

# **Assault occasioning bodily harm**

s 317(1) *Criminal Code*

**Prior to 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
36.	<i>LJL (a child) v Mason</i>  [2013] WASC 465  Delivered 19/12/2013  On appeal from Children's Court	12 yrs at time offending.  Convicted after PG.  Criminal record; including agg burg, assault W/I to rob, agg robb.  Committed a string of similar offences throughout the same year.  All offences other than AOBH committed in breach of IYSO.  Response to previous orders was unsatisfactory.	Agg burg x 3. Burg x 2. AOBH x 1. Criminal damage x 1.  The appellant hit the victim to the left side of his face with a stolen scooter. He also punched the victim in his face. The victim suffered bruising under his right eye and soreness to both sides of his face.  The appellant broke into homes and stole property. In one instance, in company with a co-offender, they threw paint inside and outside of a house. Putty was also used to stick items to the wall and to write offensive words.	TES 3 mths detention.  Good prospects of rehabilitation.	Dismissed.  At [15] ... Rehabilitation is a particularly important consideration in respect of children.  At [19] There is nothing to suggest that the magistrate did not have regard to the report indicating that the appellant had recently made positive changes and was responding well to supervision. However, the offences were of a very serious nature...  Discussion surrounding the amendment of s120 <i>Young Offenders Act</i> .
35.	<i>Tunney v The State of Western Australia</i>  [2013] WASCA 286  Delivered 17/12/2013	39 yrs at time sentencing.  Convicted after early PG.  Criminal record; one charge of breach police order.  Experienced unhappiness as a child.  Constant record of employment.	<u>Indictment</u> Ct 1: Agg AOBH. Ct 2: Criminal damage. Ct 3: Agg burg.  <u>s32 Notice</u> Breach police order. Trespass. Breach protective bail conditions.  The victim and appellant had been in an 'on and off' domestic relationship for 3 years. The offending occurred over a period of months. The	<u>Indictment</u> Ct 1: 18 mths imp (cum) Ct 2: 2 mths imp (conc). Ct 3: 22 mths imp (cum)  <u>s32 Notice</u> 1 mth imp (conc). 4 mths imp (cum). 2 mths imp (conc).  TES 3 yrs 8 mths imp.  EFP.	Dismissed – on papers.  At [34] The appellant engaged in sustained offending against the victim. The design and effect of the offending was to intimidate the victim both physically and psychologically. The appellant was not deterred from committing further offences by police orders

			<p>first incident occurred at the victim's home whereby the appellant kicked the victim in the groin whilst she was on the floor. The kick caused extensive bruising.</p> <p>The next day the appellant followed and continually texted the victim as she was driving to a suburban shopping centre. She entered the shopping centre and returned to her car a few hours later. On her return she found two of the car tyres had been deflated.</p> <p>About 4 months later the victim arrived home with her 2 children and found the appellant inside her house. The appellant took a bag from the victim's car containing personal belongings. Police issued a police order however in this time the appellant made numerous telephone calls to the victim at work.</p> <p>Days later the appellant again entered the victim's home using a set of keys he had cut without the victim's permission.</p> <p>The next day the victim arrived home to find the appellant inside her house. The appellant attempted to kiss the victim on her mouth and touch her breast. The appellant then physically assaulted the victim.</p> <p>Less than one month later the appellant entered into a bail undertaking which included conditions not to contact the victim. The victim breached the order by contacting the victim and attending her house.</p>	<p>Lacked victim empathy; continued to blame victim; little remorse.</p> <p>Sentencing judge described appellant's behaviour as constituting a 'sustained pattern of violent offending against a vulnerable victim'.</p> <p>Intimidated the victim to write a misleading letter in mitigation.</p>	or bail conditions...
34.	Clarke v The	21 yrs at time offending.	AOBH x 1.	9 mths imp.	Allowed.

	<p><i>State of Western Australia [No 2]</i></p> <p><b>[2013] WASCA 197</b></p> <p>Delivered 27/08/2013</p>	<p>Convicted after early PG.</p> <p>NZ criminal record for traffic offences; No AUS or WA criminal record.</p> <p>Raised and educated in NZ; completed a butcher apprenticeship; consistent employment record.</p> <p>Supportive family; In a stable de facto relationship.</p> <p>Appellant recognised alcohol had been a contributing factor to his offending behaviour and that he had, in the past, been involved in fights; Prepared to engage in counselling to deal with these issues.</p>	<p>The appellant and a friend were walking through the Cultural Centre in Northbridge. The victim was also walking through the Cultural Centre, but was heading in the opposite direction.</p> <p>There was a verbal confrontation and hand gestures between the appellant and victim. The appellant threw a single punch to the victim and hit him on the head. The victim immediately collapsed and, in doing so, hit his head on the ground. As a result of the victim's head striking the ground, he was rendered unconscious. The assault was caught on CCTV. The appellant left the scene without providing assistance to the victim.</p> <p>The charge of AOBH was upgraded to GBH then downgraded again after further medical evidence.</p>	<p>Accepted responsibility for the offence and appeared anxious about the victim's wellbeing.</p> <p>Does not pose a risk of reoffending.</p>	<p>Sentence set aside.</p> <p>Re-sentenced to 8 mths imp susp for 9 mths.</p> <p>At [21] ... the punch occurred in circumstances where each protagonist was prepared and willing to fight the other and the blow that was struck, although in law unjustified, could not be said to be entirely unprovoked or unexpected.</p> <p>At [33] ... general deterrence is an important factor in cases such as this, involving young men fighting in public places like Northbridge.</p> <p>At [34] ... I do not think the stage had been reached where the only appropriate disposition was a term of immediate imprisonment.</p> <p>At [34] ... in the combination of circumstances of this case, which I regard as unusual, such a disposition satisfies</p>
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33.	<p><b><i>JBD v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 180</b></p> <p>Delivered 14/08/2013</p> <p>Juvenile</p>	<p>17 yrs at time offending. 18 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record; mostly limited to traffic offences.</p> <p>Parents separated when 1 year old; no further contact with biological father; good relationship with step-father at time of sentencing.</p> <p>Positive family support; lives at home with his parents.</p> <p>Left school at Year 10; reasonable work history.</p> <p>Intoxicated at time of offending; knew that he had violent episodes when drinking.</p> <p>After being charged sought counselling for alcohol issues.</p> <p>Co-offender convicted after trial and sentenced to 3 yrs</p>	<p>Ct 1: GBH. Ct 2: AOBH.</p> <p>At around 2am on a Sunday; a maxi taxi carrying the appellant, a co-offender and a number of their friends stopped in Barrack Lane, Mandurah. The appellant had been behaving aggressively in the taxi, threatening to kill the driver and banging on the window.</p> <p>At around the same time Mr Roe, Ms Shaw and their son Levi, were trying to make their way home after a night out. They had been unsuccessful in obtaining a taxi. When they saw the appellant's taxi pull up Mr Roe approached and offered to pay the fare of the people in the taxi if he and his family could then use it to get home. One of the girls in the taxi was rude to Mr Roe and verbally abused him. The appellant also joined in the abuse. This cause Mr Roe to back off, telling the occupants, "It's cool, it's okay, no worries".</p> <p>At about the same time the appellant and co-offender got out of the taxi and walked towards Levi shouting abuse at him. Levi tried to calm the situation but the co-offender removed his shirt and then hit Levi, knocking him to the ground. The appellant immediately joined in with blows. Levi was momentarily knocked unconscious (AOBH). His mother, who was close by, was terrified and began screaming.</p>	<p>Ct 1: 12 mths imp. Ct 2: 8 mths imp (cum).</p> <p>TES 20 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found co-offender was the more aggressive of the two and found that it was probable that it was the co-offender who had fractured Mr Roe's knee. However, he considered that an injury of the kind suffered was a foreseeable result of the common purpose which both offenders had in carrying out the attacks.</p> <p>Attacks were entirely unprovoked, random and senseless.</p> <p>Degree of remorse and co-operative with police although limited to telling the police that he could remember little</p>	<p>Dismissed on papers.</p> <p>At [29] ... the appellant was required to be sentenced in accordance with the principles under the YOA.</p> <p>At [35] The youths of the appellant and his prospects of rehabilitation were appropriately reflected in the length of the terms imposed.</p>

		imp.	<p>Mr Roe heard the yelling, saw his son being attacked and tried to help by pulling off one of the offenders. This caused both the appellant and the co-offender to turn on Mr Roe.</p> <p>The appellant and co-offender both punched Mr Roe and then kicked him after he fell to the ground. The appellant was then dragged back into the taxi by his girlfriend. The co-offender continued to attack Mr Roe, kicking him to the stomach, chest and back area before stomping on him. During this attack Mr Roe was on his knees, holding his hands up and pleading for the co-offender to stop (GBH).</p> <p>Levi Roe suffered a swollen and bruised left eye, abrasions to his lip and elbows.</p> <p>Mr Roe received a fractured tibia of the left knee. He also received multiple bruises and abrasions.</p>	<p>about what had occurred.</p> <p>Reasonable prospects of rehabilitation.</p>	
32.	<p><b><i>Gray-Herewini v Lee</i></b></p> <p><b>[2013] WASC 200</b></p> <p>Delivered 24/05/2013</p>	<p>21 yrs at sentencing.</p> <p>Convicted after PG.</p> <p>Limited prior criminal history; not previously imprisoned; Previous offence that arose in circumstances of drunkenness.</p> <p>Past history of domestic violence.</p> <p>Mother of 3 yr old child.</p>	<p>AOBH x 1</p> <p>The appellant and victim were unknown to each other.</p> <p>The appellant was walking over the horseshoe bridge on William Street Perth. She was in company with a number of friends, being three females and a male. Another group of people, which included the victim, were also crossing the bridge. As the two groups approached each other the appellant bumped shoulders with the victim and yelled 'Watch out you'.</p> <p>The contact with the victim was forceful enough to cause him to spin around. As he spun around he</p>	<p>9 mths imp.</p> <p>Unprovoked attack.</p> <p>Expressed remorse and willingness to address issues with alcohol.</p> <p>PSR said offence occurred as a consequence of excessive alcohol consumption; no recollection of her behaviour but expressed regret and shame.</p>	<p>Dismissed.</p> <p>At [40] ... Hardship to an offender's child cannot generally be taken into account. Such hardship must be extreme or exceptional if it is to justify an offender avoiding imprisonment where the sentence is otherwise appropriate.</p> <p>At [41] In <i>Shoad v Van Der Zanden</i>, I recently noted that the commission</p>

