

Indecent dealing with a child

ss 320(4), 321(4), 322(5) and 329(4) *Criminal Code* and repealed equivalent provisions where the offending falls within the definition of indecent dealing found in ss 320(4), 321(4) and 322(5)

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
agg	aggravated
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
indec	indecent
TES	total effective sentence
ISO	intensive supervision order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<p><i>The State of Western Australia v PJW</i></p> <p>[2015] WASCA 113</p> <p>Delivered 03/06/2015</p>	<p>32 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history, including 2001 convictions of indec dealing with a child U13 yrs and indec recording a child U13 yrs.</p> <p>Significant health difficulties at a young age; disadvantaged upbringing.</p> <p>Engaged in rudimentary employment.</p> <p>Emotionally immature; limited self-awareness.</p>	<p>Sex pen of de facto child U16 yrs x 7.</p> <p>Indec dealings of de facto child U16 yrs x 2.</p> <p>The offending was committed over 10 mths. The victim was seven yrs old and was the biological daughter of the respondent's de facto partner. The respondent lived with the victim.</p> <p>The victim was asleep in a bedroom. The respondent entered the room, removed his underpants and inserted his finger in the victim's anus twice (cts 1-2) before inserting his penis in her anus (ct 3).</p> <p>On another date, the respondent ejaculated in the victim's mouth (ct 4).</p> <p>On another date, the respondent showed the victim a pornographic film (ct 6). He rubbed his penis against her anus on the outside of her underwear (ct 7).</p> <p>On another date, the respondent invited the victim to enter a garden shed where he removed some of her clothes, lowered his pants and penetrated her anus with his penis (ct 8).</p> <p>On another date, the respondent entered the victim's bedroom, removed some of her clothes, removed his shorts and inserted his penis in her vagina (ct 9).</p> <p>On another date, the respondent performed cunnilingus on the victim (ct 11).</p>	<p>Ct 1: 2 yrs imp (conc).</p> <p>Ct 2: 2 yrs imp (conc).</p> <p>Ct 3: 4 yrs imp (cum on ct 4).</p> <p>Ct 4: 2 yrs 6 mths imp (conc).</p> <p>Ct 6: 18 mths imp (conc).</p> <p>Ct 7: 18 mths imp (conc).</p> <p>Ct 8: 4 yrs imp (conc).</p> <p>Ct 9: 4 yrs imp (conc).</p> <p>Ct 11: 2 yrs 8 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Offending aggravated by victim's age, relationship with the respondent, the victim's vulnerability, the respondent's significant breach of trust and the period of time over which the offences were committed.</p>	<p>Allowed.</p> <p>Orders for conc and cum set aside. Re-sentenced to:</p> <p>Ct 1: 2 yrs imp (cum)</p> <p>Ct 2: 2 yrs imp (conc)</p> <p>Ct 3: 4 yrs imp (conc)</p> <p>Ct 4: 2 yrs 6 mths imp (conc)</p> <p>Ct 6: 18 mths imp (cum)</p> <p>Ct 7: 18 mths imp (cum)</p> <p>Ct 8: 4 yrs imp (conc)</p> <p>Ct 9: 4 yrs imp</p> <p>Ct 11: 2 yrs 8 mths imp (conc)</p> <p>TES 9 yrs imp.</p> <p>At [43] His offending was not momentary or impulsive. It was sustained and repetitive... The respondent engaged in some deliberate grooming of the victim to facilitate his abuse of her for his sexual gratification... the sexual abuse caused her physical pain... The emotional consequences for the victim were damaging. She has experienced nightmares,</p>

					<p>anxiety and sadness. Cts 1, 2, 3 and 9 were committed while the victim was sleeping in her own bed. She was especially vulnerable and defenceless.</p> <p>At [49] The respondent's continuing denial of the current offending, as well as his minimisation of his responsibility for the 2001 offending gives rise to considerable concern. His stance is an impediment to his rehabilitation... the risk that he may reoffend in a similar manner was an important sentencing factor.</p> <p>At [50] The respondent has shown no remorse or victim empathy.</p> <p>At [51] The proper exercise of the sentencing discretion required greater accumulation of the individual sentences in order to mark the very serious nature of the respondent's overall offending and to reflect the primary sentencing</p>
--	--	--	--	--	--

