IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not restricted
Suitable for Publication

Case No. CR-18-01133

DIRECTOR OF PUBLIC PROSECUTIONS

v

GEORGE PELL

JUDGE:	HIS HONOUR CHIEF JUDGE KIDD
WHERE HELD:	MELBOURNE
DATE OF HEARING:	27 February 2019
DATE OF RULING:	13 March 2019
CASE MAY BE CITED AS:	DPP v Pell (Sentence)
MEDIUM NEUTRAL CITATION:	[2019] VCC 260

REASONS FOR SENTENCE

Subject:	Criminal Law – Sentence.
Catchwords:	Historical child sexual offences – Four charges of indecent act with or in the presence of a child under 16 and one charge of sexual penetration of a child under 16 - Offending within institutional setting – Serious examples of offences - Offending more serious because of breach of trust and abuse of power – Advanced age of offender – Good character – Delay – Extra-curial punishment.
Legislation Cited:	*Crimes Act 1958,* ss 45, 47, 464ZF; *Sentencing Act 1991* ss 3, 5, 5AA, 6B, 6D, 6E, 6F, 8K; *Sex Offenders Registration Act 2004* ss 7, 34.
Cases Cited:	*Cheung v The Queen* (2001) 209 CLR 1; *Berichon v The Queen* (2013) 40 VR 490; *Fagan v The Queen* (1982) 150 CLR 666; *Clarkson v The Queen* (2011) 32 VR 361; *DPP v Dalgliesh (a pseudonym)* [2016] VSCA 148; *Osborne v The Queen* [2018] VSCA 160; *Verdins v The Queen* (2007) 16 VR 269; *Bromley v The Queen* [2018] VSCA 329; *DPP v Toomey* [2006] VSCA 90; *Ryan v The Queen* (2001) 206 CLR 267; *R v RLP* (2009) 213 A Crim R 461; *Einfeld v The Queen* (2010) 200 A Crim R 1; *R v Dunne* [2003] VSCA 150; *Mok v The Queen* [2011] VSCA 247; *DPP v Dalgleish (a pseudonym)* (2017) 91 ALJR 1063; *Makarian v The Queen* (2005) 228 CLR 357; *Stalio v The Queen* (2012) 46 VR 426; *Wong v The Queen* (2001) 207 CLR 584.
Sentence:	Total effective sentence 6 years' imprisonment, with a non-parole period of 3 years' and 8 months.

APPEARANCES:	Counsel	Solicitors
For the DPP	Mr M Gibson QC with Ms A Ellis	Mr J Cain, Solicitor for Public Prosecutions
For the Accused	Mr R Richter QC with Ms R Shann	Galbally & O'Bryan

HIS HONOUR:

Introduction

1 Cardinal George Pell, on 11 December 2018 you were convicted by a jury of five charges of sexual offending by you against two young boys in 1996 and 1997 in St Patrick's Cathedral, East Melbourne. You were convicted of one offence of Sexual Penetration of a Child under 16 years and four offences of committing an Indecent Act with or in the presence of a Child under 16 years.

2 The jury who unanimously convicted you was comprised of 12 men and women, randomly selected from the community. Initially, there was a jury of 14 who heard the evidence and arguments of counsel, and who received directions of law from me, over the course of some 5 weeks. The jury was then reduced to 12 by ballot, at the time of the deliberations. The jury deliberated for almost 5 days, before returning their verdicts of guilty on all of the charges.

Preliminary observations

3 Before I commence to examine the specific issues put to me on your plea, I am mindful that I am sentencing you within a unique context.

4 It is important that I acknowledge that context so that I can make plain to you and to the community what my sentencing of you involves and what it does not involve.

5 Let me first say something about this context:

- At the time you returned to Australia to face these charges you were one of the most senior figures within the Catholic Church, globally;
- You remain a Cardinal of the Catholic Church;
- You are of a figure of significant interest to those of the Catholic faith, and to the public generally;

- There has also been extraordinary and widespread publicity and public comment, which has surrounded you for a number of years;

- Some of this publicity has involved strong, trenchant and sometimes emotional criticism of you;

- Indeed, it is fair to say that in some sections of the community you are a publicly vilified figure;

- Finally, I am also conscious that I am sentencing at a particular time, where in recent years there has been the exposure of child sexual abuse within institutional settings, including within the Catholic Church.

6 Having said a little about this context, it is important for me now to make some remarks concerning how this context relates to my sentencing of you today.

7 First, I am required to sentence you today in accordance with the rule of law. This is a critical feature of our criminal justice system. The rule of law demands that when I sentence you, I must do so independently of any outside influences, only upon the evidence before me, and upon established legal principles. This means sentencing without fear or favour.

8 Further, you are to be punished only for the particular wrongdoing you have been convicted of on this Indictment[1], of sexually abusing two boys in the 1990's, and only of that wrongdoing.

9 It is critical that you understand that this is the basis upon which I sentence you today. It is vital that the community understands this as well.

10 As I directed the jury who convicted you in this trial, you are not to be made a scapegoat for any failings or perceived failings of the Catholic Church. Nor are you being sentenced for any failure to prevent or report child sexual abuse by other clergy within the Catholic Church. You have not been charged with or

1 Indictment H11808513B.2.

convicted of any such conduct or failings.

11 This leads me to say something to other victims of clerical or institutional sexual abuse who may be present in court today or watching or listening elsewhere. This sentence is not and cannot be a vindication of your trauma. Cardinal Pell has not been convicted of any wrongs committed against you. Cardinal Pell does not fall to be punished for any such wrongs. I recognise that you seek justice, but it can only be justice if it is done in accordance with the rule of law. For me to punish Cardinal Pell for the wrongs committed against you would be contrary to the rule of law and it would not be justice at all.

12 Next, in sentencing you today, Cardinal Pell, I am not sitting in judgment of the Catholic religion or the Catholic Church. It is George Pell who falls to be sentenced.

13 Finally, with respect to these preliminary observations, over the last period we have witnessed, outside of this court and within our community, examples of a 'witch-hunt' or 'lynch mob' mentality in relation to Cardinal Pell. I utterly condemn such behaviour. That has nothing to do with justice or a civilized society. The Courts stand as a bulwark against such irresponsible behaviour.

14 Cardinal Pell, I want to acknowledge that in sentencing you today, I do so on the basis that you are a member of the community, like any other. Most importantly, while I must punish you for your offending, like anyone who falls to be sentenced by our courts, you are entitled to the balanced and steady hand of justice.

Summary of offending

15 I now turn to the facts of this case.

16 You fall to be sentenced on a basis consistent with the jury verdict on your trial.[2]

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2 *Cheung v The Queen* (2001) 209 CLR 1, 9 [6].

It was common ground at the plea that this effectively means that you are to be sentenced on the basis of the account of the victim J who gave evidence at trial. Your counsel accepts this.

