

# **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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
OMG	outlaw motorcycle gang

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
13.	<p><i>Kim v The State of Western Australia</i></p> <p>[2018] WASCA 142</p> <p>Delivered 10/08/2018</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born and raised in South Korea; low income family; eldest of two children; expected to support his parents; younger brother seriously ill.</p> <p>Supportive family; no family or friends to provide support in Australia.</p> <p>Completed mandatory military service.</p> <p>Travelled Australia on a working holiday with victim Ms K; relationship marred by increasing violent and controlling behaviour; single since breakup with victim.</p>	<p>2 x GBH with intent.</p> <p>Kim was a relationship with the victim Ms K. Their union ended and shortly afterwards Ms K commenced a relationship with the victim TK.</p> <p>Kim returned to Korea, but continued to obsess about Ms K. In an attempt to coerce her to return to him he flew to Perth and spent the day with her before returning home.</p> <p>A few weeks later Kim flew to Perth for one day, again to confront Ms K and to coerce her into resuming their relationship. Ms K had moved address and he did not know where she was living, but through social media he discovered she was looking for work. Pretending to be an employer offering work Ms K arrived at a location where he confronted her and physically prevented her from leaving. Police were called and issued a police order preventing him contacting or approaching Ms K. He returned to Korea the same day.</p> <p>Two days later Kim again flew to Perth with the intention of confronting Ms K, in contravention of the order still in place. On arrival he purchased a utility knife. Travelling to Ms K's address he waited. As she and TK were getting into their car he approached them. There was some discussion between the three and when warned that if he did not leave they</p>	<p>Ct 1: 5 yrs 6 mths imp. Ct 2: 7 yrs 6 mths imp (cum and partially conc).</p> <p>Sentence for ct 2 to begin 2 yrs after serving sentence for ct 1.</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the offending aggravated by being committed in the context of a failed domestic relationship; the use of violence was premeditated; planned and persistent; the use of a weapon; the very serious injury inflicted to TK; it was serious in that there were two victims; it occurred in breach of a police order and in a public place.</p> <p>No demonstrated victim empathy or true</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and totality.</p> <p>At [23] ... the length of each term of imp was not unreasonable or plainly unjust. Each sentence was commensurate with the seriousness of the offence.</p> <p>At [28] ... taking into account: ... the very serious nature of the offending ... the TES imposed in previous cases ... the place which the appellant's overall criminal conduct occupies on the scale of seriousness of offences of this kind; ... the aggravating and mitigating factors referred to by his Honour ... the TES was appropriate.</p>

			<p>would call the police Kim struck TK in the neck with the knife, causing a large laceration and severing a major blood vessel. Kim attempted to strike him again, but missed.</p> <p>Kim then swung the knife at Ms K, striking her in the hand. He then attempted to punch the knife into Ms K, but TK grabbed the knife and after a struggle was able to disarm him.</p> <p>Freeing himself Kim knocked Ms K to the ground, straddled her and attempted to strangle her. TK and another occupant of the house intervened. As Ms K fled Kim chased after her, followed by TK.</p> <p>Kim then continued his assault, knocking TK to the ground and hitting him while he was down. He also forced his fingers inside the wound on his neck, attempting to tear it. Passers-by assisted and police attended shortly after.</p> <p>Ms K suffered lacerations to her fingers, which required sutures, and bruising to her throat.</p> <p>As well as the wound to his neck TK suffered lacerations to his hands. His injuries required surgery.</p>	remorse.	
12.	<p><i>Merlo v The State of Western Australia</i></p> <p>[2018] WASCA 71</p>	<p>34 yrs at time offending.</p> <p>Convicted after trial (acquitted cts 1 and 2).</p> <p>Prior minor criminal history.</p>	<p>Ct 3: GBH.</p> <p>Ct 4: GBH with intent.</p> <p>The victim, AR is a US citizen. She met Merlo overseas and they began living together in WA.</p>	<p>Ct 3: 18 mths imp (cum).</p> <p>Ct 4: 5 yrs imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned error in finding this offending agg by prior violent behaviour towards victim; and totality</p>

