

Mr Perry, the defendant, has been found guilty of eight counts of penetrative sexual abuse of a young person. Five counts relate to a female complainant who, intending anonymity and meaning no disrespect, I will call "Melissa". The other three arose out of one incident involving a female complainant who, again meaning no disrespect, I will call "Danielle". In Danielle's case, the verdicts of guilty were alternatives of charges of rape. In respect of both complainants, I was required to make findings of fact relevant to sentence. On 10 July 2025, I published to the parties my findings and reasons. Those findings are incorporated into these comments.

The five counts involving Melissa were committed between 1 December 2018 and mid-March 2019. At the start of the period of offending, Melissa was 13 years and 9 months old. The defendant was born on 3 September 1999, making him four and a half years older, and so 19 years 3 months at the start of the period. For part of 2018 Melissa was living with her mother. Her father was not in her life. In August of that year, when she was in Grade 8, she changed schools and then became friends with a girl, Emma (not her real name), whose older sister was then the girlfriend of the defendant. Melissa ended up spending time with the two sisters and the defendant. They would drive to places such as a quarry, sit, talk and smoke cigarettes. The defendant started coming to Melissa's school, bringing cigarettes and talking to her. As the student year progressed, friction arose between Melissa and her mother and eventually Melissa left home. She stayed with friends or in abandoned buildings before moving in with Emma and Emma's mother. Contact with the defendant continued. She would ask him for alcohol, and he would oblige, or he would offer to get it and did so. He continued to provide cigarettes and sometimes food. He would give her lifts in his car whenever she asked. The defendant and Melissa communicated on Snapchat and at one point he asked her for photos of herself naked, and she obliged. All five counts involve penile penetration of the vagina. The first act happened in the bathroom of Emma's home, when there was a gathering there and after he had followed her into that room. He did not use protection. Two further acts of intercourse in similar circumstances to each other. In each case, while the defendant was giving her a lift to a requested destination, he drove the car off onto a dirt road and intercourse took place on the passenger seat. On each occasion he used a condom. The next time happened after the defendant had offered to help Melissa's mother by taking rubbish away. He and Melissa then drove to the rural property where the defendant lived, and to a spot where the rubbish could be disposed of. Intercourse took place in the vehicle at that location. Protection was used. The last occasion was after a gathering of young people at a large unit complex, next to which there was some vacant land. The defendant and Melissa spent the night outside in a swag. Intercourse took place but no condom was used. Shortly afterwards the defendant stopped communicating with her.

In his police interview the defendant admitted to an unspecified number of acts of intercourse but said these things happened at the home of the complainant's mother. The jury was instructed that if it thought this version was reasonably possible, it should acquit. The issue as to whether the defendant had an honest and reasonable but mistaken belief about Melissa's age was also left to the jury. He told police he thought she was 17 but because of the age difference and s 124(3) of the Criminal Code, the question left to the jury related to a belief as to an age of at least 15. The verdicts did not resolve the two pathways of this issue by which they could have been reached they being first, the possession of a positive but mistaken belief. and second, whether it was honestly and reasonably held. I made a finding I am satisfied the defendant did not have a positive belief that she was at least 15. I am satisfied that he had an appreciation of

her approximate age. Melissa can be properly described as being vulnerable at the time, given that she was estranged from her mother and, for a time at least, did not have stable accommodation and was nomadic. The defendant made efforts to ingratiate himself with her by way of the provision of cigarettes, alcohol and free rides. At a point in time before any physical sexual acts, he was involved in sexualised communications with her. I have a victim impact statement, dated 18 June 2025. Melissa says that after the first act of sexual intercourse, she took a pregnancy test but, not fully understanding the process, took it the next day. She did not fully understand conception and was very scared. Generally, she says she was hungry; the defendant brought her food, cigarettes and alcohol, and it was not difficult for him to build a friendship with her when she was struggling. She thought she was mature but now recognizes her naivety. Melissa says the defendant's behaviour contributed to a chain of events that has made her life incredibly difficult. She went back to school in Year 10 but rebelled and went into foster care because her mother could not control her. She then associated with older people, who gave her drugs, which lead her down a very difficult path. While still underage, she was being sexually abused by an older man who gave her drugs. She is now 21 and wonders how she will recover. Maintaining relationships has been difficult. She finds it difficult to put into words the damage caused with her whole life being chaotic. She does acknowledge the verdicts have made her feel vindicated and eased a lot of her worries.

