

ELECTRONIC VERSION

# **STALKING LAW REFORMS**

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## **ABSTRACT**

*In November 1993, Queensland included specific anti-stalking provisions in its Criminal Code, making it the first state in Australia to enact such laws. Proposed changes to the offence of stalking provided for in the Criminal Code are now under discussion. This Research Bulletin examines the phenomenon of stalking and examines current proposals for reform, by reference to the Discussion Paper released in June 1998 and the Consultation Draft of the Criminal Law (Stalking) Amendment Bill released in October 1998. Details of anti-stalking laws in other Australian jurisdictions are also provided.*



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## 1. BACKGROUND

### 1.1 STALKING DEFINED

Stalking has been described as “*a novel offence in the law*”.<sup>1</sup> In lay terms, it connotes a slow, stealthy, persistent pursuit.<sup>2</sup> At law, it has been described as “... *a generic term .... which collectively describes a wide variety of fact situations where one person may follow, contact, put under surveillance, or otherwise harass or intimidate a second person, but stops short of committing an offence against that person or his or her property*”.<sup>3</sup>

The origin of stalking laws can be traced to the United States where they were introduced in the wake of celebrity stalking cases such as those involving singer John Lennon and actresses Jodie Foster and Rebecca Schaeffer, although subsequent research suggests intimate and acquaintance stalking is far more prevalent than celebrity stalking.<sup>4</sup> The first stalking statute was enacted in California in 1990.<sup>5</sup> All 50 American states, and Canada,<sup>6</sup> subsequently passed stalking legislation.<sup>7</sup> Stalking legislation seeks to fill the “... *niche of anti-social, threatening*

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<sup>1</sup> *Albrecht v Pryce*, Northern Territory Supreme Court Decisions, Nos AS28, AS45 of 1995, per Kearney J at p 31. At Internet at [http://www.austlii.edu.au/do/disp.pl/au/cases/nt/supreme\\_ct](http://www.austlii.edu.au/do/disp.pl/au/cases/nt/supreme_ct).

<sup>2</sup> *The Macquarie Dictionary*, 1981, p 1678.

<sup>3</sup> Hon DM Wells MLA, Criminal Law Amendment Bill, Second Reading, *Queensland Parliamentary Debates*, 9 November 1993, p 5473.

<sup>4</sup> Patricia Tjaden and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, April 1998: <http://www.ncjrs.org>

<sup>5</sup> RA Swanwick, ‘Stalkees strike back - the stalkers stalked: A review of the first two years of stalking legislation in Queensland’, *University of Queensland Law Journal*, 19(1), 1996, pp 26-44 at p 26.

<sup>6</sup> Canadian *Criminal Code*, s 264. See Swanwick, ‘Stalkees strike back’, p 26.

<sup>7</sup> *Stalking in America: Findings from the National Violence Against Women Survey*: <http://www.ncjrs.org>

course of behaviour which, it can be argued, is not properly or adequately covered by the current criminal law”.<sup>8</sup>

As Goode explains:

“... that gap occurs where one person causes another a degree of fear or trepidation by behaviour which is on the surface innocent but which, taken in context, assumes a more threatening significance. Where a person does not explicitly threaten another, but silently follows them around, or sits outside their dwelling, it may be difficult to find the appropriate criminal sanction”.<sup>9</sup>

## 1.2 EXAMPLES OF STALKING BEHAVIOUR

Specific activities falling under the umbrella of stalking include:

- following someone
- spying on them
- standing outside their home or place of employment
- making unsolicited phone calls
- sending unwanted letters or items
- vandalising property
- threatening to kill or killing a victim’s pet.

In Swanwick’s review of cases dealt with in the District Court of Queensland in the first two years after stalking legislation was introduced in Queensland in late 1993, more unusual conduct included cases in which an offender had:

- drilled observation holes through the ceiling of an ex-de facto’s home unit
- switched off the power to a complainant’s home at night
- left photos of his naked ex-wife at her place of employment for workmates to find before she arrived at work.<sup>10</sup>

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<sup>8</sup> Matthew Goode, ‘Stalking: Crime of the nineties?’ *Criminal Law Journal*, 19(1), February 1995, pp 21-31, at p 24.

<sup>9</sup> Goode, p 24.

<sup>10</sup> Swanwick, ‘Stalkees strike back’, p 34.

### 1.3 TYPOLOGY OF STALKING BEHAVIOUR

Research into stalking behaviour has suggested a basic typology of stalkers, as follows:

- *simple obsessional*: Here the stalker harasses a victim whom the stalker knows, such as an ex-spouse, ex-lover or former employer.
- *love obsessional*: Here the stalker and the victim are strangers, but the obsessed stalker begins a campaign of harassment to make the victim aware of the stalker's existence.
- *erotomania*: Here the stalker falsely believes that the victim, usually someone rich or famous, is in love with the stalker.
- *false victimisation syndrome*: where there is a conscious or unconscious desire to be placed in the role of a victim.<sup>11</sup>

However, other research has cautioned against a too facile stereotyping of stalkers.<sup>12</sup>

To generate information on stalkers' motivations, respondents to an American survey published in April 1998 were asked why they thought they had been stalked. Based on victims' perceptions, it would appear that much stalking is motivated by stalkers' desire to control or instil fear in their victims. By contrast with the commonly expressed view that many stalkers suffer some sort of mental illness, displaying a wide range of psychological or psychotic symptoms including erotomania, obsessive love and morbid jealousy,<sup>13</sup> the American survey reported that only 7% of victims said they were stalked because their stalkers were mentally ill or abusing drugs or alcohol.<sup>14</sup>

### 1.4 EMPIRICAL EVIDENCE

Key findings of the nation-wide American study referred to above included:

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<sup>11</sup> Zona, Sharman and Lane, 'A comparative study of erotomaniac and obsessional subjects in a forensic sample', *Journal of Forensic Science*, 1993, p 894, cited in Goode, p 30.

<sup>12</sup> DeBecker, 'Better to be wanted by the police than not to be wanted at all', unpublished paper, 1994, quoted in Goode, pp 30-31.

<sup>13</sup> see eg *Albrecht v Pryce*, p 31.

<sup>14</sup> Tjaden and Thoennes, p 6.

- Stalking is a gender-neutral crime; however, the majority (78%) of stalking victims were female and the majority (87%) of stalkers were males.<sup>15</sup>
- Most stalking cases involve victims and perpetrators known to each other; only 23% of female victims and 36% of male victims were stalked by strangers.<sup>16</sup>
- Women are significantly more likely than men to be stalked by intimate partners. 59% of women compared to 30% of men were stalked by partners (defined as current or former spouses, current or former boyfriends or girlfriends or current or former cohabitants). To test the popular opinion that stalking typically occurs after a woman breaks off a relationship, the survey asked women stalked by former husbands or partners when in the relationship the stalking started. 21% said the stalking occurred before the relationship ended, 43% said it occurred after the relationship ended and 36% said it occurred both during the relationship and after it ended.<sup>17</sup>

Swanwick's analysis of 43 cases dealt with in the District Court in the first two years of operation of Queensland's stalking legislation found:

- Stalking was primarily an offence where the perpetrator was male and the victim was female. Only four victims of stalking were men. There were only two stalkers who were female.
- The largest number of stalking situations had their genesis in a broken relationship (there were 25 such cases), with 13 cases arising from a relationship with a former spouse or de facto, and 12 from a non-conjugal relationship (boyfriend, girlfriend).
- The duration of stalking ranged from a few days to more than one year. In 23 cases, the stalker persisted after he or she had been arrested and charged or otherwise restrained. In *The Queen v Westrup*, the stalker continued to persist after being committed for trial.<sup>18</sup>

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<sup>15</sup> Tjaden and Thoennes, p 4.

<sup>16</sup> Tjaden and Thoennes, p 4.

<sup>17</sup> Tjaden and Thoennes, p 5.

<sup>18</sup> *The Queen v Westrup* (unreported, District Court Brisbane, Robertson DCJ, 11 November 1994), cited in Swanwick, 'Stalkers strike back', pp 32-33.

