

S CR 2018 0063

THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

Crown

v

KUMUTHINI KANNAN

Accused

S CR 2018 0064

THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

Crown

and

KANDASAMY KANNAN

Accused

JUDGE: CHAMPION J
WHERE HELD: Melbourne
DATE OF HEARING: 8 February–23 April, 29–30 June 2021
DATE OF SENTENCE: 21 July 2021
CASE MAY BE CITED AS: DPP (Cth) v Kannan & Anor
MEDIUM NEUTRAL CITATION: [2021] VSC 439

CRIMINAL LAW - Sentence - Charges of intentionally possessing a slave and intentionally exercising over a slave any of the powers attaching to the right of ownership, namely use - Slavery by domestic servitude - Husband and wife accused - Serious level of offending - Three children with special needs - Exceptional hardship relating to children - Mental health considerations - Good prospects for rehabilitation - General deterrence - Lack of remorse - Total effective sentence of 8 years' imprisonment with 4 years' non-parole period for wife - Total effective sentence of 6 years' imprisonment with 3 years' non-parole period for husband - *R v Verdins & Ors* (2007) VR 269 - *Crimes Act 1914* (Cth) - *Commonwealth Criminal Code*.

| <u>APPEARANCES:</u> | <u>Counsel</u> | <u>Solicitors</u> |
|----------------------------------|---|---|
| For the Crown | Mr R Maidment QC with Mr Y Hardjadibrata and Ms S Bruhn | Commonwealth Director of Public Prosecutions |
| For the Accused Kumuthini Kannan | Dr G Boas with Mr A Imrie | Stary Norton Halphen |
| For the Accused Kandasamy Kannan | Mr J Kelly SC with Ms M Brown | Peter Lunt Lawyers |

HIS HONOUR:

Introduction

1 Kumuthini Kannan and Kandasamy Kannan, after a trial lasting 49 sitting days, on 23 April 2021 a jury found each of you guilty of two slavery offences laid under the *Commonwealth Criminal Code* (Cth) ('the Code'). These were:

- (a) One charge of intentionally possessing a slave, contrary to s 270.3(1) of the Code, between 5 July 2007 and 30 July 2015; and
- (b) One charge of intentionally exercising over a slave any of the powers attaching to the right of ownership, namely use, contrary to s 270.3(1) of the Code, between 5 July 2007 and 30 July 2015.

2 The maximum penalty for each of these offences is 25 years' imprisonment and/or a fine not exceeding 1500 penalty units.

3 It is my task to pass sentence upon you in respect of the offending for which you have been found guilty by the jury. The parties have informed the Court that, as far as they are aware, apart from one previous case which contained an element of domestic slavery, this may be the first case solely relating to slavery by domestic servitude to be heard by an Australian court.

4 Slavery is defined in the Code as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person. The High Court of Australia has observed that 'powers of control, in the context of an issue of slavery, are powers of the kind and degree that would attach to a right of ownership if such a right were legally possible, not powers of a kind that are no more than an incident of harsh employment, either generally or at a particular time and place'.¹ By its verdicts, the jury were satisfied that you both exercised any or all of powers of control over a slave as defined by the Code, and that those powers were more than an incident of

¹ *R v Tang* [2008] HCA 39 AT [42].

harsh employment. The offence of slavery is regarded as a crime against humanity.

The victim

5 The victim of your offending was Mrs Rajalakshmi Natarajan, a female Indian national. She was born in India and is now 67 years old. Since her release from hospital in October 2015, she has been cared for in an aged-care facility in the eastern suburbs of Melbourne. Immigration records establish that at the time she travelled to Australia, she had lived in Tamil Nadu, located in southern India.

6 Mrs Natarajan did not complete her first year primary level education and left school at around age 6. She has almost completely no formal education. By about 12 years old, she worked in fields looking after farm animals, later helped workers with menial tasks on building sites and cooked. Her life has been characterised by an exceedingly low level of education, illiteracy in language and numeracy and carrying out low level employment. She married and had four children, but her husband died early and she was forced to raise and care for her children on her own. She lost whatever assets she had when she had to mortgage some property to pay for her daughter's wedding and was unable to repay the loan. Her life in India has been dominated by financial struggle and deprived circumstances. She travelled to Australia on a number of occasions with the objective to earn income for herself and her family. I shall discuss those years when she lived with you and your family shortly.

7 By 30 July 2015, Mrs Natarajan's health had become perilous to the point where she had to be conveyed to hospital by ambulance from your home in Glen Waverley. Upon her arrival at hospital, she was regarded as a Category One patient due to extreme hypothermia, having recorded a temperature of 28.5°C. She was emaciated and weighed about 40 kilograms; had crusted lesions on her feet and hands; and multiple pressure sores. In evidence before the jury, the hospital doctor described her as 'fading away'.

8 Due to her deteriorating condition, Mrs Natarajan was transferred to the intensive care unit for two days. Medical examination confirmed her to be suffering from a number

of conditions, including septicaemia which had spread to her bloodstream, atonic bladder which has required a permanent in-dwelling catheter and uncontrolled type II diabetes. A comparison of photographs taken in her early years in Australia, those taken of her emaciated condition on her admission to Box Hill Hospital and those taken after appropriate medical treatment was provided to her, in addition to viewing her during the giving of her evidence in this Court, suggests that her physical health has improved to a significant degree since late July 2015. Nevertheless, she will continue to suffer long-term effects from uncontrolled diabetes and complications arising from her reduced state of health in 2015, and will require the catheter for the rest of her life.

9 Mrs Natarajan gave initial evidence to police investigators by way of six recorded VARE interviews, then at committal proceedings, and then finally in this Court with further evidence in chief, cross-examination and re-examination over 11 days. Due to the particular nature of these proceedings, she was legally regarded as a vulnerable witness. Due to those circumstances and the uncertainty regarding the future of the COVID-19 pandemic, her evidence was given remotely and pre-recorded in late 2020 and early 2021. As such, the entirety of her evidence was adduced to the jury in recorded format.

10 Mrs Natarajan has remained continuously in Australia since her arrival in 2007 until the present. There is no evidence before the Court as to when she may return to her home in India.

Sentencing principles

11 The sentencing of Commonwealth offenders is governed by Part 1B of the *Crimes Act 1914* ('the CA'). Section 16A of the CA sets out the matters to which a sentencing court must have regard when determining the appropriate sentence. In particular, s 16A(1) of the CA provides that the court must impose a sentence that is of a severity appropriate in all the circumstances of the offence, with s 16A(2) setting out a non-exhaustive list of factors that the court must take into account, as are relevant and known to the court.

12 In these reasons, I will address the sentencing factors that are relevant and known to the Court that apply to your circumstances, and those of your offending.

13 I note that the approach to sentencing known as 'instinctive synthesis' continues to apply to the sentencing of Commonwealth offenders.

Nature and circumstances of the offending

General comments

14 Detailed submissions have been advanced by the parties regarding the nature and circumstances of your offending. You both pleaded not guilty to the charges on the indictment and continue to strenuously deny your guilt. In this context, the Court must come to some conclusions regarding the nature and circumstances of your offending for sentencing purposes. Such conclusions must be consistent with the guilty verdicts delivered by the jury.

15 I shall firstly address matters not in contention, before discussing the matters which appear to remain in dispute.

16 By 2002, you had been married for about 12 years and had one child, your now oldest daughter. It appears that you, Kumuthini Kannan, met Ms Natarajan during a family visit to India somewhere around the late 1990s or early 2000s. She was then about 50 years old. She was identified as a person who may be interested in travelling to Australia for the purpose of domestic work. Discussions took place which resulted in her travelling to Australia in 2002 and 2004 for approximate periods of six months. During these visits, she lived in your family home and provided help with daily living, including domestic chores, cooking, and caring for your first child on the earlier visit and then your later born twin children in 2004 and 2005. The original arrangement appeared to be negotiated between you, Kumuthini Kannan, and Mrs Natarajan through the intercession of a third party or parties, most likely involving her then son-in-law, Jawahar Krishnan. She received payment for the assistance provided to your family during these visits. After each of these occasions of travelling to Australia, Mrs Natarajan returned to India.

- 17 By early 2005, you both wanted Mrs Natarajan to return to Australia to provide assistance to your family. Across 2005 to 2007 a series of visa applications were lodged with the Department of Immigration seeking permission for her to travel again. Each application was rejected by the Department until the last in June 2007, which succeeded. The reasons for these rejections included that the Department was not satisfied the visit was not for 'work purposes' (September 2006); that the sponsor, being you Kandasamy Kannan, was listed as 'an employer' (November 2006); and again that the Department was not satisfied Ms Natarajan was 'not engaging in work' (December 2006). These applications formed a significant part of the evidence placed before the jury at trial.
- 18 The prosecution case was that the rejection of each unsuccessful application led to modification of the next application in a process of refinement designed to maximise the chances that the next application would be successful. The prosecution case was that each of you had a role to play in that process which eventually succeeded, with the Department finally granting an application allowing an entry visa for a period of 30 days. The grant was on the basis that Mrs Natarajan was not to engage in employment and that the purpose of her visit was to lend support to the family, in particular you, Kumuthini Kannan, who was said to be un-well and 'struggling', having recently born twins and suffering compromised physical and mental health.
- 19 The prosecution case is that in the refinement process, a number of significant lies were told in order to provide the best chance for a successful application. For example, in some applications, it was asserted that Mrs Natarajan possessed sufficient financial means showing she did not need to come to Australia to derive income. In one supporting letter, she was described as being of 'wealthy background'. Further, undertakings were made that she was not proposing to come for the purposes of employment and that her return to India would take place within the terms of the visa grant. The prosecution case was that some of these statements amounted to extravagant lies told in a desperate attempt to guarantee a successful application. Of particular note is that, in some applications, a supporting letter was included from a

then sitting member of Federal Parliament.

20 The applications contained lengthy and detailed letters signed by you, Kandasamy Kannan, and Mrs Natarajan, with the letters signed by her in fact either drafted or at least contributed to by one or both of you. Both kinds of letters contained significant lies and untruths, the design of which was to deceive the Department as to the true intention behind Mrs Natarajan's proposed travel to Australia. Evaluated broadly, the application process amounted to a deceptive course of conduct designed to ensure the return of Mrs Natarajan to Australia to provide you with assistance in your home. Before the jury and during the plea hearing there was dispute about your true purpose behind the provision of false information conveyed to the Department. I shall return to discuss this aspect below.

21 Mrs Natarajan finally arrived in Australia on 5 July 2007. It is undisputed that she has remained in Australia since that date until the present time, being just over 14 years. On her arrival at Melbourne airport she was met by you, Kandasamy Kannan, and conveyed to your home in Glen Waverley, where she lived until paramedics transported her to the Box Hill Hospital on 30 July 2015.

22 On her arrival at your home, she relinquished her Indian passport to you, Kumuthini Kannan, and you then handed it over to your husband. Later searches conducted by the Australian Federal Police in October 2015 failed to locate the passport. There is no evidence before this Court as to what became of it and no explanation has been offered as to its whereabouts. However, the visa applications indicate that the passport was due to expire on 19 January 2011. It may be reasonably inferred that it did so.

23 Furthermore, as Mrs Natarajan's entry visa was for a period of 30 days, it is undisputed that on or about 6 August 2017, some month or so after her arrival, she became unlawfully in Australia. She remained an unlawful non-citizen from that point until her immigration status was regularised at some stage after 30 July 2015, having agreed to assist the investigation into these matters then being carried out by the Australian Federal Police.

24 Apart from when Mrs Natarajan accompanied you on annual family holidays or occasionally on interstate trips, she resided and worked in your home between her arrival in Australia and the time she was taken to Box Hill Hospital. The verdicts of the jury establish that at some stage during that period, as reflected by the dates of the charges on the indictment, Mrs Natarajan was in a condition of slavery. I shall return to discuss this aspect of these reasons below.

25 By the time Mrs Natarajan was taken to hospital on 30 July 2015, she had become reduced to a dangerous state of health. When paramedics arrived at your house on that day, she was found lying on a bathroom floor, barely conscious and in a pool of urine.

26 You, Kumuthini Kannan, had called 000 for assistance, but not before taking your children to a school concert and leaving Mrs Natarajan on the bathroom floor. On your return, the call to 000 was recorded. You told the 000 operator that Mrs Natarajan was a guest, an Indian lady with relatives in Sydney who did not want to keep her, that she did not want to stay at your house, that she sometimes asked for money and went away, that you did not have any of her documents and knew nothing of her except her first name and that someone would call or write to you stating they were picking her up and she would pack her bag and go. Not only did you tell lies to that operator and give a misleading account about Mrs Natarajan's arrangements with you and your knowledge of her, but you also misled the ambulance officers that attended your home by not providing a surname or any form of identification and by telling them that her passport was with people in Sydney.

27 The consequence of providing false and misleading information to the authorities at this point meant that Mrs Natarajan, who was in no fit state to communicate for herself, was admitted to Box Hill Hospital under the incorrect name of Rajalaksmi Rangan. This was the name she remained known by until a much later time, well after police had become involved in an investigation concerning her welfare and whereabouts. Furthermore, hours after the admission of Ms Natarajan to Box Hill Hospital, you, Kumuthini Kannan, spoke to an emergency doctor who rang you to

seek information about her patient. You perpetuated the same type of misleading information and untrue accounts to that doctor. You later told material lies to social workers at the hospital about Mrs Natarajan by indicating that you had never seen her passport, that she had relatives in New South Wales that you had no contact details for and that you were unsure why Mrs Natarajan had, by that stage, begun to tell a conflicting story to your own about her background. In short, you told a litany of lies designed to mislead and distance yourself and your husband from the true circumstances of the person who had been admitted to the hospital.

28 At this time, parallel events were occurring unbeknown to the hospital authorities. For a significant period of time, Mrs Natarajan's family in India had become increasingly concerned about her health and their inability to contact her. Communications between you, Kumuthini Kannan, and Mrs Natarajan's family had sunk to a new level of abuse by you towards them. These circumstances resulted in a complaint being made to authorities in India, which then led to Victoria Police being tasked to conduct an enquiry into the welfare of Mrs Natarajan. A local police station was provided a file containing information, including the address at which Mrs Natarajan was believed to have been living, namely, your home address. As a result, on 24 August 2015, Senior Sergeant Carl Keenan and other members of Victoria Police visited your home to check on her welfare. While you were both at home, Mrs Natarajan was at the Box Hill Hospital, admitted under a false name.

