cause the victim to fear personal injury, and Western Australia requires an intention to intimidate or intention to act in a manner reasonably expected to intimidate

Table 2: Stalking provisions in Australia

Penalty	Prohibited conduct	Intention
<i>Criminal Code Act 1899 (Qld) – section 359A Unlawful Stalking; effective 23 November 1993</i>		
Five years prison in circumstances of aggravation; in other cases, 3 years prison.	A course of conduct ^{**} involving doing a concerning offensive act ⁺ on at least two separate occasions by: <ul style="list-style-type: none"> - Following - Loitering - Watching or approaching another - Interference with property - Telephone or other contact - Other act of “harassment, intimidation or threat against another” or unlawful act committed against the person or their property 	That complainant be aware the course of conduct is directed at them.
<i>Criminal Code (NT) – section 189 Unlawful Stalking; effective 28 March 1994</i>		
Five years prison in circumstances of aggravation; in other cases, 2 years prison.	On at least two separate occasions: <ul style="list-style-type: none"> - Following - Surveillance - Loitering (work, home, other place) - Interference with property - Other covert acts ‘that could reasonably be expected to arouse the other person’s apprehension or fear’ 	To cause physical or mental harm, apprehension or fear.
<i>Criminal Law Consolidation Act 1935 (SA) – section 19AA Unlawful Stalking; effective 14 April 1994</i>		
Five years prison in circumstances of aggravation; in other cases, 3 years prison.	On at least two separate occasions: <ul style="list-style-type: none"> - Following - Surveillance - Loitering (work, home, other place) - Interference with property - Provision of offensive material - Or acts ‘in any other way that could reasonably be expected to arouse the other person’s apprehension or fear’ 	To cause physical or mental harm, apprehension or fear
<i>Crimes Act 1900 (NSW) – Part 15A Apprehended Violence; effective 12 December 1994</i>		
Five years prison and/or, fine of 50 penalty units.	Stalking: <ul style="list-style-type: none"> - Following - Surveillance - Loitering (work, home, other place) Or Intimidation: <ul style="list-style-type: none"> - Conduct amounting to harassment or molestation - Repeated telephone contact - Other conduct causing reasonable apprehension of injury or damage to any person or property 	To cause fear of personal injury
<i>Criminal Code Compilation Act 1913 (WA) – sections 338D-E Stalking; effective 23 December 1994</i>		
<i>Intentional:</i> 8 years prison where circumstances of aggravation; in other cases 3 years prison <i>Summary conviction:</i> 2 years prison (\$8,000 fine) in circumstances of aggravation; 18 months prison (\$6,000 fine) otherwise <i>Intention imputed:</i> 12 months prison (\$4,000 fine)	Pursuing the person by: <ul style="list-style-type: none"> - Repeated communication (directly or indirectly, with or without words)[§] - Repeatedly following[¶] - Repeatedly causing the person to receive unsolicited items 	To intimidate [‡] , or by imputation, acting in a manner reasonably expected to intimidate

Table 2 (continued)

Penalty	Prohibited conduct	Intention
Crimes Act 1958 (Vic) – section 21A Stalking; effective January 1995		
<p><i>Heard summarily:</i> 2 years prison <i>Otherwise:</i> 10 years prison (level 5)</p>	<p>A course of conduct including:</p> <ul style="list-style-type: none"> - Following - Surveillance - Loitering (work, home, other place) - Interference with property - Provision of offensive material - Telephone or other contact - Other acts ‘that could reasonably be expected to arouse the other person's apprehension or fear’ 	<p>To cause physical or mental harm, apprehension or fear</p>
Criminal Code 1924 (Tas.) – section 192 Stalking; effective 14 November 1995		
<p>Two years prison if heard summarily, otherwise twenty-one years prison.</p>	<p><i>Following</i> <i>Surveillance</i> <i>Loitering (work, home, other place)</i> <i>Interference with property</i> <i>Provision of offensive material</i> - Or acts “in any other way that could reasonably be expected to arouse the other person's apprehension or fear”</p>	<p>To cause physical or mental harm, apprehension or fear</p>
Crimes Act 1900 (ACT) – section 34A Stalking etc; effective 10 July 1996		
<p>Five years prison in circumstances of aggravation; in other cases, 3 years prison.</p>	<p><i>Following</i> <i>Surveillance</i> <i>Loitering (work, home, other place)</i> <i>Interference with property</i> <i>Provision of offensive material</i> <i>Telephone or other contact</i> - Or covert acts reasonably expected to arouse apprehension or fear or conduct “amounting to intimidation, harassment or molestation of the other person”</p>	<p>To cause physical or mental harm, apprehension or fear</p>
Criminal Code Bill (Cwlth) – clause 25.4 Stalking etc; effective 15 March 2000		
<p>Three years prison.</p>	<p><i>On at least two separate occasions:</i></p> <ul style="list-style-type: none"> - <i>Following</i> - <i>Surveillance</i> - <i>Loitering (work, home, other place)</i> - <i>Interference with property</i> - <i>Provision of offensive material</i> - <i>Telephone or other contact</i> - Other acts “that could reasonably be expected to arouse the other person's apprehension or fear” 	<p>To cause serious harm*; apprehension or fear of serious harm</p>

Persons covered in the table include all where conduct is directed at the complainant or a third person, except for New South Wales where conduct is directed at the complainant or a third person with whom the complainant has a domestic relationship.

Aggravating circumstances is defined as where the offender contravenes a court order or possesses an offensive weapon (ACT, NT, SA, WA). This also applies to Queensland, with the addition of occasions where an offender uses or threatens to use unlawful violence.

* **Harm:** physical harm (includes unconsciousness, pain, disfigurement and any physical contact objectionable in the circumstances), harm to mental health (including psychological harm), or disease (permanent or temporary).

** **Course of conduct:** must be such that it would cause a reasonable person in the complainant's circumstances (those known by and reasonably foreseen by the alleged offender) to believe that a concerning offensive act is likely.

+ **Concerning offensive act:** unlawful act of violence against the complainant or their property or person about which the complainant would reasonably be expected to be seriously concerned.

‡ **Intimidate:** includes causing physical or mental harm; or apprehension or fear; preventing a person from doing that which they are lawfully entitled to do, or compelling a person to do that which they are lawfully entitled to refuse to do.

§ Rebuttable by showing the accused didn't intend to communicate with the person.

¶ Rebuttable by showing the accused didn't intend to follow the person.

Victim

The Australian Capital Territory and New South Wales do not require that the victim actually apprehended or feared harm. All jurisdictions allow complaints in respect of third parties. In New South Wales this is limited to complaints in respect of conduct directed at persons who have a domestic relationship with the complainant.

Statutory Defence

Queensland is the only State to create a defence to stalking of engaging in conduct for a genuine industrial, political or public dispute. In Western Australia it is a defence to a charge of stalking to prove that the accused acted with lawful authority. The Victorian approach is that conduct which would ordinarily be considered stalking will not be stalking where it is engaged in for a number of specified purposes.

Alternative verdicts

Western Australia allows for an alternative verdict of behaving in a manner reasonably expected to intimidate where the intention to intimidate can not be established.

1.4 Intervention Order Provisions in Victoria

The purpose of the *Crimes (Family Violence) Act 1987* was originally to 'provide for intervention orders in cases of family violence'. A family violence intervention order could initially be granted under section 4, for a period of not more than 12 months (section 6), if the court was satisfied on the balance of probabilities that, as between family members:

- A person has assaulted another or caused damage to the property of another and is likely to do so again; or
- A person has threatened to assault another or cause damage and is likely to make good that threat; or
- The person has harassed or molested another, or has behaved in an offensive manner to another and is likely to do so again.

The *Crimes (Amendment) Act 1994* amended the *Crimes (Family Violence) Act 1987* to enable a stalking victim to be deemed a "family member" under the *Crimes (Family Violence) Act 1987* and thereby be enabled to apply for an intervention order against the alleged stalker.

Section 5 of the *Crimes (Family Violence) Act 1987* provides that an intervention order can contain the following conditions:

- Prohibit or restrict the person from approaching within a specified distance of the victim or from being within a specific locality.
- Prohibit or restrict access to the victim's home, workplace or other haunt.
- Prohibit contact with the victim.
- Prohibit damage to the victim's property.
- Prohibit the person from causing another to engage in restrained behaviour.
- Direct the person to receive counselling.
- Revoke any fire-arm license and confiscate any firearm.

Breach of an intervention order by a person against whom the order has been made is an offence punishable by up to 6 months imprisonment or a maximum fine of \$2,000. The offence is only made out where the effect of the order has been explained to the accused, or the accused has otherwise been notified of the making of the order.

Subsection 21A(5) allows the court to make an intervention order under the *Crimes (Family Violence) Act 1987* when satisfied on the balance of probabilities that the defendant has stalked a person and is likely to continue to do so. The Second Reading Speech suggests that intervention orders will be 'especially important in situations where a person may not have been charged with stalking, or will not be charged, perhaps because the person suffers from a mental disability'

The *Crimes (Amendment) Act 1994*, which introduced the offence of stalking into the *Crimes Act 1958*, also made a number of amendments to the *Crimes (Family Violence) Act 1987*. In addition to treating stalkers as 'family' for the purposes of obtaining an intervention order, the Act broadens the definition of family member from blood relatives, spouses and household members, to persons who have had 'an intimate personal relationship with [the offender]'

Prior to the amending Act, where a relationship fell outside the definitions contained in the *Crimes (Family Violence) Act 1987*, the party affected would need to turn to the peace complaint procedure contained in section 126A of the *Magistrates' Court Act 1989*. This provision empowers the Magistrates' Court, on the application of any person, to order another person to enter into a bond to keep the peace, or to be of good behaviour.

The amending Act removed the 12-month restriction on intervention orders and left the duration of the order to the court's discretion, and changed the penalty for breach of such an order. Breach is described as a summary offence, punishable by imprisonment for up to two years and a fine of up to \$2,400 or both for a first offence (section 22). For subsequent offences, the person may receive a term of imprisonment not exceeding five years.

An interim intervention order is also available where it is necessary to preserve the safety of the complainant, prior to the hearing and determination of the complaint. It may include the same restrictions as can be imposed on the section 4 intervention order, but provides for the case where the subject of the order is not in court, or the request for the order occurs after hours.

1.5 Intervention and protection orders in other Australian jurisdictions

In addition to specific domestic violence protection orders, other Australian jurisdictions have, to varying degrees, equivalents of stalking intervention orders under the Victorian *Crimes (Family Violence) Act 1987*. Some are included as part of domestic violence provisions, others are not. Provisions created in other Australian jurisdictions in respect of intervention orders or their equivalents can be found in Table 3.

Order type

In Victoria, the power to grant intervention orders is found in the stalking provisions of the *Crimes Act 1958* and not in the *Crimes (Family Violence) Act 1987*. Some police indicated in the course of interviews that this may cause confusion about who is able to obtain an intervention order, and in what circumstances.

In the Australian Capital Territory, Queensland and Western Australia, the type of behaviour covered by the complaint procedure is similar to some aspects of stalking behaviour (assaults, threats and property damage). In the Northern Territory, only a peace complaint is available (akin to section 126A *Magistrates Court Act 1989* (Vic)).

Breach

In all jurisdictions it is necessary that the offender knows an order has been made before they can be found guilty of any breach of that order. Penalties for a breach range from fines of 10 to 100 penalty units, and jail terms of between six months and five years. In comparison, there is a fine of up to \$2,000 (20 penalty units) and imprisonment of up to six months for breach of intervention orders in Victoria.

Restrictions

The most broadly drafted provisions allow the court to impose such prohibitions and restrictions as are necessary or desirable to prevent the behaviour about which there has been a complaint. In Victoria the provisions are not that broad. More restrictive provisions, for example those in the Australian Capital Territory, only prevent specific types of behaviour. However, even these specific behaviours are broadly drawn so as to permit a wide range of restrictions.

Table 3: Intervention orders in Australia

Grounds for granting order	Conditions	Consequences of breach	Other comments
<i>Magistrates' Court Act 1930 (ACT) – Part X Restraining Orders</i>			
<p>Satisfied on balance of probabilities that the respondent:</p> <ul style="list-style-type: none"> • Caused personal injury or damage to property and is likely to cause further injury or damage • Threatened to cause personal injury or damage to property and is likely to carry out the threat or • Behaved in an offensive or harassing manner 	<p>Order may prohibit the respondent:</p> <ul style="list-style-type: none"> • Being at a specified locality (including home and work) • Approaching the complainant • Contacting, harassing, threatening, intimidating the complainant • Damaging the property of the complainant • Causing another person to do any of the above 	<p>A maximum fine of 50 p.u and/or imprisonment for 2 years (first offence) or 5 years (subsequently).</p> <p>Order must be in force</p> <p>Respondent must be present when order is made or served personally with the order</p> <p>Order must be contravened</p>	<p>Not available where an order can be obtained under the <i>Domestic Violence Act 1986 (ACT)</i></p>
<i>Crimes Act 1900 (NSW) – Part 15A Apprehended Violence</i>			
<p>Satisfied on balance of probabilities that the complainant has reasonable grounds to fear and in fact fears :</p> <ul style="list-style-type: none"> • Conduct amounting to harassment or molestation • Conduct amounting to stalking <p>An order must be taken out:</p> <ul style="list-style-type: none"> • Where there has been a charge or conviction for stalking or a domestic violence offence or where police believe stalking or domestic violence has occurred 	<p>Order may impose such prohibitions or restrictions on the behaviour of the respondent as appear necessary or desirable to the court</p>	<p>A maximum fine of 50 p.u and/or imprisonment for 2 years.</p> <p>Order must be in force</p> <p>Respondent must knowingly contravene a prohibition or restriction</p>	<p>Additional provisions exist where a domestic relationship is involved</p>
<i>Justices Act 1928 (NT) – section 99</i>			
<p>Upon complaint of any person, the court may make an order that the respondent enter a recognisance, with or without sureties</p>	<p>Order that respondent shall keep the peace or be of good behaviour</p>	<p>A maximum penalty of 6 months imprisonment and loss of any sureties</p>	<p>Upon proof of a change of circumstances, the court may vary the order as it thinks just</p>
<i>Peace and Good Behaviour Act 1982 (Qld) – section 6</i>			
<p>Where court is satisfied that the respondent has threatened to:</p> <ul style="list-style-type: none"> • Assault or do bodily injury to the complainant • Destroy or damage any property of the complainant • Procure another to do any of these things 	<p>Order that the respondent shall keep the peace and be of good behaviour for such time as the court thinks fit</p>	<p>A maximum penalty of 100 p.u or imprisonment for 1 year.</p> <p>Must contravene or fail to comply with current order</p>	<p>Where the court considers it more appropriate, a matter may, with the complainant's consent, be referred to mediation</p>
<i>Summary Procedure Act 1921 (SA)</i>			
<p>Satisfied on balance of probabilities that the respondent may, unless restraining, cause personal injury or damage to property, or behave in an intimidating or offensive manner**</p>	<p>Order may impose such prohibitions or restrictions as are necessary or desirable to prevent the person from acting in the apprehended manner</p>	<p>A maximum penalty of Division 5 imprisonment</p> <p>Order must be in force</p> <p>Order must have been served on the respondent personally</p>	<p>A specific restraining order is available in respect of persons found loitering near children and who have been found guilty of a child sexual offence previously</p>

Justices Act 1959 (Tas.)			
Satisfied on balance of probabilities that respondent has: Assaulted or caused personal injury to the complainant Threatened to assault or cause personal injury to complainant and is likely to do so again	Order may impose such prohibitions or restrictions as are necessary or desirable to prevent the person from acting in the way giving rise to the order	A maximum fine of 10 p.u and/or imprisonment for 6 months. Order must be in force Order must have been served on the respondent personally	
Crimes (Family Violence) Act 1987 (Vic)			
Satisfied on the balance of probabilities that a person has: Assaulted another or caused damage to their property and is likely to do so again Threatened to assault another or cause damage to property and is likely to carry out threat Harassed or molested another or has behaved in an offensive manner towards a person, and is likely to do so again	Order may prohibit: Contact with persons. Access to premises. Presence in locality Damaging property Firearm licence Order may compel: Participation in prescribed counselling	<i>First breach:</i> A maximum fine of \$2,400 or imprisonment for 2 years. <i>Subsequent breaches:</i> 5 years imprisonment	The order automatically expires one year after it is made, except where specified by the court. A fresh order may still be made at any stage
Restraining Orders Act 1997 (W.A.)			
<i>Violence Restraining Order:</i> Satisfied on balance of probabilities that unless restrained the respondent is likely to commit a violent personal offence against the applicant (or applicant fears they will) <i>Misconduct Restraining Order:</i> Or that respondent is likely to intimidate or offend the applicant, damage the applicant's property, or behave in a manner likely to breach the peace.	The court may impose such restraints as are necessary to prevent the respondent committing a violent personal offence, causing the victim to think the respondent would commit a violent personal offence, intimidating or offending the victim, damaging the victim's property or behaving in a manner likely to breach the peace.	<i>Violence restraining order:</i> A maximum fine of \$6,000 or imprisonment for 18 months. <i>Misconduct restraining order:</i> A maximum fine of \$1,000.	

* Actual fear need not exist where the complainant is under 16 or has appreciably below average intellectual function

** A respondent behaves in an intimidating or offensive manner if they have committed the criminal offence of stalking under section 19AA *Criminal Law Consolidation Act 1935 (SA)*

Section 2: Methodology

Summary of Section 2

Analysis of previous studies on stalking

An analysis of the literature relating to stalking was conducted, covering Victorian and other jurisdictions where stalking laws have been introduced.

Analysis of police and court statistics

Information was collected from Victoria Police and Victorian courts' databases for all persons, charged and/or prosecuted under the stalking legislation. Information was also collected for all persons obtaining an intervention order under the stalking legislation.

Survey of police and magistrates

A survey was conducted to assess the impact of the introduction of stalking legislation on police and magistrates, and to identify areas of policy, process or legislation that may require refinement.

Interviews of police and magistrates

Magistrates and police receiving the questionnaires were invited to separately provide contact details if they wished to participate in an interview.

Analysis of media representations of stalking

An analysis was undertaken of 169 articles on stalking published in primarily Victorian newspapers from January 1993 to December 1998, covering approximately three years prior to, and three years following, the introduction of the Victorian stalking legislation.

2. Methodology

The study included the following:

- an analysis of literature on stalking.
- an analysis of police and court statistics .
- a survey of police and magistrates.
- interviews of police and magistrates.
- an analysis of media representations.

2.1 Analysis of previous studies on stalking

An analysis of all available literature relating to stalking was conducted, covering relevant material published in English within and beyond the Australian jurisdiction between January 1993 and December 1998.

The literature examined included journal articles, government reports and discussion papers, and community information booklets, and is outlined in attachment 2.

2.2 Analysis of police and court statistics

Information was collected from police and court databases (including Magistrates' Court, higher courts and the Office of Public Prosecutions) for all persons, charged and/or prosecuted under the stalking legislation. Information was also collected for all persons obtaining an intervention order under the stalking legislation. Police data were obtained for 1995 to 1998. Court data, except that relating to intervention orders, were obtained for 1995 to 1998. Data relating to intervention orders were obtained for the financial years 1995-96 and 1997-98. No identifying information was retained on the study's databases.

2.3 Survey of police and magistrates

A survey was conducted to assess the impact of the introduction of stalking legislation on police and magistrates and to identify areas of policy, process or legislation that may require refinement.

Exploratory discussions were conducted with personnel from Victoria Police and the Magistrates' Court to assist in developing and piloting the survey questionnaires.

Two self-completion questionnaires (one for police and one for magistrates) were finalised in consultation with the Project Advisory Group. Department of Justice Research Ethics Committee approval for the survey was granted on 20 August 1997.

The police questionnaire, approved by the Victoria Police Research Coordination Committee, was sent to a sample of Victoria Police officers with a cover letter from the Assistant Commissioner (Corporate Policy, Planning and Review) endorsing the study (attachment 3).

The police sample selected was a stratified sample determined on the basis of the area of police work (eg CIB or CPS) and rank (eg. Sergeant or Constable). From CIB, 170 police were selected from CIB, 138 from CPS. There were 176 sergeants and 188 senior constables or constables. A total of 245 questionnaires were completed and returned, giving a response rate of 36.5 per cent.

The questionnaire for magistrates (attachment 4) was approved by the Chief Magistrate and distributed to all Victorian magistrates (96 magistrates and two acting magistrates).

Only 16 completed questionnaires were returned, and this should be borne in mind when considering the results of the survey for magistrates. The response rate for magistrates was 15.6 per cent, considerably lower than for police.

Returned questionnaires had any identifying information removed before being coded and checked prior to data entry. Due to the length of the questionnaires and the use of routing instructions (to skip or go to certain questions) a number of returned questionnaires were incomplete. The non-response rate to open-ended questions was relatively high. For this reason, data obtained from the open-ended questions should be regarded with caution.

2.4 Interviews of police and magistrates

Magistrates and police receiving the questionnaires were invited to separately provide contact details if they wished to participate in an interview. Of those surveyed, 42 police and eight magistrates who completed surveys indicated they would like to be interviewed to allow for in-depth responses on their experience with stalking cases.

Those persons who expressed interest in being interviewed were contacted and invited to participate in a one-to-one telephone or face to face interview, or, in the case of police, focus groups. The issues covered in the interviews and focus groups were the same.

The interview schedule for this process was developed in consultation with the Project Advisory Group (attachment 5). Notes taken from the interviews and focus groups precluded the disclosure of confidential information and were checked by participants.

Six magistrates and seven police participated in telephone or face-to-face interviews. Twelve police participated in two focus groups. The data obtained from their responses were used to complement and illustrate the survey findings and are reported on in section 5. Again, caution must be exercised in interpreting the data given the relatively low participation rate.

2.5 Analysis of media representations of stalking

An analysis was undertaken of 169 articles on stalking published in primarily Victorian newspapers from January 1993 to December 1998 (attachment 6). This period covers approximately three years prior to, and three years following, the introduction of the Victorian stalking legislation. While this analysis does not comprise an exhaustive search of articles, it is a broad compilation of the majority of articles published about stalking during this period and, as such, enables representation of stalking behaviour in the print media to be analysed.

Section 3: Previous studies on stalking

Summary of Section 3

While stalking has emerged as an issue of social concern since the early 1990s, to date Australian studies have been relatively infrequent.

The USA has published the majority of studies on stalking and the UK has also had a presence in this field.

Studies indicate a responsiveness to the introduction of stalking legislation and comprise assessments of proposed legislation and comparisons to already enacted legislation in overseas jurisdictions.

Studies have placed a comparatively strong emphasis on issues relating to the mental health of stalking offenders, the psychological impact on victims, and the importance of precision in legislative drafting.

The publications reviewed are generally positive regarding the introduction of stalking legislation, but some limits are placed on this optimism.

Issues of concern identified in the literature include:

- The impact of stalking on the victim.
- The relationship between domestic violence and stalking.
- The inadequacy of traditional civil and criminal remedies in addressing stalking behaviour.
- The relationship between intervention orders and stalking.
- The impact of the decision not to define legislative terms such as 'stalking' and 'course of conduct' within stalking legislation.
- The interpretation and application of the offender's intent.
- The problems surrounding the mental health of the offender.
- Sentencing of the stalking offender.

3. Previous studies on stalking

The analysis of all available literature on stalking focuses on journal articles and some government reports published from the beginning of 1993 to October 1998, all of which are listed in the Bibliography. The analysis firstly covers non-Australian jurisdictions and then looks at previous studies undertaken within Australia. Only English language publications were reviewed.

3.1 The USA and the UK

The earliest publications that directly address the social and legal issues relating to stalking were published mostly in the USA and the UK around 1993. These and later studies have tended to focus on the characteristics of stalking behaviour, the objectives of stalking legislation, and in the case of the USA the success of the legislation in preventing stalking behaviour.

A strong association was identified between domestic violence and stalking in the USA (Bernstein 1993), and statistics indicated that 90 per cent of women murdered by their boyfriends or husbands in the USA had reportedly been previously stalked.

A number of US studies analyse civil and criminal remedies protecting victims, particularly women, from stalking behaviour (Miller 1993; Sohn 1994). Reasons why these traditional remedies were particularly found to be deficient included the:

- Potential ambiguities that arise when the legislature chooses not to define what 'stalking' is.
- Inadequate provisions within protective orders contributing to the frequency of breach of these orders.

Attinello (1993) conducted a comparison between the perceived inadequacies of traditional remedies for stalking behaviour and the evolution of the Californian legislation introduced in 1990 aimed at directly addressing it. Attinello succinctly outlines the reasons why civil injunctions and criminal statutory remedies have proved ineffective in preventing stalking, and provides a general overview of the Californian stalking legislation. The main conclusion is drawn that 'because an obsession often transcends respect for the law, there is little that any law can do to adequately deter a person from stalking another person' (Attinello 1993). This is considered to encapsulate the central difficulty facing stalking efforts.

The most comprehensive US study on stalking is by Bradfield (1998) who outlines and analyses the behaviour of stalkers, the ineffectiveness of traditional remedies for stalking behaviour, the development of US stalking statutes, and the legal elements contained in these statutes.

Bradfield also discusses the sentencing aspects involved with stalking cases, and concludes that pre-trial release of the alleged stalker should be avoided if there is a real danger of re-offending. Bradfield believes that most stalkers suffer from mental infirmity and proposes that sentencing must take into account that fact.

Bradfield emphasises that the justice system may have traditionally tended to trivialise stalking behaviour as many victims know their offenders. This legal attitude is prevalent in relation to domestic violence, which is increasingly becoming socially and legally unacceptable.

Gregson (1998), another US author, analyses the critical role of intent in the Californian stalking legislation. He proposes a need to reform the Californian statute to include a general intent provision requiring the stalker to purposefully engage in activities that would cause a reasonable person to fear bodily injury or death. Gregson believes the legislation should not require that the stalker intend to cause the victim to be afraid, as this provides a loophole to those defendants who intentionally stalk but whose mental state allows them to escape liability under existing law. Victorian stalking legislation goes some way towards addressing this issue, by providing that the intent required to constitute the offence of stalking is made out where the offender knows or ought to have understood in all the particular circumstances, that engaging in a course of conduct of that

kind would be likely to cause physical or mental harm to the victim or arouse apprehension or fear in the victim for his or her own safety or that of any other person, and the conduct actually did have that result. Nevertheless, Victorian legislation is currently not as far-reaching as proposed by Gregson.

UK studies published between 1993 and 1996 (Turl 1994; Lawson-Cruttenden 1996; Bonnington 1996; Bean 1996), discuss the crime of stalking within the legal arena and support the need for stalking legislation in the UK, which was enacted in 1997.

In a discussion paper entitled *The Government's Proposed Stalking Law* (Lawson-Cruttenden 1996) it is posited that the Parliament in the UK failed to take into consideration the strengths and weaknesses of existing stalking laws in various states in the USA, Australia and Canada when drafting the English stalking legislation. Lawson-Cruttenden concludes that it is 'doubtful whether these [UK] proposals can be strictly described as stalking legislation. What these laws propose is the criminalisation of the offences of 'aggravated' harassment (with threatened violence) and molestation'. He was also of the view that the criminal offence threshold was too low and gave inappropriate powers to police regarding search without warrant.

Gardner (1998) provides a critique of the enacted English stalking legislation, the *Protection From Harassment Act 1997* (UK). Gardner considers that the Act 'hone[s] in on the otherwise legally unaddressed behaviour of stalking by capturing the crucial idea of besetting, by requiring the offending behaviour to occur on at least two occasions'. He states, however, that the legislation's lack of definitions cause the Act to border on overgenerality that will lead to difficulty in application. Wells (1997) reaches a similar conclusion, stating that due to its breadth and overlap with previously existing public order offences, the English legislation does 'little more than make a public policy statement'.

Empirical data on the extent of stalking are provided by the US Department of Justice National Violence Against Women Survey (1998). It surveyed 8,000 women and 8,000 men and comprised the first national data on stalking in the USA.

The most pertinent findings of this survey include:

- Eight per cent of women and 2 per cent of men had been stalked at some time during their lives.
- Ninety per cent of victims were stalked by only one person.
- Seventy-four per cent of victims were between the ages of 18 and 39.
- Ninety-four per cent of stalkers identified by female victims were male.
- Women tended to be stalked by intimate partners.
- Stalkers were motivated by a desire to control or instil fear in the victim.
- Police were significantly more likely to arrest or detain a suspect in cases with a female victim than in those cases with a male victim.
- A third of female and a fifth of male victims of stalking sought psychological counselling as a result of stalking.
- Less than one per cent of victims said the stalking had stopped because they had obtained a restraining order.

This study recommended that stalking be treated as a significant social problem, and that there was a need for more research to be conducted regarding the effects of stalking behaviour on the community.

Recurring themes in studies on stalking in countries other than Australia include:

- The role of intent.
- The definition of legislative terms such as course of conduct.
- Legal attitudes toward domestic violence.
- The offender's mental health.

3.2 Australian studies

Mental health of the offender

In Australia, a major study on stalking behaviour was conducted by Mullen & Pathe (1994) which specifically examined the pathology of a 'subgroup' of stalkers, typically described as 'erotomaniacs', through the verbal reports of victims. These stalkers appear to delude themselves that the victim returns their amorous feelings. Mullen & Pathe conclude that 'it is essential that legislative and judicial responses to stalking take account of this subgroup which, although possibly small, is potentially disruptive and dangerous but treatable'.

According to a later study undertaken by Mullen & Pathe (1997), 'Stalking describes a constellation of behaviour in which one individual inflicts on another repeated unwanted intrusions and communications'.

Their analysis of 100 victims of stalking throughout Australia shows that:

- Approximately 80 per cent of stalking victims are female.
- Thirty per cent of victims are stalked by an ex-partner.
- All victims indicated they had experienced multiple forms of harassment.
- Eighty per cent of victims experienced direct approaches.
- Seventy per cent were followed.
- Approximately 60 per cent were overtly threatened.
- Thirty per cent had suffered physical or sexual assaults by their stalkers.

The authors note that 'all victims felt that their stalking experience had had a deleterious impact on their psychological, interpersonal and/or occupation functioning', and that 80 per cent of victims had modified their usual activities and experienced high anxiety levels. While half of the victims studied were confident that stalking ceased due to legal action, Mullen & Pathe comment that 'approaches to law enforcers were too often met with comments such as: "You're just over-reacting" '.

