IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2016-085-002938
[2019] NZHC 234

THE QUEEN

v

ALOSIO TAIMO

Hearing:	22 February 2019
Appearances:	Jasper Rhodes and Charlie Piho for the Crown Panama Le'au'anae and Tua Saseve for the Defendant
Judgment:	22 February 2019

SENTENCING REMARKS OF MOORE J

Introduction

[1] Alosio Taimo, at the age of 56, you appear for sentence having been convicted of 95 charges of sexual offending committed against 17 boys.

[2] On 24 October last year, after several days of deliberation following a nine-week trial, the jury in your trial returned verdicts of guilty on the following charges:

(a) 25 counts of sexual violation by unlawful sexual connection;[1]

(b) 20 counts of committing an indecent act on a child under 12;[2]

(c) 32 counts of indecent acts on a young person under 16;[3]

(d) 7 counts of indecency with a boy under 12;[4] and

(e) 11 counts of indecency with a boy between 12 and 16.[5]

[3] Your offending, however it is viewed, is unprecedented in this country. The sheer scale is extraordinary, whether it is measured in the number of charges, their seriousness, the number of victims, their tender age, their vulnerability, the years over which your offending spanned; all committed in the context of gross breaches of trust: boys who looked up to you; parents who admired and trusted you and turned to you for help and embraced you into their families; teachers and staff who never in their wildest dreams thought you were capable of doing these dreadful things. Almost certainly that sense of trust and the standing in which you were held by so many allowed you to commit these crimes over the nearly 30 years you did because you knew the boys would never dare complain and even if they did they would never be believed; the words of a boy pitched against the reputation of a respected senior community leader.

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1 Crimes Act 1961, ss 128(1)(b) and 128B(1); the maximum sentence is 20 years' imprisonment. However, four of these counts arose prior to 1 September 1993, when the maximum sentence was 14 years' imprisonment.
2 Section 132(3); the maximum penalty is 10 years' imprisonment.
3 Section 134(3); the maximum penalty is seven years' imprisonment.
4 Section 140 (repealed); the maximum penalty was 10 years' imprisonment.
5 Section 140A (repealed); the maximum penalty was seven years' imprisonment.

[4] As you know, the Crown seeks a sentence of preventive detention. Your lawyer, Mr Le'au'anae, presses for a finite sentence. And so I will approach your sentencing in two stages:

(a) First, I shall fix the finite sentence and corresponding minimum period of imprisonment (MPI); and

(b) Then I shall decide whether you should be subject to preventive detention and if so, the length of the MPI to accompany that sentence.

[5] If I decide against preventive detention, you will receive the finite sentence I determined at the first stage.

[6] I turn now to the facts of your offending. Obviously, they are well known to you. But because sentencing a quintessentially judicial function and is required to be undertaken in public it is necessary for me to set out the factual basis on which the sentence I fix is calculated. At your trial you denied what each of the 17 victims described. Plainly by its verdict the jury largely believed them and concluded you had lied. They did not believe you. It now seems you accept, belatedly and only in part, what that procession of courageous young men described. And so I approach my description of the tragic facts on that basis.

Facts

[7] Some of your victims are now adults. Others are still teenagers. For that reason, the trial was split into two broad groups: the adult group and the child group.

[8] You offended against the adult group at various times and locations within your community. At the time they were boys. Each was either related to you or was the child of families you met through work or in your neighbourhood.

[9] The child group was a little different. You met them through your involvement at a local primary school and through your involvement as a successful rugby coach, manager and mentor.

[10] The boys you abused, irrespective of which age cohort they fitted into, were all aged between nine and 16 years. The 17 victims were connected to you via different associations. Significantly in my view, of the 17, 15 were abused on multiple occasions. Of those, many were abused almost every time they had contact with you; in some cases virtually daily over periods measured in months and years. In respect of nine of the victims, charges of sexual violation were proved. It is not overstating the position to say that you adapted almost every environment you occupied to facilitate your offending, whether that was your home, the victims' homes, in which they were entitled to feel safe, your workplaces or your vehicles.

[11] I shall summarise the offending in respect of each group. At times I shall make comments which are common to the offending against a number of victims. In doing so, I do not intend to downplay the impact of the offending against individuals. It is simply that your offending was committed on such a grand scale against so many and in so many respects reveals a clear modus operandi or pattern which lies at the heart of your culpability. Indeed, it was for that reason I made the pre-trial orders I did, that all charges be heard together because it was important the jury heard the whole story so that they could assess for themselves your claims of collusion and weigh up your assertions that each of them was lying. As I said, by its verdict, it was you the jury determined was the liar.

Offending against the adult group (1987-2007) – RM, LF, CM, ML, SR and KS

[12] So I start with the offending against the adult group which occupied the period of 1987 to 2007 and involved the complaints who I shall refer only by their initials because this is a public forum; and they are RM, LF, CM, ML, SR and KS.

[13] In 1986, you immigrated to New Zealand from Samoa. You arrived on a 30-day tourist visa. Initially you stayed with a relative at her address in Ōtara. For a few months you shared a bedroom with her son, RM. More relatives came to stay at the address. And so you and RM moved into the garage.

[14] Towards the end of 1986, you found employment at a local McDonalds. You were later promoted to manager.

[15] In 1989, LF moved into the garage. You are related to him. That same year you met your partner.

[16] In 1990, you secured a job for RM at McDonalds. Your partner became pregnant and gave birth to your first child, a girl, in early 1991. You and your partner had two further children in 1992 and 1993. However, soon after the birth of your last child, your partner was deported back to Samoa. At that stage you stopped working at McDonalds so you could care for your children.

[17] In 1995 you moved to your home in Papatoetoe. From 1996, CM would spend time at this address. He is also related to you. Around this time, you found work at a local freighting company. There you met and befriended the mother of ML. You occasionally visited ML at his home, supposedly to drop off food while his mother was working late.

