Recklessly Cause GBH in Company

s.35(1) (NSW) Crimes Act

s 35 (1) In company of another person or persons causes grievous bodily harm to any person reckless as to causing actual bodily harm

Maximum Penalty: **14 years**

Standard non-parole period: **5 years (where conviction entered or guilty plea accepted on or after 1.1.2008)**

Commenced: **27.9.2007**

Wording substituted: **21.6.2012**

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	SUMMARY
1.	**Farrawell-Smith** (23) [2010] NSWCCA 144	s.35(1) s.35(3)	PG (40% combined) PG (50% combined)	20m (suspended) 12m (suspended)	Crown AD (in exercise of discretion)	Shovel	Offences including assault – breached conditional liberty	**SNPP – 5 years** Approached group of youths with several other offenders with intention to fight – two victims assaulted by co-offender with shovel – bashed to head – another co-offender angered by earlier confrontation Supporting partner and child – remorse – good prospects of rehabilitation
2.	**Kemp** (18) [2012] NSWCCA 281	s.35(1) Affray	PG	4y 6m NPP 2y 6m FT 12m (concurrent)	AD	Assault	breach parole for violence offences	**SNPP – 5 years** Two victims waiting at train station approached by group of males and punched and kicked – offender ran to one victim and punched in head causing him to strike head on concrete platform and suffer brain injury

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	WEAPON	RECORD	SUMMARY
3.	**Mansour** **Hughes** [2013] NSWCCA 35	s.35(1) Affray Sched: Possess restricted sub s.35(1) Affray	VG (at s.33 trial – 10% for offer) VG (at s.33 trial)	4y 18d NPP 2y 9d 3y NPP 1y 6m (concurrent) 4y 6m NPP 2y 3m 3y 4m NPP 1y 8m (concurrent)	AD	Assault	breached bond breached bond	**SNPP – 5 years** Sustained attack on male stranger in night club by offenders and third male – punched and kicked and stomped while prone on floor – unprovoked attack – injury at lower end of scale M – youth - remorse – good prospects of rehabilitation H – remorse – good prospects of rehabilitation
4.	**Davis** [2018] NSWCCA 67	s.35(1) s.35(4)	PG (15%)	3y 2m NPP 1y 2y 6m NPP 1y Total: 4y 2m NPP 2y	AD	Assault	Nil	**SNPP – 5 years** With 2 co-offenders – offender instigated assault upon first victim who was previously in relationship with offender's partner – single blow with clenched fist to head knocking victim unconscious, striking head on tiled floor – struck second victim to head causing him to fall backwards - serious injuries including broken jaw, stroke following hospitalisation and blindness in left eye, ongoing headaches, on blood thinner for life, cognitive impairment including short term memory issues - unprovoked violent attack - unplanned – intoxicated Industrious young man who had grown up in considerable difficulties.

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5.	**Fenech** [2018] NSWCCA 160	s.35(1)	VG at trial for s.33	3y NPP 2y	AD	Assault		**SNPP – 5 years** One of eight members of bikie club involved in assault on sergeant at arms – victim assaulted at night on footpath outside workshop – taken inside and handcuffed with cable ties – assault continuing when police arrived – offender in wheelchair and did not participate in assault – liable to joint criminal enterprise and brought cable ties and pick axe handle for use in assault – could not exclude did not intend less than grievous bodily harm but considered possibility someone would intentionally or recklessly act to cause actual bodily harm
6.	**Brown** (33) [2020] NSWCCA 132	s.35(1) AOABH	PG (10%)	Indicative: 6y 3m NPP 4y 3y Aggregate: 7y 3m NPP 4y 10m	AA Indicative: 5y 6m NPP 3y 6m 2y Aggregate: 6y NPP 3y 10m	Scissors	Includes property – assault – custody of knife	**SNPP – 5 years** Asked by female manager of motel to leave after confrontation between partner and manager – returned with partner and another male in earlier hours of morning – female manager kicked and punched by co-offenders – joint criminal enterprise - stabbed partner of manager in back three times causing puncture of lung Difficult childhood – early drug use – offending uncharacteristic and influenced by drug use – genuine remorse – absconded while on bail On appeal – sentence unreasonable and plainly unjust
7.	**Shmait** [2021] NSWCCA 133	s.35(1)	PG	4y NPP 2y 8m	AA 3y NPP 2y	Assault – poles		**SNPP – 5 years** Male victim attacked by three males in public area – two offenders armed with poles with something sharp attached – planned and targeted attack although not extensive or long-standing planning – motive unclear – multiple blows – use of weapons an aggravating feature – below mid-range On appeal: evidence not sufficient to show offender physically assaulted victim – moral culpability reduced

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8.	**Donovan** [2021] NSWCCA 323	s.35(1) Affray	PG (25%)	2y 6m NPP 1y 8m 2y Aggregate 2y 9m NPP 1y 10m	AA 2y 3m NPP 1y 6m 1y 8m Aggregate 2y 5m NPP 1y 7m		Nil	**SNPP 5 years** With co-offenders involved in fight with two male victims – offender punched one male to head, causing him to fall and hit back of head on concrete - did not move for remainder of assault – suffered traumatic brain injury, bleeding and swelling on brain and fractures to skull. Deprived background CCA: error as to application of *Bugmy* principles – objective seriousness slightly less than mid-range – good prospects rehabilitation
9.	**Tonga** [2023] NSWCCA 120	s.35(1) Failing to disclose identity	PG	22m NPP 13m	AD	Crowbar	Limited – no violence as an adult	**SNPP 5 years** Road rage incident – with brother assaulted victim stopped at traffic signal – grabbed crowbar from victim and struck him twice to head – short and impulsive offence – a little below mid-range Good character – dealing with drug and anger issues – father to young child with pregnant partner – remorse On appeal: no error in declining to impose ICO
10.	**Solo** (25) [2026] NSWCCA 130	s.35(1)	PG (15% combined)	3y 2m NPP 1y 10m	AD		Record although no 'like' offences – breached parole and CCO	**SNPP 5 years** Three men involved in physical altercation with victim and cousin on road after verbal altercation outside hotel – victim punched, kicked and had head stomped on – offender least active role – JCE – just below mid-range Sparse evidence of remorse – some insight – could not find unlikely to reoffend or good prospects of rehabilitation – Bugmy factors On appeal: rejected argument of disparity

Last updated: Sept 2026