

Manslaughter

s 280 Criminal Code

From 1 January 2014

Transitional Sentencing Provisions: Each of the two tables 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

conc	concurrent
cum	cumulative
circ	circumstances
disq	Disqualification
EFP	eligible for parole
imp	imprisonment
TES	total effective sentence
PG	plea guilty
susp	suspended
AOBH	assault occasioning bodily harm
VRO	violence restraining order

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	<p><i>Brewerton v The State of Western Australia</i></p> <p>[2017] WASCA 191</p> <p>Delivered 20/10/2017</p>	<p>40 yrs at time offending.</p> <p>Convicted after PG (15% discount).</p> <p>Prior criminal history; no relevant driving convictions.</p> <p>Born in New Zealand; eldest of five children.</p> <p>Non-Australian citizen; permanent resident.</p> <p>Parents and three siblings still reside New Zealand; supportive family.</p> <p>Active member of a Christian church; supportive members.</p> <p>Educated to yr 12; employed mostly real estate industry.</p> <p>Medicated for epilepsy; subject to seizures involving an impairment of consciousness, capable of functioning and performing tasks, but unaware of what he is doing.</p>	<p>1 x Manslaughter.</p> <p>Due to a medical condition Brewerton was declared by a medical practitioner unfit to drive a motor vehicle. Brewerton was well aware of the prohibition.</p> <p>Brewerton was driving when he had a seizure and lost control of his car. At speed he drove towards an intersection, he did not brake or slow down at any stage. His vehicle hit the rear of a stationary taxi, launching it into the air and propelling it through the intersection. After the collision Brewerton's vehicle continued into the intersection, where it crashed into another vehicle.</p> <p>As a result of the collision the taxi driver suffered multiple injuries from which he died a short time later.</p>	<p>5 yrs imp.</p> <p>MDL disq 10 yrs.</p> <p>EFP.</p> <p>The sentencing judge found the appellant drove contrary to medical advice; in the knowledge he had previously had an accident when he had a seizure and knowing there was a potential he could lose control of the vehicle.</p> <p>The sentencing judge assessed the criminality as being mid-range, rather than at the lower end; the appellant's criminality to be judged at the point immediately before he lost control of his vehicle due to the seizure; the speed at which he drove and his failure to brake to avoid the collision were not regarded as aggravating factors.</p>	<p>Allowed (MDL disq only).</p> <p>Appellant challenged length of sentence and MDL disq. and concerned error in failing to consider deportation and finding plea not entered at first reasonable opportunity.</p> <p>MDL disq substituted with a disq of 5 yrs.</p> <p>At [32] The law as to whether the prospect of deportation from Australia is a mitigating factor is settled in this State. This court and its predecessor have consistently held that the prospect of deportation is not a mitigating circumstance.</p> <p>At [54] ... the first reasonable opportunity to PG to the charge of manslaughter was at the disclosure committal hearing ... By that time the State had provided adequate particulars of its case and the appellant had been given an opportunity to consider them. Plainly, the</p>

