



MONASH University

**A Critical Analysis of the Applications of
Anti-Stalking Legislation in
Victoria, Australia**

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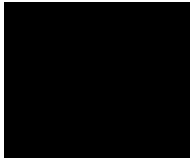
Abstract

Stalking is a prevalent social issue and the complex and diverse nature of the behaviour poses challenges to its criminalisation. The application and efficacy of original anti-stalking legislation and subsequent law reform in Victoria, Australia, is unknown, as is the effect of the legislation in responding to stalking. Drawing upon a quantitative and qualitative content analysis of 161 court records involving stalking offences heard in the County Court of Victoria from 1995 to 2012, this thesis begins by identifying the types of behaviours being addressed as stalking crimes in the jurisdiction. Further case analysis highlights the nature of stalking offences in relation to the persistence and duration of conduct, the profile of stalkers and their victims, and the contexts of behaviours. The analysis also covers other offences commonly convicted alongside stalking, sentencing outcomes and the intended and unintended consequences of stalking statutes.

The mixed methods analysis sheds light on a broad legislative framework that results in a blanket definition of stalking. Anti-stalking legislation has malleable application that is both responding to serious stalking offences and also being stretched beyond the behavioural scope of stalking. The highly discretionary and versatile nature of anti-stalking laws suggests the legislation is too broad. This raises implications for the appropriate use of anti-stalking laws in Victoria, other Australian jurisdictions and internationally, which diminishes the need and original aim of the law reform. The intention of this thesis is to address these complex and significant issues using a unique methodological approach to examine criminal offences and law in action.

Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

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List of Abbreviations

ABS	Australian Bureau of Statistics
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
ANROWS	Australia's National Research Organisation for Women's Safety
APC	Australian Productivity Commission
BCS	British Crime Survey
CBO	Community Based Order
CCO	Community Corrections Order
COAG	Council of Australian Governments
CPS	Crown Prosecution Service
CSA	Crime Statistics Agency
DOJ	Department of Justice
DVO	Domestic Violence Order
DPP	Director of Public Prosecutions
GEM	Gender Empowerment Measure
HMCPSP	Her Majesty's Crown Prosecution Service Inspectorate
HMIC	Her Majesty's Inspectorate of Constabulary
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer/Questioning
MCCOC	Model Criminal Code Officers Committee
MCLOC	Model Criminal Law Officers Committee
MUHREC	Monash University Human Research Ethics Committee
NIJ	National Institute of Justice
NISVS	National Intimate Partner and Sexual Violence Survey
NVAW	National Violence Against Women
POV	Parliament of Victoria
PTSD	Post-Traumatic Stress Disorder
RCFV	Royal Commission into Family Violence
RECON	Relationship and Context-Based
SAC	Sentencing Advisory Council
SAM	Stalking Assessment and Management
SASH	Screening Assessment for Stalking and Harassment

SCAG	Standing Committee of Attorneys-General
SPSS	Statistical Package for the Social Sciences
UAV	Unmanned Airborne Vehicle

List of Cases

Berlyn v Brouskos (2002) 134 A Crim R 111.

DPP v Sutcliffe [2001] VSC 43.

Giller v Procopets (2008) 24 VR 1.

Grosse v Purvis [2003] QDC 151.

Gunes v Pearson (1996) 89 A Crim R 297.

Nadarajamoorthy v Moreton [2003] VSC 283.

R v Derboghossian (08/07/1996 DCt(Qld) Unreported).

R v Hoang (2007) 16 VR 369.

R v Verdins (2007) 16 VR 269.

Thomas v Campbell (2003) 9 VR 136.

List of Legislation

California Penal Code § 646.9 (Deering 2018).

Crimes (Domestic and Personal Violence) Act 2007 (NSW).

Crimes (Family Violence) Act 1987 (Vic).

Crimes (Stalking and Family Violence) Act 2003 (Vic).

Crimes Act 1958 (Vic).

Crimes Act 1990 (ACT).

Crimes Amendment (Bullying) Act 2011 (Vic).

Criminal Code Act (NT).

Criminal Code Act 1899 (Qld).

Criminal Code Act 1924 (Tas).

Criminal Code Act 1995 (Cth).

Criminal Code Act Compilation Act 1913 (WA).

Criminal Law Consolidation Act 1935 (SA).

Family Violence Protection Act 2008 (Vic).

Mental Health Act 1986 (Vic).

Occupational Health and Safety Act 2004 (Vic).

Personal Safety Intervention Orders Act 2010 (Vic).

Protection from Harassment Act 1997 (UK).

Protection of Freedoms Act 2012 (UK).

Sentencing Act 1991 (Vic).

Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic).

Sentencing and Other Acts (Amendment) Act 1997 (Vic).

Serious Crime Act 2015 (UK).

Stalking Intervention Orders Act 2008 (Vic).

Summary Offences Act 1966 (Vic).

Introduction

Stalking has been described as the ‘crime of the nineties’ (Goode, 1995) but historically, stalking-type behaviours existed long before this and only became a serious social concern in the 1990s, which then galvanised the media, general public, and academics, subsequently becoming a criminal justice issue for policy and law makers (Mullen, Pathé, & Purcell, 2009). Over the past 30 years the extent to which stalking is a salient problem behaviour has been explored through victim surveys, epidemiological studies and psychological research, which has demonstrated the high prevalence of stalking. In Australia, one in six women and one in 15 men will be victims of stalking at one point in their lives (Australian Bureau of Statistics [ABS], 2017). While there is no standardised definition used amongst researchers, stalking is commonly seen as making *repeated and unwanted intrusions on another person causing fear or distress* (Pathé & Mullen, 1997; Spitzberg & Cupach, 2007). Incorporated in this general definition are complex, subjective and context-dependent behaviours. It is the *persistence* of a pattern of behaviour and how it is *perceived* that distinguishes stalking from routine, everyday conduct (Finch, 2001; Sheridan & Davies, 2001c; Swanwick, 1996).

Challenges in defining stalking extend to the legal sphere. The introduction of modern anti-stalking legislation in California in 1990 provided relatively new statutes when compared to traditional crimes such as murder or robbery (Guy, 1993). Unlike most other crimes, a criminal offence of stalking is not a single illegal act but rather the repetition of acts that when considered in isolation are often legal and even innocuous such as making telephone calls, sending text messages and giving gifts. Behaviours may appear ostensibly innocent or merely annoying, yet in reference to context, frequency, location and time, may appropriately be seen as threatening (Goode, 1995; Harbidge, 1996). A constellation of behaviours may be used to stalk another person including following, making approaches, loitering, placing someone under surveillance and communication such as telephone calls, text messages, emails and letters (Pathé & Mullen, 1997). Ogilvie (2000b) argues that the inherent difficulty in criminalising stalking is the nebulous nature of behaviours it can include, and that it is only through the undue amplification of these normative conventions that behaviours

become concerning. In light of these issues and despite the shared intention of proscribing repetitive intrusions causing a person harm, there is also a lack of a consistent definition of stalking in anti-stalking laws (Purcell, Pathé, & Mullen, 2004b).

In 1995, the Australian State of Victoria introduced anti-stalking legislation. The construction of this new offence was in response to growing community concern, and seen as a necessary expansion of domestic violence law reforms (Keenahan & Barlow, 1997; Parliament of Victoria [POV], 1994a). It was formulated to conform to the proliferation of anti-stalking laws being introduced internationally. Section 21A of the *Crimes Act 1958* (Vic) provides that a stalking offence is committed if an offender engages in a course of conduct involving any of a non-exhaustive list of behaviours included in the legislation. This includes contacting the victim by any means, acting in any way that could reasonably cause harm, making threats or using abusive or offensive words. Case law interpretation of a course of conduct is behaviours engaged in on at least two occasions, or that is protracted,¹ together with the behaviours displaying a continuity of purpose.² Conduct must be committed with the intent to cause harm, or the offender ought to have understood the likely harm that may result. Harm is stated as physical or mental harm, self-harm, or arousing apprehension or fear in the victim. Actual impact is only explicitly required if malicious intent was not found. The maximum penalty for stalking in Victoria is ten years imprisonment.

As outlined, Victorian anti-stalking legislation has three elements that constitute an offence of stalking: conduct requirements, intention of the offender, and impact on the victim. The framework for most anti-stalking laws nationally and internationally consists of the inclusion, exclusion or variations of these clauses where any differences – alongside the principal focus for legislatures – results in varied laws within Australian states and between countries (Kapley & Cooke, 2007; McEwan, Mullen, & MacKenzie, 2007a; Purcell et al., 2004b; Van der Aa & Römken, 2013). Further, it is not uncommon for legislation to be reformed in order to reflect socio-cultural changes in how stalking is committed or obstacles in the implementation of

¹ *Gunes v Pearson* (1996).

² *Berlyn v Brouskos* (2002).

the law. The current anti-stalking legislation in Victoria has been amended several times since its inception. Most notably, the *Crimes (Stalking and Family Violence) Act 2003* (Vic) expanded the legislation to include cyberstalking and allowed for the extra-territorial operation of the law. The legislation was further expanded by the *Crimes Amendment (Bullying) Act 2011* (Vic) making stalking applicable to situations of bullying.

Notwithstanding that the legal recognition of stalking as a crime helps raise public awareness of this problem behaviour, existing scholarship on stalking provides the foremost knowledge on the nature of these behaviours. Studies have concentrated on the prevalence of stalking; the scope of behaviours; impact to and coping strategies of victims; risk assessments; and the typologies, motivations and management of stalkers (Mullen et al., 2009; Sheridan, Blaauw, & Davies, 2003a; Spitzberg & Cupach, 2007). Perceptions of stalking is a growing area for investigation providing valuable insights into how the community and victims interpret what constitutes stalking against behavioural and legal criteria. Such research is consequential given that stalking is a socio-cultural construction that has come into the common lexicon and hence it is through the subjectivity of perceptions that behaviours are designated the label of stalking (Mullen, Pathé, & Purcell, 2001b). Much like popular misconceptions around rape, there is an adherence to stalking stereotypes, for example that stalking perpetrated by strangers represents the most dangerous context (De Fazio, Sgarbi, Moore, & Spitzberg, 2015; Dunlap, Hodell, Golding, & Wasarhaley, 2012; Dunlap, Lynch, Jewell, Wasarhaley, & Golding, 2015; Scott, Rajakaruna, & Sheridan, 2014b; Scott, Rajakaruna, Sheridan, & Sleath, 2014c; Scott, Rajakaruna, Sheridan, & Gavin, 2015; Sheridan & Davies, 2001b). Such misperceptions taint the reality of how stalking is experienced and is contrary to the evidence based on empirical research.

Whilst academic research has largely focused on dissecting the behaviours of stalking and their impact, far less is known about criminal justice responses to stalking. In particular, the implementation of anti-stalking legislation to address criminal offences of stalking is understudied. This represents a significant shortfall when considering the ambiguous quality of stalking, the range of behaviours that may be used to stalk, difficulties in legislating against the conduct and the newness of the crime. The majority of research currently available on stalking within the criminal justice system

relates to the number of stalking incidents reported to police (ABS, 2017; Baum, Catalano, Rand, & Rose, 2009; Budd & Mattinson, 2000a; Korkodeilou, 2016; Morris, Anderson, & Murray, 2002; Purcell, Pathé, & Mullen, 2002; Tjaden & Thoennes, 1998), stalking offences recorded by police (Marshall, 2001; Victoria Police, 2014a), shortcomings in the appropriate policing of stalking (HMIC & HMCPSI, 2017; Taylor-Dunn, Bowen, & Gilchrist, 2017), number of stalking intervention order applications and breaches (Courts and Tribunals Unit: Department of Justice [DOJ], 2008; DOJ, 2009; McMahon & Willis, 2002; Sentencing Advisory Council [SAC], 2008; 2017c; Willis & McMahon, 2000), prosecution and conviction rates (ABS, 2011; Middlemiss, 2014; Ogilvie, 2000a, 2000c), and sentencing outcomes for stalking convictions (DOJ, 1998; Dussuyer, 2000; SAC, 2017a, 2017e). More recently, studies have surveyed police about their attitudes of stalking incidents and perceptions regarding seriousness of the behaviour as well as the influence of the relationship between victims and offenders (Brady & Nobles, 2017; Finnegan, Fritz, & Horrobin; Kamphuis et al., 2005; Lynch & Logan, 2015; McKeon, McEwan, & Luebbers, 2015; Scott, Nixon, & Sheridan, 2013; Sheridan, Scott, & Nixon, 2016b; Weller, Hope, & Sheridan, 2013). This is together with surveys devised to gauge the perceptions of mock juries towards factors within stalking cases that may influence their deliberation for guilty verdicts (Dunlap et al., 2012; Dunlap et al., 2015; Gavin & Scott, 2016; Magyarics, Lynch, Golding, & Lippert, 2015).

Specifically, in regards to anti-stalking legislation in Victoria, there has been little to no evaluation of the practical applications and efficacy of the original anti-stalking law or subsequent legislative reform. While it is evident that these laws have been implemented through recorded rates of arrests, charges, prosecutions and convictions, the nature of stalking offences entering the criminal justice system is unclear on both a domestic and international level. Numerous commentaries have theoretically critiqued the design of legislation to reveal potential issues with its implementation. This predominantly regards the three principal elements of conduct, intention and impact. Most of these critiques have emerged from the United States, questioning definitional issues, differences between states, constitutionality of laws and methods for uniforming legislation (Boychuk, 1994; Bradfield, 1998; Carter, 2016; Gregson, 1998; Guy, 1993; Lamplugh & Infield, 2003; Lingg, 1993; Walker, 1993). Otherwise, reviews have called for law reform to address stalking offences specifically (Finch,

2002; Middlemiss & Sharp, 2009; Petch, 2002; Richards, Fletcher, & Jewell, 2012) and has provided cross-country comparison of laws (De Fazio, 2009; Modena Group on Stalking, 2007; Smartt, 2001; Van der Aa & Römken, 2013; Van der Aa, 2017).

Australian research and case commentary have reviewed anti-stalking laws and considered its utility for addressing the many forms, motivations and ramifications that stalking may have (Dennison & Thomson, 2005; Freckelton, 2000; Goode, 1995; Groves, 1997; Kift, 1998, 1999; McEwan et al., 2007a; Petch, 2002; Richards et al., 2012; Swanwick, 1996; Urbas, 2000; Whitney, 1999; Wiener, 2001b). Of concern is that the legislative framework expressed through anti-stalking legislation results in overbroad law. A balance is required between having a law that is comprehensive enough to address the multitude of stalking behaviours and yet narrow enough to not capture legitimate activities (Dennison & Thomson, 2005; Mullen et al., 2009; Ogilvie, 2000b). The application of anti-stalking legislation should avoid having a net-widening effect, so as to not draw more people into the criminal justice system under anti-stalking laws who commit relatively minor offences. The low threshold and vagueness of conduct requirements are central to this issue. Purcell and colleagues (2004b) recognise the problems that nonetheless can arise from specifying a number of acts constituting a course of conduct. Too few will draw more people into the criminal justice system for undertaking minor nuisances, whilst too many may result in victims being vulnerable to further harm before legal intervention can be taken.

The intent of the offender is another contentious element in the legislation. In Victoria the *foreseeability element*, where intent can also be fulfilled if the offender ought to have understood the likely consequences, was introduced to allow courts to take into account the offender's intellectual capacity and cultural background when determining guilt (POV, 1994b). However, it is undetermined whether the two facets of intent differentiate seriousness of behaviour and degrees of offender culpability. In light of the spectrum of behaviours and intentions included in stalking, McEwan, Mullen and MacKenzie (2007a) propose that distinctions of severity should be made between prolonged campaigns of stalking and relatively inoffensive intrusions that do not warrant the classification of a criminal offence of stalking.

Anti-stalking legislation is a unique law as it depends on the victim's interpretation of behaviours, and their experience of the harm caused to them (Purcell et al., 2004b). An advantage of this is that it acknowledges the context-dependent nature of stalking. However, whilst a victim-defined crime may ensure greater application of the law, this may come at the expense of criminal culpability (Mullen et al., 2009). It is also speculative how far apprehension or mental harm extends in these laws (Wiener, 2001a), especially as stalking may involve no physical contact, divergent from most traditional criminality (Swanwick, 1996). There are other suggested difficulties in implementing the legislation, most notably, the evidential burden for the prosecution in proving the constituent elements of a stalking offence (Feld, Hemming, & Anthony, 2015; Finlay & Kirchengast, 2015). This includes satisfying the conduct requirements comprising of multiple acts and for some legislation, evidence that there was a credible threat to victims (Bradfield, 1998; Brady & Nobles, 2017; Dank, 2017; McAnaney, Curliss, & Abeyta-Price, 1993; Wells, 2001).

The views and experiences of researchers highlight real issues for the application of anti-stalking legislation in achieving its objective of addressing serious and persistent stalking cases. Clinicians in Australia have observed alternative uses for the law where the breadth of the legislation has led to stalking offences being utilised as an add-on offence alongside other offences (Mullen et al., 2009). The flexibility of anti-stalking laws coupled with the ambiguity of stalking-like behaviour may give rise to its highly discretionary use by police and prosecutors. There is potential for the legislation to be applied to 'charge load' offenders in order to achieve augmented penalties, or as a tool for plea-bargaining. This is particularly pertinent when community protection is a factor and there is a risk of future violence (Freckelton, 2001). According to Pathé and colleagues (2004), inappropriate and inconsistent implementation of anti-stalking legislation through the dismissal and downgrading of charges derives from inherently unclear legislation and a lack of understanding of stalking. In Victoria, anti-stalking legislation has been enforced for more than 20 years, but the use of the law and the nature of behaviours entering the criminal justice system as stalking offences are still uncertain. On the strength of the critiques around anti-stalking legislation, and the complexity and prevalence of stalking, this represents a consequential shortcoming.

Despite the significance of the law reform in the 1990s, anti-stalking legislation may not be applied to its full potential. The aims and benefits in passing these laws may be thwarted by how the legislation is implemented in practice, whereby police and prosecutors may overly depend on more traditional laws when confronted with stalking (HMIC & HMCPSI, 2017). Some stalking behaviours may be addressed through alternative laws such as assault or making threats; this is instead of, or as well as, being prosecuted for stalking. This poses a limitation to the appropriate application of anti-stalking legislation on behaviours characteristic of stalking, and perhaps highlights the legislation as a symbolic law, in which anti-stalking legislation is not being enforced on stalking crimes.

Purpose and Scope of the Study

Drawing upon a quantitative and qualitative content analysis of stalking cases entering the County Court of Victoria under anti-stalking legislation, this study examines how anti-stalking legislation is implemented in Victoria, and to what effect it is addressing stalking behaviours. This criminological thesis evaluates whether behavioural and psychological understanding of stalking is corresponding to the legal definition of stalking in relation to the nature of behaviours convicted as criminal stalking. This study bridges the gap between what constitutes a criminal offence of stalking and what psychological research indicates as problematic stalking behaviour. As prior research has shown, there is a genuine concern for anti-stalking legislation having applications other than its original purpose, which is to address harmful stalking behaviour. Hence, the current study investigates the intended and unintended consequences of anti-stalking legislation for victims, offenders and the integrity of the law. The application of the legislation is contextualised within the wider framework of how society perceives, understands and constructs stalking.

This research examines stalking cases appearing in the County Court of Victoria between 1995 and 2012. This involves reviewing sentencing remarks and court files of cases in which stalking was a primary or secondary proven offence in accordance with section 21A of the *Crimes Act 1958*. Analysis was based on 161 stalking cases or related offences; 143 stalking convictions, 7 acquittals, 6 discontinued charges (*nolle*

prosequi),³ and 5 offences that were not prosecuted under s 21A but involved stalking behaviour.⁴ This sample represents all cases involving stalking offences in the County Court during this time period. The content analysis involved codifying quantitative and qualitative variables. This identified contextual information involved in stalking offences, the types of behaviours in cases and the circumstances of offenders and victims. The quantitative content analysis yields descriptive statistics that outlines features found in cases whilst the qualitative content analysis provides an in-depth examination of the nature of stalking convictions.

This criminological study embraces an original methodology for researching criminal offences and takes a novel approach in examining the intersection between law and behaviour. There are challenges and implications between the rigidity of law and the way it is operationalised in order to address behaviours that are often complex and nuanced. Given the breadth and sweeping nature of what stalking is and what constitutes stalking under anti-stalking legislation, this study is suitably positioned to explore this interaction. Additionally, stalking is relevant to the growing changes in how we communicate and interact with people in the globalised world. Stalking-like behaviour has been connected to new forms of offensive interaction such as *revenge pornography* and *trolling*,⁵ while still being pertinent to conventional crimes connected to domestic violence. Thus, the implications for how anti-stalking legislation is utilised may have wider significance. The issues raised by this thesis also extend to how other stalking statutes are used in different jurisdictions and the increasingly stretched meaning of stalking. The mixed methods analysis of legislation and its applications also provides an innovative methodological contribution that may be applied to other research projects into the nexus between behaviour and the laws that aim to regulate it.

³ A *nolle prosequi* (or ‘no bill’) is a formal notification filed by the prosecution in court indicating that there is no intention to proceed with specific charges. The Director of Public Prosecutions [DPP] may discontinue prosecution due to a number of considerations such as insufficient evidence to establish every element of an offence; no reasonable prospect of conviction; or that continuing the prosecution is not in the public’s interest (Feld et al., 2015; Judicial College of Victoria, 2017).

⁴ This includes convictions for breaching intervention orders or multiple telecommunication offences.

⁵ Trolling is a form of online harassment that involves posting purposefully inflammatory commentary in order to provoke an emotional response from people. This online behaviour may be a one-off occurrence of posting abusive comments or long campaigns of harassment (McEwan, 2014, February 26).

There are limitations to this research, most notable is that the stalking cases analysed were processed in the County Court rather than in the Magistrates' Court of Victoria, where the majority of stalking offences are heard summarily. Unfortunately, content analysis of offences heard in the Magistrates' Court was not feasible, as these courts do not hold comprehensive sentencing remarks or case files. Hence, this research is based on more serious and indictable offences that may not reflect the full scope of behaviour prosecuted as stalking. Analysis was also substantially based on stalking convictions as sentencing transcripts represented the vast majority of collected data. Cases that did not involve a stalking conviction represented a smaller sample size comparatively and required extra caution when extrapolating any findings.

Thesis Outline

This thesis is divided into eight chapters. Following this introduction, a review of available research on the subject of stalking is provided. The literature is separated into four main chapters. Chapter One covers behavioural and psychological research that assesses how stalking emerged as a problem behaviour, the prevalence of stalking, common behaviours, motivations for pursuit, and relationship between perpetrators and targets. Chapter Two is a literature review that concentrates on research exploring the political, social and cultural constructions of stalking and how certain influences can impact perceptions of stalking and harassment. Chapter Three provides theoretical critiques of anti-stalking legislation and examines the key legislative clauses within anti-stalking legislation in greater detail. Chapter Four outlines official data reporting on the criminal justice response to stalking within the three agencies of police, prosecutions and the courts and considers the pervasiveness of stalking offences in Victoria. Chapter Five describes the methodological design and approach for this study, including the stages and processes for data collection and analysis of the data.

Following the methodology, the results of the content analysis are reported. Chapter Six outlines the findings of the quantitative content analysis of stalking sentencing remarks and court files from the Victorian County Court, which are structured according to descriptive statistics. These results outline the demographics of offenders and victims, including age, gender, mental health issues and any prior offending. The statistics on the nature of stalking includes the relationship type between the offender

and victims, the duration of the course of conduct, and the primary motivation for stalking conduct. This is in addition to an analysis on the procedural application of the legislation; that being the number of stalking offences charged, other offences that were charged alongside stalking, sentencing outcome and the length of the sentence.

Chapter Seven reports on findings from the qualitative component of the content analysis of Victorian County Court stalking cases. This chapter presents a comprehensive examination of cases entering courts, including an in-depth analysis of the nature of offences. The duration, frequency and types of stalking are presented and an analysis is provided to explain how this accords with the legislative requirements of anti-stalking legislation, specifically in satisfying a course of conduct. This is in addition to the other two main elements of anti-stalking legislation: intent and impact. The chapter reflects on how criminal offences of stalking correlate with stalking as a behaviour where the circumstances of the offence – together with the offender and victims – is examined with regard to the entire context of the case. The chapter focuses on factors that relate to the seriousness of offences, or the perceptions of seriousness, which corresponds to why charges were brought and prosecuted. The chapter details how anti-stalking legislation is used in practice, what behaviours constitute an offence, prosecutorial practices, and why alternative laws were used on stalking-related behaviour.

Chapter Eight, then, discusses the convergence of results from the previous two analysis chapters and implications of findings. This discussion and conclusions chapter emphasises the nature of stalking offences charged, prosecuted and convicted in the County Court of Victoria, contrasting these criminal offences with how stalking is described and experienced in the community, as evidenced from stalking literature. This chapter also highlights the variability of persistent stalking behaviours constituting a course of conduct. The efficacy of Victorian anti-stalking legislation in addressing serious stalking conduct is discussed, along with whether the law is fulfilling its designed purpose. This chapter concludes the thesis and provides a summary of the main findings, conclusions and implications for research. Possible consequences for policy are also outlined as well as this study's methodological research contribution.

Chapter One

Stalking as Behaviour: The State of Descriptive and Psychological Research on Stalking

Introduction

This chapter provides a review of existing research relevant to stalking. Unsurprisingly, stalking research has only been conducted in earnest in the last 30 years, stimulated by the modern construction of the conduct as problematic and its subsequent criminalisation (Mullen et al., 2001b; Spitzberg, 2002). Although there is no accepted single definition of stalking, studies clearly refer to the same phenomenon (Sheridan et al., 2003a). Analysis of research in this chapter is separated into subsections reflecting the emergence of stalking behaviour, defining what is stalking, classifying behaviours in regards to relationship contexts and motivations, the nature of how stalking is perpetrated and who stalkers and stalking victims are. Although the phenomenon is based on acts that may be part of day-to-day life, they can be damaging and result in serious injury for victims. Salient themes also include the circumstances surrounding stalking in relation to the presence of threats, physical assault and domestic violence. The analysis provides the basis for comparing criminal offences of stalking coming before the courts with behavioural and psychological understanding and experiences of stalking in the community.

The Emergence of Stalking as a Social Concern

Stalking as a distinct term and criminal offence are relatively recent developments, originating in the late 1980s and early 1990s (Mullen et al., 2001b). However, behaviour entailed in persistent pursuit, harassment, and intrusion have long been documented in fiction and are entrenched in the popular ideals of ‘true love’ (Emerson, Ferris, & Gardner, 1998; Giorgi-Guarnieri & Norko, 2007; Mullen, Pathé, Purcell, & Stuart, 1999; Ogilvie, 2000a; Sinclair & Frieze, 2000). Cupach and Spitzberg (2004) recognise that the range of behaviours understood as stalking today have deep roots in courtship. Ogilvie (2000b) also draws connection between the powerful cultural belief of love being interlocked with raw emotional intensity, while unfaltering romantic pursuit is endorsed as a sign of true and noble love. Classics such as *Wuthering Heights* (Brontë, 2003) and *Othello* (Shakespeare, 1994) encase themes

of love, tragedy, betrayal, and jealousy, and are fused together under the image of romance. Importantly, these narratives propel the ‘cultural acceptance of the idea that passionate love may well entail violence’ (Ogilvie, 2000b, p. 11).

These traditional depictions continue to hold cultural significance today, manifested through media, film and popular culture. The *Twilight* (Meyer, 2005) novels and films, for instance, portray a vampire who, at a distance, inconspicuously follows and watches his human love interest in order to protect her; appearing in her bedroom merely to watch her sleep. The overriding message in the saga is a tale of true love. In the face of rejection, continual demonstrations of persistence verify commitment to an intimate relationship. Such conduct is not entirely disapproved of by society, and may in fact prove successful in establishing a long-term relationship (Emerson et al., 1998; Sinclair & Frieze, 2000). Nonetheless, Dunn (1999), Cox and Speziale (2009) explain that framing behaviours as romantic minimises the threats they could present as it follows traditional models of courtship in heterosexual paradigms where men need to overcome all obstacles (including women themselves) to win affection. Due to such entrenched stereotypes, when it comes to defining stalking, there are difficulties in differentiating between features of stalking and passionate romantic pursuit, both in popular consciousness and in the legal interpretation of behaviours.

From the late 1980s, the media appropriated the term stalking to mean persistent harassment (Lowney & Best, 1995; Mullen et al., 2009). ‘Stalking’ is an English word that at first was largely confined to Anglophone countries (Mullen et al., 2001b). Stalking is not a discovered phenomenon, but rather constructed to help conceptualise particular forms of harmful intrusions (Mullen et al., 2001b). Lowney and Best (1995) suggest that media coverage of sensational celebrity stalking cases spurred public awareness and scrutiny over this new crime. Specifically, the 1989 shooting death of American actress Rebecca Schaeffer by an obsessed fan, who had stalked her for two years, has been credited with galvanising national attention (Guy, 1993; Kapley & Cooke, 2007; Lowney & Best, 1995). Initial interest in stalking imposed on public figures and celebrities was reflected in early research dedicated to investigating inappropriate communication and approach behaviours towards Hollywood celebrities and members of the United States Congress (Dietz et al., 1991).

Celebrity stalking victims such as Jodie Foster, David Letterman, Ronald Reagan and Madonna are considered the impetus for exposing the true scope of stalking and its reach beyond the celebrity (Emerson et al., 1998; Giorgi-Guarnieri & Norko, 2007; Goode, 1995; Ogilvie, 2000b; Saunders, 1998). Henceforth the media began circulating reports of domestic violence victims being stalked by former partners; followed by everyday individuals also being the victims of stalking (Lowney & Best, 1995). The deaths of five women from California drew particular attention of legislators and contributed to the implementation of the world's first specific anti-stalking law. These women were relentlessly stalked and killed by their former intimate partners within a 6-week period in 1989. The criminal justice system was seen as ineffective in spite of the restraining orders that were taken out against their former partners (Guy, 1993; McAnaney et al., 1993; Walker, 1993). Thereafter, the media framed stalking as a form of domestic violence and precursor to serious violence, prompting activists and victim lobbies to push for greater government response (Lowney & Best, 1995).

Former Californian State Senator Edward Royce of Fullerton sponsored the first modern anti-stalking bill proscribing 'stalking' as a criminal offence (Guy, 1993; McAnaney et al., 1993). Anti-stalking legislation was subsequently introduced across the United States in what McAnaney et al. (1993, p. 824) describe as a 'torrent of legislation'. Many state legislatures drafted stalking laws in line with the Californian model as well as in response to local and particularly emotive stalking cases (Purcell et al., 2004b). The proliferation of these laws during the 1990s extended internationally to include, among other countries, Australia, Canada, New Zealand and the United Kingdom (Mullen et al., 2009; Purcell et al., 2004b). The criminalisation of stalking has also expanded beyond Anglophone countries to many European nations, introducing respective anti-stalking laws since the mid-1990s and well into the 2000s (De Fazio, 2009; Van der Aa & Römken, 2013).

Australian state governments introduced anti-stalking laws between 1993 and 1996 to fill inadequacies in existing laws and to protect women who have been constantly harassed by ex-partners (Dussuyer, 2000; McMahon & Davids, 1993; McMahon & Willis, 2002; Queensland Parliament, 1993). The frequency of stalking within domestic violence cases was demonstrated in the first epidemiological study on

stalking conducted by the ABS (1996a), which solely surveyed women about their experiences of stalking, partner violence and their safety at home and in the community. The case of Andrea Patrick in New South Wales highlighted the dangers of stalking in the context of domestic relationships (Goode, 1995; McMahon & Davids, 1993). Andrea was violently harassed by her ex-de facto husband in breach of a protection order, which ultimately resulted in him murdering Andrea. This was compounded by the fact that Andrea's ex-partner had been in custody and granted bail two days before her murder (Goode, 1995).

Goode (1995) and Swanwick (1996) suggest that while California's original motivation for stalking laws was likely the advent of celebrity stalking, subsequent laws in the United States and internationally became attached to a domestic violence priority. McMahon and Willis (2002) propose that this swift enactment of laws indicates a moral panic surrounding the egregious nature of stalking and the failure to regulate the emerging crime. The prompt introduction of anti-stalking legislation – and the lack of preparatory research – resulted in considerable variance across domestic and international legislation (McEwan et al., 2007a). This lack of a uniform definition is however not restricted to legislation, where research on stalking has also adopted different descriptions to suit the remit of the study.

Defining Stalking as a Concept, for Academia and as a Law

Stalking is repeated conduct rather than an isolated act (Sheridan et al., 2003a). Developing a blanket definition of stalking is problematic given that it involves a range of commonplace and ordinary behaviours. Whether stalking is formulated clinically, conceptually, or in a legal setting, extensive debate surrounds its definition. A popular definition is Mullen and colleagues' (1999, p. 1244) description of stalking as a 'constellation of behaviours involving repeated and persistent attempts to impose on another person unwanted communication and/or contact'. Alternatively, Meloy (Meloy & Gothard, 1995; 1996, 1998) originally preferred the term *obsessional following* to describe an abnormal or long-term pattern of harassment imposed on a specific individual, involving more than a single overt act. This definition was drawn from research conducted by Zona, Sharma, and Lane (1993), labelling obsessional individuals as those who have persistent ideas, thoughts, or impulses that inevitably leads them to engage with the targeted person.

Researchers differ in their definitional approach; some convey the general notion of stalking, others draw upon legal definitions and operationalise them for epidemiological surveys, while others select a stringent approach in order to accurately express the qualities of stalking. Purcell and colleagues (2002, p. 116) provide one of earliest examples of a more rigid definition involving a time element, where stalking is ‘ten or more behaviours persisting for more than four weeks’. Likewise, Dressing, Kuehner and Gass (2005) opt for a stricter definition in which stalking involves multiple episodes of harassment consisting of at least two different forms of intrusive conduct, occurring over a minimum of two weeks, while also causing fear. In contrast, the British Crime Survey [BCS] investigated ‘persistent and unwanted attention’, which was taken from the broad definition of harassment under the *Protection from Harassment Act 1997* (UK) (Budd & Mattinson, 2000b, p. 6). More recent studies have aimed to differentiate stalking from less harmful harassment using empirical investigation of duration thresholds (e.g. behaviours persisting for longer than two weeks (Purcell, Pathé, & Mullen, 2004a)) and the number of intrusions (five or more behaviours (Thompson & Dennison, 2008; Thompson, Dennison, & Stewart, 2013)), which have subsequently been used to define stalking in community-based research (Senkans, McEwan, & Ogloff, 2017).

In the state of Victoria, a stalking offence has been committed if the offender engages in a course of conduct with the intention of causing physical or mental harm, or to arouse apprehension or fear in the victim for their own or another’s personal safety. The offender must also know that engaging in said conduct would likely cause such harm, apprehension, or fear. Significantly, intent is also seen to be present if the offender *ought* to have understood the potential for this harm even if this was not their objective. Here, criminal liability is seen as a form of recklessness or negligence (Groves, 1997). In this circumstance, the offender’s conduct must have resulted in physical or mental harm, apprehension or fear in the victim (*Crimes Act 1958* s 21A(3)(b)).

Ingrained in these definitions are the acts, conduct and behaviours used in the process of stalking. While some include a specific list of the array of behaviours that stalking may entail, other definitions avoid such delineation given that behaviours are too

exhaustive to effectively outline. This particularly relates to the two basic legislative models that exist: either adhering to the list method – listing all the acts constituent of an offence; or the general prohibition method (Lamplugh & Infield, 2003; Van der Aa & Römken, 2013). Victorian legislation is a mix of these approaches, providing a list of acts that may comprise a course of conduct but openly proscribing stalking as any behaviour that may reasonably cause harm. Clinical research and victim surveys have found that stalking typically involves, but is not restricted to: following, watching, vandalising, surveillance, trespassing, loitering, slandering, threatening, physical and verbal abuse, theft, accosting, intrusive communication, harassing phone calls, property damage, breaking and entering, attending places frequented by the victim, and sending unsolicited mail and gifts (Budd & Mattinson, 2000b; Coleman, 1997; McEwan, Mullen, MacKenzie, & Ogloff, 2009b; Pathé, 2002; Sheridan, Davies, & Boon, 2001a, 2001b; Sheridan, Scott, & Roberts, 2016c). These behaviours can also certainly take place outside a stalking situation, presenting one of several issues for their criminalisation.

Research highlights the many problems involved in developing a single definition covering all nuances involved in stalking, confirmed also by the disparities between legislation (De Fazio, 2009; Dennison & Thomson, 2005; Purcell et al., 2004b). One pervasive issue is that stalking does not relate to a single action, but rather a multitude of acts. Ogilvie (2000b) asserts that definitional difficulties stem from the paradox of stalking being both an example of conformity and criminality. That is to say, stalking comprises conduct that is derived from widespread and accepted social norms, such as giving gifts, but is excessively employed to the point of being unwelcomed and harassing. Hence, stalking often involves innocuous behaviours (McEwan et al., 2007a). Finch (2002) contends the ‘nebulous quality’ of stalking renders a precise and workable legal definition problematic. Atypical to the traditional concepts of criminal law, stalking often does not comprise any physical elements but is rather formed of mental elements in terms of implied threats and impact being purely psychological or emotional (Dietz & Martin, 2007; Douglas, 2005; Swanwick, 1996). Although stalking often involves no physical injury or damage, and may not even involve direct contact, victims nonetheless experience detriment.

Conduct that has an exclusively psychological impact is highly subjective. Emerson et al. (1998) emphasise that stalking is based on interpretation; what one person perceives as stalking may be very different for another person. Constructing either a conceptual or legal definition of stalking centres on how the victim experiences the conduct, instead of being wholly contingent on the perpetrator's behaviours and intentions (Mullen et al., 1999). Thus, legislation focusing on conduct requirements could be unreservedly applied if the necessary acts of stalking were proven. This opens the debate on what elements of stalking represent the wrongfulness of the behaviour; the acts committed, the intention of the perpetrator, or the impact. Finch (2002) and Ogilvie (2000b) argue that unwanted behaviour and any resultant fear and apprehension should be prioritised. This acknowledges the context-dependent nature of stalking, the damage it can cause, and any idiosyncratic behaviours that are specifically disturbing and threatening only to the victim.

There are nonetheless disadvantages of stalking being victim-defined. Due to individual dispositions and vulnerabilities, 'victims' may mistakenly perceive conduct as stalking. Medical conditions, emotional instability, past histories, and personal vulnerabilities are all factors that can influence how an individual responds to another's conduct (Mullen et al., 2009; Purcell et al., 2004a). Swanwick (1998) draws attention to previous experiences that may elevate fear, and subsequently impact how an individual processes a social interaction. The author gives the example of a female rape victim, who may be hypersensitive to conduct engaged in by a man (not the rapist) trying to win over her affections. Arguably this suitor is not engaging in stalking, but this may be perceived as such by the woman. This raises the issue as to how far victim impact should be legislated, particularly as victims of stalking may experience a number of consequences aside from mental and physical harm, such as financial loss (Spitzberg, 2002). Many anti-stalking laws incorporate a 'reasonable-person-test' in order to overcome this issue, which is an objective test to determine whether a reasonable person would think that the behaviours would likely have a negative or harmful effect (Blaauw, Sheridan, & Winkel, 2002a; Dennison & Thomson, 2005).

McEwan et al. (2007a) recognise that most legislation has at least one of three critical components; conduct requirements, intention, and consequences to victims (Boyчук,

1994). These three elements are fundamental in legally defining stalking. Firstly, and arguably the most important legally and behaviourally, stalking is repetitive and persistent conduct. Secondly, the conduct is unwanted by the recipient; and finally, the persistent conduct results in a negative reaction in the recipient, such as distress or fear. In accounting for the various behavioural and legal definitions, while also being cognisant of the similarities between definitions, these are the common properties that characterise stalking. It is important to note that defining stalking is fundamental to accurately measuring, understanding, and criminalising the behaviour. Accordingly, stalking definitions should coincide with *specific purposes*, whether that be an operational definition for clinical studies or to fulfil jurisprudential criteria (Cupach & Spitzberg, 2004; Giorgi-Guarnieri & Norko, 2007). With this mind, this thesis adopts Mullen et al.'s (1999, p. 1244) definition of stalking as 'constellation of behaviours involving repeated and persistent attempts to impose on another person unwanted communication and/or contact'.

Moreover, the present research critically analyses anti-stalking legislation, and thus by extension the legal definition of stalking. Thesis findings will compare how the legal definition of stalking corresponds to the behavioural understanding in terms of the types of cases charged, prosecuted, and convicted as stalking under legislation in the State of Victoria, and shed light on what an appropriate and effective legal definition of stalking should entail. Furthermore, it is essential that anti-stalking legislation is not examined in isolation, but positioned within a wider framework (Ogilvie, 2000b) that includes a comprehensive understanding of stalking in terms of offenders, victims, motivations, behaviours and social norms that demonstrate how complex the phenomenon of stalking is. Such a comprehensive framework is particularly relevant for this thesis as these issues pertain to how to address stalking crime in relation to prevention and responding to breaches of law.

The Prevalence of Stalking and Pervasiveness of the Problem Behaviour

Epidemiological surveys indicate that stalking is a prevalent crime of significant social concern, and thus research investigating the nature of stalking, together with how to best address this crime, is of great value. However, the definition of stalking adopted by studies has a direct impact on the extent and incidence of stalking that are being measured. Indeed, Davis and Frieze (2000) found that the rate of victimisation

fluctuated according to whether a specific behavioural definition or a self-classification scheme was employed. The rate of stalking may also differ according to the phraseology and selection of conduct incorporated in survey definitions, together with the frequency of conduct, response rate, sample population, the level of fear that the victim is required to have experienced, and any preconceived notions associated with the term stalking or harassment. In light of this, some surveys may specifically opt to exclude the word *stalking* (Purcell et al., 2002). With these caveats in mind, these surveys offer a necessary gauge of the prevalence of stalking as a social issue.

The most recent Personal Safety Survey conducted by the ABS (2017) found that since the age of 15, 17% of women and 6.5% of men have been a victim of stalking at least once during their lifetime. This rate is slightly decreased from a previous survey, in which 19% of women and 7.8% of men reported victimisation respectively (ABS, 2012).⁶ Drawing on the most recent report, over 3% of women and 1.7% of men were stalked in the 12 months prior to the survey (ABS, 2017). An earlier ABS (1996a) survey focusing on women's safety, similarly reported that 2.4% of women were stalked annually, whilst 15% had been stalked at least once during their lifetime; these findings were confined to male perpetrators only.

One of the earliest representative Australian surveys conducted by Purcell et al. (2002), found that almost one in four respondents had at one point experienced victimisation that satisfied the legal definition of stalking in Victoria. This indicates the broad reach of incidents that may be considered stalking offences in Victoria. Ten percent of respondents reported experiencing 10 or more behaviours that persisted for more than four weeks (Purcell et al., 2002). Men were overwhelming the perpetrators of stalking, comprising 84% of stalkers in this sample (Purcell et al., 2002). Similar to the first representative ABS (2005) survey conducted a few years later, Purcell et al. (2002) found that women were twice as likely than men to experience stalking during their lifetime. The rate of victimisation in the 12 months prior to the administration of both these surveys was, however, not significantly different between genders (ABS, 2005; Purcell et al., 2002).

⁶ The 2012 Personal Safety Survey adopted a different definition of stalking compared to the 2016 survey (ABS, 2017), which asked respondents whether they experienced unwanted contact or attention on more than one occasion that *could* have caused fear or distress.

Australian epidemiological surveys demonstrate a higher lifetime prevalence rate of stalking compared to international surveys. As discussed previously, this is the result of varying definitions of stalking, which may indicate that Australian surveys adopt a broader definition of stalking rather than it reflecting greater incidence. For instance, the National Violence Against Women [NVAW] Survey⁷ was the first national victimisation survey on stalking in the United States and incorporated fear as a criterion for stalking (Tjaden & Thoennes, 1998). This survey found that 2% of men and 8% of women had been stalked during their lifetime, while 0.4% of men and 1% of women were stalked annually. Seventy-eight percent of stalking victims were female and 87% of perpetrators were male (Tjaden & Thoennes, 1998). However, the NISVS conducted five years later estimated an increased prevalence of stalking, in which almost 6% of men and over 15% of women in the United States experienced stalking victimisation during their lifetime (Breiding et al., 2014).⁸ Other studies validate the consensus that women are two to four times more likely to be victimised compared to men (Baum et al., 2009; Black et al., 2011; Spitzberg, Cupach, & Ciceraro, 2010). The BCS also found a high rate of annual stalking victimisation, with 4% of women and 1.7% of men experiencing unwanted and persistent attention (Budd & Mattinson, 2000a). This increased for both women and men to 9% in 2004/2005 while the lifetime rate of stalking in this study for women was 23% and 15% for men (Finney, 2006). The high prevalence of stalking is duplicated in findings across international studies including Germany (Dressing et al., 2005; Hellmann & Kliem, 2015), Norway (Narud, Friestad, & Dahl, 2014), Sweden (Dovelius, Öberg, & Holmberg, 2006) and the Netherlands (Van der Aa & Kunst, 2009).

Younger people have been repeatedly shown to be more likely to experience stalking victimisation than older individuals (ABS, 2005; Purcell et al., 2002; Scottish Government Social Research, 2011; Van der Aa & Kunst, 2009; Wood & Stichman, 2018). This has resulted in some studies opting to conduct research within a stratified

⁷ The National Intimate Partner and Sexual Violence Survey [NISVS] implemented in 2010 replaced the NVAW conducted in 1995/1996.

⁸ Similar to the NVAW Survey, the NISVS used a conservative definition of stalking requiring the victim to report having felt very fearful or concerned as a result of the perpetrator's behaviour. However, using a definition of stalking that amounts to any amount of fear, NISVS reported that 1 in 4 women and 1 in 13 men had been a victim of stalking in their lifetime (Black et al., 2011).

sample population, namely in a higher educational setting. This sample population presents a specific context in which stalking occurs, that is within the normal practices of establishing and dissolving romantic relationships by young adults. In Portugal, 36% of female college students and 29% of male students reported stalking (Granegia & Matos, 2018). Higher rates of stalking in universities compared to the general population was also found by Jordan, Wilcox, and Pritchard (2007). The prevalence of stalking within the student population was reported in a study of sexual assault and harassment at Australian universities, which found a number of students experience stalking-type behaviours (Australian Human Rights Commission [AHRC], 2012).

Another recent study conducted by Senkans and others (2017) found that many male and female university students were both the perpetrators and victims of problem behaviours within the context of intimate relationships. The presence of serious intimate partner violence during a relationship was particularly associated with stalking once the relationship had ended (Senkans et al., 2017). This is supported by earlier research that in the context of relationships, female stalkers in a university sample perpetrated increased levels of moderate violence than their male counterparts, while there were no gender differences for severe violence (Thompson, Dennison, & Stewart, 2010). Youth is not the only sub-population recognised as having a higher than average stalking victimisation rate: members of the LGBTIQ community (Langenderfer-Magruder, Walls, Whitfield, Kattari, & Ramos, 2017; Sheridan, Scott, & Campbell, 2016a), physicians and health professionals (Mullen et al., 2009; Nelsen, Johnson, Ostermeyer, Sikes, & Coverdale, 2015) and public figures (Hoffmann, 2009; James et al., 2011; James et al., 2016) also have an increased risk of victimisation.

Spitzberg and Cupach's (2007) meta-analysis of 175 international studies explores the scope of stalking. Overall, it was found that the lifetime prevalence of stalking victimisation was between 2% to 13% for males and 8% to 32% for females. The incidence averaged across both samples was also calculated, in which 25% of those surveyed experienced stalking (Spitzberg & Cupach, 2007). This corresponds with Purcell et al.'s (2002) finding that almost one in four individuals will experience stalking. Furthermore, Spitzberg and Cupach (2007) contend that although clinical studies may over-represent the rate of female victims of stalking and male perpetration, females are evidently more likely to be victimised compared to their

male counterparts. In view of these prevalence studies, stalking is clearly a significant social issue both in Australia and internationally. The widespread consensus is that women are more likely to be victims of stalking, while perpetrators are predominantly male. However, men also represent a substantial proportion of stalking victims and women a significant minority of perpetrators, with more male victims and female perpetrators found in the community than would present in a criminal justice setting.

Typologies of Stalkers and Classifying Stalking

A substantial body of research consists of clinical studies proposing typologies of stalkers. The development of typologies has emerged from the different contexts in which stalking occurs and offers a crucial understanding of the psychology and circumstances of offending (Pinals, 2007). The categorisation of stalking cases is important as it can inform strategies to discontinue stalking episodes, measure the effectiveness of policy responses, assist in the appropriate management of stalkers and is somewhat predictive of future risk for physical violence (McEwan, Daffern, MacKenzie, & Ogloff, 2017a; Mullen et al., 1999; Mullen, Pathé, & Purcell, 2001a; Ogilvie, 2000b; Racine & Billick, 2014). Diverging intervention strategies are necessary to best prevent future offending, for example a stalker suffering mental illness likely requires different legal and psychological treatment compared to a stalker seeking revenge on a former partner. Arguably, stalking offences should not be uniformly prosecuted or sentenced similarly liable to the same penalty of a maximum ten years imprisonment (McEwan & Strand, 2013). This section will discuss the typologies of stalking within three sub-categories: an underlying disorder or pathology (physiological or psychological); relationship context; and the primary motivation.

Pathological Typologies

Mullen et al. (1999) identify five types of stalkers in their clinical studies, integrating motivation, context and mental disorder where it exists: the rejected, intimacy seekers, incompetent suitors, resentful, and predatory stalkers. Rejection from a relationship may lead to stalking motivated by a desire for reconciliation or revenge, most frequently involving a former partner, but may also occur due to an estrangement with a family member or close friend. Intimacy seekers endeavour to establish a love relationship with the victim (or believe that they already have one due to the presence

of a severe mental disorder), while incompetent suitors continue to embark on courting rituals despite their acknowledgement that the individual to whom their attention is directed does not reciprocate their feelings. Resentful stalkers aim to cause fear and distress to the victim due to a grievance held by the stalker against a specific or random victim. Finally, predatory stalkers use stalking as a means for planning a physical or sexual assault by gathering information on the victim through surveillance for instance (Mullen et al., 1999; Mullen et al., 2009). The act of stalking in itself may be gratifying in this situation, where the predator may gain a sense of power and control over the victim (Morrison, 2007).

Zona and others' (1993) early classification of stalkers is a nexus of psychiatric condition and relationship, whereby stalkers are tagged as erotomaniac, love obsessional, or simple obsessional. Erotomanics possess the delusional belief that a person is in love with them and almost always target a public figure. Love obsessionals parallel erotomanics, but may also have several delusions or psychiatric symptoms and are obsessed with their victim and may not actually believe that the victim loves them. Unlike the former two categories, simple obsessional perpetrators have an existing prior relationship with the victim whether that of an ex-partner, work colleague, or neighbour, and seek retribution or resolution (Zona et al., 1993).

Harmon, Rosner, and Owens (1995, 1998) instead dichotomise stalkers as either affectionate/amorous or persecutory/angry. As the names suggest, the former class of stalker initially pursue victims for intimacy, which may later turn to hostility if rejected by their love interest. The latter seeks revenge for an actual or perceived harm committed against them by their targets (Harmon et al., 1995, 1998). Holmes (1993) developed a typology based on the variables of victim characteristics, method of victim selection, motivation, anticipated gain, intention for fatal violence, and sexual motivation. This typology comprised of the celebrity stalker, lust stalker (motivated by sexual predation), the hit stalker (professional killer or assassin), the love scorned stalker (no prior intimate relationship), domestic stalker (an ex-partner), and the political stalker (Holmes, 1993).

Mental disorders play an important role in the development of these typologies. Mullen et al.'s (1999) categorisation of intimacy seekers comprise of individuals

suffering mental illness, such as erotomania, schizophrenia, mania, morbid infatuation and jealousy, as well as other delusional and personality disorders. Clinical studies and research have consistently demonstrated that stalkers frequently suffer psychological and psychiatric conditions (Harmon et al., 1995, 1998; Meloy & Gothard, 1995; Meloy, 1996; Mullen & Pathé, 1994; Mullen et al., 1999). In a large North American study of stalkers in contact with criminal justice and security agencies, almost 50% had discernable evidence of mental disorder in file materials (Mohandie, Meloy, McGowan, & Williams, 2006). The presence of mental illness in stalkers is reviewed later in this chapter concerning stalking offenders.

Relationship Contexts of Stalking Behaviours

There is an intrinsic link between the nature of stalking and the context in which it occurs. Thus, the relationship between the stalker and victim represents a logical classification system for stalking. The clearest relationship contexts classify stalkers as intimates or former intimates, acquaintances, or strangers (Meloy, 1996; National Institute of Justice [NIJ], 1996). The RECON⁹ typology (Mohandie et al., 2006) evolves this to also include public figure stalkers as an additional category. Emerson et al. (1998) proposed a system based on the level of acquaintanceship, distinguishing stalkers who are unacquainted, pseudo acquainted, semi-acquainted and intimately acquainted with their target. Alternatively, Wright et al. (1996) dichotomised stalkers into non-domestic and domestic (meaning former intimates). Non-domestic stalkers are further sub-divided into organised and delusional stalkers, while domestic stalkers are described as either delusional or non-delusional. The significance of the relationship status between the offender and victim cannot be overemphasised and thus represents a key variable in studies surveying victims.

The overriding consensus amongst victimisation studies indicates that victims of stalking are clearly more likely to be stalked by someone known to them compared to a stranger (ABS, 2017; Baum et al., 2009; Dressing et al., 2005; Galeazzi, Bučar-Ručman, De Fazio, & Groenen, 2009; Mullen et al., 1999; Mullen et al., 2009; Purcell, Moller, Flower, & Mullen, 2009; Richards, 2011; Scottish Government Social Research, 2011; Sheridan et al., 2003a; Spitzberg, 2002). Spitzberg and

⁹ RECON is short for relationship and context-based.

Cupach (2007) calculated that across studies, 80% of stalkers were known to the victim (Spitzberg et al., 2010). Of this bracket, there remains contention as to whether acquaintance or intimate partner stalking constitutes the highest statistical likelihood of being stalked. However, this may be traced to the catalogue of relationships utilised by specific studies. A number of studies suggest acquaintance-based stalking is most predominant (Baum et al., 2009; Jordan et al., 2007; Mullen et al., 1999; Ogilvie, 2000b; Pathé & Mullen, 1997). Pathé and Mullen (1997) for instance reported that 55% of victims have been stalked by an acquaintance. This category generally comprises casual acquaintances, work colleagues, neighbours, friends, clients, and customers.

