

## Unlawful Striking Causing Death s 314A

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It is an offence for a person to unlawfully strike another person to the head or neck and cause the death of that other person.

In order to establish such an offence, the prosecution must prove each of the following four elements beyond reasonable doubt:

1. That the defendant struck the deceased to the head or neck;
2. That the striking was unlawful;
3. That the striking caused the death of the deceased; and
4. That the striking was not done as part of a socially acceptable function or activity that was reasonable in the circumstances.

As to the *first* of those elements, to strike another person to the head or neck means to directly apply force to the head or neck of that person by punching or kicking, or by otherwise hitting using any part of the body, with or without the use of a dangerous or offensive weapon or instrument.

As to the *second* element, the striking will be unlawful if it was not authorised, justified or excused by law.<sup>1</sup>

As to the *third* element, to cause means to cause directly or indirectly. It does not matter that death did not immediately result. If the striking led to an injury to the deceased which in the ordinary course resulted in his or her death, then in law the defendant is responsible for that death, even though it occurred some days after the striking. The striking need not have been the only cause of death. However, the striking must have been a substantial or significant cause of death or have contributed substantially to the death.<sup>2</sup>

As to the *fourth* element, the defendant is not criminally responsible for causing the death of another person by striking that person in the head or neck if the striking was done as part of a socially acceptable function or activity and the

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<sup>1</sup> The defences under s 23(1)(b) and 270 do not apply to this offence because they are expressly excluded: s 314A(2). Also, because s 314A(3) provides that an assault is not an element of the offence, the defences under ss 268 and 269 do not apply. Nor would diminished responsibility under s 304A be available because the offence charged is not murder.

<sup>2</sup> See *Royall v The Queen* (1991) 172 CLR 378 at 411.

**striking was reasonable in the circumstances. In this regard, function or activity includes a sporting event. The prosecution must prove beyond reasonable doubt that either the striking was not part of a socially acceptable function or activity or, if it was, that the striking was not reasonable in the circumstances before this element will be established.**