

## Affray

### s.93C (NSW) *Crimes Act*

s.93C Uses or threaten unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at scene to fear for personal safety

**Maximum Penalty:** 5 years increased to 10 years for offences committed on or after 15.12.2005

NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	SUMMARY
<b>Tarawa</b> (21) <a href="#">[1999] NSWSC 597</a> Barr J	s.93C [5y]	PG	200h Community service  On breach converted to FT 2m		No history of violence	Involved in brawl outside service station – altercation with aboriginal youths – first person to use physical violence – not responsible for initial altercation Isolated incident – assisting friends – failure to complete work and attendance requirements
<b>McNally</b> <a href="#">[1999] NSWCCA 449</a>	s.93C [5y]  Assault	PG	3y NPP 2y 3m  FT 6m (concurrent)	AD	Violence	Returned to collect personal possessions from property – took two friends – harassed, terrorised and threatened property owners with gun over several hours – very serious offence of affray
<b>Huynh</b> (23)  <b>Ta</b> (21)  <b>Lam</b> (23)  <a href="#">[2000] NSWCCA 18</a>	s.93C [5y]  s.93C [5y]  s.93C [5y]	PG  PG  PG	3y GBB  2y GBB  2y GBB	Crown AD	Nil  Minor  Affray - breached bail	Brawl outside roller skating rink involving up to 30 Vietnamese youths – offenders not responsible for death and not armed with weapons – very limited roles – no premeditation L and T – present at affray offering encouragement H – injured in fight
<b>Goh</b> <a href="#">[2002] NSWCCA 234</a>	s.93C [5y]	PG	Charge dismissed under s.10	Crown AD		Brawl between two groups on street at night – struck male in defence of friend – upon fight resuming fell to ground and assaulted Youth – sentence unusual but not inadequate

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<b>Langton</b> <a href="#">[2002] NSWCCA 382</a>	s.93C [5y]  3 x Assault  2 x Perjury	PG	FT 2y  FT 12m  2y NPP 18m  <u>Total:</u> 3y 6m NPP 3y	AA FT 2y  FT 12m  18m NPP 3m / 6m  <u>Total:</u> 3y 6m NPP 2y 3m	Subsequent assault	(1990) - Police officer involved in assault on young males brought to police station after arrested for brawl with off duty police officers – males assaulted with batons – systematic and savage beating - punched three males in interview room – lied at subsequent court hearing under cross-examination
<b>T. Eleter</b> (19)	s.93C [5y]	PG (20%)	16m NPP 12m	AD	Assault police	Father, three sons and two friends attended brothel – seeking to extract revenge for earlier fight involving one offender – males threatened and assaulted – one male shot dead by third brother (charged with murder) - JO sought to arrange false alibi statements YE – health problems
<b>G. Eleter</b> (19)	s.93C [5y]	PG (20%)	16m NPP 12m	AD	Prior record	
<b>Y. Eleter</b> (46)	s.93C [5y]	PG (20%)	16m NPP 12m			
<b>JO</b> (17)  <a href="#">[2002] NSWSC 1224</a> Dunford J  <a href="#">[2003] NSWCCA 130</a>	s.93C [5y]  Att pervert course of justice	PG (20%)	12m NPP 9m Periodic Detention  3y GBB			
<b>Fajka</b> (31) <a href="#">[2004] NSWCCA 166</a>	s.93C [5y]	PG	2y NPP 18m	AA 100h CSO (7w custody served)	Minor offences	Involved in fight at hotel with brother – struck male patron – very limited role Married – evidence of rehabilitation On appeal discount for guilty plea imposed
<b>Bugmy</b> (28) <a href="#">[2004] NSWCCA 258</a>	s.93C [5y]  AOABH	PG (20-25%)	FT 9m  2y Suspended	AA (to remove condition of suspended sentence)	Lengthy criminal record – assaults	Tackled shop keeper during attack with two co-offenders – unaware co-offender had knife – unable to ascertain who attacked victim with baseball bat – lesser offender Long history of drug and alcohol abuse