29 During conversations that you both had with Senior Sergeant Keenan, you provided false information about the whereabouts of Mrs Natarajan, giving a partially untrue and misleading account regarding the period of time she lived in your home. One lie told by you, Kumuthini Kannan, was that Mrs Natarajan had lived with your family for about six months after her arrival. You stated that, not long after a trip she had accompanied you on to Sydney where she had met a family, members of that family had come to your place and taken her away and you had not seen her since. You said you could not provide names for these people, but thought that they actually lived in Darwin. Perhaps most importantly, you deliberately misled the enquiring police as

to the true whereabouts of Mrs Natarajan, which you well knew. In effect, you sought to deflect a police investigation by misleading, obfuscating and telling them lies. This was reprehensible conduct on your part, Kumuthini Kannan. Of significance is that you knew exactly where Mrs Natarajan was located and, as conveyed by the police, that her family were concerned and looking for her. You could have acted to relieve the anxiety of her family but did not. You, Kandasamy Kannan, told the police you had no information to offer about her whereabouts, when you clearly also had knowledge about where she was. This was an example of pitiless and heartless conduct on the part of both of you.

30 Instead, you allowed Victoria Police to leave your premises misapprehending the circumstances concerning the whereabouts of Mrs Natarajan and the true circumstances of the time she had lived with you over the past eight years. She remained in the Box Hill Hospital for a significant period of time following that visit by police, and as a consequence of your lies, the doctors, nursing staff and social workers at Box Hill Hospital were prevented from having important information as to the true identity and medical background of their patient.

31 In another visit by Victoria Police on 28 August 2015, you both told further lies about the circumstances concerning Mrs Natarajan. You had that period of four days to reflect on the impact of your first conversation with police. Nevertheless, you both continued to undermine and confound the police investigation by providing a deliberately embellished false story about Mrs Natarajan.

32 This misleading position remained until 11 September 2015, when your solicitor rang Senior Sergeant Keenan and told him that the two of you wanted to apologise for the lies you had told. Senior Sergeant Keenan was told the name Natarajan, but when he checked with the hospital, that name was not recorded. As such, no connection was made between that name and the name under which she had been admitted over a month earlier. It was not until days later following further conversation with both of you, and further information being provided by you, that two and two were finally put together by authorities when it was revealed that Mrs Natarajan was in fact the

same person who had been admitted to Box Hill Hospital on 30 July 2015.

33 There seems to be no dispute that these facts that have been recounted took place. It is conceded that you both told untruths, as described above. However, at trial, counsel on your behalf put to the jury that the purpose of your deception of the police and hospital authorities was to prevent the prospect that both of you and Mrs Natarajan might be exposed to charges relating to breach of her visa conditions, her possible illegal status in Australia, as well as your own exposure to a charge of harbouring an illegal citizen. It was argued that such deception was not an attempt to conceal your possible implication in the possession and use of a slave. I will discuss these particular issues below.

34 Returning to the admission of Mrs Natarajan into Box Hill Hospital, a considerable amount of evidence was called before the jury about her medical condition on arrival, her various diagnoses, the progression of her particular medical treatment, her contact with doctors, nursing staff, social workers, police officers and interpreters, leading to her eventual discharge from the hospital. Mrs Natarajan was finally discharged from the hospital in October 2015 and was conveyed to a local aged-care facility, where she remains until the present day. At the time of these sentences being passed, the Court has no information about when Mrs Natarajan will return to India.

35 It is not possible to conclude whether your failure to tell the truth about Mrs Natarajan's identity, circumstances and whereabouts could have or did have any adverse effect on the treatment she received in hospital or compromised any of her health outcomes. Accordingly, I have not taken that possibility into account in the assessment of the matters to which I am required to have regard.

Submissions of the parties on the offending

36 There remains a significant body of evidence called in the prosecution case that remains in dispute. It will be necessary for the Court to make some necessary findings of fact about issues of significance to the sentencing calculus. Such findings must be consistent with the findings of guilt made by the jury. In embarking on this course, it

is to be noted that you both steadfastly dispute the verdicts of the jury.

37 It is also to be noted that the evidence above, which appears mostly undisputed, emerges largely from the evidence of sources independent of Mrs Natarajan, including witnesses such as doctors, social workers and police officers. By comparison, in areas where the evidence of Mrs Natarajan is unsupported or uncorroborated, her evidence remains disputed. At trial, the evidence of Mrs Natarajan was heavily in dispute in material respects.

38 It is convenient to summarise the submissions of the parties in relation to the findings of fact that should be made and the nature and quality of the offending carried out by you both.

Submissions of the prosecution

39 With respect to a finding as to the period of your offending, the prosecution initially argued in written submissions that you both possessed and used Mrs Natarajan as a slave for the entire period reflected in the dates set out in the indictment, namely about eight years. It was submitted that this period far exceeds that of any other slavery case finalised in Australia.

40 In the course of discussion, the prosecution conceded that the cases against you both were put to the jury on the basis that there was no requirement for it to be satisfied that your offending took place through the whole of the charged period and that the jury should not approach the matter on that basis. Later, in reply to submissions advanced for you both, the prosecution modified its initial approach and argued that for the purposes of sentencing, the Court should find that your offending took place over a substantial period across the eight years of the indictment period. The prosecution ultimately acknowledged that it is difficult to identify a precise date at which the circumstances or condition that Mrs Natarajan was in, crossed the line into a condition of slavery.

41 The prosecution submitted that both of your offending involved premeditation. It was contended that both of you, as well as Mrs Natarajan, realised at some point that

you were vulnerable to criminal prosecution for harbouring an illegal non-citizen and the prospect of her deportation.

42 The prosecution submitted that your offending was blatant and motivated by greed in that you sought cheap labour to undertake domestic duties and care for your children. It is contended that this allowed both of you to continue working in your occupations and maintain a comfortable lifestyle with various benefits, including annual trips to India for the entire family, interstate trips and other holidays.

43 It is argued that you engaged in deceptive conduct against the Department to secure the services of Mrs Natarajan and that you presented her to the outside world as a member of your family. It is argued that the benefits that accrued to you both through her service involved putting her to work immediately on her arrival, paying her grossly inadequate remuneration not comparable to any Australian standards, having an on-call domestic servant 24 hours a day for seven days a week and having an experienced child carer on the same terms.

44 It is submitted that the level of your deception of the Department was significant and risky, reflecting your determination to secure the services of Mrs Natarajan. It is submitted that given the refinement of the refused visa applications, you were both prepared to say and do whatever it took to achieve the objective of having Mrs Natarajan come to Australia. The prosecution contended that the inference is overwhelming that, in the face of committing significant funds to support her travel to Australia, and with the final application seeking a period of only 30 days for her visit, you both had intended she would overstay the terms of her visa. It is submitted that you must have known at the time she arrived in Australia that Mrs Natarajan was never going to have the means, wherewithal or allies in Australia to return to India without your assistance and agreement. Further, you both knew she was never going to have enough money to buy a ticket or extract herself from your household during the period of her stay.

45 Furthermore, the prosecution argued that you both knew that Mrs Natarajan would never be able to sign on for Medicare and thus would be entirely dependent on you for her medical and welfare needs, as well as her living conditions on a day-to-day basis. In other words, upon her arrival and stay with you, Mrs Natarajan was entirely dependent on you both for everything. Accordingly, it is submitted that there was a constraint placed on her freedom and that you both had knowledge of the inevitable restrictions placed on her due to her lack of English, low level of education and total lack of knowledge regarding her whereabouts beyond the immediate vicinity of the family home and local park.

46 It is submitted that the prosecution case was never put on the basis that you knew about the law that defines slavery, which is unnecessary. Rather, it is argued that you both had knowledge and foresight regarding the powers associated with the possession and use of a person, which in law could amount to slavery. Accordingly, it is submitted that there was premeditation on the part of both of you that Mrs Natarajan would stay in Australia longer than a month, that you had engaged her knowingly in a 'last roll of the dice' and that the deception in the application for visa process was a device to get her into Australia and keep her here for as long as you required her. As such, it is submitted that an overwhelming inference can be drawn that you intended for Mrs Natarajan to stay beyond the terms of her visa from day one, would not pay her anything more than a meagre sum of money and that she would be available as a domestic servant 24 hours a day for 7 days a week.

47 It is submitted that these circumstances apply to you both. In particular, you, Kandasamy Kannan, cannot be divorced from these circumstances as you lived in the house, knew what was happening and were part of it as a senior member of the household and the major breadwinner. In support of this argument, the prosecution pointed out that you were unemployed for 12 months in 2012, thus increasing the likelihood you knew exactly what the domestic arrangements were.

48 As to the condition of slavery, it is submitted that for the duration of that period, you both took advantage of Mrs Natarajan's vulnerability as an illegal non-citizen. The

prosecution contended that examples of the exercise of powers over Mrs Natarajan included the following:

- (a) the power to control her freedom of movement, exercised by exploiting her lack of knowledge of Australia beyond Gillian Road and its close environs, her lack of ability to communicate in English, her fear of exposure as an illegal non-citizen and her lack of money;
- (b) the power to control her ability to return to India at the time of her choosing;
- (c) the power to control her daily living conditions, including the hours and nature of her work;
- (d) the power to determine the level of her remuneration and how and when it would be paid;
- (e) the power to control her choice as to whether she would cease working for you;
- (f) the power to control when and how she could communicate with her family in India; and
- (g) the power to control her health care and welfare needs.

49 It is submitted that the above examples of powers exercised over Mrs Natarajan were not seriously disputed during the trial, and that when viewed in a rational way, the Court should be satisfied beyond reasonable doubt that you both exercised each of these powers over Mrs Natarajan throughout the relevant period.

50 The prosecution submitted that both of you deprived Mrs Natarajan of her liberty for a period of about eight years. It is acknowledged that Mrs Natarajan may have consented to the rights of ownership exercised over her, but that this simply reflects her desperation to alleviate her life of poverty and that of her family in India, which you both knew about well before her arrival into Australia in 2007. It is submitted that insofar as Mrs Natarajan may have consented to her circumstances, this does not offer either of you any mitigation.

51 It is pointed out that your offending was only discovered due to the events involving Mrs Natarajan's deterioration into a desperate health condition by 30 July 2015. It was noted that in the face of her illegal status from 8 August 2007, it appears the Department took no action nor made enquiries about her status. On the other hand, you both did nothing to inform the authorities of that status, which the prosecution submitted constitutes an aggravating feature of your offending.

52 The prosecution contended that it was predictable that all of the powers exercised as amounting to a condition of slavery would be exercised at one stage or another in order to prevent information leaking out and to enable the continued relationship to proceed, as you both intended. It was submitted that these factors contribute to a conclusion that both your offending conduct should be regarded as serious.

53 It is also submitted that your own medical and psychiatric conditions, and those of your children, before and during the charged period, do not mitigate your culpability. It is pointed out that you were both employed for most of the relevant period and whatever physical or mental health conditions you may have suffered from were capable of being managed within Australia's world-class health and social security services schemes. By comparison, Mrs Natarajan, by being an illegal non-citizen, never had the benefit of such support and completely depended on you for all her needs.

54 With respect to the days and hours of work, the prosecution conceded that the Court should not find that Mrs Natarajan worked 24 hours, seven days a week and 365 days a year. However, it argued that she was available to you and your family, being on call and at your beck and call.

55 In respect of remuneration, the prosecution pointed to evidence of four payments approximating 80,000 rupees being paid by you, which it was argued was barely put into contest in the course of the trial. The prosecution further submitted that evidence placed before the jury in a subsequent document appearing to have been authored by you, Kumuthini Kannan, which suggested payments of up to 185,000 rupees over a

period of 37 months from March 2010 should be rejected. However, even if the later figures were to be accepted in addition to other evidence about payments of earlier remuneration, the prosecution argued that the overall remuneration paid to Mrs Natarajan over eight years was meagre to the point where it was grossly inadequate. It is argued that the Court should accept that Mrs Natarajan was not paid anything after 2013.

56 The prosecution noted the photographic and video evidence presented at trial showing that, on occasions, Mrs Natarajan became involved in social gatherings with your family and mixed with people within your community. It was submitted this evidence was consistent with her explanation that she was told to not 'let-on' about her circumstances or have in-depth conversations with other people. The prosecution argued that the images demonstrated that she was passed off to others as being lawfully associated with your family and not an illegal non-citizen. It was submitted that this was the nature of the environment that was created by you both in which you exercised control over her associations with people outside your immediate family. The prosecution submitted that if the evidence of Mrs Natarajan is to be accepted in this respect, it constitutes evidence of ongoing control over a lengthy period of time which is relevant to both your characters, prospects of your rehabilitation and remorse.

57 The prosecution submitted that the exercise of the power of ownership to control Mrs Natarajan's health care and welfare represents a serious aggravating feature of both of your offending, but particularly yours, Kumuthini Kannan, who was in a position as a female to have a more understandable type of communication with Mrs Natarajan. Nevertheless, it is submitted that both of you were aware of her health concerns and need for treatment or care. The prosecution argued that as you both had powers of ownership over her, you both bore the responsibility for ensuring her ongoing welfare. Mrs Natarajan was never registered with Medicare, nor had any knowledge or capacity to seek her own health or welfare care.

58 As to the events concerning the deteriorating condition of Mrs Natarajan on 30 July 2015, the prosecution submitted that the failure of you, Kumuthini Kannan, to act expeditiously to seek medical assistance is a particularly egregious example of the power which you exercised over her health care. At the same time, the prosecution submitted that whilst you, Kandasamy Kannan, cannot be held responsible for your wife's behaviour on that day, you cannot avoid responsibility for the lack of treatment for Mrs Natarajan's emaciation and deteriorating health, including sepsis, in the period before her admission to hospital. Thus, it is submitted that, in her particular circumstances, Mrs Natarajan was wholly reliant on the both of you for her health care and that you both exercised and seriously abused the power of ownership over her in this respect.

