

## Sexual Intercourse With Child Under 10 Years

1.2.2003 – 31.12.2008

s.66A (NSW) *Crimes Act*

### s 66A Sexual intercourse child under 10 years

<b>Maximum Penalty:</b>	25 years
<b>Standard non-parole period:</b>	15 years (offences committed on or after 1.2.2003)
<b>Increased Penalty Commenced:</b>	1.2.2003
<b>Amended:</b>	1.1.2009

For offences under this section committed prior to 1.2.2003 and on or after 1.1.2009 see separate tables

**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) / 21B(5)

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	AJP (22) (2004) 150 A Crim R 575 <a href="#">[2004] NSWCCA 434</a>	s.66A  Sched: s.61M(2)	PG (25%)	3y NPP 18m	Crown AA 5y NPP 2y 6m	Nil	<b>SNPP 15 years</b> Sexually assaulted 8y niece while caring for complainant and brother – forced fellatio then rubbed erect penis against vagina – isolated offence – breach of trust – opportunistic – below mid-range objective seriousness Good prospects of rehabilitation
2.	JDB (13 / 14) (2005) 153 A Crim R 164 <a href="#">[2005] NSWCCA 102</a>	4 x s.66A  Sched: 2 x s.66A	PG (25%)	3y NPP 12m (Detention)	AA 3y NPP 7m 14d		<b>SNPP 15 years</b> Young boy sexually assaulted 8y step-sister on several occasions – anal and vaginal penetration – deliberate acts of sexual abuse – offender understood actions wrong and took steps to conceal Remorse – difficult childhood

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3.	J.T.A.C. (13) <a href="#">[2005] NSWCCA 345</a>	2 x s.66A  2 x s.61M(2)	PG (25%)	2y 6m NPP 9m  FT 6m (concurrent)	AD		Sexually assaulted 5y half-sister and 7y half-brother – 2 acts of fellatio – rubbed penis against complainant's bottom and vagina
4.	MLP (39) (2006) 164 A Crim R 93 <a href="#">[2006] NSWCCA 271</a>  <a href="#">[2014] NSWCCA 183</a>	s.66A	VG	16y NPP 12y	AA 16y NPP 11y  AD	Minor	<b>SNPP 15 years</b> Penile intercourse with 9y daughter on camping trip – in presence of younger children – significant breach of trust – mid range objective seriousness. Protective custody – health problems – reasonable prospects of rehabilitation
5.	DBW <a href="#">[2007] NSWCCA 236</a>	2 x s.66A  s.61O(2)  s.61O(2)  s.61M(2)  Sched: 6 x s.66A s.61M(2) 2 x s.61O(2)	PG	6y NPP 3y  3y NPP 18m  4y NPP 2y  4y 6m NPP 1y 9m  <u>Total:</u> 6y 6m NPP 3y 6m	AD		<b>SNPP 15 years</b> Offences committed on three infant children over 5 years – offender son and daughter and neighbour's child – sexual intercourse offences involved licking daughter's vagina in bath and daughter biting appellant's penis – also masturbated in front of son and neighbour's daughter on separate occasions and rubbed penis on daughter's vagina in bath Good prospects of rehabilitation – full confession to unknown offences

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6.	<b>PGM</b> (2008) 187 A Crim R 152 <a href="#">[2008] NSWCCA 172</a>	3 x s.66A  2 x s.61M(2)  s.61M(2)  Sched: 2 x Possess child pornography	VG	7y NPP 4y  3y 6m NPP 2y  4y NPP 2y  <u>Total:</u> 7y NPP 4y 6m	Crown AA 9y NPP 6y  6y NPP 4y  6y 8m NPP 4y 8m  <u>Total:</u> 9y 6m NPP 7y 6m	Nil significant	<b>SNPP 15 years</b> Offences committed on daughter of female neighbour aged 6-7y over seven months - cunnilingus and penile intercourse – breach of trust – all offences less than mid-range seriousness Prior good character
7.	<b>RJA</b> (30) (2008) 185 A Crim R 178 <a href="#">[2008] NSWCCA 137</a>  <a href="#">[2014] NSWCCA 89</a>	3 x s.66A	VG	21y NPP 16y	AA 17y NPP 13y  AA 15y NPP 11y	Nil	<b>SNPP 15 years</b> Sexual assault on daughter aged 8 –9y over seven months – penile penetration of genitalia in mid-range objective seriousness – digital penetration less than mid-range. Prior good character. Second Appeal brought pursuant to s 78 <i>Crimes (Appeal and Review) Act 2001</i> – following judgment in <i>Muldrock</i> (2011) 244 CLR 120.]
8.	<b>Kite</b> <a href="#">[2009] NSWCCA 12</a>	2 x s.66A	PG (25%)	8y 10m NPP 5y 6m	AA 8y NPP 5y	Minor	<b>SNPP 15 years</b> Sexually assaulted 6y girl sleeping in room with other children at family NYE party – did not know complainant before party – cunnilingus and digital penetration Remorse – good prospects of rehabilitation
9.	<b>King</b> <a href="#">[2009] NSWCCA 117</a>	s.66A  Sched: 3 offences	PG (25%)	2y suspended sentence	Crown AA 7y NPP 4y 6m	BE&S, malicious damage, driving. Subject to suspended sentence at time of offence.	<b>SNPP 15 years</b> Broke into home to take car keys in order to steal motor vehicle – digital penetration of 4y girl sleeping in room – intoxicated at time - only slightly below mid-range in objective seriousness. Alcohol addiction.
10.	<b>Eedens</b> (71) <a href="#">[2009] NSWCCA 254</a>	s.66A  Sched: s.66A s.66C(1)	PG (25%)	12y NPP 9y	AA 8y 3m NPP 6y 2m	Sexual assault of 15y girl - assault female	<b>SNPP 15 years</b> Three friends of offender's young daughter playing at offender's house - forced 13y complainant to fellate offender in presence of another child - significantly below mid-range objective seriousness. Review of other authorities involving s.66A.