[18] In 1998, you shifted to Naenae in Lower Hutt. There you studied tourism at the Wellington Polytechnic and worked part-time at McDonalds. CM came to stay with you for a number of months.

[19] In 2002, you returned to Auckland and again stayed with the relative at whose address you lived when you first arrived from Samoa. You found a job at a local primary school as a parent helper and later as a teacher's aide. In 2003 you shifted into your home in Ōtara. You lived there until your arrest in August 2016.

[20] It was in 2003 that, through a chance encounter, you reconnected with another relative of yours through your church. You realised her children, SR and KS, went to the same school as yours. You began to spend time with her and her family.

[21] In either 2004 or 2005, KS moved into your home to live. He stayed with you until 2006. SR would also spend much time at your home.

[22] DP lived next door to you at this time. He was good friends with one of your children and would spend time at your home.

[23] It is not possible to truly capture the scale and seriousness of your offending in a few paragraphs in a sentencing decision. The evidence took many weeks to extract from young men who had mostly bottled up these events they had spent so much of their lives trying to blot out. But my task is to try to summarise what the jury heard and what they must have found from their verdicts.

[24] The offending against these boys spanned 20 years between 1987-2007. Throughout this time you offended against them in a wide variety of places. These included the garage, at McDonalds where you worked, in your own home, in their homes and in your car. The victims, when you offended against them, were aged between nine and 16. Your offending involved mutual masturbation. This would often occur while you were in bed together or after you encouraged them to massage your legs with baby oil. Occasionally this took place while others were in the room, either asleep or beside other victims. On a number of victims you performed oral sex. And then you made them perform oral sex on you. On one occasion, you unsuccessfully attempted to have anal sex.

[25] The offending against one boy involved just a single incident. For others, those with whom you had constant contact, it amounted to almost daily abuse over months, even years. Sometimes you bribed them with gifts to secure their compliance or buy their silence. Others you threatened. You threatened to tell their parents that they had been naughty at school or you threatened to tell them that they had been smoking.

[26] Throughout, in a subtle and cynical way, you controlled them whether that was through bribes, threats or, in some cases, even interfering in their relations with girlfriends.

Offending against the child group (2009-2016) – VF, KC, JM, DT, SO, IK, SM, JT, MT and RW

[27] I turn now to the offending against the child group. This was between 2009 and 2016 and involved ten victims: VF, KC, JM, DT, SO, IK, SM, JT, MT and RW.

[28] In 2008, you began working at another local primary school as a teacher's aide. You held this role until your arrest in 2016. Throughout this time you came to know

the other 10 victims, nine of whom were students at the school. The remaining victim, IK, was a friend of one of the others.

[29] Not only did you carry out the functions of a teacher's aide, but as you became more trusted and respected by the school's senior management you were given roles which gave you access to the boys you favoured for the purposes of feeding your perversions. In particular, as the school's sports co-ordinator, you supervised the coaching of sports teams and assisted with physical education. You were in charge of the sports shed, located in the school grounds, where sports equipment was stored. Each year you selected and appointed sports monitors to assist you with your responsibilities.

[30] You were also associated with a local rugby club. You recruited students to play for the club. You helped to transport those students to and from their games and their training. The boys' parents worshipped you for what they believed was your kindness and generosity. Many could not afford the costs of transport. They saw you as something of a saviour. Several of the students you recruited continued to play at the club after they left primary school. You thus continued your contact with them. You ingratiated your way into their families.

[31] It became routine for the boys to spend nights at your home, especially before games. Parents trusted you with their sons. They looked up to you. They saw you as a leader and mentor; a vehicle by which their aspirations and their children's dreams might be realised.

[32] Often, boys would stay over at your house after training. You plied them with food and drink; treats which were rare in their experience. You indulged them with access to video games, computers and phones. You regularly offered to help their parents with their care and purchased them rugby gear and school uniforms. It is not surprising that, despite the abuse you subjected them to, so many of the boys returned. You knew they would. They wanted to hang out with their friends; they wanted to play on the games that you provided. In that way your home became something of a magnet. Parents so trusted you that on occasions when their sons resisted your invitations because of the sexual abuse you subjected them to, their parents insisted

they go; lest they cause you offence. They even sent boys' siblings to stay with you, such was the unconditional trust that they reposed in you.

[33] The offending against these younger victims did not differ markedly from that perpetrated against the adult group. It involved mutual masturbation (often with baby oil). It involved mutual oral sex. There were also several unsuccessful attempts at anal intercourse. It appears that on two occasions you achieved penetration.

[34] As with the adult group the offending took place in various locations. It took place in the school sports shed, it took place in your car and at your home. Sometimes you took your victims home after sports games for the sole purpose of offending against them. But more often, the offending took place while you had a group of boys spending the night at your house. They would usually sleep in the lounge. You would ensure they were distracted with a video game, a computer or phone. Then you would call boys, one-by-one, into your bedroom and offend against them. This happened so many times over such a protracted period that what you did to them could only properly be captured in representative charges.

[35] On occasions where you encountered resistance, you would become upset. You would emotionally blackmail your victims, saying things like, "I do everything for you and this is how you pay me back?" Sometimes you would feign crying.

[36] All of this, after decades, ended in August 2016, when SM's aunt overheard him telling her daughter that you had abused him. Naturally, as did so many others who you abused, he thought he would be in trouble. He told his aunt only part of what you did to him. But she believed him. She questioned him and satisfied herself that he was telling the truth. She brought the matter to the Police's attention. This set off a chain reaction, culminating in you being convicted of offending against 17 victims over a period of nearly 30 years.

Victims impact statements

[37] Several of your victims and their families have filed victims impact statements, and you sat in this Court while they read those out to me. Not all the victims have made statements. That is entirely understandable. Some have elected not to do so

because they do not want to. Others are simply too busy in their young lives. The reality is that whatever sentence I impose on you, it will never be an answer for those 17 courageous young men who stepped forward last year to confront their abuser.

