

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	DPP v Hancock (a pseudonym)
Citation:	[2026] ACTSC 389
Hearing Date:	8 September 2026
Decision Date:	6 October 2026
Before:	Muller J
Decision:	See [72]
Catchwords:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – Judgment and Punishment – Sentence – young offender – sexual intercourse without consent – principles of sentencing young offenders – statutory regime – objective seriousness – extra-curial punishment – importance of rehabilitation – purposes of sentencing – current sentencing practice
Legislation Cited:	<i>Crimes Act 1900</i> (ACT), s 54 <i>Crimes (Sentencing) Act 2005</i> (ACT), ss 7, 33, 133C, 133G, Ch 8A <i>Crimes (Sentence Administration) Act 2005</i> (ACT), s 86
Cases Cited:	<i>Casey v R</i> [2015] NSWCCA 142; 71 MVR 191 <i>DPP v Best (a pseudonym)</i> [2024] ACTSC 334 <i>DPP v Creighton (a pseudonym)</i> [2025] ACTSC 511 <i>DPP v Joliffe-Cole</i> [2024] ACTSC 256 <i>DPP v Umunakwe (No 2)</i> [2025] ACTSC 139 <i>MT v The Queen</i> [2021] ACTCA 26; 17 ACTLR 26 <i>OH v Driessen (No 2)</i> [2015] ACTSC 354 <i>R v CN</i> [2020] ACTSC 282 <i>R v Daley</i> [2010] NSWCCA 223 <i>R v Miller</i> [2019] ACTCA 25; 279 A Crim R 232 <i>R v Smith (a pseudonym) (No 2)</i> [2020] ACTSC 260
Texts Cited:	Explanatory Statement, Children and Young People Bill 2008 (ACT)
Parties:	Director of Public Prosecutions Lucas Hancock (a pseudonym) (Offender)
Representation:	Counsel E Priestly (DPP) E Chen (Offender) Solicitors ACT Director of Public Prosecutions

Legal Aid ACT (Offender)

File Number:

SCC 113 of 2026

MULLER J:

1. Lucas Hancock is now aged 18 years. At the time of the offence he was 16 years old; albeit days away from turning 17. He is therefore a “young offender” within the meaning of Ch 8A of the *Crimes (Sentencing) Act 2005* (ACT) (the *Sentencing Act*) and as a consequence he is subject to special sentencing considerations. He comes before me to be sentenced for the offence of sexual intercourse without consent.
2. On 1 August 2025 at about 8:00pm, DS attended a party with her friends at an address in Holt, ACT. At the party, she met Mr Hancock, who was not previously known to her. She was 18 years of age at the time of the offence.
3. DS was consuming alcohol at the party, as was Mr Hancock. It is not suggested either of them were intoxicated. At some point after 10:00pm, Mr Hancock inserted himself into a conversation DS was having with another young man. He asked her if she had a boyfriend to which she replied, no. Mr Hancock remained in her vicinity for the rest of the evening up until the time of the offending.
4. At some later time, Mr Hancock asked DS to go for a walk and she agreed. He carried her bottle of vodka. Mr Hancock walked with DS to a location two to three houses away from the party residence. There they sat down and had a conversation. Mr Hancock began kissing DS. A few minutes later he suggested they “go somewhere more private”. They walked to a green belt nearby. The pair sat down and began kissing again.
5. Mr Hancock then laid DS on her back, continuing to kiss her, and laid on top of her. He placed his legs either side of her, causing her to feel “trapped under him”. Mr Hancock then undid DS’s belt and took her shirt and tights off; ripping the tights and pulling them to DS’s ankles.
6. Mr Hancock forcefully ripped open DS’s bodysuit, undid his own belt and partly removed his underwear and pants. He penetrated DS’s vagina with his fingers, moving them in an “in and out motion”, that was very hard. DS estimates this continued for about two minutes. She stated that she did not want anything sexual to happen but did not know how to say so.
7. Mr Hancock then laid on top of DS and penetrated her vagina with his penis. DS estimates this penetration lasted about five minutes. She described it as “rough and really unpleasant”. DS did not want this sexual activity. She wanted to run away but was scared Mr Hancock would hurt her as he was bigger, and she was pinned underneath him. She did not know if the outcome would be worse if she tried to run away.

