

Child Sex Offences – Intra-familial

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
indec	indecent
pen	penetrate
TES	total effective sentence
ISO	intensive supervision order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<p><i>LJH v The State of Western Australia</i></p> <p>[2016] WASCA 155</p> <p>Delivered 05/09/2016</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after early PG (14-15% discount).</p> <p>No prior criminal history.</p> <p>Raised in NZ; parents separated when 6 yrs old; little contact with his father; physically abusive step-father.</p>	<p>Cts 1, 7, 11, 21, 26, 29, 33, 37 and 41: Sex pen of de facto child U 16 yrs (penile/vaginal pen).</p> <p>Cts 5, 9, and 19: Sex pen of de facto child U 16 yrs (digital pen).</p> <p>Cts 3, 6, 10, 12, 14, 16, 18, 20, 25, 28, 31, 38, 39 and 40: Sex pen of de facto child U 16 yrs (cunnilingus and fellatio).</p> <p>Cts 23 and 35: Procuring a de facto child U 16 yrs to engage in sexual behaviour.</p> <p>Cts 2, 4, 8, 13, 15, 17, 22, 24, 27, 30, 32, 34 and 36: Indec recording of de facto child U 17 yrs.</p> <p>Cts 42 and 43: Poss CEM.</p> <p>LJH was in a de facto relationship with the victim's mother since the victim was 1 yr old. LJH commenced an intimate physical relationship with the victim when she was around 13 yrs. The victim was aged between 14-15 yrs at the time of the offences and she regarded LJH as her father. The offences are a representative of a sequence of offending conduct.</p> <p><u>Ct 1</u> LJH had penile/vaginal intercourse with the victim in his bedroom.</p> <p><u>Cts 2-7</u> LJH visually recorded the offences for 13 mins. LJH kissed the victim's breasts and digitally penetrated her. The victim performed fellatio on LJH. LJH then had penile/vaginal intercourse with her. The victim was also recorded masturbating.</p>	<p>Cts 1, 7, 11, 21, 26, 29, 33, 37 and 41: 6 yrs imp each.</p> <p>Cts 5, 9, and 19: 3 yrs imp each.</p> <p>Cts 3, 6, 10, 12, 14, 16, 18, 20, 25, 28, 31, 38, 39 and 40: 4 yrs imp each.</p> <p>Cts 23 and 35: 4 yrs imp each.</p> <p>Cts 2, 4, 8, 13, 15, 17, 22, 24, 27, 30, 32, 34 and 36: 2 yrs imp each.</p> <p>Cts 42 and 43: 1 yr imp each.</p> <p>All cts conc, expect for one sentence of 4 yrs imp for oral sex pen, one sentence of 2 yrs imp for indec recording and one sentence of 1 yr imp for poss CEM cum with sentence of 6 yrs imp for penile pen.</p> <p>TES 13 yrs imp.</p> <p>EFP.</p> <p>PG made in the face of an unanswerable case.</p>	<p>Allowed.</p> <p>Appeal concerned discount for PG and length of TES.</p> <p>Re-sentenced with 20% discount for PG to:</p> <p>Cts 1, 7, 11, 21, 26, 29, 33, 37 and 41: 5 yrs imp each.</p> <p>Cts 5, 9, and 19: 2 yrs im each.</p> <p>Cts 3, 6, 10, 12, 14, 16, 18, 20, 25, 28, 31, 38, 39 and 40: 3 yrs imp each.</p> <p>Cts 23 and 35: 3 yrs imp each.</p> <p>Cts 2, 4, 8, 13, 15, 17, 22, 24, 27, 30, 32, 34 and 36: 18 mths imp each.</p> <p>Cts 42 and 43: 8 mths imp each.</p> <p>Cts 1, 5 and 12 cum, and other cts conc on ct 1.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>At [84] ... the recordings were not provided by the appellant to anybody else,</p>

		<p><u>Cts 8-14</u> LJH visually recorded the offences.</p> <p>The first recording was for 20 mins. The sexual activity included LJH digitally penetrating the victim's vagina, she stroked his penis, LJH performed cunnilingus on her, LJH had penile/vaginal intercourse with her and the victim performed fellatio on him.</p> <p>The second recording was for 9 mins on the same day. The victim stroked LJH's penis and performed fellatio on him. LJH masturbated, straddling the victim's chest and ejaculated on her chest.</p> <p><u>Cts 15-21</u> LJH visually recorded the offences.</p> <p>The first recording was for 2 mins. LJH masturbated and tells the victim to "Hurry up". The victim then performed fellatio on LJH.</p> <p>The second recording on the same day was for 22 mins. LJH touched the victim's breasts and the victim performed fellatio on him. LJH masturbated, digitally penetrated the victim and performed cunnilingus on her. LJH had penile/vaginal intercourse with the victim and ejaculated on her genital area.</p> <p><u>Cts 22-23</u> LJH visually recorded the offence for 2 mins 40 secs. The victim wore a strap-on dildo, one end penetrated her vagina and she penetrated LJH's</p>	<p>The sentencing judge described very serious sexual offending over an extended 21 mths involving 'the grossest breach of trust that a father figure could ever commit'.</p> <p>The sentencing judge rejected LJH's submission of remorse.</p>	<p>nor were they posted on any internet site to which others might have access.</p> <p>At [85] The respondent does not contend that the appellant's offending is in the most serious category. The cases reveal various circumstances not present in this case but which, when present, agg the seriousness of the offending behaviour.</p> <p>At [123] The TES imposed on the appellant is equal to or greater than the TES imposed in many appellate decisions where the offender was convicted after trial in cases involving multiple victims, or younger victims, or a longer period of offending, or a combination of these.</p> <p>At [126] the offences committed by the appellant were extremely serious. They were committed, after a period of grooming, over a period of approx 18 mths. The offending was both sustained and</p>
