

Aggravated Sexual Intercourse With Child Under 10 Years

1.1.2009-28.6.2015

s.66A(2) (NSW) Crimes Act

s 66A (2) Aggravated sexual intercourse with child under 10 years

(3) 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
- (c) offender is in company of another person or persons
- (d) victim under authority of offender
- (e) victim has a serious physical disability
- (f) victim has a cognitive impairment
- (g) offender took advantage of victim being under influence of alcohol or a drug
- (h) offender deprives victim of liberty
- (i) offender breaks and enters into any dwelling-house or other building with intention of committing serious indictable offence. *[added 19.5.2009]*

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| <u>Maximum Penalty:</u> | Life |
| <u>Standard non-parole period:</u> | 15 years (offences committed on or after 1.2.2003) |
| <u>Commenced:</u> | 1.1.2009 |
| <u>Amended:</u> | 29.6.2015 |

For offences under s.66A(1) committed during this period see separate table

For offences committed under s.66A prior to 1.1.2009 and on or after 29.6.2015 see separate table

Note: the effect of 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. It 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.

This provision was replaced by s.21B(1) (NSW) Crimes (Sentencing Procedure) Act on 18.10.2022 which extends the requirement to all offences.

Under both provisions the relevant standard non-parole period is that which applied at the time of the offence: 25AA(2) / s.21B(5)

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| | NAME (age if known) | OFFENCE | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|----|--|---|-------------|--|--|-----------------------|---|
| 1. | PK (18) [2012] NSWCCA 263 | s.66A(2) | PG (25%) | 13y NPP 8y | AA 12y NPP 6y | | SNPP 15y Sexually assaulted 13 month old baby – digital penetration of vagina – resulted in bleeding – sutures required. Dysfunctional upbringing- rehabilitation. |
| 2. | JRM (late 50s) [2012] NSWCCA 112 | s.66A(2) s.66A(2) s.91H(1) s.474.17: Cth Code s.91G Sched: 2 x s.61O(2) s.61M(2) | PG (25%) | 10y NPP 7y 8y NPP 6y 3y NPP 1y FT 1y 3y NPP 1y <u>Total:</u> 12y NPP 9y | AA 7y NPP 4y 5y 4m NPP 4y 3y NPP 1y FT 1y 3y NPP 1y <u>Total:</u> 12y NPP 9y | Nil | SNPP 15y Sexually assaulted 9y son over ‘substantial period’ – touched child’s penis then sucked it – on different occasion son forced to suck offender’s penis for short time – representative counts - pictures of young female child being sexually assaulted on computer – sent recordings of masturbating self or wife while communicating with male over internet – recorded wife sucking complainant’s penis for web cam Breach of trust – no violence or threats |
| 3. | RJT (38) [2012] NSWCCA 280 | s.66A(1) s.66A(2) | PG (10%) | 7y NPP 4y 6m 9y NPP 5y 6m <u>Total:</u> 10y NPP 6y 6m | AA 6y 3m NPP 4y 8y NPP 4y 10m <u>Total:</u> 9y NPP 5y 10m | | SNPP 15y Sexually assaulted 7y daughter – rubbed vaginal area and cunnilingus Dysfunctional upbringing – otherwise employed and held in good stead by employer. On appeal discount given for assistance as complainant of abuse at hands of grandfather |
| 4. | GN (40) [2012] NSWCCA 96 | s.66A(2) | PG (25%) | 10y 8m NPP 8y | AA 9y NPP 6y | Child sexual offences | SNPP 15y Circumstance of aggravation – stepfather – forced penile penetration of 9y step daughter while wife in hospital – not isolated offence Sexually abused as a child – low intelligence – genuine remorse |

