Carnal Knowledge Girl Aged Between 10-16 years

ss.71 and 72 (NSW) *Crimes Act*

s 71 Unlawfully and carnally knows any girl of or above the age of ten years, and under the age of sixteen years

Maximum Penalty: **10 years**

Repealed: **23.3.1986**

s 72 Attempts unlawfully and carnally to know any girl of or above the age of ten years, and under the age of sixteen years, or assaults any such girl with intent carnally to know her

Maximum penalty: **5 years**

Repealed: **23.3.1986**

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.

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	**Lumsden** (Late 20s) NSWCCA 31.7.1996	3 x s.71 s.72 2 x s.76	PG VG PG	MT 3y AT 3y FT 2y FT 2y (all concurrent)	AA MT 2y AT 2y FT 18m FT 18m (all concurrent)	nil	(1972-1974) – offences committed on 10-13y swimming student – had admitted to these offences prior to report and attended counselling with complainant (s.71/s.76) (1978) – attempted penile intercourse with 12y swimming student (s.72) 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.

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
2.	**CLW** NSWCCA 17.6.1998	3 x Aid and abet s.71 2 x Incite s.76A AOABH Aid and abet s.61E(1) s.66C(2)	VG	Total MT 4y AT 4y	AD		(1979- 1985) – female - assisted husband sexually abuse daughter over 8 years – complainant aged 7-15y – forced fellatio – held daughter while husband poured boiling water into mouth – penile penetration on weekly basis – performed cunnilingus on complainant aged 15y
3.	**PLV** (17-18) (2001) 123 A Crim R 194 [2001] NSWCCA 282	s.71	VG	2y NPP 3m	AD		(1973-4) - forced penile intercourse on sister aged 11-12y – very lengthy delay
4.	**Schlenert** (14-15 at offence) [2001] NSWCCA 481	s.71	PG	12m GBB	AA Charge dismissed		(1980) – had sexual intercourse with 12-13y girl in car – friend returned to car and also had intercourse – offender apologised to complainant – matter pursued 18y later when complainant's husband became aware of incident Subsequent excellent character

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
5.	**G A T** (35 at first offence – 56 at appeal) [2007] NSWCCA 208	s.71 s.61E(1) s.61M(1) s.61O(1) s.66C(4) s.66C(2)	PG (25%)	6y NPP 4y FT 3y 5y NPP 3y FT 18m 4y 6m NPP 3y 7y 6m NPP 4y Total: 13y NPP 9y 6m	AA 6y NPP 4y FT 3y 3y NPP 1y 6m FT 12m 4y 6m NPP 3y 5y NPP 3y Total: 10y 6m NPP 7y	nil	(1985) – commenced sexually assaulting daughter aged 13y – forced fellatio, digital penetration and penile/vaginal intercourse – sexual relationship continued into complainant's 20s (2004) – sexually assaulted grandsons aged 10y and 13y – masturbation and fellatio Not isolated offences - remorse
6.	**DF** (61 at sentence) [2012] NSWCCA 171	s.71 3 x s.76 2 x s.72	VG	8y NPP 5y 6m FT 2y / 2y 6m FT 3y 6m Total: 10y NPP 7y 6m	AA 6y NPP 3y FT 12m / 1y 6m FT 1y 6m Total: 8y NPP 5y	Very recent common assault	(1978-1979) – groomed and sexually assaulted lonely 10y girl – touching – cunnilingus – attempted penile penetration – penile penetration Aboriginal male – health problems – good rehabilitation

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
7.	**RL** (14-16 at four offences - 49 at sentence) [2015] NSWCCA 106	2 x s.71 s.61D(1) s.61D(1) s.61D(1) s.76 s.76 Sched: 5 offences	PG (25%)	Indicative: 6y 6m NPP 2y 6m 4y NPP 1y 6m 4y 9m NPP 1y 9m FT 1y 6m 3y NPP 1y FT 6m Aggregate: 7y NPP 3y 3m	AA Indicative 4y 6m no custody FT 9m FT 1y 6m no custody no custody Aggregate 6y NPP 2y 9m	nil	(1981-1986) - juvenile offender Sexually assaulted two nieces aged 6-12y and 10-11y and complainants' male cousin aged 8-9y – offender aged 14-19y – fellatio, cunnilingus, digital and penile penetration.
8.	**JM** (73) [2017] NSWCCA 138	3 x s.73 4 x s.76 s.71 2 x s.61E(1)	VG	Indicative 3y 6m 2y 3y 6m 6m / 9m Aggregate 6y 7m NPP 2y 3m	Crown AD		(1976–1979; 1982–1983) – sexually abused step-daughter and daughter aged 10–16y – penile penetration when complainant aged 10y – digital penetration – offences committed with some degree of force - very serious offending extended over a period of years. Crown appeal dismissed in exercise of residual discretion.

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
9.	**Faehringer** (77) [2017] NSWCCA 248	s.71 2 x s.71 2 x s.76	PG (25%)	5y NPP 2y 3y 6m / 12m <u>Total</u>: 8y 3m NPP 5y 3m	AA Conviction quashed <u>Indicative</u> 3y 6m / 12m <u>Aggregate</u>: 6y 7m NPP 3y 7m		(1973–1974) – sexual abuse of 12y girl in foster care - penile vaginal intercourse – mid-range seriousness - forced complainant to fondle offender's penis and kissed complainant on mouth - upper middle range objective seriousness Age and health issues – low risk category for sexual recidivism – remorse – delay
10.	**Corliss** (31-32 at offence) [2020] NSWCCA 65	s.71 s.71 2 x s.76 s.76 Schedule: s.76	PG (25%)	4y 6m NPP 2y 3m 5y 3m NPP 2y 7m 1y 6m NPP 9m 2y 7m NPP 1y 3m <u>Total</u>: 7y NPP 4y 4m	AD		(1979)-(1980) – sexual abuse of 12-13y girl – daughter of friend with whom had relationship – sexual intercourse – exposed and rubbed penis, fellatio. Long-standing grooming – some aggressive conduct – emotional coercion.

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
11.	**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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