

**STATE OF TASMANIA v AIDAN JACK BINNIE**  
**COMMENTS ON PASSING SENTENCE**

**7 OCTOBER 2022**  
**JAGO J**

Aidan Jack Binnie, you have pleaded guilty to five counts of using a carriage service for child abuse material contrary to s 474.22 ss (1) of the *Commonwealth Criminal Code*, and one count of possessing or controlling child abuse material obtained or accessed using a carriage service contrary to s 474.22 ss (A) ss 1 of the *Commonwealth Criminal Code*. I have also agreed, pursuant to s 385A of the *Tasmanian Criminal Code* to deal with one count of failing to comply with reporting obligations contrary to s 33 of the *Community Protection Offender Reporting Act 2005*.

The background to this matter is that on the 15 June 2020, you were sentenced by Estcourt J to 12 Commonwealth and State charges relating to child abuse and child pornography material. Over the course of a year and three months, you had accessed, possessed and transmitted a large amount of child pornography material. You were sentenced to an aggregate sentence of 20 months imprisonment to be released on recognisance to be of good behaviour for two years, pursuant to s2(1)(b) of the *Commonwealth Criminal Code*, after serving ten months of that sentence.

You were placed on the Community Protection Offender Reporting Register for a period of five years following your release from prison. You were released from prison on the 18 May 2021. You went to live with your mother and sister in Devonport. Within just a few short days of your release from custody, you commenced re-offending.

Charge one relates to you using a carriage service to access child abuse material. On the 23 May 2021 you accessed on anime image of a female pre-pubescent child with a dog licking her genitals. Charge two relates to using a carriage service to solicit child abuse material. On 13 June 2021 you sent a message to another user (DU) on the Discord communications site, asking if you could join an online chat group. You were asked to complete a survey about your favourite type of child abuse material and where you found your material. You did this and were sent a link to the site. Whilst in the chat group you made a number of comments that amounted to soliciting child abuse material, including:

- *how do I see all the channels?*
- *so rare to find groups like this anymore, know anymore?*
- *if you ever want to trade IRL [A reference to in real life]...I have telegram.* DU replied: *Alright then, I know some people if you are interested.* You then messaged DU: *"What's your telegram and yes."* You also said *"Great if you know any groups on there too."*

After DU provided you with his user name, you said *"I messaged you on telegram."* You also sent a later message saying, *"Hey, sorry I left. Can you send the invite again please?"* You were then sent a link inviting you to the chat group.

It is obvious from the conversation you engaged in that you demonstrated a degree of persistence in gaining entry to the chat group and an interest in both obtaining and exchanging child abuse material.

Charge three also relates to using a carriage service to solicit child abuse material. On 14 June 2021 you sent a message to a user on the Discord communication application asking if he knew any *"Zoo servers"*. When you received a negative response, you replied: *"Damn. What about*

*any Loli or anything?"* "Loli" is a reference to child abuse material. When the user indicated he may be able to trace some, you asked him: *"What baby stuff you got?"* The user replied that he preferred *"..loli older not toddler"*. It is of note that your endeavour to solicit child abuse material relating to babies is consistent with the type of material that you were sentenced for having possession of in 2020.

Charge four relates to using a carriage service to transmit child abuse material. You used the username *"sicktwistedmum"* to upload two child abuse files to a chat room named "Online Free Chat". This site allows users to view, download, upload, share and discuss pornography. The files transmitted were of an infant child being orally penetrated by an adult penis, with the male ejaculating in the child's mouth and an infant victim being vaginally penetrated by an adult hand. You told police that the material you sent was material you had initially received from a user in a chat room, and you sent it in order to maintain a conversation with the user when he appeared to become suspicious of you.

Charge five relates to you accessing child abuse material. On 24 July 2021 you used a carriage service in the form of your mobile phone, to access seven child abuse material files. Six of the files depicted prepubescent female children aged infant to toddler engaged in acts of a depraved nature, including female children being anally penetrated by adult male penises; an infant being held on or near the genitals and an infant victim being held by a male as he holds his erect penis over her mouth. The seventh file depicted an infant female posed naked.

