

## Fraudulent Misappropriation of Money

### s.178A (NSW) Crimes Act

s 178A having collected or received any money or valuable security upon terms requiring him or her to deliver or account for or pay to any person the whole or any part of:

(a) such money or valuable security or the proceeds thereof, or

(b) any balance of such money, valuable security, or proceeds thereof after any authorised deductions or payments have been made thereout,

fraudulently misappropriating to his or her own use or the use of any other person, or fraudulently omitting to account for or pay the whole or any part of such money, valuable security, or proceeds, or the whole or any part of such balance in violation of the terms on which he or she collected or received such money or valuable security.

**Maximum penalty:** 7 years

**Repealed:** 22.2.2010

	CASE (AGE IF KNOWN)	OFFENCE	AMOUNT	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	<b>Beckett</b> NSWCCA 29.4.1991	s.156 [10y]  3 x s.178A	\$120,574	PG	MT 2y 3m AT 9m  FT 12m  <u>Total</u> MT 3y 3m AT 9m	AD	larceny as a servant	Manager of club failed to bank \$61,755 over 20 days - money repaid Dismissed but obtained job as manager of a hotel - stole \$58,819 from employer - money not repaid, although agreement to repay \$100 per week. Compulsive gambler and had financial difficulties from divorce.
2.	<b>Sellen</b> (1991) 57 A Crim R 313	16 x s.178A  Sched: 6 x s.178A	\$1.25m	PG	MT 7y AT 1y	AA MT 5y 6m AT 2y 6m	Nil	Chartered accountant committed offences over five years - money used to finance business, family and personal expenses.
3.	<b>Smith</b> (31) NSWCCA 19.3.1992	s.178A	\$13,500	VG	MT 15m AT 15m	AD	Nil	Accountant / tax agent – victim was elderly widow – abuse of trust Financial difficulties
4.	<b>Page</b> NSWCCA 22.11.1993	12 x s.178A	\$750,000	VG	MT 3y AT 1y	AD	Nil	Doctor promised to invest client's money but spent it on racehorses.

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5.	<b>Maley</b> NSWCCA 15.12.1993	s.178A	\$360	VG	2y NPP 18m	AD	Minor dishonesty matter	Fraudulently rented unit – took money for bond and rent from struggling single mother
6.	<b>Pisani-Rossi</b> (45) NSWCCA 11.7.1994	s.178A  s.178BB [5y]  Sched: 2 similar offences	\$200,000	PG	MT 2y 3m AT 9m  FT 12m (concurrent)	AD	Nil	Accountant and financial adviser deposited money for investments in own account - falsely provided receipts as to investment No repayments
7.	<b>Sneddon</b> (50) NSWCCA 2.8.1994	14 x s.178A  Sched: Offences unstated	\$870,000	PG	2y PD	Crown AD	Nil	Accountant - offences committed Sept 82-Feb 86 - facts not clear - all money repaid Rehabilitation strong - extraordinary delay between arrest and sentence Manifestly inadequate, but in discretion sentence not increased
8.	<b>Begley</b> NSWCCA 2.9.1994	4 x s.178A  Sched: 2 x s.178BB	\$38,750	PG	MT 18m AT 6m	AA to take into account pre sentence custody	false pretences	Self-employed marine broker exchanged boats and kept excess money from transaction.
9.	<b>George</b> (54) NSWCCA 23.9.1994	9 x s.178A  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 - not motivated by greed - \$65,000 recovered - one count involved forgery, others involved false epitome of mortgage.
10.	<b>Megas</b> NSWCCA 12.10.1994	19 x s.178A  Sched: 30 x s.178A	\$2,762,796	PG	MT 6y AT 3y	AA only to adjust form of sentence	Nil	Franchisee tax agent and financial adviser used client's money to pay extraordinary dividends he had promised investors over two and a half years - \$1.6m outstanding.
11.	<b>Wong</b> (52) NSWCCA 14.11.1994	6 x s.178A  Sched: 14 offences	\$497,011	PG	MT 3y AT 1y	AA MT 2y AT 1y	Nil	Misappropriated money from employer over three years - forged signatures on cheques. \$47,142 repaid - volunteered guilt before actions discovered - gambling.
12.	<b>McCarthy</b> NSWCCA 17.3.1995	3 x s.178A  2 x s.179 [5y]	\$21,658	VG	MT 9m AT 3m  FT 9m (concurrent)	AA Bond 5y \$5,000 fine.	Nil	Manager of Dalgety appropriated money over three months - sold cattle in breach of agreement and failed to account.

