

Mens Rea

Different penalties apply whether it is reckless or intended.

Intention

- Subjective test- Actual mental state (intelligence, drug, alcohol, intended- not what reasonable person would do).
- State rule, what did person say/do that indicates it was intended.

Recklessness

s 21:

‘Recklessly’—a person is reckless in causing harm or serious harm to another if the person—

- a) Is aware of a substantial risk that his or her conduct could result in harm or serious harm (as the case requires); and
- b) Engages in the conduct despite the risk and without adequate justification;

Unlawfulness

The absence of a defence—such as lawful consent – that could render the conduct lawful.

Potential defence: Lawful consent of the victim

The general rule is that consent is not a defence to assaults, which cause harm or serious harm, but there are exceptions.

- S 22 outlines exceptions to this rule. ‘lawful consent’ :

s 22 (3) ‘a person may consent to harm (including serious harm) if the nature of the harm and the purpose for which it is inflicted fall within limits that are generally accepted in the community’

- harm with ‘a religious purpose’ (but not ‘female genital mutilation’, specifically prohibited under Commonwealth law)
- ‘genuine therapeutic purpose’
- ‘controlling fertility’
- ‘sporting or recreational activity’

Contemporaneity/coincidence in time

- Fagan v Metropolitan Police Commissioner [1969] 1 QB
 - Started as an accident, AR but no MR. Dis consent yet continued.
- After dis consent- Demonstrates both AR and MR
- Not result + AR.