8. Mr Hancock then rolled onto his back and pulled DS on top of him. She did not want to be on top of Mr Hancock and attempted to lie on her side with her legs crossed.
9. Mr Hancock asked the victim to perform fellatio on him; she said she did not want to. She said she needed to go back to her friends. DS's phone kept ringing, but Mr Hancock did not permit her to answer it. Mr Hancock forced DS's head and mouth down onto his penis, using his hand to push on her head. He said words to the effect "I'm almost there". DS described the force he used in this process as 8 – 8.5 out of 10.
10. DS froze. Mr Hancock would not let her come up for air and DS had to push against his stomach and thigh to breathe. She asked Mr Hancock to stop and let her go. DS estimates this activity lasted for about 10 minutes. She was crying and said, "please stop, I don't want this".
11. After a further period of several minutes, Mr Hancock ejaculated into DS's mouth. DS had to spit out his ejaculate. Throughout the offending, Mr Hancock did not use a condom.
12. Mr Hancock adjusted DS's clothes and helped her to her feet. They then returned to the party.
13. DS stated in an evidence in chief interview that she "just froze". If she could have said no it would have been right when Mr Hancock laid her down and started touching her body.
14. Mr Hancock is to be sentenced on the following charge:

CH 2025/1261	Sexual intercourse without consent: contrary to s 54(1) of the <i>Crimes Act 1900</i> (ACT)	Maximum penalty: 12 years imprisonment
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15. Mr Hancock pleaded guilty in the ACT Children's Court following disclosure of a brief of evidence and negotiations.
16. He has spent 1 day in custody attributable to this offending. He has no criminal antecedents and there is no breach offending to be addressed.

Nature and circumstances of the offence

17. The summary of the offending detailed above is taken from the facts agreed between the parties. In addressing objective seriousness, I consider the following matters of particular relevance:

- (a) Mr Hancock walked DS away from her friends, and the relative safety of the group environment at the party prior to the offending;
 - (b) Mr Hancock did not ask her for her consent;
 - (c) Mr Hancock forcefully ripped DS's clothing;
 - (d) the offending was seemingly in a public place;
 - (e) he continued in circumstances where she was crying and had asked him to stop;
 - (f) Mr Hancock did not use any form of contraceptive protection in the offending, heightening the risk of sexually transmitted diseases and pregnancy;
 - (g) Mr Hancock used considerable force in pursuit of his own sexual gratification;
 - (h) Mr Hancock physically pinned and restrained his victim;
 - (i) Mr Hancock prevented her from using her phone, thus denying her a prospective means of assistance;
 - (j) the offending was not for a short period of time and on DS's estimate may have continued for approximately 20 minutes. On any view of the offending, it included several discrete episodes of offending, adding to the overall criminality of the conduct;
 - (k) DS was herself a young person and she was vulnerable by virtue of her age and relative physical stature; and
 - (l) the particular circumstances of the offending were humiliating and degrading involving significant physical force, and disregard for the wishes of DS in circumstances where she had little capacity to defend herself.
18. Mr Hancock points to three factors relevant to the assessment of objective seriousness. First, there is no evidence of premeditation. The victim and Mr Hancock consensually moved to a private area and began kissing. The offending occurred in a way suggestive of opportunistic conduct, a conclusion supported by the pre-sentence report. Secondly, the protracted nature of the offending is disputed. Whilst the victim says the offending lasted many minutes; there is no objective evidence as to the actual duration of the offending. Mr Hancock says the victim's estimates of time cannot be accepted as reliable in the context of experiencing such a traumatic event. He says a proper characterisation of the event would be a single course of conduct on one night measured in minutes. Thirdly, Mr Hancock concedes a rolled-up count is ordinarily considered to be more serious than the criminality of an individual count, but the sentence cannot be manifestly

excessive and cannot exceed the statute set maximum. I accept there is no evidence to demonstrate any significant planning or premeditation. It remains the case that DS was removed from the relative safety of the party environment and to a “private” location at the request of Mr Hancock. As to duration in the context of sexual offending, I adopt the observations of the New South Wales Court of Criminal Appeal in *R v Daley* [2010] NSWCCA 223 at [48]:

