

## **Unlawful Possession of a Motor Vehicle s 408A(1)(b)**

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The prosecution must prove that:

1. The defendant had the vehicle in his or her possession.

“Possession” means that the defendant had control of the vehicle or was capable of exercising control over it. Where the vehicle is found on the defendant’s premises, it must be proved that the vehicle was there with the defendant’s knowledge and approval and that the defendant was exercising control over it.<sup>1</sup>

2. The person in lawful possession did not consent to the defendant’s possession of it.
3. At the time that the defendant had possession of the vehicle he or she knew that the person in lawful possession had not given consent to the defendant having possession.
4. The defendant had the vehicle in his or her possession with the intent to deprive the person in lawful possession thereof of the use of the vehicle either temporarily or permanently.
5. Direct on any circumstances of aggravation.<sup>2</sup>

It is a defence to prove that the defendant had the lawful consent of the owner of the vehicle to its possession by the defendant (s 408A(1C)). The onus is on the defendant to prove the defence on the balance of probabilities.

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<sup>1</sup> See definition of “possession” in s 1; *R v Solway* [1984] 2 Qd R 75.

<sup>2</sup> Section 408A(1A) and (1B).