SUPREME COURT OF QUEENSLAND

CITATION:	*The King v Ferns* [2022] QSC 220
PARTIES:	**THE KING** **v** **JACOB ANTHONY FERNS** (accused)
FILE NO/S:	Indictment No 1493 of 2021
DIVISION:	Trial Division
PROCEEDING:	Sentence
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	Delivered ex tempore on 13 October 2022
DELIVERED AT:	Brisbane
HEARING DATE:	28 September 2022
JUDGE:	Davis J
ORDERS:	**1. In respect of count 1 you are convicted and sentenced to 10 years imprisonment to commence on 28 September 2022.** **2. In respect of count 2 you are convicted and sentenced to eight years imprisonment to commence on 28 September 2022.** **3. In respect of count 3 you are convicted and sentenced to four years imprisonment to commence on 28 September 2022.** **4. In respect of count 4 you are convicted and sentenced to 15 years imprisonment to commence on 28 September 2022.** **5. In respect of count 5 you are convicted and sentenced to eight years imprisonment to commence on 28 September 2022.** **6. In respect of count 6 you are convicted and sentenced to eight years imprisonment to commence on 28 September 2022.** **7. Pursuant to s 19AB of the Crimes Act 1914, I fix a single non-parole period of eight years.**
CATCHWORDS:	CRIMINAL LAW - SENTENCE - INTERPRETATION OF SENTENCING PROVISIONS - where the accused was

charged with offences concerning child abuse material - where amendments had been made to the Commonwealth Criminal Code and the *Crimes Act* 1914 (Cth) - where maximum sentences had been increased - where a mandatory minimum sentence was provided for - relevance of earlier comparable sentences given the amendments - whether the mandatory minimum affected the calculation of sentence - whether the mandatory minimum set new yardsticks for calculation of the sentence - determination of the appropriate sentence

Crimes Act 1914 (Cth), s 16A, s 16AAA, s 16AAC, s 17A, s 19, s 19AB, s 23ZD
Criminal Code (Cth), s 474.22, s 474.22A, s 474.24A
Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019
Migration Act 1958 (Cth)
Penalties and Sentences Act 1992 (Qld)

Bahar v R (2011) 45 WAR 100, followed
DPP (Cth) v CCQ [2021] QCA 4, considered
DPP (Cth) v D'Alessandro (2010) 26 VR 477, followed
Eldridge v The State of Western Australia [2020] WASCA 66, cited
Karim v The Queen (2013) 83 NSWLR 268, cited
Magaming v The Queen (2013) 252 CLR 381, followed
Markarian v The Queen (2005) 228 CLR 357, followed
R v Delzotto [2022] NSWCCA 117, followed
R v Goodwin; ex parte Attorney-General (2014) 247 A Crim R 582, followed
R v Karabi (2012) 220 A Crim R 338, cited
R v Latif; Ex parte Commonwealth Director of Public Prosecutions [2012] QCA 278, cited
R v Nagy [2004] 1 Qd R 63, followed
R v Nitu [2013] 1 Qd R 459, cited
R v O'Sullivan and Lee (2019) 3 QR 196, followed
R v Pot, unreported, Supreme Court of the Northern Territory, Riley CJ, 18 January 2011, followed

COUNSEL: A C Freeman for the Crown
M F Bonasia for the accused

SOLICITORS: Commonwealth Director of Public Prosecutions for the Crown
Bell Criminal Lawyers for the accused

[1] Jacob Anthony Ferns, on 8 March 2022 you were arraigned before Burns J on an indictment charging you with six counts against provisions of Chapter 10, Part 10.6, Division 474, Subdivision D of the *Criminal Code* (Cth).

[2] Count 1 is an offence against s 474.22(1)(a)(iii). It carries a maximum term of imprisonment of 15 years. The count is:

> Between about the seventeenth day of August 2020 and about the thirteenth day of September 2020, at Fortitude Valley or elsewhere in the State of Queensland, [you] transmitted material using a carriage service, the material being child abuse material.

[3] Count 2 is an offence against s 474.22(1)(a)(i). It carries a maximum term of imprisonment of 15 years. The count is:

> Between the twentieth day of September 2019 and about the thirteenth day of September 2020, at Fortitude Valley or elsewhere in the State of Queensland, [you] accessed material using a carriage service, the material being child abuse material.

