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of Law & Human Dignity

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GRIFFITH JOURNAL  
OF LAW & HUMAN DIGNITY

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# STOPPING THE STALKER: VICTIM RESPONSES TO STALKING

## An Examination of Victim Responses to Determine Factors Affecting the Intensity and Duration of Stalking

DR TERRY GOLDSWORTHY & MATTHEW RAJ\*

*It is estimated that 19 per cent of women in Australia will be stalked at some stage in their life.<sup>1</sup> Victims of stalking are exposed to threatening behaviours over prolonged periods of time and their experiences have been described by them as “emotional or psychological rape”, “psychological terrorism”, and “rape without sex”. Research has shown that the more victimisation a person experiences, the more he or she resorts to a variety of attempts to manage the stalking behaviour. Many methods have attracted criticism, specifically the use of civil injunctions to reduce the risk of violence and continued stalking. However, there have been few studies which have explored the methods deployed by victims that have then yielded empirical evidence showing how a particular intervention impacts on an offender and how this might reduce stalking behaviours. Should a victim respond to stalking? What is the best method of responding? Can a victim benefit from responding at an early stage of victimisation? This article discusses the phenomenon of stalking, victim responses, and factors that may escalate stalking behaviour. It is posited that duration and intensity of stalking, in addition to the risk and harm to victims, can be reduced by researching the effectiveness of myriad proposed responses outlined by academics, practitioners, and law enforcement agencies. The authors draw on Cohen and Felson’s Routine Activities Theory, which highlights the fact that everyday behaviours have an impact on offending and victimisation. Ultimately, the following looks to inform best practices in the strategic intervention of stalking by distinguishing maladaptive and adaptive victim initiated responses.*

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<sup>1</sup> Australian Bureau of Statistics, *4906.0 – Personal Safety Australia, 2012: Stalking* (11 December 2013) [3] <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter9002012>>.

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## I INTRODUCTION

An Australian study conducted in 2002 found that nearly one in four people will be stalked in their lifetime, with approximately a fifth of all victims suffering from some form of physical assault by their stalker.<sup>2</sup> Stalking refers to a pattern of unwanted intrusions by one person into the life of another in a manner that causes a reasonable person anxiety or fear.<sup>3</sup> Common methods deployed by victims of stalking to thwart the intrusive behaviour of another include: changing day-to-day activities,<sup>4</sup> requesting the person cease their behaviour,<sup>5</sup> avoiding certain people or places,<sup>6</sup> hanging up when the person calls,<sup>7</sup> enlisting the help of family or friends,<sup>8</sup> reasoning or attempting to reason with the pursuer,<sup>9</sup> avoiding or attempting to avoid the pursuer,<sup>10</sup> and ignoring or trying to ignore the pursuer.<sup>11</sup> Victims of severe stalking often resort to obtaining restraining orders and/or contacting the police.<sup>12</sup>

<sup>2</sup> Rosemary Purcell, Michele Pathé and Paul Mullen, 'The Prevalence and Nature of Stalking in the Australian Community' (2002) 36(1) *Australian & New Zealand Journal of Psychiatry* 114.

<sup>3</sup> Troy McEwan et al, 'Approach and Escalation in Stalking' (2012) 23(3) *Journal of Forensic Psychiatry & Psychology* 392.

<sup>4</sup> Katrina Baum et al, *Stalking Victimization in the United States* (Department of Justice, 2009).

<sup>5</sup> Beth Bjerregaard, 'An Empirical Study of Stalking Victimization' (2000) 15(4) *Violence and Victims* 389.

<sup>6</sup> Tracey Budd and Joanna Mattinson, *The Extent and Nature of Stalking: Findings from the 1998 British Crime Survey* (Her Majesty's Stationary Office, 2000) 210.

<sup>7</sup> Alana Nicastro, Amber Cousins and Brian Spitzberg, 'The Tactical Face of Stalking' (2000) 28(1) *Journal of Criminal Justice* 69.

<sup>8</sup> Baum et al, above n 4; Jeffrey Haugaard and Lisa Seri, 'Stalking and Other Forms of Intrusive Contact After the Dissolution of Adolescent Dating Or Romantic Relationships' (2003) 18(3) *Violence and Victims* 279.

<sup>9</sup> Mary Brewster, *An Exploration of the Experiences and Needs of Former Intimate Stalking Victims* (US National Institute of Justice, 1998).

<sup>10</sup> Bonnie Fisher, Francis Cullen and Michael Turner, *The Sexual Victimization of College Women* (US National Institute of Justice, 1999); Colleen Sinclair and Irene Frieze, 'When Courtship Persistence

These interventions are seldom used independently so that one or more of these methods are used over time in conjunction with another.<sup>13</sup> Research has shown that the more victimisation a person experiences, the more he or she resorts to a variety of attempts to manage the stalking behaviour.<sup>14</sup> Many methods have attracted criticism, specifically the use of civil injunctions to reduce the risk of violence and continued stalking.<sup>15</sup> Despite such criticism, very few studies have yielded empirical evidence showing how a particular intervention impacts on an offender and how this might reduce the stalking behaviours.<sup>16</sup>

Persistence relating to stalking is virtually unexplored.<sup>17</sup> By examining victim responses in relation to the duration and intensity of stalking, a clearer understanding of specific victim behaviours that deter persistence can be provided. Self-protective behaviours are measures victims take in order to avoid victimisation, sustaining injury, and/or to prevent the completion of a crime.<sup>18</sup> It is argued that self-protective victim responses to stalking determine the persistence of the offender and therefore the consequences associated with prolonged offending behaviour.<sup>19</sup>

Support for this body of research draws from Cohen and Felson's *Routine Activity Theory*, which advances the concept that for the commission of a crime, three elements must

Becomes Intrusive Pursuit: Comparing Rejecter and Pursuer Perspective of Unrequited Attraction' (2005) 52(11) *Sex Roles* 839.

