

Indecent Assault on Male

Victim Under 16 Years

s.81 (NSW) Crimes Act

s 81 Indecent assault upon a male

Maximum Penalty: 5 years

Repealed: 8.6.1984

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 (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Combo (42) NSWCCA 22.4.1971	s.81		5y (no NPP)	5y NPP 2y 9m	vagrancy	Assaulted 14y boy. Suffering mental or emotional disturbance - mentally defective person within meaning of <u>Mental Defectives (Convicted Persons) Act</u> 1939 - also danger to community
2.	Murray (34) NSWCCA 30.8.1974	3 x s.81	PG	4y 6m NPP 20m	AD		Homosexual acts committed with another adult on two 13y and 14y boys - gave complainants beer - drove them some distance - no overt violence - at time of committal for these offences committed similar offence on 15y boy
3.	Roberts (57) NSWCCA 1.11.1974	2 x s.81	PG	5y NPP 2y 4m	AA 2y 6m NPP 12m	prior convictions for indecent assaults 5 years prior	Assaulted 8-9y boy - complainant came to offender's caravan to play cards - cards had indecent pictures on back - 2 days later again played cards then got into bed together - physical contact - complainant given money Suffering physical disability resulting from polio
4.	Brogan (36) NSWCCA 31.7.1975	2 x s.81	PG	8y	AA 4y NPP 12m	received deferred sentences on many occasions for similar offences	Masturbated in presence of 10y and 7y boys on separate occasions - no interference with complainants Brain condition affected by alcohol - some hope of rehabilitation

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5.	Charlton (39) NSWCCA 27.2.1976	s.81	VG	2y 6m NPP 11m	AA 2y 6m NPP 6m	8 year old offence for indecent assault and buggery	Assaulted 14y boy in public toilet - element of violence Prior good character - assaulted in gaol - lost job - hearing disability
6.	Miller (21) NSWCCA 29.7.1977	s.81	PG	2y 6m NPP 6m	AD	nothing of significance	Took 14y navel cadet to motel room - both drank alcohol and indecent assault occurred - premeditated - position of quasi authority over complainant Prior good character - Navel seaman
7.	Perrot (45) NSWCCA 15.2.1980	5 x s.81	PG	4y 6m NPP 2y	AD	prior convictions for sexual offences 10y ago	Assaulted four 11y boys in picture theatre managed by offender - took one boy home to sexually assault him - no violence or physical harm Prior good character
8.	Anderson (37) NSWCCA 8.4.1982	s.81	VG	2y NPP 10m 25d	AD	nil	Seen standing near 5y boy with penis near complainant's chest. Prior good character
9.	Beserick (41) NSWCCA 16.2.1993	s.81 s.61E	VG		AA MT 12m AT 6m FT 3m (concurrent)	Nil	(1983) – Petty Officer instructor ordered 13y cadet to sleep in sick room and touched penis outside underpants – several months later gave complainant alcohol and performed fellatio at gathering at home of offender – not isolated offence - breach of trust Delay between charging and trial – prior good character Originally convicted of sexual intercourse without consent under s.61D(1) – conviction replaced by s.81 indecent assault and resentenced for new offence
10.	G J F (24 at offence / 41 at sentence) NSWCCA 2.3.1994	s.76 s.76A s.81	VG	FT 12m FT 9m MT 12m AT 6m <u>Total:</u> MT 2y 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 Army service in Vietnam

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11.	Newby (50s at offence / 72 at sentence) NSWCCA 29.5.1995	11 x s.81	PG	MT 16m AT 2y 6m	AA FT 4m + 2m PSC	Old offence for indecent assault	(1971-1981) - brothers aged 8-16y living next door to offender on farm – handling penis, masturbation and fellatio Seriously ill
12.	Johnson (26-8) NSWCCA 16.5.1997	6 x s.81 Sched: 5 x s.81.	PG	18m PD 2y GBB	Crown AA 3y PD 2y GBB	nil	(1976–1978) – complainant was wife’s brother, aged 12-15y - masturbation and fellatio - admitted some offences in 1995 when first interviewed by police - number of offences committed against complainant’s will. Aged 47y at time of sentence - offences an inappropriate reaction to stress in marriage - mental breakdown shortly after - now good support from family On appeal - full time custodial sentence appropriate but double jeopardy applied
13.	Moon (26-31) (2000) 117 A Crim R 497 [2000] NSWCCA 534	4 x s.81	PG	MT 2y AT 8m	AA 18m NPP 13m 10d	nil	(1966-1971) - indecently assaulted male neighbour aged 9- 14y - forced complainant to masturbate offender and placed penis between buttocks of complainant on one occasion - representative counts. Remorse - rehabilitated - no further offending - degree of ignorance of wrongness of actions - delay.
14.	Cottrell (73) [2002] NSWCCA 213	s.81	PG (25%)	3y 6m NPP 2y 6m	AA 2y suspended	Considerable record for similar offences	Offences committed 21 years ago – fondled genitals of 12y foster son while boy in bath Received substantial counselling and medical assistance
15.	TC (17 at offence – 55 at sentence) [2016] NSWCCA 3	s.81 Sched: s.76	PG (25%)	2y GBB	AD	Bond without conviction for indecent exposure 2001	(1976) – teenager staying at house of girlfriend’s family – rubbed penis against face and mouth of sleeping 9y brother of girlfriend – brief incident – woke 12y sister of complainant and moved her hand up and down penis – drunk – no memory of incident but took responsibility – well below mid- range Unstable life at time of incident – impact of conviction on employment – no appropriate to record no conviction in light of subsequent offence

