

IN THE COUNTY COURT OF VICTORIA  
AT MELBOURNE  
CRIMINAL DIVISION

Revised  
Not Restricted  
Suitable for Publication

Case No. CR-21-01689

DIRECTOR OF PUBLIC PROSECUTIONS

v

JAYDEN DANIEL FAURE

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<u>JUDGE:</u>	Holding
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	11 April 2022
<u>DATE OF SENTENCE:</u>	10 May 2022
<u>CASE MAY BE CITED AS:</u>	DPP v Faure
<u>MEDIUM NEUTRAL CITATION:</u>	[2022] VCC 613

**REASONS FOR SENTENCE**

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Subject:  
Catchwords:  
Legislation Cited:  
Cases Cited:  
Sentence:

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
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For the DPP

For the Accused

HIS HONOUR:

- 1 Paul Jayden Faure you have pleaded guilty to 4 charges (Charges 1-4) of Misconduct in Public Office, contrary to Common Law, and 1 charge (Charge 5) of Attempting to Pervert the Course of Justice, also contrary to Common Law.
- 2 The maximum penalty in respect of each of the first 4 charges is 10 years' imprisonment, and for charge 5 the maximum penalty is 25 years' imprisonment.
- 3 Charges 1-4 are founded upon you holding a position in public office because you were a serving member of Victorian Police. In the course of performing your duties as a police officer, you obtained the personal details of 3 women and 1 female child. You then used those personal details to have personal communication with these individuals and went on to form inappropriate friendships. In respect of two of the women, you engaged in a sexual relationship with them. Once your misconduct was discovered and investigated, you contacted one of the women and the child and tried to influence them to conceal their dealing with you from those investigating your misconduct. That influence and attempted influence is the subject of charge 5 of attempting to pervert the course of justice.

**Circumstances of the offending**

- 4 The circumstances of your offending are contained in the Prosecution Opening which was exhibited on your Plea. I act upon the facts as outlined in that opening which were not disputed by you.<sup>1</sup>
- 5 At the time of the first offence you were 23 years old and in a long term relationship. You were employed by Victoria Police, having been sworn in as a Police Officer on 24 April 2015 .

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<sup>1</sup> Exhibit A on the Plea – Summary of Prosecution Opening dated 1 April 2022.

## **Charge 1.**

- 6 Charge 1 relates to your misconduct with a child I will refer to as Adele Roberts<sup>2</sup> between the 27 June 2016 and 31 January 2017.
- 7 On 27 June 2016, Adele Roberts was assaulted in the Melbourne Central Business District. At that time you were performing general duties as a probationary police officer with Transit Safety Command. In response to a '000' call you and another more senior police officer went to the assistance of Ms Roberts. The person who had assaulted her had left the scene, and you accompanied her back to the police station where she made a statement. You spent some hours with Ms Roberts. In the course of a conversation with Ms Roberts you said that a lot of girls 'go for you because you are a police officer but you didn't want to date anyone'. You said to her that you were thinking about getting Snapchat, and you gave her your business card with your police email address. This was unnecessary because you were not the Informant investigating her case. There was no official reason why Ms Roberts would need to contact you. It was the Informant's duty to provide her with updates on her case.
- 8 On 28 June 2016, Ms Roberts sent an email to you thanking you for your help the previous day. You responded in an informal manner telling her that she was a good person and didn't deserve what had happened to her and you ended that email by writing 'I will try and call you asap just to touch base about it all J'. Later that day you sent another email asking Ms Roberts whether her phone was working and writing that you had tried to phone her that morning. Call charge records show that over the next month or so, you phoned Ms Roberts twelve times. You sent her a Snapchat request from your personal phone, and updated her on her case even though this was not your duty. You checked the details of the alleged assailant of Ms Roberts on the police LEAP database without any legitimate reason for doing so.

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<sup>2</sup> A pseudonym.

- 9 From July 2016 to January 2017, you had regular Snapchat communication with Ms Roberts. You sent her photos of yourself in uniform, at home in bed, playing basketball and in the shower. In response Ms Roberts sent photos of herself in the shower holding her dog; only her shoulder and legs were visible in this photo.
- 10 You also sent messages that had a sexual overtone. You sent a message suggesting the possibility that Ms Roberts could stay at your house accompanied by a 'winky face' emoji. On more than one occasion you sent messages saying that you wished she was 18, and that you could not wait until she turned 18. You also messaged Ms Roberts suggesting a meeting with you and a friend in a pub and that you could meet for a coffee. You also introduced Ms Roberts to a friend and a fellow police officer via Snapchat. Ms Roberts appears to have been sensible enough to have resisted your invitations. There was never any physical meeting between the two of you other than the initial meeting where you took a statement from her.
- 11 The misconduct particularised in Charge 1 is that you abused your position and authority for personal gain by forming an inappropriate friendship with Ms Roberts.

## **Charge 2**

- 12 Charge 2 relates to your misconduct with a woman whom I will refer to as Sienna Argyle<sup>3</sup>. The offence was committed between 6 and 13 April 2017. On 6 April 2017 you were working at the Police booth at Flinders Street Station. Sienna Argyle went to the booth and told you that she had lost her wallet the day before on a public transport bus. You took her details and provided her with a lost property report.
- 13 You checked Ms Argyle's background on the Police 'LEAP' database without any official reason for doing so .
- 14 The next day you telephoned Ms Argyle and spoke to her for approximately 25 minutes. Ms Argyle says only about 10 minutes of that conversation related to her

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<sup>3</sup> A pseudonym.

case, with the other conversation concerning personal matters. You complimented Ms Argyle on her appearance the day before, which led to Ms Argyle asking to meet you for a drink. There were further phone calls between the two of you that day that led to arrangements to go out for dinner that night. When you finished work that day you picked up Ms Argyle in your car and the two of you went out for dinner. During the dinner you told her that you were single and had recently separated from a relationship. After dinner you both walked along the beach and kissed each other and you drove Ms Argyle home.

