

Maliciously Inflict GBH

s.35(1)(b) (NSW) *Crimes Act*

s 35(1)(b) Malicious inflict GBH

Maximum penalty: 7 years

Substituted: 27.9.2007 (see new tables)

NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	SUMMARY
Moufferige NSWCCA 5.9.1994	s.35(b)	VG	MT 1y 10m AT 5 1/2m	AD	Iron bar	lengthy but no violence	Argument with female victim in car park - struck victim on head, causing immediate epileptic fit and cognitive impairment - on methadone which made offender snap. Married with three children - personality problem - 50% discount for assistance
Coleman (26) NSWCCA 20.2.1995	s.35(b)	PG	2y PD	Crown AA MT 6m AT 1y	Assault	minor	Kicked friend in head as he intervened in violent argument between offender and girlfriend - severe and permanent brain damage – intoxicated Good rehabilitation.
O'Kane (26) NSWCCA 9.3.1995	7 x s.35(b)	PG	MT 1y AT 3y	Crown AA MT 2y AT 4y	Assault	not significant	Injuries inflicted on 4-5m old child over some weeks - six fractures and injury to eye causing blindness. History of depression and drug abuse - never recovered from death of 4m daughter.
Leslie (20) NSWCCA 10.3.1995	s.35(b) Sched: PCA Unlic driver	VG	MT 6m AT 1y	Crown AA MT 1y AT 1y	Car	extensive including traffic and assault	While drunk drove car into group of people at party - serious injuries. Alcohol problem - post traumatic stress disorder - brother handicapped and mother in poor health
Clark (21) NSWCCA 27.3.1995	s.35(b)	PG	MT 6m AT 1y 6m	Crown AA MT 1y AT 1y 6m	Assault	nil	Shook 2y old baby of de facto - serious, probably permanent injuries Medical condition - much of sentence on protection.
Stanley NSWCCA 7.4.1995	s.35(b)	VG	MT 9m AT 3m	AD	Elbow	violence on bond and CSO	Elbowed victim in face in rugby league game - fractured jaw.

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Mangion NSWCCA 25.5.1995	s.35(b)	PG	MT 18m AT 2y 6m	Crown AA MT 3y AT 2y	Gun		During family dispute fired gun at son – caused paraplegia - forced another son to take blame - on previous occasions had threatened family with gun – ten year delay before truth came out.
Ali NSWCCA 27.6.1995	s.35(b)	VG	MT 2y AT 8m	AD	Assault	long record, two offences for violence.	Staying with female victim for several weeks – after drinking with victim and friend found them in intimate position - physically assaulted victim – returned later that day and forced victim and young son into car – victim escaped at petrol station.
Kalache (25) NSWCCA 30.6.1995	s.35(b)	VG	MT 4y AT 16m	AD	Fire	nil	Went to 17y victim's house with two brothers - believed victim had informed to police on another brother - victim held down, doused in petrol and set alight - extensive burns and need for life long treatment - later tried to bribe victim to withdraw evidence. Lack of contrition.
Dunn (22) NSWCCA 6.11.1995	s.35(b)	VG	MT 2y 5m AT 18m	AA MT 18m AT 18m	Failure to catch		Noticed young daughter of de facto had wet pants – threw victim twice into air and caught her - victim scared after second throw - threw her a third time but failed to catch her - victim hit floor with her head and shoulders. Genuine efforts towards rehabilitation.
Pitcher NSWCCA 19.2.1996	s.35(b)	PG	250h CSO	Crown AA 12m PD	Assault		Punched 3y son in stomach forcing him against wall and causing injury to bowel and spine - life-threatening injuries. Good subjective features
Hatch NSWCCA 21.2.1996	s.35(b)	PG	250h CSO	Crown AA MT 6m AT 12m	Steel rod	nil	Poked steel rod through window of car causing injury to eye of daughter's boyfriend - eye removed – provocation – victim involved in criminal activity. Good character.
Rose (19) NSWCCA 5.3.1996	s.35(b)	PG	12m PD	Crown AA 3y PD	Assault	nil	Three men attacked male stranger - injuries could have been fatal - unprovoked attack - returned to check condition of victim - not main instigator Contrition - excellent prospects of rehabilitation
Hussein (20) NSWCCA 25.3.1996	s.35(b)	PG	3y GBB	Crown AD (discretion exercised)	Assault	nil	Kicked mother's de facto husband in face - trained in martial arts and boxing - fractured skull. Upset over breakdown of parent's marriage - excellent subjective features
Grimmett NSWCCA 1.4.1996	s.35(b)	VG	MT 18m AT 2y 6m	Conviction AD	Assault	violence	Assaulted 19m child of de facto causing permanent brain damage and damage to ear.

