

DIRECTOR OF PUBLIC PROSECUTIONS

v

PETER VINCENT WHITE

JUDGE: JUDGE CHAMBERS
WHERE HELD: Melbourne
DATE OF HEARING: 5 December 2023
DATE OF SENTENCE: 20 December 2023
CASE MAY BE CITED AS: DPP v White
MEDIUM NEUTRAL CITATION: [2023] VCC #

REASONS FOR SENTENCE

Subject: Criminal law - Sentence
Catchwords: Guilty plea – sexual offending against seven child victims between 1977 and 1988 – 33 charges comprised of four charges of indecent assault with a male under 16, one charge of assault with intent to commit buggery, one charge of gross indecency with a male, one charge of indecent assault with a girl under 16, 17 charges of indecent assault with a person under 16, five charges of gross indecency with a person under 16 and 4 charges of sexual penetration of a child under 10 – extremely serious offending – victims entrusted to the care of the offender at the time of the offending – breach of trust – diagnosed paedophilic disorder - offending motivated by sexual attraction to children – no prior or subsequent criminal history – utility of plea – application of *Worboyes* sentencing discount – limited evidence of remorse of insight – delay – age of offender - low risk of future offending – serious sexual offender provisions – general deterrence, denunciation and just punishment – cumulation and principle of totality – sex offender registration for life
Legislation Cited: *Crimes Act 1958*, ss 68(3A), 69(4), 55(1), 44(1), 50(1)(a), 50(1)(b), 47(1); *Sentencing Act 1991*, ss 5, 6D, 6E, 18, 6AAA; *Sex Offenders Registration Act 2004*, s 34(1)(c)
Cases Cited: *DPP v Toomey* [2006] VSCA 90; *Worboyes v The Queen* [2021] VSCA 169; *DPP v Sari* [2023] VSC 523; *Biba v The Queen* [2022] VSCA 168; *Stalio v The Queen* (2012) 46 VR 426; *Curypko v The Queen* [2014] VSCA 192; *Carter v The Queen* (2018) 272 A Crim R 170; *Bromley v The Queen* [2018] VSCA 329; *Fitchner v The Queen* [2019] VSCA 297; *Beyer v The Queen* [2011] VSCA 15; *DPP v Dalgleish (a pseudonym)* (2017) 91 ALJR 1063

Sentence: Total effective sentence of 15 years' imprisonment with a non-parole period of 9 years.

APPEARANCES:

Counsel

Solicitors

For the DPP

Ms K Judd KC
with Ms S Lenthall

Office of Public Prosecutions
Victoria

For the Accused

Mr T Battersby

TEAK Legal & Consulting Pty
Ltd

HER HONOUR:

Introduction

- 1 Peter Vincent White, on 19 September 2023, you pleaded guilty to 33 charges of child sexual offending, ranging from indecent assault to penetrative sexual offences, committed against seven victims between January 1977 and December 1988. The victims were all children, aged between 4½ and 14 years, at the time of your offending.
- 2 Much of your offending occurred at your house in Stuart Drive, Woodend, where you lived with your wife and two children. The Stuart Drive house was known as a central meeting place for children in the local area, many of whom played there regularly. The sexual abuse of the victims often occurred at night when your children and your wife - who was deaf and was unlikely to be woken by noise - were asleep.
- 3 You were born on 19 July 1950. You were aged 26 when the offending commenced (in 1977 – 46 years ago) and 38 when, 11 years later, it concluded (in 1988 – 35 years ago). You are now 73 years old. You have no prior criminal history.

Circumstances of offending

- 4 I turn now to the facts of this case.

Offending against Oscar Drew¹

- 5 Charges 1 – 6 on the Indictment relate to your offending against Oscar Drew comprised of three separate incidents between January 1977 and December 1980. Oscar Drew was born in July 1969 and was between 7-11 years of age during the period you offended against him.

¹ A pseudonym.

6 The victim's father was a friend of yours and you babysat the victim for your friend on multiple occasions, first at a unit you lived at in Sunbury, and later at the house in Stuart Drive.

Charges 1-2: Sunbury Unit (1 January 1977 to 31 December 1978)

7 The first two charges relate to the period between January 1977 and December 1978 when the victim was between 7-9 years of age.

8 On the first occasion, when you were babysitting the victim at your Sunbury unit, you sat next to the victim on the couch, wearing only your dressing gown. The gown was not tied up, and your penis was fully exposed. You told the victim that he could take his pants off, then helped him to remove his pants and underwear. You then grabbed and fondled the victim's penis for a couple of minutes. This act is the subject of charge 1 – indecent assault of a male person under 16.²

9 You then took the victim's hand and forced him to masturbate your penis. You placed a condom on your penis, and directed the victim to continue until you ejaculated in the condom. This conduct is the subject of charge 2 – indecent assault of a male person under 16. The victim says he felt surprised and confused by your conduct at the time.

Charge 3: Hotel incident (between 1 January 1977 and 31 December 1978)

10 The second incident occurred when the victim was between 7-9 years of age, and you had accompanied him and his parents on a trip where everyone stayed overnight at a hotel.

11 After dinner, you told the victim's parents that the victim could sleep with you in the spare bed in your hotel room. When the victim was alone with you in your room, you invited him to get into your bed. You removed the victim's pyjama pants, leaving him naked from the waist down. You then pressed your penis back and forth between his naked buttock cheeks before you fell asleep. This conduct is the

² Contrary to s 68(3A) of the *Crimes Act 1958*, as amended by the *Crimes (Amendment) Act 1967*.

subject of charge 3 – assault with intent to commit buggery. While asleep, you then urinated while your penis was still between the victim’s buttock cheeks.

Charges 4-5: Stuart Drive incident (between 1 January 1979 and 31 December 1980)

12 The third incident occurred between January 1979 and December 1980 when the victim was between 9-11 years of age, after you built and moved into the house in Stuart Drive. On this occasion, the victim was sitting with you on the couch in the lounge room, when you removed his pants leaving him naked from the waist down. You then removed your own pants, exposing your penis. You began to fondle your penis, and directed the victim to fondle his own penis.

13 You then placed the victim’s penis in your mouth and performed oral sex, sucking on his penis for a couple of minutes. This act is the subject of charge 4 – indecent assault upon a male person under 16. You then placed your penis in the victim’s mouth and forced his head to move up and down on your penis. This conduct is the subject of charge 5 – indecent assault of a male person under 16. When the victim pulled away, you grabbed his hand and forced him to masturbate your penis with his hand. When the victim pulled his hand away, you masturbated yourself to ejaculation in his presence.³

Charge 6: Stuart Drive incident (between 1 January 1979 and 31 December 1980)

14 The fourth incident occurred in either 1979 or 1980, when the victim was between 9-11 years old, after he had gone with you to your workplace one day. The victim then returned to have dinner with you and your wife at your house in Stuart Drive. After your wife had gone to bed, the victim went to the bathroom. By the time he returned you were sitting on the couch, masturbating, while holding a pornographic magazine. You did not stop when the victim walked into the room.

³ This is an uncharged act.

- 15 You indicated that the victim should join you, but he said no. This conduct is the subject of charge 6 – attempted gross indecency with another male person.⁴ You then gave the victim the magazine to take to bed with him.
- 16 The victim felt proud to have repelled you on this occasion and hoped this would be the end of the abuse.
- 17 As it transpired, the victim’s parents came to rely less on you to babysit the victim, having found a neighbour to do so. The family had less contact with you over time.
- 18 When he was in his mid-teens, Oscar Drew disclosed your offending to his parents. A week later, the victim’s father confronted you about what you had done, to which you made certain admissions. You promised you would never do anything to anyone else ever again.
- 19 In 2004, the victim disclosed your offending to his wife. He was encouraged to report the matter by his wife after becoming aware of the complaints made by other victims through media reports.

