

Aggravated Sexual Intercourse Without Consent

Victim Under 16 Years

s.61J (NSW) *Crimes Act*

s 61J (1) Sexual intercourse with another person without consent of the other person knowing other person does not consent and in circumstances of aggravation

(2) Circumstances of aggravation:

- (a) offender intentionally or recklessly inflicts actual bodily harm on victim or any other person who is present or nearby,
- (b) offender threatens to inflict actual bodily harm on victim or any other person who is present or nearby by means of an offensive weapon or instrument,
- (b1) offender threatens to inflict grievous bodily harm or wounding on victim or any other person who is present or nearby (*inserted 28.11.2018*)
- (c) offender is in company of another person or persons,
- (d) victim is under age of 16 years
- (f) victim has a serious physical disability
- (g) victim has a cognitive impairment
- (h) offender breaks and enters into any dwelling-house or other building with intent to commit any serious indictable offence (*inserted 1.1.2009*)
- (i) offender deprives victim of liberty for a period before or after offence. (*inserted 1.1.2009*)

Maximum penalty: 20 years

Standard non-parole period: 10 years (offences committed on or after 1.2.2003)

Commenced: 17.3.1991

Note: [s.25AA \(NSW\) Crimes \(Sentencing Procedure\) Act](#) applies to sentences imposed on or after 31.8.2018:

- (1) A court must sentence an offender for a child sexual offence in accordance with the sentencing patterns and practices at the time of sentencing, not at the time of the offence.

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Scales NSWCCA 4.8.1992	2 x s.61J s.66C 2 x s.61E(1A) s.61M	PG	MT 6y AT 2y (other sentences concurrent)	AA	MT 3y 6m AT 2y	Foster parents to three young children they knew had been sexually abused previously – abuse by offender committed against youngest girl aged 10y over seven months – included digital penetration
2.	McClea (35) NSWCCA 1.9.1992	s.61J	PG	MT 6y AT 2y	AD	Lengthy record – no sexual offences	Sexual assault on 14y female by three men – complainant visiting offenders - offender forced intercourse while co-offender holding complainant down – forced fellatio – subjected to vaginal and oral intercourse simultaneously by co-offenders then anal intercourse by offender while co-offenders continued vaginal intercourse – principal offender Assistance against co-offenders – fear for safety – assisted in care for crippled father
3.	Gerges NSWCCA 8.3.1994	s.61J s.61L	VG	MT 2y 6m AT 10m (concurrent sentence)	AD		Picked up 15y complainant hitchhiking - drove to dark place and forced fingers into vagina - also touched breasts - did not stop complainant leaving car.
4.	Moore (40) NSWCCA 12.4.1994	s.61J Att s.61J s.61M(1) Sched: 4 similar off	PG	MT 9y AT 3y FT 8y FT 2y (concurrent)	AA MT 6y AT 3y FT 4y FT 2y (concurrent)	Breached recog for indecent assault on same complainant	Undressed 13y step daughter and attempted to insert penis in vagina – ejaculated on leg – inserted little finger in vagina on separate occasion – part of ongoing conduct
5.	Heather (45) NSWCCA 1.8.1995	3 x s.61J s.90A	VG	MT 10y AT 5y	AA MT 9y AT 3y	Sexual offences	Forced 11y girl walking past into house – struck on side of head – penile intercourse and 2 x oral intercourse – threatened with further assault Schizophrenia
6.	RSS NSWCCA 27.2.1996	s.61J	VG	MT 2y AT 8m	AD		Digital penetration of 10y complainant staying at friend's house - complainant fell asleep on double bed and awoke to find offender's finger in vagina.

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7.	Mills (47) NSWCCA 27.6.1996	3 x s.61J 2 x 61M(1)	PG	MT 2y 9m AT 1y 3m FT 1y <u>Total:</u> MT 3y 9m AT 1y 3m	AD	similar offences	Sexually assaulted 11y twin brothers, met through go-kart business - played with penis and performed fellatio - not an isolated offences
8.	Falls NSWCCA 21.8.1996	s.61J 2 x BES	PG	MT 4y AT 2y 6m (concurrent sentence)	Crown AA MT 6y AT 3y (concurrent sentence)	recog	Followed 12y complainant through paddock and tackled her from behind - penetrated her by unknown means, ejaculating in crotch area - threatened complainant with bike chain
9.	Chmielowiec (56) NSWCCA 21.7.1998	s.61J 2 x s.61O(2)	PG	MT 4y 6m AT 1y 6m FT 2y (concurrent)	AD	nil	Wife's 9y granddaughter residing in their home - made complainant masturbate him in his car, and fellate him – representative offences
10.	CAA (32) NSWCCA 4.12.1998	2 x s.61J Sched: Possess unauth firearm	PG	MT 3y AT 2y 6m	AA MT 12m AT 12m	offensive language	Digitally penetrated 14y female twice - in loco parentis - no threats - immediately acknowledged misconduct when confronted
11.	Rushby (18) [1999] NSWCCA 104	s.61J Sched: Take and drive conveyance Unlic driving	PG	MT 5y AT 3y	AD	driving, resist arrest, possess implements	Stole car with co-offender and 13y complainant – car driven until broke down in remote place – complainant dragged into bush land, ordered to remove clothes and threatened with piece of wood - co-offender had penile intercourse - offender had anal intercourse - tore clothes and left complainant tied to tree - co-offender aged 16y Pleaded guilty at earliest opportunity – assistance - protective custody.
12.	Taumaialo (20) [2000] NSWCCA 14	2 x s.61J	VG	MT 5y AT 3y	AD	on parole for rob in company	While waiting at home with 14y female for lift to church forced sexual intercourse - next day complainant returned with offender to his house where he forced her to engage in fellatio – returned under threat.

