

Stalking:

**Legislative, Policing and
Prosecution Patterns
in Australia**

Stalking: Legislative, Policing and Prosecution Patterns in Australia

Emma Ogilvie



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Foreword

Australia in the mid-1990s. Stalking has been defined in some jurisdictions as repeated acts *intended by offenders* to cause fear and apprehension, while in other jurisdictions stalking is interpreted as repeated acts which are *experienced by victims* as fearful or apprehensive.

However, defining stalking is not a simple exercise. Usually, criminality is a breach of some normative convention. However, in the case of stalking, the behaviour causing concern is typically not so much a breach of the normative conventions as often an undue *amplification* or emphasising of normative conformity.

Previous research on stalking has developed primarily out of a psychiatric framework, with a second research orientation focusing on specific aspects of the law and a third research orientation focusing on the incidence rates of stalking victimisation across the community.

To date, however, there has been very little research examining the outcome of anti-stalking legislation, specifically in terms of police and court data. Accordingly, this report aims to address this void in stalking research, by focusing on the legislation introduced in Australia in the mid-1990s and on the subsequent trends in reporting and prosecuting stalking since this legislation was introduced.

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Director, Australian Institute of Criminology
December 2000

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Executive Summary

Stalking has been described as the “paradoxical crime of the nineties”. Stalking is viewed as encompassing behaviours which *can* appear conventional and inoffensive whilst nevertheless managing to convey a menacing sense of obsession. Although stalking-type behaviours have been documented since the early 19th century, legislation specifically designed to protect individuals from stalking was only introduced in Australia in the early to mid-1990s.

Given the relatively recent nature of the “crime”, empirical studies of the stalking phenomenon are relatively few and typically somewhat specialised. In order to address this gap, this report investigates the social, legal and criminal justice system attempts to deal with a crime that incorporates such diverse realms as psychiatric disorders, gender relations and everyday social interaction. There are a number of important findings.

- Stalking as a crime is an inherently difficult concept to define due to its paradoxical status as simultaneously involving both conformity and criminality. In cases of stalking, the behaviour causing concern is often not so much a breach of normative conventions as an undue *amplification* or emphasising of normative conformity.
- Most research on stalking has focused upon psychological characteristics of stalking. Principal findings include: approximately 10 per cent of people have experienced stalking-type behaviours at some time in their life. Victims are most likely to be female and younger than their stalkers. Stalkers are most likely to be male and older than the average male criminal. The majority of stalkers appear to pursue their ex-partners and most stalking episodes last (on average) between 1 and 2 years. The most common behaviours involve being watched, followed and telephoned, with the motivations for stalking being predominantly control and intimidation.
- Typologies of stalking offenders vary, and can be based upon: the characteristics of the victim (for example, celebrities and strangers); the relationship between the stalker and the victim (for

example, workplace acquaintance, electronic acquaintance and ex-partner); the motivations of the stalker (for example, revengeful, love and rejected); and the psychological characteristics of the stalkers (for example, erotomanic and simple obsessional). Many researchers use a combination of these variables in their typologies. However, the most commonly used classification is that of: stranger, acquaintance and intimate.

- Stalking legislation was first introduced in Australia in the mid-1990s. Queensland introduced anti-stalking legislation in 1993; New South Wales, the Northern Territory and South Australia in 1994; Tasmania, Victoria and Western Australia in 1995; and the Australian Capital Territory in 1996.
- Stalking is commonly defined as repeated behaviours causing fear and apprehension. The behaviours include (amongst others) practices such as following, watching, telephoning or otherwise contacting another person; loitering near, watching, approaching or entering a place where another person lives, works or visits; interfering with property in the possession of another person; and leaving or giving offensive material to another person.
- Differences in stalking legislation across jurisdictions relate primarily to the nature of intent. Some jurisdictions use objective tests of intent, where a reasonable person should have known they were causing apprehension and fear (for example, Queensland). Other jurisdictions use subjective tests of intent, where the offender had to intend apprehension or fear (for example, South Australia), and some jurisdictions use a mixture of the two across a gradation of offences (for example, Western Australia).
- Stalking is reported to police at a reasonably high rate, with the highest rate of reporting being South Australia (at 27.9 per 100 000) and the lowest being the Australian Capital Territory (at 0.9 per 100 000). These numbers are strongly affected by the counting conventions employed in the different states and, arguably, reflect the differing nature of stalking legislation across the different jurisdictions. It is, thus, critical to note that the data are not strictly comparable across jurisdictions.
- Only a small amount of reported stalking cases result in prosecution. Of those cases that make it to the courts, there is a

higher likelihood of dismissal than conviction, and the penalties imposed tend to be at the lower scale (that is, recognisance without or without supervision). As with the police data, it is critical to remember that the courts data are not strictly comparable across jurisdictions.

- The primary policy recommendation of this report is that the range of available responses to stalking needs to be expanded. Given the complicated nature of the offence, simple interventions based upon *either* therapy *or* criminal justice intervention are not suitable on their own. There needs to be co-operation between different stakeholders, including mental health experts, police and magistrates, domestic violence organisations and others in implementing the most appropriate interventions. These interventions should be based upon a sound understanding of the different types of stalking behaviours, the potential for violence, and the detrimental impact of these behaviours upon victims (particularly when they continue over a period of years).

Dimensions of Stalking

As a concept, stalking possesses sinister and threatening connotations. It implies being hunted and harassed, whilst powerless and unable to stop a relentless and threatening pursuit.

Despite these connotations, stalking, as a discrete concept, is a surprisingly recent phenomenon, relatively unknown until towards the end of the 20th century. While practices that might be said to constitute stalking have been documented since the early 19th century, these were never officially designated as criminal, or even seen as constituting a particular category of social behaviour. Part of the reason for this very late recognition of stalking as a phenomenon in its own right is the difficulty entailed in defining exactly what constitutes stalking. Stalking has proved (and continues to prove) to be remarkably resistant to definitions which can be used in a legal sense as well as convey the range of connotations the term stalking has come to be imbued with. Stalking has been variously defined as:

A constellation of behaviours involving repeated and persistent attempts to impose on another person unwanted communication and/or contact. (Mullen et al. 1999, p. 1244)

Activities which on the surface are innocuous and commonplace but which, when constituting a course of conduct and with the necessary intent, form the basis of the criminal offence. (Swanwick 1996, p. 26)

When one person causes another a degree of fear or trepidation by behaviour which is on the surface innocent but which, when taken in context, assumes a more threatening significance. (Goode 1995, p. 24)

The wilful, malicious, and repeated following and harassing of another person that threatens his or her safety. (Meloy and Gothard 1995, p. 258)

A slow, sinister, persistent and possibly lethal pursuit. (Evans 1994, p. 1021)

A course of conduct directed at a specific person that involves repeated physical or visual proximity, non-consensual communication or verbal, written or implied threats. (Tjaden 1997 cited in Harris 2000, p. 1)

As can be seen, each of these six definitions, taken from the legal, psychological and sociological arenas, draws upon quite different criteria in order to delimit what constitutes stalking.

The specific legislation, which has been written up to define stalking in the legal sphere, is no more consistent. Stalking has been defined in some jurisdictions as repeated acts *intended by offenders* to cause fear and apprehension, while in other jurisdictions stalking is interpreted as repeated acts which are *experienced by victims* as fearful or apprehensive (see chapter on “The Legislative Framework”).

This issue of the nebulosity of stalking is one of the central themes of this report. Definitional difficulties derive from the paradoxical status of stalking as simultaneously being an exemplar of conformity and criminality. That is, criminality is usually a breach of some normative convention. However, in the case of stalking, the behaviour causing concern is typically not so much a breach of the normative conventions as an undue *amplification* or emphasising of normative conformity.

In any criminological exercise, identifying the characteristics of offenders is a crucial aspect of developing effective strategies to address crime, be that through legislation, policy or social infrastructure. However, the identification of offenders is reliant upon the definition of the offence. For example, in crimes such as armed robbery, the offence is relatively easy to define, generally involving being armed with an offensive weapon or instrument, and robbing (or having intent to rob) any person or business.

Consequently, typologies of “typical” offenders’ characteristics have been made on the basis of the most common characteristics of those engaging in this particular offence (that is, males in their early 20s with low levels of education, previous convictions and a history of drug use). However, because stalking is a difficult concept to define, there are very real difficulties in identifying the common characteristics of offenders. This can perhaps be seen more clearly if we continue the comparison with armed

robbery. When engaging in armed robbery, regardless of the particular situational context (for instance, holding up a bank, a service station or a fast food store), armed robbers generally have reasonably similar motives. Offenders generally require similar levels of knowledge (being able to access and credibly brandish a weapon), have similar relationships to their victims (usually persons who are not acquainted with the offender), and their behaviours are relatively consistent (threatening someone with a weapon).

In contrast, stalking behaviours can require diverse levels of knowledge ranging from that required to make a telephone call to that involved in setting up an anonymous remailer on the Internet. The relationship to the victim can vary from a never encountered Hollywood celebrity to an ex-partner. Similarly, the actual behaviours can range from persistently threatening an ex-partner to “spamming”¹ a work colleague who has never actually been met in person. It is for these reasons that stalkers have been described as a “heterogeneous and complex group”, characterised more by what they do than where they come from (White and Cawood 1998). For this reason, many theorists argue that there is, in fact, no one profile of a stalker (Davis and Chipman 1997; Rudden, Sweeney and Francis 1990).

There are obviously those who have attempted this endeavour however, and, in recent times, there has, in fact, been a plethora of academic texts examining stalking phenomena. The vast majority of this burgeoning literature has developed out of a psychiatric framework. Whilst this attention is obviously welcome, it has meant some of the most prolific researchers interested in stalking have focused upon issues such as erotomania and mental health in order to explain stalking behaviours.

A second research orientation has focused on specific aspects of the law, such as intent and overbreadth, in order to determine the likely effectiveness of stalking legislation. A third research orientation has focused upon the incidence rates of stalking victimisation across the community. This approach is obviously valuable in as much as it aims to generate “benchmark” data crucial to policy development and implementation processes.

To date, however, there has been very little research focusing upon the outcome of anti-stalking legislation, specifically in terms of police and court data. Accordingly, this report specifically aims to address this void in

¹ Spamming is a technique often used in cyberstalking, and involves the persistent sending of hundreds of “junk” e-mails, see Deirmenjian 1999; Ogilvie 2000.

stalking research, by focusing on the legislation introduced in Australia in the mid-1990s and on the subsequent trends in reporting and prosecuting stalking since this legislation was introduced.

As can be seen in Table 1, all of the Australian jurisdictions have introduced legislation that attempts to clarify what “is” stalking.

However, it is important to note that legislation is only one aspect of the wider phenomenon of stalking. Legislation is affected by social norms and values as much as it, in turn, affects policing and courts practices. For this reason, stalking legislation cannot be examined on its own as if legislation and community attitudes, policing practices and victim’s experiences of stalking are somehow mutually exclusive phenomena. Instead, current stalking legislation needs to be positioned within a wider framework, which includes understanding how society constructs obsessive love, the lessons that academic research has taught us concerning stalking behaviours, and how legislation, in turn, impacts upon policing and sentencing practices, in ways which are not always beneficial to victims of stalking behaviour.

Given these critical factors, the following report has taken a broad approach to examining stalking within the Australian context. With this objective in mind, the text is divided into eight specific sections.

Dimensions of Stalking: An introduction to stalking and an outline of the structure of the report.

Defining Stalking: An examination of disciplinary differences in the definitions of stalking. This chapter examines historical and cultural accounts of love, romance and stalking in order to illustrate the complex nature of stalking and the way in which it represents a highly problematic “mix” of conformity and criminality.

Current Explanations of Stalking: This chapter provides an overview of stalking research to date. This chapter outlines the primary arguments, and summarises the principle categories mobilised by the major researchers of stalking (in particular those operating from within a psychiatric orientation).

Case Studies: This chapter follows on from the previous chapter, providing case study examples of stranger stalking, acquaintance stalking and intimate

stalking. International examples are drawn upon, followed by more focused case studies from the Australian context.

The Legislative Framework: This chapter overviews the current Australian legislation across the different jurisdictions. Comparisons are made to legislation in other countries, specifically Northern America and the United Kingdom, and attention is paid to issues of overbreadth, intent and what constitutes a course of conduct.

Policing: This chapter outlines the rates of stalking being reported to police, provides comparisons between cases reported and cleared, and discusses the stark differences found across selected jurisdictions.

The Courts: This chapter examines the incidence of stalking cases that appear in both the lower and the higher courts. Comparisons are made between those cases which are dismissed and those that result in conviction, and the final outcomes received across the different jurisdictions.

Intervention/Prevention Responses: This chapter examines current intervention guidelines. Therapeutic management, legislative options and community education programs are outlined as promising options for future policy development and implementation.

Conclusion: This chapter summarises the basic arguments of the text and offers policy recommendations for addressing stalking within the Australian context.

Table 1: Summary of Stalking Legislation Across Jurisdictions

Section	Year	Stalking Defined as	Criteria	Penalty	Exceptions
ACT <i>Crimes Act</i> 1900 s34A	1996	Acts engaged in on at least 2 separate occasions, which could be expected to arouse the other persons apprehension or fear.	Offender must intend to cause apprehension or fear of serious harm, or serious harm.	Up to 2 years. Unless behaviour also involves possession of an offensive weapon or contravenes a court order, then up to 5 years.	
NT <i>Criminal Code Act</i> s189	1994	Acts engaged in on at least 2 separate occasions, which could be reasonably expected to arouse the other persons apprehension or fear.	Offender must intend to cause physical or mental harm or apprehension or fear.	Up to 2 years. Unless behaviour also involves possession of an offensive weapon or contravenes a court order, then up to 5 years.	
NSW <i>Crimes Act</i> 1900 s562AB	1994	Acts engaged in which amount to intimidation within the context of a domestic relationship.	Offender must intend to cause person to fear themselves or another person in that domestic relationship.	Up to 2 years imprisonment or a fine of \$5 000.	
QLD <i>Criminal Code Act</i> s359A	1993 amended 1998	Concerning acts engaged in on more than 1 occasion, or on 1 protracted occasion.	Behaviour directed intentionally at a person which would reasonably cause apprehension and fear.	Up to 5 years. Unless behaviour also involves possession of an offensive weapon or contravenes a court order, then up to 7 years.	Industrial, political or public disputes undertaken in the public interest and reasonable conduct engaged in for lawful purposes.
SA <i>Criminal Law Consolidation Act</i> 1935 s19AA	1994	Acts engaged in on at least 2 separate occasions, which could be reasonably expected to arouse the other persons serious apprehension or fear.	Offender must intend to cause serious physical or mental harm, or serious apprehension or fear.	Up to 3 years. Unless behaviour also involves possession of an offensive weapon or contravenes a court order, then up to 5 years.	A person acquitted or charged of an offence other than stalking may not be convicted of stalking if the charge arises out of the same set of circumstances.
TAS <i>Criminal Code Act</i> 1924 s192	1995 amended 1999	Acts engaged in which could be reasonably expected to arouse the other persons apprehension, or fear of physical or mental harm.	Offender must intend to cause apprehension, fear or physical or mental harm, or have known that their acts would create fear and apprehension.	Up to 21 years.	It is not an offence if behaviour is engaged in when performing his or her official duties for the purposes of (a) the enforcement of the criminal law; (b) the administration of an Act; (c) the enforcement of a law imposing a pecuniary penalty; (d) the execution of a warrant; or (e) the protection of the public revenue.
VIC <i>Crimes Act</i> 1958 s21A	1995	Engaging in a course of conduct with the intention to cause physical or mental harm, apprehension or fear.	Offender must intend to cause apprehension, fear or physical or mental harm. The conduct must have the result intended by the offender.	Up to 10 years.	It is not an offence if behaviour is engaged in when performing official duties relating to enforcing the law, the administration of an Act, the execution of a warrant, or the protection of public revenue.
WA <i>Criminal Code</i> <i>Compilation Act</i> 1913 s338D and s338E	1995 amended 1998	The prevention or hindering of another persons lawful actions, compelling a person to commit an act that they are lawfully entitled to abstain from or causing physical or mental harm, apprehension or fear in a person.	Offender must have intent to intimidate or the act does in fact intimidate.	Court of Summary Jurisdictions: Up to 18 months or a \$6 000 fine; a higher court: up to 3 years. Unless behaviour also involves possession of an offensive weapon or contravenes a court order then: court summary jurisdictions: up to 2 years or a \$8 000 fine; a higher court: up to 8 years.	If the accused acted with lawful authority or reasonable excuse.

Defining Stalking

As noted in the first chapter “Dimensions of Stalking”, one of the primary difficulties faced by researchers and practitioners attempting to explain and “deal with” stalking relates to its problematic status as an act that derives from both conformity and non-conformity.

In Western society, we have a very strong cultural belief in the romance and intensity of unrequited love as a narrative that conveys magnificent emotional intensity of which humanity is capable. Whether this narrative ends in the object appreciating and reciprocating the love, or the subject dying nobly through loss of this love, the general theme is one which has gained cultural reification across the centuries, enough to be celebrated in literature, performance art and the continuation of historical accounts.

However, one of the central features of “criminal” stalking is that it involves “repeated pursuit”. Persistent pursuit is, of course, also a central feature of “true love”. There is a vast cultural heritage (at least in Western culture) that legitimates persistent pursuit as “proof” that the love is real and, therefore, will ultimately be rewarded with reciprocation. If we turn to a variety of expressions of how society has culturally reified the nature of intimate relationships, we can very easily see why it is that criminal pursuits (that is, stalking) are so difficult to sensibly distinguish from legitimate pursuits (that is, proving one’s love).

Categorising Activity

If we use the most simple of definitions for the moment, that stalking is a *single-minded pursuit of another*, we come across an immense array of examples which, for conveniences sake, may be labelled “good love” stories.

A Single-Minded Pursuit of Another: Good Love

The notion that love involves pursuit, persistence and tests of perseverance is not one that is unusual across either cultures or time. When we delve in ancient mythology, we see clear examples of heroes engaging in the most extreme of behaviours in order to secure the returned *amour* of the object of their affections. These include accounts provided by almost any Greek mythological love story we care to think of (for instance, Orpheus and Eurydice, Perseus and Andromeda, Odysseus and Penelope). Invariably, challenges are faced and obstacles overcome in the *pursuit* of an indomitable love. Whilst, in the true spirit of Grecian tragedy, very few of these stories end happily, the notion that one must overcome both earthly and divine obstacles in the hunt for an inexplicable passionate love is one that has long been recognised and celebrated as something very important, and very *human*.

These stories are not of course confined to myth, as the devotion of such famous poets as Dante for Beatrice and Petrarch for Laura clearly reveal. Indeed, Dante is willing to go to hell and back (to describe the *Vita Nuova* somewhat literally) primarily so that the final outcome, salvation, results in him being with Beatrice.

And, perhaps most famously, it is Jane Eyre's persistence that finally allows for true love to prevail. Jane, as with our other male heroes, goes through a personal pilgrimage, finding love, having it denied her, living by her Christian values, only to be unexpectedly rewarded at the end of her journey by the sudden availability of her obsession —Rochester.

A figure came into the twilight and stood on the step—a man without a hat.... Dusk as it was, I had recognised—it was my master, Edward Fairfax Rochester, and no other. I stayed my step, almost my breath, and stood to watch him—to examine him, myself unseen, and, alas! To him invisible. It was a sudden meeting, and one in which rapture was kept well in check by pain. (Charlotte Bronte 1960)

It is certainly not only in the classic novels that we come across such themes. The premise by which the feisty young heroine is plucked away against her will by a charismatic male, heroically voicing her objections up until the very end of the novel, is hardly new. The final discovery she has actually fallen *headlong in love* with her protagonist is a familiar story line that has secured the success of *Mills and Boons* across the years, not to mention

ensured the literary longevity of Georgette Heyer, Jane Austen, and all three Bronte sisters.

It can be seen then that persistence, pursuit and dogged determination are qualities that are often demanded across cultures in order to *prove* and eventually *win* the prize of the subject's affections. Obstacles and endurance tests are simultaneously positioned as demonstrations of the true ardour of the pursuer, as well as the value of succumbing by the pursued to the dedication of the pursuer.

Obviously, such qualities are not the sole characteristic of what in our more enlightened times we now consider stalking. Whilst there may be shared qualities (pursuit, determination, refusal to give up), we recognise these more "noble" behaviours as qualitatively different to the uninvited and so ominous aspects of stalking.

With this thought in mind, we might expand on our original definition, and call stalking *a single-minded pursuit of another despite continued rejection*. However, this revised definition simply takes us into a different, but equally vast, cultural domain, old time romantic cliché—unrequited love.

A Single-Minded Pursuit of Another Despite Continued Rejection: Unrequited Love

While it may seem flippant to discuss unrequited or unfulfilled love, a painful but somewhat romantic experience most people experience at least once in their life, in relation to a crime as serious as stalking, the link between unrequited attachment and consequent stalking behaviours is important (Aron, Aron and Allen 1998; Meloy 1989; Sinclair and Frieze 2000). The links between culturally-legitimated notions and stalking behaviours are not being noted here flippantly. It is argued, in part, that because these "acceptable" expressions of emotions and behaviour are so clearly and prominently culturally defined, identifying the line between stalking and "legitimate" pursuit is so difficult.

One of the best examples we might note at this point is that of Shakespeare himself. As Shakespeare discusses his mistress, who we presume has just denied him her affections, in a series of sonnets, we witness the impassioned declarations of intense devotion.

Who taught thee how to make me love thee more,
The more I hear and see just cause of hate? (Sonnet 150, 5–10)

Shakespeare is, of course, not the only cultural icon we can cite concerning unfulfilled love, obsession and brooding pain. Emily Bronte's *Wuthering Heights* provides an ideal case study whereby Heathcliff's intense and dangerous love for Cathy is frequently cited as the "classic" love story of the last century. In this particular tale, tragedy, jealousy, intense love, and death, somehow coalesce into "romance".

But unrequited love does not in itself necessarily lead to acts of violence. More frequently, this emotion simply becomes the source of depression and despondency. Even so, the next connection between stalking and the dominant cultural narratives of our age is not difficult to discern if we further extend our definition of stalking to encompass: *a single-minded pursuit of another despite continued rejection, causing fear and apprehension*; or as we might want to think of it—bad love.

A Single-Minded Pursuit of Another Despite Continued Rejection, Causing Fear and Apprehension: Bad Love

What is particularly interesting about this conception is that just as unrequited love is culturally glorified, so too are violent responses to this phenomenon.

The classic example of this is of course *Othello*. Othello is the pre-eminent example of impassioned obsession, love, betrayal, and ultimately murder. It is interesting to note the manner in which Othello has been described as "by far the most romantic figure among Shakespeare's heroes", and, as expressing a love "as strange, adventurous and romantic as any passage of his eventful history, filling his heart with tenderness and his imagination with ecstasy" (*Bradley; From Shakespearean Tragedy, 1904*). This is a particularly interesting appraisal when we consider Othello's words while he smothers Desdemona:

Ah balmy breath, that dost almost persuade
Justice to break her sword! One more, one more.
Be thus when thou art dead, and I will kill thee,
And love thee after. One more, and this the last:
So sweet was ne'er so fatal. I must weep,
But they are cruel tears: this sorrow's heavenly;
It strikes where it doth love. (Act 5, Scene 2)

A similar theme is developed in the *Phantom of the Opera*, with the Phantom's pursuit of Christine, his pleas for her love, his desperate desire

for her, and the final abduction in the name of devotion. The success of the Andrew Lloyd Webber production of this narrative signals just how strongly this theme resonates with popular understandings of the nature of “true love”. When we read the final epilogue from the dying Eric, however, the resemblance of what is being so tunefully conveyed with some of the worst stalking murders is immediately apparent.

Of love ... daroga ... I am dying ... of love ... That is how it is... I loved her so! ... And I love her still ... daroga ... and I am dying of love for her, I ... I tell you! ... If you knew how beautiful she was ... when she let me kiss her ... alive ... It was the first ... time, daroga, the first ... time I ever kissed a woman.... Yes, alive.... I kissed her alive ... and she looked as beautiful as if she had been dead! (Leroux 1923, p. 237)

And lest we consider that such thoughts are no longer current currency, we may listen to Nick Cave and Kylie Minogue in the 1990s, singing their number one single: *Where The Wild Roses Grow*.

From the first day I saw her I knew she was the one
As she stared in my eyes and smiled
For her lips were the colour of the roses
That grew down the river, all bloody and wild
.....

On the second day I brought her a flower
She was more beautiful than any woman I'd seen
I said, "Do you know where the wild roses grow"
So sweet and scarlet and free?
.....

On the last day I took her where the wild roses grow
And she lay on the bank, the wind light as a thief
As I kissed her goodbye, I said, "All beauty must die"
And lent down and planted a rose between her teeth
(Cave 1996)

What we have then is a widespread cultural acceptance of the idea that passionate love may well entail violence. Whilst perhaps not as socially legitimate as unrequited love, these violent attachments occupy a particularly important position in the cultural landscape of contemporary society.

This cultural legitimization of violence as an aspect of true love leads to enormous difficulties when we come to understand and define what *is* stalking because so many aspects of stalking are so enmeshed in violent cultural narratives of “love”. It is here that we get to the crux of the problem of stalking.

Part of the reason for the difficulty in defining stalking as a concept lies in its paradoxical status as an act that is ambiguously located somewhere between crime and conformity. It has been argued that “the term stalking does not differentiate between a general class of behaviours (that are limited only by the constraints of the stalker) and the specific act of following someone” (Westrup 1998, p. 276). For example, behaviours such as telephoning an ex-lover or sending gifts are not inherently criminal (Weiner 1995, p. 33).

Matters of definition are critical at this point because of the cultural link between criminal stalking and conventional romantic interactions.

some of the actions employed by stalkers are extreme versions of actions that characterise ordinary intimacies: writing, calling, visiting and gathering information appear in perverse, terrifying incarnations, but those behaviours derive from more familiar, everyday courtship and friendship actions. Similarly, the core dynamic in relational stalking—persistence in seeking a relationship in the face of continuing rejection—mirrors in the extreme the dogged pursuit of “true love” idealised in the culture and media, as well as being a hyperbole of the manic love noted in normal courtship. (Emerson, Ferris and Brooks Gardner 1998, p. 292)

So what then do we see in our most infamous stalkers. Interestingly, John Hinkley, who attempted to assassinate President Reagan out of love for Jodie Foster, explains this act in a manner eerily resembling Browning:

I seem to have a need to hurt those people that I love the most. This is true in relation to my family and to Jodie Foster. I love them so much but I have this compulsion to destroy them.... My assassination attempt was an act of love, I'm sorry love has to be so painful. (Caplan 1987, p. 130)

Similarly, Arthur Jackson, who stabbed Saldana a dozen times after having travelling across the world to track her down,² bears some striking similarities to Kirkegaard or Dante.

it was spiritual lovesickness and divine inspiration...it's always been aesthetic and Platonic...[however] if she was a whore, God was going to appoint me to punish her. (Saunders 1998, p. 27)

It is not only the more infamous stalkers who can be compared to some of our greatest lovers. As the quotations below demonstrate, expressions of devotion, love, obsession and persistence are recurring themes in stalkers' testimonies.

I asked you to see me and you refused which is your right. It's my option to make your life miserable, if that's what you really want.... (cited in Victim Advocacy Centre 1999)

Mr P was charged with kidnapping.... When I asked him what he had done, he stated that he had handcuffed his girlfriend to the stickshift of his sports car and drove, despite her protestations, to Las Vegas from California. When I asked him why he did this, he said "It was my Italian way of saying 'I love you'." (cited in Meloy 1988, p. 280)

I have an obsession with the unattainable. I have to eliminate what I cannot attain. (Bardo cited in Saunders 1998, p. 25)

You'll be thinking of me. You may not be thinking good thoughts, but you'll be thinking of me. (cited in Victim Advocacy Centre 1999)

Discussion

So what is stalking? Few people would disagree with the view that the previous examples of stalking behaviours constitute dangerous and socially injurious practices that should be legislated against. Arguably, however, there are equally few people who would disagree with the view that

² The stalking and assault upon Saldana by Jackson is widely credited as initiating California's first stalking legislation. This is discussed in more detail in the third chapter "Current Explanations of Stalking".

Shakespeare and Browning were extraordinary poets who described what it means to be human with extraordinary sensitivity and perspicacity. It is precisely this contradiction in our social understandings of stalking behaviours that makes dealing with the subject such a difficult exercise.

The end result of this confusion is that it would appear that behaviours become stalking *when the victim defines them as such*. The behaviours themselves are, therefore, not necessarily inherently criminal, *unless* the target of the behaviours negatively interprets them. There may well be numerous examples where one person's stalking behaviours are another's courting practices. The importance of this point cannot be over-emphasised, as research has indicated that when those who have experienced persistent and unwanted attention were questioned as to whether they considered the behaviour a crime, one-third of respondents answered that the behaviours should be considered criminal, 37 per cent considered the behaviours to be "wrong, but not a crime", and 25 per cent of respondents considered the behaviours to be "just something that happens" (Budd, Mattinson and Myhill 2000, p. 49). The implications this volatile and often subjective status of behavioural practices has for defining stalking as a crime are enormous (as can be seen in current attempts to theoretically explain stalking).

Current Explanations of Stalking

This chapter begins with a brief account of the dominant theoretical orientation drawn upon to locate stalking within the broader landscape of social behaviours. This is then followed by an overview of what we know about the background and *modus operandi* of “typical” stalkers. Finally, the chapter concludes with an examination of the typologies developed to categorise offenders.

In very general terms, this chapter suggests that if we are to advance our understanding of stalking, and our responses to it, we need to move beyond psychiatric models that emphasise the psychological at the expense of the social. A very simple threefold categorisation of stalking is presented which is capable of incorporating the insights derived from the psychiatric models without sacrificing the gains to be obtained by an approach which is more sensitive to the role of social factors.

Current Research

As noted in the previous chapter, the issue of stalking is one that has only very recently begun to receive sustained academic attention. Consequently, at this point, the literature is relatively sparse and generally rather specialised. To date, the research investigating the characteristics of stalking behaviours, including the impact upon victims of stalking and the attributes of offenders, has been characterised by forensic investigations into the psychological profiles of stalkers, with more recent excursions into the area by sociologists, feminists and policy makers. Nonetheless, this research has contributed significantly to our understanding of stalking, specifically with respect to the who, what, why and how of stalking activities.

Given the psychological or forensic orientation of stalking research, specifically in the early days of academic interest in the area, the primary focus of examinations of stalking to date has been upon the mental health of stalkers. This emphasis has resulted in a considerable body of information

concerned with the backgrounds of stalkers. This is useful, indeed crucial, baseline information, although some caution needs to be exercised in the interpretation of such data.

Before discussing the research findings, it is necessary to elaborate a little upon the ways in which the existing literature cannot be accepted without some significant qualifications. The first qualification we need to bear in mind is that many of the investigations into stalking are based on small samples comprised of already committed (charged and psychiatrically diagnosed) stalkers. The weaknesses of small samples are reasonably well known, most particularly in that they do not allow for ready generalisation to larger populations. The focus upon convicted stalkers also creates problems because in researching those stalkers who have been sent to a psychiatric unit as an aspect of their sentence, it is likely that such research “recruit[s] the more distressed and aware victims, skewing our data to the more severe end of the spectrum” (Pathé and Mullen 1997, p. 12). This means that cases that are more ambiguous, that have not been reported to the police, and that are far less likely to have resulted in a court order of some sort incorporating psychiatric treatment, tend not to be recognised, acknowledged, or investigated.

These issues have been addressed more recently by sociologists investigating stalking, although these projects also need to be understood within context. While recent investigations have involved larger and more representative samples, many have also relied upon one resource pool of respondents, mainly college students. While these findings are more scientifically sound in terms of generalisability, they are also necessarily biased with respect to their ability to incorporate the experiences of more marginalised members of the community. Nonetheless, from these varied investigations into stalking, some critical trends have been uncovered.

Who: Characteristics of Stalking Offenders and Victims

What we do know of stalkers provides crucial indicative data concerning the magnitude of stalking. The National Institute of Justice has been conducting an annual project on stalking since 1996. Using the National Violence Against Women Survey (n=16000), it was found that 8.1 per cent of all women and 2.2 per cent of all men surveyed were stalked at least once in their lifetime (National Institute of Justice 1997, p. 7) (see also Tjaden and Thoennes 1999). Of those who responded, over 90 per cent were stalked by one person (National Institute of Justice 1997, p. 8). The 1998 British Crime

Survey also included questions on stalking, and found that 11.8 per cent of adults aged 16 to 59 had experienced stalking (defined as persistent and unwanted attention) at some time in their lives, with 16.1 per cent of women and 6.8 per cent of men having experienced such behaviours (Budd, Mattinson and Myhill 2000). The Australian Women's Safety Survey reported similar figures, despite only looking at women who had been stalked by men, with 2.4 per cent of women (aged over 18 years) having been stalked by a man in the last 12 months, and 15 per cent having been stalked by a man at least once in their lifetime (Australian Bureau of Statistics 1996, p. 62).³

There also appears to be a link between domestic violence and stalking (Burgess et al. 1997; Coleman 1997; Kurt 1995; Mechanic, Weaver and Resick 2000). The risk of stalking rises if the victims/offenders have been involved in a relationship that incorporates domestic violence (Australian Bureau of Statistics 1996) and husbands who engaged in emotional abusive behaviours towards their wives were discovered to be more likely to engage in stalking behaviours (National Institute of Justice 1998). These results are reinforced when examining lethal domestic violence resulting in murder or femicide, with 76 per cent of femicide and 85 per cent of attempted femicide respondents reporting an episode of stalking within 12 months of their subsequent murder (McFarlane et al. 1999, p. 308; see also Walker and Meloy 1998).

