

Burglary s 419;¹ Entering s 421

The prosecution must prove that:

1. **The defendant entered² the dwelling³ [or, for offence under s 421, premises⁴] of [the complainant];**
2. **At the time the defendant entered the dwelling house he intended⁵ to commit an indictable offence, namely [name indictable offence].**

[The named offence] is an indictable offence.⁶

Direct on any relevant circumstances of aggravation:⁷

1. **Break.⁸**

A person who breaks any part, whether external or internal of a dwelling or any premises or opens by unlocking, pulling, pushing, lifting or any other means whatever, any door, window, shutter, cellar, flap or other thing, intended to close an opening in a dwelling or premises, or an opening giving passage from one part of the dwelling or premises to another, is said to break the dwelling or premises.

2. **“In the night” means between 9 pm and 6 am.⁹**
3. **“Uses or threatens to use actual violence”.**

Actual violence means no more than physical force which is real and not merely threatened or contemplated.¹⁰

¹ The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

² See s 418(2). A person is said to enter a dwelling as soon as any part of the person’s body or any part of any instrument used by the person is in the dwelling.

³ See definition in s 1 *Criminal Code*.

⁴ “Premises” includes a building or structure or part thereof, a tent, caravan, vehicle or similar place: s 418(4) *Criminal Code*. It is a narrower definition than that contained in s 1, and does not include the land or water on which a building or other structure is situated: *R v Smith* [2009] 1 Qd R 239.

⁵ See notes on Intention.

⁶ The prosecution need not plead the specific indictable offence or offences: *Borland* (1907) 10 GLR 241.

⁷ The further opening of an already partly opened garage door did not constitute a “breaking”: *R v Gibb* [2018] QCA 120 at [92]-[96].

⁸ See definition in s 418(1) *Criminal Code*.

⁹ See s 1 *Criminal Code*.

¹⁰ *R v De Simoni* (1981) 147 CLR 383.

4. Armed.

To be armed with a weapon means that the defendant must be in possession of a weapon and the weapon must be available for immediate use as a weapon.¹¹

5. “In company”.

Being ‘in company’ requires proof that the defendant and one or more other person or persons be physically present for the common purpose of entering the dwelling or premises.¹²

¹¹ *Miller v Hrvojevic* [\[1972\] VR 305](#).

¹² *R v Brougham* [\(1986\) 43 SASR 187](#); *R v Leoni* [\[1999\] NSWCCA 14](#).