Persistent Sexual Abuse of a Child

Previous Offence – Max Penalty 25 years

s.66EA (NSW) *Crimes Act*

s 66EA(1) Person on 3 or more separate occasions occurring on separate days during any period, engages in conduct in relation to a particular child that constitutes a sexual offence

Maximum Penalty: **25 years**
Commenced: **15.1.1999**
Substituted: **1.12.2018**

Note: the effect of recent 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.

	NAME (age if known)	OFFENCE	PLEA	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	**Fitzgerald** (2004) 144 A Crim R 316 [2004] NSWCCA 5	s.66EA	PG (25%)	6y 9m NPP 3y 6m	Crown AD		Sexually abused 14-15y step-daughter over 8 months – indecent assault - penile penetration in variety of locations ejaculating on stomach – covered mouth with tape on two occasions – made threats – videotaped incident on one occasion – pattern of misconduct
2.	**Manners** [2004] NSWCCA 181	s.66EA	PG (25%)	6y NPP 4y 3m	Crown AD	Lengthy record for similar offences	Sexually abused 9-10y dancing student over 8 months – kissed complainant on lips and touched buttocks and genitalia – photographed exposed genitalia - aware a prohibited person who was not permitted to teach dance – breach of trust – planned offence Sexually abused as a child

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	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
3.	**Langbein** (2008) 181 A Crim R 378 [2008] NSWCCA 38	s.66EA	VG	10y NPP 7y 6m	AD	Nil	(2001-2004) – sexually abused step-daughter aged 6-11y – digital penetration – touched vagina with tongue and hand – attempted penile penetration – medium range seriousness
4.	**Hitchen** (44) [2010] NSWCCA 77	s.66EA(1) s.474.19(1)(a)(iii) - Transmit child pornography s.474.19(1)(a)(i) - Access child pornography s.91H(3) - Possess child pornography s.91G(1)(a) - Use child for pornography s.474.19(1)(a)(iii) - Transmit child pornography Sched: 6 child pornography offences	PG (25%)	16y NPP 12y 4y NPP 3y 4y NPP 3y 3y NPP 2y 6y NPP 4y 10y NPP 8y Total: 24y NPP 18y	AA 16y NPP 12y 4y NPP 3y 4y NPP 3y 3y NPP 2y 6y NPP 2y 6y NPP 4y Total: 18y NPP 14y	Nil	Sexually abused daughter of former partner over 3 years – complainant aged 7-9y – videotaped some offences and transmitted them overseas – offences committed while child asleep – involved intercourse – extensive planning - also in possession of 729,000 images and 2,700 videos of child pornography – some offences in worst category
5.	**ARS** [2011] NSWCCA 266	s.66EA	VG	14y NPP 10y	AD		(2002-2007) – sexually abused 11-16y stepdaughter – routine sexual activity – touching inside and outside of vagina – digital penetration – touching of penis – mouth on vagina – simulated intercourse

	NAME (age if known)	OFFENCE	PLEA	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
6.	**IS** [2011] NSWCCA 142	s.66EA s.66A s.66A s.61M(2) s.61M(1) s.61O(1)	VG PG	10y NPP 7y 6m 5y NPP 3y 4y NPP 3y 18m NPP 12m 3y NPP 2y 3m FT 12m <u>Total</u>*:* 11y 8m 29d NPP 9y 2m 28d	AA 10y NPP 7y 5y NPP 3y 4y NPP 3y 18m NPP 12m 3y NPP 2y 3m FT 12m <u>Total</u>*:* 11y 8m 29d NPP 8y 8m 28d	Minor offences as a teenager	(1997 -2004) – sexually abused daughter aged -8-15y – penile and digital penetration and cunnilingus – indecent touching Difficult childhood involving sexual abuse
7.	**DS** [2012] NSWCCA 159 [2013] NSWCCA 313	s.66EA s.61M(2) s.61M(2) s.61O(2)	VG	10y NPP 6y 9m 8y NPP 6y FT 2y FT 2y 6m <u>Total</u>: 13y NPP 9y 9m	AA (same effective sentence) AA To correct error as to SNPP – same effective sentence	Nil relevant	(1999-2007) – sexually assaulted daughter of de facto while living at home and subsequently during contact visits – complainant aged 5-13y - touched vagina – forced touching of penis – digital penetration of vagina Breach of trust
8.	**AC** (26) [2016] NSWCCA 107	s.66EA	PG (25%)	10y NPP 7y 6m	AD		'Married' 12y complainant with consent and arrangement of complainant's father – previously told by religious leaders this would be illegal – had frequent sexual intercourse over one month period

