

# **GBH with intent**

*s 294 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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**

cum	cumulative
conc	concurrent
GBH	grievous bodily harm
TES	total effective sentence
susp	suspended
imp	imprisonment
EFP	eligible for parole
dep lib	deprivation of liberty
agg burg	aggravated burglary
AOBH	assault occasioning bodily harm
sex pen	sexual penetration
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	<p><i><b>FWB v The State of Western Australia</b></i></p> <p><b>[2016] WASCA 118</b></p> <p>Delivered 11/07/2016</p>	<p>47 yrs at time sentencing. 42-44 yrs at time offending for indictment 1.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no prior sexual offending.</p> <p>Left school aged 15 yrs.</p> <p>Recent steady employment.</p> <p>Regularly consumes alcohol and occasionally smokes cannabis. Daily use of amphetamines and heroin, but did not believe he had a substance abuse problem.</p> <p>FWB on bail for indictment 1 at time offending on indictment 2.</p>	<p><u>Indictment 1</u> Ct 1-4, 6-10: Sex pen of de facto child U 16 yrs. Ct 5: Indec dealings with de facto child U 16 yrs.</p> <p><u>Indictment 2</u> Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg sex pen. Ct 4: GBH with intent.</p> <p><u>Indictment 1</u> FWB had been the de facto father of the victim, M, since she was about 2 yrs old.</p> <p>When M was aged 11-12 yrs, FWB digitally penetrated her vagina twice (ct 1-2). He then penetrated her vagina with his penis (ct 3). He slapped M's face when she tried to escape. FWB then made M suck his penis, before masturbating and ejaculating on her face (ct 4). Later, M awoke with FWB touching her vagina (ct 5). The following night, FWB went into M's bedroom and had sexual intercourse with her (ct 6).</p> <p>When M was aged 12-13 yrs, FWB filmed himself sexually abusing M over two hrs. FWB put his fingers in her vagina (ct 7) and then had sexual intercourse with her (ct 8). FWB made M suck his penis (ct 9), before having sexual intercourse with her again (ct 10). FWB continued the abuse and repeated</p>	<p><u>Indictment 1</u> Ct 1-2 and 7: 2 yrs imp each (conc). Ct 3, 6 and 10: 6 yrs imp each (conc). Ct 4 and 9: 4 yrs imp each (conc). Ct 5: 1 yr imp (conc). Ct 8: 6 yrs (cum ct 3).</p> <p>TES 12 yrs imp (cum with TES on indictment 2).</p> <p><u>Indictment 2</u> Ct 1: 1 yr imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs imp (conc). Ct 4: 5 yrs imp (conc).</p> <p>TES 8 yrs imp (cum with TES on indictment 1).</p> <p>Overall TES 20 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending against M as involving "the most gross breach of trust"</p>	<p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Only re-sentenced on <u>indictment 1</u> to:</p> <p>Ct 8: 6 yrs imp (cum with 2 yrs on ct 1).</p> <p>TES 8 yrs imp (cum with TES on indictment 2).</p> <p>TES 16 yrs imp.</p> <p>EFP.</p> <p>At [65] The charges in the first indictment were representative of a course of conduct.</p> <p>At [66]... in relation to the first indictment...The two episodes of offending involved planning and premeditation...The offending occurred in the family home, a relatively isolated farmhouse, where M was vulnerable and the appellant could abuse her for an extended period without fear of being</p>

			<p>the acts until he ejaculated onto her stomach. M was crying and was fearful of FWB who threatened to harm her or members of her family.</p> <p><u>Indictment 2</u> FWB and H (M's mother) had been in a de facto relationship for 13 yrs, but had separated approx. 6 mths earlier.</p> <p>The dep lib charge (ct 1) was a continuing offence. When visiting H, FWB produced a knife and threatened to kill her, telling her that he loved her, couldn't live without her and wanted her to suffer like she had made him suffer (ct 2). FWB tied H's wrists with cable ties, forced her into a car and drove her to the vicinity of a country town. FWB ordered H out of the vehicle, removed her clothing had sexual intercourse with her until he ejaculated (ct 3). FWB stabbed H in the chest (ct 4) and during the struggle she cut her finger on the knife. When H got out of the car FWB dragged her by the hair back into the car. FWB said he was taking her for medical assistance but H feared for her safety and jumped from the moving car and ran to a nearby house. As a result of being stabbed H suffered a 5cm wound that caused one of her lungs to collapse.</p>	<p>and "at or near the top of the range of gravity, justifying the maximum penalty as a starting point".</p> <p>Offending occurred when M was alone and FWB sometimes engineered opportunities to be alone with her. The sentencing judge said that the offending against M had features of sex pen without consent; offending was not the result of grooming.