

IN THE COUNTY COURT OF VICTORIA  
AT MELBOURNE  
CRIMINAL DIVISION

Revised  
Not Restricted  
Suitable for Publication

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

v

HILARY MALONEY (*a pseudonym*)

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JUDGE: KARAPANAGIOTIDIS  
WHERE HELD: Melbourne  
DATE OF HEARING: 19 July 2024  
DATE OF SENTENCE: 26 August 2024  
CASE MAY BE CITED AS: DPP v Maloney (*a pseudonym*)  
MEDIUM NEUTRAL CITATION: [2024] VCC 1328

**REASONS FOR SENTENCE**

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Subject: CRIMINAL LAW - Sentencing  
Catchwords: Plea of guilty – Produce child abuse material – Use carriage service to transmit child abuse material – Persistent sexual abuse of a child under 16 – Child sexual offences – Commonwealth and State offending - Gender dysphoria – Transgender prisoner – Prison likely to be more onerous – Mandatory term of imprisonment - Young offender - Bugmy – Complex trauma – Low risk of re-offending - Good prospects of rehabilitation  
Legislation Cited: ss 5(1), 6AAA, 6E, 11A, 19AC *Sentencing Act 1991* (Vic) – ss 16A *Crimes Act 1914* (Cth)  
Cases Cited: *Lugo v The Queen* [2020] VSCA 75 - *Bugmy v The Queen* [2013] HCA 37- *Azzopardi v The Queen* [2011] VSCA 372 - *DPP v Hermann* [2021] VSCA 160 - *R v O'Rourke* [1997] 1 VR 246  
Sentence: Total effective term of 4 years and 9 months' imprisonment on Commonwealth Offences, Non-parole period of 2 years and 6 months' on State Offence, Recognisance Release Order of two years

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the CDDP	Ms N. Simpson	Commonwealth Director of Public Prosecutions
For the Accused	Mx I. Skaburskis	Doogue & George

HER HONOUR:

- 1 Hilary Maloney<sup>1</sup>, you have pleaded guilty to one charge of producing child abuse material for use through a carriage service, one charge of using a carriage service to transmit child abuse material and one charge of persistent sexual abuse of a child under the age of 16.

### **Circumstances of the offending**

- 2 The full circumstances of your offending are outlined in the amended prosecution opening, marked as Exhibit A, and this constitutes the factual basis upon which I sentence.
- 3 You were identified through police intelligence from the United States of America as being involved in the production and transmission of child abuse material depicting a female child aged between 2-5. Further investigations identified the victim as your daughter, born in April 2018.
- 4 On 15 September 2023, a search warrant was executed at your home and your Samsung mobile telephone was seized. Analysis of your mobile telephone revealed:
  - a) You had produced 77 files categorised as child abuse material depicting your daughter, between 2 May 2023 and 3 June 2023. The 77 files included 13 videos and 64 images.
  - b) During the same period, you had transmitted 77 files of child abuse material to user 'Bulthax' via the Discord application. 'Bulthax' is otherwise known as Samuel Booth.<sup>2</sup>
  - c) You had engaged in the persistent sexual abuse of your daughter between 3 May 2023 and 23 May 2023. Throughout the period of

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<sup>1</sup> Name pseudonymised

<sup>2</sup> Name pseudonymised

offending, you were residing with her and your ex-partner, that is your daughter's mother, Emma Price.<sup>3</sup>

- 5 Your daughter was 5 years old throughout the offending, and can I indicate that all names will be pseudonymised in these reasons, to protect your daughter and Ms Price, but for present purposes I will be referring to her as 'AW').
- 6 Turning to Charges 1 and 2, the child abuse material was located in the cache of the Discord application, meaning it had been used on Discord and subsequently deleted. The prosecution case is that the files retrieved were produced and sent by you during your Discord conversation with Booth.
- 7 Police examined your telephone and created screen recordings of conversations in which Booth instructed you to complete daily tasks and to film them. These directions included brushing your teeth or showering, but also included instructions for the sexual abuse of your daughter. During the conversations, the prosecution case is that you consistently expressed hesitance and concern about the abuse of your daughter, but nonetheless continued to comply with requests made.
- 8 An example of the conversations leading to the production and transmission of child abuse, and descriptions of a sample of the child abuse material sent, are extracted in a table at paragraph [14] of the prosecution opening. I have considered these conversations in full, but I do not intend to reproduce the table in these reasons.
- 9 In summary, the sample covers the period between 2 May 2023 and 3 June 2023. Booth encourages and instructs you to engage in a variety of sexual and perverse acts with your daughter (for example, see 2 May 2023 at 4.24 am and 13 May 23 at 5.03 am). He occasionally offers you affirmations that you made

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<sup>3</sup> Name pseudonymised

him 'so hard and proud' and that he is 'impressed by you' and that 'you did so good' and are 'such a good girl'.