## 1.5 VICTIM IMPACT

The consequences for victims of stalking are generally agreed to be severe, with the potential for serious emotional harm to be inflicted. In *The Queen v Wilson*, His Honour Judge Pratt stated “... *stalking can involve a severe degree of emotional and psychological trauma to the victim of the stalking whatever the state of mind of the stalker might be ... It amounts to a subtle form of violation which adversely affects and is designed to affect the personality of the victim ... The mental consequences can be severe and they can lead in that sense to physical damage ... At the heart of the offence of stalking is the desire to subjugate the victim*”.<sup>19</sup>

Stalking victims may be unwilling to enter new relationships for fear they will be stalked again, leading to social isolation.<sup>20</sup> Money may be outlaid on obtaining a silent number, installing extra security lights or seeking legal assistance.<sup>21</sup>

## 2. THE CURRENT STALKING LAWS IN QUEENSLAND

In November 1993, the Queensland *Criminal Code* was amended by inserting ss 359A and 359B in order to extend protection in a variety of circumstances known collectively as stalking.<sup>22</sup> This made Queensland the first state in Australia to enact stalking legislation.<sup>23</sup> Some measure of protection may also be provided under the *Domestic Violence (Family Protection) Act 1989* (Qld) or the *Peace and Good Behaviour Act 1982* (Qld), depending upon the circumstances.

Queensland’s current anti-stalking laws are discussed in more detail below. The limited protection afforded by the Domestic Violence (Family Protection) Act and

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<sup>19</sup> *The Queen v Wilson* (unreported, District Court Brisbane, Pratt DCJ, 16 September 1994, transcript sentencing remarks, p 2), quoted in Swanwick, ‘Stalkees strike back’, p 35.

<sup>20</sup> Richard Evans, ‘Every step you take: The strange and subtle crime of stalking’, *Law Institute Journal*, 68(11), November 1994, pp 1021, 1023 at p 1023.

<sup>21</sup> *R v Cook*, Queensland. Court of Appeal, 23 March 1995, p 3.

<sup>22</sup> Hon DM Wells MLA, Criminal Law Amendment Bill 1993, Second Reading Speech, *Queensland Parliamentary Debates*, 9 November 1993, p 5473. Section 359B, which provided for summary proceedings for unlawful stalking, has since been repealed.

<sup>23</sup> Suzanne Harbidge, ‘Stalking - The Queensland legislation’, *The Queensland Lawyer*, 17(2), October 1996, pp 67-71 at p 67.

the Peace and Good Behaviour Act is discussed first, followed by an outline of the specific stalking provisions contained in the Criminal Code.

## 2.1 DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989

Section 11 of the *Domestic Violence (Family Protection) Act 1982* defines domestic violence in a way that includes intimidation or harassment, whether actual or threatened. However, the protection provided by the Act is restricted to persons who satisfy the definition of a spouse set out in s 12 (ie the Act allows a person being stalked by a spouse or de facto, ex-spouse or ex de facto, or the parent of the person's child or children to apply for a protection order (ss 13 & 14)). If the protection order is breached, the police can lay charges under s 19 of the Act. Breaching a protection order is an offence the maximum penalty for which is 40 penalty units (\$3000) or imprisonment for one year (s 80).

## 2.2 THE PEACE AND GOOD BEHAVIOUR ACT 1982

A person who is not covered by the Domestic Violence (Family Protection) Act may be able to use the Peace and Good Behaviour Act. Where a complainant can substantiate that someone has threatened to assault the complainant or damage his or her property and that the complainant is in fear of that person, a magistrate may make an order that the person complained of keep the peace and be of good behaviour (ss 4 & 6). A person who contravenes such an order is guilty of an offence, the maximum penalty for which is 100 penalty units (\$7500) or one year's imprisonment (s 10).

## 2.3 CRIMINAL CODE

Section 359A(1) of Queensland's Criminal Code provides that a person must not unlawfully stalk another person.

The elements of the offence of stalking are set out in s 359A(2). Stalking is said to occur if:

- the accused (described as the first person) engages in a **course of conduct** involving doing a **concerning act** on at least **two separate occasions** to another person or persons (whether the complainant (described as the second person), another person, or other persons)
- the accused **intends** that the complainant be aware that the course of conduct is directed at the complainant, even if the concerning acts, or

particular concerning acts, are done to, or to the property of, someone other than the complainant

- the complainant is **aware** that the course of conduct is directed at the complainant
- the course of conduct would cause a reasonable person in the complainant's circumstances (described as those circumstances known or foreseen by the accused and those reasonably foreseeable by the accused: s 359A(3)) to believe that a **concerning offensive act** is likely to happen.

A “**concerning act**” is defined in s 359A(7) to mean:

- following, loitering near, watching or approaching another person
- 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
- leaving offensive material where it will be found by, given to or brought to the attention of, another person
- giving offensive material to another person, either directly or indirectly
- harassing, intimidating or threatening another person
- committing an unlawful act against the person or property of another person.

In *The Queen v Clarke*, His Honour Judge Robertson commented that the definition of concerning act seemed to cover almost every known act of human behaviour.<sup>24</sup>

A “**concerning offensive act**” is defined as an unlawful act of violence by the accused against:

- the complainant or the complainant’s property;
- a person (eg a dependant, relative, employer or associate) other than the complainant about whose health or custody the complainant would reasonably be expected to be seriously concerned if the act was done, or
- the property of someone other than the complainant about whose property the complainant would reasonably be expected to be seriously concerned if the act was done (such as the premises where the complainant lives or works, or the property of a dependant, relative, friend, employer or associate): s 359A(7).

### 3. PROPOSALS FOR REFORM

On 30 June 1998, the Queensland Attorney-General, Hon MJ Foley MLA, released a Discussion Paper on proposed changes to the offence of stalking provided for in the Criminal Code. The consultation period ended on 10 August 1998. In October 1998, a Consultation Draft of the Criminal Law (Stalking) Amendment Bill 1998

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<sup>24</sup> *R v Clarke*, unreported, District Court Ipswich, Robertson DCJ, 27/2/95, p 10, cited in Swanwick, ‘Stalkees strike back’, p 31.

was released for public comment. The draft Bill was circulated to approximately 450 interested parties and posted on the Internet. Ads were placed in newspapers in Brisbane and major regional centres calling for submissions from the general public. The consultation period closed on 9 November.<sup>25</sup>

In the remainder of this *Research Note*, key elements of the existing s 359A are discussed in more detail and compared with the options for reform outlined in the Qld Government's Discussion Paper on Stalking, and the changes proposed by the Consultation Draft Bill.

### 3.1 COURSE OF CONDUCT

To satisfy this element of the current Queensland offence, it is necessary to establish that a concerning act was done on at least two separate occasions. Consequently, a single episode of protracted surveillance would not qualify as stalking under the Queensland legislation.<sup>26</sup> The Queensland position is further complicated by the Supreme Court decision in *R v Hubbuck*, where it was decided that the jury must agree on the same two concerning acts having occurred.<sup>27</sup> For example, it would not be sufficient if six jurors were satisfied that Incidents A and B occurred and were concerning acts and the other jurors were satisfied that Incidents B and C occurred and were concerning acts.<sup>28</sup>

Of the other Australian jurisdictions, South Australia's<sup>29</sup> and the Northern Territory's<sup>30</sup> stalking laws require the conduct complained of to have occurred on at least two separate occasions. The other Australian jurisdictions do not require that the behaviour complained of must have occurred on a particular number of occasions.

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<sup>25</sup> Hon MJ Foley MLA, Ministerial Statement, "Stalking Legislation", *Queensland Parliamentary Debates*, 21 October 1998, p 2590.

<sup>26</sup> *Queensland Government Discussion Paper on the Offence of Stalking*, June 1998, p 6.

<sup>27</sup> In *R v Hubbuck*, Pincus J applied the approach taken in the High Court decision of *KBT v The Queen* (1997) 72 ALJR 116 to stalking.

<sup>28</sup> *R v Hubbuck*, Queensland. Court of Appeal, unreported, 17 February 1998.

<sup>29</sup> *Criminal Law Consolidation Act* (SA), s 19AA.

<sup>30</sup> *Criminal Code* (NT), s 189(1).

