

Stalking Legislation in Australia

Jurisdiction	Provisions
Australian Capital Territory	In the ACT the offence of stalking is contained in section 35 of the <i>Crimes Act 1900</i> (ACT). The maximum penalty for an aggravated stalking offence is imprisonment for 5 years. The maximum penalty for a non-aggravated stalking offence is imprisonment for 2 years. <i>Crimes Act 1900</i> (ACT) 35. Stalking (1) A person must not stalk someone with intent— (a) to cause apprehension, or fear of harm, in the person stalked or someone else; or (b) to cause harm to the person stalked or someone else; or (c) to harass the person stalked. Maximum penalty: (a) imprisonment for 5 years if— (i) the offence involved a contravention of an injunction or other order made by a court; or (ii) the offender was in possession of an offensive weapon; or (b) imprisonment for 2 years in any other case. (2) For this section, a person stalks someone else (the stalked person) if, on at least 2 occasions, the person does 1 or more of the following: (a) follows or approaches the stalked person; (b) loiters near, watches, approaches or enters a place where the stalked person resides, works or visits; (c) keeps the stalked person under surveillance; (d) interferes with property in the possession of the stalked person; (e) gives or sends offensive material to the stalked person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the stalked person; (f) telephones, sends electronic messages to or otherwise contacts the stalked person; (g) sends electronic messages about the stalked person to anybody else; (h) makes electronic messages about the stalked person available to anybody else;

	(i) acts covertly in a way that could reasonably be expected to arouse apprehension or fear in the stalked person; (j) engages in conduct amounting to intimidation, harassment or molestation of the stalked person. (3) However, this section does not apply to reasonable conduct engaged in by a person as part of the person's employment if it is a function of the person's employment to engage in the conduct and the conduct is not otherwise unlawful. (4) Without limiting subsection (1), a person is also taken to have the intent mentioned in the subsection if the person knows that, or is reckless about whether, stalking the other person would be likely— (a) to cause apprehension or fear of harm in the person stalked or someone else; or (b) to harass the person stalked. (5) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person stalked or someone else apprehended or feared harm or that the person stalked was harassed. (6) For this section: <i>harm</i> means physical harm, harm to mental health, or disease, whether permanent or temporary. <i>harm to mental health</i> includes psychological harm. <i>physical harm</i> includes unconsciousness, pain, disfigurement and physical contact that might reasonably be objected to in the circumstances, whether or not there was an awareness of the contact at the time. In NSW, the offence of stalking is set out in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW).
New South Wales	<i>Crimes (Domestic and Personal Violence) Act 2007</i> s 13 Stalking or intimidation with intent to cause fear of physical or mental harm (1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence. Maximum penalty: Imprisonment for 5 years or 50 penalty units, or both. (2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship. (3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.

	(4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm. (5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed. A penalty unit in NSW is \$110. Stalking is found in the Northern Territory <i>Criminal Code</i> and in the <i>Domestic and Family Violence Act</i>. Criminal Code s 189. <i>Unlawful stalking</i> (1) A person (the offender) stalks another person (the victim) if the offender engages in conduct that includes repeated instances of or a combination of any of the following: (a) following the victim or any other person; (b) telephoning, sending electronic messages to, or otherwise contacting, the victim or another person; (c) entering or loitering outside or near the victim's or another person's place of residence or of business or any other place frequented by the victim or the other person; (d) interfering with property in the victim's or another person's possession (whether or not the offender has an interest in the property); (e) giving offensive material to the victim or another person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person; (f) keeping the victim or another person under surveillance; (g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of another person, with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of another person and the course of conduct engaged in actually did have that result. (1A) For the purposes of this section, an offender has the intention to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for his or her own safety or that of another person if the offender knows, or in the particular circumstances a reasonable person would have been aware, that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear.
Northern Territory	

