

89. Defence of Moveable Property with Claim of Right: s 275

89.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 1](#) – Definitions

[Section 22](#) – Ignorance of the law – bona fide claim of right

[Section 275](#) – Defence of moveable property with claim of right

89.2 Commentary

[Last reviewed: March 2025]

Section 275 provides a defence where the defendant:

- (1) is in peaceable possession;
- (2) of moveable property;
- (3) under a claim of right; and
- (4) uses force that is reasonably necessary to defend their possession of property.

The defence does not apply where the defendant uses force that causes grievous bodily harm.

The defence extends to force used against a person who is entitled by law to possession of the property. It also provides a defence to any person lawfully assisting the person in possession or acting on their authority.

Section 1 of the *Criminal Code* defines ‘property’ and ‘grievous bodily harm’. See **Chapter 76 – Claim of Right** for discussion of s 22. See also *R v Waine* [\[2006\] 1 Qd R 458](#)

For a useful examination of the authorities on ‘peaceable possession’, see *Shaw v Garbutt* (1996) 7 BPR 97, 600.

89.3 Suggested Direction

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The law provides certain protection to a person who acts in defence of their property.

A person in peaceable possession of moveable property under a claim of right may use such force as is reasonably necessary in order to defend [his/her] possession of the property, even against a person who is entitled by law to the possession of the property, provided that [he/she] does not do grievous bodily harm to the other person. Whether or not a person is in peaceable possession of property is a question of fact for you to decide.

The law recognises that ‘possession’ is a very wide concept. It includes having under control in any place whatever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question [refer to the evidence relevant to this question].

‘Property’ includes everything that is capable of being the subject of ownership.

A [refer to property] is movable property.

A ‘claim of right’ is a right to the property [refer to the evidence relevant to this question].

This defence does not authorise the doing of grievous bodily harm. This defence does not permit a person to use unreasonable force.

You should remember that a person defending [his/her] property cannot always weigh precisely the exact action which [he/she] should take in order to avoid the threat to [his/her] property. You should take account of the situation in which the Defendant found [himself/herself]. You must consider the whole of the circumstances.

It is not for the Defendant to prove that [he/she] used reasonable force. It is for the prosecution to satisfy you beyond reasonable doubt that the force used was more than reasonably necessary.

If the prosecution cannot satisfy you of that beyond reasonable doubt, the Defendant would not be regarded as criminally responsible for the result and you should find [him/her] not guilty.

If the prosecution does satisfy beyond reasonable doubt that the force used was not reasonable, this particular defence is not open.