		<p>Employed full time.</p> <p>Male co-offender charged with common assault.</p>	<p>swung a bag he was carrying towards the appellant and said 'You can't do that'. The appellant became angry and yelled at the victim. The victim then placed his bag in front of his body to protect himself.</p> <p>The appellant approached the victim and threw several punches and kicks towards him connecting with his face and body. The male friend of the appellant then grabbed the victim by the shoulders and threw him to the ground.</p> <p>Whilst the victim was on the ground the appellant kicked and punched him to the body and to the head several times. This caused the victim to curl up into a ball in order to protect himself.</p> <p>By the end of the assault the victim was in a semi-conscious state. He had sustained a broken nose and bruising and swelling around the face and body. One of his teeth had been knocked out by the force of the blows. He had a laceration underneath his nose which required several stitches.</p>	<p>On appeal sought to adduce additional evidence about care of her child.</p>	<p>of offences of this type by relatively young men whose aggression is fuelled by alcohol is not unusual. Regrettably the same is true for young women. As I also noted, magistrates are well placed to see the impact of alcohol-related offences.</p> <p>At [42] The consumption of alcohol and its consequent effects upon judgment and aggression do nothing to mitigate offences of this type. Those who choose to drink to excess cannot expect that their actions will be excused.</p>
31.	<p><b><i>Shoard v Van Der Zanden</i></b></p> <p><b>[2013] WASC 163</b></p> <p>Delivered 03/05/2013</p>	<p>23 yrs at offending.</p> <p>Convicted after PG.</p> <p>Prior convictions for reckless driving and driving without authority; none of violence.</p> <p>Full time apprentice diesel fitter.</p>	<p>AOBH x 1</p> <p>The victim and his girlfriend were sitting together at the poker machines near the Carbon Sports Bar of the Crown Casino. The appellant was standing nearby, facing the victim and his girlfriend and talking to them.</p> <p>A short distance away a friend of the appellant was standing talking to the co-offender. Without warning the co-offender turned, ran at the victim and punched him to the face whilst he was still</p>	<p>7 mths imp.</p>	<p>Dismissed.</p> <p>At [32] Sentences for this offence can vary markedly given the wide range of circumstances in which it can be committed.</p> <p>At [41] The commission of offences of this type by relatively young men whose aggression is fuelled</p>

		<p>Behaviour fuelled by alcohol and a provocative remark made by the victim.</p> <p>(SJA – sentence imposed by Chief Magistrate).</p>	<p>seated. At least three punches were inflicted.</p> <p>The victim stood up and was wrestled to the ground by the co-offender. The co-offender continued to punch the victim, doing so some eight to ten times.</p> <p>Whilst the victim was on the ground the appellant approached and kicked him three times and stomped on him once. Security officers attended and detained the appellant and the co-offender until police arrived.</p> <p>The victim sustained grazes to his knees, head and face, bruising around his right eye and a blood nose.</p> <p>Unclear which injuries were caused by appellant but admitted he bore responsibility for causing bodily harm to victim.</p>		<p>by alcohol is not unusual. Magistrates are well placed to see the impact of alcohol related offences. Where such offences occur in a public place, as here, they pose a danger not only to the participants but members of the public.</p> <p>At [42] The consumption of alcohol and consequent effects upon judgment and aggression do nothing to mitigate offences of this type.</p>
30.	<p><b>Clarke v The State of Western Australia</b></p> <p><b>[2013] WASCA 67</b></p> <p>Delivered 12/03/2013</p>	<p>30 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record including an assault against a previous girlfriend in NSW; In WA convicted of several offences relating to the victim including a number of Breach of VRO and Agg AOBH.</p> <p>Offences committed in breach of a suspended term of imp imposed for Agg AOBH, Breach VOR and</p>	<p>1 x Breach of susp imp (original term 12 mths).</p> <p>Ct 1: Threats to kill</p> <p>Ct 2: Dep lib.</p> <p>Ct 4: Sex pen w/o consent (pen vagina with penis).</p> <p>Ct 6: Sex pen w/o consent (pen vagina with penis).</p> <p>Ct 7: AOBH.</p> <p>(Acquitted of Cts 3 and 5 on indictment).</p> <p>The offences arose out of a dysfunctional relationship between the appellant and the victim. They were engaged for a time, but after that the relationship deteriorated. The victim successfully applied for a VRO against the appellant which she then removed after a few months. They reconciled for a short time. The relationship followed a pattern of argument followed by reconciliation up until</p>	<p>Breach: 12 mths imp.</p> <p>Ct 1: 12 mths imp cum.</p> <p>Ct 2: 12 mths imp conc.</p> <p>Ct 4: 4 yrs imp cum.</p> <p>Ct 6: 2 yrs imp cum.</p> <p>Ct 7: 2 yrs imp conc.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Appellant spent 328 days on remand which was taken into account in relation to the sentence for Ct 6.</p>	<p>Appeal against conviction and sentence dismissed – leave refused on papers.</p> <p>TES did not breach totality principle.</p> <p>Sentence on Ct 4 not manifestly excessive.</p> <p>At [92] Sentences for offences of sexual penetration without consent vary significantly.</p> <p>At [94] The appellant submits that the</p>



		<p>Breach protective bail conditions.</p> <p>Exposed to domestic violence as a child.</p>	<p>2011 when the offences occurred.</p> <p>The victim went to the appellant's house to collect money that was owed to her parents. When the appellant did not answer the door the victim entered. The appellant then came through the front door from outside the house and attacked her. He told her that she was going to 'die here tonight' a while holding her against the wall with his arm against her chest and his other hand around her throat so that she could not breathe, swallow or speak. The victim tried to run towards the door, but the appellant attached her again and pushed her to the ground, holding her head down with his knees. He again told her that she was going to die.</p> <p>The appellant pushed the victim into the bathroom and pushed her against the wall. He held her by the back of the neck with one hand and pushed her head towards the bathroom sink. He held her around the waist so that she could not move. He forcibly penetrated the victim. The victim cried and asked him to stop.</p> <p>The appellant held the victim's arm while they stood on the front porch to look at the car. The victim wanted to check her sleeping child. The appellant then pushed her face against the wall and again forcibly had sex with her.</p> <p>The victim was eventually able to run to her car and leave the appellant's house. The victim sustained injuries throughout the ordeal.</p> <p>The defence at trial was that the sexual intercourse</p>	<p>No remorse.</p> <p>Lied to police in VROI.</p> <p>Assessed as presenting a medium to high risk of sexual re-offending.</p>	<p>seriousness of this offence was reduced by the fact that there were no circumstances of aggravation. This submission has no merit because the 'starting point' of 4 to 6 years assumes that there are no aggravating factors. That would not put it into a less serious category for an offence under s325 of the <i>Criminal Code</i> (WA). At the appeal hearing, counsel for the appellant emphasised that the period of offending was relatively short. He submitted that the brevity of the ordeal should have been reflected in the sentence. However long the ordeal lasted, it was certainly long enough for the appellant to sexually penetrate the victim without her consent in the circumstances outlined above. Counsel for the appellant also submitted that the offence was of a less serious nature because the parties had previously been in a consensual sexual</p>
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			took place but was consensual and he denied the other allegations.		relationship. That is not a mitigating factor.  At [100] There is no requirement, even where multiple offences arose out of a single transaction, that concurrent sentences be imposed.
29.	<p><i>Ali v The State of Western Australia</i></p> <p><b>[2013] WASCA 55</b></p> <p>Delivered 01/03/2013</p>	<p>30 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record for traffic offences. No prior record for offences of violence.</p> <p>Wife and 2 yr old child.</p> <p>Migrated from Egypt.</p> <p>Unemployed, having lost his licence to drive a taxi following the assault.</p>	<p>1 x AOBH.</p> <p>The appellant was working as a Taxi driver. The appellant picked up the victim from Burswood Casino in the early hours. The victim asked to be taken to Tuart Hill.</p> <p>The victim had no cash on him but intended to pay the taxi fare on his credit card. However, when he arrived outside his home and attempted to use the card the transaction was declined. The appellant tried several times to process the transaction on his credit card machine without success. He offered to charge the victim a reduced amount but the credit card transaction for the reduced charge was also unsuccessful. The victim then asked to be taken to a nearby ATM to withdraw cash. The appellant did so but the transaction at the ATM was also declined.</p> <p>The victim then returned to the taxi and offered his driving licence to the appellant by way of security, saying he would pay the fare the following day. The appellant became angry and attempted to seize the victim's wallet. The victim turned and began to walk away from the taxi.</p>	<p>12 mths imp.</p> <p>EFP.</p> <p>Sentencing judge accepted that the incident was out of character.</p>	<p>Allowed.</p> <p>Re-sentenced to 12 mths imp susp 12 mths.</p> <p>At [18] Having regard to the circumstances and nature of the assault, the offending, while serious, was not of the most serious kind. It was not premeditated but occurred on the spur of the moment.</p> <p>At [19] While the assault was violent, it was not prolonged and no weapon was involved.</p> <p>At [22] ... in the circumstances a sentence of 12 months immediate imprisonment fell outside the discretionary range.</p>

			<p>The appellant lost his temper and got out of the taxi and pursued the victim. He grabbed the victim by the collar and pulled him, twisting and hitting him so he fell to the ground. The appellant punched the victim while he was on the ground and stamped on his knee. The appellant then drove away in his taxi, taking the victim's mobile phone with him.</p>		
28.	<p><b><i>Pagana v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 248</b></p> <p>Delivered 29/11/2012</p> <p>Co-offender of <i>Kaschull v WA</i> [2012] WASCA 245 – judgements should be read in conjunction with one another.</p>	Convicted after trial.	<p>Ct 1: AOBH (victim 1). Ct 2: AOBH (victim 2). Ct 3: Unlawful wounding (victim 3).</p> <p>Appellant and six others were involved in a violent altercation with the three victims.</p> <p>Co-offender (Kaschull) PG on first day of trial while appellant went to trial on same charges. Kaschull, as part of the plea agreement, was to be sentenced on a factual basis agreed to by the State which contradicted significant aspects of the State's case at trial and which reduced the seriousness of the facts of the offending. First sentencing judge, who presided over the appellant's trial, refused to sentence Kaschull on that basis and the matter was sent to a different judge for sentencing. Court of Appeal held that the respondent's agreement to such a course of action was difficult to justify.</p> <p>Kaschull sentenced to 14 mths imp on ct 1, 12 mths imp on ct 2 and 6 mths imp on ct 3 for a TES of 14 mths imp.</p> <p><u>Facts on which appellant sentenced</u> Appellant had recently broken up with his girl friend and had tried, with no success, to contact her in the days preceding the offending. Appellant</p>	<p>2 yrs imp. 18 mths imp. 18 mths imp.</p> <p>TES 3 yrs 6 mths imp. EFP.</p>	Dismissed – leave refused on papers.

