

Grievous Bodily Harm

s 297 Criminal Code.

From 1 January 2014

Transitional Sentencing Provisions: This table 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
CBO	community based order
TES	total effective sentence
Sex pen	sexual penetration
VRO	violence restraining order

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<p><i>Kere Kere v The State of Western Australia</i></p> <p>[2016] WASCA 189</p> <p>Delivered 02/11/2016</p>	<p>35 yrs at time offending.</p> <p>Convicted after late PG (5% discount).</p> <p>Prior WA and QLD criminal history, including convictions of common assault; AOBH; assaulting a public officer; and obstructing public officers. No prior sentences of imprisonment.</p> <p>Satisfactory childhood.</p> <p>Completed school and holds a university degree.</p> <p>Good work history.</p>	<p>1 x GBH.</p> <p>The victim, aged 31 yrs, was socializing with a friend at a club. As they left the venue the appellant approached the victim's friend and punched him in the face.</p> <p>In an attempt to defuse the situation the victim spoke to the appellant. Without warning he threw a flurry of punches, striking the victim six times in the face and head, knocking him to the ground.</p> <p>The victim's eye socket was badly fractured and required corrective surgery.</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted his offending behaviour was worsening and that the appellant was very aggressive towards the victim and his friend.</p> <p>The sentencing judge found the victim 'considerably smaller' than the appellant and that he seriously injured the victim 'for no reason at all' and that the victim was 'backing up with his hands up' and the appellant 'kept after him until [he] hit him to the ground'. The victim's injuries could not be described as 'trivial'.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence.</p> <p>At [35]-[36] Discussion of comparative cases.</p> <p>At [40] In the present case, the appellant's offending was serious. He inflicted numerous forceful blows to the victim's face and head. The violence was gratuitous and senseless. The victim did not, in any sense, provoke the attack. Indeed, he was retreating. ... He appears to have made a full recovery, but the appellant's behaviour had the potential to result in a more serious injury than was in fact suffered.</p>
13.	<p><i>Yaqubi v The State of Western Australia [No 2]</i></p>	<p>18 yrs at time offending. 20 yrs at time sentencing.</p> <p>Early PG (25% discount).</p>	<p>1 x GBH.</p> <p>The victim, aged 17 yrs, was out with friends at the same venue as Yaqubi and his friends.</p>	<p>16 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Yaqubi challenged length and type of sentence.</p>

	<p>[2016] WASCA 187</p> <p>Delivered 31/10/2016</p>	<p>Prior criminal history, including a common assault committed 6 weeks after offence subject of this appeal.</p> <p>Uneventful childhood.</p> <p>Supportive family and in a committed relationship.</p> <p>Steady employment and studying for a degree.</p> <p>In good health; does not drink alcohol or use illicit drugs.</p>	<p>There had been previous tension between members of the two groups.</p> <p>As the victim and his friends were leaving Yaqubi made an insulting comment about the victim's mother. In a demanding and aggressive tone the victim questioned Yaqubi about what he said.</p> <p>Yaqubi punched the victim forcefully to the left side of the face and then kicked the victim in his lower back as he and the victim were being separated.</p> <p>The victim's jaw was fractured in two places and required surgery.</p>	<p>Later offence of common assault indicated violence was not wholly out of character for Yaqubi and that he had initiated the incident and was the physical aggressor.</p> <p>No genuine remorse, despite Yaqubi eventually writing a letter of apology to the victim.</p> <p>The seriousness of the offending and the importance of personal and general deterrence made it inappropriate to susp the term of imp.</p>	<p>At [49] ... the offending was serious. The victim suffered a significant injury as a result of the appellant's gratuitous violence. ... The victim has apparently made a full recovery, but the appellant's conduct had the potential to result in a more serious injury than was in fact suffered. The victim did not provoke the attack. The sentencing judge was rightly sceptical about the degree to which the appellant was genuinely remorseful.</p> <p>At [53] ... despite the appellant's youth and prior good character and the other mitigating factors, the seriousness of the offending, the need for personal and general deterrence and the lack of genuine remorse made a sentence of immediate imprisonment the only appropriate sentencing option.</p>
12.	<p><i>The State of Western Australia v WTG</i></p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>1 x Agg AOBH.</p> <p>1 x Threat to harm.</p> <p>1 x Agg GBH.</p>	<p>Agg AOBH: 12 mths imp (cum).</p> <p>Threat to harm: 10 mths imp (conc).</p>	<p>Allowed.</p> <p>Appellant challenged length of sentence and totality.</p>