Charge six relates to the possession of child abuse material. It is the same material referred to in charge 1. When police analysed your Nokia mobile telephone, they located a single anime image of a female pre-pubescent child posed in the manner I earlier described. This image had been previously accessed and downloaded by you. You had elected to keep and possess the image, thus committing the additional possession charge. I do note, however, for sentencing purposes, there is a significant degree of overlap between the criminality associated with charge one and charge six.

As to the State offence and the failure to comply with your reporting obligations, you were required to advise the register within seven days of the details of any email addresses, internet user names, instant messaging names, chat room user names or any other user name or identity used or intended to be used through the internet or other electronic communication services and of any passwords associated with such names. The reasons you were required to provide such information is obvious given your prior history. You failed to notify the register of your internet identity username *"sicktwistedmum"*, which you used on the online free chat platform. It is in my mind, a relatively serious breach. It undermines the protective purpose of the legislation, and its efficacy in protecting the community from child sex offenders.

All of these offences came to light following the Australian Federal Police receiving a Cyber Tipline report. They subsequently obtained and executed a warrant at your residence on 11 August 2021. During the execution of the warrant, you voluntarily participated in a recorded conversation with AFP Officers. You provided police with an explanation of specific files that were shown to you. You admitted to police that you had accessed the online free chat website, using the profile *"sicktwistedmum"* to receive and send child exploitation material. You admitted it included both male and female children of a variety of ages. You also admitted to police that you had searched the internet using various search terms looking for child exploitation material. You also told them you had searched forum boards looking for such material. Many of the terms you used were directed at locating child abuse material relating to

babies. You told police *"You wanted stories of what other people had committed... so as to compare yourself to other people."* You said you wanted to *"...understand what was going on."*

You also told police that upon your initial release from prison, you *"Didn't have any of those thoughts in my head. It was like 'I've done my time'. I just need to move on."* You told police you did not go anywhere and no one was talking to you and *"It got to the point where the only people that I remembered being able to talk to were the people that were doing that ..... sending exploitation material."* You said to police that you were *"...in a bad head space"*. You *"went to try back to do something stupid"* because you didn't have anyone to talk to and *"ended up doing something stupid"*. You said *"I got caught talking to the wrong people."*

You admitted sending and receiving child exploitation material to other users on the chat platform. You admitted to police that you had possessed and transmitted child exploitation material, although your transmission of the material was limited to the two images. Forensic examination of the mobile phone seized disclosed no further transmissions beyond the files to which I have referred

In addition to the admissions you made to police, you also made substantial admissions during a bail application on 22 November 2021. In support of your application for bail, you provided an Affidavit. In that Affidavit, you indicated, amongst other things, the following:

- It starts to get really bad after a while and I end up talking to people online that are in to doing this and I end up getting led down a dark and dangerous path.
- It's happened this time because my Dad went back to prison again as an historic child sex offender and I didn't know how to deal with that and the fact he used to expose me to child exploitation material as a kid.
- I was severely struggling and becoming desperate for help as I do not want to end up as my Dad.
- I became obsessed with wanting to know why people are doing this and what it is they get excited about.
- I went into an online chat room with a name I knew would garner attention ...I asked what is it about children that gets you excited? The person sent six pictures and said *"That's what."*
- The person said *"If you really want to know, I'm not telling you anything unless you send me some material." ...."The dumbest thing I've ever done in my life." I resent him the first two images he sent to me."*

In my view, what I have just outlined demonstrates that you were largely co-operative with police and their investigation and made substantial admissions, although I do not accept some of the explanations you offered to police as to why you were searching for this material. I am satisfied you were searching for it predominantly because of your paedophilic tendencies and not because you were looking for answers as to *"why it was happening"*. Having said that, I accept your autism complicates this issue such that the concepts are not necessarily mutually exclusive. I accept your loneliness and social isolation contributed to your behaviour. I will return to this issue shortly.

