

## 173. Riot: s 61

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### 173.1 Legislation

[Last reviewed: March 2025]

*Criminal Code*

[Section 61](#) – Riot

### 173.2 Commentary

[Last reviewed: March 2025]

The elements of s 61 are that:

- (1) 12 or more persons present together;
- (2) use or threaten to use unlawful violence to a person or property for a common purpose; and
- (3) the conduct of them together would cause a person in the vicinity to reasonably fear for their personal safety.

Where these elements are present, each of the assembled persons commit the offence of riot.

Section 61(2) states that '*it is immaterial whether there is or is likely to be a person in the vicinity who holds the fear mentioned*' in the offence.

*Circumstances of aggravation*

There are circumstances of aggravation under the penalty provisions in s 61(1). Depending on the aggravation alleged, recourse may be had to **Chapter 140 – Grievous Bodily Harm** and **Chapter 124 – Circumstances of Aggravation** for directions on offensive weapons.

The offence is also a prescribed offence under s 161Q of the *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation is applicable. See Part 9D, Division 1 of the *Penalties and Sentences Act 1992* (Qld) for relevant definitions.

### 173.3 Suggested Direction

[Last reviewed: March 2025]

**The prosecution must prove beyond reasonable doubt that the Defendant:**

1. **Was one of 12 or more persons gathered together** (i.e. the assembled persons).
2. **Who used, or threatened to use, unlawful violence to a person or property for a common purpose at the time they were gathered.** [Here refer to the evidence led by the prosecution on this issue].
3. **The conduct of them taken together would cause a person in the vicinity to reasonably fear for the person's personal safety.**

**It is immaterial whether there was, or was likely to be, a person in the vicinity who held the fear for personal safety.**

(Where relevant, direct on any circumstances of aggravation).