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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
PSR	pre-sentence report
susp	suspended
AOBH	assault occasioning bodily harm
DDOGBH	dangerous driving occasioning grievous bodily harm
VRO	violence restraining order
VROI	video record of interview

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	***Francis v The State of Western Australia*** **[2019] WASCA 43** Delivered 06/03/2019 (Appeal by both Offender and State)	24 yrs at time offending. 26 yrs at time sentencing. Convicted after PG (20% discount). Minor criminal history; cannabis use and traffic record. MDL disq 9 mths for offence of driving whilst suspended at time offending. Raised in a loving, supportive and hardworking family; happy upbringing; some hardships mainly in the form of bullying. Supportive ex-partner; shared custody of child; aged 4 yrs at time sentencing; devoted father. Good work history. No history of illicit substance use.	Ct 1: Manslaughter. Ct 2: Failing to stop and render assistance. Ct 3: Failing report an incident. Francis was driving a motor vehicle, with two passengers, when he saw the deceased, aged 15 yrs, riding his trail bike on the same road. Francis mistakenly believed the bike to be one stolen from him several months earlier. With the intention of stopping the deceased and retrieving the bike Francis pursued the deceased at speed, exceeding the 50 km/h speed limit for the area while he did so. The deceased, fearful at being chased for no reason, sped up in an attempt to get away. Still being pursued by Francis, the deceased rode through a four-way intersection at speed against a 'give way' sign. The deceased's bike crashed with considerable force into another vehicle driving through the intersection. He was thrown from the bike and suffered critical injuries. He died the following day. Francis drove up to the intersection and, on seeing the bike did not belong to him, continued through the intersection and drove home. He failed to stop to render assistance	Ct 1: 5 yrs 6 mths imp. Ct 2: 18 mths imp (cum). MDL disq 3 yrs. Ct 3: 18 mths imp (conc). MDL disq 3 yrs. MDL disq to be served conc. TES 7 yrs imp. EFP. The sentencing judge found the manslaughter offence was aggravated by Francis travelling well in excess of the 50 km/h speed limit, at a speed of 75 km/h; in a built-up residential area with a risk to other road users; he gave chase in a car that he knew had electrical and mechanical faults; he put his passengers at risk; the offending involved vigilante behaviour and he was driving when he was not authorised to do	Dismissed. State appeal challenged individual sentences and totality principle. Appellant challenged length of sentence (ct 1) and totality principle. At [58] – [72] Discussion on comparative cases. At [75] Mr Francis made the reckless decision to pursue a person who he thought was riding his stolen trail bike. That act of vigilantism was directed at an innocent 15-yr-old boy … riding his own trail bike. [His] act of intimidation resulted in the tragic death of the deceased, with a devasting effect on his family. The offending was significantly aggravated by the fact that [he] was driving at excessive speed, in a built-up area, while his licence was suspended.

			and did not report the incident to police.	so. The sentencing judge found Francis' culpability as being 'between the middle and higher end of the range of seriousness for offences of manslaughter, when that offence is committed with a motor vehicle'. The sentencing judge found the offence of failure to stop was aggravated by Francis being responsible for the injuries caused to the deceased; he was aware both vehicles had been badly damaged and that two persons were potentially injured; the deceased critically; his actions made his two passengers complicit in his failure to stop and render assistance; he did not reconsider and return to the scene; instead he continued to conceal his involvement until the police came to his home.	At [76] … the fact that Mr Francis was prepared to chase the deceased in a vehicle with known defects elevates the level of recklessness involved in his conduct. At [77] … The sentencing judge accepted that Mr Francis did not intend to knock down the trail bike, and failed to appreciate the danger created by his driving and pursuit of the deceased. … [he] did not drive in a manner which made a serious collision inevitable or almost inevitable. He did not strike or come into contact with the trail bike, and did not use his vehicle as a weapon intended to cause harm to persons or property. However … [he] intended to place the deceased under pressure so that he would stop and [he] could retrieve what he thought was his trail bike. That intentional act of intimidation had the effect of placing the deceased in

