Conspiracy to Defraud the Commonwealth

s.135.4 (Cth) *Criminal Code*

s 135.4 (1) Conspire to dishonest obtain gain from Commonwealth entity

(3) Conspire to dishonestly cause loss to Commonwealth entity

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

(7) Conspire to dishonestly influence Commonwealth public official in exercise of official's duties as a public official

Maximum Penalty: **10 years**

Commenced: **24.5.2001**

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
1.	**Bell** (56) [2008] NSWCCA 206	s.135.4(1)	$556,039	PG (15%)	6y 6m NPP 3y 10m	AA 5y 6m NPP 3y 3m	Nil	Director of company engaged in fraud by co-offender on television company – co-offender a production manager who arranged for money to be paid to offender's company on false invoices – 72 invoices over two years – similar culpability – received $248,088 of money obtained Nil repayments

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
2.	**Agius** (63 at sentence) [2012] NSWSC 978 Simpson J [2015] NSWCCA 200	Consp s.29D / 86(2) (Cth) *Crimes Act* s.135.4(5)	$5m loss to Cth	VG	4y 5m 4y 6m <u>Total</u> 8y 11m NPP 6y 8m	AD	Nil	Tax fraud scheme - Owen T Daniel Accountants scheme A involved in deliberate, calculated, systematic and repeated frauds over ten years – close to worst case – financial advantage Z – became involved as young and naïve accountant due to employment over 7 years – influenced by corrupt employer – no direct financial benefit – made some attempt to stop involvement – good character – married with young children – delay caused significant stress to family – loss of profession
	Zerafa (36 at sentence) [2012] NSWSC 978 Simpson J [2013] NSWCCA 222	Consp s.29D / 86(2) (Cth) *Crimes Act* s.135.4(5)		VG	500h CSO 3y Immediate release	Crown AA 500h CSO 3y 6m NPP 2y 3m	Nil	
3.	**Boughen**	Consp s.29D / 86(2) (Cth) *Crimes Act* s 135.4(3)	Approx $500k	PG (40% on appeal)	2y ICO	Crown AA 1y 6m 1y 6m <u>Total</u>: 3y released to recog after 18m	Nil	Single conspiracy - successful owners of TV production company – wrote and produced TV shows – in 1990 accountant suggested tax evasion scheme – offenders did not know of illegality of scheme at first but both realised it was illegal in 1997 – continued with scheme until 2004 – evaded taxable income of around $500k each. Middle-class – good character – middle aged – poor health – delay in proceedings
	Cameron [2012] NSWCCA 17	Consp s.29D / 86(2) (Cth) *Crimes Act* s 135.4(3)		PG (40% on appeal)	2y ICO	1y 6m 1y 6m <u>Total</u>: 3y released to recog after 18m	Nil	

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4.	**Liles** (65 at sentence) [2012] NSWSC 1249 Schmidt J [2014] NSWCCA 289	Consp s.29D / 86(2) (Cth) *Crimes Act* Consp s.29D / 86(2) (Cth) *Crimes Act* s.135.4(3) s.135.4(3) Sched: 2 x conspiracy to defraud	Over $2m	PG (37% for plea and assist)	2y 6m 2y 3w 2y 6m 5y 2w <u>Total</u>: 8y 3m NPP 4y 11m	AA 1y 7m 4m 1y 7m 3y 2m <u>Total</u> 5y 9m NPP 3y 6m	Nil	Female accountant committed offences over 9 years 1997-2006 – international tax avoidance schemes – did not establish schemes but continued to assistance clients after advising of illegality – later became effective operator – took active steps to conceal offences – received some financial benefit in way of professional fees Senior accountant – past President of National Institute of Accountants and involved in National Tax Liaison Group - principal carer for husband – chronic physical and mental medical problems – reduced life expectancy
5.	**J Sakovits** (62) **R Sakovits** (64) [2013] NSWSC 464 Hall J [2014] NSWCCA 109	Consp 29D / 86(2) (Cth) *Crimes Act* s.135.4(3) Consp 29D / 86(2) (Cth) *Crimes Act* s.135.4(3)	$1,177,893	VG VG	6m 5y NPP 2y 6m (concurrent) 6m 5y NPP 2y 6m (concurrent)	AD AD	Nil Nil	Husband and wife directors of company – tax avoidance scheme over 5y 5m – link to Liles – false invoices and false records – sophisticated planning – multiple acts – greed - lengthy, persistent and calculated fraud Ill health – delay See also ***Liles*** [2012] NSWSC 1249; [2014] NSWCCA 289
6.	**Mereb** **Younan** [2014] NSWCCA 149	s.135.4(3)	$1m	VG	4y NPP 2y	Crown AD		Business owners agreed to participate in tax fraud scheme proposed and organised by accountants – participated over 5 years Repaid tax shortfall – will make penalty payments requiring sale of houses – largely co-operated – delay