Kerr (1994) also approaches the issue of stalking from a mental health perspective. In her critique of the proposed Victorian stalking legislation, Kerr expresses concerns regarding the effects of the legislation, suggesting that it could cover a very broad range of behaviour due to the lack of definition of 'course of conduct'.

Similarly, Weiner (1995) voices concerns that the Victorian legislation would inappropriately target the mentally ill with the possibility that behaviour that is actually unintentional or harmless would be labelled as stalking. Weiner considers that the mentally disabled should be protected from the stalking laws, rather than finding themselves the subject of judicial response.

The mental health issue is again addressed by Swanwick (1996) and Goode(1995) in considering the Queensland and South Australian stalking legislation respectively. Swanwick outlines that many Queensland stalking offenders 'had psychological disturbances, including personality disorders, adjustment disorders, attention deficit disorders, paranoia, depression, suicidal tendencies, alcoholism and drug addiction or had undergone some form of psychiatric treatment'. Goode suggests that 'serious stalkers are very likely to be mentally ill ~ and preventative policing is all the

more urgent in such cases where the normal deterrent effect of the criminal law is unlikely to work'. Both authors conclude that there is a need to examine more closely the mental health of stalking offenders, and that the criminal justice system should respond to stalking behaviour with this factor in mind.

Definitional issues

A number of studies have focused on definitional issues. For example, Weiner (1995) argued that the Victorian legislature's decision not to define 'mental or physical harm' would lead to difficulties in application, as with the decision not to define 'course of conduct'. She concluded that the legislation was 'vague and uncertain and will prove difficult to interpret'.

Generally the literature highlights the important role of stalking legislation in filling a legal void previously inadequately addressed by the civil and criminal justice system. However, Swanwick (1996) and Goode (1995) argue that stalking legislation in Queensland and South Australia respectively, which does not define the expression 'course of conduct' has resulted in some non-stalking behaviour being punished as stalking.

The relationship between women, domestic violence and stalking

In general, Australian analysis of stalking legislation has highlighted the need to protect women from the detrimental impact of stalking.

The Australian Bureau of Statistics (ABS) survey on Women's Safety (1996) included some information on stalking. The findings of this survey parallel those from the National Violence Against Women Survey (US Department of Justice). Findings from the ABS survey show that:

- Of Australian women aged 18 and over 2.4 per cent had been stalked in the 12-month period prior to the report.
- Fifteen per cent of women have been stalked at some stage in their life.
- Younger women are the more common targets of stalking behaviour.
- In the 12-month period prior to the survey, women were more likely to be stalked by strangers than by someone they knew.
- The most common forms of stalking are the making of telephone calls, sending mail and watching the victim.

A police perspective is provided by Martin (1998) who, in the context of the ABS figures, concludes that stalking is now a serious national problem. Riddiford (1996) provides insight into how Victorian police are working with the legislation by outlining a case study where the success of the prosecution case rested on proving the victim had experienced harm. Riddiford stressed that police 'need to keep in touch with victims and advise them carefully of the options open to them such as intervention orders'.

Chapter 5 (non fatal offences against the person) of the Commonwealth Model Criminal Code (Model Criminal Code Officers Committee of the Standing Committee of the Attorneys-General 1998) recognised that a significant factor prompting the enactment of Commonwealth stalking legislation was the need to address domestic violence. The report provides an overview of the current State stalking legislation, and the legal changes that would result from introducing the proposed Commonwealth legislation. A conclusion is drawn that stalking provisions in the Model Criminal Code are essential.

The Model Criminal Code stalking provisions differ from the Victorian stalking legislation in that, under the Model provisions, in order to make out the offence it is not necessary to prove that the person threatened or stalked actually feared that the threat would be carried out or that the person or any other person would be caused harm. In contrast, the Victorian stalking legislation requires the intention of the offender to have come to fruition.

Intent

Another issue identified in the literature is the appropriateness of including intent as an element of the crime of stalking. According to Swanwick (1996), the fact that an individual who has engaged in 'stalking' behaviour without the requisite intent will not be able to be convicted of the offence of stalking may have consequences for the victim who nevertheless feels that he or she has been 'stalked'.

Focusing on the intent component in the Queensland stalking legislation, Harbridge (1996) assesses as unsatisfactory the unusual intent element that requires the offender intend that the victim be aware the conduct is directed toward them.

Kift (1998) also provides a critique of this legislation, including an analysis of the proposed amendments to Queensland's stalking legislation, section 359A of the *Criminal Code Act 1899* (Qld). As indicated earlier, Queensland stalking legislation currently requires that an offender intend that the victim be aware that his or her conduct is directed at the victim. The *Criminal Code (Stalking) Amendment Bill 1999* seeks to insert a new provision into the legislation, which provides that, in establishing the offence, it is immaterial whether the offender intends that the stalked person be aware that the conduct is directed at the stalked person, or whether the offender has a mistaken belief about the identity of the person at whom the conduct is intentionally directed.

Kift considers that the proposed changes to the intent requirement are still unsatisfactory and that a version of intent requiring proof of an intention to cause serious physical or mental harm, or serious fear or apprehension, should be adopted.

Course of conduct

The casenote of *Gunes and Tunc v Pearson*, a case reviewing the Victorian stalking legislation's requirement of a 'course of conduct', suggests that the judge in that case was not prepared to arbitrarily determine the number or nature of incidents that would constitute a course of conduct. In his judgment, McDonald J concluded that 'the relevant conduct must be conduct which is protracted or conduct which is engaged in on more than one separate occasion'.

Kift (1998) considers that the Queensland legislation needs to define 'course of conduct' and suggests the adoption of McDonald J's interpretation of this term.

Public Awareness

A number of booklets have been published aimed at increasing public awareness about the issue of stalking. An information booklet aimed at women who are the victims of violence, produced by the Victorian Community Council Against Violence (1998), identifies stalking as a form of violent behaviour. The booklet emphasises that stalking can be perpetrated by anyone, including a partner or ex-partner. It also outlines that the offender needs to have intended the behaviour and the behaviour must have occurred more than once. A list is provided of the different types of behaviour that can constitute stalking.

In an effort to increase access by the community to intervention orders, Victoria Legal Aid and the Victoria Legal Foundation (1998) have produced two booklets titled *Applying for an Intervention Order* and *Responding to an Intervention Order*. These booklets, while primarily aimed at victims of domestic violence, and family members who are subject to an intervention order, also contain sections on stalking. These booklets have been distributed through police stations, the courts and various community groups.

The Internet

A search of the Internet revealed substantial coverage of legal and social issues relating to stalking, although these were predominantly American in perspective, and included information on:

- Support groups for victims of stalking; for example, the Stalking Victim's Sanctuary (www.stalkingvictims.com, 18 December 1998)
- The legal rights of victims of stalking

- Overviews of what legally constitutes stalking behaviour; for example, Stalker Inc (<http://members.aoi.com/stalked>, December 1998)
- A number of chat rooms relating to stalking on the International Relay Chatline (IRC)
- A site offering hints for responses to internet stalking (www.cyberangels.com)
- A couple of unusual sites, such as 'Are You Being Stalked?' (www.privacyrights.org/fs-14-stk.htm, December 1998, providing tips for protection against stalking and the service of a private investigator and bodyguard trained in stalking tactics).

In summary, there has been an increase in recent years in studies undertaken with respect to stalking. These studies analyse stalking from a social and a legal perspective. While the USA has published the majority of studies on stalking, the UK has also had a presence in this field. Australian studies indicate a responsiveness to the introduction of stalking legislation throughout the country and comprise assessments of proposed legislation and comparisons to already enacted legislation in overseas jurisdictions. Australian studies have placed a comparatively strong emphasis on issues relating to the mental health of stalking offenders, and the importance of precision in legislative drafting. A number of booklets have been produced in Victoria to inform the public about their rights and responsibilities regarding stalking, particularly in relation to domestic violence.

The publications reviewed are generally positive regarding the introduction of stalking legislation, but some limits are placed on this optimism.

Issues identified include:

- The negative impact of stalking on the victim.
- The existence of relationship between domestic violence and stalking.
- The inadequacy of traditional civil and criminal remedies in addressing stalking behaviour.
- The impact of the decision not to define legislative terms such as 'stalking' and 'course of conduct' within stalking legislation.
- The interpretation and application of the offender's intent.
- The relationship between the mental health of the offender and the stalking.

Section 4: Analysis of police and court statistics on stalking

Summary of Section 4

Victoria Police statistics

Stalking offences and offenders

The number of offenders processed for stalking rose from 265 in 1995-96 to 738 in 1997-98, representing a 59.5 per cent increase annually, over three years.

The rate of stalking charges cleared has generally been very close to the overall clearance rate for all crimes against the person.

Stalking offences represent only a small proportion of all offences against the person, (between 1 and 3 per cent).

Stalking offenders and victims – who stalks whom?

The largest number of offences (three-quarters) involved a male stalking a female.

Men were more almost six times as likely to stalk a women than another man. Conversely, women were slightly more likely to stalk other women than men.

The majority of male stalking offenders were aged less than 45 years, and the most frequent age category was 25-29 years. The majority of female stalking offenders were aged under 40 years, and most fell into the 30-34 year age category. Most female victims were less than 40 years old and the average age of female victims was 28 years.

Where stalking occurs

Stalking incidents most frequently occurred in residential locations or on the street.

While stalking offences occurred widely throughout Victoria, approximately three-quarters of stalking offences occurred in metropolitan police districts – the police districts of Melbourne, Prahran, Moorabbin and Nepean have consistently shown high rates of stalking incidents. In the rural police districts, Gippsland and Highlands Wimmera have shown the highest rates of stalking incidents.

Victorian courts statistics

Criminal offence of stalking

As with police statistics there has been a substantial rise in stalking offences between 1995 (when stalking was introduced) and 1997. There is a high number of charges not proven (approaching one out of every two charges in 1998) in the Magistrates' Court.

The most frequent outcome for defendants with proven stalking charges was a community based order, followed by suspended sentences and fines. Custodial sentences represented 13.4 per cent of dispositions in 1998.

Number of intervention orders for stalking

The civil remedy for stalking incidents has predominated over criminal actions in the courts. Over the last three years, for every criminal charge of stalking heard in the Magistrates' Court, there were more than 50 applications for an intervention order relating to stalking.

Stalking intervention order applications are frequently withdrawn, struck out or dismissed (in around 60 per cent of cases).

Most intervention orders are requested by women applicants in respect of male respondents.

4. Analysis of police and court statistics on stalking

The analysis of police and courts statistics in this section provides information about the trends in stalking that have come to the attention of justice agencies in Victoria between 1995 and 1999. The data relates to persons processed by Victoria Police for stalking and all defendants prosecuted under section 21A of the *Crimes Act* 1958, as well as persons against whom an intervention order is sought for stalking under subsection 21A(5) of the *Crimes Act* 1958 and section 4 of the *Crimes (Family Violence) Act* 1987.

The analysis is based on Victoria Police and court statistics and includes: trends in the criminal offence of stalking; trends in stalking intervention orders; and details of stalking victims and offenders.

4.1 Victoria Police statistics

Number of stalking offences and offenders

Published statistics from Victoria Police show that the number of offenders processed for stalking rose from 265 in 1995-96 to 738 in 1997-98, representing a 178.5 per cent increase over three years.

Since the legislation came into force in January 1995, the number of stalking offences recorded has shown a very substantial increase (up 111.8 per cent) in the four year period (despite a 16.1 per cent decrease in the number of offences recorded between 1997-98 and 1998-99), associated with an increased number of offenders apprehended and processed by police. It should be noted that in some instances, cases may come to the attention of police but are not recorded.*

This indicates the heightened awareness of the availability of the stalking legislation and its expanding use.

Stalking offences recorded and offenders processed, Victoria Police, 1995-96 – 1997-98

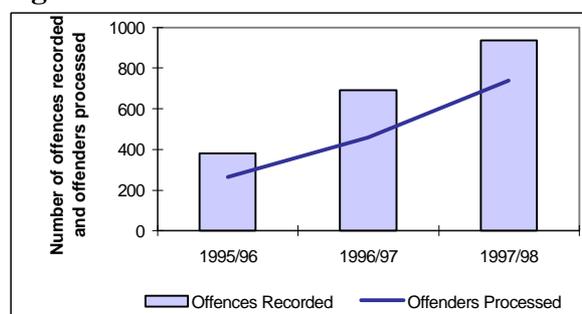
Table 4

	Offences recorded	Offences cleared - %	Offenders processed
1995-96	380	69.7	265
1996-97	693	66.2	459
1997-98	959	78.6	738
1998-99	805	74.3	n/a

Source: Victoria Police, 1995-96 – 1998-99

The rate of stalking charges cleared increased from 1995-96 to 1998-99 (from 69.7 per cent to 74.3 per cent).

Figure 1



Stalking offences represent only a small proportion of all offences against the person. As a percentage of all offences against the person stalking offences increased from 1995-96 to 1997-98 (from 1.2 per cent to 2.9 per cent), but showed a slight decrease in 1998-99 (to 2.4 per cent).

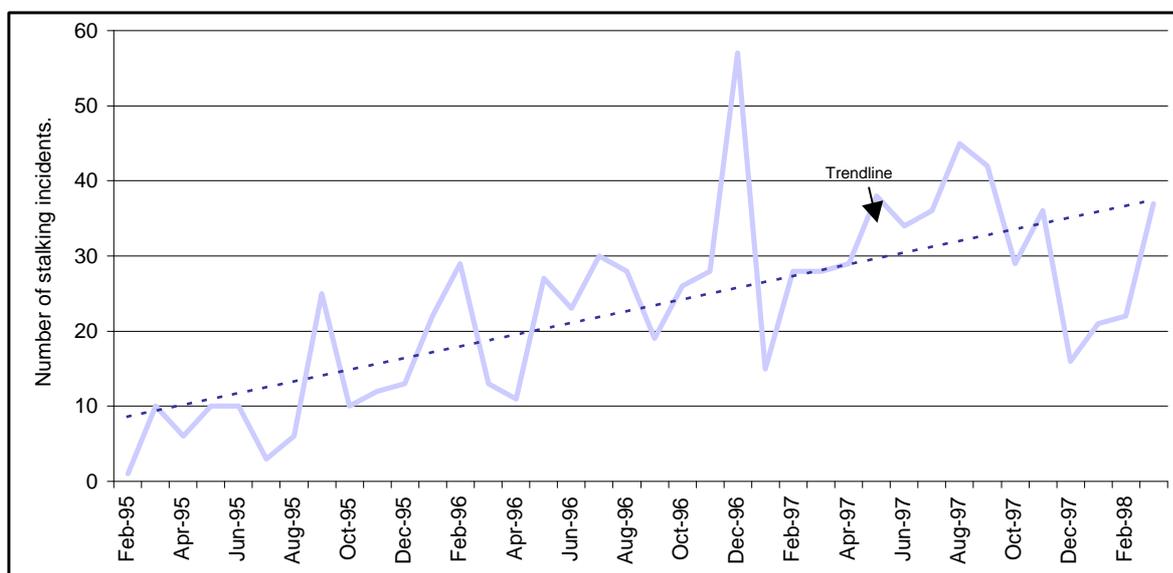
* From the survey with police, it was estimated that about 10 per cent of stalking cases coming to the attention of police were not recorded on the database.

While the highest clearance rate (the rate of offences in respect of which police have laid charges or were unable to proceed) of stalking charges was observed in 1997-98 (78.6 per cent), the percentage cleared* in 1998-99 (74.3 per cent) is very close to the overall clearance rate for all crimes against the person (74.5 per cent).

Information on the number of stalking charges laid, and what, if any, other charges were laid in association with stalking was not readily available at the time of writing.

Monthly data from February 1995 shows that stalking incidents have been recorded by Victoria Police in increasing numbers (see figure 2). While there appear to be lower numbers of incidents during the December-January period (an exception was December 1996), there was an overall rising trend, which is confirmed by the annual figures shown in table 4 and figure 1. It should be noted that each 'incident' recorded by police can have more than one corresponding 'offence' recorded; the December-January figures are a reflection of total crime which decreases at this time; and the December 1996 figure is inflated by one offender who was charged with some 31 offences which took place between January 1994 and August 1996.

Figure 2: Number of stalking incidents by month, Victoria Police, 1995 – 1998



Source:

Victoria Police (unpublished data)

* Includes offences where an investigation reveals there is no offence, where an offender is processed, where the complaint was withdrawn or for some reason the offender was not charged.

Stalking offenders and victims.

Who stalks whom?

Over the three year period, men were more likely to be stalkers than women (75.4 per cent). Men who stalked were more likely to stalk women (86.0 per cent) than other men (14.0 per cent). Conversely, women were slightly more likely to stalk other women (57.1 per cent) than men (42.9 per cent). Women stalking women made up 7 per cent of all stalking incidents, while women stalking men comprised 5.3 per cent.

Age and sex

To determine who the offenders processed by police were for the stalking incident and who their victims were, Victoria Police data (from 1 January 1995 to 31 December 1997) was examined in terms of the age and sex of stalking victims and offenders (table 5 and figures 3-6).

Over the three year period a total of 683 separate stalking incidents involving the apprehension of an offender (some of which involved the same offender) were recorded.

In general, most offenders (87.7 per cent) in stalking incidents were male and 12.3 per cent female offenders. Victims of stalking were predominantly female (82.4 per cent). The data on age and sex of stalking victims and offenders were analysed and trends are shown in figures 3-6 for the three years. Table 5 shows the four different combinations of offenders and victims by age and sex.

Over the period shown, the majority of male stalking offenders were aged less than 45 years. In 1996, a peak occurred in the number of offenders aged between 35 and 39 years (29.2 per cent), with the average age of male offenders being 34 years. In 1997, the average age of male offenders was 32 years, and the most frequent age category was 25-29 years (26.1 per cent).

Similar trends are apparent in the age breakdown of the female stalking offenders recorded by police over the three-year period (figure 3). The majority of offenders were aged under 40 years (average age 31 years), and most (29.4 per cent) fell into the 30-34 year age category.

As shown in figures 5 and 6 male victims showed wide variation in terms of age and may reflect the small numbers. Most female victims were less than 40 years old (81.7 per cent) and over half (55.6 per cent) were less than 30. The average age of female victims was 28 years.

In summary, the average age of male stalking offenders was 32.8 years, slightly younger than the average age of male stalking victims (34.3 years). The average age of female stalking offenders was 31.0 years, slightly higher than the average age of female stalking victims (28.8 years).

Table 5: Stalking victims and offenders, by sex and age, Victorian Police, 1995-97

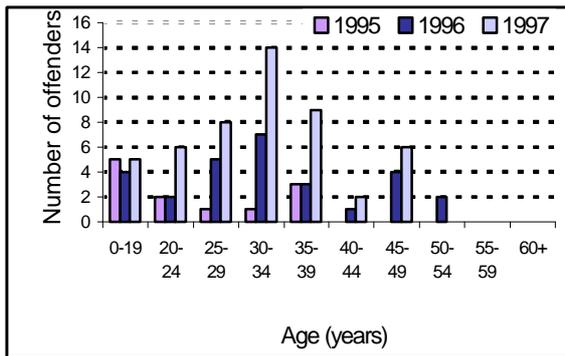
		Female Victim						
	Age (Years)	0-19	20-29	30-39	40-49	50-59	60+	Sub-total
Female Offender	0-19	4	4	4	0	0	0	12
	20-29	0	6	2	4	0	0	12
	30-39	0	6	5	2	1	0	14
	40-49	0	2	1	4	0	1	8
	50-59	0	0	0	1	1	0	2
	60+	0	0	0	0	0	0	0
	<i>Sub Total</i>		<i>4</i>	<i>18</i>	<i>12</i>	<i>11</i>	<i>2</i>	<i>1</i>
Male Offender	0-19	13	6	21	0	1	0	41
	20-29	47	100	25	7	5	0	184
	30-39	43	41	58	20	7	2	171
	40-49	7	13	23	28	4	0	75
	50-59	9	6	8	5	3	0	31
	60+	3	3	0	5	1	1	13
	<i>Sub Total</i>		<i>122</i>	<i>169</i>	<i>135</i>	<i>65</i>	<i>21</i>	<i>3</i>
		126	187	147	76	23	4	563

		Male Victim							
	Age (years)	0-19	20-29	30-39	40-49	50-59	60+	Sub-total	All Offenders
Female Offender	0-19								
	20-29	0	0	0	1	0	0	1	13
	30-39	1	5	2	2	0	0	10	22
	40-49	0	7	8	3	2	0	20	34
	50-59	0	0	0	4	1	0	5	13
	60+	0	0	0	0	0	0	0	2
	<i>Sub-total</i>		<i>1</i>	<i>12</i>	<i>10</i>	<i>10</i>	<i>3</i>	<i>0</i>	<i>36</i>
Male Offender	0-19	3	5	2	2	0	0	12	53
	20-29	8	9	6	3	1	1	28	212
	30-39	5	4	4	9	1	0	23	194
	40-49	1	1	0	7	0	2	11	86
	50-59	0	0	1	5	2	1	9	40
	60+	0	0	0	1	0	0	1	14
	<i>Sub-total</i>		<i>17</i>	<i>19</i>	<i>13</i>	<i>27</i>	<i>4</i>	<i>4</i>	<i>84</i>
All Victims		18	31	23	37	7	4	120	683

Source: Victoria Police (unpublished data)

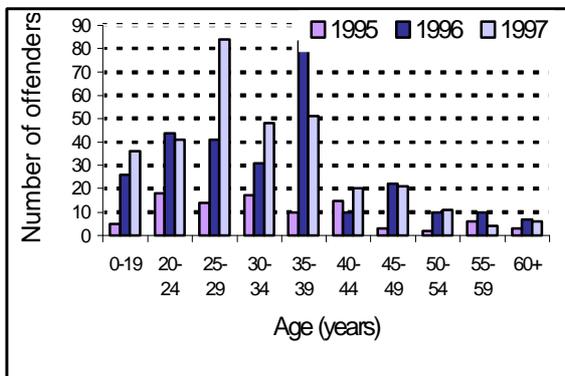
Note: A total of 795 stalking incidents were recorded between February 1995 and December 1997. In 102 of the cases either the sex or age of the offender or victim was missing.

Figure 3: Female stalking offenders by age, Victoria Police, 1995-97



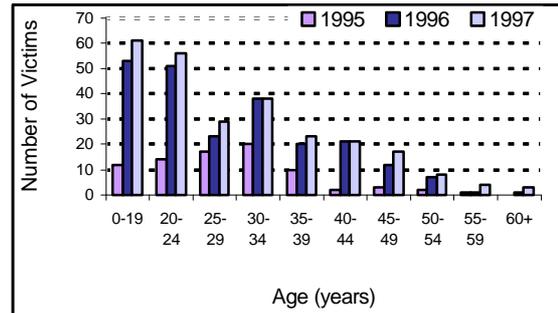
Source: Victoria Police (unpublished data).

Figure 4: Male stalking offenders by age, Victoria Police, 1995-97



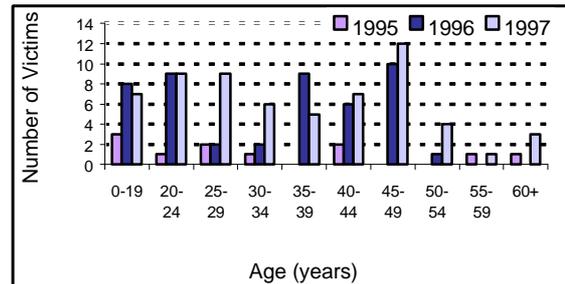
Source: Victoria Police (unpublished data).

Figure 5: Female stalking victims by age, Victoria Police, 1995-97



Source: Victoria Police (unpublished data).

Figure 6: Male stalking victims by age, Victoria Police, 1995-97



Source: Victoria Police (unpublished data).

Where stalking occurs

Table 6: Stalking incidents by location, Victoria Police, 1995-97

	1995		1996		1997		Total	
	No.	%	No.	%	No.	%	No.	%
Residential	41	38.7	92	29.4	154	41.0	287	36.1
Street/lane/footpath	20	18.9	54	17.3	22	14.6	129	16.2
Shop/supermarket	1	0.9	8	2.6	10	2.7	19	2.4
Public transport	3	2.8	4	1.3	7	1.9	14	1.8
School/school grounds	6	5.7	2	0.6	5	1.3	13	1.36
Police station	2	1.9	3	1.0	1	0.3	6	0.8
Car park	0	0.0	2	0.6	3	0.8	5	0.6
Restaurant/fastfood	0	0.0	3	1.0	1	0.3	4	0.5
Parkland/reserve	1	0.9	2	0.6	0	0.0	3	0.4
Licensed premises	1	0.9	1	0.3	0	0.0	2	0.3
Sports are/facility	0	0.0	2	0.6	0	0.0	2	0.3
Service station	0	0.0	0	0.0	1	0.3	1	0.1
Other location	5	4.7	11	3.5	5	1.3	21	2.66
Unspecified location	26	24.5	129	41.2	134	35.06	289	36.4
Total	106	100.0	313	100.0	376	100.0	795	100.0

* Number of stalking incidents between February 1995 and December 1998. Offender may have committed more than one incident.

Source: Victoria Police (unpublished data)

Stalking incidents, as recorded by police, most frequently occurred in residential locations (29.4 per cent in 1996 and 41.0 per cent in 1997). The second most frequent location was street/lane/footpath (18.9 per cent in 1995 and 14.6 per cent in 1997). It should be noted that in more than a third of stalking incidents in 1997 no location was specified. This might reflect the ‘mix’ of locations in a series of stalking occurrences and hence the difficulty in recording this information.

Stalking offences occurred widely throughout Victoria (table 7). However stalking appeared to be more frequently recorded in police districts D (Nepean) and C (Moorabbin), Q (Gippsland) and I (Broadmeadows) compared to other districts.

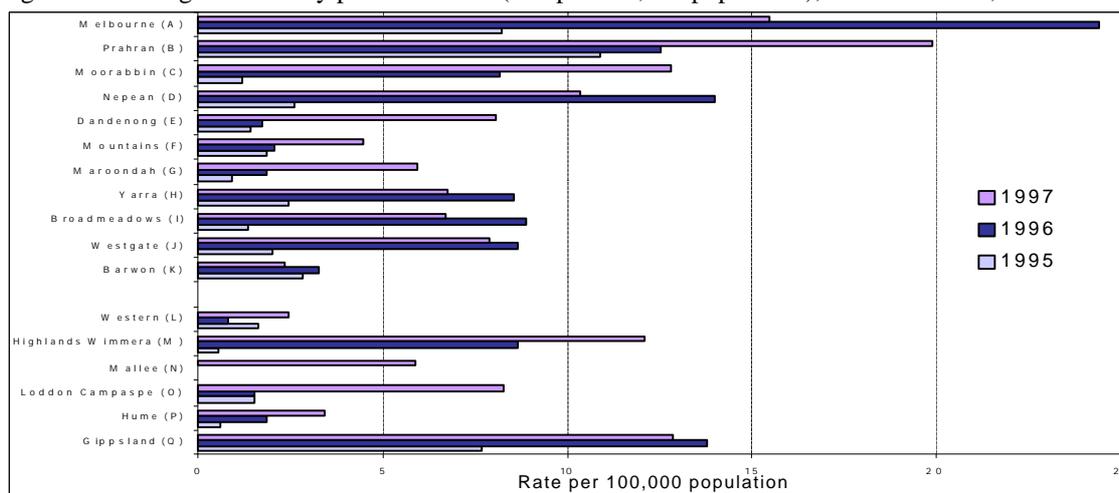
Table 7: Stalking incidents by police districts, Victoria Police, 1995-97

	1995		1996		1997		Total	
	No.	%	No.	%	No.	%	No.	%
Metropolitan districts								
Melbourne (A)	8	7.5	24	7.7	19	5.0	51	6.4
Prahran (B)	12	11.3	14	4.5	26	6.9	52	6.5
Moorabbin (C)	4	3.8	28	8.9	44	11.7	75	9.6
Nepean (D)	9	8.5	49	15.7	36	9.6	94	11.8
Dandenong (E)	4	3.8	5	1.6	24	6.4	33	4.2
Mountains (F)	7	6.6	8	2.6	17	4.5	32	4.0
Maroondah (G)	5	4.7	10	3.2	31	8.2	46	5.8
Yarra (H)	10	9.4	35	11.2	28	7.4	73	9.2
Broadmeadows (I)	6	5.7	40	12.8	30	8.2	76	9.6
Westgate (J)	7	6.6	30	9.6	28	7.4	65	8.2
Barwon (K)	6	5.7	7	2.2	5	1.3	18	2.3
<i>Sub-total</i>	78	73.5	250	79.9	288	76.6	616	77.5
Rural districts								
Western (L)	2	1.9	1	0.3	3	0.8	6	0.8
Highlands Wimmera (M)	1	0.9	16	5.1	22	5.9	39	4.9
Mallee (N)	0	0.0	0	0.0	5	1.3	5	0.6
Loddon Campaspe (O)	4	3.8	4	1.3	22	5.9	30	3.8
Hume (P)	1	0.9	3	1.0	6	1.6	10	1.3
Gippsland (Q)	17	16.0	31	9.9	28	7.4	76	9.6
Unknown	3	2.8	8	2.6	2	0.5	13	1.6
<i>Sub-total</i>	28	26.4	63	20.0	88	23.4	179	22.5
Total	106	100.0	313	100.0	376	100.0	795	100.0

Source: Victoria Police (unpublished data)

Of the stalking offences recorded in police districts D, I and C, 68.9 per cent, 77 per cent and 34.6 per cent were recorded by police as having been committed by person residing in that district.

Figure 7: Stalking incidents by police districts (rate per 100,000 population), Victoria Police, 1995-97



Source: Victoria Police (unpublished data)

In terms of rate per 100,000 population (figure 7), the highest rate of stalking offences in 1997 occurred in Prahran (B), with 19.9 stalking incidents per 100,000 population. The police districts of Melbourne (A), Prahran (B), Moorabbin (C) and Nepean (D) have consistently shown high rates of stalking incidents over the period shown. In the rural police districts, Gippsland (Q) and Highlands Wimmera (M) have also shown relatively high rates of stalking incidents.

