

EOJ has pleaded guilty to the following charges on indictment contrary to the *Criminal Code*: one count of possession of child exploitation material (s 130C), two counts of accessing child exploitation material (s 130D), three counts of distribution of child exploitation material (s 130B), rape (s 185(1)), indecent assault (s 127), and two counts of production of child exploitation material (s 130A). He has also pleaded guilty to a summary charge of possess bestiality product contrary to s 74(b) of the *Classification (Publications, Films and Video Games) Act 1995*.

On 26 January 2022 Tasmania Police executed a search warrant at the defendant's home. His Apple iPhone and Apple MacBook were located and his crimes were discovered.

He had possession of child exploitation material which he had saved to a hidden folder on his Apple iPhone. There were 193 unique images of child exploitation material, 62 of which involved children under the age of 13 years, and 81 unique videos of child exploitation material, 34 of which involved persons under the age of 13 years. These photographs had been accumulated by the defendant during conversations with people on a number of applications from 31 August 2021.

He also had 16 images and 14 videos depicting adult bestiality, giving rise to the summary charge.

He accessed images of child exploitation material between 31 August and 10 October 2021, which is the conduct relating to count 2 on the indictment. He spoke on the social media platform Telegram with a person under the name of "Chris" and during these conversations accessed the images. I have the messages exchanged with Chris during which the images were sent. During these messages the defendant volunteered that he would like to meet again, and that he was "keen on some young fun". He volunteered that his son was to be born tomorrow and that he had been "perving" when he took his daughter to swimming lessons. He sent an image of himself with a naked erect penis, and the other person sent a video of child exploitation material.

During a conversation on 11 and 12 September 2021, the defendant sent "Chris" a message asking for "some young pics" or "stories". "Chris" sent 29 images and videos of child exploitation material to the defendant. These included a video of a female child engaged in vaginal intercourse with an adult male, naked children, a video of anal penetration of a girl and two videos each of a boy penetrating their own anus, in one case with a vibrator, and in another with a finger and objects. The defendant responded with a message expressing approval and sexual interest in the content.

During conversations on 21, 28 and 29 September, Chris sent the defendant 26 images and videos including of naked boys, an image of a pubescent boy anally penetrating another, three videos each of an adult male anally penetrating a teenage boy, a video of an adult male ejaculating into the mouth of a distressed infant, an 8 minute video compilation of short videos depicting sex against a number of pre-pubescent boys including anal and oral penetration by adults, a video showing anal penetration and masturbation of a pre-pubescent child, a 10 minute video depicting oral and anal penetration of a teenage boy by an adult male, and a 21 minute video compilation of videos and images of child exploitation material. The defendant responded saying that he saw material he liked. During a further exchange Chris sent an

animated image and another image of a naked boy and a video of an adult male anally penetrating a boy.

During the conversations on 21, 28 and 29 September the defendant volunteered that he was bathing his daughter, that he was looking forward to his son being older, and enquired about whether Chris had abused children he had access to and whether he had any images.

On 9 and 10 October 2021, Chris and the defendant had a further text conversation, Chris sent five video and image files including videos of pubescent boys masturbating, anal penetration between two teenage boys and the anal penetration of a boy. The defendant responded in terms expressing his approval of, and appreciation for, the material.

The defendant also spoke on social media platforms Instagram, Telegram and Wickr with a person under an account name "Jackson David" or "JackAus7". During conversations across these platforms on 21 September 2021 and 13 January 2022, the defendant distributed and accessed images of child exploitation material. This conduct concerns counts 3 and 4. Before considering those counts in any detail I will consider the defendant's conduct concerning his infant son, counts 5–10.

The defendant committed the crimes of rape and indecent assault involving his infant son, which he recorded, giving rise to crimes of production and distribution of child exploitation material. The defendant's son was born in September 2021 and was four months old in January 2022.

On 2 January 2022 the defendant took a video of his son. The video shows his son in the main bedroom at the family home lying on his back. The defendant approached his son with his exposed flaccid penis in his hand. He put his penis close to his son's mouth and caused it to penetrate the infant's mouth. The video depicts the child suckling on the defendant's penis held in place by the defendant's hand for a period of three seconds when the video concluded. The defendant's conduct amounted to the crime of rape and he produced child exploitation material in the form of the video. After taking the video, the defendant distributed the video to an unknown contact on the application Wickr.

