

## Homosexual Intercourse With Male Aged Between 10-18y

### s.78K (NSW) Crimes Act

s 78K Male person who has homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years

**Maximum penalty:** 10 years  
**Commenced:** 8.6.1984  
**Repealed:** 13.6.2003

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.

|    | CASE<br>(AGE IF KNOWN)                                | OFFENCE                   | PLEA | SENTENCE                                  | APPEAL                | RECORD                           | FACTS   |
|----|---|---------------------------|------|---|-----------------------|----------------------------------|---|
| 1. | <b>Bharat</b><br>(31)<br>NSWCCA<br>17.4.1986          | s.78K                     | PG   | 6y 9m<br>NPP 3y 9m                        | AD                    |                                  | Took 14y male friend to assist with car – forced two acts of anal intercourse – caused complainant to scream  |
| 2. | <b>Hayes</b><br>(59)<br>NSWCCA<br>7.2.1986            | s.78K<br>Att s.78K        | PG   | 5y<br>NPP 2y 6m                           | AA<br>3y 6m<br>NPP 9m |                                  | Sharing bedroom with 13y nephew – on first night committed act of fellatio – on second night attempted anal intercourse – complainant requested offender desist – breach of trust<br>Prior good character |
| 3. | <b>Pepper-Clayton</b><br>(68)<br>NSWCCA<br>11.12.1987 | s.78K<br>Indecent assault | PG   | 6m PD<br>5y GBB                           | Crown AA<br>18m PD    | Old indecent assault offences    | Masturbated 11y son of female friend – anal penetration while complainant under influence of drug – breach of trust – premeditation - not isolated offences   |
| 4. | <b>Maclay</b><br>NSWCCA<br>16.2.1990                  | s.78K<br>4 x s.78Q        | PG   | MT 15m<br>AT 2m<br>FT 12m<br>(concurrent) | AA<br>FT 13m 7d       | Breached bail for sexual offence | Offences committed on 13y consenting male who was paid for involvement – lower end of scale of seriousness  |

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|-----|--|--|------|---|--|-----------------------------------|--|
| 5.  | <b>Bujdoso</b><br>(38)<br>NSWCCA<br>14.6.1990      | 5 x s.78K<br><br>3 x s.78L<br><br>s.78Q                          | PG   | MT 2y 6m<br>AT 10m<br><br>MT 2y 6m<br>AT 10m<br><br>FT 1y<br>(concurrent) | AD   | Insignificant<br>matter           | Sexually assaulted 14y male contacted through local soccer club – invited to stay at home of offender – fondled penis and fellatio – repeated offences and attempted anal intercourse during trip to Melbourne – 14m later attempted anal intercourse while complainant working for offender<br>Remorse and rehabilitation |
| 6.  | <b>Vince</b><br>(23)<br>NSWCCA<br>28.5.1991        | s.78K<br><br>s.78Q<br><br>Sched:<br>2 related offences           | PG   | MT 1y 6m<br>AT 1y<br><br>FT 1y<br>(concurrent)                            | AD   | minor                             | (1989) – took de-facto's 11y brother for walk – took photos of exposed penises touching – took photo of offender performing oral sex on complainant – intoxicated<br>Good work record  |
| 7.  | <b>Gore-Johnson</b><br>(60)<br>NSWCCA<br>16.4.1992 | 2 x s.78K<br><br>Sched:<br>3 x s.78Q                             | PG   | MT 12m<br>AT 12m  | AD   | nil                               | Employed 15y complainant to do lawns - later watched pornographic video together - fellatio  |
| 8.  | <b>Gibbs</b><br>(65)<br>NSWCCA<br>16.6.1992        | 4 x s.78K  | PG   | MT 4y<br>AT 6m  | AA<br>(One count<br>quashed)<br>MT 2y 6m<br>AT 10m | nil                               | Two complainants – 12y and 13y - three counts of penile penetration of anus, and one digital penetration of anus - friends of grandson   |
| 9.  | <b>McKenna</b><br>(31)<br>NSWCCA<br>16.8.1992      | s.78K  | VG   | MT 1y 3m<br>AT 5m   | AA<br>FT 9m  | No priors for<br>similar offences | Complainant aged 15y 9m – isolated incident – complainant assisting in moving of furniture – fellatio – no force   |
| 10. | <b>Cozens</b><br>(60)<br>NSWCCA<br>1.10.1992       | 2 x s.78K<br><br>3 x s.61E(1)<br><br>Sched:<br>6 sexual offences | PG   | MT 3y<br>AT 1y<br><br>MT 3y<br>AT 1y<br>(concurrent)                      | AA<br>MT 2y 3m<br>AT 1y 9m                         |                                   | Sexually assaulted 13y male who visited home of offender to enjoy freedom over several months – shown pornographic videos – indecent touching and anal intercourse on more than two occasions – indecent assault of second boy<br>Mental and physical health problems  |
| 11. | <b>BCH</b><br>NSWCCA<br>7.10.1992                  | 3 x s.78K  | VG   | MT 7y<br>AT 1y  | AA<br>MT 5y<br>AT 3y                               |                                   | Became friendly with complainant aged 11-15y - established trust with parents - not isolated incidents - offences occurred over 3-4 years  |

