

Submission to the Victorian Law Reform Commission

Stalking: Consultation Paper

August 2021

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Introduction

I welcome the opportunity to make a submission to the Victorian Law Reform Commission's Consultation Paper: *Stalking*.

Tragically in Victoria we have witnessed the fatal consequences of stalking. While not every case leads to homicide, stalking shatters victims' quality of life, hindering their ability to not only thrive, but to participate in basic activities—working, studying, shopping, socialising and connecting with their community.

Stalking leaves victims feeling as though there is no respite or relief. Because stalking is a crime of persistence, it erodes victims' sense of safety. It causes retreat from friends, family, and wider support networks. It is this very isolation that may cause victims not to report stalking or seek the help they need.

Although anyone can experience stalking, stalking is overwhelmingly perpetrated by males against female victims. Like family violence and sexual assault, justice and service system interventions that address stalking must account for the gendered nature of this crime.

Like other forms of gendered violence, stalking can also be a subtle crime of control. Techniques used to exert power and control are designed to terrorise victims in a way unique to them. Many victims experience feelings of confusion, powerlessness, and loss of control.

Sadly, I have heard from victims of stalking that they feel victimised twice. Firstly, by the stalking and then by the justice system that fails to adequately protect them.

Reducing the risks of secondary victimisation—that is, the harms caused to victims by engaging with the justice system—is everyone's responsibility including police, courts, prosecutors, and victim support services. It is the reason the *Victims' Charter Act 2006* (Vic) was introduced, and it guides the work I do advocating for greater recognition and respect for victims throughout the justice and victims' services system.

Like many criminal justice system reforms, better responses to stalking starts with cultural change. Victims need consistent responses from the police, justice and the victims' services system. When victims say they are concerned for their safety, we must listen. We must respond with the most appropriate criminal and civil interventions and wrap supports—practical and therapeutic—around them quickly.

Improving the justice and victims' services system response to stalking requires a system-wide approach. It is only when a whole-of-system view is taken that the real barriers to victim safety and perpetrator accountability can be meaningfully addressed.

That is why this submission addresses a range of justice and service system reforms required. Some of these reforms relate to the broader operation of the justice and victims' services system. Other reforms address victims of stalking specifically.

I urge the Victorian Government to consider investing much-needed funds into Victoria's justice and victims' service system to deliver a strengthened response to stalking victims—and all victims of crime—in Victoria.

Fiona McCormack
Victims of Crime Commissioner

1. About the Victims of Crime Commissioner and the Victims' Charter

1.1. The Victims of Crime Commissioner

The Victims of Crime Commissioner (the Commissioner) is an independent point of contact for victims who have experienced difficulties or confusion when dealing with the criminal justice system and government and non-government victims' services.

The Commissioner has a role in holding justice agencies and victims' services to account for their treatment of victims of crime.

Under the *Victims of Crime Commissioner Act 2015* (Vic) (VOCC Act), the Commissioner is empowered to advocate for the respect, recognition and inclusion of victims of crime in the justice system by:

- investigating complaints made by victims about their treatment by justice agencies and victims' services¹
- monitoring the compliance of justice agencies and victims' services with the *Victims' Charter Act 2006* (Vic) (Victims' Charter)²
- conducting inquiries into systemic issues that affect victims of crime³
- representing the concerns of victims to government and providing advice to the Attorney-General, the Minister for Victim Support and government departments and agencies about improvements to the justice system to meet the needs of victims of crime.⁴

A key part of the Commissioner's role is monitoring the compliance of justice agencies and victims' services with the Victims' Charter.

¹ *Victims of Crime Commissioner Act 2015* (Vic) s25A.

² *Victims of Crime Commissioner Act 2015* (Vic) s28(1A).

³ *Victims of Crime Commissioner Act 2015* (Vic) s13(1)(b-c), 23(1).

⁴ *Victims of Crime Commissioner Act 2015* (Vic) s13(1)(a),(d).

1.2. The Victims' Charter

1.2.1. The Victims' Charter obligates better treatment of victims

The Victims' Charter sets cultural and behavioural obligations for justice and victims' services agencies when they interact with victims of crime. Victims are afforded special treatment by these agencies and are allowed to participate in certain parts of the justice process.

The Victims' Charter applies to a diverse and large number of agencies, including Victoria Police, the Office of Public Prosecutions, community legal centres and government-funded sexual assault, family violence and specialist victims' support services.

Specifically, these agencies are required to:

- treat victims with courtesy, respect and dignity
- have regard to victims who experience disadvantage
- provide information about services, entitlements and assistance
- communicate with and respond to victims in a way that recognises their preferences and needs
- protect victims' personal information
- respond to complaints from victims who believe an agency has breached the Victims' Charter.

Some agencies, such as prosecuting and investigatory agencies, have additional information provision and consultation obligations under the Victims' Charter.

Prescribed agencies' compliance with the Victims' Charter directly impacts how victims of crime will experience both the justice and service system.

1.2.2. The Victims of Crime Commissioner oversees the operation of the Victims' Charter

The Commissioner has been provided powers to publicly report agency compliance with the Victims' Charter and to consider complaints from victims who believe an agency has breached the Victims' Charter.

While the approach to monitoring agency compliance will be developed and implemented over a number of years, it aims to achieve the following goals:

- show how the justice and victim support systems are and are not working for victims

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- identify compliance challenges with the Victim's Charter and where the experience of victims could be improved
 - support agencies to improve compliance with the Victims' Charter by identifying and sharing good practice
 - enable victims to better understand their right to complain about their treatment and seek appropriate remedies
 - prioritise victims who face systemic barriers to accessing justice and victim support services

It is vital the Victims' Charter results in the implementation of victim-centric practice within justice and victim service system agencies as well as increased confidence for victims to know their interests are protected in legislation.

1.2.3. Regard to the Victims' Charter in policy development

In addition to justice and victim service agencies, the Victims' Charter also applies more generally to policy development and criminal justice administration in Victoria. A person or body responsible for the development of criminal law policy, the development of victims' services policy, the administration of criminal justice or the administration of victims' services must, where relevant, have regard to Victims' Charter principles.⁵

2. About this submission

2.1. Scope and data used in this submission

As outlined above, the Victims of Crime Commissioner can receive complaints about victims' treatment under the Victims' Charter.

This submission draws on information received through the Commissioner's complaints function relating to stalking. Due to the scope of the Commissioner's legislative complaints function, not all contact with the Victims of Crime Commissioner's Office meets the legislative threshold of a 'complaint' for the purposes of the Victims' Charter. However, this submission draws on high-level themes arising from contact with the Victims of Crime Commissioner's Office about stalking between November 2019 and May 2021.

⁵ *Victims' Charter Act 2006* (Vic) s18 (2).

As noted in the Victorian Law Reform Commission's (VLRC) Consultation Paper: *Stalking* (Consultation Paper), stalking in the family violence context (including by partners and former partners) falls within the remit of the specialist family violence system and the *Family Violence Protection Act 2008* (Vic).

Like the Consultation Paper, this submission primarily relates to non-family violence stalking. However, this submission includes insights from victims who have contacted the Victims of Crime Commissioner's Office and identified issues relating to stalking, regardless of the context in which the stalking occurred.

It is the Commissioner's experience that not all victims delineate between family violence and non-family violence stalking (for example, some victims may not identify stalking by an ex-partner as 'family violence' stalking). Depending on the nature of the contact with the Victims of Crime Commissioner's Office and consistent with its victim-led and trauma-informed approach, specific details about the context in which a crime has occurred are not always available or sought by the Office.

Additionally, some victims have described to the Commissioner being stalked by their ex-partner and associates of their ex-partner, circumstances which would give rise to possible legal interventions under both the *Family Violence Protection Act 2008* (Vic) and *Personal Safety Intervention Order Act* (2010). This demonstrates the complexity of victims' experiences, and the difficulty faced by victims in having to compartmentalise their experiences within a rigid justice system.

Accordingly, victim experiences of stalking raised with the Victims of Crime Commissioner's Office are discussed more broadly.

2.2. Literature on stalking

As noted in the Consultation Paper, research relating to people who have experienced stalking specifically in Victoria is limited. There are also research gaps relating to certain cohorts of people experience stalking, such as people who identify as LGBTIQ+.⁶

Like the Consultation Paper, this submission draws on the themes and findings arising in a range of national and international literature to identify trends and issues.⁷ While the findings of these studies may not specifically relate to Victoria, and some relate specifically to intimate-partner stalking, the trends and issues

⁶ Lisa Langenderfer-Magruder et al, 'Stalking Victimization in LGBTQ Adults: A Brief Report' (2020) 35(5–6) *Journal of Interpersonal Violence* 1442, 1444.

⁷ Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) 13.

discussed may assist in identifying the most appropriate responses to non-family violence stalking in Victoria and therefore, are drawn upon in this submission.

2.3. Terminology

The way in which those harmed by crime identify themselves, and their experience of crime, is deeply personal. People who experience crime might identify as one or more of the following:

- victim
- survivor
- victim-survivor
- complainant or witness

Some people may not identify with any of these terms.

In this submission, the term 'victim' is predominantly used because it aligns with the Victims of Crime Commissioner's legislative functions and powers under the VOCC Act and the definition of victim in the Victims' Charter. However, it is acknowledged that these terms may not represent all experiences.

The VLRC refer to people who have committed or engaged in stalking as 'a person who has committed' or 'been convicted of' or 'engaged in stalking'.⁸ In this submission, people who stalk (or have allegedly stalked) will primarily be referred to as the 'perpetrator'. This is in acknowledgement of the harm caused to victims, the need to place responsibility on those who use violence and because such terminology is often used in state and federal policy in relation to gendered violence.⁹ The Commissioner notes however, that not all stalking behaviours result in criminal convictions, nor do they necessarily meet the standards of proof required for a criminal conviction.

Where literature refers to perpetrators as 'stalkers', this may be adopted for consistency and clarity.

2.4. Gendered problem

As noted in the Consultation Paper, stalking is a gendered crime.¹⁰ The Consultation Paper, and this submission, note that women are more likely to

⁸ Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) iv.

⁹ Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 1, 10. As discussed at 2.4, women are more likely to experience stalking than men.

¹⁰ Victorian Law Reform Commission (n 7) 13.

experience stalking than men.¹¹ Research suggests stalking is overwhelmingly perpetrated by males against female victims.¹² Ex-intimate partner stalkers are the most prevalent group of stalkers.¹³

The most recent Australian Bureau of Statistics' *Personal Safety Survey* (2016) showed that:

- 1 in 6 (17%, or 1.6 million) women had experienced stalking since the age of 15
- 1 in 15 (6.5%, or 587,000) men had experienced stalking since the age of 15.¹⁴

There is also a strong correlation between stalking and other types of physical and sexual assault having occurred within a relationship.¹⁵

3. Victim impact and experiences of stalking

3.1. Harms caused by stalking

The dynamics of stalking—its frequency and intensity—make it difficult for victims to live free from fear.¹⁶ Psychologist and stalking expert Laura Richards describes stalking as 'stealing lives' and, at its most extreme, 'taking lives'.¹⁷

Despite stalking being a criminal offence in Victoria—and there being a range of criminal and civil law interventions available to help victims and hold perpetrators to account—as the Consultation Paper highlights, stalking often entraps victims in a cycle of abuse that is difficult to identify, prove, and stop.¹⁸

Similar to the dynamics of family violence, where perpetrators exercise power and control over a victim,¹⁹ stalking may not involve physical violence. In fact, as noted by Thomas et al, considering victim impact within traditional notions of harm (i.e.

¹¹ Australia Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia: Continuing the National Story 2019* 162, 65.

¹² Eleanor White, Nicholas Longpré and Ewa B Stefanska, 'Stalking Behaviors Presented by Ex-Intimate Stalkers: A Victim's Perspective' [2020] *Journal of Interpersonal Violence* 11; Anna Costanza Baldry et al, 'Victim's Perception of Quality of Help and Support by the Police Issuing Warnings Orders in Ex Intimate Partner Stalking Cases in Italy' (2016) 10(4) *Policing* 432, 432.

¹³ White, Longpré and Stefanska (n 12) 11; Costanza Baldry et al (n 12) 432.

¹⁴ Australia Institute of Health and Welfare (n 11) 65.

¹⁵ White, Longpré and Stefanska (n 12) 4.

¹⁶ Costanza Baldry et al (n 12) 440.

¹⁷ Laura Richards, *Stalking and Harassment: The Victim's Voice* (2011) 24, 1.

¹⁸ Victorian Law Reform Commission (n 7) 4.

¹⁹ Costanza Baldry et al (n 12) 440.

physical violence) misrepresents the harms caused by psychological distress, impaired interpersonal and vocational functioning and enforced changes to lifestyle as a result of stalking.²⁰

Economic and social losses are frequently experienced by stalking victims because of lifestyle changes and safety plans (formal and informal) implemented by victims to help them stay safe. In this way, Stuart et al have highlighted the unique nature of victim impact in stalking cases: ‘just as the modus operandi of stalking behaviour is heterogeneous, the degree of how much being a target of stalking behaviour affects the victim, is equally a very individualized experience’.²¹

Although the impact on victims is broad and varied, impacts can be summarised as:

- **Lifestyle:** including victims not being able to leave the house alone, shopping outside their local area, changing their route home from work or school, installing closed-circuit television (CCTV), moving house, changing jobs, needing to relocate and not spending time in their community (e.g. walking their dog), having to limit use of social media and other online tools.²²
- **Psychological and physical wellbeing:** anxiety, low mood, depression, chronic sleep disturbance, excessive tiredness, headaches, suicidal ideation.²³
- **Economic:** terminating employment, losing their job because of poor performance or due to the stalker’s persistent interruptions or infiltration or work, having to relocate due to the stalking.²⁴

Recent research has highlighted the extent to which stalking and other types of technology-facilitated abuse cause isolation because victims often restrict their use of technology to avoid harassment and stalking. Flynn et al found that this meant victims may lose contact with their support networks as well as isolating them from support services and even emergency services.²⁵

²⁰ Stuart DM Thomas et al, ‘Harm Associated With Stalking Victimization’ (2008) 42(9) *Australian & New Zealand Journal of Psychiatry* 800, 801.

²¹ Ibid.

²² Holly Taylor-Dunn, Erica Bowen and Elizabeth A Gilchrist, ‘Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims’ Experiences’ (2018) *Journal of Interpersonal Violence*, 10.

²³ University of the West of Scotland, *Centre for Action Against Stalking: International Centre Against Harmful & Abusive Behaviour* (23 March 2021) <<https://www.uws.ac.uk/research/research-institutes-centres-groups/centre-for-action-against-stalking>>; Tk Logan, ‘Examining Stalking Experiences and Outcomes for Men and Women Stalked by (Ex)Partners and Non-Partners’ (2020) 35(7) *Journal of Family Violence* 729, 730.

