

DIRECTOR OF PUBLIC PROSECUTIONS

v

NEIL LENNIE

JUDGE: HER HONOUR JUDGE RIDDELL
WHERE HELD: Melbourne
DATE OF HEARING: 3 March 2021
DATE OF SENTENCE: 23 March 2021
CASE MAY BE CITED AS: DPP v Lennie
MEDIUM NEUTRAL CITATION: [2021] VCC 268

REASONS FOR SENTENCE

Subject: CRIMINAL LAW -- SENTENCE
Catchwords: Obtain Financial Advantage by Deception -- Teacher -- False Resumé -- Excellent Performance -- No loss or harm -- Delay -- Unique Sentencing Task
Legislation Cited: *Crimes Act 1958 s.82 -- Sentencing Act 1991*
Cases Cited: *DPP v Weybury* (2018) 84 MVR 153 -- *DPP v Flanagan* [2015] VCC 1084 -- *Julian Richard Taylor v The Queen* [2019] 59 VR 163 -- *DPP v Julian Richard Taylor* [2018] VCC 2271 -- *Di Paolo v The Queen* [2019] VSCA 194 -- *R v Merrett* (2007) 14 VR 392 -- *R v Todd* [1982] 2 NSWLR 517 -- *Einfeld v The Queen* (2010) 200 A Crim R 1 [86] -- *R v Dunne* [2003] VSCA 150 [35] -- *Ryan v The Queen* (2001) 206 CLR 267 -- *R v O'Connor* [1987] VR 496 -- *R v Piacentino* (2007) 15 VR 501 -- *Bell v The Queen* (2016) 77 MVR 336 -- *Boulton v The Queen* [2014] 46 VR 308.
Sentence: 12 months Community Correction Order with Conviction

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr J Dickie	Office of Public Prosecutions
For the Accused	Mr I Hill QC with Mr M Allen	Dribbin and Brown

HER HONOUR:

Overview

- 1 Neil Stuart Lennie in 1976, after six years of valid teaching as an undergraduate student, you spun a lie, claiming qualifications you did not possess. You did so in an application to obtain a job in an independent College as a teacher. Having obtained that role you then set about performing it, and doing so exceptionally well. Ironically, it was likely your excellent performance which made that lie very difficult to un-tell, the web spun difficult to untangle.¹
- 2 You went on three more times to claim qualifications you did not possess in the process of securing teaching roles at highly respected secondary colleges in Melbourne. You were entrusted to the position of Deputy Headmaster, and employed as Headmaster, and were duly remunerated for your services to each of those institutions. You accept by your pleas of guilty to four charges of Obtaining a Financial Advantage by Deception, that you would not have been employed by those four schools if they had known the falsity of your claimed qualifications.
- 3 Deception in the context of obtaining employment on a false premise is a serious matter. Employers rely on trust and honesty. In most cases of deception in the context of employment there is a risk to consumers, to clients or patients or to other staff, and usually a significant loss occasioned to those deceived. There is a need to generally deter anyone from perpetuating such an untruth to obtain a financial advantage at the expense of others.
- 4 However, yours is an unusual case in the context of deception cases. References written at the time and the bundle of references provided on your behalf from your former students – now highly qualified professionals – speak of you with one voice, as one of the most outstanding and influential teachers they were fortunate to have. Similarly the references from your former colleagues talk of an excellent teacher and administrator, a natural

¹ *"Oh what a tangled web we weave, when first we practice to deceive!"* Sir Walter Scott - *Marmion: A Tale of Flodden Field* 1808

leader and person respected by students, parents and staff, dedicated to the betterment of the education in this State.

- 5 The extraordinary nature of this case therefore lies in the fact that, not only has there been no loss caused to any of the schools involved, but you in fact enhanced the lives of persons in each of those school communities through your dedication to your chosen career. I can find no other case of obtaining financial advantage by deception where that can be said. As such, this presents as a unique sentencing task.

Summary of Offending

- 6 To summarise the offending. Neil Lennie, you have pleaded guilty to four charges of Obtaining a Financial Advantage by Deception². Those four charges relate to your appointment as a teacher to four secondary schools between 1976 and 2000. You obtained those appointments in part by falsely representing that you were a registered teacher, and claimed that you had various tertiary qualifications.
- 7 It is apparent that none of those institutions checked your qualifications, and you in turn accepted each position, knowing the falsity of that information.

Background

- 8 Before turning to the detail of each charge, and in order to understand your offending and to place it in context, I will turn to your personal background.
- 9 You are now 72 years of age. You were born in May 1948, the fourth son of two teachers. Your early years were spent in a mission-like environment in Bahrain where your parents worked as educators. Your family enjoyed a wide circle of friends in an ex-patriot community. Your parents were loving and brought you up with a strong emphasis on their Christian faith.

² *Crimes Act 1958 s.82*

- 10 You attended an ex-patriate school in Bahrain for the early years of primary school. You were naturally academic, acquiring literacy and numeracy easily and progressing well.
- 11 At age nine you were sent to Haileybury College in Melbourne as a boarder, commencing in Grade 6. You later repeated Grade 6 due to your young age, however your academic proficiency saw you promoted at the end of Form 2, effectively skipping Form 3. You first completed your final year of school at age 15. Again, you were considered too young to progress, and so you repeated Matriculation despite having obtained excellent results.
- 12 In 1965 you formally Matriculated from Haileybury College. Your results were good enough to see you offered a place at the University of Melbourne in a Bachelor of Science Degree course.
- 13 For all your successes at secondary school, tertiary study it seems was not for you. In your first year, you passed one subject and failed others resulting in your suspension from that course. You did not undertake or complete any further study at the University of Melbourne. Nor were you conferred any qualification from the University of Melbourne.
- 14 In 1967, 1968 and 1971 you were enrolled in an Associateship Diploma of Mathematics at the Royal Melbourne Institute of Technology ("RMIT"), a 3-year full-time course. You completed only six subjects over that time. In 1972 and 1975 you were enrolled in a Bachelor of Applied Science (Mathematics) at RMIT but did not complete any subjects. You have not been conferred any qualification from RMIT.
- 15 You have never been validly registered as a teacher in Victoria. No evidence could be found of you obtaining any qualifications that might otherwise have made you potentially eligible for registration or employment as a teacher in Victoria.
- 16 During the period when you were enrolled at RMIT in the late 1960s, recruiters from the Victorian Education Department approached undergraduate students spruiking for any person interested in taking up emergency teaching positions. You say at that time the Department was desperate for teachers in State High Schools, often in needy areas of metropolitan Melbourne. Those recruiters were aware that their target audience were

undergraduate students who had not completed any degree, but qualifications were not required.