Stalking is also prevalent in the context of former intimate relationships (Bjerregaard, 2000; Dennison & Stewart, 2006; Dressing et al., 2005; McGuire & Wraith, 2000; Mullen & Pathé, 1994; Sheridan et al., 2001b; Spitzberg & Cupach, 2007, 2014; Tjaden & Thoennes, 1998). A meta-analysis across selected studies reported that 44% of stalking incidents emerged from romantic relationships, while strangers committed 20% of stalking (Spitzberg et al., 2010). Forensic settings tend to over-represent ex-partner stalking, in which Mullen et al.'s (2009) study found that prior intimates are the largest category of stalkers, with women targeted by a former male partner as the prevailing victim profile. Representative samples and epidemiological studies report that former intimate partners are not the most common relationship context with 13% of ex-partners targeting victims in Purcell et al.'s (2002) research and 11% in the ABS (2005) survey. Surveys conveying the highest rate of stranger stalking includes Meloy and Gothard (1995) at 45%, Jordan et al. (2003) at 43%, Purcell et al. (2002) at 42% and the ABS (2005) at 39%. It is noted that although these surveys differ in terms of scope and respondents, they nonetheless show a notable proportion of stranger stalking.

Drawing on the most recent ABS (2017) survey, there are relationship differences between how females experience stalking compared to males. Women surveyed in this report were predominantly stalked by men known to them. Male victims on the other hand were comparably stalked by both genders (Baum et al., 2009). Prior studies also support this finding that men are more likely than females to be victimised by a stalker of the same gender (Budd & Mattinson, 2000b; Dressing et al.,

2005; Pathé & Mullen, 1997; Purcell et al., 2002; Tjaden & Thoennes, 1998). This relationship appears to be reversed for younger people, where it has been found that the majority of adolescents engage in same-gender stalking, and this is more common for females targeting other females (Purcell et al., 2009; Purcell, Pathé, & Mullen, 2010).

Limited research has concentrated on the prevalence and nature of same-sex stalking. Purcell et al. (2002) found that same-sex stalking accounted for 24% of cases in their sample of 432 respondents. In contrast to the recent ABS (2017) survey, Strand and McEwan, (2011) and Pathé, Mullen and Purcell (2000) all found that females were more or at least equally likely to be same-sex stalkers when compared to males. In this context, same-sex victims were significantly more likely to be stalked by an acquaintance or stranger, compared to an ex-intimate partner (Meyers, 1998; Strand & McEwan, 2011; Tjaden & Thoennes, 1998). This is consistent with Pathé et al.'s study (2000), finding that in 28% of same-sex stalking cases the relationship was of a professional nature. Stalking of juveniles and adolescents support the finding that females are more likely to engage in same-sex stalking as an extension of bullying (Purcell et al., 2009; Purcell et al., 2010; Roberts, Tolou-Shams, & Madera, 2016; Sheridan, North, & Scott, 2014).

Of particular significance for the current study in comparing behavioural research to stalking cases entering court, men are predominantly the perpetrators of stalking and women more likely to be victims of stalking. Relationship profiles of stalking offences identified in this thesis will be primarily compared to the recent ABS (2017) survey that found stalking most often occurs between known persons, with stranger stalking representing the least common relationship type. This is supported by Spitzberg and colleagues' (2010) meta-analysis of stalking studies.

Motivations for Perpetrating Stalking Behaviours

Considerable research has been dedicated to exploring motivational factors involved in stalking, both in relation to developing typologies and in explaining the reasons for the behaviour. A range of motivations may incite stalking, including the desire for reconciliation or revenge, to control the victim, initiating relationships, or the refusal to accept the termination of a relationship, while stalking may be spurred by emotions

of jealousy, shame, rage, possessiveness, abandonment, frustration, anger, distrust and vindictiveness (Davis, Ace, & Andra, 2000; Dennison & Stewart, 2006; Dressing et al., 2005; Dussuyer, 2000; Galeazzi et al., 2009; McGuire & Wraith, 2000; Meloy & Gothard, 1995; Meloy, 1996, 1998; Meyers, 1998; Mullen & Pathé, 1994; Mullen et al., 1999; Spitzberg & Cupach, 2007; Wright et al., 1996). The BCS reported that victims most commonly cited the main reason for stalking was to start a relationship, followed by the desire to upset and annoy the victim, or to continue a relationship (Budd & Mattinson, 2000b). Comparably, the NVAW survey found that victims perceived that their stalkers wanted to control them, keep the victim in a relationship, or scare them (Tjaden & Thoennes, 1998). Motivations for stalking are naturally connected to the offender-victim relationship, as observed by the typologies discussed above.

In intimate partner stalking, ex-partners who refuse to accept the termination of their relationship often seek retribution for their rejection, and hence aim to harass, intimidate, control, and punish their former partner (Burgess, Harner, Baker, Hartman, & Lole, 2001; McGuire & Wraith, 2000; Mullen & Pathé, 1994). Zona et al. (1993) and Meloy and Gothard (1995) note that stalking in this context may be driven by rage for being abandoned, connected also to attachment issues of the perpetrator (Davis et al., 2000; Kienlen, 1998; Spitzberg & Cupach, 2007). Ex-partners may also stalk out of hope for reconciliation; their persistence perceived as symbolic of their ongoing commitment (Burgess et al., 2001; McGuire & Wraith, 2000). Sinclair and Frieze (2000) contend that some behaviours in stalking are also normal during the pursuit of romantic relationships and at their dissolution, such as frequent telephone call attempts (De Smet, Buysse, & Brondeel, 2011; De Smet, Loeys, & Buysse, 2012; De Smet, Uzieblo, Loeys, Buysse, & Onraedt, 2015). It has been noted by a number of authors that not all stalkers intend to harm or frighten victims, and many sincerely believe that their behaviours are not causing harm (Harmon et al., 1998; Mullen & Pathé, 1994).

Further still, Mullen et al. (1999) report in their clinical study that stalkers categorised as intimacy seekers and incompetent suitors engaged in stalking in an effort to establish relationships. Often, intimacy seekers' pursuits are driven by delusional disorders, infatuation, and obsessiveness, while incompetent suitors are those who

want a date or a sexual relationship, but lack the skills necessary to achieve this goal (often due to the presence of intellectual and social handicaps) (Mullen et al., 1999). Romantic motivations for stalking are a subcategory of all stalking behaviours that are not confined to the context of a former intimate relationship, but also extends to strangers and acquaintances. Stalking may also be a means for lonely and isolated people to attempt to connect with others, as well as to vent personal burdens and frustrations (Mullen et al., 1999).

Rationales for stalking are as multifarious as the behaviours that may be used to stalk another person. The range of stalking motivations appears to cover the gamut of human emotion; from jealousy, frustration, infatuation, and financial gain to achieving a sense of control and power. A study conducted by James and others (2011) on people who stalk and harass British Royalty, supports the complex reasons behind stalking, often induced by mental illness. This research found that individuals had a delusional belief that they themselves were royalty, wanted to offer friendship, advice, or counsel, were infatuated with royalty, sought royal assistance, felt that they were persecuted by royalty, or had no clear motivation. Stalking contexts help generate a paradigm for common typologies, relationships and motivations involved in this behaviour. This not only helps identify contexts presented in stalking offences entering courts, but also offers a framework for the present study to compare whether particular stalking contexts take greater precedence in policing and prosecutions of cases.

The Nature of Stalking: Types of Acts, Persistence and Duration of Behaviour

Stalking sits on a continuum of behaviours ranging in severity from mild disturbances to more pronounced acts of violence (Coleman, 1997; Davis et al., 2000; Davis & Frieze, 2000; Mullen et al., 1999; Sinclair & Frieze, 2000). For example, stalking may involve silent phone calls occurring twice a week for a month or at the other extreme, a daily barrage of phone calls, texts messages and emails viciously threatening severe violence. Pathé, MacKenzie, and Mullen (2004) state that minor intrusions may include ordering unwanted fast food deliveries to victims' homes, whilst more severe acts used by stalkers may include rape. The codification of stalking conduct is made more problematic due to the fact that many of these non-violent behaviours are commonplace. On the surface, conduct such as sending gifts and emailing are

innocuous. However, when repeated over a period of time and when unwanted, the behaviour or ‘course of conduct’ (as found in legislation) can become alarming for the recipient (Sheridan, Gillett, & Davies, 2000). Thus, stalking can be an insidious crime often comprising seemingly innocent behaviours, rendering it difficult to prosecute perpetrators.

Victimisation surveys consistently record the types of stalking conduct that are experienced. According to the ABS (2017), maintaining unwanted contact, loitering or hanging around or outside the victim’s home, following or watching, and interfering or damaging property were the most common behaviours experienced. Surveillance of the victim is also a prevalent strategy employed by stalkers that has been echoed in a number of other studies (Breiding et al., 2014; Johnson & Thompson, 2016; Logan & Walker, 2017; Morris et al., 2002; Mullen & Pathé, 1994; Tjaden & Thoennes, 1998), alongside spreading rumours about the victim (Baum et al., 2009), physical intimidation (Budd & Mattinson, 2000a), and using social media or other cyber activities to contact or post damaging material about the victim (Logan & Walker, 2017; Richards, 2011). Despite some statistical differences and the non-identical labelling of behaviours by surveys, these common forms of stalking were found in studies conducted by Purcell et al. (2002), Sheridan et al. (2001b), Amar and Alexy (2010), and Galeazzi et al. (2009), and are consistent with international research (Blaauw, Winkel, Arensman, Sheridan, & Freeve, 2002b; Dovelius et al., 2006; Dressing et al., 2005).

Less obvious or conspicuous behaviours can also be used for stalking. Sheridan and colleagues (2001b) found that 77% of stalkers attempted to gain information about their victim through the victim’s family and friends. Hall (1998) also reported that stalkers may enter victims’ homes to move around objects without stealing anything in order to cause distress. Legal and criminal justice procedures may be co-opted by stalkers as a means to further control, intimidate and facilitate interaction with victims. Significantly, Pathé et al. (2004) found that anti-stalking legislation, designed to protect stalking victims, may instead be another apparatus in harassment. Through initiating civil action, stalkers are able to trace and force communication with their victim, and may falsely accuse the victim of being the stalker (Pathé et al., 2004; Taylor-Dunn et al., 2017). Victims may be subject to frivolous lawsuits, false reports

of child abuse and other custodial issues that would compel continued interaction between the parties through legal proceedings (Miller & Smolter, 2011).

In the past decade, cyberstalking has attracted research and police attention with the Internet and social networking becoming a new method for committing stalking. Stalkers may use advancing technology as a means of communication through emails and posting messages on websites or social media platforms, gather information on the victim, publish derogatory information about the victim, identity theft and to follow and spy on the victim (Bluett-Boyd, Fileborn, Quadara, & Moore, 2013; Clough, 2016; Royal Commission into Family Violence [RCFV], 2016; Sheridan & Grant, 2007; Woodlock, 2017; Wykes, 2007). Mullen et al. (2009) recognise that cyberstalking may be used to encourage others to harass the victim. Studies have shown that stalking by proxy is not uncommon both in cyberspace and in real life (McEwan et al., 2009b; Purcell et al., 2009; Sheridan et al., 2001b; Woodlock, 2017). Cyberspace, breakthrough technologies and innovations in communication perhaps alter perceptions of what stalking could entail and represents a point of discussion in the next chapter.

The nature of stalking behaviour is also divergent in terms of the gender of stalkers. Sinclair and Frieze (2000) contend that in the context of courting rituals, men opt for overt tactics such as directly approaching a victim when pursuing a relationship, and covert aggressive behaviours such as surveillance and intimidation when hoping to reconcile with an ex-partner. In contrast, women are slightly more likely to utilise covert techniques when seeking a romantic relationship, while using more aggressive tactics when exacting revenge (Dennison & Stewart, 2006; Meloy, Mohandie, & Green, 2011; Sinclair & Frieze, 2000). Female stalkers are also found to be no less violent than male stalkers (Strand & McEwan, 2012; Thompson et al., 2010).

There are inconsistencies across studies as to the average longevity of stalking. Research by Spitzberg and Cupach (2007) and the NIJ (1998) found that stalking persists for an average of almost two years. Mullen et al.'s (1999) forensic sample of stalkers found that the duration of stalking ranged from four weeks to 20 years, with a median of one year. A general survey found that 55% of stalking cases lasts one month or less, 23% between one and six months, and 13% for one year or more

(Purcell et al., 2002). Any fluctuations in these statistics can likely be attributed to the design of studies, the stalking definitions used, measurements of duration, the participants surveyed and whether the length of stalking could be accounted for. Studies have noted that victims are occasionally unsure whether their victimisation has ceased. Stalkers may be halted by legal proceedings or inexplicably stop, only to appear months or years later to continue harassment (Hall, 1998; Pathé & Mullen, 1997). Research reports that victims on average experience five (Dressing et al., 2005) or six (Blaauw et al., 2002b) different types of stalking behaviours. The frequency of incidents during stalking contributes to the conceptualisation of stalking as a behaviour and crime of persistence.

A significant study conducted by Purcell, Pathé and Mullen (2004a), helped to establish a dividing line that separates *repeat intrusions* from stalking. According to the authors and drawing on data collected by Purcell et al. (2002), 45% of stalking cases abated within two weeks. Within this sample, the average duration of intrusion was two days, most frequently stopping after one day (Purcell et al., 2004a). This study argued that two weeks is the critical threshold that dichotomises limited bouts of intrusions, and more protracted and harassing forms of stalking. Of the 55% of victims who experienced stalking beyond two weeks, the average duration of victimisation was six months, with a mode of 12 months (Purcell et al., 2004a). Certain risk factors also correlated with protracted stalking. Victims pursued beyond the two-week threshold were more likely to be stalked by someone previously known to them and more often experienced explicit threats and assaults (McEwan, Mullen, & Purcell, 2007b; McEwan et al., 2017a).

A number of studies support the finding that strangers stalked for short durations and were likely to discontinue behaviours within two weeks (Budd & Mattinson, 2000b; McEwan, Mullen, & MacKenzie, 2009a; McEwan et al., 2009b; Purcell et al., 2002). James et al. (2010) observed that stalking persistence was associated with psychosis and the stalker seeking intimacy. Consequently, protracted stalking results in greater potential damage to the victim and this has been emphasised by a number of studies (Blaauw et al., 2002b; Mullen et al., 2006; Pathé & Mullen, 1997). Moreover, research indicates that prolonged stalking may be characterised by more serious and concerning acts such as aggression, maliciousness, threats, property damage, and

violence (James et al., 2010; Johnson & Thompson, 2016; McEwan et al., 2009a; Purcell et al., 2004a). In light of influential research, a critical threshold is established by separating confined bouts of intrusion and more protracted, persistent, and damaging forms of stalking. The watershed of stalking-type behaviours persisting beyond two weeks provides a clear division between repeat intrusions and what should be labelled stalking (Mullen et al., 2009). Duration and persistence of stalking is a key component that distinguishes stalking from more minor intrusion and should be reflected in criminal stalking cases entering courts.

Threats, Violence and Escalation in Stalking Episodes

Stalkers more commonly make threats to victims than commit physical violence. McEwan et al.'s (2007b) review of stalking research found that 30 to 60% of victims experienced threats, with assaults three times more frequent for victims who were threatened than victims who were not. Pathé and Mullen (1997) observed 58% of stalking victims were explicitly threatened, while 45% of these threats were associated with subsequent physical or sexual assault. Importantly, most threats do not eventuate in physical assault, however, the majority of stalking victims who are assaulted have been previously threatened (McEwan et al., 2007b). Threats manifest in various forms, from death threats, to suicide threats, to threatening the victim's reputation (Ashmore, Jones, Jackson, & Smoyak, 2006; Taylor-Dunn et al., 2017). Actual physical violence involves hitting, punching, slapping, physical restraint, beating, pushing and shoving, sexual assault, rape, strangulation and suffocation (Dressing et al., 2005; Groenen & Vervaeke, 2009; Mullen & Pathé, 1994; Pathé & Mullen, 1997; Purcell et al., 2002; Purcell et al., 2009).

Meloy's (1996) review suggests that less than 2% of stalking incidents result in homicide. Measuring the frequency of homicide that follows stalking behaviours is however complicated by the fact that the offender is typically charged with more serious criminal offences (McEwan et al., 2007b). Contrary to expectations, female victims of stalking are no more likely to experience threats or violence compared to male victims (Pathé & Mullen, 1997; Purcell et al., 2002; Tjaden & Thoennes, 1998). From a perpetrator's perspective, female and male stalkers have comparable rates of escalating to violence (Churcher & Nesca, 2013; Purcell, Pathé, & Mullen, 2001; Strand & McEwan, 2012; Thompson et al., 2010, 2013).

Research indicates that although most stalking situations do not result in violent altercations, the presence of threats and physical violence are not uncommon. Physical violence reported in studies range from 25% to 35% (Dressing et al., 2005; Meloy, 1998; Mullen et al., 1999; Pathé & Mullen, 1997; Racine & Billick, 2014; Sheridan et al., 2001b; Sheridan & Roberts, 2011; Spitzberg, 2002). A lower prevalence of violence was recorded by Purcell et al. (2002), in which 18% of victims reported being physically assaulted. This is supported by later research using a forensic sample of stalkers referred to a Victorian mental health clinic that found that violence was present in less than 20% of cases, where severe violence was uncommon (McEwan et al., 2009b; McEwan et al., 2017a). Rosenfeld and Harmon (2002) also recognise that whilst a third of stalkers in their research were classified as violent, the majority of these acts were relatively minor with less than 6% of stalking offenders committing serious violence such as assault with a weapon or causing physical damage. Thus, the escalation of physical violence in stalking is frequent, but is likely to involve comparatively minor acts.

The vast majority of stalking violence is perpetrated by a former intimate partner compared to strangers or acquaintances (Churcher & Nesca, 2013; Groves, Salfati, & Elliot, 2004; McEwan et al., 2007b; McEwan, MacKenzie, Mullen, & James, 2012; McEwan et al., 2017a; Mullen et al., 2006; Purcell et al., 2002; Rosenfeld, 2004; Sheridan & Roberts, 2011; Thomas, Purcell, Pathé, & Mullen, 2008). This is therefore the leading risk factor of physical violence in stalking situations. Otherwise, previous violence, explicit threats, substance abuse and a rejection-motivated perpetrator all have links to violence (Churcher & Nesca, 2013; McEwan et al., 2007b; McEwan et al., 2009b; McEwan et al., 2017a). Interestingly, psychotic disorders do not appear to be antecedent to an increased risk of violence (Churcher & Nesca, 2013; McEwan et al., 2009b; Mullen et al., 1999; Mullen et al., 2009; Rosenfeld, 2004). In stalking contexts other than those involving former intimate partners, substance abuse during stalking, young age, and previous violence increases the risk of violence (McEwan et al., 2009b). Purcell et al.'s (2009) study on stalking among juveniles found that threats and violence were paramount with 75% reporting threats and 54% assaulted. This is foreseeable as adolescents may have poorer-impulse control and react hastily to issues regarding interpersonal relationships. Importantly, the impact of stalking

results in serious psychological and social harm for victims, whether or not physical violence was present, as will be discussed later in this review.

The Connection Between Stalking and Domestic Violence

The momentum for introducing anti-stalking legislation in the early 1990s was helped by domestic violence lobbies drawing on stalking incidents following the dissolution of domestic relationships that subsequently led to serious physical violence. Given this impetus, scholarship on stalking has focused on the links between stalking and domestic violence. Studies have established a strong correlation between stalking victimisation and an increased risk of violence in the context of intimate relationships (McEwan et al., 2009b; McGuire & Wraith, 2000; Meloy & Gothard, 1995; Meloy, 1996; Palarea, Zona, Lane, & Langhinrichsen-Rohling, 1999; Pathé & Mullen, 1997; Rosenfeld & Harmon, 2002; Thomas et al., 2008). As such, some researchers have considered stalking an extension of domestic violence (Burgess et al., 2001; Coleman, 1997; Logan, Shannon, & Cole, 2007; Mechanic, Uhlmansiek, Weaver, & Resick, 2000; Norris, Huss, & Palarea, 2011; Pearce & Eastal, 1999). This area is still of great concern given that stalking in physically violent domestic relationships has been earnestly connected to murder or attempted murders, most especially of female victims (McFarlane, Campbell, & Watson, 2002; Melton, 2007; Monckton-Smith, Szymanska, & Haile, 2017; RCFV, 2016).

A focal study was conducted by Coleman (1997), investigating the role of stalking in the cycle of domestic violence. This study suggests that women who reported more physical and verbal abuse during relationships were more likely to experience stalking by their former partners after the relationship dissolved. This finding is consistent with Melton (2007) and Logan et al.'s (2007) research. Battered women who were later stalked suffered increased levels of distress, fear, anxiety, degradation, control, psychological abuse, sexual violence and violations of protection orders. This is compared to battered women who were not stalked (Logan et al., 2007; Logan & Walker, 2010). It is reasonable to describe intimate partner stalking as especially nefarious in light of the exploitative position stalkers may have over victims. Ex-partners would be aware of daily routines, bank details or passwords to email accounts, shops that victims would go to for groceries and also privy to deeply personal secrets and insecurities (Adams, 2017). Further contact between the stalker

and victim may be required if there are child-custody issues or co-owned properties. These ongoing ties place additional pressures on victims (Miller, 2001).

Tjaden and Thoennes (1998) claimed a solid connection between stalking and other forms of interpersonal violence, given that 81% of women surveyed in their research who were stalked by a current or former intimate partner, were also physically assaulted by their partner. However, there is contention that some rates of intimate partner violence in connection with stalking are overstated. This may be due to the definitions used in studies drawing on legislation with a focus on male perpetrators against female victims (Senkans et al., 2017). Further, Tjaden and Thoennes' (1998) study was based on a NVAW Survey (NIJ, 1998) whilst the first ABS (1996a) survey investigating stalking specifically studied women's safety. Overlap exists in research dedicated to domestic violence and stalking (Norris et al., 2011; Palarea et al., 1999), with some surveys identifying that stalking can occur during current domestic relationships (Baum et al., 2009; Dovelius et al., 2006; Finney, 2006; Tjaden & Thoennes, 1998).

However, other researchers have argued that stalking can only occur after a relationship has ended notwithstanding domestic violence that occurred during the relationship. McEwan and colleagues (2017b) challenge the assumption that stalking post-relationship and intimate partner violence that occurred during the relationship, are the same. The distinguishing factor in separating the two concepts is the level of contact or relationship wanted by the two individuals; violent, abusive, or coercive behaviour during a *current* relationship is intimate partner violence. Conversely, once an individual indicates the relationship is over, stalking is the unwanted intrusion after the end of that relationship, when the partner becomes the victim's *ex-partner* (McEwan et al., 2017b; Mullen et al., 2009; Senkans et al., 2017). McMahon and McGorry (2016) support this notion as the idea of someone being stalked by a person who they may be living with does not fit with the understanding of stalking. Whilst this thesis acknowledges this contention, applying anti-stalking legislation to behaviours perpetrated against current partners at the time of the offence would be an important use of these laws in domestic scenarios. Hence, stalking offences that have occurred during a *current* intimate partner relationship are recorded in this study.

Although there is a compelling connection between domestic violence and stalking, the association is not certain or straightforward. Senkans and colleagues (2017) found that for the most part, victims of intimate partner violence, whether female or male, did not experience stalking after the end of a relationship (Walby & Allen, 2001). Likewise, many victims of former intimate partner stalking did not experience previous physical violence during the relationship when it existed (McEwan et al., 2017b). The nature of the domestic violence – that is of a serious nature – rather than just being present, may be the crucial factor for stalking post-relationship (Brady & Hayes, 2018; Norris et al., 2011; Senkans et al., 2017). Male perpetrators of severe domestic violence were more likely to engage in subsequent stalking, whilst female counterparts had similar rates of committing post-relationship stalking, regardless of the severity of domestic violence during the relationship. Female victims of domestic abuse nonetheless experienced higher rates of intimate partner stalking once the relationship ended compared to males (Senkans et al., 2017).

Ultimately, stalking following the dissolution of a domestic relationship is a serious concern. However, unwanted behaviours after breakups are common and involve ubiquitous behaviours that can be subtle and considered normal (De Smet et al., 2015). Intrusions and unwanted pursuit in the form of normative behaviours, such as phone calls and sending gifts, are common in the hopes of reconciling relationships. These behaviours are particularly pervasive in a university setting (Granegia & Matos, 2018; Ybarra, Langhinrichsen-Rohling, & Mitchell, 2017). Such reconciliatory stalking behaviour may be present after the relationship has terminated, together with the abusive and controlling conduct more typically recognised in domestic violence. Domestic relationships are further confused with interrelated disputes regarding children or finances. Langhinrichsen-Rohling and colleagues (2006; 2012) acknowledge that mutual stalking by both parties is common in domestic settings (Granegia & Matos, 2018), which accords with findings of Senkans et al. (2017) that many women stalk ex-partners in this context also. Thus, battered women and men both experience and commit stalking behaviours and unwanted pursuit in what can be characterised as convoluted and muddled domestic relationships.

Who Stalks? Perpetrators and Offenders of Stalking

The ‘typical’ stalker is a male targeting a female aiming to initiate or reconcile an

intimate relationship, or is seeking retribution in this context (Hall, 1998; McGuire & Wraith, 2000; Spitzberg & Cupach, 2007). While this is the most common stalker profile, it may not account for the majority of stalking cases. Stalkers also tend to be single, separated or divorce (Galeazzi et al., 2009; Mohandie et al., 2006; Mullen et al., 1999). Although many stalkers are unemployed, the occupations and positions that have been noted include students, self-employment, clerical and health care workers, military personnel, retirees, homemakers, and many are employed in a professional capacity (Hall, 1998; Mullen et al., 1999; Sheridan et al., 2001b). McGuire and Wraith (2000) appreciate that there exists a broad range of research and opinions that depict the quintessential stalker. As previously discussed, studies have consistently and overwhelmingly found that the majority of stalkers are male (Mullen et al., 2009). Meloy et al.'s (2011) profile of the typical female stalker consists of a female targeting a male acquaintance, celebrity, or stranger, rather than a former intimate partner. In contrast, Strand and McEwan (2012) found that the vast majority of female stalkers targeted a person known to them, most often an ex-partner. Regardless, in the case of both male and female victims of stalking, the perpetrator is most likely to be male (Davis & Frieze, 2000).

In relation to other demographics, perpetrators of stalking are between the ages of 12 to 75 years-old but usually in their 30s, and do not suffer from a severe mental illness or disorder (Dressing, Foerster, & Gass, 2011; Mullen et al., 1999; Purcell et al., 2002). However some form of clinical diagnosis and co-morbidity is common in offenders (McEwan et al., 2018; Nijdam-Jones, Rosenfeld, Gerbrandij, Quick, & Galietta, 2018). Understanding the mental health circumstances of stalkers is crucial as there is a stereotypical depiction of stalking being predominantly committed by deranged psychotic individuals (Lowney & Best, 1995; Spitzberg & Cadiz, 2002). Clinicians have emphasised that no specific mental disorder is associated with stalking but rather involves perpetrators covering the whole diagnostic spectrum (McEwan et al., 2007b). Nonetheless, psychotic disorders have been found to be more common among stalkers targeting strangers and acquaintances compared to former intimate partners (McEwan & Strand, 2013; Mohandie et al., 2006; Nijdam-Jones et al., 2018). Stalkers with a psychotic disorder are less likely to commit violence than non-psychotic stalkers (Churcher & Nesca, 2013; McEwan et al., 2007b; Rosenfeld & Harmon, 2002), despite being subject to more intervention orders (McEwan & Strand,

2013), and accordingly are more likely to come to the attention of the criminal justice system.

Nijdam-Jones and colleagues (2018) reported that 50% of stalking offenders in their community-based sample presented with one or more personality disorders. Mullen et al. (1999) also found that stalkers were primarily diagnosed with personality disorders, who were more likely to commit assaults on stalking victims. Research by Rosenfeld and Harmon (2002) did not support this finding, however other studies have also found that personality disorders were related to the reoccurrence of stalking episodes (McEwan & Strand, 2013; McEwan et al., 2017a). Offenders also have varied criminal histories and often have substance abuse issues (Hall, 1998; Harmon et al., 1995; Meloy & Gothard, 1995; Meloy, 1998; Mohandie et al., 2006; Mullen et al., 1999). The presence of substance abuse disorders in particular has been associated with violent behaviours (Rosenfeld & Harmon, 2002) or aggression (Nijdam-Jones et al., 2018).

Notwithstanding the abundance of research with clinical or forensic samples, less is understood about the personality profile of stalkers in non-clinical samples (Spitzberg & Veksler, 2007). This is largely due to accessibility issues and methodological limitations. Even so, it has been suggested that stalkers can be fearful, maladaptive, insecure, socially inept, avoidant and narcissistic (Davis et al., 2000; Johnson & Thompson, 2016; Kienlen, 1998; Mullen et al., 1999). These instabilities lead to individuals feeling a heightened sense of humiliation, aggression, rage, as well as the need to exert control (Meloy, 1996, 1998; Zona et al., 1993). However, these personality traits are amply found in the general population and it is unclear whether those who possess them are more likely than others to stalk. Stalkers often have a history of impaired relationships; never having had an intimate relationship, failing to sustain these relationships, or failing in courting attempts (Meloy & Gothard, 1995; Mullen et al., 1999). Here, stalking may be considered a by-product of abandonment issues stemming from feelings of being rejected and loneliness (Meloy & Gothard, 1995). Mullen et al. (1999, p. 1248) elaborate on this by stating that ‘stalkers come predominantly from the lonely, isolated, and disadvantaged of our society but can include individuals from the whole social spectrum’.

Who is Stalked? The Impact of Stalking Victimisation

Women are at greater risk of stalking victimisation than men, which is most likely committed by a perpetrator previously known to the victim, preponderantly a former intimate partner (Bjerregaard, 2000; Galeazzi et al., 2009; Kamphuis & Emmelkamp, 2001; Mullen et al., 2009; Purcell et al., 2002; Rosenfeld, 2004; Sheridan et al., 2001b; Spitzberg, 2002). Men nonetheless still represent a sizable proportion of stalking victims. Clinicians and other health care professionals are particularly at risk of stalking, including doctors, psychiatrists, psychologists, nurses and social workers (Ashmore et al., 2006; Galeazzi, Elkins, & Curci, 2005; Jones & Sheridan, 2009; Mastronardi, Pomilla, Ricci, & D'Argenio, 2012; McIvor & Petch, 2006; Mullen & Pathé, 1994; RCFV, 2016). In addition, family members, casual acquaintances, neighbours and work associates can be potential victims of stalking (Pathé & Mullen, 1997; Purcell et al., 2002; Sheridan et al., 2001b). Stranger stalking is considered the least frequent, however statistically this rate may still be regarded as significant. Hence, anyone could be a victim of stalking as it represents a fairly indiscriminate behaviour.

There is an established body of work examining the impact of stalking on victims. Stalking has been shown to have psychological, emotional and social repercussions for victims. Apart from injuries sustained as a result of physical assault, stalking is distinguished as a crime that may have no physical elements. As such, stalking has been equated to 'psychological terrorism' (Hall, 1998, p. 133) or 'psychological rape' (Lowney & Best, 1995, p. 37). Stalking can be debilitating, resulting in deterioration in both physical and mental health. Victims report heightened levels of anxiety and chronic sleep deprivation, manifested through panic attacks, hypervigilance and hyperarousal (Pathé & Mullen, 1997). This can have physiological effects as well with weight fluctuation, fatigue, increased alcohol and nicotine consumption, headaches, and nausea commonly reported by victims (Dressing et al., 2005; Pathé & Mullen, 1997; Purcell et al., 2002). Stalking has been linked to post-traumatic stress disorder [PTSD] or manifestations of the disorder (Kamphuis & Emmelkamp, 2001; Kamphuis, Emmelkamp, & Bartak, 2003; Pathé & Mullen, 1997; Purcell, Pathé, & Mullen, 2005). Blaauw et al. (2002b) indicate a large percentage of stalking victims have psychiatric symptoms and a diagnosable disorder. This study also found an association between suicide and stalking victimisation, as no fewer than 31% of

victims surveyed repeatedly contemplated committing suicide, with several attempted suicides (Blaauw et al., 2002b).

Stalking is a pernicious behaviour that clearly results in emotional harm. According to Sheridan et al. (2001b), victims described their emotional experiences as involving fear, intimidation, powerlessness, anger, a loss of self-esteem, and the feeling of imprisonment (Cox & Speziale, 2009; Kamphuis & Emmelkamp, 2001; Sheridan et al., 2001b). Stalking is considered a sinister crime due its very nature, accentuated by victims experiencing fear of what unknown behaviours may entail. Goode (1995, p. 26) conceptualises this tacit menace as threat that ‘lies in mere omnipresence’. Threats are often perceived as an underlying condition in many acts, discomforting the victim with fear that behaviour may escalate into further behaviours or violence (Mullen & Pathé, 1994). Significantly, threats are just as harmful as physical assault and perhaps more so in stalking (McEwan et al., 2007b). Emerson et al. (1998) note that victims may begin to feel a sense of malice and trepidation as a consequence of behaviours. Fear and safety concerns for the victim also extend to those whom they care for. Secondary victimisation of children, family, friends, and colleagues of victims may occur through direct harassment and information gathering (Cox & Speziale, 2009; Korkodeilou, 2017; Sheridan & Roberts, 2011). One stalking victim articulated this harmful impact:

...obviously, every time my phone went, it made me nervous ... every time the doorbell went, or there was a bang on the door, me and the children would be really scared, to the extent that my children would run upstairs and hide, screaming (as cited in Taylor-Dunn et al., 2017, pp. 26-27).

Social damage and disruption is also common for stalking victims. Major lifestyle changes made by victims to curb behaviour include modifying daily routines and avoiding places the stalker might be. This includes not attending social gatherings and as a consequence victims may become isolated, with many losing contact with friends (Ashmore et al., 2006; Hall, 1998; Kamphuis et al., 2003; Korkodeilou, 2017; Pathé & Mullen, 1997). Stalking may prompt victims to increase security measures, such as obtaining unlisted telephone numbers, installing security systems and carrying weapons for protection (Kamphuis & Emmelkamp, 2001; Pathé & Mullen, 1997; Purcell et al., 2002; Tjaden & Thoennes, 1998). At the extreme end, victims may relocate across states or internationally (Blaauw et al., 2002b; Pathé & Mullen, 1997;

Sheridan et al., 2001b). Financially, victims have reported a decrease in attendance and productivity at work or school. Stalkers may incessantly call and appear at workplaces, not only taking an emotional toll but also resulting in victims losing their jobs or leading to circumstances where they are forced to resign (Kamphuis & Emmelkamp, 2001; Pathé & Mullen, 1997; Sheridan et al., 2001b; Tjaden & Thoennes, 1998).

The longer stalking persists, the greater the harm to victims. Purcell and colleagues (2004a, 2005) established this association between duration of stalking and impact, where prolonged behaviours extending beyond two weeks is associated with higher rates of psychopathology (Podaná & Imříšková, 2016). Research suggests that female victims are more fearful of their stalkers, more likely to feel threatened, and are more prone to psychological symptoms and distress compared to male victims (Bjerregaard, 2000; Budd & Mattinson, 2000b; Hall, 1998; Pathé & Mullen, 1997; Podaná & Imříšková, 2016; Sheridan & Lyndon, 2012). Johnson and Kercher (2009) support these findings, suggesting that psychological detriment is augmented when stalked by a prior intimate partner. Emerson et al. (1998) found that on the occasion when a woman stalked a man, the victim rarely expressed great concern and took fewer countermeasures. However, the relationship between impact and gender may reflect a difference in stalking behaviours experienced by females compared to males, where women may experience more overt threats or approach tactics by stalkers (Dennison & Thomson, 2005). It may also indicate popular opinion regarding women as not embodying any real physical threat to men. Subjective experiences and perceptions are significant in victims identifying behaviours as stalking and themselves as a victim of stalking. These perceptions are influenced by socio-cultural factors that may fundamentally effect whether the behaviours are recognised as a stalking offence. Without this recognition, victims, police or prosecutors may not attribute criminality to these harmful behaviours.

Conclusion

This chapter examined existing research on stalking that has been conducted from a behavioural, psychological and epidemiological perspective, and generated an understanding of this behaviour that can be compared to conduct entering courts as stalking offences. Impressive scholarship on stalking has been active since the 1990s,

first recognised as an issue for public figures, then domestic violence victims and now as a widespread social issue. Central to the understanding of stalking is the persistence and duration of behaviour with two weeks representing a critical benchmark for defining the presence of stalking. As studies have demonstrated, stalking episodes commonly involve surveillance, following and contacting the victim. A wide range of human emotions may motivate stalking behaviours, where revenge, rejection, resentment, initiating or reconciling a relationship and predatory motives are the most acknowledged.

Stalking episodes in the community occur in the context of former intimate relationships, acquaintances and strangers. Stalking by ex-partners is of particular concern as it is often coupled with threats and violence. Stalkers are typically men in their mid-30s, and while many have mental health concerns, most do not have a serious disorder. Women are more likely the victims of stalking whilst men also contribute a significant number of victims. Stalking victimisation has far-reaching repercussions both psychologically and socially, which is an important reminder that these behaviours have serious consequences requiring appropriate and adequate attention from the criminal justice system. As stalking arises out of different circumstances, and can take on different depictions, it is valuable to understand constructions of stalking – together with enduring perceptions and misconceptions – and how these shape our understanding of the behaviour. The next chapter will examine this and the socio-cultural aspects defining stalking as behaviour and potentially as a crime.

Chapter Two

Constructions of Stalking: Political and Socio-Cultural Influences and Perceptions of Stalking-Type Behaviours

Introduction

This chapter examines the social and cultural considerations relating to the construction and perception of stalking. Drawing on the previous chapter examining empirical research on stalking perpetration and victimisation, the current chapter reviews the relationship between the construction of stalking – that is the *meaning* given to stalking – and the reality of the behaviour. This chapter will firstly examine the nature of behaviours and contexts that parliamentarians perceive as stalking under the law by examining Hansard debates at the time of original legislation, and subsequent amendments. This is followed by a discussion of the cultural and social conditions that shape the acknowledgement of stalking behaviours. A review of public, victim and criminal justice perceptions of stalking is also provided, taking stock of research dedicated to surveying perceptions of stalking, stalkers and victims. This chapter will then examine media representations of stalking, which can generate a stereotyped image of stalking that may be devoid from the true nature and scope of the crime. The construction of crime is, however, not a static process, in that behaviours connected with the crime can be continually reinforced or undergo expansion in light of emerging problem behaviours. The rapid increase in cyberstalking and new forms of harassment have prompted a re-conceptualisation of stalking behaviours with pervasive technologies and innovative ways of communication taking place in the virtual world.

The Construction of Stalking as a Crime: A Political Process

The criminal law consists of legal rules that identify and proscribe conduct, and parliaments and courts are the main bodies that have the power to introduce and make changes to law. Legal positivism takes the perspective that the law operates on a logical and discrete system of principles – away from social consideration, political agenda and morality – and is autonomously applied (Grant, 2009; McSherry & Bronitt, 2017). This position however discounts the fact that criminal law reflects what lawmakers say is a crime at a particular point in time (McSherry & Naylor,

2004; McSherry & Bronitt, 2017). Christie (2004) asserts that crime does not just 'become' based on moral absolutes, but that the meaning *is created* and as such, crime is a product of political, social and cultural values and processes (McSherry & Bronitt, 2017; Rafter, 1990). The construction of crime, and consequent changes to law, are not only influenced by legislatures but also the media, mass public opinion, lobby and interest groups, business organisations and government agencies and departments (White & Perrone, 2010b). These institutions may centre on certain behaviours and populations considered as criminal or deviant, and form public and political agenda regarding what is in the community interest, benefit and safety. Certain types of acts have either become criminal or decriminalised through contemporary changes in social norms. Behaviour such as drug taking, homosexuality, euthanasia, prostitution and smoking in public places have all undergone a process of being (re)defined as either acceptable or criminal (Henry, 2009). Thus, for conduct to become a crime, the behaviour needs to be constructed and labelled as unacceptable, harmful and criminal and it is through the formal process of law-making and law enforcement – influenced by social processes – that the meaning of behaviours as criminal is constructed.

The offence of stalking was created in Victoria with the introduction of the Crimes (Amendment) Bill in 1994. The legislature recognised stalking as divergent from other, existing, crimes in that it may involve no physical harm. However, there was a clear perception that the law had a domestic violence focus and men were largely the perpetrators and were considered more violent than women (POV, 1994a). A number of women's lobby groups and movements gave their support for the law reform, offering evidence of stalking behaviours prior to domestic homicides. Hence, legislators recognised the law as 'a step forward in the protection of women' (POV, 1994c, p. 1243). As evidenced by Hansard, the Victorian Parliament was concerned that anti-stalking laws could be used to prosecute legitimate or misinterpreted behaviours, and emphasised that the new law should appropriately be used only in 'serious' cases:

Walking behind a person and making telephone calls, of themselves, are not offences ... we will be talking about the extreme examples of stalking (POV, 1994a, p. 1885).

...one would constantly need to be on the lookout for other people who might be incorrectly interpreting one's actions (POV, 1994a, p. 1901).

Law reform in 2002/2003 expanded Victorian anti-stalking legislation to include cyberstalking, stalking beyond Australian borders, and removed the requirement that the victim needed to be aware or experience harm when the behaviour is committed with malice. Unlike the introduction of legislation in 1994 – or subsequent law reform in 2011 – there was a lack of Parliamentary consensus about these amendments. There was a misunderstanding that stalking should be defined along the lines of acts that are traditionally affiliated with intrusive behaviours that embraced a degree of physical presence:

...but it is really extending the definition of stalking beyond the physical which most of us associate it with (POV, 2003b, p. 1996).

...stalking, as I have said, has always been about a physical presence ... stalking is now akin to slander, and defamation can occur through stalking with words rather than stalking as a physical presence (POV, 2003b, p. 1993).

Media outlets expressed vehement concern about these amendments, arguing that they could curtail freedom of the press, seemingly influencing parliamentary recognition of behaviours that should and should not be regarded as stalking (POV, 2003a). Thus, members of the then Opposition argued that the law reform extended too far in light of the potential that media outlets could be liable for stalking when publishing articles on the Internet especially. These amendments were eventually passed with the then Government contending that the reforms in no way aimed to restrict the media and other legitimate activities, and instead intended to address new ways of committing intrusive stalking behaviours through advancing technologies and communication.

The media has a significant role in labelling behaviours as criminal, and in turn this may influence public and political opinion (Downes & Morgan, 2006). The highly publicised case of Brodie Panlock seized community interest in Victoria, and ultimately led to further legal reform to legislation in 2011. The case involved the suicide of Brodie Panlock in 2006, which was allegedly the result of her being relentless harassed by three staff members at a café where Brodie was employed. These employees along with the café owner were charged under the *Occupational*

Health and Safety Act 2004 (Vic), but could not however be held criminally responsible under legislation at that time. This case caused an emotional reaction from the public and propelled a victim lobby group to campaign for the introduction of a criminal offence of bullying, which came into law under anti-stalking legislation.

While there was objection to the broadening of legislation by the 2003 amendments, expanding the understanding of stalking offences to constitute serious bullying received widespread parliamentary support. However, there was little reference to stalking in debating this Bill, with the word *stalking* mostly mentioned in the context that bullying will be criminalised under stalking provisions under the *Crimes Act 1958* s 21A, as the word *bullying* was not being explicitly inserted into the *Act*. Apart from descriptors of bullying being serious, systematic and repeated, there is a dearth of explanation as to how bullying is to be recognised as criminal stalking. Arguably, there is an inherent difference in the notion of bullying in comparison to stalking – potentially in the severity of behaviours and persistence beyond a specific environment of school or the workplace – otherwise the terms would be used synonymously or with greater interchangeability than identified by parliamentarians:

It needs to get serious about being consistent in its antibullying messages (POV, 2011, p. 115).

I know what it is like when a child does not want to go to school because they are being picked on (POV, 2011, p. 1171).

These 2011 amendments were passed and significantly expanded the scope of the original legislation, together with the 2003 amendments (Purcell, 2011, June 14). As a consequence, workplace bullying cases are also charged and prosecuted under what is now known as Brodie's Law, rather than in reference to anti-stalking laws (Mills, 2018, February 18; Moor, 2016, June 16).

Constructing and addressing what is criminal is not done in isolation and thus it is of significance to understand the role of legislatures, politics, socio-cultural practices and the media in developing or perpetuating perceptions and misconceptions of stalking and how this shapes community understanding. Criminology critically reflects that

there is a difference between criminal codes and how criminal laws operate in action (McSherry & Bronitt, 2017). Systems and customs construct meaning that influences perceptions of behaviours and generates an image of how the law should operate. In turn, this impacts upon whether stalking is identified as a crime and what types of acts are addressed, which situations warrant criminal justice intervention and ultimately, when anti-stalking legislation is applied or not applied. This criminological study investigates whether stalking court cases reflect the original purpose of introducing anti-stalking law, or whether the breadth and further expansion of the law has resulted in other deviant behaviours being also addressed as stalking crimes.

Cultural Values in Defining and Criminalising Stalking

Stalking research is overwhelmingly conducted in western countries, but nonetheless, the presence and commonality of stalking exists in other countries even if the label of stalking is resisted. Perumal (2005) explores the tension between cultures in light of legal reforms addressing stalking in South Africa. Rural communities within South Africa oppose 'western' values intruding on their cultural and personal matters and accordingly, the imposition of law prohibiting behaviours that are embedded in local courting practice. The implications of this would be addressing a problem behaviour that is not culturally sensitive to social custom, criminalising behaviours not recognised as criminal, passing law that may not be widely accepted, and not confronting harmful behaviours with the most effective measures. This also demonstrates a strain between addressing damaging forms of stalking and preserving traditions. Perumal (2005) questions the efficacy of such legal reforms in protecting women, who are subject to patriarchal traditions. Among the significant hurdles to effective legal intervention in such cultures is that women subjected to stalking would less frequently turn to legal intervention, especially in the case of interpersonal relationships where women are on the debilitating end of unequal power relationships, subordinate to their dominate male partner (Perumal, 2005). Whilst these obstacles are culturally significant in South Africa, they are also similar with other gendered crimes such as domestic violence and rape, and are prevailing issues for international criminal justice (Davis, 2007; Watts & Zimmerman, 2002).

A further example of the strain between potentially harmful stalking behaviours and entrenched cultural traditions is demonstrated by Kordvani (2000) who acknowledged

that, while stalking is legally defined in western countries, there is no anti-stalking law in Iran (MacKenzie & McEwan, 2011). Despite this, Kordvani (2000) found that stalking is a significant concern for Iranian women. Cultural factors contributing to stalking includes patriarchal social systems and individual beliefs, where men perceive themselves as having the duty to protect the honour of the family unit. This is in connection with religious and traditional beliefs deeming extra-marital relationships as indecent, and thus stalking presents a means to prevent this indecency from disgracing the family (Kordvani, 2000; Meyers, 1998). This is supported by Sheridan, Scott and Roberts (2016c) comparing international studies of women's experiences of intrusive behaviours based the United Nation's Gender Empowerment Measure [GEM]. The authors found that women from countries with higher GEMs more commonly experienced intrusions relating to courtship and requests for casual sex. This is in contrast to countries with lower GEMs where intrusions were based on ownership over women (Sheridan et al., 2016c). Importantly, men from traditional patriarchal societies who reside in Western cultures may continue stalking-like behaviours in fulfilment of their familial responsibility knowingly or unknowingly in breach of law. This is pertinent to a highly multiculturally diverse country like Australia, and as such these cultural issues may be reflected in stalking court cases analysed in the current study.

Increased awareness of stalking and the impact of harassing behaviours is a social concern expanding beyond Anglophone nations. In recent years, European Member States have reviewed and introduced legislation in order to best address stalking, while also consolidating stalking research based in Europe (De Fazio, 2009, 2011; Modena Group on Stalking, 2007). Van der Aa's (2013; 2017) examinations of anti-stalking legislation have seen a trend in some European Member States criminalising stalking; whilst they may not specifically use the term 'stalking', they are nonetheless proscribing the behaviour. The term or expression for *stalking* often does not translate easily into other languages and may cause confusion as to what sort of acts are covered by laws drafted in response to the behaviour (Granegia & Matos, 2018; Modena Group on Stalking, 2007; Van der Aa & Römken, 2013). As a concept, communities may not readily relate intrusions and harassing behaviours as stalking or conceive of it as a pressing issue. Galeazzi et al. (2009) found that half of the stalking victims from European countries surveyed were unfamiliar with the notion of stalking

at the time of their victimisation, while others may interpret the behaviour as a milder form of harassment (Van der Aa & Römken, 2013).

Research indicates that stalking in other countries is not necessarily seen as criminal due to social and cultural customs along with how stalking is addressed by criminal justice systems. Scott et al.'s (2010) cross-cultural study found that an Australian community sample perceived stalking behaviours to be more serious than counterparts in the United Kingdom. This may be due to differences in legal definitions of stalking with a higher penalty for convictions in Victoria in contrast to the United Kingdom; perhaps yielding the impression that stalking is a more serious and dangerous crime in Australia (Scott et al., 2010). Notably the diverse and multiplex nature of stalking generates a certain perception of stalking, often based on social and cultural conventions and contexts. Differences in these perceptions may not only be present in different countries, but within multi-cultural societies common to Westernised countries. This thesis will explore whether stalking behaviours perceived by offenders as a legitimate method for courting are being addressed as criminal offences.

Normality of Stalking Behaviours in Society

Victims play a more proactive role in criminal justice in interpreting behaviours as stalking and recognising them as a crime. This can be made difficult when behaviours associated with stalking and harassment are normalised. Gracia (2010) contends that social and cultural messages minimise stalking and camouflages the seriousness of the behaviour with satires of romance or comedy. Merchandise is commonly available by way of t-shirts and stationary that have slogans such as 'Some call it stalking, I call it love' and 'It's NOT stalking if you love me back' (Garcia, 2010). Making light and joking about stalking is not uncommon and while it might be amusing, deemphasising stalking may generate the notion that stalking is not a damaging behaviour. This depreciates the meaning of stalking away from a serious crime, and perhaps, even to the point of condoning the behaviour.

Purcell et al. (2002) propose that the high incidence of stalking among youth reflects an increase in the last 20 to 30 years, and may be evidence of high rates of relationship breakdown as well as shifts in traditional courting rituals. There is also greater awareness of gender equality and women expecting more from relationships

and their partners, rather than complying with conventional standards of modesty and compliance in intimate relationships (Mullen et al., 2001b). This is substantiated with the overall increase in divorce, as well as the fact that more people marry later in life (ABS, 2009; Mullen et al., 2001b). Parkinson, Cashmore and Single (2011) in their analysis of post-separation conflict found that the word ‘stalking’ has entered common usage in this context as it has broad meaning away from being a crime. Rather than being a pattern of damaging behaviour for a victim, it has instead come to mean annoyances of a former partner after separation when they are still required to interact due to shared commitment such parental responsibilities (Parkinson et al., 2011).

Potentially, there may be a tendency to blame victims for stalking behaviours in the context of romantic relationships. Research suggests that perpetrators may be seen as reasonable in their actions when victims are seen to have misled the offender during relationships and in regards to their prospective future together (Scott et al., 2010; Scott & Sheridan, 2011; Sheridan, Gillett, Davies, Blaauw, & Patel, 2003b). In situations of intimate partner stalking, victims may be – or perceived to be – ambivalent towards stalking. These relationships are often intertwined with ‘good times’ of reconciliation and affection, as well as ‘bad times’ of unwelcomed persistent harassment (Spitzberg & Veksler, 2007; Swanwick, 1998). This thesis examines whether anti-stalking legislation is addressing stalking conduct within entangled and often confusing states of relationships. This includes whether there is judgement of deserving and underserving victims of stalking reflected in the case analysis.

Perceptions of Stalking, Stalking Offenders and Victimisation

Perceptions of stalking are critically important to whether and how the community recognises the behaviour. This should be considered with how victims perceive their own victimisation and how members of the criminal justice system intervene when encountering these behaviours. Research surveys have predominantly measured community and victim perceptions, with a growing scholarship on the perceptions of mock jurors.

Community Perceptions of Stalking

Dennison and Thomson (2000) found that *persistence* of acts was significant for the community to recognise stalking. Subsequent studies have found the same trend; stalking was distinguished as illegal when conduct was persistent and repetitive (Dennison & Thomson, 2002; Dennison, 2007; Phillips, Quirk, Rosenfeld, & O'Connor, 2001; Scott & Sheridan, 2011). Scott et al.'s (2014b) study supports this but also suggests that there is a meaningful difference between perceiving behaviours as stalking and considering them a criminal offence. In their research sample of 449 UK participants, Scott et al. (2014b) concluded that while persistence of behaviours affected community understanding of stalking, it was only when the conduct was considered severe that it was also considered criminal. Not only was high persistence associated with identifying stalking as such, it was more often perceived as a crime in need of police assistance and victims were deemed less responsible under these circumstances (Scott et al., 2014c). Other factors that distinguish stalking include the presence of explicit threats and a clear intent to harm the victim (Dennison, 2007; Scott & Sheridan, 2011).

Prior relationship between the offender and victim is another factor that influences perceptions as to whether or not stalking has occurred. Intrusions committed by strangers are more often identified as stalking and are correspondingly perceived as more serious than stalking by ex-partners or acquaintances (Cass & Rosay, 2012; Hills & Taplin, 1998; Phillips et al., 2001; Scott et al., 2010; Scott & Sheridan, 2011; Scott et al., 2013; Scott et al., 2014b; Scott et al., 2014c; Scott et al., 2015; Weller et al., 2013; Yanowitz & Yanowitz, 2012). Greater need for criminal justice intervention was deemed to be required in these situations, failing to reflect the reality that these contexts are the least likely to involve violence. These misperceptions have been attributed to the just-world hypothesis (Lerner & Simmons, 1966), which assumes that the world is morally fair and people ultimately get what they deserve. In stalking scenarios, victims of stalking – primarily females – were perceived to be responsible for their own victimisation (Gavin & Scott, 2016). Although victims were regarded as less blameworthy when stalked by a stranger, as there is no shared history, they were seen to be encouraging their continued harassment when they responded to communication from the perpetrator, even if it was requests for the perpetrator to cease contact (Scott et al., 2010; Scott, Gavin, Sleath, & Sheridan, 2014a; Scott et al.,

2014c). When stalked by an ex-partner, there is speculation that the victim was somehow responsible for the conditions that led to their victimisation post-separation (Scott et al., 2014a).

