

Arson, Breach of Duty by Person in Control of Ignition Source or Fire, and Bush Fire

ss 444 & 445A *Criminal Code*
s 32(2) *Bush Fires Act*

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	<p><i>Ashford v The State of Western Australia [No 2]</i></p> <p>[2016] WASCA 222</p> <p>Delivered 08/12/2016</p> <p>Published 19/12/2016</p>	<p>20 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Strong family support; no male role model.</p> <p>Struggled at school.</p> <p>Good work history.</p> <p>Use of alcohol and MDMA at time of offending; otherwise no history of illicit drug use.</p>	<p>Ct 1: False belief. Ct 2: Arson. Ct 3: False belief.</p> <p>At the time of the offences Ashford was a volunteer bushfire fighter.</p> <p>Ashford called 000 and reported a fire, knowing the fire did not exist (ct 1).</p> <p>The same morning he called 000 to report a fire. Immediately after making the call he set fire to bushland. He and other members of the bushfire brigade attended and spent about 10 minutes extinguishing the fire (ct 2).</p> <p>A few weeks later Ashford called 000 and reported a fire. He and members of the brigade attended. No sign of any fire was found.</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 6 mths imp (conc).</p> <p>TES 12 mths imp.</p> <p>The sentencing judge accepted the offending was at the lower end of the scale of seriousness. However agg by the fact he was a volunteer firefighter who knew the risks involved.</p> <p>The sentencing judge took into account the damage caused was negligible and, given the weather conditions, the risk of a serious conflagration was much reduced.</p> <p>Remorseful; recognised his stupidity.</p> <p>Substantial positive steps taken towards rehabilitation.</p> <p>Negligible risk of reoffending.</p>	<p>Allowed.</p> <p>Appellant challenged type, not length of sentence.</p> <p>Re-sentenced to 9 mths imp, susp 9 mths.</p> <p>At [37] ... the unusual features of the appellant's offence placed it very much at the lower end of the range of seriousness of offending of this kind. That, combined with the appellant's personal circumstances, meant that a sentence of immediate imp was not open.</p> <p>At [38] The fire lit by the appellant caused very little damage ... The appellant lit this fire on a day ... on which more than 40 mm of rain had fallen. He called the fire brigade before or substantially at the time as he lit the fire ... the risks arising from the fire ... were of a substantially different magnitude to any ordinary case.</p>

<p>7.</p>	<p><i>Suleiman v The State of Western Australia</i></p> <p>[2017] WASCA 26</p> <p>Delivered 20/09/2016</p>	<p>27 yrs at time offending. 28 yrs time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Minor criminal history; including possess and use of cannabis.</p> <p>Born in Kenya; no history of trauma or abuse; homeless as a child in Africa.</p> <p>Permanent resident since 2008; facing deportation on completion of sentence.</p> <p>History of on and off casual part-time employment; unemployed at time offending.</p> <p>7 yr relationship with victim; mother of his two daughters, aged 5 and 4 yrs.</p> <p>Homeless at time offending.</p> <p>Diagnosed paranoid schizophrenic; history of admittance to mental health clinic.</p>	<p>Ct 1: Breach of duty by person in control of ignition source or fire. Ct 2: Agg burg. Ct 3: Damage.</p> <p>Suleiman had been in a relationship with the victim, who lived in a unit with their two children.</p> <p>Suleiman went to the unit and used petrol to set fire to his car that had been parked at the premises for some time. The fire destroyed the car, damaged the carport, and the exterior of the building suffered smoke damage. The fire threatened to spread to the unit, where he knew the victim and his children were inside.</p> <p>When igniting the petrol Suleiman suffered burns to his face and hands.</p> <p>Suleiman then broke a window of the house and climbed inside. The victim and the children took refuge in a bedroom.</p> <p>Inside Suleiman smashed numerous items, before forcing entry into the bedroom that the terrified victim and the children were hiding. He grabbed the victim's phone as she was speaking to police and smashed it. He then forcefully grabbed hold of his youngest daughter and attempted to leave the house with her. Neighbours intervened and persuaded him to hand over his daughter before assisting the victim and his eldest daughter.</p> <p>Suleiman left the scene but was arrested close by a short time later.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (to commence 1 yr after the sentence for ct 1). Ct 3: No penalty.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge took into account the appellant's mental illness, but was not satisfied he was suffering an acute relapse of his mental illness to the extent that his judgment was impaired.</p> <p>Remorseful.</p>	<p>Allowed.</p> <p>Appeal concerned procedural fairness relating to psychiatric illness.</p> <p>Resentenced: Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: No penalty.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>At [35] ... in determining the appellant's mental state ... his Honour relied to a significant extent on his personal assessment of the appellant's appearance, and the manner in which the appellant conducted himself, in the electronically recorded interview</p> <p>At [48] ... the sentencing judge's failure to raise with defence counsel that his Honour was proposing to reject the State's concession in relation to [the psychiatrist's] report; and ... the basis on which</p>
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6.	<p><i>Harris v The State of Western Australia</i></p> <p>[2016] WASCA 34</p> <p>Delivered 19/02/2016</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, offended after charged with this offence.</p> <p>Traditional Aboriginal from</p>	<p>Ct 1: Burglary. Ct 2: Arson.</p> <p>The appellant held anger and animosity toward the victim and decided to confront her at her home.</p> <p>The appellant located a samurai sword and attempted to arm herself with it, with the intention</p>	<p>Ct 1: 2 yrs imp. Ct 2: 4 yrs imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP</p> <p>Sentencing judge considered mitigating</p>	<p>Dismissed.</p> <p>Appeal challenged length of sentence of arson offence.</p> <p>At [27] Although the offending involved no real planning it was deliberate</p>