- 10 You sent him a range of images of your daughter, including of her naked, of you sexually posing with her, of her naked in the shower bending down, partly naked on the bed with her legs spread, images of her naked, or partly naked, with your thumb placed on her outer labia and images of her naked on her hands and knees.
- 11 You also sent him videos which include your face between her buttocks, where your movements and the sound are consistent with licking, a video of you licking her outer labia and her anal region and a video of you directing her to bend over, with her leggings down and vaginal region exposed.
- 12 You expressed some hesitation and expressed feeling 'conflicted', including 'she is my daughter and I shouldn't be doing it', but you continue to comply and to commit these acts.
- 13 Communication between you and Booth continued almost daily until 2 September 2023. On this date, Booth advised you that he was going to be arrested and told you to delete the conversations between you and the pictures in the conversation.
- 14 In respect of Charge 3, of the files produced and transmitted, 19 files depicted you sexually abusing your daughter. The prosecution case is that you sexually abused her on at least 19 separate occasions as is evidenced by the child abuse material identified. In summary, the representative sample covers the period 3 May 2023 to 23 May 2023. They include images of your daughter's hand resting against your semi-erect penis, her lying in bed with her buttocks exposed and you using your fingers to expose her anus and outer labia and of her buttocks exposed and you using your hand to pull her buttocks to the side, exposing her anal region.



- 15 There are also several videos of you, including kissing her naked buttocks or moving her buttocks to the side and, what can be inferred from movements and sounds, of you licking in the vicinity of her anal region. On one of these occasions you ask her if she likes it, and she says 'no'.
- 16 On the evening of 15 September 2023, police conducted a record of interview with you. Your answers are extracted in the prosecution opening. In summary, you told police that you got into an agreement with a person, Booth, to be a slave for them, not really knowing what you were getting yourself into. You met this person online and he seemed nice to start. The conversation moved to Discord and things started to get more serious and controlling, demanding and abusive. The person kept insisting that you send explicit material of your daughter, and you did not really want to. You said that most of the images of your daughter were just of you and her cuddling, and some were you being told to do things which you tried to advise you did not want to do. You felt tied to Booth because you were not in a good mental state. Booth seemed to care, which is not something you had had much of. You feel your life had gone terribly and everything got worse. When police advised that they have viewed 15 videos of AW, you replied, 'I honestly didn't know it was that many'. Police told you that they had seen videos of you spreading the bum of AW and licking, and you responded 'I can't remember spreading or licking. I don't have the best memory. As I stated earlier, I do tend to block things out, I don't remember a lot'. When asked how you felt about the offending, you stated 'I feel terrible and horrible afterwards'. You stated, 'I don't know what I would say to be honest. Just regretful, I guess. I regret a lot of things and this being the highest one of my regret list'.

## Victim Impact

- 17 Ms Emma Price, the mother of AW, provides a victim impact statement in which she speaks of the profound impact of your offending. She refers to her daughter

as 'difficult to handle' and displaying some behavioural problems. She reflects, 'looking back, the behavioural issues all started from around the time that you were doing these things to her'. Since your arrest, and the end of the offending against her, she has reverted back to how she was and is 'coping so much better.' Ms Price states, 'I've been through a lot in my life but this is the worst thing that's ever happened to me. To have a child with someone and have your trust in them, even after breaking up and co-parenting, and then find out they've done these things'. She refers to struggling to cope, work and sleep and how her sense of safety and trust has been eroded. 'I am just constantly in fear, thinking if her own father could do this to her, what stops a stranger from doing the same? This has completely ruined my trust in others'.

- 18 I take into account the impact of your offending and I thank Ms Price again for her contribution and participating in these proceedings.

## Sentencing regime

- 19 You have pleaded guilty to a combination of Commonwealth and State matters. In sentencing for Commonwealth offences, the Court is required to have regard to the matters set out in Part 1B of the *Crimes Act* 1914 (Cth). Section 16A(1) recognises and enshrines the principle of parsimony. Section 16A(2) sets out a non-exhaustive list of factors to be taken into account, as far as they are relevant and known, when sentencing a Federal offender. The Court is required to impose a sentence that is of a severity appropriate to all the circumstances of the offending. You must also be adequately punished for the offending. On the State matters, the Court is required to take into account the purposes of sentencing pursuant to s5 of the *Sentencing Act* 1991 and must have regard to the other factors referred to where relevant.

## Gravity of offending

- 20 Ms Maloney, these offences are obviously serious and the legislature has made this plain. Charge 1 and 2 are Federal offences with a maximum sentence of 15 years' imprisonment.
- 21 Charge 3 is a State offence with a maximum penalty of 25 years' imprisonment. It is a category 1 offence which means that the Court must impose a sentence of imprisonment. Such a term is not to form part of a combined sentence unless an exception applies, and no exceptions were advanced on your behalf. Charge 3 is also a standard sentence offence and the standard sentence of imprisonment is 10 years.
- 22 The sentencing principles for child sexual offences are well established and outlined in the prosecution submissions at paragraphs [17] to [20]. The principles involving child abuse or child pornography material are also not in dispute between the parties and are outlined in the prosecution submissions at paragraph [21]. I have used these frameworks in which to assess the gravity of your offending.
- 23 Your offending on Charge 3 is objectively grave. As the Courts have previously stated, offending by a parent against their child is an 'offence of very high culpability'.<sup>4</sup> It involves a breach of the most fundamental and serious kind. You offended against your 5-year-old child. General deterrence is paramount in sentencing in such matters, given the importance of protecting children from the severe and long-lasting harm that is presumed to be caused by such offending.
- 24 The charge you have pleaded guilty to reflects numerous instances of sexual abuse, as already outlined. In total, there were 19 instances of abuse over a concentrated period of approximately one month. Your daughter was very young, vulnerable and dependent on you. On at least two occasions she expressed she did not like what you were doing. You also photographed and