[38] What can anyone say which can adequately capture the incalculable toll of your offending? Victim after victim described what you did. For anyone sitting in that Court over those weeks it was a tortuous exercise. But for those 17 young men whose ages now range from 12 to 42 it was an excruciating experience. Not only did they have to recount the detail of the abuse they suffered at your hands, but they had to endure the ignominy of being accused of being liars.

[39] As I said, it was courageous of them to come forward and tell their stories; stories which, again and again, resonated with such familiarity and a sense of deja vu. It is not appropriate for me to single out any particular victim. Nor is it appropriate to quote at length from any of the very moving and heartfelt descriptions of the effects of your offending. What is worthy of comment is not only the courage of your victims but also the dignity and balance of their comments.

[40] Having said that there are themes which run through these accounts; the sense of abject helplessness; isolation and no-one to turn to; the overwhelming sense of guilt; the hate, anger and rage, and the fear that no one would ever believe them.

[41] Sitting here this morning and hearing the seven heart-wrenching accounts, it is impossible to be anything but deeply moved. I watched you as parent and victim tried to convey to me the true horrors of what you did. They did so with great dignity and I acknowledge each of them, as well as every other victim and the swathe of others who have been so deeply affected by what you did. You drove some of your victims to the brink of suicide. Others moved overseas to try to distance themselves from their childhood horrors. Some took refuge in alcohol and drugs. Some resorted to violence. Others have been unable to sustain long-term relationships. These are just some of the chronic effects of your abuse.

[42] And those life-long consequences are not confined to those you physically hurt.

[43] I have heard from parents who will never forgive themselves for allowing you into their families' lives. They feel and will always feel the dreadful burden that they somehow failed as parents or as siblings because they did not protect their children or their brothers as every parent should. As they say, they invited you into their homes with open arms. They welcomed you and treated you as family. They had no way of really knowing who you were. They now see themselves as failures. Of course, that burden is undeserved. They should not have to carry that weight because they did nothing wrong. They trusted you to protect and nurture their children. But you abused that trust. You exploited their confidence. But Mr Rhodes submitted to me this morning, and Mr Le'au'anae also supported that submission, these are victims who are not broken. To adopt Mr Rhodes' words, "These are proud strong and successful people." Those descriptors, in my view, are apt.

[44] Despite what I said earlier, it is appropriate to refer to a handful of comments which your victims have made. This is because they capture, better than I ever could, the range of life-long effects that your offending has had on them;

From one:

> "Today each of your victims will feel only a small part of closure but a lifetime of torment."

From another:

> "No matter how many people will mentor, coach or befriend my son, regardless if I think that there is good in them, I will never forget that looks can deceive."

And another:

> "Forgiveness is the hardest part, but it's allowed me to move forward in life, to overcome what you did."

And finally:

> "I have always wondered why and have asked myself over and over again as the attempts to take my own life failed so many times and now I understand that I need to live for this day to face my predator to break the silence and to have a voice. I am happy to say I am a survivor."

Finite sentence

[45] As I mentioned earlier, before I move on to consider whether to order preventive detention I must first fix what I consider to be the appropriate finite or determinate sentence. And it is to that task I now turn. First, the starting point.

Starting point

[46] The law requires the sentencing Court to impose a penalty near to the maximum prescribed if the offending is near to the most serious of cases, unless the circumstances relating to the offending make that inappropriate.[6]

[47] The Crown's basic proposition is that your offending is the most serious of its kind. Mr Rhodes also submits that cumulative sentences should be imposed to push the starting point beyond the statutory maximum of 20 years' imprisonment.

[48] The Crown says this approach is supported by the Court of Appeal's decision in *R v AM*.[7] There the Court said that where there are multiple victims offended against over a number of years the totality principle and the availability of cumulative sentences mean that the 20-year maximum for one offence is not the maximum available sentence for serial offending.

[49] The Crown is not aware of any other cases where cumulative sentences and the totality principle have been used for sexual violation offending to reach an overall starting point greater than 20 years. But it says this is warranted in your case; your case is exceptional by reason of the sheer number of complainants and the scale of offending. Mr Rhodes says that the natural distinction between the two sets of complainants makes the use of cumulative sentences appropriate.

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6 Sentencing Act 2002, s 8(d).
7 *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750 at [48].

[50] Turning first to the offending against the 10 younger complainants, or the "child group", the Crown submits that a starting point of 20 years' imprisonment is appropriate. It identifies the following six aggravating factors:[8]

(a) Multiple victims;

(b) The scale and frequency of the offending;

(c) Vulnerability of the victims;

(d) Breach of trust;

(e) Premeditation and grooming;

(f) Harm to the victims.

[51] The Crown says that your offending is similar to the "paradigm case" referred to in *R v AM*;[9] repeated rapes of one or more family members over a period of years. It also compares your case to *R v Martin*,[10] another example of band 4 offending used by the Court in *R v AM*.[11] The offending in *Martin* has some parallels to your case; young males offended against over a 13-year period by an offender who exploited his involvement through Māori cultural groups, the scout movement and his high office in the local church.

[52] The Crown also refers me to the case of *R v Parker*.[12] There the offender was a teacher and later deputy principal at a Kaitaia school. He pleaded guilty to 74 charges, five of which were sexual violation charges, committed against more than 20 victims. All were young males who he came into contact with through his professional role. He formed relationships of trust with his victims' families, and then invited the victims to stay at his house overnight or during school holidays. While he lived at the house with his wife and three children, he slept in the lounge with the victims. It was

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8 Sentencing Act 2002, s 9(1) and *R v AM* at [34]-[64].
9 At [109].
10 *R v Martin* CA251/99, 12 October 1999.
11 At [109].
12 *R v Parker* [2013] NZHC 2075.

there he offended against them. In assessing the appropriate finite sentence, Heath J adopted the statutory maximum of 20 years as a starting point.[13]

[53] The Crown says your offending is similar, but more serious. Some of your victims are directly related to you and your offending spanned a greater period. In that assessment I must agree with the Crown.

