

## 178. Stalking (repealed)

(Offences between 30 April 1999 and 1 August 2023)

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### 178.1 Legislation

[Last reviewed: March 2025]

*Criminal Code*

[Section 359A](#) – Definitions for ch 33A

[Section 359B](#) – What is unlawful stalking, intimidation, harassment or abuse

[Section 359C](#) - What is immaterial for unlawful stalking, intimidation, harassment or abuse

[Section 359D](#) - Particular conduct that is not unlawful stalking, intimidation, harassment or abuse

[Section 359E](#) – Punishment of unlawful stalking, intimidation, harassment or abuse

### 178.2 Commentary

[Last reviewed: March 2025]

This Chapter covers stalking offences alleged to have occurred after 30 April 1999 and before 1 August 2023, prior to the amendment of Chapter 33A by the *Domestic and Family Violence (Combating Coercive Control) And Other Legislation Amendment Act 2023* (Qld). That Amending Act changed the title of the offence, expanded the range of acts that may constitute stalking, and added an aggravation related to domestic violence. For the current offence see **Chapter 178A - Unlawful stalking, intimidation, harassment or abuse**.

The Defendant must have:

- (1) Engaged in conduct on any one occasion if the conduct was protracted or on more than one occasion;
- (2) Which was intentionally directed at the Complainant; and
- (3) Consisted of one or more acts described in s 359B(c);
- (4) That:
  - a. Would cause the Complainant apprehension or fear, reasonably arising in all the circumstances, of violence to, or against the property of, the Complainant or another person; or

- b. Caused detriment, reasonably arising in all the circumstances, to the Complainant or another person.

The scope of the offence is limited by s 359D, which lists acts that do not amount to stalking. Section 359C lists various things that are 'immaterial for unlawful stalking'. A definition of 'detriment' is set out in s 359A and includes:

- apprehension or fear of violence to, or against property of, the stalked person or another person;
- serious mental, psychological or emotional harm;
- prevention or hindrance from doing an act a person is lawfully entitled to do; and
- compulsion to do an act a person is lawfully entitled to abstain from doing.

Definitions of 'property', 'violence', and 'circumstances' are also included in s 359A.

The jury must be unanimous as to the identity of the single act if the conduct is protracted, or two or more of the acts particularised as constituting the conduct relied on (*R v Conde* [\[2016\] 1 Qd R 562](#), *R v Hubbuck* [\[1999\] 1 Qd R 314](#)). In *Conde* at [568], McMurdo P (Lyons J agreeing at [578]) held that failure 'to direct the jury as to the need for unanimity on the identity of the two or more occasions said to constitute the course of conduct amounting to unlawful stalking was a misdirection.'

In *R v Glover* [\(2022\) 10 QR 825](#), [835] there was a misdirection where the trial judge had failed to convey to the jury that the acts they agreed on had to constitute a 'continuous course of conduct'. A jury cannot convict, for example, if the two acts they agree on are separate in time and constitute 'sporadic' rather than 'continuous' conduct. There is also an obligation on a trial judge to identify relevant aspects of the evidence. In *Glover*, '[a] failure to do so, in the context of counts which were particularised as involving acts of varying types and intensity in specific time periods with lengthy periods of no such conduct', rendered directions to the jury inadequate.

In *R v Conde* [\[2016\] 1 Qd R 562](#), the Court of Appeal held that the relevant apprehension, fear or detriment may arise from a course of conduct, even though each act in isolation would not have that effect.

### *Circumstances of aggravation*

Section 359E includes circumstances of aggravation. The offence is also a prescribed offence under s 161Q of the *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation is applicable.

## **178.3 Suggested Direction**

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(Note that while the *Code* uses the term 'stalked person', such turgid terminology is unnecessary in directing a jury and is not used here).

**The prosecution must prove beyond reasonable doubt:**

1. **That the Defendant has engaged in conduct that was intentionally directed at the Complainant.**

**It is immaterial whether the Defendant intends that the Complainant be aware that that conduct is directed at the Complainant, or if the Defendant has a mistaken belief about the identity of the person at whom the conduct is initially directed. It is immaterial whether the conduct directed at the Complainant consists of conduct carried out in relation to another person or the property of another person.**

2. **The conduct is engaged in on any one occasion if the conduct is protracted or on more than one occasion.**

**It is immaterial whether the conduct throughout the occasion on which the conduct is protracted, or the conduct on each of a number of occasions, consists of the same or different acts.**

3. **The conduct consists of one or more acts of the following, or similar, type:**

- (a) **Following, loitering near, watching or approaching a person;**
- (b) **Contacting a person in any way, including for example, by telephone, mail, fax, e-mail or through the use of any technology;**
- (c) **Loitering near, watching, approaching or entering a place where a person lives, works or visits;**
- (d) **Leaving offensive material where it will be found by, given to or brought to the attention of, a person;**
- (e) **Giving offensive material to a person, directly or indirectly;**
- (f) **An intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;**
- (g) **An act of violence, or a threat of violence, against, or against property of, anyone, including the Defendant (see 359(C)(ii)).**

**It is immaterial whether the conduct directed at the Complainant consists of conduct carried out in relation to another person or property or another person.**

4. **That the conduct:**

- (a) Would cause the Complainant apprehension or fear, reasonably arising in all the circumstances, of violence to, or against property of, the Complainant or another person; or**
- (b) Causes detriment, reasonably arising in all the circumstances, to the Complainant or another person.**

**It is immaterial whether the Defendant intended to cause the apprehension or fear, or the detriment, mentioned in the section. It is immaterial whether the apprehension or fear, or the violence is actually caused.**

**(As relevant, direct on circumstances of aggravation).**