		<p>a large family.</p> <p>Irregular employment.</p> <p>User of cannabis since 14 yrs and alcohol and illicit substances, including amphetamines, since 21 yrs.</p> <p>Paranoid schizophrenic, compounded by illicit substance abuse and complicated by abuse of prescribed medication.</p>	<p>of using it to injure the victim.</p> <p>At some point the appellant ascertained that the victim was not at home.</p> <p>The appellant then approached another and asked for a baseball bat or iron bar to assault the victim. This was refused.</p> <p>The appellant returned and gained entry into the victim's house and deliberately lit some flammable material in a bedroom, which caught fire.</p> <p>The house was extensively damaged by fire.</p>	<p>factor to be the appellant's mental illness; however this did not deprive her of the capacity to differentiate between right and wrong.</p> <p>Appellant's lack of remorse and insight into her mental health and illicit drug problems. High risk of further offending and moderate risk of setting fires.</p>	<p>and born out of anger and revenge. The appellant's mental state is a relevant mitigating factor, but it remains the fact that she knew that what she was doing was wrong. Her actions caused extensive damage and,, although there was no one else inside the house, fires in built-up areas have the potential to spread.</p> <p>At [28] The mitigation that could be given to the appellant's mental impairment was limited by the appellant's risk of reoffending; lack of insight into her mental illness; and her entrenched illicit drug use.</p>
5.	<p><i>IEB v The State of Western Australia</i></p> <p>[2015] WASCA 207</p> <p>Delivered 24/07/2015</p> <p>Published 15/10/2015</p>	<p>18 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Lengthy criminal history.</p> <p>Born in West Africa; spent most of childhood in a refugee camp.</p> <p>Using marijuana since age 14 and used synthetic</p>	<p><u>Indictment</u> 1 x Arson.</p> <p><u>Section 32 Notice</u> Ch 1: Breach of bail. Ch 2: Breach of CRO.</p> <p>The appellant attended a residential house in Gosnells with a box of matches. No one was home.</p> <p>The appellant went into the backyard, kicked a</p>	<p><u>Indictment</u> 2 yrs 3 mths imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 1 mth imp (conc). Ch 2: forfeiture of \$200.</p> <p>TES 2 yrs 3 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> 16 mths imp (conc).</p> <p><u>Section 32 Notice</u> Not disturbed.</p> <p>TES 16 mths imp.</p>

		<p>cannabis.</p> <p>Suffers from paranoid schizophrenia and PTSD.</p>	<p>hole in the wall. He used the matches to light some unknown item and threw that inside with a view to setting the house on fire. He knocked another hole in the side wall, used the matches to light another item, and threw that item inside the opening. Part of the wall and roof structure caught fire, causing smoke and heat damage.</p> <p>The appellant was arrested and released on bail. He subsequently failed to answer that bail (ch 1).</p> <p>The arson offence breached a CRO previously imposed by the Children's Court (ch 2).</p> <p>Police obtained a signed witness statement from the appellant. The appellant claimed he was paid \$200 by X to commit the indictable offence.</p>		<p>AFP.</p> <p>At [7] ... the prosecuting counsel, the appellant's counsel and the sentencing judge were all unaware of the existence of a letter of recognition...</p> <p>At [24] The appellant's cooperation with police included, but went beyond, the provision of the witness statement. Indeed, the provision of the letter of recognition and its contents demonstrate that the appellant's cooperation was regarded by police as of actual and potential assistance.</p>
4.	<p><i>Stokke v The State of Western Australia</i></p> <p>[2015] WASCA 131</p> <p>Delivered 11/03/2015</p> <p>Published 25/06/2015</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including poss of drugs and criminal damage.</p> <p>Good relationships with parents and siblings.</p> <p>Using methyl since age 14; prone to binge drinking.</p>	<p>Ct 1: Stealing. Ct 2: Accessory after the fact to arson.</p> <p>The appellant drove a Holden Commodore, without a valid driver's licence, to a tavern. His brother Kristien was a passenger. The appellant parked the Commodore next to a Holden Astra.</p> <p>Kristien got out of the Commodore and walked over to the Astra. The appellant remained seated in the Commodore. Kristien smashed the window of the Astra and transferred property, valued at \$2,650, to the Commodore. The appellant warned Kristien when strangers left the tavern and walked</p>	<p>Ct 1: 14 mths imp. Ct 2: 30 mths imp (start 6 mths after ct 1).</p> <p>TES 3 yrs imp.</p> <p>AFP.</p> <p>Disqualified from holding or obtaining driver's licence for 18 mths.</p> <p>Not premeditated; no remorse; unwilling to</p>	<p>Allowed.</p> <p>Re-sentenced to: Ct 1: 7 mths imp (cum). Ct 2: 20 mths imp (cum).</p> <p>TES 2 yrs 3 mths imp.</p> <p>AFP.</p> <p>At [78] The individual sentence imposed upon the appellant for the offence of stealing was, in our view,</p>

