

Stalking (for offences committed after 1 August 2023)

Legislation

Criminal Code Act 1899 (Qld)

Section 359B What is unlawful stalking, intimidation, harassment or abuse

Unlawful stalking, intimidation, harassment or abuse is conduct—

- (a) intentionally directed at a person (the stalked person); and
- (b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and
- (c) consisting of 1 or more acts of the following, or a similar, type—
 - (i) following, loitering near, watching or approaching a person;
 - (ii) contacting a person in any way, including, for example, using any technology and over any distance;

Examples of ways of contacting a person, including using technology—

by telephone, mail, fax, SMS message, email, an app on a computer, smart phone or other electronic device, or an online social network

- (iii) loitering near, watching, approaching or entering a place where a person lives, works or visits;
- (iv) monitoring, tracking or surveilling a person's movements, activities or interpersonal associations without the person's consent, including, for example, using technology;

Examples of monitoring, tracking or surveilling using technology—

- using a tracking device or drone to track a person's movements
- checking the recorded history in a person's digital device
- reading a person's SMS messages
- monitoring a person's email account or internet browser history
- monitoring a person's account with a social media platform or online social network

- (v) leaving offensive material where it will be found by, given to or brought to the attention of, a person;
- (vi) publishing offensive material on a website, social media platform or online social network in a way that will be found by, or brought to the attention of, a person;
- (vii) giving offensive material to a person, directly or indirectly, including by using a website, social media platform or online social network;
- (viii) an intimidating, harassing, threatening, humiliating or abusive act against a person, whether or not involving violence or a threat of violence;

Example—

publishing a person’s personal information, including, for example, the person’s home address or phone number, on a website

- (ix) an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and
- (d) that—
- (i) would cause the stalked person apprehension or fear, reasonably arising in all the circumstances, of violence to, or against property of, the stalked person or another person; or
 - (ii) causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.

Section 359C What is immaterial for unlawful stalking, intimidation, harassment or abuse

- (1) For section 359B(a), it is immaterial whether the person doing the unlawful stalking, intimidation, harassment or abuse—
 - (a) intends that the stalked person be aware the conduct is directed at the stalked person; or
 - (b) has a mistaken belief about the identity of the person at whom the conduct is intentionally directed.
- (2) For section 359B(a) and (c), it is immaterial whether the conduct directed at the stalked person consists of conduct carried out in relation to another person or property of another person.

- (3) For section 359B(b), 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.
- (4) For section 359B(d), it is immaterial whether the person doing the unlawful stalking, intimidation, harassment or abuse intended to cause the apprehension or fear, or the detriment, mentioned in the section.
- (5) For section 359B(d)(i), it is immaterial whether the apprehension or fear, or the violence, mentioned in the section is actually caused.

See also section 359A, Definitions for unlawful stalking; 359D, Particular conduct which is not unlawful stalking; 359E, Punishment of unlawful stalking; and 359F, Court may restrain unlawful stalking.

Commentary

The *Domestic and Family Violence (Combating Coercive Control) And Other Legislation Amendment Act 2023* (the Act) amended Chapter 33A of the *Criminal Code* (the Code) to expand unlawful stalking to include intimidation, harassment, or abuse. The conduct that is unlawful stalking, intimidation, harassment or abuse is extended to include:

- contacting a person in any way, including, for example, using any technology and over any distance. Examples of ways of contacting a person, including using technology— by telephone, mail, fax, SMS message, email, an app on a computer, smart phone or other electronic device, or an online social network: See s. 359B(C) (ii) of the Code.
- monitoring, tracking or surveilling a person’s movements, activities or interpersonal associations without the person’s consent, including, for example, using technology. Examples of monitoring, tracking or surveilling using technology—
 - using a tracking device or drone to track a person’s movements
 - checking the recorded history in a person’s digital device
 - reading a person’s SMS messages
 - monitoring a person’s email account or internet browser history
 - monitoring a person’s account with a social media platform or online social network: See s 359B(c)(iv).
- publishing offensive material on a website, social media platform or online social network in a way that will be found by, or brought to the attention of, a person: See s 359B(c)(vi).

- giving offensive material to a person, directly or indirectly, including by using a website, social media platform or online social network: see s 359B(c)(vii).
- an intimidating, harassing, threatening, humiliating or abusive act against a person, whether or not involving violence or a threat of violence. For example, publishing a person's personal information, including, for example, the person's home address or phone number, on a website: see s 359B(c)(viii).

The Act also amended section 359E of the Code to add the circumstance of aggravation that a domestic relationship exists between the person and the stalked person.

Suggested Direction

Amendments to the current direction are underlined. The footnotes have been omitted – please refer to directions 177 and 178 for offences committed prior to 1 August 2023; and for relevant footnotes.

Unlawful Stalking, Intimidation, Harassment or Abuse

The prosecution must prove:

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, using any technology and over any distance;
 - (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, including by using a website, social media platform or online social network;
- (f) an intimidating, harassing, threatening, humiliating or abusive 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.

(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).

5. Circumstances of aggravation: as per section 359E.