Victims of strangers fit the mould of ideal victimhood status (Christie, 1986). Traditionally, the term stalking connotes the image of a ‘dark, sinister, stealthy unseen menace’ (Swanwick, 1996, p. 41). Mullen et al. (1999) note that stranger stalking as well as individuals with clear mental illness, produce the most fearful scenarios in stalking. This propels the cultural myth that individuals are more at risk of ‘stranger danger’ rather than being victimised by someone known to them (Jewkes, 2004; Kelly & Humphreys, 2000). Mullen et al.’s (1999) categorisation of predatory stalkers is a subset of stalkers that heightens social fear of strangers. Predatory stalkers, who usually perpetrate stalking in preparation of a sexual assault, represent a small proportion of stalkers. Mullen et al. (2001b) recognise that these stalkers thrive on social imagination, associated also with an increasingly disconnected society that generates fear of the unknown ‘other’. This parallels the argument that modern urbanisation and increased mobility through globalisation have disintegrated neighbourhoods, and in the process disrupted collective bonds and goals that connect people within a community (Aas, 2007; Giddens, 1990). Stalking exemplifies fear of strangers, and also justifies that fear with real cases of stranger stalking (Mullen et al., 2001b). Hence, due to a change in societal dynamics and relations, this form of stalking is the most feared, even while being relatively uncommon. This thesis will examine whether the stalking of strangers is overrepresented in prosecutions.

Gender is another key factor in community perceptions of stalking. Overall, there is greater concern for female victims of male perpetrators and thus this situation is seen to necessitate police involvement (Finnegan & Fritz, 2012; Phillips et al., 2001; Scott et al., 2015; Sheridan et al., 2003b). In contrast, there is a public perception that female stalkers pose less threat and harm for male victims (Finnegan & Fritz, 2012; Sheridan & Scott, 2010; Thompson et al., 2010). This is due to a cultural bias that men should be able to defend and protect themselves, disregarding empirical evidence that female stalkers engage in similar rates of violence to male stalkers (Strand & McEwan, 2012; Thompson et al., 2010). Women also distinguish and identify behaviours they believe constitute stalking to a greater extent than men in the

community (Dennison & Thomson, 2002; Scott et al., 2015; Sheridan et al., 2001a) and tend to recognise a broader range of acts that can be involved in a pattern of unwanted intrusion (Miglietta & Maran, 2016). Gender, rather than culture, was more closely associated with perceptions of stalking behaviours in Hong Kong and China, where Chan and Sheridan (2017) found that women were also more sensitive in their identification of the various acts that stalking may entail. In contrast, men more often considered that stalking victims liked the attention they received from their pursuers. McKeon et al. (2015) claim that men were more likely than women to endorse stalking myths including that stalking conduct is not serious, that it is romantic, and victims are to blame for harassing behaviours.

Perceptions of and attitudes about stalking are a matter of perspective and are influenced by social norms. Women may discern stalking with greater sensitivity, as they tend to take on the role of victim, whilst men often identify themselves as the pursuers (Scott et al., 2015; Sinclair, 2012; Yanowitz & Yanowitz, 2012). How the general public considers stalking in the context of pursuing a relationship, or at its dissolution, may be especially embroiled with relationship expectations and mores. There is an inclination to believe that ex-intimates are not perpetrating stalking but simply seeking closure at the end of a long-term relationship, expressing frustration or hoping to reconcile (Cass, 2011), which on the surface all represent understandable reactions. This perception will be tested as to whether judges presiding over stalking cases empathise with offenders in committing behaviours with reconciliatory intents.

Victim Perceptions of Stalking

Victims of stalking do not always identify themselves as victims, let alone victims of the specific behaviour or crime of stalking (Logan, Walker, Stewart, & Allen, 2006). Studies consistently find that female victims more readily perceive stalking-type behaviour as stalking and report greater fear than male victims (Bjerregaard, 2000; Davis et al., 2000; Ménard & Cox, 2016; Owens, 2017; Pathé & Mullen, 1997; Podaná & Imříšková, 2016; Reyns & Englebrecht, 2012), which correlates with community views discussed above. Owens (2017) further found that lifestyle situations, together with differences in stalking behaviours, may provoke greater fear for female victims. Women are more likely to be responsible for single-parent households, have lower incomes and are stalked for longer periods. In addition, male

stalkers caused greater fear for both female and male victims than those stalked by females (Owens, 2017).

Gender appears to be a major factor in assigning behaviours with the label of stalking and as a crime. This is demonstrated in the latest ABS (2017) survey, where half of female stalking victims perceived their victimisation as wrong but not criminal. In contrast, male victims were less likely to regard their experiences as a crime when stalked by a female, noting that it is just something that happens and accordingly were less likely to report to police in these situations (ABS, 2017). Here, it is very likely that men are susceptible to gendered stereotypes of male stoicism and invulnerability to victimisation, especially when victimised by women. This leaves a high percentage of stalking victims not acknowledging their stalking as a crime and potentially forgoing restitution.

When victims did distinctly define their victimisation as stalking, they were more likely to recognise the behaviour as a crime and accordingly report it to police (Ménard & Cox, 2016). Ménard and Cox (2016) found that the relationship context between the victim and offender was not associated with labelling behaviours as stalking. This was however relevant for the likelihood of victims reporting to police, with stalking by former intimate partners less likely to be reported. Victim acknowledgement of stalking was also associated with classical behaviours of spying and following (Ngo, 2014). For stalking victims, the presence of other crimes increased perceptions of the severity of the conduct and was influential in their reporting to police (Ménard & Cox, 2016; Reyns & Englebrecht, 2010, 2012). This helps generate the view that there needs to be an element of immediate threat and physical violence for behaviours to be reported to police, even if behaviour is not seen as stalking *per se*.

The impact of fear – feelings of intense threat or anxiety for potential harm or violence – is not a certain consequence of stalking. Jordan et al. (2007) observed that almost half of the female students they sampled who experienced stalking did not convey feelings of fear, which was significant in both acknowledging and reporting their victimisation. Otherwise, victims reported anxiety or concern, or changed their daily habits to avoid the perpetrator, which were also factors associated with self-

defined stalking victimisation (Ngo, 2014). In light of this, there are concerns that due to a lack of fear in some victims, intrusive and potentially dangerous behaviours are not reported to police. Some anti-stalking legislation necessitates the victim to experience a certain level of harm to satisfy that a stalking offence has occurred. Stalking victims who perceive their experience as not rising to the level of impact proscribed by legislation, may be resistant to report to police.

A number of researchers have argued that experiencing fear should not establish victimhood as this will limit recognition for a greater number of stalking victims (Dietz & Martin, 2007; Jordan et al., 2007; Ngo, 2014; Owens, 2017; Podaná & Imříšková, 2016; Reyns & Englebrecht, 2012). Arguably, given that fear – and to a large extent other repercussions from stalking – can vary with regard to gender, relationship-context and socio-cultural influences, repetitive and persistent conduct should be used to qualify stalking more definitively. European anti-stalking laws vary in the consequences required for the victim to experience in order to constitute an offence, in which the Dutch, Italian and Belgian laws amongst others do not require the victim to experience any negative consequences (Van der Aa & Römken, 2013). In Victorian law, stalking victims are also not required to experience impact except in cases where the offender ought to have understood that the conduct would likely cause harm (*Crimes Act 1958*, s 21A(3)(b)).

Victim Perceptions of the Criminal Justice System

In contrast to community and victim perception surveys, less is known about victims' perceptions of the criminal justice system when reporting stalking. Victims have reported mixed experiences with the criminal justice system and police more specifically (Van der Aa & Groenen, 2011). Studies have indicated that victims felt that police were unresponsive (Pathé & Mullen, 1997), that police warnings, arrests and intervention orders were ineffective (Blaauw et al., 2002b), that police did not take the matter seriously (Galeazzi et al., 2009), and that they trivialised the harassment (Morris et al., 2002; Van der Aa & Groenen, 2011). Research commissioned in 2016 on the handling of stalking and harassment offences in England and Wales by police and the Crown Prosecution Service [CPS] also reported that victims perceived that police were not taking their claims seriously. This included police engaging in victim-blaming, where victims felt as though police held the

victims responsible for the harassing behaviours or were ‘over-reacting’ to the conduct (Taylor-Dunn et al., 2017). This was further supported by a review of 112 police and CPS cases that found in 95% of these cases, there was a lack of victim care (HMIC & HMCPSI, 2017). Victims have perceived that police and courts do not take complaints seriously, do not adequately deal with offences or that there was no benefit to contacting police (Baldry, Cinquegrana, Cacace, & Crapolicchio, 2016).

Victims have reported that they felt police trivialised their experiences when there was no physical element involved, or it did not appear to the police that there was any further risk of assault to the victim (Korkodeilou, 2016; Taylor-Dunn et al., 2017; Van der Aa & Groenen, 2011). In addition, police advised victims that the conduct was not ‘serious enough’ to warrant a criminal offence and unless there were specific threats, property damage or assault, no action could be taken:

A couple of times when I spoke to the police they said obviously, ‘Unless he’s actually tried to physically get into the property ... then obviously there’s nothing we can really do, just note down every time he comes around’ (as cited in Taylor-Dunn et al., 2017, p. 44).

Policing inadequacies in the investigative stages of stalking crimes exist, which may be hindered by department policies in assessing the risk that the crime presents, complexity of the case, availability of resources and not prioritising stalking cases (HMIC & HMCPSI, 2017; Van der Aa & Groenen, 2011). Stalking victims have noted that there are problems with proving victimisation and police inaction in gathering evidence:

He was waiting for me. Now, I got home and phoned the police straight away, and I said, ‘Look, there’s CCTV right outside that supermarket’. Police never bothered to get the CCTV (as cited in Taylor-Dunn et al., 2017, p. 40).

Moreover, victims have reported difficulties when different police officers respond to different incidents directed at the same victim, resulting in individual officers viewing each episode in isolation. Victims have reported feelings of frustration with having to recount their entire stalking experience several times to different law enforcement (Van der Aa & Groenen, 2011). This criticism is not only directed at police but prosecutors who can be focused on individual offences that have occurred rather than on the pattern of harassment inflicted on victims. As a consequence, enduring

harassment may go unrecognised with nominal convictions and sentences for the most current behaviours, while particularly reprehensible conduct may be relegated to less serious offences.

Different officers are going all the time. If one officer turns up one night, and another lot of officers the next night, they're just taking trivial incidents, broken plants or photographs being stolen and stuff... (Domestic abuse liaison officer as cited in Morris et al., 2002, p. 77).

The CPS only took one offence into account and then not the most serious or the string of offences that I have documents and tapes for that goes back for 6 years (Victim of stalking, as cited in Richards, 2011, p. 4).

This thesis will evaluate victims' experiences that the criminal justice system does not account for the pattern of behaviour involved in stalking that extends prior to the specifics of the case. This is in relation to the perception of judges in sentencing conduct convicted of an indictable stalking offence.

Criminal Justice Professionals' Perceptions of Stalking

Literature on the perceptions of the criminal justice system when responding to stalking crimes primarily involves international studies or out-dated research. There is limited Australian and Victorian research especially around police perceptions of stalking. However, importantly for this study, McKeon et al.'s (2015) research highlighted that Victorian police were found to be as susceptible as the community to stalking myths, often misinterpreting stalking as romantic endeavours. Nonetheless, when police do determine behaviours as stalking, they are less likely to minimise conduct and treat the incidents more seriously compared to the general public (McKeon et al., 2015). Finnegan and colleagues' (2017) survey of Canadian police found that the nature of the intrusive behaviours rather than the gender of either the offender or victim influenced perceptions in identifying stalking cases or seriousness of the conduct. However, Canadian police considered that female victims would experience greater harm than male counterparts, while judges are more likely to sentence male stalkers to prison than female stalkers (Finnegan et al., 2017).

An early Australian study found that police officers are reluctant to become involved in domestic disputes, and stalking within a domestic violence context can be problematised by attitudes, perceptions and practices connected to policing of

domestic disputes which may hinder appropriate legal enforcement (Pearce & Easteal, 1999). Given that physical violence is definite – with physical injuries providing evidence and requiring a single incident – there is greater ease in identifying stalking-type behaviours as domestic violence and in using corresponding and more orthodox laws. The small sample of Australian Federal Police surveyed in Pearce and Easteal's (1999) study elected not to use anti-stalking legislation to address stalking within a domestic context, preferring to utilise civil orders under domestic violence legislation. One officer commented:

A DVO [Domestic Violence Order] is easier because it's there in black and white and it's a court order made by magistrates and tends to be taken more seriously (as cited in Pearce & Easteal, 1999, p. 167).

Community perceptions influencing criminal justice outcomes converge when a jury tries a stalking offence. Surveys have been developed to gauge the perceptions of mock juries in stalking cases and their determination of guilt, with results indicating that female jury members render a greater number of guilty verdicts than males (Dunlap et al., 2012; Dunlap et al., 2015; Magyarics et al., 2015). Gavin and Scott (2016) provide an insightful qualitative analysis on the stereotypical scripts that mock jurors adhere to and further promote when deliberating cases. Stalking behaviours committed by men under the guise of courtship was considered more reasonable compared to female stalkers who engaged in these behaviours, who were in contrast seen as desperate or pathological by the mock jurors. In considering stalking victims, females were blamed more for their victimisation, while male victims were belittled (Gavin & Scott, 2016). The 'jurors' were inclined to reinterpret the cause of stalking scenarios or fill in the gaps when information was lacking. This included that alcohol triggered the behaviour and speculating what the victim may have said to the perpetrator to instigate and perpetuate the stalking. Importantly, the perceptions held by community members, victims and the criminal justice system are instrumental in how stalking is identified, the seriousness of the behaviour and what conduct is perceived as deserving of criminal justice intervention.

The Role of the Media in Influencing Perception

The media has significant influence over community attitudes to crime. Jewkes (2011) argues that the media is shaped by assumptions made about the audiences, and as a

result the media frames a story in a particular manner and sets an agenda. The process by which news outlets, editors and journalists select news is based on its perceived newsworthiness, which is widely accepted as the most serious and dramatic crimes (Greer, 2007). In particular, stories involving risk or danger to society, celebrities, behaviours of a sexual or graphic nature, and those that are culturally connected are all values that capture the attention of the community and audience (Bloustein & Israel, 2006; Reiner, 2007). The media is pivotal in constructing popular images of stalking and representations of what the behaviour constitutes and can generate a distorted fear of crime within the community (Reiner, 2007; White & Perrone, 2010b). Importantly, the reported 'facts' of crimes by the media yields a public perception of crime that altogether can misrepresent the reality.

Media Perceptions of Stalking: Strangers, Celebrities and the Fatal

Stalking first became a visible social issue through media coverage of star stalking cases involving celebrity targets. Ogilvie (2000b) contends that stranger stalking typically dominates media attention given that it often links with celebrity culture, thus capturing public interest. Dussuyer (2000) found that the most frequent category of offender-victim relationship outlined in media representations were strangers. This profile is largely mistaken in that stalking victims more commonly know their stalkers and serious mental disorders are not normally present in offenders. These paradigms however have emerged and evolved in the media over 30 years and are still very much present in news coverage today. Australian media emphasises that stalking is connected with the celebrity mostly as stalking victims of strangers but also as stalkers, for example:

Stalker nightmare haunts champ (Golf, 2013, January 31).

Police allege stalking and threats by beauty contest judge against former partner (Cavanagh, 2017, November 4).

Pie's stalker terror – Girlfriend's nightmare as crazed fan attacks footy star's home (Dowsley, 2009, October 6).

Di ignored the 'creepy, stalking' Trump (The Herald Sun, 2015, August 18).

Ex-Demon Colin Sylvia spied on ex-girlfriend, filmed her as she slept, court told (Cooper, 2017, November 28).

Quintessential stalking cases emerged in the early 1990s to also include stalking in the wake of failed, and usually domestically violent relationships perpetrated by men (Lowney & Best, 1995). Most frequently, these reports drew widespread coverage given the often-fatal consequences. Hall (1998) proposes that there are two popular representations of stalking; the celebrity stalked by a crazed fan and a woman escaping a physically abusive relationship with deadly consequences. Examples of headlines from Australian news media illustrating the latter typecast and cases that have similar circumstances are provided below. Interestingly, in these cases it was only after the fact of serious physical violence or homicide that it was clear that the perpetrator engaged in prior stalking behaviours. Additionally, in relation to the last headline relating to the highly publicised murder of Jill Meagher by Adrian Bayley, while the offender's behaviours were without doubt heinous, the labelling of his conduct as stalking is argued to be inaccurate (Bucci & Spooner, 2015, March 26; Ford, 2017, September 22). The offender followed Jill on a short route before what was considered a random and opportunistic attack. The characterisation of the offender's 'stalking' behaviour may misleadingly be represented as criminal. The media's use of the word 'stalk' here is not incorrect as it is made in reference to the older definition of the word to 'stalk prey', rather than the modern, criminal concept of stalking. However its use perpetuates the misconception of the perceived heightened danger that strangers represented.

Man who punched and stomped on ex-girlfriend's head jailed for six years (Cooper, 2017, February 7).

Stalker found guilty. Jail for ex who hung pet dog (Ryan, 2009, January 20).

Woman tried to end relationship with attacker several times before she was stabbed, doused in petrol (Kidd, 2016, November 5).

Daniela D'Addario pleaded with ex-boyfriend to stop stalking her days before her murder (Lowrey, 2016, July 2).

It was easy for Bayley to stalk, rape and murder (Ford, 2015, March 27).

Although the extreme cases that the media reports on obviously do occur, it is not the reality for the majority of stalking victims. Notwithstanding the role of the media in promoting important public policy, over-reporting cases that are the most dramatic and sensational can orientate a misrepresented picture of stalking. This is

counterproductive to the accurate experiences of victims presented in Chapter One, who are commonly everyday people, stalked by someone they know and stalking behaviours infrequently result in serious injury and death. The media may influence police and prosecutorial agenda around the types of cases most in need of recourse, distorted by popular coverage on stalking instead of being based on behavioural and clinical research around the true nature of stalking. This thesis tests this hypothesis when analysing the nature of stalking cases entering court and whether stereotypical depictions of stalkers are reflected in these cases.

Film Media (Mis)representations: Gendered Portrayals of Stalking

From the late 1980s to early 1990s, a spate of classic stalker movies emerged. *Fatal Attraction* for example follows a story of a psychotic jilted-lover who violently terrorises her married lover after having a one-night affair with him. Mullen et al. (2001b) claim the success of such movies reinforces a paradigm of stalkers, that of being a disordered, obsessive, disturbed individual with a crazed obsession. Female stalkers, as depicted in *Fatal Attraction*, tend to fit the mould of the deranged and unhinged stereotype. In the film *Cape Fear*, Robert De Niro also features as the antagonist with an obsessive vendetta against his former lawyer. Due to such representations, stalking evokes a sinister image where violence appears imminent while also reinforcing the ‘stranger danger’ rhetoric (Kelly & Humphreys, 2000; Mullen et al., 2001b). In addition, such representations confirm the assumption that severe fear for the victim’s safety is required for stalking to receive criminal justice intervention.

Film media endorse, glorify and exaggerate portrayals of pursuit and stalking-type behaviours. It is through films that people form ideas, perceptions and opinions about the nature of crime, offenders and victims (Rafter, 2007). Motion pictures such as *The Graduate*, *Love Actually*, and *The Notebook* all have characters that go to extremes to win the affections of their love interest. The women pursued are often not troubled when their pursuers fail to accept their refusals but by the end of the movie are ‘won over’ by their wooer’s persistence (Lippman, 2016). In the romantic comedy, *There’s Something About Mary*, stalking discourses reflect the notion for men to try and try again when they do not at first succeed. Stalking behaviours, usually based on deceptions, are normalised as romantic while also being presented as humorous and

ubiquitous (Anderson & Accomando, 1999; Schultz, Moore, & Spitzberg, 2014). This film also engages in a level of victim blaming; as the title suggests, the character of Mary is perceived to inspire her stalking and hence is responsible for bewitching her stalkers (Anderson & Accomando, 1999).

Films cultivate an understanding that stalking-like behaviours are trivial and minimises the deleterious harm that research has shown many victims experience; or at the other extreme, exaggerate exceptionally disordered stalking. These depictions have direct influence on the general public where perceptions of mock jurors demonstrated that stalking stereotypes and double standards endure (Gavin & Scott, 2016). When men stalk women, their behaviours were considered as misunderstood, compared to women who were seen as desperate and not conforming to the archetypal gender role of being the one who is pursued. Moreover, there are a considerable number of films that portray stalking as hyper violent and macabre. Schultz and colleagues (2014) found in their content analysis of stalking films that there are a number of prevailing misrepresentations of stalking. Women were underrepresented as victims and moderately overrepresented as stalkers. Strangers principally committed stalking or there was a superficial relationship between the stalker and their victim. The majority of stalking campaigns were coloured by extreme violence, where the natural resolution of the narrative is death of either the stalker or victim (Schultz et al., 2014).

Film and news media representations constructs and reinforces stereotyped images of stalking that has genuine consequences for how the public perceives stalking and how victims view their own victimisation. As members of the community, popular depictions may in turn influence criminal justice stakeholders. McKeon et al.'s (2015) survey of Victoria police indicated that they tended to adhere to the myth that stalking behaviours experienced by victims are often misinterpreted romantic pursuit. In the examination of stalking offences in this study, trends concerning the nature of behaviours, profiles of offenders and victims, and the perceived seriousness of the behaviour are analysed according to whether this accords with misrepresentations of stalking in films and the media.

Cyberstalking: New Constructs and Methods of Stalking

Globalisation and advancements in technology are rapidly changing the way people interact with one another. These social changes present new mediums for how crime is committed and new challenges for the criminal justice system. Technology expands the scope in which stalking can be perpetrated. Cyberstalking is the online stalking of an individual through electronic or Internet-enabled methods (Yar, 2006). Like traditional stalking behaviours, cyberstalking involves a broad range of activity, including instant messaging through emails and Facebook posts, publishing damaging and embarrassing material about the victim on Internet sites and chat rooms, posting false information and information gathering on the victim (Bradford, Henson, & Fisher, 2012; DOJ US, 1999; Home Office, 2011; Mullen et al., 2009; Ogilvie, 2000d; Roberts, 2008; Taylor-Dunn et al., 2017). The dissemination of material on websites and social networking sites is publicly available and may be permanently accessible (Langos, 2013). Expanding technologies enables an infinite capacity for communication to be both dispatched and received instantaneously and universally (Meloy, 1998). Furthermore, due to these continuous advancements, the dynamics and nature of cyber behaviours are constantly redefining stalking.

Research indicates that cyberstalking and offline stalking have greater overlap than might be expected. Former intimate partners were more likely to cyberstalk their ex-partners than engage in stalking behaviours offline, while strangers were no more likely to commit cyberstalking (Cavezza & McEwan, 2014; Sheridan & Grant, 2007). This runs counter to popular stereotypes of cyberstalkers being lurking strangers enjoying anonymity, randomly targeting victims. There is however greater normality in engaging in cyberstalking activities. The article, *Look who's stalking: 10 creepiest apps* (Alba, 2012, April 5), reviews new and available applications or 'apps' for smartphones that people can download onto their mobile phones for the purposes of 'social stalking'.¹⁰ These applications in particular could be exploited for stalking. One app named *Creepy* allows the user to track postings that their target makes on social media forums and networks. In the context of domestic violence, victims perceived online and technology-assisted stalking as pervasive and extremely

¹⁰ Social stalking is part of modern vernacular that expresses normal curiosity that people have to pry into the lives of others through information and material publicly available on the Internet.

detrimental. Women reported that ex-partners have electronically tracked their movements both online and offline, filmed them through spyware and with the ubiquity of smartphones, victims feel under siege and isolated from the constant stream of communication from the offender (RCFV, 2016; Woodlock, 2017).

Online stalking can be considered a variant of similar conduct that would be normally committed in the non-virtual world (Yar, 2006). Cyberstalking thus represents a new terrain for stalkers that removes restrictions of space and time. This too may exacerbate the distress experienced by cyberstalking victims; intensifying the perception that stalkers can infiltrate all components of victims' lives (Meloy, 1998; Sheridan & Grant, 2007). This reiterates a key feature of stalking not entailing any physical elements in order to have a substantial impact on victims. Meloy (1998) recognises that cyberstalking may hold a certain appeal given the absence of social constraints and inhibitions that may hinder stalking-type behaviours offline. Social anxiety for instance, may prevent some individuals from engaging in offline stalking for fear of interpersonal communication, and the cyber world, then, provides a real alternative. Cyber incidents may be more prevalent, not only given the ease of accessing the Internet and communication services, but also as the pool of potential victims extends to any person digitally connected (Ogilvie, 2000d). Thus, the growth in technology and communication has arguably contributed to increasing rates of stalking, or new forms of intrusive and stalking-type behaviours are being recognised as harmful and possibly criminal.

Cyberbullying is a manifestation of cyberstalking involving repeated and systematic conduct directly or indirectly targeting a victim with the use of computers and communication technologies (Langos, 2012). There are difficulties in defining both phenomena and there is considerable overlap in the behaviours. Cyberstalking is however considered more serious, characterised as intense harassment creating significant harm and fear for victims (Langos, 2014, 2015). On the other hand, cyberbullying is intentionally aggressive conduct in order to cause harm (Langos, 2012). Similar to stalking, there are concerns for the over criminalisation of cyberbullying as it also involves a 'commonness' of behaviour that can range dramatically in severity (Langos, 2015). Langos (2013, 2015) argues that a specific criminal offence designed to address cyberbullying should be tailored to only capture

the most serious cases in order to prevent over-reach of the law, where trivial cases should be diverted away from the criminal justice system to avoid net-widening. The author proposes that to limit a catch-all provision, a narrow definition of harm should be employed. Given that anti-stalking legislation can be applied to cyberbullying cases, as explicitly intended by the 2003 amendments, this thesis will assess whether minor cyber offences relating to stalking and bullying are being convicted as indictable stalking offences.

The digital world broadens the types of behaviour defined and associated as stalking. For example, an Australian footballer received threatening messages on his Twitter account. There were several messages posted after a football game that were described as offensive and disturbing, and it appears as though more than one perpetrator was involved (Daffey, 2012, April 25). This conduct was described as a stalking incident, perhaps despite being committed by several people making one post each. This cyber activity is known as *trolling*, involving an online user who posts deliberately inflammatory messages on forums, chat rooms, blogs, and other community networks with the intent of provoking a severe emotional response from the target (Martin, 2013, May 30; McEwan, 2014, February 26). Other intrusions, such as drone technology¹¹ that have been flown over private properties, most often representing invasion of privacy and breaching aviation laws, but have also been associated with stalking in common parlance (ABC, 2017, November 3). These sorts of behaviours are traditionally not considered stalking, however given the ambiguity of behaviours that may be seen as stalking and the scope of anti-stalking legislation, the law may be further extended to address these other offensive acts.

The rise of emoticons, or ‘emojis’, as symbols of expression within text messages being sent and received, is an emerging problem for the legal system in interpreting the meaning of these icons as evidence in the commission of an alleged offence (Cowie, 2018, March 25). This new form of communication, where emoticons can emphasise an implied threat, has resulted in stalking convictions (Cowie, 2018, March 25). In addition, with the ease of taking and sending images with smartphones,

¹¹ A drone or more accurately an ‘unmanned airborne vehicle’ [UAVs], is a small-unmanned aircraft that can have various designed capabilities such for film recording, taking photographs, sports telecasting and for patrolling (Sarre, 2016).

distributing intimate and sexually explicit images without the consent of the individual who is the subject of the image is a current problem behaviour that has drawn social concern. Defined as *revenge pornography*, this unwanted and distressing conduct can likewise entail stalking-type behaviours and as the name suggests, has been used to humiliate and enact revenge on their victim (Clough, 2016; Goldsworthy, Raj, & Crowley, 2017; Henry, Powell, & Flynn, 2017). These cyber activities could constitute stalking, especially if the behaviours are persistent and prolonged. However, there appears to be a blurring of definitions, which may lead to difficulties in determining criminal stalking when it forms part of other offensive behaviour.

Conclusion

This chapter explored the political and socio-cultural constructions of stalking that can influence understandings of the behaviour. Meaning is given to stalking through different perspectives and evolving representations of the problem behaviour that prevail through law-making, media portrayals, cultural perspectives and current trends in communication and interaction. Acknowledgement of stalking is swayed by different cultures, social values and what the media and politicians highlight as criminal. These variables influence perceptions of stalking and the severity of behaviours, which can misalign with how stalking is experienced in reality. These various constructions and influences are considered when analysing stalking cases entering court, especially in how police, prosecutors and judges potentially perceive the behaviour constituting convictions. Cyberspace and new technology particularly presents a new medium to commit stalking and other harassing behaviours (DOJ US, 1999; Yar, 2006). Accordingly, the concept of criminal stalking has expanded to include cyber activities and manifestations of the behaviour such as revenge pornography. This has changed the dynamics of stalking, potentially diversifying the behaviour to embrace a fuller range of offensive behaviours that further extends what stalking is and what conduct is captured by anti-stalking laws. The next chapter analyses the framework of anti-stalking legislation, most relevantly in Victorian law, and reviews the critiques of stalking statutes revealing potential issues with its application.

Chapter Three

Key Elements and Theoretical Critiques of Anti-Stalking Legislation

Introduction

Since the early 1990s, governments around the world have increasingly introduced and amended anti-stalking legislation. Like behavioural definitions of stalking, these anti-stalking laws are often drafted broadly to account for the large range of behaviours that are used to stalk another person. However, the criminalisation of stalking has been challenging, with a lack of a consistent definition across anti-stalking legislation both domestically and internationally (Dennison & Thomson, 2005; Fox, Nobles, & Fisher, 2011; Sheridan & Davies, 2001c; Van der Aa & Römken, 2013). Despite these issues, it is largely undetermined how anti-stalking laws are operationalised and how the criminal justice system addresses stalking behaviours. This chapter will outline the laws that were used to address stalking-type behaviours prior to the introduction of a specific offence of stalking. Legislative reforms specifically addressing stalking will then be discussed in relation to intervention orders. Civil injunctions are the predominant method in responding to harassing behaviours, which intersects with criminal law if these orders are contravened. This chapter then examines the key elements of anti-stalking statutes and critiques for the legislative framework. A summary of how the Victorian legislation compares with anti-stalking laws in other Australian jurisdictions is provided before the chapter concludes with considerations for the present study in analysing the practical applications of Victorian anti-stalking legislation in relation to theoretical concerns for the law.

Legislation Used to Address Stalking Prior to Anti-Stalking Legislation

Denmark is considered to have first introduced a version of modern day anti-stalking legislation, though without specifically referring to stalking, which was constructed over half a century later. The Danish Penal Code of 1933 refers to violations of the peace against a person, which implies a repetitive use of different forms of behaviours (De Fazio, 2009; Meloy & Felthous, 2011). In Australia, South Australia's *Criminal Law Consolidation Act 1935* (SA) criminalised certain stalking-like behaviours up until 1992. This included persistently following another person, watching and

besetting, hiding items belonging to another, and the use of violence and intimidation (Goode, 1995).

Contemporary legislation can, and is, used to address stalking behaviours, despite the availability of anti-stalking legislation. For example, in Victoria, some individual acts that comprise of stalking may be prosecuted under arguably less burdensome laws such as assault, theft, property damage, breaking and entering, or making threats. Other harassment category offences may also be used, including the use of a carriage service (e.g., a telephone call) to menace, harass or offend, which is legislated under Commonwealth law (*Criminal Code Act 1995* (Cth) s 474.17).¹² These individual offences however do not address the harmfulness of stalking or the on-going nature of the crime. Alternative offences such as making threats, property offences or justice procedure offences such as breaching intervention orders are available to police, not only to address the criminal behaviour but also in a preventative fashion to stymie further behaviour directed towards a specific person.

On the other hand, other laws within the crimes against the person category of offending apart from stalking, such as sexual offences and assault, may be the consequence of escalating stalking behaviours. Such acts involving physical violations may be addressed with more conventional laws without needing to acknowledge the pattern of behaviour that preceded the assaults. Although the prosecution of individual acts provides relief to victims, a failure to systematically append a series of stalking acts as an offence creates a disservice to victims and obscures the reality of stalking (Purcell et al., 2004b; Swanwick, 1996). For example, while an individual act of assault may be prosecuted, persistent episodes of the stalker following the victim for months prior to the assault – causing a great level of trepidation for the victim – may be overlooked.

¹² This Commonwealth law applies to all Australian states and territories, including Victoria, and may be used instead of a stalking offence.

According to the Australian Model Criminal Code Officers Committee [MCCOC]¹³ (1998), anti-stalking laws fill a gap in previously existing law and acknowledge that an offence of stalking is a prolonged succession of harassment rather than minor disconnected offences (McAnaney et al., 1993). The expectation was that, in labelling and proscribing stalking, new legislation would deter would-be stalkers with the prospect of arrest and imprisonment. In contrast, Malsch (2000) notes that drafting anti-stalking legislation may be seen as unnecessary, as existing provisions can already be applied to stalking behaviours. Even with the availability of anti-stalking legislation, it is suggested that police and prosecutors continue to use other tactics beyond the legal measures explicitly introduced to deal with stalking (Storey & Hart, 2011). This thesis will assess this proposition when examining court files of stalking-related behaviours that were alternatively convicted with other laws and not with anti-stalking legislation.

Civil Responses to Stalking: Stalking Intervention Orders

Intervention orders are the primary method for addressing stalking behaviours (Bourke's Criminal Law, 2010; McEwan et al., 2007a). These orders are court injunctions designed to prevent future conduct by the respondent against the complainant and protect them from further harm or injury (DOJ, 2009; *Stalking Intervention Orders Act 2008* (Vic)). Orders are based on past evidentiary misconduct committed by the respondent but aim to address future behaviours rather than punish past actions. In civil proceedings, a lower standard of proof is required in order to make an intervention order, where the court needs to be satisfied on the 'balance of probabilities' that the respondent has stalked, and will continue to stalk the complainant. This is compared to the much higher standard of 'beyond reasonable doubt' required in criminal matters (Finlay & Kirchengast, 2015; Foellmi, Rosenfeld, & Galietta, 2016). Intervention orders are also known as restraining orders, protection orders, apprehended violence orders and family violence intervention orders. Laws providing intervention orders against the perpetration of future stalking events have undergone several legislative changes in Victoria.

¹³ The Standing Committee of Attorneys-General [SCAG] established the MCCOC in order to develop a national model criminal code for Australia. The Committee was renamed the Model Criminal Law Officers Committee [MCLOC] in 2006, in light of its broader role of advising on criminal law issues. The Council of Australian Governments [COAG] has since replaced the SCAG.

As a result of the Crimes (Amendment) Bill (Vic), courts were able to utilise intervention orders more extensively in light of the new offence of stalking. These civil orders could be granted in the absence of intimate relations between the offender and the victim (Explanatory Memorandum, 1994; SAC, 2008). This was replaced in 2008 with a distinct system for intervention orders in the case of stalking, separate from that of family violence, when the *Family Violence Protection Act 2008* (Vic) and the *Stalking Intervention Orders Act 2008*, came into effect. This Bill was passed in order to preserve the stalking intervention order system until it could be reviewed by the Department of Justice (POV, 2008). Once reviewed it was found that the court system was overburdened from processing a great number of stalking intervention order applications as a result of interpersonal disputes (DOJ, 2009). As a result the now current *Personal Safety Intervention Orders Act 2010* (Vic) came into effect in 2011 (Explanatory Memorandum, 2010). The primary difference involved in this new civil system is that it allows the court to refer interpersonal disputes to mediation in order to resolve the underlying matter rather than granting an order. In summation, an intervention order may be granted if the court finds there are safety concerns for the applicant subject to stalking behaviours regardless of their relationship to the respondent.

Although there is limited research examining the use and efficacy of intervention orders, it is clear that these civil remedies are preferable to criminal prosecution. The latest Magistrates' Court of Victoria (2016) annual report found that between 2015 and 2016, 58,934 family violence and 15,317 personal safety intervention order applications were finalised across the state. Given the overhaul of the Victorian intervention order system during the past decade, which involves applications in the context of family violence or a person other than a family member, it is difficult to differentiate whether these injunctions were required due to stalking or other risks to a person's safety. Prior to the introduction of the current *Personal Safety Intervention Orders Act 2010*, there were 8344 stalking intervention orders finalised in 2010/2011 by the Magistrates' Court (2011). The SAC (2008) found that between 2004 and 2007, 22% of all intervention orders issued were in respect to stalking. Since the introduction of anti-stalking legislation there has been an increased use of intervention orders as civil injunctions that can be finalised on the basis of behaviours satisfying

the legal definition of stalking. In addition, the most recent reform to the intervention order procedure in Victoria – implementing mediation to circumvent the large amount of civil orders entering the court – suggests that some of the matters coming before the courts were frivolous or relatively minor interpersonal disputes, rather than pressing stalking incidents.

McMahon and Willis (2002) argue that a large portion of applications for intervention orders in Victoria may in fact relate to interpersonal or neighbourly disputes rather than being paradigmatic of stalking. Whilst several of these cases may be labelled trivial, other incidents were harmful. Stalking intervention orders relating to disputes between neighbours involve an array of conduct including verbal abuse, throwing rubbish on property, property damage, threats, obscene gestures, and throwing stones or mud at neighbours or at their property. In Dussuyer's (2000, p. 67) study, one magistrate affirmed the prevalence of neighbourhood complaints entering court:

Everyday they come in seeking intervention orders for putting a hose over the fence ... they're neighbourhood disputes ... not matters that should be coming before the court as stalking.

In light of Parliamentary motivations for introducing anti-stalking legislation aiming to address serious cases of stalking, the application of the law to address minor intrusive acts suggests that the legislation is too broad. McMahon and Willis (2002) found civil injunctions are exceptionally popular in light of the breadth in which conduct may fall within the legislative meaning of stalking. Police confronted with interpersonal disputes may be unable to resolve matters and thus frequently suggest that parties take out civil injunctions instead. Intervention orders are complementary to anti-stalking legislation by regulating prospective stalking conduct. Evidence of past behaviour may be predictive of on-going stalking and the potential for serious future violence. Victims of stalking may prefer this civil option rather than reporting behaviours as they may be reluctant to involve police, especially if intimately acquainted with the perpetrator or if stalking is perceived to be motivated by romantic rather than hostile intentions (McMahon & Willis, 2002).

Effectiveness and Enforcement of Stalking Intervention Orders

The enforcement of intervention orders has nonetheless proven somewhat ineffective, especially in relation to stalking in domestic violence situations. A number of studies have recognised that stalkers frequently engage in stalking behaviours in violation of intervention orders (Baldry et al., 2016; Logan & Walker, 2010; Logan & Cole, 2011; Messing, O’Sullivan, Cavanaugh, Webster, & Campbell, 2017; Middlemiss & Sharp, 2009; Richards et al., 2012). Between 2015 and 2016, Victoria Police recorded 35,473 breaches of family violence orders and 3,083 breaches of intervention orders (Crime Statistics Agency [CSA], 2016). In comparing these rates with the applications finalised by the Magistrates’ Court in the same period, this means that 60% of family orders and 20% of personal safety orders were breached. In reviewing the statistics publicly released by the Magistrates’ Court, it is unknown how many contraventions of these orders were due to stalking.

Victims of stalking often report the ineffectiveness of intervention orders, as well as difficulties in obtaining them. In Brewster’s (2001) study, one victim noted that she had trouble gaining a civil injunction as there were never any witnesses to corroborate the stalking;

He’d sit there on the hood of my car right in front of them. And then, the cops would leave, and then he would slash my tires or whatever it was. I had a hard time getting any protection (as cited in Brewster, 2001, p. 100).

Research indicates that not only are intervention orders commonly breached, these breaches are not effectively policed, with victims noting that returning to court may simply result in the restatement of the original order (Pathé et al., 2004). Douglas (2008) found in her review of Queensland police data that when stalking was cited as the behaviour that breached an intervention order, no stalking charges were subsequently laid. This is consistent with literature discussed in the previous chapter where police customarily opt for civil injunctions for domestic violence when encountering stalking in a domestic scenario (Pearce & Easta, 1999).

Studies have recognised that women were often more susceptible to extreme acts of violence once leaving abusive relationships (Coleman, 1997; Mechanic et al., 2000). Thus, it is unsurprising that these orders are referred to as ‘paper shields’ (MacKenzie

& James, 2011). Stalking following a domestically abusive relationship, especially those characterised by sexual violence, was a risk factor for continued stalking and violence despite active intervention orders (Logan & Cole, 2011). The presence of stalking in domestic relationships prior to court intervention orders is also a risk factor for violations of these orders (Logan et al., 2007; Logan & Walker, 2010). Messing and others (2017) observed that no protective actions taken out by the battered women participating in their study reduced stalking thereafter. In summary, a history of stalking is considered a risk factor for continued stalking regardless of active intervention orders prohibiting contact (Logan & Walker, 2010; Melton, 2007). While stalking victims report breaches of intervention orders more than non-victims of stalking, 50% to 64% did not report violations according to studies (Logan et al., 2007; Logan & Walker, 2010). Thus, there is some apparent effectiveness in these civil court interventions.

When intervention orders are breached, by and large the penalties represent the lower scale of sentences available (SAC, 2017d). Contraventions of personal safety intervention orders most frequently result in adjourned undertakings, discharge or dismissals (33%), followed by fines (31%), sentences of Community Corrections Orders [CCOs] (20%) and imprisonment (12%) (SAC, 2017d). Overall, intervention orders are the primary response to stalking and questions remain as to their effectiveness in curtailing behaviours. Instead of serious stalking cases, injunctions have been granted for interpersonal disputes and altercations between neighbours. Significantly for analysing the applications of anti-stalking legislation, there are indications that the meaning of stalking has been stretched in the civil system to cover conduct beyond stalking. This may also be evident in the nature of criminal stalking offences in the County Court, which this thesis aims to examine.

Torts

There is case law focusing on stalking-related behaviours and legal redress is available for individuals seeking civil liability and compensation for injuries and harm they have experienced as a result of stalking. In the Queensland case of *Grosse v Purvis* [2003], the judge awarded damages for an invasion of privacy claim, recognising that the defendant unlawfully stalked the plaintiff as proscribed under sections 359B and 359E of the *Criminal Code Act 1899* (Qld). This included

committing various acts of harassment, nuisance, trespass and assault arising out of six years of stalking resulting in the plaintiff suffering distress, hurt and embarrassment. In this case, stalking (in the criminal realm) became actionable behaviour for the civil claim of invasion of privacy.

In another civil case, *Giller v Procopets* (2008), the Victorian Court of Appeal held that the claimant was able to recover compensatory damages for breach of confidence. This claim was based on the emotional distress caused to the plaintiff by the defendant in distributing an unauthorised videotape of the defendant and plaintiff engaging in sexual activities. This case is an example of revenge pornography before the concept became more widely known. Moreover, the non-consensual distribution of intimate images was committed in the context of a physically and emotionally violent relationship. Once the relationship ended, the defendant engaged in further assaults, breaches of intervention orders and stalking of the plaintiff, all of which resulted in criminal convictions. Whilst these cases represent civil remedies, where damages have been awarded in stalking or stalking-relating cases, civil liability for stalking is outside the scope of this criminological study.

Critiques of Anti-Stalking Legislation

The majority of research available on anti-stalking legislation provides theoretical critiques of the law and potential issues with its implementation. The three main clauses of anti-stalking legislation involve conduct requirements, intent of the offender, and impact to the victim and represent the key areas for evaluation. These elements of the legislation will be analysed in each of the following sections as the Victorian law incorporates each of these clauses. Reviewing commentary on anti-stalking law is pivotal to gain a thorough comprehension of the intended and unintended consequences of the legislative composition. The present study will draw on the concerns and questions raised by previous research around the efficacy of the law to respond to stalking. This is in addition to providing a legislative framework of what constitutes an offence, against which the cases heard in the County Court can be compared.

The Act of Stalking as a Course of Conduct

Anti-stalking legislation commonly frames the *actus reus* of an offence of stalking as a *course of conduct* (Kapley & Cooke, 2007; Van der Aa & Römken, 2013). The phrase ‘a course of conduct’ under Victorian legislation has been interpreted in case law. In *Gunes v Pearson*, it was determined that a course of conduct must entail conduct engaged in on more than one occasion, or that the conduct must be protracted. This definition was expanded in *Berlyn v Brouskos*, detailing that a pattern of conduct is also required exhibiting a continuity of purpose. Legally defining the act of stalking as a course of conduct has drawn concerns that the term is ambiguous and fails to appreciate the persistent nature of stalking. Swanwick (1996) claims the term is unclear, which may be more of a concern for Victorian law, as a course of conduct is not so much defined but is rather indirectly explained through the proscription of various acts (Groves, 1997).

Although a *course of conduct* connotes persistence and continuity, rather than isolated or infrequent episodes, it is a pliable term and can be considerably subjective. This is indicated by a ruling in Queensland¹⁴ that stalking need not be continuous for an offence of stalking to be found, however non-continuous conduct would challenge the contention that fear was reasonable (Swanwick, 1998). Whilst evidence and common sense are key determining factors in establishing a course of conduct (Samuels, 1997), the intrinsic characteristic of stalking involving a *degree of persistence* may be overly flexible. This may result in legislation being applied to conduct demonstrating negligible repetitiveness. In the Victorian case of *Thomas v Campbell* (2003), the accused was found guilty of stalking based on two incidents ten months apart; an assault with a car in October 2001 and an assault with a hand motion in August 2002. On appeal, it was noted that the stalking charge should have been dismissed given the lack of sufficient pattern between incidents. This case raises concerns that isolated incidents may be married together as a course of conduct given insufficient understanding of the term.

¹⁴ *R v Derboghossian* (1996).

Stalking, as a course of conduct, is a malleable concept as the above case suggests. Accordingly, this legal proscription may not adequately communicate the characterisation of stalking as systematic behaviour aimed at a specific individual (Mullen et al., 2001b). Persistence involved in stalking may be attained through specifying a requisite number of acts necessary to form a course of conduct. In Victoria, the number of acts required to prove a charge of stalking need not exceed two incidents. It can be assumed, however, that evidence of a greater number of acts would be more readily identified as stalking, as found in the previous chapter regarding community perceptions of stalking. Nonetheless, this represents a low threshold for conduct to be seen as repetitive and increases the probability that trivial and inoffensive behaviours will also be prosecuted (Purcell et al., 2004b). Moreover, the fact that a course of conduct may constitute a single protracted act, the potential for the legislation to capture genuinely innocent social interactions or minor intrusions should not be underestimated (McEwan et al., 2007a; Mullen et al., 2009).

In the experience of Pathé and colleagues (2004) – assessing and treating stalkers in their forensic mental health clinic – the application of law is considerably inconsistent, especially in relation to understanding stalking as a course of conduct. For one client, a stalking conviction was based on sending two SMS text messages, for which he received a suspended sentence,¹⁵ downgraded on appeal to a Community Based Order [CBO].¹⁶ Another client who made over 100 threatening calls to his victim over a couple of months, was only charged with telecommunications offences and contravening an intervention order. This thesis will examine conduct that amounts to a *course* in stalking convictions and any variability or irregularities found in the persistence of behaviours that this clause aims to address.

Breadth of Stalking Conduct Constituting a Course of Conduct

The breadth of legislation has emerged as a central issue for anti-stalking laws. Critically, the efficacy of legislation rests on defining the complexities of stalking conduct widely enough to be effective, yet narrow enough not to include entirely

¹⁵ Wholly and partially suspended sentences have since been abolished in Victoria for offences committed after September 2014.

¹⁶ CCOs replaced CBOs in 2012 in Victoria.

innocent behaviours as criminal. Thus, it becomes a balance between overbreadth¹⁷ and over-restricted legislation (Ogilvie, 2000b). Several commentators in the United States have observed the main legal challenge to anti-stalking legislation is that it is vague and has the potential to violate civil liberties (Fox et al., 2011; Lingg, 1993; Lopez & Bast, 2009; McAnaney et al., 1993). Victorian legislation provides a list of the types of behaviours that can form a course of conduct. However, under the legislation, stalking may also involve acting in any other way that can be reasonably expected to cause harm (*Crimes Act 1958* s 21A(2)(g)). Bradfield (1998) maintains that the use of a comprehensive list of specific acts would avoid issues of vagueness by placing the offender on notice of the sorts of behaviours that are prohibited. Police, prosecutors, and the judiciary would also be informed as to what stalking may entail, assisting in the identification and prosecution of stalkers. Specific behaviour amounting to a course of conduct may nevertheless be nebulous and widely cast. ‘Following’, for example, is a loose term that can be broadly used by police; following may range from a short distance to methodologically tracking a victim’s movements for weeks.

In Victoria, harassment is not a specific offence per se, however a stalking offence under the *Crimes Act 1958* (s 21A) can be charged when behaviour amounts to harassment of the victim. In comparison, in the United Kingdom the *Protection from Harassment Act 1997* was first introduced to specifically address stalking; this however became a catch-all offence for general harassment.¹⁸ Given the breadth of behaviours that can satisfy a stalking offence and in applying for intervention orders, there are indications that Victorian legislation has the flexibility to be used for general harassment also. In particular, the most recent changes to Victorian anti-stalking legislation, where repeated acts of bullying can be charged and convicted as a criminal offence of stalking, means that the scope of the law has been further expanded (*Crimes Amendment (Bullying) Act 2011*). There is some reported evidence

¹⁷ Overbreadth is the quality of being overly broad. This is a legal term in the United States, in which the Overbreadth doctrine in constitutional law prohibits overbroad statutes that infringes on protected conduct such as freedom of speech (Boychuk, 1994; Guy, 1993).

¹⁸ England and Wales have since introduced the specific offence of stalking as an addition to the *Protection from Harassment Act 1997*, as it was found that this original legislation was rarely used for stalking cases (Harris, 2000; Richards et al., 2012).

from magistrates that anti-stalking provisions are applied to some behaviour disconnected from stalking, as one Victorian magistrate noted:

Non-true stalking behaviours covered by the legislation include harassing behaviour. Some examples are one neighbour mowing the other's lawn ... there was one where a neighbour was panel beating cars up until midnight or 1am (as cited in Dussuyer, 2000, p. 65).

There are apparent differences between harassment or bullying and stalking. Harassment is an umbrella term that can involve milder forms of intimidation, while stalking denotes a more serious behaviour (HMIC & HMCPSP, 2017; Owens, 2016; Van der Aa, 2017). As Dennison and Thomson (2005) argue, although stalking is harassment, not all cases of harassment constitute stalking. The danger here is that the legislation and meaning of stalking is stretched and alternatively used to fill a gap in law for all general nuisances and disputes. McMahon and McGorry (2016, p. 101) concur that there is a trend to broaden the ambit of proscribed conduct within stalking and these 'offences should not be used as mental harm's catch-all provision in the criminal law'.

Queensland has anti-stalking legislation that recognises two levels of stalking by adopting a scale based on the nature of conduct. An offence is aggravated if the stalking involves threats of violence, violations of intervention orders, or if the accused possessed a weapon (*Criminal Code Act 1899* ss 359E(2)–(3); Harbidge, 1996). The *Protection of Freedoms Act 2012* (UK) introduced new stalking offences into the *Protection from Harassment Act 1997*, which also comprises two layers of offending; harassment amounting to stalking (s 2A) and stalking involving fear of violence or serious alarm or distress (s 4A). In Italy, punishment for stalking is increased if the offender is an ex-partner of the victim or if the victim is considered vulnerable, for example a minor, pregnant or disabled (De Fazio, 2011). The absence of a scale of offending may prove problematic in the application of the Victorian legislation in several key ways. Wiener (1995) notes that individuals engaged in minor intrusions are liable to the same maximum of ten years imprisonment as more dangerous offenders. Judges may also have limited capacity to issue suitable sentences and management strategies, while prosecutors have little recourse when pursuing a range of stalking offences (McEwan et al., 2007a). In contrast, it may be argued that scaling is unnecessary given judges' discretion to discern the seriousness

of the stalking conviction and the mitigating and aggravating factors when determining the subsequent punishment.

Anti-stalking legislation should not be overbroad to the extent that it may sweepingly proscribe lawful activities. McEwan et al. (2007a) note the inherent difficulties in legislating stalking behaviours that commonly involve telephone calls, sending gifts or waiting for someone outside homes and workplaces, which in themselves are innocuous. Critiques regarding the breadth of legislation should however focus on the misuse of anti-stalking legislation rather than on the legislation criminalising legitimate activities (Ogilvie, 2000b). These concerns appear warranted in light of the vast number of cases entering courts for relatively minor intrusions and offences. In one case, a candidate in a local council election took out an intervention order against a rival candidate with claims his rival was posting rude messages on Facebook and harassing him (Schmidt, 2013, December 16). The MCCOC (1998) supports a narrowing of anti-stalking legislation, arguing the wide operation of legislation addressing conduct far removed from the sorts of stalking cases first prompting legislation. The array of behaviours covered by anti-stalking legislation raises genuine concerns for how the law can be used and applied to non-stalking situations.

Intent of the Offender in Perpetrating Stalking Behaviours

The *mens rea* element of crime extends to intention, knowledge, recklessness, and negligence and may also include malice (Butt, 2004). McEwan et al. (2007a) outline that this element is contentious in stalking as many stalkers do not intend to frighten or harm their victims, or they may suffer from serious psychiatric conditions and hence are unable to understand the wrongfulness of their actions. This applies to a notable proportion of stalkers, precluding them from forming criminal intent and thus receiving a criminal conviction (Purcell et al., 2004b). Legislation in Victoria requires that the offender either possess the intent to cause harm to the victim, or should have known the potential adverse impact of their actions (which was realised with some negative effect) (*Crimes Act 1958* s 21A(3)). Bradfield (1998) outlines that the distinction between stalkers' conduct being 'intentional', 'wilful' or 'knowing' translates into the amount of protection and criminal justice intervention afforded to victims under legislation. To include intent to cause harm would limit the protection for victims whose stalkers are motivated by genuine desires to initiate or reconcile

relationships rather than cause harm to the victim (Purcell et al., 2004b). Conversely, to exclude intent would place mentally ill or socially inept people in the same category of offending as stalkers who seek revenge.