In the Queensland Government *Discussion Paper on the Offence of Stalking* the view was expressed that:

“... *there is no necessity for a minimum number of acts to constitute a course of conduct. The expression ‘stalking’ clearly encompasses either a single protracted episode or repeated conduct. The jury should be allowed to concentrate on the true nature and gravamen of the offence, the course of conduct, rather than on particular occasions*”.<sup>31</sup>

### 3.1.1 The Consultation Draft Bill

The Consultation Draft Bill omits the requirement that the conduct alleged to constitute stalking should have occurred on at least two separate occasions. Instead, under the proposed new legislation, a course of conduct will include conduct which is protracted: **proposed new s 359A(2)(a)**.

Furthermore, under the proposed changes, if the conduct is engaged in on more than one occasion, it will not matter whether the conduct is the same or different on each occasion: **proposed new s 359A(2)(b)**.

## 3.2 THE ACCUSED’S INTENTION

Under the current Queensland legislation, the accused must intend that the complainant be aware that the course of conduct is directed towards him or her (ie even if a victim is severely adversely affected by someone’s stalking behaviour, it would appear that this element will not be satisfied unless the stalker intends that the victim be aware that the conduct is directed at him or her<sup>32</sup>). (However, by contrast with the position in the other Australian jurisdictions, the accused does not have to be shown to intend that certain consequences would follow (eg apprehension or fear, harm, physical or mental, or detriment to the complainant)).

### 3.2.1 The Consultation Draft Bill

Under the Consultation Draft Bill, it is immaterial whether the offender intends that the victim be aware that the offender’s course of conduct is directed at him or her: **proposed new s 359A(5)(a)**.

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<sup>31</sup> *Discussion Paper on the Offence of Stalking*, p 7.

<sup>32</sup> Swanwick, ‘Stalkees strike back’, p 29.

### **3.3 VICTIMS TO BE AWARE THAT COURSE OF CONDUCT IS DIRECTED AT THEM**

Currently, it is also a specific requirement of the Queensland legislation that the person being stalked be aware that the course of conduct is directed at him or her (ie this would appear to mean that no matter how vigorously a stalker is stalking his victim, if the victim is unaware that the stalker's course of conduct is directed towards him or her, then this element will not have been proven<sup>33</sup>).

#### **3.3.1 The Consultation Draft Bill**

The requirement contained in subsection 2(c) of the existing s 359A does not explicitly appear in the proposed new s 359A.

### **3.4 THREAT OF VIOLENCE - THE IMPACT ON THE VICTIM**

Under the Queensland legislation, to constitute the offence of stalking, the course of conduct engaged in must cause a reasonable person in the victim's circumstances to believe that a concerning offensive act (ie an unlawful act of violence against the complainant's person or property, or the person or property of someone about whom the complainant would reasonably be expected to be concerned) is likely to happen.

The Queensland Government Discussion Paper on Stalking stated as its preferred position:

- that the offence of stalking be redefined so that the course of conduct must cause the victim reasonably in all the circumstances to fear injury or detriment (a concept much wider than the existing reference to an unlawful act of violence), but that actual injury or detriment need not occur;
- that the intent of the offender should be irrelevant; and
- that circumstances be redefined to include:
  1. the alleged offender's circumstances
  2. the victim's circumstances that are known, foreseen or reasonably foreseeable by the alleged offender
  3. the circumstances surrounding the conduct
  4. any other relevant circumstances.<sup>34</sup>

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<sup>33</sup> Swanwick, 'Stalkees strike back', p 29.

<sup>34</sup> *Discussion Paper on The Offence of Stalking*, p 10.

### 3.4.1 The Consultation Draft Bill

Under the Consultation Draft Bill, the requirement that a reasonable person in the victim's circumstances would be caused to believe, because of the offender's course of conduct, that a "concerning offensive act" (ie an unlawful act of violence against a person or property) was likely to happen, has been omitted. Instead, under **proposed new s 359A(1)**, a person will be guilty of stalking if he or she engages in a course of conduct directed at a second person which :

- would cause the second person, reasonably in all the circumstances, to apprehend or fear -
  - unlawful violence to the second person or another person; or
  - violence against property of the second person or another person, or
- involves or causes -
  - detriment to the second person or another person; or
  - violence against property of the second person or another person.

**Proposed new s 359A(4)** goes on to explain that "**detriment**" means:

- physical injury, or
- another detriment (including for example those listed below) reasonably arising in all the circumstances -
  - apprehension or fear of unlawful violence to the person or another person, or violence against property of the person or another person
  - serious mental, psychological or emotional harm
  - prevention or hindrance from doing an act the person is lawfully entitled to do (eg where a person no longer ventures outside their residence or workplace)
  - compulsion to do an act that the person is lawfully entitled to abstain from doing (eg where a person significantly changes the route or form of transport they would ordinarily use to get to work).

**Proposed new s 359A(12)** redefines "**circumstances**" in the way proposed in the Discussion Paper (see above).

### 3.5 RESTRAINING ORDERS

The Discussion Paper on the Offence of Stalking canvassed the notion whether there should be a lesser charge of harassment. Four possible options were outlined:

- creating a summary offence of harassment, which could also be used as an alternative to the offence of stalking (Section 19AA(3) of the *Criminal Law Consolidation Act 1935* (SA) provides for a person charged with stalking to

be taken to have been charged in the alternative with offensive behaviour. If the court is not satisfied that the charge of stalking has been made out but is satisfied that the charge of offensive behaviour has been established, the court may convict the person of offensive behaviour.)

- providing for injunctions or restraining orders as an alternative to a charge of, or conviction for, stalking and making a breach of such an order an offence
- giving a court the power to make a restraining order at the same time as sentencing an offender
- amending the Peace and Good Behaviour Act to allow restraining orders to be made if harassment occurs even though there is no threat of assault or property damage. (Currently, a complainant must prove fear and a threat of assault or property damage to obtain a restraining order under the Peace and Good Behaviour Act. This would not provide protection to someone being harassed by obscene but otherwise non-threatening telephone calls which nonetheless caused considerable anguish.)<sup>35</sup>

### 3.5.1 The Consultation Draft Bill

The Consultation Draft Bill has adopted the third option above. **Proposed new s 359A(9)** provides that, in addition to any other order the court may make against a stalker, the court may make an order it considers appropriate, prohibiting all or particular contact. This may include prohibiting the stalker from contact, for a stated period, with the second person or another person or the second person's property or the property of another person.

Knowingly contravening an order made under **proposed new subsection 9** is made an offence under the Consultation Draft Bill. The maximum penalty which would be able to be imposed is 40 penalty units (\$3000) or one year's imprisonment: **proposed new s 359(11)**.

## 3.6 DEFENCES

In Queensland, it is a defence to a charge of stalking where the stalker can prove that his or her course of conduct was engaged in for the purpose of an industrial dispute or for a political or other dispute carried on in the public interest: s 359A(4).

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<sup>35</sup> *Discussion Paper on The Offence of Stalking*, pp 10-11.

### 3.6.1 The Consultation Draft Bill

The defences for genuine industrial and political disputes are retained under the Consultation Draft Bill: **proposed new s 359A(8)** but it has been suggested that alternative precedents (such as that contained in the United Kingdom's *Protection from Harassment Act 1997*) should be given further consideration.<sup>36</sup> The UK Act creates a summary offence of harassment (s 1) and a more serious offence of putting people in fear of violence (s 4). Under s 1(3) the prohibition on harassment does not apply where a person can show that:

- his or her course of conduct was pursued for the purpose of preventing or detecting crime
- the course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed under any enactment
- that in the particular circumstances the pursuit of the course of conduct was reasonable (this exemption is included to safeguard the legitimate activities of people such as journalists, salesmen, religious activists, debt collectors, private investigators or political canvassers<sup>37</sup>).

The first and second exemptions above are also defences to a charge under s 4. A person charged under that section will also have a defence if he or she can establish that the course of conduct pursued was reasonable for his or her protection or the protection of another or for the protection of his or another's property.

### 3.7 SCOPE OF THE LEGISLATION

Recent Queensland incidents in which charges of stalking have been laid as a result of neighbourhood disputes have raised the question whether the legislation was intended for this purpose.<sup>38</sup> **Appendix A** contains news articles dealing with this and other aspects of stalking.

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<sup>36</sup> Sally Kift, 'Stalking law reform under lawful scrutiny', *Proctor*, September 1998, pp 19-22 at p 20.

<sup>37</sup> United Kingdom. *House of Commons Hansard Debates*, Column 784, 17 December 1996.

