

Queensland



**CRIMINAL CODE
(STALKING) AMENDMENT
BILL 1999**

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**CRIMINAL CODE (STALKING)
AMENDMENT BILL 1999**

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Criminal Code (Stalking) Amendment

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT
1995 12

1999

A BILL

FOR

An Act to amend the Criminal Code, and for other purposes

The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Short title 3

1. This Act may be cited as the *Criminal Code (Stalking) Amendment Act 1999*. 4
5

PART 2—AMENDMENT OF CRIMINAL CODE 6

Code amended in pt 2 7

2. This part amends the Criminal Code. 8

Replacement of s 359A (Unlawful stalking) 9

3. Section 359A— 10
omit, insert— 11

‘CHAPTER 33A—UNLAWFUL STALKING 12

‘Definitions for ch 33A 13

- ‘359A.** In this chapter— 14

“circumstances” means the following circumstances— 15

- (a) the alleged stalker’s circumstances; 16
(b) the circumstances of the stalked person known, foreseen or 17
reasonably foreseeable by the alleged stalker; 18
(c) the circumstances surrounding the unlawful stalking; 19
(d) any other relevant circumstances. 20

“detriment” includes the following— 21

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- | | |
|--|--------|
| (a) apprehension or fear of violence to, or against property of, the stalked person or another person; | 1
2 |
| (b) serious mental, psychological or emotional harm; | 3 |
| (c) prevention or hindrance from doing an act a person is lawfully entitled to do; | 4
5 |
| (d) compulsion to do an act a person is lawfully entitled to abstain from doing. | 6
7 |

Examples of paragraph (c)— 8

A person no longer walks outside the person’s place of residence or employment. 9

A person significantly changes the route or form of transport the person would ordinarily use to travel to work or other places. 10
11

Example of paragraph (d)— 12

A person sells a property the person would not otherwise sell. 13

“property”, of a person, means— 14

- | | |
|--|----------|
| (a) property in which the person has an interest, ¹ whether or not the defendant also has an interest in the property; or | 15
16 |
| (b) property that is otherwise— 17 | |
| (i) used and enjoyed by the person; or 18 | |
| (ii) available for the person’s use or enjoyment; or 19 | |
| (iii) in the person’s care or custody; or 20 | |
| (iv) at the premises at which the person is residing. 21 | |

“stalked person” see section 359B. 22

“unlawful stalking” see section 359B. 23

¹ The *Acts Interpretation Act 1954*, section 36 defines “interest”, in relation to land or other property, as meaning—

- | | |
|--|--|
| ‘(a) a legal or equitable estate in the land or other property; or | |
| (b) a right, power or privilege over, or in relation to, the land or other property.’. | |

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“violence”—	1
(a) does not include any force or impact within the limits of what is acceptable as incidental to social interaction or to life in the community; and	2 3 4
(b) against a person includes an act depriving a person of liberty; and	5
(c) against property includes an act of damaging, destroying, removing, using or interfering with the property.	6 7
‘What is unlawful stalking	8
‘359B. “Unlawful stalking” is conduct—	9
(a) intentionally directed at a person (the “stalked person”); and	10
(b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and	11 12
(c) consisting of 1 or more acts of the following, or a similar, type—	13
(i) following, loitering near, watching or approaching a person;	14
(ii) contacting a person in any way, including, for example, by telephone, mail, fax, e-mail or through the use of any technology;	15 16 17
(iii) loitering near, watching, approaching or entering a place where a person lives, works or visits;	18 19
(iv) leaving offensive material where it will be found by, given to or brought to the attention of, a person;	20 21
(v) giving offensive material to a person, directly or indirectly;	22
(vi) an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;	23 24
(vii) an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and	25 26
(d) that—	27
(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	28 29 30

- (ii) causes detriment, reasonably arising in all the circumstances, to the stalked person or another person. 1
2

‘What is immaterial for unlawful stalking’ 3

‘359C.(1) For section 359B(a), it is immaterial whether the person doing the unlawful stalking— 4
5

(a) intends that the stalked person be aware the conduct is directed at the stalked person; or 6
7

(b) has a mistaken belief about the identity of the person at whom the conduct is intentionally directed. 8
9

‘(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. 10
11
12

‘(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. 13
14
15

‘(4) For section 359B(d), it is immaterial whether the person doing the unlawful stalking intended to cause the apprehension or fear, or the detriment, mentioned in the section. 16
17
18

‘(5) For section 359B(d)(i), it is immaterial whether the apprehension or fear, or the violence, mentioned in the section is actually caused. 19
20

‘Particular conduct that is not unlawful stalking’ 21

‘359D. “Unlawful stalking” does not include the following acts— 22

(a) acts done in the execution of a law or administration of an Act or for a purpose authorised by an Act; 23
24

(b) acts done for the purposes of a genuine industrial dispute; 25

(c) acts done for the purposes of a genuine political or other genuine public dispute or issue carried on in the public interest; 26
27

(d) reasonable conduct engaged in by a person for the person’s lawful trade, business or occupation; 28
29

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- (e) reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving.

