Comparative legal review of harassment and sexual exploitation laws across the Commonwealth

MODELS OF HARASSMENT LAWS
Outline

The Legal Assistance Centre and Sisters For Change have compiled four separate volumes of appendices to accompany the EJA report, *Comparative legal review of harassment and sexual exploitation laws across the Commonwealth*. The appendices are available in PDF format and provide excerpts of legislation on discrimination, harassment and sexual exploitation from across the regions of the Commonwealth, as well as relevant international and regional conventions and directives.

Appendix 1: Models of harassment laws includes excerpts of harassment laws from across all regions of the Commonwealth – Africa, Asia, Caribbean and the Americas, Europe and Pacific – as well as from a number of Non-Commonwealth countries including Germany, the United States and Bermuda.

About Legal Assistance Centre

The Legal Assistance Centre (LAC) is a public interest law centre in Namibia which strives to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia.

About Sisters For Change

Sisters For Change (SFC) is an international NGO working to eliminate discrimination and violence against women and girls worldwide through legal reform, legal empowerment, legal accountability and legal advocacy strategies. SFC works to generate systemic change in how governments combat violence, structural change to give women voice and agency in justice systems and social change to end the social acceptance of violence against women and girls. SFC is active in the UK, India and Indonesia. As a member of the Equality & Justice Alliance, SFC is working to reform laws that discriminate against women and girls and LGBT people across the Commonwealth. SFC is currently working with the Governments of Namibia, Saint Lucia and Samoa on technical assistance programmes and is a member of the SADC Parliamentary Forum’s Technical Working Group on the development of a Model Law on Gender-Based Violence.

For more information visit

[www.sistersforchange.org.uk](http://www.sistersforchange.org.uk)

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eSWATINI

Sexual Offences and Domestic Violence Act 2018

10. Unlawful Stalking

(1) Any person who unlawfully stalks another person commits an offence of unlawful stalking and shall on conviction, be liable to pay a fine not exceeding twenty thousand Emalangeni or to a term of imprisonment not exceeding ten years or both.

(2) For purposes of this section, unlawful stalking shall be conduct—
(a) directed at a person;
(b) engaged in on any one occasion if the conduct is protracted or on more than one occasion; and
(c) consists of one or more acts of the following, or a similar, type of acts—
(i) following, loitering near, watching or approaching a person;
(ii) contacting a person in any way, including but not limited to, by telephone, mail, fax, email or through the use of 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; and
(vii) an act of violence, or a threat of violence, against the property of, anyone, including the defendant, without a lawful excuse or a legally justifiable reason;

that would cause the stalked person reasonable apprehension or fear.

(3) For the removal of doubt, unlawful stalking for the purposes of this section does not include the following acts -
(a) reasonable conduct engaged in by a person for the lawful trade, business or occupation of that person;
(b) reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving; or
(c) acceptable courting.

(4) For purposes of subsection (2)(a) of this section the conduct has be directed to the person who is being stalked.

11. Motive immaterial for unlawful stalking

(1) It shall be immaterial for the purposes of section 10(2)(a), 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) It shall be immaterial for the purposes of section 10(2)(a) and (c) whether the conduct directed at the stalked person consists of conduct carried out in relation to another person or property of another person.

(3) It shall be immaterial for the purposes of section 10(2)(b) 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.

12. Court may restrain unlawful stalking.

(1) Notwithstanding subsection (2), a person who reasonably believes is being unlawfully stalked by another or any other person on behalf of the person who is being unlawfully stalked, may make an application to Court for a restraining order against the stalker and the Court shall determine the matter and issue the restraining order or dismiss the application.
(2) Whether a person is found guilty or not guilty on a charge of unlawful stalking or the prosecution ends in another way, if the presiding officer considers it desirable, the presiding officer may consider whether or not a restraining order shall be made against the person.

(3) The presiding officer may act under subsection (2) on application by the prosecutor or an interested person or on the own initiative of the presiding officer.

(4) The Court hearing the restraining order proceedings 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 application or charge and on any further evidence the Court may admit.

(5) A restraining order may be varied or revoked at any time by the Court issuing the order or by another Court if the order so provides. 22

(6) A person who knowingly contravenes a restraining order commits an offence and shall, on conviction, be liable to pay a fine not exceeding twenty-five thousand Emalangeni or to a term of imprisonment not exceeding five years or both.

(7) A question of fact for the presiding officer in restraining order proceedings shall be decided on the balance of probabilities.

48. Sexual harassment

(1) A person who sexually harasses another commits an offence and shall, on conviction, be liable to pay a fine not exceeding twenty-five thousand Emalangeni or to imprisonment for a period not exceeding ten years or to both.

(2) Sexual harassment for the purposes of this Act is committed where−
   (a) a person subjects another person to an unsolicited act of physical intimacy, including but not limited to, physical contact such as patting, pinching or touching in a sexual way or unnecessary familiarity such as deliberately brushing against another;
   (b) a person makes an unsolicited demand or request, whether directly or by implication, for sexual favours from the other person;
   (c) a person engages in any other unwelcome conduct of a sexual nature in relation to the other person including but not limited to offensive telephone calls and indecent exposure;
   (d) the person engaging in the conduct described in paragraphs (a), (b) or (c), does so -
      (i) with the intention to offend, humiliate or intimidate the other person; or
      (ii) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

(3) For purposes of subsection (2) (d) (ii), the circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct include−
   (a) the sex of the other person;
   (b) the age of the other person;
   (c) the race of the other person;
   (d) any impairment that the other person has;
   (e) the relationship between the other person and the person engaging in the conduct;
   (f) the nature of the place, whether private or public, and the time of the day; and
   (g) any other circumstance of the other person the Court may find or deem relevant.

Author’s Note: This Act covers a broad range of other sexual offences, as well as domestic violence, grooming, pornography and commercial sex work. Where intimidation, harassment or unlawful stalking occur in the context of a domestic relationship, provisions relating to domestic violence protection orders apply. The Act also provides for the establishment of special Domestic Violence Courts. There are also overarching procedural provisions, including special measures to protect vulnerable witnesses; provisions on how to interview child witnesses; and training for police officers who work with the Act.
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NAMIBIA

Combating of Domestic Violence Act 2003

2. Definition of domestic violence

(1) For the purposes of this Act, “domestic violence”, within the context of a domestic relationship, means engaging in any of the following acts or courses of conduct -

(a) **physical abuse**, which includes -
   (i) physical assault or any use of physical force against the complainant;
   (ii) forcibly confining or detaining the complainant; or
   (iii) physically depriving the complainant of access to food, water, clothing, shelter or rest;

(b) **sexual abuse**, which includes -
   (i) forcing the complainant to engage in any sexual contact;
   (ii) engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;
   (iii) exposing the complainant to sexual material which humiliates, degrades or violates the complainant’s sexual integrity; or
   (iv) engaging in such contact or conduct with another person with whom the complainant has emotional ties;

(c) **economic abuse**, which includes -
   (i) the unreasonable deprivation of any economic or financial resources to which the complainant or dependent of the complainant is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities, and mortgage bond repayments or rent payments in respect of a shared household;
   (ii) unreasonably disposing of moveable or immovable property in which the complainant or a family member or dependent of the complainant, has an interest or a reasonable expectation of use;
   (iii) destroying or damaging, property in which the complainant, or a family member or a dependent of the complainant, has an interest or a reasonable expectation of use; or
   (iv) hiding or hindering the use of property in which the complainant, or a family member or dependent of the complainant, has an interest or a reasonable expectation of use;

(d) **intimidation**, which means intentionally inducing fear in the complainant, or a family member or dependent of the complainant by -
   (i) committing physical abuse against a family member or dependent of the complainant;
   (ii) threatening to physically abuse the complainant, or a family member or dependent of the complainant;
   (iii) exhibiting a weapon; or
   (iv) any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour;

(e) **harassment**, which means repeatedly following, pursuing or accosting the complainant, or a family member or dependent of the complainant, or making persistent unwelcome communications, and includes but is not limited to -
   (i) watching, or loitering outside or near the building or place where such person resides, works, carries on business, studies or happens to be;
   (ii) repeatedly making telephone calls or inducing a third person to make telephone calls to such person, whether or not conversation ensues; or
   (iii) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to such person’s residence, school or workplace;

(f) **entering the residence or property** of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence;

(g) **emotional, verbal or psychological abuse**, which means a pattern of degrading or humiliating conduct towards a complainant, or a family member or dependent of the complainant, including -
   (i) repeated insults, ridicule or name calling;
   (ii) causing emotional pain; or
(iii) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant’s, or the complainant’s dependant or family member’s privacy, liberty, integrity or security; or

(h) where applicable, threats or attempts to do any of the acts referred to in this subsection.

Author’s Note  This Act covers a broad range of other sexual offences, as well as domestic violence, grooming, pornography and commercial sex work. Where intimidation, harassment or unlawful stalking occur in the context of a domestic relationship, provisions relating to domestic violence protection orders apply. The Act also provides for the establishment of special Domestic Violence Courts. There are also overarching procedural provisions, including special measures to protect vulnerable witnesses; provisions on how to interview child witnesses; and training for police officers who work with the Act.

NIGERIA

Violence Against Persons (Prohibition) Act 2015

17. Stalking

(1) A person who stalks another commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000.00 or Both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of section [17] commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to fine not exceeding N200,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection[1] of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection [1] of this section is an accessory after the fact and liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N100,000.00 or both.

18. Intimidation

(1) A person who intimidates another commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

(3) A person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection [1] of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

(4) A person who receives or assists another who, to his or her knowledge, committed the offence provided for in subsection [1] of this section is an accessory after the fact and liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

46. Interpretation

In this Act-

“intimidation” means the uttering or conveying of a threat or causing any person to receive a threat, which induces fear, anxiety or discomfort;

“stalking” means repeatedly -

(a) watching, or loitering outside of or near the building or place where such person resides, works, carries on business, studies or happens to be; or

(b) following, pursuing or accosting any person in a manner which induces fear or anxiety;
A. Commonwealth Africa cont

SOUTH AFRICA

Protection from Harassment Act 2011

1. Definitions

(1) In this Act, unless the context indicates otherwise-

“harassment” means directly or indirectly engaging in conduct that the respondent knows or ought to know-

(a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably -

(i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;

(ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or

(iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or

(b) amounts to sexual harassment of the complainant or a related person;

“harm” means any mental, psychological, physical or economic harm;

“related person” means any member of the family or household of a complainant, or any other person in a close relationship to the complainant;

“sexual harassment” means any -

(a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;

(b) unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated;

(c) implied or expressed promise of reward for complying with a sexually-oriented request; or

(d) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request;

(2) This Act does not prevent a person who may apply for relief against harassment or stalking in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), from applying for relief in terms of this Act.

2. Application for protection order

(1) A complainant may in the prescribed manner apply to the court for a protection order against harassment.

(2) If the complainant or a person referred to in subsection (3) is not represented by a legal representative, the clerk of the court must inform the complainant or person, in the prescribed manner, of -

(a) the relief available in terms of this Act; and

(b) the right to also lodge a criminal complaint against the respondent of crimen injuria, assault, trespass, extortion or any other offence which has a bearing on the persona or property of the complainant or related person.

(3) (a) Notwithstanding the provisions of any other law, the application for a protection order may, subject to paragraph (b), be brought on behalf of the complainant by another person who has a material interest in the well-being of the complainant or related person.

(b) An application referred to in paragraph (a) must be brought with the written consent of the complainant, except in circumstances where the complainant is a person who, in the opinion of the court, is unable to do so.
(4) Notwithstanding the provisions of any other law, any child, or person on behalf of a child, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.

(5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court has a reasonable belief that the complainant or a related person is suffering or may suffer harm if the application is not dealt with immediately.

(6) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.

(7) The application and affidavits must be lodged with the clerk of the court who must immediately submit the application and affidavits to the court.

3. Consideration of application and issuing of interim protection order

(1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 2(7) and may, for that purpose, consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of proceedings.

(2) If the court is satisfied that there is prima facie evidence that:
   (a) the respondent is engaging or has engaged in harassment;
   (b) harm is being or may be suffered by the complainant or a related person as a result of that conduct if a protection order is not issued immediately; and
   (c) the protection to be accorded by the interim protection order is likely not to be achieved if prior notice of the application is given to the respondent,
the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings referred to in subsection (1), issue an interim protection order against the respondent, in the prescribed manner.

9. Issuing of protection order

(1) If the respondent does not appear on a return date referred to in section 3(3) or (4), and if the court is satisfied that:
   (a) proper service has been effected on the respondent; and
   (b) the application contains prima facie evidence that the respondent has engaged or is engaging in harassment,
the court must issue a protection order in the prescribed form.

9. Issuing of protection order

(4) Subject to subsection (5), the court must, after a hearing as provided for in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has engaged or is engaging in harassment.

10. Court’s powers in respect of protection order

(1) The court may, by means of a protection order, including an interim protection order, prohibit the respondent from:
   (a) engaging in or attempting to engage in harassment;
   (b) enlisting the help of another person to engage in harassment; or
   (c) committing any other act as specified in the protection order.

(2) The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety or well-being of the complainant or related person.

(3) The court may order -
   (a) a member of the South African Police Service to -
      (i) seize any weapon in the possession or under the control of the respondent as provided for in section 12;
      (ii) accompany the complainant or related person to a specified place to assist with arrangements regarding the collection of personal property identified in the application for a protection order; or
   (b) the station commander of the relevant police station to investigate the matter with the view to the possible institution of a criminal prosecution against the respondent.

