

MM, you plead guilty to persistent sexual abuse of a child. These published comments have been amended, including by use of a pseudonym for the complainant's mother, so as to protect the identity of the complainant. The crime of persistent sexual abuse of a child is committed when a person commits an unlawful sexual act against a child on at least three separate occasions. In this case, the prosecution alleges that there were fourteen occasions on which unlawful sexual acts occurred, and that these identified occasions occurred in the context of other regular acts of sexual abuse throughout the period of offending. Although you plead guilty to the crime, many of the acts alleged against you are disputed and thus it is necessary for me to make findings in relation to the nature and the character of the persistent sexual abuse for which you are to be sentenced.

The prosecution case is that the crime was committed more than 40 years ago during the period between late 1979 and November 1985 against the complainant, who was your step daughter, when she was aged between 5 and 12, and you were aged between 38 and 44. Some background facts are not in dispute. The complainant was born in 1973. She had one older brother and one younger brother. In about 1978 you began a relationship with the complainant's mother, Helen Jacobs, after the breakdown of her marriage. You moved into the home in which she lived with her children. You had two daughters from a previous relationship although they did not live with you. In late 1979 you and Ms Jacobs and the children moved to a house in Sherwins Avenue. Because Ms Jacobs was in full time employment, you helped care for her three children. In about 1981 or 1982 you and Ms Jacobs purchased and moved into a rural property in Lalla about 30 kilometres north of Launceston where you lived until about 1985.

According to the complainant, you began to commit sexual acts with her after you moved into the home in Sherwins Avenue and continued after you moved to Lalla. She said that the acts consisted of you penetrating her mouth with your penis, you performing oral sexual intercourse upon her and rubbing her vagina with your penis and fingers. On her account the sexual acts occurred frequently and continued until you moved out in about 1985.

You do not admit that any unlawful sexual act was committed at Sherwins Avenue. You admit that there were occasions when you lived in Lalla that you penetrated the complainant's mouth with your penis. As it applies to the occasions identified by the prosecution, the admission relates to three occasions, which, as I will explain, are occasions five, seven and nine. The admission of those three occasions is sufficient to constitute the crime although there are some factual disputes concerning those occasions which may affect the sentence. Beyond that, you say that none of the other occasions of unlawful sexual acts identified by prosecution happened, and you dispute the nature and extent of the sexual abuse which is alleged by the prosecution to have occurred apart from those identified occasions.

The sentencing hearing began in May 2025. The complainant gave evidence. Because, at that time, you were unrepresented, counsel was appointed in accordance with *Evidence (Children and Special Witnesses) Act 2001*, s 8A, to assist you in cross examining the complainant. The prosecution tendered the relevant parts of an audio visual recording of a police interview which was conducted with you on 9 September 2019. You gave evidence in your own defence. Following an adjournment you also adduced evidence from the complainant's mother, Helen Jacobs. By that time you were represented by other counsel who also made sentencing submissions on your behalf, including as to the factual findings I should make. The prosecution

case included facts which were asserted and not disputed by you but otherwise depends almost entirely of the truthfulness and accuracy of the complainant's evidence. I would direct myself that I could not find disputed facts adverse to you unless those facts were proved to my satisfaction beyond reasonable doubt. I could not be so satisfied unless I found the complainant to be, in all essential respects, an honest and accurate witness. In considering that question I may take into account all of the evidence.

The complainant's evidence was that the first occasion on which anything of a sexual nature occurred between you and her was in late 1979 when you came into her bedroom at Sherwins Avenue and exposed your penis to her. She would have been six or nearly six. She said that you were wearing overalls. As an adult she now understands that your penis was erect. The prosecution does not rely on that event as an occasion for the purposes of the crime. However, after that, on a morning when the complainant had come into the bed you shared with her mother, you, when her mother was not there, lay behind her and placed your penis between her legs. Such an act was an indecent assault (the first occasion). On a different morning not long afterwards you indecently assaulted her in the same way, but this time while Ms Jacobs was also in the bed but facing away (the second occasion). The complainant said that the following year you went into the bathroom while the complainant was there. You told her to get onto her hands and knees. In front of a mirror you lifted her legs from behind and rubbed your erect penis and fingers on her vagina (the third occasion). In 1981 the family stayed at a holiday shack at Dodges Ferry. The complainant was in the bed with you and her mother. You without her mother knowing, took her hand and placed it on your penis for a couple of seconds (the fourth occasion).

