

Manslaughter Failure to Provide

Maximum Penalty: 25 years (s.25 (NSW) Crimes Act)

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
1.	Armstrong NSWSC B-Parker J 25.8.1995	Criminal negligence Victim under 18y Failure to provide	VG	4y GBB		Nil	Mother failed to seek medical attention for four hours after child placed in scalding water by de facto - de facto convicted of murder
2.	Wilkinson (19) NSWSC Wood CJ at CL 9.4.1998 [1999] NSWCCA 248	Criminal negligence Victim under 18y Failure to provide	VG	MT 3y 6m AT 3y	AD	nil	Mother failed to protect wellbeing of 6m son - ignored bruises for which de facto offered innocent explanations - ignored breathing difficulty - talked out of taking child to doctor by de facto over 2 days - suspected de facto mistreating child - inattentive and disinterested mother Mother of older daughter born when offender 16y and younger child
3.	Hall (1999) 108 A Crim R 209 [1999] NSWSC 738 Bell J	Criminal negligence Failure to provide	PG	5y GBB		minor	Victim staying with offender and co-offender H in caravan – assaulted by second co-offender S - offender failed to obtain help - all offenders intellectually impaired Female with good character S dealt with for mal inflict GBH H dealt with for acc after fact to infliction of GBH
4.	Eriksson (23) [2001] NSWSC 781 Ireland AJ Co-offender: HILL	Criminal negligence Victim under 18y Failure to provide	PG (50% plea and assist)	3y NPP 18m		insignificant	Female - 2y son thrown into lounge by de facto – failed to obtain medical assistance despite deteriorating health of child - number of serious injuries inflicted on child by de facto over 10-14 days prior to death Difficult childhood - remorse - volatile and chaotic relationship with father of children then with co-offender - willing to give evidence against co-offender - will become blind within ten years - strict protection

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
5.	Hill (23) [2001] NSWSC 978 Ireland AJ [2003] NSWCCA 16 Co-offender: ERIKSSON	Criminal negligence Victim under 18y Failure to provide	PG (11%)	8y NPP 6y	AA 6y NPP 4y 6m	prior convictions	Physically abused 2y son of de facto over several weeks prior to death - refused to obtain medical treatment On appeal found SJ could not have been satisfied offender inflicted final injury on victim nor prevented mother from obtaining medical assistance
6.	McDonald (2001) 124 A Crim R 17 [2001] NSWCCA 301	Criminal negligence Failure to provide Victim under 18y	PG	7y NPP 5y	AD		Offender and husband caring for young developmentally retarded boy and male teenager - probably foster carers - aware teenage boy was violently assaulting younger boy over some 10 days - did not prevent horrific assaults and failed to get medical assistance for final fatal assault Mild intellectual disability
7.	O'Brien [2003] NSWCCA 121	Criminal negligence Victim under 18y Failure to provide	VG	5y NPP 2y	AD	Nil	1y daughter died of malnutrition – refused to take daughter to hospital when requested by doctor – claimed husband refused hospital treatment and she was threatened and dominated by him – suffering BWS Assistance against husband – protective custody
8.	George (58) (2004) 149 A Crim R 38 [2004] NSWCCA 247	Criminal negligence Failure to provide	VG	7y NPP 4y	AA 3y 6m NPP 2y	Nil	Failure to provide proper nutrition, hydration and medical care to 86y mother – found with bed sores, dirty, severely malnourished, dehydration, semi-conscious – mother domineering and refused care and treatment while competent – offender culpable only for period of incapacity Probably suffering mild Asperger's Disorder – characterised by social isolation and difficulties in relating to people – failure to properly take into account

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
9.	HA (29) [2008] NSWSC 1368 Rothman J	Criminal negligence Victim under 18y Failure to provide	PG (35% plea and assist)	2y suspended sentence		Nil	Failed to obtain medical care for 4y son – son suffering numerous medical conditions resulting in severe malnutrition – died from pneumonia and kidney infection – need for medical care would have been obvious to parents – medical care declined due to genuine religious beliefs of HA and husband – husband older and dominating figure (although not abusive) – breach of trust - child otherwise well cared for – low level of culpability Mother to ten surviving children – husband died since arrest – subsequent support of family and providing good care for remaining children – remorse – borderline intelligence
10.	T Sam M Sam [2009] NSWSC 1003 Johnson J (2011) 206 A Crim R 67 [2011] NSWCCA 36	Criminal negligence Victim under 18y Failure to provide	VG VG	8y NPP 6y 5y 4m NPP 4y	AD	Nil Nil	Parents of 9m daughter failed to obtain appropriate medical treatment for eczema over many months – father a trained homeopath – each offender well educated - upon examination at hospital found to be in severe pain, malnourished, dehydrated, severe skin condition and ulcerated eyes – died from infection – serious case of negligence - seriousness of medical condition clear – failure constituted cruelty Subsequently have 3y son – successfully treated for eczema – delay in charging – effect of imprisonment on son exceptional circumstances – limited insight into offences T Sam – narcissistic personality traits – rigid reliance upon homeopathic remedies M Sam - compliant woman
11.	BW (No 3) (46) [2009] NSWSC 1043 Hulme J [2011] NSWCCA 176	Criminal negligence Victim under 18y Failure to provide	VG	16y NPP 12y	AD	Nil	Father of 7y daughter who died from starvation and neglect – victim suffered developmental delay and autism – left in bedroom in unhygienic conditions - ignored daughter - worst case Mother convicted of murder - [2009] NSWSC 1043 / [2013] NSWCCA 103 Unlikely to reoffend – rehabilitation.

