Sexual Intercourse Without Consent

Victim Aged Under 16 Years

s.61D(1) (NSW) *Crimes Act*

s 61D(1) Sexual intercourse with another person without consent of the other person knowing the other person does not consent

Maximum Penalty: **10 years (where victim aged under 16 years)**

Commenced: **14.7.1981**

Repealed: **17.3.1991**

s 61D(1A) Sexual intercourse with another person without consent of the other person knowing the other person does not consent – where other person under the age of 16 years and under authority of offender

Maximum Penalty: **12 years**

Commenced: **23.3.1986**

Repealed: **17.3.1991**

s 61D(1B) Sexual intercourse with another person without consent of the other person knowing the other person does not consent - in company

Maximum Penalty: **12 years (where victim aged under 16 years)**

Commenced: **21.2.1988**

Repealed: **17.3.1991**

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.

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	INVOLVEMENT & SUMMARY
1.	**Clarke** NSWCCA 18.2.1983	4 x s.61D(1) 2 x s.61E(2) s.76	PG	6y 4y 4y <u>Total</u> 10y NPP 3y 6m	AA 6y 1y 4y <u>Total</u>: 6y NPP 2y	minor traffic	(1981) – sexually assaulted children of de facto wife and friends - all offences committed in home of offender - element of breach of trust Contrition On appeal - sentences imposed for indecent assaults greater than maximum penalty
2.	**Marwick** (31) NSWCCA 17.3.1983	2 x s.61D(1) s.61E(2)	PG	4y 6m 2y 6m <u>Total</u> 7y NPP 1y 9m	AA 4y 6m 6m <u>Total</u> 5y NPP 18m	minor traffic	(1982) - sexually assaulted 9y son of de facto while in bed - committed fellatio on complainant and placed finger in anus Prior good character
3.	**O'Donoghue** (16) NSWCCA 29.6.1984	s.61D(1) s.61	PG	6y 6m 2y 6m <u>Total</u> 9y NPP 4y	AA 6y 6m 2y 6m <u>Total</u>: 6y 6m NPP 4y	prior convictions - on bond	(1983) - with co-offender attacked 14y male of frail build and almost blind - forced anal intercourse - no reason for attack - attack took place over three locations - threatened violence
4.	**Dillon** (33) NSWCCA 7.2.1985	s.61D(1) s.61D(1) Att s.61D(1)	PG	7y 4y 3y <u>Total</u>: 11y NPP 4y	AA 7y 4y 3y <u>Total</u>: 7y NPP 3y	irrelevant	Drove 14y female home from party and gave her alcohol - drove her to country and sexually assaulted her - forced fingers and then penis into vagina - attempted to force penis into mouth Problems with alcohol addiction

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5.	**Harris** (34) NSWCCA 24.7.1987	2 x s.61D(1A) 2 x s.61E(1)	PG	4y NPP 12m (each – concurrent)	AA 3y NPP 6m (each – concurrent)	irrelevant	Sexually assaulted 14y daughter on numerous occasions - digital and penile interference with vaginal area and oral sexual encounters Prior good character
6.	**Field** NSWCCA 18.8.1988	s.61D(1)	VG	5y 6m	AA 5y 6m NPP 3y 6m		(1985) - took 13y girl to secluded area and sexually assaulted her Conviction for kidnapping quashed on appeal
7.	**DPP v Garnam** (56) NSWCCA 9.3.1989	2 x s.61D(1) s.61E(2)	VG	3y GBB	Crown AD	nil	(1985-6) - on two occasions licked vagina of 9y female neighbour – had complainant touch penis and showed her pornographic books - elements of breach of trust Prior good character - medical condition Crown appeal dismissed because of delay
8.	**Ristevski** (17) (1989) 39 A Crim R 11	s.61D(1)	VG	3y NPP 18m	AA 3y NPP 12m	not stated - first time in custody	Sexually assaulted 15y met at club – complainant held down by another male Significant delay justifies reduction in NPP
9.	**Kovacs** (36) NSWCCA 29.3.1989	s.61D(1) 3 x s.61E(2)(a) 3 x s.61E(1)(a)	PG	2y 2y 2y <u>Total</u> 4y NPP 2y	AD	nil	Sexually assaulted 7y daughter of de facto while wife at work - showed complainant pornographic material and vibrator - massaged genital area of complainant with vibrator – complainant used vibrator on offender - cunnilingus
10.	**Webb** NSWCCA 28.6.1989	8 x s.61D(1) 3 x s.61E(2)	VG	<u>Total</u> 20y NPP 10y	AD	lengthy record - spent much time in custody	Sexually abused 2 daughters of de facto over three year period – complainants aged 11-14y and 14-16y - various forms of sexual abuse - on one occasion older girl held down by mother as offender inserted fingers then fist into vagina - suffered tear in vagina requiring surgery
11.	**Vaughan** (69) NSWCCA 4.3.1991	s.61D(1) 2 x Assault w/ act indecency	PG	5y 6m 18m / 2y <u>Total</u>: 9y NPP 3y 9m	AD	Nil	(1980-1983) - full facts not provided - complainant aged 8-9y - digital penetration - abuse of position of trust - number of other assaults.

