

Obtain Financial Advantage by Deception from Commonwealth

s. 134.2 (Cth) Criminal Code

s 134.2 by a deception, dishonestly obtains a financial advantage from a Commonwealth entity

Maximum Penalty: 10 years

Commenced: 24.5.2001

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
1.	Pipes (53) [2004] NSWCCA 351	s.134.2	\$155,644	PG	3y NPP 2y	AD	Nil	Senior employee of Dept of Veteran Affairs diverted funds – accessed computer and changed details Money repaid – contrition and remorse
2.	Aller (77 at sentence) [2004] NSWCCA 378	s.29D (Cth) <u>Crimes Act [10y]</u> s.134.2	\$146,706	PG	2y, released to recog for 5y	Crown AD	Shoplifting offences	Female - received social security payments in two names over 8 years – some repayments made Extensive medical problems – severe depression – sole carer for very disabled and ill 40y son
3.	Isaac [2005] NSWCCA 86	s.134.2 4 x bankruptcy offences [3y]	\$19,868 \$31-50,000 credit	PG (25%)	2y 6m NPP 18m FT 9m / 12m (concurrent)	AD	Nil	Received Newstart payments for 30 months while employed – on two occasions obtained credit for finance without disclosing bankruptcy status – on two occasions used false name to obtain credit to purchase goods Motivated by pressure to assist family in Iran
4.	Ly (33 at first offence 40 at sentence) [2007] NSWCCA 28	18 x s.29D (Cth) <u>Crimes Act [10y]</u> 5 x Att s.29D (Cth) <u>Crimes Act</u> <u>[10y]</u> 18 x s.134.2 Att s.134.2	\$328,692	PG (25%)	6y NPP 4y 6m	AD	Nil	Tax agent filed false tax returns – degree of planning Gambling addiction – partial repayment to be made

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5.	Schultz [2008] NSWCCA 199	s.29B(Cth) <i>Crimes Act [2y]</i> s.29D(Cth) <i>Crimes Act [10y]</i> s.134.2	\$198,503	PG	3y recog 18m Released after 6m for 2y 2y 3m Released after 6m for 2y	AD		Received mother's aged pension for 22 years after she had died – submitted three false declarations during that time Full reparation made by sale of house
6.	Ridley (2008) 192 A Crim R 139 [2008] NSWCCA 299	9 x s.29D (Cth) <i>Crimes Act [10y]</i> 3 x Att s134.2	\$442,000	VG	8y NPP 5y	AD	Nil	Made false claims to Tax Office for GST refunds.
7.	O'Meara (65) [2009] NSWCCA 90	s.134.2 4 x Att s.134.2	Over \$500k; (almost received payment of \$15m)	VG	8y NPP 5y 4m	AD	Prior to 2000 fraud, firearms drugs	From July 2001 to September 2002 made false claims for refunds of GST in Business Activity Statements submitted to Tax Office in names of companies controlled by offender - statements contained false information concerning alleged purchases claimed to have been made that incurred GST
8.	Thorn (19 at time offences commenced) (2009) 198 A Crim R 135 [2009] NSWCCA 294	s.400.4(1) (Cth) <i>Criminal Code [20y]</i> 11 x s.134.2 Att s.134.2	\$114,586	PG (25%)	3y 4m 2y 6m 2y 6m Total: 5y 4m NPP 3y	AA 2y 8m 6m - 18m 6m Total: 4y 2m NPP 2y 4m	Committed and dealt with for other dishonesty offences during period of offending	Made false claims for tax refunds totalling \$114,586.92 – money laundering offence related to use of \$103,512.50 of refunds claimed – unusual use of s.400.4 offence – very low form of offending Gambling and drug use – lengthy delay Reparation order - \$114,586.92

