

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
CRIMINAL DIVISION

S ECR 2023 0017

Between:

THE KING

-and-

GREGORY STUART LYNN

Accused

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JUDGE: Croucher J  
WHERE HELD: Melbourne  
DATE OF HEARING: 12 September 2024  
DATE OF SENTENCE: 18 October 2024  
CASE MAY BE CITED AS: R v Lynn  
MEDIUM NEUTRAL CITATION: [2024] VSC 635

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CRIMINAL LAW – Sentence – Murder – Sentencing facts after jury verdicts – Accused acquitted of murder of Mr Hill, but found guilty of murder of Mrs Clay – Whether acquittal and directions to jury on motive preclude finding accused murdered Mrs Clay to eliminate her as witness to death of Mr Hill – Whether finding of motive implied in guilty verdict – Whether Court satisfied of motive – Whether accused intended to kill Mrs Clay – Whether murder committed spontaneously – Whether murder aggravated by accused’s attempts to conceal offence, including by burning bodies and failing to disclose whereabouts of remains for 20 months – Whether, despite acquittal, permissible to regard accused’s treatment of Mr Hill’s body as part of concealment of Mrs Clay’s murder – Profound victim impact – Absent accused’s admissions and assistance to police, extremely unlikely remains would be discovered – No remorse for murder, as accused maintains innocence – Whether, nonetheless, accused’s admissions, assistance, and apology to deceased’s families for “despicable” treatment of bodies and delay in disclosing location of remains, temper that aggravating conduct – No relevant criminal history – Strong history of responsible employment and community contributions – Reasonable prospects of rehabilitation – Weight to be given to sentencing purposes – Parsimony – Whether case calling for life sentence – Sentence of 32 years’ imprisonment with non-parole period of 24 years – *Sentencing Act 1991 (Vic)*, ss 5, 5A, 5B, 6, 11, 11A & 18.

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APPEARANCES:CounselSolicitorsFor the Director of  
Public ProsecutionsMr D Porceddu with  
Ms K HamillAbbey Hogan, Solicitor for Public  
Prosecutions

For the Accused

Mr D Dann KC with  
Mr M McGrath

Chris McLennan &amp; Co

HIS HONOUR:

**Overview**

- 1 On 19 March 2020, Russell Hill, aged 74, and Carol Clay, aged 73, set off together from Pakenham on a camping trip to the Wonnangatta Valley in the alpine region of Victoria. Two days later, another camper found Mr Hill's Toyota Landcruiser parked beside a burnt-out campsite at Bucks Camp in the Wonnangatta Valley. There was, however, no sign of Mr Hill or Mrs Clay. Proof-of-life checks over the ensuing months all came up negative. The two campers were missing, presumed dead.
- 2 After a 20-month investigation, on 22 November 2021, police arrested Gregory Stuart Lynn, a 55-year-old airline captain. When interviewed, Mr Lynn ultimately told police that, on the evening of 20 March 2020, when he too was camping at Bucks Camp, Mrs Clay was killed instantly by a shot to the head when his shotgun accidentally discharged as he and Mr Hill struggled over the gun. Shortly afterwards, Mr Hill, in anger, came at Mr Lynn with a knife. As the two men fell to the ground, the knife accidentally penetrated Mr Hill's chest. He crawled for a moment, then stopped. Mr Lynn checked his pulse, but he was gone.
- 3 In a panic, and fearing he would be wrongly blamed, Mr Lynn said he decided to try to conceal his connection with the deaths. He did this in various ways, including by cleaning and burning the campsite, moving the bodies to a remote site off the Union Spur Track, and, eight months later, burning them and scattering the remains there.
- 4 At the end of the interview on 25 November 2021, police charged Mr Lynn with two counts of murder. When asked if he wanted to say anything in answer to the charges, he said, "I'm innocent of murder. ... I haven't behaved well; I've made some poor decisions. But murder, as I understand it, I'm innocent of." He has remained in custody ever since.
- 5 At trial, the prosecution case was that, by unknown means and in unknown circumstances, Mr Lynn murdered Mr Hill first. The most the prosecution could say

about the circumstances was that the two men must have argued in some way, perhaps about Mr Hill's use of his drone, and that this led to his murder. The prosecution case on the second charge was that, in unknown circumstances, Mr Lynn then murdered Mrs Clay by shooting her to the head with his shotgun. While it was conceded that there was no other evidence of motive, it was alleged that, if Mr Lynn murdered Mr Hill, he then would have had a motive to murder Mrs Clay in order to eliminate her as a witness to the earlier murder. The prosecution urged the jury to reject Mr Lynn's account of accidental deaths as an elaborate fiction. On each charge, the prosecution also relied on his admitted attempts to conceal his involvement in these events as incriminating conduct of murder.

6 Mr Lynn's defence at trial was as he had explained in his police interview, which was before the jury. He also gave sworn evidence to the same effect.

7 On 25 June 2024, which was the eighth day of their deliberations, the jury found Mr Lynn not guilty of the murder of Mr Hill but guilty of the murder of Mrs Clay.

8 On 12 September 2024, I heard victim impact statements, a plea in mitigation, and submissions on sentence. It is now my responsibility to pass sentence on Mr Lynn for Mrs Clay's murder. As will be seen, that task is complicated somewhat by the contrasting verdicts.

9 I shall announce the sentence at the conclusion of these reasons.

### **Mrs Clay, Mr Hill and Mr Lynn**

10 Turning first to the background to this matter, I shall say something about the three key figures, commencing with Mrs Clay.

11 Carol Clay was born in February 1947. She had three children – two from her first marriage, and one from her second. She lived alone in Pakenham. For much of her life, Mrs Clay was heavily involved in community work with various organisations, including the Country Women's Association ("CWA").

12 Russell Hill was born in October 1945. Before his retirement, his work had included logging, and then driving trucks. He had been married to Robyn Hill for 51 years. Together, they had three daughters. Mr and Mrs Hill lived together in Drouin. Mr Hill was a keen amateur radio enthusiast, and had become a drone buff of late. He pursued both pastimes when camping.

13 Mrs Clay and Mr Hill had been an item when they were teenagers. They rekindled their romance much later in life, and had been seeing each other for about 15 years at the time of their deaths. They had been away camping together several times, including with friends on occasions. Mrs Clay's family were aware of their romantic relationship, as were some of Mr Hill's friends. However, while Mrs Hill and her children knew Mrs Clay, they were not aware of her ongoing affair with Mr Hill.

14 Gregory Lynn was born in September 1966, and was therefore aged 53 at the time of Mrs Clay's murder. An aero pilot most of his working life, he was employed as a senior check captain with Jetstar. He lived in Caroline Springs with his wife Melanie and three of his children. His two older children are from his previous marriage, and his youngest is from his current marriage. He enjoyed camping and hunting, and was a sporting shooter. He was licensed to hunt deer, and had several registered firearms, including a Barathrum Arms 12-gauge semi-automatic shotgun.

### **Evidence prior to Mr Lynn's arrest**

15 I turn now to a brief outline of some of the other evidence before the jury, as it stood prior to Mr Lynn's arrest.

16 On 19 March 2020, other campers driving in the Wonnangatta Valley saw Mr Hill and Mrs Clay stop at Bucks Camp. The next day, Mr Hill was seen driving his Landcruiser towards the same place.

17 Mr Hill's last known contact with another was with his friend Robert Ashlin via amateur radio between about 6:00 p.m. and 6:40 p.m. on the evening of 20 March. To Mr Ashlin, nothing seemed out of the ordinary with Mr Hill at that time.

18 On 26 March, Mr Hill was reported missing by his wife, Robyn Hill. Two days later, Mrs Clay was reported missing by her friend, Vicky Birch.

19 After Mr Hill's Landcruiser and the burnt-out campsite were discovered by a camper on 21 March, and again by more campers subsequently, police and forensic officers attended Bucks Camp from 28 March. The cabin of Mr Hill's Landcruiser was locked. Its rear metal canopy was singed on the passenger side, but unlocked. The passenger side mirror was missing from its mounting. In the footwells of the cabin were two wallets, both with their cards scattered beside them. Neither wallet contained any cash. Mr Hill's drone and his and Mrs Clay's mobile phones were missing. Their tent and camping paraphernalia had been burnt to ashes. Metal items were badly singed but otherwise intact. Searches within about 100 metres of the campsite did not disclose anything of immediate relevance.

20 Mr Hill's Landcruiser was removed from the scene, and later forensically examined. The radio transceiver was operating normally. Its use would have permitted contact with other amateur radio stations in Australasia and further afield.

21 On 1 April 2020, an expert in fires examined the scene. His opinion was that the burnt tent had been L-shaped, with a canopy between the tent and the Landcruiser. This opinion conflicted with other evidence that the brand of tent was rectangular, with no such side canopy.

22 Meanwhile, also on 1 April, Mr Lynn placed an advertisement on Gumtree to sell his trailer. The advert was removed on 3 April. The trailer's registration remained in Mr Lynn's name until its expiry. The trailer was never recovered.

23 By late April 2020, Tom Matthews had informed police that, on the night of 20 March, he was camped with his family beside the Wonnangatta Track where it crosses the Wonnangatta River. The river crossing was blocked at the time. At about 2:00 a.m. on 21 March, Mr Matthews awoke to hear a vehicle towing a trailer arrive at his campsite, engage in a protracted turning manoeuvre, and then drive

away. To him, the vehicle sounded like it had an automatic transmission and a petrol engine. Mr Lynn's Nissan Patrol had those features.

