

Mr Holmes, you have pleaded guilty to one count of possession of child exploitation material, contrary to s 130C of the *Criminal Code*, one count of accessing child exploitation material contrary to s 130D of the *Criminal Code* and one count of distribution of child exploitation material contrary to s 130B(1) of the *Criminal Code*.

On 9 January 2023, police executed a search warrant at your home following a joint investigation with members of Victoria police from the Bendigo Sexual Offences and Child Abuse Investigation Team. Victorian police were investigating allegations of a historical nature in respect to a nine year old child. When the search warrant was explained to you, you surrendered your iPhone and told police there was child abuse material on it. You denied, however, there was any material relating to the nine year old child Victoria police were investigating. A number of other electronic devices were also seized, including a Hewlett laptop computer.

The iPhone and laptop computer were forensically examined. That examination revealed your possession of child exploitation material, across both devices. It also revealed that you had downloaded child exploitation material between 31 October 2022 and 9 January 2023 and that you had communicated with persons trading in child exploitation material via media platforms Gmail, Telegram (which is an encrypted cloud based instant messaging service), and a Russian based platform known as Yandex Male. You had received images and videos as a result of these communications. The forensic analysis revealed that you had downloaded material onto both your iPhone and laptop, and had also saved a number of images via these platforms. In total, you were in possession of 2,114 images and 600 videos which were classified as, or related to, child exploitation material. In particular, there were 1,592 images and 446 videos which were classified as category 1, that is, depictions of real pre-pubescent children under the age of 13 years, with the child involved in a sexual act, witnessing a sexual act or where the material is focused on the child's anal or genital region; 402 images and 148 videos which were category 2, that is child abuse material not classed as baseline; and a further 120 images and 6 videos which were category 3, being images which were not unlawful but which were indicative of an inappropriate interest in children.

The types of conduct depicted in the material included, but was not limited to:

- pre-pubescent females being raped by an adult male whilst another adult male is covering her mouth;
- a compilation video of female children between the ages of 4 to 12 being vaginally, anally and orally penetrated by different adult males;
- images of a female baby's vagina being digitally penetrated by an adult; and
- images of very young children masturbating with adults
- there were also videos and images of children who were bound and appeared visibly distressed.

The longest category 1 video in your possession was over two and a half minutes long. In total, there was 55.30 minutes viewing time contained across all of the videos.

The forensic analysis also revealed that you were in a possession of a video filmed by you, of the nine year old child who was the subject of the Victorian Police investigation. This video showed her naked in the shower. I am told the nine year old child was a neighbour of yours in

Victoria, who would attend your residence with her mother because of a mutual interest in horses. It is not clear how you came to record the video of her. In any event, on 10 December 2022, you distributed this video via your Gmail account. When you did this, you were communicating with a person referred to as "Alex Smythe". Initially, you had sent him an image of the nine year old girl, fully clothed. You told Mr Smythe that she was a friend's daughter who was going through the stage of "liking me". You described her as a "little hottie". You were asked to send the naked shower video. You did so. When you sent it, you wrote "Get your rocks off with this then. If you can fix up the quality then feel free to send it back to me ...she had a tight little pussy and soft puffy nipples...enjoy". Such a communication clearly shows, in my view, a high level of interest in the material and a complete disregard for the well-being of the nine year old child. You were prepared to distribute a naked image of her via the internet having no control whatsoever as to how far and wide it may be further distributed.

When you were interviewed by police, you told police that you were attracted to the girls in the material and that your preference was for girls aged between 14 and 15 years. When advised of the subject matter of some of the material found on your devices, you told police that you did not realise "it was that bad". You suggested you were not physically aroused by the material. I reject this proposition. The comments you made when distributing the video to Mr Smythe is entirely inconsistent with such a proposition.