<p>[2016] WASCA 175</p> <p>Delivered 12/10/2016</p>	<p>At time offending, WTG was subject to an SIO for convictions of 3 x breach VRO protecting the victim.</p> <p>Significant prior criminal history, including AOBH, agg assault, breaches of protective bail, carrying a weapon with intent to cause fear, agg burg, breaches of VRO and agg AOBH. A number of convictions of agg assault, agg AOBH and breach VRO against this victim.</p> <p>Difficult childhood, without positive parental guidance.</p> <p>No significant employment history.</p> <p>Three children with the victim.</p> <p>Long history of illicit substance abuse.</p> <p>Prior to offences and whilst on remand in custody attempts made to rehabilitate himself, through religion, rehabilitation and training programmes.</p>	<p>WTG and the victim had been in a relationship, marred by domestic violence, for approx. 15 yrs. They had been separated approx. 2 yrs and, despite a VRO, the victim had contact with WTG.</p> <p>WTG stayed a weekend at the victim's home with their children. They both took drugs and had sexual relations.</p> <p>On the Sunday afternoon, having made arrangements for the children to be looked after by a friend, WTG became aggravated with the victim over her declining to have sex with him and her prior relationship with another man. WTG became increasingly aggravated by the victim's refusal to discuss the prior relationship. Over the course of the Sunday evening and into the early hours of Monday morning, WTG assaulted the victim a number of times. He struck the top of the victim's head with a knife, cutting her near her left temple (Agg AOBH).</p> <p>Later, the victim locked herself in a bedroom. WTG kicked open the door and punched her hard to the face once or twice with a clenched fist, knocking her to the ground unconscious. WTG then drove the victim around, and punched her in the face again. Later, when the car was parked, WTG asked the victim about the prior relationship and</p>	<p>Agg GBH: 2 yrs 10 mths imp (head sentence)</p> <p>Breach of SIO: 6 mths imp (conc).</p> <p>TES 3 yrs 10 mths imp.</p> <p>The sentencing judge found that the offences caused the victim to suffer significant adverse consequence, physically and emotionally.</p> <p>No genuine remorse.</p> <p>The offences were committed against a slightly built, defenceless and vulnerable former partner who had placed a degree of faith and trust in WTG by recommencing contact.</p> <p>The GBH took place over a sustained period.</p>	<p>Sentence set aside. WTG re-sentenced to:</p> <p>Agg AOBH: 6 mths imp (cum with head sentence). Threat to harm: 9 mths imp (conc). Agg GBH: 4 yrs 6 mths imp.</p> <p>Breach: 6 mths imp (cum).</p> <p>TES 5 yrs 6 months imp.</p> <p>EFP.</p> <p>At [44]-[51] Discussion of comparative cases.</p> <p>At [52]... the sentence imposed in this case for the offence of agg GBH is so far outside the range of sentences open to the sentencing judge in the sound exercise of his discretion as to manifest implied error.</p> <p>At [54] As I have concluded that the head sentence was manifestly inadequate, it follows that the TES was also manifestly inadequate...</p>
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			<p>when she refused to answer he punched her in the left side of the face. This occurred at least four or five times. One blow caused her head to hit the car window. During this incident WTG said he would kill the victim (threat to harm).</p> <p>The victim suffered bruising and swelling to the eye, a split lip and a fractured jaw (Agg GBH).</p>		
11.	<p><i>The State of Western Australia v Smith</i></p> <p>[2016] WASCA 153</p> <p>Delivered 31/08/2016</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and lengthy prior criminal history, including convictions for breaching VRO, agg common assault and being armed in public in a way that may cause fear.</p> <p>History of domestic violence towards his partners.</p> <p>Emotional trauma associated with the death of his father.</p> <p>History of methyl use; affected by drugs at time offending.</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg unlawful wounding. Ct 2: Agg GBH. Ct 3: Att steal motor vehicle. Ct 4: Assault public officer. Ct 5: Obstructing public officer.</p> <p><u>s.32 notice</u></p> <p>Ch 1: Trespass. Ch 2: Steal motor vehicle. Ch 3: Cruelty to an animal.</p> <p><u>Ct 1</u></p> <p>Smith and the victim were in a domestic relationship. They were at home using drugs and Smith left the house armed with a hammer and in an agitated state. He returned with the hammer and argued with the victim. He threatened to hit her with the hammer. The victim turned her back to Smith and he violently hit her head with the hammer,</p>	<p><u>Indictment</u></p> <p>Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 3 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 3 mths imp (conc).</p> <p><u>s.32 notice</u></p> <p>Ch 1: \$500 fine. Ch 2: 3 mths imp (conc). Ch 3: 2 mths imp (cum).</p> <p><u>SIO</u></p> <p>Ordered to serve 6 mths of 10 mths SIO (conc).</p> <p>TES 2 yrs 2 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence for cts 1 and 2 and totality.</p> <p>Re-sentenced to:</p> <p>Ct 1 (ind): 2 yrs imp (conc). Ct 2 (ind): 3 yrs 6 mths imp.</p> <p>Sentences for ct 4 (ind) and ch 3 (s32 notice) and 6 mths imp for SIO cum upon each other and cum upon new sentence for ct 2 (ind). All other sentences conc.</p> <p>TES 4 yrs 8 mths imp. EFP.</p> <p>At [30] The respondent had a history of domestic violence</p>