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7.	**Bennett** (51) [2015] NSWCCA 56 Co-offender: ZERAFA AGIUS	Consp s.29D / 86(2) (Cth) *Crimes Act* s.135.4(3)		VG	4y 9m NPP 2y 4m	AD		A and P participated in a scheme set up and promoted by AG which enabled its participants to evade company tax and income tax - false deductions amounted to $112,000 producing a tax shortfall of $40,320 - conduct perpetrated over five years - involved considerable deliberation and dishonesty. Good character – hard-working professional – supportive family
8.	**Dickson (No.18)** (50) [2015] NSWSC 268 Beech–Jones J [2016] NSWCCA 105 Co-offender: ISSAKIDIS	s.135.4(5) Consp money laundering: s.400.3(1)	$135 million	VG	7y 6m 9y Total: 11y NPP 7y	Crown AA 9y 12y Total: 14y NPP 9y 3m	nil	Tax fraud in worst category of offence – conspiracy to deal with proceeds of crime very serious example of offence - offender and co-conspirator were directors of company - agreed to make false depreciation claims in company tax returns – sham agreements to acquire medical technology as basis for depreciation claims – submission of false material to Australian Tax Office to support claims – extent of loss or risk of loss $135 million – personal benefit - dishonest and fraudulent tax scheme on a large scale - high degree of planning and sophistication. Prior good character – well-educated, employed
9.	**Chang** [2016] NSWCCA 296	s.135.4(3)	2,994,990	VG	5y NPP 3y	AD		Involved in scheme inflating and receiving GST funds – employee with intimate knowledge of, and involvement in, scheme – co-conspirators owner of companies and internal accountant
10.	**Issakidis** (74) [2018] NSWSC 378 Co-offender: DICKSON	Consp money laundering: s.400.3(1) s 135.4(5)	$135 million	VG	8y 3m 7y Total: 10y 3m NPP 7y 6m		Nil relevant	Tax fraud in worst category of offence - conspiracy to make false depreciation claims in company tax returns and conspiracy to launder proceeds of crime through offshore accounts - loss to Commonwealth exceeded $100M - intended loss to Commonwealth approximately $135M – offences involved intricate planning and preparation over a number of years - worst category offences – motivated by greed – no contrition - role marginally less significant than co-accused - less involved in production of documents than in dealing with people to maintain semblance of legitimacy - share of proceeds smaller than co-offender but still in excess of $15M. Good prospects of rehabilitation –significant delay – hardship to offender and his wife – mental and physical health problems – advanced age

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
11.	**Kitson** (37) [2019] NSWSC 1109 Payne J [2022] NSWCCA 166 Co-offenders: A.CRANSTON ONLEY L.CRANSTON HAMMOND ANQUETIL MENON WILLMOTT	s.135.4(3)	Over $105m	PG (50% - combined)	4y 6m NPP 3y		Nil	Involved in Plutus tax fraud conspiracy over three years with – payroll service company set up and used to misappropriate money taken from clients for tax payments – high level of sophistication, premeditation and dishonesty – total loss to ATO $105,625,304.36 – not designer of scheme but actively involved from early stage – responsible for sourcing clients and building up business – later employed as manager – attempted to destroy records to conceal offence – personally received $1.3m – slightly below principals: essential facilitator – aware at least $80m involved – towards top of range Prior good character – remorse
12.	**Hammond** (22 at beginning of offence) [2020] NSWSC 888 Payne J Co-offenders: A.CRANSTON ONLEY L.CRANSTON ANQUETIL KITSON MENON WILLMOTT	s.135.4(3) Consp money laundering: s.400.3(1)	See facts	PG (50% - combined)	Indicative: 2y 3y Aggregate: 4y NPP 2y		Nil	Involved in Plutus tax fraud conspiracy that used payroll service company to misappropriate money taken from clients for tax payments – scheme high level of sophistication, premeditation and dishonesty – offender employed by company for several months before becoming aware of scheme – continued involvement aware of illegality and extent of fraud – involved in accounting and financial transactions - total loss to ATO during involvement of offender $101,584, 952.81 – took active steps to conceal conspiracy – bottom of hierarchy – money laundered $49,084,316.55 – received small financial benefit compared to co-conspirators - role place offence at just below mid-range Female - youth and inexperience – acted from misguided sense of trust and loyalty – remorse and contrition – prior good character