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			<p>anus with the other end.</p> <p><u>Cts 24-31</u> These offences were captured on three visual recordings and photographed by LJH.</p> <p>The first recording was for 17 secs and shows the victim performing fellatio on LJH. The 12 photographs show the victim performing fellatio on LJH and LJH engaged in penile/vaginal intercourse with the victim.</p> <p>The second recording was for 7 mins. LJH masturbated, the victim performed fellatio on him and stroked his penis, and LJH had penile/vaginal intercourse with her.</p> <p>The third recording was for 14 mins and shows LJH touching the victim's breasts and the victim performing fellatio on LJH until he ejaculates into her mouth.</p> <p><u>Cts 32-33</u> LJH took three photographs of himself having penile/vaginal intercourse with the victim.</p> <p><u>Cts 34-35</u> LJH visually recorded for 2 mins and took six photographs of the victim wearing a strap-on dildo, one end penetrating her vagina and the other penetrating LJH's anus.</p> <p><u>Cts 36-37</u> LJH visually recorded himself having penile/vaginal intercourse with the victim for 34</p>		<p>repetitive. The appellant abused the victim for his own sexual gratification. He engaged the victim in various forms of sexual pen. Those offences which involved the use of a sexual device involved an extra dimension of depravity. The victim ... is racked by nightmares and anxiety. The victim feels worthless and ashamed. The offences were a gross abuse of trust. An agg feature of them was that many of the offences were recorded by the appellant.</p> <p>At [127] The most significant mitigating factor in the case is the PG. While we acknowledge that the prosecution case was strong by virtue of the appellant recording much (but not all) of the offending, the PG were entered at the first reasonable opportunity, a little over a week after he was charged. By doing so, the appellant spared the victim, at a very early stage, the anxiety that she</p>
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			<p>secs.</p> <p><u>Ct 38</u> Whilst motocross riding with the victim, LJH stopped and took the victim into the bushes. He had penile/vaginal intercourse with her and ejaculated on her stomach. The victim asked LJH to stop, but he told her it was too late.</p> <p><u>Cts 39-41</u> LJH gave the victim alcohol, cannabis and a crystal substance which she smoked. He then undressed the victim and the victim performed fellatio on LJH as he performed cunnilingus on her. LJH had penile/vaginal intercourse with her and ejaculated over her stomach. The victim covered her face with her arms so she did not have to look at LJH.</p> <p><u>Cts 42-43</u> Police analysed LJH's computer hard drive and found the visual recordings and photographs outlined above (ct 42). They also found CEM of unidentified children ranging in age from 6-15 yrs (ct 43). Ct 43 consisted of five videos in category 1; one video in category 2; three videos in category 3; 29 videos in category 4; one video in category 5 and three videos in category 6.</p>		<p>may have to relive her experiences in a trial. Having regard to the criteria in s 9AA(2) of the <i>Sentencing Act</i>, the appropriate discount for each offence is 20%.</p>
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<p>5.</p>	<p><i>FWB v The State of Western Australia</i></p> <p>[2016] WASCA 118</p> <p>Delivered 11/07/2016</p>	<p>47 yrs at time sentencing. 42-44 yrs at time offending for indictment 1.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no prior sexual offending.</p> <p>Left school aged 15 yrs.</p> <p>Recent steady employment.</p> <p>Regularly consumes alcohol and occasionally smokes cannabis. Daily use of amphetamines and heroin, but did not believe he had a substance abuse problem.</p> <p>FWB on bail for indictment 1 at time offending on indictment 2.</p>	<p><u>Indictment 1</u> Ct 1-4, 6-10: Sex pen of de facto child U 16 yrs. Ct 5: Indec dealings with de facto child U 16 yrs.</p> <p><u>Indictment 2</u> Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg sex pen. Ct 4: GBH with intent.</p> <p><u>Indictment 1</u> FWB had been the de facto father of the victim, M, since she was about 2 yrs old.</p> <p>When M was aged 11-12 yrs, FWB digitally penetrated her vagina twice (ct 1-2). He then penetrated her vagina with his penis (ct 3). He slapped M's face when she tried to escape. FWB then made M suck his penis, before masturbating and ejaculating on her face (ct 4). Later, M awoke with FWB touching her vagina (ct 5). The following night, FWB went into M's bedroom and had sexual intercourse with her (ct 6).