Intent to cause harm in legislation provides a limitation to otherwise broad conduct requirements in anti-stalking laws. Legislation in South Australia and California are two examples that conform to a burdensome requirement of explicit intention to cause the victim harm. South Australian law provides that an offender must engage in stalking with the intent to cause *serious* harm (*Criminal Law Consolidation Act 1935* s 19AA(1)(b)). In California, conduct needs to be wilful and malicious, involve a credible threat and be committed with the intent to cause reasonable fear in the victim for their safety (*California Penal Code* § 646.9 (Deering 2018)). Intent need not be explicitly stated but can be inferred by the actions of the offender. Courts may objectively determine the reasonability of the offender's lack of awareness or understanding of the impact of their actions, becoming a case of what an offender ought to know about the potential consequences of their behaviour (Dennison & Thomson, 2005). This establishes criminal liability most comparably to recklessness or negligence (Groves, 1997).

The Parliament of Victoria recognised that including what an offender ought to have known would prevent the loophole defence of offenders denying malicious motivations (Explanatory Memorandum, 1994; POV, 1994a). In one Victorian case, an offender was convicted of stalking a staff member at the university he attended which involved persistent telephone calls, approaching the complainant's colleagues and sending gifts to the complainant's home and workplace over a five-year period (*R v Hoang* (2007)). The obsessive behaviours were intended to win over the complainant's affections, despite the complainant continually expressing no interest in a relationship. The offender claimed he did not intend to frighten the complainant, and hence did not meet the objective test for intent to cause harm. The court, however, acknowledged that there are obsessive stalkers who pursue a relationship out of the false belief that their conduct is welcomed. When subjective intent fails, proof that the offender objectively ought to have understood that harm would likely result from his or her behaviour is adequate.

Wiener (2001b) argues that the redefinition of *mens rea* under Victorian legislation is ill defined and unclear. The author suggests that intent to cause harm is surely more heinous, and thus is an important distinction to be made in anti-stalking legislation. McAnaney et al. (1993) note that the intent requirement including the element of foreseeability is aimed to prevent the legislation reaching people who are incapable of forming necessary intent. Assessments indicate most stalkers are not sufficiently impaired by mental illness and so are liable for their actions, however many stalkers may lack awareness of what constitutes socially acceptable behaviour (Meloy & Gothard, 1995; Mullen et al., 1999). Although stalkers rarely have a significant mental illness that rises to the level of insanity under law, offenders have engaged in stalking largely as a consequence of delusions or other mental health issues (McEwan & Strand, 2013). Freckelton (2001) claims that such individuals commit stalking as a consequence of their illness or in a state of confusion, and so the law should address each type of stalker differently.

Anti-stalking legislation has been criticised for failing to include mental health provisions in order to provide psychiatric assessments and adequate treatment options for mentally ill stalkers. Several commentators have stressed the relevance of psychiatric illness in stalking and have proposed that mental health provisions, such as psychiatric assessments, should be adopted into legislation (Fritz, 1995; McEwan et al., 2012; McEwan & Strand, 2013; Mullen et al., 2009; Purcell et al., 2004b). The absence of these provisions is an apparent mark of poor policy, which is in line with the MCCOC's (1998, p. 61) claim that 'criminal offences should not be created as a surrogate for a proper mental health system'. Thus, anti-stalking laws may adopt a 'one size fits all' approach and fail to consider mental illness as a recognised root cause of some stalking cases (Fritz, 1995).

Impact of Stalking on Victims

Under Victorian anti-stalking legislation, there is no requirement for the victim to experience harm or fear, and thus victims only need to identify that they are being stalked and report to police. Police are merely required to show that a reasonable person *would* have been harmed or fearful as a result of the conduct. Victims are required to experience actual impact for an offence of stalking to be satisfied where the offender did not have the intent to cause them harm. This impact is physical or

mental harm, self-harm, or arousing apprehension or fear in the victim for his or her own safety or for another person (*Crimes Act 1958* s 21A(3)). Purcell et al. (2004b) identify that anti-stalking legislation often adopts a victim focus, where victim reaction principally defines stalking rather than establishing criminal intent. As considered in the previous chapter, an offence of stalking correlates with victim interpretation of the behaviours as stalking. For individuals who identify themselves as being stalked, recourse may only be achieved if the legal requisite of harm is fulfilled. Given that stalking often involves no physical elements, anti-stalking legislation acknowledges the mental harm experienced by victims.

In the case of *DPP v Sutcliffe* [2001], the respondent was accused of stalking the complainant who resides in Canada. The course of conduct involved sending unsolicited mail and gifts, repeated telephone calls, and leaving threatening voice messages. The complainant reported being afraid of Sutcliffe, feeling as though he was potentially dangerous towards her in light of his obsessive conduct. Importantly, the Supreme Court of Victoria upheld the stalking charge recognising the inclusiveness of the Victorian legislation involving a host of effects that could have a gradual impact, with mental harm developing only after a prolonged period of stalking. The behaviours may have an adverse effect on the victim's mental wellbeing, even with the perpetrator residing in another country where the risk of physical assault was not immediate.

In relation to the specific reaction of fear, a number of researchers argue that the element of fear should not be a qualifying factor for victimhood under legislation (Owens, 2016; Podaná & Imříšková, 2016; Reyns & Englebrecht, 2010). This is because stalking victims experience a range of repercussions other than fear, and this may disqualify victims who are considered less likely to be fearful. This would also position stalking in line with other violent crimes such as rape, domestic violence, and assault, where victims in all likelihood experience fear, but the law does not require this impact for an offence to be found (Dietz & Martin, 2007). Finch (2002) argues that the wrongfulness of stalking hinges on the conduct being unwanted. Legislation taking this approach, rather than emphasising specific forms of conduct, may be more suitable in addressing the idiosyncrasies of stalking. Victims of stalking can span

from timid individuals to the exceptionally stoic, and hence victimisation may be experienced in a variety of ways (Swanwick, 1996).

The inclusion of a fear element may however moderate the wide applications of anti-stalking legislation, whereby intrusive behaviour that does not cause fear may be analogous to harassment rather than a stalking crime (Van der Aa, 2017). The purview of mental harm in Victorian legislation is undetermined and may extend to variants of distress, anxiety or even annoyances (Kift, 1999; Wiener, 2001a, 2001b). It is tenable that harm could mean something quite minor; potentially creating a slippery slope as to what conditions may constitute harm. Under Victorian law, victims need not actually experience physical or emotional harm for an offence to have occurred. Omission of actual harm further broadens the application of legislation so that more resilient victims, who experience consequences beyond physical or emotional harm, or those who are unaware of the stalking, are entitled to legal recourse (McEwan et al., 2007). In the situation where a victim may not become aware of the stalking until a later date, once cognisant of the stalking, the victim may be concerned about the conduct and also seek recourse.

Judicial testing of victim impact ensures that a stalking offence is not solely dependent on the victim's perspective as it evaluates the reasonableness of subjective harm from an objective standpoint. Victorian legislation states that subjective experience of harm or fear is required in incidents where there is no malice, yet it is not clear whether this is measured objectively (Purcell et al., 2004b). Although it is difficult to examine the judicial process regarding the testing of victim impact, by examining the rhetoric used by judges within cases under examination in the present study, an understanding of the perceptions of the injury caused by stalking in various circumstances may be gained. This is together with judges' considerations of victim impact statements as a factor in determining sentences for stalking offences. Critically, it is undetermined how far impact is covered under legislation, from serious psychological and physical harm or more minor consequences, and whether certain experiences are weighted more heavily than others.

Key Similarities and Differences of Anti-Stalking Legislation Across Australian Jurisdictions Compared to Victorian Law

As part of this thesis, all anti-stalking laws across Australian jurisdictions were reviewed with a snapshot of legislation in each state and territory provided in Appendix B, with the title and section of each Act. There are a number of key similarities and differences between these laws and the Victorian approach. Typically, legislation defines a criminal offence of stalking as a course of conduct, repeated acts, or acts engaged in on at least two occasions. Queensland law also proscribes that stalking can occur on one protracted occasion. Courts in New South Wales can consider any pattern of violence when determining whether a person's behaviour amounted to stalking. All Australian legislation includes a list of acts that may constitute stalking, commonly including following, loitering, contacting or approaching the victim and interfering with property, amongst other acts.

Australian anti-stalking legislation proscribes that the offender engaged in stalking with the intention to cause physical or mental harm, arouse apprehension or fear in the victim; or that the offender ought to have known that this was the likely consequence of their conduct. The exception to this is South Australian law, where stalking is committed if the offender intended to cause *serious* harm to the victim and does not include a recklessness clause. It is not necessary to prove that physical or mental harm, apprehension or fear was experienced by the victim and in Queensland, the victim need not be aware of the conduct for it to amount to a stalking conviction. However, Victorian anti-stalking legislation states that in cases where the offender ought to have understood the likely harm, the harm, apprehension or fear actually did have that result (*Crimes Act 1958* s 21A(3)(b)).

Anti-stalking legislation in Victoria, ACT, Queensland, Tasmania and Western Australia all provide exemptions or defences to stalking. This can include if the conduct was part of official duties such as in the execution of a warrant, part of a person's employment or for the purposes of industrial disputes. In South Australia, anti-stalking legislation includes provisions that a person cannot be convicted of both stalking and any other offence if both charges arose out of the same set of circumstances (*Criminal Law Consolidation Act 1935* ss 19AA(4)–(5)). Tasmania has the highest maximum penalty of up to 21 years in prison, followed by Victoria where

the penalty for stalking can be up to ten years imprisonment. With the exception of Victoria, New South Wales and Tasmania, Australian legislation offers a scaling of offending in which stalking offences can be sentenced for up to two to five years in prison in respective states. If the offences involved aggravated circumstances, such as being in breach of an intervention order, the maximum penalty can be elevated to between five and eight years in prison depending on the state law.

Conclusion

This chapter has outlined the legislative framework of anti-stalking legislation in Victoria. Commentaries evaluating legislative clauses have provided invaluable insights into the scope of the law as well as possible intended and unintended consequences with its implementation. Importantly, critiques concerning the design of legislation signpost the potential misapplication of legislation, curtailing the efficacy of anti-stalking legislation in addressing stalking as per its behavioural definition and understanding. Literature reveals issues of vagueness and far reaching application in relation to the confluence of the three primary elements of anti-stalking legislation: conduct, intent and victim impact. Due to the ambiguity and interpretation of these three clauses, legislation may be loosely applied to an excessive range of behaviours and result in net-widening. Thus, there is potential for the legislation in drawing more low-level conduct, minor disturbances or other behaviours disconnected from stalking behaviour into the criminal justice system, rather than reserving the law for serious cases of stalking. The next chapter will review available research on the practical implementation of anti-stalking provisions as a criminal justice response in relation to law enforcement, prosecutions and convictions.

Chapter Four

The Practical Implementation of Anti-Stalking Legislation as a Criminal Justice Response

Introduction

This chapter outlines the practical implementation of anti-stalking legislation by police, prosecutors and the court, which represent the key institutions of the criminal justice system under discussion. There is a dearth of research focusing on the criminal justice responses to stalking. Hence, this examination predominantly concentrates on data examining the rate that victims report stalking to police, official police statistics and court statistics on stalking convictions and sentencing outcomes. Given that the present research focuses on cases heard in the County Court of Victoria, studies relating to stalking within Victoria are prioritised. This chapter reviews available research on the nature of stalking behaviours coming to the attention of police and the courts, strategic issues with policing and prosecution, and the process of plea-bargaining in relation to stalking cases. Lastly, this chapter discusses the recidivism and re-occurring rates of stalking events.

Official and Unofficial Reporting of Stalking to Police

Several victimisation studies survey the rate of stalking reported to police, accounting for the approximate number of victims seeking criminal justice intervention. Data from victim surveys is a necessary accompaniment to official data on crime, specifically police statistics, as the latter is often unrepresentative of the true nature, incidence, and prevalence of particular types of crime. Official statistics do not account for the ‘dark figure’ of crime, i.e. incidents that go unreported and unrecorded. Common reasons for not reporting stalking behaviours to police is that the behaviour may be perceived as a private or personal matter, felt that it is a minor incident that victims could deal with themselves or too trivial to involve the police (ABS, 2017; Baum et al., 2009; Scottish Government Social Research, 2011). Police may also not identify stalking behaviours and thus fail to record it under the specific criminal offence of stalking (HMIC & HMCPSP, 2017).

According to the ABS (2017), approximately a third of stalking victims contact police. This is consistent with Victorian participants sampled by Purcell et al. (2002), finding only 35% of stalking victims reported to police, where research from the United States indicates less than one-third of victims notify law enforcement (Reyns & Englebrecht, 2010). The number of stalking offences recorded by Victoria Police from 1995/1996 to 2015/2016 is illustrated in Figure 4.1. Police recording rates of stalking offences prior to 1998/1999 were gathered from Dussuyer's (2000) study that collected information from police databases. Rates after 1999 were collected from crime statistics publicly released by Victoria Police (2002, 2010c, 2014b) and since 2014, the Victorian Crime Statistics Agency (2015, 2016) has provided statistics on recorded crime.

Figure 4.1 shows that the number of stalking reports have steadily increased since anti-stalking legislation became law in 1995, with a sharp increase in 2012/2013, perhaps due to the law reform in 2011, which extended the legislation to include bullying offences. The crime rate of stalking from 1995 to 2016 has increased from approximately 6.1 per 100,000 to 43.4 per 100,000 general population (ABS 1996b, 2016). The clearance rate for stalking from 1995/1996 to 2010/2011 sits at an average of 75%, similar to the overall clearance rate for all crimes against persons (Dussuyer, 2000; Nash, Paton, Wight, Nicolson, & Dussuyer, 1999; Victoria Police, 2002, 2004, 2005, 2006, 2008, 2009, 2010a, 2010b). Clearance rates do not equate to the number of charges prosecuted in reality, as charges may be later dismissed or withdrawn due to insufficient evidence.

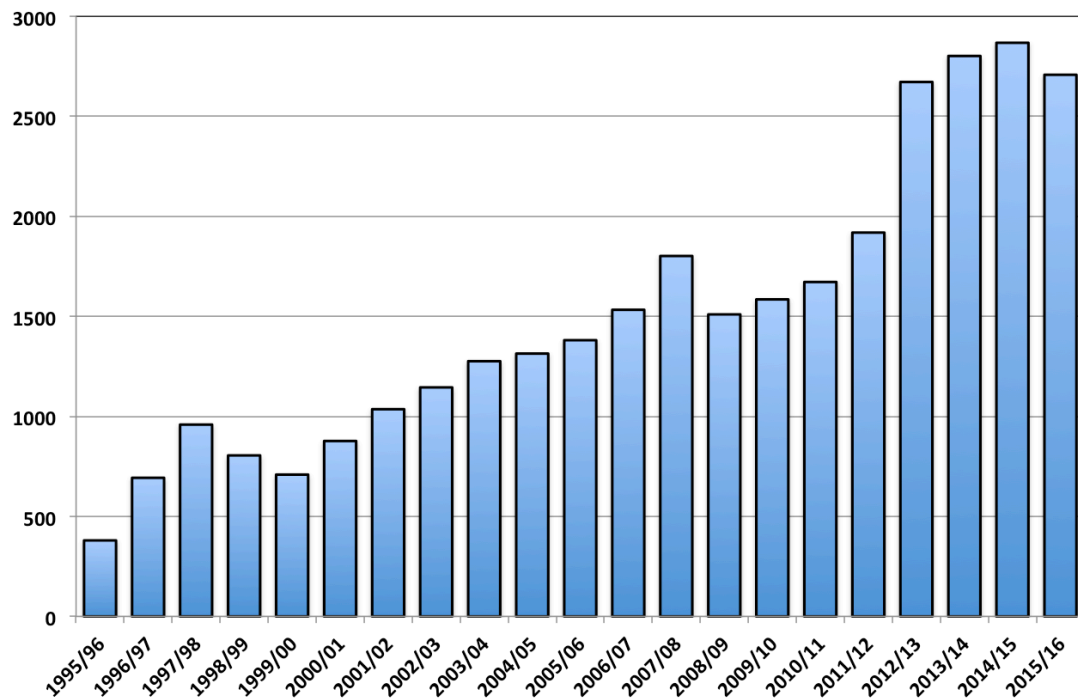


Figure 4.1: Number of stalking offences recorded by Victoria Police

When analysing the rates of police recording of stalking offences and the data released by the recent ABS (2017), an interesting picture forms between victim reporting and police response. Of the approximate 570,000 victims who reported their most recent episode of stalking to police during the last 20 years, only approximately 31,600 stalking offences were recorded by police between 1995/1996 and 2015/2016. Thus, Victoria Police recorded only 5.5% of the behaviours reported by victims as stalking offences, revealing the discrepancy or ‘dark figure’ between official recording rates and victimisation surveys. Recent research from the United States similarly found police infrequently record stalking offences. During an eight-year period the Houston Police Department received over 3,700 reports classified as stalking resulting in 66 stalking incidents filed by police (Brady & Nobles, 2017). Thus, this indicates that a fraction of stalking victims contact police and, in addition, that a significantly smaller proportion are recorded by police as stalking offences. Caution is required when interpreting these findings however, as victims who self-define their victimisation may not fulfil the criteria of behaviours legally defined as a criminal offence of stalking.

The most recent ABS¹⁹ (2017) survey found that 37% (54,400) of female victims stalked by another female reported the most recent stalking behaviour they experienced to police,²⁰ compared to 29% (337,300) who were stalked by a male. This is compared to men who were more likely to report stalking when stalked by a male stalker (47%, 132,100) compared to a female stalker (18%, 46,400). These figures indicate that victims are more likely to report victimisation when stalked by a person of the same gender (perhaps because same gender-stalkers are more likely to be strangers and so cause greater fear). The decreased reporting rate for males stalked by females may be due to perceptions that being victimised by a female perpetrator conflicts with dominant masculine stereotypes, as described in the previous chapter. On the other hand, women may be disinclined to involve police when stalked by an ex-partner.

Nature of Stalking Reported to Police and Issues with Policing Stalking

Once police identify and respond to stalking reports, there are numerous interventions that police may make; from issuing warnings, monitoring, applying for intervention orders to arrests and laying charges on the accused (HMIC & HMCPSI, 2017; Storey & Hart, 2011). In Victoria, police have the power to arrest a suspect without a warrant. Remanding the suspect in custody after charge is another important strategy, especially when there appears a strong necessity for the immediate protection of the victim from further violence (Malsch, Groenen, de Keijser, & Vervaeke, 2009). In addition, warnings may be an effective and informal tool in preventing further harassment, whereby perpetrators who are unaware of their criminal behaviour are put on notice. Prosecution can rely on police warnings as evidence that the defendant had knowledge that conduct was unwanted. Further to this, there are several barriers to police charging behaviours as stalking. This includes unfamiliarity with anti-stalking legislation, a tendency to pursue lesser charges, laying charges along the lines of more conventional laws such as assault or laws considered easier or less complicated, for example applying for intervention orders (Lynch & Logan, 2015).

¹⁹ The ABS (2017) in the Personal Safety Survey defines stalking as any unwanted contact or attention on more than one occasion that could have caused fear or distress, or multiple types of unwanted contact or behaviour experienced on one occasion that could have caused fear or distress.

²⁰ This refers to the most recent episode of stalking experienced by the victim that occurred in the last 20 years, by male and female stalkers.

In the UK, it was reported that police and the CPS often had issues separating harassment and stalking, and this misunderstanding has led to stalking not being recognised, not being recorded, or the offence being mis-recorded (HMIC & HMCPSI, 2017). As such, stalking is likely to be concealed in the recording of other crimes; an issue that certainly extends to Victorian cases. This is in addition to inappropriately charging stalking behaviours with other offences, or undercharging stalking with harassment in the UK (Taylor-Dunn et al., 2017), or with telecommunication offences to use an Australian offence as an example. Given that stalking involves repetitive acts, another challenge for police is linking together separate incidents together as a pattern of behaviour (Dank, 2017), which would also be an issue for prosecutors establishing that behaviours constituted a course of conduct. This is supported by UK research, where police and the CPS fail to recognise the pattern of behaviour in stalking and instead often address individual incidents (HMIC & HMCPSI, 2017). The context of the behaviours is of paramount importance in stalking cases, where although acts may appear innocent to police officers, they may have idiosyncratic meaning to the victim as part of a wider history (Taylor-Dunn et al., 2017).

Cyberstalking cases present another obstacle to policing. There are practical difficulties in policing online behaviours in regard to intercepting and collecting communication data from service providers, who may be reluctant to share private information about a user or in allowing access to police (Brown, 2015). However, it could be argued that cyberstalking may be easier to police, as there is a digital record of contact by the offender that may be logged by victims or gathered by police (Roberts, 2008). Cyberstalkers may nonetheless be difficult to prosecute due to jurisdictional boundaries. Stalkers and victims may be distanced by inter-state or international borders (Matthews, 2001; Wykes, 2007), each governed by different laws and policing agencies. Amendments to the Victorian legislation have specifically reflected this issue as a result of growing awareness of cyber and extra-territorial stalking (*Crimes Act 1958* ss 21A(2)(ba)–(bc)). The present research will explore whether these amendments have resulted in the prosecutions of cyberstalking in the County Court of Victoria.

In light of the challenges in assessing and addressing stalking appropriately, police risk assessment and management is a critical field of study. The Stalking Assessment and Management [SAM] checklist was examined as a practical tool for Swedish police to implement in their consideration of risk factors relating to the nature, severity and duration of future stalking incidents or escalation of behaviour into violence (Belfrage & Strand, 2009). This risk assessment may aid in the prediction of stalking recidivism, however there may be limitations in predicting future violence (Foellmi et al., 2016). Another assessment tool for stalking that has been found to aid Dutch police is the Screening Assessment for Stalking and Harassment [SASH] (Hehemann, van Nobelen, Brandt, & McEwan, 2017). SASH helps police to identify, differentiate and predict the different severity levels of stalking in order to effectively provide the best course of action. This research is particularly important in light of studies indicating that police do not record stalking correctly and fail to understand or misinterpret the seriousness of the behaviour, especially in relation to the risk posed to the victim (HMIC & HMCPSI, 2017).

There is very limited research available on the nature of stalking behaviours encountered by police. An early study based in Victoria by Dussuyer (2000) offers some insights. This research found that Victoria Police reported that the stalker most often knew the victim (35%), followed by a stranger (25%) or specifically a previous partner of the victim (23%) (Dussuyer, 2000). Motivations for stalking were commonly identified as the offender's inability to cope with rejection or the dissolution of a relationship, followed by sexual attraction or infatuation, mental imbalance, jealousy or wanting to control the victim. Measuring the precise duration of stalking is considerably difficult; nonetheless, according to police records, 41% of incidents occurred within one day, 19% persisted for one month, 10% between one and three months, and 13% occurred between three and six months. Where the duration was unknown, police recorded the duration for less than one day (Dussuyer, 2000). Nonetheless, this is consistent with Purcell et al.'s (2004a) study indicating a large proportion of patterns of unwanted intrusion are of a very short duration. This has implications for anti-stalking legislation being used for short periods of intrusion rather than prolonged cases of stalking.

Prosecuting Stalking Behaviours: Plea Bargaining and Charge Loading

Prosecutorial discretion in selecting cases is based on the sufficiency of evidence, prospect of obtaining conviction, along with whether prosecution is in the public's interest (Fox, 2010). Success of conviction relies on prosecutors proving each act of stalking beyond reasonable doubt (Ross, 2005), while also establishing necessary intent. Prosecution of stalking relies mostly on evidence that behaviours had in fact occurred, but also on the informant's and victim's ability to testify, violations of intervention orders, and the relationship history between parties, particularly if domestic violence was present. The predominant method of case finalisation that proceeds to the court is a plea of guilt. In 2016/2017, 90% of defendants pleaded guilty across Victorian courts (ABS, 2018). Resolution of a case through pleas commonly follows plea-bargaining between the prosecution and defence (Flynn, 2011, 2016; Flynn & Freiberg, 2018; Seifman & Freiberg, 2001).

The aim of plea-bargaining is to reach an agreement whereby the prosecutor can make concessions on the charges in exchange for the defendant pleading guilty (Baldwin & McConville, 1977). This is the most frequent form of plea negotiations known as charge bargaining, where prosecutors have wide discretion in the framing of charges (Findlay, Odgers, & Yeo, 2014; Flynn, 2016; Flynn & Freiberg, 2018). The tactic of charge loading, involving police and prosecutors loading the charge sheet against the accused, either in terms of number or seriousness of offences, is advantageous for prosecutors in the practice of plea-bargaining to achieve convictions (Ashworth, 2009; Baldwin & McConville, 1977; Flynn & Freiberg, 2018). In stalking cases, prosecutors may argue that multiple offences were committed, despite overlapping conduct so that at least one charge will be upheld or, at best, multiple convictions obtained (Fox, 2010). Otherwise, overcharging an offender by police or prosecutors may be seen as a matter of course to boost the number of crimes on charge sheets to increase the overall penalty, while also generating leverage in negotiations to induce a guilty plea (Anleu & Mack, 2001; Flynn & Freiberg, 2018; Seifman & Freiberg, 2001). Incentives are offered in exchange for guilty pleas, which may include withdrawing charges, pleading to lesser charges, or entering agreed sentencing submissions to the judge (Ashworth, 2009). This practice of police and prosecutors raises questions as to the veracity of the original charges laid against the accused (Findlay et al., 2014). In light of the versatility of anti-stalking laws, providing

provisions within the legislation against alternative uses beyond addressing serious stalking cases may represent a necessary amendment to the law.

The Parliamentary Inquiry into stalking law in England and Wales in 2011/2012 found that Crown prosecutors plea bargained cases involving stalking-type behaviours; where several charges were dropped provided that offenders pleaded guilty to lesser charges (Moncur, 2018, April 2; Richards et al., 2012). This was also found by the HMIC and HMCPSI (2017), namely that the CPS did not charge and prosecute stalking and instead preferred other offences, such as the lesser offence of harassment. This was due to pressures to avoid trials or for victims in having to provide evidence in court. Recommendations for the CPS within this report nonetheless included reinforcing guidelines to not accept guilty pleas for harassment offences when stalking charges should be pursued (HMIC & HMCPSI, 2017). The HMIC and HMCPSI (2017) found that the lack of a single, consistent definition of stalking may have contributed to the low number of stalking crimes prosecuted.

This issue may be more pronounced in the Magistrates' Court, as police have greater discretion in withdrawing charges and police prosecutors the flexibility to negotiate (Seifman & Freiberg, 2001). Despite the limited research available on this area, plea-bargaining and undercharging in stalking cases also occurs in Australia. In one news report, a police officer who stalked his former girlfriend pleaded guilty to a lesser charge of offensive behaviour and breaching bail in exchange for prosecutors dropping charges of stalking (ABC News, 2012, August 2). This is consistent with earlier research drawing on South Australian police prosecutions who reported low convictions of stalking, perhaps related to stalking charges being withdrawn in favour of lesser offences or issuing intervention orders (Marshall, 2001). Purcell et al. (2004b) also suggest that anti-stalking legislation is misused as a charge loading offence in Australia, evidenced from sentencing statistics revealing that a charge of stalking is infrequently the principal charge. The Department of Justice (1997, 1998) in Victoria reported that in less than one third of cases, stalking was the principal charge for which an offender was sentenced. It is argued that this abuse of legislation is being targeted against suspected paedophiles in order to achieve an augmented penalty (Purcell et al., 2004b). An aim of this thesis is to investigate whether there is a risk that anti-stalking legislation is exploited for alternative motives, namely in charge

loading offenders. The necessity of which will be examine by this thesis in the types and number of charges that are brought against an offender convicted of stalking.

Stalking within the Courts: Court Statistics and Sentencing of Stalking Offences

Once police charge a suspect with stalking in Victoria, most cases are subsequently heard summarily in the Magistrates' Court, which represents a less serious charge.²¹ Otherwise, stalking may be prosecuted as an indictable offence in the County or Supreme Court of Victoria. It is expected that for the number of stalking cases reported to police, relatively few enter courts. Statistics on stalking charges finalised in the Magistrates' Court of Victoria was requested through the Department of Justice for the purposes of this project. Figure 4.2 shows the outcomes of stalking charges resolved in the Magistrates' Court from 1994/1995 to 2011/2012²² (Magistrates' Court of Victoria, 2012). As the chart indicates, just under half of stalking charges heard in this court were withdrawn or 'struck out', dismissed or discharged.

This data shows an increase in charging practices since the first years that anti-stalking legislation was introduced until 2011/2012, with a six-and-a-half fold increase in stalking charges seen in the Magistrates' Court. During this period there has been a five-fold increase in stalking convictions and an eight-fold increase in stalking charges being dismissed (Magistrates' Court of Victoria, 2012). Stalking convictions in the Magistrates' Court most frequently were sentenced to CBOs, followed by wholly suspended sentences, imprisonment, and fines, respectively. The sentencing outcomes for stalking cases have, however, shifted in recent years. The SAC (2017c) has reported that between 2013 and 2016, 39% of stalking convictions in the Magistrates' Court were sentenced to a CCO and 27% to imprisonment; 80% of which was for a period of less than 12 months. On the basis of these statistics, there has been a clear growth in stalking offences entering courts since the introduction of anti-stalking legislation, however there has been a proportional increase in the number of stalking charges that are dismissed.

²¹ In the Magistrates' Court of Victoria, a magistrate can impose a maximum term of two years imprisonment for a single offence, and a maximum of five years for multiple offences.

²² The 2011/2012 data records are as of December 2011.

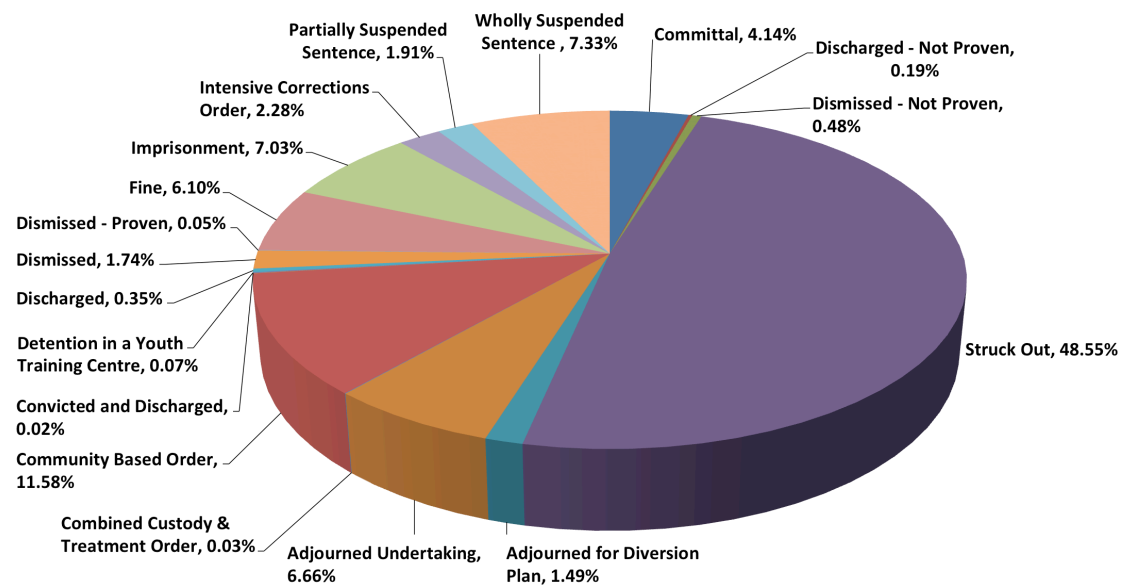


Figure 4.2: Outcomes for stalking offences in the Magistrates' Court of Victoria between 1994/1995 and 2011/2012

As might be expected from the more serious nature of indictable offences, stalking convictions in the County and Supreme Courts of Victoria attract a higher rate of imprisonment. The SAC (2017b) found that between 2011 and 2016, 71% of stalking charges resulted in imprisonment, while 15% of stalking convictions were sentenced to CCOs. Of the charges resulting in imprisonment, 27% were for a period of less than 12 months and 36% were between one and three years (SAC, 2017b). The SAC (2017b) also provides some case details, showing that 95% of stalking offenders entering the high courts during this period were male. Seventy-six percent of cases heard in the higher courts involved multiple charges, while the remaining 24% represent cases where stalking was the only, and hence principal charge (SAC, 2017b).

Sentencing Guidelines and Shifts in Sentencing Patterns

Freckelton (2001) argues that sentencing patterns for stalking offences in Australia indicate varying attitudes towards the crime. Due to the variability of stalking conduct, from irritating to more pernicious conduct, factors in sentencing are important for the present study in determining any consistent or inconsistent trends in how stalking is penalised. There are several aims for sentencing including retribution, deterrence, rehabilitation, denunciation and community protection (*Sentencing Act*

1991 (Vic) s 5(1); Findlay et al., 2014). General mitigating and aggravating factors in sentencing include the seriousness of conduct, moral culpability of the offender, motivations for conduct, number of incidents forming the course of conduct, duration, and whether the conduct escalated (McSherry & Bronitt, 2017). Another factor is the ongoing threat to the community, where a stalker may not be suitably treated or rehabilitated and continue to harass the victim or become fixated on another individual (Freckelton, 2001). Upon reflection of judicial sentencing concerning offenders with significant mental illness, Freckelton (2001) notes that the law should and does address each type of stalker differently.

Victorian courts have the power to remand defendants in custody and order psychiatric evaluations (*Mental Health Act 1986* (Vic)). However, it is unclear how the level of culpability impacted by mental illness may influence sentencing deliberation for stalking offenders. This is separate from mental illness being taken into account as a factor that may exacerbate the effects of a prison sentence, and thus other sentencing dispositions may be considered instead. In Victoria, McEwan and colleagues (2007a) found that magistrates and judges are aware of the significance of mental health issues in relation to stalkers, and frequently consider the recommendations made by psychiatrists and psychologists in determining sentences.

Sentencing statistics indicate that there is increased use of imprisonment, possibly resulting from reform to sentencing laws, in which the abolition of suspended sentences may have led to magistrates resorting to imprisonment at a higher rate. Law and order agenda has pushed a punitive approach in Australia since the 1990s. Despite a general decrease in the crime rate, there has been an increase in general sentencing lengths and prison populations, helped by legislative measures including statutory maximum penalties, mandatory sentencing, abolishment of suspended sentences, indefinite supervision orders and tightening of bail and parole laws (Attorney-General, 2017, June 23; Findlay et al., 2014; Freiberg, 2010; McMahon & Davids, 2015). This is aided by the ‘tough on crime’ mentality and public panic that criminals are ‘escaping’ prison (Bartels, 2010).

Community attitudes that push the criminal justice system to be tougher on crime, especially crimes against women, have encouraged a punitive shift in criminal justice.

A number of more recent and highly publicised events have helped spur this law and order response toward penal populism. The 2012 rape and murder of Jill Meagher by Adrian Bayley²³ (who was on parole at the time) caused widespread outrage in Victoria about the epidemic levels of violence against women as well as the miscarriage of the Adult Parole Board and Community Correctional Services for failing to re-incarcerate Bayley once he breached bail and before he perpetrated the abhorrent crime against Jill Meagher (ABC News, 2015, March 26; Akerman, 2013, August 21; Milman, 2013, June 11; Oakes, 2013, August 20). This is in addition to the establishment of ANROWS (2014) in 2013 under the National Action Plan (2010-2022) to reduce violence against women and children along with the release of the ABS (2012) Personal Safety Survey, highlighting the high rates of domestic violence in Australia. The establishment of the Royal Commission into Family Violence (2016) in 2015 was also highly influential in recognising the full scope of harm that can result from family violence. Ultimately, these developments potentially have contributed to the increased rates of stalking offences and sentences of imprisonment.

Nature of Stalking Offences Entering Victorian Courts

There is insufficient research exploring the nature of stalking behaviours entering the courts. Dussuyer's (2000) early study surveyed a small sample of magistrates on their experiences of stalking in the first few years of anti-stalking legislation becoming operational in Victoria. Magistrates found that offenders were most commonly identified as strangers (60%), former partners (20%), or another known person (7%). This represents a deviation from stalking literature and may be due to stranger stalking being considered as more dangerous, as suggested by perception research, or that, in this context, it is easier to provide evidence as there was no pre-existing relationship between the victim and offender. Moreover, the majority of stalking cases presided over by magistrates involved a male perpetrator and a female victim (Dussuyer, 2000). Magistrates have also noted that stalking may occur for some time before being brought to the court's attention, suggesting that stalking may need to escalate to a perceptible degree of seriousness before either victims notify police or for police and prosecutors to charge stalking or under alternative law (Dussuyer, 2000).

²³ See page 60.

More up-to-date research and analysis is required to reassess these findings at present, particularly in light of the recent focus on family violence. While it is evident from more recent statistics that anti-stalking legislation is being used at an increasing rate, it is unclear what sorts of stalking cases are resulting in convictions. This thesis is well positioned to examine the nature of stalking behaviours prosecuted in Victoria and whether charges and convictions for stalking represent the forms of behaviour that research suggests is most pressing for the criminal justice system to address.

Stalkers Reoffending: Recidivism Rates and Re-Occurring Stalking

The rate of stalking recidivism has been examined (Eke, Hilton, Meloy, Mohandie, & Williams, 2011; Foellmi et al., 2016). Mohandie and colleagues (2006) found over half of stalkers who received criminal justice sanctions reoffended with stalking behaviours. Malsch et al. (2011) found that while 53% of convicted stalkers reoffended, only 11% recidivated with a stalking offence, and this generally occurred shortly after their conviction. The authors suggested that this is most likely due to the context of the stalking conviction involving a former intimate partner, and hence emotions regarding the dissolution of the relationship remain heightened. These statistics are not at odds with general rates of recidivism (ABS, 2010; Australian Institute of Criminology [AIC], 2010; Australian Productivity Commission [APC], 2018; Hughes & Wilson, 2002). Similarly, Rosenfeld (2003) reported almost 50% of offenders re-offended within a follow-up period of two-and-half to 13 years since their court-ordered mental health evaluations. This study however classified recidivism as any indication of a second arrest for recurrent harassment as well as renewed stalking, which may be considered a continuation of a single persistent episode of stalking. Rosenfeld (2003) highlights that individuals with delusions were not associated with reoffending, suggesting that these stalkers are best managed via mental health services away from the criminal justice system. In clinical samples of stalkers, 32% to 38% of participants engaged in recurrent stalking, which is a recommencement of stalking behaviours after a period of cessation either targeting the same victim or a different person (McEwan & Strand, 2013; McEwan et al., 2017a). McEwan et al. (2017a) study supports Rosenfeld (2003) finding that stalkers with personality disorders were associated with reoffending or recommencing stalking behaviours.

Conclusion

This chapter examined official statistics recording the number of stalking offences entering the criminal justice system in Victoria. The data indicates that anti-stalking legislation is used in Victoria, resulting in successful prosecutions with many offenders sentenced to terms of imprisonment, particularly in the County and Supreme Courts of Victoria. Research also indicates challenges to policing and prosecuting stalking cases, namely in treating stalking events as separate incidents rather than accounting for the pattern of conduct experienced by victims. This is in addition to differentiating harassment cases from pressing stalking behaviours, in which advancements in risk assessment research offer critically important insights for law enforcement to identify the latter. Studies evaluating offences under anti-stalking legislation are more than two decades old. Hence, this thesis aims to address this gap in research by identifying the types of cases involved in stalking offences that are heard in the County Court of Victoria. The next chapter will outline the methodology for systematically examining the content of stalking offences in order to gauge the nature of behaviours captured under Victorian anti-stalking legislation.

Chapter Five

Methodology: Research Design and Conceptual Framework

Introduction

This research employs a quantitative and qualitative content analysis of sentencing transcripts and court files to examine a) how anti-stalking legislation is implemented in Victoria, and b) whether this law is addressing stalking as it is described in the research literature. From the previous chapters, it is clear that stalking is a complex phenomenon. This is due to multiple factors including the range of acts it may involve and the motivations of stalkers being multilayered, while a major determinant for the identification of behaviours as stalking depends on the victim. The extent to which anti-stalking legislation is responding to stalking – with all the complexities that the behaviour entails – is by and large unexplored. This is a significant problem given the theoretical concerns that have been raised regarding the practical operation of these laws. The present study uses court records to investigate the nature of offences entering the County Court of Victoria as stalking crimes, which adequately allows for analysis of case variables that can then be compared with behavioural research. This chapter discusses the methodology used in conceptually defining stalking, selecting stalking court files, the process of analysis, limitations of the research and any ethical considerations.

Conducting research in criminology is traditionally positivistic (Brewer & Hunter, 2006), which promotes quantitative analysis of numerical ‘hard’ data. In contrast, qualitative methods investigate ‘meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions’ that are observed or present in texts (Berg & Lune, 2012, p. 3; Noaks & Wincup, 2004). Principal methods used by researchers in the social sciences include observations, surveys, experimental studies and non-reactive research, which is an unobtrusive method involving the analysis of texts, records or other material (Brewer & Hunter, 2006). These research methods may be designed within a quantitative and/or qualitative approach. In criminology, and specifically research on stalking, most past research has been dedicated to measuring the rate of crimes, interviewing stakeholders and experiments designed to gauge the experiences and perceptions of victims and the general public. Oleinik (2010) argues

that using quantitative methods concurrently with qualitative methods on the same text is an original methodology that takes a middle ground between these different approaches. The present study thus takes an innovative strategy to investigate the nature of crime and how behaviour intersects with law.

Key Research Questions and Hypotheses

This thesis aims to answer two key research questions:

1. Is anti-stalking legislation in Victoria addressing stalking behaviour?
2. Is there a risk that anti-stalking legislation is capturing non-stalking behaviour?

The answers to these questions will be discussed in relation to the risks of net-widening for offenders and effectiveness of legislation to be flexible enough to still capture new expressions of offending, such as revenge pornography. Based on the review of stalking literature, it is hypothesised that anti-stalking legislation in Victoria is addressing serious stalking behaviours as well as non-stalking and relatively inoffensive behaviours. This indicates the potential that anti-stalking legislation is too broad and flexible, being applied to behaviours that lack persistence and do not fit the profile of stalking that is fundamental to the definition of stalking. This thesis tests these assumptions through examining the content of stalking offences heard in the County Court of Victoria and evaluates whether convictions of stalking correspond to the phenomenon as defined and understood in behavioural and psychological studies.

Conceptual Framework: Legal and Behavioural Definitions and Understandings of Stalking

This research does not embrace a specific theoretical approach, but alternatively draws on a conceptual framework that converges on legal concepts of proscribing conduct and behavioural variables that explain stalking as experienced by victims and that is perpetrated by offenders. Analysis draws on the relationships within this conceptual framework (Miles & Huberman, 1994; Miles, Huberman, & Saldaña, 2014; Neuendorf, 2002). The legal definition of what constitutes an offence of stalking as expressed under the legislation is fundamental for examining how the law

is applied. Since 1995,²⁴ section 21A of the *Crimes Act 1958* prohibits stalking as engaging in a course of conduct. Case law interpretation of a course of conduct is behaviours engaged in on at least two occasions, or that is protracted,²⁵ together with the behaviours displaying a continuity of purpose.²⁶ Conduct must be committed with the intent to cause harm, or in all particular circumstances, the offender ought to have understood the likely harm that resulted from the conduct. Harm is physical or mental harm, or ‘apprehension or fear in the victim for his or her own safety or that of any other person’ (*Crimes Act 1958* s 21A(3)). Appendix A provides the complete criminal code of stalking under the *Crimes Act 1958*.

A conceptual definition of stalking was adopted in order to assess the extent to which the legislation is addressing stalking behaviours. An understanding was reached from psychological studies dedicated to explaining stalking as a behavioural phenomenon. This thesis specifically adopts Mullen et al.’s (1999, p. 1244) broad definition of stalking.²⁷ The key elements incorporated in this definition are that behaviours are repetitive rather than occurring in isolation and that there are no limitations on the type and nature of behaviours other than being unwelcomed and causing harm to the recipient.

In this thesis, a distinction is made between stalking *conduct* and stalking *behaviour*. Conduct, especially conduct as part of a *course*, is used in reference to the legal framework of stalking, while *behaviour* is confined to conceptual meanings based on socio-cultural perception and clinical research. As a criminological study, this research is well situated to explore the engagement and contention between the

²⁴ The current legislation has been amended since 1995. The *Sentencing and Other Acts (Amendment) Act 1997* (Vic) increased the penalty for stalking to level 5 imprisonment (10 years maximum). The *Crimes (Stalking and Family Violence) Act 2003* expanded the legislation to include cyberstalking activities, removed the requirement of actual impact in cases without malice, and allowed for the extra-territorial operation of the law. The *Crimes Amendment (Bullying) Act 2011* amended the legislation by making stalking applicable to situations of bullying. The term bullying was however not explicitly inserted into the legislation. Finally, the *Stalking Intervention Orders Act 2008* allowed the Court within the meaning of that *Act* to make an intervention order in relation to stalking rather than the now repealed *Crimes (Family Violence) Act 1987* (Vic). The *Personal Safety Intervention Orders Act 2010* has since replaced the intervention order system that was previously administered in Victoria under the *Stalking Intervention Orders Act 2008*.

²⁵ *Gunes v Pearson*.

²⁶ *Berlyn v Brouskos*.

²⁷ See pages 14 and 18.

criminalisation of stalking and how it was conceived in the community and in relevant research. This is particularly relevant given the identification of behaviour as stalking is often subjective, context-dependent and ambiguous.

Data Collection: The Law in Operation Through Court Transcripts

The data that forms the content under analysis are sentencing transcripts and court files collected from the County Court of Victoria. Court records are primary source documents that provide official views and determinations of criminal offences entering courts (Finnegan, 2006; Jupp, 2006). Stalking cases heard in the County Court and Supreme Court of Victoria was collected for analysis.²⁸ These predominantly involved sentencing transcripts combined with a selection of full court files. Stalking offences entering the Victorian courts provide case examples of stalking behaviours that are captured by law and are used to analyse how legislation operates in practice.

Court transcripts were requested from the County Court for the period between 1994/1995 and 2011/2012.²⁹ A search of the court database for the term ‘stalking’ used in sentencing remarks was conducted. This resulted in over 250 sentencing transcripts; not all of which related to an offence of stalking. An index of court files where a stalking charge was acquitted or dismissed was also provided, however this only related to cases where stalking was the most serious charge. A search of the online legal database AustLII for Victorian case law that included the term ‘stalking’ was also conducted, returning approximately 125 documents. The inclusion criteria for cases to be analysed were a conviction for stalking as a primary or secondary offence, a finding of not guilty of a stalking offence as a primary or secondary charge, a *nolle prosequi* was entered for a stalking charge, and cases that involved stalking-related behaviour but did not involve a stalking offence under section 21A of the *Crimes Act 1958*. These cases often involved convictions for contravening an intervention order or multiple Commonwealth telecommunication offences.

²⁸ County Court records including sentencing remarks and full case files were requested and accessed through the court, however Supreme Court records including appeal judgments is case law and are publicly available.

²⁹ Court and sentencing transcripts were collected up to September 2012. These represented the most up-to-date transcripts that were catalogued by the County Court at the time of the request.

Cases accessed through the County Court were cross referenced with case names requested through the Victorian Sentencing Advisory Council for the purposes of accurately accessing all relevant cases processed in the courts. When sentencing transcripts were not provided or contained minimal information, the full court files were accessed. These were accessed at the court registry at the County Court of Victoria in Melbourne, Victoria and were identified by case names. This included court files with limited case details comprised in sentencing remarks, cases that were dismissed or unproven, and stalking-related offences that were alternatively charged under other offences. The full court files contained trial proceedings such as submissions, direction hearings, details of offences, victim impact statements and other related documents such as police charge sheets. A number of cases also had further matters heard in the Court of Appeal, in which the transcripts were also accessed through the legal database AustLII. These transcripts provided further case details that may not have been disclosed in sentencing remarks or involved questions of law relevant to stalking provisions.

In all, analysis was based on 161 cases ($N=161$), 141 of which concerned convictions in the County Court and two cases in the Supreme Court of Victoria, representing all stalking convictions heard in the higher courts from the introduction of the law until 2012. Table 5.1 shows the number of stalking case transcripts collected according to the final method of finalisation of the stalking offence or related offence. As indicated by Table 5.1, analysis and subsequent findings are substantially based on sentencing transcripts, thus on convictions. Cases that do not involve a conviction of stalking represent a comparatively smaller sample size and because of this, caution was taken in extrapolating these findings.

Table 5.1: The number of court and sentencing transcripts collected by method of finalisation

Court Transcript Type by Method of Finalisation	Number of Cases
Conviction of stalking as a primary or secondary offence	143
Not guilty of stalking as a primary or secondary offence	7
<i>Nolle prosequi</i>	6
Related stalking offences (breach of intervention order or multiple telecommunication offences)	5

The sentencing remarks and court files could not be collected in a de-identified format. Given this, cautions were taken in collecting and storing the records with security protections. Permission was granted by the County Court that the files may be used for this study provided that the parties were not identified in any published work. Thus, while the content in these court records were coded and analysed with identifiable information relating to the parties of cases, all confidential information that was extracted for the use of analysis and examples are carefully presented in a de-identified format. This includes replacing names with pseudonyms, altering specific dates and any other distinguishable events or places that may identify parties involved in cases.

Content Analysis of Court Transcripts

A content analysis was employed on the court records collected to investigate stalking cases. Case and offence details, including the type of behaviours and contexts in which they occurred, are the units of analysis found in records that demonstrate the behaviours entering the County Court of Victoria under anti-stalking legislation. Content analysis is a flexible research method in that it has broad application, can be designed both quantitatively and qualitatively (Bryman, 2004; May, 2001), and can be used for both inductive and deductive approaches (Bengtsson, 2016; Graneheim, Lindgren, & Lundman, 2017). This method is described as a systematic examination of words, symbols, ideas or messages found in texts in order to identify themes, relationships and patterns (Berg & Lune, 2012; Kraska & Neuman, 2008; Neuendorf, 2002). The quantitative strategy aims to count the occurrences of items or properties in text and provides statistical analysis (Bernard, 2012). While traditionally regarded

exclusively as a quantitative research method, Holsti (1969) argues that a content analysis is a comprehensive technique that goes well beyond converting text into numbers that allows for insights into the meaning of content (Bengtsson, 2016; Berg & Lune, 2012; Bernard, 2012; Holsti, 1969; Kraska & Neuman, 2008). This study utilised both a quantitative and qualitative content analysis in order to outline the characteristics of stalking cases and also to draw inferences about the meaning the content produces around stalking as a crime and as behaviour.

Qualitative methods have been increasingly advocated as complementary to quantitative methods as well as a stand-alone methodology (Crow & Semmens, 2008; Kraska & Neuman, 2008; White & Perrone, 2010a). Bachman and Schutt (2011) contend that qualitative research allows for a richer view of society and more intimate understanding of phenomena (Berg & Lune, 2012). By combining these methodological approaches, a more complete and informed understanding of crime and criminal justice is attained (Brewer & Hunter, 2006; Kraska & Neuman, 2008; Noaks & Wincup, 2004). This study achieves triangulation of methods by integrating both forms of content analyses to examine court records (Bryman, 2004; Oleinik, 2010). This mixed methods research is designed to corroborate and provide nuances in findings, in which the quantitative component of the research prepares for the qualitative, which can then draw back on the quantitative results, and vice versa. This is in addition to providing a validity check on findings in which any consistencies or inconsistencies between the two methods are scrutinised (Bernard, 2012). Both methods involve a systematic coding scheme for content, which will be outlined separately.

Quantitative Content Analysis of Court Records

The process of conducting a content analysis relies on a coding system that establishes a guideline around what content is to be recorded and how it is to be counted (Dantzker & Hunter, 2006; Kraska & Neuman, 2008). Content that is quantitatively coded records information into a numerical value that corresponds to a designated value. The frequency of content counted across all the sentencing transcripts and court files is subsequently examined. Units of content include the occurrences of words, characters, or themes (Neuendorf, 2002) then converted into numbers through a coding process (Bryman, 2004). The variables selected for coding

were content found in court records that identified contextual information involved in stalking cases and offences.

Objective coding through systematic rules is required in conducting a content analysis and requires a scheme to be developed prior to coding (Dantzker & Hunter, 2006; Holsti, 1969; Neuendorf, 2002). This study's conceptual framework provides the basis for criteria against which variables can be coded and then further analysed (Bryman, 2004). A codebook provides criteria when determining what observable information should be coded as a unit and assigns rules as to how the content is to be recorded (Bachman & Schutt, 2011; Kraska & Neuman, 2008; Neuendorf, 2002). This involves a code name, description and examples of text to be coded under each label. The variables coded were taken from the extensive review of literature around stalking as well as key clauses that constitute an offence of stalking under legislation. The motivation for stalking behaviours was largely based on Mullen and colleagues' (1999) typology of stalkers comprising the context and motivation of behaviours. This is in addition to Spitzberg and Cupach's (2007) variables of stalking behaviours surveyed across past studies. Schultz et al. (2014) employ a similar methodology to this study, whereby their content analysis of stalking films uses codes extracted from previous research that explain what 'real-world' stalking involves.

A number of transcripts were examined prior to the development of the systematic coding protocol in order to identify any additional content that should also be coded. Among the variables identified in this process were the type and context of behaviours involved in offences, impact of stalking, duration and frequency of behaviours and sentences. In order to conduct a content analysis for the present study, a codebook was developed that outlined each category and corresponding value for each code. For example, the relationship between the accused and complainant was coded as 1 = ex-spouse, 2 = ex-boyfriend/girlfriend, 3 = casually dated, 4 = family member and so forth. The quantitative codebook is provided in Appendix C. Narrow and specific variables were developed, as categories can then be collapsed into broader categories (e.g. merging ex-spouse and ex-boyfriend/girlfriend into the category of ex-partner). This recoding process was necessary for data involving a multitude of categories; prior criminal records for instance. Quantitative content coding is a highly structured process involving a deductive approach, which is theory-

driven using previous research to create a model of categories relating to stalking behaviours. Sentencing remarks usually contain a textual structure that is beneficial for coding given that certain case details are traditionally recorded for sentence. This includes the counts of offences, circumstances of the offences, offender characteristics etcetera. Thus, most of the data for quantitative coding was surface content that was explicitly stated or presented in the text. However, other content involved underlying variables that had implicit meaning (Swift, 2006), such as the legislative clauses. For example, the stalking behaviours that constituted the course of conduct or the intent of the offender as per legislative clauses within anti-stalking legislation was often not specifically stated but framed around the judicial account of offences convicted.