The next occasion the complainant was able to identify occurred in 1983. By then you and Ms Jacobs had purchased and moved into the rural property at Lalla. The complainant was aged nine or ten. You told her to "wash her fanny" and followed her into the bathroom. When you were both naked you had her perform oral sex on you by penetrating her mouth with your penis. She said that she could see one of your daughters looking at what was happening through the bathroom window (the fifth occasion). You admit that this occurred although you do not admit that you made reference to a fanny or that your daughter was present or could have seen what happened. The complainant said that, during the same year you again had her perform oral sex on you, this time in a cubby house (the sixth occasion).

In 1985, when the complainant was 11 or 12, you had her perform oral sex on you on three occasions she remembers: once in the kitchen pantry (the seventh occasion), once in the family vehicle which you had pulled over onto a dirt road (the eighth occasion), and once in your bedroom (the ninth occasion). On this latter occasion you laughed at her when she told you that she was too old to do this anymore. You admit the occasions in the pantry and in the bedroom. As to the occasion in the car, you admit that you suggested oral sex but say it did not happen because she did not agree.

According to the complainant, the occasion in your bedroom, occasion nine, was the final occasion on which an unlawful sexual act was committed. However, she identified five other occasions of unlawful sexual act each of which she could only say happened between 1981 and 1985 when she was aged between 7 and 12. On one occasion you had the complainant get into your bed and perform oral sexual intercourse by penetrating her mouth with your penis (the tenth occasion). On another occasion you made her sit naked on top of you on your bed while you rubbed your penis on her vagina (the eleventh occasion). On another occasion, while she was on your bed, you rubbed her vagina with your fingers and then performed oral sex on her (the twelfth occasion). On another occasion the complainant required treatment lotion purchased from a

pharmacy to be rubbed on her vagina (the thirteenth occasion). You applied the lotion but sexualised the act, she said, by asking whether what you were doing “felt nice.” The other occasion occurred in her bedroom. You entered the room and asked if she was awake before pulling off the doona and penetrating her mouth with your penis (the fourteenth occasion). The complainant’s evidence was this was not the only occasion on which such an act occurred in her bedroom.

In your evidence you maintained that no sexual acts occurred at Sherwins Avenue, and the only occasions of an unlawful sexual act were the three occasions at Lalla on which you had the complainant perform oral sex on you, that is that you penetrated her mouth with your penis. To recap, those occasions were once in the pantry, which you said was the first time, one in your bedroom and once in the bathroom.

