

Mr Smith, the defendant, has pleaded guilty to one count of using a carriage service to access child abuse material contrary to s 474.22(1) of the *Commonwealth Criminal Code*. It is alleged the offending was committed between about January 2020 and May 2020. The charge arose in the following way. In mid-2020 Australian Federal Police received reports relating to a user uploading and receiving child abuse material via the social media application Snapchat with various user names. As a result, officers went to a house and spoke to a woman who proved to be the defendant's mother. She told the officers the defendant had lived with her until late March 2020 when he moved out to live with father. She gave police details of the defendant's internet and social media use. On the same day enquiries led to the defendant at an address where he was staying. He was arrested. He had in his possession a mobile phone and a gaming console. He was then taken to his father's house which was searched. Officers found ten electronic devices which were then seized for analysis, along with the phone and gaming console. The device of interest proved to be the defendant's mobile phone on which there identified a number of email and other accounts and apps such as TikTok and Snapchat. The history of one email account revealed searches for sexual material which included references to children and sexual interest in children, with some images depicting young children and babies in a bath and being viewed. The number of files alleged to have been accessed is ten. The date range is 4 January 2020 to 8 May 2020. Using the rather obscure Interpol Categorisation System one image was of category one: depiction of a real pre-pubescent child involved in a sexual act or witnessing a sexual act or where the material is focused on the child's genital or anal region. This image involved two naked pre-pubescent girls kneeling beside an adult male holding his erect penis near one girl's open mouth while holding her behind the head. The other nine were category two: files that are illegal according to local legislation either by way of age or content. Some descriptions of the material are necessary. In this category two material, five images are of a cartoon or anime type. Three involved posing of naked young children; one of those depicting a young male and female, both naked, with the male having an erect enlarged penis with white fluid on the head of it, with the female shown as having white fluid leaking from her vagina. One shows a small toddler naked from the waist down being penetrated by an adult male penis. The remainder of the category two material, which involves real images, ranges from images of naked pubescent children posing with genitalia exposed, to those of posing in various sexually suggestive positions in the presence of adult males with erect penises close to genitalia. Internet search histories of two devices showed regular searching for child pornography from 4 January to 19 July 2020, as well as searches for and access to for general pornography and bestiality material. At one point the defendant searched for access to the "Dark Web", an anonymised network notoriously used for illegal material and transactions including child abuse material. He is not to be punished for those activities but it is relevant to the context of the present offence.

The defendant is now 20 years old; he was 19 at the time of the offending. He has no recorded history of offending. I was told that he had a difficult upbringing, having witnessed his sister being sexually assaulted when he was six or seven years old. This was a traumatic experience as he tried to intervene. This has had an ongoing effect on him although there is no suggestion of any connection with the present offending. His father was very frequently violent to him. He completed year 11 but was expelled at the start of year 12 due to frequent absences. He does not seem to have had any stable employment to speak of. He is the father of two young children to different mothers; one child is eighteen months old, the other is seventeen months old. He presently lives with the mother of the youngest child and her family. He sees the oldest