<p>Delivered 15/05/2018</p>	<p>Supportive family; support within the community.</p> <p>Successful businessman.</p> <p>Married at time sentencing.</p> <p>Illicit substance abuse at time offending; since ceased drug use.</p>	<p>Merlo was controlling and violent and AR eventually asserted some degree of independence from him, however they retained a relationship.</p> <p><u>Ct 3</u> AR attended Merlo's apartment. He consumed methyl and in a drug-fuelled rage battered AR with his fists, delivering at least 'two targeted powerful blows' to her face rendering her semi-conscious.</p> <p><u>Ct 4</u> Merlo then took a meat cleaver, put her hand on a chopping board and with a single blow of the cleaver severed, almost entirely, her little finger.</p> <p>AR suffered a fractured cheekbone and eye sockets, resulting in nerve damage to her face, affecting her appearance. Surgical attempts to reattach the finger were unsuccessful.</p>	<p>EFP.</p> <p>The trial judge found the offences not an 'uncharacteristic aberration' and did not happen 'out of the blue'; they were a 'dramatic escalation of prior conduct'; it was unprovoked and senseless, although not premediated.</p>	<p>principle.</p> <p>At [44] The appellant's criminal behaviour involved two distinct acts, ... The first was punching AR to the face. ... with considerable force. He did so without any justification. ... AR was already vulnerable, being much smaller and nowhere near as strong as the appellant, but his actions left AR weakened and semi-conscious. While AR was in this state, the appellant committed ct 4.</p> <p>At [45] The appellant's actions in taking a meat cleaver and deliberately severing part of the appellant's little finger ... was a particularly senseless, cruel and violent act. To take AR's hand ... and wield the meat cleaver as he did was terrifying and pitiless. While not life-threatening, the loss of the finger is unsightly and painful, and has deprived AR of pursuits she once enjoyed. ...</p> <p>At [51] ... having regard to</p>
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					all of the relevant circumstances ... including the separate and distinct acts committed by the appellant, and that his Honour adjusted the individual sentence on ct 3 for totality reasons, it would have been inappropriate to apply the so-called one transaction rule ...
11.	<p><i>The State of Western Australia v. Mae</i></p> <p>[2018] WASCA 53</p> <p>Delivered 16/04/2018</p>	<p><u>James</u> 30 yrs at time offending. 32 yrs at time sentencing.</p> <p>Convicted after PG. (cts 1-3) (25% discount).</p> <p>Prior criminal history in NSW; including convictions for violence.</p> <p>Victim of domestic violence as a child.</p> <p>Left school yr 10.</p> <p>Employed construction industry.</p> <p>Long-term de facto relationship; two young children.</p> <p>Significant substance abuse issues; alcohol; cocaine and methyl.</p>	<p>Ct 1: Unlawfully did an act likely to endanger life, health or safety. Cts 2 &amp; 3: GBH with intent.</p> <p>The victims, E (aged 18 yrs) and D (aged 19 yrs) and three other males travelled in a Mercedes to an address. Unbeknown to the men the house was occupied by James and his family.</p> <p>James was not home when one of the males from the Mercedes knocked on the door. James' partner answered and was asked 'Where's Mohammed?'. She said no-one by that name lived there. She then telephoned James and told him what had occurred and that the Mercedes was still at the house.</p> <p>About 15 minutes later, James, Jonathan and Phillip arrived at the house. James was in a state of 'absolute uncontrollable rage'. A verbal altercation occurred with the occupants of the Mercedes. As a result the car began to reverse to escape the situation.</p>	<p><u>James</u> Ct 1: 1 yrs imp (conc). Ct 2: 6 yrs 6 mths imp (conc). Ct 3: 6 yrs 6 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp. EFP.</p> <p><u>Jonathan</u> Ct 2: 5 yrs 9 mths imp (conc). Ct 3: 5 yrs 9 mths imp (conc).</p> <p>TES 5 yrs 9 mths imp. EFP.</p> <p><u>Phillip</u> Ct 2: 6 yrs imp (conc). Ct 3: 6 yrs imp (conc).</p> <p>TES 6 yrs imp. EFP.</p>	<p>Allowed (James). Dismissed (Jonathan and Phillip).</p> <p>Appeal concerned TES and totality principle.</p> <p><u>James</u> Order that the sentences cts 2 and 3 be served conc be set aside and substituted with an order of partial conc. Ct 2: To commence 19.11.2015. Ct 3: To commence 19.11.2017.</p> <p>TES 8 yrs 6 mths imp. EFP.</p> <p>At [69] ... his Honour's stated approach to sentencing an offender for multiple offences is in accordance with authority...his Honour,</p>