²⁴ University of the West of Scotland, *Centre for Action Against Stalking: International Centre Against Harmful & Abusive Behaviour* (23 March 2021) <<https://www.uws.ac.uk/research/research-institutes-centres-groups/centre-for-action-against-stalking>>

²⁵ Asher Flynn, Anastasia Powell and Sophie Hinds, *Technology-Facilitated Abuse: A Survey of Support Services Stakeholders* (ANROWS) 60, 24.

Given the experience and impact of stalking varies,²⁶ it is critical that professionals within the justice and victim services' system understand the impact of trauma, including the cumulative effect of stalking, and the different ways trauma may manifest in victims. This is discussed further below in relation to the need for a trauma-informed justice system.

3.2. Victim experiences and perspectives on stalking

White et al note that a 'victim's account [of stalking] provides a perspective that is not available through official records or from interviewing the perpetrators.'²⁷ Notably, victims' perspectives on stalking has been under researched.²⁸

Taylor-Dunn et al conducted a study in the United Kingdom in 2018 examining victim experiences of stalking and assessed recent international literature in relation to victims' experiences. Their study found that victims encounter significant barriers when reporting their concerns to police.²⁹ Taylor-Dunn et al also concluded that there is 'consensus within the existing literature that the criminal justice response to victims of harassment and stalking requires improvement.'³⁰

Taylor-Dunn et al's research found that victims may encounter insensitive and victim-blaming responses when interacting with the justice system, as demonstrated by the following insights from participants in their study:³¹

I don't think anybody has actually acknowledged the harm it has caused me and is causing me to date, because it's not physical harm . . . It was said to me a few times, y'know "we do have, obviously, more pressing crimes and things going on, you're not in immediate danger.

I've been very much made to feel that I'm a bit of an inconvenience, and that I am just wasting their time.

After my experience I personally felt like I should never have opened my mouth. I don't feel I was taken seriously or my concerns and this resulted in me being attacked even after a restraining order was put into place. Even after contacting the police about being attacked once again I felt as though I wasn't taken seriously.

I've had several police officers in the house tell me that I'm paranoid and that I'm going crazy, and, y'know, I just need to get on with my life, and stop worrying about all of this, and stop being frightened to go out the door, and just get on with life. And I'm like "It's not that simple".

²⁶ Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story* (Report, 2019) 56.

²⁷ White, Longpré and Stefanska (n 12) 6.

²⁸ Ibid 5.

²⁹ Taylor-Dunn, Bowen and Gilchrist (n22).

³⁰ Ibid 4.

³¹ Ibid 20.

I actually got made to feel a drama queen about it all. And that it was my fault, and that, um, because of the family history, and that um, I was making a mega fuss, basically.

UK advocacy group Protection Against Stalking surveyed 143 victims of stalking in 2011, highlighting the victim's voice and their concerns about the justice system response to stalking:³²

They failed to act, released him without charge, despite a witness statement, accepted his sob story and being contrite and allowed him to continue with his behaviour the minute he was released, giving him more confidence that he was untouchable.

The police didn't take me seriously on any occasion that I went to them to report numerous events.

They told me to switch my phone off and ignore it. They said there that nothing can be done. I showed them dozens of texts, they were not really interested. They said nothing can be done unless he actually tries to hurt me!!

There are over 100 incidents and no action, wrong dates and information given to CPS. The IPCC upheld my complaints and I still can't get help.

Media coverage of high profile stalking cases in Victoria and Australia, some of which have resulted in homicide, also illustrate some of these same key frustrations raised by victims and deceased victims' families in relation to the justice system response (or perceived lack of response) in stalking cases.

Media coverage following the death of Celeste Manno called for tougher laws and supervision of offenders. A change.org petition calling for changes to protect victims of stalking has now reached over 32,000 signatures.³³ The petition states:

Although there are laws in place and intervention orders can be granted, it is clear that this is not sufficient and more needs to be done. Far too many women have lost their lives at the hands of perpetrators.³⁴

Ms Di McDonald, whose experiences of stalking were detailed in a two-part ABC Australian Story piece in October 2020 illustrated difficulties she faced getting meaningful action in relation to her experiences of stalking. The trajectory of Ms McDonald's case changed when a specialist family violence police officer was assigned to the case and used innovative forensic techniques to analyse evidence and connect the perpetrator to the stalking reported by Ms McDonald.

In January 2021, the ABC ran a follow up story as Ms McDonald's stalker was about to be released from prison. Ms McDonald again outlined her feelings of frustration at the perceived lack of support provided by the system:

³² Richards (n 17) 6.

³³ As at 16 July 2021. See change.org, *Introduce stringent laws for victims of stalking and violence* <<https://www.change.org/p/daniel-andrews-introduce-stringent-laws-for-victims-of-stalking-and-violence>>

³⁴ change.org, *Introduce stringent laws for victims of stalking and violence* <<https://www.change.org/p/daniel-andrews-introduce-stringent-laws-for-victims-of-stalking-and-violence>>

I was told that I should leave my home if I feel like I am in danger, that I needed to go to Safe Steps [Family Violence Response Centre] or a women's refuge. Same old BS. I asked if I call triple O that someone will actually attend if Max is here. He told me to go into the station and make a report if Max turns up and they will look into it. Nothing changes. No help from police again.³⁵

3.3. Victim experiences raised with the Victims of Crime Commissioner

3.3.1. Secondary victimisation

One of the objectives of the Victims' Charter is to help reduce the likelihood of secondary victimisation by the criminal justice system.³⁶

A number of victims who have experienced stalking and harassment contacting the Victims of Crime Commissioner's Office described secondary victimisation caused by their interaction with the justice system. Victims who experience stalking have expressed concern about:

- failure of justice agencies to treat them with courtesy, respect and dignity (section 6 of the Victims' Charter)
- failure to give victims information about support services and legal assistance (section 7 of the Victims Charter)
- issues relating to justice agencies' communication (section 7B of the Victims' Charter).

These experiences are consistent with stalking research that has found that 'victims report mixed feelings about [police] work, including, feelings of not being believed or helped, being judged, as well as lack of trust they can solve their problem.'³⁷

3.3.2. Receiving information about the case and police communication

Under the Victims' Charter, victims are entitled to be informed about the progress of an investigation into a criminal offence, any offences charged (or reason why no offence was charged) or any decision to modify charges.³⁸

Despite these information entitlements, victims consistently raise issues in Victoria about not being kept informed in relation to their case, not receiving crucial

³⁵ Cheryl Hall, 'Melbourne Woman Asks for Tracker to Discourage Stalker after Release from Prison' (8 January 2021) <<https://www.abc.net.au/news/2021-01-09/di-mcdonald-stalker-max-gardiner-release/13041912>>.

³⁶ *Victims' Charter Act 2006* (Vic) s4(1)(c)

³⁷ Costanza Baldry et al (n 12) 433.

³⁸ *Victims' Charter Act 2006* (Vic) s8-9.

information or feeling under constant pressure to chase information about their matter.³⁹ This is not limited to cases of stalking.

Research by RMIT's Centre for Innovative Justice in 2020 found that victims felt burdened by constantly trying to obtain information about their case. Victims described their experience of not receiving information about their cases as invalidating the impact of the crime on them, but also in some cases, exacerbating safety concerns. For example, without access to information about the progress of a case, they didn't know whether the offender had been apprehended and whether they were still at risk in the community.⁴⁰

As noted by the VLRC in its 2016 report *Victims of Crime in the Criminal Trial Process*, victims' experience of the justice system is tied to the quality of the information they receive.⁴¹ Victims describe information provision as 'key' and 'crucial' to their experience of navigating the criminal justice process.⁴²

According to Wedlock and Tapley, a substantial body of literature continues to demonstrate that the lack of timely and accurate information remains one of the biggest causes of victim frustration and dissatisfaction.⁴³

Consistent with broader research outlined above, and more specific stalking research,⁴⁴ the Victims of Crime Commissioner's Office has heard from victims of stalking that they have not been able to get information about the progress of a stalking matter from police, including whether a matter is being investigated or whether charges were being pursued.

The Victims of Crime Commissioner's Office has also heard about victims moving from Victoria to escape stalking and harassment, only to encounter issues reporting the matter to Victoria Police because they no longer reside in Victoria.⁴⁵

Leaving aside complexities associated with jurisdictional issues, victims' experiences as raised with the Victims of Crime Commissioner's Office suggest some victims are not adequately guided on entitlements, legal options or processes, nor are they referred to appropriate support services that might assist them to manage the impacts of stalking.

³⁹ RMIT Centre for Innovative Justice, *Improving Support for Victims of Crime: Key Practice Insights* (2020) 14.

⁴⁰ RMIT Centre for Innovative Justice, *Improving Support for Victims of Crime: Key Practice Insights* (2020) 14.

⁴¹ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 104.

⁴² Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 107.

⁴³ Elaine Wedlock and Tapley, Kacki, *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment* (Victims' Commissioner and University of Portsmouth, March 2016) 44, 13.

⁴⁴ Taylor-Dunn, Bowen and Gilchrist (n 22) 20.

⁴⁵ It is noted that the *Personal Safety Intervention Order Act 2010* (Vic) makes provision for conduct that occurs in Victoria while a person resides outside Victoria: *Personal Safety Intervention Orders Act 2010* (Vic) s35(5) and s61(5).

3.3.3. Placing the onus on victims to collect evidence

A common theme in stalking research is police telling victims there is nothing they can do.⁴⁶ Literature suggests victims' dissatisfaction with the justice system response to stalking is mostly attributable to the perceived inaction of the police, including the frequency with which victims are told that no criminal offenses have been committed.⁴⁷

Consistent with this, the Victims of Crime Commissioner's Office has heard from victims that police have told them that they need to collect video or audio evidence before a matter can proceed, and that without such evidence, there is nothing further that can be done.

Some victims who contacted the Victims of Crime Commissioner's Office described feeling like there was an onus on them to collect evidence, such as audio recordings of phone calls and installing CCTV, even where they felt this might place them at further risk.

3.3.4. Use of technology to facilitate stalking

The Victims of Crime Commissioner's Office has heard from victims that stalking and harassment often involves the use of technology.

Victims who contacted the Commissioner's Office spoke about stalking commencing with physical stalking and then progressing to online stalking and harassment. This is consistent with research that has found offline stalking can be interrelated with online stalking victimisation.⁴⁸

Victims spoke about technology further enabling the abuse and harassment, for example, perpetrators using private numbers to further intimidate and harass victims.

3.3.5. Complexity of stalking cases

Information from victims contacting the Victims of Crime Commissioner's Office demonstrates that stalking and harassment is often experienced in the context of other offences and may form part of a wider experience of victimisation.

As noted above, not all victims contacting the Victims of Crime Commissioner's Office delineate between family violence and non-family violence stalking. For example, some victims may not identify stalking by an ex-partner as 'family violence' stalking, even though ex-partners fall within the definition of 'family' under the *Family Violence Protection Act 2008* (Vic). It is also possible that if

⁴⁶ Taylor-Dunn, Bowen and Gilchrist (n 22) 20.

⁴⁷ Ibid 4, 13.

⁴⁸ Flynn, Powell and Hinds (n 25) 11.

victims are unaware of this distinction, that they are not receiving the appropriate justice system information and specialist victim support.

Additionally, some victims have described to the Commissioner being stalked by both their ex-partner and ‘associates’ of their ex-partner, circumstances which might give rise to possible legal interventions under both the *Family Violence Protection Act 2008* and *Personal Safety Intervention Order Act 2010*. This is referred to in some literature as ‘proxy’ stalking—perpetrators involving other people in the tracking or harassment of the targeted victim.⁴⁹ This demonstrates the complexity of victims’ experiences, and the difficulty faced by victims in having to compartmentalise their experiences within a rigid justice system.

The Commissioner also heard from victims about instances of possible systems abuse—that is, perpetrators using the justice system to further harass and intimidate, such as creating situations which might lead to the misidentification of a stalking victim as a perpetrator. Although this is well recognised in the family violence system, there is limited research in this area in relation to non-family violence stalking. Taylor-Dunn et al’s 2018 research found some evidence of perpetrators issuing ‘counter allegations’ of stalking against the victim, which is a form of systems abuse.⁵⁰

4. Barriers to identifying stalking and reporting stalking

There are several factors that influence whether people who experience stalking report their experiences to police. These factors include:

- systemic barriers to accessing the justice system
- victims not recognising stalking as a crime, or not thinking their experiences of stalking are important or significant enough
- misunderstandings about the risks posed by perpetrators (e.g. ‘downplaying’ the seriousness of the stalking)
- fear of retaliation from the perpetrator
- lack of trust in police based on previous reporting experience.

⁴⁹ Logan (n 23) 737.

⁵⁰ Taylor-Dunn, Bowen and Gilchrist (n 22) 21.

4.1. Systemic barriers to accessing the justice system

Some barriers to reporting crime exist regardless of crime type due to systemic barriers to accessing the justice system.

For example, victims may have a history of mistrust in the justice system, lack of accessibility to supports, and/or experience socio-economic disadvantage, discrimination and exploitation.

The Law Council of Australia's 2018 *Justice Project Final Report*—a comprehensive, national review into the state of access to justice in Australia—highlighted the barriers to justice faced by certain groups:

- People with disability face many systemic and structural barriers to accessing justice. This includes physical inaccessibility, inflexible court procedures, negative attitudes and stigma, lack of understanding of disability by those who work in the justice system and lack of critical supports at all stages of the justice system.⁵¹
- People who identify as LGBTIQ+ may be significantly less likely than other victims of crime to report harassment or violence to the police, due to historic and lived experiences of discrimination and marginalisation.⁵²
- Aboriginal and Torres Strait Islander people have experienced a long history of dispossession and marginalisation. Intergenerational trauma and experiences of systemic racism and injustice have accumulated over lifetimes impacting confidence in the justice system.⁵³
- People from culturally and linguistically diverse backgrounds, particularly recent arrivals or asylum seekers, often face cultural and linguistic challenges in engaging with the justice system. Many asylum seekers experience additional barriers due to experiences of human rights violations, persecution, conflict, forced displacement and family separation.
- Children and young people often have little knowledge of their legal rights, uncertainty about available avenues or remedies and a perception that the legal system will not assist them.⁵⁴
- Older people are a diverse demographic group with intersectional identities. The barriers are varied and are affected by a multiplicity of factors, such as an older person's stage of life, age, socio-economic circumstances, health, geographic location and cultural and linguistic background.⁵⁵ Elder

⁵¹ Law Council of Australia, *The Justice Project* (Final Report, August 2018) 20.

⁵² Law Council of Australia, *The Justice Project* (Final Report, August 2018) 22-23. See also Langenderfer-Magruder et al (n 6) 1444.

⁵³ Law Council of Australia, *The Justice Project* (Final Report, August 2018) 24-27.

⁵⁴ Law Council of Australia, *The Justice Project* (Final Report, August 2018) 31-32.