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<sup>4</sup> *Lugo v The Queen* [2020] VSCA 75

filmed this conduct. Given this conduct constitutes separate charges, I have not taken it into account as an aggravating feature of the persistent abuse charge. There is however significant overlap between the circumstances and the conduct charge, which brings into sharp focus considerations of totality in your case, which I will return to shortly.

- 25 Your counsel points to other factors that are relevant to an assessment of the gravity of your offending. While the instances of abuse are many and sustained, she submits the offending period is relatively limited, compared to other cases involving sexually abusive relationships with a dependent child. There is no suggestion that you were grooming your daughter over a period of time or cultivating her trust for the purpose of exploitation, though I do note here that she was already trusting of you given the nature of your relationship. The offending was not committed for your own personal sexual gratification. Finally, although the conduct towards your child was 'unreservedly abhorrent', it stops short of any penetrative act and it did not involve the use of applied force, objects or pain.
- 26 In relation to Charges 1 and 2, you produced material depicting your 5-year-old child in various stages of nudity with a focus on her genitals and anal region and engaged in the acts I have already referred to. In some of this material your daughter was awake and, as already noted, said she did not like what you were doing. For the charged period the offending was relatively frequent given that there was a total of 77 separate files over that period of time. The material was produced for the purpose of distribution to another (Charge 1) and was ultimately transmitted to another (Charge 2). This does not aggravate the offending on Charge 1, given the separate sentence to be imposed for the distribution on Charge 2, but again totality is an important consideration given the overlap in the offending conduct.
- 27 Your Counsel again points to the confined period of your offending. Also, she references the absence of aggravating features, including the absence of threats,



inducements or motivation to profit from the production and transmission of the child abuse material. Also, the transmission was to a single person in a private chat.

28 I accept the prosecution submission that each offence is objectively grave, in particular Charge 3, given the frequency of the conduct, your daughter's very young age and the significant breach of trust. In my assessment I do also take into account the matters properly raised by your Counsel, noting that all three charges relate to the one victim and the offending occurs during an overlapping and relatively confined period of time.

29 I now turn to the issue of your moral culpability. There is no dispute between the parties that the relationship between you and Booth was one involving coercion and manipulation of you. It is also accepted that in the context of your background and personal relationships, which I will return to, you were more vulnerable to predatory behaviour. The prosecution however submit that this does not reduce your moral culpability, as you knew at all times that your conduct was morally and legally wrong.

30 On your behalf, it was submitted that this is a 'stand-alone' factor capable of reducing your moral culpability. Viewed against your background and vulnerabilities, Booth cultivated and exploited a relationship with you through affirmation and attention, which in turn validated you as a woman and a sexual person.

31 During this period of time it was submitted you were particularly isolated and vulnerable. Your relationship with the mother of your daughter, Ms Price, had progressively deteriorated and had come to an end, which also ended most of your entwined social connections. Further, you were isolated from your family. Your already strained relationship with your mother had come to a complete end after the birth of your daughter in 2018, as she had advocated for the termination of the pregnancy. You entertained some desperate hope to reconnect with your

largely absent father, when you received news that he had passed away suddenly in March 2023, extinguishing any such prospect.

32 Compounding matters, you had only started to transition in around 2021 and your gender identity was not fully accepted by those around you, including Ms Price. Your Counsel submits that at the relevant time you were 'completely lacking connection in [your] life' and were experiencing 'pervasive feelings of rejection and lack of self-worth'. You met Booth through a chat site called 'Omegle' and you established that you would have a sexualised relationship with a master/slave dynamic. At first, he was attentive and caring and someone with whom you could share every aspect of your daily life.

33 The report of consultant forensic psychiatrist, Dr Rajan Darjee, describes your offending at paragraph 43 as a 'pattern of sexual offending [that is] well recognised and is in fact the commonest pattern of sexual abuse seen in females who are charged with sexual offences'. Noting relevantly that at the time of your offending you identified as a female, were living as a female and were hormonally female, he states:

... This pattern of sexual abuse is one which a more dominant male pressurises, manipulates and/or coerces a female who has access to a child, usually her own, to sexually abuse that child and/or to make that child available to him to sexually abuse. The person who drives this offending is the dominant male who is able to use a vulnerable female to do what he is sexually motivated to achieve.'<sup>5</sup>

34 In my assessment of your moral culpability, I take into account the influence of Booth. There is some overlap in a consideration of his influence over you and the *Bugmy* principles relied upon<sup>6</sup>. In this respect, I note the prosecution accept that your circumstances are capable of enlivening the general and specific

<sup>5</sup> Forensic Psychiatric report of Dr Rajan Darjee, dated 9 July 2024, paragraph [43]

<sup>6</sup> *Bugmy v The Queen* [2013] HCA 37 (*Bugmy*)

application of *Bugmy*, such that your moral culpability may be less than that of a person whose experience has not been marred in the way yours has. I will return to this shortly, but I indicate at this stage that I do accept that your moral culpability, which I would otherwise assess as high, is reduced by reason of these factors.

