

## Recklessly Cause GBH

s.35(2) (NSW) *Crimes Act*

s 35 (2) Cause grievous bodily harm to any person reckless as to causing actual bodily harm

**Maximum Penalty:** 10 years

**Standard non-parole period:** 4 years (where conviction entered or guilty plea accepted on or after 1.1.2008)

**Commenced:** 27.9.2007

**Wording substituted:** 21.6.2012

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	SUMMARY
1.	<b>Thawer</b> (33) <a href="#">[2009]</a> <a href="#">NSWCCA 158</a>	s.35(2)	PG (15% on appeal)	16m suspended sentence	Crown AA 3y NPP 16m	Knife	Nil	<b>SNPP – 4 years</b> Resident of Wesley Mission stabbed another resident during argument – three stab wounds to abdomen – excessive response to self-defence and provocation – towards lower end of mid-range Mental condition
2.	<b>Gillon</b> (37) <a href="#">[2009]</a> <a href="#">NSWCCA 277</a>	s.35(2)	PG (25%)	4y NPP 3y	AD	Punch and kick	Lengthy - assault, violence	<b>SNPP – 4 years</b> Assaulted victim after victim hit de facto who was offender's cousin - kicked and punched victim while on ground – various injuries including fractured jaw, nose and ribs - mid-range offence. Aboriginal background.
3.	<b>Spooner</b> (18) <a href="#">[2009]</a> <a href="#">NSWCCA 247</a>	s.35(2)	PG (25%)	4y NPP 1y 10m	AD	Glass	Nil	<b>SNPP – 4 years</b> Smashed glass in victim's face during altercation at club – victim had arm in plaster cast – victim lost sight in one eye as a result of incident - above mid-range objective seriousness.
4.	<b>Butters</b> (21) <a href="#">[2010]</a> <a href="#">NSWCCA 1</a>	s.35(2)	PG (25%)	4y 6m NPP 3y	AD	Glass	Nil	<b>SNPP – 4 years</b> Victim intervened after offender grabbed female companion on buttocks at hotel - smashed glass into victim's face – eye later surgically removed – intoxicated Prior good character but history of alcohol abuse - remorse

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5.	Dunn <a href="#">[2010]</a> <a href="#">NSWCCA 128</a>	s.35(2)	PG (17%)	2y 6m NPP 15m	AD	Punch and knee		<b>SNPP – 4 years</b> Involved in fight with neighbour in street – both men exchanged punches – grabbed victim to head and kneed him in face causing facial fractures and loss of sight to eye – long term feud
6.	Campbell- Stephen <a href="#">[2010]</a> <a href="#">NSWCCA 204</a>	s.35(2)  Sched: Common assault	PG	3y 6m NPP 2y	AD	Punch		<b>SNPP – 4 years</b> Single blow to victim who fell and hit head on pavement – suffered serious head injury with multiple skull fractures and brain swelling – argument at club - mid-range objective seriousness.
7.	Dosen (50) <a href="#">[2010]</a> <a href="#">NSWCCA 283</a>	s.35(2)	PG (25%)	3y NPP 18m	AD	Glass	Breached bond for assault	<b>SNPP – 4 years</b> Offender and two companions forcefully ejected from hotel by victim – threw glass at victim striking him in head – angry at treatment – spontaneous offence – significant injuries – slightly less than mid-range Suffering depression and back injury
8.	Mumberson <a href="#">[2011]</a> <a href="#">NSWCCA 54</a>	s.35(2)	PG (10% on appeal)	1y 8m Suspended sentence	Crown AA 2y 3m NPP 1y 3m	Car	High range PCA	<b>SNPP – 4 years</b> Riding as passenger in vehicle being driven by girlfriend – Highly intoxicated and in emotional and aggressive state following argument on phone with friend - told girlfriend where to drive – grabbed steering wheel causing vehicle to collide – girlfriend suffered serious spinal injuries – no recollection of events - unusual case. Good character.
9.	Moss (48) <a href="#">[2011]</a> <a href="#">NSWCCA 86</a>	s.35(2)	VG	3y 9m NPP 2y	AD	Punch	Stealing, assault, street offences, breach AVO (same victim) - history stopped in 1997 and did not resume until 2008	<b>SNPP – 4 years</b> Lived in same Department of Housing development as 53y female victim – history of altercations – punched victim several times – victim suffered fractured nose – injuries at lower end of spectrum. Mental illness – on bond
10.	Weir <a href="#">[2011]</a> <a href="#">NSWCCA 123</a>	s.35(2)  s.195 – Destroy property	PG (10%)	4y NPP 1y 6m  FT 3m (concurrent)	AA 3y NPP 1y 6m  FT 3m (concurrent)	Claw hammer	Lengthy	<b>SNPP – 4 years</b> Attacked neighbour in apartment block following history of disputes – struck victim in forearm and to forehead – damaged victim's door - mid-range. Mental illness On appeal - denial of procedural fairness at sentence