<sup>11</sup> Brewster, above n 9.

<sup>12</sup> Baum et al, above n 4; Bjerregaard, above n 5; Brewster, above n 9.

<sup>13</sup> Brewster, above n 9; Budd and Mattinson, above n 6; William Cupach and Brian Spitzberg, 'Obsessive Relational Intrusion: Incidence, Perceived Severity, and Coping' (2000) 14(4) *Violence & Victims* 357; Leila Dutton and Barbara Winstead, 'Types, Frequency, and Effectiveness of Responses to Unwanted Pursuit and Stalking' (2011) 26(6) *Journal of Interpersonal Violence* 1129; Fisher, Cullen and Turner, above n 10; Haugaard and Seri, above n 8; Nicasastro, Cousins and Spitzberg, above n 7; Lorraine Sheridan and Graham Davies, 'Stalking: The Elusive Crime' (2001) 6(2) *Legal & Criminological Psychology* 133.

<sup>14</sup> Dutton and Winstead, above n 13; Brian Spitzberg, Alana Nicasastro and Amber Cousins, 'Exploring the Interactional Phenomenon of Stalking and Obsessive Relational Intrusion' (1998) 11(1) *Communication Reports* 33.

<sup>15</sup> Gavin de Becker, *The Gift of Fear: Survival Signals that Protect Us from Violence* (Bloomsbury, 1997); Matthew Goode, 'Stalking: Crime of the Nineties?' (1995) 19(1) *Criminal Law Journal* 21; Doris Hall, *Outside Looking In: Stalkers and their Victims* (Doctoral dissertation, Claremont Graduate School, 1997); Ronnie Harmon, Richard Rosner and Howard Owens, 'Obsessional Harassment and Erotomania in a Criminal Court Population' (1995) 40 *Journal of Forensic Sciences* 188.

<sup>16</sup> Dutton and Winstead, above n 13.

<sup>17</sup> David James et al, 'Persistence in Stalking: A Comparison of Associations in General Forensic and Public Figure Samples' (2010) 21(2) *The Journal of Forensic Psychiatry and Psychology* 283.

<sup>18</sup> Ráchael A Powers and Sally S Simpson, 'Self-Protective Behaviours and Injury in Domestic Violence Situations: Does it Hurt to Fight Back?' (2012) 27(17) *Journal of Interpersonal Violence* 3345.

<sup>19</sup> Ronald Clarke and Marcus Felson, *Routine Activity and Rational Choice: Advances in Criminological Theory* (Transaction Publishers, 1993); Lawrence E Cohen and Marcus Felson, 'Social Change and Crime Rate Trends: A Routine Activity Approach' (1979) 44(4) *American Sociological Review* 588; Elizabeth Ehrhardt Mustaine and Richard Tewksbury, 'A Routine Activity Theory Explanation for Women's Stalking Victimization' (1999) 5 *Violence Against Women Journal* 43.

simultaneously exist: first, a motivated offender; second, a suitable target; and finally, the absence of capable guardianship.<sup>20</sup> In their application of *Routine Activity Theory* to stalking, Mustaine and Tewksbury found that female college students who engage in drinking and drug use were at greater risk of being stalked than were women who abstain from these behaviours.<sup>21</sup> It is accepted that certain behaviours that victims engage in may have an effect on their risk of harm and further victimisation.<sup>22</sup> It is contended that the argument for early, measured intervention remains cogent even in the face of pursuits formed as a result of psychopathological conditions such as erotomania. Erotomania, as first described by Esquirol in 1838 and found in the *Diagnostics and Statistics Manual*,<sup>23</sup> is considered to be the reason for several high profile stalking cases and is characterised by a delusional belief that the target of one's affections, usually a person of higher status, in fact, returns these affections. Early intervention in cases such as these would encourage clinical, professional help at the onset of the stalking that may thwart instances of perennial pursuit, debilitating victims through all-consuming fear.<sup>24</sup>

## II WHAT IS STALKING?

Stalking is considered an extra-ordinary type of crime and characterised by the targeted repetition of an ostensibly ordinary or routine behaviour.<sup>25</sup> Described as the 'crime of the nineties',<sup>26</sup> awareness of stalking developed as a direct result of instances of public figures becoming the targets of obsessional followers, capturing the attention of the media and later creating a culture and lucrative industry concerned with 'risk' and 'threat' assessment for those deemed in jeopardy as high-profile figures within society. Since the global discovery of the phenomenon of stalking in 1990, there have been concerted efforts to establish

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<sup>20</sup> Cohen and Felson, above n 19.

<sup>21</sup> Ehrhardt Mustaine and Tewksbury, above n 19; Patrick Kinkade, Ronald Burns and Angel Ilarraza Fuentes, 'Criminalizing Attractions: Perceptions of Stalking and the Stalker' (2005) 51 *Crime & Delinquency* 3.

<sup>22</sup> James Gobert, 'Victim Precipitation' (1977) 77(4) *Columbia Law Review* 511.

<sup>23</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition — Revised* (American Psychiatric Association, 1987); Reid Meloy, 'Unrequited Love and the Wish to Kill: Diagnosis and Treatment of Borderline Erotomania' (1989) 53(6) *Bulletin of the Menninger Clinic* 477; William Fremouw, Darrah Westrup and J Pennypacker, 'Stalking on Campus: The Prevalence and Strategies for Coping with Stalking' (1997) 42(4) *Journal of Forensic Sciences* 666.