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13.	Paul (49) [2000] NSWCCA 117	Att s.61J	PG	MT 7y 6m AT 2y 6m	AD	property, violence, driving - on parole	Attacked 13y walking along footpath - punched her, demanded money then attempted to have sexual intercourse. Chronically dysfunctional - dangerous - drug addiction
14.	Smith (27) [2000] NSWCCA 343	s.61J	PG (20%)	3y 6m NPP 20m	Crown AA 4y 6m NPP 2y 3m	criminal record but not for sexual offences of this kind	Forced 11y cousin to engage in intercourse causing pregnancy - took advantage of family context. Remorse - suffering schizo-effective disorder.
15.	Rich (34) [2000] NSWCCA 448	s.61J	VG	MT 2y 9m AT 2y	Crown AD	minor	Assaulted 13y male relation while asleep – sharing bedroom - forced anal intercourse. Sexually abused as a teenager – retrial - protection.
16.	Quinn (35) [2000] NSWCCA 446	s.61J	VG	MT 9y AT 2y	AA 9y NPP 7y	on parole for sexual offence – violence, sexual, property and drug offences	Followed 15y female into public toilets at train station, threatened and digitally penetrated her - limited display of violence.
17.	BEG (54) [2001] NSWCCA 341	2 x s.61J (under 16y and under authority)	PG	5y NPP 3y	AA 5y NPP 2y 3m	Old convictions	Sexually assaulted 10y step-daughter and friend Severe back pain proving unmanageable in custody - sentence reduced to take into account fact that medical condition worse than appreciated at time sentence imposed.
18.	MBB (16) [2001] NSWCCA 354	s.61J s.61M(1)	PG (20%)	4y 9m NPP 2y 3m FT 2y (concurrent)	AD	nil	Forced 14y schoolgirl into toilets at public park using knife - indecently assaulted her and forced penis into mouth for short time. Unstable family life - rehabilitation.
19.	ICC [44-8] [2002] NSWCCA 119	2 x s.61J (under authority) s.61M(1) Sched: 12 related off	PG (not stated)	4y 6m NPP 3y 4m 13d FT 3y (concurrent)	AD	nil	Sexually abused teenage daughter over 4 year period Remorse and contrition - protective custody – breakdown of marriage – willingness to seek counselling – suicide risk

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20.	KJW (32) [2002] NSWCCA 107	s.61J (under 16 and under authority) 2 x s.61M(1)	PG (25%)	4y NPP 2y FT 2y Total: 4y 9m NPP 2y 9m	AD	Nil	Came into stepdaughter's bedroom at night on two occasions and rubbed her arm along penis - received treatment for behaviour and returned to family unit - sucked penis of stepson several years later. Receiving treatment – prospects of rehabilitation reasonable – protective custody
21.	Fong (27) (2002) 132 A Crim R 308 [2002] NSWCCA 320	s.61J (inflict ABH)	PG (15-20%)	5y NPP 3y	Crown AA 13y NPP 8y 6m	nil	Took 6y step daughter and tied her to bed head - forced penile/vaginal intercourse while complainant screaming - caused major injury to vagina Fijian - protection - remorse
22.	Musso (37) [2002] NSWCCA 487	s.61J 2 x s.61J s.61N s.61M	VG	4y 6m NPP 2y 6m FT 2y 6m FT 6m FT 18m (all concurrent)	Crown AA 4y 6m NPP 2y 6m 4y 6m NPP 2y 6m FT 6m FT 18m Total: 5y NPP 3y	nil	Stepfather of 14y complainant - anal intercourse on two occasions and fellatio. Stable and supportive family - suffering from spina bifida - need for medical treatment in custody - protective custody - prior good character and reputation as caring father.
23.	Dennis (36) [2003] NSWCCA 137	s.61J	PG (10%)	12y NPP 9y	AA 10y NPP 7y 6m	Lengthy record although not as serious	Broke into home of 15y complainant and waited in bedroom – threatened complainant with knife and forced vaginal intercourse Aboriginal with early drug and alcohol abuse
24.	Slack [2004] NSWCCA 128	2 x s.61J	VG	5y NPP 3y	AA 3y NPP 18m	Nil	11-12y female assaulted by father of friend while staying at offenders house – offender placed fingers in or around vagina on two occasions while complainant in bed – breach of trust Good character – protective custody – volunteer fire-fighter

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25.	Diaz (25) [2004] NSWCCA 251	s.61J (in company)	VG	8y NPP 6y	AD	Unfavourable record	In company with co-offender had intercourse with 15y intoxicated complainant at Darling Harbour Low intelligence – difficult background in El Salvador
26.	Wilkinson (57) [2004] NSWCCA 468	s.61J Sched: 2 x s.61J	PG (on appeal - 25%)	18y NPP 13y 6m	AA 12y NPP 9y	Numerous similar priors over 35y – had already served approx 15y for various offences	Penile-vaginal penetration with intellectually disabled 13-14y female (mental age of 8-9y), who became pregnant as a result – pregnancy terminated – previous relationship with complainant’s mother – admitted further acts of intercourse with complainant Institutionalised as a child – “uncontrollable” child – suicide attempt – very poor health, heart problems
27.	AD (15) [2005] NSWCCA 208	s 61J Sched: s 61M	PG (40% plea and assist)	2y 6m NPP 1y 9m	AD	Nil	SNPP 10 years In relationship with 15y complainant – in presence of 22y cousin fondled complainant and inserted finger in vagina against her wishes – cousin exposed himself and offered \$100 for sex Agreed to give evidence against cousin - high risk of re-offending – low opinion of non-Muslim women – low IQ – poor impulse control
28.	RTGS [2005] NSWCCA 293	s.61J	VG	3y NPP 18m	Conviction AD		Babysitting 11y step-niece by marriage – digitally penetrated vagina for about 15min Good character
29.	Mearns [2005] NSWCCA 396	s.61J 4 x s.61M	VG	4y 6m NPP 2y FT 12m <u>Total:</u> 6y NPP 4y	AD		Sexually assaulted daughter of de facto partner over several years when complainant aged 11-15y - touched breasts and vagina, digital penetration and exposed penis – part of ongoing abuse – towards lower end of scale
30.	LAB (2006) 162 A Crim R 517 [2006] NSWCCA 202	5 x s.61J Assault	VG	9y NPP 6y FT 6m	AD		Sexually abused adopted daughter aged 13-17y – five counts of penile intercourse part of ongoing abuse – three counts committed when complainant 17y but under offender’s authority

