

## 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ss 320(4), 321(4), 322(5) and 329(4) *Criminal Code* and repealed equivalent provisions  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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
18.	<p><b><i>MHE v The State of Western Australia</i></b></p> <p><b>[2019] WASCA 133</b></p> <p>Delivered 29/08/2019</p>	<p>38-39 yrs at time offending. 40 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born WA; very stable home environment; supportive family and friends.</p> <p>Two brothers; he and both siblings' victims of sexual abuse when children; two offenders charged and convicted.</p> <p>Educated to yr 12; completed 6 months farm studies in Switzerland.</p> <p>Good work history.</p> <p>One prior long-term relationship; de facto relationship with MG about 5 yrs prior to offending.</p> <p>MG charged on joint ind with five separate offences.</p>	<p>21 x Sex pen de facto child. 66 x Indec dealing de facto child.</p> <p>MHE and MG (co-offender) were in a de facto relationship. The three victims were MG's children. Two daughters, S, aged 15 and K, aged 11 yrs and a son, L, aged 8 yrs.</p> <p>The offending occurred on 14 separate days over a period spanning about a year. All but three of the offences occurred in the last 6 months of that period.</p> <p>Three offences were committed against S, 83 against K and one against L.</p> <p>The offending against S involved MHE rubbing her buttocks on one occasion and a further occasion when he stroked her buttocks and penetrated her vagina with his finger.</p> <p>The offending against K involved MHE allowing K to masturbate his penis and having her perform fellatio on him. MHE also masturbated his penis in K's presence, rubbed K's vagina and clitoris and poked or tickled her breasts, buttocks, anus or genital area.</p> <p>On a further occasion MHE and MG were watching TV. Knowing K and L were in the room and watching, MG lifted her shirt and exposed her breasts. MHE used a fork to tickle her breasts (cts 58 and 59).</p>	<p>Sentenced 87 offences; all but four cts made wholly concurrent.</p> <p>Ct 58: 18 mths imp (cum). Ct 59 18 mths imp (conc).</p> <p>TES 12yrs 6 mths imp. EFP.</p> <p>The sentencing judge found some of the individual acts of indecency ranked towards the very upper end of the scale of such offences and the appellant's offending ranked towards the upper end of objective seriousness, particularly because there were three victims.</p> <p>The sentencing judge found the appellant breached his position of trust, power and influence over the victims, who depended on him for support, care and guidance; two of the victims, K and L, were very young; the offending was repeated, particularly</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence (cts 58 and 59) and totality principle.</p> <p>Re-sentenced: Cts 34 and 36: 12 mths imp. Cts 58 and 59: 4 mths imp. Ct 68: 3 yrs.</p> <p>Cts 3, 40 and 6 cum; all other sentences conc.</p> <p>TES 10 yrs imp. EFP.</p> <p>At [64] ... the gravamen of these offences [cts 58 and 59] is the exposure of K and L, both young children, to a form of sexual touching between the appellant and the victim's mother. ... There was no physical contact with L, Nor was anything said to L about what was occurring.</p> <p>At [65] While the appellant committed a very large number of offences against</p>

