

Assault Public Officer

s 318 *Criminal Code*

From 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
ct	count
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order
poss	possess
wiss	with intent to sell or supply
methyl	methylamphetamine
SIO	suspended imprisonment order
CBO	community based order
agg burg	aggravated burglary
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<i>Papworth v The State of Western Australia</i> [2017] WASCA 82 Delivered 21/04/2017	27 yrs at time offending. 29 yrs at time sentencing. Convicted after early PG (25% discount). Extensive prior criminal history; including driving and drug offences. Dysfunctional childhood. Efforts made at rehabilitation.	Ct 1: Agg reckless driving. Ct 2: Agg assault public officer. Ct 3: Obstruct public officer. Papworth had consumed methyl and was heavily intoxicated. He drove without a licence and in a car that he was not entitled to drive. When police attempted to stop Papworth's car he accelerated heavily. He was pursued for about 34 mins. He travelled at excessive speeds, frequently exceeding the speed limit by more than 45km per hour. He disregarded a number of red traffic lights and other traffic control signs. On two occasions he collided with roadwork signs and drove on the incorrect side of the road. Despite the front tyres of Papworth's car being shredded by a stinger deflation device, he continued to drive. His car fishtailed from left to right as a result of damage. Police stopped their cars across two lanes in an effort to stop and prevent him continuing. He did not stop; he collided with one of the police vehicles. Papworth ignored directions to alight from his vehicle. As police attempted to remove him he threw a tomahawk at an officer, which narrowly missed his head. He threw various other items at police. He was eventually tasered, removed from his car and arrested.	Ct 1: 18 mths imp. Ct 2: 18 mths imp (cum). Ct 3: 12 mths imp (conc). TES 3 yrs imp. EFP. The sentencing judge erroneously found that Papworth deliberately rammed his car into the police vehicle, endangering the occupants. Remorse.	Dismissed. Appeal concerned Judge's finding that Papworth deliberately "rammed" the police car. CofA found (at [33] – [48]) that his Honour erred by making the finding, but that the error did not require a different sentence to be imposed. At [42]... the appellant's assault on Detective Hartley was also very serious. The tomahawk thrown by the appellant narrowly missed Detective Hartley's head. If the tomahawk had struck his head there would have been a serious risk of at least very significant injury. At [47]... The sentence imposed on the appellant (for the agg assault public officer charge) was, in the circumstances, within the available range but lenient.
5.	<i>Cleminson v The State of Western</i>	25 yrs at time offending.	<u>Indictment</u> Ct 1 & 3: Criminal damage.	<u>Indictment</u> Ct 1: 6 mths imp (conc).	Dismissed – on papers.