Charge 7: Offending against Imogen Thornton⁵ (between 1 January 1977 to 31 December 1978)

- 20 Charge 7 on the Indictment relates to your offending against Imogen Thornton who was born in April 1972 and was between 4 ½ to six years of age at the time you offended against her on one occasion between January 1977 and December 1978.
- 21 The victim grew up in New South Wales, but would visit family in Woodend on weekends or during school holidays.
- 22 In 1977 or 1978, she visited a house in Woodend at the same time as you and your wife. During this visit, she shared a double-bed in a caravan with you and your wife. At some point, early in the morning after your wife had left the bed, you exposed your penis, and took the victim’s hand and placed it on your exposed

⁴ Contrary to s 69(4) of the *Crimes Act 1958*.

⁵ A pseudonym.

penis. This conduct is the subject of charge 7 – indecent assault with a female under 16.⁶ The victim does not recall how the incident ended, but remembers being frozen with fear.

23 The victim told no one about your offending at the time because she was frightened, and ashamed.

24 In 2005, the victim told her parents about your offending and they confronted you. You told them you could not remember abusing their daughter.

25 Ms Thornton made a statement to police in 2022, after becoming aware of the broader police investigation into your offending.

Offending against Ms Lee⁷

26 Charges 8-13 on the Indictment relate to Ms Lee, comprised of six separate incidents of offending that spanned from March 1981 to December 1987. Ms Lee was born in February 1973 and was between 7 – 11 years of age at this time. Ms Lee was your neighbour's daughter, and spent a lot of time at the Stuart Drive house babysitting your two children. She also went on holiday with you and your family on two occasions.

Charge 8: Incident in son's bedroom (between 1 March 1981 and 31 December 1983)

27 Between March 1981 and December 1983, when the victim was between 7-9 years old, she babysat your children on a weekend, and stayed at your house in Stuart Drive to avoid having to go home late. She slept on a trundle bed in your son's bedroom.

28 When your son, who was then aged 3-4, woke crying in the middle of the night, you came into the bedroom to settle him. You then pulled the blankets back on the victim's bed and started to rub her vagina over her underwear. This is the conduct

⁶ Contrary to s 55 (1) of the *Crimes Act 1958*, as amended by the *Crimes (Amendment) Act 1967*.

⁷ Ms Lee consents to being identified in this way.

that is the subject of charge 8 – indecent assault of a person under 16.⁸ Awake, the victim stiffened and lay very still. You then left the room.

Charge 9: Incident in lounge room (between 1 January 1982 and 31 December 1983)

29 On an occasion between January 1982 and December 1983, when the victim was around 9 years old, she was in the lounge with you one Saturday night, after your wife and children had gone to bed. You were wearing only a loosely-tied dressing gown, and began to play a pornographic video. After about 20 minutes, you asked the victim if she liked watching the video. When she said no, you turned it off, and replaced that video with another. The victim recalls this was the movie, “The Killing Fields”.

30 The victim went to bed after half an hour, but 20 minutes later felt ill from watching the videos, and threw up on the carpet in your son’s room. She went downstairs and told you what had happened.

31 Later that night, you came into the bedroom when your son woke crying. After settling your son, you inserted your finger into the victim’s vagina, causing her pain. This act is the subject of charge 9 – indecent assault of a person under 16.

Charge 10 – Incident at offender’s parents’ house (between 1 March 1981 and 31 December 1983)

32 One weekend in summer between March 1981 and December 1983, when the victim was between 8-10 years old, you drove her to your father’s house on the other side of Woodend. You were driving your ute, with the victim inside the cab with you. Your son and two other local children were in the tray at the rear of the ute.

33 During the drive, you exposed your erect penis out of the right leg of your shorts to the victim.⁹

⁸ Contrary to s 44(1) of the *Crimes Act 1958*, as amended by the *Crimes (Sexual Offences) Act 1980*.

⁹ This is an uncharged act.

34 Then, upon arriving at your father's house, you joined the four children in a bedroom. You sat the victim on your crouch, and she could feel your erect penis through your clothes, as you moved her backwards and forwards on your lap. This conduct is the subject of charge 10 – indecent assault of a person under 16.

35 On the trip back, you again exposed your erect penis to the victim.¹⁰

Charge 11 – Mildura incident (between 1 January 1982 and 31 December 1984)

36 Between January 1982 and December 1984, when the victim was between 9-11 years of age, she accompanied you and your family on a family holiday to Mildura, where you went camping. The victim and the two other children slept in the annex. When your son awoke crying in the night, you went into the annex, and inserted your fingers in the victim's vagina. This act is the subject of charge 11 – indecent assault of a person under 16.

Charge 12 – Apollo Bay incident (between 1 January 1982 and 31 December 1984)

37 The following summer, when the victim was between 8-11 years old, she was invited to holiday with your family and another family in Apollo Bay. The victim shared a room with your son. On the first night, when your son was crying, you went into their room, and held his hand. While you were doing so, you inserted your finger into the victim's vagina. This act is the subject of charge 12 – indecent assault of a person under 16.

Offending against Ms Lee and Tahlia Downie¹¹

38 Charges 13 and 14 relate to your offending against Ms Lee and her friend, Tahlia Downie and occurred one day after the Apollo Bay incident.

¹⁰ This is an uncharged act.

¹¹ A pseudonym,

- Charges 13 & 14: The match incident (between 1 January 1983 and 31 December 1987)*
- 39 On this occasion, you invited the victim and her friend to go down the street with you and your son. You drove them to your father's house, and during the drive, you exposed your penis to the victim¹².
- 40 That night, you asked the victim's mother if she and her friend could stay over at the Stuart Drive house to look after your children. After this arrangement was made, you sat down with the two girls in the lounge room, and while sitting on the couch, you exposed your erect penis from beneath your dressing gown. You then turned the light off, struck a match and placed the ignited match in the eye of your penis, and asked one of the girls to blow it out. This conduct is the subject of charges 13 and 14 – gross indecency with a person under 16.¹³
- 41 Ms Downie does not recall seeing you after this incident. She and Ms Lee never spoke of the incident. You ceased abusing Ms Lee when she and her family moved to a different part of Woodend in her first year of high school.
- 42 Ms Lee never told her mother about your abuse. Her mother idolised you and she was scared to tell her father. When she was about 15, she told her older brother about your offending. She also told her then boyfriend. Then, when she was in her 20s, she told her sister, and her sister told their parents. Ms Lee's mother asked you whether it had happened, but you denied it.

Offending against Madeleine West¹⁴

- 43 Charges 15-25 relate to ten separate instances of offending against Madeleine West over five years between January 1982 and December 1988. Ms West was born in July 1977 and was sexually abused by you between the ages of five and ten.

¹² This is an uncharged act.

¹³ Contrary to s 50(1)(a) of the *Crimes Act 1958*, as amended by the *Crimes (Sexual Offences) Act 1980*.

¹⁴ Madeleine West has provided her written consent to being identified in my published reasons.

44 Ms West's family were your neighbours, and the two families socialised together regularly. You were always very complimentary about the pictures drawn by the victim, and she would sometimes set up a table in your garage to draw.

45 On one occasion, when she was about five years old, the victim was in the garage drawing, when she turned and saw you sitting on the couch, with your penis out of your shorts¹⁵. She says you were smirking.

46 On another occasion, when the victim was six years old, you were with her in the TV room when you exposed your penis to her¹⁶, again smirking while you did so. You exposed your penis to the victim on another occasion you were with her in your daughter's room¹⁷.

Charge 15: Incidents in the garage and blow up pool (Rolled up charge) (between 1 January 1982 and 31 December 1985)

47 On an occasion between January 1982 and December 1985, when the victim was between 5-8 years old, she was in the garage with you when you got up from the couch and swiped your fingers across her vagina, over her clothes. On another occasion, she was in a blow-up pool in your backyard when you lifted her up and as you did so, you swiped your fingers upwards over her vagina, on the outside of her bathers. Your conduct on these two occasions is the subject of rolled up charge 15 – indecent assault of a person under 16.

Charge 16: Incident in the front yard (between 1 January 1983 and 31 December 1984)

48 On an occasion between January 1983 and December 1984, when the victim was between 5-7 years old, she was playing in the front yard of the Stuart Drive house with another child, Amanda Russell¹⁸, while you sat on a sunbed. Madeleine West looked over at you and saw you had your penis out of your shorts again. You told her to put flowers on your erect penis, to "make it look pretty". By this time, seeing your penis had become normal for the victim, and she did so. This conduct is the

¹⁵ This is an uncharged act.

