

## Sexual Intercourse With Child Between 10 and 14 Years

Offences committed on or after 13.6.2003

s.66C(1) (NSW) Crimes Act

s 66C(1) Sexual intercourse child of or above the age of 10 years and under the age of 14 years

|                                    |  |
|------------------------------------|--|
| <u>Maximum Penalty:</u>            | 16 years   |
| <u>Commenced:</u>                  | 13.6.2003  |
| <u>Standard Non-parole Period:</u> | 7 years (offences committed on or after 29.6.2015) |

For offences under s.66C committed prior to 13.6.2003 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) / s.21B(5)

|    | CASE<br>(age if known)  | OFFENCE  | PLEA        | SENTENCE  | APPEAL  | PRIORS | FACTS  |
|----|---|--|-------------|---|---|--------|--|
| 1. | <b>Dagwell</b><br>(47)<br><a href="#">[2006] NSWCCA 98</a>    | s.66C(1)<br><br>4 x s.66C(1)<br><br>s.66C(1)<br><br>2 x s.61M(1)<br><br>s.61M(1) | PG<br>(20%) | 18m<br>NPP 6m<br><br>18m<br>NPP 6m<br><br>18m<br>NPP 6m<br><br>FT 3m<br><br>FT 3m<br><br><u>Total:</u><br>21m<br>NPP 9m | Crown AA<br>22m<br>NPP 1y 3m<br><br>2y 10m<br>NPP 1y 8m<br><br>3y 4m<br>NPP 1y 11m<br><br>12m<br>NPP 9m<br><br>1y 9m<br>NPP 12m<br><br><u>Total:</u><br>4y 3m<br>NPP 2y 10m | nil    | Met 13y complainant through chat room – discussed sexually explicit matters over phone – upon meeting engaged in consensual sexual activity – touching and sucking breasts – digital penetration – on second occasions went to offenders house – indecent touching of breasts, digital penetration, digital penetration of anus, cunnilingus, anal intercourse, fellatio   |
| 2. | <b>LB</b><br>(52)<br><a href="#">[2011] NSWCCA 220</a>        | s.66C(1)<br><br>s.61M(2)<br><br>Sched:<br>2 x s.61M(2)                           | PG<br>(12%) | 4y 6m<br>NPP 3y<br><br>FT 2y<br><br><u>Total:</u><br>5y 6m<br>NPP 4y  | AA<br>3y 6m<br>NPP 2y<br><br>FT 2y<br><br><u>Total:</u><br>4y 6m<br>NPP 3y  | Nil    | 12y male complainant stayed at offender's house overnight with step-father – touched complainant's penis on outside of pants with shoe – licked complainant's face and put tongue in mouth – placed finger in area of complainant's anus - forced complainant to perform fellatio – opportunistic and unplanned offence<br>Long history of mental problems and alcohol dependence after traumatic experiences in Nicaragua |
| 3. | <b>RD</b><br><a href="#">[2014] NSWCCA 103</a>                | 3 x s.66C(1)   | PG<br>(20%) | 3y<br>NPP 18m   | Crown AA<br>5y 6m<br>NPP 2y 9m  | Nil    | Offender was friend of 12y female complainant's older brother – asked complainant to be in a “relationship” with him – penile vaginal intercourse – complainant discovered she was pregnant<br>Dysfunctional background  |
| 4. | <b>Nelson</b><br>(18-19)<br><a href="#">[2016] NSWCCA 130</a> | 2 x s.66C(1)<br><br>6 x s.66C(3)   | PG<br>(25%) | 2y suspended<br><br>3y GBB  | Crown AA<br><u>Aggregate:</u><br>3y<br>NPP 2y   |        | Had sexual relationship with 3 'girlfriends' over 14 months – each complainant had moved into home of offender and family – complainants aged 13-14y – first complainant fell pregnant<br>Suffered physical abuse as a child – significant cognitive disabilities and mental health problems   |

