

## Indecent Assault / Act of Indecency - Female Victim

Victim Under 16 Years

ss.76 / 76A (NSW) Crimes Act

### s 76 Indecent assault upon female

**Maximum Penalty:** 5 years (where victim under 16 years) increased to 6 years 2.8.1974

**Commenced:** 1.10.1924

**Repealed:** 14.7.1981

### s 76A Act of indecency with or towards any girl under the age of sixteen years, or incites a girl under that age to any act of indecency

**Maximum Penalty:** 2 years

**Commenced:** 2.8.1974

**Repealed:** 14.7.1981

**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. 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.

|    | NAME<br>(age if known)   | OFFENCE                    | PLEA | SENTENCE   | APPEAL | RECORD | INVOLVEMENT & SUMMARY  |
|----|--|----------------------------|------|--|--------|--------|--|
| 1. | <b>G J F</b><br>(24 at offence / 41 at sentence)<br>NSWCCA<br>2.3.1994 | s.76 [6y]<br>s.76A<br>s.81 | VG   | FT 12m<br>FT 9m<br>MT 12m<br>AT 6m<br><br>Total:<br>MT 2y<br>AT 6m | AD     |        | (1976) forced 10y step daughter to touch penis and fellatio – several days later forced first complainant and 9y natural brother to engage in sexual acts including intercourse with each other – exposed himself to second complainant and younger sister and forced second complainant to touch and fellate offender – representative conduct<br>Army service in Vietnam |

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| 2. | <b>EJL</b><br>(48 at sentence)<br>NSWCCA<br>2.8.1994                            | s.76A<br><br>s.76 [6y]<br><br>6 x s 61E(1A)<br><br>s.61E(1) | PG   | 4y GBB<br>12m PD   | Crown AA<br>MT 2y<br>AT 2y | Offences against second complainant breached bond for indecent assault on daughter | (1980-1986) – indecently assaulted daughter aged 7-13y – second complainant aged 10y – forced complainants to play with penis, ribbed himself against vaginal area and other indecent touching<br>Suffering severe spinal problems  |
| 3. | <b>Bustos</b><br>(33)<br>NSWCCA<br>27.6.1995                                    | 2 x s.76 [6y]<br><br>4 x s.61E                              | PG   | MT 3y 6m<br>AT 14m | AD                         | Nil  | (1980-1982) - indecent assaults over two years – representative counts - close friend of family became obsessed with complainant aged 12-14y – some indecent assaults involved conduct that constituted intercourse at time of sentencing   |
| 4. | <b>Turner</b><br>(41-45)<br>NSWCCA<br>26.7.1995 /<br>28.7.1995                  | 4 x s.76 [6y]   | PG   | 500h CSO           | Crown AA<br>2y PD.         | Nil  | (1976-80) - daughter of de facto - offences occurred over four years when complainant aged 9-13y - representative charges - took complainant out in car, touched her on vagina and breasts and forced her to masturbate him - on another occasion placed penis between buttocks - offences affected complainant deeply.<br>Low intellectual capacity - health problems - unlikely to reoffend.<br>On appeal – should have been full time custodial but periodic detention because of health |
| 5. | <b>Holyoak</b><br>(44-47 at offences –<br>75 at sentence)<br>NSWCCA<br>1.9.1995 | 2 x s.76 [5y]<br><br>Sched:<br>2 indecent assault offences  | VG   | MT 7y<br>AT 12m    | AA<br>MT 5y<br>AT 1y       | nil  | (1963-1966) – supervisor at children’s home – touched 9y female resident on vagina during height check – developed ongoing sexual relationship with complainant involving mutual masturbation – forced different female complainant to fellate offender – touched male complainant on penis – not isolated incidents<br>Carer for seriously ill wife  |
| 6. | <b>Stammers</b><br>NSWCCA<br>4.3.1996   | 3 x s.76 [6y]   | VG   | MT 2y<br>AT 8m     | AD                         |  | (1978-9) assaulted 8-9y female – friend of family – offences committed while complainant staying at offenders house – rubbed vagina – digital penetration   |
| 7. | <b>McD</b><br>NSWCCA<br>2.5.1996  | 4 x 76 [6y]   | VG   | MT 2y<br>AT 2y     | AD                         |  | (1976-83) continually sexually abused 2 nieces aged 6-13y and 8-15y while they stayed with him  |

