

## 59. Intention

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### 59.1 Legislation

[Last reviewed: January 2025]

*Criminal Code*

[Section 23](#) – Intention—Motives

### 59.2 Commentary

[Last reviewed: January 2025]

The plurality (Kiefel, Bell, and Keane JJ) in *Zaburoni v The Queen* ([2016](#)) [256 CLR 482](#), 490; [\[2016\] HCA 12](#), [14] explained that:

Where proof of the intention to produce a particular result is made an element of liability for an offence under the Code, the prosecution is required to establish that the accused meant to produce that result by his or her conduct [...] [K]nowledge or foresight of result, whether possible, probable or certain, is not a substitute in law for proof of a specific intent under the Code.

At [15], the plurality referred to the need for the trier of fact to ‘be satisfied that the accused meant to produce the particular result’ (see also the judgement of Gagelar J at [55]). Intention can be equated with purpose, which is distinct from motive: Kiefel, Bell, and Keane JJ at [17].

A direction as to the meaning of intent (and its derivatives) should not be given unless the jury requests assistance concerning the concept (*R v Willmot (No 2)* [\[1985\] 2 Qd R 413](#), 418-419); see also *Cutter v The Queen* [\(1997\) 71 ALJR 638](#); [\[1997\] HCA 7](#), 648 and the discussion in *R v Glebow* [\[2002\] QCA 442](#)).

It may sometimes be useful to tell a jury which requests assistance and seems troubled that intent connotes premeditation, that the prosecution has to prove that the Defendant had the necessary intention at the time of the alleged offence, that it need not have been a long-standing intent, and that it is sufficient for it to have formed in a matter of seconds, say in a sudden flash of temper. In other words, it may be a momentary intent formed immediately before the relevant event.

Though motive is rarely an element of an offence (*Criminal Code*, s 23), evidence of motive, or of absence of motive, could bear on whether the Defendant actually did (or omitted to do) something; or where intention is critical, be pertinent to that issue. Accordingly, it may sometimes be appropriate to inform the jury, in effect, that, although it is unnecessary for the prosecution to prove a motive, as motive is not an element of the offence, nonetheless the presence, or absence, of motive may be taken into account when considering whether the prosecution has proved guilt (see *De Gruchy v*

*The Queen* ([\(2002\) 190 ALR 441](#); [\[2002\] HCA 33](#); *R v Neilan* [\[1992\] 1 VR 57](#)). Note the distinction between ‘absence of proven motive’ and ‘proven absence of motive’: Keane JA and Chesterman J in *R v Reid* [\[2007\] 1 Qd R 64](#).

Care is to be taken to ensure that adequate reference is made in the summing up to the Defendant’s evidence of lack of intent (*R v Butler* [\(2006\) 45 MVR 391](#); [\[2006\] QCA 51](#), [37]-[40]).

### 59.3 Suggested Direction

[Last reviewed: January 2025]

**‘Intent’ and ‘intention’ are familiar words. In this legal context, they carry their ordinary meaning. In ascertaining the Defendant’s intention, you are drawing an inference from facts which you find established by the evidence concerning [his/her] state of mind.**

**Intention may be inferred or deduced from the circumstances in which [e.g. the death eventuated], and from the conduct of the Defendant before, at the time of, or after [he/she] did the specific act which [e.g. caused the death]. And, of course, whatever a person has said about [his/her] intention may be looked at for the purpose of deciding what that intention was at the relevant time.**

**In respect of the offence of [insert offence], proof of intention to produce a particular result, [namely...], is an element of the offence. Accordingly, the prosecution must prove beyond reasonable doubt that the Defendant meant to produce that result by [his/her] conduct.**