	(2) A person who stalks another person is guilty of an offence and is liable: (a) to imprisonment for 2 years; or (b) where: (i) the person's conduct contravened a condition of bail or an injunction or order imposed by a court (either under a law of the Commonwealth, the Territory, a State or another Territory of the Commonwealth); or (ii) the person was, on any occasion to which the charge relates, in the possession of an offensive weapon, to imprisonment for 5 years. <i>Domestic and Family Violence Act</i> <i>s 5. Domestic violence</i> Domestic violence is any of the following conduct committed by a person against someone with whom the person is in a domestic relationship: (a) conduct causing harm; - Example of harm for paragraph (a) - Sexual or other assault. (b) damaging property, including the injury or death of an animal; (c) intimidation; (d) stalking; (e) economic abuse; (f) attempting or threatening to commit conduct mentioned in paragraphs (a) to (e). <i>s 7. Stalking</i> <i>Stalking</i>, a person, includes engaging in any of the following conduct on at least 2 separate occasions with the intention of causing harm to the person or causing the person to fear harm to the person: (a) intentionally following the person; (b) intentionally watching or loitering in the vicinity of, or intentionally approaching, the place where the person lives, works or regularly goes for a social or leisure activity. <i>s 120. Contravention of DVO by defendant</i> (1) A person commits an offence if: (a) a DVO is in force against the person; and (b) the person engages in conduct that results in a contravention of the DVO ... <i>s 121. Penalty for contravention of DVO - adult</i>
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	(1) If an adult is found guilty of an offence against section 120(1), the person is liable to a penalty of 400 penalty units or imprisonment for 2 years. ...
Queensland	In Queensland, the offence of stalking is found in Chapter 33A of the <i>Criminal Code Act 1899</i>. <i>Criminal Code Act 1899</i> <i>359A Definitions for ch 33A</i> In this chapter— <i>circumstances</i> means the following circumstances— (a) the alleged stalker's circumstances; (b) the circumstances of the stalked person known, foreseen or reasonably foreseeable by the alleged stalker; (c) the circumstances surrounding the unlawful stalking; (d) any other relevant circumstances. <i>detriment</i> includes the following— (a) apprehension or fear of violence to, or against property of, the stalked person or another person; (b) serious mental, psychological or emotional harm; (c) prevention or hindrance from doing an act a person is lawfully entitled to do; (d) compulsion to do an act a person is lawfully entitled to abstain from doing. Examples of paragraph (c)— - A person no longer walks outside the person's place of residence or employment. - A person significantly changes the route or form of transport the person would ordinarily use to travel to work or other places. Example of paragraph (d)— - A person sells a property the person would not otherwise sell. <i>property, of a person, means—</i> (a) property in which the person has an interest, whether or not the defendant also has an interest in the property; or Editor's note— - Acts Interpretation Act 1954, section 36— - interest, in relation to land or other property, means— (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. (b) property that is otherwise—

	(i) used and enjoyed by the person; or (ii) available for the person's use or enjoyment; or (iii) in the person's care or custody; or (iv) at the premises at which the person is residing. <i>stalked person</i> see section 359B. <i>unlawful stalking</i> see section 359B. <i>violence</i>— (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 (b) against a person includes an act depriving a person of liberty; and (c) against property includes an act of damaging, destroying, removing, using or interfering with the property. 359B What is unlawful stalking Unlawful stalking 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, by telephone, mail, fax, email or through the use of any technology; (iii) loitering near, watching, approaching or entering a place where a person lives, works or visits; (iv) leaving offensive material where it will be found by, given to or brought to the attention of, a person; (v) giving offensive material to a person, directly or indirectly; (vi) an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence; (vii) 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. 359C What is immaterial for unlawful stalking
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	(1) For section 359B(a), it is immaterial whether the person doing the unlawful stalking— (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 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. <i>359D Particular conduct that is not unlawful stalking</i> Unlawful stalking does not include the following acts— (a) acts done in the execution of a law or administration of an Act or for a purpose authorised by an Act; (b) acts done for the purposes of a genuine industrial dispute; (c) acts done for the purposes of a genuine political or other genuine public dispute or issue carried on in the public interest; (d) reasonable conduct engaged in by a person for the person's lawful trade, business or occupation; (e) reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving. <i>359E Punishment of unlawful stalking</i> (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 <i>Weapons Act 1990</i>; 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. (4) Also, a person is liable to a maximum penalty of imprisonment for 10 years if any of the acts constituting the unlawful stalking are done
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when or because the officer is investigating the activities of a criminal organisation.

