

Sexual Intercourse With Child Under 10 Years

Offences committed on or after 29.6.2015

s.66A (NSW) Crimes Act

s 66A Sexual intercourse child under 10 years

Maximum Penalty:	Life
Standard non-parole period:	15 years (offences committed on or after 1.2.2003)
Commenced:	29.6.2015

For offences under this section committed prior to 29.6.2015 see separate tables

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)

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	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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2.	BT (29) [2019] NSWCCA 147	s.66A s.61O(2) Sched: s.61M(2)	PG (10%)	9y NPP 6y 9m 1y 4m (concurrent)	AD	minor	SNPP 15y 4y complainant left in care of offender one evening when mother and offender's partner left house – offender undressed to underwear and hugged complainant with penis exposed – gave complainant hard kiss – digitally penetrated complainant when she went to toilet – opportunistic – suffering effects of pain killers Aboriginal with disturbed childhood including exposure to violence and alcohol abuse, sexual abuse by grandfather, foster care – extensive mental health issues – commenced cannabis use as teenager – sexual interest in young children – low insight into offending
3.	JJ (44) [2019] NSWCCA 148	s.66A(1) [25y] s.66A	VG	4y NPP 2y 6m 5y NPP 3y <u>Aggregate:</u> 6y NPP 3y 9m	Crown AA 5y NPP 3y 6m 7y NPP 4y <u>Aggregate:</u> 8y NPP 5y	Serious prior traffic and criminal offences – no sexual offences.	SNPP 15y Offences committed in 2015 then 2017 when stepdaughter aged 6y and 9y – cunnilingus - digital penetration - offences took place over period of time - opportunistic – gross breach of trust. Special circumstances – first period in custody
4.	GBB (16 at time of offending) [2019] NSWCCA 296	2 x s.66A	VG	<u>Aggregate:</u> 2y 1m NPP 1y 14d	AD		Offences took place in 2017 – complainant half-sister, aged 5 - penile-vaginal penetration, cunnilingus. Intellectual and developmental disabilities consistent with Autism, ADHD.
5.	RC (74) [2020] NSWCCA 76	s.66A	VG	18m Community Correction Order	Crown AD	nil	SNPP 15y While bathing 5y 11m grandson inserted finger into anus twice – isolated, fleeting and spontaneous – caused pain – committed in complainant's home – no sexual motivation – breach of trust Out of character – prior good character - loss of close relationship to family – good prospects of rehabilitation Crown appeal – sentence manifestly inadequate – error to assess offence as lowest level of gravity - should have been 3y imprisonment – effect of Covid-19 pandemic – in discretion dismissed appeal

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6.	Scott (68) [2020] NSWCCA 81	s.66A 3 x s.61M(2)	VG	<u>Indicative</u> 5y NPP 3y 3y NPP 21m <u>Aggregate:</u> 6y NPP 3y 6m	AA <u>Indicative</u> 4y NPP 2y 2y NPP 18m <u>Aggregate:</u> 5y NPP 2y 6m	nil	SNPP 15y Grandfather kissed 8y granddaughter on or near vagina on three separate occasions – on fourth occasion kissed complainant directly on vagina – offences occurred during sleepovers – spontaneous – short duration – no force, coercion, threats or pressure – stopped when asked by complainant – no immediate distress – breach of trust – below mid-range Inexplicable conduct – motive unclear – impressive prior character – involvement in charities – low risk of re-offending – frail health On appeal: sentence manifestly excessive – on re-sentence took into account impact of Covid-19 pandemic on older offender in poor health
7.	LS (16) [2020] NSWCCA 120	s.66A s.91H(2) – produce child abuse material Sched: Possess child abuse material	PG (25%)	<u>Indicative</u> 5y 9m 2y 9m <u>Aggregate:</u> 6y 9m NPP 4y	AA <u>Indicative</u> 3y 9m NPP 2y 2m 2y 3m NPP 1y 4m <u>Aggregate:</u> 4y 9m NPP 2y 9m	nil	Offender commenced searching for pornography when aged 8-11y – became involved in child abuse chat rooms and sharing sites – commenced sharing photos of young children taken at offender's house at 14y – at 16y took photo of 4y complainant with offender holding open and licking vagina – upon arrest found in possession of hundreds of images and videos of child abuse material – very young age of complainant – no physical harm – multiple child abuse complainants Diagnosed with severe autism and ADHD and associated developmental and behavioural problems – expert evidence established offender motivated by desire social validation and interaction – sexual interest related to developmental immaturity – youth and mental disorders had significant relationship to offending - assaulted on 18 occasions in custody – self harm on six occasions – difficulty in custody because of autism - profound remorse – reasonable prospects of rehabilitation On appeal – failure to properly take into account both youth and mental disorders – good to excellent prospects of rehabilitation - exceptional case