				<p>The sentencing judge found the prospects of the appellant's deportation as a result of the conviction not a relevant sentencing factor.</p> <p>The sentencing judge considered the disq of the appellant's MDL should be a lengthy period; to allow a significant period over which an assessment could be made as to whether he had progressed to the point where the risk of him suffering a seizure while driving is so insignificant as to render him fit to drive.</p> <p>Truly remorseful; low risk of reoffending.</p>	<p>appellant did not enter or indicate a PG to manslaughter on that occasion. Instead, he offered to PG to dangerous driving occasioning death ... Once the offer was rejected he quickly entered the plea ...</p> <p>At [65] The appellant chose to drive contrary to the instruction of his doctor ... he had not been given the all-clear to drive. The serious danger that he posed to other road users if he had a seizure while driving was obvious....</p> <p>At [67] ... In such circ, it is the responsibility of the person not to drive. Failure to abide by that responsibility is serious conduct which, in cases such as the present, amounts to serious criminality.</p> <p>At [68] Having regard to the criminality of the appellant's conduct, the need to provide general deterrence and weighing the appellant's favourable personal circ</p>
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					<p>including his PG and having regard to the maximum penalty for manslaughter, we do not regard the sentence ... as manifestly excessive.</p> <p>At [75] ... the period of disq ... was manifestly excessive. ... In all of the circ, it was unreasonable or plainly unjust. It is more than was reasonably required to achieve the sentencing objectives of proper punishment, general deterrence and the protection of the public. Moreover, we do not think that a period of 10 yrs (to commence after he was released from custody) would be required for the appellant's medical advisers to assess the appellant's risk of driving.</p>
7.	<p><i>Liyanage v The State of Western Australia</i></p> <p>[2017] WASCA 112</p> <p>Delivered 22/06/2017</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after trial (acquitted of murder).</p> <p>Born in Sri Lanka; arrived in Australia 2011.</p> <p>Supportive family and good</p>	<p>1 x Manslaughter.</p> <p>The deceased and Liyanage were married.</p> <p>The deceased was violent and controlling and he regularly assaulted Liyanage and threatened to harm her family. He forced her to watch pornography (much of which depicted child abuse), to participate in his sexual conduct</p>	<p>4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge took into account the history of domestic violence and considered the offence was too serious to be</p>	<p>Dismissed.</p> <p>Liyanage challenged length and type of sentence.</p> <p>At [285] Striking a person to the head with a heavy metal mallet is highly likely to cause death or life-</p>

		<p>support network in the community.</p> <p>Medical doctor; employed at a hospital.</p> <p>Exemplary character; model prisoner while on remand.</p>	<p>with other women and to perform sexual acts in front of an active web-camera.</p> <p>At the time of his death the deceased was grooming a 17-yr-old girl, K, to engage in sexual activity with himself and Liyanage, some of which had already occurred.</p> <p>During the night Liyanage struck her husband on the head at least two times with a heavy metal mallet as he lay in bed. In the morning she called '000' and a short time later ambulance officers arrived and found him deceased.</p>	<p>suspended.</p> <p>The sentencing judge accepted Liyanage's acted in defence of another, in order to prevent harm to K.</p> <p>The sentencing judge found the deceased was a manipulative and merciless abuser, but it was not a justified killing or a reasonable response to the circumstances or the threat Liyanage faced at that time.</p> <p>Remorseful; acceptance of responsibility; no risk of reoffending.</p>	<p>threatening injury. The appellant ... must have appreciated this. The manner in which the deceased was killed made this a serious example of the offence of manslaughter.</p> <p>At [286] ... The deceased's behaviour towards the appellant and K was abhorrent. However, that behaviour did not justify the appellant killing the deceased. ... and the imposition of a sentence which appropriately recognised the sanctity of human life remained important sentencing considerations.</p> <p>At [288] The seriousness of the offending made it inappropriate to susp the appellant's sentence of imp. ... The sentence imposed was of a significantly lesser term than the sentences usually imposed ... even in the presence of significant mitigating factors.</p>
6.	<i>Al Jrood v The</i>	22 yrs at time offending.	1 x Manslaughter.	9 yrs imp.	Appeal allowed.