...In *R v Hibberd* (2009) 194 A Crim R 1 I said at [56] that the duration of the offence was a relevant consideration in the assessment of the seriousness of an offence contrary to s 611 *Crimes Act*. I wish to make it clear that the short duration of a sexual assault would not ordinarily be considered as a factor which reduces the objective seriousness of the offence. Most sexual assaults will not be prolonged as the offender will seek to avoid apprehension. On the other hand, a sexual assault of an extended duration will necessarily add to the seriousness of the offending as the suffering and the humiliation of the victim will be increased. The short duration of the present offence neither mitigated nor magnified the objective seriousness of the offence. The degree of violence, the form of forced intercourse and the circumstances of humiliation were all relevant considerations in determining where on the scale of objective seriousness the offence lay: *R v Gebrail* (Court of Criminal Appeal, 18 November 1994, unreported) at [10-11] per Mahoney JA.

19. In assessing objective seriousness in a sexual assault case, the issue is not so much the measurement in seconds and minutes of the duration of the sexual assault, but how the circumstances of the offending including its duration, the degree of violence, the nature of the assault and the circumstances of suffering and humiliation should guide the court in making its assessment. Here the offending involves the use of significant force without consent against a vulnerable young person who was placed in a situation where she was denied any prospective protector. That offending is properly regarded as serious.
20. I accept, as Mr Hancock submits, in dealing with a rolled up count it is necessary to have due regard to the applicable maximum sentence for the single charged offence.

Discount for plea of guilty

21. A brief of evidence was required to be produced in this matter. However, as Baker J said in *DPP v Creighton (a pseudonym)* [2025] ACTSC 511 at [40]-[41] adopting the observations of Taylor J before her Honour in the matter of *DPP v Joliffe-Cole* [2024] ACTSC 256 at [44]-[58], a discount of 25% is certainly available in proceedings where a plea is entered prior to committal, albeit following the preparation of a brief of evidence. The reasoning behind that position is recognition of the assistance provided to the court by the resolution of matters. As Baker J observed at [41]:

Like Taylor J, I do not understand his Honour to question the availability of a 25% discount in indictable proceedings where a plea is entered prior to committal, albeit following the preparation of a brief of evidence. I also agree with her Honour that a plea at arraignment

under *Practice Direction 2 of 2024: Procedure on Committal to the Supreme Court for Trial – Early Arraignments* may properly attract a 25% discount, in recognition of “the substantial resources diverted from the conduct of a trial including those steps in furtherance of it, such as the finalisation of documents, further investigation, pre-trial applications, directions hearings and call-overs”: *Joliffe-Cole* at [53].

22. Mr Hancock proposes a discount of 25% by virtue of his early guilty plea. The prosecution accepts a discount is appropriate but makes no submission as to an appropriate level. I consider a discount of 25% for the plea of guilty to be appropriate in this case. In reaching that view I have had particular regard not only to the utilitarian value of the plea in terms of the use of court resources but also to the plaintive impact statement of DS, and the real benefit in avoiding the additional trauma for her arising in the context of a contested trial.

Impact of the offending on the victim

23. DS provided an impact statement which she read at the commencement of the sentence hearing.
24. She describes the shame she felt from allowing herself to be trapped in this situation. She asked Mr Hancock to stop. His statement that he was not finished echoes in her mind. The only course of action she felt she could take was to wait out the assault. DS was excited for adventures and opportunities having just turned 18 years of age, and instead she met with a boy who raped her at a house party which was “filled with people [she] knew and went to school with”. She details her loss of dignity, confidence and sense of self because of the assault. She “can no longer call [her] body [her] own.” DS says that night her life was stolen and will forever be changed; she will always be a victim in some light. For six months after the offending, she struggled with basic tasks like brushing her teeth, bathing and general personal care because of the impact of the assault.
25. DS described perceiving herself more as an object than a person, and developing a warped sense of sex and intimacy. She still gets flashbacks of the assault and her feelings of helplessness.
26. The overwhelming sense in receiving DS’s victim impact statement is the manner in which the profundity of the sexual act is most apparent when the power to consent to participation in this most intimate of engagements is denied.

