

The defendant, now aged 82 years old, has been found guilty by a jury of the crime of persistent sexual abuse of a child.

The complainant is his eldest daughter who was raped and sexually assaulted by the defendant on multiple occasions on King Island and at Ulverstone between 1972 and 1979 when the complainant was aged between 10 and 16 years of age.

For the crime of persistent sexual abuse of a child, it is not necessary for the prosecution to prove the dates on which any of the unlawful sexual acts were committed, or the exact circumstances in which the unlawful sexual acts were committed.

Children who are victims of such offences are frequently unable to give particulars of each and every sexual act during a period of prolonged offending. The State has listed the specific sexual acts she is able to identify, but the defendant may be sentenced on the basis that each specific act is part of a course of conduct involving other, sometimes many other, unspecified acts.

The 11 occasions specified by the Crown and left to the jury are as follows:

Occasion 1

On an unspecified date, on King Island, on a farm, near a pigsty, the accused pushed the complainant onto the grassland and penetrated the complainant's vagina with his penis.

Occasion 2

On an unspecified date, on the farm, in the pit of the milking shed, the accused penetrated the complainant's vagina with his penis.

Occasion 3

On an unspecified date, on the farm, in the pit of the milking shed, the accused penetrated the complainant's vagina with his penis.

Occasion 4

On an unspecified date, on the farm, in the milking shed, near the generator, from a position standing behind the complainant, the accused penetrated the complainant's vagina with his penis.

Occasion 5

On an unspecified date, on the farm, on the laneway leading to the rapeseed paddock, the accused pushed the complainant onto the ground and penetrated the complainant's vagina with his penis.

Occasion 6

On an unspecified date, on the farm, in the area of the Ramsey Paddock, the accused pushed the complainant onto the ground and penetrated the complainant's vagina with his penis.

Occasion 7

On an unspecified date, in the bedroom ordinarily occupied by the complainant, when the complainant was not at school due to a migraine, the accused penetrated the complainant's vagina with his penis.

Occasion 8

On an unspecified date, in the bathroom of an abandoned cottage, on the farm, the accused penetrated the complainant's vagina with his penis.

Occasion 9

On an unspecified date, while the complainant dressed for school in front of a combustion stove, the accused touched the complainant's vagina, thereby committing the crime of Indecent Assault.

Occasion 10

On an unspecified date, in the front seat of a motor vehicle parked in a shed, the accused penetrated the complainant's vagina with his fingers, thereby committing the crime of Indecent Assault.

Occasion 11

On an unspecified date, while the complainant was learning to drive a motor vehicle in Ulverstone, the accused touched the complainant's upper thigh, close to her vagina, thereby committing the crime of Indecent Assault.

To have returned a verdict of guilty the jury needed to be satisfied beyond reasonable doubt that at least three of those unlawful sexual assaults occurred, but not necessarily the same three.

It falls to me to find the factual basis of the jury's verdict. I am satisfied beyond reasonable doubt of the truth and reliability of the complainant's evidence and I reject out of hand the defendant's evidence that the only sexual assault against his daughter was an uncharged act of sexual assault. I am satisfied beyond reasonable doubt that each of eleven sexual assaults – eight rapes and three indecent assaults, occurred as described by the complainant and that they occurred against a background of many other repeated rapes over several years on King Island.

As one of my fellow judges said not so long ago, this crime, by its nature, applies to a wide range of sexual offences and consequently there is no discernible sentencing range. The defendant should suffer the same penalty as would have been imposed if the individual sexual acts constituting the crime had been charged as separate crimes, such that the sentence is a just and appropriate measure of the defendant's total criminality. That course requires some tempering to take account of the principle of totality and so as to avoid crushing and unjust sentences.

Child sex offences have enormous potential to cause harm, physical and psychological. Conduct of this nature has profound and deleterious physical and psychological effects upon victims for many years, if not for the whole of their lives. The consequences of an offence, including its effect on a victim, are important considerations in the sentencing process, and the severity of the sentence may be increased because of them.

In the present case I have read a victim impact statement from the complainant. In general she feels that every area of her life has been affected by the gross mistrust of her parents, particularly her father. She is now 58 years of age and would like to have been in a better position emotionally, physically and financially than where she is currently placed. She feels as though the sexual abuse she suffered has robbed her of a normal life and she is unsure whether the trauma will ever be resolved in her mind and as such whether her quality of life will improve.

General deterrence, punishment, vindication of the victim and community protection are the primary sentencing factors in this case, and age and poor health are subordinated to the consideration of vindication in particular.

I am satisfied that the defendant poses no risk of re-offending. I make no order under the *Community Protection (Offender Reporting) Act 2005*.

I am fully cognisant of the defendant's advanced age and his state of poor health, including the onset of dementia. At 82 the defendant has a life expectancy of some 6 to 7 years. This *may* be regarded as mitigatory although, as I have already said, old age and poor health as sentencing considerations must be largely subordinated to the very serious and repeated nature of the offending in this case. I do not overlook that each year of my sentence represents a substantial proportion of the remainder of the defendant's life.

The defendant is convicted and sentenced to a period of 8 years' imprisonment. He is not to be eligible for parole until he has served 4 years of that sentence.