

Cyberpredator

s 204B Criminal Code

From 1 January 2014

Transitional Sentencing Provisions: Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
PNG	plead not guilty
poss	possess
ct	count
CSI	conditional suspended imprisonment
TES	total effective sentence
elec comm	electronic communication
CEM	child exploitation material

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<p><i>Vucemillo v The State of Western Australia</i></p> <p>[2017] WASCA 37</p> <p>Delivered 01/03/2017</p>	<p>24 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Parents divorced; second eldest of six children; behavioural difficulties from aged 9 yrs.</p> <p>Physically and emotionally abused by his father.</p> <p>Bullied at school; educated to yr 12; enrolled university course; studies postponed.</p> <p>Left home aged 17 yrs.</p> <p>Medicated for depression.</p> <p>The Psychologist Report noted the appellant displayed features commonly associated with Asperger's Syndrome; including severe problems with social interaction, restricted and repetitive patterns of behaviour and interests and individuals with this disorder can have great difficulty reading non-verbal cues and in determining appropriate</p>	<p>Ct 1: Using elec comm to procure a child to engage in sexual activity or expose a child to indec matter. Ct 2: Poss CEM.</p> <p><u>Ct 1</u> Vucemillo placed an online advertisement on Craigslist looking for '... any young girls that want to have some fun... I have got some perverted fantasies'. A police officer posing as a 14 yr-old girl responded and there were regular communications between them of an explicit sexual nature. He offered to buy or give her a new phone to allow further communications. He was arrested when he arrived at a pre-arranged meeting point.</p> <p><u>Ct 2</u> Five images of CEM were found on a thumb drive from Vucemillo's house. Some images appeared to depict female children as young as 7 or 8. The images fell within category 1 of the CEM classification guidelines.</p>	<p>Ct 1: 2 yrs imp. Ct 2: 6 mths imp cum.</p> <p>TES 2 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the appellant believed the person he was communicating with was 14 yrs old. He found the appellant had encouraged and sought to persuade her to engage in sexual activity with him.</p> <p>The sentencing judge accepted the CEM was toward the lower end of the scale of seriousness and that he did not intend to disseminate the images. However the poss of CEM and his communications with a person he believed was 14 yrs demonstrated a sexual interest in underage girls.</p>	<p>Dismissed.</p> <p>Appeal concerned a miscarriage of justice due to subsequent diagnosis of autism spectrum disorder, and totality. Individual sentences were not challenged.</p> <p>At [42] ... the symptoms of autism spectrum disorder ... were in substance described in [the] psychological report, in which it was specifically noted that certain of the appellant's attributes were consistent with Asperger's Syndrome. It is evident ... the sentencing judge took those matters into account.</p> <p>At [44] ... There is nothing in this case to suggest that adequate provision could not or would not be made to prevent the exploitation of the appellant, or that... imprisonment would be much more burdensome on the appellant than it would be for an ordinarily prisoner.</p>

		interpersonal space.		No insight or remorse for his offending. Moderate to high risk of reoffending.	At [52] ... It may be accepted that the appellant's lack of insight and remorse may at least to some extent be attributable to the appellant's mental impairment and it may also be accepted that the appellant's mental impairment means that general deterrence is to be given less weight. ... it is evident that in the circumstances of this case the existence of that mental impairment increases the need for specific deterrence and the protection of the public.
3.	<i>Bechara v The State of Western Australia</i> [2016] WASCA 77 Delivered 12/05/2016	43 yrs at time offending. 49 years at time sentencing. Convicted early PG (20% discount). Prior criminal history of inciting a person U16 yrs to commit an act of indec. Born in Lebanon, immigrated to Australia in 1985. Divorced; single at time of offending. Previously employed by family, but full time career for his elderly mother for a number of years.	4 x Using elec comm to procure a child to engage in sexual activity or expose a child to indec matter. 2 x Procuring a child U13 yrs to do an indec act. The appellant lived in NSW and adopted false personas to contact children through an online chat programme. <u>Cts 1 and 2</u> Using the persona of a 14 yr-old boy the appellant communicated online with the victim, a 13 yr-old girl. The appellant repeatedly asked her to send naked images of herself or photographs of her breasts and vagina. She complied when the appellant told her he would never speak to her again if she did not. The appellant also sent two photographs of an erect penis to her. <u>Cts 3 - 6</u>	16 mths imp on each ct. TES 4 yrs imp. EFP. The sentencing judge acknowledged the appellant's cooperation; demonstrated remorse and responsibility for his offending and the hardship imp would create on the appellant and his mother.	Allowed. Appeal concerned length of sentence and totality principle. Re-sentenced to 12 mths imp each count. Cts 1, 3 and 5 cum and 2, 4 and 6 conc. TES 3 yrs imp. EFP. (3 yrs 6mths imp. When considered with NSW offence). At [55] The appellant offended against more than one victim; the offending involved 'real children' who, on occasions, exposed themselves to the