</p> <p>FWB's offending against H "was a terrifying ordeal" and involved "criminality of the highest degree".</p> <p>FWB was at a moderate to high risk of future sexual offending and a moderate risk of future violent offending, most likely family violence.</p>	<p>discovered...The appellant filmed the offences the subject of cts 7, 8, 9 and 10. He had previously told M that once he had recorded the abuse he would stop offending against her. That was not the case... The appellant's offending against M's mother... would have adversely affected M in view of the threats to harm her family which the appellant made in the course of his offending against M.</p> <p>At [69] The appellant claimed to have little or no recollection of the offending and, accordingly, little weight could be given to any remorse. No victim empathy was apparent.</p> <p>At [70] the TES of 12 yrs' imp, especially in the context of the PG, was not broadly consistent with reasonably comparable cases and was not commensurate with the overall seriousness of the offending... The proper exercise of the sentencing discretion required lesser accumulation of the</p>
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					<p>individual sentences.</p> <p>At [90] ...the TES of 8 yrs' imp for the offences in the second indictment was...well within the range open to the sentencing judge ... and reflects ... totality issues arising as a result of the appellant standing for sentence not only in relation to the offences in the second indictment but also the offences in the first indictment.</p> <p>At [91] the overall TES of 20 yrs' imp in relation to the first and second indictments, especially in the context of the PG, was not commensurate with the overall seriousness of the offending the subject of the first and second indictments.</p>
9.	<p><i>Schmied v The State of Western Australia</i></p> <p>[2016] WASCA 99</p> <p>Delivered 17/06/2016</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; convictions for breach of VRO and a threat to injure, endanger or harm; no convictions for actual violence.</p> <p>Stable family upbringing.</p>	<p>1 x GBH with intent.</p> <p>H is Schmied's former de facto. She lived with her parents. Schmied held animosity towards her and her parents. A VRO prohibited him having contact or coming near the home.</p> <p>Late at night, armed with a hunting knife, Schmied went to the house and punctured the</p>	<p>GBH with intent: 7 yrs imp.</p> <p>The sentencing judge found that the offence was not premediated.</p> <p>The sentencing judge accepted that Schmied had unconsciously</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence.</p> <p>At [24] Expression of remorse given little weight.</p> <p>At [39] ...the injuries inflicted were objectively</p>

		<p>ADHD and OCD as a child; isolated and bullied at school.</p> <p>On disability allowance; chronic back pain from a work injury at 15 yrs. Occasional labouring and mechanical work.</p> <p>Abuse of illicit substances from aged 15 yrs.</p> <p>Diagnosed but untreated for major major depression; suicidal.</p> <p>Dysfunctional and violent de facto relationship; 16 mth-old son time offending.</p> <p>Schmied subject to an SIO at time offending for breaching VRO by pursuing and threatening H.</p>	<p>tyres of two cars, before calling out to the occupants. H's mother approached Schmied and he came towards her with the knife raised. To protect his wife the victim confronted Schmied and attempted to restrain him. He did not see the knife.</p> <p>Schmied stabbed the victim eight times, causing life-threatening penetrating injuries to his lungs and liver. During the struggle the victim fell to the ground and fractured his collarbone, scapula and sternum.</p> <p>Schmied managed to get away and drove off, yelling out "you're dead you cunt".</p> <p>Schmied admitted the stabbing but blamed the victim. He subsequently claimed to have no memory of the incident.</p>	<p>blocked out his memory of the offence.</p> <p>The sentencing judge found that Schmied was not significantly intoxicated at time offending, but his judgment was impaired by major depression. Culpability reduced to some extent.</p> <p>The sentencing judge found Schmied's conduct showed a callous disregard and lack of remorse.</p>	<p>serious and likely to cause death. ... The injuries were inflicted in a sustained attack. ... The appellant stabbed the victim ... in an act of random and senseless violence which was obviously likely to endanger ... life. The appellant's comment as he drove away from the scene of his crime indicates that he subjectively intended to endanger the victim's life.</p> <p>At [40] It is also a significant ... that the offence was committed in breach of a VRO, while the appellant was subject to a suspended sentence for breaching that VRO... The offence occurred against a background of threatening behaviour by the appellant towards H.</p>