			<p>mistakenly believed that victim 1 was possibly involved with his ex-girlfriend.</p> <p>Day prior to the offending, appellant went to victim 1's house three times looking for his ex-girlfriend and was told to leave on each occasion. On the second and third occasions, victim 1 punched appellant in the face.</p> <p>After the third visit, appellant was highly emotional and, after a series of phone calls, appellant and six others (including the appellant) had assembled at appellant's house. The groups armed themselves – Kaschull with a baseball bat, another with a sword and at least one other with an unknown weapon and went to victim 1's house.</p> <p>When the group arrived at the house, the victims went outside, victim 1 armed with a baseball bat, and victim 1 asked what was going on. Kaschull hit victim 1 over the head with the baseball bat.</p> <p>Kaschull hit victim 1 twice more with the bat and victim 1 fell to the ground where he was set upon in a sustained attack during which the appellant held him so that the others could attack him. Victim 2 tried to help victim 1 and was attacked by several people, including Kaschull who hit him multiple times with the baseball bat. Victim 2 was also slashed with a machete or sword. Victim 3 tried to assist victim 2 and suffered slashes from an unknown weapon to his legs.</p> <p>No direct evidence to show the appellant personally inflicted any of the injuries but was sentenced on the basis he counselled or procured and encouraged the offending.</p> <p><u>Facts on which Kaschull sentenced</u></p> <p>The arrival of the group at victim 1's house is</p>		
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			essentially the same. The subsequent confrontation was found not to be precisely clear but roughly matches the sequence above with except that the State agreed for the purposes of Kaschull's sentencing, that Kaschull only hit victim 1 with the bat once and that he did not strike victim 2 but was responsible for all the acts of violence by virtue of s 8 <i>Criminal Code</i> .		
27.	<p><b><i>Kaschull v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 245</b></p> <p>Delivered 29/11/2012</p> <p>Co-offender of <i>Pagana v WA</i> [2012] WASCA 248 – judgements should be read in conjunction with one another.</p>	<p>Convicted after late PG – on first day of trial.</p> <p>No prior criminal record.</p> <p>Excellent antecedents.</p> <p>Good, supportive family and partner.</p> <p>Good employment history and supportive employer.</p>	<p>Ct 1: AOBH (victim 1). Ct 2: AOBH (victim 2). Ct 3: Unlawful wounding (victim 3).</p> <p>Appellant and six others were involved in a violent altercation with the three victims.</p> <p>Appellant PG on first day of trial while co-offender (Pagana) went to trial on same charges. Appellant, as part of the plea agreement, was to be sentenced on a factual basis agreed to by the State which contradicted significant aspects of the State's case at trial and which reduced the seriousness of the facts of the offending. First sentencing judge, who presided over the Pagana's trial, refused to sentence the appellant on that basis and the matter was sent to a different judge for sentencing. Court of Appeal held that the respondent's agreement to such a course of action was difficult to justify.</p> <p>Pagana sentenced to 2yrs imp on ct 1, 18 mths imp on ct 2 and 18 mths imp on ct 3 for a TES of 3 yrs 6 mths imp.</p> <p><u>Facts on which Pagana sentenced</u> Pagana had recently broken up with his girl friend</p>	<p>14 mths imp. 12 mths imp. 6 mths imp.</p> <p>TES 14 mths imp.</p> <p>EFP.</p> <p>Genuine remorse.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [38] None of the individual sentences were manifestly excessive.</p> <p>At [43] Youthful violence of this kind is a problem in the community and, in sentencing, general deterrence must be emphasised.</p>

			<p>and had tried, with no success, to contact her in the days preceding the offending. Pagana mistakenly believed that victim 1 was possibly involved with his ex-girlfriend.</p> <p>Day prior to the offending, Pagana went to victim 1's house three times looking for his ex-girlfriend and was told to leave on each occasion. On the second and third occasions, victim 1 punched Pagana in the face.</p> <p>After the third visit, Pagana was highly emotional and, after a series of phone calls, Pagana and six others (including the appellant) had assembled at Pagana's house. The groups armed themselves – the appellant with a baseball bat, another with a sword and at least one other with an unknown weapon) and went to victim 1's house.</p> <p>When the group arrived at the house, the victims went outside, victim 1 armed with a baseball bat, and victim 1 asked what was going on. The appellant hit victim 1 over the head with the baseball bat. Appellant hit victim 1 twice more with the bat and victim 1 fell to the ground where he was set upon in a sustained attack during which Pagana held him so that the others could attack him. Victim 2 tried to help victim 1 and was attacked by several people, including the appellant who hit him multiple times with the baseball bat. Victim 2 was also slashed with a machete or sword. Victim 3 tried to assist victim 2 and suffered slashes from an unknown weapon to his legs.</p> <p>No direct evidence to show Pagana personally inflicted any of the injuries but was sentenced on the basis he counselled or procured and encouraged the offending.</p>		
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			<p>Facts on which appellant sentenced</p> <p>The arrival of the group at victim 1's house is essentially the same. The subsequent confrontation was found not to be precisely clear but roughly matches the sequence above with except that the State agreed for the purposes of the appellant's sentencing, that the appellant only hit victim 1 with the bat once and that he did not strike victim 2 but was responsible for all the acts of violence by virtue of s 8 <i>Criminal Code</i>.</p>		
26.	<p><b><i>McLaughlin v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 204</b></p> <p>Delivered 12/10/2012</p>	<p>37 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – including violent offending.</p> <p>Cts 3 &amp; 4 breached bail for cts 1, 2 and s 32 offence.</p> <p>Traumatic childhood which has lead to deep seated fears of rejection.</p> <p>Drug and alcohol issues.</p>	<p>Ct 1: AOBH.</p> <p>Cts 2 &amp; 3: Threats to kill.</p> <p>Ct 4: Arson.</p> <p>s 32 offence (poss controlled weapon).</p> <p>Appellant, who had been drinking alcohol, argued with the victim 1 (de facto partner) about an earlier incident involving her son. Appellant demanded victim 1 retrieve some cigarette butts from the bin so he could roll a cigarette. Victim 1 refused and appellant threw an ashtray at her, hitting her in the back. Appellant then locked external door and put the key in his pocket, picked up a large knife and cut the power cord to the vacuum the victim 1 was using.</p> <p>Later that day, appellant, in the bedroom with the victim 1, grabbed spat on her, grabbed her and then shook her. Appellant told her to leave the bedroom and victim 1 went to lounge room. Appellant then used a large knife to smash the glass table in the lounge and stabbed the walls. Appellant then held the knife to the victim 1's throat and threatened to</p>	<p>Ct 1: 1 yr 6 mths imp.</p> <p>Cts 2 &amp; 3: 10 mths imp each ct.</p> <p>Ct 4: 2 yrs 10 mths imp.</p> <p>6 mths imp.</p> <p>TES 4 yrs 8 mths imp.</p> <p>EFP.</p>	Dismissed – leave refused on papers.

			<p>kill her and members of her family. Appellant then stabbed the walls again, stopping when the blade of the knife broke. Victim 1 tried to leave the room but the appellant prevented her from leaving, shouted at her, pushed and shoved her and then punched her in the nose. Eventually the appellant fell asleep and victim 1, fearing for her life, remained awake. The next morning, victim 1 fled the house with her son. Appellant had a disagreement with victim 2 (estranged wife) and left her house. Over the course of the next few hours, appellant sent victim 2 increasingly violent and threatening text messages. Appellant drove to victim 2's home, banged on the door, shouted, swore and demanded to be let in. No one was home so appellant kicked in a rear gate and then smashed a window to gain entry to the house. Appellant set fire to the lounge chair and then left. Fire spread and \$30,000 damage was caused. After setting the fire, appellant left more violent and threatening text messages to victim 2.</p> <p>History of domestic violence during marriage of appellant to victim 2 – although no convictions in that regard.</p>		
25.	<p><i>Ugle v The State of Western Australia</i></p> <p>[2012] WASCA 104</p> <p>Delivered 10/05/2012</p>	<p>18 yrs 9 mths at time offending (victim 78 yrs). 19 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Offending breached protective bail (4 x agg burg; 3 x stealing; 1 x steal motor vehicle).</p>	<p>Ct 1: Agg burg. Ct 2: Agg AOBH. Ct 3: Agg sex pen (digital pen vagina). Ct 4: Agg sex pen (pen vagina with penis). Ct 5: Agg sex pen (pen anus with penis). Ct 6: Agg sex pen (pen vagina with penis). Ct 7: Agg sex pen (pen anus with penis). Ct 8: Agg sex pen (fellatio).</p> <p>Sentenced separately for:</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 yrs imp. Ct 3: 5 yrs imp. Ct 4: 4 yrs imp. Ct 5: 6 yrs imp. Ct 6: 4 yrs imp. Ct 7: 6 yrs imp. Ct 8: 6 yrs imp.</p>	<p>Dismissed.</p> <p>At [46]-[66] Discussion of comparative cases.</p> <p>At [71] Ordinarily, youth is a significant mitigating factor but, in some instances, despite youth a sentence needs to reflect</p>



