

# Grievous Bodily Harm

*s 297 Criminal Code.*

**From 1 January 2014**

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
CBO	community based order
TES	total effective sentence
Sex pen	sexual penetration
VRO	violence restraining order

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
20.	<p><i>Baker v The State of Western Australia</i></p> <p>[2018] WASCA 15</p> <p>Delivered 16/02/2018</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history in NSW; including assault; damage and breach of an AVO.</p> <p>Born New Zealand; positive family upbringing; moved to Australia aged 19 yrs.</p> <p>Left school 16 yrs.</p> <p>Reasonably regular employment history.</p> <p>History of illicit substance use.</p>	<p>1 x GBH.</p> <p>The victim and Baker were unknown to each other.</p> <p>Baker knocked on the victim's door and when he answered he was struck in the head and body with a wooden article. When he fell to the ground Baker continued the attack.</p> <p>The victim suffered substantial head injuries, including a fractured skull with permanent loss of sense of taste and smell.</p> <p>Offence committed while in methyl induced psychosis [10], [13].</p>	<p>4 yrs 6 months imp.</p> <p>No explanation for his offending; except offence committed while in drug-induced psychosis.</p> <p>The sentencing judge found the appellant committed an unprovoked assault; agg by the use of a weapon; the extent of the victim's injuries; the persistence of the attack; the victim gave no cause whatsoever for grievance; was not known to the appellant; had no means of defending himself and it occurred on the front door of his home.</p> <p>The sentencing judge found the case was in the mid to high level of seriousness of offences of this kind.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [26] Consideration of reasonably comparable cases does not support a conclusion that the appellant's sentence was manifestly excessive. ... the appellant's sentence is broadly consistent with the sentences in other reasonably comparable cases.</p> <p>At [27] ... it is not reasonably arguable that the length of the term of imp was unreasonable or plainly unjust. The sentence ... was commensurate with the seriousness of the offence and was within the range open to the sentencing judge on a proper exercise of his discretion.</p>
19.	<p><i>Fernandez v The State of Western Australia</i></p>	<p>43 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>1 x GBH.</p> <p>The victim is Fernandez's estranged husband. There was a custody dispute over their two</p>	<p>5 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; error in taking into</p>

<p><b>[2017] WASCA 223</b></p> <p>Delivered 05/12/2017</p>	<p>No prior convictions.</p> <p>Loving and supportive family.</p> <p>Well educated, intelligent.</p> <p>Hard working; highly thought of by work colleagues and friends.</p>	<p>children.</p> <p>Fernandez arranged to meet the victim at a park, to spend some time with their youngest child.</p> <p>After playing with the child a short time, it was agreed the victim would leave with the child and collect their other child later that afternoon.</p> <p>While at his car the victim noticed someone behind him. He turned and saw Fernandez with a knife. She stabbed him in the stomach and again in the chest, causing him to fall to the ground on all fours. He took hold of the knife to prevent being stabbed again, causing severe injury to his left palm.</p> <p>The victim required surgery for two major penetration wounds to his chest and abdomen. One of the lacerations was 4-5cm deep and almost 15cm long. The second lacerated the small bowel.</p>	<p>The sentencing judge was satisfied beyond reasonable doubt that the appellant brought the knife to the park, but was not satisfied beyond reasonable doubt that she formed the intent to use it until shortly before the stabbing occurred.</p> <p>The sentencing judge found there was a degree of premeditation in the appellant's offending by the carrying of the knife and forming the intent.</p> <p>The sentencing judge described the attack as brutal; it involved the use of a weapon in a public park in the middle of the day, with people, including children, present.</p>	<p>account complainant was collecting his children pursuant to a consent order as agg factor; error in finding of fact appellant brought the knife to the park.</p> <p>At [154] The appellant's contention that the judge treated the fact that the complainant was picking up his child in accordance with a court order as an agg factor is mere assertion ... The judge was making the uncontroversial point that the complainant was entitled to go about his ordinary daily business without fear of being attacked.</p> <p>At [158] ... It was well open to the jury, and the sentencing judge, to be satisfied beyond reasonable doubt of the truth and reliability of the complainant's evidence that he did not bring the knife to the park, and that the appellant produced the knife. The only reasonable inference from those findings was that the appellant brought the knife to the park.</p> <p>At [163] ... the sentence ...</p>
--	---	--	---	---

					<p>imposed upon the appellant in this case is broadly consistent with all reasonably comparable cases.</p> <p>At [166] The appellant's offence was unquestionably serious. She deliberately used a dangerous weapon. She inflicted two major wounds. The attack was unprovoked. Her attack on the complainant caused serious life-threatening injuries and has had far-reaching and enduring consequences for him.</p>
18.	<p><b><i>Reynolds v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 214</b></p> <p>Delivered 24/11/2017</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (20% discount) (ct 1).</p> <p>Convicted after trial (cts 2-3).</p> <p>Extensive criminal history; offending across four States; no significant gaps since age of 18 yrs.</p> <p>On bail for ct 1 at time of committed offences subject of cts 2 and 3.</p> <p>Abandoned by both parents at a young age; childhood dogged by</p>	<p>Ct 1: Receiving. Ct 2: GBH. Ct 3: Unlawful wounding.</p> <p><u>Ct 1</u> Police executed a search warrant at Reynolds' home and located various items, valued at about \$12,800, recently stolen from a home burglary.</p> <p><u>Cts 2 &amp; 3</u> Mr B's home was burgled and some of his CDs were stolen. He believed the CDs were at Reynold's home. Mr B, accompanied by Mr T, decided to go to Reynolds home to retrieve them.</p>	<p>Ct 1: 9 mths imp (cum). Ct 2: 5 yrs imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES 5 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the overall offending on cts 2 and 3 in the upper range of seriousness by use of a knife and there were two victims. The offences were unprovoked and did not occur in self-defence</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and length of sentence.</p> <p>At [36] ... the offence of unlawfully doing GBH committed by the appellant was at the upper end of seriousness. The victim suffered the permanent loss of sight in his right eye. The consequences of this injury to the victim have been serious and profound. ... The use of a weapon is ... an aggravating factor. ... the offence was unprovoked. [Mr B]</p>

		<p>lack of opportunity and homelessness.</p> <p>Sporadic history of employment as a mechanic.</p> <p>15 yr relationship; two children 13 and 8 yrs; 2015-2016 partner suffered cognitive deficits from brain aneurism.</p> <p>Insular and isolated family life; no friends or support within the community.</p> <p>Some mental health issues; illicit drug use from 12 yrs; fluctuated in and out of daily drug use since; time spent on methadone program for heroin addiction.</p>	<p>Mr B and Mr T went to a locked gate at the rear of Reynolds' property. His partner appeared and they asked for the return of the CDs. Mr B was told to go away.</p> <p>Reynolds came into the backyard and exchanged angry words with the two men, before going back into his unit and asking his partner to call police.</p> <p>Reynolds was already carrying a pocketknife but he armed himself with another and went back outside. As Mr B was looking through a hole in the gate Reynolds stabbed him in the eye with one of the knives (ct 2).</p> <p>As both victims walked away Reynolds jumped the fence and came towards Mr T, stabbing him twice in the back (ct 3).</p> <p>As a result of the attack Mr B was blinded in one eye. Mr T's two wounds were able to be sutured and glued.</p>	<p>or defence of his household.</p> <p>Limited capacity for empathy; little remorse; justified his actions.</p>	<p>did not enter or attempt to enter the appellant's premises and posed no threat to the appellant or the appellant's family.</p> <p>At [39] The appellant's overall offending was very serious. Not only did he stab [Mr B] but he also stabbed [Mr T]. Although the injuries that [Mr T] suffered were not as serious as those suffered by [Mr B], the potential for serious injury is obvious. The receiving charge the subject of ct 1 was a serious example of its type.</p> <p>At [40] ... It was well open to her Honour to impose some additional punishment for [ct 1], bearing in mind that it was committed some time before cts 2 and 3. ... it is aggravating that cts 2 and 3 were committed while the appellant was on bail for ct 1.</p>
17.	<p><i>The State of Western Australia v MacKey</i></p> <p>[2017] WASCA</p>	<p>46 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; no prior</p>	<p>Ct 1: GBH. Ct 2: Steal MV.</p> <p>MacKey and the victim were friends.</p> <p>The respondent was a passenger in the</p>	<p>Ct 1: 2 yrs 6 mths imp. Ct 2: 9 mths imp (conc).</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Appeal concerns length of sentence on ct 1 and totality principle.</p>