<sup>38</sup> Stephen Lamble, 'Mum's a stalker', *Sunday Mail*, 25 October 1998, p 3; Stephen Lamble, 'Backyard brawl', *Sunday Mail*, 22 November 1998, p 29.

### 3.8 PENALTIES

Under the current Queensland legislation, the maximum penalty for stalking is three years imprisonment, unless the stalker also:

- unlawfully uses or threatens to use unlawful violence against another person or another person's property;
- is in possession of a weapon; or
- contravenes an injunction or court order or threatens to do so,

in which case the maximum penalty which may be imposed is increased to five years.

#### 3.8.1 The Consultation Draft Bill

The Consultation Draft Bill retains the above penalties for stalking simpliciter, and stalking with circumstances of aggravation.

### 3.9 SENTENCES

In a paper published in 1996, Swanwick reviewed the operation of Queensland's stalking legislation during the first two years since its introduction.<sup>39</sup>

Court of Appeal decisions against sentences handed down by the District Court in *R v Cook* and *R v Kyriakou* give some idea of the factors that had been taken into consideration in charges of stalking.

In *R v Cook*,<sup>40</sup> the complainant was an elderly librarian, under whose supervision the appellant had worked for almost two years.

In November 1993, the appellant made an obscene phone call to the complainant, later rang back and apologised and resigned from the library the same day.

In February 1994, the appellant began making a series of obscene calls to the complainant, including accusations that she was a lesbian, that the only good lesbian is a dead lesbian, and that he would be seeing her. On one occasion, he told the complainant that he was coming to get her.

The applicant, who pleaded guilty to a count of unlawful stalking with a circumstance of aggravation, was sentenced in the District Court to imprisonment

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<sup>39</sup> Sentencing issues are discussed in Swanwick, 'Stalkees strike back', pp 37-39.

<sup>40</sup> *R v Cook*, Queensland. Court of Appeal, unreported, 23 March 1995.

for one year, suspended after three months on condition that he be of good behaviour for two years. The sentencing judge took into account the appellant's plea of guilty and his chronic alcoholism. However, the judge also referred to the need for deterrence and said that, although the threats were of low-grade obscenity, they had been repeated a number of times. Accordingly, the sentencing judge decided that a custodial sentence was appropriate.

The Court of Appeal, after taking into account the appellant's difficult personal circumstances, his apparent willingness to continue to seek assistance for his psychiatric and alcohol problems, and the support he had received from a senior officer of his former employer, decided that a prison sentence was not necessary. A sentence of three months imprisonment, suspended for one year, was substituted for the original sentence.

In *R v Kyriakou* the appellant appealed against a sentence of six months imprisonment, upon a conviction of unlawful stalking, which had involved going on several occasions to the female complainant's workplace and home, and exhibiting fairly bizarre behaviour including talking nonsense and dancing around in front of her. On appeal, on the ground that the sentence was manifestly excessive, the Court of Appeal said:

*"... we disagree ... that in the applicant's case imprisonment 'had become inevitable'. This is a case, in our view, which upon all the material, calls for an order which will provide some assistance to the applicant in gaining social skills. This can best be done by making, with the consent of the applicant, an order that he be placed on probation for a period of two years and in addition to the usual conditions that there be a special condition that he receive medical, psychological and psychiatric examination, treatment, counselling and advice. Should there be a repetition of conduct of the sort which led to his conviction, which involves a breach of his probation order, further consideration may then be given to whether a custodial sentence is required."*<sup>41</sup>

In a further paper published in October 1998, Swanwick traced the continuing evolution of Queensland's stalking legislation.<sup>42</sup> Analysing the impact of the legislation during its third and fourth years of operation, Swanwick noted that sentences had generally followed the pattern set during the first two years. Sentences of imprisonment have been imposed only sparingly, usually after trials. *R*

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<sup>41</sup> *R v Kyriakou* (1994) 75 A Crim R 1, quoted in *Albrecht v Pryce*, pp 29-30.

<sup>42</sup> RA Swanwick, 'The unreasonable stalkee, the egg shell skull rule and the continuing evolution of stalking law in Queensland', *Queensland Lawyer*, 19(2), October 1998, pp 67-75. Sentencing issues are discussed at p 71.

*v Fitzgerald*,<sup>43</sup> in which a custodial sentence of four years was imposed upon a conviction on a charge of stalking with aggravating circumstances, was the heaviest sentence that had been imposed. Where defendants have pleaded guilty, non-custodial sentences continue to be the most common sentences imposed.

## 4. A COMPARATIVE SURVEY

### 4.1 SOUTH AUSTRALIA

In South Australia, stalking is dealt with under s 19AA of the *Criminal Law Consolidation Act 1935*.<sup>44</sup> The elements of the offence are an intention to cause serious physical or mental harm or serious apprehension or fear. The stalking behaviour must have occurred on at least two separate occasions. The maximum penalty is five years imprisonment if the stalking behaviour was in contravention of an injunction or court order or the offender possessed an offensive weapon on any occasion to which the stalking charge relates, and three years otherwise.

### 4.2 VICTORIA

Under Section 21A of the *Crimes Act 1958* (Vic),<sup>45</sup> the Victorian legislation does not require the stalking behaviour to have occurred on a specified number of occasions. Rather, the legislation proscribes a course of conduct (s 21A(2)) which may include:

- 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 other person's residence or workplace or any other place frequented by the victim or other person
- interfering with property in the victim's or any other person's possession

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<sup>43</sup> *R v Fitzgerald*, unreported, District Court, Ipswich, Judge Robertson, 19 June 1996, cited in Swanwick, 'Continuing evolution of stalking law in Queensland', p 71.

<sup>44</sup> inserted by the *Criminal Law Consolidation (Stalking) Amendment Act 1994* (SA).

<sup>45</sup> inserted by the *Crimes (Amendment) Act 1994* (Vic).

- giving offensive material to the victim or any other person, or leaving offensive material 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 safety or the safety of any other person (a catch-all provision).

There must be an intent to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for the safety of the victim or any other person (s 21A(2)). It must also be proved that the stalking conduct actually did have that result (s 21A(2)).

Section 21A(3) goes on to provide that an offender will also be taken to have the requisite intention (above) if the offender knows or ought to have understood, in all the particular circumstances, 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.

The penalty for stalking under the Victorian legislation is Level 5 imprisonment, equivalent to a maximum of 10 years imprisonment,<sup>46</sup> described by Wiener as “*particularly high for the type of conduct to be proscribed*”.<sup>47</sup> There is no provision for a simple offence with a less severe penalty versus an aggravated offence carrying a more severe penalty.

According to the Second Reading Speech at the time the anti-stalking legislation was introduced, the reference to “any other person” is meant to be directed to a child or spouse of the victim about whose health or safety the victim could be expected to be concerned.<sup>48</sup>

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<sup>46</sup> *Sentencing Act 1991* (Vic), s 109(1).

<sup>47</sup> Deborah Wiener, ‘Stalking: criminal responsibility and the infliction of harm’, *Law Institute Journal*, 69(1), January 1995, pp 30-33 at p 30.

<sup>48</sup> Crimes (Amendment) Bill 1994 (Vic), Second Reading, Legislative Assembly, Mr Coleman, Minister for Natural Resources, *Victorian Parliamentary Debates*, 20 October 1994, p 1384.

### 4.3 NEW SOUTH WALES

In New South Wales, the elements of the offence of stalking involve an intent to cause the person stalked to fear personal injury (*Crimes Act 1900* s 562AB(1)). Under the legislation, causing a person to fear personal injury includes causing the person to fear personal injury to someone else with whom he or she has a domestic relationship (s 562AB(2)). The element of intent is satisfied if the offender knows that his or her conduct is likely to cause fear in his or her victim (s 562AB(3)). It is not necessary to prove that the person alleged to have been stalked actually feared personal injury (s 562AB(4)).

Under the NSW legislation, stalking is defined to mean:

- following a person about, or
- watching or frequenting the vicinity of or an approach to a person's place of residence, business or work or any place that a person frequents for social or leisure activity: s 562A(1).

The penalty for stalking under the Crimes Act is imprisonment for five years, or a fine of 50 penalty units (\$5000),<sup>49</sup> or both (s 562AB(1)).

