

Threats: s 359

Legislation

S 359 [Criminal Code](#)

Commentary

Section 359 was amended by s 63 [Criminal Code and Other Acts Amendment Act 2008](#) which commenced on 1 December 2008. The effect of the amendment was to broaden the scope of operation of the offence by deleting 'Any person who threatens to do any injury, or cause any detriment, of any kind to another with intent to prevent or hinder that other person' and inserting 'A person (the *first person*) who threatens to cause a detriment to a second person with intent to prevent or hinder any person (the *other person*) other than the first person.' For offences committed prior to 1 December 2008, the narrower scope of operation is applicable.

Meaning of 'detriment'

'Detriment' need not necessarily in itself involve a criminal or unlawful connotation: *R v Zaphir* [\[1978\] Qd R 151](#). It is sufficient for the prosecution to prove that the threat was to cause a detriment to another by inducing a violation of that other person's legal right, contractual or otherwise. See definition in s 1.

Meaning of 'threatens'

'Threatens' has its ordinary meaning. A threat must be of such a nature and extent that an ordinary person might be influenced or made apprehensive. This is an objective test: See *R v Zaphir* [\[1978\] 1 Qd R 151](#) at 163-4.

Meaning of 'law enforcement officer'

'Law enforcement officer' is defined in s 1 to mean:

- (a) a member or officer of a law enforcement agency, including a person appearing for the director under the [Director of Public Prosecutions Act 1984, section 10\(4\)](#); or
- (b) a person who is authorised, in writing, by the commissioner of the police service, or the chairperson of the Crime and Corruption Commission, to help a member or officer of a law enforcement agency; or
- (c) a person who belongs to a class of persons that is authorised, in writing, by the commissioner of the police service, or the chairperson of the Crime and Corruption Commission, to help a member or officer of a law enforcement agency.

Meaning of 'criminal organisation'

The meaning of criminal organisation is defined in s 161O of the [Penalties and Sentences Act 1992 \(Qld\)](#):

- “(1) A **criminal organisation** is a group of 3 or more persons, whether arranged formally or informally—
- (a) who engage in, or have as their purpose (or 1 of their purposes) engaging in, serious criminal activity; and
 - (b) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.”

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

Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation), see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions.

Suggested Direction

The prosecution must prove that:

1. The defendant threatened to cause a detriment to another.
2. With intent to:
 - (a) prevent or hinder any person from doing any act which the other person is lawfully entitled to do; or
 - (b) compel any person to do any act which the other person is lawfully entitled to abstain from doing; or
 - (c) cause public alarm or anxiety.

‘Threatened’ is an ordinary English word. It must be of such a nature and extent that an ordinary person might be influenced or made apprehensive. It is an objective test.

3. Circumstance of aggravation.

It is a circumstance of aggravation if:

- (a) the threat is made to a law enforcement officer, or a person helping a law enforcement officer;
- (b) when or because the officer is investigating the activities of a criminal organization.