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31.	FV (44 at sentence) [2006] NSWCCA 237	Att s.61J s.61J s.61M(1)	PG (15%)	7y NPP 4y FT 2y FT 3m <u>Total:</u> 8y 3m NPP 5y 6m	AA 6y NPP 3y FT 2y FT 3m <u>Total:</u> 7y 3m NPP 4y 3m	nil	While sleeping in mother's bed father touched and played with 12y daughter's breasts – attempted to have penile intercourse with complainant when she was 15y – digital penetration of complainant when aged 15y Good character – second offences committed shortly after death of wife
32.	D'Amico (40-42) [2006] NSWCCA 316	2 x s.61J s.61J s.61O s.61M Sched: s.61O	PG (20% on appeal)	6y 4m NPP 4y 8m 7y 3m NPP 5y 6m 1y 10m NPP 1y 4m 2y 8m NPP 2y 3m <u>Total:</u> 8y 3m NPP 6y 6m	AA 5y 9m NPP 4y 2m 6y 3m NPP 4y 4m 1y 7m NPP 1y 2m 2y 4m NPP 1y 9m <u>Total:</u> 7y 3m NPP 5y 4m		Married to complainant's aunt – offences occurred when complainant aged 11-13y – took complainant to unit of girlfriend and forced her to watch them have intercourse – girlfriend performed cunnilingus on complainant – complainant forced to perform fellatio on offender and indecently touched with his penis – on separate occasions performed cunnilingus on complainant and penile penetration

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33.	Smith (48 at sentence) [2006] NSWCCA 353	s.61J 2 x s.61J 2 x s.61M s.61I Sched: 3 related offences	PG (25%)	6y NPP 3y 3m FT 2y 9m FT 18m FT 2y <u>Total:</u> 6y NPP 3y 3m	Crown AA 6y NPP 3y 3m FT 2y 9m FT 18m 5y NPP 3y <u>Total:</u> 7y 9m NPP 5y	nil	Friend of family sexually assaulted female aged 9-12y and 17y – on several occasions entered room of sleeping complainant and digitally penetrated her – rubbed buttocks and vaginal area over clothes, forced complainant to hold penis and touched and licked vagina – just below mid-range Immediate confession upon confrontation – obtained counselling- good character
34.	I.F.G. [2007] NSWCCA 6	s.61J s.61J	PG (25%)	6y NPP 4y 6y NPP 3y <u>Total:</u> 8y NPP 5y	AA (only to correct pronouncement of sentence)	nil	Sexually assaulted step daughter aged 12 and 13y – on two occasions came into complainant's bedroom and forced penile penetration – part of course of sexual abuse over several years – sentenced for related offences in Queensland Delay not caused by complainant or offender – good character
35.	Picken (20) [2007] NSWCCA 319	2 x s.61J s.61M	VG	2y suspended	Crown AD	nil	SNPP 10 years Dance instructor at party at home of 13y female student's Uncle – in spa with complainant and two other children digitally penetrated complainant twice and forced her to touch penis on outside of swimwear – below mid-range Prior good character – physical health issues – behavioural issues – immature and vulnerable in custodial conditions
36.	Rylands (55) (2008) 184 A Crim R 534 [2008] NSWCCA 106	s.61J	VG	6y NPP 4y	AD	Nil	SNPP 10 years 13y friend of offender's daughter invited to sleepover party – offender gave complainant alcohol and offered massage – touched complainant on groin area and performed cunnilingus – complainant in shock and protested - spontaneous offence – below middle range of objective seriousness - breach of trust Good character – upstanding member of community.

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37.	Carlton (2008) 189 A Crim R 332 [2008] NSWCCA 244 [2014] NSWCCA 14	4 x s.61J	VG	13y 4m NPP 8y 6m (each – concurrent)	AD AD		SNPP 10 years Sexual assault on 10y girl in unit – anal penetration with finger, penis and vibrator – penetration of genitalia Mental illness - segregation
38.	KAF (56) [2009] NSWCCA 184	s.61J s.61J Sched: 2 x s.61O Agg act indecency	PG (25%)	FT 5y 8y NPP 5y <u>Total:</u> 9y NPP 6y	AA 8y NPP 5y 8y NPP 5y <u>Total:</u> 9y NPP 6y	Minor	SNPP 10 years Assaulted 11y daughter over 6 month period –part penile vaginal penetration – digital penetration - mid-range objective seriousness Voluntary disclosure to police – remorse – psychotic disorder On appeal – failure to set NPP
39.	McGrath (2010) 199 A Crim R 527 [2010] NSWCCA 48	s.61J s.61J s.61M(2)	VG	10y NPP 7y 10y NPP 6y 6y NPP 4y 6m <u>Total:</u> 14y 6m NPP 10y 6m	AA 8y NPP 6y 8y 6m NPP 5y 4y 6m NPP 3y <u>Total:</u> 12y NPP 9y	Nil relevant	SNPP 10 years Penile / vaginal intercourse when stepdaughter aged 9y – on second occasion forced to touch offender's penis – second offence of penile/vaginal intercourse 18m later

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40.	BT (35) [2010] NSWCCA 267	s.61J 3 x s.61M(1)	PG	9y NPP 6y 5y NPP 3y <u>Total:</u> 11y NPP 8y	AA 5y NPP 3y 3y NPP 2y <u>Total:</u> 6y NPP 4y	nil	SNPP 10 years Came into bedroom of sleeping 15y daughter of de facto and touched her on vagina under pyjamas – digital penetration – not isolated incidents Former good character – serious mental health issues
41.	LJ (22 at offence – 34 at sentence) [2010] NSWCCA 289	s.61J Sched: 2 x agg indecent assault Act of indecency	PG on appeal - 25%)	2y 2m NPP 16m	AA 18m NPP 12m	Nil	Offences occurred 13 years ago in 1997 – oral intercourse with 14y male – friend of family – not isolated incident – abuse took place over 6 months. No evidence offender had abused or would abuse again – lonely at time due to lack of warmth in his own family – good character. SJ erred in not giving discount for guilty plea.
42.	MDZ [2011] NSWCCA 243	s.61J s.61J Sched: Indecent assault	PG (10% on appeal)	7y NPP 4y 11y NPP 7y <u>Total:</u> 11y NPP 7y	AA 4y NPP 2y 6m 8y NPP 5y (concurrent)		SNPP 10 years Sexually assaulted 12y girl was sleeping at home of friend and at which offender also staying – penile / vaginal intercourse and digital penetration. Borderline personality disorder – mental health issues – cannabis dependence – these matters reduced objective seriousness of offence.
43.	FB [2011] NSWCCA 217	s.61J (under 16y and under authority)	VG	6y NPP 4y	Crown AA 10y NPP 6y	Sentenced for similar offence committed later in time	SNPP 10 years Headmaster of school sexually assaulted 14y student staying with his family for two weeks – complainant fell asleep after taking tablets from offender – awoke to find offender forcing penile / vaginal intercourse – just below mid-range – vulnerable complainant Prior good character – hardship in custody – loss of teaching career