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| 5. | Essex (30) [2013] NSWCCA 11 | s.66A(2) 2 x s.43A Att pervert course of justice | VG PG | 15y 6m NPP 11y FT 6m FT 2y <u>Total:</u> 16y 6m NPP 12y | AA 12y NPP 8y 6m FT 6m FT 2y <u>Total:</u> 13y NPP 9y 6m | | SNPP 15y Moved in with mother of 3y female complainant and assumed parental care and responsibility – failure as parent to provide necessities of life causing danger of serious injury - 3y complainant and 1y brother in bedrooms filled with dangerous equipment and furniture – frequently locked in rooms unsupervised – wrote letter to mother of children asking her to give false account – washed 3y complainant with garden hose when she dirtied pants – on one occasion pushed hose nozzle into complainant’s vagina causing injury – cruel – no grooming – no sexual desire |
| 6. | Leslie (22) [2013] NSWCCA 48 | s.66A(2) 66A(2) s.66B | PG (10%) | 22y 6m NPP 15y 2m 19y 9m NPP 13y 9m 17y NPP 11y 10m <u>Total:</u> 23y 6m NPP 16y | AA 17y NPP 11y 15y NPP 10y FT 10y <u>Total:</u> 19y NPP 13y | On bail. AOABH, property offences, B&E, stalk and intimidate | SNPP 15y Assaulted 8y girl – three offences on one night - staying in same house – dragged complainant way from house – assaulted complainant in bushes – threats to kill if she told anyone – attempted penile-vaginal penetration – digital penetration – forced complainant to perform oral sex – planned offences - not worst category but significantly above mid-range Dysfunctional upbringing – alcohol and drugs – Aboriginal – uncertain rehabilitation – no remorse. Avoid crushing sentence. |
| 7. | Jolly (30) [2013] NSWCCA 76 | s 66A(2) s.66B 2 x 61M(2) s 86(1)(b) | PG (25%) | 22y NPP 15y 17y NPP 12y 6y NPP 4y 9y NPP 6y <u>Total:</u> 22y 9m NPP 15y 9m | AA 18y NPP 12y 7m 15y NPP 10y 6m 6y NPP 4y 9y NPP 6y <u>Total:</u> 18y 9m NPP 13y 4m | Nil | SNPP 15y Approached and grabbed 6y female sitting in her front yard and forced her into car - took complainant to first location and placed complainant’s hands on penis – at second location attempted penile-vaginal penetration, forced complainant to perform fellatio, rubbed penis on complainant’s bottom – took complainant back to area near her home and told her to walk home – offence took place over 1 1/2 hours. Uncharacteristic aberration – disturbed psychology – depressive and psychosexual disorder - supportive family – unlikely to reoffend |

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| 8. | Kertai (69) [2013] NSWCCA 252 | s.66A(2) | VG | 12y NPP 7y | AD | sexual assault, stealing. | SNPP 15y Offender was friend of 5y complainant – offence took place on fishing trip – digital penetration. |
| 9. | Gavel (33) [2014] NSWCCA 56 | s.66A(2) s.66A(2) s.66A(2) s.61M(2) s.91H(2) Sched: 6 offences | PG (25%) | <u>Indicative</u> 5y NPP 3y 8m 3y 6m NPP 2y 6m 4y 3m NPP 3y 1y 6m NPP 1y 1m 14m NPP 10m <u>Aggregate:</u> 8y NPP 5y 4m | Crown AA 10y NPP 7y 6m 8y NPP 6y 8y NPP 6y 3y NPP 2y 3m 4y NPP 3y <u>Aggregate:</u> 14y NPP 9y 6m | Nil | SNPP 15y Complainant female aged 8y - cunnilingus and digital penetration – showed complainant pornographic videos - offender former husband of complainant's stepmother who had remarried and lived with her new husband and children – on good terms with former wife - offender often looked after complainant and her brother - calculated conduct – grooming of complainant – complainant trusted offender like a member of family |
| 10. | BA (31) [2014] NSWCCA 148 | s.66A(2) 3 x s.61M(2) s.61M(2) 2 x s.61O(2) | VG | 2y 8m NPP 12m FT 6m 8m NPP 6m 8m NPP 6m (concurrent) | Crown AA 6y NPP 4y FT 6m 8m NPP 6m 8m NPP 6m (concurrent) | | SNPP 15y Sexually assaulted 6y daughter of de facto over 20mins while she was under his authority at home – kissed complainant three times on lips – asked complainant to lick / kiss penis and bottom but complainant refused – licked and kissed complainant near vagina (cunnilingus – s.66A) and on bottom Suffers from physical and psychological conditions |

