

## **Indecent dealing with a child**

ss 320(4), 321(4), 322(5) and 329(4) *Criminal Code* and repealed equivalent provisions where the offending falls within the definition of indecent dealing found in ss 320(4), 321(4) and 322(5)

**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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
agg	aggravated
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
indec	indecent
TES	total effective sentence
ISO	intensive supervision order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	<i>KMT v The State of Western Australia</i>  [No 2] [2018] WASCA 49  Delivered 11/04/2018	35 yrs at time sentencing.  Convicted after trial.  No prior criminal history.  Left school yr 9; began four-yr apprenticeship.  Employed; att to commence regional business venture unsuccessful.  Married; two daughters and two sons at time offending (the second born after the offences occurred).  New relationship at time sentencing; supportive partner.  Satisfactory health.	2 x Indec dealing child lineal relative U16 yrs 3 x Sex pen child lineal relative U16 yrs.  The victim, S, was the eight-yr-old biological daughter of KMT.  At the time of the offending KMT lived with S, his wife and their two other children.  <u>Ct 1</u> KMT touched the outside of S's vagina.  <u>Cts 2 and 3</u> On another occasion KMT touched and placed his finger inside S's vagina.  <u>Ct 4 and 5</u> On another occasion KMT penetrated S's vagina with his finger and penis.	Ct 1: 20 mths imp (cum). Ct 2: 20 mths imp (conc). Ct 3 & 4: 30 mths imp (conc). Ct 5: 60 mths imp.  TES 6 yrs 8 mths imp. EFP.  The trial judge found the charges representative of other occasions; there was 'not a high degree of perversion' in the offending, but a significant age disparity and S was the appellant's biological daughter.  The trial judge found the appellant had stopped offending of his own volition; but noted the seriousness of the offending and its effects.	Dismissed.  Appeal concerned length of sentence, failure to obtain PSR; failure to challenge assertions in VIS and failure to produce character references.  At [133] The TES imposed was not outside the range.  At [135] ... There is no basis to conclude that the absence of a pre-sentence report could have affected the sentence imposed or led to any error by the sentencing judge.  At [136] ... There is no basis to interfere with the sentence by reason of the lack of a challenge to the victim impact statement.  At [137] ... The content of any further character references, ... would be unlikely to have affected the sentence imposed.
9.	<i>SCN v The State of Western Australia</i>	42 yrs at time sentencing.  Convicted after PG (10%	Cts 1, 4, 6, 8 & 40-42: Procure sex pen of child U13. Cts 2, 3, 5, 7, 23-26, 33-36, 38-39, 43, 45-47 &	Cts 1 & 50: 2 yrs 8 mths imp (conc). Cts 2, 28-29: 2 yrs imp	Appeal dismissed.  Appeal concerned length

<p><b>[2017] WASCA 138</b></p> <p>Delivered 26/07/2017</p>	<p>discount).</p> <p>Adopted; positive and unremarkable childhood; adjustment difficulties when family moved to UK aged 13-14 yrs; compounded by parents separation; returned to WA aged 19 yrs.</p> <p>Left school aged 15 yrs; completed painting and decorating apprenticeship; successful in his trade; largely self-employed.</p> <p>No longer in contact with parents or siblings; unsuccessful attempts to contact his birth mother.</p> <p>Twice married; three children.</p> <p>First wife suffered serious brain injury when pregnant with victim.</p> <p>Married eight yrs to second wife; separated 2013.</p>	<p>49: Procure indec dealings with child U13.</p> <p>Ct 9: Indec recorded a child lineal relative.</p> <p>Cts 10-11: Distributed CEM.</p> <p>Cts 12-14 &amp; 18: Procure sex pen child 13-16, where child under care, supervision or authority of offender.</p> <p>Cts 15-16: Indec dealings with child 13-16, where child under care, supervision or authority of offender.</p> <p>Cts 17 &amp; 19: Sex pen child 13-16, where child under care, supervision or authority of the offender.</p> <p>Ct 20: Indec record child U13.</p> <p>Cts 21-22: Indec record child under circ of agg.</p> <p>Cts 27-30: Sex pen of child U13.</p> <p>Ct 31: With intent to commit a crime, showed offensive material to a child.</p> <p>Ct 32: Procure to indec record child U13.</p> <p>Ct 37: Procure, encourage or incite child U13 to do an indecent act.</p> <p>Cts 48, 51 &amp; 56: Stupefying in order to commit indictable offence.</p> <p>Cts 50, 53 &amp; 55: Procure sex pen of child 13-16.</p> <p>Cts 52 &amp; 54: Procure indec dealings with child 13-16.</p> <p>Cts 57-62: Compelled another person to provide a sexual service, and that the person was a child.</p> <p>The victim is SCN's biological daughter and he had sole custody of her. The offending occurred over a two year period when she was aged between 11 and 13 yrs.