[54] On this basis the Crown proposes a 20-year starting point for the offending against the child group. In respect of the offending against your adult victims, it says that if sentenced independently this would warrant a starting point towards the top of band 4 of *R v AM*. Providing for totality, Mr Rhodes submits a cumulative sentence of at least five years should be added to the 20-year base, bringing the starting point up to 25 years.

[55] Mr Le'au'anae says the approach adopted by the Crown is unprecedented and excessive. He says that I should apply a starting point of 20 years for *all* offending.

[56] But the Crown's approach is not unprecedented. In *B (CA196/2010) v R* the District Court Judge's starting point of 21 years was challenged on appeal.[14] B was found guilty of 12 counts of sexual abuse against his three children, committed over seven years. The Judge adopted cumulative sentences of 16 years for the offending against one child and five years for the other two.

[57] This starting point was upheld by the Court of Appeal which observed that the combination of the number of victims, their vulnerability, the gross breaches of trust, the seriousness of the offending and the duration over which it took place justified the Judge's "bleak assessment".[15]

[58] Generally, cumulative sentences are appropriate for offending which is different in kind.[16] Concurrent sentences are generally appropriate if offending is of a similar kind and makes up a connected series.[17] Despite this, the Courts have

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13 At [47].
14 *B (CA196/2010) v R* [2011] NZCA 654.
15 At [61].
16 Sentencing Act 2002, s 84(1).
17 Section 84(2).

commented that cumulative sentences may be necessary to recognise the harm done to multiple victims.[18]

[59] I agree with the Crown that it is appropriate to impose cumulative sentences in this case. Indeed, to do otherwise would be to give scant regard to the principle of totality. Furthermore, in addition to the need to recognise the overall criminality of your offending, I consider that there are material differences in the nature of your offending against each of the two victim groups. This is largely based on the circumstances in which you came to know them. But I also accept the Crown's submission that the offending against the adult complainants was more opportunistic. By contrast, you tended to engineer and manipulate the situations with the child group with more sophisticated grooming and the creation of opportunities to facilitate one-on-one encounters.

[60] However, I do take a slightly different view to the Crown's totality assessment in setting the overall starting point. While I regard your offending as more serious than *Parker* due to its scale, the same could be said in respect of *B (CA196/2010)*. However, this needs to be tempered by the fact that the offending in the latter case was aggravated by overt and serious violence and the added aggravating dimension that one of the victims was compelled to offend against the others. While your offending was very serious, it was not aggravated by such factors.

[61] I have also reviewed several decisions where Courts have imposed starting points of 18 years or greater for sexual offending.[19] However, the offending in those cases pales in comparison to yours when viewed in terms of the number of victims and the duration of the abuse. I do not find them particularly helpful. But they do serve to confirm my view that your offending merits a starting point above 20 years.

[62] Other than that, though, there is little to guide me in fixing an appropriate starting point. As I have said, this is a truly exceptional case. But assessing the totality

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[18] *R v P* [2008] NZCA 476 at [31]-[32]; see also *Hemi v Police* HC Wellington CRI-2008-435-7, 21 July 2008.

[19] *T (CA221/2011) v R* [2011] NZCA 203; *F (CA844/2013) v R* [2014] NZCA 390; *P (CA515/2014) v R* [2015] NZCA 480; *R v AF* [2013] NZHC 822; *R v Washer* [2017] NZHC 1683.

of your criminality, I am of the view that a 25-year starting point is too high. Instead I adopt a global starting point of 23 years' imprisonment.

[63] In reaching this starting point I take into account that four of the sexual violation charges were committed at a time when the maximum sentence for that offence was 14 years' imprisonment and the principles of sentencing in sexual abuse cases were materially different to the modern approach.

Personal factors

[64] You have no personal factors which warrant an uplift from that starting point. And you have only very limited personal factors or circumstances which might operate to mitigate. You cannot claim previous good conduct because the near 30-year duration of your offending simply eliminates that. You started offending in your twenties. Neither can you point to your services to the community because it was through your ostensibly good works and community prominence that you selected your victims and were able to offend for so long without complaint. Despite this Mr Le'au'anae points to several matters which he says warrant a modest discount. They are:

(a) Your remorse;

(b) Your own historic abuse; and

(c) Your age and ill health.

[65] I accept that you have expressed some remorse to the report writers and otherwise shown some, albeit modest, insight into your offending. However, the fact that you have not apparently accepted all aspects of your offending is troubling. But at least you have made a start on what will be a long road to rehabilitation. The remorse you have expressed thus far may not have manifested itself in a tangible way, but I consider it is genuine.[20]

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[20] *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [64].

[66] As for your age, you are now 56. You are not an old man in biological years. But neither are you young. Your physical health is poor. You suffered a heart attack in 2014 and underwent a triple bypass. The procedure was successful, but you are required to take daily medication. In addition to your history of cardiovascular disease, you have Type 2 maturity onset diabetes and you suffer from sleep apnoea. These were all matters traversed in the evidence at trial.

[67] The next issue which Mr Le'au'anae mentions is that you claim you, yourself, were the victim of sexual abuse as a child. Historical abuse may be relevant to sentencing. What is necessary for a discount is an evidential basis for concluding, beyond a mere likelihood, that there has been prolonged abuse and that it materially contributed to the index offending.[21] In other words, there must be some kind of nexus or connection. This matter is covered in the health assessors' reports. I shall return to this topic later in my remarks. For now it is sufficient to say that I am satisfied you suffered sexual abuse as a child and that this left an imprint on your psychosexual makeup and thus contributed to your offending.