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44.	RSW [2012] NSWCCA 13	2 x s.61J s.61M(1)	VG	8y NPP 5y 6y NPP 3y <u>Total:</u> 9y NPP 6y	AD		SNPP 10 years Stepfather sexually assaulted 9-10y daughter on at least two occasions – entered bedroom of complainant early in morning – cunnilingus and placed penis in complainant's hand – prior good character
45.	Enriquez (39) [2012] NSWCCA 60	s. 61J Sched: Attempt agg sexual assault	PG (15%)	8y 6m NPP 6y	AD	Minor	SNPP 10 years Sexually assaulted 15y daughter of ex-partner who was home alone with her two younger siblings – vaginal-penile intercourse – aware no adult was home and that complainant was vulnerable - previous familial relationship of stepfather and stepdaughter also placed complainant in vulnerable position - breach of trust. Drug abuse – depression – supportive partner and children.
46.	DAJ (39 at sentence) [2012] NSWCCA 143	s.61J s.61J 4 x s.61M(1) FTA	VG	3y 6m NPP 2y 3m 3y 6m NPP 2y 2y NPP 18m FT 6m <u>Total:</u> 4y 6m NPP 3y 3m	Crown AA 4y 6m NPP 3y 5y NPP 2y 9m 2y NPP 18m FT 6m <u>Total:</u> 7y NPP 4y 9m	Traffic matter	SNPP 10 years 2003-2007 – sexually abused daughter of de facto aged 9-13y – touched complainant on stomach, thigh and vagina while in bed on two occasions – digital penetration – kissing and attempting to touch breasts and vagina

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47.	Van der Baan (25/26) [2012] NSWCCA 5	3 x s.61J 3 x s.61J s.97(1)	PG	FT 6y 9m 12y NPP 9y FT 18m <u>Total:</u> 17y 3m NPP 14y 3m	AA FT 6y 9m 12y NPP 9y FT 18m <u>Total:</u> 15y 9m NPP 12y 9m	Sexual offences committed at similar time	1995-6 – Arranged to meet 18y female acquaintance – walked complainant to park area and threatened her with knife – forced penile/vaginal intercourse, anal intercourse and fellatio – tied up complainant and stole property – 16m later grabbed 15y female walking along bridge in early evening – threatened with knife – forced fellatio, digital penetration and vaginal intercourse – each attack callous and degrading and caused significant psychological and physical injury Totality to sentence imposed for similar offences
48.	Christie (34) [2012] NSWCCA 228	s.61J s.61J s.38 - administer intoxicating drug with intent	VG	10y NPP 7y 6m 12y NPP 8y FT 7y <u>Total:</u> 16y NPP 12y	AA 8y NPP 5y 8y NPP 6y FT 5y <u>Total:</u> 11y NPP 8y	Offences – no sexual offences	SNPP 10 years Befriended 14y female stranger at wharf and commenced drinking – supplied Xanax tablet lying about effect – complainant accompanied offender home before passing out – placed naked in offender's bed and sexually assaulted – cunnilingus and penile / vaginal intercourse
49.	GWM (27) [2012] NSWCCA 240	s.61J	PG (25%)	5y 3m NPP 2y 8m	Crown AA 7y 6m NPP 4y 10m	limited	SNPP 10 years Sexually assaulted 11y niece – woke complainant in her bed and forced vaginal intercourse, ejaculating into vagina – drunk at time of offence – refused to stop when asked by complainant – complainant had to be tested for sexually transmitted diseases Drug and alcohol addiction commenced after suicide of father

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50.	DJM [2013] NSWCCA 101	s.61J 2 x s.61J s.91H(2) – disseminate child pornography s.91G(1)(a) – use child for child pornography s.91H(1) – possess child pornography	PG (12.5%) PG (25%)	14y NPP 9y 6m 10y 6m NPP 7y 10m FT 5y FT 7y FT 1y 6m <u>Total:</u> 17y 9m NPP 13y 3m	AA 10y 4m NPP 7y FT 7y FT 3y FT 7y FT 1y 6m <u>Total:</u> 13y 4m NPP 10y		SNPP 10 years Stepfather took photographs of naked 13y step-daughter and sent them to friend – activated webcam so friend could view 13y stepdaughter getting naked – digital and penile penetration of 13y stepdaughter – had possession of photos of naked 13y sister of friend – set up webcam so different friend could view offender having sexual intercourse with step-daughter
51.	RO [2013] NSWCCA 162	s.61J s.61M(1)	VG	5y NPP 3y FT 2y <u>Total:</u> 6y NPP 4y	AD	Minor offence prior – 2 subsequent indecent assault offences	1994 and 1996 offences – sexually assault on complainant aged 13 / 15y by mother’s boyfriend – on first occasion under influence of acid – exposed penis and rubbed vagina – digital penetration – mid range
52.	Montero (24) [2013] NSWCCA 214	s.61J s.61J s.61L	VG	4y 4y 6m 2y <u>Total:</u> 7y NPP 4y 6m	AD	traffic offences only	SNPP 10 years 15y female stayed overnight at home of offender with his girlfriend and younger sister – awoke to find offender in her bed – touched, kissed and licked breasts – digital and penile penetration – opportunistic offence – below mid-range Prior good character