<p><i>State of Western Australia</i></p> <p>[2016] WASCA 73</p> <p>Delivered 03/05/2016</p>	<p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Showed remorse and empathy for the family of the deceased and accepted responsibility for his offending.</p> <p>Educated to yr 12; university studies; trained and worked in the security industry; good work ethic.</p> <p>Good physical and mental health.</p> <p>No history of illicit substance use.</p> <p>Prior good character.</p>	<p>Al Jrood's group of friends and the deceased's group of friends crossed paths. The deceased was significantly intoxicated.</p> <p>Members of each group began arguing and Al Jrood punched the deceased once to the head. The deceased fell, hitting his on the road.</p> <p>Al Jrood walked away from the deceased, leaving him in a non-responsive state. A short time later the deceased showed signs of response and Al Jrood left in his car.</p>	<p>EFP.</p> <p>Al Jrood's assault was unprovoked, unexpected, sudden and forceful.</p> <p>The offending was impulsive and spur of the movement and, although the deceased's intoxication made him a vulnerable victim who could not protect himself, Al Jrood was not aware, and did not seek to take advantage of, the deceased's diminished capacity.</p> <p>Al Jrood took no steps to assist the deceased, but the sentencing judge found that the situation would have been chaotic and that imposed sharp limitations on what Al Jrood could have done to assist.</p> <p>Remorseful; minimal risk of reoffending, accepted some responsibility for</p>	<p>Al Jrood challenged length of sentence.</p> <p>Re-sentenced to 7 yrs imp. EFP.</p> <p>At [29] The trial judge failed to take into account the appellant's minimal risk of reoffending.</p> <p>At [36] The sentence was reduced for the appellant's youth, prior good character, remorse, victim empathy, acceptance of responsibility and minimal risk of reoffending.</p>
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<p>5.</p>	<p><i>Marshall v The State of Western Australia</i></p> <p>[2015] WASCA 156</p> <p>Delivered 10/08/2015</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal history, including two convictions of AOBH.</p> <p>Parents separated when aged six; both parents drug users; exposed to drug use and violence as a young child.</p> <p>Completed school to yr 10.</p> <p>Two significant personal relationships; son aged 13 yrs.</p> <p>Stable employment from 2005.</p> <p>Diffuse brain injury from car accident in 1999; neurocognitive disorder.</p> <p>Uses illicit substances.</p> <p>Serving a term of susp imp at time offending.</p>	<p>1 x Manslaughter.</p> <p>The appellant was in his unit with his girlfriend and two friends. He had consumed a moderate amount of alcohol. He heard the noise of an argument between the deceased and two companions and the occupant of the adjoining unit. The deceased was severely intoxicated. The appellant attempted to calm the situation down. The appellant returned to his unit when the deceased became aggressive towards him.</p> <p>The deceased then approached the front door of the appellant's unit and attempted to open the security door, yelling, 'Do you want to smash?' The appellant called the police.</p> <p>The deceased and his companions left and armed themselves with pieces of wood or chair legs. During this time, the appellant left his unit in the erroneous belief that the disturbance had concluded. The deceased and his companions returned, heading towards the appellant. Seeing them approach, the appellant armed himself with a golf club.</p> <p>The appellant and the deceased struck each other with the weapons they were holding. Both fell to the ground. The golf club broke and the appellant used the shaft of the club to stab the deceased five times in the back, with</p>	<p>offending.</p> <p>7 yrs 6 mths imp.</p> <p>Sentencing judge found that the appellant's neurocognitive impairment played a part in his overreaction to the attack upon him by the deceased.</p> <p>Sentencing judge found the appellant genuinely remorseful.</p> <p>Sentencing judge rejected the State's submission that the offending was at the higher end of the range of seriousness for the offence of manslaughter.</p> <p>Psychiatrist concluded moderate risk of reoffending and psychologist concluded low to moderate risk of reoffending.</p>	<p>Dismissed.</p> <p>At [11] The Commissioner described the stabbing of the deceased as being a frenzied response motivated by the need for Mr Marshall to defend himself, but overtaken by anger and frustration.</p> <p>At [52]-[61] Discussion of comparable cases.</p> <p>At [63] ... while it may be observed that the sentence imposed in this case was towards the upper end of the range available to the sentencing judge, having regard to the seriousness of the offending conduct it cannot be said that the sentence imposed exceeded that range or was otherwise unreasonable or unjust.</p>
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4.	<p><i>Stagno v The State of Western Australia</i></p> <p>[2015] WASCA 115</p> <p>Delivered 05/06/2015</p>	<p>28 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history, including drugs, firearms and traffic offences.</p> <p>Appellant already serving TES 8 yrs imp for drugs and firearms offences (see <i>Stagno v The State of Western Australia</i> [2013] WASCA 166).</p> <p>Left school at age 15; strong employment history.</p>	<p>1 x Manslaughter</p> <p>The appellant occasionally bought drugs from the victim. A dispute arose about a debt owed by the appellant to the victim. A few days before the offence, the victim sent the appellant threatening text messages. One of them asserted that the appellant's girlfriend wanted to be in a relationship with the victim rather than the appellant.</p> <p>On the date of the offence, the appellant's girlfriend sent the appellant text messages that suggested that she was with the victim. The appellant became agitated and drove to the victim's house and fired a number of bullets at a car in the driveway. The victim was very</p>	<p>9 yrs imp (to start 5 yrs after drugs and firearms sentence).</p> <p>TES 14 yrs imp.</p> <p>EFP.</p> <p>Appellant received some mitigation for offering to PG to manslaughter prior to trial.</p> <p>Remorseful, although this was tempered by his conduct after the victim was killed.</p>	<p>Dismissed – on papers.</p> <p>At [47] It was necessary to accumulate the manslaughter sentence with a substantial part of the drugs and firearms sentence in order to reflect the extremely serious nature of the appellant's overall offending and to deter him and others. The overall TES bears a proper relationship to the criminality involved in all the offences committed by the appellant...</p>