<p>Australia</p> <p>[2017] WASCA 58</p> <p>Delivered 15/03/2017</p>	<p>Convicted after PG (25% discount).</p> <p>Lengthy criminal history; including convictions for agg AOBH and common assault.</p> <p>Childhood ‘fairly dysfunctional’.</p> <p>Completed yr 12.</p> <p>Irregular employment history.</p> <p>Father of a six-yr-old child; no contact with his ex-partner and child.</p> <p>History of alcohol and drug abuse.</p>	<p>Ct 2: Threat to kill. Ct 4: Armed to cause fear. Ct 5: Poss firearms. Ct 6: Assault public officer.</p> <p><u>Section 32 Notice</u> Ch 1: Discharging a firearm. Ch 2: Refusing a disease test.</p> <p>The victims are Cleminson’s mother KC, and her partner GJ. They lived in a family and domestic relationship on an isolated property.</p> <p>Agitated Cleminson took some of his belongings and set fire to them. The fire was extinguished. He said ‘I’m going to kill everyone’. Inside he smashed items, including two power boxes to the house and shed, cutting off the main power supply.</p> <p>KC left the property but GJ remained and hid outside, too frightened to go into the house.</p> <p>Cleminson said on several occasions ‘You fucking cunts, I’m going to kill you’. He unlocked a gun safe and removed two firearms, forced entry to a box of ammunition and loaded one of the rifles. Outside he fired a round into a target. He did not hold a firearms licence or permit.</p> <p>Police arrived and he submitted himself, unarmed, to police. As he was being assisted into the police vehicle he spat in the face of a police officer. A mixture of saliva and blood hit</p>	<p>Ct 2: 2 yrs imp (cum). Ct 3: 12 mths imp (conc). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc). Ct 6: 12 mths imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 6 mths imp (conc). Ch 2: 2 mths imp (cum).</p> <p>TES 4 yrs 2 mths imp. EFP.</p> <p>The sentencing judge described the overall offending as very serious and found the offending was not uncharacteristic of the appellant.</p> <p>Lacks insight into causes of his offending behaviour; elevated risk of re-offending.</p>	<p>Appeal concerned length of sentence for ct 4 and totality.</p> <p>At [26] ... Although the offences were committed on the same day in one (extended) incident, some accumulation of the sentences was appropriate in order to properly reflect the appellant's overall criminality.</p>
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			the officer in the eyes. He refused to undergo a mandatory blood test.		
4.	<p><i>Winmar v State of Western Australia</i></p> <p>[2016] WASCA 184</p> <p>Delivered 28/10/2016</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount – Ind 1049) (20% discount – Ind 494).</p> <p>Subject to an SIO at time offending for 5 convictions of unlicensed driving.</p> <p>Significant criminal history, including prior convictions for burg and assault.</p> <p>Daily user of methyl at time offending.</p> <p>Dysfunctional upbringing; sexually abused and used illicit drugs from a young age.</p> <p>Completed schooling to yr 9; never worked.</p> <p>Three children; pregnant at time sentencing.</p> <p>Suffers from depression.</p>	<p><u>Indictment 1049 of 2015</u> Ct 1: Dangerous driving to escape pursuit. Cts 3 & 5: Assault public officer.</p> <p><u>Indictment 494 of 2015</u> Cts 1-4 & 6: Agg burg. Ct 5: Reckless driving.</p> <p><u>Indictment 1049 of 2015</u> Winmar was driving with a passenger in a car when police signalled for her to stop. She sped from police, drove on the wrong side of the road and in and out of traffic at about 100km p/h. Caught in traffic she was informed she was under arrest.</p> <p>During an altercation with police Winmar managed to start the car and drive off, throwing two police officers to the ground. They suffered minor injuries.</p> <p><u>Indictment 494 of 2015</u> Winmar entered the 73-yr-old victim's home and rummaged through drawers, stealing jewellery. The victim was outside at the time.</p> <p>Winmar and co-offenders broke a window and entered the victim's home. Stealing a handbag and jewellery. The victim was not at home.</p> <p>Winmar smashed a window and entered the 74-yr-old victim's home, stealing jewellery. The</p>	<p><u>Indictment 1049 of 2015</u> Ct 1: 6 mths imp (cum). Ct 3: 9 mths imp (cum). Ct 5: 9 mths imp (cum).</p> <p><u>Indictment 494 of 2015</u> Ct 1: 15 mths imp (head sentence) Ct 2: 2 yrs imp (conc). Ct 3: 2 yrs imp (cum) Ct 4: 18 mths imp (conc). Ct 5: 18 mths imp (cum) Ct 6: 18 mths imp (conc).</p> <p><u>Breach of SIO</u> 8 mths imp each (conc with each other and other sentences imposed).</p> <p>TES 6 yrs.</p> <p>EFP.</p> <p>The sentencing judge regarded the seriousness of the driving and burg offences and the need to impose a deterrent penalty.</p> <p>The sentencing judge noted positive steps taken towards rehabilitation and engaged in voluntary work.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle.</p> <p>At [27] The overall criminality involved in the offences which the appellant committed was high. She drove in a manner which placed police officers and other road users at very high risk of death or serious injury on two occasions. The assaults on the two police officers ... placed them at risk when performing their important public duties and called for a cumulative sentence. The burg offences were agg by the fact that the appellant was in company, and by the impact of the offences on often elderly victims.</p>

