

# **Aggravated dangerous driving occasioning death** **& vehicular manslaughter**

**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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
circ	circumstances
PG	plead guilty
occ	occasioning
BAC	blood alcohol content
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
BH	bodily harm
att	attempted
EFP	eligible for parole
DDOGBH	dangerous driving occasioning grievous bodily harm
DDOD	dangerous driving occasioning death
DDOBH	dangerous driving occasioning bodily harm
agg	aggravated
disqu	disqualified
TES	total effective sentence
SCP	summary conviction penalty

No.	Case	Antecedents	Summary/ facts	Sentence	Appeal
3.	<p><b><i>Paulose v The State of Western Australia</i></b></p> <p><b>[2019] WASCA 182</b></p> <p>Delivered 15/11/2019</p>	<p>48 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born India; death of father when aged 17 yrs; financial hardship.</p> <p>Well educated; attained Bachelor degree.</p> <p>Strong marriage; two children; wife seriously ill at time offending; supportive family.</p> <p>Arrived Australia 2015; own business; financial difficulties; ceased trading to care for his wife.</p> <p>History of charitable work through Church.</p> <p>Good physical health; some history of mental health issues; including depression; using alcohol to excess as a means to cope at time offending.</p>	<p>Ct 1: DDOGBH Cts 2 &amp; 3: Failure to stop and render assistance Cts 4 &amp; 5: Failure to report an incident. Ct 6: Unlawful killing.</p> <p>Paulose drove his motor vehicle after consuming alcohol. He drove erratically and veered to the right of the road and mounted the traffic island between lanes.</p> <p>Paulose made no attempt to brake and his vehicle collided with two males, ages 16 yrs and 15 yrs, waiting to cross the road. He narrowly avoided a third male aged 12 yrs.</p> <p>Paulose drove from the scene without rendering assistance to either victims or reporting the incident to police. He later claimed this was because he feared being assaulted.</p> <p>Paulose was arrested several hrs later. Analysis revealed a blood alcohol level of 0.212g/per 100mL of blood at the time of the collision. During interview he admitted to consuming alcohol prior to driving.</p> <p>The two victims sustained life threatening injuries. One victim was placed on life support but later died. The other suffered fractures in his back and bleeding on the brain.</p>	<p>Ct 1: 1 yr imp (cum). MDL disq 5 yrs. Cts 2 &amp; 3: 3 yrs 6 mths imp (conc). Cts 4 &amp; 5: 2 yrs imp (conc). MDL disq cts 2-5: 2 yrs (cum). Ct 6: 8 yrs imp (cum).</p> <p>TES 9 yrs imp.</p> <p>MDL disq 7 yrs.</p> <p>EFP after 7 yrs.</p> <p>The sentencing judge characterised the offending as serious; he engaged in a gross breach of traffic rules; he knew he was heavily intoxicated yet he made a decision to drive in circ where he was clearly incapacitated and he had no particular reason to drive beyond mere convenience.</p> <p>The sentencing judge found an agg factor was the appellant's driving was so erratic and unexpected that the victims had no opportunity to take evasive action.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [57] ... the appellant's overall offending was very serious. ... The victims of the appellant's offending were highly vulnerable.</p> <p>At [60] It was appropriate for the sentencing judge to order some accumulation of the sentence for the ct of unlawful killing and the sentence his Honour would otherwise have imposed for the ct of DDOGBH while under the influence of alcohol ...</p> <p>At [61] ... The sentence was commensurate with the overall seriousness of the offending ...</p>

				Remorseful; empathy for families of the victims; insight into impact of his offending; addressing his alcohol use; low risk of re-offending.	
2.	<p><b><i>The State of Western Australia v Tittums</i></b></p> <p><b>[2018] WASCA 23</b></p> <p>Delivered 27/02/2018</p>	<p>35 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after PG (12.5% discount).</p> <p>Minor criminal history; no prior traffic convictions.</p> <p>Left school yr 10.</p> <p>Good work history; employed time offending.</p> <p>Loving family man; married; two young children.</p> <p>History of alcohol and drug abuse; since offending undertaken counselling for substance abuse.</p>	<p>Cts 2; 4 &amp; 6: Agg DDOD. Ct 7: Failure to report an incident. Ct 8: Failure to render assistance.</p> <p>The three victims were travelling together in a motor vehicle. Tittums was driving his vehicle some distance behind the victims' vehicle.</p> <p>The applicable speed limit was 90 km per hr. Tittums' was driving at a minimum average speed of between 157-165 km per hr.</p> <p>Tittums' vehicle collided with the rear of the victims' vehicle causing their vehicle to leave the road and strike trees. The vehicle ignited and was engulfed in flames.</p> <p>Tittums' vehicle came to rest 82m down the road. He abandoned his vehicle and made no attempt to assist the victims or to report the incident to the police or emergency services.</p> <p>Tittums walked home, showered, changed his clothes and went to bed.</p> <p>The victims died at the scene from smoke inhalation or, possibly, smoke inhalation</p>	<p>Ct 2: 6 yrs 6 mths imp (to commence 9 mths after commencement of ct 4); MDL disqu 2 yrs (conc ct 8). Ct 4: 6 yrs 6 mths imp (to commence 9 mths after commencement of ct 6); MDL disqu 2 yrs (conc ct 8). Ct 6: 6 yrs 6 mths imp (to commence 1 yr after commencement of ct 8); MDL disqu 2 yrs (conc ct 8). Ct 7: 1 yr's imp (con ct 8); MDL disqu 1 yr (cum ct 8) Ct 8: 2 yrs imp; MDL disqu 2 yrs .</p> <p>TES 9 yrs imp. MDL disqualification 3 yrs.</p> <p>EFP.</p> <p>The sentencing judge rejected the submission offending was within the worst category of offences of its kind; but accepted it</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences cts 7 and 8; MDL disqualifications and totality principle.</p> <p>Sentences cts 7 and 8 set aside; all orders for conc and cum set aside.</p> <p>Re-sentenced:</p> <p>Ct 2: 6 yrs imp (head sentence). Ct 7: 2 yrs imp (cum with head sentence). Ct 8: 4 yrs imp (conc).</p> <p>Individual sentences for cts 4 and 6 not disturbed.</p> <p>All other individual sentences conc with each other and conc with accumulates sentences for cts 2 and 8.</p> <p>MDL disqualification each ct set aside; all orders for conc and cum in relation to MDL disqualifications set aside.</p>