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11.	<b>Allen</b> (45) <a href="#">[2010] NSWCCA 47</a>	s.66A  s.86(1)	PG (25%)	14y NPP 10y  8y NPP 6y  <u>Total:</u> 16y NPP 12y	AA 14y NPP 10y  6y NPP 4y  <u>Total:</u> 16y NPP 12y	Child sexual offences	<b>SNPP 15y</b> Befriended family of 5y boy in caravan park – when boy alone in TV room took him into bush and performed fellatio – well above mid-range Alcohol abuse
12.	<b>AWKO</b> (33) <a href="#">[2010] NSWCCA 90</a>	s.66A  Breach AVO	PG (25%)	12y 87m 28d NPP 8y 3m13d  FT 2m (concurrent)	AD	Nil priors	<b>SNPP 15y</b> Anal intercourse with 6y daughter – mid range – spontaneous offence Good prospects of rehabilitation
13.	<b>Muldrock</b> (30) <a href="#">[2010] NSWCCA 106</a>  (2011) 244 CLR 120 <a href="#">[2011] HCA 39</a>  <a href="#">[2012] NSWCCA 108</a>	s.66A  s.61M(1)	PG (25%)	9y NPP 96d (residential condition of parole)	AD Crown AA 9y NPP 6y 8m  AA  3y NPP 1y (immediate release)	Similar prior offence	<b>SNPP 15y</b> 9y male complainant and mother living in flat attached to house where offender resided – took child to lake and touched backside and area around penis while swimming – upon leaving lake forced child to ground and sucked penis Significantly intellectually disabled Residential condition of parole – to reside and undertake rehabilitation for intellectually disabled sex offenders

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14.	<b>Ingham</b> <a href="#">[2011] NSWCCA 88</a>  <a href="#">[2014] NSWCCA 123</a>	2 x s.66A  2 x s.66A  s.66A  3 x s.66A  2 x s.61M(2)  s.66B	VG	21y 4m NPP 16y  20y NPP 15y  20y NPP 15y  13y 4m NPP 10y  8y  12y NPP 9y  <u>Total:</u> 22y 4m NPP 17y	AA (second appeal) 13y NPP 9y  10y NPP 7y 6m  8y NPP 6y  10y NPP 7y 6m  4y NPP 3y  8y NPP 6y  <u>Total:</u> 17y NPP 13y	Prior record	<b>SNPP 15y</b> Sexual offences against 8y and 9y females over two days – friend of family staying with older complainant and babysitting girls – digital penetration, licking breasts, tongue in vagina, indecent assault with penis, attempted fellatio, fellatio, penile/vaginal penetration - breach of trust – all offences committed in presence of other complainant – not isolated incidents – degree of planning Second appeal - Muldrock appeal
15.	<b>HJWG</b> (54) at sentence <a href="#">[2011] NSWCCA 50</a>	s.66A  s.61M(2)  2 x s.61M(1)	PG (25%)	9y NPP 6y  1y 10m 15d NPP 9m  4y 6m NPP 2y 8m 12d  <u>Total:</u> 11y NPP 8y	AD		<b>SNPP 15y</b> Sexually assaulted daughter aged 7-10y during access visits – placed tongue in complainant's mouth during a kiss – digital penetration of anus – indecent rubbed of bottom and vagina – encouraged complainant to touch penis and testicles – s.66A offence below mid-range seriousness