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Hubber NSWCCA 29.5.1996	s.35(b)	PG	MT 2y AT 8m	AD	Assault	minor	Found victim in offender's car - during argument punched, stomped and kicked victim in face many times – intoxicated Out of character.
Aala NSWCCA 30.5.1996	s.35(b)	VG (at attempt murder trial)	MT 13m AT 21m (+8m PSC)	Crown AD	Knife		Domestic dispute with wife multiple stab wounds – no pre-meditation In state of turmoil.
K Williams (17)	s.35(b)	VG	MT 8m AT 8m	AD	Assault.	AVO	Father and son assaulted neighbour late one night in front yard – victim did not approve of relationship between daughter and son - breached AVO – assault initiated by KW - fractured cheek.
P Williams (44) NSWCCA 27.8.1996	s.35(b)	VG	MT 10m AT 6m			Minor, two assaults	
Sandeman	s.35(b)	VG	MT 2y 3m AT 9m	AA MT 1y 9m AT 7m	Assault and water pipe		Fight in backyard after drinking with victim – victim kicked, beaten with water pipe and head forced into brick wall - fractured skull and cheek. Both offenders had chronic alcohol problems.
Hilditch NSWCCA 4.9.1996	s.35(b)	VG	MT 2y 3m AT 9m	AD			
Crowhurst (18) NSWCCA 30.10.1996	s.35(b)	PG	MT 21m AT 16m	AD	Assault	nil	Victim assaulted by three youths whose cars had been earlier pelted with eggs - victim wrong person in wrong place - kicked victim twice in head, and jumped on face with both feet - multiple fractures – intoxicated Sentence discounted for assistance
Kennedy (34) NSWCCA 15.11.1996	s.35(b)	VG	MT 12m AT 3y	AD	Assault	included assaults	Kicked publican in face as he was removing offender's de facto wife from hotel - broken jaw.
Henry (17) NSWCCA 26.11.1996	s.35(b)	PG	MT 2y AT 18m	AD	Hammer	previous assaults on victim on probation and recog	Beat de facto when she tried to leave him - hit numerous times around legs and arms as she protected head. Aboriginal.
Rainbow (22) NSWCCA 20.12.1996	s.35(b)	PG	MT 3y AT 2y	AA MT 2y AT 18m	Hot iron		Struck 21m child in head and applied hot steam iron to abdomen and leg - annoyed at crying - burns first and second degree - unpremeditated.