Circumstances of the offender

27. I have the benefit of a pre-sentence report prepared by Chloe Cantlon and Ariel Press of Children, Youth and Families dated 31 August 2026. The authors note no concerns have been raised whilst Mr Hancock has been on bail.
28. Mr Hancock was born in Bhutan. He is the eldest child of his parents and has a younger brother. Mr Hancock was taught by his parents from kindergarten to grade 3. Upon commencement of grade 4 he commenced a new school, residing with his father's sister who lived near to the school from grade 5 through to grade 7. On commencing high school education he moved to the capital of Bhutan to live with his grandparents. His parents moved to Australia in 2022, and he and his brother remained living with their grandparents. He and his brother moved to Australia in February 2025, some six months prior to the offence. He lives in Canberra with his parents, his brother and an aunt and uncle. He and his family practice their Bhutanese culture and Buddhist religion at home. Mr Hancock identifies no substantial difficulties with his home life. His parents both work and he describes an apparently happy home existence. The authors raise no concerns regarding the home situation in relation to the adequacy of supervision and discipline.
29. Mr Hancock is currently completing his grade 12 studies. He enjoys the school environment, identifying health science and biology as his favourite subjects. He missed some schooling the previous year due to poor friendship choices and he is doing better in the current year, although experiencing some sickness. Mr Hancock discloses a confrontational interaction with another student in the previous year in which he punched the other young person, resulting in a restraining order and a suspension. One other instance of disruptive school behaviour is reported involving Mr Hancock photographing another student using the toilet. When asked about the incident in the pre-sentence report interview Mr Hancock laughed and stated it was a joke; suggesting limited remorse, and a failure to appreciate the gravity of his actions. It is unclear whether the police are to be involved in relation to the incident.
30. As a consequence of these matters Mr Hancock will be unable to graduate with a grade 12 certificate in 2026 without completing additional work experience or coursework. The prospect of a transition to a CIT program or post school employment is suggested by the authors of the pre-sentence report as options to be considered given Mr Hancock's limited success in achieving his academic outcomes. Mr Hancock expresses interest in a career in nursing or physiotherapy, but it is apparent a change in attitude towards his study will be required if either paths are to become serious vocational options for him.

31. Mr Hancock is financially dependent upon his parents. He describes his health as “excellent” (notwithstanding his earlier assertion of having had considerable issues with sickness in the past year). There is no suggestion of any illicit drug use or significant alcohol use. Risk in this category is identified as being at the low end, as is the risk arising from his peer associations.
32. Mr Hancock has had one job previously at KFC.
33. Mr Hancock’s father described his son as “humble” and “not really aggressive”. As to the offending, his father states he is “not happy with [the] current offence” but Mr Hancock is “a soft person” and “never rude or cruel”.
34. Mr Hancock reports no mental health issues
35. Regarding his personality and behaviour Mr Hancock says he is “sickened with [him]self for what [he] did wrong”. He feels sorry for his offending. However, he is also recorded in the course of the pre-sentence report interview, notwithstanding the agreed statement of facts, to say the victim was “exaggerating stuff” and that he “didn’t force her to do that and this”. He states because she didn’t say no, he believed it was consensual. He also expresses the belief both parties intended to have sexual intercourse when they moved away from the front of the party. He concedes this was his first experience of a sexual nature, including kissing.
36. Mr Hancock recognises his actions may have impacted his parent’s process of attaining permanent residency in Australia; although no evidence is before me on this point.
37. In response to questioning about the impact on DS, Mr Hancock says, “people might view her differently, I feel sorry for her about that but that’s about it”. In terms of behaviour modification as a consequence of these events, Mr Hancock says in future he will “confirm verbal consent”. It is his father’s belief Mr Hancock’s actions stem fundamentally from ignorance.
38. The report writers applied the Juvenile Sex Offender Assessment Protocol – II to Mr Hancock. The protocol is a tool designed to be used with males between the ages of 12 and 18 years who have been charged with sexual offences, or in some cases have a history of sexual offending. It, at its core, is a risk assessment of the factors associated with a young person’s offending and abuse behaviours and shapes the outcome and service response; it guides the informing of treatment and risk management decisions. Mr Hancock is assessed as presenting a moderate risk, although there are clear aggravating factors in his life that may increase his risk. The writers pointed to the noted events of physical violence at his school and his taking photographs of a child in a toilet. He has experienced caregiver inconsistency with his movement in his early childhood,

and has some limited antisocial responses, particularly where his expression of anger is noted to be at the more extreme end.