			<p>The majority of the offences were discovered when a CCTV system set up in the lounge room of the home was viewed.</p>	<p>against K, as to be routine; a number of individual offences and the offending overall revealed an extreme degree of depravity.</p> <p>Initially denied any offending; number of admissions made after CCTV footage seized from his home; voluntary disclosure of a number of offences that would not otherwise have come to light.</p> <p>Expressed willingness to undertake sex offender treatment; no demonstrated significant or genuine remorse; some shift of responsibility and blame on 11 yr-old victim.</p>	<p>K, ct 58 was the only offence involving L. ... there was no evidence or material before the sentencing judge to suggest, much less establish, that L was aware of the appellant's offending behaviour against K ...</p> <p>At [66] ... the appellant's offence against L, in ct 58, must be viewed as towards the lower end of the range of seriousness for offences of indec dealing with a child known to be the offender's de facto child.</p> <p>At [95] The appellant's offending undoubtedly had a number of serious features ... We accept, ... that the appellant persistently and callously treated K as a sexual plaything for his own sexual gratification. ...</p> <p>At [96] However, ... the appellant's offending did not include any penile/vaginal or penile/anal penetration.</p>
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					imposed in many appellate decisions where the offender was convicted, after trial, of multiple offences of sex pen that (1) included penile/vaginal penetration, (2) involved younger victims, (3) were committed over a substantially longer period of time, (4) involved a course of conduct of which the convictions were representative, (5) involved violence or threats of violence, or (6) involved a combination of those features. ...
17.	<p><b><i>Underwood v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 189</b></p> <p>Delivered 26/10/2018</p>	<p>38 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>Significant criminal history; prior convictions for sexual offending against children.</p> <p>Deprived upbringing; physically and sexually abused during childhood.</p> <p>Supportive grandparents; grandmother deceased.</p>	<p>Ct 1: Indec dealing child U13 yrs. Ct 2: Indec dealing child 13-16 yrs. Ct 3: Indec dealing child 13-16 yrs. Ct 4: Use elec comm with intent to expose a person U16 yrs to indecent material. Cts 6-10: Sex pen child 13-16 yrs.</p> <p>Over a period of several months Underwood committed various sexual offences against two male children, TP aged 8 yrs and ND aged 13 yrs.</p> <p>The offending involved one episode against the victim TP and six episodes against the victim ND.</p>	<p>Ct 1: 3 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 9 mths imp (conc). Ct 6: 2 yrs imp (cum). Ct 7: 4 yrs 6 mths imp (cum). Ct 8: 9 mths imp (cum). Ct 9: 1 yr 9 mths imp (conc). Ct 10: 2 yrs imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the offending at</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [42] The appellant took advantage of his friendship with the victims' parents to sexually abuse their children. There was an element of grooming in relation to ND. The appellant invited and encouraged ND to engage in further and different sexual activity. The seriousness of the offences</p>

		<p>Isolated and bullied at school.</p> <p>Separated from partner since offending.</p> <p>History of substance abuse.</p>		<p>‘the higher end of the scale of seriousness’; the appellant breached ‘a situation of trust’ and the offending was ‘far from uncharacteristic’; he abused both victims for his own sexual gratification.</p> <p>The sentencing judge found although the appellant’s offending did not involve threats, physical coercion or acts of violence, the absence of those factors did not diminish the seriousness of what he actually did to the victims.</p> <p>Significant treatment needs; lack of insight into his offending behaviour; well above average risk of sexually reoffending.</p>	<p>escalated. The offending involved a significant degree of moral corruption of ND. The appellant’s criminal behaviour was persistent....</p> <p>At [43] The victims were highly vulnerable.</p> <p>At [48] ... the TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the seriousness of the overall offending, the vulnerability of the victims, the pattern of sentencing in reasonably comparable cases and the matters of mitigation referred to by his Honour ...</p>
16.	<p><b><i>HTD v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 202</b></p> <p>Delivered</p>	<p>74 yrs at time offending. 75 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Married 30 yrs, three children; numerous grandchildren.</p>	<p>1 x Indec dealing child lineal relative U16 yrs.</p> <p>The victim ‘E’ was aged 5 yrs and HTD was her grandfather.</p> <p>E hurt her back. The following day HTD gave E a massage, ostensibly to relieve soreness in her back, during which he rubbed her body with</p>	<p>16 mths imp.</p> <p>EFP.</p> <p>The trial judge did not accept it was ‘an innocent therapeutic massage’ and that the ‘obvious reason</p>	<p>Appeal allowed (length of sentence).</p> <p>Re-sentenced:</p> <p>8 mths imp; suspended 12 mths.</p>

