

Arson, Breach of Duty by Person in Control of Ignition Source or Fire, and Bush Fire

ss 444 & 445A *Criminal Code*
s 32(2) *Bush Fires Act*

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
11.	<p><i>Biruta v The State of Western Australia</i></p> <p>[2019] WASCA 52</p> <p>Published 02/04/2019</p>	<p>50 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Minor criminal history; two prior convictions for dishonesty offending.</p> <p>Happy and pro-social upbringing; very close family; no violence, drug use or dysfunction.</p> <p>Left school aged 14 yrs.</p> <p>Married; separated 11 yrs; three children; one aged 15 yrs time offending.</p> <p>Employed part-time prior to workplace injury after offending; on worker's compensation at time sentencing.</p> <p>Significant financial troubles leading up to offending.</p> <p>Good physical health; suffers from and medicated</p>	<p>Ct 1: Arson. Ct 2: Fraud.</p> <p>Biruta was struggling to repay a credit card debt. She and two co-offenders, her son Ferritto-Di Franco and Dulson, formed a plan to destroy her car so she could claim the insurance money.</p> <p>Biruta drove her vehicle to a hospital where she was to be admitted for treatment, parking it in the hospital's carpark. Later that day the two co-accused visited her in hospital, where she gave Ferritto-Di Franco the keys to her car, knowing he intended to take it and destroy it by setting it on fire.</p> <p>Ferritto-Di Franco drove Biruta's car from the hospital carpark. Dulson followed in her car. Ferritto-Di Franco later drove the car to a semi-rural area where he doused it in petrol and set it on fire. Dulson remained close by in her car and then drove him from the scene.</p> <p>The car was completely destroyed.</p> <p>The next day, Biruta reported her car stolen to police. She also informed her insurer and commenced an insurance claim.</p> <p>During an interview with a representative of her insurer Biruta indicated she did not know who had taken her car and that she had no involvement in either its theft or damage.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 8 mths imp (cum).</p> <p>TES 2 yrs 8 mths imp. EFP.</p> <p>The sentencing judge noted the seriousness of arson offences and found the appellant deliberately targeted her own vehicle to obtain a financial benefit; the offending was premeditated; she acted as leader and instigator, in concert with her 19 yr-old son and she alone made the claim for insurance as a calculated and premeditated act of dishonesty.</p> <p>The sentencing judge found the appellant involved others, including her son, for the sole purpose of benefiting herself financially and she maintained her deception when interviewed.</p> <p>The sentencing judge</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence for ct 1; totality and parity principles.</p> <p>At [38] While the appellant's offence was by no means the most serious example of an offence of criminal damage by fire, it nevertheless exhibited serious elements. It was premeditated, done for commercial gain and done in concert with others.</p> <p>At [39] ... the appellant's sentence ... on ct 1 cannot be seen as manifestly excessive. To the contrary, it lies at the bottom of the range of sentences commonly imposed for less serious cases of arson, at a time before the max sentence was increased to life imp. ...</p> <p>At [42] Both the appellant and her son were sentenced on the basis that the appellant had led her son</p>