## **Plea of guilty and co-operation**

35 You entered an early plea of guilty which entitles you to an important sentencing discount. Your plea has significant utilitarian value and has spared the time, expense and trauma of a trial. Your plea of guilty indicates your willingness to facilitate the course of justice and accept responsibility. Your plea, along with the admissions that you made during your record of interview, are also, I accept, indicative of remorse. While it is suggested that there was some minimisation during the answers in your interview, on all the evidence, I do accept that you are remorseful and ashamed of your conduct. I note the evidence of Dr Darjee that you were clearly distressed about what you had done to your daughter.

## **Personal circumstances**

36 You were 24 years of age at the time of your offending and you have no prior criminal history. Your personal circumstances were comprehensively outlined by your Counsel and in the report of Dr Darjee.

37 In summary, Ms Maloney, you are now 25. You describe a difficult and fraught relationship with your mother growing up. You refer to a range of circumstances, including her drug taking, her 'string of boyfriends' and her frequent absences. Your parents separated when you were very young and aside from visiting your father once in prison, you had no contact with him. As I have already noted, he passed away in March 2023.

- 38 You were a lonely and isolated child and mostly looked after yourself. You are accustomed to saying that you have lived alone since the age of 7. You also report that your mother was physically and mentally abusive and that she would often express homophobic and hateful views. Growing up, you knew you were different and at the age of nine, you knew that you were 'not in the right body' but did not know who to speak to about it. When you expressed an interest in women's clothing, you were berated. Because of your mother's itinerant lifestyle, you moved often and attended several different schools and were bullied due to your apparent differences. While you made some friends, you also experienced associated grief, when your friendship group entered a 'suicide pact,' with you as the only one not joining in. Given the ongoing difficulties at home, and the loss of your friends, you 'shut [yourself] down'.
- 39 Progressively you became more isolated. You stopped going to school for extended periods. You started to retreat into the internet, using Omegle, an anonymous online chat service, to connect with people. You were feeling depressed and saw a counsellor at school for a period of time. You spent most of your time talking to people online and playing video games.
- 40 At around the age of 15 your mother's boyfriend started threatening you and was abusive, forcing you to move out and live at a 'semi-friend's' place. You moved back with your mother for a period of time. At the age of 17, when she and her new boyfriend, whom you describe as violent, moved to Queensland, you went with them for a short period. You then returned and ended up 'crashing' with people you knew from school. You left school during Year 12, when you were 17.
- 41 It was around this time that you met your ex-partner and mother of your daughter, Ms Price. Your mother returned from Queensland and lived with you and Ms Price for a period of time. Tensions started to build when Ms Price



became pregnant with your daughter, with things coming to a head in around 2018 and your mother moving out.

- 42 You describe this period as 'terrible'. You obtained work at a bakery and you were working from 3 am to 3 pm and then trying to take care of your partner, who had become very sick, and your daughter. You told Dr Darjee that it was 'too much' and your relationship ended. You continued living together under the same roof however and this was also challenging, as you would often argue and it was confronting to see your ex-partner have relationships with others. In the period that followed, in brief summary, you moved to several different houses together, reunited as a couple, had your partner's mother stay with you which introduced additional stressors, continued to argue and you continued to feel overwhelmed by the pressure of long working hours and parenthood. While you were excited to become a parent, you were ill-equipped, with little experience and no real supports.
- 43 In 2019 you also started to explore being transgendered. In 2020, during Covid, you started to think about transitioning and talked to doctors and to other people online. You confided in Ms Price and she, at the time, was accepting and wanted you to stay together. Though she supported you, she also did not call you by your real name or, you felt, treat you like a woman. You went to see your GP about transitioning and things 'progressed from there.' You have been on gender affirming treatment for three years, including oestrogen gel and a testosterone blocker. You have also been prescribed antidepressant medication by your GP, which you continue to take. You want to have gender affirming surgery.
- 44 After working at the bakery for about three or four years you left and for a period Ms Price took care of the financial side of things as she was working. You also ended up getting a job working from home for the same employer. The arguments and problems in the relationship continued and by March 2023 you

had moved into your daughter's room, sharing the room and working from in there. It was during this time that you also learnt of your father's death and you were feeling particularly estranged from your ex-partner, who had started a new relationship. You had no friends and turned to 'strangers online'. You described your life at the time to Dr Darjee as 'working, talking to strangers and sleeping'.

- 45 Since being arrested and released on bail, you have been staying at a shared house in Keilor Downs. You have reported to police several times a week. You have no connections with family or friends. You have engaged with various service providers, including CISP and Beyond Bricks & Bars, who provide support to trans people involved with the criminal justice system.