Despite the paucity of replicated findings, as the literature develops there appears to be recurrent themes. For example, it has been reasonably consistently demonstrated that most stalkers are male and most victims are female (Budd, Mattinson and Myhill 2000; Fremouw, Westrup and Pennypacker 1997; Geberth 1992; Meloy 1998; National Institute of Justice 1997, 1998; Pathé and Mullen 1997), with the most cited finding being that women were found to be four times more likely to be stalked than males (National Institute of Justice 1997). Some research has replicated these results, such as Pathé and Mullen (1997), whose sample (n=100) contained 83 female and 17 male victims while other research has resulted in closer ratios, such as that by Fremouw, Westrup and Pennypacker (1997),

³ It is important to note, however, that when the definition is broadened, or specifically when a potential stalking scenario is provided to women, Hills and Taplin's research has shown that "29 per cent of participants reported having had an experience similar to that depicted in the scenario, [a figure] much higher than the 15 per cent reported from a survey of Australian women by the Australian Bureau of Statistics." (Hills and Taplin 1998, p. 145)

demonstrating that 35.2 per cent of female students compared to 18.4 per cent of male students reported having been stalked (n=593) (Fremouw, Westrup and Pennypacker 1997).

It should be noted, however, that when the definition of stalking is broadened to whether respondents have experienced being followed, telephoned or sent gifts repetitively (rather than experiencing fear or apprehension), these gender differences are less. For example, research focusing upon college students' experience of stalking demonstrates no significant gender differences in experiencing a range of behaviours which could constitute stalking (Spitzberg, Nicastro and Cousins 1998; Logan, Leukefeld and Walker 2000). Hills and Taplin's work also shows no significant difference between males (29%) and females (31%) reporting having had an experience similar to the stalking scenario provided by the researchers (Hills and Taplin 1998, p. 145).

This gender dimension also becomes slightly more complicated when we examine who is likely to stalk whom, with some research demonstrating that males and females were likely to be stalked by different people as "female victims are significantly more likely than male victims to be stalked by spouses or ex-spouses, whereas, male victims are significantly more likely to be stalked by acquaintances and strangers" (National Institute of Justice 1997, p. 9). Similarly, while females are more likely to be stalked by males, the sex of offenders stalking males appears to be more evenly distributed, with research demonstrating that 57 per cent of offenders stalking males were male, and 43 per cent were female (Budd, Mattinson and Myhill 2000, p. 26).

In general, however, stalkers appear to be older than the average criminal, aged on average between 35 and 45 years (Harmon, Rosner and Owens 1995; Meloy and Gothard 1995; Mullen and Pathé 1994; National Institute of Justice 1997; Schwartz-Watts and Morgan 1998; Zona, Sharma and Lane 1993), and victims tend to be younger than their offenders, on average between the ages of 18 and 29 years (Australian Bureau of Statistics 1996; Tjaden 1997; Tjaden and Thoennes 1999).

Most stalkers pursue their ex-partners (Meloy and Gothard 1995; Mullen et al. 1999; Zona, Sharma, and Lane 1993; Zona, Palarea and Lane 1998), or follow someone they know (Harmon, Rosner and Owens 1995; Meloy 1996; Mullen et al. 1999; Roman, Hays and White 1996; Zona, Palarea and Lane 1998). It appears that stalkers are more likely to be violent if they have had an intimate relationship with the victim (Coleman 1997; Lingg 1993;

McFarlane et al. 1999; Meloy 1996; Pathé and Mullen 1997; Palarea et al. 1999, Perez 1993; Tjaden and Thoennes 1999).

The duration of stalking ranges considerably, with Pathé and Mullen's (1997) research including cases that ranged from 1 month to 20 years, resulting in an overall median of 2 years. The National Institute of Justice (1998, p. 21) found that approximately two-thirds of all stalking cases last maximum of 1 year, about a quarter last 2–5 years, and about a tenth last more than 5 years. On average, stalking cases lasted 1.8 years, although it is important to note that those cases involving intimates tended to last longer than cases involving non-intimates (2.2 years compared to 1.1 years respectively) (National Institute of Justice 1998, p. 21).⁴

Why: Characteristics of Stalking Motivations

Few researchers have explicitly focused on the motivations of stalkers, but those which do tend to argue that power, revenge and insecurity are the primary motivations. Stalking is seen as a phenomenon rooted in the particular *psyche* of the offender rather than deriving more directly from social factors or contexts. This may of course reflect the background of the researchers rather than the more complex socio-genesis of stalking behaviours. Nevertheless, Wright et al. (1996) argue that stalker crimes are “motivated by interpersonal aggression rather than by material gain or sex. The purpose of stalking resides in the mind of stalkers who are compulsive individuals with a misperceived fixation. Stalking is [said to be] “the result of an underlying emotional conflict that propels the offender to stalk or harass a target” (1996, pp. 494–95). Social factors are acknowledged as contributing to this final psychological malaise, with Meloy hypothesising that “chronic failures in social or sexual relationships through young adulthood may be a necessary predisposing factor for some obsessional followers” (Meloy 1996, p. 151).

The third annual report published by the National Institute of Justice included victims' perceptions of why they had been stalked. Victims reported perceived motivations of control, with 21 per cent feeling that the stalker wanted to control them, 20 per cent feeling the stalker wanted to keep them in a relationship, and 16 per cent believing the stalker wanted to scare them, in comparison to 7 per cent believing that there stalker was

⁴ For an overview of stalking victims' and offenders' age and sex within the Australian context, as recorded by self-report survey data and police statistics, see Appendix A.

psychotic or delusional (National Institute of Justice 1998, p. 14). These motivations of possession and power are reflected in Wright et al.'s research with 40 per cent reporting anger or retaliation, 33.3 per cent possession, 20 per cent infatuation, and 6.7 per cent another reason for stalking (n=30) (Wright et al. 1996). In terms of intimate-partner violence, it has been argued that stalking, together with battering and emotional abuse, is motivated by attempts to control and intimidate the victim, and is also likely to be precipitated in the context of perceived or actual threats to the relationship (Mechanic, Weaver and Resick 2000, p. 68). It is important to note, however, that again there may be significant gender differences in motivation, with Budd, Mattinson and Myhill's research demonstrating that women were more likely to state that the offender wanted to start a relationship, and men being more likely to state that the offender wanted to annoy or upset them (2000, p. 29).

How: Characteristics of Stalking Behaviours

The two most common reported stalking behaviours appear to be being watched and being telephoned (see Brewster 2000, Meloy 1998; Pathé and Mullen 1997). In an Australian survey conducted by the Australian Bureau of Statistics, 1.6 per cent of women reported receiving telephone calls and 1.2 per cent reporting being watched (proceeded closely by being "followed" at approximately 1%) in the last 12 months (Australian Bureau of Statistics 1996, p. 62). Tjaden reported higher incidences for these behaviours using the National Violence against Women Survey, which examined stalking across the respondents' life. While the percentages were higher, the trend was the same. Of those surveyed, 78 per cent received telephone calls (with professionals being more likely than other groups to receive harassing calls); 71 per cent were followed; 62 per cent received letters; 58 per cent received direct threats; 50 per cent received unsolicited "gifts" (dead animals, flowers and photos); 36 per cent experienced damage to property, especially cars and outside of homes; 31 per cent were physically assaulted; 7 per cent were sexually assaulted; 3 per cent experienced attempted murder; and 2 per cent were abducted (Tjaden 1997). Budd, Mattinson and Myhill (2000) reported that the most common behaviours were silent phone calls (45%), being physically intimidated (42%) and being followed (39%). Women were more likely to experience being forced into talking to the offender, while men were more likely to experience silent phone calls (Budd, Mattinson and Myhill 2000, p. 35).

Forensic studies have come up with similar results, with Mullen et al.'s (1999) analysis of diagnosed stalking offenders finding that the most common method of communicating was via the telephone (78% of respondents), with 65 per cent also sending letters. Fifty-eight per cent of the stalkers made threats to the victim or a third party, with 52 per cent attacking the victim (Mullen et al. 1999, p. 1246). Other authors have identified a cycle of violence, involving specific phases of stalking acceleration.

Three factors of classification of stalking behaviour are suggested by the data. In the first factor, stalkers are open in their attempts to contact their ex-partner; when this fails they begin to contact others and discredit their partner. The second factor is the conversion of positive emotion of love to the negative of hate they essentially go underground with the clandestine behaviour being non-revealing and including anonymous or hang-up phone calls and entering the residence without permission. Just before they go public again, there is a phase of ambivalence indicating the splitting of love and hate where they send gifts and flowers. When they move from the mix of public and secret behaviour to a public display of stalking and targeting behaviour, they suddenly explode and in this sample, entered the victim's residence and were very violent. (Burgess et al. 1997, p. 399)

Given these findings, the relevance of different behaviours should not be underestimated in attempting to ascertain levels of danger of potential stalkers. Whilst an overview of violence and stalking will be undertaken later in the chapter, it is worthwhile noting at this point that:

The most frequently reported stalking behaviour for both femicide and attempted femicide victims was being followed or spied on. Additional stalking behaviour reported by almost half of all women was the intimate partner perpetrator sitting in a car outside her home or work site and receiving unwanted phone calls. (McFarlane et al. 1999, p. 308)

What: Consequences of Stalking for Victims

The final factor to be considered before dealing more systematically with the phenomenon of stalking is that of the impact on victims. Some research has

suggested that the experience of being stalked is “akin to psychological terrorism” (Hall 1998, p. 133), with many victims moving address, quitting jobs and changing their names and appearance in an effort to hide from their stalkers (Hall 1998, p. 134). In a study of 100 victims, Pathé and Mullen’s research revealed that over 94 per cent of victims of stalking reported lifestyle changes. Within the sample, a high proportion of subjects made specific lifestyle changes. Eighty-two per cent modified their usual activities, 73 per cent increased their security and 70 per cent curtailed social outings. An equally high proportion reported more psychological impacts on their lives. For example, 83 per cent reported jumpiness, shakes and panic attacks; 75 per cent reported feeling powerless; and 74 per cent reported chronic sleep disturbances. Twenty-four per cent (nearly a quarter) of the sample seriously considered or attempted suicide (Pathé and Mullen 1997).

The National Institute of Justice recorded less serious negative mental health impacts (although still substantial), with 30 per cent of women and 20 per cent of men reporting that they had sought psychological counselling. Extra precautions were taken by 22 per cent of victims, with 18 per cent enlisting the help of friends and family, and 17 per cent purchasing a gun. Eleven per cent changed address or moved out of town (National Institute of Justice 1998, p. 19). The British Crime Survey recorded that overall 92 per cent of victims of stalking behaviours were annoyed and upset, with 71 per cent of those who had been stalked changing their behaviours by either avoiding certain places, taking additional security measures, or going out less than they would have previously. Overall, women were more likely to change their behaviours than men were (Budd, Mattinson and Myhill 2000, pp. 43–44).

Fremouw, Westrup and Pennypacker discovered less extreme coping strategies, but with one particularly interesting gender differences. For females, the top four coping strategies for handling being stalked were ignoring the stalker, confronting them, changing their schedule and carrying a spray weapon (for instance, mace). In contrast, the top four coping strategies for males were confronting the stalker, ignoring them, reconciling with them and changing their schedule (Fremouw, Westrup and Pennypacker 1997, p. 668). Thus, both males and females chose three similar responses to being stalked, with the one difference of females carrying spray, and males reconciling with their stalker.

In sum, there have been a number of empirical investigations into stalking, which have revealed a variety of demographic data concerning the characteristics of both stalking offenders and stalking victims, based upon a variety of research samples (see Table 2).

Categories

The categorisation of offenders is a means of understanding the effectiveness of policy responses to stalking. If stalkers typically suffer from mental illness, then imprisonment is unlikely to constitute a particularly useful strategy in preventing further stalking behaviour. However, if the majority of stalking derives from dysfunctional intimate relationships, then this has crucial implications for domestic violence policies. An accurate and comprehensive classification of stalkers would, thus, facilitate the development of “a guide to the course and duration of harassment, the risks of escalation to assaultive behaviours, and, above all, the most effective strategies for ending the stalking” (Mullen et al. 1999, p. 1245; see also Mullen, Pathé and Purcell 2000). Given the importance of such an endeavour, it is not surprising that much of the research to date has focused upon the development of typologies of stalkers. These attempts at categorisation vary in their levels of sophistication.

Typologies can be based upon: the characteristics of the victim (for example, celebrities/strangers. See Holmes 1993); the relationship between the stalker and the victim (for example, workplace acquaintance, electronic acquaintance and ex-partner. See Davis and Chipman 1997, Emerson, Ferris and Brooks Gardner 1998); the motivations of the stalker (for example, revengeful, love, rejected. See Dietz et al. 1991; Harmon, Rosner and Owens 1995; Mullen et al. 1999); and the psychological characteristics of the stalkers (for example, erotomaniac and simple obsessional. See Meloy 1998; Zona, Sharma, and Lane 1993, 1998; Rudden, Sweeney and Francis 1990).

However, classificatory schemes are not always clear cut, with many researchers using a combination of these variables in their typologies. For example, Zona, Palarea and Lane’s (1998) research, which is predominantly concerned with psychiatric classification, divides two of these classifications (simple obsessional and love obsessional) on the basis of the relationship between the offender and the victim. Similarly, Mullen, Pathé and Purcell (2000), Harmon, Rosner and Owens (1998) and Wright et al. (1996) use a mixture of motivations and psychiatric characteristics in the development of their typologies.

Table 2: Selected Empirical Studies of Stalking

Authors	Sample
Kurt (1995)	4 case studies of stalkers with psychotic disorders.
Harmon, Rosner and Owens (1995)	48 individuals referred to a forensic psychiatry clinic.
Australian Bureau of Statistics (1996)	National survey of 6 300 women.
Wright et al. (1996)	30 stalking cases (no information regarding where cases came from).
Kienlan et al. (1997)	Archival files of 25 forensic subjects whose criminal offences met criteria for stalking.
Burgess et al. (1997)	Police incident reports. Charged subjects interviewed (120 participants).
Coleman (1997)	141 subjects from undergraduate psychology classes: control group 90; harassed group 38; and stalked group 13.
Pathé and Mullen (1997)	100 clients referred to forensic psychiatry clinic.
Fremouw, Westrup and Pennypacker (1997)	West Virginia University undergraduates: Study I: 294 college undergraduates. Study II: 299 college undergraduates.
National Institute of Justice (1997, 1998)	National survey of 16 000 people: 8 000 female and 8 000 male.
Emerson, Ferris and Brooks Gardner (1998) for temporary restraining orders).	41 qualitative interviews with people who had been "followed": 25 female and 16 male (plus examining petitions
Hills and Taplin (1998)	172 respondents, random survey of metropolitan Perth.
Sandberg, McNeil and Binder (1998)	17 mental health patients who were identified as having engaged in stalking behaviours.
Schwartz-Watts and Morgan (1998)	Medical records of 42 pre-trial detainees charged with stalking. Group divided into 22 non-violent and 20 violent.
Palarea et al. (1999)	223 intimates (n=135) and non-intimate (n=88) stalking cases (via LA Police Threat Management Unit).
McFarlane et al. (1999)	Closed police records from 10 cities in the United States (141 femicides and 65 attempted femicides included).
Ehrhardt Mustaine and Tewksbury (1999)	861 female university students (from 9 separate institutions).
Pathé, Mullen and Purcell (1999)	12 "false victimisation" individuals; and 100 "genuine victim" individuals.
Mullen et al. (1999)	145 (stalking) offenders located in a forensic psychiatric clinic.
Brewster (2000)	282 college students: 123 male and 159 female.
Logan, Leukefeld and Walker (2000)	337 college students: 147 males and 190 females.
Sinclair and Frieze (2000)	241 college students: 197 female and 44 male.
Sheridan, Davies and Boon (2000)	358 female union members.
Mechanic, Weaver and Resick (2000)	114 women who had experienced intimate-partner violence.
Farnham, James and Cantrell (2000)	50 (stalking) offenders located by a forensic service.
Budd, Mattinson and Myhill (2000)	9 988 people aged 16 to 59 years (the British Crime Survey). Of those stalked at least once in their lifetime, n=1179 approximately).

While some researchers have attempted to develop clear definitions of their concepts (for example, quality of obsession. See Zona, Sharma, and Lane 1993) or checklists based upon the style of stalking, risk level, motive and outcome (see Wright et al. 1996), in general, a failure to provide a clear operationalisation of stalking has proven to be a significant handicap to research into this area. The lack of “reliability” in these diverse (albeit overlapping) studies obviously hinders the development of “valid” typologies. With the added disadvantages of small samples, deriving from forensic populations of already diagnosed offenders, much psychiatric research is limited to exploratory hypotheses rather than explanatory data (Emerson, Ferris and Brooks Gardner 1998; Hills and Taplin 1998; Westrup 1998). Nonetheless, it remains the one discipline to have empirically investigated stalking and, as such, one of the few to make any major contribution to the field.

The psychiatric literature focuses predominantly upon stalking behaviours as indicating the presence of obsessional disorders, specifically that of erotomania (Goldstein 1998; Harmon, Rosner and Owens 1995; Leong 1994; Wright et al. 1995; Zona, Palarea and Lane 1998). The examination of erotomania can be argued to have defined early research into stalking, with Meloy undertaking a review of all studies of stalking and finding only five studies that did not exclusively focus on erotomania (Meloy 1996). Erotomania was first discussed by Esquirol in 1838 (see Meloy 1989). It has been defined as a “mixture of morbid infatuation and delusions of being loved by another” (Abrams and Erlick Robinson 1998a, p. 474) and a “fixed delusional belief that one is loved by another, usually someone of a higher status or power” (Fremouw, Westrup and Pennypacker 1997).

Zona, Sharma and Lane (1993) were amongst the first researchers to use understandings of obsession in analysing a group of stalkers. They categorised 74 stalkers as representative of three distinct groups: erotomaniac (cases in which the offender (delusionally) believes the victim loves them), love obsessional (cases in which the victim and the offender have no prior relationship), and simple obsessional (cases in which the victim and the offender have a prior relationship).

There has also been discussion concerning which sex is likely to be erotomaniac. Clinical tests suggest that males are more likely to suffer erotomania (Mullen and Pathé 1994, Goldstein 1987), while larger non-forensic samples demonstrate higher incidences of the disorder in females

(Zona, Sharma, and Lane 1993; Harmon, Rosner and Owens 1995). For a detailed discussion of these findings, see Meloy (1996).

It should be noted though that, while the majority of early forensic investigations focus upon issues of erotomania, most have discovered that erotomania exists in an extremely small percentage of stalkers, and that most stalkers are not psychotic at the time of their stalking (Meloy 1998). Despite these relatively consistent findings, there has been little discussion as to the possible consequences of stalking not being a mental health problem.

Harmon, Rosner and Owens (1995) conducted analysis on 48 individuals who had been referred for evaluation to a Forensic Psychiatry Clinic for harassment, aggravated harassment and/or menacing. They developed a classification scheme for the offenders along two axes: “one relating to the nature of the attachment between the defendant and the object of their attentions, and another relating to the nature, if any of the prior interaction between them” (Harmon, Rosner and Owens 1995, p. 189).

The two axes were broken down further, whereby the nature of attachment was divided into “affectionate/amorous” or “persecutory/angry”, and the nature of prior interaction was divided into six categories: personal (prior intimate), professional (for example, business, professor and therapist), employment (employer or employee), media, acquaintance (superficial previous relationship), none (no clear reason for selection of victim), and unknown. Harmon, Rosner and Owens’s (1995, pp.190–94) research is interesting in that the majority of prior interaction was in the professional (25%) and employment (25%) categories, indicating a level of familiarity between the offender and the victim, but not intimacy. Indeed, only 13 per cent reported a personal prior relationship, the same percentage that reported having a relationship through media familiarity.

The nature of the relationship, however, was predominantly “amorous/affection” (63%) in comparison to a smaller (yet, still concerning) 31 per cent in the “persecutory/angry” category. In their later research, Harmon, Rosner and Owens (1998) further investigated these issues, affirming that there were statistically significant differences between individuals who harass for reasons relating to love compared to those who harass for reasons relating to persecution and anger (Harmon, Rosner and Owens 1998, pp.

246–47). They make the important point, however, that the law-enforcement community should consider *both* categories a threat (Harmon, Rosner and Owens 1998, p. 247).

Somewhat more comprehensively, Mullen et al. conducted analysis on 145 stalkers located in a forensic psychiatric clinic. The authors defined stalking as the repeated and persistent unwelcome attempts to approach or communicate with a person (1999, p. 1245). Thirty per cent of the stalkers were previously in a domestic relationship with their victim, while 23 per cent were in a professional relationship. Fifty-seven per cent of the stalkers had previous criminal histories (Mullen et al. 1999, p. 1246). Of particular interest is Mullen et al.'s analysis of the motivations reported by offenders for their stalking behaviours. They identified five specific “types” of stalkers, these being:

- the “rejected”;
- the “intimacy seeking”;
- the “incompetent”;
- the “resentful”; and
- the “predatory”.

Thirty-six per cent of respondents engaged in stalking behaviours in response to “rejection from a relationship”, usually that of an ex-partner. Thirty-four per cent were “seeking intimacy”, identifying the victim of their stalking as the true love (Mullen et al. 1999, p. 1247). The incompetent stalkers made up 15 per cent of the sample, and were similar to the intimacy seekers in that they were seeking intimacy but acknowledged that the object of their stalking did not return their feelings. Of the original 145 stalkers, 16 men (11%) were identified as “resentful stalkers”, who stalked in order to “frighten and distress the victim”, and 6 men (4%) were defined as “predatory”, being those who were planning a sexual attack (Mullen et al. 1999, p. 1247).

In their more recent work, Mullen, Pathé and Purcell expand more comprehensively upon this typology, arguing that the categories are intended to “capture the function of the behaviour for the stalker” (Mullen, Pathé and Purcell 2000, p. 75). If, as Mullen and colleagues suggest, the particular behaviours engaged in by stalkers have a meaning which is some

way relates to their goals (Mullen, Pathé and Purcell 2000, p. 75), this is of critical importance to any intervention strategies that are developed to address stalking behaviours.

Kienlan et al. (1997) constructed a simpler typology that focused specifically on comparing psychotic versus non-psychotic stalkers. While again the samples are extremely small, the authors concluded that more than one-third of their sample (35 per cent, n=8) were psychotic, and the remaining (65 per cent, n=15) were non-psychotic at the time of their offences (Keinlan et al. 1997, p. 320). They discovered that the psychotic stalkers were characterised by delusional beliefs at the time of stalking, usually (in interesting contradiction to erotomania) these delusions were of a “persecutory or grandiose nature” (Keinlan et al. 1997, p. 331).

Wright et al. also used a simple definitional typology of non-domestic (where the stalker has no interpersonal relationship with the victim) and domestic (where the stalker is a former boy/girlfriend, family or household member). In the non-domestic category, there are two styles of stalking. The organised stalker, where the target is initially unaware of being stalked or of who is stalking them. In this context, “an organised stalker is one who targets and communicates with the victim through hang-up, obscene or harassing telephone calls, unsigned letters; and other anonymous communication” (Wright et al. 1996, p. 496). This is in comparison to (non-domestic) delusional stalking. The delusional stalker stalks because of a psychological fixation on the victim, either one of “fusion” where the stalker “blends his or her personality into the target”, or “erotomania” where the offender engages in an idealised romantic love for the victim (Wright et al. 1996, p. 497). For delusional stalkers, their preoccupation with the victim becomes all consuming, as the offenders create elaborate fantasies regarding the relationship to their victim.

The second category of domestic stalkers is where the victim knows the stalker or may have been in an intimate relationship that the victim has attempted to terminate (Wright et al. 1996, p. 499). In this category, there is often a history of prior abuse, domestic violence or conflict, often compounded by external factors (financial, vocational or educational) (Wright et al. 1996, p. 500).

It should be noted, however, that the classifications of offenders has not been exclusively confined to psychiatric research. However, those not specifically deriving from a psychiatric orientation tend to focus upon the

relationship between the victim and the stalker (as opposed to the motivations or the mental state) as the most useful variable in distinguishing between types of stalking. Examples of this approach include the very simple typology employed by the National Institute of Justice, which simply uses three categories: “intimate or former-intimate stalking”, where the stalker and the victim are (or have been) in an intimate relationship; “acquaintance stalking”, where the offender and victim may know one another informally, such as through work; and “stranger stalking”, where some what self-explanatorily, the stalker and victims are strangers (National Institute of Justice 1998, p. 2). The Home Office has used a similar typology based upon both the victim-offender relationship and the sex of the victim (Budd, Mattinson and Myhill 2000, p. 30). This has resulted in four categories.

- Female victim—intimate relationship with offender.
- Female victim—non-intimate relationship with offender.
- Male victim—intimate relationship with offender.
- Male victim—non-intimate relationship with offender.

Emerson, Ferris and Brooks Gardner (1998), in one of the very few sociological investigations of stalking, develop a similar typology, although with the addition of an extra category. In their seminal piece of research investigating the concept of “relational stalking”, Emerson, Ferris and Brooks Gardner (1998) identify four variations of stalking associated with levels of (or lack of) familiarity. These comprise: unacquainted stalking (where the victim/offender is a stranger), pseudo-acquainted stalking (where the victim is a public figure for whom the offender “feels” they have a special understanding), and semi-acquainted stalking (where the victim and the offender have had some type of social contact, for example in the workplace). Finally, they use a category of intimately-acquainted stalking (where the victim and the offender have been in a relationship which the offender is trying to maintain or recreate) (Emerson, Ferris and Brooks Gardner 1998, p. 295). It should be noted, however, that Emerson, Ferris and Brooks Gardner (1998) do not actually provide a label for this fourth group but refer to the fact that “here the parties involved are not only previously acquainted, but usually intimately linked” (Emerson, Ferris and Brooks Gardner 1998, p. 295).⁵

⁵ It is important to note that this definition does not take into account revenge stalking leading to violence.

Following on from Emerson, Ferris and Brooks Gardner's research, there has been an increased focus upon stalking "in everyday life", with Tjaden, Thoennes and Allison (2000) examining the differences between self-definition versus legislative definitions of stalking, and Sinclair and Frieze (2000) and Langhinrichsen-Rohling et al. (2000) investigating expressions of stalking in relationship courting practices and dissolution practices respectively. This relatively recent orientation into stalking research is extremely valuable, as it allows for the analysis of what constitutes "criminal" stalking as opposed to "conformist" pursuit. Thus, it has enormous potential to contribute to future policy initiatives addressing stalking. It should be noted, however, that the categorisations that result refer more to stalking victims than offenders. Importantly, all of these classification schemas allow for the investigation of the relationship between stalking and "normal" social relations. See Table 3 for a list of stalking typologies.

Table 3: Stalking Typologies

Authors	Classification
Dietz et al. (1991)	Jilted Lover. Narcissistic. Over-idealised. Romantic. Batterer. Perverted. Psychotic.
Zona, Sharma and Lane (1993)	Erotomantic. Love obsessional. Simple obsessional.
Holmes (1993)	Celebrity. Lust. Hit. Love scorned. Domestic. Political.
Harmon, Rosner and Owens (1995)	Affectionate/amorous. Persecutory/angry.
Geberth (1992)	Psychopathic. Psychotic.
Roberts and Dziegielewski (1996)	Domestic violence. Erotomania/delusional. Nuisance.
Wright et al. (1996)	Non-domestic (organised or delusional). Domestic.
De Becker (in Orion) 1997	Attachment seeking. Identity seeking. Rejection based. Delusionally based.
Kienlen et al. (1997)	Psychotic. Non-Psychotic.
National Institute of Justice (1998)	Intimate or former-intimate. Acquaintance. Stranger.
Emerson, Ferris and Brooks Gardner (1998)	Unacquainted. Pseudo acquainted. Semi-acquainted. Intimately acquainted.
Mullen et al. (1999) (see also Mullen, Pathé and Purcell 2000)	Rejected. Intimacy seeking. Incompetent. Resentful. Predatory.
Budd, Mattinson and Myhill (2000)	Female victim—intimate relationship with offender. Female victim—non-intimate relationship with offender. Male victim—intimate relationship with offender. Male victim—non-intimate relationship with offender.
Tjaden, Thoennes and Allison (2000)	Self-defined (victims). Legally-defined (victims).

Discussion

Research has, thus, yielded a number of reasonably consistent findings. In sum, approximately 10 per cent of people have experienced stalking-type behaviours at some time in their life (8% according to the National Institute of Justice research; 15 per cent according to the Australian Bureau of Statistics research; 29 per cent according to Hills and Taplin). Victims are most likely to be female and younger than their stalkers. Stalkers are most likely to be male and older than the average male criminal. The majority of stalkers appear to pursue their ex-partners and most stalking episodes last (on average) between 1 to 2 years. The most common behaviours involve being watched, followed and telephoned.

Accordingly, classification criteria have developed around such factors as psychological motivations and the relationship between the victim and the offender.

Given that legislation is typically developed with the objective in mind of impacting upon behaviours that “exceed normal social interaction and that have the potential for harm” (Hills and Taplin 1998, p. 140), understandings of what is appropriate social interaction are perhaps most easily investigated by examining social relationships (intimates/strangers). Similarly, to the extent that attitudes of police and magistrates are representative of wider social norms, the extent to which they take stalking seriously is a “barometer” of how comprehensively stalking is understood as criminality by the wider populace. If an individual persistently leaving unwanted flowers is viewed as a rather pathetic “sap”, for which pity rather than police intervention is considered necessary, this will inevitably be implicated in the manner in which such cases come to court. Conversely, if behaviours such as repeatedly threatening an ex-partner are considered more representative of a domestic violence offence (rather than stalking), this may also decisively impact upon the manner in which police choose to intervene.

Given these decisions, the following chapter will briefly review the literature available using the National Institute of Justice’s criteria of stranger stalking, acquaintance stalking and intimate or former-intimate stalking. It will also include case study examples.

Case Studies

As noted in the second chapter “Defining Stalking”, the primary concerns of this report are the legislative and the criminal justice processes involved in “dealing with” stalking, as both an aspect of everyday cultural life and as a crime. This is not to say that the mental health issues or the research outlined so far is irrelevant. Such research provides a crucial base upon which to further extend investigations into the very complex phenomenon of stalking. As already noted, there are a variety of strategies by which stalking behaviours can be categorised. However, this text will use the categories of stranger stalking (both celebrity stalking and what is described in this report as “pure” stranger stalking), as well as acquaintance-based stalking and intimate or former- intimate-based stalking. A fourth category of stalking is also described, which is directly related to domestic violence.

The Global Context

Stranger Stalking

“Stranger stalking” is defined as a situation in which “the stalker and victim do not know one another at all. Cases involving celebrities and other public figures generally fall into this category.” (National Institute of Justice 1998, p. 2)

Stranger stalking is the type of stalking which generally receives the most media attention, because of its association with famous people and the often lurid fascination involved in an unknown “private” individual pursuing celebrity “public property”. This type of stalking has also received a reasonable degree of academic attention (if not systematic research). It should be noted, however, that not all “celebrity” stalkings automatically fit into stranger stalking, for example Judith Durham was stalked by an ex-friend that she had originally met at 16 years of age, Jerry Lewis was stalked by an ex-employee, and Tina Sinatra was stalked by an ex-lover. As such,

these cases are more accurately situated in the categories of acquainted or intimately-acquainted stalking, regardless of the social position of the victim.

Celebrities

It is commonly suggested that anti-stalking legislation in the United States developed because of the stalking of celebrities. The majority of articles from the United States invariably begin their introductions with a citation to either the murder of Rebecca Schaeffer by Robert Bardo or the attempted murder of Theresa Saldana by Arthur Jackson (see Coleman 1997; Davis and Chipman 1997; Emerson, Ferris and Brooks Gardner 1998; Hall 1998; Holmes 1993; Palarea et al. 1999; Saunders 1998; Sohn 1994; Fein and Vossekul 1998; Zona, Palarea and Lane 1998). These two cases have proved to be critical with respect to public awareness (specifically within North America) of stalking as a problem requiring a legal/police response.

