

AJP, the defendant, has been found guilty by unanimous verdict of a jury of one count of persistent sexual abuse of a child. I need to make findings of fact on which to pass sentence. Of course, it is the criminal standard of proof that I must apply. The complainant who, meaning no disrespect, I will Kayla, was born in May 2000. She was the foster daughter of the defendant and his wife between September 2008 and October 2014. In September 2008 the defendant was 36 years old. Before going into the foster care of the defendant and his wife, Kayla had a very disruptive and troubled upbringing. She has three siblings who share the same mother. In August 2003 Kayla was removed from her mother's care because of concerns about childcare which included general parental neglect resulting in poor hygiene, illicit drug use and unstable housing. Except for a brief period in 2006, since November 2013 and until she turned 18, court orders were in place granting legal guardianship to the Secretary of the relevant government department. From the time of her initial removal from her mother's care until September 2008 Kayla was placed in several different homes with several different foster carers and families. These placements included respite placements which involved Kayla leaving the current foster family for brief periods and staying with a different carer or family. These placements also included a brief period where she returned to her mother's care. Before going into the care of the defendant Kayla had been with seven different families. The broad allegation against the defendant is that he maintained a sexual relationship with Kayla for the whole of the period she was in their care. Kayla's evidence was in the form of three video-recorded police interviews between September 2016 and December 2018, and pre-recorded evidence in this Court on 14 March 2023. The State identified six occasions on which unlawful sexual acts took place. They are as follows.

Occasion 1: At a time shortly after Kayla was placed with the defendant and his wife, in Kayla's bedroom, the defendant touched her vagina underneath her clothing, and then inserted his finger into her vagina.

Occasion 2: While on the Spirit of Tasmania returning from Melbourne, when in a cabin on the ship, the defendant moved her from a top bunk to a bottom bunk, reached under her pyjama pants, touched her vagina and inserted his fingers into her vagina, after which he inserted his penis into her mouth.

Occasion 3: While inside the garden shed at the house where they lived, he touched the complainant on the vagina and put his fingers inside her vagina, and again inserted his penis into her mouth.

Occasion 4: In the bathroom at home, the defendant made Kayla touch his penis, and then he inserted his penis into her mouth.

Occasion 5: In the bedroom at home, the defendant told her to remove her pants, and then attempted to insert his penis into her vagina but did not succeed as a result of Kayla's resistance.

Occasion 6: While camping in a park area and when in a tent, the defendant either attempted to or succeeded in penetrating the complainant's vagina with his penis.

The law is that a person sentenced to this crime on the basis of three or more identified occasions of sexual offending should ordinarily suffer the same penalty as if the offences were charged separately, subject to moderating factors of proportionality and totality. If the evidence shows that the extent of the crime goes beyond identified occasions, it is often not possible to do more than make an estimate of that extent, and to take into account that the identified offences were part of ongoing abuse. In this case, there are the six identified occasions. The complainant was able to identify distinctive features of each occasion and I am satisfied that each occasion occurred as alleged. Three occasions involved both indecent assaults and oral

rape, one involved an indecent assault, and one an attempted vaginal rape. I am satisfied that the last occasion involved a degree of vaginal penetration. The allegation is also that these occasions took place in a background of continued similar conduct. In Kayla's police interview she said several times that things happened "all the time"; "once a week or more". Although it may well have seemed that way to a girl of her age and in that predicament, I am not satisfied that this can be taken as literally correct. That is because of the combined effect of evidence given by the defendant, his wife and a former employer of facts which I find to be, at the very least, a reasonably possible scenario. For what was described as "a lot" of the time when Kayla was in the defendant's care, the defendant was engaged in carrying out NBN installations. For a period of 12 months, he worked at St Helens during the week, returning home only at weekends. There was also a period when he serviced the Bass Strait Islands. Installations were carried out during most of the working week. With service calls he would fly over in the morning and usually back that night. That said, I am satisfied that these identified occasions took place in a general background of similar abuse, the frequency of which it is really impossible to estimate. The best that can be said is that it was reasonably regular. The nature of the unlawful sexual acts escalated in seriousness over time as Kayla got older. That abuse included regular vaginal intercourse to the point of ejaculation. This often happened on a chair in Kayla's bedroom with her on top of the defendant. Kayla's statement to a social worker in October 2014 were to the effect the defendant did not use a condom and would "finish inside". Kayla used to worry about being pregnant after her menstrual cycles commenced. It was at that time and to that social worker the offending came to light. Kayla had recently made an oblique comment to a fellow student. Kayla was worried that her friend was going to tell other people. When she started to reveal the abuse, she was deeply troubled about breaking a promise she had made to the defendant not to talk about what had been happening between them.