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| 11. | Tu (34) [2014] NSWCCA 155 | s.66A(1) s.66A(2) Sched: s 61N(1) s 66A(2) | PG (25%) | 2y NPP 1y 4m 8y NPP 5y <u>Total:</u> 9y NPP 6y | AD | Nil | SNPP 15y Offences against daughter committed 7 years apart – had separated from wife – first offence when complainant aged 2y - rubbed clitoris – second offence complainant aged 9y - rubbed penis outside complainant’s vagina – breached position of trust. Remorse – assistance to authorities. |
| 12. | EG (68) [2015] NSWCCA 21 | s.66A(2) | PG | 5y NPP 2y 6m | AA 2y NPP 1y | nil | SNPP 15y Licked vagina of 2y granddaughter while changing her nappy – admitted offence when spoken to by police - no explanation for commission of offence – unplanned - no sexual motivation - one-off and brief aberration. Adjustment disorder with depressed mood or mild dementia – good character - “Unique and unusual” case. |
| 13. | MD (36) [2015] NSWCCA 37 | 2 x s.66A(2) Sched: s.61M(2) | PG (25%) | 10y 3m NPP 7y 8m | AA 10y 3m NPP 7y 3m | Nil | SNPP 15y Sexually assaulted 8y daughter in bathroom – forced complainant to perform fellatio twice and rubbed penis between buttocks – caught by wife – immediate confession – confessed to similar offences on earlier occasion Low intelligence – sentence judge failed to give effect to finding of special circumstances |
| 14. | AH (42) [2015] NSWCCA 51 | s.66A(2) s.61M(2) s.61O(1) s.61O(2) Sched: 2 offences | PG (25%) | <u>Indicative</u> 8y NPP 6y 3y NPP 2y 3m 1y 6m 2y <u>Aggregate</u> 10y NPP 6y 6m | AD | nil | SNPP 15y Sexually assaulted 9-10y daughter of de facto partner – fellatio - confessed when complainant told her mother – offences took place over 14month period Suffering depression. |

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| 15. | JP [2015] NSWCCA 267 | s.66A(2) Sched: 2 x s 91H(2) | PG (25%) | 1y 9m suspended sentence | Crown AD | Nil | SNPP 15y Female – mother of 6w female complainant – cunnilingus – performed at request of co-offender who was father of complainant - act performed not for any sexual gratification on part of offender but for co-offender Intellectually disabled – good character. |
| 16. | Scavera [2016] NSWCCA 145 | s.66A(2) s.66A(2) s.61M(2) s.91H(2) | PG (25%) | 6y NPP 3y 8m 3y NPP 1y 8m 2y NPP 1y FT 1y 6m <u>Total</u> 6y 6m NPP 4y 2m | Crown AA 7y 6m NPP 4y 6m 5y 4m NPP 4y 3y 9m NPP 2y 9m FT 1y 6m | | SNPP 15y Sexually assaulted 6y boy offender was babysitting in complainant's own home – performed oral sex and digitally penetrated anus – recorded acts on i-pad - complainant autistic - child abuse material located on offender's electronic devices and computer hardware. |
| 17. | TO [2017] NSWCCA 12 | s.66A(2) 2 x s.66B | VG | 16y NPP 12y FT 8y (concurrent) | AA 12y NPP 9y 4y NPP 3y (concurrent) | Petty crime only. | SNPP 15y 2012 – assaulted 9y daughter of ex-partner – while complainant in shower inserted penis into complainant's anus and attempted to put penis into her mouth - later that day attempted vaginal intercourse. No expressed remorse or responsibility |
| 18. | CR [2017] NSWCCA 29 | 2 x s.66A(2) | VG | 12y NPP 8y | Conviction AD | | SNPP 15y Limited facts – offences took place between 1 May and 31 July 2012 - sexually assaulted 5y female complainant - complainant friend of offender's granddaughter at school and would play at offender's home - offender took complainant into his room and penetrated her vagina with his penis - digital penetration in similar circumstances – complainant under offender's authority. |