		<p>Poor health with coronary artery and heart related conditions. Insulin dependent diabetic.</p> <p>Psychological evaluation concluded a dependent personality disorder and major depressive disorder, plus a low level of understanding and comprehension of his offending or the consequences of his actions.</p> <p>The appellant was also convicted in NSW of producing, disseminating or poss. child pornography for material found on the same computer; sentenced to 6 mths 24 days imp.</p>	<p>Under the false persona of a 13 yr-old boy the appellant communicated online with the victims, two sisters, S aged 11 yrs and T.</p> <p>The appellant told S and T that he loved them and during their online chats asked them to wear miniskirts and remove their underwear whilst using webcam.</p> <p>The appellant also asked S to show her breasts and vagina over webcam and she did so on at least one occasion when the appellant told her he would never speak to her again. The appellant also attempted to send S a photograph of his penis. He sent to S, moving emoticon pictures showing a vagina being rubbed and a penis entering a vagina. During some chats with S the appellant told her he was masturbating.</p> <p>On at least ten occasions T complied with the appellant's requests to show him her breasts and vagina on webcam. The appellant recorded her actions and stored images of T's vagina and naked chest on his computer. He sent to T, moving emoticon pictures showing a vagina being rubbed and a figure performing oral sex.</p> <p>Police found on the appellant's computer a 21pg document containing a record of approx 200 girls who he had communicated with electronically.</p>		<p>appellant and the offending was persistent (and ... the relatively unfavourable psychological report).</p> <p>At [62] The TES ... when considered with the sentence for the NSW offence... represented the highest sentence imposed for this type of offending when compared with the sentences imposed in other cases.</p>
2.	<p><i>D'Rozario v The State of Western Australia</i></p> <p>[2015] WASCA</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal history, including</p>	<p><u>Indictment</u></p> <p>Ct 1: Use elec comm with intent to procure a person U16 yrs to engage in sexual activity.</p> <p>Ct 2: Sex pen of child 13-16 yrs.</p> <p>Ct 3: Sex pen of child 13-16 yrs.</p>	<p><u>Indictment</u></p> <p>Ct 1: 12 mths imp</p> <p>Ct 2: 3 yrs imp</p> <p>Ct 3: 3 yrs imp</p> <p>Ct 4: 3 yrs imp</p>	<p>Dismissed – on papers.</p> <p>At [14] The sentencing judge identified the agg factors of the indictable offences to include</p>

	<p>171</p> <p>Delivered 02/09/2015</p>	<p>convictions of use elec comm with intent to expose a person U16 yrs to indecent material, use elec comm with intent to procure a person U13 yrs to engage in sexual activity, poss child pornography and failing to comply with reporting obligations.</p> <p>Supportive family; supportive partner.</p> <p>Completed tertiary studies in business; obtained university degree in HR and employed as a senior accounts manager from 2009-2013.</p> <p>Attended 11 psychological counselling sessions by time sentencing.</p>	<p>Ct 4: Sex pen of child 13-16 yrs. Ct 5: Sex pen of child 13-16 yrs. Ct 6: Poss child exploitation material.</p> <p><u>Section 32 Notice</u> Fail to comply with obligations imposed by the <i>Community Protection (Offender Reporting) Act 2004</i> x 11.</p> <p><u>Ct 1</u> The appellant initiated contact with M, who was aged 15. The appellant and M regularly engaged in telephone and text sex. The appellant was aware of M's age.</p> <p><u>Cts 2-6</u> The appellant initiated contact with K who, to the appellant's knowledge, was aged 15. Cts 2-5 involved digital penetration and cunnilingus. The offences were representative. Ct 6 related to naked photographs of K.</p> <p><u>Section 32 Notice</u> The appellant failed to report his unsupervised contact, which was of a sexual nature, with B (aged 16), R (aged 14-16), N (aged 16), KC (aged 15-16), S (aged 15-16) and J (aged 16). Appellant also failed to report that he had reactivated or set up new internet and mobile telephone accounts.</p>	<p>Ct 5: 3 yrs imp Ct 6: 12 mths imp</p> <p><u>Section 32 Notice</u> 6 mths imp on each of the 11 breaches.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	<p>the appellant's conduct in contacting and grooming the victims; the age difference between the appellant and the victims; the appellant's prior criminal record; that the breach offences involved unreported contact with young girls which, whilst not amounting to criminal offence, was similar in nature and manner to his interactions with the victims of the indictable offences; and ct 1 was committed when the appellant was on parole.</p> <p>At [15] Mitigating factors include an early PG, for which the trial judge gave 25% discount, his qualified cooperation with police at the time of his arrest and his remorse. The sentencing judge also accepted that as a result of his upbringing he was socially isolated and lacked confidence. Further, the appellant had not undertaken the sex offenders treatment programme while in custody for his prior offending or any equivalent programme when on parole.</p>
<p>1.</p>	<p><i>HMN v The State of Western Australia</i></p>	<p>20-21 yrs at time offending. Convicted after PG.</p>	<p><u>Indictment BUN 50/2014</u> Use elec comm with intent to expose a person U16 yrs to indecent material x 2.</p>	<p><u>BUN 50/2014</u> and <u>BUN 154/2014</u> 7.5 mths imp (conc)</p>	<p>Allowed. Resentenced to:</p>

