

# Dangerous driving occasioning GBH

**From 1 January 2014**

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
BAC	blood alcohol content
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
circ	circumstances
TES	total effective sentence
RTA	<i>Road Traffic Act 1974 (WA)</i>
DUI	driving under the influence
Disq	Disqualification

No.	Case	Antecedents	Summary/ facts	Sentence	Appeal
3.	<p><i>The State of Western Australia v Berry</i></p> <p>[2016] WASCA 113</p> <p>Delivered 07/07/2016</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history, including convictions for DD and failing to stop after an accident; reckless driving and DUI.</p> <p>Exposed to domestic violence prior to his father's death at age 5.</p> <p>Difficult school years and played truant from year 11.</p> <p>Employed in labouring roles prior to caring for partner with mental illness; sole carer of their four children.</p> <p>Serious alcohol problem; occasional user of cannabis and amphetamines.</p>	<p><u>Indictment</u> Cts 1-3: DDOGBH.</p> <p><u>Section 32 notice</u> Ch 1: DUI. Ch 2: DDOBH.</p> <p>Berry had been drinking heavily and was in an agitated state after an argument when he left home with his four children (aged 9, 8, 7 and 4 yrs at time of sentencing) in the car. His mother pleaded with him not to take the children but Berry ignored her pleas.</p> <p>Berry drove well above the 70 km/h limit and unlawfully overtook cars ahead of him using painted traffic islands as de-facto overtaking lanes. During one of these manoeuvres Berry lost control of his car. It left the road, mounted the curb and collided with a tree, continued through a chain link fence and hit a parked car.</p> <p>All four children were injured.</p> <p>One was flung from the car on impact and landed on the road. He suffered a serious spinal cord injury and is likely to be permanently wheelchair bound.</p> <p>Another received fractures to both upper arms and his vertebrae and was likely to have permanent reduced movement in his shoulder and arm.</p>	<p><u>Indictment</u> Ct 1: 20 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 15 mths imp (conc).</p> <p>2 yr MDL disq on each ct (conc).</p> <p><u>Section 32 notice</u> Ch 1: \$1,600 fine. 18 mth MDL disq (conc). Ch 2: 4 mths imp (cum). 2 yr MDL disq (conc).</p> <p>TES 2 yrs imp; 2 yrs MDL disq.</p> <p>The sentencing judge took into account the guilt and anguish Berry suffered in causing such serious harm to his children.</p> <p>High risk of re-offending if alcohol abuse not addressed.</p>	<p>Allowed.</p> <p>State challenged length of each DDOGBH sentence, totality and length of MDL disq.</p> <p>Sentences imposed on cts 1-3 set aside. Re-sentenced: Ct 1: 3 yrs 6 mths imp. Ct 2: 2 yrs imp. Ct 3: 2 yrs imp.</p> <p>4 yr MDL disq on each ct.</p> <p>Section 32 notice sentences unchanged.</p> <p>Cts 2 and 3 on the ind and the DDOBH on the section 32 notice to be served conc with each other, but partly conc with the sentence on ct 1. Ct 1 to commence 1 yr after the commencement of cts 2, 3 and the section 32 notice.</p> <p>All periods of disq conc.</p> <p>TES 4 yrs 6 mths imp; 4 yrs MDL disq.</p> <p>EFP.</p> <p>At [40] The respondent's conduct cannot be regarded as an out of character aberration.</p>

			<p>Another child suffered a fractured leg that needed surgery.</p> <p>The other child escaped with bruising and abrasions.</p> <p>After the accident Berry was aggressive towards people trying to assist and attending police.</p> <p>Berry initially refused a breath test. His BAC was 0.168.</p>		<p>At [42] ... the respondent knew he had a problem with alcohol but took no steps to overcome it and instead drove with the children in the car when he must have known he was not in a fit state to drive and was exposing them to serious and unnecessary danger.</p> <p>At [44] ... the respondent's offending conduct fell a long way short of his parental obligations, particularly given the children's vulnerability by reason of their young age.</p> <p>At [45] ... the respondent's relevant prior convictions, his admission that he had previously driven in an intoxicated state with his children, and his inability to address his alcohol issues even after the commission of the offences, emphasise the need to deter the respondent himself.</p>
2.	<p><b><i>Rubin v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 2</b></p> <p>Published 08/01/2016</p>	<p>61 yrs at time offending.</p> <p>Convicted after early PG (25% discount)</p> <p>No prior criminal history.</p> <p>Impeccable antecedents with no risk of reoffending.</p> <p>Well educated with a</p>	<p><u>Indictment</u></p> <p>2 x DDOD.</p> <p>3 x DDOGBH.</p> <p><u>Section 32 Notice</u></p> <p>1 x DDOBH.</p> <p>The appellant lived in the USA and had limited experience of driving on the left-hand side of the road. He drove along a dual carriageway, which converted to a single carriageway in each direction, separated by a</p>	<p>2 x DDOD: 18 mths imp each cnt (conc).</p> <p>3 x DDOGBH: 12 mths imp each cnt (conc).</p> <p><u>Section 32 Notice</u></p> <p>6 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p>EFP</p>	<p>Dismissed.</p> <p>Appeal concerned findings of fact, general deterrence and type, not length, of sentence.</p> <p>At [53] Mr Rubin ... erroneously believed that he was still driving on a dual carriageway. When account is taken of the four signs which were clearly and readily</p>

