Aggravated Sexual Intercourse Without Consent in Company

Victim Aged 16 Years or Older

s.61JA (NSW) *Crimes Act*

s 61JA(1) (a) sexual intercourse with another person without consent of that person knowing that person does not consent, and

(b) in company of another person or persons, and

(c) (i) intentionally or recklessly inflicts actual bodily harm on victim or any other person who is present or nearby, or

(ii) threatens to inflict actual bodily harm on victim or any other person who is present or nearby by means of an offensive weapon or instrument, or

(iii) deprives victim of liberty for a period before or after commission of offence

Maximum Penalty: **Life**

Standard non-parole period: **15 years (for offences committed on or after 1.2.2003)**

Commenced: **1.10.2001**

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	**Hoang** (18) [2003] NSWCCA 380	s.61JA s.90A s.112(2) Sched Acc After Fact BE	PG (25%)	15y NPP 11y 3m 7y 6m NPP 5y 7.5m 8y NPP 6y (concurrent)	AA 15y NPP 9y 3m 7y 6m NPP 5y 8y NPP 5y 4m (concurrent)	nil	With two co-offenders broke into home – threatened male complainants and female complainant with knives – took property – abducted female complainant and sexually assaulted her. Youth

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
2.	**MSK** (23) **MAK** (23) **MRK** (17) **MMK** (16) [2004] NSWSC 319 Sully J [2005] NSWCCA 369	9 x s.61JA 9 x s.61JA 9 x s.61JA 9 x s.61JA	VG VG VG VG	22y NPP 16y 6m 16y NPP 12y 10y NPP 5y 22y NPP 13y	AD AD AD	dishonesty nil one minor nil	Four brothers - invited two teenage female complainants (whom they had met on one previous occasion) to residence – complainants taken into separate bedrooms and subjected to series of violent sexual assaults Emigrated to Australia from Pakistan while relatively young – lack of parental supervision – refusal to accept any wrongdoing – poor rehabilitation prospects
3.	**S Aslett** (18) [2006] NSWCCA 48 Co-offender: D.ASLETT	s.112(3) s.61JA s.61JA s.61JA	PG	10y NPP 5y 18y NPP 11y 18y NPP 11y 18y NPP 11y <u>Total</u>: 24y NPP 17y	AA 9y NPP 5y 14y NPP 10y 14y NPP 9y 14y NPP 7y <u>Total</u>: 20y NPP 13y	Nil	**SNPP 15 years** With three men broke into home unit – occupants tied up – property stolen – 16y daughter sexually assaulted over several hours by three men – offender forced fellatio twice and anal rape – serious injury Aboriginal male – low intelligence – uncle was primary offender

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4.	**D Aslett** (32) [2006] NSWCCA 49 [2006] NSWCCA 86 Co-offender: S.ASLETT	s.112(3) s.61JA 2 x s.61JA 3 x s.61JA Incite act of indec	VG	13y 4m NPP 10y 26y 8m NPP 20y 20y NPP 15y 18y NPP 8y FT 2y <u>Total</u>: 40y NPP 30y	AA 10y NPP 2y 8m 21y 4m NPP 16y 20y NPP 15y 16y NPP 8y 6m FT 2y <u>Total</u>: 30y NPP 22y 6m	Lengthy – long periods in gaol or institutions since 10y – breached conditional liberty	**SNPP 15 years** With three men broke into home unit – occupants tied up – property stolen – 16y daughter sexually assaulted over several hours by three men – offender made complainant manipulate vagina then forced penile intercourse – other offenders forced fellatio, penile and anal rape – serious injury – primary offender – worst case category Aboriginal male
5.	**Harrison** (38) [2006] NSWCCA 185	s.61JA s.61K(a) Sched: s.61JA	PG	9y NPP 7y FT 3y <u>Total</u>: 11y NPP 9y	AA To backdate only		Offences committed with brother – attempted to force female into car – picked up prostitute and repeatedly raped Offences out of character – hardship on wife and children
6.	**Upton** [2006] NSWCCA 256	2 x s.61J 2 x s.61JA	VG	7y NPP 4y 7y NPP 4y (all concurrent)	AD	Nil	Assaulted prostitute with co-offender – threatened with noose and drill - lesser role Prior good character – assistance – protective custody – good prospects of rehabilitation