				Remorseful; insight into the impact of his offending; cooperative with police. Devastating impact on deceased's family.	danger and causing him to travel through the intersection without giving way, resulting in his tragic death. Furthermore, it must also be borne in mind, … that [he] had two passengers in the car, who were put at risk by [him] engaging in the dangerous chase. At [78] The act of driving off after the accident was particularly callous. At [94] The present case involves a serious example of a failing to stop and assist offence. …
9.	***TDO v The State of Western Australia*** **[2018] WASCA 135** Delivered 02/08/2018	36 at time offending. 38 at time sentencing. Convicted after PG (15% discount). Prior criminal history; including stealing; fraud; receiving; poss stolen or unlawfully obtained property; AOBH and drug offending; no previous sentences of imp. Positive upbringing; good	1 x Manslaughter. TDO was in a personal relationship with the co-offender CM. She was also friends with the co-offenders JP and MH and she knew the victim. Aware that JP wanted to confront the victim over an alleged drug debt TDO arranged for JP to meet the victim at CM's home. Under a false pretext relating to drugs TDO collected the victim from a train station and drove him to CM's house. She persuaded the	7 yrs 4 mths imp (but for undertaking to give evidence, 9 yrs 8 mths imp). The sentencing judge found the appellant played a critical role in the offending; the assault was planned and she coordinated the arrangements which enabled it to take place; she used deception to	Allowed. Appellant challenged length of sentence. Re-sentenced to 5 yrs 8 mths imp. EFP. At [47] … the term … arrived at … was not broadly consistent with the sentencing pattern revealed by the prior cases.

		relationship with her family. Completed yr 12; tertiary certificates. Single; 12 yr old son. Unemployed at time offending; previous work for accounting and business enterprises; stable employment history until 2010; sporadic work history since 2010 as personal trainer and gymnasium instructor. Suffered death of boyfriend when aged 21 yrs and stillbirth of second child. History of illicit drug abuse; using methyl at time offending.	victim to enter the home and did not tell him JP was in the house waiting for him, knowing it was likely he would be assaulted. When they entered JP approached the victim with a shotgun. Observing the gun TDO fled the premises. JP and CM then bashed the victim to death and placed his body in a garden shed. The house was then cleaned by CM and others. Later that night JP and MH told TDO the victim was dead. She was present when the victim's clothing and rings were burnt. The following morning TDO noticed the car she had driven to collect the victim was missing. She was told by JP it had been destroyed because the victim had been inside it. She informed the registered owner of the car and told them to report the vehicle stolen to police. The next day JP and CM removed the victim's body, and with the help of another person, disposed of it in the ocean. His body has never been recovered.	induce the victim to go to the house; she fled the home and did nothing to obtain assistance for the victim; the assault on the victim was prolonged and brutal; she arranged for the car to be reported as stolen to conceal her responsibility for the offence and the disposing of the victim's body was callous and as a consequence of the events she had put in motion she was 'subsequently complicit in concealing the crime'. Co-operative with police; prepared to give evidence as a witness at trial of co-offenders.	At [48] The appellant knew that the confrontation between [JP] and [the victim] would involve an assault upon [the victim] with a significant level of violence. … The appellant accepted that death was a reasonably foreseeable consequence of the kind of assault which the appellant had in contemplation. … However, there was no finding that the appellant subjectively foresaw that the assault would be of such a nature as might result in death. At [49] The appellant was not aware, … that [JP] would have a firearm. … There was no evidence that the firearm was used in the assault on [the victim]. … the extent to which the appellant's failure to assist [the victim], by contacting the police, increased the seriousness of her offending must be evaluated in the whole of the context, including that the appellant feared for her own

					safety, when [JP] produced the shotgun … in our opinion, the appellant's failure to contact the police did not, in all of the circumstances, significantly increase the seriousness of her offending. At [50] Although the appellant's participation in the offending involved serious criminality, her culpability in relation to events after she had deceived [the victim] and lured him to [CM's] house was limited. In particular, the appellant did not remain at the house and take part in or witness the assault …; she did not have any involvement in moving or disposing of [the victim's] body; she did not participate in cleaning the house …; she did not suggest that the car used to transport [the victim] be damaged or destroyed … At [51] The degree of seriousness of the appellant's offending did not, in our view, place her offence

					towards the upper end of the scale of seriousness of offences of this kind.
8.	***Brewerton v The State of Western Australia*** **[2017] WASCA 191** Delivered 20/10/2017	40 yrs at time offending. Convicted after PG (15% discount). Prior criminal history; no relevant driving convictions. Born in New Zealand; eldest of five children. Non-Australian citizen; permanent resident. Parents and three siblings still reside New Zealand; supportive family. Active member of a Christian church; supportive members. Educated to yr 12; employed mostly real estate industry. Medicated for epilepsy; subject to seizures involving an impairment of consciousness, capable of functioning and performing tasks, but unaware of what he is doing.	1 x Manslaughter. 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. 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. As a result of the collision the taxi driver suffered multiple injuries from which he died a short time later.	5 yrs imp. MDL disq 10 yrs. EFP. 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. 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	Allowed (MDL disq only). 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. MDL disq substituted with a disq of 5 yrs. 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. 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