The first case was that of Theresa Saldana, and her attempted murder by Arthur Jackson, (although accounts of this differ). Some claim that Jackson first saw Saldana as a young actress in *Deliverance*, whereupon he was attracted to her but realised that they would never have a “normal” relationship. Because of this realisation, Jackson set about planning her murder so that he could “be with her forever in the afterlife” (Saunders 1998, p. 26). Others suggest that he first saw her in *Raging Bull* and became convinced that she was part of a CIA mind control conspiracy (Fein and Vossekul 1998, p. 188). Regardless, there is general agreement that he travelled from Scotland to Los Angeles specifically in order to kill Saldana, acquiring her details from either the Department of Motor Vehicle Records (Saunders 1998) or a private investigator (Fein and Vossekul 1998). Upon arriving at her address, he waited for her to leave her home, and stabbed her ten times. A passing deliveryman saw what was occurring and rescued her.

Following Saldana’s attempted murder was the murder of Rebecca Schaeffer, commonly considered to be the catalyst for California having enacted the first anti-stalking legislation in 1990 (Emerson, Ferris and Brooks Gardner 1998; Kurt 1995; Palarea et al. 1999). Schaeffer was a young actress acting in a television series called *Son of Sam*. Bardo was attracted to her because of her “youthful innocence” (Saunders 1998, p. 27),⁶ sending her

love letters in the form of fan mail for 2 years (Holmes 1993). He travelled from Arizona to Los Angeles three times in an attempt to meet her on the set of the production. Each time he was unsuccessful, and barred from entry by security.

Bardo then saw Schaeffer in a movie where her character slept with another male. He was disgusted by this, stating that if “she was a whore, God was going to appoint me to punish her” (Saunders 1998, p. 27). He started writing threatening letters, and tracked her address through the Department of Motor Vehicles. He purchased a gun, packed a signed photo of Schaefer, and drew a diagram of her body, marking the areas in which he intended to shoot her. He then travelled to Los Angeles, telling his sister that he was going to “stop Schaeffer from forsaking her innocent childlike image for that of an adult fornicating screen whore” (Saunders 1998, p. 27). He turned up at her door, Schaeffer requested that he did not visit her again, he shook her hand, left her house, loaded his gun, and then returned and shot her (Saunders 1998).

These two cases are important in that they were the motivating factors in the development of anti-stalking legislation in America, contributing to stalking becoming a publicly recognised crime. They also contain the two striking features of celebrity stalking, which appear to be that of obsessive love and the threat of violence.

These characteristics can be observed in a number of “celebrity” stalkings, with a large number of cases indicating an obsessional love for the target of choice. For example, Simon Benson, who stalked news presenter Liz Hayes for approximately 10 years, told investigators that “he was not a pervert, but had genuine feelings of love” (*The Age*, 24 September 1998). The stalkers of Anne Murray, Princess Caroline, Michael J. Fox, Jodie Foster, David Letterman and the Lennon sisters all demanded that they marry them (Kelly 1999).

This obsessional love appears to quite frequently develop into threats of violence. For example, Robert Hoskins, who stalked Madonna, threatened to “slice her throat if she did not marry him” (Kelly 1999). The Lennon sisters’

⁶ It is worthwhile making the point here that this is exactly how the media presents her. For example, she is described as “the only child of a psychologist and a writer, Rebecca was sleek, svelte and beautiful. Her beauty landed her on the cover of *Seventeen*.” (Kelly 1999)

stalker murdered their father before killing himself. Similarly, Marie Boguszewski made terrorist threats to kill three of Dennis Rodman's employees after realising that her hundreds of calls and e-mails requesting a date were not being forwarded on to the basketball star (National Basketball Association 1999).

Despite the widespread fascination with the lives of celebrities, little systematic investigation of the topic has been conducted, with one of the few studies on the topic being that of Dietz et al. (1991). Dietz et al. studied threatening and inappropriate letters sent to celebrities. Although some of the variables they examined are open to query (whether correspondents used lined or blank paper, colour of ink and cursive or typed writing (Dietz et al. 1991, pp. 195–96), they, nevertheless, uncovered interesting results which bring into question the reliability of media samples as sources of data. Rather than the desired “potential lover or husband” suggested by media articles, Dietz et al.'s research suggested that would-be stalkers were more likely to position themselves as friends, advisers or acquaintances (41%), although this was closely followed by would-be spouse (30%) and would-be lover (25%) (Dietz et al. 1991, p. 199). Similarly, 56 per cent of their sample were rated as having “idolised or worshipped” the celebrity, and 23 per cent were identified as having threatened harm. However, without wishing to undermine the seriousness of threats, particularly given the tragic consequences of those that go unheeded, Dietz et al. also noted a number of “implausible threats” including “you better get your hair cut because if you do—Jupiter will collide with Mars” (Dietz et al. 1991, p. 204).

What is particularly interesting with respect to celebrity stalking, however, is that while they are designated “stranger” stalking, the very nature of being a celebrity imposes a form of “pseudo relationship” between a celebrity and the public. Millions of people buy *New Idea* and *Women's Day* in order to find out about the private lives of their favourite stars. The nature of being a celebrity means that one's personality is sold to the public. This obviously means a pursuer may readily come to feel that they have a “special understanding or emotional attachment” to these figures (Emerson, Ferris and Brooks Gardner 1998, p. 295).

This arguably leads to a feeling on the part of the perpetrator of being intimately acquainted with the victim, despite having never encountered them outside of their media persona. So, in some ways, celebrity stalking should not be considered stranger oriented stalking—but pseudo related (Emerson, Ferris and Brooks Gardner 1998).

“Pure” Stranger

In some ways, then, a more “pure” form of stranger stalking is that of “everyday” people being stalked by a complete stranger. As with celebrity stalking, very little systematic research has been conducted on “pure” stranger stalking. Mullen et al. note that “stalkers who are strangers and overtly mentally ill produce the most fear in victims” (Mullen et al. 1999, p. 1249). Such cases involve a fixation being developed by someone whom one has never met, who proceeds to systematically stalk and harass a victim, with no underlying rationale. As stated by one victim of “pure” stranger stalking.

For the last eight years, I’ve been stalked by a man I do not know. I’ve never had a conversation with him. I know his name, but I won’t say it. I know what he looks like as well as I know the stoops and curbs of my own neighbourhood, but I don’t know where he comes from, how he lives, or why he chose me. As I write this, he’s in jail, but he stills sends me pornographic magazines, and he still calls me almost every day. (Maroukian 1998)

In this particular case, the victim’s stalker came to her door with one of the residents who lived in her block of apartments. She did not allow either of them into her apartment. Following that encounter, the offender started turning up in public places that she was at, she started receiving hang-up calls and pornographic materials, together with flyers for Star Trek conventions. Notes from the offender were left under her door and, on one occasion, the stalker was encountered in her laundry smelling her clothes. These tactics continued for 4 years until the stalker was sent to a residential psychiatric program. From here, he continued to ring and send “gifts”, including:

20 gift subscriptions to magazines from NBA Inside Stuff to Hot Sex Calls; more than 100 invitations to Star Trek conventions; hundreds of assorted catalogues; enrolment in various clubs, from something called Creation to a sci-fi comic-book group; 47 brochures for vocational-training programs; multiple brochures for contraceptive devices; 1 black-and-white elementary-school picture of the stalker; 2 Christmas cards; 4 Valentine’s Day cards; dozens of empty envelopes, some marked “From your

boyfriend, Clark Kent”; scores of letters and postcards; thousands of voice messages captured on tape; 1 plastic bag full of jagged shards of broken glass hurled into the video store I’d just left. (Maroukian 1998)

Over the ensuing 3 years, the offender was repeatedly gaoled and released, each time returning to stalk the victim. Her story ends in 1998 (having begun in 1989), with the stalker having been returned to gaol, awaiting sentencing for “contempt of court” (Maroukian 1998).

In sum, it would appear that, although stranger stalkings are the rarest form of stalking (both “celebrity” and “common folk”), they have, nevertheless, garnered attention as a consequence of their “extreme” nature. Meloy (1996) notes that through the interest in “high profile” or “stranger” stalking, much forensic and law-enforcement research under-represents the potentially more common, and the potentially more dangerous, forms of stalking such as that which occurs in domestic violence cases. While it is fair to say that this criticism may no longer be quite so apt in 2000, with a large range of research focusing upon the implications of intimate acquaintance stalking, it is, nonetheless, the case that the “carving out” of stalking as a research orientation in its own right was largely driven by an interest (in the extreme) in the scandalous and the lurid.

Despite these origins, it has been argued that the focus upon celebrity stalking ultimately allowed (or perhaps more accurately “made room”) for the acknowledgment of more “everyday” stalking to acquire a degree of “virility” in the public vernacular. For example, Davis and Chapman (1997) argue that:

press coverage of these rare occurrences of injury has dramatically increased the public awareness of stalking behaviour. Media attention directed toward a high profile target, such as Rebecca Schaeffer...or David Letterman, has publicly exposed the devastating fears, injury and pain of the celebrity, opening the floodgates for numerous victims recoiling in fear behind bolted doors, drawn curtains and unanswered telephones of the homes and offices of ordinary people. Press coverage of celebrity victims and their families has given a reverberating voice to the thousands of unrecognised victims who were forced into hiding, terrorised into silence, and

ignored or disbelieved when they finally summoned the courage to seek help. (Davis and Chipman 1997, p. 167)

Regardless of just how much empirical impact celebrity stalkings have had on initiating justice intervention for non-celebrities, it certainly seems a reasonable hypothesis that celebrity stalkings did stimulate media attention, and hence more general public awareness of the stalking phenomenon. It becomes appropriate to now consider the more common cases of “acquaintance stalking”.

Acquaintance Stalking

“Acquaintance stalking” is where “the stalker and victim may know one another casually, either through formal or informal contact. For example, they may be co-workers or neighbours, or they may have dated once or twice but were not sexual partners.” (National Institute of Justice 1998, p. 2)

Many studies suggest that acquaintance-based stalking is one of the largest categories of stalking. For example, Pathé and Mullen (1997) found that while a stranger was stalking 16 per cent of victims, an ex-partner was stalking 29 per cent, and 55 per cent of victims reported being stalked by an acquaintance. In this acquaintance category, 25 per cent first encountered their stalker through a professional relationship, 9 per cent in other work-related contexts, and 21 per cent were casual social contacts or neighbours. Subsequent research found similar results, with 14 per cent of stalkers being strangers, 30 per cent of stalkers being ex-partners, and 53 per cent being an acquaintance (23 per cent had a professional relationship with the victim, 11 per cent had been through work-related interaction, and 19 per cent were casual acquaintances) (Mullen et al. 1999). Similarly, when re-categorising Harmon, Rosner and Owens’s research, Meloy (1996) suggested that their classification system could be simplified into prior acquaintances, prior sexual intimates and strangers. When using this classification, on Harmon, Rosner and Owens’s sample, we find in 13 per cent of the group having stalked sexual intimates, 21 per cent having stalked strangers, and 58 per cent having stalked former acquaintances.

Acquaintance-based stalking thus clearly appears to be the largest category of stalking, although, yet again, this aspect has not been systematically investigated. Only occasionally do findings such as these get mentioned in the context of debates about stalking. This is especially unfortunate because

such data provide interesting clues about the general nature of stalking. An example of such a clue would be Schwartz-Watts and Morgan (1998, p. 244) and Morgan's discovery that acquainted stalkers are apparently the least likely to be violent.

Interestingly enough, however, many of the acquaintance cases resemble stranger stalking. An example of this can be seen in the United Kingdom, where a University lecturer stalked a colleague and his wife (Fleet 1998). In this case, Susan Underwood began stalking Christopher Jones after he took on the role as her staff mentor in 1995. Over the following months, she sent Jones hundreds of communications, left messages on his answering machine, repeatedly walked past his office, and appeared outside his house, his college and his home, leaving such gifts as a survey on "personal sexual habits" in his office pigeon hole (Fleet 1998).

Similarly, there was the case of Anthony Burstow who engaged in the stalking of Tracy Morgan for a period of 6 years and was the first stalker to be prosecuted in Britain for inflicting grievous bodily harm on his victim without touching her. They originally met as work colleagues where Morgan:

Befriended him as she felt sorry for him. But he became obsessed with her and began a campaign of terror when she ended the friendship. Burstow sent her a soiled sanitary towel, stole her underwear from a washing line, and poured solvent over her car. He littered her garden with condoms and wrote her sinister notes including one saying: "Remember this is totally personal and nothing will change how much I hate you." (Carter 1998)

Unfortunately, given that both these cases were reported in the media, they are presumably the extreme ends of acquaintance stalking, and their resemblance to celebrity stalking may say more about what the media finds newsworthy than it does about characteristics of stalking behaviour. Nevertheless, the initial expressions of adoration followed by threats and inappropriate gifts remains a constant in the acquaintance category and, interestingly enough, is also demonstrated in the intimate stalking category as well.

Intimate or Former-Intimate Stalking

“Intimate or former-intimate stalking” is where “the stalker and victim may be married or divorced, current or former cohabitants, serious or casual sexual partners, or former sexual partners. A history of domestic violence may exist.” (National Institute of Justice 1998, p. 2)

Increasingly, a strong link is being demonstrated between stalking and domestic violence, with intimate-partner violence replacing original interest in celebrities as the area of primary importance with respect to stalking. While acquaintance stalking includes the largest group of those stalked, because the group incorporates such as a wide range of potential “acquaintances” (neighbours, friends, patients, employees and colleagues), the fact that former intimates is the next most likely group to be stalked is a cause for concern. What is particularly concerning with respect to former-intimate stalking, however, is the strong link between stalking and violence.

Stalking and Domestic Violence

Given findings that 80 per cent of women who report being stalked by an intimate or a former intimate also report being physically assaulted (National Institute of Justice 1997, p. 10), the relevance of this area can not be underestimated. Many researchers have begun to argue explicitly that the most important predictor of violence from stalking is the relationship between the offender and the victim, with intimately acquainted partners being the most likely to be violent (Palarea et al. 1999). The reasons why intimate stalking may be more dangerous than stranger stalking are closely connected with the nature of the relationship. In partnerships, “suspects who had higher levels of intimacy with their victims may use more physical approach behaviours due to their comfort level in interacting with their victim, as well as their knowledge of their victims lifestyles and whereabouts” (Palarea et al. 1999, p. 279; see also Meloy 1996 and Zona, Sharma, and Lane 1993).

Research investigating the similarities/differences between violent and non-violent stalkers finds no demographic or clinical differences between these two groups. The only variable that even approaches significance was “the relationship of the stalker to his victim, with ex-wives being the group most likely to be targeted by violent stalkers” (Schwartz-Watts and Morgan 1998, p. 244).

The link between other violent activities and stalking is a crucial factor in these cases. McFarlane et al. discovered that women who had been physically abused before their murder were also far more likely to also have been stalked (McFarlane et al. 1999, p. 309). Meloy and Gothard (1995) found a significant relationship between threats and intimacy, and Rosner and Owen (1995) recorded the highest degree of threats and assaults in their affectionate/amorous category. Coleman's (1997) research argued that men who were verbally and/or physically abusive during a relationship were more likely to pursue their partners after the relationship had been terminated (Coleman 1997, p. 430).

men who reportedly stalked their former wives or girlfriends after the relationships ended were more likely to have been verbally and physically abusive during the relationships than were men whose former wives or girlfriends were in the harassed and control groups. (Coleman 1997, p. 429)

Such findings raise the importance of "accounting for the presence of an intimate relationship when assessing for violence risk in stalking cases" (Palarea et al. 1999, p. 278).

intimate stalkers threatened persons and property more often, committed more violence against persons and property (including physical violence toward the victim), were more likely to "make good" on their threats by following them with some form of violent behaviour, and used more physical approach behaviours in contacting their victims than non-intimate stalkers. (Palarea et al. 1999, p. 278)

The potential for general violence and lethal violence has also received particular attention, with the simple situational factor of stalking being a risk factor for further assaults "just by virtue of the tenacious proximity seeking toward the victim, and especially if it occurs in combination with several other high risk behaviours" (Walker and Meloy 1998, p. 142). This is clearly demonstrated in McFarlane et al.'s research, which investigated stalking and femicide. The authors' research indicated that in the 12 months before an intimate partner murdered (or attempted to murder) their female partner, more than three-quarters of the women had been stalked. They concluded that "it appears that both intimate partner assault and stalking are risk factors for lethal and near-lethal violence for women, especially when these two perpetrator behaviours occur together" (McFarlane et al. 1999, p. 312).

Interestingly, these findings contradict earlier claims that the most dangerous style of stalking was likely to be the “stranger danger” of obsessive fans. Pathé and Mullen (1997) noted this when explaining the high rates of intimate-partner violence found in their sample, commenting that it “contrasts with the findings of Dietz et al., with regard to the impact of threats contained in letters sent to prominent public and media personalities. It is likely we are examining victims plagued by a very different group of individuals from the disordered and disgruntled fans of the famous.” (Pathé and Mullen 1997, p. 15)

Given these links between domestic violence and stalking, it becomes important to recognise stalking as one factor in a “cycle of violence”. Understanding stalking “as a stage in the cycle of violence provides a valuable avenue for understanding who is at risk of becoming a victim or a perpetrator of stalking behaviour” (Coleman 1997, p. 430). This means that particular trends, such as an escalation from clandestine to open behaviour, can be considered as potentially predictive of lethal action (Burgess et al. 1997).

This is clearly demonstrated in one case in the United Kingdom, where Douglas Pallet, a 60- year-old County Councillor, was charged with stalking his ex-lover, 45-year-old Lynda Guglielmi. After the relationship ended, Pallet sent Guglielmi flowers, chocolates, cards and letters. He also followed her on her family vacation to the Isle of Wight. After 8 months, his stalking behaviours escalated.

He began by painting graffiti denouncing Mrs Guglielmi as a “whore” at Manningtree High School, where she was chairman of governors, and at other highly visible places around the Essex town. Pallett then sent a stream of obscene, sexually explicit and racist letters made from cut-up newspapers and magazines to Mrs Guglielmi, members of her family and her neighbours. The letters referred to Mrs Guglielmi as a “whore” and to members of her family as “wops” and made allusion to VD clinics, rent boys and obscene sexual acts. Pallett also sent letters on Royal Mail headed notepaper to pensioners living near Honeycroft post office in Lawford, near Colchester, which Mrs Guglielmi ran with her husband Giancarlo. The forged letters warned them that the business was under investigation for malpractice, although no such inquiry was taking place. The court also heard how Pallett distributed cards at telephone

kiosks near where Mrs Guglielmi lived offering sex and drugs to anyone who called her home number or visited her home address. As a result, Mrs Guglielmi received a series of messages on her answering machine from men seeking her services as a prostitute. (Pook 1998)

The Australian Context

While these examples are important, the cases described thus far have been those covered in the media. These examples may tell us more about the nature of media reporting than they do about stalking as an aspect of present day Australian life. It becomes necessary, then, to see whether such categorisations can be maintained when we turn to the Australian legislative context.

These case studies have been drawn from three separate collections of unreported and reported decisions, these being: AustLII, SCALEPlus and Butterworths. It is critical to note that cases that are reported in AustLII, SCALEPlus and, to a lesser extent, Butterworths are cases that have gone to appeal. As such, they represent the more extreme examples of stalking behaviours. Whilst a rich resource for qualitative material, such data cannot be considered as representative of all stalking cases to go to court.

Stranger Danger

As noted, stranger cases can be divided into two separate sub-categories, that of celebrity cases and that of complete stranger. For these purposes, two case studies will be presented in order to demonstrate the differences between the two. The first is the complete stranger, represented by the case of *R v Carlile*, in which a customer stalked a checkout operator.

The complainant was a 22 year old university student who was employed on a part-time basis as a check-out operator at the Coles supermarket at Coorparoo. The appellant frequently passed through her check-out counter several times a day with a few items, sometimes lining up behind customers with many items in their trolley. He started engaging her in conversation. He told her that he was a truck driver and that he liked driving past schools when it was raining so he could splash water on the young girls' dresses and see through them. He also told the

complainant (who had a reddish tint in her hair) that he liked red-heads. At times he followed her around the store.

On one occasion the appellant (whilst going through the checkout) asked the complainant out to lunch. She replied that she had a boyfriend and was very happy. He told her she thought she was happy but she was not. He left a Myer bag on her counter. She drew his attention to it and he told her to keep it. It contained an envelope bearing her name "Rachel". She was too busy to read it properly but opened it and noted that it ended with the statement "From who?" About half an hour later the appellant returned in an agitated state and said to her "You have misunderstood me. You must know I am unstable. You fucked with my head. Your safety is at risk and so is mine". The appellant started to cry. A nearby attendant requested that the appellant leave, and returned with the service manager. The appellant shouted that the complainant had been leading him on.

He continued to use vulgar language. The victim was extremely upset and was even more upset when she actually read the sexually suggestive message on the front of the card. On another occasion the complainant saw the appellant standing in a queue waiting to be served at her check-out. She left it and went to the service desk. The appellant followed her so she returned to her check-out again followed by the appellant. This occurred three or four times. The appellant started yelling out words to the effect "Look what you have done". Another employee heard the appellant say "What is going on you little slut?" upon which he told the appellant to leave.

The third act consisted of the appellant driving past the complainant while she was walking along a road near her house. According to the complainant's evidence, the appellant beeped his horn, turned around and as she crossed the road pulled over in front of her yelling words such as "whore", "bastard" and "slut". She walked behind his vehicle to cross the street but he reversed it towards her. She continued past a service station and he parked in front of her. He swore again saying "Is this what you do to everyone who cares about you?" She kept walking and he drove past her again yelling further abuse. On another occasion the appellant drove past the complainant in another vehicle whilst she was waiting outside her university. He slowed, sounded the horn and grinned at her. (R v Carlile [1999] QCA 363 (3 September 1999))

The case of *R v Carlile* is particularly interesting in that it was one of the first cases to be prosecuted (and similarly to go to appeal). In many ways, it can be seen to represent the archetype of what may unambiguously be considered stalking, due to its obvious dimensions of “unstable” behaviour. The victim is a young, female stranger. She received the attentions of her stalker in the day-to-day duties required through her employment, and received both physically and sexually threatening abuse from him. The stalker himself demonstrated behaviour commonly understood as socially unacceptable (for example, splashing water on young girls so he could see through their dresses).

Given this, the case is easily situated within the stereotype of mentally ill obsession, and exhibits all of the qualities socially understood as “crossing” social boundaries of acceptable forms of interaction.

Similar characteristics can be observed in celebrity stalking cases, such as that of *R v Vose*. The following case exhibits the same qualities of celebrity stalking (development of fascination with a public figure).

In or about 1995 or 1996, the applicant became obsessed with MA, who had been featured in various advertising campaigns. In early 1997 the complainant and his sister were walking home when they were approached by the applicant who asked the boy whether he was the boy from certain advertisements and attempted to question him about his advertising work. When the children did not stop, the applicant followed until they turned into their own street. Several weeks later the applicant made a similar approach and was again unsuccessful in engaging the boy in conversation.

During the relevant period, the applicant habitually attended locations where he could view the boy, most particularly in attendance at Evensong where MA appeared regularly as a member of a choir and after-school soccer training at a nearby oval. The boy’s family received three collections of material to their home, including details of the applicant’s website. The father located the applicant’s website and found material related to children and galleries of photographs of MA. One gallery included scanned television and print advertisements and accompanying text describing the applicant’s interest in MA and identifying him as a member of a church choir. A caption to a photograph taken by the applicant and showing MA looking sternly into the camera read “Shite—I reckon he might have spotted me this time”. A

second gallery presented 19 images of MA and his school friends, taken with a telephoto lens at soccer training. A further included the applicant's personal manifesto, describing his paedophilia, his views on the appropriateness of legal restraints on such activities and his self-confessed dangerousness to those whom he perceived as a threat.

On 18 June 1998, the applicant was arrested by police officers attached to the Child Exploitation Squad Office and subsequently charged with the offences of stalking and remanded into custody. Later that evening, police members executed a search warrant pursuant to s.465 of the Crimes Act, at the applicant's premises and seized a large quantity of property, including electronic listening devices and instructions, micro-cassette equipment (audio), handwritten notes (recording various of the applicant's conduct in respect of MA and his family), other documents, photographic equipment, photographs, a roll of undeveloped film, a computer (containing further images of MA) and computer equipment, documents bearing the surname of the family, other personal information pertaining to them (telephone and credit card numbers), various articles of subterfuge and/or disguise, and Melways maps indicating MA's school.

Three of the four audiotapes retrieved contained conversations between various members of the family household. The conversations appear to have been taped covertly in the front garden of the family home. The majority of the photographs seized were of MA and other unidentified boys, apparently taken without the subjects' consent or knowledge. Of the documentation retrieved from the applicant's premises, many items were identified by the mother as having come from the family home and on a later occasion an electronic listening device was located under the grate of an open fireplace in the lounge room of the family home. (R v Vose [1999] VSCA 200 (25 November 1999))

Again, obvious socially deviant characteristics are demonstrated by the offender, and easily identified "vulnerable" characteristics can be seen in the victim, which allows for "stalking" to be readily defined.

In this case study, the offender demonstrates all of the key characteristics required of the modern day stalker. He not only follows a very young boy, with whom he has become familiar through an advertising campaign, but he also secretly films him and places photographs of him on a website. He breaks into the family home in order to access memorabilia of the boy and places an electronic listening device in his victim's home and finishes off with a detailed description of his paedophilic fantasies.

I'm unapologetically dangerous to virtually anyone who threatens me. No one should ever threaten anyone they don't know very well, and since no one knows me very well no one should ever threaten me. Revenge is righteous. I first fell in love with the boy when I was also a boy at the age of 13 years, and he was about 7 years.

I believe that romantic and/or sexual activity between any two people should be acceptable to the community. It is not appropriate for the Government or society to tell me who I can or cannot love, or the most fitting way in which I can love. I don't understand why people think that children are unable to give consent to romantic and/or sexual behaviour. The kid either enjoys the sexual behaviour or they don't. Special laws to protect children are not necessary.

It is not far wrong to say I am [a] green-eyed monster, whenever I observe very public displays of romantic behaviour amongst heterosexual people, even on television. I have wanted to do exactly the same sort of thing with little boys for half my life. It pisses me off that I can't do it. The day I get caught having sex with a child, I go to war with the world around me, starting with governments and the police and anyone else stupid enough to get in my way. (R v Vose [1999] VSCA 200 (25 November 1999))

It can be seen, then, that these cases of stranger stalking incorporate all the key criteria necessary for the behaviours to be defined as stalking.

The offenders in these two case studies are, if not psychiatrically mentally ill, at least decidedly socially deviant. The victims of these pursuits are easily positioned as vulnerable and blameless, while the stalking behaviours clearly demonstrate "obsessive and threatening" behaviours.

Acquaintance

The same criteria identified in stranger stalking are also clearly evident in acquaintance style stalking. Similar characteristics of obsessive, violently harassing behaviours are observed in those cases which have gone to appeal, as can be seen in the following case, R v Kerr. In this case study, the stalking behaviour is being perpetuated by a neighbour (the applicant) of two disabled people (the complainants).

The circumstances giving rise to these offences were as follows. The complainants, Susan Zent and Peter Adams, live at Yinnar South, in a remote area of Gippsland, on a property owned by Zent. Zent suffers from “20th century disease”, a heightened allergic reaction to even the smallest traces of chemicals and pollutants in the atmosphere. Adams is a profoundly deaf mute, his only means of communication being by handwriting or sign language.

Shortly after the applicant took up residence in his house property in December 1995 he commenced a course of conduct which lasted until 24 April 1996. These include at least ten separate occasions where he verbally abused the defendants with phrases such as:

- “Don’t worry, if the bastard comes anywhere near me, I’ll really hurt him this time”,
- “Get the gun”,
- “You want shit, you’ll get it”
- “You shit, scum bag, one foot on my land and you’re in hospital, you dumb bastard, Ned Kelly.”
- “I got your solicitor’s letter and I wiped my arse with it”
- “Woman molester”
- “There’s a lot more trouble coming for you yet, just wait and see.”
- “If you set foot on my property you’ll be murdered”

He also, on a variety of different occasions, engaged in miming and gesticulation that included vomiting, barking, growling, spastic motions, exaggerated sign language and chicken-like noises. Similarly he threatened Adams with a metal bar, a weed blower and a chainsaw, together with spitting at him knee-ing him in the abdomen. On other occasions he speeded up when he saw Zent on the road, as if to run her and her daughter over. (R v Kerr [1998] VSCA 125 (24 November 1998))

Again, the key elements here represent the archetype of what is considered to be the “dangerous” nature of stalking, whereby, particularly vulnerable victims, in this case the physically impaired, are subjected to a sustained and violent attack for no obvious reason. This case does not, however, include the element of romantic fixation. The absence of this romantic element is important because it heightens the “strangeness” and potentially dangerous nature of the behaviour.

This is not to say, however, that romantic attachments are not observed in acquaintance style stalking. Indeed, as with celebrity and intimate stalking, acquaintance stalking can incorporate all of the difficulties inherent in defining stalking behaviours, where persistent pursuit is occurring, but offenders do not acknowledge any intent to cause harm or fear. For example, in the case of *Kirkland v Tippett*, a 35-year-old male offender was charged with stalking a 17-year old-girl. In explaining his behaviour, it was argued that:

By way of general introduction, he acknowledged his belief to be that she was interested in him. His first answer under cross-examination was that his interest in this 17 year old girl was a result of her encouraging [sic] him. He thought she probably wanted a fling, and he wanted a sexual relationship with her. He also believed that her mother was encouraging her in this, and in an extraordinary statement said this might be due to a desire to “get on the bandwagon with this murder episode”, a reference to a community rumour that he is the person responsible for the unsolved murder of Victoria Cafasso. (*Kirkland v Tippett* [2000] TASSC 94 (19 July 2000))

Intimate

The final category to be examined through the use of a case study is that of intimately-related stalking. The following case, *Thomas v Burk*, refers to behaviours exhibited following an intimate relationship.

Evidence was received over the objection of the applicant’s counsel concerning a series of incidents occurring between the complainant and applicant in the course of an intimate relationship which commenced in 1992 and extended to 1996. In August of that year, the complainant obtained a restraint order against the applicant and the order was in place in December when the incidents of stalking were alleged to have occurred.

The incidents about which evidence was received were as follows:

- Easter 1992: an occasion when the applicant argued with his son, lost his temper and kicked him.
- During a period when the parties separated the applicant telephoned the complainant and said “I’ve got 20 tapes of personal conversations

if you don't come back to me I will send them to relatives and friends.”

- Verbal abuse including comments such as referring to the complainant as “nothing” and a “piece of shit”.
- An occasion in 1993 when the complainant said she didn't love the applicant and he “belted her across the face” and she suffered a swollen jaw.
- During a break in the relationship and the complainant told the applicant about a trip to King Island and he said that if she went “he would pour petrol through the house” and he asked her a question about what were the two most precious things to her. The complainant said that she inferred a reference to her two children.
- An incident on the 6th June 1994 when the complainant was walking from Hutchins School to the University Creche and the applicant came up behind her and swore at her.
- An incident when the complainant and the applicant went to dinner at Prossers and then to the Casino and on the way home the applicant was driving at a speed of about 180 kph and verbally abusing her. When they got home the applicant struck the complainant and she stepped back into a glass door causing it to smash.
- An interim restraint order was taken out by the complainant and after that the applicant followed her. There was no detail of what took place.
- An occasion in mid-December 1995 when the complainant was at work at Fahan School. The applicant rang her and said to her “if you don't come with me I'll come and make trouble”. They met at Sandy Bay Beach and the applicant abused the complainant. That evening the complainant had planned to go to a work function and the applicant followed her and slapped Her across her face. The applicant turned up at the function uninvited by the complainant.
- On the 27 April 1996 after both the complainant and the applicant had attended the Fahan Race Day, the applicant assaulted the complainant by striking her across her face with an open hand causing bruising. The complainant sought medical treatment for an injury to her eye which was caused by the blow.
- In August 1996 the applicant threatened the complainant stating that if she did anything about his behaviour he would knife her and tie her up in court. (Thomas v Burk [1999] TASSC 138 (13 December 1999))

The important aspect of this case study is that, while the previous examples included many threats of violence, it is the “intimate” category which actually incorporates physical assaults.

Discussion

This chapter has focused upon specific case studies in order to illustrate the manner in which the categories of stranger, acquaintance and intimate stalking apply in the context of both international and specific Australian examples. It can be seen that in these examples the extreme forms of pathological attachment appear to be more obvious in the celebrity stalking cases, where the behaviours involve intensities of obsession manifesting through the collection of personal items and what appears to be intense romantic delusions.