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| 8.  | <b>Brown</b><br>NSWCCA<br>22.8.1996   | 2 x s.76 [6y]<br><br>Sched:<br>3 x s.76 | PG           | MT 18m<br>AT 2y 6m   | AA<br>MT 12m<br>AT 2y                                  | nil relevant                     | (1979-80) digital penetration of vagina and licking genitals of daughter aged 8-10y - intoxicated with alcohol or drugs. Admitted offences when first confronted - reported to authorities in 1982 - no action taken until 1995 (major mitigating factor) - family counselling undertaken at time - clear remorse           |
| 9.  | <b>Middlemass</b><br>(17-27)<br>NSWCCA<br>24.3.1997   | 4 x s.76 [6y]                           | PG           | MT 5y<br>AT 3y   | AD   | nil                              | (1974-1984) sexually abused two step sisters aged 5-14y - forced masturbation, forced fellatio, digital penetration, cunnilingus, rubbed penis near vagina, placed hand on vagina – breach of trust and position of authority.  |
| 10. | <b>MCP</b><br>(43 at sentence)<br><br><b>RCP</b><br>(40 at sentence)<br><br>NSWCCA<br>16.9.1998 | 5 x s.76 [6y]<br><br>3 x s.76 [6y]      | PG<br><br>PG | MT 9m<br>AT 3m<br>12m GBB<br><br>MT 9m<br>AT 3m<br>12m GBB | AA<br>FT 5m 1d<br><br>FT 5m 1d<br><br>(immed release)  | nil relevant<br><br>nil relevant | (1975-6) offences committed on young female cousin. all offences representative - RCP juvenile at time of some offences - illicit touching, getting her to illicitly touch them and masturbation until ejaculation. Lived substantially trouble free lives - little likelihood of reoffending - some delay since complaint. |
| 11. | <b>Watson</b><br>(65 at sentence)<br><a href="#">[1999] NSWCCA 227</a>                          | 11 x s.76 [5y]                          | PG           | MT 6y<br>AT 2y   | AA<br>MT 4y<br>AT 18m                                  | nil                              | (1964-70) assaulted natural daughters aged 9-11y and 11y (1976-1977) assaulted 13y step daughter - touching and digital penetration.  |
| 12. | <b>Cocking</b><br>(25-6 / 68 at sentence)<br><a href="#">[2000] NSWCCA 435</a>                  | 12 x s.76 /<br>s.61E(1)                 | PG           | MT 4y 6m<br>AT 2y 6m                                       | AA<br>Fresh evidence of cancer<br>MT 3y 6m<br>AT 2y 6m | nil                              | (1955-1984) 12 female complainants aged 5-12y from extended family - representative counts - breach of trust.   |
| 13. | <b>DJS</b><br><a href="#">[2001] NSWCCA 189</a>   | s.76 [6y]                               | PG           | 12m GBB  | AA<br>Charge dismissed                                 | nil                              | 20 years ago - touched 8y old sister on vagina - child experimenting in sexual activity. Young man with own family  |

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| 14. | <b>AJC</b><br>(54 at sentence)<br><a href="#">[2001] NSWCCA 388</a>                 | 4 x s.76 [5y]<br><br>s.81A<br><br>2 x s.61O(1)<br><br>s.61O(1)<br><br>Sched:<br>2 offences | PG          | 16m<br>NPP 12m<br><br>FT 9m<br><br>FT 15m / 9m<br><br><u>Total:</u><br>3y 4m<br>NPP 3y | AA<br>16m<br>NPP 6m<br><br>FT 9m<br><br>FT 15m / 9m<br><br><u>Total:</u><br>3y 4m<br>NPP 2y 6m | Wilful and<br>obscene exposure | (1972) – indecent assaults on daughter – rubbed outside vagina while daughter aged 3-7y – masturbated in presence and forced daughter to suck penis – rubbed outside vagina – fondled daughter while piggy backing – exposed penis to son in presence of daughter and forced son to rub and suck penis<br>(1998-99) – masturbated in presence of 10y step-daughter |
| 15. | <b>JFR</b><br>(62 at sentence)<br><a href="#">[2002] NSWCCA 9</a>                   | 6 x s.76 [5y]  | PG          | 2y 7m<br>NPP 1y 7m   | AD   | nil                            | (1960-64) - systematic course of conduct over extended period of time on daughters - rubbed vaginal area with hand and penis - daughters aged under 10y<br>Conitriion  |
| 16. | <b>Pell</b><br>(60s at sentence)<br><a href="#">[2004] NSWCCA 205</a>               | 3 x s.76 [6y]  | PG          | 3y 9m<br>NPP 2y 9m   | AA<br>3y 6m<br>NPP 2y 3m   |                                | (1977) – assaulted two children aged 9-10y   |
| 17. | <b>Humphries</b><br><a href="#">[2004] NSWCCA 370</a>                               | 2 x s.76 [6y]<br><br>Sched:<br>2 x s.76  | PG          | 2y 6m<br>NPP 18m   | AD   |                                | (1979-1981) Father sexually abused daughter over several years – offences occurred over twenty years ago – masturbated complainant – rubbed penis on back – part of series of assaults   |
| 18. | <b>A.J.B.</b><br>(60)<br>(2007) 169 A Crim R 32<br><a href="#">[2007] NSWCCA 51</a> | 5 x s.76 [6y] /<br>s.61E(1)<br><br>Sched:<br>4 offences                                    | PG<br>(25%) | 4y<br>NPP 3y   | AA<br>3y<br>NPP 18m  | Nil                            | (1979-1981) – sexually assaulted step daughter aged 6-10y – rubbed penis against vagina – fondled vagina and breasts – aberration<br>Remorse – obtained counselling and did not re-offend  |
| 19. | <b>Bradbery</b><br>(80 at sentence)<br><a href="#">[2008] NSWCCA 93</a>             | 4 x s.76 [5y]  | PG<br>(25%) | 2y 6m<br>NPP 1y 9m   | AA<br>2y<br>NPP 12m  | Nil                            | (1970-1975) – sexually assaulted youngest daughter aged 8-12y – touched vagina during bath – forced complainant to rub penis and testicles – touched vagina while wrestling – cunnilingus – voluntarily desisted when complainant turned 13y<br>Hardship to wife – ill health – delay – failed to apply sentencing patterns at time of offence                     |