				aggravating factors. The sentencing judge found the prospects of the appellant's deportation as a result of the conviction not a relevant sentencing factor. 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. Truly remorseful; low risk of reoffending.	been given an opportunity to consider them. Plainly, the 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 … 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…. 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. 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 including his PG and having regard to the maximum penalty for manslaughter, we do not regard the sentence … as manifestly excessive. 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.
7.	***Liyanage v The State of Western Australia*** **[2017] WASCA 112**	36 yrs at time sentencing. Convicted after trial (acquitted of murder). Born in Sri Lanka; arrived in Australia 2011.	1 x Manslaughter. The deceased and Liyanage were married. The deceased was violent and controlling and he regularly assaulted Liyanage and threatened to harm her family. He forced her to watch	4 yrs imp. EFP. The sentencing judge took into account the history of domestic violence and	Dismissed. Liyanage challenged length and type of sentence. At [285] Striking a person to the head with a heavy metal

	Delivered 22/06/2017	Supportive family and good support network in the community. Medical doctor; employed at a hospital. Exemplary character; model prisoner while on remand.	pornography (much of which depicted child abuse), to participate in his sexual conduct with other women and to perform sexual acts in front of an active web-camera. 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. 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.	considered the offence was too serious to be suspended. The sentencing judge accepted Liyanage's acted in defence of another, in order to prevent harm to K. 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. Remorseful; acceptance of responsibility; no risk of reoffending.	mallet is highly likely to cause death or life-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. 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. 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.
6.	***Al Jrood v The State of Western Australia*** **[2016] WASCA 73** Delivered 03/05/2016	22 yrs at time offending. Convicted after trial. No prior criminal history. Showed remorse and empathy for the family of the deceased and accepted responsibility for his offending. Educated to yr 12; university studies; trained and worked in the security industry; good work ethic. Good physical and mental health. No history of illicit substance use. Prior good character.	1 x Manslaughter. Al Jrood's group of friends and the deceased's group of friends crossed paths. The deceased was significantly intoxicated. Members of each group began arguing and Al Jrood punched the deceased once to the head. The deceased fell, hitting his on the road. 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.	9 yrs imp. EFP. Al Jrood's assault was unprovoked, unexpected, sudden and forceful. 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. 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. Remorseful; minimal risk	Appeal allowed. Al Jrood challenged length of sentence. Re-sentenced to 7 yrs imp. EFP. At [29] The trial judge failed to take into account the appellant's minimal risk of reoffending. 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.

				of reoffending, accepted some responsibility for offending.	
5.	***Marshall v The State of Western Australia*** **[2015] WASCA 156** Delivered 10/08/2015	32 yrs at time sentencing. Convicted after PG. Criminal history, including two convictions of AOBH. Parents separated when aged six; both parents drug users; exposed to drug use and violence as a young child. Completed school to yr 10. Two significant personal relationships; son aged 13 yrs. Stable employment from 2005. Diffuse brain injury from car accident in 1999; neurocognitive disorder. Uses illicit substances. Serving a term of susp imp at time offending.	1 x Manslaughter. 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. 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. 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. The appellant and the deceased struck each other with the weapons they were holding. Both fell to the ground. The golf club broke	7 yrs 6 mths imp. Sentencing judge found that the appellant's neurocognitive impairment played a part in his overreaction to the attack upon him by the deceased. Sentencing judge found the appellant genuinely remorseful. 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. Psychiatrist concluded moderate risk of reoffending and psychologist concluded low to moderate risk of reoffending.	Dismissed. 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. At [52]-[61] Discussion of comparable cases. 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.

			and the appellant used the shaft of the club to stab the deceased five times in the back, with considerable force. Two of the wounds were fatal. One penetrated the deceased's right lung and extended through his diaphragm into his liver. The second wound extended through the deceased's left lung, his heart and to his anterior chest wall, ending just behind his breast plate, which was fractured. The appellant telephoned an ambulance and waited at the scene until the ambulance and police arrived. When the police arrived, the appellant told them he had caused the injuries. The appellant admitted that he wanted to hurt the deceased enough to cause him to leave, but did not intend to kill him.		
4.	***Stagno v The State of Western Australia*** **[2015] WASCA 115** Delivered 05/06/2015	28 yrs at time offending. Convicted after trial. Criminal history, including drugs, firearms and traffic offences. Appellant already serving TES 8 yrs imp for drugs and firearms offences (see ***Stagno v The State of Western Australia*** [2013] WASCA 166). Left school at age 15; strong	1 x Manslaughter 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. 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	9 yrs imp (to start 5 yrs after drugs and firearms sentence). TES 14 yrs imp. EFP. Appellant received some mitigation for offering to PG to manslaughter prior to trial. Remorseful, although this was tempered by his	Dismissed – on papers. 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…

