

Dangerous Driving Causing Death

s.52A(1) (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.

Maximum penalty: 10 years

Commenced: 23.12.1994

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	Ngo NSWCCA 15.11.1996	s.52A(1) Sched: Unlicensed driver Possess heroin	PG	MT 12m AT 4m	Crown AD	Bad	Struck pedestrian / cyclist at pedestrian crossing - failure to keep proper lookout - excessive speed for circumstances, but not above speed limit - fled scene but later contacted police.
2.	Gore (24) NSWCCA 27.11.1996	s.52A(1)	PG	MT 4y AT 2y	AD	Drugs, disqualified driver at time of offence.	Driving on wrong side of road at high speed - struck deceased - affected by alcohol and heroin. Contribution.
3.	Sellers (60) (1997) 92 A Crim R 381	s.52A(1)(a)	PG	MT 1y AT 2y	Crown AA MT 3y AT 2y	DUI, restricted licence at time of offence.	Drove aggressively in car park - drove into Victim's car - V struck and dragged for fifteen metres - drove off at high speed on wrong side of road and collided with bus. Alcohol reading: .145 - .150.
4.	Meehan NSWCCA 8.4.1997	s.52A(1)(c)	PG	MT 3y AT 1y	AD		Ran over wife on bush track - driving into sun affected vision - judgement affected by alcohol - car "spectacularly unroadworthy" Suffering genuine grief.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
5.	Masella (41) NSWCCA 14.5.1997	s.52A(1) s.52A(3) Sched: unregistered car unlicensed driver	PG	MT 3y AT 1y FT 2y (concurrent)	AD	Drugs	With girlfriend and daughter driving to Queensland - collided with oncoming semi-trailer whilst overtaking - killed girlfriend & injured daughter - affected by amphetamines.
6.	Smith (18) 95 A Crim R 373	s.52A(1)	PG	Home Detn MT 6m AT 2m	Crown AA Home Detn MT 12m AT 4m	nil	Lost control of car running into tree - killed friend who was passenger - impaired by cannabis - driving at excessive speed.
7.	Sluka NSWCCA 28.7.1997	4 x s.52A(1)(c)	PG	MT 3y 6m AT 2y 6m	AD	Good character.	Truck driver drove onto wrong side of road at high speed - collided with oncoming car killing 4 occupants - affected by amphetamines - prior to accident had been veering onto wrong side of road.
8.	Tapfield (27) NSWCCA 30.7.1997	s.52A(1)(a) Sched: Fail to stop Drive whilst disq.	PG	MT 1y AT 9m	Crown AA MT 1y 9m AT 1y 3m	Bad driving record: mid-range PCA - disq at time of offence - dishonesty & drugs - prison.	Drove into breakdown lane hitting cyclist - failed to stop - pursued by truck drivers - took heroin after starting to drive knowing would be driving for long period.
9.	Pellow (21) NSWCCA 1.8.1997	s.52A(1) s.52A(3)	PG	500 hrs CSO	Crown AA PD 12mths	Nil	Fell asleep at wheel - crossed to wrong side of road - collided with victims' car - shift worker who had not slept for 24 hrs - strong subjective features.
10.	Marlin (34) NSW CCA 10.9.1997	2 x s.52A(1)(c)	PG	CSO 200 hrs	Crown AD "Facts were of a kind rarely seen from which a sentencing pattern could be discerned."	Nil	Driving in paddock with friend and young daughter - no seatbelts and no roof on 4WD - deliberately making car skid - hit hummock and passengers thrown out - car rolled and killed both. Suffering deep remorse, especially from death of daughter.
11.	Pattenden NSWCCA 1.10.1997	s.52A(1) s.52A(3)	PG	MT 2y AT 3y (concurrent sentence)	AD		Veered onto wrong side of road - head-on collision with elderly couple's car - drug addict - affected by heroin & alcohol. SJ had taken into account hardship to third party - 8y son

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
12.	Musumeci (22) NSWCCA 30.10.1997	s.52A(1)	PG	15m PD	Crown AA MT 8m AT 7m (take into account 4m PD)	Minor speed offence	Tow truck driver collided with victim's car at excessive speed - mounted kerb and crashed into shop, killing proprietor - drove heavy vehicle in busy shopping area where 2 of 3 lanes blocked, restricted vision and at excessive speed - previously had run red light. Good character.
13.	Fuller (24) NSWCCA 4.3.1998	s.52A(1) Sched: s.52A(3)	PG	MT 3y AT 2y	AA MT 2y AT 3y	Minor criminal and traffic record	Drove small lorry as work car - after drinking at hotel drove two friends - veered on to median strip, back across road and collided with tree - lorry slid on roof - passenger in tray killed - passenger in cab injured - alcohol reading: .176.
14.	Romanov (26) NSWCCA 26.6.1998	s.52A(1)(a)	PG	MT 18m AT 18m	AD	minor	Driving down King St, Newtown, braked suddenly and mounted kerb - killed pedestrian and crashed into shop - alcohol reading: .125 - .140
15.	Lemoto (18) NSWCCA 24.7.1998	2 x s.52A(1)	VG	500hrs CSO	Crown AA PD 2y 6m	Nil	Driving down dark road after dark and knew headlights failing - continued to drive and failed to see pedestrians crossing road - both killed On provisional licence (age)
16.	Thackray NSWCCA 19.8.1998	s.52A(1)	PG	Home Detention 18m	Crown AA MT 3y AT 1y	High range PCA (1991)	Intoxicated (0.127-0.387) - crashed into cars in one street and continued driving - kept driving although air bag expanded - collided with car at intersection and killed driver Excellent character.