15 Over the next few days you both exchanged texts of a personal nature. You sent naked images of yourself, including images of your erect penis. On 10 April 2017 while dressed in your police uniform, you met Ms Argyle at Flinders Street station before she went to work. You spoke for a few minutes and then throughout the day exchanged text messages, where you both agreed to meet at a hotel to have sex. Ms Argyle didn't want to meet at her home because of the presence of her house mates, and you made up a story about living with your brother, when in fact you were at the time living with a partner.

16 On 11 April 2017, text messages and emails were exchanged relating to finding an appropriate meeting place. You used your Victorian Police email account to suggest an apartment complex.

17 On 12 April 2017, you and Ms Argyle met at the apartment and stayed the night together. You both engaged in sex on the balcony of the apartment and you used your mobile phone to partially record you both having sex. The recording goes for 34 seconds' and shows Ms Argyle's naked breast and genital region. You had not had a prior discussion with Ms Argyle about taking the video, and after the sex Ms Argyle asked you to delete the video recording. You said you would delete the recording and you asked Ms Argyle to similarly delete the nude photos that you had previously sent to her. Ms Argyle deleted the photos in front of you at the time. You did not delete the video of the two of you having sex.

- 18 Despite prior discussions between the two of you about spending the day together, the next morning you made up a false story about having to leave early because your start time at work had changed. You had breakfast with Ms Argyle and then left.
- 19 Subsequent examination of your phone messages shows that on that same morning you sent the video of the two of you having sex the previous night to a friend. Your friend confirmed receipt of the video by text message stating, 'Fuck you're a funny cunt. Camera work is impressive.' You responded with a message saying, 'Oscar?!?'
- 20 Over the next week or so you and Ms Argyle continued to speak and send text messages, but Ms Argyle became suspicious of you, and through Facebook discovered that you were engaged to be married. She then felt terrible about having sex with you, and felt that you had lied to her about your relationship status just so you could have sex with her. Later, Ms Argyle was told by Police that you had sent the video of the two of you having sex to a friend and she was understandably distressed, and also fearful that it might be distributed more widely or put online.
- 21 The misconduct particularised in charge 2 is that you abused your position and authority for personal gain by forming a friendship with Ms Argyle in pursuit of a sexual relationship and abusing trust by sending a sex recording to a third person without the consent of Ms Argyle.

### **Charge 3**

- 22 Charge 3 relates to your misconduct with a woman I will refer to as Isabelle McManus<sup>4</sup>. The offence occurred between 7 and 28 April 2017. On the morning of 7 April 2017, Ms McManus was travelling on a train to Flinders Street Station when she had a panic attack and experienced suicidal thoughts such as jumping in front of a train. Ms McManus made calls for help and was given advice over the phone

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<sup>4</sup> A pseudonym.

from a psychiatric service to seek help at Flinders Street Station. At the station a Metro Trains employee took Ms McManus to the Station Master's office, and a '000' call was made. You were conducting police duties at the station at the time and with another police officer met with Ms McManus and requested an ambulance. You were with her for approximately one hour, and she discussed her personal problems with you. She told you she was in an unhappy relationship with her boyfriend and wanted to break up with him. You encouraged her to leave the relationship and told her how you had recently had a boring date. Ms McManus provided you with her personal details including her phone number and you gave her your business card. You walked Ms McManus to an ambulance that arrived to assist her.

- 23 Later that day Ms McManus emailed you from hospital where she was waiting to be treated. She thanked you for your help. Part of her message reads: 'You calmed me down so much and I was literally so comfortable talking to you ( And thanks for calling me gorgeous haha). You're so good at your job, I'm glad you didn't pursue teaching, you're definitely in the right career. Thanks again.'
- 24 In the afternoon you replied to Ms McManus writing that it was your pleasure to help her, part of your message reads, '... I can't even begin to imagine what you are feeling. But I know you are an awesome chick and I know you won't do anything silly...'
- 25 Later in the day Ms McManus emailed you a further time complaining about having to be at the hospital all day. She was later admitted to the psychiatric ward and was treated there for 5 days until being discharged on 11 April 2017.
- 26 On 10 April you sent Ms McManus an email in the morning wishing her luck and saying you hoped she felt better.
- 27 On 12 April Ms McManus sent an email to your Police email address, and told you she had been discharged from hospital and had been given an appointment with a CAT team and some further appointments in the next few weeks. You responded

from your Police email account, indicating that you were glad Ms McManus had messaged you and you went on to write friendly and complimentary comments.

28 On 15 April you telephoned Ms McManus but she did not answer. On 16 April you sent Ms McManus a Snapchat request which she accepted. Ms McManus queried whether you might get into trouble, and you responded by telling her that your work was not concerned with your personal life.

29 On 17 April Ms McManus sent you an email saying she missed chatting with you but that she understood if you did not want to 'talk' anymore.

30 On 23 April Ms McManus sent an email to your police email account saying, 'Jay please read me', in an attempt to have you re-add her to Snapchat so she could continue to communicate with you.