¹⁶ This is an uncharged act.

¹⁷ This is an uncharged act.

¹⁸ The victim has consented to being identified as Amanda Russell in my published reasons for decision.

subject of charge 16 – gross indecency with a person under 16.¹⁹ You then invited the victim to kiss or touch your penis, but she did not.

Charge 17: Incident involving sticks (between 1 January 1982 and 31 December 1988)

49 On another occasion between January 1982 and December 1988, you were in the yard of the Stuart Drive house together with the victim when you exposed your erect penis to her over the top of your shorts. You then told the victim to put sticks in your penis. The victim felt repulsed by your request, but complied. This conduct is the subject of charge 17 – gross indecency with a person under 16.

Charge 18: Rolled up charge (between 1 January 1982 and 31 December 1988)

50 Between January 1982 and December 1988, the victim was in the garage with you and saw you sitting on the couch stroking your exposed penis. As she stood up, you pulled the victim onto your lap and placed your hands around her waist. The victim could feel your erect penis against her buttocks, as you began to gyrate against her.

51 On a separate occasion, the victim was watching TV with you in the TV room at the Stuart Drive address. As she stood up to get a snack, you pulled her onto your lap, where she could feel your erect penis as you began moving her back and forward. On this occasion the victim felt dampness on her buttocks and noticed a damp patch on your shorts in the area of your penis.

52 Your conduct on these two separate occasions is the subject of rolled up charge 18 – indecent assault of a person under 16.

Charge 19: Christmas incident (between 1 January 1985 and 31 December 1986)

53 Between January 1985 and December 1986, when the victim was between 7-9 years old, she was sitting on a couch next to the Christmas tree at the Stuart Drive house when you told her she could have a lolly. She stood up to get a lolly from the Christmas tree, but as she did so you placed your hand in her pants, and

¹⁹ Contrary to s 50(1)(b) of the *Crimes Act 1958*, as amended by the *Crimes (Sexual Offences) Act 1980*.

underpants. You then inserted your finger into her vagina. This act is the subject of charge 19 – indecent assault of a person under 16. The victim began to cry, but you told her to be quiet, and gave her a candy cane.

Charge 20: Kitchen incident (between 1 January 1985 and 31 December 1987)

54 On another occasion between January 1985 and December 1987, the victim was with you in the kitchen, when you gave her a jug of juice or cordial to hold. You then licked your finger, reached underneath the victim's underpants, and inserted your finger into her vagina. You then carried on as if nothing had happened. This act is the subject of charge 20 – indecent assault of a person under 16.

Charge 21: Incidents in daughter's bedroom and on the swing (between 1 January 1985 and 31 December 1988)

55 On an occasion between January 1985 and December 1988 when the victim was between 8-10 years old, she hurt herself in the backyard at the Stuart Drive house, and had been taken into your daughter's room. She was lying down on the bed, in the darkened room, when you touched her vagina underneath her underwear.

56 On a separate occasion, the victim was with you and some others at a park near Woodend Primary School. You were pushing the victim on the swing from behind. As she swung back towards you, you put your hands on her vagina over her clothes. This happened every time she swung back – about ten times. She describes your act as hurting a lot. The victim squealed loudly in the hope that someone would notice what was happening.

57 These two incidents are the subject of charge 21 – a rolled up charge of indecent assault of a person under 16.

Charge 22 – Incident in son's bedroom (between 1 January 1985 and 31 December 1986)

58 Between January 1985 and December 1986, when the victim was between 7-9 years old, she was lying face down on your son's bed and could feel you pressing her into the bed. She then felt you insert your finger into her anus, causing her

pain. She describes feeling very faint as a result. This act is the subject of charge 22 – indecent assault of a person under 16.

Charge 23: Incident of penile/oral penetration (between 1 January 1985 and 31 December 1986)

59 When the victim was still between the ages of 7-9, she was in your lounge room when you removed your penis from your shorts and told her to sit down on the couch. Standing in front of her, you said words to the effect, 'Come on, lets try this'. You then forced your penis into the victim's mouth, and penetrated her mouth by moving back and forth. You continued to do so until the victim vomited. You then gave her some cordial to drink. This act is the subject of charge 23 – sexual penetration of a child under 10.²⁰

Charges 24 & 25: Incident at the party (between 1 January 1986 and 25 July 1987)

60 When the victim was between the age of 8-9, she was with her family at a party at your house in Stuart Drive, where all the adults were all drinking.

61 The victim became upset, and you offered to get her some toys and took her to your son's bedroom, while the other children watched TV. You then sat on the bed, and pulled the victim onto your lap, facing away from you. You then forced your finger into the victim's vagina, causing her pain. You removed your finger, then pulled the victim closer and rubbed your erect penis against her buttocks. You then spat on your finger, and pulled her underwear aside, reinserting your finger into her vagina. Again, this caused the victim pain. This act is the subject of charge 24 – indecent assault of a person under 16.

62 You removed your finger and then thrust your penis into the victim's vagina two or three times. This act is the subject of charge 25 – sexual penetration of a child under 10. You then grunted before releasing the victim who went out to the carport and told her mother she wanted to go home. She did not tell her mother what you had done. The next day, the victim's vagina was very sore, and bleeding.

²⁰ Contrary to s 47(1) of the *Crimes Act 1958*, as amended by the *Crimes (Sexual Offences) Act 1980*.

63 You ceased touching the victim when she was around 10 years old. Her family subsequently moved to Kyneton and ceased all contact with you.

64 When the victim was about 8 years old, she told her mother that you had been exposing yourself to her, and that you wanted her to touch you. Her mother told her not to be alone with you, and not to play in your backyard anymore.

65 In 2017, the victim told her former partner, Shannon Bennett, about what you had done to her. She also disclosed your offending to her current partner and medical professionals from 2020 onwards.

Offending against Amanda Russell²¹

66 The next victim of your offending is Amanda Russell. Her family lived near you and she regularly played with your daughter at your house in Stuart Drive. Charges 26-30 relate to six incidents of offending against Amanda Russell between January 1986 and December 1987. Ms Russell was born in August 1981 and was sexually abused by you between the age of 4 ½ to six years.

Charge 26: Incident at the offender's parents' place (between 1 January 1986 and 31 December 1987)

67 Between January 1986 and December 1987, when the victim was between 4 ½ to six years old, just before Christmas in 1987, she visiting your house one day when you were home alone.

68 You took the victim in your ute to check on your parents' house. Once inside, you gave the victim an ice-cream and then went to do some jobs around the house. You returned, sat on the couch, and exposed your penis to the victim, introducing your penis as your 'friend'. You told the victim your penis was sad because it was "floppy" but she could make it happy by kissing it. You began stroking your penis, and told the victim she needed to kiss it. She said no, and you said that if she did you would take her home and get her more ice-cream. The victim then kissed your penis, before you placed you hand on top of her head and inserted your penis into

²¹ The victim consents to being identified as Amanda Russell in my published reasons for decision.

her mouth. This act is the subject of charge 26 – sexual penetration of a child under 10. The victim is unsure how long this lasted, but describes it feeling ‘like a lifetime’. You ejaculated onto her face.

69 You then asked the victim to kiss your penis again. She argued with you about this, but you told her she had to do it, or otherwise the two of you would not go home. The victim kissed your penis, as you stroked it.²² You then took the victim home.

Charge 27: Rolled up charge – second and third incidents (between 1 January 1986 and 31 December 1987)

70 The second and third incidents occurred between January 1986 and December 1987.

71 On one occasion between those dates, you and your daughter were playing a game of hide and seek with the victim at your house in Stuart Drive. As your daughter counted, you took the victim out of the house to a caravan that was parked in the driveway, saying you could hide in the bed together.

72 At some point, the victim’s top was removed. While your daughter was screaming outside the caravan, asking where you both were, you cuddled the victim and rubbed her back. This conduct forms part of charge 27 – a rolled up charge of indecent assault of a person under 16. Your daughter was becoming increasingly agitated, screaming and at one point tried to open the caravan door. The victim heard people on the driveway outside, and you left the caravan.