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8.	BS (72 at offending) [2021] NSWCCA 39	s.66A 2 x s.61M(2) s.61M(2)	VG	<u>Indicative:</u> 4y 6m NPP 2y 6m 14m NPP 6m 9m NPP 4m <u>Aggregate:</u> 5y 6m NPP 3y	AD	Nil	SNPP 15y 2016 - offences committed on two grandnieces aged 7 and 12 - Digital penetration of female complainant aged 7 – indecent assaults consisted of kissing complainant in each case with tongue. SJ found on balance a causative link between offending and developing dementia, but still knew actions wrong - considerable breach of trust - special circumstances.
9.	AB [2022] NSWCCA 62	s.66A s.66EB(3) s.66DC(a) Sched: 2 offences	PG (25%)	<u>Indicative</u> 5y 7m NPP 3y 9m 3y NPP 2y 2y 3m <u>Aggregate:</u> 8y 6m NPP 5y 8m	AD	Nil	SNPP 15y 2016 - 2019 – offences committed upon 7y daughter of woman applicant living with – rubbed and licked vagina whilst in shower - showed pornographic videos. Remorse - some prospects of rehabilitation.
10.	Cheung (68) [2022] NSWCCA 168	s.66A	VG	10y NPP 6y	AD	Nil	SNPP 15y Female complainant aged 3y – offender’s wife worked as cleaner / nanny at complainant’s home – offender alone with complainant - vaginal-digital penetration – caused laceration injury (actual bodily harm) – part of a course of conduct. Age – health – special circumstances.

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11.	PC (56) [2022] NSWCCA 107	s.66A s.66A 2 x s.66C(2) s.66C(2) s.66C(2) s.61M(2) Sched: 7 offences	PG (25%)	<u>Indicative</u> 9y NPP 5y 4m 7y 6m NPP 4y 6m 6y NPP 3y 7m 4y 6m NPP 2y 8m 3y 3m NPP 3y 1m 2y 3m NPP 1y 4m <u>Aggregate:</u> 16y NPP 9y	AD	Nil	SNPP 15y 2015 – over four period, offences committed against daughter aged between 8/9-12y – fellatio – other offences involved penile-anal intercourse, cunnilingus.
12.	Bhatia [2023] NSWCCA 12	s.66A	VG	10y NPP 6y	AA 8y NPP 5y 3m	Nil	SNPP 15y Cared for son of family friends while parents worked – one afternoon woke from nap and put penis of 6y 11m complainant in offender's mouth – opportunistic and did not rely on violence or threats – in home of complainant - not isolated act but no lengthy pattern of abuse – slightly below mid-range No remorse – good character – reasonable prospects of rehabilitation – onerous custodial conditions On appeal: erroneously applied s.21A(5A)