(4) (a) The physical, home and work address of the complainant or related person must be omitted from the protection order, unless the nature of the terms of the order necessitates the inclusion of the address.
   (b) The court may issue any directions to ensure that the complainant’s or related person’s physical address is not disclosed in any manner which may endanger the safety or well-being of the complainant or related person.
11. Warrant of arrest upon issuing of protection order

(1) Whenever a court issues a protection order, including an interim protection order, the court must make an order -
(a) authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and
(b) suspending the execution of that warrant subject to compliance with any prohibition, condition, obligation or order
imposed in terms of section 10.

(4) (a) A complainant may hand the warrant of arrest, together with an affidavit in the prescribed form, wherein it is
stated that the respondent has contravened any specified prohibition, condition, obligation or order contained in
a protection order, to any member of the South African Police Service.

(b) If it appears to the member of the South African Police Service concerned that, subject to subsection (5), there are
reasonable grounds to suspect that the complainant or related person is suffering harm or may suffer imminent harm
as a result of the alleged breach of the protection order by the respondent, the member must immediately arrest the
respondent for allegedly committing the offence referred to in section 18(1)(a).

(c) If the member of the South African Police Service concerned is of the opinion that there are insufficient grounds for
arresting the respondent in terms of paragraph (b), he or she must immediately hand to the respondent a written
notice in the prescribed form, which -
(i) specifies the name, the residential and work address and the occupation or status of the respondent;
(ii) calls upon the respondent to appear before a court on the date and at the time specified in the notice,
on a charge of committing the offence referred to in section 18(1)(a); and
(iii) contains a certificate signed by the member of the South African Police Service concerned to the effect that he
or she handed the original notice to the respondent and that he or she explained its import to the respondent.

(5) In considering whether or not the complainant or related person is suffering harm or may suffer imminent harm,
as provided for in subsection (4)(b), the member of the South African Police Service must take into account the-
(a) risk to the safety or well-being of the complainant or related person;
(b) seriousness of the conduct comprising an alleged breach of the protection order;
(c) length of time since the alleged breach occurred; and
(d) nature and extent of the harm previously suffered by the complainant or related person.

(6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4)(a),
the member of the South African Police Service must inform the complainant of his or her right simultaneously to lay
a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

13. Variation or setting aside of protection order

(1) A complainant or a respondent may, upon notice to the other party and the court concerned, apply for the variation
or setting aside of a protection order referred to in section 9 in the prescribed manner.

(2) If the court is satisfied that circumstances have materially changed since the granting of the original protection order
and that good cause has been shown for the variation or setting aside of the protection order, it may issue an order
to this effect: Provided that the court may not grant such an application to the complainant unless it is satisfied that the
application is made freely and voluntarily.

(3) The clerk of the court must forward a notice as prescribed to the complainant and the respondent if the protection
order is varied or set aside as provided for in subsection (1).

18. Offences

(1) Notwithstanding the provisions of any other law, any person where-
(a) contravenes any prohibition, condition, obligation or order imposed in terms of section 10(1) or (2); or
(b) in an affidavit referred to in section 11(4)(a), makes a false statement in a material respect, is guilty of an offence
and liable on conviction to a fine or imprisonment for a period not exceeding five years.
2. Application of relevant Acts

(1) An act of gender-based violence shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other written law.

3. Interpretation

“gender” means female or male and the role individuals play in society as a result of their sex and status;

“gender-based violence” means any physical, mental, social or economic abuse against a person because of that person’s gender, and includes -

(a) violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to the person, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life; and

(b) actual or threatened physical, mental, social or economic abuse that occurs in a domestic relationship;

“harassment” means engaging in a pattern of conduct that induces in a person the fear of imminent harm or feelings of annoyance and aggravation, including -

(a) sexual contact without the consent of the person with whom the contact is made and making unwanted sexual advances;

(b) following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes -

(i) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be;

(ii) repeatedly making phone calls or using a third party to make phone calls to the harassed person, whether or not conversation ensues;

(iii) repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail or other offensive objects or messages to the harassed person; or

(iv) engaging in any other menacing behaviour;

“intimidation” means intentionally inducing fear of imminent harm in a person whether by words or actions and whether by oneself or by the use of a third party by -

(a) threatening to abuse that person or a third party;

(b) threatening to damage, destroy or dispose of property in which that person or a third party has a material interest; or

(c) exhibiting a weapon before that person;

“physical, mental, social or economic abuse” means any act, omission or behaviour or threat of any such act, omission or behaviour which results in death or is likely to result in the direct infliction of physical, sexual or mental injury to any person, and includes -

(a) physical abuse;

(b) sexual abuse;

(c) emotional, verbal or psychological abuse, including any conduct that makes another person feel constantly unhappy, humiliated, ridiculed, afraid or depressed or to feel inadequate or worthless;

(d) economic abuse;

(e) intimidation;

(f) harassment;

(g) stalking;

(h) controlling behaviour such as isolating a person from the person’s family and friends, monitoring the person’s movement and restricting the person’s access to information or assistance;

(i) malicious damage to property;

(j) forcible entry into a person’s residence, where the parties do not share the same residence;
A. Commonwealth Africa cont

(k) depriving a person of, or hindering a person from access to or a reasonable share of the use of the facilities associated with the person’s residence or forcible entry into a person’s room or into a room occupied by a person, where the parties share the same residence;
(l) the unreasonable disposal of household effects or other property in which a person has interest;
(m) abuse delivered from the following cultural or customary rites or practices:
   (i) forced virginity testing;
   (ii) female genital mutilation;
   (iii) pledging of a person for purposes of appeasing spirits;
   (iv) forced marriage;
   (v) sexual cleansing;
   (vi) child marriage;
   (vii) forced spouse heritage; or
   (viii) sexual intercourse between persons within the prohibited relations of affinity or consanguinity;
(n) abuse perpetrated on a person by virtue of the person’s age, physical or mental incapacity, disability or illness;
(o) conduct that in any way harms or may harm another person, including any omission that results in harm and either -
   (i) endangers the safety, health or wellbeing of another person;
   (ii) undermines another person’s privacy, integrity or security; or
   (iii) detracts or is likely to detract from another person’s dignity or worth as a human being; and
(p) trafficking in persons;

“stalkling” includes following, pursuing or accosting a person;

4. Number of acts amounting to gender-based violence

A single act may amount to gender-based violence.

5. Duty to assist or inform victim of rights, etc.

A police officer, labour inspector, social worker, counsellor, medical practitioner, legal practitioner, nurse, religious leader, traditional leader, teacher, employer or other person or institution with information concerning the commission of an act of gender-based violence shall -

(a) inform a victim of the victim’s rights and any basic support which may be available to assist the victim;
(b) obtain for the victim, or advise the victim how to obtain shelter, medical treatment, legal services, counselling or other service that may be required in the circumstances; and
(c) advise the victim of the victim’s right to lodge a complaint against the respondent including remedies available to the victim under this Act.

6. Filing of complaint to police

(1) A victim of gender-based violence may file a complaint about the gender-based violence.

...
8. Police assistance after receipt of complaint

(1) Where a police officer receives a complaint under subsection (4) of section six, the police officer shall -
(a) interview the parties and witnesses to the gender-based violence;
(b) record the complaint in detail and provide the victim with an extract of the complaint, upon request, in a language
the victim understands;
(c) assist the victim to obtain medical treatment, where necessary;
(d) assist the victim to a place of safety as the circumstances of the case or as the victim requires where the victim
expresses concern about safety;
(e) protect the victim to enable the victim retrieve personal belongings, where applicable; and
(f) assist and advise the victim to preserve evidence.

(4) A victim of gender-based violence who is assisted by the police to obtain medical treatment under paragraph (c) of
subsection (1), shall be entitled to free medical treatment at a public health facility and a free medical report within
a reasonable period of time.

10. Application for protection order

(1) A victim may, in the prescribed manner, apply to a court for a protection order to prevent -
(a) a respondent;
(b) an associated respondent; or
(c) both a respondent and an associated respondent;
from carrying out a threat of gender-based violence against the victim or to prevent the respondent, an associated
respondent, or both, from further committing acts which constitute gender-based violence against the victim.

(2) If the victim is not represented by a legal representative, the clerk of court shall inform the applicant-
(a) of the remedies available to the victim in terms of this Act; and
(b) of the procedure for lodging an application for a protection order.

(3) Notwithstanding subsection (1) and any other law, and subject to subsections (4) and (5), where a victim is for any
reason unable to apply for a protection order personally, any other person with information about the gender-based
violence may assist the victim to apply for a protection order.
B. Commonwealth Asia

INDIA

Penal Code 1860 (as amended by the Criminal Law (Amendment) Act 2013)

354D. Stalking

(1) Any man who—
1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;
Provided that such conduct shall not amount to stalking if the man who pursued it proves that-
1. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

SINGAPORE

Protection from Harassment Act 2014 (as amended by the Protection from Harassment (Amendment) Act 2019)

2. Interpretation

“communication” means any words, image (moving or otherwise), message, expression, symbol or other representation that can be seen, heard or otherwise perceived by any person, or any combination of these;

“internet intermediary” means a person who provides any internet intermediary service;

“internet intermediary service” means -
(a) a service that allows end-users to access materials originating from third parties, using the internet;
(b) a service of transmitting materials to end-users on or through the internet; or
(c) a service of displaying, to an end-user who uses the service to make an online search, an index of search results, each of which links that end-user to content hosted or stored at a location which is separate from the location of the index of search results, but excludes any act done for the purpose of or that is incidental to the provision of -
(d) a service of giving the public access to the internet; or
(e) a computing resource service;
Examples of internet intermediary services are —
(a) social networking services;
(b) search engine services;
(c) content aggregation services;
(d) internet-based messaging services; and
(e) video-sharing services.

“related person”, in relation to a person, means another person about whose safety or well-being the first-mentioned person would reasonably be expected to be seriously concerned;

**PART 2 - OFFENCES**

3. **Intentionally causing harassment, alarm or distress**

(1) An individual or entity must not, with intent to cause harassment, alarm or distress to another person (called in this section the target person), by any means -
(a) use any threatening, abusive or insulting words or behaviour;
(b) make any threatening, abusive or insulting communication; or
(c) publish any identity information of the target person or a related person of the target person,
and as a result causing the target person or any other person (each called in this section the victim) harassment, alarm or distress.

(2) Any individual or entity that contravenes subsection (1) shall be guilty of an offence and, imprisonment for a term not exceeding 6 months or to both.

(3) In any proceedings for an offence under subsection (2), it is a defence for the accused individual or accused entity (called in this section the accused) to prove that the accused’s conduct was reasonable.

**Illustrations**

(a) X and Y are co-workers. At the workplace, X loudly and graphically describes to the other co-workers X’s desire for a sexual relationship with Y in an insulting manner. X knows that Y is within earshot and intends to cause Y distress. Y is distressed. X is guilty of an offence under this section.

(b) X writes a letter containing threatening words towards Y intending to send the letter to Y to cause him alarm. X decides not to send the letter and throws it away. Y finds the letter and is alarmed. X is not guilty of an offence under this section as he had no reason to believe that the letter would be seen by Y.

(c) X and Y were formerly in a relationship which has since ended. X writes a post on a social media platform making abusive and insulting remarks about Y’s alleged sexual promiscuity. In a subsequent post, X includes Y’s photographs and personal mobile number, intending to cause Y harassment by facilitating the identification or contacting of Y by others. Y did not see the posts, but receives and is harassed by telephone calls and SMS messages from strangers (who have read the posts) propositioning Y for sex. X is guilty of an offence under section 3(2) in relation to each post.

(d) X records a video of Y driving recklessly in a car on the road. X posts the video on an online forum, where people share snippets of dangerous acts of driving on the road. X posts the video with the intent to warn people to drive defensively. X has not committed an offence under this section.

4. **Harassment, alarm or distress**

(1) An individual or entity must not by any means -
(a) use any threatening, abusive or insulting words or behaviour; or
(b) make any threatening, abusive or insulting communication, which is heard, seen or otherwise perceived by any person (referred to for the purposes of this section as the victim) likely to be caused harassment, alarm or distress.
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(2) Any individual or entity that contravenes subsection (1) shall be guilty of an offence and, subject to section 8, shall be liable on conviction to a fine not exceeding $5,000.

(3) In any proceedings for an offence under subsection (2), it is a defence for the accused individual or accused entity (called in this section the accused) to prove -
   (a) that the accused had no reason to believe that the words or behaviour used, or the communication made, by the accused would be heard, seen or otherwise perceived by the victim; or
   (b) that the accused’s conduct was reasonable.

Illustrations

(a) X and Y are classmates. X posts a vulgar tirade against Y on a website accessible to all of their classmates. One of Y’s classmates shows the message on the website to Y, and Y is distressed. X is guilty of an offence under this section.

(b) X and Y are classmates. X gathers with other classmates outside Y’s family home, where Y lives with Y’s parents, and shouts threats at Y. Y is not at home. Y’s mother hears X’s threats and is distressed, because she fears for Y’s safety. X is guilty of an offence under this section.

(c) X enters a bus station and starts to brandish a sword. Several persons present are alarmed by X’s behaviour. X is guilty of an offence under this section even though X’s actions were not directed at anyone.

