

Aggravated Dangerous Driving Causing Death

s.52A(2) (NSW) Crimes Act

s.52A (1) ... vehicle driven by offender is involved in impact occasioning death of another person and driver was, at time of impact, driving vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons, or
- (c) in a manner dangerous to another person or persons.

(2) commits offence of dangerous driving occasioning death in circumstances of aggravation.

(7) Circumstances of aggravation:

- (a) the prescribed concentration of alcohol was present in the accused's breath or blood, or
- (b) the accused was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 kilometres per hour, the speed limit (if any) applicable to that length of road, or
- (c) the accused was driving the vehicle to escape pursuit by a police officer, or
- (d) the accused's ability to drive was very substantially impaired by the fact that the accused was under the influence of a drug (other than intoxicating liquor) or a combination of drugs (whether or not intoxicating liquor was part of that combination).

Maximum penalty: 14 years

Commenced: 23.12.1994

CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Williams (17) NSWCCA 17.12.1996	s.52A(2) (intoxication)	PG	MT 2y 3m AT 2y 9m (detention)	AD	Mal damage, PCA	At party drove car with three people on bonnet - struck steel pole killing deceased.
Slattery (24) (1996) 90 A Crim R 519	2 x s.52A(2) (alcohol and speed)	PG	3y PD	Crown AA MT 12m AT 2y	Good character - Low range PCA no conviction recorded.	Lost control at high speed trying to avoid collision - -killed 2 close friends travelling as passengers.

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CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Ingram NSWCCA 26.8.1997	s.52A(2) (intoxication)	VG	MT 3y 6m AT 2y 6m	AD	Numerous driving offences including drink driving.	Struck deceased standing on side of road being sick. Family suffered harassment as result of offence.
Kalanj (30) NSWCCA 18.12.1997	s.52A(2) (intoxication) Sched: drive unreg & uninsured		MT 18m AT 18m	Crown AA MT 2y 6m AT 2y 6m	Serving CSO for assault - Dishonesty, property, violence and PCA	Travelling in country, drove onto wrong side of road and collided with car and caravan - Deliberately decided to travel long distance under the influence of alcohol - Reading not less than 0.16. Significant alcohol problem - Some attempts at rehabilitation.
Black (21) NSWCCA 23.7.1998	s.52A(2) s.52A(4) Sched: drive unlic, unreg & uninsured	PG	MT 2y 3m AT 2y 3m FT 2y 3m (concurr)	Crown AA MT 3y AT 2y FT 3y (concurr)	Nil	Travelling along Parramatta Rd at 110 km in 60 zone at 5.55am - drove through red light narrowly missing pedestrian - swerving through traffic ran another red light, colliding with victim's car - driver killed instantly, passenger severely injured - alcohol reading: 0.120 - 0.135.
Byrne (31) (1998) 104 A Crim R 456	s.52A(2) (intoxication) s.52A(4) Sched: unlicensed driver	PG	MT 12m AT 4m (home detention) 3y GBB	Crown AA MT 11m AT 2y	Stealing, possess cannabis and unlicensed driver	Female - Driving her two young children, unrestrained - drifted left and collided with parked car - travelled along nature strip and collided with fence - daughter died, son injured - alcohol reading: 0.155 to 0.228 (probably 0.205) - drinking with brother who was concerned about her ability to drive. Difficult background resulting in alcohol problem - serious injuries from accident.
Winter (24) NSWCCA 9.10.1998	52A(2) (intoxication)	PG	MT 3y 3m AT 2y 3m	AD High but not outside discretion.		When left house aware he would drink and drive - drove on after hitting Victim - serious aggravating factor - alcohol 0.157.