17 I must at law give full effect to the jury's verdict. It is not for me to second guess the verdict. What this means is that I am required to accept, and act upon, J's account. That is what the law requires of me and that is what I will do.

18 In the latter part of 1996 and into 1997, whilst Archbishop of Melbourne, you conducted Sunday Solemn Mass at St Patrick's Cathedral in East Melbourne. The two victims, one of whom is now deceased, were choristers or choir boys who performed singing duties during Mass. They sang in furtherance of a singing scholarship each had at a private Catholic high school. I have anonymised my sentencing remarks so that the identities of the victims are not published. In these anonymised remarks, I refer to the victims as 'J' and 'R'.

19 The matter involves two episodes of offending.

20 Turning to the first episode.

21 In the latter part of 1996, at the conclusion of one Sunday Solemn Mass, which was delivered by you, the victims formed part of a procession, outside of the Cathedral, walking back towards their choir room. The victims were still wearing their chorister's robes. During this time, without asking permission, the victims separated themselves from the procession. They made their way, via the priests' sacristy corridor, to the priests' sacristy. This area was off limits to the public. The priests' sacristy was also customarily off limits to choristers.

22 Once inside the priests' sacristy, each of them drank some sacramental wine kept in an alcove within the priests' sacristy.

23 After Mass, you entered the priests' sacristy alone; you were still robed. The priests' sacristy was the area you used for disrobing at that time. When you

entered the priests' sacristy you planted yourself in the doorway and said something like 'you're in trouble' to the victims. You and the victims sort of froze at that moment. Then you started to move something underneath your robes, like your trousers or belt.

24 Shortly after this you committed an indecent act upon R, who is now deceased. This involved pulling R aside, pulling out your penis, grabbing R by the back of his head with one hand and placing R's head and face in close proximity to your genital region. This occurred while R was crouched in front of you and you were standing. R was squirming, struggling and flailing while this was occurring. J saw R's face - R was terrified. At one point, R said to you 'can't you let us go? We didn't do anything.' R also called out 'no' and 'help'. This incident with R lasted about a minute or two. This is charge 1 on the Indictment, Indecent Act.[3]

25 A short time after this you turned your attention to J. You then sexually penetrated J. This involved pushing your erect penis into J's mouth. You pushed J's mouth onto your penis for a short period of time, in the order of about two minutes. J was, to use his words, 'freaking out' when this happened. You were standing and J was pushed down, crouching or kneeling. This is charge 2 on the Indictment, Sexual Penetration.[4]

26 You then committed further indecent acts with J. You told J to take off his pants and you started touching his genitalia with your hands. This is charge 3 on the Indictment. While this was occurring, you began touching your own genital area with your other hand. These acts occurred over a minute or two. This is charge 4 on the Indictment. Both charges 3 and 4 are Indecent Act charges.[5]

27 Once you stopped, J put his clothes back on, and J and R left the room. They eventually re-joined the choir.

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3 Contrary to s 47(1) of the *Crimes Act 1958* (as amended by the *Crimes (Sexual Offences) Act 1991).*
4 Contrary to s 45(1) of the *Crimes Act 1958* (as amended by the *Crimes (Amendment) Act 2000)*.
5 Contrary to s 47(1) of the *Crimes Act 1958* (as amended by the *Crimes (Sexual Offences) Act 1991).*

28 Both J and R were present together in the priests' sacristy during the whole of the offending.

29 At this time, both J and R were aged 13 years of age.

30 During the incident J and R were crying and sobbing. J and R called out but it was at a level of whimpering and whispering. At some point you told J and R to be quiet because they were crying.

31 Now turning to the second episode of offending.

32 Over a month later, following Sunday Solemn Mass at St Patrick's Cathedral, J was walking along the back corridor that leads past the priests' sacristy. You were also walking in that same area. You had either just presided over or delivered Sunday Solemn Mass. You were in official robes. J was in his chorister robes. You pushed yourself up against J against a wall[6] and then squeezed J's genitals for a brief period (for approximately 1 to 3 seconds). You then desisted and kept walking. This is charge 5 on the Indictment, another Indecent Act charge.[7]

Victim Impact

33 I now turn to the impact upon the victims in this matter.

34 The prosecution tendered two Victim Impact Statements being a statement of J[8] and a statement of the father of R.[9]

35 In describing the impact of your offending on J and R's father, I am mindful that neither wished to have their statements read out loud in court, so I will be paraphrasing.

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6 The prosecution accepts that the pushing up against a wall did not constitute a sexual rubbing or sexual contact.

7 Contrary to s 47(1) of the *Crimes Act 1958* (as amended by the *Crimes (Sexual Offences) Act 1991).*

8 Exhibit 2 on the plea.

9 Exhibit 3 on the plea.

Victim Impact Statement of J

36 In relation to the victim J, these crimes have had a significant and long lasting impact on J's emotional wellbeing, which has, in turn, affected many aspects of his life.

37 J has experienced a range of negative emotions which he has struggled to deal with for many years since this offending occurred. Sometimes those feelings have been overwhelming.

38 In particular, the offending has had a significant impact on J's relationships. He has found it difficult because of issues of trust and anxiety.

39 I take into account the profound impact that your offending has had on J's life.

Victim Impact Statement of R's father

40 In his Victim Impact Statement, R's father expressed that he felt shocked and upset to learn of what had occurred to his son. He felt that he had failed his son. I take this impact into account.

41 I do not take into account R's father's grief for the loss of his son. It is common ground between the parties that R's death is not related to the offending against R.

42 The defence argued that R's father was not 'a victim of the offence' for which I am sentencing,[10] because the offending did not have a *direct* impact on R's father.[11]

43 At the plea hearing, I rejected that submission and in my written settled reasons I will explain why in a footnote.[12]

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10 Section 8K of the *Sentencing Act 1991* allows '…a victim of the offence...' to make a statement.

11 'Victim' is defined in s3 of the *Sentencing Act 1991* as being 'a person who….has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of the offence….'

12 The term 'victim' must be given the broad interpretation which the legislature clearly intended. The term

Absence of Victim Impact Statement of R

44 I do not have the benefit of a Victim Impact Statement from R, who is deceased. However, on the basis of J's account at trial, I am able to say that your offending must have had an immediate and significant impact on R.

45 The defence submit that I should not speculate as to the long lasting impact upon R. Whilst it is not possible for me to quantify the harm caused, or articulate precisely how it impacted upon R in the long run, I have no doubt that it did in some way.

46 I am mindful of the authorities which recognise that sexual activity with children is presumed to cause long term and serious harm, both physical and psychological to the child.[13]

Gravity of offending

47 I now turn to an assessment of the gravity of your offending.

Objective assessment of offending conduct

48 This first involves an assessment of the conduct itself.

49 Your offending encompassed two distinct episodes, over a month apart.

50 In my view, the first episode in the priests' sacristy involved a brazen and forcible sexual attack upon the two victims. The acts were sexually graphic.