### Other mitigating factors

- 46 While you are not a young offender, Ms Maloney, and you were not a young offender at the time of the commission of the offences, you were still relatively young, at the age of 24. The well-known principles that apply to young offenders therefore have some application in your case, and I have taken these into account, balanced against the objective seriousness of your offending.<sup>7</sup>
- 47 As already noted, your Counsel relies on the *Bugmy* principles<sup>8</sup> as having both general and specific application and refers to the well-known authorities in her submissions.<sup>9</sup> Your Counsel submits that your offending is 'seemingly inexplicable' unless one understands your personal history of isolation and neglect and the harm associated with being a trans child growing up in an isolated and transphobic environment. You grew up in a household of significant

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<sup>7</sup> *Azzopardi v The Queen* [2011] VSCA 372

<sup>8</sup> *Bugmy*

<sup>9</sup> *DPP v Hermann* [2021] VSCA 160 (*Hermann*)

instability and neglect and were subjected to an environment 'of homophobia, transphobia and intolerance'.

48 Dr Darjee conducted a thorough assessment of you. He found there to be no evidence of cognitive impairment and considered that you clearly met the criteria for gender dysphoria.<sup>10</sup> In his evidence, he stated that the term gender dysphoria 'applies to the difficulties individuals who are transgendered experience in relation to being the person they want to be'. The issue is not being transgendered but rather 'the issue is the difficulty caused by having an identity and then trying to achieve the gender identity that you feel is the one that you should be'. The adverse responses to this – that is, a transgendered child growing up in a transphobic environment, can create mental health and behavioural disturbances, causing gender dysphoria, and then leading onto other mental health consequences for the individual. Your environment was a harsh and invalidating one, where you experienced confusion and fear in expressing or exploring your identity. Your past was marked by negative experiences, related and unrelated to being trans, including emotional abuse and parental neglect, impacting your mental health and personality structure.

49 Further, he opines that 'being transgendered and [your] gender dysphoria is also important in understanding [your] personality development and experiences of complex childhood trauma.'<sup>11</sup> Developmental gender confusion combined with the adverse reactions of others can cause identity disturbance, complex trauma, dysfunctional traits and mental health problems. On the background of this vulnerability, you have also at times of loss and stress developed depression and anxiety. Your Counsel further relies upon research that documents the unique and significant mental health impacts and challenges affecting young trans people.

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<sup>10</sup> Report of Dr Rajan Darjee, paragraph [38]

<sup>11</sup> Ibid, paragraph [40]

50 Your Counsel submits that there is a 'realistic connection between the offending and the relevant background connection'.<sup>12</sup> Dr Darjee explains that your adverse experiences have had a lasting impact on your development, self-image, personality and mental health; as an adult you have lacked confidence, self-esteem and assertiveness, you are easily rejected; struggle to form relationships, feel lonely and are dependent in the sense that you want to be cared for and want others to take control.<sup>13</sup> He states (at [44]):

She felt the man she connected with cared for and was nice to her, and due to her low self-esteem, lack of assertiveness, loneliness, submissiveness and desperation to be noticed and cared for, it was easy for him to pick up on her vulnerability and manipulate her into the master/slave relationship where he took control of her life. He then involved her in sexual exchanges and then coerced her to sexually abuse her daughter and take videos and photos to share with him. She was not inherently motivated by deviant sexual interests or any other motive, except doing what he told her and keeping him happy, to sexually abuse her daughter.<sup>14</sup>

51 Given Booth's manipulation and coercion and your vulnerabilities, you were much less able to make objectively the right and healthy choices.

52 In his evidence in Court, Dr Darjee also explained how such abusive relationships online can 'very quickly move into being coercive'. As already indicated, I accept that the *Bugmy* principles are enlivened in your case, as advanced by your counsel.

53 In addition, your Counsel submits also that you will likely experience greater hardship in custody as a trans prisoner. A report of Mr Witt Gorrie, a project coordinator from Beyond Bricks and Bars, was relied upon and Mr Gorrie was also called to give evidence. I accept that Mr Gorrie has the expertise and

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<sup>12</sup> *Hermann*

<sup>13</sup> Report of Dr Rajan Darjee, paragraph [39]

<sup>14</sup> *Ibid*, paragraph [44]



experience to give evidence on these issues and his evidence was not challenged. The report indicates that all trans women who enter the women's system are placed in solitary confinement upon reception and remain there for anywhere from five weeks to their entire prison sentence. Placement in long-term solitary confinement is restrictive and has significant impacts on a person's mental health. In Mr Gorrie's experience in working with trans women in the prison system, all have also 'reported transphobic bullying and harassment', along with sexual harassment and abuse, within the custodial environment. He also referred to some of the common difficulties and delays around receiving, and appropriately monitoring, hormone replacement therapy in custody. Mr Gorrie considers that as a young trans woman you would be particularly at risk in prison. Dr Darjee also refers to these likely additional challenges in a custodial setting.

54 The prosecution accepts that while there are policies in place to address the needs of transgendered prisoners, your experience in prison will be more burdensome than that of a cisgender person. They concede, based on the psychological material, that there is a risk of a serious adverse impact on your mental health if incarcerated. They submit that while a significant matter, it needs to be weighed against the objective seriousness of your offending and the relevant sentencing principles. On the evidence before me, I accept that you will face additional hardship in prison as a relatively young trans woman and that you will struggle considerably, more so with prison life than the average inmate. Further, I take into account, as submitted by your Counsel, that you are likely to experience greater isolation as all your friends were online and you have no family, friends or supports in the community to visit you in custody.