### 4.4 WESTERN AUSTRALIA

In Western Australia, stalking is dealt with under ss 338D and E of the *Criminal Code*, which were inserted by the *Criminal Law Amendment Act 1994* as part of a reform package to tackle serious crime. In introducing the amending legislation to the WA Legislative Assembly, the then Attorney-General stated:

*“The current laws on stalking and restraining orders are inadequate and do not reflect modern community concerns. Most people understand stalking to mean surveillance, harassment and/or intimidation, without any currently recognised form of offence being committed. In particular, the current law takes no account of the mental strain and fear that stalking can cause an individual”.*<sup>50</sup>

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<sup>49</sup> *Interpretation Act 1987* (NSW), s 56.

<sup>50</sup> Criminal Law Amendment Bill 1994 (WA), Second Reading, Legislative Assembly, Hon Mrs Edwardes, Attorney-General, *Western Australia Parliamentary Debates*, vol 317, 27 October 1994, p 6286.

Under the Western Australian Criminal Code as it now stands, the elements of the offence of stalking are an intent to:

- prevent or hinder the lawful doing of an act by the victim, or
- compel the victim to do an act he or she is lawfully entitled to abstain from doing, or
- cause physical or mental harm to the victim or apprehension or fear in the victim.

Prior to the changes enacted by the Criminal Law Amendment Act, a charge of intimidating or annoying a person by violence or otherwise could be laid under s 550 of the Criminal Code; however, the penalty was only three months imprisonment or a \$40 fine; moreover, s 550 (now repealed) did not provide for the mental element of intent to cause physical or mental harm or apprehension or fear.<sup>51</sup>

The maximum penalty for the current offence of stalking is three years, unless the offence is committed in circumstances of aggravation (such as being armed with a weapon or being in breach of a restraining order: s 338E(4)) in which case the offender is liable to a maximum penalty of eight years.

If the offence is dealt with summarily, the maximum penalty is imprisonment for two years or a fine of \$8000 if there are aggravating circumstances and imprisonment for 18 months or a fine of \$6000 otherwise.

Under the Western Australian legislation, it is a defence to a charge of stalking if the accused acted with lawful authority or reasonable excuse (s 338D(2)).

#### 4.5 TASMANIA

Under s 192 of the Tasmanian *Criminal Code*,<sup>52</sup> stalking occurs if a person does any of the following things with the intention of causing another person physical or mental harm, apprehension or fear:

- following the other person or a third person
- loitering outside the residence of the other person or a third person
- entering or interfering with the other person's property or the property of a third person

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<sup>51</sup> Criminal Law Amendment Bill 1994 (WA), Attorney-General's Second Reading Speech, p 6286.

<sup>52</sup> inserted by the *Criminal Code Amendment (Stalking) Act 1995* (Tas).

- keeping the other person or a third person under surveillance
- giving offensive material to or leaving it lying around 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.

#### **4.6 NORTHERN TERRITORY**

In the Northern Territory, the offence of stalking was introduced into the Criminal Code in 1994. The relevant section is s 189. The elements of the offence are an intent to cause physical or mental harm or apprehension or fear. The behaviour complained of must have occurred on at least two separate occasions. A person found guilty of stalking is liable to imprisonment for two years (s189(2)(a)). Section 189(2)(b) provides for a maximum of five years imprisonment, if the stalking is accompanied by aggravating circumstances (eg if the stalker is contravening a condition of bail).

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*Crimes Act 1900 (NSW)*, s 562A and s 562AB

*Crimes Act 1958 (Vic)*, s 21A

*Criminal Law Consolidation Act 1935 (SA)*, s 19AA

*Criminal Code (WA)*, ss 338D and E

*Criminal Code (Tas)*, s 192

*Criminal Code (NT)*, s 189

*Protection from Harassment Act 1997 (UK)*

*Canadian Criminal Code*, s 264.

**APPENDIX A - NEWS ARTICLES**

**Title**            **Stalked.**

**Author**          **LAMBLE, STEPHEN**

**Source**          **SUNDAY MAIL**

**Date Issue**     **22/11/98**

**Pages**          **28**

A new survey has opened a window into the terrifying world of the stalker.

It is a world of pain and power games with some victims suffering for years.

One of the few Australian studies into the effects stalking has on victims is being conducted by Bond University post graduate psychology student Julie Monico, who has worked with 45 victims.

She said 65% of them had been stalked "for love", 20% for no discernible reason and 15% for other reasons such as disputes with neighbours.

"It certainly has a huge effect on the victims' lifestyles," she said. "It is not like any other crime, it keeps occurring. It is not just a single event with a single crime scene.

One of the people in my study had been stalked for seven years.

Two-thirds had to change their residence. One in five had to stop working and 43% had to change their place of work.

Over half the victims were stalked by an ex-partner. They are the ones who are more likely to be assaulted."

Ms Monico said she believed it would be wrong to exclude neighbourhood rows from the stalking legislation.

"It is still stalking because it encompasses behaviour like phone calls, letters and harassment.

"But it is really difficult to charge a neighbour with stalking because they are entitled to be there - right next door.

Bond University's head of psychology, Professor Bob Montgomery, said many stalkers were otherwise normal people.

"The most common context for stalking is a failed or desired relationship," he said.

"There is a smaller group who are seriously psychologically disturbed. They have fantasies about the person they are stalking.

"They fantasise a relationship and misinterpret the feedback from the person they are stalking."

Professor Montgomery said it was extremely difficult to counter a determined stalker.

"Often the victims have to move, change jobs and pay quite a big social cost to get away from a persistent stalker. You can get an apprehended violence order but it can be hard to have it enforced."

State Government moves to toughen the stalking laws have been welcomed by victims but have sparked fears they may be used as a weapon in neighbourhood disputes.

The changes are also worrying private investigators who fear tougher laws could rebound on them.

Acting Inspector Greg Thomas of the Queensland Police Service's legislation development unit said, under the current law, stalking had to take place on at least two occasions before police could act on a complaint.

Further, the conduct of the stalker had to cause "a reasonable person" to believe an "offensive act" was likely to happen.

"It actually has to include an unlawful act of violence, so it is confined to violence against a person or property," he said.

At present a person convicted of stalking can be jailed for up to five years and be made to pay a victim's compensation.

Attorney General and Justice Minister Matt Foley said the penalties were under review and the new legislation was designed to better define what a "reasonable person" would consider an "offensive act".

It also recognised that stalking could cause psychological harm, not just physical harm and the requirement for two or more instances of stalking to occur before police could act would be dropped.

"The new bill also proposes to give the courts the power to order a convicted offender to refrain from contact with a victim of stalking," he said.

**Title**            **Tighter laws on table.**

**Author Taylor, Chris**

**Source**         **SUNDAY MAIL ( 151 )**

**Date Issue**    **01/11/98**

**Page**            **4**

STALKING laws will be widened to include mental, psychological and emotional harm to the victim under a new proposal to go before Parliament by the end of the year.

Just the fear of violence would be enough to bring stalking charges.

The draft bill also expand acts of stalking to include offences against property, relatives, friends and associates of victims.

The definition of the offence will be extended to include: Following, loitering, watching or approaching another person.

Telephoning another person following a complaint.

Loitering near, watching, approaching or entering a place where another person lives, works or visits.

Interfering with property in possession of another person.

Leaving offensive material where it will be found by, given to or brought to the attention of another person.

An intimidating, harassing or threatening act against another person.

An unlawful act committed against the property of another person.

**Title**            **Cell phone stalker.**

**Author** **Lawrence, Kara**

**Source**         **SUNDAY MAIL ( 151 )**

**Date Issue**    **01/11/98**

**Page**            **4**

A MAN jailed for stalking his ex-girlfriend allegedly continued to torment her from prison with a mobile phone.

Philip David Jackson, 44, was sentenced to four years' jail in June last year for intimidating Kathy Grinter.

He made obsessive calls to her Brisbane home, mobile and work numbers.

When Ms Grinter continued to receive harassing calls while Jackson was in custody, she sought and was granted another two-year protection order in July.

Mobile phones are banned in Queensland jails.

But another of Jackson's former girlfriends insists he obtained a phone while in custody.

She has supplied the Queensland Community Corrections Board with two mobile phone numbers and details of a telephone betting account.

