

# Stalking

s 338E Criminal Code

**Prior to 1 January 2014**

**Transitional Sentencing Provisions:** This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
TES	total effective sentence
SIO	suspended imprisonment order
CBO	community based order
VRO	violence restraining order
TIC	time in custody

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
5.	<p><i>Sakkers v Thornton</i></p> <p>[2009] WASC 175</p> <p>Delivered 22/06/2009</p>	<p>28 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal record – traffic offences; crim damage; damage; stealing; steal motor vehicle; disorderly conduct.</p> <p>Stable family environment and upbringing.</p> <p>Good employment history.</p>	<p>1 x Agg stalking. 12 x Breach VRO. 1 x Poss firearm in circumstance agg. 1 x Poss ammunition. 1 X Poss firearm &amp; fail ensure safekeeping.</p> <p>Victim ended her 3 yr relationship with the appellant approx 11 wks prior to the offending. Since the end of the relationship, appellant had continually emailed and texted victim. Victim had changed her phone number several times and had a filter placed on her work email. Due to unwanted communications, victim took out VRO against appellant. After being served with VRO, appellant created a new email address so that he could breach the filter installed at her workplace – the emails sent from that new address contained death threats against the victim. Appellant also posted chat room posts threatening to kill the victim. Victim greatly affected and fearful and constantly moving so the appellant cannot find her.</p> <p>Appellant was arrested at his house and a search revealed a shotgun and ammunition – appellant disqualified from possessing such items.</p>	<p>12 mths imp. 12 mths imp globally. 7 mths 2 wks imp. \$400 fine. \$400.</p> <p>TES 31 mths 2 wks imp.</p> <p>Remorse; some acceptance of responsibility; little insight; minimal victim empathy.</p>	<p>Offender’s appeal allowed.</p> <p>TES reduced to 19 mths 2 wks imp.</p> <p>At [19]-[25] Sentences on breach restraining order quashed – stalking constituted conduct which breached VRO and s 11 <i>Sentencing Act</i> prohibits sentencing on both sets of offences.</p> <p>At [31] Fines imposed together with a sentence or sentences or imprisonment should be weighed in the application of the totality principle.</p> <p>At [70]-[74] Discussion comparable cases for agg stalking.</p>
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
4.	<p><i>Gilmour v State of Western</i></p>	<p>Convicted after trial.</p>	<p>1 x Attempt PCJ. 1 x Agg stalking.</p>	<p>10 mths imp. 4 yrs imp.</p>	<p>Dismissed.</p>

	<p><b>Australia</b> <b>[2008] WASCA 42</b></p> <p>Delivered 27/02/08</p>	<p>No prior criminal record - conviction for breach VRO in ACT disputed and accorded no weight in sentencing.</p> <p>No material suggesting exceptionally good character.</p>	<p>Appellant and victim divorced approx 12 mths – appellant began to stalk victim. Offending conduct over a period of 3 ½ mths, ceasing only when appellant taken into custody. Conduct escalated over time, culminating in the appellant going to victim's house wearing a gorilla mask and carrying a knife.</p> <p>Appellant requested his neighbours to provide him with an alibi for the previous evening (the night of the "gorilla mask" event). Alibi was to have been to the effect that he was at a barbecue at their house, which was effectively the story which appellant told police in interview. Neighbours did tell police a false story when first asked about the matter. However, once they realised that police considered that story to be false, they revealed the true position and appellant's role in requesting that the false story be told.</p>	<p>TES 4 yrs 10 mths imp.</p> <p>Flagrant disregard for law and escalating misconduct towards victim suggested very strong need for personal deterrence.</p>	<p>At [15] Fact that appellant lost custody and contact with children as result of offending cannot be relied upon as mitigating when appellant “<i>so persistently engaged in conduct likely to be extremely detrimental to his young children.</i>”</p>
3.	<p><b>Hellings v The Queen</b></p> <p><b>[2003] WASC 208</b></p> <p>Delivered 3/09/2003</p>	<p>Convicted after separate trial on each indictment.</p> <p>Extensive prior criminal record – interstate juvenile and adult convictions; adult convictions in WA; dishonesty offences; property offences; numerous violent offences; drug offences; motor vehicle offences; AOBH and threats (victim was former de facto partner with whom appellant had a child); traffic offences.</p>	<p><u>Indictment 1:</u> 1 x Stalking.</p> <p><u>Indictment 2:</u> 1 x Agg stalking. 1 x Threats to prevent person doing act lawfully entitled to do.</p> <p>Victim was appellant’s former partner and the relationship was one marred by domestic</p>	<p>7 mths imp. At time sentencing had already served sentence due to TIC on remand.</p> <p>6 ½ yrs imp. 5 yrs imp.</p> <p>TES 11 ½ yrs imp. Equivalent to 7 yrs 8 mths imp after</p>	<p>Dismissed.</p> <p>Not an error to refuse to order eligibility for parole.</p> <p>At [100]-[101] Individual sentences and TES appropriate.</p>