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53.	TDP (late 30s) [2013] NSWCCA 303	2 x s.61J 2 x s.61J 5 x s.61J s.61M(1) s.61M(1)	VG	10y NPP 6y FT 4y 7y NPP 4y FT 3y FT 2y 6m <u>Total:</u> 10y 6m NPP 7y 6m	Crown AA 10y NPP 6y 6y NPP 4y 7y NPP 4y 3y NPP 18m 2y 6m NPP 12m <u>Total:</u> 10y 6m NPP 7y 6m	Nil	SNPP 10 years Sexually abused stepdaughter aged 13-16y over 3 years – forced penile / vaginal intercourse while sharing beds in hotels and taking rest breaks in motor vehicles – on occasions provided sleeping tablets – anal intercourse and fellatio – touched vagina – similar sexual misconduct on other occasions both at home and away travelling – offences towards mid-range - aggravating factors - Complainant under 16 years and under authority Prior good character – mental health problems
54.	CMB [2014] NSWCCA 5 [2015] HCA 9 [2015] NSWCCA 166	4 x s.61J s.61M(1)	PG (25%)	3y GBB (all counts)	Crown AA <u>Aggregate:</u> 5y 6m NPP 3y Appeal to High Court allowed Crown AD (exercise of discretion) - 12m custody while waiting HCA		SNPP 10 years Sexually abused daughter aged 11-12y over 2005-2006 – touched on vagina – kissed and licked vagina on multiple occasions Entered pre-trial diversion program for other offences – confessed to additional offences in assessment period – judge erroneously imposed non-custodial sentence in light of pre-trial program High Court found error in approach to exercise of discretion on Crown appeal 2015 - Evidence of rehabilitation – serious medical conditions

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55.	Jarrett [2014] NSWCCA 140	2 x s.61J s.61M(1) s.61M(1)	VG	8y NPP 5y FT 12m FT 18m Total: 8y NPP 5y	AD		SNPP 10y Sexually assaulted 12y friend of daughter staying at offender's house – invited complainant to watch movie on sofa bed in lounge – touched breasts and genitals – cunnilingus – penile penetration – one incident
56.	DC [2014] NSWCCA 192	4 x s.61J	VG	Aggregate: 7y NPP 5y 3m	AD	Extensive - inflict ABH with intent to have sexual intercourse - AR, BES	SNPP 10y Targeted attack of 15y female at night as complainant walking home – grabbed complainant and held knife to neck – penile-vaginal, digital intercourse and cunnilingus.
57.	FB [2014] NSWCCA 282	s.61J	VG	6y 6m NPP 4y	AD	Child sexual abuse offences.	SNPP 10y Sexual intercourse with female – complainant aged 14y and under offender's authority as teacher and headmaster of school – with consent of complainant's family, was taking care of complainant - offender drugged complainant and waited until she was sleeping before having intercourse - criminal culpability considerable - significant degree of deliberation and premeditation.
58.	Hammond (26) [2015] NSWCCA 89	2 x s.61J	PG (25%)	6y NPP 3y (each – concurrent)	AD	Nil	SNPP 10y 15y female complainant – highly intoxicated whilst camping with offender and friends – offender offered to take her home but took complainant to his residence – digital vaginal penetration – penile vaginal penetration – took complainant home. Prior good character – suffering depressive illness.
59.	KA (17) [2015] NSWCCA 111	s.61J (in company) s.61J (in company)	VG	FT 23m 4y NPP 2y Total: 4y 3m NPP 2y 3m	AD		Two males separated 14y intoxicated female complainant from group on beach at night – co-offender forced fellatio with assistance of offender – offender engaged in penile / vaginal intercourse – joint criminal enterprise – co-offender initiated offences

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60.	EI-Ali (34) [2015] NSWCCA 300	s.61J	VG	9y NPP 6y	AD		SNPP 10y Took 13y complainant to hotel room and supplied alcohol – anal intercourse without consent in presence of male friend
61.	AG (49) [2016] NSWCCA 102	3 x s.61J s.61M(1)	PG (25%)	3y NPP 2y FT 12m <u>Total:</u> 6y NPP 4y	AD		SNPP 10y Sexually assaulted daughter when aged 11-13y - digital vaginal penetration – touching vagina Ellis discount – disclosure of aspects of offending not complained of by complainant – remorse undermined by complainant-blaming
62.	Erazo [2016] NSWCCA 139	2 x s.61J 2 x s.61J 2 x s.61J Sched: 6 sexual offences	PG (12%)	<u>Indicative</u> 9y NPP 6y 10y NPP 7y 13y NPP 9y <u>Aggregate</u> 14y NPP 10y	AD	Nil	SNPP 10y Sexually abused 12-17y step daughter over 5 years – continued offending after matter originally reported to police but not pursued – caused pregnancy requiring abortion – rubbing of penis - fellatio – cunnilingus – digital and penile penetration of vagina – penile penetration of anus – criminality of high order
63.	DN (25) [2016] NSWCCA 252	s.61J s.61O(2A)	VG	6y NPP 4y FT 10m (concurrent)	AD	Breached GBB	SNPP 10y Took 15y complainant to offender's home at night – complainant employee at offender's father's shop – forced fellatio – took photos of complainant's breasts – approaching mid-range

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64.	Majid (25) [2016] NSWCCA 289 [2016] NSWCCA 311	s.61J s.61J Detain for advantage	VG	12y NPP 9y 14y NPP 10y FT 8y <u>Total:</u> 14y 6m NPP 10y 6m	AA 11y 6m NPP 7y 12y 6m NPP 8y FT 8y <u>Total:</u> 14y 6m NPP 10y AA 11y 6m NPP 7y 11y 10m NPP 8y FT 8y <u>Total:</u> 13y 10m NPP 10y	Drug / dishonesty / traffic / assault	SNPP 10y Manager of fast-food restaurant took home 15y female employee – en route parked car and forced penile / vaginal intercourse – one month later offence repeated – first offence just below mid-range – second offence mid-range Muldrock error Born in Afghanistan – childhood trauma – some evidence of efforts at rehabilitation in custody
65.	Kapanadze (55) [2017] NSWCCA 69	s.61J 2 x Att s.61J s.61M(2)	VG	<u>Indicative</u> 7y NPP 5y 3m 4y 2y NPP 18m <u>Aggregate:</u> 9y 4m NPP 7y	AD	Nil	SNPP 10y Offences committed against de facto partner's 14y daughter - penile/anal intercourse in offender's car - touching complainant on her naked breast - attempted penile/vaginal intercourse and penile/anal intercourse – sexually assaulted complainant 2-3 times per week - offender would hurt complainant, punching and kicking at home, in car, and at park

