Dishonestly Obtain Gain or Cause Loss to Commonwealth

s.135.1 (Cth) *Criminal Code*

s 135.1 (1) Do anything with intention of dishonestly obtaining a gain from a Commonwealth entity.

(3) Do anything with intention of dishonestly causing a loss to a Commonwealth entity.

(5) Dishonestly cause loss, or dishonestly cause risk of loss, to a Commonwealth entity, knowing or believing that loss will occur or that there is substantial risk of loss occurring

(7) Do anything with intention of dishonestly influencing a Commonwealth public official in exercise of official's duties as a public official

Maximum Penalty: 5 years (increased to 10 years for offences committed on or after 25.8.2018)

Commenced: 24.5.2001

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
1.	**Hayman** [2003] NSWCCA 138	s.29D (Cth) *Crimes Act* s.135.1(5)	$50,000	PG	18m 18m Total: 18m NPP 12m	AA 12m 12m Total: 12m NPP 6m	Nil	Female – continued to claim benefits after reconciling with partner – some payments made through parents' house indicating intent Difficult domestic situation – good character – care of children Reparation order of $48,705 also made
2.	**Wood** (71 at sentence) [2005] NSWCCA 233	3 x s.29D (Cth) *Crimes Act* s.135.1(5)	$151,170	PG	3m	AD		Female - received widow's pension over 14y – need not greed All money repaid – poor health – care of mentally retarded daughter
3.	**Sanchet v DPP** [2006] NSWCCA 291	40 x s.29B (Cth) *Crimes Act* 21 x s.135.1(5)	$402,967	PG (1/3 plea and assist)	6y NPP 4y	AD		High degree of planning and sophistication – offences committed over four years using 22 false identities Traumatic background – Kuwaiti – suffering PTSD and depression - assistance

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	Amount	Plea	Sentence	Appeal	Record	Facts
4.	**Thomas** (38) [2006] NSWCCA 313	s.135.1(5) s.135.1(5)	$86,181	PG	18m 18m Total: 2y 6m NPP 12m	AD	Dishonesty	Female – changed name twice to escape difficult domestic situation – subsequently claimed benefits in all three names over 3 years Impact of custodial sentence on children
5.	**Evans** [2006] NSWCCA 349	s.29D (Cth) *Crimes Act* s.135.1(5)	$164,721.30	VG	2y 4m NPP 12m FT 1m (concurrent)	AD		Migrated from Greece and changed name – claimed benefits over 6 years in both names
6.	**Bick** [2006] NSWCCA 408	11 x s.29D (Cth) *Crimes Act* 3 x s.135.1(5)	$309,351	PG	4y 6m NPP 3y 6m	AD		Received benefits over 11 years – used five false names and false documents
7.	**Murphy** (24-25) [2007] NSWCCA 18	11 x s.135.1(1)	$375,895	PG (25%)	3y 3m NPP 2y 3m	AA 3y 3m NPP 2y	Nil	Centrelink employee – changed bank account details – offences committed over 18 months
8.	**Townsend** (84) [2007] NSWCCA 215	2 x s.29B (Cth) *Crimes Act* 2 x s.29D Cth) *Crimes Act* 3 x s.135.1(5)	Over $90,000	PG	6m 3y 1y 6m All suspended for 3y	Crown AD		Over thirty years claimed widow's pension while married or in receipt of other pensions Crown appeal dismissed in view of age and serious health issues – otherwise offences should have received custodial sentence

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
9.	**McGuiness** (60) [2008] NSWCCA 80	s.29B (Cth) *Crimes Act* 3 x s.29B (Cth) *Crimes Act* s.135.1(5) s.135.1(5) s.135.1(5)	$55,132	PG (20%)	9m 3m 3m 9m 12m <u>Total</u>: 2y released to recog after 10m	AA 6m 3m 3m 6m 9m <u>Total</u>: 12m released to recog after 4m 20d (immed)	Nil	Received partner allowance over 6 years without disclosing part time employment – included falsely signing document Husband sentenced for related offences – poor health – all money repaid by appeal – delay in prosecution – money used to support household
10.	**Charkawi** [2008] NSWCCA 159	2 x s.29B (Cth) *Crimes Act* 4 x s.135.1(5)	Over $106k	PG (10%)	4y NPP 2y 6m	AD	dishonesty	Over 6 years used false identities to obtain social security payments – well-planned. Able to repay $45k
11.	**Ord** [2008] NSWCCA 162	3 x s.29B (Cth) *<u>Crimes Act</u> [2y]* 6 x s.135.1(5)	$75k	PG	18m released to recog after 10m 2w	AD		Claimed welfare benefits by falsely stating she had care of her children when children were in care of grandparents. Care of young child at time of sentence – no longer drug dependent.
12.	**Yarak** [2008] NSWCCA 298	3 x s.29B (Cth) *Crimes Act* 3 x s.135.1(5)	$75k	PG (25%)	2y released on recog after 15m	AD	Nil	Over 7y period claimed single parenting payments whilst employed full-time. Care of young child at time of sentence.
13.	**Ivanovic** (53-58) [2009] NSWCCA 28	4 x s.29B (Cth) *Crimes Act* 3 x s.135.1(5)	$49,012.64	PG	2y 9m released to recog after 12m	AD	Dishonesty	Received pensions over 5y period while employed or in receipt of other pension or workers compensation payments Physical disabilities - reparation
14.	**Milne** (late 50s) [2012] NSWSC 1538 Fullerton J	s.135.1(1)	Tax liability $415,474	PG	2y (partially accum to existing sentence)		Sentenced for fraud / money laundering shortly before	Lodged three income tax returns at same time – failed to declare consultancy fees of over $900.000 Delay – major depressive disorder – motivated by personal greed