8.	<p><i>Nicholls v The State of Western Australia</i></p> <p>[2016] WASCA 20</p> <p>Delivered 22/01/2016</p>	<p>27 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including offences of violence.</p> <p>Unemployed and regular drug user.</p>	<p>1 x accessory after the fact (principal offence GBH with intent).</p> <p>The principal offenders engaged in a joint criminal enterprise to secure payment of an outstanding drug debt owed by the victim.</p> <p>The appellant was present at a home when the principal offenders arrived and assaulted the</p>	<p>2 yrs 9 mths imp.</p> <p>Trial judge found the appellant was present, at a minimum, at both the start and end of the violence and that he had knowledge of the commission of the</p>	<p>Dismissed</p> <p>Appellant challenged length of sentence.</p> <p>At [32] The seriousness of the offence committed by the appellant takes colour from the nature and circumstances</p>

	<p>Co-offender of</p> <p><i>Mansour v The State of Western Australia</i> [2015] WASCA 175</p>	<p>Tried together with co-offenders.</p>	<p>victim over many hours in a sustained and deliberate manner and with such force he suffered life-threatening injuries. The victim was also burnt with boiling water and cigarette butts.</p> <p>The appellant and one of the principal offenders put the seriously injured victim into a car and dumped him behind bins in a park. The victim was later discovered and conveyed to hospital by ambulance</p> <p>The victim suffered pervasive, permanent and functionally limited cognitive impairment, to such degree he would be unable to live independently in the community.</p>	<p>principal offence.</p> <p>No remorse.</p>	<p>of the principal offence. ... the principal offence was, to the appellant's knowledge, sustained and exceptionally brutal. Injuries inflicted on the victim have left him with a significant and permanent impairment.</p> <p>At [33] ... no claim by the appellant (or evidenced to support) a defence of duress.</p> <p>At [34] The appellant did not cooperate with the author of the pre-sentence report and had shown no remorse.</p> <p>At [35] ... no mitigating factors and the matters personal to the appellant do him no credit.</p>
7.	<p><i>Mansour v The State of Western Australia</i></p> <p>[2015] WASCA 175</p> <p>Delivered on 01/09/2015</p> <p>Co-offender of</p>	<p>39 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history, including drug and weapon offences.</p> <p>Migrated to Australia from Lebanon.</p> <p>Left school at age 13; constant employment.</p>	<p>Ct 1: Kidnapping. Ct 2: GBH with intent.</p> <p>The victim owed a significant drug debt to the appellant. During the weeks preceding the offence the appellant sent the victim threatening text messages, including threats of serious harm. The appellant arranged for three co-offenders to accompany him from Sydney to Perth to enforce the victim's debt.</p> <p>The appellant arranged for the victim to be at the house on the night of the offence. The</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 8 years imp (cum).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>The trial judge found the appellant was the principal offender.</p>	<p>Dismissed – on papers.</p> <p>At [42] ... the significant distinguishing feature, for sentencing purposes... was the appellant's role as the principal offender... the appellant made contact with his co-offenders and recruited them to be a part of the joint criminal enterprise... the purpose of the offending was to</p>

	<p><i>Nicholls v The State of Western Australia</i> [2016] WASCA 20</p>	<p>Married with five children; supportive wife.</p> <p>Co-offender Serji Mansour was convicted after trial of one ct of kidnapping and one ct of GBH with intent and was sentenced to TES 8 yrs imp.</p> <p>Co-offender Andy Mannah was convicted after trial of one ct of kidnapping and one ct of GBH with intent and was sentenced to TES 8 yrs imp.</p> <p>Co-offender Niraj Singh was convicted after trial of one ct of kidnapping and one ct of GBH with intent and was sentenced to TES 9.5 yrs imp.</p>	<p>appellant and his co-offenders entered the house and ambushed the victim, detained him against his will and assaulted him savagely, for approx. six hours. The assault involved basically torture. The assaults were deliberately carried out to cause the victim significant pain and degradation, which lead to life threatening injuries. Two children aged 18 mths and 11 yrs were present at the house and could hear noises.</p> <p>After the assault the appellant returned to Sydney. Two co-offenders remained in Perth and placed the victim into a car and dumped him behind bins at Centenary Park.