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66.	Aloniu [2017] NSWCCA 74	s.61J s.61J s.61J	PG (6%)	<u>Indicative:</u> 6y NPP 4y 6y 9m NPP 4y 6m 7y NPP 4y 8m <u>Aggregate:</u> 8y 11m NPP 5y 9m	AD		SNPP 10y Single episode took place in December 2010 – 15y niece by marriage - digital penetration, cunnilingus and penile/vaginal intercourse – entered room where complainant was sleeping - asked complainant not to tell anyone and that “he would buy her anything for Christmas” – complainant under offender’s authority – planned offence.
67.	PH [2017] NSWCCA 79	6 x s.61J 2 x s.61M(2)	PG (25%)	<u>Aggregate</u> 18y 9m NPP 14y	AD		SNPP 10y 2012 – 2014 – abused his three daughters aged 12-16y - circumstances of aggravation under the authority of offender - penile/vaginal intercourse - representative counts
68.	Abbey [2017] NSWCCA 109	s.61J s.61O s.61O	VG	<u>Indicative</u> 5y 1y 2y <u>Aggregate</u> 5y 6m NPP 3y 3m	AD		SNPP 10y 2003 – sexually assaulted step daughter aged 11-12y – hit complainant with wooden spoon when she refused his request to wear dress without underwear and sit with legs spread – forced complainant to play with offender’s penis then forced penis down her throat – ejaculated on complainant leaving semen on underwear

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69.	DG (49) [2017] NSWCCA 139	s.61J 2 x s.61M(1) s.61M(1) Sched: 2 x Child sexual intercourse offences	PG (25%)	<u>Indicative</u> 14y NPP 10y 2y NPP 1y 2m 3y NPP 2y <u>Aggregate</u> 15y NPP 11y	AA <u>Indicative</u> 14y NPP 10y 2y NPP 1y 2m 3y NPP 2y <u>Aggregate</u> 15y NPP 10y	Possess drugs	SNPP 10y 2010 – 2015 - Offences against offender's step-daughter - first indecent assault offence when complainant aged 11y - penile/vaginal intercourse when complainant aged 16y - offence above midrange objective seriousness.
70.	Kennedy [2017] NSWCCA 193	4 x s.61J	PG (10%)	17y NPP 12y	AD	Limited	July 1996 - November 1999 – sexual assaults on daughter of partner – abused complainant from age 15-18y – vaginal / penile intercourse – one count a violent rape conducted under threat of killing – complainant fell pregnant three times and gave birth to two babies – callous disregard for complainant in continuing to have unprotected sex - pregnancy was used as a means of requiring complainant to continue engaging in sexual intercourse under threat of losing children Aboriginal background.
71.	Croxon (41) [2017] NSWCCA 213	s.61J s.61M(1) Sched: s 61J Assault with act of indecency	PG (10%)	<u>Indicative</u> 8y NPP 5y 3y 6m NPP 2y <u>Aggregate</u> 11y 5m NPP 7y	AA <u>Indicative</u> 5y 5m NPP 4y 2y 8m NPP 2y <u>Aggregate</u> 5y 11m NPP 4y 6m	Nil	SNPP 10y School teacher committed offences against 15y female student at school – digital vaginal penetration – touched vagina – told complainant he would kill himself if she told anyone and that police would not believe her - significant abuse of a position of trust - mid-range, albeit towards lower end

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72.	Johnson (53) [2017] NSWCCA 278	Supply cannabis leaf s.61M(2) s.61J s.61J Supply cannabis leaf s.61N(1) Accessory after fact s.112(2)	PG (10%) VG VG VG VG PG (20%)	<u>Indicative</u> 6m 3y NPP 2y 7y NPP 4y 6m 8y NPP 5y 3m 12m 3m 3m <u>Total:</u> 10y NPP 6y 2m	Crown AA <u>Indicative</u> 6m 3y 7y 8y 12m 3m 3m <u>Total:</u> 10y NPP 7y 6m		SNPP 10 years Provided cannabis leaf to son and 15y girlfriend – next morning sexually assaulted girlfriend in bathroom – touched breasts and vagina in shower – licked vagina – rubbed penis between vagina – offered money and cannabis for silence – next day exposed penis Aggravated BES involved assisting girlfriend 'recover' property offender mistakenly believed belonged to girlfriend Poor health On appeal non-parole period increased - earlier sentence quashed after successful conviction appeal
73.	Lever (A pseudonym) [2018] NSWCCA 107	9 x s.61J	VG	<u>Indicative:</u> 8y NPP 5y <u>Aggregate:</u> 13y NPP 8y	Conviction only - AD		SNPP 10 years Stepfather to female aged 9–10y – came into complainant's bedroom and inserted one or more fingers into vagina.
74.	TP [2018] NSWCCA 140	s.61J 3 x s.61M(2)	VG	<u>Aggregate</u> 9y 6m NPP 6y 2m	AD		SNPP 10 years Sexually assaulted 14y daughter while giving her a massage – rubbed breasts and buttocks – inserted finger into vagina – licked and kissed breasts – below mid-range seriousness Prior good character

