

Indecent Assault & Agg Indecent Assault

s 323 & s 324 *Criminal Code*

From 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
PNG	plead not guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
indec	indecent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
ISO	intensive supervision order
TIC	time in custody
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<p><i>CYD v The State of Western Australia</i></p> <p>[2018] WASCA 66</p> <p>Delivered 11/05/2018</p>	<p>37 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal history; no relevant prior offending.</p> <p>Longstanding childhood issues.</p>	<p>Ct 1: Dep lib. Ct 2: Indec assault. Ct 3: Dep lib. Ct 4: Indec assault.</p> <p>The victim, M, was aged 18 yrs. CYD was her step-father, having been in a relationship with her mother since she was 5 yrs old.</p> <p><u>Cts 1 and 2</u> CYD took M for a driving lesson. On a country road he switched the fuel from petrol to gas. This tank contained little fuel so as the vehicle lost power he took over driving and reversed the car into a secluded track.</p> <p>CYD told M he was going to walk down the road to try for a mobile signal to call for assistance. Shortly afterwards he returned with pliers, wearing a mask and a voice-changing mechanism he had earlier concealed on his person.</p> <p>CYD held the pliers to M's throat, tied her hands together and placed cable ties around her neck, which he secured to the headrest. He then fondled her breasts, rubbed her vaginal area on the outside of her clothing and told her she was going to be gang-raped. When M cried loudly he desisted, cut the cable ties and ran away.</p> <p>Shortly afterwards CYD returned to the vehicle, pretending that he knew nothing of the incident.</p> <p>Interviewed by police CYD claimed no knowledge and no involvement in the assault. He was subsequently charged and released to bail, on</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2 & 4: 2 yrs imp (conc each other and ct 3). Ct 3: 5 yrs imp (cum).</p> <p>TES 9 yrs imp. EFP.</p> <p>The sentencing judge characterised the offences as very serious; involved premeditation and planning; there was an element of 'sexual intent' in the offences.</p> <p>The sentencing judge found the offences were committed in circumstances designed to instil fear and involved the use of force and physical restraints on a vulnerable young woman with whom he was in a trusting family relationship.</p> <p>The sentencing judge accepted cts 1 and 2 were an aberration; but this could not be said about cts 3 and 4.</p> <p>Remorseful; cooperative</p>	<p>Dismissed.</p> <p>Appeal concerns length of sentences cts 1 and 3 and totality principle.</p> <p>At [80] It is difficult to find previous cases which are broadly comparable with the appellant's offending in relation to cts 1 and 3.</p> <p>At [81] ... it is not reasonably arguable that the sentence for ct 1 or the sentence for ct 3 is unreasonable or plainly unjust.</p> <p>At [85] ... it was necessary, in order properly to mark the very serious nature of the appellant's overall offending, for the individual sentences imposed on each of cts 1 and 3 to be served cum. Cts 1 and 3 involved separate, distinct and very serious offending.</p>

			<p>the condition he not contact M or be present when she visited the family home.</p> <p><u>Cs 3 and 4</u> Some weeks later CYD waited for M to leave his home after she visited family. Having earlier covered two spotlights on his car with blue and red plastic he followed her in his vehicle. Causing the spotlights to flash intermittently M stopped her vehicle, believing it be a police vehicle.</p> <p>Disguising his appearance and altering his voice with the voice-changing mechanism, CYD approached M's vehicle and forced her to move into the passenger seat. After wrapping her head with a bandage to cover her eyes he drove her vehicle to a country road.</p> <p>CYD demanded M remove her clothing. Noticing the bandage had displaced he put duct tape over her eyes. He then then forcibly removed her clothing. Using her mobile phone he took photographs of her naked body before sending them to his own mobile, with a text message purporting to be from her.</p> <p>CYD then drove M in her vehicle back to where he had earlier deceived her into stopping. He disposed of the red and blue plastic and the voice-changing mechanism.</p> <p>CYD later sent a text to M claiming he was going to make a complaint to the police that she was sending him naked photos of herself.</p>	with authorities after committing cts 3 and 4	
3.	<i>Singh v The State of Western Australia</i>	27 yrs at time offending. 31 yrs at time sentencing.	Ct 1: Indec assault. Ct 2: Indec assault. Ct 3: Sex pen.	Ct 1: 18 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp.	Dismissed. Appeal concerned length