55 Further, I accept that there is a risk of a serious adverse impact on your mental health if incarcerated. Dr Darjee stated at paragraph 51:

Considering the impact of imprisonment in terms of potential deterioration in her mental health or whether prison is likely to be more onerous or

burdensome, she is currently suffering from major depression of moderate severity with anxious distress. Imprisonment is likely to lead to her becoming more severely depressed, with a greater level of distress, and suicidal ideation. I would be immediately concerned about her mental health and risk of suicide if she was imprisoned.<sup>15</sup>

- 56 I also take into account that you have been on bail, complying, for a substantial period of time. Further, in a general sense, I take into account some of the difficulties that you have suffered since being charged, including receiving implied threats on Facebook, the loss of your employment, your placement in male emergency accommodation where you felt objectified and harassed and the disruption of your hormone therapy for a period as you could no longer access the family GP.

### **Prospects of rehabilitation**

- 57 Your Counsel submits, Ms Maloney, that given your lack of criminal history, your young age, assessed low risk of reoffending, and your education and history of employment, you have strong prospects of rehabilitation. Further, you have sought out psychological support and have engaged meaningfully in the process and have also engaged with CISP. The prosecution submit that you attempted to minimise your offending in your interview. However they accept that you have since demonstrated remorse which favours your rehabilitative prospects.
- 58 According to Dr Darjee, you clearly do not have a paraphilic disorder. There is no evidence of sexually arousing fantasies, urges or behaviours involving prepubescent children.<sup>16</sup> In both his evidence in court and in his report, Dr Darjee considers that you present a low risk of further sexual offending. He states at paragraph 50, 'She is highly unlikely to commit a further sexual offence,

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<sup>15</sup> Report of Dr Rajan Darjee, paragraph [51]

<sup>16</sup> Report of Dr Rajan Darjee, paragraph [42]

unless she finds herself in a similar situation, being pressured or coerced by a man'.<sup>17</sup>

59 Dr Darjee considers that you would be assisted by mental health services and treatment to address some of your underlying issues, though even without this, he makes clear that your assessed future risk is very low. Given your long-standing complex trauma, Dr Darjee considers that you need long term, targeted treatment with a psychologist. He was of the opinion that specific treatment targeting sexual abuse would not be appropriate in your case, or of any benefit and that you do not require any specific interventions to prevent further sexual offending.

60 In all the circumstances, Ms Maloney, I consider that you present with very good prospects of rehabilitation.

## **Sentencing purposes**

61 The purposes for which sentences may be imposed are just punishment, general deterrence, specific deterrence, rehabilitation, denunciation and protection of the community. As I have already noted, general deterrence looms large in charges dealing with the sexual abuse and the exploitation of children.

62 I have had regard to the relevant sentencing landscape for each charge, and on Charge 3, have only had regard to sentences previously imposed for the offence as a standard sentence. While Counsel have provided some cases to guide the court, in many respects your case is quite unique and there are no intermediate appellate sentences directly referable or significantly factually comparable to the nature and type of offending in the present matter.

63 Charge 3, as I have already noted, is a standard sentence, the standard sentence being 10 years. A sentencing Court must therefore treat the standard

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<sup>17</sup> Ibid, paragraph [50]

sentence as a 'legislative guidepost', having the same function as the maximum penalty, albeit that the established instinctive synthesis approach to sentencing is not affected. The matters that the Court may, or must, take into account in sentencing are not otherwise affected.

64 Accordingly, I have taken into account the standard sentence as one of the factors to consider in my instinctive synthesis of all the relevant matters in your case. The sentence that I am about to impose on this charge is lower than the standard sentence. I have considered all relevant factors in assessing your sentence, including the standard sentence, the objective seriousness of your offending and the matters available to you in mitigation.

65 In relation to Charge 3, if you are convicted and sentenced to a term of imprisonment on Charges 1 and 2, you fall to be sentenced as a serious offender. In determining the duration of a sentence, the Court must regard protection of the community as the primary sentencing purpose and may, to achieve this, impose a disproportionate sentence. The prosecution did not submit that a disproportionate sentence is required, and I do not intend to impose one. Also, while community protection must be given full effect, your assessed low-risk of reoffending and very favourable rehabilitative prospects are also relevant.

66 In sentencing an offender for multiple Commonwealth child sexual offences, the Court is not to make an order which has the effect that the sentences for each offence are to be served partly cumulatively, or concurrently with any uncompleted term of imprisonment which is, or has been, imposed on the person for another Commonwealth child sexual offences or a State child sex offence.

67 The Court may impose a partly cumulative or concurrent term of imprisonment if satisfied that imposing the sentence in this way would still result in sentences that are of a severity appropriate in all the circumstances.



