

STATE OF TASMANIA v PAC
COMMENTS ON PASSING SENTENCE

8 DECEMBER 2023
WOOD J

PAC has been found guilty of one count of persistent sexual abuse of a child. Between on or about 1 January 1980 and on or about 31 December 1988, the defendant maintained a sexual relationship with his daughter, who shall be referred to by the initials TC.

TC was born in March 1977 and was between approximately 3 and 11 years of age during the period of offending. The defendant was aged between approximately 43 and 52 years.

To reach their verdict of guilty, the jury needed to be satisfied beyond reasonable doubt that the defendant committed an unlawful sexual act on at least three occasions. The complainant gave evidence of six specific occasions of sexual acts. Having regard to her evidence and all of the evidence on the trial, I am satisfied beyond reasonable doubt of the truthfulness and reliability of her evidence with respect to all six occasions, and that the six occasions occurred as she described them in her evidence.

Each of the six specific occasions involved the commission of the crime of indecent assault and, on one of the occasions, occasion 3, the defendant also committed the crime of penetrative sexual abuse of a child. I refer to the occasions, noting the numbering of the six occasions is not in chronological order.

The complainant's family consisted of her mother, her father – the defendant – and her two younger sisters. They lived at Woodbridge and sometimes went on family holidays to Bicheno Holiday Village.

Occasion one occurred when the family were on holiday at Bicheno Holiday Village. The complainant was 5 or 6 years of age. She was kayaking in a shallow pond and fell into the water. Her mother was looking after her and told her to go back to the cabin. Her father was there and he undressed her and put in the shower. Afterwards, he dried her off with a towel. He rolled up the edge of the towel and rubbed it on her vagina. He knelt down in front of her while she was standing and put the rolled up towel on her vagina and moved it around. The incident ended when someone, most likely the complainant's mother, returned to the cabin and the defendant moved away from the complainant.

Occasion two occurred on a family holiday in Bicheno, and may have been the same holiday referred to in occasion one. The complainant was aged approximately 5 or 6, but she may have been 7. She was allowed to stay up late and watch a movie which was a big treat as the family did not have a television at home. Her mother and younger sister had gone to bed. She recalls that she was sitting next to her father on the couch. There was a sex scene or kissing during the movie and he put his hand over her eyes so she could not see it. He pulled her onto his lap so she was facing him, with her legs around his waist, and he held her waist and moved her back and forth on his lap.

She said it hurt while he moved her back and forth. Her vagina and pubic bone were in contact with his penis, over their clothing. She was wearing pyjamas. She felt something hard and remembers thinking it was like a rock or a bicycle seat. She described him doing that for "a while" and then it ended, and he stopped and pushed her off onto the couch.

Occasion three occurred on a family holiday to the Central Highlands. The complainant was aged 3 or 4, and it is likely that this was the first of the specific occasions in time.

The arrangements were that the family was sleeping in an open room, divided by a curtain. Her mother, father, and baby sister were sleeping on one side of the curtain, and her bed was on the

other side. She was displeased about sleeping out there by herself. She cried out in the night, and the defendant went to her, which her mother described as unusual.

The complainant remembers waking up and her father being there. He told her that she was really good because she was brave for sleeping out there and he was going to teach her some "big girl things" and how to kiss. He began to kiss and lick her face and she could not breathe. Then he said to her, "We're going to do something different and it's going to be good and it's nothing to worry about". He put his penis into her mouth while she was lying in bed on her side. The complainant struggled to breathe. The defendant said: "Just try it", "It will be okay", "Just try to lick it like an ice-cream".

The complainant recalled the defendant removing his penis and saying she could get up after that and have a little packet of sugar as a treat.

The complainant gave evidence of non-specific occasions that happened in the family home when the defendant would come into her bedroom and wake her and put his hand down between her legs and touch her vagina, and put her own hand there and get her to do it, as well.

Occasion four was a specific occasion when this happened. The defendant got her to lie on her stomach and he put his hand under her nightie and underpants. He would rub around her vagina and, in her words, "Put his finger at the top and sort of move it around". He said to her, "You need to learn how to do this," and that girls need to learn that, and showed her ways of touching her genitalia. He told her she was "good", and that she could not tell anyone.

Occasion five occurred in the bathroom at the complainant's family home at Woodbridge. She recalls being in the bathroom with the defendant who had had a shower and was naked. He took her hand and put it on his penis and got her to move her hand up and down. The act of abuse ended abruptly because someone came down the hallway and "he threw her hand away". The complainant was approximately 4 years of age. She was sure she was only very young because she was at eye-level with the top of his thigh and penis.

Occasion six relates to an incident in the car when the defendant drove the complainant and her school friend to Little Athletics at Kingston or Blackmans Bay. Her friend got out of the car and went to join the other children. The complainant remembers her father was very angry about something that had happened and she was not allowed to join in and had to stay in the car. The complainant desperately wanted to be involved in Little Athletics and to race, and she was ready, wearing her gym shorts. She was sitting in the front seat of the car. The defendant reached over and put his hands into her gym shorts and told her to look out the window. He rubbed her on the vagina under her clothing. The abuse ended when the complainant's friend returned to the car. She thought she was aged 6 or 7, but she also said she was in grade four or five, which would mean she would have been aged 9–11.

As mentioned, there were other unspecified occasions when the defendant came into her bedroom at night when she was aged approximately 5–7. Her evidence was that there were definitely three times that she can remember well. I find that in addition to occasion four, there were at least two other occasions.

The defendant is to be sentenced with respect to the specific occasions and not the uncharged conduct. However, the uncharged conduct is relevant to his moral culpability generally. It cannot be said that the six occasions were the only instances of abuse.

