

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 |

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| 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 <u>Total:</u> 24y NPP 18y | AA 16y NPP 12y 4y NPP 3y 4y NPP 3y 3y NPP 2y 6y NPP 2y 6y NPP 4y <u>Total:</u> 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 |

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| 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 PG | 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 |

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| 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%) | <u>Indicative:</u> 8y NPP 4y <u>Aggregate</u> 13y NPP 7y | Crown AA <u>Indicative:</u> 10y 6m <u>Aggregate:</u> 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 <i>Van Ryn (No 2)</i> – application by Crown to correct error refused – taken to High Court <i>Van Ryn (No 3)</i> - 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 |

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| 13. | Hillman [2020] NSWCCA 43 | s.66EA AOABH s.61M(2) s.61M(2) | PG (25%) | <u>Indicative:</u> 14y 7m 3y 6y NPP 4y 6m 5y 3m NPP 3y11m <u>Aggregate:</u> 21y NPP 15y 9m | AA <u>Indicative:</u> 14y 6m 2y 7m 3y 9m NPP 2y 9m 3y NPP 2y 3m <u>Aggregate:</u> 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%) | <u>Indicative:</u> 9y 9m 2y NPP 18m 18m NPP 13.5m 7y NPP 5y 3m 6y 6m <u>Aggregate:</u> 13y 6m NPP 10y | AA <u>Indicative:</u> 9y 9m 2y NPP 18m 18m NPP 13.5m 7y 6y 6m <u>Aggregate:</u> 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 |

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| 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 |

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