A codebook establishes a set codification of concepts that is consistently and constantly referred to in order to provide reliability when coding content (Bryman, 2004). Once content is coded, the objective of the quantitative content analysis is to examine the prevalence of the content counted (Kraska & Neuman, 2008). Categorised content is analysed according to the frequency that it appears across the court files and stalking offences. The coded data was entered into an excel spreadsheet that was then exported into the statistical-software package *Statistical Package for the Social Sciences* [SPSS] version 22. Any errors made during coding were identified and corrected when the data was cleaned through SPSS. This included assessing the consistency of coding, highlighting missing data, invalid code entries and confirming that data entry adhered to the values assigned to each code. This is a preparation stage in order to prepare the data into a quality form for statistics (Pallant, 2011; Swift, 2006). As the recording of content within sentencing transcripts predominantly involved nominal types of data, findings are based on descriptive statistics of frequency distributions and cross tabulation of variables. This extracts the incidence and rate of variables found in stalking court files and prevalence of specific features within stalking criminal offences. This method is used to organise and simplify data and sets the scene as to the nature of stalking offences addressed by the legislation, which is then further analysed using a qualitative content analysis.

Qualitative Content Analysis of Court Records

Converting textual elements into numbers allows for a description of the data that then provides the foundation for further interpretation in the form of a qualitative

analysis (Berg & Lune, 2012). A qualitative content analysis refers to the systematic analysis of selected text to ‘uncover their meaning, themes, and cultural and social significance’ (Kraska & Neuman, 2008, p. 437). By indexing content, patterns from the text are drawn out that have significance for the purposes of the research under investigation (Bryman, 2004; May, 2001). This method yields insights into messages found in the content so that inferences can be made about emerging patterns (Berg & Lune, 2012; Holsti, 1969). Greater focus is given to the qualitative component of the study given this research aims to gain a deeper appreciation of how legislation is practically implemented, rather than simply measuring quantifiable characteristics in cases.

Qualitative variables were coded in a similar manner to that described for the quantitative content analysis. A qualitative codebook was likewise created as a paradigm of what segments of content were to be catalogued (see Appendix D). Codebooks operationalise concepts and converts them into fixed features in text that can be coded, organised and then interpreted (Dantzker & Hunter, 2006; Fereday & Muir-Cochrane, 2006). Segments of text represent a theme, concept or subject matter converted into meaningful units of content for analysis (DeCuir-Gunby, Marshall, & McCulloch, 2011; Holsti, 1969; MacQueen, McLellan, Kay, & Milstein, 1998). Much like quantitative coding, the variables within court records were classified with reference to past research that assists in the construction of codes as guides of what to look for when carefully reading and re-reading the court records (Fereday & Muir-Cochrane, 2006; Neuendorf, 2002). However, qualitative coding also used an inductive approach, which is a data first approach and looks for patterns subsequently drawing from previous literature (Bengtsson, 2016; Graneheim et al., 2017).

The content recorded from sentencing remarks include the type and context of behaviours involved in offences, how gender and relationships between offenders and victims were discussed, impact of stalking, persistence of behaviours, and sentencing determinations. Other types of coded content surrounded questions of law, how the sentencing judge discussed the course of conduct, intent of the conduct as well as appraising the offender and victim circumstances. In qualitative coding, content may be manifest that has been clearly expressed or concrete descriptions appearing on the surface of the text. Otherwise, there is latent content that has representative meaning

and messages that are interpretative or inferred (Bengtsson, 2016; DeCuir-Gunby et al., 2011; Graneheim et al., 2017). This study engaged in both forms of coding and subsequent analysis. For example, within court files judges may make overt statements about the perceived seriousness of the offences that are to be sentenced, while particular discourses or choices in language used by the judiciary may also reveal veiled opinions or attitudes regarding the offence they are presiding over (Fairclough, 2013; Jupp, 2006; Neuendorf, 2002).

The qualitative content analysis and coding of transcripts also focuses on the narrative component of the data. As with other types of story-telling (Dantzker & Hunter, 2006), sentencing judges by and large retell the commission of the offence, antecedent events, consequences of behaviours and the context of matters along with the individuals involved. These elements of an offence are coherently placed in the record usually as a chain of events. There is a structured sequence within comments made by judges, and this retelling of a story can also reveal the trajectory of behaviours or events that led to the stalking offence, all of which were considered important for coding and analysis. In addition, textual analysis of content reveals judges' attitudes and views about the offender and the stalking conduct.

The qualitative coding of content from sentencing remarks was conducted in two stages; selective and open coding. Firstly, content that was selectively coded involved reviewing the court transcripts for the assigned content, theme and concept that was chosen, as outlined in the codebook. This takes a deductive approach to examining content in court records. Secondly, sentencing remarks were coded openly according to the subject matter that best represented the content, representing an inductive process. New codes were created if the content was considered unique and not previously considered for coding. Open coding allows for themes to emerge naturally while also building a framework for further content not initially designated for coding (Kraska & Neuman, 2008).

Court transcripts were uploaded into the qualitative data analysis software *NVivo* (version 10) developed by QSR International. This software is a data management program allowing for manual coding of segments of text to the assigned category as per the codebook instructions. In using a qualitative content analysis, links between

codes are investigated whereby inferences and relationships between themes and concepts can be drawn (Bachman & Schutt, 2011; Kraska & Neuman, 2008). Holsti (1969) further claims that content analysis can shed understanding about the effects of content. This study adopts this perspective.

Limitations of the Study

A limitation of this research is the stalking cases analysed were processed in the County Court rather than in the Magistrates' Court, where the majority of stalking offences are heard as summary offences. A case analysis of offences heard in the Magistrates' Court of Victoria was not feasible, as these courts do not hold comprehensive sentencing remarks or case files. Hence, the research is based on indictable offences that are at the higher end of seriousness in stalking offences. Additionally, a number of the court files and sentencing remarks lack certain case details while others had variables missing. The content analysis predominantly involved sentencing transcripts in relation to a conviction of stalking as a primary or secondary offence as these files could be more readily accessed. Given the disproportionate number of these transcripts as opposed to other methods of finalisation, these could not be significantly statistically compared. Further analysis on acquitted stalking offences and stalking-related behaviours prosecuted with alternative legislation may also demonstrate limitations with implementing anti-stalking legislation on certain types of behaviours.

Another limitation is the use of descriptive statistics, namely comprising of frequency distributions generated by the quantitative content analysis, which may not demonstrate the true nature of data (Berg & Lune, 2012). Given that content analysis predominantly involves content coded into discrete variables, causal relationships cannot be tested. While this is a weakness of the project, the qualitative component of the analysis is used to draw out these patterns while being mindful not to infer causal relationships based on the frequency or prevalence of coded content. However, comparisons between the quantitative and qualitative analyses provides a measure of consistency in the findings and helps control for contradictory or overreaching conclusions (Holsti, 1969).

The shortcomings of quantitative research is that it is contingent on frequencies and statistics, which may not grasp complex themes and patterns found in social science research (Oleinik, 2010). Conversely, qualitative research has been criticised for its subjective approach, relying on the opinions and views of the researcher to draw meaning from documents (Bryman, 2004; May, 2001). By adopting a mixed methods research design, this study aims to offset the limitations of each research method. A further limitation of this study is that content analysis commonly involves team-based projects in order to establish reliability and validity through the intercoding by multiple researchers, especially for large data sets (Fonteyn, Vetteuse, Lancaster, & Bauer-Wu, 2008; MacQueen et al., 1998). The findings and conclusions produced by this study were analysed and corresponded to past research with the aim of achieving reasonability and reliability in research results (Bengtsson, 2016).

Ethical Considerations

The Monash University Human Research Ethics Committee [MUHREC] granted ethics approval for this research and all ethical protocols stipulated by the Committee were adhered to. Consent to access court files was permitted by the County Court of Victoria while the Sentencing Advisory Council granted access to a list of case names involving stalking offences. Given that the data collected did not involve human participants, this minimised any risk for adverse consequences that may arise as a result of this research. Nonetheless, the court files accessed from the County Court of Victoria contained personally identifiable information regarding relevant parties of each case. This included sensitive information concerning offenders and victims such as victim impact statements. Confidentiality is an important issue in research and thus any personal information in court files was carefully de-identified in this thesis in order to protect the privacy of individuals about whom cases concern.

Conclusion

The present study uses a quantitative and qualitative content analysis of court files involving stalking offences as its methodology to examine anti-stalking legislation and the implementation of this law in Victoria. The integration of these research methods allows for the thorough analysis of the nature and types of behaviours that are being charged and convicted as stalking offences. The conceptual framework adopted by this research provides a crossover between how stalking is legally defined

as a criminal offence in Victoria and what previous research elucidates as stalking behaviour. Content analysis was conducted on 161 court cases involving stalking offences, or related conduct. This data was predominantly collected from the County Court of Victoria. The quantitative content analysis entailed coding content found in court records into numbers for statistical analysis that provide descriptions of stalking cases entering court. The qualitative content analysis involved a similar procedure, however segments of texts were coded according to themes and concepts that were then analysed for patterns and trends, communicating how anti-stalking laws are being applied on which forms of conduct or people. The next chapter is the first of the analysis chapters, outlining and then discussing the results from the quantitative content analysis that forms a picture of stalking cases addressed in the Victorian criminal justice system.

Chapter Six

Implementation of Anti-Stalking Legislation in the Victorian County Court: Quantitative Content Analysis of Court Files

Introduction

This chapter outlines the results from the quantitative content analysis conducted on stalking court files. As detailed in the methodology chapter, this involved converting specific information contained within the content of the court records collected from the County Court of Victoria into numerical data. This was then evaluated using descriptive statistics, which describe the characteristics of stalking cases that are entering the courts and provides a profile of the nature of behaviour being addressed as stalking offences. To begin with, a snapshot of all the cases collected for analysis will be reviewed and the method in which they were resolved. This is followed by the presentation of the prevalence of stalking offences in the courts, the demographics of offenders and stalking victims, and the mental circumstances of offenders. The contexts for stalking is also presented involving the motivations for the behaviours, relationship between the offender and victim and any other charges that were prosecuted and convicted alongside stalking. Further still, this chapter outlines the type and length of sentencing outcomes, with an emphasis on offences resulting in terms of imprisonment.

Given that the court records analysed principally involved stalking convictions, these cases comprise the majority of the findings and thus this chapter is predominantly reflective of those results. Nonetheless, this chapter also provides findings on court records that involve stalking charges resulting in acquittals, discontinued charges and cases that incorporate stalking behaviour prosecuted under alternative legislation. Following the presentation of results, this chapter provides an inclusive discussion of the quantitative findings and considerations for the qualitative content analysis of stalking cases that follows in Chapter Seven.

Incidence of Stalking and Stalking-Related Offences

The majority of the court files collected from the County Court of Victoria were sentencing remarks and thus involved a stalking conviction as either a primary or

secondary offence. As indicated in Figure 6.1, this contributed almost 89% ($N = 143$) of cases and given this high percentage when compared to the other court files, these cases were segregated for separate analysis and represent the chief findings. Of the stalking convictions, 68% (110 cases) involved a guilty plea, 18% (29 cases) had a finding of guilt and in 3% (4 cases) the method of finalisation was not specified. Of the seven (4%) acquittal cases, one (1%) involved the accused being found not guilty by reason of mental impairment. Of the cases that indicated stalking-related or harassing behaviours (labelled as *other convictions* in Figure 6.1), but which were addressed with alternative laws, three (2%) of these cases had convictions for telecommunication offences under the *Criminal Code Act 1995* and two cases (1%) had convictions for breaching intervention orders. These cases represent a small sample size and are unlikely to be representative of the actual number of stalking charges that were withdrawn, resulted in acquittals or alternatively charged and prosecuted. Unlike convictions for offences that subsequently require sentencing – and thus a record of the sentencing remarks made by judges – court files on cases not resulting in conviction are not readily accessible. Despite this, these cases may provide information on the nature of harassing behaviours not determined as a stalking offence, along with potential limitations of anti-stalking laws. Accordingly, findings based on these cases will be outlined further in this chapter.

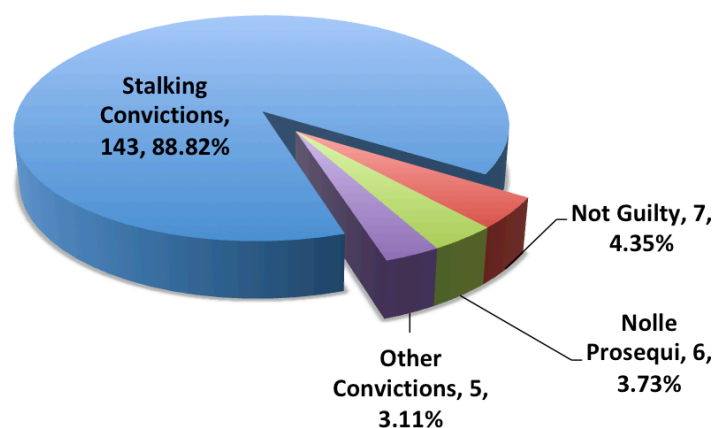


Figure 6.1: Number and percentage of cases by method of finalisation

Cases that involved stalking convictions (hereafter stalking cases) heard in the County Court have increased since anti-stalking legislation took effect in Victoria in 1995. As Figure 6.2 illustrates, the growth in cases fluctuated from year to year with peak

periods during the financial periods of 2003/2004, 2007/2008, 2008/2009 and 2011/2012. There was a decrease in cases during 2000/2001 and a sharp rise between the years 2006/2007 and 2007/2008. The number of cases in 2012/2013 is limited to sentencing transcripts finalised up to September 2012 and is thus not representative of the entire financial year. In separating cases finalised within the three main periods of law reform,³⁰ 37 (26%) cases were finalised from 1995 to late 2003, 90 cases (63%) from late 2003 to mid-2011 and 16 cases (11%) finalised between mid-2011 to September 2012 under the current legislation. In 96 (67%) cases, the sentencing judge was male compared to 46 (32.2%) female judges; the gender of the judge was unknown in one (1%) case.

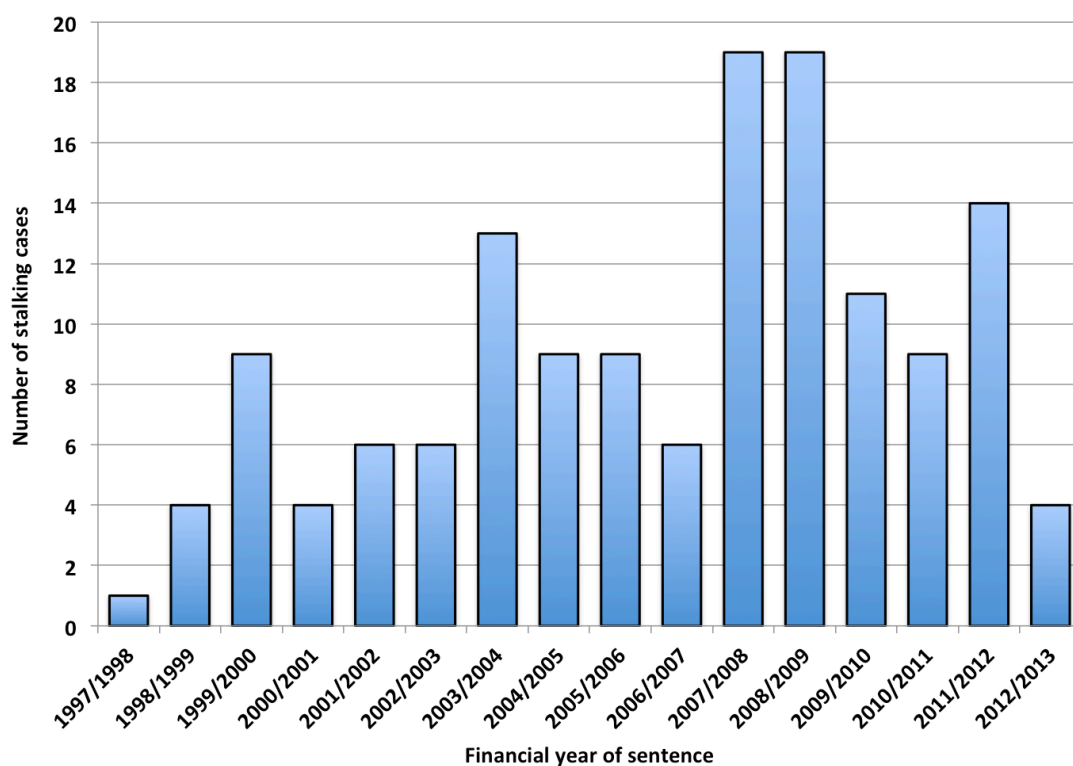


Figure 6.2: Number of stalking cases finalised by year of sentence

Demographics of Offenders and Victims in Stalking Cases

In the vast majority of stalking cases ($N = 141$, 99%), a single offender was convicted with only two (1%) cases with multiple offenders; there were two offenders in both of these cases. As such, any findings that examine offender demographics and

³⁰ These amendments occurred in 2003 and 2011 that affected legislative clauses around conduct that constitute an offence of stalking.

circumstances will take into account all 145 offenders within the 143 cases. One hundred and thirty-five (93%) of these offenders were males aged between 19 to 71 years old, with a mean of 38.54 years ($SD = 11.58$).³¹ Female offenders were convicted in 10 cases (7%) and were aged between 21 and 51 years of age, with a mean of 35.50 years ($SD = 12.19$). Across the 143 cases there was a total of 218 victims; it was unclear in two cases how many victims were involved in the offence. The number of victims targeted ranged from one to eight victims, with a mean of 1.55 victims ($SD = 1.19$, Mode = 1). Of the 218 victims, the gender of 217 was known; 76% ($N = 166$) were female and 23% ($N = 51$) were male. The age of the victims was reported in 49 incidences across cases ranging from 10 to 84 years of age at the time of the offence, with a mean of 25.84 years ($SD = 19.62$). Table 6.1 shows that 93% of women had been stalked by a man compared to 7% who had been stalked by a female, while 85% of men were stalked by another male whereas 15% were stalked by a female. Caution is required with this data as there were substantially more male than female offenders.

Table 6.1: Frequency of the sex of offenders cross tabulated by the sex of victims targeted

			Sex of Offender		Total
			Male	Female	
Sex of Victim	Female	Count	155	11	166
		% within Sex of Offender	93.4%	6.6%	100.0%
	Male	Count	45	8	53
		% within Sex of Offender	84.9%	15.1%	100.0%
Total		Count	200	19	219
		% within Sex of Offender	91.3%	8.7%	100.0%

Counts are based on the sex of offenders and victims and takes into account cases involving multiple offenders and/or multiple victims.

The psychological circumstances of offenders were recorded from the analysed cases according to comments made by the sentencing judge. Sentencing remarks customarily reflect on the mental health assessments of offenders but are selective as to the factors the judge considers relevant in formulating an appropriate sentence. Of

³¹ In one case, the age of the offender was unknown. These statistics were based on 134 male offenders.

the offenders sentenced, 15% did not present with mental illness or substance abuse, or the judge did not indicate any such conditions. However, 24% of offenders had known substance abuse, which was similarly divided between drug and alcohol abuse (12% compared to 11%). Depression was reported in almost 16% of offenders, 7% had a physiological or neurological disability; almost 5% exhibited schizophrenia or psychosis and 5% were considered suicidal or had self-harming tendencies. Intellectual disability or impairment was accounted for in 4% of offenders, 4% presented with a personality disorder or symptoms and a further 4% exhibited symptoms of an anxiety disorder. Almost 45% of offenders ($N = 64$) were recorded as having two or more of the abovementioned mental health issues.

Eighty-five percent of offenders convicted of stalking had a prior criminal history. Only 4% of offenders had prior convictions for stalking; 6% had convictions for breaching intervention orders and 1% of offenders were previously convicted under Commonwealth telecommunication offences. Offenders were most frequently (15%) convicted previously for assault, including unlawful assault or causing injury. Almost 8% of offenders had previous convictions for theft and associated offences while a further 6% had priors for deception and dishonesty offences. Stalking offenders also had prior histories of driving or traffic offences (6%), drug offences (6%), criminal damage (5%), burglary or robbery (4%) and making threats (4%).

Contexts of Stalking Cases

Stalking cases frequently involved a range of motives that were not mutually exclusive. Nonetheless, the primary rationale for committing offending behaviours was recorded according to statements made by the sentencing judges, or as suggested by the offenders' comments or behaviours committed. The foremost motivation for stalking was to exact revenge against the victim, which was present in almost 24% ($N = 34$) of cases, as indicated in Figure 6.3. This was followed by evidence of an infatuation or obsession with the victim in 13% ($N = 19$) of cases, or predatory stalking with sexual intent in 13% ($N = 18$) of cases. In 10% ($N = 14$) of cases, the offender wanted to reconcile a past relationship. In a further 10% ($N = 14$) of cases, the motivation for the stalking offence was unclear. Cases ($N = 6$, 4%) recorded as having other motives included offences triggered by loneliness and extortion of the victim.

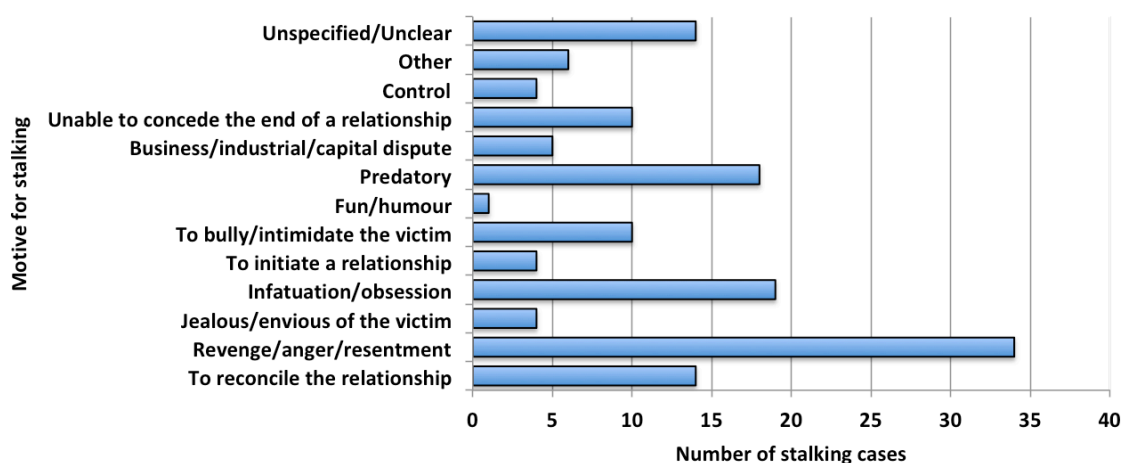


Figure 6.3: The primary motivation for stalking behaviours

The various relationship contexts between the offender and each victim are shown in Table 6.2. It is important to note that the percentage of cases exceed 100 given that discrete cases may have involved more than one victim. As indicated in the Table, perpetrators of stalking offences predominantly target former intimate partners. However, in utilising a simplified relationship classification consisting of former intimate partners, strangers and acquaintance-based stalking, acquaintances (or known persons other than a former intimate partner) became the most prevalent relationship context. This represented over 51% ($N = 114$) of contexts per offender-victim relationship. This includes a wide range of relationships including friends, family members, clients and colleagues, with neighbours demonstrating the largest sub-category of this transposed classification system (10%, $N = 23$). Further to this, 24% ($N = 52$) of relationships involved a former intimate partner and a stranger targeted the victim in almost 17% ($N = 37$) of relationship contexts. The relationship between the offender and victim was unclear or not specified in 6% ($N = 13$) of cases. The summarised relationship context findings are shown in Table 6.3 and are further subdivided by the sex of the offender.

Table 6.2: Relationship context between the offender and victim/s

Relationship Context	N	Percent	Percent of Cases
Stranger	37	16.7%	25.9%
Ex-spouse (married/de-facto/long-term relationship)	27	12.2%	18.9%
Other acquaintance/known to the victim ^a	26	11.7%	18.2%
Ex-boyfriend/ex-girlfriend	25	11.3%	17.5%
Neighbour	23	10.4%	16.1%
Friend	18	8.1%	12.6%
Client/customer	15	6.8%	10.5%
Partner/Ex-partner family members	13	5.9%	9.1%
Unspecified	13	5.9%	9.1%
Work/school associate	6	2.7%	4.2%
Work/school colleague	5	2.3%	3.5%
Current partner ³²	4	1.8%	2.8%
New partner of ex-partner	4	1.8%	2.8%
Family member	4	1.8%	2.8%
Casually dated	2	0.9%	1.4%
Total ^b	222	100.0%	155.2%

- a. This included the offender being seen around the neighbourhood by the victim (however not a neighbour), ex-partner of current partner, previous victim to the offender and co-offender in another crime.
- b. The total of 222 victim-offender relationships included two cases involving two offenders and one victim, in which the relationship context was counted twice.

Continuing with this simplified relationship classification, male offenders more often victimised an acquaintance (78%, $N = 105$), followed by a former intimate partner (41%, $N = 55$) then a stranger (25%, $N = 34$). Female offenders likewise targeted acquaintances or other known persons (110%, $N = 11$), however were more likely to stalk a stranger (50%, $N = 5$) than a former intimate partner (30%, $N = 2$).³³ Caution is required with these statistics given that two cases involve female offenders stalking multiple strangers and another who was convicted for stalking multiple family members, which was coded under ‘acquaintances/other known persons’ in the simplified relationship transposition. In juxtaposing the motive for stalking conduct

³² This study acknowledges the debate in that stalking can not be present in current intimate relationships as this would be defined as intimate partner violence rather than stalking, as discussed in Chapter One. However, case examination in this study showed that anti-stalking legislation was applied in cases where the offences were based on behaviours targeting a current partner at the time of the offence. This was coded as such.

³³ Percentages pertaining to the gender of offenders by the relationship context of the victims targeted exceed 100 given cases where offenders targeted multiple victims.

based on the gender of offenders, male offenders were most often motivated by revenge or anger towards the victim (23%, $N = 30$), were predatory (15%, $N = 19$), infatuated with the victim (12%, $N = 16$) or hoped to reconcile the relationship (11%, $N = 14$). Female stalkers engaged in stalking because of anger (3%, $N = 4$) or infatuation with the victim (2%, $N = 3$). The gender of judges did not appear to influence how the motivation of the stalker was perceived.

Table 6.3: Sex of the offender cross tabulated with the relationship context of the stalking offence

Sex of Offender			Relationship Context				Total
			Intimate Partner ^a	Acquaintance ^b	Stranger	Unclear	
	Male	Count	55	105	34	13	135
		% of Total	38.5%	73.4%	23.8%	9.1%	94.4%
	Female	Count	3	11	5	0	10
		% of Total	2.1%	7.7%	3.5%	0.0%	7.0%
Total		Count	58	114	37	13	143
		% of Total	40.6%	79.7%	25.9%	9.1%	100.0%

Percentages and totals are based on available data on relationship contexts.

a. Intimate partners include former and current intimate partners.

b. Acquaintances are all known persons other than intimate partners and include family members.

Cases seldom invoke stalking as the sole charge or conviction; 93% of cases had other offences convicted alongside stalking. Theft-related offences including burglary and robbery were most frequently convicted with stalking, representing 21% of other convictions. This was followed by assault or causing injury (14%), sex offences (13%) and making threats to kill, injure or damage property (10%). In addition to stalking, 7% of other convictions either involved contravening intervention orders or telecommunication offences. In considering the motivation for stalking cross tabulated with other offences resulting in conviction, there was an association between predatory cases also resulting in convictions for sex offences (22% of cases, $N = 28$) and also theft or burglary type of offences (9% of cases, $N = 11$). Cases where the offender was perceived as angry or revengeful towards the victim involved convictions for a greater range of other offences including making threats (7% of cases, $N = 9$), causing injury or assault (6% of cases, $N = 8$) and criminal damage to property (6% of cases, $N = 8$).

Stalking Charges, Counts, and Duration of Stalking Conduct

In 79 (55%) cases, stalking represented the principal charge; compared to 61 (43%) of cases where stalking was the secondary charge and in 3 (2%) cases it was unclear whether stalking was the principal or secondary charge. Across the stalking cases, offenders were convicted of between one and eight counts of stalking with a mean of 1.50 stalking counts ($SD = 1.10$, Mode = 1). This was similar to the number of courses of conduct engaged in by the offender, as outlined by the sentencing judge. The number of courses of conduct also ranged from one to eight courses with a mean of 1.38 ($SD = 0.99$). Multiple counts of stalking most commonly occurred in cases that involved acquaintances or other known persons (65% of cases, $N = 66$). This was followed by 17% ($N = 17$) of cases with multiple stalking counts targeting strangers, compared to 12% ($N = 12$) of cases involving a former or current intimate partner. Subcategories within the broader acquaintance relationship context indicate that neighbours (18% of cases, $N = 18$), clients or customers (13% of cases, $N = 13$) and family members of partners or ex-partners (13% of cases, $N = 13$) were frequently involved in cases with multiple counts of stalking.

The duration of each course of conduct is depicted in Table 6.4, which shows that 28% ($N = 56$) persisted for less than 2 weeks and contributed to 39% of cases. Similar to other variables, the durations for each case do not amount to 100% in light of cases involving multiple courses of conduct. The next most frequent duration of stalking was between one and three months or between three and six months, both accounting for 14% ($N = 27$) of courses of conduct. Over 65% of the total courses of conduct occurred over a period of six months or less compared to over 20% of courses persisting for a minimum of six months to over five years. In almost 15% ($N = 23$) of courses, the duration was not specified or not clear.

Table 6.4: Duration of each course of conduct

Duration of Courses of Conduct	N	Percent	Percent of Cases
< 2 weeks	56	28.3%	39.2%
2 weeks > 4 weeks	19	9.6%	13.3%
1 month > 3 months	27	13.6%	18.9%
3 months > 6 months	27	13.6%	18.9%
6 months > 12 months	14	7.1%	9.8%
1 year > 2 years	11	5.6%	7.7%
2 years > 5 years	12	6.1%	8.4%
> 5 years	3	1.5%	2.1%
Unclear	6	3.0%	4.2%
Unspecified	23	11.6%	16.1%
Total	198	100.0%	138.5%

The duration of courses of conduct was also considered by relationship context. As demonstrated in Table 6.5 below, 25% ($N = 35$) of cases involved strangers engaged in conduct for two weeks or less, compared to 18% ($N = 26$) of cases with former intimate partners and 16% ($N = 23$) of cases with acquaintances/other known persons. Perpetrators of stalking who were either former intimate partners or strangers most frequently engaged in stalking for 12 months or less. Cases comprising acquaintance-based stalking showed a greater distribution in the duration of courses of conduct with many persisting beyond 12 months. In differentiating discrete subcategories within acquaintances, clients or customers (13%, $N = 19$), neighbours (13%, $N = 19$) and friends (5%, $N = 7$) represented relationships contexts that involved courses of conduct continuing for 12 months or longer.

Table 6.5: Duration of courses of conduct cross tabulated with relationship context

Duration			Relationship Context				Total
			Intimate Partner ^a	Acquaintance ^b	Stranger	Unspecified	
< 2 weeks	Count		26	23	35	1	56
	% of Total		18.2%	16.1%	24.5%	0.7%	39.2%
2 weeks > 4 weeks	Count		4	16	6	9	19
	% of Total		2.8%	11.2%	4.2%	6.3%	13.3%
1 month > 3 months	Count		11	20	9	4	27
	% of Total		7.7%	14.0%	6.3%	2.8%	18.9%
3 months > 6 months	Count		12	41	2	2	27
	% of Total		8.4%	28.7%	1.4%	1.4%	18.9%
6 months > 12 months	Count		5	43	12	0	14
	% of Total		3.5%	30.1%	8.4%	0.0%	9.8%
1 year > 2 years	Count		1	22	4	2	11
	% of Total		0.7%	15.4%	2.8%	1.4%	7.7%
2 years > 5 years	Count		0	37	1	0	12
	% of Total		0.0%	25.9%	0.7%	0.0%	8.4%
> 5 years	Count		0	10	3	0	3
	% of Total		0.0%	7.0%	2.1%	0.0%	2.1%
Unclear	Count		5	3	0	0	6
	% of Total		3.5%	2.1%	0.0%	0.0%	4.2%
Unspecified	Count		4	45	2	7	23
	% of Total		2.8%	31.5%	1.4%	4.9%	16.1%
Total		Count	58	114	37	13	143
		% of Total	40.6%	79.7%	25.9%	9.1%	100.0%

Counts include cases with multiple courses of conduct with the corresponding duration and the relationship between each offender and victim. Thus the totals of the duration and relationship context do not equal the number of cases analysed.

a. Intimate partners include former and current partners.

b. Acquaintance group includes all known persons excluding former or current partners.

The duration of courses of conduct was also compared by the primary motivation for the stalking conduct, in which cases that include courses of conduct persisting for two weeks or less were mostly motivated by revenge (10%, $N = 13$), followed equally by predatory with sexual intent or incompetent suitors seeking to start a relationship (6%, $N = 8$) and offenders who were unable to concede the end of a relationship (5%, $N = 7$). There was a wider distribution regarding the duration of courses of conduct committed by perpetrators motivated by revenge or anger towards the victim. Offenders who were perceived to be infatuated or obsessed with the victim tended to stalk victims for three months or longer; 14% ($N = 18$) of cases compared to 5% ($N =$

6) who committed courses over less than three months.³⁴ The duration of courses of conduct was examined by the sex of victims, in which 53% ($N = 74$) of cases involved female victims stalked for less than two weeks in contrast to male victims in 7% ($N = 10$) of cases. Cases where the stalking persisted for at least 12 months to longer than five years was directed at male and female victims comparably (29%, $N = 41$ versus 27%, $N = 38$, respectively).³⁵

Conduct, Intent and Impact as per Anti-Stalking Legislation

The types of conduct forming a course of conduct were categorised according to the behaviours listed under Victorian anti-stalking legislation. The most common type of conduct in stalking offences was contacting the victim by any means, which entails non-physical communication such as telephone calls, text messages, emails and by post. This method of stalking was present in almost 30% of courses of conduct. Acting in any other way that could reasonably be expected to arouse apprehension or fear comprised 21% of courses. This category of stalking conduct was recorded when the nature of the behaviour did not correspond to the other defined acts in the legislation. Entering or loitering outside the victim's home or workplace was the next most frequent behaviour offenders committed during a course of conduct, occurring in 16% of courses. The number of different behaviours comprised in a course of conduct ranged from one to six behaviours with a mean of 2.28 behaviours ($SD = 1.29$).

The intent of the offender for committing the stalking offence – as per stalking statutes – was specified or implied by the sentencing judge in 63% ($N = 91$) of the cases. The judge determined that 53% of offenders ($N = 77$) knew that engaging in the course of conduct would likely cause harm or arouse apprehension or fear in the victim. In almost 10% ($N = 14$) of cases, the offender ought to have understood that engaging in the course of conduct would likely cause harm. The judge likewise explicitly stated or suggested the impact of the offending on the stalking victim and this was also recorded according to anti-stalking legislation. Over 29% ($N = 64$) of

³⁴ Counts and percentages are based on cases with multiple courses of conduct with the corresponding duration and the primary motivation for the stalking offence.

³⁵ Counts and percentages are based on the cross tabulation of courses of conduct with the corresponding duration along with the sex of the victim. Cases with these intersecting variables take into account cases with multiple courses of conduct and multiple victims.

victims experienced apprehension or fear for their safety, 27% ($N = 58$) experienced a combination of mental harm and apprehension or fear, while almost 15% ($N = 32$) of judges specifically noted that the victims experienced mental harm. It was unclear or not specified what the impact was for almost 25% ($N = 54$) of victims. Physical harm or injury by itself or in conjunction with mental harm, apprehension or fear occurred less often, experienced by fewer than 4% ($N = 8$) of victims. One victim (1%) was reported to have self-harmed as a result of stalking victimisation and a further victim experienced no impact.

Sentencing of Stalking Cases

The sentencing outcome for each of the 218 counts of stalking resulting in conviction was recorded, in which almost 52% ($N = 113$) of stalking offences resulted in a term of imprisonment with a mean of 16.85 months ($SD = 12.46$).³⁶ The next most frequent sentence were wholly suspended sentences (16.5%, $N = 36$, $M = 8.56$ months, $SD = 5.79$), followed by CBOs³⁷ (13.3%, $N = 29$, $M = 19.79$ months, $SD = 5.35$) and partially suspended sentences (7.8%, $N = 17$, $M = 8.82$ months, $SD = 5.24$), respectively.³⁸ Figure 6.4 compares the distributions of the sentencing lengths for the most common sentencing outcomes. As shown, the median of custodial sentences is 12 months with an upward dispersion for longer sentences. The range for these sentencing lengths is greater when compared to other sentencing types. There are a number of outliers, outside the sentencing range for terms of imprisonment, wholly suspended sentences and CBOs. Partially suspended sentences were sentenced to an average of six months or longer while CBOs were 24 months or shorter.

³⁶ Custodial sentences are immediate terms of imprisonment and do not take into account the non-parole period outlined by the sentencing judge.

³⁷ This includes CCOs, which replaced CBOs as a sentencing option in early 2012.

³⁸ A suspended sentence is a custodial sentence that is wholly or partially suspended for a specified period. Suspended sentences were abolished in September 2014.

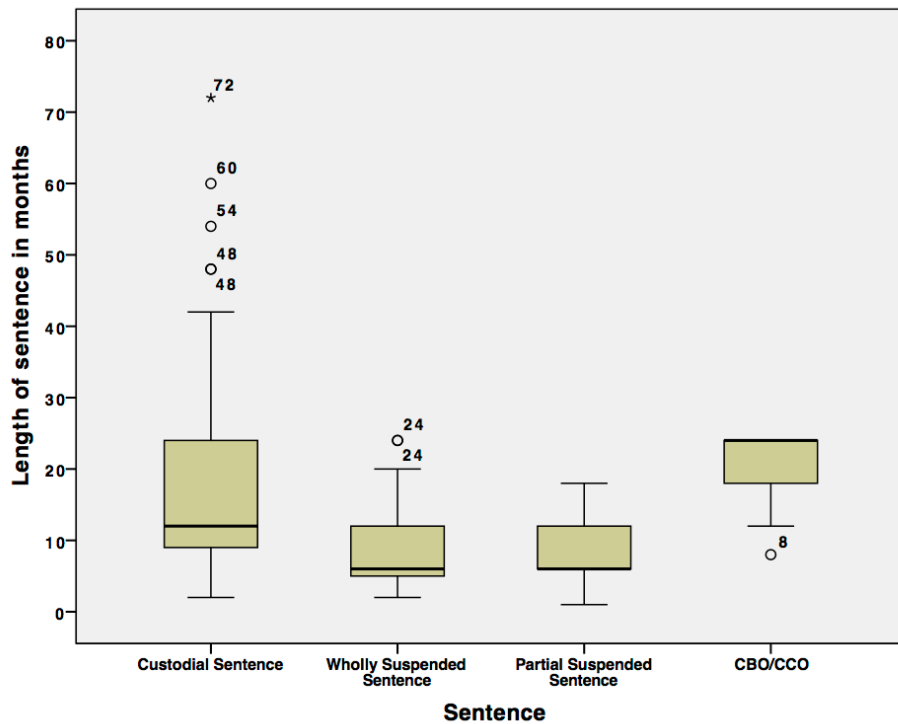


Figure 6.4: Distributions of sentencing lengths grouped by most common sentencing outcomes

Courses of conduct of various levels of persistence were issued an immediate term of imprisonment. As demonstrated in Table 6.6, 45% ($N = 57$) of stalking offences occurring between six and 12 months were given a custodial sentence, followed by courses between three and six months (35%, $N = 44$) and those that occurred over less than two weeks (23%, $N = 29$). When considering the sentencing outcome by the motivation for the stalking, cases where the offender wanted revenge most frequently resulted in a custodial sentence, occurring in 23% of cases ($N = 26$). The next most common motive that resulted in a full term of imprisonment was stalkers who had predatory intent (22%, $N = 25$) followed by offenders who had an infatuation or obsession with the victim (19%, $N = 22$). The sentencing type was also cross tabulated by history of offending; imprisonment was the more likely sentencing outcome when the offender had priors for causing injury or assault (50%, $N = 63$), theft, burglary or robbery (35%, $N = 44$) and deception or dishonesty offences (30%, $N = 38$). When comparing sentence outcome with other offences convicted alongside stalking counts, convictions for sex offences (47%, $N = 60$), theft or deception offences (33%, $N = 42$) and causing injury or assault (31%, $N = 39$) were also more likely to result in custodial sentences.

Table 6.6: Most common sentencing outcome cross tabulated by the duration of each course of conduct

Duration			Sentencing Outcome				
			Custodial Sentence	Wholly Suspended Sentence	Partial Suspended Sentence	CBO/CCO	Total
	< 2 weeks	Count	29	20	5	7	42
		% of Total	22.8%	15.7%	3.9%	5.5%	33.1%
	2 weeks > 4 weeks	Count	21	5	4	3	19
		% of Total	16.5%	3.9%	3.1%	2.4%	15.0%
	1 month > 3 months	Count	23	2	4	18	27
		% of Total	18.1%	1.6%	3.1%	14.2%	21.3%
	3 months > 6 months	Count	44	5	2	8	27
		% of Total	34.6%	3.9%	1.6%	6.3%	21.3%
	6 months > 12 months	Count	57	1	0	0	14
		% of Total	44.9%	0.8%	0.0%	0.0%	11.0%
	1 year > 2 years	Count	19	3	3	2	11
		% of Total	15.0%	2.4%	2.4%	1.6%	8.7%
	2 years > 5 years	Count	22	0	0	12	11
		% of Total	17.3%	0.0%	0.0%	9.4%	8.7%
	> 5 years	Count	9	0	0	0	3
		% of Total	7.1%	0.0%	0.0%	0.0%	2.4%
	Unclear	Count	6	0	1	0	5
		% of Total	4.7%	0.0%	0.8%	0.0%	3.9%
	Unspecified	Count	46	3	0	0	17
		% of Total	36.2%	2.4%	0.0%	0.0%	13.4%
Total		Count	113	36	17	29	127
		% of Total	89.0%	28.3%	13.4%	22.8%	100.0%

Counts include cases with multiple courses of conduct with the corresponding duration and the sentencing outcome for each conviction of stalking that resulted in either a custodial sentence, wholly or suspended sentence or a CBO/CCO. Thus the totals of the duration and sentencing outcomes exceed the number of cases analysed.

The gender of sentencing judges had no significant influence on the outcome of an immediate and full term of imprisonment, in which 58% ($N = 42$) of female judges compared to 49% ($N = 71$) determined that the offender serve a custodial sentence. There were also no differences between the lengths of an immediate term of imprisonment when determined by a male judge compared to a female judge ($M = 17.24$, $SD = 12.15$ compared to $M = 16.19$, $SD = 13.10$, respectively).

Custodial sentences requiring an immediate term of imprisonment were considered independently. Each stalking offence resulting in a custodial sentence was separated according to the relationship context that the count pertained to. Fifty-five (49%) custodial sentences related to the stalking of an acquaintance or other known person; followed by a former intimate partner ($N = 34$, 30%) and custodial sentences involving a stranger ($N = 18$, 16%).³⁹ These statistics consider cases where there may be multiple stalking counts due to offences committed against multiple victims or multiple offences directed at a single victim. The terms of imprisonment for custodial sentences according to the three broader relationship categories are depicted in Figure 6.5. The lengths of custodial sentences for offences relating to strangers had a broader range and distribution compared to other relationship contexts with a larger median sentence. In contrast, the terms of imprisonment for intimate partners and acquaintances had comparable median lengths for sentence.

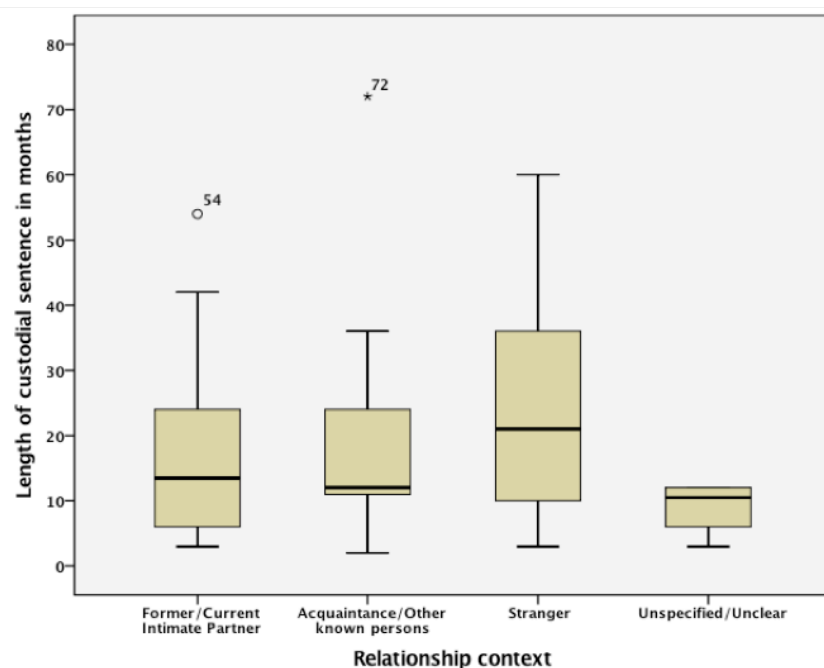


Figure 6.5: Distributions of terms of imprisonment for custodial sentences by relationship context

Stalking Acquittals, Discontinued Charges and Stalking-Related Cases

A quantitative content analysis was conducted on cases that did not result in a stalking conviction. This comprised cases where the accused was found not guilty of stalking

³⁹ In six (5%) custodial sentences the relationship context was unclear or not specified.

offences (acquittals), discontinued stalking charges (a *nolle prosequi* was entered) and cases involving harassing behaviours prosecuted under alternative laws (stalking-related cases). The content available for coding in these cases is limited to the type of cases they constitute. In contrast to convictions, these cases will have no data on sentencing outcomes for stalking convictions while stalking-related cases are not charged under anti-stalking legislation and hence will not contain information on courses of conduct. Given the small sample size of each group of these cases and restrictions in case information, only relevant descriptive statistics are detailed.

Stalking Acquittals

In all acquittal cases, the defendants were male (100%, $N = 7$) aged between 27 and 64 years of age ($M = 47.67$). Females were the complainants in four (57%) cases, men in two (29%) cases and in one case the gender of the complainant was not specified. In three (21%) cases, no other offences were charged alongside stalking and in two (14%) cases additional charges of stalking were proven. For the most part, acquittals involved acquaintances, representing almost 72% ($N = 5$) of cases while a stranger was the complainant in one (14%) case.⁴⁰ The stalking charges were based on alleged courses of conduct persisting for less than six months (71%, $N = 5$)⁴¹ and in all cases the courses included contacting complainants. In three (43%) cases, the defendants had no history of prior offending while in two (29%) cases the defendants had previous convictions for stalking and breaching intervention orders

Nolle Prosequi

Cases where stalking charges were discontinued by the prosecution involved male defendants in five (83%) of the cases and a female defendant in one (17%) case and were aged between 22 and 56 years of age ($N = 42$). Across these cases, males represented 67% ($N = 6$) of the complainants compared to 33% ($N = 3$) of females. In one case, the defendant allegedly targeted four males. Defendants were most often also originally charged with causing injury or assault; this occurred in half of the dismissed cases (50%, $N = 3$). Acquaintances represented 67% ($N = 6$) of the relationships and ex-partners in 22% ($N = 2$) of relationships. The abandoned stalking

⁴⁰ The relationship context was not specified in one acquittal case.

⁴¹ In two acquittal cases, the nature and duration of alleged courses of conduct were not specified.

charges were largely based on courses of conduct that persisted for less than two weeks, in which all but one of the alleged courses occurred over a fortnight or shorter (89%, $N = 8$). The alleged stalking conduct mainly involved contacting the complainant, followed by entering or loitering outside the complainant's home or workplace. Defendants who had stalking charges dismissed for the most part had no prior convictions (50%, $N = 4$), one (13%) defendant had previously breached an intervention order and another defendant (13%) had low-level theft offences.

Stalking-Related Offences

As previously outlined, cases incorporating harassing or stalking-like behaviours not prosecuted under stalking statutes were also analysed. Three (60%) cases involved multiple convictions for using a carriage service to menace, harass or cause offence⁴² and two cases (40%) had convictions for breaching intervention orders.⁴³ All offenders in these cases were male (100%, $N = 5$), aged between 20 and 67 years of age ($N = 34.40$). Across these cases, 18 victims were targeted; 14 (78%) were strangers, three (17%) victims were ex-partners and one (5.6%) victim was the family member of an ex-partner. Fifty-six percent ($N = 10$) of the victims were female and 17% ($N = 3$) were male, while for 28% ($N = 5$) of victims the gender was not specified. The other convictions – aside from the offences addressing the harassing behaviours – were diverse. Both offenders convicted for breaching intervention orders were also convicted for offences related to causing injury and assault (40%, $N = 2$). Three (60%) offenders had previously been convicted for theft related offences and in the other two (40%) cases, the offender did not have any prior offences or the criminal history was not specified. In all but one of these cases (80%) the offence resulted in a term of imprisonment.

Discussion

The quantitative content analysis conducted on stalking court files described the prevalence and profile of offenders and behaviours addressed under anti-stalking legislation that are entering the County Court of Victoria. Stalking cases were normally resolved by the defendant pleading guilty (68%), on par with the rates of

⁴² This offence is a telecommunication offence under the *Criminal Code Act 1995*.

⁴³ One case involved two counts of breaching an intervention order.

guilty pleas (75%) for all criminal offences resolved in the Victorian higher courts in 2016/2017 (ABS, 2018). Anti-stalking legislation has resulted in successful convictions either through pleas or findings of guilt and reveals a law that is no less onerous than satisfying the particulars of other criminal codes. The slightly reduced rate of guilty pleas for stalking specifically may be explained by cases that also contain charges for sexual offences, usually as the principal charge. Sex offences in courts carry a significantly lower plea rate and convictions in the County Court (2012, 2013, 2014, 2015).

The growth in the number of stalking offences is evidence that there has been an increase in the implementation of legislation since its introduction in 1995. With any new law reform, an inauguration period is necessary for police to become familiar with the legislation and charge conduct accordingly. As such, it was anticipated that with improved awareness of stalking by the community and the criminal justice system, a greater number of stalking charges would ensue. This is demonstrated in the low number of stalking cases during the formative years of anti-stalking laws, with the first case being heard in 1997/1998 in the County Court. The increase in stalking offences in the higher courts similarly mirrors trends in the number of summary stalking offences heard in the Magistrates' Court of Victoria (2012) with a likewise peak period between 2007/2008 and 2008/2009. However, unlike charges entering the County and Magistrates' Courts, which fluctuated across individual years despite a general increase, there was a steady growth in the number of stalking cases recorded by Victoria Police.⁴⁴ This may be due to the subsequent amendments made to anti-stalking legislation after 2003, expanding the scope of what behaviours may be prosecuted as stalking.

Customarily, indictable offences may take several months to be heard, committed for trial and finalised by either plea or verdict in the County Court (County Court of Victoria, 2016). Therefore, surges in cases in particular years should take into account the time lag. The modest rise in cases finalised in 1999/2000 may have been the result of the *Sentencing and Other Acts (Amendment) Act 1997*, increasing the penalty for stalking and consequently providing prosecution a stronger incentive to pursue

⁴⁴ As shown in Figure 4.1.

stalking charges. Furthermore, amendments made to anti-stalking legislation in 2003 and 2011 following heightened social concern over cybercrime and a heavily publicised case of severe workplace bullying, respectively, may have impacted the rise in cases during 2003/2004 and 2011/2012. In addition, the overhaul of the intervention order system in 2008 and then again in 2010, as a consequence of the significant influx of applications for these orders, have further highlighted the prevalence of stalking behaviour as a criminal justice issue, resulting in an increase in the contraventions of these orders. This further explains the affected growth in stalking offences in the latter years of the court cases analysed, whereby stalking charges may have been laid on offenders rather than being charged for breaching these injunctions.

By and large anti-stalking legislation in Victoria appears to be matching the demographics common to stalking behaviour depicted in behavioural research. Females are over three times more likely to be a victim of stalking compared to males, whereas men are overwhelming the perpetrators of stalking offences compared to female stalkers. However, the rate of male offenders of stalking (93%) entering the County Court is higher than generally found in victim surveys (79 to 85%) (ABS, 2017; Purcell et al., 2002). Perception surveys recognise a gender bias whereby female stalkers are discerned as less threatening and dangerous despite research proving the contrary (Finnegan & Fritz, 2012; Sheridan & Scott, 2010; Strand & McEwan, 2012; Thompson et al., 2010, 2013). This may explain why female stalkers were less likely to be charged with serious, indictable stalking offences and therefore also less likely to appear in the County Court. Corresponding to past studies, convicted stalkers range broadly in age but are typically in their 30s (Dressing et al., 2011; Mullen et al., 1999; Purcell et al., 2002). Both females and males were more likely to have experienced stalking by a man, which again accords with the recent ABS (2017) study. To reiterate however, there was considerably fewer female offenders in cases and this limits any meaningful comparison between male and female stalkers.

Stalking offenders had diverse criminal histories, where violence and assault related offences were common; few had been previously convicted for stalking. In all, 10% of offenders either had previous stalking convictions or breached intervention orders.

This sits below the recidivism or reoccurring rates for stalking outlined by literature (Malsch et al., 2011; McEwan et al., 2017a; Rosenfeld, 2003). Stalking offenders examined in the current study may not be pathological compared to the clinical samples typically representative in these recidivist studies. Offenders addressed by anti-stalking legislation appear to be first time stalking offenders or relate to cases where behaviours escalated to the level necessary for police and prosecutors to identify the most recent episode of offending as stalking. It is possible that offenders convicted in the cases analysed may have engaged in previous stalking behaviours, but that were identified by police or prosecutors as other criminal behaviours.