[68] On the question of your age and health, a sentencing Judge should take these matters into account if not recognising them would lead to a sentence that is disproportionately severe.[22] The level of discount will vary with the circumstances, but it is generally limited.[23]

[69] I recognise that your health is parlous and is likely to further deteriorate. In addition and without going into detail on a potential MPI, it is safe to say that you will remain in prison, at the very least, until you are well into your sixties.

[70] None of the factors Mr Le'au'anae has listed is particularly compelling on its own. But combined I consider they warrant a modest discount of around four to five percent.

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21 *Tuau v R* [2012] NZCA 146 at [35] citing *R v Whiu* [2007] NZCA 591.
22 *M (CA91/2012) v R* [2013] NZCA 325 at [52].
23 At [54].

[71] Applying this to the starting point, this leads to a final finite sentence of 22 years' imprisonment. This will be your final sentence if I decide not to order preventive detention.

Minimum period of imprisonment

[72] I now turn to consider whether I should impose an MPI; in other words a non-parole period. The Crown seeks an MPI. It says that the statutory maximum available, that is 10 years, is a necessary response.[24] Mr Le'au'anae says it should be nine years, this being 50 percent of what he says should be your final sentence; that is 18 years. Either way there is very little between the Crown and the defence on this point.

[73] I consider that, in the event I impose a finite sentence of 22 years, a 10-year MPI is necessary to hold you accountable for the harm you have done to your victims and your community.[25] The extent of that harm is considerable and should be self-evident. Moreover, I note that 10 years forms less than 50 percent of your end sentence. What this means in practice is that whatever happens you cannot be released before the expiration of 10 years. Only from that point will you become eligible for release. Whether you are released at that point will be a matter for the Parole Board. They may release you. It is more likely they will not. If they do, they may release you on conditions. It will be for the Parole Board to assess the risk you pose at that time based on the information they have about you.

Preventive detention

[74] I now turn to consider whether I should make an order for preventive detention. That option is available to me because you have committed a qualifying offence.[26] I may only sentence you to preventive detention if I am satisfied you are likely to commit another qualifying offence if you are released on parole after a finite sentence.[27]

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24 Sentencing Act 2002, s 86(4)(b).
25 Section 86(2)(a).
26 Section 87(2)(a) and (5)(a).
27 Section 87(2)(c).

[75] The purpose of preventive detention, as mandated by Parliament, is to protect the community from those who pose a significant and ongoing risk to the safety of its members.[28] Protection of society has always been a dimension of sentencing; in the case of preventive detention, that dimension is predominate.[29] But it is important to recognise that preventive detention is not a sentence of last resort or a punishment in itself.[30] It is all about assessment and the evaluation of risk.

[76] When considering whether to impose preventive detention, I am obliged by law to take into account five matters. These are:[31]

(a) Any pattern of serious offending disclosed by your history;

(b) The seriousness of the harm caused by your offending;

(c) Information indicating a tendency for you to commit serious offences in the future;

(d) The absence of, or failure of, efforts by you to address the cause of your offending; and

(e) The principle that a lengthy determinate sentence is preferable to preventive detention, if this provides adequate protection for society.

[77] To help me in this decision, I ordered, as I am required to, reports from two health assessors. In those reports they have discussed the likelihood of you committing another qualifying offence.[32] I will cover each of their reports briefly. However, I make it clear that the ultimate decision rests with me.[33] In coming to my decision I will, of course, take the experts' opinions into account but I must make my own decision on all the evidence. I start with Dr Pillai's report.

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28 Section 87(1).
29 *R v C* [2003] 1 NZLR 30 (CA) at [5].
30 *R v Evans* [2018] NZHC 69 at [27].
31 Section 87(4).
32 Section 88(1)(b).
33 *R v Johnson* [2004] 3 NZLR 29 (CA) at [19]; *R v Exley* [2007] NZCA 393 at [46].

Dr Pillai's report

[78] Dr Pillai is a consultant psychiatrist for the Waitemata District Health Board (WDHB). His report is dated 14 November 2018. It begins by providing a brief account of your upbringing, which is deserving of repetition, although some of the detail was traversed in evidence at your trial.

[79] You were born in a village on the island of Upolu in Samoa. You were one of six siblings. Your father was a fisherman and your family was poor. A Roman Catholic, you attended a local Catholic school. You excelled academically, but left high school in the 6th form. Later, you worked as a waiter in a bar between 1981 and 1985. During this time, you studied at the local teacher's college.

[80] With regard to your psychiatric history, the doctor notes that you have never had any contact with mental health services. You report that you have no significant history of substance abuse.

[81] As is so often the case with child sex offenders, you yourself report being sexually abused as a child. You told Dr Pillai that between the ages of 11 and 14, you were abused by a close family member while you lived in Samoa. You say this caused you distress over the years but that you "tried to block it out". It is also reported that you suffered severe physical abuse at the hands of your parents.

[82] You had a girlfriend in Samoa after you left high school, but your relationship did not involve significant sexual contact. After you came to New Zealand in 1986 you dated several women casually, but none of these relationships involved a sexual element either. It seems that your only significant sexual relationship occurred as an adult, with your partner, the mother of your three children.

[83] You told Dr Pillai that you do not have a history of exhibitionism, voyeurism or fetishism. You say that you have viewed adult pornography, but do not do so regularly as you are not "good with computers". You say that you have never had sexual relations with a man.

[84] As for your offending, you told Dr Pillai that you now acknowledge that some of it was true despite pleading not guilty. You said that you did not think the earliest instances of abuse were sexual in nature; you said that you were helping to care for the boys' genitalia after they had been circumcised.

[85] You linked the beginning of your offending to your wife's deportation. You said that this made you feel like a failure; your behaviour changed and you began to involve yourself sexually with boys. However, somewhat irreconcilably, you said you did not have sexual thoughts and did not plan the offending. You said at the time you thought you were looking after the boys and did not think of the harm you were causing them. You said you wish you could undo what you have done.