</p> <p>SCN had a sexual relationship with the victim and provided her to men for their sexual gratification.</p>	<p>(conc).</p> <p>Cts 3, 9-10, 20-22: 2 yrs 3 mths imp (conc).</p> <p>Cts 4, 8, 12, 18, 30, 42, 53 &amp; 55: 3 yrs imp (conc).</p> <p>Cts 5 &amp; 7: 1 yr 10 mths imp (conc).</p> <p>Cts 6, 13-14: 2 yrs 8 mths imp (conc).</p> <p>Ct 11: 14 mths imp (conc).</p> <p>Cts 15, 16, 23-26, 39, 46-48, 51 &amp; 56: 1 yr 6 mths imp (conc).</p> <p>Cts 17 &amp; 19: 4 yrs 6 mths imp (conc).</p> <p>Ct 27: 1 yr 9 mths imp (conc).</p> <p>Cts 31, 33 &amp; 35: 10 mths imp (conc).</p> <p>Ct 32: 1 yr 6 mths imp (cum).</p> <p>Cts 34 &amp; 40: 2 yrs 4 mths imp (conc).</p> <p>Cts 36-38, 43, 45, 49 &amp; 54: 11 mths imp (conc).</p> <p>Ct 41: 2 yrs 6 mths imp (conc).</p> <p>Ct 52: 1 yr 7 mths imp (conc).</p> <p>Ct 57: 10 yrs imp (cum).</p> <p>Ct 58: 11 yrs imp (head).</p> <p>Ct 59: 3 yrs 6 mths imp (conc).</p> <p>Cts 60-61: 9 yrs imp</p>	<p>of sentence on ct 60 (9 yrs); totality and discount for the PG.</p> <p>At [6] This is a case which is in a class of its own. The nature and the extent of the offending are unlike any other case. ...</p> <p>At [117] ... there are no comparable cases in WA to provide a benchmark for the purposes of broad consistency.</p> <p>At [99] It was plainly open to the sentencing judge to come to the view that the prosecution case was a very strong one and that the PG, though reasonably early, were not entered at the first reasonable opportunity. ... The discount given was not plainly unjust or unreasonable.</p> <p>At [103] As to the seriousness of the appellant's offending, it involved not only prolonged and repeated sexual abuse of a child by</p>
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			<p>He met the men ‘C’, ‘A’, ‘B’, ‘CL’, ‘M’ and ‘V’ through online advertisements in the personal section of websites.</p>	<p>(conc). Ct 62: 10 yrs imp (conc). <b>TES 22 yrs 6 mths imp.</b></p> <p>The sentencing judge found the appellant’s offending represented one of the most serious examples of sexual offending against children to have come before the courts in WA; some of his conduct ‘involved a high degree of depravity and exploitation’; the victim showed loyalty to the appellant during the investigation and this illustrated the extent of her vulnerability and trust.</p> <p>The sentencing judge noted the appellant had completely disregarded his daughter’s welfare; even during his interview with police when expressing regret about what had occurred he said ‘It was fun while it lasted ... but it went way over the line’.</p> <p>The sentencing judge</p>	<p>her natural father but also seeking out other men and making the child available to those men to be sexually abused. ... The appellant encouraged, cajoled and compelled his daughter to comply with the abuse. Some of the abuse involved deviant and demeaning conduct. Video recordings and indecent photographs of the abuse were made and distributed. ... the appellant permitted his daughter to be administered a stupefying substance to better facilitate the commission of sexual offences upon her. ... She was vulnerable and dependent upon him. He abused the love and trust that she felt for him by using it to make her compliant with his sexual desires. The child’s physical safety and psychological wellbeing were disregarded or dismissed. The breach of trust involved was both extraordinary and extreme.</p> <p>At [104] It does not follow</p>
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				<p>found that while money was paid for some of the photographs, it was clear that the appellant's primary motive was not financial gain.</p> <p>Remorseful; empathetic; risk of reoffending assessed 'well above the low category'.</p>	<p>that a course of offending involving one victim is necessarily less serious than one involving multiple victims. Such an approach would ignore the relevance of other factors. In this case, those other factors were of great importance and served to place this offending into a very high category of criminality.</p> <p>At [105] One of the most serious aspects of the offending ... was that the appellant compelled the complainant to provide sexual services to a number of other men. This was reflected in the sexual servitude charges ... Sentences imposed for that offence have not been considered in other cases in this court to date. ...</p> <p>At [109] ... a relationship of sexual servitude can occur wherever an offender is in a position to compel another person to provide sexual services to others. That power imbalance is</p>
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					not confined to women or children from other countries whose poverty and circumstances make them vulnerable. It can also arise, as here, where a father has sole custody of a child who is vulnerable to and dependent on the father.