59 With respect to the physical mistreatment alleged by Mrs Natarajan as having been perpetrated by you, Kumuthini Kannan, the prosecution does not seek to persuade the Court that any such mistreatment is relevant to proving that the condition of slavery existed. It does not seek to persuade the Court to make findings of mistreatment or that any mistreatment as may have occurred should aggravate your offending conduct, where the evidence of Mrs Natarajan is not corroborated. On the other hand, it is submitted that claims made that Mrs Natarajan was a 'beloved family member' should not be accepted and, in any event, would not amount to mitigating circumstances.

60 The prosecution addressed the broad issue of the many lies told by the both of you in relation to Mrs Natarajan's circumstances. It was submitted that, apart from those which formed part of the visa applications and the background to your offending, the lies you told are relevant to the character of both of you. The prosecution referred to a number of grandiose lies told in the visa applications, including assertions of good character when you were both in fact embarked on the course of deceiving the authorities.

61 Furthermore, as to a number of lies, the prosecution further submitted that the telling of the lies by both of you demonstrates a continuing attempt to maintain control over

Mrs Natarajan beyond the charge period. As well as going to your character, the prosecution submitted that the series of lies told by both of you after 30 July 2015 is an aggravating feature showing your concern to protect yourselves by deliberately withholding information about Mrs Natarajan that may have assisted her, the police investigation and those in India. Whilst the lies were not put by the prosecution as showing consciousness of guilt, it was submitted that they nevertheless go to your character by showing a lack of respect and care towards Mrs Natarajan. It was argued that you both placed your own selfish interests well ahead of her interests when she was in hospital recovering from very serious medical complications.

62 It is also to be noted that some weeks after Mrs Natarajan was taken to hospital, and when you knew there was a police investigation regarding her whereabouts, you explored the possibility that Mrs Natarajan could move in to live with your neighbour, Gail Kelly. You, Kumuthini Kannan, confabulated an untrue story about Mrs Natarajan and attempted to inveigle Mrs Kelly to look after the person you described as your 'auntie', who suffered from some form of dementia. You made up a story that your family and relatives could not look after her. Your motivation for attempting to have Mrs Natarajan live with your neighbour assumes that you expected her to be released from hospital at some point and returned to live with you.

63 One conclusion open is that you anticipated the continuation of a police investigation and sought to physically remove Mrs Natarajan from view. However, in the absence of evidence on this point, I cannot safely conclude that your approach to Mrs Kelly was part of a plan to confound a police investigation. Accordingly, I will not take this possibility into account against you, except to remark that it represents another piece of evidence that reflects poorly on the character of both of you. The approach occurred at a stage before Mrs Natarajan made any allegations against you in respect of your conduct towards her.

64 As to the respective roles in your offending, the prosecution submitted the evidence reveals that you, Kumuthini Kannan, had the most daily interaction with Mrs Natarajan, in that you managed what she would do within the household. It was

submitted that you were largely responsible for organising the household and that the traditional approach adopted was that you, Kandasamy Kannan, worked full-time and played a 'hands off' role in domestic matters. Nevertheless, it is submitted that even when the household dynamics are taken into account, you both exercised the various powers of ownership and use consistently and continuously over the relevant period, such that there is a significant level of personal culpability for the offending carried out by you both. Accordingly, it is submitted that you, Kandasamy Kannan, knowingly and willingly participated with your wife in creating the circumstances underpinning the condition of slavery and that you both knowingly and willingly benefited from the daily labour of your slave.

65 The prosecution addressed the submissions made on your behalf, Kandasamy Kannan, which focused on your 'different situation' to that of your wife. The prosecution invited the Court to look at the reality of the situation, that both of you were a married couple living under the same roof and were engaged in multiple deceptions of the Department. It was argued that you had the same knowledge, belief and intent as your wife. The prosecution contended that despite having attempted to shield yourself behind your wife as being the main point of contact between the family and Mrs Natarajan, you cannot get 'off the hook' in circumstances where you were a member of the same family and observed what was occurring around you on a daily basis. As such, it is submitted that you are not able to distance yourself from the conditions of slavery which existed.

66 The prosecution noted that it was not possible to determine how the circumstances relating to Mrs Natarajan's condition of slavery would end. It may be observed that you, Kumuthini Kannan, attempted to purchase a ticket for Mrs Natarajan in September 2014 to travel to Chennai, India. However, the plan failed as it became plain that a ticket could not be purchased for Mrs Natarajan as she had no valid passport at that point. As such, she remained living in your household.

Submissions for Kumuthini Kannan

67 Kumuthini Kannan, counsel on your behalf submitted that consistent with the guilty

verdicts of the jury, you should not be sentenced for possessing and using Mrs Natarajan as a slave for the entire period between the dates of the indictment. It was further argued that asserted facts by Mrs Natarajan which solely depend on her account of events should not be accepted and therefore disregarded as aggravating features of your offending conduct. In this regard, counsel referred to the High Court authority of *Cheung v The Queen*,² which stands for the proposition that findings of fact which may be made against you must be proven beyond reasonable doubt. It is submitted that a number of allegations made by Mrs Natarajan are simply not open to be accepted to the high standard required. Counsel specifically referred to how the prosecution at trial disavowed reliance on physical, verbal or emotional abuse and thus did not put its case on the basis of 'mistreatment'.

68 Counsel noted a number of pieces of evidence of Mrs Natarajan, including that she was not shackled, was treated as a member of the family and occasionally accompanied the family to social gatherings. It was further pointed out that whilst the prosecution did not suggest it was impossible for her to leave the house, her freedom of movement was restricted because she simply had nowhere to go. It was argued that your instructions to not open the door or engage in conversations with outsiders was in order to disguise Mrs Natarajan's status as an illegal non-citizen, rather than her exposure as being in a condition of slavery.

69 Counsel pointed out that the prosecution accepted aspects of unreliability attaching to the evidence of Mrs Natarajan, particularly in respect of dates. It was further noted that the prosecution put its case on the basis that the first five years of her stay did not involve any physical abuse and later downplayed episodes of alleged physical abuse by arguing to the jury that the case was not about mistreatment, but rather all the other circumstances creating the condition of slavery.

70 It is submitted on your behalf that many of the allegations of mistreatment made by Mrs Natarajan could only be proven if her credibility and reliability is to be accepted. It is submitted that most of the evidence in this area is not capable of being accepted

² [2001] HCA 67.

beyond reasonable doubt as it is either internally inconsistent within her own evidence or that of other witnesses, and that independent evidence is to be preferred. Thus, it is submitted that a proper consideration of these matters means that it is not possible to make a series of findings beyond reasonable doubt for sentencing purposes that Mrs Natarajan was treated other than as a member of the family for a substantial part of the charged period, that she suffered physical abuse at your hands, Kumuthini Kannan, that her work hours and conditions were as described in her evidence, that she was physically confined in any way, that she was not free to converse and interact with other members of the Indian community, that she was denied access to adequate sustenance, that her hygiene and cleanliness was controlled by you and that she wanted to return to India but was prevented from doing so at any time before 2014. Accordingly it is submitted that instances of alleged mistreatment are not available to be taken into account as they are not capable of being proven beyond reasonable doubt. As such, it is argued that they cannot be treated as factors aggravating the sentence to be imposed.

71 Further, it was noted that no evidence was placed before the Court to explain any cultural or cognitive issues that may have impacted, or could explain, the evidence Mrs Natarajan gave about these matters. Thus, it is submitted that the Court should act on the basis that she was an adult with no cognitive impairments and that no cultural factors can be assumed to explain any inconsistencies or alleged exaggerations in her evidence. There is no evidence about how Mrs Natarajan may fit into Tamil society, or her relationship with you both that may explain or ameliorate your behaviour towards her. Counsel pointed to evidence from Federal Agent Taylor that she was satisfied that Mrs Natarajan was capable of giving evidence.

72 Accordingly, it is submitted that the Court should not find beyond reasonable doubt that Mrs Natarajan was in a condition of slavery for the entire period charged on the indictment. It is submitted that the matters put forward by the prosecution supporting the argument that a condition of slavery occurred for the entire period in the indictment are equally consistent with the condition of slavery occurring at some

point during her stay in Australia. Counsel on your behalf, Kumuthini Kannan, argued that it was open to conclude that the circumstances evolved from something that was not a condition of slavery into something that was a condition of slavery. It is submitted that the evidence contained within the visa applications is intractably neutral and does not rise to establishing beyond reasonable doubt that Mrs Natarajan was recruited with the intention that she would be in the condition of slavery upon her arrival in Australia. Accordingly, it is submitted that the period during which she was in a condition of slavery was shorter than the period set out in the indictment and that it cannot be established that there was premeditation for the purposes of enslaving her. Counsel contended that this aspect of premeditation cannot be used as an aggravating feature in relation to the findings of slavery.

73 It is accepted on your behalf that there was premeditation on your part to get Mrs Natarajan into the country for more than one month. However, counsel rejected the prosecution's submission that you were motivated to bring Mrs Natarajan to Australia as cheap labour and to maintain your lavish lifestyle, arguing that it amounts to a speculative submission which does not take the issue meaningfully further.

74 As to what findings should be made about the starting point of the condition of slavery, counsel pointed out that Mrs Natarajan had come to Australia on two previous occasions and had returned in 2007. Further, it was noted that she told Federal Agent Taylor that she was very happy for the first five years after arriving in 2007.

75 As to the question of remuneration, it is submitted that there is evidence of money being paid to Mrs Natarajan, but that evidence of the nature of the agreement between you and Mr Krishnan is incoherent. It is submitted that the state of the evidence does not permit a finding to the appropriate standard as to whether there was a coherent structured arrangement and whether it was honoured or not. It is submitted that it is only open to conclude that Mrs Natarajan wanted to earn some money; that she asked for such money to be directed back to her family in India, that she gave those

directions and that they were carried out.

76 Counsel conceded that the evidence reveals that payment was probably not adequate, but otherwise argued that the state of the evidence on this issue is a mess. Thus, while accepting that Mrs Natarajan was not paid 'lots of money' and did not live an opulent lifestyle, it is submitted that it cannot be concluded beyond reasonable doubt that she was brought to Australia and paid a grossly insufficient amount of money. Counsel argued that, in any event, being illiterate and the kind of person she was with obvious limitations, Mrs Natarajan did not seek the expensive or luxurious trappings of life and that her life enjoyment would be through her interactions with other people.

77 Further, it was submitted that the Court should not be satisfied that Mrs Natarajan worked as a domestic servant on call for 24 hours a day. It was conceded that during the period when she was in a condition of slavery, she was performing domestic duties for you and your family. However, it is argued that there is a limitation to the extent to which the evidence of Mrs Natarajan can be accepted, which affects the gravity of the offending during which the condition of slavery existed. It is submitted that a lot of the powers exercised by you were consistent with a relationship that was not one of slavery. It is contended that while this does not extinguish the gravity of the conditions of slavery under which you are held, it can be diminished.

78 As to the health and welfare needs of Mrs Natarajan, counsel addressed the allegation that the condition of slavery under which Mrs Natarajan was held included the power to control the provision of health and welfare of the enslaved person. It was conceded that there is some force in the submission that Mrs Natarajan ended up in a dreadful state and that you did not prevent her from getting into that final state. Further, it was acknowledged that Mrs Natarajan was in no position to seek out her own medical attention if she wished to. Nonetheless, it was submitted that the situation was nuanced. It was emphasised that the prosecution conceded to the jury that you both were not responsible for Mrs Natarajan's medical condition and did not cause it, and that there was not sufficient evidence to determine that you knew she had diabetes before she was taken to hospital.

79 Counsel rejected the suggestion that you seriously neglected Mrs Natarajan's medical condition, but nevertheless conceded that she was in a bad state when she went to hospital. Whilst acknowledging that Mrs Natarajan was emaciated, had septicaemia, was diagnosed with diabetes and had no teeth upon her hospitalisation, it was submitted that care must be taken as to the facts to be found which may be adverse to you, Kumuthini Kannan, for sentencing purposes. It was observed that there was no evidence before the Court as to the length of time which these medical conditions had been in existence and whether any would have been observable. Ultimately, it was submitted that there was a limit to the relevance of the medical evidence as it related to a condition of slavery and that these matters should not be provided with emphasis as aggravating factors. At the same time, while counsel acknowledged that you, Kumuthini Kannan, did not do what you should have done, it is argued that the circumstances were not as black and white as put forward by the prosecution.

80 It is submitted that the Court should conclude that Mrs Natarajan was part of your family and not someone who was a slave chained and locked under the stairs, with windows sealed and doors locked. It was argued that the prosecution conceded that she was part of the family and that you and your husband treated her in this way to obtain her good graces and maintain her connection with your children. Counsel contended that she was loved by your children, participated in family life, including holidays, and was an integrated member of your family, at least for some period falling short of the period of the condition of slavery. It was submitted that the facts of this case are capable of being interpreted in a variety of ways and that the relationship between Mrs Natarajan, you and your husband was not as straightforward as those in examples of other slavery cases.

81 Accordingly, while submitting that it is not open to find that Mrs Natarajan was in a condition of slavery for the entire eight years, counsel acknowledged that you fall to be sentenced for serious offending. However, it is argued that this must be viewed in the context of the above submissions. Ultimately, it is submitted that the nature and gravity of your offending falls low on the scale for this type of offending. In this

regard, it is submitted that you fall to be sentenced for possessing and using a slave for a discrete period and not the full period of the charge, without any of the aggravating factors, as conceded by the Crown, that Mrs Natarajan alleged as having existed and in circumstances where she was a part of the family unit in some way.

Submissions for Kandasamy Kannan

82 Kandasamy Kannan, as to the nature and circumstances of your offending, counsel submitted that, as the prosecution disavowed the condition of slavery as being a continuing state of affairs, it was open to the jury to find you guilty on being satisfied that it existed for a single day during the charge period. It is submitted that in light of that approach, the task for the Court is to consider the evidence and make findings about the extent of the objective gravity of your criminality. It is contended that the assessment of objective gravity is of critical importance in this case. Counsel argued that it is very difficult to determine when, within the period of the indictment, the relationship between you both and Mrs Natarajan deteriorated to a point where it became more than an exploitative work relationship.

