

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Repealed: 14.7.1981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Repealed: 14.7.1981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 (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	G J F (24 at offence / 41 at sentence) NSWCCA 2.3.1994	s.76 [6y] 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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2.	EJL (48 at sentence) NSWCCA 2.8.1994	s.76A s.76 [6y] 6 x s 61E(1A) s.61E(1)	PG	4y GBB 12m PD	Crown AA MT 2y 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 Suffering severe spinal problems
3.	Bustos (33) NSWCCA 27.6.1995	2 x s.76 [6y] 4 x s.61E	PG	MT 3y 6m 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.	Turner (41-45) NSWCCA 26.7.1995 / 28.7.1995	4 x s.76 [6y]	PG	500h CSO	Crown AA 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. Low intellectual capacity - health problems - unlikely to reoffend. On appeal – should have been full time custodial but periodic detention because of health
5.	Holyoak (44-47 at offences – 75 at sentence) NSWCCA 1.9.1995	2 x s.76 [5y] Sched: 2 indecent assault offences	VG	MT 7y AT 12m	AA MT 5y 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 Carer for seriously ill wife
6.	Stammers NSWCCA 4.3.1996	3 x s.76 [6y]	VG	MT 2y 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.	McD NSWCCA 2.5.1996	4 x 76 [6y]	VG	MT 2y 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.	Brown NSWCCA 22.8.1996	2 x s.76 [6y] Sched: 3 x s.76	PG	MT 18m AT 2y 6m	AA MT 12m 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.	Middlemass (17-27) NSWCCA 24.3.1997	4 x s.76 [6y]	PG	MT 5y 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.	MCP (43 at sentence) RCP (40 at sentence) NSWCCA 16.9.1998	5 x s.76 [6y] 3 x s.76 [6y]	PG PG	MT 9m AT 3m 12m GBB MT 9m AT 3m 12m GBB	AA FT 5m 1d FT 5m 1d (immed release)	nil relevant 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.	Watson (65 at sentence) [1999] NSWCCA 227	11 x s.76 [5y]	PG	MT 6y AT 2y	AA MT 4y AT 18m	nil	(1964-70) assaulted natural daughters aged 9-11y and 11y (1976-1977) assaulted 13y step daughter - touching and digital penetration.
12.	Cocking (25-6 / 68 at sentence) [2000] NSWCCA 435	12 x s.76 / s.61E(1)	PG	MT 4y 6m AT 2y 6m	AA Fresh evidence of cancer MT 3y 6m AT 2y 6m	nil	(1955-1984) 12 female complainants aged 5-12y from extended family - representative counts - breach of trust.
13.	DJS (14) [2001] NSWCCA 189	s.76 [6y]	PG	12m GBB	AA 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.	AJC (54 at sentence) [2001] NSWCCA 388	4 x s.76 [5y] s.81A 2 x s.61O(1) s.61O(1) Sched: 2 offences	PG	16m NPP 12m FT 9m FT 15m / 9m <u>Total:</u> 3y 4m NPP 3y	AA 16m NPP 6m FT 9m FT 15m / 9m <u>Total:</u> 3y 4m NPP 2y 6m	Wilful and 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 (1998-99) – masturbated in presence of 10y step-daughter
15.	JFR (62 at sentence) [2002] NSWCCA 9	6 x s.76 [5y]	PG	2y 7m 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 Conitriion
16.	Pell (60s at sentence) [2004] NSWCCA 205	3 x s.76 [6y]	PG	3y 9m NPP 2y 9m	AA 3y 6m NPP 2y 3m		(1977) – assaulted two children aged 9-10y
17.	Humphries [2004] NSWCCA 370	2 x s.76 [6y] Sched: 2 x s.76	PG	2y 6m 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.	A.J.B. (60) (2007) 169 A Crim R 32 [2007] NSWCCA 51	5 x s.76 [6y] / s.61E(1) Sched: 4 offences	PG (25%)	4y NPP 3y	AA 3y NPP 18m	Nil	(1979-1981) – sexually assaulted step daughter aged 6-10y – rubbed penis against vagina – fondled vagina and breasts – aberration Remorse – obtained counselling and did not re-offend
19.	Bradbery (80 at sentence) [2008] NSWCCA 93	4 x s.76 [5y]	PG (25%)	2y 6m NPP 1y 9m	AA 2y 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 Hardship to wife – ill health – delay – failed to apply sentencing patterns at time of offence

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20.	GRD (35-39) (64 at sentence) [2009] NSWCCA 149	6 x s.76 [6y] 3 x s.76A	PG (25%)	<u>Total:</u> 6y NPP 3y	AA <u>Total:</u> 4y 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 Remorse – unlikely to re-offend – delay – carer for 14y son
21.	Rosenstrauss [2012] NSWCCA 25	3 x s.76 [6y] Sched: similar offence	PG	3y NPP 2y	AA 3y 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 Subsequent good character and community work – genuine remorse
22.	Henderson (75) [2016] NSWCCA 8	7 x s.76 [5y] 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.
23.	Leighton (36-46 at offences – 79 at sentence) [2016] NSWCCA 215	3 x s.76 [5y] s.76 [6y] s.61E	VG	<u>Total:</u> 1y 7m 16d 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 (1975) – administered nitrous oxide to 10y patient and rubbed vagina under underwear (1994) – administered nitrous oxide and touched vulva of 12y patient Not isolated offences Poor health at time of appeal – wife also in poor health
24.	Hornhardt (34-47y – 85 at sentence) [2017] NSWCCA 186	6 x s.76 [5y] s.76A	PG (25%)	<u>Aggregate</u> 4y 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 (1977-8) – rubbed penis against daughter of second marriage while in bed one morning Breach of trust – genuine remorse – good character – unlikely to re-offender – ill health

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	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
25.	Kelly (22-31 at offences / 72 at sentence) [2021] NSWCCA 154	s.76 [5y] 4 x s.76 [6y] 2 x s.76A Sched: 2 x assault	PG	<u>Aggregate:</u> 8y 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 Aboriginal male – suffering mental disorder and health issues at sentence – delay – unlikely to re-offend
26.	ET (16-19 and 32-37 at offences) [2024] NSWCCA 131	2 x s.76 [5y] 2 x s.76 [6y] Sched: 3 x s.76 offences	PG (5%)	<u>Aggregate:</u> 4y 6m NPP 2y 3m	AD	Assault female, assault, malicious damage.	(1956-1981) two female complainants – applicant's half-sister (aged 6y-8y) and niece (aged 8y and 13-14y) - digital penetration of both complainants – both cases involved force, pain and threats – offences in context of repeated, similar offending. No remorse. PTSD - mental health – disadvantaged background.

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