Manslaughter

Criminal Negligence

Maximum Penalty: 25 years (s.25 (NSW) Crimes Act)

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
1.	**Elliott** (28) NSWCCA 14.2.1991	Criminal negligence Motor vehicle	VG	MT 4y AT 1y 4m	AA FT 10m 25d backdated - immediate release	nil relevant	Truck driver collided with passenger coach – raining - before commencing journey aware of major fault in braking system which caused accident - criminality at lower end of scale Remorse
2.	**Stevens** (18) NSWCCA 13.8.1993	Unlawful & dangerous - misc Criminal negligence Motor vehicle	PG	MT 7y AT 2y 4m	AA MT 5y 6m AT 2y 6m		After drinking spree decided to steal car - killed owner who was seeking to prevent car being stolen
3.	**Cameron** (19) NSWCCA 27.9.1994	Criminal negligence Electrocution Victim under 18y	VG	MT 8m AT 16m	AD	BES, supply, escape	Playing with power lines with friends - left exposed line - 15y male electrocuted when out walking his dog
4.	**Armstrong** NSWSC 25.8.1995 B-Parker J	Criminal negligence Victim under 18y Failure to provide	VG	4y GBB		Nil	Mother failed to seek medical attention for four hours after child placed in scalding water by de facto - de facto convicted of murder

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

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5.	**Hayne** NSWCCA 18.9.1998	Unlawful & dangerous - misc Criminal negligence Arson	VG	FT 18m	AD		Arguing with wife - splashed petrol around living room and set it alight - tried to rescue wife but failed Suffered severe burns himself
6.	**Wilkinson** (19) NSWSC 9.4.1998 Wood CJ at CL [1999] NSWCCA 248	Criminal negligence Victim under 18y Failure to provide	VG	MT 3y 6m AT 3y	AD	nil	Mother failed to protect wellbeing of 6m son - ignored bruises for which de facto offered innocent explanations - ignored breathing difficulty - talked out of taking child to doctor by de facto over 2 days - suspected de facto mistreating child - inattentive and disinterested mother Mother of older daughter born when offender 16y and younger child
7.	**Hall** (1999) 108 A Crim R 209 [1999] NSWSC 738 Bell J	Criminal negligence Failure to provide	PG	5y GBB		minor	Victim staying with offender and co-offender H in caravan – assaulted by second co-offender S - offender failed to obtain help - all offenders intellectually impaired Female with good character S dealt with for mal inflict GBH H dealt with for acc after fact to infliction of GBH
8.	**Simpson** [1999] NSWSC 842 Studdert J [2000] NSWCCA 284	Criminal negligence Electrocution	PG	MT 6y AT 3y	AD	supply, possess, cultivate Indian hemp, use heroin	Victim electrocuted when trying to get over electrified wire fence set up to protect offender's cannabis plants - found victim's body and disposed of it in bushland Confessed immediately - generally good character
9.	**Cramp** (55) (1999) 110 A Crim R 198 [1999] NSWCCA 324	Criminal negligence Unlawful and dangerous - misc Motor vehicle Victim under 18y	VG	MT 7y AT 2y 4m	AD	2 x PCA	"Worst case category" - allowed 16y intoxicated female to drive car at high speed - ran into telegraph pole killing driver - 3 young children in car - looking after victim and children who were neighbours.