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12.	**Kozakiewicz** NSWCCA 11.6.1991	3 x s.61D(1A) 4 x s.61E(2A)	PG	4y 8m NPP 3y 6m 6m <u>Total</u>: 5y 2m NPP 4y	AD		Sexually assaulted step daughter aged 11-12y over two years
13.	**Davis** (71) NSWCCA 20.8.1991	2 x s.61D(1) Indecent Assault	PG	 <u>Total</u> MT 3y AT 1y	AA MT 2y AT 8m 1y <u>Total</u> MT 2y AT 8m	Nil	(1981-1989) - two offences of digital penetration upon adopted grand-daughter aged 15y - indecent assault occurred when complainant aged 6y - assaults on complainant and other female family members took place over number of years On appeal – original count of s.61D(1A) replaced by s.61D(1).
14.	**Dent** (28-34 at offences) NSWCCA 14.3.1991	4 x s.61D(1) 2 x s.81 2 x s.81A s.61E s.61E(2)	PG	MT 2y 3m AT 9m (concurrent fixed sentences)	Crown AA MT 3y AT 1y (concurrent fixed sentences)	Dishonesty offences	(1980-1986) – sexually assaulted stepson aged 9-15y – indecent touching while playing 'tickling game' – digital penetration of anus – fellatio of complainant and forced fellatio of offender Police officer – protective custody
15.	**Tillman** NSWCCA 17.2.1992	s.61D(1) 2 x Act of indecency	VG PG	MT 4y 6m AT 18m FT 2y (concurrent)	AD		(1989) – sexually assaulted 10y daughter of de facto – indecent touching of vagina and penile penetration
16.	**Marshall** NSWCCA 21.4.1992	3 x s.61D(1)	VG	MT 2y 3m AT 9m	AD	nil	(1984-1986) – sexually assaulted wife's niece aged 11-13y – penile/oral intercourse - complainant came to Australia as a 'boat person' and offender involved in assisting them Good character

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17.	**E C** (18 at sentence) NSWCCA 11.6.1992	s.61D(1)	PG	MT 18m AT 3y 6m	AA MT 18m AT 2y	Record for serious criminal offences	(1990) – forced fellatio from 15y inmate of detention centre at knifepoint
18.	**DJM** NSWCCA 13.8.1992	4 x s.61D(1)	PG	MT 3y AT 4y	AD		(1979-1983) - sexually assaulted daughter aged 6-10y – representative counts – penile penetration of vagina Lengthy delay
19.	**DTB** NSWCCA 24.11.1992	3 x s.61D(1) 3 x s.61D(1A)	PG	Total: MT 7y AT 1y 8m	AD	Nil similar	(1985-1990) – sexually assaulted step-daughter aged 11-16y – penile/vaginal penetration – pattern of offending – became pregnant and gave birth to son
20.	**Martinez** NSWCCA 23.3.1993	2 x s.61D(1A)	VG	MT 6y AT 2y	AD	Record including personal violence	(1987-8) – sexually assaulted stepdaughter aged 10-11y – part of ongoing sexual misconduct Political prisoner in El Salvador suffering torture
21.	**M** (63 at sentence) NSWCCA 15.9.1993	2 x s.61D(1) 4 x s.61E(1)	VG	Total: MT 3y 6m AT 6m	AD		Sexually assaulted three girls aged 10y, 6y and 5y living in same apartment building as offender – digital penetration and fellatio Poor health
22.	**Skinner** NSWCCA 28.10.1993	s.61D(1) s.61D(1) s.66A s.61E(1) Sched: 12 sexual offences	PG	MT 4y AT 1y 4m MT 4y AT 1y 4m MT 4y AT 1y 4m MT 4y AT 1y 4m	Crown AA MT 7y AT 3y MT 4y AT 1y 4m MT 4y AT 1y 4m MT 4y AT 1y 4m	Not significant	(1982-1989) – offences committed on 3 stepdaughters and natural daughter – long term sexual abuse – digital and penile penetration – one daughter forced to terminate pregnancy – penile penetration on natural daughter commenced when she was 3-4y – use of force Severe back injury – protective custody
23.	**BDR** (12-19 at offence) NSW CCA 17.12.1993	2 x s.61D(1) 3 x s.76	PG	MT 2y 6m AT 2y 6m FT 6m (concurrent)	AD		(1976-1982) – sexually assaulted sister aged 9-15y – not isolated offences Police officer with promising career

