

Mr Hay, on complaint 91512/2023 you have pleaded guilty to eight counts of use a carriage service to transmit child abuse material, contrary to s 474.22(1) of the *Commonwealth Criminal Code*; four counts of using a carriage service to solicit child abuse material, contrary to s 474.22(1) of the *Commonwealth Criminal Code*; three counts of using a carriage service to transmit indecent communication to a person under 16 years, contrary to s 474.27A(1) of the *Commonwealth Criminal Code*; and one count of use a carriage service to solicit child abuse material, contrary to s 474.22(1) of the *Commonwealth Criminal Code*. Additionally, you have pleaded guilty to one count of using a carriage service to access child abuse material; one count of using a carriage service to transmit child abuse material and one count of possessing or controlling child abuse material obtained or accessed using a carriage service on Complaint 90230/2023. You have also, pursuant to s 385A of the *Criminal Code*, sought that this Court sentence you for the offence of contravene a condition of bail order, contrary to s 9 of the *Bail Act (TAS)*.

Your pleas of guilty to counts 13 to 16 on Complaint 91512/2023 and your pleas of guilty to the three counts on Complaint 90230/2023 breach a recognisance release order. On 6 November 2020, you were convicted and sentenced for one count of possessing or controlling child abuse material obtained or accessed using a carriage service. You were sentenced to seven months' imprisonment, to be released forthwith, upon entering a recognisance in the sum of \$2,000 to be of good behaviour for two years, pursuant to s 20(1)(b) of the *Crimes Act*. This order was in effect until 5 November 2023. Application is now made that the order be revoked and that you be required to serve the seven months' imprisonment originally imposed.

Your prior conviction for that matter also enlivens the mandatory sentencing provisions, pursuant to s 16AAB of the *Crimes Act* in respect to the three counts on Complaint 90230/2023 and Counts 13 to 16 on Complaint 91512/2023, as all of those counts occurred after you had been convicted of the crime of possessing or controlling child abuse material obtained or accessed using a carriage service. Counts 1 to 12 on complaint 91512/2023 were committed prior to the sentencing order of 6 November 2020. In respect to counts 13, 14 and 15 on Complaint 91512/2023, the mandatory minimum head sentence is three years for each count. In respect to count 16 on that same complaint, the mandatory minimum sentence is four years. In respect to the three counts on Complaint 90230/2023, the mandatory minimum sentence in respect to each count is four years.

Between 17 October 2019 and 11 February 2020, you sent a large number of emails to a person known as "Mikayla Longmore" whom you believed was a 14-year-old female. It was in fact an adult male with whom you were communicating but you did not know that. For convenience, I shall continue to refer to the online persona of Mikayla in these comments. In total you sent 109 child abuse images to her. You also sent text-based child abuse material on two occasions to Mikayla and sent her links to pornography. The material you sent featured many different child victims, some of whom were very young. It showed them engaged in depraved and graphic sexual activity, and depicted the victims in ways which were sexually exploitive and demeaning. You were also quite persistent in your endeavours to have Mikayla send you child abuse material and you encouraged her to perform sexual acts upon herself and send you videos of her doing so. It is this behaviour that encompasses counts 1 to 12 on Complaint 91512/2023.

More specifically, in respect to these counts, you committed the following acts:

- On 17 October 2019, you sent Mikayla three emails containing child abuse material. The first email attached six GIF images of pre-pubescent females aged from about three years to ten years, engaged in sexual acts with adult males. You sent two further emails which contained an additional 12 GIF images of pre-pubescent females engaged in penetrative sexual acts with adult males.
- On 5 November 2019, you sent Mikayla nine emails which contained 26 GIF images, depicting child abuse material. The images depicted pre-pubescent females engaged in penetrative sexual acts with adult males, engaging in sexual acts with other pre-pubescent males, and engaged in solo sexual acts.
- On 7 November 2019, you sent an email to Mikayla which contained five GIF images of pre-pubescent children engaged in penetrative sexual acts with other children or adults.
- On 22 November 2019, you sent an email to Mikayla which contained text-based child abuse material. It was a narrative that described a 12-year-old female being sexually abused by her uncle. I have read it. It is distasteful. Two adult pornographic GIF images were also attached to the email.
- On 25 November 2019, you exchanged a series of emails with Mikayla in which you asked her to send you images of an intimate nature. At one point you made a comment, "I meant I shouldn't send you porn or ask you for nude pictures or videos. You're 14 years." During the email exchange, Mikayla disclosed to you that she had been a victim of sexual abuse. You nevertheless continued to ask her to send you intimate images.
- On 26 November 2019, you sent an email to Mikayla with an image of a pubescent teen in transparent underwear, exposing her nipples.
- On 6 January 2020, you sent an email to Mikayla asking her to send you a video of herself masturbating. You attached a video file of an adult female masturbating and said you wanted her to send you a video like it.
- On 12 January 2020, you sent seven emails to Mikayla which contained 50 child abuse material videos. The videos included pre-pubescent females and toddlers engaged in penetrative sexual acts with adult males.
- On 22 January 2020, you sent an email to Mikayla with the subject line "Tammy from Chatzy has a 14y daughter I'd like to fuck. Now, compare this to what I've got from you in the last six weeks. Lift your game Mikayla". The text of the email contained a graphic description of a 14-year-old girl engaging in masturbation. You also attached four images and one video to the email, which depicted computer-generated child abuse material of teenage females engaged in sexual acts with adult males or of them masturbating.
- On 5 February 2020, you sent an email to Mikayla in which you outlined a fantasy you had in respect to her and said that you were, "Still hoping for nude selfies and sex tapes like the 15-year girl in the video you sent me".
- On 10 February 2020, you sent an email to Mikayla telling her it was your birthday and asking her to send you a sex tape. You attached a link to adult pornography to the email.
- On 11 February 2020, you sent two emails to Mikayla which had child abuse material images attached.