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16.	AAT (22) <a href="#">[2011] NSWCCA 17</a>	3 x s.66A  2 x s.66A  s.91H(2)  s.474.19(1)(a)  Sched: 2 x agg ind assault	PG (45% on appeal – plea and assist)	7y NPP 5y 3m  5y 6m NPP 3y 3m  FT 12m  FT 6m  <u>Total:</u> 8y 6m NPP 6y 3m	AA 6y 3m NPP 4y 3m  5y 3m NPP 3y 3m  FT 12m  FT 6m  <u>Total:</u> 7y 6m NPP 5y 6m		<b>SNPP 15y</b> Sexually assaulted 8y half-brother over several months – fellatio and forced fellatio – took photographs of complainant - level 1, 2 and 3 images on COPINE scale – found in possession of 7 images of child pornography received via e- mail – level one images Subjected to bullying at school – confusion as to sexual orientation – assistance to authorities – good gaol conduct
17.	RR (46) <a href="#">[2011] NSWCCA 235</a>	s.66A	VG	12y NPP 9y	AD	minor	<b>SNPP 15y</b> Offender in shed at rear of premises when 5y female friend of son entered playing hide and seek – forced complainant to fellate him – moderately below mid-range – opportunistic Poor health
18.	NLR (70) <a href="#">[2011] NSWCCA 246</a>	s.66A  s.66A  s.61M(1)  Sched: s.61M(1)	PG (25%)	6y 9m NPP 4y  7y 10m 15d NPP 4y  3y NPP 1y 8m 18d  <u>Total:</u> 8y 10m 15d NPP 5y	AD	Nil significant	<b>SNPP 15y</b> Step-grandfather sexually assaulted two step- granddaughters while babysitting – put hands down shirt and squeezed breasts of 10y – digitally penetrated 7y who was sitting on his lap Voluntary admissions to police – remorse – good prospects of rehabilitation
19.	Jones (20) <a href="#">[2012] NSWCCA 262</a>	2 x s.66A	VG	15y NPP 11y	AA 12y NPP 8y	Nil	<b>SNPP 15y</b> (2008) Took 6y male to shops – stopped in secluded area, sucked penis and penetrated anus – complainant and family staying with friends of offender - opportunistic offence – no violence – one continuous act

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20.	FD (70) <a href="#">[2013] NSWCCA 139</a>	s.66A  s.66A  7 x s.61M(2)  Sched: 4 offences	PG (35%)	5y NPP 3y 4m  4y 9m NPP 3y 2m  2y NPP 1y  <u>Total</u> 8y NPP 4y	AD	Nil	<b>SNPP 15y</b> Grandfather sexually abused twin granddaughters aged 5-8y from 2005-2008 – rubbed vagina both under and over underpants – kissed vagina – indecent assaults at bottom of mid-range – sexual intercourse at bottom of range – gross breach of trust Genuine remorse - some degree of cognitive deficit
21.	SW (57) <a href="#">[2013] NSWCCA 255</a>	s.66A	PG (15%)	7y 7m NPP 5y	AD		<b>SNPP 15y</b> Complainant aged 5-6y – offence took place between Jan 2007-Feb 2009 – offender was friend of complainant's family – looked after complainant often – when complainant in bath inserted rectal syringe into anus.
22.	AG <a href="#">[2013] NSWCCA 264</a>	s.66A  s.66B  s.61M(2)	PG	9y 6m NPP 6y 6m  FT 6y  6y NPP 4y 6m  <u>Total:</u> 13y 6m NPP 10y 6m	AA 9y NPP 6y  5y  5y NPP 4y  <u>Total:</u> 11y NPP 8y		<b>SNPP 15y</b> Sexually assaulted two daughters - attempted penile/vaginal intercourse with 6y developmentally delayed daughter – complainant also indicated full intercourse had taken place at one time – mid range offences - on different occasion took 4y developmentally delayed daughter into bath and rubbed penis between legs until ejaculation – just below most serious – breach of trust Intellectually disabled
23.	RM (13-17) <a href="#">[2015] NSWCCA 4</a>	s.66A  s.66B  2 x s.61M(2)  3 x s.61O(2)	PG (25%?)	Agg Sentence 2y suspended	Crown AA 1y 6m suspended  7m suspended 4y 6m GBB		2001-2004 - sexually abused 5-8y male neighbour over several years – some offences representative – offending escalated from fondling, masturbation, oral sex to one attempt at penile / anal intercourse Sincere remorse – excellent prospects of rehabilitation
24.	GP <a href="#">[2016] NSWCCA 150</a>	2 x s.66A	VG	16y NPP 10y	AD		<b>SNPP 15y</b> 2006-2007 – complainant aged 3-4y at time of offences – niece – vaginal penile and digital penetration.

