

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
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 by an aunt; both parents deemed unfit to care for her.</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 comply with treatment regimens put in place.</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 culpability and the significance of general deterrence as a sentencing</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>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>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 222</p> <p>Delivered</p>	<p>20 yrs at time offending. 21 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p>	<p>Ct 1: False belief. Ct 2: Arson. Ct 3: False belief.</p> <p>At the time of the offences Ashford was a volunteer bushfire fighter.</p> <p>Ashford called 000 and reported a fire, knowing</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>The sentencing judge accepted the offending</p>	<p>Allowed.</p> <p>Appellant challenged type, not length of sentence.</p> <p>Re-sentenced to 9 mths imp, susp 9 mths.</p>

	08/12/2016 Published 19/12/2016	Strong family support; no male role model. Struggled at school. Good work history. Use of alcohol and MDMA at time of offending; otherwise no history of illicit drug use.	the fire did not exist (ct 1). 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). 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.	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. 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. Remorseful; recognised his stupidity. Substantial positive steps taken towards rehabilitation. Negligible risk of reoffending.	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. 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.
7.	<i>Suleiman v The State of Western Australia</i> [2017] WASCA 26 Delivered 20/09/2016	27 yrs at time offending. 28 yrs time sentencing. Convicted after early PG (25% discount). Minor criminal history; including possess and use of cannabis.	Ct 1: Breach of duty by person in control of ignition source or fire. Ct 2: Agg burg. Ct 3: Damage. Suleiman had been in a relationship with the victim, who lived in a unit with their two children. Suleiman went to the unit and used petrol to set fire to his car that had been parked at the premises	Ct 1: 3 yrs imp. Ct 2: 3 yrs imp (to commence 1 yr after the sentence for ct 1). Ct 3: No penalty. TES 4 yrs imp. EFP.	Allowed. Appeal concerned procedural fairness relating to psychiatric illness. Resentenced: Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: No penalty.

		<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>Used cannabis since aged 10 and regular user of alcohol.</p>	<p>for some time. 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>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>TES 2 yrs imp. 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 expert evidence from a psychiatrist and is not to be made by the application of</p>
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					<p>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 amphetamines, since 21 yrs.</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. This was refused.</p> <p>The appellant returned and gained entry into the</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>Appellant's lack of remorse and insight into her mental</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 actions caused extensive damage and, although there was no one else</p>

		Paranoid schizophrenic, compounded by illicit substance abuse and complicated by abuse of prescribed medication.	victim's house and deliberately lit some flammable material in a bedroom, which caught fire. The house was extensively damaged by fire.	health and illicit drug problems. High risk of further offending and moderate risk of setting fires.	inside the house, fires in built-up areas have the potential to spread. 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.
5.	<i>IEB v The State of Western Australia</i> [2015] WASCA 207 Delivered 24/07/2015 Published 15/10/2015	18 yrs at time offending. Convicted after PG. Lengthy criminal history. Born in West Africa; spent most of childhood in a refugee camp. Using marijuana since age 14 and used synthetic cannabis. Suffers from paranoid schizophrenia and PTSD.	<u>Indictment</u> 1 x Arson. <u>Section 32 Notice</u> Ch 1: Breach of bail. Ch 2: Breach of CRO. The appellant attended a residential house in Gosnells with a box of matches. No one was home. 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. The appellant was arrested and released on bail. He subsequently failed to answer that bail (ch 1).	<u>Indictment</u> 2 yrs 3 mths imp (conc). <u>Section 32 Notice</u> Ch 1: 1 mth imp (conc). Ch 2: forfeiture of \$200. TES 2 yrs 3 mths imp. EFP.	Allowed. Re-sentenced to: <u>Indictment</u> 16 mths imp (conc). <u>Section 32 Notice</u> Not disturbed. TES 16 mths imp. EFP. At [7] ... the prosecuting counsel, the appellant's counsel and the sentencing judge were all unaware of the existence of a letter of recognition... At [24] The appellant's

			<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>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 offender Kristien Stokke (appellant's brother) had not yet been sentenced.</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 offence. The appellant immediately drove Kristien from the scene.</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 upon the appellant, on the one hand, and Kristien Stokke, on the other hand,</p>

		<p>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>The appellant lied to police to conceal his own involvement and that of Kristien Stokke.</p> <p>CCTV footage recorded the offence.</p>		<p>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>Suffered from depression at time offending; alcohol</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><u>Ct 2:</u> The fire from ct 1 also caused extensive damage to the neighbouring unit and common fire wall.</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>Motive was to defeat his ex-wife's claim to the</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>

		likely contributed to offending. Engaged counselling and taking antidepressants prior to sentencing.	Cost of repairs totalled \$260,000. <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. 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. <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.	properties. Remorseful; good prospects of rehabilitation; low risk of reoffending.	
2.	<i>The State of Western Australia v Smith</i> [2015] WASCA 87 Delivered	28 yrs at time offending; 30 yrs at time sentencing. Convicted of ct 1 after trial; convicted of ct 2 after PG. Prior criminal history, including AOBH and	Ct 1: Murder. Ct 2: Arson. The respondent was homeless. The victim invited the respondent to stay with him. The second night, the respondent and victim drank alcohol at the victim's unit and had an argument.	Ct 1: Life imp. Min non parole period of 17 yrs. Ct 2: Arson: 4 yrs 6 mths imp (conc). Depression; antisocial personality; poor coping	Dismissed. At [49]-[122] and [178]-[180] Discussion of comparative cases. At [184] In our opinion, the minimum term of 17

	04/05/2015	<p>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>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>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> 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>[2014] WASCA 18</p>	<p>38 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Significant criminal record including convictions for</p>	<p>1 x Wilfully lit a fire.</p> <p>The appellant deliberately set fire to bushland in 3 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</p>	<p>22 mths imp.</p> <p>EFP.</p> <p>Premeditated.</p>	<p>Dismissed – on papers.</p> <p>At [17] ... We were not referred to, and our own research has not unearthed, any cases under s 444 in</p>

	<p>Delivered 24/01/2014</p>	<p>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>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>High risk of re-offending.</p>	<p>the relevant period which are comparable.</p>
<p align="center"><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>					
<p align="center"><i>Transitional provisions repealed (14/01/2009)</i></p>					

Amendments to s 444 Criminal Code (8/12/2004)

Offence amended to include damage committed in circumstances of racial aggravation (max penalty 20 yrs imp).

Transitional provisions enacted (31/08/2003)

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Office of the Director of Public Prosecutions