31 A few days later, you did re-add her to your Snapchat account and sent her an image of you shirtless and started to ask her questions about her sex life. You hinted that as you were both single you could have sex. You proposed that you could have sex at your workplace as her house was far away from you. You sent her the Victoria Police Centre address and you arranged to have sex there the next morning.

32 On 28 April 2017 you arrived at the Victoria Police Centre early in the morning and placed your sleeping bag in a vacant sleeping quarter in the Transit Safety Division irregular shift rooms. You then waited near the main entrance for Ms McManus to arrive. When she did arrive you took her to this room and told her that if anyone stopped the two of you she should say she was your cousin and you were giving her a tour of the station.

33 In the room you explained that you didn't have much time and Ms McManus then performed oral sex upon you and you both then engaged in sexual intercourse. Ms McManus was in the police station for about 40 minutes and when she was leaving you accompanied her out of the building.



34 After this sexual encounter there were a few more communications over snapchat and Ms McManus wanted to meet with you again. You communicated that you were fine now for a couple of months and you were going to America soon and you were going to have sex there.

35 Ms McManus described feeling disgusted and panicky. She was worried she would see you again at Flinders Street station. In her statement she indicated that she felt you had taken advantage of her. She stated, 'you don't strike up a relationship with somebody that was literally suicidal' and 'I don't think him having sex with me was, like him looking out for my best interests, especially when I – like , I've told him I've had so many problems with, like, having sex with guys and stuff.'

36 Charge 3 is particularised as you wilfully misconducting yourself by abusing your position and authority for personal gain by forming a friendship with Ms McManus and engaging in sexual intercourse on Victoria Police premises.

#### **Charge 4**

37 Charge 4 relates to your misconduct with a woman I will refer to as Lisa Charles<sup>5</sup>. The offending occurred between 13 September and 15 November 2017.

38 On 13 September you were undertaking reception work at the Moonee Ponds Police Station. Ms Charles telephoned the station and reported to you details of what she believed was the fraudulent purchase of her iPad. She provided you with some personal details and agreed to email you relevant communications relating to the sale of her iPad. On the same day you performed a 'LEAP' police check on Ms Charles.

39 Ms Charles was able to provide the name of the person suspected of having fraudulently obtained her iPad and you checked this person's criminal background on the 'LEAP' database. You then asked Ms Charles to attend the police station

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<sup>5</sup> A pseudonym.

to possibly identify the suspect by looking at some photos. While she was at the Police Station you told her you would be away from work for a couple of weeks.

40 Between 30 September and 5 October a number of emails were exchanged between you and Ms Charles. The emails had a friendly and somewhat informal tone, but appeared to centre around making progress in investigating the crime that Ms Charles had reported. Arrangements were made for a suitable time for Ms Charles to attend the station and make a formal statement. This occurred on 5 October 2017 and while she made the statement with your assistance, she told you she was thinking of applying to join the Police Force. You offered to assist her in completing that application.

41 Later that evening you sent an email to Ms Charles again with a familiar and friendly tone, stating in the email that your offsider had spilt a drink over the statement she had made. You apologised to Ms Charles and asked her to come back to the station in the next few weeks to re-sign the statement. You later admitted to Ms Charles that this story was false and was an excuse for you to be able to see her again.

42 You continued to exchange friendly emails with Ms Charles in the following days. There were references in the emails to the investigation relating to Ms Charles' complaint and also unrelated banter, with some reference to you going on leave to play basketball.

43 On 22 October 2017 you emailed Ms Charles, 'Hey Lisa, Just a friendly reminder to see how you are? Any update on the police force application ? Silly question but I'm assuming our friend has not deposited any money into your account Re iPad? Anyways I'm back from leave now and will find time to catch up. Hope you're well.'

44 There were further friendly emails exchanged between you and Ms Charles on this day and in the evening you telephoned her and spoke with her for about 5 minutes. Two days later on 23 October you again rang Ms Charles and spoke for about 20 minutes. During one of these phone calls you asked her whether she would like to

catch up for a coffee in the next couple of days. Understandably, she formed the view that you were interested in her personally. She agreed to meet with you and you arranged to have lunch with her at Highpoint Shopping Centre on 25 October 2017.

45 You told Ms Charles you had been engaged but were now separated. This was not true but she initially believed you and the two of you socialised over the next few weeks. The two of you kissed each other on an occasion, watched some TV together, and went to the horse races. Ms Charles watched you playing basketball.

46 In November Ms Charles became suspicious that you were not separated as you claimed. She told you to sort out your relationship. On 11 November you were away on a 'buck's weekend' and telephoned Ms Charles when you were intoxicated. You asked her if she would consider being in a relationship with you. Ms Charles was still suspicious and over the next few days text messages were exchanged. On 15 November Ms Charles saw you shopping with your partner at Highpoint shopping centre and sent you a text saying she had caught you out.

47 The next day, 16 November, you and Ms Charles went to dinner to discuss the situation. You still maintained that you were separated but Ms Charles did not believe you. Later that night Ms Charles messaged you saying amongst other things that she thought you were a polite and caring person but that you were obviously still in love with your partner and that you deserve to be happy with her. You responded with a message saying amongst other things, that you had been truthful and that any decent guy would be stupid not to fall in love with her.

48 Call charge records show that you made 26 phone calls to Ms Charles during the charged period. Later in the investigation it was discovered that you had not recorded details of your investigation regarding Ms Charles' police report on the LEAP database as required by Police policies.