[4] Count 3 is an offence against s 474.22(1)(a)(iv). It carries a maximum term of imprisonment of 15 years. The count is:

> Between about the seventeenth day of August 2020 and about the ninth day of September 2020, at Fortitude Valley or elsewhere in the State of Queensland, [you] solicited material using a carriage service, the material being child abuse material.

[5] Count 4 is an offence against s 474.24A(1). It carries a maximum term of imprisonment of 30 years. The count is:

> Between about the eighth day of September 2020 and about the ninth day of September 2020, at Fortitude Valley or elsewhere in the State of Queensland, [you] committed an offence against section 474.22 of the *Criminal Code* (Cth) on 3 or more occasions and the commission of each offence involved 2 or more people.

[6] Count 5 is an offence against s 474.22A. It carries a maximum term of imprisonment of 15 years. The count is:

> On the thirtieth day of September 2020, at Fortitude Valley in the State of Queensland, [you] possessed or controlled material, being child abuse material, in the form of data held in a computer or contained in a data storage device and [you] used a carriage service to obtain or access the material.

[7] Count 6 is also an offence against s 474.22A and is in the same terms as count 5, although there are different particulars which I will later explain.

[8] Sentencing submissions were made to me on 28 September 2022. I invited the parties to provide to me the statement of the INTERPOL categorisation of child abuse material that is referred to in the statement of facts that was tendered during the hearing.[1] I also requested examples of cases where cumulative sentences had been imposed under the scheme of the *Crimes Act* 1914. A bundle of material was sent to my Associate on 29 September 2022. I will admit that bundle into evidence and mark it Exhibit 9.

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1 Exhibit 1.

[9] The charges came after a search was conducted by police of your home on 30 September 2020. An Apple MacBook computer and an Apple iPhone were seized. You provided passcodes for both devices when requested. Although your criminal activity was detected by police in mid-December 2019, the details of your offending emerged from an examination of the Apple MacBook and the Apple iPhone.

[10] Once the electronic devices were seized, your conviction was probably all but inevitable.

[11] However, you cooperated with police by providing the passcodes to the devices. You have no prior criminal history and you have taken steps towards rehabilitation which I will later describe. In those circumstances, despite the fact that you did not participate in an interview with police when arrested, the pleas of guilty, in my view, reflect not only a willingness to cooperate with the administration of justice, but also show true remorse by you for your offending. I take the pleas of guilty into account on that basis.

[12] Subdivision D creates offences relating to the use of carriage services for child abuse material. The different subsections identify different acts as being criminal and these are reflected in the various counts on the indictment. Count 1 concerns the transmission of child abuse material. Count 2 concerns accessing child abuse material. Count 3 concerns soliciting child abuse material. I shall refer to count 4 separately. Counts 5 and 6 concern the possession of child abuse material which has been obtained or accessed using a carriage service.

[13] Count 4, which is the most serious count on the indictment, is a composite one. Where, relevantly here, an offender uses a carriage service for child abuse material on three or more occasions and the commission of each such offence involves two or more people, an aggravated offence under s 474.24A is committed.

[14] The particulars of your offending have been reduced to a written statement about which there is no contest.

[15] Count 1, as I have already observed, concerns transmitting child abuse material. You did this by access to a messaging application known as Kik. In order to use Kik, it is necessary to register a Kik account which you did. It is not necessary when registering a Kik account to provide a telephone number. Therefore, a degree of anonymity can be maintained.

[16] Between 17 August 2020 to 13 September 2020, a period of about 1 month, you transmitted child abuse material to 17 users. These users were all registered to Kik.

[17] The material which was transmitted were video files, still image files and sexualised text conversations which you undertook with the 17 other users.

[18] You transmitted 52 child abuse material files. The images and videos showed depraved acts. These include a boy aged between eight and 10 being orally raped by an adult male, a baby with an adult male penis in her mouth, a female baby about one year old being anally raped by an adult male, a child aged between two and four being anally raped by an adult male and a child about one year old being orally raped by an adult male. There are other images and videos.