		employment history. History of drug use; participated in drug counselling while in custody. The appellant's girlfriend convicted of manslaughter and sentenced to 5 yrs 4 mths imp.	victim's house and fired a number of bullets at a car in the driveway. The victim was very angry and agitated. 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. 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.	conduct after the victim was killed. Reasonable prospects for rehabilitation.	
3.	***Beard v The State of Western Australia*** **[2015] WASCA 74** Delivered 09/04/2015	36 yrs at time sentencing. Convicted after late PG. Significant criminal history including speeding, drink driving, reckless driving and AOBH. Relatively normal childhood; completed yr 12. Unemployed at time offending; stressed. Two children from prior relationships.	Ct 1: Acts with intent to cause bodily harm. Ct 2: Manslaughter. The appellant was driving his car heavily intoxicated by methyl. 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. The victim tried to get away from the appellant. The appellant pursued the victim at	Ct 1: 3 yrs 1 mth imp. Ct 2: 12 yrs 4 mths imp (to commence 8 mths after ct 1). TES 13 yrs imp. EFP. Sentencing judge found limited victim empathy and prospects of rehabilitation mitigating. Criminal history showed disobedience to road traffic laws.	Dismissed. 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. 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'.

		History of drug use.	high speed, ramming his car into the victim's car another two times. This forced the victim's car sideways into the kerb and to spin onto the wrong side of the road. 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. 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. The second victim died at the scene. The appellant was pinned in his vehicle with serious physical injuries. The appellant claimed to be the person being pursued.	Sentencing judge found 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. 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. Appellant presented with risk factors relating to substance abuse and ability to control emotions.	At [44] Such a conclusion was, having regard to his Honour's findings as to the circumstances of the offending, completely justified. At [50] There is no tariff for manslaughter … 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. 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. 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 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.	***Thomas v The State of Western Australia*** **[2014] WASCA 202** Delivered 05/11/2014	Convicted after PG.	1 x Manslaughter. 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. 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	7 yrs 6 mths imp.	Dismissed – on papers. Sole ground of appeal was failure to award 25% discount. 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). 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

			deceased at least twice more to the body as she fell to the ground. 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.		offence, it is proper to take into account the offender's delay in offering to plead to the lesser offence. 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.
1.	***The State of Western Australia v Camus*** **[2014] WASCA 74** Delivered 10/04/2014	22 yrs at time of offending. 24 yrs at time of sentencing. Convicted after trial (acquitted of murder). No prior criminal record. Grew up in a small village in France.	1 x Manslaughter. 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.	4 yrs 6 mths imp. EFP. Co-operated with Police; extent was limited by lack of recollection. No remorse or contrition. Chief Justice found that	Allowed. (Pullin J dissenting). Re-sentenced to 6 yrs 6 mths imp. At [102] In the present case, the respondent's offending was very serious. At [103] …The offending

		Qualified accountant. Came to Australia to learn English & travel; speaks limited English. Good character.	The deceased was visiting Broome with his girlfriend and cousin. They had been drinking 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. 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 remonstration occurred between on the deceased's cousin and the respondent's friends. The victim, on seeing the altercation ran back to the group. 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. 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.	the respondent did not go into town with the intention of using the knife was a weapon, but that for 'some reason or another, was found in possession of it'. Chief Justice formed view that the respondent was very intoxicated and had no memory of the events of the evening because of his intoxication. His Honour found there was no planning or premeditation. 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. Low risk of violent re-offending. Good prospects of rehabilitation.	was completely out of character. 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… 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. 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…

			The deceased then walked away from the area where the stabbing occurred. He was then set upon violently, by others whom were associated with the person the deceased assaulted earlier in the Bungalow Bar; apparently not realising that he was fatally wounded. They punched and kicked him while he was on the ground. Their attack did not accelerate the deceased's death. He had already been fatally wounded by the respondent. The respondent was found the next morning by an ambulance officer. He was asleep on a driveway near the hospital. He was missing his trousers. He got up and walked home and attended work as normal, 2 days later.	**NB:** At time of sentencing max penalty was 20 yrs imp. Now life imprisonment.	
Maximum penalty increased to life imprisonment (17/03/2012)					
Transitional provisions repealed (14/01/2009)					
	Transitional provisions enacted (31/08/2003)				