		<p>Offending occurred while appellant was subject to an SIO of 10 months imp, susp 12 mths.</p>	<p>exposing her skull.</p> <p><u>Ct 2</u> Smith struck the victim again as she tried to flee, hitting and fracturing her hand.</p> <p><u>Ct 3</u> Police found Smith walking down the street. As the officer got out of his patrol car and approached Smith, Smith ran to the other side of the car, got into the driver's seat and attempted to drive away.</p> <p><u>Cts 4-5 and ch3</u> The officer tried to stop Smith and was struck on the arm by the car's door. They wrestled for control of the car. Smith pulled out a knife and the officer attempted to knock it from his hand. The officer then attempted to taser Smith.</p> <p>A police dog grabbed Smith by his leg and pulled him from the car. Smith struck the dog on the head with the hammer and hit the officer's arm with the hammer. He attempted to hit the dog again, but the officer tasered him and he fell to the ground. Continuing to fight the officer, still armed with the hammer, he was tasered a third time. The officer kicked the hammer from Smith's hand and restrained him until assistance arrived.</p>	<p>The sentencing judge noted the offences reflected an escalation in his offending behaviour, but that Smith had not been before the courts from 2005-2010.</p> <p>Remorseful; claimed no recollection of actions due to drug intoxication.</p> <p>Psychological report indicated developing insight into his behaviour and reasons for it.</p> <p>High risk of re-offending if illicit drug use continues.</p>	<p>towards his partners, and this underscored the importance of personal deterrence as a sentencing factor.</p> <p>At [39] ... the respondent's offending was serious... The respondent armed himself with a ... weapon capable of inflicting serious harm, and his attacked upon the victim was unprovoked... The respondent's conduct in striking the victim ... had the potential to cause her extremely serious injury. He was physically stronger and more powerful than her.</p> <p>At [95] ... it was significant that the injury in fact sustained [for ct 2] was a defensive wound caused by an attempt to strike the victim with a hammer, in circumstances where the respondent had just struck her with the hammer to the back of her head. The use of the hammer in that manner was likely to permanently injure or even kill the victim. The level of violence employed against the victim was high. The infliction of the injury</p>
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					<p>formed part of a sustained attack against the victim which ceased only after she was able to take refuge at the neighbour's premises. The victim had not provoked the attack, and posed no threat to the respondent.</p> <p>At [100] The respondent acknowledged that he had perpetrated domestic violence on a regular basis.</p> <p>At [104] Any AOBH to a police officer performing his or her important community function is a serious matter. That is particularly so where weapons are involved. The respondent produced a knife, which he did not have the opportunity of using, and employed a claw hammer to inflict bodily injury...</p>
10.	<p><i>Gowan v The State of Western Australia</i></p> <p>[2016] WASCA 98</p> <p>Delivered</p>	<p><u>Gowan</u> 33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Good employment record.</p>	<p>Ct 1: Agg burg. Ct 2: GBH. Ct 3: Criminal damage. Ct 4: Agg burg. Ct 5: GBH.</p> <p><u>Cts 1-3</u> The victim owed Gowan money for drugs.</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 4 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p>	<p>Dismissed.</p> <p>Appeals concerned totality.</p> <p>At [52] ... the TES imposed by the sentencing judge were high... the appellants' personal circumstances were unusually</p>