[19] During the text conversations with the other users you, among other things, expressed a desire to rape a baby. When discussing with one of the parties his desire to have sex with a newborn, you asked him, "…how new would you go? Fresh at home or open it up still attached to the Mum?".

[20] You also described to some of the persons with whom you were communicating how, when you were 14, you had persuaded a three year old to perform oral sex on you. You also expressed your ambition to have the father of a young child rape his son in front of the father's friends.

[21] It is not to the point whether the experience you have claimed to have had with the three year old boy is true or not. You are not charged with an offence against a three year old boy. The criminality attaches to the passing of the message. The passing of such messages and images encourages others and creates and maintains a market for this type of material. As Harper JA said in *DPP (Cth) v D'Alessandro*,[2] the images evidence "the degradation of human beings too young to avoid the exploitation to which they are being subjected".[3] Creating and maintaining such a market leads to the horrific abuse of children in the ways depicted in the images.

[22] Count 2 concerns you accessing child abuse material.

[23] This offence occurred between 20 September 2019 and 13 September 2020, a period of almost a year. This material was sourced from the Kik users with whom you had been communicating and chat rooms frequented by people of like disposition to you. Both your Apple iPhone and your Apple MacBook were used to access the child abuse material. You accessed 86 files of child abuse material and downloaded 145 videos of child abuse material. You accessed 33 videos of child abuse material and downloaded it to the Dropbox on your laptop.

[24] Count 3 concerns soliciting child abuse material. This occurred on two occasions, one on about 17 August 2020 and one on about 9 September 2020.

[25] On 17 August 2020, you had a message conversation with a Kik user where there was discussion about having sex with young boys and fantasising about being paediatricians or child care workers to have access to children for sexual reasons. You messaged, "Got any hot content to trade?", thus inviting the other user to send you child abuse material. The request constitutes the offence. The offence is complete even though no material was sent in response.

[26] On 9 September 2020, you were engaging in a text conversation with another user when you transmitted four files of child abuse images. You then asked the user whether he had molested a newborn and then asked, "Did you have any of your fave vids you can send?". That is obviously a request for the other user to send to you one or more of his favourite videos showing child abuse material. That is a solicitation of child abuse material, although the other user did not send any material in response.

[27] I will return to count 4 later as that is, as I have already mentioned, the most serious offence.

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2 (2010) 26 VR 477.

3 At [23].

[28] Counts 5 and 6 are both charges of possessing child abuse material. They are differently particularised. Count 5 concerns images found on your Apple iPhone and count 6 concerns images found on your laptop.

[29] As to count 5, 20 videos and 118 image files were located on your Apple iPhone. These included those you had transmitted and accessed pursuant to counts 1, 2 and 4 and, consequently, there is some overlap between the various charges.

[30] The files include male victims as young as four posed displaying their penises or anuses, male victims as young as five engaged in sexual activity with each other, the vaginal, anal and oral rape of prepubescent female victims as young as newborn babies and the anal and oral rape of prepubescent male victims as young as five.

[31] As to count 6, 770 video files were identified as potentially being child abuse material. 178 were actually found to be child abuse material.

[32] The videos were classified according to a categorisation of material system kept by INTERPOL. This is a four-tiered categorisation as follows:

CATEGORY/ LEVEL	**INTERPOL Category**	**GUIDE**
1	INTERPOL Baseline	Depicts real prepubescent child (under the age of 13 years approximately), and the child is involved in a sexual act, is witnessing a sexual act or the material is focused/concentrated on the child's anal or genital region
2	Jurisdictionally defined CEM not classed as Baseline	Files that are illegal according to local legislation, either by way of age or content
3	Related non-illegal files	An image that forms part of a CEM[4] series, but which is not in its right illegal, although it may contain important clues or identifying information to assist investigations in relation to category 1 or 2 images
4	Ignorable	All other (legal) material which does not fit into categories 1-3

[33] It is common ground that 146 of the videos were category 1 and 32 of the videos were category 2. 48 of the category 1 videos show children of both genders between the ages of newborn and five being vaginally, anally and orally penetrated by adult males.

[34] 183 images on the laptop were identified as child abuse material and 56 of those were category 1. They were of similar content to the video files.