					considerations of appropriate punishment and personal general deterrence, having regard to the need to protect vulnerable children.
5.	<p><i>DKA v The State of Western Australia</i></p> <p>[2015] WASCA 112</p> <p>Delivered 03/06/2015</p>	<p>47-49 yrs at time offending. 56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Irrelevant criminal history.</p> <p>Left school after completing yr 11.</p> <p>Always employed; well-regarded and respected by work colleagues.</p> <p>Supportive new partner.</p>	<p>Indec dealings of de facto child U16 yrs x 7. Sex pen of de facto child U16 yrs x 2.</p> <p>The victim, K, was the daughter of the appellant's de facto partner. The appellant lived with the victim at the time of offending. The offending occurred over two and a half yrs. The mother was away from the house on each occasion.</p> <p><u>Ct 1</u> The appellant took K's hand, placed it onto his shorts and moved her hand up and down on his penis. He then lowered his shorts, exposed his erect penis and used his hand on her hand to rub his erect penis, despite K trying to pull away. K was 10 yrs old.</p> <p><u>Cts 2-3</u> On another date, while K was asleep, the appellant went into her bedroom and put his hand inside her pyjamas and underwear, and touched her vagina. K awoke with a fright. The appellant put K's hand down his shorts and onto his penis and told her to play with his penis. The appellant continued to play with K's vagina while forcing K's hand up and down on his penis. K was 10 yrs old.</p> <p><u>Cts 6-7</u> On another date, the appellant went into K's</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs imp (conc). Ct 6: 2 yrs imp (conc). Ct 7: 2 yrs imp (conc). Ct 10: 4 yrs imp (conc). Ct 11: 2 yrs imp (conc). Ct 17: 18 mths imp (conc). Ct 20: 5 yrs 8 mths imp.</p> <p>TES 7 yrs 8 mths imp.</p> <p>EFP.</p> <p>Trial judge found that the appellant had sexually offended against K on an ongoing systematic basis over an extended period of time of about two and a half years.</p> <p>The appellant denied the offending; trial judge found he had no remorse or acceptance of responsibility; no steps</p>	<p>Dismissed – on papers.</p> <p>At [42] ...ct 20 involved especially egregious offending... The offence occurred while K was in her own home and under the appellant's care and supervision. She was extremely vulnerable. The offence involved some premeditation and planning. Later, the appellant endeavoured to buy K's silence by giving her money. All of the offending, including ct 20, caused K to suffer significant long-term harm.</p> <p>At [44] The term of 5 yrs 8 mths was commensurate with the seriousness of the offence and was within the range open to the trial judge on a proper exercise of the sentencing discretion.</p>

			<p>bedroom after she had gone to bed. He put her up against the wall, pulled her pants down, touched her vagina and tried to insert his fingers into her vagina. It was very painful and K told him it hurt. At the same time he pulled down his pants and made her play with his penis. K was 11 yrs old.</p> <p><u>Cts 10-11</u> On another date, after showing K pornography, the appellant placed K on his bed, removed her clothing and inserted his fingers into her vagina. At the same time he forced her to masturbate his penis. K was 11 yrs old.</p> <p><u>Ct 17</u> On another date, while the appellant watched pornography, he made K sit on the floor next to the chair and he used his foot to rub the outside of her vagina through her clothes. K was 11 yrs old.</p> <p><u>Ct 20</u> On another date, the appellant took K into his bedroom, made her lie on the bed, knelt over her and penetrated her vagina with his penis. The appellant persisted in sexually penetrating K, despite her yelling in pain and attempting to move away from or avoid his actions. K was 12 yrs old.</p>	<p>towards rehabilitation.</p> <p>Trial judge found that the overall offending was towards the upper end of the scale of offending against a child.</p>	<p>At [48] ... his Honour was correct in stating that, while the appellant's overall offending '[was] not the most serious offending', it was 'towards the upper end of the scale of seriousness of offending' of the kind in question.</p> <p>At [55] The term of 7 yrs 8 mths was required in order to reflect the very serious nature of the appellant's offending and to give effect to the primary sentencing considerations of appropriate punishment and personal and general deterrence, having regard to the need to protect vulnerable children.</p>
4.	<p><i>LFG v The State of Western Australia</i></p> <p>[2015] WASCA 88</p> <p>Delivered</p>	<p>64-67 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including convictions for child sex offences.</p>	<p>Indec dealings of child U13 yrs x 1.</p> <p>Indec dealings of child 13-16 yrs x 9.</p> <p>Sex pen of child 13-16 yrs x 5.</p> <p>The appellant and the victim were second cousins. The offending spanned a period of two to three yrs. The victim was 11-14 yrs at time offending.</p>	<p>Ct 1: 8 mths imp.</p> <p>Ct 4: 2 yrs imp (cum).</p> <p>Ct 9: 2 yrs 10 mths (cum).</p> <p>Ct 22: 2 yrs imp.</p> <p>Ct 23: 2 yrs 10 mths imp.</p> <p>Ct 24: 18 mths (cum).</p>	<p>Dismissed.</p> <p>At [402] The appellant's offending was correctly characterised by the trial judge as falling towards the higher end of the scale of seriousness for this type</p>