			<p>victim came home to see Winmar or a co-offender climbing out a window.</p> <p>Winmar and co-offenders entered the 78-yr-old victim's home and stole jewellery and a TV. The victim returned home and saw Winmar or one of the co-accused leaving the house.</p> <p>Winmar and her co-offender entered the victim's home and stole her handbag containing cash and other items. The victim, outside the house, saw Winmar and her co-offender flee the house.</p> <p>Winmar drove with false licence plates. Police requested she stop but she accelerated away at high speed, mounting a verge. Police pursued Winmar who drove through a red traffic light and on the wrong side of the road. Other vehicles were forced to brake and swerve and at one point she struck a police vehicle.</p>	Demonstrated remorse and acceptance of responsibility.	
3.	<p><i>The State of Western Australia v Smith</i></p> <p>[2016] WASCA 153</p> <p>Delivered 31/08/2016</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and lengthy prior criminal history, including convictions for breaching VRO, agg common assault and being armed in public in a way that may cause fear.</p> <p>History of domestic</p>	<p><u>Indictment</u> Ct 1: Agg unlawful wounding. Ct 2: Agg GBH. Ct 3: Att steal motor vehicle. Ct 4: Assault public officer. Ct 5: Obstructing public officer.</p> <p><u>s.32 notice</u> Ch 1: Trespass. Ch 2: Steal motor vehicle. Ch 3: Cruelty to an animal.</p> <p><u>Ct 1</u> Smith and the victim were in a domestic relationship. They were at home using drugs and</p>	<p><u>Indictment</u> Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 3 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 3 mths imp (conc).</p> <p><u>s.32 notice</u> Ch 1: \$500 fine. Ch 2: 3 mths imp (conc). Ch 3: 2 mths imp (cum).</p> <p><u>SIO</u> Ordered to serve 6 mths of 10 mths SIO (conc).</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence for cts 1 and 2 and totality.</p> <p>Re-sentenced to:</p> <p>Ct 1 (ind): 2 yrs imp (conc). Ct 2 (ind): 3 yrs 6 mths imp.</p> <p>Sentences for ct 4 (ind) and ch 3 (s32 notice) and 6 mths imp for SIO cum upon</p>