	16/08/2018	<p>Current relationship 9 yrs; partner and family (excluding victim's parents) supportive.</p> <p>University educated; worked many years chosen field; retired; prior good character.</p>	<p>massage oil and touched her buttocks.</p>	<p>for doing this act was the exploration of some kind of sexual curiosity or gratification'.</p> <p>The trial judge found the offence did not rank amongst the most serious examples of this kind of crime but it could not be said to be at a low level of objective criminality.</p> <p>The trial judge found imp was the only appropriate disposition; suspension not warranted given nature and gravity of offending.</p> <p>No remorse or acceptance of responsibility.</p>	<p>Appeal concerned error in finding offending sexually motivated; length of imp and error in failing to suspend term of imp.</p> <p>At [34] ... There is no basis in the trial record for disturbing his Honour's finding that the offending was sexually motivated. He was entitled to make that finding beyond reasonable doubt. ...</p> <p>At [63] and [64]... the appellant was fully clothed while he massaged E; ... the appellant did not engage in grooming behaviour either on the occasion in question or during previous visits by E to his house; ... the appellant did not coerce E; ... the massage was a single event and did not occur in the course of other uncharged indecent dealings or sexual activities; ... the appellant's criminality involved touching E's naked buttocks and did not extend to the touching of</p>
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					<p>her breasts, genitals or anus. ... the absence of those features informs the nature and extent of the appellant's objective criminality and the place which his criminal conduct occupies on the scale of seriousness of offences of the kind in question.</p> <p>At [67] ... the sentence ... was not commensurate with the seriousness of the offence. ... the length of the sentence was manifestly excessive. ...</p>
15.	<p><b><i>Williams v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 161</b></p> <p>Delivered 21/09/2018</p>	<p>18-19 and 31 yrs at time offending. 53 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior relevant criminal history.</p> <p>Born in UK; migrated to Australia with family as a young child; second oldest of five.</p> <p>Well respected by family, friends and work colleagues.</p>	<p>5 x Indec dealing child U14 yrs. 2 x Agg indecent dealing child 13-16 yrs (care, supervision or authority).</p> <p>The offending involved three victims and occurred over a 13-yr period, but in two separate and distinct periods.</p> <p>Cts 1 -5 occurred in 1983 – 1984 and involved the sexual abuse of two boys, aged 8 and 10 yrs, who were living with Williams' parents as foster children.</p> <p>Cts 14 and 15 occurred in 1996 and involved the sexual abuse of a boy, aged 13 yrs, whilst under his care at a youth centre.</p>	<p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the appellant's youth was a powerful mitigating factor in respect of cts 1-5.</p> <p>The trial judge found a suspended sentence was not appropriate; a sentence of imp was the only appropriate outcome.</p>	<p>Allowed.</p> <p>Appeal concerned totality principle.</p> <p>Re-sentenced.</p> <p>TES 3 yrs 2 months imp.</p> <p>EFP.</p> <p>At [50] ... the appellant was aged between 18 and 19 when cts 1-5 occurred and was living at home with his parents. He had no prior history of sexual offending. The offences</p>



		<p>Good employment history.</p> <p>Prior marriage; two adult children.</p>			<p>were opportunistic in nature. ... the appellant's youth was a significant mitigating factor in respect of these offences. ... the subsequent offences, which occurred many yrs later ... were very much less serious in nature.</p> <p>At [52] Having regard to the appellant's youth when cts 1 – 5 committed and the degree of seriousness of the offending overall, the TES was disproportionate to the appellant's overall criminal conduct. ...</p> <p>At [53] ... there were seven offences ... involving young vulnerable victims; ... there was a significant age difference between the appellant and each of the victims; ... there was no finding that the offences were representative of any continuing course of abuse in respect of any of the victims; ... the offending conduct in respect of cts 5, 14 and 15 was towards the</p>
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					lower end of the scale of seriousness ...
14.	<p><b><i>PJB v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 150</b></p> <p>Delivered 29/08/2018</p>	<p>61 at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Happy childhood.</p> <p>Hard worker; consistently employed since completing yr 12.</p> <p>Prior good character.</p> <p>Twice married; one child from first marriage; second wife positive influence and supportive.</p> <p>History of alcohol and cannabis use; abusing at time offending; at time of sentencing no longer using cannabis; continued excessive alcohol use.</p>	<p>Cts 8 &amp; 9: Indec dealing child lineal relative U16 yrs.</p> <p>Ct 10: Indec dealing child U13 yrs.</p> <p>The victim, ALB, was aged 12-13 yrs and is PJB's biological daughter.</p> <p>The victim MRB was PJB's niece.</p> <p>Ct 10 occurred some 9-10 yrs after the offending the subject of cts 8 and 9.</p> <p>ALB had just showered when PJB entered the bathroom on the pretext of checking a switch. He put both hands on ALBs breasts, telling her he was checking her development (ct 8).</p> <p>On another occasion when she was frightened and could not sleep ALB got into PJBs bed. He rubbed his erect penis against her body. She got up and ran out of the room (ct 9).</p> <p>MRB was sitting at a desk when PJB approached and asked her what she was doing. He then leant across and rubbed her breasts on the outside of her clothing (ct 10).</p>	<p>Ct 8: 12 mths imp (conc).</p> <p>Ct 9: 24 mths imp (conc).</p> <p>Ct 10: 9 mths imp (cum).</p> <p>TES 2 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that at the time of the offending the appellant had a deviant sexual interest in female children; the offences involved a gross breach of trust and seriously affected the victims.</p> <p>The sentencing judge found the offending the subject of ct 8 was not an isolated incident; the appellant touched ALBs breasts on many occasions up until she was 17 yrs old.</p> <p>The sentencing judge found the offending the subject of ct 9 an isolated but particularly serious offence.</p>	<p>Dismissed.</p> <p>Appeal concerned errors in findings (rehabilitation and risk of re-offending); length of sentence (ct 10) and totality principle.</p> <p>At [29] ... it has not been demonstrated that his Honour erred by failing to find, that as a result of the passage of time since the commission of ct 10, demonstrated that the appellant had been rehabilitated.</p> <p>At [30] ... there was no such material before his Honour which supported a conclusion that the appellant posed a low risk of reoffending. ....</p> <p>At [38] ... we accept that the touching to the breasts of MRB was not as serious as other examples of indecent dealing .... Nevertheless, the offence had a number of serious features. The victim was</p>