		<p>History of drug use; participated in drug counselling while in custody.</p> <p>The appellant's girlfriend convicted of manslaughter and sentenced to 5 yrs 4 mths imp.</p>	<p>angry and agitated.</p> <p>The appellant's girlfriend lured the victim to the house that she shared with the appellant. The victim went to the house, armed with a taser gun and small axe or tomahawk. The appellant fired a number of bullets. Four bullets hit the front of the victim's lower torso and two entered his back.</p> <p>The victim's body was left in the bathroom for some time. It was then wrapped in plastic, shoved into a car and left in the back of the car, parked and abandoned at a hotel.</p>	<p>Reasonable prospects for rehabilitation.</p>	
3.	<p><i>Beard v The State of Western Australia</i></p> <p>[2015] WASCA 74</p> <p>Delivered 09/04/2015</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Significant criminal history including speeding, drink driving, reckless driving and AOBH.</p> <p>Relatively normal childhood; completed yr 12.</p> <p>Unemployed at time offending; stressed.</p> <p>Two children from prior relationships.</p> <p>History of drug use.</p>	<p>Ct 1: Acts with intent to cause bodily harm. Ct 2: Manslaughter.</p> <p>The appellant was driving his car heavily intoxicated by methyl.</p> <p>The first victim was driving behind the appellant and, after indicating, he pulled out, intending to pass the appellant's car. As he overtook the car, the appellant suddenly, and without any justification, rammed his car into the side of the victim's car. In an attempt to get his car on the road, the victim steered his car back into the appellant's car.</p> <p>The victim tried to get away from the appellant. The appellant pursued the victim at high speed, ramming his car into the victim's car another two times. This forced the victim's</p>	<p>Ct 1: 3 yrs 1 mth imp. Ct 2: 12 yrs 4 mths imp (to commence 8 mths after ct 1).</p> <p>TES 13 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found limited victim empathy and prospects of rehabilitation mitigating.</p> <p>Criminal history showed disobedience to road traffic laws.</p> <p>Sentencing judge found</p>	<p>Dismissed.</p> <p>At [42] ... his Honour's characterisation, when read in context, was not a finding that ct 2 was in the worst category of manslaughter cases generally.</p> <p>At [43] It is clear from what his Honour said that he was agreeing with the prosecutor's submission... that ct 2 was 'in the worst category of motor vehicle manslaughter cases'.</p> <p>At [44] Such a conclusion was, having regard to his</p>