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	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
13.	Grange (31-37 at offences; 39 at sentence) [2023] NSWCCA 6	s.66A s.66A 13 x 61M(2) s.61O 9 x s.91G(1)(a) s.91H(2) Sched: 13 x s.91G(1)(a) 4 x Cth offences Possess child abuse material Use carriage service to access and transmit child abuse material	PG (25%)	State Offences <u>Indicative:</u> 9y NPP 6y 2m 21y NPP 14y 4m (lesser sentences) <u>Aggregate:</u> 30y NPP 20y 6m Cth offences: <u>Aggregate</u> 4y 6m NPP 3y 4m <u>Total:</u> 30y NPP 22y 6m	AD	Nil	SNPP 15y Penile-oral penetration of female baby aged 8 weeks; ejaculated into complainant's mouth - digital penetration 3-5y female child - other offences in respect of the three female complainants aged 3-5y (niece), 1-2y and 8 weeks old (daughters of friends) - filmed sexual assaults of the three complainants - offences discovered following AFP search warrant of applicant's electronic devices. Some remorse and acceptance of responsibility.
14.	Clarke (60) [2023] NSWCCA 170	s.66A s.66A s.61M(2)	VG	<u>Indicative</u> 8y NPP 5 10y NPP 6y 6y NPP 4y <u>Aggregate</u> 12y NPP 8y	AD	Driving and alcohol related offences, malicious injury, trespass, BES, aggravated dangerous driving causing death	SNPP 15y Two female complainants aged 6-7y and 4y - lived in same apartment block with their grandmother with whom applicant friendly – digital penetration 6-7y old complainant - put hands down underwear of 4y old complainant, penetrated her genitalia, rubbing with his hand, penis exposed and asked her to touch it. Very young age of complainants – abuse of trust. Challenging upbringing.

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15.	PH (27 at offences; 34) [2023] NSWCCA 176	s.66A 3 x contravene ADVO Contravene ADVO	PG (25%)	<u>Indicative</u> 7y 9m NPP 4y 9m 6m 6m <u>Aggregate</u> 8y NPP 5y	AA <u>Indicative</u> 6y 6m 3m 4m <u>Aggregate</u> 7y NPP 4y 2m		SNPP 15y Assaulted stepdaughter 8y – pulled down underpants and licked vagina for short time - ADVO offences related to electronic communications between applicant and complainant's mother – not planned - opportunistic CCA: SJ failed to take into account impact of COVID-19 pandemic on custodial imprisonment. Case falls within broad category of cases below middle of range - significant breach of trust - took place in victim's home - spontaneous offence, one-off nature of the offending. Strong subjective case - traumatic background – remorse - good prospects of rehabilitation – special circumstances.
16.	BH (37-38) [2023] NSWCCA 278	s.61M(2) 3 x s.66A s.66A 2 x s.66A 2 x s.66A 3 x s.66A 2 x s.66A	VG	<u>Indicative:</u> 2y NPP 1y 3m 6y 6m NPP 4y 2m 6y 6m NPP 4y 2m 7y 6m NPP 4y 9m 7y NPP 4y 6m 7y NPP 4y 6m 8y NPP 4y 11m <u>Aggregate:</u> 14y NPP 9y	AA <u>Indicative:</u> 2y NPP 1y 3m 8y NPP 5y 9y NPP 6y 10y 6m NPP 7y 10y NPP 7y 9y NPP 6y 11y NPP 7y <u>Aggregate:</u> 18y NPP 12y	nil	SNPP 15y Sexually abused biological daughter aged 6-8y on 8 distinct occasions over 2 years – digital penetration – forced fellatio – cunnilingus – penile penetration – degree of force and violence – some offences committed in home of complainant – breach of trust of highest order – ten offences of or above mid-range Continued to deny offences – good prospects of rehabilitation – mental health issues making custodial conditions more difficult On appeal – indicative sentences outside range – aggregate sentence manifestly inadequate

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17.	STB (20-22) [2024] NSWCCA 36	s.66A s.66C(1) s.66C(1) Sched: 4 related offences	PG (5%)	<u>Indicative:</u> 6y 3m NPP 3y 8m 4y 5m NPP 2y 7m 5y 4m NPP 3y 2m <u>Aggregate:</u> 8y 2m NPP 4y 9m	AD	nil	SNPP 15y Sexually assaulted stepsister aged 9-12y over several years – offences not isolated incidents – involved touching of breasts and digital penetration in home of complainant – clear breach of trust On appeal: error conceded in relation to scheduled offence Offences between lower and upper mid-range – prior good character – born in Peru – moderate risk of re-offending – uncertain prospects of rehabilitation – special circumstances – no lesser sentence warranted on re-consideration

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