

Manslaughter

Diminished Responsibility

s.23A(1) Where, at trial for murder, it appears person was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for the acts or omissions, the person shall not be convicted of murder.

(3) Shall be liable instead to be convicted of manslaughter

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

Repealed: 3.4.1998 (replaced with Substantial Impairment)

	Case (age if known)	Type	Basis	Plea	Sentence	Appeal	Record	Facts
1.	Low (1991) 57 A Crim R 8	Diminished responsibility Provocation Assault - domestic	Brain damage as result of hammer attack	VG	Bond	Crown AA MT 2y AT 2y		Killed fiancée with claw hammer after she attacked him - brain damage as result of attack by victim with hammer
2.	Philp NSWSC Abadee J 18.2.1991	Diminished responsibility Stabbing - domestic	Schizophrenia - did not take medication	PG	MT 7y 6m AT 2y 6m			Stabbed sister's de facto during fight - when threatened with spade handle retrieved knives from kitchen and inflicted 16 stab wounds - some degree of provocation History of mental illness
3.	Ulgun NSWCCA 5.3.1991	Diminished responsibility Shooting - domestic	Paranoid schizophrenia	PG	MT 15y AT 5y	AA MT 12y AT 4y	nil	Fired ten shots at neighbours believing them to be contract killers

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4.	Falconetti NSW SC (Mathews J) 21.6.1991 NSWCCA 24.3.1992	Diminished responsibility Stabbing - general	Paranoid schizophrenia	PG	MT 5y 6m AT 11y 6m	AD		Unprovoked attack on visitor to uncle's farm - irrational belief that visitor had been involved in aunt's death - after stabbing slashed wrists and stabbed himself in abdominal region Long history of mental illness and associated behaviour - real concern about danger to community
5.	Shephard NSWCCA 15.7.1991	Diminished responsibility Assault - domestic	Brain damage resulting from alcohol abuse	PG	MT 4y AT 16m	AD	Nil significant	Killed wife with hammer No previous violence towards wife
6.	Troja NSWCCA 16.7.1991	Diminished responsibility Shooting - domestic	Depressive illness	VG	MT 8y AT 4y	AD	nil	Shot husband who was having affair and wanted divorce – shot through glass door with rifle
7.	Fryer NSWCCA 17.3.1992	Diminished Responsibility Assault - general	Low intelligence - difficulty maintaining independent life	PG Mansl Robbery Assault Arson	MT 14y AT 10y 7y 7y 'light sentence' (all concurrent)	AD		Fatally bashed one man, and assaulted four other victims with two co offenders during 'rumbles' - planned to attract publicity
8.	Gardner NSWSC Wood J 27.3.1992	Diminished Responsibility Provocation Shooting - domestic	Extreme use of mechanisms of denial and repression developed to cope with major childhood traumas	PG	7y GBB			Shot husband under extreme stress – husband very ill with MS and physically dependent - child suffered cerebral palsy and was also utterly dependent - victim terrorised offender and kept gun beside bed – shot victim once, then buried and reported him as missing Son died in lead-up to trial - pregnant at time of sentencing - wholly exceptional case
9.	Hietikko NSWCCA 18.6.1992	Diminished Responsibility Stabbing - general	Chronic paranoid schizophrenia and chronic alcohol abuse	PG	16 y NPP 12y	Sentence translated MT 7y 7m 2d AT 2y 6m 2d		Struck foreman with hammer and stabbed him with knife brought from home

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10.	Brown NSW SC McInerney J 19.3.1993	Arson Diminished Responsibility	Brain damage from birth - aggressive slow learner - pyromania	VG	MT 8y AT 8y		Priors	Six killed in Backpackers Hostel
11.	Clements (18) NSWCCA 8.6.1993	Diminished responsibility Assault - general	Paranoid schizophrenic with mental disabilities	PG	MT 7y 6m AT 9y 6m	AD		Kicked and bashed homeless old man to death with co -offender then torched body
12.	Chayna (1993) 66 A Crim R 178	Diminished responsibility Victim under 18y Stabbing - domestic	Major depressive illness	VG		Conviction AA 3 x manslaughter substituted MT 6y AT 6y 2 x FT 6y (concurrent)		Female offender - invited sister-in-law to house and subjected her to 'frenzied attack', hiding body in backyard - later that night stabbed own daughter and left body in room for two days - stabbed second daughter two days later when she returned from camp Convicted at trial of 3 x murder
13.	Evers NSWCCA 16.6.1993	Diminished responsibility Shooting - general	Severe personality disorder - close to psychotic - tendency to transient psychosis triggered by stress or drugs - three overlapping disorders	VG 5 x Mansl	MT 18y AT 7y	AD	nil	Shot five people in units after believing victims called him 'dole bludger'. Not treatable and danger to community
14.	Keceski (33) NSWCCA 10.8.1993	Diminished responsibility Assault - domestic	Depressive illness	VG	MT 10y AT 3y 4m	AD Special leave to HC refused	no significant	Broke into house and bashed ex-girlfriend to death with glass decanter