⁵⁵ Law Council of Australia, *The Justice Project* (Final Report, August 2018) 35-36.

abuse, which is often perpetrated by a family member, creates additional complexity due to a victim's relationship with the offender.

- People who are homeless are amongst the most marginalised people in society. The stigma facing homeless people, and often the circumstances that led to their homelessness, can add to a lack of trust in the police and justice system and an unwillingness to report.⁵⁶

4.2. Not recognising behaviour as a crime or serious enough to warrant intervention

General community perceptions of stalking affect whether perpetrators understand their behaviour to be problematic (and criminal) and whether victims recognise that they're experiencing stalking (and that it is criminal).⁵⁷

Community beliefs and attitudes, myths and misconceptions may downplay, excuse and normalise stalking behaviour.⁵⁸

According to the Australian Bureau of Statistics' 2016 *Personal Safety Survey*, approximately half of all victims of stalking did not perceive the most recent episode of stalking as a crime.⁵⁹ Around 48% of women (557,800) stalked by a male and 51% of women (74,200) stalked by a female considered it wrong, not a crime.⁶⁰

Victims of stalking were also asked their reasons for not contacting police. Almost half of all victims, regardless of gender (44% of women and 46% of men) felt that they could deal with it themselves, while 36% of women felt that it was not a serious enough offence.⁶¹

These issues are discussed further below in relation to the need for broader community education in relation to stalking.

4.3. Perceptions of danger / risk

Various studies have investigated the characteristics that influence people's perceptions of stalking, including their perception of risk.

⁵⁶ Law Council of Australia, *The Justice Project* (Final Report, August 2018) 35-36.

⁵⁷ Bronwyn McKeon, Troy E. McEwan & Stefan Luebbers (2015) "It's Not Really Stalking If You Know the Person": Measuring Community Attitudes That Normalize, Justify and Minimise Stalking, *Psychiatry, Psychology and Law*, 22:2, 291-306, 291.

⁵⁸ Bronwyn McKeon, Troy E. McEwan & Stefan Luebbers (2015) "It's Not Really Stalking If You Know the Person": Measuring Community Attitudes That Normalize, Justify and Minimise Stalking, *Psychiatry, Psychology and Law*, 22:2, 291-306, 291.

⁵⁹ Fewer than 1 in 3 (31%, or 364,000) women who experienced stalking by a male perceived the most recent episode as a crime at the time: Australian Bureau of Statistics, *Personal Safety, Australia 2016* (Online, 8 November 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#experience-of-stalking>>.

⁶⁰ Australia Institute of Health and Welfare (n 11) 68.

⁶¹ Australian Bureau of Statistics, *Personal Safety, Australia 2016* (Online, 8 November 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#experience-of-stalking>>.

Scott et al's study examining general community perceptions of stalking (using hypothetical scenarios) suggested members of the community are:

- more likely to see the behaviour as stalking when the severity increases, and more likely to call police when there is an explicit threat of harm
- less likely to perceive behaviour as stalking or necessitating police intervention when the perpetrator is an ex-partner compared to a stranger or acquaintance, and less likely to call police when it involves an ex-partner compared to a stranger
- more likely to be perceive actions as amounting to stalking where this is explicit evidence of intent
- more likely to perceive the victim as responsible for encouraging the perpetrator's behaviour when the stalking is perpetrated by an ex-partner.⁶²

As discussed further below, these general perceptions of risk impact not only victims' perception of harm or risk but permeate the criminal justice system and influence action taken (or not taken) by justice agencies or victims' services.

4.4. Lack of appropriate police action

As a result of negative experiences reporting stalking, victims of stalking will often have low expectations of police.⁶³ Some victims will choose not to make further reports based on previous experiences with police. This can increase victims' further risk of harm.

In Taylor-Dunn et al's study, common themes of inaction and inappropriate police action emerged.⁶⁴ More than half (54%) of victims who participated in the study were advised by the police that their experience of stalking was not serious enough to constitute a criminal offence. The most common advice received by victims from police was to keep reporting and to keep a log of any further incidents.⁶⁵

Victim experiences of reporting to police also highlight the challenges faced by victims in having to report multiple instances to different police officers on different occasions. This results in police considering incidents of stalking in isolation, failing to recognise the bigger picture in order to assess overall risk.⁶⁶

⁶² Adrian J. Scott & Lorraine Sheridan, 'Reasonable' perceptions of stalking: the influence of conduct severity and the perpetrator-target relationship. *Psychology, Crime & Law* (2011) 17:4, 331-343, 332-334.

⁶³ Nelli Puronvarsi, Viivi Ruotanen and Juha Holma, 'Female Survivors' Experiences of Authorities' Actions in Cases of Partner Stalking' (2020) 4(2) *Journal of Gender-Based Violence* 173, 175.

⁶⁴ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 13.

⁶⁵ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 14.

⁶⁶ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 4.

Victim-blaming also emerged as a common theme in the studies by Taylor-Dunn et al (2018)⁶⁷ and Puronvarsi et al (2020),⁶⁸ where several victims reported being made to feel responsible for their experiences of stalking and were advised by police to change their behaviour. One victim who recounted her experience said:

They only suggested that I close my blinds, and move my TV to another part of the room so that I couldn't see anybody going past the window when I was watching TV. And I says "That doesn't solve the problem. That- that's not an answer. That's making me even more of a prisoner and even more of a victim"⁶⁹

Research suggests police may advise victims to relocate⁷⁰ or stop using social media to avoid the perpetrator.⁷¹ One woman who was being harassed on social media by an acquaintance was advised:

Have you thought about just not looking? Don't monitor it. Don't look. If you don't look, you won't know it's there.⁷²

There are well publicised cases in Victoria where victims have allegedly been advised by police to stop using social media. In a recent Australian study relating to all forms of technology-facilitated abuse (including stalking), victim support services said that police would 'tell victims to just turn off their phones, delete their accounts or make a complaint to the technology or social media company.'⁷³ Victim support workers also said that some police did not count technology-facilitated abuse as a breach of an intervention order.⁷⁴

Consistent with research relating to secondary victimisation more broadly, a victim of stalking in one research study described the experience of not getting any help from police as 'even more traumatic than the terrifying act of stalking itself.'⁷⁵

⁶⁷ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 16.

⁶⁸ Nelli Puronvarsi, Viivi Ruotanen and Juha Holma, 'Female Survivors' Experiences of Authorities' Actions in Cases of Partner Stalking' (2020) 4(2) *Journal of Gender-Based Violence* 173.

⁶⁹ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 16.

⁷⁰ Nelli Puronvarsi, Viivi Ruotanen and Juha Holma, 'Female Survivors' Experiences of Authorities' Actions in Cases of Partner Stalking' (2020) 4(2) *Journal of Gender-Based Violence* 173; Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 16.

⁷¹ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 16.

⁷² Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 16.

⁷³ Flynn, Powell and Hindes (n 25) 31.

⁷⁴ *Ibid.*

⁷⁵ Nelli Puronvarsi, Viivi Ruotanen and Juha Holma, 'Female Survivors' Experiences of Authorities' Actions in Cases of Partner Stalking' (2020) 4(2) *Journal of Gender-Based Violence* 173, 175.

5. Overarching systems reforms to support victims

There are existing deficits and gaps in the current justice and victims' services system which, if rectified, would better support all victims of crime, including victims of stalking.

For this reason, recommendations outlined below relate to overall improvements to the justice and victims' services system. This broader systems approach aims to prevent 'band aid' solutions—their implementation would benefit all victims, including victims of stalking.

5.1. A trauma-informed justice system

Much has been said about the need for trauma-informed responses to victims of crime over the past decade.⁷⁶ One of the objectives of the Victims' Charter is to help reduce the likelihood of secondary victimisation by the criminal justice system.⁷⁷ Trauma-informed responses are key to reducing the risk of secondary victimisation by the criminal justice system.

In the case of stalking, victim experiences outlined in this submission demonstrate not all justice services have trauma informed approaches.

To the maximum extent possible, the justice and service system should adopt a trauma-informed approach, uphold victims' rights and entitlements *and* ensure a fair process for the respondent (in a civil matter) or the accused (in a criminal matter).

Research suggests that trauma-informed law, policy and practice:⁷⁸

- realises the impact of trauma and recognises the signs of trauma

⁷⁶ See, for example, Victorian Law Reform Commission, *Family Violence and the Victims of Crime Assistance Act 1996* (Consultation Paper, June 2017) xiv; Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report, July 2018); Royal Commission into Family Violence, *Volume IV Report and Recommendations* (March 2016) 18.

⁷⁷ *Victims' Charter Act 2006* (Vic) s4(1)(c)

⁷⁸ For discussion of aspects of trauma-informed practice, see generally: Holly Ramsey-Klawnsnik and Erin Miller, 'Polyvictimization in later life: Trauma-informed best practices' (2017) 29 (5) *Journal of Elder Abuse & Neglect*, 339-350; Nicole C. McKenna & Kristy Holtfreter, 'Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness' (2020) *Journal of Aggression, Maltreatment & Trauma* (published online); Blue Knot Foundation, *Trauma-informed Practice: How important is this for domestic and family violence services?* (2016) <<https://www.blueknot.org.au/Home/Front-Page-News/ID/46/Trauma-informed-Practice-in-Domestic-and-Family-Violence-Services>>; Orygen, The National Centre of Excellence in Youth Mental Health, *Clinical practice in youth mental health: What is trauma-informed care and how is it implemented in youth healthcare settings* (2018) <http://orygen.org.au/Training/Resources/Trauma/Clinical-practice-points/What-is-trauma-informed-care-and-how-is-it-implemented/orygen_Trauma_informed_care_CPP?ext=>>.

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

These principles should guide the comprehensive review of each area of law, policy and practice as it relates to stalking, across both civil and criminal interventions.

Recommendation 1:

Review laws, policies and practices (including civil and criminal interventions) relating to stalking and the extent to which such laws, policies and practices are trauma-informed, including whether they facilitate a justice system that:

- **realises the impact of trauma and recognises the signs of trauma**
- **reduces re-traumatisation**
- **emphasises physical, psychological, and emotional safety for victims**
- **provides victims with voice and choice, including different ways to engage to minimise harm**
- **creates opportunities for victims to rebuild a sense of control and empowerment**
- **recognises that trauma may impact victims' engagement with the process**
- **responds to victims' diversity**
- **promotes trust and transparency in process and decision making.**

5.2. A strengthened victims' services system and new Financial Assistance Scheme

Victoria's existing victim support system⁷⁹ has been found to be a 'one-size-fits-all' system and 'falling short' for most victims of crime.⁸⁰

The 2020 report *Strengthening Victoria's Victim Support System: Victim Services Review*, by RMIT's Centre for Innovative Justice (on behalf of the Department of Justice and Community Safety), identified the need for a strengthened victims' services system.

Amongst its findings, the review suggested the need for:

- ongoing access to a single point of contact for victims as their needs change over time
- stronger connections with, and referrals between, victim services and other specialist responses within the family violence and sexual assault sectors
- a strengthened victims' case management system
- access to independent legal advice.

The report articulates a vision for a fully integrated victim support model which includes:

- an integrated, phone-based Victim Support Centre (VSC) that provides a core response to victims of crime including case coordination and proactive, phone-based outreach
- a more intensive, case management model to be delivered through a network of community-based agencies across the state
- a new Victims Legal Advice Service to provide victims of crime with trauma-informed legal information and advice, referrals and discrete task assistance.

The Department of Justice and Community Safety (DJCS) is also progressing work to develop a new Financial Assistance Service (FAS) for victims of crime in response to the VLRC's 2018 review of the *Victims of Crime Assistance Act 1996*

⁷⁹ As outlined in the Consultation Paper, Victoria's victim support system includes government-funded and administered services for victims of crime provided by the Department of Justice and Community Safety including the Victims of Crime Helpline and the Victims Assistance Program (VAP). An overview is also provided in RMIT Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 20.

⁸⁰ RMIT Centre for Innovative Justice, *Improving Support for Victims of Crime: Key Practice Insights* (2020) 7.

(Vic) (VOCAA) and the operation of the Victims of Crime Assistance Tribunal (VOCAT).

The VLRC concluded that the current approach to state-funded financial assistance was 'not victim-centred or beneficial in its approach'.⁸¹

The Government accepted in principle all 100 recommendations contained in the VLRC's report,⁸² including the central recommendation that a new administratively-based financial assistance scheme be established to remove the requirement for victims to navigate a court-based process.

Work to implement a new FAS is still being progressed by the DJCS.⁸³

Taken together, these broader victims' services and FAS reforms, if implemented in full, could improve the service system response for *all* victims of crime. If fully implemented, these reforms would undoubtedly improve access to more timely and appropriate support for victims of stalking, helping them stay safe and assisting them in their recovery process. For this reason, it is vital these reforms are implemented in full, and appropriately funded.

Recommendation 2: To ensure all victims of crime, including victims of stalking, have access to a strengthened victim support and financial assistance scheme, the Victorian Government should establish and fund:

- **the enhanced victim support service model outlined in *Strengthening Victoria's Victim Support System: Victim Services Review***
- **the full rollout of a new state-funded Financial Assistance Scheme for victims, incorporating all recommendations of the VLRC's review to enhance access and equity for victims of crime**

All current, and future victims' services, including the new Financial Assistance Scheme, should be prescribed agencies under the *Victims of Crime Commissioner Regulations 2020*, to enable appropriate oversight and compliance with Victims' Charter obligations.

⁸¹ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report, July 2018) xxi.

⁸² Victoria, Parliamentary Debates, Legislative Council, 2 February 2021, 96 (Natalie Hutchins, Minister for Crime Prevention, Minister for Corrections, Minister for Youth Justice, Minister for Victim Support)

⁸³ The 2019–20 State Budget provided \$3.297 million over three years to establish a dedicated team within DJCS to progress the development of the new financial assistance scheme. The 2021–22 State Budget provided a further \$54.6 million towards a range of victim initiatives, with a proportion of that funding 'provided to start transformation of the victim service system through establishing the foundations for a new Financial Assistance Scheme for victims of crime'

5.3. A comprehensive victims' legal service

The need for a victims' legal service has been consistently raised in Victoria in a range of recent reviews and inquiries.

The 2020 report *Strengthening Victoria's Victim Support System: Victim Services Review* found considerable unmet demand for specialist, independent legal advice for victims of crime.⁸⁴ The report suggested that access to specialist, tailored legal advice for victims would provide for early intervention by way of legal 'issues spotting' and help link victims to suitable organisations for ongoing legal support.⁸⁵

The need for a dedicated, specialist victims' legal service was also raised in the VLRC's 2016 report *Victims of Crime in the Criminal Trial Process*.