5. Fear, provocation or facilitation of violence

(1) An individual or entity must not by any means use towards another person (called in this section, except subsection (1A), the victim) any threatening, abusive or insulting words or behaviour, or make any threatening, abusive or insulting communication to another person (also called in this section, except subsection (1A), the victim), either -
   (a) with the intent -
      (i) to cause the victim to believe that unlawful violence will be used by any person against the victim or any other person; or
      (ii) to provoke the use of unlawful violence by the victim or another person against any other person; or
   (b) whereby -
      (i) the victim is likely to believe that such violence referred to in paragraph (a)(i) will be used; or
      (ii) it is likely that such violence referred to in paragraph (a)(ii) will be provoked.

(1A) An individual or entity must not by any means publish any identity information of another person (called in this subsection the victim) or a related person of the victim, either -
   (a) with the intent -
      (i) to cause the victim to believe that unlawful violence will be used against the victim or any other person; or
      (ii) to facilitate the use of unlawful violence against the victim or any other person; or
   (b) knowing or having reasonable cause to believe that it is likely -
      (i) to cause the victim to believe that unlawful violence will be used against the victim or any other person; or
      (ii) to facilitate the use of unlawful violence against the victim or any other person.

(2) Any individual or entity that contravenes subsection (1) or (1A) shall be guilty of an offence and, subject to section 8, shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) In any proceedings for an offence under subsection (2), it is a defence for the accused individual or accused entity (called in this section the accused) to prove -
   (a) behaviour used, or the communication made, by the accused would be heard, seen or otherwise perceived by the victim; or
   (b) that the accused’s conduct was reasonable.

Illustrations

(a) X and Y are classmates. X writes a post with threatening and abusive remarks against Y on a website accessible to all their classmates. X writes a subsequent post on the same website, stating Y’s identity information and stating “Everyone, let’s beat Y up!”. X is guilty of an offence under this section in respect of the subsequent post.

(b) X writes a public post on a social media platform containing threats against Y. X publishes a subsequent public post stating A’s home address and a message “I know where you live”. X is guilty of an offence under this section relating to conduct mentioned in section 5(1A)(a)(i) if X intends the subsequent post to cause Y to believe that violence will be used against A, or an offence under this section relating to conduct mentioned in section 5(1A)(b)(i) if X knows that it is likely that Y will believe that violence will be used against Y as a result of X’s subsequent post.
(c) X writes a post (on a social media platform to which Y does not have access) containing threats of violence against Y and calling others to “hunt him down and teach him a lesson”. B posts Y’s home address in reply to X’s post. B is guilty of an offence under this section.

6. Threatening, abusing or insulting public servant or public service worker

(1) An individual or entity that by any means -
   (a) uses any indecent, threatening, abusive or insulting words or behaviour; or
   (b) makes any indecent, threatening, abusive or insulting communication, towards or to a public servant or public service worker (called in this section, except subsection (1A), the victim) in relation to the execution of the duty of the public servant or public service worker, shall be guilty of an offence.

(1A) An individual or entity that contravenes section 3(1)(c) (in relation to a target person under section 3(1)(c) who is a public servant or public service worker) -
   (a) with the intent to prevent or deter that public servant or public service worker from discharging the duty of that public servant or public service worker; or
   (b) in consequence of anything done or attempted to be done by that public servant or public service worker in the lawful discharge of the duty of that public servant or public service worker, shall be guilty of an offence.

(2) No offence is committed under this section unless the accused individual or accused entity (called in this section the accused) knows or ought reasonably to know that the victim was acting in his capacity as a public servant or public service worker, as the case may be.

(3) Subject to section 8, an individual or entity shall be liable, on conviction for an offence under subsection (1) or (1A), to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) It is a defence for the accused to prove -
   (a) in any proceedings for an offence under subsection (1), that the accused had no reason to believe that the words or behaviour used, or the communication made, by the accused would be heard, seen or otherwise perceived by the victim; or
   (b) in any proceedings for an offence under subsection (1) or (1A), that the accused’s conduct was reasonable.

Illustration

X is unhappy that a public servant, Y, refused to waive a late payment charge. X writes several posts on an open social media platform with abusive comments about Y in relation to the incident. In a subsequent post, X posts Y’s name, home address and photograph on the same open social media platform in order to cause Y distress. Y is distressed by the subsequent post. X is guilty of an offence under this section.

7. Unlawful stalking

(1) An individual or entity must not unlawfully stalk another person.

(2) Subject to subsection (7), an individual or entity (called in this section the accused) unlawfully stalks another person (referred to for the purposes of this section as the victim) if the accused engages in a course of conduct which -
   (a) involves acts or omissions associated with stalking;
   (b) causes harassment, alarm or distress to the victim; and
   (c) the accused -
      (i) intends to cause harassment, alarm or distress to the victim; or
      (ii) knows or ought reasonably to know is likely to cause harassment, alarm or distress to the victim.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking:
   (a) following the victim or a related person;
   (b) making any communication, or attempting to make any communication, by any means -
      (i) to the victim or a related person;
      (ii) relating or purporting to relate to the victim or a related person; or
      (iii) purporting to originate from the victim or a related person;
   (c) entering or loitering in any place (whether public or private) outside or near the victim’s or a related person’s place of residence or place of business or any other place frequented by the victim or the related person;
   (d) interfering with property in the possession of the victim or a related person (whether or not the accused has an interest in the property);
   (e) giving or sending material to the victim or a related person, or leaving it where it will be found by, given to or brought to the attention of, the victim or a related person;
   (f) keeping the victim or a related person under surveillance.
Illustration

These acts are acts associated with stalking of X by Y:
(a) Y repeatedly sends emails to Y’s subordinate (X) with suggestive comments about X’s body.
(b) Y sends flowers to X daily even though X has asked Y to stop doing so.
(c) Y repeatedly circulates revealing photographs of a classmate (X) to other classmates.

(4) For the purposes of subsection (2)(c), the accused ought reasonably to know that the accused’s course of conduct is likely to cause harassment, alarm or distress to the victim if a reasonable person in possession of the same information would think that the course of conduct is likely to have that effect.

(5) In considering whether a course of conduct is likely to cause harassment, alarm or distress, the court may have regard to the following factors:
(a) the number of occasions on which the acts or omissions associated with stalking were carried out;
(b) the frequency and the duration of the acts or omissions associated with stalking that were carried out;
(c) the manner in which the acts or omissions associated with stalking were carried out;
(d) the circumstances in which the acts or omissions associated with stalking were carried out;
(e) the particular combination of acts or omissions associated with stalking comprised in the course of conduct;
(f) the likely effects of the course of conduct on the victim’s safety, health, reputation, economic position, or his freedom to do any act which he is legally entitled to do or not to do any act which he is not legally bound to do; and
(g) the circumstances of the victim including his physical or mental health and personality.

(6) Any individual or entity that contravenes subsection (1) shall be guilty of an offence and, subject to section 8, shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(7) In any proceedings for an offence under subsection (6), it is a defence for the accused to prove:
(a) that the course of conduct was reasonable in all the circumstances;
(b) that the course of conduct was pursued under any written law or rule of law or to comply with any condition or requirement imposed by any person under any written law;
(c) that the course of conduct was lawfully done under a duty or power under any written law for the purpose of preventing or detecting crime; or
(d) that the course of conduct was done on behalf of the Government and was necessary for the purposes of national security, national defence or the conduct of international relations.

…

(10) In this section—

“course of conduct” means conduct—
(a) on one occasion, if—
(i) the conduct is protracted; or
(ii) the accused has a previous conviction under this section in respect of the same victim; or
(b) on 2 or more occasions in any other case;

Illustration

Y surreptitiously plants a camera in X’s apartment. Unknown to X, the camera continuously transmits live videos of X in X’s apartment and Y watches the videos continually over several days. Y’s conduct is protracted.

10. Contravention of certain orders

(1) An individual or entity that, without reasonable excuse, fails to comply with an order made under—
(a) section 12(2) or (2E); or
(b) section 13(1) or (1B),
(except any provision mentioned in section 12(2B)(c), or any requirement mentioned in section 12(3) relating to that provision) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or to both.

(1A) In proceedings for an offence under subsection (1), an accused is presumed, until the contrary is proved, to have knowledge of the terms of an order made under this Act at and after the time when the order takes effect.

(2) Subject to subsection (3), subsection (1) shall not affect the powers of the court in relation to the punishment for contempt of court.
(3) Where a person is convicted of an offence under subsection (1) in respect of any non-compliance with an order, that non-compliance is not punishable as a contempt of court.

(4) A person cannot be convicted of an offence under subsection (1) in respect of any non-compliance with an order which has been punished as a contempt of court.

PART 3 – CIVIL ACTIONS AND ORDERS

Division 1 — Actions and orders relating to contraventions of Part 2

11. Action for statutory tort

(1) The victim under section 3, 4, 5 or 7 may bring civil proceedings in a court against any individual or entity alleged to have contravened that section in relation to the victim (called in this section the respondent).

(2) In such proceedings, if the court is satisfied on the balance of probabilities that the respondent has contravened that section as alleged by the victim, the court may award such damages in respect of the contravention as the court may, having regard to all the circumstances of the case, think just and equitable.

12. Protection order

(1) Subject to subsection (9), the victim of an alleged contravention of section 3, 4, 5, 6 or 7 may make an application to a court for a protection order.

(2) A court may, if it is just and equitable in the circumstances to do so, make a protection order against any individual or entity alleged to have contravened section 3, 4, 5, 6 or 7 in respect of the victim (called in this section the respondent) if it is satisfied on the balance of probabilities that:

(a) the respondent has contravened section 3, 4, 5, 6 or 7 in respect of the victim; and

(b) the respondent is likely to continue that contravention or to commit another contravention of section 3, 4, 5, 6 or 7 in respect of the victim.

(2A) For the purposes of subsection (2)(a), a court is deemed to be satisfied on the balance of probabilities that the respondent has contravened section 3, 4, 5, 6 or 7 in respect of the victim if:

(a) the respondent has been convicted of that offence, or any offence specified in the Schedule, in respect of the victim; or

(b) the court is satisfied on the balance of probabilities that the respondent has voluntarily caused hurt (within the meaning given by section 321 of the Penal Code (Cap. 224)) to the victim.

(2B) A protection order under subsection (2) may provide for all or any of the following:

(a) prohibit the respondent from doing any thing in relation to the victim or any related person of the victim, as may be specified in the order;

(b) if the likely contravention or likely continuing contravention of section 3, 4, 5, 6 or 7 mentioned in subsection (2)(b) involves an offending communication, require the respondent to stop publishing (before a specified time) the offending communication or to not publish any communication that is substantially similar to the offending communication;

(c) refer the respondent, the victim or a related person of the victim (or 2 or more of them) to attend counselling or mediation provided by such body as the court may direct.

(2C) To avoid doubt, a protection order may, under subsection (28)(a), grant the right of exclusive occupation to the victim of the shared residence or a specified part of the shared residence by excluding the respondent from that shared residence or a specified part of the shared residence, whether or not the shared residence is solely owned or leased by the respondent or jointly owned or leased by the respondent and the victim.

(2D) Except so far as the exercise by the respondent of a right to the shared residence is suspended or restricted, or prohibited or restrained, by virtue of an order made under subsection (2C), the order does not affect any title or interest that the respondent or any other person might have in the residence.

(2E) In addition, where a court is satisfied on the balance of probabilities that:

(a) the respondent’s contravention involves an offending communication; and

(b) any other individual or entity (called in this section a third party) is likely to publish, or continue to publish, the offending communication or any communication that is substantially similar to the offending communication, the court may, if it is just and equitable in the circumstances to do so, make a protection order requiring any third party to stop publishing, by a specified time, or to not publish the offending communication or any communication that is substantially similar to the offending communication.
B. Commonwealth Asia cont

(2F) Where a court is satisfied on the balance of probabilities that -
(a) the respondent’s contravention involves an offending communication; and
(b) the respondent or a third party has published, or is likely to publish or continue to publish, the offending communication by means of an internet intermediary service provided by an internet intermediary, the court may also, if it is just and equitable in the circumstances to do so, make a protection order requiring the internet intermediary to disable access by end-users of the service in Singapore, within a specified time, to -
(c) the offending communication; or
(d) in the case of a prescribed internet intermediary -
(i) the offending communication; or
(ii) any identical copy of the offending communication.

(3) A protection order under subsection (2), (2E) or (2F) may also include any requirement necessary for or incidental to the proper carrying into effect of the order.

(4) A protection order may be made subject to such exceptions or conditions as may be specified in the order.

(5) An order under this section takes effect in respect of a relevant party -
(a) when the order is served on the relevant party in such manner as may be prescribed;
(b) where the court dispenses with the service of the order, when the service of the order on the relevant party is dispensed with by the court; or
(c) at such later time as the court may specify.

(6) Subject to subsection (7), a protection order shall cease to have effect after such period as the court may specify in the order.

(7) The court may, on the application of the victim or a relevant party, vary, suspend or cancel the protection order or extend the duration of the protection order.

(8) [deleted]

(9) For the purposes of this section and section 13, the victim of any contravention of section 3 shall include only the person to whom the respondent intended to cause harassment, alarm or distress, and not any other person harassed, alarmed or distressed by that contravention.