	<p><u>Jonathan</u> 24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after PG. (cts 2-3) (25% discount).</p> <p>Prior criminal history relating to cannabis use in NSW; no prior WA convictions.</p> <p>Victim of domestic violence as a child; deeply entrenched family commitment which impacted decision-making on night of offences.</p> <p>Partially completed yr 12.</p> <p>Employed crowd controller and labourer.</p> <p>Single.</p> <p>History of depression; binge drinker; uses cannabis.</p> <p><u>Phillip S</u> 25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG. (cts 2-3) (20% discount).</p> <p>Prior criminal history in NSW;</p>	<p><u>Ct 1</u> James returned to his vehicle and drove in front of the Mercedes, forcing it backwards and causing it to veer off the roadway. When the Mercedes came to rest, three of the occupants fled the scene. Nobody suffered any physical injury.</p> <p><u>Cts 2 and 3</u> Phillip then went to the front passenger side the Mercedes and forcibly removed E from the vehicle, placing him in a neck-hold and dragging him to the other side of the vehicle. Phillip pushed E to the ground and stood over him to prevent him from getting up or leaving.</p> <p>At the same time, Jonathan went to the driver's side of the Mercedes and smashed its window, before striking D multiple times. Jonathan attempted to drag D from his vehicle, so D got out and sat down, being told he was not free to go.</p> <p>Meanwhile, James obtained two large knives from inside his home and returned carrying one in each hand. James walked up to where E was sitting and began to repeatedly stab and slash him. He was struck at least five times, unable to leave or defend himself. Eventually he was able to run from the scene.</p> <p>James chased E for a short time, before returning to where D, who had tried to flee, was now being held and punched by Jonathan and Phillip. James stabbed D multiple times as</p>	<p>The sentencing judge took into account they acted in company with each other and each was involved in the offending "in a very severe way".</p> <p>The sentencing judge found James used the knife to deliberately inflict serious wounds to both victims and in doing so there was potential for serious or fatal injury.</p> <p><u>James</u> No remorse or victim empathy; willing to undergo counselling; moderate risk of reoffending.</p> <p><u>Jonathan</u> Ashamed of his offending behaviour; accepted responsibility; low risk of reoffending.</p> <p><u>Phillip</u> Remorseful; expressed regret about his</p>	<p>... correctly, refers to the one transaction rule as potentially applying to the question of concurrency or cumulacy.</p> <p><u>James</u> At [84] Both victims suffered serious physical injuries. ... Both victims have been badly psychologically traumatised. Whilst the harm inflicted upon [E] and [D] is not as grave as in other cases, it is nevertheless of a high order.</p> <p>At [85] James' overall offending evinced a very high level of criminality. ... James was the principal offender. He substantially escalated the level of violence by going to his house, arming himself with two knives, and then stabbing and slashing ... [E] and then [D].</p> <p>At [86] ... He ferociously and mercilessly inflicted multiple wounds upon each of his victims. ... they could easily have had fatal consequences.</p> <p>At [88] ... He inflicted</p>
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		<p>substantial traffic convictions in WA; at time of offending had recently been released to parole.</p> <p>Completed yr 12; won music scholarship; unable to take it up because of lack of funds.</p> <p>Employed as a courier and in packing.</p> <p>Currently single; father to 4 yr old son living in NSW.</p> <p>Heavy drinker and user of amphetamine.</p>	<p>he was being restrained. Eventually he was able to run from the scene.</p> <p>Both victims were conveyed to RPH. E sustained multiple deep lacerations requiring surgery. He suffered serious damage to the ligaments in one arm, leaving him with impaired use of his hand. D sustained multiple stab wounds, the most serious of which punctured both lungs, causing them to collapse.</p>	<p>behaviour.</p>	<p>serious physical and psychological harm on two victims, in separate and distinct attacks. ...</p> <p>At [89] ... Neither victim did anything which justified the use of violence, let alone the extreme violence perpetrated by the respondent.</p> <p>At [99] ... the TES ... did not bear a proper relationship to the overall criminality involved in all of the offences he committed. The only reasonable view, in all the circ was that some accumulation of the individually appropriate sentences was necessary to properly reflect James' overall criminality.</p> <p><u>Jonathan</u> At [106] There can be no doubt that Jonathan's conduct was serious. [He] willingly associated himself in a concerted attack on both victims. ...</p> <p>At [107] ... with respect to the offence committed on [E], Jonathan played a lesser</p>
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				<p>role than James and Phillip. His presence assisted to prevent [E] from escaping. That is a significant feature relevant to the application of the totality principle.</p> <p>At [108] As serious as Jonathan's offending was, he did not wield the knife and had no physical contact with [E].</p> <p>At [111] ... we have not been persuaded that the TES imposed on Jonathan ... infringed the first limb of the totality principle. ... it was not unreasonable or plainly unjust to order conc on cts 2 and 3.</p> <p><u>Phillip</u> At [114] Phillip's offending was also, without question serious.</p> <p>At [117] ... we have not been persuaded that the TES ... infringed the first limb of the totality principle. As was the case with Jonathon, it was open to the sentencing judge to take the view that concurrent sentences would</p>
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					bear a proper relationship to the overall criminality involved in all of Phillip's offences, viewed in their entirety, .... It was not unreasonable or plainly unjust to order concurrency on cts 2 and 3.
10.	<p><b><i>FWB v The State of Western Australia</i></b></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><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>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</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 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</p>	<p>EFP.</p> <p>The sentencing judge described the offending against M as involving "the most gross breach of trust" 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</p>	<p>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 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</p>
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			suffered a 5cm wound that caused one of her lungs to collapse.	of future sexual offending and a moderate risk of future violent offending, most likely family violence.	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 individual sentences.  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.  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.
9.	<i>Schmied v The State of Western Australia</i>	28 yrs at time sentencing. Convicted after trial.	1 x GBH with intent. H is Schmied's former de facto. She lived	GBH with intent: 7 yrs imp.	Dismissed. Appellant challenged length

