

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
Thawer (33) [2009] NSWCCA 158	s.35(2)	PG (15% on appeal)	16m suspended sentence	Crown AA 3y NPP 16m	Knife	Nil	SNPP – 4 years 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
Gillon (37) [2009] NSWCCA 277	s.35(2)	PG (25%)	4y NPP 3y	AD	Punch and kick	Lengthy - assault, violence	SNPP – 4 years 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.
Spooner (18) [2009] NSWCCA 247	s.35(2)	PG (25%)	4y NPP 1y 10m	AD	Glass	Nil	SNPP – 4 years 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.
Butters (21) [2010] NSWCCA 1	s.35(2)	PG (25%)	4y 6m NPP 3y	AD	Glass	Nil	SNPP – 4 years 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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Dunn [2010] NSWCCA 128	s.35(2)	PG (17%)	2y 6m NPP 15m	AD	Punch and knee		SNPP – 4 years Involved in fight with neighbour in street – both men exchanged punches – grabbed victim to head and kned him in face causing facial fractures and loss of sight to eye – long term feud
Campbell-Stephen [2010] NSWCCA 204	s.35(2) Sched: Common assault	PG	3y 6m NPP 2y	AD	Punch		SNPP – 4 years 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.
Dosen (50) [2010] NSWCCA 283	s.35(2)	PG (25%)	3y NPP 18m	AD	Glass	Breached bond for assault	SNPP – 4 years 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
Mumberson [2011] NSWCCA 54	s.35(2)	PG (10% on appeal)	1y 8m Suspended sentence	Crown AA 2y 3m NPP 1y 3m	Car	High range PCA	SNPP – 4 years 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.
Moss (48) [2011] NSWCCA 86	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	SNPP – 4 years 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
Weir [2011] NSWCCA 123	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	SNPP – 4 years 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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Reberger (25) [2011] NSWCCA 97	s.35(2)	PG (25%)	4y 10m 15d NPP 2y 11m 2d	AA 3y 9m NPP 2y 3m	Beer glass	Driving	SNPP – 4 years 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
O'Connor [2011] NSWCCA 161	s.35(2)	PG (10%)	4y NPP 2y 6m	AD	Punch	Long record including assaults – breached bonds	SNPP – 4 years 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
Arnold (39) [2011] NSWCCA 150	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	SNPP – 4 years 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
Passaris (54) [2011] NSWCCA 216	s.35(2)	PG (10-15%)	8y NPP 6y	AD	Truck	Old assault offences	SNPP – 4 years 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
Ross (45) [2012] NSWCCA 161	s.35(2)	PG (10%)	4y 6m NPP 3y 4m	AA 3y 8m NPP 2y 9m	Piece of wood	Lengthy record including violence	SNPP – 4 years 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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Dungay (23) [2012] NSWCCA 197	s.35(2)	PG (25%)	1y 9m Suspended	Crown AD	Punch	Juvenile offences	SNPP – 4 years 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
Blackwell [2012] NSWCCA 227	s.35(2)	VG (at trial for s.33 - 13% for offer)	4y 4m NPP 2y 8m	Crown AD	Glass	minor	SNPP – 4 years Struck male stranger at hotel with glass – loss of eye and facial scarring – intoxicated – not aware glass in hand Evidence of rehabilitation
Galbraith, B (25) Galbraith, R (19) [2013] NSWSC 284 Harrison J	s. 35(2) Affray s. 35(2) Affray	VG VG	1y 8m suspended 2y GBB 1y 8m suspended 2y GBB		Punch	Nil Nil	SNPP – 4 years 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
Brown [2014] NSWCCA 215	s.35(2)	PG (10%)	4y 10m NPP 3y 4m	AD	Punch	Lengthy	SNPP – 4 years Following argument punched female partner to both sides of head – suffered fractured jaw and bruising – underwent surgery - mid-range Alcohol abuse.
Pound (32) [2015] NSWCCA 54	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	SNPP – 4 years 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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Daniels [2016] NSWCCA 35	s.35(2)	PG (25%)	4y 6m NPP 3y	AD	Punch	Agg B&E, violence offences.	SNPP – 4 years 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.
Mulligan [2016] NSWCCA 47	s.35(2)	PG (25%)	15m Suspended	Crown AA 18m NPP 12m	Punch	Minor – some assault	SNPP – 4 years 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
Hona (20) [2016] NSWCCA 119	s.35(2)	PG (25%)	6y 9m NPP 4y 9m	AD	Punch	Violence, resist police, affray, take and drive conveyance	SNPP – 4 years 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.
Siemek (36) [2017] NSWCCA 18	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	SNPP – 4 years 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 -
Lewin (18) [2017] NSWCCA 65	s.35(2)	VG	3y 9m NPP 2y 3m	AD	Glass bottle of alcohol		SNPP – 4 years During party smashed bottle of alcohol into face of 17y causing significant injuries and some permanent impairment to vision – below mid-range
Longworth [2017] NSWCCA 119	s.35(2)	VG (25%)	4y 10m NPP 3y	AD	Punch		SNPP – 4 years 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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Merillo (26) [2017] NSWCCA 173	s.35(2)	PG (25%)	2y ICO	Crown AD (exercise of discretion)	Glass		SNPP – 4 years 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
Stevens [2017] NSWCCA 216	s.35(2)	PG (10%)	4y 6m NPP 2y 9m	AD	Punch	AOABH (similar offending)	SNPP – 4 years 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
Darcy-Shillingsworth (30) [2017] NSWCCA 224	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)	SNPP – 4 years 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
Wick (35) [2017] NSWCCA 244	s.35(2)	VG	4y NPP 1y 6m	AD	Glass	Minor alcohol related	SNPP – 4 years 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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Ussher-Clarke [2018] NSWCCA 61	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		SNPP – 4 years Kicked 12 weeks pregnant female partner in abdomen causing miscarriage – offender made number of phone calls to victim asking her to lie to police
Anae (27) [2018] NSWCCA 73	s.35(2)	PG (25%)	4y 6m NPP 3y 4m	AD	Slap	assault and resist arrest offences	SNPP – 4 years 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
Kaderavek [2018] NSWCCA 92	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	SNPP – 4 years 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
Patsan (22) [2018] NSWCCA 129	s.35(2) Sched: AOABH	PG (25%)	2y 3m NPP 1y 4m	AD	Punch	nil	SNPP – 4 years 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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BJ (21) [2018] NSWCCA 231	s.35(2) Sched: Fail to take care of child	PG	6y NPP 4y	AD	Burns caused by hot liquid	Driving offences	SNPP – 4 years 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
Tepania (22) [2018] NSWCCA 247	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	SNPP – 4 years 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
Ewan (25) [2019] NSWCCA 17	s.35(2)	PG (25%)	2y 6m NPP 1y 3m	AD	Punch	AOABH	SNPP – 4 years 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
Manocha [2019] NSWCCA 122	s.35(2) s.43A – failure to provide necessities	VG	<u>Total:</u> 7y NPP 4y 6m	AD	Thrown or pushed	Nil	SNPP – 4 years 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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Crimmins (23) [2019] NSWCCA 268	s.35(2)	PG	6y NPP 4y	AD	Fight/ pushed	Nil	SNPP – 4 years 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.
Waterfall [2019] NSWCCA 281	s.35(2)	VG	5y 9m NPP 3y 9m	AD	Punched	Nil	SNPP – 4 years 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.

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