

Mr Keil, the defendant, has been found guilty by unanimous verdict of a jury of one count of stalking. The crime was alleged to have been committed between January 2016 and January 2018. The indictment alleged a course of conduct done with the intention to cause the female complainant, BL, physical or mental harm, or to be apprehensive or fearful. The alleged course of conduct included frequent contact by telephone and other electronic means, sending offensive material by the same means, loitering in and about the one location where the complainant both worked and lived, and keeping her under surveillance. The defendant represented himself at the trial. He made no real challenge to the basic facts about the conduct as stated by the complainant in her evidence, and did not give or adduce any evidence. The Crown tendered an edited audio-visual recording of a police interview with the defendant, in which he essentially admitted the conduct complained of, but suggested an innocent explanation for being where the complainant was. I find the facts to be in accordance with the complainant's evidence and with the admissions. A summary is as follows. At the time of the offending the complainant was in her early 40s. She said she had not met the defendant beforehand that she knew of. She was cross-examined about meeting the defendant many years earlier, but could not recall that happening. I accept that at least one meeting of some significance may have taken place but for all intents and purposes, the defendant was a stranger to the complainant at the relevant time. At the start of the course of events, the complainant worked in a café that was part of a complex located in a public historical area. She had a role in managing onsite accommodation and lived in one of the buildings in that complex. At about the start of the relevant period the complainant started a photography business. She had a presence on social media; in particular, Facebook accounts in her personal name as well as for the business. The defendant's first approach was to the complainant's sister. This seems to have been in early 2016, most likely in the February to March period. He spoke to her where she worked, gave his name and asked if she knew the complainant. The sister denied that she did. The defendant came back a short time later and told the sister she had lied, saying he had discovered the complainant on Facebook, and knew the relationship. This was passed on to the complainant and she became anxious about who the person was. The defendant approached the sister a third time but was quickly asked to go away under threat of the police being called. Shortly after, the defendant phoned the complainant and identified himself. He said they had met at a hospitality course and asked her if she would go out with him. She declined. A few days later, he called again with essentially the same conversation occurring, except that he added that the complainant had smiled at him in a particular park. The references to previous meetings meant nothing to the complainant. The complainant lied, telling the defendant she had a boyfriend. She said she was not interested. As the complainant was quite concerned, she blocked the defendant's number on her phone. However, the defendant was able to leave voice messages and did so quite regularly thereafter. On 6 September 2016 the complainant texted the defendant making it quite clear that she was not interested in him, that what he was doing was harassment, that she had blocked his number and – untruthfully at that time – that she had notified the police. The defendant persisted with this conduct until about November 2017 when the complainant changed her number. The content of the voice messages was, at the start, mostly pleading for the complainant to call back. But the tone became aggressive. The complainant said he would swear, call her names and asked why she did not want to go out drinking with him. This happened about twice a month on average and made the complainant feel quite anxious. In addition to leaving voice mails, the defendant left comments on photos she had put up on her Facebook page. The complainant then blocked the defendant from being able to post comments on Facebook. The defendant also discovered the complainant's Gmail

account and sent her photos as emails. These photos included ones of the area around her house. On one occasion he sent a photo of a dead wombat, which she found odd and disturbing. Often the photos were accompanied by comments. A particular example read, "How's your hot boyfriend handling your lesbian girlfriends at the moment, best not spread yourself too thin." Another one, about a week later, referred to a medical problem from which the complainant actually suffered. That made the complainant particularly upset. In April 2017 the complainant sent an email message again asking the defendant to stop contacting her. As the defendant would not stop his persistent contact, she finally reported the matter to police in November 2017. She was advised to take out a restraining order but her state of anxiety was such that she felt she could not go through the process. The complainant deleted one particular email account at the same time she changed her phone number. Shortly afterwards, the complainant and her sister were in a supermarket carpark, and her sister pointed out the defendant near his car. That was the first time the complainant knew what the defendant looked like. The next day he came into the café where she worked. He ordered a coffee and chatted to her about merchandise within the shop. After he left, the complainant reported the matter to her manager. The defendant returned to the area the next day. The complainant was outside and saw the defendant's vehicle parked in an open area across from her house. He was walking around. The complainant avoided him, but the defendant returned again the next day, parking his vehicle in the same spot. The complainant was in her house. She saw the defendant drive away passed her house and he sounded the car's horn as he did so. About six days later on 17 January 2018 the defendant again returned to the area where the complainant lived and worked. She saw his car as she drove into the area. Having seen it she drove on passed the car and parked for a while. When she returned, the defendant was still there. In a state of great panic and anxiety she drove around for a time and then went home, locking the doors and closing the blinds after she got inside. She called the police. After they arrived, the defendant was seen to walk away from the area, and the police were not able to find him. A few days later the complainant made a statement to police and they obtained a restraint order. A little over a month later police officers found the defendant again in the area where the complainant worked and lived, and he was arrested and interviewed. The defendant essentially admitted the relevant conduct, including phone calls, voice mail messages and emails to various accounts. He volunteered that some voice messages were derogatory. He agreed that they were somewhat abusive. He agreed that the complainant's communications amounted to a fair indication that she did not want to have contact with him, but he agreed that he continued to contact her. He said he sent the photo of a dead wombat "just to be an idiot ... not to intimidate or anything like that". The interviewing officer summarised the effect of what had taken place, and asked the defendant whether he thought that would cause mental harm to anybody. He said "I expect it would, yeah, it would stress them out to a degree", and later acknowledged that his continued contact by phone, emails and pictures etc, would cause the complainant apprehension and fear. He said he was not aware of where the complainant worked until he went to the café and saw her there. I am satisfied that is not true. Having regard to what the evidence shows as to the information the defendant was able to gather, I am satisfied he knew where she worked. At the same time, though, I acknowledge that as a public historical area with open space and a beach, there may be genuine reasons for the defendant to go there; for instance to walk his dogs.