		<p>Under influence of alcohol and methyl at time offending.</p> <p>At the time the appellant was sentenced, principal offender Kristien Stokke (appellant's brother) had not yet been sentenced. Kristien was convicted after PG for a number of offences and sentenced to TES 4 yrs 8 mths imp. Individual sentence for stealing was 7 mths imp (conc) and arson was 27 mths imp (conc).</p>	<p>in their direction.</p> <p>Kristien walked back to the Astra and set fire to the car after realising he had left forensic evidence which might incriminate him. The fire destroyed the car, valued at \$12,300. The appellant was not aware that Kristien intended to commit the arson offence. The appellant immediately drove Kristien from the scene.</p> <p>The appellant lied to police to conceal his own involvement and that of Kristien Stokke.</p> <p>CCTV footage recorded the offence.</p>	<p>accept responsibility for conduct.</p>	<p>high, but ... not... manifestly excessive.</p> <p>At [99] ... the correct approach to be taken to the parity principle is to have regard to the TES imposed upon the appellant, on the one hand, and Kristien Stokke, on the other hand, rather than merely the sentences that were imposed for the [stealing and arson] offences...</p> <p>At [103] Even taking into account the matters favourable to Kristien Stokke, it must be said that his overall criminality was much greater than the appellant's. In our opinion, the differences in their criminality is insufficiently reflected in the disparity of 20 mths imp in the TES they received.</p>
3.	<p><i>Rimington v The State of Western Australia</i></p> <p>[2015] WASCA 102</p> <p>Delivered</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Of previous good character.</p> <p>Led a blameless and hardworking life.</p>	<p>4 x Arson.</p> <p>All offences occurred on the same date within a short period of time.</p> <p><u>Ct 1:</u> The appellant and his former wife effectively owned and controlled a business premises,</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs 9 mths (start 12 mths after ct 1). Ct 4: 4 yrs (start 12 mths after ct 3). TES 6 yrs imp.</p>	<p>Dismissed.</p> <p>At [77] ...when the maximum sentence for arson was 14 yrs, the range of sentences for an individual offence was up to 4 yrs 8 mths... the</p>

