

Western Australia

Murder, Manslaughter and Other Homicides

Armstrong Legal - Fernanda Dahlstrom

Adapted from: <https://www.armstronglegal.com.au/criminal-law/wa/offences/murder-and-manslaughter-and-other-homicides-wa/>

Murder and manslaughter are among the most serious criminal offences that can be committed in Western Australia. In Western Australia, the Criminal Code Compilation Act governs murder, manslaughter and other homicide offences. The Act prescribes mandatory minimum sentences that can be imposed on both adults and children who are found guilty of these offences.

Definition Of Murder

Under Section 279 of the Criminal Code Compilation Act, a person is guilty of murder if they unlawfully kill another person and:

- intended to cause the death of a person (regardless of whether or not they intended to kill the person who was killed); or
- intended to cause an injury that is likely to endanger the life of a person; or
- cause death by an act done in pursuit of an unlawful purpose and that is likely to endanger human life (regardless of whether or not they intended to hurt anyone).

Penalty For Murder

An adult offender who is found guilty of murder must be sentenced to imprisonment for life unless:

- It would clearly be unjust to impose a life sentence in the circumstances; and
- The offender is unlikely to be a threat to the safety of the community when they are released (in which case the person must be sentenced to imprisonment for 20 years).

A child offender who is found guilty of murder is liable to a maximum penalty of imprisonment for life or detention until they are released by order of the governor.

An adult who commits the offence of murder in the course of an aggravated home burglary is liable to imprisonment for a maximum period of life and a minimum period of 15 years.

A juvenile who commits a murder in the course of an aggravated home burglary is liable to a maximum period of life imprisonment and a minimum period of three years imprisonment or detention. Courts must impose a conviction on the offender and must not suspend any part of the term of imprisonment imposed.

Manslaughter

Under Section 280, where a person unlawfully kills a person in circumstances that do not amount to murder, they are guilty of manslaughter. The maximum penalty for a charge of manslaughter is life imprisonment. For an accused to be found guilty of manslaughter beyond a reasonable doubt, the death of the victim must have been reasonably foreseeable.

If manslaughter is committed in the course of an aggravated home burglary, minimum penalties apply as follows:

- For an adult offender, imprisonment for 15 years;
- For a child, imprisonment or detention for three years.

Unlawful Assault Causing Death

Under Section 281, a person commits a crime if they unlawfully assault a person and the person dies as a result of the assault. The maximum penalty for this is imprisonment for 20 years. This offence is different to manslaughter in that a person can be found guilty of it even if the death of the victim was not reasonably foreseeable.

If unlawful assault causing death is committed during an aggravated home burglary, the court must impose a term of imprisonment no less than:

- For an adult, 15 years;
- For a juvenile, three years.



New South Wales

Murder and Manslaughter

Criminal Law - Fernanda Dahlstrom

Adapted from: <https://www.gotocourt.com.au/criminal-law/nsw/murder-and-manslaughter/>

Murder is generally considered to be the most serious of all criminal offences. It is closely related to the lesser offence of manslaughter. Both murder and manslaughter are homicide offences, meaning offences involving one person being killed by another. New South Wales also has several other homicide offences, with which a person can be charged as an alternative to manslaughter.

In New South Wales, the partial defence of provocation is available to reduce a conviction for murder to one of manslaughter. Other defences available to murder are self-defence and duress.

The legislation

The laws surrounding murder and manslaughter in New South Wales are governed by the Crimes Act 1900.

Murder

Section 18 of the Crimes Act defines murder as causing another person's death

- with reckless indifference to human life or
- with the intent to kill or inflict grievous bodily harm or
- in an attempt to commit a crime punishable by imprisonment for 25 years or more.

This definition of murder encompasses the situation where a person kills another person intentionally or recklessly as well as the situation where a person kills another person in the process of committing a serious offence, such as rape or robbery.

Manslaughter

A fatal assault committed in any other circumstances is manslaughter. However an act that is not malicious or for which there is a lawful excuse, does not constitute manslaughter.

Under the common law, a person must have been grossly negligent in order to be found guilty of manslaughter. A manslaughter charge can be defended by arguing that the accused was not grossly negligent, did not do the alleged acts, or by arguing that the accused was acting in self-defence or under duress.