8.	<p><i>SGT v The State of Western Australia</i></p> <p><i>[2017] WASCA 136</i></p> <p><i>Delivered 20/07/2017</i></p>	<p>32-37 at time offending. 40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant criminal history.</p> <p>Born in Greece; moved to Australia aged 7 yrs.</p> <p>Stable upbringing; supportive family.</p> <p>Educated to yr 10.</p> <p>Married 13 yrs; lived apart 6-7 yrs; three children.</p> <p>Consistent employment history.</p> <p>Good physical and mental health.</p>	<p>Cts 1, 3-5: Indec dealings of child lineal relative. Ct 2: Encouraging a child lineal relative to engage in sexual behaviour.</p> <p>The victim is SGT's biological daughter.</p> <p>SGT was driving the victim home when he stopped the car and told her he would give her \$50 if she let him touch her. She said no, but SGT touched her vagina. She was aged 7 yrs (ct 1).</p> <p>On another occasion SGT stopped the car and made her touch his penis (ct 2).</p> <p>On another occasion he showed her a child pornographic video. She was 8-9 yrs old (ct 3).</p> <p>On another occasion SGT touched her vagina as she slept. When she resisted he told her if she did not let him do it he would kill her mother. She was aged 9-10 yrs (ct 4).</p> <p>On another occasion as the victim slept SGT touched her vagina over her clothes. She was aged 11-12 yrs old (ct 5).</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 2 yrs imp (cum). Ct 3: 6 mths imp (cum) (reduced from 18t mths imp). Ct 4: 2 yrs 6 mths imp (conc). Ct 5: 2 yrs imp (conc).</p> <p>TES 4 yrs 6 mths imp.</p> <p>The sentencing judge found the offending was not an isolated incident and that the appellant was in a position of trust and authority, while the complainant was highly vulnerable and defenceless.</p> <p>The sentencing judge found the appellant sought to normalise his conduct and groom his</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence on cts 1 and 5 and totality.</p> <p>At [45] The offences in relation to cts 1 and 5 were serious ... There is no basis for suggesting that the sentences imposed were plainly unreasonable or unjust.</p> <p>At [47] ... It is well established that in cases of intrafamilial sexual abuse matters personal to the offender are of less mitigatory weight than might otherwise be the case. Sentencing considerations in such cases focus on the need to protect young, defenceless</p>

				<p>victim and referred to his 'truly disturbing and vile statement' that 'all little girls do this to their dads'. The showing of the pornographic video was an effort on his part to normalise the sexual abuse.</p>	<p>children from abuse at the hands of those who are in a position of trust and authority over them and who are in a position to conceal their offending.</p> <p>At [49] ... The offences involved a course of conduct over several yrs by which the appellant sexually abused his daughter in circumstances where she was clearly vulnerable. He did not PG and there was nothing mitigating in his personal circumstances, other than his lack of a criminal record, which is a matter that carries little weight in cases of this nature.</p>
7.	<p><b><i>RGT v The State of Western Australia</i></b></p> <p><b><i>[2017] WASCA 120</i></b></p> <p><b><i>Delivered 29/06/2017</i></b></p>	<p><u>Indictment 44 of 2015</u> 29 at time sentencing.</p> <p><u>Indictment 43 of 2015</u> 30 at time sentencing.</p> <p><u>Indictment 43 of 2015</u> Convicted after late PG (12.5% discount).</p> <p><u>Indictment 44 of 2015</u> Convicted after early PG (15% discount).</p>	<p><u>Indictment 43 of 2015</u> Cts 1-2; 5-6: Sex pen of child U16 yrs. Cts 3-4 &amp; 7: Indec deals of child 13-16 yrs.</p> <p><u>Indictment 44 of 2015</u> Cts 1; 4; 6-8; 10; 13; 16-19 &amp; 21: Sex pen of lineal relative U16. Cts 2-3; 9; 12; 15; 20 &amp; 22: Indec recording of lineal relative U16. Cts 5; 11 &amp; 14: Indec dealings of lineal relative U16.</p> <p><u>Indictment 43 of 2015</u></p>	<p><u>Indictment 43</u> Ct 1: 5 yrs imp (head). Ct 2: 5 yrs imp (conc). Ct 3: 10 mths imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 4 yrs 6 mths imp (conc). Ct 6: 4 yrs imp (cum) (reduced from 4 yrs 6 mths). Ct 7: 6 mths imp (conc). Total: 9 yrs imp (partially</p>	<p>Allowed (44 of 2015). Dismissed (43 of 2015).</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>Re-sentenced on ct 21 on Ind 44 of 2015 to 5 yrs imp (cum with ct 1). All other sentences and orders to stand.</p>