24 By early July, police had an image from an automatic number plate recognition ("ANPR") camera showing Mr Lynn alone in his Nissan towing a closed trailer on the Great Alpine Road over Mount Hotham at about 9:48 a.m. on 21 March. Police also had telephone records indicating that, at almost precisely the same time, Mr Hill's mobile phone connected to a nearby phone tower at Hotham Heights.

25 On 14 July, police noticed that Mr Lynn's Nissan had been partly repainted a beige colour, whereas it was mainly a dark colour when captured on the ANPR camera at Mount Hotham on 21 March. Later, police found a photograph on Mr Lynn's wife's phone of him repainting the Nissan a beige colour on 4 June.

26 On 15 October, at the instance of police, rangers from Parks Victoria collected debris and items from the campsite at Bucks Camp. In January 2021, this material was forensically examined and found to contain, among other things, bra hooks, heavy glass, and the drive mechanism of a side-mounted electric mirror.

27 Ten months later, on 13 November 2021, Mr Lynn was covertly recorded speaking with his wife while they watched a *60 Minutes* television feature on the disappearance of Mr Hill and Mrs Clay. The programme showed an image of Mr Lynn's Nissan and trailer passing through the ANPR camera site at Mount Hotham on 21 March 2020. Mrs Lynn remarked to her husband that it looked like his Nissan and trailer. The ANPR image also showed a distinctive side-mounted awning attached to the Nissan. Surveillance footage taken six days later, on 19 November, showed that Mr Lynn removed the side-mounted awning on that day.

### **Mr Lynn's arrest and police interview**

28 On the afternoon of 22 November 2021, police arrested Mr Lynn at Arbuttle Junction in the alpine region. He was taken to Sale, where police interviewed him

briefly that evening, and then more extensively over the next three days. Ultimately, Mr Lynn told police the following, among other things.

29 While on a hunting trip in the Wonnangatta Valley, Mr Lynn camped at Bucks Camp from 18 March 2020. Mr Hill and Mrs Clay also camped there from the next afternoon. Initially, relations were cordial. However, the next day (20 March), Mr Lynn noticed a drone flying near him when he was out in the bush hunting deer. As it turned out, the drone was Mr Hill's. Later, when Mr Lynn returned to camp, Mr Hill told him that he did not like deer hunters, that he had drone footage of him hunting close to the campsite, and that he was going to take the footage to the police. Mr Lynn said that that was ridiculous. Mr Hill then said he could allege that Mr Lynn shot through the campsite, which was false. By this stage, Mr Lynn had formed the impression that Mr Hill just wanted him to leave Bucks Camp. Miffed, in what he confessed was a childish attempt to annoy Mr Hill for falsely accusing him of illegal hunting, when Mr Lynn returned to his campsite, he opened the doors of his Nissan and played loud music on the vehicle's stereo.

30 Later that evening, Mr Lynn heard a different noise coming from his vehicle. He then noticed Mr Hill walking away from the Nissan carrying his Barathrum Arms semi-automatic 12-gauge shotgun and its magazine. Mr Lynn confronted Mr Hill, and asked him to return the gun. But Mr Hill refused, and said he was going to take it to the police. As Mr Lynn advanced towards him, Mr Hill fired a couple of shots into the air. Frightened by this, Mr Lynn took cover by crouching down on the driver's side of Mr Hill's Landcruiser. When he saw the barrel of the gun appear over the bonnet from the passenger side, he took his chance and sought to wrest the gun from Mr Hill. He grasped the barrel with his right hand and the rear stock with his left, whereas he believed Mr Hill must have held the pistol grip with his right hand. Mrs Clay, who was at the passenger side of the Landcruiser, next to its rear canopy, was screaming, "Russell, stop it." In the course of the men's struggle at the bull-bar and over the bonnet, the gun discharged accidentally. The shot went through the passenger side mirror and struck Mrs Clay to the head, killing her

instantly. Mr Hill immediately let go of the gun, and went to Mrs Clay's aid. Mr Lynn took the gun back to his campsite. So as to make it safe, he discharged the remaining shot in the magazine into the air. He turned the music off and put the gun inside his Nissan, which he then locked.

31 Shortly afterwards, Mr Hill, who was yelling, came at Mr Lynn with a kitchen knife in his right hand and his left fist clenched. He first took a swing with his left hand, which Mr Lynn blocked. Then, Mr Hill swung at him with the knife, but Mr Lynn grabbed his wrist. Mr Hill's forward momentum caused them to fall over, with him landing on top of Mr Lynn. When on the ground, it became apparent that the knife had accidentally penetrated Mr Hill's chest in the fall. Mr Hill crawled for a moment, then stopped. Mr Lynn checked for a pulse, but he was gone.

32 Mr Lynn then flew into a panic. He feared that he would be wrongly blamed for these deaths, especially given that his shotgun was involved in the death of Mrs Clay. He thought his career as an airline captain would be over, and that he would never be allowed to pursue his interest as a sporting shooter. So, instead of alerting the authorities, he set about doing a number of things designed to cover up these events, and to conceal his involvement in them. For example, he cleaned the campsite, knocked the damaged side mirror off the Landcruiser, and set the mirror, the tent and other items on fire. He put the deceased in his trailer and drove to Union Spur Track, where he hid the bodies off to the side of the track. On his way home to Caroline Springs, he disposed of Mr Hill's drone and both deceased's phones. In the ensuing months, he repainted his trailer and sold it, and repainted his Nissan. In June<sup>1</sup> 2020, he returned to Union Spur Track to check on the bodies, which he covered with leaves and sticks. In November 2020, he returned to that site again, burned the bodies, and scattered the remains in the same area. Mr Lynn also directed police to the site of those remains.

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<sup>1</sup> While Mr Lynn said it was June, it is likely that it was in May. Nothing turned on this.

33 By agreement between the parties, an edited version of the audio-visual recording and transcript of Mr Lynn's police interview was put into evidence at trial.<sup>2</sup>

### **Evidence discovered following Mr Lynn's arrest and interview**

34 I turn now to the evidence before the jury that was gathered following Mr Lynn's arrest, much of which was discovered as a result of things he said in his interview.

35 Soon after Mr Lynn's arrest, police searched his home and found the Barathrum Arms 12-gauge shotgun of which he had spoken in his interview.

36 Between 29 November and 1 December 2021, police, forensic officers and experts in various disciplines recovered, and later examined, the remains from the site at Union Spur Track.<sup>3</sup> More than 2,100 bone fragments were found. Examination of these fragments by a forensic anthropologist indicated that the bodies had been burned at the site, and that the remains were of two persons. Examination of insect remnants by an entomologist suggested a level of decomposition before burning. A partial DNA profile from a bone fragment showed that it came from Mr Hill. Examination by an odontologist suggested that dental remains found were consistent with Mr Hill's dental records.

37 On 11 February 2022, the rear metal canopy of Mr Hill's Landcruiser, which had been sold by that stage, was retrieved and examined again by forensic officers. This time, they found spattered bloodstains and apparent fatty deposits on the inside of the canopy on the passenger side. Forensic opinion was that force, in addition to gravity, had been applied to liquid blood while a person was positioned in the

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<sup>2</sup> This occurred despite the fact that, on a pre-trial *voir dire*, I ruled that the police interview was inadmissible, pursuant to s 84 of the *Evidence Act 2008* (Vic). I ruled in this way because the making of admissions in the interview was influenced by oppressive conduct by police towards Mr Lynn. See *R v Lynn (Rulings 1-4)* [2023] VSC 373 at, e.g., [7] & [238]-[344].

<sup>3</sup> This evidence (of the recovery and examination of the remains at Union Spur Track) was admitted by agreement between the parties despite that fact that, on a pre-trial *voir dire*, I ruled that it should be excluded, pursuant to s 138(1)(b) of the *Evidence Act 2008* (Vic). I ruled in that way because this evidence was obtained in consequence of admissions obtained improperly by reason of the oppressive conduct of police during the interview. See *R v Lynn (Rulings 1-4)* [2023] VSC 373 at, e.g., [8] & [345]-[348] & [354]-[393].

vicinity of the canopy (while its door was open) so as to produce those results. Mrs Clay's DNA was detected in the newly discovered stains.

38 In March 2022, debris collected from the campsite at Bucks Camp back in October 2020 was examined again. This time, Mrs Clay's DNA was detected on three cranial bone fragments found in that debris.

39 Also in March 2022, during a fresh search of the Bucks Camp campsite, police found a cranial bone fragment, which did not appear burnt and contained Mrs Clay's DNA. Also found were a fired 12-gauge projectile of an indeterminate brand containing Mrs Clay's DNA, and pieces of glass, the writing on which indicated they were from a vehicle's side-mirror.

40 The forensic anthropologist also opined that, upon x-ray, some of the cranial bone fragments found at Bucks Camp containing Mrs Clay's DNA showed a whitish area, described as radiopaque and which had the appearance of metal, which may have been produced by gunshot. There were also signs in the fragments of *peri-mortem* trauma – meaning trauma that occurred around the time of death.

41 While there was some debate about this evidence at trial, shot trajectory testing performed in February and May 2022 was consistent with the version given by Mr Lynn to police as to how Mrs Clay was shot.<sup>4</sup> Consistently with an opinion offered by Mr Lynn in his police interview – namely, that the trigger pressure required to discharge his shotgun was on the heavier side – testing of that gun confirmed that the only manner in which it could be discharged was the normal method of applying pressure to the trigger. Test firing of the shotgun showed that

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<sup>4</sup> This evidence (of the shot trajectory testing) was admitted by agreement between the parties despite that fact that, on a pre-trial *voir dire*, I ruled this evidence should be excluded, pursuant to s 138(1)(b) of the *Evidence Act* 2008 (Vic). This was because this evidence was generated and obtained in consequence of admissions obtained improperly by reason of the oppressive conduct of police during the interview. The prosecutor also conceded that, if the interview were ruled inadmissible, as it was, then the evidence of shot trajectory testing would have to be excluded in any event. See *R v Lynn* (*Rulings 1-4*) [2023] VSC 373 at, e.g., [8] & [345]-[349], [354]-[365] & [436]-[440].

the fired projectiles had the same characteristics as the fired 12-gauge projectile found at Bucks Camp in March 2022, which contained Mrs Clay's DNA.