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10.	**Luong** (17) [2000] NSWSC 505 Sully J	Unlawful & dangerous - shooting Criminal negligence Juvenile offender Victim under 18y Shooting - domestic	VG	4y NPP 2y		nil	Hosted party for school friends at family home - while displaying gun deliberately fired at 16y female friend mistakenly believing no live ammunition in gun Excellent subjective features
11.	**Do** [2000] NSWCCA 459	Criminal negligence Motor vehicle Victim under 18y	VG 2 x Mansl	MT 3y AT 1y (each)	Crown AD	nil	Driver of heavily laden truck lost control on downward incline of major road colliding with car and crashing into residential property - killed driver of car and 13y occupant of house - failure to observe warning signal and initial abandonment of responsibility although facts did not establish deliberate acceleration
12.	**Do** [2001] NSWCCA 19	Criminal negligence Shooting - general	VG	MT 18m AT 18m (PD)	Conviction AD		Spent night in company with victim and friend drinking, smoking heroin and taking rohypnol and playing with victim's shotgun - pointed gun at victim and deliberately pressed after playing with safety catch - thought he had put safety catch back on
13.	**McDonald** (2001) 124 A Crim R 17 [2001] NSWCCA 301	Criminal negligence Failure to provide Victim under 18y	PG	7y NPP 5y	AD		Offender and husband caring for young developmentally retarded boy and male teenager - probably foster carers - aware teenage boy was violently assaulting younger boy over some 10 days - did not prevent horrific assaults and failed to get medical assistance for final fatal assault Mild intellectual disability
14.	**ANG** (16) [2001] NSWSC 758 Ireland AJ	Criminal negligence Drowning Juvenile offender	PG	2y suspended sentence		nil	Pushed unconscious body of 31y uncle into river - did so at earlier request of suicidal uncle - uncle suffered depression and intoxicated at time - offender under influence of drugs from drinks spiked without knowledge of offender Well respected youth - good family support - deeply affected by incident - rehabilitation.

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15.	**Eriksson** (23) [2001] NSWSC 781 Ireland AJ Co-offender: HILL	Criminal negligence Victim under 18y Failure to provide	PG (50% plea and assist)	3y NPP 18m		insignificant	Female - 2y son thrown into lounge by de facto – failed to obtain medical assistance despite deteriorating health of child - number of serious injuries inflicted on child by de facto over 10-14 days prior to death Difficult childhood - remorse - volatile and chaotic relationship with father of children then with co-offender - willing to give evidence against co-offender - will become blind within ten years - strict protection
16.	**Hill** (23) [2001] NSWSC 978 Ireland AJ [2003] NSWCCA 16 Co-offender: ERIKSSON	Criminal negligence Victim under 18y Failure to provide	PG (11%)	8y NPP 6y	AA 6y NPP 4y 6m	prior convictions	Physically abused 2y son of de facto over several weeks prior to death - refused to obtain medical treatment On appeal found SJ could not have been satisfied offender inflicted final injury on victim nor prevented mother from obtaining medical assistance
17.	**Styman** (24) [2003] NSWSC 93 Barr J Co-offenders: STYMAN TABER	Unlawful and dangerous - assault Criminal negligence Assault - general	VG (at murder trial) PG Agg BE and rob	14y NPP 9y 8y Total: 15y NPP 10y		BES offences	With 2 co-offenders broke into house of elderly female living alone - victim tied and gagged and left in house - stole cash and property – made unsuccessful 000 call - victim died 10-12 days later - lesser participant - not aware victim not rescued Cruel and violent childhood - genuine remorse - assistance to police - truthful at trial - evidence of rehabilitation - protective custody
18.	**O'Brien** [2003] NSWCCA 121	Criminal negligence Victim under 18y Failure to provide	VG	5y NPP 2y	AD	Nil	1y daughter died of malnutrition – refused to take daughter to hospital when requested by doctor – claimed husband refused hospital treatment and she was threatened and dominated by him – suffering BWS Assistance against husband – protective custody

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19.	**Huynh** [2003] NSWSC 1066 Kirby J	Criminal negligence Arson	VG (at murder trial – small discount for offer)	6y NPP 3y 6m		Nil	During argument with ex-wife poured methylated spirits around kitchen and lit lighter – unexpected ignition – no intention to hurt wife Excellent character evidence, including from victim's parents – deep remorse – excellent prospects of rehabilitation – care of young son
20.	**George** (58) (2004) 149 A Crim R 38 [2004] NSWCCA 247	Criminal negligence Failure to provide	VG	7y NPP 4y	AA 3y 6m NPP 2y	Nil	Failure to provide proper nutrition, hydration and medical care to 86y mother – found with bed sores, dirty, severely malnourished, dehydration, semi-conscious – mother domineering and refused care and treatment while competent – offender culpable only for period of incapacity Probably suffering mild Asperger's Disorder – characterised by social isolation and difficulties in relating to people – failure to properly take into account
21.	**HMF** (30) [2005] NSWSC 1214 Latham J	Criminal negligence Assault – domestic Victim under 18y	PG (25%)	5y NPP 3y 9m		Record for property offences	Mother scalded 8m daughter in bath – no medical assistance called – no intent to harm History of drug abuse – suffering drug induced psychosis – judgment significantly impaired – genuine remorse