<sup>24</sup> Doreen Orion, *I Know You Really Love Me* (Diane Publishing, 1997).

<sup>25</sup> See, eg, *Criminal Code 1899* (Qld) s 359B.

<sup>26</sup> Patricia Wynn Davies, 'Sweeping Penalties in New Laws on Stalkers', *The Independent* (London), 6 December 1996, 9.

protective measures or coping strategies for victims.<sup>27</sup> The insidious nature of stalking, being a course of conduct intended to cause fear or detriment, has remained a problem for interventionists. Many stalkers are former partners who have formed a potent mix of jealousy and anger as a result of a relationship break-down and respond negatively to arrest or civil injunction orders; it has been stated that the latter is, in fact, a counter-productive measure.<sup>28</sup>

There is a conspicuous lack of consensus among definitions of stalking in literature.<sup>29</sup> The disjunctive constructions and perceptions of stalking have led to varied definitions being adopted and accepted by legislative bodies, culminating in the commission of a crime remaining vastly unpredictable depending on one's geographical location at any one time. The inherent dangers in confining a set of particular behaviours so as to establish an offence of stalking have remained a serious matter for the judiciary to consider. Where seemingly innocuous behaviours, such as sending gifts, or ostensibly trivial ephemera to a person are intentionally repeated over a course of time, they constitute an offence when a threat is perceived by the target of such advances.<sup>30</sup> Sheridan and Davies describe it as the 'elusive crime' with research suggesting that stalkers engage in similar patterns of activity; the authors suggest, 'as far as the general public is concerned, it may be that stalking is like great art: they cannot define it, but they know it when they see it'.<sup>31</sup>

A further developed, and somewhat legalistic, definition of stalking is provided by Ogilvie as 'a single-minded pursuit of another despite continued rejection, causing fear and apprehension'.<sup>32</sup> Prior to national media groups in the United States, circa 1990, using the term "stalking" to refer to the pursuit of a person of interest, specifically Hollywood celebrities, the etymology of stalking derived from practices found in hunting,<sup>33</sup> and ordinarily meant 'the act of following one's prey and walking stealthily'.<sup>34</sup> Meloy and Gothard define stalking as 'the wilful, malicious, and repeated following and harassing of another

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<sup>27</sup> Michele Pathé, *Surviving Stalking* (Cambridge University Press, 2002); Fremouw, Westrup and Pennypacker, above n 23; de Becker, above n 15.

<sup>28</sup> de Becker, above n 15.

<sup>29</sup> Boon and Sheridan, above n 25; Darrah Westrup and William Fremouw, 'Stalking Behaviour: A Literature Review and Suggested Functional Analytic Assessment Technology' (1998) 3(3) *Aggression and Violent Behaviour* 255.

<sup>30</sup> Dutton and Winstead, above n 13, 1130.

<sup>31</sup> Sheridan and Davies, above n 13, 134.

<sup>32</sup> Emma Ogilvie, 'Stalking: Legislative, Policing and Prosecution Patterns in Australia' (Research and Public Policy Series No 34, Australian Institute of Criminology, 2000) 10.

<sup>33</sup> Keith Davis, Irene Hanson Frieze and Ronald Maiuro (eds), *Stalking: Perspectives on Victims and Perpetrators* (Springer Publishing, 2002) 175

<sup>34</sup> Paul Mullen, Michele Pathé and Rosemary Purcell (eds), *Stalkers and their Victims* (Cambridge University Press, 2000) 3.



person that threatens his or her safety'.<sup>35</sup> Meloy describes stalking as 'an old behaviour, a new crime' and states that 'if there is a heart of darkness in the desire to bond with another, it is stalking'.<sup>36</sup> Stalking is not accepted as a new behaviour; instead it has been discovered and constructed as a way to conceptualise particular forms of behaviour.<sup>37</sup> Pathé and Mullen provide a working definition of stalking, referring to it as 'a constellation of behaviours in which one individual inflicts on another repeated unwanted intrusions and communications'.<sup>38</sup> Several authors have successfully managed, through their research, to navigate the boundaries between unwanted pursuit and criminal behaviour. Hall found that 58 per cent of stalkers' motivations came from not accepting the end of a romantic relationship.<sup>39</sup> Moreover, from a later study conducted by Sheridan and colleagues,<sup>40</sup> it was found that 22.2 per cent of interviewed women reported that their ex-partners refused to accept that the relationship was over.

In an attempt to delineate and differentiate the nebulous behaviours of stalking, a range of terms has been used to describe stalking and stalking-related phenomena, including: obsessive relation intrusion;<sup>41</sup> obsessional following;<sup>42</sup> obsessional harassment;<sup>43</sup> unwanted pursuit behaviours;<sup>44</sup> pre-stalking;<sup>45</sup> and criminal stalking.<sup>46</sup> For example, obsessional following is defined as 'an abnormal or long-term pattern of threat or harassment directed toward a specific individual'.<sup>47</sup> Obsessive relational intrusion is defined as the 'repeated and unwanted pursuit and invasion of one's sense of physical or

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<sup>35</sup> Reid Meloy and Shayna Gothard, 'Demographic and Clinical Comparison of Obsessional Followers and Offenders with Mental Disorders' (1995) 152 *American Journal of Psychiatry* 258, 258.

<sup>36</sup> Reid Meloy, 'Stalking: An Old Behaviour, A New Crime' (1999) 22(1) *The Psychiatric Clinics of North America* 85, 85.

<sup>37</sup> Mullen, Pathé and Purcell, above n 34.