- 68 In respect of Charge 3, the term of imprisonment must, unless otherwise directed by the Court, be served cumulatively upon any uncompleted sentences or sentences of imprisonment imposed on the offender, whether imposed before or at the same time as the term.<sup>18</sup> General principles of totality and proportionality nevertheless continue to apply.
- 69 I am mindful not to undermine the legislative policies inherent in the provisions I have just referred to, but as I have already noted the offending conduct underpinning each charge is closely related and interdependent.<sup>19</sup>
- 70 The Commonwealth charges of produce and transmit relate to the same files. Although marking separate criminality, you produced the material in order to transmit it, as requested by Booth. As your counsel submits, the production of the child abuse material was for the sole purpose of the transmission of the material. It was not produced for your own use or gratification. In the unusual circumstances of this case, I propose to order limited cumulation between the Commonwealth charges and I am satisfied that such orders will result in sentences that are of an appropriate severity.
- 71 I also accept that the acts underpinning the persistent child abuse charge were committed so as to produce and transmit the material to Booth. As your Counsel submits, the child abuse behaviour was performed for the purpose of the production and transmission of the material. Overall, and for the reasons already canvassed, I view the persistent child abuse charge as the most egregious offending. While I consider it appropriate to order some cumulation between this charge and the Commonwealth charges to reflect the different criminal vices to which the offences are directed, these orders will be substantially moderated given the overlap and interdependency between them.

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<sup>18</sup> *Sentencing Act* 1991 (VIC), s.6E

<sup>19</sup> *R v O'Rourke* [1997] 1 VR 246

- 72 There is no dispute between the parties that your offending warrants an immediate term of imprisonment. The prosecution submits that it requires a term of imprisonment, structured with a non-parole period. Your Counsel submits that any such term on the Commonwealth matters could be served by way of a recognisance release order. In all the circumstances, I consider that the only just and appropriate sentence here is one of imprisonment.
- 73 Given the gravity of the offending and its impact, the sentence must be sufficiently stern to meet the sentencing principles of general deterrence, denunciation, community protection and just punishment. Your conduct does need to be unequivocally denounced. I also do accept that there are significant and compelling factors in mitigation that must be reflected and given appropriate weight.
- 74 I have endeavoured to tailor your sentence to ensure that it is proportionate to your overall criminal conduct.
- 75 Now, Ms Maloney, could you please stand. I am going to indicate in broad terms the sentence. Then I will have you take a seat. There is some complexity to this.

## Sentence

- 76 On Charge 3, it is the sentence I am going to approach first, that is the State offence. You are convicted and sentenced to a term of imprisonment of 4 years and 3 months' imprisonment. That sentence will commence today. I am setting a non-parole period on that sentence of 2 years.
- 77 Given the complexity of sentencing on a combination of Commonwealth and State offences, I have had to significantly lower and adjust the non-parole period on the State offence to achieve my desired result. In the circumstances of this case, I consider it is in the interests of justice to set a non-parole period that is less than 60 per cent on the State charge. This is necessary so as to reflect the gravity of the offending, the relevant sentencing principles, the compelling

mitigating factors and the importance of the principle of totality in your case. Both parties are in broad agreement that given the unique circumstances of your offending, there should only be limited cumulation. The Federal sentence I impose must commence no later than the end of the State non-parole period, whether you are released on parole or required to serve the entire sentence.

## **The Commonwealth charges**

78 Charge 1 – I convict you and sentence you to a period of 2 years and 10 months' imprisonment and I direct that that is to commence three months before the expiration of the State non-parole period. My intention, counsel, on this charge is to cumulate four months. We will come to the mathematics in a moment, but I just want to complete the actual sentence.

79 Charge 2 – You are convicted and sentenced to a term of 2 years and 8 months' imprisonment and that term is to commence one month after the expiry of the State non-parole period. My intention here is to cumulate two months.

80 That makes for a total effective sentence on the Commonwealth charges of 3 years' imprisonment. In other words, two years and 10 months and two months cumulated.

81 Having set a term on the Commonwealth matters that does not exceed three years, I direct that you be released on a Recognisance Release Order in the sum of \$1,000 for a period of two years to be of good behaviour, after having served six months of the total effective sentence imposed on the Commonwealth charges.

82 Overall, my intention is to sentence you to a total effective term of 4 years and 9 months' imprisonment and you will be eligible for release on parole for all effective purposes and on that Recognisance Release Order after serving a minimum term of 2 years and 6 months.

83 Now, Ms Maloney, you can take a seat.

84 Counsel, I am just going to go through some of those matters. I will complete the actual sentence, but I do want to ensure I have checked this and there is a well-known complexity to Commonwealth and State matters. There is no issue that I can impose a recognisance release order if it is three years or less, along with a State sentence structured by way of a non-parole period. There is no dispute about that. Correct?

85 MS SIMPSON: Correct.

86 MX SKABURSKIS: Correct.

87 HER HONOUR: All right, I am just going to complete my sentencing terms. I am going to refer to those commencement dates to ensure that it reflects my intention. I have made my intention very clear in the event that it does not and it needs to come back before me to be remedied. Okay.