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
12.	PFC (24) [2010] NSWSC 834 RA Hulme J (PTC) [2011] NSWCCA 51 Co-offender: NLH	Criminal negligence Victim under 18y Failure to provide	PG (5%) Sched: 2 x possess cannabis leaf	5y 2m NPP 3y	AD	Nil	Failed to obtain medical assistance for 7w baby knowing partner and mother of victim had harmed victim – NLH threw victim into bassinet then pushed bassinet which fell onto ground – victim stopped breathing later in evening - earlier injuries also found on victim's body Young couple struggling financially – NLH difficulty in coping with raising two small children - good character – supportive family – good rehabilitation prospects – remorse
13.	Nair (43) [2013] NSWCCA 79	Criminal negligence Failure to provide	PG Mansl Supply Supply Sched: 2 x supply	4y 6m NPP 2y FT 2y 3m 3y 9m NPP 2y 9m 23d <u>Total:</u> 7y 9m NPP 5y 3m 22d	AA 4y 6m NPP 2y FT 6m 3y 9m NPP 2y 9m 23d <u>Total:</u> 7y NPP 4y 6m 23d	Poor driving record	Engaged escorts and supplied them with cocaine – one escort died after voluntarily consuming cocaine – 9m later engaged two escorts providing them with cocaine – offender and escorts intoxicated - one escort became unwell with convulsions – failure to call ambulance and inappropriate medical treatment – body left in unit – while on bail for manslaughter engaged two escorts and supplied cocaine – all cocaine supplied originally by escort agencies as part of 'party package' Neurosurgeon – seriously assaulted in gaol resulting in permanent impairment to vision
14.	Smith (31) [2013] NSWSC 796 Latham J [2014] NSWCCA 316	Criminal negligence Victim under 18y Failure to provide	PG (25%) Mansl Access after fact to murder	FT 7y 12y NPP 9y <u>Total:</u> 16y NPP 12y	AD	Relatively minor	Failed to obtain medical treatment for 6y daughter of de facto – victim assaulted by mother – after unsuccessful attempts to revive child offender put her to bed and went to work next day – child died during day – body placed in suitcase for several days then placed in shallow grave in bush and burned – gave false accounts of disappearance and laid false trails for over nine months – aware victim subjected to long term physical abuse at hands of mother – acted out of loyalty to de facto – manslaughter top of range – accessory worst case Co-offender sentenced for murder: Abrahams

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
15.	A (No 5) (34) [2015] NSWSC 670 Bellew J	Criminal negligence Victim under 18y Failure to provide	VG	4y 6m NPP 2y 6m		Nil	Female – failure to obtain medical treatment for 2y son over one month - victim suffered physical injuries and displayed symptoms of being unwell – no evidence offender present when injuries inflicted - period of offending followed offender’s hospitalisation for episode of self-harm - otherwise appropriately attentive to child’s needs - offending behaviour was aberrant – no deliberate decision not to obtain medical assistance - not total abandonment of responsibility - substantially below mid-range Difficult background – mental illness / health – unlikely to re-offend
16.	KJ (27) [2015] NSWSC 767 Harrison J	Criminal negligence Victim under 18y Failure to provide	PG (40%) (see facts for additional offences)	<u>Manslaughter</u> 12y <u>Aggregate:</u> 14y NPP 10y 6m		nil	Mother to four children including 7y male victim - intellectually disabled victim subjected to constant physical and psychological abuse by offender and her partner as method of discipline – lied to police suggesting death resulted from fall off pogo stick – failed to obtain medical assistance for 24h – all offences committed in presence of siblings (children) – substantial emotional and physical harm – manslaughter most serious case of neglect – other offences vary in seriousness from low to above mid-range 4 x s.61 assault s.91G(1)(c) child abuse offence 3 x s.91H(2) child abuse offence s.35(3) reckless wounding in company s.43A(2) fail to provide necessities Sched: 2 x fail to provide adequate lodgings Childhood characterised by violence and sexual abuse – relationships characterised by violence – low intelligence – dependent personality – came under control and influence of co-offender – genuine remorse – assistance – voluntary admission to previously unknown offences

