

Circumstances of Aggravation (Robbery, Assault, Burglary)

Legislation

See directions on robbery at **No 174 – Robbery**, assaults on police officers at **No 108 – Assault on Police Officer in Execution of the Officer’s Duty**, assaults occasioning bodily harm at **No 107 – Assault Occasioning Bodily Harm** and burglary at **No 112 – Burglary**.

Commentary

Offensive weapon

In many cases the meaning of ‘offensive weapon’ 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.

To be ‘armed’ with a weapon means that the defendant must be in possession of a weapon and the weapon must be available for immediate use as a weapon: *Miller v Hrvojevic* [\[1972\] VR 305](#).

In company

It is not necessary that more than one participant actually strike the complainant. It is sufficient that the defendant and one or more other person or persons be physically present for the common purpose of assaulting or robbing the complainant and of physically participating as required: *R v Brougham* [\(1986\) 43 SASR 187](#) at 191 per King CJ; *R v Leoni* [\[1999\] NSWCCA 14](#).

Wounding or using person violence

For the direction on wounding see **No 193 – Unlawful Wounding**.

Personal violence means bodily violence: *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. See also direction on robbery **No 174 – Robbery**.

Serious organised crime

Robbery, burglary, assaults occasioning bodily harm and serious assaults are prescribed offences under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

Suggested Direction

Armed:

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

Offensive weapon:

An offensive weapon means:

Anything that is not commonly used except as a weapon; or

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].

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 complainant]. 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.

Wounding or using person violence to any other person:

Personal violence means bodily violence.

Serious organised crime:

[Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation), see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions.]