A week later on 9 January, the defendant took four images of himself and his son which amounts to child exploitation material. These images showed acts of indecent assault, depicting the defendant's erect penis making contact with parts of the baby's body, including his scrotum. The defendant and his son were on the baby's play mat on the lounge-room floor and the images were taken when no one else was home.

The images depict the following:

- The defendant lying next to his son, with the defendant's erect penis touching his son to the leg near his knee. His son was naked from the waist down.
- The defendant lying next to the baby, with his exposed erect penis touching the baby's feet. Again the baby was naked from the waist down.
- Two images of the defendant lying with his exposed erect penis resting on his own stomach, with his baby son sitting on top of it. The baby is again shown naked from the waist down and the defendant's penis is making contact with the baby's scrotum and that general area.

The defendant distributed one of these child exploitation images to a person "Jackson David" via Telegram on 13 January. The conversation on Telegram reveals the defendant offering Jackson David an image of him and his son. There was conversation about what else he had done with his son and the defendant volunteered "some light touching" and that "he was still a bit young".

The defendant volunteered to police that he had also distributed the images to an unnamed contact on Wickr, who had expressed interest in child exploitation material in exchange for an in-person meeting with the defendant and children to whom they had access. There is no evidence or suggestion that such a meeting in fact occurred.

The images were sent to two people and the video to one person. Of course, once the images and video left the defendant's control, they were likely to be further distributed on the internet and this distribution may never be reversed.

I return now to other communications between the defendant and the person Jackson David leading to the defendant accessing and distributing other child exploitation material on two dates, 21 September 2021 and 13 January 2022.

On 21 September 2021 the defendant sent to Jackson David image files using the platform Wickr. The conversations on Telegram reveal a mutual interest in child exploitation material and a paedophilic interest in having sex with children. The conversations also reveal that Jackson David sent the defendant links to a Twitter account containing child exploitation material on three occasions and that the defendant accessed that material. He thereby committed crimes of accessing and distributing child exploitation material.

In addition to the image of his son that he distributed to 'Jackson David' on 13 January, he accessed and distributed other child exploitation material on that same date. There were discussions which included the topic of various applications to speak on, referred to the fact that iMessage is encrypted and that the defendant had attempted to send photographs on Wickr. After the defendant sent the image I have mentioned of his son, there was conversation about tween boys and teen boys seen at the pool and demonstrating a shared sexual interest. During this conversation the defendant sent an image of a naked pubescent boy. He asked 'Jackson David' whether he had any 'new content', and Jackson David expressed regret that he had not been able to obtain any, although he had been trying.

The police executed a search warrant at the defendant's home. Police attended his work site. The defendant co-operated with Police and provided his mobile phone and passcode.

He participated in a police interview. He admitted he had taken the photographs of his son. He said he didn't know what to say about it; it should not have been done. He described it as a "lapse of judgment". He said the photographs were taken at the request of a person who asked him prove that he was "legit" and that he was really a Dad. The photographs were taken to the specifications of what had been requested. He knew the person from Grindr and Wickr and that person used to send him child exploitation images and videos. There had been a discussion with this person about meeting up in real life with children, with the intention of committing a sexual act on a minor. The photographs were taken in exchange for being invited to a meeting of this nature. There is no suggestion that the meeting in fact happened. In fact, the Crown conceded that it did not happen.

He stated that after he sent the images he felt pangs of guilt, realising he had done the wrong thing. He told Police that the images were still on his phone. He kept them so if other people requested these types of images in the future he could send them again and he would not need to take images of this nature again. I accept that he kept the images for this reason and he was intending not to take any more. However, it is concerning that he was prepared to send the same images again in the future.

In terms of other child exploitation material, he admitted to police receiving the material. He kept the material on his phone in a hidden folder of photographs. He does not know why he

kept the images, and feels disgusted about them. He denied deriving any enjoyment or thrill from the content of the material but said he is intrigued about the conversations and he is interested in hearing stories of people who have had sexual experiences with children. He did not know why he participated in conversations with these people except there was "a thrill of the nature of it being wrong".

After the video and images of his son were located on his phone, the defendant participated in a second interview in February 2022. At first, he denied that the content was of him and his son but he later admitted it was. He said he sent the video once and deleted it afterwards. He lied in that he said he took the video in response to threats. He was asked about his conversations, he said that he takes on a different persona and nothing said is truthful.

There are circumstances that make this a particularly grave case. The victim was a helpless and vulnerable infant. As the baby's father the defendant was entrusted with his care. His actions were a profound breach of that trust. His partner, the mother of the child, knew nothing about what he had been doing and his betrayal is beyond her imagining and beyond her comprehension.

