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| IN THE COUNTY COURT OF VICTORIA  AT Melbourne  CRIMINAL DIVISION | Revised  Not Restricted  Suitable for Publication |

Case No. CR-18-00629

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
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| v |  |
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| PAUL DAVID RYAN |  |

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| JUDGE: | HER HONOUR JUDGE PULLEN | |
| WHERE HELD: | Melbourne | |
| DATE OF HEARING: | 18 July 2019 | |
| DATE OF SENTENCE: | 29 July 2019 | |
| CASE MAY BE CITED AS: | DPP v Ryan | |
| MEDIUM NEUTRAL CITATION: | [2019] VCC 1136 |  |

**REASONS FOR** **SENTENCE**

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Subject: CRIMINAL LAW

Catchwords:

Legislation Cited: *Sex Offenders Registration Act* *2004*; *Sentencing Act* *1991*; *Crimes Act* *1958*

Cases Cited: *The Queen v RHMcL* (2003) 203 CLR 452; *DPP v Hopson* [2016] VSCA 303; *Matheas v The Queen* [2017] VSCA 330; *Gordon v The Queen*[2013] VSCA 343; *DPP v Bales* [2015] VSCA 261; *Zhao v The Queen* [2018] VSCA 267; *DPP v Toomey* [2006] VSCA 60; *DPP v DJK* [2003] VSCA 109; *DPP v Pell* [2019] VCC 260; *TRG v The Queen* [2011] VSCA 337; *R v RLP* [2009] VSCA 271; *R v Whyte* (2004) 7 VR 397; *R v Yates* [1985] VR 41; *R v Crowley and Garner* (1991) 55 A Crim R 201; *R v Iles* [2009] VSCA 197; *R v Cumberbatch* (2004) 8 VR 9; *Tones v The Queen* [2017] VSCA 118.

Sentence: Total effective sentence of two years two months imprisonment, 17 months non-parole period.

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| APPEARANCES: | Counsel | Solicitors |
| For the DPP | Ms R. Champion | Solicitor for the Office of Public Prosecutions |
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| For the Offender | Mr G. Chisholm | Victorian Legal Aid |

HER HONOUR:

# Paul Ryan, you have pleaded guilty to one charge of indecent assault, maximum penalty five years’ imprisonment, one charge of sexual penetration of a person between 16 and 18, maximum penalty two years’ imprisonment and one charge of indecent act with a child under 16, maximum penalty ten years’ imprisonment.

# These crimes arise out of events which took place between yourself and the complainants, George Nettleton[[1]](#footnote-1), Xavier Morton[[2]](#footnote-2) and Dylan Thompson[[3]](#footnote-3).

# It is not necessary for me to recount in great detail the facts of this matter as it was opened in some detail by the learned prosecutor, consistent with Exhibit A. I sentence you on the basis of the facts as summarised by the prosecutor and discussed during the course of the plea hearing. It is sufficient for present purposes to say the facts in this case are most serious and disturbing. Your offending was obviously quite unacceptable to simply satisfy your own sexual desires.

# Aggravating aspects of your offending conceded by Mr Chisholm, your counsel, was that you were in a position of trust with respect to each of your victims and their parents. There was also a power imbalance implied in the institutional setting in which it occurred, that setting facilitating your sexual offending.

# Also as to the gravity of your offending, Mr Chisholm conceded each of the offences occurred against a backdrop of grooming. That there was a pre-existing relationship between yourself and each of the victims which was relevant to the seriousness of your offending.

# Mr Chisholm also conceded in Charge 2 there was a brazenness to your offending which occurred in a public area. Further Mr Chisholm conceded the victim being told he had “enjoyed it” because the victim had an erection would have been debasing for a young man of 17. I agree.

# Mr Chisholm also conceded Charge 2 involved repeated touching of the victim’s naked body and the victim ejaculating.

# Addressing Charges 1 and 3, Mr Chisholm conceded each victim was alone in a situation where they should have felt safe. That each act of offending was precipitated by you having them remove their clothes, Mr Nettleton naked.

# Mr Chisholm also conceded an aggravating feature of your offending involved, as I said, a breach of trust, not only of the victims, but their parents, who entrusted their children to you.

# Mr Chisholm also conceded an aggravating feature was that it occurred in a religious setting (being the Sacristy/church or the religious retreat), and an inherent abuse of power by you. That power imbalance made these victims vulnerable. I agree.

# The victims of your offending have suffered enormously and long-lasting adverse effects as a result, and I shall return to this later in these sentencing remarks.

# I turn to your offending. At the time of it, you were between 32 and 44 years of age and are 70 at sentence. You are no longer a priest, and until your recent remand resided in Western Australia.

# On 28 May 1976, you were ordained as a Catholic priest and from 1980 to 1985 worked as the assistant Priest at St Joseph’s Parish Church in Warrnambool. That included working as a chaplain at St Joseph’s Christian Brothers College, Warrnambool. You left the school and area in late 1985.

# From the late 1980s, you worked at the Parish of Penshurst, Hamilton. In 1992, you worked at the Immaculate Conception Catholic Church, Ararat.

# George Nettleton was born in 1966 and is now 53 years of age. In 1978, he commenced at St Joseph’s Christian Brothers College in Warrnambool. At the time of your offending against him in 1981 he was aged 15.

# Xavier Morton was born in 1967 and is now 51. In 1980, he commenced at St Joseph’s Christian Brothers College, Warrnambool. At the time of this offence involving him in 1985, he was aged 17.

# Dylan Thompson was born in 1977 and is now 42. At the time of this offending in 1992, he was 14, a student at Marian College, Ararat, and also an altar boy at the Immaculate Conception Catholic Church.

# I turn to Charge 1.

# In 1981, Mr Nettleton was a student at the Christian Brothers College in Warrnambool, turning 15 that year. He met you, when you assisted in religious education classes in the latter part of that year. Mr Nettleton also saw you outside school on some Sundays when he attended Mass at St Joseph’s Church with his family.

# The sex-education classes had been going for a while when Mr Nettleton was asked by you to meet up outside class during school hours. You either asked him directly, or had a message passed to him through another teacher. The meetings occurred about six times every one to two weeks. You had Mr Nettleton participate in confession, or you would continue sex-education guidance in those meetings.

# On the occasions when it was for confession, Mr Nettleton would go into the confessional boxes in the school chapel. You would be in the one next to him. Mr Nettleton described the conversation as “normal” at the start, then progressing to you asking sexual questions about masturbation. This is relied upon by the prosecution for context. That conversation made Mr Nettleton feel uncomfortable.