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victim is not simply confined to those who are the object or target of the crime. What is required is a causative relationship between the offence and the injury, loss or damage. The connection between the offence and consequences do not need to be proximate or immediate. Here, there is a sufficiently causative relationship between the offence and the distress experienced by R's father, so that the effects of the crime on R's father are a 'direct result' of the offending. Parents hearing about the sexual abuse of their children will almost invariably be directly impacted as a result of that news. The nature of their close relationship (as parent and child) means that serious offending against one will almost inevitably have a significant impact on the other. I accept that less weight would likely be given to the impact upon a parent than the impact upon the immediate victim, given that the impact upon the immediate victim is likely to be more significant. See *Berichon v The Queen* (2013) 40 VR 490, 495 [18]-[19]; *Fagan v The Queen* (1982) 150 CLR 666, 673 (Mason and Wilson JJ).

13 *Clarkson v The Queen* (2011) 32 VR 361, 364 [3], 371 [33]; *DPP v Dalgliesh (a pseudonym)* [2016] VSCA 148 [45]-[47].

51 Both victims were visibly and audibly distressed during this offending. The obvious distress and objections of your victims is relevant to my assessment of the impact of your offending on J and R.[14]

52 There is an added layer of degradation and humiliation that each of your victims must have felt in knowing that their abuse had been witnessed by the other.

53 In relation to charge 1, which is the indecent act against R has, in my view, a nasty element to it - holding him by the head, whilst placing your penis in close proximity to R's head. While there was no sexual physical contact, the conduct here must have been particularly confronting and debasing. Judging by R's reaction, it clearly was so.

54 Charge 2 on the Indictment is a charge involving sexual penetration of J and it is rightly characterised as an act of violence. Additional force was used by you to offend over and above the penetration, in that your grabbed hold of J's head and pushed your penis inside his mouth. You held his head down for a period.

55 One of the indecent acts against J, being charge 3, involved direct physical contact with his genitals, which sets it apart from touching that occurs on the outside of clothing.

56 I accept that the first episode involved opportunistic and spontaneous offending, rather than pre-planned or premeditated conduct. It is on that basis that you must be sentenced and I take this into account. Had it been pre-planned or involved grooming, it would have been more serious.

57 Turning now to the second episode of offending. While the indecent act in the second episode in the corridor was very brief and spontaneous and involved contact over clothes, it is, however, coloured by the fact that you had sexually assaulted J a month or so before. This squeezing of his genitals in the corridor

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[14] Further, I am conscious that, despite the forceful nature of the assault, you have not been charged with or convicted of the offence of rape. Therefore I must not find that your awareness of the absence of the victims' consent increased your culpability. See *Osborne v The Queen* [2018] VSCA 160 [51].

cannot be viewed as an *isolated* lapse on your part. You had had ample time to reflect upon your previous abuse of J. Yet despite this you still indecently acted against J and did so with what I consider to be a degree of physical aggression and venom. It was by no means a minor indecent act.

58 In supplementary submissions, your counsel submitted that the only inference that can be drawn from your offending in both episodes is that you were not, for whatever reason, acting rationally. It was submitted that the fact that you are an otherwise intelligent person, who had never previously or subsequently offended, just highlights that you must not have been in your right mind at the time of this offending. In particular, your counsel emphasised that no person thinking rationally would engage in the conduct of the first episode, with the door open and with people nearby and where there were accessible private lockable rooms nearby. It was submitted that I should therefore proceed upon the basis that you did not reflect in a reasoned way upon your offending.

59 I reject this submission for a number of reasons.

60 First, there is no medical or psychological evidence before me of any kind, which supports any inference that your mental functioning was impaired or diminished in any way at the time of either episode. I note your counsel did not seek to engage the principles of mental impairment under the case of *Verdins.*[15]

61 Second, there is no evidence before me from any witness at the trial that you were other than a fully functioning, competent, lucid and intelligent man, during the relevant period of time. To the contrary, there is evidence that on the day of the first episode, you had successfully delivered Sunday Solemn Mass, as Archbishop, this being a public role requiring discipline and focus.

62 Third, in relation to the first episode, you offended over a period of minutes, where there was ample opportunity for you to both reflect, and to stop. On the

15 *Verdins v The Queen* (2007) 16 VR 269.

evidence of J, you told the boys they were in trouble. J says you all then just froze. You then started moving underneath your robes. You then exposed your penis. There was time for reflection even at the beginning of this offending. What then occurred was sustained offending. Your sexual abuse involved multiple different activities and actions. You moved from one victim to the other. Your dialogue with the two victims during the first episode was both purposeful and responsive. You continued to offend, with callous indifference to the victims' obvious distress and objections. At some point during this episode, you even told your victims to be quiet because they were crying.

63 Fourth, what you did was so egregious that it is fanciful to suggest that you may not have fully appreciated this. Your graphic sexual misconduct was not of a kind where you may have misjudged its gravity.

64 Fifth, the fact that you offended twice against J further undermines the explanation that your offending was but an irrational, unthinking moment of lunacy.

65 As to what drove you to offend in such a risky and brazen manner, I infer that, for whatever reason, you were in fact prepared to take on such risks.

66 I conclude that your decision to offend was a reasoned, albeit perverted, one and I reach that conclusion to the criminal standard.

67 To accept the argument of your counsel would mean that every offender who commits an offence which is brazen, out of character, and spontaneous, must be considered to have some form of mental impairment, or some lapse in a capacity to reason or to think rationally. There is no basis in law or in principle for this proposition and I reject it.

68 Certainly you were confident your victims would not complain. I will return to this later.

69 In any event, I reject your counsel's submission that the only inference available is that you were not acting as a rational, thinking person.

70 If I am required to identify other explanations as to why you were prepared to take on the risk of somebody walking in on you into the priests' sacristy, then I do so.

71 By the jury's verdict, this offending occurred, and no one walked into the priests' sacristy whilst you were offending. These are facts which I must act upon. You may at the time have been sufficiently confident that other Church officials would not walk in during this period of time. You would have had some knowledge as to their activities and whereabouts at the time. Moments before you had walked from the Cathedral into the priests' sacristy corridors. You would have had some opportunity to interact with others and observe their movements.

72 Another possible reasonable explanation for your preparedness to take on the risk of somebody walking into the sacristy, is that you may also have subjectively believed that, had this occurred, you could control the situation. You may have thought you could control the situation by reason of your authority as Archbishop, whether or not that belief was well founded. Such a state of mind would have been extraordinarily arrogant, but the offending which the jury has found you have engaged in, was on any view, breathtakingly arrogant.

73 These are all reasonable inferences available once it is assumed, as I must, that this offending actually occurred. I do not aggravate your sentence on the basis that you held any of these states of mind as to why you were prepared to take on the risk of somebody walking in.[16] I simply highlight them as reasonable possibilities to further rebuff your counsels' submission that the only inference

[16] It follows from what I have said that I am not prepared to accept, to the criminal standard, the prosecution submission that by virtue of your powerful position your behaviour was less likely to be called into question by those associated with St Patrick's Cathedral.

available is that you could not have been acting in a rational, thinking way.