73 On another occasion before Christmas 1987, the victim was alone with you in your bedroom. You were lying on top of the victim on the bed. This conduct also forms part of rolled-up charge 27. At one point, the bedroom door opened, and your son and another boy stood in the doorway. Someone asked, ‘what are you doing’ at which point the victim left the room.

²² This is an uncharged act.

Charge 28: Incident with felt pieces (between 1 January 1986 and 31 December 1987)

74 On a separate occasion, you were alone with the victim in your daughter's bedroom at the Stuart Drive address. The victim and your daughter had been playing with felt boards earlier that day, and the victim was still playing with the felt pieces. You sat down, and asked the victim if she would like to play a game. You told her the game involved dressing your penis up with felt. The victim placed pieces of felt on your penis, while you told her how to do it, and suggested they use ejaculate to make the pieces stick.²³

75 You then put the victim's hands on your penis, and showed her how to rub it. This act is the subject of charge 28 – indecent assault of a person under 16. You ejaculated, causing the felt to stick to your penis.

Charge 29 – Incident with balloon (between 1 January 1986 and 31 December 1987)

76 On a further occasion, the victim went to your house for dinner. After your daughter went to bed, she stayed up with you in the den. You were sitting with the victim on the couch and suggested that you play a game by tying two balloons to your penis.

77 You took your penis out of your pants, for the victim to try to tie balloons around it. You told the victim to rub the balloons on your penis, and she did so, until you had an erection. This act is the subject of charge 29 – gross indecency with a person under 16.

Charge 30 – The sixth incident (between 1 January 1986 and 31 December 1987)

78 The sixth incident occurred between January 1986 and December 1987 when the victim was sitting between your legs on a bed or couch. Your penis was out of your pants, and you were holding it. You told the victim she had to put your penis in her mouth. You then inserted your penis into her mouth, and directed her to move her mouth back and forwards on your penis, to perform oral sex on you. This act gives rise to charge 30 – sexual penetration of a child under 10.

²³ This is an uncharged act.

79 In 1992 or 1993, when the victim was between 10-11 years of age, she told her mother's friend about your sexual abuse. The friend then told the victim's mother, but she did not believe that the abuse had occurred. Over the years, the victim also disclosed your offending to her brother.

Offending against Andrew Russell²⁴

80 Andrew Russell is the older brother of Amanda Russell. Like his sister, Andrew Russell regularly played at the Stuart Drive address. Charges 31-33 related to your offending against Andrew Russell between January 1987 and December 1988 comprised of three separate incidents. Mr Russell was born in March 1980 and was between the age of six and seven when you sexually abused him.

Charges 31 & 32 – incident during phone book delivery run (between 1 January 1987 and 31 December 1988)

81 In 1987, when the victim was about 6 or 7 years old, he accompanied you while you delivered telephone books. On this occasion, you parked your ute in a bush area, and asked the victim to take his pants off. The victim did as you asked, and you began to masturbate his penis. This went on for some time. This act is the subject of charge 31 – indecent assault of a person under 16.

82 You asked the victim to lie down, and started to masturbate him again, while also masturbating your own penis, using the other hand.²⁵

83 You then rubbed your erect penis, through your pants, on the victim's hip. At some point you ejaculated on the legs of the victim's trouser pants. This act is the subject of charge 32 – indecent assault of a person under 16. After this incident, the victim went home. He felt strange, and thought that the incident should not have happened.

²⁴ The victim consents to being identified by the name Andrew Russell, and as the brother of Amanda Russell.

²⁵ This is an uncharged act.

Charge 33 – Incident in the lounge room (between 1 January 1987 and 31 December 1988)

84 On an occasion when the victim was still between six and seven years old, but before the events that occurred in the ute, the victim went to visit your son at the Stuart Drive house. You told the victim that your son was out, but that the victim should come into the house and play.

85 The victim went into your son's room and started playing with some toys, but you told him to come into the lounge room where you were watching TV.

86 The victim did so. He turned around at one point, and saw that you had your pants down with your penis exposed. You told the victim to come over to the couch and touch your penis. The victim did as you directed, and briefly touched your penis. You then asked, 'could you rub it for me?'. The victim started to masturbate your penis, and after a short period, you took his hand and wrapped it around your penis. This act is the subject of charge 33 – indecent assault of a person under 16. The victim was unable to say whether you ejaculated on this occasion.

87 After this incident, the victim ran straight home, feeling scared and confused. He never told anyone about the incident.

88 After the offending in the ute, the victim did not go to your house as often, and when he did, you seemed to him to appear distant, and more focused on his sister.

89 The victim told his father about your abuse, but his father did not do anything about it. Many years later, he also disclosed your offending to his mother and to his wife.

Investigation and interviews

90 In the course of the police investigation into your offending, two of the victims participated in pre-text conversations with you, in which they confronted you about your offending.

91 On 13 June 2022, after consulting with investigators, Madeleine West attended at your address in Sunbury where she spoke with you, and recorded the

conversation. During that conversation, Ms West told you she had a memory of you touching her when she was little, to which you responded:

'I am so sorry. I can't – Mel, I don't remember doing anything like that...I am sorry, please, please forgive me. If – if I did, I – I don't remember. I'm very, very sorry if I did'.

92 Throughout the pretext conversation with Ms West, you repeatedly apologised and asked to be forgiven, but maintained you did not remember “*doing anything*”, saying, “*it's been washed from my mind*”.

93 On 14 December 2022, another victim, Imogen Thornton also spoke with you about your offending in the caravan. You told her it had been “completely erased from my memory”. When the victim asked why you targeted her, you denied this saying “it was just something that happened at the time”. You said words to the effect that you were not claiming to be innocent, just that you could not remember what exactly happened.

94 You were interviewed by investigators on three separate occasions, on 11 December 2019, 4 November 2022 and 22 December 2022. In accordance with your rights, you declined to answer questions asked of you during those interviews.

Procedural history

95 You were charged with some of these offences on 4 November 2022. Further charges were then filed on 13 January 2023. The matters resolved to a guilty plea to the 33 charges for which you are to be sentenced at a fourth committal mention in the Bendigo Magistrates' Court on 6 September 2023. Your undertaking of bail was forfeited at this time, and you have been remanded in custody since that date.

96 I return to the relevance of your early guilty plea later in these reasons.

Gravity of offence and victim impact

97 I turn now to speak about the gravity of your offending and the impact it has had on your victims.

- 98 By any measure, your offending was extremely serious. The community rightly regards predatory sexual offending against young children as repugnant. Counsel appearing on your behalf, Mr Battersby, conceded that the sustained and egregious nature of your offending places it towards to worst example of this type of criminal offending. I agree with that characterisation of the gravity of your crimes.
- 99 There are a number of features that aggravate your offending.
- 100 Firstly, your offending involved multiple victims: seven in total. The victims were each particularly young children, ranging in age from 4 ½ to fourteen years.
- 101 Secondly, the victims had either explicitly or impliedly been entrusted to your care on each of the occasions you offended against them. Jacob Burnett was the son of a friend of yours, and you had been entrusted to babysit him when you took the opportunity this presented to sexually offend against him. Another victim was a blood relative of yours. Other victims were the children of neighbours, children who babysat for you, travelled with your family or were friends of your own children and who therefore played at your house frequently. It was the opportunity of this unsupervised interaction with these children, implicitly granted by their parents, that illustrates the victims' vulnerability at the time of your offending. By your offending, you fundamentally breached the trust reposed in you to do no harm to those children. This factor significantly aggravates your offending.
- 102 Thirdly, you exploited the vulnerability of the victims by enticing them with the use of "games" and treats, such as lollies, to orchestrate opportunities to offend. In particular, the offending in which you purported to play games involving your penis, calculated to normalise such play, was appallingly manipulative conduct.
- 103 Fourthly, in respect of four of the victims, Oscar Drew, Ms Lee, Madeleine West and Amanda Russell, your offending was persistent and increasingly deviant over multiple instances of offending. With each further incident, the victims' fear that the

abuse would occur again can only have been heightened. Moreover, the presence of other children, including your own, did not deter you from offending.