				<p>No genuine remorse or demonstrated engagement or interest in programs addressing his sexual interests in young girls, which he continues to deny; some risk of re-offending.</p>	<p>vulnerable by reason of her age and her relationship to the appellant. ... the offence was not a one-off aberration. The appellant had an established sexual attraction towards young girls and acted upon that attraction. The offence was an abuse of trust and ... had a serious effect upon the victim. ... the sentence that was imposed on ct 10 was appropriate as to type and length. ....</p> <p>At [39] ... the overall criminality involved was not at the high end of the scale of seriousness of offences of this type. However, the offending had some serious aspects. The appellant committed three offences involving two victims, one of whom was his daughter, the other his niece, both of whom were young. The conduct in ct 8 was representative of a continuing course of conduct of that type against her. Ct 9 was a serious example of its type ... The appellant abused</p>
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					his position of trust against both victims.
13.	<p><b><i>The State of Western Australia v BKJ</i></b></p> <p><b>[2018] WASCA 136</b></p> <p>Delivered 08/08/2018</p>	<p>40-53 yrs time offending. 55 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born QLD; raised remote and isolated cattle station; felt unsupported and unnurtured by parents.</p> <p>Left school yr 11; worked 5 yrs before travelling Australia and settling in WA; employed mining industry 20 yrs; fly-in-fly out worker.</p> <p>One significant relationship; with C's mother.</p> <p>No mental health issues; no illicit drugs or alcohol use.</p>	<p>Cts 1; 9-10; 18; 21; 23; 38; 40 &amp; 47: Indec dealing child lineal relative U16 yrs.</p> <p>Cts 2-7; 16; 24; 26; 28; 30; 32; 34; 36; 42; 44; 50 &amp; 56-57: Sex pen child lineal relative U16 yrs.</p> <p>Cts 11; 13; 15; 17; 19; 22; 25; 27; 29; 31; 33; 35; 37; 39; 41; 43; 45-46; 48 &amp; 51-53: Indecent recording child lineal relative U16 yrs.</p> <p>Cts 14; 20 &amp; 54: Procuring a child lineal relative U16 yrs to engage in sexual behaviour.</p> <p>Cts 8; 12 &amp; 58: Procuring a child lineal relative U16 yrs to do indecent act.</p> <p>Ct 59: Distributed CEM.</p> <p>Cts 60 &amp; 61: Poss CEM.</p> <p>BKJ is the biological father of the victim, 'C'. He engaged in sexual activity with C when she was aged between 2 and 12 yrs.</p> <p>The offences also involved C performing sexual acts on BKJ.</p> <p>BKJ recorded many of the offences on video or by digital photograph, or both. He uploaded and distributed some of this material onto the worldwide web.</p> <p>When interviewed by police BKJ made admissions to producing, storing and uploading CEM and he disclosed to police the whereabouts of three USB thumb drives he had secreted in his home, which had not been found during the search.</p>	<p>Ct 10; 12; 40-41: 18 mths imp (conc).</p> <p>Ct 13: 18 mths imp (cum).</p> <p>Cts 1-3; 5-6; 8-9; 18-19; 21-22; 25; 28; 31; 38; 47; 56-57: 2 yrs imp (conc).</p> <p>Cts 17; 23; 27; 33-35; 37; 39; 43; 45-46; 48-49; 51-53; 55; 58: 2 yrs 6 mths imp (conc).</p> <p>Cts 11; 15: 2 yrs 6 mths imp (cum).</p> <p>Cts 16; 24; 29-30; 32; 36; 42; 44; 50 &amp; 60: 3 yrs imp (conc).</p> <p>Cts 7; 20: 3 yrs 6 mths imp (conc).</p> <p>Ct 14: 3 yrs 6 mths imp (cum).</p> <p>Cts 54 &amp; 61: 4 yrs imp (conc).</p> <p>Ct 59: 4 yrs imp (cum).</p> <p>Cts 26: 5 yrs imp (conc).</p> <p>TES 14 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the overall offending as 'at the high upper end of the scale of seriousness'; the respondent robbed C of</p>	<p>Dismissed.</p> <p>Appeal challenged length of individual sentences (cts 1 and 59 and cts of sex pen and procuring a child to sexually penetrate) and totality principle (ct 4).</p> <p>At [112] All of the offences challenged ... were, in our opinion, serious examples of their type. ...</p> <p>At [114] Each of these offences reflect a high degree of depravity on the respondent's part. ...</p> <p>At [115] There are many aggravating factors in the commission of each of these offences, including: ... C's very young age. ... The gross breach of trust shown by the respondent ... The offences were not an isolated aberration and were committed over a period of about 10 yrs. ... The respondent groomed C and, having done so,</p>