	04/05/2015	Stable health issues.	<p><u>Ct 1</u> The appellant and the victim were alone at the victim's grandmother's house. The appellant asked to see the victim's pubic hair. The victim showed the appellant his pubic hair for a few seconds.</p> <p><u>Ct 4</u> On another date, the appellant took the victim for a walk. The appellant masturbated the victim to ejaculation.</p> <p><u>Ct 9</u> On another date, the appellant started performing fellatio on the victim in a car outside of the victim's grandmother's house. The grandmother interrupted him, so he placed a pillow over the victim's groin area. When the grandmother left, the appellant continued performing fellatio to ejaculation.</p> <p><u>Cts 22-33</u> On four different dates, the appellant took the victim to a hotel. On each occasion, the appellant masturbated the victim and performed fellatio on him to ejaculation (cts 22-23, 25-26, 28-29 and 31-32). On each occasion, the appellant asked the victim to masturbate him. The victim did so. The appellant then masturbated himself to ejaculation (cts 24, 27, 30 and 33).</p>	<p>Ct 25: 2 yrs imp. Ct 26: 2 yrs 10 mths imp. Ct 27: 18 mths imp (cum). Ct 28: 2 yrs imp. Ct 29: 2 yrs 10 mths imp. Ct 30: 18 mths imp. Ct 31: 2 yrs imp. Ct 32: 2 yrs 10 mths imp. Ct 33: 18 mths imp.</p> <p>TES 7 yrs 10 mths imp. EFP.</p> <p>Prolonged course of conduct directed at gaining the victim's trust and grooming him for the commission of the offences.</p> <p>High risk of reoffending; not remorseful; steadfastly maintained a denial of the offending; no steps to rehabilitation.</p> <p>Significant adverse effect on the victim's emotional and social</p>	<p>of offending.</p> <p>At [407]... the complainant was, to some extent, an 'easy target' for the appellant, and the appellant took advantage of the complainant's unfortunate domestic situation.</p> <p>At [419] ...the TES was not disproportionate to the appellant's overall offending and it cannot reasonably be said that he has been left without any reasonable prospect of useful life after his release.</p>
--	------------	-----------------------	--	--	--

	<p>3. <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>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>Ct 1: Indec dealings child 13-16 yrs. Ct 2: Agg indec assault. Ct 3: 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><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>well-being.</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. 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>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>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 were a number of mitigating factors that could, in combination, properly be characterised as unusual.</p>
--	--	--	---	---	---

<p>2.</p>	<p><i>AIM v The State of Western Australia</i></p> <p>[2014] WASCA 155</p> <p>Delivered 27/08/2014</p>	<p>70 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>No criminal record of significance.</p> <p>Married; 3 adult children; number of grandchildren.</p> <p>Constantly employed; actively involved in community activities.</p> <p>Number of positive references.</p> <p>General good health.</p> <p>No evidence of rehabilitation.</p>	<p>Indec dealings of child U13yrs x 7. Sex pen of child U13 yrs x 6.</p> <p>Cts 1-9 concerned a girl 'A'. Cts 10-13 concerned another girl 'H'.</p> <p><u>Cts 1-4:</u> The victim 'A' was in years 3 and 4 at the local primary school where the appellant was her school teacher. All the offences occurred on the school grounds. He used physical force, threats and he ignored the victim's attempts to repel his sexual advances.</p> <p>On four separate occasions the appellant rubbed his hand on A's vagina on the outside of her clothing.</p> <p><u>Cts 5-6</u> On two separate occasions the appellant penetrated A's vagina with his finger. In Ct 6, as he penetrated her vagina he masturbated to the point where he ejaculated over her.</p> <p><u>Ct 7:</u> The appellant exposed his penis to A and started rubbing it. He asked the victim to kiss his penis but she refused.</p> <p><u>Cts 8-9</u> The appellant penetrated A's vagina with his penis. His acts of sexual penetration caused the victim physical pain. The offending against A continued until she transferred to another primary school. At about this time, the appellant ceased working as a teacher.</p>	<p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The appellant was interviewed and denied any wrongdoing.</p> <p>No remorse.</p> <p>The charges concerning both victims were representative of his conduct.</p> <p>Appellant had groomed 'A'.</p> <p>Both victims badly affected; ongoing consequences.</p> <p>The sentencing judge characterised the offences against each victim as being at the upper end of the range of seriousness.</p>	<p>Dismissed - on papers.</p> <p>At [48] the appellant will be 80 when he becomes eligible for parole and will be 82 upon the completion of the total effective sentence. It must be accepted that the appellant may well die in gaol or that a very significant proportion of his remaining life will be spent in custody.</p>
-----------	--	---	--	--	---

