

## Compulsion: s 31(1)(d)

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### Legislation

#### **s 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—*
- (a) *in execution of the law;*
  - (b) *in obedience to the order of a competent authority which he or she is bound by law to obey, unless the order is manifestly unlawful;*
  - (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;*
  - (d) *when—*
    - (i) *the person does or omits to do the act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and*
    - (ii) *the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and*
    - (iii) *doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.*
- (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.*
- (3) *Whether an order is or is not manifestly unlawful is a question of law.*

### 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) will be strictly construed: in *Pickering v The* [\(2017\) 260 CLR 151](#); [2017] HCA 17, the appellant allegedly stabbed the deceased and he 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 was precluded by s 31(2).

The High Court held that s 31(2) applies to an act only if the accused has been charged in relation to that act with an offence described in s 31(2) and seeks to invoke s 31(1) to deny criminal responsibility on that charge. Therefore, s 31(1) is not available to deny criminal responsibility on a charge of any of the offences described in s 31(2), but may be available in relation to any other offence that is charged or that is available as an alternative verdict. In this case, the protection afforded by s 31(1)(c) was available to the appellant in relation to the offence of manslaughter, which was not an offence described in s 31(2). The appellant’s conviction was quashed and a new trial ordered.

## Direction

**In certain circumstances the law offers us protection – a defence – if we are compelled to act or to refrain from acting to avoid threatened harm.**

**The Queensland Criminal Code calls this ‘compulsion’ and says, for present purposes, that a person is not criminally responsible for an act (or omitting to do an act) if that person does (or omits to do) the act in order to save themselves or their property (or another person, or their property) from serious harm or detriment threatened by some person in a position to carry out the threat; and, when the person doing (or omitting to do) the act reasonably believes that they (or the other person) are otherwise unable to escape the carrying out of the threat; and, when the doing of the act (or making of the omission) is reasonably proportionate to the threatened harm or detriment.**

[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. a threat was made of serious harm or detriment to the person or property of [X] or another person (“detriment” is a common English word meaning injury or damage); and**

2. the person making the threat was in a position to carry it out; and
3. the defendant [X] reasonably believed he or she or the other person was unable to escape the carrying out of the threat other than by the act (or omission) alleged; and
4. the doing of the act (or making of the omission) was reasonably proportionate to the harm or detriment threatened.

There is no burden upon the defendant [X] to prove that he/she did (or omitted to do) 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 four factual circumstances was not present.

***Example: unable to escape?***

The prosecution alleges that [X] did not reasonably believe he/she could not escape. That question is to be measured by reference to [X]'s own state of mind, The question you must ask yourself is: *Did [X] reasonably believe that he/she was otherwise unable to escape the carrying out of that threat?*

***Example: reasonable proportionality***

In deciding whether the doing of the act by [X] was what the law calls 'reasonably proportionate' the test is an objective one. You can decide the matter by asking yourself this question: *Did [X]'s act bear a reasonable relationship to the degree of threat? Or, has the prosecution proved beyond reasonable doubt that the act exceeded what was a reasonable response to the threat?*

I remind you, again, that there is no burden upon the defendant to prove that he/she did the act (or made the omission) in circumstances that will attract this defence. (The fact that the defendant has called evidence about the act, and those circumstances, does not change that. Nor does the fact [X]'s lawyer has raised the matter in submissions to you.)

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

1. **that there was no threat of serious harm or detriment to the person or property of [X] or another; or**
2. **that the person making the threat was not in a position to carry it out; or**
3. **that [X] did not reasonably believe he/she was otherwise unable to escape the carrying out of the threat; or**
4. **that the doing of the act (or making of the omission) by [X] was not reasonably proportionate to the harm or detriment threatened.**

**If your answer to any of these questions is ‘yes’ – that is, that 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 (or omission).**

**If your answer to all the questions is ‘no’ – that is, that the prosecution has not proved any of the four 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:

5. **That [X] entered into an unlawful association or conspiracy and by doing so rendered him/herself liable to have such a threat made to him/her.]**