

Assault

Introduction

D could be charged with assault under **S61 of the Crimes Act 1900 (NSW)**. The prosecution must prove all the elements of assault BRD (**Woolmington**).

Assault includes both psychic and battery

S61 Common Assault

Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years.

Darby v DPP – Definition of Assault

‘An assault is an act by which a person intentionally or perhaps recklessly causes another person to apprehend the immediate infliction of unlawful force upon him; a battery is the actual infliction of unlawful force’

Battery

D intentionally or recklessly applies unlawful physical force or contact against V's person (**R v Venna**)

Elements

AR (S61)	MR (R v Venna)
1. Application of unlawful contact	1. Intentionally apply unlawful contact
2. Without consent of victim	2. Recklessly apply unlawful contact
Temporal Coincidence	

Actus Reus

1. Application of unlawful contact

- Must be positive application of unlawful contact to V's person (not omission) (**Fagan v Metropolitan Police Commissioner**)
- D must be the substantial and operational cause of V's injury (**Royall**). V doesn't break causal chain when their actions are not perverse reaction to D (**Zanker v Vartzokas**)
- Touching amounts to assault (**Collins v Wilcock**)
- Spitting amounts to assault (**DPP v JWH**)
- Unlawfulness
 - Was the contact within the limits of what is socially acceptable or at least tolerated? (**Bouhey v R** for acceptable)

2. Without consent of victim