The board will review Jackson's case at a meeting on Tuesday. The prisons investigation unit is checking phone records.

The information came to light two months ago when Jackson's latest girlfriend broke off their engagement and contacted Ms Grinter.

That's also when Ms Grinter, who was supposed to be notified of Jackson's every move within the jail system, learnt he had been out on regular weekend release for months.

Helen (not her real name) met Jackson in 1996 when he was on bail charged with stalking Ms Grinter.

They became engaged last year.

She said she rang Ms Grinter after she dumped Jackson in August.

Helen told her Jackson had obtained a mobile phone from another prisoner in Moreton Correctional Centre, and bought another under his ex-wife's name while at Maconachie Correctional Centre, near Burpengary, where he moved on April 28.

Helen also told Ms Grinter Jackson had visited her on weekend release since May.

Corrective Services Investigation Unit head Det Insp Bob Pease said the unit was getting telephone records.

Jackson denied making the calls.

A Queensland Corrective Services Commission spokesman said low- security prisoners could have mobile phones for work with the permission of supervisors.

Allan Lewis, manager of the St Vincent de Paul Community Corrections Centre where

Jackson was moved on October 5, said Jackson did not have permission for a phone.

**Title**            **Advocate for the underdog.**

**Author** FIFE-YEOMANS, JANET

**Source**         **Australian ( 80 )**

**Date Issue**    **27/10/98**

**Page**            **4**

Article: Snowy-haired and ruddy-cheeked, with Alastair Nicholson, what you see is what you get - he hides behind no judicial facade.

The Chief Justice of the Family Court is said to be at once a big softy and a champion of the underdog, while at the same time aggressive when fighting for his court.

Since he was appointed to what is arguably the country's most unenviable judicial position as head of the Family Court, he has not been backward in coming forward, regularly making headlines.

He's usually sticking up for those underdogs - children, Aborigines, the stolen generation, domestic violence victims while at the same time angering others such as men's groups.

He has more supporters than detractors among lawyers, but even his biggest fans wonder if sometimes he goes too far when he crosses the line into political debate as he antagonises those he needs on his side.

"There's more than one way of skinning a cat, but that's his way," said one family law practitioner of Justice Nicholson's escalating and increasingly personal spat with federal Attorney-General Daryl Williams.

It is said by associates of the Chief Justice not to be a brawl he sought, but one he was

forced into by savage cuts to legal aid and a refusal by the Federal Government to appoint more judges.

An only child whose parents ran a rubber plantation in Papua New Guinea, Alastair Nicholson was sent at the age of eight to boarding school in Melbourne, making the long trip home alone once a year.

The judge and his wife, with three daughters of their own, were for many years members of Kids in Care, a group providing emergency foster care for children in need.

He stood in 1972 and 1974 as an ALP candidate for the Victorian seat of Chisholm, but gave up politics long before his appointment to the bench of the Victorian Supreme Court in 1982.

He moved to the Family Court hot seat in 1988, when the court had been shaken by the murder of one judge and of another's wife.

"He doesn't come out of the same mould as many other chief justices do, but then he has a different sort of court," Law Council family law section head Michael Tausig QC said.

**Title** Mum's a stalker.  
**Author** LAMBLE, STEPHEN  
**Source** SUNDAY MAIL ( 151 )  
**Date Issue** 25/10/98  
**Pages** 3

A NEIGHBOURS' spat over an electric fence escalated into a police stake-out, an armed raid and a middle-aged mum being found guilty of stalking.

The bizarre events near Gympie ended, in the trial judge's words, with "a perfectly agreeable woman" who had led "a blameless life" being found guilty of stalking.

Donna Savage, 50, feels humiliated by the verdict and can't believe anti-stalking laws were intended for such circumstances.

While the dispute simmered, Mrs Savage and her invalid husband Gordon, 55, had their every movement recorded by neighbour Lynette White.

During their trial, it was claimed the Savages made rude gestures towards Ms White, stared at her while loitering in their yard and threatened and harassed her.

It was also claimed their 15-year-old daughter Joy drove a car up and down their property to harass Ms White.

But court records show the Savages themselves were kept under surveillance by Ms White from as early as 4am until as late as midnight.

For nine months she watched their outdoor movements through a telephoto lens and logged such mundane details as Mr Savage painting his gateposts and cuddling his cat.

In November 1996, Ms White told police she feared the Savages might kill her or hire a hitman, and she suspected Mr Savage had a gun.

The next month, police officers hid for a day in a shed on Ms White's property and videotaped the Savages moving around their property and on their back veranda.

Three weeks later, two armed detectives searched the Savages' home and found two plastic water pistols.

Mr and Mrs Savage were arrested on stalking charges and not released from Gympie police station until 2am the following day.

Mr Savage was acquitted after a seven-day District Court trial in July.

Sentencing Mrs Savage, Mr Justice McLauchlan said the matter was difficult because it arose from a neighbourhood dispute and such matters were usually resolved without resort to criminal charges.

"You were acting within your rights, in one sense, in that you were behaving on your own property in ways which you would be entitled to behave if it were not for the legislation which confronts you - the stalking legislation," he told Mrs Savage.

Mr Justice McLauchlan said Ms White had been "somewhat abrasive" but Mrs Savage appeared to have hounded her.

However, he said, Mrs Savage had no criminal history and was otherwise "a perfectly agreeable woman" who had led a "blameless life".

She was put on two years' probation but no conviction was recorded.

The Savages live on a 4ha block at Widgee, 24km west of Gympie.

Ms White lives by herself on a similar-sized block about 90m away, separated by an electrified boundary fence.

It was alleged the dispute started because the Savages feared a jolt from the electrified fence could kill the family's 30-year-old horse Flicka.

Ms White has recently launched a civil court action seeking \$25,000 compensation from Mrs Savage.

In July, Mrs Savage wrote to Attorney-General Matt Foley asking him to review the stalking laws.

Yesterday he said he could not comment on a specific case without being aware of all the facts.

"But the whole of the stalking law is under review and we are happy to take on board concerns expressed from all quarters."

Ms White declined to comment.

**Title**

**Author Koch,**

**Source Courier Mail ( 59 )**

**09/10/98**

**Page**

A SCHOOLBOY stalked a younger student, tried to run him over, made death

Brisbane Magistrates Court was told yesterday.

at the time, had threatened the Year 9 boy at school and at work before allegedly

Youth Club dance at Carina this year.

The youth, who cannot be named because

offences, faced 10 charges, including going armed to cause fear.

fellow former Mansfield High School student Ben Lawrence because Lawrence

committal hearing was told.

The youth, now 17, smirked, yawned and

allegations he stalked his "enemy" Lawrence between February and July this

Lawrence, who has since changed schools, said the youth had warned him he was

dead".

Lawrence told the court he began to "worry

have a driver's licence, drove a car on the

footpath, stopping only 1m from Lawrence

Lawrence said that when he asked the youth the reason for his behaviour, he

he was going to beat up (the youth's) friends".

the youth told him.

"Your time is coming."

he was standing waiting for a bus then drew a double-barrel shotgun from his car

driving off.

The youth, now a tree lopper, entered no

going armed to cause fear, unlawful stalking and dangerous conduct.

unlicensed driving and two charges of obstructing police.

fixed.

**Title**            **Indecent obsession (stalking).**

**Author** **Gibson, Rachel**

**Source**        **AGE ( 99 )**

**Date Issue**    **24/09/98**

**Page**         **18**

Article: Judith Durham doesn't go out much at the moment.

She sleeps badly and eats little.

A woman who has stood before halls filled with thousands of strangers is now wary of what she might find on her doorstep.

Psychologically, the Seekers' lead singer has been badly shaken.

She alleges that for the past five years she has been stalked, harassed and threatened by a former friend and fan - who ultimately sent 42 doormats to her apartment because she felt Durham had treated her like one.

Last month, seeking an intervention order to prevent Margaret Dahlstrom from contacting her for 12 months, Durham told the County Court she felt her life had been invaded.

"I'm not well and I am very, very stressed at the moment," she said.

"My memory is bad, I do very strange things.

I don't know which button to press on the tape recorder." On another occasion, she said she felt embarrassed, compromised and defenceless.

Her friend and biographer, Graham Simpson, says Durham has found it difficult to concentrate.