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15.	Haynes NSW SC Studdert J 25.3.1994	Diminished responsibility Victim under 18y Assault – domestic Strangulation	Obsessive personality and depressive disorder - news from children triggered catastrophic depression	PG 2 x mansl	MT 6y AT 6y		driving offence	Strangled and suffocated daughter and step- daughter during access after argument with estranged wife - children told him they could not see him again and had been subjected to sexual abuse
16.	Gombar (70) NSW SC Wood J 16.6.1994	Diminished responsibility Shooting - general	Paranoid psychosis or paranoid personality disorder resulting in grossly abnormal ideas	PG Mansl Mal wound	MT 6y AT 5y		nil	Shot 2 friends celebrating his birthday - set fire to unit and shot self - concerned victims had stolen from him and intended to kill him
17.	Forsyth (20) NSWSC Finlay J 26.7.1994	Diminished responsibility Assault – domestic	Brain damage from of assault - loss of self-control	PG	MT 4y AT 4y			Bashed / strangled girlfriend's mother
18.	Barnett (1994) 71 A Crim R 515	Diminished responsibility Shooting – domestic Victim under 18y	Brain damage from car accident - loss of self-control			Conviction AA Manslaughter substituted: MT 8y AT 2y		Minding two step children while working as security guard - children arguing and shot step son at point blank range Convicted of murder at trial
19.	Josifovski NSWSC Smart J 25.1.1995	Diminished responsibility Stabbing - domestic	Paranoid delusional disorder	PG	MT 6y 9m AT 6y 6m			Stabbed wife 51 times after she refused to have sex with him - considered killing himself but taken to police by relatives History of mental illness and paranoia – history of violent acts towards victim and threats on her life - Yugoslav migrant

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20.	Barton NSWCCA 28.7.1995	Diminished responsibility Stabbing - domestic	Intellectual and personality deficits meant inability to respond appropriately to attack	PG Sched: Mal Wound Ass	MT 8y AT 8y	AA MT 5y AT 5y		During visit was attacked by elderly and mentally retarded neighbour with knife - responded by stabbing neighbour 24 times
21.	Blackledge (66) NSWCCA 12.12.1995	Diminished responsibility Shooting - general	Degenerative brain disease - paranoid delusions	PG	MT 2y AT 3y	Crown AA MT 4y AT 4y	nil	Wrongly believed neighbour having affair with wife – shot without provocation
22.	Hunt NSWSC Hidden J 2.4.1996	Diminished responsibility Victim under 18y Poison / drug	Borderline personality disorder - symptoms of Munchausen's Syndrome by Proxy	PG	MT 3y AT 4y		nil	Mother poisoned son on four occasions over several weeks
23.	Grierson NSWCCA 28.10.1996	Diminished responsibility Victim under 18y Assault - domestic	Borderline personality disorder	PG	MT 3y AT 3y		no relevant convictions	Mother threw child across room - one-off episode
24.	Carlson NSWCCA 25.11.1996	Diminished responsibility Assault - domestic	Permanent brain damage from car accident and alcohol - reduced self-control	PG	MT 11y AT 5y	AD	long record, bond for DV	Assaulted de facto wife - substantial number of blows - violent relationship characterised by alcohol abuse - some provocative statements from victim prior to attack
25.	Cassel (26) NSWSC Bruce J 14.3.1997	Diminished Responsibility Stabbing - general	Manic depressive	PG	MT 5y AT 3y		nil	Stabbed stranger in stomach after fight over boat Tried suicide twice
26.	EJ (49) NSWCCA 1.4.1997	Diminished Responsibility Stabbing - domestic	Manic depressive - bipolar affective disorder	PG Mansl 2 x Att murder	MT 12y AT 6y	AA MT 9y AT 3y	nil	Killed wife and attacked two daughters with tomahawk In financial difficulties and concerned could not provide for family

