Assault Occasioning Actual Bodily Harm

s.59 (NSW) *Crimes Act*

s 59 **(1) Assault occasioning actual bodily harm**

Maximum Penalty: **5 years**

(2) Assault occasioning actual bodily harm in company

Added: **14.12.2001**

Maximum Penalty: **7 years**

	Name (age if known)	Offences	Plea	Sentence	Appeal	Record	Facts
1.	**Baugh** (18) [1999] NSWCCA 131	s.59	VG	3y GBB (1y 2d PSC)	Crown AA 2 years PD	significant	Acquitted of manslaughter - followed and punched victim after victim refused to give cigarette – skull and brain damage after falling on concrete ground – kicked by co-offender – victim subsequently died
2.	**Bloomfield** (34) [1999] NSWCCA 196	s.59	PG	18m PD	AD	Driving, resist arrest	During argument with daughter punched her 5-6 times in face, pushed her to ground and kicked in stomach – victim fell on protruding screw causing bleeding to head – intoxicated
3.	**Philp** (1999) 108 A Crim R 336 [1999] NSWCCA 253	s.59	VG	5y GBB	AA 2y 6m GBB	Assault - no previous custody.	Slapped female at party causing bruised lip.
4.	**Lockyer** (28) [2000] NSWCCA 336	s.59 Sched: 3 offences	PG	MT 2y AT 8m	AA 20m NPP 15m	Lengthy - drugs, property, violence - previous custody.	With co-offender went to victim's house to collect debt from victim's girlfriend – attacked victim with piece of wood and kicked to head and body while on floor
5.	**Peres** [2000] NSWCCA 353	s.59	PG	MT 2y AT 8m	AA 15m NPP 5m	Larceny and possess prohibited drug	Savage assault on male acquaintance outside hotel – punched and kicked victim on ground - spontaneous response to perceived homosexual advance Provided most evidence for offence – on bail for 2y without re-offending – relative youth

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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6.	**Moran** (24) [2000] NSWCCA 379	s.59	VG	9m Periodic Detention	AD	Violence - previous custody – breached bail and AVO.	Punched spouse in eye and pushed against wall – caused bruising to cheek, eye and back Sentence imposed cumulative to existing sentence
7.	**Howard** (19) [2000] NSWCCA 378	s.59	PG	FT 12m	AD	BES, fraud	With group of co-offenders approached victim and friend calling insults – victim punched and fell to ground – suffered bleeding requiring stitches and broken ankle. Aboriginal male with deprived background.
8.	**Burke** (34) [2001] NSWCCA 47	s.59	PG	FT 12m	AD	Drugs, AR, BES	Approached female (39 weeks pregnant) grabbing handbag – victim fell to ground suffering abrasions to shoulder and arm. Drugs – rehabilitation.
9.	**Najjarin** [2001] NSWCCA 46	3 x s.59	VG	12m PD 2y GBB (concurrent)	Conviction AD		Assaulted ex-girlfriend on three occasions – punched victim twice and struck with baseball bat on third occasion – serious bruising.
10.	**Stebbings** (28) [2001] NSWCCA 262	s.59	PG	4y NPP 2y	AA 2y 6m NPP 15m	Violence, property - previous custody.	Punched de facto wife in face during argument as she was driving car – caused bruised eye and cheek.
11.	**A Mallott** (27) **T Mallott** (28) [2001] NSWCCA 453	s.59 s.59	PG PG	18m NPP 9m 18m NPP 9m	AA 17m suspended 17m suspended	Driving, drugs, fraud	Female offenders - assaulted female during domestic type argument – swelling and bruising to face and neck.
12.	**Elijah-Jack** (22) [2002] NSWCCA 177	s.59	PG (25%)	18m NPP 6m	AA 12m NPP 3m	Nil	Punched and hit de facto following argument Uncharacteristic – under influence alcohol.
13.	**El-Farra** (23) [2003] NSWCCA 140	s.59 Take and drive conveyance	PG	2y 6m NPP 20m FT 9m (concurrent)	Crown AA 2y NPP 15m FT 9m <u>Total</u>: 2y 9m NPP 2y	local court offences including BES	Entered victim's car parked in street when victim unlocked it – brandished screwdriver and ordered victim to drive – lunged at victim striking him in throat – victim jumped out and offender drove off in car

