

## **Stalking**

### **(Offences between 23 November 1993 and 30 April 1999)**

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#### **Commentary**

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](#).

“Another person” may be, but does not need to be, the complainant.

For the aggravating circumstance of using or threatening to use violence, the threat must be expressed, not implied: *R v Allie* [\[1999\] 1 Qd R 618](#).

#### **Suggested Direction**

**The prosecution must prove:**

- 1. The defendant engaged in a course of conduct, by doing at least two ‘concerning acts’ on separate occasions.**

**‘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.**

- 2. The defendant intended the complainant be aware the course of conduct was directed at him/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 him/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.**

**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/she was likely to use violence against the complainant or against his/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 property; or**

2. **has possession of a weapon within the meaning of the *Weapons Act 1990*; or**
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.**