		<p>violence towards his partners.</p> <p>Emotional trauma associated with the death of his father.</p> <p>History of methyl use; affected by drugs at time offending.</p> <p>Offending occurred while appellant was subject to an SIO of 10 months imp, susp 12 mths.</p>	<p>Smith left the house armed with a hammer and in an agitated state. He returned with the hammer and argued with the victim. He threatened to hit her with the hammer. The victim turned her back to Smith and he violently hit her head with the hammer, exposing her skull.</p> <p><u>Ct 2</u> Smith struck the victim again as she tried to flee, hitting and fracturing her hand.</p> <p><u>Ct 3</u> Police found Smith walking down the street. As the officer got out of his patrol car and approached Smith, Smith ran to the other side of the car, got into the driver's seat and attempted to drive away.</p> <p><u>Cts 4-5 and ch3</u> The officer tried to stop Smith and was struck on the arm by the car's door. They wrestled for control of the car. Smith pulled out a knife and the officer attempted to knock it from his hand. The officer then attempted to taser Smith.</p> <p>A police dog grabbed Smith by his leg and pulled him from the car. Smith struck the dog on the head with the hammer and hit the officer's arm with the hammer. He attempted to hit the dog again, but the officer tasered him and he fell to the ground. Continuing to fight the officer, still armed with the hammer, he was tasered a third time. The officer kicked the hammer from Smith's hand and restrained him</p>	<p>TES 2 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences reflected an escalation in his offending behaviour, but that Smith had not been before the courts from 2005-2010.</p> <p>Remorseful; claimed no recollection of actions due to drug intoxication.</p> <p>Psychological report indicated developing insight into his behaviour and reasons for it.</p> <p>High risk of re-offending if illicit drug use continues.</p>	<p>each other and cum upon new sentence for ct 2 (ind). All other sentences conc.</p> <p>TES 4 yrs 8 mths imp. EFP.</p> <p>At [30] The respondent had a history of domestic violence towards his partners, and this underscored the importance of personal deterrence as a sentencing factor.</p> <p>At [39] ... the respondent's offending was serious... The respondent armed himself with a ... weapon capable of inflicting serious harm, and his attacked upon the victim was unprovoked... The respondent's conduct in striking the victim ... had the potential to cause her extremely serious injury. He was physically stronger and more powerful than her.</p> <p>At [95] ... it was significant that the injury in fact sustained [for ct 2] was a defensive wound caused by an attempt to strike the</p>
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			<p>until assistance arrived.</p>		<p>victim with a hammer, in circumstances where the respondent had just struck her with the hammer to the back of her head. The use of the hammer in that manner was likely to permanently injure or even kill the victim. The level of violence employed against the victim was high. The infliction of the injury formed part of a sustained attack against the victim which ceased only after she was able to take refuge at the neighbour's premises. The victim had not provoked the attack, and posed no threat to the respondent.</p> <p>At [100] The respondent acknowledged that he had perpetrated domestic violence on a regular basis.</p> <p>At [104] Any AOBH to a police officer performing his or her important community function is a serious matter. That is particularly so where weapons are involved. The respondent produced a</p>
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					knife, which he did not have the opportunity of using, and employed a claw hammer to inflict bodily injury...
2.	<p><i>Moir v The State of Western Australia</i></p> <p>[2014] WASCA 25</p> <p>Delivered 04/02/2014</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal record including burglary, dishonesty, traffic offences and breaching court orders.</p> <p>Suffered significant trauma as a child and adult; history of severe sexual abuse and domestic violence.</p> <p>Abused alcohol for many years.</p> <p>Diagnosed with ADHD; some characteristics of post-traumatic stress disorder; personality disorder with emotionally unstable paranoid and antisocial features.</p> <p>Claimed that the offences on Indictment and s32 were whilst she was adversely affected by the effects of her medication.</p>	<p><u>Indictment</u> Ct 1: Unlawful wounding. Ct 2: Stealing.</p> <p><u>s32 notice</u> Ct 1: Assault public officer. Ct 2: Trespass. Ct 3: Obstruct public officer.</p> <p><u>Breach</u> Breach of ISO - agg unlawful wounding. (By re-offending and non-compliance).</p> <p><u>Breach</u> The appellant was drinking at a nightclub when she encountered the victim and his partner. During a conversation with them, she threw the contents of her glass over the victim's partner. Either the victim or his partner then threw the contents of their drink at the appellant. She reacted by throwing the rest of the contents of her glass at the victim and, in doing so, the glass she was holding left her hand and struck the victim just above his left eye with such force that the glass broke and inflicted a 5 cm cut to the victim's forehead.</p> <p><u>Indictment and s32 notice</u> The victim and her 10 year old son were at their community library. The appellant, who was</p>	<p><u>Indictment</u> Ct 1: 16 mths imp (cum). Ct 2: 6 mths imp.</p> <p><u>s32 notice</u> Ct 1: 6 mths imp (cum). Ct 2: 3 mths imp. Ct 3: 3 mths imp.</p> <p><u>Breach</u> 9 mths imp (cum).</p> <p>TES 2 yrs 7 mths imp.</p> <p>EFP.</p> <p>Appellant told sentencing judge she intended to re-engage in rehabilitation programs.</p> <p>Both unlawful wounding offences were unprovoked, unexpected and unjustified.</p>	<p>Dismissed – on papers.</p> <p>At [24] When viewed as a whole, the appellant's offending was unquestionably serious. On two separate occasions she, without any justification, unlawfully wounded her victims.</p>

