

Christopher Farrell, the offender, has pleaded guilty to 10 counts of using a carriage service for child abuse material contrary to s 474.22(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 474.22A(1). Seven of the 10 counts relate to transmitting child abuse material, two involve conduct of transmitting, soliciting and causing to be transmitted to himself such material, and the remaining count relates to accessing material. In addition, the offender pleaded guilty in the lower court to a further count of using a carriage service for soliciting child abuse material, and a further count of possessing or controlling child abuse material obtained or accessed using a carriage service. I am also dealing with his pleas of guilty to State summary charges of possessing a bestiality product and two charges of breach of bail, under the *Bail Act* 1994. In relation to the Commonwealth charges, pursuant to s 16BA of the *Crimes Act* 1914, there has been filed in the Court a schedule of other Commonwealth offences believed to have been committed by the offender, and in respect of which he has admitted his guilt and expressed the wish they be taken into account in passing sentence. During the sentencing hearing I convicted the offender of all offences and am now able to take the listed offences into account when passing sentence. There are seven such offences to be taken into account which relate to counts 1, 4 and 10 on the indictment. Overall, the offending commences in March 2017 and extends through to March 2023. It involves the use of a number of messaging apps – Telegram, Snapchat, Kik, WhatsApp, and Wickr – some of which permit encrypted communication, and Grindr– a dating app. The facts are as follows.

Count 1 is a count of accessing child abuse material. It is a rolled-up offence, comprising three separate instances of offending between June 2020 and November 2021. In that period, the offender accessed child abuse material on three separate devices; an iPad, an iPhone and an iPad Mini. In total, he accessed 1,112 child abuse files, comprising 488 images and 624 videos. Item 1 on the 16BA schedule, which is an offence of accessing material, is to also be taken into account in sentencing on this count, and that involves the offender accessing 51 child abuse pornography files in March 2017, contrary to s 474.19(1) of the Code. Item 2 on the schedule also relates to this count, and concerns accessing child abuse material between January 2020 and June 2020 by way of the iPad.

Count 2 is a charge involving transmitting and causing to have child abuse material transmitted to himself, between December 2020 and October 2021. The offender engaged in online conversations of mutual encouragement with three internet users on WhatsApp. On three occasions, he transmitted five child abuse material files, including photos, videos, and written materials, and on one occasion, he asked for child abuse material and received two files. During this, when asked for more material he told one user that WhatsApp was very insecure and he would use Telegram, as it is much safer. That allows encrypted exchanges.

Count 3 is a transmit child abuse material charge which again concerns online conversations with an internet user, this time using Telegram. On six occasions between December 2020 and May 2021, the offender sent 25 child abuse material files, the majority of which were videos, to a person he was communicating with.

Count 4 is a rolled-up charge. It covers the period between February and November 2021, when the offender was engaging in many online conversations on Telegram with 22 different users. It involves 24 separate instances of offending that includes transmitting, cause to transmit and soliciting child abuse material. During that period the offender sent 436 child abuse material files to those users; they contained images, videos, and written material. During that period he also asked for child abuse material from two of the users, and one of those users sent him 10 files. Associated with this count are three offences in the schedule; items 3, 4 and 5.

They are two offences of transmitting – a total of 16 files – and one of causing to be transmitted to himself six files. Not to diminish the appalling nature of the material covered by other counts, the material and conversations involved in this offending highlight the generally grave level of depravity attached to offender's conduct.

Count 5 is a charge of transmitting child abuse material between the May and July 2021, during which time the offender was engaging in online conversations with a user on Telegram and sent that person 78 child abuse material files. **Count 6** is another rolled up charge comprising 13 separate instances of offending, involving the transmission, solicitation and causing to transmit child abuse material and, between April and September 2021, the offender engaged in online conversations with 11 different users on the application Kik, and during that time he transmitted 56 child abuse files to the other users. He asked for material from three of the users and one of those three sent him one file in response. The detail of the criminal activity in these two counts is similar to that in count 4.