			<p>violence. At the time of offending the victim had taken out a VRO against the appellant. Stalking conduct constituted continuous phone calls, threats and harassment.</p> <p>Appellant failed to appear at trial on indictment one and bench warrant issued. Offence on indictment 2 committed after failed to appear and warrant issued.</p> <p>Approx 6 weeks before trial on date first indictment re-listed for, appellant sent victim 10 page threatening and abusive letter described by the court on appeal as “<i>one of the most vitriolic, threatening and appallingly venomous documents....It is abusive in the extreme.</i>” [6]. Letter resulted in threats charge on second indictment.</p>	<p>implementation of transitional provisions.</p> <p>Not EFP.</p> <p>Little insight or genuine victim empathy; high risk of re-offending without intensive psychotherapy – previous treatment has been ineffective.</p>	
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					
<b>2.</b>	<p><b><i>Anglesey v The Queen</i></b></p> <p><b>[2002] WASCA 194</b></p> <p>Delivered 20/06/2002</p>	<p>Convicted after PG.</p> <p>Prior criminal record – agg burg (same victim).</p>	<p>1 x Agg stalking.</p> <p>Extremely serious instance of stalking and included squirting blood filled syringe in victim’s face while her children were present.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp. Equivalent to 16 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Serving sentence of 6 yrs imp at time sentenced.</p>	<p>Dismissed.</p> <p>AT [15] Murray J, Steytler J agreeing, notes that the sentence is lenient. Attributed the leniency to the sentencing Judge’s desire to avoid double punishment for agg burg offence which the agg stalking was a part of.</p>
<b>1.</b>	<b><i>Luckman v</i></b>	49 yrs at time sentencing.	1 x Agg stalking.	12 mths imp.	State appeal allowed.

<p><b><i>Leucus</i></b> <b>[2001] WASCA</b> <b>57</b></p> <p>Delivered 2/03/2001</p>	<p>Convicted after PG.</p> <p>Prior criminal record – numerous breach VRO and threats to kill (different victim); threat to kill police officer; theft and fraud; AOBH; steal with violence; driving offences.</p> <p>Stalking offence breached bail imposed for threats to kill offence.</p>	<p>Victim and appellant in relationship which was attended by differences and disagreements.</p> <p>Stalking behaviour included 960 phone calls of harassing and intimidating nature in space of approx 3 ½ mths. Appellant also continually attended victim’s home and workplace. Stalking came to light when victim asked DPP to withdraw threats charge as she was fearful of continuing the prosecution due to stalking behaviour of appellant.</p>	<p>TES 12 mths imp. Equivalent to 8 mths imp after implementation of transitional provisions.</p> <p>Sentence to be served concurrently with term 2 ½ yrs imp appellant serving at time, sentence imposed for threats to kill (same victim).</p> <p>No remorse; lack of insight; unwilling to accept responsibility; no ability to control aggression; unlikely to benefit from treatment.</p>	<p>Sentence for agg stalking increased to 18 mths imp – at [31] notes that were it not for double jeopardy, 2 yrs imp would be appropriate.</p> <p>TES ordered to be partly cumulative with sentence currently being served – sentence to begin on day EFP on sentence 2 ½ yrs.</p> <p>NB: Double jeopardy applied to State appeals.</p>
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