The defendant is now 51 years old. He has prior convictions for offences of dishonesty but they are of considerable age; in the period 1986 to 1988. There has been no significant offending since that time and I take the view that his record is of no real relevance. Because of some material in the Crown papers not before the jury, and because of some things that happened during the trial, I obtained a psychiatric report and a report from Community Corrections. Respectively, I have a report from Dr Jordan dated 15 January 2021 and one from a probation

officer, Ms Harris, dated the same day. Relevant general personal circumstances are as follows. The defendant is a single man living at home with his mother. His parents separated some time ago; his father remarried but is now deceased. The defendant has two sisters, one younger, one older, but does not communicate with them apart from when they visit their mother. He has not been in an intimate relationship since his late teens, and has no social network. He has been unemployed for about 20 years. He spends his time walking his dogs and making gym equipment which he hopes to sell. Previous attempts to start small businesses have not succeeded. He has online involvement with a church in the USA. He has no substance abuse problems, but does have a psychiatric history. In 2014 he was admitted to the psychiatric ward of the LGH. In the period leading up to the admission he had become increasingly agitated, began to express bizarre religious themes and was experiencing auditory hallucinations. He was considered to make the threshold for a diagnosis of schizophrenia. He was an inpatient for six weeks and received an injected antipsychotic which resulted in some improvement. He was the subject of a treatment order until October 2015 and received antipsychotic medication through that period. He was discharged from further engagement as it was considered there was not enough evidence for him to be again placed under an involuntary treatment regime. On discharge it was considered his psychosis had considerably improved. Once the order was at an end, the defendant is said to "have retreated from engagement" with Mental Health Services. In Dr Jordan's view, it does not appear that the defendant ever developed any insight into his mental disorder and continues to reject the notion that he suffers with a pervasive psychotic disorder. Dr Jordan notes however, that there has been no need for any further psychiatric admission despite having receiving no antipsychotic medication for almost five years. Dr Jordan also notes the defendant is guarded as to what he is prepared to admit in the interview situation, and assumes the defendant is still enduring some paranoid ideation but not to a level that requires hospital admission. The significance of the defendant's schizophrenia in the sentencing process became an issue and, in the end, I heard evidence from Dr Jordan. He was cross-examined by Crown counsel; the defendant did not ask any questions. He disputed the existence of any mental illness or condition at all. Having regard to the whole of the material my findings are as follows:

- 1 The defendant's condition did not amount to an impairment of mental functioning that caused or contributed to the stalking behaviour.
- 2 The defendant was suffering from a minor impairment of mental functioning relating to schizophrenia that may cause some loss of appreciation of the emotions of other people, and the consequences to them of his actions.
- 3 At the outset, the defendant had some lack of appreciation of the potential consequences of his conduct, but after the complainant's position was made clear, there is no reason he would not have been able to appreciate he should not do what he did.
- 4 From at least the first clear communication from the complainant in September 2016, the defendant understood that he should not be communicating with the complainant, and knew of the potential to cause harm.
- 5 There is nothing to support the proposition that his mental condition would have prevented him from understanding clear instructions not to communicate with the complainant.