	<p>15/06/2016</p>	<p>History of drug use.</p> <p><u>Burnside</u> 30 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Father of twin daughters and two step-children from a long standing relationship.</p> <p>Good employment record.</p>	<p>The appellants forcibly entered the victim's home. Gowan was armed with an axe handle and Burnside with a wheelbarrow handle. They repeatedly struck the victim about the head, face, upper arms and legs. Burnside fractured the victim's leg and damaged some of his property.</p> <p><u>Cts 4-5</u> The appellants then went to an address in search of a person whom they did not know, and who they believed was associated with the first victim.</p> <p>Despite being told by the second victim that they had the wrong house, the appellants forced their way in. They assaulted the second victim by repeatedly punching him and striking him with wooden implements. The victim suffered an injury to the left eye that required surgery.</p>	<p>TES 9 yrs imp each.</p> <p>The sentencing judge characterised the offences as 'most serious', noting that they were planned and involved persistent assaults upon the victims and the use of weapons.</p> <p>The sentencing judge characterised the injuries as 'not as serious as frequently encountered' for GBH.</p> <p>The sentencing judge found the injuries to be inflicted by 'deliberate repeated violence with use of weapons in sustained violent attacks upon the victims'. The attacks being out of revenge and a demand for money.</p>	<p>favourable for this type of offending. However, I do not consider that the sentences were unreasonable or plainly unjust.</p> <p>At [53] ... the appellants' offending was very serious. It involved two home invasions in company that were planned, undertaken at night and were for the purpose of enforcing a debt. The appellants were armed with weapons. They repeatedly assaulted their victims and the violence involved was significant and gratuitous. They persisted in attacking the victim of cts 4 and 5 even after they must have realised he was not the person that they had been seeking.</p> <p>At [54] The offences that constituted cts 1-3 occurred at a different time and place to the offences alleged by cts 4 and 5. Although the home invasions occurred on the same night, they did not form part of a single criminal episode... it was appropriate to accumulate the sentences for each home</p>
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					invasion and for the criminal damage offence. The home invasion offences were separate offences and the criminal damage offence involved separate acts and damage of a different kind to the assaults that occurred during the first home invasion.
9.	<p><i>Winmar v The State of Western Australia</i></p> <p>[2016] WASCA 62</p> <p>Delivered 15/04/2016</p>	<p><u>Winmar</u> 31 yrs at time offending; 33 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including violent offences.</p> <p>As a teenager, witnessed domestic violence and alcohol abuse in extended family.</p> <p>Left school in yr 10; occupied with studies, training and employment.</p> <p>Close relationship with family.</p> <p>Two-yr-old daughter from previous relationship.</p> <p>History of alcohol abuse; hardly</p>	<p>Ct 1: Criminal damage. Ct 2: GBH. Ct 3: GBH.</p> <p>There was long-standing animosity between the appellants and the victim and his cousin.</p> <p>The victim and his cousin were significantly under the influence of alcohol. To antagonise the appellants' family, they did a burnout in front of their home.</p> <p>The appellants and two males armed themselves and ran towards the victim and his cousin. They struck the victim's vehicle, causing extensive damage to the exterior panels, the lights and windscreen (ct 1).</p> <p>The victim's cousin escaped. The appellants and two males pursued the victim with an intention of inflicting physical harm on him. Winmar threw an iron bar at him, which struck his leg causing a significant open</p>	<p><u>Winmar</u> Ct 1: \$1000 fine. Ct 2: 1 yr 3 mths imp (cum). Ct 3: 3 yrs 3 mths imp (cum).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p><u>Lawrence</u> Ct 1: \$1000 fine. Ct 2: 9 mths imp (cum). Ct 3: 3 yrs 3 mths imp (cum).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Trial judge assessed Winmar's offending for</p>	<p>Dismissed – on papers.</p> <p>Appeals concerned the length of sentence for ct 3 and totality principle.</p> <p>At [75] The fear engendered by the appellants was sufficiently powerful to cause Mr Corbett to flee despite the injury to his leg. The trial judge found that when Mr Corbett made the emergency 000 telephone call he was genuinely terrified... His Honour was satisfied beyond reasonable doubt that each of the appellants, in striking Mr Corbett, intended to cause him significant physical harm.</p> <p>At [76] The injury to Mr Corbett's finger was materially less serious than the injuries</p>