</p> <p>The victim suffered burns to 14% of his body, multiple traumas including severe traumatic brain injury, bilateral orbital fractures, haemorrhages, deep wounds to his hands, lacerations to his upper back and multiple bruises. The victim was unconscious and was put into an induced coma.</p>	<p>Trial judge found that the appellant set up the offending conduct in respect of ct 1 in an ‘organised, calculated and cold manner’; the appellant’s culpability in respect of ct 1 was more serious than that of his co-offenders; the offending in respect of ct 2 was a joint criminal enterprise.</p> <p>Trial judge found the co-offenders Serji Mansour and Andy Mannah – culpability was less than that of the appellant.</p> <p>Trial judge found the co-offender Niraj Singh – culpability greater than Mansour and Mannah.</p>	<p>endeavour to recover the significant debt owed by the victim to the appellant. The appellant harassed and threatened the victim before travelling to Perth... the appellant was significantly more culpable than his co-offenders.</p>
6.	<p><i>Dimitrovska v The State of Western Australia</i></p> <p>[2015] WASCA 162</p> <p>Delivered</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history, including conviction of poss drugs wiss.</p> <p>Exposed to domestic violence</p>	<p>GBH with intent x 1.</p> <p>The appellant suspected that her husband was having an affair with the victim. She repeatedly contacted the victim, looking for her husband.</p> <p>During the months preceding the offence, the</p>	<p>17 yrs imp.</p> <p>Trial judge found that the offence was in the worst category of cases of GBH with intent.</p>	<p>Dismissed.</p> <p>At [137] Perhaps the only aspect of the circumstances of the case which is less serious than might be imagined is the very limited premeditation of the</p>

19/08/2015	<p>during childhood; parents' marriage was turbulent.</p> <p>Truancy from school from age 15.</p> <p>Previously worked as a fashion model; unemployed since age 25.</p> <p>Two marriages; second marriage characterised by drug use and domestic violence; appellant's mother cared for appellant's daughter.</p> <p>Using drugs and involved in the antisocial and drug subculture since adolescence.</p> <p>Affected by methyl at time offending.</p>	<p>appellant made repeated threats to the victim. Assertions included "you're dead, bitch" and "I'll ruin your pretty little face".</p> <p>At 6.00am, the appellant went to the victim's apartment with a man, gaining entry through the balcony. The appellant and victim argued about the appellant's husband. The victim took from the appellant an alight methyl burner and told the appellant to leave the unit.</p> <p>The appellant stated "Just tell me where he is or I'm going to set you on fire". The appellant doused the victim with a bottle of methylated spirits, which caused her to catch fire immediately.</p> <p>The appellant laughed at the victim after setting her on fire and failed to render any assistance or to call for others to render assistance.</p> <p>The appellant attempted to flee from police.</p> <p>The victim suffered burns to 60% of her body. The injuries were life-threatening and would cause permanent physical and psychological trauma.</p>	<p>Trial judge found that there was no basis for the appellant's belief that the victim was involved with her husband.</p> <p>Trial judge described the appellant as self-indulgent, impulsive, manipulative and self-absorbed.</p> <p>Trial judge found that the offence had not been planned, but there was some pre-meditation in the form of the many threats, which preceded the attack; attack was unprovoked.</p> <p>Psychological report stated the appellant had a notably compromised ability for victim empathy, a distorted perception that she is a victim too.</p> <p>Trial judge observed that the appellant had "totally ruined" the victim's life.</p>	<p>particular offence, in that there is no evidence, nor did the trial judge find, that Ms Dimitrovska attended Ms Vulin's unit with the plan and intention of setting her on fire. However, as the trial judge noted, the significance of that aspect of the case is somewhat diminished by the repeated threats made by Ms Dimitrovska towards Ms Vulin over the months, weeks and days which preceded the attack. Those threats suggest that Ms Dimitrovska may have contemplated some form of attack upon Ms Vulin, without necessarily contemplating its precise form.</p> <p>At [139] Although Ms Dimitrovska had no prior convictions for violence, she cannot be said to be a person of good character.</p> <p>At [141] ... in this case which falls within the worst category of cases of causing GBH with intent, there is very little that can be said to justify any reduction in</p>