49 The misconduct in Charge 4 is particularised as you abusing your position and authority for personal gain by forming a friendship with Ms Charles and wilfully

neglecting your duty to record your investigative actions relating to Ms Charles' complaint.

### **Discovery of your misconduct and your attempt to pervert the course of justice**

50 Your misconduct first came to attention of the authorities after Isabelle McManus discussed having sex with you in the Police Station with a counsellor, and revealed to the counsellor how much she regretted that encounter. Your behaviour was subsequently reported to police and an investigation commenced.

51 On 30 November 2017, police executed a search warrant at your address and seized your telephone and sleeping bag. You were arrested and interviewed in relation to your conduct with Ms McManus. Following legal advice, you made no comment to the questions put to you.

52 On 1 December 2017 your work files were inspected and the report by Lisa Charles concerning her iPad came to light. She was telephoned by police and told that you would no longer be working on her case and was asked if she needed her complaint to be further investigated. Ms Charles said she did not need any further police assistance. She then sent you a text message referring to this phone call and asked you if everything was okay. You telephoned Ms Charles and said you would explain things when you had a chance and you told her, 'Just whatever you do, don't say anything and I'll get back in touch with you when I have a chance.'

53 Ms Charles never heard from you again. She felt you had used the fact she was a victim of crime as an 'ice breaker' to ask her out and she states, 'I feel he was never really a single man and he was stringing me along for some sort of sexual contact, but I wasn't ready for that.'

54 Between 1 December and 3 December 2017, you called Adele Roberts using Snapchat but she didn't answer. She called you back and you told her she needed to delete all of the messages between the two of you and that you were going to

block her on Snapchat . You told her you would get back in touch in a month or two. Ms Roberts thought this a strange request and you told her all police get their phones checked to make sure they are doing the right thing. As a result of your request she deleted your name, and the communications between the two of you from her Snapchat account.

55 On 3 December 2017 you enlisted the help of a friend named Mr Findlay to make further contact with Ms Roberts. You were hoping that Mr Findlay could persuade her to give a false account if she was questioned about how she first met you.

56 Mr Findlay used your Facebook account to attempt to contact Ms Roberts. Ms Roberts didn't understand who Mr Findlay was or why he was trying to contact her and she resisted responding. She messaged Mr Findlay to stop contacting her, and sent messages stating 'Who are you?' along with a teary eyed emoji.

57 Between 4 and 6 December 2017 you and Mr Findlay exchanged some messages and spoke over the phone a number of times about Mr Findlay's unsuccessful efforts. The messages reveal that you took some care not to explicitly refer to what you were requesting Mr Findlay to do on your behalf. The messages also indicate that you persisted in encouraging Mr Findlay to make contact with Ms Roberts.

58 Ms Roberts was puzzled and concerned as to why Mr Findlay in his messages did not disclose why he wanted to speak to her or who he was. For example, Mr Findlay messaged Ms Roberts 'Call me if you like. If not, I won't bother you again , sorry about this.' Ms Roberts replied, 'Can you just tell me who it's from then I'll call you.' Mr Findlay then telephoned you and the two of you spoke before Mr Findlay replied to Ms Roberts by sending her a message, 'I can't sorry.'

59 On 6 December 2017 after much reluctance Ms Roberts telephoned Mr Findlay and they spoke for a short time. Mr Findlay told Ms Roberts he was your best friend and that whilst you were not in trouble you were worried. He said to her that he didn't think police would call her but if they did could she say she met you at a

party and added you to Snapchat before you assisted her at the Flinders Street Station.

60 Mr Findlay spoke with you over the phone for about 20 minutes after this communication with Ms Roberts and no doubt would have told you that he had successfully conveyed your request to Ms Roberts.

61 On 20 December 2017, Ms Roberts was told Police were going to meet with her that day to speak to her. Ms Roberts immediately thought about her call with Mr Findlay and tried unsuccessfully to communicate with Mr Findlay. When Police spoke with Ms Roberts she told them the truth about how she had met you and her communication with Mr Findlay. She co-operated with the investigation and conducted two further calls with Mr Findlay that she recorded. During those conversations Mr Findlay confirmed that you would like her to say she knew you before the incident at Flinders Street station.

62 Charge 5 is particularised as you, between 1 December and 20 December 2017, attempting to cause Ms Charles and Ms Roberts not to co-operate with a police investigation.

63 You were arrested on 1 March 2018 and interviewed regarding your involvement with Sienna Argyle, Isabelle McManus, and Lisa Charles , and made a no comment interview.

64 As a result of this investigation you resigned from the Police Force on 12 June 2018. On 9 March 2021 you were charged on summons. Your committal mention hearing was on 9 August 2021, and you indicated you would plead guilty to these offences. Your plea hearing proceeded in this Court on 11 April 2022.

### **Your Personal History**

65 Tendered on your behalf at your plea hearing were two psychological reports, and three personal references that refer in detail to your background and upbringing.<sup>6</sup> Your Counsel, Ms Melinda Walker also expanded upon your personal circumstances during the hearing and in her written submissions<sup>7</sup>.

66 The Prosecution concede that your early childhood circumstances are properly characterised as traumatic and deprived.<sup>8</sup> You had an older brother and younger sister but you were exposed as child to your parents using heroin and cannabis and frequent family violence that necessitated police and medical interventions. At the age of four you were removed from parental care and initially placed with an Aunt before being placed into foster care. You were placed in two or three different foster homes between the ages of four and eight. Fortunately at the age of eight, you were able to form a positive relationship with your carers and after some time your brother was able to join this placement. Your sister was raised by a different carer.