The incident relating to Danielle which gave rise to three counts happened on 4 October 2019. At that time, she was 14 years 9 months old. The defendant had just turned 20 by a month. The age difference is 5 years and 4 months. Danielle met the defendant through her friends. She said that one of them, Amber (not her real name), was "on the go" with him. A week before the incident Danielle was staying at Amber's house. At one point Amber and the defendant were on the phone and she could hear the conversation in which they were saying that they loved each other, and the defendant was calling her pretty. The next week, Danielle received a message from the defendant saying that he wanted to talk to her, to which she agreed. She suggested that they meet at a park near to where she lived. She got the impression the defendant wanted to talk to her about Amber "cheating" on him with his cousin. They met at about 4:30pm and after some initial discussion about that topic, he suggested they go for a drive. He put her bicycle in the back of his utility and after a short drive, they arrived at a relatively isolated area in a forest. When providing her detailed version of events to police on 17 October 2019, Danielle described events as follows. The defendant removed her shirt and bra, then took his clothes off and undid his own shorts. He inserted a finger or fingers into her vagina, which is the first relevant count on the indictment. After that, she performed oral sex on him after which he told her she needed to take her shorts off. She obliged, and vaginal sexual intercourse took place with her laying down on the bench seat of the vehicle. He was not wearing a condom but ejaculated onto her stomach. The defendant then drove her home.

The verdicts of not guilty of rape are consistent both with the jury not being satisfied beyond reasonable doubt that Danielle did not consent, and with being satisfied that she did not consent, but finding it was reasonably possible the accused had an honest and reasonable mistaken belief as to consent. The State requested that a finding be made about this, and I have resolved it on the basis that I am satisfied that Danielle did not consent to the three acts the subject of the proven charges. I rejected his version to police that in a telephone call in the afternoon, she suggested they meet for sex, and that she instigated what occurred. I proceed on the basis the jury could not exclude the reasonable possibility the defendant was honestly and reasonably mistaken about consent. Danielle's evidence that she did little, if anything at all, to resist or express her unwillingness can explain the not guilty verdicts. However, as I will go on to discuss, care needs to be taken so the defendant is sentenced for the type of crime of which he

has been found guilty, and not that of rape in respect of which he has been acquitted. An absence of consent is not an element of the former, it cannot of itself be taken as an aggravating factor although it does have a role to play, as I will later explain. There is also the question of the defendant's belief as to age. I am satisfied that the defendant did not have a positive belief that Danielle was at least 17, and in fact had an appreciation that she was about 14 going on 15. It is relevant of course, that the three offences of which he was found guilty all formed part of the one incident.

I have a victim impact statement of Danielle dated 7 July 2025 which shows a high level of adverse impact. In summary, she says she genuinely thought the defendant wanted a friend as they had similar interests. She feels he took advantage of her kindness and naivety. In terms of the acts the subject of the counts, she was relatively sexually inexperienced. After the event she felt ashamed. She had previously been diagnosed with depression but that worsened. She began self-harming regularly and severely. She began being harassed and bullied at school and on social media. There has been one apparently serious suicide attempt, which saw her hospitalised. She has been undertaking counselling. In short, she says she remains seriously traumatised, but in her case also, the guilty verdicts have helped her to obtain some closure, and she says she is seeing things more positively.

It is appropriate the offending be put in some context. In the trial, tendency evidence came from two young women who were not complainants in the trial. I will refer to them by letters. The evidence, which I accept, has a common theme. Separate communications between them and the defendant were started on Snapchat or the like, with the defendant requesting the acceptance of friend status. Online conversations became sexualised with the defendant asking for nude photographs. P was 12, turning 13, in 2018 to 2019. He sent photographs of what were described as "ab pics". She sent photographs of herself in school uniform but no pictures of herself naked. After that there was no further contact. He did not ask her age, but it was available on Instagram. The other girl, M, seems to have been about 14 turning 15. In this case, she sent pictures of her breasts on request, and the defendant sent pictures of a penis. Conversations of that type at least, ended in March 2018 when she started going out with another young man.