			<p>car sideways into the kerb and to spin onto the wrong side of the road.</p> <p>In a desperate attempt to escape the appellant, the victim sped past a number of cars so that he was in front when the lanes merged into one. With the intention of causing harm to the victim, the appellant drove at a dangerous speed onto the gravel verge. He took over the cars in front of him, causing other motorists to take evasive action.</p> <p>The appellant lost control when at least part of his car was still on the gravel verge. His car suddenly slewed, in a diagonal direction onto the wrong side of the road and into the path of a car being driven by the second victim. They collided head on. The appellant was driving fast enough to stop the second victim's car and push it backwards. The second victim had no opportunity to avoid the collision.</p> <p>The second victim died at the scene. The appellant was pinned in his vehicle with serious physical injuries.</p> <p>The appellant claimed to be the person being pursued.</p>	<p>aggravated by: highly reckless conduct; speed grossly inappropriate for position car was being driven; adversely affected by methyl; victim had no opportunity to take evasive action.</p> <p>Sentencing judge found both cts in the category of the more serious offending of its type; ct 2 in worst category of offending in such cases.</p> <p>Appellant presented with risk factors relating to substance abuse and ability to control emotions.</p>	<p>Honour's findings as to the circumstances of the offending, completely justified.</p> <p>At [50] There is no tariff for manslaughter ...</p> <p>At [53] ...it must be born in mind that both Penny and Brown, and for that matter, Munda, were all decided before the increase in the maximum penalty for manslaughter. Those cases, and the authorities reviewed in them, must be reviewed in that light.</p> <p>At [57] Anyone who drives intoxicated by methyl and in that state commits the offence of manslaughter, must expect to receive a significant custodial penalty.</p> <p>At [61] Ct 1 carries a maximum penalty of 20 years' imp. On any account, the sentence imposed on that ct was lenient, particularly having regard to the persistency of the appellant's</p>
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					attempts to harm (the first victim), the use of his motor vehicle as a weapon, and the terror the appellant inflicted upon (the second victim).
2.	<p><i>Thomas v The State of Western Australia</i></p> <p>[2014] WASCA 202</p> <p>Delivered 05/11/2014</p>	Convicted after PG.	<p>1 x Manslaughter.</p> <p>The deceased (aged 62 yrs and the cousin of the appellant's partner) became involved in an argument between the appellant and his partner. The deceased became heated and started hitting the appellant with her fists. The appellant walked outside and the deceased followed him. She was carrying an Aboriginal ceremonial stick, a waddy, which was about a metre long.</p> <p>The deceased approached the appellant from behind as he was walking away. The appellant ended up facing the deceased and the deceased stuck him in the arm with the waddy, causing a fracture. The deceased then raised the waddy vertically in both hands to about shoulder height and struck the appellant to the head. The appellant reacted by grabbing hold of the waddy with both hands and pulling it towards him. He took possession of the waddy and immediately raised it and struck the deceased to the head twice. The second strike knocked the deceased unconscious and she fell heavily to the ground. The appellant stuck the deceased at least twice more to the body as she fell to the ground.</p>	7 yrs 6 mths imp.	<p>Dismissed – on papers.</p> <p>Sole ground of appeal was failure to award 25% discount.</p> <p>At [16] This case should not be taken as authority for the proposition that in circumstances where the State reduces a charge because of the unexplained absence at trial of a central witness, an immediate plea of guilty to the reduced charge is a plea made at the first reasonable opportunity for the purpose of s 9AA(4).</p> <p>At [19] Where the objective/utilitarian benefits of a willingness to plead guilty are reduced because of the State's reasonable refusal to accept an earlier offer to plead guilty to a lesser offence, it is proper to take into account the offender's</p>