<p><b>204</b></p> <p>Delivered 02/11/2017</p>	<p>history of violent offending.</p> <p>Disturbed childhood; violent alcoholic father; left home aged 11 yrs; little contact with family.</p> <p>18 yr former relationship; 15 yrs her registered carer due to her serious mental health issues; mother to his 13 yr old daughter.</p> <p>New relationship; much younger partner; young baby together.</p> <p>Good work history; employed time offending.</p> <p>No health issues; long standing drug addiction; previous engagement in substance abuse programs.</p>	<p>victim's car when he received a text message from his partner alleging that she had engaged in sexual relations with the victim. This upset and angered the respondent who told the victim he wanted to return home immediately.</p> <p>The respondent produced a knife and attempted to stab the victim a number of times. The victim, though driving, was able to block the attempts. However, on the third or fourth attempt the respondent stabbed the victim, causing a very serious abdominal wound.</p> <p>The victim stopped the car and got out. The respondent then got into the driver's seat and drove off.</p> <p>A passing motorist eventually assisted the victim and he was taken to hospital and underwent immediate emergency surgery.</p>	<p>The sentencing judge described the offending as serious. The victim suffered significant injury; the respondent used a knife and he attacked out of the blue while the victim was driving and unable to defend himself.</p> <p>The sentencing judge found the victim did not provoke the attack; it was not a planned act, but a spontaneous reaction to the text message.</p> <p>No expressions of remorse; continued to justify the stabbing as an accident.</p>	<p>Re-sentenced to:</p> <p>Ct 1: 3 yrs 6 mths imp. Ct 2: 6 mths (cum).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>At [36] The harm that resulted from the respondent's assault was serious.</p> <p>At [37] The act which caused the injury was a single blow with a knife. The use of a weapon is an aggravating factor... It was delivered with such force that two of [the victim's] ribs were also broken. Clearly the respondent intended to harm ... and forcefully used a weapon in order to do so.</p> <p>At [38] The respondent's attack on his victim was entirely unprovoked. The use of a weapon on the driver of a moving car seriously aggravated this offence. ... Despite the obvious seriousness of the injury caused, the respondent</p>
---	---	---	---	---

					<p>abandoned [the victim] at the scene and made no attempt to call an ambulance.</p> <p>At [44]-[49] Discussion of comparative cases.</p> <p>At [53] ... The stealing of the motor vehicle was a separate offence made more serious by the fact that it involved leaving [the victim] injured and helpless on the road. ... the stealing offence called for some accumulation.</p>
16.	<p><i>Allen v The State of Western Australia</i></p> <p>[2017] WASCA 203</p> <p>Delivered 31/10/2017</p>	<p><u>Allen</u> 32 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>First trial aborted, PG accepted week prior to second trial commencing.</p> <p>Substantial criminal history, including three prior convictions for AOBH; released from prison about one month before committing present offence.</p>	<p><u>Allen and Gastarov</u> 1 x AOBH.</p> <p><u>Marsandi</u> 1 x GBH.</p> <p>Late at night the victim and his heavily pregnant partner attended a car park to collect his car. He used a baseball bat to smash a window to gain access to his car, causing the vehicle's alarm to sound.</p> <p>The proprietor of the adjacent workshop was woken by the alarm. He had previously been engaged by Marsandi to work on the vehicle so he telephoned one of the appellants to inform them of what was happening.</p>	<p><u>Allen</u> 2 yrs 10 mths imp. EFP.</p> <p><u>Gastarov</u> 3 yrs 6 mths imp. EFP.</p> <p><u>Marsandi</u> 6 yrs 4 mths imp. EFP.</p> <p>The sentencing judge characterised each appellant's offence as objectively very serious and at the high end of the</p>	<p>Allowed.</p> <p>Appeals concerned lengths of sentences.</p> <p>Re-sentenced to:</p> <p><u>Allen</u> 20 mths imp. EFP.</p> <p><u>Gastarov</u> 2 yrs 4 mths imp. EFP.</p> <p><u>Marsandi</u> 5 yrs imp.</p>

	<p>Parents deceased; single; no dependents.</p> <p>Supportive ex-partner.</p> <p>Business owner-operator; successful for a while.</p> <p>Leg injury resulting in a limp; postural problems and headaches. Suffers from depression.</p> <p>Prior history of drug abuse.</p> <p><u>Gastarov</u> 38 yrs at time offending. 41 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>First trial aborted, PG accepted week prior to second trial commencing.</p> <p>Prior criminal history; mostly traffic offences; convictions for dep of liberty and AOBH.</p> <p>Born Australia; raised in the USA after parents separation.</p>	<p>A short time later Marsandi and Allen arrived. Marsandi spoke to the victim. During the conversation Marsandi picked up the victim's baseball bat and without warning swung the bat the victim's head.</p> <p>The victim fell to the ground. Marsandi swung at the victim with the bat a further five or six times. Not all of those strikes made contact with the victim.</p> <p>The victim got to his feet and run. At this time Gastarov arrived and he pursued the victim in his car, while Allen ran after the victim on foot.</p> <p>When Gastarov and Allen caught up with the victim he started jogging back towards the car park. Allen continued to chase the victim on foot and unsuccessfully attempted to kick the victim from behind.</p> <p>Marsandi remained at the car park and when the victim returned, rushed towards him. Gastarov arrived and also rushed towards the victim with the raised baseball bat, before punching and kicking him. Gastarov then pulled the victim to the ground where Marsandi continued to kick and stomp on him several times.</p>	<p>objective criminality for offences of its kind.</p> <p>The sentencing judge found it was a sustained attack and the injuries to the victim represented serious examples of the respective offences; carried out in a brazen manner while in company.</p>	<p>EFP.</p> <p><u>Marsandi</u> At [61] ... A sentence in the range of 3 to 5 yrs will commonly be imposed in cases involving the use of weapons.</p> <p>At [68] ... The beating which the victim suffered was severe, .... While the injuries were moderately severe examples of GBH, they were not established to have resulted in serious permanent disability.</p> <p>At [69] ... It may be inferred that at least most of the injuries constituting GBH were caused by [his] initial use of a baseball bat to repeatedly and forcefully strike the victim's head. ... The sustained nature of the assault, and the fact that a weapon was used in a manner which was objectively likely to cause serious injury, were significant aggravating features of the offence.</p> <p>At [70] The victim did not offer any provocation for the assault.</p>
--	--	---	---	---