39. The authors conclude:

There is some degree of remorse and guilt; however, there are possible egocentric motives such as shame or embarrassment. [Mr Hancock] appears to internalise his feelings and his remorse appears to be internalized [sic] at a cognitive (thinking) level. [Mr Hancock] throughout the interviews expressed cognitive distortions regarding the offending behaviour with an alternate understanding of the sexual behaviour being consensual.

40. I also have before me three character references and a letter of apology from Mr Hancock.

41. In a reference from his cousin Pema, Mr Hancock is described as being “extremely respectful towards women”. In another from his aunt Nima, Mr Hancock is described as “caring, respectful and thoughtful”. In the final reference from Ugyen, Mr Hancock is described as “respectful”, and has a “genuine, kind-hearted approach to life”. The most troubling feature of the references when viewed as a whole is the complete absence of any acknowledgement of the subject offending. Whether that is for cultural reasons or otherwise, the weight that may be given to references attesting to Mr Hancock’s otherwise good fame and character and respectful attitudes is significantly diminished when it is entirely unclear what, if any, level of understanding the referees have of the offending behaviour to which he has entered a plea of guilty.

42. In his letter of apology Mr Hancock states he regrets his actions and is sorry for what he did. He says at the time of the offending he did not really appreciate what consent was, but does now. He says he has learnt from his actions and does not want to make another person feel that way again. He says as a result of his actions, school became difficult for him, he lost confidence and self-esteem. He worries for what may happen to his family. He recognises his understanding of the nature of his wrongdoing will be measured by his future actions.

43. When the material before me is viewed as a whole I am left with some troubling concerns about the level of insight Mr Hancock has regarding the gravity of his offending. I have no doubt he feels sorry, but whether he feels sorry because of the impact these charges have had in his own life, or whether he feels sorry because he realises what he did was wrong and recognises the abhorrence with which the community regards his wrongful behaviour is a little unclear. What is clear is he now realises the giving of consent to sexual interaction necessarily involves clear and active communications to that effect, not just an absence of express refusal. I accept his prior lack of sexual experience and

inevitably limited insight into societal norms in Australia given his very short time in the country prior to the offending are factors mitigating his moral culpability.

44. Mr Hancock contends he has positive prospects of rehabilitation because:

- (a) his offending conduct is recent and without precedent;
- (b) specific deterrence has been achieved through extra-curial punishment; and
- (c) he has strong protective factors.

45. I accept his offending conduct is only a recent feature. By the same token his history prior to coming to Australia six months before the subject offending is unknown and, in addition to the subject offending the other uncharged matters described above raise real concerns if for no other reason than their timing. Each of the events post-dated Mr Hancock being charged for the subject offending, at a point in time where he ought reasonably to have understood the gravity of the conduct leading to this charge and the risk of further sanction for additional offending.

46. The extra-curial punishment he relies upon follows concern about the potential for deportation due to any sentence handed down. He also relies upon ostracism by his peers at school because of his offending.

47. In considering extra-curial punishment flowing from the act of the offence itself, Hoeben CJ at CL (with whom Hidden and Adams JJ agreed) in *Casey v R* [2015] NSWCCA 142; 71 MVR 191 said in the context of grief suffered by an offender for his actions causing the death of the victim at [49]:

There are, however, other difficulties preventing the applicant succeeding on this submission. In *Alameddine v R* [2006] NSWCCA 317 at [10]–[20] the principles relating to extra-curial punishment were reviewed by Grove, Kirby and Hislop JJ. The effect of that review was that a distinction is to be made between situations where the extra-curial punishment was caused by external forces and those triggered by the offender's own actions. Such an example is that in *R v Allpass* (1993) 72 A Crim R 561 where the offender was subjected to a campaign of abuse and harassment following publication of a sentence for a sexual crime against a young girl by an elderly man. That is not the situation here. The death of the deceased was a direct consequence of the applicant's actions and was an integral part of the offending.

48. I accept in this case the asserted treatment received from school colleagues is an indirect consequence of Mr Hancock's actions. However, the available evidence does not demonstrate it is beyond the level of the perhaps natural disaffection for a person who has committed this type of offence. It is therefore of little weight. In a similar vein I place limited weight on the deportation concerns of Mr Hancock. Ultimately any consideration of cancelling a persons' visa is a matter properly resting with the relevant minister and a court cannot negate or reduce or craft a sentence simply because there is a risk of

deportation. Whilst deportation need not be certain, it must be substantiated by sufficient evidence, and no substantive evidence has been placed before me in this case: *DPP v Umunakwe (No 2)* [2025] ACTSC 139 at [71]-[83].