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16.	Henderson (75) [2016] NSWCCA 8	7 x s 76 2 x s 81 Sched: 2 x s 76	PG (25%)	<u>Total</u> 6y NPP 3y 10m	AA <u>Total:</u> 5y 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. Age at sentence – no reoffending despite opportunity for 40 years – remorse - supported by and regularly visited by his children and step-daughter.
17.	Flaherty (28-38 – 72 at sentence) [2016] NSWCCA 188	2 x s.81 3 x s.81	VG PG (25%)	2y 3w NPP 6m	AA 2y NPP 3m	Nil	(1972) – Catholic priest masturbated on two occasions with 15y male parishioner (1977-8) – 11-12y male parishioner stayed with offender in holiday house – awoke to find offender performing fellatio (1981) – rubbed genitals of 14y male parishioner staying at holiday house while complainant in bed Very poor physical and mental health – dementia – shortened life expectancy
18.	Wade (81 at sentence, 40 at offence) [2018] NSWCCA 85	3 x s.81	VG	<u>Total:</u> 18m NPP 9m	AD		Headmaster/ principal at Catholic high school – assaulted 2 male students – 1976 fondled penis of 13-14y male student – 1980 fondled penis and performed fellatio on 14y male student - assaults took place in offender's office – ignored pain one complainant suffering from unrelated medical condition of testicle - abuse of position of trust and authority as headmaster substantial – mid-range objective seriousness. Age – poor health – rehabilitation – unlikely to re-offend
19.	O'Sullivan (80 at sentence, 33-44 at offence) [2019] NSWCCA 261	14 x s.81 Sched: 2 x s.81	PG (10%)	<u>Aggregate:</u> 8y 6m NPP 6y	AD	Serving sentence of imprisonment for similar offences against different complainants.	(1972 to 1983) - School teacher / Principal abused 15 male students aged 10-16 years over an 11 year period – touched complainants on genital area inside and outside of clothing – one instance of masturbating a complainant. Age – ill-health – special circumstances.

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20.	WB (63 at sentence; 16-18 at offences) [2020] NSWCCA 159	s.81 s.81 s.81 Att s.80 Sched: 2 x s.81	PG (25%)	<u>Indicative</u> 3y 3y 2y 7m 3y <u>Aggregate:</u> 8y NPP 5y 7m	AA <u>Indicative</u> 1y 8m 9m 1y 6m 1y 8m <u>Aggregate:</u> 3y NPP 2y	Sexual intercourse person aged 10-16, sexual intercourse w/o consent, indecent assault female, stealing	(1972-1974) – complainant aged 11-12y – mother babysat complainant – masturbation, fellatio, attempt buggery – offences took place within ongoing sexual assault from 1966-1975 when complainant aged 5-14y and offender aged 11-20y. Adverse childhood experiences including sexual abuse as a child – genuine remorse - significant period in which there was no report of sexual offending - special circumstances. CCA: error in assessment objective seriousness.
21.	Stephens (68 at sentence; 28 at offences) [2022] NSWCCA 227	3 x s.81	VG	<u>Aggregate</u> 4y 6m NPP 2y 9m		Nil	(1982-1983) – complainant aged 10-11y - offender worked as flying instructor –complainant showed his penis to offender on request – over next few days, on two further occasions, performed fellatio on complainant. Sound progress in custody – continued rehabilitation upon release assessed as excellent. Remitted from High Court
22.	Richards [2023] NSWCCA 107	s.81 s.81 2 x s.81 s.81 s.81 s.81 s.61E(1)	PG (10%)	<u>Indicative:</u> 3y 4m 3y 9m 3y 7m 3y 11m 2y 11m 2y 8m 3y <u>Aggregate:</u> 8y NPP 5y	AD	See facts	(1966, 1983-4) Christian brother used position as head teacher and principal of junior school to sexually assault three students aged 10-12y – assaults committed on school camps and trips and on school premises – touching and groping of genitals and buttocks – mid-range to above mid-range Offender previously sentenced by 4 judges for similar offences – total of 24 offences committed against 16 complainants over 21 years – this sentence partially accumulated to existing sentence Not good character – good prospects of rehabilitation and unlikely to re-offend due to advanced age and change in circumstances – limited insight and remorse On appeal: no error in approach to post-offence character, delay, totality and accumulation – sentence not manifestly excessive

Last Updated: June 2023

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