			<p>A post-mortem examination showed that the deceased had suffered a depressed compound fracture of the skull with associated traumatic brain injury and fractures of the fourth to seventh ribs. She also suffered a collapsed lung and had multiple bruising and deep lacerations to her skull.</p>		<p>delay in offering to plead to the lesser offence.</p> <p>At [20] In this case there was no reduction in the discount attributable to the circumstances in which the State accepted the plea, being the unexplained disappearance of the State's central witness. Whether that could and should have been taken into account either in determining whether the plea was made at the first reasonable opportunity or in the exercise of the discretion in s 9AA(2) does not arise for determination in this application for leave.</p>
1.	<p><i>The State of Western Australia v Camus</i></p> <p>[2014] WASCA 74</p> <p>Delivered 10/04/2014</p>	<p>22 yrs at time of offending. 24 yrs at time of sentencing.</p> <p>Convicted after trial (acquitted of murder).</p> <p>No prior criminal record.</p> <p>Grew up in a small village in France.</p> <p>Qualified accountant.</p>	<p>1 x Manslaughter.</p> <p>The respondent, with two friends, had been celebrating Christmas eve at their home. They were drinking heavily. Early in the hours of Christmas morning, the 3 travelled by taxi intending to go into the Bungalow Bar. Due to the level of their intoxication they were refused entry. The respondent and his two friends gathered near the Oasis Bar.</p> <p>The deceased was visiting Broome with his girlfriend and cousin. They had been drinking</p>	<p>4 yrs 6 mths imp.</p> <p>EFP.</p> <p>Co-operated with Police; extent was limited by lack of recollection.</p> <p>No remorse or contrition.</p> <p>Chief Justice found that the respondent did not go into town with the</p>	<p>Allowed. (Pullin J dissenting).</p> <p>Re-sentenced to 6 yrs 6 mths imp.</p> <p>At [102] In the present case, the respondent's offending was very serious.</p> <p>At [103] ... The offending was completely out of character.</p>

		<p>Came to Australia to learn English & travel; speaks limited English.</p> <p>Good character.</p>	<p>heavily at his house and then in the Oasis Bar and the Bungalow Bar. The deceased became involved in a fight and struck another patron and a bouncer. He was ejected and had to be physically removed by bouncers. The deceased, his girlfriend and cousin moved towards the Oasis Bar.</p> <p>The respondent's group and the deceased's group came into contact near the Pearler's Bar. For no reason the deceased struck one of the respondent's friends then walked away. A remonstrance occurred between on the deceased's cousin and the respondent's friends. The victim, on seeing the altercation ran back to the group.</p> <p>The deceased viciously assaulted the respondent's two friends, including a seriously injuring one. The respondent, having witnessed the assault on his two friends, followed the deceased.</p> <p>The respondent was confronted with the deceased acting in a threatening and aggressive manner. The respondent; in possession of a knife (in his possession by chance); stabbed the deceased 3 times in the upper torso, one of which punctured the ventricle chamber of the heart & lungs.</p> <p>The deceased then walked away from the area where the stabbing occurred. He was then set</p>	<p>intention of using the knife was a weapon, but that for 'some reason or another, was found in possession of it'.</p> <p>Chief Justice formed view that the respondent was very intoxicated and had no memory of the events of the evening because of his intoxication.</p> <p>His Honour found there was no planning or premeditation.</p> <p>Chief Justice findings left open the possibility that the respondent had acted in self-defence, but in the heat of the moment exceeded what was reasonable force to repel the victim's aggression.</p> <p>Low risk of violent re-offending.</p> <p>Good prospects of rehabilitation.</p> <p>NB: At time of sentencing</p>	<p>At [107] ... When the sentence is evaluated in the context of all relevant facts and circumstances, and all relevant sentencing factors, it is apparent that the sentence did not properly reflect the respondent's culpability...</p> <p>At [108] Further, the sentence did not properly recognise the importance of generally deterring the use of weapons within the community to cause life-threatening injury or the value which Parliament has placed on human life.</p> <p>At [109] ... The sentence was not merely lenient. It was substantially outside the sentencing range open to the trial judge on a proper exercise of his discretion...</p>
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<i>Maximum penalty increased to life imprisonment (17/03/2012)</i>					
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					