In the acquaintance cases, these delusions become less romantic and less focused upon the collection of personal memorabilia, but more oriented towards threatening the victim. In the final category of intimates, it would appear that this approach towards violence becomes crystallised, with a right to ownership (in terms of ex-wives) being more evident. The extremes of obsessive love in the celebrity context may be seen to merge with the theme of violent revenge often characterising the behaviour of the acquaintance stalker.

These are, of course, only case studies and cannot be regarded as representative data. Nonetheless, they do indicate key areas of stalking behaviours that may need to be better addressed through future research, legislation and policy. Before examining this, however, it is important first to examine how it is that current legislation deals with stalking. This is the focus of the following chapter.

The Legislative Framework

The development of anti-stalking legislation has been continually hindered by the difficulty of defining what should, and should not, constitute stalking. Nonetheless, attempts to prosecute behaviours which could now be defined as stalking have been documented since the 18th century (Mullen, Pathé and Purcell 2000). The earliest case noted was in 1704, where a physician persistently pursued a young heiress and was prosecuted for assaults committed during his ardour and ordered to “keep the peace” for one year and a day (Mullen, Pathé and Purcell 2000, p. 251).

Previous Alternatives to Stalking Legislation

More recently, those behaviours which are now defined as stalking were dealt with, as far as possible, through a statutory scheme of summary injunctions which differed in detail across each jurisdiction (Keenahan and Barlow 1997, p. 297). For example, Goode (1995) notes that South Australia had an offence in the criminal law which criminalised behaviours we now define as stalking, whereby any person who persistently follows another person, watches or besets their house or place of business or uses violence to, or intimidates another person, was guilty of an offence under the *Criminal Law Consolidation Act*. Similarly, both Tasmanian and Queensland legislation covering domestic violence was considered sufficient to also cover behaviours now considered stalking (Keenahan and Barlow 1997, p. 297).

In general, however, these laws have proved ill-suited to address the specific offence now covered under “stalking”. For example, in New South Wales, stalkers could be prosecuted under ss15–31 of the *Crimes Act* division, where an offender intentionally or recklessly causes injury, injury being defined as “unconsciousness, hysteria, pain and any substantial impairment of bodily function” (Weiner 1995, p. 30). However, psychological apprehension and fear could only come under “hysteria”, a specific

psychiatric disorder that was never judicially interpreted in a stalking case (Weiner 1995). Indeed, prior to 1986, the legislation only allowed for actual or grievous bodily harm, leaving the psychological and/or mental suffering caused by stalking beyond the justice system's reach (Weiner 1995, p. 30). Similarly, in Queensland the *Domestic Violence (Family) Protection Act 1989* was believed to provide a degree of protection for stalking victims. However, the Act's protection was limited to those who could be officially defined as "spouse" (Harbidge 1996). The other recourse available to victims was within the "threats to murder" legislation (s308). However, "the acts which constituted stalking were regarded merely as precursors to the ultimate offence...and not as offences in their own right" (Swanwick 1996, p. 27). In Western Australia, it was an offence to threaten violence, persistently follow, hide property, or watch or beset another under section 550 of the Criminal Code. However, this legislation was specifically aimed at debilitating picketing unions and, while the course of conduct was (theoretically) sufficient to include stalkers, no stalking case was ever prosecuted under it (Whitney 1999).

Given these limitations, "most stalking-type behaviours were beyond the reach of the criminal law unless an actual or threatened assault occurred which technically satisfied the relevant provisions" (Harbidge 1996, p. 68). More specifically, statutory summary injunctions were proved ineffective in properly dealing with the threatening course of action currently defined as stalking. According to Goode (1995), strategies such as restraining orders were ineffective, as "anecdotal consensus appears to be that a restraining order will have little effect on the kind of serious obsessive behaviours exhibited by stalkers" (Goode 1995, p. 24).

The only guide to follow, however, in attempting to officially criminalise stalking, was that of the North American legislation. As noted earlier, California was the first state to officially define stalking as a crime in 1990, legislating stalking as being "the wilful, malicious and repeated following and harassing of another person, which includes a credible threat with the intent to place that person in reasonable fear for his or her safety or the safety of his or her immediate family" (Section 646.9 of the California Penal Code, as cited in Palarea et al. 1999). All American states have subsequently introduced stalking legislation of some kind.

The United States legislation arose primarily out of public concern regarding celebrity stalking. Now famous cases such as the murder of Rebecca Schaeffer by Robert Bardo, and the attempted murder of Theresa Saldana by

Arthur Jackson, created a public outcry over the dangers posed to celebrities, which then resulted in legislation designed to attack “stalking” behaviours.

Research on American legislation differs. Some argue that there is little resemblance between different American states’ legislation, with states such as California closely resembling Australian legislation in the requirement for an offender to have intent to cause apprehension or fear, while other states such as Michigan rely upon the perception of the victim as to whether they felt afraid (Mullen, Pathé and Purcell 2000).

However, other researchers argue that American legislation is distinguished by a focus upon the degree of seriousness. For example, many of the anti-stalking sanctions in the United States require that the victim fear impending death or serious injury (Sohn 1994; Sheridan, Davies and Boon 2000). This obviously demands a high level of seriousness in relation to physical threat, whether intended by the offender or experienced by the victim. Other nations such as Canada have utilised similar legislation to America (see Manitoba Law Reform Commission 1997), with the only distinct difference in the Canadian legislation being the lack of a specific “course of conduct” (see Mullen, Pathé and Purcell 2000, p. 263).

In contrast, the legislation in the United Kingdom and Wales (which was introduced after the Australian legislation) is extremely broad, and does not even define stalking as a concept. Instead, stalking-type behaviours come under the *Protection from Harassment Act 1997*. This legislation was deliberately drafted in order to be wider ranging and states that a person must not pursue a course of conduct:

- a) which amounts to harassment of another; and
- b) which he knows or ought to know amounts to harassment of the other.

While the legislation includes a clause that distinguishes between those engaging in preventing or detecting crime, the scope for prosecution is still wide. Indeed, the legislation can apply to a variety of incidents including bullying at work, neighbourhood nuisances, racial and sexual harassment, and intrusive news reporters (Sheridan, Davies and Boon 2000).

There is, however, a second offence within the *Protection from Harassment Act 1997* that involves putting people in fear of violence, which is similar to the Australian and the American requirements of intent to cause

apprehension or fear. In essence, then, the United Kingdom and Wales legislation provides a scale of offending with respect to stalking (Mullen, Pathé and Purcell 2000), but one which is far broader than that offered in other Western countries.

Interestingly enough, while the North American legislation appears to have developed quite specifically out of celebrity stalking and murder, with the significance of stalking in “ordinary folks” lives only gaining significance after the legislation had been implemented, the Australian legislation appears to have arisen more directly as a response to domestic violence situations (Keenahan and Barlow 1997), with the offence itself being conceived as an “adjunct to the arsenal of legal weapons arrayed against domestic violence” (Model Criminal Code Committee 1998, p. 51). This is clearly evident in the political implementation of stalking legislation.

Political Context

Within the Australian context, stalking appears to have developed quite specifically out of concerns for victims of domestic violence (see Hayden 1997). In Queensland, the first state to introduce stalking legislation, the justification for making the offence a crime was provided by a number of members of parliament:

Violence committed against people by estranged partners has made our community painfully aware of the fact that some individuals who may be disposed towards violence are not deterred by restraining orders. Therefore, new measures such as that embodied in this Bill must be enacted. (Queensland Hansard 1993 (9 November) 5473)

In Brisbane, it is reported that up to 50 callers a month are contacting the Domestic Violence Resource Centre with news that they are considering moving interstate or overseas to escape being stalked. That is a horrendous figure...this legislation shows our concern. (Queensland Hansard 1993 (9 November) 6070)

This Bill will be welcomed by my former colleagues in the Queensland Police Service who will use this law to great effect, primarily in the prevention of domestic violence and violence against women. (Queensland Hansard 1993 (9 November) 6074)

These concerns were repeated across all states, as noted in the following excerpts.

In general terms, an awakening of concern about this type of behaviour in this country has been caused by its prevalence in domestic violence cases. The creation of a criminal offence dealing with this behaviour is presented and argued for as an adjunct to the arsenal of legal weapons arrayed against domestic violence. (South Australia Hansard 1993 (13 October) 545)

Mr Speaker, the opposition supports the government's proposal that stalking be criminalised under certain circumstances. Members will be aware of recent publicity in relation to the harassment of women by former partners in particular and occasionally by total strangers who follow them obsessively. The opposition is keen to support a criminal sanction that will provide a measure of comfort to women in this situation. (Northern Territory Hansard 1994 (1 March) Parliamentary Record No 25)

The first is that, in the context of domestic violence, stalking should be seen as a further act of violence, for that is what it is. It is intended to intimidate, to cause fear, and that is exactly the effect it has on its victims. Stalking is another form of violence. I know that up until this point there has been a view around that unless an offender was actually causing harm or threatening to cause harm to a victim there was not a crime. I believe that it is time for our community to say that this action itself is a crime. We must treat the issue of stalking as an issue of violence and a further representation of violence in our community. (Australian Capital Territory Hansard 1996 (27 March) 674)

The importance of the relationship between stalking and domestic violence is perhaps most evident in the New South Wales legislation, where the offence was specifically included in the Domestic Violence Amendment Bill. This was a particularly interesting political debate as it was agreed by both the government and the opposition of the day that it was the behaviour of stalking (for instance, following people, watching people and frequenting the vicinity) which needed to be criminalised (New South Wales Hansard 1993 (18 November) 5726). Where the debate arose was whether to define

that activity as “stalking” (see New South Wales Hansard 1993 (18 November) 5723–730) or provide an alternative “label” (such as occurred in the United Kingdom and Wales). Regardless, both sides agreed that the behaviours were an aspect of domestic violence situations, as argued by both the government.

the government is introducing this legislation because it is seriously concerned about the problem of domestic violence in our society. (New South Wales Hansard 1993 (18 November) 5727)

And the opposition:

Domestic violence is obnoxious. For those that who have not have a personal involvement in these matters, I want to explain what is obnoxious. The very nature of stalking is obnoxious. (New South Wales Hansard 1993 (18 November) 5726)

This political rhetoric concerning the inherent link between domestic violence and stalking has meant that attention has been primarily oriented towards the role of restraining orders (the traditional weapon in the fight against domestic violence). Again, this narrative is repeated across all states:

If the principal object of the offence is to deal with domestic violence related situations, it makes a great deal of sense to have a basic offence aggravated by such factors as violation of a restraining order, employment of a weapon and the like...this new law, when taken together with the appropriate use of protection orders, ought to assist materially in the protection of the victims of domestic violence. (South Australia Hansard 1993 (13 October) 546)

It must be recognised that the enactment of the offence will not of itself stop domestic violence. Nevertheless, when taken together with the appropriate use of protection orders, this new law ought to assist materially in the protection of the victims of domestic violence. (Northern Territory Hansard 1994 (1 March) Parliamentary Record No 25)

The purpose of this Bill is to enhance the restraint order provisions in the *Justices Act* to provide greater protection for the public, particularly victims of domestic violence. (Tasmania Hansard 1995 (9 October) 41)

In putting forward this legislation today, the ACT is really playing catch-up in relation to the array of protections against various forms of domestic violence. (Australian Capital Territory Hansard 1996 (27 March) 674)

It is important to note here that these recommendations were not always accepted easily:

Mr President, I support the Bill but I do so with a warning and I say this because I know there are a number of magistrates in the Court of Petty Sessions in Tasmania who are concerned to some degree with the way these restraint applications are coming about. What you often find in practice is a restraint order being taken out, a person coming to court and being bound over to keep the peace and not to approach the complainant either directly or indirectly, not to approach within 100 metres of the dwelling of the complainant and so on. There are a number of conditions imposed upon that restraint application which will be the same as the stalking applications but then what you have is the complainant saying to the defendant, “I want you back again” and so the defendant runs back to the complainant and perhaps lives with the complainant again and they act as husband and wife or girlfriend and boyfriend for a period of three months.

The person then may go out and have a few beers one night and come home drunk. What you find happens is the complainant rings the police up and says, “I have a restraint order application out against the defendant. Come and take him away; he has breached the restraint order”. So it is not only a case—and I think it is worth remembering here rather than passing laws willy-nilly—of protecting these people, in relation to domestic restraint orders, who have been abused, threatened, assaulted or whatever but it is also a case where in fairness, it is unfair on the people who have been asked to return to the house, to come back into that house, live with the person for three months or whatever then to perhaps come home late one night and then they wake up in the morning with police officers standing beside them who then drag them away and keep them in custody for breaching the restraint order, so I believe that

that warning should always go hand in hand with amendment such as this. (Tasmania Hansard 1995 (9 October) 41)

We can see, then, that within the Australian context, stalking legislation has primarily revolved around issues of domestic violence, with the primary argument being that more focused legislation than that currently available was needed in order to be able to address a recognisable problem. Where concerns existed, these were primarily in relation to the breadth of the legislation, with people concerned that innocent people might get caught up in the criminal justice system, or that women could manipulate the legislation in order to “get at” ex-husbands. Interestingly, the resulting Australian legislation is relatively harsh in comparison to other countries, and attention has been paid predominantly to what constitutes a “course of conduct” resulting in stalking. These issues are addressed in the following section. The overall result of these political machinations is that all states introduced stalking legislation. The legislation for each separate state is provided in the following pages.

VICTORIA**CRIMES ACT 1958—SECT 21A**

(1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

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

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

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

(4) This section does not apply to conduct engaged in by a person performing official duties for the 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 sub-section, would constitute an offence against sub-section (1).

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

NEW SOUTH WALES

CRIMES ACT 1900—SECT 562AB

Amendment: *Crimes Amendment (Apprehended Violence) Act 1999*

Stalking or intimidation with intent to cause fear of physical or mental harm.

(1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is liable to imprisonment for 5 years, or to a fine of 50 penalty units, or both.

(2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.

(3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.

(4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm. Division 1A Apprehended domestic violence orders.

CRIMES ACT 1900—SECT 562BC

562BC Order prohibits stalking, intimidation etc.

Unless otherwise ordered, every order is taken to specify that the defendant is prohibited from doing any of the following:

- a) engaging in conduct that intimidates the protected person or a person with whom he or she has a domestic relationship,
- b) stalking the protected person.

AUSTRALIAN CAPITAL TERRITORY

CRIMES ACT 1900—SECT 34A

- (1) A person shall not stalk another person with intent to cause—
- (a) apprehension or fear of serious harm in the other person or a third person; or
 - (b) serious harm to the other person or a third person. Penalty:
 - (a) where—
 - (i) the offence involved a contravention of an injunction or other order made by a court; or
 - (ii) the offender was in possession of an offensive weapon;
 - (b) in any other case—imprisonment for 5 years; and
 - (b) in any other case—imprisonment for 2 years.
- (2) For the purposes of subsection (1), a person shall be taken to stalk another person if, on at least 2 occasions, he or she—
- (a) follows or approaches the other person;
 - (b) loiters near, watches, approaches or enters a place where the other person resides, works or visits;
 - (c) keeps the other person under surveillance;
 - (d) interferes with property in the possession of the other person;
 - (e) gives or sends offensive material to the other person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the other person;
 - (f) telephones or otherwise contacts the other person;
 - (g) acts covertly in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or
 - (h) engages in conduct amounting to intimidation, harassment or molestation of the other person.
- (3) In a prosecution for an offence under subsection (1), it is not necessary to prove that the person stalked or a third person, as the case may be, apprehended or feared serious harm.
- (4) In this section—
- “harm” means physical harm, harm to mental health, or disease, whether permanent or temporary;
- “harm to mental health” includes psychological harm;
- “physical harm” includes unconsciousness, pain, disfigurement and any physical contact that might reasonably be objected to in the circumstances, whether or not there was an awareness of that contact at the time.

SOUTH AUSTRALIA

CRIMINAL LAW CONSOLIDATION ACT 1935. SECT 19AA

(1) A person stalks another if—

“(a)” on at least two separate occasions, the person—

- (i) follows the other person; or
- (ii) loiters outside the place of residence of the other person or some other place frequented by the other person; or
- (iii) enters or interferes with property in the possession of the other person; or
- (iv) gives offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or
- (v) keeps the other person under surveillance; or
- (vi) acts in any other way that could reasonably be expected to arouse the other person's apprehension or fear; and

“(b)” the person—

- (i) intends to cause serious physical or mental harm to the other person or a third person; or
- (ii) intends to cause serious apprehension or fear.

(2) A person who stalks another is guilty of an offence.

Penalty:

“(a)” if—

- (i) the offender's conduct contravened an injunction or an order imposed by a court (either under a law of the State or the Commonwealth); or
- (ii) the offender was, on any occasion to which the charge relates, in possession of an offensive weapon,

imprisonment for not more than 5 years;

“(b)” in any other case—imprisonment for not more than 3 years.

(3) A person who is charged with stalking is (subject to any exclusion in the instrument of charge) to be taken to have been charged in the alternative with offensive behaviour^[1] so that if the court is not satisfied that the charge of stalking has been established but is satisfied that the charge of offensive behaviour has been established, the court may convict the person of offensive behaviour.

(4) A person who has been acquitted or convicted on a charge of stalking may not be convicted of another offence arising out of the same set of circumstances and involving a physical element that is common to that charge.

(5) A person who has been acquitted or convicted on a charge of an offence other than stalking may not be convicted of stalking if the charge of stalking arises out of the same set of circumstances and involves a physical element that is common to the charge of that other offence.

QUEENSLAND

QUEENSLAND CRIMINAL CODE ACT 1899: SECT. 359A

Definitions for ch 33A

359A. In this chapter—

“Circumstances” means the following circumstances—

- (a) The alleged stalker’s circumstances;
- (b) The circumstances of the stalked person known, foreseen or reasonably foreseeable by the alleged stalker;
- (c) The circumstances surrounding the unlawful stalking;
- (d) Any other relevant circumstances.

“Detriment” includes the following—

- (a) Apprehension or fear of violence to, or against property of, the stalked person or another person;
- (b) Serious mental, psychological or emotional harm;
- (c) Prevention or hindrance from doing an act a person is lawfully entitled to do;
- (d) Compulsion to do an act a person is lawfully entitled abstain from doing.

“Property” of a person, means—

- (a) Property in which the person has an interest, whether or not the defendant also has an interest in the property; or
- (b) Property that is otherwise—
 - i. Used and enjoyed by the person; or
 - ii. Available for the person’s use or enjoyment; or
 - iii. In the person’s care or custody; or
 - iv. At the premises at which the person is residing.

“Stalked person” see section 359 B

“Unlawful stalking” see section 359 B

“Violence”—

- (a) Does not include any force or impact within the limits of what is acceptable as incidental to social interaction or to life in the community; and
- (b) Against a person includes an act depriving a person of liberty; and
- (c) Against property includes an act of damaging, destroying, removing, using or interfering with the property

359B “Unlawful stalking” is conduct—

- (a) Intentionally directed at a person (the “stalked person”); and
- (b) Engaged in on any 1 occasion if the conduct is protracted or on more than one occasion; and
- (c) Consisting of 1 or more acts of the following, or a similar, type—
 - i. Following, loitering near, watching or approaching a person;
 - ii. Contacting a person in any way, including, for example, by telephone, mail, fax, email or through use of any technology;
 - iii. Loitering near, watching, approaching or entering a place where a person lives, works or visits;
 - iv. Leaving offensive material where it will be found by, given to or bought to the attention of, a person;

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- v. Giving offensive material to a person, directly or indirectly;
 - vi. An intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;
 - vii. An act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and
- (d) That—
- i. Would cause the stalked person apprehension or fear, reasonably arising in all circumstances, of violence to, or against property of, the stalked person or another person; or
 - ii. Causes detriment, reasonably arising in all circumstances, to the stalked person or another person.

What is immaterial for unlawful stalking

359C (1) For section 359B (a) it is immaterial whether the person doing the unlawful stalking—

- (a) Intends that the stalked person be aware the conduct is directed at the stalked person; or
 - (b) Has a mistaken belief about the identity of the person at whom the conduct is intentionally directed.
- (2) For section 359B (a) and (c), it is immaterial whether the conduct directed at the stalked person consists of conduct carried out in relation to another person or property of another person
- (3) For section 359B (b) it is immaterial whether the conduct throughout the occasion on which the conduct is protracted, or the conduct on each of a number of occasions, consists of the same or different acts.
- (4) For section 359B (d) it is immaterial whether the person doing the unlawful stalking intended to cause the apprehension and fear, or the detriment, mentioned in the section
- (5) For section 359B (d) (i), it is immaterial whether the apprehension or fear, or the violence, mentioned in the section is actually caused.

Particular conduct that is not unlawful stalking

359D “unlawful stalking” does not include the following acts—

- (a) Acts done in the execution of a law or administration of an Act or for a purpose authorised by an Act;
- (b) Acts done for the purposes of a genuine industrial dispute;
- (c) Acts done for the purposes of a genuine political or other genuine public dispute or issue carried on in the public interest;
- (d) Reasonable conduct engaged in by a person for the person’s lawful trade, business or occupation;
- (e) Reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving.

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Punishment of unlawful stalking

359E (1) A person who unlawfully stalks another person is guilty of a crime

(2) A person who commits the crime of unlawful stalking is liable to a maximum penalty of imprisonment for 7 years if, for any of the acts constituting the unlawful stalking, the person—

- (a) Uses or intentionally threatens to use, violence against anyone or anyone's property;
or
- (b) Possesses a weapon within the meaning of the *Weapons Act 1990*; or
- (c) Contravenes or intentionally threatens to contravene an injunction or order imposed or made by a court or tribunal under a law of Commonwealth or a State.

TASMANIA

CRIMINAL CODE ACT 1924: SECT 192

Stalking

192. (1) A person is guilty of a crime if that person, with the intention of causing another person physical or mental harm, apprehension or fear—

- (a) follows the other person or a third person; or
- (b) loiters outside the residence of the other person or a third person or another place frequented by the other person or third person; or
- (c) enters, or interferes with, property of the other person or a third person; or
- (d) keeps the other person or a third person under surveillance; or
- (e) gives offensive material to, or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the other person or a third person; or
- (f) acts in any other way that could reasonably be expected to arouse the other person's apprehension or fear.

Charge: Stalking.

(2) A person who engages in conduct of a kind referred to in subsection (1) and so causes physical or mental harm, apprehension or fear in another person is taken to have the intention required by subsection (1) if that person knows, or ought to have known, that engaging in that conduct would or would be likely to cause the other person physical or mental harm, apprehension or fear.

(3) Subsection (2) does not apply in respect of a person who engages in conduct of a kind referred to in subsection (1) in the course of performing his or her official duties for the purposes of—

- (a) the enforcement of the criminal law; or
- (b) the administration of an Act; or
- (c) the enforcement of a law imposing a pecuniary penalty; or
- (d) the execution of a warrant; or
- (e) the prosecution of the public revenue.

NORTHERN TERRITORY
CRIMINAL CODE. SECT 189

- (1) A person stalks another person if, on at least 2 separate occasions—
- (a) the person—
 - (i) follows the other person;
 - (ii) loiters outside or enters the place of residence or employment of the other person or some other place frequented by the other person;
 - (iii) interferes with property (whether or not the person has an interest in the property) in the possession of the other person;
 - (iv) keeps the other person under surveillance; or
 - (v) acts covertly in a way that could reasonably be expected to arouse the other person's apprehension or fear; and
 - (b) the person intends to cause—
 - (i) physical or mental harm to the other person or a third person; or
 - (ii) apprehension or fear.
- (2) A person who stalks another person is guilty of an offence and is liable—
- (a) to imprisonment for 2 years; or
 - (b) where—
 - (i) the person's conduct contravened a condition of bail or an injunction or order imposed by a court (either under a law of the Commonwealth, the Territory, a State or another Territory of the Commonwealth); or
 - (ii) the person was, on any occasion to which the charge relates, in the possession of an offensive weapon,
- to imprisonment for 5 years.

WESTERN AUSTRALIA

CRIMINAL CODE ACT COMPILATION ACT 1913 SECT338E

Amendment: s338D 1994

(1) In this chapter—

“circumstances of aggravation” means circumstances in which—

- (a) immediately before or during or immediately after the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;
- (b) or the conduct of the offender in committing the offence constituted a breach of;
 - (i) an order made or registered under the *Restraining Orders Act 1997* or to which that Act applies; or
 - (ii) a condition on which bail has been granted to the offender.

“intimidate”, in relation to a person, includes—

- (a) to cause physical or mental harm to the person;
- (b) to cause apprehension or fear in the person;
- (c) to prevent the person from doing an act that the person is lawfully entitled to do, or hinder the person in doing such an act;
- (d) to compel the person to do an act that the person is lawfully entitled to abstain from doing.

“pursue”, in relation to a person, means—

- (a) to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;
- (b) to repeatedly follow the person;
- (c) to repeatedly cause the person to receive unsolicited items;
- (d) to watch or beset the place where the person lives or works or happens to be, or the approaches to such a place;
- (e) whether or not repeatedly, to do any of the foregoing in breach of a restraining order or bail condition.

(2) For the purpose of deciding whether an accused person has pursued another person—

- (a) the accused is not to be regarded as having contacted or followed that person on a particular occasion if it is proved by or on behalf of the accused that on that occasion the accused did not intend to contact or follow that person;
- (b) an act by the accused on a particular occasion is not to be taken into account for the purpose of deciding whether the accused watched or beset a place where that person lived, worked or happened to be, or the approaches to such a place, if it is proved by or on behalf of the accused that on that occasion the accused did not know it was such a place.

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s338E 1) A person who pursues another person with intent to intimidate that person or a third person, is guilty of a crime and is liable—

- (a) where the offence is committed in circumstances of aggravation, to imprisonment for 8 years; (b) in any other case, to imprisonment for 3 years.

Summary conviction penalty:

- (c) in a case to which paragraph (a) applies: imprisonment for 2 years or a fine of \$8 000;
 (d) in a case to which paragraph (b) applies: imprisonment for 18 months or a fine of \$6000

2) a person who pursues another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person is guilty of a simple offence. Penalty: Imprisonment for 12 months or a fine of \$4000.

3) it is a defence under this section to prove that the accused person acted with lawful authority.

Overbreadth, Intent and Course of Conduct

Within the Australian context, the primary criticisms directed towards stalking legislation have been those of “overbreadth”, the differences between objective and subjective tests of intent and what should constitute a “course of conduct” (Goode 1995; Kift 1998; Swanwick 1996; Model Criminal Code Officers Committee 1998).

It is worthwhile spending some time examining Queensland, given that it has had legislation for the longest period of time. Swanwick (1996) extensively reviewed this legislation in terms of the key criteria.

Swanwick reiterates the point made in the first chapter “Dimensions of Stalking”, that stalking as a crime is unusual in that “often no physical elements are present, only mental elements, and render liable to criminal sanction activities which on the surface are innocuous” (1996, p. 26). He identifies two major issues that need to be taken into consideration in understanding stalking legislation as written up, these being the breadth of the legislation, and the nature of intent.

Breadth of the Legislation

The issue of the breadth of stalking legislation is a critical factor, as it is one of the concepts at the heart of what is stalking. As noted, concern has been expressed regarding the defining of certain behaviours as criminal, which may actually be entirely innocent. However, there is an apparent contradiction here, as “it is generally agreed that legislation for the offence of stalking needs to be very widely drawn in order to be effective and this has been one of the main concerns” (Swanwick, 1996, p. 39). However, “it is not desirable that legislation be too narrowly drawn either, in case it excludes those domestic violence and other situations which the Criminal Code did not previously cover and for which stalking was specifically created” (Swanwick 1996, p. 39). So there needs to be some sort of comfort zone in legislation between “overbreadth” and “over-restriction”.

This is evident in the types of “exceptions” included in the legislation, such as Queensland’s original 1993 version where:

it is a defence to a charge under this section to prove that the course of conduct was engaged in for the purposes of a genuine industrial dispute...or...political or other public dispute or issue carried on in the public interest. (Criminal Code, s359A [4])

While these provisions were obviously included in order to limit the scope of the crime, they served to generate criticisms with respect to other groups. As with the criticisms raised earlier with respect to love-lorn “exs”, it was queried as to whether such initiatives as investigative consumer journalism were in the public interest? The Model Criminal Code Officers Committee (1998) asked “What about a group of heritage protestors trying to stop the demolition of a building which the owner has every right to demolish? Or peace protestors at an American base? Or anti-abortion protestors at a clinic.” Thus, queries were made that concerned not only who could be legitimately defined as stalkers, but also who could be legitimately defined as innocent.

There are no specific cases which have made it to AUSTLII that represent these issues, so it is interesting to observe that such cases appear to have been dismissed rather than made it to appeal. In fact, where complaints exist concerning the breadth of the legislation they do not focus so much on “legitimate” behaviours, but rather abuse of the legislation. This includes the

legislation being used to cover neighbourhood disputes, as noted by the Department of Justice, Victoria:

Non true stalking behaviours covered by the legislation include harassing behaviour. Some examples are one neighbour mowing the other's lawn; hosing the neighbour's garden; there was one where a feral neighbour was panel beating cars up until midnight or 1 am. (magistrate cited in Department of Justice, Victoria 2000, p. 61)

Other cases are whether intimate relationships become confused with stalking, and where the divide lies between criminal and conforming conduct, as in the following case.

The complainant gave evidence that she was in his company at social gatherings on a number of occasions since that time but she explained these by reasons other than a wish to continue her relationship with him and denied showing affection to him on any of these occasions. She said that she went to Brothers Leagues Club with him for his birthday in about February 1995 but that she did this because she wanted to talk to his parents about his problems. She said that she went with him to an engagement party of a friend Linda Atley in February or March 1995 because he told her that if she did not take him he would turn up anyway; it was because of the possible embarrassment of this that she agreed to go with him. She said that she went with him to a Slayer concert at Festival Hall in March although she said that this was because he happened to be in a group of friends which also included her. She said that she went with him to a barbecue at the house of friends of his parents but again that this was so that she could talk to his parents about his problems.

The complainant also admitted under cross-examination that she went with the appellant to the house of a couple who were his friends for dinner on one occasion; she said that she did this so that she could talk to them to see if they could do something for him. And she admitted that she went to another engagement party in February 1995 with the appellant, and agreed that she slept overnight at the house at which the party was held but denied that she did so on a mattress with him.

It was put to the complainant on behalf of the appellant that on some of the above occasions she had demonstrated affection towards the appellant by holding his hand or putting her arm around him, which she

denied. At least one other occasion was put to her in which it was said that she in his company apparently voluntarily and happily. It was put to the complainant that she went on a swimming outing to Kholo Crossing with the appellant and three others and later to the appellant's property near Ipswich; that the whole party returned to her house for a shower; that she offered them all lunch which they declined; and that later that day after the others had left she and the appellant visited them at the appellant's property where they were camping.

... All of this evidence was relevant to the true nature of the relationship between the appellant and the complainant between December 1994 and June 1995 during which, it was alleged, concerning acts had occurred. It is true that none of this evidence would have proved that the appellant and the complainant continued to live in a de facto relationship if they ever did. A jury properly instructed may have considered that such evidence tended to prove that they appeared to continue over that period in a mutually affectionate relationship and consequently one which was arguably inconsistent with the existence of the concerning acts alleged over this period. For that reason, in our view, this evidence was wrongly excluded. (R v Ellacott [1996] QCA 233 (16 July 1996))

Intent

One of the ways in which attempts to limit the breadth of stalking legislation has been addressed is through the defining of **intent**. As in most criminal offences, the "element of intent is usually an essential element of criminal responsibility" (Goode 1995, p. 40). American legislation has focused upon "intentionally" following or harassing and making a "credible threat" (Model Criminal Code Officers Committee 1998). Some also contain an "aggravated stalking" offence in which the offence attracts a higher penalty if there are violations of a restraining order, involvement of a weapon or a previous conviction (Goode 1995). In the United Kingdom and Wales, no intent is required, but the "reasonable person" test is used in order to decide whether a person pursued a course of conduct amounting to harassment (Sheridan, Davies and Boon 2000).

In the original Queensland legislation, the criterion for stalking required a "course of conduct" involving a "concerning act" on at least two separate occasions. Concerning acts could include, for example, telephoning, following and sending gifts. In order for stalking to be carried out, the stalker needed to intend that the victim felt apprehension or fear, the victim needed to be aware of being stalked and the stalker's behaviour needed to

be able to cause a reasonable person to believe that a “concerning offensive act” was likely to happen (Harbidge 1996).

However, this was later amended so that it was immaterial whether the victim was aware of being stalked, or whether the offender intended to cause fear or apprehension. The only relevant criteria being whether the behaviour would reasonably cause someone to be fearful.

In many ways, then, the Queensland legislation is currently very broad, and unlike other jurisdictions, there is no need for the offender to “intend” that the victim feel fear or apprehension. This has some benefits in that those offenders who are “intending” for the victim to fall in love with them can still be prosecuted under stalking if their behaviour is offensive enough, but it also means that it risks including cases that perhaps should not fall under this category. For example, if a person is engaging in market research and repeatedly rings up someone in the hope of increasing their sample size, they may well intend for the respondent to know that their course of conduct is directed at them, but not in a manner that would justify a stalking conviction.