- 17 Your brother too had a similar experience. While he was waiting to turn 21 so that he could take up a commission in the RAAF, he was appointed as a temporary teacher at Bayswater High School. Despite having failed Pure Mathematics at University he was asked to teach Form 2 maths, teaching the brightest grade and a remedial class. He also names several of his teachers during his time at Haileybury College, including a Vice Principal, who did not have any teaching qualifications.
- 18 Parallels from that era can be seen even in the Law, where persons who acted as Clerks of Courts could progress to the position of Magistrate, despite having no legal qualifications. One such man became Chief Magistrate of Victoria.
- 19 You put your hand up straight away. As a result you took up a position at Newlands High School in Coburg where you remained for a year. That was followed by teaching at Lakeside High School in Reservoir and then at Norwood College in Ringwood, for a total of six years teaching.
- 20 You say, *“I loved teaching and believed I had found my vocation. ... By the end of my time at Norwood I was a pretty competent teacher”*.

Charge 1 - Mount Scopus Memorial College (1976-1988)

- 21 In March 1976 at age 27, you applied for a teaching position at Mount Scopus Memorial College in Burwood (“Mt Scopus”). In your application, you used your father’s teaching registration number and stated that you had obtained a Trained Secondary Teacher’s Certificate from Melbourne Teachers’ College in 1968, and a Bachelor of Applied Science from RMIT in 1969.
- 22 You also told a half-truth about your teaching experience, stating that you worked at Newlands High in 1964, at Lakeside High in 1965 and at Norwood High School between 1966 and 1975 as a *qualified* teacher. It was a rather unsophisticated lie in that you would

have been 16 years old in 1964, and you did not matriculate until 1965. No one apparently picked up the obvious anomalies.

23 On the basis of your application, and what you describe as a perfunctory interview, you were offered a teaching appointment. You were subsequently employed at Mount Scopus and remained there from 22 March 1976 to 31 January 1988.

24 You have pleaded guilty to obtaining financial advantage by deception in relation to your work at Mount Scopus. That is, you accept that Mount Scopus would not have employed you had it been aware that you did not have the qualifications you falsely claimed.

25 It seems you did make an attempt to return to study during the period you were working full time at Mt Scopus. In 1979 you enrolled in a Bachelor of Arts (Humanities) Degree at Deakin University. This was a 3-year full-time course normally involving four units per semester. You enrolled in one subject in each of your first two semesters. You did not pass either or complete any further studies at Deakin University and were not conferred any degree or qualification from Deakin university.

26 You were married with a child, teaching full time. You told Clinical and Forensic Psychologist Patrick Newton that studying was difficult so you let the course drop. *“Honestly I just couldn’t see the point. I never went back [to that course], but I kept improving my skills because I felt I had a calling to teach and I wanted to be true to my vocation.”*

27 In that assessment you were correct. Your natural talent for teaching is reflected in your rise through the ranks at Mount Scopus, a highly regarded school with approximately 1200 students, including 200 in Year 12, and with approximately 120 teaching staff at the Burwood campus. You were Vice President of the Staff Association as early as 1979 and you assisted the HSC Convenor for two years. You became an exam marker for HSC Physics by 1979 and Head of the Physics Department at Mount Scopus a position you held for five years. You then became co-ordinator of Mathematics, supervising 15 other teachers at levels from Years 7 to 12. You were Head of Drama for a year and Head of

Music for a year. You variously directed School musicals and organised Debating and public speaking competitions. You instigated a maths program for gifted children and also for those in remedial classes. Your HSC pass rates are recorded by your then Principal as "*probably the best in the State*". From 1 February 1986 you were promoted to the position of Deputy Headmaster for Student Services.

28 According to the Summary of Prosecution Opening for your 12 years of service to Mt Scopus you were paid \$197,016.

29 You told Patrick Newton that during your time as Deputy Headmaster at Mt Scopus College, the school's governing body determined to establish a more distinctly Jewish character for the school. Part of that was in the appointment of a Jewish Deputy Headmaster. Those facts are reflected in a written reference dated 7 September 1987 from then Principal of Mt Scopus, Dr Steven Lorch who stated "*Neil is clearly of headmaster calibre. For the past two years he has indeed represented the school with characteristic distinction in the form of School Heads of the Association of Eastern Independent Schools. Unfortunately, in a Jewish school such as Mount Scopus College, it is unlikely that he would ever be able to serve in the capacity of school head.*" You report that Dr Lorch arranged interviews for you with Haileybury College and Caulfield Grammar.

Charge 2 - Haileybury College (December 1987 - March 1988)

30 On 1 December 1987 you applied to Haileybury College in Keysborough for the position of Director of Music.

31 In your application, you attached a resumé falsely asserting you had been conferred a number of qualifications from the University of Melbourne namely, a Bachelor of Applied Science (History and Philosophy of Science, Mathematics and Computer Science) in 1969; a Trained Secondary Teacher's Certificate (Mathematics, Music and Drama) in 1970; and a Bachelor of Education (Administration) in 1975.

32 The Prosecution Opening which you accept, states that on the basis of your application you were offered a teaching appointment at Haileybury College. It is difficult to imagine that the calibre of your work at Mount Scopus did not play a significant part in your appointment. In any event, you accepted the position of Director of Music on 22 December 1987. You were employed from 1 January 1988 to 30 March 1988.

33 For your three months of service you obtained remuneration of about \$6,189.20.

34 Your plea of guilty is on the basis that Haileybury College would not have employed you had it been aware that you did not have the qualifications you falsely claimed.

Charge 3 - Caulfield Grammar School (1988 - 1993)

35 On 25 November 1987 you had also applied to Caulfield Grammar School for the position of Headmaster at the school's Caulfield campus. In your application, you attached the same resumé.

36 You were offered the position of Headmaster of Caulfield Grammar which was formally confirmed on 2 February 1988. You commenced in your role at the start of Term 2 in 1988, after giving notice at Haileybury College. At that time Caulfield Grammar had approximately 800 students at its Caulfield Campus, and 80 staff.

37 You continued as Headmaster of Caulfield Grammar until 31 December 1993. For your six years in that role you obtained remuneration of about \$383,882.

38 You have pleaded guilty to obtaining that financial advantage by deception, namely you accept that Caulfield Grammar School would not have employed you had it been aware that you did not have the qualifications you falsely claimed.