42 Thus, the forensic evidence was consistent with both the defence and prosecution cases on how Mrs Clay died – namely, that she was shot to the head with a projectile from Mr Lynn's shotgun while next to the passenger side of the rear canopy of the Landcruiser. There was, however, no forensic evidence as to how Mr Hill died.

43 There was also opinion evidence from a pathologist to the effect that, from the remains found, no medical cause of death could be determined for either Mrs Clay or Mr Hill.

#### **Mr Lynn's evidence at trial**

44 Mr Lynn gave sworn evidence at trial. In substance, his account of the accidental deaths of Mrs Clay and Mr Hill, and of his reasons for taking the various steps he took subsequently to distance himself from their deaths, was the same as his account in his police interview.

45 Some matters that had not been raised with Mr Lynn in the police interview were raised in his evidence. One such issue concerned a thin guy rope, said to have been running from the bull-bar of the Landcruiser up to the top of a portable toilet positioned in front of the vehicle. Mr Lynn said he did not notice the guy rope at the time he and Mr Hill were struggling over the shotgun. The prosecution case was that, if Mr Lynn's account of this event were true, he would have noticed the guy rope because the two men would have become hopelessly entangled in it as they struggled over the shotgun. Mr Lynn disagreed.

## Disputed sentencing facts concerning circumstances of murder

### *Motive*

- 46 I turn now to address the disputed circumstances in which the murder of Mrs Clay was committed, commencing with the issue of motive.
- 47 Mr Porceddu, who appeared with Ms Hamill for the Director of Public Prosecutions, urged me to sentence on the following basis. In the course of some sort of interaction between the men, Mr Hill died, or was very seriously injured and later died, and Mr Lynn then murdered Mrs Clay to cover up what had happened, because he believed that she was, or could become, a witness to these events.<sup>5</sup>
- 48 Mr Dann KC, who appeared with Mr McGrath for Mr Lynn, urged me to reject that submission, for several reasons. First, he submitted that, given the jury directions on motive,<sup>6</sup> the acquittal in relation to the murder of Mr Hill meant that the jury could not, consistently with their oaths or affirmations, have convicted Mr Lynn of the murder of Mrs Clay by reliance on any motive to kill her as a witness to the death of Mr Hill. This is because those directions provided that, only if the jury were satisfied beyond reasonable doubt that Mr Lynn murdered Mr Hill, could there be any motive to kill Mrs Clay so as to eliminate her as a witness.<sup>7</sup> Second, Mr Dann submitted that, to sentence on the basis that Mr Lynn murdered Mrs Clay with the

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<sup>5</sup> This argument was advanced by Mr Porceddu and Ms Hamill in their written submissions (dated 10 September 2024) filed ahead of the plea, and also in Mr Porceddu's oral submissions.

<sup>6</sup> As to which, see my charge to the jury ("Charge") at [229]–[235], especially at [231]–[232].

<sup>7</sup> In support of this proposition, in written submissions (dated 23 September 2024) filed after the plea, Mr Dann and Mr McGrath relied on *R v Bennett* (2002) 137 A Crim R 210 at 216[26]–219[38] (*per* Winneke P, Vincent JA and O'Bryan AJA) and *DPP v Ho* [2024] VSC 162 at [18] (*per* Kaye JA). Only two days ago, on 16 October 2024, the Solicitor for Public Prosecutions filed a one-page response which, curiously, was not signed by either Mr Porceddu or Ms Hamill or anyone else. Nor is anyone's name typed (but unsigned) at the foot of the submission. No explanation was given for taking this course. The submission makes the point, correctly but unresponsively, that the jury were given separate consideration directions, and argues that the verdicts demonstrate that those directions were heeded. The submission goes on to assert, without elaboration, that "[sentencing] Mr Lynn on the basis submitted by the prosecution is neither contrary to the way the trial was conducted [nor] how the jury was directed". As the following paragraphs of these reasons reveal, I do not accept that submission.

motive asserted, would be to deny him the full benefit of his acquittal of the murder of Mr Hill.

49 In my view, Mr Dann's submissions should be accepted, at least in part. Addressing his first point first, the law is that, in so far as I can, I am required to sentence on a basis that is consistent with the jury's verdicts.<sup>8</sup> In this endeavour, it is necessary to have regard to the manner in which the case went before the jury in order to ensure that full effect is given to the verdicts delivered.<sup>9</sup> On the directions given on motive, the only way in which the jury could have found that Mr Lynn sought to eliminate Mrs Clay as a witness was if they were satisfied, beyond reasonable doubt, that he had first murdered Mr Hill. But, given the acquittal in relation to Mr Hill, the directions did not permit the jury to find any such motive. It follows that, to sentence on the basis that there was such a motive, would be to sentence inconsistently with those directions and the jury's verdicts.

50 Second, however, at a stretch, it may be possible to construct a version of events that gives Mr Lynn the full benefit of his acquittal while still ascribing the asserted motive to him for the murder of Mrs Clay. That said, I cannot readily think of a version of events that would not conflict with the directions the jury were given on motive. For example, it might be said that, while Mr Lynn is not responsible in law for any element of murder in relation to Mr Hill, he may have wrongly believed that he was, or might be, so responsible, and, with that belief, he then murdered Mrs Clay to eliminate her as a possible witness. To reason in this fashion, it might be argued, would not deny Mr Lynn the full benefit of his acquittal, because he would not be regarded as responsible for any element of the offence charged. But it would still be at odds with the direction that there could be no motive to eliminate Mrs Clay as a witness unless the jury were first satisfied beyond reasonable doubt that Mr Lynn murdered Mr Hill.

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<sup>8</sup> See, e.g., *Cheung v The Queen* (2001) 209 CLR 1 at 12-13[14] (per Gleeson CJ, Gummow and Hayne JJ), citing *R v Isaacs* (1997) 41 NSWLR 374 at 377-378 (per Gleeson CJ, Mason P, Hunt CJ at CL, Simpson and Hidden JJ).

<sup>9</sup> See, e.g., *R v Bennett* (2002) 137 A Crim R 210 at 217[30] (per Winneke P, Vincent JA and O'Bryan AJA).

51 Mr Dann submitted, additionally, that it would be unfair to sentence on the basis of the motive alleged because it was neither put to Mr Lynn in cross-examination nor argued that he murdered Mrs Clay because she witnessed, say, an *accidental* death of Mr Hill. I accept that submission, too.

52 Presumably, no such questions were asked of Mr Lynn by Mr Porceddu in cross-examination for the forensic reason that to do so might be thought to entertain, before the jury, a weakness in the prosecution case on the murder charge concerning Mr Hill. This, in turn, might be thought to cast doubt on the other charge too, because it would entertain the truth of at least part of Mr Lynn's account, which might get the jury thinking the same about his account vis-à-vis Mrs Clay.

53 The same explanation might be given for the prosecution's failure to urge, at least, that the directions on motive should be tailored to allow for the possibility that the jury might not be satisfied that Mr Lynn murdered Mr Hill, but that he died accidentally or in some other way short of murder.<sup>10</sup> And, further, the same explanation might be given for the prosecution submission (which the defence joined in, and I accepted) that manslaughter should not be left to the jury as an unindicted alternative. Rather, both parties ran the case on each charge on a "murder-or-nothing" basis.

54 In those circumstances, I think it ill behoves the prosecution to argue now that the jury's verdicts should be understood as meaning that they found the asserted motive in relation to Mrs Clay, and/or that I should sentence on that basis.

55 Even if I am wrong in those conclusions, there are two further reasons why, in any event, I have determined not to sentence on the basis of the motive urged by the prosecution.

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<sup>10</sup> That it might be thought necessary to give a direction of this kind was contemplated in my pre-trial ruling concerning incriminating conduct, as it was in the Court of Appeal's judgment on the interlocutory appeal against that ruling (see *R v Lynn (Rulings 5 & 6)* [2024] VSC 375 at, e.g., [73] & [83]; and *DPP v Lynn* [2024] VSCA 62 at [70] (*per* Emerton P, Taylor and T Forrest JJA)).

56 First, and conventionally, the directions given to the jury made it clear that they need not be satisfied of motive in order to find Mr Lynn guilty of murder on either charge. For motive is not an element of the crime of murder.<sup>11</sup> Thus, to sentence on the basis of an absence of satisfaction of motive is consistent with the directions given to the jury, and with the law. And, unless the jury have gone astray, to sentence in this way should also be consistent with their guilty verdict in relation to Mrs Clay.

57 Secondly, and in any event, having considered all the evidence at trial, I am not satisfied beyond reasonable doubt that Mr Lynn killed Mrs Clay with the motive asserted. Given the jury were directed that they must acquit if they could not reject (beyond reasonable doubt) Mr Lynn's account of the accidental death of Mrs Clay,<sup>12</sup> their guilty verdict must be taken as a rejection of that account on the criminal standard of proof. Once that account is gone, there is, on the evidence, as I see it, no alternative version of the circumstances in which Mrs Clay was killed. And, even allowing that the jury's acquittal concerning Mr Hill leaves open a range of scenarios as to what might have occurred before or after Mrs Clay was shot, none of them sufficiently persuades me of the events immediately preceding or following her murder so as to be satisfied beyond reasonable doubt of the factual substratum for the motive asserted.