		<p>consumed prior to offending.</p> <p><u>Lawrence</u> 23 yrs at time offending; 25 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including robbery.</p> <p>Positive upbringing.</p> <p>De facto relationship; three yr old child.</p> <p>Employed as factory hand.</p> <p>History of alcohol and illicit drug use; ceased using when child was born.</p>	<p>wound and fracture (ct 2).</p> <p>The victim ran away with significant pain and difficulty, and rang 000. The appellants and two males chased him again in their vehicle and clipped him while he was trying to escape. While he was lying in a defenceless position, the appellants and two males struck him a number of times with their weapons. Lawrence inflicted a blow which struck the victim on the head, causing a laceration to his scalp. He was rendered unconscious for a short period of time. The combined assault caused an injury, including a laceration, to the extensor tendon of the victim's middle finger (ct 3).</p> <p>The victim also suffered a small stab wound and some small lacerations.</p> <p>The victim underwent surgery for his leg and finger. Without the surgery, it was probable that the victim's leg would have become infected and may have needed amputation. If the finger injury had not been repaired, the likely outcome would have been a high rate of infection and flexion deformity.</p>	<p>ct 2 as "falling somewhere between the lower and the middle of the range of seriousness of its type" and for ct 3 as "falling towards the middle of the range of seriousness of offences of its type". Trial judge made the same assessment for Lawrence, but in relation to ct 2, Lawrence was "marginally less culpable" than Winmar.</p> <p>Winmar and Lawrence at some risk of reoffending.</p> <p>Trial judge imposed a more lenient sentence on Lawrence than Winmar to reflect Lawrence's culpability for ct 2, his age and his less extensive prior criminal history than that of Winmar.</p>	<p>suffered by victims in numerous prior cases of unlawfully doing GBH. However, that fact was decisively outweighed by the serious features of the offending in relation to ct 3.</p> <p>At [77] Mr Winmar's prior criminal record was materially worse than Mr Lawrence's. Nothing in the circumstances leading up to the offending reduced Mr Winmar's or Mr Lawrence's culpability or moral blameworthiness. Both of the appellants failed to accept responsibility for the offending. They were at 'some risk' of reoffending.</p> <p>At [78] Personal deterrence, general deterrence and the protection of the public were sentencing factors of importance.</p> <p>At [86] Cts 2 and 3 were separate and distinct offences and there was a material interval between their commission... the trial judge reduced, in the application of the totality</p>
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					principle, the individual sentences he would otherwise have imposed for ct 2.
8.	<p><i>Gurgone v The State of Western Australia</i></p> <p>[2016] WASCA 9</p> <p>Delivered 13/01/2016</p>	<p>48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Positive employment record.</p> <p>No significant mental health issues.</p> <p>Acted as a good Samaritan in relation to the victim.</p>	<p>1 x GBH.</p> <p>The appellant lived with the victim. The victim was the appellant's step brother. Their relationship was strained at the time of offending.</p> <p>The appellant and victim were intoxicated. After a heated argument, the appellant lost his temper and punched the victim twice. They struggled and the victim bit the appellant. To terrorise the victim, the appellant pointed a rifle at him. The appellant walked away with the rifle.</p> <p>The appellant came back in an angry state armed with a large hunting knife and a machete. The victim raised his hands to defend himself. The appellant struck the victim with both weapons a number of times to his hands and head. As the victim scrambled for the gate, the appellant struck the victim with the knife and machete. One connected with the victims back and penetrated through his chest cavity.</p> <p>When police arrived the appellant responded abusively.</p>	<p>4 yrs 3 mths imp.</p> <p>EFP.</p> <p>VRO and order for forfeiture of weapons.</p> <p>No remorse; low risk of reoffending.</p> <p>Sentencing judge categorised victim's injuries as "falling in the middle of the range of seriousness for injuries amounting to GBH" and the appellant's actions as falling "towards the higher end of the range of seriousness of acts causing GBH".</p> <p>The seriousness of the appellant's conduct was aggravated by the fact that the most serious injuries were inflicted when the victim was trying to escape; the</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged the length of sentence.</p> <p>At [40] The appellant inflicted life-threatening injuries upon the victim.</p> <p>At [41] The act which caused the injury was a persistent and relentless attack by the appellant with two potentially lethal weapons. His Honour was right in characterising the appellant's actions as falling towards the high end of the range of seriousness of acts causing GBH.</p> <p>At [42] ... there was no reasonable justification or explanation for the violence perpetrated upon the victim.</p> <p>At [43] The overall circumstances of the offence fell very much between the middle and higher range of seriousness</p>

			<p>The victim's injuries were serious; he had a number of wounds and a 12cm long laceration to left side of his back. The victim's left lung was punctured and collapsed. He was struggling to breathe.</p> <p>The victim underwent surgery. He would have died without that surgery.</p>	<p>victim was at that point, "completely and utterly vulnerable and unable to offer any form of defence".</p> <p>Sentencing judge assessed the offence "as being between the middle and the higher range of seriousness of offences of this type".</p>	<p>of offences of this type.</p>
7.	<p><i>The State of Western Australia v Ellement</i></p> <p>[2016] WASCA 1</p> <p>Delivered 06/01/2016</p>	<p>25 yrs at time offending; 27 yrs at time sentencing.</p> <p>Convicted after PG (10% discount).</p> <p>Minor prior criminal history.</p> <p>Left school in yr 10; steady employment history.</p> <p>Long history of alcohol and illicit drug abuse; used cannabis regularly at time offending.</p> <p>At time offending, in a dysfunctional relationship with Ms Doonan; relationship ceased after the offence.</p>	<p>1 x Agg GBH.</p> <p>The victim was 62 yrs old. The respondent was in a relationship with the victim's daughter Ms Doonan. Ms Doonan had a drug problem and was unable to care for her son, A, on a full-time bases. With Ms Doonan's consent, A was in the unofficial custody of the victim.</p> <p>On the afternoon of the offence, against the victim's wishes, Ms Doonan and the respondent drove to the victim's home to collect A from her. The respondent entered in an angry and a hostile mood. He swore at the victim and rushed towards her. The victim gestured to the respondent to stop coming towards her.</p> <p>The respondent forcefully grabbed each of</p>	<p>18 mths imp, susp on conditions 18 mths.</p> <p>Permanent VRO.</p> <p>Remorse; positive steps towards rehabilitation; some allowance for youth.</p> <p>Sentencing judge said the decision to suspend was made "by the narrowest of a hair's margin".</p>	<p>Allowed.</p> <p>Appeal only challenged suspension, not the leniency of the length of the term.</p> <p>Re-sentenced to 18 mths immediate imp. EFP.</p> <p>At [1] It is not uncommon for grandparents to step in and take physical custody and care of grandchildren at risk. The carers need to be protected from aggression directed at them in connection with the performance of their care function. The physical violence inflicted by the appellant on the victim occurred in this context. The</p>

