

Mr C, you have pleaded guilty to one count of penetrative sexual abuse of a young person.

The crime was committed in 1987, when you were 31 years of age and the complainant was 16. You are the brother of the complainant's stepfather. She had lived with him, and known you as her uncle, since she was 3 years of age. For some months leading up to the crime, you engaged in a course of sexualised conduct with her, in particular kissing and intimate touching. The crime itself consisted of an act of vaginal intercourse, which occurred in a motel room, which you had arranged and where you took the complainant one day after college. It is accepted that the sexual intercourse was consensual, and it seems that the sexual relationship continued for some months after the complainant had turned 17. The act which constitutes this crime was the only act of sexual intercourse which occurred when the complainant was under 17 years of age.

The existence of consent, and the proximity of the act to the complainant's seventeenth birthday is, of course, relevant to sentencing and, in particular, my assessment of the objective seriousness of the crime. However, this remains serious criminal conduct. In general terms, penetrative sexual conduct with a person under 17 years of age is regarded as criminal because of the need to protect children from adults who would take advantage of their youth and vulnerability. A consensual decision to engage in sexual activity, made without the benefit of the experience and wisdom which is gained with age, can have significant and long-term adverse consequences on the child. These dangers are highlighted in this case by the actual experience of the complainant as reported by her in her impact statement. It is clear that the impact on her has been and still is significant. As she says in her statement, she now realises how innocent, naive and vulnerable she was, but this realisation, of course, does not lessen the effect of this conduct on her life. Of course, it is necessary to approach the assessment of the impact described by the complainant with a degree of care, having regard to the fact that the sexual relationship continued on a consensual and lawful basis after she turned 17.

I think I need also to refer specifically to the matter that has been the subject of discussion this morning, concerning your conduct 18 years ago when you made a comment to another person at the complainant's step-grandmother's funeral. You are not charged with criminal conduct in respect of that comment. I cannot attribute any other explanation to that comment, other than that there was an element of bragging, or, perhaps, gloating that was going on. I do not know, and I do not think she knows, how that conversation started or ended, so I cannot say anything about its context. It is not asserted that you were deliberately saying it in a manner that would indicate that you intended that she overhear it, but the fact that she did overhear it also indicates to me that you were not taking much care in relation to that question. I think it is atrocious conduct. In respect of sentencing, it is relevant in that it is conduct which was capable of, and undoubtedly did, increase, continue and perpetuate the impact of your original criminal conduct on the complainant. If I thought that you were deliberately gloating to her, or deliberately intending that she overhear the comment, it would be much more serious than that. I will take it into account as an aspect of the impact that she has accurately described in her impact statement. None of this should come as a surprise because the whole point of this crime, as I have already indicated, is to protect children from becoming involved in circumstances which will impact the rest of their lives. And something of the nature of what occurred in this case certainly had that capacity.

In addition to the considerations I have already discussed, your moral culpability for the crime is aggravated by the significant age disparity between the complainant and you, and the fact that your criminal conduct constituted a breach of the expectation of trust which arose from your long-standing close family relationship with her. Such a relationship also implies an inherent power imbalance which tends to reduce the mitigatory effect of the consensual nature of the conduct. I have no doubt that these factors have also compounded the impact of this crime on the complainant.

You are now 65 years of age. With one exception, you have little in the way of other offending, either before or after your commission of this crime, with your criminal history largely comprised of a few traffic and minor drug offences. The exception, of course, is the conviction in Queensland in 2019 for child pornography offences. You received for those crimes, what were in effect, suspended prison sentences as a result of these convictions. There is no suggestion that you have breached the terms of suspension, nor that you have committed any criminal conduct since that time.

I am told that you have had a long-standing problem with the abuse of alcohol. You were affected by this problem at the time that you committed this crime. That certainly does not mitigate your conduct. It may provide some explanation for it, but it does not mitigate it. Despite a strong industrial record, your physical and mental health has now deteriorated over recent years largely as a result of the effect of many years of alcohol abuse. You are now in receipt of a disability support pension as a result of these health issues. You have been diagnosed with osteoarthritis which affects your joints and back, and with emphysema. Your mental health is also poor. You have been diagnosed with alcohol-related dementia, depression and other conditions related to your alcoholism. I am told that you have been extremely anxious about these proceedings and the potential sentence, and have made a number of serious attempts at suicide over the last two years. You have sought psychological counselling and medical help. Your doctor and psychologist both express the opinion that actual imprisonment will significantly exacerbate your mental health problems, and both express concerns about the risk of further attempts at suicide in that event.

You have expressed remorse for your conduct and its effect on the complainant. I think your expressions of remorse can be accepted, but also need to be taken with the reservation that 18 years ago you were prepared to make the comment that I have referred to. It is submitted that you provided an early indication of a plea of guilty to this charge. I will proceed on that basis, despite the plea not being entered for some time, because it seems only recently that the prosecution has accepted that a further charge was unsustainable because the relevant sexual act occurred after the complainant had turned 17. You should also receive credit for the utilitarian benefit of the plea, which includes the fact that the complainant will not be required to give evidence in a trial.

The only appropriate sentence for this crime is a sentence of imprisonment. The objective seriousness of the crime, the significant impact on the complainant and the need to deter others from committing crimes of this nature against children, make this inevitable. The only real question for me is whether you should be required to immediately serve all or some of the sentence. I must say I have found this to be a difficult decision. In the end, I have decided to suspend the whole sentence. I have reached that conclusion specifically because of your age, health difficulties and the fact that you have decided to enter a plea of guilty. This decision will provide you with an opportunity to avoid actually serving the sentence, but it is still a sentence

of imprisonment, and if you breach the conditions of suspension, then you will become liable to serve it. Whether or not that occurs will be entirely up to you.

A C, you are convicted of the crime to which you have pleaded guilty and sentenced to imprisonment for 16 months. The whole of the sentence will be suspended for a period of two years on condition that you do not commit another offence punishable by imprisonment during that period.

I am required to make an order under the *Community Protection (Offender Reporting) Act* 2005, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Having regard, in particular, to the crimes of which you were convicted in 2019, I am not satisfied of that matter and, accordingly, must make an order. I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for a period of five years.