		<p>Prior criminal history; no prior convictions for sexual offending.</p> <p>Parents separated when very young; raised by his mother and stepfather.</p> <p>Experienced sexual and physical abuse.</p> <p>Left school before yr 12.</p> <p>Qualified tradesman; inconsistent work history.</p> <p>Long history of illicit drug abuse; heavy user of methyl at time of offending.</p>	<p>The victims were a boy K, aged 7-9 yrs and a girl, F, aged 13 yrs.</p> <p>K was RGT's partner's son. RGT took care of him whilst his mother was at work.</p> <p>On one occasion RGT pulled down K's pants and performed fellatio on him (ct 1). On another occasion he performed fellatio on K, despite K asking him not to (ct 2).</p> <p>RGT and his family were staying at F's home. During a massage RGT unclipped her bra (ct 3), rubbed her breasts and sucked her nipples (ct 4). He also made F perform fellatio on him (ct 5) and sexually penetrated her vagina (ct 6).</p> <p>Later the same day RGT slapped F on her buttocks and made a sexually suggestive comment to her (ct 7).</p> <p><u>Indictment 44 of 2015</u> The victim A was RGT's two yr old daughter. The offending occurred over a period of about six mths.</p> <p>RGT performed cunnilingus on A whilst recording the act on his mobile phone (cts 1-2).</p> <p>Another time RGT exposed A's vagina and recorded an image of her vagina on his mobile phone (ct 3).</p> <p>On another occasion RGT performed cunnilingus on A several times, rubbed her vagina (cts 4-7)</p>	<p>conc with sentence on ind 44 - to commence having served 10 yrs). EFP.</p> <p><u>Indictment 44</u> Cts 1 &amp; 21: 8 yrs imp (cum). Cts 2-3, 9, 12, 15, 20 &amp; 22: 3 yrs imp (conc). Cts 4, 6-7, 13, 16 &amp; 19: 8 yrs imp (conc). Cts 5 &amp; 14: 4 yrs imp (conc). Cts 8, 10 &amp; 18: 10 yrs imp (conc). Ct 11: 5 yrs imp (conc). Ct 17: 9 yrs imp (conc).</p> <p>Total: 16 yrs imp. EFP.</p> <p>TES 19 yrs imp. EFP.</p> <p><u>Indictment 43 of 2015</u> The sentencing judge identified the very young age of the victim K, the breach of trust and the very great age gap between him and the victim.</p> <p>The sentencing judge found the offending against the victim F,</p>	<p>Substituted TES on Ind 44 of 2015 of 13 yrs imp. EFP.</p> <p>New overall TES of 16 yrs imp. EFP.</p> <p>At [64] Turning ... to the offences the subject of ind 44 of 2015, the victim, ... was just 2 yrs of age. She could not have been more vulnerable ... The offences constituted a gross breach of the trust reposed in any parent. The appellant's offending was not isolated. ... The fact that the offences were recorded on the appellant's mobile telephone is an aggravating factor. This is because of the potential for the offending conduct to be viewed again by the appellant or to be distributed to others.</p> <p>At [65]... The acts committed by the appellant on K would have been deeply humiliating for the victim. ... K was very young ... and was in no</p>
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			<p>and sexually penetrated her vagina, before performing a further act of cunnilingus (ct 8). He recorded these acts on his mobile phone (ct 9).</p> <p>On another occasion RGT penetrated and rubbed A's vagina with his penis (ct 10) before masturbating and ejaculating onto her vagina (ct 11). He recorded these acts on his mobile phone (ct 12).</p> <p>On a further occasion RGT performed cunnilingus on A, before rubbing her vagina. This was recorded on his mobile phone (cts 13-15).</p> <p>On another occasion RGT used his mobile phone to record himself performing cunnilingus and penetrating A's vagina with his fingers and penis. (cts 16-20).</p> <p>On another occasion RGT performed cunnilingus on A whilst recording it on his mobile phone (cts 21-22).</p>	<p>'extremely brazen and persistent' in nature.</p> <p><u>Indictment 44 of 2015</u> The sentencing judge described the offending as 'monstrous' and in the category of worst cases.</p> <p>Little or no true remorse; claimed no recollection of offending in respect of victim A.</p> <p>Moderate to high risk of reoffending.</p>	<p>position to defend himself against the appellant's predations.</p> <p>At [66] Although the offences committed against F occurred on one day, the appellant pursued F and persisted in the offending ... where it culminated with the acts of sex pen ... committed by the appellant using physical force.</p> <p>At [69] ... TES imposed upon the appellant ... is substantially beyond the sentences imposed in any of the cases we have mentioned. ... when all of the circumstances of this case are compared with some of the cases that have been cited ... and bearing in mind the appellant's pleas of guilty, we conclude that the overall TES ... does not bear a proper relationship to the overall criminality involved in all of the offences ...</p>