Cases post-R v Jurisic 12.10.98 (Guideline Judgment)

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McDonald NSWCCA 12.10.1998	s.52A(2) (PCA) s.52A(4)	PG	MT 2y AT 3y (concurrent sentence)	Crown AA MT 3y AT 3y (concurrent sentence)	very poor traffic record incl PCA	Drinking for previous 12 hours - alcohol reading 0.195 - prior to accident was seen speeding, changing lanes without indicating and running lights.
McKinney (49) [1999] NSWCCA 51	s.52A(2) (PCA)	PG	3y PD	Crown AA MT 1y 6m AT 1y 6m		High range alcohol (between 0.166 - 0.282) - lost control of truck hitting pole and tree - wife killed - embers of public put at risk Considerable remorse.
Sen (29) [1999] NSWCCA 199	2 x s.52A(2) (PCA)	PG	MT 6y 9m AT 2y 3m	AA MT 5y 3m AT 1y 9m	speeding	Considerably influenced by alcohol (0.219) - drove through red traffic light killing two persons.
Reeves [1999] NSWCCA 269	s.52A(2) (intoxication) 2 x s.52A(4)	PG	MT 2y 6m AT 2y 6m (concurrent sentences)	AD	nil	Female - Under influence of alcohol (0.160) hit two pedestrians, killing 17y girl and seriously injuring another. Passenger also injured. Taking medication for bipolar disorder and was aware medication should not be mixed with alcohol.
Simpson (43) [1999] NSWCCA 367	s.52A(2) (PCA)	PG	MT 3y 6m AT 1y 6m	Crown AD	Nil. "Fine driving record" over 20 years driving experience.	Intoxicated (0.254) truck driver overtook bus slightly over speed limit - crossed to wrong side of road colliding with van and killing driver.
Jaworowski (43) (1999) 108 A Crim R 489 [1999] NSWCCA 430	s.52A(2) (PCA)	PG	MT 6y AT 2y	AA MT 5y AT 3y	Previous convictions for drink driving - lost licence two weeks prior to offence for PCA offence.	Driving intoxicated ran over motorcyclist in daylight. Alcoholic - evidence of rehabilitation since offence - genuine contrition.
Hanlon (25) [2000] NSWCCA 55	s.52A(2) (PCA)	PG	MT 3y 9m AT 1y 3m	AA MT 3y AT 2y	not significant	Intoxicated lost control of vehicle on bend and collided with oncoming car - killed brother. Significant remorse.
Hawkins (29) [2000] NSWCCA 380	s.52A(2) (PCA)	PG	MT 4y AT 1y	AD	Prior convictions for mid-range PCAs.	Driving utility while intoxicated (0.216) and speeding (100kph in 60kph zone) - collided with car killing passenger. Significant alcohol problem.
Woodward (24) [2001] NSWCCA 90	s.52A(2) (intoxication)	VG	MT 5y AT 3y	AD	no significant criminal record - very poor driving record	While driving left road and collided with power pole killing passenger - intoxicated - 0.2016 - knew over the limit - in category of most serious offences of this kind. Prior good character - remorse - post traumatic stress disorder

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CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Tadman (21) [2001] NSWCCA 225	s.52A(2) (intoxication) Sched: Self admin heroin Fail to stop	PG (25%)	MT 4y AT 3y	AA 5y 3m NPP 2y 8m	no priors	Drove while under influence of heroin - Long period of erratic driving - Collided with car forcing it into on-coming traffic - left scene. Genuine remorse - high prospects for rehabilitation - excellent character references - heroin addiction
Cousins (37) [2002] NSWCCA 81	s.52A(2) (police pursuit) s.52A(4)	PG (20% on appeal)	7y NPP 4y (concurrent sentence)	Crown AA 8y NPP 6y	appalling record - driving offences - disqualified driver	Police chase in stolen car through suburban streets - Middle of day - Roads moderately affected by traffic - High speed - Collision at intersection after running red light - Killed and injured passengers - Gravity of offence extremely high Prospects for rehabilitation poor
Rayner (37) [2002] NSWCCA 309	s.52A(2) s.52A(4)	PG	6y NPP 4y (concurrent sentence)	AD	On bond for dangerous driving	Struck median strip and veered on to wrong side of road – Collided with motor cyclist – Passenger killed – Cyclist injured – Intoxicated Police officer for 18 years until recently dismissed
Skrill (22) [2002] NSWCCA 484	s.52A(2) (intoxication) s.52A(4)	PG	5y NPP 2y (concurrent sentence)	Crown AA 6y NPP 2y 6m <i>Total:</i> 6y 6m NPP 3y	nil	Driving friends after a party while intoxicated - Speeding - Lost control of car and overturned around bend - Killed girlfriend and injured another passenger - Alcohol level 0.182-0.238g Significant psychological consequences of accident
Elrifai (26) [2002] NSWCCA 496	s.52A(2) (police pursuit)	PG (30%)	4y NPP 2y	AD		Police tried to pull appellant over after suspecting appellant may be under influence of alcohol - Appellant continued to drive at high speed (111kmh) - Drove through red light - Vehicle airborne before colliding into tree - Passenger (best friend) killed. Ongoing injuries - extreme remorse - isolated social background (Lebanese)
Vukic (28) [2003] NSWCCA 13	s.52A(2) (intoxication)	PG (20-25%)	8y NPP 5y	AA 7y NPP 4y	poor traffic record	Intoxicated (0.172) - Speeding - Crossed double lines - Collided head on History of drug and alcohol abuse - Seriously injured resulting in permanent injuries - Traumatized by accident - Suffering major depression and PTSD
Ryan (23) (2003) 141 A Crim R 403 [2003] NSWCCA 202	s.52A(2) (speed) Sched: Fail to stop	PG (25%)	7y 6m NPP 5y	AA 6y NPP 4y	Lengthy criminal (driving) and traffic record	Speeding (approx 135kph in 75kph zone) - Collided with stationary vehicle forcing vehicle into intersection and collision – driver killed – left scene of accident – no element of intoxication Failure to take into account prior good character.