You are now 22 years of age. You have been remanded in custody since your arrest on 11 August 2021. I have already referenced your relevant prior conviction. Because of your prior conviction, which amounts to a prior serious child sexual abuse offence, mandatory minimum

penalties apply for the Commonwealth crimes. In respect of each charge, the mandatory minimum penalty is four years. The maximum penalty for each crime is 15 years imprisonment. I note however, s 16AAC ss 2 and 3 of the Act, which allows for specified reductions for your plea of guilty and for your co-operation. In my view, it was an early plea of guilty. You are entitled to the full mitigating benefit of the utilitarian value of your pleas. You admitted your wrongdoing from the time of the search of your premises and made substantial disclosures to the AFP officers. You are entitled, in my view, to a 25% discount for your plea of guilty pursuant to s 16A(2)(g) of the Act. Additionally, I will discount your sentence for assistance and co-operation by a further 15% pursuant to s 16AAC(2)(b) of the Act. In combination, the early entry of the guilty plea and your co-operation with the investigation entitles you, in my view to a discount of 40% from the penalty which would otherwise be imposed.

There is little doubt that you have had a difficult upbringing. Your parents separated when you were young. Thereafter, you saw your father on alternate weekends. He exposed you to child pornography from a young age, probably about six. At the time, you did not really appreciate the gravity of the material but you developed a curiosity about the subject matter, a trait consistent with your autism. It seems you were exposed on numerous occasions to such material by your father and became de-sensitised to the material. In addition to that, when you were approximately four, you were sexually abused by a family member. This matter has not been reported to authorities. You have some recall of the incident and have struggled to come to terms with it generally. When you were 11, you were diagnosed with autism. School was a difficult experience for you. You were frequently bullied because of your autism. This was exacerbated in high school when you disclosed your sexuality. The bullying intensified and you were the target of some most unsavoury behaviour.

You isolated yourself from your peers and largely became a recluse. Your teenage years are described as being "*sad and lonely*". The only relationships you really formed were online, ultimately leading to you becoming engaged in child pornography chat rooms.

When Estcourt J sentenced you in 2020, he did so on the basis that he was satisfied you were autistic, which explained a likely lack of empathy for the plight of the abused babies and infants. He also sentenced on the basis that you derived a high level of sexual arousal from the material and in particular the material relating to young infants and babies. At the time of sentencing he had before him a report from Dr O'Donnell dated 20 February 2020. He also heard evidence from Dr O'Donnell on the sentencing hearing. Estcourt J concluded the evidence did not support a finding that any of the first four limbs of Verdins were engaged.

The O'Donnell report referred to by Estcourt J was also before me on this sentencing hearing, although I did not have her additional evidence. There is no reason for me not to accept, however, the assessment made by Estcourt J. Counsel for Mr Binnie does not seek to specifically rely on the first four limbs of Verdins in mitigation, although the defendant's autism and the characteristics of that condition must of course be relevant to sentencing in a general sense. I also accept his condition will make him vulnerable in a prison environment and make his time there more difficult. Counsel for Mr Binnie does submit however, that I should sentence on the basis that he does not have a paedophilic disorder and is not sexually attracted to children, which is contrary to the view expressed by Dr O'Donnell, and contrary to the basis upon which Estcourt J sentenced. The submission is based upon an opinion offered Dr Darjee in a psychiatric report, dated 31 July 2022 and tendered on the sentencing hearing.

It is necessary to refer to aspects of that report. Dr Darjee opines inter alia:

- The defendant has an Autism Spectrum Disorder as evidenced by his long standing social communication deficits and restricted interests and repetitive behaviour. In his case, the special features that he manifests include not sharing interest with others; difficulty appreciating his own and others emotions; difficulty making friends and being overly focused on niche subjects to the exclusion of others.

