

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| Repealed: | 13.6.2003 |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: 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. '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.

| | CASE (AGE IF KNOWN) | OFFENCE | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|----|---|---------------------------|------|--------------------|-----------------------|-------------------------------|---|
| 1. | Bharat (31) NSWCCA 17.4.1986 | s.78K | PG | 6y 9m NPP 3y 9m | AD | | Took 14y male friend to assist with car – forced two acts of anal intercourse – caused complainant to scream |
| 2. | Hayes (59) NSWCCA 7.2.1986 | s.78K Att s.78K | PG | 5y NPP 2y 6m | AA 3y 6m 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 Prior good character |
| 3. | Pepper-Clayton (68) NSWCCA 11.12.1987 | s.78K Indecent assault | PG | 6m PD 5y GBB | Crown AA 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 |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

| | CASE (AGE IF KNOWN) | OFFENCE | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|----|--|--|------|---|--|-------------------------------------|--|
| 4. | Maclay NSWCCA 16.2.1990 | s.78K 4 x s.78Q | PG | MT 15m AT 2m FT 12m (concurrent) | AA 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 |
| 5. | Bujdoso (38) NSWCCA 14.6.1990 | 5 x s.78K 3 x s.78L s.78Q | PG | MT 2y 6m AT 10m MT 2y 6m AT 10m FT 1y (concurrent) | AD | Insignificant 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 Remorse and rehabilitation |
| 6. | Vince (23) NSWCCA 28.5.1991 | s.78K s.78Q Sched: 2 related offences | PG | MT 1y 6m AT 1y FT 1y (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 Good work record |
| 7. | Gore-Johnson (60) NSWCCA 16.4.1992 | 2 x s.78K Sched: 3 x s.78Q | PG | MT 12m AT 12m | AD | nil | Employed 15y complainant to do lawns - later watched pornographic video together - fellatio |
| 8. | Gibbs (65) NSWCCA 16.6.1992 | 4 x s.78K | PG | MT 4y AT 6m | AA (One count quashed) MT 2y 6m 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. | McKenna (31) NSWCCA 16.8.1992 | s.78K | VG | MT 1y 3m AT 5m | AA FT 9m | No priors for similar offences | Complainant aged 15y 9m – isolated incident – complainant assisting in moving of furniture – fellatio – no force |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

| | CASE (AGE IF KNOWN) | OFFENCE | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|-----|--|--|--------------|--|---|--|---|
| 10. | Cozens (60) NSWCCA 1.10.1992 | 2 x s.78K 3 x s.61E(1) Sched: 6 sexual offences | PG | MT 3y AT 1y MT 3y AT 1y (concurrent) | AA MT 2y 3m 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 Mental and physical health problems |
| 11. | BCH NSWCCA 7.10.1992 | 3 x s.78K | VG | MT 7y AT 1y | AA MT 5y AT 3y | | Became friendly with complainant aged 11-15y - established trust with parents - not isolated incidents - offences occurred over 3-4 years |
| 12. | O'Donnell (middle aged) NSWCCA 16.9.1993 | s.78K s.90A | VG | MT 4y AT 1y 4m MT 4y AT 1y 4m (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. | Eagles (58) NSWCCA 16.12.1993 | 4 x s.78K 3 x s.78Q s.61E Sched: 10 similar offences | VG PG | Total: MT 7y 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 Protective custody |
| 14. | Williams (53) NSWCCA 30.9.1994 | 4 x s.78K s.61E | VG | MT 6y AT 2y FT 3y | AA MT 5y AT 1y 8m 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 Protective custody Original sentence imposed for 6 counts of s.78K – reduced on appeal after convictions for two counts quashed. |
| 15. | Doyle (56) NSWCCA 14.12.1994 | 2 x s.78K | PG | 3y AT 12m | AA to adjust dates commencement date | Lengthy record – no relevant sexual offences | Picked up 15y complainant from refuge – fellatio and anal intercourse |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