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13.	<b>Baker</b> NSWCCA 4.8.1995	7 x s.178A s.178A	\$254,585 \$34,925	PG	MT 4y 9m AT 5m	AA MT 3y 9m AT 1y 5m		Accountant - 8th offence committed on bail for first offences.
14.	<b>Holmwood</b> NSWCCA 25.10.1995	5 x s.178A s.178BA [5y] s.178BB [5y] Sched: 13 offences	\$571,000 +	PG	MT 4y AT 2y  FT 3y  FT 3y  (all concurrent)	AD	Nil	Solicitor defrauded clients over four years.
15.	<b>Marvin</b> (38) NSWCCA 5.11.1995	41 x s.178A  s.300(1) [10y]  s.300(2) [10y]		PG	MT 18m AT 6m  MT 18m AT 6m  MT 18m AT 6m (all concurrent)	AA MT 12m AT 12m  MT 12m AT 12m  MT 12m AT 12m (all concurrent)	Nil	Solicitor misappropriated funds over four years.
16.	<b>Robards</b> (54) NSWCCA 23.7.1996	7 x 178A	\$6,876	PG	24m PD GBB 5y	AD		Real Estate agent stole from trust fund to support business.
17.	<b>Allen</b> (77) NSWCCA 20.11.1996	7x s.178A	\$117,276	PG	MT 1y 1m 16d AT 4m 15d	AD		Accountant – victims included longstanding female friend Severe health problems – community and war service
18.	<b>Scott</b> (51) NSWCCA 27.11.1996	6 x s.178A	\$107,000	PG	MT 1y AT 4m 5y GBB	AA (only to remove condition from bond)	Nil	Female – senior position in Credit Union – stole money over 9 years Young child – condition of bond requiring \$400 payment per month inappropriate
19.	<b>Wratten</b> NSWCCA 16.12.1996	8 x s.178A s.178BA [5y]	\$500,000+	PG	MT 4y 6m AT 18m	AA MT 3y AT 2y	nil	Insurance and investment adviser misappropriated client money over four years. Some money repaid

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20.	<b>Crowl</b> NSWCCA 10.7.1997	5 x s.178A  7 x s.178BA [5y]	\$937,584	VG	FT 12m  MT 2y AT 12m  <u>Total</u> MT 3y AT 1y	AD	Nil	Accountant misappropriated money received from clients for investment.
21.	<b>Cincotta</b> (39) NSWCCA 8.8.1997	11 x s 178A  s.178A	\$68,510  \$159,510	PG  VG	2y NPP 16m s.11 (comp - \$68,510)  4y NPP 3y  <u>Total:</u> 4y 11m NPP 3y 11m	AA (to delete compensation condition of s.11 bond – same effective gaol sentence imposed)	Nil – subsequent offence breached bail	Agent for insurance company – stole money over 3.5 years – as financial advisor stole money from elderly clients Imposition of compensation condition on bond inappropriate in view of financial circumstances and length of prison term
22.	<b>Hunt</b> (42) NSWCCA 30.9.1997	5 x s.178A	\$38,341.38	VG	MT 1y AT 21m	AD		Solicitor misappropriated funds from two elderly clients - money used for expenses - \$18,000 recovered.
23.	<b>Boland</b> NSWCCA 13.10.1998	s.178A	\$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.
24.	<b>P Child</b> (49)   <b>J Child</b> (28) <a href="#">[1999] NSWCCA 407</a>	3 x s.178A  s.178BA [5y]  3 x aiding and abetting s.178A	\$906,291	VG   VG	MT 4y AT 1y 4m  FT 2y (concurrent)  MT 2y 6m AT 10m	AD	Nil	Father and son set up company - received money from clients and used it other than in accordance with terms received. Father dominant offender Both suffering hereditary brain damage - son suffering frontal lobe damage.