Contextual circumstances: breach of trust and abuse of power

74 I now turn to my assessment of the contextual circumstances, and in particular to the issues of breach of trust and abuse of power. These are all relevant to my assessment of the gravity of your offending, including your moral culpability.

75 As Archbishop, it is true, as the defence submitted, that you did not have a direct, formal or standing role of supervision in relation to the victims, like that of a boarding master and boarder, regular teacher and pupil, or babysitter and child. Other adults were charged with directly supervising the choristers when they attended at St Patrick's Cathedral, most notably the Choir Marshall, who was a teacher.

76 In my view, the concept of breach of trust in sentencing law cannot be confined to the narrow circumstances of formal supervision.

77 Adults working at institutions no longer stand as mere strangers in relation to children who attend those institutions. This is because the institutional setting affords these adults with an opportunity to *interact* with children within that setting, an opportunity they would not have as a mere stranger.

78 It is the opportunity of unsupervised *interaction*, implicitly granted by parents or guardians, which is the point of a child's vulnerability. The child no longer has the immediate protection of his or her parents or guardians. The power imbalance between adult and child is usually amplified within an institutional setting. Indeed, that disparity of power makes children vulnerable and may in fact deter them from bringing forward a complaint.[17]

79 The opportunity of interaction with children within an institutional setting must come with the responsibility not to act to the detriment of the child.

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17 *Bromley v The Queen* [2018] VSCA 329 [54].

80 If the opportunity to *interact* with the child within the institutional setting does not depend upon the adult being placed in an explicit or official supervisory role with respect to the child, then the relationship of trust surely cannot be conditioned upon this.

81 No direct authority on point has been brought to my attention. But I think the position which I have stated above is supported by the general principles as to when the law recognises a relationship of trust within the sentencing context.[18]

82 It has been said by our Court of Appeal that:

> The exposure over recent years of the extent of the incidence of abuse of children in our community by persons entrusted with their care has created much distrust at all levels and threatened the very capacity of adults to interact in a normal healthy fashion with them.[19]

83 The law needs to be clear and unequivocal here.

84 The level of trust, and the corresponding degree of any breach, will often vary; but this should not distract from an acceptance of a fundamental relationship of trust between adults and children within institutional settings.

85 Where the adult occupies a senior position within the institution, exercising power, authority and influence, any breach of this relationship of trust should be seen as grave.

86 I consider this fundamental trust is an expectation which every parent is entitled to have when their child attends any institution – sporting, social, educational, cultural, religious or otherwise.

87 This was as true at the time of your offending, as it is today.

88 In any event, Cardinal Pell, I find, beyond reasonable doubt, that on the specific facts of your case, there was a clear relationship of trust with the victims and you breached that trust, and abused your position to facilitate this offending.

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18 Arie Freiberg, *Fox & Freiberg's Sentencing* (Lawbook Co., 3rd ed, 2014) [4.155].

19 *DPP v Toomey* [2006] VSCA 90 [20] (Vincent JA).

89 The following matters, when taken together, drive me to these conclusions:

- First, as Archbishop, you occupied the most senior leadership, official and religious position at St Patrick's Cathedral on the days in question.

- Second, there was a large body of evidence that the environment at St Patrick's Cathedral was hierarchical, structured, and subject to strict discipline. Authority mattered within the Cathedral, and was very largely respected. You were a pillar of St Patrick's community by virtue of your role as Archbishop. Victim J gave evidence that the choir boys were expected to show reverence in your presence. The evidence shows that you were profoundly revered, Cardinal Pell, which imbued you with, and legitimised your, authority. As Archbishop, you did have a relationship of approval in relation to the choirboys. In part, the choirboys were performing to please you as Archbishop. There was evidence that you would from time to time visit the robing room to congratulate the boys on their singing. The choir boys were the least powerful and the most subordinate individuals at the Cathedral. The victims themselves were 13 years of age. The power imbalance between the victims and all the senior church leaders or officials, yourself included, was stark.

- Third, the victims' presence and role within the choir at the Cathedral were intimately connected to their schooling. They were required to attend choir as part of their scholarship conditions. Their role within the choir was effectively an extension of their schooling. You understood this link, as did every cathedral official. This educational connection, and the school like atmosphere with which the Cathedral was imbued, further reinforces in my mind the obvious relationship of trust which was cast upon you and other church officials in relation to the boys.

- Fourth, in both the first and second episodes, you came into contact with the victims because you were present at St Patrick's Cathedral

performing official duties, as were the victims. The victims would have seen you presiding over or delivering mass immediately prior to the offending. The victims, themselves, had just performed choir duties during those masses. In both episodes, you were still officially dressed, as were the victims. According to the evidence, your role in mass did not officially conclude until you had divested. In both episodes, the offending occurred in areas which were off limits to the public. In relation to the second episode, the offending actually occurred during the recession after the mass. The full weight of your authority and position of power must have been very obvious to your victims, and to you.

- Fifth, during the first episode, when you found the victims in the priests' sacristy you said words to the effect that 'you're in a lot of trouble'. Whilst being offended against, R pleaded that you let them go. Your admonishment of the victims was an explicit expression of your authority over them. The victims were rebuked by you because they had breached a rule in their capacity as choir boys. The very pre-text through which you committed this offending had to do with the strict discipline of the choir boys at the Cathedral.

- Sixth, the brazenness of your conduct is indicative of your sense of authority and power in relation to the victims. In the case of the first episode you did not seek to secure the door of the priests' sacristy before you commenced the offending. You offended against two victims, despite the fact that the door was unlocked and despite the risk that either victim could have run from the room or later complained. I think you did give thought or reflection to this offending and the only reasonable inference from the brazen circumstances of your offending is that you had a degree of confidence that the victims would not complain either immediately by running out or at some later stage. The second episode was also redolent of your absolute dominance over J, and control of the choir boys more

generally. In my view, you did not say anything to your victims by way of threats to secure their silence, because you clearly felt that you did not need to.

- Seventh, while I consider that your offending was intimately connected with your duties and role as Archbishop and the victims' duties and roles as choir boys, on any view, you seized upon the opportunity presented to you to interact with the victims within the Cathedral setting, to abuse them.

90 To conclude on this issue, the authority you carried within the Cathedral setting in relation to the choir boys, carried with it a significant responsibility of trust, not to do anything to the detriment of the boys.

91 The argument of your counsel that this offending was committed by you George Pell - the man - and not by you George Pell - the Archbishop - must be roundly rejected. I do so without any hesitation. Your obvious status as Archbishop cast a powerful shadow over this offending. Not only do I consider that you offended in breach of your relationship of trust, and in abuse of your power and authority, I would characterise these breaches and abuses as grave.

92 You were the Archbishop of St Patrick's Cathedral - no less - and you sexually abused two choir boys within that Cathedral. This connection and the depth of the breaches and abuses is self-evident.

