



No. 176

# Stalking: Policing and Prosecuting Practices in three Australian Jurisdictions

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*This paper examines stalking trends as indicated by police and court data across three different jurisdictions, Victoria, South Australia and Queensland. It must be noted, however, that legislation and enforcement practices vary significantly across these jurisdictions, and therefore direct comparisons are not possible. Nevertheless, this Trends and Issues paper is a significant Australian contribution to a new field of research.*

*The issue of stalking is one that has only recently begun to receive sustained attention, and consequently the literature is relatively sparse and generally rather specialised. To date, the research investigating the characteristics of stalking behaviours, including the impact upon victims of stalking and the attributes of offenders, has been characterised by forensic investigations into the psychological profiles of stalkers, with occasional excursions into the area by sociologists, feminists and policy makers. There is, however, a dearth of literature examining criminal justice system practices relating to stalking. This paper contributes to this very new field of research by providing an overview of current police and courts data as they take account of stalking.*

Adam Graycar  
Director

## Current Literature

**S**talking has been defined in a variety of different ways but in essence it encompasses a pattern of repeated, frequently intrusive behaviours which intimidate and cause fear in recipients. One of the most important contributions of research to date, is the categorisation of offenders.

The categorisation of offenders is a means of understanding the effectiveness of policy responses to stalking. If stalkers typically suffer from mental illness, then imprisonment is unlikely to constitute a particularly useful strategy in preventing further stalking behaviour. However, if the majority of stalking derives from dysfunctional intimate relationships, then this has crucial implications for domestic violence policies. An accurate and comprehensive classification of stalkers would thus facilitate the development of "a guide to the course and duration of harassment, the risks of escalation to assaultive behaviours, and, above all, the most effective strategies for ending the stalking" (Mullen, Pathé and Purcell, 1999 p. 1245). Typologies can be based upon: the characteristics of the victim (celebrities/strangers, see Holmes 1993); the relationship between the stalker and the victim (workplace acquaintance, electronic acquaintance, ex partner, see Emerson et al. 1998); the motivations of the stalker (revengeful, love, rejected, see Mullen et al. 1999); and the psychological characteristics of the stalkers (erotomantic, simple obsessional, see Meloy 1998).

Classificatory schemes are not always clear cut, with many researchers using a combination of these variables in their

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**Table 1: Selected Stalking Typologies**

AUTHORS	CLASSIFICATION
Zona, Sharma and Lane (1993)	<ul style="list-style-type: none"> <li>▪ Erotomantic</li> <li>▪ Love obsessional</li> <li>▪ Simple obsessional</li> </ul>
Harmon, Rosner and Owens (1995)	<ul style="list-style-type: none"> <li>▪ Affectionate/amorous</li> <li>▪ Persecutory/angry</li> </ul>
Geberth (1996)	<ul style="list-style-type: none"> <li>▪ Psychopathic</li> <li>▪ Psychotic</li> </ul>
Roberts and Dziegielewski (1996)	<ul style="list-style-type: none"> <li>▪ Domestic violence</li> <li>▪ Erotomania/delusional</li> <li>▪ Nuisance</li> </ul>
Wright, Burgess, Burgess, Laszlo, McCrary and Douglas (1996)	<ul style="list-style-type: none"> <li>▪ Non-domestic (organised or delusional)</li> <li>▪ Domestic</li> </ul>
De Becker ( <i>in</i> Orion) 1997	<ul style="list-style-type: none"> <li>▪ Attachment seeking</li> <li>▪ Identity seeking</li> <li>▪ Rejection based</li> <li>▪ Delusionally based</li> </ul>
Kienlen, Birmingham, Solberg, O'Regan and Meloy (1997)	<ul style="list-style-type: none"> <li>▪ Psychotic</li> <li>▪ Non-Psychotic</li> </ul>
National Institute of Justice (1998)	<ul style="list-style-type: none"> <li>▪ Intimate or former intimate</li> <li>▪ Acquaintance</li> <li>▪ Stranger</li> </ul>
Emerson, Ferris and Brooks Gardner (1998)	<ul style="list-style-type: none"> <li>▪ Unacquainted</li> <li>▪ Pseudo acquainted</li> <li>▪ Semi-acquainted</li> <li>▪ Intimately acquainted</li> </ul>
Mullen, Pathé, Purcell and Stuart (1999)	<ul style="list-style-type: none"> <li>▪ Rejected</li> <li>▪ Intimacy seeking</li> <li>▪ Incompetent</li> <li>▪ Resentful</li> <li>▪ Predatory</li> </ul>
Budd, Mattinson and Myhill (2000)	<ul style="list-style-type: none"> <li>▪ Female victim-intimate relationship with offender</li> <li>▪ Female victim-non-intimate relationship with offender</li> <li>▪ Male victim-intimate relationship with offender</li> <li>▪ Male victim-intimate relationship with offender</li> </ul>