Cases post - Jurisic 12.10.98 (Guideline Judgment)

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
17.	Comber (32) NSWCCA 11.11.1998	s.52A(1) s.52A(3)	PG	MT 22m AT 20m FT 22m (concurrent) 30% discount assistance	AD	nil	Female drove friend and two children to service station - friend obtained heroin and both injected - not habitual user and did not expect reaction - crashed into tree killing one child and injuring the other Amphetamine user - genuine remorse.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
18.	Hill NSWCCA 4.12.1998	s.52A(1) Sched: drive whilst disg	PG	MT 3y AT 3y	AA MT 2y AT 2y 6m	Disq driver for high PCA	Driving with friend in country - drinking all evening (alcohol - 0.113) and speeding (139-149 kph in 110 zone) - lost control on bend and rolled car - passenger killed instantly - medium to upper range seriousness.
19.	Douglas (27) NSWCCA 11.12.1998	2 x s.52A(1)	PG	12m PD	Crown AA MT 18m AT 18m	Nil - good traffic record for truck driver.	Professional truck driver - drove into back of car killing two passengers - failure to keep proper lookout - affected by drugs (amphetamines) and fatigue. Genuine remorse.
20.	Howland (22) (1999) 104 A Crim R 273 [1999] NSWCCA 10	s.52A(1)	VG	1y 6m PD	Crown AA MT 9m AT 9m	nil	Drove truck around vehicle which had stopped at intersection against amber light - collided with driver of motor cycle crossing intersection - deliberate conduct taking calculated risk - no "abandonment of responsibility" as per <i>Jurisc</i> .
21.	Mansour (40) [1999] NSWCCA 180	s.52A(1)	PG	MT 2y AT 2y	AA MT 1y AT 1y	Nil - no traffic infringements over 23 years	Female - Driving at high speed overtaking other vehicles - crossed onto wrong side of road colliding with oncoming vehicle Remorse – shock
22.	Menzies (28) [1999] NSWCCA 222	s.52A(1)	VG	Home Detention MT 12m AT 6m	Crown AD	Disobey traffic lights, speeding, unlicensed driver, PCA	Struck pedestrian at pedestrian crossing - driving in excess of 70kph - failure to keep proper lookout. CCA applied <i>Jurisc</i> (full-time custody should have been imposed) but declined to intervene as Home Detention order almost finished.
23.	Wells (23) [1999] NSWCCA 226	s.52A(1) Sched: 4 x BES	PG	MT 4y AT 2y	AD	driving record	Under influence of drugs - erratic driving - drove onto median strip trying to overtake traffic - lost control and went across two lanes of traffic - hit by a truck and went through gap in concrete barrier killing victim working behind barrier.
24.	Tomson [1999] NSWCCA 369	s.52A(1)	PG	3y GBB (Sentence details from JIRS case summary).	Crown AD	nil	Crossed double yellow lines to overtake slow vehicle - collided with oncoming car - de facto wife killed - "Momentary reckless error of judgment" <i>not</i> 'momentary inattention' or 'abandonment of responsibility'. Excellent character and driving record - remorse.
25.	Everett [2000] NSWCCA 439	2 x s.52A(1) Sched: unlic driver self admin drug	PG	MT 2y AT 2y	AD	Minor drug offences, driving offences including unlicensed driver	Female - lost control of car and collided with sign killing husband and 2y son - under influence of morphine and cannabis within toxic to lethal range. Drug addiction - hardship to family (4y daughter survived.)