"Things that she did every day of her life, she'd just sit there and think 'I don't know what to do'," Simpson says.

"She couldn't focus on anything; it was like 'I can't think, I just can't think.

I need to lie down'."

Such feelings are not uncommon in stalking cases.

Former Triple J broadcaster Helen Razer has spoken of anxiety attacks so severe she vomits when she goes to her former workplace.

Razer, who was stalked by a deluded 23-year-old university student who had convinced himself they were married, has said her confidence has been so diminished she may never return to live radio.

Other victims of stalking have described their experience as "emotional rape" or "psychological terrorism".

Yesterday, 60 Minutes reporter Liz Hayes became the third Australian public figure this year to seek court protection from a stalker.

In a Sydney court, a 32-year-old man, who had been writing to Hayes for 10 years and claimed "genuine feelings of love" for her, undertook to cease contact with Hayes.

While the experts say stalkers seldom turn to physical violence, the impact on their victim's life can be devastating.

Dr Allen Barlow, a psychotherapist at the University of Western Sydney, who has worked with and researched stalkers and their victims for 15 years, says: "In a sense, it's not too different to victims of rape." "The person

becomes much more isolated; their circle of friends closes down; they often become agoraphobic; their productivity goes down; they become much less adventurous; they start to look for safe havens the whole time ...

"Their lives are significantly depreciated in almost every sense of the word and that has a huge personal cost, family cost, community cost and overall social and economic cost to the nation," he says.

A new study by Queensland's Bond University, looking at the impact of stalking, is expected to find that a large proportion of victims meet the criteria for post-traumatic stress disorder, a diagnosis normally associated with victims of rape or extreme violence.

Professor Bob Montgomery, who is leading the study - based on detailed psychological assessments of 50 victims - says stalking is far more common than is widely known.

Recent research by the Australian Bureau of Statistics found 10 per cent of all Australian adults had been victims of stalking at some time and Montgomery says: "Certainly, when we invited people who'd been stalked to take part in our research project, we just got swamped."

Usually, stalkers know their victim - sometimes intimately, either through a romantic attachment or a friendship that has soured.

Despite the publicity surrounding cases involving obsessed fans of famous people such as Madonna, Steven Spielberg, Jodie Foster and Princess Anne, so-called celebrity stalkings are relatively rare.

In a study of 100 victims of stalking, Melbourne forensic psychiatrists Professor Paul Mullens and Dr Michele Pathe found 29 victims had been stalked by former partners; 34 by a person they had met professionally or in a work-related context; 21 by a neighbour or person they had met socially; and

16 by strangers.

Ten cases involved women who were stalked by other women.

Most research points to men as the primary perpetrators, but Barlow believes female stalkers may actually be in the majority.

It is just that we don't hear about the male victims, partly because men stalked by women are treated less seriously by society, he says.

Stalking can take several forms: following a person, sending letters (sometimes many in one day), gifts, phone calls, e-mails, surveillance, verbal threats and, in some cases, physical assaults.

But Mullen and Pathe note it can also include more insidious forms of harassment, such as ordering goods on the victim's behalf, making false accusations, threatening or harassing friends or relatives of the victim, or launching spurious legal actions.

Durham received up to six doormats a day in the weeks leading up to her court appearance last month.

Since then, the woman who once ran her fan club has appealed against the intervention order (the action was

dismissed) and lodged civil and criminal proceedings against the singer, alleging defamation and perjury.

In some cases of persistent stalking, where there was once a relationship with the victim, the stalker is driven by their need to maintain contact, Montgomery says.

The stalker may be socially inadequate and over-value the relationship because they have little else.

“If you've got a reasonably mixed lifestyle and a range of relationships and rewards, if something goes wrong, there's a whole lot of other stuff to buffer you,” he says.

“If you're very mono- manically obsessed with just one area and that starts to go wrong, it hits you hard.”

Unfortunately, the law is often little help.

Anti-stalking legislation was first introduced in California in 1990 after a spate of well-publicised celebrity stalkings, including the case of John Hinckley, who shot President Ronald Reagan in the belief it would win him the affections of Jodie Foster.

Most Australian states passed similar laws a few years later. But although the need for uniform national legislation has been acknowledged, it is still some way off.

Victoria, which introduced legislation in 1994, allows for the toughest penalties in the country, up to 10 years imprisonment.

But Barlow quotes court figures showing that a high proportion of cases that come before the Australian courts are dismissed (68 per cent in Victoria).

Montgomery says the heart of the problem is that the law requires that an “intent to harass” be established.

“That, of course, is quite difficult,” he says.

“The stalker can say, 'I love this person, I'm being nice to this person, I only want to make this person's life wonderful'.

“I think the law needs to be reconsidered in terms of the actual impact on the victims, regardless of the intent of the perpetrator,” he says.

A report recommending uniform national measures, released by Justice Minister Amanda Vanstone last month, suggested the offence of stalking should be extended to include “non-serious” harassment.

“There can be little doubt that there is a niche of anti-social, threatening behavior which, it can be argued, is not properly or adequately covered by the current criminal law,” it said.

Even when an intervention order is obtained, it is often ineffective.” More stalkers than not will violate those (apprehended violence orders), which means that the law has very little impact in protecting a

victim, because the perpetrator is being driven by a compulsion or emotion that is really beyond our conception of rationality,” Barlow says.

In Durham's case, it took a mere six hours for her alleged stalker to breach the intervention order she had obtained.

The woman called one of her friends, threatening to commit suicide, then sent Durham a 12- page fax.

As her friend Graham Simpson notes, the singer is left to wonder where it will all end.

**Title**            **Stalker took knife and ring to court.**  
**Author**         **Butcher, Steve**  
**Source**          **AGE ( 99 )**  
**Date Issue**     **01/08/98**  
**Page**            **12**

Article: A man who stalked a woman for a year took a kitchen knife and a diamond ring to court on the day she sought an intervention order to restrain him, the Melbourne Magistrates Court was told yesterday.

The magistrate, Mr Maurice Gurvich, said Warwick Gordon Ramseyer had engaged in menacing behaviour and had become obsessed with the woman who was subjected to distress, nausea and fear.

Ramseyer's victim had earlier told the court that she hid in a rear room at her work and once locked herself in the storage area when he appeared.

Mr Gurvich said that Ramseyer, 23, wrote two letters to the woman, which he told police after his arrest were "weird" and "sick".

Ramseyer pleaded not guilty to charges of stalking between March 1997 and April this year and to being armed with an offensive weapon.

Mr Gurvich heard In May that, after Ramseyer began attending the woman's work daily, he asked her out up to 10 times, but she refused, saying she had a boyfriend and then avoided him "at all costs". The court was told he twice arrived with portraits he had painted of her and gave her letters, which were offensive and suggestive.

Court security discovered the knife on Ramseyer when he was searched on 16 April before the hearing of the intervention order.

After being found guilty, Mr Gurvich remanded Ramseyer in custody for three pre-sentence reports and sentenced him yesterday.

Mr Justin Hannebery, defending, said Ramseyer was prepared to consent to an indefinite intervention order - part of which bans him from going within 200 metres of her.

Mr Gurvich said part of Ramseyer's defence, that the woman had fabricated the letters, was at best fanciful and at worst a "wicked lie".

He said Ramseyer desperately needed urgent treatment for a disorder. Ramseyer, formerly of St Andrews Road, Bayswater, was jailed for 12 months, the term to be served in the community by way of an intensive correction order.

He was also jailed for 180 days, 100 of which he had already served, with the balance suspended for two years.

Mr Gurvich urged Ramseyer's case be closely monitored and ordered him to attend a psychiatric clinic run by Professor Paul Mullins, a consultant forensic psychiatrist.

**Title**            **New stalking laws head Foley's crime reforms.**

**Author** **Retschlag, Christine**

**Source**         **Courier Mail ( 59 )**

**Date Issue**    **01/07/98**

**Page**            **4**

Article:         QUEENSLAND Attorney-General Matt Foley has pledged to "get tough" on crime, targeting stalkers as the first victims of a Labor law policy he yesterday vowed would be "fair dinkum".

Mr Foley yesterday announced the proposed legislation aimed at safeguarding victims of stalkers, which would effectively give the courts power to make protective orders against offenders.