		<p>Prior criminal record – poss stolen property; steal motor vehicle; common assault.</p> <p>Never been sentenced to detention or imprisonment previously.</p> <p>Eldest of 6 children; childhood marred by violent father; family homeless while he was growing up.</p> <p>Entrenched history cannabis and alcohol abuse.</p> <p>Completed high school; minimum work history.</p>	<p>1 x Give false details to police. 1 x Breach protective bail.</p> <p>Assault and sex offences at the upper end of the scale of seriousness.</p> <p>Victim lived alone in an accommodation complex for senior citizens. Victim was showering at approx 7pm when appellant entered the grounds of the accommodation complex by jumping a perimeter wall. Appellant entered victim's unit by smashing lounge room window after finding the rear door locked (ct 1). Appellant confronted by victim's small dog when he entered. Appellant locked the dog in a cupboard. Victim heard the noises the appellant made and her dog barking and got out of the shower. Appellant entered bathroom and confronted naked victim. Appellant struck the victim and pushed her to the floor. Victim fell and hit her head on the wall causing a laceration on the back of her head (ct 2). Victim screamed for help and appellant placed his hand over her mouth. While victim was on the bathroom floor, appellant removed his penis from his pants, positioned himself on top of the victim and put his fingers inside her vagina (ct 3). Appellant also rubbed her clitoris, causing her pain. Victim told appellant he was hurting her but appellant persisted. Appellant partially penetrated victim's vagina with his penis (ct 4) and then penetrated her anus with his penis, causing her to scream in pain (ct 5). Appellant then dragged victim into the bedroom, pushed her onto the bed and positioned himself over her. Appellant grabbed victim's necklace and</p>	<p>TES two charges 14 mths imp (cumulative on sentences above).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>Limited victim empathy; no acceptance of responsibility some remorse and shame; some steps towards rehabilitation (attending Alcoholics Anonymous); posed a present danger to the community.</p>	<p>the need to protect the public as wells personal and general deterrence.</p> <p>At [72] <i>"The degree of objective seriousness of the appellant's offending required that the mitigating effect of his youth be significantly reduced in determining the appropriate sentencing disposition."</i></p> <p>At [90] Vulnerability of the victim is a significant factor in sentencing.</p>
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			<p>ripped it from her neck – appellant later gave the necklace to his cousin. Necklace had two locketts on it and was of sentimental value to the victim. Necklace was not recovered.</p> <p>Appellant then partially penetrated victim’s vagina with his penis (ct 6) and then partially penetrated victim’s anus with his penis (ct 7). Appellant then demanded victim perform oral sex on him. Victim said she had not done that before. Appellant thrust his penis into victim’s mouth for approx 5 minutes causing her to cough and choke. Appellant then ejaculated in victim’s mouth, again causing her to choke (ct 8).</p> <p>Appellant then demanded money, got dressed and left the victim’s home.</p>		
24.	<p><i>Closter v Humphreys</i></p> <p><b>[2012] WASC 145</b></p> <p>Delivered 27/04/2012</p>	<p>Convicted after early PG.</p> <p>25 yrs at time sentencing.</p> <p>Prior criminal record – one conviction indicating history of violence.</p> <p>Engaged in counselling to address excessive alcohol consumption and anger management prior to sentencing; stopped drinking alcohol since offending.</p> <p>Supportive partner and family.</p>	<p>1 x AOBH.</p> <p>Appellant at licensed premises and asked to leave by crowd controllers as a result of her intoxication. As the appellant was being escorted out she has attempted to run off in the direction of the toilets. The victim (female crowd controller who was escorting her out) has followed and a physical altercation followed as victim attempted to forcibly remove the appellant. Appellant was holding a glass bottle from which she had been drinking. A struggle has ensued during which the appellant has thrown her arms up and the bottle has broken on the forehead of the victim. Appellant did not intentionally strike the victim with the bottle.</p> <p>Victim suffered 1.5cm laceration to her forehead and superficial cuts and bruises to her face.</p>	<p>10 mths imp.</p> <p>TES 10 mths imp.</p> <p>Remorse; no attempt to minimise or excuse conduct.</p> <p>Spent approx 4 weeks in custody prior to being released on bail pending the determination of appeal.</p>	<p>Offender’s appeal allowed.</p> <p>12 mth ISO imposed.</p> <p>At [27]-[37] Some discussion of comparable cases.</p> <p>At [39] That the victim was a crowd controller carrying out her duty was a relevant sentencing factor.</p> <p>At [39] “...offences involving the use of violence on licensed premises by persons who are intoxicated are unacceptable and</p>

			Appellant lost her full-time job as a result of the assault. Appellant placed on 12 mth prohibition from entering licensed premises.		<i>deserving of condemnation.</i> ”
<b>23.</b>	<b><i>Kjellgren v Green</i></b> <b>[2012] WASC 80</b>  Delivered 1/03/2012	Convicted after late PG (morning trial due to begin).  Offending breached police order requiring to him to stay away from residence he shared with the victim due to an earlier incident of domestic violence.  Prior criminal record – including violent offences.	1 x Agg AOBH. 1 X Breach Police order.  Appellant and victim were in a relationship and had been living together for approx 4 mths prior to the offending.  Appellant returned to caravan he shared with victim following an earlier domestic dispute to find his possessions outside. Appellant verbally abused victim, threatened her and punched her in the face several times. Victim retreated to kitchen and appellant hit her again, knocking her to the ground. When victim attempted to leave, appellant began to punch her and prevented her from leaving.  Victim suffered a broken nose and a 2-3cm laceration to her cheek below the eye.	2 yrs imp. Fine.  TES 2 yrs imp.  EFP.	Offender’s appeals allowed.  TES reduced to 15 mths imp.  EFP.  At [7]-[8] Domestic violence an inherently serious offence, particularly when orders protecting the victim are breached – personal and general deterrence are main sentencing considerations.  At [13]-[16] Brief discussion of comparative cases.
<b>22.</b>	<b><i>Messiha v Plaucs</i></b> <b>[2012] WASCA 63</b>  Delivered 20/02/2012	Prior criminal record – including violent offences.  Serious drug problem - offending occurred after appellant been on a 7 day methyl binge.  Financial pressure due to	3 x Agg AOBH.  1 x Agg Common Assault. 1 x Threat to injure.  Appellant and victim married for 16 yrs – offending took place while their two children were home.  Described in sentencing as a brutal and sustained	10 mths; 4 mths 4 mths imp. 4 mths imp. 4 mths imp.  TES 18 mths imp.  Deeply remorseful and ashamed; issue as to	Offender’s appeal allowed.  TES reduced to 15 mths imp.  At [12] “..the denials made by the appellant to the community corrections officer could only be

		loss of employment 3 mths prior.	<p>attack.</p> <p>Appellant and victim having a verbal argument regarding the victim's vehicle. Appellant punched victim in the side of the face. Victim became dizzy. Appellant then grabbed the right side of the victim's face, causing her pain, and punched the victim 3 or 4 times to the face, head and shoulder regions. Victim raised her arms to protect herself and appellant punched her again several times. Victim screamed for help and tried to leave. Appellant picked up a screwdriver and said to victim "I've had enough. I'm sick of you. I'm going to kill you". Appellant then grabbed victim around the neck from behind and stabbed the victim in her shoulder with the screwdriver causing a laceration. Victim pleaded with appellant not to kill her and appellant threw screwdriver down. Appellant approached victim, who put her arms up to protect herself. Appellant grabbed her arms and bite her twice. The bites caused extreme pain and needed medical attention. Victim's son then attempted to intervene and stop the assault. Victim was able to flee after appellant received a telephone call.</p>	genuineness of remorse.	<p><i>viewed as attempts by him to minimise his conduct. That was a factor which could relevantly bear upon the question of whether the appellant had an understanding of the seriousness of his conduct and was truly remorseful for it."</i></p> <p>[22] Offending serious as conduct sustained; 3 offences inflicted injuries which is indicative of the ferocity of the attack; offences committed in family home while children were there (potential for psychological trauma to children and physical injuries if they intervene to stop the attack). At [44]-[49] Discussion of comparative cases.</p>
21.	<p><b><i>Stokes v Auckland</i></b></p> <p><b>[2012] WASC 2</b></p> <p>Delivered 10/01/2012</p>	<p>29 yrs at time of offending.</p> <p>Convicted after early PG.</p> <p>Offending breached 3 x SIO.</p> <p>Significant prior criminal</p>	<p>1 x Agg AOBH.</p> <p>1 x Breach of SIO (agg AOBH).</p> <p>1 x Breach of SIO (agg AOBH).</p> <p>1 x Breach of SIO (breach of bail) .</p> <p>Appellant in de facto relationship with victim for approx 3 yrs at time offending.</p>	<p>16 mths imp.</p> <p>6 mths imp.</p> <p>6 mths imp.</p> <p>3 mths imp.</p> <p>TES 22 mths imp.</p> <p>EFP.</p>	<p>Offender's appeal dismissed.</p> <p>At [18] Prevalence of domestic violence linked to alcohol abuse in Aboriginal communities meant general deterrence</p>

		<p>record – including violent offences.</p> <p>Performed well on previous community based orders; successfully completed drug and alcohol counselling and domestic violence counselling.</p> <p>Significant history of alcohol and drug abuse and violence (incl. against the same victim of these offences).</p> <p>Unemployed.</p>	<p>Appellant sitting in vehicle with victim when he made sexual remark about victim's niece – both affected by alcohol. Victim angry at this and left vehicle, swearing at appellant. Appellant followed victim and punched her in head several times and also dragged her by the hair to a tap to wash blood from her head.</p> <p>Victim suffered swelling to mouth and eye, and abrasions and bruising to forehead.</p> <p>Victim had resumed relationship with the appellant at time of sentencing.</p>	<p>Acceptance of responsibility; remorse.</p>	<p>key factor in sentencing.</p> <p>At [37] Offending was “<i>very serious and disturbing in its circumstances</i>” and ‘<i>occurred in a context of repeated violent assaults against the same victim over a period of time</i>’.</p> <p>At [37] Need for personal deterrence.</p> <p>At [43] Victim's willingness to continue relationship and forgive appellant does not mean an otherwise appropriate sentence should be reduced.</p> <p>At [44] No clear range for AOBH.</p> <p>At [45]-[48] Some discussion of comparative cases.</p>
20.	<p><b><i>Starr v The State of Western Australia</i></b></p> <p><b>[2011] WASCA 170</b></p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – agg burg; threats to injure;</p>	<p>Ct 1: Kidnapping.</p> <p>Ct 2: AOBH.</p> <p>Ct 4: Act likely to endanger health, life or safety.</p> <p>Victim 17 yrs at time offending and slightly built. Appellant and victim known to each other and</p>	<p>Ct 1: 6 yrs imp.</p> <p>Ct 2: 2 yr imp.</p> <p>Ct 4: 3 yrs imp.</p> <p>TES 6 yrs imp.</p>	<p>Dismissed – application for extension of time refused on papers.</p>