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|----|--|--|--|--|--|-----------------------|--|
| 5. | <b>CF</b><br><a href="#">[2017] NSWCCA 318</a>                             | s.66(1)<br><br>3 x s.61M(2)  | VG   | <u>Indicative</u><br>5y 6m<br><br>1y – 2y<br><br><u>Aggregate</u><br>8y<br>NPP 5y  | AD   | Nil                   | Sexually assaulted 12y great niece on two separate occasions – digital penetration of complainant while sitting at table during Christmas gathering – alone in room – 6m later touched genitals of complainant while massaging leg sitting on lounge – touched breast inside sports bra – touched genitals insider underwear – element of grooming – significant breach of trust<br>Medical conditions   |
| 6. | <b>AM</b><br>(19)<br><a href="#">[2020] NSWCCA 101</a>                     | s.66C(1)<br><br>s.66C(1)<br><br>s.61M(2)<br><br>2 x s.61N(1)<br><br>Sched:<br>9 offences | PG<br>(35% on appeal)<br><br><br><br>PG<br>(25%) | <u>Indicative</u><br>6y 3m<br>NPP 3y 9m<br><br>5y 2m<br>NPP 3y<br><br>3y<br>NPP 1y 8m<br><br>7m<br><br><u>Aggregate</u><br>8y 3m<br>NPP 6y | AA<br><u>Indicative</u><br>5y<br>NPP 3y<br><br>4y 6m<br>NPP 2y 9m<br><br>2y 3m<br>NPP 1y 3m<br><br>6m<br><br><u>Aggregate</u><br>6y 6m<br>NPP 4y | Nil                   | <b>SNPP – 7 years</b><br>Sexually assaulted 10y half-sister – touched complainant's vagina – masturbated in complainant's presence, touched complainant's buttocks outside clothing.<br>Social anxiety – remorse – low risk reoffending<br>CCA: judge found special circumstances but minimal departure from statutory proportion – increased discount for <i>Ellis</i> disclosure   |
| 7. | <b>Scrimshaw (A pseudonym)</b><br>(59)<br><a href="#">[2021] NSWCCA 81</a> | 3 x s.66C(1)<br><br>s.66C(1)<br><br>Sched:<br>4 sexual offences                          | PG<br>(25%)                                      | 5y<br><br>7y<br>NPP 3y<br><br><u>Total:</u><br>11y<br>NPP 7y   | AD   | Child sexual offences | Sexual offences against daughter aged 10 – 13 between 2004 – 2006 - penile/vaginal sex, fellatio, cunnilingus, and masturbation in front of complainant.<br>CCA: SJ erroneously applied standard non-parole period – re-sentence: whilst incarcerated for prior child sexual assault offences, met his wife with whom he fathered the complainant - cognitive deficits - below average intelligence - deprived and psychologically harmful upbringing – guarded prospects of rehabilitation. |

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| 8.  | DR<br>(44)<br><a href="#">[2022] NSWCCA 151</a>               | 3 x s.66A(2)<br><br>s.66C(1)<br><br>s.66C(2)<br><br>s.61M(2)<br><br>s.66C(4)<br><br>Sched:<br>2 offences | PG<br>(5%) | <u>Indicative</u><br>11y 4m<br><br>11y 4m<br><br>7y 7m<br><br>1y 10.5m<br>NPP 1y 5m<br><br>8y 6m<br><br><u>Aggregate</u><br>20y 10m<br>NPP 15y 6m                  | AD     | Yes.        | <b>SNPP 15y</b><br>(April 2005 – Nov 2015) Offences against two female complainants aged 11-15y and 8-9y – complainant 1: in relationship with older sister, digital, penile intercourse, cunnilingus, violence and threats – complainant 2: own daughter, digital intercourse.<br>Deprived background with physical violence, sexual abuse and substance abuse - no evidence of causal link between disadvantaged upbringing and offences; disadvantage given full weight ( <i>Bugmy</i> ) - anti-social personality disorder and amphetamine use disorder. |
| 9.  | Krojs<br>(19 at offence)<br><a href="#">[2022] NSWCCA 209</a> | s.66C(1)   | VG         | 4y<br>NPP 2y   | AD     | Not stated. | (2015) offences against 12y female complainant – met through mutual friend – complainant staying at offenders' home - offender came into room where complainant sleeping and locked door – pinned complainant's arms against bed, vaginal-penile intercourse – ignored complainant asking to stop and trying to push him away.   |
| 10. | Kilby<br><a href="#">[2023] NSWCCA 247</a>                    | s.66C(1)<br><br>s.61M(2)<br><br>s.61M(2)<br><br>s.61M(2)<br><br>s.61M(2)<br><br>s.61N                    | VG         | <u>Indicative:</u><br>7y<br><br>12m<br>NPP 7m<br><br>2y 4m<br>NPP 1y 5m<br><br>2y<br>NPP 1y 2m<br><br>2y CCO<br><br>9m<br><br><u>Aggregate:</u><br>9y<br>NPP 5y 5m | AD     | Not stated  | (2007-2010) sexual offences committed against friend of daughter aged 10-12y – touched complainant on vagina and breast over swimmers – during sleepover digitally penetrated complainant sleeping on floor while masturbating – stopped five times to check hallway<br>(2016-2017) – inappropriately touched partner's niece on three separate occasions<br>On appeal: no error in taking into account offender's position of authority at time of offending  |