83 Further, it is submitted that it cannot be established beyond reasonable doubt that your representations to the Department in the visa applications are capable of sustaining a conclusion that you turned your mind to enslaving Mrs Natarajan at the time the documents were written. Counsel pointed to your age, non-criminal background and unwavering commitment to the desperate circumstances of your family as demonstrating your desperation to obtain assistance to alleviate the chaos in the family circumstances. It was argued that these matters did not point to a man who did premeditated acts consistent with arranging a slave to come to Australia. In support of this submission, counsel pointed to the bond between your children and Mrs Natarajan that developed over the two previous occasions she had travelled to Australia for periods of six months.

84 Counsel adopted the submissions made on behalf of your wife insofar as they criticised aspects of the evidence of Mrs Natarajan as to her hours of work and alleged abuse. In particular, it was submitted that the more florid features of Mrs Natarajan's

account of events of abuse should not be acted on.

85 Further, it was contended that there is a layer of added complexity within the sentencing exercise due to the Court being required to determine the stage at which the relationship between the two of you and Mrs Natarajan developed from what may have been an exploitative employment relationship to one involving a condition of slavery. It was submitted that the charging of you both as principal offenders meant that some features of the evidence related to only one of you. For instance, it was submitted that in your case, Kandasamy Kannan, the evidence is that Mrs Natarajan's remuneration was not discussed with you. As such, in the absence of direct evidence, it was argued that knowledge as to what she was or was not paid could not be sheeted home to you. In the same vein, regarding the conditions under which Mrs Natarajan worked, it was submitted that, in the absence of direct evidence, it was not sufficient for the prosecution to rely on your general benefit from the arrangement. Counsel submitted that any benefit you may have received from the reduction of Mrs Natarajan to a state of slavery by someone else cannot be used as an aggravating feature against you. Nevertheless, it was accepted that the jury's verdicts meant that it was satisfied of your intentional possession and use of Mrs Natarajan as a slave, but that any benefit you may have received is not capable of eliminating your intentional possession and use of her and has little work to do in respect of determining the appropriate sentence to be passed.

86 Counsel further submitted that there was a marked difference between your relationship with Mrs Natarajan and her relationship with your wife. In particular, it was argued that it would be impossible to conclude that you were involved in any physical abuse of Mrs Natarajan and that the relationship you shared was one of mutual respect and support. It was acknowledged that there may be an inherent tension between this feature and the verdicts returned by the jury, but these matters are not necessarily mutually exclusive. Counsel pointed to the evidence of Mrs Natarajan that you were generally solicitous towards her, provided her with medication, told her to rest and when to eat. It was argued that evidence existed that

you were somewhat under the control of your wife, had to listen to her and that there were occasions when you are scolded by her for being kind to Mrs Natarajan.

87 It was argued that you did your level best towards Mrs Natarajan, at the very least until the last few months before she was taken to hospital. In this respect, counsel referred to the evidence at trial regarding the benign and possibly unrecognised appearance of undiagnosed diabetes. Accordingly, whilst not endeavouring to minimise Mrs Natarajan's parlous state of health, it is submitted that it is difficult to precisely determine what must have been obvious to you about her health by the time she was admitted to hospital, on which day you were not at home.

88 Counsel submitted that whilst Mrs Natarajan suffered from certain vulnerabilities, including her lack of English and consequent inability to communicate with neighbours and the wider world, it is by no means certain that such factors represented the sphere of control exercised by you. Further, it was contended that it is not clear on the evidence that you exploited these vulnerabilities. Rather, it was submitted that tendered videos and photographs demonstrated Mrs Natarajan as very much part of the social fabric of your family and your desire for her to attend social gatherings oppose to hide her away.

89 Counsel referred to the alleged control you had over the ability of Mrs Natarajan to return to India at the time of her choosing. It was submitted that the evidence on this topic was equivocal as to whether she ever raised such a desire with you. It was argued that, in any event, there is a lack of evidence regarding the role you played on this matter as well as her remuneration. As such, counsel submitted the extent of your power over her on this matter cannot be inferred beyond reasonable doubt.

90 With respect to your alleged power over her hours, conditions and the nature of her work, it was submitted that the weight of the evidence is that domestic tasks were assigned to Mrs Natarajan by your wife and that you were not involved in a practical sense. If accepted, these matters affect the degree of the objective gravity of your offending, leading to a conclusion that your offending is of a lesser order of magnitude

and represents a modest example of the exercise of the condition of slavery.

91 As to the question of your power to control whether Mrs Natarajan had the capacity to choose to cease working for your family, it is argued that the conditions of employment were not set by you and that you were not directing her duties. At the same time, it is acknowledged that you benefited from her employment. It was submitted that you occupied a fairly peripheral and passive role in the house which involved looking after the children's daily needs, and apart from your work, arrangements in the domestic context were ceded to your wife. Thus, these were powers exercised for you at a lesser magnitude.

92 Additionally, it is not certain how the power to control when Mrs Natarajan communicated with her family in India was said to be exercised by you. It was submitted that evidence of the time at which you would get home, have dinner and retire to bed meant that there was not an inescapable inference that this was a power you exercised. Thus, it was submitted that when the lesser magnitude of this and other powers are considered, the objective gravity of your offending is significantly lessened.

93 As to the power to control the provision of Mrs Natarajan's health care and welfare needs, it was conceded that she lived under your roof and that given the circumstances of her vulnerability, it can be said that you exercised a power in this regard. However, as to whether this is a circumstance of aggravation, counsel submitted that this factor needs to be set against other occasions where you interceded on her behalf, provided medication to her and lobbied on her behalf to be sent to the hospital. It was argued that such matters ameliorate to some extent the aggravating feature of the exercise of this power. Further, counsel noted the fact that cultural issues meant that it was less likely that Mrs Natarajan would be prepared to confide in you about health matters in any event. It was submitted that this is a factor that is significant in determining the extent to which this power is capable of operating as an aggravating feature in your case.

94 Ultimately, it was accepted that it is not incumbent on the Court to nominate a point at which the offending commenced or ceased. It was submitted that there were problems of reliability and credibility with the evidence of Mrs Natarajan and that caution should be exercised in acting on her evidence which may ground circumstances of aggravation. Thus, it is submitted that is not open to the Court to conclude beyond reasonable doubt that your offending was premeditated and blatant.

95 Furthermore, it is submitted that it could not be concluded that your motivation for carrying out this offending was greed. This is particularly so if the Court concludes that the initial motivation for securing the services of Mrs Natarajan involved seeking respite care for your wife. It was submitted that a far more compelling motivation than securing a luxurious lifestyle was securing a lifeline.

96 Counsel submitted that your case should viewed on the basis that once Mrs Natarajan had arrived and her services were in place, you put your head down and went to work with a background of being gentle, dutiful, diligent, hardworking and decent. It is contended on your behalf that you continued in this manner throughout and beyond the eight years Mrs Natarajan lived with your family.

Conclusions on the objective seriousness and nature and gravity of the offending and moral culpability

When did the condition of slavery exist?

97 As observed, it was not necessary for the prosecution to establish that the condition of slavery existed for the entire period set out in the indictment. Furthermore, in circumstances where two accused have been found guilty of the separate offences of the intentional possession and use of a slave, there remains the possibility that the jury may not have been satisfied that, first, there was a condition of slavery for the whole period, and second, that each accused intentionally possessed and used the person in the condition of slavery at exactly the same times. It is also consistent with the jury's verdicts that the condition of slavery, and the possession and use of the slave, was not continuous for the whole period, but may have waxed and waned over the period that the jury found beyond reasonable doubt that a condition of slavery existed.

98 In my opinion, it is not possible to precisely determine when the condition of slavery first existed. Neither is it possible to determine to a required degree of certainty as to whether both accused possessed and used Mrs Natarajan in a condition of slavery for the whole period over which the jury found such a condition to have existed and whether one or all of the powers attaching to the condition of slavery existed across the whole period. It is of some significance to note that a person accused of possession and use of a slave does not need to understand the legal concept of slavery, only that it did involve the exercise of one or all of the powers or indicia of slavery.

99 I am satisfied to the required degree that you both acted consciously and deliberately in making the arrangements for Mrs Natarajan to return to Australia in 2007. I am prepared to accept that you regarded yourselves as desperately wanting her assistance, a by-product of which would be to allow you to maintain your respective employments and lifestyle, including annual trips overseas. I am satisfied that a rational view of the circumstances permits the conclusion that you were both aware of the refinements that occurred in the series of visa applications, leading eventually to the final application which was successful in securing a visa for one month. I am satisfied that you were both aware of the misrepresentations and falsehoods that formed part of these applications.

100 While it should be acknowledged that a condition of slavery is capable of existing on the basis of one of the powers of control being exercised, I am not satisfied to the required degree that before Mrs Natarajan came to Australia, you intentionally planned that any of the powers would be exercised over her to the point where one or more of such powers would satisfy the requirement for a condition of slavery to exist. Consistently with the verdicts of the jury, I am satisfied however that at some point during the period set out in the indictment a condition of slavery did exist. I am not able to say when that was, but I am of the opinion that the condition of slavery existed for a substantial period within the charged dates.

101 It matters little that Mrs Natarajan may have been 'happy' for some or even a significant part of that period defined by the condition of slavery. Whatever

happiness to her may have meant, such a state, if it existed, must be evaluated in the context of her overall life experience and the circumstances in which she had previously been living. What matters is the fact of the powers being exercised over her. She was a largely uneducated, illiterate and vulnerable woman who you both took advantage of, irrespective of whether she ever comprehended that she was in a condition of slavery.

102 The fact is that you developed almost absolute control over all aspects of her day-to-day life. This began to evolve from very early on after her arrival into Australia when you took away her passport and thus removed her immediate ability to leave the country when she wished. Further, you paid her minimal sums of money, which you undoubtedly saw to be to your own advantage, controlled how and when she worked, controlled her communications with her family and others, and controlled how and when she received health care.

103 To understand the concept of slavery, we must rid ourselves of ingrained images of rows of men chained together at the oars of a galley, or men and women working in fields in bondage. Slavery can be much more subtle than that and may not involve physical restraint. What must be reaffirmed is that possessing or using a person in a condition of slavery is repugnant, degrading of the human condition, and a gross breach of human rights.

Objective seriousness

104 The actions of you both must be regarded as being at a serious level and your offending falls into a serious category. I do not accept the submission that this offending should be categorised as being towards the lower level of this kind of offending. Your actions were such as to subjugate Mrs Natarajan, over an extended period measured in years rather than months, far beyond the examples reflected in other Australian slavery cases, albeit the form of slavery was mostly of a different character.

105 Although the finding of seriousness attaches to you both, I am of the opinion that as the person in day-to-day control of Mrs Natarajan's life and working conditions, Kumuthini Kannan, your actions were of a more aggravated nature than those of your husband. Of the two of you, you are more morally culpable for your offending. You had 'the say' in the running of the household and controlled Mrs Natarajan's recourse to health care and communications between her and her family. Towards the end, you became abusive and angry towards them when they enquired about Mrs Natarajan and clearly wanted her sent home.

106 On the other hand, you, Kandasamy Kannan, were more at arm's length, in that you worked in a full-time occupation, were the major breadwinner and have been portrayed as being more susceptible to a degree of domination by your wife and as of a weaker character. That does not excuse your actions at all, but perhaps puts such actions, as well as your failure to take action, in somewhat of a different light. Overall, I regard you as less morally culpable than your wife.

107 With respect to the distinction between the charges of possession and use of a slave, the majority of previously decided cases tend to make it clear that use of a slave is regarded as the more serious offence, as reflected in the penalties imposed in those cases. Notwithstanding the nature of those cases concerning sexual servitude, I see no reason not to follow a similar approach and will sentence on that basis accordingly.

Victim impact

108 Sections 16A(2)(e) and 16A(2)(ea) of the CA provides that a sentencing factor that must be taken into account by a sentencing court is any injury, loss or damage resulting from the offending and whether an individual who is a victim of an offence has suffered harm as a result of the offending. A victim is entitled to make a victim impact statement to be provided to the court.

109 Mrs Natarajan has declined to provide a victim impact statement. The Court has been informed that she has 'said everything I want to say' and has 'nothing further to tell'.

- 110 In circumstances where the offending occurred over a very lengthy period, it is regrettable that the Court was not provided with more insight into its impacts on Mrs Natarajan than what is able to be discerned from the evidence put forward in the trial. This of course was her choice to make. However, the Court remains uninformed about possible impacts with respect to issues including her absence from her home country and loss of personal contact with members of her family for over 14 years. Apart from what may have been observed in her evidence at trial, little is known about any response she may have had to remaining in this country from the date of her admission into hospital until now.
- 111 In the circumstances, it is difficult to draw particular conclusions beyond what might normally be expected to be experienced by any person faced with the circumstances she has had to confront. This said, in my opinion, it may be safely observed that over an extended period of time, she received little remuneration from the two of you. Keeping in mind her age and personal circumstances, there is no information before the Court as to what she may have expected by way of reward for any employment she might have had in India had she never come to Australia.
- 112 Very recently, some information has been provided to the Court as to an amount that may have been paid to Mrs Natarajan had she been employed in regular employment under appropriate awards. However, there has been no information as to any form of income or benefit she may have received from the Australian authorities from 30 July 2015 until today while waiting for this matter to be finalised. These matters are simply not sufficiently known to the Court. Accordingly, I am of the opinion that no safe conclusions can be drawn, as to do otherwise would amount to speculation.
- 113 Furthermore, there are no safe conclusions that can be drawn about Mrs Natarajan's current physical condition and any ongoing psychological effects she has experienced as a result of your offending against her. The prosecution has not sought to place that type of information before the Court.

Personal circumstances

Introduction

- 114 I will briefly address some issues relating to your joint circumstances, before turning to discuss the personal circumstances of each of you.
- 115 You were married in Melbourne in 1994 when you, Kumuthini Kannan, were 27 years old and your husband was 30 years old. Yours was an arranged marriage. Kumuthini Kannan, you had sponsored your husband to Australia through a skilled migrant visa in 1991. The two of you have never separated. You have three children, each with special needs. Your eldest child, a daughter born in 2001, is now 19 years old. She has been diagnosed with mild high functioning autism. She completed year 12 at secondary school and has gained entry to a degree course in actuarial studies in New Zealand. You also have twin children born in 2004, who are presently 16 years old. Your daughter attends an autism school, having been assessed in mid-2020 as meeting the diagnostic criteria for autism spectrum disorder. She receives medication and takes a mood stabiliser drug. Your son attends a high school via a fully funded scholarship and has been assessed as suffering from mild to moderate high functioning autism.
- 116 You and your three children have resided in rented accommodation in Burwood East since September 2018. The former family home, being at the place where your offending was carried out, was sold in 2018. The proceeds from the sale were restrained by a court order following an application by the Australian Federal police.

