

## 172. Riot and Unlawful Assembly: ss 61 and 62 (Offences prior to 1 December 2008)

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### 172.1 Legislation

[Last reviewed: February 2025]

*Criminal Code*

[Section 61](#) – Riot

*Corrective Services Act 1988*

[Section 92\(1\)](#) – Abuse of office

### 172.2 Commentary

[Last reviewed: February 2025]

The offences of riot and unlawful assembly were found in s 62 *Criminal Code* (definition in s 61) and s 92(1) *Corrective Services Act 1988*. Where the Accused is a prisoner, and the charge is under s 92(1) of the *Corrective Services Act 1988*, regard should be had to the definition of ‘unlawful assembly’ in s 92(b)(a).

A ‘tumult’ occurs where people usually, but not always, to the accompaniment of noise, engage in agitated movement or are excited or emotionally aroused: per Derrington J (with whom Ambrose and Dowsett JJ agreed) in *R v Thomas* [\[1993\] 1 Qd R 323](#) at [325] approving *J.W. Dwyer Ltd v Metropolitan Police District Receiver* [\[1967\] 2 QB 970](#) at [979]-[980].

In *R v Howell* [\[1982\] 1 QB 416](#) at [427], the English Court of Appeal said (by reference to the powers of police office to arrest for a breach of the peace): ‘... *there is a breach of the peace whenever harm is actually done or is likely to be done to a person or, in his presence, to his property, or a person is in fear of being so harmed ...*’

### 172.3 Suggested Direction

[Last reviewed: February 2025]

**The prosecution must prove that the Defendant:**

- 1. With at least two others assembled, that is, gathered together.**
- 2. With the intention of carrying out some common purpose [here refer to the evidence led by the prosecution on this issue] at that time.**

3. **With at least two others assembled in such a manner or being gathered together, conducted themselves in such a way as to cause people in the vicinity to fear on reasonable grounds that the Defendant and at least two others so gathered would tumultuously disturb the peace, and so became an unlawful assembly.**

**It is immaterial that the original assembling was lawful if they conduct themselves with a common purpose in the manner described.**

**A tumult occurs where people usually, but not always, to the accompaniment of noise, engage in agitated movement or are excited or emotionally aroused.**

**A disturbance of the peace occurs where harm is actually done or is likely to be done to a person or, in his or her presence, to his or her property, or a person is in fear of being so harmed.**

4. **That that unlawful assembly began to act in so tumultuous a manner as to disturb the peace and so became a riotous assembly.**