39 Your Deputy Headmaster Mr Jock Nelson in an August 2020 reference describes you as *"a highly talented individual... who brought positive leadership to the school."* Another reference from August 2020 authored by Mr David Croome, Head of Studies at Caulfield Campus of Caulfield Grammar during your time as Headmaster outlines your performance

in that role. One of your first tasks was to organise redundancies for 13 staff. He says you dealt with that situation with compassion and expertise. He states –

“As an educational administrator he demonstrated enthusiasm for the task of making Caulfield Grammar School, and particularly Caulfield Campus, a progressive educational institution. He strongly supported the move to co-education and emphasised the focus on academic performance and excellence.”

- 40 You were instrumental in changing the structure of the school, making Heads of Faculty the Campus Academic Policy Committee with real input into the school’s direction. You promoted steady growth in staff development and professional in-service, in line with emerging community trends, and instituted a fairer system of teacher allocation. Mr Croome states –

“These developments, together with the continued up-grading of facilities ... were pushed ahead by the enthusiasm and cheerful optimism of Neil Lennie. He encouraged the Parents Association to give their support to the development of computer facilities at the School He was also very interested in the implementation of the new VCE. ... [ensuring] that Caulfield Campus was involved from the outset in trialling and piloting the new programmes and as a result both staff and students benefitted from the increased expertise gained in this process. He communicated his ideas and reforms clearly and frequently to the Ministry and undoubtedly was a positive voice contributing towards changes and modifications in the VCE process. He organised and ran a Conference at the Caulfield Town Hall for teachers from all schools to discuss the implementation of the compulsory, but ill-fated VCE subject, Australian Studies.

Neil Lennie was also particularly interested in the subject areas of music and drama.”

- 41 You re-organised the Music Department, employing new well-qualified staff, and in addition you personally produced an “*excellent series*” of School Musical Productions which made a positive contribution to the cultural life of the school. He says these would “*long be remembered with gratitude by the many students involved.*” You also organised a series of Headmasters seminars, inviting community leaders to speak to students. In conclusion Mr Croome states –

“Neil Lennie gave his energy and expertise in a most unselfish way to the task of continuing the growth of Caulfield Grammar School as a successful educational institution.”

42 After leaving your position at Caulfield Grammar, you stepped out of classroom teaching, in essence continuing in the areas of administration and management as you had done in your roles as Deputy Headmaster and Headmaster, to commence work as a consultant in the field of education.

43 In 1994 it seems you again tried tertiary education, enrolling in an Associate Diploma of Business (Accounting) course at Box Hill College of TAFE. You withdrew from the majority of units and did not complete the diploma. You have not been conferred any qualification from that TAFE.

Charge 4 - Overnewton Anglican Community College (1997 - 2000)

44 Sometime around 1996, a former colleague of yours, Mrs Lesley Bell, was appointed Principal of the reasonably new Overnewton Anglican Community College (“Overnewton College”). Late in that year she approached you and invited you to apply for the position of Deputy Principal. On 13 January 1997 you commenced in that role at the Keilor Campus of Overnewton College. You did not officially apply for the position until 20 March 1997, later signing an employment agreement on 27 April 1997.

45 In the resumé you provided in support of your application, you falsely asserted you had a Bachelor of Applied Science (Mathematics, Computer Science, History and Philosophy of Science) from the University of Melbourne; a Bachelor of Education (Administration/Measurement) from Monash University; a Master of Arts (History and Philosophy of Science) from the University of Melbourne; and an Associate Diploma of Business (Accounting) from Box Hill College of TAFE.

46 You remained employed as Deputy Principal of Overnewton College until May 2000. For your services over four years you were paid \$256,479.78.

47 You have pleaded guilty to obtaining a financial advantage by deception, namely by your plea you accept that Overnewton College would not have employed you in your role had it been aware that you did not have the qualifications you falsely claimed.

Total financial advantage obtained

48 The Prosecution opening on the plea recites that the financial advantage obtained by you by way of your wages over those 24 years was approximately \$843,567.

Discovery of offending

49 It seems your offending was uncovered when changes were made to the governing body for teachers. On 1 January 2003 you were issued with a new teacher registration number by the new governing body the Victorian Institute of Teaching (“VIT”).

50 On 22 May 2007 the VIT communicated the requirement of all teachers to renew their registration every five years. On 14 March 2008 officers at the VIT identified discrepancies in your records and requested evidence of your birth name and qualifications. These were not provided. On 28 May 2009 you withdrew your application to renew your recorded teacher’s registration. As a result, the registration was cancelled.

51 In 2015, further anomalies were detected and on 10 November 2015 the VIT referred your non-registration and possible offending to Victoria Police for investigation.

52 In 2019, police investigators conducted an investigation and in May 2019 Detectives executed a search warrant at your home, seizing various records concerning your employment. Charges were issued in May 2020.

Maximum penalties and other relevant sentencing provisions

53 The maximum penalty for each of Charges 1, 2 and 3 is five years’ imprisonment. On Charge 4 the maximum penalty is 10 years’ imprisonment.

Sentencing Principles

54 The principle of general deterrence is the most prominent of applicable sentencing principles in your case. That is so because deceptions in the workplace context cannot be tolerated. They can be difficult to detect. A person passing themselves off as qualified for a particular position can expose others to harm. They can impact the reputation of the

institutions which employ a person on false bases. There is an associated element of community protection which must also be considered in the sentencing synthesis for those reasons.

55 Therefore the sentence I impose must generally deter others who would falsify qualifications in order to obtain employment. It must also, on behalf of the community, express denunciation of such conduct.

56 In order to determine the appropriate sentence in your case, I must assess your offending to determine where it sits on the spectrum of broadly similar or comparable cases.³

Objective Gravity of your Offending

57 Assessing the objective gravity of your offending it is not a straightforward task.

58 I accept that your original deception to obtain the position at Mt Scopus College was a reasonably serious one wherein you lied about qualifications and experience. You used your father's registration number which you knew was legitimate and in that sense would be unlikely to lead to detection. The lie was premeditated and deliberate.

59 You were a young man, recently married, and having gained legitimate teaching experience, you obviously took a path to circumvent returning to university. To that end it was rather brazen, though, had anyone investigated even at a cursory level, would have been easily discovered.

60 For a person looking to guide young minds as a teacher, such dishonesty is reprehensible.

61 I accept that in each application you made, represented here by the four charges, you deprived another, legitimately qualified teacher from obtaining that position. In that sense the offending did have a potential detriment as against another person who had obtained necessary qualifications in order to become a teacher.

³ *DPP v Weybury* (2018) 84 MVR 153

62 I take into account the fact that none of the schools have sought to provide a victim impact statement. I take into account however, that there may be some embarrassment for those schools in not having checked your qualifications before they employed you. I accept that such deceptions have the potential to cause embarrassment to the institutions which and people who placed their faith in you and employed you. I accept the submission from Mr Dickie that as time went on you were perhaps more confident of the likely lack of detection and in some way that makes the latter lie more bold.