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| 19. | XX (27-28) [2017] NSWCCA 90 | s.66A(2) s.61M(2) s.61O(2) | PG (25%) | <u>Indicative:</u> 6y NPP 4y 6m 4y 8m NPP 3y 3y <u>Aggregate:</u> 7y NPP 4y 6m | Crown AA <u>Indicative:</u> 7y 6m 4y 6m 3y 9m <u>Aggregate:</u> 9y NPP 6y | dishonesty | SNPP 15y Sexually assaulted 4y daughter when she was sleeping in her bed – licked vagina – rubbed vagina with penis – masturbated and ejaculated onto her chest Sexually abused as a child - remorse |
| 20. | ZA (36)-(37) [2017] NSWCCA 132 | 6 x s.66A(2) s.66A(2) 2 x s.91G(1)(a) s.91H(2) | PG (25%) | <u>Indicative:</u> 12y NPP 8y 15y NPP 10y 3y 2y 6m <u>Aggregate:</u> 26y NPP 18y | AD | Assault offences | SNPP 15y Sexually abused natural daughter aged 8-9y over 18 months – fellatio / object in anus / cunnilingus / penile-anal intercourse – showed daughter child pornography – filmed several occasions – found in possession of 44 videos and 67 images of child pornography No error in approach to totality |
| 21. | Morton (28) [2018] NSWCCA 84 | s.66A(2) s.61M(2) s.66A | PG (15%) | 9y NPP 6y 3y 4m NPP 2y 9y NPP 4y <u>Total:</u> 12y 6m NPP 8y | AD | priors – no sexual offences | SNPP 15y (2014) Met mother of 5y female through dating site – after period of time given permission to take complainant to his home overnight – after shared shower put tongue in complainants vulva and pushed erect penis against vulva (2016) – developed relationship with 6y male and his twin through acquaintance with complainant 's uncle – one night put complainant to bed and sucked penis Troubled childhood – low intellectual functioning – mental health problems |

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| 22. | XZ (62-65) [2018] NSWCCA 76 | s.66A(2) s.66A(1) s.61O(2) s.61M(2) Sched: 4 offences Possess unreg firearms Sched: 7 offences | PG (10-15%) PG (25%) | <u>Indicative</u> 12y NPP 8y 12y NPP 8y 4y 6y NPP 4y 4y 6m NPP 3y <u>Aggregate:</u> 15y NPP 10y 6m | AD | Nil | SNPP 15y Sexually abused granddaughters of de facto partner over several years – complainants aged 6-9y – abuse included digital penetration, forced fellatio, use of vibrator, forced touching of penis and licking and touching of vagina – grooming – mid to just below mid-range Poor physical health |
| 23. | Gibbons (A pseudonym) (36 at offence, 41 at sentence) [2019] NSWCCA 150 | 2 x s.66A(2) Sched: 2 offences | VG | <u>Aggregate:</u> 30y NPP 22y 6m | | Indecent assaults on child - aggravated indecent assaults on child | SNPP 15y 1 November 2011-19 January 2012 – sexually abused 4y son – fellatio, anal intercourse. History of sexual offending against children - aware name on Child Protection Register and not permitted to live with children, including complainant |
| 24. | Toohey (35 / 40 at sentence) [2019] NSWCCA 182 | s.66A(2) | VG | 4y 6m NPP 3y | Crown AA 6y 9m NPP 4y 6m | Manslaughter (of complainant - currently serving sentence) | SNPP 15y (2014) - unusual case – manslaughter of female complainant - 11 month old baby - in relationship with complainant's mother – sexual penetration of complainant's anal area at time of manslaughter offence – forceful penetration of anus by blunt instrument – Crown unable prove identity of item used, or that penetration was for purpose of sexual gratification. CCA: Manifestly inadequate sentence - even if no sexual motivation, offence was gratuitous and cruel infliction of harm. |

