

PEA, you were found guilty by a jury of persistent sexual abuse of a child. The crime was committed against a young female between about 2005 and 2011 when she was aged between about 10 and 15. In order to avoid identification of her, in compliance with s 194K of the *Evidence Act* 2001, your name, the complainant's name and the persons connected to her are not given in these comments.

It is my duty to find facts for sentence. Subject to consistency with the verdict, I am required to make findings about the nature and character of the sexual relationship which was maintained between you and the complainant.

Throughout the relevant period the complainant lived with her mother and older sister in a semi-rural area in northern Tasmania. You lived in your own home which was only walking distance away. Following the separation of the complainant's parents in about 2003, when she was 7 or 8, you became friendly with her mother. A relationship with her began and continued until 2016. Although you never lived with the complainant's mother and her daughters, you spent a lot of time at their family home. Most evening meals were eaten there. They also spent time at your home. In circumstances in which her and her sister's relationship with her biological father became increasingly distant you came to be something of a father figure.

Although your interaction with the complainant at first involved innocent and playful cuddling and tickling, her evidence was that you began to touch her in a sexual way. She told the jury that she had her first period when she was 9. The first occasion of sexual touching she could specify happened when she was in grade 5 or 6. She must have been about 11 or 12. You touched her breasts and pinched her nipples, but on the outside of her clothing. She told the jury that occasions of sexual touching then occurred regularly. It included touching her under her clothes. After she began wearing a bra you would undo it and touch her breasts and nipples. She said it happened at least once or twice a week. She described other sexual contact which happened when she sat on your lap. She would rub herself against your groin as if simulating sexual intercourse. When she did so she could feel your penis against her vagina and sometimes it was erect. The next occasion she identified was in 2011 when she was 15. This was an occasion in which you undid her bra, groped her breasts and touched her nipples. It progressed to the type of simulated intercourse she described. She said nothing about an awareness of whether you ever ejaculated as a result of such actions.

It was not long after that second specified occasion when she, during a school trip to the Northern Territory, disclosed to an adult who accompanied the group that you were sexually touching her. He, very properly, notified the authorities in Tasmania. After her return the complainant repeated her allegations. She was taken seriously by the authorities, but faced with scepticism from her mother about the truth of what she had said, and a fear that if she persisted she may not be able to return home, she changed her story. Despite you having been informed of the allegations the sexual touching soon resumed. The complainant was able to identify another indecent assault which occurred within a month or two of her return. While she was sitting on your lap you put your hands under her clothes, grabbed her breasts, and touched her nipples. Her evidence was that when you said to her words to the effect "I thought we had stopped" she felt resigned to her fate. She told the jury that the last incident of touching occurred around the time of her 17th birthday. Because of uncertainty about her age it was not identified as an unlawful sexual act for the purposes of proving the charge. She said

that, on that occasion, her mother and sister nearly walked in and saw what was happening and she decided to stop.

No further complaint was made about your conduct until in 2017, after your relationship with the complainant's mother had ceased, and the complainant said that she felt safe enough to tell the truth, she went to the police.

In finding facts for sentencing, facts adverse to you must be proved to my satisfaction beyond reasonable doubt. My findings are to be consistent with the verdict. As the jury was directed, the charge of which you were found guilty requires proof that during the period specified in the indictment you committed unlawful sexual acts against the complainant on at least three separate occasions. Because only three occasions were specified by the prosecution the jury must unanimously have been satisfied beyond reasonable doubt that all three were proved. The first of the identified occasions occurred at the beginning of the offending period and the other two towards the end. In each case the unlawful sexual act was an indecent assault. Although it does not necessarily follow that each member of the jury accepted every other aspect of the complainant's evidence, it is inconceivable that the verdict could be on any basis other than satisfaction of the general truthfulness and reliability of the complainant's evidence. In any event, I am satisfied beyond reasonable doubt that the complainant, in every important respect, was a truthful and reliable witness. It may be that the assaults occurred somewhat less frequently than she described but I accept that these acts were perpetrated commonly when the opportunity arose. She gave a compelling account of what had been happening to her which was supported by her complaints. There were some differences of detail between the account in her evidence and the complaints she made in 2011, but to my mind they are explained by the difficulty, for a girl of her age and in her position, of recounting the subject matter in the circumstances she found herself at the time. I am satisfied that the other conduct she described occurred much as she stated, but that she, by reason of her age and the repetitive nature of the acts, could not give evidence of dates, occasions, or other specific and differentiating features of any other instance. The reasons she may have been reluctant to say anything before 2011 are clear. She was young and you were, I find, a father figure in a relationship with her mother. It is easy to understand how she may have been confused about how to respond, afraid and apprehensive. Any fear that she may not be believed was understandable because that is just what happened in 2011. The reluctance to say anything further until 2017 for fear that the same thing may occur readily explains the further delay until after you had left the scene at home.

The jury must have rejected the truth of your denials in evidence. They do not cause me to doubt the complainant's account. Initially you denied any sexual touching of the complainant. However when the specified occasions were put to you, you claimed to have no recollection of them one way or another. I find that to be so incredible that it should be disregarded.

The sentence must be proportional to the criminality involved in each of the specified occasions. However you are to be sentenced on the basis that those identified indecent assaults occurred in the course of a period of sustained and repeated sexual abuse which continued, despite her complaints, for more than five years until the complainant, not you, put an end to it. You breached the trust placed in you by the complainant and by her mother in a most egregious way. It is aggravating that the sexual assaults occurred when the complainant was under your care and supervision. For at least the first specified act she was under 13.

You are now aged 70 years. You have three adult children who remain supportive. You were married for 26 years until divorced in the late 1990s but it was a difficult marriage for financial reasons exacerbated by your illiteracy. You have lived an industrious life including by conducting your own small business until only a year or two ago. You have no prior convictions. I do give that some weight but it is not a significant weight because it is commonly the case for offences of this nature because otherwise it is not likely that you would have been trusted as you were. The delay between the criminal conduct and when you were charged in 2018 is not mitigating because it was caused by the circumstances I have described. The delay between the charge and the trial is not mitigating in any significant way particularly in light of the verdict. I do take into account that your age may make prison more onerous.. You are not entitled to the mitigation a plea of guilty would have attracted. In the complainant's victim impact statement she describes the type of profound psychological impact which crimes of this nature are presumed to cause. She refers to dissociation disorder and complex post-traumatic stress disorder. There is no medical evidence to support either diagnosis or that either condition results from your crime. However, the other impacts she describes, flashbacks, anxiety, low confidence and self-esteem, self-blame, social avoidance, sleep disturbance and disrupted education, are just the type of consequences that are to be expected to result from sexual crimes against a child and they are likely to be long lasting.

I was asked to consider a home detention order but I do not consider that such an order, even for the maximum period, would sufficiently address the dominant sentencing consideration of general deterrence, punishment, condemnation and vindication of the victim.

PA, you are convicted. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act 2005* in the future. I make an order directing that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for a period 10 years from your release. You are sentenced to a term of imprisonment of four years from 4 August 2022, the date you were remanded in custody. I order that you not be eligible for parole until having served half of that term.