Dr Darjee further opines:

- A highly relevant issue is his history of sexual trauma related to his experience of being directly sexually abused and being exposed to child sexual abuse material through his father. Exposure to such trauma can have a very significant effect on the emotional, interpersonal and sexual development of any child but is likely to be more problematic in children with Autism Spectrum Disorder, who will struggle even more than other children to understand and make sense of such experiences.

In Dr Darjee's view, Mr Binnie does not have a paraphilic disorder such as paedophilic disorder. Dr Darjee notes Mr Binnie reports not being sexually attracted to children, not being sexually aroused by child sexual abuse material and having no sexual interest in children at all. Although this is his self-report, Dr Darjee notes he has been consistent in his accounts of sexual interest and behaviour and there are no behavioural indicators of a sexual interest in children beyond his offences.

Dr Darjee notes that both his Autism Spectrum Disorder and his history of sexual trauma are crucial in understanding why he has become involved in such offending and why such offending has reoccurred despite his previous prison term.

In terms of risk of re-offending, Dr Darjee opines that Mr Binnie does not pose a risk of contact sexual offending but there is a risk that he will return to similar child sex abuse image offending, particularly if he does not receive appropriate support and treatment.

Dr Darjee's report does not seem to specifically address the findings in Dr O'Donnell's report, although it is clear he had access to it at the time of authoring his report. His opinion largely appears to be based on the defendant's self-report to him. I find it very difficult to accept that the defendant does not have a sexual interest in young children. His behaviour clearly demonstrates otherwise. The content of his chat room conversations and the subject matter of his internet searches clearly suggests such an interest. Moreover, it is the only sensible explanation for his repeat offending within such a short period of time of his release from gaol. I prefer the opinion provided in the report of Dr O'Donnell. I will sentence on the basis that the defendant does have such an interest. I will also sentence, however, on the basis that the defendant's exposure to child exploitation material at such a young age, the sexual abuse he experienced as a child, his autism and the difficulties that has created for him in life, particularly his social isolation and tendency to become fixated and obsessed with certain topics, in culmination, but not singularly, impaired his ability to make appropriate judgements, appreciate social nuances and have also perhaps desensitised him to the abhorrence of child abuse and the sexualisation of children. The law recognises that the defendant's moral culpability, given the upbringing he has endured, is likely to be less than for a defendant who has not experienced a childhood marred by such factors: *Bugmy v Q* (2013) 249 CLR 571. To

that end, I sentence on the basis the defendant's moral culpability is moderated, but only to a limited extent. I am nevertheless satisfied he fully appreciated his wrong-doing.

In terms of the objective seriousness of the offending, I note that the number of images the defendant possessed was small, there is no suggestion the purpose of his possession was for sale. The length of time over which the offending occurred was limited, being May to August 2021, although I note the defendant did not desist from his conduct, but rather it was interrupted by the intervention of AFP. I take into account the nature and content of the material, the age of the children involved and the gravity of the sexual activity depicted. I accept the volume of the material involved here is very much towards the lower end of the scale. The type of material and the degree of its depravity however, is most troubling. The children in some of the images were very young and therefore very small in their anatomical development. The abhorrence of penetration by adult male penises is obvious and it is cruel.

I note in respect to charges two and three, the defendant actively sought to join groups to access child abuse material and/or find a group that could provide him with access to child abuse material. It was not a passing endeavour but demonstrated some persistence. It is also aggravating that the offending occurred whilst the defendant was a reportable offender under the *Community Protection Offending Reporting Act 2005* and commenced within such a short period of time following his release from custody.

General deterrence is obviously the primary sentencing consideration for offending involving child abuse material, given the prevalence and ready availability of such material on the internet and the obvious need to protect children from sexual abuse. It must be understood that the possession of child exploitation material is far from a victimless crime. Time and time again, judges of this Court have noted the appalling suffering that is experienced by children who are exposed to the production of child abuse material. It is recognised that the harm perpetrated will often be life-long and in many ways immeasurable. To be in possession of such images contributes to a demand for them and the demand perpetuates the ongoing abuse of the children. There is a paramount public interest objective in promoting the protection of children.