104 Fifthly, viewed globally, your offending was prolonged, spanning eleven years. Your offending over this period was so egregious that it is impossible to suggest that you did not appreciate the wrongfulness of your conduct, yet you persisted. In doing so, you repeatedly preferenced your own sexual gratification over the safety and wellbeing of the victims. There is no basis for me to conclude that you lacked the capacity to pause and reflect upon the harm you were causing, and desist, but you did not. Even where your offending caused the victims pain, distress or injury, you continued to offend. Your decision to continue offending, moving from victim to victim, increases your moral culpability each time you committed a further act of sexual abuse.

105 The most serious offending with which you are charged relates to the offences of sexual penetration of a child under 10, being four separate charges. The offending giving rise to two of these charge relates to Ms West in circumstances where you forced your penis into her mouth, demanding that she perform oral sex on you, until she vomited and, on a separate occasion, sexually penetrated her vagina with your penis. Ms West was only 7-9 years of age at the time of this offending.

106 Two other charges of sexual penetration of a child under 10, relate to your offending against Amanda Russell where, in the context of offering her an ice-cream and introducing your penis as your 'friend' you told the victim to kiss your penis, then taking the opportunity to force your penis into her mouth. On the second occasion you did so, you were sitting with the victim on a bed or couch, holding your penis when you told the victim she had to put your penis in her mouth, before directing her how to move her head. Ms Russell, a friend of your daughters, was only 4 ½ to six years of age at the time.

107 These are extremely serious examples of the offence of sexual penetration of a child under 10. Offending of this kind strikes at the heart of the fundamental moral

values of a decent and civilised society.²⁶ Moreover, the law places an absolute prohibition on sexual activity with children in recognition of the harm that is presumed to follow from premature sexual activity.

108 It is notable that much of the offending charged as an indecent assault of a child under 16 also involved acts of penetration, elevating the seriousness of that offending to a significant degree.

109 Offences involving the sexual penetration of children are recognised as being inherently violent. The Courts are also conscious of the devastating and life-long consequences that flow from the sexual abuse of children, as is borne out by the victim impact statements provided by the victims in this case, each of which was read in court, and to which I now turn.

110 Oscar Drew says your offending robbed him of a normal, happy and innocent childhood. He asks how his life may have been different if you had not come into it. He speaks of the impact your offending has had on many aspects of his life, including his relationship with his parents and the way in which he fathered his own children. He concludes by stating that in pursuing your own self-gratification you significantly diminished the quality of his life and the lives of those who love and care for him. Mr Drew says you have left him with emotional scars he must live with for the rest of his life.

111 Mr Drew's mother also provided a victim impact statement that illustrates the flow-on effects of your offending. Although she bears no responsibility for your conduct, she speaks of overwhelming guilt in failing to protect her son. Believing you were a person who loved to be with children, she trusted you. She describes the anguish of being told of your offending by her son, and feelings of inconsolable sadness.

112 Imogen Thornton speaks of her experience of burying her trauma by staying silent for all these years. She says your offending has affected every aspect of her life –

²⁶ *Fitchner v The Queen* [2019] VSCA 297 [68]-[69]

her sense of security, your belief in herself, and her relationships with others. She describes her overwhelming sense of fear as a child: fear of being left alone with you, fear of being isolated from people who could protect her, fear that things would happen and it would be her fault. Ms Thornton says she grew up with an abiding sense of shame and guilt, leaving her feeling alone and afraid. She describes the impact this has had on her as an adult, leaving her with crippling depression, anxiety and panic attacks. In her concluding remarks Ms Thornton says she now recognises that while this all happened to her, it was never her fault.

113 Ms Lee speaks of an overwhelming feeling of knowing what was going to happen to her when she babysat for you, combined with a sense of dread. She too reflects on her fear that no one would believe her, and so kept your offending a secret. As a result, she says she felt disconnected as child; from family, friends and other children in her neighbourhood. She describes a lost innocence and a loss of identity. She speaks of the guilt she experienced when she discovered you had offended against others in the same way. Your offending has also impacted on all of her relationships as an adult, leaving her hypervigilant and overprotective. Ms Lee says you ruined her life.

114 In her victim impact statement, Tahlia Downie also reflects on feeling she could not confide in anyone about what you had done to her, leaving her feeling utterly isolated. She says she had carried the heavy burden of shame, with memories of your offending often returning. She says when this occurs she struggles to navigate these overwhelming emotions.

115 Madeleine West also read her victim impact statement aloud at your plea hearing. She speaks of a perfect world in which someone would have stopped you, where someone would have saved her, but sadly this did not occur. Ms West reflects on the insidious impact your offending has had on many aspects of her life; physically, emotionally and psychologically. She says you robbed her of her precious, formative years as a child: a time that should have been special. Instead, you

violated her repeatedly. She struggled to form relationships because she could not feel safe with others or learn to trust them. She describes the various ways the trauma has impacted on her health and wellbeing. She says you absolutely ruined her life. Ms West concludes by saying that although she was your victim, she was never to blame for what happened to her as a child.

116 Amanda Russell also speaks of a loss of trust in others because of your offending. She says you left her with feelings of confusion, embarrassment and sadness. She says your offending damaged her relationship with her mother, and in later life, says that she was overly vigilant with her own children, constantly fearing for their safety. Ms Russell describes the physical impact of her flashbacks, including ones that were triggered by the police investigation, where she would panic, unable to breathe. She sought psychological treatment to help her manage these experiences.

117 Andrew Russell says that as a child, your offending left him in survival mode. He did not understand what was happening to him or why. He describes being a confused child, who could not understand why a man he looked up to as a father figure would treat him in this way. Mr Russell says you turned his world upside down, not knowing what to do. As an adult, your offending has eroded his trust in others, impacting on every relationship in his life. Mr Russell says his psychologist is treating him for PTSD, but he finds it difficult to speak of his experiences to this day.

118 As the Court of Appeal has observed:²⁷

“It is well to bear in mind that the rehabilitation of the victim of sexual abuse may often be more difficult to achieve than that of the perpetrator. Frequently, the damage will be profound and a long time will pass before it can be addressed at all. In the meantime, childhood will be destroyed, self-esteem damaged, educational and career opportunities lost and the capacity to form and maintain relationships seriously impaired...The vindication of the victim in cases of this kind, in particular, is profoundly important if the criminal justice system is to perform its role properly.”

²⁷ *DPP v Toomey* [2006] VSCA 90 [22]-[23] per Vincent JA.

119 Mr White, you can be in no doubt that your offending has had a profound, and devastating impact on the lives of your victims. I have read each of the victim impact statements carefully. The victims have eloquently and courageously spoken of your offending and the trauma it has caused. I have taken the significant impact of your offending on each of the victims into account in sentencing you.

Personal circumstances

120 I turn to consider your personal circumstances. Much of the detail of your background is derived from the psychological report of Mr Jeffrey Cummins dated 27 November 2023 that was tendered on your plea.²⁸

121 You were raised in a loving and supportive family environment in Strathmore. You have two sisters, one older and one younger. Your father worked as a plumber and your mother raised the family at home. Your parents never separated.

122 You deny any experience of physical or sexual abuse as a child.

123 You attended St Vincent's Primary School in Strathmore and then completed the equivalent of Year 11 at St Bernard's Secondary College in Essendon.

124 Following secondary school, you undertook a four-year plumbing apprenticeship with your father, then continued working for your father for two years. You travelled overseas for a period of three years, undertaking demolition work in London, before returning to live with your parents in Balwyn where you resumed employment as a plumber in your father's business.

125 When you were 24 years old, your parents decided to relocate to Woodend and you then worked in your father's plumbing business, which traded as 'Plumbrite Pty Ltd'. At around this time, you met your wife, who was friends with your younger sister. You married in 1978, and had two children together; a son, who was born

²⁸ Exhibit 1 – psychological report of Mr Jeffrey Cummins, Clinical and Forensic Psychologist dated 27 November 2023.

in 1980 and a daughter, born one year later in 1981. As stated, you wife was hearing impaired from birth, but managed day to day interactions by lip reading.

