

## Group Assaults

If you are involved in a fight or assault which involves more than one person, there are a range of serious legal consequences that you need to be aware of.

Not only is it a more serious crime when you are involved in a violent incident as a group, in some circumstances you could end up being held legally responsible for the actions of the other people you are with.

### What is an 'Assault'?

Assault is any act that intentionally or recklessly (see below for definitions) causes someone to fear immediate violence. It can involve hitting, pushing or punching someone but you can also commit an assault without even touching someone (eg making a threat).

It is *not necessary* that an injury is caused to the victim. Spitting on someone is regarded as an assault. Throwing a punch or raising your fist towards someone, as though you are *about* to hit them, can also be regarded as an assault.

Basically, any situation where the victim *believes* that they are about to be hurt can be an assault.

### Assaults committed by groups and the charge of Affray

As is the case with many crimes, the crime of assault is regarded as *more serious* if it is committed by a group of people.

Where lots of people are involved in a violent incident, or even just a heated argument or fight, Police may also charge group members with the offences of Affray or Riot.

Affray has become a very common charge in the Children's Court and carries a much higher penalty than assault – you can be charged with Affray in any situation where there are 2 or more people involved, and the actions of the group are intimidating enough that any members of the public would be frightened.

Any group scuffle or fight in a public place can lead to an Affray charge. The maximum penalty for Affray is 10 years imprisonment.

### What if someone is injured? Are the charges more serious?

Yes, the category of offence changes depending on the seriousness of the injury.

*Assault Occasioning Actual Bodily Harm* – is where there is an injury from the assault, such as a bruise, swelling or a graze.

*Grievous Bodily Harm* – is where there is some sort of serious or permanent injury to the victim, or an injury which will cause the victim ongoing problems. Typical examples of where this charge is used include fractured jaws, badly broken bones and brain injuries.

You can be charged with inflicting Grievous Bodily Harm either *recklessly*, or *intentionally* (see definitions below).

### **What if someone is armed with a knife or weapon?**

Firstly, it is against the law to even carry a weapon in a public place, unless you have a reasonable excuse... For example, if you are carrying scissors in your pencil case and you are on your way home from school, this is reasonable. However, carrying a knife in your pocket in the CBD at night is not likely to be able to be explained by any reasonable excuse.

You are not allowed to carry weapons or knives for the purpose of self-defence. Many young people state that they do carry knives for this reason. This is against the law and it is important to remember that knives will not protect you. Carrying a knife is something that actually places you at a far greater risk. Knives are extremely dangerous and minor offences can escalate into extremely serious and life threatening ones because people are carrying knives.

If a person is **injured with a knife**, or in any way cut, you can be charged with *Wounding*, either *Recklessly* or *Intentionally* (see definitions of 'recklessness' and 'intent' below). These are extremely serious offences.

### **Does it matter that I didn't mean to cause the injury?**

With *Grievous Bodily Harm* and *Wounding* charges, there are 2 different ways you can be charged – that you acted:

- “With intent” – this is where it looks like the injury was deliberately inflicted, or the offender really wanted to cause the injury. For example, if someone is repeatedly kicked in the head and suffers a brain injury as a result. Another example is where a person deliberately “stabs” someone with a knife.
- “Recklessly” – this is where the injury looks like it was an unintended result but the offender should have realised that it such an injury might happen as a result of their actions. For example, a knife is pulled out during a fight and someone gets cut accidentally, or non-deliberately, while the knife is being waved around.

Basically, which charge you get depends on whether it looks like the injury was deliberately or purposefully inflicted, or whether it was an unintended result. If the infliction of a serious injury appears to have been intentional, the penalties are very tough – usually long periods of detention or jail.

For example, if a young person is charged with *Intentional Wounding* or *Intentionally Inflicting Grievous Bodily Harm*, this becomes one of those special categories of charges which is too serious to be dealt with in the Children’s Court and must go up to the District Court where you will be dealt with like an adult.

In these sorts of cases, you are usually facing lengthy time in custody, even if you have no criminal history.

### **What if somebody else in the group causes the injury?**

If you were part of the original assault, you can be held responsible for any injuries caused to the victim by members of the group you were with at the time.

Once you are involved, you can be held legally responsible for whatever happens to the victim, even if the injury is actually inflicted by someone else.

You should read carefully the Fact Sheets on '*Joint Criminal Enterprise*' and '*Common Purpose*' to make sure you understand how these laws apply in a group assault.

### **What if the victim dies?**

If the victim dies, each member of the group actively involved in the assault can be charged with murder, regardless of which one of their actions caused the injury.

### **What if I was acting in “self defence”? What if the victim provoked me?**

If you are genuinely acting *only* to defend yourself, you are not guilty of an assault. However, self-defence is very narrowly defined and you are only allowed to do what is reasonably necessary to either stop the other person from harming you or to enable yourself to get away.

For example, if someone is hitting you, you are allowed to push them away or take whatever steps that a reasonable person would think is necessary to get them off you. However, if you are able to free yourself and walk away that is what you should do. You are not allowed to keep going just to “punish” them. You are not allowed to take excessive measures or over-react.

Once you have ensured that you are safe, the only power you have is to hold the person at the scene once you call the Police. This is known as the power of '*citizen's arrest*'. However, it is important to realise that the law does not say you *have* to do this, and in the scenario of a violent offence it is often dangerous to do so.

You should only do this if it is safe to do so, and be aware that the right to detain the person who assaulted you does not give you the right to assault or be violent with the person, and it is only until the Police arrive and take over.

The law of self-defence *does not* allow you to retaliate or “get someone back” for something they have done to you – no matter how bad.

For example, if someone runs up to you in the street and punches you, then runs away, you are not legally allowed to run after them just so you can punch them back.

Another example of this would be if someone throws a drink over you at a party, you are not allowed to react by hitting them.

Provocation, or where someone does something annoying or rude which provokes the fight, is *not a defence* to the crime of assault. In other words, even if someone calls you a name or does something rude and offensive towards you, you are not allowed to hit them.

*This Fact Sheet is designed to give you a very basic understanding of how the law works. If you have a legal problem, or want to know how these laws apply to a specific situation, you should speak to a lawyer. If you are under 18, you can call the Legal Aid Youth Hotline 1800 10 18 10.*

