

Maintain Unlawful Sexual Relationship
Current Offence – Max Penalty - Life
s.66EA (NSW) Crimes Act

s 66EA(1) Adult engages in 2 or more sexual acts with or towards a child over any period

Maximum Penalty: life

Commenced: 1.12.2018

s.66EA(7) This section extends to a relationship that existed wholly or partly before the commencement of the relevant amendments, or the predecessor offence, if the acts engaged in by the accused were unlawful sexual acts during the period in which the relationship existed.

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	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	GP (a pseudonym) [2021] NSWCCA 180	s.66EA s.61M(2)	PG (20%)	13y 6m NPP 9y 9m 19m NPP 14m <u>Total:</u> 14y NPP 10y 3m	AA 12y NPP 8y 7m 19m NPP 14m <u>Total:</u> 12y 6m NPP 9y 1m		Sexually abused step daughter aged 12-13y over 7 months – rubbed breasts and stomach and forced penile/vaginal intercourse day before marrying complainant's mother – forced fellatio in shed and multiple counts of penile/vaginal intercourse in complainant's bedroom – further acts of penile/vaginal intercourse while staying overnight with complainant away from home – told complainant to stay silent or offences would ruin mother's life – also threatened suicide – indecently assaulted second complainant on car trip to Sydney <u>Bugmy</u> factors – profound childhood deprivation – heroin baby – incarcerated parents – foster child – childhood sexual abuse – remorse – good prospects of rehabilitation On appeal: sentence erroneously based on offender ejaculating on more than one occasion At [63]-[64] – observations in <u>Burr</u> [2020] NSWCCA 282 at [160] as to factors bearing on seriousness of old offence apply to new offence.

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	NAME (age if known)	OFFENCE	PLEA	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
2.	Xerri (48 -50 at offence) [2021] NSWCCA 268	s.66EA Contravene AVO	PG (20%)	8y NPP 4y 9m FT 4m <u>Total</u> 8y 2m NPP 4y 11m	AD	Nil relevant. Old assault matter.	(2016-2018) Female complainant aged 14 - 16 – vaginal-penile intercourse on number of occasions over 18 month period – grooming of complainant over prior two year period. Low intellectual functioning - disregard of AVO which had been put in place to protect complainant- lack of insight into offending.
3.	Towse (40) [2022] NSWCCA 252	s.66EA	PG (35% combined)	8y NPP 5y	AA 5y 3m NPP 3y 3m	Nil	9y old stepdaughter – five ingredient offences occurred over a week – touched vagina, vaginal-digital penetration – included Queensland offences of indecent treatment of a child; placed complainant's hand on penis - serious breach of trust. Difficult upbringing - prospects for rehabilitation reasonable. CCA: Sentence manifestly excessive - actual conduct occurred within brief period - does not bear comparison with extended period of offending / more serious offending in comparative cases - “unsophisticated person intellectually” who suffers from social anxiety, lack of insight; element of general deterrence is reduced.

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4.	JG [2023] NSWCCA 33	s.66EA s.66EA s.66DB(a) s.66DB(a) s.61M(2) 2 x s.61M(2) s.91H(2)	PG (25%)	<u>Indicative:</u> 11y 8y 9m 12m 2y 8m NPP 2y 3y NPP 2y 3m 18m <u>Aggregate:</u> 17y NPP 12y	AA <u>Indicative:</u> 9y 4y 6m Remaining indicative sentences not varied. <u>Aggregate:</u> 13y NPP 9y		Sexual offending against four children - each victim a member of offender's extended family - persistent sexual abuse of two children, AB and PC – AB (aged 13-15y): 10-15 acts of sexual touching of AB over 15-month period; applicant touching AB's penis or putting his hands on AB's penis - PC (aged 12-14y): 10 incidents in NSW and ACT over 39-month period; ever-increasing sexual assaults; touching complainant's penis, masturbating complainant until ejaculation, stimulating accidental urination; grooming, plying PC with alcohol; implied threat by way of casting guilt onto PC not to tell anyone. Does not accept diagnosis of paedophilic disorder - high risk of reoffending – remorse. CCA: Not open to sentencing judge to find s.66EA offending within mid-range – comparative cases discussed.
5.	DB (60 at sentence) [2024] NSWCCA 18	s.66EA [25y] s.66EA [life] s.91G(1)(a) s.66DC(a) s.91G(1)(a) s.91H(2) Sched: 3 offences	PG (25%)	19y NPP 14y 6m	AA 19y NPP14y 3m	Minor	(1999-2010) Sexually abused 5-16y daughter – indecent touching, digital penetration, cunnilingus and attempted penile penetration – forced complainant to undress for recording - used threats and bribery – toward high end of range (2018-2021) repeated indecent touching of 7-9y child in care – complainant had mild autism and severe anxiety – took photos of genitalia – exposed penis to second child in care and took photos of genitalia – complainant aged 4-6y with moderate to severe autism and non-verbal – photos and videos of child pornography found on computer – offences low to mid-range Dysfunctional and disruptive childhood – mental health issues – remorse On appeal: error in application of statutory ratio