[35] I return to count 4. On 8 and 9 September 2020, you participated in text conversations with two other users on Kik. The conversations are extracted in

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4 Child Exploitation Material.

Annexure B to the statement of facts. During the conversations, you transmitted child abuse material on eight occasions.

[36] The conversations include discussion of the participants' preferences for young children, in particular newborn babies.

[37] The images included a male child of approximately eight to 10 years of age holding an erect adult penis, a child approximately one to two years of age with an adult erect penis positioned on the child's anal area, a male child approximately six to eight years of age being orally raped by an adult male and a cartoon depiction of a female baby being anally raped by an adult male with the penis having impaled the baby and protruding from the baby's mouth.

[38] I have not described all the images, nor all the text conversations which are involved in the six counts. I have only attempted to identify sufficient to illustrate the depravity of your offending. I have taken into account all the facts as described in the statement of facts, including all the details of the material and text conversations that have been provided to me.

[39] It is necessary to refer to some statutory provisions relevant to the imposition of sentence in cases like this.

[40] In 2020, various amendments were made to the statutory law relevant to the sentencing of offenders under Subdivision D. I understand this is the first sentence to be imposed in Queensland since the amendments came into effect. There are cases in other states where sentences have been imposed since the amendments for offences under Subdivision D, but not for an aggravated offence under s 474.24A of the Code.

[41] The amendments, relevantly here, concern count 4 on the indictment which is the composite offence involving conduct of three or more occasions with two or more people. That, as I have previously observed, is an offence against s 474.24A(1) of the Code.

[42] Section 474.24A(1) was amended to increase the maximum sentence for an aggravated offence concerning child abuse material from 25 years imprisonment to 30. At the same time, s 16AAA of the *Crimes Act* 1914 was enacted. Section 16AAA provides for minimum periods of imprisonment to be imposed in relation to various offences, including those against s 474.24A of the Code. Section 16AAA provides for a minimum term of seven years imprisonment for an offence against s 474.24A of the Code.

[43] That mandatory minimum is subject to the provisions of s 16AAC of the *Crimes Act* 1914. Section 16AAC relevantly provides as follows:

> "(2) A court may impose a sentence of imprisonment of less than the period specified in column 2 of an item of a table in section 16AAA or subsection 16AAB(2) only if the court considers it appropriate to reduce the sentence because of either or both of the following:
>
> (a) the court is taking into account, under paragraph 16A(2)(g), the person pleading guilty;

> (b) the court is taking into account, under paragraph 16A(2)(h), the person having cooperated with law enforcement agencies in the investigation of the offence or of a Commonwealth child sex offence."

[44] Before turning to the impact of s 16AAA and s 16AAC on the sentencing process here, it is necessary to consider the broad effect of such amendments. In *R v O'Sullivan and Lee*,[5] the Court of Appeal considered a sentence imposed for manslaughter where the offence was a domestic violence offence. Amendments had been made to the *Penalties and Sentences Act* 1992 (Qld) which provided that the fact that the offence was a "domestic violence offence" was an aggravating factor to be taken into account on sentence.

[45] As to the effect of the amendments on earlier comparative sentences, the Court of Appeal observed:

> "The sentences imposed in earlier cases are useful only insofar as they can be used to identify the unifying principles that should be applied. When applicable legislation changes, the laws as changed must be applied faithfully and a previous range of sentencing may no longer be useful."[6]

[46] The obvious legislative intention of the amendments in relation to Subdivision D offences was to lead to a general increase in sentences for offences against, relevantly here, s 474.24A. That intention is confirmed by statements made in the Explanatory Memorandum to the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill* 2019 to that effect.

[47] An example of the potential impact of the amendments can be seen by reference to the recent decision of *DPP (Cth) v CCQ*.[7] There, the Queensland Court of Appeal set aside a head sentence of 12 years imprisonment imposed on an offence against s 474.24A and other offences against Subdivision D. The offending there was more objectively serious than here. In *CCQ*, there were images (and videos) more widely disseminated, and the material included videos of babies and very young children being tortured, in bondage situations and of children involved in bestiality.

[48] There are various statements of principle made by the Court of Appeal in *CCQ* which apply to the present sentencing. However, the case's use as a comparative has been diminished by the statutory amendments and it now by no means follows that the sentence in this case would be substantially less than that in *CCQ* simply because your offending is objectively less serious.