Delivered 4/08/2011	<p>resist arrest; poss smoking implement; agg AOBH; breach VRO; breach bail; assault police officer; AOBH; common assault; unlawful damage.</p> <p>Difficult childhood; victim violent abuse; left home at 14 yrs old and lived on streets; educated to yr 9.</p> <p>Some employment in various fields.</p> <p>Drug use.</p>	<p>appellant harboured considerable animosity towards victim prior to offending.</p> <p>Victim at service station waiting for a friend. Appellant and two co-offenders pulled into service station, all three got out of the ute and ran towards the victim. Co-offender 1 punched victim in side of face and victim fell to ground. Co-offender 1 then kicked victim numerous times in the head and chest – victim suffered lacerations and abrasions. Appellant and co-offender 2 then forced victim into the ute and drove him to a group of units. Victim dragged out of ute and carried into a unit by both appellant and co-offender 2, where he was forced to the concrete floor. While victim on floor, appellant and both co-offenders repeatedly kicked and punched him. Assault continued for 5-10 minutes and at end of assault victim in very bad physical condition – bleeding, difficulty standing and walking. Victim then taken back to ute, forced into it and driven to an isolated bush location. Appellant tied victim's feet together and took off victim's shirt. Appellant and co-offender 1 then urinated on victim.</p> <p>Ute had crane fixed to rear tray and appellant hooked victim's legs to crane and raised it so that victim was suspended upside down. Appellant and both co-offenders repeatedly kicked and forcefully kicked victim to head, chest and stomach as he was suspended upside down. Victim lowered to ground and a word was carved in his chest by one co-offender as a 'memento'. Victim thought that he was going to be killed at this point.</p> <p>Co-offender 1 then repeatedly struck victim with claw hammer on each hand – causing intense pain</p>	<p>EFP.</p> <p>No acceptance of responsibility; blamed co-offenders; no victim empathy.</p> <p>At [117] Considered by sentencing judge as least culpable of the three offenders but offending conduct described as 'cowardly, brutal and sadistic.'</p>	
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			<p>and serious permanent injury. Co-offender 1 then struck victim repeatedly in legs with metal tyre iron and struck victim's feet with hammer. Victim had by now been stripped to his boxer shorts and socks and could barely hobble.</p> <p>Appellant and both co-offenders got back in ute and drove away - deliberately leaving victim seriously injured with no assistance in remote location (ct 5). By time appellant and co-offenders left it was dusk – victim spent night in bush and at dawn next day managed to crawl 4-5m to dirt road. Victim seen by a man on his way home from motor biking with his son. Man has carried victim to his car and driven him to hospital (admitted suffering mild hypothermia, dehydration and serious injuries from the attack including split kneecap, multiple breaks in his shin bone, multiple fractures to his hands and extensive bruising and lacerations all over his body) – victim then transferred by air to Perth hospital. Required extensive treatment from orthopaedic and plastic surgeons and remained in hospital for 3 weeks.</p> <p>At time sentencing victim had limited use of hands, could not walk without leg pain, has suffered anxiety attacks, serious depression and has attempted suicide.</p>		
19.	<p><i>Eriha v The State of Western Australia</i></p> <p>[2011] WASCA 167</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – burglary; att burglary;</p>	<p>Ct 1: AOBH. Ct 2: Kidnapping. Ct 3: AOBH. Ct 4: GBH with intent. Ct 5: AOBH with intent.</p> <p>Offending within worst category of offences of this</p>	<p>Ct 1: 1 yr imp. Ct 2: 5 yrs imp. Ct 3: 2 yrs imp. Ct 4: 9 yrs imp. Ct 5: 3 yrs imp.</p> <p>TES 11 yrs imp.</p>	<p>Dismissed.</p> <p>At [59]-[62] As offending fell within worst category, irrespective of previous sentences imposed, court entitled to impose sentence</p>

Delivered 2/08/2011	<p>AOBH; carry controlled weapon in manner likely to cause fear; had not previously served term imp.</p> <p>Difficult childhood; domestic violence; ran away from home at same time left school (part way through yr 11).</p> <p>Entrenched propensity for violence.</p>	<p>type.</p> <p>Victim 17 yrs at time offending and slightly built. Appellant and victim known to each other and appellant harboured considerable to animosity towards victim prior to offending.</p> <p>Victim at service station waiting for a friend. Appellant and two co-offenders pulled into service station, all three got out of the ute and ran towards the victim. Appellant punched victim in side of face and victim fell to ground. Appellant then kicked victim numerous times in the head and chest – victim suffered lacerations and abrasions (ct 1). Two co-offenders then forced victim into the ute and drove him to a group of units (ct 2 – kidnapping extended for a period of several hours). Victim dragged out of ute and carried into a unit by both co-offenders, where he was forced to the concrete floor. While victim on floor, appellant and both co-offenders repeatedly kicked and punched him. Assault continued for 5-10 minutes and at end of assault victim in very bad physical condition – bleeding, difficulty standing and walking (ct 3). Victim then taken back to ute, forced into it and driven to an isolated bush location. Co-offender 1 tied victim's feet together and took of victim's shirt. Appellant and co-offender 1 then urinated on victim.</p> <p>Ute had crane fixed to rear tray and co-offender 1 attached victim's legs to crane and raised it so that victim was suspended upside down. Appellant and both co-offenders repeatedly kicked and forcefully kicked victim to head, chest and stomach as he was suspended upside down. Victim lowered to ground</p>	<p>EFP.</p> <p>High risk re-offending.</p>	<p>at or near the statutory maximum. Offending in this case involved criminality of highest order and demanded long custodial sentence on grounds denunciation, public protection and general and specific deterrence – appellant's conduct cruel, deliberate, methodical and sustained.</p>
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			<p>and a word was carved in his chest by one co-offender as a 'memento'. Victim thought that he was going to be killed at this point.</p> <p>Appellant then repeatedly struck victim with claw hammer on each hand – causing intense pain and serious permanent injury (ct 4). Appellant then struck victim repeatedly in legs with metal tyre iron and struck victim's feet with hammer. Victim had by now been stripped to his boxer shorts and socks and could barely hobble.</p> <p>Appellant and both co-offenders got back in ute and drove away - deliberately leaving victim seriously injured with no assistance in remote location (ct 5). By time appellant and co-offenders left it was dusk – victim spent night in bush and at dawn next day managed to crawl 4-5m to dirt road. At approx 8.30am victim seen by a man on his way motor biking with his son. Man has carried victim to his car and driven him to hospital (admitted suffering mild hypothermia, dehydration and serious injuries from the attack including split kneecap, multiple breaks in his shin bone, multiple fractures to his hands and extensive bruising and lacerations all over his body) – victim then transferred by air to Perth hospital. Required extensive treatment from orthopaedic and plastic surgeons and remained in hospital for 3 weeks.</p> <p>At time sentencing victim had limited use of hands, could not walk without leg pain, has suffered anxiety attacks, serious depression and has attempted suicide.</p>		
18.	<b>Langdon v Kelemete-Leoli-McLean</b>	18 yrs a time offending. Convicted after trial.	<p>Ct 1: AOBH (victim 1).</p> <p>Ct 2: AOBH (victim 2).</p>	<p>Ct 1: 8 mths imp.</p> <p>Ct 2: 15 mths imp.</p>	Offender's appeal dismissed.

	<p><b>[2011] WASCA 26</b></p> <p>Delivered 14/02/2011</p>	<p>No prior criminal record.</p> <p>Full-time employment.</p> <p>Offending out of character.</p>	<p>Appellant and friend in Northbridge trying to find a taxi and had been at a nightclub. Appellant had consumed approx 4 vodka drinks. Appellant and friend walked past victim 1 and his girlfriend who were standing outside a nightclub. Victim 1 was extremely intoxicated and swore at the appellant. Appellant retaliated by punching victim 1 in the face and breaking his nose.</p> <p>Victim 2 saw the altercation and went and spoke to the appellant and the victim. Victim 2 had been drinking at another nightclub with friends and had left to find a taxi.</p> <p>The appellant punched victim 2 in the face. Victim 2 fell to the ground and was rendered unconscious. On awaking in hospital, victim 2 found he had permanently lost his sense of smell - medical evidence confirmed the permanency of the loss and showed that as a result of that loss, victim 2's sense of taste had been altered.</p> <p>Appellant provided no assistance to either victim and left the scene after assaulting victim 2.</p>	<p>TES 15 mths imp.</p> <p>EFP.</p>	<p>At [9]-[33] and [77]-[91] Discussion as to s 7(3) <i>Sentencing Act</i> and whether permanent injury suffered by victim 2 could be taken into account in sentencing as an aggravating factor – s 7(3) not applicable in this case.</p>
17.	<p><b><i>The State of Western Australia v Cheeseman</i></b></p> <p><b>[2011] WASCA 15</b></p> <p>Delivered 19/01/2011</p>	<p>24 yrs at time offending.</p> <p>Convicted after fast track PG</p> <p>Prior criminal record – stealing; benefit by fraud; agg burg and stealing.</p> <p>History of violence - 2 yrs prior had been involved in a fight causing the death of the other party to the</p>	<p>Ct 1: Dep lib. Ct 2: Dep lib. Ct 3: AOBH. Ct 4: Threat to kill.</p> <p>Respondent believed intimate relationship existed between his de facto (victim 1, 22 yrs) and victim 2 (20 yrs). Victim 1 and respondent separated at time offending.</p> <p>4 weeks after the separation, respondent met with victim 1 and victim 2. Spoke for awhile then victim 2 left premises, victim 1 remained with respondent.</p>	<p>Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: Fine \$1000 Ct 4: 2 yrs imp.</p> <p>\$1,000 fine imposed for breach CBO.</p> <p>TES 2 yrs imp susp 18 mths \$2,000 fine.</p> <p>Spent 120 days in custody prior to</p>	<p>Allowed.</p> <p>TES 18 mths imp substituted.</p> <p><u>Sentences on appeal:</u> Ct 1: 12 mths imp. Ct 2: 12 mths imp. Ct 3: 6 mths imp. Ct 4: 18 mths imp - reduced to recognise rehabilitative efforts since SIO imposed.</p>