		<p>Supportive parents.</p> <p>Lifestyle changed since offence; has a young baby with new partner; ceased using illicit drugs.</p> <p>Sent letter of apology to victim.</p>	<p>the victim's upper arms and propelled her backwards with sufficient force that her feet left the floor. She fell to the floor, landing on her backside and right elbow. The impact caused a fracture of the femur. The following day, the victim underwent a total hip replacement.</p>	<p>consequences for the victim have been life-changing. Deterrence is the weightiest sentencing consideration.</p> <p>At [44] This case involved an entirely unprovoked attack upon a vulnerable victim in her own home. The respondent went there in an angry and aggressive mood. He was much younger and stronger than the victim. He swore at her, plainly to intimidate her. The victim then gestured to the respondent to stop coming towards her. Not only did he ignore her, he grabbed the victim firmly by the upper arms and forcefully propelled her backwards so that her feet left the ground. The backwards motion was more than a mere shove or a push. It was, in effect, a throw. Unsurprisingly, the victim fell heavily to the floor. While the respondent did not intend to cause GBH to the victim, throwing a 62-year-old person heavily to the floor runs the obvious risk of serious physical injury. That risk eventuated</p>
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					<p>here.</p> <p>At [45] The injury the victim suffered was severe by any measure. The effects have had a pervasive and negative impact upon her life and will continue to do so in the future.</p> <p>At [46] A seriously aggravating aspect of the respondent's offending is that he violently assaulted the victim at the time she was, in effect, discharging parental responsibilities towards A and acting to prevent him from being taken away by persons who were unable to properly care for him. The use of violence with the aim of removing a child in such circumstances evinces serious criminality.</p> <p>At [51] ...a sentence of 18mths imp could be said to be lenient.</p>
6.	<p><i>Peake v The State of Western Australia</i></p> <p>[2015] WASCA 239</p>	<p>21 yrs at time offending; 22 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history,</p>	<p>1 x GBH.</p> <p>There was a negative exchange between the victim's group and the appellant's group. The victim was not involved in the conversation and was standing nearby.</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that the appellant</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned backdating and length of sentence.</p> <p>At [63] He attacked, without</p>

	<p>Delivered 27/11/2015</p>	<p>including AOBH.</p> <p>Supportive parents.</p> <p>Left school at age 14; overweight and bullied; talented golfer until shoulder injury.</p> <p>While on bail for this offence, appellant was charged with another offence allegedly committed while he was on bail.</p>	<p>The appellant, without warning and without provocation, forcefully struck the victim to the head with a clenched fist. The victim fell, unprotected, into a metal meter box. The victim suffered a significant scalp laceration and substantial bleeding.</p> <p>The appellant left the crime scene immediately and did not inquire about the victim's welfare or endeavour to obtain assistance for him.</p>	<p>showed no remorse or concern for victim on the night of offending.</p> <p>Sentencing judge found that the appellant eventually understood the substantial effect his criminal conduct has had upon the victim; some credit given in the sentencing process for remorse, but pointed out that his late remorse stemmed, at least in part, from a realisation of the consequences that his actions would have for him.</p> <p>Sentencing judge found the offending to be "at the mid-range of seriousness of offences of this kind".</p>	<p>warning, a man who was significantly shorter and smaller in stature. The blow was very forceful. The victim suffered an injury which required his admission to hospital, surgery and other medical treatment. His injuries were of such a nature as to endanger or be likely to endanger life. Although, fortunately, the victim does not have any permanent physical disability, he does have a significant permanent scar on his head. Also, he has suffered ongoing psychological trauma.</p>
5.	<p><i>Hunter-Aragu v The State of Western Australia</i></p> <p>[2015] WASCA 80</p>	<p>20 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Irrelevant prior criminal history.</p> <p>Supportive family.</p>	<p>Ct 1: Criminal damage. Ct 2: Unlawful wounding. Ct 3: Agg robbery. Ct 4: GBH.</p> <p>The appellant behaved aggressively outside of a nightclub. He demanded money and</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 6 mths imp. Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 4 yrs 3 mths imp (cum).</p>	<p>Dismissed.</p> <p>At [55] ...the offence of unlawfully doing GBH against Mr Gabriel was extremely serious...the offence of robbery against Mr Gabriel was</p>