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13.	**Anquetil** [2020] NSWSC 995 Payne JA [2021] NSWCCA 59 [2025] NSWCCA 147 Co-offenders: A.CRANSTON ONLEY L.CRANSTON HAMMOND KITSON MENON WILLMOTT	s.135.4(3) Money laundering: s.400.3(1) Sched: s.400.3(1)	See facts	PG (50% - combined)	4y 8m 6y Total: 7y 6m NPP 5y	Crown AD AD	Nil	Involved in Plutus tax fraud conspiracy over three years with – payroll service company set up and used to misappropriate money taken from clients for tax payments – high level of sophistication, premeditation and dishonesty – one of the most serious tax fraud offences seen by the courts – total loss to ATO $105,625,304.36 – a principal and one of four to establish scheme – performed critical role throughout scheme – at apex of hierarchy – money laundering offence well above mid-range – sophisticated, organised and diverse – use of false entities and business records – involved in laundering over $28m with ultimate personal benefit of $12,218,148.55 – schedule offence involved payment $24,244,760.64 in response to blackmail threats (see *Hausman / Rostankovski* [2022] NSWCCA 24) Genuine remorse and contrition – prior good character – good prospects of rehabilitation CCA: 2025 appeal by applicant on family hardship ground allowed – no lesser sentence warranted.
14.	**Assie** [2020] NSWCCA 249	s.135.4(3) Money laundering: s.400.9(1)	$137,397	PG (10%)	5y 9m Aggregate 5y NPP 3y 3m	AD		Female - with late husband gave advice and assistance to various co-conspirators to obtain Commonwealth social security benefits (“carer payments” and “carer allowances”) to which not entitled – received cash payments from “customers” in exchange for completing and lodging claim form with Centrelink on their behalf - received at least $11,000 for her role Arranged marriage to husband at age 18 – power imbalance in relationship – but exercised choice to participate in offence and continued after husband died - remorse

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15.	**Assi** **Jomaa** [2021] NSWCCA 181	s.135.4(3) Sched: s.400.5(1) s.233BABAD(1) *Customs Act* s.135.4(3) Sched: s.400.5(1) s.233BABAD(1) *Customs Act* Forgery: s.144.1	Over $2.4m duty avoided	PG (17.5%) PG (17.5%)	24m 3w 15m 3w recognisance release order 17m recognisance release order	AD AD	Use false statement and dispose of property with intent to defraud Nil	Both offenders became involved in conspiracy to import cigarettes without payment of excise duty – two containers imported with total avoided excuse duty over $2.4m – each offender provided false documents in relation to one container – received $20,000 of promised $80,000 fee (proceeds offences) – willing, knowledgeable participants, integral to agreement A - operations manager / truck driver for freight forwarding business – other offence on schedule involved participation in meetings discussing other importation J – offending slightly more serious because of position as licenced customs broker – further offences involved giving advice in relation to another importation and lodging false documents – prior good character and low prospects of re-offending – some remorse – loss of licence – wife in poor health On appeal – rejected parity ground – error made on aggravating factor in relation to J but no lesser sentence on re-sentence
16.	**L.Cranston** (21-24) [2023] NSWSC 454 Payne JA Co-offenders: A.CRANSTON ONLEY HAMMOND ANQUETIL KITSON MENON WILLMOTT	s.135.4(3) Consp money laundering: s.400.3(1)	See facts	VG	4y 6y Total: 8y NPP 5y		Nil	Involved in Plutus tax fraud conspiracy that used payroll service company to misappropriate money taken from clients for tax payments over 3 years – scheme high level of sophistication, premeditation and dishonesty – towards highest range of objective seriousness - offender trusted and responsible although subordinate role – became aware of illegality after working for 11m and continued involvement – persistent course of conduct - total loss to ATO during involvement of offender $101,584,952.81 – at or near bottom of hierarchy – money laundered $49,084,316.55 – received financial benefit of $181,639.96 – similar culpability to Hammond Female - primarily motivated by misguided loyalty to brother – no contrition – prior good character – prospects of rehabilitation fair – 5y daughter – assistance in conduct of trial - delay

