

# Possess child exploitation material/ child pornography

s220 Criminal Code

s 60(1) Classification (Publications, Films and Computer Games) Enforcement Act

**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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
PNG	plead not guilty
poss	possess
ct	count
CSI	conditional suspended imprisonment
TES	total effective sentence
TOI	trial of issues
DC	District Court
CEM	Child exploitation material
EFP	eligible for parole

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

			<p>the whereabouts of three USB thumb drives he had secreted in his home, which had not been found during the search.</p> <p>Four USB thumb drives and a computer hard drive located at BKJ's home contained 13,498 CEM images ranging from Category 1 through to Category 6 on the Child Degradation Category Chart. Some of these images included him in sexual acts with C.</p> <p>A further 408 digital files were also found, of which 174 consisted of videos from Category 4 and Category 5 on the Child Degradation Category Chart, including 31 showing sexual activity between BKJ and C.</p>	<p>her innocence and of her entitlement to live in a secure and loving home; his conduct was a gross breach of trust by him as C's father; he used C as a sex object for his own sexual gratification, directly, but also vicariously, be disseminating images of the sexual abuse on the internet.</p> <p>The sentencing judge found the offending was representative of a course of conduct over a significant period of time; the offences were planned and premeditated and the respondent groomed and exploited an 'extremely vulnerable' C from a very young age, to the point where he normalised, in C's mind, his sexual behaviour.</p> <p>The sentencing judge described the acts perpetrated upon C as being 'gross and degrading' and done for the respondent's 'perverse</p>	<p>humiliating. ... The respondent recorded, ... his actions. He later viewed it himself. He uploaded the material onto the internet and obtained satisfaction from knowing others might view it. ... The offending has had a profound negative effect upon C ...</p> <p>At [120] ... The leniency of the individual sentences is moderated by the place of those sentences in the TES ... imposed.</p> <p>At [121] ... the individual sentences do not reach – although some of them approach – a degree of leniency which can be characterised as unreasonable or plainly unjust.</p> <p>At [138] By reason of the respondent's voluntary disclosure of the whereabouts of the material which is the subject of ct 59 and the contribution of the sentence for that offence to the TES, we have, ... come to the conclusion that the individual sentence on ct 59 is not manifestly inadequate.</p> <p>At [158] ... the TES that was imposed upon the respondent fell to the lower end of that range. However, we have not been</p>
--	--	--	---	---	---

				<p>sexual gratification’.</p> <p>The sentencing judge found the offences relating to the CEM as ‘offending ... at the highest end’ of its type.</p> <p>No genuine remorse; empathy or insight into his offending.</p> <p>Low-moderate risk of reoffending.</p>	<p>persuaded that it infringed the first limb of the totality principle. ...</p>
10.	<p><b><i>ADP v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 40</b></p> <p>Delivered 27/03/2018</p>	<p>46-52 at time offending. 53 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal history.</p> <p>University studies; post graduate qualification in law.</p> <p>Certified practising accountant.</p> <p>Employed corporate services manager.</p>	<p>Ct 1: Using carriage service to transmit child pornography (Cth). Ct 2: Using a carriage service in way that is menacing, harassing or offensive (Cth). Ct 3: Poss child pornography.</p> <p>ADP was married to GM, together they had two daughters, C and E.</p> <p>After they separated ADP created false profiles on various dating websites using photographs of GM, including intimate photos taken when they were together, her personal particulars and details of where she was living. GM was not aware of the profiles.</p> <p>Using the false profiles ADP engaged in online communications with unknown persons.</p>	<p>Ct 1: 18 mths imp. Ct 2: 2 yrs 6 mths imp. Ct 3: 12 mths imp (to commence 6 mths before commencement of cts 1 and 2).</p> <p>EF release at expiration of 18 mths from commencement of ct 2 upon recognisance \$1,000 to be of good behaviour for balance of term imposed on ct 2.</p> <p>TES 3 yrs imp. EF release after 2 yrs.</p> <p>The sentencing judge found cts 1 and 2 aggravated by the sinister</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle and additional evidence (psychiatric report submitting appellant mentally impaired by depression).</p> <p>At [42] ... the appellant’s overall offending was serious. ... in particular, ... the following: ... The duration of the offences the subject of cts 1 and 2. ... The premeditation and planning involved in the offending. ... The gross breach of trust in the appellant’s use of intimate photographs of GM obtained during their marriage. ... The gross breach of trust in the appellant’s sexualisation of his</p>

