

Homosexual Intercourse With Male Aged Under 10 Years

s.78H (NSW) *Crimes Act*

s 78K Male person who has homosexual intercourse with a male person under the age of 10 years

Maximum penalty: Life – reduced to 25 years 12.1.1990

Commenced: 8.6.1984

Repealed: 13.6.2003

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.	Hill (43-48) NSWCCA 7.7.1992 Co-offender: DUNN	s.78H 12 offences of homosexual intercourse with boy 9 x Indecent ass Inciting ind ass	PG	MT 12y AT 4y (lesser concurrent sentences)	AD	Bad record for sexual offences	Offences committed over 4 years on 7 boys aged 9-15y – fondling penis, oral intercourse, forced fellatio, anal intercourse, gross indecency – encouraged sexual acts between boys – videotaped conduct – no violence No remorse
2.	B I D (37) NSWCCA 5.11.1992	4 x s.78H 5 x s.78Q	PG	MT 3y AT 1y FT 6m (concurrent)	AD		(1985-1990) - sexually abused son aged 5-9y over 5 years – placed complainant's penis in mouth and on three occasions forced penis into complainant's mouth – mutual touching
3.	Clappison NSWCCA 1.2.1994	s.78H	VG	MT 3y 2m AT 1y 4m	AD		(1992) – performed fellatio on 4y child in offender's house

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
4.	Richards (18-20) NSWCCA 15.4.1994	s.78H s.78K	PG	MT 6m AT 18m MT 6m AT 18m (concurrent)	Crown AA MT 12 AT 12m MT 12m AT 12m (concurrent)	nil	Sexual abuse of complainant aged 4-10y – abuse commenced when offender aged 14y
5.	O'Donnell NSWCCA 1.7.1994	s.78H s.61E(1) s.61M 2 x s.81 Sched 5 similar offences	PG	MT 9y AT 3y (concurrent sentences)	AA MT 7y 6m AT 2y 6m		(1984-1992) - performed oral intercourse on 9y son – similar offences committed for four years – homosexual intercourse on 10y step-son (on sched) – masturbated step son and two other complainants aged 7-9y – part of pattern of appalling behaviour over many years
6.	Roach (42) NSWCCA 29.9.1994	2 x s.78H	VG	MT 10y AT 3y 4m	AA MT 8y 6m AT 2y 10m	Nil sexual offences	(1989) - trusted family friend – anal/penile penetration on 7y boy causing him to scream and causing damage to anus
7.	Rhule (24) NSWCCA 25.7.1995	s.78H s.61M(2) s.61O(2) Sched: Indecent assault	PG	MT 6m AT 18m (concurrent sentences)	Crown AA MT 18m AT 18m	nil	Trusted friend of family met through church – sexually abused 7y male – mutual touching of genitals and fellatio – indecently assaulted another 7y child contacted through church True remorse – voluntary confessions
8.	Viado (24) NSWCCA 1.8.1995	s.78H	PG	MT 18m AT 18m	AD	Nil	Trusted friend of family – performed fellatio on 3y child – immediate confession – not isolated sexual act Philipino – sexual abused as a child

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
9.	Hallam NSWCCA 28.9.1995	s.78H s.97 Sched: 2 x kidnapping	PG	MT 3y AT 4y (concurrent sentence)	AD	Sexual offence committed on bail for robbery offence – breached bond – insignificant record	(1994) – grabbed 9y complainant and 11y friend playing outside units and dragged them into unit – performed fellatio on 9y boy – robbery committed 6m earlier Lengthy psychiatric history
10.	JFP NSWCCA 22.7.1996	2 x s.78H s.61M(1)	VG	MT 6y AT 4y (concurrent sentence)	AD		(1990-1991) – sexually abused brothers aged 13y and 8-9y – shared bedroom with twins – anal/penile penetration with two complainants – attempted anal/penile penetration with third complainant
11.	Monk (32) NSWCCA 2.3.1998	6 x s.78H	PG	MT 12m AT 12m	AD		(1996) - masturbated 5y child and sucked penis while caring for complainant over weekends Significant mental and physical disabilities
12.	DB (65) [2001] NSWCCA 320	s.78H s.61M(2) Sched: 7 similar offences	PG (20%)	5y NPP 2y 6m (concurrent sentence)	AA 3y NPP 18m	Nil	Fondled 5y grandson's penis – engaged in fellatio when complainant 7y – offences on schedule committed on complainant and brother Poor health - remorse
13.	Ball (58 at first offence – 72 at sentence) [2001] NSWCCA 352	s.78H s.61N 6 x s.61E(1) 3 x s.78H	PG	FT 4y MT 18m AT 12m FT 3y FT 3y Total: MT 5y 6m AT 12m	AA FT 3y MT 18m AT 12m 2y 6m NPP 18m FT 3y Total: 5y 6m NPP 4y 6m		(1990) - sexually abused two complainants over 5 years – complainant of s.78H aged 9y – grooming, hugging and kissing developed into masturbation and anal intercourse

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