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
15.	**Thomson** [2014] NSWCCA 88	2 x s.135.1(5)	$54,771.67	PG (10%)	2y 6m released after 14m	AD		Received Newstart allowance and disability support pension without disclosing already receiving disability support pension – used different name – offence committed over four years. Repaid $5,824.90
16.	**Masri** [2015] NSWCCA 243	s.135.1(3)		VG	16m released after 10m	AD		Party to joint criminal enterprise with another man to import cigarettes in containers that falsely represented contents were float glass and aluminium frames to avoid customs duties - role was "not insignificant" Motivated by financial greed
17.	**Afiouny** (33) [2017] NSWCCA 23	s.135.1(5)	$17.7m	PG (25% - plea and assist)	20m NPP 8m (cumulative to existing sentence)	AD	Breached bail for bribery offence	Significant role as advisor in sophisticated and concerted scheme to illegally import cigarettes and tobacco – not principal and not involved in selling or distribution – actual loss of duty $3.5m – potential loss of further $14.2m – mid range offence Limited assistance to authorities
18.	**Rostanovski** (27 at offence) [2022] NSWCCA 24	Aid and abet s.135.1(3) Jointly commit money laundering: s.400.3(1) Blackmail: s.249K(2) (NSW) *Crimes Act*	See facts	PG (20%)	Indicative: 1y 7m 9y 6m Aggregate: 8y 4y NPP 2y 5m Total: 10y 5m NPP 7y 2m	Crown AD AD	Nil	Aided A.Cranston in Plutus tax fraud conspiracy that used payroll service company to misappropriate money taken from clients for tax payments over 3 years – recruited and managed straw directors – received at least $192,000 – not member of inner circle – mid-range Involved with co-offender H in blackmailing directors of scheme – extensive planning – greater role played by H – well above mid-range Used co-offender solicitor to launder money received from blackmail demands – over $24m and $19m – sophisticated planning – above mid-range Remorse – good prospects of rehabilitation – little likelihood of re-offending – special circumstances On appeal: failure to take into account good character – no lesser sentence

Maximum Penalty 10 years – Offences Committed on or after 25.8.2018

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
19.	**Zreika** [2022] NSWCCA 262	Obtain financial advantage by deception: s.134.2 Obtain financial advantage by deception: s.134.2 s.135.1(1) s.135.1(1) Sched: 7 offences s.166 certificate s.192E(1)(b)	$36,000	PG (25%)	Aggregate 4y 6m NPP 3y s.10A CSPA	AA Indicative: 3y 1y 6m 1y 6m 3m Aggregate 3y 6m NPP 2y 3m	Dishonestly obtain financial advantage by deception, making false representation resulting in police investigation, shoplifting.	Number of false claims in relation to Australian Government Disaster Relief Payment for those adversely affected by bushfire – assumed false identities – other false claims in relation to crisis payments under covid-19, Medicare and housing benefits - attempted unsuccessfully to obtain other amounts of approximately $37,000. CCA: sentence manifestly excessive - amounts involved relatively small - offending over relatively short period of time - generally employed unsophisticated methods. Excelled academically – special circumstances – first time in custody
20.	**Connell** (46-47) [2024] NSWSC 1565 Fagan J	Aid and abet s.135.1(5)	Over $10m	PG (15%)	1y 6m After 8m released to recog for 10m		Nil	Assisted one offender involved in large tax fraud conspiracy over two years – lowest category of involvement – peripheral and insubstantial Good character – serious and chronic health condition impacting custodial conditions – remorse - delay

Last Updated: Dec 2024