

The defendant, now aged 61, has pleaded guilty to one count of persistent sexual abuse of a child between 12 September 1995 and 11 September 2000.

For a period of nearly thirty years from the early 1990s the defendant was in a long term relationship with the complainant's mother. During the relationship with his mother the defendant took on a role as the complainant's step-father. There would be occasions when the complainant and the defendant were left alone together, during trips in the car or at their home. On these occasions, and when the opportunity arose, it is alleged that the defendant would inappropriately touch the complainant's penis, most commonly while they were travelling alone in a vehicle but also when the complainant was alone in his bedroom or in his mother's bedroom. The touching is said eventually to have progressed to the defendant performing oral sexual intercourse upon the complainant. The defendant disputed this.

The defendant first began to sexually assault the complainant when the complainant was approximately 13 years of age and in Grade 6 or 7. There is no doubt that this conduct continued for a period of approximately four years. The complainant was approximately 17 years old when the final occasion occurred. The defendant was in his thirties during the period of the abusive relationship.

The first occasion of sexual assault is said to have occurred was when the complainant was in the defendant's car. The defendant reached his hand over to where the complainant was seated in the passenger seat, placed his hand inside the complainant's clothing and touched his penis. He describes the defendant "*pulling it*". He was unable to recall the exact details of the car or where they were going but believed it was for the purpose of going bush to cut some wood. The defendant did not accept that there was skin on skin contact and says that he only ever touched the complainant's penis outside of his clothing.

It is said that this conduct then occurred regularly. The complainant recalls that his mother had no idea what was happening and would often send him down to the bush with the defendant to cut firewood. He would make excuses that he had other things to do, to no avail. Whenever he got in the car with the defendant he knew something would happen. There were occasions when he would try and cross his legs or put something over his genitals in order to make it harder for the defendant to touch his penis. Invariably those efforts would be futile.

The defendant claims no recollection of collecting wood with the complainant and touching his penis and told police when interviewed that his actual recall is of touching the complainant's penis outside his clothing on four or five occasions with the possibility that there were a further five occasions that he does not remember.

The complainant played cricket. On another occasion when he was travelling from cricket training in the vehicle, the defendant again touched and played with the complainant's penis. The defendant denied this or at least had no memory of it.

When the complainant was in grade 10 he began working at Hungry Jack's in North Hobart. The defendant would often pick him up and take him home after shifts. On one such occasion the defendant stroked the complainant's penis when he was travelling in the vehicle. This was not the only time the sexual assaults would occur en route from his workplace. On some

occasions when working at Hungry Jack's the complainant would finish in the early hours of the morning and would ask his mother to pick him up. However, on occasions when she was unable to do so, the defendant would pick him up instead. On these occasions the defendant would take the opportunity to touch and rub the complainant's penis.

The complainant recalls the first time the defendant engaged in oral sexual intercourse with him. It occurred in his mother's bedroom at between 8:00 or 9:00pm. The defendant and others were drinking in the back yard and he was the only person in his mother's room. He was watching television. The defendant came in to the room and closed the door. He began touching and stroking the complainant's penis. He then pulled the complainant's pants down and placed the complainant's penis in his mouth. The complainant recalls having an erection but did not ejaculate. The complainant did not know what to do or say and remained mute. The defendant denies that.

All the acts of oral sexual intercourse occurred at the house where the complainant lived with his mother and the defendant. This type of conduct is said to have occurred approximately 10 to 15 times. The defendant denies placing the complainant's penis in his mouth on any occasion. He claimed when interviewed by police that if he had a person's penis in his mouth he thinks he would remember that.

However, the defendant told police that he recalled getting up one night to go to the toilet when he found the complainant in the lounge room, watching television. He went to get a drink from the fridge and recalled approaching the complainant and touching him until he became erect. He recalled pulling the complainant's trousers down so that his penis was exposed. He was about to suck the complainant's penis but the complainant told him not to, so he did not. He believed that at about this time the complainant was approximately 17 years of age. The defendant claimed that, as far as he could recall, he did not touch the complainant sexually again after this occasion.

The complainant believes the touching of his penis, occurred many more times, up to 100 times during the four-year period. The defendant warned the complainant not to tell his mother but did not otherwise threaten him. This is not disputed. The complainant did not tell anyone for years, even though the abusive relationship ceased when he was approximately 17 years old.

In September 2004, when the complainant was in his early twenties he disclosed the abuse to the family. The complainant recalls that the family were drinking at the house, things were becoming heated and they were arguing. He retreated to his bedroom and was lying on the bunk stewing about things, he became extremely upset and told everyone, including his mother and brother that the defendant was a paedophile. He told his mother that he had been touched by the defendant when he was in her car, her bedroom and his bedroom. As a consequence, his brother assaulted the defendant. The defendant was forcibly removed from the house and stayed at another address for approximately two months. However, he consistently denied that he had acted inappropriately towards the complainant and eventually returned to live with the complainant's mother in the family home. Authorities were not notified. Those details were, of course, lies, even on the defendant's own account.

