

Fraud by Solicitor or Legal Person

See list of offences and penalties at end of table

| | CASE (AGE IF KNOWN) | OFFENCE AND MAX PENALTIES | AMOUNT | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|----|--|---|-------------|------|----------------------|------------------------|--------|--|
| 1. | George (54) NSWCCA 23.9.1994 | 9 x s.178A (NSW) [7y] Sched: 27 x s.178A | \$612,305 | PG | MT 4y 6m AT 1y 6m | AA MT 3y AT 2y | Nil | Solicitor defrauded clients over five years - one count involved forgery, others involved false epitome of mortgage Not motivated by greed - \$65,000 recovered |
| 2. | Holmwood NSWCCA 25.10.1995 | 5 x s.178A (NSW) [7y] s.178BA (NSW) [5y] s.178BB (NSW) [5y] Sched: 13 offences | \$571,000 + | PG | MT 4y AT 2y | AD | Nil | Solicitor defrauded clients over four years. |
| 3. | Marvin (38) NSWCCA 5.11.1995 | 41 x s.178A (NSW) [7y] s.300(1) (NSW) [10y] s.300(2) (NSW) [10y] | | PG | MT 18m AT 6m | AA MT 12m AT 12m | Nil | Solicitor misappropriated funds over four years. |
| 4. | Hughes (39) NSWCCA 24.7.1996 | 5 x s.271 (NSW) [14y] s.24(1) (Cth) [2y] s.24(2) (Cth) [2y] s.31(1) (Cth) [5y] Sched: 2 offences | \$379,000 | PG | MT 2y 6m AT 2y 6m | AD | Nil | Solicitor committed offences on 4 occasions over 15 months – calculated and complicated fraudulent activity – operated bank account in false name – opened second bank account in false name – conducted 5 non-reportable financial transactions – forged 5 wills Financial difficulties – depression - some reparations made – genuine remorse – admission to undetected guilt – excellent character |

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| 5. | Cofini (37) NSWCCA 4.3.1997 | 3 x s.300(2) (NSW) [10y] Sched: 6 x s.300(2) | loss to bank: \$1.452m | PG | MT 1y AT 1y | AD | | Solicitor used documents to deceive bank to obtain large loan for client. Severe hardship since offence - genuine remorse. |
| 6. | Hunt (42) NSWCCA 30.9.1997 | 5 x s.178A [7y] | \$38,341.38 | VG | MT 1y AT 21m | AD | | Solicitor misappropriated funds from two elderly clients - money used for expenses \$18,000 recovered. |
| 7. | Petroff NSWCCA 20.7.1998 | 5x s.178BA (NSW) [5y] 2 x s.178BB (NSW) [5y] | | VG | MT 12m AT 12m | AA MT 11m AT 11m | dishonesty on recog | Telephoned people claiming to be a solicitor representing men seeking bail - sought money for surety - six times money changed hands. Sentence reduced because one count quashed. |
| 8. | Boland NSWCCA 13.10.1998 | s.178A (NSW) [7y] | \$48,759.08 | PG | MT 18m AT 6m | AD | nil | Solicitor committed single, but carefully planned, offence using system of bank accounts designed to make detection very difficult. Great professional and personal stress at time of offence - full restitution - remorse - delay in sentencing. |
| 9. | Francipane NSWCCA 23.12.1998 | s.178BA (NSW) [5y] | \$220,000 | VG | MT 4y AT 2y | AA MT 3y AT 1y | nil record | Wrongfully obtained money from V by lying about the purpose it was to be used for. Solicitor / client relationship an aggravating factor. No money recovered. Sentence reduced because second count of s.178BA quashed on appeal |
| 10. | Smith (2000) 114 A Crim R 8 [2000] NSWCCA 140 | 5 x s.178A (NSW) [7y] Sched: 14 x s.178A | \$2,832,740 | PG | MT 3y AT 2y | Crown AA MT 4y 6m AT 2y | nil | Solicitor under investigation in Queensland carried on practice in NSW after practicing certificate taken away - received money for mortgages and failed to invest money - severe breach of trust Financially struggling - loving and devoted family man - co-operated with receiver - \$250,000 recovered. |