	Delivered 29/04/2015		<p>mobile phones from other people.</p> <p>He became involved in a physical altercation with Lyle. Lyle went to a taxi and sat in the front passenger seat. The appellant threw a rock at the taxi, smashing the window (ct 1) and causing a wound to Lyle's left arm (ct 2).</p> <p>The appellant then sought to confront Gabriel. Gabriel raised his hands, to indicate that he did not want a confrontation, and backed away. The appellant pursued him. Gabriel fell to the ground and the appellant kicked him in the chest. The appellant stomped on Gabriel's head rendering Gabriel unconscious and causing a serious brain injury. The appellant dragged Gabriel about 15 metres, robbed him of his mobile phone and \$100 cash and abandoned him. Gabriel was found a few hours later, still unconscious.</p> <p>Offending caused devastating adverse consequences for Gabriel, including problems walking, talking and poor vision and balance.</p>	<p>TES 7 yrs 3 mths imp.</p> <p>EFP.</p> <p>It was an extremely serious example of gratuitous violence.</p> <p>Serious permanent consequences for Gabriel; impacted seriously on Gabriel's partner.</p> <p>Remorse; motivated to rehabilitate.</p>	<p>serious... the individual sentence for robbery was high but nevertheless within the appropriate sentencing range.</p>
4.	<i>The State of Western Australia v Ghilardi</i> [2015] WASCA	<p>23 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history including disorderly conduct, AOBH,</p>	<p>1 x GBH.</p> <p>The victim was at a BP service station with his two daughters waiting for a taxi. He had consumed a reasonable amount of alcohol.</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Mitigation afforded by provocation was limited.</p>	<p>Allowed.</p> <p>Re-sentenced to 4 yrs 3 mths imp.</p> <p>EFP.</p>

<p>61</p> <p>Delivered 23/03/2015</p>	<p>stealing, agg burg, burg, being armed or pretending to be armed and making threats to destroy property.</p> <p>Unstable childhood; left school in year 9; constant employment.</p> <p>Young daughter in the care of former partner.</p> <p>Majority of offending behaviour alcohol related.</p>	<p>The respondent arrived at BP in a car with two friends. He was affected by alcohol to some extent. He spent a short period of time sitting in the car eyeing off the victim's daughters and talking about them.</p> <p>As the respondent's friend started to drive the car out of BP, one of the three occupants yelled a derogatory remark to the victim's daughters. The victim heard the remark and yelled angrily towards the car something like 'Don't speak to his daughters like that'. The driver stopped the car and the respondent got out to teach the victim a lesson.</p> <p>The victim and respondent shouted abuse at each other and adopted fighting stances. The respondent threw the first punch. During the altercation the victim threw one or two punches at the respondent; they did no harm or damage. During the altercation the respondent delivered a full-blooded punch to the front of the victim's head causing a significant fracture in the victim's skull. The victim became immediately unconscious. He fell backwards and the back of his head hit the road with considerable force.</p> <p>The victim did not pose any real threat to the respondent before or during the altercation.</p> <p>The victim suffered immediate life-</p>	<p>May not have committed offence without the influence of alcohol; genuinely sorry for injuries; did not fully accept responsibility for conduct; risk of reoffending no more than moderate.</p>	<p>At [17] His Honour assessed the offence 'as being around the middle of the range of seriousness of offences of its type'.</p> <p>At [45] It was, on any view, an extremely violent act and, although the respondent did not use a weapon, in a very real sense he used his fist with the same effect.</p> <p>At [49] ...there is no tariff for GBH.</p> <p>At [55] ...the offence involved a high level of criminality.</p>
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			threatening brain injuries, long term and possibly permanent physical, cognitive and emotional difficulties which impact on his everyday life and the life of his close family members.		
3.	<p><i>Hansen v The State of Western Australia</i></p> <p>[2014] WASCA 229</p> <p>Delivered 11/12/2014</p>	<p>54 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long criminal history including minor, mostly traffic offences; agg AOBH and common assault.</p> <p>Good upbringing; completed year 10; Regular employment.</p> <p>Indigenous; has standing and respect amongst indigenous people in the Bunbury area.</p> <p>Father of seven children; four of whom are adults.</p> <p>Hereditary heart condition and hypertension.</p>	<p>Ct 1: Agg AOBH. Ct 3: Agg GBH.</p> <p>The victim (Lee) was in a family and domestic relationship with the appellant. She had previously been in a relationship with the victim (Hill). The victim had a child who was in Lee's care. Lee was pregnant with the appellant's child.</p> <p>The victim's and their two children were walking along a street. The appellant followed them in his vehicle. He stopped and alighted from the vehicle carrying a wooden implement. The appellant struck Hill with the stick, possibly seven or eight times, to the ribs, kidney and elbow. Hill suffered a large lump-type bruise to the left elbow, a fracture to the ulna bone, bruising and a laceration and bleeding in and around the kidney.</p> <p>A short time later Lee miscarried and Lee went and stayed with a friend.</p> <p>About 20 days later Lee and the appellant were drinking together at a reserve then returned to the friend's house. The appellant</p>	<p>Ct 1: 1 yr 6 mths imp. Ct 3: 4 yrs 6 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Denied responsibility; No victim empathy or remorse.</p> <p>Sentencing judge characterised Agg AOBH as 'in the mid-range of offences of this kind'; Agg GBH as 'in the mid to upper range of seriousness'.</p> <p>Moderate risk of re-offending.</p>	<p>Dismissed – on papers.</p> <p>At [24] The offences were each serious examples of their type. Each was born out of anger and was brutal, sustained and completely without justification. On both occasions, the victim was defenceless.</p>