In contrast, the Australian Capital Territory legislation requires the offender must intend to cause apprehension or fear of serious harm⁷; the Northern Territory requires that the offender must intend to cause physical or mental harm, apprehension or fear; and in Tasmania the offender must intend to cause apprehension, fear or physical or mental harm, or should have known that their actions would have that effect. New South Wales is slightly different in that it requires that the offender must intend to cause a person to fear personal injury to either themselves or to another person in that domestic relationship. In South Australia, the issue of intent is also more restricted, with the requirement being that the offender must intend to cause serious physical or mental harm or serious apprehension or fear.

All of these factors are difficult matters to deal with administratively (that is, by the criminal justice system) and bring to fore the reasons why “intent” is so critical in stalking legislation, particularly the need to prove the “intent to cause apprehension or fear”. This is an inherently subjective test of intent and one which, while consistent with many criminal offences, is at odds

⁷ It is important to note that, at the time of writing, a recommendation was proposed to the Australian Capital Territory government to change this legislation so that the “seriousness” element was deleted.

with the offence of stalking, because stalking so often represents an attempt to either initiate or maintain a relationship. Thus the intent is, if you like, to cause affection and love, rather than apprehension or fear. Most stalking legislation, however, makes successful prosecution contingent upon proving that some form of pursuit intended to cause fear and apprehension.

Indeed, in Victoria, “intent” not only involves the offender intending to cause apprehension, fear, or physical or mental harm and the conduct having the result intended by the offender. This twofold requirement certainly reduces the danger of overbreadth, but at the risk of defining the object of stalking legislation in such a way that it bears little relationship to the “real world” of stalking behaviours (for instance, the erotomaniac stalker with love delusions rather than an intention to produce fear, the domestic violence stalker who should have known they were causing fear, but argues that they were trying to re-build a marriage).

It is this issue of intent that has created the most difficulty for magistrates. In the Northern Territory decision of *Kym Stephen Albrecht v Leonard David Price* [1996] NTSC 20 (3 April 1996), Kearney J said:

the “essential mental element” in the offence of stalking is the stalker’s intent—either to cause harm, or to cause apprehension or fear. Whether harm or apprehension or fear is actually caused, is irrelevant to establishing the offence.

However, intent to cause harm is never that easy. In one case, where a man was “stalking” a variety of public servants, ostensibly due to their taking his five children into care, the man engaged in 19 separate concerning acts (*R v Allie* [1998] QCA 75 (28 April 1998)). These acts included making a variety of telephone calls to the Reverend Alan Male, stating that he would “take you out, I’ll take you down, I’ll bring the government down.” He also made a variety of calls to a Family Services employee stating things such as “I will come up there and I will find you. I’ll get you and when I get you, you know that I’ll hurt you.” Calls were also made to a colleague of the Family Services Officer, alleging that the officer was corrupt, that he was going to take her out, that he was going to expose her to the media, and that he was going to come and get her. The offender threatened “to ram the phone ... down [her] throat until it came out [her] arse, wrap it around [her] neck and hang [her]”. He said he knew where she worked and what time she finished work and he was going to wait for her, she would not see him but he would be waiting there. More phone calls were made to another female employee (up

to fifty in all) which were also abusive, stating that the woman was “a fucking bitch, I’ll get you for this, don’t you think you can get away with this, I can get you taken out.” Finally, calls were made to one more female employee (she estimated over a hundred calls were made). During these phone-calls the man would swear at her, threaten her job and tell her that she was going to be sacked. The officer testified that the offender would say, “You get off your f...ing vibrator and get the minister out of his office.”

In this particular case, Justice Davies went into some detail in explaining the nature of intent to threaten, stating that:

As his Honour has pointed out, “threat” is used in the definition of “concerning act” in sub-s.(7)(g) and “threatens” is used in sub-s.(6)(a)(i). In the latter case the threat must be “to use unlawful violence”. In both cases, in my view, the word is used in its ordinary meaning which involves, in accordance with the dictionary definition adopted by Fryberg J., the communication of an intention or determination to inflict punishment, pain or loss on someone either conditionally or unconditionally. That communication does not need to be express. It may be inferred from conduct but the conduct from which it is inferred must communicate that intention or determination to the person to whom the threat is said to be made.

Unlike Fryberg J. I do not find difficulty in envisaging a set of facts which satisfies the elements of sub-s.(2) which does not give rise to a threat because it does not involve the communication of that intention or determination. The second person may reasonably believe that an act of violence against a person or property is likely to occur notwithstanding the absence of any such communication. Indeed many stalking cases involve “cranks” who do not communicate any such intention or determination either expressly or by conduct but simply behave in an irrational way. That behaviour may nevertheless cause a reasonable person in the second person’s circumstances to believe that a violent act is likely.

It follows, in my opinion, that the concerning acts may involve a threat against a person which is not a threat to perform an unlawful act of violence or may not involve a threat at all; yet in either of these cases a reasonable person in the second person’s circumstances may believe that an unlawful act of violence by the first person is likely to occur. In other words a threat to use unlawful violence against another person is not an element of the offence. (R v Allie [1998] QCA 75 (28 April 1998))

In this case, it was argued that explicit intent does not need to be expressed for concerning acts to be threatening. While there may be differences in the degree of threat, it is enough if a reasonable person feels afraid because of a particular course of conduct; that is, an objective test of intent was utilised.

However, these discriminations are not always made. This can be seen by considering the judgement in a very similar case in New South Wales. A man believed that a conspiracy was being conducted around the death (or as he believed, murder) of his wife. Over the years, he alleged that a large number of persons were involved in this conspiracy, including two Ministers, a number of doctors, an employee of the Health Care Complaints Commission, the Indian High Commissioner, the Indian Consul, a former Police Commissioner, the President of the Anti-Discrimination Board, a member of a committee attached to the Independent Commission Against Corruption, officers of the Department of Public Works and the police involved in the investigation.

On 27 October 1997, the plaintiff was convicted in the Local Court at Liverpool Street, Sydney on two charges of stalking, the allegation being that he had followed and threatened a person whom he believed, erroneously, to be a daughter of one of the Ministers allegedly engaged in the conspiracy against him.

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The actual appeals came on in the District Court before Chief Judge Blanch QC on 4 May 1998, when the appeals were upheld and the convictions quashed, not because his Honour was not satisfied that he had not done what was alleged, but because he considered that in view of the plaintiff's irrational state, he was not satisfied beyond reasonable doubt that he was capable of forming the intention to carry out the threats. (*Bhattacharya v Hamilton* [2000] NSWSC 102 (1 March 2000))

In this particular case, a subjective test of intent was critical in absolving the offender of blame. While the man's actions were clearly threatening, the magistrate felt that the offender did not intend on carrying out his threats, and hence any apprehension or fear felt by the woman in question was irrelevant.

Course of Conduct

The final aspect of the legislation that needs to be considered is the course of conduct required to constitute stalking. All states and territories specify conduct that amounts to stalking (see Table 4); the most common acts are: following; loitering; entering or interfering with property; keeping a person under surveillance; giving or leaving offensive material; and acting in any way which would be expected to arouse apprehension or fear (see Queensland, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory).

Similarly, most states require that the course of conduct be conducted on at least two occasions, with the exceptions of Queensland, Tasmania, Victoria and Western Australia (refer back to Table 1).

Table 4: Elements of Stalking Courses of Conduct

State	Elements of Offence
NSW	<ul style="list-style-type: none"> • following of a person about; or • the watching or frequenting of the vicinity of or an approach to a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.
VIC	<ul style="list-style-type: none"> • following the victim or any other person; • telephoning, sending electronic messages to, or otherwise contacting, the victim or any other person; • 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; • interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property); • 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; • keeping the victim or any other person under surveillance; or • 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.

(Continued on next page)

QLD	<ul style="list-style-type: none">• following, loitering near, watching or approaching a person;• contacting a person in any way, including, for example, by telephone, mail, fax, email or through use of any technology;• loitering near, watching, approaching or entering a place where a person lives, works or visits;• leaving offensive material where it will be found by, given to or bought to the attention of, a person;• giving offensive material to a person, directly or indirectly;• an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence; and• an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant.
WA	<ul style="list-style-type: none">• persistently following or telephoning that person;• depriving that person of possession of any property or hindering that person's dwelling, or the approaches to it; that person's place of employment or business, or the approaches to it; or a place where that person happens to be, or the approaches to it.
SA	<ul style="list-style-type: none">• following the other person;• loitering outside the place of residence of the other person or some other place frequented by the other person;• entering or interfering with property in the possession of the other person;• giving offensive material to the other person, or leaving offensive material where it will be found by, given to or brought to the attention of the other person;• keeping the other person under surveillance; or• acting in any other way that could be reasonably expected to arouse the other person's apprehension or fear.
TAS	<ul style="list-style-type: none">• following the other person or a third person;• loitering outside the residence of the other person or a third person or another place frequented by the other person or third person;• entering, or interfering with, property of the other person or a third person;• keeping the other person or a third person under surveillance;• giving offensive material to, or leaving offensive material where it is likely to be found by, given to or brought to the attention of, the other person or a third person; or• acting in any other way that could reasonably be expected to arouse the other person's apprehension or fear.
ACT	<ul style="list-style-type: none">• following or approaching the other person;• loitering near, watching, approaching or entering a place where the other person resides, works or visits;• keeping the other person under surveillance;• interfering with property in the possession of the other person;• giving or sending offensive material to the other person or leaving offensive material where it is likely to be found by, given to or brought to the attention of, the other person;• telephoning or otherwise contacting the other person;• acting covertly in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or• engaging in conduct amounting to intimidation, harassment or molestation of the other person.
NT	<ul style="list-style-type: none">• following the other person;• loitering outside or entering the place of residence or employment of the other person or some other place frequented by the other person;• interfering with property (whether or not the person has an interest in the property) in the possession of the other person;• keeping the other person under surveillance; or• acting covertly in a way that could reasonably be expected to arouse the other person's apprehension or fear.

The defining of specific course of conduct is obviously a necessary aspect of determining whether particular acts do, or do not, constitute stalking. However, the specifications employed have been extensively criticised due to their applicability to a wide range of situations. For example, Kerr (1994, p. 7) has encouraged people to “consider the detrimental effect this legislation will have on the community”, describing a case where a man who in the course of his daily routine, consistently came across a woman on her way to work and was subsequently charged with stalking. The case went to court, where it was determined that the man was simply travelling a similar route to work and “acting appropriately” (Kerr 1994, p. 7). Other critiques of stalking legislation have asked “what about the suitor who is harmlessly trying to rekindle a relationship and sends flowers and gifts? What about the man on the Bourke Street tram...who makes polite pleasantries with the woman sitting opposite? There are any number of permutations of conduct in which one could find oneself classed as a potential stalker?” (Weiner 1995, p. 33)

The criticisms of current definitions of “course of conduct” are thus similar to earlier criticisms of who should be exempted from stalking legislation. These difficulties are, in turn, related to earlier discussions concerning the difficulties in defining stalking. As noted earlier, following, telephoning and watching are not inherently criminal, and the only way in which to criminalise them is to include the proviso that they cause apprehension and fear. However, if they are not “intended” to do so (as in the case of the man attending his place of employment), then we return to the earlier complexities of what constitutes intent, and whether objective intent or subjective experience should be prioritised.

Amendments

It is important to note that in attempting to deal with these various issues of intent, overbreadth and course of conduct, at least three jurisdictions have amended their stalking legislation after its introduction, these being Western Australia, Queensland and Tasmania.

In Western Australia, the original legislation focused upon the intent of the offender, specifically the intent to cause apprehension and fear. However, it was discovered that this criterion seriously limited the extent to which stalking-type behaviours could be successfully prosecuted. In one famous

case, a stalker was likened to a “harmless puppy dog” by a magistrate (Whitney 1999) in another case where:

the accused visited in the complainant’s home and office over a period of seven years, the magistrate found that the accused had not intended to intimidate or frighten the complainant. Thus, the behaviour was not within the provisions of the stalking legislation.... Consequently, it has been decided that the stalking provisions need to be extended to cover those situations where there is no intent on the part of the accused but the victim nevertheless fears for his or her safety or is prevented from going about his or her normal lifestyle. Therefore, the Bill provides for a new simple offence of stalking which does not involve any intent on the part of the accused. (the Hon Peter Foss cited in Whitney 1999)

Thus, two new stalking offences were created. One was a more serious, indictable offence, which required that the accused had “intent to intimidate”, while the second was a lesser offence which only required for the pursuit to be “reasonably expected to intimidate, and that it does in fact intimidate” (Whitney 1999, pp. 308–9).

The Queensland amendment introduced a similar criterion to the legislation, ignoring the offender’s intent and requiring only that the “course of conduct...would cause the [victim], reasonably in all circumstances, to fear injury or detriment” (Kift 1998; see also Swanwick 1998).

Similar provisions were also made in Tasmania, where the intent element was kept in the definition of stalking (subsection 1)—and the addendum made such that:

A person who engages in conduct of a kind referred to in subsection (1) and so causes physical or mental harm, apprehension or fear in another person is taken to have the intention required by subsection (1) if that person knows, or ought to have known, that engaging in that conduct would or would be likely to cause the other person physical or mental harm, apprehension or fear. (*Criminal Code Amendment (Stalking) Act 1999* (No. 59 of 1999)

It is interesting to note that these amendments, primarily designed to protect

those victims of “love oriented” stalking were not advised by the Model Criminal Code Committee (1998) when they provided an assessment of the then stalking legislation. Indeed, the Committee specifically advised that the South Australian model be followed and that proof should be provided regarding the intent to cause serious fear or apprehension. While recognising that these provisions would not allow for the prosecution of offenders who may have caused fear (and/or serious fear) but never actually intended to, the Committee argued that such offenders should not actually be dealt with under stalking and should instead be dealt with through current apprehended violence orders and/or the mental health system (Model Criminal Code Committee 1998; see also Kift 1998).

Given the differences in the rates of prosecution of stalking across the different jurisdictions identified later in this report, this is a particularly interesting point to keep in mind.

Additional Issues

There are some other issues that have been raised concerning whether current laws are sufficient to prevent and punish stalking.

Other possibilities in relation to the legislation of stalking include the suggestion that, while the legislation is a “good idea”, it may be better covered by legislation which makes it an offence to loiter without lawful purpose. “This would mean that you would not have to prove that the person had an unlawful purpose for being wherever, but that they did not have a lawful one (reverse onus of proof). Where there is previous evidence of stalking, it becomes nearly impossible to establish a lawful reason especially if there is a restraint order in force as well.” (personal correspondence, Tasmanian police, 2000) This is actually what has been argued in the Scottish context. Scotland does not have stalking legislation, and it was argued that there is no need for it, given the power of “breach of peace” legislation to cover such a wide range of offences, including stalking behaviours (Bonnington 1996). The argument is that, while stalking is offensive, specific legislation only makes prosecution “more” difficult, and current legislation should be utilised in order to address the problem of stalking more effectively. It should be noted here that such suggestions (while legitimate) are just as applicable to critiques of current stalking legislation, specifically the concept of intent, than they are to whether

stalking legislation should actually be initiated in the first place.

Additionally, there is the issue of if the victim did not feel apprehension or fear, despite being subjected to what could be classified under legislation as stalking, has an offence occurred? This issue has been raised by those in Western Australia, where cases have involved women being followed and “spied” upon in their homes, but because they were not aware of the behaviour, the offender in question could not be charged with stalking (personal correspondence, Western Australian police 2000). The only states to address this issue are Queensland and the Australian Capital Territory, which specifically includes the proviso that the victim does not need to be aware of the stalking for the behaviour to be an offence.

In all other jurisdictions, however, we return to one of the original difficulties outlined in the second chapter “Defining Stalking”, where stalking only becomes stalking when the victim defines it as such.

The final issue to be noted is the impact that stalking legislation has had upon other offences. For example, some bail acts specify that bail is to be refused for stalking offences (see Bail Act 1977 (Vic) s4), and other acts outline that sentences such as home detention are not allowed to those either charged with stalking, or having a previous conviction for stalking (see Crimes Sentencing Procedure) Act 1999 (NSW) ss76–77). In the Northern Territory, there are some licences that you cannot obtain if you have been convicted for stalking (see Private Security (Crowd Controllers) Regulations (No 7) 1996 NT), while the Refugee Review Tribunal will refuse application for citizenship if the applicant has been proven to engage in stalking behaviours.

The impact of stalking legislation is, thus, interesting with respect to the apparent seriousness with which other social spheres have taken it into account. However, as will be seen later in this report, the impact of the apparent seriousness of stalking has not actually resulted in severe penalties within the court system.

Discussion

Overall, it is important to remember the diversity of both stalking behaviours and attributes of stalkers, and it may well be that Mullen et al.'s final conclusion regarding the potential impact of legislation is one of the most apt reminders of the difficulties faced in legislating against this specific offence.

Stalkers vary considerably according to their motives, their psychiatric status and their response to management and treatment. Laws that fail to include a range of remedies to address this variation are unlikely to offer an effective solution. With the exception of a handful of United States statutes, most states have failed to consider the value of including mental health evaluations and intervention as part of the sentences imposed on convicted stalkers. Similarly the concept of treatment has been eclipsed by the desire for punishment. Whether the anti-stalking laws prove effective may ultimately depend upon the motivations and psychiatric status of the offender, as well as the willingness of the criminal justice system to view the offence seriously. (Mullen, Pathé and Purcell 2000, p. 277)

In sum, the Australian legislation has been quite stringently defined, focusing upon the extreme examples of stalking behaviours, and relying upon predominantly subjective understandings of offenders needing to intend to cause harm. Particular behaviours constitute the “course of conduct” (that is, the manner in which this harm is caused). The majority of criticisms of stalking legislation has focused upon the risk of “overbreadth”, and has been predominantly concerned with the possibilities of innocent members of public being prosecuted.

Finally, it is interesting to note that the majority of recent amendments have actually focused on “broadening” the legislation, removing strict intent requirements, and allowing for objective experiences of fear and apprehension to be considered more seriously. It is obvious that these factors will impact upon both policing and court practices when dealing with stalking, and it is to these issues that the following chapter turns.

Policing

The number of stalking cases reported to police is essentially a function of the responses of victims to various forms of pursuit. Police statistics are, thus, not necessarily representative of the “real” dimensions of stalking-type behaviours. Victims may not report episodes of stalking for a variety of reasons. Indeed, victim responses to stalking behaviours range from ignoring the incidents to obtaining restraining orders against them. Research differs on the likelihood of stalking victims to report incidents to police. In samples of college students who have experienced “stalking-like” behaviours, it would appear that the likelihood to report the behaviours to the police is low. For example, Fremouw, Westrup and Pennypacker’s (1997) research data reveal that the coping strategies employed by victims altered according to the sex of the victim, but none of the “top five” responses of victims included contacting the police. Instead, the females were more likely to ignore or hang up on unwanted phone calls, confront the stalker, change their daily schedule, carry pepper spray, or arrange for a personal escort. In comparison, males were most likely to confront their stalker, ignore or hang up on calls, reconcile with their stalker, change their schedule, or have someone warn the stalker (Fremouw, Westrup and Pennypacker 1997).

Not surprisingly, whether incidents are reported to police is strongly dependant upon whether stalking incidents are considered “a crime”. For example, Budd, Mattinson and Myhill’s research demonstrated that only a third of respondents who had experienced persistent unwanted pursuit considered the behaviour a crime. These respondents, in turn, were far more likely to report the behaviour to the police (56%) than those respondents who considered the behaviours wrong, but not a crime (18 per cent of whom reported the incidents to the police) (2000, p. 50).

However, research which utilises more stringent definitions of stalking, results in far higher likelihood of victims reporting stalking incidents to the police. For example, the National Institute of Justice (1993) first initiated a project to develop a “model anti-stalking code for states”. As a part of this

project, they surveyed police departments in the United States, Canada, Great Britain and New Zealand (conducted by the Police Executive Research Forum (PERF)).

PERF found that, of the police agencies that responded to their survey, 94 per cent reported having stalking incidents and 57 per cent reported that stalking was not a problem in their jurisdiction (National Institute of Justice 1993, p. 39). The intervention options utilised by police at that time were similar. In states with anti-stalking legislation, police relied on alternative sentences as much as those did in states without anti-stalking legislation. For example, in states with anti-stalking legislation, “81 per cent [of agencies] charge offenders with trespassing, while 74 per cent of agencies without such laws charge offenders with trespassing. Seventy-four per cent of agencies enforcing stalking laws charge offenders with assault while 60 per cent of states without laws charge offenders with assault.” (National Institute of Justice 1993, p. 40)

Importantly, given potential developments in police prosecution of stalking, PERF found that police charging offenders with multiple offences “enhances the chances that a stalker will be stopped” (National Institute of Justice 1993, p. 40). Equally interesting, while it was found that most stalking victims were former lovers, former spouses and spouses (National Institute of Justice 1993, p. 40), domestic violence and crimes against persons units were rarely involved in police investigations of stalking (National Institute of Justice 1993, p. 39).

It would appear that a reasonable percentage of victims do in fact report stalking episodes to the police, most particularly when the behaviour can be clearly classified as stalking, rather than simply “annoying behaviour”. The National Violence against Women Survey recorded that 55 per cent of female victims and 48 per cent of male victims reported stalking to police (National Institute of Justice 1998, p. 15). The Australian Women’s Safety Survey recorded that 58 per cent had reported stalking to the police in the last 12 months, followed by 57 per cent having reported the behaviour at some time during their life-time (Australian Bureau of Statistics 1996, p. 68). Mullen and Pathé report that 69 per cent of their respondents notified the police, with 38 per cent consulting lawyers, 44 per cent consulting doctors and 19 per cent consulting their work supervisor. The vast majority (78%), however, consulted friends and family (Mullen and Pathé 1997, p. 14). Tjaden’s research indicated that half of victims filed police reports, 25 per cent of victims obtained restraining orders and 80 per cent of these were

violated by the stalker. Twenty-four per cent of female victims who reported to police had their cases prosecuted. Of these, 54 per cent of the stalkers were convicted (Tjaden 1997). We could, therefore, reasonably presume that over half of the behaviour is considered serious enough to be worthy of police attention, and that, while males are less likely to report, there is still a sizeable percentage of victims disposed to request police intervention.

Police Practices

Before examining in more detail the number of stalking incidents reported to police, it is important first to clarify the difficulties involved in comparing police data from different jurisdictions. It is crucial to note that the following data are not being presented as a “clean” comparative analysis of Australian states and territories. Given the variety of different ways in which different jurisdictions count different offences, there is no methodologically sound manner in which different police data can be unproblematically compared. For example, in Victoria the counting unit for all crimes against the person (that is, stalking) is the principal number of victims for each separate occurrence of the offence. This means that if two people are stalked by three people, two offences will be recorded (Victorian Police 1998). In contrast, the counting unit used in South Australia is the number offences that were either reported to or cleared by the police⁸ (Office of Crime Statistics 1999). This is similar to Queensland where recording mechanisms count “multiple offences”; that is, distinct criminal acts are counted per criminal incident (Ogilvie, Lynch and Bell 2000). Unfortunately, police data on stalking from New South Wales is unavailable, due to police using the counting definition of “intimidation”. Stalking is included within this offence category, as are a variety of other offences (for instance, threats against the person). Given this, the offence category cannot be utilised to examine police practices in recording stalking as a specific offence.

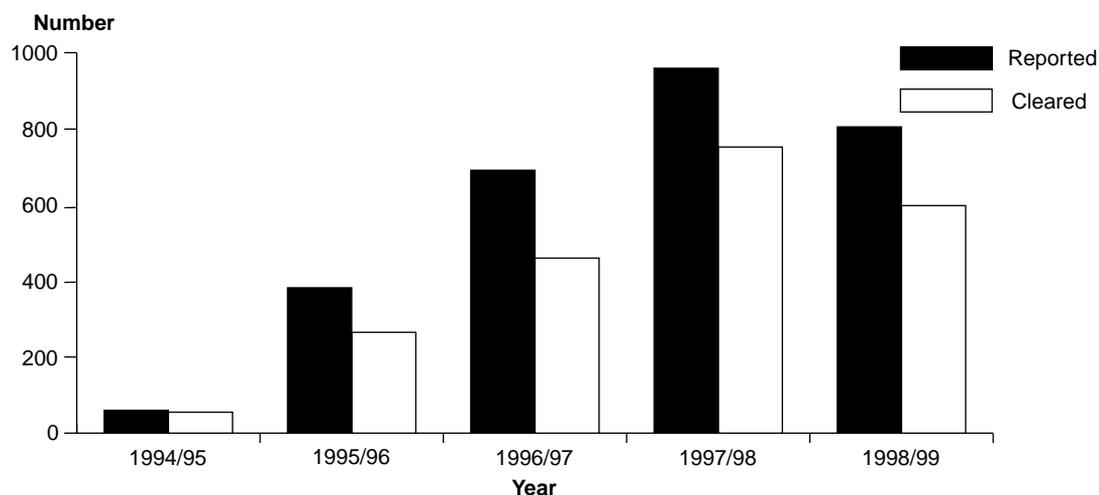
⁸ In contrast, court figures are based on individual appearances, with only the most serious charge per case shown. Because an individual may have committed a number of offences, police statistics invariably will be much higher than court figures (Marshall 1998).

However, even with these limitations, it is still possible to examine the general *trends* indicated *within* each jurisdiction as documented by each of the states' particular counting strategy.

Cases Reported and Cleared: Jurisdictional Comparisons

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

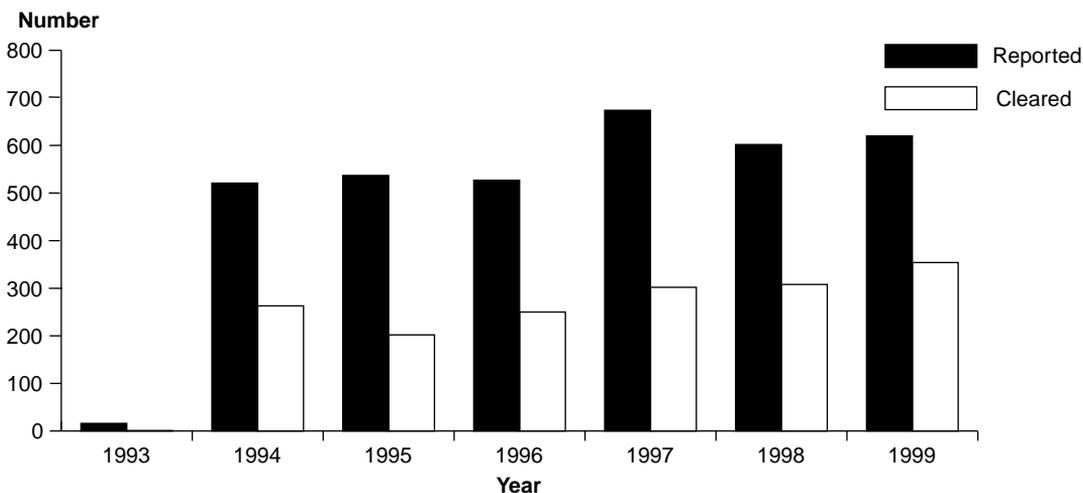
Figure 1: Victoria—Cases Reported and Cleared



Source: Victorian Police: unpublished statistics.

This is followed by Queensland, which had a peak reporting number in 1997 at 674. In 1999, 620 cases of reporting were recorded by the Queensland police (Figure 2).

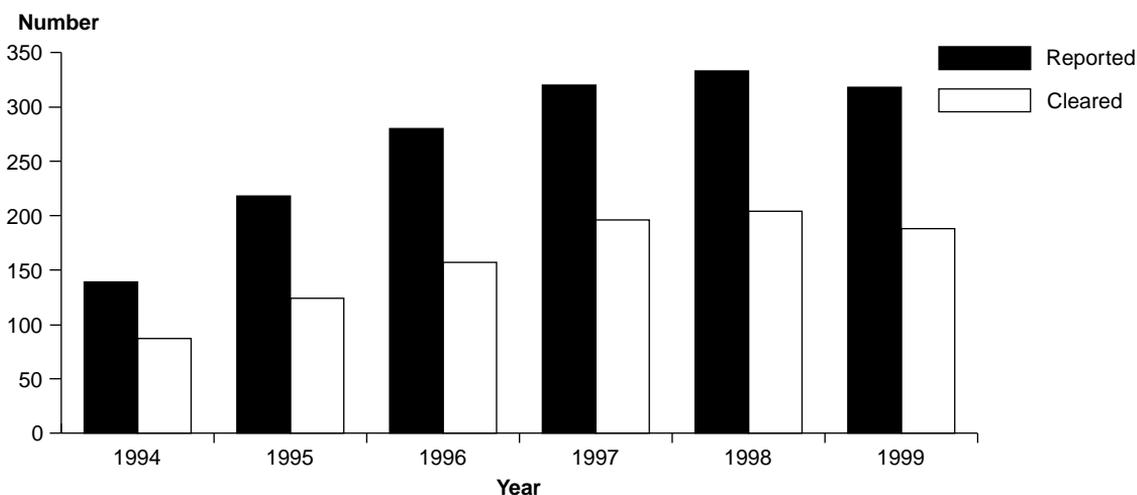
Figure 2: Queensland—Cases Reported and Cleared



Source: Statistical Services, Queensland Police: unpublished statistics.

South Australia has the third highest number of stalking cases reported, peaking in 1998 with 333 cases, and then dropping slightly to 318 in 1999 (Figure 3).

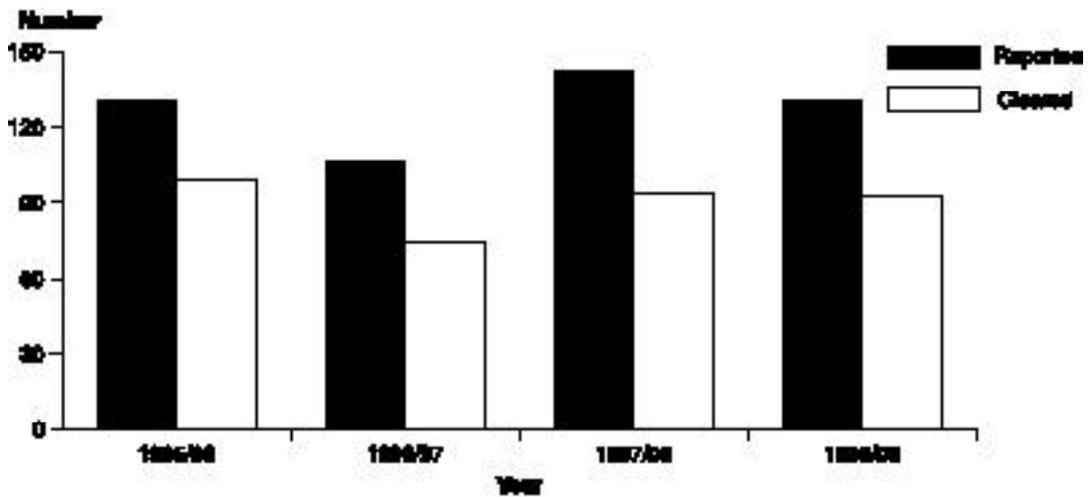
Figure 3: South Australia—Cases Reported and Cleared



Source: Office of the Crime Statistics (1994–1999): unpublished statistics.

This was followed by Western Australia, which had 142 stalking cases reported in 1997/98, followed by 131 in 1998/99 (Figure 4).

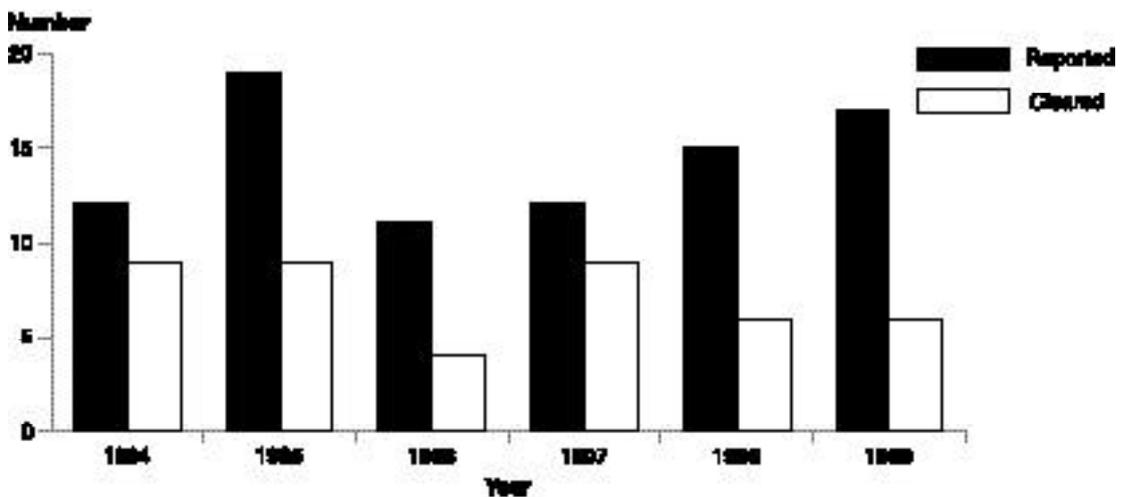
Figure 4: Western Australia—Cases Reported and Cleared



Source: Western Australian Police: unpublished statistics.