		for depression and anxiety.	<p>She was later interviewed by a private investigation company and denied any involvement in the theft of her car or to engaging a third party to take it.</p> <p>Biruta received an insurance payment of \$11,782.98 for her car.</p>	<p>found the appellant to be significantly more culpable than her son; she was the architect of the plan and the beneficiary of the fraud.</p> <p>Remorseful.</p>	<p>into committing the offences. That finding, of itself, amply justified the imposition of a higher sentence ... than was imposed on her son. Moreover, [her] son was 19 yrs old when he was sentenced, and thus had the significant mitigating benefit of youth. ... [Her] son also PG at an earlier stage, resulting in a high discount under s 9AA.</p>
10.	<p><i>Hope v The State of Western Australia</i></p> <p>[2019] WASCA 12</p> <p>Published 16/01/2019</p>	<p>51 yrs at time of offending.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Victim of serious crimes as a child; suffers continued adverse effects of this offending.</p> <p>Single; never married.</p> <p>History of paid employment; unemployed at time offending; in receipt of workers' compensation payout.</p> <p>Close to her mother and sister; no other close</p>	<p>Ct 1: Arson. Ct 2: Att fraud.</p> <p>Hope was living in a house with her sister. Both contributed to the mortgage and it was accepted they were joint owners of the property. The home and its contents were insured.</p> <p>A deliberately lit fire caused soot and smoke damage to the interior of the home. No charges were laid in respect of this fire.</p> <p>About a week later Hope and her sister prepared to leave the house. Hope remained inside a short time while her sister waited for her outside. She set fire to some items in her bedroom, then left the home, locking the house as she left.</p> <p>The fire spread through the house and emergency services attended. The fire caused significant damage to the house and its contents.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 6 mths imp (cum).</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentenced on the basis that the lighting of the fire the subject of ct 1 was not the only occasion the appellant had set fire to the house.</p> <p>Low risk of reoffending; prison more onerous due to the appellant's physical and mental health.</p>	<p>Dismissed.</p> <p>Appeal concerned error in finding (appellant lit first fire) and type of sentence.</p> <p>At [56] ... it was well open to the learned sentencing judge, ... to be satisfied beyond reasonable doubt that the appellant was the person who caused the [first] fire ... There is no other reasonable inference open on the evidence adduced at trial.</p> <p>At [82] The ... sentencing judge correctly characterised the arson offence as 'a very serious</p>

		<p>relationships.</p> <p>Significant chronic health problems; including severe dermatitis and allergies; experiences of depression, anxiety and stress; once attempted suicide.</p>	<p>A claim was made to the insurance company on the house and contents policy. Hope represented to the company that she did not know how the fire started. A payment was later made to her sister, but not to Hope.</p>		<p>crime'. ... the appellant deliberately caused the house to be damaged by fire. The property was in a built-up area and there was a risk of the fire spreading to other properties. ... the appellant's actions resulted in the need for fire and emergency services personnel to attend the house and place themselves at risk in fighting a fire that was still burning.</p> <p>At [83] ... the earlier fire shows that the offence ... was not isolated and shows that the appellant was determined to carry out her wish to damage the house by fire. The offence could not be characterised as spontaneous. ... A serious additional aspect of the appellant's offending was that the appellant att to obtain ... half of the proceeds of the insurance claim. ...</p> <p>At [86] ... his Honour was right to conclude, ... that it was not open to him, in the</p>
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					circumstances, to impose a susp term of imp, and that the only appropriate sentence was immediate imp.
9.	<p><i>Squance v The State of Western Australia</i></p> <p>[2018] WASCA 25</p> <p>Published 27/02/2018</p>	<p>38 yrs time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Prior criminal history; offences of damage but not involving fire.</p> <p>Unsettled and angry in childhood and adolescence; parents separated aged 2 yrs.</p> <p>Lived with father from aged 13 yrs; volatile relationship; became involved with drugs and negative peer groups; then homeless.</p> <p>Disruptive at school; suspended aged 16 yrs.</p> <p>Short-term periods of work in labouring and factory jobs; disability pensioner time of offending.</p> <p>Teenage daughter; raised</p>	<p>1 x Arson.</p> <p>In the early hours Squance set fire to a commercial barge, using a canister of fuel. He then left the area.</p> <p>Emergency Services extinguished the fire, but the barge and various tools and equipment were extensively damaged.</p> <p>Cost of repairs and replacement of damaged property \$26,500. Loss of income approx. \$10,000.</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge observed the fire caused very significant damage; the use of an accelerant and the real risk it could spread; it was lit in the early hours of the morning, when it might be expected to take longer for the fire to be detected and it was necessary for resources to be deployed to extinguish the fire.</p> <p>The sentencing judge noted the appellant's mental illness had been difficult to treat, partly because of the resistant nature of his schizophrenia and partly because of his resistance to compliance; need to protect the community and to ensure that persons are aware of the need to</p>	<p>Dismissed.</p> <p>Appeal concerned error of principle re appellant's mental illness and length of sentence.</p> <p>At [46] ... This was a relatively serious example of the offence of criminal damage by fire ... having regard both to the extent of actual damage caused and the damage which could potentially have been caused if the fire had spread further. The fact that the appellant started a fire in a public area in the early hours of the morning and then simply left the area for the fire to take hold, and potentially spread, is an agg feature of the offence.</p> <p>At [48] The appellant's mental illness is a mitigating factor which reduces his moral</p>