<sup>38</sup> Michele Pathé and Paul Mullen, 'The Impact of Stalkers on their Victims' (1997) 170(1) *The British Journal of Psychiatry* 12, 12.

<sup>39</sup> Hall, above n 15.

<sup>40</sup> Lorraine Sheridan, Graham Davies and Julian Boon, 'Stalking: Perceptions and Prevalence' (2001) 16(2) *Journal of Interpersonal Violence* 151.

<sup>41</sup> Cupach and Spitzberg, above n 13.

<sup>42</sup> Reid Meloy, 'Stalking (Obsessional Following): A Review of some Preliminary Studies' (1996) 1 *Aggression and Violent Behaviour* 147.

<sup>43</sup> Harmon, Rosner and Owens, above n 15.

<sup>44</sup> Jennifer Langhinrichsen-Rohling et al, 'Breaking Up is Hard to do: Unwanted Pursuit Behaviours Following the Dissolution of a Romantic Relationship' (2000) 15(1) *Violence and Victims* 73.

<sup>45</sup> Robert Emerson, Kerry Ferris and Carol Brooks Gardner, 'On being Stalked' (1998) 45(3) *Social Problems* 289.

<sup>46</sup> Brian Spitzberg and William Cupach, 'The State of the Art of Stalking: Taking Stock of the Emerging Literature' (2007) 12(1) *Aggression and Violent Behaviour* 64.

<sup>47</sup> Meloy and Gothard, above n 35, 258.

symbolic privacy by another person, either stranger or acquaintance, who desires and/or presumes an intimate relationship'.<sup>48</sup>

Broadly defined, unwanted pursuit behaviours include any unsolicited activities undertaken by a person in the hope of establishing a romantic relationship between individuals who are not currently engaged with one another amorously.<sup>49</sup> Stalking is considered to be a severe form of unwanted pursuit.<sup>50</sup> Many of these terms do not attempt to define stalking, but instead provide a comprehensive overview of behaviours synonymous with and/or encompassing stalking related patterns of behaviour. Clearly, proscribing certain behaviours deemed to be considered stalking is a difficult challenge. While behavioural definitions of stalking are invaluable when determining which actions constitute deviant behaviour within society, we are confined to legislative provisions in order to establish what amounts to unlawful stalking.

#### *A Stalking and the Law*

Since at least the 18th century, stalking has been dealt with by prosecuting stalking-related crimes such as trespass, breaking and entering, criminal damage, and threats to kill.<sup>51</sup> Today, most English speaking countries have approached the issue of proscribing stalking through one of the two ways to legislate: the "list" or "general prohibition" method.<sup>52</sup> The offence of stalking varies in definition across Australian states and there remains to be seen a single, codified classification of stalking both behaviourally and at law (see Table 1).<sup>53</sup> For example, in New South Wales, the relevant legislation does not require a course of conduct in order for the offence to be established; a person can be found guilty of stalking if they perform a prohibited act on one occasion. Similarly, in NSW and the Australian Capital Territory, the legislation explicitly provides that the victim need not feel fear or emotional distress for the

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<sup>48</sup> Cupach and Spitzberg, above n 14, 4.

<sup>49</sup> Langhinrichsen-Rohling et al, above n 44.

<sup>50</sup> Cupach and Spitzberg, above n 14.

<sup>51</sup> *R v Dunn* (1840) 113 ER 939; Mullen, Pathé and Purcell, above n 34; Pathé, above n 27.

<sup>52</sup> Paul Infield and Graham Platford, 'Stalking and the Law' in Julian Boon and Lorraine Sheridan (eds), *Stalking and Psychosexual Obsession: Psychological Perspectives for Prevention, Policing and Treatment* (Wiley, 2002) 220.

<sup>53</sup> Tim Lawson-Cruttenden, 'Stalking' (2012) 176 *Criminal Law and Justice Weekly* 103; Ogilvie, above n 32, 6.

offence to be made out, whereas the other states and territories omit any reference to the victim's subjective response.<sup>54</sup>

The inherent difficulty in attempting to capture stalking behaviour through legislation can be demonstrated by way of the following example.<sup>55</sup> One extreme case shows a man who was charged and convicted of stalking following the end of a flirtatious text message relationship. After the "victim" sent a message saying she did not want him to contact her again, he sent two text messages. The first stated "you're joking" and when he did not receive a reply, he sent another text in which he accused her profanely of leading him on. Although the message was undeniably offensive, it could not be construed as threatening and he did not attempt to contact her again. Despite having no criminal history, he received a six-month prison sentence, suspended for two years. His behaviour technically met the criteria for the offence of stalking in Victoria.

Evidently, legislating against stalking is problematic and concerns of over-breadth in the drafting of such provisions remains subject to scrutiny.<sup>56</sup> The impact that this broadness may have on victims, particularly when assisting in criminal proceedings, is difficult to measure. Attempts to restrict the offence of stalking, for example, by incorporating a provision that states the offender must know, or ought to know, that their behaviour amounted to causing fear or detriment to the victim, will likely have a dramatic impact on prosecutions. Such provisions, however, could be used as an aggravating feature of the offence, and speak directly to sentencing.

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<sup>54</sup> Troy McEwan, Paul Mullen and Rachel MacKenzie, 'Anti-Stalking Legislation in Practice: Are we Meeting Community Needs?' (2007) 14(2) *Psychiatry, Psychology and Law* 207.

<sup>55</sup> Rachel MacKenzie and David V James, 'Management and Treatment of Stalkers: Problems, Options and Solutions' (2011) 29(2) *Behavioural Sciences and the Law* 222.