In the Northern Territory the highest number of stalking cases reported was 19 in 1995, followed by 17 in 1999 (Figure 5).

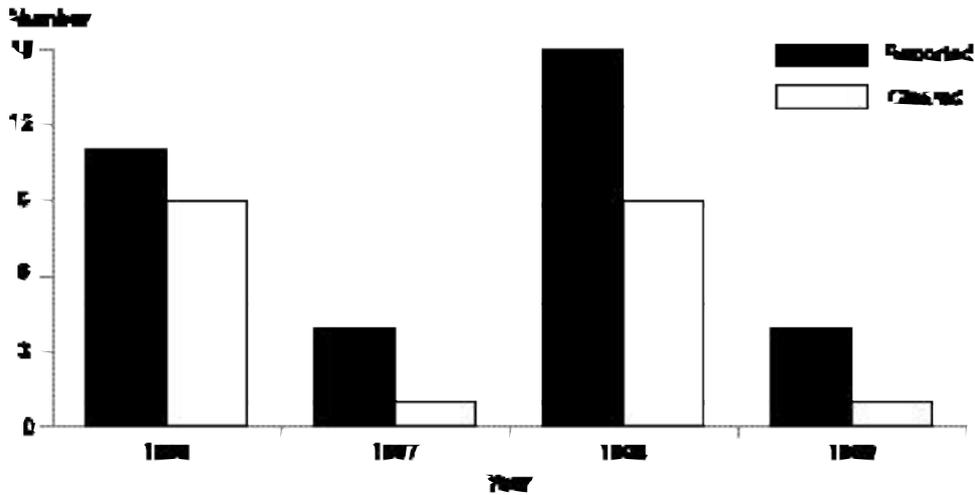
Figure 5: Northern Territory—Cases Reported and Cleared



Source: Northern Territory Police: unpublished statistics.

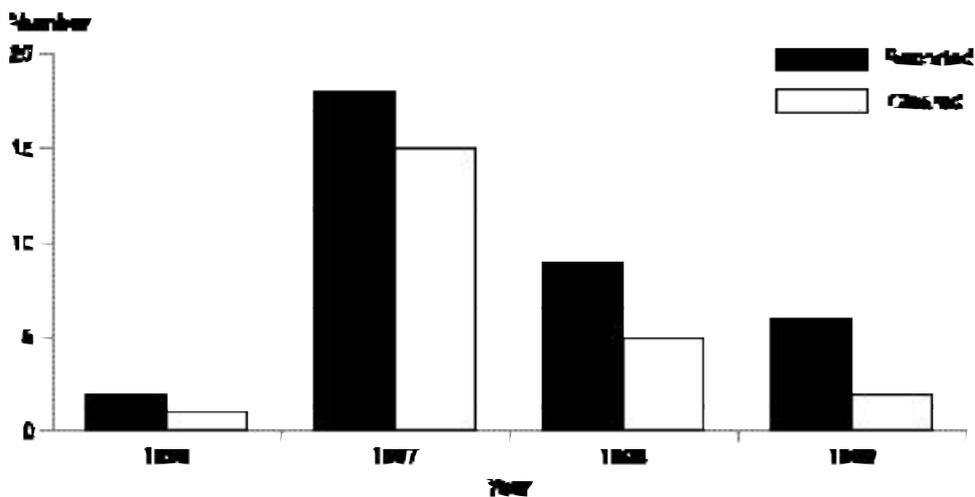
Finally, Tasmania and the Australian Capital Territory both had small numbers of reported stalking cases. In Tasmania, the highest number was 15 in 1998, with only 4 cases being reported in 1999 (Figure 6). In the Australian Capital Territory, 18 cases were reported in 1997 and 6 cases were reported in 1999 (Figure 7).

Figure 6: Tasmania—Cases Reported and Cleared



Source: Tasmanian Police: unpublished statistics.

Figure 7: Australian Capital Territory—Cases Reported and Cleared



Source: Australian Capital Territory Federal Police: unpublished statistics.

While these numbers provide an interesting illustration of jurisdictional trends in stalking behaviours, they tell us little about the actual rates of stalking across jurisdictions. It is also difficult to meaningfully compare clearance rates across the jurisdictions because of the differences in the absolute numbers involved and the different counting strategies underpinning these absolute numbers. It is not surprising that Victoria has the largest number of stalking cases, given that they are the largest state included in those examined. However, notwithstanding these methodological hindrances to inter-jurisdictional comparisons, if we are interested in the actual rates compared across the states, we do in fact uncover some fascinating results (Table 5).

Table 5: Rates of Stalking Reported to Police (Per 100 000, 18 Years and Above)* **

	1993	1994	1995	1996	1997	1998	1999
VIC	NA	NA	1.8	11.2	19.9	27.2	22.5
QLD	0.7	22.3	22.4	21.4	26.9	23.5	23.8
SA	NA	12.6	19.7	25.1	28.5	29.5	27.9
NT	NA	10.2	15.7	8.8	9.3	11.5	12.7
WA	NA	NA	NA	10.1	8.0	10.5	9.5
TAS	NA	NA	NA	3.2	1.1	4.3	1.1
ACT	NA	NA	NA	0.9	7.9	3.9	0.9

* Western Australia and Victoria are collected for the financial year and have been calculated for the year up—that is, 1995/96=1996.

** It is critical to remember that *due to different counting mechanisms these rates cannot be directly compared across jurisdictions. They are presented in the one table for reasons of convenience, rather than comparability.*

Source: Victorian Police: unpublished statistics; Statistical Services, Queensland Police: unpublished statistics; Office of Crime Statistics: unpublished statistics; Northern Territory Police: unpublished statistics; Western Australian Police: unpublished statistics; Tasmanian Police: unpublished statistics; and Australian Federal Police: unpublished statistics.

Table 5 demonstrates that in 1999, South Australia has the highest rate of stalking reported at 27.9 (per 100 000), followed by Queensland at 23.8 and Victoria at 22.5. Interestingly, the Northern Territory follows with 12.7 (per 100 000) stalking incidents reported to the police in 1999, followed by Western Australia, Tasmania and the Australian Capital Territory at 9.5, 1.1 and 0.9 respectively.

Unfortunately, as already noted, rates of reported episodes are not necessarily representative of stalking incidents deemed appropriate for prosecution. For these figures, we need to look at the clearance rates. It can be seen that clearance rates for stalking are reasonably constant (Table 6). Victoria and Western Australia have the highest clearance rates, at 76 and 71 per cent respectively. Tasmania and the Northern Territory have the lowest rates at 48 and 35 per cent respectively.

Table 6: Clearance as a Percentage of Reported Offences* **

	VIC	WA		QLD	SA	TAS	NT	ACT
	%	%		%	%	%	%	%
na	na	na	1993	6	na	na	na	na
na	na	na	1994	50	63	na	75	na
1994/95	92	na	1995	38	57	na	47	50
1995/96	69	76	1996	47	56	82	36	83
1996/97	67	70	1997	45	61	25	75	56
1997/98	78	66	1998	51	61	60	40	33
1998/99	74	71	1999	57	59	25	35	na

* Given that the majority of cases are not cleared in the same year that they are reported, there may be discrepancies such as that observed in 1996.

** As with the earlier table, it is critical to remember that *due to different counting mechanisms these percentages cannot be directly compared across jurisdictions. They are presented in the one table for reasons of convenience, rather than comparability.*

Source: Victorian Police: unpublished statistics; Statistical Services, Queensland Police: unpublished statistics; Office of Crime Statistics: unpublished statistics; Northern Territory Police: unpublished statistics; Western Australian Police: unpublished statistics; Tasmanian Police: unpublished statistics; and Australian Federal Police: unpublished statistics.

Of course, not all cases that are cleared necessarily proceed to prosecution. While the data are not available from all states, we can check across four jurisdictions—South Australia, Queensland, Tasmania and the Northern Territory—in order to better determine the numbers of cases cleared which result in dismissals. As can be seen in Table 7, these numbers are, surprisingly, quite low.

Table 7: Cases Cleared (C) Resulting in Unfounded (U) Judgements*

	SA		QLD		TAS		NT	
	C	U	C	U	C	U	C	U
1993	<i>na</i>	<i>na</i>	1	0	<i>na</i>	<i>na</i>	<i>na</i>	<i>na</i>
1994	87	26	263	22	<i>na</i>	<i>na</i>	9	2
1995	124	24	202	60	<i>na</i>	<i>na</i>	9	4
1996	157	31	250	294	9	0	4	0
1997	196	39	302	159	1	0	9	5
1998	204	54	308	248	9	4	6	3
1999	188	39	354	183	1	0	6	5

*As with Table 6, given that cases may designated as cleared and unfounded in different years to which they are reported, there may be discrepancies such as that observed in 1996.

South Australia: Unfounded (includes dismissed at victim request/other); Tasmania: Unfounded (includes investigation unable to proceed); and Northern Territory: Unfounded (includes no offence as reported, no further action, no complaint forthcoming).

Source: Statistical Services, Queensland Police: unpublished statistics; Office of Crime Statistics: unpublished statistics; Northern Territory Police: unpublished statistics; and Tasmanian Police: unpublished statistics.

Discussion

Why then might these substantive differences between the jurisdictions be occurring? The obvious first clue that needs to be investigated is the issue of legislation. As noted in the chapter on “The Legislative Framework”, the legislation differs slightly across all of the states. In South Australia, the legislation is quite narrow, requiring that the offender have intent to cause serious fear and apprehension. In comparison, Queensland has since introduced a more objective understanding of the victim needing to experience apprehension and fear. These legislative definitions will obviously impact upon police practices in terms of charging offenders with a stalking offence.

For example, we may imagine that a person has developed a fixation on another person with whom they briefly had sexual relations, consistently sending them presents, ringing them at home, visiting them at work, turning up at all their usual social locales, and warning other potential admirers away because the other person is “already taken”. In this situation, regardless of any apprehension that may be being experienced by the respondent of these attentions, it would be almost impossible to charge them with stalking under current South Australian law.

Alternatively, if a neighbourhood dispute over a shared fence line involves consistent abusive threats, interference with the shared property and surveillance through the bathroom window, this offence can be currently charged under stalking legislation, as it fulfils all of the major criteria. Indeed, this outcome is exactly what appears to have occurred in Victoria, with one of the major complaints made being the trivialising of the offence through it being used to deal with neighbourhood complaints (Department of Justice, Victoria 2000)

Other factors will also impact upon police decision-making processes. For example, if a person is consistently threatening their ex-partner, consistently violating restraining orders and has had a history of abusive behaviours, it may well be that police feel they have a higher likelihood of being able to

charge the person under domestic violence (albeit with perhaps a lower charge) than they would in successfully prosecuting under stalking legislation. Indeed, this has been demonstrated in Pearce and Easteal's research, which suggested that police prefer to act under civil domestic violence legislation in response to "stalking scenarios", given that "A DVO is easier because it is there in black and white and it's a court order made by a magistrate and tends to be taken more seriously." (police officer cited in Pearce and Easteal 1999, p. 167)

What is particularly interesting is that Pearce and Easteal's research also argued that if a protection order was already in place, police respondents "overwhelmingly chose to use 'breach of an order'" (Pearce and Easteal 1999, p. 167) rather than stalking legislation.

These, and other, factors will significantly impact upon police decision-making processes when determining whether to charge with stalking or not, and these decision-making processes will differ according to the different jurisdictional legislation, and the different levels of familiarity with that legislation. They will also impact significantly upon subsequent court practices; this is the subject of the following chapter.

Courts

There is very little research undertaken focusing upon court practices in relation to stalking. One exception is Keenahan and Barlow (1997), who note that the number of cases dismissed or against which no action was taken far outweighs the number of convictions. Similarly, the Department of Justice, Victoria (2000) noted that, in Victoria, there are a high number of charges not proven in the Magistrates Court. This appears to match international findings which note that in Canada, “even if caught, violators receive, at most, minimal jail time or minor monetary penalties” (Abrams and Erlick Robinson 1998b, p. 478). One exception to this trend appears to be in the United Kingdom and Wales. As already noted, in the United Kingdom and Wales, stalking comes under the *Protection from Harassment Act 1997*, and is far broader in scope than Australian or American legislation. It encompasses a wide range of behaviours other than stalking (see Sheridan, Davis and Boon 2000). It may be for these reasons that the *Protection from Harassment Act* appears to be quite successful in relation to its prosecution patterns. Indeed, in evaluating the Act, Harris recorded that of those cases referred to the courts, 39 per cent were dropped (2000, p. 29). However, of those cases that were that went to a hearing, 84 per cent received a conviction (2000, p. 35).

It needs to be noted, however, that just as police data cannot readily be compared across jurisdictions, so too court data cannot be easily compared across jurisdictions. As was noted in the previous chapter, the rates of reporting across the different jurisdictions differ substantially. It was suggested that this may in part be due to the different counting strategies used by the police and the different legislation in place in each state. This chapter focuses on the way in which the courts give effect to the various forms of stalking legislation in each state.

Court Practices

As is the case with the police data, there are similar difficulties relating to comparisons between jurisdictional court data. One of the issues that often arise with the unpublished statistics is that the data are preliminary. For example, in Queensland it is estimated that the data provided are representative of 65 per cent of the Queensland Criminal Court population. This is because stalking offences can only be identified through CRS courts (electronic Case Register System). Approximately 65 per cent of court data come from these courts, with the other 35 per cent being documented through paper returns (personal communication, Queensland Office of Economical and Statistical Research, 2000). Similarly, counting mechanisms vary across the states. However, in all states reported here the counting mechanism used has been the most serious outcome for each conviction (that is, each convicted charge is counted just once).

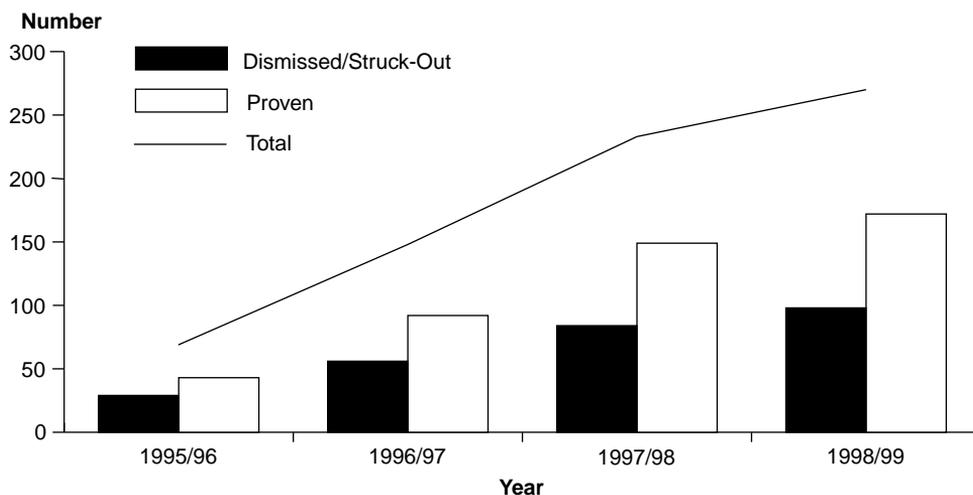
It was noted in the previous chapter that clearance rates involve relatively few cases cleared through dismissal. Of those that make it to the courts, however, the differences between proceeding to sentencing versus being dismissed are greater, and the patterns observed are not consistent across the states.

Cases Dismissed and Proven: Jurisdictional Comparisons

In Victoria, cases are more likely to be proven than dismissed. In 1998/99, 172 stalking charges were proven compared to 98 which were dismissed (Figure 8).

In New South Wales, a similar pattern occurred, but with less substantive difference. In 1998, 144 cases were dismissed compared to 200 cases which were proven (Figure 9).

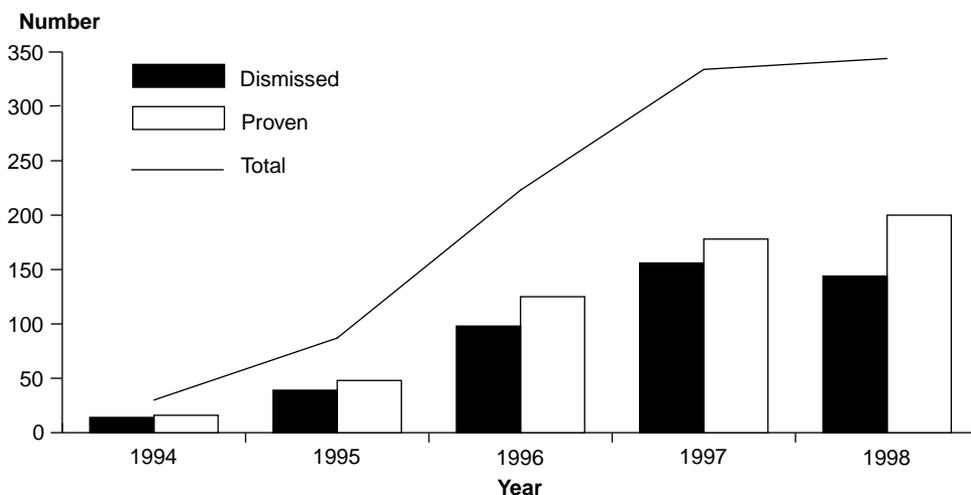
Figure 8: Victoria—Stalking Offences Dismissed and Proven



Total n=409.

Source: Magistrates Court Statistics—Victoria: unpublished statistics.

Figure 9: New South Wales—Stalking Offences Dismissed and Proven

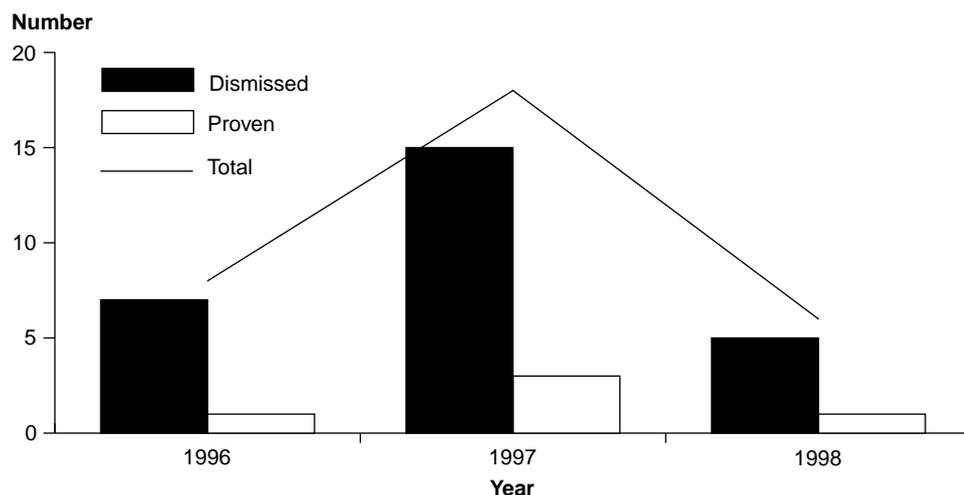


Total n=1018.

Source: New South Wales Bureau of Crime Statistics and Research: unpublished statistics (magistrates court).

In South Australia, however, the pattern changes dramatically. As we saw in the chapter on “Policing”, South Australia had the highest rates of reported stalking of all the states or territories. However, when we look at prosecution patterns within the court, we can see that the majority of cases are actually dismissed. This was most noticeable in 1997, where of the 18 cases that made it through to court, 15 were dismissed. Similarly, in 1998 of the 6 cases that made it to court, 5 were dismissed (Figure 10).

Figure 10: South Australia—Stalking Offences Dismissed and Proven*

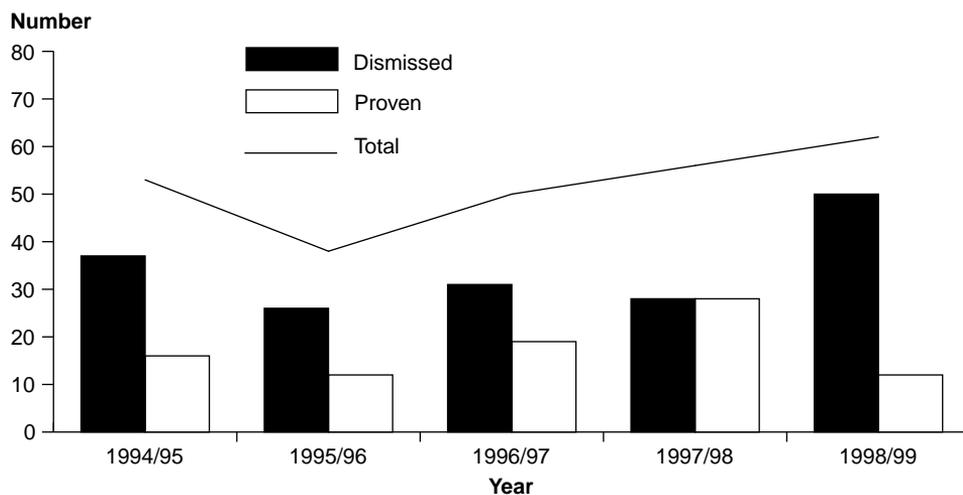


*Dismissed includes cases withdrawn, and proven includes cases committed for trial or sentence with penalty.

Total n=32.

Source: Office of Crime Statistics (magistrates courts): unpublished statistics.

A similar pattern occurs in Queensland (Figure 11), with a similarly high rate of reporting. Indeed, in 1998/99, of the 62 charges that went to the lower court, 50 were actually dismissed. This trend of a higher number of charges being dismissed than proven was evident across all of the years (1994/95 to 1998/99) with the exception of 1997/98, where the numbers were exactly equal, 28 charges being dismissed and proven respectively. It should be noted at this point, however, that Queensland is one of the very few states that recorded whether cases were committed to a higher court for either trial or sentencing. Between 1994/95 and 1998/99, 9 people were committed to a higher court for sentencing, and 259 were committed to a

Figure 11: Queensland—Stalking Offences Dismissed and Proven

Total n=259.

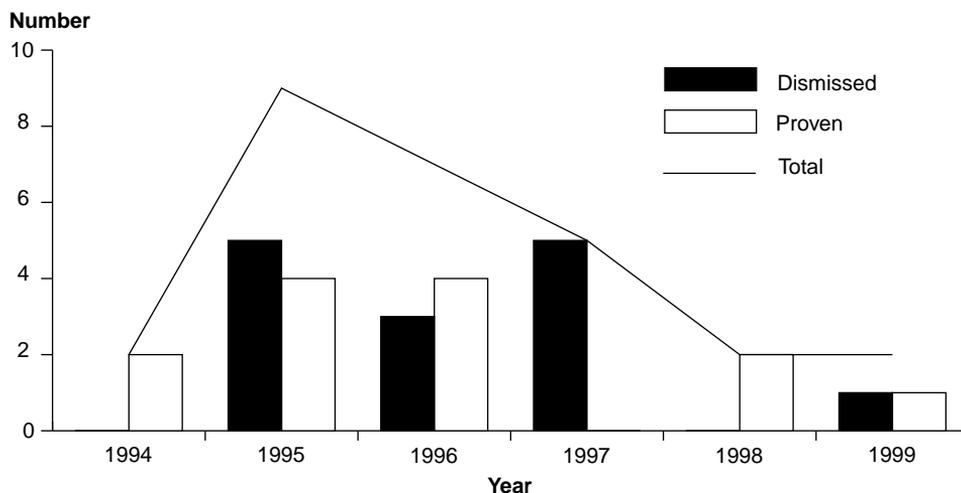
Source: (Department of) Justice and Attorney General, Courts Data base: unpublished statistics (lower court).

higher court for trial. These figures may explain the apparent discrepancy between reported figures in Queensland and those that make it to court. No such explanation is evident in South Australia. The trends in the Northern Territory are less clear.

The highest number of stalking cases making it to court in the Northern Territory was 9 in 1995, of these 4 were proven and 5 were dismissed. In 1999, only 2 cases made it to court, of which 1 was proven and 1 was dismissed (Figure 12).

In the Australian Capital Territory, the numbers of cases of stalking which made it to court were slightly larger than the Northern Territory (but less than South Australia). However, the most likely outcome in the Australian Capital Territory is dismissal. The highest number of stalking cases to make it to court in the Australian Capital Territory was 18 in 1997, of these 11 were dismissed and 7 resulted in conviction. This number has since dropped such that in 1999, 7 cases made it through to the courts, but 6 were dismissed and only 1 was charged (Figure 13).

Figure 12: Northern Territory—Stalking Offences Dismissed* and Proven

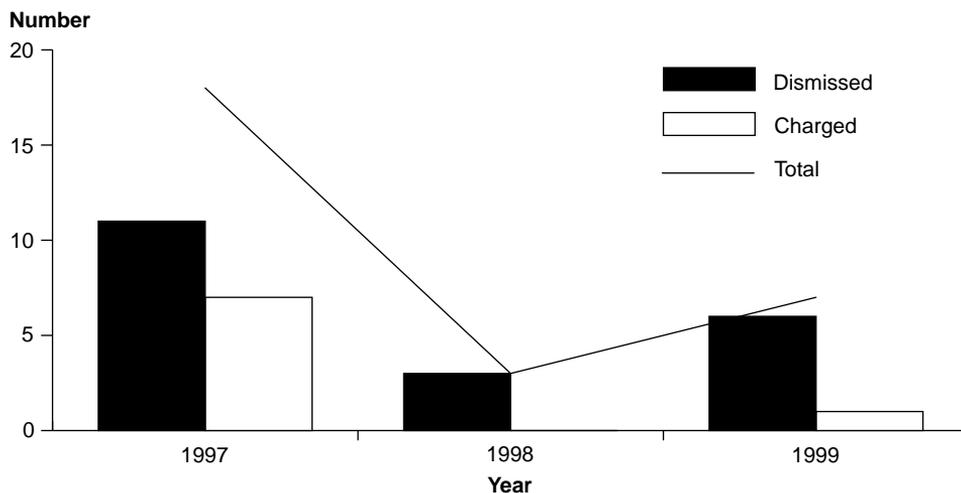


* Dismissed includes charges withdrawn and discharged.

Total n=27.

Source: Northern Territory Attorney-General's Department: unpublished statistics.

Figure 13: Australian Capital Territory—Stalking Offences Dismissed and Proven



Total n=28.

Source: Australian Capital Territory Magistrates Court: unpublished statistics.

It can be seen that the differences in levels of dismissal and proven offences differs quite markedly between the states. Victoria has the highest percentage of proven offences over dismissed, with an average of 85 per cent (see also Criminal Justice Statistics and Research Unit 1997, 1998). At the other end of the spectrum, the Australian Capital Territory has the highest percentage of dismissed rather than proved, with an average of 82 per cent dismissed (Table 8). It should be noted at this point that courts data from Western Australia and Tasmania were unavailable. In Tasmania, however, the Office of Justice and Industrial Relations reports that approximately 10 stalking complaints have been lodged in the Hobart Court of Petty Sessions since 1996, with 2 being recorded in 1997/98, 5 recorded in 1998/99 and 3 recorded in 1999/2000 (personal communication, Department of Justice and Industrial Relations 2000).

In Western Australia, previous research has been conducted on the offence category “threats and stalking” for the year 1998 (Ministry of Justice 1999), showing that 93 charges of making threats or stalking were recorded in 1998. Forty-six offences involved threats or stalking as the most serious offence in that year (Ministry of Justice 1998). What is particularly interesting about the Western Australian data is that, of the 93 charges (of making threats or stalking) recorded in 1998, 46 per cent received a prison sentence, 13 per cent received a suspended sentence and 17 per cent received a fine. While a

Table 8: Percentage (of Total) of Those Proven/Dismissed

%	QLD		SA		%	VIC		NT		NSW		ACT	
	P	D	P	D		P	D	P	D	P	D	P	D
1994/95	70	30	na	na	1994	na	na	100	0	47	53	na	na
1995/96	68	32	62	38	1995	na	na	44	56	45	55	na	na
1996/97	62	38	62	38	1996	88	13	57	43	44	56	na	na
1997/98	50	50	64	36	1997	83	17	0	100	47	53	39	61
1998/99	81	19	64	36	1998	83	17	100	0	42	58	0	100
	na	na	na	na	1999	na	na	50	50	na	na	14	86

Source: Magistrates Court Statistics—Victoria: unpublished statistics; (Department of Justice and Attorney General, Courts Data base: unpublished statistics; New South Wales Bureau of Crime Statistics and Research: unpublished statistics; Office of Crime Statistics (magistrates courts): unpublished statistics; Northern Territory Attorney-General’s Department: unpublished statistics; and Australian Capital Territory Magistrates Court: unpublished statistics.

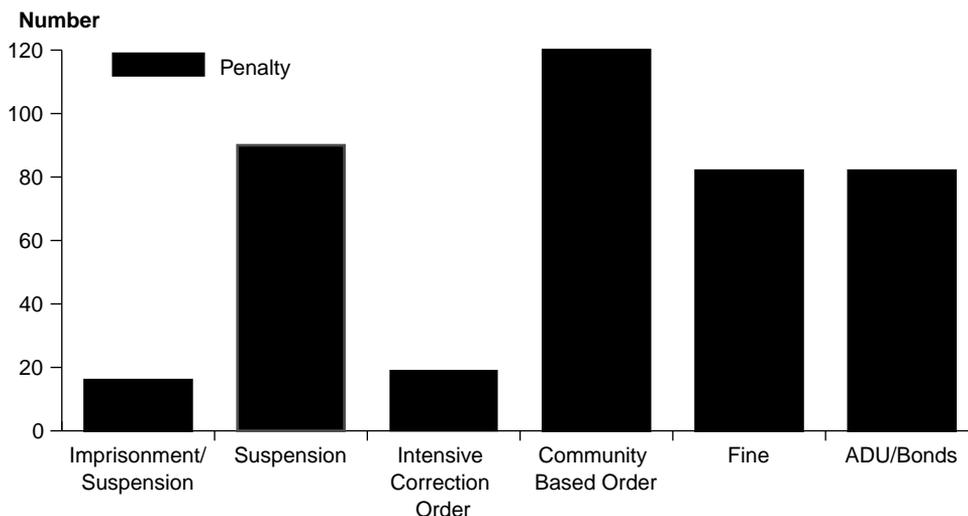
majority of the prison sentences were “prison with parole” (n=35), followed by prison without parole (n=8), this apparent trend towards utilising prison sentences for stalking is an anomaly in comparison to other Australian jurisdictions. This can be seen in the following examination of final outcomes for stalking charges, across jurisdictions.

Final Outcomes across Jurisdictions

Of those cases that go to court, what then are the actual outcomes of the court process? Because of the aforementioned methodological difficulties, it is not possible to directly compare across the states. Notwithstanding this issue, it is, nonetheless, of some interest to note the final outcomes of stalking charges across the various magistrates courts.

Victoria is the most likely jurisdiction to impose penalties in court (Figure 14). The most likely outcome was a Community Based Order (n=120) followed by a suspended sentence (n=90), and then either a fine or an Adjourned Undertaking or various Bonds (n=82 respectively).

Figure 14: Victoria—Penalty for Defendants With One of More Charges of Stalking (1995/96 to 1998/99)*



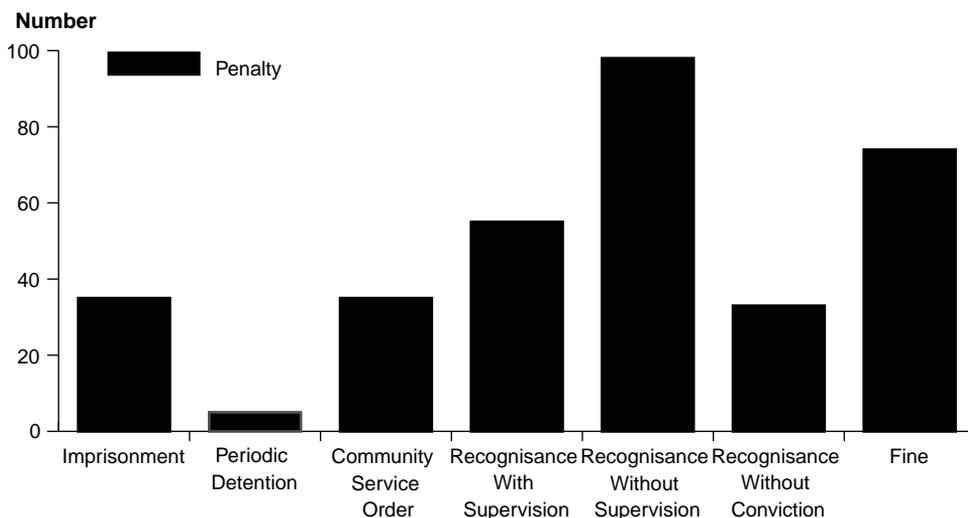
*two penalties are not included in this chart, one convicted and discharged in 1996/97 and one combined custody and treatment order in 1998/99.