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Zelukin [2003] NSWCCA 262	s.52A(2) (alcohol)	PG	5y NPP 3y	AD		Driving utility – Crossed to wrong side of road across dirt median strip – Collided with on-coming traffic Under influence of alcohol and cannabis
Howcher (2004) 146 A Crim R 371 [2004] NSWCCA 179	s.52A(2) (speed)	PG (10%)	3y 6m NPP 2y	AD	Poor driving record – breached bond – unlicensed	While demonstrating new car lost control and collided with tree, killing passenger – Car modified – 115-126kph in 60 zone Absconded to Lebanon for several years – Voluntary return - Rehabilitation
Sutton (44) [2004] NSWCCA 225	s.52A(2) (intoxication)	PG (25% on appeal)	6y 6m NPP 4y 6m	AA 6y 6m NPP 4y	Old record for drink driving	Swerved to wrong side of road and killed female cyclist – Blood alcohol reading 0.268 – Failed to stop – Unlicensed Some evidence of rehabilitation
Berg (45) [2004] NSWCCA 300	s.52A(2) (intoxication)	PG (toward top of the range)	5y NPP 3y	AA 4y NPP 2y 3m	Record mostly dishonesty – prior traffic record in other states including drink driving	Lost control of car which left road and crashed into embankment killing girlfriend – Intoxicated Evidence of recent good character including involvement in charity work and citizenship awards – Deeply affected by death
Pevy (22) [2004] NSWCCA 414	s.52A(2) (police pursuit)	PG	5y NPP 3y 9m	AA 5y NPP 3y 3m	Suspended sentence for demand money with menaces	Accelerated from police seeking to administer random breath test – drove 100-110 kph in 60kph zone for 5 minutes – collided with car killing driver – intoxicated Remorse – assaulted in custody – excellent prospects of rehabilitation – failure to find special circumstances
Smith (30) [2005] NSWCCA 19	s.52A(2) (intoxication)	PG	7y NPP 4y	AA 6y NPP 3y	Old record for drink driving	Drove home from pub with girlfriend – approx 115kp/h in 100 zone – crashed into field and car rolled over, killing girlfriend – sustained minor injuries and told police had been alone in car – alcohol and cannabis – unlicensed Rehabilitation while in custody – low risk of reoffending – sole care of child.
Veatufunga (36) [2007] NSWCCA 54	s.52A(2) (intoxication) 4 x s.52A(4) Fail to stop	PG (25%)	3y NPP 18m (concurrent sentences)	Crown AA <u>52A(2)</u> 42m NPP 21m <u>Total:</u> 4y 9m NPP 3y	Nil – minor traffic offences	Collided with on-coming car on wrong side of road – blood alcohol reading of 0.187 – moral culpability high Remorse

