



Car stealing and unlawful use or possession of motor vehicles

Author: [Caprice Gobie-Smith](#)

Email: cgobiesmith@gnl.com.au

Phone:

Date: Sunday January 28, 2024

With the “youth crime” crisis being a hot topic of public debate at the moment, the offence of car stealing is never far from the media spotlight. Stories of victim’s cars being stolen - often accompanied by home security footage showing the offenders in the act - feature regularly on the nightly news bulletins.

Interestingly, the offence of car stealing does not involve stealing at all – at least not in the legal sense. The offence of car stealing is actually called “*unlawful use or possession of a motor vehicle*”.

What is unlawful possession of a motor vehicle?

Any person who has a motor vehicle in their possession without the consent of the owner and who intends to deprive the owner of that motor vehicle is guilty of a crime. It is noteworthy that the law also captures other types of transport within this offence provision, including aircraft and boats.

What is a motor vehicle – for criminal law purposes?

The definition of a motor vehicle is wide and includes any machine designed for propulsion (including by gas, motor spirit, oil, electricity, steam, or other mechanical power). So e-bikes, battery-powered scooters, golf carts, and similar vehicles all fall within the definition.

A 'motor vehicle' also includes a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle. Broken-down vehicles and those being renovated are also included. It is immaterial whether the motor vehicle is incapable of use through mechanical defect or whether any parts have been removed.

Proving unlawful use or possession of a motor vehicle

In order to prove a charge of unlawful use or possession of a motor vehicle, the prosecution must prove that:

1. the defendant had the vehicle in their possession;
2. the person in lawful possession did not consent to the defendant's possession of the vehicle;
3. the defendant knew that the person in lawful possession had not given consent to the defendant having possession of the vehicle; and
4. the defendant had the vehicle in their possession with the intent to deprive the person in lawful possession thereof of the use of the vehicle either temporarily or permanently.

The term "possession" means that the defendant had control of the vehicle or was capable of exercising control over it. Where the vehicle is found on the defendant's premises, it must be proved that the vehicle was there with the defendant's knowledge and approval and that the defendant was exercising control over it.

Importantly, the person in lawful possession may not necessarily be the owner of the vehicle. Lawful possession can be a person who has a lawful right to the physical possession of a car. For example, a person who has had a vehicle lent to them by an owner is a person in lawful possession. It can also include a person who hires a vehicle.

Applicable penalties and defences for unlawful use or possession of a motor vehicle

The maximum penalty for unlawful use or possession of a motor vehicle is 10 years imprisonment, although the penalties usually imposed for this offence are much less than that.

Circumstances that will attract harsher penalties include:

1. If the defendant uses the motor vehicle for the purpose of facilitating a serious (indictable) offence (for example, a robbery or a ram raid), the maximum penalty is increased to 12 years imprisonment.
2. If the defendant uses or publishes material on social media to advertise involvement in the offence, the maximum penalty is increased to 12 years imprisonment. This is a recently new amendment to the law designed to deter youthful offenders, in particular, from posting their car-stealing exploits on social media.

It is a defence to prove that the defendant had the legitimate consent of the owner of the vehicle. General defences under the *Criminal Code* may also apply, such as mistake of fact or extraordinary emergency.

Which court deals with a charge of unlawful use or possession of a motor vehicle?

A charge of unlawful use or possession of a motor vehicle is a serious offence which is often dealt with in the higher courts.

Sometimes, the charge can be dealt with 'summarily'. i.e., in the Magistrates Court. This often occurs in circumstances where the value of the vehicle is less than \$30,000.00 and the defendant intends to plead guilty. If the value of the vehicle is more than \$30,000.00, or the charge is contested, the charge must be dealt with in the District Court of Queensland.

Additionally, the Magistrates Court cannot impose a sentence of more than 3 years imprisonment. If the Magistrates Court forms the view that a penalty of more than 3 years imprisonment ought to be imposed against a defendant, then it must transfer the charge to the District Court.

Get help from a criminal lawyer

If you are accused of taking someone's car without their permission and/or have been charged with an offence of unlawful use or possession of a motor vehicle, it is critical that you seek advice from a lawyer experienced in criminal law as soon as possible.

Contacting Gilshenan &Luton Criminal Defence Lawyers

[07 3361 0222](tel:0733610222) (24/7)

gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.