

DRF, you have pleaded guilty to the crime of persistent sexual abuse of a child. This crime is committed if a person commits an unlawful sexual act against a child on three or more occasions during the indictment period. To protect the complainant's identity, I will refer to her as "A". A was the daughter of a good friend of yours and, at the relevant time, you were frequently at their home. You have known A's father for about 15-20 years and you regularly spent time with him and his family. A referred to you as her "uncle". It was common for you to go to the family home and spend time with the complainant and her sibling, without supervision. It was during these occasions, that the offending occurred. At the time of the offending, A was aged only seven.

Four occasions of an unlawful sexual act are identified by the prosecution as having occurred during the six month indictment period from January to June 2022; but these occasions must be considered in context. The touching of A occurred on a regular basis during the indictment period, often on multiple occasions on any given day. The sexual abuse predominately involved you touching A's vagina, but on at least occasion, you made A touch your penis. When you touched A on the vagina, you would tell her to remove her underwear so that it was "better to rub it". Sometimes A would remove her underwear, on other occasions, she would not. If she did not remove her underwear, you would place your hand inside her underwear and touch her on the skin. The complainant described that many of the assaults were hard and they hurt her.

These acts of touching usually occurred when you and A were both sitting on the couch in the living room. Often A's younger brother was also in that room. A would try and move away from you by sitting on top of the couch or lying on her stomach. She made it clear that the contact was unwelcome and unwanted, but endeavours to avoid you were futile, and it seems you persisted with touching her. On occasion, after you had touched A, you would tell her that she was not to tell her mum and dad. Such comments indicate that you well understood that what you were doing was wrong, but it also aggravates the offending in my view, because such comments placed a very young child in the untenable position of feeling conflicted about whether to keep secrets or otherwise from her parents.

The first specified occasion involved you placing your hand inside A's underwear and rubbing her vagina. On this occasion, you were both sitting on the couch. A was playing with some toys. On the second occasion, you and A were also sitting on the couch. A was watching television. You told her to remove her underwear. She did so. You rubbed her on the vagina. On the third occasion, you and A were sitting on the couch in the loungeroom. A was playing on her phone. You placed your hand inside her underpants and again rubbed her vagina. The conduct on these three occasions involves indecent assaults. On the fourth occasion, you and A were in the loungeroom. You repeatedly asked A to touch your penis. Initially, A refused to do so but you persevered with your requests and eventually A touched your penis with her hand. This conduct amounts to the crime of committing an indecent act with a child.

The sexual abuse came to an end when A told her mother about your conduct. On this day, you were at A's home with her family. At one point, you were in the bathroom with A and her younger brother. A started to cry and said, "I don't like keeping secrets". When A said this, her mother was near the bathroom. You came out of the bathroom and upon seeing A's mother said, "I don't know what the fuck she's talking about". You immediately left the house. A's

mother asked the complainant what was happening, and A told her that you had touched her on the vagina, that you had done it "really hard" and that it had hurt. A also told her mother that you had told her not to tell her mother or father as you would get into trouble and would not be allowed to come to the home any more.

The matter was reported to police. Given A's young age, the process of disclosing your behaviour was a difficult and traumatic one. A had to make her witness statement across a number of days because she would often become too upset to continue.

On 6 February 2023, you were spoken to by police. You denied the offending. You did admit that A's father was one of your close friends. You agreed that you had spent considerable time at the home. You also agreed that the last time you had seen A's father "something had come up" and you had been asked to leave. You said you had had no contact with A's father since that point. You agreed A would often sit on your knee but you denied that you had ever sexually abused her.

A is now aged 11. She has provided an impact statement. It was read to the Court. It forcefully describes the enormous and ongoing impact of a crime of this nature. Her schooling has been affected, her confidence has been affected, she is hyper-vigilant and anxious and is concerned about the future. She has experienced the type of consequences which typically occur when abuse of this nature is perpetrated within a family unit. Although you are not biologically related to A, you were treated as a family member, and she saw you as part of her extended family. Your crime involved a terrible breach of trust, not only to A but also to A's parents.

