

EC, the defendant, has pleaded guilty to one count of persistent sexual abuse of a young person. The period alleged in the indictment and as stated in the Crown facts is from about 1 October 1982 to 15 August 1983, that date being the day before the complainant turned 17. The defendant was born on 28 July 1948, making him 34 to 35 years old at relevant times. Many of the facts were in dispute including the detail of some identified occasions as to which the defendant admitted unlawful sexual acts of a less serious nature than those alleged and the total number of occasions involved. I heard evidence from both the complainant and the defendant. On 17 October 2024 I published my findings and reasons. I found that there were ten identified occasions on which an unlawful sexual act or unlawful sexual acts had taken place, commencing on about 1 February 1983. I also found that this was in the context of ongoing sexual activity, in particular, vaginal sexual intercourse, but that there was no unlawful sexual activity between 22 April and 30 May 1983. The background is as follows. In late 1978 or early 1979, the complainant first met the defendant during a visit he made to her home. The defendant was a teacher, and the purpose of his visit was to speak with her parents to arrange for her, when she began at Brooks High School, to be assigned to a particular sub-school which he managed. The identification of future students for enrolment at the sub-school was not unusual. The complainant attended that sub-school from grades 7 to 10 from 1979 to 1982. The defendant was one of her allocated teachers. For a time from 1981 to 1982, the complainant was in a relationship with the defendant's son. As a result of this relationship, she became more familiar with the defendant. As a teacher, the defendant was said to be "accessible, supportive and encouraging", but the manifestation of those things increased in late 1982, when the complainant was in grade 10. It was common ground that in December 1982 after the complainant left school and in early 1983, the defendant contacted her and they communicated in writing; he visited her at work, and they would meet. There was an area of contention about the nature and intensity of the defendant's "romantic" interest in the complainant when she was still at school and shortly thereafter. He sent her poems, gave her literature and they met in non-teaching situations. The defendant denied being in love with her in late November 1982 when he sent her a love poem, although he conceded growing feelings for her at the time he sent another poem to her in later December. I have found that the defendant's inappropriate interest in the complainant when she was still at school was greater than he was prepared to admit.

The first identified occasion of an unlawful sexual act is one of indecent assault which happened on or about 1 February 1983. The defendant "briefly" kissed the complainant on the lips while they were at his home sitting on a couch in the lounge room talking. I am not satisfied that any unlawful sexual activity took place before that date. Occasion 2 is said to have occurred in early 1983 when the complainant and the defendant went in his car to a secluded place where they lay on the grass. The defendant ran his hands over her body, fondled her breast through her bra, placed his hand under her skirt and rubbed her genitalia through her stockings and underpants. This conduct amounts to an indecent assault. The first act of vaginal sexual intercourse took place on 1 March 1983. That is occasion 3. This took place when the complainant was 16 years and six months old, while the defendant was 34 years and seven months. He picked her up from work, drove them to a riverbank area, they walked to a spot beside the river, lay down, he removed her underwear and vaginal sexual intercourse took place.

The remaining seven identified occasions are as follows.

- Occasion 4: during the day sometime between 1 March and 21 April 1983, they drove to a forest reserve where they lay down in the back of the defendant's van, and vaginal sexual intercourse took place.
- Occasion 5: on a date which can be inferred to be before 30 May 1983, they again drove to the same place where vaginal sexual intercourse again took place.
- Occasion 6: sometime between 1 March and 21 April 1983, after normal hours the complainant and the defendant went to the school and, while in the music room, the complainant performed oral sex on the defendant until he ejaculated; this was followed by vaginal sexual intercourse.
- Occasion 7: early in the evening on a different day, sometime between 1 March and 15 August 1983, they again went to the school and vaginal sexual intercourse took place.
- Occasion 8: sometime after 30 May 1983, they drove to road reserve where vaginal sexual intercourse took place until they were interrupted by a policeman knocking on the side of the vehicle.
- Occasion 9: sometime after 30 May 1983, after the complainant finished work at 9pm they drove to the Batman Bridge, where vaginal sexual intercourse took place in the car.
- Occasion 10: on an unknown date but after the complainant had left home on 30 May 1983, and in the defendant's room at a hostel where the defendant was living, vaginal sexual intercourse took place.

As noted, the unlawful sexual relationship ended on 15 August 1983. Their sexual activity then became lawful. The defendant and the complainant continued their relationship, as a couple, for some 13 years; it ended when the complainant left the relationship in 1996 at the age of 29. Although often living apart they were in what seems to have been a continuous and exclusive relationship. It should here be noted, that although when the complainant was 16 they took steps to hide what they were doing, on 22 April of that year, her parents challenged the defendant about the nature of the relationship and he admitted it was sexual. Sexual activity then stopped until the complainant left home, an event in which I found the defendant was involved. The matter was reported to the Education Department, but the defendant denied the allegations when spoken to. The matter was not reported to police until the complainant contacted them in late 2018.