(10) In this section and section 13, “third party” excludes any individual or entity that is likely to publish, or continue to publish, a communication mentioned in subsection (2E) merely by the provision of -
(a) an internet intermediary service;
(b) a telecommunication service;
(c) a service of giving the public access to the internet; or
(d) a computing resource service.

Illustration
Following from Illustration (b) under section 4, Y’s mother may apply for a protection order prohibiting X from gathering with others outside her home and from threatening Y at any location.

13. Expedited protection order

(1) Where, upon an application for a protection order under section 12(2), the court is satisfied that -
(a) there is prima facie evidence that -
(i) the respondent has contravened section 3, 4, 5, 6 or 7 in respect of the victim;
(ii) the contravention referred to in sub-paragraph (i) is likely to continue, or the respondent is likely to commit a contravention of section 3, 4, 5, 6 or 7 in respect of the victim imminently; and
(iii) the contravention referred to in sub-paragraph (ii), if continued or committed, is likely to have a substantial adverse effect on the victim or the victim’s day-to-day activities; and
(b) it is just and equitable in all the circumstances for the protection order to be made on an expedited basis, the court may, subject to section 21(1), make an expedited protection order providing any thing that may be provided in an order under section 12(2).

(1A) For the purposes of subsection (1)(a)(i), the court is deemed to be satisfied that there is prima facie evidence that the respondent has contravened section 3, 4, 5, 6 or 7 in respect of a victim if -
(a) the respondent has been convicted of an offence under section 3, 4, 5, 6 or 7, or an offence specified in the Schedule, in respect of the victim; or
(b) the court is satisfied that there is prima facie evidence that the respondent has voluntarily caused hurt (within the meaning given by section 321 of the Penal Code) to the victim.

(1B) A court may, on an application for a protection order under section 12(2E), make an expedited protection order against a third party providing anything that may be provided in a protection order under section 12(2E), if the court is satisfied that -

(a) there is prima facie evidence that -
   (i) the respondent’s alleged contravention involves an offending communication; and
   (ii) the publication of the offending communication or any communication that is substantially similar to the offending communication by any third party mentioned in that subsection is -
      (A) imminent or likely to continue; and
      (B) likely to have a substantial adverse effect on the victim or the victim’s day-to-day activities; and
(b) it is just and equitable in the circumstances to make the protection order on an expedited basis.

(1C) A court may, on an application for a protection order under section 12(2F), make an expedited protection order against an internet intermediary providing anything that may be provided in a protection order under section 12(2F), if the court is satisfied that -

(a) there is prima facie evidence that -
   (i) the respondent’s alleged contravention involves an offending communication; and
   (ii) the publication of the offending communication by the respondent or the third party mentioned in section 12(2F) is -
      (A) imminent or likely to continue; and
      (B) likely to have a substantial adverse effect on the victim or the victim’s day-to-day activities; and
(b) it is just and equitable in the circumstances to make the protection order on an expedited basis.

(2) Subsections (1), (1B) and (1C) apply even if the notice of the application has not been served on the relevant party or has not been served on the relevant party within a reasonable time before the hearing of the application.

(2A) An expedited protection order takes effect in respect of the relevant party -

(a) when the order is served on the relevant party in such manner as may be prescribed;
(b) where the court dispenses with the service of the order, when the service of the order on the relevant party is dispensed with by the court; or
(c) at such later time as the court may specify.

(3) An expedited protection order ceases to have effect at the earlier of the following times:

(a) when the application for a protection order mentioned in subsection (1) is determined or discontinued;
(b) when the expedited protection order is suspended or cancelled.

(3A) A court may vary, suspend or cancel the expedited protection order or extend the duration of the expedited protection order, on the application of -

(a) the victim;
(b) the relevant party; or
(c) if the order requires an internet intermediary to disable access to a third party’s communication, that third party.

(3B) The respondent must not make an application under subsection (3A) (to vary, suspend or cancel an expedited protection order) more than 28 days after the date the expedited protection order takes effect under subsection (2A), unless the court grants the respondent leave to do so.

(4) Section 12(4) applies, with the necessary modifications, to an expedited protection order.

(5) There shall be no appeal against a decision of the District Court made under this section.

13A. Referral for investigation by police when expedited protection order made

(1) When a court makes, on or after the date of commencement of section 18 of the Protection from Harassment (Amendment) Act 2019, an expedited protection order under section 13 against the respondent, the court must -

(a) consider if a criminal investigation into whether the respondent has committed an offence under section 3, 4, 5, 6 or 7 is warranted; and
(b) if it is satisfied that such a criminal investigation is warranted, refer the matter to a police officer for investigation.
13B. Mandatory treatment order where protection order made

(1) Where a court makes a protection order under section 12(2), the court may, on the application of the victim or on its own initiative, make a mandatory treatment order requiring the respondent to undergo psychiatric treatment for a period not exceeding 36 months.

(2) A mandatory treatment order may also require the respondent to reside in a psychiatric institution during the whole or a specified part of the period that the respondent is required to undergo psychiatric treatment.

(3) Before making a mandatory treatment order against a respondent, the court must -
   (a) have reasonable grounds to believe that -
      (i) the respondent is likely to be suffering from a psychiatric condition; and
      (ii) that psychiatric condition is likely to be a contributing factor for the respondent's contravention that formed the basis for making the protection order against the respondent; and
   (b) call for a formal assessment report in respect of the respondent by an appointed psychiatrist.

(4) In making a determination under subsection (3)(a), the court -
   (a) may call for a preliminary assessment report by a specified psychiatrist; and
   (b) must consider any matter prescribed by regulations made under section 20.

(5) There is no appeal against any decision of the court under this section to call for or not to call for a preliminary assessment report.

(6) For the purpose of obtaining a preliminary assessment report from a specified psychiatrist in respect of a respondent, the court may order the respondent to attend before the specified psychiatrist at such times and places as the specified psychiatrist may require.

(7) For the purpose of obtaining a formal assessment report from an appointed psychiatrist in respect of a respondent, the court may order the respondent to -
   (a) reside in a psychiatric institution for observation for one or more periods (each not exceeding 3 weeks) as the court thinks fit; or
   (b) attend before the appointed psychiatrist at a psychiatric institution at such times as the appointed psychiatrist may require.

(8) A court must not make a mandatory treatment order in respect of a respondent unless the formal assessment report in respect of the respondent certifies that -
   (a) the respondent is suffering from a psychiatric condition that is susceptible to treatment;
   (b) the respondent is suitable for the treatment; and
   (c) the psychiatric condition is a contributing factor for the respondent's contravention that formed the basis for making the protection order against the respondent.

(9) A court must not make a mandatory treatment order in respect of a respondent if the formal assessment report in respect of the respondent certifies that the appointed psychiatrist is not satisfied as to any of the matters mentioned in subsection (8)(a), (b) or (c).

(10) In assessing whether a respondent is a person suitable for treatment for the respondent's psychiatric condition, the appointed psychiatrist may take into account the following factors:
     (a) whether the respondent is likely to attend the treatment sessions at such time and place as the appointed psychiatrist may require;
     (b) the physical and mental state of the respondent;
     (c) the respondent's financial standing and ability to pay all or any part of the costs of the treatment that it is reasonable for the respondent to pay.

(11) Where a court calls for a formal assessment report in respect of a respondent, the respondent may submit any report by another psychiatrist, engaged by the respondent, to the approved psychiatrist not later than -
     (a) the end of a period of 3 weeks after the date the court calls for the formal assessment report; or
     (b) such later time as the court may allow.

(12) Before making a formal assessment report, the appointed psychiatrist must take into consideration any report submitted by the respondent under subsection (11).

(13) Any report by the appointed psychiatrist is to be taken to be final and conclusive as to the matters mentioned in subsection (8)(a), (b) and (c).
(14) The court must extend to the respondent or the respondent’s advocate a copy of every preliminary assessment report and formal assessment report made in respect of the respondent.

(15) A court may include the requirement in subsection (2) in a mandatory treatment order only on the recommendation of the appointed psychiatrist.

(16) A court may impose such conditions as the court thinks fit when making a mandatory treatment order.

(17) Before making a mandatory treatment order, the court must explain to the respondent in ordinary language -
   (a) the purpose and effect of the order, and in particular the obligations of the respondent as specified in subsection (21);
   (b) the consequences which may follow if the respondent fails to comply with any of those obligations, or any conditions of the order; and
   (c) that the court has the power, under subsection (18), to vary or revoke the order on the application of the appointed psychiatrist.

(18) The court may, on the application of the appointed psychiatrist and whether or not the respondent has failed to comply with subsection (21) -
   (a) vary a mandatory treatment order (including reducing or extending the period that the respondent has to undergo psychiatric treatment) or the conditions of the order in such manner as the court thinks just and expedient in the circumstances; or
   (b) after taking into account the extent to which the respondent has complied with the order, revoke the order.

(19) The court may vary or revoke a mandatory treatment order under subsection (18) if such variation or revocation is justified in view of
   (a) any change of the circumstances after the order was made; or
   (b) the progress the respondent has made in the treatment.

(20) Where, under subsection (18)(a), a court extends the period that the respondent has to undergo psychiatric treatment under a mandatory treatment order, the period of psychiatric treatment must not exceed 36 months from the date the order is first in force.

(21) A respondent in respect of whom a mandatory treatment order is in force must -
   (a) attend the treatment sessions on such day and at such time and place as the appointed psychiatrist may require;
   (b) comply with all other conditions in connection with the respondent’s treatment as the appointed psychiatrist may require; and
   (c) comply with all other conditions or requirements of the order.

(22) The Minister charged with the responsibility for health may make regulations in relation to the treatment of a person subject to a mandatory treatment order.

(23) To avoid doubt, failure to comply with subsection (21) or disobedience with or breach of an order under subsection (6) or (7), if intentional, is a contempt of court.

(24) In this section -
   “appointed psychiatrist” means a psychiatrist appointed by the Director of Medical Services for the purposes of this section;
   “specified psychiatrist” means a psychiatrist specified by the court calling for a preliminary assessment report under subsection (4)(a).

(25) To avoid doubt, this section does not apply to any criminal proceedings or affect the application of section 339 of the Criminal Procedure Code (Cap. 68) in criminal proceedings.

PART 4 – GENERAL

18. Power of arrest

(1) Any police officer may arrest without warrant any person offending in his view against any of the provisions of this Act, and take him before a Magistrate’s Court to be dealt with according to law.

(2) Any police officer may also arrest without warrant any person reasonably suspected of having committed an offence under section 10(1) in the circumstances prescribed in regulations made under section 20, and take that person before a Magistrate’s Court to be dealt with according to law.
CANADA

FEDERAL LEGISLATION

Criminal Code 1985 (as amended by the Protecting Canadians from Online Crimes Act 2015)

162.1 Publication, etc., of an intimate image without consent

(1) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty

(a) of an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) of an offence punishable on summary conviction.

Definition of intimate image

(2) In this section, intimate image means a visual recording of a person made by any means including a photographic, film or video recording,

(a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;

(b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and

(c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

Defence

(3) No person shall be convicted of an offence under this section if the conduct that forms the subject-matter of the charge serves the public good and does not extend beyond what serves the public good.

Question of fact and law, motives

(4) For the purposes of subsection (3),

(a) it is a question of law whether the conduct serves the public good and whether there is evidence that the conduct alleged goes beyond what serves the public good, but it is a question of fact whether the conduct does or does not extend beyond what serves the public good; and

(b) the motives of an accused are irrelevant.

162.2 Prohibition order

(1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection 162.1(1), the court that sentences or discharges the offender, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.
Duration of prohibition

(2) The prohibition may be for any period that the court considers appropriate, including any period to which the offender is sentenced to imprisonment.

Court may vary order

(3) A court that makes an order of prohibition or, if the court is for any reason unable to act, another court of equivalent jurisdiction in the same province may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.

Offence

(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of
   (a) an indictable offence and is liable to imprisonment for a term of not more than four years; or
   (b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months.

264. CRIMINAL HARASSMENT

(1) No person shall, without lawful authority and knowing that another person is harassed or recklessly [sic] as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of repeatedly following from place to place the other person or anyone known to them; repeatedly communicating with, either directly or indirectly, the other person or anyone known to them; besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or engaging in threatening conduct directed at the other person or any member of their family.

Punishment

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years; or an offence punishable on summary conviction.

Factors to be considered

(4) Where a person is convicted of an offence under this section, the court imposing the sentence on the person shall consider as an aggravating factor that, at the time the offence was committed, the person contravened the terms or conditions of an order made pursuant to section 161 or a recognizance entered into pursuant to section 810, 810.1 or 810.2; or the terms or conditions of any other order or recognizance made or entered into under the common law or a provision of this or any other Act of Parliament or of a province that is similar in effect to an order or recognizance referred to in paragraph (a).

Reasons

(5) Where the court is satisfied of the existence of an aggravating factor referred to in subsection (4), but decides not to give effect to it for sentencing purposes, the court shall give reasons for its decision.
D. Commonwealth Europe

UNITED KINGDOM
ENGLAND & WALES

1. Protection from Harassment Act 1997 (as amended in 2017)

1. Prohibition of harassment

(1) A person must not pursue a course of conduct -
(a) which amounts to harassment of another, and
(b) which he knows or ought to know amounts to harassment of the other.

(1A) A person must not pursue a course of conduct -
(a) which involves harassment of two or more persons, and
(b) which he knows or ought to know involves harassment of those persons, and
(c) by which he intends to persuade any person (whether or not one of those mentioned above) -
   (i) not to do something that he is entitled or required to do, or
   (ii) to do something that he is not under any obligation to do.

