

Stalking s 359A (Offences between 23 November 1993 and 30 April 1999)

The prosecution must prove:

1. The defendant engaged in a course of conduct, by doing at least two “concerning acts” on separate occasions.¹

“Concerning Act” means:

- (a) following, loitering near, watching or approaching another person*; or
- (b) telephoning or otherwise contacting another person*; or
- (c) loitering near, watching, approaching or entering a place where another person* lives works or visits; or
- (d) interfering with property in the possession of another person*; or
- (e) leaving offensive material where it will be found by, given to or brought to the attention of, another person*; or
- (f) giving offensive material to another person* directly or indirectly; or
- (g) an act of harassment, intimidation or threat against another person*; or
- (h) an unlawful act committed against the person or property of another person*.

* Another person may (but need not be) the complainant.

2. The defendant intended the complainant be aware the course of conduct was directed at her even if some or all of the concerning acts were done to someone else.

(an act qualifies as a concerning act only if done with that intention)

3. The complainant was aware that the course of conduct was directed at her.
4. The course of conduct would cause a reasonable person in the complainant’s circumstances to believe that a concerning offensive act is likely to happen.

¹ There can be no conviction unless the jury is satisfied as to the commission of at least the same two concerning acts: *R v Hubbuck* [1999] 1 Qd R 314.

The complainant's circumstances are those known or reasonably foreseeable by the defendant.

A "concerning offensive act" means an unlawful act (that is, an offence) of violence by the defendant:

- (a) against the complainant's person or property; or
- (b) against another person about whose health or custody the complainant would reasonably be expected to be seriously concerned; or
- (c) against the property of another person about whose property the complainant would reasonably be expected to be seriously concerned

"Violence" against the person includes an act depriving a person of liberty.

"Violence" against property includes an unlawful act of damaging, destroying, removing, using or interfering with property.

A reasonable person is an ordinary citizen of the complainant's age and sex.

The issue is whether a reasonable person in the complainant's circumstances would believe from the defendant's conduct that he was likely to use violence against the complainant or against her property.

"Likely" is a word that is in everyday use. Its meaning may depend on its context. In this context it means a substantial chance that violence would occur. It must be a real and not remote chance: it must be more than a mere possibility of violence occurring.

Circumstances of Aggravation:

It is a circumstance of aggravation if, for any of the concerning acts the defendant—

1. unlawfully uses or threatens to use unlawful violence against another person or another person's property²; or
2. has possession of a weapon within the meaning of the *Weapons Act 1990*;
or

² The threat must be expressed, not implied: *R vAllie* [1999] 1 Qd R 618.

3. **contravenes an injunction or order imposed or made by a court under a law of Queensland, another State or Territory or the Commonwealth or threatens that.**