*Does an absence of motive make the murder worse?*

58 Next, it is sometimes said that a motiveless murder may be worse than a murder with a sinister motive, perhaps because to do such a thing without motive may be disturbing. But I am not satisfied that the murder was motiveless either. I simply cannot say, on the evidence I have heard, what motivated Mrs Clay's murder.

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<sup>11</sup> Charge at [233].

<sup>12</sup> Charge at [288]–[294], especially at [291].

*Not purely spontaneous*

59 Equally, I am not satisfied, on the balance of probabilities, in mitigation, that the murder of Mrs Clay was purely spontaneous. It may have been, and the jury may well have thought it was. But, given the jury's verdicts and the evidence, I am simply not able to find either that possible fact or any other particular matter in mitigation about the immediate circumstances of the murder. I should add that Mr Dann did not urge either this scenario or any other particular version in mitigation. Moreover, I understood him to accept that this conclusion was open to me.

*Order of deaths?*

60 Another issue. While the prosecution put – and were, in effect, confined to putting – their case on the basis that Mr Hill was murdered first, Mr Dann submitted that the jury's verdicts do not even necessarily reveal the order in which the deceased died or were killed.

61 There is, I think, something in the point. This is because the order the prosecution urged presupposed that there were two murders, not merely one death and then one murder. In view of the acquittal concerning Mr Hill, it is very difficult to discern what the jury may have found, if anything, about the order of deaths, or, for that matter, about any of the circumstances that led to Mrs Clay's murder.

62 That said, and if it mattered, given the way the cases were run, and notwithstanding the acquittal, I consider that it is quite possible that the jury's verdicts mean that they considered that Mrs Clay was murdered after something happened to Mr Hill to cause his death (but not murder). But I am unable to determine that that is what the jury found. They may well have found the reverse order. Or individual jurors may have differed on this issue. Or they may simply have been unable to decide on the order.

63 Assuming, then, consistently with the verdicts, it is open to me to find the order of deaths, again, I cannot do so, as the evidence does not convince me one way or the

other, whether on the criminal or the civil standard of proof. The prosecution theory – that it is likely the two men argued first, which somehow led to Mr Hill’s death, and subsequently to Mrs Clay’s murder – may well be right, but I am just not satisfied to the requisite standard that that is what happened.

### *Conclusions*

64 The law recognises that, if the prosecution fails to prove beyond reasonable doubt a possible circumstance of the offending which, if proved, would be adverse to the accused, but the accused fails to establish on the balance of probabilities a competing possibility which, if proved, would be favourable to the accused, the judge may sentence on the basis that neither of the competing possibilities is known.<sup>13</sup> That, to my way of thinking, is the situation that obtains in this matter with respect to many of the possible circumstances of Mrs Clay’s murder.

65 In the end, the most I can say about those circumstances includes the following. First, given the jury’s guilty verdict, and the forensic evidence as to what caused her death, I am satisfied beyond reasonable doubt that Mrs Clay was killed instantly when she was shot to the head with Mr Lynn’s shotgun while she was near the metal canopy on the passenger side of Mr Hill’s Landcruiser.

66 Second, while murder can be committed with either an intention to kill or an intention to cause at least really serious injury, and the jury were so directed,<sup>14</sup> they were also directed that another element of murder on the second charge was that Mr Lynn “consciously, voluntarily and deliberately fired the gun at Mrs Clay’s head”.<sup>15</sup> Absent any satisfactory evidence of context on which I am prepared to act – and I can find none – I consider that to fire a shotgun deliberately at another’s head, inevitably gives rise to the inference of an intention to kill, not merely to cause really serious injury. Thus, I am satisfied, beyond reasonable doubt, that Mr Lynn

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<sup>13</sup> See, e.g., *Filippou v The Queen* (2015) 256 CLR 47 at 69–70[64] (*per* French CJ, Bell, Keane and Nettle JJ).

<sup>14</sup> Charge at [160]–[161], [170], [191]–[197], [206]–[207] & [368].

<sup>15</sup> Charge at [161].

intended to kill Mrs Clay when he deliberately fired the shotgun at her head. The jury, I consider, must have made the same finding.

67 Third, given Mr Lynn's account in his interview and in his sworn evidence, I consider that it is likely that there was a brusque interaction of some description between the men over Mr Hill's accusation of illegal hunting and his use of the drone, and that this occurred before Mrs Clay was murdered. But, as I have said, I am not satisfied, whether on the criminal or the civil standard of proof, either that this interaction resulted in Mr Hill's death or of the order in which the deaths occurred.

68 There are several other things that I cannot say about the circumstances surrounding Mrs Clay's murder. For example, while I consider these things reasonably possible, I am not satisfied, on either the criminal or the civil standard of proof, that the shot that killed Mrs Clay was fired through the side mirror of the Landcruiser or that that mirror was even damaged by a gunshot.

69 Further, I am not satisfied beyond reasonable doubt of the following matters that, if proved, would amount to aggravating factors: (i) that Mrs Clay's killing was planned or premeditated; (ii) that she was stalked or chased; (iii) that she was cowering in fear at the time; (iv) that she was even aware that she was about to be shot; (v) that more than one shot was fired at her; or (vi) that she suffered – indeed, as I have said, her death would have been instantaneous.

70 Nor, absent satisfaction of motive, am I satisfied beyond reasonable doubt that her killing was cold or callous – except to the extent that any such description might be inherent in the action of deliberately shooting to the head a woman of 73, at a remote campsite, with an intention to kill, without any belief in the need for self-defence, and without proof of any accompanying circumstance of mitigation.

## Hiding and burning of bodies and other post-offence conduct

71 Finally, Mr Porceddu submitted that I should sentence on the basis that numerous of Mr Lynn's actions taken after Mrs Clay's death were designed to cover up her murder. The actions he pointed to were, in the main, the same as those he relied on at trial as incriminating conduct, and include the following:

- a) moving items belonging to the deceased, and burning them, including the tent, to destroy evidence at the campsite;
- b) removing cards from the wallets of the deceased to make it appear they had been robbed;
- c) removing from the scene the deceased's bodies, their mobile phones, the car key, and the drone;
- d) driving many hours through the night before hiding the bodies in the remote wilderness off Union Spur Track;
- e) disposing of the drone and the mobile phones;
- f) in April 2020, painting and disposing of his trailer;
- g) in May 2020, returning to the site of the bodies to check they remained hidden;
- h) in June 2020, painting his Nissan a different colour;
- i) in November 2020, returning to the bodies, burning them, and throwing the remaining fragments into a hole left by a fallen tree; and
- j) on 19 November 2021, removing the side-mounted awning of his Nissan.

72 As I understood Mr Porceddu, implicit in his submission must be the view that Mr Lynn's explanation for this behaviour is to be rejected, at least in so far as it was exculpatory vis-à-vis the murder of Mrs Clay. This behaviour, like motive, is not an element of the offence of murder. Rather, it is evidence of conduct, said to amount to incriminating conduct, that potentially assists in proof of the offence. However, one of the directions the jury were given on incriminating conduct was in these terms:<sup>16</sup>

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<sup>16</sup> Charge at [264].

Given the importance to the prosecution case, on both charges of murder, of the evidence of so-called incriminating conduct, if, after considering all the evidence, you were not satisfied beyond reasonable doubt that Mr Lynn believed he had committed murder of the deceased in question, you could not be satisfied of his guilt of that charge, and, accordingly, you must find him not guilty of that charge.

73 Thus, given this direction and the guilty verdict, it follows that the jury must have rejected, beyond reasonable doubt, Mr Lynn's exculpatory explanation of his state of mind when, and his reasons for, engaging in that behaviour vis-à-vis Mrs Clay.

74 Mr Dann, I should say, accepted that Mr Lynn's treatment of Mrs Clay's body following her death "represents a significant aggravating feature" of the murder. Implicit in that concession, I think, was a realistic acceptance that the jury would have rejected Mr Lynn's exculpatory explanation for this behaviour vis-à-vis Mrs Clay.

75 In those circumstances, I am satisfied, to the criminal standard, that this behaviour was directed at covering up Mrs Clay's murder, and that the particular acts engaged in – especially the removal and burning of her body – amount to a significant aggravating feature of that offence.

76 Further, notwithstanding the acquittal, Mr Dann conceded that "the removal and ultimate disposal of Mr Hill's body could be taken into account as part of Mr Lynn's overall attempts to conceal the murder ... of Mrs Clay". He added, however, that "care would again be needed to ensure that Mr Lynn's entitlement to the full benefit of his acquittal ... was not infringed".<sup>17</sup>

77 Mr Dann's concession and his qualification raise a delicate point. On the one hand, an accused person is not only to receive the full benefit of his acquittal, but he is also to be sentenced only for the offence of which he is convicted. On the other, as I understood Mr Dann, I would be conforming with both principles if I were to sentence on the basis that Mr Lynn nevertheless moved and burned the body of

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<sup>17</sup> See Mr Dann and Mr McGrath's supplementary submissions (dated 23 September 2024) at [9]–[10].

Mr Hill to further his concealment of the murder of Mrs Clay, and that that offence was aggravated by that concealment, by the like manner in which Mrs Clay's body was treated, and by the 20-month period Mrs Clay's loved ones were left suffering the agony of not knowing her fate, and yet fearing the worst. I agree. More of that later.