It is because of the pervasive nature of the impact, and the need to protect young children from such abuse, that the primary sentencing considerations for a crime like this are general deterrence, denunciation and vindication of the complainant. To put it simply, those who perpetrate such abuse must realise that the consequences will be harsh punishment. It is aggravating that your offences were committed whilst A was under the age of 13 years, and under your care, supervision and authority at the relevant time. Many of your offences were committed whilst A's younger brother was nearby, although there is no evidence that he directly observed your conduct. The fact, however, that you were prepared to take the chance of committing this type of act in front of other members of the family is indicative of you having a high level of sexual interest in A. This is confirmed, in my view, by the frequency with which the offending occurred. Although your offending was limited to a 6-month period, it seems your conduct occurred, whenever the opportunity arose. The fact it occurred within her family home added to the trauma for A. It was a place where she was entitled to feel safe and protected. Instead, she must have felt scared, confused and conflicted.

You are now 41 years of age. You have no prior convictions of relevance. You have some prior convictions under the *Misuse of Drugs Act*, consistent with your regular use of cannabis over several years. You suffer with an intellectual impairment. You have been assessed as having a full-scale IQ of 67, which indicates mild intellectual disability. You continue to live with your parents, and they support you in many aspects of your life. Whilst your independent living skills are limited, you are able to operate your own lawn mowing business and have done so successfully for a number of years. In the past, you have held employment in labour-based industries, but such employment, and navigating the expectations of the workplace, often proved too challenging for you, hence the development of your lawn mowing business. You have a driver's licence, although you cannot read well, and your understanding of finance is minimal. Your parents manage your finances. You are socially withdrawn and quite isolated.

School was very difficult for you. You were bullied incessantly. You had very few friends at school. In some ways, this only enhances the breach of trust associated with your conduct. A's father was your friend. He accepted you and allowed you into his family and you abused that trust.

Given your intellectual disability, this matter proceeded to an investigation into your fitness to stand trial. A jury found that you were fit to stand trial. The need for that process explains, to some extent, the delay that has been associated with this matter. Thereafter, I accept that counsel had to proceed in a careful and often slow manner in obtaining instructions. Ultimately, you have pleaded guilty to this crime and have acknowledged your wrongdoing. Despite the lateness of that plea, it remains of mitigatory value as it has saved a very young complainant from having to give evidence about what was obviously, traumatic incidents.

I take your intellectual impairment into account generally in formulating sentence in this matter. It contextualises your conduct. I accept it impacts your understanding of societal expectations generally and informs the way in which you interact with, and are perceived by, others. But there is nothing before me to suggest that you did not know that what you were doing was wrong. Indeed, as I have commented, much of your behaviour suggests that you very much knew that what you were doing was wrong. You told A not to tell her parents or you would be unable to return to the home.

I accept your intellectual impairment will make you more vulnerable in a prison environment. You are likely to be bullied and ostracised. Therefore, a period of incarceration will be more onerous for you than others. In formulating sentence, I have regard to the reports that were tendered on the fitness investigation, but there is nothing within those reports which suggests *Verdins* considerations have application.

As noted, I have regard to your plea of guilty. The mitigatory value of that must be balanced against the fact that you did not stop offending voluntarily, but only after your conduct had been disclosed by A to her mother. That said, given A's age, it would have been a most distressing occurrence for her to have to give evidence, and it would introduce the risk of further traumatising her. Your sentence will therefore be discounted accordingly.

The only appropriate punishment in this case is a significant sentence of imprisonment. In assessing the length of that sentence, I will take into account your intellectual impairment, and the fact that your time in custody is likely to be difficult. Ultimately, however, general deterrence and vindication of the complainant must be given the most significant weight in formulating sentence.

DRF, you are convicted of the crime of persistent sexual abuse of a child. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act 2005*, therefore I make an order directing that the Registrar cause your name to be placed on the register, and that you comply with the reporting obligations under that Act for a period of eight years following your release from custody. You are sentenced to a term of imprisonment of three years and six months from 30 October 2025. I order that you are not eligible for parole until you have served one-half of that sentence.