# On other occasions, Mr Nettleton would also be asked to meet up with you by staying back in class, or meeting in a room off the school chapel. You would talk to Mr Nettleton about general things, the conversation would turn to sexual matters like masturbation and boys and girls. Also relied upon as context.

# At those encounters, you had a briefcase with you that contained a folder of four to five pornographic magazines, homosexual in nature, with naked adult men kissing and in positions where they appeared to be having sex. You showed Mr Nettleton the magazines and asked him how the images made him feel. Also for context.

# Later, in 1981, you approached Mr Nettleton’s mother and told her that you thought it would be a good idea if her son became an altar boy at the church. Mr Nettleton was not interested, however agreed for his mother. That involved three to four weeks of training once or twice a week conducted by you, at St Joseph’s Church. Mr Nettleton was one of six boys participating in the altar-boy training.

# The boys changed into altar boy’s robes in a room off the church then presented themselves one at a time to you in another room, preparing “gifts” for Mass. You would check their appearance.

# In the third or fourth week of that altar-boy training, you asked Mr Nettleton to stay back after it finished. The other boys left and Mr Nettleton was in the room used by you to prepare for Mass. You told Mr Nettleton he was nearing the end of training, and would not be wearing his school uniform under the robe during Mass. You said you wanted to know how it fitted.

# You asked Mr Nettleton to take his school uniform off. Mr Nettleton removed the altar-boy robe and his school uniform, which left him wearing his underwear. You asked Mr Nettleton to also remove his underwear. Mr Nettleton did not question you and removed his underwear, quickly putting his altar-boy robe back on. You watched him do this. The prosecution relied upon this as ‘uncharged act’/context evidence.

# You got off your chair, approached Mr Nettleton and stood in front of him. You arranged the robe Mr Nettleton was wearing by touching his shoulders, then moved around to behind Mr Nettleton. As you did that Mr Nettleton could feel your erect penis brush past his hands. Mr Nettleton was petrified.

# When on Mr Nettleton’s right side you continued touching Mr Nettleton’s robe as if you were altering it, then reached down with your right hand and touched Mr Nettleton’s genital area, particularly his penis, rubbing it over the robe (Charge 1). You didn’t say anything. Mr Nettleton said his mother would be waiting as a means of moving away from you.

# Mr Nettleton quickly grabbed his school uniform, went to the altar boy change room and closed the door to get changed. He left the altar-boy robe in the change room, and went out to his mother. Mr Nettleton told her he would not be going back to continue training and he never assisted in Mass.

# Mr Nettleton was not again asked by you to meet outside class and the incident was never discussed. Mr Nettleton did not speak to anyone about what had happened until March or April 2016, when he told his mother.

# Charge 2 relates to Xavier Morton. Mr Morton met you in 1984, when Mr Morton was in Year 11 and you were the school Chaplain at Christian Brothers College. Mr Morton also saw you regularly at St Joseph’s Church when you were the assistant Priest when he attended with his family for Sunday service.

# As Mr Morton got older, he started going out on Saturday night, so would attend church on the Sunday and be dropped off there by his parents.

# On these occasions, you were either taking the service or sitting at the back of the church with Mr Morton and other boys from the school. You would quiz the boys about what they got up to over the weekend, how they went with girls and if they had “picked up”. You also told the boys, if they needed condoms, to let you know. This was relied upon for context. Mr Morton saw you at school most days and you also took some of Mr Morton’s classes.

# Early in 1985, between 1 February and 31 March, a retreat was organised by the school for students at Amberley, run by the Christian Brothers. Mr Morton was in a group of students who attended the retreat from Monday to Wednesday. You also attended the retreat and took sessions with the students.

# On the first day of the retreat, Mr Morton was in a group of students in a session discussing “families” conducted by you. Due to issues in Mr Morton’s own family at the time, he asked to be excused from the session and went to the corner of the room, where he sat on cushions or a beanbag.

# Mr Morton fell asleep in that location and later woke when it was still daylight, to find you kneeling next to him with the upper part of your body over him. You had your head over Mr Morton’s groin about a foot away from him.

# Mr Morton’s pants were undone, and slightly pulled down, his underwear also pulled down. Mr Morton’s penis was erect.

# Mr Morton freaked as he realised what was happening. He tried to get up and away. You were above him and pushed Mr Morton on the chest so he fell back onto the cushions or beanbag keeping your hand there so Mr Morton could not get up.

# You used your left hand to masturbate Mr Morton (relied upon as an ‘uncharged act’/context). You licked your hand and masturbated Mr Morton a few times, then moved your head down using your mouth to suck Mr Morton’s penis (Charge 2). You moved your head up and down as you sucked Mr Morton’s penis stroking Mr Morton’s penis as you did.

# You sucked Mr Morton’s penis about 8-10 times, masturbated him with your hand and then back again to sucking. When Mr Morton was close to ejaculating, you pulled his penis harder and faster until he did, turning on your side to stop any ejaculate going onto you.

# You told Mr Morton to clean up and said to Mr Morton “you enjoyed it” and “you don’t get hard if you don’t enjoy it”. Mr Morton quickly got up and left.

# Mr Morton first told about what you had done when he was an adult. Mr Morton spoke to Bishop Mulkearns, now deceased who told Mr Morton “don’t go to the police I’ll deal with it”. Mr Morton did not hear anything more about it.

# [REDACTED]

# I turn to Charge 3. From the age of 10, Dylan Thompson was an altar boy at Immaculate Conception Catholic Church, Ararat, attending weekly with his mother. In 1991, you were working as the assistant priest at that Church.

# Dylan Thompson was then 14 and at Marian College. You and Mr Thompson attended regular get-togethers in a nearby presbytery after Mass on Saturday nights, with about seven other altar boys.

# By the beginning of 1992, Mr Thompson regularly met with you by himself at the presbytery at lunchtimes, after school and on weekends. You would talk, smoke cigarettes and play cards together.

# On a Saturday night in January 1992, when you were both playing cards at the presbytery, the game turned into “strip poker”. At the conclusion of one of the games of strip poker, Mr Thompson was winning, you were wearing only your underwear. You went over to Mr Thompson, knelt down in front of him, reached under the leg of Mr Thompson’s shorts near his thigh, and pushed your hand up until it rested on Mr Thompson’s penis. Your hand was over the top of Mr Thompson’s underwear.

# You then said “I bet you’re big” and rubbed Mr Thompson’s penis up and down for a couple of minutes until Mr Thompson had an erection. Mr Thompson was shocked and confused about what was happening and did not know what to say. You then stopped rubbing Mr Thompson’s penis and removed your hand (Charge 3).

