

Malicious Wounding

s.35(1)(a) (NSW) Crimes Act

s 35(1)(a) Malicious wounding

Maximum penalty: 7 years

Substituted: 27.9.2007 (see new tables)

NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	SUMMARY
Frogley NSWCCA 8.2.1994	s.35(a)	VG	MT 23m AT 8m	AD	Knife		Unprovoked attack on nursing sister alone in hospital in early morning - wound to chest.
Fragoso (44) NSWCCA 24.2.1994	s.35(a)	PG	500h CSO	AA 3y GBB	Knife	nil	Attacked victim after savagely bashed by victim and friend - victim suffered large laceration to lung and liver - severe provocation. Suffered psychological trauma as result of assault.
Fergus (22) NSWCCA 31.5.1994	s.35(a)	PG	500h CSO (+ 2m PSC)	Crown AA 12 PD	Knife	nil	De facto declined marriage proposal - purchased three knives and placed in car - picked up de facto from station and asked for a hug - during embrace stabbed victim - also tried to strangle her - left her by roadside. Remorse - attempted suicide - good rehabilitation. By time of appeal CSO completed.
Steeden (23) NSWCCA 19.8.1994	s.35(a)	VG	MT 3y AT 1y	AD	Knife	significant including violence and dishonesty	Intoxicated - disturbed group fishing - stabbed victim in back.
Sinika (68) NSWCCA 25.9.1995	s.35(a)	PG	MT 18m AT 12m	AD	Knife	one minor offence	Roused neighbour at 2am one morning, stabbing him in abdomen – retaliation for beer bottle thrown into offender's driveway during children's party. Not in good health.
Pedersen NSWCCA 5.3.1996	s.35(a)	PG	3y PD	Crown AD	Knife		Driving altercation resulted in stabbing – provocation - genuine apprehension for safety because of earlier similar incident. Strong subjective factors.

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Drysdale NSWCCA 24.10.1996	s.35(a)	VG	MT 15m AT 15m	AD	Knife	disregarded	Altercation between two boys broken up by victim - blows exchanged between victim and one boy's father - victim stabbed number of times in leg, hand, abdominal region and neck – self-defence rejected
Woodhouse NSWCCA 20.12.1996	s.35(a)	PG	MT 1y 9m AT 7m	AD	Knife	previous assaults	Involved in scuffle in hotel - went home then returned with knife - further confrontations - stabbed victim several times in arm.
Haitoua (20) NSWCCA 9.4.1997	s.35(a)	PG	500h CSO	Crown AA MT 12m AT 12m	Knife	alcohol related offences	Ejected from club and altercation ensued - friend tried to restrain offender and stabbed twice in chest - lung collapsed. Alcohol problems - good prospects of rehabilitation.
Kaadi (29) NSWCCA 7.5.1997	s.35(a)	VG	FT 9m	Crown AA MT 1y 6m AT 1y	Knife	violence, including AR on parole and bail	Altercation initiated by victim after offender jumped queue at Methadone clinic - approached victim in car park to have it out – victim stabbed in abdomen. Addicted to heroin.
Tracey (31) NSWCCA 7.7.1997	s.35(a)	PG	MT 2y AT 8m	AD	Iron bar	on recog for AOABH	Attacked victim with iron bar when he answered back door of his house - head wounds – claimed victim had molested friend's 13y step daughter.
McAdam NSWCCA 29.9.1997	s.35(a)	PG	MT 2y 6m AT 18m	AD	Knife	considerable including 2 x mansl	Victim came to flat asking for light - angry at being woken so took knife to door - victim insulting and aggressive – victim stabbed causing serious injury to eye. Some attempts made at rehabilitation.
Rowe NSWCCA 10.12.1997	s.35(a)	VG	MT 1y 355d AT 1y 10d	AD	Knife	ten counts of assault	Attack on bouncer who removed offender from hotel - stabbed in lower abdomen and under armpit, punched and grabbed by throat
GNW (32) NSWCCA 2.3.1998	s.35(a)	PG	MT 3y 9m AT 1y 3m	AA MT 3y AT 1y	Knife	dishonesty	Cut throat of friend's girlfriend while driving - external jugular vein severed – intoxicated - acted "wantonly".
Willett (25) NSWCCA 21.8.1998	s.35(a)	PG	MT 15m AT 5m	AD	Glass	nil	Struck female with glass after altercation on dance floor - glass broke causing injury to eye and cheek. Very atypical behaviour - excellent record with navy - prior to offence had been at sea 10 days, sleep deprived and influenced by hay fever medication - excellent character