63 In taking those matters into account, objectively the deceptions are reasonably serious.

Objective Gravity and Moral Culpability

64 However, I also take into account in assessing the objective gravity of your offending, and your moral culpability, the following unusual features.

65 First, I must place my assessment at least of Charge 1 in the context of the era as I have described where there was a different emphasis on the need for qualifications. That does not excuse the offending, but the era of compliance and regulation at the time you told your untruth in your application to Mt Scopus was a different one to today. It cannot be assessed by today's standards, but must be put in the context of that time, almost half a century ago.

66 Second, although Charges 1, 3 and 4 each span a lengthy period of time, your active deception really occurred at the commencement of those periods by way your false resumé attached to your applications and, by extension, at the time of your interviews and acceptance of the offers of employment in each case. The particulars of the charges bear that out. The time period on each charge however, reflects the overall period of your employment at each school, that being the period over which you were paid. The offences are ongoing, however the broad date range should be treated with caution.

67 Third, none of your offences was attended to by the common aggravating features of deception offending such as falsifying documents such as fake University papers or

Degrees. You did not give a false identity. You did not organise bogus referees.⁴ You were not hiding a history of offending or bad character which would disqualify you from being a teacher. There was no ulterior motive towards children or teaching institutions.

68 The Prosecution provided me with the case of *Taylor v The Queen*⁵ as a comparator. That is a good example of night to day. Mr Taylor was a person who had a lengthy history of serious fraud, amassing some 62 prior convictions for dishonesty and having been sentenced to a total of eight years imprisonment during the 1990s over five separate court appearances. His prior offending was described by the Court of Appeal as “*large-scale, highly planned and most ingenious*”.

69 In the early 2000s, he managed to gain teaching qualifications using a variety of names. His offending for which he was sentenced in this Court in 2018, related to a most elaborate series of deceptions over the course of a decade, and was described by the sentencing Judge as follows –

“... [he] chose time and time again to misrepresent [his] identity and to omit, or blatantly deny, [his] criminal past of serious dishonesty offences in numerous official forms and statutory declarations. [He] then used the [VIT] registration obtained by deception to mislead the schools who were [his] trusting employers. As a part of this scheme, [he] also chose to falsify official identity documents such as Birth Certificates and Change of Name forms, utilising the names of innocent parties as having certified the veracity of these forgeries. Throughout the course of this endeavour [he] also committed perjury.”⁶

70 He carried out those falsehoods aware of his obligations to disclose his true identity, but knowing that if he did so, his prior criminal history and his clear unsuitability as a teacher would be revealed.

71 After pleading not guilty and running a trial, he was found guilty by a jury. He then appealed both conviction and sentence. Their Honours in the Court of Appeal stated -

“His history reveals that... the applicant has been an enthusiastic — although not entirely successful — fraudster. He has displayed no remorse for the instant offending. ...we would assess [his prospects of rehabilitation] as being very poor. The applicant, it seems, has learned little from the sentences imposed upon him for past transgressions ...the fact that he has not responded to previous sanctions

⁴ *DPP v Flanagan* [2015] VCC 1084

⁵ *Julian Richard Taylor v The Queen* [2019] VSCA 162; 59 VR 163

⁶ *DPP v Julian Richard Taylor* [2018] VCC 2271 at paragraphs 2 and 3

*bears directly on his moral culpability for the instant offending, his prospects of rehabilitation and the danger his recidivist tendencies present to the community, all of which emphasise the need for a sentence influenced by a significant measure of specific deterrence. The applicant needed to be punished and the community protected.*⁷

72 Not one of the aggravating features of either the offending or the individual are present in your case Mr Lennie. To that extent it is of limited assistance to me in consideration of the appropriate sentence.

73 In your case there was no ulterior motive. Motive is usually able to be determined by the behaviour which follows. I reject the prosecution submissions that you were motivated for your own personal benefit, or beating others to the role, or by ego. I believe you were motivated by your desire to teach, and that it is as simple as that.

74 As I believe with most teachers, you did see teaching as a vocation, a calling. I accept that was your genuine belief. You were someone who had been surrounded by educators your entire formative years, first your teacher parents in the mission setting in Bahrain, and then, from that tender age of 9 as a boarder, your nights and weekends would have been spent surrounded by persons dedicated to education. I accept there was also an influence of your Christian parents to do good for others and you obviously saw that path through teaching. When I consider your offending in the context of that history I take a view it was part of what you saw as a way to make your contribution to the betterment of the world.

75 This is not a case where you are diagnosed with a narcissistic personality disorder or similar, which might lead me to conclude you sought out positions for your own ego or edification. Although you sought to improve your position as your teaching career progressed, that is exactly what any employer and what the community would hope for. I am of the view that was part of your career path, rather than seeking to outdo others.

76 I therefore utterly reject the suggestion that you were motivated by any sense of greed or ego. I think it would be difficult to find any teacher who enters that profession because of greed. If the current pandemic has taught us anything, as any parent trying to home school

⁷ *Taylor v R* op cit at paragraph 141

their children knows, it is the fact that the hard work of teachers has long been undervalued. Your performance in giving to an extensive array of extra-curricular activities, no doubt over and above your assigned duties, is testament in my view to your strong and honest desire to contribute to the lives of your students and colleagues.

77 Fourth, in relation to Charges 2 and 3, the deception on the employer particularised by way of asserting on a resumé that you had certain qualifications, to my mind would have been a lesser operative factor in their decision to hire you. Even if you had completed three years of training in your early twenties, that would likely have been somewhat eclipsed by your proven performance even by 1988. Although you accept by your plea that Haileybury and Caulfield Grammar would not have employed you if you did not have relevant qualifications, it is apparent to me that your outstanding performance in your role at Mt Scopus College as attested to by your Principal at the time, would have played a significant part in landing you those jobs.

78 It is worth referring to the 1987 reference of Dr. Lorch in some detail in support of that conclusion. He described you as follows –

“... A gifted teacher of mathematics and physics. He served with distinction as head of both subject areas, for a number of years, initiating the, College's involvement in academic competitions and in programmes for extension and remediation ... that have served as models for other departments. ... he also unstintingly gave of his great talents in music, drama, and public speaking, directing and leading numerous festivals and activities. ...

