

Stalking¹

The prosecution must prove:

1. that the defendant has engaged in conduct that was intentionally directed at the complainant.²

(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.³ 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).⁴

2. the conduct is engaged in on any one occasion if the conduct is protracted or on more than one occasion.⁵

(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).⁶

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;

¹ Offences alleged to have occurred after 30 April 1999.

² The *Code* uses the term “stalked person”: s 359B(a). However, such turgid terminology is unnecessary in directing a jury.

³ See 359(C)(i).

⁴ See 359(C)(ii).

⁵ 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.

⁶ See 359(C)(iii).

- (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.⁷

(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 violence⁸ to, or against property of, the complainant or another person;⁹ 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).¹⁰

5. Circumstances of aggravation.¹¹

⁷ See 359(C)(ii).

⁸ For definitions of the terms “violence”, “property”, “detriment”, “circumstances”: s 359A.

⁹ 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.

¹⁰ See 359(C)(iv) and (v).

¹¹ For circumstances of aggravation: s 359E. The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.