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<b>Graham</b> (2004) 62 NSWLR 252 <a href="#">NSWCCA</a>	s.93C [5y]  Sched 2 related offences	PG	2y GBB  On breach converted to 2y NPP 18m	AD	Breached bond and bail	Forced entry to neighbour's house and threatened to kill with knife – damaged door and threw brick through window – unprovoked attack Suffering depression, chronic back pain and substance abuse
<b>DW</b> (17)  <b>KW</b> (16)  <a href="#">[2006] NSWSC 118</a> Buddin J	s.93C [10y]  s.93C [10y]	PG  PG	9m GBB (15m PSC)  9m GBB (15m PSC)		Minor  Minor	History of animosity between family groups – male associated with one family threatened by group associated with second family including offenders – yelled abuse in threatening manner after victim collapsed – (victim subsequently died) – spontaneous reaction Favourable prospects of rehabilitation
<b>JM</b> (16) <a href="#">[2006] NSWSC 1220</a> Buddin J	s.93C [10y]	PG (25%)	9m GBB (11m PSC)		Subsequent offences	Became involved in fight outside residential premises at night – victim hit and kicked by a number of people including offender – subsequently died – attending nearby party with no reason to get involved in affray – subsidiary role – co-offenders charged with manslaughter General good character – hard worker
<b>Stevens</b> (44) <a href="#">[2007] NSWCCA 152</a>	s.93C [5y]	PG	18m NPP 12m	AD	Lengthy record for violence – breached parole	Travelled to remote property with two co-offenders to retrieve car – male and female owners assaulted with baton and tyre lever
<b>Elphick</b> (21) <a href="#">[2010] NSWCCA 112</a>	s.93C [10y]  AOABH	PG (25%)	2y NPP 18m  2y NPP 18m (concurrent)	Crown AA 3y NPP 2y 3m  2y NPP 18m (concurrent)	Breached parole – property and violence offences	Assaulted bus driver when he declined to take victim home – swung using metal bars, kicking driver several times – caused bus to swerve and mount kerb – savage and sustained attack Intoxicated
<b>Greer</b> (19) <a href="#">[2011] NSWCCA 40</a>	s.93C [10y]	PG (25% on appeal)	3y 9m NPP 2y 6m	AA 3y NPP 18m	Breached bail for offence of reckless wounding committed during drunken fight	Became involved in altercation in street – male victim surrounded by group of young males and viciously assaulted – brother and sister also assaulted – group sought to pursue victims into shop Dysfunctional childhood – early drug and alcohol abuse

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<b>Apthorpe</b> (21) <a href="#">[2012] NSWCCA 100</a>	s.93C [10y]  Sched: Damage prop Larceny	PG (15%)	3y 4m NPP 2y	AD	Mal inflict GBH, AOABH, affray, assault - on bond.	With 4 co-offenders assaulted victim by punching and kicking whilst victim on ground – ongoing dispute between families - victim hit by hard object and lost consciousness - suffered fracture of nasal bone, damage to teeth, extensive bruising to head, face, chest and shoulders and a ruptured blood vessel to right eye - sustained group attack on one victim
<b>Khanwaiz</b> (29)	s.93C [10y]  AOABH	PG (12.5%)	2y 4m NPP 18m  21m NPP 14m  <u>Total:</u> 2y 7m NPP 21m	AD	Nil  nil	Pakistani student residing in Australia lured out of apartment and assaulted by group of males – punched and kicked – planned assault – family dispute
<b>Khanvez</b> (19)  <a href="#">[2012] NSWCCA 168</a>	s.93C [10y]  AOABH	PG (12.5%)	2y 4m NPP 18m  21m NPP 14m  <u>Total:</u> 2y 7m NPP 21m			
<b>Abdulhadi</b> (30) <a href="#">[2012] NSWSC 1658</a> Latham J  Co-offender: HEK MARIAM ELBADAR AM HE SE	s.93C [10y]	PG (10%)	3y 7m NPP 2y		Minor	Attended with others at night on street to confront another group over dispute – shots fired resulting in accidental death of passing truck driver – offender shot in abdomen - particularly serious example of affray