			<p>Four USB thumb drives and a computer hard drive located at BKJ's home contained 13,498 CEM images ranging from Category 1 through to Category 6 on the Child Degradation Category Chart. Some of these images included him in sexual acts with C.</p> <p>A further 408 digital files were also found, of which 174 consisted of videos from Category 4 and Category 5 on the Child Degradation Category Chart, including 31 showing sexual activity between BKJ and C.</p>	<p>her innocence and of her entitlement to live in a secure and loving home; his conduct was a gross breach of trust by him as C's father; he used C as a sex object for his own sexual gratification, directly, but also vicariously, be disseminating images of the sexual abuse on the internet.</p> <p>The sentencing judge found the offending was representative of a course of conduct over a significant period of time; the offences were planned and premeditated and the respondent groomed and exploited an 'extremely vulnerable' C from a very young age, to the point where he normalised, in C's mind, his sexual behaviour.</p> <p>The sentencing judge described the acts perpetrated upon C as being 'gross and degrading' and done for the respondent's 'perverse</p>	<p>normalised his sexual behaviour towards her. ... The offences were premeditated and planned. ... The offences involved a high degree of depravity and were seriously humiliating. ... The respondent recorded, ... his actions. He later viewed it himself. He uploaded the material onto the internet and obtained satisfaction from knowing others might view it. ... The offending has had a profound negative effect upon C ...</p> <p>At [120] ... The leniency of the individual sentences is moderated by the place of those sentences in the TES ... imposed.</p> <p>At [121] ... the individual sentences do not reach – although some of them approach – a degree of leniency which can be characterised as unreasonable or plainly unjust.</p> <p>At [138] By reason of the</p>
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				<p>sexual gratification’.</p> <p>The sentencing judge found the offences relating to the CEM as ‘offending ... at the highest end’ of its type.</p> <p>No genuine remorse; empathy or insight into his offending.</p> <p>Low-moderate risk of reoffending.</p>	<p>respondent’s voluntary disclosure of the whereabouts of the material which is the subject of ct 59 and the contribution of the sentence for that offence to the TES, we have, ... come to the conclusion that the individual sentence on ct 59 is not manifestly inadequate.</p> <p>At [158] ... the TES that was imposed upon the respondent fell to the lower end of that range. However, we have not been persuaded that it infringed the first limb of the totality principle. ...</p>
12.	<p><b><i>NN v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 92</b></p> <p>Delivered 12/06/2018</p>	<p>14-17 yrs at time offending (cts 1-3 and 6-7).</p> <p>32 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor criminal history; no relevant sexual offending.</p> <p>Eldest of seven children; dysfunctional family environment where females of the household degraded.</p>	<p>Ct 1: Procuring a child lineal relative to do indecent act.</p> <p>Cts 2-5: Sex pen child lineal relative.</p> <p>Cts 6-7: Indec dealing child lineal relative.</p> <p>The victims, L and K, are NN’s sisters. The offending against L began when she was aged 10 yrs and ended when she was aged about 15 yrs.</p> <p>NN was 4 yrs older than L and 10 yrs older than K.</p>	<p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 18 mths imp (conc).</p> <p>Ct 3: 18 mths imp (conc).</p> <p>Ct 4: 3 yrs imp.</p> <p>Ct 5: 2 yrs imp (cum).</p> <p>Ct 6: 6 mths imp (conc).</p> <p>Ct 7: 15 mths imp (conc).</p> <p>TES 5 yrs imp. EFP.</p> <p>The trial judge found the appellant disliked L and took pleasure in</p>	<p>Dismissed.</p> <p>Appeal asserted express error (provisions of <i>Young Offenders Act</i>); and totality principle.</p> <p>At [78] and [79] ... this appeal, ... turns on whether the trial judge correctly applied the principles contained in the <i>Young Offenders Act</i> when sentencing the adult</p>