The infant was unaware of the nature of the act, and unlikely to have a memory of it, but serious harm and a lasting impact are inevitable.

I have a victim impact statement from the victim's mother. It vividly conveys her deep shock and disbelief. She cannot fathom how something so horrific could have been done by her partner, the baby's father, in their family home, impacting the victim and their young daughter, now and for the rest of their lives. She has forced herself to attend Court, to represent the children. Despite how traumatised she is, she is determined to create a life that minimises the impact of these crimes on the children. As a single parent she carries a substantial burden of worry for now and the future. She fears for the children as they grow older and they learn about their father and what he did. It is apparent that there is a very high probability that the children will acquire this knowledge at some stage. She is now under financial pressure and has difficulty trusting anybody outside the immediate family. The harm to her and the children is profound and lasting.

The defendant is 34 years of age. He has no prior convictions of any relevance. He is the eldest of two brothers. His parents separated when he was young and have re-partnered. He is a hard working man and after 12 years in the airline services industry he embarked on an electrical apprenticeship and was in his final year this year. His employment was terminated when he was charged in February this year.

He has pleaded guilty at an early stage to facilitate the resolution of this matter knowing that this was best for his former partner and children. It is accepted by the Crown that his pleas of guilty are indicative of remorse. His pleas of guilty have also had a utilitarian benefit in avoiding the necessity of a trial.

It is noted that his admissions to police in relation to the distribution of material relate to matters that the Police did not have knowledge about and are relied by the prosecution to support that charge.

I accept that the defendant fully appreciates the seriousness of what he has done, and wishes to do what he can to make amends. After he was charged he attended his general practitioner and sought a mental health care plan to obtain specialist counselling and therapy. Unfortunately, that did not eventuate in the period before he was remanded in custody due to delays in arranging that professional assistance. However, he has demonstrated his willingness to

participate in treatment and rehabilitation programs. He has had no contact with his former partner and children since his conduct came to light. It can be seen that his crimes have had a destructive effect upon his own life, the life he had as a father and family man, and his career path.

The defendant has the unconditional support of his mother and younger brother. They have each provided a letter to the Court which attest to the defendant's deep remorse. His mother writes that she witnessed him grieving to the point of physical illness and becoming a recluse because of his actions and decisions that made him lose his young family and cause them heart-break. While he was on the waiting list to see a psychologist she became extremely worried, describing him as tormented mentally by what he had done. She tried to help by sourcing a private psychologist but there were long waiting lists for appointments. It is noted that the defendant's mother and brother will assist him on his release in terms of his transition back into the community and medical intervention or supporting programs to help him reform.

These matters are significant. The defendant's remorse and his evident anguish about his conduct and the implications for his partner and family strongly indicate that he is someone who will be motivated to address the underlying causes of his offending and strive to reform.

The Court's dominant consideration in relation to all of the charges is the protection of children. In terms of possession of child exploitation material, two counts of accessing, and distributing child exploitation material in counts 1–4, the courts seek to deter people from accessing and distributing this material, material which depicts child abuse and abases the child every time it is viewed or distributed. By imposing deterrent sentences the courts seek to deter others from creating this material and to protect children from sexual abuse. This can only be done by delivering heavy sentences.

There are serious aspects to the defendant's conduct in accessing and distributing this material. He had on-line conversations which shows him and the other party to the conversation endorsing, normalising and encouraging the shared interest in child abuse material. It also shows the defendant's determined and active efforts to seek out material that portrayed the sexual abuse of children. It shows him and the other party referring to real children and potential opportunities for abuse, conversations which no doubt were for the purpose of sexual gratification. I add, it is not suggested that these conversations were grounded in actual intent, but serious harm is still done by them because it promotes and encourages paedophilic interest and child exploitation material.

In terms of the criminal conduct involving the defendant's own infant son, I have already spoken about the gravity of his conduct and his betrayal of trust. His criminal culpability must be seen as substantial. He must have known that the three people he distributed the material to held a predatory interest in the sexual abuse of his child. He had had previous conversations with them referring to both of his children in a sexual context and when he must have known this would promote their predatory interest. At least to some extent he had promoted their interest in his children leading to the request for him to provide them with this material. His culpability in relation to the second incident is increased by the fact that it represented a second occasion of abuse of his son.