Kumuthini Kannan

- 117 Kumuthini Kannan, you are now 53 years old. You were raised in Sri Lanka and educated to year 10 level. Your father is deceased and your mother is an elderly and frail 92-year-old, living in Melbourne with whom you have limited contact. You are the youngest of four siblings, with one brother, and also two sisters living in Melbourne, with whom you also have limited contact. Your father was a very organised and strict man and you were closer to your mother than him. You grew up in an atmosphere of obedience, yet had a happy childhood until conflict blighted your

country. You had no emotional, behavioural or developmental problems and there is no family history of mental health issues.

- 118 The civil war in Sri Lanka resulted in you and your family being forced from your home to live in a refugee camp in Colombo for a period of months. You were subjected to an unsettling and frightening time. You later came to Australia with your family on a humanitarian visa in 1984, when you were 17 years old. You became an average level student and after passing year 12 at a high school in Melbourne, you completed one year of applied science at the Caulfield Institute of Technology. This was followed by six years studying a part-time degree in occupational health and safety at Victoria University.
- 119 While studying part time, you worked for Community Aid Abroad. After completing your degree, you worked full time at City West Water for 12 months. By this stage, you were married and accompanied your husband to Canberra, where you worked for the Department of Immigration for six months, with ACT Electricity and Water for three months and then other employers. You disliked living in Canberra and felt miserable.
- 120 You lived in Canberra with your husband for 18 months before returning to Melbourne. You returned to work with City West Water, then engaged in charity work until commencing a family in 2000. In 2002, you started full-time work in customer service at an ANZ Bank call centre. This employment concluded in 2016 when details of this court case were published in the media. Your subsequent attempts at employment were not successful due to adverse media publicity. As such, you have been unemployed since late 2017 and have been living at home.
- 121 You report having a good relationship with your husband and describe him as a quiet man who gets frustrated easily. There has never been abuse or violence in your relationship. You describe yourself as doing, saying and organising everything for the family.

Health

- 122 As to your various health conditions, the Court has been provided with a series of reports, including from your general practitioner Dr Antoinetta Kiriakova dated 7 June 2021; consultant psychiatrist Dr Dhayanthi Devasagayam dated 6 May 2021; consultant forensic psychiatrist Dr Rajan Darjee dated 10 June 2021 and Mr Jeffrey Cummins dated 17 June 2021. Over the course of the proceedings in this Court, various reports have been provided as to your physical and mental state. For present purposes, it is unnecessary to refer to those earlier reports, as the more recent reports cover the issues sufficiently.
- 123 As to your physical health, in 2007 you were diagnosed with a frozen shoulder for which you had physiotherapy. In 2008 a CT scan showed a bulging disc in your spine for which you received treatment. In 2009 you received a whiplash injury in a car accident, and between that event and a subsequent car accident in 2017 you presented with back pain and shoulder pain on a regular basis. Following the car accident in 2017 you were diagnosed with left peroneal sensory neuropathy. You have consulted different specialists due to ongoing pain and malfunctioning of your left foot, and have completed a pain management program. Since 2018 you have received treatment for severe left shoulder pain and have been referred to a neurosurgeon for further treatment. You have chronic shoulder, neck and back pain, with frequent exacerbations. You have had a long-term battle with chronic and acute pain, which has affected your mental state. There have also been gynaecological issues, for which you have received surgical treatment.
- 124 You have had difficulties coping with your family situation and physical limitations with movement. You have been depressed and unstable in your mood and you have been referred to a psychologist in the past. Dr Kiriakova reports that, in 2018, you took an overdose and were admitted to Box Hill Hospital under the care of a CAT team. Following your release, your general practitioner commenced you on a course of the antidepressant, Cymbalta. Across 2019 you have had multiple visits to the general practitioner's clinic regarding shoulder pain and depression, and have had referrals to receive physiotherapy and osteopathic treatment to assist you with

ongoing pain. Dr Kiriakova reports that you have suffered from depression over all of the years described and have been on and off antidepressants over that period, as well as receiving treatment from a psychiatrist with psychotherapy.

125 As to your mental health, Dr Darjee diagnoses you as suffering from a moderate to severe major depressive disorder with moderate to severe anxious distress. He concludes that you have suffered from episodes of a major depressive disorder since living in Canberra in the 1990s, with more marked symptoms following the birth of your twins, leading to you being diagnosed with postnatal depression following that birth. You have received IVF treatment. Your symptoms have been more severe and have affected you more significantly since your arrest on these present charges, and this has exacerbated since the finding of guilt by the jury. You have described your life in the period since your arrest as a 'nightmare' and feel that your family's lives have been ruined. Your symptoms have included depressed mood, diminished interest and enjoyment, insomnia, poor appetite, poor concentration, hopelessness and helplessness, suicidal ideation and fatigue. Since your arrest, you have felt highly stressed and anxious.

126 Dr Darjee opines that you have obsessional personality traits manifested by longstanding perfectionism, high standards, the need to be in control, rigidity and difficulty with adapting to change. Further, these traits have occasionally been dysfunctional, making you vulnerable to developing depression. At the same time, there have been periods in your life when you have not suffered from these problems. You do not meet the threshold for a diagnosis of personality disorder despite these dysfunctional traits. Dr Darjee further opines that factors that have made you vulnerable to depression include these obsessional personality traits, your experience of past trauma, your ongoing suffering with chronic pain and the difficulties you have experienced since the birth of your children, particularly in relation to their developmental issues and needs.

127 Dr Darjee reports that between 2007 and 2016 your general practitioner noted presentations for depression on four occasions, with you being prescribed

antidepressant medication and receiving mental health care plans for psychological treatment. You reported to Dr Darjee that during this period, before your arrest but after the arrival of Mrs Natarajan, things had been generally better with you being busy looking after the children and their social lives, and despite some stress and lack of sleep, you felt less depressed and did not have suicidal thoughts. Since your arrest, your son and elder daughter have had to move schools, with your daughter becoming withdrawn and your son demoralised and angry. Your younger daughter is unable to understand the situation.

128 Dr Darjee concludes that due to your depression and obsessional personality traits, you are very likely to find prison highly distressing and difficult to cope with. Imprisonment is likely to lead to an acute exacerbation of your depression with a heightened risk of self-harm and suicide. He recommends that on imprisonment, it will be important for you to get immediate mental health support and treatment. He did not detect evidence of delusions or hallucinations, and described you as clearly tense and appearing exhausted and feeling overwhelmed when asked about your thoughts for the future, including your children's lives and the prospect of imprisonment. You denied any current suicidal ideation, but admitted to feeling helpless and hopeless at times. There is no evidence of cognitive impairment.

129 In dealing with your response to the findings of guilt and psychiatric issues relevant to remorse, Dr Darjee noted your adamant denial of committing the offences and your sense of injustice, along with the impact of these findings on you and your family. As above, you do not accept that you committed the offences for which you were found guilty and were shocked by the jury's verdict. It is unclear to Dr Darjee whether you perceived what you had done to have been coercive and abusive, realised the nature of your actions but felt it was justified, or were protecting yourself by trying to maintain the perception of yourself as a good person in your own eyes and in the eyes of others.

130 Dr Darjee observed that your obsessional traits and depression may play a role in your lack of insight into what you have done, as you perceive that you and your family

needed 'help'. He expresses the view that your denial and focus on the consequences for yourself are understandable and should be considered normal at this stage of criminal proceedings. He opines that, from a clinical perspective, denial and lack of remorse do not reduce your prospects of rehabilitation or increase the risk of future offending. He reflects on the specific and unusual nature of your offending and opines that there are very few risk factors for violence or for general antisocial or criminal behaviour, thus indicating that you pose a low risk of recidivism or violence in the future.

131 You described yourself to Dr Darjee as a very organised and detail-oriented person, who likes things to be done properly. You find it difficult when others do not have the same high standards that you do. You like to be in charge and in control, and have always valued being dependable and reliable. Status is important to you and you have described your family's standing in Sri Lanka and within the community in Australia. You also describe yourself as a perfectionist, a tidy person and as someone that follows rules.

132 I note the report of consultant psychiatrist Dr Dhyanthi Devasagayam, in which, having assessed you on five occasions in mid-2020, you were diagnosed with having major depression with mood congruent psychotic symptoms and residual deficits in attention, concentration and derealisation in unfamiliar settings. He noted that your affect was low with restricted range, with no suicidal or homicidal ideas or plans, but detected the presence of auditory hallucinations speaking in a chorus commanding you to kill yourself. He noted your judgment was intact with reasonable insight into your condition and treatment for the condition diagnosed. You were prescribed with an antidepressant and a trial course of antipsychotic medication to be taken daily. I note that Dr Darjee was provided with a copy of the report of Dr Dhyanthi Devasagayam for the purpose of writing his report.

133 In his report of 17 June 2021, Mr Jeffrey Cummins confirms that he initially assessed you in November 2018 and that you have been subsequently attending his rooms for treatment. Mr Cummins has provided previous reports, as well as giving evidence

before this Court on earlier occasions. He is not only very familiar with your circumstances, but was also provided with a series of previous reports from other practitioners for the purposes of writing his report. In his initial report of November 2018, he expressed the opinion that you have suffered from a major depressive disorder which was severe and recurrent in type and associated with anxious distress. At that time, he noted that you had a previous history of depression and had received treatment for that condition. For the purposes of his latest report, he was provided with the most recent report of your general practitioner.

134 Mr Cummins reported that you attempted to commit suicide by taking an overdose of medication on two occasions, being in 2006 and 2018. On the second occasion, a CAT team offered you subsequent support, which you declined due to what you described as your chaotic home environment. He reports that in 2018 he assessed you as extremely severely depressed, extremely severely anxious and extremely severely distressed. He describes that your mental health symptoms have fluctuated over the course of his treatment of you, reflected in various aspects of the court proceedings, your husband's employment situation and in relation to the changing needs and circumstances of your three children.

135 Mr Cummins reflected on the circumstances impacting adversely on your marriage and added that he has formed the opinion that your husband suffers from a mild autism spectrum disorder, resulting in difficulties in verbalising his feelings, communicating with you and communicating in an age-appropriate level with your three children. He noted that your husband's primary source of self-esteem was his work and that his mental health has deteriorated as a result of the termination of his employment, as well as the recent jury verdict.

136 Mr Cummins describes you as wanting to present yourself as a coping and psychologically resilient person, usually putting the needs of your three children ahead of your own needs and those of your husband. He describes you as committed to displaying your love for your three children and that you devote considerable effort and time towards their welfare, particularly your twins who have demanding needs

and personality styles. He describes you as reporting overwhelming and contradictory negative ruminative thinking on a daily basis, a symptom of major depression. He further describes you as maintaining your innocence, and in a psychological sense, presenting as psychologically frozen and incapacitated as a result of the jury verdict.

- 137 Mr Cummins also describes you as presenting with at least high average intelligence and as always presenting with orientation in time, place and person. You have never provided a history indicative of acquired brain injury, autism spectrum disorder, adult ADHD or bipolar mood disorder. Further, he does not assess you as suffering from schizophrenia or a delusional disorder. He noted that a treating psychiatrist diagnosed you as sometimes suffering from mood congruent psychotic (delusional) symptoms, but in his opinion:

these delusional symptoms have invariably been transient in type. He expresses the opinion that these transient delusional symptoms do not explain, and are of no particular relevance to, the offending behaviour with which she has been found guilty. I have not assessed Mrs Kannan as suffering from any personality disorder.

- 138 Mr Cummins describes you as an intelligent, although emotionally needy person. He sees you as having an overall depressive outlook on life and opines that it will be particularly onerous for you to serve a jail sentence as you will regard yourself as having let down your children, particularly your younger daughter. You are overwhelmed with feelings of embarrassment, shame and bewilderment concerning the jury verdict, and Mr Cummins would expect your mental health to inevitably deteriorate when you are incarcerated. He is firmly of the view that the prison authorities should be advised of his opinion in this regard. Further, he expresses the opinion that it is inevitable that your mental health will deteriorate when incarcerated, and that as you are currently medicated on an antidepressant, you will require an antidepressant when incarcerated. It is his opinion that there is a very real risk you could choose to take your life even though you regard your children as being a protective factor in this regard.

139 Finally, he confirmed his opinion that you suffer from a severe major depressive disorder making it genuinely more difficult for you to accept the jury verdict. He is of the opinion that you are unable to understand and accept what evidence put before the jury was used to determine the verdict. It is his opinion that serving time in custody will be more onerous for you as you are very attached to your children and that you take your responsibilities towards them very seriously.

Character

140 As to evidence of your previous character, you have no previous charges or convictions. The Court was provided with a series of character references from persons within your community. In general terms, the references from these people describe knowing you for a considerable period of time and being aware of the jury verdicts in this matter. Generally, these references describe you as a caring, moral and compassionate person, extending to the care of children and older people, being a person who strove to better the lives of destitute people by organising fundraising events, being of good standing within the extended community, being admired for your ability to engage with people of all ages, being committed to social causes, being strongly religious with good moral character, teaching Sri Lankan culture, supporting children's performances in that context, demonstrating excellent character and of high standing and conduct within the context of a community cultural centre, being a unique character and always respectful, being gentle and polite towards people of all walks of life, and kind and compassionate towards elders in need of help, treating people respectfully, having a kind heart full of generosity and a love for working in a hard and determined way within your community, being an honourable member of your community by being involved in fundraising activities and being observed to be a wonderful mother to your three children. You are described to always be thinking of others in your selfless acts of service, which have a positive impact on your community.