67 One of the personal references tendered on your behalf is from Katie Hooper who worked with Child Protection in the years when you were between 4 and 7 years old. Part of her reference states:

‘As Jayden’s and his siblings’ protective worker, I saw first-hand the abuse and neglect he suffered as an infant and young child. There were many disruptions to his home, his stability, his schooling and routine... His mother used substances and was not able to attend to her children’s needs. As a child Jayden had sporadic, occasional and brief contact with his father. Both of Jayden’s parents spent time in prison.’

68 Despite your traumatic childhood you managed to successfully complete Year 12 and then gained stable employment in jobs involving security work, banking and the hospitality industry, before joining the Police Force. Your foster parents describe you as having a strong work ethic and that this allowed you to save for your first home, cars, trips and wedding.

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<sup>6</sup> Exhibit 2 on the Plea - Psychological Report of Sandra Cokorilo dated 21 March 2022; Exhibit 3 on the Plea - Psychological Report of Craig Sanderson dated 23 March 2022; Exhibit 4 on the Plea - three personal references of Jimmy Hsu (25.3.22), Steven Aney and Brendan Wagner (20.3.22) and, Katie Hooper (3.4.22).

<sup>7</sup> Exhibit 1 on the Plea - Defence Outline of submissions.

<sup>8</sup> Exhibit B on the Plea - Prosecution outline of Submissions dated 8 April 22 at [24].

- 69 You married on 16 December 2017 and have one daughter from this marriage who is now approximately two years of age. Unsurprisingly, your marriage has ended. Your psychologist noted that your spouse terminated your 11 year relationship with her in November 2020, in the context of discord arising from the current Court matter.’
- 70 The psychological reports and reference material are consistent in stating you have a strong bond with your daughter that you describe as ‘ a bright spark of my life.’
- 71 You have managed since being charged to gain casual employment in the hospitality industry and live with Katie Hooper, who was present<sup>9</sup> during your plea hearing.

### **Psychological Evidence**

- 72 In the month after you were first interviewed concerning your misconduct, you sought professional psychological assistance. Psychologist Craig Sanderson, in his brief report dated 21 March 2022, states that you have attended sessions regularly (every 2 to 3 weeks) over almost four and a half years since December 2017.<sup>10</sup>
- 73 Craig Sanderson opines:

“...Mr Faure has communicated his remorse regarding his actions , and his desire to address his behaviour and change it. He has often been quite emotional in sessions, regularly becoming teary. My observations and opinion is that he is sincere in his remorse.”

“With the assistance of therapy, I have sought to help Mr Faure understand the emotions driving his behaviour...He speaks of his childhood experiences resulting in him suffering from low self-esteem and seeking the acceptance of others. It is my opinion , and now his understanding, that he sought the attention and approval of his victims in order to feel better about himself.’

The past 4 and a half years have been difficult for Mr Faure. During this time, Mr Faure has waited for an outcome into the investigation of the charges brought against him. He has been suffering ongoing anxiety

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<sup>9</sup> The hearing was conducted remotely due to the pandemic and Ms Hooper was present via video link.

<sup>10</sup> Exhibit 3 on the Plea.



during this time, with his mood being very low at times. It also impacted his marriage to his wife...He has had to seek employment outside Victoria Police, often wondering if his employment will be interrupted with a court hearing and jail sentence. It is unfortunate that the investigation has been so lengthy, as it has definitely had a considerable impact on Mr Faure's mental health.'

74 An extensive psychological assessment prepared by Ms Sandra Cokorilo was also tendered.<sup>11</sup> I have read it carefully but make reference only to the parts necessary to explain my sentencing reasons.

75 You were 29 years old by the time Ms Cokorilo assessed you. You were aged between 23 and 25 over the period of the offending. After detailing your background, the circumstances of the offending, and the results of a mental state examination and the psychometric testing undertaken, Ms Cokorilo came to the following conclusions:

'His offending is thought to have arisen as a combination of psychosocial immaturity and consequence of negative life events which have been proposed in literature as explanation for first-time adult-onset offending.

In the months preceding the offending Mr Faure's foster family relocated to Sydney, his marriage was beginning to deteriorate, and he had witnessed fatalities in the course of his employment as a young police officer. His emotional avoidance inferred to have developed as a coping mechanism in response to his adverse early life experience, is thought to have limited his insight into his mental states thereby precluding help-seeking behaviours. Instead, he sought validation through pursuing relationships with members of the public.'

76 In relation to your misconduct in public office, Ms Cokorilo indicated that you had told her that you did not appreciate the 'legal boundaries' related to your behaviour but have since 'recognised your offending conduct' and expressed remorse for that behaviour. Despite the consequences of your conduct resulting in a loss of career, friends, and your marriage, you have maintained employment, frequent contact with your daughter, and a commitment to counselling. Whilst she assesses your prospects of reoffending as low, she observes that your insight into the extent of your misconduct remains poor, and there would be ongoing benefit from specialised interventions to promote your understanding of your own behaviour

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<sup>11</sup> Exhibit 2 on the Plea.

and reduce the risk of any further transgressions. She states that you have no underlying mental health conditions or 'pro-criminal orientation'.

77 I find that your psychological assessment does not raise any of the sentencing considerations discussed in the case of *Verdins*<sup>12</sup>.