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CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Thompson (31) [2007] NSWCCA 299	2 x s.52A(2) (speed)	PG (at trial)	10y 6m NPP 7y 6m	AD	Nil – speeding fines	Driver of car struck tree killing two passengers – speeding (120kph in 60kph zone) – intoxicated – failed to stop at stop sign – car became airborne – two passengers in one seat with restraint – left scene without reporting accident- upper end of range of seriousness Remorse
Lawrence [2007] NSWCCA 349	s.52A(2) (PCA) High range PCA	PG	6y NPP 4y 18m (concurrent)	AA 5y NPP 3y	Nil	Consumed 6-10 schooners in afternoon – Drove on freeway for about 2 hours – collided with victim causing victim's car to overturn. Strong subjective circumstances – exemplary record – extraordinary impact of victim's death upon applicant.
Page (37) [2008] NSWCCA 26	s.52A(2) (police pursuit) Sched: Drive conveyance	PG	5y 4m NPP 4y	AD	Lengthy record – including traffic and driving offences – breached parole for BES	Involved in police chase in stolen car – driving at 65kph through 50 zone – collided with vehicle reversing from driveway – no contributory negligence – under influence of heroin
Whybrow (20) [2008] NSWCCA 270	2 x s.52A(2) (PCA) s.52A(4) Drive with high range PCA	PG (15%)	9y NPP 5y 4m	AA 7y NPP 4y 2m	Nil – minor traffic infringements	Drove intoxicated – crossed to wrong side of road and collided with on-coming vehicle – husband and wife killed – 18y daughter seriously injured – mid-range culpability Married with children – remorse – good prospects of rehabilitation – suffered serious injuries from accident
Hei Hei [2009] NSWCCA 87	s.52A(2) (PCA)	PG (30%)	5y NPP 3y	AD	Lengthy history of driving offences	Drove after evening drinking with stepdaughter and stepdaughter's boyfriend as passengers – crossed road impacting with brick wall – step daughter died
SBF (17) (2009) 198 A Crim R 219 [2009] NSWCCA 231	2 x s.52A(2) (speed) Sched: s.52A(4)	PG (10%)	7y 10m 4y 3m	AD	Nil	Whilst intoxicated, drove vehicle containing 3 friends and collided with telegraph pole – two passengers died – one passenger seriously injured – travelling over 65km/ph over speed limit.

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Bombardieri (20) (2010) 203 A Crim R 89 [2010] NSWCCA 161	s.52A(2) (police pursuit)	PG (16.66%)	10y NPP 6y 6m	AA 9y NPP 5y 9m		Police pursuit over 190km after found speeding and driving dangerously along country highway – police called off chase on several occasions due to dangerous nature – ignored calls by police officer to turn off engine – caused minor collision – crossed unbroken lines causing oncoming vehicle to leave road, lose control and collide with semi-trailer – unlicensed driver Remorse – attempted suicide – psychological disorder – good prospects of rehabilitation – protective custody due to assaults in gaol
Smith (32) [2011] NSWCCA 290	s.52A(2)	PG	8y NPP 6y	AA 7y NPP 5y 3m	PCA, driving, mal inflict GBH	Intoxicated – speeding – drove through red light and collided with kerb causing car to overturn – passenger victim (girlfriend) was killed. Manifestly excessive.
Millwood (26) [2012] NSWCCA 2	s.52A(2) (under influence drugs and alcohol) s.52A(4)	PG (15-20%)	4y NPP 3y Total: 5y NPP 3y 9m	Crown AD	Multiple offences – blood alcohol driving offence	Under influence of alcohol and drugs picked up two hitchhikers – accelerated rapidly in residential area showing off – driving turbo charged car in breach of provisional licence – moved to wrong side of road around bend – swerved to miss on-coming car and collided with tree killing and injuring passengers Severely dysfunctional childhood – Physically injured in collision – remorse
Gommesen [2012] NSWCCA 226	s.52A(2) (PCA)	PG (25%)	4y NPP 2y 6m	AD	Prior conviction for drink driving	Struck power pole and passenger killed – half-brother – intoxicated – drinking at party
Williams [2012] NSWCCA 286	s.52A(2) (PCA) s.52A(4) Fail to appear	VG	8y NPP 4y	AD	Lengthy	Struck power pole - 1 st passenger killed and 2 nd passenger badly injured – high alcohol reading and erratic driving – evidence that deceased had grabbed the steering wheel – however, collision caused by offender's driving. Aboriginal female – difficult background.
Wright (43) [2013] NSWCCA 82	s.52A(2) (speed / PCA) s 52A(4)	PG (25%)	9y 6m NPP 5y 9m	AD	Driving offences	Drove vehicle at an extreme speed (45kph above speed limit) along major highway for 38½ kilometres - substantially impaired by alcohol – driving witnessed by several motorists - 16y male passenger killed – 14y female passenger injured - disgracefully irresponsible conduct - close to worst type of offence - moral culpability high. Mental illness.
Elkassir (20) [2013] NSWCCA 181	s.52A(2) (speed)	PG (20%)	3y NPP 12m	Crown AD	Traffic offences	Drove at extreme speed trying to race another vehicle – exceeded speed limit by more than 45 kph – killed close friend/passenger Good character – hard-working – supportive family – remorse - mental condition deteriorated since sentence