In 1986, Neil was appointed to the position of Deputy Headmaster in charge of student services, in which capacity he is widely recognised for the innovative leadership he has provided in the areas of extra-curricular programming, particularly in sport; student discipline, which had been an area of serious concern before 1986 and has since become one of the school's real strengths; special services, counselling and pastoral care, where the widely acclaimed team approach he has developed to meeting the personal and interpersonal needs of students is perhaps unparalleled elsewhere in Victoria. In my experience with him, every project with which he is associated is the richer and more successful for his involvement.

Neil brings to his work an impressive constellation of personal qualities, including great sincerity, outstanding enthusiasm, caring and encouragement for colleagues and students alike, incredible energy and drive, and that elusive quality known as charisma. These, combined with unusual stamina and a firm commitment to devoting himself to his work above and beyond the call of duty, have established him as a true educational leader in the eyes of students, colleagues, and parents alike. In fact, if the school community were asked today to nominate the most influential, effective, and prominent member of the senior staff of the College (each

of whom is, by any standard, a highly competent and accomplished professional in his own right) aside from myself as principal, it would by a wide margin and without hesitation choose Neil Lennie.

...

It is therefore with utmost confidence in his potential as school head and, at the same time, with great reluctance and concern at the prospect of having to fill his formidable shoes if his application were successful, that I recommend him enthusiastically for the position of Headmaster. Any independent school would be fortunate to employ him in this capacity."

- 79 In a cumulative way, the role you then performed successfully as Headmaster at Caulfield Grammar likely played its part in your appointment to Overnewton College. The fact you were head hunted for that position bears that out.
- 80 Although I have received a psychological report and written submissions, I do accept the prosecution submissions that there is little direct evidence on two points: why you repeatedly falsified your qualifications, and why you never returned to study to legitimise them.
- 81 I can only surmise that having served something of an apprenticeship in your six years at State High Schools you felt you had attained some level of competence. Then, once you had obtained the role at Mt Scopus College and spent more than a decade there proving your worth, that lie became very difficult to un-tell, and so it flows to your time at the other three schools. At age 45 you left teaching in schools but were then asked to re-enter through the role of Deputy Principal at Overnewton College as I have described.
- 82 In addition, as a young man with a full time job and a family, study would have been challenging. You also had a broad range of interests and commitments outside teaching - you were a tenor soloist and singer in secular and religious settings, a pianist, a paid Musical Director in amateur theatre, a registered adjudicator for Debating Victoria, a Sunday school teacher, and a runner. At one point you were Chief examiner for HSC/VCE Physics in Victoria.
- 83 These four matters to my mind significantly reduce the objective gravity of and your moral culpability for your offending.

Consequences of your Offending

- 84 Fifth, to an extent, I accept what the prosecution submit - that this case is not about whether you were a good teacher. At the point of your original offence that fact was largely an unknown.
- 85 However, although I have accepted in part that this case is not about whether you were a good teacher, that is not to say your performance is an irrelevant consideration. That is so because the proven consequences of any offence must influence the sentencing equation. Indeed, Parliament through s.5 of the *Sentencing Act* 1991 specifically obliges the sentencing Judge to consider the impact of the offence on any victim,⁸ and any injury, loss or damage resulting directly from the offence.⁹
- 86 In any case of obtaining financial advantage by deception it is incumbent on the sentencing Judge in assessing the gravity of that offending and the related principle of moral culpability, to consider not just the financial advantage gained but the loss or harm suffered by any victim.
- 87 The reported cases on deceptions are littered with examples of dishonest people lying in order to gain for themselves at the expense of others. In the case of deception in employment, that is most often with an attached risk of harm. The case of *Di Paolo v The Queen*¹⁰ bears that out and is but one recent example. Over the course of a decade Mr Di Paolo falsely represented that he was a qualified medical practitioner with expertise in invitro fertilisation treatment. He perpetrated those lies on couples who in turn paid thousands of dollars to undergo bogus fertility treatment. The risks, the immorality of preying on vulnerable people for his own gain are obvious. That harm and loss to victims was a significant factor in sentencing.
- 88 I reject the prosecution submission that the comment of their Honours in *Taylor v The Queen*¹¹ to the effect that “*It matters little... that the applicant’s teaching drew no criticism*”

⁸ Sentencing Act 1991 s.5(2)(daa)

⁹ *Sentencing Act* 1991 s.5(2)(db)

¹⁰ *Di Paolo v The Queen* [2019] VSCA 194

¹¹ *Taylor v R op cit* at paragraph 142

in some way means I should not consider your performance as a teacher. First, that comment must be viewed in the context of that case where their Honours said children would simply not have been given over to his care if he had revealed his true colours. Second, one cannot equate a lack of apparent complaint in that case with the deluge of positive testimonials here, both contemporaneous and recent.

89 If you had caused harm or damage to your students, or loss to any of the schools, those would be relevant aggravating factors in sentencing you. As I stated, the proven consequences of any offence must influence the sentencing discretion. Almost always that involves loss and harm to victims. In my view, it must be a consideration which works in the reverse. Your performance at each school in that way is a matter I should and do consider.

Assessment of loss or harm

90 So, I return to assess the issue of loss and harm in your case. It is my conclusion that there is none. Firstly, if these schools had not engaged you, they would have paid another teacher, another Headmaster. They would have been most fortunate if that resulted in the value you contributed.

Performance as a Teacher, Deputy Headmaster, Headmaster and Deputy Principal

91 Secondly, what you did in performing your role as a teacher was to make a significant contribution to each school; to the students, to the staff and to the wider community. And your impact as a teacher has helped former students to positions where they, in turn, have made their own positive contributions to society. In that sense, the broader community has benefited from your performance in education.

92 Written references from your former students are glowing in their recall of you. Significantly, all testimonials have been written by people who are aware you have pleaded guilty to this offending.

93 Professor Sharon Lewin AO, Director of the Peter Doherty institute for Infection and Immunity was your physics student in the period 1977 to 1979 at Mt Scopus. She says –

“I recall him to be one of the most outstanding teachers I had ever had. I often credit Mr Lennie with my enduring love of Science, pursuit of academic excellence and self-belief in my own capabilities in Science.”

94 Professor Lewin says she has previously spoken publicly about you –

“.. on each occasion I have specifically named Mr Lennie as a teacher who had a profound impact on my career. I have never made a similar statement about any other high school teacher in relation to the impact they had on my learning.”

95 Professor Lewin continues –

“He was one of the most inspiring teachers I have had... able to teach complex concepts, provide his students with appropriate skills to solve problems and also make the learning fun. I remember him very clearly telling me that I was capable of doing anything in life and to shoot for the stars. As a young woman in the 1970s, I now understand that this kind of encouragement for women in Science was most unusual.”

96 As your student in matric, Sharon Lewin scored the top mark for Physics in the State of Victoria with a perfect score. She says you instilled in her *“a lifelong love of learning and of Science. I couldn’t think of a greater gift from a teacher”*.