93 I am conscious that the breaches of trust and abuse of power overlap here and that one informs the other. Trust may be abused by the misuse of a position of authority. The conferral of authority and power can give rise to relationship of trust. They interrelate in this way in your case. I am mindful that I must not punish you twice.

Absence of aggravating factors

94 Your counsel submitted that, in assessing the gravity of your offending, I should take into account the absence of certain aggravating features which are sometimes present in sexual offending against children.[20] The additional presence of these factors, such as pre-planning, would have made your offending objectively more serious. Their absence is, nevertheless, not determinative of my assessment of the gravity of your offending, which I must carry out upon the basis of what you actually did.

95 For example, despite there being no grooming, I have still found that you made a reasoned and deliberate decision to engage in the inexcusable conduct of the first episode. You had time to reflect on your behaviour as you offended. Yet you failed to desist.

Conclusion on gravity

96 To conclude on the question of gravity, the gravity of the offending cannot be assessed by reference to the particulars of the charged conduct alone.

97 In my opinion, all of the offending – across both episodes – is made significantly more serious because of the surrounding or contextual circumstances, namely, the breach of trust and abuse of power. This elevates the gravity of each of the offences. In my view, your conduct was permeated by staggering arrogance.

98 I consider, in particular, that the sexual penetration offence is very clearly a serious example of that offence, and that the indecent acts encompassed by charges 1 and 3 are also serious examples of that offence.

99 Viewed overall, I consider your moral culpability across both episodes to be

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20 Your counsel made particular reference to the absence of additional violence and threats, but also referred to a number of other factors including the absence of grooming or familiarity or prior contact, physical injuries, ejaculation, pre-planning, use of weapon, more prolonged duration of offending, persistent offending, and other uncharged acts.

high.

100 I reject the submission of your counsel that the offending in the first episode or the sexual penetration offence was at or towards the lower end of the spectrum of seriousness. In my view, it does not even approach low end offending.

No utilitarian discount or discount for remorse

101 Moving on to some other matters.

102 As I have already stated, you were convicted of these offences following a trial where you pleaded not guilty.

103 You are not to be punished for electing to plead not guilty, as is your right, however a number of matters flow from this.

104 You are not entitled to any discount for pleading guilty.

105 You maintain your innocence in relation to this offending, which is your right, but as consequence there is no evidence of your remorse or contrition for me to act upon to reduce your sentence.

Principal matters personal to you

Background, good character and isolated offending

106 I now turn to your background and to the evidence of your good character.

107 Cardinal Pell, you are 77 years of age. You were born in Ballarat, where you grew up, were educated and then ordained. You then obtained a Doctor of Philosophy from Oxford University, before returning to Australia to work.

108 By 1996, you were appointed Archbishop of Melbourne, before being appointed Archbishop of Sydney. In 2014, you were appointed as first prefect for the Secretary of the Economy at the Vatican. At this time you moved to Rome, where you remained until this matter arose.

109 Self-evidently, you have experienced an exceptional career within the Catholic Church. You are clearly an intelligent and hard-working man.

110 That brings me to consider your life's contribution and your good character.

111 Evidence of an offender's otherwise good character is a factor that the sentencing judge is bound to consider.[21]

112 You have no prior convictions.[22]

113 Since this offending, you have not committed other offences.

114 I have received a number of character references on the plea.[23] These references come from people who have known you for many years in various professional and personal capacities. They speak of man who dedicated his life to service, in particular to vulnerable members of the community. They describe a compassionate and generous person, especially to those experiencing difficulties in their lives; someone who has a deep commitment to social justice issues and the advancement of education for young people. I note that these references were not challenged or contradicted by the prosecution.

115 In addition to not having any prior convictions, I am satisfied that the evidence before me is that you are someone who has been, in the last 22 years since the offending, of otherwise good character.

116 I sentence you upon the basis that these episodes (viewed together) constitute isolated offending.

117 I make substantial allowance for your good character and otherwise blameless life.

118 However, the question of your good character is also relevant to other

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21 *Ryan v The Queen* (2001) 206 CLR 267, 278 [33] (McHugh J), 297-298 [102] (Kirby J), 309-310 [144] (Hayne J), 317-381 [174] (Callinan J).

22 The prosecution explicitly disavowed reliance upon s 5AA(1) of the *Sentencing Act 1991*.

23 These references formed part of Exhibit A – Defence plea book.

sentencing purposes. I will return to these issues in due course.

Age and health

119 I turn now to your age and health.

120 Your age is a significant factor in my sentencing exercise, as I have indicated before you are now in your late 70's . It is relevant in a number of ways.[24]

121 Of some real importance in my sentencing exercise, is the fact that each year you spend in custody will represent a substantial portion of your remaining life expectancy.

122 While it is a matter of speculation as to how long you will live, the fact is that you are of advanced years and are entering the last phase of your life. Like anyone in their late 70's your health will decline in time. I am conscious that the term of imprisonment which I am about to impose upon you carries with it a real, as distinct from theoretical, possibility that you may not live to be released from prison. Facing jail at your age, in these circumstances, must be an awful state of affairs for you.

123 You are also clearly someone with some significant enough health issues.

124 Your health is also a relevant factor, and it is related to your age. You have a significant history of cardiac problems, and currently suffer from hypertension and congestive heart failure. You have a dual chamber pacemaker. While stable out of custody, it is the opinion of one of your treating doctors, that stress is an aggravator of tendency to heart failure, if your blood pressure is not controlled. Your doctor has also observed that your blood pressure has previously been more difficult to control with stress.

125 You also have osteoarthritis in both knees and recently I granted you bail to

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24 *R v RLP* (2009) 213 A Crim R 461, 476 [39].

undergo bilateral knee surgery.

126 Your age and health also interacts with a number of other factors, which I must consider, including the quality of your time in custody and your risk of reoffending. As to the former, one might anticipate the quality of your health will decline over time. The medical evidence does indicate that your heart and blood pressure conditions will be aggravated by stress. I have no doubt that you will experience some stress while in custody. I will make allowance for these matters.

Delay

127 I now turn to the question of delay.

128 The delay in your case since this offending is in the order of 22 or so years.

129 The lapse of time since of the commission of offences of this kind is, however, not unusual. It is often the case with offending such as yours that the victims do not come forward for many years after the offending. [25]

130 That said, the delay in this case does have some consequences. As I have already observed you fall now to be sentenced to a not insubstantial term of imprisonment as a 77 year old man and I have already touched on what follows from this.

131 But the delay also means that you have been able to demonstrate the capacity to lead an otherwise blameless life in the 22 years since this offending, which, as I said I will, I take into account has I said I will.

Risk of re-offending and related matters

132 I now turn to consider your risk of re-offending, your rehabilitation, and to the purposes of specific deterrence and community protection from you.

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25 *DPP v Toomey* [2006] VSCA 90.