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22.	**Taber** (27) **Styman** (37) [2005] NSWSC 1292 Studdert J (2007) 170 A Crim R 427 [2007] NSWCCA 116 Co-offender: STYMAN	Unlawful and dangerous - assault Criminal negligence Assault - general	VG Mansl Agg rob VG Mansl Agg rob	18y NPP 13y 6m 10y <u>Total</u> 19y NPP 14y 6m 18y NPP 13y 6m 10y <u>Total</u> 19y NPP 14y 6m	AD	Nil relevant Of little significance	Three offenders broke into home of 70y female – victim tied up, gagged and left with pillowcase over head – stole $23,300 - 000 call not acted upon – victim died after 9 days – carefully planned offence – "most grave crime of manslaughter" Protective custody – no remorse – low prospects of rehabilitation
23.	**Gow** [2006] NSWDC 78 Berman DCJ	Criminal negligence Poison / drug	PG	18m NPP 12m suspended		Nil	Patient died from drug prescribed by doctor – prescribed wrong form of morphine – failed to properly instruct victim as to taking of drug – failed to write instructions on prescription as required – looked up wrong drug in writing out required amount – tired and under stress Remorse – admitted mistake openly in court – excellent character – caring doctor

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24.	**HA** (29) [2008] NSWSC 1368 Rothman J	Criminal negligence Victim under 18y Failure to provide	PG (35% plea and assist)	2y suspended sentence		Nil	Failed to obtain medical care for 4y son – son suffering numerous medical conditions resulting in severe malnutrition – died from pneumonia and kidney infection – need for medical care would have been obvious to parents – medical care declined due to genuine religious beliefs of HA and husband – husband older and dominating figure (although not abusive) – breach of trust - child otherwise well cared for – low level of culpability Mother to ten surviving children – husband died since arrest – subsequent support of family and providing good care for remaining children – remorse – borderline intelligence
25.	**T Sam** **M Sam** [2009] NSWSC 1003 Johnson J (2011) 206 A Crim R 67 [2011] NSWCCA 36	Criminal negligence Victim under 18y Failure to provide	VG VG	8y NPP 6y 5y 4m NPP 4y	AD	Nil Nil	Parents of 9m daughter failed to obtain appropriate medical treatment for eczema over many months – father a trained homeopath – each offender well educated - upon examination at hospital found to be in severe pain, malnourished, dehydrated, severe skin condition and ulcerated eyes – died from infection – serious case of negligence - seriousness of medical condition clear – failure constituted cruelty Subsequently have 3y son – successfully treated for eczema – delay in charging – effect of imprisonment on son exceptional circumstances – limited insight into offences T Sam – narcissistic personality traits – rigid reliance upon homeopathic remedies M Sam - compliant woman
26.	**BW (No 3)** (46) [2009] NSWSC 1043 Hulme J [2011] NSWCCA 176	Criminal negligence Victim under 18y Failure to provide	VG	16y NPP 12y	AD	Nil	Father of 7y daughter who died from starvation and neglect – victim suffered developmental delay and autism – left in bedroom in unhygienic conditions - ignored daughter - worst case Mother convicted of murder - [2009] NSWSC 1043 / [2013] NSWCCA 103 Unlikely to reoffend – rehabilitation.