Count 7 is a transmit child abuse material count. In July 2021 the offender was engaging in online conversations with a single user on Telegram and he sent 64 child abuse material files to that user. **Count 8** is another transmit child abuse material charge. In August 2021, the offender was again having a conversation with a user on Telegram, and he sent that user 48 child abuse material files including written child abuse material. Regrettably, some features of the appalling associated conduct need to be noted. The other user sent a picture of a clothed female child aged about one year, said to be that user's daughter, and asked what the offender would do to her. He replied, "Everything you allow me to" and there followed a graphic discussion about that. Of more extreme gravity is that the offender sent to this user a video of a naked female, about 15 years old, being held by two men, cut in the abdomen with a knife which was then forced into her genitals until the blade was no longer visible, and then shot in the torso.

Count 9 also concerns transmission. In an online conversation with a different user on Telegram between August and October 2021 the offender sent 65 child abuse material files including written material. **Count 10** is a rolled up charge of transmitting child abuse material on two separate occasions in July-August 2021. The offender transmitted 7 child abuse material files to an internet user. Items 6 and 7 on the schedule are connected with this count. In May 2019, the offender requested child abuse material from an internet user but did not receive any, and in April 2020, he sent 7 child abuse material files to the same user.

Count 11 comprises five separate instances of offending in the sense that on 25 November 2021 across five different devices, the offender possessed 1,212 child abuse material files. Those devices were the three Apple ones already mentioned, and two external storage devices. The facts relating to the State summary charge of possess a bestiality product are that on 25 November 2021 the defendant had in his possession 121 bestiality material files, being 98 images and 23 videos, stored across five devices.

The significance of 25 of November 2021, is that on that day police executed a warrant at the offender's residence. The five devices referred to were found and analysed. The offender was interviewed and made admissions. He told the police that there would be child abuse material on his devices. He said some of the material would involve children as young as six or seven. He accessed the material mainly through chat groups on Telegram and said he tended to access and/or share the material while under the influence of methylamphetamine, because he was mixing in the wrong circles and was curious. He thought if it was not illegal, he may not even be interested in the material. He stated that he would forward child abuse material to anyone who asked for "underage stuff". He stated he was not interested initially in material where children were harmed, saying that he preferred material where children were playing. He was asked about conversations concerning videos of the rape of children, and sending such videos.

He said he felt so wrong after that and he was sometimes very, very self-destructive. He knew it was wrong on every level and said he was horribly ashamed it even existed. He felt he received validation from interacting with these people on the Internet and it made him feel good. He wanted to impress these people and have his ego stroked. He said he was attracted to men as low in age as mid to early teens, but denied physically offending against any children. After the interview, the offender was charged and bailed.

As to the other two remaining indictable charges, the first is a charge of using a carriage service to solicit material, the second is one of possessing material obtained or accessed by way of a service. Another warrant was executed at the offender's home on the 3 March 2023. During the search, police seized five devices which included a Motorola phone. This contained a chat on the Grindr app between the offender and another user on 16 July 2022. After the offender asked about age interests, there was a highly sexualised discussion in which the offender asked for a photo which the user sent, to which the offender replied: "Now, send me your body", adding: "You'll be as naked as appropriate whenever we're together." There followed a sexualised discussion about meeting in person. The second indictable offence is possessing child abuse material, in that on the 3 March, there was another five devices, including the Motorola phone that contained a total of 251 child abuse material items similar in nature to the material the subject of the earlier offending.

As to the breaches of bail, one of the conditions was that the offender only possess one device with internet access. But on 3 March 2023 when the police attended, there were five devices with internet access. A further condition was that he that the offender was not to access the internet or social media applications, unless it was for banking or some legitimate purpose. However, in early 2022 he installed YouTube and Wickr on an iPad, Snapchat and Grindr on another phone in May, and at some point Snapchat on a further phone. He use the first phone to solicit material, and accessed a website called FetLife about 500 times on the iPad. During the execution of the warrant on 3 March 2023, police spoke to the offender about the further matters. He denied there would be any child abuse material on the premises. He said he understood his bail conditions. He said that he regularly used YouTube to watch videos and admitted having a Snapchat account. He said he spoke with people who he befriended and associated with when they had drugs. When confronted with the child abuse material images he said he had no idea how they had appeared on the devices.