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					<p>sentence below the max prescribed by law. Perhaps the only matters of any significance are the limited period of premeditation... and the lack of any prior conviction for violence. Those matters in combination justify some small reduction from the max penalty available – in the order of the reduction given by the trial judge when he imposed the sentence of 17 yrs imp.</p> <p>At [144]-[152] Discussion of comparable cases.</p> <p>At [153] ... the application of the principles introduced by the 2008 amendments to the <i>Sentencing Act</i>, and which were enunciated by this court in <b>BLM</b> to the circumstances of this case sustain the conclusion that the trial judge was entirely justified in imposing a sentence of 17 yrs imp.</p>
5.	<p><i>McKenzie v The State of Western Australia</i></p> <p>[2015] WASCA</p>	<p>20 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after PG of cts 1, 2 and 6. Convicted after trial of cts 3, 4</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Stealing. Ct 3: Agg burg. Ct 4: Agg GBH with intent. Ct 5: Agg GBH with intent.</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: \$500 fine. Ct 3: 3 yrs 6 mths imp (cum).</p>	<p>Dismissed – on papers.</p> <p>At [53] Cts 3, 4 and 5 were especially egregious. Those offences were committed in</p>

<p><b>163</b></p> <p>Delivered 24/08/2015</p>	<p>and 5.</p> <p>Criminal history, including convictions for stealing, criminal damage, trespass, agg burg, threats, common assault, breach of pre-sentence order and AOBH.</p> <p>Disadvantaged background; brother committed suicide; father had depression and schizophrenia; parents separated when aged 11 or 12.</p> <p>Never been employed.</p> <p>History of substance abuse.</p> <p>History of suicide attempts and depression.</p> <p>Diagnosed with paranoid personality disorder, borderline personality disorder and antisocial personality disorder.</p>	<p>Ct 6: Steal motor vehicle.</p> <p>The appellant and two co-offenders stole a Holden Commodore sedan by taking the keys for the car from a house (ct 1).</p> <p>The offenders then picked up Wells and Akee and drove to BP. The appellant put fuel in the car and the car left without the appellant paying for the fuel (ct 2).</p> <p>The car ran out of fuel and was abandoned. The offenders walked to Mr and Mrs Elliott's property to steal another car. Wells and Akee remained at the front gate of the property. The offenders formed a plan to enter the house and steal the keys to one of the cars. The appellant, armed with a hammer, and a co-offender, armed with a screwdriver, entered the house through an unlocked sliding door (ct 3).</p> <p>Mr and Mrs Elliott were sitting at a table eating dinner. Mr Elliott was aged 71 and Mrs Elliott was aged 67. Mr Elliott stood up when the offenders entered the kitchen. The appellant struck him twice on the head with the hammer (ct 4) and Mrs Elliott, at least once, on the head with the hammer (ct 5). They were rendered unconscious.</p> <p>The appellant and co-offenders then ransacked the house and stole various items, including the keys to Mrs Elliott's car.</p> <p>The appellant and the co-offenders stole Mrs</p>	<p>Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 5 yrs imp (conc). Ct 6: 12 mths imp (cum).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found high risk of reoffending and significant need for protection of the community.</p> <p>Psychiatrist report stated that the appellant's mental state, mood disorder, substance abuse and personality pathology, contributed to the offending.</p>	<p>company; the appellant and his co-offenders were armed with a hammer and a screwdriver; the offences were committed on residential premises; the appellant and his co-offenders knew, before entering the premises, that they were occupied; Mr and Mrs Elliot were viciously assaulted; the appellant personally assaulted them with the hammer; the victims did not confront, provoke or resist the offenders; the offenders were youthful whereas the victims were of an advanced age; the offenders outnumbered the victims; the victims were vulnerable; the victims ...suffered severe injuries and ongoing trauma; and Mr Elliot has been left with distressing residual disabilities.</p> <p>At [56] ... the weight to be accorded to the appellant's psychological difficulties was decisively overpowered by his risk of violent reoffending.</p>