"We want to get on with the job and to act promptly.

The origin of these reforms came about through a series of amendments that Labor moved in the Parliament while in Opposition," he said.

"Victims of crime are not simply witnesses to be paraded through a court case.

"They are absolutely at the centre of the criminal justice process and we need to ensure that the process of reform of the criminal law recognises just that."

The proposed changes to the legislation, introduced by the Labor government in 1993, would empower courts to make an order that a convicted offender refrain from contact with a stalking victim.

They also would extend protection to cases where the stalking involved serious psychological harm and remove

requirements for two or more instances of stalking, instead requiring proof of a "course of conduct" which would cause, in reasonable circumstances, the victim to fear injury or detriment.

Mr Foley said he was dismayed that a discussion paper had been prepared as early as January this year along with other papers relating to rape, bail, bribery and corruption, but had not acted upon.

He said he expected to put the stalker legislation into the Parliament this year after a six-week discussion period, ending on August 10.

Victims of Crime president Ian Davies, who today will launch a new emergency assistance programme for crime victims, has welcomed the proposed laws.

**Title**           **Terror hides behind law.**

**Author** Lawrence, Kara

**Source**           **SUNDAY MAIL ( 151 )**

**Date Issue**      **03/05/98**

**Page**             **60**

Article:      BRISBANE stalking victim Kerry fought hard to achieve a four-year jail sentence against the man who terrorised her.

Now, less than a year later, Philip David Jackson could be released from prison.

Kerry (not her real name), 49, was last week notified her stalker had been re-classified as a low-security prisoner and could be eligible to serve home detention in the community.

She says she fears for her life and has little faith in police and Queensland anti-stalking laws to protect her.

“I have prepared myself...

I have a shooter's licence and a gun and if he comes near me I'll use it, because that's how bad the laws are here in Queensland,” she said.

Stalking is once again in the spotlight after it was revealed Helen Razer, announcer for ABC radio's Triple J, had been stalked by an obsessive fan.

But as Razer has noted, her story and its connection to her celebrity status is the exception.

Kerry's case is more common among the reported 15 percent of Australians who are stalked.

Kerry's ordeal began in early 1995 when she broke off a relationship with Jackson, 44, her live-in partner of five months.

Refusing to accept rejection, he made tearful visits to her home and threatened: “I'll fix you for this”.

His obsessive behaviour escalated with repeated calls to her home, mobile and work telephones, forcing her to change her home number.

When she left her home, she was followed or found him waiting at her destination.

Jackson stood outside her home, calling her on a mobile phone to let her know he was there, watching.

One night, she came home to find him covered in blood.

He had fallen while trying to break into her house through a second- storey window.

Kerry did not lodge a complaint of stalking with police until January 1996, initially thinking she could make him see reason.

Her friends also trivialised the behaviour, but she soon grew so frightened she became a social recluse and carried a knife in her handbag.

“My thoughts were if I had the opportunity, I'd kill him.

“You lose all control of your own life because you're so tied up with trying to gauge what this man's going to do next.”

Despite a domestic violence protection order taken out in June 1996, Kerry's car was vandalised on three occasions with slashed tyres and red paint. Jackson took a job as a car detailer just 100m from her workplace.

Jackson continued to contact her via letters while held in custody from January 1997 to face stalking and other charges.

Kerry says the battle for police action was “just as horrendous”.

She lodged a complaint with the Criminal Justice Commission alleging police inaction, stating police failed to visit her home to arrest him when they knew he was there, she said.

Kerry is being counselled for post-traumatic stress disorder and has lodged a claim for criminal compensation.

She now runs a support group, Victims of Stalking.

She said stalking laws, which carried a maximum jail term of five years, deterred many victims from pursuing charges against their stalker because the burden of proof on victims was so strong.

“I know the law is not going to protect me.

The perpetrators have too much of the law on their side, they have too much protection and the victims have none whatsoever.”

Queensland's Women's Legal Service in April launched a booklet on stalking and is lobbying to tighten stalking laws, enacted in November 1993.

Co-ordinator Zoe Rathus said the laws covered every conceivable act stalkers engaged in, but also required proof an act of violence was likely to occur.

Snr Sgt Judi Newman agreed Queensland police were constrained in prosecuting stalkers because the law “gives with one hand and takes away with the other”.

She recalled one incident when a stalker broke into a woman's home and washed her dishes - hardly violent, but still menacing.

“How are you going to prove that an act of violence is likely and yet it's obsessive, scary behaviour,” she said.

Snr Sgt Newman early this year completed a report on stalking in Queensland which showed a massive increase in complaints since the laws were introduced.

She attributed this to increasing police and public awareness of the laws.

She said stalking was such an emotional issue that it was difficult for police to always meet community expectations.

In the 18 months to January 1997, there were 1104 stalking complaints lodged with police (803 constituted apparent elements of stalking).

This number was more than four times the 240 stalking complaints police received in the previous 18-month period.

COMMON tactics included telephone calls, threats, and attending the victims' workplace or home.

Cases included stalkers killing goldfish, defecating on the victim's front steps, leaving a dissected magpie and a container of urine at victims' homes, and firing a cap-gun at the victim.

Almost 90 percent of stalkers were men and 81 percent of victims were women.

In 80 percent of cases, victims knew the offender, with 35 percent of cases related to a previous intimate relationship.

A spokesman for Police Minister Russell Cooper said there was nothing more the department could have done for Kerry.

Police had caught the offender and it was up to a judge and an independent parole board to decide when an offender could be released.

He said Mr Cooper established a concerned-person register in September last year so that victims were made aware their attacker could be released back into the community.

“People go through the system, they are eligible for parole eventually if they behave themselves,” he said.

Kerry did not wish to name Jackson publicly, however, she accepts The Sunday Mail has obtained his name from public records.

I know the law is not going to protect me.

The perpetrators have too.



**Title**                    **Angry father stalks staff.**

**Author** **Lawrence, Kara; MCKENNA, MICHAEL**

**Source**                **SUNDAY MAIL ( 151 )**

**Date Issue**        **07/12/97**

**Page**                 **5**

A BRISBANE man faces up to five years' jail after being convicted of stalking five Family Services staff, including the department's director-general.

William Allie, of Aspley, was found guilty in Ipswich District Court on five stalking charges after he abused and threatened department staff with violence.

Yesterday the Rev.Allan Male, director-general of the Department of Families, Youth and Community Care, said he had "feared for his life" after receiving Allie's threats.

He said the conviction would "draw a line in the sand" on how far the public could take complaints against government departments.

The court was told Allie began the stalking in January after he became involved in a custody dispute over four of his children.

The children had been taken from his custody over the past seven years.

The court was told Allie, who will be sentenced tomorrow, made numerous abusive and vulgar comments and threats to staff during phone calls and visits to the department over a three-month period.

Mr Male said Allie's behaviour had turned some of his office staff into "absolute nervous wrecks".

Two others who had also dealt with Allie had taken stress leave and new security measures were introduced for staff in the office and at home.

"He said he'd take me out and take me down and take the Government down.

I don't think he meant for a cappuccino at Park Road in Milton," Mr Male said.

"I feared for my life.

I was concerned and had to tell my family that something like this was going on."

He said the department had made every effort to help reunite Allie with his children but was unsuccessful.

"We have some very angry people who approach us but most times can work out a plan to help but unfortunately in this case we couldn't," he said.

Mr Male, who said he had received several threats since taking office in March 1996, said the case sent a clear message that "we're public servants, not public slaves".

"We tolerate the troubles and frustrations and we act for them but we're not going to

tolerate people being rude, crude and carrying on in an awful manner," he said.

Another of the stalking victims, departmental liaison branch manager Niki Edwards, is a mother of five children aged under 10 with a husband who travels for work.

She said that after Allie's threats, she had made extra security arrangements at home and was constantly wary about anyone approaching her home or her children.

"He would ring repeatedly, up to 30 times a day, saying things like he was going to get me, he knows where I live, he knows what hours I'm working..."she said.

"I was genuinely afraid for my life."

She said Allie had made allegations of impropriety but department staff worked in a minefield of complex, emotionally charged issues and strove to be caring and accountable.

"Still, today, I actually feel extremely sorry for Mr Allie, his family and his circumstances and I'm really sorry it had to come to this," she said.