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75.	RL [2018] NSWCCA 274	s.61J s.61J s.66A(1) s.61M(1) s.61M(2) s.61M(2) Sched: 2 offences	PG (10%)	13y 7m NPP 7y 9y NPP 6y 5m 6y 3m NPP 4y 2m 4y 6m NPP 3y 3m 4y 6m NPP 3y 3y 7m NPP 2y 6m <u>Total:</u> 19y 7m NPP 13y	AD	record	SNPP 10 years Sexually abused two stepdaughters aged 6-13y over ten years – indecent touching and penile and digital intercourse – risk of pregnancy for one complainant – offence mid to high range Difficult childhood
76.	DP (47) [2019] NSWCCA 55	s.61J	VG	7y NPP 4y	Crown AA 9y NPP 5y 3m	nil	SNPP 10 years Penile-vaginal intercourse upon 11y female complainant resulting in pregnancy – great-uncle to complainant - precise facts and circumstances of offence unknown – treated as isolated incident – mid range Poor mental functioning affecting custody
77.	Wright (31-32) [2019] NSWCCA 134	s.61J s.61M(2) s.61M(2)	VG	<u>Indicative:</u> 9y NPP 6y 6m 2y NPP 18m 4y NPP 3y <u>Aggregate:</u> 12y NPP 9y	AD	minor	SNPP 10 years Forced penile-vaginal intercourse on 15y daughter of partner – three weeks after complainant turned 16y offender entered complainant's bedroom, kissed complainant against her will, removed his pants to expose penis and attempted to remove complainant's pants – mid-range offences – not isolated incidents Uncharacteristic behaviour

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	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
78.	RO (26 at time of offences, 32 at sentence) [2019] NSWCCA 183	s.61J s.61J s.61J s.66C(2) s.66C(2) s.66C(2) s.66C(2) s.66C(2) Sched: 6 offences	PG (15%)	<u>Indicative</u> 11y 6m NPP 7y 6m 13y 6m NPP 9y 10y NPP 6y 6m 9y NPP 6y 9y NPP 6y 10y NPP 6y 6m 9y NPP 6y 13y NPP 8y 6m <u>Aggregate</u> 21y NPP 14y	AA <u>Indicative:</u> 11y 1m NPP 7y 4m 13y 7m NPP 9y 1m 11y 11m NPP 7y 11m 9y 4m 10y 2m 11y 1m 11y 11m 12y 9m <u>Aggregate</u> 21y NPP 14y (backdated by 8m)	Affray, assault (of complainant)	SNPP 10 years (2011-2015) – female complainant aged 10-14y - offender in relationship with complainant’s mother – vaginal intercourse and fellatio – mid-range objective seriousness - vaginal intercourse involved complainant being dragged from room and held down by complainant’s mother - high end of range of objective seriousness Limited intellect - drug and alcohol issues
79.	SW (15-16) [2019] NSWCCA 194	3 x s.61J(1) 3 x s.61M(1) s.61L Sched: s.61M	PG	<u>Aggregate</u> 3y NPP 1y 6m	AD	Since offending – AOABH, drugs, breach AVO	(2001-2002) – assaulted step-brother aged 10-11y - parents in de facto relationship – offending commenced in 1998 when complainant aged 6y and offender aged 11y - penile-oral penetration, kissing, masturbation – coercion and threats. Delay of 16 years.

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80.	JE (15) [2019] NSWCCA 225	s.61J(1) in company s.61M(1) Sched: s.61J(1)	PG (15%)	<u>Indicative:</u> 3y 1y 6m <u>Aggregate</u> 4y NPP 2y	AA <u>Indicative:</u> 3y 1y 6m <u>Aggregate</u> 3y NPP 1y 6m		Offender did not commit s61J offence himself – Present when co-offender aged 14y committed penile-vaginal penetration and digital penetration of female complainant aged 14y - offender touched breast – all friends from school – drinking together – offenders encouraged complainant to drink more, complainant highly intoxicated. Stable background until mother passed away leading to behavioural changes. CCA: parity - culpability of co-offender greater
81.	Priday (52 at sentence) [2019] NSWCCA 272	s.61J(1) AOABH s.61M(1)	VG PG (10%)	<u>Indicative:</u> 7y 6m 2y 1y 10m <u>Aggregate:</u> 8y 6m NPP 5y 6m	AD	breached bond for stealing offences – no recent history	(1994) – 14y female just arrived from England – stranger to Sydney – met offender who offered to show her around city – took complainant to isolated stairwell and attempted to kiss her – when complainant resisted punched her in face and forced vaginal intercourse Reasonable prospects of rehabilitation – physical and mental health issues
82.	Lissock (58 at sentence) [2019] NSWCCA 282	s.61J 5 x s.61J s.61J s.66A 5 x s.61M(1)	VG	<u>Indicative:</u> 7y 5y 6y 6y 1y / 2y / 3y <u>Aggregate:</u> 18y NPP 12y	AA <u>Indicative:</u> 7y 5y 6y 6y 1y / 2y / 3y <u>Aggregate:</u> 14y NPP 9y 4m	minor	(1997, 2002) – Sexually assaulted step daughter aged 7/8y then 13y – touched breasts and vagina and rubbed penis against vagina – anal intercourse – digital and penile intercourse – cunnilingus – ignored complainant's protests – severity ranged from low to above mid-range – gross breach of trust Moderate delay – sexually abused as a child On appeal – sentence not manifestly excessive but fresh evidence of cancer and reduced life expectancy (to 18 months) makes incarceration more onerous

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83.	LS (43) [2020] NSWCCA 27	3 x s.61J Sched: s.61M(2) 3 x s.61J	PG (15%)	<u>Aggregate</u> 11y NPP 7y	AD		SNPP 10 years Mother of complainant sexual abused 15y daughter over several months – offences committed at night in complainant’s bedroom – on three occasions in presence of de facto partner offender digitally penetrated complainant and performed cunnilingus – watched while de facto partner also digitally penetrated complainant, performed cunnilingus and on one occasion forced penile / vaginal penetration –on fourth occasion committed offences alone – above mid-range Difficult and dysfunctional childhood – sexually abused by multiple family members – early drug use – relationships marked by domestic violence – long term drug user On appeal – despite error as to Form 1 offences no lesser sentence warranted
84.	FL (36) [2020] NSWCCA 114	s.61J 2 x s.61J s.61J Sched: s.61M(1) 5 x s.61M(2)	PG (25%)	<u>Indicative:</u> 6y NPP 4y 8y NPP 5y 6m 7y NPP 4y 6m <u>Aggregate:</u> 14y 6m NPP 10y	AD	stealing and driving offences	SNPP 10 years Forced penile / vaginal intercourse on stepdaughter aged 15-16y on four separate occasions over several months – incidents of attempted fellatio and digital penetration – ejaculated inside complainant – offences committed in complainant’s home – breach of trust – mid-range Samoan – remorse – low risk of re-offending – fair to good prospects of rehabilitation On appeal: not manifestly excessive
85.	JJ (26) [2020] NSWCCA 165	s.61J	VG	12y NPP 9y	AD	Destroying property, stalking and intimidating, driving with high PCA, possession of goods suspected of being stolen.	SNPP 10y Assaulted 14y step-daughter – penile-vaginal intercourse – offence involved punching and forceful restraint - after incident, placed hands on complainant’s neck and threatened her if she informed her mother he would kill her – committed in complainant’s own home. Unable to identify any reason why offence committed - no evidence of having attempted to groom complainant. Lack of remorse.