141 Your eldest daughter also provided a letter to the Court on behalf of you and your husband. She described you as very loving, thoughtful, a caring mother to your

children and selfless in respect of their care. It is a very detailed letter which was carefully and thoughtfully written on behalf of her parents. She describes her father as a very hard-working, caring and selfless human being to all three children. She describes him as a man with a particular ability to calm her younger sister when necessary. Much stated in this letter is extremely personal and unnecessary for the Court to summarise publicly. It is sufficient to say that I have read it carefully and taken the heartfelt nature of it into account in the assessment of the appropriate sentences to be passed in this case.

Kandasamy Kannan

142 Kandasamy Kannan, you are now 57 years old. You were born in 1964 in Jaffna, in northern Sri Lanka.

143 You came to Australia in 199 and have lived here ever since. As above, you were sponsored by your now wife.

144 Your parents are now both deceased. You were raised in a law-abiding family where your parents never had a problem with alcohol, drugs, gambling or mental health issues. You have a 52-year-old brother who lives in Glen Waverley and works in the IT industry. You are not particularly close to your brother, although he has offered support to you following the verdicts of the jury. You were raised in a loving and caring family and were never subjected to any domestic violence or abuse.

145 You have a mathematics degree from Madras University and a postgraduate degree in information technology from another university. Until recently you worked in the information technology industry, most recently being employed by the Bendigo and Adelaide Bank. Your employment was terminated in April 2021, apparently as a result of your trial in this Court.

146 After your IT training, your parents proposed that you marry your wife, Kumuthini Kannan. As above, she sponsored you to Australia through a skilled migrant visa arrangement in 1991. When you arrived in Melbourne, you had not previously met her, as your marriage had been very strictly arranged. Shortly after settling in

Melbourne, you completed an IT training program through RMIT, following which you obtained employment in Canberra and moved there with your wife.

147 On returning to Melbourne, you worked for Tattersalls for five years, then 13 years as an IT analyst with IBM, until 2012 when you were retrenched due to structural changes carried out by your employer. You were unemployed for approximately 12 months, after which you became employed with the Bendigo and Adelaide Bank until your termination in 2021. Your employment was terminated by letter on the basis that the matters with which you were charged reflected poorly on your character and your continued employment with the bank represented an unacceptable risk to the bank's reputation. Further, your conduct was inconsistent with your contract of employment signed in 2014, insofar as it breached the bank's code of conduct and corporate values. Notably, the bank also expressed that your alleged conduct was inconsistent with the its recently published modern slavery statement, which reiterated the bank's position that 'modern slavery is abhorrent and inconsistent with how we treat people, our organisation's values and our code of conduct.' From that point in time, you have been unemployed.

148 Mr Cummins notes the circumstances of your three children as they apply to you. Specifically, he notes the arrangements being sought to be entered into for their ongoing care, which had not been settled at the date of his report.

Health

149 As to your physical health, you suffered a myocardial infarction in 2009, as a result of which a stent was inserted into a coronary artery at Box Hill Hospital. You have never been diagnosed with any chronic medical condition apart from elevated blood pressure, although you were diagnosed with a cervical disc protrusion with nerve compression in 2008. You are currently medicated for elevated blood pressure.

150 As to your mental health, Mr Cummins notes that you have never been hospitalised for psychiatric reasons. You have never formed a plan to take your life, although intermittently since the commencement of the trial in this Court, you reported

engaging in suicidal thinking. That frequency of thinking has increased since the jury's verdict. You have only ever received mental health treatment through Mr Cummins. He notes that your mental health has deteriorated significantly following the jury verdicts and you are unquestionably struggling in a psychological sense to come to terms with them. It is his opinion that you present as a relatively unassertive person, have always been concerned for the welfare of your wife and children, and have regarded your primary role as earning an income and being the breadwinner for the family. You therefore report feeling embarrassment, shame and shock concerning the jury verdict and that, if incarcerated, you will not be able to financially support your family.

151 Further, Mr Cummins noted that you do not know how you may cope with a period of imprisonment and has observed you as being tearful on occasions. You now report symptoms of anxiety, depression and traumatisation and obsessional negative ruminative thinking regarding the jury verdicts and the possibility of imminent imprisonment. He regards you as exhibiting symptoms of a first episode of a major depressive disorder with anxious distress of moderate severity. You have so far declined to take mood stabilising or antidepressant medication.

152 On mental state examination, Mr Cummins opines that you have been appropriately oriented in time, place and person and present as being of above average intelligence. However, Mr Cummins is of the opinion that you present as having a mild autism spectrum disorder. You have never been diagnosed with adult ADHD and there is no history consistent with you suffering bipolar mood disorder.

153 You present to Mr Cummins as a very quietly spoken and reserved man, unassertive and obsessed with work as an IT systems consultant. Some of your family members describe you as being difficult to communicate with. You present as emotionally constrained and your level of emotional intelligence is significantly below your level of academic intelligence. You currently present as moderately depressed and mildly to moderately anxious, but not acutely suicidal. You have never presented as being psychotic or schizophrenic and there is no suggestion from your history that this has

ever been the case. You do not present as having any personality disorder and, in his opinion, you are not suffering from any diagnosable mental health condition apart from a mild autism spectrum disorder over the duration of your offending.

154 Ultimately, Mr Cummins is of the opinion that you have now developed symptoms of a first episode of a major depressive disorder concerning the jury verdicts and the associated risk of imprisonment, and the fact that, if imprisoned, you will be separated from your wife and three children with special needs. In his opinion, at the time of your offending, you were suffering from mild autism spectrum disorder which implied you tended to keep to yourself and have a relatively introverted and reclusive lifestyle focusing on your work and commitment to your faith. Mr Cummins is of the opinion that your mental health will inevitably deteriorate and significantly so if you are incarcerated. He expresses the opinion that if you are incarcerated, it will be necessary and appropriate for prison authorities to be informed that your mental health will most probably deteriorate significantly.

155 The Court also received a psychological report authored by Dr Aaron Cunningham dated 23 June 2021. Dr Cunningham applied a psychological assessment tool and diagnosed you with a major depressive disorder and autism spectrum disorder. He noted your deterioration of mental state after being fired from your employment, which in his opinion was the main precipitator of your major depressive disorder. He confirmed that you are fearful for the welfare of your children should you and your wife be incarcerated. Given the context of their autism spectrum disorders, Dr Cunningham is of the opinion that they will not adapt well to new caregivers or places of residence. He regards your two younger children as significantly vulnerable, and in his opinion their physical and mental wellbeing is at significant risk given the possible absence of parental support, stability, routine and structure. Finally, he confirms that in the context of your autism spectrum disorder and major depressive disorder, if incarcerated, you would be at a significant level of vulnerability to an increase in depression and suicidal ideation.

Character

156 You have no prior convictions and, like your wife, have not had previous trouble with the police. The Court also received a number of character references on your behalf, as well as the letter from your daughter described above. I have taken that letter into account in your case.

157 The references are from some relatives, as well as members of the Indian community who have known you for many years. Appropriately, all state they are aware of the outcome of these court proceedings. The references attest to their surprise at your having been found guilty of the offences alleged against you. Many attest to your positive characteristics, including your contribution to homeless orphans and disabled people in Melbourne and overseas, a motivation to helping disadvantaged people, your calm personality, friendliness and natural compassion. One reference attests to your honesty, generosity, assistance to others within your community, charity work and fundraising, commitment to your religion and involvement in the building of Victoria's first Hindu temple in the 1990s. Another reference speaks of the shock experienced by your community to hear of the outcome of these proceedings and how the loss of reputation and disgrace in your close-knit community has caused severe trauma to you and your family.

158 Finally, I remark that you told Mr Cummins that you have never cheated or defrauded any Commonwealth payment systems and have always paid your taxes.

159 Needless to say, the references attesting to the past good character and characteristics of yourself and your wife stand in stark contrast to the allegations of slavery that have been put forward in these proceedings.

The Kannan children

160 As the circumstances pertaining to your children play a significant role in both of your lives, and have been addressed at length in respect of the sentencing outcomes in these proceedings, it is appropriate for the Court to discuss their circumstances in some detail as they will have relevance to the sentences that will be passed.

161 As above, all three of your children have been diagnosed with autism. Dr Darjee specifically mentions your younger daughter as having ‘significant problems with communication, talking if she needs to but unable to have a conversation.’ She attends special schools and has ongoing speech and behavioural therapy. The behaviour of your son has been particularly difficult since your arrests. He has been withdrawn and angry, and there have been exhibitions of violence resulting in police being called to the home. There have been threats in the home environment.

162 The Court has also been provided with a report relating to your youngest daughter from the Melbourne Children’s Clinic dated 13 May 2020, authored by Dr Jonathan Ajzner. The report was written in support of continuing her National Disability Insurance Scheme funding. The report confirms her diagnosis of autism at age 3 and that she still meets the ASD criteria under DSM-V at Level 2 severity – Category A and Level 2 severity – Category B. The report makes clear that the functional impacts of her autism include behavioural and emotional regulation difficulties requiring the regular input of a child psychologist, speech delay requiring continued speech pathology, severely delayed daily living skills requiring occupational therapy input, and poor play and socialisation skills requiring the input of social skills groups. Comorbid conditions affecting daily functioning include considerable difficulties in behaviour and emotional regulation, delayed speech, delayed daily living skills and sensory difficulties.

163 In his report of 17 June 2021, Mr Cummins addresses issues concerning your three children. In the context of his observation that both of you are experiencing difficulty accepting the jury’s verdict, he opines that it has been exceedingly difficult to encourage you to make necessary and appropriate plans for how your children will be accommodated and looked after should you both be incarcerated. He confirms that he has liaised with DFFH, Yooralla and Wellways Australia and that all three children have been supported by NDIS packages. He raises the question as to their accommodation and care, whether rental can be maintained on the family home and whether adults known to the children can be arranged as part-time or serial resident

carers.

164 In his report, Mr Cummins discusses in some detail the specialised and individual needs of each of your three children, with respect to their suffering from an autism spectrum disorder and also by virtue of various cultural factors. He addresses the children's embarrassment, shame, and puzzlement concerning their parent's legal situation and their fear of how they will cope if their parents are unavailable to them. He also addresses the implications of their parents' potential incarceration on their futures. He expressed the opinion that all three children have difficulties in social-emotional reciprocity, non-verbal communication and in developing, maintaining and understanding relationships. He identifies the limited ability of your eldest child to cope with daily tasks and the trauma experienced by her in being unable to manage the needs of her younger siblings, in the absence of the significant additional input from adults.

165 Mr Cummins opines that your difficulties with decision-making regarding the future needs of your children are reflective of your prevailing mental health issues, rather than being malicious, anti-authoritarian or vindictive. He is of the view that you are both psychologically overwhelmed with the demands of your prevailing situation. At the date of his report, Mr Cummins notes that no solutions have been offered as to whether government department or helping organisations would assist in the event you are both incarcerated. I note that situation has now changed, which I will discuss below.

Submissions of the parties

Submissions for Kumuthini Kannan

166 Kumuthini Kannan, it was submitted on your behalf that all sentencing options are open in your case.

167 It was submitted that you have had a long, well-documented history of depression, as discussed above. It was emphasised that you suffer from a severe major depressive disorder and have experienced periodic suicidality, which is likely to increase upon

your incarceration. Counsel submitted that your poor mental health is tied up in a significant struggle to raise your three children with special needs. It was also contended that the prospect of your incarceration on the children is clearly a devastating circumstance which affects you.

168 Reference was made to *R v Verdins & Ors*,³ namely principles five and six, being:

- (a) that the existence of the relevant condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person of normal health; and
- (b) that there is a serious risk that imprisonment will have a significant adverse effect on the offender's mental health, this factor tending to mitigate punishment.

169 Counsel contended that the likely impact of incarceration on you has been clearly demonstrated. Further, it was noted that there is a risk you may attempt to commit suicide upon incarceration.

170 Further, it is submitted that your incarceration will expose your children to exceptional hardship, such that it amounts to exceptional circumstances for sentencing purposes. It is submitted that the evidence provides a clear and irresistible basis for the imposition of mercy in respect of the sentence to be passed. Counsel also contended that you are entitled to rely on the mitigating effect of extra-curial punishment to which you have been subjected in this case. This includes the loss of employment, which has led to your inability to work, in addition to adverse media attention. It was submitted that such media attention has had a deleterious effect on your children, leading to serious behavioural problems and requiring a change of school. It was noted that you refer to your life as being like a 'nightmare' and believe that your family's lives have been ruined since your arrest. Accordingly, counsel submitted that these adverse consequences are related to your offending and

³ (2007) VR 269 (*'Verdins'*).

constitute extra-curial punishment which should be taken into account.

171 With respect to delay, counsel submitted that there has been considerable delay between your initial interview, the time you were charged and the resolution of your trial. It was contended that the reasons for the delay have been varied and have not been caused by your conduct. The obvious intervention of the COVID-19 pandemic and the consequent 12-month delay in the commencement of your trial is a factor to be taken into account.

172 Further, counsel referred to delays occasioned by the re-framing of the prosecution case, but for which the trial would have been concluded well before the delay caused by the pandemic. It was also noted that this led to a separate trial application by your husband, which further delayed matters. Counsel further noted that additional time was wasted due to a series of lengthy and complex pre-trial arguments, the outcomes of which were ultimately rendered superfluous by changes in the way the prosecution case was eventually conducted at trial.

173 Referring to *Thomas v The Queen*,⁴ counsel argued that delay has had a considerable effect upon you and that your case is one where delay is important in the overall sentencing synthesis. It was submitted that this allows for a significant reduction in sentence, which becomes all the more relevant as you were suffering severe anxiety and depression between the time of your arrest and sentencing. Thus, it was contended that the combined psychological effects of these circumstances is considerable and manifested an additional punishment on you, such that you are entitled to an appropriate reduction of sentence.

174 It is submitted that the sentence to be passed does not need to reflect any need for a component of specific deterrence and that your prospects of rehabilitation should be regarded as excellent. Counsel relied on your previous good character and argued that you present no threat of future offending, as the offending took place in the context of seeking assistance for the care of your three children. Reference was also

⁴ [2019] VSCA 223.

made to the opinion of Dr Darjee that you pose very few risk factors for violence or general antisocial or criminal behaviour, and that you pose a low risk of recidivism and violence in the future.

175 Finally, it was submitted that the charges against you in relation to an attempt to pervert the course of justice should be entirely disregarded in the sentencing synthesis.