		<p>altercation - no charges were laid.</p> <p>Offending breached CBO (agg burg).</p> <p>Breached bail for these offences by failing to comply with residential requirement – remanded in custody.</p> <p>Respondent and victim 1 have 2 yr old child together; educated to yr10; good employment history.</p> <p>Suffered from anxiety and depressive disorder - on medication; psych report estimated slightly below average intelligence.</p> <p>Under influence alcohol and cannabis at time offending.</p>	<p>Victim 1 and respondent then went looking for victim 2, found her, spoke to her, and left again.</p> <p><u>Ct 1:</u> Respondent detained victim 1 in vehicle and drove to his home. Victim 1 attempted to escape to neighbours home, but respondent forced her back by putting his hand over her mouth and carried her back into his home, placed her on the lounge, then armed himself with a spear gun and loaded with a barbed spear.</p> <p><u>Ct 2:</u> When victim 2 arrived respondent pointed spear-gun at her and forced her to enter. Then demanded that mobiles be placed on the kitchen table. Victim 2 tried to leave but respondent pushed his left shoulder into victim 2's body to stop her. Respondent said 'no one is leaving until I say so' and he was 'dying tonight' and would be taking someone with him. He looked directly at victim 2 while speaking.</p> <p><u>Ct 3:</u> Respondent then demanded victim 2 give her car keys, when victim 2 refused and tried to leave, respondent punched her left cheek with sufficient force to knock her down. He then picked victim 2 up by the throat and placed her on the ground facing him. Then hit her in the same area of her face causing her skin to split. Victim 2 suffered bruising (face, arm and groin), a laceration to her cheek and a non displaced fracture to her cheek.</p> <p><u>Ct 4:</u> Victim 2 then threw her keys onto the table. Respondent forced victim 2 onto a kitchen stool,</p>	<p>sentencing.</p> <p>Genuine remorse; accepted responsibility</p>	<p>Respondent and victim 1 had reconciled at time sentencing – erroneously identified by the sentencing judge as a mitigating factor.</p> <p>At [3] <i>“The hallmark of domestic or relationship related violence is the readiness of many victims to return to, or remain in, a relationship with perpetrator of the violence. The otherwise appropriate penalty should not be reduced because there is a return to the status quo that existed prior to the breakdown of the relationship which precipitated the violence. It is also circular to rely on the return to the relationship status quo as the route to rehabilitation.”</i></p> <p>At [92] variations in circumstances dep lib can be committed in means there is no ‘tariff’ for the offences itself – appropriate sentence dependent on individual facts.</p>
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			<p>pick up a loaded spear gun and pointed it at her chest. He then said he could shoot her in the chest now, then call the police, or call the police first, then shoot her in the chest. He also said 'You killed me, that's why I have to kill you'.</p> <p>Respondent eventually surrendered to police.</p> <p>Unprovoked assault over prolonged episode intimidation of victim 2 committed in the context of a domestic relationship with victim 1. Victim 2 suffered psychological difficulties as result of offending and moved towns to get away from respondent and his family.</p>		<p>At [106] "<i>The usual sentencing disposition where a person is convicted of the offence of deprivation of liberty or the offence of threatening unlawfully to kill, where the offender is armed with a weapon and the offending is otherwise objectively serious, is a term of imprisonment to be served immediately</i>".</p>
16.	<p><b>Wiltshire v Mafi</b></p> <p><b>[2010] WASCA 111</b></p> <p>Delivered 14/05/2010</p>	<p>20 yrs at time offending.</p> <p>Convicted after PG at earliest opportunity.</p> <p>Prior criminal record – assault.</p> <p>Supportive family and friends.</p> <p>Between conviction and this appeal, respondent changed industry he worked in and become a first time father</p>	<p>1 x AOBH.</p> <p>Respondent was employed as a crowd controller in a nightclub but was not on duty at the time of offending.</p> <p>Respondent and victim were outside same nightclub when respondent approached victim and asked him for money. Respondent's wallet had just been thrown towards the group of people the victim was standing with and the respondent wrongly believed the victim had his wallet.</p> <p>Victim replied he had no money and respondent slapped and then punched him in the face. The punch caused the victim to fall to the ground. Respondent again asked for money. Victim, trying to deflect respondent, replied he did. While victim still lying on the ground, respondent kicked him hard in the stomach. Victim got to his feet and attempted to run away but the respondent chased him and struck him again, causing him to fall to the</p>	<p>12 mths imp.</p> <p>TES 12 mths imp susp 9 mths.</p> <p>NB: Original sentence of 15 mths imp was imposed. Following an appeal by the offender, the above sentence was substituted. The State then appealed that substituted sentence.</p>	<p>State appeal allowed.</p> <p>TES 12 mths imp substituted.</p> <p>At [26] The summary conviction penalty is a jurisdictional limit only – it is not the maximum sentence. A Magistrate may use a starting point in excess of that jurisdictional limit as long as the sentence imposed falls below it.</p> <p>At [42] The sentencing range of 6 mths susp imp to 2 yrs imp identified in <i>Holden v The State of</i></p>

			<p>ground. Respondent then kicked victim several times in stomach area before walking off.</p> <p>Victim suffered lacerated spleen and kidney. Injuries managed by catheter, painkillers and antibiotics. Assault also had adverse impact on victim's financial and employment situation.</p> <p>Victim was significantly shorter and smaller than respondent.</p>		<p><i>Western Australia</i> [2009] WASCA 50 upheld.</p> <p>At [47]-[48] Appropriate sentence was 15 mths imp originally imposed. Owing to changes made by respondent to reform himself and taking into account time already spent in custody as well as on bail, that term reduced to 12 mths.</p>
15.	<p><b><i>The State of Western Australia v BLM</i></b></p> <p><b>[2009] WASCA 88</b></p> <p>Delivered 20/05/2009</p>	<p>27 yrs at time offending. 29 yrs at time appeal.</p> <p>Convicted after trial.</p> <p>Prior criminal record – AOBH; assault.</p> <p>Parents separated when 3 yrs old; lived with grandparents after separation and only saw parents in school holidays.</p> <p>Educated to yr 10; good employment history.</p>	<p>Ct 1: Act causing bodily harm s 304(2) <i>Criminal Code</i> (victim 1). Ct 2: AOBH (victim 2).</p> <p>Respondent refused entry to a tavern. Entry refused as respondent had previously been involved in a violent incident at the tavern which was the subject of current criminal proceedings. Respondent became angry and aggressive towards tavern owner and victims (two off duty police officers) came to owner's assistance and helped remove respondent from premises. Police officers escorted respondent home shortly after.</p> <p>Respondent returned to the tavern armed with a large stick. On arrival at the tavern, patrons gathered in car park due to electricity outage. Respondent approached victim 1 and without warning struck him with the stick on the leg, face, head and body – victim 1 struck approx 8 times. Victim 2 went to assist victim 1 but was prevented from reaching him when a relative of the</p>	<p>Ct 1: 3 yrs 4 mths imp. Ct 2: 12 mths imp.</p> <p>TES 3 yrs 4 mths imp.</p> <p>EFP.</p> <p>At [124] Sentencing judge found that victims, although off duty, were acting in their capacity as public officers – entitled, if not obliged, to intervene. Offending therefore more serious.</p> <p>PSR – tendency to normalise aggression.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> Ct 1: 6 yrs imp. Ct 2: 6 mths imp.</p> <p>TES increased to 6 yrs imp.</p> <p>EFP.</p> <p>At [108]-[112] Comprehensive discussion of principles relating to sentencing for multiple offences, the one transaction rule and the totality principle.</p> <p>At [168]-[172] Discussion of comparable cases for s</p>

			<p>respondent's pushed him in the chest. Respondent then punched victim 1 in the face without warning. Respondent also punched tavern owner a short time later.</p> <p>Attack on victim 1 caused significant injuries - regular migraines, short term memory loss, facial and head scars, numbness in face, paralysis in left hand, calcium deposit on back of skull, indent on top of skull, lacks confidence, fearful, depression, poor concentration.</p> <p>Respondent intoxicated at time offending and motivated solely by revenge. Respondent surrendered to police a day or two after offending – claimed could only remember hitting victim 2 due to intoxicated state.</p> <p>Generated significant publicity with bloodied photos of victim 1 in media.</p>		<p>317 <i>Criminal Code</i>.</p> <p>At [177]-[180] Error in ordering sentence for ct 2 wholly concurrent with sentence for ct 1.</p> <p>Repeal of transitional provisions and its effect on sentences discussed in detail at several points in the decision.</p> <p>At [1]-[43] Except in worst cases of offending, following repeal of transitional provisions, appropriate sentencing range is identified by reference to the minimum terms required to be served so as to avoid disparity in sentencing and an increased penalty range. cf dissenting judgement of Buss JA and Miller JA on this point.</p>
14.	<p><b><i>Holden v The State of Western Australia</i></b>  <b>[2009] WASCA 50</b></p> <p>Delivered</p>	<p>34 yrs of age at time offence.</p> <p>Convicted after negotiated PG – original charge GBH. Relatively minor record of prior offending.</p>	<p>1 x AOBH</p> <p>Middle range of seriousness of offending – incorrectly categorised in sentencing as falling within the upper range of seriousness.</p> <p>Appellant, co-offender and victim's girlfriend were</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES 18mths imp substituted.</p> <p>At [43] Hard to discern sentencing range for</p>