		At time of committing these offences was subject to an 18 mth ISO imposed for agg unlawful wounding.	<p>intoxicated, was seated at a computer station a couple of seats away from them. Without warning the appellant struck the victim to the left side of her face with a partially filled bottle of whisky which broke on contact. The victim suffered a 10cm cut to her left eyebrow and damage to the retina of her left eye. She then fled after stealing a purse from the victim's handbag.</p> <p>The appellant then went to and entered an acquaintances address in Orelia without his consent. The victim returned home and made several requests for her to leave however his requests were ignored. The police were contacted. Instead of leaving, the appellant took a bath and then hid under the victim's bed. She refused all requests by police to leave. Eventually she climbed out a window, stood in the garden and pleaded with the victim to allow her to stay. She resisted police attempts to arrest her and kicked a police officer in the face and leg.</p>		
1.	<i>Hume v Pettyfer</i> [2014] WASC 22 Delivered 29/01/2014	<p>22 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record including breach police order and obstruct public officer.</p> <p>Difficult childhood; cared for by her aunt.</p>	<p>s 318 Criminal Code Assault person working in a hospital.</p> <p>s 74A(2)(a) <i>Criminal Code</i> Disorderly behaviour.</p> <p>The appellant was taken to the Peel Heath Campus in ambulance because she was heavily intoxicated. She later said she had been using amphetamine for several days.</p> <p>Whilst being attended to by nursing staff the appellant became aggressive and thrashed her</p>	<p>7 mths imp.</p> <p>\$750 fine & \$68 costs.</p> <p>Remorse and regret.</p> <p>Told author of PSR had no memory of what occurred in hospital.</p> <p>Magistrate characterised offending as 'abhorrent and</p>	<p>Dismissed.</p> <p>At [22] Hospitals provide an important public service. It is essential to the delivery of that service that those who work in hospitals should not be subject to violent attacks. Such attacks not only pose the risk of harm to hospital staff but can disrupt or</p>

		<p>Commenced using drugs at 14 yrs.</p> <p>Unemployed.</p> <p>Has young son; not in her care.</p> <p>Little or no family support.</p> <p>Non-compliant with regards to the preparation of PSR.</p> <p>Reluctant to engage with an order; no steps taken to address drug problem.</p>	<p>arms about. A security guard was called. He attempted to restrain the appellant but she kicked him in the groin. She continued to be aggressive and non-compliant with nursing staff. The security guard escorted her out of the hospital.</p> <p>A short time later the appellant returned and went to the toilets. Nursing staff and the same security guard removed the appellant from the toilets and took her outside. Attempts were made to calm her down and ascertain what assistance she needed. As other nursing staff and patients walked past the appellant attempted to attack them. The security guard again had to restrain the appellant. She then started lashing out and punched the security guard in the face.</p> <p>After the security guard had restrained the appellant she commenced spitting on him.</p>	<p>totally unacceptable'.</p> <p>Continued use of drugs raises the risk of re-offending.</p>	<p>prevent the delivery of medical care to the sick and injured. The importance of ensuring the safety of hospital staff makes general deterrence an important sentencing factor.</p> <p>At [25] As regards the standards of sentencing for offences of this type, there are no reported cases involving sentences imposed for assaults upon hospital employees pursuant to s318.</p>
<p><i>Mandatory sentencing introduced (22/09/2009)</i></p> <p><i>s 318(5) sets out prescribed circumstances where mandatory sentencing applies – certain categories of officer who suffer bodily harm</i></p> <p><i>Minimum penalty where offending falls within s 318(1)(l) set at 9 mths immediate imp</i></p> <p><i>Minimum penalty in all other instances set at 6 mths immediate imp</i></p>					
<p><i>Transitional provisions repealed (14/01/2009)</i></p>					
<p><i>Maximum penalty s 318, other than those falling within s 318(1)(l), reduced to 7 yrs imp (27/04/2008)</i></p>					

Transitional Provisions Enacted (31/08/2003)

Maximum penalty for s 318 increased from 5 yrs to 10 yrs imp (20/01/1995)