97 That reference is not alone. Ms Sharon Stone who you taught maths at Mount Scopus describes you as –

“exceptional... able to teach complex problems with clarity and enthusiasm. His classes were interesting and engaging. Mr Lennie strove to ensure that each student could grasp the concepts...”

Because of his outstanding teaching skills, maths became my favourite subject and I excelled. His influence was so positive that I wanted to have the same impact on other young minds, and I went on to become a Maths/Science teacher.”

98 Ms Stone talks of your influence in the musical sphere, saying –

“Mr Lennie gave a lot of his time after hours and on weekends to produce excellent quality school musicals... He imbued in me the confidence to perform on stage and this had held me in good stead for the rest of my life.

When I reflect on my school years, Mr Lennie was the most remarkable teacher I had. I have nothing but fond memories and the utmost respect for him as a teacher.”

99 Dr Bernard Infeld, Neurologist, read about you in the media and volunteered a reference. You taught him physics in 1980 in HSC. He says you had a deep knowledge of your subject, a passion, were a skilled communicator with humour and flair. He says –

“I have no hesitation in saying that Mr Lennie is an exceptional and dedicated educator and was one of the best teachers I ever had, and I feel privileged to have been taught by him.”

100 Dr Michelle Fleiszig was a student from 1967 to 1980 at Mt Scopus. She says you had a passion for physics and were well respected by the students - *“even the trouble makers didn’t play up in his class.”* She says you were an excellent educator who helped most of her classmates achieve good and excellent results.

101 Dr Jenny Bromberger says *“I shall never forget this gentleman, whose commitment to teaching was so profound. ... Teaching was his gift.”*

102 Other former students write in similar terms of your joy for teaching and of your positive impact on their studies and their lives. That is not only in the field of science and mathematics, but in drama, musicals and debating.

103 It is not just your former students who write. Your former colleagues also attest to your dedication.

104 Psychologist and international expert, Ms Evelyn Field OAM, worked with you at Mt Scopus College where she was a counsellor/psychologist. She describes your role as Deputy Headmaster managing reintroduction of uniforms and a new discipline system you devised. You successfully brought back Speech Nights, wrote English words to the School song, managed the visit of the President of Israel and became head of the counselling service with four psychologists reporting to you. She says at no stage did she have cause to question your behaviour or professional expertise, both as a teacher and as an administrator or Department Head. She says you dealt with all members of the school community respectfully and professionally, and gave time and expertise in extracurricular activities. She says *“I believe that he has been a worthwhile member of society and contributed more than his share to improve the quality of education in our society.”*

105 In 1999, Principal of Overnewton College, Lesley Bell in a letter to you stated –

“Neil, the College is most fortunate indeed to have a professional educator of your calibre as its ‘General Manager’. So much has been achieved in your various areas of responsibility since commencing at Overnewton, particularly with the expansion of the Performing Arts, and the development of the Keilor playing fields and the new inter-school sporting competition for students from Year 7 to Year 10, to name but two important aspects. As my ‘2IC’ your support and loyalty is greatly valued and very much appreciated.”¹²

106 Ms Debra Pulver joined you on the staff of Mt Scopus in 1987, having previously been your student. She says she was delighted to discover you were still there and still contributing to the formal and informal education of students. She describes you as a gifted teacher with rare skills and a desire to help students excel. While she says she in no way condones your deception, she asks that the sentencing court –

“please take into consideration the positive effect that he has had over the years on the lives of hundreds of students in his care, enabling many of them to be accepted in the university degrees of their choice, and continuing on to successful careers.”

107 Perhaps at some level the knowledge that you did not have the qualifications drove you to perform; perhaps as one of your former students attests you were *“born to teach”*. Whatever the driver, you performed your role in an outstanding manner.

108 These factors are relevant to my assessment of the gravity of your offending and to your moral culpability. They significantly reduce both considerations and they are to a large extent what make your case unique.

Delay

109 There has been extraordinary delay in bringing this matter to its legal conclusion. You are responsible for none of that delay. It is unclear to me why the anomalies discovered in around 2008 did not cause the VIT to properly look at your history. It was not until 2015 that a further investigation was conducted.

110 The VIT referred the matter to Victoria Police in November 2015. At that point in time you received a wave of adverse publicity and it would have been clear to you that firstly, your

¹² Depositions p.165 - Letter of Lesley Bell dated 8 September 1999

career was in tatters, and secondly, that you were likely to face criminal charges. Yet, it took another five years before you were charged. Statements were still being obtained as late as May 2020.

111 In May 2019 at 8am four detectives from the Major Fraud squad executed a search warrant at your home. You and your 75 year old wife were present and you were arrested. From the time of your arrest, another 12 months passed before charges were issued and finally, on 9 June 2020, you were served with those charges.

112 There has been almost no attempt to explain that delay. If there are criminal matters to be investigated and charges to be laid those processes must happen in a timely manner. The interests of justice are not served where a person is forced to live under the weight of that stress for half a decade. Justice delayed is justice denied.

113 The Prosecution here accept the delay is significant and unacceptable and is an extraordinary feature in your case.

114 Higher Courts have held that delay in sentencing is a powerful mitigatory factor, relevant in two ways. First, because the sentencing court is then dealing with matters which are very stale, a person may have rehabilitated themselves in the interim thereby decreasing the punitive and deterrent aspects of the sentencing process. Second, because the enormous strain on a person in the interim is an additional punishment.¹³

115 His Honour Justice Maxwell, President of the Victorian Court of Appeal repeated the remarks of Chief Justice Street of the New South Wales Court of Appeal¹⁴ that “*sentencing for a stale crime... calls for a considerable measure of understanding and flexibility of approach – passage of time ... when lengthy, will often lead to considerations of fairness to the prisoner in his present situation playing a dominant role in the determination of what should be done in the matter of sentence; at times this can require what might otherwise be a quite undue degree of lenience being extended...*”¹⁵

¹³ *R v Merrett* (2007) 14 VR 392

¹⁴ *R v Todd* [1982] 2 NSWLR 517

¹⁵ *R v Merrett* op cit at paragraph 400

116 I take those matters into account.

Pleas of guilty

117 I take into account your pleas of guilty. In contrast to the delay, you indicated your intention to plead guilty at the earliest available opportunity in July 2020.

118 Any person who pleads guilty is entitled to a discount in sentence. That is so because there is great utilitarian benefit in pleas of guilty. They save the community the cost and time of a criminal jury trial. They save witnesses from having to attend and give evidence.