The models in the VLRC's 2016 *Victims of Crime in the Criminal Trial Process* report and in the *Strengthening Victoria's Victim Support System* review were different, although, both reports advocated for the establishment of a publicly funded dedicated victims' legal service.⁸⁶

The Victorian Government has recently announced funding for a limited victims' legal service. It is proposed to only provide a service for victims seeking state-funded financial assistance, restitution and compensation orders.⁸⁷

While the establishment of a victims' legal service for this purpose is welcomed, a broader victims' legal service is required to assist victims with the full range of complex legal issues that arise as a result of victimisation. In the context of stalking, a victims' legal service would assist victims to:

- identify the criminal and civil options that are available to address stalking and advocate for appropriate interventions
- access state-funded financial assistance to implement safety mechanisms (e.g. CCTV, home security, door and window locks) and therapeutic supports such as counselling

⁸⁴ RMIT Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 13.

⁸⁵ *Ibid* 152.

⁸⁶ *Strengthening Victoria's Victim Support System: Victim Services Review* suggested the legal advice service should integrate with the existing victims' services system operated by the Department of Justice and Community Safety and would be delivered by a 'publicly funded legal service provider co-locating with existing victims' services': Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 151. In *Victims of Crime in the Criminal Trial Process*, the VLRC recommended Victoria Legal Aid should be funded to establish a service for victims of violent indictable crimes: Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, 2016) xxiv.

⁸⁷ Victoria, *Parliamentary Debates*, Legislative Council, 23 June 2021, 2465 (Ms Sonja Terpstra, Member Legislative Council)

- navigate the various rights and entitlements arising during the criminal justice process (such as alternative arrangements for giving evidence, avoiding cross examination by the alleged perpetrator, making a victim impact statement)
- navigate parallel legal issues such as child protection, family law and criminal law issues that may intersect with their victimisation experience.⁸⁸

The Commissioner advocates for a victims' legal service providing tailored legal information and advice delivered by specialist legal professionals who have a trauma-informed and culturally safe approach. The legal service should be staffed by specialist lawyers who have completed training and education (and ongoing professional development) in victims' rights and entitlements spanning the relevant provisions across criminal, administrative, and civil law.⁸⁹

Recommendation 3: **The Victorian Government should establish a publicly funded victims' legal service to assist victims with the full range of complex legal issues that arise as a result of victimisation.**

5.4. Victim right to review scheme

In the United Kingdom, victims can seek a review of certain Crown Prosecution Service (CPS) decisions not to start a prosecution or to stop a prosecution.⁹⁰ Victims can also seek a review of police decisions where police have interviewed a suspect and decided not to charge the suspect or that the case does not meet the test for referring to the CPS.⁹¹ Together these are referred to as the Victim's Right to Review (VRR).

The Independent Victims' Commissioner for London, Claire Waxman, has described the VRR as 'an important check and balance, empowering victims to challenge charging decisions that they are not happy with.'⁹² Academic Mary Iliadis contends that independent review mechanisms do not alter the structural position of victims in the criminal justice system, as victims do not become a party

⁸⁸ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report, 2018) 204.

⁸⁹ Including *Sentencing Act 1991* (Vic), the *Victims of Crime Assistance Act 1996* (Vic), Victims Charter and relevant protections afforded victims under the *Criminal Procedure Act 2009* (Vic), *Evidence (Miscellaneous Provisions) Act 1958* (Vic), *Evidence Act 2008* (Vic), *Public Prosecutions Act 1994* (Vic), *Judicial Proceedings Reports Act 1958* (Vic), and *Open Courts Act 2013* (Vic).

⁹⁰ Crown Prosecution Service (CPS) *Victims' Right to Review Scheme* (27 May 2021) <<https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme#a02>>

⁹¹ Rights of Women, *A guide to the victim's right to review scheme* <<https://rightsofwomen.org.uk/wp-content/uploads/2018/02/A-guide-to-the-victims-right-to-review-scheme.pdf>>. There are a range of police decisions outside the scope of the review scheme.

⁹² Claire Waxman, *Review of Compliance with the Victims' Code of Practice: Findings, recommendations and next steps* (Report, March 2019) 16.

to criminal proceedings, but such participatory mechanisms empower victims and increase their satisfaction with the criminal justice system.⁹³

Alison Bird, Clinical Lead for Stalking at Solace Women's Aid and a Visiting Senior Fellow for Social Policy at University of Suffolk, has stated that in the UK, 'The Victims' Right to Review (VRR) enables complainants to challenge police decisions, granting stalking victims who believe that their cases have been mishandled an additional avenue for seeking justice'.⁹⁴

In the Commissioner's submission to the VLRC's sexual offences inquiry, it was noted that the ability to independently review police and prosecution decisions is crucial in sexual offence cases because police and prosecutors may make decisions based on problematic misconceptions and stereotypes relating to sexual violence.⁹⁵ Sheridan et al suggest similar misconceptions and stereotypes might also be relevant in stalking cases.⁹⁶

In its 2016 report, *Victims of Crime in the Criminal Trial Process*, the VLRC discussed, but ultimately did not recommend, an independent VRR scheme. They did, however, consider such a scheme should be revisited in five years after further work was done to internal review mechanisms within OPP.⁹⁷

While significant work has been done within the Office of the Public Prosecutions to provide victims with better access to reasons for prosecutorial decisions,⁹⁸ and a discontinuance review framework has also been established,⁹⁹ an independent VRR in Victoria would provide victims with an avenue to seek independent (external) review of both police and prosecution decisions after proper internal review processes have been exhausted.

At the same time, it must be acknowledged that such a scheme is not failsafe. Alison Bird recently stated that the 'very reason that the Victim's Right to Review (VRR) exists [in the UK] is to give a stalking survivor the opportunity to voice their concerns about a lack of progression within their case'. However, Bird's

⁹³ Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 163.

⁹⁴ Alison Bird, Dr Katherine Allen and Dr Olumide Adisa, *Examining the Victim's Right to Review by Police in Stalking and Harassment Cases: Report of FOI Findings* (University of Suffolk) 61, 6.

⁹⁵ See also, Mary Iliadis and Asher Flynn, 'Providing a check on prosecutorial decision-making: an analysis of the victims' right to review reform' (2018) 25 *British Journal of Criminology*, 550-568, 556.

⁹⁶ Lorraine Sheridan, Adrian J Scott and Keri Nixon, 'Police Officer Perceptions of Harassment in England and Scotland' (2016) 21(1) *Legal and Criminological Psychology* 1, 2.

⁹⁷ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 76.

⁹⁸ Office of Public Prosecutions, *Requesting reasons for decisions* (2017)

<<https://victimsandwitnesses.opp.vic.gov.au/witnesses/requesting-reasons-for-decisions>>

⁹⁹ [Discontinuance-Review-Framework \(opp.vic.gov.au\)](https://victimsandwitnesses.opp.vic.gov.au/discontinuance-review-framework)

research has found that victims of stalking 'are often not told that they can challenge a police or CPS decision to not take their case any further.'¹⁰⁰

Bird et al's research found that not only is there a need for more robust guidance and procedures for police to ensure that stalking victims are kept apprised of their rights and developments in relation to their cases, but that victims of stalking need to be better informed about their right to review a decision. In that context, Bird et al's research supported stalking victims' access to an Independent Stalking Advocacy Caseworker (ISAC) to reduce the potential for revictimization by the justice system, including through the VRR process.¹⁰¹ Access to specialised victim support is discussed further below.

Having regard to the difficulties faced by some stalking victims to get adequate action taken, access to an independent VRR scheme in Victoria (underpinned by new rights in the Victims' Charter) might enhance best practice in stalking cases and increase victims' perceptions of justice. Consideration should be given to a VRR scheme sitting independently of both the police and prosecution and reviewing decisions made at both the investigatory and prosecutorial stages of the process.¹⁰²

Recommendation 4:

The Victorian Government should introduce a Victims' Right to Review scheme underpinned by new entitlements in the Victims' Charter enabling independent review of certain police and prosecution decisions after internal review options are exhausted.

5.5. Safety in court

Under the Victims' Charter, so far as is reasonably practicable, a prosecuting agency and the courts should, during the course of a court proceeding and within a court building:¹⁰³

- minimise a victim's exposure to unnecessary contact with the person accused of the criminal offence, defence witnesses and family members and supporters of the accused person

¹⁰⁰ University of Suffolk, *New research published examining the Victim's Right to Review by police in stalking and harassment cases* (2021) <<https://www.uos.ac.uk/news/new-research-examining-victim's-right-review-police-stalking-and-harassment-cases>>

¹⁰¹ Alison Bird, Dr Katherine Allen and Dr Olumide Adisa, *Examining the Victim's Right to Review by Police in Stalking and Harassment Cases: Report of FOI Findings* (University of Suffolk) 14.

¹⁰² Academics point to the importance of independent review schemes operating separately from the original decision-making body. See, for example, Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 163; Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 71.

¹⁰³ *Victims' Charter Act 2006* (Vic) s12.

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- **safe court entrances and exits for victim-survivors**
 - **safe waiting spaces and interview rooms, including child-friendly spaces and culturally safe spaces**
 - **remote witness facilities.**

6. Data and attrition rates

Research suggests police, judges, courts and even victim support services may minimise, deny or dismiss stalking.¹⁰⁸ Stalking myths may include beliefs that victims secretly like the attention, they must have led the perpetrator on in some way, that they must be imagining it or are misinterpreting innocent expressions of interest.¹⁰⁹

As with sexual assault matters, it is important that the justice system is able to identify why reports of stalking are not progressing and at which points they're dropping out of the justice system. For example, UK research has highlighted victim frustration with prosecution processes:¹¹⁰

there is no continuity with the prosecution as there is always a new prosecutor appointed. Often they have no expertise or knowledge of stalking and harassment and therefore are unable to prosecute effectively

CPS decided not to progress the case despite this being behaviour that was a pattern

Many charges were dropped or minimised with no explanation given as to why

Collecting, analysing and reporting on stalking data will uncover the extent to which:

- myths and misconceptions may be influencing the way in which stalking is recognised and responded to by police and prosecutors
- victims may feel unsupported by the justice and/or victim support system
- issues relate to the inability of police to collect evidence or lack of resourcing available to police to investigate.

¹⁰⁸ Logan (n 23) 730.

¹⁰⁹ Bronwyn McKeon, Troy E McEwan and Stefan Luebbbers, "It's Not Really Stalking If You Know the Person": Measuring Community Attitudes That Normalize, Justify and Minimise Stalking (2015) 22(2) *Psychiatry, Psychology and Law* 291, 293.

¹¹⁰ Richards (n 17) 9.

Recommendation 6:	The Victorian Government should improve data collection and reporting in relation to stalking to contribute to better understanding of attrition rates to inform justice system improvements.
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7. Encouraging reporting in stalking cases

To promote trust in the justice system responses to stalking, it is vital that victims who report stalking are:

- taken seriously by police and have their experiences validated
- kept informed of the progress of police investigation
- receive referrals to appropriate support.¹¹¹

These justice system responses are consistent with victim entitlements under the Victims' Charter, specifically that victims are kept informed about an investigation and receive referrals to support services.¹¹²

7.1. Safe ways to report crime

In the Commissioner's submission to the VLRC's sexual offences inquiry, the Commissioner advocated for alternate pathways to reporting crime to provide an avenue for victims to communicate their experiences and remove the fear associated with making a formal report to police.

Given the ways in which stalking can instil fear in and isolate victims, as well as make it difficult for victims to move freely in their community, providing alternative ways to engage with police, including online, may better meet more victims' needs. This is also important for victims of crime who may be fearful of police or face structural or physical barriers to attending a police station.

The VLRC should consider any recommendations made in the VLRC's sexual offences final report relating to alternative ways to report crimes or engage with police.

¹¹¹ Taylor-Dunn, Bowen and Gilchrist (n 22) 13.

¹¹² *Victims' Charter Act 2006* (Vic) s7-8.

Recommendation 7: **Victoria Police should explore alternative mechanisms for victims to report to, and engage with, police in relation to stalking cases.**

7.2. Consistent police responses

Police play an essential role in the frontline response to stalking. However, some studies suggest that the nature of stalking and its consequences may not be fully understood by police.¹¹³ Police may make decisions based on flawed notions of what constitutes stalking.¹¹⁴ For example, various studies have highlighted the frequency with which stalking victims are told there is nothing the police can do, or that no criminal offence has been committed.¹¹⁵ Some stalking victims have experienced an exclusive focus by police on physical violence over other types of abuse.¹¹⁶

Victims' advocates in the UK have told researchers that because of the barriers experienced by victims in reporting to police, that 'they sometimes [have] to coach victims in how to convince the police that apparently innocuous acts by perpetrators were part of a wider pattern of offending so that their case would be treated seriously'.¹¹⁷

Taylor-Dunn et al's study reflected the main issues experienced by stalking victims which included:

- not being adequately informed about progress in the case
- not being referred to appropriate support services
- being passed between several different police officers
- not being taken seriously
- being made to feel as though they were over-reacting.¹¹⁸

Similarly to rape myths, myths and misconceptions about stalking influence the way in which stalking is recognised and responded to.¹¹⁹ They may influence initial

¹¹³ Nelli Puronvarsi, Viivi Ruotanen and Juha Holma, 'Female Survivors' Experiences of Authorities' Actions in Cases of Partner Stalking' (2020) 4(2) *Journal of Gender-Based Violence* 173, 175.

¹¹⁴ Taylor-Dunn, Bowen and Gilchrist (n 22) 5.

¹¹⁵ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 4.

¹¹⁶ Nelli Puronvarsi, Viivi Ruotanen and Juha Holma, 'Female Survivors' Experiences of Authorities' Actions in Cases of Partner Stalking' (2020) 4(2) *Journal of Gender-Based Violence* 173; Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28.

¹¹⁷ Her Majesty's Inspectorate of Constabulary and Majesty's Crown Prosecution Service Inspectorate, *Living in Fear - the Police and CPS Response to Harassment and Stalking* (Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, July 2017) 87
<<https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/living-in-fear-the-police-and-cps-response-to-harassment-and-stalking.pdf>>.

¹¹⁸ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28, 20.

¹¹⁹ Research has also found victim/perpetrator relational biases in cases of stalking are parallel to those identified in rape myth literature and domestic abuse research: 'That is, men and women raped by acquaintances or partners/ex-partners are apportioned a greater degree of blame than those raped by strangers'. See Sheridan, Scott and Nixon (n 96) 2.

reporting rates as well as decisions made by legal professionals about whether a case should proceed through the justice system.

For this reason, recognising and responding to stalking requires specialist training and education.