		<p>by an aunt; both parents deemed unfit to care for her.</p> <p>TAFE studies 5-6 yrs prior to sentencing; failed to complete due to drug abuse.</p> <p>History of mental illness; diagnosed paranoid schizophrenic and co-morbid mental and behavioural disorder due to substance abuse; mentally ill time of arrest.</p> <p>History of cannabis and methyl abuse; long history of alcohol abuse.</p>		<p>comply with treatment regimens put in place.</p> <p>Psychiatric report noted management and stability of his mental illness complicated by both substance use and disorganised lifestyle; poor insight into his mental illness; need for ongoing treatment; some symptoms of an enduring nature, unresponsive to treatment and likely to persist.</p>	<p>culpability and the significance of general deterrence as a sentencing consideration. However, the mitigating effect of the appellant's paranoid schizophrenia is counterbalanced by the imperative to impose a sentence which protects the community from future offending by the appellant. It is true that the appellant has not previously committed an offence of this gravity despite his long-standing mental illness. However, the medical evidence indicates that the appellant's uncontrolled mental illness was a significant factor in this arson offence. Combined with his history of poor compliance with treatment requirements and illicit drug use, this indicates a significant risk of future offending of the same general kind.</p>
8.	<p><i>Ashford v The State of Western Australia [No 2]</i></p> <p>[2016] WASCA</p>	<p>20 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p>	<p>Ct 1: False belief. Ct 2: Arson. Ct 3: False belief.</p> <p>At the time of the offences Ashford was a</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 6 mths imp (conc).</p> <p>TES 12 mths imp.</p>	<p>Allowed.</p> <p>Appellant challenged type, not length of sentence.</p>

	<p>222</p> <p>Delivered 08/12/2016</p> <p>Published 19/12/2016</p>	<p>No prior criminal history.</p> <p>Strong family support; no male role model.</p> <p>Struggled at school.</p> <p>Good work history.</p> <p>Use of alcohol and MDMA at time of offending; otherwise no history of illicit drug use.</p>	<p>volunteer bushfire fighter.</p> <p>Ashford called 000 and reported a fire, knowing the fire did not exist (ct 1).</p> <p>The same morning he called 000 to report a fire. Immediately after making the call he set fire to bushland. He and other members of the bushfire brigade attended and spent about 10 minutes extinguishing the fire (ct 2).</p> <p>A few weeks later Ashford called 000 and reported a fire. He and members of the brigade attended. No sign of any fire was found.</p>	<p>The sentencing judge accepted the offending was at the lower end of the scale of seriousness. However agg by the fact he was a volunteer firefighter who knew the risks involved.</p> <p>The sentencing judge took into account the damage caused was negligible and, given the weather conditions, the risk of a serious conflagration was much reduced.</p> <p>Remorseful; recognised his stupidity.</p> <p>Substantial positive steps taken towards rehabilitation.</p> <p>Negligible risk of reoffending.</p>	<p>Re-sentenced to 9 mths imp, susp 9 mths.</p> <p>At [37] ... the unusual features of the appellant's offence placed it very much at the lower end of the range of seriousness of offending of this kind. That, combined with the appellant's personal circumstances, meant that a sentence of immediate imp was not open.</p> <p>At [38] The fire lit by the appellant caused very little damage ... The appellant lit this fire on a day ... on which more than 40 mm of rain had fallen. He called the fire brigade before or substantially at the time as he lit the fire ... the risks arising from the fire ... were of a substantially different magnitude to any ordinary case.</p>
7.	<p><i>Suleiman v The State of Western Australia</i></p> <p>[2017] WASCA 26</p>	<p>27 yrs at time offending. 28 yrs time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Minor criminal history;</p>	<p>Ct 1: Breach of duty by person in control of ignition source or fire. Ct 2: Agg burg. Ct 3: Damage.</p> <p>Suleiman had been in a relationship with the victim, who lived in a unit with their two children.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (to commence 1 yr after the sentence for ct 1). Ct 3: No penalty.</p> <p>TES 4 yrs imp.</p>	<p>Allowed.</p> <p>Appeal concerned procedural fairness relating to psychiatric illness.</p> <p>Resentenced:</p>