### **Victim impact statements**

78 The next topic concerns the victim impact statements received from three of Mrs Clay's loved ones.

79 Emma Davies is Mrs Clay's daughter from her second marriage. Justifiably, Ms Davies swelled with pride as she recounted her mother's many admirable qualities. She was an adored grandmother; someone who looked after her neighbours; an advocate for women and children; an expert fundraiser for the less fortunate; and one tirelessly involved in numerous community organisations, including the CWA, the Victoria Day Council, Foodbank Victoria, Meals on Wheels, and school and kindergarten committees. Ms Davies, however, also made it plain that even the very process of writing her statement was harrowing. She had to trawl through the trauma of her mother being missing for so long, and then her remains eventually being found, but in a desecrated state. The crime has had an immense impact on her, so grave that she has struggled with work and study, and has had to withdraw from volunteer roles. She also finds she has to remove herself from her children's sporting events for fear of confrontation. The horror of her mother's murder, the whole ordeal, is "on repeat" in her mind, and she is exhausted by it.

80 Mrs Clay was Alison Abbott's oldest and closest friend. They met at the Methodist Ladies' College in 1959. They loved going to the tennis together and were mad about ABBA. "Waterloo" was their special party song, but hearing it now only brings Ms Abbott tears of grief. Not knowing what had happened to Mrs Clay for so long was very traumatising, and caused her great anxiety. But those feelings turned to anger when she heard what had happened to Mrs Clay, and she had trouble

sleeping in consequence. She finds the loss of her great friend incredibly sad. It also saddens her to know that her friend's diverse skills are lost to the community to which she contributed so deeply.

81 Jillian Walker is Mrs Clay's older sister. When she saw a photo of the burnt-out campsite, Ms Walker believed something was horribly wrong. Even though she knew somehow her sister was gone, she did not want to believe it. As she said, you just cannot give up hope on your sister. She had Zoom meetings with police, but they could not tell her much. Then, once her sister's remains were found, the story was horrific, sickening, abominable. That she had been reduced to no more than fragments was unimaginable. On top of her grief, she now had feelings of rage, disbelief and confusion. She has lost her sister, a wonderful person that she loved dearly.

82 I find these sentiments, and the many others in the victim impact statements, profoundly moving. They express the immeasurable hurt and loss felt as a result of the murder of Mrs Clay, the appalling treatment of her body in death, and the distress in not knowing what had happened to her for at least 20 months. In so far as the law allows, I have taken these statements into account in considering sentence.

83 I wish to add this. I expect that no sentence this Court could pass would lessen the grief or ease the pain of Mrs Clay's loved ones. The sentence to be imposed is not a measure of Mrs Clay's life. It cannot be. Instead, it is a product of the many and varied factors that the law requires me to synthesise and take into account, only one of which is the impact on victims.

### **Mr Hill's loved ones**

84 In contrast with Mrs Clay's family and friends, Mr Hill's loved ones are left in an excruciating legal limbo. Mr Hill is dead, but not as a consequence of any murder by Mr Lynn. By their verdict, the jury has said so. In those circumstances, Mr Hill's loved ones are not "victims" within the meaning of that term in the *Sentencing Act* in

respect of any crime concerning him. This, I assume, is why there are no victim impact statements from them.

85 That said, in addition to the loss of her life partner, Mrs Hill has suffered the hurt and humiliation of the discovery of his affair with Mrs Clay and the saturation media coverage of that fact to the world at large. Notwithstanding the impossibly awkward and terribly sad positions in which they found themselves, Mrs Hill and her daughter Deborah Hill gave evidence at trial with immense dignity. While neither they nor Mr Hill's other loved ones can be recognised as victims in sentencing law in relation to his death, I think that, just as one person to another, as a matter of common human decency, I should acknowledge their plight, their agony, their suffering.<sup>18</sup> And I do.

#### Nature and gravity of offence

86 I turn now to an assessment of the nature and gravity of this offence of murder.

87 Murder is the most serious offence in the criminal calendar. A person convicted of murder is liable to imprisonment for life or for such other term as is fixed by the Court.<sup>19</sup> The offence also carries a standard sentence of 25 years' imprisonment.<sup>20</sup>

88 Even though I am not satisfied that Mr Lynn's motive in murdering Mrs Clay was to eliminate her as a witness, or of various other possible aggravating factors, on what is known, it is still a very grave example of murder, for at least these reasons.

89 First, Mrs Clay, a woman of 73, was intentionally killed by a shotgun blast to the head. Thus, it was a violent, brutal, horrific death effected with a weapon designed to kill.

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<sup>18</sup> I can't help but think of Mrs Hill as a female version of the protagonist in *The Widower in the Country*, an aching piece by the great Australian poet Les Murray. I came across it in an anthology of poems entitled *Poems that Make Grown Men Cry*, edited by Anthony and Ben Holden. Thoughtfully, my associate Alexander Pemberton gave it to me as a gift (as I've been known to engage in a bit of public weeping). The commentary by Nick Cave, another gifted Australian, is spot on.

<sup>19</sup> *Crimes Act 1958 (Vic)*, s 3(1).

<sup>20</sup> *Crimes Act 1958 (Vic)*, s 3(2)(b).

90 Second, there is no suggestion that Mrs Clay posed any threat to Mr Lynn. As I have said, I am unable to find any mitigating feature of the circumstances of the offence. Nor is it said that Mr Lynn has any remorse for the offence itself, for he maintains his innocence.

91 Third, in my opinion, the offence was aggravated significantly by Mr Lynn's post-offence conduct designed to cover up the murder. The gravest parts of that conduct were the concealment of Mrs Clay's body in a remote place and the later burning of her body almost to nothingness, just fragments.<sup>21</sup> As the victim impact statements reveal so graphically, this was an appalling thing for her loved ones to learn. Mr Lynn must have known that these actions, once revealed, would cause Mrs Clay's loved ones no end of grief and distress.

92 Fourth, the offence was also aggravated by Mr Lynn's inaction in not revealing the whereabouts of Mrs Clay's remains until November 2021. For this left – and Mr Lynn must have believed this was always going to leave – her loved ones in a state of agonising uncertainty for an indeterminate period, which turned out to be 20 long months.

93 Fifth, given the foregoing matters, I consider that Mr Lynn's moral culpability for the offence is very high.

94 For these reasons, this was just a terrible thing to do. Hence my conclusion that this is a very grave murder.

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<sup>21</sup> See, e.g., *DPP v England* [1999] 2 VR 258 at 263[16]-268[37] (per Brooking JA; Batt JA and Chernov JA agreeing (at 268[41]-269[42])). More recently, see also, e.g., *DPP v Timalu* [2024] VSCA 192 at [64]-[65] (per Emerton P, Priest and McLeish JJA).

## **Personal circumstances**

### ***Family***

95 Before turning to the mitigating factors urged by Mr Dann, I shall give a more detailed summary of Mr Lynn's personal circumstances, commencing with his family and his early life.

96 Mr Lynn was born in Penrith in 1966. He was raised in the Blue Mountains before his family moved to Lismore. He has two sisters and one brother, who live in southeast Queensland. His father, now deceased, was a fitter and turner. His mother undertook childcare duties. She now resides in a nursing home in New South Wales.

### ***Education***

97 After starting at Mount Riverview Primary School in the Blue Mountains, Mr Lynn went on to Kadina High School in Lismore, where he completed his HSC in 1984.

98 The next year, he was accepted into Sydney University to study for an engineering degree. However, he had an ambition to be a pilot, so he left university after a few months and commenced the RAAF Direct Entry Pilots' Course in Point Cook.

99 Unfortunately, he suffered severe motion sickness when flying. So, he undertook a six-week course in balance stabilisation, which, happily, was successful. He then completed the 138<sup>th</sup> Pilots' Course, graduating early in 1986.

100 He moved to the RAAF base in Pearce, Western Australia, and then undertook Advanced Pilot Training in the Number 2 Flying School in Perth. While he completed all of the training, he failed the instrument-handling component. He was offered retraining as a navigator or an air traffic controller, but declined. He was discharged in December 1986.

## *Employment*

- 101 In 1987, Mr Lynn moved to Bankstown to study for a licence as a commercial pilot. He joined Navair Flying Service, where he later became the manager of a programme teaching Qantas's cadet pilots how to fly. In 1989, during the pilots' dispute, he accepted a job with Par Avion in Launceston, but the company went bankrupt only six weeks after he started. In 1990, he joined Airlines of Tasmania as a freight pilot, but was retrenched in 1992 during the recession.
- 102 Until he could land another flying position, he worked picking asparagus and also as a tour guide with Tasmania Expeditions.
- 103 In 1993, he joined the Australian Flight Training School, where he taught students how to fly. In 1994, he worked for Southern Australian Airlines as an ambulance pilot. Next, he joined Ansett, which went into administration in 2001, but he was kept on until 2002. The same year, he joined Qatar Airways, and he was promoted to captain in 2006. In 2007, he was recruited by Jetstar as a direct entry captain, and then was promoted to a training captain, which involved teaching first officers. In 2014, he was promoted to a senior check captain with Jetstar, which was the position he held until his arrest in 2021.

## *Relationships*

- 104 Turning to his personal relationships, Mr Lynn met his first wife, Lisa Searle, when he was nearly 19 and she was 21. They married in 1986. Mrs Lynn had involvement with a church, which Mr Lynn also joined. She resigned her position as an RAAF signals operator based at Laverton, and they moved together to off-base accommodation. When they went to Bankstown in 1987, Mrs Lynn worked as a data entry technician. Next, they moved to Tasmania, bought a home in Launceston, and joined the Pentecostal Church there. After shifts between Tasmania and New South Wales, they moved to Victoria, and shared a house with others in Carlton. Mrs Lynn worked as a flight attendant with Qantas. Then they bought a home in Mount Macedon.