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
26.	Khatter (30) [2000] NSWCCA 32	s.52A(1)	PG	2y PD	Crown AA FT 3m (to date from appeal judgment taking into account PD partly served)	nil	Drove intoxicated at insistence of best friend - lost control of car and friend killed instantly - speeding and 0.099g alcohol per 100ml blood. Refugee status from India.
27.	Davies [2000] NSWCCA 84	s.52A(1)	VG	MT 18m AT 18m	AD	poor driving record	Drove through red light and struck pedestrian crossing road On appeal - no additional category or middle ground between momentary inattention and abandonment of responsibility: <i>Jurisc</i> (1998) 45 NSWLR 209 and <i>Pyritz</i> NSWCCA 23.11.98 - offender's actions fell outside momentary inattention and clearly made custodial penalty appropriate - SJ correct that offenders conduct constituted " <i>grossly irresponsible driving</i> ". Remorse – delay - will find prison particularly difficult - impact of accident on life.
28.	Katoa [2000] NSWCCA 223	s.52A(1)	PG	MT 8m AT 10m	AA 18m PD		Female - Collided with motor cycle making right hand turn and killed cyclist - failed to stop and ensure roadway clear before making turn - more than momentary inattention - towards bottom end of offences. Substantial and compelling subjective case.
29.	Dhanhoa (21) [2000] NSWCCA 257	s.52A(1)	PG	MT 12m AT 2y	Crown AD	Prior convictions for PCA and drive unlicensed.	Lost control of car which crashed and fire - female passenger incinerated - intoxicated with blood alcohol reading between 0.144 and 0.233 - unlicensed. Psychological and physical effect of offence - difficult family life
30.	Bailey (31) [2001] NSWCCA 10	s.52A(1)	VG	MT 3y AT 1y	AA 3y NPP 2y	Serious prior convictions - appalling driving record	Collided with female pedestrian while riding motor cycle - Dangerous driving constituted by overtaking bus while it was pulling out, failing to keep proper lookout and failing to brake in time - did not abandon responsibility for manner of driving.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
31.	Hemsworth (22) [2001] NSWCCA 86	s.52A(1)	VG	MT 3y AT 2y	AD	Driving record not good	Driving closely behind utility on main road - utility forced to brake sharply for parked car and appellant lost control, crossing to wrong side of road and killing girlfriend in his car - excessive speed, erratic driving and affected by cannabis - abandonment of responsibility resulting from multiple factors. Appellant seriously and permanently injured in accident - change of lifestyle - remorse - good character - loss of girlfriend
32.	Begbie (17) (2001) 124 A Crim R 300 [2001] NSWCCA 206	s.52A(1)(a)	PG	Home detention 18m NPP 6m	Crown AA 2y 9m PD	nil priors	Fell asleep at wheel in early morning, crossed median strip and collided with oncoming car killing driver - affected by alcohol (0.1-0.113g). Excellent subjective features.
33.	Foster [2001] NSWCCA 215	s.52A(1)(c)	PG (15%)	22m suspended sentence	Crown AD	nil relevant	Lost control of car driving over bridge in country and colliding with railing - passenger not wearing seat belt and flung from car - driving at higher than suggested 60 kph over bridge (probably around 70-80 kph) - did not amount to abandonment of responsibility - momentary reckless error of judgement. Lost close friend - good subjective features.
34.	Dunlop [2001] NSWCCA 435	s.52A(1) s.52A(3)	PG	3y NPP 12m PD 3y NPP 12m PD (concurrent)	Crown AA 3y NPP 2y PD 3y NPP 12m PD (concurrent)	Nil - minor traffic matters	Drove next morning after night of drinking - 0.126 blood alcohol level - swerved into lane and collided with oncoming traffic - killed 11y passenger in other car and injured self and driver - attempted to rescue despite suffering injuries - probably fell asleep - no abandonment of responsibility but moral culpability still high because of alcohol. Remorse - good character - judge erred in finding special circumstances.
35.	Oddie [2001] NSWCCA 524	s.52A(1)(c) 2 x s.52A (3)(c)	VG	2y NPP 12m	AA 16m NPP 8m FT 8m (concurrent)	mal dam; assault	Crossed over median strip onto wrong side of road killing one person and injuring two others (one a 10y child) in oncoming vehicle - SJ erred in not identifying culpable conduct. Strong subjective features.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
36.	Meyers (21) [2002] NSWCCA 116	s.52A(1)(c)	VG	4y NPP 2y	AD	driving	Driving for prolonged period on wrong side of road - approaching crest of hill collided with oncoming motorcyclist Special circumstances youth and rehabilitation.
37.	O'Dea (29) [2002] NSWCCA 91	3 x s.52A(1)	PG	6y NPP 3y 5m	AD		Female drove 5 friends in car after night of drinking at hotel - Lost control of car and collided with pole - 3 passengers killed - Also affected by cannabis - Gross abandonment of responsibility Unlicensed driver - Remorse - 2 young sons - Daughter born in custody
38.	Y (17y 3m) [2002] NSWCCA 191	s.52A(1) s.52A(3)	PG	2y suspended 18m suspended (concurrent)	Crown AD	nil	Provisional driver attempted to overtake truck across unbroken lines - Collided with oncoming car - Slightly in excess of speed limit - No alcohol or drugs - Error of judgement based on inexperience - Not abandonment of responsibility 7 month delay in Crown appeal - School boy driving home from part time work - Prior good character - Provisional licence for 6w
39.	Bishop (21) [2002] NSWCCA 263	3 x s.52A(1) 2 x s.52A(3)	VG	6y NPP 3y 4y NPP 2y (concurrent)	AD	traffic offences	Collided with car turning right at intersection - Speeding above 100kph in 80kph zone - Middle range - Acquitted of more serious aggravated offences Good work record - Good character - Young daughter - Football career finished - Genuine contrition - Devastated by accident
40.	Forsyth (25) [2002] NSWCCA 393	s.52A(1)	PG	3y 6m NPP 2y 6m	AA 3y 6m NPP 2y 3m	traffic offences	Driving too fast in car after night at hotel - Ignored warnings to moderate driving throughout evening - Lost control and left road - Back seat passenger killed - Initially lied to police - Not satisfied above PCA Truck driver - Depression since accident - Father to 4y daughter - failure to reflect finding of special circumstances
41.	Clampitt-Wotton (34) [2002] NSWCCA 383	2 x s.52A(1)(c) 2 x s.52A(3)(c)	VG	2y NPP 12m FT 6m (concurrent)	Crown AA 4y NPP 2y	no priors - minor traffic record	Driver of heavy truck collided with car - 2 children killed and 2 children injured - Failure to keep proper lookout - Looking at something in truck - Calculated risk Remorse - Psychological effect of accident - Effect on family

