

## 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.	<b>Hollaway</b> (26) <a href="#">[2016] NSWCCA 166</a>	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.	<b>Jackson</b> (36) <a href="#">[2021] NSWCCA 15</a>	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 male 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.

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	SUMMARY
3.	<b>Kuruppu</b> (50) <a href="#">[2021] NSWCCA 261</a>	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.	<b>Barnes</b> <a href="#">[2022] NSWCCA 140</a>	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.	<b>Saunders</b> (52) <a href="#">[2022] NSWCCA 174</a>	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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	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	SUMMARY
6.	Habambo <a href="#">[2023] NSWCCA 328</a>	s.37(1)  s.37(1A)  5 x Intimidation <i>CDPV</i> Act  2 x common assault  AOABH	VG	<u>Indicative</u> 4y 6m  3y  2y 6m / 3y / 18m / 12m / 12m  9m / 9m  18m  <u>Aggregate:</u> 10y NPP 6y	AD	Nil	Domestic violence offences against former wife over 9y 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 offender still holding neck - trying to gasp for air but could not breathe - offender 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 [Note: further 18 offences not subject of appeal, for which conditional release orders and community correction orders imposed]

Last Updated: December 2023

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