			<p><u>Ct 1</u> On one profile ADP stated he was a divorced mother of teenagers. In six of the false profiles he made sexually explicit descriptions of the woman's daughter, that they were under the age of 18 yrs, that they were involved in sexual activity with adult males and were available for sex with other adult males. He gave explicit descriptions of their sexual activities.</p> <p>In other false profiles he stated the woman had a son under 18 yrs who was interested in and available for sexual activity and described explicit sexual activity.</p> <p><u>Ct 2</u> The false profiles created contained personal details relating to GM. ADP stated the woman was available for sexual encounters and described the type of sex she preferred. He engaged in sexually explicit communications with other users of the dating website, masquerading as the woman the subject of the false profiles. ADP told users specific information that related to GM, enabling users of the website to locate her.</p> <p>GM became aware of the profiles when she was approached by men she did not know. She became fearful for her personal safety and that of her daughters.</p> <p><u>Ct 3</u></p>	<p>and cynical manner in which the appellant made his family members the subject of the materials; along with the depravity of the content. Cts 1 and 2 formed part of a course of conduct intended to denigrate GM and the children over an extended period.</p> <p>C profoundly affected by offending.</p> <p>No evidence of contrition; prospects of rehabilitation uncertain.</p>	<p>teenage daughters on the internet. ... The gross invasion of privacy in the appellant's creation of a record on the internet which the complainants are mostly unlikely to be able to erase. ... The fact that sufficient information was provided in the profiles to enable unknown men to contact GM at her work place. ... The significant impact of the offending on the complainants. ... The appellant's apparent motive for the offending, namely acrimony towards GM and their daughters.</p> <p>At [46] ... It was necessary, in order properly to mark the seriousness of the appellant's overall offending, for there to be some accumulation between the sentences ...</p> <p>At [50] ... none of the individual sentences of imp imposed on the appellant is manifestly excessive.</p> <p>At [56] ... the information in the report does not materially advance the appellant's case in the appeal. In particular, we are satisfied that [the psychiatrist's] views as to the appellant's 'propensity towards depression' at the relevant time, based on the appellant's history,</p>
--	--	--	--	---	---

			On ADP's computer 127 images and five videos of CEM were located. Within the CEM category guidelines 90 images were in category 1; 18 images in category 2; three images and one video in category 3; 13 images and four videos in category 4 and three animated images in category 6.		was not a significant mitigating factor in the context of the facts and circumstances of the offending and the other relevant sentencing factors. ...
9.	<b>Gobetti v The State of Western Australia</b>  <b>[2017] WASCA 130</b>  Delivered 11/07/2017	39-43 at time offending. 46 yrs at time sentencing.  Convicted after PG (13% discount).  Minor prior criminal history.  Dyslexic; struggled at school; educated to yr 10.  Inherited farm 2004; worked very long hrs running business since that time.  Married; two teenage children; good husband and father; supportive wife and family.  Long standing links to the farming community in which he lives; families of victims well-known to him; ostracised by local community since offending came to light.  History of substance abuse as a young adult.	Ct 1: Indec recording of child U13 yrs. Ct 2: Indec recording of child 13-16 yrs. Ct 3: Indec recording of child of or over 16 yrs. Ct 4: Poss CEM.  Search warrant executed at the appellant's farm. A computer hard drive and two hand-held video cameras were seized. Admitted were his at search.  Analysis of the hard drive found multiple indecent recordings of young girls surreptitiously made by appellant. Eight recordings were made on six occasions and involved five female children aged 9-12, (ct 1). On sixteen occasions he recorded four female children aged 13-15 (ct 2) and six recordings were taken on five occasions of a female aged 16 (ct 3).  The camera zoom was used to record the groin, breasts and buttocks of the girls, often while they were wearing bathers, playing in his swimming pool or on a trampoline at his property. The videos were about 30 seconds duration and often in a series, recorded on the same occasion	Ct 1:13 mths imp (conc). Ct 2:16 mths imp (cum). Ct 3:16 mths imp (cum). Ct 4: 8 mths imp (conc).  TES 2 yrs 8 mths imp.  EFP.  The judge noted the offending was 'very persistent' and involved multiple victims. And the recordings made and kept so the appellant could indulge a voyeuristic tendency and to satisfy his sexual interest in young girls.  The judge found significant premeditation and planning involved in a number of the recordings and occasions when he had concealed the camera. The recordings were a serious	Dismissed – on papers.  Appeal concerned plea discount; error in excluding reports; totality and hardship.  At [77] His Honour's assessment was that whilst the pleas were entered at a relatively early stage, they were not entered at the first reasonable opportunity ... the delay had resulted in the taking of statements ... He also said that the prosecution case was a strong one ...  At [80] The discount here may have been at the lower end of what was appropriate, but it was a conclusion that was open in the proper exercise of discretion.  At [81] ... the sentencing judge did not disregard the content of the reports furnished by the appellant. His Honour expressed some doubt as to whether the cause for the offending referred to