Table 8: Duration of stalking incidents, Victoria Police, 1995-97

	1995		1996		1997	
	No.	%	No.	%	No.	%
<1 day	35	33.0	148	47.3	138	36.7
1 day	7	6.6	7	2.2	18	4.8
<1 month	23	21.7	54	17.3	71	18.9
1-<3 months	7	6.6	23	7.3	39	10.4
3-<6 months	17	16.0	40	12.8	49	13.0
6-<12 months	7	6.6	22	7.0	34	9.0
1-<2 years	7	6.6	13	4.2	15	4.0
2-<5 years	3	2.8	5	1.6	7	1.9
5-<10 years	0	0.0	1	0.3	2	0.5
10+ years	0	0.0	0	0.0	3	0.8
Total	106	100.0	313	100.0	376	100.0

Source: Victoria Police (unpublished data)

While it is hard to assess how long stalking incidents lasted, as difficulties can arise in precisely determining when stalking starts and ends, 40.4 per cent of incidents were reported to occur within a day. However, this figure includes cases where the stalking duration was not known and was recorded as occurring in less than one day. The estimated duration of stalking incidents is shown in table 8 and is shown for a large proportion to have gone on for extended periods.

Table 9 shows that most offenders (80 per cent) were processed for only one stalking incident (which may include a series of occurrences); however, a small number of offenders were recorded as having been involved in 5 or more incidents (3.1 per cent). Over the period shown, there was an average of 1.5 incidents per offender.

Table 9: Number of stalking incidents per offender processed, Victoria Police, 1995-97

Number of incidents	1995		1996		1997		Total	
	No.	%	No.	%	No.	%	No.	%
1	71	87.7	137	75.3	229	82.1	437	80.6
2	7	8.6	22	12.1	33	11.8	62	11.4
3	1	1.2	7	3.8	9	3.2	17	3.1
4	0	0.0	7	3.8	2	0.7	9	1.7
5+	2	2.5	9	4.9	6	2.1	17	3.1
Total	106		313		376		795	
Number of offenders	81	100.0	182	100.0	279	100.0	542	100.0
<i>Average number of Incidents per offender</i>		1.3		1.7		1.3		1.5

Source: Victoria Police (unpublished data)

Method of processing stalking offenders.

In general, police can deal with apprehended offenders by arrest, summons or caution. In general, the majority of offenders processed for all crime are processed by way of an arrest (54.1 per cent), or by a summons (33.5 per cent). Few are dealt with by a caution (8.8 per cent) or another method* (3.7 per cent). For crimes against the person, similar proportions of offenders processed are arrested and summonsed (44.1 per cent and 44.2 per cent, respectively), with a smaller proportion (2.2 per cent) cautioned, and 9.5 per cent processed by another method (according to 1995-96 –1997-98 Victoria Police figures). In comparison, the stalking offender was arrested in 62.4 per cent of stalking incidents recorded by police between 1995 and 1998 (table 10). A summons was used in 27.9 per cent of stalking incidents as a means of dealing with the offender by police, while very few stalking offenders (1.5 per cent) were cautioned. This is consistent with methods of processing for other offences of similar seriousness.

Table 10: Method of processing stalking offenders, Victoria Police, 1995-97

	1995		1996		1997		Total	
	No.	%	No.	%	No.	%	No.	%
Arrest	68	64.2	173	55.3	255	67.8	496	62.4
Summons	28	26.4	110	35.1	84	22.3	222	27.9
Caution*	2	1.9	2	0.6	8	2.1	12	1.5
Other**	8	7.5	28	8.9	29	7.7	65	8.2
Total	106	100.0	313	100.0	376	100.0	795	100.0

Source: Victoria Police (unpublished data)

** Formal cautions for stalking are only available for juvenile offenders.

* Other means of processing includes: complaint withdrawn; alleged offender underage, insane or deceased; or warrant issued.

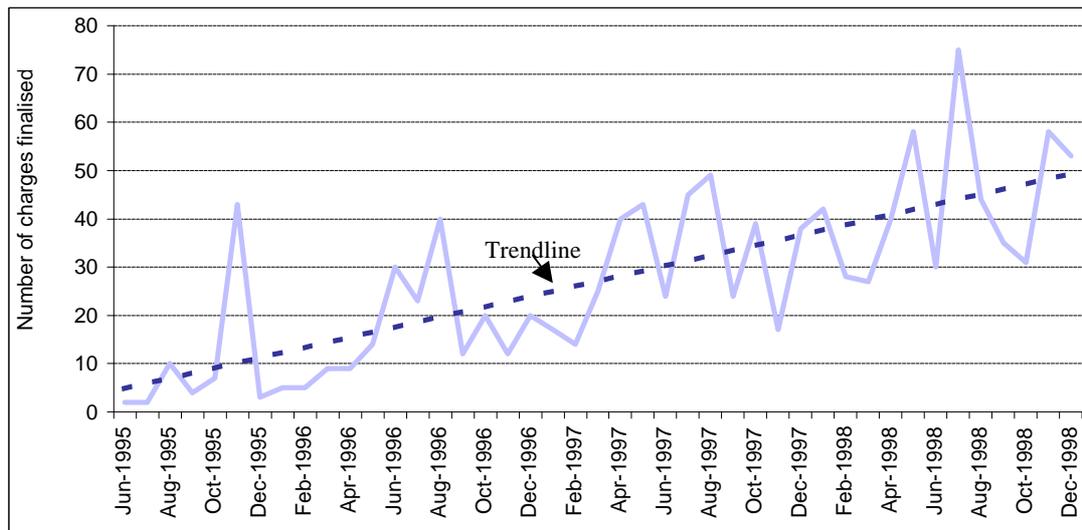
4.2 Victorian courts

As stalking incidents can reach the courts through the criminal or civil stream, the statistical analysis will examine these two areas separately.

Criminal offence of stalking

When police charge offenders with stalking most cases are subsequently heard in the Magistrates' Court as an indictable offence which can be heard summarily. As with police, the Magistrates' Court saw a rise in the number of stalking charges heard and defendants with proven charges since the introduction of the offence of stalking in January 1995 as shown in figure 8 below.

Figure 8: Number of stalking charges finalised, by month, Magistrates' Court, 1995-98



Source: Source: Magistrates' Court Sentencing Statistics, 1995-97

Magistrates' Court Sentencing Statistics, 1998 (unpublished)

Table 11: Stalking charges finalised and defendants, Magistrates' Court, 1995-98

	Stalking charges finalised	% Proven charges	Defendants with proven charges
1995	72	30.6	11
1996	199	51.3	52
1997	375	56.0	90
1998	521	47.0	127

Source: Magistrates' Court Sentencing Statistics, 1995-97

Magistrates' Court Sentencing Statistics, 1998 (unpublished)

One feature of stalking charges heard in the Magistrates' Court is that there is a high number of charges not proven (approaching one out of every two charges in 1998). In comparison, the general proportion of charges not proven in the Magistrates' Court is about a quarter of all charges finalised. "Not proven" in this context refers to circumstances where charges are withdrawn, charges are struck out or the accused is found to be not guilty.

Discussions with police and magistrates (section 5) indicate that difficulties with interpreting and proving intent and harm components of the legislative provision may impact on the proportion of proven charges. The nature of stalking is that it is likely to occur in isolation, with no witnesses.

Stalking is frequently an offence where the court must choose whether to believe the evidence of the victim or the accused, increasing the evidentiary burden on the prosecution.

Another possible reason for the high number of charges not proven might be that alternative charges have been proven, or that the act of arrest itself was sufficient intervention in the circumstances for no further action by police.

Outcomes for defendants with proven stalking charges are shown in table 12.

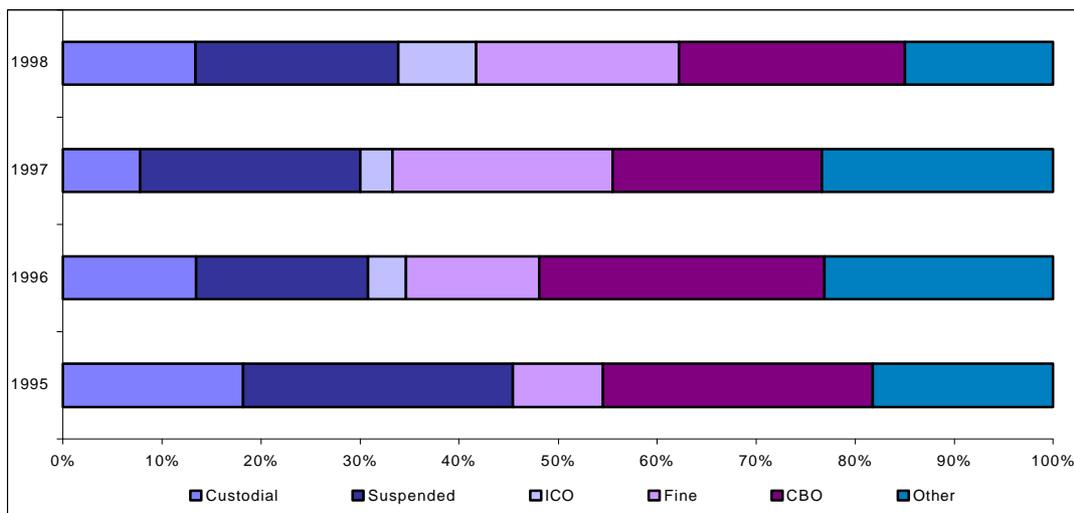
Table 12: Sentencing outcomes for defendants with proven stalking charges, Magistrates' Court, 1995-98

Sentencing outcome	1995		1996		1997		1998	
	No.	%	No.	%	No.	%	No.	%
Custodial sentence	2	18.2	7	13.5	7	7.8	17	13.4
Suspended sentence	3	27.3	9	17.3	20	22.2	26	20.5
Intensive Correction Order (ICO)	0	0.0	2	3.8	3	3.3	10	7.9
Community Based Order (CBO)	3	27.3	15	28.8	19	21.1	29	22.8
Fine	1	9.1	7	13.5	20	22.2	26	20.5
Other disposition	2	18.2	12	23.1	21	23.3	19	15.0
Total	11	100.0	52	100.0	90	100	127	100.0

Source: *Magistrates' Court Sentencing Statistics, 1995-97*
 Magistrates' Court Sentencing Statistics, 1998 (unpublished)

Over the period shown, the most frequent outcome in the Magistrates' Court for defendants with proven stalking charges was a community based order (22.8 per cent in 1998), followed by suspended sentences and fines (both 20.5 per cent in 1998). The use of custodial sentences declined over the period (from 18.2 per cent in 1995 to 13.4 per cent in 1998), as did the use of suspended sentences* (from 27.3 per cent in 1995 to 20.5 per cent in 1998). Over the same period, the proportion of defendants receiving fines increased (from 9.1 per cent in 1995 to 20.5 per cent in 1998).

Figure 9: Outcomes for defendants with proven charges, Magistrates' Court, 1995-98



Source: *Magistrates' Court Sentencing Statistics, 1995-97*
 Magistrates' Court Sentencing Statistics, 1998 (unpublished)

Very few cases of stalking reach the higher courts. Those that have between 1995 and 1998 are shown in table 13.

There have been six proven prosecutions of stalking in the County Court since the introduction of the stalking legislation in 1995 and one proven prosecution in the Supreme Court up to the end of 1998. All these cases have been in respect of male offenders. The small number of cases brought before the higher courts means there has been limited opportunity for judicial consideration of the stalking legislation.

Table 13: Stalking convictions, County Court, 1995–1998

Year	Age	Stalking counts	Other offence counts	Effective sentence
1995	33	8 counts	rape (1) indecent assault (1)	Six years, six months imprisonment Min: Four years, six months
1997	50	1 count	reckless conduct endangering persons (1)	Two years imprisonment Min: Eighteen months
1998	62	2 counts	threat to kill (1) damaging property (1) common assault (1)	Five years imprisonment Min: Fifteen months
1998	23	1 count	burglary (1) theft (1) threat to kill (1) possession of a drug of dependence (1)	Eighteen months imprisonment, nine months suspended for three years
1998	31	1 count	threat to inflict serious injury (1) threat to kill (1)	Fine: \$1,500 Community Based Order: Two years

Source: County Court, Conviction Returns, 1995-98

Age and sex of stalking defendants and victims

As shown in table 14, between 1995 and 1998, the vast majority of offenders who were heard in the Magistrates' Court for offences against section 21A were male (86.5 per cent).

Table 14: Stalking offenders by sex and age Magistrates' Court, 1995-98

	Female		Male		Total	
	No.	%	No.	%	No.	%
under 20 years	6	3.8	27	2.7	33	2.8
21-30 years	35	22.2	340	33.7	375	32.1
31-40 years	70	44.3	304	30.1	374	32.0
41-50 years	44	27.8	248	24.6	292	25.0
51-60 years	3	1.9	55	5.4	58	5.0
over 60 years	0	0.0	36	3.6	36	3.1
Total	158	100.	1010	100.	1168	100.
		0		0		0

Source: Magistrates' Court statistics (unpublished), 1995-98

Number of intervention orders for stalking

The civil remedy for stalking incidents has predominated over criminal actions in the courts and has increased the work load significantly for the court administration. Over the last three years, for every criminal charge of stalking heard in the Magistrates Court, there were more than 50 applications for an intervention order relating to stalking.

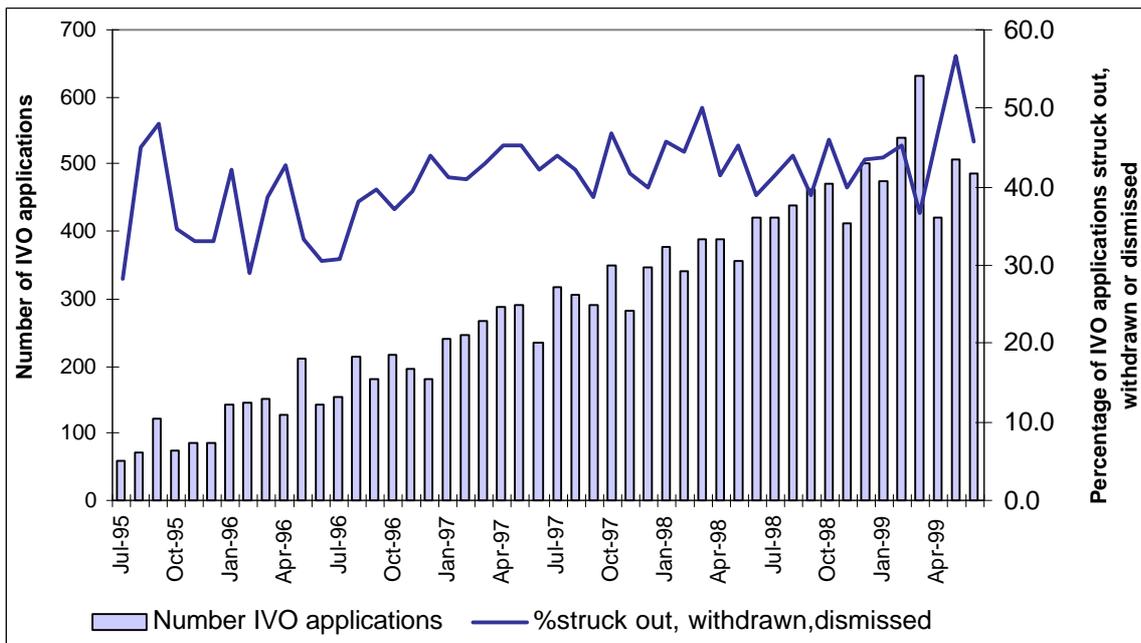
The standard of proof required for an intervention order is “on the balance of probabilities” as compared with proving stalking charges “beyond reasonable doubt” in a criminal prosecution. Intervention orders may well be seen to be more effective in the short term as they address the criminal behaviour immediately, compared to the process of a criminal prosecution.

Applications for intervention orders for stalking in 1995-96 made in the Magistrates’ Court represented 8.2 per cent of the total 17,055 orders granted.

These figures are similar to police statistics relating to stalking offenders of whom 87.7 per cent were male.

The youngest defendant was 18 years old*, the oldest 80. More than 50 per cent of stalkers were over 33 years old.

Figure 10: Intervention order applications for stalking, by month Magistrates’ Court, July 1995 – June 1998



Source: Magistrates’ Court (unpublished data), 1995-96 to 1997-98

* Note: any defendants under 18 are not reported in Magistrates’ Court Statistics as cases are heard by the Children’s Court.

In 1997-98, there were a total of 4,167 applications for intervention orders for stalking, representing 19.8 per cent of all intervention orders. As with criminal offences of stalking where a high rate of charges were not proven, stalking intervention order applications are frequently withdrawn (14.0 per cent on average), struck out (20.0 per cent on average) or dismissed (9.0 per cent on average). In 1995-96, intervention orders were finalised in 63.4 per cent of applications, and by 1998-99, this figure had dropped to 56.0 per cent.

Table 15: Stalking intervention order applications, by outcome, Magistrates' Court, 1995 – 1998

	Struck out, withdrawn, dismissed	Order made	Total applications
1995-96	517	897	1,414
1996-97	1,114	1,597	2,711
1997-98	1,806	2,361	4,167
1998-99	2,537	3,234	5,771

Source: Magistrates' Court (unpublished), 1995-96 to 1997-98

Between 1995 and 1998, only 1.6 per cent of stalking intervention orders dealt with by the Magistrates' Court were extensions, revocations or variations of original orders. The remainder were original orders. Only 2.2 per cent of applications were for interim orders. In 10.7 per cent of cases, the defendant consented to the order being made.

Most applicants (91.5 per cent) were the aggrieved person, that is, the victim of stalking. It should be noted that the police initiated the complaint in 4.2 per cent of cases, and parents of the victim initiated the complaint in 3.3 per cent of cases.

From table 16, it is evident that the most frequent restrictions imposed prohibit the respondent from contacting the victim in any way (21.1 per cent) or from approaching the victim (20.5 per cent). Each restriction appears to be used with similar frequency. The average number of restrictions attached to each order (4.7).

Table 16: Restrictions granted for stalking intervention orders, Magistrates' Court, 1995 – 1998

Restriction	Total	
	No.	%
Approaching victim	4,623	20.5
Access to premises	4,159	18.4
Contacting victim	4,759	21.1
Property damage	4,157	18.4
Engage others	4,480	19.9
Firearm licence revoked	372	1.6
Total restrictions	22,550	100.0
Total orders granted	4,834	
<i>Average restrictions per order</i>		4.7

Source: Magistrates' Court (unpublished data), 1995-96 to 1997-98

As shown in table 17, most intervention orders are made in respect of male defendants (60.2 per cent). Most intervention order applications are made by women (63.5 per cent). Applications were more likely to be made by women (55.0 per cent) against men than by other men. Applications were more likely to be made by other women (76.0 per cent) against women than by men. These figures may in part be attributed to cross-applications (or ‘tit-for-tat’ applications).

Men made up 36.5 per cent of applicants in intervention order applications, despite comprising only 17.6 per cent of the victims of stalking prosecutions. Women, who made up only 12.3 per cent of stalking offenders prosecuted, comprised 39.8 per cent of respondents to intervention order applications.

Table 17: Applicants and respondents processed for intervention orders by age and sex, Magistrates’ Court, 1995-98

		Female Applicants						
	Age (yrs)	0-19	20-29	30-39	40-49	50-59	60+	Sub-total
Female defendant	0-19	90	26	20	12	7	3	158
	20-29	33	336	173	84	40	20	686
	30-39	26	173	383	167	41	34	824
	40-49	12	67	174	169	67	21	510
	50-59	4	21	42	71	55	26	219
	60+	2	11	23	22	18	26	102
<i>Sub-total</i>		<i>167</i>	<i>634</i>	<i>815</i>	<i>525</i>	<i>228</i>	<i>130</i>	<i>2,499</i>
Male defendant	0-19	36	15	22	40	10	4	127
	20-29	76	350	164	154	65	20	829
	30-39	47	217	285	145	80	32	806
	40-49	53	91	142	140	54	30	510
	50-59	19	44	61	89	57	24	294
	60+	9	20	33	28	28	44	162
<i>Sub-total</i>		<i>240</i>	<i>737</i>	<i>707</i>	<i>596</i>	<i>294</i>	<i>154</i>	<i>2,728</i>
Total		407	1,371	1,522	1,121	522	284	5,227

		Male Applicants							
	Age (yrs)	0-19	20-29	30-39	40-49	50-59	60+	Sub-total	Total
Female defendant	0-19	7	9	5	4	3	1	29	187
	20-29	10	54	60	38	22	16	200	886
	30-39	22	39	94	57	21	21	254	1,078
	40-49	14	21	41	46	27	12	161	671
	50-59	4	10	20	10	19	13	76	295
	60+		5	8	15	6	18	52	154
<i>Sub-total</i>		<i>57</i>	<i>138</i>	<i>228</i>	<i>170</i>	<i>98</i>	<i>81</i>	<i>772</i>	3,271
Male defendant	0-19	51	19	19	20	12	11	132	259
	20-29	41	260	133	98	54	35	621	1,450
	30-39	39	104	236	143	59	38	619	1,425
	40-49	40	64	105	167	85	37	498	1,008
	50-59	14	28	48	73	55	37	255	549
	60+	5	17	16	22	18	25	103	265
<i>Sub-total</i>		<i>190</i>	<i>492</i>	<i>557</i>	<i>523</i>	<i>283</i>	<i>183</i>	<i>2,228</i>	4,956
Total		247	630	785	693	381	264	3,000	8,227

Source: Magistrates’ Court (unpublished data), 1995-96 to 1997-98

Section 5: Perspectives of police and magistrates

Summary of Section 5

Knowledge of the stalking legislation

Familiarity

When examining the level of familiarity with stalking provisions in the *Crimes Act 1958* and *Crimes (Family Violence) Act 1987*, a higher proportion of magistrates, compared to police said they were very familiar with the legislation.

Sources of information

For both magistrates and police, the most common sources of information were their own reading and colleagues. The main focus of this information was the legislation, followed by evidentiary requirements and information about how to deal with the offender. Least information was obtained about how to deal with the victim.

Response to stalking scenarios

Survey participants were presented with four scenarios and asked whether the behaviour would be considered definitely stalking or definitely not stalking, or if more information was required to decide.

In general, there was a high degree of similarity between police and magistrates' views about whether the scenarios involved stalking. For all scenarios a high proportion of respondents stated the need for more information. Scenario responses showed that there was a degree of consensus about which incidents constituted stalking.

Relationship between familiarity with stalking legislation and response to scenarios

On the whole, the responses indicated a good understanding of the scope of stalking legislation in the sense that the respondents were able to say what was or was not stalking, but also showed an awareness of the need to clarify and seek further factual details in order to determine whether the behaviour fits the legislative definition.

Extent of experience with stalking cases

All but one of the 16 magistrates who responded to the survey had had experience with stalking, compared to about two-thirds of police who responded. The majority of magistrates had involvement with between 1 and 10 cases. Police had comparatively less experience with stalking. Only 64.7 per cent of police had responded to, investigated or prosecuted cases of alleged stalking. Of those police, most had been involved with between 1 and 5 cases of stalking.

Most recent experience with stalking

Sex of stalking victim and offender

Magistrates reported that the victims in their most recent case were predominantly female (76.9 per cent), and offenders mainly male (69.2 per cent). The sex of victim and offender in reported police cases reflected that reported by magistrates.

Relationship between stalking victim and offender

Magistrates generally categorised the relationship between victim and offender as stranger (60.7 per cent) although in a small number of cases a previous partner (20.0 per cent) or other known person (6.7 per cent) was said to be involved. Police were more likely to deal with stalking perpetrated by a known person (35.4 per cent) than by a stranger (24.8 per cent) or a previous partner (22.9 per cent).

Motive for stalking behaviour

Police most frequently mentioned sexual attraction or infatuation and inability to handle rejection or break-up of a relationship, followed by mental imbalance and jealousy or possessiveness about the victim. Less frequent motives included neighbourhood disputes and 'road-rage' situations.

Where and when stalking occurs

Stalking was reported to occur in a relatively narrow range of locations. About a third indicated that around the home of the victim was where stalking was occurring, almost a third of each group said it occurred in the street. Other locations were at work, around the shops, other public places or other locations.

Stalking was likely to have involved a series of incidents occurring for some time before being brought to the attention of police and the courts. A quarter of respondents indicated stalking had been going on for 3-4 weeks and about a third said it had been going on for 1-5 months.

Outcome for victims

Most police reported that the stalking had stopped (74.5 percent) with less than half of the remainder saying that the stalking had not stopped. Most police who said the stalking had stopped said it was due to formal judicial processes (40.7 per cent) while others attributed it to cautioning (16.9 per cent). Other reasons given by police were: one party moved away, counselling and mediation.

When police were asked what further action the victim took to try to stop the stalking an extensive range of responses were given. Some victims were reported to have changed their name, address or telephone number. Others made certain they were not alone, only went out with others or became reclusive.

Effectiveness of the stalking legislation

The legislation was most frequently reported by magistrates as most effective in protecting the victim followed closely by being effective as a means of preventing stalking behaviour. Magistrates less frequently rated the legislation as being effective in protecting the rights of defendants. Police views on the ways in which legislation has been effective confirm that the stalking legislation has been effective as a policing tool, but the legislation was considered to be less effective in preventing stalking behaviour.

Some differences in views between police and magistrates are observed: magistrates believed the stalking legislation is more effective in protecting the victim and preventing stalking than police. Police were somewhat more likely than magistrates to perceive the legislation as being effective as a policing tool and in relation to the rights of the defendant.

In rating the overall effectiveness of the stalking legislation, 18.8 per cent of magistrates and 19.4 per cent of police said it was very effective, 62.5 per cent of magistrates and 49.1 per cent of police considered it fairly effective. No magistrates considered the legislation ineffective and only 3.9 per cent of police considered the legislation to be not very effective.

Caution must be advised in interpreting these results, given the low response rate to the survey.

5. The perspectives of police and magistrates

Presented in this section are the results from surveys completed by 232 police and 16 magistrates in early 1998, two police focus groups conducted in January and February of 1999 and a number of interviews with police and magistrates conducted between December 1998 and February 1999. The analysis covers:

- Knowledge of the Victorian stalking legislation.
- Experience with stalking cases.
- General views on the stalking legislation and its implementation.

Police

For the survey, a sample was drawn from police members (7,015) which ensured proportional representation from the Criminal Investigation Branch (CIB), the Community Policing Squad (CPS), and the ranks of the General Policing Department. Allowing for a 50 per cent return rate; 672 questionnaires, with a cover letter from the Assistant Commissioner, were sent out to police (170 to CIB; 138 to CPS and 176 to Sergeants, 188 to Senior Constable/Constables in General Policing).

A total of 232 questionnaires were returned giving a response rate of 35 per cent. Caution is advised when considering these results, given the lower than anticipated response rate.

The police sample consisted of 167 males and 62 females (3 not stated). In terms of rank there were 78 sub officers or above, 113 senior constables, 30 constables, 5 other ranks (6 not stated).

One third had joined the police force between 1985 and 1989 (34.1 per cent) while 44 (19.0 per cent) joined between 1980 and 1984. Those who had joined since 1990 represented 18 per cent of the sample.

In terms of where police were based geographically, there was a wide spread from across Victoria. Most of the police had been at their present location between 1 and 4 years (46.4 per cent), with 12 (5.4 per cent) in their present location for less than 1 year, and 14 (6.3 per cent) for 13 years or more.

Magistrates

In respect of magistrates, all (95) were sent the same questionnaire as police (except for some minor wording changes), with a cover letter from the Chief Magistrate. Only 16 questionnaires were returned from magistrates – a response rate of 16.8 per cent. Caution is strongly advised when results from Magistrates are considered, given their low response rate.

The small magistrates sample consisted of 11 males and 5 females.

Where comparisons are made between responses from police and Magistrates, it is important to bear in mind the relative response rates to the survey of each of these two groups.

5.1 Knowledge of the stalking legislation

Familiarity

Survey participants were asked how familiar they considered themselves to be with the two components of the stalking legislation, namely section 21A of the *Crimes Act 1958* and the *Crimes (Family Violence) Act 1987*.

As shown in figure 11, the majority of magistrates (56.3 per cent) participating in the survey considered that they were *reasonably familiar* with section 21A with a similar proportion (50.5 per cent) for police. Lower proportions of police and magistrates stated they were *very familiar* – 21.1 per cent and 25.0 per cent respectively.

Figure 11: Level of familiarity with stalking in the *Crimes Act 1958*, Police and Magistrates

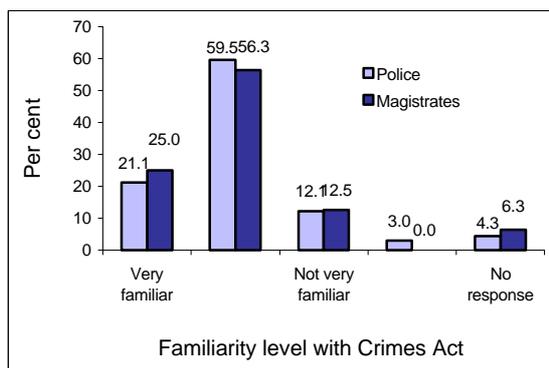
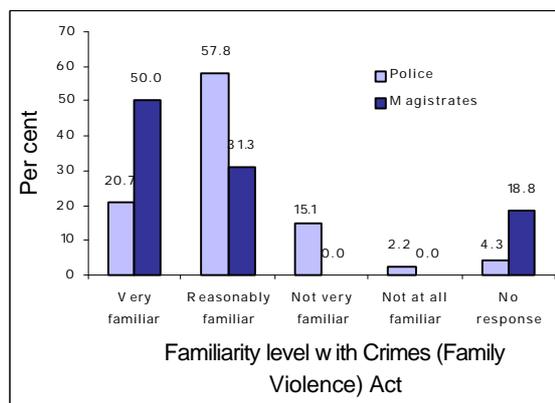


Figure 12: Level of familiarity with stalking in the *Crimes (Family Violence) Act 1987*, Police and Magistrates



When examining the level of familiarity with stalking provisions in the *Crimes (Family Violence) Act 1987*, there are greater differences between police and magistrates – 57.8 per cent of police (compared to 31.3 per cent of magistrates) said they were reasonably familiar with the legislation, whereas a higher percentage of magistrates compared to police said they were very familiar with the legislation (50.0 per cent and 20.7 per cent respectively).