105 Their first child was born in 1997, and their second in 1998. Their second child was born with a cleft lip and palate, which required a series of operations until he was 18.

106 Their relationship fell into difficulty, and Mr Lynn moved out of the family home. He had commenced a relationship with another woman.

107 The marriage became so difficult that Mrs Lynn obtained an intervention order against her husband. A condition of the order was that he was not to attend the family home, except by prior arrangement. Mr Lynn breached the order when he attended, without prior arrangement, on the day of his son's birthday, to give him a present. After he left, phone contact he had with his wife became heated, which resulted in a second breach. Mrs Lynn complained to police. He was asked to return a personal organiser which he believed was his and which he had taken from the family home. Police took him to where he indicated it was located. Instead of collecting it and returning it to police, he just kept walking to the train station. This was charged as an escape from police custody.

108 In May 1999, Mr Lynn pleaded guilty in the Magistrates' Court to the escape charge and two breaches of the intervention order. Without conviction, he was placed on an adjourned undertaking to be of good behaviour, and was required to pay \$300 to the Court Fund.

109 Sadly, on 26 October 1999, Lisa Lynn was found deceased on the front lawn of their Mount Macedon property. A coroner's inquest determined that she died after consuming a quantity of drugs and alcohol.

110 Protracted custody proceedings taken by Mrs Lynn's parents followed. Mr Lynn was awarded custody of the children. Property proceedings also ended in his favour.

111 After being a single parent for a period, Mr Lynn, with his two children, then moved in with his new partner to the Mount Macedon home, before they moved to

Adelaide. The couple had a daughter in 2001. But that relationship ultimately broke down, which caused Mr Lynn and his two sons to move back to Melbourne.

112 This coincided with his move to Qatar with Qatar Airways, where he met his current wife, Melanie Lynn. She was working as an airline attendant at Qatar Airways. They were married in 2004, and had a son in 2007.

113 Upon the family's return to Australia, they initially rented accommodation in Caroline Springs, and then bought the property in which his family still live.

#### *Community activity and contributions*

114 Over the years, Mr Lynn has been involved in community activity and contributions.

115 When in Launceston, he became the leader of a youth group at his church, and performed volunteer work for the local Christian radio station.

116 He and his wife Lisa volunteered to be foster parents with the Department of Community Services in Launceston. They had three placements: two were with teenage girls on short-term placements, and a third was with a girl who lived with them for about 12 months.

117 Between 1992 and 1996, Mr Lynn and his wife Lisa sponsored a child in India through the Christian Children's Fund. In 1994, they travelled to Central India and purchased a house for the family of the child they had been sponsoring.

118 More recently, Mr Lynn and his wife Melanie have had a long-term involvement with the Smith Family Charity, sponsoring children.

119 Mr Dann pointed out that, in the material seized by police during their searches, bank records showed that one of the debits was for a contribution to the Blue Ribbon Foundation. Mr Lynn and his wife had done this regularly.

## **Mitigating factors**

### ***No prior convictions***

120 I turn now to the mitigating factors urged by Mr Dann, commencing with the fact that, at 58, Mr Lynn has no prior or subsequent convictions. His appearance in 1999 concerned findings of guilt that, in my opinion, have no significance in this case.

### ***Strong history of work and providing for family***

121 Second, Mr Lynn has a strong history of work and of providing for his family. He has risen to leadership positions within his industry, and has been in employment constantly.

### ***Community activity and contributions***

122 Third, as I detailed a moment ago, he has made contributions to the community. This consideration, along with his lack of prior convictions (and only the one previous court appearance in 1999) and his strong history of employment and providing for his family, all go to an assessment of Mr Lynn's previous character.<sup>22</sup>

### ***Impact of assault, "management", "protection" and pandemic protocols in prison***

123 Fourth, Mr Dann submitted that four particular aspects of the conditions of Mr Lynn's incarceration should be taken into account in mitigation.

124 First, towards the end of the trial, Mr Lynn was assaulted in prison. Second, he was then placed in a management unit for his own safety, although Mr Dann said that it seems more like a punishment unit to Mr Lynn.

125 Next, because of his high profile, and not because he asked, he has been housed in "protection" since his incarceration. Given the assault, his profile and his protection

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<sup>22</sup> See ss 5(2)(f) and 6 of the *Sentencing Act* 1991 (Vic).

status, Mr Dann described Mr Lynn as a vulnerable prisoner. I accept that description.

126 Finally, along with other prisoners, since his arrest in 2021, Mr Lynn has also had to endure the restrictions on prison life that came with the onset of the pandemic.<sup>23</sup>

127 I accept that, in combination, these factors have made, and, to a greater or lesser degree, will continue to make, his imprisonment more burdensome than otherwise.

*Anguish at inability to assist wife and children re house*

128 Fifth, in mitigation, Mr Dann relied on Mr Lynn's anguish stemming from separation from his wife and children in circumstances where the family home is at significant risk and he can be of no assistance.

129 When Mr Lynn went into custody and was no longer earning an income, his family rallied around to try to maintain the home by helping with mortgage payments. But, despite those payments, a restraining order was then placed on the house, as often occurs nowadays in cases of this nature. So, as Mr Dann put it, Mr Lynn sits in custody in the knowledge that his wife and (two of their) children are at grave risk of being displaced from the family home, and that there is nothing he can do about it.

130 I accept that Mr Lynn's anguish in not being able to do anything for his family in this regard has made, and will continue to make, his imprisonment more burdensome than otherwise.<sup>24</sup>

*Sentence will represent a significant proportion of remainder of life*

131 Sixth, Mr Dann submitted that it is relevant to consider in mitigation the fact that, at Mr Lynn's age, the sentence to be imposed, whatever it may be, will represent a substantial proportion of the remainder of his life.<sup>25</sup>

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<sup>23</sup> Counsel referred to *Surtees v The King* [2022] VSCA 42 at [10] (*per* Kyrou and Kaye JJA).

<sup>24</sup> Counsel referred to *Markovic v The Queen* (2010) 30 VR 589 at 595[20] (*per* Maxwell P, Nettle, Neave, Redlich and Weinberg JJA).

132 Mr Lynn was 55 at the time of his arrest, and he is now 58. As Mr Dann submitted, even if the standard sentence of 25 years' imprisonment is taken as a guide, given what is understood about life expectancy generally,<sup>26</sup> such a sentence would represent a substantial proportion – and possibly the entirety – of the remainder of Mr Lynn's life. Accordingly, I have had regard to this principle in mitigation.

### *Delay*

133 Seventh, Mr Dann submitted that the delay in this matter being finalised is a mitigating factor. I agree. It is nearly three years since Mr Lynn's arrest. He has had two murder charges, and the prospect of a life sentence, hanging over his head for much of that time. I accept Mr Dann's submission that I do not need psychological or psychiatric evidence to accept that that prospect must have weighed heavily over him for all that time.<sup>27</sup>

### *Admissions re bodies and location of remains; and apologies to deceased's loved ones*

134 The eighth and ninth matters to be considered in mitigation are Mr Lynn's admissions as to his burning of the bodies, coupled with his directing the police to where the remains were located, and his apologies and regret for that behaviour.

135 Absent Mr Lynn's admissions as to what he did with the bodies, and his disclosure of where the remains were located, it is extremely unlikely that the police – or anyone else, for that matter – would have either learned that the bodies were incinerated or found the remains. The remoteness of their location, and that police had not been able find them, despite extensive searches over 20 months, tends to demonstrate the point.

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<sup>25</sup> Counsel referred to *R v Iles* [2009] VSCA 197 at [33]–[35] (*per* Redlich JA).

<sup>26</sup> See, e.g., Australian Institute of Health and Welfare, "Life Expectancy", Web report, 6 June 2024. According to Table 8.1 of the report, men aged 45 years in 2020–2022 would be expected to live until 82.8 years of age, and men aged 65 years in 2020–2022 would be expected to live until 85.2 years of age.

<sup>27</sup> Counsel cited *Tomes v The Queen* [2017] VSCA 118 at [39]–[40] (*per* Maxwell P, Redlich and Kyrou JJA).

136 In his evidence-in-chief at trial, Mr Lynn accepted that his decision “not [to come] forward”, but to “do what [he] did with the bodies of Mr Hill and Mrs Clay”, caused “immeasurable pain to their family and loved ones”, and was “despicable”. He said to their families that he was “very sorry for [their] suffering that [he] caused”. He accepted that he should be punished for that conduct. Before the trial, he offered to plead guilty to the uncharged offence of destruction of evidence,<sup>28</sup> but that offer was declined. He accepted that he was guilty of that offence, but he maintained his innocence of both murder and manslaughter.<sup>29</sup>

137 On the plea, I received in evidence a letter from Mr Lynn headed “Contrition Letter”. In it, he said this:

Your Honour,

I am disappointed and perplexed by the jury verdict, as I have not killed anyone and will be respectfully appealing their decision.

However, I accept that my decision to flee the scene and attempt to disappear, and all of my actions to that effect, were selfish and callous in the extreme, causing family and friends of both Carol Clay and Russell Hill much grief and stress for 20 long months. For those actions, I am very sorry.

At the time, I had reasons, but I understand they are no excuse and of no interest to those who suffered. And to detail any of that now would be insulting to the memory of Carol and Russell.

I’m also very sorry for the trouble and work my decisions caused for Victorian emergency services, both government and voluntary. To my previous employer and to the sporting clubs to which I belonged, I apologise for the shame that my trial has caused.