# You then told Mr Thompson you had a pornographic magazine and video in your bedroom. Out of curiosity, Mr Thompson went into your bedroom and sat at the end of the bed. The curtains were closed and it was dark, but there was light in the office and a light on in the bedroom.

# Mr Thompson was wearing board shorts, you wearing only your underwear. You approached Mr Thompson, put him on his back on the bed and pulled his shorts down with both hands. You then lay on top of him and tried to kiss him on the face. Mr Thompson turned his head and tried to push you away. You rubbed your body up against Mr Thompson for about three to four minutes before getting off the bed. Mr Thompson put his shorts on and quickly left.

# In approximately 2002, Dylan Thompson told his sister, and his wife, what you had done to him as a child.

# In June 2016, a police investigation into the allegations by George Nettleton and Xavier Morton began [Redacted].

# In August 2016, you were interviewed by Western Australian sexual assault squad officers, and agreed at that time you were school chaplain at Warrnambool during the time of the allegations. Regarding the allegations by George Nettleton, you said his name “rang a bell”, but that you had never done anything with him. You denied any indecent assault on Mr Nettleton, although did say “unless I’ve just supressed things through the emotional pain of my life which would be on the cards”.

# You denied the allegations made by Xavier Morton.

# You have pleaded guilty to these charges and you are entitled to have that fact taken into account in your favour, and I do so. The community has, by your pleas of guilty, been spared the time and cost of a trial and witnesses, in particular, the three complainants, have been spared the ordeal of having to give evidence upon your trial. I note Xavier Morton was cross-examined at a contested committal in March 2018, and as I understood it, there were no attempts to resolve your offending against Xavier Morton until just prior to trial in March 2019, approximately a year later.

# I accept, as does the prosecution, you intimated early your intention to plead guilty to the charges involving George Nettleton and Dylan Thompson. Your plea to the charge involving Xavier Morton was entered late, the second day after your trial had commenced.

# In the Record of Interview you denied the offending, as I have said.

# Your pleas of guilty have utilitarian value and I take the fact of the pleas and timing of them in your favour when sentencing. I accept your pleas of guilty are indicative of some remorse by you, however regarding the extent of your remorse I do not accept you have fully accepted responsibility for your offending. Any suggestion your pleas of guilty reflect true remorse has to be examined in light of your denials to Police, the report of Mr Newton and you having received counselling before and during the offending period.

# As a result of this offending, you were remanded in custody on 19 March 2019, and as at 17 July 2019 had spent 121 days by way of pre-sentence detention.

# Regarding the *Sex Offenders Registration Act* *2004,* on 8 September 2006 you were sentenced for a registrable offence pursuant to the Act, with an applicable reporting period of 15 years then ordered.

# The offences before me involve Charge 2, a Class 1 offence pursuant to that Act, and Charges 1 and 3; Class 2 offences. It is mandatory you be registered for life pursuant to that Act. Your counsel, Mr Chisholm agreed such classification and duration applied to you.

# Turning to the serious sex offender provisions, pursuant to s6B(2)(a) of the *Sentencing Act* *1991* you fall to be sentenced as a serious sexual offender in respect of Charges 1 and 3 (not Charge 2). Your counsel agreed such applied to you.

# When sentencing I must regard the protection of the community from you as the principal purpose for which sentence is imposed (see s 6D *Sentencing Act 1991*).

# A number of authorities have discussed these provisions including *The Queen v RHMcL[[4]](#footnote-4)*, and recently *DPP v Hopson[[5]](#footnote-5)*, and *Matheas v The Queen[[6]](#footnote-6).*

# The principle of totality still has applicability referred to by Tate JA in *Matheas,* referring to *Gordon v The Queen[[7]](#footnote-7)* and *DPP v Bales[[8]](#footnote-8):*

“(when s 6E is enlivened) there is a need to ensure that the totality principle is not applied in a manner inconsistent with the legislative purpose of s 6E, that is, full effect is not to be given to the totality principle as though s 6E ‘was not on the statute book’. The weight to be given to the totality principle is to be moderated to ensure consistency with legislative purpose.”[[9]](#footnote-9)

# Consideration of totality is still applicable when sentencing, also see most recently *Zhao v The Queen[[10]](#footnote-10).*

# The prosecution were not seeking a disproportionate sentence and, in my opinion, I am able to appropriately sentence you without the need to impose a disproportionate sentence.

# There were two Victim Impact Statements before me, from Dylan Thompson and Xavier Morton. George Nettleton had been advised of his right to make a statement however declined to do so. Both statements were read to the court, Dylan Thompson reading his.

# The statements are eloquent and it is difficult to do justice to them in these brief sentencing remarks. I have, however, read those statements which detail the adverse impact of your offending upon each which has been profound.

# I turn to the Victim Impact Statement of Dylan Thompson. When he first met you, he was an average teenage boy who enjoyed sport, time with friends, had a girlfriend and was easy going.

# Mr Thompson volunteered his time to serve as an altar boy and enjoyed time with the other boys and the other parish priests that worked there. Before meeting you, he was involved in “pretty normal teenage stuff”. Before meeting you, family members, teachers, clergy and sporting coaches had always been good to him and he was never suspicious about his safety.

# A group of boys would often call into the presbytery to smoke and just hang out. It was not uncommon for you to purchase cigarettes and share alcohol with them. As a curious teenager, Mr Thompson thought that was great and he felt special to be part of the group.

# You then left the parish unexpectedly. When you returned you took an interest in spending time alone with Mr Thompson. You would spend time talking about Mr Thompson’s girlfriend, relationships, footy, church and life in general. You supplied Mr Thompson with smokes and alcohol. Mr Thompson trusted you as someone he could confide in. That you seemed a good bloke.

# That trust was broken when you changed his life forever and suggested they play strip poker and referring to pornography Mr Thompson might like to look at. Mr Thompson was confused by your offending against him. His visions of your offending continued to haunt his memories.

# Prior to your offending, he had never questioned his sexuality, and had no idea men sexually abused boys. He had no idea a priest would do that to an altar boy.

# Mr Thompson described you as having taken his innocence away and making him question who he was. Mr Thompson felt guilt and shame he did not stop you straight away and blamed himself for being in the position he was at the time.

# The shame he felt burned inside him for years without anyone knowing. He felt ashamed, and continues to feel ashamed.

# Your offending behaviour caused him to abuse alcohol and tobacco throughout his life and was a contributor to his first marriage breakdown.

# Mr Thompson left the Catholic Church and never returned. Your offending had impacted on him sexually, as described within his Statement. That caused him embarrassment and shame.

# Mr Thompson had also battled depression ‘off and on’ using alcohol to block out the thoughts of what happened to him at your hands.