		<p>university degree and good working history.</p> <p>Close supportive family and highly regarded within the community.</p> <p>Co-operated with the police.</p> <p>Deeply and genuinely remorseful.</p>	<p>double white line.</p> <p>The appellant failed to see various signs and visual markers that indicated he was travelling on a single carriageway. Shortly after the road merged into single lanes the appellant drove onto the incorrect side of the road and collided head on with a vehicle being driven in the opposite direction.</p> <p>As a result of the collision the appellant's wife was killed and his daughter seriously injured.</p> <p>The driver of the other vehicle was seriously injured, along with his father; his 2 yr old daughter died and his partner suffered bodily harm.</p>	<p>Sentencing judge observed the appellant suffered serious physical injuries as a result of the collision and that it had a profound effect upon his psychological state; the tragic consequences of the accident resulted in adverse consequences to him of a greater scale and dimension than any possible consequences of the range of sentences reasonably open to the sentencing court.</p> <p>Considered a suspended sentence would fail to adequately reflect the serious nature of the offence.</p>	<p>visible to drivers travelling south, the line markings on the surface of the road, and the period of time and distance over which Mr Rubin had the opportunity to observe those matters and draw an appropriate conclusion from them, it cannot be said that it is difficult to envisage a case in which the culpability of the conduct could be lower.</p> <p>At [75] The appellant's culpability was not aggravated by such matters as excessive speed, deliberate dangerous driving or the ingestion of illicit drugs or alcohol, his driving nevertheless represented a significant departure from the standards expected of a reasonable driver. The appellant failed to see no less than four signs. Further, he failed to note the change in the road markings which conveyed that he was no longer driving on a dual carriageway. The appellant's failure to see these things speaks of a high degree of inattentiveness which was more than merely momentary.</p> <p>At [78] An additional factor which his Honour took into account, and which cannot be ignored, is the need for general deterrence.</p>
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<p>1.</p>	<p><i>Drage v The State of Western Australia</i></p> <p><b>[2015] WASCA 145</b></p> <p>Delivered 28/07/2015</p>	<p>50 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Lengthy criminal history of mostly drug and traffic offences. Some convictions for offences involving violence.</p> <p>Self-employed truck driver.</p> <p>Dependent child aged 12; three adult children.</p> <p>Good physical health.</p> <p>Good reputation in local community; regularly assisted police in towing vehicles.</p>	<p><u>Indictment</u> 1 x DDOGBH.</p> <p><u>Section 32 Notice</u> 2 x DDOBH.</p> <p>At around 11.00pm, the appellant was at a beach access ramp to tow a car. When leaving the beach, the appellant spun the wheels of his car when passing a group of people, causing sand and debris to shower onto them. In response, a member of the group threw a can of beer at the appellant's car. The appellant continued up the access road to the junction of the sealed road and stopped his car to unlock the four-wheel drive hubs on the front wheels. He walked down to remonstrate the group for throwing the can and they in turn remonstrated him for his driving and causing sand to go into the eyes of a member of the group.</p> <p>The appellant returned to his car and parked it, rather than leaving. The victim, Lange, arrived at the top of the access road and stood in the middle of the road waving his arms at the appellant. The appellant then drove his car towards Lange from stationary position, approx. 60 metres away, accelerating to approx. 40 km/h. Two other members of the group, Seitz and Streit, moved towards Lange and attempted to remove him from the road. Another member of the group threw a beer can at the appellant's car, striking the windscreen and causing the appellant to duck.</p>	<p><u>Indictment</u> 1 yr 9 mths imp. Disqualified from holding obtaining a MDL for 3 yrs.</p> <p><u>Section 32 Notice</u> Ch 1: 3 mths imp (cum). Disqualified from holding obtaining a MDL for 1 yr (conc).</p> <p>Ch 2: 3 mths imp (conc). Disqualified from holding obtaining a MDL for 1 yr (conc).</p> <p>TES 2 yrs imp. Disqualified from holding obtaining a MDL for a total of 3 yrs.</p> <p>EFP.</p> <p>Sentencing judge found that appellant's driving did not involve momentary inattention or mere carelessness.</p> <p>Sentencing judge found that the speed was, in the circumstances, excessive.</p> <p>Sentencing judge acknowledged that the appellant did not intend to</p>	<p>Dismissed.</p> <p>At [56]-[59] Discussion of comparable cases.</p> <p>At [67] ...some cumulacy was required in this case to reflect the fact that the appellant not only injured Mr Lange, but that he also inflicted injuries upon two other victims.</p> <p>At [73] While the appellant's offending over the 10-yr period prior to the commission of the offences had been reduced, his driving record was not without blemish. Having regard to all the circumstances of the case, a period of 3 yrs [disqualification] cannot be said to be unjust or unreasonable.</p>
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<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b><i>Amendments to RTA s 59 – reversal of onus of proof (01/01/2005)</i></b>					
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					