

## Aggravated Break and Enter With Intent to Commit Serious Indictable Offence

s.113(2) (NSW) Crimes Act

s.113 (1) break and enter dwelling-house or building with intent to commit serious indictable offence

(2) commit offence under subsection (1) in circumstances of aggravation

s.105A (1) circumstances of aggravation means:

armed with an offensive weapon, or instrument,  
in the company of another person or persons,  
uses corporal violence on any person,  
intentionally or recklessly inflicts actual bodily harm on any person,  
deprives any person of his or her liberty,  
knows that there is a person, or persons, in the dwelling house or building

**Maximum Penalty:** 14 years

	NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	Ditfort (32) <a href="#">[1999] NSWCCA 442</a>	s.113(2) (steal)	In company	PG	MT 2y AT 18m	AA To vary commencement date	Lengthy record - released to parole nine days prior to offence	Broke into shop with two co-offenders armed with cricket bat and piece of timber - stole money and cigarettes. Aboriginal male with deprived upbringing; drug addiction
2.	Lord (18) <a href="#">[2001] NSWCCA 533</a>	s.113(2) (steal)  Sched: AOABH		PG	12m GBB (no conviction recorded)	Crown AA 18m suspended sentence	Nil	Broke into home of 71y female - pushed past victim in attempt to escape - victim fell on tiles injuring herself - Lesser offender Excellent prospects of rehabilitation – remorse
3.	Rutter <a href="#">[2003] NSWCCA 306</a>	s.113(2) (steal)		PG (25%)	6y NPP 3y	AD	Nil	Waited in car while co-offender entered house brandishing pistol and impersonating police officer – in telephone contact with co-offender Also dealt with for drug offences – Psychological disorder

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4.	<b>Elmir</b> (33)  <b>Salami</b> (30)  <a href="#">[2003] NSWCCA 192</a>	s.113(2) (AOABH)  s.59 AOABH  s.113(2) (AOABH)  s.59 AOABH	Infliction of corporal violence   Infliction of corporal violence	PG (20%)   PG (20%)	<u>Total:</u> 3y PD NPP 18m  <u>Total:</u> 2y 6m PD NPP 12m	Crown AA 2y NPP 12m  1y 9m NPP 9m	Lengthy but old   Minor – no violence	Forced way into house and chased occupants – sustained assault on male - punches and pool cue – minor injuries inflicted - revenge for serious assault on younger brother of Elmir - Elmir principal offender Remorse
5.	<b>Lenthall</b> (26)  <a href="#">[2004] NSWCCA 248</a>	s.113(2) (steal)  Sched: 3 offences	In company	PG (25%)	5y 3m NPP 2y 6m  Compensation order	AA 3y 9m NPP 1y 10m	“appalling”	Ram-raid in stolen car with 2 co-offenders of service station - \$10,000 damage to service station Remorse – good prospects of rehabilitation – parity
6.	<b>Pettersen</b> (25)  <a href="#">[2009] NSWCCA 91</a>	s.113(2) (steal)  Dangerous driving  Sched: Take and drive conveyance	In company	PG	3y 9m NPP 2y  FT 6m (concurrent)	Crown AD	Breached parole – significant record	Driver of car – four co-offenders broke into club and threatened cleaners with gun – attempt made to break into ATM – police car chase followed by attempt to escape by foot – unaware of handgun – unaware people in club Remorse – sentences concurrent to revoked parole Co-offenders Bendt and Fell sentenced for s.113(3)
7.	<b>Haydon</b> (25)  <a href="#">[2012] NSWCCA 151</a>	s.113(2) (steal)  Sched: 3 offences	In company	PG (25%)	2y 6m NPP 1y 10m	AD	Breached parole for similar offences	With co-offender attempted to break into shed and steal motorbikes Sentence imposed 13m after commencement of sentence for s.112(1) offence
8.	<b>Pettersen</b> (30)  <a href="#">[2013] NSWCCA 20</a>	Att s.113(2) (steal)  Conspiracy to BES in agg circumstances  Sched: 3 car offences	In company	PG (25%)	FT 3y 9m  6y NPP 3y  <u>Total</u> 7y 3m NPP 4y 3m	AD	Lengthy record for dishonesty offences – breached parole	Attempted unsuccessfully to break into commercial premises using crowbar - made preparations to break into warehouse but abandoned attempted when alerted to police presence – stole several car to assist attempts On appeal: error in regarding the conspiracy offence as breach of s.112(2) instead of common law offence – no lesser sentence warranted