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25.	<b>Smith</b> (2000) 114 A Crim R 8 <a href="#">[2000] NSWCCA 140</a>	5 x s.178A  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. Financially struggling - loving and devoted family man - co-operated with receiver - severe breach of trust - \$250,000 recovered.
26.	<b>Houlton</b> (56) <a href="#">[2000] NSWCCA 183</a>	5 x s.178A  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 three 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
27.	<b>De Souza</b> <a href="#">[2001] NSWCCA 94</a>	15 x s.178A  4 x s.300(2) [10y]  s.178BA [5y]  Sched: 66 similar offences	\$1.5m	PG	MT 4y AT 3y  FT 4y  FT 4y  (all concurrent)	AD	prior record for fraud offences	Insurance agent defrauded 23 clients over 5 year - vulnerable victims.
28.	<b>Gardiner</b> <a href="#">[2002] NSWCCA 209</a>	15 x s.178A  Give false evidence to Police Integrity Comm	\$72,5000	PG	2y 4m NPP 1y 4m  1y 3m NPP 6m	AA 2y NPP 15m  1y 3m NPP 6m  <u>Total:</u> 2y NPP 21m		Police officer – misappropriated money from Police Cricket Association over 2y 9m – some money repaid Sold house to repay outstanding amount
29.	<b>Carr</b> (49) (2002) 135 A Crim R 171 <a href="#">[2002] NSWCCA 434</a>	s.178A  s.176A [10y]	\$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

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30.	<b>Weir</b> (55+) <a href="#">[2003] NSWCCA 204</a>	4 x s.178A  s.300(2) [10y]  s.178B [1y]  Sched: 15 fraud offences	Over \$1m	PG (25%)	5y NPP 2y           <u>Total:</u> 7y NPP 4y	AD	Prior convictions for fraud – breached CSO	Female - accountant took money from clients for purpose of investment – breach of trust over prolonged period Gambling - remorse
31.	<b>O'Brien</b> <a href="#">[2003] NSWCCA 440</a>	4 x s.29D (Cth) [10y]  3 x s.178A   24 x s.178BA [5y]	\$479,093	PG	3y 6m NPP 2y 8m  3y NPP 2y  2y NPP 16m  <u>Total:</u> 3y 6m NPP 2y 8m	AD		Acted as customs agent to four companies failing to tell them he was not registered – falsified documents to both Customs and companies – misappropriated cheques
32.	<b>Rizk</b> (30) <a href="#">[2005] NSWCCA 104</a>	7 x s.178A	\$19,356	PG	3y NPP 2y 3m PD	AD	Nil	Real estate agent drew on trust fund into which tenants' rent paid – full admissions to police Marriage fell apart as a result – restitution to be made – average intelligence - anxiety
33.	<b>Higgins</b> <a href="#">[2006] NSWCCA 38</a>	15 x s.178A  3 x s.1041G (Cth) [5y]	\$1,702,527	PG	8y NPP 5y  FT 2y (concurrent)	AD	Old fraud offence	Investment adviser – well planned offences committed over 5 years – serious breach of trust

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34.	<b>Assi</b> (44) <a href="#">[2006] NSWCCA 257</a>	s.178A  s.178A s.178BA [5y] s.178BA [5y]  Sched: 3 x s.178A 3 x s.178BA	\$222,000	PG (10%)	5y NPP 3y  FT 3y  4y NPP 2y  3y 6m NPP 9m  <u>Total</u> 7y 6m NPP 4y 9m	AA 5y NPP 3y  FT 3y  4y NPP 2y  3y 6m NPP 6m  <u>Total</u> 7y 6m NPP 4y 6m	Breached bail and parole – similar offences	Disqualified solicitor defrauded several clients Appeal allowed to correct small error.
35.	<b>Oudomvilay</b> (37) <a href="#">[2006] NSWCCA 275</a>	6 x s.178A  Sched: s.178A	\$809,350	PG	6y 9m NPP 4y	AD	Nil	Female Laotian solicitor took money from trust account.
36.	<b>Higgins</b> (44) <a href="#">[2006] NSWCCA 326</a>	s.178A	\$73,000	VG	3y NPP 1y 9m	Crown AD	Nil	Bank manager given cheque by elderly customer
37.	<b>P Blundell</b> (38) <a href="#">[2008] NSWCCA 63</a>	3 x s.178A	\$146,000	PG (25%)	18m NPP 9m	AD	Limited	Insurance brokerage business – stole money from clients provided to pay for insurance Married with children – delay – evidence of rehabilitation - co-offender charged with ss.178BA offences

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