(2) For the purposes of this section or section 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows -
(a) that it was pursued for the purpose of preventing or detecting crime,
(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

2. Offence of harassment

(1) A person who pursues a course of conduct in breach of section 1(1) or (1A) is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

(3) [deleted]

2A. Offence of stalking

(1) A person is guilty of an offence if -
(a) the person pursues a course of conduct in breach of section 1(1), and
(b) the course of conduct amounts to stalking.

(2) For the purposes of subsection (1)(b) (and section 4A(1)(a)) a person’s course of conduct amounts to stalking of another person if -
(a) it amounts to harassment of that person,
(b) the acts or omissions involved are ones associated with stalking, and
(c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking -
(a) following a person,
(b) contacting, or attempting to contact, a person by any means,
(c) publishing any statement or other material -
(i) relating or purporting to relate to a person, or
(ii) purporting to originate from a person,
(d) monitoring the use by a person of the internet, email or any other form of electronic communication,
(e) loitering in any place (whether public or private),
(f) interfering with any property in the possession of a person,
(g) watching or spying on a person.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or both.

(5) [transitional provision]

(6) This section is without prejudice to the generality of section 2.

2B. Power of entry in relation to offence of stalking

(1) A justice of the peace may, on an application by a constable, issue a warrant authorising a constable to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing that -
(a) an offence under section 2A has been, or is being, committed,
(b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
(c) the material -
   (i) is likely to be admissible in evidence at a trial for the offence, and
   (ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material
       (within the meanings given by sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984), and
(d) either -
   (i) entry to the premises will not be granted unless a warrant is produced, or
   (ii) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1).

(3) A constable may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

(4) In this section “premises” has the same meaning as in section 23 of the Police and Criminal Evidence Act 1984.

3. Civil remedy

(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) Where -
   (a) in such proceedings the High Court or the county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and
   (b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,
the plaintiff may apply for the issue of a warrant for the arrest of the defendant.

(4) An application under subsection (3) may be made -
   (a) where the injunction was granted by the High Court, to a judge of that court, and
   (b) where the injunction was granted by the county court, to a judge of that court.

(5) The judge to whom an application under subsection (3) is made may only issue a warrant if -
   (a) the application is substantiated on oath, and
   (b) the judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.
(6) Where-
(a) the High Court or the county court grants an injunction for the purpose mentioned in subsection (3)(a), and
(b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,
he is guilty of an offence.
(7) Where a person is convicted of an offence under subsection (6) in respect of any conduct, that conduct is not
punishable as a contempt of court.
(8) A person cannot be convicted of an offence under subsection (6) in respect of any conduct which has been punished
as a contempt of court.
(9) A person guilty of an offence under subsection (6) is liable -
(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory
maximum, or both.

3A. Injunctions to protect persons from harassment within section 1(1A)
(1) This section applies where there is an actual or apprehended breach of section 1(1A) by any person (“the relevant person”).
(2) In such a case -
(a) any person who is or may be a victim of the course of conduct in question, or
(b) any person who is or may be a person falling within section 1(1A)(c), may apply to the High Court or the county
court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in
relation to any person or persons mentioned or described in the injunction.
(3) Section 3(3) to (9) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an
injunction granted as mentioned in section 3(3)(a).

4. Putting people in fear of violence
(1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against
him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other to fear on
each of those occasions.
(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause
another to fear that violence will be used against him on any occasion if a reasonable person in possession of the
same information would think the course of conduct would cause the other to fear on that occasion.
(3) It is a defence for a person charged with an offence under this section to show that -
(a) his course of conduct was pursued for the purpose of preventing or detecting crime,
(b) his course of conduct was pursued under any enactment or rule of law or to comply with any condition or
requirement imposed by any person under any enactment, or
(c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection
of his or another’s property.
(4) A person guilty of an offence under this section is liable-
(a) on conviction on indictment, to imprisonment for a term not exceeding ten years, or a fine, or both, or
(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory
maximum, or both.

4A. Stalking involving fear of violence or serious alarm or distress
(1) A person (“A”) whose course of conduct -
(a) amounts to stalking, and
(b) either -
(i) causes another (“B”) to fear, on at least two occasions, that violence will be used against B, or
(ii) causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities,
is guilty of an offence if A knows or ought to know that A’s course of conduct will cause B so to fear on each
of those occasions or (as the case may be) will cause such alarm or distress.
(2) For the purposes of this section A ought to know that A’s course of conduct will cause B to fear that violence will be
used against B on any occasion if a reasonable person in possession of the same information would think the course of
conduct would cause B so to fear on that occasion.
(3) For the purposes of this section A ought to know that A’s course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that -
   (a) A’s course of conduct was pursued for the purpose of preventing or detecting crime,
   (b) A’s course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
   (c) the pursuit of A’s course of conduct was reasonable for the protection of A or another or for the protection of A’s or another’s property.

(5) A person guilty of an offence under this section is liable -
   (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, or a fine, or both, or
   (b) on summary conviction, to imprisonment for a term not exceeding twelve months, or a fine not exceeding the statutory maximum, or both.

(9) This section is without prejudice to the generality of section 4.

5. Restraining orders on conviction

(1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this section.

(2) The order may, for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which -
   (a) amounts to harassment, or
   (b) will cause a fear of violence, prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(5) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.

(6) A person guilty of an offence under this section is liable -
   (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
   (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

5A Restraining orders on acquittal

(1) A court before which a person (" the defendant ") is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under that one.

(5) A person made subject to an order under this section has the same right of appeal against the order as if -
   (a) he had been convicted of the offence in question before the court which made the order, and
   (b) the order had been made under section 5.

(6) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.

6. Limitation

(1) In section 11 of the Limitation Act 1980 (special time limit for actions in respect of personal injuries), after subsection (1) there is inserted -
   “(1A) This section does not apply to any action brought for damages under section 3 of the Protection from Harassment Act 1997.”
D. Commonwealth Europe cont

7. Interpretation of this group of sections

(1) This section applies for the interpretation of sections 1 to 5A.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A “course of conduct” must involve -
   (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
   (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.

(3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another -
   (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
   (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(4) “Conduct” includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

…

2. Stalking Protection Act 2019

1. Applications for orders

(1) A chief officer of police may apply to a magistrates' court for an order (a “stalking protection order”) in respect of a person (the “defendant”) if it appears to the chief officer that—
   (a) the defendant has carried out acts associated with stalking,
   (b) the defendant poses a risk associated with stalking to another person, and
   (c) there is reasonable cause to believe the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in paragraph (a)).

(2) A stalking protection order is an order which, for the purpose of preventing the defendant from carrying out acts associated with stalking -
   (a) prohibits the defendant from doing anything described in the order, or
   (b) requires the defendant to do anything described in the order.

(3) A chief officer of police for a police area in England and Wales may apply for a stalking protection order only in respect of a person—
   (a) who resides in the chief officer’s police area, or
   (b) who the chief officer believes is in that area or is intending to come to it.

…

2. Power to make orders

(1) A magistrates’ court may make a stalking protection order on an application under section 1(1) if satisfied that -
   (a) the defendant has carried out acts associated with stalking,
   (b) the defendant poses a risk associated with stalking to another person, and
   (c) the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in paragraph (a)).

…

(3) Prohibitions or requirements must, so far as practicable, be such as to avoid -
   (a) conflict with the defendant’s religious beliefs, and
   (b) interference with any times at which the defendant normally works or attends an educational establishment.

…

3. Duration of orders

(1) A stalking protection order has effect -
   (a) for a fixed period specified in the order, or
   (b) until a further order.
Where a fixed period is specified it must be a period of at least 2 years beginning with the day on which the order is made.

Different periods may be specified in relation to different prohibitions or requirements.

4. Variations, renewals and discharges

(1) The defendant or a relevant chief officer of police (see section 14(1)) may apply to a magistrates’ court for an order varying, renewing or discharging a stalking protection order.

(2) Before making a decision on an application under subsection (1), the court must hear - 
   (a) the defendant, and 
   (b) any relevant chief officer of police who wants to be heard.

(3) On an application under subsection (1) the court may make any order varying, renewing or discharging the stalking protection order that the court considers appropriate.

(4) But the court may not- 
   (a) in renewing or varying an order, impose an additional prohibition or requirement unless satisfied that it is necessary to do so in order to protect a person from a risk associated with stalking; 
   (b) discharge an order before the end of 2 years beginning with the day on which the order was made without the consent of the defendant and— 
      (i) where the application was made by a chief officer of police, that chief officer, or 
      (ii) in any other case, the chief officer of police who applied for the stalking protection order and (if different) the chief officer of police for the area in which the defendant resides, if that area is in England or Wales.

5. Interim stalking protection orders

(1) This section applies where an application for a stalking protection order (the “main application”) has not been determined.

(2) A magistrates’ court may make an order (an “interim stalking protection order”) in respect of the defendant on an application— 
   (a) made at the same time and by the same chief officer of police as the main application, or 
   (b) if the main application has already been made, made by the chief officer of police who made that application.

(3) The court may, if it considers it appropriate to do so, make an interim stalking protection order— 
   (a) prohibiting the defendant from doing anything described in the order, or 
   (b) requiring the defendant to do anything described in the order.

(4) Prohibitions or requirements must, so far as practicable, be such as to avoid— 
   (a) conflict with the defendant’s religious beliefs, and 
   (b) interference with any times at which the defendant normally works or attends an educational establishment.

(5) A prohibition or requirement has effect in all parts of the United Kingdom unless expressly limited to a particular locality.

(6) An interim stalking protection order— 
   (a) has effect only for a fixed period specified in the order, and 
   (b) ceases to have effect, if it has not already done so, on the determination of the main application.

(7) The defendant or the chief officer of police who applied for an interim stalking protection order may apply to a magistrates’ court for an order varying, renewing or discharging the interim stalking protection order.

(8) On an application under subsection (7), the court may make any order varying, renewing or discharging the stalking protection order that the court considers appropriate.

8. Offence of breaching stalking protection order etc

(1) A person who, without reasonable excuse, breaches a stalking protection order or an interim stalking protection order commits an offence.

...
E. Commonwealth Pacific

AUSTRALIA
AUSTRALIAN CAPITAL TERRITORY

Crimes Act 1900 (as amended)

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:
   - **harm** means physical harm, harm to mental health, or disease, whether permanent or temporary.
   - **harm to mental health** includes psychological harm.
   - **physical harm** 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.
NEW SOUTH WALES
Crimes (Domestic and Personal Violence) Act 2007

PART 1 – PRELIMINARY

7. Meaning of “intimidation”
(1) For the purposes of this Act, intimidation of a person means:
   (a) conduct (including cyberbullying) amounting to harassment or molestation of the person, or
      Note: An example of cyberbullying may be the bullying of a person by publication or transmission of offensive material over social media or via email.
   (b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or
   (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.

(2) For the purpose of determining whether a person’s conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person’s behaviour.

8. Meaning of “stalking”
(1) In this Act, stalking includes the following:
   (a) the following of a person about,
   (b) the watching or frequenting of the vicinity of, or an approach to, a person’s place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity,
   (c) contacting or otherwise approaching a person using the internet or any other technologically assisted means.

(2) For the purpose of determining whether a person’s conduct amounts to stalking, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person’s behaviour.

PART 2 – OBJECTS OF ACT IN RELATIONS TO DOMESTIC AND PERSONAL VIOLENCE

9. Objects of Act in relation to domestic violence
(1) The objects of this Act in relation to domestic violence are:
   (a) to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and
   (b) to reduce and prevent violence by a person against another person where a domestic relationship exists between those persons, and
   (c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and
   (d) to enact provisions that are consistent with the United Nations Convention on the Rights of the Child.

(2) This Act aims to achieve those objects by:
   (a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation (including harassment) and stalking, and
   (b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice.

(3) In enacting this Act, Parliament recognises:
   (a) that domestic violence, in all its forms, is unacceptable behaviour, and
   (b) that domestic violence is predominantly perpetrated by men against women and children, and
   (c) that domestic violence occurs in all sectors of the community, and
   (d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and
   (e) that domestic violence occurs in traditional and non-traditional settings, and
(f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and

(fl) the particular impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities, and

(g) that domestic violence is best addressed through a co-ordinated legal and social response of assistance and prevention of violence and, in certain cases, may be the subject of appropriate intervention by the court.

(4) A court that, or person who, exercises any power conferred by or under this Act in relation to domestic violence must be guided in the exercise of that power by the objects referred to in this section.

10. Object of Act in relation to personal violence

(1) The object of this Act in relation to personal violence is to ensure the safety and protection of all persons who experience personal violence outside a domestic relationship.

(2) This Act aims to achieve that object by:

(a) empowering courts to make apprehended personal violence orders in appropriate circumstances to protect people from violence, intimidation (including harassment) and stalking, and

(b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice, and

(c) ensuring that other avenues of dispute resolution are encouraged where appropriate.

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.

PART 4 - APPREHENDED DOMESTIC VIOLENCE ORDERS

15. Application for making of apprehended domestic violence order by court

(1) An application may be made in accordance with Part 10 for an apprehended domestic violence order for the protection of:

(a) a person against another person with whom he or she has or has had a domestic relationship, or

(b) two or more persons against another person with whom at least one of those persons has or has had a domestic relationship.