typologies (see Table 1). For example, Zona et al.'s (1998) research, which is predominantly concerned with psychiatric classification, divides two of these classifications, (simple obsessional and love obsessional) on the basis of the relationship between the offender and victim. Similarly, Mullen et al. (2000), Harmon et al. (1998) and Wright et al. (1996) utilise a mixture of motivations and psychiatric characteristics in the development of their typologies.

Specific examples of categorisations of stalking include Harmon, Rosner and Owens (1995) who developed a classification scheme for the offenders along two axes: "one relating to the nature of the attachment between the defendant and the object of their attentions, and another relating to the nature, if any of the prior interaction between them" (Harmon et al. 1995, p. 189).

Alternatively, Mullen et al. (1999) developed their typology around the motivations of stalkers. They identified five specific "types" of stalkers, these being:

- the "rejected"
- the "intimacy seeking"
- the "incompetent"
- the "resentful", and
- the "predatory".

Kienlan, Birmingham, Solberg, O'Regan and Meloy (1997) constructed a simpler typology that focused specifically on comparing psychotic vs non-psychotic stalkers. Wright et al. (1996) also utilised a simple definitional typology of non-domestic (where the stalker has no interpersonal relationship with the victim) and domestic (where the stalker is a former boy/girlfriend, family or household member).

It should be noted, however, that the classifications of offenders have not been exclusively confined to psychiatric research.

Those not specifically deriving from a psychiatric orientation tend to focus upon the relationship between the victim and the stalker as the most useful variable in distinguishing between types of stalking. Examples of this approach include the very simple typology utilised by the National Institute of Justice, which simply uses three categories of "intimate or former intimate stalking", "acquaintance stalking" and "stranger stalking" (National Institute of Justice 1998, p. 2). The Home Office has used a similar categorisation process (Budd, Mattinson and Myhill 2000), but with four categories organised around the sex of the victim, and their relationship to the offender (see Table 1). Given these different categorisations of stalking behaviours, how does current legislation cover this offence?

## Legislation

Legislation covering stalking was introduced in Australia in the mid 1990s, with Queensland being the first state to introduce stalking legislation in 1993. There are a variety of critical factors that need to be understood in terms of understanding stalking legislation. Most importantly, there is the simple difficulty involved in legislating against stalking as a criminal offence. Given that stalking is a crime in which often "no physical elements are present, only mental elements" this means that criminal sanctions can be imposed upon actions and behaviours which "on the surface are innocuous" (Swanwick 1996, p. 26). Within the Australian context the primary criticisms directed towards stalking legislation have been those of "overbreadth", the differences between objective and subjective tests of intent and what should constitute a "course of conduct" (Goode 1995; Kift 1998; Swanwick 1996).

In terms of the three states being examined, there are important differences in the

**Table 2: Legislation —Victoria, Queensland and South Australia**

	SECTION	YEAR INTRODUCED	STALKING DEFINED AS	CRITERIA	PENALTY	EXCEPTIONS
VIC	Crimes Act 1958 s21A	1995	Engaging in a course of conduct with the intention to cause physical or mental harm, apprehension or fear	Offender must intend to cause apprehension, fear or physical or mental harm (or ought to have understood the result of their actions) and the conduct has the result intended by the offender	Up to ten years	It is not an offence if behaviour is engaged in when performing official duties relating to enforcing the law, the administration of an Act, the execution of a warrant or the protection of public revenue
QLD	Criminal Code Act 1899 s359A	1993	Conduct intentionally directed at a person and engaged in on more than one occasion, or on one occasion if the conduct is protracted	Behaviour would <i>reasonably</i> cause detriment, apprehension or fear of violence	Up to five years; unless behaviour also involves possession of an offensive weapon or contravenes a court order – then up to seven years	Industrial, political or public disputes undertaken in the public interest and reasonable conduct engaged in for lawful purposes
SA	Criminal Law Consolidation Act 1935 s19AA	1994	Acts engaged in on at least two separate occasions, which could be reasonably expected to arouse the other person's <i>serious</i> apprehension or fear	Offender must intend to cause <i>serious</i> physical or mental harm or <i>serious</i> apprehension or fear	Up to three years; unless behaviour also involves possession of an offensive weapon or contravenes a court order – then up to five years	A person acquitted or charged of an offence other than stalking – may not be convicted of stalking if the charge arises out of the same set of circumstances