133 Cardinal Pell, I am satisfied that you effectively do not present as a risk of re-offending for a number of reasons: your advanced years, the fact that you will be older still once released from prison, your otherwise good character, the fact that you have not offended in the 22 or so intervening years. Other factors, such as your notoriety and sexual offender registration, which I come to, are also likely to limit any interaction with children in the future, and effectively eliminate any opportunities to offend.

134 The prosecution has submitted that, as you have shown no remorse or insight into your offending, there remains no explanation for your offending and the underlying causes cannot be addressed. The prosecution contends, therefore, that there remains a risk of re-offending, albeit a limited one.

135 I do not accept that submission.

136 The lengthy period without offending since these matters supports my conclusion that you have effectively reformed.[26]

137 And as I have said, there are other matters, such as your advanced years, which persuade me that you are not a risk to the community.

138 It also follows that my sentence today is not aimed at protecting the community from you as an individual.

139 In my view, specific deterrence also has no role to play.

Extra-curial punishment and public opprobrium

140 I turn now to the question of extra-curial punishment.

141 It was submitted on your behalf that, you have experienced an unprecedented level of public scorn and criticism.

142 This is partly as a result of the investigation and prosecution of these offences

26 *Bromley v The Queen* [2018] VSCA 329 [52] [69].

but such public criticism and scorn is also attributable to other alleged offences for which you were either not charged, or where the charges were subsequently dismissed.

143 It was also submitted that you have had to endure the stress of having to plan and work with your defence team on rebutting many charges that did not ultimately proceed to trial, and that you have lived under that additional stress for a number of years.

144 It was also submitted that you have had to endure protests and verbal abuse whenever you were seen arriving or departing from court, at least during your preliminary court appearances; and that you have been publicly pilloried, both in the media, and through the publication of a particular book.

145 Finally, it was submitted that because of this kind of publicity and stigma, the resumption of your earlier life (including, but not limited to your career) is now impossible.

146 Your counsel submitted that this material - at least looked at globally - represents extra-curial punishment - that is, a form of punishment that you have received over and above the punishment which I will impose upon you today in my sentence. Further, it was submitted that I should take this into consideration when sentencing.

147 The prosecution conceded that this is an unusual case – indeed a unique case - and have conceded that the matters relied upon by the defence warrant a level of mitigation.

148 While the manner and extent to which extra-curial punishment and public opprobrium should be taken into account by way of mitigation is not entirely settled[27], I accept the position of the parties, and your counsel's submissions in

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

particular, that I should make some allowance for these matters in my sentence, and I have done so.

Conditions in custody because of notoriety

149 I turn now to consider the question of your likely experience in custody.

150 Your counsel submitted that life in prison for you will be more onerous than for other prisoners in the general population and indeed other sexual offenders, because of your notoriety and the animosity to which you are likely to be exposed.

151 The prosecution accepts that initially your experience of custody will be more burdensome than that of other prisoners. The prosecution went on to contend, however, that your future custody classification and conditions are unknown and are therefore speculative.

152 The prosecution relies upon the affidavit deposed to by the Assistant Commissioner of the Sentence Management Unit of Corrections Victoria on 8 March 2019. The Assistant Commissioner in that affidavit outlines the current conditions experienced by you in custody, and also the possible future conditions for someone who is classified as a high profile prisoner, who has been given protection status, where there are significant security concerns. The affidavit also highlights that the conditions of persons with protection status at various different prisons, are no longer significantly more restricted than those within the mainstream prison populations.

153 Having considered all these matters, I do not accept the Crown submission that your experience in prison after sentence is speculative.

154 Even making full allowance for the fact that the experience of protective prisoners today is less restrictive than in the past, I need to make some predictive assessment concerning your likely personal experience. Like so

many things to do with your case, Cardinal Pell, I think your situation is somewhat unique. As the affidavit highlights, there are concerns about your notoriety and the extremely high profile nature of your case. This gives rise to security and safety concerns. The Assistant Commissioner can say no more than that the safety risk towards you – currently assessed as 'at immediate risk of serious threat' – may be reduced in protection, so that in time you may be able to mix with a limited number of heavily vetted prisoners. I emphasised the use of the term *may*. I am satisfied on the balance of probabilities, however, that even with the best will in the world your time in prison will be materially and negatively impacted upon because of these issues. Your position is not improved because of your advanced years and the vulnerability which goes with that.

155 I accept your counsel's argument that I should give weight to these considerations.

156 I will make allowance for these matters in my sentence.

Filming and broadcast of sentencing remarks

157 In a further supplementary submission, your counsel objected to the broadcast of these sentencing remarks. The complaint is not that my remarks are broadcast live, but that they are to be broadcast at all and may therefore subsequently remain on the internet. The defence submitted that, if I chose to proceed with the broadcast I should take this into account as further extra-curial punishment. I should also consider that this will further adversely affect your experience in custody, according to the argument. The essence of the complaint is that the broadcast of a robed judge delivering sentence will have a potency significantly greater than the publication of the written word. This constitutes additional punishment and opprobrium, according to the defence submission.

158 I do not accept these submissions for the following reasons.

159 The plea hearing was conducted in open court and reported on in full. Since that time, there has already been saturation, indeed febrile publicity concerning you and these convictions, on an unprecedented scale.

160 These sentencing remarks would, in any event, have always been delivered orally in open court and would have been reported upon by the media without restriction. They would have been, and will be, published in written form without restriction.

161 I consider that, even if my sentencing remarks were just delivered orally in open court and published in writing, the public would still be inundated with reports of my sentencing remarks and findings. Delivered in that way, the sentencing remarks would still carry the full weight of my judicial authority, as they should. Further, the media coverage of them would have been, in any event, at saturation levels.

162 The broadcast of these sentencing remarks therefore does not communicate anything of substance more than they would had I communicated them or delivered them orally in open court and published them in writing. As the publicity will already be at saturation levels, I fail to see how the fact of the broadcast of my remarks will materially change the levels of coverage.

163 On that basis, I do not consider the broadcast *per se* will have any material impact on the levels of publicity and your experience in custody, over and above the publication of my written sentencing remarks.

164 Even if it is the case that a visual broadcast of my sentence is imbued with further judicial authority, this cannot be a legitimate basis for objection. It entails no punishment. The argument advanced by your counsel, with respect, is irrational.

165 In my view, the broadcast of my sentencing remarks is simply a clear demonstration of transparent and open justice and an accessible communication of the work of the court to the community of a case of interest.

166 The broadcast does not constitute additional extra curial punishment.

167 Irrespective of the means of the delivery of my sentencing remarks, I nevertheless accept that your ongoing notoriety will continue to be exacerbated by the deluge of publicity which will follow my sentence. I accept that this will impact upon your experience in custody, as I have discussed, and I will take that into account.