The complainant did not tell anyone about the abuse for a number of years as she was scared to do so. The defendant told her that if she did, her mum would leave or he would be taken away and she would be on her own.

The defendant abused his daughter by taking advantage of her innocence and trust, and his authority as her father. He secured her silence by emotional manipulation. He normalised his conduct and legitimised it by "teaching" her things that she needed to learn. He was furtive and pushed her aside when there was a risk of discovery. His conduct was a fundamental abandonment of his duty as her father to care and protect her from harm. He persisted with his acts of abuse in the face of her vulnerability as a small and trusting child.

The conduct covered a significant period of time, with six specific occasions of abuse during a period of approximately 6–8 years. The defendant subjugated his daughter's needs knowing full well how his conduct would be regarded by his wife and the community if discovered.

I regard the defendant's moral culpability as very high.

Aggravating circumstances for the purpose of s 11A of the *Sentencing Act* are that the complainant was, as his daughter, under his care, supervision, and authority, and all of the abuse occurred when she was under 13 years of age.

The complainant's parents separated when she was about 16 or 17, and she asked her sister about their father but did not discuss his acts of abuse. At about the same age, she spoke to her mother and suggested in general or oblique terms that he had sexually touched her. Her mother told her "he wasn't like that". Her mother was taken aback, misunderstood when such conduct was meant to have happened, and also thought if something like that had happened to one of her daughters, she would have known. She described her initial response, "to her shame", as terrible. She explained that she did not believe her daughter was not telling the truth, but she could not believe it. That her husband could have abused their daughter was incomprehensible, and a grave breach of her trust.

This evidence reveals the ripple effect of crimes of child abuse, and the damage suffered by families and the community. It is not uncommon for a parent or an older sibling to feel guilt and blame for their sense of failing the child but when the abuse was beyond their comprehension.

After telling her mother, the complainant tried to soldier on but started to struggle and moved away from Tasmania. She began consuming alcohol and, in her words, "took some drugs", and her life became very unstable. She describes going "off the rails". She returned to Tasmania and obtained a mental health plan and consulted a psychologist in approximately 2018. She reported the offending to the police in 2019.

The complainant has read her victim impact statement to the Court, which is eloquent and compelling. The Court is grateful for the provision of victim impact statements as they provide essential insight and contribute to the Court's knowledge about the impact of these crimes on child victims. In this case, the statement is especially helpful because it is provided many decades after the abuse and speaks to the lasting detrimental harm caused by these crimes. Without summarising her statement, because it is not possible to do it justice, it reveals the pervasive harm the defendant's crime has caused. She grew up in fear, she has been diminished as a person, and she has suffered throughout her adult life, struggling with relationships, study, and employment, and the losses of not reaching her potential. There has been a profound impact on her self-esteem. She has required professional assistance and is committed to her recovery but, as she says, her whole life has been about trying to fix herself from the harm he has caused.

The defendant was interviewed by police on 22 April 2019 and denied the allegations. The defendant has shown no remorse for his conduct then, or since. He is aged 87 and has been

preoccupied with his medical conditions in the lead up to and during the trial. There is the possibility that he may be ashamed yet unable to confront the reality of what he has done.

The defendant has no prior convictions of any relevance. He is well educated and had a career as a high school teacher, where he was highly regarded. After his marriage breakdown, he converted to the Islamic faith in the 1990's and since then has lived a reclusive lifestyle.

The defendant has significant health issues that impact on his daily activities. He has severe osteoarthritis and bunions in both feet requiring surgery that affect his mobility, and he is prone to falls. He has chronic lymphocytic leukaemia causing fatigue and requiring specialist review, and type 2 diabetes, contributing to visual decline which affects his mobility. He has penile pain and a rash or lesion which involves seeing an urologist and dermatologist, chronic bronchitis, and widespread osteoarthritis.

Imprisonment is undoubtedly going to be more difficult for him than for others because of his medical conditions. While I will assume that he will receive essential care, treatment, and medication while serving his prison sentence, I accept that it will not be at the level that he would have received if he was in the community. As the years advance, it is likely that his health and mobility will deteriorate further and the experience of imprisonment will become increasingly difficult.

For the crime of persistent sexual abuse of a child, a defendant should receive a sentence that reflects the sentence that the person would have received if charged with the specific occasions that fall within the charge, and which allows for the fact that he is being sentenced for a number of incidents. The final sentence imposed in this case has been checked and moderated so that it is just and proportionate to the totality of the offending.

In fixing his sentence, I have also moderated the length of it to some extent to take account of his age and health issues, and the prospect that his final years may be spent in prison. The sentence must reflect his personal circumstance, however, sentencing goals of general deterrence, protection of children, and vindication of the victim are just as important today as they were when these crimes were committed. It is important that other would-be offenders see that the passing of decades does not mean a heavy sentence is avoided; there should not be a tangible incentive to silence child victims.

PAC, the sentence must adequately reflect the gravity of each specific occasion of abuse, your appalling breach of trust, and the profound and lasting harm that you have inflicted upon your daughter.

In determining sentence, the protection of children is a paramount concern and, consequently, general deterrence is a crucial sentencing objective. The sentence must be an effective deterrent to others who may be minded to abuse children in their care.

I record a conviction and I impose nine years' imprisonment from 3 November 2023. You are not to be eligible to apply for parole until you have served a non-parole period of four and a half years.

I make an order under the *Community Protection (Offender Reporting) Act 2005* that your name be placed on the register pursuant to that Act, and that you comply with the reporting obligations under that Act for 10 years.