

Intentionally Choke, Suffocate or Strangle

s.37(1) (NSW) *Crimes Act*

s 37(1) Intentionally choke, suffocate or strangle another person so as to render them unconscious, insensible or incapable of resistance, reckless as to rendering that person unconscious, insensible or incapable of resistance.

Maximum penalty: 10 years

Commenced: 5.6.2014

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	SUMMARY
1.	Hollaway (26) [2016] NSWCCA 166	s.37(1) Intentionally damage property Breach ADVO	VG PG	1y 9m NPP 1y FT 3m FT 1m (all concurrent)	Crown AD	Lengthy – breached parole for manslaughter	Female offender in turbulent and destructive relationship with female victim resulting in ADVO – at time of offence broke window with pot plant and forced entry into home of victim - found attempting to choke victim on ground Significantly deprived and traumatic background – mental illness issues and alcohol and drug abuse – manslaughter offence involved substantial impairment and self-defence on male victim threatening to rape offender
2.	Jackson (36) [2021] NSWCCA 15	s.37(1) AOABH AOABH s.166 – Contravene DVO Sched: 2 x Assault AOABH	PG (10%)	<u>Indicative:</u> 6y 2m 2y 2m 2y 7m 6m <u>Aggregate:</u> 7y 9m NPP 5y 6m	AD	Criminal record for domestic violence offences – multiple terms of imprisonment	Troubled relationship with victim – resumed co-habitation in breach of DVO – awoke to phone call – became angry with victim and started choking her in bed – hand around throat and over nose and mouth – slapped victim across head and threw her onto table – threw oranges striking her in head – forced fingers into mouth and bit her ear and cheek – kicked victim lying on floor – when she attempted to leave grabbed her by hair and head butted to nose Aboriginal man with difficult and violent childhood – intellectual deficits – at crossroads – importance of deterrence for domestic violence offences

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

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3.	Kuruppu (50) [2021] NSWCCA 261	s.37(1) s.113(2) s.166 - Contravene AVO Breach s.9 bond (for assault)	PG (25%)	<u>Indicative:</u> 4y 6m 5y 3m 18m 6m <u>Aggregate:</u> 7y NPP 4y 3m	AD	Violence towards same victim; mid- range PCA. On bail, bond, ADVO.	In context of domestic violence – threw paver through window of home of former partner – twisted victim’s head from side to side - victim struggled and screamed and found it hard to breathe - pushed onto bed and put fingers into victim’s mouth and down throat pushing all the way down - victim began to pass out - continued to squeeze throat tighter - victim fell off bed and offender let go – threatened to kill victim, children and himself - offence in presence of child Severe alcohol use disorder, moderate persistent depressive disorder - persistent lack of insight into what constitutes domestic violence - decline in mental health in months preceding
4.	Barnes [2022] NSWCCA 140	s.37(1) Assault Sched: Stalking intent to cause harm	PG (25%)	<u>Indicative</u> 6y 9m NPP 4y 9m <u>Aggregate</u> 6y 11m NPP 4y 10m	AA <u>Indicative</u> 6y NPP 4y 6m <u>Aggregate</u> 6y 2m NPP 4y 2m	Nil	Pre-meditated, planned and violent attack on young female stranger – saw victim walking at night, caught victim’s bus and followed to apartment block - surprised victim from behind, hooked bike chain around neck, pulling victim backwards onto ground - victim struggled and lost consciousness for brief period – punched male witness who tried to confront offender to face. Absence of medical records and psychiatric report at sentence hearing admissible as fresh evidence on appeal – schizophrenic – subject to prevalence of acts of violence in custody.
5.	Saunders (52) [2022] NSWCCA 174	s.37(1) AOABH 2 x Intimidate Sched: s.37(1) Intimidate	PG (5%)	<u>Indicative</u> 2y 10m 5m CCO 12m <u>Aggregate:</u> 3y NPP 1y 6m	AD	Lengthy time since last offences – Assault, AOABH, possess firearm.	Offences committed against former partner – domestic violence - approached from behind and squeezed throat until victim passed out – when victim awoke, offender placed fingers in victim’s mouth as she screamed, punched eye. Remorse - good prospects of rehabilitation – health conditions.

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6.	Habambo [2023] NSWCCA 328	s.37(1) s.37(1A) 5 x Intimidation <i>CDPV Act</i> 2 x common assault AOABH [Note: further 18 offences not subject of appeal, for which conditional release orders and community correction orders imposed]	VG	<u>Indicative</u> 4y 6m 3y Each: 2y 6m 3y 18m 12m 12m Each: 9m 18m <u>Aggregate:</u> 10y NPP 6y	AD	Nil	Relating to domestic violence offences against former wife over 9-year period – grabbed victim’s neck with both hands and ran her backwards into bedroom two metres, victim’s knees hit bed and fell on bed while applicant still holding neck - trying to gasp for air but could not breathe - applicant let victim go after less than 10 seconds – bruising and marking to neck. No remorse – continued to deny offences – guarded rehabilitation prospects – repeated offending over significant period. CCA: Aggregate sentence not manifestly excessive.

Last Updated: December 2023

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