Delivered 20/09/2016	<p>including possess and use of cannabis.</p> <p>Born in Kenya; no history of trauma or abuse; homeless as a child in Africa.</p> <p>Permanent resident since 2008; facing deportation on completion of sentence.</p> <p>History of on and off casual part-time employment; unemployed at time offending.</p> <p>7 yr relationship with victim; mother of his two daughters, aged 5 and 4 yrs.</p> <p>Homeless at time offending.</p> <p>Diagnosed paranoid schizophrenic; history of admittance to mental health clinic.</p> <p>Psychiatric report stated that the appellant had an acute relapse of his mental illness at the time of offending.</p>	<p>Suleiman went to the unit and used petrol to set fire to his car parked at the premises. The fire destroyed the car, damaged the carport, and the exterior of the building suffered smoke damage. The fire threatened to spread to the unit, where he knew the victim and his children were inside.</p> <p>When igniting the petrol Suleiman suffered burns to his face and hands.</p> <p>Suleiman then broke a window of the house and climbed inside. The victim and the children took refuge in a bedroom.</p> <p>Inside Suleiman smashed numerous items, before forcing entry into the bedroom that the terrified victim and the children were hiding. He grabbed the victim's phone as she was speaking to police and smashed it. He then forcefully grabbed hold of his youngest daughter and attempted to leave the house with her. Neighbours intervened and persuaded him to hand over his daughter before assisting the victim and his eldest daughter.</p> <p>Suleiman left the scene but was arrested close by a short time later.</p>	<p>EFP.</p> <p>The sentencing judge took into account the appellant's mental illness, but was not satisfied he was suffering an acute relapse of his mental illness to the extent that his judgment was impaired.</p> <p>Remorseful.</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: No penalty.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>At [35] ... in determining the appellant's mental state ... his Honour relied to a significant extent on his personal assessment of the appellant's appearance, and the manner in which the appellant conducted himself, in the electronically recorded interview</p> <p>At [48] ... the sentencing judge's failure to raise with defence counsel that his Honour was proposing to reject the State's concession in relation to [the psychiatrist's] report; and ... the basis on which he proposed to reject the State's concession, denied the appellant procedural fairness.</p> <p>At [49] ... the diagnosis of a mental illness requires</p>
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		Used cannabis since aged 10 and regular user of alcohol.			<p>expert evidence from a psychiatrist and is not to be made by the application of a non-expert's common-sense, rationality and experience.</p> <p>At [56] The only conclusion reasonably open, having regard to [the psychiatrist] reports, is that the appellant had suffered an acute relapse of mental illness at the time of the offending and that there was a causal connection between the relapse and the commission of the offences.</p>
6.	<p><i>Harris v The State of Western Australia</i></p> <p>[2016] WASCA 34</p> <p>Delivered 19/02/2016</p>	<p>43 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, offended after charged with this offence.</p> <p>Traditional Aboriginal from a large family.</p> <p>Irregular employment.</p> <p>User of cannabis since 14 yrs and alcohol and illicit substances, including</p>	<p>Ct 1: Burglary. Ct 2: Arson.</p> <p>The appellant held anger and animosity toward the victim and decided to confront her at her home.</p> <p>The appellant located a samurai sword and attempted to arm herself with it, with the intention of using it to injure the victim.</p> <p>At some point the appellant ascertained that the victim was not at home.</p> <p>The appellant then approached another and asked for a baseball bat or iron bar to assault the victim.</p>	<p>Ct 1: 2 yrs imp. Ct 2: 4 yrs imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP</p> <p>Sentencing judge considered mitigating factor to be the appellant's mental illness; however this did not deprive her of the capacity to differentiate between right and wrong.</p>	<p>Dismissed.</p> <p>Appeal challenged length of sentence of arson offence.</p> <p>At [27] Although the offending involved no real planning it was deliberate and born out of anger and revenge. The appellant's mental state is a relevant mitigating factor, but it remains the fact that she knew that what she was doing was wrong. Her</p>