Sources of information

For both magistrates and police surveyed, the most common sources of information on stalking were their own reading (81.3 per cent and 84.1 per cent respectively) and colleagues (68.8 per cent and 38.8 per cent respectively).

Table 18: Sources of information used and subjects covered on stalking,
Police and Magistrates

Source	Police		Magistrates	
	No.	%	No.	%
Supervisor/Senior Magistrate	44	19.0	5	31.3
Colleagues	90	38.8	11	68.8
Reading	195	84.1	13	81.3
Training	58	25.0	4	25.0
Subjects covered				
Legislation	200	86.2	14	87.5
Evidentiary requirements	139	59.9	9	56.3
How to deal with the offender	32	13.8	9	56.3
How to deal with the victim	30	12.9	7	43.8

The main focus of this information was the *legislation* (87.5 per cent for magistrates and 86.2 per cent for police) followed by *evidentiary requirements* (56.3 per cent and 59.9 per cent respectively) and information about how to deal with the *offender* (56.3 per cent and 13.8 per cent respectively). Least information was provided about how to deal with the *victim* (police 12.9 per cent, magistrates 43.8 per cent).

5.2 Responding to stalking scenarios

Creating a new offence and making behaviour liable to criminal justice system intervention requires close attention to definitions – what is the behaviour intended to be covered by the legislation, what are the boundaries and how are they to be determined? To explore these issues and to examine how police and magistrates approach them, a set of scenarios were developed to elicit responses to these questions from participants.

Survey participants were presented with the four scenarios and then asked whether the behaviour would be considered definitely stalking or definitely not stalking, or if more information was required to decide. The scenarios described a number of situations in which stalking might arise:

- A domestic dispute involving husband and wife.
- A neighbourhood dispute involving a female of non-English speaking background and her male neighbour.
- A ‘road rage’ incident involving a male driver and an unidentified driver.
- Unwanted advances by a male towards a female.

While it is acknowledged that asking survey participants to respond to the four scenarios is a contrived means of exploring their views on what types of incidents would or would not be considered to involving stalking, a high level of response was obtained. The responses obtained for the four scenarios are presented below.

Table 19: Responses to scenario questions, Police and Magistrates

	Percentage							
	Scenario A		Scenario B		Scenario C		Scenario D	
	Mag	Pol	Mag	Pol	Mag	Pol	Mag	Pol
Stalking offence								
Yes, definitely	31.3	34.5	18.8	10.3	12.5	10.3	31.3	26.7
No, definitely not	12.5	9.9	50.0	54.3	75.0	54.7	31.3	20.7
More information required	50.0	52.6	31.3	26.3	12.5	30.6	31.3	47.4
Don't know	0.0	0.4	0.0	1.7	0.0	1.3	12.5	3.0
No response	6.3	2.6	0.0	7.3	0.0	3.0	0.0	2.2
Total	100.0							
Other offence								
Yes	0.0	9.5	37.5	62.5	43.8	45.7	0.0	6.5
No	100.0	89.7	62.5	37.1	56.3	54.3	100.0	93.1
No response	0.0	0.9	0.0	0.4	0.0	0.0	0.0	0.4
Total	100.0							

Scenario A

Bill has recently separated from his wife. Whenever Bill leaves home or work, he notices that his ex-wife follows him in her car. One night, his ex-wife confronts him and threatens to harm him if he starts seeing other women. She yells at him and calls him names. Bill thinks his ex-wife is still in love with him and is uncertain what she may do.

For Scenario A, 34.5 per cent of those police and 31.2 per cent of magistrates participating in the survey indicated that Bill's ex-wife should *definitely be charged* with stalking, while a minority (10.0 per cent of police and 12.5 per cent of magistrates) stated that she should *definitely not be charged*.

Many respondents indicated that *more information* was required in order to decide whether stalking charges should be laid (50 per cent of magistrates and 52.6 per cent of police).

When asked what sort of additional information was required, what the magistrates wanted to know included:

- The 'reason for separation'.
- 'What effect [the offender] intended'.
- 'What effect [the offender's] behaviour had'.
- 'Effect on victim and how he perceives the behaviour'.

What the police who participated in the survey wanted to know included:

- 'Did the following arouse fear for safety in [the victim]'.
- 'Information as regards victim's state of mind'.
- 'Any history of threats made previously? Any history of Intervention Orders'.
- 'Depending on how often she stalks him and if she has the means to carry out the threat'.
- 'Where does [the offender] work/live? Has she reason to be on the road at the same time as [the victim]'.
- 'Where did confrontation happen? Did anyone see?'
- 'History of relationship. Past behaviour. Frequency of behaviour. Medical history'.

All magistrates and 89.6 per cent of police responding in the survey considered that the offender should not be charged with a different offence.

Scenario B

Thoa has recently moved to Australia from Vietnam and doesn't speak English very well. Each time she goes outside her house, her neighbour approaches the fence and makes comments about Thoa's nationality. One day, the neighbour throws an egg at Thoa who contacts the police.

In relation to Scenario B, 34.5 per cent of magistrates and 18.8 per cent of police felt the offender should *definitely be charged* with stalking, while 10.0 per cent of magistrates and 54.3 per cent of police said the offender *should not be charged* with stalking. About a third of police (26.3 per cent) and magistrates (31.2 per cent) said they required *more information*.

Magistrates participating in the survey wanted to know:

- 'How many times and what is the nature of the comments made?'
- The 'effect on victim'.
- The 'intention of the alleged offender'.
- 'What responses has victim made to the original comments (aggravation of situation)?'

Police surveyed were interested in:

- 'Were there witnesses other than victim the present? What is neighbours intentions?'
- 'Is victim intimidated by threats?'
- 'Did egg hit her/cause her injury. Intention of neighbour. How long lived there. Is there any other reason for dispute apart from nationality.'

More police (62.5 per cent) said the person should be charged with another offence compared to magistrates (37.5 per cent). The types of 'offences' the police suggested the person could be charged with included:

- 'Assault'.
- 'Discharging a missile'.
- 'Racial Discrimination'.
- 'Insulting words'; 'Abusive language'.

Scenario C

Ken is driving home alone from the football late on Friday night. He pulls out in front of another vehicle. The driver of the other vehicle starts flashing his headlights and honk his horn repeatedly. Ken ignores this. The driver of the other vehicle continues to follow Ken for about 20 minutes, and continues to honk his horn and flash his lights during this time.

The majority of those police (54.7 per cent) and magistrates (75.1 per cent) surveyed stated the person *should not be charged* with stalking although a significant minority of police (10.3 per cent) and magistrates (12.2 per cent) said the person *should be charged*. Again, many police (30.6 per cent) said *more information* was required – only 12.2 per cent of magistrates said this.

The information magistrates wanted included:

- ‘Need to know if that was the end of it?’
- ‘Effect upon victim’.
- ‘Intention of alleged offender’.

Police wanted to know:

- ‘What is other driver’s intention?’
- ‘Victim’s reactions. Degree of violence.’
- ‘Is [victim] in fear or apprehension?’
- ‘Why he wants to pull him over. What his intentions are.’

Magistrates (43.7 per cent) and police (45.7 per cent) who considered the offender should be charged with another offence identified the following:

- ‘Assault’
- ‘Sufficient grounds for an IVO’
- ‘Careless/reckless driving’
- ‘Excess use of horn’
- ‘Fail to dip headlights’

Scenario D

Louise lives alone. Nick, a neighbour, repeatedly calls on her, uninvited and unwelcome, on the pretext of neighbourly business. Louise has asked Nick to stop calling her but he has persisted.

Magistrates and police participating in the survey were evenly divided as to whether the offender *should be charged* with stalking (31.3 per cent and 26.7 per cent respectively); whether the offender *should not be charged* with stalking (31.3 per cent and 20.7 per cent respectively), or *whether more information* was required (31.3 per cent and 47.4 per cent respectively).

One magistrates said he 'would need some material which would go to show the alleged offender's intentions'. Other questions asked by magistrates included:

- 'Has the victim suffered harm?'
- 'Has [the offender] been told clearly enough?'
- 'Has the victim apprehended fear for her own safety?'

Police questions included:

- 'Is [the victim] in fear or apprehension?'
- 'What effect on [the victim]. I[nter]view of Nick re reasons.'
- 'His reason for visiting. What happens when he gets there. What they talk about.'

Most police and magistrates did not consider *another offence* appropriate.

Is it stalking or not?

In general, there was a high degree of similarity between the surveyed police and magistrates' views about whether the four scenarios involved stalking or not.

Scenario A attracted the highest degree of agreement (about one third of respondents) that it was *definitely stalking*, although approximately half said that *more information* was required before it was decided. Scenario D was the next most frequent in terms of being considered *definitely stalking* (about one quarter of respondents). For Scenarios B and C only around 10 per cent said that it was *definitely stalking* and a high proportion indicated that it could involve *other offences*.

For all scenarios a high proportion of respondents stated the need for *more information*. Scenario responses showed that there was a degree of consensus about what types of incidents constituted stalking. The only significant variation in opinion between police and magistrates was in relation to the harassment scenario (B) involving a woman of non-English speaking background. The responses to the scenarios also showed that both police and magistrates were dependant to a considerable degree on obtaining further information before they would decide it was stalking or not.

Relationship between familiarity with stalking legislation and response to scenarios

Whether the degree of familiarity influenced responses to the scenarios was examined in table 20. Generally, it was noted that requests for more information in respect of the scenarios did not necessarily correspond with a lack of knowledge. Those persons who were very or *reasonably familiar* with the stalking legislation were more likely to ask for information than those who were *not very* or *not at all familiar* with the legislation.

The main response of magistrates who were very or reasonably familiar with the legislation to scenario A was that more information was required – although more thought that scenario A was definitely stalking than thought was definitely not stalking.

It was found that police who were not *very* or *not at all familiar* with the stalking legislation were more likely to find that a scenario was definitely not stalking than police who were *very* or *reasonably familiar* with the legislation. However, the latter were also more likely to state that *more information* was required than colleagues who were *not very* or *not at all familiar* with the stalking legislation.

On the whole, the responses to the scenarios indicated a good understanding of the scope of stalking legislation in the sense that the respondents were able to say what was or was not stalking, but also showed an awareness of the need to clarify and seek further factual details in order to determine whether the behaviour could come under the definition of stalking. Table 20: Relationship between familiarity with stalking legislation and scenario responses, Police and Magistrates

Table 20: Relationship between familiarity with stalking legislation and scenario responses, Police and Magistrates

Stalking offence?						
	Yes	No	More info.	Don't know	No response	Total
Scenario A						
<i>Police</i>						
Familiar	66	16	101	0	4	187
Unfamiliar	13	7	13	1	1	35
No response	1	0	8	0	1	10
<i>Magistrates</i>						
Familiar	4	2	7	0	0	13
Unfamiliar	1	0	1	0	0	2
No response	0	0	0	0	1	1
Scenario B						
<i>Police</i>						
Familiar	19	101	52	2	13	187
Unfamiliar	2	20	8	2	3	35
No response	3	5	1	0	1	10
<i>Magistrates</i>						
Familiar	2	7	4	0	0	13
Unfamiliar	1	0	1	0	0	2
No response	0	1	0	0	0	1
Scenario C						
<i>Police</i>						
Familiar	19	103	59	1	5	187
Unfamiliar	3	21	8	2	1	35
No response	2	3	4	0	1	10
<i>Magistrates</i>						
Familiar	1	10	2	0	0	13
Unfamiliar	1	1	0	0	0	2
No response	0	1	0	0	0	1
Scenario D						
<i>Police</i>						
Familiar	50	37	93	3	3	187
Unfamiliar	7	9	14	2	2	35
No response	5	2	3	0	0	10
<i>Magistrates</i>						
Familiar	4	5	4	0	0	13
Unfamiliar	1	0	1	0	0	2
No response	0	0	1	0	0	1

5.3 Magistrates' and police experience with stalking cases

Survey respondents were asked if they had had experience with a stalking case and if so, how many, since the introduction of the legislation in January 1995.

'True stalking is extremely rare. Since the legislation has been enacted, I've had only half a dozen' (magistrate).

Many respondents distinguished what they believed to be 'true' or 'pure' stalking from other stalking cases brought under the legislation. What was considered true stalking varied, but generally referred to stalking by a stranger in the form of surveillance or other type of harassment. Magistrates and police when asked, gave quite detailed descriptions of the type of behaviour they considered to be stalking:

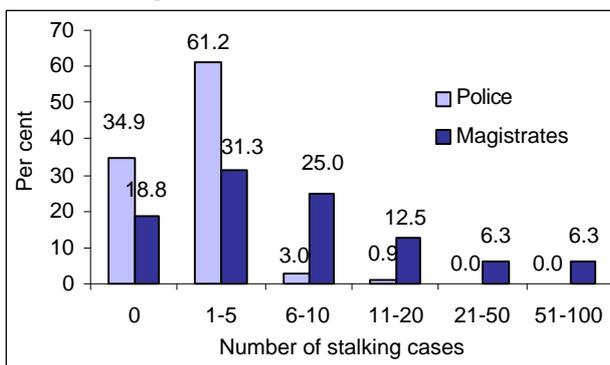
I have a stalking offender who is obsessed with young schoolgirls. He follows them home, follows school buses and hangs around bus and train stations when they are on their way home or to school. He stands among them and looks up their school dresses. He used to just loiter to be close to the kids. When we went to his house he had a lot of teenage porn and local paper pictures of young girls cut out. He occasionally approached a few girls and made lewd suggestions, but not that often, and he has never touched any of them. So some of the girls knew they were being stalked while others didn't. He has been committing these offences since 1983. We caught him red-handed . . . but this was before the stalking legislation came in and we tried to get him on the charge of offensive behaviour. Then, in 1997, we received another complaint about him. This time we charged him with pure stalking. At contest mention he received a CBO but I am positive that he is out there doing it again (CIB, female).

Extent of experience

All the magistrates, except one, who responded to the survey had had experience with at least one stalking case compared to about two-thirds of police who responded to the survey.

The majority of magistrates had had between 1 and 10 cases, although 1 magistrate's experience involved between 50 and 100 stalking cases (including intervention order applications).

Figure 13: Number of stalking cases involved in, Police and Magistrates



Police had comparatively less experience with stalking. Only 64.7 per cent of police had responded to, investigated or prosecuted cases of alleged stalking. Of those police having experience with stalking, most had been involved with between one and five cases (61.2 per cent). Only 3.9 per cent had experience with more than five cases.

A greater proportion of male police had involvement with stalking cases (61.7 per cent) than female police (58.1 per cent). More Senior Constables (72.6 per cent) and Constables (60 per cent) had involvement with stalking cases than police of the rank of sub-officer or above (53.8 per cent). In terms of length of service, officers with up to 10 years in the police force were involved in stalking cases slightly less frequently (66.7 per cent) than officers with up to 20 years in the police force (70.7 per cent). Of those officers with up to 40 years in the police force, 46.2 per cent had experience with stalking.

5.4 Experience with most recent stalking case

To explore in more detail specific stalking cases, questions were asked from those police and magistrates who had had an experience with at least one stalking case. Questions were asked in respect of the most recent stalking case dealt with by each respondent. For police, the most recent stalking case does not necessarily involve court proceedings.

Sex of stalking victim and offender

Magistrates reported that the victims in their most recent case were predominantly female (76.9 per cent), and offenders mainly male (69.2 per cent).

The sex of victim and offender in reported police cases reflected that reported by the magistrates. In terms of the sex of the stalking victim and the offender, and their relationship to each other, table 21 shows that all four combinations (male offender-female victim, male offender-male victim, female offender-female victim, female offender- male victim) were reported but the first was much more common than the others. Of the 150 most recent cases described by police, 78 per cent involved a female victim and a male offender. For magistrates this combination represented 7 of the thirteen recent cases discussed.*

Table 21: Sex of stalking victim and offender for most recent case, Police and Magistrates

	Stalking Victim		Total
	Male	Female	
Stalking offender			
<i>Police</i>			
Male	14	117	131
Female	10	9	19
<i>Total</i>	<i>24</i>	<i>126</i>	<i>150</i>
<i>Magistrates</i>			
Male	2	7	9
Female	1	3	4
<i>Total</i>	<i>3</i>	<i>10</i>	<i>13</i>

Less frequent combinations, for police, were the male victim and male offender category (9.3 per cent). For magistrates this was 15.4 per cent of cases. The other two combinations were even less frequent.

‘... take the obvious one, male stalking female, though you do have female on female and female on male, that’s not uncommon these days...’ (magistrate)

Less frequent combinations, for police, were the male victim and male offender category (9.3 per cent). For magistrates this was 15.4 per cent of cases. The other two combinations were even less frequent.

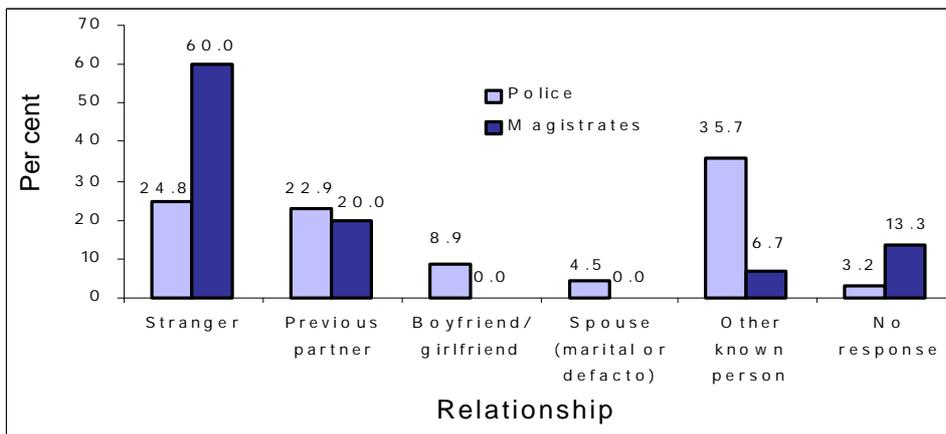
From the police and magistrates’ perspective, stalking is overwhelmingly a female victim/male offender combination, but not exclusively so as table 21 shows.

* Three magistrates did not provide details of their most recent case, despite having experience with stalking.

Relationship between stalking victim and offender

Figure 14 shows that the relationship between the offender and the victim in the recent cases cited by magistrates was generally categorised as *stranger* (60.0 per cent) although in a small number of cases a *previous partner* (20.0 per cent) or *other known person* (6.7 per cent) was said to be involved. Police were more likely to deal with stalking perpetrated by a known person (35.4 per cent). The remainder of cases cited by police involved *strangers* (24.8 per cent) or a previous *partner* (22.9 per cent).

Figure 14: Relationship between the victim and offender, Police and Magistrates



What constitutes stalking behaviour?

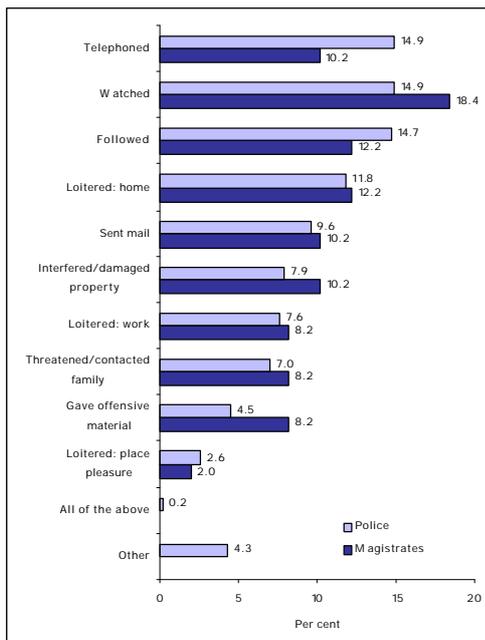
The types of stalking behaviours most often described in the recent case dealt with by police and magistrates show similar trends.

apparently innocent behaviour can unintentionally cause fear and apprehension' (Magistrate)

Stalking by telephone was most frequently mentioned as well as being watched, followed and loitering around the home. Somewhat less frequently mentioned was the sending of mail, damaging property, loitering around work and contacting or threatening the victim's family.

Non-true stalking behaviours covered by the legislation include harassing behaviour. Some examples are one neighbour mowing the other's lawn; hosing the neighbour's garden; there was one where a neighbour was panel beating cars up until midnight or 1am.' (Magistrate) Behaviour* of the alleged offender , Police and Magistrates

Figure 15: Behaviour* of the alleged offender, Police and Magistrates



‘A young woman and a friend began a barrage of phone calls to [another woman]’s house which affected both her and the two other women with who she lives. The two girls made a total of 28 phone calls to the co-worker’s house in three days. These calls ultimately culminated in a death threat to the co-worker’. (Sergeant, CIB)

Motive for stalking behaviour

Police and magistrates were asked what they thought the main motive was for stalking in the most recent case they had dealt with. To this open-ended question police most frequently mentioned *sexual attraction or infatuation* (32.0 per cent) and *inability to handle rejection or break-up of a relationship* (33.3 per cent) followed by *mental imbalance* (12.2 per cent) and *jealousy or possessiveness about the victim* (8.8 per cent). Much less frequent motives mentioned were *neighbourhood disputes* (3.4 per cent) and ‘road rage’ situations (2.0 per cent).

Table 22: Main motive for the stalking, police

	No.	%
Sexual attraction/infatuation	47	32.0
Inability to handle rejection/break-up of relationship	49	33.3
Jealousy/possessiveness/control of victim	13	8.8
Mental imbalance	18	12.2
Neighbourhood disputes	5	3.4
Road rage	3	2.0
Other	5	3.4

Specific examples of motives attributed by police to stalkers included:

- ‘Sexual attraction by offender to the child victim’
- ‘Ex-wife unhappy about being dumped’
- ‘Fixation on police members’
- ‘In love with victim and mental disorder’
- ‘Jealous of relationship between victim and her boyfriend’
- ‘Power exercise over victim’
- ‘Offender was annoyed by the noise and dust coming from the victim’s work’
- ‘Offender wanted ex and young son in their custody’
- ‘To watch the victim undressing’

[Neighbourhood disputes] are very prevalent in [one suburb]. Just about everyone in [that suburb] has got an IVO against each other. Every day they come in seeking intervention orders for putting a hose over the fence... it all comes under stalking... they’re neighbourhood disputes. That’s all they are and not matters that should be coming before the court as stalking’ (male magistrate)

For the magistrates the main motives mentioned reiterated those cited by police:

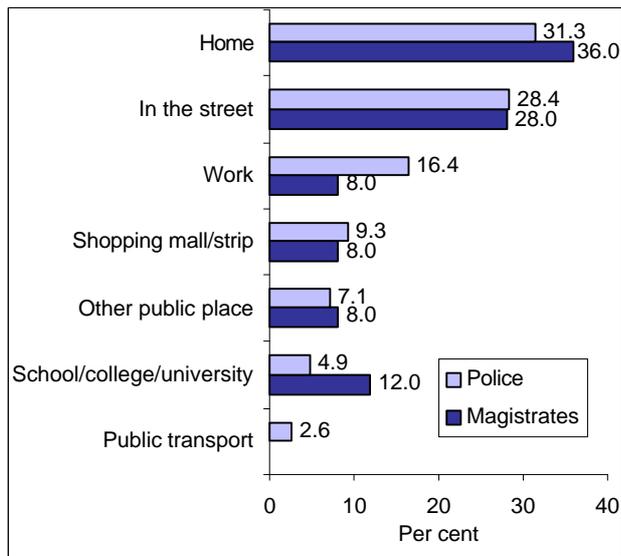
- ‘To obtain maintenance or assistance for children’
- ‘Hatred’
- ‘Infatuation’
- ‘Jealousy’
- ‘Intended rape’

The experience of police and magistrates suggests a link between the motivation for stalking and the existence of an emotional relationship between the stalker and the victim. In this context, there can be a misconception on the part of the stalker about the feelings or wishes of the victim.

Where and when stalking occurs

Stalking was reported to occur by survey respondents in a relatively narrow range of locations. Again, police and magistrates gave very similar response patterns: about a third indicated that around the home of the victim was where stalking was occurring, almost a third of each group said it occurred in the street. Other, less frequent, locations were at work, around the shops, other public places or other locations such as a gym, a pub/hotel, a nightclub, while driving and in a church.

Figure 16: Locations* where stalking took place, Police and Magistrates



In terms of the stalking case coming to the attention of police, 79.6 per cent of police reported that the victim came directly to them as shown in table 23.

Table 23: How the report came to the attention of the police

	No.	%
Victim reported directly to police	125	79.6
Third party reported to police	19	12.1
Other	9	5.7
No response	4	2.5

When asked, in relation to the most recent stalking case dealt with, how long approximately the stalking had been occurring before coming to the attention of police or the courts, the estimates given by police and magistrates were similar.

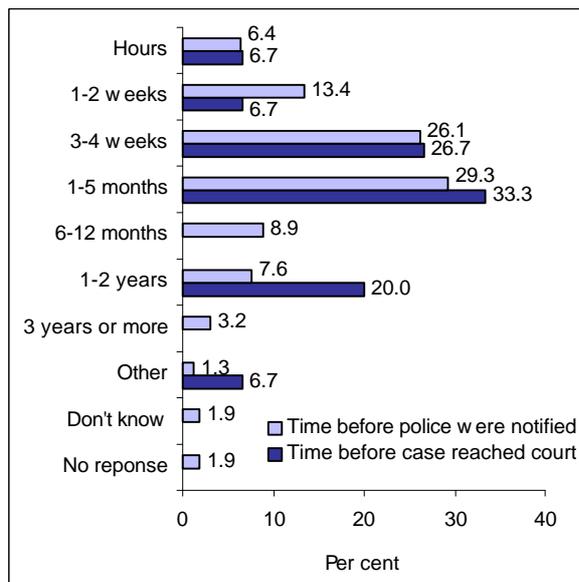
Stalking was likely to have involved a series of incidents and, as shown below, had been occurring for some time before it was brought to the attention of police and courts.

A quarter said that stalking had been going on for 3-4 weeks and about a third said it had been going on for 1-5 months. This suggests that stalking behaviour is mostly a continuous, over-time activity, leading to action through the police or courts after it has been going on for some time without stopping leading to the victim reaching their tolerance threshold.

In respect of when people seek action for stalking, one magistrate suggested that, ‘frequently there is an accumulating process where there may be a “last straw” factor (ie: assault or threat to kill). Often the catalyst for court intervention is police attendance following an emergency call with police advice to obtain an intervention order.’ (Magistrate)

Current status of the most recent case

Figure 17: Estimate elapsed times for stalking victim, Police and Magistrates



Police respondents were asked about the current status of the stalking case they had been describing. In the majority of cases the offender had been charged; and half as many said an intervention order had been taken out. Smaller numbers mentioned that the complaint had been withdrawn, that no offence was disclosed or that the case was unsolved or still being investigated.

Table 24: Current status of case, Police

	No.	%
Offender charged	74	48.7
Offender charged and IVO	28	18.4
Intervention order	18	11.8
Complaint withdrawn/ no further action	14	9.2
No offence disclosed	6	3.9
Unsolved/still being investigated	9	5.9
Other	3	2.0
<i>Total</i>	152	100.0

Outcome for victims

The most desirable outcome in stalking cases is that the actual stalking behaviour has stopped. When asked about this, most police tended to say that the stalking had stopped (74.5 per cent) with only 12.7 per cent saying that the stalking had not stopped.

Police were also asked if the stalking offender had been charged, what the charges were. As shown in Table 25, in half the cases the charge was stalking, with the other charges being assault, breach of intervention order or telecommunication and mail offences.

Table 25: Type of charge, Police

	No.	%
Stalking	74	49.7
Assault/incident assault/assault police	16	10.7
Breach IVO	15	10.1
Criminal damage	7	4.7
Still under investigation	3	2.0
Traffic offences	2	1.3
Telecommunications and mail offences	11	7.4
Not authorised	2	1.3
Drunk/resist	1	0.7
Threat to kill	5	3.4
Offensive behaviour	3	2.0
Intentionally cause injury	2	1.3
Other	8	5.4
<i>Total</i>	152	100.0

Magistrates were asked how their case was finalised. Figure 18 shows a range of outcomes, although numbers are too small to draw any meaningful conclusions.

Figure 18: How the stalking case was finalised, Magistrates

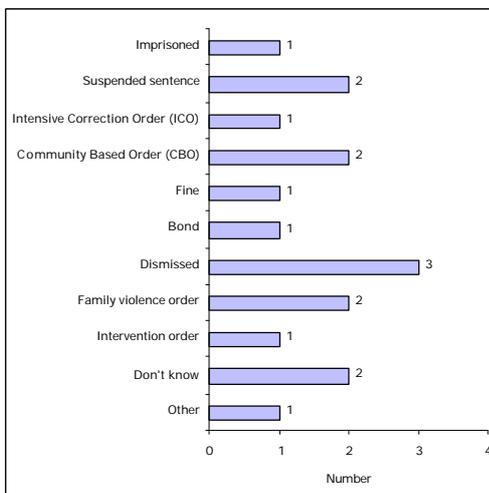
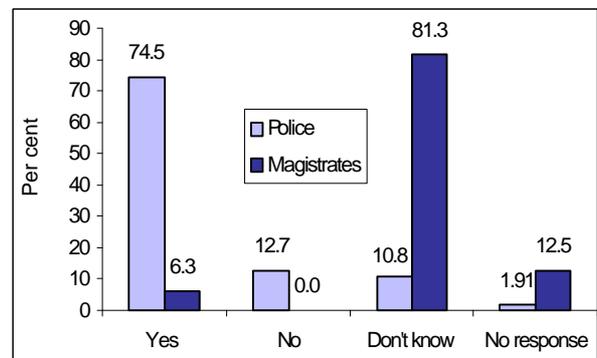


Figure 19: Whether the stalking stopped



Police and Magistrates

Magistrates reported more frequently than police that they did not know whether the stalking had stopped or not (81.3 per cent). This is not surprising, given that a Magistrate's involvement in a particular case ceases following finalisation of court proceedings.

