

## **Circumstances of Aggravation (Robbery, Assault, Burglary)**

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### **Armed:**

The weapon must be in the possession of the defendant and available for immediate use as a weapon.

### **Offensive Weapon:**

- Anything that is not commonly used except as a weapon.
- Anything capable of being used and intended by the defendant to be used for offensive purposes [even though it is also capable of being used for innocent purposes].<sup>1</sup>

### **In company:**

Being “in company” requires proof that [the complainant] was confronted by the combined force or strength of two or more persons including the defendant or the force of two or more persons including the defendant must be deployed against [the complainant].

It is not necessary that more than one participant actually strike the victim. It is sufficient that the defendant and one or more other person or persons be physically present for the common purpose of [assaulting, robbing] [the complainant] and of physically participating as required.<sup>2</sup>

### **Wounding or using person violence to any other person.**

**Wounding** – see unlawful wounding.

**Personal violence** means bodily violence.<sup>3,4</sup>

### **Serious Organised Crime**

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

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<sup>1</sup> In many cases this will not be an issue. If the weapon or thing is one capable of being used for normal purposes e.g. a knife, the prosecution must prove that the defendant was armed with it with the intention of using it for an aggressive or offensive purpose: *Miller v Hrvojevic* [1972] VR 305.

<sup>2</sup> *R v Brougham* (1986) 43 SASR 187 at 191 per King CJ; *R v Leoni* [1999] NSWCCA 14.

<sup>3</sup> *R v De Simoni* (1981) 147 CLR 383. The same incident of actual violence which constitutes an element of the offence may also constitute the circumstance of aggravation of personal violence.

<sup>4</sup> See Robbery.