6.	<i>The State of Western Australia v PJW</i>	32 yrs at time offending. Convicted after trial.	7 x Sex pen of de facto child U16 yrs. 2 x Indec dealings of de facto child U16 yrs.	Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp (cum on ct	Allowed. Orders for conc and cum

	<p><b>[2015] WASCA 113</b></p> <p>Delivered 03/06/2015</p>	<p>Criminal history, including 2001 convictions of indec dealing with a child U13 yrs and indec recording a child U13 yrs.</p> <p>Significant health difficulties at a young age; disadvantaged upbringing.</p> <p>Engaged in rudimentary employment.</p> <p>Emotionally immature; limited self-awareness.</p>	<p>The offending was committed over 10 mths. The victim was seven yrs old and was the biological daughter of PJW's de facto partner. PJW lived with the victim.</p> <p>The victim was asleep in a bedroom. PJW entered the room, removed his underpants and inserted his finger in the victim's anus twice (cts 1-2) before inserting his penis in her anus (ct 3).</p> <p>On another date, PJW ejaculated in the victim's mouth (ct 4).</p> <p>On another date, PJW showed the victim a pornographic film (ct 6). He then rubbed his penis against her anus on the outside of her underwear (ct 7).</p> <p>On another date, PJW invited the victim to enter a garden shed where he removed some of her clothes, lowered his pants and penetrated her anus with his penis (ct 8).</p> <p>On another date, PJW entered the victim's bedroom, removed some of her clothes, removed his shorts and inserted his penis in her vagina (ct 9).</p> <p>On another date, PJW performed cunnilingus on the victim (ct 11).</p>	<p>4).</p> <p>Ct 4: 2 yrs 6 mths imp (conc).</p> <p>Ct 6: 18 mths imp (conc).</p> <p>Ct 7: 18 mths imp (conc).</p> <p>Ct 8: 4 yrs imp (conc).</p> <p>Ct 9: 4 yrs imp (conc).</p> <p>Ct 11: 2 yrs 8 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Offending aggravated by victim's age, relationship with the respondent, the victim's vulnerability, the respondent's significant breach of trust and the period of time over which the offences were committed.</p>	<p>set aside. Re-sentenced to:</p> <p>Ct 1: 2 yrs imp (cum)</p> <p>Ct 2: 2 yrs imp (conc)</p> <p>Ct 3: 4 yrs imp (conc)</p> <p>Ct 4: 2 yrs 6 mths imp (conc)</p> <p>Ct 6: 18 mths imp (cum)</p> <p>Ct 7: 18 mths imp (cum)</p> <p>Ct 8: 4 yrs imp (conc)</p> <p>Ct 9: 4 yrs imp</p> <p>Ct 11: 2 yrs 8 mths imp (conc)</p> <p>TES 9 yrs imp.</p> <p>At [43] His offending was not momentary or impulsive. It was sustained and repetitive... The respondent engaged in some deliberate grooming of the victim to facilitate his abuse of her for his sexual gratification... the sexual abuse caused her physical pain... The emotional consequences for the victim were damaging. She has experienced nightmares, anxiety and sadness. Cts 1, 2, 3 and 9 were committed while the victim was sleeping in her own bed.</p>
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				<p>She was especially vulnerable and defenceless.</p> <p>At [49] The respondent's continuing denial of the current offending, as well as his minimisation of his responsibility for the 2001 offending gives rise to considerable concern. His stance is an impediment to his rehabilitation... the risk that he may reoffend in a similar manner was an important sentencing factor.</p> <p>At [50] The respondent has shown no remorse or victim empathy.</p> <p>At [51] The proper exercise of the sentencing discretion required greater accumulation of the individual sentences in order to mark the very serious nature of the respondent's overall offending and to reflect the primary sentencing considerations of appropriate punishment and personal general deterrence, having regard</p>
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					to the need to protect vulnerable children.