	26/02/2009	Problem with alcohol; depression; limited family support.	<p>drinking at appellant's unit. Victim arrived at the unit in an intoxicated state. During the evening victim was provocative and antagonistic towards his girlfriend at various times. Victim left unit and returned with knife but did not threaten anyone – he simply made it known that he had knife in his possession. Girlfriend took the knife off victim and placed it out of his reach. Appellant then dragged victim from unit. Co-offender followed, grabbed victim and forced him to the ground with a karate chop to the neck or shoulders and kned victim in the chest.</p> <p>Appellant went back into unit and returned with a pair of nunchakus. He swung the nunchakus at the victim who was hunched over and kneeling on the ground, striking the victim once. Appellant and co-offender then went back inside and continued drinking with victim's girlfriend. Victim went back to his unit.</p> <p>Victim woke next morning with stomach pains and later that afternoon called an ambulance - treated for perforated bowel and bruising and tenderness on his lower back with fractures to 2 of his vertebrae.</p>		<p>AOBH owing to multitude circumstances it can occur in but cases show following a PG and dependent on individual circumstances a sentence between 6 mths susp imp – 2 yrs imp is usual.</p> <p>At [41]-[48] Strong criticism of appellant's submissions in relation to the assertion the sentence was outside the appropriate range and to the failure to suspend the term. Criticisms explain how a ground relative to such assertions should be properly framed so as to assist the court.</p>
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b>13.</b>	<p><b><i>State of Western Australia v Camilleri [2008] WASCA 217</i></b></p> <p>Delivered 23/10/2008</p>	<p>24yrs at time offending.</p> <p>Convicted after fast track PG – acknowledged not acting in self defence even though claimed fearful of victim 2 as holding bottle.</p>	<p>1 GBH. 2 x AOBH.</p> <p>Respondent employed as a floor manager at a tavern -employed approx 2 weeks and had not received training in dealing with intoxicated persons. Respondent on door at closing time and allowed some young women in at to use the</p>	<p>8mth imp. 4 mths imp each count.</p> <p>TES 8mths imp.</p> <p>Remorse; acceptance of responsibility.</p>	<p>Dismissed.</p> <p>Lenient but not so as to manifest error.</p>

		<p>No relevant prior record - traffic offences, possess prohibited drug.</p> <p>Referees described him as having 'good character'. On day of offence he had worked a long day in the construction industry then long hours at the tavern.</p>	<p>bathroom. Victim 1 also wanted to enter tavern to use bathroom but respondent did not allow him to. Victim 1 insulted the respondent and turned to walk away. Respondent pushed him in the back causing victim 1 to fall down some steps to the ground. Victim 1 injured his knees and had pain, bruising and swelling to his right knee in particular (AOBH). The respondent then walked quickly up to victim 1 and punched him in the face causing him to fall to the ground unconscious - recovered consciousness soon after (AOBH).</p> <p>Victim 2 (victim 1's brother) approached respondent with a bottle in his hand. Respondent punched victim 2 in head. Victim 2 fell on concrete, hit head, and began to convulse (GBH).</p>		
12.	<p><b><i>Tubb v The State of Western Australia</i></b></p> <p><b>[2007] WASCA 106</b></p> <p>Delivered 24/05/2007</p>	<p>21 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record – poss controlled weapon (Tasmania); no convictions in WA.</p> <p>Only been in WA a few weeks before offending.</p>	<p>1 x Kidnapping. 1 x AOBH..</p> <p>Victim was taken by a group of men, including the appellant, from a pub to a house. The appellant was not aware that the victim was taken to the use against his will. On arriving at the house, the appellant joined in punching the victim. The main offender threatened the victim with a 20cm kitchen knife, pushing it against his chest. The appellant then produced a pocket knife which he offered to the main offender. The victim was handcuffed tightly with his hands behind his back by the appellant and the appellant and main offender then dragged the victim to the back shed. Once in the shed, the victim's legs and feet were bound with masking tape and he was gagged (rag stuffed in his mouth), blindfolded and pushed onto a lounge with</p>	<p>5 yrs 7 mths imp. 2 yrs 7 mths imp.</p> <p>TES 5 yrs 7 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>NB: Only kidnapping sentence challenged on appeal.</p>



			<p>a box on top of him. The appellant kept watch outside the shed and when the victim freed his feet and spat out the gag, the appellant punched him in the face.</p> <p>Later on, the victim was dragged back into the house. By this point, the victim's hands had gone numb owing to the handcuffs and he begged for them to be loosened to no avail. The appellant used his pocket knife to cut the victim's shirt off, exposing chest injuries and dragged the still handcuffed victim into the bathroom where he was held under alternate hot and cold water in the bath. The appellant used his foot to push the victim under the cold water. Main offender told the appellant he had "one hour" and to ensure there was no blood. On orders from the main offender, the appellant later removed the tape and cuffs from the victim. The victim was ordered to clean the bathroom. Later that night a dog choker chain was put around the victim's neck and paper stuffed into his mouth and taped in. The offenders ordered pizza and the victim was forced to crawl around, still chained, and eat the crusts off the floor. Later, the appellant bound and handcuffed the victim again – forcing him to sleep on the couch that way.</p> <p>The next day, the victim's restraints were removed and he was allowed to move around the house but the door was padlocked. The victim was treated as a slave and made to clean the house and make the main offender's dinner, being taken outside only to use the toilet. In the evening, the victim was left to sleep on the couch. At some point during the night, when everyone else was asleep, the appellant removed the handcuffs. When the appellant fell asleep, the victim escaped and went to the police.</p>		
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			<p>The victim was held for 35 hrs and suffered extensive cuts, abrasions, swelling and tenderness over his whole body.</p> <p>Appellant sentenced on the basis not principal offender but second in charge acting, at times, under orders and, at times, independently.</p>		
11.	<p><b><i>Mourish v The State of Western Australia</i></b></p> <p><b>[2006] WASCA 257</b></p> <p>Delivered 28/11/2006</p>	<p>33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal record - GBH; assault; unlawful wounding (bit off part of ear).</p> <p>Good employment history.</p> <p>History of violent altercations between family members; appellant not accepted by de facto's family.</p>	<p>1 x AOBH.</p> <p>Appellant attended a function with his de facto. A number of his de facto's family were present. Appellant began arguing with de facto. Victim (de facto's sister) took appellant's de facto for a short walk outside building to calm her down and then returned to the hall. Victim spoke to the appellant about an incident earlier in the evening when he had intentionally knocked a can from his de facto's hands. The appellant responded by grabbing the victim by the hair and punching her face.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp susp 2 yrs.</p>	<p>Dismissed.</p> <p>At [12]-[13] Discussion of comparable cases.</p>
10.	<p><b><i>Robinson v Smith</i></b></p> <p><b>[2005] WASC 99</b></p> <p>Delivered 20/05/2005</p>	<p>41 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal record - dep lib; sexual assault; cannabis offences; breach bail; disorderly conduct.</p>	<p>1 x AOBH.</p> <p>Victim was a security officer and patron of licensed bar assault occurred at. On evening in question he was off duty but wearing his security uniform. Victim with a group of nine of other men. Members of victims' group were involved in three separate physical altercations before the offending. Victim standing at bar close to last altercation when</p>	<p>12 mths 1 day imp.</p> <p>TES 1 2mths 1 day imp.</p> <p>EFP.</p>	<p>Offender's appeal dismissed.</p>

		Supports 16 year old child; 3yr relationship with girlfriend; no fixed address.	<p>the appellant walked up behind him. Victim turned towards appellant and appellant hit him in the neck. Victim staggered but did not fall down. As appellant was preparing to hit victim again, a member of the appellant's group hit him twice in the body causing him to fall to the ground. The appellant's group then stood around the victim as he was on the floor and a second member of the group further assaulted the victim. Appellant and group then left.</p> <p>Victim attended hospital after assault – fractured jaw, laceration and abrasions on face and soft tissue injuries to chest and abdomen. Victim profoundly affected by events and was still physically affected 5mths after the assault.</p>		
9.	<b><i>Polletti v Adams</i></b>  <b>[2005] WASC 66</b>  Delivered 20/04/2005	18 yrs at time offending.  Convicted after early PG.  No prior criminal record.  Father committed suicide when appellant 6yrs old; anger management issues (willing to address); excommunicated from family following assault; educated to yr10; deferred apprenticeship due to family problems.	1 x AOBH  Long-term relationship between appellant's mother and step-father had recently broken down. Victim in relationship with appellant's mother - appellant, mother, her three other children, the victim and his 2 children living in the same house at time offending. Appellant's mother regularly intoxicated as result of her association with victim and the household was full of tension.  Prior to offending, appellant and mother were drinking at pub while the victim was at home with friends. Appellant went home leaving his mother at pub and argued with victim. Victim asked him to fight, appellant declined. Two hours later appellant went back to pub to pick mother up. When mother came home argument occurred between her and the	12mths imp EFP.  Remorseful.	Offender's appeal allowed.  TES 12mths imp susp 12 mths substituted.