			<p>and incineration.</p> <p>Police attended Tittums' home in the early hours of the same day and he lied to police about his knowledge of the incident. His blood alcohol level at the time of the collision was calculated to have been 0.13% and blood analysis detected the use of methyl.</p>	<p>was towards the upper end of seriousness for offending of its kind.</p> <p>Genuinely remorseful; 'deeply distressed about the impact' of his offending; has taken responsibility for the consequences of his criminal conduct.</p>	<p>Re-sentenced:</p> <p>Ct 2: MDL disqu 4 yrs (conc). Ct 4: MDL disqu 4 yrs (conc). Ct 6: MDL disqu 4 yrs (conc). Ct 7: MDL disqu 2 yrs (cum ct 2). Ct 8: MDL disqu 4 yrs (conc).</p> <p>TES 10 yrs imp. MDL disqualification 6 yrs.</p> <p>EFP after 8 yrs.</p> <p>At [82] The respondent's offending in relation to cts 7 and 8 was very serious. Its egregious character is readily apparent from his Honour's unchallenged findings as to the facts and circ of those cts. His Honour identified, as aggravating factors, the ... extraordinary callousness in walking away while the victims died and their bodies were incinerated; the ... conduct, upon arriving at his home, in showering and going to bed without making any attempt to report the incident; and the ... lies to the police that he had not used his vehicle and had not been injured. ... The parlous situation in which the victims</p>
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<p>1.</p>	<p><b><i>Billing v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 80</b></p> <p>Delivered 21/04/2017</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history, including convictions of 3 x breaching VROI, 3 x criminal damage, 3 x threats to injure and several driving offences.</p> <p>Divorced; three children.</p> <p>Educated to yr 10; sandblaster by trade.</p>	<p><u>Indictment</u> Ct 1: Agg DDOD.</p> <p><u>Section 32 Notice</u> Ch 1: DDOBH. Ch 2: DDOBH. Ch 3: Driver failing to report incident occasioning death or GBH. Ch 4: Failed to render assistance to victim of incident occasioning BH, not GBH or death Ch 5: No MDL (fine suspension) Ch 6: Breach of VRO.</p> <p>The three victims were all passengers in Billing's car.</p> <p>Approx. 30 mins before the fatal crash, Billing drove in a grossly dangerous fashion. He drove at speeds of up to 220km per hour and through four red lights. At one intersection he nearly collided with another car. He drove over one victim's foot at a service station. He did a burnout out at his former partner's house in breach of a VRO.</p> <p>Billing ignored pleas from two victims asking him to stop and let them out.</p> <p>Billing drove at 145km per hr in a residential street where the speed limit was 50km per hr. The street was a two-lane carriageway. Another car had to swerve to avoid colliding with Billing's car. Billing collided with a raised median island, causing him to lose control of the car. The</p>	<p><u>Indictment</u> Ct 1: 10 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1: 6 mths imp (conc). Ch 2: 6 mths imp (conc). Ch 3: 12 mths imp (conc). Ch 4: 12 mths imp (conc). Ch 5: \$1500 fine. Ch 6: \$2000 fine.</p> <p>5 yrs 9 mths MDL disqualification.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge erroneously found that the agg DDOD fell within the worst category.</p> <p>Sentencing judge found that the DDOBH offences were severe, but noted that the victims suffered relatively minor injuries.</p> <p>Sentencing judge found that Billing's dangerous driving was willful and did not involve an error of judgment or other momentary driving error. He found that while the</p>	<p>Allowed in part.</p> <p>Appeal concerned finding of agg DDOD as worst case of its kind.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> Ct 1: 8 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1, 2 and 3: to be served cum upon each other and Ct 1. Ch 3: to remain conc with new sentence on Ct 1.</p> <p>All other sentences to remain.</p> <p>TES 10 yrs imp (thus the TES was left unchanged).</p> <p>At [34] ... while the overall circumstances of the offence and the offender warranted a lengthy sentence of immediate imp, it did not warrant the maximum prescribed penalty.</p> <p>At [37] ... his Honour erred in his assessment of the gravity of the offence of DDOD. A different and lower sentence should have been imposed with respect to the indictable offence.</p>
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<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b><i>Amendments to RTA s59 – reversal of onus of proof (01/01/2005)</i></b>					
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					

Office of the Director of Public Prosecutions