	<p>Two children to ex-wife; one child to current partner.</p> <p>Completed yr 12 equivalent in USA.</p> <p>Consistent work history; own tattooing business before suffering financial difficulties.</p> <p><u>Marsandi</u> 28 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>First trial aborted, PG accepted week prior to second trial commencing.</p> <p>Limited prior criminal history in WA; no previous terms of imp. After this offence convicted in NSW of AOBH.</p> <p>Close and supportive family; supportive friends.</p> <p>De facto relationship; good and loving father to three young</p>	<p>The appellants then allowed the victim and his partner to leave.</p> <p>Marsandi and Allen then hosed down the car and the car park where the assault took place. They also changed their clothes. Gastarov collected the baseball bat and left.</p> <p>The assault was captured on CCTV footage installed at the workshop premises. At some point it was manually deleted, however it was later able to be recovered by police.</p> <p>Later the same day Gastarov also attempted to obtain the CCTV footage from a nearby business, but it had already been seized by police.</p> <p>The victim was hospitalised and required surgery for a number of injuries, including the insertion of a metal plate in his head.</p>	<p>At [72] The conclusion that the appellant felt he could seriously assault others with impunity elevated the significance of personal deterrence and community protection as sentencing considerations. ... It is capable of explaining the imposition of a sentence greater than the sentences customarily imposed for serious examples of causing GBH. However, it does not explain the extent of the disparity in this case.</p> <p>At [73] ... the sentence imposed ... was not commensurate with the seriousness of Marsandi's offence ...</p> <p>At [76] ... In all the circumstances, while Marsandi's offence is a serious example of the offence of unlawfully doing GBH, a sentence of 6 yrs 4 mths imp is unreasonable or plainly unjust.</p> <p><u>Allen</u> At [81] Allen did not himself actually inflict any of the</p>
--	---	--	--

		<p>children.</p> <p>Educated to yr 11; completed apprenticeship; good trade and work history.</p>			<p>injuries which the victim sustained. His criminal responsibility is to be assessed on the basis that, by his presence and support ... he aided ... Marsandi and Gastarov, in assaulting the victim ...</p> <p>At [82] ... Allen did not actually inflict any injury, and did not instigate the violence initially directed towards the victim ...</p> <p><u>Gastarov</u> At [87] Gastarov was not present when the injuries constituting GBH were inflicted. ... His culpability is reduced by the fact that he was not present for the whole of the sustained assault on the victim, although it is aggravated by the fact that he himself assaulted the victim who [he] must have appreciated was already seriously injured.</p>
15.	<p><i>Bowe v The State of Western Australia</i></p> <p>[2017] WASCA 166</p>	<p><u>G Bowe</u> <u>R Bowe</u> <u>L Bowe</u> <u>J Bowe</u></p> <p>Convicted after trial.</p>	<p>1 x GBH.</p> <p>R; L and J Bowe are brothers; G Bowe is their father.</p> <p>The victim and Ms P went to the Bowe family home to discuss money owed to Ms</p>	<p><u>G Bowe</u> 3 yrs 8 mths imp.</p> <p><u>R Bowe</u> <u>Indictment</u> 4 yrs imp; <u>Breach</u></p>	<p>Dismissed.</p> <p><u>G Bowe</u> Appeal concerned length of sentence; type and parity.</p> <p><u>R Bowe</u></p>

	<p>Delivered 11/09/2017</p>	<p><u>R Bowe</u> At time offending subject to a suspended term of imp imposed Magistrates Court for 2 x driving without authorisation.</p>	<p>P's husband for the purchase of a vehicle.</p> <p>After a short conversation the victim agreed to go and get Ms P's husband to discuss the matter with him.</p> <p>The victim asked to be dropped off down the street to maintain watch on the vehicle, concerned it may be removed from the property.</p> <p>The victim was standing across the street when the three Bowe brothers approached him. R Bowe was armed with a baseball bat. After a short conversation the victim was taken by surprise and struck from behind with a weapon by G Bowe. He dropped to the ground and when he stood up R Bowe struck him twice on the forehead with the baseball bat. All four then kicked and punched the victim, striking him with baseball bats, a piece of wood and other weapons.</p> <p>The victim's injuries included a fractured skull and bleeding on his brain. He suffered damage to his brain involved with language and developed a stutter.</p>	<p>7 mths imp (cum).</p> <p><u>L Bowe</u> 3 yrs imp.</p> <p><u>J Bowe</u> 3 yrs imp.</p> <p>All EFP.</p> <p>The trial judge found G and R Rowe the principal offenders and that L and J Bowe participated in the physical attack on the victim and were not only there as backup.</p> <p>The judge categorised the offences as a serious example of GBH, although not the most serious or worst case of its kind.</p> <p>The judge found the seriousness of the offending was aggravated by the premeditation involved; the crime was perpetrated by four men again one; the use of</p>	<p>Appeal concerned totality.</p> <p><u>L Bowe</u> Appeal concerned length of sentence and parity.</p> <p><u>J Bowe</u> Appeal concerned parity.</p> <p><u>G Bowe</u> At [95] ... the differing sentences imposed upon the offenders were entirely justified by the differing levels of culpability ... [R Bowe] and [G Bowe] were the principal offenders who had planned the attack upon [the victim]. Although [G Bowe] struck the first blow from behind, it was [R Bowe] who struck the blows which caused GBH ... and his most significant injuries. Those differences justify the imposition of a sentence upon [R Bowe] which was four mths longer than that imposed upon [G Bowe].</p> <p>At [96] ... the roles played by each of [L Bowe] and [J Bowe] were less significant, although</p>
--	---------------------------------	--	--	---	--

				<p>weapons; the sustained nature of the assault and serious nature of the injuries sustained.</p> <p>Appellants not remorseful.</p>	<p>each participated in the assault ... The differences in their level of participation in the attack ... justify the lower sentences ... imposed upon each.</p> <p><u>R Bowe</u>          At [102] ... It was clearly open to her Honour to find that there was no injustice in directing that [R Bowe] serve the sentence previously imposed upon him ... Given that the offence for which that sentence was imposed was entirely unrelated to the offence of GBH, there was no reason why her Honour should not have directed the sentence to be served cumulatively. The imposition of the additional term ... could not be said to contravene the first limb of the totality principle given the culpability of [R Bowe's] conduct, and the fact that the TES ... was in any event within the range available to the judge in the sound exercise of her discretion in respect of the offence of GBH alone.</p> <p><u>L Bowe</u></p>
--	--	--	--	---	--

					<p>At [106] ... it was entirely appropriate for her Honour to take the principle of parity into account when deciding whether or not to suspend the term of imp imposed ... noting, ... the differences between the circumstances of his case and the circumstances of the other offenders.</p> <p>At [108] ... the sentence ... was at the lower end of the range of sentences customarily imposed for serious offences of GBH ...</p> <p><u>J Bowe</u> At [113] ... her Honour did not err in referring to, and appropriately applying the principle of parity in deciding whether or not to suspend the term of imp imposed.</p>
14.	<p><b><i>Kere Kere v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 189</b></p> <p>Delivered 02/11/2016</p>	<p>35 yrs at time offending.</p> <p>Convicted after late PG (5% discount).</p> <p>Prior WA and QLD criminal history, including convictions of common assault; AOBH; assaulting a public officer; and</p>	<p>1 x GBH.</p> <p>The victim, aged 31 yrs, was socializing with a friend at a club. As they left the venue the appellant approached the victim's friend and punched him in the face.</p> <p>In an attempt to defuse the situation the victim spoke to the appellant. Without</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted his offending behaviour was worsening and that the appellant was very aggressive towards</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence.</p> <p>At [35]-[36] Discussion of comparative cases.</p> <p>At [40] In the present case, the</p>