The sexual abuse stayed with the complainant for the next 20 years. It affected aspects of his life, including his relationship with his children.

In 2020 the complainant confronted the defendant and recorded the exchange. During that recording, the complainant raised the sexual abuse, including oral sexual intercourse. The

complainant asserted that he remembered the defendant sexually abusing him when he was young and that it involved *"playing with his dick"*. The complainant told the defendant that he remembered absolutely everything, even the defendant sucking his penis. He told the defendant he stayed quiet and did not say anything and was embarrassed to tell anyone and that he never wanted to be alone with him. The defendant protested that he did not remember any oral sex but did not deny any of the allegations and told the complainant he could not understand why he had never said anything, like, *"What the fuck are you doing"* or *"Fuck off"*. The defendant told the complainant there were a few times he thought about doing the cowardly thing and hanging himself. They discussed the complainant's desire for the defendant to admit what had happened while he was sober, to be a man about it and just to accept what he had done. The defendant claimed he did not remember a lot and that he was sorry. Some weeks after making the recording the complainant reported the defendant to police and took part in an interview in December 2020.

In early 2021 the complainant's mother again spoke with the defendant about the allegations. The defendant admitted that he had something to confess. He told her that he had previously "touched" the complainant but denied any penetrative activity. He claimed that it had not continued for as long as the complainant had suggested (something he now of course accepts, making that another lie). The complainant's mother told the defendant their relationship was over.

The defendant was interviewed by police on 8 April 2021 at the Glenorchy Police Station. He agreed he had acted in an inappropriate way with the complainant by touching him on the penis on four or five occasions on the outside of his clothing. He claimed it started when they were mucking around, playing a wrestling game on a bed. He confirmed that on this first occasion he recalled they were in the complainant's mother's bedroom. The conduct began by touching the complainant on the outside of his trousers. It was a deliberate act on his part. He believed this was the first time he touched the complainant on the penis. He recalled the complainant was 13 or 14 years of age at the time.

He admitted there were a couple of times when the complainant was working at Hungry Jack's after he picked him up in the early hours of the morning when the same thing happened. In respect to any touching that occurred in the vehicle en route to or from Hungry Jack's, the defendant claimed the touching was always on the outside of the complainant's trousers, not on the inside. He claimed the complainant may have become erect but that he did not.

The defendant admitted that on an occasion when he was travelling in a vehicle, and the complainant was sitting in the front passenger seat, he touched the complainant through his clothing but claimed he did not get aroused by it or masturbate afterwards. He said he could not understand why he behaved in that way. The defendant recalled two occasions when this type of conduct occurred in the car. He accepted it was possible that he had placed his hand inside the complainant's clothing, onto his penis, that he was not denying having done so but that he could not remember it. The defendant now says that this was not an admission that he had done so. He admitted the complainant was probably 14 or 15 years of age at the time.

He told police there were no other locations where the touching occurred but said it was possible that it may have happened on an occasion when they were collecting wood at Baskerville but he did not have any specific recollection of that.

The defendant was asked about an occasion when he picked up the complainant from cricket training. He told police that he recalled picking him up once but whether anything happened, he was not sure.

The defendant accepted that the complainant's brother assaulted him as a result of the allegations. He told police that he felt that it was his fault, he was disgusted and felt terrible about the whole thing.

He provided some explanation for his behaviour on the basis of his abuse of alcohol. He further informed them that it may stem from his past experiences. He told police he had a couple of incidences of sexual assault himself and thought about it, saying *"if something happened to you like that, why would you do it to someone else?"* In essence, the defendant admitted the sexual contact had occurred approximately five times, *"as far as he could remember"*.

I heard evidence as to the disputed facts in the form of a video recording of the complainant's statement to police, an audio recording of the complainant's conversation with the defendant, a video recording of the defendant's interview with police and oral evidence from both the complainant and the defendant. I accept the evidence of the complainant as to the disputed facts and reject that of the defendant. I am satisfied beyond reasonable doubt that each of the four occasions set out in the Crown statement of facts occurred and that they occurred against a background of many other indecent assaults over a four year period, and as many as 10 or so other acts of oral intercourse.

The complainant's statement to police had the ring of verisimilitude and was wholly convincing in its presentation. He was embarrassed to begin with, but he was calm and articulate and did not appear to embellish or exaggerate. I got no sense that he was untruthful about the number and nature of the unlawful sexual acts. Despite being articulate he used childish language to describe them (e.g. *"he put his lips around my doodle"*). I gained the impression that this was a genuine retrieval of his memory and not a reconstruction, which might be flawed. I accept that his estimate of 100 occasions of indecent assault may have been an overestimation but it came across as a euphemism for many times over four years. I observe, however, that 100 times over a four year period is not a wholly unrealistic possibility – it amounts to about once a fortnight. And I further observe that it is in my view it is counterintuitive that a person sexually preying on a child would only act out once a year but nonetheless do so over a period of four years.