126 In Woodend, you and your wife were active in a large social group, attending dinner dances and organised activities such as working bees with the local Apex group. You were a social drinker, but otherwise had no issue with alcohol or illicit drugs.

127 When your father ceased working in the business, you continued to trade as Plumbrite, but changed the nature of the business to a retail outlet, selling domestic heating appliances which you would supply and instal. In more recent years, you engaged sub-contractors to undertake this work.

128 You and your wife had lived in Sunbury for the past 12-13 years.

129 Approximately 18 months ago, you decided to place the business on the market, with plans to retire with your wife to a residential unit in St Leonards. However, once charged with this offending, you placed the company into voluntary liquidation prior to forfeiting your undertaking of bail, and being remanded. You told Mr Cummins you did not want responsibility for liquidating the company to fall to your wife or sister once you were in jail. You had worked in this industry for close to four decades.

130 You had been married to your wife for 45 years. That relationship ended, and you separated under the one roof once these charges came to light, however, your wife remains supportive of you. But your offending has destroyed other relationships in your life. Since being charged, your daughter has refused to speak with you. Your son visited you once after you were charged, but despite having his number, and you have not spoken with him since returning to custody. You retain the support of your younger sister who is prepared to offer you support, notwithstanding the nature of your offending. However, your older sister has ceased all contact with you.

131 Prior to your remand, you were seeing a psychologist in Sunbury, largely to assist you with managing the stress of your current situation, but you did not discuss your offending directly in these sessions.²⁹

132 You have had no prior involvement in the criminal justice system.

Matters in mitigation

133 Having assessed the objective gravity of your offending, and your moral culpability for your conduct, I turn now to a number of factors that operate in mitigation of your sentence.

Early guilty plea

134 First and foremost, I attach particular significance to your guilty plea. You are entitled to a discount on the sentence to be imposed in recognition of your early plea of guilty, and its utilitarian value. Your plea has facilitated the course of justice and the community has been spared the time and cost associated with what could only have been a lengthy trial.

135 Significantly, by entering a guilty plea at an early stage in these proceedings, you have spared the victims from the trauma and distress associated with having to relive their experiences in court. In cases such as these, involving multiple victims and other potential family members likely to be called as witnesses, the practical or utilitarian value of your plea is a matter of appreciable weight in mitigation of sentence.

136 Your plea is also an indication of a level of remorse. However, apart from the remorse inherent in your plea, there is little evidence that you accept responsibility for your actions, or have demonstrated any insight or genuine remorse for your offending behaviour and its impact on the victims.

137 The regret you expressed in the pre-text calls and in your discussions with Mr Cummins were so qualified by your asserted lack of any specific recollection of the

²⁹ Exhibit 2 – Letter of Ms Jessica Martino, Serene Psychological Service dated 5 August 2023.

offending - apologising “if you did” any of these things³⁰ - as to ring hollow. An offender whose plea is accompanied by genuine remorse for their offending is entitled to have that fact reflected in further moderation of sentence, a factor that is absent here.

Worboyes or pandemic related discount

138 In the wake of the COVID-19 pandemic, the criminal justice system was significantly affected, with jury trials unable to proceed or delayed, and with committal hearings in the Magistrates’ Court also severely impacted, adding to further delays. In the case of *Worboyes*³¹, the Court of Appeal determined that a plea of guilty should be given additional weight while the criminal justice system was experiencing pandemic-related delays, because a plea carried a greater utilitarian benefit than at other times.³²

139 At your plea hearing, the prosecution argued that no or if any, only ‘a negligible’ additional sentencing discount should be given due to pandemic-related delays, arguing that the delays that plagued the criminal justice system between 2020 and 2022 have now resolved. The prosecution submissions highlighted the fact that the Supreme Court has now cleared its pandemic backlog³³, as has the County Court.³⁴ The pending case load in the Magistrates’ Court is currently 8% higher than prior to the pandemic, but is otherwise finalising more cases than are initiated.³⁵

140 In the case of *Biba*³⁶, the Court of Appeal recently held that, for consistency, *Worboyes* discounts, even if modest, must continue to be given in all courts for so long as any of them are experiencing pandemic-related delays.³⁷

³⁰ Pretext call with Madeleine West on 13 June 2022.

³¹ *Worboyes v The Queen* [2021] VSCA 169,

³² *Worboyes*, [35]-[39]

³³ *DPP v Sari* [2023] VSC 523, Hollingworth J, [51]

³⁴ Chief Judge Peter Kidd, *Statement: Update on pending criminal trials, County Court of Victoria* dated 9 October 2023

³⁵ Caseload data report dated September 2023.

³⁶ *Biba v The Queen* [2022] VSCA 168

³⁷ *Biba*, [26].

141 In assessing whether a *Worboyes* discount should be applied, and if so, the extent of any discount, it is necessary to consider the degree of the pandemic-related delay at the time the plea was entered. In this case, you indicated an intention to plead guilty in August 2023. A small, but discernible delay continued to be experienced in the case load of the Magistrates' Court following the pandemic at this time. By your plea, you saved that Court the time associated with a contested committal hearing. Accordingly, you are entitled to a slight *Worboyes* discount additional to that which otherwise attaches to your plea.

Delay and age

142 I now turn to the issue of delay.

143 You last offended in 1988 and you now fall to be sentenced over three decades later. The lapse of time since the commission of offences of this kind is not necessarily unusual. In cases involving sexual offending against children, it is often the case that victims do not come forward for many years after the offending.

144 Nonetheless, the delay in this case does have a number of consequences.

145 Firstly, you now fall to be sentenced to a substantial period of imprisonment as a 73-year-old man. This is a factor of significance, given that each year you spend in custody will represent a significant portion of your remaining life expectancy.

146 You have a number of health conditions of a type which are not uncommon for a man of your age. You are medicated for high blood pressure and type-2 diabetes. You also had a coronary stent fitted ten years ago. You are otherwise in reasonable physical health.

147 It is not possible to predict how long you will live. However, the fact is you are entering the last decades of your life, and it can be anticipated that your health will decline over time. I have regard to the fact that the term of imprisonment that I am imposing carries with it a genuine prospect that you will live out the rest of your life in prison. Facing this possibility at your age will be an additional burden of your

imprisonment, and one that Mr Cummins reports is the cause of some anxiety for you, and I make allowance for this fact.

148 Secondly, the delay means that the maximum penalty for the offences with which you are charged are those which applied at the time of your offending, and not those that apply now.

Sentencing practices and comparative cases

149 I therefore turn to consider the maximum penalties and the question of current sentencing practices.

150 In relation to the offence of sexual penetration of a person under 10, the maximum penalty is 20 years' imprisonment.

151 The maximum penalty for the offence of assault with intent to commit buggery is 10 years' imprisonment.

152 In relation to the offence of indecent assault of a person under 16 years, at the time you committed that offence, the maximum penalty was five years' imprisonment.³⁸ The current equivalent of this crime is the offence of sexual assault of a child under 16, which now carries a maximum penalty of 10 years' imprisonment. However, it is the lower maximum penalty of 5 years that applies to you.

153 The offence of gross indecency with a person under 16 years carries a maximum penalty of 2 years' imprisonment.

154 The maximum penalty fixed by Parliament is the relevant yardstick when arriving at an appropriate sentence, however it is not the determinative factor in my sentence.

³⁸ The offence of indecent assault of a male/female person under 16 also carries a maximum penalty of 5 years' imprisonment for charges 2, 4, 5 and 7.