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| 20. | <b>GRD</b><br>(35-39)<br>(64 at sentence)<br><a href="#">[2009] NSWCCA 149</a>               | 6 x s.76 [6y]<br>3 x s.76A                          | PG<br>(25%) | <u>Total:</u><br>6y<br>NPP 3y           | AA<br><u>Total:</u><br>4y<br>NPP 2y | Nil                      | (1975-1980) – sexually abused step-daughter aged 9-13y – made complainant touch penis – rubbed penis against genitals – cunnilingus – digital penetration – forced fellatio – voluntarily desisted<br>Remorse – unlikely to re-offend – delay – carer for 14y son  |
| 21. | <b>Rosenstrauss</b><br><a href="#">[2012] NSWCCA 25</a>                                      | 3 x s.76 [6y]<br><br>Sched:<br>similar offence      | PG          | 3y<br>NPP 2y                            | AA<br>3y<br>NPP 16m                 |                          | (1975-1981) - Family friend – forced fellatio in grounds of school – forced complainant to undress and rubbed penis against genitals until ejaculation in car – touched complainant's vagina and forced her to touch penis in pool<br>Subsequent good character and community work – genuine remorse   |
| 22. | <b>Henderson</b><br>(75)<br><a href="#">[2016] NSWCCA 8</a>                                  | 7 x s.76 [5y]<br>2 x s 81<br><br>Sched:<br>2 x s 76 | PG<br>(25%) | <u>Total</u><br>6y<br>NPP 3y 10m        | AA<br><u>Total:</u><br>5y<br>NPP 3y | Indecent assault – child | (1961-1978/9) – four complainants aged 3-10y - females and male – offender aged 21– 34y - uncle to two complainants, cousin to one complainant and unrelated to fourth - digital vaginal penetration – rubbing of genitals.<br>Age at sentence – no reoffending despite opportunity for 40 years – remorse - supported by and regularly visited by his children and step-daughter.   |
| 23. | <b>Leighton</b><br>(36-46 at offences – 79 at sentence)<br><a href="#">[2016] NSWCCA 215</a> | 3 x s.76 [5y]<br>s.76 [6y]<br>s.61E                 | VG          | <u>Total:</u><br>1y 7m 16d<br>NPP 1y 1m | Crown AD                            |                          | (1973) – on three occasions dentist administered nitrous oxide to 12y female patient and fondled breasts, rubbed vagina outside clothes and rubbed groin against shoulder<br>(1975) – administered nitrous oxide to 10y patient and rubbed vagina under underwear<br>(1994) – administered nitrous oxide and touched vulva of 12y patient<br>Not isolated offences<br>Poor health at time of appeal – wife also in poor health |
| 24. | <b>Hornhardt</b><br>(34-47y – 85 at sentence)<br><a href="#">[2017] NSWCCA 186</a>           | 6 x s.76 [5y]<br>s.76A                              | PG<br>(25%) | <u>Aggregate</u><br>4y<br>NPP 2y        | AD                                  | Nil                      | (1965-1970) – indecently assaulted two daughters aged 6-12y – offences not isolated – touched and rubbed vaginal area with fingers – rubbed penis against daughter lying on bed – forced daughter to rub penis until ejaculated<br>(1977-8) – rubbed penis against daughter of second marriage while in bed one morning<br>Breach of trust – genuine remorse – good character – unlikely to re-offender – ill health           |

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| 25. | <b>Kelly</b><br>(22-31 at offences /<br>72 at sentence)<br><a href="#">[2021] NSWCCA<br/>154</a> | s.76 [5y]<br>4 x s.76 [6y]<br>2 x s.76A<br><br>Sched:<br>2 x assault | PG   | <u>Aggregate:</u><br>8y<br>NPP 5y | AD     | Minor  | (1969-1977) – sexual abuse of 7-15y foster child of half-sister – touched vagina and chest of 7y complainant outside clothes – not isolated – sexually assaulted 13y complainant in presence of 15y female – rubbed breast and penetrated complainant with fingers, candlestick and dildo – forced complainant to lick vagina of other female – took photos and threatened with gun – threatened 15y complainant who was heavily pregnant – forced complainant to place air fresheners in vagina and forced fellatio<br><br>Aboriginal male – suffering mental disorder and health issues at sentence – delay – unlikely to re-offend |

Last Updated: Jul 2021

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