Following up on those police who had said the stalking *had stopped*, with a question as to the reasons, most (40.7 per cent) said it was because of *formal judicial processes* while others said that the offender had been *cautioned*, (16.9 per cent).

Other police mentioned as reasons for stalking stopping: *one party moved away* (9.0 per cent), *counselling* (5.6 per cent) and *mediation* (2.8 per cent).

'In some cases questioning and warning by police has resulted in offending behaviour desisting'
(Police officer, general duties)

'Normal people like to think that they are in control of their lives and that they can take care of matters, then it will get to a stage where there is a big confrontation. I had a case of attempted kidnap, but this incident was really the culmination of eight months of stalking behaviour. This victim had been trying to deal with it on her own. He dived through the kitchen window and kidnapped her. He ended up holding a siege in [a suburban] police station and wouldn't give up until his mum came...' (CIB)

When police were asked what further action the victim took to try to stop the stalking an extensive range of responses were given – indicating that in many instances the victim had not been inactive in trying to do something about the stalking.

Categorising the responses shows that there were frequently life style changes made by the victim (table 26).

Table 26: Further action taken by the victim to try to stop the stalking from occurring, Police

	No.	%
Changed address	23	15.0
Changed phone number/silent line/screen calls	27	17.6
Never alone	11	7.2
Changed lifestyle/routines/habits	8	5.2
Ignored offender	2	1.3
Became reclusive/high security	2	1.3
Changed name	1	0.7
Intervention order	22	14.4
Offender charged/legal action	2	1.3
Abused offender/family	7	4.6
Contacted friends/family/council	3	2.0
Contacted police again/surveillance	5	3.3
Mediation/issue resolved	2	1.3
Nil/don't know	36	22.9
Not applicable	3	2.0
Total	153	100.0

Many victims were reported to have changed their name, their address or their telephone number (or had taken a silent line). Others made certain they were not alone, only went out with others or became reclusive.

Some examples of steps taken by victims cited by police include:

- ‘...all the girl could do was have her boyfriend over all the time’ so she wouldn't be alone (general duties, police)
- ‘In one case the son was assaulted by his father outside the family home. The mother did not want an order issued against the father so she and the son left home, not him.’ (CIB, police)

Outcome for offender

In terms of what happened to the offender, according to police and magistrates, many had judicial action taken against them.

Some effects on the offender as reported by police were positive, including:

- ‘In some cases questioning and warning by police has resulted in offending behaviour desisting’.
- ‘[The offender] obtained counselling and gained control of himself’.
- ‘[The offender] was ordered to undergo psychological counselling of a sexual nature’.

Other police however reported that there had been no, or minimal effect on the offender, for example:

- ‘[The offender] located the victim’s new address and found out the victim’s silent telephone number’.

In 18.8% of responses the most recent case dealt with by police and magistrates was also often reported as having been dismissed. In those cases where a conviction was entered, sentences were most often a suspended sentence (12.5 per cent) or a community based order (12.5 per cent).

One uniform duties male police officer told of the ‘ongoing saga [of a] man annoying an elderly couple (neighbours) with loud music. They called the police 54 times in 18 months. The police dealt with the problem as a standard noise complaint but because the situation was ongoing, powers under the EPA noise regulations were limited (each night dealt with as a separate complaint). The victims wrote to the offender, went to their shire council and contacted their local MP. The police felt they should do something. It was the victim who said “I feel as if I’m being stalked” that made the police think about solutions under the stalking provisions’.

When the matter proceeded to a contested hearing in the Magistrates’ Court the court granted an intervention order. The defendant's attitude was very much that he did not accept that his behaviour was stalking. Since the order was made, the police have been called in respect of two breaches of the order, one dealt with by summons, the other by arrest. The defendant is expected to appeal the initial order to the Supreme Court.

Practical issues

Finally the survey respondents were asked if anything affected their capacity to deal with the stalking case. Grouping responses to this questions shows that some factors related to the difficulties in obtaining evidence and definitions (table 27).

Table 27: Things that affected the police officer's capacity to deal with the stalking case

	No.	%
Corroboration difficult/inability to get evidence	8	17.0
Locating the offender	5	10.6
Definition difficulties/grey area/unclear	4	8.5
Surveillance problem	4	8.5
Offender's mental state/intellectual capacity	4	8.5
Victim took offender back (in domestic case)	2	4.3
Delays in intervention orders	2	4.3
Reluctance of victim to seek help	2	4.3
Lack of resources/flexibility	2	4.3
Offender still able to contact victim	2	4.3
Complaint was illusory	2	4.3
Other	10	21.3
Total	47	100.0

In general, when describing their most recent stalking case, police and magistrates were able to indicate in many instances that the legislation was used to good effect. However, a number of factors noted indicate that dealing effectively with stalking is complex.

These factors included lifestyle actions that were taken by the victim in attempting to avoid stalking.

Police comments included:

- 'Difficulty as a result of suspect always ensuring no witnesses saw events. Always one word against the other'

Could anything be done without stalking legislation?

Irrespective of any problems encountered with the present legislation, police responses to the question of what police could have done before the introduction of the stalking legislation – one quarter suggested that previously there was little or nothing that could have been done. Other actions that police could have taken prior to implementation of the legislation are shown in table 28 below. Intervention orders and telecommunication or mail offences were most frequently suggested by the police.

Table 28: Action the police could have taken if victim had reported the incident prior to the enactment of the stalking legislation

	No.	%
Little/nothing	42	25.8
Intervention order	28	17.2
Telecommunication/ mail offences	20	12.3
Assault	15	9.2
Caution	9	5.5
Breach of the peace	8	4.9
Threat to kill	8	4.9
Offensive behaviour	7	4.3
Criminal damage	6	3.7
Same	6	3.7
Unlawfully on premises	5	3.1
Indecent assault	2	1.2
Don't know	2	1.2
Other	5	3.1
<i>Total</i>	<i>163</i>	<i>100.0</i>

5.5 Magistrates' and police views on the stalking legislation and its implementation

A number of questions asked respondents about their general views on the stalking legislation. Police and magistrates were asked, based on their experience and/or knowledge of the stalking legislation and its implementation, what changes, if any, would they suggest to improve (a) the legislation and (b) its operation.

'I believe the stalking legislation filled a huge void in the system where people were acting in a way to cause apprehension, but there was no legislation to cover it. With the stalking legislation we finally have adequate legislation to deal with a very common behaviour problem'. (CIB, police)

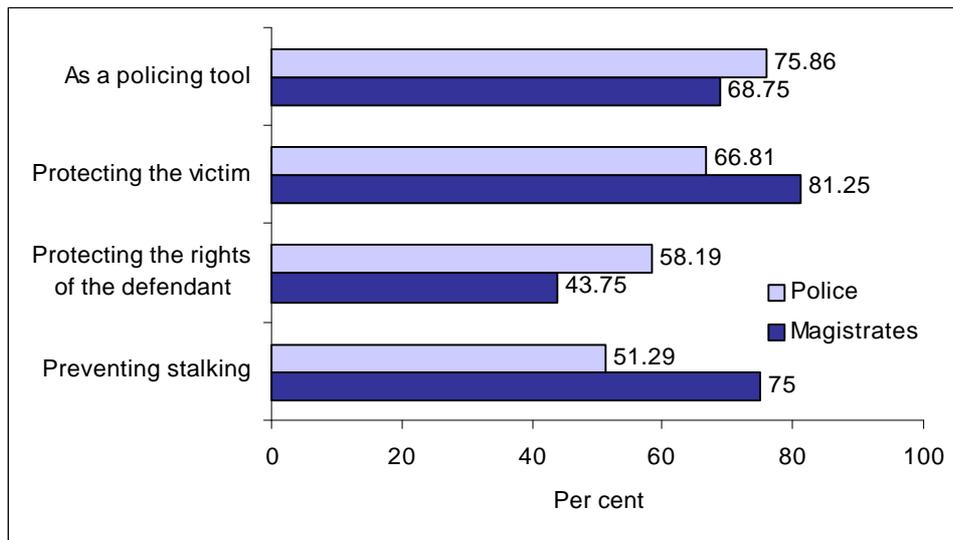
Effectiveness of stalking legislation

Survey results indicate a variety of views held by police and magistrates on the effectiveness of the Victorian stalking legislation and the way it operates. Many of these opinions were given in some detail.

Specifically, in relation to its effectiveness in terms of protecting the victim, preventing stalking, as a policing tool, and in relation to the rights of the defendant, figure 21 shows a high degree of positive responses.

The legislation was most frequently reported by magistrates as most effective in protecting the victim (81.3 per cent) followed closely by being effective as a means of preventing stalking behaviour (75.9 per cent). Magistrates less frequently rated the legislation as being effective in protecting the rights of defendants (43.8 per cent).

Figure 20: Percentage of Police and Magistrates who believe the stalking legislation has been used very or fairly effectively



The most useful aspects of the legislation identified by magistrates included:

- ‘Getting disputes into court early.’
- ‘It has covered an area for which the criminal law previously did not provide protection.’
- ‘It enables Court to offer some security to an applicant over a period of time.’
- ‘Ability to provide protection for a group of victims who had little or no redress in the past.’

Police views on the ways in which the legislation has been effective confirm that the stalking legislation has been effective as a policing tool (75.9 per cent) but it was considered to be less effective in preventing stalking behaviour (51.3 per cent).

It should be noted again, that a significant percentage of police did not respond to this section of the survey (between 15 per cent and 26 per cent).

The most useful aspects of the legislation identified by police participating in the survey included:

- ‘Investigative tool.’
- ‘Protection for victim.’
- ‘Provides offence where none previously ie following, watching victim.’
- ‘Police power to do something.’
- ‘Can be one off incident.’
- ‘Covers all persons whether in or out of relationship and persons not related in any form.’
- ‘Broad areas for various courses of conduct.’
- ‘Wide ranging definition.’
- ‘A specific legal remedy to an area of behaviour not previously addressed.’
- ‘More scope for power of arrest.’
- ‘Protection of people from situations where each individual act isn’t significant though the whole picture (number of acts) are causing harm.’

Some differences in views between police and magistrates are observed: magistrates believe the stalking legislation is more effective in protecting the victim and preventing stalking than police.

Table 29: Percentage of police and magistrates with issues in obtaining evidence on intent to harm and harmful effect

	Police		Magistrates	
	No.	%	No.	%
Intent to harm	70	30.2	5	31.3
Harmful effect on the victim	50	21.3	0	0.0

Some of the respondents who indicated the legislation had not been used effectively in relation to these four aspects elaborated on the reasons for saying this.

Police and magistrates were asked whether they had any issue with two key components of the legislation, namely in obtaining evidence of intent to harm and of the harmful effect on the victim. Only a minority of both groups indicated that this was the case.

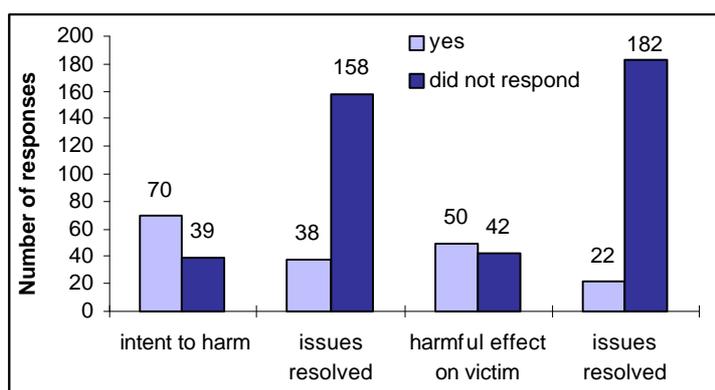
Table 30: Whether the issues were resolved, Police and Magistrates

	Police		Magistrates	
	No.	%	No.	%
Yes	38	16.34	5	31.3
No	34	14.7	11	68.8
Yes and no	1	0.4	0	0.0

Even where these two aspects were identified as issues, further responses indicated that many of the stalking incidents were still subsequently resolved.

Approximately a third of the magistrates surveyed reported having difficulties with the issue of proving intent to harm, although almost half these magistrates reported these problems were resolved. None of the magistrates reported having problems proving that the stalking behaviour had a harmful effect on the victim.

Figure 21: Problems encountered in proving intent to harm and harmful effect, police



In relation to evidentiary issues, 30.2 per cent of police said they experienced problems obtaining evidence on intent to harm and 21.6 per cent experienced problems in obtaining evidence concerning the harmful effect of the stalking behaviour on the victim. In both instances, under half of these problems were said to have been resolved

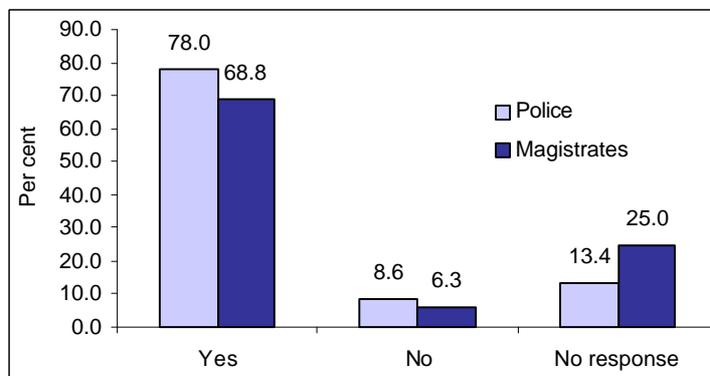
‘The legislation doesn’t seem to cater for multiple victims/individual incidents where the offender does not stalk the same victim more than once, though he is clearly engaging in a strong pattern of stalking, watching multiple women in an evening. One man went from house to house, watching women and masturbating outside their houses. But he never went to the same house to see the same victim more than once. He was never charged with stalking because it wasn’t considered he had undertaken a course of conduct.’ (Rape Squad)

‘I think that there is a problem with the legislation when people do not know that they are being watched or stalked. Just because the victim is unaware of the behaviour does not mean the behaviour is okay. This is a particular problem in the Rape Squad, where dealings are mainly with unknown prowlers. One man admitted that he would ejaculate on the windows of various women. These women didn’t know. There are numerous prowlers who watch girls in their bedroom windows night after night and can’t be charged with stalking, even on their own admission. A woman could be stalked every night, and never know of his presence, but if she knew she’d be terrified, and when she finds out she will experience that fear. Ignorance protects the offender.’ (Detective Senior Constable, male)

A majority of respondents considered that the legislation effectively addresses a gap in the criminal law.

Although four magistrates did not respond to this question, 12 magistrates considered the stalking legislation to have effectively addressed a gap in the criminal law. In comparison, 78 per cent of police considered the legislation to have effectively addressed a gap in the criminal law.

Figure 22: Whether the stalking legislation effectively addresses a gap in the criminal law, Police and Magistrates



Asked whether instances of stalking could be prevented in other ways, a number of suggestions were made by some magistrates, many of which related to the need for counselling or mediation in less serious instances of stalking or as a preliminary measure; to intervention orders and their availability and interaction with criminal charges and to police action, although 33 per cent of magistrates provided no response to this question (6). Four magistrates thought that stalking could be prevented in other ways. Alternatives provided included:

- ‘Police should get involved at an earlier stage.’
- ‘Some are on the borderline. A strong police warning could suffice.’
- ‘Summary offences, assault, driving offences, offensive behaviour, may be more appropriate in less serious circumstances . . .’
- ‘Mediation, exercise of commonsense practical approach by both parties.’

Of the 76.3 per cent of police who responded to this question, 31.5 per cent considered that stalking could be prevented in other ways. Their suggestions included:

- ‘Perhaps intervention orders could contain an option of directing the offender to attend some form of counselling, where they can talk their issues through . . . possibly as part of some anger management treatment.’
- ‘Intervention orders should if possible be obtained first.’
- ‘If both parties are known to each other then possibly mediation.’
- ‘Advertising campaigns which make it quite clear that such behavior is not tolerated by the community and law.’
- ‘Public education and more thorough action in the Family Court regarding access to children to avoid emotional actions by offender.’
- ‘Road rage should be addressed through the Road Safety Act.’
- ‘Psychiatric help. Warning for minor cases.’
- ‘Assessments and counselling of offender and possibly victim.’
- ‘Give police power to direct parties in a conciliatory manner – before an inspector or above – record it, and if persist, charge; and increase penalty if found guilty.’

The most useful aspects of the stalking legislation were identified as:

- it addressed a gap in the criminal law;
- as a policing tool;
- provision of protection to victims;
- broad application.

Table 31: The most useful aspects of the stalking legislation, police

	No.	%
Police tool	39	29.8
Addresses a gap in the law	27	20.6
Broadness	27	20.6
Protect victim	20	15.3
Wider access to IVOs	6	4.6
Other	6	4.6
Bail provisions	2	1.5
One off incident	2	1.5
Nil	2	1.5
<i>Total</i>	131	100.0

Table 32: The main impact of the stalking legislation on police

	No.	%
Good policing tool – positive impact	118	91.5
Negative impact	5	3.9
Nil	4	3.1
Other	2	1.6
<i>Total</i>	129	100.0

Table 33: The main impact of the stalking legislation on the courts

	No.	%
Good policing tool – positive impact	118	91.5
Negative impact	5	3.9
Nil	4	3.1
Other	2	1.6
<i>Total</i>	129	100.0

While the general views of police and magistrates were positive towards the stalking legislation and its operation, several areas of improvement were suggested. Responses were made and were categorised and are presented in tables 34 and 35.

Comments by magistrates as to how the legislation could be made more effective were broad-ranging, though sparse, and included:

- 'It has many times been abused by applicants.'
- 'In relation to preventing stalking, I have had some cases where the stalking is pathological.'
- '...virtually all of these situations require counselling of some sort. You can even counsel them in court. But there is a total gap in counselling. This counselling should be held at the Magistrate's level. If they are counselled here and don't like the result they can take it to the Magistrate...' (magistrate).

20.3 per cent of police made suggestions as to ways the legislation could be made more effective and included:

- 'Maybe the legislation needs to have a section on stalking as experienced by the victim, as it currently does, and stalking behaviour generally exhibited by the offender. This second section could relate to those cases where there were multiple victims though all were only stalked on the one occasion.'
- 'Formulate a summary offence version of stalking to lower proof of intent.'
- 'More effective if "course of conduct" defined as to what constitutes it.'
- 'Penalties not severe enough, not a deterrent.'
- 'More powers of search required.'
- 'Often offences continue to be committed after orders are made. Insufficient education of potential offenders.'
- 'To include victims who are unaware they are being stalked.'
- 'Further training and information.'

Improvements to the legislation suggested by police differ somewhat to those suggested by magistrates and reflect their different roles in addressing stalking behaviour in the community.

Table 34: Suggested improvements to the legislation, police

	No.
<i>Crimes Act 1958</i>	
Remove: 'intention to cause apprehension or fear'	13
Course of conduct definition	6
More specific definitions	5
Tighter penalties	5
Burden of proof/reverse onus	3
Broaden scope of victims	2
Intervention order linked to bail charge	2
Instant remand	1
Other	11
<i>Total who made suggestions</i>	48
<i>Crimes (Family Violence) Act 1987</i>	
After hours service/timeliness	5
Tighter penalties	5
Increased police powers	4
Too easy to obtain	4
Wider grounds for issue	4
Burden of proof	2
Third party involvement	1
Remove intent	1
Other	11
<i>Total who made suggestions</i>	37

Approximately 30 per cent of police respondents suggested changes to the legislation. In respect of the *Crimes Act 1958* provision, thirteen responses related to removing intent, six mentioned the definition of course of conduct and five responses specified the need for more specific definitions or firmer penalties.

In relation to the *Crimes (Family Violence) Act 1987* provision, five responses related to after hours service or timeliness. Tougher penalties were also mentioned by five respondents.

'I think that stalking should be categorised as a sex offence myself. Often there is an established relationship between the two parties, but when there is not, when it is a total stranger, I think that it is definitely sexual. And I think it should perhaps carry a more serious penalty. Not that all are sexual, some are clearly just aimed at causing fear in the victim. Maybe we need a subsection to cover cases of stalking which are clearly sexual in nature, and this would entail more severe penalties.' (police officer, CIB)

Table 35: Suggested improvements to how the legislation operates, police

	No.
Crimes Act 1958	
Victim legally able to tape calls	1
Create two offences: minor and major	1
“Course of conduct” – one incident only	1
Increased police powers	1
Total who made suggestions	4
Crimes (Family Violence) Act 1987	
Difficult to prove	3
Too easy to obtain	3
Increase access to intervention orders and quicker	3
Magistrates’ attitude	2
After hours service	2
Police not billed if complainant doesn’t attend court	1
Tighter penalties for breach	1
Other	2
Total who made suggestions	17

When asked for suggested improvements to the *Crimes Act 1958*, three magistrates considered it necessary to improve the wording of the Act, including:

- ‘It should be made clear that neighbourly disputes are either in or outside this legislation.’
- ‘What constitutes mental or physical harm? What does ‘understood’ mean? What does ‘likely’ mean?’
- “Course of conduct” is a bit awkward. I think that the “intention” elements ought to be expanded to include a “reckless” element.’

In relation to the *Crimes (Family Violence) Act 1987*, four magistrates felt the wording could be improved and included comments such as:

- ‘No changes, but it is incumbent on the courts to be conscious of the criteria, to weed out nuisance neighbour disputes.’
- ‘Currently far too wide for these purposes.’
- ‘It would be handy to define stalking for *Crimes (Family Violence) Act 1987* rather than just refer to section 21A of the *Crimes Act 1958*.’

Figure 23: Suggested improvements to the *Crimes Act 1958*, magistrates

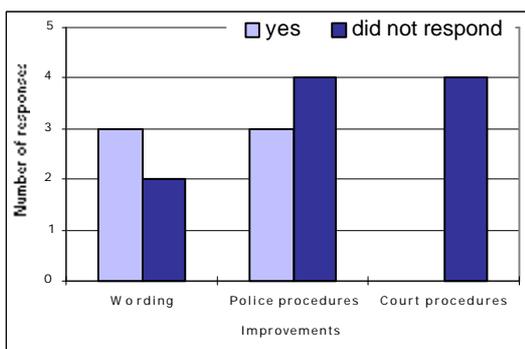
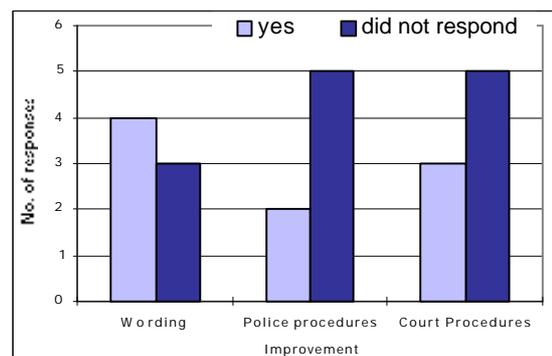


Figure 24: Suggested improvements to the *Crimes (Family Violence) Act 1987*, magistrates



In relation to the *Crimes Act 1958*, 25.43 per cent of police considered changes necessary with suggestions such as:

- ‘Same power of entry as *Crimes (Family Violence) Act 1987*.’
- ‘Include reckless as to whether conduct caused physical or mental harm.’
- ‘Intent to harm needs to be more specific.’
- ‘Remove intention aspect on behalf of the offender. Difficult to prove.’
- No requirement to prove intention. Victim’s state of mind should be sufficient.

With respect to the *Crimes (Family Violence) Act 1987*, 18.1 per cent of police considered changes necessary with suggestions such as:

- ‘It’s too wide ranging, no longer just applies to family incidents.’
- ‘Too easy to obtain intervention orders.’
- ‘Issue of interim orders should be automatic subject to hearing.’

Suggestions were also offered about changes that could be made to police and court procedure (table 36).

Police procedures were seen to need improvement by three magistrates surveyed. Suggestions included:

- Ensure defendants are bailed with conditions (sometimes they are simply charged on summons).’

Table 36: Suggested changes that could be made to police procedures, police.

	No.
Increase discretion/flexibility	3
Increase understanding/training/information	10
Bail	1
Link intervention order to charge	1
Warrant provision	1
Time consuming	2
Other	9
Total	27

Among other suggestions made were the need for better telecommunication services and greater availability of information.

As with suggested improvements to the *Crimes Act 1958*, three magistrates considered there could be improvements made to *police procedures* for the *Crimes (Family Violence) Act 1987*. Their comments included:

- ‘IVO procedures are insufficient. With regard to interim orders that didn’t involve banning someone from the matrimonial home, they should be available over the counter. If you are going to kick someone out of their matrimonial home as a consequence of the IVO, then this must go to court.’
- ‘All complaints should be sworn at first instance; at least 40 per cent don’t come back. These unfortunately are the ones that probably need the IVO the most; i.e. they are in abusive situations.’
- ‘The onus should be shifted back onto the defendant to justify the removal of an IVO.’

Recommendations to changes in *police procedures* in respect of stalking behaviour were made by 14.2 per cent of police and included comments such as:

- ‘In the United States police are able to detain perpetrators of stalking and other aggressive behaviour until they cool down. It works kind of like the drunk law does here. It could be good to have similar provisions under the stalking legislation.’
- ‘Very time consuming, especially when AFMS are unwilling.’
- ‘Training.’
- ‘Take action only if victim desires this course of action.’
- ‘More members to be aware and use the stalking provisions.’

No magistrates considered there to be any problems with *court procedures* in the *Crimes Act 1958*. In respect of the *Crimes (Family Violence) Act 1987*, three magistrates considered improvements necessary to court procedures. Suggestions included:

- ‘I believe it should be considered whether restraining orders should be available as of right on an administrative basis, save and except for orders excluding the defendant from a property.’
- ‘Notice of defence should be compulsory, indicating whether the defendant will be represented. Many people seek adjournments when faced with a represented defendant. This causes cost problems’

The improvements to *court procedures* in relation to stalking behaviour suggested by 21.12 per cent of police included:

- ‘Magistrates make it too easy to get an intervention order, and apply them sometimes in the wrong circumstances, for instance in neighbourhood disputes.’
- ‘Magistrates should tighten up on orders and on breaching people. Sometimes releasing someone back into the community is putting someone else’s life at risk.’
- ‘Automatic IVO should be granted when allegation made.’
- ‘Improve period from charge to hearing. Prevent excessive adjournments.’
- ‘Courts need to recognise the seriousness of psychological effect this behaviour has on its victims.’
- ‘Too slow to deal with cases.’

It should be noted that two and four magistrates respectively did not respond to the survey request for suggested improvements to the *Crimes Act 1958* and the *Crimes (Family Violence) Act 1987*. There was also a significant percentage (72.4 per cent and 89.2 per cent respectively) of police who chose not to respond to this question in the survey.

The main impact of the stalking legislation

Magistrates and police were asked to assess the main impact of the stalking legislation on the police, the courts, the victims and the alleged offenders.

Magistrates’ answers in respect of the *impact on police* included:

- ‘Legislation enables the police to act when a complaint is made.’
- ‘Provides an avenue of intervention in disputes that was not previously there.’
- ‘A direct course of action can now be taken to deal with offenders more easily.’

Police answers in respect of the *impact on police* included:

- 'Increase in powers to prevent victim terrorisation.'
- 'Greater scope for intervention beyond referrals to seek civil action.'
- 'Made our jobs easier in terms of dealing with stalking type offences.'
- 'Ability to act prior to a substantial criminal offence occurring.'
- 'Power with real bite.'
- 'More power in relation to one-off incidents.'
- 'Better ability to deal with emotional family disputes.'

Magistrates' answers in respect of the *impact on the courts* included the following comments:

- 'Increase of Crimes Family Violence cases.'
- 'Increase in workload.'
- 'More applications for intervention orders.'
- 'Some excessive use of the legislation. It is very easy just to issue proceedings rather than to try and resolve the problem in another way such as negotiation between parties.'

Comments by police in respect of the *impact on the courts* included:

- 'Increased accountability.'
- 'A little extra workload.'
- 'Enables the court to be effectively involved to help protect victims and order counselling to offenders.'
- 'The courts don't understand it fully.'
- 'It seems penalties do not reflect the victim's experience.'

Magistrates' answers in respect of the *impact on victims* of stalking included:

- 'Great benefit to the victim.'
- 'Provides further protection.'
- 'It offers a quick and easy way to bring what can be a difficult matter before the court.'
- 'Has demonstrated that stalking is inappropriate unacceptable behaviour and they have rights and protection.'

Police comments in respect of the *impact on victims* of stalking included:

- 'Being satisfied with the criminal justice system.'
- 'Gives greater confidence in the legal system.'
- 'Peace of mind.'
- 'Feel like something is being done.'
- 'Gives solace that their situation is taken seriously by the courts and police.'
- 'Psychological and physical protection.'
- 'Victims will come forward more often.'
- 'They don't feel protected. Usually the offender is back on the street in a couple of hours.'

Magistrates' answers in respect of the *stalking offender* included:

- 'Most seem to comply.'
- 'Offenders are made aware that stalking is a criminal offence.'
- 'Increased likelihood of intervention order being made and or being prosecuted, found guilty and sentenced for stalking.'
- 'If a case is proven they are prohibited from certain conduct over a period of time, with severe penalties for breach.'

Police comments about the *stalking offender* included:

- 'Knows what offence they are committing.'
- 'Less opportunity to harass victims and get away with it.'
- 'Makes them face up to their unlawful behaviour.'
- 'They realise it is not open season on terrorising people any more.'
- 'If offender punished properly, do prevent some.'

Table 37: Overall effectiveness of the stalking legislation, Police and Magistrates

	Police		Magistrates	
	No.	%	No.	%
Very effective	45	19.4	3	18.8
Fairly effective	114	49.1	3	62.5
Not very effective	9	3.9	0	0.0
No response	64	27.6	3	18.8
Total	232	100.0	16	100.0

In rating the overall effectiveness of the stalking legislation, 18.8 per cent of magistrates said it was very effective, 62.5 per cent considered it fairly effective. A similar percentage of police considered the stalking legislation to be fairly effective (49.1 per cent) and very effective (19.4 per cent). No magistrates of those in the sample considered it to be ineffective while 3.9 per cent of police considered the legislation to be not very effective. It should be noted that 27.2 per cent of police surveyed did not respond to this survey question.

Section 6: Media analysis

Summary of Section 6

One of the primary sources of information on stalking accessed by the general public is through the print media. An analysis was undertaken of 169 media articles, covering a three year period prior and subsequent to the introduction of the Victorian stalking legislation in January 1995.