It then appears that for a period, you ceased communicating with Mikayla, which I suspect coincided with your home being searched on 1 January 2020 and child abuse material being

discovered following forensic examination of a laptop on 18 March 2020. It was this material that was the subject of the charges for which you were sentenced on 6 November 2020.

Concerningly, it seems that sentencing order did very little to deter you, as within four days of that sentence being imposed, you resumed your offending behaviour.

On 10 November 2020, you sent an email to Mikayla containing a link to pornography with the subject line, "I thought we might be back on friendly terms again after you emailed for the first time since February." You sent a second email the same day, with the subject line "This used to make you wet" and a link to pornography.

On 13 November 2020, you sent an email to Mikayla in which you indicated you wanted a "Mikayla collection". In the email you said, "My videos make you wet, your photos of you make me hard. Throbbing in fact. Plus, I want to know what has been happening to you since last February. Brad OXOX." There were further emails in which you described erotic thoughts you had been having about Mikayla. You again attached links to pornographic material to the email.

On 23 November 2020, you sent an email to Mikayla with a link to a pornographic videos. On 9 December 2020, you sent an email to Mikayla in which you said, "Are you joking. I almost went to gaol sending you the young girl videos you wanted, and I still might when the FBI releases the other videos. I'll pay for a sex tape of you masturbating with a hairbrush. How about chatting first and bringing me up to date from last February or thanking me for the cartoon porn you said you liked." The body of the email contained a link to a pornographic video titled "Masturbating with hairbrush". In the email you offered payment to Mikayla if she sent the pornographic material to you. It must be remembered that throughout the entirety of these communications, your mindset was that you were communicating with a 14 year old child.

As to Complaint 90230/2023, on 21 September 2022, the Australian Federal Police Child Protection Unit received a report about an Australian transmitting child abuse material. On 28 September 2022, members of Tasmania Police attended your residence and seized an ACER brand laptop computer. Forensic examination of that computer revealed that on 31 July 2022, you had sent an email containing two files of child abuse material to a "John Smith". The files contained images of a pre-pubescent female aged about six to eight years old, bent over with her bottom and genitals pointed towards the camera. There was a white fluid, consistent with the appearance of semen, on the victim's bottom and genitals. There was also an image of a pre-pubescent female kneeling on all fours, with her underwear down around her knees, and her naked bottom facing the camera. Police also found a second email address used by you, via which you had exchanged further pornographic material with John Smith. The transmission of this child abuse material comprises count 2 on the complaint.

Within the locally accessed files and folders on your laptop, police also found four image files depicting cartoon characters which were deemed to be child abuse material. These files had been downloaded on 15 June 2020. Additionally, forensic investigators found further cached images on your laptop, including images of a pre-pubescent female, aged about nine to ten years, lying naked on a bed with her legs pulled back behind her arms, exposing her genitals and anus, and images of a pre-pubescent female being orally penetrated by an adult male and having her genitals being licked by an adult female. There were also multiple images depicting cartoon characters engaged in sexual behaviours, which were deemed to be child abuse

material. Your accessing of such child abuse material comprises count 1 on the complaint. Because you had saved onto your device the four image files depicting the cartoon characters you are also guilty of possessing child abuse material accessed using a carriage service, being count 3 on the complaint.

