

- (2) a restricted computer (as defined in subs (5));
- (3) without the consent of the computer's controller (as defined in subs (5)).

The offence is aggravated in the following circumstances:

- (A) The accused:
 - (1) causes or intends to cause;
 - (2) detriment or damage; or
- (B) The accused:
 - (1) gains or intends to gain;
 - (2) a benefit;
 - (3) for any person.

The offence is further aggravated in the following circumstances:

- (C) The accused:
 - (1) causes a detriment or damage, or obtains a benefit for any person;
 - (2) which detriment, damage or benefit is of a value of more than \$5000; or
- (D) The accused intends to commit an indictable offence.

[s 408E.20] **Sentencing principles** In *R v Stevens* [1999] NSWCCA 69; BC9901682, in the context of an appeal against sentence under a similar provision of the Commonwealth Crimes Act, Studdert J said at [54]:

Computer technology plays an important role in modern society. The potential for harm by computer abuse of the type that occurred in this case, in a society which is becoming increasingly dependent upon computers, requires that considerations of deterrence, not only of the offender but of others who might be tempted to offend in a similar way, should be adequately reflected when it comes to sentence.

[s 408E.25] **Sentence: Illustrative case** See *R v Boden* [2002] QCA 164; BC200202250 in which it was noted that public deterrence is a significant consideration.

CHAPTER 38 — STEALING WITH VIOLENCE — EXTORTION BY THREATS

[s 409] **Definition of robbery**

409 (1) Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of **robbery**.

(2) An indictment charging an offence against this section with the circumstance of aggravation stated in the Penalties and Sentences Act 1992, section 161Q may not be presented without the consent of a Crown Law Officer.

[subs (2) insrt Act 62 of 2016 s 128, opn 9 Dec 2016]

COMMENTARY ON SECTION 409

Scope of section	[s 409.1]
Cross references	[s 409.5]
Form of indictment	[s 409.10]
Elements of offence	[s 409.15]
Interpretation	[s 409.20]
Intention and intoxication	[s 409.25]
Joinder of charges	[s 409.30]
Alternative verdicts	[s 409.35]

[s 409.1] **Scope of section** This section defines robbery.

[s 409.5] **Cross references** "Stealing" is defined by s 391. Robbery is punishable un

[s 409.10] **Form of indictment** See Form No 243 of the Criminal Practice Rules 19
A count in an indictment must identify the essential factual ingredients of the offence. Accordingly a count which does not allege actual violence or the threat of actual violence part of the accused person does not constitute a charge of robbery under this section. *McGoldrick* [1995] 1 Qd R 553 (CA).

[s 409.15] **Elements of offence** The accused:
(1) steals;
(2) anything;
(3) and at or immediately before or immediately after the time of stealing it;
(4) uses or threatens to use actual violence;
(5) to any person or property;
(6) in order to obtain the thing stolen or to prevent resistance to its being stolen.

[s 409.20] **Interpretation** Any degree of violence is sufficient (*R v Harrison* (1930) 22 R 82) but mere fear of violence is not sufficient: *R v Parker* [1919] NZLR 365; [1919] GL

[s 409.25] **Intention and intoxication** An intention to cause a specific result is an element of the offence of robbery: See *Kaminski v R* [1975] WAR 143, which discusses the significance of intoxication in this context.

[s 409.30] **Joinder of charges** As the very gist of the offence of robbery is stealing, a charge of robbery is a "charge of stealing" within s 568(4), and a charge of robbery may properly be joined with a charge of receiving. See *R v Bedington* [1970] Qd R 353.

[s 409.35] **Alternative verdicts** On an indictment for robbery (with or without a circumstance of aggravation) it is not open to find the accused person guilty of an assault. See *Cushi (No 2)* [1977] WAR 141.

410 [s 410 rep Act 55 of 2008 s 72, opn 1 Dec 2008]

[s 411] **Punishment of robbery**

411 (1) Any person who commits the crime of robbery is liable to imprisonment for 14 years.

(2) If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, or if, immediately before or immediately after the time of the robbery, the offender uses any other personal violence to any person, the offender is liable to imprisonment for life.

(3) The Penalties and Sentences Act 1992, section 161Q also states a circumstance of aggravation for the crime of robbery.

[subs (3) insrt Act 62 of 2016 s 129, opn 9 Dec 2016]

[s 411 am Act 1 of 1986 s 28; Act 88 of 1988 s 5 and Sch II]