88 I consider that the period – can I say this in respect of the effective minimum term, I am not able to set a global minimum non-parole period. So dealing with the effective minimum term, that is 2 years and 6 months, I consider that that is a term that justice requires you to serve. In setting this period, I am mindful that the requirements, in particular of general deterrence, must be reflected in both the head sentence imposed and the non-parole period. However, I have also taken into account, Ms Maloney, your favourable prospects of rehabilitation, along with your relative youth and your vulnerability and likely difficulties that you will experience in custody.

89 Turning to the Recognisance Release Order on the Commonwealth charges, I am obliged to explain in language you are likely to understand what this means. In relation to Charges 1 and 2, after serving six months on the order, which commences on the expiration of your non-parole period, you will be permitted to serve the balance of that term imposed in the community. The Recognisance



Release Order means you will be subject to a condition to be of good behaviour during the operational period, that is 24 months, 2 years.

90 There are also other mandatory conditions and no doubt the Court will soon be provided with a recognisance order, but as I read the relevant statutory provisions, Ms Maloney also will be:

- a) subject to supervision of a probation officer;
- b) obey all reasonable directions of probation officer;
- c) not travel interstate or overseas without the written permission of the probation officer; and
- d) undertake such treatment or rehabilitation programs that the probation officer reasonably directs.

91 They are the conditions that I would set on a recognisance release order because of the opinions of Dr Darjee. It will be a matter for Parole and it will be a matter for the assessing officer as to what is suitable in terms of programs, but I am not going to and I understand I do not have to impose the sex offenders treatment. It will be a matter for those who assess her, so I indicate that.

92 MS SIMPSON: I think that is right. I do think that matters of this kind, in order to be eligible for parole, you do have to complete it.

93 HER HONOUR: You probably do and she will probably have to undertake that, but I do not consider that I need to stipulate that on the recognisance release order.

94 MS SIMPSON: No, not at all.

95 HER HONOUR: It does not seem to be part of the mandatory terms.

96 MS SIMPSON: No.

97 HER HONOUR: Now, Ms Maloney, just on that Recognisance Release Order, I must inform you that if you fail without reasonable excuse to fulfil or comply with the conditions, you may be brought back before the court and the order may be revoked or cancelled, the \$1,000 forfeited. You do not pay that upon be released and you may be dealt with by the court for the offences in respect of which the order was made and you may well be required to serve a further term of imprisonment.

98 I must further inform you that there are provisions in the Act which enable you in certain circumstances to apply to the court for a discharge or variation of the terms or duration of the recognisance release order. You will need to sign the order and I will be assisted by counsel in a moment in respect of that.

99 In your case, in global terms, I am not, unless Counsel indicate I am required to, I indicate that had you not entered a plea of guilty, I would have sentenced you to some 7 years' imprisonment with a non-parole period of 4 years 6 months.

100 I declare that you are a serious sexual offender in respect of Charge 3.

101 Charges 1-3 are registrable offences for the purposes of the *Sex Offenders Registration Act* 2004. Upon a finding of guilt for these charges, you will be subject to reporting obligations for the remainder of your life. I make order and I will come to it again in a moment.

102 There was a forfeiture order in relation to the telephone and that was unopposed. Correct?

103 MX SKABURSKIS: It is not opposed.

104 MS SIMPSON: That's correct.

105 HER HONOUR: I make the forfeiture order.

106 Counsel, the overall effect of my sentence and my intention as I think I have made plain, is to impose a sentence of 4 years and 9 months' imprisonment and allow for eligibility on parole after the service of 2 years and 6 months. Now with the commencement dates that I have stipulated, do counsel agree that it reflects that overall intention?

107 MS SIMPSON: Yes, that looks correct, Your Honour.

108 HER HONOUR: Mx Skaburskis, do you agree that that is correct?

109 MX SKABURSKIS: Yes, it is. I needed to puzzle through all the various calculations.

110 HER HONOUR: As I said, it really does have its complexities, but perhaps we can do that. Is there a recognisance order that is being drafted? I see you have your instructor there and no doubt she is attending to it.

111 MS SIMPSON: Yes, it will be sent through to chambers.

112 HER HONOUR: Okay, thank you. Can I indicate also it is my experience that, particularly in these joint Commonwealth and State matters, if there is a need to express commencement dates differently or if they are not being interpreted as I will make plain on the order, we are usually notified and if so Counsel will be told and the matter returned<sup>20</sup>.

113 HER HONOUR: Further, I am going to note custody management issues and they are as follows.

114 HER HONOUR: This is Ms Maloney's first experience in custody. She is diagnosed as suffering from gender dysphoria and also depression. She is a trans prisoner and I also note her relative youth. Are there any further custody

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<sup>20</sup> On 2 September 2024 the matter was returned to Court and the orders amended, by agreement and pursuant to s.104A Sentencing Act (Vic) and/or s.19AHA Crimes Act (Cth) to change/correct the commencement dates of the sentences so as to reflect the overall intended sentences of the Court.

management issues that need to be noted? She is further also on antidepressant medication. We will note that.

115 MX SKABURSKIS: And of course essential hormone medication that she will require continual access to.

116 HER HONOUR: And hormone medication, thank you.

117 MX SKABURSKIS: Thank you, Your Honour.

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