359F Court may restrain unlawful stalking

(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.

(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).

NB: in Queensland, one penalty unit is \$100.

Criminal Law Consolidation Act 1935

s 19AA—Unlawful stalking

(1) A person stalks another if—

- (a) on at least two separate occasions, the person—
 - (i) follows the other person; or
 - (ii) loiters outside the place of residence of the other person or some other place frequented by the other person; or
 - (iii) enters or interferes with property in the possession of the other person; or
 - (iv) gives or sends offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or
 - (iva) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the other person; or
 - (ivb) communicates with the other person, or to others about the other person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or
 - (v) keeps the other person under surveillance; or
 - (vi) acts in any other way that could reasonably be expected to arouse the other person's apprehension or fear; and
- (b) the person—
 - (i) intends to cause serious physical or mental harm to the other person or a third person; or
 - (ii) intends to cause serious apprehension or fear.

(2) A person who stalks another is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 3 years;
- (b) for an aggravated offence—imprisonment for 5 years.

(3) A person who is charged with stalking is (subject to any exclusion in the instrument of charge) to be taken to have been charged in the alternative with offensive behaviour¹ so that if the court is not satisfied that the charge of stalking has been established but is satisfied that the charge of offensive behaviour has been established, the court may convict the person of offensive behaviour.

(4) A person who has been acquitted or convicted on a charge of stalking may not be convicted of another offence arising out of the same set of circumstances and involving a physical element that is common to that charge.

(5) A person who has been acquitted or convicted on a charge of an offence other than stalking may not be convicted of stalking if the charge of stalking arises out of the same set of circumstances and involves a physical element that is common to the charge of that other offence.

(6) For the purposes of this section, the circumstances of a dealing with material may be taken into account in determining whether the material was offensive material but, if material was inherently offensive material, the circumstances of a dealing with the material cannot be taken to have deprived it of that character

s 54A—Aggravated offences

(1) Subject to this section, an aggravated offence is an offence committed in the following circumstances:

(a) the offender committed the offence in the course of deliberately and systematically inflicting severe pain on the victim;

(b) the offender used, or threatened to use, an offensive weapon to commit, or when committing, the offence;

(c) the offender committed the offence against a police officer, prison officer or other law enforcement officer—

(i) knowing the victim to be acting in the course of his or her official duty; or

(ii) in retribution for something the offender knows or believes to have been done by the victim in the course of his or her official duty;

(d) the offender committed the offence—

(i) intending to prevent or dissuade the victim from taking legal proceedings or from pursuing a particular course in legal proceedings; or

(ii) in connection with the victim's conduct or future conduct (as party, witness or in any other capacity) in legal proceedings; or

(iii) in retribution against the victim for taking legal proceedings or for the victim's conduct (as party, witness or in any other capacity) in legal proceedings;

(e) the offender committed the offence knowing that the victim of the offence was, at the time of the offence—

(i) in the case of an offence against Part 3 Division 11A—under the age of 14 years;

(ii) in any other case—under the age of 12 years;