Special considerations-young offenders

49. As a consequence of his age at the time of the offending Mr Hancock is a young offender for the purposes of this sentencing exercise.

50. Section 133C of the *Sentencing Act* is as follows:

133C Young offenders—purposes of sentencing

(1) Despite section 7 (2), in sentencing a young offender, a court must consider the purpose of promoting the rehabilitation of the young offender and may give more weight to that purpose than it gives to any of the other purposes stated in section 7 (1).

(2) Also, in sentencing a young offender, a court must have particular regard to the common law principle of individualised justice.

51. Section 7 of the *Sentencing Act* is in the following terms:

7 Purposes of sentencing

(1) A court may impose a sentence on an offender for 1 or more of the following purposes:

(a) to ensure that the offender is adequately punished for the offence in a way that is just and appropriate;

(b) to prevent crime by deterring the offender and other people from committing the same or similar offences;

(c) to protect the community from the offender;

(d) to promote the rehabilitation of the offender;

(e) to make the offender accountable for his or her actions;

(f) to denounce the conduct of the offender;

(g) to recognise the harm done to the victim of the crime and the community.

(2) To remove any doubt, nothing about the order in which the purposes appear in subsection (1) implies that any purpose must be given greater weight than any other purpose.

(note omitted by this court)

52. The competing positions of the parties as to how those provisions are to be applied may be summarised in this way. The prosecution accepts the combined effect of s 7 and s 133C of the *Sentencing Act* is the promotion of rehabilitation must be considered in the sentencing exercise for a young offender but the weight to be given to it, as opposed to other sentencing considerations, is discretionary. It rejects any contention that for a young offender the promotion of rehabilitation must be given primacy in the sentencing

exercise. The prosecution relies on the following passage from the decision of the Court of Appeal in *R v Miller* [2019] ACTCA 25; 279 A Crim R 232 at [44]:

The primary sentencing considerations for sexual offending are punishment, deterrence, denunciation and recognition of the harm done to the victim. In the proceeding before the primary judge there was little by way of remorse demonstrated by the respondent beyond his plea of guilty to the offence. Personal deterrence should have been a relevant consideration at that time. General deterrence, or deterrence of others from committing like crimes, is always an important consideration in imposing a sentence for sexual offending. The above does not deny the relevance of rehabilitation in sentencing offenders such as the respondent, but in sentencing for sexual offences rehabilitation will ordinarily be given lesser weight than the other considerations to which we have referred due to the gravity of the offending.

53. As a consequence, for this type of offending, the prosecution argues principles of denunciation, general and specific deterrence, and recognition of harm to the victim must be given paramount consideration in sentencing.
54. Mr Hancock relies upon the observations of the Court of Appeal in *MT v The Queen* [2021] ACTCA 26; 17 ACTLR 26, commencing at [35]. The following principles may be drawn from that decision:
 - (a) for young offenders the operation of s 7 of the *Sentencing Act* is altered in a way that emphasises rehabilitation;
 - (b) the importance of individualised justice remains the central tenet of the sentencing exercise;
 - (c) the court's capacity to impose a sentence of imprisonment is confined;
 - (d) sentencing purposes other than rehabilitation are not excluded;
 - (e) young offender sentencing principles do not distinguish on the basis of the seriousness of the offence, the age of the offender or the adult nature of the crime;
 - (f) in assessing culpability regard must be had to the young offender's maturity;
 - (g) regard must also be had to the young offender's state of development and their past and present family circumstances; and
 - (h) the "implicit corollary" that no sentence may be longer than is necessary to achieve relevant sentencing principles is made explicit in the case of young offenders.
55. I accept as a starting position in cases of sexual offending such as this the focus in sentencing must be on punishment, deterrence, denunciation and acknowledgement of the harm suffered by the victim. However, where the person to be sentenced is a young offender the primacy of those considerations must be viewed through the prism of s 133C

of the *Sentencing Act*. As a consequence, the purpose of promoting the rehabilitation of the offender must be considered as part of the sentencing exercise. As for the weight to be given to the purposes of rehabilitation, relative to the other important sentencing considerations, the task of the court is to be approached on the basis that justice should be individualised. Individualised justice necessarily requires consideration of the offender's culpability with due regard to their maturity, their state of development and their particular family circumstances. As the Court of Appeal observed in *MT* the distinction to be drawn between "maturity" and "state of development" is difficult to fathom. In *MT* the Court of Appeal proposed the former may refer to cognitive development whereas the latter refers to social and moral maturity. The explanatory statement recognised the overlap between the two concepts in the observation:

