

## Aggravated Indecent Assault

Victim under 16 years

s.61M(1) (NSW) Crimes Act

s 61M (1) Aggravated indecent assault

(3) Circumstances of aggravation:

(b) victim is under the age of 16 years

**Maximum Penalty:** 7 years

**Standard non-parole period:** 5 years (for offences committed on or after 1.2.2003)

**Commenced:** 19.3.1991

**Substituted:** 1.1.2009 – (3)(b) removed and s.61M(2) amended to include person under 16y with sentence increased to 10 years – 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)

	Name (age if known)	Counts	Plea	Sentence	Appeal	Record	Summary
1.	Lord (60) NSWCCA 7.2.1994	s.61M(1)	VG	3y bond \$5,000 fine	AD	nil	14y complainant employed by offender – touched complainant on outside of pants several times
2.	Craig NSWCCA 25.7.1994	s.61M(1)	VG	FT 6m	AD	nil	Touched 9y complainant's breast and rubbed vagina whilst she swimming in river

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3.	<b>Barrett</b> (81) NSWCCA 26.7.1995	2 x s.61M(1)  s.61E	PG	MT 12m AT 12m  MT 12m AT 12m (concurrent)	AA <u>Total:</u> MT 8m 15d AT 15m	No offences until 1992 – breached bond for indecent assault	Indecently assaulted two males aged 6y and 9y – first offence occurred 1990 – second offences occurred 1992 - knew parents of complainants – breach of trust – touched complainant’s penis Fresh evidence of heart condition
4.	<b>White</b> (60) NSWCCA 21.5.1996 23.5.1996	s.61M(1)	VG	MT 3m AT 8m	AA 12m PD	Nil	Long standing family friend – touched young male on bottom during holiday
5.	<b>EMT</b> NSWCCA 23.10.1996	3 x s.61M(1)	PG	MT 2y AT 8m	AD		Very serious offences against daughter Ill health
6.	<b>Prior</b> (51) NSWCCA 7.10.1997	s.61M(1)	VG	MT 15m AT 15m	AD	Nil	Carer played with penis of 12y male cerebral palsy sufferer in respite care
7.	<b>Kelly</b> (46 at first offence) NSWCCA 23.11.1998	4 x s.61M(1)  Sched: 2 x Supply LSD	PG	MT 2y AT 1y	AD	Nil	Indecently assaulted stepdaughter and friend aged 11-14y and 14y – representative offences against step daughter – touched breasts and vagina – gave stepdaughter LSD tablet
8.	<b>Murray</b> (47 at first offence) <a href="#">[2000] NSWCCA 430</a>	s.61E(1A)  s.61M(1)  3 x s.61M(1)	PG	FT 12m  MT 18m AT 18m  FT 12m  <u>Total</u> MT 18m AT 18m	AD	nil	(1989-1995) - indecent touching over years of daughter of de facto – touched vagina with hands, fingers and tongue – representative counts – offences continued despite separation and reconciliation from wife
9.	<b>JS</b> (53) <a href="#">[2000] NSWCCA 38</a>	2 x s.61M(1)  Sched: s.61M(1)	PG	MT 18m AT 18m	AA MT 12m AT 12m	nil	Touched breast and vagina on outside of clothes of 13y step daughter during friendly wrestle – schedule offence involved touching exposed breast under dressing gown two weeks later. Isolated offences - prior good character.