# Mr Thompson found giving his Statement to police very difficult as he hated having to tell strangers about the embarrassing things that had happened to him. He felt his privacy had been repeatedly invaded. He never slept well, and for years suffered night terrors, even as an adult.

# Mr Thompson described your offending as having taken his innocence, naivety and being carefree away from him. He could not understand why an adult would do that to a child.

# There was a Victim Impact Statement from Xavier Morton. Since your offending, he had never let anyone get close to him. His guard was always high and he was scared to be himself in case he was hurt. He had never been able to allow himself the joy of companionship, as he had ‘too many walls up’ to have feelings.

# His friendships were few and far between as he could not let people get close to him for fear they may know the full extent of the secret of your offending or his pain. Mr Morton did not want anyone to know about that, even his parents.

# Sometimes Mr Morton closed his eyes, wanting to be someone else, but that could not happen.

# At 51 years of age, Mr Morton described himself as emotionally “a boy”. Suicide was his friend and on occasions said hello.

# Mr Morton felt his trust was breached after having told Bishop Mulkearns about your abuse yet nothing happened. He felt guilty about a boy taking his own life and regretted he had not himself attended police earlier.

# Mr Morton had depression, suffered alcohol abuse and post-traumatic stress. He was nervous and anxious with confrontation.

# Mr Morton was scared of enclosed places and hated people breathing on the back of his neck. At work, he was constantly frightened, his workmates aware they had to make a noise before coming anywhere near him.

# Mr Morton described himself as a victim of sexual abuse, not a survivor – “you don’t survive sexual abuse”. It had stayed with him forever and had damaged his life. There was no healing, or medication that dimmed the pain. No band aide to cover the wound, no quick fix, no cure.

# Relevant also is the notion of social rehabilitation. A number of authorities have referred to the impact upon a victim of sexual offending, including *DPP v Toomey[[11]](#footnote-11)*, in which his Honour Justice Vincent referred to the importance of social rehabilitation citing *DPP v DJK[[12]](#footnote-12)*.

# The effects upon a victim are a relevant sentencing consideration (s5 *Sentencing Act* *1991*). I am conscious, however, I must not allow the effects upon a victim to swamp the sentencing process.

# You come to the Court without any prior convictions. You do, however, have a subsequent conviction from 8 September 2006. On that date at Warrnambool Magistrates’ Court you were sentenced on five charges of indecent assault, and were sentenced to an aggregate 18 months’ imprisonment with a non-parole period of 12 months.

# Before me were details of the dates of that offending (between 31 March 1990 and 28 February 1991 from the Court extracts) and a summary of that offending. As I said in court, I am mindful the summary before me may well have been amended at that hearing. I note your offending (referred to in those charges) occurred prior to your offending in Charge 3 before me and following Charges 1 and 2 before me.

# Your subsequent conviction is relevant when assessing your rehabilitation prospects.

# Your counsel, Mr Chisholm, prepared an Outline of Submissions and addressed them during the course of the plea hearing.

# Mr Chisholm conceded you acknowledged to Mr Newton, the trust and power involved in your vocation had facilitated your sexual offending. He urged that since leaving the priesthood, you had not further offended against children.

# It was conceded by Mr Chisholm, and appropriately so, that these were serious examples of indecent assault/acts and sexual penetration. He is correct. In my opinion your moral culpability is high.

# Mr Chisholm urged your offending, particularly in relation to Charges 1 and 3, was not the most serious examples of such offences, as the charges involved touching over clothes, not direct touching of the victims’ naked penis. That you had offended against each victim only once and did not seek to persist in offending on further occasions. There was however, in my opinion, the background of grooming. Beyond the violence inherent in the sexual acts themselves, he submitted you did not inflict serious injuries or use a weapon. While that is so, weapons were not needed to gain compliance given your position in relation to the complainants.

# Mr Chisholm urged overall your offending was ‘mid-range’. In my opinion your offending is closer to high-range (not highest).

# Mr Chisholm referred to this offending having occurred 27 to 37 years ago and the then maximum penalties applicable, specifically referable Charge 2 the maximum 2 years. The maximum penalty is a matter to which I must and do have regard.

# Mr Chisholm provided sentencing statistics from the 1980s and 1990s. I discussed those with him and whilst sentencing statistics have relevance they lack details of the offending involved and the various matters potentially relevant to the sentences imposed, in particular matters personal to offenders.

# Turning to current sentencing practice, Mr Chisholm referred to *DPP v Pell[[13]](#footnote-13).*

# I accept, consistent with his Honour’s statements in *Pell,* this is one factor I must and do consider as described by his Honour.

# Turning to matters in mitigation, it was conceded by Mr Chisholm that yours was not a plea of guilty at the earliest opportunity regarding Xavier Morton. He urged, however, there was significant utility in the cross-examination of Mr Morton at committal submitting that following the committal, the Prosecution withdrew the more serious allegation against Mr Morton. I discussed that with him, and that between the committal in March 2018 and the plea being entered regarding Mr Morton in March 2019 there appeared to be no attempt to resolve this offending until the second day of the trial in March 2019.

# But you have, however as I have said, pleaded guilty and I have previously referred to this. Your pleas have utilitarian value and relevance in mitigation of your sentence.

# Mr Chisholm submitted that your pleas of guilty were indicative of some remorse. I accept some remorse, however am concerned about the extent of your remorse, given your lack of willingness to discuss your offending with Mr Newton and your history of ‘counselling’ prior to your offending before me.

# You are now 70 years of age. In his written submissions Mr Chisholm said you were educated in Mildura at Catholic primary and secondary schools. You succeeded at school academically, and were also involved in after school sports.

# You passed VCE. Your parents did not approve of you going to university so you undertook an accounting apprenticeship. You did not enjoy that, and returned to university and the priestly vocation. Your family were not overly religious and when you wanted to train for the ministry it caused a major rift between you and your parents.

# In the ministry you completed a Master of Arts, Master of Science and Doctor of Ministry. Since leaving the priesthood you had undertaken studies towards a Master of Counselling.

# Since you were defrocked in 1993 you worked in a number of jobs, including as a landscape gardener for two years, also in private practice for a couple of years after moving to Cape York leading a mental-health team in psychotherapy. You worked in indigenous health until made redundant in 2006.

# You were incarcerated in 2006 until 2008 (your subsequent court appearance), following which you were self-employed in online marketing. You are now a pensioner with little assets.

# Mr Chisholm referred to you having undergone sessions of rehabilitation over the years. As a result of your sexual behaviour at a Catholic secondary college, you were referred to Dr Ronald Conway (psychologist), and to Dr Eric Seal (psychiatrist), who both worked for the Catholic Church. It was recommended you spend a year overseas for spiritual reformation and psychological guidance.