			<p><u>Ct 10:</u> H is the appellant's granddaughter and was living with the appellant and his wife. The appellant commenced abusing her from 4 yrs of age. The abuse continued for the next three years. The abuse would occur on the pretence of playing games and would end up with the victim being rewarded with a chocolate covered sweet. On one occasion the appellant the victim to tickle him, he pulled his pants down and moved H's hands up and down his penis to the point of ejaculation.</p> <p><u>Cts 11-13:</u> Were committed in the appellant's bedroom in the one incident. He lay on his bed without trousers or underwear. He asked H to play with him and to take her pants off. The appellant got the victim to masturbate him and then suck his penis. He then told her he wanted to show her how to have sex. He inserted his penis into her vagina.</p> <p>The appellant would tell the victim that the sexual activity between grandfathers and granddaughters was normal.</p>		
1.	<p><i>The State of Western Australia v Hassell</i></p> <p>[2014] WASCA 158</p> <p>Delivered 27/08/2014</p>	<p>59 yrs at time offending. 61 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including one of indecent assault and multiple drink driving.</p> <p>Constant employed for 23</p>	<p>Ct 1: Indec dealings of child U13 yrs. Ct 2: Indec dealings of child U13 yrs.</p> <p>The victim was 10 yrs of age with developmental issues. She attended a special needs school.</p> <p>The victim and her mother went to a friend's house with the intention of staying overnight. Later that evening, the respondent and his adult son attended. The adults that were present stayed up all night</p>	<p>Ct 1: 14 mths imp.</p> <p>Ct 2: 18 mths imp (conc).</p> <p>TES 18 mths imp susp 14 mths.</p> <p>In ROI he claimed he could not recall</p>	<p>Allowed.</p> <p>Ct 1: 14 mths imp. Ct 2: 18 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>At [43] There was nothing</p>

		<p>yrs.</p> <p>Long term problem with alcohol abuse; excessive alcohol consumption is linked to his past and present offending.</p> <p>No positive signs towards rehabilitation; moderated his drinking after offending.</p> <p>Shortly after offending, his former partner of 25 yrs passed away.</p>	<p>drinking. The respondent became very intoxicated.</p> <p>The next day whilst the respondent was sitting next to the victim he began rubbing the victim's feet with his feet and intimated that she should go inside. The victim went inside. The respondent also went inside, pushed the victim into a bedroom and closed the door. There he kissed the victim on various parts of her head and then her lips with an open mouth in a plainly sexual way.</p> <p>Sometime later the victim was playing with other children. The respondent entered the room and touched the victim on the neck. She left to escape his advances. Later, the respondent pulled the victim by her wrists into a bedroom and rubbed her vaginal area on the outside of her bather shorts.</p> <p>At one point the respondent threatened to kill the victim. The victim told her mother with the respondent saying that 'she came onto me'.</p>	<p>offences.</p> <p>No remorse; blamed the victim; unwilling to take responsibility for his actions.</p>	<p>exceptional about the facts and circumstances of the present case. Although the offending was not at the most serious end of the spectrum, the criminal conduct was persistent and accompanied by physical coercion and threats.... A particularly aggravating aspect of it was the vulnerability of the victim. Not only was she young, but she was developmentally delayed.</p> <p>At [51] It is accepted that this court has a residual discretion in a State appeal not to interfere with the sentences imposed, even though a ground or grounds of appeal have been made out.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					
s 189 Criminal Code Indecently deal child u 13 yrs repealed (1/08/1992)					

ss 320(4), 321(4), 322(5) and 329(4) *Criminal Code* (indecently deal with child offences) enacted (1/08/1992)

The following sentences were enacted as a result of this legislative change:

Indecent deal child u 13 yrs s 320(4) *Criminal Code* maximum penalty of 10 yrs imp

Indecent deal de facto/lineal child u 16 yrs s 329(4) *Criminal Code* maximum penalty 10 yrs imp

Indecent deal de facto/lineal child over 16 yrs s 329(4) *Criminal Code* maximum penalty of 5 yrs imp

Indecent deal with child under care/supervision or authority s 321(4) *Criminal Code* maximum penalty of 10 yrs imp

Definition of sexual penetration extended to included oral penetration of vagina or penis (previously charged as indecent deal) (1/08/1992)

s 183 *Criminal Code* Indecently deal child u 14 yrs repealed (23/03/1990)

NB: maximum penalty under this section was 7 yrs imp.