7.2.1. Training and education

In Victoria, the crime of stalking is defined by the perpetrator intending to cause physical or mental harm to the victim, including self-harm, or arousing apprehension of fear in the victim. For this reason, policing stalking requires a different approach to other forms of crime—police must be able to build a picture of the abuse that starts with the impact on the victim¹²⁰ because stalking is not solely defined by the activities of the perpetrator, but also by harms caused to the victim.¹²¹

One of the key challenges of addressing stalking and harassment is the fact that stalking behaviours experienced by victims have been found to differ in every case and can be dependent on the specifics of a particular relationship between a perpetrator and victim.¹²²

Recent research also suggests police may be failing to understand, and respond to, technology facilitated stalking: 'police [are] still failing to understand the extent of harm, telling victims they should just turn off social media and the problem would go away.'¹²³

The complexity of stalking requires police to develop specific skills in relation to understanding the dynamics of such crimes, the variables that might indicate enhanced risk of violence, and impacts on victims.¹²⁴

There are specific behaviours and dynamics related to stalking that require specialist training, which is similar to realisations reached in policing that family violence and sexual assault require specialist police training,.

Training should include, not only the dynamics of stalking, but the impacts on victims and also how victims might present as a result of trauma.¹²⁵ Miglietta et al

¹²⁰ Taylor-Dunn, Bowen and Gilchrist (n 22) 22.

¹²¹ White, Longpré and Stefanska (n 12) 1.

¹²² Ibid.

¹²³ Tammy Mills, 'Devices hacked, women and girls blackmailed as cyber abuse grows', *The Age* (online), 21 July 2021, <<https://www.theage.com.au/national/devices-hacked-women-and-girls-blackmailed-as-cyber-abuse-grows-20210720-p58b8l.html?btis>>

¹²⁴ Costanza Baldry et al (n 12) 433.

¹²⁵ Ibid 442.

also suggest that training for professionals should include consideration of how their perception of risk might be influenced by gender attitudes.¹²⁶

Flynn et al's recent research into technology-facilitated abuse (TFA)¹²⁷ has also raised concerns about the expertise and resources currently available to police to undertake the necessary investigatory and evidentiary processes to address technology-facilitated abuse:

...police face significant barriers in investigating and prosecuting TFA-related harms. These included difficulty in tracing blocked numbers and the long and onerous process of accessing evidence from telephone and social media companies, as a result of which police may not be able to meet the evidentiary standards required by the courts.¹²⁸

Victoria Police should be provided sufficient training and resources to respond to technology-facilitated stalking, including sufficient training and resourcing to investigate, collect evidence and disrupt such offending.

Training and education should also encompass the application of evidence-based risk assessments and be accompanied by a Code of Practice for stalking, discussed further below.

Recommendation 8:

Victoria Police should be funded to design and implement a comprehensive, evidence-based training on stalking that features:

- **in-depth exploration of the behaviours, dynamics and techniques of stalking, including the gendered nature of stalking**
- **insight into the impact of stalking on victims featuring lived experiences of victims**
- **application of evidence-based risk assessment tools**
- **evidence-collection in stalking, including dealing with technology-facilitated stalking.**

¹²⁶ Anna Miglietta, Marco Rizzo and Daniela Acquadro Maran, 'Who Is the Stalker and Who Is the Victim? The Influence of Gender Ideologies in the Perception of Stalker/Victim Pairs: A Cross-Sectional Study' (2021) *Sexuality & Culture* (published online 30 April 2021).

¹²⁷ Technology-facilitated abuse is an umbrella term that includes stalking, but may also include harassment and forms of sexual abuse. See, Flynn, Powell and Hindes (n 26) 4.

¹²⁸ Flynn, Powell and Hindes (n 25) 31.

7.2.2. Code of Practice for stalking

Consideration should be given to establishing a stalking Code of Practice to support a system of accountability. There is precedence for this approach in the family violence sector in Victoria.

Victoria Police's *Code of Practice for the Investigation of Family Violence* details 'the options available to police and how those options are implemented to assist in breaking the cycle of family violence'.¹²⁹ It clarifies the aims of police intervention in cases of family violence, including:

- increasing the level of safety for victims
- providing early intervention and disruption to break the cycle of family violence
- holding perpetrators accountable for their behaviours by laying criminal charges where appropriate, including for contraventions of family violence intervention orders (FVIOs) and family violence safety notices (FVSNs).

The *Code of Practice for the Investigation of Family Violence* aims to achieve 'good practice through an appropriate, consistent, transparent and accountable response to, and investigation of, family violence'.¹³⁰

A key responsibility outlined in the Code of Practice is the need for police to pursue criminal charges where appropriate, setting this as a standard response and key expectation. The Code of Practice's explicit expectation that criminal charges be pursued in all cases where a Family Violence Intervention Order (FVIO) had been breached signalled a significant cultural change for Victoria Police. Previously, there had been a culture of subjectively assessing some FVIO breaches as merely 'technical' breaches. The Code of Practice stated:¹³¹

FVIOs...must be strictly interpreted and enforced. There is no such lawful term as a 'technical' contravention and police must lay charges for any contravention

Decisions to prosecute are based on the evidence gathered and should not be a subjective assessment by the responding police as to the seriousness of the contravention

In the UK, police and prosecutions created a national stalking protocol in 2014 to:

- reflect policing and prosecution policy
- achieve consistent performance in the investigation and prosecution of stalking

¹²⁹ Victoria Police, *Code of Practice for the Investigation of Family Violence* (2019) 10.

¹³⁰ Victoria Police, *Code of Practice for the Investigation of Family Violence* (2019) 10.

¹³¹ Victoria Police, *Code of Practice for the Investigation of Family Violence* (2019) 34-36.

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- increase public confidence in the ability of the criminal justice system to deal with stalking cases.

A 2017 review of responses to stalking in the UK found poor compliance with the protocol, leading to a recommendation that the protocol be integrated with police training.¹³² This demonstrates the need for a whole-of-system response to stalking—with education, training and codes of practice considered as part of a broader cultural change initiative.

Introducing a Code of Practice should not stand alone. It must work in conjunction with systems-wide reforms. However, a Code of Practice for stalking in Victoria would clarify best practice expectations of police and prosecutions when responding to cases of stalking, providing a framework for appropriate, consistent, transparent, and accountable responses to stalking.

Recommendation 9:**Justice and victims' services agencies should co-design a Code of Practice for stalking, setting out:**

- **best practice police, prosecution and victims' services responses when responding to cases of stalking**
- **police responsibilities in relation to pursuing both criminal and civil interventions in cases of stalking**
- **police responsibilities in relation to pursuing criminal charges for breaches of stalking intervention orders**
- **police and prosecution obligations, consistent with the Victim' Charter, including keeping victims informed about the progress of a case, making appropriate referrals and consulting with victims at key stages of the criminal justice process.**

¹³² Her Majesty's Inspectorate of Constabulary and Majesty's Crown Prosecution Service Inspectorate (n 116).

8. Risk assessment, early intervention and information sharing

8.1. Risk assessment

Risk assessment is broadly considered to be the process of estimating and reviewing the likelihood and nature of risk posed by a perpetrator.¹³³ Risk assessment ensures risks to the victim have been identified and the most suitable actions are taken to manage the identified risks and protect the victim.¹³⁴

Research has pointed to the importance of first responders understanding the context in which stalking occurs, and how this may increase the threats posed.¹³⁵ For example, different stalker–victim relationships present varying behaviours,¹³⁶ therefore the perpetrator–victim relationship is an important factor in predicting future risk.¹³⁷

Just as in cases of family violence, a consistent approach to risk assessment and risk management in stalking matters is vital for protecting victims' safety.¹³⁸

There is a need for more sophisticated risk assessment, risk profiling and information sharing in cases of non-family violence stalking, approaches which may be informed by learnings in the family violence sector as discussed further below.

8.1.1. The Family Violence Multi-Agency Risk Assessment and Management Framework

The Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) ensures services that interact with victims and perpetrators of family violence effectively identify, assess and manage family violence risk.¹³⁹

MARAM is not limited to police as first responders. All parts of the family violence system use MARAM, so they have a shared understanding of risk assessment and

¹³³ Her Majesty's Inspectorate of Constabulary and Majesty's Crown Prosecution Service Inspectorate (n 116) 9.

¹³⁴ Ibid.

¹³⁵ White, Longpré and Stefanska (n 12) 16.

¹³⁶ Ibid 13.

¹³⁷ Ibid 4.

¹³⁸ Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 1, 19.

¹³⁹ Victorian Government, *Family Violence Multi-Agency Risk Assessment and Management Framework* (18 January 2021) <<https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>>

management.¹⁴⁰ MARAM helps a range of organisations recognise a range of risk factors and keep perpetrators in view.¹⁴¹

Risk assessment and risk management is vital to securing safety for victims. As noted by RMIT's Centre for Innovative Justice in their review of the effectiveness of Family Violence Intervention Orders, safety 'comes just as much from the expertise, reliability and consistency of risk management, enforcement and access to supports which surround an [intervention order] process than it does from the act of simply 'getting the [intervention] order in place'.¹⁴² It is the risk management, enforcement and supports around an intervention order that make it 'more than just a piece of paper'.¹⁴³

8.1.2. Risk assessment in stalking cases

Like in the family violence sector, risk assessment needs to be shared across the justice and victims' service system. However, as occurred in the family violence system following the Family Violence Royal Commission, the justice and victims' services system would require significant reform and commensurate investment to ensure all victims of stalking (and therefore, alleged perpetrators) are part of a comprehensive risk assessment process which:¹⁴⁴

- determines the level and seriousness of risk and safety for each victim survivor
- assesses a perpetrator's pattern of abusive behaviour to inform an assessment of whether the victim survivor is at an increased risk of being killed or almost killed, the likelihood and severity of future violence, as well as identifying imminent risk
- assesses the full spectrum / presentation and impact of risk
- creates a complete picture of the level of risk at a point in time and how risk might change over time
- determines the most appropriate risk management activities and creates a safety plan for victims.

¹⁴⁰ Victorian Government, *Family Violence Multi-Agency Risk Assessment and Management Framework* (18 January 2021) <<https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>>

¹⁴¹ Victorian Government, *Family Violence Multi-Agency Risk Assessment and Management Framework* (18 January 2021) <<https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>>

¹⁴² Centre for Innovative Justice (n 106) 5.

¹⁴³ Centre for Innovative Justice, *More than Just a Piece of Paper: Getting Protection Orders Made in a Safe and Supported Way* (RMIT - University, February 2021) 5.

¹⁴⁴ Victorian State Government, *Practice Guides Responsibility 7: Comprehensive Risk Assessment*, 277. Accessed at <<https://www.vic.gov.au/sites/default/files/2020-05/PG%20Responsibility%207.pdf>>.

The development of MARAM, and rolling out its prescribed use across Victorian organisations, has required dedicated funding and resources.

If a similar tool to the MARAM (but tailored specifically to the context of non-family violence stalking) was to be rolled out in Victoria, sufficient resourcing and funding would need to be provided to police, victims' services, courts and other agencies and organisations that intersect with victims and perpetrators of stalking.

Recommendation 10: **The Victorian Government should fund the development and implementation of a comprehensive multi-agency risk assessment tool for use by justice agencies and victims' services in cases of non-family violence stalking.**

8.1.3. Increasing capacity to respond to course of conduct / patterns of behaviour

As noted in the Consultation Paper, the primary challenge for frontline police is identifying the course of conduct/behaviours that constitute stalking.¹⁴⁵

The incident-based nature of policing can result in police missing patterns of abuse that do not fit into traditional crime categories and may not appear criminal when viewed in isolation.¹⁴⁶ Taylor-Dunn et al highlight that cases of stalking, as with cases of family violence, reveal a flaw in our criminal justice system—an inability to adequately account for patterns of abuse:

the existing adversarial justice system ... is unlikely to be able to deal effectively with the complexity of these offenses, particularly the need to appreciate the unique impact on victims. ... Existing studies suggest that police officers treat reported incidents of stalking in isolation, failing to recognize the bigger picture, and thereby forcing victims to recount their story each time they call for help¹⁴⁷

Research in the UK demonstrates challenges faced by victims in getting the justice system to consider the collective harm and 'totality' of stalking:

They have dealt with numerous incidents in isolation. They are reluctant to deal with incidents collectively as they say they can't prove it's my ex-partner that is doing it.¹⁴⁸

I am let down because they do not take into account the totality of what has happened over the years, they are focused on narrow actions in a narrow band of time, the victim is so traumatised by the years of abuse (and harassment is abuse) and in the end one action is all the criminal justice system will focus on - that is clearly not fair on the victim¹⁴⁹

¹⁴⁵ Victorian Law Reform Commission (n 7) 16.

¹⁴⁶ Taylor-Dunn, Bowen and Gilchrist (n 22) 22.

¹⁴⁷ Ibid 5.

¹⁴⁸ Richards (n 17) 7.

¹⁴⁹ Ibid 14.

As noted above, a comprehensive training and education program should be rolled out for police relating to stalking. Part of this training and education should include ways in which police can better respond to course of conduct offences like stalking and build a holistic picture of a victim's experience through:

- minimising a victim's need to continually tell/re-tell their story to a new police officer each time they wish to report
- minimising the need for victims to contextualise their stalking experience each time they engage with police
- ensuring Victoria Police's recording system can capture 'course of conduct' and ensuring information is captured and recorded in ways that support victims, as well as adequately capturing any increased escalation in behaviour or risk.

It is also vital that police can both receive, and share, information with other agencies interacting with the victim and/or perpetrator, as is the case in the family violence system. Information sharing is discussed further below.

Victoria Police's ability to provide a single point of contact for stalking victims should also be explored. Firstly, this would improve police capacity to monitor risk and observe potential escalation in behaviour. Secondly, it would also minimise the burden on victims to continually re-tell their story. This could also be addressed through specialist police responses in high risk stalking cases, as discussed further below.

Recommendation 11:

The Victorian Government should fund Victoria Police to implement the necessary IT, workforce and training reforms to ensure:

- **comprehensive, evidence-based training relating to stalking**
- **IT systems can capture the 'complete picture' of stalking, including risk factors and / or escalation in behaviours**
- **victims, wherever possible, are provided with a single point of contact to report stalking matters to minimise the extent to which victims are required to re-tell their story and to enhance safety.**

8.1.4. Information sharing

Information sharing in the family violence sector works alongside the MARAM to manage risk.¹⁵⁰ The Family Violence Information Sharing Scheme was created under the *Family Violence Protection Act 2008* (Vic) to enable key organisations and services to share information related to assessing or managing family violence risk to keep perpetrators in view and promote the safety of victim-survivors of family violence.¹⁵¹

Information sharing was formalised in the family violence system because there was an acknowledgement that the failure to share information across frontline services can have catastrophic consequences for victims.¹⁵²

Non-family violence stalking shares many of the same characteristics of family violence and domestic abuse including coercive control and persistent violation of a victim's privacy and security. Accordingly, there should be a similar framework for information sharing related to stalking to ensure system-wide oversight and monitoring of risk.

Recommendation 12: **The Victorian Government should develop an information sharing scheme for stalking as part of the development of a comprehensive multi-agency risk assessment tool for use by justice agencies and victims' services in cases of non-family violence stalking.**

8.2. Specialist response teams and multi-agency responses

Consideration should be given to whether specialist stalking teams, or multidisciplinary approaches to stalking, should be utilised in certain high-risk cases. Some possible models are outlined below.