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Ho (22) NSWCCA 28.2.1997	s.35(b)	PG	MT 9m AT 9m	AD	Assault	insignificant	Left club with intention to fight - instigated fight with victim who was punched and kicked - serious head injuries.
Martino (32) NSWCCA 11.4.1997	s.35(b)	PG	MT 2y 8m AT 8m	AA MT 18m AT 6m	Baseball bat	nil	Accused victim of affair with wife and assaulted with baseball bat 20 times - fractured limbs.
Doolan (23) NSWCCA 7.5.1997	s.35(b)	PG	MT 2y AT 3y	AD	Assault	extensive: dishonesty, driving, assaults	Drinking in park with group of people - pulled apart fighting females by hair, then became aggressive - pulled and grabbed victim by hair, pulled him to ground, kicked and stomped on head - fractured jaw and zygoma Sexually assaulted by victim when younger.
Service NSWCCA 3.11.1997	s.35(b)	PG	MT 12m AT 3m	AD	Crowbar		Victim attended home of co-offender demanding payment of debt - arranged for offender and others to be present when victim returned – victim attacked by four persons – offender used crowbar.
Malass NSWCCA 3.3.1998	s.35(b)	VG	MT 18m AT 18m	AD	Wood	serious driving offences	Brawl involving 30-40 people - police officer struck in face with wood - broken nose and loss of sense of smell.
Jamieson (21) NSWCCA 24.3.1998	s.35(b)	VG	MT 15m AT 21m	Crown AA MT 3y AT 2y	Assault	2 x assault on recog and bail	Attacked frail male in his bed - no motive - intoxicated. Tragic background.
Banks (21) NSWCCA 17.8.1998	s.35(b)	VG	MT 12m AT 12m	AD	Punching and kicking	nil violence but gaol for other offences, mostly cars	Arguing with female in caravan park - male from neighbouring caravan came out to complain - 'king hit' male, then kicked him in stomach, head and back while on ground - fractured jaw and chipped teeth – self-defence rejected.
Campbell (20) [1999] NSWCCA 76	s.35(b) Sched: Drive unreg MV Drive unins MV	PG	MT 1y AT 2y	AA MT 2m 25d AT 18m	Steel rod		After fight with victim took a lift in same car - repeatedly struck victim on head with steel rod in car, causing fractures and lacerations - both intoxicated Rehabilitation - contrition

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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 victim with bottle once – subsequent on-going conflict and confrontation – 16m later threw house brick and victim and friends – struck one male causing serious head injuries
Kama (17) (2000) 110 A Crim R 47 NSWCCA	s.35(b)	PG	MT 9m AT 18m PD	Crown AA MT 2y AT 1y PD	Punching and stomping on head	nil	Viciously assaulted male significantly smaller in size - attack continued after victim defenceless on ground - permanent brain damage. Youth - previous good character.
Toomalati (28) [2000] NSWCCA 105	s.35(b)	PG	3y GBB	Crown AD	Assault and key	three convictions for assault - on recog at time of offence	Female - punched 17y female around face and stabbed her with keys causing injury to eye – angered over victim's affair with offender's husband Single mother with four children - violent relationship with husband - depression and attempted suicide on several occasions - support of family - apologised to victim
Magrin Watson [2000] NSWCCA 346	Acc. to s.35(b) s.35(b)	PG VG	16m NPP 12m (+ 52d PSC) 12m PD	Crown AD Crown AD	Baseball bat	nil	Assisted third co-offender in serious assault on victim for payment - GM involved in planning and negotiating - GW drove co-offender to and from scene of offence but not present during offence - did not intend or expect severity of assault – victim lost eye and suffered brain damage
Berry (31) [2000] NSWCCA 451	s.35(b)	PG	2y 6m NPP 6m PD	Crown AA 18m NPP 9m	Car	no prior criminal or traffic convictions	Drove motor car at estranged de facto, deliberating swerving on to wrong side of road and increasing speed to 50kph - reckless and indifferent to consequences. Good subjective features