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			<p>Elliott's car (ct 6). They stopped at the front gate to pick up Wells and Akee.</p> <p>Mr Elliott suffered four lacerations, a significant depressed fracture to the left and the front of his skull and bruising to his brain. Mrs Elliott suffered three lacerations and a fractured skull.</p>		<p>A [57] ... the appellant's reasonably extensive and serious prior criminal record as an adult, together with the facts and circumstances of his current offending and the significant risk he poses to public safety, form a proper basis for deciding that he could not be afforded any leniency in the sentencing disposition for the offences in question.</p>
4.	<p><b><i>Oxenham v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 30</b></p> <p>Delivered 18/02/2015</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>No relevant prior criminal record.</p> <p>Good and privileged upbringing without any trauma; supportive parents; only engaged in one significant personal relationship; father of 2 young children.</p> <p>Educated to year 12 standard; good employment history.</p> <p>No alcohol or drug abuse issues.</p> <p>Received counselling while on remand.</p>	<p>Ct 1: Agg AOBH Ct 3: GBH with intent.</p> <p>The appellant and the first victim (Raso) were previously in a de facto relationship and had 2 young children. They separated in April 2012. In August 2012, Raso commenced a relationship with the second victim (Robertson). The appellant reacted poorly to Raso seeing someone else and made multiple threats to harm Robertson.</p> <p>During the day of 12 October 2012, the appellant confirmed twice with the children's nanny that she would not be at Raso's house. At approx. 1.30am the following morning, the appellant went to Raso's house. Raso opened the door to the appellant, who pleaded with her to give the relationship one more chance.</p> <p>While Raso held their 1-yr-old, and in the presence of their 5-yr-old, the appellant</p>	<p>Ct 1: 18 mths imp (cum). Ct 3: 6 yrs imp.</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge noted that both offences were 'clearly jealous and anger-fuelled rage offences'.</p> <p>Sentencing judge regarded the GBH with intent offence as 'a very serious example of this type of offence' and found it was premeditated.</p>	<p>Dismissed.</p> <p>At [30] In <b><i>Trompler v The State of Western Australia</i></b>, Wheeler JA noted that in general, there are three matters of significance to be considered in assessing the criminality involved in an offence of doing GBH ....Although these observations were not made in the context of the offence of doing GBH with intent, they are relevant to that offence by analogy.</p> <p>At [32] The attack upon Mr Robertson was premeditated, orchestrated by deception, brutally administered and sustained over a significant</p>

			<p>demanded that Raso give him her mobile telephone. She refused. He grabbed her by the hair, shouting 'give me your fucking phone,' and took the phone from her. He read through the text messages which had passed between Raso and Robertson while threatening to harm and kill her. He repeatedly kicked her in the shins and abused her verbally.</p> <p>The appellant lured Robertson to the house by sending him text messages, constructed to appear as if they had been sent by Raso, from Raso's phone. He forced Raso to call Robertson and to make him come over.</p> <p>When Robertson arrived at the house around 2.00am, the appellant was waiting for him and immediately attacked him. He punched him in the face and, when he fell to the ground, repeatedly kicked and punched him in the head and body. He jumped on him with both feet. The appellant punched Raso in the face with his clenched right fist. Raso observed the appellant continue kicking an unresponsive Robertson. Throughout the attack, the appellant taunted and humiliated Raso. Police arrived at around 2.20am.</p> <p>Raso received largely superficial soft tissue injuries. Robertson's injuries were very serious; he would have died without medical intervention. He has permanent injuries to his right eye.</p>	<p>Sentencing judge accepted that the appellant was remorseful and that his behaviour was out of character.</p>	<p>period of time.</p> <p>At [35] Mr Oxenham did not use a weapon to inflict injury upon Mr Robertson... However, the absence of an aggravating factor is not to be equated with a mitigating factor.</p> <p>At [37] To the extent that a range can be discerned from the previously determined cases... That range equates approximately to a range of between 4 ½ and 8 yrs under the current sentencing system.</p> <p>At [40] – [48] Discussion of comparative cases.</p> <p>At [49] Having regard to all relevant circumstances, Mr Oxenham's offence was properly characterised as lying toward the upper end of the scale of seriousness while not within the worst category of case.</p>
3.	<i>Vuletic v The State of Western</i>	31 yrs at time offending.	<p><u>Indictment</u> Ct 2: GBH with intent (attempt to strike a</p>	<p><u>Indictment</u> Ct 2: 4 yrs imp.</p>	Dismissed on papers.