8.2.1. Stalking Threat Assessment Centre (STAC)—UK

In the UK, the Stalking Threat Assessment Centre (STAC) is a dedicated specialist unit partnering police, mental health services and victim advocacy services to target high-risk stalking matters. It is designed to be a centre of excellence.¹⁵³

¹⁵⁰ Victorian Government, *Family Violence Information Sharing Scheme* (22 June 2021) <<https://www.vic.gov.au/family-violence-information-sharing-scheme>>

¹⁵¹ Victorian Government, *Family Violence Information Sharing Scheme* (22 June 2021) <<https://www.vic.gov.au/family-violence-information-sharing-scheme>>

¹⁵² Victorian Government, *Family Violence Information Sharing Scheme* (22 June 2021) <<https://www.vic.gov.au/family-violence-information-sharing-scheme>>

¹⁵³ Mental Health NHS Trust, *Stalking Threat Assessment Centre* (2021) <<https://www.beh-mht.nhs.uk/services/stalking-threat-assessment-centre-stac/298?ignore=stalking-threat-assessment-centre-stac&postid=298>>.

The multidisciplinary team includes police officers, nurses, a psychiatrist and a psychologist, a victim advocate, Crown Prosecution Service lawyer and a probation officer. Its multidisciplinary team works together to:¹⁵⁴

- pilot innovative responses to stalking, including identifying perpetrators who may be suitable to undertake a behaviour change program
- offer expert advice on stalking to police colleagues
- assist with management plans to protect victims
- improve information sharing between agencies to better protect victims.

Similar teams could be established in geographic regions across Victoria, ensuring high risk cases could be referred to a specialist team.

8.2.2. Victorian Fixated Threat Assessment Centre

A multidisciplinary model has been applied in Victoria to respond to serious threats of violence posed by people with complex needs including mental illness. The Victorian Fixated Threat Assessment Centre (VFTAC), which is a joint service of Forensicare and Victoria Police, employs specialist police, forensic and mental health experts.¹⁵⁵

VFTAC deals 'specifically with fixated individuals and grievance fuelled lone actors, many of whom have a major mental illness or current mental health needs'.¹⁵⁶ VFTAC staff, employed by Forensicare, work on site with police and undertake 'structured risk assessments using standardised tools, and work collaboratively with police on further assessment and intervention plans'.¹⁵⁷

VFTAC funding also ensures specialist mental health, alcohol and other drug services can be put in place to engage high risk individuals to get the help they need.

Both the UK's STAC model, and the VFTAC model, could be useful examples of successful multi-agency and multidisciplinary approaches with applicability to stalking in Victoria. However, careful consideration would need to be given to any multidisciplinary approach have expertise to deal with the spectrum of stalking

¹⁵⁴ Police Professional, *Partners come together to create 'world-leading' specialist unit to tackle stalking* (2018) <<https://www.policeprofessional.com/news/partners-come-together-to-create-world-leading-specialist-unit-to-tackle-stalking/>>.

¹⁵⁵ Forensicare, *Community Forensic Mental Health Service* (2016) <https://www.forensicare.vic.gov.au/wp-content/uploads/2016/09/Forensicare-Community-6pp-DL_v5-Final-Spread-1.pdf>.

¹⁵⁶ Ethical Jobs, *Senior Clinician – Victorian Fixated Threat Assessment Centre* (2020) <<https://www.ethicaljobs.com.au/members/ForensicareEJ/senior-clinician-victorian-fixated-threat-assessment-centre>>.

¹⁵⁷ Ethical Jobs, *Senior Clinician – Victorian Fixated Threat Assessment Centre* (2020) <<https://www.ethicaljobs.com.au/members/ForensicareEJ/senior-clinician-victorian-fixated-threat-assessment-centre>>.

typologies, including 'rejected' stalkers, 'intimacy seekers', 'entitlement' stalkers and 'resentful' stalkers.¹⁵⁸

8.2.3. Risk Assessment and Management Panels (RAMPs)—Victorian response to family violence

Risk Assessment and Management Panels, or RAMPs, are multiagency meetings convened at a local level between representatives from key agencies and organisations that contribute to the safety of women and children experiencing serious and imminent threat from family violence.¹⁵⁹

RAMPs are co-chaired by Victoria Police and specialist family violence services but also include representatives from corrections, child protection, public housing, mental health, alcohol and drug services and men's family violence services.

RAMPs aim to facilitate the safety of family violence victim survivors who require a comprehensive, multiagency risk assessment and management action plan.

As RAMPs bring together key stakeholders—without the need to create a new multidisciplinary 'team' or unit—such a model, if developed with a clear framework and protocol relevant to stalking, could be a practical way to promote a multidisciplinary approach to stalking without any structural changes required in key organisations.

A RAMP-like multidisciplinary mechanism could also be supplemented by a central high-risk stalking centre (whether multidisciplinary or police-based).

8.2.4. Specialist police responses

McEwan et al's research relating to the application of stalking risk profile tools has pointed to the need for specialist policing responses for stalking, noting some risk assessment tools may be too complex for frontline police.¹⁶⁰

Additionally, there is strong evidence from the family violence system that specialist police responses can improve outcomes for victims, particularly where cases involve course of conduct complexities.

In one high profile case in Victoria, a victim of stalking had to deal with different police officers at different police stations over a number of years, none of whom had a specialisation in stalking. Media reports suggested the policing response demonstrated a lack of ability to consider the 'whole story'—no one had tried to

¹⁵⁸ Victorian Law Reform Commission (n 7) 6-7.

¹⁵⁹ Victorian Government, *Facilitate the roll-out of the Risk Assessment and Management Panels* (2020) <<https://www.vic.gov.au/family-violence-recommendations/facilitate-roll-out-risk-assessment-and-management-panels>>

¹⁶⁰ Troy E McEwan et al, 'The Reliability and Predictive Validity of the Stalking Risk Profile' (2018) 25(2) *Assessment* 259, 274.

bring all the evidence together in totality. It was only when the case was referred to a specialist police officer in a Family Violence Investigation Unit that innovative evidence collecting techniques were used to connect the perpetrator to the crimes, ultimately enabling a successful conviction.

While a specialised stalking response may not be required in each police station, consideration should be given to whether Victoria Police should establish a specialised stalking team to provide an avenue for non-specialist police to refer high risk cases to a specially trained and dedicated stalking team. Such teams might be particularly useful where stalking is technology-facilitated, an area which has been identified as challenging for generalist police to respond to.¹⁶¹

Given the gendered nature of stalking, there may be opportunities to learn from, or leverage off, existing specialist responses including:

- sexual offences and child abuse investigation teams, including the multidisciplinary centres (MDCs) available in certain regions of Victoria
- Family Violence Investigation Units

Any specialist police response for stalking should also account for any parallel recommendations relating to possible multi-agency responses to stalking, as discussed above.

Recommendation 13:

The Victorian Government should consider funding specialist police and multi-agency responses to stalking, including consideration of:

- **multiagency stalking risk management meetings**
- **the need for a specialised stalking team within Victoria Police to provide an avenue for non-specialist police to refer high risk cases**
- **whether there is a need for a dedicated multidisciplinary team for high risk stalking matters.**

¹⁶¹ Flynn, Powell and Hindes (n 25) 31.

9. Protecting victims—victim safety and support

As outlined above, there are a range of reforms required across the justice and victim support system to improve victims' experiences, regardless of crime type.

The following section addresses reforms that would more specifically apply to victims of stalking, noting many of these reforms are contingent on, or would be parallel to, investment in broader victims' services and initiatives outlined above.

9.1. Victim support

Under the Victims' Charter, all victims should be referred to relevant victim support services.¹⁶² Research confirms that early intervention in cases of stalking and the provision of services correlates with victim's perception of a positive experience with the criminal justice system.¹⁶³

As outlined above, the 2020 report *Strengthening Victoria's Victim Support System: Victim Services Review*, (Victims Services Review) by RMIT's Centre for Innovative Justice (on behalf of the Department of Justice and Community Safety), identified the need for a strengthened victims' services system in Victoria.

Amongst its findings, the review suggested the need for ongoing access to a single point of contact for victims as their needs change over time, as well as the need to improve system capacity for comprehensive (and ongoing) risk and needs assessment as part of a new 'Victim Support and Recovery Program' (VSRP) which would operate as an enhanced case management model.

Under the proposed new VSRP, a comprehensive risk and needs assessment would be conducted using a victim-led, trauma-informed and strengths-based methodology. If implemented and funded in full, the proposed VSRP would improve stalking victims' safety and support, ensuring comprehensive risk and needs assessments are completed at key points, including when threats or behaviours are escalating.

Given the protracted nature of stalking, the victims' services system must have capacity to continually review a victim's circumstances, assessing risk alongside a standardised risk assessment and management framework like the MARAM

¹⁶² *Victims' Charter Act 2006 (Vic) s7*

¹⁶³ Holly Taylor-Dunn, Erica Bowen and Elizabeth A. Gilchrist, 'Reporting Harassment and Stalking to the Police: A Qualitative Study of Victims' Experiences' (2018) *Journal of Interpersonal Violence*, 1-28.

discussed above, and incorporating appropriate information sharing across relevant agencies including Victoria Police.

Recommendation 14: **The Victorian Government should implement the enhanced victim support service model outlined in *Strengthening Victoria's Victim Support System: Victim Services Review* which would provide victims of stalking with ongoing risk and needs assessment as part of an enhanced Victim Support and Recovery Program case-management model.**

9.1.1. Specialised stalking services

While implementation of an enhanced victim support service model in Victoria, and more sophisticated risk assessment and information sharing (as discussed in detail above) would undoubtedly improve support for stalking victims, consideration should also be given to whether there is a need for a more specialised stalking response, particularly in high risk cases.

Research has highlighted victim support worker concerns around their expertise to respond to, for example, technology-facilitated stalking.¹⁶⁴

A specialised stalking support service would not necessarily require the creation of a new victim support service, or even a stand-alone service. Rather, existing victim support services could be bolstered to provide more specialised responses.

For example, the existing victim support services funded by the Department of Justice and Community Safety, and delivered by community service organisations, could be funded to provide accredited specialist stalking case workers. This could be modelled on Independent Stalking Advocacy Caseworkers (ISACs) in the UK.¹⁶⁵

ISACs ensure that high risk victims of stalking are supported and that a coordinated community response is developed locally to keep victims safe. A stalking victim who had an ISAC stated in recent research:

Without an ISAC I wouldn't have felt confident to ask questions and know what was going on but ultimately, knowing I had support and someone fighting the same battle with me meant so much for my self-worth during a bleak process. I felt prepared going into appointments and giving statements because of my ISAC, but the most helpful part was just having someone feel the same emotions with you while being proactive and having the tools that I lacked to get answers.¹⁶⁶

Academic Alison Bird's stalking research suggests having a stalking case worker to advocate for stalking victims can help validate their experience and help support police in their investigations.

¹⁶⁴ See generally, Flynn, Powell and Hinds (n 25).

¹⁶⁵ Paladin National Stalking Advocacy Service, *Accredited Independent Stalking*

¹⁶⁶ Bird, Allen and Adisa (n 94) 12.

Other specialised models of victim support include Scotland's Action Against Stalking's 'Throughcare Stalking Support Service' which provides counselling and case support to victims of stalking¹⁶⁷ and the National Stalking Helpline (UK).¹⁶⁸

Without commitment from the Victorian Government regarding implementation of the strengthened victims services approach advocated in *Strengthening Victoria's Victim Support System: Victim Services Review*, it is difficult to determine the most appropriate response to providing support for stalking victims. To some degree, the most appropriate response depends on the broader commitment to improving victim support for all victims in Victoria.

However, it is clear from other jurisdictions like the UK, that consideration should be given to whether stalking specialisation should be integrated into Victoria's existing victim support system.

Recommendation 15:

The Victorian Government should consider integrating a specialised stalking support service for high risk victims of stalking in Victoria through:

- **bolstering existing services to provide enhanced responses in high risk cases**
- **establishing a specialised unit / stream of support to enable referrals from generalist victim support case workers in high risk cases.**

9.2. Financial assistance

One of the findings of the VLRC's 2018 review of the *Victims of Crime Assistance Act 1996* (Vic) was that victims often experience delays in accessing awards to assist with their recovery. Although establishment work is underway in building a new financial assistance scheme (FAS), the transition from VOCAT to FAS may take some time.

Due to the persistent and potentially escalating nature of stalking, it is vital that state-funded financial assistance is available for victims of stalking urgently to enable them to put practical safety steps in place to enhance their safety.

Although a new FAS is expected to provide victims with more timely assistance, particularly under a proposed new stream of assistance called 'immediate needs', given the known issues relating to timeliness of VOCAT awards, it is important that

¹⁶⁷ Action Against Stalking, *Our Services* <<https://www.actionagainststalking.org/our-services>>

¹⁶⁸ Suzy Lamplugh Trust, *What happens when I contact the helpline?* <<https://www.suzylamplugh.org/what-happens-when-i-contact-the-helpline>>

victims of stalking have access to swift financial assistance while the new FAS is being implemented.

Consideration should be given to whether it might be appropriate for funded victims' services to administer flexible support packages or enhanced brokerage packages to assist victims of stalking. In a submission to VLRC's 2018 review of the *Victims of Crime Assistance Act 1996* (Vic), a Victims Assistance Program (VAP) stated that VAPs have limited brokerage to assist victims with immediate safety and practical needs and that it would be better for VAPs to be able provide financial assistance payments to assist with immediate safety and practical needs rather than wait for a VOCAT award.¹⁶⁹

In the family violence sector, family violence services are funded by government to provide Family Violence Flexible Support Packages (FSPs).¹⁷⁰ FSPs provide for individualised financial support with an average cost of \$3,000 (up to \$10,000). FSPs are 'individualised' and 'holistic' packages intended to assist victims to access support, move out of crisis and improve their safety, well-being and independence into recovery.

Swift provision of a flexible support package or brokerage in cases of stalking would enable victims to implement safety plans (e.g. install new locks and CCTV). In high risk cases, victims might use a flexible package to cover removalist fees to relocate, change vehicles or purchase new (and safer) technology such as a new mobile phone.

Once the new FAS is introduced, such packages may be unnecessary as the new FAS is intended to provide swifter support under the proposed new stream of financial assistance for 'immediate needs'.

Recommendation 16:**The Victorian Government should:**

- **establish and fund the full rollout of a new Financial Assistance Scheme, including ensuring a new stream of timely assistance is provided under the category of 'immediate needs'**

¹⁶⁹ Merri Health, Submission No 15 to Victorian Law Reform Commission, *Victims of Crime Assistance Act* (30 October 2017).