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10.	<b>ACK</b> <a href="#">[2000] NSWCCA 180</a>	2 x s.61M(1)	VG	MT 2y 1m AT 3y	Conviction AD		14y daughter – rubbed penis against vagina and ejaculated on legs
11.	<b>Thomson</b> <a href="#">[2000] NSWCCA 476</a>	3 x s.61M(1)	PG	MT 2y 6m AT 1y 6m	AD	Nil	Indecently assaulted 11-12y step son over 12 months – rubbed penis - mouth on penis – threats to withhold gifts Health problems
12.	<b>Puskas</b> <a href="#">[2001] NSWCCA 43</a>	5 x s.61M(1) s.61O(1) Supply prohibited drug 2 x s.61L	PG	18m suspended \$3,750 fine	Crown AD		Inappropriate behaviour of music teacher towards 4 female students - students aged 15-16y – offences committed over two year period. Special circumstances - young daughter deaf and required intensive therapy involving whole family.
13.	<b>GKW</b> (49) <a href="#">[2002] NSWCCA 130</a>	4 x 61M(1)	PG (25%)	4y NPP 2y	AD	Nil	12y daughter of family friend – fondled breasts and external genitalia and placed tongue in mouth
14.	<b>Walder</b> (42) <a href="#">[2002] NSWCCA 310</a>	s.61M(1)	PG (30% on appeal)	4y 10m NPP 3y	AA 3y NPP 21m	Similar offences	Touched and kissed 10y daughter of friend on area of vagina Dysfunctional background – permanent and severe deafness
15.	<b>Giddy</b> (59) <a href="#">[2003] NSWCCA 46</a>	s.61M(1)	PG	18m NPP 9m	AA 12m suspended from date of appeal	nil	Gymnastics coach - called 13y complainant into office and touched her on breasts - non-threatening and non-violent Could have been dealt with in Local Court - on bail for 6 years
16.	<b>Campbell</b> (54 at sentence) <a href="#">[2005] NSWCCA 125</a>	7 x s.61M(1) AOABH	PG (20%)	7y NPP 4y	AD	Breached bail and suspended sentence – priors for child sexual offences	(1993-1996) - Sexually assaulted orphaned niece living with offender – complainant suffering PTSD because of offences – used violence and emotional manipulation Alcohol problem at time of offences
17.	<b>AEL</b> (75 at sentence) <a href="#">[2005] NSWCCA 148</a>	s.61M(1) s.71 Sched: S.71	PG (25%)	3y 9m NPP 2y  1y 6m (concurrent)	AD		Commenced sexual intercourse with 13y complainant abusing position as spiritual leader – 1992 rubbed vagina of 14y daughter over clothing – not isolated offence Poor health sentences - partially concurrent to existing interstate sentence

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18.	<b>Pearson</b> (25) <a href="#">[2005] NSWCCA 116</a>	s.61M(1)  s.61M(1)  s.61M(1) s.91G(1) – use child for pornography  Hinder investigation  Sched: 9 offences	PG (20%)	3y NPP 18m  3y 6m NPP 18m  FT 12m  FT 18m  18m NPP 6m  <u>Total:</u> 3y 6m NPP 2y	AD	Dishonesty offence	Female offender – assisted boyfriend to take photographs of naked 13y complainant – extensive efforts made to conceal offence – complainant pressured into doing degrading and humiliating poses without consent on more than one occasion – concerned would lose job with offender
19.	<b>Sangalang</b> (44) <a href="#">[2005] NSWCCA 171</a>	s.61M(1)	PG (25%)	4y 3m NPP 2y 9m	AD	Similar offence – received bond	<b>SNPP 5 years</b> Rubbed breast and vagina of 13y complainant outside school uniform – kissed complainant and placed tongue in mouth – friend of family – amphetamine use – just below mid-range
20.	<b>Tidona</b> (67) <a href="#">[2005] NSWCCA 410</a>	s.61M(1)  s.61N(1) (call up on breach)	PG (15%)	5y 2m NPP 3y 11m  (concurrent fixed sentence)	AA 5y 2m NPP 3y	Breached bond imposed for s.61N offence	<b>SNPP 5 years</b> s.61N offence - grabbed 13y neighbour and offered money to perform sexual acts 2 years later assaulted 12y neighbour who was helping clean house – exposed penis and pushed complainant onto bed Ill health
21.	<b>Sharwood</b> (39) <a href="#">[2006] NSWCCA 157</a>	5 x s.61M(1)	VG	7y 6m NPP 5y 4m	AA 2y NPP 1y 3w (immediate release)	Minor – not relevant	<b>SNPP 5 years</b> Indecently assaulted 10y friend of daughter staying overnight – part of one course of conduct – touched vagina over pants, placed hand on penis and pushed penis into back Protective custody – exceptional effect on ill wife and daughter – extra curial punishment On appeal - error as to max penalty

