

## 107. Assaults Occasioning Bodily Harm: s 339

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### 107.1 Legislation

[Last reviewed: October 2024]

*Criminal Code*

[Section 339](#) – Assaults occasioning bodily harm

[Section 245](#) – Definition of assault

[Section 246](#) – Assaults unlawful

### 107.2 Commentary

[Last reviewed: October 2024]

The defendant must have:

- (1) unlawfully;
- (2) assaulted another person; and
- (3) thereby done that other person bodily harm.

For commentary on the meaning of assault and unlawfully, see **Chapter 106 – Assault**.

*Bodily harm*

Bodily harm is defined in s 1 of the *Criminal Code* as a bodily injury which interferes with health or comfort. A sensation of pain alone without the infliction of an identified bodily injury is not sufficient to constitute ‘bodily harm’: *Scatchard v R* (1987) 27 A Crim R 136. Authority indicates that bodily harm also extends to psychiatric injury arising from an identifiable clinical condition: see *R v Chan-Fook* [1993] EWCA Crim 1; 2 All ER 552 (cited with approval in *R v Morrison, ex parte West* [1998] 2 Qd R 79, in relation to the phrase ‘bodily harm’ in former s 663A of the *Criminal Code*).

*Aggravation*

It is a circumstance of aggravation to be or pretend to be armed with any dangerous or offensive weapon or instrument, or to be in company with one or more other person or persons.

Another circumstance of aggravation is if the offence is committed in a public place while the person was adversely affected by an intoxicating substance: s 108B *Penalties and Sentences Act 1992* (Qld). See s 365C *Criminal Code* for circumstances in which a person is taken to be adversely affected by an intoxicating substance.

The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation is applicable.

### 107.3 Suggested Direction

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**The prosecution must prove beyond reasonable doubt that:**

1. **The defendant assaulted the complainant** (the direction on assault in **Chapter 106 – Assault** may be referred to here, together with the definition of assault below, as relevant).

**Any person who strikes, touches or moves or otherwise applies force of any kind to the person of another, either directly or indirectly, without that person’s consent is said to assault that other person.**

2. **The assault was unlawful; that is not authorised, justified or excused by law.**
3. **The defendant thereby did the complainant bodily harm; that is, any bodily injury which interferes with health or comfort.**

(If relevant, refer to any circumstance of aggravation. For example, that the defendant committed the offence in a public place while he or she was adversely affected by an intoxicating substance).