Submissions for Kandasamy Kannan

176 Referring to s 17A of the CA, counsel on your behalf submitted that the Court shall not pass a sentence of imprisonment unless satisfied no other sentence is appropriate in all the circumstances of the case. It was submitted that a sentence of immediate imprisonment is not the only appropriate sentence available in your case. Should a term of imprisonment be ordered, it was contended that a recognisance release order pursuant to s 20(1)(b) of the CA should be granted in your favour.

177 It was argued that a form of suspended imprisonment would still be a very onerous disposition, given your age and personal circumstances, as set out in the expert reports and character references. It was submitted that, largely because of the exceptional circumstances relating to the hardship to your family, your case stands alone, particularly in the absence of comparative cases. As such, it was contended that such exceptional circumstances might operate to reduce a term of imprisonment or warrant a tailored sentence releasing you from an immediate custodial disposition.

178 Counsel placed considerable emphasis on the exceptional circumstances relating to the hardship of your two youngest children, which has been conceded by the prosecution. It was emphasised that your case is clearly distinct from other cases of slavery, where a parent may have elected to leave their home country and family to target and recruit vulnerable sex slaves and impose upon them a substantial debt.

179 Further, counsel emphasised your children's extreme needs and vulnerabilities and pointed to the stability that has defined their lives to this point, which would be removed if you and your wife are incarcerated. Reference was also made to the expert

reports tendered on your behalf, including the consequences of your terminated employment and the impact on your self-esteem.

180 While you accept that your offences are objectively serious, when assessing your moral culpability, it is submitted that it is relevant that:

- (a) Mrs Natarajan described you as kind and gentle;
- (b) Her evidence was that you did not impose restrictions on her interactions with other people or movement, nor did you provide her with chores to perform; and
- (c) You encouraged her to eat and rest.

181 It was pointed out that whilst Mrs Natarajan was in a parlous medical condition at the time of her admission to hospital, you were not present during those events and were not aware of the extent of her deterioration.

182 With respect to general deterrence, counsel submitted that your case is unique and there are no true comparative sentences. Accordingly, it is contended that your case must be distinguished from other slavery cases, where the creation of exploitative employment was premeditated and victims were constrained by a debt and had every aspect of their life closely monitored. Furthermore, there is no evidence of the prevalence of your type of offending in the community. I note I have also taken this submission into account for you, Kumuthini Kannan.

183 With respect to specific deterrence, counsel emphasised that you are 57 years old, have no prior criminal history, have an impeccable work history, and have endured more than five years of extremely anxious and stressful waiting before the conclusion of your trial. Further, it is noted that you have witnessed the impact of these proceedings on your reputation, professional life, wife's health, own health and your children. It is submitted that there is no risk of your reoffending in the future.

184 As to the nature and circumstances of your offending, counsel submitted that in circumstances where the prosecution has disavowed the condition of slavery as being a continuing state of affairs, it was open to the jury to find you guilty on being satisfied that the condition of slavery existed for a single day during the charge period. As such, it was contended that the Court must consider the evidence and make findings about the extent of your criminality.

185 Mr Kannan, it was submitted that you fall to be sentenced as a person of previous good character. There is positive evidence of your good work history, involvement in the community and contribution to charity. You have tertiary level education and have been employed for most of your adult life.

186 You have been recently diagnosed with autism spectrum disorder and major depressive disorder. Counsel argued that your mental health has deteriorated significantly since the jury returned its verdicts, and further, that your health would suffer substantially if imprisoned. Accordingly, it was submitted that principles five and six from *Verdins* are also enlivened in your case.

187 It was submitted that you have not been accused of any further offending since your arrest in 2015. As such, counsel contended that your prospects of rehabilitation should be assessed as excellent and that the likelihood of further offending is negligible.

188 It was submitted that given their autism spectrum disorders, incarceration will result in significant hardship for your children in circumstances where there is limited family support and no other primary carers. As submitted on behalf of your wife, it was contended that your children's personal circumstances create an exceptional hardship in your case. Further, it was also submitted that the national media attention surrounding your case, which included publication of your daughter's image, constitutes a form of extra-curial punishment.

189 As discussed in relation to your wife, counsel on your behalf also addressed the issue of delay. It was contended that the sentence to be imposed should include a degree of moderation to reflect the fact that these proceedings have been unduly long,

hanging over your head for an unreasonable time in circumstances where the delay is not attributable to you.

Submissions for the prosecution

190 The prosecution submitted that you have both shown no contrition for your offending, as demonstrated by the expert reports. It was noted that the matter of whether contrition is evident must be taken into account pursuant to s 16A(2)(f) of the CA.

191 Next, the prosecution submitted that you have both demonstrated only modest cooperation with the police, referring to the execution of a search warrant at your home on 1 October 2015. It was contended that such cooperation was overshadowed by the series of false statements you both made to police, which obstructed the authorities in their investigation relating to Mrs Natarajan. It was submitted that the degree to which a person has cooperated with law enforcement agencies is a matter that must be taken into account pursuant to s 16A(2)(h) of the CA.

192 Matters concerning the character, antecedents, age, means and physical or mental condition of an offender must be taken into account pursuant to s 16A(2)(m) of the CA. Mrs Kannan, the prosecution accepted that you have been diagnosed with a moderate to severe major depressive disorder with moderate to severe anxious distress. It is accepted that this diagnosis would make imprisonment more burdensome for you and that there is a serious risk that imprisonment would have a significant adverse effect on your mental health.

193 Further, the prosecution pointed to your educational achievements and employment background and submitted that you should have known far better than to engage in the offending that you did. Finally, it is acknowledged that you have spent 23 days on remand in relation to matters for which further charges were laid and that this period of time should be regarded as pre-sentence detention.

194 Mr Kannan, the prosecution accepted that you have been diagnosed with major depressive disorder and autism spectrum disorder in a mild form and that these conditions will make imprisonment more burdensome for you. Again, it is submitted

that you are a well-educated and intelligent man who should have known better than to engage in the offending. Reference was made to your protestations of honesty and integrity in your communications with the Department of Immigration, submitting that such expressions ring hollow and reflect poorly on your character.

195 Next, the prosecution acknowledged that, pursuant to s 16A(2)(p) of the CA, an offender can seek an exercise of mercy on the ground that a sentence of imprisonment is likely to cause hardship to members of that person's immediate family or other dependants. However, it is submitted that these circumstances must be shown to be exceptional and referred to *DPP (Cth) v Gaw*,⁵ which stated that exceptional hardship to children or other dependants is simply a factor to be taken into account and may be entitled to great weight in some cases and hardly any at all in others.

196 The prosecution acknowledged that each of your children have been diagnosed with autism spectrum disorder with varying degrees of functioning. It is accepted that given the age and condition of your two younger children, both will suffer difficulties and one will suffer significant hardship should both of you be imprisoned. It is accepted that the prospect of your incarceration will be disruptive and frightening for your children.

197 It is noted that your inability to adjust to the jury verdict and make decisions about your children's wellbeing has not assisted them. Finally, while it is accepted that hardship amounting to exceptional circumstances can be established in respect of your two younger children, this factor needs to be considered in light of the seriousness of your offending.

198 Additionally, the prosecution accepted that the imprisonment of you both would be more burdensome as a result of your inability to care for and provide for your children.

199 The prosecution accepted that delay is a factor to be taken into account in sentencing. It provided a procedural chronology of these proceedings, which can be summarised

⁵ [2006] VSCA 51 ('*Gaw*').

as follows:

- (a) The execution of a search warrant took place on your premises on 1 October 2015;
- (b) You were both arrested on 28 September 2016;
- (c) The committal hearing concluded on 27 February 2018;
- (d) The first hearing of the matter in this Court occurred on 16 March 2018;
- (e) Pre-trial arguments began on 17 June 2019 and continued on a number of occasions from that date until the prerecording of Mrs Natarajan's evidence concluded on 5 February 2021;
- (f) The jury was empanelled on 8 February 2021; and
- (g) Verdicts were returned on 23 April 2021.

200 With respect to extra-curial punishment, the prosecution accepted that loss of employment and loss of future employment can be taken into account in consideration of the appropriate sentences to be passed. However, it was submitted that the media coverage in this case was not out of the ordinary, notwithstanding the difficulties it created for your children.

201 It was submitted that you both grossly exploited a woman you knew had virtually no education and who came from a very poor background. In those circumstances, the prosecution contended that both of you should be sentenced to periods of imprisonment. It was argued that both of your prospects of rehabilitation should be regarded as being guarded.

202 It is submitted that general deterrence plays a significant role in this case, noting that slavery is a crime against humanity. While prevalence of such offending cannot be demonstrated, the prosecution argued that such offences are easily committed and difficult to detect. It was noted that your offending was unlikely to have come to light

had Mrs Natarajan not become dangerously ill and taken to hospital.

203 Accordingly, it is submitted that both of you have both committed serious offending which warrants the imposition of immediate sentences of imprisonment. It was contended that there should be substantial amounts of concurrency in respect of the sentences imposed for both offences.

Analysis and conclusions

204 Kumuthini Kannan, I accept the evidence of the professional witnesses that you have suffered from compromised mental health for a significant period of your life and continue to do so. You suffer from a major depressive disorder and I accept that principles five and six, as set out in *Verdins*, apply to you. You will find a sentence of imprisonment more burdensome due to the existence of your mental condition and the sentence you receive will weigh more heavily on you than it would on a person of normal health. Further, there is a serious risk of imprisonment having a significant adverse effect on your mental health, which does tend to mitigate your offending. I have taken those factors into account.

205 Kandasamy Kannan, I also accept the evidence that you have begun to suffer a depressive disorder since the jury's verdicts and that you have also been diagnosed on the autism spectrum to a mild degree. The latter condition has not prevented you from functioning to a high degree in your employment, nor has it adversely affected your family and social life in a significant way. Nevertheless, I take these conditions into account in sentencing you, though noting they only carry modest weight in your favour.

206 In respect of you both, I am prepared to accept that you have suffered, and will continue to suffer, a degree of extra-curial punishment as a result of the circumstances relating to your children. This issue has been well documented and represents an exceptional degree of hardship on you both. I acknowledge that the outcome of these proceedings, as it affects both of you as well as your children, weighs heavily on you and will continue to do so. In your case, Kumuthini Kannan, the impact of your

mental health conditions, in association with matters concerning your children, add to the exceptional circumstances of your situation. I also accept that the delay in the resolution of this case has added to the severity of the impact of the above matters.

207 I accept the evidence that you have both not previously offended, were considered of good character in the eyes of many people and have done good work within your community in Australia and India. Despite the stark contradictions between your past good character and the circumstances of your offending, I accept that the sentences to be imposed do not require components of special deterrence. Furthermore, I am prepared to accept that it is very unlikely that either of you will offend in the future.

208 I note that you both strenuously deny your offending and have not shown any of remorse or contrition. As such, you do not qualify for any mitigation that might have otherwise come from an exhibition of remorse or regret that may have been evidenced had you pleaded guilty to these offences. Aside from the expression of regret that you, Mrs Kannan, made through your counsel at a very late stage, neither of you have ever expressed a sense of sorrow about Mrs Natarajan's condition which led to her hospitalisation. I note this will not be taken into account as an aggravating factor.

209 In all these circumstances, I am satisfied that you have good prospects of rehabilitation and are unlikely to reoffend in the future. In making this assessment, I have considered the particular nature of this offending and also relied on the positive character references from members of your community. Mrs Kannan, when assessing the question of rehabilitation, I have ignored any possible impact of the allegations and evidence relating to an attempt to pervert the course of justice, namely contacting Mrs Natarajan in early 2020. I have ignored these allegations as your counsel has indicated that these charges will be contested by you.

210 In assessing the appropriate sentences to be passed on you both, I have taken into account the impacts of these sentences on your children. As discussed, there are exceptional circumstances that have been conceded which apply to you both to different degrees. I have no doubt that your children with special needs will be

severely adversely affected should you both be sentenced to imprisonment. Your failure to make arrangements for their welfare and care prior to the jury's verdicts did you both no credit whatsoever and reinforces the opinion of this Court that you have persistently failed to come to grips with the realities and practicalities of your situation. Your primary focus appears to have been on yourselves and on a denial of the possibility that you may be found guilty of these offences.

211 I specifically make mention that two days ago the Court received a written communication by a Principal Solicitor at the Department of Families, Fairness and Housing regarding arrangements that have been put in place for the care of your children in the event you are incarcerated. Given the ages and personal issues relating to your children, I will respect the request of the Principal Solicitor to be mindful of their privacy and thus will not read any content from the letter. It is sufficient to say that I am satisfied that the Department is now engaged and arrangements have been made for the care of your children.

212 In *Markovic v The Queen*,⁶ the Court of Appeal reaffirmed that hardship which imprisonment creates for persons other than the offender is an appeal for mercy. Further, it stated that the application of the exceptional circumstances test limits the availability of the court's discretion to exercise mercy on that ground. Notably, the effect on the offender of hardship caused by imprisonment raises different considerations to which the exceptional circumstances test has no application. The Court added:

... it is only in the exceptional case, where the plea for mercy is seen as irresistible, that family hardship can be taken into account.⁷

213 In the case of the effect on the offender of hardship caused to family members by imprisonment, the Court held as a separate matter:

An offender's anguish at being unable to care for a family member can properly be taken into account as a mitigating factor – for example, if the court is satisfied that this will make the experience of imprisonment more burdensome or that it materially affect the assessment of the need for specific terrorist or of

⁶ [2010] VSCA 105 at [5] (*Markovic*).