### **Submissions and Sentencing Considerations**

78 The Prosecution submits<sup>13</sup> that your offending warrants a term of imprisonment that involves a head sentence and non-parole period. In relation to the nature and gravity of your offending it is submitted this is serious offending because:

- (a) There are four complainants;
- (b) The complainants were 'vulnerable women' and one was a child;
- (c) Your role was to assist them and you abused your position to manipulate them for your own sexual gratification;
- (d) You sent the 15 year old complainant photos of yourself in the shower, implied you could have sex and a message wishing she was 18;
- (e) You lied to the complainants about your relationship status and your behaviour was 'predatory';
- (f) In relation to Sienna Argyle you forwarded intimate footage of the two of you having sex without her consent;

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<sup>12</sup> *R v Verdins* (2007) 16 VR 269.

<sup>13</sup> Exhibit B on the Plea.

- (g) You knew Isabelle McManus was extremely vulnerable because you were aware she had been admitted to Dandenong Psychiatric Ward before you took advantage of her;
- (h) You made 'LEAP' checks on these women no legitimate reason and never properly recorded you investigation of Lisa Charles' report to police;
- (i) The impact on the complainants was significant. Adele Roberts has made a victim impact statement where she has stated, 'I sought out the assistance of authorities, the only service who could have helped me in this situation and I was further victimised.<sup>14</sup> As a result, my vulnerabilities increased and my trust was violated.' Isabelle McManus feels similarly that she was taken advantage of by a person she should have been able to trust.
- (j) Charge 5 is a serious example of attempting to pervert the course of justice as it is a rolled up charge that relates to influencing two people and you, as a serving police officer, would have been aware how serious it is to improperly impede an investigation;
- (k) General deterrence and denunciation are significant sentencing considerations as misconduct in public office erodes public confidence in those that have access to the 'LEAP' system the public is entitled to expect that when they go to police for assistance that police members will not use their authority to access personal information; and
- (l) The suggestion in Ms Cokorilo's report that you were not aware that your behaviour with the four complainants constituted criminal conduct is not credible given your attempt to pervert the course of justice.

79 The Prosecution accept that you have pleaded guilty at the earliest opportunity and that this attracts a greater discount because of the pandemic. They also

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<sup>14</sup> Exhibit C on the Plea.

concede you have shown some remorse but submit there is still a need for specific deterrence.

80 There is no issue you have good prospects of rehabilitation.

81 The Prosecution also accept that your traumatic and deprived background engage the principles stated in *Bugmy*,<sup>15</sup> and that the assessment of your moral culpability should be 'reduced somewhat' however this not a strong factor given you were able to qualify as a police member, once placed in a supportive family environment.

82 The Prosecution concede the delay in your case being finalised should be taken into account in your favour.

83 The Defence rely upon a number of circumstances that I accept are significant matters of mitigation:

(a) You indicated an intention to plead guilty at an early stage. As such you have saved the expense of a trial and the need for the complainants to give evidence concerning personal and embarrassing details. This has facilitated the course of justice, and relieved the significant backlog of trials listed in this court. The fact that such a plea is entered during the course of the pandemic entitles you to a more significant amelioration of your sentence both because of the additional utilitarian benefit and that the fact that imprisonment during the pandemic is likely to be more onerous due to the restrictions that are likely to be ongoing in the prison environment.

(b) The psychological material, character references, and your letter to the court speak of your reaction to being charged. Although there are still some concerns regarding your insight into your own behaviour I accept that you are remorseful and over time have come to appreciate how deplorable your actions were towards these complainants.

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<sup>15</sup> *Bugmy v The Queen* (2013) 249 CLR 571.

- (c) You were young and Mrs Cokorilo expressed the view that your upbringing resulted in 'psychosocial immaturity' that was a likely contributing factor to your offending.
- (d) You are now aged 29. You have not reoffended in the intervening period since being charged. You are assessed as being low risk of reoffending. Your prospects of rehabilitation are good. You have engaged in counselling for over four years since being charged, with a counsellor who expressed the view that you want to address your behaviour and change it. You have managed to regain employment and perform an ongoing fatherly role to your young daughter.
- (e) The delay in you being charged has not been adequately explained by the Prosecution and there is some 'incongruity' between the Prosecution claim that the offending is serious and at the same time taking so long to bring the charges before the Court.<sup>16</sup>

84 The Defence also referred me to other cases where sentences were imposed in respect of charges of a misconduct in public office. I have examined these cases bearing in mind that such cases are not precedents but may offer some guidance in terms of sentencing principles, and may provide a 'yardstick' as to the type and length of sentences imposed. It was submitted that your conduct could be contrasted and compared with other types of misconduct sometimes associated with this type of offending such as:

- (a) Introduction of contraband into prisons;
- (b) Tampering of evidence and theft from suspects; and
- (c) Illegal entry to premises and trafficking drugs.

85 It was submitted that your offending could properly be dealt with by sentencing you to a lengthy Community Corrections Order and that such a sentence would

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<sup>16</sup> *R v Schwabegger* [1998] 4 VR 649.

reflect deterrence and denunciation, but also balance such considerations against the need to impose a sentence that is just in all the circumstances and which promotes your rehabilitation.

## **Conclusion**

86 There can be no doubt your offending is serious. The offence of perverting the course of justice carries a maximum penalty of 25 years' imprisonment and the offence of misconduct in public office 10 years' imprisonment. While the maximum penalty is an important sentencing consideration, the particular circumstances of your offending must be carefully considered.

87 In relation to the misconduct in public office, it is particularly disturbing that you sent footage of you having sex with Sienna Argyle to your friend after you had told Ms Argyle that you would delete the footage. It is completely understandable that she would feel a deep sense of betrayal and distress as a result of this conduct.