5.	<p><b><i>DKA v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 112</b></p> <p>Delivered 03/06/2015</p>	<p>47-49 yrs at time offending. 56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Irrelevant criminal history.</p> <p>Left school after completing yr 11.</p> <p>Always employed; well-regarded and respected by work colleagues.</p> <p>Supportive new partner.</p>	<p>7 x Indec dealings of de facto child U16 yrs. 2 x Sex pen of de facto child U16 yrs.</p> <p>The victim, K, was the daughter of DKA's de facto partner. DKA lived with the victim at the time of offending. The offending occurred over two and a half yrs. The mother was away from the house on each occasion.</p> <p><u>Ct 1</u> DKA took K's hand, placed it onto his shorts and moved her hand up and down on his penis. He then lowered his shorts, exposed his erect penis and used his hand on her hand to rub his erect penis, despite K trying to pull away. K was 10 yrs old.</p> <p><u>Cts 2-3</u> On another date, while K was asleep, DKA went into her bedroom and put his hand inside her pyjamas and underwear, and touched her vagina. K awoke with a fright. DKA put K's hand down his shorts and onto his penis and told her to play with his penis. DKA continued to play with K's vagina while forcing K's hand up and down on his penis. K was 10 yrs old.</p> <p><u>Cts 6-7</u> On another date, DKA went into K's bedroom after she had gone to bed. He put her up against the wall, pulled her pants down, touched her vagina and tried to insert his fingers into her vagina. K told him it hurt. At the same time he</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs imp (conc). Ct 6: 2 yrs imp (conc). Ct 7: 2 yrs imp (conc). Ct 10: 4 yrs imp (conc). Ct 11: 2 yrs imp (conc). Ct 17: 18 mths imp (conc). Ct 20: 5 yrs 8 mths imp.</p> <p>TES 7 yrs 8 mths imp.</p> <p>EFP.</p> <p>Trial judge found that the appellant had sexually offended against K on an ongoing systematic basis over an extended period of time of about two and a half years.</p> <p>The appellant denied the offending; trial judge found he had no remorse or acceptance of responsibility; no steps towards rehabilitation.</p> <p>Trial judge found that the overall offending was towards the upper end of</p>	<p>Dismissed – on papers.</p> <p>At [42] ...ct 20 involved especially egregious offending... The offence occurred while K was in her own home and under the appellant's care and supervision. She was extremely vulnerable. The offence involved some premeditation and planning. Later, the appellant endeavoured to buy K's silence by giving her money. All of the offending, including ct 20, caused K to suffer significant long-term harm.</p> <p>At [44] The term of 5 yrs 8 mths was commensurate with the seriousness of the offence and was within the range open to the trial judge on a proper exercise of the sentencing discretion.</p> <p>At [48] ... his Honour was correct in stating that, while the appellant's overall offending '[was]</p>

			<p>pulled down his pants and made her play with his penis. K was 11 yrs old.</p> <p><u>Cts 10-11</u> On another date, after showing K pornography, DKA placed K on his bed, removed her clothing and inserted his fingers into her vagina. At the same time he forced her to masturbate his penis. K was 11 yrs old.</p> <p><u>Ct 17</u> On another date, while DKA watched pornography, he made K sit on the floor next to the chair and he used his foot to rub the outside of her vagina through her clothes. K was 11 yrs old.</p> <p><u>Ct 20</u> On another date, DKA took K into his bedroom, made her lie on the bed, knelt over her and penetrated her vagina with his penis. DKA persisted in sexually penetrating K, despite her yelling in pain and attempting to move away from or avoid his actions. K was 12 yrs old.</p>	<p>the scale of offending against a child.</p>	<p>not the most serious offending', it was 'towards the upper end of the scale of seriousness of offending' of the kind in question.</p> <p>At [55] The term of 7 yrs 8 mths was required in order to reflect the very serious nature of the appellant's offending and to give effect to the primary sentencing considerations of appropriate punishment and personal and general deterrence, having regard to the need to protect vulnerable children.</p>
4.	<p><b><i>LFG v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 88</b></p> <p>Delivered 04/05/2015</p>	<p>64-67 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including convictions for child sex offences.</p> <p>Stable health issues.</p>	<p>1 x Indec dealings of child U13 yrs. 9 x Indec dealings of child 13-16 yrs. 5 x Sex pen of child 13-16 yrs.</p> <p>LFG and the victim were second cousins. The offending spanned a period of two to three yrs. The victim was 11-14 yrs at time offending.</p> <p><u>Ct 1</u> LFG and the victim were alone at the victim's grandmother's house. LFG asked to see the victim's pubic hair. The victim showed LFG his</p>	<p>Ct 1: 8 mths imp. Ct 4: 2 yrs imp (cum). Ct 9: 2 yrs 10 mths (cum). Ct 22: 2 yrs imp. Ct 23: 2 yrs 10 mths imp. Ct 24: 18 mths (cum). Ct 25: 2 yrs imp. Ct 26: 2 yrs 10 mths imp. Ct 27: 18 mths imp (cum). Ct 28: 2 yrs imp. Ct 29: 2 yrs 10 mths imp. Ct 30: 18 mths imp.</p>	<p>Dismissed.</p> <p>At [402] The appellant's offending was correctly characterised by the trial judge as falling towards the higher end of the scale of seriousness for this type of offending.</p> <p>At [407]... the complainant was, to some</p>