| | CASE (AGE IF KNOWN) | OFFENCE | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|-----|--|--|------|---|----------|--------------------|--|
| 16. | Engert (1995) 84 A Crim R 67 NSWCCA | s.78K | PG | MT 3y 9m AT 1y 9m | AD | Priors and on bail | Friend of family - suffering schizophrenia – 13y complainant - isolated offence |
| 17. | McMinn NSWCCA 20.5.1996 | 5 x s.78K | VG | MT 6y AT 2y | AD | Similar priors | Friend of family - little to attract leniency – 10y complainant |
| 18. | Ryan (58 at sentence) NSWCCA 20.8.1996 | 5 x s.78K 6 x s.81 Sched: 5 x solicit male | PG | MT 4y AT 2y (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 Paedophilia |
| 19. | Fisk (26 -41) NSWCCA 21.7.1998 | 8 x s.79 s.81 4 x s.61E(1A) s.61D(1A) 3 x s.61D(1A) 4 x s.78K Aid and abet s.78K 2 x Aid and abet s.66A | PG | MT 9y AT 3y FT 2y FT 2y / 3y MT 7y 6m AT 2y 6m FT 6y MT 7y 6m AT 2y 6m MT 7y 6m AT 2y 6m FT 6y (all concurrent) | AD | | (1974-1989) – sexually abused three male complainants aged 13-19y – all complainants from dysfunctional families – offences representative of paedophilic lifestyle |
| 20. | Hutton (48) NSWCCA 2.12.1998 | s.78K Sched: 3 x cannabis offences | PG | MT 2y 6m 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 |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

| | CASE (AGE IF KNOWN) | OFFENCE | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|-----|--|--|------|--|---------------|--|--|
| 21. | Williams (21-33) NSWCCA 11.12.1998 | 2 x s.78K 3 x s.78K 2 x s.61N s.61E(1) Sched: 13 offences | PG | MT 6y 8m AT 3y 4m FT 6y FT 2y / 1y FT 2y (concurrent) | AD | Breached recog for sexual 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. | Virgona (35-42) [1999] NSWCCA 136 | 3 x s.78K 2 x s.81 s.78Q(1) | PG | MT 4y 6m AT 1y 6m FT 12m FT 12m (concurrent) | AD | | (1983-1990) – sexually assaulted nephew aged 9-16y – upper range of seriousness for offences of this type Complainant of sexual assault as a child – some evidence of rehabilitation |
| 23. | Skene [2000] NSWCCA 322 | s.78K 2 x s.78K 3 x s.61M(1) | VG | MT 4y AT 1y 4m FT 3y FT 2y (concurrent) | AD | No prior 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. | Connors [2000] NSWCCA 470 | 4 x s.78K s.61M(1) | VG | <u>Total:</u> MT 3y AT 3y FT 6m (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. | AB [2001] NSWCCA 496 | 6 x 78K | VG | 8y NPP 6y | AD | | Complainant a distant relative aged 10-16y – anal intercourse – continuing course of misconduct |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

| | CASE (AGE IF KNOWN) | OFFENCE | PLEA | SENTENCE | APPEAL | RECORD | FACTS |
|-----|---|--|------|---|--|--------|---|
| 26. | Bishell (late 20s) [2002] NSWCCA 279 | 4 x 78K | VG | 2y NPP 1y 3m PD | AA (One count quashed) FT 12m PD | | 14-15y son of de facto – anal intercourse |
| 27. | Milton (early 30s) [2004] NSWCCA 195 | 4 x s.78K s.78K s.78K 2 x s.61E s.90A | VG | 2y 3y 10y NPP 6y 1y 3y <u>Total:</u> 16y 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 |
| 28. | WW (17-25 at offences – 62 at sentence) [2023] NSWCCA 311 | s.79 s.81 6 x s.81 4 x s.81A 2 x s.78K Sched: 8 similar offences | PG | <u>Indicative:</u> 6y 12m CCO 18m - 2y 6m 18m – 23m 4y / 4y 6m <u>Aggregate:</u> 10y NPP 6y | AD | Nil | (1977-1986) Sexually abused two nephews aged 6-12y over nine years – brothers – indecent touching of penis and fellatio – forced touching of offender's penis and fellatio – anal intercourse – gross breach of trust – many offences committed in home of grandparents and in presence of other children – not isolated offences Significant health issues – remorse – excellent prospects of rehabilitation – delay On appeal: importance of general deterrence – youth relevant only for initial offending |

Last updated: Dec 2023

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.