General deterrence, punishment, denunciation

168 I now turn to consider the purposes of general deterrence, just punishment, and denunciation.

169 It was put by your counsel that the court should consider the unplanned, spontaneous nature of your offending, and the fact that it was entirely out of character, when determining what weight should be given to general deterrence. It was argued that general deterrence is of limited value to would-be child sexual offenders in the community who offend without premeditation, that is, spontaneously, or on the spur of the moment. That is especially so where the offender acted irrationally without reasoned reflection, so the argument goes.

170 I reject the proposition that general deterrence should be moderated in your case.

171 There may be scenarios known to the law where general deterrence should be moderated. Two such scenarios have arisen in the course of argument, but neither applies to you. I will now deal with each of them.

172 First, with some *non-intentional* offences, such as negligently causing serious

injury, general deterrence will not loom large. That is because it would be 'unrealistic to think that the sentence to be imposed….would have the slightest effect on the likelihood of similar offences being committed in the future.'[28] By contrast, the offences you, Cardinal Pell, have committed were each *intentional* offences. So this scenario does not apply to you.

173 As a matter of logic, it does not follow that, because sexual offending is out of character, spontaneous or unplanned, an offender is less deterrable. Potential offenders in that category have a capacity to weigh up, in a rational manner, the advantages and disadvantages of engaging in such conduct, even if this consideration is momentary.[29]

174 The message which the Courts send to would-be child sexual offenders must be unequivocal. They must be dissuaded, whether the offending is planned or whether it is the result of a spur of the moment decision.

175 The second scenario where general deterrence will be of less relevance in sentencing, is where an offender has some form of mental impairment.[30] That principle is founded on the basis that similar would-be offenders in the community, whose mental impairment may limit their capacity to reason or to think rationally, are less capable of being deterred. That scenario also does not apply to your case, Cardinal Pell.

176 You, Cardinal Pell did have the capacity to reason and to reflect upon your actions. Indeed, as I have already stated, I positively find that you did reflect upon your actions.

177 The principles of *Verdins* have not been engaged by your counsel's submissions.

178 In supplementary written submissions, your counsel highlighted that sentencing

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28 *Mok v The Queen* [2011] VSCA 247 [7] (Nettle JA).
29 Arie Freiberg, *Fox & Freiberg's Sentencing* (Lawbook Co., 3rd ed, 2014) [3.100].
30 *Verdins v The Queen* (2007) 16 VR 269 ('*Verdins*').

courts have always drawn some distinction between a planned as compared with a spontaneous offence. I accept this proposition is correct. I stress that this *is* relevant to my assessment of the objective seriousness of the offending, and in determining your moral culpability. I will weigh this into my consideration. I do however, reject the notion that it diminishes the need for general deterrence.

179 Now, having rejected the submission that general deterrence should be moderated, I now want to say something more generally about the role which general deterrence, denunciation and just punishment play in this sentence.

180 The many factors I have identified in your favour, in particular your old age, your otherwise blameless life and the 22 year delay, must be balanced against the need for the sentence to properly reflect the purposes of general deterrence, denunciation and just punishment. Those purposes loom large when I come to consider your sentence.

181 The purposes of general deterrence, denunciation and just punishment are very important in cases involving sexual offences against children.[31] As the High Court has said 'sexual abuse of children by those in authority over them has been revealed as a most serious blight on society.'[32]

182 The sentence I impose must aim to discourage potential offenders by demonstrating to those offenders the grave consequences of violating such laws. [33]

183 Further, it is important that the factors particular to you do not devalue my assessment of the gravity of your offending and do not result in an inappropriately low sentence.[34]

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31 *DPP v Toomey* [2006] VSCA 90 [14].
32 *DPP v Dalgleish (a pseudonym)* (2017) 91 ALJR 1063, 1074 [57].
33 *DPP v Toomey* [2006] VSCA 90 [14]; *Bromley v The Queen* [2018] VSCA 329 [70]-[71].
34 *DPP v Toomey* [2006] VSCA 90 [14]; *Bromley v The Queen* [2018] VSCA 329 [70].

Maximum penalty and current sentencing practices

184 I turn now to consider the maximum penalties and the question of sentencing practices.

185 In relation to the charges of indecent act with or in the presence of a child under 16 years, the maximum penalty is 10 years' imprisonment.

186 In relation to the charge of sexual penetration with a child under 16 years, at the time you committed that offence, the maximum penalty was also 10 years' imprisonment. While Parliament has since increased the maximum penalty for this offence to 15 years' imprisonment, it is the lower maximum penalty of 10 years which applies to you.

187 The maximum penalty is not the determinative factor of my sentence; nor is the maximum penalty the starting point for my sentencing exercise.[35] The maximum penalty is one factor of a range of factors that Parliament has prescribed that I must have regard to.[36]

188 In sentencing you, I am also required to have regard to current sentencing practices. The relevant practices are those currently applied, rather than those applied by the courts at the time of your offending.[37]

189 The principle of equal justice requires, however, that I also take into account sentencing practices at the time of your offending, if they are ascertainable, on the basis that those practices are relevant to arriving at a sentence that is just in all of the circumstances.[38]

190 Your counsel provided me with supplementary written submissions advising me that there were no materials, cases or otherwise, to indicate with any precision what these sentencing practices were in the late 1990's. Your counsel did

35 *Makarian v The Queen* (2005) 228 CLR 357, 372 [30].
36 Section 5(2)(a) of the *Sentencing Act 1991.*
37 *Stalio v The Queen* (2012) 46 VR 426.
38 *Stalio v The Queen* (2012) 46 VR 426; *Bromley v The Queen* [2018] VSCA 329 [49]-[50].

provide some material from the intervening years to support the proposition that the sentencing practices were lower then, than they are today.

191 The prosecution also provided supplementary materials, including some sample sentences and some statistics.

192 I think it is fair to say that both parties accepted that there is very limited material as to past sentencing practices. It seems that both parties also accept that there are no truly contemporary and comparable cases for this offending. I can only gain the broadest of assistance from what has been provided by the parties.

193 I am prepared to act upon the proposition, especially emphasised R by your counsel, that sentencing practices for these offences were lower at the time of your offending.

194 That all said, I also take into account that there is now a much greater understanding of the impact of sexual offending on child victims, and that this must be reflected in my sentence. As recently stated by the Victorian Court of Appeal:

> In approaching the sentencing task, the court may bring to bear its present understanding of the devastating impact that offending of this kind has even though such an understanding may not have been a feature of sentences imposed at the time the relevant offending occurred.[39]

195 In any event, current sentencing practices are but one factor to be considered and are not the controlling factor of the sentence that I must impose upon you.[40] Still less, are past sentencing patterns the controlling factor of my sentence.