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|-----|--|---|-------------|---|--------------------------|---|--|
| 11. | Hockley<br>(33)<br><a href="#">[2023] NSWCCA 285</a> | s.66C<br><br>s.66EB(2A)<br><br>s.91H(2)<br>s.66EB(3)<br><br>s.66EB(3) | PG<br>(25%) | <u>Indicative</u><br>2y 4m<br>NPP 17m<br><br>24m<br>NPP 14m<br><br>18m<br><br>2y 2m<br>NPP 15m<br><br>2y 2m<br>NPP 16m<br><br><u>Aggregate</u><br>6y<br>NPP 3y 7m | AD                       | Nil   | <b>SNPP 7y</b><br>Engaged three 13y males in communication via social media Snapchat – grooming - met with and performed fellatio on complainant WH – exchanged sexual images and videos with complainants – gave complainants food, gifts and money - 1,802 files of child abuse material found on applicant's devices. Lack of insight and remorse.  |
| 12. | MJ<br>(40)<br><a href="#">[2023] NSWCCA 306</a>      | s.66C(1)<br><br>Sched:<br>s.66DD(a)                                   | PG<br>(25%) | 3y<br>NPP 2y  | Crown AA<br>6y<br>NPP 4y | Dishonesty, supply of prohibited drugs, possession of unauthorised firearms, assault police, domestic violence, recklessly causing injury, agg assault, agg burglary. | <b>SNPP 7y</b><br>Offence committed against partner's 10y daughter– at service station toilet, pushed complainant onto her knees and pulled her pants down - sprayed lubricant on her anus and engaged in penile/anal intercourse - ejaculated onto complainant's back. CCA: Manifestly inadequate sentence - SJ overlooked specific deterrence, denunciation and protection of community. <i>Bugmy</i> - early social and economic deprivation - reduced moral culpability and mental health – Aboriginal male. |

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|-----|--|---|-------------|---|---|-----------------|---|
| 13. | STB<br>(20-22)<br><a href="#">[2024] NSWCCA 36</a> | s.66A<br><br>s.66C(1)<br><br>s.66C(1)<br><br>Sched:<br>4 related<br>offences                          | PG<br>(5%)  | <u>Indicative:</u><br>6y 3m<br>NPP 3y 8m<br><br>4y 5m<br>NPP 2y 7m<br><br>5y 4m<br>NPP 3y 2m<br><br><u>Aggregate:</u><br>8y 2m<br>NPP 4y 9m | AD  | nil             | <b>SNPP 15y</b><br>Sexually assaulted stepsister aged 9-12y over several years – offences not isolated incidents – involved touching of breasts and digital penetration in home of complainant – clear breach of trust<br>On appeal: error conceded in relation to scheduled offence<br>Offences between lower and upper mid-range – prior good character – born in Peru – moderate risk of re-offending – uncertain prospects of rehabilitation – special circumstances – no lesser sentence warranted on re-consideration   |
| 14. | Lawavou<br><a href="#">[2025] NSWCCA 35</a>        | 4 x s.66C(1)<br><br>s.37(1A) choking<br><br>6 x s.66DB(a)<br><br>2 x s.61<br><br>Sched:<br>2 offences | PG<br>(25%) | <u>Aggregate:</u><br>18y<br>NPP 13y 6m  | AA<br><u>Aggregate:</u><br>15y<br>NPP 9y 6m | Assault police. | <b>SNPP 7y</b><br>Sexual and assault offences against stepdaughter 12y-13y – vaginal-digital penetration – choked complainant on one occasion - threats and physical violence – often intoxicated at time of offences - one assault offence against partner.<br>CCA: Miscarriage of justice due to absence of material at sentence proceedings of sexual assaults committed against applicant at time proximate to present offences.<br>Above mid-range objective seriousness – alcohol use disorder, paedophilic disorder, PTSD - prospects of rehabilitation guarded, though positive - unlikely of reoffending positive. |

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