[49] There are no real comparatives given the absence of sentences imposed for offences against s 474.24A under the new regime.

[50] In *R v Goodwin; ex parte Attorney-General*,[8] Mullins J (as her Honour then was) made this observation as to the approach where there are no comparatives:

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5 (2019) 3 QR 196.
6 AT [94].
7 [2021] QCA 4.
8 (2014) 247 A Crim R 582.

> "The lack of comparable sentences may deprive the sentencing judge of the assistance of 'the yardstick' for testing the proposed sentence, but it does not preclude the sentencing judge from otherwise finding the relevant facts for the purpose of the sentencing, weighing up the relevant factors relating to the offence and the offender, and applying the principles of sentencing found in the relevant legislation and the common law, in order to reach the appropriate sentence for that offending. The sentencing judge may very well find the exercise of the discretion to be more difficult, in the absence of, and without the usual assistance afforded by, comparable sentences, but as a matter of principle the sentencing judge will have available sufficient material from the evidence adduced on the sentence and the relevant law to undertake the well defined process of sentencing."[9]

[51] The provision of a statutory minimum throws up somewhat different considerations.

[52] There have been two different approaches adopted to sentencing where there is a statutory minimum. Justice Adamson (with whom Beech-Jones CJ at CL and R A Hulme J agreed) in *R v Delzotto*,[10] tagged the two approaches as "the Bahar approach" and "the Pot approach", reflecting the fact that one approach was adopted by the Western Australian Court of Criminal Appeal in *Bahar v R*[11] and one in the Supreme Court of the Northern Territory in *R v Pot*.[12]

[53] The Pot approach is for the judge to arrive at a sentence by reference to the maximum penalty but by ignoring the minimum penalty. Once the otherwise appropriate penalty is settled upon, a sentence at the minimum is imposed if the sentence settled upon was less than the minimum.

[54] Under the Bahar approach, a sentencing judge looks to both the maximum and minimum sentences which are statutorily prescribed and uses both as part of the "yardstick" against which to impose the appropriate sentence.

[55] The Pot approach in particular has been open to criticism on the basis that it compromises the principles of equal justice. All offenders who would otherwise fall below the minimum will be sentenced to the minimum even though, as between them, those offenders may have different culpability.

[56] The Bahar approach has been applied by the Court of Appeal in cases involving offences against the *Migration Act* 1958 (Cth). See *R v Karabi*,[13] *R v Nitu* [14] and *R v Latif; ex parte Commonwealth Director of Public Prosecutions*.[15] Importantly, the New South Wales Court of Criminal Appeal, in *R v Delzotto* in June 2022, applied the Bahar approach to sentencing under Subdivision D of the Code and s 16AAA of the *Crimes Act* 1914 after the 2020 amendments.

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9 At [37].
10 [2022] NSWCCA 117.
11 (2011) 45 WAR 100.
12 Unreported, Supreme Court of the Northern Territory, Riley CJ, 18 January 2011
13 (2012) 220 A Crim R 338.
14 [2013] 1 Qd R 459.
15 [2012] QCA 278.

[57] The Bahar approach also, in my view, is consistent with the High Court's statements in *Markarian v The Queen*[16] and *Magaming v The Queen*.[17] In *Magaming*, the High Court observed:

> "The prescription of a mandatory minimum penalty may now be uncommon but, if prescribed, a mandatory minimum penalty fixes one end of the relevant yardstick."[18]

[58] *Delzotto* follows other cases which have adopted the Bahar approach (*Karim v The Queen*[19] and *Eldridge v The State of Western Australia*).[20]

[59] There is no reason for me not to follow the recent unanimous decision of the New South Wales Court of Criminal Appeal in *Delzotto* and I do so.

[60] Complications may be caused by s 16AAC which might reduce the mandatory minimum in some circumstances and therefore alter the yardstick. It was not submitted in your case that consideration of the guilty pleas or cooperation with the authorities would result in a sentence of less than seven years on count 4 even if it stood alone. Therefore, s 16AAC has no real relevance here.

[61] Section 16A of the *Crimes Act* 1914 prescribes the general sentencing principles for Federal offences.