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| 11. | Houlton (56) [2000] NSWCCA 183 | 5 x s.178A (NSW) [7y] Sched: 80 x s.178A | \$347,000 | PG | 3y PD 5y GBB \$120,000 reparation | Crown AD | nil | Solicitor misappropriated money held on trust for clients over 3 year period - money used for business and personal use. Substantial delay - some reparation made - under significant stress from personal and professional situation at time of offence. |
| 12. | Aliperti (50) [2000] NSWCCA 315 | s.178BA (NSW) [5y] Sched: 6 x s.178BA s.178A | \$400,000 | VG | MT 3y 9m AT 1y 3m | AA 4y NPP 3y | nil | Solicitor misappropriated money given to him by clients for purpose of investment - serious breach of trust. Judge failed to take into account substantial delay between arrest and trial. |
| 13. | Carr (49) (2002) 135 A Crim R 171 [2002] NSWCCA 434 | s.176A (NSW) [10y] s.178A (NSW) [7y] | \$321,666 \$358,952 | PG | 4y NPP 2y FT 2y (concurrent) | Crown AD Sentence inadequate but discretion applied | | As company director and solicitor fraudulently obtained money from company in 1996 - no charges pursued until second offence - as solicitor for second company banked cheque for sale of property in personal account |
| 14. | Hovan (44) [2005] NSWCCA 179 | s.178BB (NSW) [5y] s.300(1) (NSW) [10y] s.300(2) (NSW) [10y] | | PG (40%) | 4y 6m NPP 3y 6m | AA 3y NPP 18m | Nil | Solicitor made false application for computer equipment loan – obtained \$102,000 - \$58,000 outstanding – forged signature and seal of clients on deed of release – received \$20,000 costs payment on behalf of client – money owed to applicant Second offence breached bail – struck off – full reparation underway – poor financial manager – psychological problems |
| 15. | Pike [2006] NSWCCA 32 | s.178BA (NSW) [5y] | \$10,000 | VG | 14m NPP 7m PD | AD | | Falsely represented to male acquaintance he was a solicitor – given \$10,000 for investment Conviction appeal against 6 similar offences allowed |
| 16. | Assi (44) [2006] NSWCCA 257 | 2 x s.178A (NSW) [7y] 2 x s.178BA (NSW) [5y] Sched: 3 x s.178A 3 x s.178BA | \$222,000 | PG (10%) | 7y 6m NPP 4y 9m | AA 7y 6m NPP 4y 6m | Breached bail and parole – similar offences | Disqualified solicitor defrauded several clients Appeal allowed to correct small error. |

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| 17. | Oudomvilay (37) [2006] NSWCCA 275 | 6 x s.178A (NSW) [7y] Sched: s.178A | \$809,350 | PG | 6y 9m NPP 4y | AD | Nil | Female Laotian solicitor took money from trust account. |
| 18. | Nikolaidis (52 at sentence) (2008) 191 A Crim R 556 [2008] NSWCCA 323 | s.300(1) (NSW) [10y] | | VG | 2y NPP 12m | AD | Nil | Solicitor had secretary type backdated letter purporting to be terms of engagement between offender and former client – involved in dispute with client – costs assessment being made by Supreme Court assessor – mid range offence – part of continuous course of conduct – breach of trust Loss of employment |
| 19. | Jafari [2017] NSWCCA 152 | s 131.1(1) (Cth) [10y] | \$220,000 | PG | 2y ICO | Crown AA 3y imprisonment - released on recognisance after 18m | Nil | (2008) - senior lawyer in Australian Government Solicitor's office – jointly responsible with colleague for managing trust established by Commonwealth, for man previously in Defence Force who had been seriously injured - prepared authority for payment from trust of \$220,000 to friend to whom offender owed money - signed document and forged signature of colleague. |
| 20. | Chalabian (No.14) (51) [2022] NSWSC 829 Johnson J | s.400.3(1) (Cth) [25y] | See facts | VG | 12y NPP 7y 6m | | nil | Solicitor – used office trust fund to launder over \$24.2m on behalf of others involved in fraudulent tax scheme over 12 weeks – aware money proceeds of crime throughout offending – received 53 deposits and made 22 distributions – false paper trail and use of straw directors – critical and indispensable role in sophisticated scheme – used professional skills and facilities – motivated by greed – received \$51,597 in legal fees and \$880,000 disbursement – amount substantially above threshold – high-range – substantial moral culpability Facilitation of trial – voluntary community work – hardship on family – prior good character of limited weight – good prospects of rehabilitation and unlikely to re-offend |

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Table of Offences

| Offence | Section | Status | Maximum Penalty |
|--|-----------------|---------------------|------------------------|
| Crimes Act 1900 (NSW) | | | |
| Cheat or defraud as director or member of body corporate or public company | s.176A | 2.11.1979-22.2.2010 | 10 years |
| Fraudulent misappropriation of money collected or received | s.178A | 12.3.1929-22.2.2010 | 7 years |
| Obtain valuable thing by deception | s.178BA | 2.11.1979-22.2.2010 | 5 years |
| Obtain valuable thing by false or misleading statement | s.178BB | 2.11.1979-22.2.2010 | 5 years |
| Forging will | s.271 | 1900 – 22.2.2010 | 14 years |
| Make false instrument / use false instrument | s.300(1) & (2) | 16.7.1989-22.2.2010 | 10 years |
| Criminal Code (Cth) | | | |
| Theft from Commonwealth entity | s.131.1 | 24.5.2001-current | 10 years |
| Intentionally dealing in proceeds of crime - \$1,000,000 or more | s.400.3(1) | 1.1.2003-current | 25 years |
| Financial Transactions Reports Act 1988 (Cth) | | | |
| Open account / operate account in false name | s.24(1) / 24(2) | 1.7.1988-current | 2 years |
| Conduct transactions to avoid reporting requirements | s.31 | 1.7.1988-current | 5 years |

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