		<p>amphetamines, since 21 yrs.</p> <p>Paranoid schizophrenic, compounded by illicit substance abuse and complicated by abuse of prescribed medication.</p>	<p>This was refused.</p> <p>The appellant returned and gained entry into the victim's house and deliberately lit some flammable material in a bedroom, which caught fire.</p> <p>The house was extensively damaged by fire.</p>	<p>Appellant's lack of remorse and insight into her mental health and illicit drug problems. High risk of further offending and moderate risk of setting fires.</p>	<p>actions caused extensive damage and,, although there was no one else inside the house, fires in built-up areas have the potential to spread.</p> <p>At [28] The mitigation that could be given to the appellant's mental impairment was limited by the appellant's risk of reoffending; lack of insight into her mental illness; and her entrenched illicit drug use.</p>
5.	<p><i>IEB v The State of Western Australia</i></p> <p>[2015] WASCA 207</p> <p>Delivered 24/07/2015</p> <p>Published 15/10/2015</p>	<p>18 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Lengthy criminal history.</p> <p>Born in West Africa; spent most of childhood in a refugee camp.</p> <p>Using marijuana since age 14 and used synthetic cannabis.</p> <p>Suffers from paranoid schizophrenia and PTSD.</p>	<p><u>Indictment</u> 1 x Arson.</p> <p><u>Section 32 Notice</u> Ch 1: Breach of bail. Ch 2: Breach of CRO.</p> <p>The appellant attended a residential house in Gosnells with a box of matches. No one was home.</p> <p>The appellant went into the backyard, kicked a hole in the wall. He used the matches to light some unknown item and threw that inside with a view to setting the house on fire. He knocked another hole in the side wall, used the matches to light another item, and threw that item inside the opening. Part of the wall and roof structure caught fire, causing smoke and heat damage.</p>	<p><u>Indictment</u> 2 yrs 3 mths imp (conc).</p> <p><u>Section 32 Notice</u> Ch 1: 1 mth imp (conc). Ch 2: forfeiture of \$200.</p> <p>TES 2 yrs 3 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> 16 mths imp (conc).</p> <p><u>Section 32 Notice</u> Not disturbed.</p> <p>TES 16 mths imp.</p> <p>EFP.</p> <p>At [7] ... the prosecuting counsel, the appellant's counsel and the sentencing judge were all unaware of the existence of a letter of</p>

			<p>The appellant was arrested and released on bail. He subsequently failed to answer that bail (ch 1).</p> <p>The arson offence breached a CRO previously imposed by the Children's Court (ch 2).</p> <p>Police obtained a signed witness statement from the appellant. The appellant claimed he was paid \$200 by X to commit the indictable offence.</p>		<p>recognition...</p> <p>At [24] The appellant's cooperation with police included, but went beyond, the provision of the witness statement. Indeed, the provision of the letter of recognition and its contents demonstrate that the appellant's cooperation was regarded by police as of actual and potential assistance.</p>
4.	<p><i>Stokke v The State of Western Australia</i></p> <p>[2015] WASCA 131</p> <p>Delivered 11/03/2015</p> <p>Published 25/06/2015</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including poss of drugs and criminal damage.</p> <p>Good relationships with parents and siblings.</p> <p>Using methyl since age 14; prone to binge drinking.</p> <p>Under influence of alcohol and methyl at time offending.</p> <p>At the time the appellant was sentenced, principal</p>	<p>Ct 1: Stealing. Ct 2: Accessory after the fact to arson.</p> <p>The appellant drove a Holden Commodore, without a valid driver's licence, to a tavern. His brother Kristien was a passenger. The appellant parked the Commodore next to a Holden Astra.</p> <p>Kristien got out of the Commodore and walked over to the Astra. The appellant remained seated in the Commodore. Kristien smashed the window of the Astra and transferred property, valued at \$2,650, to the Commodore. The appellant warned Kristien when strangers left the tavern and walked in their direction.</p> <p>Kristien walked back to the Astra and set fire to the car after realising he had left forensic evidence which might incriminate him. The fire destroyed the car, valued at \$12,300. The appellant was not aware that Kristien intended to commit the arson</p>	<p>Ct 1: 14 mths imp. Ct 2: 30 mths imp (start 6 mths after ct 1).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>Disqualified from holding or obtaining driver's licence for 18 mths.</p> <p>Not premeditated; no remorse; unwilling to accept responsibility for conduct.</p>	<p>Allowed.</p> <p>Re-sentenced to: Ct 1: 7 mths imp (cum). Ct 2: 20 mths imp (cum).</p> <p>TES 2 yrs 3 mths imp.</p> <p>EFP.</p> <p>At [78] The individual sentence imposed upon the appellant for the offence of stealing was, in our view, high, but ... not... manifestly excessive.</p> <p>At [99] ... the correct approach to be taken to the parity principle is to have regard to the TES imposed</p>