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6.	WP (48) [2024] NSWCCA 77	s.66EA [life] 6 x s.59(1) 7 x s.61 s.66A 2 x s.61M(1) 9 x s.61O(1) 4 x s.66C(2) 2 x s.66D s.91H(2)	PG	18y <u>Aggregate</u> 28y NPP 20y	AD	Larceny, assault, contravene ADVO, destruction property,	(1995-2019) Offences committed over 18 year period on 3 own children and 3 stepchildren (boys and girl) - s.66EA offence (1995 to 2005) started on stepson KG when aged 6y; fellatio and then anal intercourse when KG aged 12y – other offences committed on KG and other children - children regularly beaten, isolated and not permitted to leave their rooms for long periods of time, went without food. Dysfunctional upbringing - Indigenous - witnessed drug abuse and domestic violence - Poor understanding of sexual abuse and of own abusive behaviour and sexual interest in children - some risk of reoffending - prospects of rehabilitation guarded. CCA: SJ fail to award 5% discount for late pleas of guilty due to error by parties as to penalty for offences – however, no lesser sentence warranted.
7.	Massaquoi (34 at offences) [2024] NSWCCA 125	s.66EA [life]	VG	16y NPP 10y	AD		(2013-2016) Female complainant aged 12-14y – offender in relationship with complainant's mother - penile-vaginal intercourse, fellatio, masturbation - level of exploitation, emotional threats. War-torn background – PTSD - anxiety and depression. CCA: No error as to findings of fact.
8.	MK (29 at offences) [2024] NSWCCA 127	3 x s.66EA [life]	VG	<u>Aggregate</u> 28y NPP 21y	AD	Nil	(2017-2018) Male complainants were three brothers whose mother in relationship with applicant – two complainants aged 11 – inserted complainant's penis into applicant's anus, digital-anal, penile-anal intercourse, fellatio, masturbation – use of force, emotional blackmail, caused pain – deliberate, manipulative, predatory nature of offending - above mid-range seriousness. Significant risk reoffending – mental health. CCA: No error in factual findings.
9.	JA (40) [2024] NSWCCA 130	s.66EA [life] Common assault	Not stated.	14y 6m NPP 11y 3m	AA 14y 6m NPP 10y 4m 3m		Offences committed on step-daughter, aged 8-15y. Special circumstances – PTSD. CCA: Minor adjustment of NPP to give effect to special circumstances.

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10.	Nolan (41-45 at offences – 65 at sentence) [2024] NSWCCA 140	s.66EA [<i>life</i>]	VG	18y NPP 13y	AA 16y NPP 11y 8m	Nil relevant	(Feb 1999 – Feb 2002) Father sexually assaulted 5-8y daughter – included sexual intercourse and indecent touching – intentionally developed relationship – high degree of emotional manipulation – offences committed in victim’s home – element of planning – not isolated acts – high degree of seriousness No insight or remorse On appeal: SJ erroneously treated act of rubbing vagina as digital penetration
11.	Fisher (54 at sentence) [2024] NSWCCA 191	2 x s.66EA [<i>life</i>] 1 x s.91H(2)	VG	<u>Indicative</u> 6y 7y 1y <u>Aggregate</u> 10y NPP 7y 6m	Crown AA <u>Indicative</u> 11y 10y 1y <u>Aggregate</u> 15y NPP 11y 3m	Possess child pornography	(2015 – 2018) Uncle to two female complainants – CH aged 8-12y, vulnerable, autism spectrum disorder, touched breasts, genitals, digital penetration, unlawful sexual acts occurred routinely up to around once per week or fortnight, then once per month – MH aged 7-11y; touched breasts, genitals, genitals with his penis, cunnilingus, estimated 120-140 unlawful sexual acts. Repeated persistent offending – no remorse - lack of insight - medium risk reoffending. CCA: Error in assessment of objective seriousness by acting upon wrong principle with respect to unlawful sexual acts that did not form alternative counts on indictment - sentence manifestly inadequate.

Last updated: October 2024

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