

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Repealed: 13.6.2003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

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	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

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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

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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

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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

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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

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