

Unlawful Use of a Motor Vehicle etc. s 408A(1)(a)

The prosecution must prove that:

1. The defendant unlawfully used the vehicle referred to in the indictment.

“Used” in this context means used as a conveyance – that is that the defendant travelled in it whether as the driver or a passenger.

“Unlawfully” means not justified authorised or excused by law.

2. The person in lawful possession did not consent to its use.¹

A person in lawful possession of a vehicle can give consent upon conditions as to limitations of the use to which it can be put. If the defendant exceeds those conditions it may constitute an offence.²

3. [Direct on any circumstance of aggravation.³]

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

¹ Knowledge of the absence of consent of the person in lawful possession of the vehicle etc. is not an element of the offence: *R v C* [2001] QCA 387 at [25]. However, an issue may arise in relation to honest claim of right pursuant to *Criminal Code* s 22(2).

² See *R v Judkins* [1979] Qd R 527; *Hollingsworth v Bean* [1970] VR 819; *R v Wibberley* [1966] 2 QB 214.

³ Section 408A (1A) and (1B).