		<p>Psychologist Report noted the offending could be attributed to stress; an addiction to pornography and difficulties arising from childhood, including sexual abuse at aged 12 by an older girl.</p>	<p>but at different times through the day. A number of the recordings were covertly filmed from an upstairs bedroom or through the window blinds in a dark room. On another occasion he discreetly placed the video camera opposite a mirrored door and filmed the reflection of the victim naked.</p> <p>Also found on the hard drive were 216 images of CEM depicting girls aged between 8 and 15 yrs (ct 4). Within the CEM category guidelines there were 202 images in category 1; One image in category 2, Two images in category 3, and 11 images in category 4.</p>	<p>breach of trust because the children had come to his home to play with his children.</p> <p>The judge found the offending the subject of ct 4 less serious than some other cases because of the relatively low number of images and few images were in the more serious categories.</p> <p>Remorseful; efforts made towards rehabilitation.</p> <p>Low to no risk of sexual reoffending.</p>	<p>in some of the reports could be accepted. These views were only suggested by the report writers, not conclusively determined by them.</p> <p>At [85] The offences in this case represented a course of conduct over a period of almost three yrs. ... The victims were the children of friends and neighbours in the community. The recordings all took place whilst the children were at the appellant's house and under his care and supervision. The offending is seriously aggravated by this significant breach of trust. It is also clear that, in some cases, the offending involved deceit and planning.</p> <p>At [91] ... it was suggested that the appellant's farm depended significantly upon him and that his wife would find it difficult, if not impossible, to manage without him. ...</p> <p>At [95] His Honour plainly accepted that there could be adverse consequences for the farm, but said that this could not justify a sentence different to that that he imposed.</p>
8.	<i>Vucemillo v The</i>	24 yrs at time sentencing.	Ct 1: Using elec comm to procure a child	Ct 1: 2 yrs imp.	Dismissed.

<p><i>State of Western Australia</i></p> <p><b>[2017] WASCA 37</b></p> <p>Delivered 01/03/2017</p>	<p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Parents divorced; second eldest of six children; behavioural difficulties from aged 9 yrs.</p> <p>Physically and emotionally abused by his father.</p> <p>Bullied at school; educated to yr 12; enrolled university course; studies postponed.</p> <p>Left home aged 17 yrs.</p> <p>Medicated for depression.</p> <p>The Psychologist Report noted the appellant displayed features commonly associated with Asperger's Syndrome; including severe problems with social interaction, restricted and repetitive patterns of behaviour and interests and individuals with this disorder can have great difficulty reading non-verbal cues and in determining appropriate interpersonal space.</p>	<p>to engage in sexual activity or expose a child to indec matter. Ct 2: Poss CEM.</p> <p><u>Ct 1</u> Vucemillo placed an online advertisement on Craiglist looking for '... any young girls that want to have some fun... I have got some perverted fantasies'. A police officer posing as a 14 yr-old girl responded and there were regular communications between them of an explicit sexual nature. He offered to buy or give her a new phone to allow further communications. He was arrested when he arrived at a pre-arranged meeting point.</p> <p><u>Ct 2</u> Five images of CEM were found on a thumb drive from Vucemillo's house. Some images appeared to depict female children as young as 7 or 8. The images fell within category 1 of the CEM classification guidelines.</p>	<p>Ct 2: 6 mths imp cum. TES 2 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the appellant believed the person he was communicating with was 14 yrs old. He found the appellant had encouraged and sought to persuade her to engage in sexual activity with him.</p> <p>The sentencing judge accepted the CEM was toward the lower end of the scale of seriousness and that he did not intend to disseminate the images. However the poss of CEM and his communications with a person he believed was 14 yrs demonstrated a sexual interest in underage girls.</p> <p>No insight or remorse for his offending. Moderate to high risk of reoffending.</p>	<p>Appeal concerned a miscarriage of justice due to subsequent diagnosis of autism spectrum disorder, and totality. Individual sentences were not challenged.</p> <p>At [42] ... the symptoms of autism spectrum disorder ... were in substance described in [the] psychological report, in which it was specifically noted that certain of the appellant's attributes were consistent with Asperger's Syndrome. It is evident ... the sentencing judge took those matters into account.</p> <p>At [44] ... There is nothing in this case to suggest that adequate provision could not or would not be made to prevent the exploitation of the appellant, or that... imprisonment would be much more burdensome on the appellant than it would be for an ordinarily prisoner.</p> <p>At [52] ... It may be accepted that the appellant's lack of insight and remorse may at least to some extent be attributable to the appellant's mental impairment and it may also be accepted that the</p>
--	--	--	---	--