The full detail of all of the offending is contained in some 20 or so pages in a set of papers filed with this Court. I have read all of that detail. Much of it is relevant context to the particular criminal acts. Overall the offending involves 13 indictable charges covering five distinct and discrete offence types, namely accessing, possessing, transmitting and soliciting child abuse/pornography material, and causing material to be transmitted to himself. A further 7 offences are included on the section 16BA schedule, as I have noted. In terms of the charges concerning the transmission of child abuse material, the offender transmitted a total of 807 child abuse material files to many other internet users, thereby actively contributing to and widening the market for the material. In respect of the indictment, the offender possessed a total of 1,212 child abuse material files on five separate devices. The two further indictable charges involve possession of a further 251 files, and again multiple devices were used. The material featured many different children with some aged as young as infants. To a very large extent the material was of extreme depravity; the range of appropriate adjectives seems inadequate. The material includes male and female children, extending to infants and toddlers, being anally and orally raped by adult males. Other instances are a prepubescent boy with his hands bound behind his back being forcibly raped both orally and anally by an adult male; a

video depicting a boy blindfolded while he was simultaneously anally and orally penetrated by two adult males; a pre-pubescent boy licking an adult penis; a pre-pubescent girl, bound and blindfolded with a dog licking her vulva; an infant having a dog's penis forcibly inserted into their mouth; post-pubescent boys engaged in sex acts and intercourse; cartoon images of children engaged in sexual activity with adults, an image of a naked pubescent boy inserting a cucumber into his anus and, of course, there is the video depicting a male cutting a teenage girl's abdomen with a knife and forcing the knife into her genitals and another male then shooting the girl in the torso. The offender admitted that he was involved in trying to purchase hundreds of child abuse videos for a female child he believed to be 14 and was negotiating a reduced price. He discussed many highly depraved topics in conversations with users, including incest, child rape, bestiality, urination and preying on "special needs kids" and "homeless". The offending was neither spontaneous nor isolated. The offending spans a six year period between 28 March 2017 and 3 March 2023, but with the most activity being from early 2020 onwards. The offender connected through direct messaging with other internet users who indicated, when asked by the offender, that they were interested in "young" material and children. The offender often directed other users to sites such as Telegram because it is "the most secure and easy". The offending involved the use of several portable devices, the risk with that being the ease with which the material can fall into the wrong hands. As an aggravating feature, the further charges of possessing child abuse material and using a carriage service to solicit child abuse material were committed whilst the offender was on bail in respect of the charges on the indictment. He has now effectively been in custody since 3 March 2023.

The offender is now 32 years old. He has twice appeared in court within the relevant offending period for alcohol related driving offences, but otherwise has no recorded history of offending. I have the benefit of submissions of counsel and a report dated 12 November 2023 from Dr Jennifer Wells, Clinical and Forensic Psychologist, together with an addendum report dated 25 February 2024. Relevant personal circumstances are as follows. The defendant had somewhat of an unsettled childhood with the family moving a great many times, and him experiencing difficulty in settling in a school. He suffered some bullying. Ultimately, he enrolled in tertiary education and completed an honours degree in mechatronic engineering as well as a masters degree in finance. He worked in a bank for a while, before working in IT and as a financial analyst. He then started his own business, which led him to moving to the USA when he was about 25. After returning to Australia he was in a stable relationship for some time and conducting his own business. When that relationship broke down, he moved to Tasmania. His most recent work over the last years has been in landscape gardening. Substance abuse has been an issue. He started using methylamphetamine when he was 22. He was introduced to this by a friend who would inject him with the drug and then watch child exploitation videos. The offender "enjoyed the feeling" of the drug and although surprised about the nature of the videos, did not object. He seemed he had become submissive and sought validation and reassurance from people. Drug addiction became a problem over a period of time and his use escalated to about one gram a week. In terms of his psychiatric condition, there is a diagnosis of PTSD arising from a series of instances of serious sexual abuse of him. These include abuse at the age of 8 years old by a family friend, a "stranger" rape on a street when he was 15, a further rape by a patron at what is described as a "sex on premises venue", a further rape after a drink spiking incident at a Melbourne night club and a particularly serious incident where he and a friend were said to be held captive and raped over a period of two days. His symptoms were exacerbated by death by suicide of a number of his friends, including his housemate and close friend in the months before his first arrest. In the two years before that arrest, he had been using one gram of methylamphetamine per week and drinking very heavily.