</p> <p>When M was aged 12-13 yrs, FWB filmed himself sexually abusing M over two hrs. FWB put his fingers in her vagina (ct 7) and then had sexual intercourse with her (ct 8). FWB made M suck his penis (ct 9), before having sexual intercourse with her again (ct 10). FWB continued the abuse and repeated the acts until he ejaculated onto her stomach. M was crying and was fearful of FWB who threatened to harm her or members of her family.</p>	<p><u>Indictment 1</u> Ct 1-2 and 7: 2 yrs imp each (conc). Ct 3, 6 and 10: 6 yrs imp each (conc). Ct 4 and 9: 4 yrs imp each (conc). Ct 5: 1 yr imp (conc). Ct 8: 6 yrs (cum ct 3).</p> <p>TES 12 yrs imp (cum with TES on indictment 2).</p> <p><u>Indictment 2</u> Ct 1: 1 yr imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs imp (conc). Ct 4: 5 yrs imp (conc).</p> <p>TES 8 yrs imp (cum with TES on indictment 1).</p> <p>Overall TES 20 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending against M as involving "the most gross breach of trust" and "at or near the top of the range of gravity, justifying the</p>	<p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Only re-sentenced on <u>indictment 1</u> to:</p> <p>Ct 8: 6 yrs imp (cum with 2 yrs on ct 1).</p> <p>TES 8 yrs imp (cum with TES on indictment 2).</p> <p>TES 16 yrs imp.</p> <p>EFP.</p> <p>At [65] The charges in the first indictment were representative of a course of conduct.</p> <p>At [66]... in relation to the first indictment...The two episodes of offending involved planning and premeditation...The offending occurred in the family home, a relatively isolated farmhouse, where M was vulnerable and the appellant could abuse her for an extended period without fear of being</p>
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			<p><u>Indictment 2</u> FWB and H (M's mother) had been in a de facto relationship for 13 yrs, but had separated approx. 6 mths earlier.</p> <p>The dep lib charge (ct 1) was a continuing offence. When visiting H, FWB produced a knife and threatened to kill her, telling her that he loved her, couldn't live without her and wanted her to suffer like she had made him suffer (ct 2). FWB tied H's wrists with cable ties, forced her into a car and drove her to the vicinity of a country town. FWB ordered H out of the vehicle, removed her clothing had sexual intercourse with her until he ejaculated (ct 3). FWB stabbed H in the chest (ct 4) and during the struggle she cut her finger on the knife. When H got out of the car FWB dragged her by the hair back into the car. FWB said he was taking her for medical assistance but H feared for her safety and jumped from the moving car and ran to a nearby house. As a result of being stabbed H suffered a 5cm wound that caused one of her lungs to collapse.</p>	<p>maximum penalty as a starting point".</p> <p>Offending occurred when M was alone and FWB sometimes engineered opportunities to be alone with her. The sentencing judge said that the offending against M had features of sex pen without consent; offending was not the result of grooming.</p> <p>FWB's offending against H "was a terrifying ordeal" and involved "criminality of the highest degree".</p> <p>FWB was at a moderate to high risk of future sexual offending and a moderate risk of future violent offending, most likely family violence.</p>	<p>discovered...The appellant filmed the offences the subject of cts 7, 8, 9 and 10. He had previously told M that once he had recorded the abuse he would stop offending against her. That was not the case... The appellant's offending against M's mother... would have adversely affected M in view of the threats to harm her family which the appellant made in the course of his offending against M.</p> <p>At [69] The appellant claimed to have little or no recollection of the offending and, accordingly, little weight could be given to any remorse. No victim empathy was apparent.</p> <p>At [70] the TES of 12 yrs' imp, especially in the context of the PG, was not broadly consistent with reasonably comparable cases and was not commensurate with the overall seriousness of the</p>
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					<p>offending... The proper exercise of the sentencing discretion required lesser accumulation of the individual sentences.</p> <p>At [90] ...the TES of 8 yrs' imp for the offences in the second indictment was...well within the range open to the sentencing judge ... and reflects ... totality issues arising as a result of the appellant standing for sentence not only in relation to the offences in the second indictment but also the offences in the first indictment.</p> <p>At [91] the overall TES of 20 yrs' imp in relation to the first and second indictments, especially in the context of the PG, was not commensurate with the overall seriousness of the offending the subject of the first and second indictments.</p>
