

Indecent Assault & Agg Indecent Assault

s 323 & s 324 *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
PG	plead guilty
PNG	plead not guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
indec	indecent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
ISO	intensive supervision order
TIC	time in custody
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>Singh v The State of Western Australia</i></p> <p>[2017] WASCA 47</p> <p>Delivered 16/03/2017</p>	<p>27 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Good character.</p> <p>Indian national; on student visa in Australia.</p> <p>Raised in a supportive environment, but with significant financial challenges.</p> <p>Attended school to the end of yr 10; completed Bachelor's degree; completed Master's degree in computer science in Australia.</p> <p>Singh's counsel submitted that Singh had little to no experience with women and that India has different cultural attitudes about women's manner of dress and what it might convey.</p>	<p>Ct 1: Indec assault. Ct 2: Indec assault. Ct 3: Sex pen.</p> <p>Offending occurred against passengers while Singh was working as a taxi driver.</p> <p><u>Ct 1</u></p> <p>Singh persistently touched the victim's thigh in a sexual manner. He also asked the victim a number of sexual questions and regularly rubbed his groin throughout the journey. He asked the victim if she would like to do something with him and said that they could come to an arrangement other than payment for the journey.</p> <p><u>Cts 2 and 3</u></p> <p>Offending occurred on the same evening as ct 1.</p> <p>The victim was 18 yrs old and intoxicated.</p> <p>While driving the victim home, Singh stopped the taxi at a park saying that he needed to check something. The victim sat on the bench for a smoke and Singh sat next to her. He placed the victim's hand on his groin and the victim resisted.</p> <p>Singh forced the victim onto her back, pinned her arms to her side and rubbed his groin against her crotch. He then ripped her underwear off and despite the victim's struggles and pleas, had unprotected sexual intercourse with her until he ejaculated inside of her. During the act, he kissed her neck and squeezed her breasts.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp.</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found that the State case was so strong that the prospects of an acquittal were pretty much non-existent.</p> <p>Sentencing judge accepted that Singh's cultural background was likely to have played a role in the offending, but noted that such cultural matters were not free of controversy in India.</p> <p>Sentencing judge found that Singh did not mistakenly assume that his attention to the victims was welcome; the victims gave unambiguously clear indications that they were not interested and not willing; Singh physically forced his attentions on them; Singh mislead the police in various respects.</p>	<p>Dismissed.</p> <p>Appeal concerned length of individual sentence for ct 1, and totality.</p> <p>At [45] ... ct 1 had a number of serious elements...He was in a position of trust as a taxi driver. His victim was a vulnerable young woman. She did not have the option of getting out of the car until she got home. His offending was part of a course of conduct that persisted for almost the entire 28 minutes that the victim spent in the car with him. He persisted notwithstanding the victim making repeated efforts to make clear to him that she was not interested in him. His offending has had a significant impact on her. His offence in ct 1 was not an isolated or once-off aberration; very soon after it, he committed cts 2 and 3. He [had] ...a medium to high risk of reoffending...</p> <p>At [57] ... the agg features of the offending ... place</p>

			<p>Singh flew back to India the following day after being interviewed by police and released.</p>	<p>Moderate to high risk of reoffending.</p>	<p>the TES... well within an appropriate exercise of discretion... The appellant was a taxi driver, a role that has an element of trust. Both his victims were vulnerable young women; one ... was ... more vulnerable by reason of intoxication. The offending was persistent in the face of clear statements by the victims that they were not interested in him and for him to stop what he was doing. The appellant responded to the second victim's resistance by using force. He had unprotected sexual intercourse... Ct 2 in itself was a serious offence of indec assault. The appellant's offending the subject of cts 2 and 3 followed soon after his conduct the subject of ct 1. Rebuffed by his first victim, he forced himself upon another young female passenger. Ct 3, standing alone, had many serious elements that could have justified a somewhat higher sentence. The appellant had a medium to high risk of reoffending. Personal deterrence</p>
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2.	<p><i>Panda v The State of Western Australia</i></p> <p>[2017] WASCA 5</p> <p>Delivered 12/01/2017</p>	<p>57 at time offending. 59 at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born in India.</p> <p>Married; two children.</p> <p>Qualified medical practitioner. Notified by the Australian Health Practitioner Regulation Agency (AHPRA) that he must not consult with female patients unless a chaperone was present. Cts 5, 11-13 occurred after this notification and without a chaperone being present.</p> <p>Suffered depression and attempted suicide prior to sentencing.</p> <p>No substance abuse issues.</p>	<p>8 x Unlawful and indec assault.</p> <p>The offending occurred over a period of almost eight months and involved five female patients. The offending occurred in the course of examining, diagnosing or treating their medical complaints.</p> <p><u>Ct 1</u> Victim M, aged 32, presented with tonsillitis. He told M he wanted to check her for skin cancers. Not wearing gloves he briefly ‘jiggled’ her breasts.</p> <p><u>Ct 2</u> Panda then had M open her legs, grabbed her vagina lips between thumb and forefinger and moved each from side to side, one after the other. He was not wearing gloves.</p> <p><u>Ct 3</u> Victim C, aged 18, attended to obtain blood results. She agreed to Panda completing a skin check. While not wearing gloves he touched her breasts.</p> <p><u>Ct 4</u> Panda asked C to remove her underpants. She refused, so he spread her legs, moved her underpants to one side and put his fingers on her vagina. He was not wearing gloves.</p> <p><u>Ct 5</u> Victim T, aged 24, attended with a cough. Panda cupped her breast with his hand. With his</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 21 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 21 mths imp (cum with ct 2). Ct 5: 9 mths imp (cum with ct 2). Ct 11: 9 mths imp (cum with ct 2). Ct 12: 6 mths imp (conc). Ct 13: 6 mths imp (conc).</p> <p>TES 5 yrs imp. EFP.</p> <p>The sentencing judge found the offending was a serious breach of trust and of the appellant’s professional responsibilities. Each offence was not part of a legitimate or proper medical examination.</p> <p>The appellant acted selfishly and for his own sexual gratification.</p> <p>Unlikely to return to medical practice.</p> <p>No remorse or victim empathy.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence and appeal concerned totality principle.</p> <p>At [97] ... The appellant was in ‘a position of trust’ and that elevated the seriousness of his offending ... The consent of M and C to the examinations which the appellant performed was obtained by fraud or deceit. The appellant did not seek the consent of N before purporting to perform the breast examination. The ... offending against T, N and A, in breach of the condition imposed by AHPRA, demonstrated the wilfulness of his offending against those complainants.</p> <p>At [98] ... the complainants were young and vulnerable. Three of them were suffering from mental illnesses when they consulted the appellant or had suffered from mental health difficulties</p>