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25.	<b>Egan</b> (21) <a href="#">[2016] NSWCCA 285</a>	2 x s.66A	PG (25%)	3y NPP 18y (concurrent)	Crown AA 5y 3m NPP 3y 9m  <u>Total:</u> 5y 9m NPP 4y 3m		<b>SNPP 15y</b> 2003 – male complainant aged 9y – friend of family – performed fellatio upon complainant – forced complainant to perform fellatio upon offender – showed pornographic movie prior to offences showing limited planning – offences of short duration - limited force involved and no threats. Good character – family support – excellent prospects rehabilitation – low risk reoffending.
26.	<b>Merkel</b> (20 at offence – 34 at sentence) <a href="#">[2019] NSWCCA 212</a>	s.66A  s.66B  s.61M(2)	VG	<u>Indicative</u> 14y NPP 10y 6m  10y NPP 7y 6m  4y NPP 3y  <u>Aggregate:</u> 15y NPP 11y 3m	AD	child sexual offences	<b>SNPP 15y</b> 2004 - sexually assaulted 6y daughter of girlfriend - offender picked up complainant from her Grandmother's for sleepover with mother – stopped at offender's unit – chased complainant into bedroom, placed pillow over face and made threats – digitally penetrated complainant then attempted penile penetration – masturbated on to complainant's leg – first two offences mid0-range seriousness – third offence marginally below mid-range – breached trust and in position of authority Suffering physical and intellectual disabilities - risk of reoffending is high - prospect of rehabilitation poor
27.	<b>BM</b> (13 at offence – 23 at sentence) <a href="#">[2019] NSWCCA 223</a>	s.66A  s.61M(2)  2 x s.61M(2)	PG (25%)	<u>Indicative</u> 2y 6m  1y 3m  2 x Conditional Release Orders  <u>Aggregate:</u> 2y 6m NPP 1y 3m	AA <u>Indicative</u> 14m  8m  <u>Aggregate:</u> 1y 6m NPP 9m		2008 – 2009 - Offender aged 13, 14 or 15 years old – (re-sentenced on basis offender aged 13 years and 10 months) - female complainant cousin aged 4-5y - offender inserted lollypop stick inside complainant's vagina (count 1) - rubbed complainant's bare vagina with hand (count 2) – opportunistic. Causative mental condition - mental disorder, being a learning disorder and/or ADHD.

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28.	<b>Gagen (a pseudonym)</b> <a href="#">[2020] NSWCCA 47</a>	2 x s.66A  2 x s.66A	PG	11y NPP 6y 6m  10y NPP 6y  <u>Total:</u> 12y NPP 7y 4m	AA 9y NPP 5y  9y NPP 5y  <u>Total:</u> 10y NPP 6y		<b>SNPP 15y</b> 2006-2009 – sexually abused daughters aged 7y and 5y on a regular basis in the family home over several years – fellatio and cunnilingus – breach of trust – mid-range Lengthy history of mental illness – misused drugs from very early age – physical and sexual abuse – foster care and lived on street On appeal – failed to properly consider deterrence in relation to mental illness – error in finding additional substantial harm established
29.	<b>Haak</b> (58 at offences; 70 at sentence) <a href="#">[2022] NSWCCA 28</a>	s.66A  s.61M(2)	VG	<u>Aggregate:</u> 10y NPP 7y 6m	AD	15 counts of indecent assault in 2010.	<b>SNPP 15y</b> 2007-2008 – female complainant 9y – church pastor / priest; lived with wife – victim and family were members of church – one evening whilst looking after complainant, penile/vaginal intercourse; rubbed breasts – some degree of planning – mid-range objective seriousness. Medium rehabilitation prospects – special circumstances – age.
30.	<b>SB</b> <a href="#">[2022] NSWCCA 164</a>	4 x s.66A  s.61M(2)	VG	<u>Indicative:</u> 10y NPP 6y 6m  3y NPP 2y  <u>Aggregate:</u> 17y NPP 11y	AD	Lengthy – no sexual offences	<b>SNPP 15y</b> 2006-2007 – sexually abused two step daughters aged 3-6y – on one occasion forced penile-vaginal intercourse twice and oral intercourse once on first complainant – forced penile-vaginal intercourse on same complainant on separate occasion – rubbed penis against vagina of second complainant outside of clothing – not isolated occasion – abuse of trust – offences all committed in home of complainants – mid-range offending On appeal: aggregate sentence not manifestly excessive

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