88 I also find it appalling that in relation to Isabelle McManus you could embark upon such a casual sexual encounter with someone you knew was recently so seriously unwell that she was hospitalised in relation to expressing suicidal tendencies. One of the troubling aspects of inviting her to have sex with you in the police station is that she appreciated at the time just how inappropriate this was, and this placed additional mental stress upon her. She had told you that some of her problems related to her past sexual relationships. Again, it is understandable that she looks back at this episode with feelings that you exploited her vulnerabilities and had little if any regard for her welfare.

89 I regard charges 2 and 3 as the more serious of the 4 misconduct charges. Although charge 1 related to a complainant that was only 15 years old, you never physically met with her after your initial encounter in the course of your work as a police officer. You did send her completely inappropriate messages which implied you were interested in her sexually but they were not at the highest level of explicitness. In relation to Charge 4, thankfully Lisa Charles developed suspicion

that you were not honest with her, and resisted becoming too embroiled in a relationship with you.

90 All four complainants understandably feel a sense of betrayal, and a feeling that you used your status as a police officer in manipulating their perceptions of you. To some extent, they believed what you said to them because you were a police officer, and they thought you were a trustworthy individual. You were not trustworthy: you deceived all of the complainants in one way or another. I have read and considered Adele Roberts' victim impact statement. She states how vulnerable she was when she first came into contact with you and, 'Instead of assistance, I feel as though I was preyed upon for his own benefit.' There is no doubt your misconduct in public office has caused reputational damage to Victoria Police.

91 This morning, on the day of sentence I have had brought to my attention two further documents lodged with the court. The first is a Victim Impact statement of Sienna Argyle and the second is a letter from your wife titled Victim Impact Statement. Ms Argyle has read her Victim Impact Statement aloud in Court. She is obviously a compassionate and thoughtful young woman. She regrets your dishonesty towards her but fortunately feels that your conduct has not caused 'major issues' to her mental health. She has felt a deep sense of stress associated with the Court case but she generously characterises your misconduct as stupid choices.

92 In relation to your wife's letter it has been necessary for me to carefully consider the impact of your offending upon your wife. There is no doubt that your offending has resulted in her realisation that your marriage to her was in many senses a fraud. She is simply devastated by what she describes as your 'disrespect disregard and awful behaviour towards women'. At the time she married you she was not aware of the full extent of your offending. I have carefully read her letter and take its contents into account to the extent that I am able to discern the impact of your offending conduct upon your wife as opposed to what might be your general

deceptiveness and disloyalty to her that is not able to be causally connected to the offences before me.

93 This is a difficult sentencing exercise. I must be mindful that you are not to be sentenced simply for what might be characterised as immoral conduct. I do find that the misconduct in public office charges you face are not the most serious examples of this offence. The cases your Defence counsel has referred me to, do appear to me to have a particular feature that is absent in your case, and which render them more serious examples of this type of offence. The offenders in those cases were utilising their status as a public official to facilitate the commission of what would be serious criminal offending regardless of their position as a public official. In other words they used a position of trust to commit such crimes as trafficking drugs, or theft.

94 Most of your interactions with these complainants would not be illegal if it were not for the fact that you had met them through your role as a police officer and had misused their personal information obtained in the course of your work to foster relationships with them.

95 Ms Cokorilo and the character reference written by your friend of eight years, Jimmy Hsu, refer to your awareness that your relations with the complainants was morally wrong and risked your ongoing employment; but you did not fully appreciate the serious illegality of your conduct. I accept that this was the case in respect of most of your conduct towards the complainants and this does to some extent lessen your moral culpability for the offences. I find the Prosecution submission that your conduct in attempting to pervert the course of justice demonstrates you were aware of the illegality of these relationships unpersuasive. Your attempt to influence Adele Roberts and Lisa Charles not to reveal how they initially met you occurred after you had been arrested and interviewed regarding the offence of misconduct in public office in relation to Isabelle McManus. That interview and arrest must have brought home to you the seriousness of using your police status and the private information obtained through your duties to foster



inappropriate relationships. I have referred to 'most' of your conduct towards the complainants because I find that you must have had some appreciation that sending the footage of you and Sienna Argyle having sex without her consent, was likely to be a criminal offence.<sup>17</sup>

96 I should note that during your plea hearing I raised the issue of what type of training police officers receive regarding the potential problems of developing personal relationships with victims of crime. The Depositions lodged with the Court included the chapter in the Victoria Police Manual – Policy Rules relating to Professional and Ethical standards. The document contained many commendable guidelines and the importance of Police continually self-evaluating their own conduct as ethical. It also stressed the importance of respecting and safeguarding the private information of individuals gained through the investigation of crime. There were also clear guidelines relating to only using the 'LEAP' database for legitimate police purposes. There appeared to be no guidelines specifically directed towards forming intimate relationships with the victims of crime. I asked the Prosecution to further investigate whether such guidelines existed. In response, the Prosecution has since the plea hearing lodged with the Court part of the Victoria Police Manual – Policy Rules dealing with 'Managing a conflict of interest'. The document runs to some 12 pages with 11 specific topics canvassed but nowhere does it specifically address the inappropriateness of police officers using the private information of victims of crime to foster intimate personal relationships. If it is the case that there are no specific references in the Victoria Police Manual to problems with this type of behaviour, then in my view, Police Command should consider reviewing these Policy Rules to specifically provide some guidance for police officers as to the potential for this type of behaviour to constitute the serious offence of misconduct in public office.