child for two hours on a weekly basis. His involvement with the children has occupied much of his time since leaving school. He is seeking employment but his present bail conditions prohibit him from the use of the internet and that creates difficulties with that endeavour. As matters operating in his favour, it was put that the offending was over a short period of five months, and that the charged activity was only carried out on five days; that is, five times on 4 January, once on 18 February, once on 12 March, twice on 5 May and once on 8 May. It was also put by his counsel that he has had and has no real interest in this type of material but it was all a matter of curiosity, with a lack of insight into the seriousness of what he was doing and the nature of the material. I am told he now realises it is not a victimless crime, and that even cartoon or anime material has insidious features. He has some interest in working with vulnerable people and accepts that this offending might comprise his ability to do that. I have a report from Grant Blake, psychologist, which report was not directly addressed to the reasons for his offending or rehabilitation, but it does establish that while there are no signs of mental illness or developmental disability, the defendant is of low average intelligence. It is said the long term consequences of his offending are not lost on him. This has had mental health consequences and he has contemplated suicide. According to Mr Blake, he has symptoms indicative of elevated, but not clinically severe, depressed thinking, aggressive attitudes and borderline personality disorder traits such as high social withdrawal and distractibility. I have two pre-sentence reports, the first dated 6 December 2021, the second 16 December 2021 the need for the second of which arose because of difficulties in reconciling statements attributed to the defendant with the stated facts, along with other issues. The second report reveals suicide attempts between 2018 and 2021 but there are inconsistencies between the medical and psychiatric history given by the defendant with information able to be ascertained by the probation officer. Child Safety has had some involvement with the defendant, and they report concerns over his presentation and mental health, with his mental health being a contributing factor to their involvement in relation to his family. In short, given often contradictory comments and the inability to confirm the nature or severity of the defendant's mental health, the probation officer says it remains unclear as to what extent the defendant is aware of the consequences of his offending, the impact on any potential or actual victims, and whether he exhibits any remorse towards his offending behaviour. In the probations officer's opinion, given the matters noted by Mr Blake and the defendant's advised seriousness of his self-harm patterns and suicidal ideations, concerns about his mental health together with his low intellectual functioning make him unsuitable for a period of community service. He is deemed suitable for a period of supervision.

The evils of accessing and possessing child exploitation material are well documented. The production of the material involves the exploitation and abuse of children somewhere in the world. The damage done is often profound. Possession and viewing exacerbates and extends the abuse and exploitation, and access and possession tends to create a demand for its production. Although anime material does not involve real people, its nature may lead to an interest in or the production of material involving actual children. It is well established that denunciation and general deterrence are prominent factors in determining the appropriate sentence. In this case, although the quantity of material access was small, some of it was at a relatively high level of seriousness. I have seen samples. The defendant's level of interest in the material is shown by his many attempts to access like material. As I said, he is not to be punished for that activity but it puts his actual offending in context to the extent that it cannot be said the identified instances of offending were isolated events. I take into account the defendant's young age and personal circumstances, and his plea of guilty which has utilitarian value. I cannot be satisfied that his conduct arose from actual sexual interest in young children and must accept that it was a matter curiosity. I accept that he seemed not to have full insight

into the actual and potential harm this type of offending creates, but in my view, there is nothing to suggest that he really ought not to have realised that, had he given it any thought. I take into account his plea of guilty and all matters set out in s 16A of the *Crimes Act* to the extent of their relevance. I note he has been subject to quite strict bail conditions for a considerable time. Lastly, I observe that s 17A of the *Crimes Act* prevents me from ordering imprisonment unless I am satisfied that no other sentences are appropriate in all of the circumstances. I note that the Crown expressly did not urge me to take that view. I have carefully considered the material in this case. The defendant's general presentation including his motivation and level of insight is a complex one. It seems to me that the case calls for a relatively high degree of individualisation. I am satisfied that imprisonment is not the only appropriate sentence, and in the circumstances a moderate fine and a community correction order with supervision is adequate to deal with the whole circumstances of the case.

Mr Smith, I have set out the facts and what I see to be the relevant factors and considerations to be taken into account. You are convicted. You will be fined the sum of \$500 to be paid within 28 days. I make a community correction order for a period of 18 months. The statutory core conditions will be set out in writing. There will be a special condition that relates to one general core condition; it is that is you obey the reasonable and lawful directions of a probation officer in relation to internet use and access, and the use of apps on devices and mobile phones. Further special conditions are as follows. During the operational period of the order you must:

- attend education and other programs as directed by a probation officer.
- submit to the supervision of a probation officer as required by the probation officer.
- submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.

You will have to report to a probation officer at 3 Terry Street, Glenorchy by 5pm tomorrow, 22 December 2021.

The law is that I must make an order under the *Community Protection Offender Reporting Act* unless I am satisfied the defendant does not pose a risk of reportable re-offending. On the whole of the material, I am not able to be satisfied there is no risk of re-offending. I direct that the defendant's name be placed on the register and that he comply with the reporting conditions under that Act for a period of 18 months from today.