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27.	**SF** (16) [2009] NSWSC 1069 Hall J	Criminal negligence Juvenile offender Shooting - general	VG	4y NPP 2y		minor	Gun produced in room full of youths – no dispute or argument – took gun, opened chamber, observing bullet, cocked gun and pointed gun over shoulder at victim – playing with gun and showing off Drug use - remorse
28.	**Reynolds** (33) [2010] NSWSC 691 Grove J [2015] NSWCCA 29	Criminal negligence Motor vehicle (boat)	VG Mansl 5 x Mansl	6y 6m NPP 4y FT 4y Total: 7y 6m NPP 5y	Conviction AD	Nil	6 victims – boat collision – offender asked by friends to drop off keys to boat after work function – took workboat which he used in his employment – took large number of persons on boat – allowed PS to drive boat for short while – PS under influence of drugs and alcohol and did not have boat licence – boat collided with fishing boat – ought to have known PS unfit to drive boat and failed to supervise him. Remorse – good character – girlfriend was one of the victims
29.	**PFC** (24) [2010] NSWSC 834 RA Hulme J (PTC) [2011] NSWCCA 51 Co-offender: NLH	Criminal negligence Victim under 18y Failure to provide	PG (5%) Sched: 2 x possess cannabis leaf	5y 2m NPP 3y	AD	Nil	Failed to obtain medical assistance for 7w baby knowing partner and mother of victim had harmed victim – NLH threw victim into bassinet then pushed bassinet which fell onto ground – victim stopped breathing later in evening - earlier injuries also found on victim's body Young couple struggling financially – NLH difficulty in coping with raising two small children - good character – supportive family – good rehabilitation prospects – remorse

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30.	**Iskov** [2010] NSWSC 1074 Barr AJ [2011] NSWCCA 241	Criminal negligence Motor vehicle	PG (25%) Mansl s.86 s.33	12y NPP 7y 6m 10y NPP 7y 6m 8y NPP 6y Total: 18y NPP 13y 6m	AA 9y NPP 5y 3m 10y NPP 7y 6m 8y NPP 6y Total: 15y NPP 11y 3m		Entered car of estranged wife and assaulted her on wrist and head with hard, blunt instrument – drove around in victim's car with victim in front seat unable to leave for three and a half hours – car collided with tree and victim killed by impact with windscreen – negligent in failing to obtain medical assistance for injuries, driving around with distressed passenger, failing to ensure victim wearing seat belt and collision with tree – negligence of driving not high Angered and depressed by marriage breakdown – suffering reactive depression
31.	**Woodbridge** (2010) 208 A Crim R 503 [2010] NSWCCA 185	Motor vehicle Criminal negligence	VG Manslaughter Agg driving cause GBH	3y NPP 2y FT 2y Total: 6y NPP 4y	Crown AA 7y NPP 4y FT 3y Total: 9y NPP 6y	High PCA	Female – drove intoxicated – crossed over to other side of road colliding with oncoming vehicle – one victim killed and second victim seriously injured – drove lengthy distance on busy highway on busy afternoon. Mental health issues – suffering depression – argument on morning with ex-husband and son caused offender to consume alcohol – good character.
32.	**Nair** (43) [2013] NSWCCA 79	Criminal negligence Failure to provide	PG Mansl Supply Supply Sched: 2 x supply	4y 6m NPP 2y FT 2y 3m 3y 9m NPP 2y 9m 23d Total: 7y 9m NPP 5y 3m 22d	AA 4y 6m NPP 2y FT 6m 3y 9m NPP 2y 9m 23d Total: 7y NPP 4y 6m 23d	Poor driving record	Engaged escorts and supplied them with cocaine – one escort died after voluntarily consuming cocaine – 9m later engaged two escorts providing them with cocaine – offender and escorts intoxicated - one escort became unwell with convulsions – failure to call ambulance and inappropriate medical treatment – body left in unit – while on bail for manslaughter engaged two escorts and supplied cocaine – all cocaine supplied originally by escort agencies as part of 'party package' Neurosurgeon – seriously assaulted in gaol resulting in permanent impairment to vision

