

87. Compulsion: s 31(1)(d)

87.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 31](#) – Justification and excuse – compulsion

87.2 Commentary

[Last reviewed: March 2025]

Section 31(1)(d) provides a defence for a Defendant's act or omission where:

- (1) The act or omission was done to save the Defendant, or another person, or property of the Defendant or another person, from a threat of serious harm or detriment;
- (2) The threat is made by a person in a position to carry it out;
- (3) The Defendant 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; and
- (4) The act or omission was reasonably proportionate to the harm or detriment threatened.

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 Defendant was acting upon compulsion beyond reasonable doubt – i.e., to exclude any reasonable possibility that the proposition is true.

In *Taiapa v The Queen* [\[2009\] HCA 53](#); [\(2009\) 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 s 31(1)(d) (*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] HCA 17; (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) 12 QR 417, 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).

87.3 Suggested Direction

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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 the Defendant or another person (it may be noted here that '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 reasonably believed [he/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 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.

(The following paragraph gives an example direction where the prosecution alleges the defendant did not reasonably believe he/she was unable to escape):

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

(The following paragraph gives an example direction where the prosecution alleges the defendant's act was not reasonably proportionate):

In deciding whether the doing of the act by the Defendant was what the law calls 'reasonably proportionate', the test is an objective one. You can decide the matter by asking yourself this question: did the Defendant'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. (If relevant, add the further sentence): The fact that the Defendant has called evidence about the act, and those circumstances, does not change that. Nor does the fact the Defendant'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 the Defendant or another; or**
- 2. That the person making the threat was not in a position to carry it out; or**
- 3. That the Defendant 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 the Defendant 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 the Defendant entered into an unlawful association or conspiracy and by doing so rendered [himself/herself] liable to have such a threat made to [him/her].**