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14.	**Eustice** [2004] NSWCCA 14	s.59(2) Assault	PG	100h CSO	Crown AA 150h CSO 100h CSO	breached bond for assault	One of group of seven males who approached three young persons aged 16y and 14y on street in early hours of morning – group assault on 16y male including punching and kicking on ground – offender chased second 16y male and threw him to ground causing him to strike head Youth
15.	**Achurch** [2004] NSWCCA 180	s.59(1)	PG (20%)	2y NPP 18m	AA 12m NPP 9m 13d (immediate release)	Lengthy record but no full time custody	Entered caravan of neighbour in early hours of morning – head butted male and poured beer on male and female – serious offence
16.	**Crowley** (19) [2004] NSWCCA 256	s.59(2) s.59(2) Enter building with intent	PG (25%)	FT 6m 12m NPP 9m Bond	Crown AD (exercise of discretion)	record includes offences for violence	Two males punched and assaulted male victim in car park of surf club – victim had knocked both to ground when offender joined fight – victim pursued and assaulted by group including offender – offender punched victim but did not cause injuries – second male pursued by group after calling 000 – offender kicked victim on ground and grabbed around throat – on separate occasions attempted to steal TV from restaurant with co-offender Appalling childhood – assaulted and neglected – anger management issues – crossroads case
17.	**Williams** (44) (2005) 152 A Crim R 405 [2005] NSWCCA 100	s.59	PG	18m NPP 6m	AA 15m NPP 6m	Lengthy, including prison	(2000) Female stabbed friend during drinking session – no recollection of event – no intention to harm – breached parole by driving unlicensed and MRPCA –attended D&A camp – didn't get on with parole officer Aboriginal woman – alcoholic - poor health, including heart disease and kidney malfunction On appeal removed parole condition not to consume alcohol
18.	**El Masri** (21) [2005] NSWCCA 167	s.59(1)	PG	300h CSO	AA 100h CSO	No violence	Struck male stranger in head at public toilet – angered by perceived sexual advance On appeal - failure to consider matter could have been dealt with in Local Court
19.	**Cotter** (37) [2005] NSWCCA 187	s.59(1)	VG	3y GBB	AD	Nil	Slapped de facto wife on face – acquitted of more serious sexual offences Delay On appeal - no error in judge ensuring treatment for psychological and emotional problems continue

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20.	**Romano** (22) [2005] NSWCCA 313	s.59(1) Intimidation	PG	2y NPP 18m FT 12m <u>Total</u>: 3y NPP 2y 6m	AD	Significant record – breached parole	Arranged meeting with ex-partner to see 17m daughter – made threats to partner at park and on way to partner's house – assaulted partner's new boyfriend with club lock in company with two brothers Significantly disadvantaged childhood – protective custody
21.	**Abboud** (39) [2005] NSWCCA 251	s.59(2) Assault 4 x Assault	PG (15%)	12m NPP 6m FT 3m FT 6m (all concurrent)	Crown AA 2y 6m NPP 13m FT 5m FT 10m <u>Total</u>: 2y 8m NPP 15m	lengthy record including violence – breached parole for domestic violence offence	Assaulted female partner fracturing rib – victim had expressed wish to sleep – week later struck victim in head with remote control to keep her awake – sustained assault on victim during argument four days later – punched victim to face – grabbed around throat – pushed victim – stomped on victim's legs in presence of children – bit victim on face – made threats
22.	**Kang** (21) **Yun** [2006] NSWCCA 187	s.59(2) Damage property s.59(2)	PG (25%) PG (25%)	FT 9m FT 3m <u>Total</u>: 12m FT 12m	AD AA to backdate sentence only	 nil	19y female victim taken to national park by K for meeting with Y – victim had previously rejected request for meeting – victim dragged from car and assaulted by both offenders – berated for lifestyle on behalf of parents – pastor and young worker at church attended by victim's parents – several days later K entered bedroom of victim and damaged CD player
23.	**Yassein** (24) [2006] NSWCCA 15	s.59(2) Resist police Enter enclosed lands Sched: supply cannabis	PG	2y NPP 12m FT 3m (concurrent) Fine	AD	breached bail for resist and assault offences and three bonds – lengthy record	After brief sexual episode offender continued to visit female victim for four months seeking her to leave her husband – on night of offence forced way into victim's house – punched her to face several times and grabbed around throat Suffering schizophrenia