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
42.	Christoff (25) (2003) 140 A Crim R 45 [2003] NSWCCA 52	s.52A(1)(c)	VG	3y 8m NPP 2y 9m	AD	lengthy record for dishonesty and driving offences	Lost control of car while driving on country road - Travelling 100kph in 80kph zone - Turned attention from road - Abandonment of responsibility - Killed de facto passenger - Did not see speed sign Remorse - Record an aggravating feature
43.	Hobday (21) [2003] NSWCCA 345	s.52A(1)(a)	PG	5y NPP 3y	AA 4y NPP 1y 9m	No prior criminal convictions – minor traffic matters	Intoxicated – Speeding in heavy rain – Lost control of car and crashed into tree – Killed de facto Genuine contrition
44.	Besant [2003] NSWCCA 388	2 x s.52A(1)(c)	PG	6y NPP 4y	AA 6y NPP 3y 6m	Bad driving record	Truck driver suffering fatigue – Fell asleep at wheel, crossed over to wrong side of road – Caused death of two passengers travelling in oncoming vehicle - Erratic driving over 50kms in heavy rain prior to fatal accident – Evidence of amphetamine use. Appeal allowed on special circumstances – First time in custody, suffering depression.
45.	Dandachli [2004] NSWCCA 100	s.52A(1) s.52A(3)	PG (20%)	4y NPP 3y FT 3y (concurrent)	AD	Bad driving record	Drove erratically and aggressively at high speed (150kmh) with four passengers who repeatedly asked A to slow down – Collided with two parked trucks in breakdown lane injuring one passenger and killing another. Prior good character – University student.
46.	Sullivan (37) [2004] NSWCCA 99	s.52A(1)	PG	3y 6m NPP 18m	AD	Minor	While intoxicated from drinking night before drove in dangerous manner down residential streets to collect methadone – Struck and killed pedestrian – high moral culpability Dysfunctional family – Major depressive disorder – Evidence of rehabilitation
47.	Melas (23) [2004] NSWCCA 198	s.52A(1)	PG	3y NPP 15m	AD	Nil	Offender drove 90-100 kph through a pedestrian refuge killing a 17 year-old cyclist – sunny day, clear conditions
48.	Price (21) [2004] NSWCCA 186	2 x s52A(1)(a)	VG	2y NPP 12m	Crown AA 3y NPP 12m	Nil	Lost control of car on bend and collided with tree killing two passengers – Intoxicated and excessive speed Failure to accept responsibility – Prior good character – PTSD - delay

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
49.	Koosmen (33) [2004] NSWCCA 359	s.52A(1) Sched: 2 lesser offences	PG (25%)	5y NPP 2y 6m	AD	Traffic and criminal record although gap	Driving while intoxicated – Excessive speed and driving on wrong side of road – Lost control and collided with sign – Passenger killed Killed best friend – Suffering depression and PTSD – Father and carer of three young boys
50.	Gardiner (39) [2004] NSWCCA 365	s.52A(1)(a)	VG	4y NPP 2y 6m	AD	No criminal record – traffic record not bad	Driving truck – collided with utility from behind killing driver – methylamphetamine in blood stream – high degree of moral culpability Commercial truck driver – serious medical problems – remorse - family
51.	Vale (40) [2004] NSWCCA 469	s.52A(1)	PG (25%)	5y NPP 2y 6m	AA 4y 3m NPP 2y	Number of driving offences, inc DUI over 10y ago	While unlicensed drove station wagon with 5 passengers after drinking – Lost control and passenger ejected and killed – Went to get help – BAC over 0.140, probably around 0.2, and THC levels Extremely remorseful - Unemployed – Aboriginal – extremely deprived and alcoholic background – illiterate – supportive family
52.	Tzanis (18) [2005] NSWCCA 274	s.52A(1)(c) s.52A(3)(c)	PG	5y NPP 3y FT 18m (concurrent)	AA 3y 6m NPP 2y <u>Total</u> 4y NPP 2y 6m	nil	Intoxicated (high portion of mid-range) – Collided with power pole – dangerous driving – passenger killed – passenger seriously injured – high moral culpability Voluntary return from Greece – high level contrition – high prospects of rehabilitation
53.	Janceski (21) [2005] NSWCCA 288	2 x s.52A	VG	2y NPP 12m	Crown AA 5y NPP 3y	Bad traffic record - BES	Upon spotting friend's stolen car threatened occupants with metal car lock – pursued car over substantial distance at high speed and against advice – driver of pursued car lost control and collided with pole
54.	Errington (49) (2005) 157 A Crim R 553 [2005] NSWCCA 348	s.52A(1) s.52A(3)	PG (25%)	2y 6m NPP 15m 18m NPP 9m <u>Total:</u> 2y 9m NPP 1y 6m	AD	Nil relevant – excellent traffic record	Driving prime mover collided into back of stationary car at traffic lights – No speed or drugs – No explanation – Many vehicles affected Good character – Post traumatic stress disorder as result of offence – Remorse

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
55.	Docker (41) [2005] NSWCCA 425	s.52A(1) s.52A(3)	VG	6y 8m NPP 5y FT 4y (concurrent)	AA 5y NPP 3y 6m FT 4y <u>Total:</u> 6y NPP 4y 6m	Poor record	Drug affected – Car drifted outside lane and struck car – Car forced into pole killing driver and passenger - Period of erratic driving – Failure to stop Drug addict
56.	Gobbett (24) [2006] NSWCCA 46	2 x s.52A(1) s.52A(3)	Early (25%)	6y NPP 4y FT 4y (concurrent)	AA Same effective sentence	Record – no relevant convictions	Speeding on highway and overtaking on breakdown lane – lost control and collided with oncoming vehicle – fiancée and child killed – driver in oncoming vehicle seriously injured Remorse – evidence of rehabilitation
57.	Richards [2006] NSWCCA 262	s.52A(1) 3 x s.52A(3) s.314 (make false accusation)	PG	4y 4m NPP 3y 4y NPP 4y FT 12m <u>Total:</u> 5y 4m NPP 4y	AA Same effective sentence imposed	Includes speeding offences	Collided with on-coming car while overtaking on country road – killed driver and severely injured passengers – lied to police as to driver of car
58.	Samadi (31) [2006] NSWCCA 308	s.52A(1)	VG	2y NPP 6m	Crown AA 2y 6m NPP 12m	Nil	Driver on learner's permit drove unsupervised in strange car – turned corner and attempted to park under excessive speed – mounted kerb, struck 7y and collided heavily with parked cars – abandonment of responsibility Afghan refugee – isolated – poor mental health - remorse
59.	Gillett (49) (2006) 166 A Crim R 419 [2006] NSWCCA 370	3 x s.52A(1)(c)	VG	7y NPP 5y 3m	AD	Nil	Driver had epileptic fit and lost control of car – collided with three cars – forced car into path of 4WD killing three occupants – aware of danger of epilepsy – ignored medical warnings and previous accident – complicated by sleep apnoea – lied repeatedly to RTA – high moral culpability