(2) An application is to be treated as an application for an apprehended personal violence order if none of the persons for whose protection the order would be made has or has had a domestic relationship with the person against whom it is sought.

16. Court may make apprehended domestic violence order

(1) A court may, on application, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person who has or has had a domestic relationship with another person has reasonable grounds to fear and in fact fears:

(a) the commission by the other person of a domestic violence offence against the person, or

(b) the engagement of the other person in conduct in which the other person:
(i) intimidates the person or a person with whom the person has a domestic relationship, or
(ii) stalks the person,
being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.

(2) Despite subsection (1), it is not necessary for the court to be satisfied that the person for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if:
(a) the person is a child, or
(b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence function, or
(c) in the opinion of the court:
   (i) the person has been subjected on more than one occasion to conduct by the defendant amounting to a personal violence offence, and
   (ii) there is a reasonable likelihood that the defendant may commit a personal violence offence against the person, and
   (iii) the making of the order is necessary in the circumstances to protect the person from further violence, or
(d) the court is satisfied on the balance of probabilities that the person has reasonable grounds to fear the commission of a domestic violence offence against the person.

(2A) An apprehended domestic violence order that is made in reliance on subsection (2) (d) cannot impose prohibitions or restrictions on the behaviour of the defendant other than those prohibitions that are taken to be specified in the order by section 36.

(3) For the purposes of this section, conduct may amount to intimidation of a person even though:
(a) it does not involve actual or threatened violence to the person, or
(b) it consists only of actual or threatened damage to property belonging to, in the possession of or used by the person.

17. Matters to be considered by court

(1) In deciding whether or not to make an apprehended domestic violence order, the court must consider the safety and protection of the protected person and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.

(2) Without limiting subsection (1), in deciding whether or not to make an apprehended domestic violence order, the court is to consider:
(a) in the case of an order that would prohibit or restrict access to the defendant’s residence—the effects and consequences on the safety and protection of the protected person and any children living or ordinarily living at the residence if an order prohibiting or restricting access to the residence is not made, and
(b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and
(c) the accommodation needs of all relevant parties, in particular the protected person and any children, and
(d) any other relevant matter.

(3) When making an apprehended domestic violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person’s property.

(4) If an application is made for an apprehended domestic violence order that prohibits or restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to give reasons for that decision.

PART 5 - APPREHENDED PERSONAL VIOLENCE ORDERS

18. Application for making of apprehended personal violence order by court

(1) An application may be made in accordance with Part 10 for an apprehended personal violence order for the protection of one or more persons against another person.

(2) An application is to be treated as an application for an apprehended domestic violence order if one or more of the persons for whose protection the order would be made has or has had a domestic relationship with the person against whom it is sought.
19. Court may make apprehended personal violence order

(1) A court may, on application, make an apprehended personal violence order if it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears:
   (a) the commission by the other person of a personal violence offence against the person, or
   (b) the engagement of the other person in conduct in which the other person:
      (i) intimidates the person, or
      (ii) stalks the person, being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.

(2) Despite subsection (1), it is not necessary for the court to be satisfied that the person for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if:
   (a) the person is a child, or
   (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence function.

(3) For the purposes of this section, conduct may amount to intimidation of a person even though:
   (a) it does not involve actual or threatened violence to the person, or
   (b) it consists only of actual or threatened damage to property belonging to, in the possession of or used by the person.

20. Matters to be considered by court

(1) In deciding whether or not to make an apprehended personal violence order, the court must consider the safety and protection of the person seeking the order and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.

(2) Without limiting subsection (1), in deciding whether or not to make an apprehended personal violence order, the court is to consider:
   (a) in the case of an order that would prohibit or restrict access to the defendant’s residence—the effects and consequences on the safety and protection of the protected person and any children living or ordinarily living at the residence if an order prohibiting or restricting access to the residence is not made, and
   (b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and
   (c) the accommodation needs of all relevant parties, in particular the protected person and any children, and
   (d) any other relevant matter.

(3) When making an apprehended personal violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person’s property.

(4) If an application is made for an apprehended personal violence order that prohibits or restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to give reasons for that decision.

21. Referral of matters to mediation

(1) If an application for an apprehended personal violence order is made to a court, the court:
   (a) when considering whether to make the order—is to refer the protected person and the defendant for mediation under the Community Justice Centres Act 1983 unless it is satisfied that there is good reason not to do so, and
   (b) at any other time—may refer the protected person and the defendant for mediation under that Act.

(2) Without limiting subsection (1), in determining whether there is good reason not to refer a matter to mediation, the court is to consider whether:
   (a) there has been a history of physical violence to the protected person by the defendant, or
   (b) the protected person has been subjected to conduct by the defendant amounting to a personal violence offence, or
   (c) the protected person has been subjected to conduct by the defendant amounting to an offence under section 13, or
   (d) the defendant has engaged in conduct amounting to harassment relating to the protected person’s race, religion, homosexuality, transgender status, HIV/AIDS infection or disability, or
   (e) there has been a previous attempt at mediation in relation to the same matter and the attempt was not successful.

(2A) The existence of any one or more of the factors referred to in subsection (2) does not prevent a court from referring a matter to mediation.
PART 8 - CONTENT AND EFFECT OF APPREHENDED VIOLENCE ORDERS

35. Prohibitions and restrictions imposed by apprehended violence orders

(1) When making an apprehended violence order, a court may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court and, in particular, to ensure the safety and protection of the person in need of protection and any children from domestic or personal violence.

(2) Without limiting the generality of subsection (1), an apprehended violence order made by a court may impose any or all of the following prohibitions or restrictions:

(a) prohibiting or restricting approaches by the defendant to the protected person,
(b) prohibiting or restricting access by the defendant to any or all of the following:
   (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
   (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,
   (iii) to any specified premises or place frequented by the protected person, whether or not the defendant has a legal or equitable interest in the premises or place,
(c) prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
(c1) prohibiting or restricting the defendant from locating or attempting to locate the protected person,
(d) prohibiting or restricting the possession of all or any specified firearms or prohibited weapons (within the meaning of the Weapons Prohibition Act 1998) by the defendant,
(e) prohibiting the defendant from destroying or deliberately damaging or interfering with the protected person’s property,
(f) prohibiting or restricting specified behaviour by the defendant that might affect the protected person.

(3) A provisional order may impose any or all of the prohibitions or restrictions specified in subsection (2) (a)–(e) if the issuing officer is satisfied that there are reasonable grounds for the order doing so and the defendant is not a child.

(4) [Repealed]

(5) A reference in this section to a court includes a reference to a Registrar.

Note. Section 23 of the Firearms Act 1996 provides for the automatic suspension of a licence under that Act on the making of an interim apprehended violence order against the licence holder and section 24 of that Act provides for the automatic revocation of a licence on the making of a final apprehended violence order against the licence holder. Section 17 of the Weapons Prohibition Act 1998 provides for the automatic suspension of a permit under that Act on the making of an interim apprehended violence order against the permit holder and section 18 of that Act provides for the automatic revocation of a permit on the making of a final apprehended violence order against the permit holder. On the suspension or revocation of such licences or permits, the relevant firearms or weapons must be surrendered to the police and may be seized by the police.

Note. Section 79 of the Residential Tenancies Act 2010 terminates the tenancy of a tenant or co-tenant under a residential tenancy agreement if a final apprehended violence order is made that prohibits the tenant or co-tenant from having access to the residential premises under the agreement.

Author’s Note Both apprehended domestic violence orders and apprehended personal violence orders can be made on an interim or an interim ex parte basis under Part VI of the Act “if it appears to the court that it is necessary or appropriate to do so in the circumstances”. It is also possible under Part VII of the Act for a police officer to apply by remote communication (telephone, fax etc) to a senior police officer or an authorized officer (a magistrate, a registrar of the Local Court, or a designated person in the Office of the Attorney-General) for the issue of a provisional apprehended domestic violence or personal violence order if the police officer “has good reason to believe a provisional order needs to be made immediately to ensure the safety and protection of the person who would be protected by the provisional order or to prevent substantial damage to any property of that person”.

(a) prohibiting or restricting approaches by the defendant to the protected person,
(b) prohibiting or restricting access by the defendant to any or all of the following:
   (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
   (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,
   (iii) to any specified premises or place frequented by the protected person, whether or not the defendant has a legal or equitable interest in the premises or place,
(c) prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
(c1) prohibiting or restricting the defendant from locating or attempting to locate the protected person,
(d) prohibiting or restricting the possession of all or any specified firearms or prohibited weapons (within the meaning of the Weapons Prohibition Act 1998) by the defendant,
(e) prohibiting the defendant from destroying or deliberately damaging or interfering with the protected person’s property,
(f) prohibiting or restricting specified behaviour by the defendant that might affect the protected person.
E. Commonwealth Pacific cont

36. Prohibitions taken to be specified in every apprehended violence order

Every apprehended violence order is taken to specify that the defendant is prohibited from doing any of the following:

(a) assaulting or threatening the protected person or a person with whom the protected person has a domestic relationship,

(b) stalking, harassing or intimidating the protected person or a person with whom the protected person has a domestic relationship,

(c) intentionally or recklessly destroying or damaging any property that belongs to, or is in the possession of, the protected person or a person with whom the protected person has a domestic relationship.

NORTHERN TERRITORY

1. Criminal Code Act 1983 (as amended)

... 

189. UNLAWFUL STALKING

(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.

(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.

Author’s Note There are separate offences under the Act which cover the stalking of specific categories of persons, including public officers in an attempt to influence a criminal investigation or judicial proceedings or the discharge of official duties, or because of anything done in good faith in any of these contexts (s.103A).

4. Personal violence offence

A personal violence offence is:

(a) an offence against any of the following provisions of the Criminal Code:
   (i) Part V, Division 2;
   (ii) Part VI, Divisions 3 to 6A;
   (iii) section 211 or 212;
   (iv) another provision prescribed by regulation; and

(b) any of the following conduct committed by a person against another person:
   (i) conduct causing harm;
   (ii) damaging property, including the injury to or death of an animal;
   (iii) intimidation;
   (iv) stalking;
   (v) economic abuse;
   (vi) attempting or threatening to commit conduct mentioned in subparagraphs (i) to (v).

10. Application for order

Any of the following persons may apply for an order (a personal violence restraining order) for the protection of a person against another person:

(a) the person whose protection is sought under the order;
(b) an adult acting for the person whose protection is sought under the order;
(c) a police officer.

14. Referral to mediation

(1) Before hearing an application for a personal violence restraining order, the Court must refer the person whose protection is sought and defendant for mediation under the Community Justice Centre Act.

(2) However, the Court must not make a referral and must proceed to hear the application if it is satisfied that a referral is not appropriate in the circumstances, including, for example, because:
   (a) there is a history of violence committed against the person by the defendant; and
   (b) there has been a previous attempt at mediation between the person and defendant in relation to the application and the attempt was not successful.

(3) A referral stays the proceedings until a report is given to the Court under subsection (6).

(4) The referral is taken to be an application under section 13 of the Community Justice Centre Act for the provision of mediation services for a dispute between the person and defendant.

(5) The Director of the Community Justice Centre must accept the referral.

(6) The Director must give the Court a written report on the outcome of the mediation or attempted mediation.

(7) The Court may refer the matter back to the Director with directions about the mediation.

(8) In deciding the application for the personal violence restraining order, the Court must take a report of the Director into account.

15. Deciding application

(1) The Court may decide to make a personal violence restraining order if it is satisfied on the balance of probabilities a personal violence offence has been committed, or is likely to be committed, by the defendant against the person whose protection is sought.

(2) Otherwise, the Court must dismiss the application.

(3) The Court may decide the application even if the defendant does not appear at the hearing.
17. Content of orders

(1) A personal violence restraining order may provide for any of the following:
   (a) an order imposing the restraint on the defendant stated in the order as the Court considers are necessary or desirable to prevent the commission of a personal violence offence against the protected person;
   (b) the other orders the Court considers are just or desirable to make in the circumstances of the particular case.

(2) In this section: “restraint” includes prohibition.

19. Interim personal violence restraining order

(1) At any time during proceedings for the hearing of an application for a personal violence restraining order, the Court may make an order (an interim personal violence restraining order) under this section.

(2) The Court may make the interim personal violence restraining order:
   (a) even if the defendant does not appear at the hearing; or
   (b) if the defendant appears at the hearing:
      (i) even though the defendant has not given evidence; or
      (ii) even if the defendant objects to the order being made.

(3) The interim personal violence restraining order is in force until the earlier of the following:
   (a) it is revoked by the Court;
   (b) if a personal violence restraining order is made for the same parties and the defendant is before the Court:
      (i) on the making of the personal violence restraining order; or
      (ii) on the later date ordered by the Court;
   (c) if a personal violence restraining order is made for the same parties and the defendant is not before the Court:
      (i) when the personal violence restraining order is given to the defendant; or
      (ii) on the later date ordered by the Court.

20. Prohibition on publication of personal details

A personal violence restraining order and an interim personal violence restraining order may include an order prohibiting the publication of personal details of a protected person or witness in proceedings if the Court is satisfied the publication would expose the person to the risk of harm.

23. Contravention of personal violence restraining order or interim personal violence restraining order

(1) A person commits an offence if:
   (a) a personal violence restraining order or an interim personal violence restraining order is in force against the person; and
   (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply unless:
   (a) the person has been given a copy of the order; or
   (b) for a personal violence restraining order that has been varied:
      (i) the person has been given a copy of the order as varied; or
      (ii) the person’s conduct also constitutes a contravention of the order last given to the person.