		<p>offender Kristien Stokke (appellant's brother) had not yet been sentenced. Kristien was convicted after PG for a number of offences and sentenced to TES 4 yrs 8 mths imp. Individual sentence for stealing was 7 mths imp (conc) and arson was 27 mths imp (conc).</p>	<p>offence. The appellant immediately drove Kristien from the scene.</p> <p>The appellant lied to police to conceal his own involvement and that of Kristien Stokke.</p> <p>CCTV footage recorded the offence.</p>		<p>upon the appellant, on the one hand, and Kristien Stokke, on the other hand, rather than merely the sentences that were imposed for the [stealing and arson] offences...</p> <p>At [103] Even taking into account the matters favourable to Kristien Stokke, it must be said that his overall criminality was much greater than the appellant's. In our opinion, the differences in their criminality is insufficiently reflected in the disparity of 20 mths imp in the TES they received.</p>
3.	<p><i>Rimington v The State of Western Australia</i></p> <p>[2015] WASCA 102</p> <p>Delivered 29/05/2015</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Of previous good character.</p> <p>Led a blameless and hardworking life.</p> <p>Prior to offending, the appellant had separated from his wife and discussions had commenced regarding disbursement of assets.</p>	<p>4 x Arson.</p> <p>All offences occurred on the same date within a short period of time.</p> <p><u>Ct 1:</u> The appellant and his former wife effectively owned and controlled a business premises, situated in a unit. The appellant dispersed petrol within this unit, and ran a rope doused in fuel from the unit into the car park. He ignited the rope causing the unit to be engulfed by fire. The contents were destroyed. The replacement value of the contents totalled \$715,000.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs 9 mths (start 12 mths after ct 1). Ct 4: 4 yrs (start 12 mths after ct 3).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Offending involved some preparation; endangered the lives and safety of other people.</p>	<p>Dismissed.</p> <p>At [77] ...when the maximum sentence for arson was 14 yrs, the range of sentences for an individual offence was up to 4 yrs 8 mths... the maximum sentence has been increased to life imp, indicating that sentences for the offence of arson should be increased from the previous range.</p>

		<p>Suffered from depression at time offending; alcohol likely contributed to offending.</p> <p>Engaged counselling and taking antidepressants prior to sentencing.</p>	<p><u>Ct 2:</u> The fire from ct 1 also caused extensive damage to the neighbouring unit and common fire wall. Cost of repairs totalled \$260,000.</p> <p><u>Ct 3:</u> The appellant went to a residential construction site of a future dwelling that was near completion. The property was effectively owned by the appellant's estranged wife.</p> <p>The appellant entered the house, dispersed petrol and fuel cans, and ran a trail of fuel from the house into the front yard. The appellant ignited the fuel which caused petrol vapours within the house to explode and parts of the house the catch fire. The building sustained heat, explosion and smoke damage. The cost of repairs totalled \$57,160.</p> <p><u>Ct 4:</u> The appellant returned to his home, owned by the appellant and his estranged wife. He doused the house and contents in petrol, removed his housemate's belongings and then parked his car in the garage. He ignited a fuel trail running from within the house to the front yard. The vehicle, dwelling and entire contents were completely destroyed by the fire. The cost of the damage totalled \$460,000.</p>	<p>Motive was to defeat his ex-wife's claim to the properties.</p> <p>Remorseful; good prospects of rehabilitation; low risk of reoffending.</p>	
2.	<p><i>The State of Western Australia v Smith</i></p> <p>[2015] WASCA</p>	<p>28 yrs at time offending; 30 yrs at time sentencing.</p> <p>Convicted of ct 1 after trial; convicted of ct 2 after PG.</p>	<p>Ct 1: Murder. Ct 2: Arson.</p> <p>The respondent was homeless. The victim invited the respondent to stay with him. The second</p>	<p>Ct 1: Life imp. Min non parole period of 17 yrs.</p> <p>Ct 2: Arson: 4 yrs 6 mths imp (conc).</p>	<p>Dismissed.</p> <p>At [49]-[122] and [178]-[180] Discussion of comparative cases.</p>