# In 1977-1978, Dr John Kinnane in Maryland, Washington DC, and Reverend John Harvey, also provided treatment to you – I was told that related to counselling regarding your ‘interest’ in adult male sexual relationships, and the teachings of the Church regarding that. Mr Chisholm submitted that counselling was brief. That such activity was not condoned by the Church. Mr Chisholm, submitted the counselling did not relate to sexual activity with children, however I have no doubt you would have been aware that was also inappropriate. This counselling in my opinion was relevant to your instructions to Mr Newton about your offending (see paragraph 40-41 of his Report), which I discussed in detail during the plea hearing.

# On one occasion I was told you were sent on a 30-day retreat in Rome to see a particular priest who specialised in therapy for your behaviour and Church doctrine regarding sexual activities. However you instructed Mr Chisholm that when you arrived, the priest wasn’t there.

# I am particularly troubled by your offending against the background of counselling.

# In July 1991 following being at Ararat, you again went to the USA for therapeutic purposes, of your own volition, to the Institute of Living in Connecticut where you received counselling from Father James Gill.

# Prior to 1992 you had received counselling on a number of occasions directed to Church beliefs and doctrine regarding sexuality. I have no doubt you were aware of, not only Church doctrine, but including sexual offending against children.

# In Australia, you received counselling in 1992 from Father Torpy, a Ballarat priest and psychologist.

# Following after your offending before me, in early 1993, you went to St Luke’s Institute in Maryland, a place for priests who had engaged in homosexual behaviour with adolescents and others. You did not however continue that program as you apparently did not wish to take Prozac which was ‘in part’ to control your libido.

# After 1993 (and after your offending before me), you undertook a Masters in Counselling in the USA, which included receiving psychotherapy. That apparently assisted you to come to terms with being gay and your adolescent sexual attraction.

# You instructed that you have not acted on any sexual offending urges since 1993 – about 25 years. I accept that is so.

# It was further clarified during your plea hearing that you received counselling in approximately 1976-1979 regarding the Church doctrine and adult homosexual activity. In 1980 you were specifically counselled about the inappropriateness of ‘homosexual activity’ with children.

# Also following the above described counselling in 1991 (between approximately June and December 1991) upon return to Australia in December 1991 you committed Charge 3 before me in January 1992. The speed with which you re-offended is alarming given the background to it as I have just described.

# Turning to your age and health, I was told you had a number of health conditions which Mr Chisholm submitted would make your time in prison more onerous compared to other prisoners. He was not however submitting you couldn’t be treated for your ‘ailments’ in prison.

# Mr Chisholm also urged that at age 70 any time you spent in custody would represent a significant portion of your remaining life expectancy.

# Age and ill health have been referred to in many cases including *TRG v The Queen[[14]](#footnote-14)* and *R v RLP[[15]](#footnote-15).*

# In *R v Whyte[[16]](#footnote-16),* President Winneke noted a sentencing Judge must be astute to pay due attention to the age of an accused and stated “they must also be careful to ensure that confidence in the administration of justice is maintained by imposing sentences which reflect the gravity of the crime which is being punished.” His Honour referred to *R v Yates[[17]](#footnote-17)* and *R v Crowley and Garner[[18]](#footnote-18).*

# His Honour further stated:

“In such cases the court said it would be inappropriate to approach the selection of a proper minimum term from the point of view that, because of the offender’s age, there was a need to grant some measure of life after release. Such an approach, it was said, would mean that general deterrence and retribution would receive insufficient weight.”

# In *R v Iles[[19]](#footnote-19)* the court referred to *R v Cumberbatch[[20]](#footnote-20):*

“… an offender’s age does not mitigate against the imposition of a significant period of imprisonment in the appropriate case.”

# Whilst age and health are relevant sentencing considerations, the mitigating effect of your age and medical conditions should be not allowed to bring about a sentence which fails to reflect the gravity of your very serious criminal behaviour.

# I accept, as did Ms Champion for the Prosecution, that such would however make your time in prison more burdensome and had some relevance to sentence.

# Mr Chisholm urged that the delay in this matter being finalised was relevant when assessing your rehabilitation prospects, in particular, that you had not in 25 years since your offending re-offended and that is so. Lapse in time is however not unusual in these cases.

# Regarding delay in *Toomey,* the Court cautioned that:

“…despite the antiquity of the offences and the respondent's apparently blameless life since then, in my opinion the sentences [in that case] so devalue the gravity of the offences that it is to be inferred that the sentencing judge fell into error, although no particular error can be identified.”[[21]](#footnote-21)

# When assessing your rehabilitation prospects both remorse and reformation must be demonstrated in order to give full weight to that limb. Less than full weight will be accorded where relevance is placed merely on abstinence from further offending[[22]](#footnote-22). I note your counsel also relied upon other factors.

# When assessing your rehabilitation prospects I consider your ‘belief’ regarding your offending as self-reported to Mr Newton and apparent ‘justification’ for it raises concerns regarding your rehabilitation prospects. I accept however your prospects overall to be “reasonable” (as opposed to “good”).

# To date, I was told, you had served your time on remand in more ‘restrictive custody’. Beyond sentence Corrections will no doubt determine the appropriate prison being mindful of any danger to your safety in custody and your health needs.

# Mr Chisholm urged the need for specific deterrence, whilst relevant, was of less weight, relying in particular on the 25 years since you offended. As I also discussed with Mr Chisholm relevant to specific deterrence was your offending after ‘counselling’ and the number of victims of your offending and the dates on which it occurred.

# Mr Chisholm conceded general deterrence, denunciation and just punishment were important in cases involving sexual offences against children and applied when sentencing you. I agree.

# Mr Chisholm conceded there should be some cumulation in relation to the three charges as they involved three separate victims. I agree.

# He conceded a term of imprisonment was appropriate with a non-parole period, urging a shorter non-parole period be imposed.

# Other material was tendered by Mr Chisholm. A medical report dated 22 June 2015, relevant to prostate biopsies and follow-up of correspondence, dated 19 August 2015 confirming you were to undergo treatment for prostate cancer. Correspondence from Dr Chris Harper, dated 12 May 2017, reported you were, at that time, managing well, and that most of the side effects of radiation therapy had settled. You would, he said, need to continue with six-monthly PSAs.

# There was National Bowel Screening correspondence from Dr Chong, pathologist, dated 5 February 2019 which revealed a result for bowel screening had found some blood in one of the samples, recommending you contact your doctor. No update provided.

# There was a reference from Joanne Brierty dated 7 May 2019. She had known you for more than 25 years. You were very close to the family and would spend time, not only with she and her husband, also with their two grown-up daughters. You would often attend social gatherings, such as barbecues and parties, at their home. They supported you, and the friendship had developed over time. You were described as a loyal, loving and caring person who would help anyone in need.