	(f) the offender committed the offence knowing that the victim of the offence was, at the time of the offence, over the age of 60 years; (g) the offender committed the offence knowing that the victim of the offence was— (i) a spouse or former spouse of the offender; or (ii) a domestic partner or former domestic partner of the offender; or (iii) a child of whom— (A) the offender; or (B) a spouse or former spouse of the offender; or (C) a domestic partner or former domestic partner of the offender, has custody as a parent or guardian; or (iv) a child who normally or regularly resides with— (A) the offender; or (B) a spouse or former spouse of the offender; or (C) a domestic partner or former domestic partner of the offender; (h) except in the case of an offence against Part 3A, the offender committed the offence in company with 1 or more other persons (including persons who are children); (i) the offender abused a position of authority, or a position of trust, in committing the offence; (ia) in the case of an offence constituted under Part 7B where the principal offence is an aggravated offence—the principal offender was, to the knowledge of the offender under that Part, a child; (j) the offender committed the offence knowing that the victim was, at the time of the offence, in a position of particular vulnerability because of physical or mental disability; (k) in the case of an offence against the person— (i) the victim was, to the knowledge of the offender, in a position of particular vulnerability at the time of the offence because of the nature of his or her occupation or employment; or (ii) the victim was, at the time of the offence, engaged in a prescribed occupation or employment and the offender committed the offence knowing that the victim was then engaged in an occupation or employment and knowing the nature of the occupation or employment; (l) the offender was, at the time of the offence, acting in contravention of an injunction or other order of a court (made in the exercise of either state or federal jurisdiction) and the offence lay within the range of conduct that the injunction or order was designed to prevent.
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Tasmania

In Tasmania, stalking is a criminal offence, found in the *Criminal Code Act 1924*. Stalking is also the basis for a restraint order or family violence order, and breach of such an order is a criminal offence. Provisions relating to these orders are in the *Justices Act 1959* and the *Family Violence Act 2004*

Criminal Code Act 1924

s 192. Stalking

(1) A person who, with intent to cause another person physical or mental harm or to be apprehensive or fearful, pursues a course of conduct made up of one or more of the following actions:

- (a) following the other person or a third person;
- (b) keeping the other person or a third person under surveillance;
- (c) loitering outside the residence or workplace of the other person or a third person;
- (d) loitering outside a place that the other person or a third person frequents;
- (e) entering or interfering with the property of the other person or a third person;
- (f) sending offensive material to the other person or a third person or leaving offensive material where it is likely to be found by, given to or brought to the attention of the other person or a third person;
- (g) publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, the other person or a third person;
- (h) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the other person to be apprehensive or fearful;
- (i) contacting the other person or a third person by postal, telephonic, electronic or any other means of communication;
- (j) acting in another way that could reasonably be expected to cause the other person to be apprehensive or fearful –

is guilty of a crime.

Charge:
Stalking.

(2) For the purposes of subsection (1) –

- (a) a person pursues a course of conduct if the conduct is sustained or the conduct occurs on more than one occasion; and
- (b) if the conduct occurs on more than one occasion, it is immaterial whether the actions that make up the conduct on one of those occasions are the same as, or different from, the actions that make up the conduct on another of those occasions.

