

**Carnal Knowledge by Teacher etc child 10-17y /
Sexual Intercourse - Young Person 16-17y Under Special Care
s.73 (NSW) Crimes Act**

s 73 Schoolmaster or other teacher, or father, or step-father, unlawfully and carnally knows any girl of or above the age of ten years, and under the age of seventeen years, being his pupil, or daughter, or step-daughter

Maximum Penalty: 14 years

The section was amended on 23.3.1986 to restrict the age of the complainant to 16 years and reduce the maximum penalty

Maximum Penalty: 8 years

The section was replaced on 13.6.2003 to create two offences (see separate table below)

(1) Sexual intercourse with child 16y under special care

Maximum Penalty: 8 years

(2) Sexual intercourse with child 17y under special care

Maximum Penalty: 4 years

Note: the effect of recent statutory provisions relating to the application of sentencing patterns and practices:

s.25AA(1) (NSW) Crimes (Sentencing Procedure) Act applied to sentences imposed on or after 31.8.2018. This required a court to 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. 'Child sexual offence' is defined as a prescribed offence where the person against whom the offence was committed was then under the age of 16 years: (5)

This provision was replaced by s.21B(1) (NSW) Crimes (Sentencing Procedure) Act on 18.10.2022. The requirement that a court sentences an offender in accordance with the sentencing patterns and practices at the time of sentencing applies to all offences unless the offence is not a child sexual offence and the offender establishes exceptional circumstances. "Child sexual offence" remains defined under s.25AA(5) as an offence committed against a person who was then under the age of 16 years.

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	JVP (56 at sentence) NSWCCA 6.11.1995	3 x s.73 [14y]	VG	MT 5y AT 3y (each - concurrent)	AD		(1971-1974) – complainant aged 12-14y Sexual abuse of daughter – three incidents of penile penetration representative
2.	Davies NSWCCA 25.5.1995	s.73 [14y] s.73 [14y] 2 x s.73 [14y] s.73 [14y]	PG	FT 1y FT 2y MT 5y AT 4y MT 5y AT 4y <u>Total:</u> MT 5y AT 4y	AA FT 1y FT 2y MT 5y AT 4y MT 5y AT 3y <u>Total:</u> MT 5y AT 4y		(1976-1978) – fifth offence committed when complainant aged 16y Sexually abused 14-16y daughter after she came to live with him having been sexually abused by mother's boyfriend – forced sexual intercourse daily – used carrot, soft drink bottle and vibrator – treated daughter as wife – pregnancy resulted in birth of son On appeal: reduced individual sentence in relation to offence committed when complainant 16y to take into account 1986 amendment to section and reduction in maximum penalty – overall sentence unchanged
3.	Taylor (43 at sentence) NSWCCA 8.11.1995	4 x s.73 [14y] s.73 [14y] 4 x s.76 2 x s.61D(1) s.61C(1)(a)	PG	FT 5y MT 6y AT 4y FT 1y FT 5y not stated (concurrent)	AD	Minor offences	(1972-1983) – s.73 offences committed when complainant aged 12-16y Sexually abused step-daughter aged 7-19y – commenced with indecent rubbing and progressed to digital then penile penetration – complainant fell pregnant on six occasions, giving birth once – assaulted complainant breaking her nose
4.	MacDonell NSWCCA 8.12.1995	3 x s.73 [14y] 2 x s.73 [8y]	PG	MT 6m AT 2y (concurrent)	Crown AD	Nil relevant	(1985-1986) – 3 offences committed Dec 1985 when complainant aged 15y – two offences committed 1986 when complainant aged 16y Had sexual intercourse with Year 10 student in school staff room – had sexual intercourse twice more with complainant following year – consensual intercourse but abused position of trust Lost teaching career