<p>[2015] WASCA 128</p> <p>Delivered 23/06/2015</p>	<p>Criminal history.</p> <p>Has an intellectual disability.</p> <p>Parents have an intellectual disability; grandmother looked after appellant from age three to 16; participated in special education classes in school.</p> <p>At time offending for BUN 50/2014, appellant was serving an 18 mth ISO for four cts of use elec comm with intent to procure a child U13 yrs to engage in sexual activity (BUN 67/2012).</p> <p>Received counselling after ISO; supports were no longer available to appellant at time offending.</p>	<p>Use elec comm with intent to procure a person U16 yrs to engage in sexual activity x 1.</p> <p><u>Indictment BUN 154/2014</u> Use elec comm with intent to procure a person U16 yrs to engage in sexual activity x 3. Use elec comm with intent to expose a person U16 yrs to indecent matter x 1.</p> <p><u>Indictment BUN 50/2014</u> The victim was 13 yrs old. The appellant sent numerous sexualised messages on Facebook and by SMS to the victim. The appellant also sent the victim a photograph of his genitals and repeatedly requested she do the same, which she did.</p> <p><u>Indictment BUN 154/2014</u> These offences involve three victims.</p> <p>The appellant engaged in conversations on Facebook with a girl who he believed to be 13 yrs old. It was in fact a police officer posing as a child. The appellant repeatedly requested that she take naked photographs of herself to send to him.</p> <p>The appellant conversed on Facebook and another social media programme with a girl believed to be 15 yrs old. The appellant requested that the victim take a naked photograph of herself and send it to him.</p> <p>The appellant engaged in highly sexualised conversations on Facebook and other social media</p>	<p>for each offence.</p> <p><u>BUN 67/2012</u> Appellant resentenced to 7.5 mths imp (conc) for each offence. TES 7.5 mths imp.</p>	<p>12 mth ISO with programme and supervision requirements.</p> <p>At [15] Three psychological reports... refer to the appellant's intellectual disability, his short-term memory difficulties and his lack of true understanding and comprehension of the wrongfulness of his conduct...</p> <p>At [22] ... the appellant's disability significantly increases his vulnerability to potential exploitation and assault in a custodial setting. That may cause the appellant to present as a greater risk to the community on his release.</p> <p>At [28] ... the appellant is an adult only in chronological age. His delayed psychological development and maturity, attributable to his intellectual impairment, is more commensurate with that of the complainants (other than the police officer posing as a child). That reduces the appellant's moral culpability for the offending.</p> <p>At [29] ... having regard to all</p>
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		<p>programmes with a 13 yr old girl who had a severe learning disability. The appellant repeatedly requested that she take naked photographs of herself and send them to him, which she did.</p> <p><u>Indictment BUN 67/2012 (offences subject of ISO)</u></p> <p>The appellant was 19 yrs old and the victim was 12 yrs old. The appellant requested that she participate in sexual activity and they exchanged highly sexualised messages. The appellant also unsuccessfully attempted to make arrangements to meet the victim.</p>		<p>sentencing considerations, retribution and punishment should also be given very little weight in the sentencing of the appellant. The most significant sentencing objective is the protection of the public, in particular children. The appellant's risk of reoffending, which is high, is best managed with intensive counselling, support and supervision...</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>				
<i>Transitional Provisions Enacted (31/08/2003)</i>				