4.	<i>The State of Western Australia v PJW</i>	32 yrs at time offending. Convicted after trial.	Sex pen of de facto child U16 yrs x 7. Indec dealings of de facto child U16 yrs x 2. The offending was committed over 10 mths. The	Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp (cum on ct 4).	Allowed. Orders for conc and cum set aside. Re-sentenced to:

<p>[2015] WASCA 113</p> <p>Delivered 03/06/2015</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>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 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>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, anxiety and sadness. Cts 1, 2, 3 and 9 were committed while the victim was sleeping in her own bed. She was especially</p>
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					<p>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 considerations of appropriate punishment and personal general deterrence, having regard to the need to protect</p>
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					vulnerable children.
3.	<i>DKA v The State of Western Australia</i> [2015] WASCA 112 Delivered 03/06/2015	47-49 yrs at time offending. 56 yrs at time sentencing. Convicted after trial. Irrelevant criminal history. Left school after completing yr 11. Always employed; well-regarded and respected by work colleagues. Supportive new partner.	7 x Indec dealings of de facto child U16 yrs. 2 x Sex pen of de facto child U16 yrs. 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. <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. <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. <u>Cts 6-7</u> On another date, the appellant went into K's 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	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. TES 7 yrs 8 mths imp. EFP. 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. The appellant denied the offending; trial judge found he had no remorse or acceptance of responsibility; no steps towards rehabilitation. Trial judge found that the overall offending was towards the upper end of the scale of offending	Dismissed – on papers. 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. 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. At [48] ... his Honour was correct in stating that, while the appellant's overall offending '[was] not the most serious

			<p>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>	against a child.	<p>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>
2.	<p><i>BGR v The State of Western Australia</i></p> <p>[2014] WASCA 82</p> <p>Delivered 17/04/2014</p>	<p>59-61 yrs at time offending. 72 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record -no relevant prior or post offending convictions.</p> <p>Mild depressive condition.</p>	<p>s329(4) <i>Criminal Code</i> Indecent dealings of lineal relative U16 x 6.</p> <p>The victim was between 4-7 yrs old and was the appellant's biological granddaughter.</p> <p>The appellant offended primarily while the victim was alone with him and under his care and supervision.</p> <p><u>Ct 1:</u> The appellant was looking after the victim at his home. He took her into a bedroom and undressed</p>	<p>TES 15 mths imp.</p> <p>EFP.</p> <p>Admitted guilt to his family and elders of the Jehovah's Witness Church.</p> <p>Full admissions when confronted with victims claims 10 years after offending; voluntarily</p>	<p>Allowed. (Buss J dissenting).</p> <p>Re-sentenced to 15 mths' imp susp 7 mths.</p> <p>At [40] ...no discount was given for the appellant's voluntary disclosure of prejudicial information that would not otherwise have been available to investigating authorities.</p>

		<p>Sexual abused as a child.</p> <p>At time of offending significant alcohol problem including regular binge drinking episodes; on admitting offences, ceased to consume alcohol.</p> <p>Married twice; children from both marriages.</p> <p>Stopped offending prior to the victim's first disclosure of his conduct.</p> <p>Successfully completed sex offender treatment programme.</p> <p>Regained the support of his wife and church.</p>	<p>her. He undressed himself, lay on the bed with the victim and kissed her chest and stomach. The appellant touched the victim's vagina with his hand. He then kissed her groin area and her buttocks. The appellant instructed the victim not to tell anyone.</p> <p><u>Ct 2:</u> The appellant was again looking after the victim at his house. He masturbated in front of her and ejaculated into a towel.</p> <p><u>Ct 3:</u> The victim was staying with the appellant at his home. The appellant took down the victim's underpants and kissed and licked her vagina and groin area.</p> <p><u>Ct 4:</u> The victim was visiting the appellant at his home together with other family members. After hearing the children talk about 'balls', the victim asked him what it meant. The appellant took the victim's hand and applied pressure so her hand pressed on his testicles.