Total n=411.

Source: Victorian Magistrates Courts: unpublished statistics.

In New South Wales (Figure 15), the most likely penalty to be imposed between 1994 and 1998 were sentences imposing recognisance without supervision (n=98), followed by a fine (n=74) and recognisance with supervision (n=55). Within this 5-year period, there were 35 cases of imprisonment with the same number receiving a community service order, and a lower number receiving a recognisance without conviction (n=33).

Figure 15: New South Wales—Final Outcome in the Magistrates Court 1994–1998*



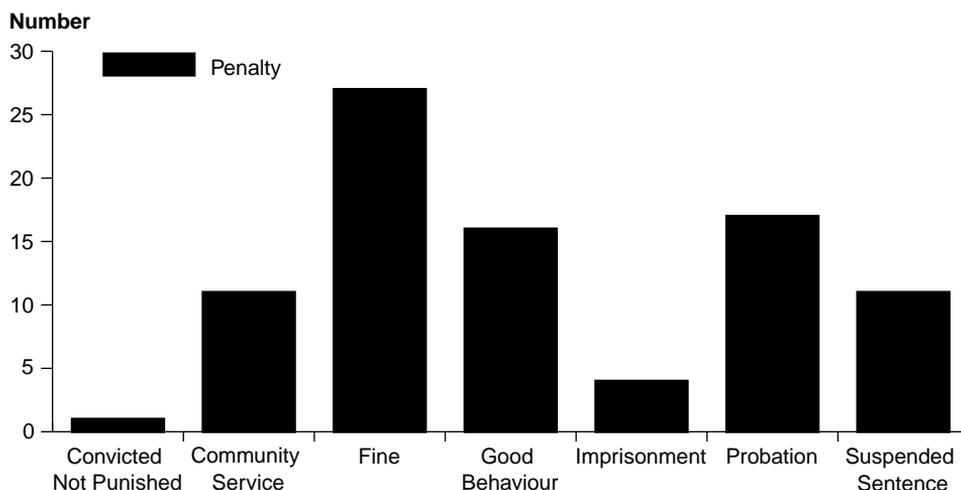
*5 cases are not included in this chart, four where no conviction was recorded, and one where a nominal sentence was imposed.

Total n=335.

Source: New South Wales Bureau of Crime Statistics and Research: unpublished statistics.

In Queensland, we have significantly fewer charges (Figure 16), and the most likely penalty to have been imposed in Queensland between 1994/95 and 1998/99 was a fine (n=27), followed by probation (n=17) and a good behaviour order (n=16).

Figure 16: Queensland—Convicted Charges in the Lower Court for Stalking (by Penalty Type) 1994/95 to 1998/99



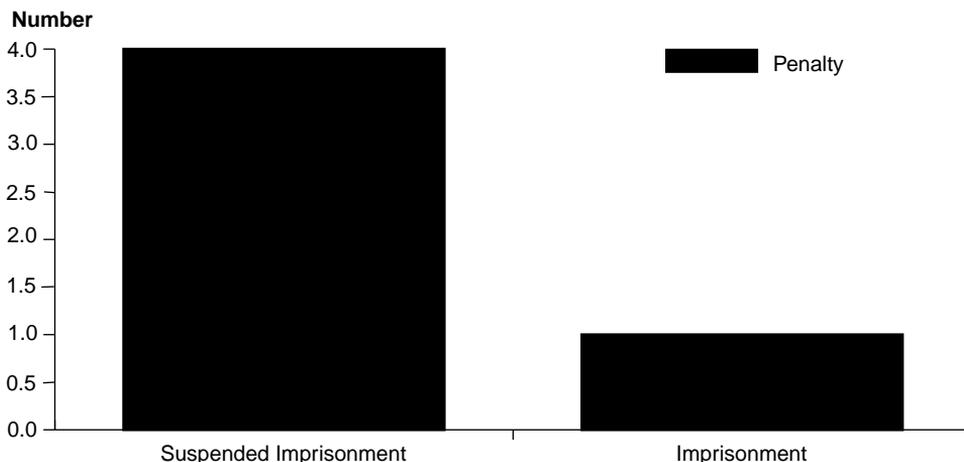
Total n=87.

Source: (Department of) Justice and Attorney General, Courts Data Base: unpublished statistics (lower court).

In South Australia, we have an even more interesting phenomenon (Figure 17), where the only outcomes were serious outcomes (4 cases resulted in suspended imprisonment, and 1 case resulted in imprisonment). Perhaps the most interesting point to note here is the extent of the discrepancy between the very high rate of reporting in South Australia and the very low rate of sentence imposition.

In an interesting reversal to the trends in the other states, the Northern Territory has a higher total (n=13) of those receiving a penalty in court than South Australia with respect to stalking (Figure 18). The most likely outcome was a bail warrant or warrant of apprehension being issues (n=7), followed by imprisonment (either fully or partly suspended) (n=5).

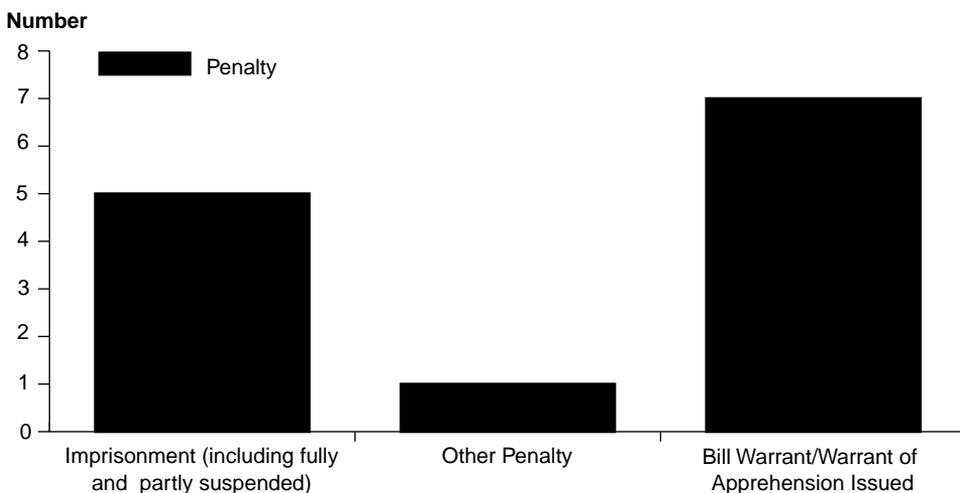
Figure 17: South Australia—Major Penalty for Major Charge Convicted 1996–1998



Total n=5.

Source: Office of Crime Statistics (magistrates courts): unpublished statistics.

Figure 18: Northern Territory—Last Order Received (of Those Proven) 1994–1999

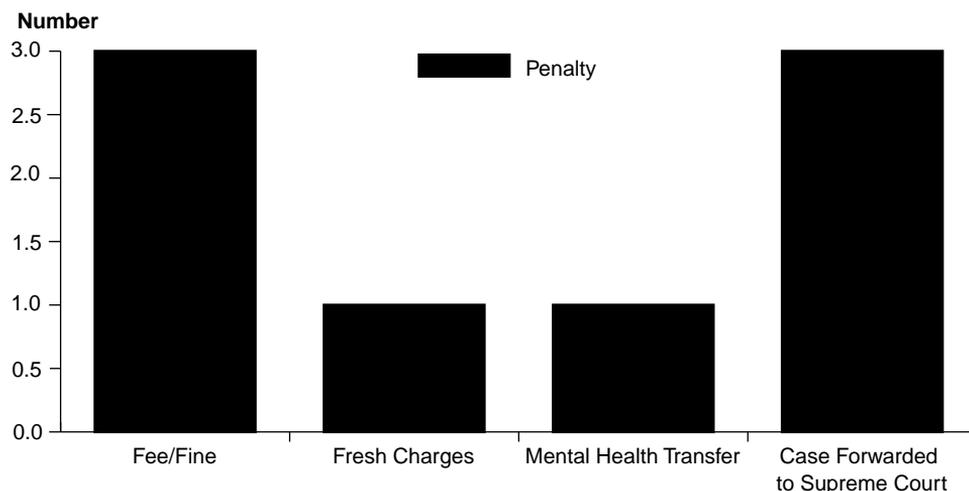


Total n=12.

Source: Northern Territory Magistrates Office: unpublished statistics.

In the Australian Capital Territory (Figure 19), the most likely results were either a fine or the case being forwarded to the Supreme Court (n=3 respectively).

Figure 19: Australian Capital Territory—Final Penalty Outcome 1997–1999



Total n=8.

Source: Australian Capital Territory Magistrates Court: unpublished statistics.

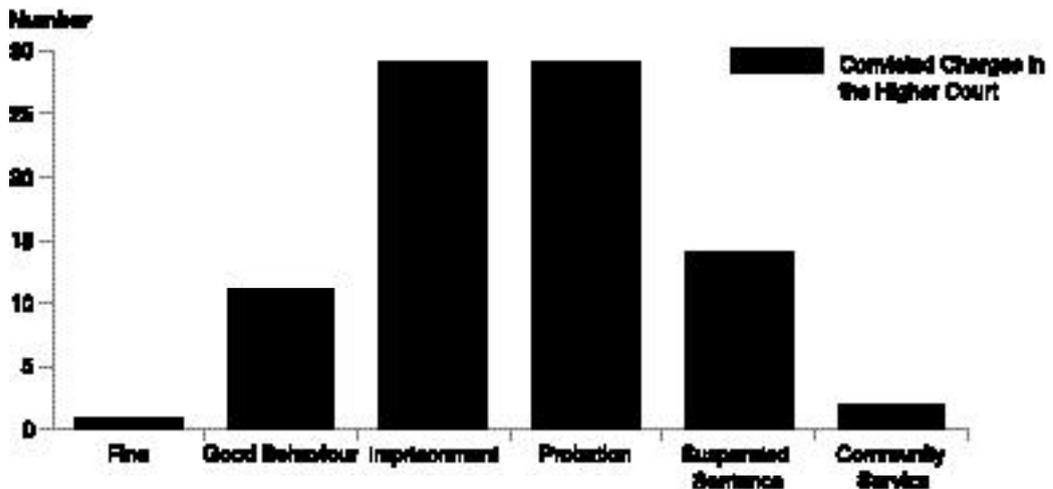
Higher Courts

It was noted earlier that Queensland appeared to have a high number of stalking charges involving, at some point in proceedings, a recommendation for referral to a higher court (n=259). This is not an unimportant finding, given that Queensland has a much higher number of charges going to the higher court than any of the other states.

Between 1994/95 and 1998/99, there were a total of 147 charges that actually did proceed to the higher courts. Of this number, 86 resulted in a penalty being imposed, with 61 cases discharged.

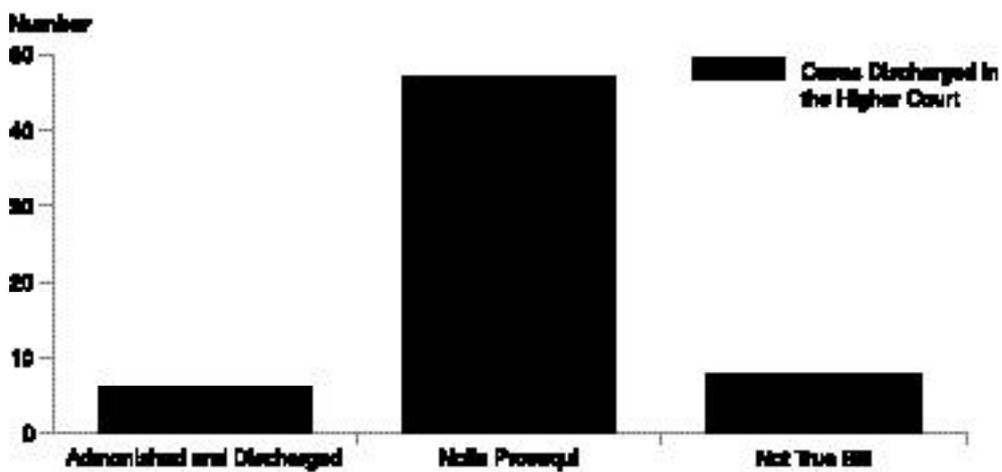
Of those charged, the penalties imposed were reasonably serious, with 29 or just over a third involving imprisonment, and the same number involving a probationary order (Figure 20).

Figure 20: Queensland—Convicted Charges in Higher Court by Penalty Outcome 1994/95 to 1998/99



Source: (Department of) Justice and Attorney General, Courts Data Base: unpublished statistics.

Figure 21: Queensland—Discharged Charges in Higher Court by Penalty Outcome 1994/95 to 1998/99



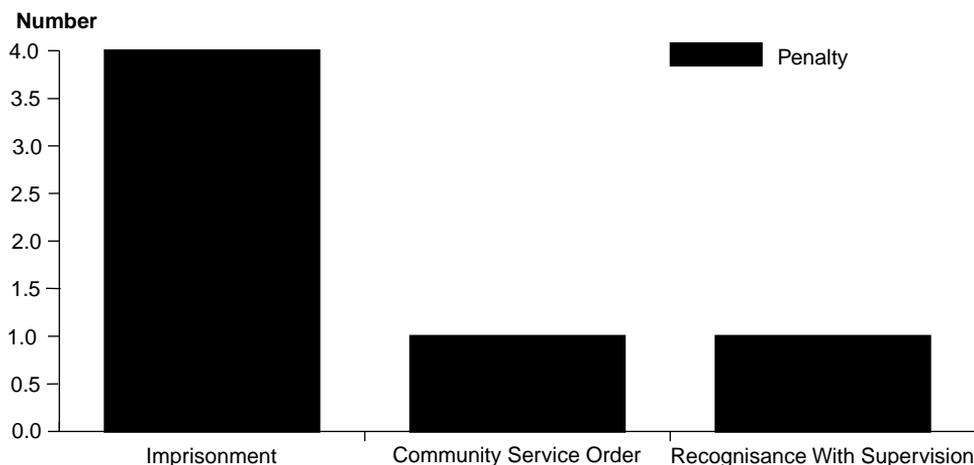
Source: (Department of) Justice and Attorney General, Courts Data Base: unpublished statistics.

Of those dismissed, 47 (or 77%) received a nolle prosequi order; that is, the decision by the state not to proceed with the case (Figure 21).

In case these numbers are considered insignificant, we can compare these outcomes to New South Wales, Australia’s largest state, and the jurisdiction with the highest number of stalking cases going through the lower courts.

The contrast between Queensland and New South Wales in terms of the frequency with which the higher courts deals with stalking cases is extreme. The most likely penalty imposed by the higher court New South Wales was imprisonment, but this sentence was only imposed in 4 cases (Figure 22).

Figure 22: New South Wales—Penalty for Principal Offence in the Higher Court 1996–1998



Source: New South Wales Bureau of Crime Statistics and Research: unpublished statistics.

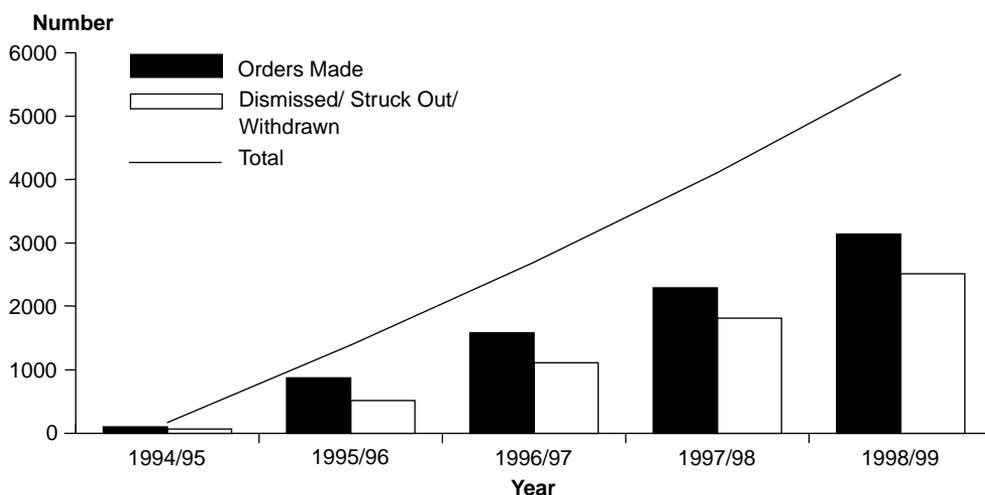
Restraining Orders

The final issue that needs to be examined in relation to stalking and the courts is the issuance of restraining orders. It is most unfortunate that, with the exception of Victoria, jurisdictional data covering the number of restraining or intervention orders issued under stalking legislation was not available.

In Victoria, the Magistrates Office has been recording the number of intervention orders taken out under the stalking provisions of the Crimes (Amendment) Act since the legislation was first introduced. Most recently, the Magistrates Court of Victoria (2000, p. 31) discovered that restraining orders taken out under the stalking legislation have increased by 56.3 per cent, with a total of 4230 intervention orders being made under the Act in 1997/98.

What was not covered in the report, however, is the likelihood of these orders being enforced. When we examine unpublished statistics from Victorian Magistrates Office, we see a noticeable trend in the likelihood of such orders being dismissed, struck-out or withdrawn. While there are a higher number of orders enforced than dismissed, struck-out or withdrawn, the disparity between the two outcomes is not very great (Figure 23). It is also important to note here that those cases being withdrawn are fewer (albeit sizeable) than those cases being dismissed, with 946 cases being withdrawn in 1998/99 compared to 1083 being struck-out and 487 being dismissed in the same year.

Figure 23: Victoria—Stalking Intervention Orders



Source: Victorian Magistrates Courts: unpublished statistics.

Discussion

What then do these trends actually indicate? The first, and most important, point is that of the stalking cases that finally make it to court, far fewer receive a penalty, are relatively few in comparison to those reported (see chapter on “Policing”). Again, as with policing prosecution decisions, these trends are arguably strongly related to specific legislation, specifically the nature of “intent”. Indeed, given their low rate of prosecution, jurisdictions such as the Australian Capital Territory have argued for the importance of re-writing the legislation so that it is more similar to the Queensland legislation. Thus legislating that offenders *should have known* that their conduct caused fear, rather than explicitly *intending* that it should do so (Clack 2000). It is also interesting to note here that the disparity between cases reported to the police and cases being prosecuted through the courts appears far greater for the larger states than the smaller jurisdictions.

The second important observation is the nature of penalties imposed by the court. Stalking frequently occurs over long periods of time and the first stalking charge usually results only after a history of breaching restraining orders. The high likelihood of outcomes such as being “released on own recognisance without supervision” is arguably an inappropriate response to the nature of the offence. One might query just how appropriate and useful such interventions may be in serious stalking incidents. Unfortunately, data detailing the types of stalking behaviours most likely to receive different penalty outcomes is not available. The intervention options for “dealing with” stalking are nevertheless of critical importance in addressing this particular crime, as will be the subject of the following chapter.

Intervention/Prevention Responses

As discussed in some detail in the third chapter “Current Explanations of Stalking”, there are a variety of criteria by which typologies of stalkers have been developed. These typologies have primarily drawn upon psychiatric conceptions of motivations for offending and the relationship between the victim and the offender. The reason why these different classificatory schema of stalkers were focused upon in the third chapter is because the development of such typologies leads to the derivation of quite different management responses to the problem of stalking. For example, Mullen et al. argue that intimacy-seeking stalkers are impervious to judicial sanctions and so require assertive psychiatric management. This is in contrast to rejected stalkers who may be persuaded to desist through criminal justice intervention (although Mullen et al. note the exception of those involved in child custody disputes) (1999, p. 1248). Others have been concerned with identifying the potential for danger and/or violence, be that in threatening letters (for example, Dietz et al. 1991) or styles of stalking (for example, Wright et al. 1996). More comprehensive typologies of stalker characteristics should (at least in theory) allow for an enhanced capacity to effectively identify “danger signs” and the most appropriate response to such signals.

Researchers who have specifically oriented their research towards intervention strategies have identified a variety of means by which stalkers might most effectively be dealt with.

Therapeutic Intervention

Roberts and Dziegielewski (1996) focused upon victims of stalking, using a therapeutic framework that focused upon short-term crisis intervention. They categorised stalkers according to whether they were 1) domestic violence stalkers; 2) erotomania/delusional stalkers and/or simply; and 3)

nuisance stalkers. They argued that there are three primary events which result in a victim of stalking requesting treatment or intervention, these being a) escalation in the incidence or severity of the episodes; b) injury being inflicted whether purposeful or accidental; and c) relationship and/or employment disturbance (Roberts and Dziegielewski 1996). While not specifically recommended, these characteristics could also be considered as “signifiers” of an escalation in threat which investigators should be aware of in attempting to determine the “seriousness” (and potential seriousness) of the offence (that is, if these are characteristics which most concern victims, they should also be characteristics recognised by intervention agencies).

Roberts and Dziegielewski’s research is clearly within the psychological paradigm, and so it is not surprising that the treatment strategies they suggest involve psychologists and therapists ensuring that victims:

- addressed safety concerns;
- explored measures of practice effectiveness;
- ensured the survivor let the stalker know that the survivor is not interested;
- use relaxation training to help the survivor confront the stalker;
- encourage the survivor to be direct, concrete and to the point as much as possible when confronting the stalker;
- utilise a behavioural rehearsal of the confrontation;
- encourage survivor to cease all contact with the stalker;
- focus treatment on victim’s mental health;
- look for possible PTSD symptoms and dissociative reactions to pain; and
- assess potential for suicide.

There is nothing inherently untoward in any of these strategies and, indeed, the more “stalking focused” of them are eminently sensible. Specifically, given that stalking necessarily incorporates a degree of obsession, contact with the stalker, whether positive or negative, will only serve to fuel the obsession of the offender. Strategies such as cutting all links ensure that there is nothing for the stalker to “feed off”.

In a similar vein, Mullen, Pathé and Purcell (2000) also recommend a therapeutic approach to “managing” stalkers. While they acknowledge that the focus of their research upon mental health represents, as much as anything, their personal occupations, they also argue that stalking is a form of “social pathology and that while it is not easy to treat delusional disorders or modify narcissistic character traits...it is far easier, and quicker, than altering societies” (Mullen, Pathé and Purcell 2000, p. 288). Thus, they recommend intervention strategies which involve the management of any continual mental disorder and targeting the actual stalking behaviours. This involves:

- shifting the stalker’s focus from thinking that their victim loves them to acknowledging that it is they who are in love with the victim;
- establishing the importance of the love, in light of previous loneliness and/or lack of previous relationships; and
- focusing upon supposed expression of the victims love, and suggesting re-interpretations of how these might be interpreted.

Mullen, Pathé and Purcell (2000, p. 287) also argue for the need to help the stalker identify the costs in terms of time and resources that they have placed into engaging in stalking behaviour, allowing the stalker to abandon stalking behaviours with a sense of dignity, and helping them to invest their energies into more realistic relationships.

Such therapeutic interventions have also been implemented by many focusing on domestic violence stalkers. For example, the “Stalker Stabilisation Program” utilises cognitive therapy in order to identify and break through “dysfunctional thinking processes that serve to escalate anxiety, anger and the need to re-attach to the partner as a means to quell emotional dysphoria” (Walker and Sonkin 1999, p. 4). Regardless of how it is that we may define “dysfunctional thinking processes” and “emotional dysphorias”, the aim of the program is to teach batterers that domestic violence is a crime and that all forms of violence are inappropriate. This is done through identifying offenders’ injurious practices and teaching them that change is possible by learning new methods of coping that are reliable, responsible and respectful of their partners.

Such strategies are obviously to be recommended in the case of extreme examples of stalking. In such cases where the offender obviously has an obsession that has gone beyond “normal” expressions of devotion, these

interventions can only be beneficial. Thus, in cases where the stalking behaviours culminate in a final psychotic frenzy, therapeutic interventions must be recommended. An example of this phenomenon was where the final outcome of the stalking involved the offender locking his ex-wife out of the house whereupon:

the appellant remained there for some seven hours with the children. His conduct was bizarre. He destroyed two photographs, one of which showed his ex-wife in an advanced state of pregnancy. He cut the depiction of the abdomen out of the photograph and burned it. He also destroyed one of the children's toys, a teddy bear, by inserting a knife into it. At length the appellant arranged for the elder of the two children to get dressed and sent him off to school with some money. The appellant stole \$60 from the house and, after the siege, as it has been called, of some six or seven hours, eventually gave himself up to police who had been in attendance for much of the time. (R v Blick [1999] VSCA 211 (6 December 1999))

This offender was diagnosed as psychotic at the time of his offences, and the benefits of focused therapy attempting to “manage” these behaviours can only be considered advantageous. However, it is not always the case that people who engage in stalking can be medically defined as “psychotic”. Indeed, even in extreme examples, many offenders have been medically examined and deemed to not be suffering a medical condition at the time of their stalking. For example, in one case an offender's wife ceased cohabiting with him.

You were described by those who knew you as having become obsessed with that situation, and angry with your wife for bringing it about. At first your wife remained in Darwin. However, various incidents occurred, including one or more incidents of violence by you towards her. Such was your conduct towards your wife that, on 3 December 1990, a restraining order was made against you in a court of summary jurisdiction at Darwin. In about the same month, your wife left Darwin and came to live in Adelaide because, due to your behaviour, she was fearful for her safety. You had abused her in public, accused her of having affairs, and threatened to kill her. It is said that, in 1990, you had threatened to strangle her and had actually seized her by the throat in an

incident in a carpark, which is described in the material before me in some detail. After being in Adelaide for some months, your wife secured permanent employment here and established herself in a flat at Parkside. It seems clear that, from time to time, you harassed her with telephone calls at her work and made threats such as “I will get you. If I can’t have you, nobody will”. On the afternoon of 23 March 1992, your wife consulted a solicitor at Greenhill Road, Parkside, about her concerns with regard to your continuing behaviour. She left the solicitor’s office at about 5.30 p.m. Some 10 minutes later a bicyclist riding along Swaine Avenue near the Queen Victoria Hospital heard a loud scream. He saw you discharge a firearm wrapped in a blanket, at short range, at a person in the street—who proved to be your wife. She fell to the ground. The same general incident was seen by at least two other female pedestrians in the area. Although immediate assistance was sought from the hospital medical staff, the gunshot wound was fatal. (R v. Colin Arthur Case [1993] SASC 4255 (10 November 1993))

In this particular case, the offender was examined by a psychiatrist who diagnosed him as not suffering from any psychiatric condition. What is particularly disturbing about this case is that not only was the offender found to be “sane”, but that the legislative alternatives available, such as restraining orders, proved fatally inadequate.

While therapeutic interventions are thus recommended, they need to be considered as simply one option amongst a range of possibilities. In saying this, it could be well argued that the previous example *should* have been perceived of as a mental health case, and that the failure to diagnose as such is a weakness in the legislative system (see Fritz 1995). However, this focus upon mental health risks denying the very difficulty entailed in defining what constitutes stalking (as discussed in the second chapter “Defining Stalking”). Indeed, one of the criticisms that has been directed towards stalking legislation is that it has in fact treated stalkers as if they were “crazy”. This is despite research which has demonstrated that the greatest danger of serious violence from stalkers in the United Kingdom is not from people with mental illnesses, but from non-psychotic ex-partners (Farnham, James and Cantrell 2000). Thus, while the importance of addressing mental illness in stalking is critical and “may be a useful analysis in some cases, in general it merely serves to reinforce inaccurate stereotypes about people who have been in the mental health system being seen as more dangerous than average, ‘sane’ abusers” (Lemon 1994, p. 1).

If we have behaviours that, on the one hand, constitute a criminal offence, but, on the other hand, are representative of cultural mores relating to obsessive love, a singular focus on mental health issues risks becoming unhelpful. Indeed, such an orientation arguably only becomes effective if we are willing to accept that perhaps society overall requires therapeutic attention or intervention. Whilst this is an intriguing premise, in practical terms, such a view does not help us address many of the behaviours that may lead to stalking, most specifically the form which is most common, stalking related to domestic violence. While focused therapy should be utilised where appropriate, it should be done in conjunction with a variety of other potential intervention strategies (an approach with which Mullen et al. would concur). Such an approach is outlined by Williams, Lane and Zona (1996).

Williams, Lane and Zona (1996) also focus upon the victim, although their strategies are slightly wider-ranging than the more narrowly defined interventions proposed by therapists such as Dziegielewski and Roberts. Specifically, they provide an overview of the LAPD Threat Management Unit which was established in 1990. Its specific aim is the investigation of long term, abnormal patterns of threat and/or harassment. They argue that resources must be devoted to three specific areas of victim intervention: education, behaviour and therapy.

Williams, Lane and Zona (1996) place a high emphasis on education, arguing that victims must take responsibility for self-protection against stalking, including developing “sufficient tolerance” for some stalking behaviours. Safety options and community assistance should be drawn upon by the victim, and they should be pro-active in attempting to deal with stalking situations, rather than simply placing all responsibility on police. This includes addressing personal behaviours and situations such as changing their phone number, considering relocation, preserving anonymity and changing everyday routines on a regular basis. In extreme circumstances, the authors recommend complete identity changes. Finally, resources need to be placed into law enforcement, but with a strong focus on developing a “therapeutic alliance” with the victim, through such mechanisms as support groups and self-defence classes. In terms of police practices, Williams, Lane and Zona (1996, p. 25) recommend that “intervention by law enforcement and victim must be early and aggressive”.

Legislation

The authors also provide a series of legislative recommendations for stalker intervention, outlining the range of possibilities available, such as restraining orders, detention, arrests, mental health diversions, criminal convictions and, when possible, deportation. They argue that interventions should be multiple, and instituted simultaneously. With respect to restraining orders, they make an important point that such orders may only be helpful when they are enforced. “When they are not enforced they reinforce the sense of immunity on the part of the stalker.” (Williams, Lane and Zona 1996, p. 26) Similarly, if stalkers are arrested and detained, the authors argue that they should have to sit out a period of detention and not be “released the following day on their own recognisance” (Williams, Lane and Zona 1996, p. 26). This is because a set period of incarceration has a “sobering effect” on stalkers and allows victims some time to adjust their lives. Whilst incarcerated, stalkers should be monitored in order to ensure that they are not able to continue harassing their victims, through mechanisms such as phone calls or letters. This is equally applicable with respect to parole.

Australian courts have appeared to take these issues seriously. For example, one offender was charged twice for breaking parole due to engaging in stalking behaviours. On the first occasion he was charged with stalking an ex-lover.

In August 1997 the Board received a complaint from Katrina Power, a woman who alleged that she had had a relationship with the plaintiff between August 1996 and February 1997. She further alleged that since the end of the relationship, the plaintiff had telephoned her constantly, written threatening letters to her, followed her, damaged her property, threatened others associated with her including colleagues, made allegations to others about her personal affairs and breached restraining orders she had obtained against him.

The Board summonsed the plaintiff to attend a hearing of the Board to determine whether his behaviour in relation to Ms Power amounted to a breach of the conditions of his parole. Following the interview, the Board found that the plaintiff had breached the requirement to be of good behaviour, and on 12 August 1997 the Board added further conditions to those which the plaintiff was already subject. The new

conditions specified that the plaintiff must: (1) maintain a diary of his daily movements and communications initiated by the plaintiff including phone calls, letters and electronic communications; (2) undertake and complete a psychiatric assessment and treatment at the direction of the parole officer; (3) take such medication as prescribed by the treating psychiatrist; (4) not contact, or attempt to contact or associate in any way with Katrina Power; (5) not to contact, attempt to contact or associate in any way with any Tandanya Board member nor visit the Tandanya premises. (*Armstrong v Parole Board of South Australia No. SCGRG-98-959 Judgment No. S6791 [1998] SASC 6791 (10 August 1998)*)

And, on the second occasion, he actually started stalking his parole officer.