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5.	D (39-50) NSWCCA 22.11.1996	s.73 [14y] s61E(1) 6 x s.66C(2) s.61L Att s.66C(2) 5 x s.78A	PG	MT 9y AT 3y FT 2y FT 4y FT 2y FT 4y FT 2y <u>Total:</u> MT 13y AT 3y	AA Only to adjust accumulation	nil	(1982-1994) s.73 committed in 1983 when complainant aged 10y Sexually abused two daughters Remorse – good prospects of rehabilitation
6.	C (59 at sentence) NSWCCA 6.8.1997	2 x s.73 [14y] s.76A s.76 Sched: 5 similar offences	PG	MT 2y 6m AT 2y 6m FT 18m FT 18m (all concurrent)	Crown AA MT 4y AT 4y FT 18m FT 18m (all concurrent)		(1974-1981) – s.73 1978 and 1981 when complainant aged 12y and 15y Sexually abused daughter aged 8-15y – masturbation, digital and penile penetration – 1976 forced 10y friend of first complainant to masturbate offender and digital penetration
7.	K A H (30 at offences) NSWCCA 15.7.1998	s.73 [14y] Sched: 5 offences	PG	3y Periodic Detention	Crown AD		(approx 1978) All offences committed against daughter except one carnal knowledge on schedule – offences committed 'from time to time over a period of time' – 'egregious breaches of parental trust' Shame and remorse – extremely unhappy and unfortunate background – completely rehabilitated – reasonable and stable family relationship including complainant and her children – exceptional case

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8.	Boys [1999] NSWCCA 11	2 x s.73 [10y] 5 x s.73 [8y] s.76	PG	Total: MT 7y 6m AT 2y 6m	AD		(Mid 1980s) – two complainants aged 15y, three complainants aged 16y Music teacher sexually abused 5 female students – abused position of respect and authority Note: maximum penalty for two s.73 offences was ten years to take into account 1986 amendment – ten year maximum penalty reflected s.66C(2) maximum.
9.	CJB (39 at sentence) [2000] NSWCCA 161	7 x s.66C(2) s.73 [8y]	PG	MT 4y AT 3y FT 3y Total: MT 7y AT 3y	AD		(1987-1993) – s.73 offence committed 1993 when complainant aged 16y Sexually assaulted step-daughter aged 10-16y – penile/vaginal intercourse – forced fellatio – complainant gave birth to two children as a result of offences then two further children as result of continuing sexual contact Suffering schizoid personality
10.	G.S. [2002] NSWCCA 4	s.73 [14y] 3 x s.78A s.76 s.76	VG	7y NPP 3y 6m 4y 6m NPP 3y FT 12m FT 18m Total: 9y 6m NPP 6y	Conviction AD		(1974-1988) – s.73 offence committed 1984 when complainant aged 16y Commenced sexual abuse of daughter aged 6y - indecent touching of vagina, masturbation of offender and fellatio – commenced sexual intercourse in 1983 – close bond and emotional blackmail
11.	TAB (65 at sentence) [2002] NSWCCA 274	s.73 [14y] s.79 3 x s.76 s.61E(2)	VG	FT 4y 7y NPP 4y FT 2y FT 9m (all concurrent)	AD	Old dishonesty offence	(1977-1982) – s.73 offence committed 1977 when complainant aged 11y Sexual abuse of daughter aged 11y at commencement of offences – fellatio, mutual masturbation, sexual intercourse and anal intercourse – representative counts Ill health

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12.	TJC [2006] NSWCCA 413	s.73 [14y] s.61M(1) s.66C(2)	PG (20%) VG	5y 3m NPP 4y FT 1y 2y NPP 1y 6m	AA 5y 3m NPP 3y 6m FT 1y 2y NPP 1y 6m <u>Total:</u> 7y 9m NPP 6y	Assault on first complainant and step sister	(1979) – forced 15y daughter to have intercourse – complainant became pregnant and had son (1999) – sexually abused 9-11y granddaughter staying at offender's house – touching of breasts and penile intercourse Sentences reduced after convictions for s.66A offences quashed on appeal
13.	KJR (57 at sentence) (2007) 173 A Crim R 226 [2007] NSWCCA 165	s.67 3 x s.73 [14y] s.61E AOABH	VG	10y NPP 7y 6m 8y NPP 5y FT 3y FT 12m <u>Total:</u> 12y NPP 9y	AD	Nil	(1979-1985) - s.73 offences committed 1981-1983 Sexually assaulted daughter aged 9-13y over extended period of time – actual violence
14.	MJL (59 at sentence) [2007] NSWCCA 261	s.73 [14y] 4 x s.76 2 x s.76 2 x s.61E(1)	PG (1/3 rd – general)	6y NPP 3y FT 18m 2y 8m NPP 2y FT 18m <u>Total:</u> 10y 6m NPP 7y 6m	AA 5y NPP 2y FT 18m 2y 6m NPP 18m FT 18m <u>Total:</u> 9y NPP 6y	Nil	(1974-1982) – s.73 offence committed when complainant 13-14y Sexually abused daughter aged 6-14y – indecent touching – forced touching of penis – digital penetration – brief penile penetration Accumulated to sentence for offences against granddaughter in 2002 – total sentence 10y 6m NPP 7y 6m