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
17.	TP (mid 30s) [2018] NSWSC 369 Hamill J	Criminal negligence Victim under 18y Failure to provide	PG (20% plea and assist)	4y NPP 18m		minor traffic	Mother failed to remove 12y daughter from danger and obtain medical treatment – aware victim brutally subjected to severe physical abuse over many years by male partner – aware of extent and seriousness of abuse – offender and second daughter also subjected to abuse – failed to obtain medical treatment after threats by partner and fear of losing children although on occasions obtained treatment for herself Suffering batter women’s syndrome – PTSD and depression – significantly reduced culpability – onerous effect of custody Male partner sentenced for murder JK [2018] NSWSC 250
18.	AS (22) [2018] NSWSC 930 Fullerton J	Criminal negligence Victim under 18y Failure to provide	PG (50% plea and assistance)	3y NPP 16m			Female - failed to remove 2y 8m daughter from abusive domestic relationship with partner and failed to obtain medical treatment – death of victim caused by assaults of male partner over two days – sustained assaults on child in week before fatal assault – offender also subjected to physical abuse and control by male partner History of sexual and physical abuse at hands of father, step mother and subsequent partners – chronic and complex mental health issues – good character
19.	Dowling (34 at offence; 41 at sentence) [2019] NSWDC 155 Lerve DCJ [2020] NSWCCA 290	Criminal negligence Failure to provide	VG	7y NPP 4y 9m	Conviction only AD	Obtain drug by false prescription, receiving, take and drive conveyance, shoplifting, damage property, assault police, intimidate police, dishonesty, minor drug matters – breached bond	Female — offender and male acquaintance had been consuming drugs (Xanax and OxyContin) - others present placed victim in offender’s car and spoke of taking victim to hospital - offender drove home, left victim in drug coma in vehicle believing he was alive and went to bed - offender’s mother discovered deceased victim next morning – offender had assumed duty of care by removing deceased from possibility of others providing help and failed to obtain medical attention Good prospects of rehabilitation - unlikely to re-offend - intellectual functioning within borderline to low ranges.

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
20.	Smith (31) [2022] NSWSC 1651 Wilson J	Criminal negligence Victim under 18y Failure to provide	VG (murder trial – 10% for offer to plead)		Lesser offences – breached conditional liberty	4y 9m NPP 3y 6m	Offender failed to fulfil legal duty to assist injured 6m child in his sole care – circumstances and perpetrator of fatal assault on 6m child not established — victim in sole care of offender – partially motivated by concern to avoid police involvement – accelerated victim’s death – affected by drugs Onerous conditions in custody – sentence reduction for efficient trial – willing to give assistance – remorse - prospects of rehabilitation
21.	Baker (34 at offence – 44 at sentence) [2023] NSWCCA 262	Criminal negligence Failure to provide	VG	5y NPP 3y	AD	Minor	Female voluntarily took responsibility for day to day care of seriously ill former partner – victim suffering cancer and several strokes – failure to provide for hygiene, food, wound care and medical assistance over several weeks – care not difficult to provide and victim had not refused hospital care – neglect occurred in presence of 9y son - victim developed cachexia (extreme weight loss) and pressure sores – after admission to hospital suffered stroke and died – cause of death linked to neglect – high seriousness Delay – small reduction in moral culpability - drug use due to assault and death of mother and reluctance to admit need for help due to involvement of FACS in care of son – unlikely to re-offend – close relationship to son – special circumstances On appeal: sentence not manifestly excessive
22.	Russell [2023] NSWCCA 272	Criminal negligence Failure to provide	VG Female genital mutilation s.33(1)(b) Manslaughter	<u>Indicative</u> 3y 6m 2y 6m NPP 1y 10m 7y <u>Aggregate</u> 10y NPP 7y 6m	<u>Indicative</u> Conviction quashed 2y 3m NPP 20m 6y 6m <u>Aggregate:</u> 7y NPP 5y 3m	nil	Extreme body modification artist performed abdominoplasty on adult female removing skin from abdominal area – required emergency corrective surgery and caused scarring – inserted silicon snowflake mould under skin of hand of second woman in unhygienic conditions and without requisite skill and expertise – wrongly advised no infection and failed to refer for medical treatment – manipulated implant despite infection and inserted second implant – victim died of sepsis – breach of trust – consent not a mitigating factor – below mid-range but not substantially Conviction for procedure performed on third female quashed on appeal No evidence of remorse or prospects of rehabilitation

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

Last Updated: Nov 2023

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.