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11.	<b>Reberger</b> (25) <a href="#">[2011]</a> <a href="#">NSWCCA 97</a>	s.35(2)	PG (25%)	4y 10m 15d NPP 2y 11m 2d	AA 3y 9m NPP 2y 3m	Beer glass	Driving	<b>SNPP – 4 years</b> Glassed victim to side of face – victim suffered permanent loss of vision to right eye – spontaneous attack – victim had intervened in argument between offender and other persons - offender intoxicated – mid-range Mental impairment
12.	<b>O'Connor</b> <a href="#">[2011]</a> <a href="#">NSWCCA 161</a>	s.35(2)	PG (10%)	4y NPP 2y 6m	AD	Punch	Long record including assaults – breached bonds	<b>SNPP – 4 years</b> Punched female performing traffic control duties twice in mouth – facial injuries and broken leg from fall – spontaneous offence – mid range severity Dysfunctional childhood – drug and alcohol abuse – PTSD – some evidence of rehabilitation – extra curial punishment from injuries inflicted when being restrained
13.	<b>Arnold</b> (39) <a href="#">[2011]</a> <a href="#">NSWCCA 150</a>	s.35(2)  s.35(4)  AOABH	PG (25%)	3y NPP 2y  2y 3m NPP 1y 4m  FT 9m  <u>Total:</u> 3y 3m NPP 2y 4m	AA 3y NPP 1y 10m  2y 3m NPP 1y 4m  FT 9m  <u>Total:</u> 3y 3m NPP 1y 10m	Punch and kick	insignificant	<b>SNPP – 4 years</b> Drinking with victims in pub – pushed male friend to ground and several kicks to body and head – struck female friend across face and head butted second male friend when they attempted to intervene – affected by alcohol Out of character
14.	<b>Passaris</b> (54) <a href="#">[2011]</a> <a href="#">NSWCCA 216</a>	s.35(2)	PG (10-15%)	8y NPP 6y	AD	Truck	Old assault offences	<b>SNPP – 4 years</b> Truck driver drove over the lower half of another truck driver standing between offender's truck and victim's truck – extensive lifelong injuries – well above mid-range
15.	<b>Ross</b> (45) <a href="#">[2012]</a> <a href="#">NSWCCA 161</a>	s.35(2)	PG (10%)	4y 6m NPP 3y 4m	AA 3y 8m NPP 2y 9m	Piece of wood	Lengthy record including violence	<b>SNPP – 4 years</b> During argument over dog and kitten struck male neighbour twice with piece of wood – blow to back caused serious internal injuries – mid range Drug user

