

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

s.113(3) (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

(3) commit an offence under subsection (2) in circumstances of special 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

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

wounds or intentionally or recklessly inflicts grievous bodily harm on any person,  
is armed with a dangerous weapon.

(amended on 21.6.2012)

intentionally wounds or intentionally inflicts GBH on any person  
inflicts GBH on any person and is reckless as to causing ABH to any person  
is armed with dangerous weapon

Maximum Penalty: 20 years

	NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	Guthrie (27) <a href="#">[2002] NSWCCA 77</a>	s.113(3) (steal)  Sched: Possess unauth firearm	Armed with dangerous weapon	PG (just under 20% on appeal)	4y 6m NPP 3y	Crown AA 6y 6m NPP 4y 6m	Lengthy record including firearms	Attempted to use altered truck to remove ATM with co-offender- arrested after struggle where offender produced gun - instigator - carefully planned offence - major criminal activity

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	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	FACTS
2.	<b>Newman</b> (23)  <b>Simpson</b> (female) (22)  (2004) 145 A Crim R 361 <a href="#">[2004] NSWCCA 113</a>	s.113(3) (steal)  s.113(3)	Wounding	PG (20%)  PG (20%)	8y NPP 5y  5y 6m NPP 3y	AD  AD	Significant record  Minor record for violence – breached bond	Female attended home of male acquaintance at night – obtained entry by pretending to seek spiritual counselling – victim assaulted by two male co-offenders and threatened with knife KS – 2 young children
3.	<b>Bendt</b> (20)  <b>Fell</b> (30)  <a href="#">[2009] NSWCCA 91</a>	s.113(3) (steal)  Sched: Take and drive conveyance  s.113(3) (steal)  Sched: Take and drive conveyance	In company  Armed with dangerous weapon	PG (25%)  PG (25%)	5y 3m NPP 3y (recommend referral to Drug Court)  5y 3m NPP 3y	Crown AA 5y 9m NPP 3y 3m  Crown AA 5y 9m NPP 3y 3m	Breached parole – lengthy record  Breached parole – lengthy record	Four offenders broke into club and threatened cleaners with gun – B smashed glass door to enter - attempt made to break into ATM with concrete saw – F took possession of gun – police car chase followed by attempt to escape by foot Remorse Driver of car Petersen sentenced for s.113(2)
4.	<b>Smith</b> (27)  <a href="#">[2011] NSWCCA 209</a>	s.113(3) (steal)  Sched: Assault	Wounding	PG (15%)	6y 9m NPP 5y	AA 4y 3m NPP 3y	Drugs, dishonesty	Offender's mother had received intimidating and harassing phone calls from N – offender went with his mother and brother to N's house – offender armed with piece of timber – assaulted the wrong person with timber causing injury to forehead and body Alcohol and anger management issues. On appeal: SJ failed to give adequate weight to provocation and motive – not a “mid-range” offence – manifestly excessive sentence

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	NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	FACTS
5.	<b>Lonsdale</b> <a href="#">[2020] NSWCCA 267</a>	Attempt s.113(3) (intimidate)	In company  Armed with dangerous weapon	PG (25%)	4y NPP 3y	AD	Record – breached bond	Three offenders approached residential house in broad daylight – offender armed with baseball bat – other offenders armed with shotgun and wrench – broke down door of house but left after several minutes without confronting occupants – towards bottom of mid-range – as close to completion of offence as possible – joint criminal enterprise Reasonable prospects of rehabilitation
6.	<b>Murdoch</b> (20) <a href="#">[2023] NSWSC 786</a> (Wright J)	s.113(3) (intimidate)	In company	VG	FT 3y		Reckless wounding, custody of offensive implement in public place, damage property	Violent home invasion - with four other males, approached home of male victim with face at least partially covered or disguised with mask and hoodie – offender did not know two co-offenders had shortened rifle and knife – induced victim to open front door – forced entry – victim stabbed by co-offender and physically assaulted – female victim in home robbed and phone smashed – some degree of planning and organisation. Youth - employed – drug use - degree of remorse – good prospects rehabilitation.

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