I have a victim impact statement dated 11 September 2024. In that statement Kayla acknowledges that she had behavioural issues as a child but had not previously experienced any mental health issues including anxiety or depression or suicidal ideation. All of these things had developed as a result of this offending. She now has a history of self-harm and hospital admissions. She feels robbed of a normal childhood development. She has issues with making and maintaining friends, and as a teenage girl felt isolated and could not be a part of what she describes as "normal teenage girl talk" about emotions for boys. She feels her schooling suffered and that she has been affected financially because of her limited education and her anxiety and trauma triggers. She also feels her life choices and control were stolen from her, with no opportunity to be a normal child or teenager. She seems to be enrolled in university at the moment and with the assistance of therapy believes she can succeed. In relation to the impact on Kayla of the defendant's crime, I accept that there was a real chance that she would in any event have suffered some behavioural and emotional issues but it is clear, and I am satisfied, that the defendant's conduct has had a very substantial and long lasting effect on her.

The defendant is now 53 years old. He was between 37 and 43 years old at the time of the offending. He is divorced from his wife but they remain friends and share a house. He has no prior convictions to speak of, although that is of no great consequence in cases such as these. He conducted a small business of his own in the period leading up to and the commencement of the period of offending and then worked in NBN installation as I have outlined. There was a good deal of evidence at the trial about a medical condition involving urinary incontinence and post micturition dribbling. He has been treated for this condition since 1995 which treatment has included surgery and medication. He has also been diagnosed suffering from retrograde ejaculation which is a condition which means that while erection and orgasm can be achieved, little to no semen is ejaculated externally, instead being ejaculated into the bladder.

The urination problem seems to be such that he has ceased work and was in receipt of benefits at the time of trial. There is nothing in his personal circumstances or background which has any real mitigatory value, although I accept that the nature of his offending may lead to segregation in prison and hence some adversity, and that his health condition will also create some vulnerability for him.

The very significant level of gravity of this offending goes without saying. Sexual abuse of children is a matter of very high community concern. While the defendant is not to be punished for taking the matter to trial, he does not get the advantage of having pleaded guilty and nor is there any expression of remorse. Factors of general deterrence, denunciation and condemnation are paramount. In this case there is a number of aggravating circumstances within the meaning of s 11A(1) of the *Sentencing Act*, which would in any event amount to such. Primarily of course, Kayla was under the care or supervision of the defendant. She was his foster child. Her background was highly unsettled and unsettling. She was very vulnerable. She required a stable and caring environment. This conduct amounted to a very grave breach of trust. She was also under 13 years old for much of the relevant period. Further one of the identified occasions took place in the presence of other people, albeit that, consistent with the view of the identified occasion I take, those others must have been asleep. Perhaps the only thing that can be said in the defendant's behaviour is that there is no evidence of physical violence or coercion and no threats of such.

Mr P, because of the need to protect children your serious criminal conduct calls for a weighty response. You deprived the complainant of a stabilising environment and effectively deprived her of a decent late childhood and early adolescence. Your conduct caused long-term disabilities and difficulties. She was entitled to expect to be safe in your home and in your company. As I have noted, you betrayed the position of trust given to you by those in authority. The need for personal deterrence is perhaps not now a major factor but, in any event, strong condemnation of what you did is important. As I have also noted, there is little that entitles you to leniency. You are convicted of the crime and sentenced to 12½ years imprisonment to commence on 11 September 2024. I order that you not be eligible for parole until you have served 7 years of that term. I am required to make an order under the *Community Protection Offender Reporting Act* unless I am satisfied that you do not pose a risk of similar offending. In the circumstances I cannot be so satisfied. I order that your name be placed on the register and that you comply with the obligations under that Act for a period of ten years from your release.