Serious Sexual Offender

196 I now turn to another matter.

197 Cardinal Pell, as I will be sentencing you to a term of imprisonment in relation to charges 1 and 2, you fall to be sentenced as a Serious Sexual Offender in

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39 *Bromley v The Queen* [2018] VSCA 329 [51].
40 *DPP v Dalgleish* (*a pseudonym*) (2017) 91 ALJR 1063.

relation to charges 3, 4 and 5.[41] I will note this in the records of the Court.[42]

198 When sentencing you as a serious sexual offender, I must have regard to the protection of the community from you as a principal purpose for which your sentence is imposed, when I am determining the length of your sentence.[43]

199 I have, however, found that you do not currently pose a risk to the community. Further, the prosecution has not sought a disproportionate sentence and I will not be imposing one.

Sex Offender Registration

200 As a consequence of my sentence, you must also be registered as a sex offender.[44] By virtue of you committing these offences, your reporting period as a registered sex offender is for life.[45]

Forensic Sample Order

201 The prosecution made an application to obtain a forensic sample from you.[46] You counsel indicated that you consented to this forensic sample order being made. I therefore grant the prosecution application.

202 I direct that you undergo a forensic procedure for the taking of an intimate sample. I am further required to tell you that police officers may use reasonable force to enable the procedure to be conducted to obtain a sample from you.[47]

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41 Section 6B of the *Sentencing Act 1991*.
42 Pursuant to s 6F of the *Sentencing Act 1991.*
43 Section 6D of the *Sentencing Act 1991*.
44 The offence of Sexual Penetration of a Child under 16 years requires mandatory registration, pursuant to s 7(1)(a) *Sex Offenders Registration Act 2004.*
45 By virtue of committing charges 1 and 2 (being a class 1 and 2 offence) (pursuant to s 34(1)(c)(ii) of the *Sex Offenders Registration Act 2004*, or in committing any three or more of charges 2, 3, 4 or 5 (being three or more class 2 offences) (pursuant to s 34(1)(c)(iii) of the *Sex Offenders Registration Act 2004*).
46 Pursuant to s 464ZF of the *Crimes Act 1958*.
47 Section 464ZF(9) of the *Crimes Act 1958*.

Cumulation and totality

203 I now turn to the issues of cumulation and to the principle of totality.

204 The law provides that sentences are presumed to be served concurrently - that is, they are to be served at the same time, in an overlapping way. They are served concurrently unless I otherwise make orders that parts of a sentence are to be be served cumulatively. Cumulation is where I direct that part of one sentence be added on top of another sentence.

205 The totality principle requires me to ensure that your overall sentence remains 'just and appropriate' for the whole of your offending. Any orders for cumulation must be moderated to the extent necessary to give effect to the principle of totality.

206 The presumption of concurrency is reversed in relation to the sentences I impose on charges 3, 4 and 5, where you are sentenced as a serious sexual offender.[48] However, I stress that the principle of totality continues to apply.

207 I will make the sentence on charge 2 – being the sexual penetration offence against the victim J – the base sentence. This is the most serious offence and will attract the longest term of imprisonment.

208 Charges 1 to 4 all formed part of a single episode. In order to reflect this, these sentences will be served substantially concurrently. That is, some cumulation is justified.

209 Some meaningful cumulation of the sentence I impose with respect to the indecent act against R, being charge 1, is required to appropriately reflect the fact that there were two victims in this overall offending. Were I not to do this R would become a meaningless statistic. The overall sentence must appropriately

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48 See s 6E of the *Sentencing Act 1991.* Despite this, for practical reasons and for reasons of comprehension I will express all my orders for cumulation in the ordinary way.

reflect that he too was offended against and harmed.

210 I am going to order some relatively modest cumulation of the sentence I impose on charge 3, involving the indecent act of your touching of J's genitals. While this is part of the same episode, in which J was orally penetrated, I think this indecent act is a sufficiently serious and distinct activity to warrant some measure of cumulation.

211 I think some cumulation of the sentence I impose with respect of charge 4, where you masturbated yourself while touching J's genitals (charge 3) is justified. I will limit it to a relatively small amount in recognition of the fact it temporally overlaps with charge 3.

212 I will then, finally, make an order of some cumulation with relation to charge 5 being the second episode. This is needed to properly reflect the fact that this was an additional, distinct occasion of offending, separated by time.

Non-parole period

213 I will moderate each component of the sentences which I will impose upon you in the light of all of the above matters favourable to you including your age, health, good character and experience in custody.

214 In particular, I will impose a shorter non-parole period than I otherwise would have been inclined to impose, in recognition in particular of your age so as to increase the prospect of you living out the last part of your life in the community.

The balancing exercise

215 Finally, sentencing is often simplistically portrayed by some in the public sphere as being an easy and uncomplicated task. From where I sit today, the exercise is far from an easy one. And it is certainly not simple.

216 I am required to weigh *all* of the relevant matters in *this* case and then reach a

conclusion as to a just and appropriate penalty that reflects all of the circumstances of your case, Cardinal Pell. It is a not a mathematical exercise. This balancing exercise is, inevitably, unique to the specific facts and circumstances of your case. This is what individualised justice demands.[49]

217 As I have endeavoured to show above, some of these factors pull in favour of more lenient sentence, while others pull in favour of a harsher sentence. [50]

218 In your case this complexity is exemplified by the fact that on the one hand I must punish and denounce you for this appalling offending; yet, on the other hand, I am conscious of the heavy reality that I am about to sentence you, a man of advanced years, who has led an otherwise blameless life, to a significant period of imprisonment, which will account for a good portion of the balance of your life.

Sentence

219 Cardinal Pell, will you please stand.

220 All things considered, I impose the following sentences upon you.

Individual sentences

221 On charge 1, being the indecent act against R, I convict and sentence you to 2 years and 6 months' imprisonment.

222 On charge 2, being the sexual penetration against J, I convict and sentence you to 4 years' imprisonment.

223 On charge 3, being the indecent act against J, where you touched his genitals, I convict and sentence you to 2 years and 6 months' imprisonment.

224 On charge 4, being the indecent act against J, where you touched your own

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49 *DPP v Dalgleish* (*a pseudonym*) (2017) 91 ALJR 1063, 1072-1073 [49].
50 *Wong v The Queen* (2001) 207 CLR 584, 612 [75].

genitals in the presence of J, I convict and sentence you to 15 months' imprisonment**.**

225 On charge 5, being the indecent against J during the second episode, I convict and sentence you to 18 months' imprisonment.

Total effective sentence

226 I direct that the sentence of 4 years imposed on charge 2 is the base sentence.

227 I further direct that 12 months of the sentence imposed on charge 1, 4 months of the sentence imposed on charge 3, 2 months of the sentence imposed on charge 4 and 6 months of the sentence imposed on charge 5 are to be served cumulatively upon charge 2 and upon each other.

228 This means that I sentence you to a total effective sentence of 6 years' imprisonment.

Non-parole period

229 I set a non-parole period of 3 years and 8 months. That means you will become eligible to apply for parole after serving this non-parole period. Your release on parole will be a matter for the Parole Board.

Pre-sentence detention

230 I declare that the 14 days' imprisonment you have already served in pre-sentence detention, is reckoned as time already served against the sentence I have just imposed.
