Sexual Intercourse With Child Under 10 Years

1.1.2009 – 28.6.2015

s.66A(1) (NSW) *Crimes Act*

s 66A(1) Sexual intercourse child under 10 years

Maximum Penalty:	**25 years**
Standard non-parole period:	**15 years (offences committed on or after 1.2.2003)**
Commenced:	**1.1.2009**
Amended:	**29.6.2015**

For offences under s.66A(2) committed during this period see separate table

For offences committed under s.66A prior to 1.1.2009 and on or after 29.6.2015 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)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	**RJT** (38) [2012] NSWCCA 280	s.66A(1) s.66A(2)	PG (10%)	7y NPP 4y 6m 9y NPP 5y 6m Total: 10y NPP 6y 6m	AA 6y 3m NPP 4y 8y NPP 4y 10m Total: 9y NPP 5y 10m		**SNPP 15y** Sexually assaulted 7y daughter – rubbed vaginal area and cunnilingus Dysfunctional upbringing – otherwise employed and held in good stead by employer. On appeal discount given for assistance as complainant of abuse at hands of grandfather

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
2.	**KB** (52) [2015] NSWCCA 220	s.66A(1) s.61M(2) 2 x s.61M(2)	PG (15%)	14y NPP 9y 6y NPP 3y 5y NPP 2y Total 14y 9m NPP 9y 9m	AA 11y NPP 7y 8m 4y 6m NPP 3y 3y NPP 2y Total: 11y 9m NPP 8y 5m		**SNPP 15y** Farmhand sexually abused 8y daughter of employer – touched vagina, buttocks and chest – partial penile penetration – abuse of trust – predatory nature of offences – implicit threat – element of planning Depression
3.	**PS** (40) [2015] NSWCCA 20	s.66A(1) Sched: 2 offences	PG (35%)	6y 6m NPP 3y 6m	AD	nil	**SNPP 15y** Licked vagina of 6y niece – confessed to complainant's mother Cognitive and intellectual disabilities – alcohol and drug abuse – special circumstances.
4.	**RP** (11-12) [2015] NSWCCA 215	2 x s.66A(1)	VG	2y 3m NPP 11m	AD	Already sentenced for similar offences against siblings	(2004-2007) sexually assaulted younger half-brother – anal intercourse – mid-range – only issue at trial was doli incapax Low intelligence
5.	**ND** (28 / 40 at sentence) [2016] NSWCCA 103	s.66A(1)	VG	2y 6m NPP 1y 8m	Crown AA 6y NPP 4y		**SNPP 15y** Digital vaginal penetration of 5y niece in 2004 – isolated opportunistic offence - below mid-range but not at lower end Good character – supportive family.

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6.	**AA** (15-19 / 23 at sentence) [2017] NSWCCA 84	s.66A(1) s.66A(1) s.66A(1) 2 x s.61M(2) Sched: s.66A(1) 2 x s.61M(2)	PG (20-25%)	4y NPP 2y 3m 4y 9m NPP 2y 9m 5y 2m NPP 2y 7m 1y 2m NPP 8m <u>Total</u>: 6y 7m NPP 4y	Crown AD	Nil	**SNPP 15y** 2008 –2012 – offences committed against two nieces aged between 5–10y – A uncle to the two complainants – touching of vagina outside of clothing - cunnilingus - fellatio – penile-vaginal of complainant aged 8y - spontaneous offences committed when other people in house. Ceased offending in 2012 – remorse - special circumstances – youth - mental health
7.	**Ng** (18 / 53-54 at sentence) [2017] NSWCCA 161	s.76 2 x s.76 66A(1) 66C(1) Sched 2 x s.76A	PG (25%)	<u>Indicative</u> 1y 10m 1y 6m / 1y 8m 9y NPP 6y 5y 6m NPP 3y 9m <u>Aggregate</u>: 14y NPP 10y	AA <u>Indicative</u> 2y 1y 6m / 1y 8m 7y 6m NPP 5y 8m 5y 9m NPP 4y 4m <u>Aggregate</u> 12y 7m NPP 9y 6m		**SNPP 15y** (1970's) licked and touched 8y female on vagina - placed complainant's hand on penis (2010-2012) sexually assaulted 9-10y daughter of de facto partner - digital penetration of vagina and anus

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8.	**CTG** (42) [2017] NSWCCA 163	5 x s.66A(1) s.91G(1)(a) s.7(1) Firearms Act	PG (25%)	Indicative: 6y 9m NPP 4y 4y 1y 9m NPP 1y 3m Aggregate 9y NPP 5y 9m	Crown AA Indicative: 8y 3m NPP 5y 4y 6m 2y 3m NPP 1y 6m Aggregate: 12y NPP 8y		**SNPP 15y** Offences against 3y old niece – photos taken by offender found on offender's mobile phone – photos depict offender's penis placed inside complainant's mouth
9.	**GP** [2017] NSWCCA 200	s.66A(1) 2 x s.61O(2)	VG	Indicative 10y 18m / 12m Aggregate: 10y NPP 7y 6m	AA Indicative 10y 18m / 12m Aggregate: 10y NPP 6y	rape – sentence accumulated to existing sentence for similar offences	**SNPP 15y** Sexually abused daughter of de facto partner's 7-8y niece – displayed penis – showed pornographic pictures – digital penetration Sentence adjusted on appeal to take into account accumulation to existing sentence
10.	**Tikomaimaleya** [2017] NSWCCA 214	s.66A(1)	VG	9y NPP 6y	Conviction AD		**SNPP 15y** Offender was husband of child care centre operator, who operated service from their home – sat next to 4-5y old female complainant asleep on lounge watching TV and inserted finger into her vagina