The analysis shows that the introduction of the Victorian stalking legislation in 1995 had a significant impact on media representations of the stalking issue in Victoria.

Information on stalking available to the public through the print media has significantly increased from 1993 to 1998.

The analysis of *general* articles showed stalking from social, psychological, legal or theoretical perspectives.

Particular trends identified in these articles were:

- The number of articles reporting from a Victorian perspective increased leading up to the introduction of the Victorian stalking legislation in 1995 and the high prevalence of feature articles on stalking.

The analysis of *specific* articles shows that:

- There is not one readily identifiable profile of either the stalking victim or offender presented by the media.
- Media representations of stalking indicate that there is often no prior relationship between the offender and the victim.

In terms of the type of stalking behaviour mentioned, the effect of the stalking on the victim, and other offences mentioned in the articles, these show that:

- The most common media representations of stalking behaviour *were following the victim and arousing apprehension or fear in the victim.*
- The most often mentioned effect of stalking on victims reported by the media was *fear*, followed by a *feeling of increased vulnerability.*

Analysis of the media coverage reveals a sporadic coverage on the role of the criminal justice system in dealing with stalking behaviour.

6. Media analysis

Information on stalking disseminated to the public through the print media is one of the primary sources of information on stalking.

To determine what information is presented to the public about stalking, an analysis was undertaken of 169 media articles published between January 1993 and December 1998. The articles covered a period both prior and subsequent to the introduction of the Victorian stalking legislation in January 1995. While this analysis did not include an exhaustive search of all articles on stalking for this period, it was a relatively systematic compilation of articles published about stalking through the media monitoring services accessed by the Victorian Department of Justice.

The characteristics (type of article, length, presence of graphics) of articles on stalking were noted and the representations of the victim and offender were also examined. The nature of stalking behaviour described was analysed, as was the effect of such behaviour on victims. Finally, the way the criminal justice system was represented by the media, in the context of stalking, was also considered.

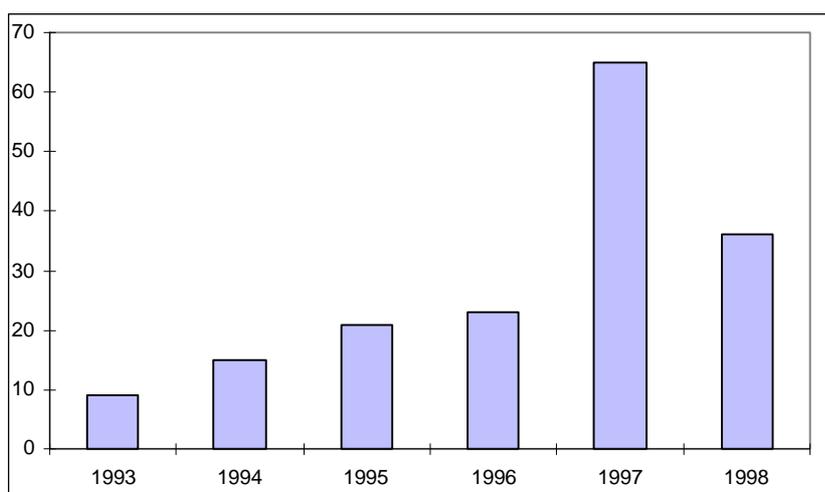
Number of articles

The majority of articles analysed were published in *The Age*, *The Herald-Sun* and *The Sydney Morning Herald*.

There had been an increase in the number of articles published with respect to stalking, from 10 articles in 1993 to 23 articles in 1996, followed by a significant increase in 1997 (65 articles), and then decreasing subsequently the following year (35 articles). Legislative proposals on stalking throughout Australia between 1993 and 1995 were likely to have prompted an increase in media interest, as was the widely publicised research of Mullen and Pathe (1994) on the psychology of stalking and the actual introduction of Victoria's stalking legislation in 1995.

It should be noted that the 64 articles in 1997 may have been due, in part, to the death of Princess Diana of Wales and the controversy surrounding her alleged stalking by the paparazzi in Paris. Some articles in 1993 and 1994 may have been excluded from the study as the term 'stalking' was not then given its current definition and the search terms for this media analysis were limited to derivatives of the word 'stalk'.

Figure 25: Total number of articles by year, 1993-98



‘General’ and ‘specific’ articles

The two major groupings of articles in the media analysis were termed “general” and “specific”. The “general” articles reported psycho-social and/or legal issues relating to stalking. The “specific” articles reported specific incidents of stalking behaviour, providing information about the victim, the offender and the behaviour.

The majority of articles (about two-thirds) over the five years focused on individual instances of stalking behaviour. These articles often outlined the details of a particular stalking incident, and explained the supposed motivation for the stalking behaviour as well as the responses to this behaviour as the case unfolded.

General articles, looked broadly at the stalking legislation or the psychopathology of stalking behaviour, (about one-quarter of all articles over the entire period). These were most prevalent in 1993 and 1994, the period leading up to the introduction of the Victorian stalking legislation. In 1994, 60 per cent of articles were of the *general* type, providing information about or a critique of the proposed Victorian stalking legislation.

6.1 Article characteristics

Headlines

Headlines are an effective way of attracting the reader's attention. The size and prominence of headlines for stalking articles attest to the newsworthiness of the subject. Examples of the headlines given to stalking articles are presented below.

Some headlines emphasised the effect of stalking on the victim with varying degrees of sensationalism:

- “Anguish for stalk victims.” (*The Herald Sun*, 2 September 1995)
- “Prisoner of fear. . .” (*The Herald Sun*, 19 January 1996)
- “Mother ‘Shattered’.” (*The Herald Sun*, 19 November 1997)
- “Schoolgirl, 15, a victim of stalking menace.” (*The Age*, 17 April 1998)

The frequency of these headlines tended to decline over the survey period.

Other headlines tended to categorise, or label, the stalking offender or the victim in some way:

- “Woman stalked judge.” (*The Weekend Australian*, 20 May 1995)
- “Mentally disabled stalker walks free.” (*The Herald Sun*, 15 June 1995)
- “How sex offenders stalk prey.” (*The Daily Telegraph Mirror*, 27 April 1996)
- “Man charged with stalking two girls.” (*The Age*, 11 March 1997)
- “Ski woman in new stalk claim.” (*The Age*, 16 January 1998)

Details about the offender and what they did were often cited in the headlines:

- “Rape bid man stalked victim.” (*Sun The Herald*, 8 March 1993)
- “Police probe claims QC stalked ex-lover.” (*The Sunday Herald Sun*, 17 July 1995)
- “Woman convicted on phone stalking count.” (*The Age*, 28 January 1996)
- “Man who filmed neighbours found guilty of stalking.” (*The Age*, 21 February 1997)
- “Stalker admits sending an explicit letter.” (*The Age*, 11 March 1997)
- “Stalker compiled intimate dossier, court told.” (*The Age*, 17 April 1998)

A number of headlines also reflected the court outcome of the stalking incident:

- “Fear and anger at stalkers sentence.” (*The Sunday Herald Sun*, 17 July 1994)
- “Cleared. Barrister stalking case dropped.” (*The Herald Sun*, 20 December 1995)
- “Convicted paedophile avoids jail for stalking.” (*The Age*, 18 February 1997)
- “DPP appeals for longer road-rage sentence.” (*The Age*, 21 May 1997)
- “Sex video man gets four months.” (*The Age*, 21 January 1998).

Headlines over time also showed an increased focus on the stalking legislation:

- “Victoria studies new stalking law.” (*The Sunday Herald Sun*, 5 September 1993)
- “Stalking law needed.” (*The Herald Sun*, 22 November 1993)
- “New laws aim to nab stalkers.” (*The Sunday Herald Sun*, 17 July 1994)
- “Making the law fit the time.” (*The Herald Sun Leader*, 24 October 1994)
- “Tougher laws mark reforms.” (*The Herald Sun*, 24 November 1994)
- “Jump in stalker law use.” (*The Herald Sun*, 19 May 1998)
- “Internet stalking test case.” (*The Herald Sun*, 20 June 1998).
- “Stalk crime soars.” (*The Herald Sun*, 30 November 1998)

Article length

Table 38: Number of articles, by article length, 1995-98

Article length	1993	1994	1995	1996	1997	1998	Total
<i>All articles</i>							
<150	3	2	7	2	10	4	28
151-500	7	12	13	19	47	21	119
501-1000	0	1	3	3	13	5	25
1001-1500	0	0	0	1	4	0	5
>1500	0	0	0	1	1	8	10
Total	10	15	23	26	75	39	187
<i>General articles</i>							
<150	1	0	0	1	1	0	3
151-500	2	9	2	8	6	6	33
501-1000	0	0	3	0	4	1	8
1001-1500	0	0	0	1	1	0	2
>1500	0	0	0	1	0	2	3
Total	3	9	5	11	12	9	49
<i>Specific articles</i>							
<150	2	2	7	1	9	4	25
151-500	5	3	11	11	41	15	86
501-1000	0	1	0	3	9	4	17
1001-1500	0	0	0	0	3	0	3
>1500	0	0	0	0	1	6	7
Total	7	6	18	15	63	29	138

The most common length of articles on stalking was relatively short: 151-500 words (63 per cent), less than 150 words (16 per cent), and 501-1000 words (13.6 per cent). This corresponds to the predominance of specific incident articles (in contrast to feature articles) that were usually less than 500 words. Of particular interest is the significant increase in articles over 1500 words in 1998 (20.7 per cent of articles in that year) and may be attributed to the emergence in this period of the investigatory-style in-depth feature coverage of stalking.

Article type

Articles on stalking were categorised as letters, editorials, news, features or other.

News articles made up the bulk of the articles on stalking behaviour throughout the review period (89 per cent), followed by feature articles (4 per cent). Only two letters (to the editor) were found over the entire period.

The emergence of feature articles in Victorian newspapers on stalking in 1995, continuing through to the end of the review period, is a likely consequence of the introduction of the Victorian legislation.

Table 39: Number of stalking articles, by article type, 1993-98

Article type	1993	1994	1995	1996	1997	1998	Total
		4					1
<i>All articles</i>							
News	9	13	20	23	67	30	162
Letter	0	0	1	0	2	0	3
Editorial	1	2	0	1	2	1	7
Feature	0	0	2	1	3	7	13
Other	0	0	0	1	1	0	2
Total	10	15	23	26	75	38	187
<i>General articles</i>							
News	2	7	4	8	11	6	38
Letter	0	0	0	0	0	0	0
Editorial	1	2	0	1	0	1	5
Feature	0	0	1	1	1	2	5
Other	0	0	0	1	0	0	1
Total	3	9	5	11	12	9	49
<i>Specific articles</i>							
News	7	6	16	15	56	24	124
Letter	0	0	1	0	2	0	3
Editorial	0	0	0	0	2	0	2
Feature	0	0	1	0	2	5	8
Other	0	0	0	0	1	0	1
Total	7	6	18	15	63	29	138

Feature articles tended to focus either on the specific experiences of an individual who has been the victim of stalking; or on a discussion of psycho-social and/or legal issues connected to stalking. *General* articles were more likely to be features than *specific* articles.

Specific articles were mainly news items. In 1993, 1994 and 1996, all specific articles were categorised as news. This is not surprising given that *specific* articles most often reported on current events that had occurred, and outlined individual stalking incidents.

An increase in *specific* feature articles in 1998 can be explained by a number of reports on personal experiences of significant length, which outlined a history of stalking experienced by one individual, for example, a radio presenter.

Use of photographs and graphics

Images accompanying articles were analysed to assess the focus placed by the media on the issue of stalking, assuming that newsworthy topics are more likely to be accompanied by a picture, graph or table.

Of the articles analysed on stalking, 24.3 per cent were accompanied by an image. For the entire period, photographs of the offender (8.9 per cent) or victim (7.7 per cent) were most frequently used. A further 3 per cent of articles included a photograph representative of stalking; for example, a woman in hiding and peering through blinds.

From 1993-97 no photographs of victims or offenders accompanied a *general* article. The *specific* article statistics indicate a much stronger graphical representation of victims or offenders throughout the survey period. General articles were more likely to be accompanied by a graph or table, as compared with stalking articles overall. Of interest is the proportion of graphics categorised as 'other' within the general category.

These photos were of politicians advocating the introduction of stalking legislation and victims unrelated to the reported crime.

Table 40: Use of photographs and other images in stalking articles, 1995-98

Image type*	1993	1994	1995	1996	1997	1998	Total
	3	4					1
<i>All articles</i>							
None	4	10	7	12	17	10	60
Victim	2	8	3	7	6	3	29
Offender	4	3	8	6	28	22	71
Graph/table	2	0	2	1	6	4	15
Other	2	3	2	1	12	2	22
Total	14	24	22	27	69	41	197
<i>General articles</i>							
None	2	8	3	7	6	3	29
Victim	0	0	0	0	0	2	2
Offender	0	0	1	0	0	0	1
Graph/table	0	0	1	1	1	2	5
Other	1	1	1	0	2	0	5
Total	3	9	6	11	12	10	51
<i>Specific articles</i>							
None	4	3	8	6	28	20	69
Victim	2	0	1	1	6	4	14
Offender	2	3	1	0	11	0	17
Graph/table	0	0	0	1	3	0	4
Other	0	0	1	0	6	2	9
Total	8	6	18	15	67	30	144

*There are more recorded values than articles because some articles contained multiple images

6.2 Perspective of general articles

In 1994, the year immediately prior to the introduction of the Victorian legislation, media interest in stalking in Victoria increased over interest in the general Australian experience. The articles were substantially informative in nature and outlined the proposed legislation, the types of behaviour the legislation would cover and the rationale for Victoria's introduction of stalking legislation.

In 1995, most of these articles concerned the enactment of the legislation and its intended outcomes. There was no media coverage of stalking in an international context during 1995.

In 1997 there was a 'levelling out' of interest in the issue of stalking in Victoria and Australia. It should be noted that the proportion of articles with an international perspective may have been somewhat skewed in 1997 by the death of Princess Diana in that year.

Of interest in 1998 is the lack of coverage of stalking from a national perspective, while reporting on the issue of stalking in Victoria remained strong. This may be a consequence of stalking in Australia having become a 'state-based' concern by 1998, as many States had adopted or were about to adopt their own versions of stalking legislation. *General* articles in 1998 tended to discuss the Victorian stalking legislation, and occasional comparisons were made to parallel legislation in international jurisdictions, particularly in the U.S.A. In addition, the media provided the public with statistics on how often the stalking legislation was utilised, and how prevalent stalking behaviour was in the community.

6.3 Analysis of specific articles

Comparison of offender and victim profiles

A comparison of the representation of victims and offenders was undertaken to assess whether the *specific* articles reviewed were more likely to provide personal information about the stalking victim or the stalking offender.

In all years reviewed except 1996 and 1998, it was more likely for the offenders' personal characteristics to be described than for the victims'. These results do not necessarily represent a tendency to portray the offender negatively, and should be considered in light of the fact that the offender's personal characteristics are easier for the media to access than are the victim's personal characteristics. The exception is in the case of high profile victims (for example, Madonna and Judith Durham) where the newsworthiness of who the victim is may coincide with the availability of information about the victim.

Age

Figures 26 and 27 show that the age of victims and offenders mentioned in media articles significantly varies throughout the period. Results may be somewhat skewed by the newspapers' repetitive coverage of a particular case or offender (for example, 31-year-old James Warwick Hall in 1996-97) although this occurred relatively infrequently.

Figure 26: Stalking victims by age group in articles, 1993-98

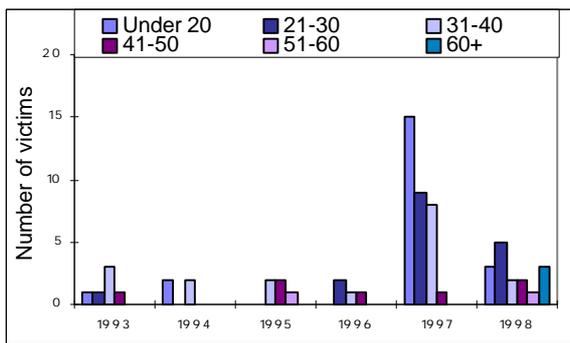
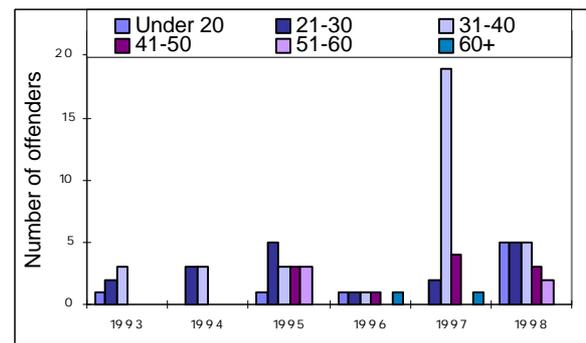


Figure 27: Stalking offenders by age group in articles, 1993-98



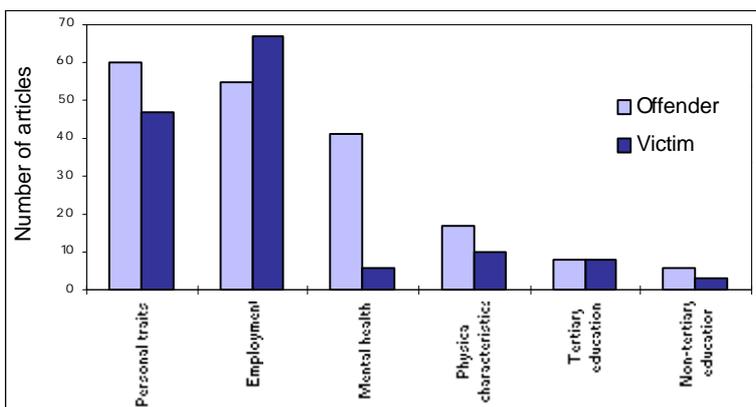
Most victims and offenders were between 31-50 years old, although the 21-30 year old offender and victim groups were also well represented. Trends over time indicate that over the last two years there has been an increase in the reporting of stalking by people over 60 years.

For offenders, the 51-60 and the over 60 age categories received the least media attention although the statistics here were spread differently for offenders than they were for victims and tended to indicate no clear trend in the reporting of offenders over the age of 51. Newspaper reports of the stalking offenders' age generally correspond to Victoria Police statistics which showed most offenders to be aged 30-39.

Personal characteristics

Articles were analysed on the basis of information about the employment, mental health or education status, or the physical characteristics or personal traits of both victims and offenders. While the employment status of the victim was reported more frequently than that of the offender, in every other category there was more detail provided about the offender. The frequent recording of the victim's employment details may have been a result of a stalking incident associated with the workplace.

Figure 28: Personal characteristics of victim and offender in specific articles, 1995 – 1998



The most commonly recorded personal characteristics for both victim and offender were employment details and personal traits such as hobbies or lifestyle habits (for example, aerobics). The least commonly reported characteristics for victims and offenders were physical characteristics and education status.

Sex

The representation of the sex of stalking victims and offenders is similar to the profiles derived from police and court figures. Female victims largely outnumbered male victims mentioned in the media from 1993 to 1998 and ranged from 76 per cent in 1997 to 100 per cent in 1994. Male offenders referred to in stalking articles substantially outnumbered female offenders throughout the survey period and ranged from comprising 77 per cent of offenders in 1997 to 100 per cent of offenders in 1993.

Relationship between victim and offender

Analysis of the representation by the media of the relationship of the offender to the victim show the most frequent category to be stranger (48.3 per cent), followed by other known person (24.5 per cent) and previous partner (17.5 per cent). Boyfriend/girlfriend was the category with the lowest representation (7 per cent), and spouse or defacto, co-worker and neighbour were also relatively under represented.

A closer analysis of these categories by year shows that stalking by a previous partner became increasingly less represented by the media from the beginning of the review period. Statistics for spouse or defacto declined from 14.3 per cent in 1993, to 5.3 per cent in 1995, to 1.5 per cent in 1997.

Reports of stalking by neighbours appeared only in 1996 and 1997. Stalking incidents involving co-workers and neighbours may indicate a use of the legislation to cover behaviour that was not able to be regulated prior to the enactment of the legislation in 1995.

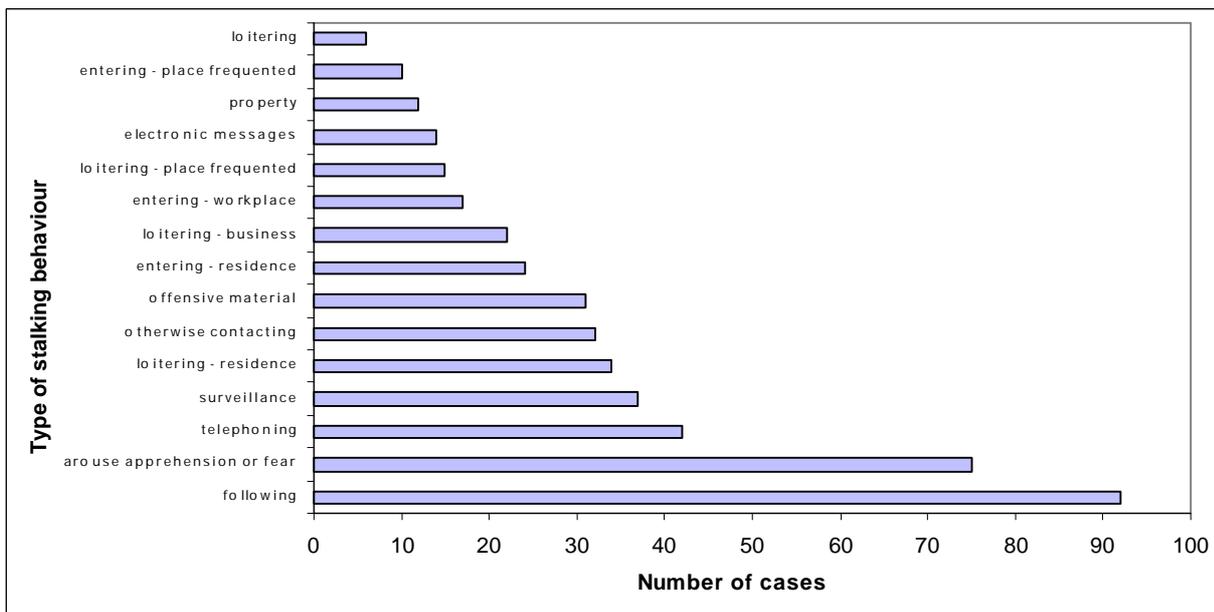
6.4 Stalking incident details

Whether the article also included the effect of the stalking behaviour on the victim, and whether any other offences were mentioned in the article, either in relation to the stalking incident, or as prior convictions of the offender or victim, was also analysed.

Type of stalking behaviour

The most common representations of stalking found in the media were following the victim, and arousing apprehension or fear in the victim. Telephoning the victim, loitering outside the victim's residence, surveillance of the victim and otherwise contacting the victim were also relatively frequent. Less frequently mentioned were loitering, entering a place frequented by the victim, damaging the victim's property, and sending electronic messages.

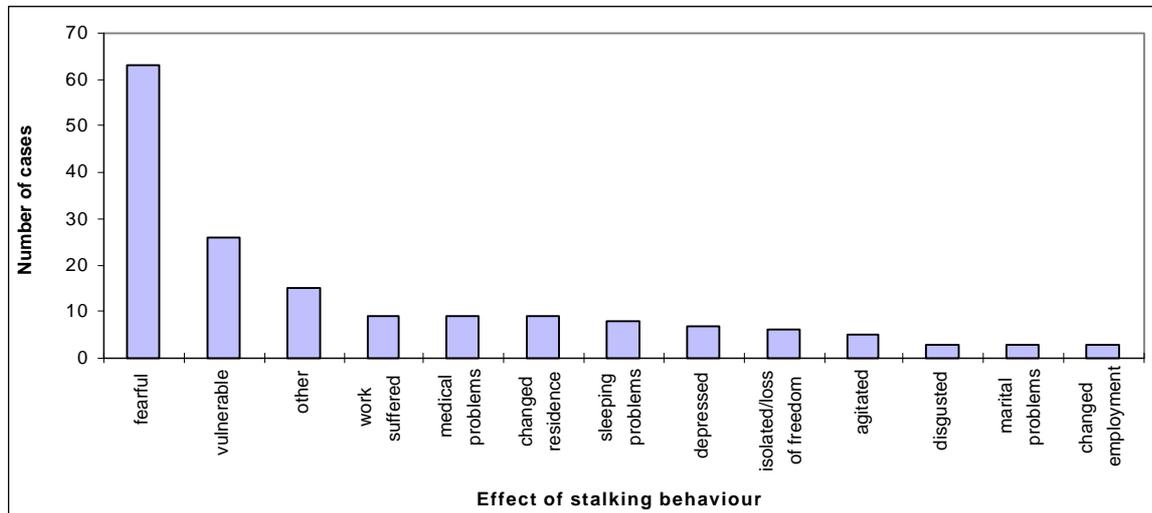
Figure 29: Type of stalking behaviour, where provided, 1993-98



Impact of stalking on victim

By far the most prevalent effect on victims reported by the media was fear, and 38 per cent of articles included a reference to this. Victims were reported by the media as feeling vulnerable in 15.7 per cent of cases. Less frequently reported impacts on victims of stalking included medical problems, work problems and need to change residence. The high levels of reporting of victim's fear may be partially attributed to the considered newsworthiness of such reactions, and to the fact that fear is one of the main effects suffered by victims of stalking.

Figure 30: Effect of stalking behaviour on victim in articles, 1993-98



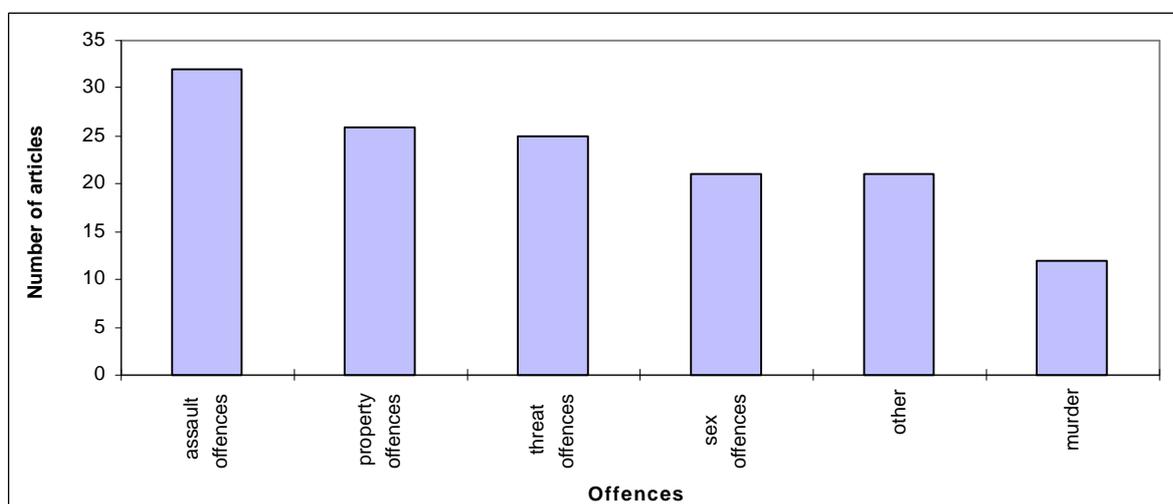
Other offences associated with stalking

Due to the use of the word 'stalk' as the search criteria, stalking was always mentioned in the articles reviewed, however, assault offences were also frequently mentioned as well as property damage and 'threat' offences.

In 1993, prior to enactment of the Victorian stalking legislation, stalking was unsurprisingly the least reported offence. Assault offences were most frequently reported in articles containing information about stalking during 1993.

In 1994, the media coverage of the offence of stalking rose to 57.1 per cent of the articles reviewed, and assault was the only other reported offence. This reflects the increasingly topical nature of stalking in this year with the anticipation of the enactment of the stalking legislation. The high levels of reporting of assault offences in this year may be attributed to the overlap between assault and stalking behaviour.

Figure 31: Offences mentioned in articles, where provided, 1993-98



From 1995 onward, stalking remained the most frequently reported offence in the articles reviewed, demonstrating the increased topical nature of stalking. The offence of stalking is mentioned in fewer articles as the review period progresses - it was mentioned in 50 per cent of articles in 1995 but only 41.7 per cent in 1998, as reporting on stalking has increasingly included mention of other offences.

The coverage of sexual offences appearing in combination with stalking in 1997 and 1998 (12.8 per cent and 7.6 per cent respectively) is partly a consequence of the media publishing a significant number of articles in these years on a convicted stalker and sex offender.

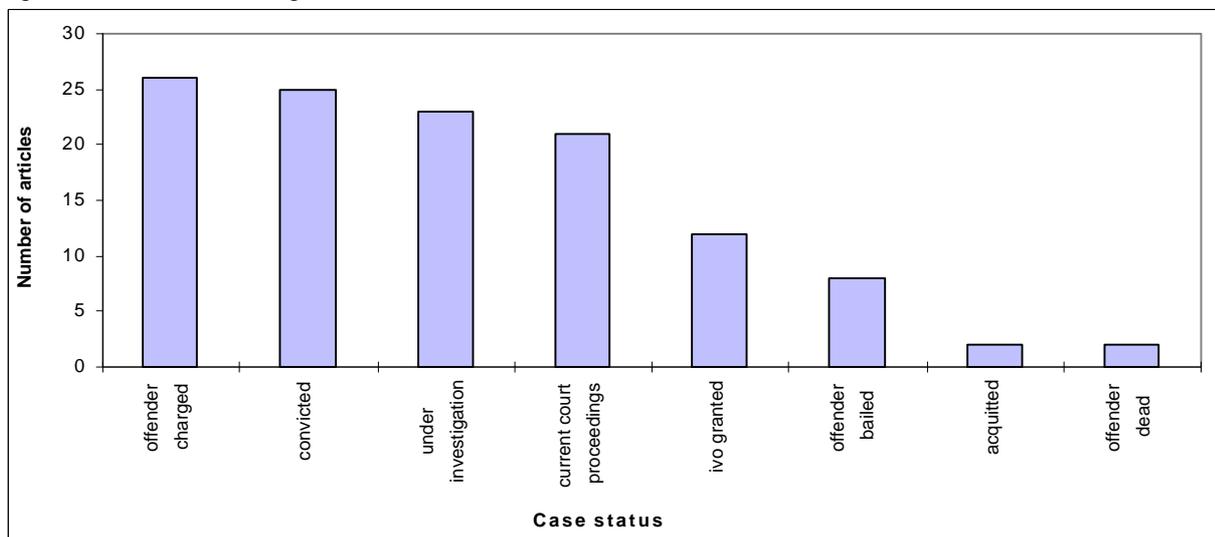
6.5 Representation of the justice system

The media's representation of the role of the justice system with respect to stalking is provided by an analysis of the status of the stalking case and the court outcome. The media portrayal was also examined for information on the methods of protection adopted by stalking victims. This might show whether the media was portraying victims as relying on the justice system for protection and support, and to what extent victims were portrayed as having to act themselves to resolve incidents of stalking.