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24.	**Heilbronn** NSW CCA 1.8.1995	3 x s.61D(1A) s.61E(1) 2 x s.66C	PG	MT 4y AT 3y (concurrent sentences)	AD		(1988-1991) – sexually assaulted step-daughter aged 10-13y – rubbed vagina outside underpants – digital and penile penetration – ongoing relationship with intercourse once or twice a month
25.	**F** NSWCCA 20.2.1996	2 x s.61D(1)	VG	MT 2y 3m AT 9m	AD		(1985) - forced 15y stepdaughter to perform fellatio in back of van while driving with mother – several months later digitally penetrated complainant while driving to mother's birthday party
26.	**Thomson** NSWCCA 18.6.1996	s.61D(1) s.61D(1) s.61E(1) Schedule 11 offences	PG	MT 6y AT 2y FT 5y FT 2y (concurrent)	AD		(1982-1987) - sexually assaulted three step children over many years – pre-meditated offences to satisfy sexual lust and avoid detection by mother – offences involved anal rape, forced masturbation, fellatio, digital penetration and molestation – one child suffered broken leg
27.	**King** (76 at appeal) NSWCCA 2.4.1997	s.61D(1) 3 x s.76A / 61E(2) 4 x s.76 / 61E(1) 2 x s.61M(2) s.61E(2)	PG	2y PD 2y GBB	Crown AA MT 12m AT 12m	Nil relevant	(1979-1992) - sexually assaulted three granddaughters – one complainant aged 5y when offences commenced

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28.	**Hardy** (24-32) NSWCCA 5.6.1997	7 x s.81 3 x s.81 5 x s.61D(1) Att s.61D(1) Att s.61D(1) s.61E(1A)	PG PG VG / PG PG PG PG	FT 3y FT 2y MT 4y AT 4y MT 4y AT 4y FT 18m FT 12m <u>Total</u>: MT 7y AT 4y	AD	Nil	(1986) - Teacher assaulted male child aged 8-16y – close family friend
29.	**Ware** (17 at offence) NSWCCA 9.7.1997	s.61D(1) 2 x s.61E(1) s.61E(2)	PG	MT 18m AT 6m (each)	AA FT 6m (each – concurrent)	Nil	(1983) – while living with complainant's family sexually abused 8-9y niece – digital penetration Attempted to bring misconduct to attention of police - rehabilitation
30.	**AK** (13-20 at offences) NSWCCA 29.10.1997	2 x s.61D(1)	PG	MT 3y AT 3y	AD		(1983) sexually assaulted 7y sister – digital penetration of vagina then forced fellatio until ejaculation (1989) forced 13y complainant to have penile/vaginal intercourse then threatened her with knife Not isolated offences
31.	**G** NSWCCA 10.12.1997	2 x s.61D(1) 6 x s.61E(1)	VG	MT 4y AT 3y (concurrent sentences)	AD		(1978-1988) – sexually assaulted stepdaughter aged 9-18y
32.	**V** NSWCCA 24.2.1998	3 x s.61D(1) 4 x s.76	PG	MT 3y AT 3y 18m (concurrent)	AD	nil	(1979-1984) - sexually assaulted two stepdaughters aged 9-13y – representative of extensive sexual misconduct – digital penetration and indecent touching

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33.	**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
34.	**Heptonstall** (37-42) [1999] NSWCCA 54	4 x s.61D(1) 7 x s.61E(1)	PG	MT 5y AT 1y 8m FT 3y <u>Total</u>: MT 8y AT 1y 8m	AA MT 4y 3m AT 2y 5m FT 3y <u>Total</u>: MT 7y 3m AT 2y 5m	nil	(1981-1986) – offences committed on four girls entrusted into care of offender for holidays – complainants aged 10-14y - indecent touching while showering with complainants – gave complainants tablets to fall asleep and lowered pants – showed lewd videos – penile and digital penetration - offences involved planning and calculation