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17.	**Wilmott** [2023] NSWSC 474 Payne JA Co-offenders: A.CRANSTON ONLEY HAMMOND L.CRANSTON ANQUETIL KITSON MENON	s.135.4(3) Consp money laundering: s.400.3(1)	See facts	VG	5y 7y Total: 9y NPP 6y		Nil	Involved in Plutus tax fraud conspiracy that used payroll service company to misappropriate money taken from clients for tax payments – scheme high level of sophistication, premeditation and dishonesty - offender involved in transfer of $31 million to second-tier companies, representing about 30 per cent of total $105 million misappropriated by group – received direct financial gain of $498,272- reward significantly less than principals – role well below some but greater than L.Cranston and Hammond - not an instigator or architect of conspiracies and acted under instructions - central role as knowing active participant for 2 years - effective 'chief managing officer' of second-tier companies - not involved in destroying records and computers University educated – no contrition - prospects of rehabilitation good - prior good character
18.	**Menon** (39) [2023] NSWSC 768 Payne JA Co-offenders: A.CRANSTON ONLEY L.CRANSTON HAMMOND ANQUETIL KITSON WILLMOTT	s.135.4(3) Consp money laundering: s.400.3(1)	See facts	VG	8y 6m 12y Total: 14y NPP 9y		Nil	Solicitor - involved in Plutus tax fraud conspiracy using payroll service company to misappropriate money taken from clients for tax payments – scheme high level of sophistication, premeditation and dishonesty - total loss to ATO $101,584,952.81 – money laundered $49,084,316.55 – not principally motivated by greed - received $248k in shares - very significant role - provided advice to principal conspirators, instrumental in appointing vulnerable drug addicted persons as directors for second-tier companies and manipulating them to carry out fraud - had directors sign documentation knowing exposed to risk of substantial personal tax liabilities, used expertise and standing as solicitor in correspondence and drafting legal documentation, overseeing forgery of documents, lying in interview with NSW Office of State Revenue, facilitating transfer of large sums, pivotal in dealing with blackmail and payment of $25 million to blackmailers, being monies which should have been paid to ATO - culpability only slightly below principals – not principally motivated by greed. Used prior good character and professional standing – no remorse - extra curial punishment including will never again practise law - prospects of rehabilitation fair

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
19.	**A.Cranston** (36) [2023] NSWSC 1004 Payne JA Co-offenders: ONLEY L.CRANSTON HAMMOND ANQUETIL KITSON WILLMOTT MENON	s.135.4(3) Consp money laundering: s.400.3(1)	See facts	VG	9y 12y Total: 15y NPP 10y		nil	Involved in Plutus tax fraud conspiracy that used payroll service company to misappropriate money taken from clients for tax payments over 3 years – over $105m misappropriated with loss to ATO of over $101m - scheme high level of sophistication, premeditation and dishonesty and towards highest range of objective seriousness -– money laundered through bank accounts owned by companies associated with conspirators – offender an instigator of scheme and a main financial beneficiary receiving not less than $6,861,782.17 –blackmail taken into account as limited non-exculpatory duress – role towards upper range of objective seriousness – course of conduct over three years – use of good character and knowledge of tax system No contrition – co-operation – some delay – effect of medical conditions on custody – prospects of rehabilitation only fair
20.	**Onley** (53) [2023] NSWSC 1008 Payne JA Co-offenders: A CRANSTON L.CRANSTON HAMMOND ANQUETIL KITSON WILLMOTT MENON	s.135.4(3) Consp money laundering: s.400.3(1)	See facts	VG	9y 12y Total: 15y NPP 10y		nil	Involved in Plutus tax fraud conspiracy that used payroll service company to misappropriate money taken from clients for tax payments over 3 years – over $105m misappropriated with loss to ATO of over $101m - scheme high level of sophistication, premeditation and dishonesty and towards highest range of objective seriousness -– money laundered through bank accounts owned by companies associated with conspirators – offender an instigator of scheme and a main financial beneficiary receiving not less than $4,692,585.56 –blackmail taken into account as limited non-exculpatory duress – role towards upper range of objective seriousness – course of conduct over three years No contrition - co-operation – some delay – good character facilitated offence – childhood trauma – prospects of rehabilitation fair – poor physical health