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|-----|--|---|--------------|--|---|--|---|
| 12. | <b>O'Donnell</b><br>(middle aged)<br>NSWCCA<br>16.9.1993 | s.78K<br><br>s.90A  | VG           | MT 4y<br>AT 1y 4m<br><br>MT 4y<br>AT 1y 4m<br>(concurrent) | AD  | Old record   | Picked up 15y male hitchhiker and forced him into airport building at knifepoint – performed fellatio on complainant – cut complainant twice with knife   |
| 13. | <b>Eagles</b><br>(58)<br>NSWCCA<br>16.12.1993            | 4 x s.78K<br><br>3 x s.78Q<br><br>s.61E<br><br>Sched:<br>10 similar<br>offences | VG<br><br>PG | <u>Total:</u><br>MT 7y<br>AT 3y                            | AD  | Not significant                                    | Sexually assaulted 10y male neighbour while babysitting on two occasions – indecent touching, fellatio and anal penetration – representative of sexual misconduct – came in contact with four further complainants through scouting movement - indecently touched 12y and 8y male - anal intercourse with 10y child – digital penetration of 11y male – breach of trust<br>Protective custody |
| 14. | <b>Williams</b><br>(53)<br>NSWCCA<br>30.9.1994           | 4 x s.78K<br><br>s.61E  | VG           | MT 6y<br>AT 2y<br><br>FT 3y                                | AA<br>MT 5y<br>AT 1y 8m<br><br>FT 3y          |  | Manager of boarding house provided free accommodation to homeless youths – engaged in sexually activity with 14y male over several weeks – indecent touching, anal intercourse and fellatio<br>Protective custody<br>Original sentence imposed for 6 counts of s.78K – reduced on appeal after convictions for two counts quashed.  |
| 15. | <b>Doyle</b><br>(56)<br>NSWCCA<br>14.12.1994             | 2 x s.78K   | PG           | 3y<br>AT 12m   | AA<br>to adjust dates<br>commencement<br>date | Lengthy record –<br>no relevant sexual<br>offences | Picked up 15y complainant from refuge – fellatio and anal intercourse   |
| 16. | <b>Engert</b><br>(1995) 84 A Crim<br>R 67<br>NSWCCA      | s.78K   | PG           | MT 3y 9m<br>AT 1y 9m                                       | AD  | Priors and on bail                                 | Friend of family - suffering schizophrenia – 13y complainant - isolated offence   |
| 17. | <b>McMinn</b><br>NSWCCA<br>20.5.1996                     | 5 x s.78K   | VG           | MT 6y<br>AT 2y   | AD  | Similar priors                                     | Friend of family - little to attract leniency – 10y complainant   |

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| 18. | <b>Ryan</b><br>(58 at sentence)<br>NSWCCA<br>20.8.1996 | 5 x s.78K<br><br>6 x s.81<br><br>Sched:<br>5 x solicit male  | PG   | MT 4y<br>AT 2y<br><br>(concurrent sentences)  | Crown AD |        | (1974-1975) - priest sexually assaulted young male parishioners - offending included encouraging complainants to indecently touch each other – removed from parish but returned to offend again 1989-1993<br>Paedophilia |
| 19. | <b>Fisk</b><br>(26 -41)<br>NSWCCA<br>21.7.1998         | 8 x s.79<br><br>s.81<br><br>4 x s.61E(1A)<br><br>s.61D(1A)<br><br>3 x s.61D(1A)<br><br>4 x s.78K<br><br>Aid and abet<br>s.78K<br><br>2 x Aid and abet<br>s.66A | PG   | MT 9y<br>AT 3y<br><br>FT 2y<br><br>FT 2y / 3y<br><br>MT 7y 6m<br>AT 2y 6m<br><br>FT 6y<br><br>MT 7y 6m<br>AT 2y 6m<br><br>MT 7y 6m<br>AT 2y 6m<br><br>FT 6y<br><br>(all concurrent) | AD       |        | (1974-1989) – sexually abused three male complainants aged 13-19y – all complainants from dysfunctional families – offences representative of paedophilic lifestyle  |
| 20. | <b>Hutton</b><br>(48)<br>NSWCCA<br>2.12.1998           | s.78K<br><br>Sched:<br>3 x cannabis offences   | PG   | MT 2y 6m<br>AT 10m  | AD       | Minor  | Complainant a 16y runaway - visited offender's home on several occasions – watched pornography, drank and smoked marijuana – mutual sexual activity with offender and co-offender – anal intercourse                     |

