

# ASSAULT OFFENCES



An assault is any use of force or threatened use of force against a person that is not consented to. In Victoria, most assault offences are provided for under the Crimes Act 1958 (VIC); however, some are provided for under the Summary Offences Act. Each has different maximum penalties that a Court can impose. The seriousness of an assault will usually determine which law police decide to prosecute under.

## **Affray**

An affray is a display of force by at least one person against another that might cause a bystander to be terrified. A fight at a crowded shopping centre could be an example of an affray.

The maximum penalty for Affray is five years imprisonment under section 320 of the Crimes Act.

## **Intentionally and Recklessly Causing Injury and Serious Injury**

The maximum penalty for Recklessly Causing Injury under

section 18 of the Crimes Act is five years imprisonment. However, if the injury was caused intentionally, the maximum penalty is ten years imprisonment.

The type of injury or the circumstances in which the injury occurred will also affect the types of penalties handed down by the Court.

The maximum penalty for Recklessly Causing Serious Injury under section 17 of the Crimes Act is 15 years imprisonment, which rises to 20 years for Intentionally Causing Serious Injury under section 16 of the Crimes Act.

## **Assault and Common Assault**

Depending on how serious an assault is said to be, you may be charged with either Assault under the common law or the Summary Offences Act.

The maximum penalty for Assault under the common law is five years imprisonment. The maximum penalty for Common Assault under section 23 of the Summary Offences Act is three months imprisonment.

# SEXUAL ASSAULT OFFENCES

Any alleged offending of a sexual nature is serious. Hearing that someone may be or has made a complaint against you involving a sexual offence can be incredibly stressful and potentially damage your reputation and integrity.

Getting expert advice from David Tamanika Solicitors as early as possible is essential, even if the Police are not yet involved. Arranging a conference with a lawyer will clarify the immediate steps that need to be taken to protect your livelihood best and explain all the avenues moving forward.

Sex matters can be particularly difficult because the only evidence is often the complainants. We have the expertise and experience to know what is required to mount the best possible defence and see clients successfully acquitted of these charges.

## What is rape?

To be charged with rape, the allegation must be that an act of penetration has taken place, which the complainant did not consent to. The penetration may be of the mouth, vagina or anus by a finger, tongue, penis or other objects.

## Sexual Assault Charges and Rape

Touching or other contact without penetration may be a sexual assault, but not rape.

In July 2015, legislation updated sexual assault charges in the following circumstances where somebody is unable to give consent:

- The person submits because of force or the fear of force/harm to themselves or someone else or an animal
- The person submits because they are unlawfully detained
- The person is asleep or unconscious
- The person is so affected by alcohol or drugs as to be incapable of consenting
- The person is incapable of understanding the sexual act

- The person is mistaken about the sexual nature of the act
- The person is mistaken about the identity of any other person involved in the act
- The person believes that the act is for medical or hygienic purposes
- Other sexual offences

Other than charges of rape or rape by compelling sexual penetration, persons may face charges for the following sexual offences:

- Sexual assault
- Sexual assault by compelling sexual touching
- Assault with intent to commit a sexual offence
- Threat to commit a sexual offence
- Sexual offences without consent to an act

## Sentencing outcomes: what happens if I'm found guilty?

Depending on the seriousness of the offending, a sentence of imprisonment is a realistic expectation if the accused pleads or is found guilty in cases of sexual offending. For charges of rape a period of imprisonment between 4 to 5 years is common.

Additionally, the accused will most likely be placed on the Sex Offenders Register.