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9.	Hili Jones [2010] NSWCCA 108 (2010) 242 CLR 520 [2010] HCA 45	s134.2 s.134.2 s.29D (Cth) <i>Crimes Act [10y]</i> Money Laundering	Tax shortfall \$398k	PG (50% plea and assist)	18m NPP 7m 18m NPP 7m	Crown AA 3y NPP 18m 3y NPP 18m High Court AD	nil	From 2001 – 2003 as sole directors of company submitted false invoices to avoid GST and income tax – financial loss to ATO \$376k Strong subjective features
10.	Schembri [2010] NSWCCA 149	9 x s.134.2 6 x attempt s.134.2 s.400.4(1) (Cth) <i>Criminal Code [20y]</i>		VG	<u>Aggregate:</u> 7y NPP 4y	AA <u>Aggregate:</u> 7y NPP 3y 5m		Female lodged false Business Activity Statements with ATO making false GST claims – proceeds offence related to use of funds On appeal commented on inappropriateness of proceeds offence – appeal allowed to make sentence of 2y concurrent with remaining sentences
11.	Kertebani (30) [2010] NSWCCA 221	s.134.2 Sched: Deal with proceeds crime	\$307,555	PG (15%)	2y NPP 1y 2m Reparation \$307,555	Crown and sentence AD	nil	Lodged two false Business Activity Statements to ATO – claimed proposed \$5.7million expenditure for two companies – co-offender worked at ATO and used position to verify false claims – ATO paid \$494,669 into offender's account – co-offender paid \$130k Sentence towards bottom range.
12.	Leighton (72) [2010] NSWCCA 280	s.29D (Cth) <i>Crimes Act [10y]</i> 2 x s.134.2	Approx \$107k	PG	6y NPP 4y	AA 5y NPP 3y		Obtained disability pension and age pension payments Ill-health – disability. SJ erred in relation to consideration of ill-health

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13.	Dwayhi (25) Bechara (42) [2011] NSWCCA 67	4 x s.134.2 Sched: 4 offences s.134.2 Money laundering	\$857,357 - received \$135,000	PG (25%) VG	5y NPP 3y Reparation order \$135,000 4y 9m NPP 3y Reparation order \$101,632	AD AA 3y release to recog after		D - ATO employee - verified four false tax refund claims in Business Activity Statements submitted to ATO - -- received \$135,000 from co-offenders - concealed primary offences by making false entries in electronic reports, creating paper trails and lodging forged documents (Form 1 offences) - grave breach of trust of position as public officer of ATO B and co-offender provided false ATO statements - co-offender took almost two thirds of proceeds.
14.	McMahon (49) [2011] NSWCCA 147	15 x s.134.5 24 x Att s.134.2 5 x s.10(1)(a) <i>Passports Act</i> [2y] 7 x Bankruptcy offence [3y] 2 x s.29(4)(aa) <i>FTA</i> [5y] 28 x s.24(1) <i>FTA</i> [2y] 35 x Electoral roll offences	\$676,620	PG	5y 4y 12m 18m 12m 12m 6m Total: 6y NPP 4y	AD	Nil significant	Undischarged bankrupt embarked on course of accumulating false identification documents over ten years – obtained passports, bank accounts and registered false names with electoral commission – rented premises, leased boxes and travelled overseas Used documents to gain control of companies and lodge false tax statements over 10 months Sophisticated and well planned offences \$100,000 repaid
15.	Hennessy [2012] NSWCCA 241	4 x s.29D (Cth) <i>Crimes Act</i> [10y] 4 x s.134.2 s.10(1)(a) <i>Passports Act</i> [2y]	\$74, 970	PG	5y released after 2y 6m	AD		Received Centrelink payments under false identities – obtained a false passport.

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16.	Edwards [2013] NSWCCA 54	4 x s.134.2 Sched: 4 offences	\$380,724	PG	4y 3m NPP 2y 2m	AD		July 2004 - January 2006 – director and shareholder of companies lodged 27 Business Activity Statements with ATO - lodged on behalf of three companies of which offender was sole director and shareholder and on behalf of himself personally - falsely claimed GST refunds of \$540,898 - received \$380,724
17.	Hawkins [2013] NSWCCA 208	s.29D (Cth) <i>Crimes Act [10y]</i> 7 x s.134.2	\$600,000	VG	3y 4m NPP 1y 8m	Crown AA 6y NPP 3y 6m	Nil	Computer consultant agreed to join tax scheme proposed by accounting firm – scheme continued over three years and involved claims for false expenses and failure to disclose all income – started innocently but came to understand illegality – immediately co-operated with police
18.	Sabra (25) [2015] NSWCCA 38	2 x s.134.2 3 x Att s.134.2	\$84,000	PG (not stated)	2y 10m conditional release after 2y on recognizance. Reparation \$84k.	AD	Robbery in company – stealing – receiving - obtaining money by deception - dealing with proceeds of crime	Lodged 285 false claims for payment under Federal Government home insulation program - falsely claimed he had installed insulation – received payment - made a further 215 claims for which no payment made - degree of planning – motivated by greed – absence of remorse. Delay – hopeful rehabilitation
19.	Chen [2015] NSWCCA 122	23 x s.134.2 4 x Att s.134.2	\$1,396,285	VG	10y NPP 6y	AD		2004-2007 - 27 fraudulent Business Activity Statements lodged with ATO for two companies controlled by offender - each BAS falsely claimed GST refund - significant planning – greed
20.	Zaky (52) [2015] NSWCCA 161	s.29D (Cth) <i>Crimes Act [10y]</i> s.134.2	\$27,374.78	VG	20m Released to recog after 10m	AD	Nil	Female – claimed rental assistance over 11 years – sustained deceit involving numerous false statements Serious medical condition
21.	Pratten [2016] NSWSC 539 Rothman J [2017] NSWCCA 42 [2021] NSWCCA 251	7 x s.134.2	\$2m	VG	5y NPP 2y	Crown AA 6y 4m NPP 3y 9m Conviction AD	Nil	2003-2009 –director of insurance company – moved company to Vanuatu – deliberate scheme of understating income by \$5 million dollars to avoid tax liability – above mid-range On appeal also sentenced for breaching proceeds of crime restraining order Carer for two daughters – tax penalties constitute extra-curial punishment - delay