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33.	**Smith** (31) [2013] NSWSC 796 Latham J [2014] NSWCCA 316	Criminal negligence Victim under 18y Failure to provide	PG (25%) Mansl Access after fact to murder	FT 7y 12y NPP 9y Total: 16y NPP 12y	AD	Relatively minor	Failed to obtain medical treatment for 6y daughter of de facto – victim assaulted by mother – after unsuccessful attempts to revive child offender put her to bed and went to work next day – child died during day – body placed in suitcase for several days then placed in shallow grave in bush and burned – gave false accounts of disappearance and laid false trails for over nine months – aware victim subjected to long term physical abuse at hands of mother – acted out of loyalty to de facto – manslaughter top of range – accessory worst case Co-offender sentenced for murder: Abrahams
34.	**A (No 5)** (34) [2015] NSWSC 670 Bellew J	Criminal negligence Victim under 18y Failure to provide	VG	4y 6m NPP 2y 6m		Nil	Female – failure to obtain medical treatment for 2y son over one month - victim suffered physical injuries and displayed symptoms of being unwell – no evidence offender present when injuries inflicted - period of offending followed offender's hospitalisation for episode of self-harm - otherwise appropriately attentive to child's needs - offending behaviour was aberrant – no deliberate decision not to obtain medical assistance - not total abandonment of responsibility - substantially below mid-range Difficult background – mental illness / health – unlikely to re-offend

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35.	**KJ** (27) [2015] NSWSC 767 Harrison J	Criminal negligence Victim under 18y Failure to provide	PG (40%) (see facts for additional offences)	Manslaughter 12y Aggregate: 14y NPP 10y 6m		nil	Mother to four children including 7y male victim - intellectually disabled victim subjected to constant physical and psychological abuse by offender and her partner as method of discipline – lied to police suggesting death resulted from fall off pogo stick – failed to obtain medical assistance for 24h – all offences committed in presence of siblings (children) – substantial emotional and physical harm – manslaughter most serious case of neglect – other offences vary in seriousness from low to above mid-range 4 x s.61 assault s.91G(1)(c) child abuse offence 3 x s.91H(2) child abuse offence s.35(3) reckless wounding in company s.43A(2) fail to provide necessities Sched: 2 x fail to provide adequate lodgings Childhood characterised by violence and sexual abuse – relationships characterised by violence – low intelligence – dependent personality – came under control and influence of co-offender – genuine remorse – assistance – voluntary admission to previously unknown offences
36.	**TP** (mid 30s) [2018] NSWSC 369 Hamill J	Criminal negligence Victim under 18y Failure to provide	PG (20% plea and assist)	4y NPP 18m		minor traffic	Mother failed to remove 12y daughter from danger and obtain medical treatment – aware victim brutally subjected to severe physical abuse over many years by male partner – aware of extent and seriousness of abuse – offender and second daughter also subjected to abuse – failed to obtain medical treatment after threats by partner and fear of losing children although on occasions obtained treatment for herself Suffering batter women's syndrome – PTSD and depression – significantly reduced culpability – onerous effect of custody Male partner sentenced for murder JK [2018] NSWSC 250

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37.	**AS** (22) [2018] NSWSC 930 Fullerton J	Criminal negligence Victim under 18y Failure to provide	PG (50% plea and assistance)	3y NPP 16m			Female - failed to remove 2y 8m daughter from abusive domestic relationship with partner and failed to obtain medical treatment – death of victim caused by assaults of male partner over two days – sustained assaults on child in week before fatal assault – offender also subjected to physical abuse and control by male partner History of sexual and physical abuse at hands of father, step mother and subsequent partners – chronic and complex mental health issues – good character
38.	**Dowling** (34 at offence; 41 at sentence) [2019] NSWDC 155 Lerve DCJ [2020] NSWCCA 290	Criminal negligence Failure to provide	VG	7y NPP 4y 9m	Conviction only AD	Obtain drug by false prescription, receiving, take and drive conveyance, shoplifting, damage property, assault police, intimidate police, dishonesty, minor drug matters – breached bond	Female — offender and male acquaintance had been consuming drugs (Xanax and OxyContin) - others present placed victim in offender's car and spoke of taking victim to hospital - offender drove home, left victim in drug coma in vehicle believing he was alive and went to bed - offender's mother discovered deceased victim next morning – offender had assumed duty of care by removing deceased from possibility of others providing help and failed to obtain medical attention Good prospects of rehabilitation - unlikely to re-offend - intellectual functioning within borderline to low ranges.
39.	**Byrne** **Cahill** [2021] NSWCCA 185	Motor vehicle Criminal negligence	PG (25%) PG (25%)	10y 6m NPP 7y 10y 6m NPP 7y	AD	Driving offence nil	Street race – during break in TAFE studies each offending commenced driving to nearby café with passengers – pulled up at lights – spontaneous street race – collided with ute killing driver instantly – up to 143kph in 50kph zone – equal culpability – provisional drivers – danger to public and seriousness of offence increased by involvement of two cars – built up area of town – speed Youth – importance of general deterrence – both had good subjective case and remorse On appeal: sentences stern but not outside range