<sup>56</sup> Ogilvie, above n 53.

State	Section	Year Introduced	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 person's 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> 1986 s189	1994	Acts engaged in on at least 2 separate occasions, which could be reasonably expected to arouse the other person's 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 involving the following of a person about or the watching or frequenting of a person's place of residence, business or work or any place that a person frequents:	Offender must intend to cause person to fear mental or physical injury.	Up to five years imprisonment or a fine of 50 points.	
QLD	<i>Criminal Code Act</i> 1899 s359A	1993	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 weapons 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 person's 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	Acts engaged in which could be reasonably expected to arouse the other person's 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 (or ought to have understood the results of their actions). 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 Compilation Act</i> 1913 s338D and s338E	1995	The prevention or hindering of another person's 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 an \$8,000 fine; a higher court, up to 8 years.	If the accused acted with lawful authority or reasonable excuse.

Table 1. A summary of stalking legislation across the Australian jurisdictions.

## III THE PREVALENCE AND IMPACT OF STALKING

Victorian Police statistics show a 27.7 per cent increase in harassment offences between 2012 and 2013,<sup>57</sup> including conduct such as stalking and using phone, postal service, or listening devices to menace, harass, and offend. Of the 4875 harassment offences recorded in Victoria for the year 2012–13, some 1138 — or 23 per cent — remain unsolved.<sup>58</sup> In Queensland, the figures are even more startling. Between January and November 2013, stalking offences increased 162 per cent.<sup>59</sup> Existing population-based studies, internationally, report a lifetime prevalence of stalking ranging from 2–13 per cent for males and 8–32 per cent for females.<sup>60</sup>

A study conducted in 2004 by Purcell, Pathé, and Mullen showed that those victims who are exposed to stalking for extended periods of time ‘will be associated not only with a more severe course of harassment, but more detrimental effects to [their] well-being’.<sup>61</sup> Additionally, a strong correlation exists between the rate of psychiatric morbidity and those pursued for more than two weeks.<sup>62</sup> Moreover, it is typical for a stalker’s behaviour to become increasingly threatening, escalating from initially bothersome to dangerous, violent, and potentially fatal.<sup>63</sup> The duration of stalking affects the experience of the victim because it is a crime committed as a course of conduct and is not, therefore, confined to an isolated instance of criminality, with research indicating that the average stalking duration is 24 months.<sup>64</sup> Research has consistently shown that victims are exposed to threatening behaviours over prolonged periods of time and their

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<sup>57</sup> Victorian Police, *Crime Statistics Official Release* (28 August 2013) Victorian Police <[http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media\\_ID=72176](http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=72176)>.

<sup>58</sup> Ibid.

<sup>59</sup> Mypolice QPS news, *Queensland Crime Statistics* (2014) Queensland Police Service News <<http://mypolice.qld.gov.au/queensland-crime-statistics/>>.

<sup>60</sup> Budd and Mattinson, above n 6; Harald Dressing, Peter Grass and Christine Kuehner, ‘What can we Learn from the First Community-Based Epidemiological Study on Stalking in Germany?’ (2007) 30(1) *International Journal of Law and Psychiatry* 10; Michele Pathé, Paul Mullen and Rosemary Purcell, ‘Stalking: False Claims of Victimisation’ (1999) 174 *British Journal of Psychiatry* 170; Purcell, Pathé and Mullen, above n 2; Spitzberg and Cupach, above n 46; Patricia Tjaden and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey* (1998) Research in Brief.

<sup>61</sup> Rosemary Purcell, Michele Pathé and Paul Mullen, ‘Editorial: When do Repeated Intrusions Become Stalking?’ (2004) 15(4) *The Journal of Forensic Psychiatry Psychology* 571, 580.

<sup>62</sup> Ibid, 571.

<sup>63</sup> Fisher, Cullen and Turner, above n 10.

<sup>64</sup> Pathé and Mullen, above n 38.

experiences have been described by them as emotional or psychological rape,<sup>65</sup> psychological terrorism, and rape without sex.<sup>66</sup>

Stalking, as a legal nuance, received considerable attention from clinicians and researchers in the early 1990s, and the effects, specifically the harm and consequences of stalking, have been explored by a number of researchers.<sup>67</sup> It is commonly accepted that stalking is deleterious to victims' health, with the majority reporting heightened anxiety (83 per cent) and chronic sleep disturbance (74 per cent).<sup>68</sup> As a constellation of behaviours, stalking has proven to alter victims' personalities,<sup>69</sup> and caused them to become very distrustful or suspicious of others.<sup>70</sup> This disruption in schemas about trust and safety can result in curtailments of normal daily activities and affect future relationships.<sup>71</sup> The argument for early, measured responses to stalking would ensure that victims do not suffer unnecessarily.

#### IV VICTIM RESPONSES TO STALKING

Feelings of helplessness and the belief that interventions are futile are often found in victims of stalking, with the end result being that positive acts to abate the stalking are deployed too late.<sup>72</sup> Additionally, intrusive and threatening behaviours associated with stalking are seldom exhibited by perpetrators at the beginning of a relationship or throughout the course of an unwanted pursuit.<sup>73</sup> The intrusions are incremental, with true intentions cloaked in polite romantic gestures such as sending gifts or buying flowers.<sup>74</sup> There may be several reasons as to why a victim of stalking applies their discretion in determining that police or legal intervention would, at that stage, be

<sup>65</sup> Orion, above n 24.

<sup>66</sup> Cupach and Spitzberg, above n 13; Hall, above n 15; Mullen, Pathé and Purcell, above n 34; Boon and Sheridan, above n 25.