When examining the statistics of offenders' mental health, a substantial proportion had some form of mental illness (85%); few however presented with a serious mental disorder. Forty-five percent of offenders experienced more than one mental health issue, consistent with stalking research (Nijdam-Jones et al., 2018). Specifically, offenders most often have drug and alcohol abuse issues (24%), depression (16%), while 5% had schizophrenia or another disorder characterised by psychosis. Significantly, stalkers being convicted of serious stalking offences are characteristically similar to the general profile of offenders (Forsythe & Gaffney, 2012; Mullen, 2001). In addition, the presence of a major mental disorder in stalkers, such as schizophrenia, is comparative to general prison population (Ogloff, Davis, Rivers, & Ross, 2007). However, the prevalence of substance abuse in stalking offenders is lower than the 46% reported in Nijdam-Jones et al.'s (2018) study. The relatively low prevalence of diagnosed personality disorders is unexpected considering research drawing connections between these disorders and the perpetration of assault on victims (Mullen et al., 1999) and in recurrent stalking episodes (McEwan & Strand, 2013; McEwan et al., 2017a). Inconsistencies in the mental health rates found in this study compared to findings from past research may simply indicate judges not drawing attention to particular mental illnesses as a factor for sentencing. For example, without a distinct diagnosis of a personality disorder, this may not be relevant for the sentencing outcome.

The various motivations for committing stalking behaviours are reflected in the stalking offences analysed. Convicted stalkers are spurred by anger, resentment, an inability to concede the end of a relationship or in the hopes of reconciling with the

victim. This is together with the offender having an infatuation or obsession with the victim, correlating with literature regarding stalkers often being intimacy seekers or incompetent suitors (Mullen et al., 1999). In contrast however, offenders who engaged in stalking conduct for predatory reasons as pre-emption to sexual offences are more prevalent in courts than that represented in clinical research (Mullen et al., 1999). This is demonstrated in the 18 cases analysed here that more closely resembled sex offences, rather than that of a stalking offence. In these cases, the offender may have been stalking the victim prior to sexually assaulting them, and so the offences of stalking *and* sex offences may have been appropriately charged.

Otherwise, the use of stalking offences may be the product of police and prosecutorial practice to charge sex offenders with additional offences, which for this study pertains directly to the application of anti-stalking legislation. It is hence not surprising that stalking was charged alongside sex offences including rape, indecent assault and child pornography crimes (contributing 13% of other offences). Further still, multiple offences including stalking were represented in over 90% of cases, primarily in the context of acquaintance and stranger stalking, where community safety would be of prime concern for the criminal justice system. These stalking cases were also associated with other convictions of making threats, assault and property damage; behaviours that are readily recognised by the criminal justice system and associated with the risk of the offender to the general public. This issue is further highlighted by the qualitative content of cases presented in the next chapter.

Half of the offenders were convicted for stalking an acquaintance, a quarter were convicted for stalking a former intimate partner, whilst stalkers were least likely to be convicted for targeting a stranger. Using a stratified categorisation of relationship contexts, stalking by ex-partners was the most prevalent given the array of relationships that may entail ‘acquaintances’. Nonetheless, these results highlight the variety of relationships that anti-stalking legislation is addressing and accords with previous research. The court records analysed are also consistent with victim surveys finding that stalkers predominantly target someone known to them (ABS, 2017) with the prevailing victim profile consisting of a male offender stalking a female who is known to them, followed by stalkers targeting a female ex-partner (Mullen et al., 2009; Spitzberg, 2002). A reduced frequency of intimate partner stalking compared

with acquaintances draws attention to the implementation of anti-stalking legislation that may not necessarily prioritise men who stalk their ex-partners whereby conventional, non-stalking laws, such as assault or breaching intervention orders, may be alternatively applied in these situations.

Alternatively, in cases where offenders and victims did not have a previous intimate relationship, stalking behaviours are more easily identified and thus charged and convicted as such stalking. This finding adheres to the perception that intrusions committed outside the domestic setting are distinguished more often as stalking (Cass & Rosay, 2012; Scott et al., 2010; Scott & Sheridan, 2011; Scott et al., 2013; Scott et al., 2014b; Scott et al., 2014c; Scott et al., 2015; Weller et al., 2013; Yanowitz & Yanowitz, 2012). An interesting finding regarding stalking contexts is that in four cases, the offender was convicted for stalking a current partner at the time the offence was committed. Previous research has acknowledged that stalking within existing relationships does occur (Baum et al., 2009; Dovelius et al., 2006; Finney, 2006; Tjaden & Thoennes, 1998); other research conversely emphasises that this confounds the notion of intimate partner violence and general understandings of stalking, particularly if the offender and victim are co-habiting (McMahon & McGorrery, 2016; Senkans et al., 2017). The relatively low, yet notable number of stalking convictions of current partners identified in this analysis demonstrates that police and prosecutors use anti-stalking legislation in this situation. Here, the legislation is filling a gap in existing domestic violence policy that inadequately prohibits non-physical coercive and controlling behaviours in domestic relationships, as argued by McMahon and McGorrery (2016).

Offenders were usually charged between one and two stalking counts, chiefly based on there being multiple victims, rather than multiple courses of conduct directed at a single victim. This is a sound finding that indicates that anti-stalking legislation is being appropriately implemented in a domestic context, given that in this scenario, stalkers normally direct behaviours to a single victim – their ex-partner. Multiple offences in cases involving neighbours in particular was anticipated given past research observing that anti-stalking legislation has been broadly used for interpersonal disputes amongst neighbours (Dussuyer, 2000; McMahon & Willis, 2002). Yet for these stalking offences to rise to the level of indictable offences also

suggests that stalking laws in these situations are not just applied to behaviours considered trivial and likely also represent harmful stalking cases. Furthermore, cases with other convictions in addition to stalking mainly involved overtly threatening offences such as thefts, assaults, sex offences, explicit threats and damaging property. This suggests that stalking cases are of a serious nature or accompany other serious crime. The qualitative content analysis of cases sheds further light on the seriousness of cases involving multiple offences.

Over one-quarter of the stalking behaviours that were convicted in the County Court of Victoria persisted for two weeks or less. This sizable prevalence of stalking offences with limited duration or persistence is supported by previous research (Purcell et al., 2002, 2004a). Presumably, only serious stalking offences entailing a high degree of persistence would be entering the higher courts as indictable offences rather than the short bouts of intrusions being identified as stalking, as seen in Purcell et al.'s (2004a) study. These shorter stalking offences often involved strangers, elucidating a context perceived as more serious by police and the community than in other relationships (Cass & Rosay, 2012; Scott et al., 2014b; Scott et al., 2015; Sheridan et al., 2016b; Weller et al., 2013) and connotes a sinister and stereotypical image of stalking described in Chapter Two (Kelly & Humphreys, 2000; Mullen et al., 2001b). As such, it is comprehensible why these contexts in particular may not persist beyond two weeks; victims experience greater fear of the unknown risk to them and might notify police more promptly. Police on the other hand may accordingly respond with greater urgency. An alternative view is that short durations of stalking conduct entail heightened violence or escalating threat, thus police hastiness in charging the offender is compelled by clearer evidence to protect victims against future violence. This is strengthened by evidence that immediate custodial sentences are prevalent in these cases where the offender was also convicted of causing injury or assault, or offenders presented with a history of sexual offending.

Women were more often stalked for shorter periods (less than two weeks) when compared to male victims. This may be the result of police perceptions that women are more likely to experience harm or are more at risk than male victims of stalking (Finnegan et al., 2017). While the legislation is being effectively applied to females who constitute the majority of stalking victims, male victims may not be prioritised or

receive a prompt police response when they contact police compared to female victims. Stalking by acquaintances had a greater range of stalking durations and persisted for longer. In light of these relationships consisting of clients, customers and neighbours, there is likely to be continuing engagement between the offender and victims due to proximity or the need for service provisions. The results also demonstrate that 13% of stalking offences persist for one year or longer; supported by previous Australian research (Purcell et al., 2002). Nonetheless, this rate is significantly lower than the ABS (2017) finding that nearly 33% of victims reported that their most recent stalking episode persisted for at least a year. Thus, anti-stalking legislation may not be invoked by police on the most prolonged stalking behaviours experienced by victims, possibly as victims are not reporting their victimisation or the behaviours are not addressed as stalking.

The most common acts comprised in stalking offences is non-physical communication and contact, such as telephone calls, text messages, voice messages, or emails. Such communication incorporates tangible evidence and hence is less burdensome to provide for adjudications. Victims commonly report unwanted contact in victimisation surveys (ABS, 2017; Purcell et al., 2002). Accordingly, applying anti-stalking legislation on stalking behaviours that are insidious and concealed – hindering evidence of any perpetration – may limit the effective use of stalking statutes on conspicuous behaviours. Stalking offenders were usually convicted for engaging in two types of stalking acts, which is consistent with previous Australian research (Purcell et al., 2002), but indicates a lower frequency of incidence reported by Dressing et al. (2005) and Blaauw (2002b). This may suggest not all acts involved in stalking behaviours are prosecuted in relation to forming a course of conduct, but may form the basis of other offences alongside stalking, theft and assault for example.

Intent of the offender as expressed within anti-stalking legislation is explicitly stated or suggested in two-thirds of stalking offences, most frequently in terms of the offender having malicious intent. This is anticipated as knowledge that the offender knew that stalking would cause harm reveals a higher level of culpability for the offending, especially relevant for the purposes of sentencing. The impact of the stalking offence was recognised by judges primarily (71%) in reference to the victim experiencing apprehension, fear, or mental harm, or a combination of these

repercussions. Thus, judges have a good appreciation that anti-stalking legislation concentrates on the mental elements and effects of the behaviour and consequence of stalking victimisation.

Over half of the stalking offences resulted in prison sentences, with the lengths of imprisonment having a wider distribution compared to other sentencing outcomes including suspended sentences and CBOs. This suggests that stalking cases determined to warrant imprisonment ranged in severity of conduct. There has been an increase in prison sentences for stalking (71% of offences convicted from 2011 to 2016 resulted in imprisonment (SAC, 2017b)) since suspended sentences were abolished in Victoria in 2014. Over 20% of stalking offences persisting for less than two weeks resulted in a term of imprisonment. These short-lived stalking behaviours suggest a level of seriousness and harmfulness to warrant prison sentences. This is further supported by results indicating that these stalking offences were motivated by revenge or predatory intent, often involving a number of other offences.

While 30% of custodial sentences involved former intimate partners, the relationship context most often receiving imprisonment was acquaintance-based stalking. Stalking in this context generally persisted for longer durations. However, stalking by strangers involved a far broader range of terms of imprisonment, implying greater disparity in the severity of convictions in these cases than custodial sentences handed down to former intimate partners and acquaintances. Greater variability in the lengths of imprisonment for stranger stalkers and greater frequency of custodial sentences for acquaintances is the result of judges determining stalking in these circumstances as aggravated, given multiple counts, concerns for community safety and a call for general deterrence.

Court records that did not involve a stalking conviction were cautiously examined as they represent a small sample, especially when juxtaposed with the number of stalking convictions analysed. Furthermore, the number of cases collected for this study would not be representative of the true rates of stalking resulting in non-convictions in the County Court. This is demonstrated when comparing these cases with almost half of the stalking offences that were withdrawn, dismissed or discharged in the Magistrates' Court (2012) between 1994/1995 and 2011/2012.

Reviewing the statistics from these court records reveal that for the most part, the gender profile involving acquittals, abandoned stalking charges and alternatively charged stalking-type behaviour were similar to that of stalking convictions. A distinct finding is that abandoned stalking charges involved more male victims than females with one case having multiple male victims. These cases were often in the context of acquaintances, with the stalking behaviours allegedly occurring over less than two weeks. In half the cases the accused was also originally prosecuted for assault-related offences and had no or a minor criminal history. This suggests that stalking offences were augmented charges on male defendants who were physically violent with someone who was known to them. The stalking offences were withdrawn as a result of defendants pleading guilty to assault offences, which further supports the notion that anti-stalking legislation can be flexibly charged to negotiate plea deals. Another interesting finding from these cases is that cases involving stalking-type behaviours convicted as telecommunication offences are in the context of the offender targeting multiple strangers, which was shown to be the primary relationship category in these types of offences. This indicates that anti-stalking legislation was appropriately not applied to these behaviours, as there was no course of conduct involving two or more acts directed at a specific individual. An in-depth qualitative analysis on cases involving no stalking convictions may further reveal why anti-stalking legislation was not used, and whilst of importance, is outside the scope of this thesis.

Conclusion

It was found that anti-stalking legislation is being increasingly implemented in the Victorian criminal justice system and is achieving successful convictions. The law is meeting the needs of stalking victims when compared to commonly identified profiles of offenders and victims; most stalkers that are convicted are male while victims are primarily females. Nonetheless, female stalkers appear to be underrepresented in offender rates, which was anticipated in light of common perceptions that women are less threatening and less violent (Finnegan & Fritz, 2012; Finnegan et al., 2017; Owens, 2017; Sheridan & Scott, 2010). Otherwise, the demographics of stalkers fit the profile gathered by previous research in that they have diverse criminal histories that do not necessarily include stalking, often present with mental illness but that the majority do not experience a significant mental disorder.

Anti-stalking legislation is addressing the varied nature of stalking behaviours, where convictions for conduct were motivated by anger, an inability to concede the end of a relationship, desire to reconcile with the victim, intimidation and bullying and so forth. Nonetheless, the high occurrence of predatory stalking was notable. Multiple offences apart from stalking convictions are typical in cases, indicating the discretionary use of anti-stalking legislation by police and prosecutors to charge load the offender. The legislation is applied to various stalking contexts with convictions mostly for acquaintances, following by former partners and then strangers. Custodial sentences were more frequent for acquaintance stalkers with a greater range in prison lengths for offenders targeting strangers. This suggests the severity in these cases is more diverse than those committed by ex-partners; the nature of behaviours is explored in greater detail within the qualitative findings.

An interesting finding was the high prevalence of relatively brief courses of conduct that occurred over less than two weeks. This is a significant threshold established by previous research (Purcell et al., 2004b) that differentiates between especially harmful and prolonged stalking and short bouts of intrusions that commonly discontinue after a fortnight. The analysis of acquittal cases, abandoned stalking charges and stalking-type behaviours addressed under other criminal codes showed consistent demographics and case details with stalking resulting in convictions. However, these cases indicate support for the contention that anti-stalking legislation is used to negotiate plea deals for other convictions, especially those involving physical violence. The quantitative analysis provides a critical foundation that outlines key case features constituting stalking offences and how anti-stalking legislation is being applied in Victoria. This will be further explored through the qualitative content analysis of court records discussed in the following chapter.

Chapter Seven

Implementation of Anti-Stalking Legislation in the Victorian County Court: Qualitative Content Analysis of Court Files

Introduction

This chapter provides findings from the qualitative content analysis conducted on stalking court files. Enhancing this analysis, the dissection of qualitative content within stalking cases contributes a deeper understanding of how anti-stalking statutes are applied, on what types of behaviours and in which contexts. This analysis allows for inferences to be made on the behaviours determined and constructed as a criminal offence of stalking. This is together with the degrees of seriousness between cases and the intended and unintended consequences of the legislation. This chapter begins with findings regarding how the ‘course of conduct’ clause in anti-stalking legislation encapsulates the persistence of stalking. The breadth of anti-stalking legislation is also discussed in the full range of acts that stalking crimes may address, revealing a flexible legislation beyond behaviours customarily considered as stalking offences.

The context-dependent nature of stalking is highlighted in this chapter in regards to how judges perceive stalking within particular relationships through the demarcation of stalking offences committed by former intimate partners, acquaintances and strangers. The intent of the offender and impact on the victim is then discussed as is how these requisite elements are satisfied and considered by judges. This is together with aspects of the offending that reinforce the severity of stalking cases, especially relevant for sentencing. As with the preceding chapter, court files involving convictions constitute the majority of reviewed cases and hence this chapter will mainly discuss those results. However, findings from court files finalised as acquittals, abandoned stalking charges and stalking-type behaviours convicted under alternative laws are integrated within the chapter as is the discussion of the findings that draws on stalking literature.

Stalking as a ‘Course of Conduct’: A Necessary Degree of Persistence

In delineating stalking counts, analysis of cases showed that judicial comments made on behaviours constituting the offence ranged from detailed narrations to succinct

outlines of key facts submitted as evidence. Trends in these variations demonstrate a clear demarcation of offending behaviours between those perceived as archetypically stalking, and behaviours that are uncharacteristic of the phenomenon. Classical lexicon customarily associated with stalking was often adopted to depict cases involving behaviours definitional of stalking. Namely, describing conduct as repetitive, persistent or frequent. These terms were expressed alongside analogous adjectives involving behaviours deemed *constant, intense, relentless, ongoing, continuous, prolonged* and *determined* (Case 38, 44, 57, 65, 72, 78, 105, 109, 110, 128).

The sustained nature of the conduct by you created a constant climate of fear for [the victim] and his family (Case 31).

You saw her and became obsessed with her. To this day your obsession is still all-consuming (Case 24).

The offences were not just serious in themselves as individual offences but were made more serious, in my view, because they were persistent, escalating and very frighteningly dangerous (Case 26).

Similarly, persistent stalking was highlighted through the excessiveness of acts illustrated through the quantity and incidence of behaviours. Non-physical contact contributed to these cases where the rate of behaviours could be carried out frequently, with judges' focusing on the profusion of calls and text messages that inundate the victims. The sheer volume of contact by the offender unmistakably identified the behaviour as stalking as it involved hundreds of communications over a period of months, weeks and days (Case 29, 34, 77, 90, 116, 117, 123, 129):

This course of conduct involved [the victim] receiving in excess of 290 telephone calls in which you would not speak. These calls occurred at all hours of the day and night. Sometimes there were more than 20 calls in a day (Case 80).

...you rang the victim 369 times and sent 570 text messages to her. When the victim was not online you would send her countless text messages and ring her throughout the day and night (Case 76).

Prototypical stalking cases exhibiting moderate to high levels of repeated or prolonged behaviours were associated with embellished descriptions to illustrate the perseverance of the offender in continuing to engage the victim. Judicial portrayals of behaviours often evoke the image of a person sinisterly and stealthily pursuing their

victim, similar to that of an animal hunting prey. In Case 105, the judge elaborated further; ‘You followed, you photographed, watched and noted the details of the activities of, conducted electronic surveillance over, and generally stalked the young [victim].’ Judges would provide supplementary commentary in these cases, giving prominence to conventional behaviours emblematic of disturbing stalking scenarios. This includes watching, following and monitoring victims’ activity perpetrated with a menacing effect and is perceived as exemplifying the qualities of stalking:

You then started to harass her, telling her all the things you had been doing in relation to her; watching her walk naked around the house before she renovated it (Case 109).

Later that afternoon you told the complainant that she should stop walking and that you wanted to see her. You told her what she was wearing (Case 29).

Judicial discourse emphasises the criminality of stalking in the persistence of behaviour and familiar portrayals of stalking involving watching and spying (Miglietta & Maran, 2016). These representations of offences are congruous with definitions intrinsic to stalking as behaviour that is persistent (Mullen et al., 1999; Purcell et al., 2002), a pattern (Meloy & Gothard, 1995; Meloy, 1996), and is an amplification of everyday acts (Ogilvie, 2000b). In addition to adhering to community perceptions identifying stalking as repeated and persistent number of acts (Dennison & Thomson, 2000; Scott & Sheridan, 2011), sentencing judges expectedly considered persistent stalking as more serious compared to shorter and less persistent behaviours. Consistently across these cases, prolonged conduct was deemed an aggravating factor for sentencing purposes indicating the tenacity of stalkers with uncompromising dispositions. Judges categorically stated that the ‘offending can only be described as most serious. It is aggravated in that it was prolonged and repetitive’ (Case 29). Other emotive language connected incessant stalking to the seriousness of the case whereby stalking offences were described as a ‘persistently cruel campaign’ (Case 57) or a ‘reign of constant harassment’ (Case 91). These characterisations draw likeness to victims’ explanations of stalking experiences as psychological terrorism (Hall, 1998) and adheres to research findings that prolonged stalking is most destructive to victims, both mentally and physically (James et al., 2010; Johnson & Thompson, 2016; McEwan et al., 2009a; Podaná & Imříšková, 2016; Purcell et al., 2005). The conduct

requirements of a course of conduct under anti-stalking legislation are capturing enduring and pernicious behaviours definitional of stalking.

Limited Courses of Conduct and Short Durations Amounting to Stalking Offences

In contrast to judges' concentrating on repeated behaviours as a fundamental feature in stalking offences, the number of cases with short or limited courses of conduct was pronounced. The content analysis showed a clear lack of continuity or duration between conduct resulting in some stalking convictions. Such cases were based on courses of conduct with nominal repetition of acts, where conduct occurred over a couple of days, hours or even minutes. Case 70 comprised the shortest course of conduct. The perpetrator engaged in what could more accurately be characterised as tailgating over less than four minutes. No other offences occurred prior, during or subsequent to the behaviour that formed the basis of this stalking count. Other cases similarly illustrate that the case law precedent that a course of conduct constitutes behaviours engaged in on at least two occasions, or one protracted act, can be liberally applied (*Gunes v Pearson*).

Almost any form of behaviour could arguably constitute a pattern of conduct or a single prolonged episode. Judges declared that the behaviours convicted on the stalking counts were committed over brief timeframes. The judge presiding over Case 19 observed that the stalking in that case was in fact a 'single incident' confined to one event rather than being protracted to any perceptible degree. Juxtaposing narration of stalking involving persistent behaviours discussed above, judges had a greater propensity to use passive language when remarking on brief and limited courses of conduct instead of embellishing on the conduct. Stalking conduct was instead summarily recounted, dispassionately focusing on factual details constituting the offence. Consistently across cases of short stalking durations, periods of time provided objective measures that stipulate the facts of the offence rather than highlighting the seriousness of the offending. Such detached and passive phrasing of the offences may reveal judges' hesitance to envisage transitory behaviour as a stalking crime (Fairclough, 2013; Halliday & Matthiessen, 2004). This is evident when comparing judges' expatiation on persistent behaviours and the substantial number of acts comprising the course of conduct in stalking cases involving high repetition. Unlike the emotive commentary linking the tenacity of the offender with

the gravity of the offence, explanations of short-lived stalking cases were confined to the facts of the offence (Case 17, 112):

The behaviour which resulted in you being charged with these matters occurred on the same day ... and in a very short time frame between two o'clock and 3.30 that afternoon... (Case 93).

The offending behaviour occurred over a few hours and on one day only (Case 71).

Those calls were recorded on the 19th and the 23rd of that month. That basically is the basis of the charge (Case 114).

In the acquittal Case 147, the jury was asked to consider whether the acts constituted a course of conduct accounting for the number of acts and the connection or pattern between the acts. However, as cases analysis has found, stalking convictions have been based on the minimal number of acts and in some cases, an individual act. Thus, this indicates that two incidents – or a single protracted act – required under anti-stalking legislation is negligible in forming a link between behaviours. Further still, convictions have been obtained despite marked time gaps between acts, signalling limited continuity of purpose that is also necessary to form a course of conduct. In Case 48, a stalking offence was based on a 12-month interval between two incidents. This was observed in another case, with the judge commenting, ‘this offence occurred between February 1995 and March 1998, although the actual criminal conduct occurred early in that period and again towards the end of that period rather than in the central part of that time span’ (Case 58).

Stalking convictions that are deficient in the *course* element of anti-stalking legislation are removed from the foremost principle that distinguishes stalking. This is an improper use of anti-stalking legislation where behaviours, regardless of repetition or continuity, can be stretched and constructed as a course of conduct. Studies have established that up to half of harassment cases do not persist beyond two weeks – most stopping in a day or two – and these cases are generally associated with less injury and harm to victims and fewer deleterious effects. Purcell and colleagues (2004a) provide this differentiation between confined bursts of behaviour and protracted stalking, and represents a context of stalking that heightens other risk factors such as being targeted by a former intimate partner and the use of threats and

physical violence (Johnson & Thompson, 2016; McEwan et al., 2009a; McEwan et al., 2009b; Mullen et al., 2006). This dividing line is not reflected in conduct convicted as a criminal offence of stalking in the higher courts of Victoria. In a substantial minority of cases, stalking is loosely applied beyond behaviour commonly seen as persistent or prolonged, and may therefore be symptomatic of a malleable law that is unduly overarching. In some cases, the course of conduct of offences does not adequately capture the definitional quality of stalking and as a consequence, non-stalking behaviours are being drawn into the criminal justice system as stalking crimes.

Escalation and Intensification of a Course of Conduct

A difference was found between stalking cases that lacked a course of conduct and conduct that was short, but which were followed by a serious offence or involved circumstances that raised concerns for the potential escalation of physical or sexual violence. Case 69 was based on the offender following a stranger for 17 minutes by car while she walked on the footpath. By itself, this conduct may be considered insubstantial, albeit satisfying a course of conduct as a single protracted incident. Nevertheless, this behaviour appeared predatory given subsequent offending in which the offender thereafter drove past a second victim and committed multiple counts of rape. There was a patent progression of behaviour where the specific conduct of following the first victim was seen as part of a pattern than ended in serious sexual assault of another woman:

...the investigation established that your car had followed her in the manner I have endeavoured to describe for about 1.3 kilometres, and her journey on foot was of some 17 minutes' duration ... That episode was closely followed in point of time by your cowardly attack on [the victim], indeed a series of cowardly attacks on a defenceless 60 year old (Case 69).

The judge recognised the stalking as a serious offence in this case, most obviously through the 18-month term of imprisonment, 12-months of which was cumulative on the base sentence of rape. A nexus was drawn between the stalking and the subsequent rape perpetrated on the second victim in sequence. The judge meticulously detailed the course of conduct through a lengthy narrative describing each turn of the road the victim took that was mirrored by the perpetrator to follow the victim. This included the direction the car was travelling on specific streets, the U-turns conducted

and roundabouts negotiated. While the course of conduct was brief – and not representative of stalking in a social or behaviourally-defined sense – the behaviours were targeted and given the subsequent offences, purposeful for committing the sexual assault. The seriousness of the stalking offence is not based on that conduct of itself but on the grievous crime that subsequently occurred.

In stalking cases of short durations, the context of the behaviours involving strangers, or acquaintances with superficial relationships, appears to be an influencing factor in applying anti-stalking legislation, rather than the behaviour exhibiting qualities of stalking. The safety of the community appears to be the overarching priority in these cases corresponding to a perceptible risk of the offender. The offender in Case 137 was convicted on four counts of stalking based on the male offender walking past or behind four young females in separate incidents, all of whom were strangers. The victims were shadowed immediately before a sexual assault or attempt thereof. The defence unsuccessfully made an application to the Crown to drop the charges of stalking, as it did not adequately show a course of conduct:

...there is insufficient evidence of the required course of conduct or of conduct which otherwise could constitute stalking ... It would appear that the alleged assault followed very shortly after he saw the girls (Defence, Case 137).

In these kinds of cases, behaviour constituting the stalking offence is considered an overture to the crime of focus, which in the above example was sexual assault. The brevity and the immediacy of the following and approach of the victims in this case may not accurately be criminalised as stalking and instead is constructed into an offence *ex post facto*. This calls into question the application of legislation in addressing the centrepiece crime at the core of the offending behaviours or the illegality and harm caused by stalking behaviours as proposed upon the introduction of anti-stalking legislation. There is a divergence between recognising the seriousness of stalking as a crime in and of itself, and intervening future crime that may or may not eventuate, drawing attention to the application of anti-stalking legislation as a preventive measure.

Qualitative content analysis indicates this issue across cases where the offenders were strangers or had surface-level relationships with victims, including parties that had

only meet once or twice, neighbours or those engaged in casual dating. In Case 131, the offender and victim met via an online dating app and engaged in consensual sexual intercourse. The following day the victim informed the offender by text message she had genital herpes contracted from her previous partner. Inflamed at the situation, the offender sent abusive texts to the victim. As a result of a police response, the offender was charged and then convicted for stalking on sending eight text messages within four days. The offender was assessed as having a low risk of re-offending and the mental health assessment concurred that the offender was not aggressive or anti-social and explained the behaviour as being panicked that the victim was not returning his calls or text messages:

I want her to suffer in a small way, and she needs to understand that you can't go around playing with peoples' lives (Offender, Case 131).

The prospect of behaviours escalating and the uncertainty of risk for the conduct turning into physical violence have featured in stalking cases analysed here. This denotes the use of anti-stalking legislation by police and prosecutors as a technique for early intervention in conduct, undeterred by limited courses of conduct. In another case, the offender and victim met at a bar and after a night of dancing, they exchanged numbers before the victim went home (Case 87). The stalking offence was based on phone records indicating that the offender called the victim four times that early morning between 4:47am and 5:08am. This conduct only rose to a concerning level when the offender went to the victim's home later that morning, surmising that an intimate relationship was being formed. In examining this conduct in isolation, the criminality is not so much based on the behaviours constituting stalking but rather what could have happened (or what the victim feared might occur). Applying anti-stalking legislation to short courses of conduct appears to be a police response to prevent crimes being committed at a later date. In particular, when strangers are involved there is an element of suspected menace, where police and prosecutors are confronted with the unknown rationale. This becomes a case of pre-emption and intervention whereby anti-stalking legislation is one example of law being used to address a crime threat that could emerge (Ashworth, 2009; Ashworth & Zedner, 2012; McCulloch & Wilson, 2016) in a society becoming focused on security and prevention rather than conventionally addressing crime post hoc (Zedner, 2007).

The prevalence of short courses of conduct was likewise found in stalking cases between former intimate partners, nonetheless under different contextual circumstances. As opposed to the stranger context where concern about future crimes appeared to influence the use of anti-stalking legislation, there is evidence that stalking post-relationship may occur in the context of pre-existing violence or abuse, lending additional severity to even the most short-lived courses of conduct (RCFV, 2016; Senkans et al., 2017). The qualitative content analysis of cases revealed that stalking between ex-partners regularly involved short courses of conduct but were shaped by concern about an ongoing pattern of behaviour during the relationship, and police and the court's desire to prevent escalation of conduct into serious physical violence:

As far as the offence of stalking is concerned, the offending occurred over a period of one week ... when the police finally intervened by arresting you, thereby preventing any further escalation of your behaviour (Case 129).

Domestic stalking cases were routinely associated with previous offending directed at the same victim, and accordingly the new offences of stalking are taken as a sign of sustained or intensifying behaviours that may not specifically entail prior convictions of stalking. Offenders presented with histories of domestic violence, thus police hastily intervene as there is grounds that this context presents with particular urgency to prevent escalation:

You continued offending despite two recent prior convictions for intentionally causing injury to [your former partner] and for having falsely imprisoned her (Case 29).

Behaviours in breach of intervention orders were often the watershed that distinguished domestic violence post relationships as stalking, as there is a manifest progression from infringing these civil orders to engaging in offences:

As a result of the escalating breaches of the intervention order and the increasingly aggressing and threatening nature of your communications to [the victim] the police decided to arrest you (Case 129).

Police warnings were another gauge for distinguishing the persistence of conduct, as offending behaviours continued despite criminal justice intervention:

Short of being brought to court and convicted of offences, I cannot see how the authorities could have given you a clearer warning that you should desist (Case 65).

Continuing or escalating offending towards a former intimate partner, despite the brevity of the index conduct, is recognised by sentencing judges in which the overall context of the offending is well appreciated, as seen in the case quotes below. This conforms to Parliamentary expectations that the offending behaviour would be examined as a whole when assessing whether stalking occurred (Explanatory Memorandum, 1994):

Although your offending is the course of conduct that you engaged in over 10 days and expressed within four emails, it must be seen in the context of what you had done to [your former partner] in the past ... When considering the gravity, show that this was not in the worst category of stalking, it remains because of the overall context, a serious example of that offence (Case 30).

I note this offending, however, was for a much lesser period and only four posted comments were involved ... the offending was again of short duration, but again of the same offensive nature (Case 85).

Previous or violent offending is a signpost of a risk for escalating behaviour, thus the lack of a course of conduct in some cases is due to police swiftly intervening. Only after a series of behaviours did conduct progress to serious matters of concern, involving physical violence or the threat of violence. Stalking frequently discontinued when conduct developed into breaking and entering into the victims' homes (Case 40, 41, 46, 64, 99, 109, 119, 123, 130, 132), arson (Case 55, 116) or when police found the offender was in possession of a weapon or items indicating the commission of a serious crime such as duct tape, rope, petrol cans etcetera (Case 35, 55, 61, 80, 91, 132). A significant finding here is that escalation of behaviours appears necessary for the seriousness of conduct to compel a response by victims and police. In other words, a flashpoint such as the above conduct appears to be determinants for previous behaviours to be addressed and identified as stalking.

Case analysis shows that not only was an escalation of stalking behaviours necessary for police and prosecution to identify stalking, but victims too were hesitant to notify police until a critical point was reached. In Case 97, the victim received several letters from the offender over a few weeks, who also frequently loitered outside the store where the victim worked. While these stalking behaviours caused the victim to be

fearful, it was only after the offender stabbed the victim's father that the police were notified of the assault and previous stalking behaviour.

She had refrained so many times, from calling the police, hoping things would calm down, but it got to the point where she realised that if she didn't call the police, one or both of you could have been hurt (Case 51).

...so frightened your victim that she ultimately realised that she would have to complain to the police in order to stop you ... she was initially prepared to regard it as aberrant behaviour and only complained to police because of the persisting harassment by phone from him (Case 23).

The qualitative content analysis reveals variability in stalking as a course of conduct, whereby anti-stalking legislation is used to address persistent behaviours inherent to stalking. Given the malleability of what may constitute a course of conduct, however, convictions have also been based on conduct with a lack of a *course* or connection between acts. A differentiation exists between limited courses of conduct and those that escalated to the point of necessitating police intervention that apparently stymied further offending. Other offences resultant from escalating behaviours are more traditional crimes and have a greater likelihood for causing physical harm. As such, stalking offences can be seen as a preamble to other serious offences, rather than being considered a severe crime in itself:

Charge 2 relates to the stalking, which in fact is the preamble to the fifth count ... As that is an offence of kidnap, it is a very serious charge. The injury charge, as the prosecution rightly submits, is also a serious charge (Case 37).

Otherwise, anti-stalking legislation is applied to behaviour with limited repetition, apparently out of fear of potential escalation, particularly in cases involving unpredictable contexts with strangers where the risk of further violence is a concern. This is a double-edged issue concerning the proper implementation of anti-stalking legislation. Police and prosecutors may appropriately apply the law to intervene and prevent escalating and dangerous stalking behaviours. On the other hand, the law may be applied prematurely or on relatively minor behaviours that are likely to stop (Purcell et al., 2004a). This inappropriate use of anti-stalking legislation draws more people into the criminal justice system for stalking offences that arguably are not committing stalking as defined from a behavioural perspective.

Breadth and Flexibility of Conduct Constituting a Stalking Offence

Conduct amounting to a course of conduct is broad, as intended by the non-exhaustive list of acts in Victorian anti-stalking legislation (*Crimes Act 1958* s 21A(2)). Case analysis examining the breadth of conduct found courses of conduct comprising behaviour that corresponds closely to stalking literature (ABS, 2017; Johnson & Thompson, 2016; Mullen et al., 1999). Contacting the victims by phone calls, text messages, voice mail, emails and letters were consistent across offences entering court, as was following, surveillance and loitering. Judges embraced the notion that stalking could be committed through a multitude of acts.

Offences entering the County Court indicated the scope of stalking extending into digital spaces and were not restricted to physical intrusions in the real world. Convictions for stalking were based on behaviours committed across international borders (Case 76, 77) and judges were not limited in their views of how advancing technologies engendered new methods for stalking behaviours. This included hacking victims' email and Facebook accounts, sending emails under the pretence that the victim sent them, posting false social media comments, and distributing explicit material pertaining to the victim.

[The offender] accessed photographs of [the victims] online from various social networking websites. He posted those photographs on pornographic sites ... The overall effect was to create the impression to anyone accessing that site that [the victims] were involved in pornography (Case 85).

Beyond conventional and observable acts, covert behaviours also resulted in stalking charges and convictions. This included silent phone calls (Case 80, 111, 113) and stalking by proxy, in which offenders who orchestrated stalking of the victim by others were successfully convicted (Case 110 118, 141, 142, 143). This is in addition to convictions based on workplace harassment prior to the 2011 amendments to anti-stalking legislation (Case 13, 21). Case 107 represented the most extreme example of covert stalking behaviour, in which the offender was convicted for compiling dossiers on victims incorporating information on land titles, company as well as residential searches. The victims were unaware the offender was gathering information on them.

The totality of acts that may constitute stalking is too far-reaching in some cases, in which stalking convictions have been satisfied based on court-sanctioned telephone

calls. In Case 114, criminal stalking was found when the offender intended to call his daughter only to have his ex-wife answer the phone or apparently interrupt these calls:

You accept that you rang your daughter, and you spoke to her in accordance with that agreement. But during the conversation you also spoke to [your estranged wife] (Case 114).

This case intersects with themes regarding routine intrusive behaviours common at the dissolution of a relationship and when on-going interaction is required, especially when the offender and victim have children together. Further still, it corroborates research findings that the identification of behaviours as stalking is intimately connected to individual and subjective perceptions (Campbell & Moore, 2011; Scott, 2008; Scott et al., 2015).

Offensive Conduct Disconnected from Stalking Behaviour

Some stalking cases reflect conduct that is atypical of, or is divorced from stalking behaviours, albeit being anti-social, intrusive or otherwise invasive. Anti-stalking legislation yields a sweeping purview of the various forms that stalking may involve. In examining the entire case context, criminal stalking has been found on conduct detached from social and scientific definitions of stalking, with anti-stalking legislation being used in lieu of other crimes. Case 47 and 79 for instance involved stalking offenders contacting and approaching the victims two to three times over a period of a few days in the attempt to discuss an upcoming criminal trial for which they were both accused. Although the number of acts fulfils the conduct requirement under legislation, the nature of the conduct presumes an offence of perverting the course of justice or obstructing justice rather than stalking. In another case, the offender was convicted of stalking by way of three acts over a period of 20 days that included posting two letters and affixing posters (Case 82). The behaviours were not directed at a specific individual; instead the offender expressed outrage towards a government service agency, albeit in a threatening manner, regarding the implementation of the Work for the Dole legislation.

These cases involving convictions that insufficiently represent stalking are commonly relatively minor behaviours when compared to the serious examples of stalking that first impelled the inception of legislation (POV, 1994a). Case 70, as discussed

previously, regards a clear case of tailgating a stranger rather than stalking and therefore to conduct that lacks a requisite 'course' that constitutes an offence. Evidently in other cases, the convicted behaviour resembled nuisance callers engaging in indiscriminate disruptive telephone calls towards complainants. These cases were usually confined to a few days of the relevant behaviour and in framing the course of conduct, the calls were at times only experienced twice by individual victims. Sentencing judges infrequently expressed the disparity of the convicted behaviour as stalking but rather used moderate language to convey their views that the case was representative of other crimes or was minor offending:

I think it is fair to say that the impression at that stage was that you were being something of a nuisance or a pest but nothing more than that (Case 43).

Furthermore, judges tagged such behaviour as nasty (Case 114, 115, 74, 60), a bother (Case 108) or merely obscene or a nuisance (Case 92, 102). These cases not only involved conduct that is inconsistent with severe behaviour the law was intended to prohibit but the nature of the behaviours are arguably not distinguishable as stalking as described in stalking literature and common perceptions of the behaviour. This conflicts with the principle of fair labelling in criminal law, which is that legislation should describe wrongdoing so as to fairly represent the nature and degrees of law-breaking (Ashworth, 2009; Chalmers & Leverick, 2008; Williams, 1983). These legal designations or labels should be intelligible to the general public and accurately communicate the nature of the offender's criminality. The stalking cases outlined in this subsection inadequately delineate stalking. This problem may be concealed in light of offenders by and large pleading guilty to offences and hence not questioning the fairness of the conviction relative to their conduct. Stalking cases were most frequently resolved by pleas of guilt or the offender made full admissions to the behaviours they committed that constituted the stalking offence. Regardless of whether the conduct exhibited characteristics of stalking behaviour, the offender would often plead guilty to the crime:

...it is quite clear from the transcripts that the plea of guilty took some time and it may have been in fact a very difficult trial for the Crown to prove in respect of the counts of stalking ... It is not your average view of what stalking consists of (Case 107).

Evidential Burden in Satisfying Stalking Convictions

The content analysis suggests that anti-stalking laws are in many cases not a burdensome offence to fulfil. Convictions usually comprise physical evidence presented by the Crown including records of numerous telephone calls (Case 11, 35, 122, 132), examples of the content of text messages (Case 46, 34, 32, 115), messages recorded on answering machines or voicemail (Case, 20, 116), and electronic equipment seized by the E-Crime police squad as evidence of cyberstalking (Case 30). Witness observations and testimonies were admitted into evidence, especially around behaviours not entailing physical evidence such as following the victim or loitering outside their homes or workplace (Case 61, 96, 124). Otherwise, evidence that substantiated stalking involved defamatory images that only the offender had possession of (Case 126), or CCTV footage of the offender posting material in relation to the victim (Case 118). This finding is at odds with that of recent UK research, reporting that proving stalking offences may be cumbersome due to police delaying investigations and not collecting evidence (HMIC & HMCPSI, 2017; Taylor-Dunn et al., 2017). In light of this, problems with obtaining stalking convictions may stem from the initial policing of incidents and patterns of conduct, rather than offences satisfying anti-stalking legislation when they come before the courts.

In other cases, the offender made admissions to police about their involvement with the victim, or that they committed specific acts, regardless of whether they were framed as a stalking offence. This may involve confessing to individual acts such as a phone call, or approaching the victim in the street, which are not offences in themselves but through the admission of committing at least two of these activities can amount to a course of conduct (Case 32, 36, 40, 82, 111, 119 123):

You also receive credit for cooperating with the police by making full admissions. This applies in particular to the charge of stalking, which otherwise would not have come to light (Case 99).

I also accept that you have made significant concessions in what would otherwise have been essentially a word-against-word case (Case 25).

In Case 13, the sentencing judge explicitly noted the lack of evidence to form a criminal stalking offence. There was no objective evidence led in this case that

substantiated the stalking conduct, which was germane given that the offender and victim worked closely together and hence interaction between them was inevitable. This however still resulted in a conviction:

You worked in a pair with the complainant from time to time ... At times you would be in an area, or a room where the complainant was performing duties, and where you had no need or reason to be ... I add, the criticism of the charge lacked practical substance (Case 13).

More often, judicial language suggested scepticism about the offending conduct constituting stalking. In Case 21, the judge conceded that the stalking conviction was not based on physical evidence but entirely on the victim's perception of the conduct that she *felt* as though she was under surveillance:

The stalking count was put on the basis of, really, all of the conduct asserted by the complainant to have taken place. In particular, the fact that she felt you kept her under surveillance, you kept appearing ... I am not going through all of the conduct, but clearly, the jury accepted that that conduct took place, and that it amounted to stalking (Case 21).

Analysis of cases involving stalking charges that were abandoned by the prosecution are palpable examples where little or no evidence is led for an offence. Circumstantial evidence in these cases ultimately resulted in Crown prosecutors abandoning the stalking counts as they did not reach the standard of proof required for an offence to be made out. Case 156 indicates the issues with prosecuting stalking that involves physical interactions with no tangible evidence apart from victim testimony:

...by the time they (the police) get there. He's no longer there... Essentially this revolves around the complainant's evidence (Her Honour, Trial Proceedings, Case 154).

The qualitative content analysis of a case involving stalking-type offences convicted on four counts of the Commonwealth telecommunication offence of using a carriage service to menace, confirms that stalking behaviour is not always convicted as a criminal stalking offence. Case 158 involved hundreds of phone calls for a period of four months ranging from a reconciliatory tone, 'Let's get back together I love you', to overtly threatening, 'Your family will pay'. This case would seem to imply a straightforward example of stalking: conduct was persistent and occurred over a prolonged period of time and in the context of former intimate partners. The offender

maintained in police statements that he had not been in physical contact with the victim since the end of the relationship. The victim further stated:

It's more to do with the phone calls and the threats, I don't think 100% that he will come and hurt me or my family but there is always a chance that he will (Victim Statement to Police, Case 158).

Although this case is a single example in an insufficient sample of stalking-related cases, it is indicative of situations where anti-stalking legislation may not have been applied due to the non-physical nature of the harassing behaviours. In this case, the behaviours involved purely non-physical contact with the victim discrediting the prospect of violence to her or her family. Given the minimised potential of physical assault, the behaviour may not have been identified or raised to the level of a criminal offence of stalking. This in turn is in conflict with the purpose of anti-stalking legislation, to address conduct that may be purely psychological (POV, 1994a). This is supported by another stalking case in the analysed sample demonstrating that Commonwealth offences⁴⁵ addressed stalking behaviours involving telephone calls and text messages, whilst physical contact was covered under the stalking conviction:

Charge 7, use a carriage service to transmit indecent communication to a person under the age of 16, I note that the victim in this matter is the same victim as for Count 8, the stalking charge ... I note the stalking reflects the personal attendances at that victim, and the telephone texts are the basis of the Commonwealth charge, Charge 7 (Case 90).

Versatility of Anti-Stalking Legislation and Pliability in its Application

The content analysis found that anti-stalking legislation may be all encompassing, having secured stalking convictions based on a comprehensive range of conduct, some of which was disconnected from general and behavioural understandings of stalking and showing nominal continuity. This was linked to results demonstrating the versatility of the legislation beyond addressing stalking that is intentionally directed at a specific person. The intricacy of cases can be complicated through multiple counts of stalking, customarily accounting for either multiple victims or multiple courses of conduct, and whether each victim is required to experience the entire course of

⁴⁵ Commonwealth statutes contain criminal offences, in which the *Criminal Code Act 1995* provides telecommunication offences. Most relevantly for stalking behaviours, s 474.17 prohibits 'using a carriage service to menace, harass or cause offence.'

conduct. This flexibility allows for the application of legislation on several fronts to satisfy a course of conduct and to also achieve augmented sentences due to there being more than one victim. In these cases, it is less clear whether stalking is being charged as a determined and targeted crime, or whether the crime is constructed simply by satisfying the numerical requirements of the legislation by the number of victims or acts.

Case 17 is the clearest example of this potential misapplication of anti-stalking laws. The offender, who was convicted on five counts of stalking directed at five victims, was a client of a service that employed all of the victims. The offender made five threatening calls in short succession then attended the premises 20 minutes after and generally shouted verbal abuse at the victims. The offender left the premises once police were notified. The calls and verbal abuse committed within 35 minutes amounted to a course of conduct. Arguably however, this sequence of behaviours is limited in persistence and consolidated into one episode wanting of repetition. Moreover, in separating each individual act within the course of conduct, three of the five victims only experienced a single act. Hence, the one course of conduct committed by the offender resulted in five counts of stalking in which a course of conduct was not satisfied for each victim. Furthermore, the nature of the behaviour in this case is comparable to summary public order offences such as the use of obscene, indecent, threatening language and behaviour in public. This is rather than the resultant and undue stalking offence in the County Court of Victoria and conviction of the offender as a stalker.

Prosecuting multiple stalking counts for multiple victims was common, particularly in cases involving strangers and acquaintances. Less frequent was charging multiple counts of stalking directed at a single victim, which occurred in two cases, both involving a former intimate partner. The offender in Case 11 engaged in persistent and prolonged conduct directed at his ex-partner including repeatedly contacting her. While this case exemplifies stalking, the incidents involved could be considered a single course of conduct. Instead the offence was split into three stalking counts with two acts being used to substantiate two separate charges of stalking, despite occurring in a single night. This should clearly not have resulted in separate stalking counts, but constitute part of a single, wider, course of conduct:

...you harassed her by telephoning her 371 times between September and January. That is Count 1 on the stalking presentment ... In October you saw her at the hotel where you regularly drank together in the past, and you followed her around the hotel generally harassing her. That is Count 2 ... the last count relates to another episode of stalking when you followed [the victim] home... That is Count 5 (Case 11).

Another implication of an adaptable legislation is that stalking conduct does not require targeted behaviour directed at a specific individual, whether that is a stranger or a person known to the offender. In Case 44, the offender was convicted of multiple stalking counts in the context of persistently attempting to contact his current girlfriend. This relationship was volatile where the offender was possessive and abusive. Understandably, the family of the girlfriend forbade contact and took measures to prevent further interaction, despite their daughter wanting to continue her relationship with the offender. The offender nonetheless went to the family home on several occasions and unlawfully gained entrance. Four stalking convictions were based on the stalking for each family member, including the girlfriend. Thus, multiple counts of stalking were applied on conduct that was not specifically directed at each family member and in the case of one of the victims, was welcomed contact; albeit in the context of a precarious and potentially abusive relationship. Disregarding this, the judge found it imprudent to differentiate the stalking counts:

I see no reason to distinguish between the acts of stalking, and they pertain to each member of the family (Case 44).

A number of stalking cases highlight that Victorian anti-stalking laws do not require conduct to be specifically targeted to a particular person, and can be fulfilled despite there being no continuity of purpose to offend against the same, single individual. Stalking convictions have hence been based on targeting random victims in an opportunistic manner. In Case 94, the offender was convicted of stalking amounting to surveillance, which was not directed towards a particular victim with continuing intent. The conviction was overturned on appeal as the judge determined that stalking is to be targeted and deliberately directed:

...the taking of photographs was a random event not directed at any particular individual ... Stalking by surveillance may be made out by keeping watch over a location with the intent of observing or recording a specific victim's movements ... The jury directions permitted a finding of guilt on this broad basis (Case 94).

This is an example of anti-stalking legislation being implemented on a suspected paedophile and to most probably augment the charge on the defendant. Charge loading in similar situations where there is community pressure for a strong criminal justice response against heinous conduct is difficult to argue against given the abhorrent nature of the behaviour. Nonetheless, such cases support the contention that anti-stalking laws have the flexibility to be applied against behaviours that are indiscriminately perpetrated. Unlike the alarming case circumstances outlined above, stalking convictions have been based on behaviours described as annoyances rather than serious stalking crimes. This is evident in cases akin to nuisance callers; directed at no particular person (Case 43, 82, 102).

This suggests a conflict around the nature of criminal stalking needing to be targeted behaviour to satisfy a conviction, as seen in two acquittal cases. The stalking charge in Case 146 was not found as all the alleged behaviours were not directed at the victim himself but at his wife, which included telephone calls and letters. Alternatively, in Case 148, the offender sent harassing emails to the daughter of his intended victim and was prosecuted on two counts of stalking. One stalking count resulted in a conviction based on conduct indirectly targeting the victim through emails sent to her daughter and hence, the conviction was obtained even though the email contact was not technically directed at the victim. The second count of stalking resulted in an acquittal given that the behaviour specifically experienced by the complainant (the daughter of the victim) was not the intended target of the offender. Thus in light of these acquittal cases, there is confusion surrounding stalking as a deliberate behaviour and whether the offender's intended victim or the person actually experiencing the behaviour, is regarded as the stalking victim.

This email was a long, rambling account which relevantly accused [the victim] of lying in the previous court matters. It was addressed to her daughter and pretended to be from a third party (Case 30).⁴⁶

⁴⁶ Case 30 and Case 148 involve the same case circumstances, where Case 30 details the stalking conviction and Case 148 involves the acquitted stalking count.

Charge Loading and Plea Bargaining: Offences Arising Out of the Same Circumstances

Analysis of court files indicated that while behaviours satisfied legislative clauses, the breadth and flexibility of conduct are likely to encompass a range of other crimes. Cases infrequently comprised stalking as the only charge, where multiple offences often involved stalking behaviour doubling with other criminal acts or co-occurring within the one situation. Sentencing remarks indicate that judges were conscious of this and would explicitly note that the non-stalking offences *arouse out of the same circumstances* as the stalking conduct (Case 21, 23, 26, 29, 62, 63, 78, 86, 90, 104, 116, 126, 142). This is mainly stalking convicted alongside breaches of intervention orders, telecommunication offences, making threats and criminal damage, as these convictions were based on virtually identical conduct:

With respect to the offence of stalking, which effectively embraces a large part of these many offences... (Case 65).

In my view that the overall offending is best dealt with by the stalking which regards a continuing course of conduct (Case 95).

Conceivably, this may be considered a form of charge loading where the prosecution loads the presentment with a number of charges with the aim of obtaining the maximum number of convictions. The repercussion of over-charging the accused with duplicate offences is that the offender is convicted and sentenced several times for the same behaviour. Some judges were aware of this issue in order to avoid the offender from being doubly punished – an appealable decision. In addition, defence lawyers would also argue for concurrency in sentences when overlapping offences were present. In two cases, the judge explicitly reproached the use of the stalking offence to charge load the presentment:⁴⁷

In the plea, your counsel indicated that she had grave difficulty being satisfied that you were guilty of the [stalking] offence. You however wished to plead guilty to have all matters finalised as a further aspect of your remorse ... I deprecate the Crown for loading the presentment with this count when the

⁴⁷ These comments made by the judge were taken from trial transcripts or from plea material submitted to the court and did not represent general depositions made for sentence. Given that the analysis on court files principally comprised of sentencing remarks with only a selection of full court files accessed, the practice of charge loading may be highlighted to a greater degree in plea material or other submissions made prior to sentencing.

conduct involved ought merely be seen as part of the overall context of the offending (Case 99).

It strikes me that the trespass would cover the total criminality but that's my opinion and it may not be the Director's, so I think you should take that on board and consider that (Case 140).

Case 90 also demonstrates the versatility of anti-stalking legislation as a tool for charge loading. This case involved multiple telecommunication offences directed at various victims. Text messages and phone calls formed the basis of the Commonwealth charges, however, when combined with physical attendance at the victim's home, the behaviour constituted a course of conduct necessary for a stalking conviction. This is a regular finding across stalking cases where anti-stalking legislation is too malleable, where prosecutors use the law to address behaviours that not only forms part of other offences, but also on behaviours that sit just outside the purview of other charges. In these cases, stalking is used as a 'filler', inappropriately fitted between and in addition to other infractions instead of reflecting the true nature of the behaviour as stalking.