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40.	**Smith** (31) [2022] NSWSC 1651 Wilson J	Criminal negligence Failure to provide Victim under 18y	VG (murder trial – 10% for offer to plead)		Lesser offences – breached conditional liberty	4y 9m NPP 3y 6m	Offender failed to fulfil legal duty to assist injured 6m child in his sole care – circumstances and perpetrator of fatal assault on 6m child not established — victim in sole care of offender – partially motivated by concern to avoid police involvement – accelerated victim's death – affected by drugs Onerous conditions in custody – sentence reduction for efficient trial – willing to give assistance – remorse - prospects of rehabilitation
41.	**Davidson** [2022] NSWCCA 153	Motor vehicle Criminal negligence Victim under 18y	PG (25%) 4 x Mansl Agg driving cause GBH 2 x cause bodily harm	Indicative 14y 3m 6y 1y 4m Aggregate 28y NPP 21y	AA Indicative 10y 6m 5y 3m 1y 1m Aggregate 20y NPP 15y	Nil	Drove whilst under influence of drugs and alcohol at excessive speed - lost control of vehicle – mounted kerb, striking seven children from behind, dragging some of them along – four victims killed instantly – three victims injured, one with critical significant brain injuries – gross criminal negligence. Good subjective case – remorse, prospects of rehabilitation, prior good character - ADHD. CCA: sentence manifestly excessive.
42.	**Baker** (34 at offence – 44 at sentence) [2023] NSWCCA 262	Criminal negligence Failure to provide	VG	5y NPP 3y	AD	Minor	Female voluntarily took responsibility for day to day care of seriously ill former partner – victim suffering cancer and several strokes – failure to provide for hygiene, food, wound care and medical assistance over several weeks – care not difficult to provide and victim had not refused hospital care – neglect occurred in presence of 9y son - victim developed cachexia (extreme weight loss) and pressure sores – after admission to hospital suffered stroke and died – cause of death linked to neglect – high seriousness Delay – small reduction in moral culpability - drug use due to assault and death of mother and reluctance to admit need for help due to involvement of FACS in care of son – unlikely to re-offend – close relationship to son – special circumstances On appeal: sentence not manifestly excessive

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43.	**Russell** [2023] NSWCCA 272	Criminal negligence Failure to provide	VG Female genital mutilation s.33(1)(b) Manslaughter	Indicative 3y 6m 2y 6m NPP 1y 10m 7y Aggregate 10y NPP 7y 6m	Indicative Conviction quashed 2y 3m NPP 20m 6y 6m Aggregate: 7y NPP 5y 3m	nil	Extreme body modification artist performed abdominoplasty on adult female removing skin from abdominal area – required emergency corrective surgery and caused scarring – inserted silicon snowflake mould under skin of hand of second woman in unhygienic conditions and without requisite skill and expertise – wrongly advised no infection and failed to refer for medical treatment – manipulated implant despite infection and inserted second implant – victim died of sepsis – breach of trust – consent not a mitigating factor – below mid-range but not substantially Conviction for procedure performed on third female quashed on appeal No evidence of remorse or prospects of rehabilitation

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