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Leroy	s.35(b) Affray AOABH	VG	4y 3m NPP 2y 3m FT 6m FT 9m Total: 5y 6m NPP 3y 6m	Conviction AD	Punch and kick		Fracas at club during weekend football carnival – manager punched and kicked and lost eye
Graham (18) [2000] NSWCCA 302	s.35(b) Affray	VG	4y 3m NPP 2y 9m FT 3m Total: 4y 6m NPP 3y	AD		Drink driving, BE W/I, assault	
Sloane (29) (2001) 126 A Crim R 188 NSWCCA	s.35(b) Sched: 2 x assault	VG	2y 11m NPP 2y PD (+65d PSC)	Crown AD (discretion exercised)	Assault	record	Off duty police officer approached group of drunken males outside hotel - showed group his badge - scuffle developed and police officer kicked while on ground - serious injuries. Neglected background - evidence of rehabilitation.
Smith [2001] NSWCCA 420	s.35(b) Sched: breach of ADVO	PG (20%)	4y NPP 3y	AA 4y NPP 2y	Assault		Assaulted estranged wife in driveway of her parents' house - bashed head into ground, forced her against steel mesh fence and forced her inside, bashing her head against floor - armed with knives. Aboriginal - good work history - protective custody because worked as prison officer.
Sako (25)	s.35(b)	VG (at trial for s.33 offence)	5y NPP 3y 9m	AD	Assault	record involving minor violence	Involved in assault on off duty police officer by 10-12 men outside hotel - officer fatally stabbed - accessorial liability - knew victim was a police officer and defenceless – aware knives had been used – S became involved after fatal stabbing when heard brother had been stabbed – E leading role in assault Iraqi
Esho (24)	s.35(b)	VG (at trial for murder)	6y 8m NPP 5y	AD		Minor violence	
[2001] NSWCCA 415	s.93C		FT 2y (concurrent)				

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Bett (20) [2001] NSWCCA 482	s.35(b)	PG	3y NPP 12m PD	Crown AA 3y NPP 2y 3m PD	Assault	nil	Took 62y male with walking stick by throat and shook him – punched in face several times and taken in headlock – thrown to ground, causing back of head to strike kerb - victim lost sight in right eye and other injuries. Voluntary surrender to police.
Remilton (25) [2001] NSWCCA 546	s.35(b)	PG	2y suspended	Crown AD	Assault	Nil	Hit 8 week old daughter in stomach and very hard to head causing facial bruising and skull fractures - full recovery Background characterised by consistently witnessing male violence as normal experience
Reid (27) [2001] NSWSC 1084 Bell J	s.35(b)	PG (35% - combined)	3y 3m NPP 1y 9m		Assault	lengthy	Assisted co-offender in assault on male acquaintance - kicked victim in head once - helped put victim in dumpster - victim subsequently set alight by co-offender and died. Aboriginal - deprived and traumatic childhood - alcoholic - assistance to authorities - protection - history of self-harm and psychiatric disorder
Galati (21) [2002] NSWCCA 366	s.35(b) Sched: 2 x possess prohibited drugs	PG	3y NPP 12m PD	Crown AA 3y PD	Assault	minor	Assaulted stranger outside hotel - unprovoked - karate kick to head - serious consequences Voluntarily surrendered next day - genuine remorse - evidence of rehabilitation - lengthy delay
Mendez (23) [2002] NSWCCA 415	s.35(b)	PG (20%)	4y NPP 2y 3m	AD	Assault with heavy object	Violence - bail	Female victim approached house of ex-husband calling out and intoxicated - swung heavy object at victim's face then chased and continued assault - serious fractures to face Violent and difficult childhood - need for psychiatric counselling.
C Van Tran H Van Tran (2002) 134 A Crim R 577 NSWCCA	s.35(b) Sched: s.35(b) s.35(b) Sched: s.35(b)	PG (25%) PG (25%)	4y NPP 3y 4y NPP 3y	AD AD	Shooting		Drove past victim's home - shot at victim and another male as they sat outside their home – revenge for being shot at by victim