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24.	**McNaughton** (33) (2006) 163 A Crim R 381 [2006] NSWCCA 242	s.114(1)(d) s.59	PG (15%)	FT 2y 2m 2y 4m NPP 10m Total: 4y NPP 2y 6m	AD	lengthy	Attempted to steal money from amusement machine in holiday resort – threw coffee tin at manager attempting to stop offender
25.	**Shillingsworth** (34) [2010] NSWCCA 19	s.59(1) Breach DVO	PG (25%)	3y NPP 2y 3m 1y (concurrent)	AD	Extensive record – breached bail for assaults on same victim	Struck de facto wife while walking home intoxicated – punched and kicked on ground dislodging front teeth – reacted to provocative comment Aboriginal male with low intelligence and disadvantaged background – substance abuse
26.	**Markou** [2012] NSWCCA 64	s.59(1) (on appeal)	VG	9m ISO	AA 75h CSO (served 4m ISO)	Record including violence	Punched victim in nightclub Convicted of AOABH in company at trial for recklessly inflict GBH in company – offence reduced to AOABH on appeal Unidentified bodily harm – isolated offence - good character
27.	**McLaughlin** (51) [2013] NSWCCA 152	s.59(1) s.59(1) Assault	PG (10%)	FT 15m 2y NPP 12m FT 1y Total: 2y 4m NPP 1y 4m	AD	Offensive conduct, assault, ABH - on bond.	After argument with de facto partner dragged her from bed causing her to fall and hit jaw on bed causing bleeding to lip and bruising – 5 months later hit victim to side of head near eye causing injury - one month later during argument grabbed victim by hair and throat - breached bond and AVO imposed only few months earlier in regard to same victim
28.	**Pattalis** (26) [2013] NSWCCA 171	s.59(1)	PG (20%)	2y NPP 1y	AD	Assault	Single punch to stranger outside nightclub – no explanation as to why incident occurred – offender was drunk and could not recall incident Out of character - employed – remorse - rehabilitation
29.	**McKay** [2014] NSWCCA 187	s.59(1)	VG (at trial for s.35)	4y NPP 3y	AD	Assault	Inmates working in laundry - victim confronted offender about spraying cigarette butts with fly spray and putting dirty underwear in locker of third inmate – offender hit victim on back of head and punched him in eye as he turned around - offender holding sharp object which perforated eye - eye removed.

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30.	**Simmons (No.8)** [2015] NSWSC 627 Hamill J	s.59(1)	PG (10%)	2y 9m NPP 2y	Lengthy record – including violence	Assault	Punched and kicked male in domestic fight – motivated by protection of girlfriend and children – victim vulnerable due to ill health – criminality high – initially lied to police blaming girlfriend - serious example of offence. Poor prospects of rehabilitation.
31.	**Jeremiah** (21) [2016] NSWCCA 241	s.59(2)	PG (10%)	1y 6m NPP 1y 1m	Crown AA 1y 8m NPP 1y 3m	lengthy – includes violence	Assaulted fellow prison inmate in company of four other prisoners – after victim assaulted by others, offender approached victim from behind, pulled him to ground and stomped on head - vicious, unprovoked and cowardly attack.
32.	**Abdelmeseeh** (21) [2016] NSWCCA 312	s.59(2)	PG (10%)	3y NPP 18m	AD	breached parole – record for robbery and violence offences	With brother stared at male victim during train journey then followed him off train and across to bus stop – punched victim in face as he was trying to walk away from offenders – brother punched victim to face causing him to fall – both offenders punched and kicked victim on ground
33.	**Rudolf** (24) [2016] NSWCCA 313	s.59(1)	PG (25%)	2y NPP 18m	AD	Common assault, larceny, damage property, driving offences.	Punched 53y male to face at hotel – knew victim as previous football coach – held grudge against victim - opportunistic and only minimally premeditated – offender calmly and deliberately carried out crime – unprovoked – offender of large build, much heavier and younger than victim
34.	**Abdaly** (22) [2020] NSWCCA 266	s.59(2)	PG (25%)	6m	AD	Not significant	In company with two co-offenders approached victim sitting in car in car park of restaurant – three other men also surrounded car - made threatening remarks and splashed water on victim suggesting it was inflammable liquid – victim punched and kicked in face by co-accused – spontaneous - offender sentenced on basis of joint criminal enterprise – committed no actual violence – towards lower end of range Relatively young – basically prior good character – good prospects of rehabilitation
35.	**Richey** (49) [2021] NSWCCA 93	s.59(1) s.166 Offences Recklessly damage property Breach AVO	VG (see facts)	2y 4m NPP 1y 9m No penalty No penalty	AD	Old assault offences – breached AVO	Domestic violence – kicked and punched female partner who was visiting offender's home for the night – dragged her by the hair – caused fractured ribs – convicted of AOABH as alternative for kidnapping offence – also acquitted of numerous sexual offences – spontaneous offence - above mid-range Good prospects of rehabilitation On appeal – consideration of EAPG provisions and entitlement to discount for offer to plea guilty