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
15.	Risby (35-38 at offences – 64 at sentence) [2008] NSWDC 300 Hulme SC DCJ	7 x s.73 [14y] 2 x s.76A 5 x s.76 s.61D(1)	VG	FT 5y (2) 5y NPP 3y 9m 5y NPP 3y (2) 5y NPP 2y 5y NPP 6m FT 1y FT 3y (3) 3y NPP 6m 2y NPP 6m 3y 6m NPP 2y <u>Total:</u> 11y 6m NPP 7y		Not significant – drink driving and possession firearm	(1980-1982) Sexually abused two step-daughters aged 10-15y – sexual touching progressed to digital, oral and penile intercourse and forced fellatio – offences occurred at multiple places Poor health – no explanation for offending <i>At [49]-[53] discussion as to sentencing regime at time of offences – no range available for sentencing of offences of this kind in 1980s</i>
16.	PH (72 at sentence) [2009] NSWCCA 161	3 x s 67 6 x s.73 [14y] 7 x s.76 s.76	PG (20%)	FT 7y MT 8y AT 8y FT 3y FT 3y <u>Total:</u> 20y NPP 12y	AA FT 4y MT 3y 6m AT 8y FT 18m FT 12m <u>Total:</u> 14y 6m NPP 6y 6m	Nil	(1966-1974) – sexually assaulted daughter aged 8-15y – one indecent assault on second daughter aged 11-12y – wide range of sexual assaults including penetration by objects – pregnancy at 13y terminated – 33y delay Very low intellectual capacity – physical health problems
17.	LP [2012] NSWDC 206 Norrish QC DCJ	2 x s.73 [14y] s.61E(1) 2 x s.61D(1)	VG	6y NPP 2y FT 18m FT 4y <u>Total:</u> 8y NPP 4y		Dishonesty offences – breach ADVO	(1982-1986) s.73 offences committed on 12-13y complainant between Jan 1984 and 2 April 1985 Sexually abused step-daughter – included sexual touching and multiple acts of penile penetration – severe breach of trust Wife in poor health

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
18.	Wright (31-32 at offences – 86 at sentence) [2016] NSWCCA 122	s.73 [14y] s.73 [14y] s.73 [14y] s.76		3y 11m NPP 1y 6m 2y 10m NPP 1y 4m 2y 7m NPP 1y 3m 2y 7m NPP 1y 2m <u>Total:</u> 4y 5m NPP 2y	AD		(1961-1964) – sexually abused 12-15y step-daughter – digital penetration – penile penetration causing great pain – later on same day had penile intercourse – continued regular intercourse over several years – took complainant to secluded areas in car Offender in very poor health – some delay after complaint first made
19.	JM (73) [2017] NSWCCA 138	3 x s.73 [14y] 4 x s.76 s.71 2 x s.61E(1)	VG	<u>Indicative</u> 3y 6m 2y 3y 6m 6m / 9m <u>Aggregate</u> 6y 7m NPP 2y 3m	Crown AD		(1976–1979; 1982–1983) – s.73 offences committed 1976-1979 when complainant aged 10-11y Sexually abused step-daughter and daughter aged 10–16y – penile penetration when complainant aged 10y – digital penetration – offences committed with some degree of force - very serious offending extended over a period of years – Crown appeal dismissed in exercise of residual discretion.
20.	MC [2017] NSWCCA 316	5 x s.76 2 x s.73 [14y]	PG (25%)	<u>Aggregate</u> 10y NPP 5y	AD		(1972-1981) – s.73 offences committed when complainants aged 11y and 15y Sexually abused natural daughters aged 5-15y – digital penetration of vagina- cunnilingus – indecent touching — not isolated offences True remorse – sexually abused as a child – voluntarily ceased offending – delay – age and poor health