			<p>stethoscope near her nipple he had her breathe in and out. He did not have the stethoscope in his ears. Panda repeated this procedure with her other breast. He stroked T's hand and suggested they meet up for sex.</p> <p><u>Ct 11</u> Victim N, aged 20, attended to collect a prescription. Panda suggested a breast examination, during which he fondled her breasts.</p> <p><u>Cts 12 and 13</u> Victim A, aged 20, attended for knee scan results. Panda hugged A and attempted to kiss her on two occasions, connecting with her cheek and the side of her mouth as she turned her head.</p>		<p>previously.</p> <p>At [100] ... His offending was not an isolated lapse of judgment or an uncharacteristic aberration.</p>
1.	<p><i>The State of Western Australia v Staniforth-Smith</i></p> <p>[2014] WASCA 170</p> <p>Delivered 05/09/2014</p>	<p>46-47 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after trial (Cts 1 & 3). Convicted after PG (Ct 2).</p> <p>No previous criminal record of significance.</p> <p>Hardworking; successful farmer.</p> <p>Following breakdown of marriage, led an isolated life.</p> <p>Suffered depression.</p> <p>Habitual user of cannabis.</p>	<p>Ct 1: s321(4) <i>Criminal Code</i> indec dealings child 13-16 yrs. Ct 2: s324 <i>Criminal Code</i> Agg indec assault. Ct 3: s326 <i>Criminal Code</i> Agg sex pen.</p> <p>The victim had been the respondent's step son who was aged between 15 and 17 years. Following the breakdown of the victim's mother and respondent the victim would visit the respondent.</p> <p><u>Ct 1:</u> Sometime in 2010 the victim stayed with the respondent. During this time the victim confided to the respondent that he was concerned about the presence of hair on his buttocks. The respondent gave the victim some hair removal cream and the victim went to the bathroom to apply it. Despite the victim stating that he did not want assistance, the respondent insisted and applied the cream to the victim's buttocks, anal and genital areas.</p>	<p>Ct 1: 4 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 14 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Voluntarily reported the matter to police but only after victim disclosed offences.</p> <p>Made significant admissions; did not fully recall or accept the entirety of what he did.</p> <p>Remorse; genuine concern for victim.</p>	<p>Dismissed.</p> <p>At [54] It is sufficient to say that there is no established range for offences of this nature and that the sentence imposed on count 3 is not so clearly inconsistent with other sentences as to indicate an error.</p> <p>At [55] Although an offender's personal circumstances in the case of sexual abuse of children do not generally carry as much weight as they might do in other cases, they are not irrelevant. In the respondent's case there</p>

		<p>Good character; positive references and support from family.</p> <p>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</p>	<p><u>Ct 2-3:</u> Cts 2 and 3 occurred on the same day about a year later when the victim had lived with the respondent. At this time the victim was between 16 and 17 years old. After both consuming alcohol and cannabis the victim fell asleep. Sometime later he woke to find the respondent using a sex toy to masturbate his penis. The respondent then placed the victim's penis in his mouth. The victim got up and left the room.</p> <p>At trial, prosecution led evidence of an uncharged sexual act committed interstate when the victim was 15 yrs old.</p>	<p>Victim had attempted suicide and self-harm.</p> <p>Sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</p>	<p>were a number of mitigating factors that could, in combination, properly be characterised as unusual.</p>
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