<sup>67</sup> Brewster, above n 9; Doris Hall, 'The Victims of Stalking' in J. Reid Meloy (ed), *The Psychology of Stalking: Clinical and Forensic Perspectives* (Academic Press, 1998) 113; Pathé and Mullen, above n 38; Tjaden and Thoennes, above n 60.

<sup>68</sup> Pathé and Mullen, above n 38.

<sup>69</sup> Hall, above n 66.

<sup>70</sup> Brewster, above n 9.

<sup>71</sup> Mindy Mechanic, 'Stalking Victimization: Clinical Implications for Assessment and Intervention' in Keith Davis, Irene Hansom Frieze and Roland Maiuro (eds), *Stalking: Perspectives on Victims and Perpetrators* (Springer Publishing, 2002) 31.

<sup>72</sup> Christine Englebrect and Bradford Reys, 'Gender Differences in Acknowledgment of Stalking Victimization: Results from the NCVS Stalking Supplement' (2011) 26(5) *Violence and Victims* 560; Spitzberg, Nicasastro and Cousins, above n 14.

<sup>73</sup> Jennifer Dunn, 'Innocence Lost: Accomplishing Victimization in Intimate Stalking Cases' (2001) 24(3) *Symbolic Interaction* 285.

<sup>74</sup> *Ibid.*

inappropriate, or ill fated. To date, there is no research showing which interventions are particularly successful in abating stalking, and whether the timing of these interventions can affect the intensity and duration of unwanted behaviour.

As the majority of stalkers are ex-partners,<sup>75</sup> it is accepted that a number of break-up sufferers perceive their unwanted pursuit behaviours as legitimate efforts to restore their intimate relationship;<sup>76</sup> for many victims of stalking, “breaking-up” can be hard to do. It has been suggested by one leading security expert that the following preferred statement be issued to an unwanted pursuer in the hope of thwarting their persistence:

No matter what you may have assumed till now, and no matter for what reason you assumed it, I have no romantic interest in you whatsoever. I am certain I never will. I expect that knowing this, you’ll put your attention elsewhere, which I understand, because that’s what I intend to do.<sup>77</sup>

The above statement is one that makes the victim’s position quite clear; avoiding instances whereby slight gesture and ambiguous language and/or reasoning are capable of leading the pursuer to believe acts of pursuit may re-establish a relationship. Here, a policy of being assertive early in the relationship about one’s interest of not having an intimate relationship is endorsed, yet, unfortunately, no research basis exists to support such a recommendation for this coping method of stalking.<sup>78</sup> Reinforcing behaviours, such as picking up the phone after the stalker has attempted to call 40 times in a row, are capable of communicating to the stalker that their target will respond eventually, specifically, on the 41<sup>st</sup> attempt.<sup>79</sup>

Based upon existing studies of unwanted pursuit in addition to related literature, Cupach and Spitzberg developed a typology of coping tactics used by victims to avoid or stop instances of unwanted pursuit.<sup>80</sup> The typology comprises five categories: moving

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<sup>75</sup> Cupach and Spitzberg, above n 14; Pathé and Mullen, above n 38; Sheridan, Davies and Boon, above n 40; Spitzberg and Cupach, above n 46; Tjaden and Thoennes, above n 60.

<sup>76</sup> Langhinrichsen-Rohling et al, above n 44.

<sup>77</sup> Gavin de Becker, ‘I was Trying to Let Him Down Easy’ in J Boon and L Sheridan (eds), *Stalking and Psychosexual Obsession: Psychological Perspectives for Prevention, Policing and Treatment* (Wiley, 2002) 35, 40.

<sup>78</sup> Keith Davis, Ann Coker and Maureen Sanderson, ‘Physical and Mental Health Effects of being Stalked for Men and Women’ (2002) 17(4) *Violence and Victims* 429; Sinclair and Frieze, above n 10.

<sup>79</sup> de Becker, above n 15; Pathé, above n 27.

<sup>80</sup> Cupach and Spitzberg, above n 14; Brian Spitzberg, ‘The Tactical Topography of Stalking Victimization and Management’ (2002) 3(4) *Trauma, Violence, & Abuse* 261; Brian Spitzberg and William Cupach, ‘What

with; moving against; moving away; moving inward; and moving outward. Examples of behaviours associated with each of these can be found in Figure 1.<sup>81</sup> Structural equation modelling carried out by Nguyen, Spitzberg, and Lee, of obsessive relational intrusion/stalking, coping, and symptoms, indicated that the influences of stalking on negative symptoms is mediated by the use of coping strategies and the adequacy of social support.<sup>82</sup>

It is asserted that certain types of responses would be more effective than others in the long run; specifically moving away and moving outward.<sup>83</sup> Moving away responses are, purportedly, 'most likely to erode the pursuer's interest'.<sup>84</sup> This is in line with earlier empirical findings showing the most frequently reported victim perception of a chosen intervention being effective in stopping the stalking was that the victim moved (19 per cent).<sup>85</sup> From the very few studies which have addressed victim interventions, the next most commonly reported reasons for an episode of stalking to cease include the stalker entering a new relationship, or because the police warned or arrested the stalker.<sup>86</sup>

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Mad Pursuit?: Obsessive Relational Intrusion and Stalking Related Phenomena' (2003) 8(4) *Aggression and Violent Behaviour* 345.

<sup>81</sup> Linda Nguyen, Brian Spitzberg and Carmen Lee, 'Coping with Obsessive Relational Intrusion and Stalking: The Role of Social Support and Coping Strategies' (2012) 27(3) *Violence and Victims* 414, 421.