			<p>pubic hair for a few seconds.</p> <p><u>Ct 4</u> On another date, LFG took the victim for a walk. LFG masturbated the victim to ejaculation.</p> <p><u>Ct 9</u> On another date, LFG started performing fellatio on the victim in a car outside of the victim's grandmother's house. The grandmother interrupted him, so he placed a pillow over the victim's groin area. When the grandmother left, LFG continued performing fellatio to ejaculation.</p> <p><u>Cts 22-33</u> On four different dates, LFG took the victim to a hotel. On each occasion he masturbated the victim and performed fellatio on him to ejaculation (cts 22-23, 25-26, 28-29 and 31-32). On each occasion, LFG asked the victim to masturbate him. The victim did so. LFG then masturbated himself to ejaculation (cts 24, 27, 30 and 33).</p>	<p>Ct 31: 2 yrs imp. Ct 32: 2 yrs 10 mths imp. Ct 33: 18 mths imp.</p> <p>TES 7 yrs 10 mths imp.</p> <p>EFP.</p> <p>Prolonged course of conduct directed at gaining the victim's trust and grooming him for the commission of the offences.</p> <p>High risk of reoffending; not remorseful; steadfastly maintained a denial of the offending; no steps to rehabilitation.</p> <p>Significant adverse effect on the victim's emotional and social well-being.</p>	<p>extent, an 'easy target' for the appellant, and the appellant took advantage of the complainant's unfortunate domestic situation.</p> <p>At [419] ...the TES was not disproportionate to the appellant's overall offending and it cannot reasonably be said that he has been left without any reasonable prospect of useful life after his release.</p>
3.	<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 &amp; 3). Convicted after PG (Ct 2).</p> <p>No previous criminal record of significance.</p> <p>Hardworking; successful</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></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</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>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>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</p>	<p>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 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>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>Sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</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 as unusual.</p>
2.	<p><b>AIM v The State of Western Australia</b></p> <p><b>[2014] WASCA 155</b></p> <p>Delivered 27/08/2014</p>	<p>70 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>No criminal record of significance.</p> <p>Married; 3 adult children; number of grandchildren.</p>	<p>7 x Indec dealings of child U13yrs. 6 x Sex pen of child U13 yrs.</p> <p>Cts 1-9 concerned a girl 'A'. Cts 10-13 concerned another girl 'H'.</p> <p><u>Cts 1-4</u> The victim 'A' was in years 3 and 4 at the local primary school where AIM was her school teacher. All the offences occurred on the school grounds. He used physical force, threats and he</p>	<p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The appellant was interviewed and denied any wrongdoing.</p> <p>No remorse.</p> <p>The charges concerning</p>	<p>Dismissed - on papers.</p> <p>At [48] the appellant will be 80 when he becomes eligible for parole and will be 82 upon the completion of the total effective sentence. It must be accepted that the appellant may well die in gaol or that a very significant</p>

		<p>Constantly employed; actively involved in community activities.</p> <p>Number of positive references.</p> <p>General good health.</p> <p>No evidence of rehabilitation.</p>	<p>ignored the victim's attempts to repel his sexual advances.</p> <p>On four separate occasions AIM rubbed his hand on A's vagina on the outside of her clothing.</p> <p><u>Cts 5-6</u> On two separate occasions AIM penetrated A's vagina with his finger. In Ct 6, as he penetrated her vagina he masturbated to the point where he ejaculated over her.</p> <p><u>Ct 7</u> AIM exposed his penis to A and started rubbing it. He asked the victim to kiss his penis but she refused.</p> <p><u>Cts 8-9</u> AIM penetrated A's vagina with his penis. His acts of sexual penetration caused the victim physical pain. The offending against A continued until she transferred to another primary school. At about this time, AIM ceased working as a teacher.</p> <p><u>Ct 10</u> H is AIM's granddaughter and was living with him and his wife. AIM commenced abusing her from 4 yrs of age. The abuse continued for the next three years. The abuse would occur on the pretence of playing games and would end up with the victim being rewarded with a chocolate covered sweet. On one occasion AIM made the victim to tickle him, he pulled his pants down and moved H's hands up and down his penis to the point of ejaculation.</p>	<p>both victims were representative of his conduct.</p> <p>Appellant had groomed 'A'.</p> <p>Both victims badly affected; ongoing consequences.</p> <p>The sentencing judge characterised the offences against each victim as being at the upper end of the range of seriousness.</p>	<p>proportion of his remaining life will be spent in custody.</p>