[86] I come now to the crux of Dr Pillai's opinion. In the doctor's view, your own history of being sexually abused as a child does not appear to have led to a sustained psychological disorder. Dr Pillai says that you have demonstrated a "sustained deviant sexual preference" for boys, despite you claiming otherwise. Unsurprisingly, he diagnoses you with paedophilia.

[87] As for the risk of future offending, Dr Pillai says that you share characteristics with a group of offenders with a low risk of sexual recidivism; or rather, with a low risk of being detected as offending. The doctor says that you have shown a strong and sustained pattern of homosexual paedophilia across a large proportion of your lifespan and that the abuse you suffered as a child predisposed you to abuse others. However, Dr Pillai also says that you do not have any significant background factors for future offending. He points out:

(a) You have a stable occupational history and good familial relationships.

(b) You have no problems with substance abuse or violence.

(c) You have not previously breached supervision.

(d) Your pattern of offending was extremely stereotyped, using emotional manipulation to secure the cooperation of your victims.

(e) You partially acknowledge your offending and the harm to your victims and their families.

(f) You have identified some of the beliefs that enabled your offending and are willing to enter treatment to prevent you from offending again.

(g) Other than the offending, you have conducted yourself in a prosocial way to those around you.

[88] However, that is not the end of the matter. Dr Pillai goes on to identify a number of dynamic factors which, in his opinion, elevate your risk of offending:

(a) You have lived as a bachelor for more than 25 years;

(b) The strong relationships you form with children suggest that you identify with them emotionally and have intimacy deficits in your adult relationships; and

(c) You linked the start of your offending with the deportation of your partner, a time of psychosocial stress; this suggests you used sexual behaviour as a coping mechanism.

[89] Dr Pillai tempers his assessment by observing it is only based on current information. The time between now and a potential future release from prison could distort his risk-assessment, one way or another. However, Dr Pillai suggests that, putting aside any progress made during rehabilitation, your natural risk of recidivism is not expected to wane with age until you reach your late sixties.

Ms Coutinho's report

[90] Ms Coutinho is a clinical psychologist, also employed by the WDHB. Her report does not add substantially to Dr Pillai's. However, it does shed some more light on the abuse you suffered as a child. You told Ms Coutinho that the family member who abused you was your mother's cousin. You referred to him as "uncle". He used to live in a house on your family's property. This house was where your father stored

his fishing canoe. You used to wait for your father there during the afternoons so you could help him with the canoe. It was during these times that the abuse would take place. Your uncle would ask you to massage his legs. This then progressed to you touching his penis and him touching yours. Sometimes he would ask you to perform oral sex on him but you refused. You say you thought the abuse was normal, but eventually you stopped going to his house. The parallels between this reported abuse and your offending, particularly with the child group, is obvious and striking.

[91] You reported another incident to Ms Coutinho. This is said to have happened when you were aged between four and five. A neighbour pointed out some birds in a tree. While you were looking at the birds, he came up behind you and pressed his erect penis against your back.

[92] As for your risk of reoffending, Ms Coutinho's opinion does not seem to differ markedly from Dr Pillai's. According to static factors, she assesses the risk as low; according to dynamic factors, she assesses the risk as high.

[93] But that risk needs to be balanced against what Ms Coutinho refers to as "protective factors": you recognise the harm you have caused your victims; you have strong bonds with your children and grandchildren and are motivated to contribute to their wellbeing; and your age and physical health will likely decrease your sex drive over time.

[94] Overall, Ms Coutinho is somewhat ambivalent as to how she assesses your ongoing risk to the community. However, as I read her report, she seems to prefer a fixed sentence of imprisonment over the indeterminate sentence of preventive detention. Ms Coutinho believes you may have difficulty making the full disclosure necessary for meaningful rehabilitation and predicts it will be "an arduous process". But she also recognises that you are motivated to receive treatment and that you have prosocial factors which will help you to do so effectively.

[95] As already indicated, I consider Ms Coutinho's report to be broadly comparable to Dr Pillai's. Both acknowledge the potential risk that you might present to the community, but neither appears to be of the view that this risk is such that

preventive detention is the only necessary or viable response. However, as I have said, the ultimate decision on that central issue rests with me.

Jurisdiction

[96] Before deciding that question, there is a preliminary matter to address. This arises from the differing schemes of preventive detention which were in force prior to and after the enactment of the Sentencing Act 2002.

[97] The modern provision I have explained. It came into force on 30 June 2002 with the passing of the Sentencing Act. Before this, preventive detention was governed by s 75 of the Criminal Justice Act 1985 (CJA). There are notable differences between the two regimes. I cannot sentence you to preventive detention for the offending which predates the Sentencing Act unless you qualified for that sentence under both regimes.[34]

[98] To qualify for preventive detention prior to 30 June 2002, an offender had to be at least 21 and to have been previously convicted of a specified offence since turning 17.[35]

[99] You have no previous convictions. Therefore, prior to 30 June 2002, you would not have been eligible for a sentence of preventive detention. This period covers the offending in relation to the first four complainants, RM, LF, CM and ML: eight charges of indecency with a boy under 12 and four charges of sexual violation by unlawful sexual connection.

[100] Although preventive detention is not available for this offending, I can nevertheless take it into account when considering preventive detention for the later

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34 Sentencing Act 2002, s 153; *Mist v R* [2005] NZSC 77, [2006] 3 NZLR 145 at [69]; see also the approach adopted by Fitzgerald J in *R v Mitchell* [2018] NZHC 1112 at [63], approved by the Court of Appeal in *Mitchell v R* [2018] NZCA 431 at [22].

35 Criminal Justice Act 1975, s 75(1); s 34(1) of the Criminal Justice Amendment Act 1993 extended eligibility for preventive detention to offenders convicted of rape who were at least 21, regardless of whether they had been convicted of a previous qualifying offence since turning 17; but it did not do so in respect of unlawful sexual connection so Mr Taimo still would not have been eligible for preventive detention under s 75(1) after it was amended.

offending.[36] Moreover, I accept the Crown's submission that the earlier offending is particularly relevant to assessing whether your history discloses any pattern of serious offending.