It follows that, in relation to the schizophrenia, I am not satisfied that there is any appreciable reduction in moral culpability, nor any impact on factors of general and specific deterrence. That said, it is plain that the defendant's mental condition is, in broad terms, something that must be taken into account as a significant background matter. The defendant's schizophrenia exists alongside the psychological issues of a stalker. Dr Jordan says the defendant closely aligns with a category of stalker known as the "incompetent suitor", where stalking normally emerges in the context of loneliness or lust. Dr Jordan notes that it seems the defendant and the complainant were very distant acquaintances with the complainant having no recollection of any previous meeting. He says it does not appear that the defendant's interest was based on delusional themes derived from his schizophrenia. The more abusive communications were within the defendant's dismay that the complainant would not respond to his efforts at communication. As to the future, Dr Jordan notes a lack of evidence of any attempt by the defendant to communicate with the complainant since January 2018. He says the defendant's "profile of cognitive rigidity, social isolation and poor social skills do place him in a category that would suggest ... some risk of reoccurrence, but the legal process in itself may already have been a significant deterrent". There are no risk factors ordinarily seen as significant in terms of future stalking violence. However, Dr Jordan says the combination of mental disorder and rigid cognitive style will make any intervention very difficult. The defendant remains insightful as to his mental disorder and has been unable to acknowledge that what he did was stalking. In Dr Jordan's opinion, efforts should be aimed at intervention such as social support and appropriate psycho-education. He says its best that these matters are pursued by the private sector potentially under the umbrella of a community corrections order. Ms Harris' report states that the defendant is unsuitable for a home detention order due to underlying mental health concerns and the fact that he did not consent; nor was consent forthcoming from his mother. He is also unsuitable for community service due to his adamant stance that he would not perform such service. The defendant is also deemed unsuitable for a community correction order, the view being that he would benefit more from targeted forensic mental health support. There thus arises a conflict. Ms Harris has also observed that the defendant is reluctant to engage in open and honest discussions, and does not view his mental health as problematic, meaning his motivation to attend specialised support may be low or non-existence. Her view is that if made the subject of a community corrections order, specific conditions should be attached relating to psychological interventions and engagement with an NDIS referral to better the chances of rehabilitation. As can be seen from all of this, the sentencing task is somewhat complicated.

At the time of the offending, stalking was made out on proof of the pursuit of a course of conduct with intent to cause another person physical or mental harm, or extreme humiliation, or to be apprehensive or fearful. A person who pursued a relevant course of conduct was taken to have the requisite intent if at the relevant time he or she knew or ought to have known that pursuing the course of conduct would, or would be likely to, cause one of the stated outcomes. In this case, I am not satisfied of an actual intention to cause harm. I am satisfied, of course, that the defendant ought to have known at least of the likely consequences of his conduct, and there is evidence to establish that at a point not too far into the whole period, he knew of the likely impact. I am satisfied that the complainant was apprehensive and fearful from the time the conduct commenced, and that the level of apprehension and fear increased over the period. However there was no evidence of any lasting harm. That is a fortunate outcome. Broadly speaking, such conduct can have a terrible psychological impact. General deterrence remains an important factor. For the defendant's benefit, I should point out that the section creating the crime does not concern itself with motive but for the sake of completeness, based on the material sent to the complainant, I reject any assertion that the entirety of the interaction was

based on the defendant seeking business assistance regarding photographs. I note the defendant's schizophrenia did not lead to his behaviour towards the complainant, although it contributed to a degree in the sense that for a time it compromised his ability to appreciate the consequences of his conduct. The defendant appears incapable of acknowledging his stalking behaviour as such, and that makes it difficult to address psychological issues relating to that behaviour. The incapacity is relevant to specific deterrence but in that respect, I note Dr Jordan's view that these proceedings may already have had a deterrent effect. Lastly, the defendant has no real insight into his mental illness. It is on those facts and bases that I will proceed to sentence. In addition to general deterrence, prominent factors are rehabilitation and the public interest.

Mr Keil, I have set out what I see to be the relevant considerations in your case. The crime generally is to be regarded as serious. Although no explicit threats of violence or harm were made, this was a relentless course of contacting the complainant, persisted in after clear indications to stop, and often done in an aggressive way and often in ways that could cause particular distress or disquiet. All in all, the crime calls for imprisonment but I take into account your personal circumstances as I have outlined them; in particular, your lack of offending history of any note and your mental health condition as established by the expert opinion. In my view the Court is justified in suspending the execution of that term on certain conditions. You are convicted of the crime and sentenced to 12 months' imprisonment the execution of which is wholly suspended on condition you commit no offence punishable by imprisonment for a period of two years, and on condition that you be subject to the supervision of a probation officer. In effect that gives rise to a community corrections order. The operational period is 12 months. The statutory core conditions will be set out in writing in a document which will be provided to you. You will have to report to a probation officer at 111 Cameron Street, Launceston by 5pm tomorrow. Special conditions of the order are that you attend educational and other programs as directed by a probation officer, you submit to the supervision of a probation officer as required by that officer, you submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer, and you submit to any assessment procedures for the purposes of the National Disability Insurance Scheme as may be directed by a probation officer.

Mr Keil, I need to explain to you the effect of those orders. You have been sentenced to 12 months' imprisonment, the execution of that has been suspended on two conditions. The first is that you commit no offence punishable by imprisonment. That means literally any offence punishable by imprisonment. That extends to such things as drink driving and driving whilst disqualified. If you commit any such offence, application can be made to the Court to activate that sentence and the Court must activate the sentence unless it considers it unjust to do so. The second condition is that you submit to the supervision of a probation order, and there are conditions of that supervision that you submit to a number things, such as assessments and treatment. Similarly to the first condition, if you not do as directed by a probation officer, or otherwise breach the conditions of the order, application to activate the suspended sentence can be made. [The defendant was asked if he understood; he said he did.]