[62] Section 16A(1) states the ultimate guiding principle that "… a court must impose a sentence … that is of a severity appropriate in all the circumstances of the offence". Also relevant, particularly here, are the nature and circumstances of the offence (s 16A(2)(a)), the extent to which you have shown contrition (s 16A(2)(f)), your plea of guilty (s 16A(2)(g)), your cooperation with law enforcement agencies (s 16A(2)(h)), personal and general deterrence (s 16A(2)(j) and (ja)), the need to adequately punish you for the offending (s 16A(2)(k)), your character, antecedents, age, means and physical or mental condition (s 16A(2)(m)) and the prospects of rehabilitation (s 16A(2)(n)).

[63] The consideration of rehabilitation is modified by s 16A(2AAA) in that to the extent the evidence allows me to do so, I must, in determining the length of a non-parole period, include sufficient time for you to undertake rehabilitation programs. While the medical evidence tendered on your behalf encourages further treatment, there is nothing informing me of exactly what that would entail or how long it would take to administer it to you.

[64] As already observed, deterrence, both general and specific, are relevant factors. The authorities show that the paramount public interest is in the protection of children.[21] You have not offended directly against children in the sense that you have not created the images and have not participated in the actions depicted in the images. However, as the authorities demonstrate, your actions should be regarded as contributing to the market for this vile material and therefore, in an indirect way,

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16 (2005) 228 CLR 357 at [30].
17 (2013) 252 CLR 381 at [48].
18 At [48].
19 (2013) 83 NSWLR 268.
20 [2020] WASCA 66.
21 *DPP v D'Alessandro* (2010) 26 VR 477 at 483-484.

you are contributing to the suffering of children. For those reasons, deterrence, both general and specific, loom large as considerations.

[65] You were born in Darwin on 15 April 1992. You were between 27 and 28 years of age when you offended. You are currently 30.

[66] You had a difficult childhood. You are the eldest of three children, but your parents separated when you were about 11 years of age. Your parents re-partnered and you have six younger half siblings.

[67] Your father was violent and abused drugs as did your mother's new partner. You went to live with your maternal grandparents when you were about 13 years of age. You have no real relationship with your father and have limited interactions with one of your younger brothers. Another brother is deceased.

[68] You are single. You completed year 12 and you have completed certificates in business. You have a good work history having worked in the Commonwealth Public Service for about 10 years.

[69] From about the age of 13, you have self-medicated with illicit drugs to deal with stress and other problems.

[70] There were tendered on sentence a report from a psychiatrist, Dr Kovacevic, and a report from a psychologist, Dr Hatzipetrou.

[71] Dr Kovacevic found no evidence of any major mental disease, natural mental infirmity or other relevant condition. The doctor opined that your behaviour "would strictly speaking meet the diagnostic criteria for pedophilia". He opined that there was nothing to suggest that you were deprived of any of the relevant capacities.

[72] However, Dr Kovacevic recorded that you have been seeing a psychologist and attending substance abuse counselling. He opined that you have developed understanding of the consequences of your actions and the impact on the victims and you can now empathise with them.

[73] Of some importance, the doctor opined, "The above factors indicate to me that Mr Ferns' risk of reoffending has significantly diminished. In his current circumstances, the risk of progression to contact sexual offending against children is, in my opinion, low".

[74] Dr Kovacevic suggested ongoing counselling.

[75] Dr Hatzipetrou also noted your substance abuse and trauma symptoms due to exposure to domestic violence and later sexual assaults upon you. He was of the view that your personal history, prejudicial upbringing and high risk sexual practices contributed to your offending behaviour. He thought the ongoing offending behaviour was affected by impairments in self-regulation which were contributed to by the drug and alcohol abuse.

[76] I return to consider s 16A(2AAA) of the *Crimes Act* 1914. Here, it is clear that any non-parole period will, on the basis of application of principles and provisions other than s 16A(2AAA), exceed five years. There is nothing to suggest that any

treatment could not be administered to you in that time so consideration of s 16A(2AAA) does not result in the extension of what would otherwise be an appropriate non-parole period.