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9.	<b>Bamblett</b> <a href="#">[2013] NSWCCA 161</a>	s.113(2) (steal)	Premises occupied	PG	4y 6m NPP 3y 4m	AD	Lengthy record – breached parole of 10 days for serious offences	Broke into house at night through window of kitchen – entered bedroom with sleeping couple – apprehended in house but fled Drug addiction
10.	<b>Mitchell M</b> (19)  <b>Mitchell P</b> (22)  <a href="#">[2013] NSWCCA 318</a>  Co-offender: MITCHELL	s.113(2) (steal)  Sched: Larceny Carried in conveyance	In company	PG (25%)	2y 3m NPP 1y 3m  2y 3m NPP 1y 3m	AA 9m NPP 6m  9m NPP 6m	Children Court matters dealt with by fines, probation  Children Court matters dealt with by fines, probation.	Brothers - offenders at night walking past premises of audio-electronics business - entered the yard and drove away in vehicle – later returned and entered premises to steal tools and music equipment - "at the lower end of range" of objective seriousness. Manifestly excessive – young adult offenders - no previous custody.
11.	<b>Mitchell</b> (40) <a href="#">[2014] NSWCCA 63</a>  Co-offenders: MITCHELL MITCHELL	s.113(2) (steal)  Sched: Larceny Take and drive a conveyance	In company	PG (25%)	3y NPP 2y	AA 1y 10m NPP 1y	Lengthy record	Brothers - walking past premises of audio-electronics business at night - entered yard and drove away with car – later returned and entered premises to steal tools and music equipment - lower end of range Senior offender
12.	<b>Huynh</b> <a href="#">[2015] NSWCCA 179</a>	s.113(2) (steal)  Sched: Resist arrest Assault police	In company	PG (25%)	4y 10m NPP 3y 8m	AA 4y NPP 3y	lengthy	With co-offender broke into house – ransacked bedroom while co-offender struggled with resident and held knife to neck Difficult childhood – early drug addiction – chronic depression
13.	<b>Fayad</b> (45) <a href="#">[2017] NSWCCA 81</a>	s.113(2) (steal)  Sched: 3 offences	In company	PG (12.5%)	7y NPP 4y 9m	AD	Minor but breached bail for assault offence	Drove stolen vehicles into glass doors of shopping centre in early hours of morning – attempting to reach ATM – extensive damage – considerable planning Harsh custodial conditions

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14.	<b>Davison</b> (22) <a href="#">[2019] NSWCCA 179</a>	s.113(2) (steal)  SMV  Sched: Larceny		PG (25%)	2y 9m NPP 18m  FT 9m  <u>Total:</u> 3y 3m NPP 2y	AA 2y 9m NPP 18m  FT 9m  <u>Total:</u> 3y NPP 21m	Yes – not stated.	With co-offenders stole motor vehicle – ram raid / drove car into shop window to try to access ATM machine – gained entry to shop but unsuccessful in obtaining access to ATM Offence committed to purchase drugs – Aboriginal male - deprived background – early exposure to drug abuse – special circumstances On appeal - disparity with co-offender
15.	<b>Isbitzki</b> (35) <a href="#">[2019] NSWCCA 247</a>	s.113(2) (larceny)  Sched: Intimidation	armed with a weapon	PG (25%)	6y NPP 4y 6m	AA 6y NPP 3y 9m	extensive – break and enter offences as a juvenile – drugs, driving and firearms	Occupants of house woke to sound of broken glass – observed broken window and left house – confronted by offender standing at letterbox armed with meat cleaver and screwdriver – threats made by offender and two co-offenders – occupants left to call police and offender entered house – arrested by police in house – financial gain – mid-range Suffered brain injury shortly before offence – drug use – remorse On appeal: SJ failed to properly consider impact of brain injury on moral culpability – special circumstances based on need for rehabilitative support
16.	<b>Kuruppu</b> (50) <a href="#">[2021] NSWCCA 261</a>	s.37(1)  s.113(2)  s.166 Certificate Contravene AVO  Breach s.9 bond (for assault)	Knowing person inside	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 finding it harder and harder to breathe - pushed onto bed and pushed fingers into victim's mouth and down throat - 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

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17.	<a href="#">Honeysett</a> <a href="#">[2023] NSWCCA</a> <a href="#">138</a>	s.113(2)  s.113(1)  2 x enter inclosed lands  s.114(1)(b)  2 x s.117  Sched: 3 offences	Knowing person inside	PG (25%)	<u>Indicative</u> 5y  2y  s.10A  1y  6m  <u>Aggregate:</u> 6y NPP 3y	AD	Numerous. Multiple property and break and enter offences, assault and rob, assault, AOABH, commit act indecenty child, stalking, intimidation. On parole and CCO's.	Entered home - female victim lying asleep in bed - 3y old grandchild asleep beside her - victim woke - offender entered bedroom – stood leaning against bed of sleeping child - put out his open hands and placed palms against child's back - left bedroom - no violence or threat of violence – no property taken - distress caused to occupants – other offences took place over several days. Tragic dysfunctional background - mental illness.
18.	<a href="#">Acton</a> <a href="#">[2024] NSWCCA</a> <a href="#">92</a>	s.113(2)  s.33B(1)(a)  s.33B(1)(a)	Actual or threatened use of violence	PG (25%)	<u>Aggregate:</u> 4y NPP 2y 6m	<u>Indicative</u> 2y 6m  1y 6m  1y 3m  <u>Aggregate:</u> 3y 6m NPP 2y 3m	Lengthy	Broke into premises of two businesses through hole in wire fencing – placed number of items in bag - brandished knife towards two victims when they confronted him – during struggle, lunged knife at victim - jumper worn by victim received large 13- centimetre cut to the front - opportunistic offending by homeless person carrying knife at time - significantly below mid-range. Long-standing drug abuse – rehabilitation poor. CCA: Not open to SJ to find beyond reasonable doubt "actual" intent to use knife to slash across victim's body.

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