To Dr Wells, he was adamant that he had never engaged in behaviours he viewed or spoke about on line. Somewhat paradoxically, he said he would not do so as he viewed that as harmful to children, saying that he did not really regard his viewing of child exploitation material as harmful in the same way. Apparently the time in custody without substance abuse has clarified his thinking on these issues. Overall, Dr Wells says he is generally a pro-social person without any anti-social attitudes supportive of violence. He has been challenged by significant trauma which began when he was a boy. He has PTSD as a result. He is regarded as having a paraphilia – that is, an intense and persistent sexual interest other than in phenotypically normal, mature consenting human partners. In particular, there is a non-exclusive paedophilic disorder which involves arousing fantasies about urges for, or behaviours with, pre-pubescent children. In addition, the defendant has multiple substance use disorders, described as a cluster of cognitive behavioural and physiological symptoms derived from continued substance abuse, despite significant substance related problems. Dr Wells states the following:

"At the time [the offender] committed these offences [he] had a complex co-morbid mixture of symptoms. These symptoms resulted in him living in a highly anxious state, he was disconnected from other people, he had low self-esteem and was having difficulty coping emotionally with how much his life had changed. He was single, living in shared house accommodation working as a landscape gardener in comparison with his life in Sydney, where he had been in a relationship ... and working in a highly respected job. He was using alcohol and drugs to help him cope with his fluctuating mood, state and trauma symptoms. When using substances his underlying Pedophilic [sic] arousal came to the fore and he engages in connections with other users of child exploitation material in order to access and share the material, but also to connect with other people and obtain validation. In my view, this is the explanation for the offences. However I do not think that his mental health conditions impaired his mental function to the extent that he could not reason, exercise appropriate judgment etc. ... He was fully aware of what he was doing and that it was wrong. He was not behaving this way impulsively."

The offender's counsel submitted that the use of methamphetamine had a particularly powerful disinhibiting effect on the offender, although it is accepted that he knew what he was doing was criminally and morally wrong. The offending while on bail is explained by a relapse into drug use. I was told that during his time in custody, he has undertaken and completed some drug use and general rehabilitative programs, engaging well in those. I was also told that since the sentencing hearings he has been moved to protective custody which makes life in prison generally more difficult. That should, of course, be accepted. He has assisted in helping other inmates with literacy and numeracy skills. I take note of those things and I take into account the matters set out in s 16A of the *Crimes Act*, to the extent they have relevance to this case. In particular, I take into account the defendant's background of the abuse of him, his mental health issues and his pleas of guilty. On the pleas to the counts the subject of the indictment, I was told that there were early "negotiations" and it was known for some time that the matter would resolve. I note the early pleas of guilty to the other two indictable matters entered in the lower court, and the pleas in this Court to the summary charges. Overall, the pleas have utilitarian value and are to be given some weight. Counsel stressed that his time in custody abstaining from drugs has given him an opportunity to reflect on his conduct, and he is now able to accept it for what it is. However, Dr Wells suggests the defendant is vulnerable to engaging further in this type of behaviour due to a number of factors, although at the same

time, there is an absence of factors more generally associated with risk of future sex offending, escalating to contact offending. She says with appropriate treatment to assist him to abstain from alcohol and drugs and to have a better understanding of his paedophilic disorder, his risk of reoffending would be reduced.