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McKay (37) [2003] NSWCCA 32	s.35(1)(b)	PG	3y NPP 18m	AD	Assault	2 x assault police	During argument with de facto wife placed her in head lock and punched her in face - caused broken cheek and eye socket - took victim to hospital Upset by recent death of father - genuine remorse - conduct unusual
Morrison (22) [2003] NSWCCA 89	s.35(b) Sched: Mal damage to property	PG (17%)	5y NPP 3y 4m	AD	Assault	assaults - breached bond and requirement to stay away from hotel	Assaulted victim outside hotel - elbowed in face - kicked while unconscious on ground several times - head butted glass window of shop - serious brain damage Unfortunate and neglected childhood - sexually abused
Takau (22) [2003] NSWCCA 181	s.35(b)	PG (25%)	4y NPP 2y 9m	AA 4y NPP 2y	Assault	Prior convictions – no full time prison	With group of males punched male acquaintance to ground – stomped on face 6-7 times Intoxicated – evidence of good character
D.S.W. (16) [2003] NSWCCA 322	s.35(1)(b)	VG (at trial for s.33 offence)	4y NPP 2y 6m	Crown AD	Assault	Assault – breached bond	Assaulted male in street - deliberately and forcefully jumped on head more than twice – caused serious impairment - intoxicated Troublesome history of violence – Aboriginal – abuse of alcohol and drugs – no remorse
Mako (25) [2004] NSWCCA 90	s.35(1)(b)	PG	3y NPP 2y	AA same effective sentence	Knife	Assault, AOABH	Cut throat of brother's girlfriend after argument with brother
Westerman (27) [2004] NSWCCA 161	s.35(b) Sched: AOABH	PG (20% on appeal)	7y NPP 5y	AA 4y NPP 3y	Assault	Dishonesty and driving – no violence	Extensive and severe beating of 5y son of de facto – injuries to head and face, arms and body – AOABH involved kick to child's lower back – not isolated incidents - not worst case
TR (16) [2004] NSWCCA 187	s.35(1)(b)	PG	3y 6m NPP 1y 8m	AD	Assault	Nil	Group assault on male victim – used heavy chain – victim kicked, punched and head stomped – serious injuries – reaction to racial slur Dysfunctional and abusive childhood – psychological problems – evidence of rehabilitation – delay - remorse
Franklin [2005] NSWCCA 24	s.35(1)(b)	PG (25%)	2y 6m NPP 1y 4m	AD	Punching and chair leg	Two previous assaults	Fight with girlfriend's ex-partner – fight initiated by victim – victim punched unconscious

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Williams (31) [2005] NSWCCA 14	s.35(1)(b)	PG (25%)	3y NPP 1y 6m	AD	Dead branch	Nil	Assault on step-father at family wedding over allegation he had sexually assaulted offender's sister when 9y – armed with mattock and axe but taken from him – punched victim and then attacked with tree branch – skull fracture with bleeding and swelling to brain Studying – marijuana – schizophrenia
Smith (27) [2005] NSWCCA 286	s.35(1)(b)	PG	10m NPP 5m	Crown AD	Hot water	None stated	Facts unclear - poured hot water on partner's 6y son in bath, permanently scarring his legs – failure to get medical assistance – hot water not a weapon within s.21A(2)(c) – exercise discretion not to intervene Average intelligence – finished high school and child care course – no drug issues
Otway [2005] NSWCCA 352	s.35(1)(b)	PG (22%)	2y 4m NPP 1y 9m	AA 2y 4m NPP 1y 4m 23d (immed release)	Knife	Mostly drug offences	During argument with male acquaintance on street punched victim in face and stabbed in stomach with knife – voluntarily surrendered to police Drug addiction
APM [2005] NSWCCA 463	s.35(1)(b)	PG	2y NPP 1y Periodic Detention	Crown AA (to correct form of sentence – same effective sentence)	Assault	Nil	Foster carer with wife of 10 week old son of wife's sister – offender accidentally dropped baby on floor from 1.2 metres – victim suffered concussion - when did not respond offender panicked, repeatedly shook victim and slapped head - did not inform wife and victim not taken to hospital until next morning - shaking and slaps caused permanent brain damage and loss of sight- initial fall unlikely to have caused any injuries - extreme tragedy Caring foster parent - unblemished character – remorse – unlikely re-offend - excellent prospects rehabilitation
Kanengele-Yondjo (39) [2006] NSWCCA 354	2 x s.35(1)(b)	PG (15%)	12y NPP 9y	AD	HIV	Dishonesty	Congolese male infected two women with HIV during intercourse – aware of medical condition but failed to warn either partner – worst case
O'Sullivan (33) [2006] NSWCCA 368	s.35(1)(b)	PG (12.5%)	4y 8m NPP 3y 6m	AD	Assault	Priors for violence – breached bond	Prolonged and unprovoked attack on fellow resident in boarding house – serious brain injuries