Case analysis further reveals that charge loading is achieved by implementing anti-stalking legislation, rather than other criminal law that is more congruent with the nature and context of the relevant conduct. Analysis demonstrates that behaviours convicted as stalking resemble other types of offending conduct such as blackmail, bomb hoaxes, nuisance calls, trespassing and public order offences. Case 70 involved the offender following the victim (a stranger to the offender) by driving closely behind her for approximately two and half kilometres. Anti-stalking legislation was plausibly applied as it represents a more significant charge than a road safety offence of 'failing to keep a sufficient distance from the vehicle in front'. In 2017/2018, the former offence carries a maximum penalty of ten years imprisonment while the latter only a \$238 fine.

A publicly reported Magistrates' Court stalking case involved similar circumstances and was overturned on appeal. In *Nadarajamoorthy v Moreton* [2003], the accused was found guilty of stalking for tailgating and driving parallel to another car for a period of three to four minutes. The complainant was a passenger in the car being

tailgated, who had prior contact with the defendant. On appeal however, the conviction was overturned as this did not amount to stalking:

At worst the appellant engaged in an episode of harassment of short duration ... Illegal as this might be (as a driving offence) it does not constitute stalking (Nadarajamoorthy v Moreton).

Few cases in this study explicitly indicated plea negotiations relating to stalking offences (Case 18, 33, 100, 140). This was expected as, in Australia, this process does not include the judge and often involves informal and private discussions between defence and prosecution lawyers. Consequently, these negotiations are often not subject to official court recording and available for scrutiny (Anleu & Mack, 2001; Flynn, 2011, 2016). Case conference material in Case 140 indicated that the accused had intended to plead guilty to burglary and not to stalking. However, the sentencing remarks suggested that a plea bargain was reached for the offender pleading to stalking only. In Case 152, material from the Directions Hearing stated that blackmail charges would be dropped if the offender pleads guilty to stalking. Other criminal laws would undoubtedly be used for charge loading and plea negotiation, however the pliability of anti-stalking legislation highlights problems with the highly discretionary nature of these laws. The breadth and inconsistent use of stalking statutes is an example of a catch-all offence. From a police and prosecutorial perspective, this may be beneficial where the law can be widely applied to various offensive behaviours and increase the severity of the charges laid against a defendant. However, from a criminological perspective, if the legislation is applied to behaviour detached and not representative of the reality of stalking, this results in net-widening through unwarranted charges and convictions where minor offending is being prosecuted as an indictable stalking offence (Austin & Krisberg, 1981; Cohen, 1985).

Context-Dependent Nature and Motivations for Stalking: Complexity of Stalking by Former Intimate Partners

Analysis confirmed that anti-stalking laws addressed an array of motivations within various relationship contexts with successful stalking convictions. In relation to domestic stalking, judges were mindful of the complexity of behaviours perpetrated by former intimate partners and recognised that motivations oscillated between reconciliatory, revengeful, abusive or simply a refusal to accept a relationship was

over (Case 116, 123). The severity of these cases was recognised, despite the offender being misguided, extremely emotional or having used stalking as a means to win back the affections of ex-partners (Case 11, 40, 46, 51, 60, 67, 71, 86, 91, 95). Sentencing judges were sensitive to the impact of victimisation regardless of the stalker self-proclaiming their benevolent intentions of reconciling with the victim. In addition, judges appeared to be acutely aware that cultural norms and courting conventions do not vindicate the offenders' conduct (Case 34):

...young men of all cultures have to get over disappointment in romance. It doesn't matter what culture or upbringing you have. You are not permitted to act like this ... What is of concern to this court is this prisoner's inability to understand how serious his actions are (Trial Proceedings, Case 133).

If it is not clear to you already, let me make it abundantly clear to you now that the law of this country does not permit one party of a marriage to treat the other as a chattel to be possessed and controlled (Case 51).

For the most part, judges appreciated the seriousness of stalking when perpetrated by former intimate partners and the risk of harm, fear and continuing nature of offending posed in this context. One judge asserted in particular that the design of anti-stalking legislation was to protect women from being stalked by former partners (Case 66). Analysis illustrates that liability in stalking was attributed to the offender's reaction or response to the end of intimate relationships (Case 12, 18, 26, 57, 61, 65, 74, 104, 129):

I think your insight into the cause of your violent and turbulent relationships with women is limited. You need to understand that women are not possessions (Case 119).

The offenders' lack of insight compounded the severity of the offence in sentencing and was linked with the prospect of recurrent stalking episodes:

I accept [the examiner's] opinion that you lack insight as to what underlies your controlling, possessive and jealous behaviour (Case 119).

...you are an angry, vengeful, self pitying and dangerous man (Case 74).

Former intimate stalkers engaged in behaviours commonplace within the dissolution of relationships that were difficult to separate from stalking behaviours under conviction. Judicial discourse suggested perceptions that the behaviours entailed in the offence, or instigating the behaviour, was the fault of the relationship breakdown

rather than placing complete responsibility on the offender. Evidence of reciprocal contact and mutual harassment by both the victim and offender was drawn on and perceived as an extension of the state of the relationship context (Case 33, 38, 46, 67, 78, 89, 114):

...the parties exchanged a large number of abusive, vulgar, intemperate and mutually hurtful SMS messages. The nature of the relationship, including its obsessive and mutually provocative character, can, I think, be gauged by those messages (Case 64).

Judges have difficulty reconciling with the actions of some victims, seen to have propagated the offenders' behaviours. This includes the victim responding to the offender and complying with requests to meet (Case 63, 117). This perception is consistent with research findings that pre-existing relationships can cloud the identification of stalking in domestic scenarios. Intrusive behaviours in these contexts may be seen as a matter of course in the disintegration of relationships and hence pose less threat (Cass & Rosay, 2012; Scott et al., 2010; Scott & Sheridan, 2011; Weller et al., 2013; Yanowitz & Yanowitz, 2012). This is in addition to presenting an unclear relationship status between parties, where suggestions of vacillating actions and desires regarding continuing a relationship, may cast doubt over whether stalking occurred (McEwan et al., 2017b).

Commonly in acrimonious and volatile domestic contexts, there were periods of reconciliation highlighted by the judges (Case 8, 25, 37, 41, 42, 95, 98, 124). Past literature has drawn attention to this, challenging the notion that stalking behaviours of a necessary degree of severity occurred in light of victims' requitals (Spitzberg & Veksler, 2007; Swanwick, 1998). Furthermore, case analysis supports research that stalking behaviours are commonplace and even normal following the end of romantic relationships (Emerson et al., 1998; Mullen et al., 2009; Spitzberg & Cupach, 2014). For example, in Case 71, a conviction of stalking was based on three angry telephone calls in one day to an ex-partner the day after the end of a relationship. This is typical practice, where unwanted contact is common and complicated in relationships, mostly involving a low frequency of acts, over a restricted period of time, committed by both men and women (De Smet et al., 2011; De Smet et al., 2012; De Smet et al., 2015). Judicial discourse also indicates that shared hostility in these relationships is ordinary and in fact explains why behaviours were committed, stopping short of excusing the

offence. A level of sympathy is afforded to the offender that they were on an ‘emotional rollercoaster’ due to the relationship. This is through judges drawing on victims’ ambivalent attitudes towards the offender and the state of their relationship, causing the offender to be confused and hence seek interaction with the victim:

[The victim] tired of the relationship and informed you that it was at an end ... You were taken by surprise by her ending of the relationship because you were of the understanding, perhaps mistakenly, that it would be a long term relationship ... you were acting in a misguided and stupid way (Case 7).

You had been in a relationship with [the victim] and said that she had disappeared off the scene and you were unclear as to whether the relationship was at an end or not when you were phoning her (Case 123).

As such, a degree of responsibility or blame at times is placed on the victim. Judges more often however, impartially emphasise that the relationship per se, and the state of affairs, instigated the offending. This is instead of placing subjective focus on either the offender or victim as being culpable (Case 2, 64, 78, 81, 114, 124, 126):

It was observed more than once in the course of the trial that you and [the victim] were curiously mismatched partners (Case 88).

The offences which you committed all took place after the breakdown of your relationship with [the victim], and the difficulties which you encountered in seeing your daughter (Case 57).

The analysis highlighted one case that comprised of stalking-related behaviours that was instead convicted as breaches of an intervention order and involved mutually harassing behaviours between the offender and victim. In a statement made by the complainant, she admitted that her relationship with the offender turned sour and became violent, during which time numerous text messages were exchanged between them, each threatening the other (Case 161). This admission may be the reason this case was charged as contravening an intervention order, in preference to a stalking count. In another case relating to discontinued stalking charges, the judge was doubtful regarding the strength of the Crown’s case. This was entirely due to the offender’s circumstances, whereby the behaviours were seen to be a ramification of terminating a relationship, rather than placing responsibility on the offender’s reaction:

...he's well educated, he's got good family support ... this relationship has clearly derailed him (Trial Proceedings, Case 154).

A handful of cases involved convictions targeting a current partner of the offender at the time of the offence. These courses of conduct were of short duration, and invariably occurred in the context of family violence. In Case 8, the offender and victim were living together at the time of the offence and after a series of threatening text messages, the offender attended the workplace of the victim. Police were notified and charged the offender with assault and false imprisonment, while the stalking offence was based on the combination of text messages and attending the victim's workplace over the course of the day. Likewise in Case 134, the offender was charged with stalking his current girlfriend by means of threatening text messages during one day and then attending her home, where he was arrested. Anti-stalking legislation was implemented in these situations notwithstanding research observations that stalking within existing relationships confuses the general notion that stalking involves imposing an unwanted relationship rather than behaving abusively in a desired relationship (McEwan et al., 2017b). While not an example of intimate partner stalking, Case 14 demonstrated that the law was also applied to a familial context, where the offender and victim in this case lived together at the time of the offence. In this example, the offender was convicted of stalking a female relative by spying on her while showering:

...she became aware that when taking a shower you were looking in through the bathroom window. To some extent the charge of stalking, which covers a whole range of conduct, needs to be seen in its particular context (Case 14).

Acquaintance-Based Stalking Cases: Unambiguous Motivations

Case analysis indicated that the motivation for stalking acquaintances, or other known persons, was usually unambiguous, especially when compared to stalking by former intimate partners. Motivations were unidimensional, with stalking being similarly committed out of revenge, resentment and desire for retribution (Case 80, 85, 142) anger or outrage (Case 5, 16, 23, 35, 50), grievances against the victim (Case 122), and using stalking as an instrument for intimidation (Case 31, 96, 121, 132, 141):

I am satisfied, beyond reasonable doubt, that your offending against both [victims] was a product of your revenge (Case 118).

Stalking spurred by romantic intentions to initiate a relationship was also distinctly recognised by sentencing judges. Unlike behaviours committed by former intimate partners, where there was a shared history between the offender and victim eliciting an equivocal assortment of motivations, courting of acquaintances was emphatically unambiguous. The defence in some of these cases argued that the victim encouraged the offender's infatuation while insinuating a wish to start a relationship. Judges disregarded these assertions in acquaintance-based contexts, placing full responsibility on the offender and did not engage in any form of victim blaming (Case 30, 48, 56, 58, 117).

...she saw that you wanted to have a relationship with her. She was married and did not want this (Case 9).

[The victim] did not indicate, encourage or participate in any conduct that could be interpreted by a rational person as wanting or being part of a relationship with [the offender] (Case 66).

This supports the just-world hypothesis (Scott et al., 2010; Scott et al., 2014a; Scott et al., 2014c), which theorises that when there is no pre-existing romantic relationship between the offender and victim, victims are perceived as less blameworthy for their stalking victimisation. By contrast, in one acquittal case it appears that the stalking charge was not found as, subsequent to the alleged stalking conduct, the defendant and the victim became a couple:

During the period April to July a series of events occurred which caused the complainant concern for her safety. These included phone calls, entry to her house, interference with her personal belongings and attendance outside her house at night ... it seems clear that after a short time a sexual relationship had been established and the prisoner and the complainant were regarded as a couple (Case 145).

This gives credence to popular film portrayal and cultural idealisms that pursuit behaviours and perseverance can prove successful in courting (Anderson & Accomando, 1999; Lippman, 2016). In another acquittal case, the complainant was a client of the defendant and would call to discuss her medical condition, but also in the hopes of initiating a romantic relationship. During the alleged course of conduct, the complainant agreed to have lunch with the defendant. Due to this consensual engagement with the defendant, the stalking charge was not established beyond reasonable doubt (Case 144). This case may signal speculations that the victim

encouraged the offender's behaviour. This is despite the fact that the victim may have agreed to lunch with the offender as a method to tackle his unwelcomed attention and to discourage the offender by clearly stating her lack of interest and to cease contact. The complainant's actions were not unprompted, as they were in direct response to the intrusion. This is also consistent with the just-world hypothesis in that stalking is an imposition of an unwanted relationship, and when the victim responds to their stalker, that is perceived as maintaining or encouraging the relationship and calls into question whether or not stalking has occurred (Gavin & Scott, 2016; Scott et al., 2014a). The implementing of anti-stalking legislation may be negated in similar situations where the victim proactively tries to remedy the perpetrator's behaviours.

Stalking of neighbours was recognised in the case analysis as a common context ranging dramatically in the severity of circumstances. Cases that were relatively minor intrusions (Case 96, 120), consisted of throwing rocks at the neighbour's windows (Case 28), or more trivially smashing eggs on driveways and leaving trails of eggs on the sides of homes (Case 3). In Case 48, the judge described this context of offending as 'inappropriate' and 'unpleasant', disconnected from pernicious stalking campaigns. On the other side of the spectrum, stalking by neighbours also comprised of prolonged harassment, that was targeted, malicious and caused substantial harm to victims (Case 52, 54, 127). Sentencing judges emphasised the severity of these neighbourhood stalking situations and like cases, as these behaviours were typically committed in public spaces and thus engendered a serious concern for community safety (Case 4, 5, 9, 107 118).

Stranger Stalking: Predatory Stalking and Social Ineptitude

The content analysis of stranger stalking cases recognised that behaviours were typically of brief duration. Despite the brevity of the courses of conduct, anti-stalking legislation is applied to offenders seen to present a risk to community safety. Stalking by strangers is found to have an unknown or sinister aspect that explains prompt police intervention and rationale for prosecution (Kelly & Humphreys, 2000; Mullen et al., 2001b; Sheridan & Davies, 2001a). The overtly predatory stalking cases were judged with the upmost seriousness, associating the stalking with sexual deviance and as a means to enact sex offences on victims (Case 45, 94, 137):

Your sole object was sexual gratification for yourself at the expense of your victims (Case 128).

You continued to offend throughout this lengthy period in a predatory fashion and at times deliberately conducted yourself in an intimidating and sadistic manner, clearly with the intent to humiliate and terrify the victims (Case 109).

The gravity of these stalking cases was further spotlighted through the convictions of sex offences including rape and molestation together with the stalking counts (Case 49, 54):

He then approached the victim who was in her kitchen and told her he wanted to make love to her. She told him that she didn't want to and asked him to leave which he refused to do (Case 111).

Furthermore, the significance and seriousness of these cases highlighted stalking behaviours as an instrument to groom young victims (Case 32, 45, 84, 120):

The success you achieved in fulfilling the selfish and evil objects of your offending conduct and the harm you perpetrated upon your victims should, in my opinion, stand as stark warnings to all parents and guardians of teenage users of internet social media (Case 128).

Your interest or obsession grew and came to embrace almost every aspect of the life of the young boy, including his day to day life at home and at school (Case 105).

Case analysis indicated that in other cases, the possibility of behaviours escalating into sexual assault was a genuine concern. In Case 39, the perpetrator followed three teenage girls, who were strangers, from a tram stop over a period of 30 to 60 minutes. A latent sexual motivation for this offending was assessed and is consistent across stalking cases involving strangers (Case 87, 94, 103, 105). Sentencing judges expressly noted that this type of conduct was of a paramount issue for community protection:

The severity of the conduct was linked to the concept of community protection: as I have said, that of a young man who, when drunk, presents a very grave risk to women in their homes (Case 56).

Conversely, some cases of stalking by strangers also generated a sympathetic response from judges in view of offenders' ineptitude in forming relationships and their lack of tact in navigating social interactions. These cases were constructed less in terms of sexualised offending but rather the offender being lonely or clumsy (Case 27,

75, 100, 133, 135). This incompetence was attributed to the life circumstances of the offender or an underlying limited intellectual capacity:

Severe public nuisance behaviours and 'corrupted courtship' behaviours which have occurred in the context of [the offender's] loss of family and social support, limited social skills and capacity to live independently in the community and a hostile world view (Case 27).

...you were quite depressed and lonely as a result of that separation, and this behaviour is a result of trying to call for help ... You have been unable to keep employment and you live a very sorry and sad, lonely life; a depressing life (Case 53).

...it was not particularly unusual for you to form relationships with younger people, as you seemed to get on better with them due to your own intellectual difficulties ... [The offender] himself has had limited experience with girls. He has never had a significant or serious relationship with the opposite sex (Case 90).

While stalking by strangers tended to be of shorter duration, there were exceptions to this. In Case 62, stalking conduct persisted for almost two years and involved sending letters. There was a lack of physical evidence, which resulted in the offender's identity being undetected until a fingerprint analysis matched police records of the offender's past criminal history. In another case, the stalking behaviours endured for almost five years despite the victim experiencing significant fear and trepidation and notifying police on numerous occasions. Moreover, the offender was in breach of intervention orders while the victim collected a number of evidential materials including letters and cards. The persistence of stalking in this case, despite criminal justice intervention, is indicative of the supposedly well-intentioned motivations of the offender to begin a romantic relationship and perceiving the victim was playing 'hard to get':

When asked as to why he had continued to contact the victim after she had specifically asked him not to, [the offender] stated that she had been playing a game with him and that he had not perceived her requests to be genuine (Case 113).

Criminal Stalkers: Intent and Mental Circumstances

The content analysis demonstrated that offenders convicted of stalking come from all walks of life. Similar to general criminal populations, many offenders had unstable and disruptive childhoods characterised by physical and sexual violence (Case 7, 15,

32, 40, 66, 78, 102) and experienced limited intellectual capacity or low educational status (Case 1, 3, 20, 37, 54, 77, 90, 93, 110, 122). Some stalking offenders were also highly intelligent (Case 51, 82), came from supportive families (Case 76, 78, 90, 99, 107, 128) or were themselves good parents (Case 16, 62, 120). Offenders were also described as successful business owners (Case 29, 110) or had good employment prospects or were productive members of society (Case 30, 34, 91, 126).

The intent of the offender in committing stalking was predominantly discussed in line with motivations such as being driven by revenge, anger, resentment and reconciliation. Nonetheless, judges did note the intent of the offender as expressed under legislation when it was plain the offender had the specific intention to cause harm to the victim, or when the offender acknowledged the inappropriateness of their actions (Case 45, 100):

...you acknowledged the wrongfulness and stupidity of what you did, which you attributed to your anger and upset because of the break-up (Case 2).

You were there interviewed and admitted knowing that your attendance at her house was likely to cause [the victim] to be fearful (Case 12).

Alternatively, case analysis showed that when judges did not directly comment on the motivations for stalking as a whole, remarks emphasised the characteristics of the conduct that insinuated intent. Conduct was accordingly described as intimidating, violent, threatening, menacing, malicious and deliberate. Judges often noted that given the harmfulness of the conduct, offenders ‘must’ have been aware of the deleterious impact to their victims. This was also acknowledged in cases when judges accepted that the offender intended no malice. Otherwise, offenders were seen to knowingly disregarded the consequences of their actions or had knowledge about the wrongfulness of their behaviour, if not illegality, even if they could not fully explain their actions (Case 24, 43, 58, 67, 75, 76, 94, 96, 104, 131):

You must have known that your conduct would, at least, unnerve them, if not cause them considerable mental distress (Case 57).

You must have understood the probable consequences of your actions. The victims of the crimes have suffered considerably (Case 54).

Harmful intent was established most particularly in domestic stalking cases when conduct was in breach of intervention orders or committed regardless of police warnings and interviews (Case 4, 36, 50, 123 131). This was in addition to statements made to the court and through victim impact statements that the victim informed the offender that behaviour was unwelcomed (Case 117).

You had been served and you breached it 32 times by sending various text messages from your mobile phone (Case 116).

You treated the order with contempt, despite the police explaining same to you (Case 91).

Judges validated the two-pronged approach of anti-stalking legislation in addressing stalking behaviours that were intending to cause harm and behaviours with no malicious intent. This was in particular to the Crown only needing to prove the offender appreciated the likely effect of conduct (Case 6, 58, 106, 120):

It may be that many stalkers falsely believe that they have a relationship with the person they pursue, even though they may have never met or spoken to the victim. A provision which required proof of a subjective intention to cause harm to the victim would not apply to an alleged stalker who obsessively pursued the victim on the basis of a false belief that these attentions were welcome (Case 113).

Sentencing remarks seldom included details on whether the offender's mental circumstances would have influenced forming necessary intent, namely whether the offender 'ought to have understood' the resulting harm. Repetitive and persistent stalking regarded as especially serious was connected to the pathology of the offender. In these cases, judges' attributed perseverance with obsessiveness. As highlighted in the case examples, the offender or the stalking offences was characterised as erratic, irrational or uncontrollable (Case 30, 34, 68). This corresponds to stereotypical portrayals of stalking as committed by obsessive, mentally disturbed and unhinged individuals (Mullen et al., 2001b):

On any view, they all demonstrate that you were a man out of control and irrational (Case 37).

Your behaviour was irrational, driven by misplaced grievance, oppressive and persistent, and no doubt frightening ... The likely apparent mentally disturbed nature of your conduct would have made such feelings of vulnerability the worse (Case 127).

In contrast, the seriousness of a proportion of cases was attributed to the premeditated nature of the conduct and the cunningness of the offender. Stalking in these cases was committed purposefully and with calculation rather than described as obsessive or compulsive (Case 19, 38, 109, 110, 124, 126):

This was calculated and planned offending ... This was not impulsive, it was considered and you took steps to ensure that your identity was difficult to discover (Case 30).

...you were very adept at adapting it for use in surveillance. The electronic surveillance employed by you in your offending behaviour showed a significant degree of sophistication and pre-planning (Case 51).

Judges commented on mental illnesses exhibited by offenders as expected for sentencing determinations. Conventionally, mental illness that impaired offenders to make reasoned judgements was the main consideration for sentencing under the *Verdins* principles (*R v Verdins* (2007)). While it was recognised that the offender was in a disturbed psychological state when committing stalking, mental impairment was rarely raised as a defence. In Case 127, the judges noted that due to the offender's acquired brain injury, his capacity to appreciate the wrongfulness of his conduct was significantly impaired. Drawing on mental health assessments, the judge found this was on the threshold of a mental impairment defence. In another case, one offender was found not guilty by reason of mental impairment due to a long, established history of schizophrenia and thus the offender could not form necessary intent as required under anti-stalking legislation (Case 149). Typically, mental impairment influenced sentencing determination to the extent that it reduced the moral culpability of offenders rather than providing a defence (Case 2, 83, 90, 124):

I have no reason to doubt that your illness was a slow, escalating, delusional disorder combined with depressive aspects (Case 107).

I believe that [the offender] was acutely psychotic at the time of the offence. [The victim] was incorporated in to his delusion system ... I believe that on balance [the offender] was aware of the nature of his actions and thus would not meet criteria in aid for a defence of mental impairment. His illness, however, impaired his ability to appreciate the wrongfulness of his actions (Case 9).

Furthermore, judges drew connections between an offender's mental illness and the impetus for the stalking behaviours:

This really all commenced as a result of an illness that you suffered. You then pursued what you saw as a conspiracy of all those involved (Case 107).

...it seems clear that you became obsessed by your victim and fixed on the idea that she was not who she said she was (Case 76).

The influence of and impairment due to alcohol and drug abuse was frequently observed in sentencing remarks; both in regards to being a sustained mental health issue of offenders and in precipitating the stalking offence. This is especially associated with stalking behaviours escalating and becoming physically violent. A long history of alcohol and substance abuse was primarily emphasised in the context of offenders targeting former intimate partners where there was an established record of substance abuse leading to threatening outbursts and domestic violence (Case 18, 23, 26, 34, 35, 39, 40, 51, 68, 116). Substance misuse was accordingly a key sentencing factor for judges, and is consistent with past research correlating substance abuse disorders with aggressiveness in stalkers (Nijdam-Jones et al., 2018; Rosenfeld & Harmon, 2002; Rosenfeld, 2004).

The list of convictions generally spells out the problem that you are wrestling with, that is alcohol and drug abuse (Case 97).

...particularly when you used alcohol to excess you were not able to control yourself in terms of your violent outbursts and your anger towards the complainant (Case 37).

Grandiosity, often connected with narcissistic personalities and clinical disorders, was a critical factor for sentencing judges, which was highlighted through the severity of the crime and the hefty penalty imposed in these stalking cases. Judges related superior self-perceptions of the offender with the anger and resentment they held against their victims. The offender was seen to embellish their behaviour with fantastical narratives and self-absorbed ideas of themselves (Case 31, 40, 44, 61, 80). This contributed to significant terms of imprisonment as judges regarded this as a notable risk for reoffending and the continuation of stalking-type behaviour and the perpetration of other offences:

I would be inclined to diagnose [the offender] as suffering from a personality disorder where narcissistic features are prominent. He's been unable to let go of his failed marriage... (Case 74).

What can be deduced or distilled from that material is that you have a personality or your personality is one that blames others for your problems. You have a distorted sense of entitlement (Case 30).

Impact of Stalking and Characterisations of Victims

Greater empathy was expressed towards victims who were young, elderly or seen as otherwise vulnerable. Additional victim characteristics were detailed in these cases illustrating the defencelessness of victims, specifically those who were young, innocent, small, children and teenagers (Case 14, 19, 20, 32, 39, 44, 45, 72, 78, 84, 94, 99, 103, 120) or elderly and diminutive (Case 54, 96). Such attributes particularly featured in stalking cases involving harmful sexual behaviour, where cases were underlined as sex offences rather than stalking. In cases where the sentencing remarks emphasised the impact of the offences on the victim, the stalking behaviour was considered more serious and attracted a higher penalty. This was particularly highlighted through judges directly and extensively quoting from Victim Impact Statements, indicating a greater appreciation for the ramifications of the conduct by drawing on victims' own words. There is no evidence of victim-blaming in these cases, in which judges stressed the fear and trauma experienced by victims (Case 18, 23, 24, 58, 109, 110, 118), requiring professional psychological support (Case 30), taking extreme measures to protect themselves such as changing telephone numbers and relocating (Case 78, 85, 127), and in their losing trust in relationships and feelings of social isolation (Case 18, 109, 113, 117, 119):

What she says is compelling. I have no doubt she speaks with immense sadness when she says that you have ruined her life ... 'never feel safe again knowing he is free to find me' (Case 30).

When these statements were not cited directly, judicial discourse would note the impact on the victim for the court record, largely in reference to the victim experiencing fear for themselves and their family (Case 4, 5, 9, 12, 17, 34, 35, 36, 37, 41, 46, 52, 93, 103, 116, 122). Mental harm was considered in terms of anxiety (Case 29, 77), ongoing psychological problems including panic attacks (Case 83, 85, 124) and sleeping issues such as insomnia and nightmares (Case 26, 31, 77, 80, 81). Judges referred to the offending affecting victims' employment and financial losses (Case 77, 80, 129), impact on other personal relationships (Case 31, 62, 128, 129) and feelings of helplessness, embarrassment and humiliation (Case 66, 77, 81, 126). The

deleterious impact of stalking identified and described in stalking cases adheres to the comprehensive research that has investigated the far-reaching repercussions that stalking may have on all facets of a victim's life (Cox & Speziale, 2009; Dressing et al., 2005; Pathé & Mullen, 1997). Judges importantly recognised the function of anti-stalking legislation was to respond to the psychological impact of stalking behaviours distinguishable from traditional crimes:

The psychological harm in such cases can be devastating, even without actual physical violence. In this case your text messages were offensive and frightening and were intended to be so. You were indeed following [the victim] and watching her movements and you wanted her to be well aware of your surveillance and to be frightened by that fact (Case 129).

Secondary impacts of stalking were attentively recognised by sentencing judges noting that the harm of stalking extended beyond the specifically targeted victim. Judges acutely sympathised with children who suffered emotional trauma from experiencing and witnessing behaviours themselves and also absorbing the distress inflicted on their family, most often by their own father (Case 1, 12, 18, 104), together with extended members of the family (Case 24, 28, 91, 98):

...it seems to me that there must be an understanding that a love for a child or a desire to have contact with a child cannot justify threats and harm to the child's other parent. That is deleterious to the child. It is not a justifiable means of expressing anger about the conduct of the other parent (Case 26).

Nonetheless, it was difficult to distinguish the particulars of the stalking impact from the whole, wider context in which the stalking conduct occurred. Specifically in relation to stalking within domestically violent relationships, the physical violence and assault inflicted on victims was detailed more extensively than stalking behaviours per se (Case 2, 30, 33, 119):

She was throughout this incident scared for her life. She suffered a number of injuries as a result of your actions (Case 117).

Judges underlined the challenges in disentangling the impact of stalking from other offences and in matters that had no relevance to the offences being sentenced (Case 61, 119):

I have attempted to disentangle the consequences of the house fire from the consequences of the stalking. This has been a difficult exercise because the [victims] see all matters as intertwined (Case 15).

Case analysis supports previous research suggesting that some stalkers use the court system to further victimise and stalk victims (Miller & Smolter, 2011; Pathé et al., 2004; Taylor-Dunn et al., 2017). In this sample, offenders placed victims in invidious positions of being cross-examined, which judges described as highly emotive, intemperate and ‘filled with rage’ (Case 56, 113). Other times, the offender would interject during court proceedings and direct verbal abuse at the victim (Case 51). Additionally, in Case 112, the offender applied for an intervention order against the victim to isolate her from engaging with family and friends under the ultimatum that the offender would revoke his order if she agreed to revoke hers:

The same policeman subsequently returned to her house and served her with an intervention order taken out by the applicant against her, prohibiting her from contacting any of her friends, either directly or by phone, from contacting her ex-husband or her children and from going to work (Case 112).

The language used by judges to describe the consequences of stalking in some cases were understated and disconnected from the requisite fear and mental harm component expressed under anti-stalking legislation. Such descriptions of the victim impact were arguably accurate, as the nature of the stalking behaviours in these cases was relatively minor or did not rise to the level that would reasonably be expected to cause harm, as stipulated in Victorian law. Victims were identified as being frustrated, upset, concerned, worried, disconcerted and unnerved as a result of victimisation (Case 21, 43, 53, 56, 73):

She was a bit scared of him ... and starting to feel like she couldn't live her life normally (Case 90).

In addition, judges made special note of victims of ex-partners who approached the offending with poise and composure and were noticeably not vindictive, even compassionate towards the offender (Case 8, 12, 51, 55). These cases were representative of a female targeted by a male ex-partner. The judge gave solace in these situations particularly when the offender and victim shared children:

You are fortunate that [the victim] has been so forgiving and courageous enough to help you by seeking to maintain the relationship you had with her and

the children. I note that she took the children to visit you whilst you were in prison (Case 25).

Sentencing Serious Stalking Cases: Physical Conduct and Continuing Risk of Offending

Serious stalking cases prioritised the physical harm experienced by victims when stalking counts were coupled with assault-related offences. In cases where assault was present, there was greater focus on the physical injury sustained by victims given that it was less ambiguous, usually entailing hospital and medical documents. Judges made long accounts of the personal injury and wounds suffered by victims, especially when weapons were involved, and there was concern for future physical violence and damage to property (Case 33, 37, 41, 52, 58, 64, 68, 92, 95, 106, 107, 119).

...the complainant was found to have suffered a discoid red bruise with an approximate diameter of two centimetres on the underside of the left side of her jaw, which was very tender and slightly swollen and extended around the contour of the jaw bone a short distance onto the cheek... (Case 51).

The severity of stalking convictions was also attributed to cases that accompanied other offences of a physically violent nature and thus more often attracted custodial sentences. This mainly included convictions for assault or causing injury. These additional convictions were deemed particularly serious in the context of domestic relationships where the possibility of violence was clearly heightened for judges (Case 2, 34, 37, 46, 104, 112).

You also said: 'If I'm gonna be doing 18 months jail then I might as well do 24 years for something that is worth it' (Case 25).

This finding conforms to research indicating that stalking situations involving physical elements takes precedence and are perceived as more serious than cases that are purely psychological (Korkodeilou, 2016; Logan & Walker, 2010; Pearce & Easteal, 1999). In a similar vein, the seriousness of stalking in the cases analysed was also based on the public-ness of the conduct. Cases that warranted heftier sentences were those that were committed in public and communal areas, particularly when involving strangers and acquaintances (Case 39, 72, 82, 94, 106).

...truly a terrifying experience to any right-thinking individual, particularly the customers and proprietors of that premises (Case 31).

This was perhaps, equally as humiliating for the elderly resident as it was for the complainant (Case 13).

This issue was extended to cases of domestic stalking, where behaviours encroached into the public space rather than being maintained in the private sphere (Case 126). In such cases, the impact of stalking was not restricted to the victim but the wider community:

...you rang for virtually the whole of the afternoon so as to disrupt the work of that office. That not only undoubtedly caused to your victim enormous emotional distress and difficulty, but it disrupted her employer's business operations (Case 65).

Previous offending and continuing stalking behaviour in domestic violence cases was considered a key sentencing issue as it represented a widespread social concern relevant to the prevalence and harm caused by domestic violence in the community. Prior criminal records were considered as risk factors for the offender reoffending and reengaging the victim and hence directly pertinent in the judge determining the length of sentencing outcomes. Criminal histories also strengthened the grounds of criminal responsibility that the offender had knowledge around the impact of their behaviour given past violence perpetrated and convicted (Case 10, 25, 29, 30, 34, 40, 50, 61, 67, 81, 89):

Your history of domestic violence and disregard for court orders is very troubling ... you have had a number of girlfriends and that your relationships are characterised by domestic violence and breaches of intervention orders (Case 119).

The aggravating aspect of that behaviour is that it did involve a person with whom you had had a long-term intimate relationship, who effectively found her trust in you displaced as a result of that, and it is that breach of trust that I take into account as an aggravating aspect (Case 33).

General deterrence in such cases was prominent in sentencing considerations, and considered necessary in order to deter men in general society from mistreating and abusing women when relationships breakdown, while also calling attention to the rights of women in their terminating relationships without fear of harassment. The refusal to accept the dissolution of relationships was seen as all too common in the community, most particularly for offenders who disregard intervention orders (Case 24, 30, 33, 38, 51, 68, 78, 117):

People must be permitted the autonomy to end relationships (Case 26).

In a civilised society, a person should be able to move on with their life after a relationship has finished, without the fear of reprisal from an estranged partner (Case 12).

Nonetheless, offenders were credited when evidence was submitted that they now accepted that the relationship with the victim was terminated. This was an important reason for reduced sentence as the judge welcomed this undertaking and assigned it as a mitigating factor and recognition that the offender was taking responsibility for conduct, and hence also reduced the risk for reoffending (Case 12, 18, 29, 46, 50, 89, 104, 116):

With the relationship with [the victim] finished and a new relationship blossoming there is a low likelihood of you re-offending in the same way against [the victim] (Case 11).

For stalking offences committed by strangers and acquaintances, the court was also seen to require sending a strong message that harassment of women in the community would not be tolerated (Case 1, 24, 32, 66, 75, 77, 96, 102, 108, 109). General deterrence was acknowledged as a crucial sentencing factor in these cases, aiming to deter like-minded men from persistently harassing women:

Those who are minded to stalk others and commit violent offences against vulnerable women must be made aware that such conduct will not be tolerated by the courts, and that the courts will impose sentences that deter others (Case 117).

As might be expected, prior sex offences were regarded as an aggravating factor for sentencing, especially in the context of stranger- and acquaintance-based stalking. Judges recognised that these prior offences were intrinsically linked to behaviours exhibited in the current case, while also indicating how stalking could have escalated. Ultimately, offenders in these cases were adjudicated as being a grave risk to society (Case 45, 94, 105, 108, 109). However, there was also an inclination to concede a need to protect the community in cases of stranger stalking despite there being no distinct predatory intent, but rather based on the social ineptitude of stalkers, the possibility of further intrusions to the general public was present (Case 39, 56, 94, 103):

Your offending was antisocial and extremely ugly and the community also demands that this type of behaviour ought to be denounced (Case 32).

Conclusion

Criminal stalking as a ‘course’ of conduct is malleable to the extent that it addresses archetypical stalking behaviours, yet is flexibly formulated so as to also fit around behaviours with minimal continuity and that are arguably inconsistent with the concept of stalking. The number of cases with short courses of conduct is striking as it runs counter to the definition of stalking being a persistent behaviour. Brevity of conduct may nevertheless signal escalating behaviours where stalking was identified and addressed after the fact of another, usually more physically violent offence. Otherwise, anti-stalking legislation may be used as preventive measure to circumvent possible escalation. Anti-stalking has been discretionally used and manipulated for charge loading and prosecutorial plea-bargaining in addition to policing legitimate stalking behaviour. Thus, there is contention between anti-stalking legislation being necessarily and appropriately broad in order to effectively address serious stalking in the community, and exceedingly pliable in which non-stalking and minor offences are captured as stalking crimes. The content analysis in this chapter provides evidence for both of these cases.

Anti-stalking legislation is addressing stalking within various relationship contexts. Stalking by former intimate partners represents the most ambiguous context where motivations are inconsistent and committed in turbulent circumstances, most of which were characterised by prior or concurrent family violence. In contrast, judges perceived stalking by acquaintances to have clearer and fixed motivations. Stalking committed by strangers was divided between stalking with predatory intent and cases where offenders tended to be socially incompetent. The seriousness of offenders’ conduct in these latter cases appeared to be largely based on what could have happened if the stalking continued or escalated. Sentencing judges comprehensively acknowledged the psychological harm typical in stalking victimisation. Nonetheless, physical harm, or the risk of physical violence, was a priority for sentencing. This is in addition to judges adeptly considering the severity of stalking behaviours, especially when seen as a continuation of domestic abuse or behaviours posing a risk to community safety. The following chapter will further discuss the findings from this

qualitative content analysis in combination with the quantitative examination of stalking cases outlined in the previous chapter. By drawing on past stalking research, the overall findings and conclusions of this study will be discussed.

Chapter Eight

Applications of Broad Anti-Stalking Legislation on the Ambiguous Crime of Stalking: Discussion, Implications and Conclusions

Introduction

This chapter centres on how anti-stalking legislation is implemented in Victoria and how the crime of stalking aligns with the phenomenon of stalking behaviour. Findings from the content analyses conducted on stalking offences heard in the County Court of Victoria are merged with past research, particularly drawing on behavioural research from a criminological perspective. This final chapter outlines four key points of discussion that address the research aims and questions of this thesis. Firstly, that Victorian anti-stalking law is capturing stalking behaviour, in which discussion will focus on how legislation is effectively addressing the heterogeneity of stalking behaviours and the variety of motivations and contexts in which these offences can occur. Secondly, that the legislation is also being applied to behaviours that are low-level, minor and are not congruent with the definition of stalking derived from behavioural research. Thirdly, it is argued that there is tension between the proper implementation of these laws to prevent the possible escalation of stalking behaviours versus a net-widening effect that inappropriately draw people into the criminal justice system as stalkers. Fourthly, that the synthesis of ambiguous stalking behaviours and the breadth of anti-stalking legislation allows flexible, versatile and highly discretionary use of these laws, which has both positive and negative consequences for the application of the law. This chapter provides recommendations for law reform and implications of this research. The contribution and value of this study's methodological design to criminological research is summarised, before a final summary of key research findings.

Anti-Stalking Legislation is Addressing Stalking: The Intersection of Criminal Stalking Conduct and Stalking Behaviour

Anti-stalking legislation is increasingly being implemented in Victoria, with the steady growth of stalking offences recorded by Victoria Police reflecting the increasing convictions for stalking both in the County and Magistrates' Court

(2012).⁴⁸ Convictions in higher courts commonly result in lengthy terms of imprisonment of 12 months or longer; a trend that has increased since the abolition of suspended sentences in 2014 (SAC, 2017b). The profiles of offenders and victims coming before the courts in stalking cases by and large align with descriptions of stalking that have been provided in research studies. Male offenders represent the vast majority of stalkers and they typically target female victims (ABS, 2017; Purcell et al., 2002; Spitzberg & Cupach, 2007). Offenders entering court are also representative of perpetrator demographics in stalking surveys and clinical studies – male, mid-30s, diverse criminal histories and backgrounds. Stalkers with psychotic disorders are no more likely to come to the attention of courts and for the most part, are not described alongside stereotypes of deranged and unhinged stalkers by sentencing judges, as popularly depicted in films and media. While significant mental disorders were infrequent in the court sample, in line with clinical samples described in research, most offenders have mental health issues, with a high prevalence of substance abuse (Dressing et al., 2011; Mohandie et al., 2006; Mullen et al., 1999; Nijdam-Jones et al., 2018; Rosenfeld & Harmon, 2002). Therefore, anti-stalking legislation is resulting in successful convictions of offenders that fit the key demographics of stalkers commonly encountered in clinical research.

The interplay between mental illness and motivations for committing intrusive acts is well recognised in the court system, in which the extensive gamut of motives has been accounted for by judges, often observed to be incited by mental health issues. As in the community, offenders stalk out of anger, revenge, vindictiveness, jealousy, control, abandonment issues and a desire to control the victim or to initiate romantic relationships (Dennison & Stewart, 2006; Dressing et al., 2005; Galeazzi et al., 2009; Mullen & Pathé, 1994). The question of offender intent is not an issue raised by the Victorian judiciary, as the persistent and menacing nature of the conduct establishes that the offender ought to have knowledge of the likely impact to the victim. Thus, the duality of the objective and subjective intent clauses in anti-stalking legislation is capturing both malicious and non-malicious intents for engaging in stalking conduct (Groves, 1997; Wiener, 2001b), as intended by the Parliament of Victoria (1994a).

⁴⁸ See Chapter Four and Figures 4.1 and 4.2.

The legislation is effectively addressing stalking in various relationship contexts within which this behaviour occurs, where offenders in both the court sample and community studies predominantly stalk someone they know (ABS, 2017; Spitzberg & Cupach, 2007). Consistent with some stalking scholarship (Baum et al., 2009; Jordan et al., 2007; Pathé & Mullen, 1997), offenders in the court sample primarily victimised an acquaintance, followed by a former intimate partner, and lastly a stranger. When separating specific relationships in offences, male perpetrators stalking a female former intimate partner becomes the largest category of offenders convicted, which is consistent with community surveys (ABS, 2017) and meta-analysis of previous stalking studies (Spitzberg et al., 2010). It is significant that anti-stalking legislation is capturing these types of stalking cases, as they represent the most violent, dangerous, threatening and harmful to the victim (Adams, 2017; McEwan et al., 2007b; McEwan et al., 2012; Sheridan & Roberts, 2011; Thomas et al., 2008).

Accordingly, the law is pertinently implemented on stalking cases seen as a continuation of domestic violence and as a precursor to serious violence, especially when the offender misuses alcohol and drugs. This is an improvement in the way the law has been applied since its introduction, where magistrates identified strangers as the most common typology of offenders entering courts (Dussuyer, 2000). Community education, highly publicised media cases and lobbying by family violence groups may have helped change perceptions around the seriousness of stalking by ex-partners since the legislation took effect in 1995. Police and prosecutors too have become acquainted with the law and the need to target their response against former intimate partners who refuse to concede the end of relationships.

Judges in particular are aware of the seriousness of stalking within domestic cases whilst also recognising the precarious state of these relationships. Judges frequently outline the mixed emotions of the offender, ambivalent attitudes of the victim, and mutual hostility between offenders and victims in these stalking cases. This is consistent with research outlining the complexity of unwanted pursuit or stalking-type behaviours in the context of initiating and dissolving intimate relationships (Crocker, 2008; De Smet et al., 2015; Granegia & Matos, 2018; Langhinrichsen-Rohling et al.,

2012; Senkans et al., 2017; Sinclair & Frieze, 2000). There is some support for judges adhering to the just-world hypothesis (Lerner & Simmons, 1966; Scott et al., 2014a) in which victims are perceived to share some responsibility for their own victimisation as a consequence of their behaviour during the relationship with the offender, and thus less culpability is attributed to the stalker. Moreover, judges recognise offences in domestic cases are intertwined with periods of reconciliation and motivations of the offender involving confusion over the status of their relationship. However, by and large case analysis demonstrates that judges are proficient in recognising the risk to victims and the likely continuation and escalation posed by stalking behaviours by former partners; especially in relationships that were previously characterised by family violence and breaches of intervention orders. This contradicts perception studies indicating that stalking by former partners is perceived as the least serious stalking context (Korkodeilou, 2016; Scott et al., 2015; Sheridan et al., 2016b; Weller et al., 2013).

Offences involving male victims are identified in the court sample analysed in this thesis, where stalking in this context was mainly perpetrated by acquaintances with malicious motivations that involve clients, colleagues and former friends, and aligns with previous behavioural research (ABS, 2017; Dressing et al., 2005; Purcell et al., 2002). Acquaintance-based stalking represented the most likely context to be given custodial sentences, due to these cases involving uncomplicated motivations based on intimidation and control, and which also tended to endure for longer periods compared to other relationship types. This supports previous research that men especially are hesitant to identify their victimisation (Ménard & Cox, 2016; Owens, 2017; Podaná & Imříšková, 2016) and thus behaviours in this context persist for longer durations.

Analysis of stalking cases indicated that male stalkers targeting female acquaintances predominantly wanted to initiate a romantic relationship. Prolonged stalking of females in these circumstances sustain cultural acceptance that stalking-type behaviours are entangled in the pursuit of a relationship (Spitzberg & Cupach, 2014), and thus not warranting police involvement. Significantly, anti-stalking legislation may be belatedly utilised – as is the protection and redress for victims – given that the police, prosecutors, and victims themselves may be slower to respond to these forms

of victimisation. In the current study, judges prudently disparaged the defence that stalking behaviours represented justifiable courting and depreciated acquaintances targeting victims out of misguided attempts to established relationships. Thus, anti-stalking legislation is applied to offenders engaged in behaviours perceived as valid, culturally approved courting practices when targeting victims where no prior romantic relationship existed or where approaches were unwelcomed.

Conversely, strangers were prosecuted for shorter stalking conduct and these cases were dichotomised between those described as predatory stalkers and incompetent suitors, as labelled according to the classification system designed by Mullen and colleagues (1999). This was anticipated, as stranger stalking is more likely to elicit moral panic around ‘stranger-danger’ misconceptions (Kelly & Humphreys, 2000; Mullen et al., 2001b). These stalkers are hence perceived to represent the highest danger for victims and the general public, in need of a swift criminal justice response (Sheridan et al., 2016b; Weller et al., 2013). In light of this inaccurate perception – given that stalking violence has been repeatedly shown to be largely committed by former intimate partners (McEwan et al., 2012; Rosenfeld, 2004; Sheridan & Roberts, 2011) – it is favourable that anti-stalking legislation was found to be used less often on strangers by prosecutors. Further still, these cases, representing serious indictable offences, were least likely to result in immediate terms of imprisonment. This confirms that while stranger stalking can be extremely predatory and injurious, most are not violent or do not reach the level of seriousness requiring a prison sentence.

Importantly, anti-stalking legislation is capturing highly persistent conduct fundamental to identifying the phenomenon for community understanding and perception standards (Dennison & Thomson, 2000; Phillips et al., 2001; Scott & Sheridan, 2011; Scott et al., 2014c); for behavioural and clinical definitions (Mullen et al., 1999; Sheridan & Davies, 2001c); and for its criminalisation (POV, 1994a, 1994c; Scott et al., 2014b). Nearly 60% of stalking courses of conduct were consistent with this conceptualisation of stalking as persistent, prolonged, and involving excessive contact and other forms of unwanted intrusion, as described by sentencing judges. The course of conduct clause encapsulating necessary repetition of acts within Victorian anti-stalking legislation appears to involve a low evidential burden for the prosecution to produce and establish a stalking case. This challenges claims that

stalking statutes are burdensome to use and to satisfy evidence of numerous acts, compared to more traditional offences where evidence of a single criminal incident is sufficient (Brady & Nobles, 2017; Dank, 2017; Wells, 2001).

As found in the court files, anti-stalking legislation is addressing the full ambit of stalking behaviours in relation to types of conduct and severity that is typically experienced by victims. Stalking convictions were based on unwelcomed contact, loitering, surveillance, and cyberstalking activities including disseminating damaging information and photos of the victim on the Internet. This is together with convictions for more insidious behaviours such as silent phone calls and stalkers using the court system to further intimidate their victims (Pathé et al., 2004). As such, critiques of stalking laws being onerous to prove and to prosecute perpetrators, requiring multiple acts to satisfy convictions, was not found within court files. Instead, stalking convictions have been based on courses of conduct involving the minimum number of required acts. Nonetheless, challenges in implementing anti-stalking legislation may still be levelled at the policing stage of cases, where there are recognised deficiencies with police inaction in gathering evidence and stalking not being considered a priority (HMIC & HMCPSI, 2017; Taylor-Dunn et al., 2017; Van der Aa & Groenen, 2011).

Anti-stalking legislation acknowledges that impact to stalking victims is largely that of psychological or emotional harm, in which sentencing judges explicitly note the mental trauma experienced by victims. This harm is echoed in victim surveys highlighting the effect that stalking has had on the lives of stalking victims (Cox & Speziale, 2009; Pathé & Mullen, 1997). Stalking offences were found to have caused victims fear, anxiety, panic attacks, sleep issues and social isolation, amongst others. Actual or potential victim impact within Victorian anti-stalking legislation allows for harm beyond specifically requiring the victim to be fearful. Apprehension and mental harm in the victim also establishes a criminal offence of stalking, and thus arguments that fear should not be a factor qualifying victimhood under stalking statutes is not a relevant issue for the Victorian example (Owens, 2016; Podaná & Imříšková, 2016; Reyns & Englebrecht, 2010). Stalking convictions in Victoria have been satisfied based on conduct where victims only became aware of their stalking after the fact, once informed by police. The extent of impact was also infrequently questioned in stalking cases as to whether conduct *would* reasonably cause harm, as proscribed by

legislation. Given this, Victorian legislation has a broad scope that does not seem to preclude stalking convictions based on the impact experienced, or that is likely to be experienced, by victims.

Risk of Overextending Anti-Stalking Legislation Beyond Stalking Behaviour

Anti-stalking legislation is capturing stalking behaviours that correspond to both the behavioural and psychological understanding of stalking as well as serious stalking cases that this law was first designed to address. However, there is a genuine risk that this law is also being implemented on low-level offending and relatively minor behaviours. The original intention of the Victorian legislature (Explanatory Memorandum, 1994; POV, 1994c; 2003c) was to pass law that effectively criminalises stalking by comprehensively accounting for all the behaviours that may constitute stalking. An unintended consequence of this broad definition is that the law has been applied to behaviours beyond what is commonly perceived and defined as stalking. While the first critiques of anti-stalking legislation raised concerns about the breadth of this law prohibiting legitimate activities (Guy, 1993; Lingg, 1993; McAnaney et al., 1993), this is not featured in the Victorian offences analysed. Instead, behaviours that are anti-social, invasive and offensive, but are not stalking, are being prosecuted under anti-stalking legislation. The case law interpretation of a course of conduct as per *Gunes v Pearson* (setting the precedent that a course of conduct can consist of a single protracted incident) is uncommonly unclear and is suggested to have a particularly adverse impact on what can constitute a course of conduct.

The content analysis of stalking cases shows that convictions of stalking have been based on short courses of conduct, which is counterintuitive to the very nature of stalking; centrally defined as a persistent pattern of behaviour that continues over time (Mullen et al., 2009; Sheridan et al., 2003a; Spitzberg & Cupach, 2007). A quarter of stalking convictions in the County Court of Victoria involved short-lived conduct that persisted for less than a fortnight. This is notable as two weeks represents a critical threshold established by Purcell and colleagues (2004a), differentiating prolonged and harmful stalking from repeat intrusions that are common, but stop after one to two days. Brief episodes of stalking-like behaviours and harassment are associated with generally little harm caused to the targeted person (Mullen et al., 2006; Purcell et al.,

2004a). As discussed throughout this thesis, repeated and persistent conduct is fundamental to stalking as behaviour. Judicial discourse in stalking cases also emphasises the criminality of stalking lies in the continuing nature of the behaviour, where the seriousness of which is based on the persistence, longevity and excessiveness of acts. This is contrasted with offences involving a lack of a course that are entering court, instead framed by the judiciary as short, non-repetitive, intermit, sporadic and as a single act. This supports the contention that the potential for anti-stalking legislation to address relatively minor intrusions is a genuine issue (McEwan et al., 2007a; Mullen et al., 2009).

The application of anti-stalking legislation by police and prosecutors on behaviours involving limited repetition represents a minority of cases analysed in this thesis. These cases do however reveal that the definition and interpretation of a course of conduct constituting stalking – comprising two or more acts or one single protracted act – can be deficient in accurately capturing persistent behaviours integral to stalking as a phenomenon. This issue is exemplified in the stalking case involving the shortest ‘stalking’ offence resulting in conviction, that describes both a single incident and one that is detached from behaviour recognised as stalking. The perpetrator engaged in tailgating of a stranger with the judge commenting that the ‘whole incident only lasted perhaps three or three and a half minutes’. Given that persistent behaviour is the mainstay of stalking, this case is one example where this rudimental element identifying stalking is insufficient, if not absent.

Inappropriate charges and convictions of indictable stalking offences were found in the content analysis of court files. In these cases, charging other offences or the issuing of police warnings or diversion would have been more fitting. These included cases where convicted conduct corresponded with individuals making random nuisance phone calls to call centre workers; trespassing on private property; using obscene and threatening language and acts in public places; and obstructing the course of justice. In a specific example, an offender was convicted of stalking for smashing eggs on their neighbour’s driveway and littering on their property. This supports findings that the meaning of stalking can be stretched to cover all forms of interpersonal disputes (McMahon & Willis, 2002). Stalking offences in court files involved relatively minor intrusions and were recognised by sentencing judges as

‘inappropriate’, ‘unpleasant’, ‘a bother’ and a ‘nuisance’. This was disconnected from pernicious stalking campaigns that were by contrast described as a ‘reign of constant harassment’. Judges are accordingly able to differentiate stalking crimes from low-level offences. Nonetheless, these minor sorts of behaviours should not have been prosecuted as stalking offences, strengthening the contention that reasonably trivial behaviours are also entering the Magistrates’ Court (Dussuyer, 2000; McMahon & Willis, 2002), overburdening this court with a substantially larger number of summary offences than what is heard in the County Court (Magistrates’ Court of Victoria, 2012).