	(3) A person who pursues a course of conduct of a kind referred to in subsection (1) and so causes another person physical or mental harm or to be apprehensive or fearful is taken to have the requisite intent under that subsection if at the relevant time the person knew, or ought to have known, that pursuing the course of conduct would, or would be likely to, cause the other person physical or mental harm or to be apprehensive or fearful. (4) Subsection (3) does not apply to a person who, in good faith, pursues a course of conduct of a kind referred to in subsection (1) in the course of performing official duties to – (a) enforce the criminal law; or (b) administer an Act; or (c) enforce a law imposing a pecuniary penalty; or (d) execute a warrant; or (e) protect the public revenue. s 389. Sentences (3) Subject to the provisions of the Sentencing Act 1997 or of any other statute, and except where otherwise expressly provided, the punishment for any crime shall be by imprisonment for 21 years, or by fine, or by both such punishments, and shall be such as the judge of the court of trial shall think fit in the circumstances of each particular case. ----- Justices Act 1959 106B. Restraint orders (1) Where on an application made under this section, justices are satisfied on the balance of probabilities – (a) that – (i) a person has caused personal injury or damage to property; and (ii) that person is, unless restrained, likely again to cause personal injury or damage to property; or (b) that – (i) a person has threatened to cause personal injury or damage to property; and (ii) that person is, unless restrained, likely to carry out that threat; or (c) that –
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	(i) a person has behaved in a provocative or offensive manner; (ii) the behaviour is such as is likely to lead to a breach of the peace; and (iii) that person is, unless restrained, likely again to behave in the same or a similar manner; or (d) that a person has stalked the person for whose benefit the application is made or a third person the stalking of whom has caused the person for whose benefit the application is made to feel apprehension or fear – they may make an order imposing such restraints upon that person as are necessary or desirable to prevent the person from acting in a manner specified in this subsection. (2) An application for a restraint order may be made – (a) by a police officer; (b) by a person against whom, or against whose property, the behaviour that forms the subject-matter of the application was directed, or, where that person is a child, a parent or guardian of that child; or (ba) by the guardian or administrator of a person who is a represented person within the meaning of the Guardianship and Administration Act 1995; or (c) by a person to whom leave is granted under subsection (3). (3) A person other than a person referred to in subsection (2)(a) or (b) may apply to justices for leave to make an application for a restraint order. (4) An application referred to in subsection (3) may be made in the absence of the respondent to the application. (4AA) An application for a restraint order must include information of any relevant family contact order, or of any pending application for a relevant family contact order, of which the applicant is aware. (4AAB) In deciding whether or not to make a restraint order, the justices – (a) must consider the protection and welfare of the person for whose benefit the order is sought to be of paramount importance; and (b) must consider whether access between the person for whose benefit the order is sought, or the person against whom the order is sought, and any child who is a member of the family of either of those persons is relevant to the making of the restraint order; and (c) must consider any relevant family contact order of which the justices have been informed. (4AAC) A restraint order is not invalid merely because –
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	(a) the applicant fails to inform the justices of any relevant family contact order, or of any pending application for a relevant family contact order; or (b) the justice fail to consider access or any relevant family contact order as required by subsection (4AAB). (4A) In determining the nature of the orders which may be included in a restraint order, the justices hearing the application for the order must consider the protection and welfare of the person for whose benefit the order is sought to be of paramount importance. (4B) Without limiting the nature of the orders which may be included in a restraint order, the justices hearing the application for the order may include in the restraint order one or more of the following orders: (a) an order directing the person against whom the order is made to vacate premises, restraining that person from entering premises, or limiting that person's access to premises, whether or not that person has a legal or equitable interest in the premises; (b) an order prohibiting or restricting the possession by the person against whom the order is made of all or any firearms specified in the order or directing the forfeiture or disposal of any firearms in the possession of that person; (c) an order prohibiting the person against whom the order is made from stalking the person for whose benefit the order is made; (d) an order prohibiting the person against whom the order is made from causing another person to engage in conduct restrained by justices. (5) Before making an order of a kind referred to in subsection (4B)(a), the justices must consider – (a) the effect of making or declining to make the order on the accommodation of the persons affected by the proceedings; and (b) the effect of making or declining to make the order on any children of, or in the care of, the persons affected by the proceedings; and (c) the need for suitable arrangements to be made to allow the person against whom the order is sought to take possession of personal property on the premises. (5A) Without limiting the nature of the orders which may be made under this section, if justices make a restraint order, the justices may include in that order any one or more of the following orders: (a) an order directing the person against whom the restraint order is sought to deliver property, in the manner specified in the order, to a person for whose benefit the restraint order is made or to allow a person for whose benefit the restraint order is made, in the manner specified in the order, to recover possession of property or have access to property; (b) an order directing the person for whose benefit the restraint order is made to allow a person against whom the restraint order is made, in the manner specified in the order, to recover possession of property or have access to property.
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	(5B) A restraint order that affects possession of or access to premises or property does not affect any legal or equitable interest held by any person in the premises or property. (6) A restraint order shall remain in force for such period as justices consider necessary to protect the person for whose benefit the order is made or until an order is made revoking the restraint order. (7) A restraint order may – (a) cancel or suspend any licence or other permit relating to the possession of a firearm by the person against whom the order is made; and (b) prohibit the person from applying for, or being granted or issued, any such licence or other permit during the period specified in the order. <i>s 106I. Contravention of restraint order, &c.</i> (1) Where a person in respect of whom a restraint order, interim restraint order or telephone interim restraint order, as made, varied or extended has effect contravenes or fails to comply with the order, that person is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months. (2) Where a police officer has reasonable cause to suspect that a person has committed an offence under subsection (1), he may, without warrant, arrest and detain that person and may, for the purpose of arresting and detaining such a person, enter, by force if necessary, any premises on which he has reasonable cause to believe that person is present and search those premises for that person. (3) Section 34 does not apply to a person arrested and detained under subsection (2). <i>Family Violence Act 2004</i> <i>s 7. Family violence</i> In this Act – "family violence" means – (a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner: (i) assault, including sexual assault; (ii) threats, coercion, intimidation or verbal abuse;