# Ms Brierty had talked with you about these charges. You were very upset and stressed about them.

# I turn to the report of Mr Patrick Newton, clinical and forensic psychologist, dated 6 May 2019 which I discussed at length with counsel during the plea hearing.

# Further details were provided about your background and history, which I will not repeat, however, have read. Your development was described as normal. You denied any significant childhood illnesses or injuries, and have not been the subject of any mistreatment. Your parents had been deceased for some years.

# You described positive school experiences. You hated every minute of your two years training in accountancy. That experience led to your previous thoughts of pursuing a vocation into the priesthood being realised.

# You were asked to leave the first seminary you attended, because of your superior’s concerns about your sexuality (given Church doctrine). You subsequently attended a second seminary in Victoria where further concerns were raised about your sexual behaviour with other male seminarians. You were then sent to America, where you reported you participated in therapy programs to address your sexual issues, although said none of those programs had been of any benefit, and I add perhaps reflected in your offending.

# You were ordained as a priest in 1976, with priestly ministries at various parishes in Victoria and America. You described, multiple complaints of sexual abuse by you of young males from within various parish communities from the late 1970s onwards. Keeping with the practice of the day, you were moved from parish to parish as each band of accusations came to light.

# Addressing your sexuality, as you became older, you became increasingly focused on sexual activity with males, and your previous sexual interest in female partners decreased markedly. From approximately your mid-teens onwards you pursued sexual contact exclusively with males, engaging in various sexual behaviours with other students whilst in the seminary (contrary to Church doctrine).

# You acknowledged to Mr Newton your history of offending against some boys under your care and supervision. The earliest examples dated from your time in the USA in about 1978, about two years after your ordination. You said a key motivator for your offending was your misguided attempts to establish a connection with those against whom you offended.

# Turning to your mental health, you acknowledge normal mood variation and response to stressful life circumstances. You had never suffered a clinical condition and had not been prescribed medication at any time, although it seems you have been prescribed Prozac previously but decided not to take it.

# You described various bouts of treatment and counselling, aimed at resolving your sexual issues (within Church doctrine) in the late 1970s, which you describe as ineffective. Your offending continued without significant interruption. That is apparent.

# You did not wish to discuss the details of your offending with Mr Newton. You said you now understood your offending was a misguided way of seeking intimacy with partners who did not challenge you, given the Church doctrine (I expressed concern about this and your ‘belief’, paragraph 40-41 of the Report).

# You were, at the time of the offending, attracted to teenage boys, finding it easier to establish a connection with underage partners than those of your own age. You had, I note, been counselled many times regarding the Church doctrine and sexual encounters.

# You expressed remorse for your offending, and recognised you had violated the trust of the three complainants.

# Mr Newton conducted a mental-state examination and estimated your intelligence was at the high end of the normal range.

# Mr Newton concluded your offending pointed to significant issues with your sexual adjustment, though you maintained you were no longer interested in young people sexually. Despite that assertion your history was clear he said that you had experienced problematic sexual arousal and deviant cognitions regarding underage boys. Mr Newton observed you had also engaged in various grooming behaviours preparatory to your offending and persisted with the conduct across an extended period of time, despite engaging in some offence-specific treatment which pointed to deviant sexual arousal.

# You said your belief at the time of your offending was that the complainants had the ability to be responsible for making choices, such as their desire to participate in sexual offending with you, and their ability to bring the behaviour to a close if they did not want you to continue. I discussed my concerns regarding this ‘belief’ during the plea hearing and referred to concerns regarding your level of insight into your offending. Such in my opinion impacts upon your rehabilitation prospects.

# You had, said Mr Newton, significant problems understanding boundaries between affection and nurture on the one hand, and sexual acts on the other.

# You described being oblivious to the dynamics of power and trust applicable in this offending at the time of it. I also however note counselling you received over the years.

# After you left the priesthood you embarked on a program of personal development, which had seen you resolve your guilt about your attraction to men, and other training you had received in human development, giving you the opportunity to develop clarity regarding the issues of power, trust, vulnerability and intimacy that underpin your offending behaviour. I accept you have continued counselling following this offending and also I was told have participated in a sex offender program when incarcerated in 2006.

# While you continued to express an attraction to the ‘aesthetic’ qualities of underage boys, you denied this was sexualised, and were adamant there had not been any offending since 1992.

# Mr Newton concluded you were a low-moderate risk of further sexual offending, that assessment also relied upon by Mr Chisholm.

# The prosecutor, Ms Champion, filed a written Outline of Submissions addressing sentence.

# She submitted that in relation to each of the three victims, your offending was very serious. That all the victims were vulnerable. Your offending involved an abuse of trust and an abuse of power. Your offending, moral culpability and personal responsibility was high. I agree.

# Regarding Mr Nettleton, Ms Champion referred to that occurring when George Nettleton was 15, you were 32, an approximately 17 year age difference. Also your offending involved contact with Mr Nettleton’s genitalia, albeit over clothing, as opposed to other parts of his body. In addition, immediately prior to your offending, you directed Mr Nettleton to remove all his clothing and underwear, which increased his humiliation and degradation. I agree.

# Regarding Mr Nettleton, you employed a ruse to get him to undress, employing a ‘trick’ to have him remove his clothing being checking Mr Nettleton’s robes. That conduct, she submitted, was at odds with what you said your state of mind was at the time of that behaviour (see paragraph 40 Mr Newton’s Report).

# Post your offending of Dylan Thompson, you also used the ruse of a pornographic magazine/video to have Mr Thompson end up on your bed. Mr Thompson tried to turn his head away from you and force was then used by you which evidenced a state of mind inconsistent she urged with your assertion in the report of Mr Newton (paragraph 40). I agree.

# Ms Champion also submitted you used your position as a priest, training the victim as an altar boy, to facilitate your offending. I agree. Further Ms Champion referred to your offending against George Nettleton not having occurred “out of the blue”, as there had been six meetings prior to your offending where you discussed sexual matters with Mr Nettleton, including masturbation, and you had shown him pornographic magazines. There was, Ms Champion submitted, grooming of Mr Nettleton by you. I agree.

# She submitted at the time of your offending involving Xavier Morton, Mr Morton was 17 years of age, you were 36, approximately nineteen years age difference. That offending commenced when Mr Morton was asleep and, therefore, particularly vulnerable. I agree. As Mr Morton was asleep, that enabled you to gain access to his genitalia by partially removing his clothing and underwear. Your offending involved a significant breach of trust. I agree.