<p>[2017] WASCA 47</p> <p>Delivered 16/03/2017</p>	<p>Convicted after PG (25% discount).</p> <p>Good character.</p> <p>Indian national; on student visa in Australia.</p> <p>Raised in a supportive environment, but with significant financial challenges.</p> <p>Attended school to the end of yr 10; completed Bachelor's degree; completed Master's degree in computer science in Australia.</p> <p>Singh's counsel submitted that Singh had little to no experience with women and that India has different cultural attitudes about women's manner of dress and what it might convey.</p>	<p>Offending occurred against passengers while Singh was working as a taxi driver.</p> <p><u>Ct 1</u></p> <p>Singh persistently touched the victim's thigh in a sexual manner. He also asked the victim a number of sexual questions and regularly rubbed his groin throughout the journey. He asked the victim if she would like to do something with him and said that they could come to an arrangement other than payment for the journey.</p> <p><u>Cts 2 and 3</u></p> <p>Offending occurred on the same evening as ct 1.</p> <p>The victim was 18 yrs old and intoxicated.</p> <p>While driving the victim home, Singh stopped the taxi at a park saying that he needed to check something. The victim sat on the bench for a smoke and Singh sat next to her. He placed the victim's hand on his groin and the victim resisted.</p> <p>Singh forced the victim onto her back, pinned her arms to her side and rubbed his groin against her crotch. He then ripped her underwear off and despite the victim's struggles and pleas, had unprotected sexual intercourse with her until he ejaculated inside of her. During the act, he kissed her neck and squeezed her breasts.</p> <p>Singh flew back to India the following day after being interviewed by police and released.</p>	<p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found that the State case was so strong that the prospects of an acquittal were pretty much non-existent.</p> <p>Sentencing judge accepted that Singh's cultural background was likely to have played a role in the offending, but noted that such cultural matters were not free of controversy in India.</p> <p>Sentencing judge found that Singh did not mistakenly assume that his attention to the victims was welcome; the victims gave unambiguously clear indications that they were not interested and not willing; Singh physically forced his attentions on them; Singh mislead the police in various respects.</p> <p>Moderate to high risk of reoffending.</p>	<p>of individual sentence for ct 1, and totality.</p> <p>At [45] ... ct 1 had a number of serious elements... He was in a position of trust as a taxi driver. His victim was a vulnerable young woman. She did not have the option of getting out of the car until she got home. His offending was part of a course of conduct that persisted for almost the entire 28 minutes that the victim spent in the car with him. He persisted notwithstanding the victim making repeated efforts to make clear to him that she was not interested in him. His offending has had a significant impact on her. His offence in ct 1 was not an isolated or once-off aberration; very soon after it, he committed cts 2 and 3. He [had] ... a medium to high risk of reoffending...</p> <p>At [57] ... the agg features of the offending ... place the TES... well within an appropriate exercise of discretion... The appellant was a taxi driver, a role</p>
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					<p>that has an element of trust. Both his victims were vulnerable young women; one ... was ... more vulnerable by reason of intoxication. The offending was persistent in the face of clear statements by the victims that they were not interested in him and for him to stop what he was doing. The appellant responded to the second victim's resistance by using force. He had unprotected sexual intercourse... Ct 2 in itself was a serious offence of indec assault. The appellant's offending the subject of cts 2 and 3 followed soon after his conduct the subject of ct 1. Rebuffed by his first victim, he forced himself upon another young female passenger. Ct 3, standing alone, had many serious elements that could have justified a somewhat higher sentence. The appellant had a medium to high risk of reoffending. Personal deterrence remained an important factor.</p>
2.	<i>Panda v The State of Western</i>	57 at time offending. 59 at time sentencing.	8 x Unlawful and indec assault.	Ct 1: 12 mths imp (conc). Ct 2: 21 mths imp (conc).	Dismissed – on papers.