To my loving family, I am very sorry for the pain, shame and suffering they have endured.

I understand that due to current community sentiment my apology will likely be rejected by most. With heartfelt regret for my own behaviour, I humbly apologise regardless. I don’t ask for forgiveness; I am simply sorry for what I have done.

Sincerely,

Greg Lynn.

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<sup>28</sup> Contrary to s 254 of the *Crimes Act* 1958 (Vic).

<sup>29</sup> Trial transcript (6 June 2024), p 1661.

138 Mr Dann submitted that I should accept that Mr Lynn's admission to burning the bodies and his disclosure of the location of the remains, together with his apologies, temper the serious aggravating feature of his crime involved in his post-offence conduct.

139 Mr Porceddu submitted that, given it was made in the context of denying the murder of Mrs Clay, Mr Lynn's apology in his sworn evidence should be regarded as nothing more than self-serving. While I did not understand Mr Porceddu to address the written apology separately or at all, I have taken his submission to extend to that document as well. As I apprehend things, he made no submission against the potential mitigatory importance of Mr Lynn's admission to the burning of the bodies and disclosure of the location of the remains.

140 It is natural to look askance at Mr Lynn's apologies, particularly when his continuing denial of the murder must be taken as including a denial that he engaged in the post-offence conduct in order to cover up Mrs Clay's murder – a fact that, consistently with the jury's verdict, I have found against him. But, having observed him, in the flesh, give sworn evidence, I accept that, irrespective of the true reason for which he engaged in that behaviour, he is genuine in apologising for his treatment of the deceased in death, for its callous nature, for the 20-month delay in disclosing the whereabouts of the remains, and for the adverse effect of that behaviour on the deceased's loved ones.

141 In those circumstances, I accept that Mr Lynn's apologies (whether accepted or not by the deceased's loved ones), his admission to burning the bodies, and his disclosure of the whereabouts of the remains, do temper the serious aggravating feature of his post-offence conduct. However, given the dreadful nature of that conduct, in my opinion, the tempering effect can only be modest, at best.

### *Prospects of rehabilitation*

142 The tenth and final matter in mitigation concerns Mr Lynn's prospects of rehabilitation.

143 Mr Porceddu submitted that, given Mr Lynn pleaded not guilty and chose to run a trial, is not accepting of the jury verdict, and has no remorse for the murder, assessing his prospects for rehabilitation is difficult. I accept that submission.

144 However, notwithstanding that difficulty, I also accept Mr Dann's submission that several matters, including the following, combine to allow the conclusion that Mr Lynn does have prospects for rehabilitation.

145 First, at 58, he is a man without prior or subsequent convictions.

146 Second, he has worked hard and done well in his chosen field.

147 Third, he has provided for his family, and he has their support.

148 Fourth, his contributions to the community show that he is capable of doing good.

149 A fifth consideration is that, by making admissions and directing police to the deceased's remains, by recognising his post-offence behaviour as despicable, and by making genuine apologies for it, Mr Lynn has shown at least some insight into the suffering of the deceased's loved ones. To that extent, he has acted with a measure of empathy and decency.

150 For these reasons, I assess his prospects of rehabilitation as at least reasonable.

## **Sentencing purposes**

### ***Introduction***

151 I turn now to the purposes of sentencing. Section 5(1) of the *Sentencing Act* 1991 (Vic) provides that the only purposes for which sentence may be imposed are, to use the shorthand, general deterrence, specific deterrence, denunciation, protection of the community, just punishment, and rehabilitation.

*General deterrence, denunciation and just punishment*

152 In my opinion, general deterrence, denunciation and just punishment are very important sentencing purposes in this case. The law places great weight on the sanctity of human life. It is a grave crime to extinguish the life of another violently, deliberately, intentionally, without any belief in the need for self-defence, and without proof of any mitigating motive. It is made all the worse by Mr Lynn's post-offence conduct, especially his treatment of Mrs Clay's body in death and his failure to disclose the whereabouts of her remains for 20 months. The sentence must reflect denunciation of such a crime; it must serve as a deterrent to others; and it must involve punishment that is just in all the circumstances.

*Specific deterrence and protection of the community*

153 It is also important that the sentence deter Mr Lynn personally and protect the community from repeat behaviour by him. That said, given the absence of prior or subsequent convictions at the age of 58, and his prospects of rehabilitation, I think that the weight to be given to the purposes of specific deterrence and community protection must be reduced somewhat. However, in circumstances where I have been unable to determine the motive for Mrs Clay's murder, I think the reduction in the weight to be given to those two sentencing purposes must be tempered.

*Rehabilitation*

154 In my view, rehabilitation remains an important purpose in fixing sentence. There are at least two reasons why that is so.

155 First, notwithstanding the gravity of his crime, the fact that Mr Lynn has at least reasonable prospects of rehabilitation makes rehabilitation a sentencing purpose that must be afforded weight.

156 Second, it is necessary to recognise the interplay between rehabilitation and protection of the community. If this is a case calling for a determinate term in prison with a non-parole period – and, as I shall explain in a moment, I think it is – then

there is a prospect that Mr Lynn will be returning to the community at some point, albeit he will be a lot older by then. It is therefore in the community's interests that such prospects of rehabilitation as he has be maximised, and that he is not crushed, so that, if he does return to the community, his risk of reoffending is as low as it reasonably can be, and his chances of successful reintegration into society are at least reasonable.

### *Parsimony*

157 Next, I note that the sentence I shall impose is intended to conform with the principle of parsimony, as it must. This principle, which is reflected in s 5(3) of the *Sentencing Act* in a modified form, provides that a court must not impose a sentence that is more severe than that which is necessary to achieve the purpose or purposes for which the sentence is imposed.

### Current sentencing practices

#### *Introduction*

158 I turn now to current sentencing practices for murder, in so far as I can determine them. These practices are but one factor in sentencing, and certainly not a controlling one at that, but they are nevertheless important in the sentencing synthesis.

#### *Standard sentence cases only*

159 Since this is a standard sentence offence, only sentences imposed under the standard sentence regime may be considered for this purpose.<sup>30</sup> While the standard sentence provisions have been in operation for some time, and while the numbers of cases dealt with under that regime are of course growing with every murder committed and proved, they are still relatively few in number.

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<sup>30</sup> *Sentencing Act* 1991 (Vic), s 5B(2)(b).

### *Sentencing statistics*

160 Nevertheless, recent statistics show that the average length of imprisonment imposed for murder under the new regime (excluding life sentences) ranged from 19 years and four months in 2021–22 to 25 years and six months in 2018–19, with the average over the five years of the survey being imprisonment for 22 years and four months.<sup>31</sup>

161 I recognise, however, that such statistics are of limited utility. This is mainly because they do not distinguish cases according to their most important sentencing considerations, such as the gravity of the offence, or whether there was a plea of guilty or not guilty, remorse, a relevant criminal history, and so on.

### *Case comparisons*

162 Sometimes, case comparisons are a useful way of assessing current sentencing practices. With this in mind, Mr Dann and Mr McGrath provided a table of what they understood to be all of the 60 or so sentences imposed for murder under the standard sentence regime since its inception.<sup>32</sup> Mr Porceddu and Ms Hamill provided a table with a selection of five cases from that same category.

### *DPP v Cross (No 2)*

163 One decision on which Mr Dann placed particular reliance was *DPP v Cross (No 2)*.<sup>33</sup> While in a tent at the Geelong Showgrounds, Mr Cross got into a verbal argument with Maddison Pante, who was one of the occupiers of the tent. As the argument became more heated, Mr Cross, who was carrying a loaded firearm at the time, ultimately pointed the gun at Ms Pante's forehead and deliberately fired from point

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<sup>31</sup> Sentencing Advisory Council, *Sentencing Snapshot 273, Murder* (June 2023), at p 3.

<sup>32</sup> At the plea, Mr Dann and Mr McGrath's table contained 58 cases. After the plea, on 16 October 2024, counsel sent a further table with the three most recent murder sentences attracting the standard sentence regime: *DPP v Anderson* [2024] VSC 565 (per Fox J); *R v Nguyen & Curran* [2024] VSC 616 (per Beale JA); and *R v Cohrs* [2024] VSC 617 (per Taylor JA).

<sup>33</sup> *DPP v Cross (No 2)* [2023] VSC 40.

blank range, killing her. Immediately thereafter, Mr Cross told Ms Pante's partner, Brodi Costello, that he was sorry. Mr Cross, Mr Costello and another in the tent then left the scene. Two days later, Mr Cross either burnt the tent with Ms Pante's body in it, or instructed another to do so. At a trial by judge alone, Mr Cross's defence was that Mr Costello was the one who shot Ms Pante. Justice Incerti found Mr Cross guilty of murder.

164 In sentencing, her Honour found that, while the shooting was spontaneous and impulsive, it was "unprovoked, cold-blooded, and carried out in a callous, almost detached manner", and that Mr Cross intended to kill Ms Pante.<sup>34</sup> The judge regarded the burning of Ms Pante's body as an aggravating factor,<sup>35</sup> and found that Mr Cross had no remorse.<sup>36</sup> He was aged 35, had prior convictions for violence, had been imprisoned before, and his prospects of rehabilitation were guarded.<sup>37</sup> Her Honour accepted that the delay of over three-and-a-half years between arrest and trial was inordinate, and that that delay was made worse by the restrictions resulting from the pandemic protocols.<sup>38</sup> Her Honour considered this to be a serious example of murder for which Mr Cross's culpability was high.<sup>39</sup> She imposed a sentence of 27 years' imprisonment with a non-parole period of 21 years.

165 Mr Dann accepted that *Cross* was not on all fours with the present case, but submitted that it does have some comparable aspects, including the burning of the body.