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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 Periodic Detention	Metal pole	Assaults – breached CSO	Assaulted 58y male with metal pole – also struck step son – history of animosity between families – element of provocation
McKenna (26) [2007] NSWCCA 113	s.35(1)(b) AOABH in company	VG	2y NPP 18m 3y NPP 18m <u>Total:</u> 3y NPP 1y 8m	AA 2y 3m NPP 15m 2y NPP 12m <u>Total:</u> 2y 6m NPP 15m	punching and kicking	nil violence – PCA offences	Four males assaulted male victim walking street in mistaken belief he had assaulted offender's girlfriend earlier in evening – kicked and punched from behind receiving heard injuries – carrying 5 week old baby who was also injured – offender not involved in actual assault and called of attack when heard baby cry – lesser offender – offenders initially unaware of presence of child Problems with alcohol
Nowak (21) (2008) 183 A Crim R 526 NSWCCA	s.35(1)(b)	PG (25%)	4y NPP 12m	AD	Bottle of vodka	Nil	Asked to leave wedding reception – smashed bottle of vodka across face of victim – serious injuries Good character – intoxicated – genuine remorse
Wright [2008] NSWCCA 282	s.35(1)(b)	VG (trial for s.33)	6y NPP 4y	AD	Beer glass	Number of similar offences – on bail	Hit victim in face with glass at pub – rivalry over female acquaintance – high end objective seriousness. Continued disregard for the law – number of previous offences involving glass as weapon.
Sayin (41) [2008] NSWCCA 307	s.35(1)(b)	PG (15%)	5y NPP 3y	AA 3y 9m NPP 2y 3m	Beer glass	AOABH	Hit victim in face at theatre show at club after becoming irritated at victim talking.

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BWJ (19) [2008] NSWCCA 333	s.35(1)(b) s.35(1)(b) Assault	PG	5y Bond 5y Bond s.10A	Crown AA 18m NPP 9m 16m NPP 6m FT 2m <u>Total:</u> 1y 10m NPP 12m	Assault	nil	Shaking and rough handling of 2-4 month old son caused subdural haemorrhages and 17 rib fractures – no premeditation – breach of trust Immature young man in pressured domestic situation – good character and good prospects of rehabilitation
Wilson [2009] NSWCCA 73	s.35(1)(b) Sched: Assault	PG (25%)	2y 3m NPP 12m Periodic Detention	AD	Beer glass	Irrelevant	Hit victim in face with beer glass while intoxicated at club.
Cryer [2010] NSWCCA 18	s.35(1)(b)	VG	5y 6m NPP 4y 1m 16d	AD	Punch		Punched victim twice in head after victim made threat to offender – victim fell backwards and suffered very serious brain injury.
Mitchell (29) [2010] NSWCCA 145	s.35(1)(b)	PG (25%)	3y NPP 2y	AD	Punch	Driving, AOABH	Punched cousin's partner four times after victim had assaulted offender's cousin – victim fell backwards - suffered brain swelling, haemorrhage, loss of taste and smell Strong family ties – hard worker – supportive family – good rehabilitation.
Walker (38 – 50) [2016] NSWCCA 213	s.35(1)(b)	PG (25%)	2y NPP 12m	AD	Punch	Assaults	(2003) – absconded after pleading guilty – unprovoked punch to head of stranger outside hotel at night causing fractured jaw No reduction for delay but took into account evidence of rehabilitation – daughter with medical condition

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