97 Regarding charge 5, the fact that you were a serving police officer at the time of your offending is an aggravating feature of the offence. I accept the Prosecution

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<sup>17</sup> See S 41 DA of the Summary Offences Act 1966. The offence has a maximum penalty of 2 years imprisonment.

submission that general deterrence, and denunciation is a significant consideration in sentencing for this offence. One of the most fundamental duties of a police officers is to assist in the investigation of criminal conduct. Specific powers and responsibilities are given to police officers in order to enable them to carry out such an important duty. In order to perform your role as a public official you took an oath to perform your duties faithfully according to law to the best of your ability. Instead you attempted to pervert the course of justice by actively impeding a criminal investigation because of your own self-interest.

98 I also accept the Prosecution submission that the offence is more serious because it is a rolled up charge relating to two witnesses one of which was only 15 years of age. However, I find that other features of this offending render it not the most serious instance of this offence. The charges of misconduct that your attempt related to were, as I have already explained, the less serious of the four misconduct offences. Your attempt involved no threats of violence or financial inducements to either witness, and in relation to Lisa Charles there was a single utterance asking her not to say anything until you had a chance to speak to her. You did not subsequently speak to her or make any further request. The offending also occurred before any decision had been made to charge you with any offence.

99 I must balance the various sentencing considerations. I must punish you to an extent that is just in all the circumstances and I must, amongst other considerations have regard to your culpability and responsibility for the offence. I have had regard to all oral and written submissions and exhibits tendered during the course of your plea when determining the appropriate sentence. Your conduct is to be denounced and I accept that the sentence must factor in the importance of general deterrence.

100 Your own conduct has resulted in you losing your career and your marriage. I accept that you are unlikely to re-offend and have made considerable effort through counselling to reflect upon your attitudes and change your behaviour. I am satisfied that the need for specific deterrence is moderated.

- 101 I must not impose a sentence that is more severe than that which is necessary to achieve the purposes for which a sentence is imposed.<sup>18</sup>
- 102 I have concluded that the factors in mitigation as referred to in paragraph 83 above compel me to impose upon you a Community Corrections Order. The seriousness of your offending warrants in my view orders of significant length and with a significant component of unpaid community work.
- 103 I am cognisant of the statements of principle in our Court of Appeal relating to the purposes of a Community Corrections Order. Such a sentence can serve both punitive and rehabilitative purposes of sentencing simultaneously. Such a sentence may in particular circumstances be suitable for relatively serious offences which might otherwise have attracted medium terms of imprisonment. In my view this is such a case.<sup>19</sup>
- 104 Without repeating all the factors in mitigation at length I have regarded your relative youth at the time of the offence, in conjunction with your deprived background and immaturity which the Prosecution concedes is relevant to assessing your moral culpability as significant. I have also found the delay in this case being finalised a significant factor. I am of the view it took far too long, for you to be charged with these offences and that the delay has not been adequately explained. As Mr Sanderson observes, for over four years you have suffered anxiety relating to the outcome of this proceeding. I have also formed the view that you will comply with a Community Corrections Order and that such an order can have a constructive component of addressing underlying psychological factors relevant to your offending and appropriately punish you for this offending.
- 105 Jayden Faure, would you please stand. I sentence you as follows:

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<sup>18</sup> S 5(3) of the *Sentencing Act 1991* (Vic).

<sup>19</sup> *Boulton v The Queen* [2014] VSCA 342.

- 106 On charge 1 of misconduct in public office, you are convicted and sentenced to a Community Corrections Order of 12 months' duration. It is a condition of this order that you complete 80 hours of unpaid community work.
- 107 On charge 2 of misconduct in public office you are convicted and sentenced to a Community Corrections Order of 2 years' duration with the special condition that you:
- (48C) Perform 250 hours of unpaid community work;
  - (48 D)(3)(e) that you undertake Treatment and Rehabilitation programs relating to your mental health.
- 108 On charge 3 of misconduct in public office you are convicted and sentenced to a Community Corrections Order of 2 years' duration with the special condition that you:
- (48C) Perform 250 hours of unpaid community work;
  - (48D)(3)(e) that you undertake Treatment and Rehabilitation programs relating to your mental health.
- 109 On charge 4 of misconduct in public office you are convicted and sentenced to a Community Corrections Order of 1 year's duration with the special condition that you:
- (48C) Perform 80 hours of unpaid community work;
  - (48D)(3)(e) that you undertake Treatment and Rehabilitation programs relating to your mental health.
- 110 On charge 5 of attempting to pervert the course of justice you are convicted and sentenced to a Community Corrections Order of 3 years' duration with the special condition that you:
- (48C) Perform 375 hours of unpaid community work;

- (48D)(3)(e) that you undertake Treatment and Rehabilitation programs relating to your mental health.

111 These Orders will run concurrently so that the total effective sentence is in effect that you will have to comply with a Community Corrections Order for 3 years, and perform 375 hours of unpaid community work, and comply with directions relating to treatment and rehabilitation relating to your mental health.

112 You are required to report to the Werribee Community Corrections Service at 87 Synot Street Werribee before 4 pm on 12 May 2022.

113 Pursuant to s 6AAA of the *Sentencing Act 1991* (Vic), I declare that had you not pleaded guilty, I would have sentenced you to a total effective sentence of 14 months' imprisonment, to serve 8 months before being eligible for parole.

114 I also make the forfeiture order sought by the Prosecution in the terms as expressed in that order as lodged with the court.