- 155 In sentencing you, section 5(2)(b) of the *Sentencing Act 1991* also requires that I have regard to current sentencing practices. The relevant sentencing practices are those that are currently applied, rather than those applied by the courts at the time of your offending.³⁹ However, the different maximum penalties that now apply to these offences qualifies the extent to which I can do so.
- 156 The concept of equal justice requires that I should also have regard to sentencing practices, to the extent they can be established, at the time of the offence.⁴⁰ This is particularly relevant if it can be demonstrated that those practices required a materially lower sentence at that time.⁴¹ The law recognises that it would be unjust for an offender to receive a substantially higher sentence than one who committed a similar offence at or about the same time, “simply because of the lapse of time”⁴². However, the weight to be given to this factor will depend upon the circumstances of the case, which will usually involve more than a discrete consideration of the effluxion of time.⁴³
- 157 Mr Battersby has provided me with some Sentencing Statistics from the Higher Criminal Courts in Victoria for the years 1985 and 1988. In 1985, the median sentence of imprisonment for the offence of sexual penetration of a child under 10 was five years. In 1988, the median sentence of imprisonment for this offence was four months, with the highest sentence imposed being one of six years’ imprisonment. The data from 1985 was based on 6 counts of that offence, while that from 1988 was based on 45 counts. This data is relied upon to illustrate that sentencing practices at the time were materially lower than they are now.
- 158 The prosecution submissions contend that the statistics provide insufficient information to ascertain sentencing practices at that time. The statistics provide little more than raw data, with no detail necessary to inform the question of

³⁹ *Stalio v The Queen* (2012) 46 VR 426

⁴⁰ *Curypko v The Queen* [2014] VSCA 192 [72]

⁴¹ *Stalio*, 432 [9], [11]; *Carter v The Queen* (2018) 272 A Crim R 170, 182 [57].

⁴² *Stalio*, [54]

⁴³ *Carter*, [55]

sentencing *practices*, such as matters that go to the gravity of the offending or matters in mitigation, such as an early plea. I accept that the data is of qualified assistance in discerning sentencing practices at the time of the offence, for these reasons.

159 That said, the data certainly indicates that, in the broad sense, sentences imposed for the offence of sexual penetration of a child under 10 were materially lower at the time of your offending. However, I also have regard to the fact that there is now a much greater appreciation of the enduring impact of sexual offending on child victims, and that this too must be reflected in my sentence.⁴⁴

160 The prosecution also referred me to a number of more recent decisions of the Court of Appeal where the offenders were sentenced for sexual offending against multiple child victims, including for penetrative offences, committed over a similar period of time.⁴⁵

161 In one such case, that of *Fichtner v The Queen*, the Court of Appeal upheld a sentence of 17 years and four months' imprisonment, with a non-parole period of 14 years, imposed for penetrative and non-penetrative sexual offending against six victims over six years between 1976 and 1982. The victims lived in the offender's neighbourhood and were aged between 8 and 16 years at the time of the offending. The offender had no prior criminal history. The prosecution accepts that the offending in the case of *Fichtner* was more serious than here, particularly the first charge of carnal knowledge of a child between 10 and 16, which was a representative charge, and which also involved acts of violence and threats, that are not present here.

162 In another case, that of *Beyer v The Queen*, the Court of Appeal upheld a sentence of nine years and four months' imprisonment with a non-parole period of six years, imposed for sexual offending over a period of 12 years between 1973 and 1985

⁴⁴ *Bromley v The Queen* [2018] VSCA 329 [51].

⁴⁵ Table of comparable cases, *Fichtner v The Queen* [2019] VSCA 297, *Beyer v The Queen* [2011] VSCA 15; *R v Franklin* (2008) 191 A Crim R 354; *Buckley v The Queen* [2016] VSCA 222.

against 12 victims aged between 4 and 13. During the period of offending, the offender was a volunteer in a boys home where the victims lived. The offending arose from acts of masturbation, fondling, oral sex and one count of digital penetration of the victim's anus. The most serious charge in the case of *Beyer* was that of attempted buggery involving an 11 year old boy. The total sentence was imposed on 31 separate charges, many of which were representative charges, with some representative of a great number of incidents.

163 I have regard to the sentences to which I was referred as informing current sentencing practices to some degree. Both parties accept that there is limited material to inform this consideration and that none of the cases to which I was referred are truly comparable to yours. As always, each case falls to be determined on its own facts and circumstances. Current sentencing practices are but one factor to be considered and do not control or determine the sentence to be imposed.⁴⁶

Specific deterrence and community protection

164 The final way in which delay is relevant to your sentence is in my assessment of the risk of you re-offending, the weight to be given to community protection and the need for the sentence to operate as a specific deterrent.

165 Here, the various factors pull in different directions. On the one hand, your offending continued for over a decade during which period you sexually offended against seven separate victims, both male and female, where the offending was multi-faceted and increasingly deviant. You also display no insight into the motivation for your offending or the gravity of your conduct.

⁴⁶ *DPP v Dalgleish (a pseudonym)* (2017) 91 ALJR 1063

166 In your assessment with Mr Cummins, you said that you are “still struggling to work out what motivated this”, stating that you “must have been young and stupid”.⁴⁷
You continued:⁴⁸

“I stopped doing this for no apparent reason and this is what I also don’t understand – like I don’t understand why I started doing this and why I stopped doing this”.

167 Your proffered explanation of being “young and stupid” is an example of your lack of insight, and an attempt to either minimise or deflect the true motivation for your offending, which is having a sexual attraction to children. In Mr Cummins’ expert opinion, you have a paedophilic disorder.⁴⁹ These factors all combine to elevate risk and, but for the matters to which I now turn, the need for the sentence to protect the community.

168 Balanced against these factors is the fact that the last date you committed any sexual offence against a child was in 1988, over thirty years ago. Moreover, while you have limited insight into your conduct, by your plea you have accepted responsibility for the entirety of your offending. You have indicated a preparedness to engage in specialist sex offender treatment in your discussions with Mr Cummins. Moreover, the fact you have not offended in the intervening years is the principal reason for Mr Cummins assessing you as a low risk of future offending, a conclusion that is accepted by the prosecution.

169 Ultimately, I assess that you pose little, if any, risk of reoffending for a number of reasons. These include your advanced age, the fact you will be much older upon your eventual release from custody, the absence of any offending since 1988 together with Mr Cummins’ assessment that you pose a low risk of future offending. Given my conclusion on this issue, the sentencing considerations of specific

⁴⁷ Exhibit 1 – psychological report of Mr Jeffrey Cummins, consulting clinical and forensic psychologist dated 27 November 2023 at page 4 [29]

⁴⁸ Ibid.

⁴⁹ Exhibit 1 – at page 6 [45]

deterrence and community protection are correspondingly moderated in the sentence I impose.

General deterrence, just punishment and denunciation

170 The paramount sentencing considerations in this case are those of general deterrence, denunciation and just punishment. In 2006, in the case of *Toomey*, Vincent JA articulated the importance of general deterrence and denunciation in cases involving the sexual abuse of children, stating:⁵⁰

“In consequence of their youth, personal circumstances...they remain silent. Often such victims, experiencing unjustified feelings of embarrassment, shame and guilt that have been induced by the behaviour of the perpetrator, will continue to remain so for many years. Accordingly, and very frequently, as in this case, the commission of the offences will not be exposed until long afterwards. Considered in this light, it is in my opinion apparent that the principle of general deterrence must assume very considerable significance as a sentencing consideration. Further, it is incumbent on the courts, however long ago the offences were committed, to express the denunciation of the community of such behaviour, through the sentences imposed on perpetrators. They must be seen to vindicate the values of society that they represent, fundamental to which is the protection of its children.”

171 In sentencing you, I must send a clear message to potential offenders of the grave consequences that flow from the sexual abuse of children, no matter how long ago the offences were committed and in doing so, I must unequivocally denounce such offending.

Serious sexual offender provisions

172 I turn now to the serious sexual offender provisions of the *Sentencing Act 1991* (‘the Act’).

173 Upon being convicted and sentenced to a period of imprisonment on charges 1 and 2, you fall to be sentenced as a serious sexual offender on charges 4-5 and 7-33, pursuant to s 6B of the Act.

174 By reason of s 6D of the Act, when sentencing you as a serious sexual offender in respect of these charges, I must have regard to the protection of the community

⁵⁰ *DPP v Toomey* [2006] VSCA 90 [17]

as the principal purpose for which your sentence is imposed, when I am determining the length of your sentence. The prosecution does not seek, and I do not propose to impose, a disproportionate sentence to achieve this objective, having regard to my finding that you pose a low risk of offending into the future.

175 Finally, s 6E of the Act requires that every term of imprisonment imposed on a serious sexual offender for a relevant offence be served cumulatively upon any other sentences of imprisonment imposed on the offender, unless otherwise directed.