Section 133D(1)(b) enables the Court to consider the young offender's individual state of development in the context of the offending behaviour. For example, while a young person may be 17 years of age their state of development may not have progressed to a degree expected of most 17 year-olds. State of development may be akin to maturity in many cases, but can also reflect the ability, inability, or limitations, of the young person to engage with the world and the community.

56. Maturity is sufficiently broad to encompass both the physical and mental attainment of a young individual relative to an adult person. The explanatory statement suggests the reference to state of development is intended to promote consideration, in terms relative to the young person's age, of their capacity to engage with the outside world and with members of their community. By way of example, a young person may be physically and mentally mature but by virtue of social isolation have limitations in the way they interact with the outside world.
57. In the case of Mr Hancock, he appears to be physically and mentally mature relative to his age group. However, his responses in the course of the completion of the pre-sentence report readily demonstrate his limited state of development both in terms of sexual experience and also in his understanding of concepts of consent as they relate to sexual interaction.
58. Where, as in this case, the prosecution submits that nothing other than a sentence containing a term of full-time imprisonment is appropriate, it is necessary to have regard to s 133G of the *Sentencing Act*:

133G Young offenders—sentences of imprisonment

- (1) This section applies if a court is sentencing a young offender to imprisonment under section 10.

Note Section 10 allows a court to sentence an offender to imprisonment if satisfied that no other penalty is appropriate.

- (2) The sentence of imprisonment must be a last resort and for the shortest appropriate term.
- (3) The court must consider making a combination sentence consisting of—
 - (a) the sentence of imprisonment; and
 - (b) a good behaviour order with a supervision condition.

Note There is no provision for the setting of a nonparole period for a sentence of imprisonment imposed on a young offender (see s 64 (2), def ***excluded sentence of imprisonment***).

- (4) The court must not sentence the young offender to imprisonment for life.

59. In a similar way to s 133C of the *Sentencing Act*, s 133G operates so as to modify the sentencing principles relating to imprisonment otherwise applying pursuant to s 10 of the *Sentencing Act*. Importantly, s 10 provides imprisonment for all or part of the term of the sentence is to be imposed only where the court is satisfied, after considering possible alternatives, that no other penalty is appropriate. Where that level of satisfaction has been reached in the case of a young offender s 133G mandates the sentence must be a last resort and for the shortest appropriate term. As part of the sentencing exercise a combination sentence must be considered.

Current sentencing practice

60. The prosecution has not identified any comparable cases, asserting an inability to identify any regarded as truly comparable. In submissions the prosecution contends current sentencing practices simply do not reflect the objective gravity of the offending. In support of that proposition reliance is placed upon the decision of Mossop J in *R v Smith (a pseudonym)* (No 2) [2020] ACTSC 260 and in particular his Honour's observations at [36], where in reflecting upon sentences in a number of cases involving sexual intercourse without consent his Honour observed:

The pattern of sentencing shows very considerable leniency shown to offenders who were under the age of 18 at the time of the offending and who pleaded guilty. Those features have tended to lead to non-custodial outcomes.

61. His Honour went on in that case to impose a fully suspended sentence for a total period of 11 months together with ancillary good behaviour obligations. His Honour's observations appear to me to be in the nature of a conclusion based on a factual review rather than a statement about the inadequacy of sentencing per se. He went on after making that observation, and before proceeding to sentence, to consider carefully the particular constraints imposed upon the sentencing of young offenders I have discussed above.