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11.	**XZ** (62-65) [2018] NSWCCA 76	s.66A(2) s.66A(1) s.61O(2) s.61M(2) Sched: 4 offences Possess unreg firearms Sched: 7 offences	PG (10-15%) PG (25%)	Indicative 12y NPP 8y 12y NPP 8y 4y 6y NPP 4y 4y 6m NPP 3y Aggregate: 15y NPP 10y 6m	AD	Nil	**SNPP 15y** Sexually abused granddaughters of de facto partner over several years – complainants aged 6-9y – abuse included digital penetration, forced fellatio, use of vibrator, forced touching of penis and licking and touching of vagina – grooming – mid to just below mid-range Poor physical health
12.	**AT** (46) [2020] NSWCCA 178	s.66A(1)	VG	8y NPP 5y	AA 6y 6m NPP 4y 3m	Relatively minor - malicious damage, possess drug, stealing – last conviction in 1994.	**SNPP 15y** (2014) 19 month old female / baby complainant – daughter of then partner – digital penetration – isolated offence - position of trust. Aboriginal male – caring positive upbringing – stable employment - low risk reoffending – special circumstances. CCA: Manifestly excessive - no evidence offence was committed for sexual gratification, strong subjective case.

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13.	**Long (A pseudonym)** (14 – 17 at offence; 23 at sentence) [2021] NSWCCA 212	s.66A(1) s.66A(1) s.66C(1) 2 x s.61M(2) s.61M(2) s.61M(2	VG	Indicative: 4y 3y 6m 3y 18m 16m Bond Aggregate: 8y 6m NPP 4y 6m	AD		**SNPP 15y** Juvenile offender - (2012-2016) – female complainants aged 7-8 and 3-4 placed in foster care with applicant's parents – related to applicant's family – blindfolded complainants; fellatio; touching penis. Not isolated conduct – knew actions wrong – seriousness of offences escalated – opportunistic. Good prospects rehabilitation – youth - prospect of not fully aware of consequences of actions – special circumstances: first time custody.
14.	**HA** (32 at offences; 42 at sentence) [2023] NSWCCA 274	2 x s.66A(1)	VG	9y NPP 5y 6m (concurrent)	AA Aggregate 8y 3m NPP 5y	Driving mid-range PCA	**SNPP 15y** (2013-2015) Female complainant aged 7-9y – sister of applicant's wife - digital-vaginal penetration for about 15 minutes and licking vagina - two counts part of a single incident – use of violence - slapped complainant and told her to shut up, punched arm and left a bruise after her leg hit his nose, threatened to kill – abuse of trust - some evidence of planning - moral culpability high. Some, but not significant, leniency on account of prior good character - health issues – no insight - prospects of rehabilitation no higher than reasonable. CCA: Sentencing judge fell into *De Simoni* error.
15.	**MA** (15-19 at offences) [2026] NSWCCA 92	8 x s 66A(1) 14 x s 61M(2) 4 x s 66A 3 x s 66C(1) 2 x s 61O(2)	VG	Aggregate 14y NPP 8y	AA Aggregate 12y NPP 7y	Nil since offending.	**SNPP 15y** (2006-2011) Offences against younger female cousins - AM aged 6-11y; AI aged 5-8y – penile-anal, penile-vaginal, penile-oral. CCA: New evidence as to mental condition. Low cognitive intelligence and equally low average emotional intelligence - impaired cognitive functioning - would have been impaired at the time of offences - need to moderate assessment of moral culpability – youth - absence of remorse or acceptance of responsibility - prospects of rehabilitation guarded - special circumstances.

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16.	TD (32) [2026] NSWCCA 139	s.66A(1) s.66C(1) s.61M(2) Sched: 3 x s.61M(2)		Indicative 6y NPP 3y 8m 3y 2y 3m NPP 1y 4m Aggregate 8y NPP 4y 10m	AA Indicative 5y 3m NPP 3y 2m 3y 8m 2y NPP 1y 2m Aggregate 7y NPP 4y	Domestic violence , animal cruelty.	**SNPP 15y** (2012=2014) Two female complainants were sisters, and nieces of applicant – assault on complainant KOD aged 8-9y, digital-vaginal penetration. Drug use – mental health issues – dysfunctional childhood, sexual abuse and neglect – Bugmy - PTSD, personality disorder – remorse. CCA: Finding of reduced moral culpability due to dysfunctional background, however, no finding as to whether general and/or specific deterrence be moderated as a result.

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