¹⁷⁰ Department of Families, Fairness and Housing, [Program requirements for the delivery of family violence flexible support packages \(2021\)](https://providers.dffh.vic.gov.au/program-requirements-delivery-family-violence-flexible-support-packages) <<https://providers.dffh.vic.gov.au/program-requirements-delivery-family-violence-flexible-support-packages>>

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- **provide for funded victims' services to administer flexible support packages or enhanced brokerage to assist victims of stalking to implement safety plans quickly.**

9.3. Safety planning

9.3.1. A system-wide responsibility

No individual—or agency—can plan in isolation. Safety planning needs to be a system-wide responsibility, working in conjunction with:

- sophisticated risk assessment, risk profiling and information sharing practices
- enhanced justice system capacity to respond to course of conduct offences and build a holistic picture of a victim's experience
- increased capacity for specialised and multidisciplinary approaches to stalking in high risk cases (across police, courts and victim support)
- improved victim support services, including enhanced case management
- swift provision of financial assistance to enable victims to implement safety plans
- appropriate police and court responses to stalking, including breaches of intervention orders
- proactive intervention by technology companies (and e-safety regulators) to stop technology-facilitated stalking.

Safety planning should be practical and victim-centred. It should be shared across the system, encompassing interventions across police, courts and victim support, as well as private technology companies where applicable.

Safety planning should not be used to perpetuate victim-blaming or put the onus back on victims to collect evidence, change their behaviour or avoid certain activities (like being online). It is not a victim's responsibility to change their behaviour to stop crimes from occurring.¹⁷¹

¹⁷¹ Noting research suggests police will often advise victims to modify their behaviour to avoid contact with the perpetrator. See, for example, Taylor-Dunn, Bowen and Gilchrist (n 22) 4.

9.3.2. Responding to technology

The risks posed by technology-facilitated abuse need to be factored into victim support, case management and safety planning for victims.

Police and support service responses increasingly need to account for the ways in which technology can be used to perpetrate abuse, not only in an overt way (e.g. persistent contact via mobile phone and social media), but through covert surveillance technology which has become increasingly sophisticated, affordable and concealable.¹⁷²

Research in the family violence sector has highlighted the extent to which technology enables:¹⁷³

- perpetrators access to victim/survivors 24 hours a day, using mobile technologies to abuse and harass women easily, instantaneously and at a distance
- perpetrators to create a sense of omnipresence in women's lives through GPS tracking on smartphones and monitoring women's social media accounts
- a variety of techniques to stalk, including text messaging, social media, GPS, and photo and video technologies.

Recent research has highlighted victim support workers' lack of knowledge of how to assist victims with technology safety planning. Research suggests victims' services may need access to highly specialised technological support,¹⁷⁴ as well as general upskilling in incorporating technological safety techniques into broader safety planning with victims.¹⁷⁵

The family violence sector in Victoria is exploring different models for enhancing technology safety including providing specialist support to enable:

- phones to be swept for spyware
- homes and cars to be checked for surveillance and tracking devices
- social media settings and security to be checked to prevent hacking.

Flynn et al have identified that there is potentially a greater role for partnerships between technology providers, government agencies and support services to

¹⁷² Victorian Law Reform Commission, *Modernising surveillance laws* (2010) <<https://www.lawreform.vic.gov.au/news/modernising-surveillance-laws/>>

¹⁷³ Delanie Woodlock, *Technology-Facilitated Stalking: Findings and Recommendations from the Smart Safe Project* (Domestic Violence Resource Centre, 2013) 5.

¹⁷⁴ Flynn, Powell and Hindes (n 25) 35.

¹⁷⁵ *Ibid* 40.

provide training, education and resources regarding technology safety, particularly how safety tools might be utilised to enable victims to remain connected with their support networks at the same time as enhancing online safety.¹⁷⁶

Recommendation 17:

The Victorian Government should consider how victim support services can be bolstered to enhance the availability of ongoing technology support as a key part of safety planning, ensuring:

- **funding for specialist technological expertise to adapt to continually evolving technology-facilitated harm**
- **funding for training, education and resources to respond to technology-facilitated harm**
- **provision of flexible support packages or brokerage to enable access to specialised technology support to facilitate safety checks for spyware, tracking devices and hacking vulnerability in high-risk cases.**

10. Improving the court process for victims

10.1. Victims' legal service

As outlined above, the Commissioner advocates for all victims to have access to a government-funded legal service. In the context of stalking, a victims' legal service would assist victims to identify the criminal and civil options that are available to address stalking and advocate for appropriate interventions, including applying for PSIOs.

A legal service would also assist victims to navigate the various entitlements and protections arising during the criminal justice process such as alternative

¹⁷⁶ Ibid 42. See also, Delanie Woodlock (n 173) 6.

arrangements for giving evidence, avoiding cross examination by the alleged perpetrator and making a victim impact statement.¹⁷⁷

It is important to note that in the context of technology-facilitated stalking, the eSafety Commissioner advises victims to seek legal advice.¹⁷⁸ Without access to lawyers who specialise in victims' issues, victims must face additional barriers to getting the help and support they need to navigate complex issues.

10.2. Protected witnesses

In its 2016 report, *Victims of Crime in the Criminal Trial Process*, the VLRC determined that victims' eligibility for special protections to give evidence should be triggered by a finding that a person is a 'protected victim'—that is, a person who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.¹⁷⁹

Consistent with the VLRC's previous recommendation, victims' eligibility for special protections should be triggered by a finding that a person is a 'protected victim'—that is, a person who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.¹⁸⁰

Consideration should be given to how this could be applied in appropriate circumstances across the civil and criminal system in stalking cases.

10.3. Getting a Personal Safety Intervention Order

While systems abuse by perpetrators of stalking is a real threat—and must be taken seriously—the system needs to better accommodate victims' needs, including the need for flexible approaches to engaging with police and courts and seeking a Personal Safety Intervention Order (PSIO).

The Consultation Paper suggests that if victims could apply for a PSIO online, that 'people who stalk might make online applications for PSIOs against the person they are stalking. There might not be a process by which the registrar could filter inappropriate applications.'¹⁸¹

If a comprehensive risk assessment framework was rolled-out across all justice and victims' services, identifying perpetrators (who present as victims) should be

¹⁷⁷ Including *Sentencing Act 1991* (Vic), the *Victims of Crime Assistance Act 1996* (Vic) and relevant protections afforded victims under the *Criminal Procedure Act 2009* (Vic), *Evidence (Miscellaneous Provisions) Act 1958* (Vic), *Evidence Act 2008* (Vic), *Public Prosecutions Act 1994* (Vic), *Judicial Proceedings Reports Act 1958* (Vic), and *Open Courts Act 2013* (Vic).

¹⁷⁸ eSafety Commissioner, *Adult cyber abuse*, (accessed 22 July 2021) <<https://www.esafety.gov.au/key-issues/adult-cyber-abuse>>

¹⁷⁹ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 203.

¹⁸⁰ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 203. This could be following an application by a party or on the court's own motion.

¹⁸¹ Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) 27.

enhanced by increased knowledge of the tactics used by perpetrators. Appropriate screening and risk assessment should identify perpetrators, regardless of whether the process was online or face to face. This is already the case for services that are not face to face, such as perpetrators who contact victims' services claiming to be victims.

There should be ways for victims to engage with the PSIO application process online, and still have the guidance and intervention of a registrar as necessary. Consideration should be given to how the application process for PSIOs could be more flexible, accommodating victims' need for safety and accessibility.

11. Managing perpetrators

11.1. Learnings from the family violence system

11.1.1. Different types of contraventions

The *Family Violence Protection Act 2008* (Vic) (FVPA) was amended in 2012 to include different types of intervention order contraventions. The FVPA now includes:

- contravention (2 years imprisonment as maximum penalty)
- contravention intending to cause harm or fear (5 years maximum penalty)
- persistent contravention (5 years maximum penalty)

When introducing these new indictable offences, the then Attorney-General stated that the offences were focused on contraventions that 'are particularly harmful to the victim' and 'particularly heinous, persistent or show a flagrant disregard for the law or for those whom the law protects'.¹⁸²

Consideration should be given to whether the *Personal Safety Intervention Orders Act 2010* (Vic) should be amended to mirror the contravention provisions in the FVPA. Further consideration would need to be given to how such offences might overlap with the criminal law offence of stalking (i.e. a 'persistent' contravention might be captured under the criminal offence of stalking).

¹⁸² Victoria, *Parliamentary Debates*, Legislative Council, 29 November 2012, 5343 (Hon G K Ruch-Phillips, Minister for Employment and Industrial Relations)

11.1.2. Specialised court and specialist civil interventions

Certain specialist family violence courts in Victoria can make counselling orders on family violence intervention order respondents. Such orders, which require male respondents to attend a Men's Behaviour Change Program, underpin the Government's overarching vision for a family violence system that increases the accountability of people who have used violence against family members, encouraging them to change behaviour.¹⁸³ When a respondent disobeys a counselling order without a reasonable excuse, they can be charged with a criminal offence.¹⁸⁴

Similarly, in the UK, a Stalking Protection Order (SPO) (a civil order made by the Magistrates' Court) can include requirements such as:

- attendance at an assessment of suitability for treatment
- attendance at an appropriate perpetrator intervention programme
- attendance at a mental health assessment
- attendance at a drugs and alcohol programme
- surrendering devices
- providing the police with access to social media accounts, mobile phones, computers, tablets and passwords/codes.

Consideration could be given to whether a specialist stalking list (or 'Division') should be established in the Magistrates' Court of Victoria. This might enable high risk cases to be centralised and dealt with by specialist magistrates. It might also provide powers for specialised Magistrates to compel respondents to attend mandatory counselling or behaviour change programs.

This would be a significant shift in policy and practice in Victoria and any reforms would need to consider the lessons learned in the family violence system in relation to the effectiveness of men's behaviour change programs. There would need to be a sound evidence base for compelling respondents in civil matters to engage in mandatory counselling or behaviour change.

Such interventions should only be implemented if it helps keep victims safe and holds perpetrators accountable.

Key considerations include:

- the nature of different types of stalking—as noted in the Consultation Paper, the primary motivation of stalkers can differ and therefore, the psychological interventions required might also differ

¹⁸³ Magistrates' Court of Victoria, *Family violence courts and counselling orders* (2020) <<https://www.mcv.vic.gov.au/about/family-violence-courts-and-counselling-orders>>

¹⁸⁴ Magistrates' Court of Victoria, *Family violence courts and counselling orders* (2020) <<https://www.mcv.vic.gov.au/about/family-violence-courts-and-counselling-orders>>

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- workforce and systems capability—if Magistrates made counselling orders, appropriate programs (with sufficient specialisation and resourcing) would need to be available.

11.2. Supervision

Keeping perpetrators in view—regardless of method—is key to enhancing the safety of victims. It is important that perpetrators feel that their behaviour is being monitored and that there are consequences when they breach PSIOs or continue stalking.

11.2.1. Electronic monitoring

Electronic monitoring of perpetrators (beyond current electronic monitoring provisions in Victoria) should be explored as a potential option to increase the safety of victims.

Benefits for victims of crime include piece of mind knowing a perpetrator is being monitored and relief from cessation of behaviours.¹⁸⁵ Studies in relation to electronic monitoring of domestic abuse perpetrators suggest electronic monitoring can buttress ‘no contact’ conditions in intervention orders.¹⁸⁶

However, these systems are not fail-safe:¹⁸⁷

- perpetrators may continue to stalk victims via other methods not detected by electronic monitoring
- exclusion zones may inadvertently alert the perpetrator to the whereabouts of the victim/survivor (or victims may ‘self-segregate’ by not travelling outside the prescribed ‘victim zone’, thus inhibiting freedom of the victim)
- electronic monitoring may malfunction, placing victims in danger
- victim/survivors may have a false sense of security (particularly if electronic monitoring is not overseen effectively and responded to by law enforcement).

Electronic monitoring cannot stand alone. To be effective in reducing recidivism and increasing victim safety, it must be part of a broader program including risk assessment, prosecution of intervention order breaches, appropriate sentences, effective face to face supervision and other oversight mechanisms for perpetrators including behaviour change where appropriate.

¹⁸⁵ Edna Erez et al, ‘GPS Monitoring Technologies and Domestic Violence: An Evaluation Study’ 144 <<http://doi.apa.org/get-pe-doi.cfm?doi=10.1037/e616502012-001>> (‘GPS Monitoring Technologies and Domestic Violence’). Studies in relation to domestic abuse matters suggest electronic monitoring can buttress ‘no contact’ conditions in intervention orders.

¹⁸⁶ Ibid 147.

¹⁸⁷ See generally, Ibid 145.

11.2.2. Expanding the sex offender's register

A further option for consideration is to expand the register of serious sex offenders to include serious harm stalking perpetrators.

The United Kingdom recently considered creating a register of dangerous domestic abusers and stalkers. It was proposed that stalking perpetrators to be added to the Violent and Sex Offender Register (ViSOR) database of offenders under the Multi-Agency Public Protection Arrangements (MAPPA).

MAPPA requires all offenders on the register to be 'risk assessed to identify anyone who may be at risk of serious harm from them' and as part of this process 'consideration must be given in each case to whether the disclosure of information about an offender to others should be made to protect victims, potential victims, staff, and other persons in the community'.¹⁸⁸

The UK parliament ultimately did not progress reforms relating to a register of dangerous domestic abusers and stalkers.¹⁸⁹

Any consideration of extending the sex offender register would have to have regard to the extent to which the management of the sex offender register is working well in Victoria in managing high risk sex offenders in the community.

It is noted that the Victorian Auditor-General's Office (VAGO) undertook an independent assurance report into the management of registered sex offenders in 2019 and concluded that:

*Victoria Police has not demonstrated a consistent level of sex offender management across the state. In the presence of such significant levels of variation in the resourcing applied to sex offender management, Victoria Police cannot be assured that all its units are best managing the risks these offenders pose, beyond the minimum legislated compliance requirements.*¹⁹⁰

11.3. Appropriate justice responses to stalking and breaching intervention orders

11.3.1. Pursuing criminal charges for stalking and breaches of intervention orders

Stalking is a crime. Police need to recognise and pursue charges where there is evidence of criminal behaviour, including both stalking and breaches of intervention orders.

¹⁸⁸ United Kingdom Secretary of State for Justice, *MAPPA Guidance: Chapter 10 Disclosure* (Online) <<https://mappa.justice.gov.uk/MAPPA/viewCompoundDoc?docid=10344660&partid=10344756&sessionid=&voteid=&>>.

¹⁸⁹ Guardian UK, 'No stalkers' register in domestic abuse bill an "insult to victims" (27 April 2021)

<<https://www.theguardian.com/uk-news/2021/apr/27/dropping-of-stalkers-register-from-bill-an-insult-to-victims>>

¹⁹⁰ Victorian Auditor-General's Office, 'Managing Registered Sex Offenders' (Independence assurance report to Parliament 2019-20:1) (2019) 7.