		<p>obstructing public officers. No prior sentences of imprisonment.</p> <p>Satisfactory childhood.</p> <p>Completed school and holds a university degree.</p> <p>Good work history.</p>	<p>warning he threw a flurry of punches, striking the victim six times in the face and head, knocking him to the ground.</p> <p>The victim's eye socket was badly fractured and required corrective surgery.</p>	<p>the victim and his friend.</p> <p>The sentencing judge found the victim 'considerably smaller' than the appellant and that he seriously injured the victim 'for no reason at all' and that the victim was 'backing up with his hands up' and the appellant 'kept after him until [he] hit him to the ground'. The victim's injuries could not be described as 'trivial'.</p>	<p>appellant's offending was serious. He inflicted numerous forceful blows to the victim's face and head. The violence was gratuitous and senseless. The victim did not, in any sense, provoke the attack. Indeed, he was retreating. ... He appears to have made a full recovery, but the appellant's behaviour had the potential to result in a more serious injury than was in fact suffered.</p>
13.	<p><i>Yaqubi v The State of Western Australia [No 2]</i></p> <p><b>[2016] WASCA 187</b></p> <p>Delivered 31/10/2016</p>	<p>18 yrs at time offending. 20 yrs at time sentencing.</p> <p>Early PG (25% discount).</p> <p>Prior criminal history, including a common assault committed 6 weeks after offence subject of this appeal.</p> <p>Uneventful childhood.</p> <p>Supportive family and in a committed relationship.</p> <p>Steady employment and</p>	<p>1 x GBH.</p> <p>The victim, aged 17 yrs, was out with friends at the same venue as Yaqubi and his friends. There had been previous tension between members of the two groups.</p> <p>As the victim and his friends were leaving Yaqubi made an insulting comment about the victim's mother. In a demanding and aggressive tone the victim questioned Yaqubi about what he said.</p> <p>Yaqubi punched the victim forcefully to the left side of the face and then kicked the victim in his lower back as he and the victim</p>	<p>16 mths imp.</p> <p>EFP.</p> <p>Later offence of common assault indicated violence was not wholly out of character for Yaqubi and that he had initiated the incident and was the physical aggressor.</p> <p>No genuine remorse, despite Yaqubi eventually writing a letter of apology to the victim.</p>	<p>Dismissed.</p> <p>Yaqubi challenged length and type of sentence.</p> <p>At [49] ... the offending was serious. The victim suffered a significant injury as a result of the appellant's gratuitous violence. ... The victim has apparently made a full recovery, but the appellant's conduct had the potential to result in a more serious injury than was in fact suffered. The victim did not provoke the attack. The</p>

		<p>studying for a degree.</p> <p>In good health; does not drink alcohol or use illicit drugs.</p>	<p>were being separated.</p> <p>The victim's jaw was fractured in two places and required surgery.</p>	<p>The seriousness of the offending and the importance of personal and general deterrence made it inappropriate to susp the term of imp.</p>	<p>sentencing judge was rightly sceptical about the degree to which the appellant was genuinely remorseful.</p> <p>At [53] ... despite the appellant's youth and prior good character and the other mitigating factors, the seriousness of the offending, the need for personal and general deterrence and the lack of genuine remorse made a sentence of immediate imprisonment the only appropriate sentencing option.</p>
12.	<p><i>The State of Western Australia v WTG</i></p> <p>[2016] WASCA 175</p> <p>Delivered 12/10/2016</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>At time offending, WTG was subject to an SIO for convictions of 3 x breach VRO protecting the victim.</p> <p>Significant prior criminal history, including AOBH, agg assault, breaches of protective bail, carrying a weapon with intent to cause fear, agg burg, breaches of VRO and agg AOBH. A number of</p>	<p>1 x Agg AOBH. 1 x Threat to harm. 1 x Agg GBH.</p> <p>WTG and the victim had been in a relationship, marred by domestic violence, for approx. 15 yrs. They had been separated approx. 2 yrs and, despite a VRO, the victim had contact with WTG.</p> <p>WTG stayed a weekend at the victim's home with their children. They both took drugs and had sexual relations.</p> <p>On the Sunday afternoon, having made arrangements for the children to be looked after</p>	<p>Agg AOBH: 12 mths imp (cum). Threat to harm: 10 mths imp (conc). Agg GBH: 2 yrs 10 mths imp (head sentence)</p> <p>Breach of SIO: 6 mths imp (conc).</p> <p>TES 3 yrs 10 mths imp.</p> <p>The sentencing judge found that the offences caused the victim to suffer significant adverse</p>	<p>Allowed.</p> <p>Appellant challenged length of sentence and totality.</p> <p>Sentence set aside. WTG re-sentenced to:</p> <p>Agg AOBH: 6 mths imp (cum with head sentence). Threat to harm: 9 mths imp (conc). Agg GBH: 4 yrs 6 mths imp.</p> <p>Breach: 6 mths imp (cum).</p>

		<p>convictions of agg assault, agg AOBH and breach VRO against this victim.</p> <p>Difficult childhood, without positive parental guidance.</p> <p>No significant employment history.</p> <p>Three children with the victim.</p> <p>Long history of illicit substance abuse.</p> <p>Prior to offences and whilst on remand in custody attempts made to rehabilitate himself, through religion, rehabilitation and training programmes.</p>	<p>by a friend, WTG became aggravated with the victim over her declining to have sex with him and her prior relationship with another man. WTG became increasingly aggravated by the victim's refusal to discuss the prior relationship. Over the course of the Sunday evening and into the early hours of Monday morning, WTG assaulted the victim a number of times. He struck the top of the victim's head with a knife, cutting her near her left temple (Agg AOBH).</p> <p>Later, the victim locked herself in a bedroom. WTG kicked open the door and punched her hard to the face once or twice with a clenched fist, knocking her to the ground unconscious. WTG then drove the victim around, and punched her in the face again. Later, when the car was parked, WTG asked the victim about the prior relationship and when she refused to answer he punched her in the left side of the face. This occurred at least four or five times. One blow caused her head to hit the car window. During this incident WTG said he would kill the victim (threat to harm).</p> <p>The victim suffered bruising and swelling to the eye, a split lip and a fractured jaw (Agg GBH).</p>	<p>consequence, physically and emotionally.</p> <p>No genuine remorse.</p> <p>The offences were committed against a slightly built, defenceless and vulnerable former partner who had placed a degree of faith and trust in WTG by recommencing contact.</p> <p>The GBH took place over a sustained period.</p>	<p>TES 5 yrs 6 months imp.</p> <p>EFP.</p> <p>At [44]-[51] Discussion of comparative cases.</p> <p>At [52]... the sentence imposed in this case for the offence of agg GBH is so far outside the range of sentences open to the sentencing judge in the sound exercise of his discretion as to manifest implied error.</p> <p>At [54] As I have concluded that the head sentence was manifestly inadequate, it follows that the TES was also manifestly inadequate...</p>
<b>11.</b>	<b><i>The State of</i></b>	25 yrs at time offending.	<u>Indictment</u>	<u>Indictment</u>	Allowed.