Following the publication of my reasons, the complainant read a lengthy victim impact statement. That also proved to be contentious, and both she and the defendant gave evidence about statements contained in it, and among other material, I received in evidence many cards and letters written by the complainant to the defendant in the period up to 1993. The complainant states that as a result of the defendant's conduct, at 16 years of age she lost everything about her life that made it her life up to that point. She described academic merit, being part of a close extended family, being an honest and responsible person, with a very good friend and a boyfriend, and with a casual job and plans for tertiary qualifications, career and a family of her own. She notes that shortly before she turned 17 she had dropped out of year 11 because she could not cope with the guilt, shame, confusion and pressure of living two lives. She describes an "abnormal" life involving the defendant and their sexual relations, the other life no longer normal because of that. By this stage she had left home and was living in a small flat. She said she missed her family terribly and felt trapped overwhelmed and confused. She feels that the defendant groomed her to get to her and it interfered with her life at home and at school and this was under the guise of being a caring teacher. She looks back on her life on

those years to 29 years of age with a mix of guilt shame anger sadness and profound remorse, and wonders what she might have been. She feels that she has failed her family. She now takes time to form friendships as she is wary. In the end the complainant went to the police as she felt she needed to stand up for herself. There is a complaint about being "trapped" in an emotionally abusive relationship going on through the years. She feels her value to the defendant was dependent on her being young, thin, desirable, undemanding, in sight but out of sight, compliant and silent. She said that it was not a conventional relationship, with them spending more time living apart than together, often in different towns and cities. She suggests that he was controlling. It is those statements in particular, which gave rise to taking further evidence. I will say something about this later.

The defendant is now 76 years old. He has no recorded history of offending of any note. He qualified in 1968 and obtained an Education Department scholarship to university. He married during his university years and two children were born, one in 1969 and one the following year. He started teaching at a high school in Launceston and then moved to King Island District High where he was for two years, and during which he and his wife separated. In 1978 he started at the high school later attended by the complainant and became house master of the school boarding house. He moved on from there in 1986 and progressed through various schools and positions including the principal at both a district high school and a southern high school, and he spent a year as acting district superintendent of a southern district. He retired in 2005. I have character references attesting to his skills as a teacher and administrator and his integrity. Of particular importance in this sentencing process are the defendant's present personal circumstances. He started a relationship with another woman [NC] about a year or so after he and the complainant separated. Those two subsequently married and they remain together. I have medical evidence which I have shows that the lady is seriously unwell with both physical and mental health problems of significance. She was diagnosed with pelvic cancer in 2018 which has required multiple surgeries. She has a severe complex PTSD along with anxiety and depression which arose from physical and emotional trauma in her childhood years and later within her first marriage, described by a medical practitioner as a long and devastating history of severe trauma. She suffers suicidal ideation and has made one attempt on her life. The defendant is formally registered as her carer and the unchallenged medical evidence is that he plays a crucial role in her emotional psychological and physical care, being the only person able to consistently manage her symptoms and provide the comfort she requires. The treating doctor expresses a firm belief that removing the defendant from his role as a carer would put his wife at an unacceptable and immediate risk potentially leading to a rapid deterioration in mental health and potentially triggering a suicidal crisis. It is said that without him her life could be in danger. I am satisfied this situation constitutes exceptional circumstances so as to enable me to take into account hardship to others.

This crime can be distinguished from more serious examples which involve younger children, non- consensual or degrading sexual activity and longer periods of offending. The consensual and willing sexual activity occurred only over a relatively short time – a little over five months – before it became lawful. I accept, that at least for a very lengthy time afterwards, the relationship between the two was one of mutual affection. However, in part, the law about having sex with young people is in place to protect those young people from making ill-considered immature decisions about who to have sex with and when. It is designed to protect those with a lack of emotional maturity and judgment from themselves, in the sense of causing themselves physical and physiological harm which may result from sexual activity at a young age with much older people. The defendant was a person of influence at that stage of the complainant's life. He was a teacher when he started to show a level of inappropriate interest

to the extent of being predatory. What later followed had its origins in that teacher/student relationship, and while it might not be strictly correct to say he was in a position of trust in the sense of an actual teacher/student relationship at the time the sexual activity commenced, given the overall circumstances, my view is that the effect of the offending is essentially the same. It follows that considerations of general deterrence and denunciation are very important. In general terms, previous character and delay in reporting do not count for much in these types of cases. There is some credit to be gained from the plea of guilty, but it is of not of great weight. The plea was made to a second indictment dated 5 September 2024, with the trial due to commence on 16 September. The previous indictment was from May 2022, and the new one simply contained one count of two which were on the old one. The plea obviated the need for a jury trial, but the admitted facts barely covered the elements of the crime and the complainant was twice required to give evidence. The defendant was entitled, of course, to advance his version of events, but that is the effect of things.