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22.	Zaky (48) [2017] NSWCCA 141	s.29D (Cth) <i>Crimes Act [10y]</i> 5 x s.134.2	\$56,599	PG (15%)	5y release on recog after 2y 6m		Falsify passport, Dishonesty	Over 8 year period received financial benefits from Centrelink – claimed to be unemployed while working for multiple employers under alias - serious deception in social security case Repayment of money - motivated by greed.
23.	Dagher (47) [2017] NSWCCA 258	s.134.2	\$66,447.53	PG	2y released on recog after 1y	AA Same effective sentence	Nil	Female - over two and a half years obtained welfare payments from Centrelink in respect of two children whom she knew were not unwell - paid fee of \$8,000 to two co-offenders to obtain assistance to fill out forms and obtain supporting documentation. Undertaking to co-operate with law enforcement authorities. Error made by sentencing judge corrected on appeal
24.	Conklin [2017] NSWCCA 275	s.29D (Cth) <i>Crimes Act [10y]</i> s.134.2	\$701,057	PG (25%)	5y NPP 2y 2m	AD		1999, 2000-2001 - fraudulent tax avoidance – offender's role was to introduce new "investors" - received commission through complex overseas structure comprised of several companies, a trust, and two debit cards taken out in false names – failed to declare commission income for taxation purposes, despite receiving income over three financial years.
25.	Noble (49 at sentence) [2018] NSWCCA 253	s.134.2 Att s.134.2	\$394,500 \$563,550	PG	4y 6m 4y 6m Total: 5y NPP 2y 6m	AD	Nil	Female – lodged 140 false business activity statements over 5 years – had been expressly warned against fraudulent lodgings

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26.	Totaan (30 at sentence) [2022] NSWCCA 75	s.134.2 s.134.2 Sched: s.135.1(5)	\$27,070.50 \$80,405.81 \$5,523.65	PG (25%)	2y 3y 6m <u>Total:</u> 4y NPP 2y	AA 1y 6m 2y 6m <u>Total:</u> 3y released to recog after 1y 1m for 1y 11m (immediate release)	Nil	Female – under-reported income over six years – systemic and persistent deceit but unsophisticated and no use of deceitful means such as false documents – motivated by financial hardship not greed – suffered physical, emotional and financial abuse at hands of partner Mother of two young children – hardship on parents unable to properly care for children – remorse and contrition – good prospects of rehabilitation – unlikely to re-offend – good character On appeal: 5 judge bench overturned exceptional circumstances test for hardship on family – SJ erred in finding deterrence meant personal mitigating factors should be given less weight – hardship of incarceration due to pandemic
27.	Rasel (29 at offences; 35 at sentence) [2022] NSWCCA 239	3 x s.134.2 s.372.1(1) (Cth) <i>Criminal Code</i> [5y] s.137 (Cth) <i>Anti-Money Laundering (Counter Terrorism) Financing Act</i> [10y] Sched: 20 offences	\$117,824 (stopped by ATO prior to payment) \$64,541	PG (25%)	<u>Aggregate</u> 4y NPP 2y	AD	Steal property as a clerk/servant	Fraudulent taxation scheme - payroll officer accessed and recorded identification information of employees at several businesses - produced false identification documents - illegitimately obtained income tax refunds by lodging false tax returns on behalf of others' stolen identities - systematic, sophisticated offences - extensive planning, premeditation - committed out of greed, although informed by perception of need or wish to provide for family. Good prospects rehabilitation – remorse – university educated - employed. CCA: Sentencing judge failed to take into account hardship to family (<i>Totaan</i> [2022] NSWCCA 75) but no lesser sentence warranted

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