<sup>82</sup> *Ibid.*

<sup>83</sup> Cupach and Spitzberg, above n 14; Dutton and Winstead, above n 13.

<sup>84</sup> Cupach and Spitzberg, above n 14, 161.

<sup>85</sup> Tjaden and Thoennes, above n 60.

<sup>86</sup> Lorraine Sheridan, Graham Davies and Julian Boon, 'The Course and Nature of Stalking: A Victim Perspective' (2001) 40(3) *The Howard Journal* 215; Lorraine Sheridan, Eric Blaauw and Graham Davies, 'Stalking: Knowns and Unknowns' (2003) 4(2) *Trauma, Violence, & Abuse* 148; Tjaden and Thoennes, above n 60.





**FIGURE 1**

Moving outward responses are deemed helpful as informing and alerting others can serve to insulate the target. Moving with responses are seen to be counterproductive, as further contact, as mentioned previously, can reinforce unwanted behaviours. Moving against tactics can also reinforce unwanted behaviour as it may be the pursuer's intent to cause distress; steps taken by the target to demonstrate anger or retaliation will communicate to the pursuer that their behaviour is causing an effect, successfully disturbing their target's lifestyle.<sup>87</sup> One exception, however, is taking legal action, which is a relatively effective moving against tactic.<sup>88</sup> Moving inward tactics are seen to be the least effective response because these measures (e.g., alcohol or drug use, denial) do not serve to stop the unwanted pursuit, instead, act as analgesics and cause the target to become more vulnerable.<sup>89</sup>

<sup>87</sup> Cupach and Spitzberg, above n 14; Dutton and Winstead, above n 13.

<sup>88</sup> Cupach and Spitzberg, above n 14.

<sup>89</sup> Dutton and Winstead, above n 13.

The 2009 National Crime Victimization Survey showed victim perceptions of why the stalking stopped.<sup>90</sup> The most commonly cited reasons were that the police warned the stalker (15.6 per cent), the victim talked to the stalker (13.3 per cent), a friend or relative intervened (12.2 per cent), the victim moved (10.8 per cent), and the victim changed her/his phone number or e-mail address (10.7 per cent). The extant research indicates that the responses to stalking and their effectiveness are capricious, with no particular response being held as effective all or, indeed, most of the time.<sup>91</sup> From a recent study which compared both male and female targets' and pursuers' perspectives on what factors contributed to the cessation of unwanted pursuit, it was found that, overall, 'avoidance/minimization' tactics were most frequently reported as opposed to 'assertion/aggression' tactics.<sup>92</sup> Many individuals respond to unwanted pursuit in indirect ways, such as acting nicely or hoping that the pursuer will give up over time.<sup>93</sup> Indeed, 'acted nicely' was the most common target response reported by both targets and pursuers;<sup>94</sup> the reasoning believed to be that many targets, as former romantic partners of the pursuers, tend to vigorously avoid injuring the feelings of their rejected partners.

Although infrequently reported, "took legal action" was the most effective response according to female targets. A UK study in 2001 of 95 self-defined stalking victims showed that 92 per cent of victims had reported the activities of their stalker to the police. A third had obtained a civil injunction to deter their stalker. Of the 19 cases where an injunction had been obtained, 15 of those civil orders were breached.<sup>95</sup> While criticism is levied against the use of civil injunctions to deter unwanted pursuit, there remains little evidence to show that their overall effect can be positive. Their use, as an early adaptive measure, of indicating to an unwanted pursuer that continuation of their behaviour constitutes harassment and will lead to serious penalty and/or criminal prosecution, is yet to be examined empirically.

Oddly, male pursuers rated 'made threats' and 'aggressive verbal confrontation' as most effective. The results suggested that the most active and dramatic responses were

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<sup>90</sup> Baum et al, above n 4.

<sup>91</sup> Dutton and Winstead, above n 13.

<sup>92</sup> Ibid.

<sup>93</sup> Cupach and Spitzberg, above n 14.

<sup>94</sup> Dutton and Winstead, above n 13.

<sup>95</sup> Sheridan, Davies and Boon, above n 86, 230.

perceived as most effective by both targets and pursuers.<sup>96</sup> An additional outcome from this study confirmed the view that 'during the breakup of a relationship, the person who is terminating the relationship may not be clear and firm in their communication of their intention'.<sup>97</sup> Moreover, it was found that partners who resist the breakup might require a strong, unequivocal message clarifying that no future relationship is likely to exist between the parties.<sup>98</sup> It would appear that the most common methods deployed by victims to abate stalking are, in fact, not always the most effective.

In the knowledge that ex-intimates are at greatest risk of physical assault and that persistence is higher amongst those who have been in a prior relationship,<sup>99</sup> it is submitted that instances of stalking perpetrated by ex-intimates are more likely to become violent, aggressive and persistent due to the victim failing to take immediate, measured action. Future research should consider response effectiveness to inform victims of stalking what action should be taken and when. By contrast, behaviours that are unhelpful can be advised against.

#### *A Factors Affecting the Intensity and Duration of Stalking*

Behavioural theorists have attempted to examine stalking patterns.<sup>100</sup> They argue that a stalker's actions constitute learned behaviour that is developed by powerful and intermittent reinforcers.<sup>101</sup> The example provided is one of responding to a stalker's phone calls by screaming or begging the offender to desist, and other times ignoring attempts at contact altogether. The capricious nature of the response could reinforce behaviours. Westrup cautioned against a phenomenon termed as "extinction burst", a situation where previous reinforcing behaviours (e.g., picking up the phone) that are now ignored could lead to an escalation in frequency and intensity.<sup>102</sup> It is averred, in line with Davis, Frieze, and Maiuro,<sup>103</sup> that the majority of stalking victims rely on

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<sup>96</sup> Dutton and Winstead, above n 13.