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22.	<b>A.I.S.</b> (19) <a href="#">[2006] NSWCCA 355</a>	s.61M(1)	PG (20%)	2y 9m 2w 4d NPP 9m	AD	Nil	<b>SNPP 5 years</b> Swimming coach took 13y student home – tongue kissed, touched genitals and placed complainant’s hand on groin area – unwelcome advances Remorse
23.	<b>Woods</b> (35) (2008) 184 A Crim R 108 <a href="#">[2008] NSWCCA 83</a>	s.61M(1)  s.562AB(1) intimidation	PG (15%)	1y 9m NPP 9m  12m NPP 5m  <u>Total:</u> 1y 9m NPP 1y	AD		<b>SNPP 5 years</b> Met 14y complainant through internet – arranged meeting and during drive touched complainant on vagina and breast area over clothes – subsequently contacted complainant and made threats if she did not agree to intercourse Prior good character
24.	<b>Hudson</b> (43) <a href="#">[2008] NSWCCA 90</a>	s.61M(1)	PG (10%)	3y 7m NPP 2y 2m	AD	Insignificant	<b>SNPP 5 years</b> 13y daughter of previous partner – breach of trust – tongue kiss and touched breasts and vagina – impulsive offence
25.	<b>FAM</b> (45) <a href="#">[2008] NSWCCA 167</a>	s.61M(1)  Sched: s.91H(3) – possess child pornography	PG (16%)	2y 6m NPP 18m	AA To make correction to expiry dates	Nil	<b>SNPP 5 years</b> Touched penis and testicles of sleeping 12y son – child pornography found on computer Previous good character – protective custody
26.	<b>Clarke</b> (29) <a href="#">[2009] NSWCCA 13</a>	s.61M(1)	VG	2y NPP 12m	AD	Minor	<b>SNPP 5 years</b> (2007) – 15y half-sister of de facto sleeping at offender’s house – touched nightie, fondled breast and touched pubic area outside underwear – breach of trust
27.	<b>EJDG</b> <a href="#">[2012] NSWCCA 251</a>	2 x s.61M(1)	VG	5y NPP 3y	AD	Nil	<b>SNPP 5 years</b> 10y step-daughter – touched sleeping complainant on vagina for short time – several months later complainant came to sleep with mother because of nightmare – cupped vagina for ten minutes Below average intelligence – good prospects of rehabilitation

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28.	<b>Peiris</b> (27-30) <a href="#">[2014] NSWCCA 58</a>	s.61M(1)  s.61M(2)	VG	17m NPP 8m  12m NPP 6m  <u>Total:</u> 18m NPP 9m	AA 14m suspended  8m suspended		<b>SNPP 5 years</b> (2008 / 2012) – indecent assault on 10y complainant in 2008 then same complainant aged 14y in 2012 - put hand down top squeezed breasts – trusted family friend
29.	<b>WG</b> (mid-40's at offence) <a href="#">[2019] NSWCCA 263</a>	2 x s.61M(1)  2 x s.61M(1)  s.61M(1)  3 x s.61M(1)  s.61M(1)  s.61M(1)  s.61O(1)  Sched: 9 x s.61M(1)	PG (25%)	<u>Indicative</u> 9m  1y 1m  6m  1y 10m  1y 6m  2y 3m  8m  <u>Aggregate:</u> 5y 7m NPP 3y 6m			1996 - 2000- assaulted three daughters of then partner – complainants aged 10-16 years old – touched breasts and groin inside and outside of clothing, kissed complainants on mouth.

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30.	<b>AB</b> (25-28) <a href="#">[2020] NSWCCA 170</a>	s.61M(1) s.61M(1) s.61M(1) s.61M(1) s.61N(1) Sched: 3 offences	PG (not stated)	<u>Indicative</u> 3y 9m  2y 3m  3y  2y  9m  <u>Aggregate:</u> 5y NPP 3y 6m	AD	Two post conduct offences – does not deny leniency	(1996-1998) – sexual abuse of step daughter aged 11-14y – regularly rubbed complainant’s vagina while putting her to bed at night – on one occasion gave complainant massage while naked and forced her to massage offender naked and touch erect penis – showered with complainant touching her with erect penis – during family meal forced complainant to rub offender’s penis over clothing – s.61N offence walked around the house naked and displayed erect penis to 11y stepson – abused position of trust and authority – breached safety of family home – offences from below to above mid-range Genuine remorse and contrition – guarded prospects of rehabilitation
31.	<b>Doyle</b> (35-67 – 78 at sentence) <a href="#">[2021] NSWCCA 297</a>	s.81 s.61M(1) s.61M(1) s.61M(1) s.61M(1) s.61M(2) Sched: 8 offences	PG (5%)	<u>Indicative</u> 2y 6m  4y NPP 2y  2y NPP 1y  2y 6m NPP 1y 3m  5y NPP 2y 6m  2y NPP 1y  <u>Aggregate:</u> 6y 6m NPP 4y	AD	Serving sentence for similar offences committed 1981-2003	(1978-2010) indecently assaulted five male teenage complainants – several complainants employees at theatre owned by offender – indecently touched penis, pubic hair and body and fellatio – befriended fifth complainant’s family – indecent kissing, touching and masturbating – showered naked Low risk of re-offending due to age and deteriorating mental health – serial paedophile On appeal: error in finding multiple complainants an aggravating factor – error in SNPP – no lesser sentence

Last updated: Dec 2021

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