# Ms Champion also submitted there was also an application of force by you beyond merely facilitating your offending. That you pushed Mr Morton back onto the cushions when he tried to flee, and also held him down. Your offending was also not of short duration, rather involved repeated acts. I agree with that assessment and description.

# Dylan Thompson was 14 years of age when you offended against him, and you 44, an approximately 30 year age gap. Your offending against Mr Thompson involved contact with his genitalia (as opposed to another part of his body) under clothing, but over his underwear. Your offending against him was not of short duration and contact with his penis was over a couple of minutes. Ms Champion also submitted that you were the priest at the church where Mr Thompson was an altar boy. That this was a clear abuse of power and trust. I agree with that description.

# Ms Champion also referred to the greater age difference between yourself and Mr Thompson. Further, an element of planning in your offending, offering a game of strip poker. She submitted, in relation to Charge 3, the larger age gap between yourself and the victim increased the gravity of your offending compared to Charge 1. I agree.

# It was submitted by Ms Champion there had been a significant impact of your offending on all victims, as evidenced in the Victim Impact Statements of Xavier Morton and Dylan Thompson. George Nettleton, while not having prepared a Victim Impact Statement, in his statement to police described being petrified at the time of your offending. I have no doubt he was.

# In the Victim Impact Statements of Xavier Morton and Dylan Thompson, Ms Champion referred to the lifelong adverse impact of your offending upon them. That is apparent.

# Ms Champion conceded you did not have any prior convictions and I am also aware of that. Your subsequent convictions Ms Champion submitted were relevant to your rehabilitation prospects. I agree. The prosecution accepted, however, as do I, that the subsequent offences occurred between 28 and 29 years ago. Charge 3 before me, occurred approximately 10 to 11 months after your offending between 1990 and 1991 dealt with in 2006.

# The prosecution conceded your plea of guilty regarding Dylan Thompson and George Nettleton was entered at an early stage. Whilst your plea of guilty was entered late in relation to Xavier Morton, the prosecution accepted that plea also had utilitarian value, as do I. Mr Morton was not ultimately required to give evidence upon your trial, albeit, was cross-examined at the committal hearing. I have previously addressed your pleas of guilty and timing of same.

# Addressing the seriousness of your offending, Ms Champion referred to prosecution concerns regarding your self-report and beliefs referred to in the report of Mr Newton. I am also concerned about those.

# In particular, Ms Champion submitted Xavier Morton was a particularly serious example of this offending, as Mr Morton was asleep and especially vulnerable at the time of your offending. In that regard, Ms Champion referred to Mr Newton’s Report (paragraph 40) and your stated belief that you “attributed to the complainants’ an ability to take responsibility for making choices (regarding their desire to participate in sexual behaviour with [you]) and an ability assertively to bring the behaviour to a close in the event they did not wish it to continue”. In that regard, Mr Newton described “These misconceived beliefs provided a context in which [you] felt able to abdicate [your] adult responsibilities and prioritise [your] own pleasure. As noted by Ms Champion, at the time of the commission of your offence in relation to Xavier Morton, Mr Morton was asleep and, in addition, you used force when he tried to flee, and held him down, which, she submitted, was inconsistent with that ‘belief’. I agree.

# Regarding your previous counselling, Ms Champion submitted adults would know sexual offending against children was wrong. In addition, you had been told not to engage specifically in sexual offending of children in 1980 by a Bishop of the church. The evidence of your actions at the time of each of the offences before me she urged was inconsistent with your report to Mr Newton (paragraphs 40 to 41).

# Ms Champion submitted, and I agree, in those paragraphs you attempted to shift some responsibility for your offending to the victims, and such was directly relevant to an assessment of your rehabilitation prospects and need for specific deterrence. Ms Champion also referred to your reluctance to discuss your offending with Mr Newton.

# Regarding your plea of guilty to Charge 2, Ms Champion confirmed that in the 12 month period between the contested committal hearing and your plea being entered to this Charge, there had not being any offer (on the prosecution file) of any offer to plead guilty to that charge.

# Ms Champion submitted your claim of remorse required “rigorous examination”. There was she conceded, some evidence of remorse, although referred to denials of your offending in the Record of Interview. Further, the basis on which you had expressed your remorse to Mr Newton was unclear she said in his Report.

# Regarding cumulation of sentence, Ms Champion submitted each of the three charges involved separate and distinct offending involving three different victims at different times. Also relevant was the impact of the offending upon each victim. Some cumulation she urged was required between the charges. I agree.

# Ms Champion submitted you fell to be sentenced on Charges 1 and 3 as a serious sexual offender. I have previously referred to s6D and s6E of the *Sentencing Act* *1991*. The prosecution conceded the principle of totality had some application. I agree.

# Turning to current sentencing practices, citing *Bromley v R[[23]](#footnote-23)*, Ms Champion submitted current sentencing practice would not be a controlling factor when sentencing and did not ‘cap and collar’ the appropriate sentencing range.

# Ms Champion submitted I could, and should, take into account sentencing practices at the time the offences were committed as one of the factors in the sentencing synthesis. I agree. Ms Champion also observed current sentencing practices for child-sex offences now reflected much greater understanding of the adverse impact offending had on child victims. That when sentencing, the Court may bring to bear its present understanding of the devastating impact offending of this kind had, even though such an understanding may not have been a feature of sentences imposed at the time of the relevant offending (see *Bromley[[24]](#footnote-24)*). I agree.

# Regarding statistics from the relevant offending period, Ms Champion submitted they were of limited assistance to the Court. I agree as I discussed with counsel.

# Ms Champion submitted when sentencing you there was the need for general deterrence, denunciation, just punishment and protection of the community. I agree. Also relevant were the serious sex offender provisions of the *Sentencing Act* *1991*. Other relevant factors were specific deterrence and your prospects of rehabilitation. I agree.

# Ms Champion noted, as do I, your low-moderate risk of further sexual offending as assessed by Mr Newton, however urged you minimised your offending (paragraphs 40 and 41) and such was relevant to your prospects of rehabilitation as that indicated a lack of insight into your offending and a lack of responsibility for it. I agree.

# The prosecution submitted a term of imprisonment was the only appropriate disposition.

# As well as matters personal to you to which I have referred, including your prospects of rehabilitation as I find them to be, I must also take into account matters such as deterrence, especially general deterrence, which is of considerable importance in a case such as this. The Courts have repeatedly referred to the vulnerability of children to sexual abuse, in particular by those persons they trusted and authority figures.

# His Honour Justice Buchanan in *Toomey[[25]](#footnote-25),* which is a case with some similarities to yours said:

“…The courts have recognised that those who commit crimes against one of the most vulnerable groups in society, which almost invariably have long-term effects on their victims, should be severely punished.”

