



Could your behaviour constitute unlawful stalking?

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Did you know that intentionally directing your attention towards another person, where that person considers the attention to be unwelcome, destructive, or dangerous, can amount to unlawful stalking? The law which governs unlawful stalking is wide-ranging, making such an offence very complex and serious.

The following article explores the [criminal offence](#) of unlawful stalking in Queensland and the implications which are attached to an offence of this nature.

What is unlawful stalking in Queensland?

Unlawful stalking is defined as conduct which is intentionally directed at another person on any one or more occasions, which consists of one or more of the following (or similar) types of behaviour:

1. Following, loitering near, watching, or approaching a person.
2. Contacting a person in any way, including by telephone, mail, fax, social media, or other technology.
3. Loitering near, watching, approaching, or entering a place where a person lives, works, or visits.
4. Leaving offensive material where it will be found by, given to, or brought to the attention of a person or giving offensive material to a person directly or indirectly.
5. An intimidating, harassing or threatening act against a person, whether or not it involves violence.
6. An act of violence or threat of violence against a person or property.

Proof required in an unlawful stalking case

In order to substantiate a charge of unlawful stalking, the prosecution must prove that the abovementioned types of behaviour are such which would reasonably cause the victim apprehension or fear of violence for themselves or their property *or* cause detriment reasonably arising in the circumstances.

The term 'detriment' includes the following:

- An apprehension or fear of violence.
- Serious mental, psychological or emotional harm, prevention.
- Hinderance from doing a certain act which a person is entitled to do. For example, a person is prevented from walking outside their place of residence, or a person significantly changes the route or form of transport which they would ordinarily use to travel to work.
- Compulsion to do an act a person is lawfully entitled to abstain from doing. For example, a person sells a property which they would not otherwise sell.

It is immaterial whether a defendant intended to cause such apprehension, fear, or detriment. It can also be immaterial that no apprehension, fear or violence was actually caused to the alleged victim.

Does my behaviour constitute unlawful stalking?

There is not a closed category of conduct that may amount to stalking due to the particularly wide-ranging definition within the legislation. Notwithstanding this, caselaw highlights that the following behaviour has been found to amount to unlawful stalking:

- Unwanted phone calls, text messages, emails, or social media posts.
- Sending unwanted gifts such as flowers despite directives to stop.
- Driving past or loitering near another person's house or place of employment.
- Abuse or threats towards a neighbour.
- Threatening emails to an ex-spouse.
- Verbal threats from an employer to an ex-employee.

Defences to a charge of unlawful stalking

Behaviour which does not amount to unlawful stalking

Whilst the definition of what behaviour constitutes unlawful stalking is wide-ranging, there are several acts which have been specified within the legislation that do not amount to unlawful stalking.

The following do not amount to unlawful stalking:

- Reasonable behaviour engaged in by an individual for the purpose of continuing to conduct their lawful trade, occupation, or business.
- Reasonable conduct engaged in by an individual to obtain or give information that the person has a legitimate interest in obtaining or giving.
- Any acts done during a genuine industrial dispute.
- Any acts done for the purpose of a genuine political or public dispute or issue carried on in the public interest.
- Any acts done in the execution of a law or administration of an Act.

General defences under the *Criminal Code 1899 (Qld)* may also apply such as insanity or extraordinary emergencies.

Circumstances which can **NOT** be utilised to defend an offence of unlawful stalking

There are also several circumstances which are deemed to be immaterial to an unlawful stalking charge. That is, such circumstances cannot be used to defend a charge of unlawful stalking.

The following circumstances are not relevant when determining if a person has an available defence to an unlawful stalking charge:

- Where a victim is not aware that they are being stalked.
- Where a defendant has mistaken the identity of their victim.
- Where the stalking behaviour was directed at another person or another person's property.
- Where a defendant had no intention to cause fear, detriment or apprehension.

What penalties can be imposed by the Court if convicted of unlawful stalking?

The maximum penalty for an offence of unlawful stalking is five years imprisonment. However, aggravating circumstances make the maximum penalty for an offence of unlawful stalking significantly more severe.

The maximum penalty for an offence of unlawful stalking increases to seven years imprisonment if any of the following aggravating circumstances are present:

1. The offender uses violence;
2. The offender uses or threatens to use violence against another person or their property;
3. The offender carries a weapon;
4. The offender acts in violation of an injunctive order or any related order issued by a Judge or Tribunal, for example, a domestic and family violence order.

Notably, if any of the above-mentioned factors are alleged by the prosecution, the matter must be dealt with in the District Court of Queensland.

Restraining orders in unlawful stalking cases

It is important to be aware that a Court may restrain future contact between the parties, regardless of whether a defendant is convicted.

Regardless of whether a defendant is found guilty or not guilty or whether a charge is withdrawn by the prosecution, the Court has the power to issue a restraining order against the defendant if it considers it desirable. Such an order can be made upon an application by the prosecution on behalf of the complainant or by the Court's own initiative and can be in relation to any person or property.

Get help from a criminal lawyer

If you have been charged with unlawful stalking, it is critical that you seek advice from a lawyer experienced in criminal law as soon as possible. Early gathering of evidence and preparation of your case is crucial in maximising the success of any defence.

Contacting Gilshenan &Luton Criminal Defence Lawyers

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