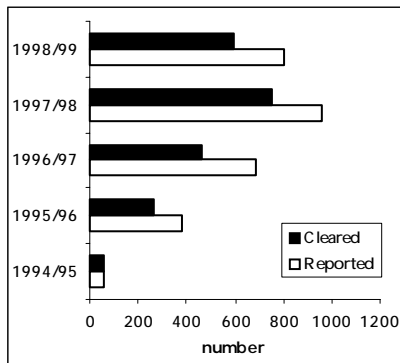
**Table 3: Elements of Stalking Courses of Conduct**

STATE	ELEMENTS OF OFFENCE
VIC	<ul style="list-style-type: none"> <li>following the victim or any other person;</li> <li>telephoning, sending electronic messages to, or otherwise contacting, the victim or any other person;</li> <li>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;</li> <li>interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);</li> <li>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;</li> <li>keeping the victim or any other person under surveillance;</li> <li>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.</li> </ul>
QLD	<ul style="list-style-type: none"> <li>following, loitering near, watching or approaching another person;</li> <li>contacting a person in any way, including telephone, mail, fax, email or through the use of any technology;</li> <li>loitering near, watching, approaching or entering a place where another person lives, works or visits;</li> <li>interfering with property in the possession of another person;</li> <li>leaving offensive material where it will be found by, given to or brought to the attention of, another person;</li> <li>giving offensive material to another person, directly or indirectly;</li> <li>an act of harassment, intimidation or threat against another person;</li> <li>an act of violence, or a threat of violence against anyone or their property;</li> </ul>
SA	<ul style="list-style-type: none"> <li>follows the other person; or</li> <li>loiters outside the place of residence of the other person or some other place frequented by the other person; or</li> <li>enters or interferes with property in the possession of the other person; or</li> <li>gives offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or</li> <li>keeps the other person under surveillance;</li> <li>or acts in any other way that could be reasonably expected to arouse the other person's apprehension or fear</li> </ul>

legislation, predominantly in relation to intent (see Table 2). In many ways South Australia can be argued to have the most stringent legislation, incorporating the criterion of the offender having to intend serious apprehension or fear. Victoria is similar in its intent requirements, although it does not include the seriousness element. In Queensland, however, following a new insertion to the legislation in 1999, there is only the need to prove that the behaviour would reasonably cause the stalked person apprehension or fear. In terms of the actual course of conduct that constitutes stalking (see Table 3), all three states are reasonably similar, with stalking behaviours including following and loitering, giving offensive material and interfering with property. The only significant difference is that South Australia requires that the acts be engaged in on at least two occasions.

There are a variety of aspects to the differing jurisdictions' legislation which are worthy of discussion (see Ogilvie 2000). However, for the purposes of this paper it is sufficient to note that these differing elements of what constitutes stalking will obviously impact upon the

**Figure 1: Victoria - Stalking Offences Reported and Cleared**



**Source:** Statistical Services, Victorian Police, unpublished statistics

**Note:** The scale is different in each of the above three graphs.

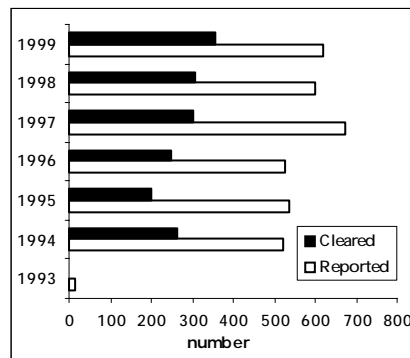
manner in which policing and court practices are carried out across the states.

### Policing Trends

Before examining the numbers of stalking incidents reported to police and recorded by the courts, it is important to clarify the difficulties entailed in comparing inter-jurisdictional data. It is crucial to note that the following data is not being presented as a comparative analysis of the three different states. Given the number of ways in which different jurisdictions count various offences, there is no methodologically sound manner in which different data can be compared (see Ogilvie 2000).

The number of stalking cases reported to police is intrinsically linked to victim responses to the crime. Police statistics are not necessarily representative of the "real" extent of criminality, because victims do not always report crimes. In relation to stalking, the research data indicate that responses from victims to stalking range from ignoring the pursuer, to obtaining restraining orders against them. For example, in Fremouw et al.'s (1997) research, the coping strategies employed by victims altered according to the sex of the victim, but none of the top five responses included contacting the police. Instead, the females were more likely to ignore or hang up on unwanted phone calls while the males were more likely to

**Figure 2: Queensland - Stalking Offences Reported and Cleared**



**Source:** Statistical Services, Queensland Police, unpublished statistics

confront their stalker (Fremouw et al. 1997).