119 In my view, the weight to be afforded to your pleas of guilty is significant in that there were issues which could have been tried had you elected to do so. You might otherwise have tested a prosecution case which relied on your obtaining of employment being as a direct result of the existence of qualifications.

120 Statements in the depositions to the effect that a particular school would not have employed you if aware of the falsity of your claimed qualifications are made in 2019 or 2020 by people who were not part of that process. Persons present at the times of your applications, interviews and appointments are in the main no longer available to give evidence as to why you were the successful candidate in each case.

121 In relation to Charge 1, the letter of offer states you were to be employed on a temporary basis as a “tutor”.¹⁶ The notes from your interview describe the role as an “understudy” to the Physics teacher and that your appointment was to be temporary, subject to satisfactory performance.

122 In relation to Charges 2 and 3, your positive performance was arguably the more prominent factor in your appointment to Haileybury College and Caulfield Grammar.

¹⁶ Depositions p.106 – Letter of A. Ranoschy

123 As I have described, in relation to Charge 4 you were sought out specifically. Even so your application listed 24 dot points highlighting your record. Only one of those related to the false qualifications.

124 Therefore you could not have been criticised had you elected to test those aspects of the prosecution case as particularised.

125 Nonetheless by your plea you accept that had those schools been aware of your lack of appropriate qualifications they would not have employed you. I sentence you on that basis.

Covid-19 Pandemic and Delays

126 Your plea of guilty was entered on 19 October 2020 in the context of the COVID-19 pandemic in Victoria. That was a time when there were considerable delays to Committal proceedings in the Magistrates' Court and when all jury trials in this Court had been suspended indefinitely due to the COVID-19 pandemic. Higher Courts have recognised the additional value of a plea in those circumstances.

127 Your matter would have had little priority given you have been on bail and there is nothing about the subject matter or witnesses which would have brought it forward. Therefore you could have delayed a trial for a considerable period. You are to be given particular credit for not doing so. I take that into account in your case.

Remorse

128 Most importantly, a plea of guilty may be a reflection of remorse. Where that is the case, a plea is of greater value as it reflects an acceptance of responsibility for wrongdoing, it bodes well for rehabilitation and reduces the need for community protection. Higher Courts have held it entitles a person to a significant discount in sentence.

129 I accept your plea of guilty is a reflection of true remorse. I reject the prosecution submission that you have only shown regret and humiliation.

130 According to psychologist, Patrick Newton, “ *he expressed remorse and regret for his offending, noting that he considers his conduct to have been ‘without excuse’ and that he deeply regrets being deceitful and is not proud of lying.*” You told him you would dearly like to apologise directly to the Principals and others whom you deceived during interviews and applications, but many have now died.

131 In recent assessments conducted by Corrections Victoria and a Forensicare clinician, both assessors describe your expressions of considerable remorse and your insight.

132 You have also expressed your remorse and shame to your family. You have brought upon them a great deal of embarrassment and disgrace, and considerable stress.

Family

133 You met your wife Maureen in 1966 on your 18th birthday at Melbourne University. You and she have had an enduring relationship for almost 55 years. Your marriage has been happy, loving and you and your wife remain strongly committed to each other.

134 You have one daughter with whom you have a close and affectionate relationship. She describes your work ethic and extraordinary after hours engagement in the life of the schools at which you were teaching. Nonetheless you were a hands on father to her, a “*dynamic and inspirational parent*”. She states –

“I love my mother very much but everyone knows my Dad is the single biggest influence in my life.... he has made me who I am – how could I be anything other than a teacher, because of his footprints already in the field?”

135 The exposure of your offending and in particular the media coverage has caused significant distress and a range of professional problems for your daughter. That has been deeply upsetting for you.

136 Similarly, your wife has travelled the difficult path of recent years with you. In November 2020 she suffered a heart attack and underwent open heart surgery for an arterial triple bypass. You attribute that in part at least to the stress of these proceedings. She says you are her sole carer, doing everything from dressing wounds, washing her hair and

completing all household chores. She says she is recovering but at 77 years of age her progress is slow. It is clear she relies on you heavily. I take that matter into account.

Burden of imprisonment

137 Being separated from your wife after 55 years together would be difficult of itself. I take into account the fact that were you to be separated from her by way of immediate imprisonment, you would suffer a great deal of anguish knowing she is alone, and knowing of her current health state.

138 Although you are a man in good health, you are now 72 years old. I accept that you would be a vulnerable person in the custodial setting given your age. I also take into account that if I were to sentence you to immediate imprisonment you would be serving a portion of the remainder of your life in a custodial setting. You would also be entering imprisonment during the time when the Covid-19 pandemic is still causing uncertainty.

Extra Curial Punishment

139 It is apparent that your case has excited a great deal of interest from the press, the teaching community and the public more broadly. That is to be expected given the public interest in teaching. However, the level of coverage, not just recently but also in 2015 has led to considerable stress and humiliation.

140 According to your daughter –

“The media coverage has been vicious and brutal. Dad has been reduced to a shameful chapter in the educational system's history and his former stellar reputation squashed beyond recognition. He knows he will never now be remembered publicly for anything other than scandal and dubious ethics; he will face continuing gossip and innuendo to his dying day and beyond, I have no doubt.”

141 You told Mr Newton that you –

“have been very publicly disgraced, appearing on the front page of newspapers from Perth to Brisbane, on evening television news and the internet so I hope anyone I have harmed will feel that justice has been done.”

142 You have lost a great deal of your reputation. You have lost your career.

143 The prosecution accept the level of public and media scrutiny is a matter I should take into account. The law is not settled with regard to whether these factors may be taken into account in mitigation of sentence.¹⁷ The better view seems to be that they can; given not everyone who commits a crime is subject to the additional public scorn and loss of reputation which you have suffered.

144 I do take the level of public disgrace you have suffered into account. It can only be a less significant factor in the sentencing consideration.

Good character

145 You are a person without prior criminal record. I take that into account.

Specific Deterrence and Prospects of Rehabilitation

146 I have no difficulty accepting the opinion of expert Clinical and Forensic Psychologist Patrick Newton that you are a very low risk of reoffending. He bases that assertion on the humiliation you have experienced throughout the pending prosecution; the loss of your career and exposure in the press; the ongoing support of family and friends; the stability of your personal circumstances; the exemplary nature of your prior adjustment; your good work skills and intelligence; the lack of any underlying behavioural issues; and your capacity to continue to develop insight.

147 Mr Newton does opine that although doing your best to deny depression, anxiety or mood disturbance, he identifies in you –

“subtle indications of intense interpersonal withdrawal and a tendency towards relentless personal standards... which combine to indicate that he is likely to be experiencing considerably more emotional distress than he felt able to acknowledge.”