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Hall NSWCCA 11.11.1998	s.35(a) Sched: 2 x AOABH 2 x Assault	PG	MT 2y AT 1y 6m (1m PSC)	AD	Assault and golf stick		Intoxicated - became aggressive and abusive to students on beach - without provocation head butted and punched two students - kneed third student in groin, struck him around head and body with golf stick, chased him and pushed broken stick into stomach causing lacerations to hands - struck fourth with golf stick.
Greiss (36) [1999] NSWCCA 230	s.35(a)	PG	400h CSO	Crown AA 2y 6m PD	Screwdriver	Nil	Assaulted motorist during argument about U-turn – head butted and punched complainant then stabbed with small screwdriver Genuine`` remorse – delay – care for mother
King (22) [1999] NSWCCA 251	s.35(a) s.35(b)	VG	Total: MT 3y 9m AT 6m	AA Total: MT 3y AT 15m	Bottle - house brick	Violence and assault – breached bond and parole	First offence committed during riot – hit male with bottle once – subsequent on-going conflict and confrontation – 16m later threw house brick at victim and friends – struck one male causing serious head injuries
Cox [1999] NSWCCA 254	s.35(a)	PG	MT 12m AT 2y 6m	AD	Hunting knife	Insignificant	Dysfunctional platonic relationship with victim characterised by mutual violence – serious alcohol problems – while intoxicated stabbed victim in stomach Psychological problems – troubled background
France (19) [1999] NSWCCA 428	s.35(a)	PG	MT 2y 6m AT 2y 6m	AA MT 1y 9m AT 1y 9m	struck victim	Long record but no gaol.	Created disturbance at public telephone - started altercation with passer-by who asked him to desist and struck him on temple. Voluntarily went to police - drug and alcohol addiction.
Towers [2000] NSWSC 420 Grove J	s.35(a)	PG	3y GBB (10mths PSC)		Glass	on recog for assault at time of offence	Originally charged with murder - during drinking binge stabbed victim with broken glass – victim killed by independent stab wounds suffered at hands of unknown assailant – matter could have been dealt with in Local Ct Aboriginal - low intelligence
Scott (28) [2000] NSWCCA 535	s.35(a)	PG	4y 4m NPP 2y 6m	AD	Knife	nil	Attacked female flatmate with knife around head and neck - resisted attempts of other flatmates to pull him of victim. Out of character.
Carpenter (52) [2001] NSWCCA 87	s.35(a)	PG	4y 10m NPP 2y 10m	AD	Knife	lengthy	Stabbed stranger in stomach on street - no provocation - intoxicated.

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Piccin (42) [2001] NSWCCA 323	s.35(a)	VG	2y GBB	AD	Knife	nil	Female - stabbed teenage ex-boyfriend when he broke off relationship Mother of 3 children - victim of fraud resulting in loss of property and business. Acquitted of stalking on appeal
Guivarra (30) [2002] NSWCCA 69	s.35(a)	PG	FT 2y suspended	Crown AD	Golf club and knife	assault	Assaulted lover of former girlfriend - victim hit with golf club and stabbed in abdomen.
Brownlow (24) [2002] NSWCCA 404	2 x s.35(a)	PG (25%)	15m NPP 5m	Crown AA 2y 11m NPP 11m	Machete	minor	Attended home of ex-de facto with 4 others armed with machete seeking return of money owed by de facto - in subsequent struggle male seriously injured on elbow and co-offender cut on ear - planned attack although wounding reckless Difficult personal history resulting in early drug abuse – below average intelligence - evidence of rehabilitation
Shepherd [2003] NSWCCA 351	s.35(a) Affray	PG (25%)	3y 9m NPP 2y 1y NPP 6m <u>Total:</u> 4y 3m NPP 2y 6m	AA 2y NPP 1y 1y NPP 6m <u>Total:</u> 2y 6m NPP 1y 6m	Punch	Breached bond – no other priors	Involved in attack on shop keeper with two other offenders – angered by refusal to provide credit – shopkeeper stabbed by co-offender and hit with baseball bat – mal wound based on punch Aboriginal with deprived background - youth
Tran (20) [2005] NSWCCA 35	s.35(1)(a)	PG	18m NPP 6m	AD	Knife	Nil	Became involved in assault on 16y female – co-offender used knife – least culpability
Ngo (22) [2005] NSWCCA 107	s.35(1)(a)	PG (25%)	3y PD	AA 2y NPP 1y 3m PD	Cleaver	Minor	Vietnamese offender went with friends to club to watch soccer – argument developed with rival Chinese group – chairs used – offender's group outnumbered, so went and got two cleavers and struck victim – left scene Good character and employment – no current drug problems – stable relationship – above average intelligence