<p><b>Australia</b></p> <p><b>[2014] WASCA 135</b></p> <p>Delivered 23/07/2014</p>	<p>Convicted after early PG.</p> <p>Convictions in Qld for producing dangerous drugs, poss dangerous drugs, supply dangerous drugs and unlawful poss weapon.</p> <p>Born in New Zealand; moved to Australia at 16 yrs and WA in 2011.</p> <p>Childhood marred by domestic violence and sexual abuse; lived on the streets as an adolescent.</p> <p>Completed apprenticeship in mechanics and worked in mines.</p> <p>Regular user of illicit drugs.</p> <p>At time of sentencing was expecting his first child.</p> <p>Psychiatric report linked applicant's paranoia to abuse of methy; exhibited features of an anti-social personality.</p> <p>Support of his mother and stepfather.</p> <p>Since offence made attempts to address his longstanding abuse of illicit substances.</p>	<p>person with a projectile with intent to maim, disfigure or disable).</p> <p>Ct 4: Having ready access simultaneously to both weapons and prohibited drugs.</p> <p><u>Section 32 notice</u></p> <p>Ct 1: Possess methyl.</p> <p>Ct 2: Fail to comply with protective bail condition.</p> <p>Ct 3: Possess unlawfully obtained property.</p> <p>Ct 4: Possess smoking utensil.</p> <p>On three occasions during one day a person in a vehicle went to the victim's property, apparently to speak to the victim's adult son.</p> <p>The following morning, the victim noticed two sets of headlights pulling up on the road in front of his property. The victim got in his car and followed the vehicles. One of the vehicles pulled to the side of the road. The victim stopped alongside. The victim saw the appellant, who was the driver, pointing a handgun. The victim drove off.</p> <p>The appellant followed him, turning his lights off. The victim did a U-turn with the intention of returning home. The appellant drove up alongside the victim's vehicle and fired at least 4 shots.</p> <p>An examination of the victim's vehicle revealed that 4 bullets had been fired into the boot of the vehicle. One bullet perforated the front left side of the driver's seat and another</p>	<p>Ct 4: 14 mths imp (conc).</p> <p><u>Section 32 notice</u></p> <p>Ct 1: 2 mths imp (conc).</p> <p>Ct 2: 1 mth imp (conc).</p> <p>Ct 3: 1 mth imp (conc).</p> <p>Ct 4: 1 mth imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge accepted was using methyl at time of offence and was in a highly emotional and agitated state; experienced symptoms of paranoia, was a result of which he had feared that his life was threatened by the victim.</p> <p>Positive prospects of rehabilitation.</p> <p>Low risk of violent re-offending.</p>	<p>At [25] no apt comparative cases in this jurisdiction.</p> <p>At [28] There can be no doubt that the offending in the present case was very serious... it was very dangerous conduct which could well have had tragic consequences.</p>
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			fractured the interior side of the right rear passenger window. At least 2 of the bullets narrowly missed striking the victim while he was driving the vehicle.		