176 Whilst I still have regard to the sentencing principle of totality and must ensure that the sentence is not crushing, particularly given your age, in doing so I must have regard to the legislative presumption in s 6E of the Act. The law requires me to give effect to the object of s 6E which is for sentences to which it applies to operate cumulatively rather than concurrently.⁵¹

Other sentencing considerations

177 Balanced against this, the totality principle requires me to ensure that your overall sentence is ‘a just and appropriate measure of the totally criminality involved’ and no more⁵². Any orders for cumulation must be moderated to the extent necessary to give effect to the principle of totality, whilst still having regard to the legislative presumption of cumulation that applies to relevant offences under s 6E of the Act.

178 Section 6E of the Act serves another purpose which is to ensure there is separate and distinct punishment for offences committed against individual victims where there are multiple victims, as here. I have therefore structured the cumulation of my sentences to reflect the separate criminality associated with your offending against each of the seven victims.

179 In sentencing you, I intend to make the sentence I impose on charge 25 – sexual penetration of a child under 10 years where Madeleine West is the victim, the base

⁵¹ See *DPP v Hum (a pseudonym)* [2022] VSCA 57 at [113 (d)]

⁵² *Postiglione v The Queen* (1997) 145 ALR 408

sentence. I do so because your offending against Ms West continued over a period of five years and involved multiple instances of offending of increasing gravity, culminating in you sexually penetrating her vagina with your penis when she was under 10 years of age. I note that this offence was immediately preceded by penetrating her vagina with your finger, the subject of charge 24, albeit a charge of sexual assault of a person under 16. As stated, the gravity of your offending increased with each further incident of offending, over this period.

180 I have imposed more modest cumulation where the offences occurred during the one incident, such as the indecent assaults on a male under 16 which temporally overlap each other in charges 4 and 5, and the offending arising from the one incident reflected in charges 31 and 32.

181 I have also sought to impose appropriate sentences on each individual charge. However, in order to impose a sentence that reflects the totality of your offending, and no more, I have otherwise moderated the orders for cumulation, or made no orders for cumulation, in order to do so.

182 Charges 15, 18, 21 and 27 are rolled up offences. While the one maximum penalty applies to these offences, the sentence I impose must reflect the total criminality of your offending comprising each of those charges.

183 I have also had regard to your age and my assessment that you pose a low risk of future offending, in fixing the period of imprisonment you must serve before being eligible for parole.

Sentence

184 Balancing the matters to which I have referred, whilst having regard to the maximum penalty for each offence, I sentence you as follows.

Offending relating to Oscar Drew

- (a) On charge 1 – indecent assault of a male under 16 – you are convicted and sentenced to 10 months’ imprisonment.

- (b) On charge 2 - indecent assault of a male under 16 – you are convicted and sentenced to 15 months' imprisonment.
- (c) On charge 3 - assault with intent to commit buggery – you are convicted and sentenced to 2 years, 6 months' imprisonment.
- (d) On charge 4 - indecent assault of a male under 16 – you are convicted and sentenced to 2 years' imprisonment.
- (e) On charge 5 - indecent assault of a male under 16 – you are convicted and sentenced to 2 years' imprisonment.
- (f) On charge 6 – attempted gross indecency with a male – you are convicted and sentenced to 6 months' imprisonment.

Offending relating to Imogen Thornton

- (g) On charge 7 - indecent assault of a female under 16 – you are convicted and sentenced to 20 months' imprisonment.

Offending relating to Ms Lee

- (h) On charge 8 - indecent assault of a person under 16 – you are convicted and sentenced to 10 months' imprisonment.
- (i) On charge 9 - indecent assault of a person under 16 – you are convicted and sentenced to 2 years' imprisonment.
- (j) On charge 10 - indecent assault of a person under 16 – you are convicted and sentenced to 12 months' imprisonment.
- (k) On charge 11 - indecent assault of a person under 16 – you are convicted and sentenced to 2 years' imprisonment.
- (l) On charge 12 - indecent assault of a person under 16 – you are convicted and sentenced to 2 years' imprisonment.

- (m) On charge 13 – gross indecency with a person under 16 – you are convicted and sentenced to 6 months’ imprisonment.

Offending relating to Tahlia Downie

- (n) On charge 14 – gross indecency with a person under 16 – you are convicted and sentenced to 6 months’ imprisonment.

Offending relating to Madeleine West

- (o) On charge 15 - indecent assault of a person under 16 – you are convicted and sentenced to 10 months’ imprisonment.
- (p) On charge 16 – gross indecency with a person under 16 – you are convicted and sentenced to 6 months’ imprisonment.
- (q) On charge 17 – gross indecency with a person under 16 – you are convicted and sentenced to 6 months’ imprisonment.
- (r) On charge 18 - indecent assault of a person under 16 – you are convicted and sentenced to 20 months’ imprisonment.
- (s) On charge 19 - indecent assault of a person under 16 – you are convicted and sentenced to 2 years’ imprisonment.
- (t) On charge 20 - indecent assault of a person under 16 – you are convicted and sentenced to 2 years’ imprisonment.
- (u) On charge 21 - indecent assault of a person under 16 – you are convicted and sentenced to 18 months’ imprisonment.
- (v) On charge 22 - indecent assault of a person under 16 – you are convicted and sentenced to 2 years’ imprisonment.
- (w) On charge 23 – sexual penetration of a child under 16 – you are convicted and sentenced to 6 years’ imprisonment.

- (x) On charge 24 - indecent assault of a person under 16 – you are convicted and sentenced to 2 years' imprisonment.
- (y) On charge 25 - sexual penetration of a child under 16 – you are convicted and sentenced to 6 years' imprisonment. This is the base sentence.

Offending relating to Amanda Russell

- (z) On charge 26 - sexual penetration of a child under 16 – you are convicted and sentenced to 6 years' imprisonment.
- (aa) On charge 27 - indecent assault of a person under 16 – you are convicted and sentenced to 8 months' imprisonment.
- (bb) On charge 28 - indecent assault of a person under 16 – you are convicted and sentenced to 15 months' imprisonment.
- (cc) On charge 29 – gross indecency with a person under 16 – you are convicted and sentenced to 6 months' imprisonment.
- (dd) On charge 30 - sexual penetration of a child under 16 – you are convicted and sentenced to 6 years' imprisonment.

Offending relating to Andrew Russell

- (ee) On charge 31 - indecent assault of a person under 16 – you are convicted and sentenced to 18 months' imprisonment.
- (ff) On charge 32 - indecent assault of a person under 16 – you are convicted and sentenced to 14 months' imprisonment.
- (gg) On charge 33 - indecent assault of a person under 16 – you are convicted and sentenced to 18 months' imprisonment.

185 I make the following orders for cumulation on charge 25 – the base sentence – and upon one another:

- (a) 12 months of the sentence imposed on charges 23, 26 and 30;
- (b) 6 months of the sentence imposed on charges 7, 9, 11, 12, 19, 20, 22 and 24;
- (c) 5 months of the sentence imposed on charge 3;
- (d) 3 months of the sentence imposed on charges 4, 5, 18, 31 and 33; and
- (e) 2 months of the sentence imposed on charge 14.

186 I order that all other sentences be served concurrently.

187 This gives a total effective sentence of 15 years' imprisonment. I fix a non-parole period of 9 years.

188 Pursuant to s 6B of the *Sentencing Act 1991*, I declare that you are sentenced as a serious sexual offender on charges 4-5 and 7-33 and direct that this fact be entered into the record of the Court.

189 Pursuant to s 18 of the *Sentencing Act 1991* I declare 109 days of pre-sentence detention to be reckoned as already served.

190 I declare, pursuant to s 6AAA of the *Sentencing Act 1991* that, but for you plea of guilty, I would have sentenced you to 19 years, 6 months' imprisonment with a non-parole period of 14 years, six months.

191 Mr White, your offending attracts the provisions of the *Sex Offenders Registration Act 2004* and you are a registrable offender. Pursuant to s 34(1)(c) of that Act, your reporting obligations are for life.