Penalties

The maximum sentence for murder is imprisonment for the term of the offender's natural life. However, a lesser penalty than imprisonment for life can be imposed for murder.

The maximum penalty for manslaughter is imprisonment for 25 years.

Other homicide offences

Section 25A of the Crimes Act makes it an offence, punishable by imprisonment for up to 20 years, to assault another person by hitting them, causing the death of the other person. This is known as 'one punch manslaughter.' A person can be found guilty of this offence regardless of whether or not the death was reasonably foreseeable.



Queensland

Types of Crime

Queensland Government

Adapted from: <https://www.qld.gov.au/law/crime-and-police/types-of-crime/murder-attempted-murder-and-manslaughter> and <https://www.qld.gov.au/law/crime-and-police/types-of-crime/assault-sexual-assault-and-stalking>

These are considered to be the most serious types of crimes against a person.

Anyone who commits murder, attempted murder or manslaughter can be sentenced to life in prison. However, courts can decide on a shorter prison term.

Murder

Murder—also called homicide—is the wilful killing of a person with intent to kill or cause grievous bodily harm. However, it does not include dangerous driving causing death—the unlawful killing of a person as a result of dangerous or negligent driving without intent to kill. This is a different offence and has a maximum penalty of 14 years in prison.

If a person has a previous murder conviction or has been found guilty of multiple murders the minimum sentence is 30 years in prison.

If a person knowingly murders a police officer the minimum sentence is 25 years in prison.

Murder is not common in Queensland and crime statistics show it is not increasing.

Manslaughter

Manslaughter is the unlawful killing of a person without intent to kill, usually as a result of a careless, reckless, or negligent act.

Manslaughter also includes the intentional killing of a person under extreme provocation or when a person's state of mind impairs their capacity to understand or to control their actions—this is sometimes called diminished responsibility.

Assault

All forms of assault involve causing physical or mental harm to another person. This may include striking, touching, moving, or applying force of any kind to a person without their consent. You do not have to hit someone to be charged with assault; pushing or just threatening them can still be classed as

assault.

Different types of assault have different penalties depending on the seriousness. The more serious the assault and or injuries to the victim, the more severe the penalty that may be imposed.

Assault causing bodily harm

This more serious form of assault is when the person attacked suffers injuries which interfere with their health or comfort (i.e. they need hospital treatment or time off work as a result of the attack).

The maximum sentence for assault occasioning bodily harm is 7 years in jail however, if there is aggravation involved in the assault—for example the offender has a weapon, pretends to have a weapon or the assault is made by more than one person—the maximum sentence increases to 10 years.

Unlawful wounding and grievous bodily harm

Wounding is breaking or penetrating the skin, which usually results in bleeding. Like assault causing bodily harm, it carries a sentence of up to 7 years in jail.

Grievous bodily harm is a very serious form of assault where the person attacked receives:

- a loss of a distinct part of an organ
- serious disfigurement
- any injury that if left untreated would endanger the person's life or cause a permanent injury or ill-health.

If you commit grievous bodily harm you can be sentenced to up to 14 years in prison.



Queensland

One Punch Law (Qld)

Criminal Law - Fernanda Dahlstrom

Adapted from: <https://www.gotocourt.com.au/criminal-law/qld/one-punch-law/>

In the years between 2010 and 2012, there was a sharp increase across the country in deaths resulting from one punch. Such blows were formerly referred to as 'king hits' but have been re-branded as 'coward's punches' in an attempt to stigmatise rather than glorify the act. Public pressure built for legislators to address this offending, which was seen as typically taking place when a group of young men were out in public and intoxicated. An argument breaks out, someone says an insult. One young man throws a punch to another young man's head. The victim falls, strikes his head on the ground and dies.

It's not murder as there is no intent to kill (Criminal Code, section 302). In many cases, courts have found that it isn't even manslaughter. To find a person guilty of manslaughter, prosecution must establish that the victim's death was foreseeable in the circumstances (Criminal Code, Section 303). In many cases where someone has thrown a single punch, courts have found the death was not foreseeable.