		<p>Despised his mother; trusted relationship with his father, a violent and strict disciplinarian.</p> <p>Attended number of schools; completed high school through distance education; Certificate 3 in horticulture; 2 yrs university studies, left before completing degree.</p> <p>Good work history; employed assistant manager at time arrest.</p> <p>No identified mental health issues.</p>		<p>humiliating and degrading her; he was aware that his sisters were vulnerable to the conduct of their father, that there was no protection from their mother and he used his own close relationship with their father as a weapon, making threats to enforce compliance.</p> <p>No remorse or insight into his offending.</p> <p>Average or moderate risk of sexual re-offending.</p>	<p>appellant for offences committed when he was under the age of 18 yrs ... It is clear that the trial judge did properly apply those principles. ... The application of those principles is also evident in the sentence ... imposed in respect of cts 1 -3 and 6 -7. The sentences of imp for those offences were of a length which was significantly shorter than may have been expected if the offences were committed by the appellant as an adult ...</p> <p>At [86] ... it is appropriate to focus on cts 4 and 5 on the ind, which related to charges of offences committed when the appellant was an adult. Both cts 4 and 5 were very serious examples of offences against s 329(2) of the <i>Criminal Code</i>. ... L was in a vulnerable position in a dysfunctional abusive household, which the appellant well knew. The offending was not isolated or uncharacteristic,</p>
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					but part of a pattern of sexual violence by the appellant towards his younger sister.
11.	<p><b><i>Cross v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 86</b></p> <p>Delivered 30/05/2018</p>	<p>23-24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after early PG (17.5% discount)</p> <p>Prior good character; absence of any offending two yrs since offences committed.</p> <p>Completed yr 11.</p> <p>Good work history; employed local supermarket and fast-food store; working in brother's business and living with parents at time sentencing.</p> <p>History of illicit substance abuse; cannabis and alcohol from 15 yrs age; daily cannabis use on multiple occasions; excessive use of Mersyndol, MDMA or ecstasy; sampled cocaine and magic mushrooms.</p>	<p>8 x Indec dealing child U16 yrs, where child under his care, supervision or authority.</p> <p>Cross managed a fast-food store and the victim, aged 15 yrs, was a casual employee.</p> <p>The offences occurred on five separate occasions over a period of months.</p> <p><u>Ct 1</u> At Cross's home the victim undressed. He remained clothed. They kissed, he positioned the victim so she was on top of him and rubbed his penis, through his clothing, on her vagina area.</p> <p><u>Ct 2</u> On another occasion whilst they were both at work Cross and the victim kissed and she touched his penis.</p> <p><u>Cts 3 and 4</u> On two separate occasions at the store Cross and the victim kissed, during which he groped her bottom.</p> <p><u>Ct 5</u> The groping of the victim on the second occasion is the subject of this ct.</p> <p><u>Cts 6, 7 and 8</u> On another occasion, at his home, Cross</p>	<p>Ct 1: 18 mths imp (conc). Ct 2: 18 mths imp (conc). Ct 3: \$250 fine. Ct 4: \$250 fine. Ct 5: 8 mths imp (conc). Ct 6: 18 mths imp (conc). Ct 7: 15 mths imp (conc). Ct 8: 15 mths imp (conc).</p> <p>TES 18 mths imp. EFP.</p> <p>The sentencing judge found the offending persistent; the appellant had opportunistically taken advantage of a vulnerable teenager under his care at work and whilst in a position of trust and authority; the age difference between the appellant and the victim was substantial; he was not in a relationship with the victim and he used the victim for his own sexual gratification.</p> <p>Average risk of re-offending.</p>	<p>Dismissed.</p> <p>Appeal concerned type and length of sentence.</p> <p>At [53] ... we accept that the appellant's offending is not in the most serious category of offences against s 321(4). ... his victim was aged between 15 yrs 4 mths and 15 yrs 10 mths and was a willing partner who initiated some of the sexual contact. Nevertheless, the appellant's offending exhibited a number of serious features: ... His offending included reasonably serious examples of non-penetrative sexual activity with a child, including fondling of the vaginal area and of the breasts. ... The offending was persistent, occurring on five occasions over a period of several mths. ... The appellant was not in a</p>