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35.	**Rodgers** (37-51 at offences - 63 at appeal) [1999] NSWCCA 260	s.61D(1) 3 x s.61D(1) 5 x s.81 2 x s.61E(1) Sched: 11 x ind assault	PG	MT 7y 6m AT 2y 6m FT 5y FT 2y FT 2y (concurrent)	AA MT 5y 6m AT 2y 6m FT 5y FT 2y FT 2y (concurrent)	Priors for indecent assault in New Zealand	(1974-1990) – Church camp leader sexually assaulted six male complainants aged 6-12y – indecent touching of complainant's penis – fellatio on complainant – thrusting penis between legs of complainant – breach of trust Most offences committed after absconding from bail
36.	**Kelly** (58 at sentence) [2000] NSWCCA 168	6 x s.61D(1) 21 x s.61D(1) 3 x s.61E(1) 6 x s.61E(1)	PG	MT 5y AT 3y 6m FT 3y FT 1y FT 3y (concurrent)	AD		(1981-1986) - Sexually assaulted three daughters of friends over 5 years – complainants aged between 5-13y – digital penetration, fellatio and penile/vaginal intercourse – voluntary confessions to wife and complainant's parents
37.	**GPP** (16-33y) [2000] NSWCCA 181	s.61D(1) Att s.61D(1) s.61E(1A) s.61E 3 x s.76 s.61L	VG	MT 6y AT 2y FT 3y FT 2y FT 18m FT 2y FT 12m (concurrent)	AD		(1975-1991) - Sexually assaulted four female complainants aged 8-15y - indecent touching – forced 8y cousin to perform fellatio – attempted penile penetration on same cousin 7 years later Poor health

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38.	**A R D** [2000] NSWCCA 443	13 x s.61D(1) 2 x Att s.61D(1) s.61D(1B) 2 x s.61E(2) Pervert course of justice Sched: Pervert course of justice	VG	Total: MT 7y 6m AT 2y 6m	Conviction AD		(1985-1991) – sexually assaulted two nieces aged 9-17y over 6 years – indecent touching, fellatio, penile/vaginal penetration – forced son to have intercourse with one complainant – digitally penetrated 12y niece of de facto on one occasion – offered money to de facto to give false evidence – conviction appeal only
39.	**Hayes** (42-3 at offences - 59 at appeal) [2001] NSWCCA 410	7 x s.61D(1) s.61D(1) 3 x s.61E(1)	PG	MT 3y AT 1y MT 12 AT 2y FT 2y Total: MT 4y AT 2y	AD	Offences committed while on bail or recognisance for sexual offence	(1984-5) – two complainants Health issues
40.	**MJR** (2002) 130 A Crim R 481 [2002] NSWCCA 129	s.61D(1A) s.61D(1A) 2 x s.61D(1) s.61E(1A) s.61E(1) Sched: 10 similar offences	PG (30%)	9y NPP 6y FT 5y FT 4y FT 2y FT 2y (concurrent)	AA 6y 6m NPP 5y FT 5y FT 4y FT 2y FT 2y (concurrent)		(1983–1989) Sexually assaulted two daughters aged 12-16y over seven years - digital penetration of external genitalia and fondling of breasts – youngest daughter suffering cerebral palsy and associated intellectual impairment

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41.	**Slater** (2003) 142 A Crim R 322 [2003] NSWCCA 178	s.61D(1) s.61D(1) *[8y]* Sched: 4 sexual offences	PG (25%)	4y NPP 2y FT 2y 6m Total: 5y NPP 3y	AD		(1982–1991) –sexual intercourse with 12y daughter – second count involved intercourse with daughter aged 21y without her consent – committed four further acts when complainant aged 13, 16 and 17y
42.	**D.K.M.** [2003] NSWCCA 372	2 x s.73 s.61D(1)	PG (25%)	4y 6m NPP 3y 4y 6m NPP 3y Total: 7y 6m NPP 6y	AD		(1979–1984) – forced daughter to engage in sexual intercourse aged 12y, 15y and 17y – used force and violence against protesting complainant
43.	**Sheehan [No.2]** (61 at sentence) [2006] NSWCCA 332	s.61D(1)	VG	7y 6m NPP 5y	AA 6y NPP 4y	Significant record – old with no sex offences	(1981-1986) - Penile intercourse with 10-11y step-daughter – not isolated assault – violence and fear Originally sentenced for 7 additional offences – successful conviction appeal. Ill health