	<p>87</p> <p>Delivered 04/05/2015</p>	<p>Prior criminal history, including AOBH and dishonesty offences.</p> <p>Dysfunctional childhood; witnessed domestic violence; parents separated when he was five; left home by age 14.</p> <p>Single; father of 7 yr old daughter; no contact with daughter.</p> <p>Supportive mother.</p> <p>History of substance abuse.</p>	<p>night, the respondent and victim drank alcohol at the victim's unit and had an argument.</p> <p>The respondent launched an unprovoked, extremely violent and sustained attack on the victim. Using a coffee table leg, the respondent repeatedly hit the victim on the head, face and arms, causing lacerations and haemorrhages to the head and a fractured nose and lower jaw. The respondent used a knife to repeatedly stab the victim. He stabbed him in the back, which pierced his lung and caused internal bleeding. He cut the Achilles tendon on his left leg. Intending to kill the victim, the respondent inflicted nine wounds to the victim's neck. Several of these wounds severed his jugular vein, which was the likely cause of death.</p> <p>The respondent had no memory of killing the victim. His next memory after the argument is standing over the victim, who was covered in blood and not breathing. The respondent covered the body with a blanket, showered and went to bed. The following morning, the respondent set fire to the unit, to conceal what he had done, and left. The unit was a ground floor unit in a double storey apartment building. The fire gutted the unit.</p> <p>The respondent initially denied the offence. He later made partial admissions but maintained he had no memory of inflicting violence upon the victim.</p>	<p>Depression; antisocial personality; poor coping and problem-solving skills; anger management problems associated with episodes of rage in the context of alcohol abuse.</p> <p>Significant remorse; low risk of reoffending.</p>	<p>At [184] In our opinion, the minimum term of 17 yrs was lenient. If we had been sentencing the respondent at first instance we would have imposed a higher non-parole period. However... we are not persuaded that the minimum term of 17 yrs was below the range open to his Honour on a proper exercise of the sentencing discretion.</p>
1.	<p><i>Bordley v The State of Western Australia</i></p>	<p>38 yrs at time offending.</p> <p>Convicted after early PG.</p>	<p>1 x Wilfully lit a fire.</p> <p>The appellant deliberately set fire to bushland in 3</p>	<p>22 mths imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>At [17] ... We were not</p>

	<p>[2014] WASCA 18</p> <p>Delivered 24/01/2014</p>	<p>Significant criminal record including convictions for property and dishonesty offences.</p> <p>Psychologically challenged childhood and adolescence.</p> <p>Immediately prior to offending, lived in a caravan park for 2 yrs and was completely socially isolated.</p> <p>Abused prescription and over the counter codeine-based medications and experienced withdrawal symptoms.</p> <p>At time of offending was experiencing an acute psychotic episode and symptoms of paranoia, anxiety and opiate dependence.</p>	<p>places over a distance of 500 m in a reserve adjacent to residential and commercial areas. It was a hot summer day with a very high fire danger. The bushland was traversed by public paths, a police station and local fire brigade.</p> <p>A total of 2.3 ha of bushland was burnt before the fires were brought under control by 5 units assisted by 5 police units and municipal officials.</p>	<p>Premeditated.</p> <p>High risk of re-offending.</p>	<p>referred to, and our own research has not unearthed, any cases under s 444 in the relevant period which are comparable.</p>
<p><i>Amendments to s 444 Criminal Code (19/12/2009)</i></p> <p>Maximum penalty increased to life imprisonment (previously maximum penalty was 14 yrs imp or, in circumstances of racial aggravation, 20 yrs imp). Definition of property extended to include vegetation.</p>					

<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Amendments to s 444 Criminal Code (8/12/2004)</i>					
Offence amended to include damage committed in circumstances of racial aggravation (max penalty 20 yrs imp).					
<i>Transitional provisions enacted (31/08/2003)</i>					