<p><b>Western Australia v Smith</b></p> <p><b>[2016] WASCA 153</b></p> <p>Delivered 31/08/2016</p>	<p>26 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and lengthy prior criminal history, including convictions for breaching VRO, agg common assault and being armed in public in a way that may cause fear.</p> <p>History of domestic violence towards his partners.</p> <p>Emotional trauma associated with the death of his father.</p> <p>History of methyl use; affected by drugs at time offending.</p> <p>Offending occurred while appellant was subject to an SIO of 10 months imp, susp 12 mths.</p>	<p>Ct 1: Agg unlawful wounding. Ct 2: Agg GBH. Ct 3: Att steal motor vehicle. Ct 4: Assault public officer. Ct 5: Obstructing public officer.</p> <p><u>s.32 notice</u> Ch 1: Trespass. Ch 2: Steal motor vehicle. Ch 3: Cruelty to an animal.</p> <p><u>Ct 1</u> Smith and the victim were in a domestic relationship. They were at home using drugs and Smith left the house armed with a hammer and in an agitated state. He returned with the hammer and argued with the victim. He threatened to hit her with the hammer. The victim turned her back to Smith and he violently hit her head with the hammer, exposing her skull.</p> <p><u>Ct 2</u> Smith struck the victim again as she tried to flee, hitting and fracturing her hand.</p> <p><u>Ct 3</u> Police found Smith walking down the street. As the officer got out of his patrol car and approached Smith, Smith ran to the other side of the car, got into the driver's seat and attempted to drive away.</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 3 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 3 mths imp (conc).</p> <p><u>s.32 notice</u> Ch 1: \$500 fine. Ch 2: 3 mths imp (conc). Ch 3: 2 mths imp (cum).</p> <p><u>SIO</u> Ordered to serve 6 mths of 10 mths SIO (conc).</p> <p>TES 2 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences reflected an escalation in his offending behaviour, but that Smith had not been before the courts from 2005-2010.</p> <p>Remorseful; claimed no recollection of actions due to drug intoxication.</p> <p>Psychological report</p>	<p>Appeal concerned length of sentence for cts 1 and 2 and totality.</p> <p>Re-sentenced to:</p> <p>Ct 1 (ind): 2 yrs imp (conc). Ct 2 (ind): 3 yrs 6 mths imp.</p> <p>Sentences for ct 4 (ind) and ch 3 (s32 notice) and 6 mths imp for SIO cum upon each other and cum upon new sentence for ct 2 (ind). All other sentences conc.</p> <p>TES 4 yrs 8 mths imp. EFP.</p> <p>At [30] The respondent had a history of domestic violence towards his partners, and this underscored the importance of personal deterrence as a sentencing factor.</p> <p>At [39] ... the respondent's offending was serious... The respondent armed himself with a ... weapon capable of inflicting serious harm, and his attacked upon the victim was unprovoked... The respondent's</p>
--	--	---	--	--

			<p><u>Cts 4-5 and ch3</u>  The officer tried to stop Smith and was struck on the arm by the car's door. They wrestled for control of the car. Smith pulled out a knife and the officer attempted to knock it from his hand. The officer then attempted to taser Smith.</p> <p>A police dog grabbed Smith by his leg and pulled him from the car. Smith struck the dog on the head with the hammer and hit the officer's arm with the hammer. He attempted to hit the dog again, but the officer tasered him and he fell to the ground. Continuing to fight the officer, still armed with the hammer, he was tasered a third time. The officer kicked the hammer from Smith's hand and restrained him until assistance arrived.</p>	<p>indicated developing insight into his behaviour and reasons for it.</p> <p>High risk of re-offending if illicit drug use continues.</p>	<p>conduct in striking the victim ... had the potential to cause her extremely serious injury. He was physically stronger and more powerful than her.</p> <p>At [95] ... it was significant that the injury in fact sustained [for ct 2] was a defensive wound caused by an attempt to strike the victim with a hammer, in circumstances where the respondent had just struck her with the hammer to the back of her head. The use of the hammer in that manner was likely to permanently injure or even kill the victim. The level of violence employed against the victim was high. The infliction of the injury formed part of a sustained attack against the victim which ceased only after she was able to take refuge at the neighbour's premises. The victim had not provoked the attack, and posed no threat to the respondent.</p> <p>At [100] The respondent acknowledged that he had perpetrated domestic violence on a regular basis.</p>
--	--	--	--	--	---

					At [104] Any AOBH to a police officer performing his or her important community function is a serious matter. That is particularly so where weapons are involved. The respondent produced a knife, which he did not have the opportunity of using, and employed a claw hammer to inflict bodily injury...
10.	<p><i>Gowan v The State of Western Australia</i></p> <p>[2016] WASCA 98</p> <p>Delivered 15/06/2016</p>	<p><u>Gowan</u> 33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Good employment record.</p> <p>History of drug use.</p> <p><u>Burnside</u> 30 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Father of twin daughters and two step-children from a long</p>	<p>Ct 1: Agg burg. Ct 2: GBH. Ct 3: Criminal damage. Ct 4: Agg burg. Ct 5: GBH.</p> <p><u>Cts 1 -3</u> The victim owed Gowan money for drugs.</p> <p>The appellants forcibly entered the victim's home. Gowan was armed with an axe handle and Burnside with a wheelbarrow handle. They repeatedly struck the victim about the head, face, upper arms and legs. Burnside fractured the victim's leg and damaged some of his property.</p> <p><u>Cts 4-5</u> The appellants then went to an address in search of a person whom they did not know,</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 4 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 9 yrs imp each.</p> <p>The sentencing judge characterised the offences as 'most serious', noting that they were planned and involved persistent assaults upon the victims and the use of weapons.</p> <p>The sentencing judge characterised the injuries as 'not as serious as</p>	<p>Dismissed.</p> <p>Appeals concerned totality.</p> <p>At [52] ... the TES imposed by the sentencing judge were high... the appellants' personal circumstances were unusually favourable for this type of offending. However, I do not consider that the sentences were unreasonable or plainly unjust.</p> <p>At [53] ... the appellants' offending was very serious. It involved two home invasions in company that were planned, undertaken at night and were for the purpose of enforcing a debt. The appellants were armed with</p>

		<p>standing relationship.</p> <p>Good employment record.</p>	<p>and who they believed was associated with the first victim.</p> <p>Despite being told by the second victim that they had the wrong house, the appellants forced their way in. They assaulted the second victim by repeatedly punching him and striking him with wooden implements. The victim suffered an injury to the left eye that required surgery.</p>	<p>frequently encountered' for GBH.</p> <p>The sentencing judge found the injuries to be inflicted by 'deliberate repeated violence with use of weapons in sustained violent attacks upon the victims'. The attacks being out of revenge and a demand for money.</p>	<p>weapons. They repeatedly assaulted their victims and the violence involved was significant and gratuitous. They persisted in attacking the victim of cts 4 and 5 even after they must have realised he was not the person that they had been seeking.</p> <p>At [54] The offences that constituted cts 1-3 occurred at a different time and place to the offences alleged by cts 4 and 5. Although the home invasions occurred on the same night, they did not form part of a single criminal episode... it was appropriate to accumulate the sentences for each home invasion and for the criminal damage offence. The home invasion offences were separate offences and the criminal damage offence involved separate acts and damage of a different kind to the assaults that occurred during the first home invasion.</p>
9.	<b><i>Winmar v The State of Western Australia</i></b>	<p><u>Winmar</u> 31 yrs at time offending; 33 yrs at time sentencing.</p>	<p>Ct 1: Criminal damage. Ct 2: GBH. Ct 3: GBH.</p>	<p><u>Winmar</u> Ct 1: \$1000 fine. Ct 2: 1 yr 3 mths imp</p>	<p>Dismissed – on papers.</p> <p>Appeals concerned the length of</p>