But these offences are, many people feel, too serious to be rightly characterised as common assault (Criminal Code, Section 245). Someone has died. Public pressure built for the government to be 'tough on crime' and change the law to accommodate one punch killings.

The new law

In 2014, Queensland parliament introduced a new offence of 'unlawful striking causing death', into the Criminal Code (Section 314A). Colloquially, this has come to be referred to as 'the one punch law.'

Under the new law, offenders who cause the death of another person by unlawfully striking a blow to the head or neck are guilty of a crime, regardless of whether they intended the victim to die, or foresaw death as a possible consequence of striking the blow. The blow struck does not even need to amount to a common assault, so long as it is delivered unlawfully.

There are some situations where it is not unlawful to strike a person in the head or neck, for example, in a boxing match, where participants are engaging in a socially acceptable activity.

Sentencing under one punch law

The Section 314 offence carries a maximum penalty of life imprisonment. This represents a massive increase in the maximum penalty courts may impose for a death resulting from a one punch assault that does not amount to manslaughter (the maximum sentence for common assault is three years). The 'unlawful striking causing death' offence also prescribes a mandatory minimum sentencing regime, but courts retain a wide sentencing discretion for these offences. If a person is sentenced to imprisonment for causing death with a blow to the head or neck and the court sentences them to a period of imprisonment, the court must order that they serve the lesser of –

- 80% of the term of imprisonment imposed for the offence; or
- 15 years.

This means that courts are restrained from setting a non-parole period that is less than 80% of the head sentence, or 15 years (whichever is less). Courts are also restrained from suspending more than 20% of the sentence they impose. However, courts are still free to set the term of the head sentence as they see fit as no minimum period of imprisonment is stipulated.

Mandatory minimum sentencing provisions vary between different states and territories, with Victoria and New South Wales having the harshest minimum sentences for 'one punch laws', being ten years and eight years respectively.



Victoria

Murder & Manslaughter

Galbally Parker Lawyers

Adapted from: <https://galballyparker.com.au/murder-manslaughter/>

Murder

Murder is a common law offence, meaning it has been developed through previous cases and not through the enactment of a piece of legislation.

Elements of Murder

A murder will be found to have been committed

if the Prosecution prove beyond all reasonable doubt before a Jury that:

- the accused caused the victim's death;
- the accused's acts were conscious, voluntary and deliberate;
- that at the time the accused did the acts that caused the victim's death, he or she intended to kill or cause really serious injury;
- the accused killed the victim without any lawful justification or excuse.

Sentences for Murder

The nature of murder cases can vary considerably; however, all are punishable by a maximum term of life imprisonment. In recent times, the Victorian Parliament has introduced a baseline sentence for murder, being 30 years in cases where the victim was an emergency worker and 25 years in all other cases. This means that the sentencing court must sentence the accused to a minimum of 25 or 30 years, as the case may be, as a starting point and then adjust the sentence according to the particular facts of the case and the accused's circumstances.

Murderous Intent

A murder case may be based on an intention by the accused to kill the alleged victim or on the basis that the accused was reckless as to whether the alleged victim would die as a result of their actions: ie, that they intended to cause really serious injury but the result was that the alleged victim died. This is seen mostly in serious assault matters which result in death, even if that was not the intended outcome.

Manslaughter – unlawful & dangerous act

Manslaughter is a common law offence and will be made out if the Prosecution proves beyond all reasonable doubt that:

- the accused committed an act that caused the death of another person;
- the relevant act was committed consciously, voluntarily and deliberately;
- the relevant act was "unlawful";
- the relevant act was "dangerous".
- Manslaughter is punishable by up to 20 years imprisonment or to a fine in addition to or without any such other order.

Manslaughter – single punch

In recent years, with the increase of 'single punch' killings and serious injuries, the Victorian Parliament has responded by introducing a provision which specifies that a single punch, delivered to the head or neck which by itself causes injury, is to be taken as a dangerous act for the purposes of a manslaughter charge. The provision (section 4A of the Crimes Act) specifically includes an example of where this charge will apply, as follows:

If a person punches another person to the head, and that other person falls, hits their head on the road, and dies from the injury resulting from their head hitting the road, the punch may be the cause of their death.