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<b>HE</b> (16)  <b>SE</b> (15)  <a href="#">[2012] NSWSC 1024</a> Latham J  Co-offender: HEK MARIAM ELBADAR AM ABDULHADI	s.93C [10y]  s.93C [10y]	PG  PG	3y GBB  3y GBB		Nil	Brothers – attended with others at night on street to confront another group over dispute – shots fired by rival group resulting in accidental death of passing truck driver - minor roles in affray - neither had knowledge of loaded firearms or inflicted violence - discharge of loaded firearms as a feature of the affray - particularly serious example of affray Remorse – rehabilitation prospects
<b>HEK</b> (20) <a href="#">[2012] NSWSC 1364</a> Latham J  Co-offenders: HE SE MARIAM ELBADAR AM ABDULHADI	s.93C [10y]  Malicious damage property by fire	VG	3y NPP 2y  FT 2y  <u>Total</u> 3y NPP 2y 4m		Nil	Attended with others at night on street to confront another group over dispute – shots fired by rival group resulting in accidental death of passing truck driver - drove van to scene carrying own group – fought with member of rival group – later drove away and destroyed van by fire to destroy evidence of participation - discharge of loaded firearms as a feature of the affray - particularly serious example of affray. Remorse – rehabilitation prospects
<b>Elbadar</b> (34) <a href="#">[2012] NSWSC 1492</a> Latham J  Co-offenders: HE SE HEK MARIAM AM ABDULHADI	s.93C [10y]  2 x Give false evidence	PG (15%)	1y 8m suspended (3m 19d PSC)  FT 10m suspended		minor	Involved in affray in car park – 11 youths from two groups met to settle dispute – member of group fired shots at rival group accidentally killing truck driver passing by – shots returned by rival group – gave false evidence at NSW Crime Commission investigation into affray – late at night – short duration – element of premeditation and planning – present with intention of assisting – removed himself when firearms used – alerted authorities before taking friend to hospital Mental and behavioural problems including Tourette's disorder – primary carer for mother

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<b>Mariam</b> (24) <a href="#">[2012] NSWSC 1496</a> Latham J  Co-offenders: HE SE ELBADAR HEK AM ABDULHADI	s.93C [10y]	PG (25%)	2y 3m NPP 1y 6m 22d		Rob in company	Involved in affray in car park – 11 youths from two groups met to settle dispute – brother fired shots at rival group accidentally killing truck driver passing by – shots returned by rival group – received gunshot wounds to arm – late at night – short duration – element of premeditation and planning – drove brother to scene and involved in assault Several offers to plead guilty to affray rejected
<b>AM</b> (15) <a href="#">[2012] NSWSC 1635</a> Latham J  Co-offenders: HEK HE SE ELBADAR MARIAM	s.93C [10y]	PG (25%)	3y GBB			Affray in car park – 11 youths from two groups met to settle dispute – brother fired shots at rival group accidentally killing truck driver passing by – offender had no knowledge of firearms at scene – not armed – least culpable of all participants in affray. Youth - period of almost 4 months pre-sentence custody - strong subjective case
<b>Dadash</b> (28) <a href="#">[2012] NSWSC 1511</a> RA Hulme J  Co-offenders: DARABI MANSOOR RAZAI CHENARJAAFARIZA D ABDOLLAHI	s.93C [10y]	PG (12.5%)	1y 9m NPP 1y 4m		Nil	Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - stand-off with other detainees against staff members – sprayed fire extinguishers and then threw them at staff – emptied contents of bins and set them alight. Prior good character - post-traumatic stress.

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<b>Darabi</b> (25)  <b>Mansoor</b> (25)  <b>Razai</b> (24)  <a href="#">[2013] NSWSC 387</a> RA Hulme J  Co-offenders: DADASH CHENARJAAFARIZA D ABDOLLAHI	s.93C [10y]  s.93C [10y]  s.93C [10y]	PG (12.5%)  PG (5%)  PG (12.5%)	1y 4m NPP 8m  1y 5m NPP 9m  1y 1m NPP 7m		Nil	Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff members – M and D commenced the protest by climbing roof and throwing tiles at staff members – continuing swearing and threatening behaviour towards staff – others joined in – R joined M and D on rooftop. All offenders of good character – rehabilitation prospects – suffering anger, frustration, depression and anxiety.
<b>Chenarjaafarizad</b> (32) <a href="#">[2013] NSWSC 388</a> RA Hulme J  Co-offenders: DARABI MANSOOR RAZAI DADASH ABDOLLAHI	s.93C [10y]	PG	2y NPP 1y		Nil	Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff members – offender grabbed staff member twice, discharged fire extinguishers - others threw tiles from roof at staff - significant contribution to violence – not a leader but played a role in motivating others to join or continue with violence. Good character – rehabilitation prospects.