As to the breach of bail charge, which I am dealing with pursuant to s 385A of the *Criminal Code (Tas)*, on 15 May 2023, you were bailed from the Launceston Magistrates Court with a number of strict conditions, including a condition that you appear in Court on any date to which your matter may be adjourned; that you must not access the internet, cloud storage or social media applications directly or indirectly (including through any other person) unless for a number of specified exceptions, which do not apply here; and a condition that you must not change the mobile number, email address or password for any social media or communications applications. You breached these conditions of bail when you accessed the internet on your laptop and sent emails, visited web pages to view pornographic material, and downloaded pornographic material from the internet. You also changed an email password and a website password. Further, on 9 May 2024, you failed to appear in the Launceston Supreme Court. A warrant was issued for your arrest. You were arrested pursuant to that warrant on 20 May 2024 and you have been remanded in custody since that date.

In addition to the matter for which you were sentenced on 6 November 2020, there are some other matters on your record of prior convictions that warrant mentioning. In 2005, you were fined for selling three unclassified films contrary to the *Classifications (Publications, Films and Computer games) Enforcement Act 1995*. In 2008, you were given a short, suspended sentence for similar breaches of the same legislation. I am told these films contained adult content and none of the films involved child pornography material. In 2007 you were fined for importing a prohibited good contrary to the *Customs Act*. The prohibited good was a German arthouse film depicting children. It was one of 11 films imported from the US and was the only illegal one. You did not view or distribute the film and pleaded guilty on the basis that the importation was reckless. Whilst these matters are broadly relevant, they do not, in my view, attract significant weight in the sentencing exercise. I also note that in June 2024, you were sentenced to a period of imprisonment of six weeks in the Magistrates Court for failing to comply with reporting obligations, pursuant to the *Community Protection (Offender Reporting) Act 2005*. That offending occurred around the same time as some of the matters for which I am sentencing you.

By way of background, you are now 65 years of age. You are single and receive a disability pension for mental health issues. Because of those mental health difficulties, you have lived a reclusive lifestyle in recent years. You have difficulty in forming relationships with others and have trouble coping in many social circumstances. There have been episodes of self-harm in the past. You have had several admissions to hospital for your mental health difficulties. You continue to see a psychologist. There is nothing before me, however, to suggest that the mental health difficulties I have referenced had any nexus to the commission of these offences, save that your isolated existence and social ineptness led to you spending considerable periods of time on-line. It seems you tend to seek connection and relationships with others via on-line communications. I am satisfied the catalyst for this offending, however, is your sexual interest in material of this nature. The length of time over which this offending occurred and the nature of it, coupled with the fact you continued with this offending despite being subject to a recognisance release order, and had an appreciation of the unlawfulness of your behaviour, underscores that you have a strong interest in material of this nature.

There is no doubt that this is very serious offending. The mandatory minimum penalties that apply to much of this offending speaks to that and the seriousness with which Parliament considers offending of this nature. As with all sexual crimes, general deterrence is a very significant sentencing consideration. The very clear object of the legislation is to protect vulnerable children from sexual abuse and other forms of sexual exploitation. The seriousness of such abuse is not diminished when it occurs on-line rather than in person. Unfortunately, offending involving on-line sexual exploitation is becoming increasingly prevalent and there is a very strong need for the Court to act, to the extent it is able, to protect children from the harm and potential corruption that is caused by sexualised communications directed at young persons on-line. Here, I note much of the communication was, in fact, directed to an adult male, but you did not know that. At all times you thought you were communicating with a 14-year-old female. Your conduct is to be regarded as no less morally reprehensible merely because the person to whom the communication was made was, unbeknown to you, someone else. Your criminality lies in your willingness to engage in these communications with a young female child. Of course, I bear in mind that there is no evidence of actual harm occasioned by your communications to a child, but your possession and transmission of child abuse material, undoubtedly caused harm to a child somewhere in the world. Except for the anime material, real children were harmed in the production of that material. You perpetuated that harm by your possession and transmission of it. The full extent of the harm associated with behaviour of that nature has been commented upon many times by courts. I do not stay to restate such comments. It is well understood that such conduct has the capacity to cause significant and irreversible harm and those who engage in such conduct, must be harshly punished.

The absolute prohibition on sexual activity and sexual exploitation of children is founded upon a presumption of harm. The presumption of harm is not displaced because the offending occurs on-line rather than in-person. The need to protect children from all forms of sexual abuse and exploitation, is patent, and the Court will act to do what it can to protect vulnerable children. The sentence must make clear to you and others that those who commit offending of this nature will be met by harsh punishment.

I take into account your pleas of guilty. They were entered at an early stage whilst these matters were still before the Magistrates' Court. I also note your co-operation with police. You provided police with access to your devices, and admitted the material found on the devices was yours. There has never been any suggestion that these matters would be dealt with in anyway other than by a plea of guilty. It is relevant in assessing the weight that ought to attach to your pleas of guilty to bear in mind that the evidence against you was overwhelming. Nevertheless, your pleas of guilty retain a utilitarian value as a jury has been saved the trauma of having to examine and consider material of this nature.