Specific deterrence also has considerable work to do in this sentencing exercise, given the defendant's history. Denunciation, punishment and protection of the community are further important sentencing considerations, and in my view, despite the defendant's still relatively young age, outweigh the objective of rehabilitation.

The only appropriate sentence is a lengthy term of imprisonment. That would be so regardless of the mandatory sentencing provisions. The behaviour of the defendant must be strongly denounced. In determining the appropriate sentence in respect to the Commonwealth matters, given the mandatory sentencing provisions, it is not necessary to be minded to alternatives to imprisonment. I would not be, in any event. I take into account the matters set out in s 16A (2) of the *Crimes Act* that are relevant and known to me.

Formulating the sentences involving a multiplicity of Commonwealth and State charges is an often unnecessarily complex task, exacerbated in this instance by the requirement to impose minimum mandatory sentences in respect to each of the Commonwealth charges. I acknowledge the purpose of such mandates, described by the Attorney-General, in the explanatory memorandum to the bill introducing the legislative provisions as: "*to increase the general and specific deterrence for committing child sex offences and ensuring the penalties for these offences more appropriately reflect the gravity of child sexual abuse, so strengthening*

*Australia's commitment to uphold the right of children to protection from all forms of sexual exploitation, ...*" The statutory minimums are to be acknowledged as a legislative direction as to the gravity of the offence. It seems to me, however, it is arguable at least, that the wording in s 16AAA of the Crimes Act (Cth) displaces the option of a court imposing a single aggregate sentence. I do not intend to resolve that issue in this sentencing exercise. I did not receive nor invite submissions on the issue. Rather, I will resolve the quandary by sentencing on each charge individually and make appropriate adjustments to the degree of concurrency. In so doing, I acknowledge there is a degree of artificiality, but the ultimate outcome must be a fair, just and proportionate sentence for the whole of the offending. Section 19 ss (5) of the Crimes Act carries a legislatively imposed presumption in favour of cumulative sentences and reasons must be given when sentences are not fully accumulated. In my view, total accumulation is not warranted here for the following reasons: there is some duplicity in the criminal conduct between charges including as to the defendant's intent, there is a temporal connection between some of the charges, many of the sentencing aims overlap between the charges, and most importantly, if the sentence were wholly accumulated the sentence imposed would be grossly disproportionate to the objective seriousness of the defendant's offending. Moreover, to impose such a sentence would essentially extinguish any prospect of rehabilitation, which although as I have noted is not a significantly weighty consideration, it nevertheless remains relevant and indeed s 16A (2AAA) of the Crimes Act, mandates I take it into account. Concurrency will be addressed by fixing the commencement dates of the respective sentences.

I make the following orders:

On the State matter, complaint 90228/22, the defendant is sentenced to one month imprisonment commencing 11 August 2021, to reflect time already spent in custody on this matter.

In respect to the Commonwealth matters, the defendant is sentenced as follows:

Count one - two years six months' imprisonment commencing on 11 September 2021  
Count two - three years imprisonment commencing on 11 September 2021  
Count three – three years imprisonment commencing on 11 September 2021  
Count four – three years imprisonment commencing on 11 March 2023  
Count five – three years imprisonment commencing on 11 September 2023  
Count six - two years and six months imprisonment commencing on 11 September 2021.

The total effective Commonwealth sentence is five years. That is in addition to the one month sentence imposed on the State matter. Because the Commonwealth sentence exceeds three years, I am required to fix a non-parole period. I order that you not be eligible for release on parole until you have served two years and six months of the Commonwealth sentences I have imposed. That reflects, in my view, an appropriate balance between severity of punishment and allowance for re-integration into the community with appropriate specialised supports attaching to any parole order.

I make an order pursuant to the *Community Protection (Offender Reporting) Act* that your name be placed on the register and you comply with the reporting obligations under the Act for a period of ten years following your release from prison.