[101] If I am of the view that you should be sentenced to preventive detention for the later offending, I must impose a concurrent finite sentence in respect of the offending committed prior to 30 June 2002.

[102] I now return to my decision. I start with the five relevant s 87(4) factors.

Is there a pattern of serious offending?

[103] A pattern of serious offending may exist despite an offender having no previous convictions.[37]

[104] The Crown submits that you have demonstrated a clearly established pattern of repetitive, ongoing and serious offending over the course of 30 years. This offending was often premeditated and involved significant breaches of trust. The Crown says that you manufactured multiple scenarios in different spheres of your life to allow yourself the opportunity to offend against boys. In addition, the calculated way in which you approached the offending helped you to engineer a pattern of behaviour that remained undetected for decades.

[105] I agree with the Crown. Of course not every instance of abuse was the same. But the common threads identified by the Crown are compelling. In the course of the trial, a clear picture of your modus operandi emerged. The sheer number of offences you were convicted of, and their similarity to one another, convey a clear and compelling pattern of serious offending.

What is the seriousness of the harm?

[106] This is not a matter on which I propose to spend a great deal of time. For the reasons I have already discussed, particularly in the context of the Victim Impact

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36 *R v Kurei* [2015] NZHC 2395 at [33]; see also *R v C* at [5].
37 See *R v Parker* at [57].

Statements, the scale of the harm you caused I have already described as incalculable. It is no hyperbole to say you have devastated the lives of 17 boys and young men. None will be the same again because of what you did to them.

[107] But it is not only the harm to the victims which needs to be considered, but also the harm to their families and the wider community. The impact of your offending has been keenly felt by a large number of people. It has destroyed the trust that was placed in you and, in doing so, has no doubt shaken the sense of security that every parent should feel when sending their child to school or entrusting their child to the care of others.

Do you have a tendency to commit serious offences in the future?

[108] This is something I have already touched on, it is something which was extensively canvassed by the two health assessors. Briefly, the primary matters that Dr Pillai and Ms Coutinho suggest as aggravating your risk of reoffending are:

(a) You are diagnosed with paedophilia, which is difficult to treat.

(b) You used sexual contact with the victims as a coping mechanism.

(c) Your adult relationships are characterised by an "emotional deficit"; in turn, you tend to identify with children on an emotional level.

(d) You ignored obvious signs of distress and resistance from some of the victims as you offended against them; instead, you rationalised your offending as an act of care and nurturing. The Crown also points to a number of occasions prior to your arrest when you were confronted about your offending by victims and by their family members. Whether the jury accepted the Crown witnesses accounts will never be known and so I place limited weight on that factor. But there can be no doubt that despite the protests and obvious distress your victims exhibited, you pressed on.

(e) You yourself were a victim of abuse.

(f) The sheer scale of your offending is enormous; it also escalated overtime in its seriousness and frequency.

(g) You continued to offend right up until the time you were arrested.

(h) As a general premise, paedophilic urges may not begin to wane until a person reaches their late sixties; you are still only 56.

[109] I accept each of these points carries weight. Each is relevant to assessing your tendency to reoffend to varying degrees. However, there are also a number of factors which operate in your favour. These include the continued support of your family and the fact that you have shown some belated insight into and taken responsibility for your offending. You express remorse for what you did. Crucially, you acknowledge the need to rehabilitate yourself and are motivated to do so. While paedophilia is difficult to treat from a clinical perspective, you have no entrenched mental illness. Further, in areas unconnected to your offending, you have conducted yourself in a prosocial and responsible way, suggesting that you have no inherent disdain for authority.

[110] As I have mentioned, your physical health is poor. If I were to sentence you to a finite sentence, you will be 66 by the time you even become eligible to be released on parole. And as I said earlier there can be no certainty at all you would be released then. Your health is likely to deteriorate further. In combination with your age, I consider this is a factor reducing your risk of reoffending when released.[38]

[111] But there is another matter that was not addressed in the reports which is, in my view, of significance in assessing your tendency to reoffend. And that is the situational nature of your offending. You abused these boys from a platform of trust within your community. Parents entrusted their sons to your care because you falsely held yourself out as a figure of responsibility. You then used your position to offend against your victims. Worse still, you took advantage of Samoan cultural norms to promote a code of silence which enabled you to continue your offending undetected.

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[38] See *R v Hall* [2014] NZHC 3097 at [49]-[50].

These boys looked up to you, having been taught from an early age to respect their elders. As a Samoan you knew that and you cynically exploited it.

[112] But in the context of assessing the potential for future risk, it is difficult to see how you could ever cultivate similar circumstances again. Without doubt, you have completely destroyed any sense of trust you previously enjoyed within your community. I expect you will be totally and permanently ostracised. At the very least, none of your community will ever trust you around children again. Without such a platform, your opportunity to offend against children will be severely limited. As for the possibility of you ingratiating yourself into a similar but unconnected school or local community, I consider this would be prevented by the combined effect of an extended supervision order (ESO) and your compulsory registration as a child sex offender.

[113] Taking all this into account with the other protective factors outlined in the assessors' reports, I do not believe that you present as a significant risk of committing a serious offence in the future.

Is there an absence of efforts to rehabilitate?

[114] You have never made any effort to address the causes of your offending or otherwise rehabilitate yourself. To a large extent, this is because until your arrest, you had never been suspected as a paedophile, let alone caught. The fact that you have not received any rehabilitative treatment in the past would usually weigh in favour of a finite sentence, particularly since you have not served a sentence of imprisonment before.[39] At the same time, if I am satisfied that there is a reasonable possibility that you will not develop sufficient insight so as to engage with treatment, that will support the imposition of preventive detention.[40]

[115] In this regard, the Crown says you have shown limited insight into your offending. Specifically, it points to the following:

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39 *Jenkins v R* [2015] NZCA 131 at [43]; see also *R v J* [2018] NZHC 2740 at [35].
40 *Jenkins v R* at [44]-[45].