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
60.	Morabito (67) [2007] NSWCCA 126	2 x s.52A(1) s.52A(1) s.52A(3)	VG	2y 6m NPP 6m 2y 6m NPP 8m FT 4m <u>Total</u> 3y 3m NPP 15m	AD	Speeding	Truck driver failed to stop for stationary car waiting to turn right – inattention over several seconds – no fatigue or intoxication – towards lower end of scale of seriousness Remorse – good character – serious depression resulting from collision
61.	Pisciuneri (48) [2007] NSWCCA 265	s.52A(1)(c)	VG	Home Detention 16m NPP 8m	Crown AD		Lost control of vehicle colliding with victim's oncoming vehicle – lower end of range of seriousness – “little more than momentary inattention or misjudgement” Good character - family and successful business – strong subjective circumstances.
62.	Markham (31) [2007] NSWCCA 295	s.52A(1)	PG	6y NPP 3y	AA 4y NPP 2y 3m	Traffic – speeding	Distracted while driving truck – drove through red light at intersection colliding with victim's vehicle. Sentence manifestly excessive in circumstances.
63.	Hughes (32) (2008) 185 A Crim R 155 [2008] NSWCCA 48	s.52A(1)	PG (25%)	4y 6m NPP 3y	AA 3y NPP 2y		Under influence of cannabis - Drove truck with 18y female partner (V) as passenger – Lost control turning corner – Able to escape but could not rescue V who died in burning vehicle. SJ failed to take into account quasi custody served in residential rehabilitation.
64.	Nguyen (19) [2008] NSWCCA 113	s.52A(1)	PG (25%)	2y 3m NPP 12m	Crown AA 3y NPP 18m	Poor driving record – booked five days previously for low range PCA	Speeding and significantly affected by alcohol (0.1) – Provisional licence – Lost control of car on suburban street and collided with fence killing passenger – high level moral culpability Significant attitude change – good prospects of rehabilitation
65.	Mitreski [2008] NSWCCA 301	2 x s.52A(1)	VG	2y 5m NPP 20m Periodic Detention	Crown AA 3y 4m NPP 2y 4m	Nil	Driving semi-trailer at excessive speed and in wrong gear on steep wet road – crossed path of oncoming vehicle containing two victims.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
66.	Shumack (33) (2008) 191 A Crim R 513 [2008] NSWCCA 311	s.52A(1)(c) s.52AB(1): Fail to stop	VG	6y NPP 4y 5y NPP 3y Total: 7y NPP 5y	AD	Nil record – minor traffic record	Fatally struck pedestrian crossing road – speeding, intoxicated and failure to keep proper lookout – slowed down then sped off without stopping – abandoned responsibility and moral culpability for driving offence high Prior good character – unlikely to re-offend – good prospects of rehabilitation On appeal: no error in taking into account failure to stop in assessing moral culpability in driving offence – no double punishment – sentence within range
67.	TG (17) [2010] NSWCCA 28	4 x s.52A(1)	PG (15%)	4y NPP 2y	AD		Driving with provisional licence – drove at 100km/ph in 80km/ph zone – wet night – lost control of vehicle – vehicle left road and impacted with tree - four passengers killed - deliberate risk-taking. Youth.
68.	Radley [2010] NSWCCA 64	s.52A(1) Sched: Pervert course of justice	PG	2y 1y 4m Periodic Detention	Crown AD		Overtook vehicle and collided with oncoming motorcyclist – rural road – no line markings – case of misjudgement – asked witnesses at scene to say victim was on wrong side of road but when they refused said “yes, do what you have to do.”
69.	Nashed (18) [2010] NSWCCA 282	s.52A(1)(c) Low range PCA Under influence of illicit drug	PG (25%)	3y NPP 2y 1 day 1 day (concurrent sentences)	AA only to quash sentences of imprisonment in relation to lesser offences		Struck and killed cyclist – drove to Brisbane and unloaded furniture – drank rum and Red Bull at nightclubs and slept two hours – started return trip to Sydney – micro sleeps and trouble concentrating prior to accident – fell asleep and collided with cyclist causing impact to windscreen and throwing victim over 7m drop – sleep deprived – P-plate driver – high moral culpability
70.	Townsend (25) [2010] NSWCCA 336	s.52A(1)(c)	PG (25%)	300h CSO	Crown AD		Veered on to wrong side of road around corner and collided with on-coming vehicle killing driver – no alcohol or drugs or speeding – inadvertence of misjudgement – low level of culpability
71.	Preston (60) [2011] NSWCCA 25	s.52A(1)	VG	4y NPP 3y	AA 3y NPP 18m	nil	Semi-trailer collided with vehicle – Drove through give way sign – ignored road warnings – cut corner and did not slow down sufficiently – corner subject to partial blind spot. Good character – sentence manifestly excessive

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
72.	Hedges (19) [2011] NSWCCA 263	s.52A(1)(c)	VG	3y 7m NPP 2y	Sentence AA 2y 6m NPP 1y 3m	Poor driving record – drive whilst suspended, reckless driving, drive manner dangerous, speeding	Overtook car and crossed over double white lines - collided with oncoming vehicle. Good character. Sentencing judge erred in misapplication of guideline judgment in <i>Whyte</i> [2002] NSWCCA 343 - no aggravating features for consideration upon sentencing.
73.	Lute [2012] NSWCCA 67	s.52A(1)(c)	PG (15%)	3y 9m NPP 2y 3m	AD		Speeding and intoxicated – drove off road at night through fence and collided with tree – passenger killed – offender received serious injuries Remorse
74.	Whelan (36) [2012] NSWCCA 147	s.52A(1)	VG	2y ICO	Crown AD	Poor driving record – assault	Made serious error of judgment in overtaking – collided with oncoming vehicle – caused premature birth of baby at 24 weeks – baby died 33 days later after contracting NEC – premature babies susceptible to NEC – low level of culpability Genuine remorse – provided financial assistance to victims – army service
75.	WW (17) [2012] NSWCCA 165	s.52A(1) Fail to stop	VG PG	7y NPP 4y FT 2y 9m <u>Total:</u> 8y NPP 5y	AD	2 x drive unlicensed – lengthy record for other offences	Strayed onto wrong side of road and collided with bike rider on straight road at 9am – failed to stop despite request of passenger and being aware of collision – using mobile phone – abandonment of responsibility Driving unlicensed
76.	Aitken (19) [2014] NSWCCA 201	s.52A(1)	PG	4y 1m NPP 2y 6m	AD		Learner's permit - driving with 2 passengers – intoxicated and speeding – failed to negotiate turn – collided with tree – one passenger killed – close friend. Good prospects of rehabilitation - unlikely to re-offend – strong subjective case – remorse - ADHD as child
77.	Williams (22) [2014] NSWCCA 200	s.52A(1)	PG (10%)	2y 7m NPP 1y 4m	Crown AA 2y 8m NPP 1y 9m		Street racing - excessive speed - innocent driver killed - high level of moral culpability and significant objective seriousness
78.	Woodward [2014] NSWCCA 205	s.52A(1)	PG (25%) on appeal	6y NPP 4y 6m	AA 3y 9m NPP 2y 9m	Not relevant	Provisional driver's license - under influence of alcohol - erratic and aggressive driving – crossed double yellow lines – crashed into tree – male passenger in same vehicle killed.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
79.	Barnett [2014] NSWCCA 296	2 x s.52A(1)	VG	3y NPP 18m	AD		Truck driver – collided with two victims who were standing with broken-down car on side of highway – inattention for significant period of time – failure to keep proper lookout - large number of other vehicles had passed the victims without colliding
80.	Harris (37) [2015] NSWCCA 81	2 x s.52A(1)(c) s.52A(1)(c) s.52A(3)(c) Sched: Take and drive conveyance Self admin drug	PG (25%)	FT 2y 3y 4m NPP 2y FT 12m <u>Total:</u> 4y 7m NPP 3y 3m	Crown AA <u>Indicative</u> 4y 6m 4y 8m 3y <u>Aggregate</u> 7y 6m NPP 5y 6m	Multiple driving offences – breached parole for disqualified driving – disqualified until 2030	Took partner's car without permission to meet father – lost control and collided with car waiting on side of road – killed driver and both child passengers – severe injuries to own 3y child – uncontrolled epilepsy and significant brain injury – aware susceptibility to epilepsy aggravated by substance abuse and non-compliance with medication – high moral culpability
81.	Casey (18) [2015] NSWCCA 142	s.52A(1)(a)	VG	3y 6m NPP 2y 7m	AD	Nil	Driving good friend as pillion passenger to motorcycle - collided with parked car - V flung from bike – offender significantly intoxicated Young offender - good character with no prior convictions - remorse
82.	Colville [2015] NSWCCA 149	s.52A(1)(c) s.52A(3)(c)	PG	3y 5m NPP 2y 3m FT 2y 6m <u>Total:</u> 4y 7m NPP 3y 5m	AD		Crossed unbroken double road markings – collided with oncoming vehicle - sleep deprivation exacerbated by secondary effects of methylamphetamine and other drugs Drug abuse.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
83.	Price (35) [2016] NSWCCA 50	2 x s.52A(1)(c) s.52A(3)(c) Possess proh drug Supply proh drug GIC	PG (25%)	<u>Indicative</u> 4y 3y 3m 6m 3m <u>Aggregate</u> 6y NPP 4y	Crown AA <u>Indicative</u> 5y 3m 4y 6m 3m 6m 3m <u>Aggregate</u> 8y 6m NPP 5y 8m	Drug and minor violence – very poor traffic record	Drove 2y son in inappropriate booster seat while under influence of methamphetamines – drove around bend into oncoming traffic – driver and passenger killed – son seriously injured with lifelong disabilities – intoxication Deep remorse – used drugs for over 20y
84.	Barker (19) [2016] NSWCCA 193	2 x s.52A(1)(c) s.52A(3)(c) 2 x negligent driving	PG (early)	2y 4m NPP 10m (each) 14m NPP 6m No penalty <u>Total:</u> 3y 2m NPP 1y 8m	Crown AD (discretion)		Designated driver for friends in borrowed ute – aware soft suspension making vehicle difficult to handle – drove with passengers in cab and on open tray – on final occasion sped up and lost control causing vehicle to roll several times – passenger on tray thrown and suffered reasonably moderate injuries – passengers in cab thrown from vehicle and died at scene - aware passengers not wearing seatbelts and poor condition of road – mid range culpability – no abandonment of responsibility Suffering major depression and PTSD resulting from accident – served 8mths prior to appeal – fragile mental condition
85.	Costello (34) [2017] NSWCCA 32	s.52A(1)	PG (15%)	3y 3m NPP 1y 10m	AD 3y NPP 1y 14d	Poor driving record	Truck driver – collided with cyclist - attempted to force way into merging lane when aware lane ending - failed to slow down - failed to have proper regard for Victim's safety - failure to keep proper lookout, failure to take proper evasive action to avoid collision – driving involved degree of aggression for some seconds - below mid-range objective seriousness, but not at lower end On appeal - fresh evidence – partner has terminal illness.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
86.	Manok [2017] NSWCCA 232	2 x s.52A(1) s.52A(3)	PG (25%)	18m (each) 11m <u>Aggregate:</u> 2y NPP 18m	Crown AD		Driving 3 passengers - high level of fatigue – fell into “micro sleep” – awoke to see car was going to collide with power pole – tried to evade pole however car struck pole – two victims died instantly. Had returned from overseas and been busy setting up café business - drove for a period of up to 12km whilst “feeling tired”. Moral culpability low - driving “very close to that end of the spectrum which ends at momentary inattention.”
87.	Cvetjovski [2019] NSWCCA 100	s.52A(1)	VG	3y NPP 2y	AD	Minor – stealing - on bond.	Truck driver – veered into oncoming traffic - collided with vehicle being driven in opposite direction by victim - failed to manage heavy vehicle - level of methylamphetamine in blood suggested withdrawal stage which could cause slower reaction times when driving - no evidence judgment impaired at time of offence by drug use Drug user amphetamines.
88.	Andonakis (42) [2019] NSWCCA 123	s.52A(1)	PG (14%)	3y 8m NPP 1y 5m	Crown AA 5y 2m NPP 3y 10m	Very poor driving record – 60 driving offences from 1991 to 2017; drugs, possess stolen property, stealing, unlawful use motor vehicle, possess knife in public place, enter premises with intent commit indictable offence. Offence committed whilst disqualified.	Drove onto opposite side of road and collided with deceased’s vehicle - high level of methylamphetamine - high range objective seriousness - not permitted by law to drive - not physically fit to drive - purpose in driving was to move stolen goods - used a vehicle with false plates - travelled 200km putting large number of innocent road users at risk. Flagrant disregard for law - history of drug taking and traffic offences demonstrated attitude and behaviour for more than 20 years

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
89.	Tang (71) [2019] NSWCCA 267	s.52A(1)(c)	VG	3y NPP 18m	AD	traffic record	Female driver cut corner and struck child and mother walking across street during mid-afternoon – child died - driving on wrong side of road – excessive speed in circumstances – failure to keep proper lookout – low to mid-range seriousness Good character – good prospects of rehabilitation – risk of re-offending low – remorse – did not have full appreciation of dangerousness of driving – suffering mental health problems as a result of collision On appeal: not manifestly excessive
90.	You [2020] NSWCCA 71	s.52A(1) s.53 Furious Driving	PG (25%)	4y 1m NPP 2y 7m 10m NPP 7m <u>Total:</u> 4y 6m NPP 3y 1m	AD	traffic only	Speeding along major road – mounted concrete island and collided with sign – returned to road, overtook car and collided with parked car – parked car forced 15 metres, colliding with another car, pole and oncoming traffic – intoxicated (0.091), speeding and dangerous driving – male sitting in driver's seat killed – male sitting in passenger seat seriously injured – moral culpability high – cusp of high range seriousness Suffered physical injury and PTSD – exceptional character – remorse – rehabilitated
91.	Moodie (36) [2020] NSWCCA 160 [2020] NSWCCA 172	s.52A(1) s.166 Cert Drive with illicit substance in blood	PG (5%)	4y 9m NPP 3y No further punishment	AA 2y 10m NPP 1y 8m	Limited	Truck driver failed to see tractor driving slowly down country road and collided into rear causing driver to be thrown from tractor – momentary distraction looking in rear view mirror – amphetamine and methylamphetamine found in blood but not sufficient to impact driving – not using phone, not speeding and log book showed no errors – stopped and came to immediate aid - below mid-range Genuine remorse – low risk of re-offending – good prospects of rehabilitation – impact of incarceration on family and mental health – psychological impact of accident on offender On appeal: error in finding more than momentary inattention without warning parties of intention to reject agreed facts – erred in finding above mid-range – comparative cases show manifestly excessive – failure to apply Whyte guideline Recalled to correct accidentally error as to date of sentence

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
92.	Nauer (20) [2020] NSWCCA 174	s.52A(1) s.52A(1) Sched: 2 x s.52A(3) s.166 offence: Drive disqual	PG	<u>Indicative:</u> 3y 4m 3y <u>Aggregate:</u> 4y 6m NPP 2y 6m FT 2m	AD		Female driver - family driving in van from country town to airport – offender took over driving at request of father although disqualified from driving – felt tired but continued driving – fell asleep at wheel, crossed to wrong side of road and collided with oncoming vehicle – father and 2y niece killed – young nephew and sister seriously injured – aggravating factors: child seats wrongly fitted, number of persons at risk and length of driving time while tired and disqualified – high moral culpability Samoan – suffering anxiety and depression since offence – remorse – extra curial suffering from death of family members and separation from young child – support of community – good prospects of rehabilitation
93.	Rummukainen [2020] NSWCCA 187	s.52A(1)	VG	3y NPP 18m	AD	Drink driving offence – otherwise not significant	Few facts – crossed to wrong side of the road – probably result of combination of tiredness and alcohol consumption at or slightly above legal limit On appeal: no error in taking into account alcohol consumption or any factor without establishing caused accident
94.	Bates (65) [2020] NSWCCA 259	s.52A(1) s.52A(3)	PG (10%)	3y 6m 2y 3m <u>Agg:</u> 4y 6m NPP 3y	AD	Criminal record including dishonesty offences, possess prohibited drug and assault – significant traffic record	Truck driver driving B-Double with two trailers on motorway south of Sydney – took eyes off road and hands off wheel to open drink bottle – crossed wide median strip and collided with oncoming cars travelling south – killed one male and injured second male – no fatigue, speeding, drugs or alcohol or phone use – between momentary inattention and abandonment of responsibility – at or slightly below mid-range – need for strong denunciation and general deterrence Experienced driver – remorse – reasonable prospects of rehabilitation On appeal: sentence not manifestly excessive
95.	Wraydeh (38) [2020] NSWCCA 309	s.52A(1) Fail to stop [10y]	PG (25%)	5y 3m FT 2y <u>Total:</u> 7y NPP 5y 3m	AD	Dangerous driving, driving recklessly during police pursuit, robbery in company. On parole.	Killed partner travelling in passenger seat - failed to negotiate right bend, crossed double lines onto wrong side of road – collided with oncoming vehicle - used clothing to wipe down driver's side door to remove fingerprints – looked for wallet before fleeing scene - not a very serious example of dangerous driving but gross failure to responsibly manage vehicle Poor subjective features - poor intellectual functioning - long-term drug abuse

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
96.	Geagea (51) [2020] NSWCCA 350	s.52A(1) Fail to stop [10y]	PG (10%) PG (25%)	<u>Indicative:</u> 4y 2m 4y 1m <u>Aggregate:</u> 6y 6m NPP 4y 2m	AA <u>Indicative:</u> 3y 4m 2y <u>Aggregate:</u> 3y 10m NPP 2y 6m	Dishonesty offences – no driving offences	Driving down suburban street in afternoon struck and killed male standing at open door of parked ute – visibility clear and no other traffic – driving slightly above speed limit – no intoxication or prior erratic driving – failure to steer clear – high degree of negligence – failed to stop – became aware of accident and attempted to dispose of vehicle – initially told police vehicle had been stolen Favourable prospects of rehabilitation – likelihood of re-offending low – strong family and community ties – lost most of livelihood due to offence On appeal: erred in taking into account attempt to dispose of vehicle when considering FTS offence – discussion as to purpose of offence and relevance of maximum penalty
97.	Elphick [2021] NSWCCA 167	s.52A(1) s.52A(3)	PG (25%)	2y 3m 18m <u>Aggregate:</u> 3y NPP 2y	AD	Nil	Drove vehicle to cross lanes of highway - vehicle of two victims oncoming and travelling in second lane - drove straight into side of a highly visible vehicle on highway - familiar with roadway and travelled over road regularly - egregious want of care - failure to look properly and assess presence of oncoming traffic created substantial risk of collision – death of one victim – second victim suffered long-lasting injuries Prior good character - genuinely remorseful - unlikely to re-offend - good prospects of rehabilitation
98.	Zreika [2021] NSWCCA 243	s.52A(1)(c) s.52A(3)(c)	VG	5y 3y 6m <u>Aggregate</u> 6y NPP 4y	AA 5y 3y 6m <u>Aggregate</u> 5y 6m NPP 3y 8m	Nil - traffic record - driving whilst suspended.	Drove truck, crossed double lines onto wrong side of road – struck both victims who were gardening on footpath, one victim killed, the second victim suffered GBH - history of blackouts; suffered seizure; had been warned by doctors unsafe to drive– under influence of drug tramadol which increased risk of seizure - use of tramadol for chronic back pain from car accident when aged 19 – not a case of abuse of illicit substances - driving whilst suspended. Special circumstances. CCA: error taking into account matters personal to applicant in assessing objective seriousness - factors, including licence suspension, double-counted. Within middle-range but not at high end of that range - high level moral culpability given knowledge of risk of seizure yet decided to drive and had taken at least twice prescribed dose.

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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
99.	Balla (37) [2021] NSWCCA 325	s.52A(1)(c)	PG (25%)	2y ICO (home detention and 400h community service)	Crown AD	Nil – minor traffic matters	Turned across large intersection as lights turned red and collided with oncoming motor cycle killing driver – tragic miscalculation and inattention over mere seconds – not true momentary inattention – towards lower end of range High good character – sincere and profound remorse – low risk of re-offending – PTSD as a result of accident – effect of pandemic on conditions of incarceration – effect of media response to accident constitutes extra curial punishment On appeal: open to impose ICO in view of factual findings on collision and extremely powerful subjective case
100.	Russell (58) [2022] NSWCCA 294	2 x s.52A(1)(c) s.52A(3)(c)	VG	<u>Indicative:</u> 2y 6m 1y 9m <u>Aggregate:</u> 4y NPP 2y	Crown AA <u>Indicative:</u> 4y 2y 6m <u>Aggregate:</u> 6y 6m NPP 4y	Record for larceny and driving offences including driving furiously / recklessly / with speed or dangerously	Lost control and collided with tree when descending hill driving grossly overloaded caravan – wife and step son killed and third passenger injured – deliberate decision to overload van – intended journey of 250km – moral culpability high Truck driver – physical and mental health conditions which would impact custodial conditions – remorse On appeal: erred in finding dangerousness commenced when caravan swayed not with decision to drive overloaded van – total sentence and NPP inadequate
101.	Peberdy (40) [2023] NSWCCA 144	2 x s.52A(1)(c) s.52A(3)(c) s.52A(3)(c)	PG	<u>Indicative:</u> 2y 6m 2y 2m 18m <u>Aggregate:</u> 5y NPP 3y	AD	Old possess firearm offence – speeding tickets	Drifted across to wrong side of country highway and collided with oncoming car – slight bend - cause of accident not clear – more than momentary inattention - failure to keep proper lookout and properly manage car – driver and 11m child killed – second child and second adult in oncoming car injured – three offences just below mid-range - injury to second child severe and offence above mid-range Strong subjective case – prior good character – excellent prospects of rehabilitation – remorse – mental health issues On appeal: no error in finding significant moral culpability

Last Updated: June 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.