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			<p><u>Cts 11-13</u>  These offences were committed in AIM's bedroom in the one incident. He lay on his bed without trousers or underwear. He asked H to play with him and to take her pants off. AIM got the victim to masturbate him and then suck his penis. He then told her he wanted to show her how to have sex. He inserted his penis into her vagina.</p> <p>AIM would tell the victim that the sexual activity between grandfathers and granddaughters was normal.</p>		
1.	<p><i>The State of Western Australia v Hassell</i></p> <p>[2014] WASCA 158</p> <p>Delivered 27/08/2014</p>	<p>59 yrs at time offending.  61 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including one of indecent assault and multiple drink driving.</p> <p>Constant employed for 23 yrs.</p> <p>Long term problem with alcohol abuse; excessive alcohol consumption is linked to his past and present offending.</p> <p>No positive signs towards rehabilitation; moderated his drinking after offending.</p>	<p>Ct 1: Indec dealings of child U13 yrs.  Ct 2: Indec dealings of child U13 yrs.</p> <p>The victim was 10 yrs of age with developmental issues. She attended a special needs school.</p> <p>The victim and her mother went to a friend's house with the intention of staying overnight. Later that evening, Hassell and his adult son attended. The adults that were present stayed up all night drinking. Hassell became very intoxicated.</p> <p>The next day whilst Hassell was sitting next to the victim he began rubbing the victim's feet with his feet and intimated that she should go inside. The victim went inside. Hassell also went inside, pushed the victim into a bedroom and closed the door. There he kissed the victim on various parts of her head and then her lips with an open mouth in a plainly sexual way.</p>	<p>Ct 1: 14 mths imp.  Ct 2: 18 mths imp (conc).  TES 18 mths imp susp 14 mths.</p> <p>In ROI he claimed he could not recall offences.</p> <p>No remorse; blamed the victim; unwilling to take responsibility for his actions.</p>	<p>Allowed.</p> <p>Ct 1: 14 mths imp.  Ct 2: 18 mths imp (conc).  TES 18 mths imp.</p> <p>EFP.</p> <p>At [43] There was nothing exceptional about the facts and circumstances of the present case. Although the offending was not at the most serious end of the spectrum, the criminal conduct was persistent and accompanied by physical coercion and threats.... A particularly aggravating aspect of it was the vulnerability of the victim.</p>

		Shortly after offending, his former partner of 25 yrs passed away.	<p>Sometime later the victim was playing with other children. Hassell entered the room and touched the victim on the neck. She left to escape his advances. Later, Hassell pulled the victim by her wrists into a bedroom and rubbed her vaginal area on the outside of her bather shorts.</p> <p>At one point Hassell threatened to kill the victim. The victim told her mother with Hassell saying that 'she came onto me'.</p>		<p>Not only was she young, but she was developmentally delayed.</p> <p>At [51] It is accepted that this court has a residual discretion in a State appeal not to interfere with the sentences imposed, even though a ground or grounds of appeal have been made out.</p>
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					
<b>s 189 Criminal Code Indecently deal child u 13 yrs repealed (1/08/1992)</b>					
<b>ss 320(4), 321(4), 322(5) and 329(4) Criminal Code (indecently deal with child offences) enacted (1/08/1992)</b>					
The following sentences were enacted as a result of this legislative change:					
Indecent deal child u 13 yrs s 320(4) <i>Criminal Code</i> maximum penalty of 10 yrs imp					
Indecent deal de facto/lineal child u 16 yrs s 329(4) <i>Criminal Code</i> maximum penalty 10 yrs imp					
Indecent deal de facto/lineal child over 16 yrs s 329(4) <i>Criminal Code</i> maximum penalty of 5 yrs imp					
Indecent deal with child under care/supervision or authority s 321(4) <i>Criminal Code</i> maximum penalty of 10 yrs imp					
Definition of sexual penetration extended to included oral penetration of vagina or penis (previously charged as indecent deal) (1/08/1992)					

**s 183 Criminal Code Indecently deal child u 14 yrs repealed (23/03/1990)**

NB: maximum penalty under this section was 7 yrs imp.

Office of the Director of Public Prosecutions