

Compulsion: s 31(1)(c)

Legislation

31 Justification and excuse – compulsion

(1) *A person is not criminally responsible for an act or omission, if the person does or omits to do the act under any of the following circumstances, that is to say—*

...

(c) *when the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person in the person's presence;*

...

(2) *However, this protection does not extend to an act or omission which would constitute the crime of murder, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself or herself liable to have such threats made to the person.*

...

Commentary

If there is some evidence capable of raising the issue, the legal or persuasive burden rests upon the prosecution to exclude the proposition that the accused was acting upon compulsion beyond reasonable doubt – i.e., to exclude any reasonable possibility that the proposition is true.

In *Taiapa v The Queen* (2009) 240 CLR 95 the High Court said at [53]:

In deciding whether the evidence sufficiently raises the issue to leave compulsion to the jury, it is necessary for the trial judge to be mindful of the onus of proof. The question is whether, on the version of events most favourable to the accused that is suggested by the evidence, a jury acting reasonably might fail to be satisfied beyond reasonable doubt that the accused was not acting under compulsion. It was not disputed that the onus on that question – an evidential burden – is on the accused. It is the accused who must tender evidence, or point to prosecution evidence, to that effect.

The exceptions contained in s 31(2) apply to all subparagraphs of s 31(c) – *R v Fietkau* [1995] 1 Qd R 667; *R v Pickering* [2016] QCA 124.

The exceptions will be construed strictly. In *Pickering v The Queen* (2017) 260 CLR 151 the appellant stabbed the deceased and was tried on a charge of murder; he was acquitted of that charge but convicted of manslaughter (available as an alternative verdict under the *Criminal Code*). The defence of compulsion was not raised by counsel at first instance and not put to the jury. The Court of Appeal held the circumstances identified in s 31(1)(c) were fairly raised but the application of the defence to manslaughter was precluded by s 31(2). It was reasoned that the exception in s 31(2) referring to “an offence of which grievous bodily harm to the person

of another ... is an element” included the offence of manslaughter because the causing of death by stabbing necessarily involved the infliction of grievous bodily harm.

The High Court disagreed with that reasoning, quashing the conviction and ordering a new trial, because s 31(2) refers to offences which are excluded, not whether the evidence discloses an act or omission constituting such an offence and grievous bodily harm is not an “element” of the offence of manslaughter.

Another exception in s 31(2) to the section’s protective effect applies to “a person who has by entering into an unlawful association ... rendered himself or herself liable to have such threats made”. In *R v Pain* [2022] QCA 233, a member of one outlaw motorcycle gang was charged with unlawfully striking a member of a rival outlaw motorcycle gang with intent to disable. He arguably did so in response to threatened violence and claimed s 31(c) provided a defence. The trial judge considered the defence was excluded by s 31(2) because the defendant had rendered himself liable to the threats by entering into an unlawful association with members of an outlaw motorcycle gang. The Court of Appeal concluded to the contrary holding the exclusory effect of s 31(2) only applies in this context where the threats are made by one or more of those involved in the unlawful association into which the defendant entered (as distinct from by those involved in some other unlawful association).

Direction

In certain circumstances the law offers us some protection – a defence – if we are compelled to act to resist the violence of others. The Queensland Criminal Code calls this ‘compulsion’ and says, for present purposes, that a person is not criminally responsible for an act if that person does the act because it is reasonably necessary to resist a threat of actual and unlawful violence to themselves [or, to another person in their presence].

[Where the defence applies to some charge or charges but not to all charges clearly identify which charge(s) its potential operation is limited to.]

[Discuss evidence material to compulsion.]

In this case, you must consider whether:

- 1. actual violence was threatened to the defendant [X] or to another person in [X]’s presence; and**
- 2. the violence threatened was unlawful; and**
- 3. the act done by [X] was reasonably necessary in order to resist the threatened violence.**

There is no burden upon the defendant [X] to prove that he/she did the act in those circumstances. The prosecution carries the burden of satisfying you, beyond reasonable doubt, that he/she did not. To do that the prosecution must have

proved to you, beyond reasonable doubt, that at least one of those three factual circumstances was not present.

Example: act not reasonably necessary

The prosecution alleges that the act was not reasonably necessary because [X] could have availed him/herself of an opportunity to do something else to render the threat ineffective. The mere existence of a potential opportunity to render the threat ineffective by some alternative action is not determinative of whether [X]'s act was reasonably necessary. Matters of degree are involved. You should consider how apparent and realistic the potential opportunity was in light of all of the circumstances in weighing up whether [X]'s act was reasonably necessary to resist the threatened violence. You should, for example, consider any risk to [X] which might have been involved if he/she had adopted the opportunity which the prosecution asserts as a reasonable alternative. [Discuss material evidence.]

Because it is for the prosecution to exclude this defence you should ask yourself whether the prosecution has proved to you, beyond reasonable doubt, at least one of these three things:

1. that [X] was not threatened with actual violence; or
2. that the violence threatened was lawful; or
3. that what [X] did was not reasonably necessary to resist the threatened violence.

If your answer to any of these questions is 'yes' – that is, the prosecution has proved that matter to you beyond reasonable doubt – then the defence of compulsion will not apply to excuse the defendant's act.

If your answer to all three questions is 'no' – that is, the prosecution has not proved any of the three matters to you beyond reasonable doubt – then the defendant is not criminally responsible and you must acquit her/him [where the defence does not apply to all charges, specify in which charge(s) such a conclusion would prompt acquittal(s).]

[In some cases the presence of the last exclusory circumstance in s 31(2) – a person has entered into an unlawful association or conspiracy and by doing so has rendered himself or herself liable to be threatened as alleged – may turn upon facts which are in issue. If so, it is a matter for the jury and it will be necessary to modify the standard

direction above to explain the defence does not apply to such a person and add another thing to the list of things the prosecution can prove to exclude the defence, namely:

4. **That [X] entered into an unlawful association or conspiracy and by doing so rendered him/herself liable to have such violence threatened to him/her.]**