I also note that in relation to both the number of indecent assaults and unlawful penetrative acts, it is unlikely in my view that the complainant, not having been believed when he made disclosures of a general nature to his family, would have gone to police with wildly exaggerated claims.

I also noted that the complainant's memory appeared to be very good for details, whereas it was obvious at every stage that the defendant's memory was limited. That may be explained by his alcohol consumption at the time or because he was not wholly truthful, but it makes his version of events as far less acceptable than the complainant's. I note for example that, as one might expect, the complainant appeared to vividly recall the first occasion of oral sexual intercourse. The defendant's claim that he had no memory of it is implausible, even allowing for his use of alcohol.

The defendant's record of interview, which was echoed in his oral evidence, while on the surface plausible and certainly made amidst a genuine display of remorse, was in my view only

a partial account. In particular, I was unimpressed by the defendant's evidence as to the attempted act of oral sexual intercourse when the complainant was 17 after which he says that he did not again touch the complainant.

The defendant knew from the conversation with the complainant which the complainant recorded, that it was alleged that he had performed oral sex on him and his account to police was, in my assessment, a fiction invented to provide an exculpatory explanation of the complainant's allegations. The complainant, whose memory was very good for details, had no recollection of such an occasion as that which, if it was the first and only occasion, would not be likely to be forgotten. The account also conveys to me that oral sex was in the defendant's contemplation and not something he would describe as "fucking shit" as he did in the recorded conversation with the complainant.

Finally, I do not accept the defendant's claim that he was not sexually aroused by his touching of the complainant.

The defendant has no relevant prior convictions. A victim impact statement was read to the Court. It is clear that the defendant's crime has ruined the quality of the complainant's life, in terms of his growing up and personal development and in terms of his emotional, psychological and sexual life.

As already noted, the defendant is now 61 years old. He was educated to year 10 and was an average student, however his parents separated when he was aged 10 and he was sexually assaulted on two occasions as a child. His mother suffered from bipolar disorder and schizophrenia. As an adult he has had a good industrial record and only lost his employment when this charge against him became known. The charge has also destroyed his own family relationships.

The defendant struggles to understand why he committed these unlawful sexual acts, or to remember them. Having said that, he did admit to what he remembered to the complainant and apologise to him. He also approached the complainant's mother to admit to her what he had done and he explained what he had done to his own son before he was charged. He has been medicated for anxiety and depression over the last two years, however during a stay at Bethlehem House the defendant underwent counselling and I have seen a reference from his counsellor in which it is stated that the defendant has accepted responsibility for his offending and is remorseful. I take into account all that has been said on behalf of the defendant and while I accept that he pleaded guilty to the charge against him, his disputing of the particulars necessitated the complainant giving evidence and being cross-examined.

This is a crime to which s 6 of the *Community Protection (Offender Reporting) Act 2005* applies. I am required to make an order under the *Community Protection (Offender Reporting) Act* unless I am satisfied that the defendant does not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not so satisfied and accordingly must make an order. I order that the defendant's name be placed on the Register pursuant to that Act and that he comply with the reporting obligations under the Act for a period of 10 years, which will commence on the date of his release from prison.

For the crime of persistent sexual abuse of a child, it is not necessary that the prosecution proves the dates on which any of the unlawful sexual acts were committed, or the exact circumstances in which they were committed. Children who are victims of such offences are frequently unable to give particulars of each and every sexual act during a period of prolonged offending.

The State has listed the specific sexual acts it is able to identify, but the defendant may be sentenced on the basis that each specific act is part of a course of conduct involving other, indeed, many other, unspecified acts.

As one of my fellow judges has said, this crime, by its nature, applies to a wide range of sexual offences and consequently there is no discernible sentencing range. However, the defendant should suffer the same penalty as would have been imposed if the individual sexual acts constituting the crime had been charged as separate crimes, such that the sentence is a just and appropriate measure of the defendant's total criminality. The total aggregate sentence is to be moderated by proportionality and totality.

Child sexual offences have enormous potential to cause physical and psychological harm. Conduct of this nature has profound and deleterious physical and psychological effects on victims for many years, if not for the whole of their lives. The consequences of an offence, including its effect on a victim, are important considerations in the sentencing process, and the severity of the sentence may be increased because of them. This is a serious example of this offence, given the egregious breach of trust involved and the number of sexual assaults and the length of the period over which they occurred. I do not lose sight of the statutory aggravating considerations to be taken into account pursuant to s 11A of the *Sentencing Act* 1997. General deterrence, punishment, vindication of the victim and community protection are the primary sentencing factors.

The defendant is convicted and sentenced to a term of eight years imprisonment, backdated to 5 July 2023. He is not to be eligible for parole until he has served five years of that sentence.