Having heard the complainant’s evidence and observed her in the witness box I am left in no doubt that she is an honest witness. I am not satisfied that the acts which she described as having occurred at Sherwins Avenue and at Dodges Ferry were proved to the criminal standard. I think it entirely possible that those acts occurred, but taking into account the complainant’s age at the time, the nature and extent of the abuse which followed and the passage of time since then, I cannot exclude as a reasonable possibility that she has misremembered or mischaracterised those events. My reservations about those occasions do not, with one exception, lead me to any doubt about the complainant’s evidence of the events at Lalla. The exception is the occasion of the application of cream to her vagina. In the context of other abuse it is reasonably possible that she has characterised an occasion which was not indecent as one which was. I am satisfied that all of the other acts she described occurred. In relation to those acts her evidence was compelling and highly persuasive. Although there may be some details which are not correct, I believed the substance of what she said. She did not seek to exaggerate or embellish and responded directly to questions asked by your counsel. She was generally calm and controlled when giving evidence, but she exhibited genuine distress when recounting the more confronting aspects of the events she described. The starting point is that the credibility and reliability of her evidence is supported by your admission that three acts of oral sexual intercourse occurred. Her evidence was given in a manner, and with direct and contextual detail, which I find to be inconsistent with it being imagined. She gave vivid descriptions of detail. For example, you denied ever ejaculating in her presence, but she recalled one occasion of oral intercourse on which she remembered sticky fluid in her mouth and hollowing out her mouth to avoid contact with it. As to acts of oral sex she described how your hands were on your penis and that she had to put her mouth on your penis and “go up and down” until you ejaculated. She described the weave of your pants in the pantry. She described the nature and purpose of the trip in the car, the type of vehicle and where you were respectively positioned. She described the cubby house in which one such act took place and her evidence about the existence and location of the cubby house was corroborated by her mother. She described her posture above you on one occasion as like riding a horse. She gave a description of remembering seeing your tongue on her vagina. She described unsuccessfully pretending to be asleep when you came into her room. All of these descriptions were rational and plausible, and, as I have already stated, are in my view, when considered as a whole, inconsistent with being fabricated or imagined.

Her evidence was also corroborated to a significant extent by contemporaneous complaints she made to her mother, which were corroborated by her mother’s evidence. The complainant described how, before her mother travelled interstate for a conference in 1985, she told her mother what had been going on. Her mother still went away and, in her absence, you committed a further unlawful sexual act which was the occasion of oral sex referred to as occasion nine.

She told her mother this had occurred and her mother arranged for the children's biological father to collect them. Her mother, Helen Jacobs, gave evidence that she was told of the abuse, possibly more than once. She remembered being told by her daughter that she had been abused over time. When Mrs Jacobs was away her daughter told her that you had made her put your penis in her mouth and that you had got into her bed.

Following these disclosures you were asked to leave the house. In 1986 you reconciled with Ms Jacobs and returned to live with her and the children in another property. According to the complainant, sometime in 1987 you and she were home alone in the evening. She turned to see you standing nearby masturbating. She began to cry and you gave her wine and chocolate and told her not to tell her mother. The prosecution does not rely on this as an unlawful sexual act for the purposes of the crime and I find it unnecessary to make any findings about it. According to the complainant her mother arranged for you and she to attend counselling. The fact of the sexual abuse is also corroborated by other evidence. On 9 December 1987 a counsellor notified the child protection service of alleged maltreatment reported as "sexual exploitation". The complaint is recorded as "substantiated" but then it was noted that the child was "placed elsewhere by parent" and the matter was "withdrawn". Why the matter was not pursued then by the relevant authorities is not explained by the evidence.

As a teenager the complainant made general disclosures to her older brother, father, younger brother and boyfriend. However no report was made by the complainant to Tasmania Police until 2018.

You deny all of these occasions beyond the three you admit. You say that there was never an occasion on which you performed oral sex on her or on which sexual acts were performed in her bedroom. You say that I should have doubt about her account because some of the details she gave were not correct. You said that you were absent from the home for much of the time either away teaching or driving taxis and so the opportunity to offend was less, at least to the extent that the complainant claimed. Your denials do not cause me any doubt about the complainant's evidence in the crucial respects. I found her evidence of these occasions compelling and your denials unconvincing. I am satisfied beyond reasonable doubt that, except for occasion thirteen which concerned the ointment, all of occasions five to fourteen occurred. There were, as the evidence of Helen Jacobs confirmed, frequently occasions on which you were alone in the house with the children while she was at work and ample opportunity for you commit the sexual acts her daughter described. Perhaps you have forgotten what happened. More likely, you have attempted to understate and minimise the gravity of your offending. Some of that may even be subconscious. An indication of your attitude to the sexual acts was your suggestions to the police and in evidence that the complainant consented to the acts. She did not consent. I accept that she was too frightened to resist. But even so, at her age, she lacked the capacity to freely agree and even if there was agreement or acquiescence your crime is not mitigated to any extent. You admitted to the police that there were more occasions of oral sexual intercourse. You say that you made that admission because you were overcome by the presence of the police and did not think carefully enough, but I reject that evidence as inconsistent with my observations of the audio visual recording of the interview.