When a victim reports stalking, police should proactively seek evidence and pursue criminal charges, as well as discussing other options that are available to the victim, such as PSIOs. Given the prevalence of technology-facilitated stalking, this must include swift and appropriate action in such cases.

As discussed above, appropriate police responses to stalking require:

- improved training and education
- more sophisticated risk assessment, risk profiling and information sharing in cases of non-family violence stalking
- a Code of Practice for stalking providing a framework for appropriate, consistent, transparent, and accountable responses
- additional resources for police to respond to technology-facilitated abuse
- enhanced ability to provide a single point of contact for stalking victims
- specialist and / or multidisciplinary approaches to stalking in certain high-risk cases.

While there is a role for specialist police responses in stalking, there also needs to be broader police accountability for responding to stalking that amounts to criminal behaviour, and breaches of PSIOs that must be pursued as criminal offences.

11.3.2. Court and Corrections resources

Appropriate court resourcing is essential to help facilitate the better protection of victims. It is vital courts have the ability to engage with the same evidence-based risk assessment tools, and information sharing schemes, as discussed above.

Given the number of intervention orders hearings that the Magistrates' Court of Victoria is required to consider, Magistrates need to have sufficient time to assess the evidence provided and the risks posed in each case.

Appropriate court resources, including ensuring integrity in the way in which intervention order processes are conducted, contributes to overall perceptions of procedural fairness for all parties. It is vital that the court response is viewed as commensurate, fair and equitable for all parties, not just victims. Research in relation to family violence intervention orders has found that respondents to FVIOs are more likely to follow those orders if they feel that they have been treated with fairness and respect. By contrast, if an intervention order respondent feels that "the system is against them", they are more likely to disregard the order or,

'just as dangerously, leverage the mechanisms of that system against a victim/survivor.'¹⁹¹

Corrections Victoria must also be given sufficient resources to adequately monitor perpetrators in the community. For example, from 1 July 2016 to 30 June 2019, the Magistrates' Court of Victoria sentenced 1,516 males and 170 females to a collective 2003 charges of stalking.¹⁹² Of those charges, 33.1% resulted in a community corrections order (CCO).

CCOs are 'flexible' orders served in the community, but conditions are also based on the risks and severity of the offence. To be effective, sufficient resources must be provided to Corrections Victoria to enable sufficient management and supervision of offenders in the community.

Recommendation 18:**The Victorian Government should consider:**

- **whether there is a need for new contravention offences for breaches of Personal Safety Intervention Orders, similar to those introduced under the Family Violence Protection Act**
- **the need for specialised court responses for stalking which may enable increased perpetrator management and oversight mechanisms such as behaviour change programs**
- **electronic monitoring of offenders on bail or subject to PSIOs in high risk cases**
- **whether the sex offender register should be expanded to include high-risk stalking offenders who pose an ongoing danger to a victim and / or the community**
- **whether courts and corrections have sufficient resources to appropriately respond to, and manage ongoing risk, in cases of stalking.**

11.4. Technology companies

Both police and victim support workers have raised concerns about the extent to which technology companies take responsibility for responding to technology-

¹⁹¹ Centre for Innovative Justice (n 106) 5.

¹⁹² https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/6231_21A.html

facilitated abuse.¹⁹³ In recent research, victim support workers said they ‘wanted to see technology companies shouldering some of the responsibility for responding to [technology-facilitated abuse], including investigating and stopping the abuse, and taking speedier action to take down abusive posts.’¹⁹⁴

The *Online Safety Bill 2021* (Cth), which passed both houses on 23 June 2021, strengthens the powers of the eSafety Commissioner to direct technology providers to remove harmful content (including content harmful to both children and adults), and impose higher penalties for both companies and individuals who do not comply.

Given the extent to which stalking is now inexplicably linked with technology-facilitated abuse, it will be important to monitor the extent to which the Online Safety Bill provides victims with improved outcomes.

12. Prevention and system oversight

12.1. Community education

As noted in the Consultation Paper, stalking has only been recognised as a crime relatively recently.¹⁹⁵ Research has pointed to the lack of knowledge in the general community in understanding stalking, particularly as a criminal offence.¹⁹⁶ There may be additional barriers to understanding stalking in certain communities. For example, recent research has highlighted the need for awareness campaigns in Aboriginal and Torres Strait Islander communities to ‘inform both the victims and perpetrators that abusive behaviours such as threats, harassment, stalking and impersonation are as illegal as physical abuse’.¹⁹⁷

It is clear that there is a need to improve community understanding of stalking—what it is, and that it is a crime.

Better awareness and a general understanding of what constitutes stalking will enable victims to identify stalking when it is happening to them, and assist victims

¹⁹³ Flynn, Powell and Hinds (n 25) 32. See also, Alison Brnley and Rebecca Armitage, ‘Perpetrators using drones to stalk victims in new age of technology fuelled harassment’ (1 October 2018) ABC News (online) <<https://www.abc.net.au/news/2018-10-01/drones-used-to-stalk-women-in-new-age-of-harassment/10297906>>

¹⁹⁴ Ibid 35.

¹⁹⁵ Victorian Law Reform Commission (n 7) 2.

¹⁹⁶ White, Longpré and Stefanska (n 12) 3.

¹⁹⁷ Chay Brown, Mandy Yap, Annick Thomassin, Minda Murray and Eunice Yu (Centre for Aboriginal Economic Policy Research, ANU), ‘Can I just share my story?’ *Experiences of technology-facilitated abuse among Aboriginal and Torres Strait Islander women from regional and remote areas* (eSafety Report, 2021) 56.

to report stalking earlier, providing enhanced opportunities for the justice system to intervene before there is an escalation in severity.¹⁹⁸

12.1.1. Gendered drivers of violence against women

Like family violence and sexual assault, gender inequality contributes to the gendered nature of stalking which disproportionality impacts women. Factors associated with gender inequality are the most consistent predictors of violence against women, resulting in gendered patterns of violence.

For this reason, community education relating to stalking should build on existing campaigns (such as those led by Respect Victoria), leveraging off existing campaigns relating to gender equality and respect which aim to address broader violence against women.¹⁹⁹

12.2. Centre of excellence in stalking

It is vital that funds are directed towards research to improve understandings of what works, and what doesn't work, in relation to interventions across both criminal and civil streams in relation to stalking.

For example, the Consultation Paper states: 'there is little evidence of how effective the PSIO system is in reducing the crime of stalking'²⁰⁰ and 'Due to the lack of data, it is not known whether, or in what circumstances, PSIOs actually protect victims'.²⁰¹

Based on recommendations made by the VLRC at the conclusion of this inquiry, it is likely that reforms will be made to either the criminal or civil system (or both) to address stalking in Victoria. It is vital that any such reforms are monitored and evaluated to assess their effectiveness, particularly in reducing harm to victims and reducing recidivism.

Given the scarcity of research and evidence-based practice in relation to non-family violence stalking in Victoria (and Australia more broadly), consideration should be given to how the Victorian Government could contribute funding towards a centre of excellence in stalking.

For example, consideration could be given to establishing stalking-specific research grants or investing in partnerships with leading experts in gendered violence. In Scotland the Centre for Action Against Stalking (CASS) is a partnership between University of the West of Scotland and the charity Action Against Stalking, operating as 'centre of excellence' structured around areas of scholarly

¹⁹⁸ Ibid 14.

¹⁹⁹ Respect Victoria, *Ministerial statement of expectations* (2019) <respectvictoria.vic.gov.au>

²⁰⁰ Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) 22.

²⁰¹ Victorian Law Reform Commission, *Stalking* (Consultation Paper, June 2021) 22.

focus that are critical to the prevention of, and responses to, stalking. CAAS promotes innovative, applied research in a multi-disciplinary, environment.²⁰²

Recommendation 19:**The Victorian Government should:**

- **fund a stalking education campaign building on existing community education campaigns relating to gender equality and respect for women.**
- **fund a centre for excellence in stalking to ensure any stalking-related reforms are monitored and evaluated to assess their effectiveness.**

²⁰² University of the West of Scotland, *Centre for Action Against Stalking: International Centre Against Harmful & Abusive Behaviour* (23 March 2021) <<https://www.uws.ac.uk/research/research-institutes-centres-groups/centre-for-action-against-stalking>>

Appendix A: Summary of recommendations

Recommendation 1:

Review laws, policies and practices (including civil and criminal interventions) relating to stalking and the extent to which such laws, policies and practices are trauma-informed, including whether they facilitate a justice system that:

- **realises the impact of trauma and recognises the signs of trauma**
- **reduces re-traumatisation**
- **emphasises physical, psychological, and emotional safety for victims**
- **provides victims with voice and choice, including different ways to engage to minimise harm**
- **creates opportunities for victims to rebuild a sense of control and empowerment**
- **recognises that trauma may impact victims' engagement with the process**
- **responds to victims' diversity**
- **promotes trust and transparency in process and decision making.**

Recommendation 2:

To ensure all victims of crime, including victims of stalking, have access to a strengthened victim support and financial assistance scheme, the Victorian Government should establish and fund:

- **the enhanced victim support service model outlined in Strengthening Victoria's Victim Support System: Victim Services Review**

-
- the full rollout of a new state-funded Financial Assistance Scheme for victims, incorporating all recommendations of the VLRC's review to enhance access and equity for victims of crime

All current, and future victims' services, including the new Financial Assistance Scheme, should be prescribed agencies under the *Victims of Crime Commissioner Regulations 2020*, to enable appropriate oversight and compliance with Victims' Charter obligations.

- Recommendation 3:** The Victorian Government should establish a publicly funded victims' legal service to assist victims with the full range of complex legal issues that arise as a result of victimisation.
- Recommendation 4:** The Victorian Government should introduce a Victims' Right to Review scheme underpinned by new entitlements in the Victims' Charter enabling independent review of certain police and prosecution decisions after internal review options are exhausted.
- Recommendation 5:** The Victorian Government should review all Victorian courts to assess their compliance with contemporary standards in victim safety and wellbeing, including upgrading all courts to meet contemporary standards including provision of:
- safe court entrances and exits for victim-survivors
 - safe waiting spaces and interview rooms, including child-friendly spaces and culturally safe spaces
 - remote witness facilities.
- Recommendation 6:** The Victorian Government should improve data collection and reporting in relation to stalking to contribute to better understanding of attrition rates to inform justice system improvements.
- Recommendation 7:** Victoria Police should explore alternative mechanisms for victims to report to, and engage with, police in relation to stalking cases.

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- Recommendation 8:** **Victoria Police should be funded to design and implement a comprehensive, evidence-based training on stalking that features:**
- **in-depth exploration of the behaviours, dynamics and techniques of stalking, including the gendered nature of stalking**
 - **insight into the impact of stalking on victims featuring lived experiences of victims**
 - **application of evidence-based risk assessment tools**
 - **evidence-collection in stalking, including dealing with technology-facilitated stalking.**
- Recommendation 9:** **Justice and victims' services agencies should co-design a Code of Practice for stalking, setting out:**
- **best practice police, prosecution and victims' services responses when responding to cases of stalking**
 - **police responsibilities in relation to pursuing both criminal and civil interventions in cases of stalking**
 - **police responsibilities in relation to pursuing criminal charges for breaches of stalking intervention orders**
 - **police and prosecution obligations, consistent with the Victim' Charter, including keeping victims informed about the progress of a case, making appropriate referrals and consulting with victims at key stages of the criminal justice process.**
- Recommendation 10:** **The Victorian Government should fund the development and implementation of a comprehensive multi-agency risk assessment tool for use by justice agencies and victims' services in cases of non-family violence stalking.**

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- Recommendation 11:** The Victorian Government should fund Victoria Police to implement the necessary IT, workforce and training reforms to ensure:
- comprehensive, evidence-based training relating to stalking
 - IT systems can capture the ‘complete picture’ of stalking, including risk factors and / or escalation in behaviours
 - victims, wherever possible, are provided with a single point of contact to report stalking matters to minimise the extent to which victims are required to re-tell their story and to enhance safety.
- Recommendation 12:** The Victorian Government should develop an information sharing scheme for stalking as part of the development of a comprehensive multi-agency risk assessment tool for use by justice agencies and victims’ services in cases of non-family violence stalking.
- Recommendation 13:** The Victorian Government should consider funding specialist police and multi-agency responses to stalking, including consideration of:
- multiagency stalking risk management meetings
 - the need for a specialised stalking team within Victoria Police to provide an avenue for non-specialist police to refer high risk cases
 - whether there is a need for a dedicated multidisciplinary team for high risk stalking matters.
- Recommendation 14:** The Victorian Government should implement the enhanced victim support service model outlined in Strengthening Victoria’s Victim Support System: Victim Services Review which would provide victims of stalking with ongoing risk and needs assessment as part of an enhanced Victim Support and Recovery Program case-management model.

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- Recommendation 15:** **The Victorian Government should consider integrating a specialised stalking support service for high risk victims of stalking in Victoria through:**
- **bolstering existing services to provide enhanced responses in high risk cases**
 - **establishing a specialised unit / stream of support to enable referrals from generalist victim support case workers in high risk cases.**
- Recommendation 16:** **The Victorian Government should:**
- **establish and fund the full rollout of a new Financial Assistance Scheme, including ensuring a new stream of timely assistance is provided under the category of ‘immediate needs’**
 - **provide for funded victims’ services to administer flexible support packages or enhanced brokerage to assist victims of stalking to implement safety plans quickly.**
- Recommendation 17:** **The Victorian Government should consider how victim support services can be bolstered to enhance the availability of ongoing technology support as a key part of safety planning, ensuring:**
- **funding for specialist technological expertise to adapt to continually evolving technology-facilitated harm**
 - **funding for training, education and resources to respond to technology-facilitated harm**
 - **provision of flexible support packages or brokerage to enable access to specialised technology support to facilitate safety checks for spyware, tracking devices and hacking vulnerability in high-risk cases.**

Recommendation 18:**The Victorian Government should consider:**

- **whether there is a need for new contravention offences for breaches of Personal Safety Intervention Orders, similar to those introduced under the Family Violence Protection Act**
- **the need for specialised court responses for stalking which may enable increased perpetrator management and oversight mechanisms such as behaviour change programs**
- **electronic monitoring of offenders on bail or subject to PSIOs in high risk cases**
- **whether the sex offender register should be expanded to include high-risk stalking offenders who pose an ongoing danger to a victim and / or the community**
- **whether courts and corrections have sufficient resources to appropriately respond to, and manage ongoing risk, in cases of stalking.**

Recommendation 19:**The Victorian Government should:**

- **fund a stalking education campaign building on existing community education campaigns relating to gender equality and respect for women.**
- **fund a centre for excellence in stalking to ensure any stalking-related reforms are monitored and evaluated to assess their effectiveness.**



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