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7.	**IE** (15) [2008] NSWCCA 70	3 x s.61JA Att s.61JA s.61M(1)	VG	10y NPP 5y 10y NPP 5y 3y NPP 18m (all concurrent)	AD		**SNPP 15 years** Group of youths accosted 15y female in shopping centre – offender and another male forced her to isolated area – co-offender touched complainant on vagina, attempted anal intercourse and forced fellatio – offender forced penile intercourse from behind – joint criminal enterprise
8.	**Qoro** [2008] NSWCCA 220 Co-offender: WEATHERALL KING	s.61JA	VG	14y NPP 10y	AD		**SNPP 15 years** Group of men detained complainant in house and forced multiple acts of sexual intercourse – complainant treated as sexual object – offender forced fellatio knowing complainant already subjected to multiple sexual assaults Intellectual disabilities and psychiatric problems
9.	**King** (28) [2010] NSWCCA 33 Co-offender: QORO WEATHERALL	s.61JA	VG	13y NPP 8y	AD	Numerous offences including drugs, assault, BES, AOABH	**SNPP 15 years** With co-offenders detained complainant in house and forced sexual intercourse - oral intercourse
10.	**BT** (16) [2012] NSWCCA 128	s.61JA s.61M(1) s.61I	PG	8y NPP 3y 2y 6m NPP 1y 5y 6m NPP 3y <u>Total</u>: 10y NPP 5y	AD	Violence	16y complainant, offender and co-offender forced to sleep on mattresses in juvenile justice interview room due to accommodation shortage – on first night complainant forced to masturbate and fellate both offenders – punched to face and threatened with violence – on second night offender raped complainant in bed Ward of state with mental illness

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11.	**Weatherall** (31) [2013] NSWCCA 282 Co-offender: QORO KING	2 x s.61JA	VG	8y NPP 5y Total: 15y NPP 10y	AD	Prior old rob and wounding offence	**SNPP 15 years** Part of group of men who detained and sexually assaulted female drug addict who attended terrace house to purchase drugs – held complainant by hair and forced fellatio – offence committed in company – complainant forced to fellate second male – vulnerable complainant Aboriginal male - deprived background
12.	**Irmak** **Dagdanasar** [2021] NSWCCA 178	s.61JA(1) 2 x s.61J(1) 2 x s.61J(1) s.61J(1) s.61JA(1) 4 x s.61J(1) s.61J(1)	VG	Indicative 16y NPP 11y 12y NPP 7y 8y NPP 5y 13y NPP 8y Aggregate: 26y NPP 18y Indicative: 12y NPP 7y 8y NPP 5y 12y NPP 7y Aggregate: 24y NPP 16y	AD	Criminal history disentitled him to leniency	**SNPP 15 years** Three male strangers picked up intoxicated 18y female on street after school formal and after formal party – took complainant to house where she was given alcohol and drugs and sexually assaulted over more than twelve hours – anal and vaginal intercourse and fellatio – four acts of intercourse committed by I – one act committed by D - two acts committed by third male - s.61JA offence based on infliction of actual bodily harm during anal intercourse – s.61J counts based on offences committed in company – all offence in upper mid-range – third offender left jurisdiction and never apprehended D - no subjective information provided on appeal I – no evidence of rehabilitation or remorse – breached conditional liberty

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13.	**Tafra** [2024] NSWCCA 190	2 x s.61JA(1)	PG (not indicated)	Indicative Each: 11y 4m NPP 7y Aggregate 14y 6m NPP 8y 6m	AD	Drug supply	**SNPP 15 years** Applicant recruited two female co-offenders HM and KM for specific purpose of conducting an internal search of victim using force in order to recover the drugs that he suspected had been stolen from him – HM and KM forcibly searched victim's vagina, inserting hand in vagina and anus - applicant did not participate in the offences and not inside the room, but present throughout the offending and stood to gain from the offending – instigated offences – anticipated a degree of physical violence and intimidation would be required. Sexual abuse and trauma as a child - mental health impairment - borderline personality disorder, PTSD, chronic polysubstance abuse disorder.

Last Updated: October 2024