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
	Kelu (48)	s.135.4(3) s.135.4(3)	$40,911,685	VG	5y 6y <u>Total</u>: 8y NPP 4y 6m		Nil	2012-2013 – large-scale tax fraud - defrauding Commonwealth of goods and services tax (GST) revenue, through purchase and sale of gold bars – gold bars purchased then melted in furnaces at M's premises - new bars sold as 'scrap gold' to gold dealers, avoiding GST as not a precious metal – co-opted persons who allowed bank accounts to be established in their names and operated by the offenders, unknowing as to criminal activities - motivated by financial greed, made substantial gain - $16,795,280 recovered – did not lead lavish lifestyle. M: excellent prospects of rehabilitation - unlikely to re-offend - good character. K: more important role but stronger subjective case - autism spectrum disorder, health issues – highly educated - good character - good prospects rehabilitation - unlikely to re-offend
21.	**Millner** (47; 56 at sentence) [2023] NSWSC 1537 Cavanagh J	s.135.4(3) s.135.4(3)			5y 6y <u>Total</u>: 8y NPP 4y 6m		No significance	

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Record	Facts
22.	**Alex** (47) **Kirschberg** (60) **McAndrew** (56) **Loccisano** (47) **Bryers** (61) [2024] NSWSC 1565 Fagan J	s.135.4(3) Consp money laundering: s.400.3(1) s.135.4(3) Consp money laundering: s.400.3(1) s.135.4(3) Consp money laundering: s.400.3(1) s.135.4(3) Consp money laundering: s.400.3(1) s.135.4(3) Consp money laundering: s.400.3(1)	$10,706,588	VG	8y 8y <u>Total</u>: 9y 3m NPP 6y 2m 7y 7y <u>Total</u>: 8y NPP 5y 6m 7y 7y <u>Total</u>: 8y NPP 5y 6m 7y 6m 7y 6m <u>Total</u>: 8y 6m NPP 6y 7y 6m 7y 6m <u>Total</u>: 8y 6m NPP 6y		Use carriage service threat to kill Nil Nil Dishonesty Fail fulfil statutory obligations as company director	2018-2020 - conspiracy to defraud Commonwealth of PAYG tax and conspiracy to deal with proceeds of crime - object of conspiracy was non-remittance of PAYG amounts withheld from wages paid in connection with a labour hire business in Queensland; two companies jointly operating the business – estimated total of PAYG not remitted, $10,706,588 (total after monies recovered by ATO $10,120,000) - proceeds of crime offence relates to channelling of money obtained by tax fraud through various companies Alex owner of business – Loccisano acted as channel of communication between Alex and Kirschberg and McAndrew - McAndrew a director of the two operating companies for all but five months of charge period – Kirschberg a director for first year, up to July 2019 – Bryers joined conspiracy in April 2019 as a consultant to the other offenders. Alex: physical health issue impacted by custody – mental health issues – no insight – importance of special deterrence Kirschberg: prior good character – no insight - good prospects of rehabilitation – unlikely to reoffend McAndrew: prior good character – no insight - good prospects of rehabilitation – unlikely to reoffend – isolation from family in Qld Loccisano: reservations about prospects of rehabilitation Byers: no subjective information – strong reservations about prospects of rehabilitation

Last updated: December 2024