<sup>97</sup> Ibid 1151.

<sup>98</sup> Ibid 1129.

<sup>99</sup> Paul Mullen et al, 'Assessing and Managing the Risks in the Stalking Situation' (2006) 34(4) *Journal of the American Academy of Psychiatry and the Law* 439; Purcell, Pathé and Mullen, above n 2.

<sup>100</sup> Darrah Westrup, 'Applying Functional Analysis to Stalking Behaviour' in Reid Meloy (ed), *The Psychology of Stalking: Clinical and Forensic Perspectives* (Academic Press, 1998) 275; Westrup and Fremouw, above n 29.

<sup>101</sup> Victoria Ravensberg and Catherine Miller, 'Stalking among Young Adults: A Review of the Preliminary Research' (2003) 8(4) *Aggression and Violent Behaviour* 455.

<sup>102</sup> Westrup, above n 100.

<sup>103</sup> Davis, Hanson Frieze and Maiuro, above n 33.

personal and informal strategies of coping until stalking escalates in frequency and severity. At this point, such informal responses are insufficient to deter the stalker.

Currently, the consensus amongst experts remains that victims who have been romantically or intimately involved with their stalker are at a substantially higher risk of physical violence.<sup>104</sup> Findings from a 2003 study showed that the duration of stalking is significantly shorter in cases of serious violence.<sup>105</sup> Extant research shows that the best predictor of the duration of stalking is the prior relationship with the stalker. Ex-intimate partners are subject to longer periods of stalking and, inversely, those stalked by strangers are likely to be subject to a shorter duration of victimisation.<sup>106</sup> Remarkably, the greatest danger of serious violence from stalkers in the UK is not from strangers or people with psychotic illness, but from non-psychotic ex-partners.<sup>107</sup> The motivation of the offender remains a primary issue in the assessment of risk.<sup>108</sup> Despite these findings and practises, victim responses have yet to be explored when considering the impact on the duration and intensity of stalking. It is submitted that early, adaptive responses to stalking are more likely to serve as a deterrent than responses deployed at a later stage in the victimisation. In line with Cohen and Felson's *Routine Activities Theory*, persistence on the part of the victim to deter the stalker could serve to thwart stalking instances; no longer is a victim "suitable" as a target of pursuit.<sup>109</sup>

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<sup>104</sup> Harmon, Rosner and Owens, above n 15; Troy McEwan, Paul Mullen and Rosemary Purcell, 'Identifying Risk Factors in Stalking: A Review of Current Research' (2007) 30 *International Journal of Law and Psychiatry* 1; Meloy, above n 35; Mullen, Pathé and Purcell, above n 34; Paul Mullen et al, 'Study of Stalkers' (1999) 156(8) *American Journal of Psychiatry* 1244; Pathé and Mullen, above n 37; Barry Rosenfeld and Ronnie Harmon, 'Factors Associated with Violence in Stalking and Obsessional Harassment Cases' (2002) 29(6) *Criminal Justice and Behaviour* 671; Donna Schwartz-Watts and Donald W Morgan, 'Violent Versus Nonviolent Stalkers' (1998) 26(2) *Journal of the American Academy of Psychiatry and the Law Online* 241; Sheridan, Davies and Boon, above n 86; Michael Zona, Russell Palarea and John Lane, 'Psychiatric Diagnosis and the offender-victim Typology of Stalking' in Reid Meloy (ed), *The Psychology of Stalking: Clinical and Forensic Perspectives* (Academic Press, 1998) 69; Michael Zona, Kaushal Sharma and John Lane, 'A Comparative Study of Erotomanic and Obsessional Subjects in a Forensic Sample' (1993) 38 *Journal of Forensic Sciences* 894.

<sup>105</sup> David James and Frank Farnham, 'Stalking and Serious Violence' (2003) 31(4) *Journal of the American Academy of Psychiatry and the Law Online* 432.

<sup>106</sup> Tjaden and Thoennes, above n 60; Budd and Mattinson, above n 6; McEwan, Mullen and Purcell, above n 104; Pathé and Mullen, above n 38; Purcell, Pathé and Mullen, above n 2.

<sup>107</sup> Frank Farnham, David James and Paul Cantrell, 'Association between Violence, Psychosis, and Relationship to Victim in Stalkers' (2000) 355(9199) *The Lancet* 199.

<sup>108</sup> McEwan et al, above n 3.

<sup>109</sup> Cohen and Felson, above n 19.

## V CONCLUSION

This article has explored the phenomenon of stalking and the extant research relating to victim responses to stalking. Intervention and response may be of particular importance in the prevention of stalking.<sup>110</sup> It is averred that exploration of victim responses, specifically, their timing and nature, to deter stalkers, is likely to yield enormous benefit in advising future practice in the prevention of stalking. From this research, it may be possible to discern between maladaptive and adaptive responses on the part of the victim. From a crime prevention perspective, further examination of self-protective victim responses may show a relationship between early, adaptive responses, such as ‘taking legal action’, and the effective deterrence of an offender’s motivation and/or reduction in the “suitability” of a target (ie, the victim of stalking).<sup>111</sup> While state legislative provisions may ably capture stalking, too often victims feel helpless, and indeed, the impact of stalking can cause further victimisation by affecting family members and friends. Future research may be capable of developing best practice in thwarting stalking behaviour, which in turn will help victims manage and control their instance of stalking.

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<sup>110</sup> James and Farnham, above n 104.

<sup>111</sup> Cohen and Felson, above n 19.

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