

Consultation Paper on Stalking



Constitutional and Mainland Affairs Bureau
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Law Reform Commission (“LRC”) Report on Stalking

- Stalking comprised a range of actions each of which on its own might not be objectionable but, when combined over a period of time, interfered with the privacy and family life of the victim, thereby causing him distress, alarm or even serious impairment of his physical or psychological well-being
- Existing civil law and criminal offences cannot address the problem fully

→ Anti-stalking legislation should be introduced



Anti-stalking legislation

- We share the LRC's view that stalking can have a serious impact on the health, freedom and quality of life of the victim and his family
- Propose to pursue legislation against stalking
- How the competing rights and interests, in particular privacy of the individual and freedom of the press, could be balanced would need to be carefully considered and weighed



Offence (1/2)

LRC's recommendation:

- a person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence; and
- for the purposes of this offence, the harassment should be serious enough to cause that person alarm or distress



Offence (2/2)

- We agree to LRC's recommendation and invite public comments on LRC's proposed offence of harassment (one stalker harasses one victim)

- We also invite public comments on whether the following should be made offences :
 - a) Collective harassment : two or more stalkers harass one victim (e.g. in debt collection)

 - b) Harassment to deter lawful activities : one stalker harasses multiple persons to deter any person (whether or not one of the persons harassed) from doing something lawful (e.g. company employees being harassed by activist groups)



Penalty

- LRC's recommendation:
 - a) knows that his course of conduct amounts to harassment : a fine and imprisonment for 2 years;
 - b) ought to know that his course of conduct amounts to harassment : a fine and imprisonment for 12 months
- We consider it more suitable to leave it to the court to decide on the appropriate penalty having regard to the circumstances of the individual cases, the strength of the *mens rea* element and the evidence available
- Propose a single maximum penalty level : **a fine of Level 6 (i.e. \$100,000) and imprisonment for 2 years** to reflect the seriousness of the offence and to provide a greater deterrent effect



Defences (1/6)

LRC's recommendation:

- a) the conduct was pursued for the purpose of preventing or detecting crime;
- b) the conduct was pursued under lawful authority; or
- c) **the pursuit of the course of conduct was reasonable in the particular circumstances (“reasonable pursuit”)**



Defences (2/6)

Comments from the media sector:

- criminalising stalking might interfere with press freedom
- difficult to draw a line between stalking and just following someone for the purpose of news-gathering
- what is “reasonable pursuit” would be subject to interpretation. Might not be sufficient to protect all the diverse legitimate activities of journalists
- suggestions :
 - a) a specific defence for “news-gathering activities”
 - b) a “public interest” defence



Defences (3/6)

LRC's considered it not necessary to create a specific defence for "news-gathering activities"

- already subsumed under the "reasonable pursuit" defence
- a defence based on the reasonableness of the pursuit would provide flexibility: replacing the general defence of reasonable pursuit by a list of specific exemptions would run the risk of excluding something that ought to have been included
- a more elaborate defence was also not practicable: whether the harassing conduct of a journalist was legitimate or not would depend on many factors (e.g. the purpose of the pursuit, the nature and gravity of the subject matter, the status of the subject, whether the journalist persisted in total disregard of the subject's response)



Defences (4/6)

LRC considered it not necessary to provide for a “public interest” defence

- the public interest in a matter pursued by journalists would be taken into account by the courts if the “reasonable pursuit” defence was adopted
- the “reasonable pursuit” defence would provide greater protection to journalists and other persons who carry out legitimate activities (e.g. those who serve subpoenas or statements of claim and security guards)



Defences (5/6)

- The relevant legislation of overseas jurisdictions (including the UK, Australia, New Zealand and Ireland) includes a general and broad exemption or defence to cover reasonable conduct without specifying news-gathering activities as a specific defence
- Need to consider the implications of such a specific defence on the protection the proposed legislation seeks to provide to victims of stalking
- The question is whether the community is prepared to exempt from the proposed legislation all forms of news-gathering activities by the media irrespective of whether such activities would be considered reasonable in the particular circumstances



Defences (6/6)

Invite public views on :

- whether a defence for news-gathering activities should be subsumed under the “reasonable pursuit” defence as recommended by the LRC
- or a separate, specific defence for news-gathering activities should be provided



Restraining orders in criminal proceedings

- LRC's recommendation:
 - a) a court sentencing a person convicted of the offence of harassment might make an order prohibiting him from doing anything which would cause alarm or distress to the victim of the offence or any other person, as the court thought fit
 - b) it would be an offence to breach the order
- We consider that a restraining order may protect the victim from being harmed by the convicted stalker in the future
- Welcome public views on the recommendation and details about the order (including the duration of the order, who can apply to vary or discharge the order and the penalty for breaching the order)



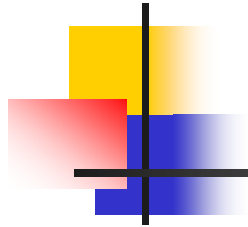
Civil remedies for victims

- LRC's recommendation:
 - a) a person who pursued a course of conduct which would have constituted the offence of harassment should be liable in tort to the object of the pursuit
 - b) the plaintiff should be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and to apply for an injunction to prohibit the defendant from doing anything which would cause the plaintiff alarm or distress
- None of the existing torts recognised by the courts captures the full extent of a stalker's behaviour
- Welcome public views on the recommendation and details regarding enforcement of the injunction (e.g. whether the court should have the power to attach a power of arrest to the injunction)



Next Steps

- The public consultation will last till end March 2012
- After the consultation exercise, we will consolidate the views received and publish a report setting out the views received and, in the light of those views, the proposed way forward



-Thank you -