

Riot: s 61 (Offences after 1 December 2008)

Legislation

S 61 [Criminal Code Act 1899](#)

S 161Q [Penalties and Sentences Act 1992](#)

Commentary

There are circumstances of aggravation under the penalty provisions in s 61(1).

See the direction in relation to grievous bodily harm at **Ch 140 – Grievous Bodily Harm**.

See **Ch 124 – Circumstances of Aggravation** for directions on offensive weapons.

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 (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 the defendant:

1. **Was one of 12 or more persons gathered together (the assembled persons).**
2. **Who used, or threatened to use, unlawful violence to a person or property for a common purpose [here refer to the evidence led by the prosecution on this issue] at the time.**
3. **The conduct of them taken together would cause a person in the vicinity to reasonably fear for the person's personal safety.**

Each of the assembled persons commits the crime of taking part in the riot.

It is immaterial whether there was, or was likely to be, a person in the vicinity who held the fear for personal safety.

4. **[Direct on any circumstances of aggravation.]**