# His Honour Justice Vincent also in *Toomey[[26]](#footnote-26)* referred to sexual abuse of young persons:

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

# In my opinion, there is also the need for specific deterrence when sentencing you.

# I must also consider the question of protection of the community from you and bear in mind the likelihood of your re-offending. In that regard, there is some comfort in the report of Mr Newton that you are a low-moderate risk of future sexual offending, and I note no offending in 25 years.

# I am called upon by the *Sentencing Act* *1991* to manifest the community’s denunciation of your conduct and generally to impose a just punishment.

# I direct it be entered into the records of the court you have been sentenced as a Serious Sex Offender on Charges 1 and 3.

# I sentence you as follows:

# On Charge 1, you are convicted and sentenced to 15 months’ imprisonment.

# On Charge 2, you are convicted and sentenced to 15 months’ imprisonment.

# On Charge 3, you are convicted and sentenced to 18 months’ imprisonment.

# I direct that Charge 2 is the base sentence, and I direct that 10 months of Charge 1 be served concurrently, and 5 months cumulatively upon Charge 2.

# I direct that 12 months of Charge 3 be served concurrently, and 6 months cumulatively upon Charge 2.

# For clarity, the orders for cumulation are upon each other and upon the base sentence.

# That results in a total effective sentence of two years two months and I direct that you serve a period of 17 months before you are eligible for parole.

# Pursuant to s6AAA of the *Sentencing Act*, had you pleaded not guilty to these charges and been found guilty of them, I would have sentenced you to a term of imprisonment of 5 years with a non-parole period of 4 years.

# Pursuant to s18(4) of the *Sentencing Act*, I declare that you have spent 132 days in custody up to and including yesterday 28 July 2019 by way of pre-sentence detention and I direct that that be entered into the records of the court.

# Pursuant to the *Sex Offenders Registration Act* *2004*, you are to report for life, such being mandatory.

# The prosecution also made application for a forensic sample pursuant to s464ZF of the *Crimes Act* *1958*. This was consented to by counsel on your behalf and I make an order in the terms sought for a forensic sample. It will be for a saliva sample, and I do that on the basis of the seriousness of your offending. I must advise you the authorities may use reasonable force in order to obtain that sample.

# Any other orders?

# MS CHAMPION: No, Your Honour.

# HER HONOUR: PSD right?

# MS CHAMPION: Yes, it's right.

# HER HONOUR: PSD right?

# MR CHISHOLM: Yes, Your Honour.

# HER HONOUR: Anyone want help with the maths? I'm not asking if you like the figures, I'm just asking do you want me to repeat any of the figures?

# MR CHISHOLM: No, Your Honour.

# HER HONOUR: No. Any figures need repeating? No. Anything that's been missed?

# MR CHISHOLM: No.

# HER HONOUR: Now I ask is there anything that was stated during the reasons given which in some way infringes upon whatever it was that being discussed this morning?

# MR CHISHOLM: Just one moment, Your Honour.

# HER HONOUR: Was that a no? Sorry.

# MR CHISHOLM: Sorry my maths is awful. No, I just was double checking something, the maths.

# HER HONOUR: Well my - - -

# MR CHISHOLM: Yes, I've got the maths. I don't have anything in respect to that and nothing in respect of the comments Your Honour's made.

# HER HONOUR: Given our earlier discussion today.

# MR CHISHOLM: Yes, yes.

# HER HONOUR: So then there's nothing that's been infringed, for want of a better word, in anything that I said.

# MR CHISHOLM: I don't believe so.

# HER HONOUR: Right, thank you. I'll sign these documents. Now you'll have to go - in a minute my associate will go down to the back of the room and have the prisoner sign.

# MR CHISHOLM: May I have Your Honour's permission to approach - - -

# HER HONOUR: Yes.

# MR CHISHOLM: - - - when that document's read out.

# HER HONOUR: Yes, the documents in relation to the Sex Offender's Registrar. He's not being asked if he wants to be on it - - -

# MR CHISHOLM: No, no, no.

# HER HONOUR: Yes, I'm just making it clear to him. He's not being asked if he wants to be on the order, I've made the order but my associate has to ask if he will accept paperwork that tells him a bit about the order, the Serious Sex Offender - - -

# MR CHISHOLM: Yes, he acknowledges in receipt of that. May I approach and explain that?

# HER HONOUR: Yes, well when she goes. Have a seat. Again, on behalf of the court, not me specifically, I apologise to the victim or victims that are in court given the way this matter proceeded this morning. It's a hard enough process without having to go through that as well but I'm afraid it was out of my hands. All right, thanks.

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1. This is a pseudonym name. [↑](#footnote-ref-1)
2. This is a pseudonym name. [↑](#footnote-ref-2)
3. This is a pseudonym name. [↑](#footnote-ref-3)
4. (2003) 203 CLR 452 [76]. [↑](#footnote-ref-4)
5. [2016] VSCA 303 [48-52]. [↑](#footnote-ref-5)
6. [2017] VSCA 330 [46-50] ‘*Matheas’.* [↑](#footnote-ref-6)
7. [2013] VSCA 343. [↑](#footnote-ref-7)
8. [2015] VSCA 261. [↑](#footnote-ref-8)
9. *Matheas* [50]. [↑](#footnote-ref-9)
10. [2018] VSCA 267. [↑](#footnote-ref-10)
11. [2006] VSCA 60 ‘*Toomey’*. [↑](#footnote-ref-11)
12. [2003] VSCA 109. [↑](#footnote-ref-12)
13. [2019] VCC 260 [184-195] ‘*Pell’*. [↑](#footnote-ref-13)
14. [2011] VSCA 337. [↑](#footnote-ref-14)
15. [2009] VSCA 271. [↑](#footnote-ref-15)
16. (2004) 7 VR 397 [29]. [↑](#footnote-ref-16)
17. [1985] VR 41. [↑](#footnote-ref-17)
18. (1991) 55 A Crim R 201. [↑](#footnote-ref-18)
19. [2009] VSCA 197. [↑](#footnote-ref-19)
20. (2004) 8 VR 9. [↑](#footnote-ref-20)
21. *Toomey* [14]. [↑](#footnote-ref-21)
22. *Tones v The Queen* [2017] VSCA 118 [42]. [↑](#footnote-ref-22)
23. [2018] VSCA 329 [49] ‘*Bromley’*. [↑](#footnote-ref-23)
24. Ibid [51]. [↑](#footnote-ref-24)
25. *Toomey* [10]. [↑](#footnote-ref-25)
26. Ibid [17]. [↑](#footnote-ref-26)