2.	<p><i>The State of Western Australia v Khasay</i></p> <p>[2014] WASCA 58</p> <p>Delivered 19/03/2014</p>	<p>48 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record; including AOBH &amp; carrying article with intent to injure.</p> <p>Ethiopian refugee; Fought against government in Ethiopia; witnessed killing &amp; death.</p> <p>Been in regular &amp; stable employment in Australia.</p> <p>Father of 3 children.</p> <p>No support in Perth.</p> <p>History suggestive of a major depressive episode &amp; psychotic symptoms.</p> <p>Socially isolated &amp; experienced significant stress concerning relationship issues &amp; significant trauma relating to exposure to war.</p>	<p>GBH with intent x 1.</p> <p>The respondent went to the victim's house in St James after following him there after a verbal altercation at a Bentley Supermarket. The respondent; armed with a golf club; approached the victim and struck him in the head with the golf club. This caused the victim to fall to the ground. The respondent then struck the victim with the golf club on another 3 or 4 occasions. The respondent then ran to his vehicle and drove away.</p> <p>The victim suffered an open skull fracture and bleeding, bruising and swelling to the brain; facial injuries, including fractures to his jaw and a fractured collarbone. The victim underwent surgery twice. Without surgery the victim wouldn't have survived. The victim spent about 3 months in hospital and rehabilitation.</p> <p>The victim suffered permanent disabilities.</p>	<p>4 yrs 8 mths imp.</p> <p>EFP.</p> <p>Respondent denied knowing the victim &amp; denied assaulting him.</p> <p>No remorse &amp; refused to accept responsibility.</p> <p>Moderate risk of re-offending.</p>	<p>Allowed.</p> <p>Re-sentenced to 7 yrs 8 mths imp.</p> <p>EFP.</p> <p>At [42] The respondent's offending was very serious. The offence was unprovoked. It was not a response to any perceived threat from the victim. It involved random and senseless violence...</p> <p>At [51] The sentence was not merely 'at the lower end of the scale' or 'low'. It was substantially outside the sentencing range open to his Honour on a proper exercise of the sentencing discretion.</p>
1.	<p><i>The State of Western Australia</i></p>	<p>37 yrs at time sentencing.</p>	<p>GBH with intent x 1.</p>	<p>6 yrs imp.</p>	<p>Allowed.</p>

<p><i>v Legge</i></p> <p><b>[2014] WASCA 47</b></p> <p>Delivered 28/02/2014</p>	<p>Convicted after trial.</p> <p>Extensive prior criminal record including AOBH, threatening behaviour, assault, assault police officer, obstructing public officers &amp; hindering police.</p> <p>Good relationship with mother; not so with father; has 16 yr old son.</p> <p>Left school in Year 9.</p> <p>Commenced using cannabis at 13 yrs; long history of alcohol abuse.</p> <p>Has \$17,580.30 in outstanding fines; never paid a court imposed fine.</p> <p>Previously performed badly on community based orders.</p>	<p>The respondent and victim were neighbours who lived on adjoining semirural properties.</p> <p>On the day of the incident the respondent and victim had a verbal confrontation about the behaviour of the respondent's dogs. The respondent obtained a samurai sword from his house and returned to the victim, concealing the samurai sword behind his back.</p> <p>When the respondent was close enough to the victim, he produced the sword and attempted to strike the victim with it. The victim raised a piece of poly pipe to protect himself, but the poly pipe was dislodged from his hands. The respondent raised the sword again and, with considerable force, struck the victim on the right, rear side of his head. The blow caused a deep, 10cm laceration which cut into the victim's skull and severed two arteries.</p> <p>The respondent then climbed the boundary fence while screaming that he intended to kill the victim, his family and their dogs. The respondent continued to swing the sword and the victim managed to dodge several sword strikes to protect himself with his hands, causing a laceration to one hand and abrasions. Another blow cut the victim's toe through the nail before following through and cutting the respondent's own knee. Eventually the victim and his father managed to disarm and restrain the respondent. The respondent continued to threaten the victim and his family and urged his dogs to attack them.</p>	<p>EFP.</p> <p>No remorse; no pity; no regret.</p> <p>Sentencing judge noted respondent's behaviour was 'entrenched' and 'getting worse' and had no insight whatsoever of the danger he was to himself and the community.</p> <p>Elevated risk of re-offending.</p>	<p>Re-sentenced to 7 yr 6 mths imp. EFP.</p> <p>At [29] The one aspect which makes this case less serious than the worst of the cases reviewed by McLure P in <i>Naumoski</i> is the lack of extensive permanent physical disability which was suffered by some of the victims in those cases. Everything else is against the respondent. There are no points of mitigation and he is not at all remorseful. The ferocity of the attack and the deliberateness of the attack all point to this being a very serious offence...</p>
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			The victim received a life threatening injury and now suffers from regular migraines and a serious post-traumatic stress disorder.		
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					