As to the question of harm caused by the offending, the State accepts that generally there is a need for circumspection in relation to victim impact statements, and properly accepts that what can be taken into account in this case is the impact of the offending had on a 16 year old, as distinct from the impact the relationship generally had on her. That is something which, the State concedes, is difficult for the complainant to distinguish. As to defining the harm arising from the unlawful conduct, the difficulty is illustrated by looking at the question in the hypothetical situation or there having been no sexual activity between the two until the complainant was 17. The principal area of dispute was the nature of the ongoing relationship after the complainant reached adulthood. That is not something that can be easily resolved and I am not at all persuaded that I am required to do so. In any event, it is very difficult to analyse the dynamics of a relationship and the individual perspectives. However, for the sake of completeness I add the following observations on some of the evidence.

The correspondence from the complainant I referred to earlier is, on its face, from a very affectionate, loving and caring person, and which shows enthusiasm for all aspects of the relationship including the sexual one. From the defendant's evidence, that is how he saw the relationship until it ended. That the two were a happy couple seems to have been the observations of others whose statutory declarations I have. In contrast to her claim of being manipulated, he says work opportunities kept them apart for various periods, but they travelled to see each other. In one instance, on his evidence, he borrowed money to travel frequently to Canberra where she had moved for a time to take up a position of advancement. They took two extensive overseas holidays together. All of that said, I will leave the matter there as there is no need for me to progress it further. As to harm arising from the offending, in stating the facts, the State's counsel asserted that the first act of sexual intercourse with the defendant was the complainant's first such experience. That was disputed, and she was cross-examined about it. I expressed my doubts about her version in my reasons, and further unchallenged material put before me since then, confirms my doubts. To the extent that it has any relevance to the issue of harm, I am not satisfied beyond reasonable doubt of that asserted fact; it is reasonably possible that there was a short act of sexual intercourse with a boy within her own age group in 1982. As to established harm, in my view the harm which the law presumes is in fact made out in this case. It is clear that over a period of time, the complainant started to realise the extent of the loss she had in fact suffered as a 16 year old. That loss is compellingly detailed in her victim impact statement, only a short portion which I have set out. A feeling of great loss and in retrospect of what might have been, is fully understandable. It was that relationship at a young age which drastically changed her immediate environment and set her on different

personal and educational trajectories. I am satisfied that in fact harm was caused by the unlawful sexual relationship starting when it did.

Because of the defendant's responsibility for the care of his wife and the extent of her disabilities, I obtained a home detention assessment report. That report shows the defendant as suitable. Four options are provided but three are discounted due to the level of care that the defendant needs to provide. This is an unusual case in many respects. It requires an individualised approach. I propose to proceed in accordance with the recommended option for home detention, but fine tuned to an extent. Home detention is imprisonment. It is clearly less onerous than imprisonment in an institution, but it does have punitive aspects which include personal embarrassment at the restrictions.

Mr C, I have set out the essential facts, your personal circumstances and all of the relevant considerations as I see them to be. You have now faced criminal proceedings about 40 years since your offending and when you were in an apparently close and loving relationship with the complainant for some 13 years. But your conduct in fact caused her harm as I have said, and as I have also said, for a person in your position and age in relation to the complaint, your conduct has to be condemned.

You are convicted of the crime. Subject to your consent, I make a home detention order. The period I direct to be the operational period is 15 months. The statutory core conditions of that order are contained in s 42AD(1) of the *Sentencing Act*, and they will include electronic monitoring under paragraph (g), and accordingly s 42AD(1)(h) and (5) apply. All conditions will be set out in writing for you. I specify the home detention premises as [address]. As a condition of the order, you must attend Community Corrections at 75 Liverpool St, Hobart by 5pm tomorrow for induction. Further special conditions are as follows and apply to the operational period of the order.

- 1 You must remain at the home detention premises at all times except for the sole purpose of taking [NC] to pre-arranged counselling or healthcare appointments between 6 am to 6 pm on weekdays and 10 am to 2 pm on weekends and public holidays, or at any time for the reason of obtaining emergency care for her.
- 2 You must not consume alcohol and must, when directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of alcohol;
- 3 You must not:
 - (a) take any controlled drugs or substances within the meaning of the *Misuse of Drugs Act 2001*;
 - (b) any medication containing an opiate, benzodiazepine, bupropion or pseudoephedrine without such medication having been prescribed or recommended in writing by a pharmacist, and you must on request provide written evidence of such prescription or recommendation;
- 4 You must maintain in operating condition an active mobile phone service, provide the details of that to a probation officer or prescribed officer, and be always accessible for phone contact.

[The defendant consented to the making of the order.] I make the home detention order in those terms. On all of the material including the home detention assessment report which addresses

the issue, I am not satisfied you pose a risk with the meaning of the *Community Protection (Offender Reporting) Act* and I will not make an order under that Act.