

## Assault Causing Death

### s.25A *Crimes Act*

s.25A(1) the person assaults another person by intentionally hitting the other person with any part of the person's body or with an object held by the person, and the assault is not authorised or excused by law, and the assault causes the death of the other person.

**Maximum penalty:** 20 years imprisonment

s.25A(2) the person who is of or above the age of 18 years is guilty of an offence under this subsection if the person commits an offence under subsection (1) when person is intoxicated.

**Maximum penalty:** 25 years imprisonment

**Mandatory Sentence:** 8 years

**Mandatory NPP:** 8 years

Commenced: 31.1.2014

	Case (age if known)	Offence	Plea	Record	Sentence	Appeal	Facts
1.	Garth (No.2) (21) <a href="#">[2017] NSWDC 471</a> Townsend DCJ	s.25A(2) s.166 Certificate Assault Affray Breach bond Breach DVO	VG	Breached bond – assault and domestic violence	10y NPP 8y  6m 9m 7m 7m  Total: 10y 3m NPP 8y 3m		<b>Mandatory NPP 8y</b> Outside party, while intoxicated, punched male to side of face causing death – continued to attempt to punch, struggle against and threaten two other males seeking to restrain him – spontaneous one punch – well below mid-range Offence doubly aggravated by being on bond for violence offences

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	Case (age if known)	Offence	Plea	Record	Sentence	Appeal	Facts
2.	<b>Mihai</b> (39) <a href="#">[2020] NSWDC 727</a> Sutherland SC DCJ	s.25A(1)	PG (5%)	Drug and minor violence offences	3y 10m NPP 2y 4m 13d		Stealing copper from disused building sites with victim and one other man – during argument assaulted victim with <u>open-handed slap</u> – offender and third man left victim at site – returned once to hear ‘gurgling’ noises then left with seeking assistance – motivated by anger - towards lower end of mid-range – arrested 18 months later Steps to conceal involvement demonstrate lack of remorse at time
3.	<b>Robinson</b> (22) <a href="#">[2020] NSWDC 837</a> Bright DCJ	s.25A(1)	PG (25%)	Limited record – breached bond	4y 10m NPP 2y 5m		Victim suffered from physical disabilities that made him unstable and frail – verbal altercation between offender and victim in bottle shop then outside on path – offender struck victim to face once with <u>open hand</u> causing him to fall and suffer fatal injuries – spontaneous action – below mid-range Difficult childhood including physical abuse – early substance abuse – mental health issues causally connected to offence – prospects of rehabilitation dependent upon treatment for ADHD and substance abuse
4.	<b>Smith</b> (33) <a href="#">[2021] NSWSC 825</a> Harrison J  <a href="#">[2023] NSWCCA 118</a>	s.25A(2)	VG (murder trial)	Nil	10y 6m NPP 8y	Conviction AD	<b>Mandatory NPP 8y</b> While drinking with friends argument developed between victim and offender over offender’s possible interest in victim’s girlfriend – offender heard victim make threats – armed himself with knife from kitchen and approached victim in lounge room – perceived victim to be picking up pole so lunged with knife twice – act caused victim to move and be stabbed by knife twice – victim died from wound complications – offender and victim both significantly intoxicated - jury verdict meant act not dangerous not done with intent or as excessive self-defence – offender influenced by mental illness – spontaneous offence although deliberate decision to arm with knife - offence objectively serious History of mental illness – reasonable prospects of rehabilitation – general deterrence relevant but not specific deterrence – unlikely to re-offend Would have imposed lesser sentence in view of mental illness if mandatory provisions did not apply

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