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44.	**Lozanovski** (56 at sentence) [2006] NSWCCA 143	s.61D(1) s.61D(1) s.61D(1) 3 x s.61E(1) s.90A s.61L	VG PG	3y 6m NPP 12m 3y NPP 2y 3y 6m NPP 2y FT 6m – 18m FT 18m FT 12m Total: 8y 6m NPP 6y	AA 2y 6m NPP 12m 3y NPP 2y 3y 6m NPP 2y FT 6m – 18m FT 18m FT 12m Total: 5y 6m NPP 4y	nil	(1982-1989) - Sexually assaulted niece aged 9-16y – fondling of breasts and digital penetration – not isolated incidents (1996) – fondled complainants breasts when she was 22y
45.	**GG** (2010) 204 A Crim R 125 [2010] NSWCCA 230	3 x s.61D(1) 2 x s.61E(1)	VG	Total: 3y 6m NPP 2y 3m	AD		(1984-1986) – sexually assaulted step-daughter aged 12-14y
46.	**Hughes** (36 at first offence) (2015) 93 NSWLR 474 [2015] NSWCCA 330	2 x s.61D(1) 4 x s.61E(1) 2 x s.61E(1A) s.61E(1A) s.61E(2)	VG	Indicative 5y 4y FT 2y 6m FT 2y 9m FT 1y Aggregate: 10y 9m NPP 6y	AD	Nil	(1984–1990) - numerous sexual assaults against four friends of offender's daughter - digital penetration of complainant aged 14-15y - rubbed clitoris of complainant aged 14-15y – indecent assaults included forcing complainant aged 6-8y to rub penis until ejaculation, rubbing over complainant's vagina with penis, exposing penis to complainant, and rubbing penis against complainant's face - objective seriousness within most serious category - opportunistic, persistent and calculated - abuse of trust and exploitation of naivety

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47.	**Morgan** (47) [2017] NSWCCA 269	s.61D(1) s.81 s.61E(2)	VG	2y 6m 6m 12m Total: 3y NPP 18m	AD		(1982-1984) – male complainant aged 12-13y – offender was acolyte at local church where complainant was altar boy – gave complainant alcohol and performed fellatio - mid-range objective seriousness.
48.	**Boatswain** (57 at sentence) [2019] NSWCCA 238	s.61E s.61D(1) s.61D(1) s.61D(1) s.61E(1) s.61D(1) s.61D(1A) Sched: 10 offences	PG (10-15%)	Indicative: 2y 6m 4y 3m 5y 6y 1y 8m 3y 6m 4y 3m Aggregate: 15y NPP 10y	AD	record includes robbery, assault, property and driving offences but no sexual offences	(1982-1988) – sexually abused two younger sisters of female partner aged 10-15y – offending included forced masturbation and fellatio, touching of clitoris and vagina, digital penetration and penile / vaginal penetration – most offences occurred while complainants living with offender and partner – sexual abuse of youngest sister continued after older sister complained but was not believed Bugmy considerations applied due to background which includes physical and sexual abuse, poverty, homelessness, lack of education, neglect and early substance use – current medical condition s.25AA applied On appeal – aggregate sentence not outside range in view of period of offending, number of complainants and vulnerable position of complainants

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49.	**AM** (15-17 at offence - 55 at sentence) [2026] NSWCCA 110	s.71 s.61D(1) s.61E(1) s.61E(1) 2 x s.61E(1)	PG (25%)	Indicative: 4y 6m 3y 4m 15d 1y 4m 15d 1y 8m 7d 1y 6m Aggregate: 8y NPP 5y 3m 14d	AA Indicative: 4y 2y 6m 1y 1y 1y 6m Aggregate: 7y NPP 3y 6m	Nil at time of offences. Serving existing sentence for child abuse offences committed in 2021.	(1983-1985) – offences against younger 15y sister - s.71: grabbed complainant after she had showered, dragged her to bedroom and forced unprotected penile-vaginal intercourse before ejaculating on her stomach – s.61E: rubbed breasts, rubbed genitals skin-to-skin, vaginal-digital penetration, sucked breasts - s.61D: vaginal-digital penetration of sister's 13y friend On appeal: failed to consider totality/ accumulation – youth Reduced moral culpability due to age and immaturity – no remorse

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