<p><b>[2016] WASCA 62</b></p> <p>Delivered 15/04/2016</p>	<p>Convicted after trial.</p> <p>Prior criminal history, including violent offences.</p> <p>As a teenager, witnessed domestic violence and alcohol abuse in extended family.</p> <p>Left school in yr 10; occupied with studies, training and employment.</p> <p>Close relationship with family.</p> <p>Two-yr-old daughter from previous relationship.</p> <p>History of alcohol abuse; hardly consumed prior to offending.</p> <p><u>Lawrence</u> 23 yrs at time offending; 25 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including robbery.</p> <p>Positive upbringing.</p>	<p>There was long-standing animosity between the appellants and the victim and his cousin.</p> <p>The victim and his cousin were significantly under the influence of alcohol. To antagonise the appellants' family, they did a burnout in front of their home.</p> <p>The appellants and two males armed themselves and ran towards the victim and his cousin. They struck the victim's vehicle, causing extensive damage to the exterior panels, the lights and windscreen (ct 1).</p> <p>The victim's cousin escaped. The appellants and two males pursued the victim with an intention of inflicting physical harm on him. Winmar threw an iron bar at him, which struck his leg causing a significant open wound and fracture (ct 2).</p> <p>The victim ran away with significant pain and difficulty, and rang 000. The appellants and two males chased him again in their vehicle and clipped him while he was trying to escape. While he was lying in a defenceless position, the appellants and two males struck him a number of times with their weapons. Lawrence inflicted a blow which struck the victim on the head, causing a laceration to his scalp. He was rendered</p>	<p>(cum). Ct 3: 3 yrs 3 mths imp (cum).</p> <p>TES 4 yrs 6 mths imp. EFP.</p> <p><u>Lawrence</u> Ct 1: \$1000 fine. Ct 2: 9 mths imp (cum). Ct 3: 3 yrs 3 mths imp (cum).</p> <p>TES 4 yrs imp. EFP.</p> <p>Trial judge assessed Winmar's offending for ct 2 as "falling somewhere between the lower and the middle of the range of seriousness of its type" and for ct 3 as "falling towards the middle of the range of seriousness of offences of its type". Trial judge made the same assessment for Lawrence, but in relation to ct 2, Lawrence was</p>	<p>sentence for ct 3 and totality principle.</p> <p>At [75] The fear engendered by the appellants was sufficiently powerful to cause Mr Corbett to flee despite the injury to his leg. The trial judge found that when Mr Corbett made the emergency 000 telephone call he was genuinely terrified... His Honour was satisfied beyond reasonable doubt that each of the appellants, in striking Mr Corbett, intended to cause him significant physical harm.</p> <p>At [76] The injury to Mr Corbett's finger was materially less serious than the injuries suffered by victims in numerous prior cases of unlawfully doing GBH. However, that fact was decisively outweighed by the serious features of the offending in relation to ct 3.</p> <p>At [77] Mr Winmar's prior criminal record was materially worse than Mr Lawrence's. Nothing in the circumstances leading up to the offending</p>
---	--	---	---	--

		<p>De facto relationship; three yr old child.</p> <p>Employed as factory hand.</p> <p>History of alcohol and illicit drug use; ceased using when child was born.</p>	<p>unconscious for a short period of time. The combined assault caused an injury, including a laceration, to the extensor tendon of the victim's middle finger (ct 3).</p> <p>The victim also suffered a small stab wound and some small lacerations.</p> <p>The victim underwent surgery for his leg and finger. Without the surgery, it was probable that the victim's leg would have become infected and may have needed amputation. If the finger injury had not been repaired, the likely outcome would have been a high rate of infection and flexion deformity.</p>	<p>"marginally less culpable" than Winmar.</p> <p>Winmar and Lawrence at some risk of reoffending.</p> <p>Trial judge imposed a more lenient sentence on Lawrence than Winmar to reflect Lawrence's culpability for ct 2, his age and his less extensive prior criminal history than that of Winmar.</p>	<p>reduced Mr Winmar's or Mr Lawrence's culpability or moral blameworthiness. Both of the appellants failed to accept responsibility for the offending. They were at 'some risk' of reoffending.</p> <p>At [78] Personal deterrence, general deterrence and the protection of the public were sentencing factors of importance.</p> <p>At [86] Cts 2 and 3 were separate and distinct offences and there was a material interval between their commission... the trial judge reduced, in the application of the totality principle, the individual sentences he would otherwise have imposed for ct 2.</p>
8.	<p><i>Gurgone v The State of Western Australia</i></p> <p>[2016] WASCA 9</p> <p>Delivered 13/01/2016</p>	<p>48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Positive employment record.</p> <p>No significant mental health</p>	<p>1 x GBH.</p> <p>The appellant lived with the victim. The victim was the appellant's step brother. Their relationship was strained at the time of offending.</p> <p>The appellant and victim were intoxicated. After a heated argument, the appellant lost</p>	<p>4 yrs 3 mths imp.</p> <p>EFP.</p> <p>VRO and order for forfeiture of weapons.</p> <p>No remorse; low risk of reoffending.</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged the length of sentence.</p> <p>At [40] The appellant inflicted life-threatening injuries upon the victim.</p>

		<p>issues.</p> <p>Acted as a good Samaritan in relation to the victim.</p>	<p>his temper and punched the victim twice. They struggled and the victim bit the appellant. To terrorise the victim, the appellant pointed a rifle at him. The appellant walked away with the rifle.</p> <p>The appellant came back in an angry state armed with a large hunting knife and a machete. The victim raised his hands to defend himself. The appellant struck the victim with both weapons a number of times to his hands and head. As the victim scrambled for the gate, the appellant struck the victim with the knife and machete. One connected with the victims back and penetrated through his chest cavity.</p> <p>When police arrived the appellant responded abusively.</p> <p>The victim's injuries were serious; he had a number of wounds and a 12cm long laceration to left side of his back. The victim's left lung was punctured and collapsed. He was struggling to breathe.</p> <p>The victim underwent surgery. He would have died without that surgery.</p>	<p>Sentencing judge categorised victim's injuries as "falling in the middle of the range of seriousness for injuries amounting to GBH" and the appellant's actions as falling "towards the higher end of the range of seriousness of acts causing GBH".</p> <p>The seriousness of the appellant's conduct was aggravated by the fact that the most serious injuries were inflicted when the victim was trying to escape; the victim was at that point, "completely and utterly vulnerable and unable to offer any form of defence".</p> <p>Sentencing judge assessed the offence "as being between the middle and the higher range of seriousness of offences of this type".</p>	<p>At [41] The act which caused the injury was a persistent and relentless attack by the appellant with two potentially lethal weapons. His Honour was right in characterising the appellant's actions as falling towards the high end of the range of seriousness of acts causing GBH.</p> <p>At [42] ... there was no reasonable justification or explanation for the violence perpetrated upon the victim.</p> <p>At [43] The overall circumstances of the offence fell very much between the middle and higher range of seriousness of offences of this type.</p>
7.	<i>The State of</i>	25 yrs at time offending; 27 yrs	1 x Agg GBH.	18 mths imp, susp on	Allowed.