(3) An offence against subsection (1) is an offence of strict liability.

3. Domestic and Family Violence Act 2007

5. Domestic violence

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;
   (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).
Part 2.2 - Making of domestic violence orders

18. When (domestic violence orders) DVO may be made

(1) The issuing authority may make a DVO only if satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant.

(2) In addition, if the protected person is a child, the authority may make a DVO if satisfied there are reasonable grounds to fear the child will be exposed to domestic violence committed by or against a person with whom the child is in a domestic relationship.

19. Matters to be considered in making DVO

(1) In deciding whether to make a DVO, the issuing authority must consider the safety and protection of the protected person to be of paramount importance. Domestic and Family Violence Act 11 Chapter 2 Domestic violence orders

(2) In addition, the issuing authority must consider the following:
   (a) any family law orders in force in relation to the defendant, or any pending applications for family law orders in relation to the defendant, of which the issuing authority has been informed;
   (b) the accommodation needs of the protected person;
   (c) the defendant’s criminal record as defined in the Criminal Records (Spent Convictions) Act;
   (d) the defendant’s previous conduct whether in relation to the protected person or someone else;
   (e) other matters the authority considers relevant.

20. Presumption in favour of protected person with child remaining at home

(1) This section applies if:
   (a) the defendant and protected person normally live in the same home with a child (whether or not the child is also a protected person); and
   (b) in deciding the conditions of a DVO, the issuing authority imposes a restraint on the defendant having contact with the protected person or child.

(2) The issuing authority must presume the protection of the protected person & child are best achieved by them living in the home.

(3) To avoid doubt, this section does not prevent a DVO including a premises access order.
   Example of order for subsection (3): A premises access order providing for the defendant to visit the child at the home.

Part 2.3 - Content of domestic violence orders

21. What DVO may provide

(1) A DVO may provide for any of the following:
   (a) an order imposing the restraints on the defendant stated in the DVO as the issuing authority considers are necessary or desirable to prevent the commission of domestic violence against the protected person;
   (b) an order imposing the obligations on the defendant stated in the DVO as the issuing authority considers are necessary or desirable:
      (i) to ensure the defendant accepts responsibility for the violence committed against the protected person; and
      (ii) to encourage the defendant to change his or her behaviour;
   (c) other orders the issuing authority considers are just or desirable to make in the circumstances of the particular case;
   (d) an order (an ancillary order) that aims to ensure compliance by the defendant with another order under paragraph (a), (b) or (c).

(1A) An ancillary order may: (a) prohibit the defendant from engaging in specified conduct; or (b) require the defendant to take specified action

(1B) The Regulations may make provision about a matter relating to an ancillary order. [2] Subsection (1) is not limited by the specific orders provided in this Part.

22. Premises access order

(1) A DVO may include an order (a premises access order):
   (a) requiring the defendant to vacate stated premises where the defendant and protected person live together or previously lived together; or
   (b) restraining the defendant from entering such premises except on stated conditions.

(2) Before making a premises access order, the issuing authority must consider the effect of making the order on the accommodation of the persons affected by it.

(3) The order applies regardless of whether the defendant has a legal or equitable interest in the premises.
E. Commonwealth Pacific cont

QUEENSLAND

Criminal Code 1899 (as amended)

Chapter 33A - Unlawful Stalking

359A Definition for Ch 33A

In this chapter-

“circumstances” 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.

“detriment” 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.

Example: 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: A person sells a property the person would not otherwise sell.

“property”, of a person, means-
(a) property in which the person has an interest, whether or not the defendant also has an interest in the property; or

Example: Under the Acts Interpretation Act 1954, schedule 1 -

“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.

“stalked person” see section 359B.

“unlawful stalking” see section 359B.

“violence” -
(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

(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.

359D Particular conduct that is not unlawful stalking

“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.

359E Punishment of unlawful stalking

(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.
(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 when or because the officer is investigating the activities of a criminal organisation.
(5) The Penalties and Sentences Act 1992, section 161Q also states a circumstance of aggravation for an offence against this section.
(6) An indictment charging an offence against this section with the circumstance of aggravation stated in the Penalties and Sentences Act 1992, section 161Q may not be presented without the consent of a Crown Law Officer.

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.
E. Commonwealth Pacific cont

(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.

Penalty: 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).

SOUTH AUSTRALIA

Criminal Law Consolidation Act 1935 (as amended)

5AA - Aggravated offences

(1) Subject to this section, an aggravated offence is an offence committed in 1 or more of 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 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 a person with whom the offender was, or was formerly, in a relationship;

(ga) - 

(i) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or 
(ii) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation);

(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;

(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 disability or cognitive impairment;

(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.

9AA - 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 

(iv-a) 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 
(iv-b) 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 behaviour 1 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.
E. Commonwealth Pacific cont

(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.

Author’s Note The Intervention Orders (Prevention of Abuse) Act 2009 has unified a number of aspects relating to the issue of intervention orders in cases of abuse in South Australia.

TASMANIA

1. Criminal Code Act 1924 (as amended by the Criminal Code Amendment (Bullying) Act 2019)

192. Stalking and bullying

(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 and bullying.

(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.

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48 Models of harassment laws
192A. Extra-territorial operation of offence

(1) If -
(a) a person takes an action referred to in section 192(1)(f), (g), (h), (i) or (j) outside, or partly outside, Tasmania; and
(b) there is a real and substantial link between the action taken and Tasmania - those provisions apply in relation to the action taken as if it had been taken wholly within Tasmania.

(2) For the purposes of subsection (1), there is a real and substantial link between the action taken and Tasmania if -
(a) a significant part of the conduct relating to, or constituting, the action occurred in Tasmania; or
(b) where the action was taken wholly or partly outside Tasmania, substantial harmful effects arose in Tasmania.

2. Justices Act 1959 (as amended)

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 –
(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 –
(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).
E. Commonwealth Pacific cont

(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 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.

(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.

(8) [repealed]

Author’s Note  This Act also provides for interim ex parte restraint orders when the presiding officer finds “sufficient” evidence (s.106D). A police officer can apply for an interim restraint order telephonically when the officer has reasonable grounds for believing that intimidation has taken place and is likely to give rise to an assault and it is not practicable to immediately apply for a restraint order because of the time and place of the situation. Police officers also have the authority to detain a person against whom an order is sought in such circumstances until such time as the application is considered (s.106DA). Contravention of a restraint order is a crime (s.106I).
VICTORIA

1. Crimes Act 1958 (as amended by the Crimes (Stalking) Act 2003)

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;
(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);
(da) making threats to the victim;
(db) using abusive or offensive words to or in the presence of the victim;
(dc) performing abusive or offensive acts in the presence of the victim;
(dd) directing abusive or offensive acts towards the victim;
(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-
(i) to cause physical or mental harm to the victim, including self-harm; or
(ii) 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, including self-harm, 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, including self-harm, 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
(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.

(5) [Repealed]
E. Commonwealth Pacific cont

(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.

(8) In this section -
   “mental harm” includes -
   (a) psychological harm; and
   (b) suicidal thoughts.

2. Personal Safety Intervention Orders Act 2010

15. Who may apply for personal safety intervention order

An application for a personal safety intervention order may be made by -
(a) an affected person; or
(b) if the affected person is an adult, any other person with the written consent of the affected person; or
(c) if the affected person is a child -
   (i) a parent of the child; or
   (ii) any other person with the written consent of a parent of the child or with the leave of the court; or
   (iii) the affected person with the leave of the court if the affected person is of or above the age of 14 years; or
(d) if the affected person has a guardian—
   (i) the guardian; or
   (ii) any other person, with the leave of the court; or
(e) a police officer.

35. Court may make interim order

(1) The court may make an interim order if a person has applied to the court for a personal safety intervention order and the court is satisfied -
   (a) on the balance of probabilities, that an interim order is necessary pending a final decision about the application -
      (i) to ensure the safety of the affected person; or
      (ii) to preserve any property of the affected person; and
   (b) that it is appropriate to make the order in all the circumstances of the case.

(2) The court may also make an interim order if a person has applied to the court for a personal safety intervention order and the parties to the proceeding have consented to, or do not oppose, the making of an interim order for the application.

(3) The court may make an order under subsection (2) -
   (a) without being satisfied as to any matter referred to in subsection (1); and
   (b) whether or not the respondent admits to any or all of the particulars of the application.

(4) Without limiting subsection (1)(b), in deciding whether it is appropriate to make an interim order the court may consider—
   (a) if the respondent is a child, the respondent’s ability to do the following, taking into account his or her age and maturity—
      (i) understand the nature and effect of an interim order; and
      (ii) comply with the conditions of the interim order;
   (b) if the court is satisfied that the respondent has a cognitive impairment, the respondent’s ability to do the following, taking into account his or her cognitive impairment—
      (i) understand the nature and effect of an interim order; and
      (ii) comply with the conditions of the interim order.

(5) The court may make an interim order whether or not—
   (a) some or all of the prohibited behaviour or stalking alleged in the application for the personal safety intervention order occurred outside Victoria, so long as the affected person was in Victoria at the time at which that alleged conduct occurred;
   (b) the affected person was outside Victoria at the time at which some or all of the prohibited behaviour or stalking alleged in the application for the personal safety intervention order occurred, so long as that alleged conduct occurred in Victoria.
37. Interim order may be made in absence of respondent etc.

An interim order may be made -
(a) whether or not the respondent has been served with a copy of the application for a personal safety intervention order; and
(b) whether or not the respondent is present when the interim order is made.

61. Power of court to make final order

(1) The court may make a final order if the court is satisfied, on the balance of probabilities, that -
(a) the respondent has -
   (i) committed prohibited behaviour against the affected person and -
      (A) is likely to continue to do so or do so again; and
      (B) the respondent's prohibited behaviour would cause a reasonable person to fear for his or her safety; or
   (ii) stalked the affected person and is likely to continue to do so or do so again; and
(b) the respondent and the affected person are not family members; and
(c) it is appropriate in all the circumstances of the case to make a final order.

63. Power to make final order if affected person has not consented to application or order-police applicants

(1) If the applicant for a final order is a police officer, the court may make the order under section 61 even if the affected person has not consented to the making of the application.

(2) However, if the affected person does not consent to the making of the final order, the final order may include only conditions referred to in section 67(2)(a), (b), (f), (g) or (h).

(3) Subsection (2) does not apply if -
   (a) the affected person is a child and -
      (i) no adult affected person is included in the application; or
      (ii) the adult affected person included in the application consents to the making of the order; or
   (b) the affected person has a guardian and the guardian has consented to the application; or
   (c) the affected person is cognitively impaired.

WESTERN AUSTRALIA

Criminal Code Act Compilation Act 1913 (as amended)

Stalking

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.
E. Commonwealth Pacific cont

(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:
   (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.

NEW ZEALAND

Harassment Act 1997 (as amended by the Harmful Digital Communications Act 2015)

3. Meaning of harassment

(1) For the purposes of this Act, a person harasses another person if he or she engages in a pattern of behaviour that is directed against that other person, being a pattern of behaviour that includes doing any specified act to the other person on at least 2 separate occasions within a period of 12 months.

(2) To avoid any doubt,—
   (a) the specified acts required for the purposes of subsection (1) may be the same type of specified act on each separate occasion, or different types of specified acts:
   (b) the specified acts need not be done to the same person on each separate occasion, as long as the pattern of behaviour is directed against the same person.

(3) For the purposes of this Act, a person also harasses another person if—
   (a) he or she engages in a pattern of behaviour that is directed against that other person; and
   (b) that pattern of behaviour includes doing any specified act to the other person that is one continuing act carried out over any period.

(4) For the purposes of subsection (3), continuing act includes a specified act done on any one occasion that continues to have effect over a protracted period (for example, where offensive material about a person is placed in any electronic media and remains there for a protracted period).

4. Meaning of specified act

(1) For the purposes of this Act, a specified act, in relation to a person, means any of the following acts:
   (a) watching, loitering near, or preventing or hindering access to or from, that person's place of residence, business, employment, or any other place that the person frequents for any purpose:
   (b) following, stopping, or accosting that person:
   (c) entering, or interfering with, property in that person's possession:
(d) making contact with that person (whether by telephone, correspondence, electronic communication, or in any other way);
(e) giving offensive material to that person or leaving it where it will be found by, given to, or brought to the attention of that person:
(ea) giving offensive material to a person by placing the material in any electronic media where it is likely that it will be seen by, or brought to the attention of, that person:
(f) acting in any other way -
(i) that causes that person (person A) to fear for his or her safety; and
(ii) that would cause a reasonable person in person A’s particular circumstances to fear for his or her safety.

(2) To avoid any doubt, subsection (1)(f) includes the situation where -
(a) a person acts in a particular way; and
(b) the act is done in relation to a person (person B) in circumstances in which the act is to be regarded, in accordance with section 5(b), as done to another person (person A); and
(c) acting in that way-
(i) causes person A to fear for his or her safety; and
(ii) would cause a reasonable person in person A’s particular circumstances to fear for his or her safety, whether or not acting in that way causes or is likely to cause person B to fear for person B’s safety.

(3) Subsection (2) does not limit the generality of subsection (1)(f).

