

## Assault Occasioning Bodily Harm: s 339

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### Legislation

#### 339 Assaults occasioning bodily harm

- (1) Any person who unlawfully assaults another and thereby does the other person bodily harm is guilty of a crime, and is liable to imprisonment for 7 years.
- (3) If the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument or is in company with 1 or more other person or persons, the offender is liable to imprisonment for 10 years.
- (4) The Penalties and Sentences Act 1992, sections 108B and 161Q also state a circumstance of aggravation for an offence against this section.
- (5) An indictment charging an offence against this section with the circumstance of aggravation stated in the Penalties and Sentences Act 1992, section 161Q may not be presented without the consent of a Crown Law Officer.

### Commentary

For notes on the meaning of unlawfully and assault, see **Benchbook No 106 – Assault**.

Bodily harm is defined in s 1 as bodily injury which interferes with health or comfort. Section 245(2) sets out a number of examples of application of force which include applying heat, light, electrical force etc. A sensation of pain alone without the infliction of an identified bodily injury is not sufficient to constitute 'bodily harm': *Scatchard (1987) 27 A Crim R 136*.

#### *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*. 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*, so a serious organised crime circumstance of aggravation is applicable.

## **Suggested Direction**

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

- 1. The defendant assaulted the complainant;**

**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;**
- 4. Refer to any circumstance of aggravation.**

**It is a circumstance of aggravation if the offence is committed in a public place while the person was adversely affected by an intoxicating substance.**

[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.]