	<p><b>[2016] WASCA 99</b></p> <p>Delivered 17/06/2016</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>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 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>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 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>The sentencing judge found that the offence was not premeditated.</p> <p>The sentencing judge accepted that Schmied had unconsciously 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>of sentence.</p> <p>At [24] Expression of remorse given little weight.</p> <p>At [39] ...the injuries inflicted were objectively 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.	<i>Nicholls v The State of Western</i>	27 yrs at time offending.	1 x Accessory after the fact (principal offence GBH with intent).	2 yrs 9 mths imp.	Dismissed

	<p><b>Australia</b></p> <p><b>[2016] WASCA 20</b></p> <p>Delivered 22/01/2016</p> <p>Co-offender of</p> <p><i>Mansour v The State of Western Australia</i> [2015] WASCA 175</p>	<p>Convicted after trial.</p> <p>Lengthy criminal history, including offences of violence.</p> <p>Unemployed and regular drug user.</p> <p>Tried together with co-offenders.</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 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>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 principal offence.</p> <p>No remorse.</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 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><b>[2015] WASCA 175</b></p>	<p>39 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including</p>	<p>Ct 1: Kidnapping. Ct 2: GBH with intent.</p> <p>The victim owed a significant drug debt to the appellant. The weeks preceding the offence the appellant sent the victim abusive text</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 8 years imp (cum). TES 12 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned parity.</p> <p>At [42] ... the significant distinguishing feature ... was</p>

	<p>Delivered on 01/09/2015</p> <p>Co-offender of</p> <p><i>Nicholls v The State of Western Australia</i> [2016] WASCA 20</p>	<p>drug and weapon offences.</p> <p>Migrated to Australia from Lebanon.</p> <p>Left school age 13 yrs; good work history.</p> <p>Married; supportive wife; five children.</p> <p>Co-offender Mansour convicted after trial of 1 x kidnapping and 1 x GBH with intent. TES 11 yrs imp.</p> <p>Co-offender Mannah convicted after trial of 1 x kidnapping and 1 x GBH with intent. TES 11 yrs imp.</p> <p>Co-offender Singh convicted after trial of 1 x kidnapping and 1 x GBH with intent. TES 9.5 yrs imp.</p>	<p>messages, including threats of serious harm. The appellant arranged three co-offenders to accompany him from NSW to collect the debt.</p> <p>The appellant arranged for the victim to be at a house. The appellant and the co-offenders ambushed the victim, detained him against his will and savagely assaulted him for approximately six hours.</p> <p>Two children aged 18 mths and 11 yrs were present at the house.</p> <p>After the assault the appellant returned to NSW. Two co-offenders remained and placed the severely injured victim in a car and dumped him behind bins at a 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>EFP.</p> <p>The sentencing judge found the appellant the principal offender and his culpability in respect of ct 1 more serious than that of the co-offenders. He set up the offending conduct in an 'organised, calculated and cold manner'. The offending in respect of ct 2 was a joint criminal enterprise</p> <p>The sentencing judge found that the assaults upon the victim 'were sustained and deliberately carried out to cause him significant pain and degradation and carried out with such force, consistent with the use of implements, as to lead to life threatening injuries' and 'basically torture'.</p> <p>The sentencing judge found the co-offender Mansour's culpability</p>	<p>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 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>
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				<p>was less than that of the appellant's; Mannah's consistent with that of Mansour; Singh's greater than that of Mansour and Mannah.</p> <p>Demonstrated no remorse.</p>	
6.	<p><i>Dimitrovska v The State of Western Australia</i></p> <p>[2015] WASCA 162</p> <p>Delivered 19/08/2015</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 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>1 x GBH with intent.</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 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>17 yrs imp.</p> <p>Trial judge found that the offence was in the worst category of cases of GBH with intent.</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-</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 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</p>