5. Meaning of act done to person

An act is done to a person (person A), for the purposes of this Act, if that act is done -
(a) in relation to person A; or
(b) in relation to any other person (person B) with whom person A is in a family relationship, and the doing of the act is due, wholly or partly, to person A’s family relationship with person B.

6. Object

(1) The object of this Act is to provide greater protection to victims of harassment by -
(a) recognising that behaviour that may appear innocent or trivial when viewed in isolation may amount to harassment when viewed in context; and
(b) ensuring that there is adequate legal protection for all victims of harassment.

(2) This Act aims to achieve its object by—
(a) making the most serious types of harassment criminal offences:
(b) empowering the court to make orders to protect victims of harassment who are not covered by domestic violence legislation:
(c) providing effective sanctions for breaches of the criminal and civil law relating to harassment.

(3) Any court which, or any person who, exercises any power conferred by or under this Act must be guided in the exercise of that power by the object specified in subsection (1).

8. Criminal harassment

(1) Every person commits an offence who harasses another person in any case where -
(a) the first-mentioned person intends that harassment to cause that other person to fear for -
(i) that other person’s safety; or
(ii) the safety of any person with whom that other person is in a family relationship; or
(b) the first-mentioned person knows that the harassment is likely to cause the other person, given his or her particular circumstances, to reasonably fear for—
(i) that other person’s safety; or
(ii) the safety of any person with whom that other person is in a family relationship.

(2) Every person who commits an offence against this section is liable, on conviction, to imprisonment for a term not exceeding 2 years.
F. Non-Commonwealth Countries

BERMUDA

Stalking Act 1997

3. Meaning of “stalking”

(1) For the purposes of this Act, a person stalks another person (the “victim”) if -
   (a) without lawful authority the first-mentioned person engages in conduct described in subsection (2)-
      (i) with the intention –
         (aa) of causing physical or mental harm to the victim; or
         (bb) of inducing in the victim apprehension or fear for the victim’s safety or for the safety of a connected
              person; or
      (ii) when he knows that that conduct is likely to cause such harm to the victim or to induce in the victim such
           apprehension or fear; and
   (b) that conduct actually has that result.

(2) The conduct referred to in subsection (1) is conduct consisting of acts, done over a period of time, which include any
    one or more of the following -
    (a) following the victim or a connected person;
    (b) telephoning or sending electronic messages to, or otherwise contacting, the victim or a connected person;
    (c) interfering with property in the possession of the victim or a connected person;
    (d) entering the place of residence or employment of the victim or a connected person, or any other place frequented
        by the victim or a connected person, and loitering there;
    (e) loitering outside the place of residence or employment of the victim or a connected person, or outside any other
        place frequented by the victim or a connected person;
    (f) keeping the victim or a connected person under surveillance.

4. Offence of stalking

(1) A person who stalks another person is guilty of an offence and, subject to subsection (2), liable on summary conviction
    to imprisonment for a term not exceeding 12 months or to a fine not exceeding $2,500 or to both.

(2) Where a person is found guilty of an offence of stalking contrary to subsection (1) and it is proved in the proceedings,
    on the balance of probabilities -
    (a) that he was in possession of an offensive weapon when he did an act forming part of the conduct constituting the
        stalking; or
    (b) that an act forming part of that conduct was a breach of –
       (i) a protection order made in respect of him under this Act; or
       (ii) an order made in respect of him under section 9A of the Matrimonial Proceedings (Magistrates’ Courts) Act
            1974 [title 27 item 5]; or
       (iii) a protection order made in respect of him under the Domestic Violence (Protection Orders) Act 1997
            [title 27 item 10], the court may, instead of sentencing him under subsection (1), sentence him to imprisonment
            for a term not exceeding 3 years or to a fine not exceeding $5,000 or to both.
5. Application for protection order

(1) A person (a “complainant”) may apply to the court in the prescribed form for a protection order in respect of another person (a “respondent”) in the cases set forth in subsection (2).

(2) Such an application may be made-
   (a) where proceedings for an offence of stalking the complainant contrary to section 4 have been instituted against the respondent and have ended in the respondent’s conviction; or
   (b) where such proceedings have been instituted but have not been concluded; or
   (c) where the court is satisfied that such proceedings are imminent.

(3) The provisions of subsections (2) to (4) of section 6, and of sections 7 to 9, of the Domestic Violence (Protection Orders) Act 1997 (applications by representatives), together with so much of section 2 of that Act as is necessary for the interpretation of those provisions, apply mutatis mutandis in relation to applications for protection orders under this Act as they apply in relation to applications for protection orders under that Act.

6. Power to make protection order

(1) In a case to which paragraph (a) of section 5(2) applies, the court may make a protection order in respect of the respondent if it is satisfied that the order is needed for the complainant’s protection.

(2) In a case to which paragraph (b) of section 5(2) applies, the court may make a protection order in respect of the respondent if it is satisfied that-
   (a) the respondent has stalked the complainant; and
   (b) the order is needed for the latter’s protection.

(3) In a case to which paragraph (c) of section 5(2) applies, the court may make a protection order in respect of the respondent if it is satisfied that—
   (a) the respondent will stalk the complainant; and
   (b) the order is needed for the latter’s protection; but such an order must be a temporary order.

7. Procedure on an application

(1) Subject to section 11, where an application for a protection order has been made, the court shall issue a summons in the prescribed form summoning the respondent to a hearing.

(2) The summons, together with a copy of the application, must be served on the respondent personally.

8. Content of protection order

(1) A protection order may, subject to this Act, make provision as specified in subsection (2).

(2) A protection order may prohibit the respondent from—
   (a) following the complainant or a connected person;
   (b) telephoning or sending electronic messages to, or otherwise contacting, the complainant or a connected person;
   (c) interfering with property in the possession of the complainant or a connected person;
   (d) entering the place of residence or employment of the complainant or a connected person, or any other place frequented by the complainant or a connected person, and loitering there;
   (e) loitering outside the place of residence or employment of the complainant or a connected person, or outside any other place frequented by the complainant or a connected person;
   (f) keeping the complainant or a connected person under surveillance;
   (g) inciting or assisting another person to stalk the complainant.
F. Non-Commonwealth Countries cont

GERMANY

Criminal Code 1998 (as amended in 2019)

Section 238 - Stalking

(1) Whosoever unlawfully stalks a person by
1. seeking his proximity,
2. trying to establish contact with him by means of telecommunications or other means of communication or through third persons,
3. abusing his personal data for the purpose of ordering goods or services for him or causing third persons to make contact with him,
4. threatening him or a person close to him with loss of life or limb, damage to health or deprivation of freedom, or
5. committing similar acts
and thereby seriously infringes his lifestyle shall be liable to imprisonment not exceeding three years or a fine.

(2) The penalty shall be three months to five years if the offender places the victim, a relative of or another person close to the victim in danger of death or serious injury.

(3) If the offender causes the death of the victim, a relative of or another person close to the victim the penalty shall be imprisonment from one to ten years.

(4) Cases under subsection (1) above may only be prosecuted upon request unless the prosecuting authority considers proprio motu that prosecution is required because of special public interest.

UNITED STATES OF AMERICA

CALIFORNIA

1. Penal Code 1872 (as amended in 2007)

646.9 (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.
(f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(g) For the purposes of this section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.”

(h) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(l) For purposes of this section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly resided, in the plaintiff’s household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

2. Civil Code 1872 (as amended in 2014)
...

1708.7 (a) A person is liable for the tort of stalking when the plaintiff proves all of the following elements of the tort:

(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.

(2) As a result of that pattern of conduct, the plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this paragraph, immediate family means a spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(3) One of the following:

(A) The defendant, as a part of the pattern of conduct specified in paragraph (1), made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member and, on at least one occasion, the plaintiff clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct.

(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to Section 527.6 of the Code of Civil Procedure, prohibiting any act described in subdivision (a).
F. Non-Commonwealth Countries cont

(b) For the purposes of this section:
   (1) Pattern of conduct means conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of pattern of conduct.
   (2) Credible threat means a verbal or written threat, including that communicated by means of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent and apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.
   (3) Electronic communication device includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. Electronic communication has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.
   (4) Harass means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.

(c) A person who commits the tort of stalking upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages pursuant to Section 3294.

(d) In an action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction.

(e) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(f) This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly.

MICHIGAN

Revised Judicature Act 1961 (as amended in 1992)

s. 600.2954 Maintaining civil action against individual engaging in prohibited conduct; “victim” defined.
   (1) A victim may maintain a civil action against an individual who engages in conduct that is prohibited under section 411h or 411i of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.411h and 750.411i of the Michigan Compiled Laws, for damages incurred by the victim as a result of that conduct. A victim may also seek and be awarded exemplary damages, costs of the action, and reasonable attorney fees in an action brought under this section.
   (2) A civil action may be maintained under subsection (1) whether or not the individual who is alleged to have engaged in conduct prohibited under section 411h or 411i of Act No. 328 of the Public Acts of 1931 has been charged or convicted under section 411h or 411i of Act No. 328 of the Public Acts of 1931 for the alleged violation.
   (3) As used in this section, “victim” means that term as defined in section 411h of Act No. 328 of the Public Acts of 1931.

OREGON

Revised Statutes 2017

s. 30.866 Action for issuance or violation of stalking protective order; attorney fees.
   (1) A person may bring a civil action in a circuit court for a court’s stalking protective order or for damages, or both, against a person if:
      (a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person’s immediate family or household thereby alarming or coercing the other person;
      (b) It is objectively reasonable for a person in the victim’s situation to have been alarmed or coerced by the contact; and
      (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim’s immediate family or household.
[2] At the time the petition is filed, the court, upon a finding of probable cause based on the allegations in the petition, shall enter a temporary court’s stalking protective order that may include, but is not limited to, all contact listed in ORS 163.730. The petition and the temporary order shall be served upon the respondent with an order requiring the respondent to personally appear before the court to show cause why the temporary order should not be continued for an indefinite period.

[3] (a) At the hearing, whether or not the respondent appears, the court may continue the hearing for up to 30 days or may proceed to enter a court’s stalking protective order and take other action as provided in ORS 163.738.

(b) If respondent fails to appear after being served as required by subsection (2) of this section, the court may issue a warrant of arrest as provided in ORS 133.110 in order to ensure the appearance of the respondent in court.

[4] The plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Reasonable attorney fees and costs.

[5] The court may enter an order under this section against a minor respondent without appointment of a guardian ad litem.

[6] An action under this section must be commenced within two years of the conduct giving rise to the claim.

[7] Proof of the claim shall be by a preponderance of the evidence.

[8] The remedy provided by this section is in addition to any other remedy, civil or criminal, provided by law for the conduct giving rise to the claim.

[9] No filing fee, service fee or hearing fee may be charged for a proceeding under this section.

[10] If the respondent was provided notice and an opportunity to be heard, the court shall also include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) and (g)(8) to affect the respondent’s ability to possess firearms and ammunition or engage in activities involving firearms.


[12] Except for purposes of impeachment, a statement made by the respondent at a hearing under this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732 or for violating a court’s stalking protective order as defined in ORS 163.750.

**VIRGINIA**

**Virginia Code 2017**

**Civil action for stalking**

A. A victim has a civil cause of action against an individual who engaged in conduct that is prohibited under § 18.2-60.3, whether or not the individual has been charged or convicted for the alleged violation, for the compensatory damages incurred by the victim as a result of that conduct, in addition to the costs for bringing the action.

If compensatory damages are awarded, a victim may also be awarded punitive damages.

B. As used in this section:

“Compensatory damages” includes damages for all of the defendant’s acts prohibited by § 18.2-60.3.

“Victim” means a person who, because of the conduct of the defendant that is prohibited under § 18.2-60.3, was placed in reasonable fear of death, criminal sexual assault, or bodily injury to himself or to a minor child of whom the person is a parent or legal guardian.

C. No action shall be commenced under this section more than two years after the most recent conduct prohibited under § 18.2-60.3.
UNITED STATES OF AMERICA

The Model Stalking Code Revisited: Responding to the New Realities of Stalking National Centre for Victims of Crime 2007

SECTION ONE: LEGISLATIVE INTENT

The Legislature finds that stalking is a serious problem in this state and nationwide. Stalking involves severe intrusions on the victim’s personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim’s quality of life, and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time. The Legislature recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the Legislature enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences.

The Legislature intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The Legislature recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

SECTION TWO: OFFENSE

Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to: (a) fear for his or her safety or the safety of a third person; or (b) suffer other emotional distress is guilty of stalking.

SECTION THREE: DEFINITIONS

As used in this Model Statute:

(a) “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

(b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) “Reasonable person” means a reasonable person in the victim’s circumstances.

SECTION FOUR: DEFENSES

In any prosecution under this law, it shall not be a defense that:

(a) the actor was not given actual notice that the course of conduct was unwanted; or

(b) the actor did not intend to cause the victim fear or other emotional distress.

SECTION FIVE: CLASSIFICATION

Stalking is a felony. Aggravating factors. The following aggravating factors shall increase the penalty for stalking:

(a) the defendant violated any order prohibiting contact with the victim; or

(b) the defendant was convicted of stalking any person within the previous 10 years; or

(c) the defendant used force or a weapon or threatened to use force or a weapon; or

(d) the victim is a minor.

SECTION SIX: JURISDICTION

As long as one of the acts that is part of the course of conduct was initiated in or had an effect on the victim in this jurisdiction, the defendant may be prosecuted in this jurisdiction.