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86.	Hill (49) [2020] NSWCCA 197	s.61J 2 x s.61J s.61J 2 x s.61J s.61J s 86(2)(b) s 91H(2)	PG (10%)	<u>Indicative:</u> 7y 6m NPP 5y 6y NPP 4y 8y 1m NPP 5y 6m 11y 5m NPP 8y 6m 12y 4m NPP 8y 6m 10y 6m 2y 6m <u>Aggregate:</u> 23y 6m NPP 17y	Crown AD	Very limited criminal history - 15 year break from criminality	SNPP 10y Abducted 11y female in park walking to school – held complainant captive for five hours – raped complainant at park - bound complainant to a tree by restraints to hands and neck - forced complainant into back of car driving to two separate areas of remote bush/forest - raped complainant at each location - released complainant near railway station - serious violence, death threats, multiple acts of forced sexual intercourse including fellatio, digital vaginal, digital anal, penile vaginal, penile anal intercourse - 271 unrelated child abuse images located on phone. Major depressive illness - substance use disorder
87.	Cunningham (75 at sentence) [2020] NSWCCA 287	s.61M(1) s.61J	PG (25%)	18m 5y 3m NPP 3y <u>Total:</u> 5y 6m NPP 3y 6m	AD	Similar sexual offence committed during the same period – further child sexual offences committed several years later	(1995-1997) – befriended family of complainant and became entrusted with her care – lied about another complainant being his daughter – on one occasion forced complainant to cuddle him pushing hard penis against her stomach – during sleepover at offender's house digitally penetrated complainant in her bed – mid range offence – breach of authority - part of pattern of exploitation of four children Physically and sexually abusive childhood Issue of totality – sentenced in 1998 for sexual offences committed at this time on different complainant – sentenced in 2005 for similar offences committed in 2002-2003 On appeal – no error in application of totality of s.25AA

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88.	Morrison (52) [2022] NSWCCA 158	s.61J s.61J 2 x s.66DB(a) s.66DB(a)	VG (25% for admiss)	<u>Indicative:</u> 9y NPP 6y 6y NPP 4y 3y NPP 2y 3y 9m NPP 2y 6m <u>Aggregate:</u> 13y NPP 8y 8m	AA <u>Indicative:</u> 9y NPP 6y 6y NPP 4y 18m 2y <u>Aggregate:</u> 10y 6m NPP 7y	Lengthy although no sexual offences	SNPP 10y Met 13y female stranger waiting at wharf at night – victim accompanied offender home – sexual activity occurred over short period – cunnilingus and penile / vaginal intercourse – tongue kissing and hickies – single episode – high degree of notional concurrency – no violence, threats or detainment – opportunistic – reckless as to consent – s.61J offences mid to upper mid-range Aboriginal offender with difficult background – poor health – discount for voluntary confession to one offence and narrowing of issues at trial – some degree of remorse and prospects of rehabilitation – protective custody On appeal: sentences for indecent touching offences excessive
89.	DN (39) [2023] NSWCCA 39	s.61J s.61J Sched: 2 offences	PG (5%)	<u>Indicative</u> 6y 4m NPP 4y 4y 8m NPP 3y <u>Aggregate</u> 7y 6m NPP 5y	Crown AA <u>Indicative</u> 10y 5m NPP 7y 9y 11m NPP 6y 8m <u>Aggregate</u> 12y NPP 8y	Common assault, damage property (domestic violence- related), intimidate police officer	SNPP 10y De facto stepfather of 14y female complainant – two serious sexual assaults committed a week or two apart - sexualised conduct towards complainant from age 11y – penile/vaginal penetration, ejaculation – put hand over complainant’s mouth to silence her, threats not to tell anyone - forceful, rough and aggressive sexual behaviour when complainant in her own bed at home – not isolated – some degree of premeditation. Complainant passed away before sentencing hearing. Drug use – some remorse - rehabilitation guarded. CCA: Sentence manifestly inadequate.

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90.	Bond (59) [2023] NSWCCA 78	s.61J s.38A s.91G(1)	PG (25%0)	<u>Indicative</u> 4y 6m NPP 3y 3y 3y 6m NPP 2y 4m <u>Aggregate:</u> 7y 6m NPP 5y	AD	1990 indecent assault, sexual intercourse with a person 10-16y.	13y female complainant who lived in refuge next door to offender's apartment building – came to apartment and consumed drugs and alcohol supplied by offender – whilst unconscious, offender committed penile-vaginal intercourse – took photographs of complainant whilst undressed and in sexual positions - complainant knew she was being sexually interfered with but unable to move or shout for help whilst in semiconscious but powerless state No genuine remorse or insight - very low intelligence - affected by a traumatic brain injury; cognitive deficiency
91.	JL [2023] NSWCCA 99	s.61M(2) 2 x s.61J s.61J	VG	<u>Indicative</u> 3y 7y 8y <u>Aggregate:</u> 10y NPP 7y	AD	Child sexual assault offences committed at similar time on complainant and brothers	Sexually assaulted 13-14y son of niece on several occasions – rubbed penis and anal intercourse – complainant initially complained about less serious sexual misconduct – offender pleaded guilty and sentence for those offences – subsequently complaint made to more serious offences Delay – no genuine remorse On appeal: rejected ground that SJ failed to take into account totality and earlier sentences

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