148 You are still working through your own understanding of the value you attach to achievements and your sense of embarrassment at not having achieved such qualifications yourself, along with some internal rationalisations which allowed you to

¹⁷ *Einfeld v The Queen* [2010] NSWCCA 87; (2010) 200 A Crim R 1 [86]; *R v Dunne* [2003] VSCA 150 [35]; *Ryan v The Queen* (2001) 206 CLR 267, 303-304, [123], 318-319 [177].

justify your behaviour through your positive contributions. To that end you would be assisted by some counselling.

149 Your prospects of full insight and therefore full rehabilitation are extremely positive and in my view there is almost no work for specific deterrence here.

Sentencing Submissions

150 The Prosecution in this case have submitted that the only appropriate penalty is one which sees you immediately incarcerated. In contrast Mr Hill QC and Mr Allen on your behalf submit that all sentencing principles may be met by either suspending a term of imprisonment, or by imposing a Community Correction Order.

Current Sentencing Practices

151 I am required to consider current sentencing practices, that is those currently applied. However, given the age of your offending, I must also take into account, as best I can ascertain them, sentencing practices at the time of your offending.

152 It is a very difficult task to post-dict what a sentencing court in the late 1970s would have done with you as a 27 year old of otherwise good character when you made your false representation to Mount Scopus. That offence was an ongoing one, but equally, trying to ascertain what a court would have done with you at the end of that period as a Deputy Headmaster is equally difficult. I accept that even at that time, general deterrence would have loomed large as it continues to do.

153 Neither current nor past sentencing practices are particularly helpful given the unique features which I have outlined in your case.

Parsimony

- 154 In order to reach a point where I am satisfied that you should serve immediate imprisonment, I must be satisfied that no other option on the sentencing calendar is appropriate to meet the sentencing principles.¹⁸
- 155 That principle of Parsimony has been developed through case law over centuries, but is also mandated by Parliament through the *Sentencing Act 1991* which expressly states "... a court must not impose a sentence that is more severe than that which is necessary to achieve the purpose ... for which the sentence is imposed."¹⁹ And specifically, "... a court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose ... for which sentence is imposed cannot be achieved by a sentence that does not involve the confinement of the offender."²⁰
- 156 In 2014 the Court of Appeal passed its guideline judgment in *Boulton v The Queen*²¹ wherein the Court described the intrinsically punitive nature of a Community Correction Order. That is so because the mandatory conditions require reporting and receiving visits from Corrections Victoria ("CV"), notifying CV of any change in address or employment, not leaving Victoria without permission, and complying with any direction given by the Secretary. Further, the Court held that a CCO was intended to be available as suspended sentences were phased out. Further, that a CCO can provide deterrence both specific and general because any further offending would breach the Order and the offender would be liable for re-sentencing. A CCO may have therapeutic conditions attached to reduce the risk of reoffending. It can be made with the imposition of a conviction, itself another discreet penalty.
- 157 The Court explicitly stated that in light of those factors, the sentencing court should ask itself –

"... is there are any feature of the offence, which requires the conclusion that imprisonment, with all of its disadvantages, is the only option?"²²

¹⁸ *R v O'Connor* [1987] VR 496; *R v Piacentino* (2007) 15 VR 501; *Bell v The Queen* (2016) 77 MVR 336

¹⁹ *Sentencing Act 1991* s.5(3)

²⁰ *Sentencing Act 1991* s.5(3)

²¹ *Boulton v The Queen* [2014] VSCA 342; 46 VR 308

²² *Ibid* at para 121

158 The Court stated that in an appropriate case a CCO can achieve all the purposes of sentencing, and can do so in cases which might previously have been thought to require a sentence of imprisonment.²³

Sentence

159 In the circumstances of your case, taking into account the prominence of general deterrence and the particular considerations pertaining to Charge 1 which I have outlined, I took a view that your offending on that Charge was more serious. Originally I was of the view that a term of imprisonment was appropriate for that offence, though given the peculiar feature of your positive contribution, plus your plea of guilty and remorse, and the significant delay, that sentence would be wholly suspended.

160 In relation to Charges 2, 3 and 4 where I found your deception most likely to have been significantly eclipsed by your performance, and the claim of qualifications in the 1970s much less important to those who employed you, I cannot conclude that imprisonment is the appropriate sentence. On those charges I propose to impose a Community Correction Order.

161 A Community Correction Order in many ways seems inappropriate for a 72 year old man of your calibre. The only sentencing options available to me are an Adjourned undertaking (Good Behaviour Bond), Fine, Community Correction Order or Imprisonment.

162 I have received a pre-sentence assessment which confirms your suitability for such an Order.

163 After passing sentence in this matter, with a suspended sentence on Charge 1 and an aggregate CCO on Charges 2, 3 and 4, I was advised by the Prosecution by email on 22 March 2021 that I do not have the power to sentence you by way of that combination. That is so because immediately before repeal of suspended sentences, s.44(1)(a) of the *Sentencing Act* 1991 specifically forbid such a sentence. Although that constraint was repealed in 2013, s.149D(5) of the *Sentencing Act* 1991 provides that the amendment

²³ *Ibid*

does not apply to an offence committed before the commencement of the 2013 amendment, irrespective of when the finding of guilt is made.

164 The Prosecution in their email of 22 March 2021 invited me to amend my sentence, pursuant to s.104B of the *Sentencing Act* 1991 without hearing any further submissions, by way of including Charge 1 in the aggregate sentence of the Community Correction Order. Defence Counsel did not object to this path.

165 The sentence as amended will therefore be as follows.

Charges 1, 2, 3 and 4

166 On Charges 1, 2, 3 and 4 I propose to impose an aggregate sentence. On those four charges you are convicted and I impose a Community Correction Order of 12 months. That Order will include the mandatory conditions. In addition I impose one discretionary condition which is I direct you to undergo assessment and treatment for your mental health as directed by Corrections Victoria.

167 Mr Lennie, before I can impose a Community Correction Order I am obliged to inform you that any reoffending or any breach by way of non-compliance with the conditions I have imposed, would constitute a breach of the Order and would expose you to further charges and re-sentencing. Do you understand that?

168 OFFENDER: Yes, Ma'm.

169 HER HONOUR: Before I can impose a Community Correction Order you must indicate your consent to that Order. Do you consent to that Order?

170 OFFENDER: Yes, Your Honour.

171 HER HONOUR: That Order will be printed out and I will ask you to sign it.

172 Your signature on that document is your promise that you will complete that Order.

173 Thankyou Counsel for your assistance. That concludes the sentence in this matter.