(a) You deny offending against anybody at McDonalds and you deny offending against RM;

(b) You deny premeditating the offending or seeking the boys out;

(c) You also deny engaging in any oral or anal conduct;

(d) You say that there was no indication of the boys being negatively affected at the time of the offending; and

(e) You deny telling the boys to remain silent about the offending.

[116] The Crown also points to Ms Coutinho's view that you "may have difficulty in making the full disclosure required for meaningful rehabilitation" and that treatment "is likely to be a slow and arduous process".

[117] Certainly there are material aspects of your offending that you have not accepted. This is very concerning. But I place more weight on your overall acceptance of responsibility and the expression of remorse for what you have done. You have shown some degree of insight, albeit limited, into your offending. Importantly, you accept that you have a need for rehabilitation. I cannot conclude that there is a reasonable risk of you backtracking from this position. Rehabilitation is an ongoing process. With time and professional assistance, you may come to accept the entirety of your offending, including the impact on your victims, and develop further insight into its root causes. Although the health assessors agree that the process of treatment will be a difficult one for you, there is nothing to suggest that you do not have the will or capacity to engage in it.

[118] It follows that I disagree with the Crown on this point. The lack of opportunities for meaningful rehabilitation weigh in favour of a finite sentence.

A lengthy determinative sentence is preferable

[119] This is a finely balanced case. Counting against preventive detention is what I view as your low potential to reoffend if released and the fact that you have never

received treatment. Counting in favour of preventive detention is the sheer scale of your offending and the ensuing harm it has caused the community.

[120] As I have already said, the scale also reveals a clear pattern of serious offending. The pattern is established despite you having no previous convictions. But your absence of convictions is not altogether irrelevant to my assessment. Where an offender sits on the cusp of preventive detention, the fact that he or she has never undergone a lengthy sentence of imprisonment or has been warned about the possibility of preventive detention may tip the scales in favour of a finite sentence.[41]

[121] There is also the possibility of an ESO being imposed if you are released from prison. This is something I am entitled to take into account.[42] An ESO is not an "agreeable alternative" to preventive detention,[43] but it is a "potential safety valve" which shores up the principle that a lengthy finite sentence is preferable to preventive detention.[44] In finely balanced cases, the possibility of an extended supervision order being imposed can tip the balance in favour of a finite sentence.[45] In a recent case involving an offender convicted of sexually abusing a child, Davison J commented that supervision would likely prevent the offender from engaging in high-risk behaviours such as having any involvement in schools or other organisations for children.[46] As I have said, I do not assess this as a significant risk in your case because of what I foresee as your community's likely reaction to your offending. The further protective measures provided by a potential ESO give me even more comfort. So too does the fact that you will be registered under the Child Protection (Child Sex Offender Government Agency Registration) Act 2016, which means that the Police will be able to monitor your whereabouts and your association with children for the rest of your life.[47]

[122] In these circumstances, I am satisfied that the scales are tipped in favour of a finite sentence. My view is that you are not likely to commit another qualifying

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41 *R v MH* [2013] NZHC 709 at [69]-[70]; see also *R v Komene* [2013] NZHC 1844 at [93]-[94].
42 *R v Mist* [2005] 2 NZLR 791 (CA) at [100].
43 *R v Hutchinson* [2007] NZCA 55 at [19].
44 *R v Mist* at [101].
45 *R v Parahi* [2005] 3 NZLR 356 (CA) at [87]; see also *R v Hohaia* [2018] NZHC 254 at [48].
46 *R v Hohaia* at [49].
47 See *R v Pateman* [2017] NZHC 2401 at [42].

offence if you are granted parole. The lengthy finite sentence you will receive is sufficient to protect the community.

Result

[123] Mr Taimo, please stand.

[124] In respect of the offending against the child group I sentence you as follows:

(a) On each of the 14 charges of sexual violation by unlawful sexual connection, 19 years' imprisonment.

(b) On each of the 20 charges of committing an indecent act on a child under 12, eight years' imprisonment.

(c) On each of the 26 charges of indecent act on a young person under 16, five years and six months' imprisonment.

[125] These sentences are to be served concurrently with each other but are cumulative on the sentences for the offending against the adult group, which I turn to now.

[126] The sentences for the offending against the adult group are shorter than those I have imposed in respect of the child group. The reasons are technical. For me to impose the sentence I consider appropriate having regard to the principle of totality, I am required to create a formula which allows me to add onto the sentence imposed on the child group. It does not indicate that the offending against the adult group is any less serious. In my view the adult offending is every bit as serious. But in order to reach the appropriate level of penalty I must make some aspects of the adult group sentences cumulative; that is, added to the child group sentences.

[127] On the adult group I sentence you as follows:

(a) On each of the 11 charges of sexual violation by unlawful sexual connection, three years' imprisonment.

(b) On each of the seven counts of indecency with a boy under 12, one year and six months' imprisonment.

(c) On each of the six counts of indecent act on a young person under 16, one year's imprisonment.

(d) On each of the 11 counts of indecency with a boy between 12 and 16, one year's imprisonment.

[128] These sentences are to be served concurrently with each other but are cumulative on the sentences for the offending against the child group as I have just explained.

[129] The effective end sentence which I impose on you, Mr Taimo, is therefore one of 22 years' imprisonment. I also order an MPI of 10 years.

[130] There is one final matter.

Child Protection (Child Sex Offender Government Agency Registration) Act 2016

[131] Mr Taimo, the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 now applies to you. Your registration as an offender under this Act is mandatory as you have committed qualifying offences.

You may stand down.

Moore J

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