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16.	<b>Dungay</b> (23) <a href="#">[2012]</a> <a href="#">NSWCCA 197</a>	s.35(2)	PG (25%)	1y 9m Suspended	Crown AD	Punch	Juvenile offences	<b>SNPP – 4 years</b> Collided with male victim while being removed from night club – during altercation punched victim once to head – victim unconscious before hitting ground – fracture of skull - no memory of incident but accepted responsibility – both intoxicated Significant rehabilitation since difficult childhood
17.	<b>Blackwell</b> <a href="#">[2012]</a> <a href="#">NSWCCA 227</a>	s.35(2)	VG (at trial for s.33 - 13% for offer)	4y 4m NPP 2y 8m	Crown AD	Glass	minor	<b>SNPP – 4 years</b> Struck male stranger at hotel with glass – loss of eye and facial scarring – intoxicated – not aware glass in hand Evidence of rehabilitation
18.	<b>Galbraith, B</b> (25)	s. 35(2)  Affray	VG	1y 8m suspended  2y GBB		Punch	Nil	<b>SNPP – 4 years</b> Co-offender (brother) struck victim who fell unconscious to ground – both offenders present co-offender confronted victim and friends who had attended party in their neighbourhood – unplanned – one of victim's friends was killed when he ran into oncoming car as he tried to escape – neither offenders directly assaulted victim - each sentenced on basis of consequences of participation in events that included assault upon victim Prior good character – rehabilitation prospects – remorse – strong subjective case
	<b>Galbraith, R</b> (19) <a href="#">[2013] NSWSC 284</a> Harrison J	s. 35(2)  Affray	VG	1y 8m suspended  2y GBB			Nil	
19.	<b>Brown</b> <a href="#">[2014]</a> <a href="#">NSWCCA 215</a>	s.35(2)	PG (10%)	4y 10m NPP 3y 4m	AD	Punch	Lengthy	<b>SNPP – 4 years</b> Following argument punched female partner to both sides of head – suffered fractured jaw and bruising – underwent surgery - mid-range Alcohol abuse.
20.	<b>Pound</b> (32) <a href="#">[2015]</a> <a href="#">NSWCCA 54</a>	s.35(2)  Carry firearms with disregard  Sched: Cultivate	PG (25%)	6y NPP 3y 6m  FT 3y 6m  <u>Total:</u> 7y 6m NPP 5y	AA 6y NPP 4y  FT 3y 6m  <u>Total:</u> 6y NPP 4y	Gun	property offences and assault offence	<b>SNPP – 4 years</b> Victim and three friends present at offender's unit after night out drinking – offender playing with gun and pointed at victim – victim pushed gun away and gun discharged – victim loss of eye and reduced vision in second eye – not deliberate shooting – high degree of recklessness Difficult childhood resulting in early drug and alcohol abuse

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21.	Daniels <a href="#">[2016]</a> <a href="#">NSWCCA 35</a>	s.35(2)	PG (25%)	4y 6m NPP 3y	AD	Punch	Agg B&E, violence offences.	<b>SNPP – 4 years</b> Single punch to male victim outside hotel – mistaken belief that victim had assaulted offender's friend – unprovoked attack - no warning - punched victim to jaw – required surgery and permanent bone plates - mid-range Alcohol abuse.
22.	Mulligan <a href="#">[2016]</a> <a href="#">NSWCCA 47</a>	s.35(2)	PG (25%)	15m Suspended	Crown AA 18m NPP 12m	Punch	Minor – some assault	<b>SNPP – 4 years</b> Offender and victim both walking dogs – dogs became involved in scuffle – offender left dog and returned to punch victim in face three times – fractures – ongoing injuries
23.	Hona (20) <a href="#">[2016]</a> <a href="#">NSWCCA 119</a>	s.35(2)	PG (25%)	6y 9m NPP 4y 9m	AD	Punch	Violence, resist police, affray, take and drive conveyance	<b>SNPP – 4 years</b> Assaulted male at Bondi – punched victim who fell to ground then stomped on chest – purposely sought out victim who made it clear he did not want confrontation - suffered severe head injury, coma and serious continuing injury and rehabilitation. Alcohol and drug abuse.
24.	Siemek (36) <a href="#">[2017]</a> <a href="#">NSWCCA 18</a>	s.35(2)  Breach of ADVO	PG (15%)	3y 9m NPP 2y  FT 6m	AD	Punch and assault	Numerous domestic violence and drug offences – breached suspended sentence and ADVO	<b>SNPP – 4 years</b> Dragged ex-wife out window by hair – dragged her to front veranda punching face and jumping on chest – tried to strike with metal ornament – threat to kill – dragged face first down stairs – stepped on head and face – mid range offence Suffering bi-polar and substance abuse disorder – manic state due to not being medicated -
25.	Lewin (18) <a href="#">[2017]</a> <a href="#">NSWCCA 65</a>	s.35(2)	VG	3y 9m NPP 2y 3m	AD	Glass bottle of alcohol		<b>SNPP – 4 years</b> During party smashed bottle of alcohol into face of 17y causing significant injuries and some permanent impairment to vision – below mid-range
26.	Longworth <a href="#">[2017]</a> <a href="#">NSWCCA 119</a>	s.35(2)	VG (25%)	4y 10m NPP 3y	AD	Punch		<b>SNPP – 4 years</b> Single punch to security guard who refused offender entry to licenced premises on grounds offender intoxicated – punched victim to head when he was not looking - upper reaches of grievous bodily harm - critical long-term traumatic brain injuries Good character – remorse - very good prospects rehabilitation