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	(iii) abduction; (iv) stalking within the meaning of section 192 of the Criminal Code; (v) attempting or threatening to commit conduct referred to in subparagraph (i), (ii), (iii) or (iv); or (b) any of the following: (i) economic abuse; (ii) emotional abuse or intimidation; (iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO <i>s 35. Contravention of FVO or PFVO</i> (1) A person who contravenes an FVO, PFVO or interim FVO, as made, varied or extended, is guilty of an offence and is liable on summary conviction to – (a) in the case of a first offence, a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months; or (b) in the case of a second offence, a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 18 months; or (c) in the case of a third offence, a fine not exceeding 40 penalty units or to imprisonment for a term not exceeding 2 years; or (d) in the case of a fourth or subsequent offence, to imprisonment for a term not exceeding 5 years. (2) For the purposes of this section, a previous offence means any contravention of an FVO, PFVO or interim FVO, regardless of whether the order was made for the protection of the same affected person. (3) In any proceedings for an offence under this section, an allegation in the complaint is evidence that – (a) an FVO, PFVO or interim FVO has been made against the person charged with the offence; and (b) the order was in force at the time of the alleged contravention; and (c) the requirement or condition alleged to have been contravened formed part of that FVO, PFVO or interim FVO. (4) For the purposes of this section, an FVO includes an external family violence order registered under section 27. (5) If a person who is fined under this section was a party to proceedings in which an order under section 32 was made, the court imposing the fine must advise the Director, MPES of that order at the time of referring the order imposing the fine to the Director, MPES for collection. NB: in Tasmania, a penalty unit is \$130.00. This is increased periodically.
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Victoria	In Victoria, the offence of stalking is located in section 21A of the <i>Crimes Act 1958</i>. Stalking is an indictable offence and has a maximum penalty of 10 years imprisonment. Where the Crimes Act applies to penalise stalking conduct that has already occurred, the <i>Stalking Intervention Orders Act 2008</i> allows a court to make an intervention order to quickly address on-going stalking conduct and prevent it from continuing. A court can do this by issuing a stalking intervention order. The intervention order can be adjusted to the facts of each situation. For instance, the order may prevent the relevant person from contacting the other person, or from being near their house. The same definition of stalking is used in both Acts. However, an application for a stalking intervention order is a civil matter between parties unlike a charge of stalking under the Crimes Act which is a criminal matter. Stalking intervention orders are civil orders not criminal penalties. If a stalking intervention order is breached (that is, the conditions of an intervention order are not followed), the respondent may be charged by the police with a criminal offence for breaching the intervention order. <i>Crimes Act 1958</i> s 21A Stalking (1) A person must not stalk another person. Penalty: Level 5 imprisonment (10 years maximum). (2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following— (a) following the victim or any other person; (b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever; (ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material— (i) relating to the victim or any other person; or (ii) purporting to relate to, or to originate from, the victim or any other person; (bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person; (bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;
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	(c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person; (d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property); (e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person; (f) keeping the victim or any other person under surveillance; (g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of any other person— with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of any other person. (3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if— (a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or (b) the offender in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result. (4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of— (a) the enforcement of the criminal law; or (b) the administration of any Act; or (c) the enforcement of a law imposing a pecuniary penalty; or (d) the execution of a warrant; or (e) the protection of the public revenue— that, but for this subsection, would constitute an offence against subsection (1). (4A) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice— (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
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	(b) for the purpose of an industrial dispute; or (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs. (6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred. (7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria. <i>Note</i> Section 7 of the Stalking Intervention Orders Act 2008 provides that the Court within the meaning of that Act may make an intervention order in respect of stalking. The <i>Stalking Intervention Orders Act 2008</i> can be found at: www.legislation.vic.gov.au . It is a crime to breach a stalking intervention order. <i>s 32 Contravention of an order</i> A person against whom an intervention order has been made and who has been served with a copy of the order or has had an explanation of the order given to the person under section 23, must not contravene the order. Penalty: 240 penalty units or imprisonment for 2 years or both. NB: in Victoria, one penalty unit is \$119.45. This amount is indexed annually. Stalking is dealt with in WA in Chapter XXXIIB of the <i>Criminal Code</i> - sections 338D and 338E. The sections were inserted into the Code in 1998. Stalking is essentially "pursuing a person with intent to intimidate" and is a crime. Section 338E(1) provides that the basic maximum penalty is 3 years imprisonment but if dealt with summarily (magistrates court rather than superior court) the maximum penalty is 18 months and fine of \$18,000. If there are "circumstances of aggravation" then maximum penalties are 8 years imprisonment or if dealt with summarily 2 years and a fine of \$24,000. "Circumstances of aggravation" are being armed or when the offence constitutes a breach of a bail condition. Section 338E(2) provides that a person who pursues another person in a manner that could reasonably be expected to intimidate is guilty of a simple offence. The penalty is 12 months imprisonment and a fine of \$12,000. Under section 338E(3) it is a defence to prove that the accused person acted with lawful authority.
Western Australia	

