

UNLAWFUL ASSEMBLY ASSAULT OFFENCE LAWYERS

If You Have Been Charged with Unlawful Assembly You Need Representation

The criminal justice system (CJS) comprising police, courts, magistrates and judges is a very unfamiliar and intimidating environment, particularly for unrepresented and/or first-time defendants. The CJS has the prosecutor's and public's best interests and rights, not yours. The relevant legislation for unlawful assembly is very complex. The amount of evidence that must be preserved before it is lost/damaged (like witness statements) and the number of aggravating and mitigating factors that must be considered for this offence means being well prepared and seeking legal advice from us as soon as possible before facing a Court is critical to use helping you receive the most favourable outcome.

MK Law has a team of expert criminal and assault defence lawyers across our 4 offices (Melbourne, New South Wales, South Australia and Western Australia) who have represented thousands of parties with unlawful assembly offences at contested hearings. We take allegations very seriously. During our confidential consultations, we carefully listen to our clients' unique instructions, consider all relevant factors and guide you through the most appropriate options (whether to plead not guilty or guilty so a lesser charge can be settled or admitting guilt to the elements of the crime and dispensing the need for the prosecution to prove guilt) to avoid the most severe penalties being imposed. We appear in Court daily and know what works. We have prepared many strong and successful plea and defence strategies in the Victorian Courts by fighting the charge/s if you have been wrongly accused (including conducting our own investigations, requesting disclosure material and statements from witnesses, proactively looking for evidence police have overlooked and vigorously questioning the prosecution's case (like if they have not drafted statements, spoken to key witnesses or obtained CCTV footage), properly explaining the underlying circumstances of your offending and personal history and arranging and tendering evidence which supports your case, including defence witness statements, character references and expert reports (like psychological reports) to the Court). This means we are well equipped in navigating this complex environment of the law to work through the particular legal processes, procedures and factors that guide the Court. We have your best intentions in mind to help defend you and persuade the Court to hand down the fairest and most lenient penalty (like avoiding imprisonment, having the charges dismissed/withdrawn and/or a costs order made out against the prosecution where you are paid all legal costs for your defence).

Our Lawyers regularly attend professional development training to ensure we are up to date with the latest law in the area.

Contact our experienced team of criminal defence and assault lawyers for free legal advice 24/7 on 1800 130 120 or marcus.mklawfirm.com.au.

What is Unlawful Assembly?

Unlawful assembly is an assault that exists just at common law (it is a common law offence not contained in or enforceable by any Victorian legislation other than by reference to the relevant penalties for committing a common law offence under s 320 of the *Crimes Act 1958* (CA)).

Unlawful assembly is defined as when a person who comes together with at least 3 people for a common purpose of committing or preparing to commit a crime by using open force or acting in a violent way that endangers public peace. The decisions form precedent for future matters that are heard (like the case of *R v Jones* (1974) 59 Cr App R 120 (CA)).

Examples of Unlawful Assembly

Unlawful assembly covers a broad range of actions and behaviours, and common everyday examples include:

- A large group of people coming together with a common purpose of unlawfully spoiling a public memorial
- A large group of people coming together with a common purpose of unlawfully causing damage to a school
- A group of 10 friends coming together with a common purpose to protest against Muslims and verbally shout aggressive words and threaten violence

Police Interview

If you have been alleged of unlawful assembly, often you would be asked to attend a formal police interview that is recorded for the purposes of evidence and whether or not to formally charge you. At this stage, police have investigated the offence and have a range of evidence already against you that they will not inform you about (like statements from witnesses and the victim). Before the interview, you are given the option to contact a lawyer for legal advice/support/ representation. We can provide you with specialised confidential legal advice over the phone or in conference at our offices that addresses all your concerns before beginning a police interview. This includes: whether to make a statement to police, whether to attend a police interview, what to expect at the interview, what your rights and obligations are during the interview (like what you are not obliged to tell/give them), whether you should answer all questions asked of you or give a 'no comment', whether you have to provide DNA and/or your mobile phone and whether you will be reprimanded if you refuse to follow an order/instruction. We also prepare you well for answering questions police ask you to ensure you do not tarnish the defence that is later given in Court and help police that exceeds what they need in their investigation. We can accompany you at the formal police interview to help ease your apprehension and stress. Police take note of everything to do and say - they are experts in interrogation and obtaining admissions from you to help them build a strong case against you.

Questions to Consider Before Pleading Guilty or Not Guilty

To determine whether you have a good prospect of success in defending your unlawful assembly charge in Court, it is important to weigh up the following important points:

- Has the prosecution correctly given me particulars of the charge/s I have been charged with?
- Does the prosecution have a strong case against me?
- Should I plead guilty or not guilty where I defend my charge at a contested hearing or at trial?
 - How many persons were involved in the act?
 - What was the reason for the people coming together?
 - Did my actions endanger public peace?

- Did I use any force?
- When did the offence occur and when was I charged by police?
- What options are available to minimise my penalty?
- Do I have a lawful reason to justify why I carried out the unlawful assembly assault (can a defence like mental impairment/illness be relied on to argue my innocence)?
- Should we subpoena (legally seek access to inspect) relevant material from the opposing party?