			<p>undressed the victim. They kissed and while sitting on top of Cross she rubbed her vaginal area on his penis through his clothing. He fondled her vagina and breasts.</p> <p>The offences came to light when the victim's father discovered photographs on the victim's telephone.</p>	<p>Remorseful; ceased drug use; undertaking treatment for anxiety and depression; understanding of impact of offending on victim.</p>	<p>relationship with the victim, he was simply using her for his own sexual gratification. ... There was a substantial difference, of eight or nine yrs, in the ages of the appellant and the victim, and this was known to the appellant. ... The victim was under the appellant's supervision and authority in the appellant's role as manager, the agg nature of which is reflected in the maximum penalty for each offence of 10 yrs. ... Significantly, the judge found, without challenge on appeal, that in committing the offences the appellant took advantage of his position of power and of the victim's vulnerability. ... As the appellant was aware, while these offences were being committed, or in the period leading up to that, the victim was self-harming, reinforcing her vulnerability. ... The appellant's offending has caused significant and</p>
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					enduring harm to the victim, ...
<b>10.</b>	<b><i>KMT v The State of Western Australia</i></b>  <b>[No 2] [2018] WASCA 49</b>  Delivered 11/04/2018	<p>35 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Left school yr 9; began four-yr apprenticeship.</p> <p>Employed; att to commence regional business venture unsuccessful.</p> <p>Married; two daughters and two sons at time offending (the second born after the offences occurred).</p> <p>New relationship at time sentencing; supportive partner.</p> <p>Satisfactory health.</p>	<p>2 x Indec dealing child lineal relative U16 yrs 3 x Sex pen child lineal relative U16 yrs.</p> <p>The victim, S, was the eight-yr-old biological daughter of KMT.</p> <p>At the time of the offending KMT lived with S, his wife and their two other children.</p> <p><u>Ct 1</u> KMT touched the outside of S's vagina.</p> <p><u>Cts 2 and 3</u> On another occasion KMT touched and placed his finger inside S's vagina.</p> <p><u>Ct 4 and 5</u> On another occasion KMT penetrated S's vagina with his finger and penis.</p>	<p>Ct 1: 20 mths imp (cum). Ct 2: 20 mths imp (conc). Ct 3 &amp; 4: 30 mths imp (conc). Ct 5: 60 mths imp.</p> <p>TES 6 yrs 8 mths imp. EFP.</p> <p>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.</p> <p>The trial judge found the appellant had stopped offending of his own volition; but noted the seriousness of the offending and its effects.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence, failure to obtain PSR; failure to challenge assertions in VIS and failure to produce character references.</p> <p>At [133] The TES imposed was not outside the range.</p> <p>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.</p> <p>At [136] ... There is no basis to interfere with the sentence by reason of the lack of a challenge to the victim impact statement.</p> <p>At [137] ... The content of any further character references, ... would be unlikely to have affected the sentence imposed.</p>
<b>9.</b>	<b><i>SCN v The State of Western</i></b>	42 yrs at time sentencing.	Cts 1, 4, 6, 8 & 40-42: Procure sex pen of child U13.	Cts 1 & 50: 2 yrs 8 mths imp (conc).	Appeal dismissed.

<p><b>Australia</b></p> <p><b>[2017] WASCA 138</b></p> <p>Delivered 26/07/2017</p>	<p>Convicted after PG (10% 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>Cts 2, 3, 5, 7, 23-26, 33-36, 38-39, 43, 45-47 &amp; 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</p>	<p>Cts 2, 28-29: 2 yrs imp (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>Appeal concerned length 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</p>
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			<p>provided her to men for their sexual gratification. He met the men 'C', 'A', 'B', 'CL', 'M' and 'V' through online advertisements in the personal section of websites.</p>	<p>Cts 60-61: 9 yrs imp (conc). Ct 62: 10 yrs imp (conc).</p> <p><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>sexual abuse of a child by 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>
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					That power imbalance is 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><b><i>SGT v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 136</b></p> <p>Delivered 20/07/2017</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</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</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</p>