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Mauri (38) [2005] NSWCCA 272	s.35(1)(a)	VG	4y NPP 9m	AA 3y NPP 9m	Glass	Record for violence – no impris – breached bond	During argument in hotel struck male stranger in face with glass – glass broke – element of provocation and self-defence – did not consciously use glass Intoxicated
Morris [2006] NSWCCA 199	s.35(1)(a)	PG (25%)	3y NPP 1y 8m	AA 2y 3m NPP 1y 2m	Knife	Not significant	Stabbing during argument with flat mate – momentary rage Good character – good prospects of rehabilitation – HIV – delay
Ilioski [2006] NSWCCA 164	s.35(1)(a)	VG	4y 6m NPP 2y 6m	AD	Knife	Nil	During brawl outside nightclub attacked male with knife – slashed to throat requiring immediate surgery – stabbed in chest Convicted after four trials
Douglas (29) [2007] NSWCCA 31	s.35(1)(a) s.35(1)(b)	PG (15%) VG (trial for s.33)	20m NPP 12m suspended	Crown AA 20m NPP 12m PD	Metal pole	Assaults – breached CSO	Assaulted 58y male with metal pole – also struck step son – history of animosity between families – element of provocation
Andrews (34) [2007] NSWCCA 68	35(1)(a)	PG (25%)	2y 3m NPP 20m	AD	Bottle	Violence and dishonesty – previously assaulted victim	Hit ex de facto with bottle of rum and beer – kicked side of face Significant substance abuse – broken home
Morris (39) [2007] NSWCCA 127	s.35(1)(a)	VG	7y NPP 4y 6m	AA 5y NPP 3y 6m	Knife	Extensive – including violence – breached parole	Attacked male stopped on street at night to be sick – stabbed with knife several times – injuries not serious
Davies (28) [2007] NSWCCA 178	s.35(1)(a)	PG (16%)	10m Suspended	Crown AD	Beer glass	On recog for high range PCA	Intervened in argument between two old school friends while drinking at club – hit victim in eye area with beer glass - low objective criminality.
Zahoros (64) [2008] NSWCCA 336	s.35(1)(a)	PG (20%)	5y 2m NPP 3y 10m	AA 4y NPP 2y 9m	Knife	Nil	Stabbed victim in arm and abdomen following argument at restaurant - offence not at upper end of range. Mental illness – schizophrenia.

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FDP (29) (2008) 192 A Crim R 87 [2008] NSWCCA 317	s.35(1)(a) 3 x s.87 – remove child from parental control	VG	5y NPP 3y 3y 3m NPP 2y <u>Total:</u> 6y 6m NPP 4y 6m	AA 3y 9m NPP 2y 3m FT 15m <u>Total:</u> 4y 6m NPP 3y	Knife	nil	Took estranged wife and three children to park – assaulted wife by punching and hitting with mobile phone – stabbed victim with knife multiple times - then took children to hotel interstate but surrendered to police next morning – breached AVO
McCullough (25-26) (2009) 194 A Crim R 439 [2009] NSWCCA 94	s.35(1)(a) Malicious Damage Assault Sched: Resist Arrest	PG (25%)	4y 2m NPP 2y 6m FT 1y 7m FT 9m <u>Total:</u> 5y 2m NPP 3y 6m	AA 2y 8m NPP 1y 8m FT 9m FT 3m <u>Total:</u> 3y 4m NPP 2y 4m	Assault	s.35 offence committed on bail for other offences mostly dishonesty offences	Approached brother's house late at night intoxicated and demanded return of money owed – smashed glass door panel and punched brother – 17m later assaulted mother in her home – sustained assault in bathroom - punched and kicked and forced head into wall – bit victim on finger Alcohol abuse

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