The grave evils of accessing, possessing and transmitting child exploitation material have been stated many times. These are not victimless crimes. The production of such material involves the exploitation and abuse of children somewhere in the world. The damage done is often profound. Possession and viewing exacerbates and extends the abuse and exploitation. Access and possession tends to create a demand for its production. Viewing can have the effect of normalising the depicted conduct and desensitising the viewer. Offending is hard to detect and images are very difficult to remove from the internet once made available. A critical aspect of transmission to anonymous users is that the sender does not know the circumstances of the recipient. They may well be prepared to act on their inclinations, be encouraged by the receipt of the material and attendant conversations and have access to children. It is very well established that denunciation and general deterrence are the prominent factors in determining the appropriate sentence. Previous good character is of little weight. In general terms, what determines the seriousness of this sort of offending relates to the nature and content of the material, number and ages of the children, the gravity of depicted abuse including the extent of cruelty and physical harm. It is also established that although quantity of the material is a relevant consideration it is the nature of that material which is more determinative. That is an important consideration in this case involving as it does, material of an alarmingly depraved and awful nature extending to torture to the point, as I have noted, of one video showing a teenage girl being horrendously mutilated and shot. Where transmission is involved, the question of profit might arise. That it does not in this case is not mitigatory; it means an absence of an aggravating factor. In this case, there are the more usual considerations in sentencing, such as the length of a course of conduct, further offending while on bail. As to offences in the s 16BA schedule, the law is that the offender is not to be convicted of those offences, nor separately punished for them, but the sentencing judge, in sentencing for the charged offences will take into account the matters for which guilt has been admitted, with a view to increasing the penalty that would otherwise be appropriate for a particular offence. The circumstances of that offending can result in a significantly higher penalty in respect of the primary offence than that which would otherwise have been appropriate had the primary offence stood alone. I am not obliged to fix a separate sentence for each count and then perhaps to make necessary adjustments by way of orders of cumulation or concurrence in respect of each. Section 11 of the *Sentencing Act* 1997 enables a court to impose one sentence for all offences or one sentence for a group of offences. Because of the operation of s 68(1) of the *Judiciary Act* 1903 (Cth) s 11 applies in this case: see *Putland v The Queen* [2004] HCA 8, 218 CLR 174, *DPP (Cth) v Beattie* [2017] NSWCCA 301 at [141]-[146], *Tenenboim v The Queen* [2024] NSWCCA 1 at [52], *Eyson v The Queen* [2024] NSWCCA 52 at [60], and in this State, *R v Cook* [2018] TASCCA 20 at [63]. I consider it appropriate to group the offences, which I approach in the following way. The bulk of the offending is between January 2020 and November 2021. Apart from one instance in March 2017, the accessing charge on the indictment relates to the period January 2020 to November 2021 with an early instance in March 2017 to be taken into account. The possession charge on the indictment relates to the material found in the defendant's possession on 25 November 2021. Accessing and possession enables transmission and I think it appropriate to deal with those two offences together. I will deal with the transmission, soliciting and causing transmission offences as a group. I will deal separately with the offending after having been charged and bailed. Of course, I bear in mind the totality principle

and the need for proportionality, and I repeat that I take into account the defendant's background and the other matters in mitigation that I have noted.

Mr Farrell, I have set out the facts in summary form, your relevant personal circumstances, factual matters that need to be taken into account and which both operate against you and in your favour, and the proper approach of a court to offending of this nature. I would simply stress to you the evil nature of the conduct in which you were engaged. I have already convicted you of all matters. On counts 1 and 11 of the indictment you are sentenced to two years' imprisonment to commence on 3 March 2023.* On charge 66 on complaint 90826/22, the State offence of possessing bestiality material, you are sentenced to four months' imprisonment; to be served concurrently with the sentence I have just imposed. On counts 2 to 10 inclusive on the indictment you are sentenced to four years' imprisonment to be served cumulatively on the sentence I have just imposed. On the indictable charges on complaints 90440/23 and 90262/23 you are sentenced to 18 months' imprisonment to commence on 3 September 2028.* As I have taken into account the fact of being in breach of bail when fixing the previous sentence and the overall sentence, I will not impose any penalty on those two charges. That makes a head sentence of seven years. I order that you not be eligible for parole until you have served four years of that term. In all the circumstances I consider there is no alternative other than to make an order under the *Community Protection (Offender Reporting Act)* that your name be put on the register and you comply with the requirements of that Act for life.

*The order was later amended to these dates pursuant to s 19AHA(3) of the *Crimes Act* 1914 (C'th), an incorrect initial commencement date having been stated at the time of sentence.