The defendant is now 26. He has no prior convictions to speak of as at this date. He was born and raised on the Northwest Coast of Tasmania in a farming environment, his father's family having been on the land for a considerable period. He completed Grade 10 and started college, but left to start work as an agricultural harvesting contractor, a type of work in which, along with being a farming hand, he has spent the whole of his working life. He is highly skilled in his area of work. He left the State in October 2019 which was a pre-planned move; it was not a sudden decision. He worked on various rural properties in Victoria and New South Wales. He returned home for Christmas in 2020 and was then interviewed and charged. His bail conditions allowed him to return to his then employment. More recently he has been employed as assistant farm manager on a large property at Tocumwal, New South Wales, on the Murray River, a position which I am told, and I can imagine, carries with it a large degree of responsibility. He has been in a stable relationship with a woman for going on two years. She also works with him. I have several references from people who have known the defendant for considerable periods, and also from those who have had more recent contact with him. From his time as a volunteer with the Tasmanian Fire Service, there are people who attest to his trustworthiness and dedication, enthusiasm and dependability – with a capacity to remain calm, focused and effective under pressure: an invaluable member. Apparently longer-term friends speak of his responsibility, kindness and enthusiasm for community projects. One of those

people refers to the great loyalty shown, and help given after that person suffered injuries in a motor vehicle accident. Two apparently more recent contacts also speak of honesty, responsibility, kindness and dedication. A letter from his current partner tells the court that the defendant treats her with the utmost support, respect and care, and speaks of the confidence he has instilled in her. She attests to his hard work and determination in getting to where he is.

The sentencing exercise in this case perhaps involves more than the usual degree of competing factors and objectives. First, as has been said many times, the purpose of the crime under consideration, is to not only to protect young people from exploitation by others, but to also in effect to protect them from themselves by dissuading them from sexual activity until they are thought to be emotionally mature enough to make sensible decisions about whether they have sex, and with whom. Engaging in premature sexual relations can have serious detrimental effects which may not emerge until much later. Sadly, that is exemplified in this case by Melissa's situation. The effect on Danielle's has been dire but her case is in a somewhat different category. This takes me back to the issue of lack of consent as I found to have been the case, and to what use can properly be made of it. As I have said, Danielle's lack of consent cannot be simply taken as an aggravating factor as such, but it seems to me the fact of it and the consequent effect on her cannot be overlooked in terms of the purely objective seriousness of the offences. However, that the defendant had an honest and reasonable but mistaken view about consent reduces his moral culpability quite considerably: see as to this issue *Director of Public Prosecutions v King* [2024] TASCRA 8 at [12]-[13]. He is to be sentenced accordingly but bearing in mind what I have said about his state of mind as to her age. In short, considerable harm has been caused to both these young women. The defendant is not able to claim the benefit of pleas of guilty.

The next thing is that on the whole of the evidence, which includes that of P and M earlier outlined, I am satisfied that although the defendant was arguably merely more comfortable simply socialising with people of that young age, there was also a sexual motivation and interest. He is not to be punished for the way he was generally conducting himself in 2018-2019 but in this respect, it is a relevant consideration. It follows that denunciation and condemnation of this offending, together with attempting to deter others similarly minded, are very important factors. On the other hand, the degree of disparity in ages is a matter which operates in the defendant's favour. It is generally regarded as a moderating factor of considerable weight where the age difference is small. It seems that age differences of the ranges as exist in this case are so regarded but of course the actual age of the complainant is important. In many cases involving a single complainant and one consensual act of intercourse or even a continuing course of that conduct, where the age difference is low the outcome has been a short, suspended term of imprisonment; sometimes even a more lenient course has been taken. The defendant is properly described as a young offender with all that that entails, and a person who had no prior convictions and remains without any. Further, the delay in this case is of significance. The State has conceded as much. On its own, simple delay is not a mitigating factor but where the offender has plainly rehabilitated themselves and is a contributing member of the community, it is a weighty factor towards leniency. I accept that this is so in the defendant's case. His employment and life in general, as he has established it interstate, has been significantly disrupted by the trial process. He is presently living and working in this State on the family farm, having had to remain here for a lengthy period since the trial by virtue of a bail condition. He has said, and I accept, that he finds it difficult being away from his lifestyle and friends in New South Wales. At the same time however, the fact of him getting on with his life in that way is to be contrasted with the adverse impacts on the complainants. So as to consider all options I obtained a home detention assessment report. The defendant has been