⁷ Ibid at [7].

the offender's prospects of rehabilitation. These are conventional issues mitigation, and they are not subject to the 'exceptional circumstances' limitation.⁸

- 214 In *Markovic*, the Court made it clear that, in any particular case, family hardship cases will be rare. However, it did specifically note the example of a case where imprisonment of both parents would leave young children without any parental care.⁹ In *The Queen v Esposito*,¹⁰ a case of cultivating a commercial quality of cannabis, the appellant's very young child was terminally ill which caused profound sadness and emotional distress on the mother. Nettle JA concluded that exceptional circumstances were not made out in that case. However, the Court was persuaded that the appellant would suffer greater emotional hardship in jail, and accordingly allowed for a modest reduction in sentence first imposed on the basis of granting a degree of mercy in the exercise of the sentencing discretion. The Court considered that, given the nature and gravity of the appellant's offending, general deterrence remained at the forefront of sentencing considerations, and that '... like other offenders who choose to engage in the criminal cultivation of commercial quantities of narcotic plants for profit, the appellant must serve a sentence which is adequate to deter would be transgressors.'¹¹
- 215 I also note in *Gaw*, a Crown appeal in which exceptional hardship to the offender's children was considered. There was evidence that in the absence of the offender, the children would be at risk if left in the custody of their mother in circumstances where there were no relatives to care for them. The Court observed that:

Hardship, even exceptional hardship, to children or other dependents is not a passport to freedom. It is simply a factor to be taken into account. In some cases it is entitled to great weight, in others to hardly any weight at all.¹²

- 216 In the circumstances of your cases, I am satisfied that exceptional circumstances have been made out, as conceded by the prosecution, and that your children will suffer particular hardship should you both be imprisoned. Further, I am also satisfied that, in each of your circumstances, you would find imprisonment more burdensome as a

⁸ Ibid at [20].

⁹ Ibid at [79].

¹⁰ [2009] VSCA 277.

¹¹ Ibid at [18].

¹² [2006] VSCA 51 at [21].

result of your anxiety and emotional hardship associated to the hardship occasioned to your children. I have taken these matters into account in assessing the appropriate sentences to be served and will exercise a degree of mercy and separate mitigation to each of you on the penalties to be imposed.

217 I also note that the prosecution recently filed an application for an order that you pay a sum in reparation to Mrs Natarajan. The application is directed towards a payment to her for unpaid wages for the period of time she was in a condition of slavery. The making of such an order is part of the sentencing process and is additional to any sentence imposed. It is a matter in the discretion of the sentencing court. In all the circumstances, particularly as the application appears to be resisted on a number of grounds, I do not propose to make an order today. I will refer the disposition of it to the Court's Judicial Registrar for further action. However, I do take into account the fact that the application has been made and make allowance for the added uncertainty and anxiety you are both likely to experience by not having the matter resolved. I do not take into account against your interests the fact that the application may be opposed.

218 With respect of your offending, you both have committed serious and aggravated conduct. You are both culpable to significant degrees, but not to the same extent. Nonetheless, the offending conduct of both of you was deliberate and occurred over a lengthy period. It could have been stopped by either of you at any time, as you both had the power to take action. Instead, you chose to continue until the point where Mrs Natarajan became so gravely ill that you, Mrs Kannan, were forced to act. Moreover, your offending occurred in the daily presence and with the obvious knowledge and comprehension of your children. You set them a deplorable example of how parents should act towards another human being.

219 As discussed above, it is not possible to be satisfied to the required degree as to when Mrs Natarajan became reduced to a condition of slavery. Because such a condition involves the exercise of certain powers over the slave, it is quite possible that the number and intensity of these powers waxed and waned over the period the condition

existed. Having considered all the evidence and submissions, I am satisfied that a condition of slavery existed for a substantial period within the eight-year period that framed the indictment. I specifically state that I have not taken into account the gravity of Mrs Natarajan's illness as having been caused by your actions.

220 I accept that it was quite open for the jury to accept all or parts of Mrs Natarajan's evidence. I also accept that it was quite open for it to reject a number of areas of her evidence, yet still conclude you are guilty of the offences alleged. She presented as a barely educated woman who was poor, deprived and vulnerable, originating from a culture entirely foreign to that of Australia. She retained all of those characteristics of disadvantage and vulnerability throughout the period she was enslaved by you. It may be observed that the poor, deprived and vulnerable are the very people that become the targets of persons such as you both who take advantage of these characteristics which render them easier to possess, control and manage and are less likely to complain. In both of your cases, your actions degraded Mrs Natarajan by severely limiting or removing her freedom to act and make decisions for herself. The power imbalance in these circumstances is manifest.

221 It is completely unsurprising that the adducing of Mrs Natarajan's evidence was a very difficult and challenging exercise. The verdicts of the jury make it plain that despite all the handicaps that beset her, and the difficult process in obtaining of her account of events, the jury accepted her as a witness of truth in material respects.

222 Telling the truth and being honest are concepts that you appear to find elusive. Both of you have told a large amount of lies surrounding the circumstances of Mrs Natarajan. In your case, Mrs Kannan, the number and brazen quality of the lies has been nothing short of astonishing. The actions of you and your husband have been deceptive from before the arrival of Mrs Natarajan into Australia. The later lies told by you both involved a serious attempt to divert a police investigation relating to Mrs Natarajan. Further, there were also lies in an attempt to pass off Mrs Natarajan to the effective custody of Mrs Kelly. Whilst it is true that you and your husband did not need to know the legal definition pertaining to a condition of slavery, I am satisfied

that the lies told about Mrs Natarajan and her circumstances were told in circumstances not only connected to the charges for which you were found guilty, but also because it was likely that you feared the consequences of Mrs Natarajan overstaying her visa and the possibility of being charged for harbouring an illegal non-citizen. In this regard, there a number of possibilities, none of which do you credit. In the circumstances, I will only regard the lies you both told as going to your character. Your lies are enough to be able to brand you both as almost compulsive liars and deceptive individuals.

223 As I have observed, there was a massive power imbalance between you both and Mrs Natarajan. Her lack of education and the poverty stricken circumstances starkly contrast against your own higher levels of education, continuing employment, financial position and the apparent status you both enjoyed in your community. You both grossly exploited a vulnerable person, for which you should be ashamed. You paid her meagre remuneration and she was almost entirely in your control throughout the period that she lived with you. She could not read or write and had little knowledge of Australia, and thus had no wherewithal or means to extract herself from your family and return home. You did not let her go home. You knew enough about her background and personal circumstances to be able to well understand you were exploiting her to a serious degree, something that went well beyond 'exploitative employment'. You controlled almost all aspects of her life and freedom. I am quite convinced that you both believe you have done nothing wrong.

224 It is of limited consequence that Mrs Natarajan consented to travelling to Australia and willingly entered the arrangement with you both. There is doubt in my mind as to how much she actually knew of the detail of the arrangement and whether her family members in India saw an economic opportunity to enhance their living circumstances. Her employment with you presented her and her family with an opportunity to improve their lives. She clearly came here for the money, and in the end, you failed to treat her with any respect in that regard.

225 Mrs Natarajan was certainly exploited by you both. Such is the nature of slavery. As noted, a vulnerable person in this case was exploited by well-educated and intelligent people in order to bring advantage to you and your family. It was nowhere near a fair arrangement. You paid her a pathetically low amount of remuneration, albeit that it cannot be affirmatively stated how much was actually paid. While you enjoyed the benefits of her poorly remunerated labour, you took family holidays to India on numerous occasions whilst she remained in your house. She was left alone for extended periods where it appears only one other person knew that anyone was living there.

226 Having come to Australia in 2007 for a relatively short time, Mrs Natarajan has now been resident in Australia for some 14 years. As noted, it is a matter of regret that there is insufficient material before me upon which I can safely draw a conclusion as to her feelings about being away from her family and her home country for so many years.

227 On the available evidence, it is not possible to conclude how this all would have ended. An obvious hurdle to Mrs Natarajan's return to India, after eight years in Australia, was that her passport expired in 2011. It can be reasonably concluded that she would have required a passport or some degree of identification in order to travel home to India. It seems inevitable that exposure of the circumstances would have taken place in one form or another.

228 It is truly remarkable that Mrs Natarajan remained in Australia for a period of eight years apparently entirely outside the view of a number of fundamental Australian institutions, including the Medicare health scheme, the Australian Taxation Office, a Fairwork type of organisation and, perhaps most importantly, the Department of Immigration. It appears to me that the Department of Immigration was missing in action, particularly given the degree to which there were a series of visa applications made which were rejected and then finally accepted. Had there been an appropriate follow-up investigation after the expiration of the short-stay visa, the whole ugly scenario that played out over the following 14 years might have been avoided. For

the purposes of our Australian institutions, it appears that Mrs Natarajan was an undiscovered, non-person, living and working under the radar, until the point at which her identity was revealed while receiving life-saving care at the Box Hill Hospital. How she came to be in these circumstances is truly reprehensible and the ultimate responsibility for it rests with the two of you. On behalf of the Australian community, this Court publicly condemns you both for your disgraceful conduct.

229 The circumstances that I have described leads to the inevitable conclusion that the offending of both of you must be regarded as being at a serious level. I reject the argument that it should be categorised as low level offending. Your offending was protracted in length, persisting across multiple years. I acknowledge that, unlike other examples of slavery cases, there was only one victim. However, the offending was unremitting and involved depriving another human being of her basic rights and freedoms by your control of her daily life. She lived in your home in this domestic setting 24 hours every day, or was otherwise almost always in the company of either one of you when outside the home. You controlled her life largely within the privacy of your own house and took care to keep her true status hidden from others. Further, you ensured as best as you could, short of actual physical restraint, that she remained within or very close to your home to continue your control over her and ensure your dirty secret was maintained.

230 It should be clearly understood that being in a condition of slavery does not demand the physical restraint of shackles. In Mrs Natarajan's case, due to her personal characteristics as discussed above, there was no need for such a form of restraint. She had no power, little money and nowhere to go in the face of your control of her. Consistent with the conclusions of the jury, I am satisfied that both of you exercised powers of control over her, sufficient for her to be in a condition of slavery. She was, in effect, powerless for a very substantial period.

231 I find that the powers exercised by the both of you over Mrs Natarajan were as set out by the prosecution. The degree and frequency of the exercise of those powers or indicia of slavery by each of you is difficult to determine with precision. In my

opinion, it is not necessary to do so. The jury's verdicts make it plain that, taking into account all of the evidence, it was satisfied that any or all of the powers were exercised to the point where it was satisfied beyond reasonable doubt that a condition of slavery existed.

232 As to general deterrence, in *R v Wei Tang*,¹³ the Victorian Court of Appeal held that, 'general deterrence is of great importance in this area'.¹⁴ While the allegations in *Wei Tang* arose in the context of sexual servitude, it is my opinion that there is no reason why the same approach does not apply to a case of domestic servitude. Both involve instances of the possession and use of a slave as well as the same indicia of slavery, including the powers of control of personal and working life circumstances, remuneration and freedom of movement. Further, the offending must be regarded as serious in its consequences for fundamental human rights, are easy to commit and difficult to detect, as well as being carried out deliberately. In my opinion, little can be said to modify the application of this concept to the circumstances of this case.

233 Finally, it is clear that the approach of instinctive synthesis applies, despite the requirements set out in s 16A of the CA. Consistent with the High Court in *Markarian*, the maximum penalties for the offences under consideration, being 25 years' imprisonment, must be taken into account as yardsticks to provide guidance.

Comparative cases and sentences

234 It is apparent from an examination of this area of sentencing that there are very few comparative sentences from which guidance can be drawn. All the cases referred to, with the exception of *R v Kovacs*,¹⁵ involved allegations of slavery in the context of sexual servitude by employees in brothels. *Kovacs* involved a number of characteristics of slavery, including a requirement that the slave perform domestic services. The period of slavery was between five to six months. In that case, the judge sentenced Mrs Kovacs to four years' imprisonment on the charges of possession and use of a slave, to be served entirely concurrently. In respect of the same charges,

¹³ (2009) 23 VR 332 ('*Wei Tang*').

¹⁴ Ibid at [61].

¹⁵ (Reported, QSC, 8 February 2010) ('*Kovacs*').

Mr Kovacs was sentenced to terms of eight years' imprisonment, to be served concurrently. I note that the appellate court determined there would be retrials, and as such, did not examine the penalties opposed in that case. Accordingly, I find this case provides very limited guidance.

235 The prosecution provided the Court with a schedule of comparative sentencing outcomes in past-decided slavery cases. As observed, most concerned different types of factual scenarios. Nevertheless, they are cases involving slavery and thus offer limited guidance in relation to the present matter. I have taken these into consideration.

Sentences

Kumuthini Kannan

236 On Charge One, intentionally possessing a slave, you will be sentenced to 4 years' imprisonment.

237 On Charge Two, intentionally exercising over a slave any of the powers attaching to the right of ownership, namely use, you will be sentenced to 8 years' imprisonment.

238 I direct that both sentences commence today, being 21 July 2021. Consistent with the approach taken by the Victorian Court of Appeal in *Wei Tang*, the effect of the orders to be made is that the sentence imposed on the charge of possessing a slave will be served fully concurrently with the sentence imposed on the charge of using a slave.

239 Pursuant to s 19AB of the *Crimes Act 1914* (Cth), I fix a period of 4 years' imprisonment before you are eligible to apply for release on parole. I have reduced this non-parole period from what I would have otherwise imposed, largely due to your personal circumstances and those affecting your children.

Kandasamy Kannan

240 On Charge One, intentionally possessing a slave, you will be sentenced to 3 years' imprisonment.

241 On Charge Two, intentionally exercising over a slave any of the powers attaching to the right of ownership, namely use, you will be sentenced to 6 years' imprisonment.

242 I direct that both sentences commence today. As above, the effect of the orders to be made is that the sentence imposed on the charge of possessing a slave will be served fully concurrently with the sentence imposed on the charge of using a slave.

243 Pursuant to s 19AB of the *Crimes Act 1914* (Cth), I fix a period of 3 years' imprisonment before you are eligible to apply for release on parole. As with your wife, I have reduced this non-parole period from what I would have otherwise imposed, largely due to your personal circumstances and those affecting your children.

Further orders

Pre-sentence detention

244 I declare that pre-sentence detention in relation to you, Mrs Kannan, is 44 days. This period is comprised of 23 days served following the revocation of your bail upon being charged with certain further offences in early 2020, as well as the period from the conclusion of the plea hearing until, but not including, today. I direct that this declaration be entered in the records of the Court.

245 There is no pre-sentence detention to be taken into account for Mr Kannan.

CERTIFICATE

I certify that this and the 68 preceding pages are a true copy of the reasons for Sentence of Justice Champion of the Supreme Court of Victoria delivered on 21 July 2021

DATED this twenty-sixth day of July 2021.