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27.	<b>Merillo</b> (26) <a href="#">[2017]</a> <a href="#">NSWCCA 173</a>	s.35(2)	PG (25%)	2y ICO	Crown AD (exercise of discretion)	Glass		<b>SNPP – 4 years</b> Head-butted male stranger on dance floor in club – asked by victim to leave female alone – during short struggle struck victim in face with glass causing permanent reduction in sight – not deliberate use of glass – below mid-range Generally good character – remorse – difficult childhood On appeal sentence inadequate but mental condition deteriorated, risk of self-harm increased and good compliance with ICO
28.	<b>Stevens</b> <a href="#">[2017]</a> <a href="#">NSWCCA 216</a>	s.35(2)	PG (10%)	4y 6m NPP 2y 9m	AD	Punch	AOABH (similar offending)	<b>SNPP – 4 years</b> Single punch / blow - struck male stranger from behind in unprovoked attack causing victim to fall to ground and lose consciousness – suffered number of injuries including haemorrhagic contusion of brain, permanent scarring, intermittent headaches, flashbacks, nightmares and rapid mood swings – high degree of violence - not planned or premeditated
29.	<b>Darcy-Shillingsworth</b> (30) <a href="#">[2017]</a> <a href="#">NSWCCA 224</a>	s.35(2)  s.59(1)  s.35(4)	VG	21m suspended  21m suspended  150h CSO	Crown AA 2y  6m  12m  <u>Aggregate:</u> 2y 6m NPP 15m	Punch and hit	Nil - AVO (same victim)	<b>SNPP – 4 years</b> Struck female partner causing her to fall backwards onto ground and smash beer bottle she was holding, deeply lacerating her hand and wrist –s.35(4) - hit victim in face knocking her to ground – s.59(1) – punched victim’s father in head several times causing him to fall and fracture ankle – s.35(2) - domestic / relationship violence - gratuitous nature of continued attack cannot be explained by momentary loss of control caused by anger - indicates continuing vicious streak Aboriginal background – alcohol
30.	<b>Wick</b> (35) <a href="#">[2017]</a> <a href="#">NSWCCA 244</a>	s.35(2)	VG	4y NPP 1y 6m	AD	Glass	Minor alcohol related	<b>SNPP – 4 years</b> Sat at table in bar with strangers – smashed glass over eye of male victim with no warning – caused lacerations and nerve damage that was subsequently repaired (injuries at low end of scale) – at trial challenged issue of causing GBH only Suffered long term depression and anxiety – genuine remorse