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
21.	GC (66) [2019] NSWCCA 241	2 x s.73 [14y] 2 x s.71 2 x s.61D(1) 2 x s.76/ 61E Sched: 10 offences	PG (10%)	<u>Indicative:</u> 8y 7y 4y 3y <u>Aggregate:</u> 15y NPP 9y	AD	2 x carnal knowledge (1984)	(1975 – 1983) – s.73 offences committed 1977-1980 Abused three step-daughters aged between 11-16y – penile/vaginal intercourse – digital/vaginal intercourse – Childhood trauma – child sexual abuse by own grandmother – had not offended for 34 years.
22.	Melville (67 at sentence) [2023] NSWCCA 284	s.73 [14y] s.61D(1) Sched: 4 x s.61D(1)	PG (5%)	<u>Indicative:</u> 2y 4m 11m <u>Aggregate:</u> 3y NPP 2y	AD	Related sexual offences against same complainants in WA – minor traffic	(1983-1988) during family holidays to NSW sexually assaulted step-daughters – forced fellatio and penile / vaginal intercourse on 14y stepdaughter – forced fellatio, digital penetration and penile / vaginal intercourse on second stepdaughter aged 16y several years later – element of humiliation and force – breach of trust in familial context – isolated setting of offences – part of ongoing course of conduct – significant and long-lasting impact Completed 10y sentence for 31 sexual offences against same complainants in 2015 – delay in charging and sentence No remorse or insight On appeal – no error in relevant circumstances – sentence not excessive

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Sexual Intercourse - Young Person 16y Under Special Care

s.73(1) (NSW) Crimes Act

s.73(1) Sexual intercourse with a young person who is under offender's special care, and is of or above the age of 16 years and under the age of 17 years

Maximum Penalty: 8 years

Commenced: 13.6.2003

CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Peterson (a pseudonym) (60 at sentence) [2020] NSWDC 122 Haesler SC DCJ	s.73(1) s.66DB(a) 2 x s.61M(2) Sched: s.66BD(b) s.73A(1)(a) s.66DB(a)	PG (25%)	<u>Indicative:</u> 3y 9m 2y 7m 2y 3m NPP 1y 5m 3y 3m NPP 2y 1m <u>Aggregate:</u> 6y NPP 4y			(2015-2019) On two occasions sexually touched 15y stepson – on separate occasion sexually touched stepson in bed then performed fellatio – on two occasions (3-4 years apart) sexually touched step-daughter – offences committed in family home or car Good character and remorse although limited weight

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Sexual Intercourse - Young Person 17y Under Special Care

s.73(2) (NSW) Crimes Act

s.73(2) Sexual intercourse with a young person who is under offender's special care, and is of or above the age of 17 years and under the age of 18 years

Maximum Penalty: 4 years

Commenced: 13.6.2003

CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Ridley (38) [2008] NSWCCA 299	s.73(2)	PG	12m NPP 6m	AA 3y GBB (served 2m custody)	Nil	Commenced relationship with ex-partner's 17y daughter – acquitted of non-consensual offences at trial – unusual circumstances in that relationship not an offence until legislative change after relationship commenced Strong subjective case – unlikely to re-offend
JD (25-27) [2018] NSWDC 492 Sutherland SC DCJ	4 x s.73(2) 6 x s.73(2) s.61M(1) Sched: 13 x s.73(2) s.61O(1)(a)	PG	<u>Indicative</u> 20m 18m 16m NPP 12m <u>Aggregate:</u> 5y NPP 3y			(2015-2017) high school teacher engaged in consensual sexual relationship with four 17y female students – relationships each extended over months Remorse At [3]-[10] referred to JAD [2012] NSWCCA 73 (conviction quashed on appeal) for background to offence changes
Gale (40) [2021] NSWCCA 16	s.73(2) s.73(2) Sched: s.73(2)	PG (25%)	<u>Indicative:</u> 13m 15m <u>Aggregate:</u> 1y 8m NPP 1y	AD	Nil significant	(2018) On three occasions engaged in sexual intercourse with student from former school – breach of trust God character although of less weight – good prospects of rehabilitation

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	Fenner (33) [2022] NSWCCA 48	s.73(2) 3 x s.73(2) 2 x s.73(2) s.73(2) Sched: 7 x s.73(2) Att s.73(2)	PG (25%)	<u>Indicative:</u> 9m 1y 9m 2y 1y 6m <u>Aggregate:</u> 3y 9m NPP 2y 3m	AA <u>Indicative:</u> 6m 1y 3m 1y 6m 1y <u>Aggregate:</u> 3y NPP 1y 10m	Nil	High school teacher had sexual relationship with 17y female student over several months Good prospects of rehabilitation – remorse – good character On appeal: failure to take into account good character and lack of criminal record

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