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| 21. | <b>Williams</b><br>(21-33)<br>NSWCCA<br>11.12.1998             | 2 x s.78K<br><br>3 x s.78K<br><br>2 x s.61N<br><br>s.61E(1)<br><br>Sched:<br>13 offences | PG   | MT 6y 8m<br>AT 3y 4m<br><br>FT 6y<br><br>FT 2y / 1y<br><br>FT 2y<br><br>(concurrent) | AD            | Breached recog<br>for sexual<br>offences | Sexual activity over 12 years – engaged in sexual activity with 15y runaway over long period of time – complainant stayed with offender on 2 occasions – joint masturbation, fellatio and anal penetration – sexually assaulted 10y cousin – fellatio – sexual activity over many years - indecent assaults on 5 other complainants aged 7-15y |
| 22. | <b>Virgona</b><br>(35-42)<br><a href="#">[1999] NSWCCA 136</a> | 3 x s.78K<br><br>2 x s.81<br><br>s.78Q(1)  | PG   | MT 4y 6m<br>AT 1y 6m<br><br>FT 12m<br><br>FT 12m<br><br>(concurrent)                 | AD            |  | (1983-1990) – sexually assaulted nephew aged 9-16y – upper range of seriousness for offences of this type<br>Complainant of sexual assault as a child – some evidence of rehabilitation  |
| 23. | <b>Skene</b><br><a href="#">[2000] NSWCCA 322</a>              | s.78K<br><br>2 x s.78K<br><br>3 x s.61M(1)   | VG   | MT 4y<br>AT 1y 4m<br><br>FT 3y<br><br>FT 2y<br><br>(concurrent)                      | AD            | No prior<br>imprisonment                 | Friend of complainant's family – sexually assaulted complainant staying at offender's house or at complainant's house – touched penis – fellatio on complainant and forced fellatio on offender – anal intercourse   |
| 24. | <b>Connors</b><br><a href="#">[2000] NSWCCA 470</a>            | 4 x s.78K<br><br>s.61M(1)  | VG   | <u>Total:</u><br>MT 3y<br>AT 3y<br><br>FT 6m<br>(concurrent)                         | Conviction AD |  | (1998-1999) - Minister sexually assaulted 13y male parishioner staying at offenders house with brother – rubbing against penis – fellatio and anal penetration of offender by complainant  |
| 25. | <b>AB</b><br><a href="#">[2001] NSWCCA 496</a>                 | 6 x 78K  | VG   | 8y<br>NPP 6y   | AD            |  | Complainant a distant relative aged 10-16y – anal intercourse – continuing course of misconduct  |

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|-----|---|------------------------|------|-------------------------------------|--|--------|---|
| 26. | <b>Bishell</b><br>(late 20s)<br><a href="#">[2002] NSWCCA 279</a> | 4 x 78K                | VG   | 2y<br>NPP 1y 3m<br>PD               | AA<br>(One count<br>quashed)<br>FT 12m<br>PD |        | 14-15y son of de facto – anal intercourse   |
| 27. | <b>Milton</b><br>(early 30s)<br><a href="#">[2004] NSWCCA 195</a> | 6 x s.78K<br>2 x s.61E | VG   | <u>Aggregate:</u><br>16y<br>NPP 12y | AD   |        | (1987-1990) – first complainant aged 13-15y - complainant from unstable family background and would often stay at offender's house – provided with drugs and alcohol – later moved in and worked for offender for short period – fellatio, touching and anal intercourse on regular occasions – second complainant 13y boy – masturbated in front of complainant on two occasions – forced anal intercourse on complainant after tying hands to bed |

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