I note ss 16AAC(2) and (3) of the *Crimes Act* are statutory mechanisms that allow a court to impose a sentence less than the mandatory minimum where it considers that adequate recognition cannot be given to a defendant's plea of guilty or co-operation without having to go below the minimum mandatory head sentence. In *Hurt v The King*; *Delzotto v The King* [2024] HCA 8, the majority indicated that a court, in considering mandatory minimum head sentences, and the mechanism provided for by s 16AAC to move below the prescribed mandatory minimum term, should approach the task by first determining the prima facie sentence with the use of the prescribed minimum sentence as a yardstick, and then apply a reduction only in circumstances where the prima facie sentence determined, falls close to the "least serious circumstances". In my view, the criminality associated with your overall behaviour could not be assessed as falling close to the "least serious circumstances". This was

not isolated or sporadic offending. The criminal behaviour continued for over three years, albeit with some gaps in the offending. It involved the sending of a considerable quantity of child abuse material, although I recognise the quantity involved was not as significant as many of these types of matters that come before the Courts. Much of the material that you sent was of a depraved nature. There was a concerted effort on your behalf to solicit child abuse material from a person whom you believed to be a 14-year-old child, and importantly, there was also a clear escalation in the gravity of the offending that you were involved in from that which was before the Court in November 2020.

Generally, I have regard to the matters set out in s 16A of the *Crimes Act* to the extent they are raised in this case. I have regard to the nature of the child abuse material that was accessed and transmitted and the ages of the children depicted. As noted, some of the images and written material that was sent was perverse and depraved. It is also always relevant to bear in mind that material is sent to individuals with no idea as to the state of that individual's mental health, what access they may or may not have to children, or what such communications may or may not encourage them to do. That is one of the many reasons why behaviour of this nature is so abhorrent to reasonable members of our community.

My primary obligation as a sentencing judge in respect to Commonwealth offences, is to impose a sentence that is of a severity that is appropriate to all of the circumstances of the offending. Of course, the objective seriousness of these offences committed against a background of prior sexual offending, is reflected in the mandatory minimum head sentences that I must impose. Such heavy mandatory penalties are reflective of the community's ongoing concern about this type of conduct.

In very simple terms, Mr Hay, your behaviour was reprehensible. It must be denounced and the Court's commitment to the protection of children must be reflected in the sentences imposed.

I make the following orders. You are convicted of all matters to which you have entered pleas of guilty. On the State charge of breach of bail, you are sentenced to one month's imprisonment, commencing on 20 May 2024. I revoke the order made by Pearce J on 6 November 2020 and I order that you serve a period of imprisonment of seven months, commencing on 20 June 2024.

In respect to counts 1 through 12 on Complaint 91512/2023, I impose a global sentence. Given the mandatory minimum penalties that apply in respect to the other charges, I consider the imposition of a global sentence for these charges to best accommodate considerations of totality and proportionality. You are sentenced to 18 months' imprisonment, commencing 20 January 2025.

In respect to count 13 on Complaint 91512/2023, you are sentenced to three years' imprisonment, commencing on 20 July 2026. In respect to count 14 on Complaint 91512/2023, you are sentenced to three years' imprisonment, commencing 20 July 2026, the effect of which is that it will be served concurrently with the sentence imposed on count 13. In respect to count 15 on Complaint 91512/2023, you are sentenced to three years' imprisonment, commencing on 20 July 2026, so again with the effect that it is served concurrently with count 13. In respect to count 16 on Complaint 91512/2023, you are sentenced to four years' imprisonment commencing 20 July 2026. Three years of this sentence will, therefore, be served concurrently.

On count 1 on Complaint 90230/2023, you are sentenced to imprisonment for a period of four years, commencing 20 January 2028. On Count 2 on Complaint 90230/2023, you are sentenced to imprisonment for a period of four years, commencing 20 July 2028. On count 3 on Complaint 90230/2023, you are sentenced to imprisonment for a period of four years, commencing 20 July 2028.

In respect to the Commonwealth sentences, I impose a single non-parole period. You are not to be eligible for parole until you have served four years of those sentences.

The result is a total sentence of imprisonment of eight years commencing 20 May 2024. You must serve four years and one month before you are eligible for parole.

I order that your name be placed on the register pursuant to the *Community Protection (Offender Reporting) Act* 2005 and that you comply with the reporting obligations under that Act for a period of 20 years, such period to commence on the date of your release from custody.