62. Notwithstanding Mr Hancock's young offender status, the prosecution maintains in the context of the objective seriousness of the offending and the impact on DS, principles of denunciation, general and specific deterrence must be given primacy.
63. Mr Hancock is critical of the prosecution's failure to seek to identify comparative cases noting the mandatory sentencing consideration in s 33(1)(za) of the *Sentencing Act*. He highlights the assistance comparative cases provide in achieving consistency in the application of relevant principles.
64. The cases Mr Hancock relies upon have limitations as comparators. In *DPP v Best (a pseudonym)* [2024] ACTSC 334, whilst the offending was similar, the young person had an unfortunate childhood marred by neglect, instability in the family home, extensive engagement with CYPS and, importantly, several intellectual and mental health challenges and disabilities. In *R v Smith (a pseudonym) (No 2)* [2020] ACTSC 260, the young person had a pre-existing relationship with the victim which included consensual sexual activity but not penile-vaginal intercourse. The offender's actions were reckless as to consent and he ceased the offending conduct shortly after it became apparent his victim was upset to the point of tears.
65. In *R v CN* [2020] ACTSC 282, the offending involved digital penetration without physical violence or coercion. The offending was taken to have been of brief duration. There was a history of domestic and family violence within the family together with parental substance misuse and neglect. In *OH v Driessen (No 2)* [2015] ACTSC 354, the offender was only 13 years of age, and the victim was his younger stepsister. There was no violence although the victim's protests were ignored. Although there was an attempt there was no penile-vaginal penetration.
66. I have found some assistance from a consideration of these other cases, but I am mindful no sentence is to be given precedent status. As Taylor J observed in *DPP v Best (a pseudonym)* [2024] ACTSC 334 at [118]:

A sentencing court is concerned with consistent application of principal not mathematical equivalence. A sentence that is "just and appropriate" (*Mill v The Queen* [1988] HCA 70; 166 CLR 59 at 63 [8]) must give effect to individualised justice.

Sentence

67. In this case I accept Mr Hancock is a very young man who is at the beginning of his offending conduct. I have given weight to the evidence of his prior lack of sexual experience, and his restricted opportunity for social development within this community having only migrated to Australia some six months prior to the offence. I have carefully considered the purpose of promoting rehabilitation. In Mr Hancock's circumstances I

consider it appropriate to give those purposes considerable weight in the sentencing outcome. His prospects of rehabilitation are significantly improved where he is allowed to remain in the community, albeit with close supervision.

68. I accept, as the prosecution submits, due recognition of the harm suffered by DS together with the importance of denunciation and deterrence of this kind of behaviour leads to an outcome where the only appropriate sentence is one that involves a term of imprisonment. Any other sentence fails to reflect the gravity of the offending. For a young offender, s 133G of the *Sentencing Act* mandates imprisonment is an outcome that must be a last resort and for the shortest appropriate term.
69. In Mr Hancock's case, and with a view to best promoting his prospects of rehabilitation, the period of imprisonment should be served entirely in the community. In reaching that view I am also mindful of the conclusion reached by the authors of the pre-sentence report that Mr Hancock's prospects of reoffending are low. His family circumstances are also positive for a low risk of reoffending noting he continues to live in a stable and supportive family environment.
70. There are some concerns raised in the pre-sentence report, particularly as they relate to Mr Hancock's insight into his offending and his engagement in the uncharged acts detailed above. Those concerns lead me to conclude the application of a good behaviour order is appropriate with an associated probation condition allowing for ongoing supervision by the Director-General.
71. I begin with a sentence of 2 years, which after applying a 25% reduction for the plea of guilty results in a sentence of 1 year and 6 months. I will require Mr Hancock to enter into a good behaviour order requiring him to engage in supervision. The term of that order will be for a period of 1 year and 6 months and it will be framed to allow the supervision component to be terminated at the discretion of the Director-General.

Orders

72. Lucas Hancock please stand:
- (1) On the charge of sexual intercourse without consent contrary to s 54(1) of the *Crimes Act 1900* (ACT) (CH 2025/1261) I convict and sentence you to a term of imprisonment for a period of one year and six months commencing on 5 October 2026 and ending on 4 April 2028.
 - (2) The sentence is to be suspended immediately upon you entering into a good behaviour order with the core conditions pursuant to s 86 of the *Crimes*

(Sentence Administration) Act 2005 (ACT) for a period of one year and six months until 4 April 2028.

- (3) In addition to the core conditions, you are to accept the supervision of the Director-General and comply with all reasonable directions until 4 April 2028 or for such lesser period as is deemed appropriate by the Director-General.

I certify that the preceding seventy-two [72] numbered paragraphs are a true copy of the Reasons for Sentence of his Honour Justice Muller.

Associate: MG Malouf

Date: 6 October 2026