			<p>victim. Mother told victim to leave house. Mother went to hit victim but appellant stopped her. Mother then shouted at appellant 'if you don't fucking hit him, I will'. In response to this urging, appellant punched victim in face with a clenched fist. Victim fell to ground and appellant continued to hit him.</p> <p>Victim sustained fractures to the cheekbones and jaw - 3 metal plates inserted to stabilise facial structures as well as receiving 60 sutures and staples.</p>		
8.	<p><b><i>Iveson v The State of Western Australia</i></b></p> <p><b>[2005] WASCA 25</b></p> <p>Delivered 23/02/2005</p>	<p>21 yrs at time sentencing.</p> <p>Convicted after PG at earliest opportunity.</p> <p>Prior criminal record</p> <p>Physically abused by step-father; left home at 14 yrs and lived on the Kings Cross streets.</p> <p>History drug abuse (cannabis &amp; amphetamine) and heroin addiction; drug-induced psychosis and tendency to violent behaviour resulted from drug use.</p> <p>At time sentencing was rebuilding relationship with natural father and had been</p>	<p>Ct 1: Dep lib. Ct 2: AOBH. Ct 3: AOBH. Ct 4: Breach VRO.</p> <p>Victim was appellant's de facto partner – volatile 3 yr relationship.</p> <p>Appellant obsessed with belief that victim having sexual relationships with other men. Appellant, without cause or warning, has struck victim across back with a pole causing 3 abrasions (ct 2). The appellant then ran into the kitchen and grabbed a knife. Victim tried to escape through the front door but the appellant prevented him from leaving (part of ct 1). Appellant grabbed victim around the throat and began to choke her, lifting her off the ground in the process. Victim fought back and tried to attract attention of neighbours through open front door. Appellant held her with one hand and closed the door with the other (part of ct 1). Victim passed out and awoke to find appellant forcibly removing her shorts and underwear. Victim lost consciousness</p>	<p>Ct 1: 2 yrs imp. Ct 2: 1 yr 4 mths imp. Ct 3: 2 yrs 8 mths imp. Ct 4: 2 mths imp.</p> <p>TES 4 yrs 10 mths imp.</p> <p>EFP.</p> <p>Genuine remorse.</p>	<p>Dismissed.</p> <p>At [31] second instance of AOBH as serious an example of that type offending likely to encounter.</p>

		drug free for 11 mths; mother also supportive at time sentencing.	again and when she awoke appellant was in another part of the unit. Victim ran from the unit screaming for help.  Breach VRO unconnected to offending above – VRO taken out following offending and appellant phoned victim from prison in breach of that order.		
7.	<b><i>The State of Western Australia v Anderson</i></b>  <b>[2004] WASCA 157</b>  Delivered 01/06/2004	31 yrs old at time offence.  Convicted after fast-track PG.  Prior criminal record – AOBH; unlawful wounding; GBH; 24 previous convictions’ for less serious offences involving violence; previously imprisoned for assaults against his former de facto.  Mainly unemployed.  History of alcohol abuse. 2 children from previous de facto relationship in which alcohol related domestic violence had been a feature.	Ct 1: AOBH. Ct 2: Threat to kill.  Categorised as close to the worst of its kind. Victim and respondent in de facto relationship.  The respondent found the victim partially clothed in bed with another man. The respondent dragged the victim out of bed, and the continued to drag her 200 m down the street whilst repeatedly hitting her body with a steel stake he had removed from the ground. He ripped the victim’s bra from her and threw it to the ground. The respondent grabbed the victim’s throat and said repeatedly ‘I’m going to kill you’. A vehicle approached and respondent released victim. They both then got a lift back to the house in the vehicle and fell asleep. Victim attended Aboriginal Medical Service in morning. Victim sustained bruising to left lower leg, right upper leg, right and left legs, left cheek, right shoulder and centre of head. Abrasions from being dragged, lacerations above right eye, centre of lower back and back of left hand.	Ct 1: 18 mths imp. Ct 2: 18 mths imp.  TES 18 mths imp.  Not EFP.  Poor response to prior supervision and failure to report; previously completed anger management and substance abuse programs during imprisonment but continued to offend after release.	Allowed.  TES increased to 2 yrs imp.  <u>Sentences on appeal:</u> Ct 1: 2 yrs imp. Ct 2: 2 yrs imp.  Error to reduce sentence to compensate for no parole order.  NB: double jeopardy applied to State appeals.
6.	<b><i>Harvey v Ingles</i></b>  <b>[2004] WASCA</b>	26 yrs at time sentencing.  Convicted after late PG	1 x AOBH.  Victim and appellant driving in same direction.	12mths imp.  TES 12 mths imp.	Dismissed.

	<p><b>30; (2004) 40 MVR 398</b></p> <p>Delivered 2/032004</p>	<p>(day of trial).</p> <p>Offending breached parole. Prior criminal record - number of violent offences.</p> <p>Drug addict - receiving naltrexone treatments and counselling;</p> <p>2 children; employed.</p>	<p>Appellant 'tailgating' victim (appellant asserted that complainant was braking, accelerating and stopping him from getting past). When vehicles came to a stop at intersection appellant got out of vehicle, went over to victim who was sitting in car, and hit him with a clenched fist to the head. Victim got out of car and a fight ensued.</p> <p>Victim received spilt lip, chipped teeth, black eye and swollen jaw.</p>	<p>Not EFP.</p> <p>General and personal deterrence crucial factors.</p>	
5.	<p><b>Mical v Ward</b></p> <p><b>[2003] WASCA 149</b></p> <p>Delivered 11/07/2003</p>	<p>29 yrs.</p> <p>Convicted after PG.</p> <p>No relevant prior record.</p> <p>Good work record; self employed for 13 years as a painter; stable relationship,</p> <p>Ex-professional kick-boxer and claimed to have shown restraint during the assault as he could have inflicted much more serious injuries.</p>	<p>1 x AOBH.</p> <p>Appellant became involved in a dispute for a debt owing from the victim's girlfriend to the appellants girlfriend. Appellant lost his temper and hit the victim. Appellant then took the victim's wallet and threw it on the ground. Appellant hit the victim a number of times causing bruising to his nose, a cut to his eyebrow and a black eye. There were also marks on throat from pressure applied by appellants' thumb to his throat.</p> <p>Appellant was not represented at any point during proceedings – including during a hearing to determine the factual basis on which he was to be sentenced. Additionally PSR raised the issue of both self defence and provocation – Magistrate determined PG stood despite them being raised and despite the appellant apparently never having legal advice or representation. Magistrate did however consider both self defence and provocation in decision.</p>	<p>9 mths imp.</p> <p>TES 9 mths imp.</p> <p>Unlikely to re-offend.</p>	<p>Offender's appeal allowed.</p> <p>TES 9 mths imp susp 6mths substituted.</p> <p>At [45]-[62] Appellant denied natural justice by lack of legal representation in these circumstances. Discusses duty of court in regard to a self-represented accused.</p>

4.	<b><i>Hooper v The Queen</i></b>  <b>(2003) 27 WAR 264</b>	40 yrs at time offending.  Convicted after trial.  No prior criminal record.  Good character; lack of propensity to violence.	1 x AOBH.  Altercation between the appellant's son and someone from the victim's bachelor party group in a vacant block of land on the street. There was no evidence to suggest that it was the victim who had inflicted injuries to the appellant's son. The appellant later on in the day ran up to the victim and yelled 'Who's hit my son?' and punched the victim in the face. Victim fell backwards and struck head on a brick path. Victim subsequently died.  Relevant bodily harm for sentencing was minor kind of bruising on lip and face that could ordinarily be caused by a single punch to the face.	2 yrs imp.  TES 2 yrs imp.  EFP.  Displayed concern for victim after assault; remorseful.	Allowed.  TES reduced to 1 yr 4 mths imp.  EFP.
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					
3.	<b><i>Johnson v Hayter</i></b>  <b>[2001] WASCA 118</b> Delivered 17/04/2001	39yrs at time offence.  PG on day before trial due to start –deemed inevitable given the weight of the evidence/ witness statements.  No relevant prior convictions.  Previous good character; employment, financial and family situation, meant imprisonment have financial impacts on farm.	1 x AOBH.  Appellant went to pick up his children from school at request of the victim (deputy principle) because of head lice. Victim had spoken on phone to appellant's wife earlier. The victim's wife had become upset and spoken with the appellant about it. Victim approached the appellant in the front foyer of the school while appellant speaking to receptionist. Victim attempted to explain conversation he had with appellant's wife but was hit by the appellant before he had a chance to speak.  Victim suffered two splits to the lower lip and two fractures to the jaw. Also suffered emotional and psychological effects.	12 mths imp. Equivalent 8 mths imp after implementation of transitional provisions.  EFP.  Unlikely to re-offend.	Offender's appeal dismissed.  Nature and seriousness of the offence and need for deterrence meant suspension not appropriate.  At [10] Maximum penalty on summary jurisdiction is a jurisdictional limit only and not the maximum penalty for the offence.

		Unprovoked, in primary school, with degree of skill and force.			
2.	<b><i>Mitchell v The Queen</i></b>  <b>[2001] WASCA 255</b>	22yrs.  Convicted after PG.  No prior criminal history.  Grew up with adoptive parents; stable relationship with partner; 4mth old baby; employed.	2 x AOBH.  At [33] very serious instance of offending.  After consuming a dozen or so beers, the appellant got involved in an altercation at a hotel between his group of friends, and ‘grano’ workers. The appellant proceeded to knock out 2 men and stomp on their heads and strike them with a bar stool while they were unconscious on the ground. Appellant extremely intoxicated at time offending and unable to recall events of that night.	2 yrs imp each count.  TES 2 yrs imp. Equivalent 16 mths imp after implementation of transitional provisions.  EFP.  Remorse.	Dismissed.  At [33] Sentences within discretionary range.
1.	<b><i>Kilner v R</i></b>  <b>[1999] WASCA 189</b>  Delivered 30/09/1999	Convicted after PG.  No previous convictions involving violence.  No details in judgement as to personal circumstances.	Ct 1: AOBH. Ct 2: AOBH.  Appellant and victim both significantly affected by alcohol. Both counts occurred in hotel belonging to appellant’s father. Evidence appellant intoxicated (refused service on 3 occasions) and making a nuisance of himself with female patrons.  <u>Count 1:</u> Appellant and victim in bar. Appellant asked victim if he had a problem. Victim said no. Without warning, appellant punched victim 1 in mouth with his fist. Victim 1 did not fight back, and explained that he would not do so because a traffic accident	Ct 1: 8 mths imp. Ct 2: 16 mths imp.  TES 2yrs imp. Equivalent 16 mths imp after implementation of transitional provisions.  EFP.  Significant risk of re-offending	Dismissed.  At [21] – [27] Summary comparative cases.  At [21] Hard to discern range for AOBH as circumstances of offending vary so much.



			<p>had left him with a hole in his head. Appellant proceeded to knee victim 1 in the groin, striking him multiple times in the head with his fist and inflicting several head butts.</p> <p><u>Count 2:</u></p> <p>Occurred approx 10 mins after count 1. Victim left bar and went to bottle shop. Appellant entered bottle shop, approached victim and proceeded to punch him in the head with his fists. Victim fell to the ground and offered no resistance. Appellant, wearing steel capped boots, kicked him in the groin, head and side. Victim lost consciousness and was taken to hospital - suffered 2 swollen black eyes, extensive bruising to the face, 2 chipped teeth, impaired vision in his right eye and a laceration to his forehead, which required 15 sutures.</p>		
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