[77] You have no prior convictions and, importantly, there is no indication that you have sexually offended directly against any children apart from the comments you made about having a three year old perform oral sex on you. There is no objective evidence supporting that comment and the Crown did not seek to prove it as true. There is mention in Dr Kovacevic's report of you having a sexual encounter with a 13 year old boy, but that was when you also were about that age. You have not reoffended while on bail to which you have been subject for a period a little over two years.

[78] Two of your former sexual partners have given references. While neither intimate relationship prevailed, you remain friends with these two men and they both speak highly of you.

[79] Sections 19(5), (6) and (7) of the *Crimes Act* 1914 provide:

> "(5) An order must not have the effect that a term of imprisonment imposed on a person for a Commonwealth child sex offence be served partly cumulatively, or concurrently, with an uncompleted term of imprisonment that is, or has been, imposed on the person for:
>
> (a) another Commonwealth child sex offence; or
>
> (b) a State or Territory registrable child sex offence.
>
> (6) Subsection (5) does not apply if the court is satisfied that imposing the sentence in a different manner would still result in sentences that are of a severity appropriate in all the circumstances.
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> (7) If the court imposes a term of imprisonment other than in accordance with subsection (5), the court must:
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> (a) state its reasons for imposing the sentence in that manner; and
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> (b) cause the reasons to be entered in the records of the court."

[80] There are two possible approaches here. The first is to impose a sentence on count 4 which reflects the seriousness of all offending and then impose individual sentences on the other counts to run concurrently.[22]

[81] The second approach is to have the sentences running cumulatively, but with due acknowledgement of the principles of totality. In either case, a single non-parole period must be stated.

[82] I intend to adopt the former approach and therefore, by force of s 19(7), I must state my reasons for imposing the sentences in that manner.

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22 *R v Nagy* [2004] 1 Qd R 63.

[83] The available head sentence on count 4 is, as I have explained, 30 years. The totality of all the offending can be easily accommodated within that head sentence.

[84] While the offending relating to count 4 only occurred over a period of a couple of days and the other offending occurred over a period of about a year, the offending, in my view, can sensibly and practically all be regarded as one series of events and the criminality can be considered in the light of one single episode.

[85] Notwithstanding that approach, I have directed myself that each of the relevant subsections under which you have been charged create different offences identifying different specific acts which constitute the offences. I have ensured that the sentence which is imposed reflects each of the acts that you have committed. I have also taken into account the fact that the seven year minimum penalty only applies to count 4.[23]

[86] I have determined that a sentence of imprisonment is the only appropriate sentence. Pursuant to s 17A(2) of the *Crimes Act* 1914, I state that my reasons for so concluding is that count 4 attracts a minimum mandatory term of imprisonment and all offences are of such objective seriousness that a sentence of imprisonment is the only appropriate sentence.

[87] By s 19AB(1) of the *Crimes Act* 1914, I am required to set a non-parole period. In setting that period, I have directed myself to all the circumstances of the case, including the seriousness of the offending, protection of the public, punishment and deterrence, your prospects of rehabilitation, and I have thereby determined the minimum proportion of the head sentence which justice in all the circumstances requires you to serve.

[88] You were taken into custody on 28 September 2022 and the sentences should commence then.

[89] The orders of the court are that:

1. In respect of count 1 you are convicted and sentenced to 10 years imprisonment to commence on 28 September 2022.
2. In respect of count 2 you are convicted and sentenced to eight years imprisonment to commence on 28 September 2022.
3. In respect of count 3 you are convicted and sentenced to four years imprisonment to commence on 28 September 2022.
4. In respect of count 4 you are convicted and sentenced to 15 years imprisonment to commence on 28 September 2022.
5. In respect of count 5 you are convicted and sentenced to eight years imprisonment to commence on 28 September 2022.
6. In respect of count 6 you are convicted and sentenced to eight years imprisonment to commence on 28 September 2022.
7. Pursuant to s 19AB of the *Crimes Act* 1914, I fix a single non-parole period of eight years.

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23 *R v Nagy* [2004] 1 Qd R 63.

[90] The Crown have sought the forfeiture of the Apple MacBook computer and the Apple iPhone pursuant to s 23ZD(1) of the *Crimes Act* 1914. There is no opposition to such an order and I make an order as per draft.