You are 68 years of age. You have no prior convictions. You have a strong industrial history. You have worked in a number of positions of employment, including truck driving and various farming positions. You are currently on worker's compensation following a workplace accident approximately which occurred approximately 12 months ago in which you sustained a serious arm injury. You have had two operations on the arm, but you are yet to be medically cleared for a return to work. You are hopeful of being able to resume employment, but it is still unclear whether this will eventuate. The arm injury has left you with considerable difficulties, including ongoing pain. You suggest the workplace accident may have had an association with this offending. You were at home with time on your hands, and feeling somewhat lost, when these crimes were committed. Whilst I accept being idle may have presented you with an opportunity to behave as you did, the recording of the nine year old girl in Victoria, sometime earlier, clearly indicates an interest in material of this nature. It is that interest which was the catalyst for this offending, although I accept your mental well-being following the workplace accident may have contributed to it. I note you are in a long term supportive relationship. The consequences of your offending have been marked in terms of that relationship. You have had to work particularly hard to rebuild trust with your partner and intend on continuing to do so.

It is noteworthy that you pleaded guilty to these crimes at an early opportunity when the matters were still before the Magistrates Court, and in circumstances where you were unrepresented. You have expressed to this Court your shame and embarrassment for your conduct. These factors count in your favour.

There is no doubt that this is very serious offending. The evils of accessing and possessing child exploitation material have been stated many times by the courts. The production of such material involves the exploitation and abuse of children somewhere in the world. Possessing and viewing the material exacerbates and extends the abuse and exploitation of children. Here, some of the images and videos demonstrated children who were visibly distressed. It is notoriously understood that children who are the subject of such horrific encounters, often

experience irreparable damage and significant psychological harm. And, of course, you also distributed an image and, once distributed, as I have noted, you had no control over what the recipient may do with it, or what response it may invoke within the recipient. Your actions in sharing the video of the nine year old child takes your culpability to a higher level.

There are a number of factors to be considered in determining an appropriate sentence in this matter. The starting point is that in matters of this nature, general deterrence is paramount. Whilst I accept that the number of images and videos involved was not as significant as is often seen by these Courts, it was far from a menial amount, and the content of many of the images and videos was disturbing. They involved penetrative acts and very young children, including babies. I am told distress was obvious in some of the victims. I note the act of distribution involved a singular occasion.

I obtained an assessment of your suitability for home detention. The suggested premises were assessed as unsuitable because there are neighbouring homes where minors reside and your partner is often absent from the residence. This, in my view, is a legitimate concern raised by Community Corrections, particularly given you must have been in reasonably close proximity to the nine year old child in Victoria when you recorded the video. Whilst I accept there is no suggestion that since you have been resident in Tasmania, anything untoward has occurred with any of the children in your neighbourhood, I am simply not satisfied, given the nature of these charges, that a Home Detention Order is appropriate. You claim boredom contributed to this offending. If I was to impose a Home Detention Order upon you, it may very well create the type of environment which gave rise, in part at least, to the offending behaviour. Given the circumstances, a period of imprisonment is the only sentencing order which adequately reflects the seriousness of the offending. It must be understood by you and the broader community, that accessing, possessing and distributing child pornography is simply not to be tolerated. To ensure adequate punishment and deterrence I have determined that some of the sentence must be actually served. But because of the quantum of the material involved, the absence of prior convictions and your remorse, I am satisfied it is appropriate to conditionally suspend part of the period of imprisonment as an incentive to you to not re-offend.

I make the following orders. You are convicted of all matters. I impose one sentence. You are sentenced to a period of 10 months' imprisonment. I suspend 6 months of that sentence on condition that you commit no offence punishable by imprisonment for a period of two years from today's date.

This is a reportable offence under the *Community Protection (Offender Reporting) Act 2005*. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the Act into the future. I therefore make an order directing the Registrar cause your name to be placed onto the Register and that you comply with the reporting obligations under that Act for a period of six years from today's date.

I make a forfeiture order pursuant to s 130F(2) of the *Criminal Code* that items 1 and 9 contained on Property Seizure Record Receipt 218717 be forfeited to the State of Tasmania.