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31.	Ussher-Clarke [2018] <a href="#">NSWCCA 61</a>	s.35(2)  s.323(a)- persuade witness give false evidence	VG  PG	5y NPP 3y 9m  2y 10m  <u>Aggregate:</u> 5y 6m NPP 4y	Conviction AD	Kick		<b>SNPP – 4 years</b> Kicked 12 weeks pregnant female partner in abdomen causing miscarriage – offender made number of phone calls to victim asking her to lie to police
32.	Anae (27) [2018] <a href="#">NSWCCA 73</a>	s.35(2)	PG (25%)	4y 6m NPP 3y 4m	AD	Slap	assault and resist arrest offences	<b>SNPP – 4 years</b> Angered by relationship between male victim and offender's cousin – took victim aside for a talk and slapped him across mouth – victim fell back and hit head on road causing brain injury – above mid-range – some permanent damage Easily angered when intoxicated
33.	Kaderavek [2018] <a href="#">NSWCCA 92</a>	s.35(2)  Assault  Intent pervert course of justice  Sched: Damage property		6y NPP 4y  16m  12m  <u>Aggregate:</u> 7y NPP 5y	AA 6y NPP 4y  16m  12m  <u>Aggregate:</u> 7y NPP 4y 6m	Punch	record for violence	<b>SNPP – 4 years</b> Assaulted female partner – squeezed victim's throat hard causing difficult breathing – two weeks later punched victim in face causing three fractures to jaw – claimed injuries occurred in home invasion and smashed up house to support story – mid-level seriousness – history of violence in relationship
34.	Patsan (22) [2018] <a href="#">NSWCCA 129</a>	s.35(2)  Sched: AOABH	PG (25%)	2y 3m NPP 1y 4m	AD	Punch	nil	<b>SNPP – 4 years</b> Punched female partner during argument – recent history of physical abuse and damaging victim's property – suffered broken jaw requiring surgery - just below middle range - domestic violence. Remorse - good prospects of rehabilitation- unlikely to re-offend – mental health

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35.	<b>BJ</b> (21) <a href="#">[2018]</a> <a href="#">NSWCCA 231</a>	s.35(2)  Sched: Fail to take care of child	PG	6y NPP 4y	AD	Burns caused by hot liquid	Driving offences	<b>SNPP – 4 years</b> Offender poured very hot liquid to body of 6m son – burns to chest area, lesions to face, thigh and further injury to lower abdomen and underneath scrotum and penis - deliberate - absence of any explanation as to motive or circumstances Good character – unlikely to reoffend
36.	<b>Tepania</b> (22) <a href="#">[2018]</a> <a href="#">NSWCCA 247</a>	s.35(2)  AOABH  s.166: AOABH  Assault  Sched: Assault	PG (25%)	4y 6m NPP 2y 8m  FT 12m  s.10A  s.10A  <u>Aggregate</u> 5y NPP 3y	AD	Hot running water	assaults – breached conditional liberty	<b>SNPP – 4 years</b> Placed 10m son of de facto into bath with hot water running causing serious burns – returned and took victim out of bath then dropped on floor – placed victim in bed and forced bottle into mouth causing further injury – struck victim to head – night before had assaulted female partner and male friend after night of drinking and taking drugs – still hung over next day – in anger smashed lego tower forcing ambulance officer to take evasive action – mid range offences Childhood of profound disadvantage and neglect – intellectual impairment
37.	<b>Ewan</b> (25) <a href="#">[2019]</a> <a href="#">NSWCCA 17</a>	s.35(2)	PG (25%)	2y 6m NPP 1y 3m	AD	Punch	AOABH	<b>SNPP – 4 years</b> Ran up to male victim walking down laneway and punched him in head from behind – victim fell forward and hit unprotected face on path – victim had earlier that day had verbal argument with offender's father over parked car – cowardly and unprovoked attack Reasonable prospects of rehabilitation
38.	<b>Manocha</b> <a href="#">[2019]</a> <a href="#">NSWCCA 122</a>	s.35(2)  s.43A – failure to provide necessities	VG	<u>Total:</u> 7y NPP 4y 6m	AD	Thrown or pushed	Nil	<b>SNPP – 4 years</b> Female offender - 11 month old baby in offender's care suffered numerous severe injuries resulting in severe traumatic brain injury – precise details unknown - mechanism of injury required child to have been thrown, flung or pushed onto hard surface causing high level of rotation of head, neck and impact to skull