	NAME (age if known)	OFFENCE	PLEA	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
9.	**Van Ryn** (60) [2016] NSWCCA 1 **Van Ryn (No.2)** [2016] NSWCCA 160 **Van Ryn (No.3)** [2016] NSWCCA 307	s.66EA 8 x s.61M(2) s.61M(1) s.61O(2) 2 x s.66C(4) Sched: 4 offences	PG (25%)	Indicative: 8y NPP 4y Aggregate 13y NPP 7y	Crown AA Indicative: 10y 6m Aggregate: 17y 9m NPP 13y 4m		(2003-2014) Offences committed against 9 complainants - male and female aged 8-15y - offences usually occurred at offender's home where visitors with children would go to socialise – reaching inside clothing or swimwear of complainant and touching genitals – oral and anal intercourse. Respected businessman and member of community *Van Ryn (No 2)* – application by Crown to correct error refused – taken to High Court *Van Ryn (No 3)* - redetermination of sentence following grant of special leave by High Court – error as to correct provision for one of lesser offences – lesser maximum penalty and SNPP applied –aggregate sentence reduced
10.	**Mills** (42) [2017] NSWCCA 87	s.66EA	PG (25%)	16y 6m NPP 12y 4m	AA 13y 6m NPP 10y	Old offence for prostitution	Sexually abused 11-14y daughter over several years – full penile/vaginal intercourse to ejaculation – many offences – high range
11.	**Eacott** (56-61) [2019] NSWCCA 158	s.66EA	PG (25%)	6y NPP 3y 6m	AD		Indecent assaults upon partner's daughter aged 6-10y - complainant rubbed offender's penis outside of clothing - offender rubbed and licked complainant's vagina - masturbation on one occasion - unusual facts – below mid-range Strong subjective case - chances of reoffending very low - good prospects of rehabilitation – contrition
12.	**Burr** (41-43 at offences – 55 at sentence) [2020] NSWCCA 282	s.66EA	PG (20%)	10y 9m NPP 7y	AD	Driving offences	(2006-7) maintained sexual relationship with 14-15y daughter of former partner over 20 months – regular oral and vaginal intercourse, use of vibrator – number of offences far exceeded threshold of three offences – not isolated offences – element of grooming, control and exploitation – age difference and familial relationship – mid-range offence On appeal: consideration of general principles for sentencing on s.66EA offences

	NAME (age if known)	OFFENCE	PLEA	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
13.	**Hillman** [2021] NSWCCA 43	s.66EA AOABH s.61M(2) s.61M(2)	PG (25%)	Indicative: 14y 7m 3y 6y NPP 4y 6m 5y 3m NPP 3y11m Aggregate: 21y NPP 15y 9m	AA Indicative: 14y 6m 2y 7m 3y 9m NPP 2y 9m 3y NPP 2y 3m Aggregate: 19y NPP 14y	Nil	(2006-2015) sexually abused step-daughter aged 6-15y over ten years – offences committed in New Zealand and later in Australia – indecent touching, digital and penile penetration, cunnilingus – offence aggravated by breach of trust and commission in complainant's home – persistent and brazen abuse over lengthy period of time on young, vulnerable complainant –on occasion caused physical pain and persisted against complainant's request to stop - offence in very high range - when complainant 16y picked her up by throat, threw her on to a bed and punched repeated in head – indecently touched 11y female cousin and 13y friend of complainant on separate occasions Remorse On appeal: error in application of plea discount to aggregate sentence
14.	**DC** (33 at offence – 44 at sentence) [2023] NSWCCA 82	s.66EA 2 x s.61M(2) s.61M(2) 2 x s.66C(2) s.66D	PG (25%)	Indicative: 9y 9m 2y NPP 18m 18m NPP 13.5m 7y NPP 5y 3m 6y 6m Aggregate: 13y 6m NPP 10y	AA Indicative: 9y 9m 2y NPP 18m 18m NPP 13.5m 7y 6y 6m Aggregate: 13y 6m NPP 9y	Drug possession – assault – driving – portion of offence committed while on conditional liberty	(2010-2011) had intercourse with 14y complainant – complainant subsequently lived offender for 12 months – intercourse everyday – upper end of mid-range (2014) sexually abused 10y step-daughter – sexual touching on several occasions – forced fellatio, cunnilingus and attempted penile vaginal intercourse – breach of trust – offences committed in complainant's home – s.66C and s.66D offences mid-high range Mental health issues and low intellectual functioning – difficult childhood – guarded prospects of rehabilitation On appeal: erred in applying SNPP to two offences – found special circumstances in mental health and intellectual functioning

	NAME (age if known)	OFFENCE	PLEA	TOTAL SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
15.	**DB** (60 at sentence) [2024] NSWCCA 18	s.66EA *[25y]* s.66EA *[life]* s.91G(1)(a) s.66DC(a) s.91G(1)(a) s.91H(2) Sched: 3 offences	PG (25%)	19y NPP 14y 6m	AA 19y NPP14y 3m	Minor	(1999-2010) Sexually abused 5-16y daughter – indecent touching, digital penetration, cunnilingus and attempted penile penetration – forced complainant to undress for recording - used threats and bribery – toward high end of range (2018-2021) repeated indecent touching of 7-9y child in care – complainant had mild autism and severe anxiety – took photos of genitalia – exposed penis to second child in care and took photos of genitalia – complainant aged 4-6y with moderate to severe autism and non-verbal – photos and videos of child pornography found on computer – offences low to mid-range Dysfunctional and disruptive childhood – mental health issues – remorse On appeal: error in application of statutory ratio