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27.	Cooper NSWCCA 24.2.1998	Diminished Responsibility Shooting - general	Major depressive dissociative state - elements of brainwashing by co-offender's father	VG Arson	MT 12y AT 6y	AD		Offences committed at instigation of co-accused's father - burnt down house of rival and executed victim at his home – co-accused acquitted
28.	Horan (45) NSW SC Hidden J 20.3.1998	Diminished Responsibility Shooting - general	Paranoid schizophrenic	PG	MT 16y AT 6y (earliest release date 30.3.2002)		old record - irrelevant	Re-determination under s13A (1986) manslaughter, wound with intent to murder, 5 x shoot at police with intent to murder, common assault. Behaving strangely day of offence - police despatched to find offender at request of family - fired at them repeatedly until emptied rifle Some rehabilitation but psychiatric state still major concern
29.	Swindale (57) NSWCCA 22.6.1998	Diminished Responsibility Shooting - general	Organic personality disorder resulting from brain damage caused by accident and alcohol abuse	PG	MT 10y AT 10y	AA MT 9y AT 3y	alcohol related - no serious violence	After argument over generator shot victim in knee and head. Concerns raised about dangerousness
30.	Gunes [1999] NSWSC 130 Newman J	Diminished responsibility Arson	Depression - paranoid schizophrenia	PG	MT 5y AT 7y		assault - not relevant	Poured petrol over father and set him alight Longstanding family dispute - history of mental illness
31.	Korhonen (16) [1999] NSWSC 933 Hulme J (K) [2000] NSWCCA 24	Diminished responsibility Provocation Juvenile offender Stabbing - domestic	Developmental delays and profoundly disturbed - appalling childhood - gross psychiatric disturbances – ill- equipped to deal with stress	VG	4y GBB	Crown AD	insignificant	Stabbed man he had been staying with – previous week had been sodomised by victim – provocation very high Positive evidence of rehabilitation
32.	Duthie (35) [1999] NSWSC 1224 Newman J	Diminished responsibility Assault – general	Chronic schizophrenia	PG	MT 5y AT 3y		long criminal record	Strangled friend/cell mate in suicide pact - both prisoners on remand and intended to commit suicide – euthanasia Hepatitis C

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33.	Bryant (31) [2000] NSWSC 245 Dowd J	Diminished responsibility Stabbing - domestic	Delusional paranoid schizophrenic state	VG Mansl Mal inflict GBH	MT 7y AT 4y FT 2y (concurrent)		nil for violence	Stabbed ex-girlfriend and cut her throat during argument - assaulting male in face with baseball bat Long history of mental illness and drug addiction
34.	Carroll (25) [2000] NSWSC 410 Greg James J	Diminished responsibility Shooting - general	Borderline personality disorder and/or acute depression	PG Mansl Sched: Assault Possess firearm	12y NPP 7y 6m		nil relevant	Aboriginal male shot male stranger in neck and chest Suicide attempts - epileptic and drug and alcohol issues
35.	PRFN (15) [2000] NSWCCA 230	Diminished responsibility Juvenile offender Shooting - general	Post-traumatic stress disorder and major depressive disorder	VG	MT 3y AT 3y	AD		Anally raped by victim when 14y old - victim continued to make sexual overtures - devastating effect - became obsessed that victim would hurt baby nephew - killing carefully implemented - lured victim to farm and shot him - element of revenge
36.	Veen (28 at offence – 45 at re-determination) [2000] NSWSC 656 Sully J	Diminished responsibility Stabbing - general	Brain damage and alcohol abuse	VG	Life Re-determination MT 20y Life		non-fatal stabbing in 1971 and stabbing mansl in 1975 (DR).	Redetermination of life sentence (1983) stabbed homosexual male victim in flat - agreed initially to have sex but became angry and stabbed victim in rage Aboriginal - fostered at young age and subjected to sexual abuse in early teens - offence committed 9 months after release on licence for earlier manslaughter - issue of dangerousness.
37.	Bowtell (17 at offence - 29 at re-sentence) [2000] NSWSC 803 Hidden J	Diminished responsibility Assault – general Juvenile offender	Borderline personality disorder	PG	Life Re-determination 21y NPP 15y (earliest release date 23.9.2003)		on bail for AR at time of offence	Redetermination of life sentence (1988) dragged 81y female victim into nearby yard - bashed her to death, and brutally sexually assaulted body - left naked body in bin After initial struggle in jail marked improvement in behaviour - diagnosed with ADD and good rehabilitation - genuine remorse

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38.	Ko (26) [2000] NSWSC 1130 Kirby J	Diminished responsibility Provocation Stabbing - domestic	Major depression	PG	4y NPP 18m		Nil	Stabbed husband 17 times - married victim after he sexually assaulted her - unhappy and violent marriage - victim forced offender to have abortion and seeking divorce - offender isolated - attempted suicide Exemplary life prior to offence - model prisoner - genuine remorse
39.	Lever (36) [2001] NSWSC 1131 Bell J	Diminished responsibility Assault - domestic	Delusional disorder	VG (murder trial - 'credit' for offer to plea)	10y NPP 6y [8m PSC]		prior serious assaults on wife although lengthy gap until onset of illness	(1996) Bashed wife to death inflicting 200 blows - used body, strap and baton to inflict blows - severe and horrific assault - intent to inflict GBH Called ambulance and found grieving and contrite - Aboriginal with excellent standing in community - much hope for rehabilitation

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