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<b>Ali</b> (40) RA Hulme J <a href="#">[2013] NSWSC 871</a>  Co-offenders: DARABI MANSOOR RAZAI DADASH ABDOLLAHI CHENARJAAFARIZA D	s.93C [10y]	PG	2y s 9 Bond		Nil	Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff member - held soccer goal post above head and moved toward staff in menacing fashion. Psychiatric issues - good character; good prospects of rehabilitation - unlikely to re-offend.
<b>Abdollahi</b> (37) <a href="#">[2013] NSWSC 428</a> RA Hulme J  Co-offenders: DARABI MANSOOR RAZAI CHENARJAAFARIZA D DADASH	s.93C [10y]	VG	12m GBB (7m PSC)		Nil	Iranian held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff members – sentenced for attempting unsuccessfully to punch activities officer several times – offence committed after unrest started but before deteriorated into riot – subsequently learned father-in-law had passed away in Iran and joined others on roof threatening suicide – offence at low end of spectrum Lengthy period in detention awaiting outcome of immigration status review – separated from wife and son for several years – deteriorating mental state – subsequently determined to be genuine refugee – wife and son now in Australia – prospects of rehabilitation
<b>Swan</b> <a href="#">[2016] NSWCCA 79</a>	s.93C [10y]  s.35(1) substituted on appeal by s.59(2)	VG	3y 6m NPP 2y  3y NPP 1y 6m  <u>Total:</u> 3y 9m NPP 2y 3m	AA 3y 6m NPP 2y  18m NPP 12m  <u>Total:</u> 3y 6m NPP 2y		One of ten men who approached victim's home at night armed with bats or pieces of wood – threatened victim - victim's wife and 9y son fled next door – victim took 6y daughter who then ran next door – victim dragged to middle of yard and kicked and punched – offender kicked victim several times Difficult background – low intelligence On appeal concluded injuries only constituted ABH and substituted conviction

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<b>Aleshbi</b> (54)	s.93C [10y]	PG (10%)	5y 5m	AA 3y 7m	Nil	(2013) - offenders and eight other men arrived and assaulted two male victims at their home – altercation began over slight misunderstanding between E and victims - group armed with weapons including baseball bats, metal pole, knife, Taser-like device - no evidence offenders aware of knife or Taser device, but must have been aware of larger items – E hit with plastic bucket - victims suffered bruising and grazing though no long-term injuries. Offenders left country in 2016 mistakenly believing they would be receiving 10 years imprisonment – returned voluntarily in 2017 A: rehabilitation prospects E: reasonable rehabilitation
	Fail to appear	(25%)	13m	12m		
			<u>Aggregate:</u> 6y NPP 4y 6m	<u>Aggregate:</u> 4y NPP 2y 6m		
<b>Eshbi</b> (34) <a href="#">[2018] NSWCCA 30</a>	s.93C [10y]	PG (10%)	5y 5m	3y 7m	Nil	
	Fail to appear	(25%)	13m	12m		
			<u>Aggregate:</u> 6y NPP 3y 7m	<u>Aggregate:</u> 4y NPP 2y 6m		
<b>Dillon</b> (18 at offence; 22 at sentence)	Each: s.93C [10y]	PG (10%)	3y NPP 2y		Agg BE, larceny, violence offences in custody.	Street brawl - involved around 10 people - insulted by AM - Rivera stopped car and agreed with Dillon to confront AM and others to fight which started the brawl – (later incident took place in which AM was killed and Dillon acquitted of AM's murder).
<b>Rivera</b> (19 at offence; 24 at sentence) <a href="#">[2019] NSWSC 1750</a> Campbell J		PG	6m		Nil relevant; on bond for drug possession.	Dillon - ring-leader - mental illness issues arose after death/killing of brother which was a retaliatory act by others for AM's death – remorse.  Rivera - willingly participated - no specific acts of particular violence attributed but fully involved in trading blows with fists or feet with other participants – good character – remorse. .

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