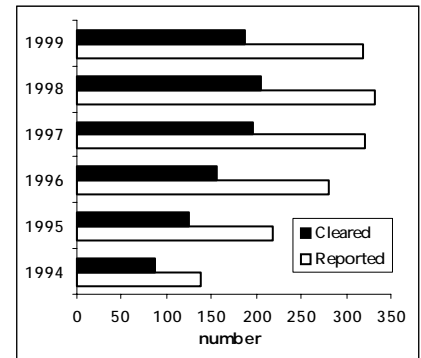
In general, however, it would appear that a reasonable percentage of victims report stalking to the police. The National Violence against Women survey recorded that 55 per cent of female victims and 48 per cent of male victims reported stalking to police (National Institute of Justice 1998, p.15). The Women's Safety Survey recorded that 58 per cent of women who had been stalked by a male in the last 12 months, reported the incidents to police, followed by 57 per cent having reported the behaviour if they experienced stalking at some time during their lifetime (Australian Bureau of Statistics 1996, p. 68). Similarly, Pathé and Mullen report that 69 per cent of their respondents referred the matter to the police (1997, p. 14). What has not been examined previously is the number of cases that are reported to police, and the proportion of those reported that are eventually cleared.

### Stalking Offences Reported and Cleared

Figures 1 to 3 show the number of stalking incidents reported and the clearance rate for Victoria, Queensland and South Australia.

Victoria has the highest number of stalking incidents reported, peaking in 1997/98 at 959 and then dropping slightly to 805 in 1998/99 (see Figure 1). In

**Figure 3: South Australia - Stalking Offences Reported and Cleared**



**Source:** Office of Crime Statistics, South Australia, unpublished statistics

1998/99 Victoria had a clearance rate of 74 per cent.

This is followed by Queensland, which had a peak reporting number in 1997 at 674 (see Figure 2). In 1999, the Queensland police recorded 620 cases of reported stalking. The clearance rate for the same year however was lower than Victoria, at 57 per cent in 1999.

South Australia has the third highest number of stalking cases reported, peaking in 1998 with 333 cases, and then dropping slightly to 318 in 1999 (see Figure 3). In 1999, South Australia's clearance rate was similar to Queensland's, at 59 per cent.

It should be noted here that being cleared does not necessarily indicate that charges are being prosecuted. Charges may be dismissed, withdrawn or simply not proceeded with due to lack of evidence. However, related research has shown that of those cleared, relatively few are cleared as a result of being dismissed (Ogilvie 2000). The number of these offences recorded by the police which are processed by the courts is the next issue.

### Courts Data

There is very little research focussing upon court practices in relation to stalking. One exception is Keenahan and Barlow (1997) who note that the number of cases dismissed or against which no action was taken far outweighs the number of convictions.



It must be noted, however, that just as police data cannot readily be compared across jurisdictions, so, too, court data cannot be readily compared across jurisdictions. For this reason the counting strategy adopted here is to use individual units (that is, each convicted charge is counted just once) wherever possible.

Turning to the three jurisdictions, Figures 4, 5 and 6 show the numbers of stalking offences reported and cleared for Victoria, Queensland and South Australia.

It can be seen that in Victoria, cases are more likely to be proven than dismissed, and in 1998/99, 172 stalking charges were proven in relation to 98 which were dismissed (see Figure 4).

In South Australia, however, the pattern changes with the majority of cases being dismissed. This was most noticeable in 1997, where of the 18 cases that reached court, 15 were dismissed, and similarly in 1998 of the six cases that reached court, five were dismissed (see Figure 5).

A similar pattern occurs in Queensland (see Figure 6). Indeed, in 1998/99 of the 62 charges that were either proven or dismissed in the lower court, 50 were dismissed. This trend of a higher number of charges being dismissed than proven was evident across all of the years

with the exception of 1997/98, where the numbers were exactly equal, with 28 charges being dismissed and proven respectively. It is important to note at this point that Queensland is one of the few states that recorded whether charges were committed to a higher court for either trial or sentencing. Between 1994/95 and 1998/99, nine cases were committed to a higher court for sentencing, and 259 were committed to a higher court for trial (Ogilvie 2000).