Criminal Code – Chapter XXXVIII

s 338D. Terms used

(1) In this Chapter —

circumstances of aggravation, without limiting the definition of that expression in section 221, includes circumstances in which —

- (a) immediately before or during or immediately after the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
- (b) the conduct of the offender in committing the offence constituted a breach of a condition on which bail has been granted to the offender;

intimidate, in relation to a person, includes —

- (a) to cause physical or mental harm to the person;
- (b) to cause apprehension or fear in the person;
- (c) to prevent the person from doing an act that the person is lawfully entitled to do, or to hinder the person in doing such an act;
- (d) to compel the person to do an act that the person is lawfully entitled to abstain from doing;

pursue, in relation to a person, includes —

- (a) to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;
- (b) to repeatedly follow the person;
- (c) to repeatedly cause the person to receive unsolicited items;
- (d) to watch or beset the place where the person lives or works or happens to be, or the approaches to such a place;
- (e) whether or not repeatedly, to do any of the foregoing in breach of a restraining order or bail condition.

(2) For the purpose of deciding whether an accused person has pursued another person —

- (a) the accused is not to be regarded as having communicated with or followed that person on a particular occasion if it is proved by or on behalf of the accused that on that occasion the accused did not intend to communicate with or follow that person;
- (b) an act by the accused on a particular occasion is not to be taken into account for the purpose of deciding whether the accused watched or beset a place where that person lived, worked or happened to be, or the approaches to such a place, if it is proved by or on behalf of the accused that on that occasion the accused did not know it was such a place.

338E. Stalking

(1) A person who pursues another person with intent to intimidate that person or a third person, is guilty of a crime and is liable —

- (a) where the offence is committed in circumstances of aggravation, to imprisonment for 8 years; and
- (b) in any other case, to imprisonment for 3 years.