The nine occasions I find proved occurred over a period of about three years between 1982 or 1983 and the end of 1985. At that time the complainant was aged between 8 or 9 and 12. The sexual abuse comprised mostly occasions on which you penetrated the complainant's mouth with your penis in various rooms of the house including her own bedroom, but also occasions on which you rubbed her vagina with your fingers and penis and one occasion of performing

oral sex on her by licking her vagina. I am also satisfied that these identified occasions occurred in the context of other sexual acts of a similar nature.

You are now aged almost 84. You have no relevant prior convictions. You have four adult children. The most recent sexual act occurred more than 40 years ago. I accept that you have experienced remorse for your conduct but it was not remorse you exhibited at the time. You were, as a young person, yourself a victim of sexual abuse by a number of persons. As your counsel suggested, it is another case in which a victim of sexual abuse became a perpetrator. You may be pitied for the acts committed against you and the effect they may have had, but that does not lessen the seriousness of the acts you inflicted on the complainant. I accept also that in your life you have made many contributions, through employment and of a charitable or voluntary nature, which are of considerable benefit to the community both in this country and elsewhere.

Your physical and mental health are poor. You have serious heart, back and skeletal conditions all of which severely limit your mobility. You will likely require urgent surgery to address a skin cancer on your lower back. You suffer a generalised anxiety disorder, agoraphobia and depression. You have been living at home but you are reliant on your wife and son for your care. Prison will be much more onerous for you than for another younger and healthier person. You will require medication and medical and surgical procedures, but it will be the responsibility of the prison authorities to care for you. Your physical condition may well deteriorate.

You are entitled to mitigation from the plea of guilty, but the complainant was nevertheless required to give evidence. In the most important respects, her evidence was accepted. I am required to take into account such of the aggravating factors stated in the *Sentencing Act* 1997, s 11A, as may apply. They would be aggravating factors regardless of the existence of s 11A. For the entire period of offending the complainant was under 13. She was subject to your care, supervision and authority. Your acts constituted a grave breach of the trust inherent in the relationship with a step child and in the trust placed in you by Ms Jacobs. The complainant gave evidence that you were violent towards her and her brothers. You did not subject her to violence or any express threats of violence to achieve your sexual aims. She was by reason of her age, stature and your authority, unable to say no to you, and I am satisfied that this authority was added to by an underlying fear, for which you were responsible, of a physical consequence should she attempt to resist. I am not satisfied beyond reasonable doubt that the act in the pantry was observed by your daughter, but I find that many of the occasions occurred when there were others in the house and so the complainant's trauma was added to by a fear of discovery. You asked her to keep your acts a secret. The acts were committed in the home in which she was entitled to feel safe but instead, she found herself trapped in a situation from which she could not escape.

In sentencing for matters of this nature the protection of children is the paramount factor. The prohibition of sexual acts with children is founded on the presumption of harm. The complainant's victim impact statement amply demonstrates the terrible lifelong psychological damage which can be done by crimes of this nature. You deprived her of a happy childhood and permanently marred her psychological and emotional development. Her life was forever changed by what you did and she remains greatly affected after more than 40 years. In fixing your sentence, I have moderated the length of it to take account of your age and health issues, and the chance that your final years may be spent in prison. However, your personal circumstances are to be subordinated to the sentencing goals of punishment, general deterrence, protection of children, and vindication of the victim. They are the most important factors, as they were at the

time the crimes were committed. The only appropriate sentence is a lengthy term of imprisonment and it is of considerable importance that others see that such a sentence will not be avoided by the passing of time.

I am not satisfied that you, any longer, pose any material risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act 2005* and so I decline to make a reporting order under that Act.

MM, you are convicted on the indictment. You are sentenced to imprisonment for seven years from today, 6 November 2025. I order that you not be eligible for parole until you have served half of that term.