		<p>Affected by methyl at time offending.</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>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>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 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</p>
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					comparable cases.  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 <i>BLM</i> to the circumstances of this case sustain the conclusion that the trial judge was entirely justified in imposing a sentence of 17 yrs imp.
5.	<i>McKenzie v The State of Western Australia</i>  [2015] WASCA 163  Delivered 24/08/2015	20 yrs at time offending. 22 yrs at time sentencing.  Convicted after PG of cts 1, 2 and 6. Convicted after trial of cts 3, 4 and 5.  Criminal history, including convictions for stealing, criminal damage, trespass, agg burg, threats, common assault, breach of pre-sentence order and AOBH.  Disadvantaged background; brother committed suicide; father had depression and schizophrenia; parents separated when aged 11 or 12.  Never been employed.  History of substance abuse.	Ct 1: Steal motor vehicle. Ct 2: Stealing. Ct 3: Agg burg. Ct 4: Agg GBH with intent. Ct 5: Agg GBH with intent. Ct 6: Steal motor vehicle.  The appellant and two co-offenders stole a Holden Commodore sedan by taking the keys for the car from a house (ct 1).  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).  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	Ct 1: 12 mths imp (conc). Ct 2: \$500 fine. Ct 3: 3 yrs 6 mths imp (cum). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 5 yrs imp (conc). Ct 6: 12 mths imp (cum).  TES 12 yrs imp.  EFP.  Sentencing judge found high risk of reoffending and significant need for protection of the community.	Dismissed – on papers.  At [53] Cts 3, 4 and 5 were especially egregious. Those offences were committed in 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

		<p>History of suicide attempts and depression.</p> <p>Diagnosed with paranoid personality disorder, borderline personality disorder and antisocial personality disorder.</p>	<p>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 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>Psychiatrist report stated that the appellant's mental state, mood disorder, substance abuse and personality pathology, contributed to the offending.</p>	<p>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> <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.	<i>Oxenham v The State of Western Australia</i>	<p>36 yrs at time sentencing.</p> <p>Convicted after late PG.</p>	<p>Ct 1: Agg AOBH Ct 3: GBH with intent.</p> <p>The appellant and the first victim (Raso) were</p>	<p>Ct 1: 18 mths imp (cum). Ct 3: 6 yrs imp.</p>	<p>Dismissed.</p> <p>At [30] In <i>Trompler v The State of Western Australia</i>,</p>

<p>[2015] WASCA 30</p> <p>Delivered 18/02/2015</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>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 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</p>	<p>TES 7 yrs 6 mths imp. 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>Sentencing judge accepted that the appellant was remorseful and that his behaviour was out of character.</p>	<p>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 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</p>
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3.	<p><i>Vuletic v The State of Western Australia</i></p> <p>[2014] WASCA 135</p> <p>Delivered 23/07/2014</p>	<p>31 yrs at time offending.</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><u>Indictment</u></p> <p>Ct 2: GBH with intent (attempt to strike a 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</p>	<p><u>Indictment</u></p> <p>Ct 2: 4 yrs imp.</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</p>	<p>Dismissed on papers.</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>

		<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>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 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.</p>	<p>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>	
2.	<p><b><i>The State of Western Australia v Khasay</i></b></p> <p><b>[2014] WASCA 58</b></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>1 x GBH with intent.</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>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-</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</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>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>offending.</p>	<p>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>
<p>1.</p>	<p><i>The State of Western Australia v Legge</i></p> <p>[2014] WASCA 47</p> <p>Delivered 28/02/2014</p>	<p>37 yrs at time sentencing.</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>1 x GBH with intent.</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</p>	<p>6 yrs imp.</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-</p>	<p>Allowed.</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</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>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>The victim received a life threatening injury and now suffers from regular migraines and a serious post-traumatic stress disorder.</p>	<p>offending.</p>	<p>deliberateness of the attack all point to this being a very serious offence...</p>
<b><i>Transitional provisions repealed (14/01/2009)</i></b>					
<b><i>Transitional provisions enacted (31/08/2003)</i></b>					