

Mr G, the defendant, has been found guilty by a jury of one count of persistent sexual abuse of a child or young person. The crime was alleged to have been committed between January 1993 and December 1997. The male complainant, N, was then aged between 11 and 15 years, and was the son of the defendant's then de-facto partner. The family group also included N's younger brother. The defendant favoured N's company over that of the brother, and the brother was not involved in these matters at all. The jury's verdict coupled with the directions given means it was satisfied beyond reasonable doubt of the truthfulness of N's account. I make findings of fact on that basis. The Crown relied on four occasions of unlawful sexual acts. On the first occasion, the two were in the living room alone. N played a video of pornography. He masturbated while watching it and suggested N do the same, saying that it was normal for people to do that. The defendant then touched N's penis and proceeded to masturbate him, after which he told N to reciprocate, which he did. The second occasion was the first incident of oral penetration by the defendant, the unlawful sexual act being put as penetrative abuse of a child or young person. The two were in the lounge room. The defendant asked N to perform oral sex on him. N started to do so but dry retched. The defendant told him that it was OK, he could just do it with his hand, and that occurred. The third occasion involved an indecent assault. This was in the master bedroom. The defendant had N bend over while standing, put lubrication between N's legs and then put his erect penis where he put the lubrication. He told N that he was not going "to stick it in there". N does not recall the act finishing. The fourth occasion was the last time any unlawful sexual act occurred. The incident happened in N's bedroom. N was asleep in bed and was awoken by the defendant pulling down his boxer shorts, and the feeling of the defendant's moustache. The defendant had his mouth over N's penis. N told him to fuck off and pushed him away. The defendant then offered him \$50 to let him perform oral sex but N again rebuffed him and he left the room. The Crown put to the jury that this unlawful sexual act amounted to rape, and I am satisfied that it did. N's evidence was that he thought that there was a total of about 10 to 20 occasions of mutual masturbation, with about 6 to 10 of these involving the defendant performing oral sex on him. On some occasions N would be reciprocate. Apart from the third and fourth occasions, the sexual activity essentially involved the same scenario as the first occasion. That is, the two were alone in the living room, either with no one else home, or when the others were in bed. The defendant played pornography. Mostly he was only wearing a towel or bathrobe, and partial undressing was common. Reciprocal masturbation would continue until each ejaculated. Lubrication in the form of baby oil was regularly involved. N told no-one about the abuse until much later. It was at N's 21st birthday party that he first made mention of it. The defendant criticised him over a minor matter which triggered an angry outburst in front of those attending. N's anger was such that he ended up injuring himself and required treatment. Not long after, on questioning from his then girlfriend, he made mention of the defendant playing pornography and asking him to perform oral sex. At the time of telling her this, he was clearly emotional said he felt disgusted and then vomited. Sometime later he spoke to his father, and ultimately went to police in 2017. When interviewed the defendant admitted that the two would watch pornography and masturbate themselves, but denied touching N in any way. I have a victim impact statement dated 20 September 2022. N says that at the time the assaults started, he could not make any sense of it; he was confused and pretended nothing had happened or change from his pleasant lifestyle. Ultimately he went from being shy and reserved to being angry and acting it out. Later, alcohol made him feel great; he drank to excess and engaged in risky behaviours. He had a very low self-esteem from feeling ashamed of what had happened, although he was not able to connect those things for some time. He feels resentful towards his mother for not really acknowledging

how terrible the situation was for him. She did not get him help and did not go to the police when she became aware. He struggled with depression and anxiety. Counselling has helped him to an extent. He says that he feels sad wondering who he would have been if the abuse had not happened. He has now a healthy relationship. His trauma has not disappeared but love and support has helped him a great deal and he feels that his dependence on alcohol to cope has dissipated. He is continuing to see a psychologist.

The defendant is now 70 years old, and for some time has been living in a remote location in Tasmania with his de-facto partner. He has no prior convictions of any significance. He has two adult children from a previous relationship. He has a good industrial record having been gainfully employed or self-employed in a number of different industries for the whole of his working life; much of his time being spent in carpet and furniture enterprises. He held a position as a caretaker for a caravan park but lost that upon being charged with this matter. He was able to continue on with some work with local authorities in the area in which he lived until the trial commenced, at which time he resigned. I am also told that throughout his life he was heavily involved in community organisations such as Rotary and the RSL, at times of holding positions of responsibility. I take those matters into account.

The gravity of sexual abuse of children cannot be understated. It is perfectly clear that sentencing courts are required to give total predominance to the condemnation of sexual abuse of children, with vindication of the victim and general deterrence being equally weighty factors. The risk of long term significant harm is an obvious one, and it eventuated in this case. Offending is difficult to detect. Section 11A(1) of the *Sentencing Act* makes some aspects of this case circumstances of aggravation. First, N was under the care supervision or authority of the defendant and second, for at least part of the time, he was under the age of 13 years. The defendant's conduct was in breach of trust and gravely damaging to N. Of course, the crime is established on proof of unlawful sexual acts on at least three occasions. It is not necessary to prove the dates on which any of the unlawful sexual acts were committed or the exact circumstances in which any of the unlawful sexual acts were committed. The law is that a person sentenced for this crime on the basis of three or more identified occasions of sexual offending, should ordinarily suffer the same penalty as if the offences were charged separately, subject to the significantly moderating factors of proportionality and totality. It is not a case of simple arithmetical accumulation. In this case, in addition to the four specified occasions, the evidence warrants me taking into account the fact that those unlawful sexual acts were committed as part of a broader course of sexual abuse similar in nature to the first and second occasions; that is, indecent assaults and penetrative sexual abuse. I think it would be unwise to attempt to define the extent of that other conduct but the evidence does not entitle me to proceed on any other basis that it is generally as estimated by N. I take into account the defendant's age and that he is otherwise a good character, although in the context of this type of offending that has little weight.

Mr G I have set out the facts and what I see to be the relevant considerations. You breached your position of trust and deprived N of the ordinary nature and benefits to be expected in late childhood and early adolescents. He was entitled to expect to be safe in your home and in your company. You exposed him to pornography and sexual abuse. You caused him long term mental and emotional harm. Clearly, a lengthy sentence of imprisonment is called for. You are convicted and sentenced to five and a half years' imprisonment to commence on 21 September 2022. I order that you not be eligible for parole until you have served one half of that term. As to the *Community Protection (Offender Reporting) Act*, I am not satisfied that you do not pose a risk in terms of further offending but given the time that has elapsed with no reported sexual misconduct, I do not think that risk is a high one. I order that your name be placed on the

register and that you comply with the reporting obligations under that Act for five years from your release.