</p> <p><u>Ct 5:</u> The appellant was pushing the victim on a swing in his yard. He turned the victim upside down and kissed her vagina and groin area through her underpants.</p> <p><u>Ct 6:</u> The appellant took the victim to her own house to collect some items. He took her to one of the</p>	<p>disclosed details of the offending that went beyond what victim told police.</p> <p>Admitted to 'grooming' the victim.</p> <p>Disclosed that he had sexually abused another girl.</p> <p>No finding that the offending was representative.</p> <p>Demonstrated remorse, shame, insight and accepted responsibility for his offending.</p> <p>Accepted responsibility and harm and pain caused to victim.</p> <p>Changed man; low risk of re-offending.</p>	<p>That failure is an error that enlivens this court's jurisdiction to intervene if it is satisfied that different sentence should have been imposed.</p> <p>At [45] A review of the sentences customarily imposed for sexual offending against children confirms that ordinarily a sentence of immediate imprisonment is imposed.</p> <p>At [51] In the unusual circumstances of this case, I am satisfied that sentences of immediate imprisonment are not the only appropriate sentencing option.</p>
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			<p>bedrooms where he undressed the victim and kissed and licked her vagina and groin area.</p> <p>When the victim was 6-7 she made a complaint to her mother. A police investigation commenced but did not proceed because of the traumatic effect it had on the victim. The case was reopened 8-9 years later.</p>		
1.	<p>ARK v The State of Western Australia</p> <p>[2014] WASCA 45</p> <p>Delivered 26/02/2014</p>	<p>32 yrs when offending commenced. 37 yrs at time sentencing.</p> <p>Convicted after Trial.</p> <p>Criminal record including obstruct public officer, and agg AOBH.</p> <p>Dysfunctional childhood.</p> <p>Commendable work history.</p> <p>Breached bail for these offences by contacting the victim; bail was revoked and held in custody.</p> <p>Victim's mother supported the appellant at trial.</p>	<p>Agg sex pen of defacto child (penile) x 5. Agg sex pen of defacto child (digital) x 3. Att agg sex pen of defacto child (penile) x 1.</p> <p>The victim was aged between 11 -15 yrs.</p> <p>The appellant was the stepfather of the victim.</p> <p>The appellant was an intimidating partner and stepfather who was; on occasion, violent and threatening to the victim's mother. He would, on occasions, hit the victim and her sister when he was displeased with them.</p> <p>Most of the offences were committed by the appellant entering the victim's bedroom at night and sexually penetrating her.</p> <p>The appellant was physically aggressive when the victim resisted his advances. He used manipulation and intimidation to coerce the victim and ensure her continued compliance with his demands. The appellant ignored the victim's distress when he had sexual intercourse with her.</p> <p>All offences were committed upon the one victim, who was the daughter of the appellant's partner.</p>	<p>6 yrs imp each Ct. 4 yrs imp each Ct. 4 yrs imp.</p> <p>Ct 6 cum with Ct 4. All other conc.</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The charges were representative of an ongoing course of conduct.</p> <p>Strong prosecution case.</p> <p>No remorse or acceptance of responsibility.</p> <p>Sentencing judge found that the family dynamics were all about the victim's mother maintaining her relationship with the</p>	<p>Dismissed.</p> <p>At [83] Sexual offences involving children are of the utmost seriousness, particularly where an abuse of trust is involved. The fact that the offending could have conceivably been worse, or that certain aggravating features such as physical violence or extreme perversion are absent, does not diminish the gravity of the offences themselves. ...The fact that a worse case may be envisaged does not preclude a case from falling within the worst category of cases for offences of that type.</p> <p>At [94] ... It is clear that the sentence imposed on the appellant in this case was well within the range</p>

			<p>The victim suffered chronic emotional abuse in circumstances where it was plain, to both the victim and appellant, that if the victim's mother had to choose between them, she would choose the appellant.</p> <p>After the victim reported the offences to police, and the appellant was charged, the appellant breached protective bail conditions by contacting the victim and attempting to manipulate her.</p>	<p>appellant.</p> <p>Found that offending fell towards 'the upper end of the scale' for such offending.</p> <p>Low- medium risk of re-offending.</p>	<p>available to the sentencing judge.</p> <p>At [95] This was a serious case of sexual offending with little to be said by the way of mitigation in favour of the appellant ...</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					