

## Wk. 1 – Stalking, Threats

338E. Stalking w/ intent

(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

### Sec 338D – definition of pursue

Pursue, in relation to a person, includes:

- (a) to repeatedly communicate with the person;
- (b) to repeatedly follow the person;
- (c) to repeatedly cause the person to receive unsolicited items;
- (d) to watch the place where the person lives or works or happens to be

- *NB: Haddon v Everitt*

### Sec 338D definition of pursue

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 or hinder the person from doing an act that the person is lawfully entitled to do.

(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 (w/o intent)

- Objective test in reasonably expected

**Sec 338E(3)** 'It is a defence to a charge under this section to prove that the accused person acted with lawful authority'. NB: Onus of proof reversed

## Threats

338A. Threat **with intent** to gain etc.

Any person who makes a threat with intent to —

- (a) gain a benefit, pecuniary or otherwise, for any person; or
  - (b) cause a detriment, pecuniary or otherwise, to any person;
- or
- (c) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act; or
  - (d) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act,
- is guilty of a crime and is liable —

- (e) where the threat is to kill a person, to imprisonment for 10 years;
- (f) in any other case, to imprisonment for 7 years.

## Sec 338 (definition of 'threat')

'A statement or behaviour that expressly constitutes, or may reasonably be regarded as constituting, a threat to —

- a) kill, injure ... any person ...
- b) destroy, damage ... any property ...
- c) take ... control of a building ... by force or violence
- d) cause a detriment ... to any person ...'.

## **Wk. 2 – Parties to a crime**

Examples of *joint principals*:

### **Facts**

D1 and D2, each with an intention to kill P, beat P to death with clubs.

### **Result**

D1 and D2 are guilty of murder. They are joint principals.

*Accomplices*

### **Facts**

D1 and D2 intentionally kill P by clubbing P to death.

D1 wields the club while D2 ...

... keeps a look out; and/or

... shouts words of encouragement; and/or

... pins P to the ground so that P is unable to defend himself against the blows.

### **Result**

Both D1 and D2 are guilty of murder. D1 is the principal offender. D2 is the accomplice (aka 'accessory', 'secondary party').

*There are two kinds of accomplices:*

Aiding/abetting: D2 assists D1 at the time D1 commits the crime e.g.

- Fayzeh keeps watch outside the animal shed while Vincent breaks into the shed and releases the quokkas.
- D2 holds a knife to P's throat while D1 rapes P

## **Elements of aiding/abetting**

### **Sec 7(b), (c)**

- 'Aids' = to help or assist: *Sherrington* [2001] QCA 105
- Mere presence at the commission of an offence is not aiding; there must be positive encouragement: *Coney* [1882] 2 QB 534
- Aiding by inaction: *Peterson v Fleay* [2007] WASC 230
- Mental element = intention, some degree of knowledge of offence. Does not need to be precise: *DPP Northern Ireland v Maxwell*

*R v Clarkson, R v Carroll* – positive act of encouragement