The application of legislation to behaviour that is not stalking is an unintended consequence and signals a deviation for the fair labelling and warning of criminal stalking, a principle in criminal law. The types of conduct outlined do not convey stalking behaviour and specifically are not distinguishable and intelligible for the public to recognise as a criminal offence of stalking (Chalmers & Leverick, 2008). This is important in accurately representing the nature of the criminality with the appropriate legal designation for the offender, victim and the justice system (Ashworth, 2009; Williams, 1983). This is all the more significant to defendants charged inappropriately with stalking for engaging in relatively minor harassment, particularly given the maximum penalty of ten years imprisonment for stalking.

This contention is comparable to arguments around criminal justice responses to cyberbullying, where caution has been advised in criminalising the various manifestations of cyberbullying that are associated with varying levels of harm. According to Langos (2015), only the most serious forms of cyberbullying warrants criminal justice response, while behaviours that lie on the ‘bottom-end’ of having a harmful impact should not be drawn into the criminal justice system. Cyberbullying and stalking-related behaviour may both involve commonplace and mundane behaviours that are offensive but inflict negligible harm (Langos, 2014, 2015). Likewise, this thesis raises issues with the application of anti-stalking legislation on behaviours that do not fit the stalking profile considered most critical by research. Case analysis shows convictions have been based on behaviours that do not resemble stalking and instead represent low-level offences. Importantly, the proscription of stalking assumes a minimal number of acts required for convictions in Victoria and

has resulted in stalking convictions that do not meet the sensible meaning of a course of conduct amounting to a stalking crime.

Application of Anti-Stalking Legislation Intervening on Escalating Behaviours Versus Net-Widening Effects and Pre-Crime Measures

This thesis has found that Victorian anti-stalking legislation is addressing both stalking and non-stalking behaviours that sit at the lower-end of offending. I would argue that a tension exists between the application of the legislation in preventing continuing or escalating stalking behaviours and a net-widening effect resulting from the law being inadvisably implemented on certain behaviours and individuals. Some stalking cases entering the County Court suggest that stalking behaviour may only be identified as an offence once a point of escalation has been reached, or there is concern that the conduct will escalate, causing an urgent police response. This actual or potential concern is for the risk of physical or sexual violence and assault. There is political and community pressure for the police especially, to arrest and prosecute dangerous or conceivably dangerous offenders. In the case of stalking, this is connected with preventing behaviours escalating into tragic and fatal consequences – cases that particularly draw the focus of media attention. However, with the combined effects of a criminal justice system becoming increasingly preventative and interventionist, together with a sweeping legal definition of stalking, this arguably widens the net by capturing more people as stalking offenders than is appropriate.

The content analysis showed that only after a critical point in the pattern of conduct was reached, involving physical assault or imminent risk of violence, the proceeding behaviours may be recognised as stalking. It was common in cases that after a series of incidents where the offender contacted or approached the victim, conduct would intensify into breaking and entering into victims' homes, property damage, or physical or sexual assault. Most importantly, sentencing judges expertly recognised the pattern and continuity of stalking behaviours within the wider circumstance of family violence. This involved judicial acknowledgement of offenders targeting ex-partners having histories of severe domestic violence and prior offending, who are more likely to engage in continued stalking and represent a serious risk to stalking victims (Logan & Walker, 2010; Mullen et al., 1999; Norris et al., 2011; Senkans et al., 2017).

From a policing and victim perspective, stalking may only be recognised as such once there is a risk of physical violence and intervention is required. In these stalking cases, it is suggested that stalking can be considered a preamble to physical violence rather than a crime in its own right. Here, anti-stalking legislation may offer late protection for victims; the law only applied once the presence of violence is unmistakeable. Physical violence is not uncommon in stalking, however most cases in the community do not involve assault and when they do, it is usually of a minor nature (Dressing et al., 2005; McEwan et al., 2009b; Mullen et al., 1999; Purcell et al., 2002; Rosenfeld & Harmon, 2002). This conflicts with the impetus for the introduction of anti-stalking legislation in addressing stalking behaviours under circumstances where there may be no physical assault. Police may continue to be inclined to use traditional laws such as assault and recklessly causing injury, or prefer to use intervention orders when stalking behaviours are brought to their attention (HMIC & HMCPSI, 2017; Pearce & Easta, 1999). Despite challenges in identifying behaviours, case analysis indicates that police and prosecutors have suitably implemented anti-stalking legislation to intervene on stalking behaviours that have, or are likely to have, escalated and that pose serious risk of harm to victims.

However, there is a risk for the pre-emptive application of anti-stalking legislation. While extreme cases of predatory stalking by strangers were evident in this thesis, case analysis also indicates that anti-stalking laws have been used against individuals who engage in intrusive or invasive behaviours that are a product of social disadvantages and handicaps. Importantly, these individuals represent a low risk of violence and are also unlikely to persist in their behaviours when engaged in stalking, stopping after a day or two (Purcell et al., 2004a). Sentencing judges described offenders convicted of less serious stalking counts as being disadvantaged, having limited intellectual capacity, socially isolated and romantically inept. These circumstances were seen to have spurred the offending behaviour, targeting victims that were strangers, or had superficial acquaintanceships with the offender, and frequently engaged in offensive behaviours in public spaces.

The content analysis indicates that there is a risk that anti-stalking legislation is resulting in net-widening, capturing individuals who are disadvantaged, engaging in

minor offending or behaviours that are uncharacteristic of stalking – a law that was originally reserved to address stalking of a serious nature. Minor cases and ‘wrong’ populations are being swept into the criminal justice system, over-burdening the courts, which instead should be focused on serious and dangerous crime (Cohen, 1985). Intensification of intervention strategies and policies, particularly in the earlier stages of policing increases the number of people caught up in the criminal justice system (Cohen, 1985; Polk, 1987). In these cases, the implementation of anti-stalking legislation is an overreach of the law and represents one ‘net’ that has been overextended with police charging unwarranted stalking counts (Austin & Krisberg, 1981; Cohen, 1979).

The implication here is that anti-stalking legislation has been used as a preventative measure in some cases, part of a drift in criminal justice and political agenda in pre-empting nascent threat and preoccupation with precaution (Beck, 1999; Freiberg, 2010; McCulloch & Wilson, 2016). Stalking acts, especially those involving an offender-stranger context reveals uncertainty, the risk of which is constructed and perceived rather than based on research evidence. Zedner (2007) articulates this problem as a shift into a pre-crime society, where forestalling risk takes precedence over responding to wrongdoings. In some of the stalking cases analysed in this study, the wrongfulness of the offences appears to be the prospect of the conduct, rather than the criminality of the actual behaviours constituting the stalking offence. This is argued to generate a misapprehension around stalking as a serious crime in its own right, one that can cause significant harm to victims. This may be a consequence of broad laws without specific limits, which in turn may be over-extended and subject to the wide discretion of police and prosecutors (Ashworth & Zedner, 2012; McCulloch & Wilson, 2016).

Flexible, Versatile and Alternative Applications of Anti-Stalking Legislation

Anti-stalking legislation is a purposefully broad law, designed to allow its application to all forms of stalking. This breadth has meant that the crime of stalking has, since its initial introduction into criminal law in the 1990s, suffered from a level of uncertainty around what exactly falls within its all-embracing legal definition (McMahon & McGorriery, 2016; Swanwick, 1996). In Victoria, the scope of proscribed conduct within stalking has further expanded to include bullying (*Crimes Amendment*

(*Bullying) Act 2011*). Combining the wide scope of the legislative framework of anti-stalking legislation with the ambiguous behaviour that is stalking engenders the opportunity for the law to be flexibly applied beyond its intended use. I would argue that this versatility can have both positive and negative consequences with how anti-stalking law is applied.

The pliability of anti-stalking legislation allows its application on newly identified behaviours in need of a criminal justice response, without requiring further law reform that involves a lengthy process. Case evidence in this study demonstrates that the legislation has been occasionally applied to cases where the offender and victim were in an existing relationship at the time of the stalking offence and therefore the law may be used to suitably address controlling and threatening behaviours in domestic violence cases. This issue was recognised in the UK, which subsequently led to the introduction of the *Serious Crime Act 2015* (UK), now allowing for the prosecution of coercive control as a form of domestic violence. Victorian anti-stalking laws implemented in these cases are applied as a stand-in offence, alleviating a shortcoming in addressing psychological intimate partner abuse. While there is an important distinction between intimate partner violence and post-relationship stalking (McEwan et al., 2017b; McMahon & McGorrery, 2016), this is an advantageous application of anti-stalking legislation in capturing emotional and psychological family abuse that may otherwise go unaddressed for victims.

The content analysis also revealed that stalking convictions were based on offenders distributing sexual images of victims without their consent. These images were posted online and circulated via social networking sites, or in one case, the offender specifically sent explicit photographs to the victim's employer with the intention of getting her fired. As such, anti-stalking legislation was implemented on cases involving revenge pornography prior to the introduction of specific laws in Victoria that criminalised the non-consensual circulation of intimate images (Goldsworthy et al., 2017; Henry et al., 2017; *Summary Offences Act 1966* (Vic) ss 41DA–41DB). Similarly, stalking has also been convicted on behaviours involving workplace harassment prior to the 2011 amendments to anti-stalking law extending the legislation to bullying cases. The legislation is also adaptable to new forms of harassment enabled by constantly advancing technologies, with stalking convictions

based on the surveillance of victims through tracking-enabled spyware and cases that constitute cyberbullying (Langos, 2013). Thus, the breadth of anti-stalking legislation allows for its versatility for the criminal justice system to quickly respond to emerging and different manifestations of harassment.

In contrast, the legislation has also led to negative consequences of charge loading offenders. Multiple counts of stalking charges convicted alongside other offences are standard in cases entering the County Court; in over 40% of cases the stalking count represented the secondary charge. The content analysis suggests that behaviours that would not otherwise be described as stalking and/or considered minor were prosecuted as stalking as it increased the seriousness of the offence. Specific cases include charging the offender with stalking when engaging in tailgating, making nuisance and crank calls, littering, and using offensive language. This accords with clinician reports that stalking offences have been alternatively used to supplement other offences that patients have been charged and convicted with (Mullen et al., 2009). Ultimately, the application of legislation is overextended in some cases whereby inexact behaviours such as ‘following’; ‘using abusive or offensive words’; and ‘acting in any way that can reasonably be expected to cause harm’; can be constructed around almost any type of offensive conduct (*Crimes Act 1958* ss 21A(2)(a), (2)(db), (2)(g)).

Anti-stalking legislation appears to be an optimum instrument available for police and prosecutorial discretion in loading charge sheets and presentments. This is not only through prosecuting the more serious offence of stalking where it does not appropriately match the behaviours, but also with multiple offences that arise in the same set of circumstances or behaviours (Anleu & Mack, 2001; Baldwin & McConville, 1977; Seifman & Freiberg, 2001). In a handful of cases, a course of conduct was stretched out to satisfy multiple counts of stalking in light of several victims that were involved, despite these victims only experiencing a single act that constituted them being stalked. In addition, legislation has been implemented on defendants who do not engage in determined behaviours aimed at a *specific* individual, which clashes with the notion of stalking being a deliberate behaviour that targets a particular victim (Mullen et al., 2001b).

Charge loading is one strategy that aids in plea negotiations, seen as a necessity for the flow of procedural justice with benefits such as substantially reducing court workload, costs and saving witnesses from reliving traumas through giving testimony (DPP Victoria, 2013; Flynn, 2011), however this process is open to misuse (Flynn, 2016). Defendants may be coerced into pleading guilty – the primary resolution for stalking cases – which may generate improper outcomes in sentencing and convictions that do not reflect the true nature of the offence (Baldwin & McConville, 1977; Seifman & Freiberg, 2001). For malleable anti-stalking legislation, this allows for exceedingly discretionary use of the law for this process, also indicated by stalking counts resulting in acquittals and being withdrawn (Magistrates' Court of Victoria, 2012). This study's analysis has illustrated the inconsistent application of the law in stalking convictions, which ranged dramatically in the persistence of behaviour constituting a course of conduct.

This may be a growing issue with the abolition of suspended sentences, which has led to an increase in custodial sentences for stalking offences, together with other criminal offending (Freiberg & Moore 2009; *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic)). With a movement towards law reform stipulating minimum penalties and limiting the sentencing discretion for the judiciary (Bartels, 2010; Hoel & Gelb, 2008), charge loading by either augmenting the number of charges against the defendant, or using charges representing a more serious offence, may become more prevalent. This increases the opportunity for unjust and disproportionate sentences not befitting the crime committed (Law Council of Australia, 2014). Reducing sentencing options for the judiciary is particularly relevant for stalking offences, as convictions have dramatically differed in circumstances regarding the type of behaviours, intent and impact.

Recommendations for Law Reform, Implications of this Study and Future Directions

The malleable legislative framework of anti-stalking laws is being effectively applied to serious cases of stalking behaviours through convictions of indictable offences in Victoria. A by-product of this flexibility is that the law is also easily framed around other activities or offences that dubiously reflect stalking. These cases involve

behaviours that may be invasive or intrusive, but which do not reflect the reality of stalking behaviours identified in behavioural studies (Sheridan & Davies, 2001c). This is not a unique issue to Victorian law, where the criminalisation of stalking internationally generally adopts broad concepts that contain uncertainty in their meaning (Van der Aa & Römken, 2013). Importantly, given that stalking involves behaviours that are commonplace and ordinary, criminal justice response should avoid overstretching the law to less harmful conduct.

I support the argument for narrowing the legislation and that the implementation of anti-stalking legislation should be reserved for serious stalking cases that result in serious harm to victims (MCCOC, 1998). The application of anti-stalking legislation should not allow wider applications for capturing non-stalking situations or minor offending. This is in the view that caution needs to be taken in the application of the legislation as to avoid net-widening.

It is recommended that Victorian anti-stalking legislation be reformed in line with anti-stalking provisions in South Australia. This law provides a compelling version of anti-stalking legislation in relation to restricting stalking crimes to conduct that produces serious harm to victims (*Criminal Law Consolidation Act 1935* s 19AA(1)(b)). Significantly, without a patent level of harm to the victim there appears to be a propensity to over-criminalise relatively minor behaviours, albeit annoying and intrusive, ‘the behaviour might qualify as harassment, but not the crime of stalking’ (Van der Aa, 2017, pp. 6-7). Moreover, South Australian legislation explicitly inserts provisions that a person cannot be convicted of both stalking and any other offence if they arose out of the same set of circumstances (*Criminal Law Consolidation Act 1935* ss 19AA(4)–(5)). It is suggested this is an issue for Victorian anti-stalking legislation, where it is conceivable that stalking charges have been tacked on to inflate charge sheets to entice defendants to plead guilty to lower charges, as has also been reported in international jurisdictions such as England and Wales (Marshall, 2001; Richards et al., 2012).

In addition, establishing a scaling of stalking offences within Victorian anti-stalking legislation may be an important policy recommendation. Law reform can be introduced to differentiate degrees of seriousness between behaviours, while also

separating prolonged stalking from general harassment. A stricter definition of behaviours constituting stalking that persists for more than two weeks may be prescribed within the legislation. This reform would advance the definitional quality of stalking as being persistent, continuing and a pattern of conduct while also distinguishing stalking that causes serious harm (Purcell et al., 2002, 2004a). Otherwise, aggravating factors can be inserted into the legislation, highlighting conditions within stalking situations that are especially harmful to the victims and which pose the highest risk of continued stalking (De Fazio, 2011; Harbidge, 1996). Anti-stalking provisions in the ACT, Northern Territory, Queensland, South Australia and Western Australia all have increased maximum penalties if the stalking offence contravened an intervention order or bail conditions, if the offender was in possession of a weapon, or the offence was otherwise aggravated. In particular reference to Queensland, the penalty for stalking is also increased from two to five years if the offence included making threats and violence – two risk factors associated with harmful stalking conduct in research studies. As such, these amendments are also proposed for Victorian anti-stalking legislation to assist in identifying the most serious stalking situations in need of criminal justice response.

It is also recommended that police and prosecutors receive continually updated education and training around stalking, alongside other behaviours that are connected to the phenomenon including revenge pornography, cyberbullying and coercive abuse in domestic relationships. Significantly, police are the ‘initial interpreters and appliers of the law’ and, as such, can set the progress of the accused through the criminal justice system (Findlay et al., 2014, p. 111). As gatekeepers, police in particular require specialised training to identify and separate harmful stalking as patterns of behaviour from relatively minor intrusions more representative of other offences. *Stalking* has come into common usage and everyday language, which can distract from the seriousness of stalking as an actual crime and the deleterious impact it has on stalking victims. There continues to be advancements in valid risk assessments that can be designed for police, emphasising the key predictors of stalking victims most at risk, and stalkers who are likely to continue or escalate their offending (Belfrage &

Strand, 2009; Hehemann et al., 2017).⁴⁹ These assessments should be included in police training; representing a critical evaluative tool that would help police address prolonged stalking. This would also assist police in diverting individuals presenting a low risk of further stalking behaviours, or who engage in low-level offending, away from the criminal justice system with more appropriate management and treatment.

Victorian anti-stalking legislation can and is easily stretched for alternative uses and operates as a catch-all offence. This implication has also been demonstrated in other jurisdictions such as in the United Kingdom, where original provisions were overextended to all forms of general harassment, rather than the *Protection from Harassment Act 1997* responding to harmful stalking victimisation (Harris, 2000; Richards et al., 2012). For Victoria, over criminalisation of minor offensive behaviour through anti-stalking legislation and the overreach of this law would be more paramount in examining summary stalking offences entering the Magistrates' Court. The recommendations for law reform to anti-stalking legislation will reduce the burden to law enforcement and caseload of low-level conduct entering court while separating out stalking cases most in need of legal recourse (Austin & Krisberg, 1981; Cohen, 1985; Langos, 2015). Moreover, these reforms will support police and prosecution to concentrate their response against serious stalking cases causing significant harm and risk to stalking victims.

A quantitative and qualitative analysis of stalking offences entering court allowed this study to examine the different ways that anti-stalking legislation is applied in Victoria and identified the nature of stalking behaviours being convicted. This mixed method analysis of the legislation provides a novel and significant contribution to research where this original methodology of examining the operation of laws in action, may be utilised for the study of other laws or problem behaviours. The innovative approach converged on exploring behaviour and the implementation of law that aims to respond to that behaviour. For anti-stalking legislation specifically, this study filled a gap in stalking literature where criminal justice responses to stalking are largely understudied with little to no evaluation of what anti-stalking statutes are achieving.

⁴⁹ See page 91.

There are a number of suggestions for future research regarding criminal justice responses to stalking that would also address some of the limitations within the current study. Offences in the higher courts of Victoria naturally involve more serious types of offending. Further research exploring the nature of low-level summary offences in the Magistrates' Court may offer a different profile of stalking offences, while also providing a larger sample of female stalkers who are entering the criminal justice system. Female perpetrators of stalking are found to be no less threatening or violent than their male counterparts (Strand & McEwan, 2012; Thompson et al., 2013), thus such studies may confirm and explain their prosecution in the Magistrates' Court as opposed to the higher courts. This is in addition to research comparing the experiences of male stalking victims, who experience comparable levels of threats and violence to females (Pathé & Mullen, 1997; Purcell et al., 2002) and represent a notable proportion of victims in need of protection and legal recourse (ABS, 2017). While not in the scope of this thesis, comparisons with the implementation of other anti-stalking laws that yield a stricter legal definition of stalking may offer important insights into the variability in the operation of these laws produced by differences in legislative clauses. Lastly, family violence continues to be a prevalent social issue in the community (RCFV, 2016). Studies investigating stalking within domestically violent contexts continue to be misinterpreted yet represent vitally relevant research.

Conclusion

This thesis aimed to examine how anti-stalking legislation is implemented in Victoria and to what extent it is addressing stalking behaviour. A mixed methods research design was employed, in which a quantitative and qualitative content analysis was conducted on 161 court files and sentencing remarks that involved stalking offences heard in the County Court of Victoria. This identified the nature of these cases and the types of behaviours that were being prosecuted and convicted as stalking offences. Analysis of cases found that 68% of convictions involved a guilty plea and 18% had a finding of guilt. There has been a general increase in stalking cases entering the County Court since the legislation was introduced in Victoria, with other offences normally convicted alongside stalking counts. Stalking offenders were typically male, in their 30s and had diverse criminal histories and mental health issues, while a significant mental disorder was uncommon. Moreover, females represented the

majority of stalking victims accounting for 76% of victims. Offences were commonly motivated by revenge, obsession or the offender engaged in stalking conduct for predatory intentions to commit a sexual offence.

Anti-stalking legislation is addressing the various relationship contexts in which behaviours can occur, with acquaintance-based stalking representing the most prevalent relationship group entering court, followed by former intimate partners and strangers. Acquaintance-based stalking involved less ambiguous motivations for committing stalking, usually out of revenge or a desire to initiate a relationship. Stalking by strangers was dichotomised between predatory stalkers and incompetent suitors. Importantly for the stalking of former intimate partners, judges appreciated the entire context of the offending beyond the circumstances of the specific case, where behaviours were seen as a continuation of family violence often in breach of intervention orders.

Various forms and types of acts were convicted of stalking, however non-physical communication was found to be the most common behaviour convicted. Nonetheless, the legislation addressed more insidious and covert stalking behaviours, such as revenge pornography and the gathering of information on victims without their knowledge. Courses of conduct constituting stalking usually persisted beyond two weeks while a quarter of stalking counts occurred over less than a fortnight. Judicial discourse describing offences distinguished archetypical stalking campaigns that were prolonged and relentless compared to behaviours that lacked continuity of conduct, instead considered by judges as short-lived and confined. Sentencing judges are proficient in accounting for the varying degrees of seriousness in stalking conduct, with over half of offences sentenced to prison with an average term of nearly 17 months.

In comparing findings from the content analysis of stalking court cases with behavioural research outlining what stalking behaviour constitutes, this thesis concludes that anti-stalking legislation is addressing stalking behaviour. Significantly, stalking victims are afforded protection and recognition when cases come before courts, with judges appreciating the mental, psychological and emotion harm that stems from this victimisation as intended by anti-stalking legislation. There is

however a real concern that the legislation is capturing non-stalking situations that involve relative minor behaviour. This is in light of stalking convictions also being based on low-level offences, causing relatively negligible harm, and is disconnected from the reality of stalking behaviours particularly lacking persistence and continuity of conduct.

It is argued that this presents a double-edged issue with how anti-stalking legislation is being used. This is represented through the appropriate implementation of legislation to prevent continuing and escalation stalking conduct and in providing necessary recourse for victims. Alternatively, police and prosecutors use the legislation on low-level offences for fear that conduct might intensify. This is due to political and social pressures for law enforcement to pre-empt violence and forestall risk, drawing more people into the criminal justice system under the legislation for minor behaviours. This is enabled by a far-reaching legislation that is suitably versatile in order to capture the many manifestations of stalking, yet is subject to its highly discretionary use by police and prosecutors.

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Appendix A

Crimes Act 1958 (Vic) Section 21A

Stalking

S. 21A(1) amended by No. 48/1997

s. 60(1)(Sch. 1 item 14).

(1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

S. 21A(2) amended by Nos 105/2003 s. 4(1), 20/2011 s. 3(3).

(2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following —

(a) following the victim or any other person;

S. 21A(2)(b) substituted by No. 105/2003 s. 3(1).

(b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;

S. 21A(2)(ba) inserted by No. 105/2003 s. 3(1).

(ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material —

(i) relating to the victim or any other person; or

(ii) purporting to relate to, or to originate from, the victim or any other person;

S. 21A(2)(bb) inserted by No. 105/2003 s. 3(1).

(bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person;

S. 21A(2)(bc) inserted by No. 105/2003 s. 3(1).

(bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;

(c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;

(d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);

S. 21A(2)(da) inserted by No. 20/2011 s. 3(1).

(da) making threats to the victim;

S. 21A(2)(db) inserted by No. 20/2011 s. 3(1).

(db) using abusive or offensive words to or in the presence of the victim;

S. 21A(2)(dc) inserted by No. 20/2011 s. 3(1).

(dc) performing abusive or offensive acts in the presence of the victim;

S. 21A(2)(dd) inserted by No. 20/2011 s. 3(1).

(dd) directing abusive or offensive acts towards the victim;

(e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;

(f) keeping the victim or any other person under surveillance;

S. 21A(2)(g) substituted by No. 20/2011 s. 3(2).

(g) acting in any other way that could reasonably be expected —

(i) to cause physical or mental harm to the victim, including self-harm; or

(ii) to arouse apprehension or fear in the victim for his or her own safety or that of any other person —

with the intention of causing physical or mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.

S. 21A(3) substituted by No. 105/2003 s. 4(2), amended by No. 20/2011 s. 3(4).

(3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim, including self-harm, or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if —

(a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or

(b) the offender in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.

(4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of —

(a) the enforcement of the criminal law; or

(b) the administration of any Act; or

(c) the enforcement of a law imposing a pecuniary penalty; or

(d) the execution of a warrant; or

(e) the protection of the public revenue — that, but for this subsection, would constitute an offence against subsection (1).

S. 21A(4A) inserted by No. 105/2003 s. 3(2).

(4A) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice—

(a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or

(b) for the purpose of an industrial dispute; or

(c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

S. 21A(5) repealed by No. 68/2008 s. 69(1).

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S. 21A(5A) inserted by No. 52/2008 s. 242, repealed by No. 68/2008 s. 69(1).

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S. 21A(6) inserted by No. 105/2003 s. 5.

(6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred.

S. 21A(7) inserted by No. 105/2003 s. 5.

(7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria.

S. 21A(8) inserted by No. 20/2011 s. 3(5).

(8) In this section —

“mental harm” includes —

- (a) psychological harm; and
- (b) suicidal thoughts.

Note to s. 21A inserted by No. 68/2008 s. 69(2), substituted by No. 53/2010 s. 221(Sch. item 4).

Note

The **Personal Safety Intervention Orders Act 2010** provides that the Court within the meaning of that Act may make a personal safety intervention order in respect of stalking.

S. 22 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1)

(Sch. 2 item 9), 48/1997

s. 60(1)(Sch. 1 item 14).

Appendix B

Summary of Anti-Stalking Legislation Across Australian Jurisdictions⁵⁰

Jurisdiction	Act and Section	Definition of Stalking	Criteria for Stalking Offence	Penalty
Australian Capital Territory	<i>Crimes Act 1990</i> (ACT) s 35	Acts engaged in on at least two occasions. This may include following; approaching; loitering; surveillance; interfering with property; giving offensive material; contacting; covert acts that could reasonably arouse apprehension or fear; or engaging in intimidation, harassment, or molestation of the stalked person.	Offender intended to cause apprehension, fear of harm, harm, or to harass the stalked person. Or the offender was reckless about whether the stalking would likely cause apprehension, fear of harm or harassment. Not necessary to prove that apprehension, fear of harm or harassment was experienced by the stalked person.	Up to 2 years imprisonment. Maximum 5 years imprisonment if the offence contravened a court order or the offender was in possession of an offensive weapon.
New South Wales	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW) s 13	Stalked or intimidated another person including following; watching; contacting; frequenting the vicinity of, or approaching the victim; or acting in any way that could reasonably cause apprehension of violence or damage to person or property.	Offender intended to cause fear of physical or mental harm, or if the offender knows that the conduct is likely to cause fear. Not necessary to prove that the victim actually feared physical or mental harm.	Up to 5 years imprisonment and/or a \$5,000 fine.
Northern Territory	<i>Criminal Code Act</i> (NT) s 189	Engaged in conduct that includes repeated acts listed in the legislation. This includes following; contacting; entering or loitering near the victim's home; interfering with property; giving offensive material; surveillance; acting in any way that could reasonably cause apprehension or fear in the victim.	Offender intended to cause physical or mental harm or arouse apprehension or fear in the victim and it did have that result. Or, in the particular circumstances, a reasonable person would be aware that engaging in the course of conduct would likely cause harm or arouse apprehension or fear.	Up to 2 years imprisonment. Maximum 5 years imprisonment if the offender contravened bail or a court order, or if in possession of an offensive weapon.

⁵⁰ This summary of anti-stalking legislation across Australian jurisdictions is current as of August 2018. This summary excludes Victorian anti-stalking legislation, which is provided in Appendix A.

Queensland	<i>Criminal Code Act 1899</i> (Qld) ss 359A–359F	Conduct engaged in on any one occasion if the conduct is protracted or on more than one occasion. This may include following; loitering; watching; approaching; contacting; leaving or giving offensive material; intimidating, harassing or threatening acts; or an act of violence or threat of violence.	Offender intentionally directed conduct at a person. Conduct would reasonably cause the stalked person apprehension or fear of violence or did cause detriment. It is not necessary for the stalked person to be aware of the conduct.	Up to 5 years imprisonment. Maximum 7 years imprisonment if violence or threats were used, the offender was in possession of a weapon, or the offence contravened a court order.
South Australia	<i>Criminal Law Consolidation Act 1935</i> (SA) s 19AA	Conduct engaged in on at least two separate occasions. This may include following; loitering; entering or interfering with property; giving or sending offensive material; publishing or transmitting offensive material; communication or contact; or acting in any way that could reasonably arouse apprehension or fear.	Offender intended to cause serious physical or mental harm, or arouse serious apprehension or fear. A person charged with stalking may be charged with an alternative offence if the stalking charge is not satisfied. Convictions or acquittals of stalking may not result in a conviction of another offence that arises out of the same set of circumstances. Convictions or acquittals of another offence may not result in a conviction of stalking if the charge of stalking arises out of the same set of circumstances as the other offence.	Up to 3 years imprisonment for a basic offence. Maximum 5 years imprisonment for an aggravated offence.
Tasmania	<i>Criminal Code Act 1924</i> (Tas) s 192	Engaged in a course of conduct involving conduct that is sustained or occurred on more than one occasion. This may include following; surveillance, loitering; entering or interfering with property; sending or giving offensive material; publishing or transmitting offensive material; communication or contact; or acting in another way that could reasonably cause apprehension or fear.	Offender intended to cause physical or mental harm, apprehension or fear. Or ought to have known that the course of conduct would likely cause physical or mental harm, apprehension or fear.	Up to 21 years imprisonment.

Western Australia	<i>Criminal Code Act Compilation Act 1913 (WA)</i> ss 338D–338E	Pursues another person with the intent to intimidate. Pursuit includes repeated acts of communication; following; sending unsolicited material; watching or approaching the victim; or breaching a restraining order or bail condition.	Offender intended to intimidate the victim by causing physical or mental harm, apprehension or fear; prevent or hinder the victim from doing a lawful act, or compel the victim to do an act. Or the pursuit could reasonably be expected to intimidate the victim.	Up to 3 years imprisonment. Maximum 8 years imprisonment for an aggravated offence involving possession of a weapon or the offence was in breach of a bail condition. Between 18 and 24 months imprisonment for a summary conviction and between \$18,000 to \$24,000 fine.
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Appendix C

Codebook for Quantitative Content Analysis of Victorian Sentencing Remarks and Court Files

Quantitative Variable	SPSS Variable Name	Coding Instructions
Identification number	ID	Number assigned to each sentencing transcript
Date of sentence	Date	dd.mm.yyyy
Financial year of sentence	Year	1 = 1994/1995 2 = 1995/1996 3 = 1996/1997 4 = 1997/1998 5 = 1998/1999 6 = 1999/2000 7 = 2000/2001 8 = 2001/2002 9 = 2002/2003 10 = 2003/2004 11 = 2004/2005 12 = 2005/2006 13 = 2006/2007 14 = 2007/2008 15 = 2008/2009 16 = 2009/2010 17 = 2010/2011 18 = 2011/2012 19 = 2012/2013
Legislation	Law	1 = 25/1/1995 to 9/12/2003 2 = 10/12/2003 to 6/6/2011 3 = 7/6/2011 to 30/6/2012 4 = N/A
Gender of presiding judge	JudgeSex	1 = Male 2 = Female 3 = N/A

Judgement of stalking offences	Judgement	1 = Found guilty 2 = Plead guilty 3 = Not guilty 4 = Not guilty by reason of mental impairment 5 = <i>Nolle Prosequi</i> 6 = Plead guilty for Commonwealth offences 7 = Plead guilty for breaching intervention order 9 = Unspecified
The number of offenders guilty of stalking	NoOffenders	In numbers
The number of stalking counts	varCountsO1 varCountsO2	In numbers 99 = N/A
Stalking counts as a primary or secondary offence	varTypeO1 varTypeO2	1 = Primary 2 = Secondary 3 = Unclear 99 = N/A
Multiple responses	TvarType	
Other offence counts other than stalking	varO1Offence1...10 varO2ffence1	1 = No other offences 2 = Breach of intervention order 3 = Use of a carriage service to menace/harass/offend
Multiple responses	TvarOffence	4 = Using a telecommunication service to harass 5 = Using a carriage service to procure persons under 16 years of age 6 = Using a carriage service to 'groom' persons under 16 years of age 7 = Using a carriage service to transmit indecent communication to person under 16 years of age 8 = Incite to murder 9 = Threats to kill

10 = Threats to inflict serious injury
11 = Extortion with threat to kill/injure
12 = Extortion with threat to destroy
property
13 = Possess an item with the intent to
damage property and endanger life
14 = Causing serious injury intentionally
15 = Causing serious injury recklessly
16 = Causing injury intentionally
17 = Causing injury recklessly
18 = Conduct endangering life
19 = Conduct endangering persons
20 = Assault
21 = Kidnap
22 = Child stealing
23 = Abduction
24 = Rape
25 = Assault with intent to rape
26 = Indecent assault/attempted indecent
assault
27 = Indecent act with child under the age
of 16/gross indecency
28 = Sexual penetration of child under the
age of 16
29 = Possession of child pornography
30 = Bomb hoax
31 = Obtaining property by deception
32 = Obtaining financial advantage by
deception
33 = Attempting to obtain financial
advantage by deception
34 = Falsification of documents
35 = Blackmail
36 = Burglary
37 = Attempted burglary
38 = Aggravated burglary
39 = Attempted aggravated burglary
40 = Armed robbery/robbery
41 = Attempted armed robbery
42 = Theft

43 = Making false statements
44 = Destroying or damaging
property/criminal damage
45 = Trespass
46 = Unlawfully on the premises without
excuse, express or implied authority
47 = Arson endangering life
48 = Arson with the intent to endanger life
49 = Possession of a drug of dependence
50 = Cultivation of narcotic plants
51 = Trafficking a drug of dependence
52 = Attempting to pervert the course of
justice
53 = False imprisonment
54 = Common law assault
55 = Affray
56 = Wilful exposure
57 = Driving while disqualified or
suspended
58 = Unlicensed driving
59 = Failing to stop a motor vehicle
60 = Dangerous driving
61 = Speeding
62 = Failure to appear or comply with
reporting obligations
63 = Resisting a police officer in the due
execution of his duty
64 = Obstructing a police officer in the due
execution of his duty
65 = Impersonating a member of the police
force
66 = Prohibited person possessing firearms
67 = Possession of unregistered firearms
68 = Failing to correctly store firearms
69 = Fraudulently using a registration plate
70 = Fixing a number plate to a vehicle
other than that issued
71 = Cruelty to an animal
72 = Aggravated cruelty to an animal
73 = Arson

		74 = Wilful and obscene behaviour 75 = Threat to destroy or damage property 76 = Indecent act with child under the age of 18 77 = Stalking 78 = Procuring a minor for the making of child pornography 79 = Discharge a missile to cause injury/danger 99 = N/A
Presence of violence	varViolence	1 = Yes 2 = No
Sex of offender/s	varSexO1 varSexO2	1 = Male 2 = Female 99 = N/A
Multiple responses	TvarSexO	
Age of offender/s - At the time of sentence	varAgeO1 varAgeO2	Age in years 98 = Unspecified 99 = N/A
Multiple responses	TvarAgeO	
Number of victims	NoVictims	In numbers 99 = Unspecified
Sex of victim/s	varSexV1...V8	1 = Male 2 = Female 3 = Unspecified
Multiple responses	TvarSexV	99 = N/A
Age of victim/s - At the time of offending	varAgeV1...V8	Age in years 98 = Unspecified 99 = N/A
Multiple responses	TvarAgeV	

Primary relationship between the first offender and victim/s	varO1RshipV1...V8	1 = Ex-spouse (married/de-facto/long-term relationship) 2 = Ex-boyfriend/ex-girlfriend 3 = Casually dated 4 = Family member 5 = Friend 6 = Work/school colleague 7 = Neighbour 8 = Client/customer 9 = Work/school associate 10 = Stranger 11 = Unspecified/unclear 12 = Current partner 13 = New partner of ex-partner 14 = Acquaintance/known to the victim 15 = Partner's/ex-partner's family members 99 = N/A
Primary relationship between the second offender and victim/s	varO2RshipV1	
Multiple responses	TvarRship	
History of domestic violence between the offender/s and victim/s - Prior to the stalking and other offences in the present case	DV	1 = Yes 2 = No 3 = Unclear 99 = N/A
Number of Courses of Conduct	NoCourses	In Numbers
Duration of stalking	varDuration1...8	1 = < 2 weeks 2 = 2 weeks > 4 weeks 3 = 1 month > 3 months 4 = 3 months > 6 months 5 = 6 months > 12 months 6 = 1 year > 2 years 7 = 2 years > 5 years 8 = > 5 years 9 = Unclear 10 = Unspecified 99 = N/A
Multiple responses	TvarDuration	

Number of incident types that formed a course of conduct - As noted by the judge	varIncidentType1...8	In numbers 99 = unspecified 999 = N/A
Multiple responses	TvarIncidentType	
Legislative incident category (code according to law in effect) - Behaviours that were considered part of the course of conduct and not based on other primary/secondary offences	var1Incident1...6 var2Incident1...5 var3Incident1...3 var4Incident1...4 var5Incident1...4 var6Incident1...3 var7Incident1...3 var8Incident1...2	1 = Following the victim or any other person 2 = Contacting the victim or any other person; by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever 3 = N/A 4 = Cyberstalking including; Publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material — Relating to the victim or any other person; or Purporting to relate to, or to originate from, the victim or any other person Causing an unauthorised computer function in a computer owned or used by the victim or any other person Tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications (N/A = cases between 25/1/1995 to 9/12/2003) 5 = Entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person 6 = Interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property 7 = Making threats to the victim (N/A = cases between 25/1/1995 to 6/6/2011)
Multiple responses	TvarIncident	

		<p>8 = Using abusive or offensive words to or in the presence of the victim (N/A = cases between 25/1/1995 to 6/6/2011)</p> <p>9 = Performing abusive or offensive acts in the presence of the victim (N/A = cases between 25/1/1995 to 6/6/2011)</p> <p>10 = Directing abusive or offensive acts towards the victim (N/A = cases between 25/1/1995 to 6/6/2011)</p> <p>11 = Giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person</p> <p>12 = Keeping the victim or any other person under surveillance</p> <p>13 = Acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of any other person</p> <p>99 = Unspecified</p> <p>999 = N/A</p>
Frequency of incident/s	var1Freq1...6 var2Freq1...5 var3Freq1...3 var4Freq1...4 var5Freq1...4 var6Freq1...3 var7Freq1...3 var8Freq1...2	In numbers 997 = over the duration 998 = unspecified 999 = N/A
Multiple responses	TvarFreq	

Central motivation for stalking behaviours	Motive	1 = To reconcile the relationship 2 = Exact revenge/anger 3 = Jealous/envious of the victim 4 = Infatuation/obsession 5 = Incompetent suitor/seeking to start a relationship 6 = Resentment of the victim 7 = To bully/intimidate the victim 8 = Fun/humour 9 = Predatory with sexual intent 10 = Business/industrial/capital dispute 11 = Dispute over capital (merged with 10) 12 = Neighbourhood dispute 13 = Unable to concede the end of a relationship 14 = Due to mental illness/drug taking (repealed) 15 = Control 16 = Other 99 = Unspecified/unclear
Legislative intent for the course of conduct	varIntentO1 varIntentO2	1 = Offender knows that engaging in the course of conduct would likely cause harm or arouse apprehension or fear 2 = In all the particular circumstances the offender ought to have understood that engaging in a course of conduct of the kind would be likely to cause such harm or arouse apprehension or fear 3 = unknown 9 = N/A
Multiple responses	TvarIntent	

Legislative impact of stalking on victim/s (code according to law in effect)	varImpactV1...V8	1 = Physical harm 2 = Mental harm 3 = Self-harm (N/A = cases between 25/1/1995 to 6/6/2011) 4 = Apprehension/fear for safety 5 = Unspecified/unclear 6 = No Impact 7 = Combination of physical harm and mental harm 8 = Combination of mental harm and apprehension/fear 9 = Combination of physical harm and apprehension/fear 10 = Combination of physical harm, mental harm and apprehension/fear 99 = N/A
Multiple responses	TvarImpactV	
Presence of main behavioural or psychological disorder in the offender/s - As considered by the judge as important	varO1Mental1...6 varO2Mental1	1 = No 2 = Substance abuse 3 = Alcohol abuse 4 = Schizophrenia/psychosis 5 = Erotomania 6 = Bipolar 7 = Intellectually disabled or impaired 8 = Depression 9 = Depressive disorder 10 = Personality disorder/symptoms 11 = Adjustment disorder/symptoms 12 = Anxiety/anxiety disorder 13 = Schizoid/trends 14 = Mood swings/disturbance 15 = Mania/hypomania 16 = Paranoia 17 = Physiological/neurological disability or disorder 18 = Other 19 = Unclear 20 = Suicidal/self harming tendencies 99 = N/A
Multiple responses	TvarMental	

Prior criminal history for 1st offender	varO1Prior1...12	1 = No priors/no relevant priors specified 2 = Priors not detailed 3 = Stalking
Prior criminal history for 2nd offender	varO2Prior1...8	4 = Breach of intervention order 5 = Commonwealth telecommunication and carriage service offences 6 = Threat to kill 7 = Threat to inflict serious injury
Multiple responses	TvarPriors	8 = Threat to destroy or damage property 9 = Causing serious injury intentionally 10 = Causing serious injury recklessly 11 = Causing injury intentionally 12 = Causing injury recklessly 13 = Conduct endangering life/persons/serious injury 14 = Unlawful assault 15 = Common law assault (inc affray) 16 = False imprisonment 17 = Rape 18 = Assault with intent to rape 19 = Indecent assault/attempted indecent assault 20 = Indecent act with (or in the presence) of child under the age of 16/gross indecency 21 = Sexual penetration of child under the age 16 22 = Possession of child pornography 23 = Wilful/obscene behaviour 24 = Burglary/attempted burglary 25 = Aggravated burglary/attempted aggravated burglary 26 = Armed robbery/attempted armed robbery 27 = Theft and theft related offences 28 = Receiving/handling/possessing stolen property 29 = Criminal damage 30 = Arson offences 31 = Loitering 32 = Unlawfully on the premises without

excuse, express or implied authority/
breaking and entering
33 = Blackmail
34 = Deception/dishonesty offences:
Obtaining property by deception
Obtaining financial advantage by deception
Attempting to obtain financial advantage by
deception
Making false statements
Perverting the course of justice
Impersonating a member of the police force
35 = Drug offences
36 = Driving/traffic offences
37 = Breach of CBO/suspended sentence
38 = Failure to appear/answer or comply
with reporting obligations
39 = Resisting/obstructing a police officer
in the due execution of his duty
40 = Weapons/explosives offences
41 = Offensive behaviour
42 = Loitering/entering with intent to
commit indictable offence
43 = Robbery
44 = Incitement
98 = Other
99 = N/A

Sentence for stalking counts for 1st offender	varO1Sentence1...8	1 = Custodial sentence 2 = Wholly Suspended sentence 3 = Partially Suspended sentence 4 = Intensive Correction Order 5 = Community Based Order 6 = Fine 7 = Adjourned undertaking with conviction 8 = Adjourned undertaking without conviction 9 = Non-Custodial Supervision Order 10 = Conviction and discharge 11 = Community Corrections Order 12 = Aggregate imprisonment 13 = Hospital Security Order 98 = Other 99 = N/A
Sentence for stalking counts for 2nd offender	varO2Sentence1	
Multiple responses	TvarSentence	
Sentence length in months for stalking counts for 1st offender	varO1LengthSen1...8	In numbers: months 99 = N/A
Sentence length in months for stalking counts for 1st offender	varO2LengthSen1	
Multiple responses	TvarLengthSen	

Appendix D

Codebook for Qualitative Content Analysis of Victorian Sentencing Remarks and Court Files

NVivo Node	Qualitative Node Description	Example of Content
Offence counts	All offences that were prosecuted and resulted in a conviction	‘You are to be sentenced in respect of two charges of stalking (Charges 1 and 2), one charge of attempt to obtain property by deception (Charge 3)...’
Course of conduct	Legislative clause of course of conduct: How the course of conduct was discussed in terms of duration, frequency, and continuity of purpose of the acts committed in regards to the stalking offence/s	‘Those calls were recorded on the 19th and the 23rd of that month. That basically is the basis of the charge.’
Intent	Intent of the offender as per anti-stalking legislation: Extends to what the offender ought to know and malicious intent Relevant circumstances taken into account in satisfying intent	‘The complainant told you that your phone calls and drive-bys were unwelcome and that she wanted you to stop contacting her.’
Impact of stalking on stalking victims	Consideration and description given to the impact of stalking on the victim: The types and degrees of both physical and psychological harm Appreciation and adequate consideration given to mental and psychological harm experienced by the victim References to victim impact statements and considerations as a sentencing factor	‘I am satisfied that your stalking has caused both [victims] a level of fear, anxiety and concern.’
Stalking behaviour	The nature and types of behaviours that are involved in stalking: This relates to how stalking was explained conceptually and generally rather than purely fulfilling legislation Content on the typicality of the conduct	‘Within a short time of you meeting her you began to ring her mobile on a frequent basis. She received more than 20 calls per night from you. During these calls you would often ask her if

	<p>and whether it fulfils the behavioural understanding of stalking</p> <p>Duration between events – regularity of conduct and context in which behaviours occur</p> <p>Conduct that may closely align with other types of behaviours</p>	<p>she was with a bloke.’</p>
<p>Stalking-type behaviours charged as other offences</p>	<p>Behaviours that formed part of the stalking context however were charged under other offences:</p> <p>For offences not prosecuted under anti-stalking legislation, why behaviours may appear to be stalking but are not prosecuted as such</p>	<p>‘You entered the house through an open bedroom window intending to assault, by putting the victim in fear.’</p>
<p>Violence and threats</p>	<p>Presence of physical violence and/or threats:</p> <p>This may be in the form of other primary or secondary offences</p> <p>Nature and degree of violence and threats used on stalking victims</p>	<p>‘In one message, you sent a threatening poem: “Roses are red, violets are blue. I would keep a look over your shoulder if I were you.”’</p>
<p>Relationship context – former intimate relationship stalking</p>	<p>Former intimate relationship stalking context:</p> <p>Contextual circumstances of the case and whether this influenced how stalking is perceived and sentenced</p> <p>Domestic violence in stalking, and whether this adds weight to intent and impact clauses, and whether conduct is seen as more or less serious given previous violence</p> <p>For non-stalking offences, did contextual factors influence why anti-stalking legislation was not used</p>	<p>‘On this occasion, as with other charges in your past, as I say, relationship that caused you to behave as you did. It was a disruptive relationship.’</p>
<p>Relationship context – acquaintance-based</p>	<p>Content relating to acquaintance-based stalking category relationship, which includes friends, family, clients and colleagues:</p> <p>Contextual circumstances of the case and whether this influenced how stalking is</p>	<p>‘[The victim] had only known you for three weeks. The relationship was through associating with a group of people. There was never any romantic relationship.’</p>

	perceived, sentenced and the circumstances that stalking transpired	
Relationship context – stranger	Case and contextual circumstances when the offender and victim had no pre-existing relationship	‘The offender having found a young girl’s phone in a park first instigated the conduct.’
Motivation for stalking	The stated or assumed motivations for the offender engaging in stalking: This does not have to be in line with anti-stalking legislation clause of intent, but rather the more visceral impulses, stimulus or reasons behind stalking	‘The genesis is clearly in the relationship between yourself and the victim and your inability to accept that she had broken it off with you and did not want any contact.’
Severity of the conduct	The degree of severity that was considered by the judge from a behavioural standpoint: This is regarding the stalking offence specifically or other offences that were committed in the overall context of the case Choices of adjectives to describe the overall conduct Breaches of intervention orders Context of relationship Nature of the course of conduct Presence of threat The connection with other concurrent or prior offences	‘There were other nuisance aspects of this charge... at the lower end of the scale of seriousness for this type of offence.’ ‘The arson offending was considered the most serious form of offending in this case.’

Offender circumstances	<p>Relevant circumstances of the offender:</p> <p>Personality type of the offender, whether the offender is socially isolated or inept</p> <p>Culpability of the offender including age, reciprocal conduct, mixed-signals, and power relationships</p> <p>Gender and what they should be aware of with courting behaviours</p> <p>Line of questioning from the prosecutors, defence, and judges concerning how they perceive and position the offender concerning intent and motivations</p>	<p>‘What can be deduced or distilled from that material is that you have a personality or your personality is one that blames others for your problems. You have a distorted sense of entitlement.’</p> <p>‘I accept that in your present circumstances the likelihood of re-offending may well be reduced simply as a result of practical considerations, that is your health, your age and your current circumstance, in that you now live interstate close to your mother, and you do not live in a marital relationship.’</p>
Mental circumstances of the offender	<p>Mental state of the offender, including substance abuse and physiological disabilities:</p> <p>Extent that mental illness (and what types of mental illness) influences criminal responsibility and the sentence</p>	<p>‘You have a history of using cannabis since the age of 16, and up until August of 2011.’</p> <p>‘I accept that you have a lengthy history of bipolar disorder and Adult Attention Deficit Hyperactivity Disorder. This is likely to be a lifelong condition.’</p>
Priors	The offender’s history of previous convictions	‘You have 38 prior convictions or findings of guilt going back to 2002. These include recklessly cause serious injury x 4; use a carriage service to harass...’
Victim circumstances	Details of the victim including age, any vulnerabilities, description of character, response to the offender during the offending behaviour, and any perceived blame for their victimisation	‘Primarily, you committed two indecent acts and stalked a young girl under the age of 16. She was vulnerable and trusted you.’

Secondary impact	Impact of stalking on secondary victims, not specifically directed at the stalking victims	‘It is very clear from all the victim impact statements that each victim has suffered significant emotional trauma as have their children. There has also been a huge financial impact upon them as a result of your offending.’
Reason for sentence	<p>The factors of the stalking offence that had a direct influence on the judge in their reasoning for the sentence handed down.</p> <p>Nature and severity of conduct</p> <p>Frequency of the conduct</p> <p>Breaches of intervention orders</p> <p>Prior criminal record and relevant offences</p> <p>Emphasis on physical injury and threats of violence</p> <p>Appreciation of psychological/emotional harm</p> <p>The presence of power relationships and whether the offender took advantage of victim’s vulnerability</p>	<p>‘You expressed a determination to have no further contact with the victim. This is positive.’</p> <p>‘...it is hard in all the circumstances to see expressions of true remorse or evidence of real insight into what you have done.’</p>
Sentencing principles	<p>Reflection made by the sentencing judge on specific sentencing principles as set out in s 5(1) of the <i>Sentencing Act 1991</i>.</p> <p>Review of whether the sentence faithfully reflects all necessary and relevant sentencing aims:</p> <p>Just punishment</p> <p>Specific deterrence</p> <p>General deterrence</p> <p>Prospect of rehabilitation</p> <p>Denunciation</p> <p>Community protection</p>	‘I have concluded that because of your prior convictions and the circumstances of this offending, a term of imprisonment is the only appropriate sentence, but that in your case both specific and general deterrence are appropriately dealt with by that sentence being wholly suspended, and that is what I propose to do.’

Aggravating factors	Aggravating or compounding factors regarding the offender, behaviour, intent and impact experienced by the victim that influence sentencing determination	‘The aggravating aspect of that behaviour is that it did involve a person with whom you had had a long-term intimate relationship, who effectively found her trust in you displaced as a result of that, and it is that breach of trust that I take into account as an aggravating aspect.’
Mitigating factors	Mitigating factors concerning the offender or content of the case that reduce the severity of conduct and considered a factor in a lesser sentencing outcome	‘On the other hand you are entitled to rely on the fact that in the three years you have not re-offended. So you have demonstrated an ability to remain offence-free, and you are entitled to call that into your credit.’
Anti-stalking legislation	<p>How did the judge discuss the legislation:</p> <p>Judicial discourse on satisfying legislative clauses</p> <p>Discussion on the appropriate use of defences</p> <p>Prosecutorial and defence arguments with connection to the legislation</p>	<p>‘In the crime of stalking, the effect on the victim, psychological trauma, is, it seems, the point of the offence. It is what the stalker often seeks to achieve.’</p> <p>‘In characterising the way the jury assessed your guilt of this offence, the actus reus requires that you undertake a course of conduct or a pattern of conduct evidencing a continuity of purpose. Your continuity of purpose was to harass [the victim].’</p>

Prosecution	<p>The content reflects prosecutorial practices and/or procedures:</p> <p>Plea bargaining procedures</p> <p>Difficulty in gathering evidence</p> <p>The nature of the conduct successfully prosecuted and connection with other concurrently prosecuted and proven offences</p> <p>For non-stalking offences, why anti-stalking legislation may not have been applied in particular cases</p>	<p>‘You pleaded guilty to the current charges after negotiations with the prosecution. You must benefit from your pleas of guilty.’</p> <p>‘Although the prosecutor submitted that this was a rolled-up count it appears to me that the matters relied upon in the prosecution summary are not relied on as separate offences but as comprising the one course of conduct.’</p>
Defence	<p>How the defence argued against the stalking offence or factors that mitigated the circumstances</p>	<p>‘Your counsel argued that because your conduct did not also involve an active of physical violence your stalking should not be regarded as serious.’</p>
Police	<p>The content reflects any policing practices and/or procedures:</p> <p>Reflectance or hesitation in initial responses</p> <p>Difficulty in gathering evidence</p>	<p>‘In a record of interview, you did make admissions to the various allegations of text messages and the attempts to contact the victim.’</p> <p>‘no action was taken at the time and it was not until the formal complaint to the police about the whole matter in 2004 that charges were laid’.</p>