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| 25. | Facer (50-52 / 59 at sentence) [2019] NSWCCA 180 | s.66A(2) s.66A(2) s.66A(2) s.66B s.66C(2) s.66C(2) Sched: 5 offences | PG (25%) | <u>Indicative</u> 15y NPP 11y 3m 9y NPP 6y 9m 10y NPP 7y 6m 12y NPP 9y 10y NPP 7y 6m 12y NPP 9y <u>Aggregate:</u> 21y NPP 15y 9m | AA <u>Indicative</u> 12y NPP 9y 6y NPP 4y 6m 6y 9m NPP 5y 7y 6m NPP 5y 6m 9y NPP 6y 9m 12y NPP 9y <u>Aggregate:</u> 16y 6m NPP 14y 4m | Nil | SNPP 15y (2009 – 2014) - Sexually abused granddaughter over seven years – complainant aged 8–14y – digital and vaginal intercourse Ameliorating conduct of transfer of bulk of offender’s assets / estate to wife ultimately for benefit of complainant - measure of remorse - prospects of rehabilitation - low likelihood of reoffending. On appeal: manifestly excessive sentence – offender will be aged 74y on release. |
| 26. | Ryan (28, 33 at offence; 41 at sentence) [2019] NSWCCA 200 | s.66A(2) s.66A | VG | 21y NPP 15y 17y NPP 12y <u>Total:</u> 22y NPP 16y | AA 18y NPP 13y 12y NPP 9y <u>Total:</u> 20y NPP 14y | Larceny, assault, shoplifting, driving with an illicit drug | SNPP 15y (2012/2013) female complainant aged 4-5y - friend’s daughter – oral intercourse/fellatio - pulled complainant’s hair and pushed complainant’s head down – not isolated offence (2007) female complainant aged 5y - daughter of friends – digital penetration of vagina. Trusted family “friend” - ingratiated himself with families to access complainants – lack of insight into inappropriateness of attitude to complainant. Long-standing drugs and alcohol abuse - mental health issues. On appeal - error as to significance of SNPP and special circumstances. |

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| 27. | Carroll (31) [2019] NSWCCA 243 | s.66A(2) s.66C(2) Sched: 2 x s.61M(2) | PG (25%) | 10y NPP 6y 9m 7y 6m NPP 5y <u>Aggregate:</u> 12y NPP 8y | AD | Nil | SNPP 15y (2009-2013) Abused step-daughter aged 7-11y – digital vaginal penetration. Offending serious and repeated involving a young girl in position of trust. |
| 28. | WM (52) [2020] NSWCCA 96 | 2 x s.66A(2) Sched: s.91G(1)(a) | PG (25%) | <u>Aggregate:</u> 13y 2m NPP 9y 11m | AD | modest | SNPP 15y (April 2015) Travelled interstate to care for 9m daughter while mother at training course – with male partner took intimate photos of daughter – photos showed partner's thumb on inner aspect of labia majoria and offender's fingers penetrating outer lips of genitalia – offence committed in home of complainant in company – under authority and breach of trust Evidence of remorse rejected |
| 29. | DR (44) [2022] NSWCCA 151 | 3 x s.66A(2) s.66C(1) s.66C(2) s.61M(2) s.66C(4) Sched: 2 offences | PG (5%) | <u>Indicative</u> 11y 4m (each) 11y 4m 7y 7m 1y 10.5m NPP 1y 5m 8y 6m <u>Aggregate</u> 20y 10m NPP 15y 6m | AD | Yes. | SNPP 15y (April 2005 – Nov 2015) Offences against two female complainants aged 11-15y and 8-9y – complainant 1: in relationship with older sister, digital, penile intercourse, cunnilingus, violence and threats – complainant 2: own daughter, digital intercourse. Deprived background with physical violence, sexual abuse and substance abuse - no evidence of causal link between disadvantaged upbringing and offences; disadvantage given full weight (<i>Bugmy</i>) - anti-social personality disorder and amphetamine use disorder. |

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