On 22 May 1998 I received a telephone call from the Secretary to the Parole Board, Kevin Hill. Mr Hill informed me that he had that day received a telephone call from John Heath, the Regional Manager of the Western Metropolitan Region of the Department of Correctional Services. Mr Heath reported to him that one of his staff, Parole Officer, Marion Kennedy, had reported that she had received several telephone calls at home from an anonymous caller who hangs up when the receiver is lifted. She also believed that her house was being watched on two occasions by a person parked outside the house in a red car. Ms Kennedy described the person in the car. Ms Kennedy reported to Mr Heath that she suspected that the caller and the watcher may be the same person, namely the plaintiff. Ms Kennedy's reason for suspecting the plaintiff lay in the fact that she is the parole officer of Laurel Egan, a woman with whom the plaintiff had had a relationship and who had been complaining of her ongoing harassment from the plaintiff since 5 February 1998 in the form of anonymous telephone calls, a break-in of her unit and the stealing of an address book, and telephone calls to other acquaintances such as her General Practitioner and to the staff at the Western Community Corrections Centre. (10) I formed a suspicion that the plaintiff had breached his parole conditions, and in particular, the condition of being of good behaviour, keeping the peace towards persons and not committing any breach of the law. In arriving at that conclusion I took into account, in addition to the allegation of Ms Kennedy, the plaintiff's previous breaches of parole as outlined in paragraphs 8 and 9 above and their similarity to the allegations now

made. I considered that the gravity of the alleged conduct, and the fact that it was alleged to be ongoing was sufficient to justify the issue of a warrant for the plaintiff's arrest, rather than have him summonsed to appear before the Board. (*Armstrong v Parole Board of South Australia* No. SCGRG-98-959 Judgment No. S6791 [1998] SASC 6791 (10 August 1998))

In this particular case, however, the stalker was a convicted felon who was on parole after having served the majority of his sentence for murder. He was not specifically charged with stalking, but rather with "breaking parole". Given the seriousness of his previous offence, it would perhaps be surprising if the judiciary did not consider him a potential threat.

Restraining Orders

The most obvious legislative interventions to be used against stalking are restraining/intervention orders. Indeed, as noted in the chapter on "The Legislative Framework", stalking legislation was positioned in some part in order to strengthen the effectiveness of such orders. Despite the proliferation with which such orders are placed, there has been hardly any empirical research conducted on their effectiveness in relation to stalking (Goode 1995). When research is conducted, it tends to focus upon domestic violence intervention orders. The effectiveness of these orders are controversial, with empirical investigations varying in their conclusions. Some researchers argue that such orders are effective (Kaci 1994), some argue that they are unsuccessful (Berk et al. 1983), and others argue that they are actually aggravating factors which further exacerbate the likelihood of violence (DeBecker 1997).

One exception to this trend has been conducted by Meloy et al. (1997) investigating the impact of domestic violence protection orders on the likelihood of subsequent violence. The authors argued that a principal variable in whether protection orders were successful or not was whether the orders were mutual or non-mutual. Mutual orders are those determined by negotiation with both parties, non-mutual orders are those instigated by only one person and then enforced through court. Not surprisingly, it was those orders which were not mutual that were the most likely to be broken (Meloy et al. 1997, p. 455), a finding which is extremely significant in relation to stalking behaviours, given such orders are almost never likely to be mutually accepted. This is clearly seen in the following case studies.

The prosecution case was that, on 6 March 1995, the appellant entered the complainant's house uninvited, boasting that she no longer had protection because of the variation which had been made in the order. Her evidence was that he insulted and touched her, and that she threw cups at him and told him to leave. A neighbour called police, and the appellant spent the night in the watch-house. (R v Fitzgerald [1996] QCA 521 (17 December 1996))

It seems that the difficulties of the parties did not stop there. Ms Guss on 20 November 1997 pleaded guilty to stalking charges involving breaches of the intervention order and was sentenced to four months' imprisonment which was wholly suspended for 18 months. She was placed on a community-based order requiring her to undergo psychiatric assessment and treatment. She has appealed to the County Court against this sentence also. (Guss v Sullivan [1998] VSC 64 (11 September 1998))

The respondent would watch the Riordans' house from a parked car, he would follow members of the family about, call at the house looking for Lisa, threaten members of the family, make continual telephone calls and generally constantly harass members of the family. From about October 1995 the incidents escalated in both seriousness and frequency. They involved breaches of conditions of bail and a restraining order. (The Queen and Ors v Donald Francis Mark Legg and Ors [1998] WASCA 90 (9 April 1998))

Since the end of the relationship, the plaintiff had telephoned her constantly, written threatening letters to her, followed her, damaged her property, threatened others associated with her including colleagues, made allegations to others about her personal affairs and breached restraining orders she had obtained against him. (Armstrong v Parole Board of South Australia No. SCGRG-98-959 Judgment No. S6791 [1998] SASC 6791 (10 August 1998))

However, some dangers have been identified in the issuance of mutual protection orders. Specifically, concerns have been raised relating to offender accountability, where the offender may interpret the order as meaning that the court blames the victim as much as the offender (Topcliffe

1992, p. 1061). Other factors that need to be considered include research which indicates that mutual protection orders tend not to be enforced as rigorously as regular orders and that they may actually be used later against the victim (Topliffe 1992, pp. 1061–62).

Finally, the difficulties faced by the police in enforcing restraining orders for stalking need to be acknowledged. While Australian legislation does not introduce the same difficulties for police as does legislation in the United Kingdom and Wales (Addison and Lawson-Cruttenden 1997a; Addison and Lawson-Cruttenden 1997b; Gibbons 1996), issues remain concerning what constitutes a course of conduct, what constitutes “serious” fear, and what is the difference between domestic violence and domestic-violence stalking, as the answers to these questions will be fundamental in impacting upon police practices and stalking.

It can be seen then that while restraining orders are being increasingly used (Magistrates Court of Victoria 2000), we still need further research on just how effective they are against stalking behaviours. It may well be that restraining orders are actually an aggravating factor, which do not actually impact upon the behaviours except to escalate them, and that stalking charges should be laid immediately rather than following several breaches of restraining orders, which is what it has been suggested is occurring in Tasmania (personal correspondence, Tasmanian Police, 2000).

Community Attitudes

The final issue that needs to be investigated, specifically in terms of our definitional procedures, are community attitudes towards stalking. Hills and Taplin (1998) conducted one particularly impressive Australian study of this phenomenon. Specifically, they investigated the “effects of threat and target stalker relationship on female and male expectations about how they would respond to a heterosexual stalking episode, focusing on the extent to which they anticipated feeling afraid, and the extent to which they believed they would be likely to contact the police” (Hills and Taplin 1998, pp. 140–41).

Given that this is one of the first studies to explicitly examine “community attitudes” within Australia, it is particularly important with respect to developing legislative responses. This is of great significance given that “legislation is aimed at those behaviours that exceed normal social interaction and that have the potential for harm” (Hills and Taplin 1998, p. 140). How we define potential for harm is the essence of how we make

judgements about our criminal sanctions. Community attitudes concerning these understandings are therefore critical.

The sample studied by Hills and Taplin (1998) was comprised of 91 females and 81 males. Their research demonstrated that understandings of threat were the most important factor in defining situations as stalking, but that there were significant sex differences with regard to likelihood to inform police. "For males, a mean of 'somewhat likely' in the 'no threat' condition increased to 'likely' in the threat condition. In contrast, females were 'very likely' to call the police in both the no threat and threat conditions." (Hills and Taplin 1998, p. 144)

While this finding has significant implications regarding the likelihood of males to perceive situations as stalking (far fewer men report them to the police), there are also significant implications with respect to how we as a community understand stalking.

Given that police, magistrates and jurors are all members of society, the implications of differently sexed understandings of the definition of "threat" in stalking are critical. Indeed this is one of the critical elements of most stalking legislation. Hills and Taplin argue that there is a "tendency for males to report being 'somewhat unlikely' to 'uncertain' about experiencing fear in the female-stalking-male situation, especially where the stalker was a former intimate, and where no overt threat had been made" (Hills and Taplin 1998, p. 145). If so, these findings have critical implications for how stalking is being not only experienced by men, but also being interpreted by police officers and magistrates, specifically given research findings that, when defining a crime, people use their own common sense understandings of the situation, rather than legislative definitions (Smith 1993).

In something of a contrast to this view, Sheridan, Davies and Boon have conducted similar research within the United Kingdom. In two articles published in 2000, the authors specifically examine perceptions of stalking, specifically in comparison to legislation and prevalence. In terms of legislation, the authors compare the United Kingdom and Wales' harassment law (which as noted is extremely broad), the United States' stalking law and the South Australian stalking law. Respondents were provided with transcripts of all three laws and then asked to define certain situational contexts according to whether they were stalking or not. Their research demonstrated that of all three laws, it was the broader United Kingdom and Wales legislation which generally produced the highest ratings in terms of defining behaviour as stalking, while that of the United

States and South Australia were very similar, producing similar ratings. However, the reasons for this were two different elements in the legislation, these being: in South Australia, “the need to prove intent”; and in the United States, “the requirement for the victim to fear bodily injury or death”.

What is interesting about this research is that it does appear to demonstrate that if provided a definition, the community will define specific situations according to the legislation, as opposed to interpreting for themselves. Unfortunately, no analysis was then done on potential differences by sex or other characteristics which may have supported or disconfirmed Hills and Taplin’s research.⁹

What is particularly interesting about Sheridan, Davis and Boon’s (2000) research is that when they compared the legislative definitions against the respondents’ own opinions of what constituted stalking, it was the United Kingdom and Wales harassment laws which closely accorded with public opinion.

While this finding may merely reflect the fact that the research was done in the United Kingdom, it is, nonetheless, intriguing in comparison to the Australian concerns regarding “overbreadth”. The harassment laws of the United Kingdom and Wales do not demand intent, nor define stalking, but simply require “two or more harassing incidents”. Sheridan and colleagues argue that it is “perhaps the loose drafting of the *Protection from Harassment Act* is necessary for the prosecution of certain types of stalking cases, such as ‘transcript one’” where:

A chap in the recent past kept turning up at my house uninvited and just walking in. He was sometimes difficult to get rid of. The relationship was flirtatious at first but his behaviour I considered inappropriate and I therefore cooled off a bit in friendliness towards him. He failed to acknowledge or accept this and chose to write weird poetry and one particularly worrying letter to me which was menacing and full of “magical thinking” abstract type stuff. This behaviour stopped after a few weeks. (Sheridan and Davies 2000, p. 15)

This particular example could, and arguably should, be prosecuted under

⁹ For an excellent examination of the same issues in America, see Tjaden, Thoennes and Allison (2000).

stalking legislation, as it represents a clear example of the sorts of behaviours that Australian commentators are fearful of being brought under stalking, and it represents a perfect example of the difficulties entailed in defining stalking. However, it is not difficult to imagine many rejected suitors who, having received a “cooling off” in friendship, engaging in the writing of bad poetry for a couple of weeks following. The notions that this should be considered as an example of stalking could be argued to risk demeaning the seriousness of the offence but, more importantly, it clearly demonstrates differences in understanding what constitutes stalking behaviour and the differences that are literally being written into legislation across the globe.

Discussion

It can be seen that the primary interventions recommended and employed in stalking situations are therapeutic based responses. This is not surprising given that most research comes from a psychological and/or psychiatric framework, and they are to be recommended in being able to address individuals whose stalking behaviours develop from mental illness. In turn, however, there are a wide range of possibilities for intervention through legislative and community responses. Although less widely implemented, the few examples that are currently in force (such as the Threat Management Unit in Los Angeles) appear able to combine the therapeutic framework recommended by psychiatrists with more structural training and management practices that may be adopted by police and the courts.

Given the diversity of stalking behaviours, these co-operative endeavours are to be recommended in most successfully managing and addressing this complex crime. Specific recommendations for future research and policy are provided in the final chapter.

Conclusion

It is at this point that we return to the fundamental question raised at the beginning of this report. The importance of understanding the complexity of stalking with respect to everyday *conformist* expressions of romantic love and affection was discussed in some detail in the second chapter “Defining Stalking”. It was argued that understanding the *normal* range of social behaviours stretching from common courting strategies on the one hand to domestic violence on the other is critical if we are to properly understand and hence contain stalking. Legislative and policing exercises that fail to take into account that stalking represents a deviant and/or extreme expression of practices that are endlessly and enthusiastically endorsed by the popular culture of the day are inevitably destined to prove to be both irrelevant and ineffective. If we are genuinely serious about confronting stalking as a social problem that needs to be addressed, we need to recognise and acknowledge the two key facts that have undermined our attempts at containment to date. Firstly, many of the behaviours that we idealise as the epitome of romantic love may actually constitute an obsession of the mentally ill. And secondly, many of the behaviours that are currently legally defined as stalking may actually also, at times, constitute wholly unremarkable aspects of “everyday” relationships.

As noted in the second chapter “Defining Stalking”, potentially inappropriate responses to the experience of unrequited love are an all too common (and hence *normal*) occurrence. Recent research focusing upon college students reveals that the majority of respondents engaged in behaviours “that might be interpreted as stalking or pre-stalking when responding to a situation of loving someone who did not love them back” (Sinclair and Frieze 2000, pp. 34–35). It follows from this that it cannot sensibly be argued that specific behaviours, such as following, telephoning or sending gifts, somehow inherently constitute stalking. Instead, it is the *consequent* experience of fear and apprehension that needs to be prioritised over and above the specifics of the behaviour that give rise to the unwelcome experience of fear and apprehension.

Tackling the Problem

If we accept the impracticality of effectively containing the most common forms of stalking by criminalising particular behaviours, we are left with two strategies by which we can distinguish between conformist behaviours and criminal (that is, stalking) behaviours. We can initiate prosecutorial processes where we believe that the offender *intended* to cause apprehension and fear (that is, a subjective test of intent). Alternatively, we could choose to initiate prosecutorial processes if we believe that the offender “should have known” they were causing apprehension and fear (that is, an objective test of intent). Given the difficulties involved in proving beyond reasonable doubt that offenders knowingly intended to cause apprehension and fear (by sending flowers and cards three times a day for example), it is argued in this report that objective, rather than subjective, tests of intent are likely to constitute the most effective starting point for legislative and policing containment strategies.

The management of stalking also, requires consideration of the phenomenon at a more general level than simply legislation and policing. At a broader societal level, we need to be able to better distinguish between serious stalking behaviours and less serious social interactions that, despite sharing aspects in common with serious stalking, represent acceptable and widely embraced patterns of behaviour. Distinguishing between these two divergent, but related, sets of behaviours means we need to frame our approaches to stalking on the basis of understanding the behaviour as having many possible points on a continuum. Thus, rather than simply seeking to categorise specific types of stalkers, and construct typologies of “unacceptable” behaviours, we need to start assessing the “dangerousness” of instances of stalking somewhat independent of the behavioural specifics involved. There is already some early research (McCann 1998a; Palarea et al. 1999; Sanberg et al. 1998) that at least, to some extent, brings this perspective to bear, and the Threat Assessment Unit in Los Angeles represents a notable example of integrating this perspective into real-world intervention strategies.

The difficulties entailed in responding to stalking in the manner being suggested here is not being overlooked or downplayed. Because of the problematic status of stalking as a sometimes normal and sometimes criminal activity, any response framework will necessarily and unavoidably be equally difficult to develop. We may need to consider a continuum of stalking behaviours, from *wanted* pursuit behaviours to *unwanted* pursuit

behaviours (see Langhinrichsen-Rohling et al. 2000). This is not to say that these two behaviours can always be “cleanly” positioned at opposite poles of a continuum. It is perhaps sufficient that they can be categorised according to seriousness, and the likelihood of causing harm. The legislative incorporation of gradations of dangerousness and perceived threat as is the case in Western Australia has decisive implications with respect to the prosecution of stalking cases. In those jurisdictions such as South Australia and the Australian Capital Territory, where it is necessary to demonstrate that the offender has the intent to cause serious harm, large numbers of those stalking cases that are reported to the police simply do not appear to be capable of being prosecuted.

If we are persuaded that the Western Australian approach represents a promising beginning in terms of more realistically developing legislation that is mindful of the reality of modern social interactions, then we clearly need to improve the extent to which we understand the various points on our continuum from the conformist to the criminal. In addition, and crucially, we need to improve the extent to which we understand what propels *movement* from an acceptable position on such a continuum to an unacceptable position upon the continuum. One (perhaps counter-intuitive) approach to addressing this issue is to shift our attention from the question of how does stalking differ from “normal” interaction to the question of how does “normal” interaction differ from stalking?

Schaum and Parish (1995) have noted that stalking “blurs the boundaries” between romantic pursuit and compulsive obsession. This has led to concepts such as “pre-stalking” behaviours (Emerson, Ferris and Brooks Gardner 1998), “obsessive relational intrusion” (Spitzberg and Rhea 1999), and “obsessional following” (McCann 1998b) being utilised by researchers interested in focusing upon the manner in which stalking “behaviours” are expressed in “normal” environments. These concepts signal a useful “opening up” of the ways we understand stalking. It is still “early days”, as these concepts tend to suggest that such behaviours will “lead to” stalking, as if they are somehow intrinsically the precursor of more serious, offensive practices. In order to try and circumvent the “pull” of this particular orientation, other researchers have focused instead upon the “construction” of stalking as a crime (Lowney and Best 1995). These researchers have noted that, while the behaviours themselves are not new, stalking can nevertheless be considered a quintessential crime of the 90s for Western societies, having been literally “constructed” via the media and then reified as a result of the public response to the media presentation of the behaviour. Again, while not

specifically noted by Lowney and Best (1995), this all serves to suggest that there is something about stalking that touches a highly sensitive cultural nerve. The fact that stalking has simultaneously been so glorified and demonised within Western culture across the ages draws attention to an aspect of our culture that warrants far greater interest than it has garnered to date.

However, withdrawing from these more general cultural considerations and returning to a more specifically Australian focus, we can see clear indications of different treatment across the jurisdictions. It is unfortunate that the Australian jurisdictional data cannot be readily compared due to the different counting mechanisms—as the data presented in this report are indicative of different very understandings of what stalking *is*—and therefore the response required, across the jurisdictions. In terms of victims' reporting practices, police clearance practices and courts prosecution practices, we can see quite distinct differences between the various jurisdictions. Unfortunately, we simply do not know whether these differences derive from behavioral differences or are a product of differences in data legislation and/or different police and court practices. Our inability to make judgements of this type constitutes a compelling argument for conducting nationally comparable research into stalking. This is particularly the case given that comparable nations, specifically the United States and the United Kingdom, have both recognised the importance of collecting national data on stalking, and have engaged in some of the most significant and representative research to date (see Budd, Mattinson and Myhill 2000; National Institute of Justice 1996, 1997, 1998). If, as a society, we believe stalking to be an issue of real concern, we need, as a matter of some urgency, to investigate community experiences of the stalking and the manner in which it is dealt with by police and courts across different jurisdictions.

Summing Up

This report has sought to draw attention to the importance of stalking as an undesirable social behaviour and the difficulties involved in addressing such behaviours. The development of effective responses to stalking is hindered by a number of factors. First, it is difficult to define exactly what it is that constitutes stalking. This issue was discussed in detail in the second chapter “Defining Stalking”, in which it was shown that stalking needs to be recognised as being simultaneously an exemplar of both normality and

deviance. This fundamental definitional difficulty then gives rise to quite different attempts at legislative and policing resolution of the definitional conundrum. The issue is then still further complicated by major jurisdictional differences with respect to how “whatever it is that stalking might *be*” are counted, responded to, and prosecuted by the police and the courts. Collectively, these difficulties lead to three “groups” of conclusions:

- **We need to be clear how we want to define stalking:** If stalking is to be defined as “criminal”, we need to be specific about what exactly are the criminal elements of the offence that distinguish it from norm-abiding behaviours. To date, this has focused upon offenders’ intent to cause fear and apprehension. However, this has been recognised by the courts as a less than satisfactory way in which to address a crime as complicated as stalking.
- **We need to conduct nationally comparable research on stalking:** If we are serious about addressing and preventing stalking, we need to first understand what constitutes stalking. This involves understanding differences between domestic violence-related stalking, celebrity stalking, acquaintance stalking, men and women’s experiences of stalking, the different impact of stalking upon victims, and a wide range of other factors. While there are some excellent examples of research into stalking within specific jurisdictions (see Department of Justice, Victoria 2000) there is limited information allowing for cross jurisdictional analyses of stalking across Australia.¹⁰ The best way to gather such information is through a reliable, national level investigation into stalking behaviours, measuring the extent and nature of stalking behaviours, in order to best develop and implement effective programs to address them.
- **We need to expand the range of available responses to stalking:** Again, given the complicated nature of the offence, simple interventions based upon *either* therapy *or* criminal justice intervention are not suitable on their own. There needs to be co-operation between different stakeholders—including, for example,

¹⁰ The only exception within the Australian context is the Australian Bureau of Statistics’ (1996) research into stalking, although this is severely limited by only examining women who have been stalked by a man. While this is critical information, it does not allow us to compare male on female stalking to other forms of stalking behaviours.

mental health experts, police and magistrates, domestic violence organisations—in implementing the most appropriate interventions. These interventions should be based upon a sound understanding of the different types of stalking behaviours, the potential for violence, and the damaging impact of these behaviours upon victims (particularly when they continue over a period of years).

However, some more specific recommendations can be made, which may be considered as complementing the wider issues.

- *Changing subjective tests of intent to objective tests of intent:* As noted, subjective tests of intent relate to the need to prove that the offender intended harm, as opposed to objective tests which request that a “reasonable person” should have known the behaviour would appear harmful. Arguments for subjective tests of intent are understandable, in that they are intended to limit the possibilities for stalking charges, thereby ensuring that only serious cases are processed by the Criminal Justice System. In practice, however, it is precisely these subjective tests which are causing relatively trivial cases to be brought before the courts, specifically in the cases of neighbourhood disputes. These practices are occurring in conjunction with a failure to charge cases of stalking, which under any other circumstance be considered criminal. Given this phenomenon, it is strongly advised in this report that legislation be changed to include an objective test of intent.
- *Provision of training for police:* Briefing sessions could be provided to police, detailing the criteria involved in stalking legislation, the range of possible manifestations of stalking, and the potential lethality of stalking when it occurs as an aspect of domestic violence (McFarlane et al. 1999). Alternatively, specialised units, resembling the Los Angeles Police Department’s Threat Management Unit, could be implemented in order to both assess the threat involved in stalking situations, and intervene as appropriate.
- *The necessity of sustained intervention:* Even in cases where an intervention has been successfully implemented, the stalking behaviours may “flare up” following the cessation of intervention

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

- *The provision of victim support networks:* At present, there are only two known victim support networks for stalking available in Australia. One is the Domestic Violence and Stalking shelter in Western Australia, and the other is a 10-week pilot program initiated by the Victorian Institute of Mental Health and funded by the Victim's Referral and Assistance Service. Given that stalking is so invasive of individual lives, the importance of providing a supportive environment for victims who have become isolated and experienced fear is crucial. More specifically, the importance of providing a safe environment for victims who may be in actual danger is critical.
- *Community Awareness:* Community attitudes towards stalking need to be investigated. For example, research investigating gender differences in perceptions of seriousness of stalking suggest that males tend to view stalking as less serious than do females. This has implications both in terms of a) jurors' and magistrates' decision-making processes; and b) the potential for males to underestimate possibilities for victimisation (Hills and Taplin 1998, p. 145).

More importantly than anything else is the recommendation, first provided by the National Institute of Justice (1993), that there be a "state's [nation's] decision to require the criminal justice system and related disciplines to take stalking incidents seriously". Ultimately, the question we need to be asking is whether current stalking legislation is protecting victims (Bradfield 1998; McCann 1995). Perhaps the future of stalking legislation is best summed up by Lemon (1994, p. 8):

In order to be effective, stalking statutes must be one piece of a much larger coordinated community response. Key pieces of the such a response would include in-depth training and written policies addressing domestic violence and stalking, and would be an integral part of the criminal justice system, health care system, educational system, and other social systems.... An additional key piece of the response would involve co-operation between all the different parts of the above systems, such as protocols for co-operation, regular interdisciplinary or

inter-agency meetings, and death review teams, reflecting the reality that everyone has to work together if we will ever be able to stop stalking and domestic violence.

It is only through this sort of co-operation between community, criminal justice, academic and legislative bodies that stalking will ultimately be understood, and hence better responded to. Finally, but not irrelevantly, it is worth noting that because stalking occupies such a problematic position on the continuum between the conformist and the criminal, enhancing our understanding of the phenomenon is likely to reveal something important about ourselves and our culture more generally.

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Appendix A: Victims and Offenders

The current data available to examine victims of stalking are extremely limited. A national survey conducted by the Australian Bureau of Statistics (the Australian Women's Safety Survey) is the largest survey of its kind conducted to date in Australia. Unfortunately, it only surveyed women who had been stalked by men (and did not examine women stalked by women, or men who have been stalked).

Additionally, we have a variety of police data on the sex and the age of victims and offenders from the three largest states to record stalking: Victoria, Queensland and South Australia. In this case, Queensland has provides victim characteristics, South Australia provides offender characteristics and Victoria supplies both offender and victim characteristics.

Australian Bureau of Statistics Data

As noted earlier, the Australian Women's Safety Survey carried out by the Australian Bureau of Statistics is somewhat limited in that it only examined women's experiences of stalking by a man. Nonetheless, given that the majority of cases of stalking are that of males stalking females, the Australian Women's Safety Survey provides some insights on stalking experiences within the general population, as opposed to those who have explicitly contacted the criminal justice system.

Stalking is defined by the Australian Women's Safety Survey in order to replicate as closely as possible jurisdictional legislation. In order to be classified as stalking, "more than one type of stalking behaviour had to occur, or the same type of behaviour had to occur on more than one occasion" (Australian Women's Safety Survey 1996, p. 82). Activities included within stalking were "loitering outside a woman's home,

workplace or place of leisure activities, following or watching her; interfering with her property; giving or leaving offensive material and telephoning; and sending mail or contacting electronically” (Australian Women’s Safety Survey 1996, p. 82).

According to these criteria, it is interesting to note that 15.6 per cent of women interviewed had experienced stalking by a man within their lifetime (n=6333). Of this, the majority had experienced the activity of being watched, followed closely by being telephoned, sent mail or contacted electronically, being followed or having a man loiter outside their home (Table 9).

Table 9: Australia—Stalking Activities Experienced by Women Who Have Been Stalked By a Man at Some Time in Their Lifetime

	’000	Rate (Per 100 Women)
Watched	639.3	9.3
Telephoned/sent mail/contacted electronically	534.0	7.8
Followed	523.4	7.6
Loitered outside home	523.7	7.6
Loitered outside workplace	271.3	3.9
Loitered outside place of leisure/social activities	215.5	3.1
Interfered with or damaged property	191.3	2.8
Gave or left disturbing materialsv	138.3	2.0

Reproduced from the Australian Women’s Safety Survey (note: if a woman reported more than one type of stalking activity, she was counted only once).

The Australian Women’s Safety Survey reported that younger women were more likely to be stalked, with 6.6 per cent of women reporting stalking by a man to have begun between the ages of 18 and 24 years (Table 10).

Women who were stalked by men appeared to be more likely to be stalked by strangers (in direct contradiction to all other research). Although if we collapse both previous partner and other “known” man (that is, acquaintance), we can see that this group is substantially larger (Table 11).

Table 10: Australia—Age at Which Stalking by a Man Began

Groups	18–24	25–34	35–44	45–54	55 and Over	All Age
	%	%	%	%	%	%
Not stalked	79.2	79.8	83.0	84.5	93	84.9
Stalked	20.8	20.2	17.0	15.5	7.0	15.1
During the last 12 months	6.6	3.0	2.1	1.7	0.6	2.4
More than 12 months ago	14.1	17.2	14.9	13.8	6.5	12.7

Reproduced from the Australian Women's Safety Survey.

Table 11: Australia—Women's Experience of Stalking by a Man—Relationship to Perpetrator

	During the Last 12 Months	During Their Lifetime
	Rate per 100	Rate per 100
Previous Partner	0.6	6.1
Other known man	0.6	4.4
Stranger	1.4	7.2
Total	2.4	15.1

Reproduced from the Australian Women's Safety Survey.

While the majority of women did not report stalking offences to the police, a reasonable proportion did. Of those who had been stalked by a man in their lifetime, 57 per cent did not tell the police, and 43 per cent did. Of the total who had experienced stalking, 38 per cent of women reported the offences to the police themselves, and 5 per cent had friends or family who reported the offence to the police (Table 12).

Table 12: Australia: Reported Stalking of Women by Men to the Police

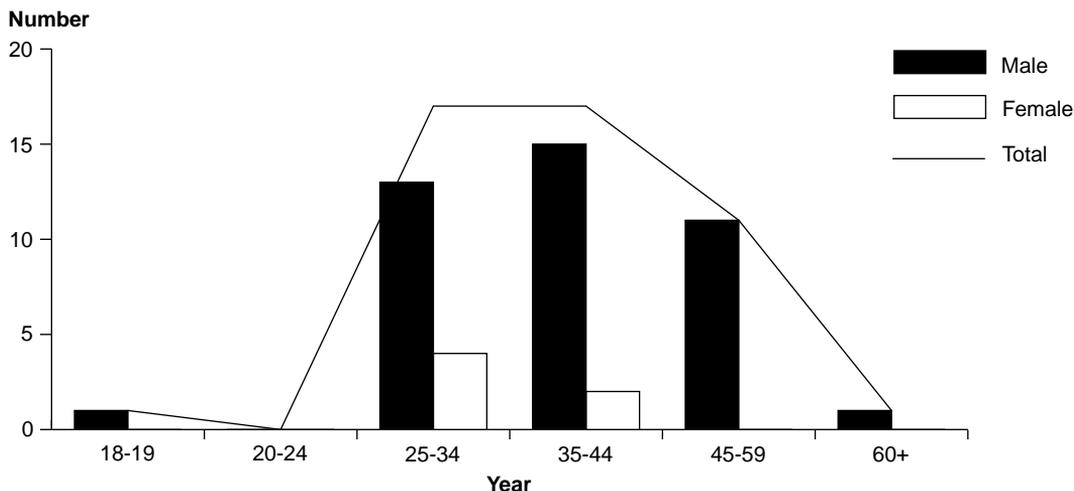
	Number	Percentage
Police not told	595	57
Police told	443	43
By woman	395	38
By someone else	49	5
Total	1038	100

Adapted from the Australian Women’s Safety Survey.

Offenders’ Age and Sex as Recorded by Police

Unfortunately, data on the age and sex of stalking victims and offenders as recorded by police were unavailable across the jurisdictions, with two exceptions being South Australia and Queensland. In South Australia, the peak age group of offenders was equal between 25–34 years of age, followed by 35–44 years of age, with 21 offenders in each age bracket respectively (Figure 24).

Police data from South Australia on offenders suggest that the majority of offenders are male, with 98 per cent of offenders recorded being male. While this finding is not surprising, it is interesting to note the later peak age of men who stalk, as it is somewhat higher than other typical crimes. The majority of men who offend tend to be situated within the 19 to 25 age group, but we can see that, in South Australia, the largest group to be charged with stalking are 35–44 year old men (Figure 24).

Figure 24: South Australia—Age and Sex of Offenders 1996–1997*

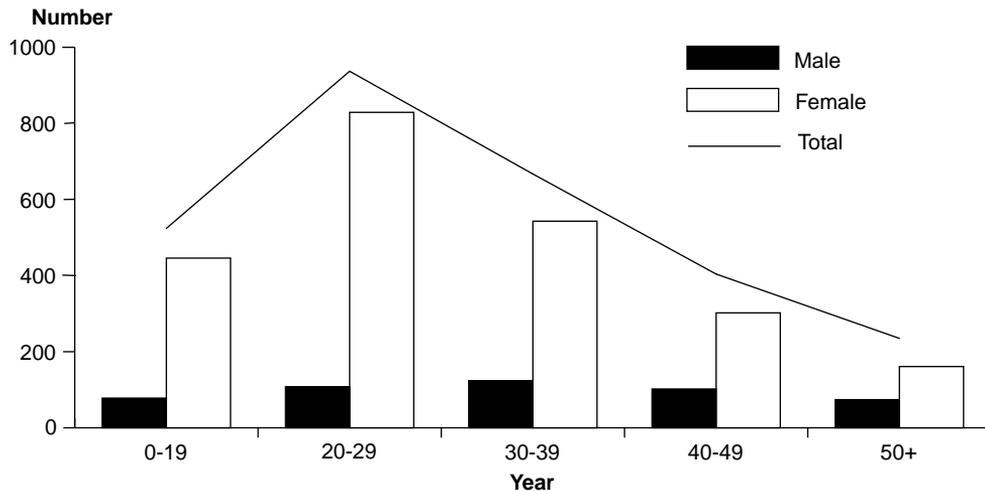
*Because of the different counting methods used in 1998, figures for this year have not been included. However, it is worth noting that the trends are similar, with 10 women and 1 male being reported to police for stalking in 1998.

Source: Crime and Justice in South Australia: Office of Crime Statistics 1996–1997.

Victims Age and Sex Recorded by Police

In terms of victims of stalking characteristics, we can see that the majority of victims are female and tend to be younger than their stalking offenders. In Queensland, most victims fall into the 20–29 year old age group, with 937 victims falling into this category. This was followed by 30–39 year olds (n=667) and 0–19 year olds (n=524). See Figure 25.

Figure 25: Queensland—Age and Sex of Alleged Victims



Source: Statistical Services, Queensland Police: unpublished statistics.