			asked Lee for sex, but she refused. The appellant became angry and punched her seven to ten times to her face with a closed fist. Lee was taken to hospital and airlifted to RPH where she underwent surgery to repair a fractured eye socket.		
2.	<p><i>Knight v The State of Western Australia</i></p> <p>[2014] WASCA 217</p> <p>Delivered 21/11/2014</p>	<p>55 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including firearms, traffic, drug sales and possession charges.</p> <p>Father of four children.</p> <p>Constant work record.</p> <p>History of cannabis and amphetamine use.</p> <p>Appellant's son convicted of agg burg; sentenced to 2 yrs 4 mths imp conditionally suspended for 2 yrs.</p>	<p>Ct 1: s401(2) <i>Criminal Code</i> Agg burg (home invasion).</p> <p>Ct 2: s297 <i>Criminal Code</i> GBH.</p> <p>Ct 3: s317(1) <i>Criminal Code</i> AOBH.</p> <p>As a result of an earlier incident involving one of the appellant's sons, the appellant with three others drove to the victim's house to seek revenge. Three of the four men were armed. The appellant picked up a metal weights bar from the outside front porch and all offenders then forced their way into the house. The victim and two of his friends were set upon. The appellant started striking the victim with the metal bar before escaping outside. Outside the victim was restrained by the appellant's son. The appellant then struck the victim again. The appellant also struck a second victim at least twice with the metal bar to the leg.</p> <p>The victim suffered a left tension pneumothorax, bruising to his right ankle and shin and a laceration to his right knee. If not for medical assistance and treatment, the pneumothorax was likely to have endangered</p>	<p>Ct 1: 3 yrs imp (conc).</p> <p>Ct 2: 3 yrs 6 mth imp.</p> <p>Ct 3: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>Principal offender.</p> <p>Sentencing judge described attack as 'a violent and senseless attack' born out of anger from an earlier incident; also found attack was a premeditated and planned 'act of retribution'.</p>	Dismissed – on papers.

			his life. The second victim sustained a fractured right ankle and bad bruising and swelling on his thigh.		
1.	<p><i>Spence v The State of Western Australia</i></p> <p>[2014] WASCA 171</p> <p>Delivered 05/09/2014</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including one common assault.</p> <p>Married now separated; four children.</p> <p>Completed year 12 and Bachelor of Business; partially completed Bachelor of Engineering.</p> <p>Employed as an accountant; then part owner and manager of the nightclub.</p> <p>Positive references.</p> <p>Positive steps towards rehabilitation.</p> <p>Letter to sentencing judge expressing his regret.</p>	<p>Ct 1: GBH.</p> <p>Ct 2: att to pervert the course of justice.</p> <p>On the evening of the incident the appellant was managing the club. In the early hours of the morning the victim was at the nightclub with two companions. A brawl ensued when security attempted to remove the victim's companions from the club.</p> <p>The victim approached the brawl and attempted to pull a bouncer off one of his friends. The appellant punched the victim to the left side of his head. The punch caused the victim to fall, striking the back left hand side of his head on the step of a 4WD.</p> <p>The victim sustained a severe traumatic brain injury that required urgent surgery.</p> <p>Following the incident the appellant sought to deflect the police investigation by arranging for the security cameras to be switched, concealing his role in the assault and advising employees not to speak to police.</p>	<p>Ct 1: 3 yrs 6 mths imp.</p> <p>Ct 2: 3 yrs imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Remorse.</p>	<p>Allowed.</p> <p>Re-sentenced to 2 yrs imp in Ct 2 (cum).</p> <p>TES 5 yrs 6 mths imp.</p> <p>At [52] The offending was of very short duration and involved no planning or sophistication. As serious as offences of this nature are, this was a less serious example of its type.</p> <p>At [53] That sentence did not properly reflect the relative seriousness of the offence and the personal circumstances of the appellant.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					

<i>Transitional Provisions Enacted (31/08/2003)</i>					
<i>Maximum penalty increased from 7 yrs to 10 yrs – effective 3/08/1998</i>					

Office of the Director of Public Prosecutions