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39.	<b>Crimmins</b> (23) <a href="#">[2019]</a> <a href="#">NSWCCA 268</a>	s.35(2)	PG	6y NPP 4y	AD	Fight/ pushed	Nil	<b>SNPP – 4 years</b> Fight with friend whilst heavily intoxicated – victim suffered traumatic brain injury (described as life threatening), language, memory and hearing impairment, cognitive function impairment – gave false accounts to police.
40.	<b>Waterfall</b> <a href="#">[2019]</a> <a href="#">NSWCCA 281</a>	s.35(2)	VG	5y 9m NPP 3y 9m	AD	Punched	Nil	<b>SNPP – 4 years</b> Correctional prison officer working at gaol / prison – assaulted inmate – punched victim repeatedly to jaw – victim required surgery due to fracture – victim did not admit assault out of fear – assault captured on CCTV.
41.	<b>SS</b> (25) <a href="#">[2021]</a> <a href="#">NSWCCA 58</a>	s.35(2)	PG (25%)	1y 9m NPP 12m	Crown AA 4y 6m NPP 3y	Shaken / shook	Nil	<b>SNPP – 4 years</b> Father shook four-week old baby daughter out of frustration when victim would not stop crying – victim left with permanent brain damage. Father to two children - genuine remorse - good prospects of rehabilitation - unlikely to reoffend CCA: Sentence manifestly inadequate – error in allowing discount for assistance - seriousness at top of mid-range
42.	<b>CW</b> <a href="#">[2022]</a> <a href="#">NSWCCA 50</a>	s.35(2)  Sched: 2 x AOABH	PG (25%)	4y 6m NPP 2y 10m	AD	Assault	Violence offences, domestic violence - on CCO.	<b>SNPP – 4 years</b> Assaulted 10 week old baby daughter – multiple rib fractures – additional assaults resulting in fractured wrist and bruising to face – impulsive. Personal history of trauma, dysfunction and violence – mental health – rehabilitation prospects guarded.
43.	<b>Wass</b> (50) <a href="#">[2022]</a> <a href="#">NSWCCA 143</a>	s.35(2)	PG	2y 4m NPP 1y 4m	AD	Snowboard	Wear police uniform, violence and firearms (diverted under mental health legislation), assault, affray, firearms (discharged under mental health legislation), stealing	<b>SNPP – 4 years</b> Offender dressed as Chewbacca at ski resort – ongoing dispute with male victim – victim told offender to leave due to complaints that children frightened of him – offender hit victim with snowboard to jaw, continued to strike victim as he lay on ground – victim required surgery, suffered damaged teeth and facial wounds – unprovoked, significant violence. Open to sentencing judge to accept expert opinion that applicant's difficulties stem from low self-esteem, prior negative experiences, and inability to deal with life stresses; not persuaded applicant had schizophrenia or major mental illness.

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44.	Owen (30) <a href="#">[2022]</a> <a href="#">NSWCCA 214</a>	s.35(2)	PG (25%)	3y NPP 18m	AD	Fist	Nil	<b>SNPP – 4 years</b> During altercation between two groups on street at night hit victim to side of head with closed fist – both seeking to break up fight - caused fractured skull and brain damage – assessed as mid-range on appeal Remorse – prior good character – low risk of re-offending – difficult childhood On appeal: error in failure to assess objective seriousness – no lesser sentence warranted
45.	Miles (27) <a href="#">[2023]</a> <a href="#">NSWCCA 90</a>	s.35(2) s.33B(2) s.61 Drive disqualified	PG (10%)	<u>Indicative</u> 3y 2m 1y 3m 3m 3m <u>Aggregate</u> 3y 9m NPP 2y 9m	AA 2y 6m 1y 3m 2m 2m <u>Aggregate</u> 3y 3m NPP 2y 3m	Metal bar	Lengthy. On conditional liberty.	<b>SNPP – 4 years</b> With 2 co-offenders beat victim over money dispute with metal bars – wounds to forehead and legs.  CCA: failure of legal representatives to present subjective case - significant subjective case – disadvantage - <i>Bugmy</i> - mental health conditions - intellectual disability (borderline) - Generalised Anxiety Disorder moderately depressed mood. Remorse - some prospects of rehabilitation - lesser risk of reoffending - special circumstances.

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