<p><i>Western Australia v Ellement</i></p> <p><b>[2016] WASCA 1</b></p> <p>Delivered 06/01/2016</p>	<p>at time sentencing.</p> <p>Convicted after PG (10% discount).</p> <p>Minor prior criminal history.</p> <p>Left school in yr 10; steady employment history.</p> <p>Long history of alcohol and illicit drug abuse; used cannabis regularly at time offending.</p> <p>At time offending, in a dysfunctional relationship with Ms Doonan; relationship ceased after the offence.</p> <p>Supportive parents.</p> <p>Lifestyle changed since offence; has a young baby with new partner; ceased using illicit drugs.</p> <p>Sent letter of apology to victim.</p>	<p>The victim was 62 yrs old. The respondent was in a relationship with the victim's daughter Ms Doonan. Ms Doonan had a drug problem and was unable to care for her son, A, on a full-time bases. With Ms Doonan's consent, A was in the unofficial custody of the victim.</p> <p>On the afternoon of the offence, against the victim's wishes, Ms Doonan and the respondent drove to the victim's home to collect A from her. The respondent entered in an angry and a hostile mood. He swore at the victim and rushed towards her. The victim gestured to the respondent to stop coming towards her.</p> <p>The respondent forcefully grabbed each of the victim's upper arms and propelled her backwards with sufficient force that her feet left the floor. She fell to the floor, landing on her backside and right elbow. The impact caused a fracture of the femur. The following day, the victim underwent a total hip replacement.</p>	<p>conditions 18 mths.</p> <p>Permanent VRO.</p> <p>Remorse; positive steps towards rehabilitation; some allowance for youth.</p> <p>Sentencing judge said the decision to suspend was made "by the narrowest of a hair's margin".</p>	<p>Appeal only challenged suspension, not the leniency of the length of the term.</p> <p>Re-sentenced to 18 mths immediate imp. EFP.</p> <p>At [1] It is not uncommon for grandparents to step in and take physical custody and care of grandchildren at risk. The carers need to be protected from aggression directed at them in connection with the performance of their care function. The physical violence inflicted by the appellant on the victim occurred in this context. The consequences for the victim have been life-changing. Deterrence is the weightiest sentencing consideration.</p> <p>At [44] This case involved an entirely unprovoked attack upon a vulnerable victim in her own home. The respondent went there in an angry and aggressive mood. He was much younger and stronger than the victim. He swore at her, plainly to</p>
---	---	--	--	--

					<p>intimidate her. The victim then gestured to the respondent to stop coming towards her. Not only did he ignore her, he grabbed the victim firmly by the upper arms and forcefully propelled her backwards so that her feet left the ground. The backwards motion was more than a mere shove or a push. It was, in effect, a throw. Unsurprisingly, the victim fell heavily to the floor. While the respondent did not intend to cause GBH to the victim, throwing a 62-year-old person heavily to the floor runs the obvious risk of serious physical injury. That risk eventuated here.</p> <p>At [45] The injury the victim suffered was severe by any measure. The effects have had a pervasive and negative impact upon her life and will continue to do so in the future.</p> <p>At [46] A seriously aggravating aspect of the respondent's offending is that he violently assaulted the victim at the time</p>
--	--	--	--	--	--

					<p>she was, in effect, discharging parental responsibilities towards A and acting to prevent him from being taken away by persons who were unable to properly care for him. The use of violence with the aim of removing a child in such circumstances evinces serious criminality.</p> <p>At [51] ... a sentence of 18mths imp could be said to be lenient.</p>
6.	<p><i>Peake v The State of Western Australia</i></p> <p>[2015] WASCA 239</p> <p>Delivered 27/11/2015</p>	<p>21 yrs at time offending; 22 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history, including AOBH.</p> <p>Supportive parents.</p> <p>Left school at age 14; overweight and bullied; talented golfer until shoulder injury.</p> <p>While on bail for this offence, appellant was charged with another offence allegedly committed while he was on bail.</p>	<p>1 x GBH.</p> <p>There was a negative exchange between the victim's group and the appellant's group. The victim was not involved in the conversation and was standing nearby.</p> <p>The appellant, without warning and without provocation, forcefully struck the victim to the head with a clenched fist. The victim fell, unprotected, into a metal meter box. The victim suffered a significant scalp laceration and substantial bleeding.</p> <p>The appellant left the crime scene immediately and did not inquire about the victim's welfare or endeavour to obtain assistance for him.</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that the appellant showed no remorse or concern for victim on the night of offending.</p> <p>Sentencing judge found that the appellant eventually understood the substantial effect his criminal conduct has had upon the victim; some credit given in the sentencing process for remorse, but pointed out</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned backdating and length of sentence.</p> <p>At [63] He attacked, without warning, a man who was significantly shorter and smaller in stature. The blow was very forceful. The victim suffered an injury which required his admission to hospital, surgery and other medical treatment. His injuries were of such a nature as to endanger or be likely to endanger life. Although, fortunately, the victim does not have any permanent physical disability, he does have a</p>

				<p>that his late remorse stemmed, at least in part, from a realisation of the consequences that his actions would have for him.</p> <p>Sentencing judge found the offending to be “at the mid-range of seriousness of offences of this kind”.</p>	<p>significant permanent scar on his head. Also, he has suffered ongoing psychological trauma.</p>
5.	<p><i>Hunter-Aragu v The State of Western Australia</i></p> <p>[2015] WASCA 80</p> <p>Delivered 29/04/2015</p>	<p>20 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Irrelevant prior criminal history.</p> <p>Supportive family.</p>	<p>Ct 1: Criminal damage. Ct 2: Unlawful wounding. Ct 3: Agg robbery. Ct 4: GBH.</p> <p>The appellant behaved aggressively outside of a nightclub. He demanded money and mobile phones from other people.</p> <p>He became involved in a physical altercation with Lyle. Lyle went to a taxi and sat in the front passenger seat. The appellant threw a rock at the taxi, smashing the window (ct 1) and causing a wound to Lyle’s left arm (ct 2).</p> <p>The appellant then sought to confront Gabriel. Gabriel raised his hands, to indicate that he did not want a confrontation, and backed away. The appellant pursued him. Gabriel fell to the ground and the appellant kicked him in the chest. The appellant</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 6 mths imp. Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 4 yrs 3 mths imp (cum).</p> <p>TES 7 yrs 3 mths imp.</p> <p>EFP.</p> <p>It was an extremely serious example of gratuitous violence.</p> <p>Serious permanent consequences for Gabriel; impacted seriously on Gabriel’s partner.</p> <p>Remorse; motivated to</p>	<p>Dismissed.</p> <p>At [55] ...the offence of unlawfully doing GBH against Mr Gabriel was extremely serious...the offence of robbery against Mr Gabriel was serious... the individual sentence for robbery was high but nevertheless within the appropriate sentencing range.</p>

			<p>stomped on Gabriel's head rendering Gabriel unconscious and causing a serious brain injury. The appellant dragged Gabriel about 15 metres, robbed him of his mobile phone and \$100 cash and abandoned him. Gabriel was found a few hours later, still unconscious.</p> <p>Offending caused devastating adverse consequences for Gabriel, including problems walking, talking and poor vision and balance.</p>	rehabilitate.	
4.	<p><i>The State of Western Australia v Ghilardi</i></p> <p>[2015] WASCA 61</p> <p>Delivered 23/03/2015</p>	<p>23 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history including disorderly conduct, AOBH, stealing, agg burg, burg, being armed or pretending to be armed and making threats to destroy property.</p> <p>Unstable childhood; left school in year 9; constant employment.</p> <p>Young daughter in the care of former partner.</p> <p>Majority of offending behaviour alcohol related.</p>	<p>1 x GBH.</p> <p>The victim was at a BP service station with his two daughters waiting for a taxi. He had consumed a reasonable amount of alcohol.</p> <p>The respondent arrived at BP in a car with two friends. He was affected by alcohol to some extent. He spent a short period of time sitting in the car eyeing off the victim's daughters and talking about them.</p> <p>As the respondent's friend started to drive the car out of BP, one of the three occupants yelled a derogatory remark to the victim's daughters. The victim heard the remark and yelled angrily towards the car something like 'Don't speak to his daughters like that'. The driver stopped the car and the respondent got out to teach the victim a lesson.</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Mitigation afforded by provocation was limited.</p> <p>May not have committed offence without the influence of alcohol; genuinely sorry for injuries; did not fully accept responsibility for conduct; risk of reoffending no more than moderate.</p>	<p>Allowed.</p> <p>Re-sentenced to 4 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [17] His Honour assessed the offence 'as being around the middle of the range of seriousness of offences of its type'.</p> <p>At [45] It was, on any view, an extremely violent act and, although the respondent did not use a weapon, in a very real sense he used his fist with the same effect.</p>