166 Mr Porceddu submitted that one of the more important differences was that the post-offence conduct in the present case was far more extensive and worse than in *Cross*.

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<sup>34</sup> *DPP v Cross (No 2)* [2023] VSC 40 at [12] & [30].

<sup>35</sup> *DPP v Cross (No 2)* [2023] VSC 40 at [31].

<sup>36</sup> *DPP v Cross (No 2)* [2023] VSC 40 at [50].

<sup>37</sup> *DPP v Cross (No 2)* [2023] VSC 40 at [25]-[26] & [33]-[36].

<sup>38</sup> *DPP v Cross (No 2)* [2023] VSC 40 at [37]-[42].

<sup>39</sup> *DPP v Cross (No 2)* [2023] VSC 40 at [51].

167 In my view, while the bare facts of the offence itself in *Cross* may be comparable to those in the present case in some ways, Mr Cross had the benefit of a finding that the offence was spontaneous and impulsive. I also accept Mr Porceddu's submission that the post-offence conduct in Mr Lynn's case is worse, and more aggravating, than it was in *Cross*. Further, Mr Lynn's post-offence conduct also involves the added aggravation of failing to disclose the whereabouts of the deceased's remains for 20 months, whereas there was no equivalent aggravating factor in *Cross*.

168 Thus, while there are some similarities between *Cross* and the present case, there are significant differences as well.

### *Conclusions*

169 Of the other individual cases in the table, none struck me as meaningfully similar to the present case. But that is not uncommon. Indeed, in the area of sentencing, it is almost always difficult usefully to compare cases. And, in any event, sentences are not precedents to be applied or distinguished.

170 In the end, as is the situation even where there are helpful statistics or more useful case comparisons, I have been driven to rely principally on the circumstances of this case, such as they are known, and sentencing principles to arrive at the appropriate sentence for this offence of murder.

### **A life sentence should not be imposed**

171 Mr Porceddu submitted that the murder of Mrs Clay was so grave that it called for a life sentence.<sup>40</sup> In support of this submission, he referred to cases decided both before and after the introduction of the standard sentencing scheme. As I

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<sup>40</sup> On the concept of the "worst category" of offending, Mr Porceddu and Ms Hamill, in their written submissions (dated 10 September 2024), referred to *The Queen v Kilic* (2016) 259 CLR 256 at 265–266[18] (*per* Bell, Gageler, Keane, Nettle and Gordon JJ). Mr Porceddu referred to *Kilic* in oral submissions too.

understood his submission, his references to the former category of case were directed at matters of principle rather than at current sentencing practices.<sup>41</sup>

172 Mr Dann argued that I should reject that submission, for at least two reasons. First, as he said, the submission appeared to be premised on acceptance of the view that Mr Lynn was to be sentenced on the basis of the motive asserted by the prosecution. In Mr Dann's submission, if I were to reject that premise, as I have, then the prosecution argument would lack the factual foundation said to support a life sentence. Second, and in any event, he submitted that, while the offence was admittedly serious, it was not so serious as to warrant or demand a life sentence.

173 As grave as the murder of Mrs Clay was, and as much as the offence was aggravated by Mr Lynn's post-offence conduct, this is not, in my judgment, a case calling for a life sentence. Neither the nature and gravity of this offence nor Mr Lynn's past history, whether considered alone or in combination, is sufficient to warrant a life sentence.

174 The cases to which Mr Porceddu referred – which included both life and fixed-term sentences – served only to confirm my view that it would be inconsistent with principle and current sentencing practices to impose a life sentence here. Indeed, the sentencing statistics for standard sentence offences of murder, and consideration of the individual cases in Mr Dann and Mr McGrath's table, suggest that it would be quite wrong to impose a life sentence in this case. Put simply, the relatively few

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<sup>41</sup> In their written submissions (dated 10 September 2024), as well as annexing their table of cases, Mr Porceddu and Ms Hamill specifically referred to *Shaptafaj v The King* [2023] VSCA 91 (per Priest, Kaye and Hargrave JJA), *R v Basham* [2023] VSC 79 (per Taylor JA), and *Phillips v The Queen* [2012] VSCA 140 at [67] (per Redlich JA and Curtain AJA). In oral submissions, Mr Porceddu referred to *R v Dupas* [2004] VSC 281 at [3] (per Kaye J) (on general principles of sentencing in murder); to *Hicks v The Queen* [2015] VSCA 14 (per Ashley, Whelan and Beach JJA) and *Hudson v The Queen* (2010) 30 VR 610 (per Ashley, Redlich and Harper JJA) as older cases involving life sentences; and to the five cases in their table of cases: *Shaptafaj v The King*; *R v Basham*; *Brown v The Queen* (2019) 59 VR 462 (per Maxwell P, Priest, Kaye, T Forrest and Emerton JJA); *R v Cameron* [2020] VSC 334 (per Tinney J); and *R v Kotiau* [2020] VSC 421 (per Coghlan JA) (the first two involved life sentences; the last three involved non-life sentences).

murders attracting life sentences,<sup>42</sup> for one reason or another, have been substantially more serious than this murder, and those attracting fixed-term sentences in the upper range, broadly speaking, have been of similar gravity to this offence.

175 For these reasons, I consider that this is instead a case calling for a fixed head sentence. That said, even when the mitigating factors are weighed in the balance, the gravity of this particular offence means that the sentence must be heavier than many other sentences imposed for murder under the standard sentence regime.

### Standard sentence

176 I have also had regard to the standard sentence for murder, which, as I noted earlier, is 25 years' imprisonment.

177 The period specified as the standard sentence is "the sentence for an offence that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness".<sup>43</sup> The objective factors affecting the relative seriousness of an offence are to be determined "without reference to matters personal to a particular offender or class of offenders" and "wholly by reference to the nature of the offending".<sup>44</sup> Thus, the mitigating factors urged in this matter are not included in that assessment of relative seriousness.

178 As will be seen, the head sentence I am about to impose is well in excess of the standard sentence for murder. As it happens, that outcome is consistent with my view that the murder of Mrs Clay is an offence well above the middle range of

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<sup>42</sup> See *DPP v Todd* [2019] VSC 585 (per Kaye JA) (rape and murder by accused with long-standing fantasy to rape and strangle female to death); *Shaptafaj v The King* [2023] VSCA 91 (per Priest, Kaye and Hargrave JJA) (double-murder of accused's daughter and son-in-law); *DPP v Thorn* [2023] VSC 702 (per Tinney J) (kidnap, false imprisonment and murder; group behaviour); *R v Basham* [2023] VSC 79 (per Taylor JA) (murder of estranged wife who was witness against accused on rape charges; staged suicide); *R v Elliot & Fares* [2022] VSC 554 (per Tinney J); *Fares v The Queen* [2024] VSCA 108 (per Orr, Kaye and T Forrest JJA) (double-murder, double-attempted murder, and intentionally cause serious injury).

<sup>43</sup> *Sentencing Act* 1991 (Vic), s 5A(1)(b).

<sup>44</sup> *Sentencing Act* 1991 (Vic), s 5A(3).

seriousness of murder taking into account only objective factors affecting relative seriousness.

**A non-parole period should be fixed**

179 Next, I should add that, even if this were a case demanding a life sentence, it would not be one calling for a determination that no non-parole period should be fixed. That said, while it was not entirely clear to me, I did not understand Mr Porceddu to make the submission that a life sentence should be imposed without a non-parole period.

180 In any event, the law is that, if a life sentence or a sentence of two or more years' imprisonment is imposed, a non-parole period must be fixed "unless [the Court] considers that the nature of the offence or the past history of the offender make the fixing of such a period inappropriate".<sup>45</sup> In this case, neither the nature of the offence nor Mr Lynn's past history make the fixing of a non-parole period inappropriate.

**Subject to interests of justice, non-parole period must be at least 70% of head sentence**

181 Given that I am about to impose a head term of imprisonment greater than 20 years in duration but less than life, s 11A(4)(b) of the *Sentencing Act* requires that, unless I consider it is in the interests of justice not to do so, I must fix a non-parole period of at least 70 percent of that head term.

182 Mr Lynn's lack of criminal convictions, his community contributions, his admissions about burning the bodies, his disclosure of the whereabouts of their remains, his age, and his prospects of rehabilitation, in combination, persuade me that there should be a reasonable gap between the head sentence and the non-parole period. However, I do not consider it to be in the interests of justice to fix a non-parole period of less than 70 percent of the head term.

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<sup>45</sup> As to which, see s 11(1) of the *Sentencing Act* 1991 (Vic).

183 As will be seen presently, and as it happens, the non-parole period I consider appropriate in this case – which is the minimum period of imprisonment that justice requires Mr Lynn to serve<sup>46</sup> – turns out to be 75 percent of the head sentence.

### Sentence

184 Finally, I turn now to impose sentence.

185 Mr Lynn, would you stand, please?

186 For the reasons I have given, and balancing all matters as best I can, for the murder of Carol Clay, Gregory Lynn is convicted and sentenced to 32 years' imprisonment with a non-parole period of 24 years.

187 Pursuant to s 18 of the *Sentencing Act*, I declare that, not including today, 1,061 days are reckoned as already served under this sentence.

188 Given Mr Lynn's age at the time of his arrest (which was 55), this sentence means that, making no allowance for any emergency management days that might be credited, he will be about 79 before becoming eligible to apply for parole, and he will be about 87 when his head sentence expires.

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<sup>46</sup> See, e.g., *Kumova v The Queen* (2012) 37 VR 538 at 545[27] (*per* Redlich and Osborn JJA).