‘Punishment of unlawful stalking

‘**359E.(1)** A person who unlawfully stalks another person is guilty of a crime.

‘**(2)** A person who commits the crime of unlawful stalking is liable to a maximum penalty of imprisonment for 5 years.

‘**(3)** However, a person is liable to a maximum penalty of imprisonment for 7 years if, for any of the acts constituting the unlawful stalking, the person—

- (a) uses or intentionally threatens to use, violence against anyone or anyone’s property; or
- (b) possesses a weapon within the meaning of the *Weapons Act 1990*; or
- (c) contravenes or intentionally threatens to contravene an injunction or order imposed or made by a court or tribunal under a law of the Commonwealth or a State.

‘Court may restrain unlawful stalking

‘**359F.(1)** This section applies on the hearing before a court of a charge against a person of unlawful stalking.

‘**(2)** Whether the person is found guilty or not guilty or the prosecution ends in another way, if the presiding judge or magistrate considers it desirable, the judge or magistrate may constitute the court to consider whether a restraining order should be made against the person.

‘**(3)** The judge or magistrate may act under subsection (2) on application by the Crown or an interested person or on the judge’s or magistrate’s own initiative.

‘**(4)** Also, if the restraining order proceeding is started before the Supreme Court or the District Court, the court may order the proceeding to be transferred to a Magistrates Court.

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‘(5) If a court makes an order under subsection (4), the registrar of the court must send to the clerk of the relevant Magistrates Court a copy of the order and the record of proceedings of the hearing of the charge and any application mentioned in subsection (3).’

‘(6) The court hearing the restraining order proceeding may make a restraining order against the person in relation to any person or any property if it considers it desirable to do so having regard to the evidence given at the hearing of the charge and any application under subsection (3) and any further evidence the court may admit.’

‘(7) A restraining order may be varied or revoked at any time by the court, and, if the order provides, by another court.’

‘(8) A person who knowingly contravenes a restraining order commits an offence.’

Maximum penalty—40 penalty units or 1 year’s imprisonment.

‘(9) A restraining order may be made against a person whether or not another order is made against the person in the proceeding for the charge.’

‘(10) A restraining order proceeding is not a criminal proceeding.’

‘(11) A question of fact for a decision under subsection (2) and in a restraining order proceeding must be decided on the balance of probabilities.’

‘(12) In this section—

“**charge**” means the charge of unlawful stalking mentioned in subsection (1).

“**restraining order**” against a person means any order considered appropriate for the purpose of prohibiting particular conduct, including, for example, contact for a stated period by the person with a stated person or the property of a stated person.

“**restraining order proceeding**” means a proceeding started under subsection (2).’.

Insertion of new ch and pt headings

4. After section 707—

insert—

‘CHAPTER 72—TRANSITIONAL PROVISIONS 1**‘PART 1—TRANSITIONAL PROVISION FOR THE
COURTS REFORM AMENDMENT ACT 1997’.** 2
3**Insertion of new ch 72 pt 2** 4

5. After section 708— 5

insert— 6**‘PART 2—TRANSITIONAL PROVISION FOR THE
CRIMINAL CODE (STALKING) AMENDMENT ACT
1999** 7
8
9**‘Transitional—Criminal Code (Stalking) Amendment Act 1999** 10

‘709. On a charge of unlawful stalking committed after the 11
commencement of the *Criminal Code (Stalking) Amendment Act 1999* (the 12
“commencement”), evidence of an act described in section 359B(c) done 13
before the commencement may be admitted for the purpose of deciding 14
whether an act done after the commencement constituted unlawful 15
stalking.’. 16

PART 3—MISCELLANEOUS 17**Acts amended in schedule** 18

6. The schedule amends the Acts it mentions. 19

SCHEDULE	1
MINOR CONSEQUENTIAL AMENDMENTS	2
section 6	3
TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994	4 5
1. Schedule 1, part 1—	6
<i>insert—</i>	7
‘11A. Section 359E (Punishment of unlawful stalking)’.	8
TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995	9 10
1. Schedule 1, part 1—	11
<i>insert—</i>	12
‘9A. Section 359E (Punishment of unlawful stalking)’.	13
	14