<p><i>Australia</i></p> <p>[2017] WASCA 5</p> <p>Delivered 12/01/2017</p>	<p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born in India.</p> <p>Married; two children.</p> <p>Qualified medical practitioner. Notified by the Australian Health Practitioner Regulation Agency (AHPRA) that he must not consult with female patients unless a chaperone was present. Cts 5, 11-13 occurred after this notification and without a chaperone being present.</p> <p>Suffered depression and attempted suicide prior to sentencing.</p> <p>No substance abuse issues.</p>	<p>The offending occurred over a period of almost eight months and involved five female patients. The offending occurred in the course of examining, diagnosing or treating their medical complaints.</p> <p><u>Ct 1</u> Victim M, aged 32, presented with tonsillitis. He told M he wanted to check her for skin cancers. Not wearing gloves he briefly ‘jiggled’ her breasts.</p> <p><u>Ct 2</u> Panda then had M open her legs, grabbed her vagina lips between thumb and forefinger and moved each from side to side, one after the other. He was not wearing gloves.</p> <p><u>Ct 3</u> Victim C, aged 18, attended to obtain blood results. She agreed to Panda completing a skin check. While not wearing gloves he touched her breasts.</p> <p><u>Ct 4</u> Panda asked C to remove her underpants. She refused, so he spread her legs, moved her underpants to one side and put his fingers on her vagina. He was not wearing gloves.</p> <p><u>Ct 5</u> Victim T, aged 24, attended with a cough. Panda cupped her breast with his hand. With his stethoscope near her nipple he had her breathe in and out. He did not have the stethoscope in his ears. Panda repeated this procedure with her other breast. He stroked T’s hand and suggested they</p>	<p>Ct 3: 12 mths imp (conc). Ct 4: 21 mths imp (cum with ct 2). Ct 5: 9 mths imp (cum with ct 2). Ct 11: 9 mths imp (cum with ct 2). Ct 12: 6 mths imp (conc). Ct 13: 6 mths imp (conc). TES 5 yrs imp. EFP.</p> <p>The sentencing judge found the offending was a serious breach of trust and of the appellant’s professional responsibilities. Each offence was not part of a legitimate or proper medical examination.</p> <p>The appellant acted selfishly and for his own sexual gratification.</p> <p>Unlikely to return to medical practice.</p> <p>No remorse or victim empathy.</p>	<p>Appellant challenged length of sentence and appeal concerned totality principle.</p> <p>At [97] ... The appellant was in ‘a position of trust’ and that elevated the seriousness of his offending ... The consent of M and C to the examinations which the appellant performed was obtained by fraud or deceit. The appellant did not seek the consent of N before purporting to perform the breast examination. The ... offending against T, N and A, in breach of the condition imposed by AHPRA, demonstrated the wilfulness of his offending against those complainants.</p> <p>At [98] ... the complainants were young and vulnerable. Three of them were suffering from mental illnesses when they consulted the appellant or had suffered from mental health difficulties previously.</p> <p>At [100] ... His offending was not an isolated lapse of</p>
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			<p>meet up for sex.</p> <p><u>Ct 11</u> Victim N, aged 20, attended to collect a prescription. Panda suggested a breast examination, during which he fondled her breasts.</p> <p><u>Cts 12 and 13</u> Victim A, aged 20, attended for knee scan results. Panda hugged A and attempted to kiss her on two occasions, connecting with her cheek and the side of her mouth as she turned her head.</p>		<p>judgment or an uncharacteristic aberration.</p>
1.	<p><i>The State of Western Australia v Staniforth-Smith</i></p> <p>[2014] WASCA 170</p> <p>Delivered 05/09/2014</p>	<p>46-47 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after trial (Cts 1 & 3). Convicted after PG (Ct 2).</p> <p>No previous criminal record of significance.</p> <p>Hardworking; successful farmer.</p> <p>Following breakdown of marriage, led an isolated life.</p> <p>Suffered depression.</p> <p>Habitual user of cannabis.</p> <p>Good character; positive references and support from family.</p>	<p>Ct 1: Indec dealings child 13-16 yrs. Ct 2: Agg indec assault. Ct 3: Agg sex pen.</p> <p>The victim had been the respondent's step son who was aged between 15 and 17 years. Following the breakdown of the victim's mother and respondent the victim would visit the respondent.</p> <p><u>Ct 1:</u> Sometime in 2010 the victim stayed with the respondent. During this time the victim confided to the respondent that he was concerned about the presence of hair on his buttocks. The respondent gave the victim some hair removal cream and the victim went to the bathroom to apply it. Despite the victim stating that he did not want assistance, the respondent insisted and applied the cream to the victim's buttocks, anal and genital areas.</p> <p><u>Ct 2-3:</u> Cts 2 and 3 occurred on the same day about a year later when the victim had lived with the respondent. At this time the victim was between</p>	<p>Ct 1: 4 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 14 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Voluntarily reported the matter to police but only after victim disclosed offences.</p> <p>Made significant admissions; did not fully recall or accept the entirety of what he did.</p> <p>Remorse; genuine concern for victim.</p> <p>Victim had attempted suicide and self-harm.</p>	<p>Dismissed.</p> <p>At [54] It is sufficient to say that there is no established range for offences of this nature and that the sentence imposed on count 3 is not so clearly inconsistent with other sentences as to indicate an error.</p> <p>At [55] Although an offender's personal circumstances in the case of sexual abuse of children do not generally carry as much weight as they might do in other cases, they are not irrelevant. In the respondent's case there were a number of mitigating factors that could, in combination, properly be characterised</p>

		<p>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</p>	<p>16 and 17 years old. After both consuming alcohol and cannabis the victim fell asleep. Sometime later he woke to find the respondent using a sex toy to masturbate his penis. The respondent then placed the victim's penis in his mouth. The victim got up and left the room.</p> <p>At trial, prosecution led evidence of an uncharged sexual act committed interstate when the victim was 15 yrs old.</p>	<p>Sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</p>	<p>as unusual.</p>
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