	Alternative offence: s. 338E(2). Summary conviction penalty: <i>(dealt with in a magistrates court rather than a superior court)</i> (a) in a case to which subsection (1)(a) applies: imprisonment for 2 years and a fine of \$24 000; (b) in a case to which subsection (1)(b) applies: imprisonment for 18 months and a fine of \$18 000. (2) A person who pursues another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person is guilty of a simple offence. Penalty: imprisonment for 12 months and a fine of \$12 000. (3) It is a defence to a charge under this section to prove that the accused person acted with lawful authority.
Commonwealth	At the Commonwealth level, there is no offence of 'stalking'. The <i>Criminal Code Act 1995</i> (the Code) creates certain offences which cover conduct that could constitute stalking, however, due to constitutional limitations on the Australian Parliament's legislative power, the relevant offences in the Code require a telecommunications service to have been used. Part 10.6 of the Code contains various telecommunications offences which could cover stalking, including: • using a telecommunications network with intention to commit a serious offence, attracting a penalty not exceeding that of the serious offence committed (section 474.14) • using a carriage service to make a threat to kill or cause serious harm, attracting a penalty of up to 10 years, (section 474.15), and • using a carriage service to menace, harass or cause offence, attracting a penalty of up to three years (section 474.17). Section 474.17 is relatively broad, and would cover less serious conduct. It imports an objective standard—reasonable persons must regard the use of the carriage service, given all the circumstances, as menacing, harassing or offensive for an offence to be committed. It therefore allows for community standards and common sense to be imported into a decision on whether certain conduct is in fact menacing, harassing or offensive. It also avoids reliance on express definitions of 'stalking', which could either inadvertently encompass less serious forms of social interaction that do not warrant a penalty, or could be too rigid in their application and therefore not capture forms of behaviour that might not fit squarely within the definition but nevertheless warrant a criminal penalty. More serious conduct, such as stalking involving threats to cause serious harm, would be covered by section 474.15 and attract a higher penalty. Legislative Provisions 474.14 Using a telecommunications network with intention to commit a serious offence (1) A person is guilty of an offence if:

	(a) the person: (i) connects equipment to a telecommunications network; and (ii) intends by this to commit, or to facilitate the commission of, an offence (whether by that person or another person); and (b) the offence is: (i) a serious offence against a law of the Commonwealth, a State or a Territory; or (ii) a serious offence against a foreign law. (2) A person is guilty of an offence if: (a) the person uses equipment connected to a telecommunications network in the commission of, or to facilitate the commission of, an offence (whether by that person or another person); and (b) the offence is: (i) a serious offence against a law of the Commonwealth, a State or a Territory; or (ii) a serious offence against a foreign law. (3) A person who is guilty of an offence against subsection (1) or (2) is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence. (4) Absolute liability applies to paragraphs (1)(b) and (2)(b). Note: For absolute liability, see section 6.2. (5) A person may be found guilty of an offence against subsection (1) or (2) even if committing the serious offence is impossible. (6) It is not an offence to attempt to commit an offence against subsection (1) or (2). 474.15 Using a carriage service to make a threat <u>Threat to kill</u> (1) A person (the first person) is guilty of an offence if: (a) the first person uses a carriage service to make to another person (the second person) a threat to kill the second person or a third person; and (b) the first person intends the second person to fear that the threat will be carried out. Penalty: Imprisonment for 10 years.
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	<u>Threat to cause serious harm</u> (2) A person (the first person) is guilty of an offence if: (a) the first person uses a carriage service to make to another person (the second person) a threat to cause serious harm to the second person or a third person; and (b) the first person intends the second person to fear that the threat will be carried out. Penalty: Imprisonment for 7 years. <u>Actual fear not necessary</u> (3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out. <u>Definitions</u> (4) In this section: <i>fear</i> includes apprehension. <i>threat to cause serious harm to a person</i> includes a threat to substantially contribute to serious harm to the person. <i>474.17 Using a carriage service to menace, harass or cause offence</i> (1) A person is guilty of an offence if: (a) the person uses a carriage service; and (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive. Penalty: Imprisonment for 3 years. (2) Without limiting subsection (1), that subsection applies to menacing, harassing or causing offence to: (a) an employee of the NRS provider; or (b) an emergency call person; or (c) an employee of an emergency service organisation; or (d) an APS employee in the Attorney-General's Department acting as a National Security Hotline call taker.
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