			11-12 yrs old (ct 5).	conduct and groom his 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.	protect young, defenceless 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.  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.
7.	<b>RGT v The State of Western Australia</b>  <b>[2017] WASCA 120</b>  Delivered 29/06/2017	<u>Indictment 44 of 2015</u> 29 at time sentencing.  <u>Indictment 43 of 2015</u> 30 at time sentencing.  <u>Indictment 43 of 2015</u> Convicted after late PG (12.5% discount).  <u>Indictment 44 of 2015</u> Convicted after early PG	<u>Indictment 43 of 2015</u> Cts 1-2; 5-6: Sex pen of child U16 yrs. Cts 3-4 & 7: Indec deals of child 13-16 yrs.  <u>Indictment 44 of 2015</u> Cts 1; 4; 6-8; 10; 13; 16-19 & 21: Sex pen of lineal relative U16. Cts 2-3; 9; 12; 15; 20 & 22: Indec recording of lineal relative U16. Cts 5; 11 & 14: Indec dealings of lineal relative U16.	<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).	Allowed (44 of 2015). Dismissed (43 of 2015).  Appeal concerned totality principle. Individual sentences were not challenged.  Re-sentenced on ct 21 on Ind 44 of 2015 to 5 yrs imp (cum with ct 1). All other sentences and orders to

	<p>(15% discount).</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><u>Indictment 43 of 2015</u> The victims were a boy K, aged 7-9 yrs and a girl, F, aged 13 yrs.</p> <p>K was RGTs 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 RGTs 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</p>	<p>Total: 9 yrs imp (partially 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</p>	<p>stand.</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</p>
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			<p>on A several times, rubbed her vagina (cts 4-7) 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>against the victim F, '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>young ... and was in no 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.	<b>The State of Western</b>	32 yrs at time offending.	<p>7 x Sex pen of de facto child U16 yrs.</p> <p>2 x Indec dealings of de facto child U16 yrs.</p>	<p>Ct 1: 2 yrs imp (conc).</p> <p>Ct 2: 2 yrs imp (conc).</p>	Allowed.

<p><b>Australia v PJW</b></p> <p><b>[2015] WASCA 113</b></p> <p>Delivered 03/06/2015</p>	<p>Convicted after trial.</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>Ct 3: 4 yrs imp (cum on ct 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>Orders for conc and cum 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</p>
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					<p>sleeping in her own bed. 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</p>
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					deterrence, having regard 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</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</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</p>

			<p>vagina. K told him it hurt. At the same time he 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>	towards the upper end of the scale of offending against a child.	<p>overall offending '[was] 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</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.</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</p>

			<p>victim's pubic hair. The victim showed LFG his 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 30: 18 mths imp. 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>complainant was, to some 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><b><i>The State of Western Australia v Staniforth-Smith</i></b></p> <p><b>[2014] WASCA 170</b></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>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>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</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</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>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</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 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>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>Sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</p>	<p>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 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</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>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</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>grounds. He used physical force, threats and he 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</p>	<p>The charges concerning 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>a very significant proportion of his remaining life will be spent in custody.</p>
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			<p>point of ejaculation.</p> <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><b><i>The State of Western Australia v Hassell</i></b></p> <p><b>[2014] WASCA 158</b></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</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.</p> <p>Ct 2: 18 mths imp (conc).</p> <p>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).</p> <p>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</p>

		<p>offending.</p> <p>Shortly after offending, his former partner of 25 yrs passed away.</p>	<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>vulnerability of the victim. 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>					
<p><b>s 189 Criminal Code Indecently deal child u 13 yrs repealed (1/08/1992)</b></p> <p><b>ss 320(4), 321(4), 322(5) and 329(4) Criminal Code (indecently deal with child offences) enacted (1/08/1992)</b></p> <p>The following sentences were enacted as a result of this legislative change:</p> <p>Indecent deal child u 13 yrs s 320(4) <i>Criminal Code</i> maximum penalty of 10 yrs imp</p> <p>Indecent deal de facto/lineal child u 16 yrs s 329(4) <i>Criminal Code</i> maximum penalty 10 yrs imp</p> <p>Indecent deal de facto/lineal child over 16 yrs s 329(4) <i>Criminal Code</i> maximum penalty of 5 yrs imp</p> <p>Indecent deal with child under care/supervision or authority s 321(4) <i>Criminal Code</i> maximum penalty of 10 yrs imp</p> <p>Definition of sexual penetration extended to included oral penetration of vagina or penis (previously charged as indecent deal) (1/08/1992)</p>					

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

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