deemed suitable for such an order. and it is possible to confine him to a residence during certain hours, allowing him to work on the farm during the day but confined to that property.

The seriousness of the totality of the offending is cumulative. The incident with Danielle has to be viewed in light of the previous relationship with Melissa. That ended about six or seven months or so earlier. That course of conduct might suggest a global sentence on the indictment, but I think a global sentence runs the risk of over generalising and mispresenting the circumstances of each set of offences. There is a view that even a wholly suspended sentence of imprisonment strictly sits above a home detention order in the hierarchy of sentences, primarily because of the possibility that actual gaol might follow, but that of itself is not determinative; much depends on the terms of the orders: see *Director of Public Prosecutions v King* [2020] TASCCA 8 per Blow CJ at [28]. I think in this case it is appropriate to impose separate sentences in relation to Melissa – counts 3 to 7, and Danielle – counts 12 -14. I am going to utilise both forms of orders that I have just mentioned.

Mr Perry, I've taken some time to set out the facts, the effects of your crimes, your personal circumstances and the consequences for you, and the competing factors. Your conduct and its effects – in the background of ingratiating yourself with these complainants and sexualised communications with girls of a similar age – has to be seen in a serious light. At the same time, I have considered things such as your age at the time, the delay that has happened which is no fault of yours, and what you have done in that time. All things considered, in respect of counts 3 to 7 you are convicted and sentenced to six months' imprisonment the execution of the whole of which is suspended on condition you commit no offence punishable by imprisonment for 18 months. I take the view that a form of imprisonment is necessary in respect of the remaining three counts, 12 to 14. You are convicted and subject to your consent, I will make a home detention order. The period I direct to be the operational period of that order is six months to commence on 12 September 2025. The statutory core conditions of that order are contained in s 42AD(1) of the *Sentencing Act*. They will include electronic monitoring under paragraph (g) of that section, and accordingly subss (1)(h) and (5) apply which deal with the removal of and interference with the device. All these conditions will be set out in writing for you so that you fully understand them. I specify the home detention premises as [addresses 1 and 2]. As a condition of the order, you must attend Community Corrections at 57-59 Oldaker St, Devonport by 10am tomorrow 12 September for induction. I make further special conditions that apply to the operational period of the order. They are:

- 1 Unless otherwise approved by a probation officer, on each day of the week:
 - (a) you must remain at the residence at [address 1] between the hours of 7 pm and 7 am;
 - (b) you must remain on the properties situate at [addresses 1 and 2] between the hours of 7 am and 7 pm save for travelling along the Bass Highway between the two properties without delay and by the most direct route.
- 2 You must submit to the supervision of a probation officer as required by that officer.
- 3 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.
- 4 You must not:
 - (a) take any controlled drugs or substances within the meaning of the *Misuse of Drugs Act* 2001;

- (b) take any medication containing an opiate, benzodiazepine, bupropion or pseudoephedrine without such medication having been prescribed by a medical professional, and you must on request provide written evidence of such prescription.
- 5 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 conditions which I have outlined are generally in accordance with those recommended by Community Corrections. [The defendant consented to the order]. I make the order in those terms. There remains the question of an order under the *Community Protection (Offender Reporting) Act*. I have given this matter careful consideration. The Community Corrections report says you present as a low level of risk, but that of course is from a broader perspective. Relevant factors are the time that has elapsed since the offending and the maturity which you see to have acquired in that time, your stable work and lifestyle interstate and your current relationship. Notwithstanding the general behaviour engaged in at the time which manifested itself in this offending, in all of the circumstances, I am satisfied you now pose no real risk, and I decline to make an order.