			<p>The victim and respondent shouted abuse at each other and adopted fighting stances. The respondent threw the first punch. During the altercation the victim threw one or two punches at the respondent; they did no harm or damage. During the altercation the respondent delivered a full-blooded punch to the front of the victim's head causing a significant fracture in the victim's skull. The victim became immediately unconscious. He fell backwards and the back of his head hit the road with considerable force.</p> <p>The victim did not pose any real threat to the respondent before or during the altercation.</p> <p>The victim suffered immediate life-threatening brain injuries, long term and possibly permanent physical, cognitive and emotional difficulties which impact on his everyday life and the life of his close family members.</p>		<p>At [49] ...there is no tariff for GBH.</p> <p>At [55] ...the offence involved a high level of criminality.</p>
3.	<p><i>Hansen v The State of Western Australia</i></p> <p>[2014] WASCA 229</p> <p>Delivered 11/12/2014</p>	<p>54 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Long criminal history including minor, mostly traffic offences; agg AOBH and common assault.</p>	<p>Ct 1: Agg AOBH. Ct 3: Agg GBH.</p> <p>The victim (Lee) was in a family and domestic relationship with the appellant. She had previously been in a relationship with the victim (Hill). The victim had a child who was in Lee's care. Lee was pregnant with the appellant's child.</p>	<p>Ct 1: 1 yr 6 mths imp. Ct 3: 4 yrs 6 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Denied responsibility; No</p>	<p>Dismissed – on papers.</p> <p>At [24] The offences were each serious examples of their type. Each was born out of anger and was brutal, sustained and completely without justification. On both occasions, the victim was defenceless.</p>

		<p>Good upbringing; completed year 10; Regular employment.</p> <p>Indigenous; has standing and respect amongst indigenous people in the Bunbury area.</p> <p>Father of seven children; four of whom are adults.</p> <p>Hereditary heart condition and hypertension.</p>	<p>The victim's and their two children were walking along a street. The appellant followed them in his vehicle. He stopped and alighted from the vehicle carrying a wooden implement. The appellant struck Hill with the stick, possibly seven or eight times, to the ribs, kidney and elbow. Hill suffered a large lump-type bruise to the left elbow, a fracture to the ulna bone, bruising and a laceration and bleeding in and around the kidney.</p> <p>A short time later Lee miscarried and Lee went and stayed with a friend.</p> <p>About 20 days later Lee and the appellant were drinking together at a reserve then returned to the friend's house. The appellant asked Lee for sex, but she refused. The appellant became angry and punched her seven to ten times to her face with a closed fist. Lee was taken to hospital and airlifted to RPH where she underwent surgery to repair a fractured eye socket.</p>	<p>victim empathy or remorse.</p> <p>Sentencing judge characterised Agg AOBH as 'in the mid-range of offences of this kind'; Agg GBH as 'in the mid to upper range of seriousness'.</p> <p>Moderate risk of re-offending.</p>	
2.	<p><b><i>Knight v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 217</b></p> <p>Delivered</p>	<p>55 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including firearms, traffic, drug sales and possession charges.</p>	<p>Ct 1: s401(2) <i>Criminal Code</i> Agg burg (home invasion).</p> <p>Ct 2: s297 <i>Criminal Code</i> GBH.</p> <p>Ct 3: s317(1) <i>Criminal Code</i> AOBH.</p> <p>As a result of an earlier incident involving one of the appellant's sons, the appellant with three others drove to the victim's house to</p>	<p>Ct 1: 3 yrs imp (conc).</p> <p>Ct 2: 3 yrs 6 mth imp.</p> <p>Ct 3: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	Dismissed – on papers.

	21/11/2014	<p>Father of four children.</p> <p>Constant work record.</p> <p>History of cannabis and amphetamine use.</p> <p>Appellant's son convicted of agg burg; sentenced to 2 yrs 4 mths imp conditionally suspended for 2 yrs.</p>	<p>seek revenge. Three of the four men were armed. The appellant picked up a metal weights bar from the outside front porch and all offenders then forced their way into the house. The victim and two of his friends were set upon. The appellant started striking the victim with the metal bar before escaping outside. Outside the victim was restrained by the appellant's son. The appellant then struck the victim again. The appellant also struck a second victim at least twice with the metal bar to the leg.</p> <p>The victim suffered a left tension pneumothorax, bruising to his right ankle and shin and a laceration to his right knee. If not for medical assistance and treatment, the pneumothorax was likely to have endangered his life. The second victim sustained a fractured right ankle and bad bruising and swelling on his thigh.</p>	<p>No remorse.</p> <p>Principal offender.</p> <p>Sentencing judge described attack as 'a violent and senseless attack' born out of anger from an earlier incident; also found attack was a premeditated and planned 'act of retribution'.</p>	
1.	<p><i>Spence v The State of Western Australia</i></p> <p>[2014] WASCA 171</p> <p>Delivered 05/09/2014</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including one common assault.</p> <p>Married now separated; four children.</p> <p>Completed year 12 and Bachelor</p>	<p>Ct 1: GBH.</p> <p>Ct 2: Att to pervert the course of justice.</p> <p>On the evening of the incident the appellant was managing the club. In the early hours of the morning the victim was at the nightclub with two companions. A brawl ensued when security attempted to remove the victim's companions from the club.</p> <p>The victim approached the brawl and</p>	<p>Ct 1: 3 yrs 6 mths imp.</p> <p>Ct 2: 3 yrs imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Remorse.</p>	<p>Allowed.</p> <p>Re-sentenced to 2 yrs imp in Ct 2 (cum).</p> <p>TES 5 yrs 6 mths imp.</p> <p>At [52] The offending was of very short duration and involved no planning or sophistication. As serious as offences of this</p>

	<p>of Business; partially completed Bachelor of Engineering.</p> <p>Employed as an accountant; then part owner and manager of the nightclub.</p> <p>Positive references.</p> <p>Positive steps towards rehabilitation.</p> <p>Letter to sentencing judge expressing his regret.</p>	<p>attempted to pull a bouncer off one of his friends. The appellant punched the victim to the left side of his head. The punch caused the victim to fall, striking the back left hand side of his head on the step of a 4WD.</p> <p>The victim sustained a severe traumatic brain injury that required urgent surgery.</p> <p>Following the incident the appellant sought to deflect the police investigation by arranging for the security cameras to be switched, concealing his role in the assault and advising employees not to speak to police.</p>	<p>nature are, this was a less serious example of its type.</p> <p>At [53] That sentence did not properly reflect the relative seriousness of the offence and the personal circumstances of the appellant.</p>	
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>				
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>				
<b><i>Maximum penalty increased from 7 yrs to 10 yrs – effective 3/08/1998</i></b>				