	29/05/2015	<p>Prior to offending, the appellant had separated from his wife and discussions had commenced regarding disbursement of assets.</p> <p>Suffered from depression at time offending; alcohol likely contributed to offending.</p> <p>Engaged counselling and taking antidepressants prior to sentencing.</p>	<p>situated in a unit. The appellant dispersed petrol within this unit, and ran a rope doused in fuel from the unit into the car park. He ignited the rope causing the unit to be engulfed by fire. The contents were destroyed. The replacement value of the contents totalled \$715,000.</p> <p><u>Ct 2:</u> The fire from ct 1 also caused extensive damage to the neighbouring unit and common fire wall. Cost of repairs totalled \$260,000.</p> <p><u>Ct 3:</u> The appellant went to a residential construction site of a future dwelling that was near completion. The property was effectively owned by the appellant's estranged wife.</p> <p>The appellant entered the house, dispersed petrol and fuel cans, and ran a trail of fuel from the house into the front yard. The appellant ignited the fuel which caused petrol vapours within the house to explode and parts of the house the catch fire. The building sustained heat, explosion and smoke damage. The cost of repairs totalled \$57,160.</p> <p><u>Ct 4:</u> The appellant returned to his home, owned by the appellant and his estranged wife. He doused the house and contents in petrol, removed his housemate's belongings and then parked his car in the garage. He ignited a fuel trail running from within the house to the front yard. The vehicle, dwelling and entire contents were completely</p>	<p>EFP.</p> <p>Offending involved some preparation; endangered the lives and safety of other people.</p> <p>Motive was to defeat his ex-wife's claim to the properties.</p> <p>Remorseful; good prospects of rehabilitation; low risk of reoffending.</p>	<p>maximum sentence has been increased to life imp, indicating that sentences for the offence of arson should be increased from the previous range.</p>
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			destroyed by the fire. The cost of the damage totalled \$460,000.		
2.	<p><i>The State of Western Australia v Smith</i></p> <p>[2015] WASCA 87</p> <p>Delivered 04/05/2015</p>	<p>28 yrs at time offending; 30 yrs at time sentencing.</p> <p>Convicted of ct 1 after trial; convicted of ct 2 after PG.</p> <p>Prior criminal history, including AOBH and dishonesty offences.</p> <p>Dysfunctional childhood; witnessed domestic violence; parents separated when he was five; left home by age 14.</p> <p>Single; father of 7 yr old daughter; no contact with daughter.</p> <p>Supportive mother.</p> <p>History of substance abuse.</p>	<p>Ct 1: Murder. Ct 2: Arson.</p> <p>The respondent was homeless. The victim invited the respondent to stay with him. The second night, the respondent and victim drank alcohol at the victim's unit and had an argument.</p> <p>The respondent launched an unprovoked, extremely violent and sustained attack on the victim. Using a coffee table leg, the respondent repeatedly hit the victim on the head, face and arms, causing lacerations and haemorrhages to the head and a fractured nose and lower jaw. The respondent used a knife to repeatedly stab the victim. He stabbed him in the back, which pierced his lung and caused internal bleeding. He cut the Achilles tendon on his left leg. Intending to kill the victim, the respondent inflicted nine wounds to the victim's neck. Several of these wounds severed his jugular vein, which was the likely cause of death.</p> <p>The respondent had no memory of killing the victim. His next memory after the argument is standing over the victim, who was covered in blood and not breathing. The respondent covered the body with a blanket, showered and went to bed. The following morning, the respondent set fire to the unit, to conceal what he had done, and left. The unit was a ground floor unit in a double storey apartment building. The fire gutted the unit.</p>	<p>Ct 1: Life imp. Min non parole period of 17 yrs.</p> <p>Ct 2: Arson: 4 yrs 6 mths imp (conc).</p> <p>Depression; antisocial personality; poor coping and problem-solving skills; anger management problems associated with episodes of rage in the context of alcohol abuse.</p> <p>Significant remorse; low risk of reoffending.</p>	<p>Dismissed.</p> <p>At [49]-[122] and [178]-[180] Discussion of comparative cases.</p> <p>At [184] In our opinion, the minimum term of 17 yrs was lenient. If we had been sentencing the respondent at first instance we would have imposed a higher non-parole period. However... we are not persuaded that the minimum term of 17 yrs was below the range open to his Honour on a proper exercise of the sentencing discretion.</p>

			The respondent initially denied the offence. He later made partial admissions but maintained he had no memory of inflicting violence upon the victim.		
1.	<p><i>Bordley v The State of Western Australia</i></p> <p>[2014] WASCA 18</p> <p>Delivered 24/01/2014</p>	<p>38 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Significant criminal record including convictions for property and dishonesty offences.</p> <p>Psychologically challenged childhood and adolescence.</p> <p>Immediately prior to offending, lived in a caravan park for 2 yrs and was completely socially isolated.</p> <p>Abused prescription and over the counter codeine-based medications and experienced withdrawal symptoms.</p> <p>At time of offending was experiencing an acute psychotic episode and symptoms of paranoia, anxiety and opiate dependence.</p>	<p>1 x Wilfully lit a fire.</p> <p>The appellant deliberately set fire to bushland in 3 places over a distance of 500 m in a reserve adjacent to residential and commercial areas. It was a hot summer day with a very high fire danger. The bushland was traversed by public paths, a police station and local fire brigade.</p> <p>A total of 2.3 ha of bushland was burnt before the fires were brought under control by 5 units assisted by 5 police units and municipal officials.</p>	<p>22 mths imp.</p> <p>EFP.</p> <p>Premeditated.</p> <p>High risk of re-offending.</p>	<p>Dismissed – on papers.</p> <p>At [17] ... We were not referred to, and our own research has not unearthed, any cases under s 444 in the relevant period which are comparable.</p>

Amendments to s 444 Criminal Code (19/12/2009)

**Maximum penalty increased to life imprisonment (previously maximum penalty was 14 yrs imp or, in circumstances of racial aggravation, 20 yrs imp).
Definition of property extended to include vegetation.**

Transitional provisions repealed (14/01/2009)

Amendments to s 444 Criminal Code (8/12/2004)

Offence amended to include damage committed in circumstances of racial aggravation (max penalty 20 yrs imp).

Transitional provisions enacted (31/08/2003)