Our experienced Lawyers will help answer all these questions and prepare a strong case for you.

What to Consider/Needs to be Established?

To determine whether you have been charged with unlawful assembly, it is important to consider what constitutes the offence (see definition above). In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- You engaged in act where *3 or more people came together?* (act)
- You came together with the intention of fulfilling a *common purpose?* (mental element)
 - The “common purpose” must be to act in an unlawful way
 - For example, advertising the act on social media, verbally sharing it at a public rally or attempting to engage in a “course of action”
 - See here for more information on a “course of action”
- And acted in an unlawful manner by *committing a crime by the use of open force* OR acting in a way that *endangers public peace?*
 - For example, acting violently or intending to cause damage to property.

NB: dot points 2 and 3 must co-exist together.

This offence will be easier for the prosecution to make out if the assembly occurs in a public place and when the public is present.

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Unlawful assembly assault offences are only dealt with summarily in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your unlawful assembly assault charge, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- Most commonly argued - the opposing party not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence (see above)
 - Fewer than 3 people were involved in the assembly
 - The people in the assembly did not share the same common purpose
 - The people in the assembly did not have a common purpose to carry out a criminal act use violence or engage in some other unlawful act
- Honest and reasonable mistake of fact
- Duress (is a complete defence) (*R v Japalijarri* (2002) 134 A Crim R 261)
 - You were forced to engage in the assembly by another person
 - You must have felt so constrained and a fear you would be a victim of threat and physical harm
- An alibi
 - Your phone/bank records indicate you were at a different place when the unlawful assembly occurred
- Mistaken identity - there is factual dispute about the real facts to the case (what happened)
 - Witnesses incorrectly identified you as being involved (a different person was involved in the assembly)
- Mental impairment/illness (is a complete defence) (s 20 *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*)
 - The defendant must be suffering at the time of the offending
 - The defendant must have not known the nature and quality of what they were doing, or did not know their conduct was unlawful
 - If this is satisfied, the defendant cannot be found guilty

Penalties

If you are found guilty of unlawful assembly, one of the following penalties will likely be imposed:

- Term of **imprisonment**
 - Level 6 offence (maximum **5 years**)
- A **diversion** (conviction or non-conviction)
 - Most likely if first time offender or offender with a mental illness
 - No disclosable outcome is made against you, which means whilst you take responsibility for the offence, it occurs in circumstances where your criminal record remains clean
 - See here for more information about a diversion
- A **promise** (to the Court to be of good behaviour)
- A **financial fine** (conviction or non-conviction)
- A **community corrections order** (conviction or non-conviction)
 - The order to engage in a behavioural change program or counselling is commonly handed down in unlawful assembly cases and this may be alongside a sentencing outcome
- **Youth Justice Centre Order** (see here for more information)

NB: In order to have a conviction or non-conviction applied for any of the penalties above, our Lawyers must make the relevant s 8 application to the Court following the conviction.

A conviction is where you have a disclosable criminal history, whilst a non-conviction is where you have no disclosable criminal history.

What is a Diversion?

A diversion is a type of penalty a Court may impose as a response to a stalking offence by a defendant. It is a program run by the Magistrates Court which the defendant participates in, which is aimed at diverting the defendant away from the CJS and protecting the defendant from having a criminal record (as the charge is discharged). The process involves the police or prosecution filing a notice of diversion with the Court and the Magistrate or judge reviewing the notice and deciding whether it is appropriate in the circumstances for the defendant to participate in the program.

If the Magistrate or judge decides it is not appropriate in the circumstances for the defendant to participate in the program, as counsel for the defendant we can make submissions to the Court to defend why it is appropriate in the circumstances and should be allowed. If the Magistrate or judge upholds their original decision, the defendant need not plead guilty as the decision is not a plea of guilt (s 59(3) *Criminal Procedure Act 2009* (Vic)). The notice will then be withdrawn, and the matter will proceed to open Court (like all other matters).

Successfully completing the program means the charge/s are discharged, whilst unsuccessfully completing the program means the charge/s are referred to open Court. Where a Magistrate does not record a conviction, the offence is included on the defendant's criminal record and this may not be removed until a given time.

Considerations When Sentencing

Courts consider a range of factors when determining the most appropriate penalty for the defendant.

- Nature/gravity of the offending conduct - the defendant's precise role in the unlawful assembly assault
- Whether a guilty plea has been entered at the earliest possible opportunity (if so, Courts often give a more lenient penalty)
- Facts surrounding the unlawful assembly (like personal matters and criminal history of the defendant)
- Whether the offence has a mandatory (or standard) sentence
- Level of planning involved, and method used
- Length of time the assembly occurred over
- Whether a type of weapon/instrument was involved, how it was used
- Whether drugs/alcohol was involved, and the type/quantity used
- Whether an injury was caused to the victim, and the seriousness/nature of it
- Location of the unlawful assembly
- Impact on the victim (in both the short and long term)

Persons with a criminal history and/or who commit the cruellest, carefully planned or motivated by hate and bias cases will attract the harshest penalties.

Our Lawyers have expertise arguing to the Court the unique circumstances of your offending to ensure they are aware of who is being sentenced, not just what you have unlawfully done.