This case reveals the insidious reach of the on-line presence of people who have a paedophilic interest, involving the normalisation and creation of this material. It shows the corrupting influence upon ordinary people who choose to engage with them, who may not under ordinary circumstances ever contemplate abusing a child. It shows that people who are parents or who have access to children are of particular interest and may be targeted. To this paedophilic on-line community, children are a sexual commodity and those who have access to them are of

real interest. The Court has an important responsibility to protect children. Anyone entrusted with the care of a child who allow themselves to be corrupted, choosing to sexually abuse a child and distribute the product of that abuse cannot expect anything other than heavy punishment.

The defendant's anguish and deep remorse, his co-operation, his lack of prior convictions and prospects of reform are taken into account in moderating the length of the sentence and in the provision that is made for parole.

The overwhelming objectives are general deterrence and denunciation. Denunciation is an important objective, the community is rightly appalled by the sexual abuse of an infant by a parent and the production of child exploitation material. The sentence must reflect that abhorrence and outrage, but do so in a way that is appropriately restrained, consistent with the response of a reasonable and just society.

The sentences I will impose will amount to 7 years' imprisonment, backdated to the date you were remanded in custody, 17 October 2022. You will not be eligible to apply for parole until you have served the minimum of half of the sentences which will be a period of 3 and a half years' imprisonment.

I impose three global sentences, each concerning related offending. Each of the global periods that I impose I consider to be just and appropriate for the related offending and have been reduced to reflect the principle of totality to ensure that cumulatively the overall sentence is not disproportionate to the defendant's total criminality and to reflect that to some degree all of the offending is related.

I record convictions and impose the following terms of imprisonment on the indictment. For counts 1–4, the crimes of possession of child exploitation material, two counts of accessing and one count of distributing child exploitation material, I regard a sentence of 18 months' imprisonment as appropriate. I record convictions and impose that global sentence on counts 1–4. It is effective from 17 October 2022. I make an order that the defendant is not to be eligible for parole until he has served a minimum of 9 months' imprisonment.

The crimes of rape, production and distribution of child exploitation material, counts 5, 6 and 7, are closely related and warrant a cumulative sentence of imprisonment of 3 and a half years. I impose that sentence. The defendant is not to be eligible for parole until he has served a minimum of half of that period of imprisonment.

For the crimes of indecent assault, production and distribution of child exploitation material, I impose a global sentence of 2 years' imprisonment as a cumulative sentence. The defendant is not to be eligible for parole until he has served a minimum of 1 year imprisonment.

For the summary offence, I impose a term of 3 months' imprisonment concurrent with the sentence imposed on counts 1-4.

The sentences for the criminal conduct concerning the defendant's infant son, counts 5-10, amount to a total of five and a half years' imprisonment, reflecting the defendant's conduct across the two separate incidents. A lesser period would not be adequate to reflect the harm to the victim, his family and the community. If not for his early pleas of guilty, his cooperation and remorse, global sentences amounting to seven and a half years' imprisonment for these crimes involving his infant son would be warranted. The crime of rape and related counts involving production and distribution justify 5 years' imprisonment on their own. It can be seen that a discount has been applied which gives the defendant the benefit of his pleas of guilty and

mitigating considerations personal to him. Similarly, the global sentence with respect to counts 1-4 reflects a discount for these mitigating considerations.

I am required to specify the sentence that would have been imposed for each offence had separate sentences been imposed.

For counts 1-4: count 1, 6 months' imprisonment from 17 October 2022; count 2, 12 months' imprisonment, 6 months concurrent with the sentence imposed on count 1; count 3, 9 months' imprisonment, 5 months concurrent with the sentence imposed on count 2; count 4, 9 months' imprisonment, 5 months concurrent with the sentence imposed on count 3.

In terms of counts 5-7: count 5, 3 years' imprisonment, 6 months concurrent with the sentence imposed on counts 3 and 4; count 6, 1 year imprisonment, 6 months concurrent with the sentence imposed on count 5; count 7, 12 months' imprisonment, 6 months concurrent with the sentence imposed on count 6.

Counts 8-10: count 8, 18 months' imprisonment, 6 months concurrent with the sentence imposed on count 7; count 9, 12 months' imprisonment, 6 months concurrent with the sentence imposed on count 8; count 10, 12 months' imprisonment, 6 months concurrent with the sentence imposed on count 8.

I make an order under the *Community Protection Offender Reporting Act* 2005, directing that the Registrar cause the defendant's name to be placed on the register and that he comply with the reporting obligations under that Act for a period of 15 years from the date of his release.

I make a forfeiture order under s 130F the *Criminal Code* in relation to the Apple iPhone seized by Police.