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36.	**MR** [2021] NSWCCA 218	s.59(1) Fail to stop Supply cannabis Drive with illicit drug in blood Sched: Possess Xanax tablet Damage property	PG (37.5% combined)	2y 11d 7m 15d 1y 6m 22d s.10A Aggregate: 3y 10m NPP 2y 7m	AD	Lengthy – robbery - assaults - drug related	Domestic violence - entered partner's home and confronted partner in her bedroom – hit victim to side of head and bit her on ear and face – accused victim of infidelity – pushed victim to floor and smashed her head against mirror – kicked her in head and knee – victim's 10y son outside room – pursued victim next door as neighbour called police - unprovoked, sustained and volent attack – other offences committed one month earlier – failed to stop when signaled by police – pursuit through 50kph zone – upon arrest found in possession of 449g cannabis – tested positive to cocaine and cannabis in blood – all offences committed on parole – assault offence breached bail for earlier offences On appeal: erred in using breach of bail and parole to aggravate seriousness of offence – would have imposed higher sentence on appeal.
37.	**Many** [2021] NSWCCA 302	s.59(1) s.61 Common assault	PG (25%)	FT 18m FT 12m Aggregate: 18m	AD	Intentional choke with recklessness and intimidation, AOABH, assault / obstruct police. On parole.	Domestic violence – AOABH: dragged victim by hair, threw onto floor, put foot on head, punched breasts – common assault: placed hands around throat squeezing until could not breathe, headbutted and poked face – threat to kill victim. Alcohol and drug issues - medium to high risk re-offending - repeated, degrading, violent attacks upon women. CCA: Error taking into account post-offence absconding and subsequent offending in aggravation - no lesser sentence warranted
38.	**Sarhene** (18) [2022] NSWCCA 79	Affray AOABH	PG (25%)	14m 2y 4m Aggregate: 2y 10m ICO	AA 12m CCO 15m ICO (1m plus 14m already served)	Nil	Offences committed in context of gang turf war – affray committed outside birthday party at private residence – part of group who assaulted male guest although did not physically participate and did not follow group into backyard – three weeks later one of several offenders who assaulted male acquaintance on street late at night – personally kicked victim to face and stepped on shoulder – unprovoked violence Genuine remorse – good prospects of rehabilitation – out of character - born in Ghana – poverty On appeal: SJ erred in finding only sentence of imprisonment appropriate for affray offence – failed to take into account youth and immaturity

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39.	**Bhatia** (39) [2024] NSWCCA 28	AOABH AOABH	PG (25%)	Indicative: 2y 5m 2y 7m Aggregate: 3y 9m NPP 2y	AD	nil	Caring for 2y 11m stepson while mother at work – slapped victim 8 times, grabbed him by neck and threw him to ground from kitchen bench – intoxicated – in home of victim – vulnerable victim in care of offender – serious injuries - slightly above mid-range Prior good character – limited insight – some degree of remorse – depression and anxiety On appeal: no error in finding evidence as to likelihood of re-offending neutral
40.	**Ayoub** (41) [2024] NSWCCA 168	3 x s.59(1) Sched: Stalking	PG (25%)	Aggregate: 4y 9m NPP 2y 10m	AD	Sexual intercourse without consent, AOABH, detain for advantage. On parole.	Offences against female partner – domestic violence - struck victim's nose causing bleeding; punched head causing a split in skin near eyebrow; took hold of hair, shook around, punched to back of head, headbutted, suffered bruising and bleeding to lip. Abusive upbringing – *Bugmy* applied - significant substance abuse - prospects rehabilitation guarded. CCA: No error as to totality regarding sentence imposed for earlier offence.
41.	**Pritchard** (21) [2024] NSWCCA 215	s.59(2) Sched: Stealing	PG (25%)	FT 18m	AD	Serious history. Serving sentence for inflict ABH w'/intent sexual intercourse, agg enter dwelling w/intent use violence and carrying out sexual act.	In company of another inmate, assaulted fellow prisoner whilst in custody - punched with closed fists to body and head – took victim's bag – lower range objective seriousness - relatively minor injuries. Aboriginal male with disadvantaged background CCA: SJ erred not stating reasons for imposing Fixed Term imprisonment – no lesser sentence on re-sentence

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