

# Stalking

s 338E Criminal Code

**From 1 January 2014**

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

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

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>Rowley v The State of Western Australia</i></p> <p><b>[2016] WASCA 162</b></p> <p>Delivered 16/09/2016</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Minor traffic and criminal history.</p> <p>No history of domestic violence from current and previous relationships.</p> <p>Single at time offending; three children from previous marriage.</p> <p>History of drug use.</p>	<p>Ct 4: Agg burg. Ct 5: Damage. Ct 6: Threat to harm. Ct 7: Agg stalking.</p> <p>Rowley and the victim "A" were in a highly volatile physical relationship.</p> <p>A accused Rowley of stealing a diamond earring from her. As a result of Rowley's aggressive behaviour she went to stay with her mother. During A's absence Rowley entered A's home using a key that he had cut without her knowledge (ct 4). Inside he found some peaches; he crushed and smudged them throughout the home, including the carpets, walls, paintings and bedding. Rowley sent a text message to A telling her he was going to wreck her apartment and clothes. A returned home and found what he had done, along with a "love note" and the missing earring on the kitchen bench. A had the external locks changed and got an interim VRO against the Rowley.</p> <p>In the morning Rowley returned to A's home and cut out the new deadlock from the rear door (ct 5).</p> <p>Rowley and A's relationship ceased, but they continued to see each other. A did not pursue charges in respect of the incidents and did not have the VRO served on him.</p>	<p>Ct 4: 18 mths imp (conc). Ct 5: 15 mths imp (conc). Ct 6: 20 mths imp (cum ct 7). Ct 7: 40 mths imp (conc).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge characterised Rowley's offending behaviour as calculated, deliberate and persistent, some of which was in wilful defiance of a court order. Rowley engaged in frequent verbal, physical and psychological abuse of A. It was hard for A to end the relationship because of his domination of her.</p> <p>The sentencing judge took into account the highly adverse effects</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [41] The offending was not isolated. Each offence was deliberately carried out with the intention of intimidating A and was a serious example of its kind.</p> <p>At [45] The adverse psychological and economic effects of the appellant's offending ... have been profound.</p> <p>At [49]... the appellant's overall offending involved a high level of criminality. A degree of accumulation was required, having regard to the different offences committed by the appellant, albeit with the same objective to intimidate and terrify A. A sentencing factor which cannot be overlooked here is the need for general deterrence. Stalking offences are often committed against vulnerable persons who</p>

			<p>Rowley was at A's home. When she refused him sex he snatched her mobile phone to examine its contents. A slapped and clawed at Rowley's face to attempt to get her phone back so he threw her onto the couch and pushed her face into it, restricting her breathing and telling her 'That's it, bitch. You've fucking done it now'. Marching A to the laundry he obtained methylated spirits and a lighter and threatened to set her alight. A pleaded with Rowley to stop. He was unable to open the bottle (ct 6).</p> <p>Over the course of several months Rowley sent aggressive, threatening and abusive text messages to A. She took out another VRO. To get her to remove the VRO Rowley stalked her, including forcing her to stop her car whilst she was driving; trespassing onto her property intimidating her with a metal pole and having a female friend telephone her in an attempt to lure her to a vacant block (ct 7).</p> <p>Found in in Rowley car were a baseball bat with metal screws, night-vision goggles, a GPS tracking device, mobile phone, a blood-filled syringe and 17 SIM cards.</p> <p>Rowley was also found to have accessed websites on stalking. He had searched the internet for listening devices, night-vision binoculars, tracking devices and "How to" sites for hacking emails and mobile phones.</p>	<p>the offending had on A and emphasised the duty of the courts to protect victims of domestic violence from harm.</p> <p>Remorseful.</p> <p>Low to moderate risk of reoffending.</p>	<p>suffer greatly as a consequence of the offending behaviour. Offending of the kind engaged in by this appellant designed ... to cause terror to someone who had the "temerity" to want to cease a relationship requires a sentence with elements of both personal and general deterrence</p>
<p><b><i>Transitional Provisions Repealed (14/01/2009)</i></b></p>					

<i>Transitional Provisions Enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions