

Fraud

s.192E(1) (NSW) *Crimes Act*

192E(1) A person who, by any deception, dishonestly:

(a) obtains property belonging to another, or

(b) obtains any financial advantage or causes any financial disadvantage,

is guilty of the offence of fraud.

Maximum penalty: 10 years

Commenced: 22.2.2010

	CASE (AGE IF KNOWN)	OFFENCE	AMOUNT	PLEA	SENTENCE	APEAL	RECORD	FACTS
1.	Matthews [2014] NSWCCA 185	2 x s.192E(1)(b) Sched: 2 x s.192E(1)(b)	total approx \$1200	PG (25%)	2y 4m NPP 1y 9m <u>Total:</u> 2y 9m 13d NPP 2y 2m 13d	AA 2y NPP 12m <u>Total:</u> 2y 3m NPP 1y 3m	bad record – breached parole	Used credit cards in other people's names to purchase goods – unsophisticated and little planning On appeal – SJ erred in making correction to starting date and increasing total sentence by 2 months and 13 days – original sentence manifestly excessive
2.	Tweedie (27) [2015] NSWCCA 71	27 x s.192E(1)(a) 4 x Att s.192E(1)(a) Larceny s.166 certificate: 7 x GIC	\$25,000- \$30,000	PG (25%)	<u>Indicative:</u> 1y 6m / 2y 1y 6m / 2y 1y 4m 2w <u>Aggregate:</u> 4y NPP 3y	AD	lengthy – driving, drugs and violence – breached parole	Male used stolen credit cards over six weeks to purchase or attempt to purchase goods from retail outlets – found in possession of stolen credit cards and stolen goods – stole wallet from bag in doctors surgery - systematic, frequent and fraudulent use of stolen credit cards Rejected evidence of remorse On appeal: sentence not unjust or unreasonable

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3.	Zhao [2016] NSWCCA 179	s.192E(1)(b) Sched: s.192E(1)(b)	\$US 730,733 \$US 190,224	PG (10%)	3y NPP 20m	AD	nil	Female – involved in complex fraud of overseas company in business dealings over several months – multiple false identities – considerable planning and sophistication – high degree of dishonesty Dependant 2y child – remorse – special circumstances
4.	Holloway (54) [2017] NSWCCA 17	10 x s.192E(1)(b)	\$269,291	VG	4y NPP 2y 6m	AD	nil	CEO of Australian branch of British company created false invoices over 10 months and had company pay cash – money went to offender's account although may not have been sole beneficiary – acquitted of 69 charges under s.176A for similar conduct in the preceding years – breach of trust – degree of planning – mid-range Health problems On appeal: verdicts not inconsistent – sentence not excessive
5.	Johnston (40 at sentence) [2017] NSWCCA 53	s.192E(1)(b)	\$1.257m	PG (25%)	6y 6m NPP 4y	AD	Nil	Senior accountant for mining company – made 156 false invoices over three years Gambling addiction – some reparation – undertaken rehabilitation program
6.	Siwek (70) [2017] NSWCCA 178	5 x s.192E(1)(b) 4 x s.178BA(1) [5y] Sched: 3 x s.178BA	\$1.7 million	PG	<u>Aggregate</u> 6y NPP 3y 8m	AD	Nil	2005 – 2012: offences committed over period of 9 years - worked as accounting manager with multi-national corporation based in America which banked with Australian bank – entrusted with task of sending electronic funds transfers - transferred funds to bank account to which he had access - breach of trust. Good character – gambling addiction – repaid \$450k

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7.	Ngati (31) [2018] NSWCCA 32	4 x s.192E AOABH Possess unreg firearm	\$2400	VG PG PG	2y 8m NPP 2y 12m 2y 8m NPP 2y <u>Aggregate:</u> 6y 6m NPP 5y	AD	Extensive	Involved in using card taken from victim by co-offenders to withdraw cash from ATM on four occasions – on unrelated occasion involved in assault on victim with two others – punched victim in neck and head – firearm found during search of house – fraud offences at lower end of scale Prospects of rehabilitation low –married with four children
8.	Clinton (74) [2018] NSWCCA 66	7 x s 192E(1)(b) s.178BA [5y] s.254 [10y] Sched: 19 offences	\$299,000	PG (30% plea and assist)	Indicative: 13m – 3y 13m 3y 6m <u>Aggregate:</u> 5y 8m MPP 3y 9m	AD	Dishonesty	2008 – 2014: joint criminal enterprise with co-offender - acting as business adviser, obtained personal and financial details from clients seeking finance – passed information to co-offender - used to submit fraudulent applications to financial institutions – obtained credit card accounts and loans, created number of businesses and obtained business banking accounts – obtained over \$1 million - \$299,000 to offender - repetitive and regular offending involving sophisticated and planned acquisition of credit cards, personal loans and mortgage funds - below mid-range Age – ill-health
9.	Woods [2018] NSWCCA 261	s.192E(1)(b)	\$809,510	PG (25%)	5y NPP 3y	AD		Female – employee in charge of payments to sub-contractors in large transport and warehouse company – 155 fraudulent transactions over 5 years – significant position of trust – planning and forethought
10.	Richards (47) [2019] NSWCCA 199	2 x s.192E(1)(b) Breach of bond for dishonesty offence	\$457,704.26 \$31,040	PG (25%)	<u>Aggregate:</u> 5y 3m NPP 3y 6m 6m (concurrent)	AD	record for dishonesty offences – breached bond	Female – 2012-2016 - worked as bookkeeper for owner of gymnastics business – subcontractor – took over financial side of business and moved money into own account and account of friend – breach of trust – substantial harm to victim No attempt to repay money – no remorse – evidence of childhood sexual abuse, gambling and depression provided limited mitigation

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11.	Whyte (33-40) [2019] NSWCCA 218	8 x s.178BA [5y] 19 x s.192E(1)(b)	\$2.906m	VG	<u>Aggregate:</u> 11y NPP 6y 6m	AA <u>Aggregate:</u> 10y NPP 6y 6m	nil	Female – trusted office administrator of family business – close relationship with family – instructed customers to make payments to personal account over 7 years – sophisticated and significant degree of planning – gross abuse of trust – mid range Mother of two daughters – conduct of trial a mitigating factor under s.22A – special circumstances On appeal – judge erred in finding motivation of financial gain an aggravating factor
12.	Raine [2020] NSWCCA 32	s.192E(1)(b) Sched: possess 0.11g meth	\$682,923	PG (25%)	3y 6m NPP 2y 4m	AD	minor and irrelevant	Employee of Tabcorp used knowledge and access to computer to duplicate unclaimed tickets and claim winnings – abuse of trust – Jan 2013-July 2016 – worked with wife although more culpable – financial gain – sophisticated and well thought out fraud – mid-range
13.	Robinson (52-3) [2020] NSWCCA 41	s.192E(1)(b)	\$515,905	PG (25%)	6y NPP 3y 10m	AA 4y 6m NPP 2y 10m	extensive – all Local Court matters – breached conditional liberty	Over 8.5 months obtained \$515,905 in loans from pawn broking business in 120 transactions – falsely represented was to receive million dollar payout for asbestos claim – never made claim – arranged for ‘solicitor’ to verify claim – series of criminal acts – upper mid-range Contrition and remorse – limited prospects of rehabilitation – Aboriginal offender with stable background - ongoing serious health issues related to loss of eye to cancer – mental health issues – developed alcohol addiction after loss of eldest child On appeal – sentence manifestly excessive in view of finding of mid-range seriousness
14.	PC (37) [2020] NSWCCA 147	11 x s.192E(1)(b) Sched: 10 x s.192E(1)(b)	\$4.6m	PG (35% combined)	<u>Aggregate:</u> 12y NPP 8y	AD	Record for similar offences – current offences committed while on parole and bail	Over 2.5 years obtained money from friends and acquaintances falsely representing he would make investments - \$3.6m unaccounted for – breach of trust – use of false documents Guarded prospects of rehabilitation On appeal: error in failure to distinguish between individual offences for indicative sentences – no lesser sentence warranted

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15.	Singh (23-26) [2020] NSWCCA 353	3 x s.192E(1)(b)	\$3,286,125	PG	<u>Aggregate</u> 6y NPP 4y	AD	Nil	Defrauded company over 3y period between 2013 and 2016 - employed as assistant accountant. Premeditation, degree of sophistication and major breach of trust.
16.	Abellanoza [2021] NSWCCA 4	4 x s.192E(1)(b) s.193B(1) 2 x s.193B(2) Sched: 3 x s.192E(1)(b)	\$3,739,773 \$130,135 \$61,000 & \$119,975	PG (25%)	<u>Aggregate</u> 8y NPP 5y	AD	Nil	Female – 2010-2018 - worked for travel company as a branch accounting supervisor - amended bank account details of certain payees of company to accounts under her control – withdrew money in cash – proceeds of crime offences involved cash withdrawals to enhance applicant's lifestyle and also transacted through gaming machines after which cheques for “winnings” deposited into bank accounts under applicant's control - gross breach of position and trust – planning and organisation - duration, repeated nature, and reasonable complexity of frauds Good character – anxiety, major depressive and gambling disorder
17.	McLaren (41-47) [2021] NSWCCA 12	17 x s.192E(1)(b) s.193B(2) Proceeds of crime	\$7.6m	PG (25%)	<u>Aggregate:</u> 16y NPP 12y 7y 6m (concurrent)	AA <u>Aggregate:</u> 12y NPP 9y 7y 6m (concurrent)	Nil	2010-2017 - defrauded 15 victims – took money for investment on false representations – failed to invest money as agreed upon – used false documents and multiple bank accounts – motivated by greed - offending across very broad mid-range, some at very top of range and some at lower end Family estrangement – employment record On appeal: unbalanced approach resulted in manifestly excessive sentence

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18.	Edelbi (28-30) [2021] NSWCCA 122	Participate in criminal group: s.93T(1) [5y] 5 x Dishonestly make false statement: s.192G(b) [5y] 5 x s.192E(1)(b) Sched: 10 x s.192G(b)	Total claims \$46,060 – total money obtained \$33,000	PG (combined 45%)	<u>Aggregate</u> 3y NPP 2y	AA 1y 11m ICO (taking into account 13m custody)	nil	Owners and directors of physiotherapy business made fraudulent insurance claims over 2 years – used false invoices and false appointment records – ‘sustained period of deception ... a sophisticated scheme’ – representative counts – breach of trust – offender managed financial accounts – around mid-range offending Mental health issues – remorse – good prospects of rehabilitation – assistance On appeal – failure to consider ICO – risk of re-offending best addressed by ICO
19.	Cordoba [2021] NSWCCA 144	2 x.s.192E(1)(b) s.166 certificate: Give false / misleading evidence at public inquiry Sched: 1 offence	\$1.7 million	PG (15%)	<u>Aggregate</u> 8y NPP 6y	AD	Dishonesty	Multiple offences occurred over 7 months – held senior manager position in educational institution with procurement responsibilities – set up own company - raised purchase orders and approved payments to himself - 50 purchase orders and payments - second offence charged another company \$50k. Breach of trust – significant planning and sophistication - on significant personal income - used funds in part to purchase second property
20.	Toller (47) [2021] NSWCCA 204	14 x s.192E(1)(b)	\$1,744,220	PG (not stated)	<u>Aggregate</u> 8y NPP 5y	AD	Driving. On CSO and bond.	2014–2017 - defrauded 14 victims, some elderly – induced victims to invest with service – money used for personal and gambling purposes – created false brochures, contracts and statements showing high returns – considerable planning and organisation – victims suffered substantial losses.
21.	Ristevski [2022] NSWCCA 38	3 x s.192E(1)(b) 3 x Larceny: s.117 Sched: 15 x s.192E(1)(b); 3 offences		PG (25%)	<u>Aggregate</u> 4y NPP 3y	AD	Prior record related to drug problem - on bail.	July 2019 - stole purses and handbags of shoppers at various supermarket locations – used credits cards and/or sums of cash to purchase items including prepaid Visa and Mastercards, tobacco and lottery products. CCA: failure to consider remorse and contrition – no lesser sentence warranted

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22.	Kareem [2022] NSWCCA 188	s.192E(1)(b) s.192E(1)(b) s.193D(1)	\$663,090	PG (10%)	<u>Indicative</u> 3y 9m 1y 11m 2y 8m <u>Aggregate</u> 4y NPP 2y 4m	AA <u>Indicative</u> 3y 1y 8m 2y 3m <u>Aggregate</u> 3y 7m NPP 2y	Nil	2013-2017 - with co-offender engaged in joint criminal enterprise to defraud ANZ Bank - scheme established by co-offender - involved creating false identities to apply for loans and credit cards - lesser role – co-offender set up false accounts and made applications for loans and credit cards Professional accountant – motivated by greed CCA: error in sentencing based on material contained in co-offender’s agreed facts Remorse – special circumstances – young family
23.	O’Brien (late 30’s) [2022] NSWCCA 234	3 x s.192E(1)(b) Sched: 4 offences	\$800,000	PG (5%)	<u>Aggregate</u> 5y 6m NPP 3y 6m	AD	Nil in Australia - significant history and imprisonment overseas.	Pretended to be qualified tradesman - purported to complete ‘home repairs’ that were defective; in some cases - rectification works cost hundreds of thousands of dollars - seven victims, most elderly and vulnerable; one victim lost her home Drug and alcohol problems – disabled son suffers spina bifida - struggled to support family - some money obtained from offending went towards support of family
24.	Carnaby (68) [2022] NSWCCA 250	15 x s.192E(1)(b) 4 x recruit another to assist in criminal activity: s.351A(1)	\$2.56 million	VG	<u>Indicative:</u> 2y – 3y 6m 2y 6m <u>Aggregate</u> 9y 9m NPP 5y 5m	AD	Similar offences of dishonesty.	Applied for finance for himself and third parties to purchase luxury motor vehicles - applications to finance companies made on basis of false documents - obtained credit / fraudulent loans of \$2.56 million– recruited persons to assist in criminal activity – total loss to finance companies \$2.29 million – offences over 3 years - significant planning and sophistication – motivated by greed, gambling and status. Special circumstances - advanced age, ill-health - prospects of rehabilitation guarded

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25.	Kapua (35) [2023] NSWCCA 14	6 x Att s.192E(1)(b) 2 x s.192E(1)(a) s.192C(2) Sched: 2 offences	Over \$1.37m \$8,903	PG (25%)	<u>Indicative:</u> 18m – 3y 6m 6m / 12m 6m <u>Aggregate:</u> 6y NPP 4y 3m	AD	Length record in Victoria and NZ including dishonesty – breached CCO	Over four month period used stolen or assumed identities to apply for financial advantage – persistent – some planning – small amount of advantage actually obtained – below mid-range Female – disadvantaged life – Bugmy factors – mental health issues – funding drug use – genuine remorse: On appeal: no error in declining to reduce moral culpability for mental health issues – no error in assessment of seriousness of offences
26.	Harris (25) [2023] NSWCCA 44	6 x s.192E(1)(b) 2 x Att s.192E(1)(b)	\$60,000	PG (25%)	<u>Indicative</u> 12m 10m <u>Aggregate:</u> 3y NPP 2y	AA <u>Indicative</u> 12m 10m <u>Aggregate:</u> 2y 10m NPP 18m	Fairly lengthy including dishonestly offences	Applied for and received grants for small businesses affected by bushfires – provided false information – two attempts unsuccessful – motivated by greed – degree of sophistication and planning Difficult and disadvantaged childhood On appeal: failed to advert to effect of existing sentence on sentence ratio
27.	Kelly (29-34) [2023] NSWCCA 104	31 x s.192E(1)(b) Sched: 59 x s.192E(1)(b)	\$6.7m	PG (25%)	<u>Aggregate:</u> 13y NPP 8y	AD	nil	Sustained course of fraudulent misconduct over 5y involving 90 victims and \$6.7m – employee of investment company used false documents and forged signatures to have unclaimed money paid into bank accounts controlled by offender Prior good character On appeal: inconsistencies in indicative sentences do not undermine appropriateness of aggregate sentence

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28.	Baydoun (29) [2024] NSWCCA 65	6 x s.192E Cth offences: s.480.4 s.474.14 s.3LA(6)	\$162k	PG (10%)	<u>Aggregate</u> 2y 3m Cth offences: <u>Aggregate</u> 1y 3m <u>Total:</u> 3y 3m NPP 2y	AA Aggregate sentences confirmed but sentence for State offences varied to account for pre-sentence custody.	Limited.	Used encrypted messaging application (Telegram) to communicate with person with username "The Russian" - The Russian provided applicant with passwords and login details for bank accounts of victims - applicant used make withdrawal (or attempted withdrawal) of \$162k from accounts of six victims - called victims' banks to set up new "two factor" authentication, locking out victims from accounts - identity theft. Remorse. CCA: SJ failed to make finding on objective seriousness for count 3 (s.3LA(6)), fail take account pre-sentence custody, error as to discount for plea guilty.
29.	Fineff [2024] NSWCCA 102	12 x s.193E(1)(b)	\$3.355m	PG (30%) comb)	<u>Aggregate:</u> 9y NPP 5y 4m	AD	Nil	Financial planner used trusted position and personal relationship to defraud 12 clients over 3y 5m –6 clients aged in 70s and 80s - obtained personal loans from victims to purchase shares – money lost in gambling – grave breach of trust – well planned, deliberate, sophisticated – repeated use of false / misleading documents Difficult childhood – gambling addiction, PTSD and personality disorder – good character – some recovery of money – excellent prospects of rehabilitation
30.	Nosti (58) [2024] NSWCCA 158	5 x s.192E(1)(b) Sched: 3 x .192E(1)(b)	\$6.76m	PG (25%)	<u>Aggregate:</u> 9y NPP 5y 6m	AA <u>Aggregate:</u> 7y 6m NPP 4y 6m		Financial controller and manager of high school – offences over 9-year period (2010-2019) - GST refunds from Taxation Office transferred into applicant's personal accounts – severe gambling addiction. Serious offences – position of trust – not sophisticated offences - good prospects rehabilitation - unlikely to reoffend. CCA: Error in manner offences on Form 1 documents taken into account – SJ erred in viewing offending as involving total \$7.4 million over 14y period.

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