Status of stalking case

Articles were analysed according to what stage the stalking case was at, ranging from the case being under police investigation through to court outcome. An overview of the articles indicates that the offender was most frequently portrayed by the media as either having been charged by police or convicted. That the case was reported as under investigation or that current court proceedings were under way was slightly less frequently reported. In 10.1 per cent of articles it was reported that an intervention order had been granted in response to stalking behaviour. This is to be compared with the statistics in section 4 indicating that there are more than 50 intervention orders applications for every stalking prosecution.

Figure 32: Status of stalking case in articles, 1993-98



Stalking cases were frequently reported as being under investigation by police in every year reviewed and ranged from 14.8 per cent to 38.5 per cent of articles reviewed (excepting 1994 where no articles reported the case status). The offender having been charged was the only category reported in every review period and ranged from 10 per cent in 1996 to 35.7 per cent in 1998.

Reports of convictions for stalking cases began in 1994 coinciding with the anticipated introduction of the legislation and fluctuated in frequency of reporting from 7.7 per cent in 1995 to 30 per cent of articles in 1996. Reporting of acquittals only occurred in 1996 and 1997 and were comparatively infrequent in these years.

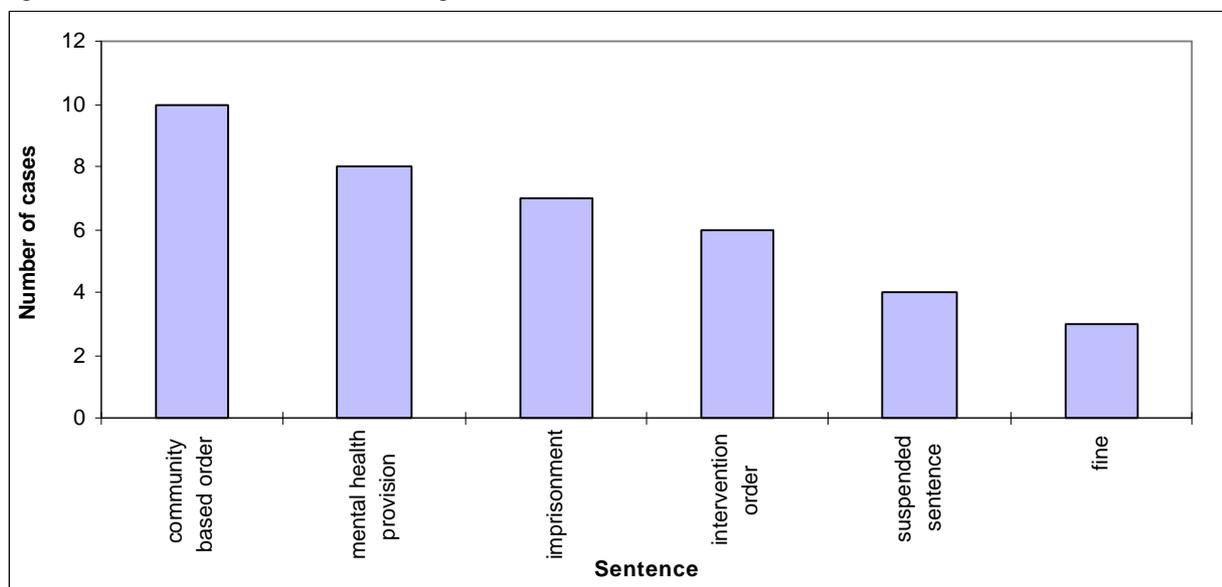
In some articles, while the stalking behaviour and the effects of this behaviour on the victim were described in relative detail, no mention was made of the victim's interaction with police or other representatives of the justice system.

Sentence received by offender

Generally, the analysis shows that the most common sentence reported for offenders convicted of stalking was a community based order (26.3 per cent). This is similar to the statistics in section 4. Media coverage was given to mental health provisions in sentencing and was reported in 21.1 per cent of articles reviewed. The relatively low level of reporting of the granting of intervention orders (15.7 per cent) is to be noted given the high numbers of intervention orders granted by the courts in response to stalking. A suspended sentence, imprisonment and fine were the least frequently reported sentences received for stalking. In the Magistrates' court statistics (section 4) a suspended sentence and fine were the next most likely outcome after a community based order.

In 1994, imprisonment comprised all sentences for stalking reported. In 1995, only suspended sentences were reported. In 1996, fines and imprisonment comprised half each of the reported sentences for stalking.

Figure 33: Sentences received for stalking offences, in articles, 1993-98



Reporting in 1997 and 1998 with regard to sentences for stalking appears to have been more comprehensive than in the previous years. In these years, 38.1 per cent and 16.7 per cent of articles respectively reported stalking offenders as having been sentenced to community based orders.

Protection against stalking

The most frequently reported (38.3 per cent of articles) method of protection from stalking adopted by victims was to rely on the police. Articles reported victims as relying on police in a number of ways including reporting the stalking behaviour to the police for future reference, having the police approach or apprehend the alleged offender, or having the police charge the offender or apply for an intervention order on their behalf. The second most frequently reported action taken by stalking victims was to rely on the courts and this appeared in 30.1 per cent of articles.

6.6 Other media

While no data was collected on the prevalence of stalking information in other forms of the media, during the course of writing this report, a number of soap operas and dramas (American, English and Australian) on Australian television have referred to the “issue” of stalking. Further indications of the infiltration of stalking into popular understanding are the descriptions of stalking behaviour by authors as diverse as Patricia Cornwall (in *Black Notice*, 1997) and Ben Elton (in *Blast from the Past*, 1998). The latter describes the relationship between stalker and stalking victim as follows:

“Right from the beginning Peter had thought he and Polly had a relationship. . . Everything Peter did he did with Polly in mind, and in his unbalanced state he had come to believe that despite her denials Polly was equally conscious of him. . . The appalling thing was that after only a short period of harassment Polly did of course have a kind of relationship with Peter. Everything *she* did she did with Peter in mind. Thus the stalker feeds his need, becoming central in the life of someone who should be a stranger to him. . . Eventually Peter got his wish. He and Polly were brought together, if only in court.” (Ben Elton, *Blast from the Past*, 1998, pp 16-17)

6.7 Conclusion

Overall, the media coverage given to the issue of stalking from 1993 to 1998 was relatively positive. General trends in reporting can be identified based around the introduction of the Victorian stalking legislation in 1995. The analysis demonstrated that, in general, the newspaper coverage given to stalking tended to reflect the trends observed in police and court statistics. It is also clear that the newspaper's working definition of stalking has broadened over the period, from stalking by surveillance prior to introduction of the legislation, to a range of harassment (including ‘road rage’ and neighbourhood disputes) by the end of the period.

7. Issues for discussion

As a criminal offence, stalking is unique - it instills significant fear in victims and can have a long lasting impact in spite of the fact that often there is no physical or verbal contact between the offender and victim.

The type of conduct addressed by the stalking legislation is unusual in that it is an offence against the person that does not require actual physical violence or a threat to occur.

The findings of the study have highlighted the overall effectiveness of Victoria’s stalking legislation, as viewed by the two groups – police and magistrates – who have to work most with it. The assessment of the legislation by the two groups of primary users of the legislation (magistrates and police) and the views of more distant observers of the legislation (academics and the media) is broadly positive. A majority of magistrates (81.3 per cent) and police (68.5 per cent) found the legislation to be effective. Responses from both police and magistrates clearly indicate that the legislation fills a gap in the criminal law and is flexible enough to cover a wide range of situations encountered.

The stalking legislation, when it was passed in 1994, aimed to:

- cover a diverse range of stalking situations, particularly ‘protecting women from harassment and other threats to their physical and mental safety by former partners or strangers’;
- offer protection to people who have been followed, placed under surveillance, contacted, or sent offensive items;
- protect victims of stalking from harassment, even when a person has not been and will not be charged with stalking;
- pre-empt actual threats and physical attacks;
- deal with offenders who intend ‘to cause [a] person physical or mental harm or apprehension or fear for his or her safety, or that of another’;
- deal with offenders who, in the circumstances² ‘ought to have known that [their] behaviour was likely to cause harm, fear or apprehension in the other person’.

Generally the introduction in 1995 of the criminal stalking legislation, and the civil remedy through intervention orders, has proven to be successful. Both forms of legislation have provided avenues to protect victims of a previously difficult to prevent behaviour. However, the practical application of the legislation, since its introduction, and other elements of this study have also highlighted a number of opportunities for improvement.

This final section presents discussion on:

- the extent to which the stalking legislation is being used for the purposes intended;
- the impact of the legislation and its implementation on the justice system; and
- issues which might enhance the effective use of the legislation – opportunities for improvement.

7.1 The extent to which the stalking legislation is being used for the purposes intended

The study found that the legislation has successfully been used for a variety of situations falling within the definition of stalking. The legislation has also been used in some situations considered not to be ‘true’ stalking – this included ‘road-rage’, disputes between school children, neighbourhood differences, ‘peeping toms’, break up of relationships and unfathomable (romantic or otherwise) obsessions. Some responses indicated that the legislation, at least in relation to intervention orders, was being used too broadly and that this was deemed by some respondents as inappropriate. The study also indicates that the definition of stalking is increasingly being widened through dealing with situations that originally may have been outside the scope of the current legislation.

The study also found that the stalking legislation has been used in respect of surveillance, loitering, mail and telephone contact, and interference with property – broadly coming under the term harassment, both through the criminal (laying of stalking charges) and the civil (the granting of an intervention order) remedies.

However, a number of unresolved issues arising from the operation of the legislation were identified by the study. These included:

- whether a ‘course of conduct’ would be found where there is an offender who visits multiple victims only once; and
- whether police officers can be victims in relation to other persons being stalked.

The study found further that, generally, the legislation has been effective in protecting victims of stalking, even where a person has not been and will not be charged with stalking. According to some police and magistrates interviewed, while prosecutions for stalking under section 21A are relatively rare, intervention order applications were found to be substantially more frequent to the extent that some courts have set aside a day for their administration. It was generally accepted by those interviewed that the lesser burden of proof required by the intervention orders made them more accessible, even when a person could be charged with stalking.

The study revealed that some police and magistrates show a degree of misunderstanding concerning the relationship between stalking provisions in the *Crimes (Family Violence) Act 1987* and those in the *Crimes Act 1958*, specifically with respect to whether:

- non-family members can access intervention orders;
- intervention orders are available where a stalking prosecution has not been commenced; and
- a stalking prosecution should take place in a family violence context.

The study indicates that the stalking legislation is not perceived by focus groups as effectively pre-empting actual threats and physical attacks. Focus groups were asked to consider whether fear can operate retrospectively when the victim is initially unaware of the stalking behaviour. If the victim must first be aware of the stalking behaviour, it raises the question of how effective the legislation can be in pre-empting actual threats and physical attacks. Police suggested that additional powers may be necessary to pre-empt actual violence; for example, the introduction of a statutory power to search for weapons without warrant on private premises in connection with a stalking allegation, and increased ability to place victims and offenders under video and physical surveillance. On the other hand, magistrates and other commentators considered police powers in relation to regulating stalking behaviour to be adequate.

The study found that penalties for stalking have thus far tended to the lower end of the scale of possible outcomes. While there is a relatively low rate of stalking offences proven, those convicted of stalking offences have received a broad range of sanctions, in line with the sentencing options available in Victoria. Community based orders, fines, suspended sentences, intensive corrections orders as well as custodial sentences have all been imposed on persons convicted of stalking.

Police report that the stalking had not stopped in about 12.7 per cent of cases. Of those instances where the stalking had stopped, it was reported that about 40.7 per cent of these instances was due to formal judicial processes.

[The legislation only provides indirectly for persons incapable of understanding the consequences of their stalking behaviour. There appears to be only limited provision for these persons with their ability to satisfy the condition of ‘. . . ought to have understood. . .’ being argued in court, rather than determined by a mental health professional.

The mental health of a number of offenders was a recurring issue throughout the study. The literature, the surveys, and police and magistrate interviews indicated that a number of offenders who engaged in stalking behaviour were perceived to have mental health problems. This was often shown, according to magistrates and police, through a lack of understanding of the effects of their behaviour, and/or being irrationally fixated upon the victim. Mullen & Pathe (1997), as well as many police and magistrates, believe that much stalking behaviour is evidence of a dysfunctional mental condition.

The issue of the offender’s mental health also raises concerns with respect to repeat offending. Many police and magistrates identified an increased likelihood for an offender with mental health problems to re-offend.]

In general, the study indicates that there appear to be few difficulties with respect to the implementation and integration of the Victorian anti-stalking legislation into the day-to-day operation of the criminal justice system.

Awareness of, and familiarity with, the legislation is relatively comprehensive across magistrates and police surveyed. [although some rural police stations stressed a need for more training regarding stalking behaviour and the application of the legislation.]

A majority of police and magistrates were reasonably or very familiar with the legislation. Most magistrates (93.8 per cent) had experience with a stalking case since the introduction of the legislation as did 64.7 per cent of police. The source of information about stalking for both was their own reading and colleagues.

The attitude of most police and magistrates toward the legislation was positive. Many highlighted the ability they now have to address previously legal but harassing behaviour as its most significant impact. Some frustration was reported in relation to abuse of intervention order procedures in disputes resulting in what was perceived as a waste of resources.

A review of media representations indicates a close correspondence between trends in existing stalking statistics and media portrayals of stalking behaviour. From this it may be concluded that the public is relatively well informed concerning the extent and nature of stalking in Victoria.

Academic analysis of stalking ranged from the psychological profiles of stalkers to critiques of various jurisdictions' anti-stalking legislation. In Victoria, a particular focus has been on the mental health of the offender, the effects of stalking behaviour on the victim, and what can be done about it by the criminal justice system.

When asked, very few magistrates or police identified the need to undertake a public education campaign focusing primarily on stalking behaviour although more information available at the time of the victim's contact with the criminal justice system was considered desirable.

7.2 Effectiveness of the legislation and its impact on the justice system

The degree to which the legislation enables stalking to stop and for the victims to be protected was touched on by a number of police and magistrates – although some said that stalking had continued in spite of actions taken by police and through the courts. A number of instances were cited where it was the actions of victims – changing their routines and life-style – that ended the harassment. A sense of powerlessness was expressed by some respondents – leading to suggestions that the penalties were not severe enough for the offences (or for breaches of the intervention orders).

- Some responses indicated that the legislation, at least in relation to intervention orders, was being used too broadly and that this was deemed inappropriate by some police and magistrates. Further investigation on this issue may be warranted to determine whether there are gaps in the law that may need to be individually addressed.

While the offence of stalking was created to address unacceptable behaviour, it does not cover certain behaviour closely associated with stalking which also causes fear or harm to victims. The study also indicates that the definition of stalking is increasingly being widened through dealing with these situations. There is a possibility that the stalking legislation is losing its specificity. There may be a need to create other options for incidents or behaviour associated with stalking, but not falling directly under the current legislation, such as 'road rage' and neighbourhood disputes.

- Courts have not yet considered whether a 'course of conduct' would be found where there is an offender who stalks multiple victims only once. According to some police, this means conduct that is frequently preliminary to sexual offences is not necessarily covered by the stalking or other legislation. Consideration would need to be given to whether this type of situation fits the behaviour intended to be addressed by stalking legislation. If so, the definition of course of conduct could be extended to include it or an alternative measure could be developed to address this behaviour.
- It has been reported by some police that the legislation does not give a significant degree of freedom to police to charge on behalf of the victim where the victim is unaware of the stalking, not comfortable, or is reluctant to pursue this course of action themselves, although the stalking behaviour persists.

The ability for police to act in this manner would enable them to prevent stalking behaviour where the actions of the alleged stalker are known to police, but not to the victim. An example of this is a person known to have stalked one or more persons, engaging in the same behaviour with a person who is as yet unaware they are being stalked.

- An offender who has been found guilty of stalking, even where there are distinctly sexual overtones, is not treated as a sexual offender for the purposes of the offence of loitering under section 60B *Crimes Act* 1958. Some police suggested that stalking incidents are frequently a precursor to sexual assaults. To include it as such, would be to provide an additional weapon in the fight to pre-empt sexual offences.

- According to police and magistrates surveyed, the protection of victims was achieved to varying degrees, depending on the circumstances. The responses from police and magistrates indicate that stalking behaviour can have different connotations in various cultural contexts. Similarly, the impact on stalking will also vary with socio-cultural factors. There are specific cultural issues that arise when providing protection for the victim; for instance, in relation to the role of the cultural community in endorsing the offender and/or victim's behaviour, and cultural attitudes concerning male and female behaviour.

To better respond to the needs of a variety of cultural communities, magistrates and police need to be aware of the difficulties faced by victims of stalking, and other domestic issues, arising from within their own cultural community.

- Magistrates and police appeared to have limited information on support services available to victims throughout and after the finalisation of the stalking case. In general, while a substantial number of victims of stalking were utilising the criminal justice procedures at their disposal, it is difficult to quantify the numbers of victims of stalking that do not take advantage of these support structures.
- Some police dissatisfaction with the accessibility of intervention orders was expressed, particularly in relation to interim after-hours intervention orders. It was suggested that the intervention order application procedure itself could be prohibitive of providing immediate and pre-emptive protection. Further investigation of this issue could be carried out to determine whether action is required that could improve procedures for obtaining after-hours intervention orders.

7.3 Issues which might enhance the effective use of the legislation – opportunities for improvement

As discussed above, there are a number of issues arising directly out of this study that present opportunities to enhance either the stalking legislation itself, or its practical operation.

In its ability to address a diverse range of stalking situations, the legislation, and/or operation of the legislation could be enhanced with the following:

- Because of the large number of intervention order applications, there is an opportunity to divert stalking incidents, possibly using dispute settlement programs or police cautioning, from being dealt with via the court system.
- The powers of the police and the court under other Acts could be examined to consider intervention order applications arising out of neighbourhood and noise disputes (for example, see the amendments being made to the Queensland *Environmental Protection Act* 1994 at the time of writing).

In its ability to offer protection to victims of stalking, the legislation, and/or operation of the legislation could be enhanced with the following:

- 'Course of conduct' could be defined to include single but prolonged instances of stalking, or instances of a person stalking multiple victims, but only on one occasion per victim.
- The 'victim of stalking' as defined in section 21A currently does not include police officers who may be in fear for the safety of a third person or a number of third persons. The definition could be broadened to include these circumstances.
- A significant proportion of stalking charges are not proven when they get to court. The reasons for this are unclear but may be evidentiary.
- Rates of 'non-proven' outcomes for the offence of stalking could be monitored over the next few years to see if they increase or stabilise and further research be done as to why such a high proportion of stalking charges are not proven. This could include an analysis of the role of evidentiary problems.

- In its ability to pre-empt actual threats and physical attacks, the legislation could be enhanced with the following:
- In determining the intent of the offender, the need for the victim to prove they have been affected by the stalking behaviour, at the exact time of the incident, could be removed. That is the victim has been affected by the stalking, but at some later time.
- In its ability to deal with persons incapable of understanding that their behaviour the operation of the legislation could be enhanced with the following:
- There could be increased cooperation between the justice and health systems in relation to the treatment of stalking offenders exhibiting mental health problems, and increased use could be made of treatment orders for these offenders.
- In terms of the overall impact of the introduction of stalking legislation on the criminal justice system, the legislation, or operation of the legislation could be enhanced with the following:
- To assess the effectiveness of the stalking legislation in regards to preventing stalking behaviour by persons already convicted of stalking, research could be undertaken to determine whether and to what extent stalkers re-offend, and which types of stalkers re-offend.
- Due to the response of police in rural areas indicating their familiarity with the use and operation of the legislation, training specifically targeting police response to stalking in rural Victoria could be enhanced.
- As a number of cases involved an alleged stalker stalking multiple victims, intervention orders could be available in respect of the one offender, rather than in respect of each victim.
- Due to the view expressed by police about sometimes frivolous use of intervention orders, greater responsibility for intervention order proceedings should be left with the parties to the dispute, and the onus shifted onto the parties in relation to changing or revoking an order.
- As stalking is often closely related to sexual offences or is of a sexual nature itself, section 21A could be included in the offences specified in section 259A *Crimes Act 1958 (Vic)* as an offence required to be finalised within three months of charging.
- To assist with intervention orders relating specifically to stalking behaviour, police could develop a pro forma intervention order application for stalking.

The study has examined stalking through the perspectives of police and magistrates, together with material on stalking presented in the print media. Assessment of the effectiveness of the legislation has been gauged through these means – not through those directly involved in stalking incidents, that is the victims, offenders and their immediate circle. While other research has explored victims' reactions to stalking, the practical difficulties inherent in conducting research on those involved in the stalking incident precluded consideration of this approach to assessing the effectiveness of the legislation in the present context.

This study has conducted an evaluation of a legislative initiative using a framework which encompassed both qualitative and quantitative methodologies. While the framework was found to have worked well in producing a comprehensive array of information for analysis, several issues were identified which could streamline any future evaluation of this nature.

It is important to know whether the legislation which has been enacted to address specific issues is in fact working in the way it was intended. Systematic research can provide useful evidence to answer this – however, it requires high level commitment enabling streamlined approval procedures and dedicated resources to ensure rapid completion, enabling outcomes of the study to be negotiated for further policy action.

The study also raises the issue of the interface between policy initiatives, legislative reform and implementation – closer interaction between these three elements are desirable if socially effective outcomes are to be achieved.

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Attachment 1: Legislation

Crimes Act 1958 (Vic.)

21A. Stalking

- (1) A person must not stalk another person.
Penalty: Level 5 imprisonment

- (2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following:
 - (a) following the victim or any other person;
 - (b) telephoning, sending electronic messages to, or otherwise contacting, the victim or any other person;
 - (c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;
 - (d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);
 - (e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;
 - (f) keeping the victim under surveillance;
 - (g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of any other person –with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of any other person and the course of conduct engaged in actually did have that result.

- (3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if that offender knows, or in all the particular circumstances that offender ought to have understood, that engaging in a course of conduct of that kind would be likely; to cause such harm or arouse such apprehension or fear and it actually did have that result.

- (4) This section does not apply to conduct engaged in by a person performing official duties for the purposes of –
 - (a) the enforcement of the criminal law; or
 - (b) the administration of any Act; or
 - (c) the enforcement of a law imposing a pecuniary penalty; or
 - (d) the execution of a warrant; or
 - (e) the protection of the public revenue –that, but for this sub-section, would constitute an offence against sub-section (1).

- (5) Despite anything to the contrary in the *Crimes (Family Violence) Act 1987*, the Court within the meaning of that Act may make an intervention order under that Act in respect of a person (the defendant) if satisfied on the balance of probabilities that the defendant has stalked another person and is likely to continue to do so or to do so again and for this purpose that Act has effect as if the other person were a family member within the meaning of that Act if he or she would not otherwise be so.”

Crimes (Family Violence) Act 1987 (Vic.)

4. Intervention Orders

- (1) The Court may make an intervention order in respect of a person if satisfied on the balance of probabilities that –
 - (a) the person has assaulted a family member or caused damage to property of a family member and is likely to again assault the family member or cause damage to property of the family member; or
 - (b) the person has threatened to assault a family member or cause damage to property of a family member and is likely to assault the family member; or
 - (c) the person has harassed or molested a family member or has behaved in an offensive manner towards a family member and is likely to do so again.
- (2) The order may impose any restrictions or prohibitions on the person that appear necessary or desirable in the circumstances to the court.
- (3) An intervention order may be made in respect of more than one aggrieved family member if the court is satisfied in accordance with sub-section (1) in respect of each aggrieved family member.

Attachment 2: Police Questionnaire
Letter from Assistant Commissioner Brown to individual police officers

21 July 1997

Dear

The Department of Justice is conducting an assessment of the impact of the introduction of the anti-stalking legislation. The project aims to enhance the understanding of the impact of the legislation on and use by justice agencies and the public, and to identify areas of policy, process or legislation which may require further refinement.

As an integral part of this study, your views on how the new stalking provisions are working are being sought. The attached questionnaire asks you a number of questions about your knowledge and experiences of the legislation.

I encourage you to complete the questionnaire to ensure that the experience of Victoria Police is properly represented by the evaluation. I see it as a valuable opportunity to comment on the operation of the recent law reform initiatives in a sensitive area of our jurisdiction.

The results of this questionnaire are **strictly confidential**. Any information you give **will not** identify any individual who participates. Nor will the specific identifying details of any case be used. Only summary information will be used in the project report assessing the impact of the legislation.

If you have any queries in relation to this study, please contact the Project Officer, Ms Kerryn Rozenbergs on telephone 9651 6932.

Yours sincerely

GAVIN BROWN

Assistant Commissioner

(Corporate Policy, Planning & Review)

QUESTIONNAIRE ON STALKING LEGISLATION FOR VICTORIA POLICE

1. Introduction

The Criminal Justice Statistics & Research Unit (CJSRU) within the Department of Justice is undertaking a project to assess the impact and operation of the new stalking legislation.

To assist with the project you are invited to complete this questionnaire which asks about your knowledge and experiences of working with stalking offences.

2. How to Complete this Survey

To respond to the questions, please tick the box corresponding to your preferred response, or provide brief comments. This is not a test so please answer with your own views and not what you think others might say. We anticipate that the survey should take approximately 30 minutes to complete.

3. Confidentiality

Please note that you are not required to identify yourself by name on this questionnaire. You have our absolute assurance that all completed questionnaires will be treated as confidential.

In addition to this questionnaire, we are planning to conduct a number of interviews with police members, magistrates and other criminal justice personnel who had experience of dealing with stalking cases. If you would be willing to participate in one of these interviews, and/or would like to receive a summary of the study's findings, please provide your details on the separate form the end of this questionnaire, and mail it to GPO Box 4356QQ, Melbourne 3001.

Once you have completed this questionnaire, please return it to us in the envelope provided (marked private and confidential).

If you have any queries about the survey, or would like further information about this project, please contact Dr Inez Dussuyer on (03) 9651 6970.

Background Information

- 1 How long have you been a member of the Victoria Police Force?

- 2 What is your gender?
 male
 female
- 3 What rank are you?
 commissioned officer
 senior sergeant
 sergeant
 sub-officer and above
 senior constable
 constable
 other (please specify) _____
-

The Stalking Legislation

- 4 How familiar do you consider yourself to be with the stalking legislation?
- (a) *Crimes Act 1958 (s.21A)*
 very familiar
 reasonably familiar
 not very familiar
 not at all familiar
- (b) *Crimes (Family Violence) Act 1987 (s.4)*
 very familiar
 reasonably familiar
 not very familiar
 not at all familiar
- 5 From what source(s) have you gained a knowledge of the stalking legislation?
 supervisor
 colleagues
 own reading
 training
 printed material
 none
 other (please specify) _____
-
- 6 What did this information cover in relation to stalking?
 legislation
 evidentiary requirements
 about the victim
 about the offender
 other (please specify) _____
-

Scenarios

We are interested in obtaining your views on how stalking legislation may be applied in the following scenarios. Please read the following scenarios carefully and indicate whether you think the “offending” individual should definitely be charged, should definitely not be charged, or whether more information is needed to determine whether to charge (specifying what information is required). Please note that information will remain confidential and is not a test. No one will know your answers.

Scenario A

Bill has recently separated from his wife. Whenever Bill leaves home or work, he notices that his ex-wife follows him in her car. One night, his ex-wife confronts him and threatens to harm him if he starts seeing other women. She yells at him and calls him names. Bill thinks his ex-wife is still in love with him and is uncertain what she may do.

- 7 Should Bill’s ex-wife be charged with stalking?
 yes, definitely
 no, definitely not
 more information is required
(please specify what else you would want to know)

- don’t know
- 8 If your answer is NO to a charge of stalking, do you think the offending individual should be charged with a different offence?
 yes, charged with a different offence
(please indicate the charge)

- no, not charged with a different offence

Scenario B

Thoa has recently moved to Australia from Vietnam and does not speak English very well. Each time she goes outside her house, her neighbour approaches the fence and makes comments about Thoa’s nationality. One day, the neighbour throws an egg at Thoa, who contacts police.

- 9 Should the neighbour be charged with stalking?
 yes, definitely
 no, definitely not
 more information is required (please specify what else you would want to know)

- don’t know

10 If your answer is NO to a charge of stalking, do you think the offending individual should be charged with a different offence?

yes, charged with a different offence
(please indicate the charge)

no, not charged with a different offence

Scenario C

Ken is driving home alone from the football late one Friday night. He pulls out in front of another vehicle. The driver of the other vehicle starts to flash his headlights and honk his horn repeatedly. Ken ignores this. The driver of the other vehicle continues to follow Ken for about 20 minutes, and continues to honk his horn and flash his headlights during this time.

11 Should the other driver be charged with stalking?

yes, definitely
 no, definitely not
 more information is required (please specify what else you would want to know)

don't know

12 If your answer is NO to a charge of stalking, do you think the offending individual should be charged with a different offence?

yes, charged with a different offence
(please indicate the charge)

no, not charged with a different offence

Scenario D

Louise lives alone. Nick, a neighbour, repeatedly calls on her, uninvited and unwelcome, on the pretext of neighbourly business. Louise has asked Nick to stop calling her, but he has persisted.