### Conclusion

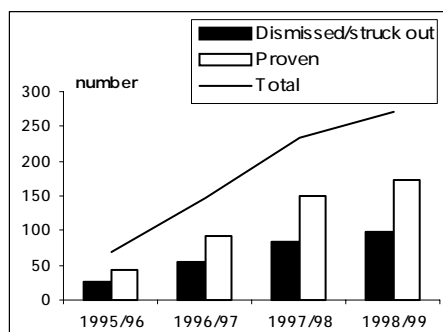
It would appear that in all three states examined there is a relatively high level of reporting of stalking to the police. There are substantial differences, however, in the number of charges ultimately cleared, and the number resulting in the imposition of some sentence. What does this indicate with respect to current stalking legislation, and police and court practices?

No "hard and fast" conclusions can be drawn from these indicative findings, the data is preliminary, the samples are small and the issues of different police and court practices are complex. While the research is at an early stage, there are nonetheless a range of policy interventions that might usefully

be considered. Specific considerations that need to be taken into account with respect to both criminal justice system interventions and future research priorities include:

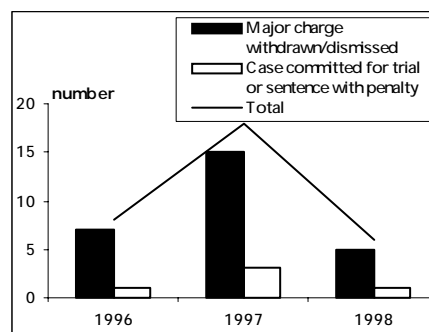
- *Addressing weaknesses in the legislation:* Issues relating to intent, overbreadth and credible threat need to be considered in relation to the possibilities for prosecuting different stalking behaviours. Strategies such as utilising a variety of different sentencing levels could be considered (as has occurred in Western Australia) in order to better address the range of stalking behaviours that may occur.
- *Provision of training for police units:* Briefing sessions could be provided to police units, detailing the criteria involved in stalking legislation, the range of possible manifestations of stalking, and the potential lethality of stalking when it occurs as an aspect of domestic violence (McFarlane et al. 1999).
- *The necessity of sustained intervention:* Even in cases where an intervention has been successfully implemented, the stalking behaviours may "flare up" following the cessation of intervention strategies.

**Figure 4: Victoria, Stalking Offences Dismissed or Proven**



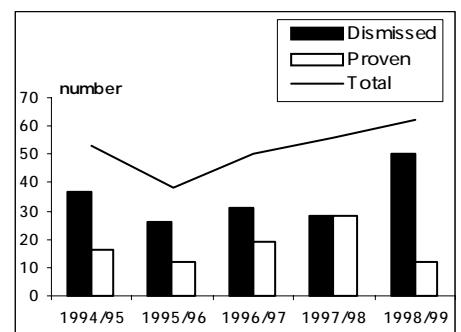
**Source:** Magistrates Court Statistics, Victoria: unpublished statistics  
*Unit =* Defendants with one or more Stalking Charges (magistrates' court)

**Figure 5: South Australia, Stalking Offences Dismissed or Proven**



**Source:** Magistrates Courts of South Australia, Office of Crime Statistics  
*Unit =* Outcome by major offence charged (magistrates' court)

**Figure 6: Queensland, Stalking Offences Dismissed or Proven**



**Source:** JAG Courts Data Base (Queensland), unpublished statistics  
*Unit =* Outcome by most serious offence charged (lower court)

**Note:** The scale is different in each of the above three graphs.

Hence policies need to be focussed upon long-term intervention strategies (Zona, Lane and Sharma 1993).

- **Devising effective research agendas:** In order to examine more thoroughly what is causing the apparent discrepancies across jurisdictions, it is necessary to conduct far more detailed analyses of the decision making processes of the police and magistrates in prosecuting stalkers, the impact of the different jurisdictional legislation, and the community attitudes held across states with respect to what constitutes stalking.
- **Investigating community awareness:** Community attitudes towards stalking need to be investigated. For example, research investigating gender differences in perceptions of seriousness of stalking suggest that males tend to view stalking as less serious than do females. This has implications both in terms of a) jurors and magistrates' decision-making processes, and b) the potential for males to under-estimate possibilities for victimisation (Hills and Taplin 1997, p. 145).

Most importantly, it is necessary for stalking to be recognised by police, magistrates and the general public as a crime which impinges upon the lives of ordinary people in ways which are threatening, invasive and potentially dangerous. It is for these reasons that future research and policy guidelines need to be developed to better understand, and thus better control what is an inherently difficult criminal offence to define, prosecute, and contain.

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