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Smith (22) [2016] NSWCCA 75	2 x s.52A(3) Sched: Fail to stop	PG (25%)	Agg 7y NPP 4y	Crown AD	Nil criminal or traffic offences	Green Plate driver – driving home after Christmas Party – intoxicated – fell asleep at wheel – mounted kerb and killed two pedestrians – ran away from accident in fear and shock Difficult childhood – alcohol abuse – excellent prospects of rehabilitation – genuine remorse
Lehn (24) [2016] NSWCCA 255	s.52A(2) s154F SMV Sched: Fail to stop, Possess proh drug x 2	PG (25% on appeal)	10y NPP 7y FT 2y Agg: 11y NPP 8y	AA 8y 3m NPP 5y 1y 9m Agg 8y 9m NPP 5y 6m	Armed robbery, steal dwelling house, possess drugs, assault	Stole vehicle - drove to collect acquaintance and purchase cannabis – negotiating bend at speed in excess of 20km/h over speed limit lost control of vehicle - collided with pedestrian on nature strip – Ran away without assisting V who later died of injuries - upper range objective seriousness – high moral culpability - driving manual car of which he had no knowledge or experience of driving - under influence of drugs - subject to sleep deprivation and driving at grossly excessive speed. Dysfunctional upbringing – drug abuse
Shashati (35) [2018] NSWCCA 167	s.52A(2)	VG	4y 6m NPP 2y 3m	Crown AA 6y NPP 3y 3m	GIC – lengthy traffic record	Driving teenage son and three cousins to quad-biking – sought to bypass slow traffic along shoulder of road and grass verge at 80kph – hit drainage ditch – passenger killed – under influence of ice – accident preceded by angry and aggressive behaviour and similar driving – high range Remorse
Conte (20) [2018] NSWCCA 209	s.52A(2) s.52A(4) Fail to stop	VG	11y 6m 6y 4y Agg: 14y NPP 10y 6m	AA 9y 6y 4y Agg: 12y NPP 8y	Lengthy – includes driving through red light – breached bail for serious offence – misconduct in custody	Male driving stolen 4WD and under influence of ice and heroin drove through red light and collided with car – driver injured and passenger killed – period of dangerous driving leading up to collision – no lights – did not slow down – left scene of accident – unlicensed – driving in 'highly dangerous and reckless fashion' – driving causing death at upper end of seriousness – other offences slightly above and below mid-range Child of drug addicts with difficult childhood
Meakin (45) [2019] NSWSC 1555 (Hidden AJ)	s.52A(2)	PG (12.5%)	7y NPP 4y		3 x Drive PCA, drive whilst disqualified	Driving with high range blood alcohol concentration – pedestrian stumbled or stepped into path of vehicle - accused failed to take evasive action – failed to stop or render assistance – continued to drive over considerable distance of 20km – tried to conceal vehicle. Pattern of alcohol use.

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<i>Norouzi</i> [2020] NSWCCA 237	s.52A(2)	PG (20%)	6y 4m NPP 4y 6m	AD	Driving speeding offences, knowingly drive in a manner that menaces another, stalking, possess drug.	Struck victim at pedestrian crossing – excessive speed 45km per hour above speed limit in relatively busy area with pedestrians - blood alcohol concentration above legal limit; prohibited drug in system - driving at excessive speeds not an isolated occurrence - driving at high speeds at time of offence. Special circumstances: likelihood of depression and anxiety causing additional degree of hardship in serving custodial sentence.

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