13. Should Nick be charged with stalking?

yes, definitely
 no, definitely not
 more information is required (please specify what else you would want to know)

don't know

14 If your answer is NO to a charge of stalking, do you think the offending individual should be charged with a different offence?

yes, charged with a different offence
(please indicate the charge)

no, not charged with a different offence

Your Experience with Stalking

15. Have you responded to, investigated or prosecuted any cases of alleged stalking since the introduction of the legislation in January 1995?

yes
 no - go to question 17

16 Approximately how many cases of alleged stalking have you responded to, investigated or prosecuted in the last three years (since January 1995).

Record number

Stalking Offence Details

The following questions ask you about your specific experiences with cases of stalking. In responding to them, please draw on your most recent completed case of stalking. Please Note: If you have not completed any case/s, please draw on your most recent uncompleted case.

17 When did this most recent stalking case come to your notice?

Month : eg. August = 08
Year: 19

18 What gender was the victim(s)?

male
 female

19 What gender was the alleged offender?

male
 female

20 What was the relationship between the victim and the alleged offender?

previous partner (marital, defacto, girlfriend / boyfriend)
 current spouse (marital or de facto)
 current boyfriend / girlfriend
 stranger / no relationship
 other person known to victim (please specify)

21 How long did the alleged stalking continue before the police were notified?

hours
 1 - 2 weeks
 3 - 4 weeks
 1 - 5 months
 6 -12 months
 1 -2 years
 3 years or more
 other (please specify) _____

don't know

- 22 Which of the following actions did the alleged offender take? Please tick as many options as apply.
- telephoned the victim
 - sent mail to the victim
 - watched the victim
 - followed the victim
 - loitered outside the victim's home
 - loitered outside the victim's workplace
 - loitered outside the victim's place of leisure
 - gave / left the victim offensive material
 - interfered with / damaged the victim's property
 - threatened or contacted the victim's family
 - other (please specify) _____

- 23 In instances when the victim alleges the stalking took place "in person," where did it take place? Tick as many options as apply.
- at home
 - at work
 - at school
 - at college / university
 - in the street
 - in a shopping centre
 - on public transport
 - in another public place (please specify) _____

other (please specify) _____

- 24 In what suburb/town did these incidents occur?
- _____

- 25 What do you think was the main motive for the stalking?
- _____

- 26 Was this case recorded on LEAP?

- yes
- no
- don't know

- 27 How was the case finalised?

- no offence disclosed
- complaint withdrawn
- offender charged (please specify nature of charge(s)) _____
- applied for intervention order
- still being investigated
- unsolved
- no further action
- other (please specify) _____

don't know

- 28 From the time this case first came to the attention of the police to when the case was finalised by police, approximately what period of time elapsed?
- less than one month
 - 1 - 3 months
 - 4 - 5 months
 - 6 - 12 months
 - 1 - 2 years
 - three years or more
 - not yet finalised
 - other (please specify) _____
 - don't know

- 29 Do you know if the stalking stopped?

- yes, it stopped
- no, it didn't stop - go to question 31
- don't know - go to question 31

- 30 Do you think that the stalking stopped because of:

- police cautioning
- formal judicial processes
- mediation
- counselling
- one party moved away
- other (please specify) _____
- don't know

- 31 Did the victim take further action(s) in addition to reporting to police, attempting to stop the stalking from occurring?

- yes (please specify) _____
- no - go to question 33
- don't know - go to question 33

Did the victim's action affect the alleged offender in any way?

- yes (please specify) _____
- no

- 32 Did you experience any practical obstacles that affected your capacity to deal with this case?

- yes
- no - go to question 35.

If YES, what was this?

33. Are there any other circumstances of this stalking case, that you would you like to tell us about?

- yes (please specify) _____
- no

Your Views on Stalking Legislation and its Implementation

34 Based on your experience, views and/or knowledge of alleged stalking offences, what changes, if any, would you suggest to improve:

(a) The wording of the legislation?

Crimes Act 1958

- no changes
 - yes changes (please specify)
-

Crimes (Family Violence) Act 1987

- no changes
 - yes changes (please specify)
-

(b) Police procedures?

Crimes Act 1958

- no changes
 - yes changes (please specify)
-

Crimes (Family Violence) Act 1987

- no changes
 - yes changes (please specify)
-

(c) Court procedures?

Crimes Act 1958

- no changes
 - yes changes (please specify)
-

Crimes (Family Violence) Act 1987

- no changes
 - yes changes (please specify)
-

35 In your experience and/or knowledge, has the stalking legislation been used effectively?

	Yes	No
to protect the victim?	<input type="checkbox"/>	<input type="checkbox"/>
to prevent stalking?	<input type="checkbox"/>	<input type="checkbox"/>
as a policing tool?	<input type="checkbox"/>	<input type="checkbox"/>
to deal with offenders?	<input type="checkbox"/>	<input type="checkbox"/>
to protect the rights of the defendant?	<input type="checkbox"/>	<input type="checkbox"/>

36 If NOT used effectively please describe your reasons:

37 Based on your experience and/or knowledge of alleged stalking offences, have there been any problems obtaining evidence of *intent to harm*?

- yes
- no - go to question 41

38 Were these problems resolved?

- yes
- no - go to question 41

39 How were these problems resolved?

40 Based on your experience and/or knowledge of alleged stalking offences, have there been problems obtaining evidence of *harmful effect on the victim*?

- yes
- no - go to question 44

41 Were these issues resolved?

- yes
- no - go to question 44

42 How were these problems resolved?

43 Do you think the stalking legislation effectively addresses a previous gap in the criminal law?

- yes
- no

44 Are there instances of stalking which could be prevented in other ways?

- yes
- no - go to question 46

If YES, please give specific instances and suggest ways

45 In your opinion what are the most useful aspects of the stalking legislation?

46 In your opinion, what has been the main impact of the stalking legislation on:

(a) the police:

(b) the courts:

(c) the victims:

(d) the alleged offenders:

47 Overall, how effective do you think the stalking legislation has been?

- very effective
- fairly effective
- not very effective
- not at all effective

Thank you for your participation and time in
completing this questionnaire.
Please return it to us in the envelope provided.

If you have dealt with one or more cases of stalking, and would:

- *be willing to participate in an interview based on your experiences and the general operation of the anti-stalking legislation; and/or*
- *would like to receive a summary of the study's results*

Please complete the relevant sections below.

- Yes, I would be willing to participate in an interview (approximately one hour duration).
My details are:

Name: _____

Daytime telephone no: (__) _____

- Yes, I would like to receive a summary of the study's results. My address is:

Name: _____

Postal Address: _____

Suburb: _____

Postcode: _____

Please send this completed form to:

FAX: (03) 9651 6977

OR

MAIL: **Stalking Project**
Criminal Justice Statistics & Research Unit
GPO Box 4356QQ
MELBOURNE VIC 3001

Attachment 3: Magistrates' questionnaire

Letter from chief magistrate to individual magistrates

22 July 1997

Dear

The Department of Justice is conducting an assessment of the impact of the introduction of the anti-stalking legislation. The project aims to enhance the understanding of the impact of the legislation on and use by justice agencies and the public, and to identify areas of policy, process or legislation which may require further refinement.

As an integral part of this study, your views on how the new stalking provisions are working are being sought. The attached questionnaire asks you a number of questions about your knowledge and experiences of the legislation.

I encourage you to complete the questionnaire to ensure that the experience of Magistrates is properly represented by the evaluation. I see it as a valuable opportunity to comment on the operation of the recent law reform initiatives in a sensitive area of our jurisdiction.

The results of this questionnaire are **strictly confidential**. Any information you give **will not** identify any individual who participates. Nor will the specific identifying details of any case be used. Only summary information will be used in the project report assessing the impact of the legislation.

If you have any queries in relation to this study, please contact the Project Officer, Ms Kerryn Rozenbergs on telephone 9651 6932.

Yours sincerely

MICHAEL A. ADAMS QC

Chief Magistrate

QUESTIONNAIRE ON STALKING LEGISLATION FOR MAGISTRATES

1. Introduction

The Criminal Justice Statistics & Research Unit (CJSRU) within the Department of Justice is undertaking a project to assess the impact and operation of the new stalking legislation.

To assist with the project you are invited to complete this questionnaire which asks about your knowledge and experiences of working with stalking offences.

2. How to Complete this Survey

To respond to the questions, please tick the box corresponding to your preferred response, or provide brief comments. We anticipate that the survey should take approximately 30 minutes to complete.

3. Confidentiality

Please note that you are not required to identify yourself by name on this questionnaire. You have our absolute assurance that all completed questionnaires will be treated as confidential.

In addition to this questionnaire, we are planning to conduct a number of interviews with police members, magistrates and other criminal justice personnel who had experience of dealing with stalking cases. If you would be willing to participate in one of these interviews, and/or would like to receive a summary of the study's findings, please provide your details on the separate form the end of this questionnaire, and mail it to GPO Box 4356QQ, Melbourne 3001.

Once you have completed this questionnaire, please return it to us in the envelope provided (marked private and confidential).

If you have any queries about the survey, or would like further information about this project, please contact Dr Inez Dussuyer on (03) 9651 6970.

Background Information

1. What is your gender?

- male
 female

The Stalking Legislation

2. How familiar do you consider yourself to be with the stalking legislation?

(a) *Crimes Act 1958* (s.21A)

- very familiar
 reasonably familiar
 not very familiar
 not at all familiar

(b) *Crimes (Family Violence) Act 1987* (s.4)

- very familiar
 reasonably familiar
 not very familiar
 not at all familiar

3. What main sources of information about stalking have you used?

- senior magistrates
 colleagues
 own reading
 training
 other (please specify) _____

none

4. What subjects did this information cover in relation to stalking?

- legislation
 evidentiary requirements
 about the victim
 about the offender
 other (please specify) _____

Scenarios

We are interested in obtaining your views on how stalking legislation may be applied in the following scenarios. Please read the following scenarios carefully and indicate whether you think the “offending” individual should definitely be brought before the court, should definitely not be brought before the court, or whether more information is needed to determine whether the person should appear before the court (specifying what information is required).

Scenario A

Bill has recently separated from his wife. Whenever Bill leaves home or work, he notices that his ex-wife follows him in her car. One night, his ex-wife confronts him and threatens to harm him if he starts seeing other women. She yells at him and calls him names. Bill thinks his ex-wife is still in love with him and is uncertain what she may do.

5. Should Bill’s ex-wife be brought before the court for a stalking offence?

- yes, definitely
 no, definitely not
 more information is required
(please specify what else you would want to know)

don’t know

6. If your answer is NO should not be brought before the court, do you think the offending individual should appear in court for a different offence?

- yes, prosecuted for a different offence (please indicate the charge)

no, not prosecuted for a different offence

Scenario B

Thoa has recently moved to Australia from Vietnam and does not speak English very well. Each time she goes outside her house, her neighbour approaches the fence and makes comments about Thoa’s nationality. One day, the neighbour throws an egg at Thoa who contacts police.

7. Should the neighbour be brought before the court for stalking?

- yes, definitely
 no, definitely not
 more information is required
(please specify what else you would want to know)

don’t know

8. If your answer is NO should not be brought before the court for stalking, please indicate whether you think the offending individual should appear in court for a different offence:

yes, prosecuted for a different offence (please indicate the charge)

no, not prosecuted for a different offence

Scenario C

Ken is driving home alone from the football late one Friday night. He pulls out in front of another vehicle. The driver of the other vehicle starts to flash his headlights and honk his horn repeatedly. Ken ignores this. The driver of the other vehicle continues to follow Ken for about 20 minutes, and continues to honk his horn and flash his headlights during this time.

9. Should the other driver be brought before the court for stalking?

yes, definitely
 no, definitely not
 more information is required (please specify what else you would want to know)

don't know

10. If your answer is NO should not be brought before the court for stalking, please indicate whether you think the offending individual should appear in court for a different offence:

yes, prosecuted for a different offence (please indicate the charge)

no, not prosecuted for a different offence

Scenario D

Louise lives alone. Nick, a neighbour, repeatedly calls on her, uninvited and unwelcome, on the pretext of neighbourly business. Louise has asked Nick to stop calling on her but he has persisted.

11. Should Nick be brought before the court for stalking?

yes, definitely
 no, definitely not
 more information is required (please specify what else you would want to know)

don't know

12. If your answer is NO Nick should not be brought before the court for stalking, please indicate whether you think the offending individual should appear in court for a different offence:

yes, prosecuted for a different offence (please indicate the charge)

no, not prosecuted for a different offence

Your Experience with Stalking

13. Have you heard any cases of alleged stalking in the last three years (since the introduction of the legislation in January 1995)?

yes
 no - go to question 14

14. How many stalking cases?

Record number

Stalking Offence Details

The following questions ask you about your specific experiences with stalking cases. In responding to them, please draw on the most recent completed case of stalking you have heard. Please Note: If none of the cases you have heard have been completed, please draw on the most recent uncompleted case.

15. When did this stalking case come to your notice?

MONTH : eg. August = 08

YEAR: 19

16. What gender was the victim?

- male
 female

17. What gender was the alleged offender?

- male
 female

18. What was the relationship between the victim and the alleged offender?

- previous partner (marital, defacto, girlfriend / boyfriend)
 current spouse (marital or de facto)
 current boyfriend/ girlfriend
 other person known to victim (please specify)

- stranger

19. How long did the alleged stalking go on before the case reached the court?

- hours
 1 - 2 weeks
 3 - 4 weeks
 1 - 5 months
 6 -12 months
 1 -2 years
 3 years or more
 other (please specify) _____

don't know

20. Which of the following actions did the alleged offender take? Please tick as many options as apply.

- telephoned the victim
 sent mail to the victim
 watched the victim
 followed the victim
 loitered outside the victim's home
 loitered outside the victim's workplace
 loitered outside the victim's place of leisure
 gave / left the victim offensive material
 interfered with / damaged the victim's property
 threatened or contacted the victim's family
 other (please specify) _____

21. In instances when the victim alleges the stalking took place "in person," where did these actions take place? Please tick all applicable locations.

- at home
 at work
 at school
 at college / university
 in the street
 in a shopping centre
 on public transport
 in another public place (eg. park) (please specify)

other (please specify) _____

22. In what suburb/town did these incidents mostly occur?

23. What do you think was the main motive for the stalking?

24. Was this case recorded on COURTLINK?

- yes
- no
- don't know

25. How was the case finalised?

- case dismissed
- case withdrawn
- charges struck out
- offender imprisoned
- offenders received a suspended sentence
- offender received an intensive correction order
- offender received community based order
- offender received fine
- offender received bond
- offender convicted and discharged
- other (please specify)

don't know

27. From the time this case first came to the attention of the Court to when the case was finalised, approximately what period of time elapsed?

- less than one month
- 1 - 3 months
- 4 - 5 months
- 6 - 12 months
- 1 - 2 years
- three years or more
- not yet finalised - go to question 29
- other (please specify)

don't know

28. Do you know if the stalking stopped?

- yes, it stopped
- no, it didn't stop - go to question 30
- don't know - go to question 30

29. Do you think that the stalking stopped because of:

- police cautioning
- formal judicial processes
- mediation
- counselling
- one party moved away
- other (please specify)

don't know

30. Did the victim take further action(s) to try to stop the stalking from occurring?

yes (please specify)

no - go to question 32

don't know

31. Did the victim's action affect the alleged offender in any way?

yes (please specify)

no

don't know

32. Did you experience any practical obstacles that affected your capacity to deal with this case?

yes

no - go to question 33

If YES, what was this?

33. Are there any other circumstances of this stalking case, that you would you like to tell us about?

yes (please specify)

no

Your Views on Stalking
Legislation and its Implementation

34. Based on your experience and/or knowledge of alleged stalking offences, what changes, if any, would you suggest to improve:

(a) The wording legislation?

Crimes Act 1958

- no changes
 yes changes (please specify)

Crimes (Family Violence) Act 1987

- no changes
 yes changes (please specify)

(b) Police procedures?

Crimes Act 1958

- no changes
 yes changes (please specify)

Crimes (Family Violence) Act 1987

- no changes
 yes changes (please specify)

(c) Court procedures?

Crimes Act 1958

- no changes
 yes changes (please specify)

Crimes (Family Violence) Act 1987

- no changes
 yes changes (please specify)

35. In your experience and/or knowledge, has the stalking legislation been used effectively?

	Yes	No
to protect the victim?	<input type="checkbox"/>	<input type="checkbox"/>
to prevent stalking?	<input type="checkbox"/>	<input type="checkbox"/>
as a policing tool?	<input type="checkbox"/>	<input type="checkbox"/>
to deal with offenders?	<input type="checkbox"/>	<input type="checkbox"/>
to protect the rights of the defendant?	<input type="checkbox"/>	<input type="checkbox"/>

If NOT used effectively please describe your reasons:

36. Based on your experience and/or knowledge of alleged stalking offences, have there been any problems obtaining evidence of *intent to harm*?

- yes
 no - go to question 39

37. Were these problems resolved?

- yes
 no - go to question 39

38. How were these problems resolved?

39. Based on your experience and/or knowledge of alleged stalking offences, have there been problems obtaining evidence of *harmful effect on the victim*?

- yes
 no - go to question 42

40. Were these issues resolved?

- yes
 no - go to question 42

41. How were these problems resolved?

42. Do you think the stalking legislation effectively address a previous gap in criminal law?

- yes
- no
- don't know

43. Are there instances of stalking which could be prevented in other ways?

- yes
- no - go to question 44

If YES, please give specific instances and suggest ways

44. In your opinion what are the most useful aspects of the stalking legislation?

45. In your opinion, what has been the main impact of the stalking legislation on:

(a) the police:

(b) The courts:

(c) The victims:

(d) the alleged offenders:

46. Overall, how effective do you think the stalking legislation has been?

- very effective
- fairly effective
- not very effective
- not at all effective

**Thank you for your participation and time in completing this questionnaire.
Please return it to us in the envelope provided.**

If you have dealt with one or more cases of stalking, and would:

- *be willing to participate in an interview based on your experiences and the general operation of the anti-stalking legislation; and/or*
- *would like to receive a summary of the study's results*

Please complete the relevant sections below.

- Yes, I would be willing to participate in _____ an interview (approximately one hour duration). My details are:

Name: _____

Daytime telephone no: (__) _____

- Yes, I would like to receive a summary _____ of the study's results. My address is:

Name: _____

Postal Address: _____

Suburb: _____

Postcode: _____

Please send this completed form to:

FAX: (03) 9651 6977

OR

MAIL: **Stalking Project**

**Criminal Justice Statistics &
GPO Box 4356QQ
MELBOURNE VIC 3001**

Research Unit

Attachment 4: Interview schedule

Focus group interview schedule

Introduction

Hi. My name is Yvette/Rachel and this is Inez/Chris

We are going to be conducting the focus group with you this morning/afternoon.

Thankyou for giving us your time today.

This is intended to be an informal forum. There are no right or wrong answers.

If any of the questions aren't clear, don't hesitate to ask for clarification.

We'd like you to speak on your own behalf, rather than as a member of Victoria Police

We have people from different ranks and areas of the police force here, but I'd like to stress that everyone's input is given equal weight.

Your identity is completely confidential. What you say is also completely confidential. That is why you have been given a numerical coding.

Yvette/Rachel/Brigitte is here to take notes on the sessions, to assist us in collating the information for the report.

This is Tim Wilmot (VCCA/V)/Jo Shaw (Office of Women's Affairs). They will not be participating in the focus group but will be observing the session to provide us with feedback at the end.

The purpose of this interview is:

- *to elaborate on the findings of the questionnaires you filled out and*
- *to provide insight into individual experiences*

We'd like you to answer these questions with illustrations from your own experience.

The information coming out of the interview will be used in a final report on the impact of anti-stalking legislation. Your input will assist with possible changes to the legislation; and further education and training.

Just a few preliminary matters, to give us some context for your answers:

- *Whereabouts are you a police officer ?*
- *What area of the police force are you from ?*
- *Would you describe your experiences with anti-stalking legislation as infrequent, moderate or frequent ?*
- *What do you think are the aims of the stalking legislation ?*
- *What do you perceive to be your role in relation to stalking behaviour ?*

What is the relationship between IVOs and the criminal offence of stalking?

In what situations would you use intervention orders?

What factors affect your use of the legislation?

What is the role of IVOs?

- *Give some examples of scenarios when you would use IVOs.*

Do the procedures that attach to IVOs address the aims of the stalking legislation?

How do you think these procedures could be improved?

In what situations would you use the criminal offence of stalking?

What factors affect your use of the legislation?

How do the individual circumstances of the victim or offender affect your use of the legislation?

Recent studies have indicated that 1/3 of stalkers have significant mental disorders. Is this reflected in your experiences?

When would you seek an IVO? When would it lead to charges?

- *Give some examples of scenarios when you would use IVOs.*

What factors affect the time of reporting of stalking behaviour?

Use your own experiences to illustrate how you would establish intent.

How is stalking used in conjunction with other charges?

When would you use an informal caution?

Use your own experiences to illustrate how the terms in the act (eg course of conduct, mental or physical harm, offender understood likely) are applied.

Are there any other experiences with stalking legislation on which you would like to elaborate?

Are there any issues as opposed to experiences regarding stalking legislation which have not thus far been discussed, or on which you would like to expand?

Is there any need for a new offence to cover behaviour that is not addressed by anti-stalking legislation?

Is there any need for education within the community?

Is there any need for education within the organisations that deal with the legislation?

Thank you very much for your time. Your responses have been great and we look forward to using them in the final report.

If you'd like a summary of the final report, come see me and I'll add your name to the list.

Attachment 5: Media review articles

Sloan, A. & Thom, G.	‘Stalkers law backed’	<i>The Herald Sun</i> , 10 February 1993, p 9
	‘Behind closed doors’	<i>The Herald Sun Leader</i> , 10 February 1993, p 14
Te Koha, N.	‘Police fear on rape stalker’	<i>The Herald Sun</i> , 2 March 1993, p 9
	‘Rape bid man stalked victim’	<i>The Herald Sun</i> , 8 March 1993, p 20
Edmonds, M.	‘Fruittier tells of stalk fears’	<i>The Herald Sun</i> , 12 March 1993, p 11
	‘Stalked for five month Christine’	<i>The Herald Sun</i> , 17 May 1993, p 4
	‘Cook plotted deaths’	<i>The Herald Sun</i> , 22 July 1993, p 23
	‘Wives cry for help’	<i>The Herald Sun</i> , 25 August 1993, p 11
Satchell, T.	‘Liberal women want stalkers sent to jail’	<i>The Courier Mail</i> , 27 August 1993, p 3
	‘Victoria studies new stalking law’	<i>The Sunday Herald Sun</i> , 5 September 1993, p 13
O’Sullivan, K.	‘Stalking law needed’	<i>The Herald Sun</i> , 22 November 1993, p 13
Walsh, B.	‘Man charged with stalking’	<i>The Herald Sun</i> , 27 November 1993, p 2
	‘New stalking law invoked on Coast’	<i>The Gold Coast Bulletin</i> , 17 January 1994, p 3
	‘Shadow charge’	<i>The Herald Sun</i> , 22 March 1994, p 5
Russell, M.	‘Stalker expert urges caution’	<i>The Herald Sun</i> , 11 April 1994, p 8
	‘Stalking charge’	<i>The Sunday Herald Sun</i> , 15 May 1994, p 11
Dugdale, L.	‘Stalker on crime charge’	<i>The Herald Sun</i> , 8 July 1994, p 9
Bladier, R.	‘Stalking charge dismissed’	<i>The Herald Sun</i> , 15 July 1994, p 5
Wilson, D.	‘New laws aim to nab stalkers’	<i>The Sunday Herald Sun</i> , 17 July 1994, p 4
	‘Anti-violence laws mooted’	<i>The Herald Sun</i> , 21 October 1994, p 33
Craddock, R.	‘Making the law fit the time’	<i>The Herald Sun Leader</i> , 24 October 1994, p 12
Matheson, G.	‘Stalker ruined our lives’	<i>The Sunday Herald Sun</i> , 30 October 1994, p 1
Kennedy, H.	‘Fear and anger at stalkers sentence’	<i>The Sunday Herald Sun</i> , 30 October 1994, p 4
Wilson, N.	‘Halfpenny warns on stalk law’	<i>The Herald Sun</i> , 11 November 1994, p 28
Coffey, M.	‘Tougher laws mark reforms’	<i>The Herald Sun</i> , 24 November 1994, p 11
	‘Two men in woman MP stalking charge’	<i>The Herald Sun</i> , 1 December 1994, p 24
Scott, J.	‘Woman stalked judge’	<i>The Weekend Australian</i> , 20 May 1995, p 9
	‘Woman stalks top judge’	<i>The Herald Sun</i> , 20 May 1995, p 3
Owen, K.	‘Mentally disabled stalker walks free’	<i>The Herald Sun</i> , 15 June 1995, p 11
Murphy, K.	‘No ticket to ride’	<i>The Sunday Herald Sun</i> , 17 July 1995, p 4
Fagan, D.	‘Home violence orders “useless”’	<i>The Australian</i> , 8 August 1995, p 5
Fagan, D.	‘Police reluctant to use flawed home violence laws’	<i>The Australian</i> , 12 August 1995, p 5
James, B.	‘Jail term for stalker murder threat made to workmans wife’	<i>The Daily Telegraph Mirror</i> , 18 August 1995, p 19
Jones, W.	‘Police probe claims QC stalked ex-lover’	<i>The Sunday Herald Sun</i> , 27 August 1995, p 4
Button, D.	‘QC stalking probe could take months’	<i>The Herald Sun</i> , 30 August 1995, p 31

Button & Livingston	‘Hints of political link in stalk case’	<i>The Herald Sun</i> , 2 September 1995, p 95
Easdown, G.	‘Anguish for stalk victims’	<i>The Herald Sun</i> , 2 September 1995, p 23
Easdown, G.	‘Torment not understood’	<i>The Herald Sun</i> , 2 September 1995, p 23
Gelastopoulos, E.	‘Knifeman in breach AVO’	<i>The Daily Telegraph Mirror</i> , 13 September 1995, p9
	‘Man on stalking charge’	<i>The Daily Telegraph Mirror</i> , 23 October 1995, p7
Harris & Davison	‘Millionaire dies, wife bashed in home raid’	<i>The Sunday Telegraph</i> , 5 November 1995, p 1
Button, D.	‘Decision soon on QC stalking claim’	<i>The Herald Sun</i> , 8 November 1995, p 17
	‘Karate expert a stalker’	<i>The Daily Telegraph Mirror</i> , 14 November 1995, p9
	‘Police stalk charge’	<i>The Herald Sun</i> , 28 November 1995
	‘Charged for stalking wife’	<i>The Daily Telegraph Mirror</i> , 4 December 1995, p 17
Button & Livingstone	‘QC stalking case dropped’	<i>The Herald Sun</i> , 20 December 1995
Button & Livingstone	‘Cleared. Barrister stalking case dropped’	<i>The Herald Sun</i> , 20 December 1995
Dale & Molitorisz	‘Stay in touch’	<i>The Sydney Morning Herald</i> , 5 January 1996, p24
O’Baugh, S.	‘Madonna faces the man who stalked her’	<i>The Daily Telegraph Mirror</i> , 5 January 1996
Guy, S.	‘Indecent obsessions’	<i>The Sydney Morning Herald</i> , 10 January 1996, p9
	‘Drifter guilty of stalking Madonna’	<i>The Australian</i> , 10 January 1996
Quigley, A.	‘Prisoner of fear- woman victim of states youngest’	<i>The Herald Sun</i> , 19 January 1996
Butcher, S.	‘Woman convicted on phone stalking count’	<i>The Age</i> , 28 January 1996
Walker, J.	‘Puppy dog may force change on stalking law’	<i>The Australian</i> , 1 February 1996
	‘Forced to live in fear’	<i>The Herald Sun</i> , 3 February 1996, p 21
Loudon, B.	‘Stalker jailed in historic sentence’	<i>The Herald Sun</i> , 6 March 1996, p 33
Sharp & Totaro	‘Domestic violence reforms on way’	<i>The Sydney Morning Herald</i> , 23 March 1996, p 3
Clifton, B.	‘How sex offenders stalk prey’	<i>The Daily Telegraph Mirror</i> , 27 April 1996, p 16
Ogg, M.	‘Officers claims persecution by bosses’	<i>The Daily Telegraph Mirror</i> , 30 April 1996, p 15
	‘Stalker’s obsession led to death threat, court told’	<i>The Sunday Telegraph</i> , 2 June 1996, p 11
Williams, G.	‘Insert’	<i>The Sydney Morning Herald</i> , 3 June 1996, p 19
Wright, S.	‘Diana’s stalking misery’	<i>The Daily Telegraph Mirror</i> , 17 June 1996, p 23
Johnston, P.	‘Would a law like this have put Dante in the dock for harassment?’	<i>The Times</i> , 19 October 1996, p 4
Reuter	‘News in Brief’	<i>The Sydney Morning Herald</i> , 19 October 1996, p18
Ackroyd, R.	‘Five years for stalkers’	<i>The International Express</i> , 23 October 1996
Harvey, A.	‘Shotgun murder victim was stalked for months’	<i>The Sydney Morning Herald</i> , 25 October 1996, p7
Clapperton, G.	‘Law puts pinch on Net stalker’	<i>The Guardian</i> , 5 November 1996, p 4
Curtin, J.	‘John Laws provoked me, man tells magistrate’	<i>The Sydney Morning Herald</i> , 12 November 1996, p9

Phelan, A. 'Women silent victims of violence' *The Sydney Morning Herald*, 12 December 1996, p6

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Attachment 6: Membership of Project Advisory Group

At project start:

Inez Dussuyer, Portfolio Planning (Chair)

Liz Cowey, Office of Women's Affairs

John Frigo, Victoria Police

John Lynch, Courts, Registries and Tribunals

Annette Wiltshire, Attorney-General's Legislation and Policy Branch

Kerryn Rozenbergs, Police and Strategic Development Division (Project officer)

At project end:

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Jo Shaw, Office of Women's Affairs

Ron Howland, Victoria Police

Sandra Russell, CPS Coordinating Office, Victoria Police

John Lynch, Courts, Registries and Tribunals

Joseph Shields, Magistrates' Court

Tim Wilmot, Victorian Community Council Against Violence

Michelle Fisher, Attorney-General's Legislation and Policy Branch

Chris Michell, Office of Public Prosecutions

Chris Wight, Portfolio Planning

Yvette Nash, Portfolio Planning (Project officer)

Rachel Nicolson, Portfolio Planning (Project officer)