

139. Going armed so as to cause fear: s 69

139.1 Legislation

[Last reviewed: December 2024]

Criminal Code

[Section 69](#) – Going armed so as to cause fear

139.2 Commentary

[Last reviewed: December 2024]

The defendant must have:

- (1) Gone armed;
- (2) In public;
- (3) In such a manner as to cause fear to any person;
- (4) Without lawful occasion.

‘Going armed’

Going armed does not require actual movement by the defendant. See *R v Hildebrandt* [\[1964\] Qd R 43](#), where it was held that where the accused sat in an aircraft and brandished a firearm, he was going armed in public. ‘Going’ refers to the manner of going and not to the progression with reference to the position of other people.

The word ‘armed’ means possessing an object which is available and capable of causing fear. It is the manner in which the object is used that is relevant: *Miller v Hrvojevic* [\[1972\] VR 305](#); *Ashcroft* [\(1989\) 38 A Crim R 327](#).

‘In public’

It is not necessary for the offence to be committed in a public place, but only that the offender go armed in public: per McPherson J in *R v Bennett* [\[2000\] 2 Qd R 174](#); [\[1998\] QCA 393](#). A useful concept from the Macquarie Dictionary is ‘open to public view’.

‘To cause fear’

It is not necessary that any person should give evidence that he/she was actually put in fear: *R v Sharp*; *R v Johnson* [\[1957\] 1 QB 552](#).

‘Without lawful occasion’

The expression ‘without lawful occasion’ is not confined to self-defence and has a wider application depending on the circumstances of the case (*R v Bennett* [\[2000\] 2 Qd R 174](#); [\[1998\] QCA 393](#), [25] (McPherson J)). It means there was no good and lawful reason for what the defendant did, and does not appear to be limited to defences in the *Criminal Code*.

McPherson J in *Bennett* further observed at [26] that:

In Queensland, however, the expression ‘without lawful occasion’ appears as an element in the statement in s 69(1) of the offence itself. In accordance with the general rule adopted in applying exculpatory provisions in the Code, it would ordinarily be for the prosecution to establish that element beyond reasonable doubt. At least that would be so once it appeared in evidence that the act of going armed in public was in the circumstances of the case fairly capable of being regarded as being not ‘without lawful occasion’.

Aggravations

Section 69(3) creates an aggravation to the offence where the defendant publishes material on a social media platform or online social network to (1) advertise the offender’s involvement in the offence; or (2) advertise the act or omission constituting the offence. Definitions of ‘advertise’ and ‘material’ are included in s 69(5).

Pursuant to s 69(2), circumstances of aggravation under s 52B of the *Criminal Code* also apply.

139.3 Suggested Direction

[Last reviewed: December 2024]

The prosecution must prove beyond reasonable doubt that the defendant:

1. Went armed.

With regard to this element, ‘going armed’ does not require proof of actual movement by the defendant from one place to another.

[Outline the means by which the prosecution alleges the defendant was armed].

2. In public.

This does not mean that the offence must have been committed in a public place; only that the defendant was armed in public.

[Outline the place where the defendant was at the time of the offence].

3. In such a manner as to cause fear to [a person or persons].

4. Without lawful occasion.

This means that the prosecution must prove that there was no good and lawful reason for the actions of the defendant.

[If relevant, outline the evidence relevant to whether there was any lawful reason for the defendant being armed in public].

(If relevant, outline the evidence relevant to proof of s 69(3), noting the definitions in s 69(5)).