					appellant's mental impairment means that general deterrence is to be given less weight. ... it is evident that in the circumstances of this case the existence of that mental impairment increases the need for specific deterrence and the protection of the public.
7.	<p><b><i>PNS v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 174</b></p> <p>Delivered 07/10/2016</p>	<p>44 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and troubling criminal history, including convictions of sexual offending against children in 1998; 2000; 2004 and 2013.</p> <p>Unremarkable upbringing.</p> <p>Single; no dependents.</p> <p>Previous marriage with four step-children; separated after PNS sexually offended against two of the children.</p> <p>Significant gaps in work history.</p> <p>Long history of cannabis use.</p> <p>PNS had undergone intensive sex offender treatment twice.</p>	<p><u>Ind 963 of 2015</u> Ct 1: Indec recording of child 13-16 yrs. Ct 2: Indec recording of child 13-16 yrs. Ct 3: Indec dealings of child 13-16 yrs. Ct 4: Poss CEM. Ct 5: Poss CEM.</p> <p><u>Ind 457 of 2015</u> 1 x Indec dealings of child U13 yrs.</p> <p><u>Section 32 Notice</u> Ct 1: Failing to comply with reporting obligations Ct 2: Poss cannabis (0.9g). Ct 3: Poss smoking implement. Ct 4: Permitted premises to be used for the use of a prohibited drug or plant.</p> <p>Offending spanned almost 5 yrs.</p> <p><u>Ind 963 of 2015 (cts 1- 3)</u> In February 2013, Police executed a search at the PNS' home and found a 4gb thumb drive and 500gb hard drive containing two videos made by PNS. The first video was of victim, J, aged 14 yrs, asleep with his underwear pulled down</p>	<p><u>Ind 963 of 2015</u> Ct 1: 1 yr 4 mths imp (conc). Ct 2: 1 yr 4 mths imp (cum). Ct 3: 1 yr 4 mths imp (cum). Ct 4: 1 yr 8 mths imp (cum). Ct 5: 1 mth imp (conc).</p> <p><u>Ind 457 of 2015</u> 1 yr 8 mths imp.</p> <p><u>Section 32 Notice</u> Ct 1: 4 mths imp (conc). Ct 2: \$100 fine. Ct 3: \$300 fine. Ct 4: 2 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that PNS was at a high risk of sexual reoffending</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences and totality.</p> <p>Re-sentenced on cts on <u>Ind 963 of 2015</u> to:</p> <p>Ct 1: 1 yr 4 mths imp (conc with ct 5 and conc with sentences for all other counts).</p> <p>Ct 2: 1 yr 4 mths imp (conc with ct 3 but cum on the sentence for ind 457 and the sentence for ct 4 on ind 963).</p> <p>Ct 3: 1 yr 4 mths imp (conc with ct 2 but cum on the sentence for ind 457 and the sentence for ct 4 on ind 963).</p> <p>Ct 4: 12 mths imp (cum).</p> <p>Ct 5: 1 mth imp (conc with ct 1 and conc with sentences for all other counts).</p>

			<p>and PNS pulling his buttocks apart, exposing his anal passage (cts 3 and 1). The second video showed J lying down with his erect penis protruding out the top of his underwear. The video focused on the victim's genitalia (ct 2).</p> <p>The drives also contained 381 images and 72 videos of CEM categorised as (ct 4):  Cat 1: 156 images;  Cat 2: 59 images and 26 videos;  Cat 3: 35 images and one video;  Cat 4: 126 images and 41 videos; and  Cat 5: 5 images and 4 videos.</p> <p><u>Ind 457 of 2015</u>  In February 2015 the victim, M, aged 8 yrs, was at a supermarket checkout with her mother. As PNS passed the victim he pressed his fingers between her buttocks over her clothing.</p> <p><u>Ind 963 of 2015 (ct 5)</u>  In May 2015, Police conducted a search of PNS' home and found a laptop containing two images of category 1 CEM, which PNS admitted downloading and using for sexual gratification.</p> <p><u>Section 32 Notice</u>  During the search in May 2015, Police found cannabis and a smoking implement Which PNS admitted using. He also allowed friends to smoke cannabis in his house.</p>	<p>against children; no remorse.</p> <p>Retribution, deterrence and the protection of society were important factors in sentencing PNS, the protection of society being particularly important in light of his continuing attitude of disobedience to the law.</p>	<p>Other sentences remain the same.</p> <p>TES 4 yrs imp.</p> <p>At [40] ... the TES in this case is substantially greater than sentences that have been imposed for much more serious offending.</p> <p>At [41] It is ... a significant factor that the appellant has been previously convicted of offending of a similar nature to the present offences and has served three terms of imp for such offending. He has also been assessed as being at a high risk of reoffending. ... it is apparent that the issue of personal deterrence assumes particular importance in this case.</p>
--	--	--	--	--	--

			PNS was a reportable offender pursuant to the <i>Community Protection (Offender Reporting) Act 2004</i> . PNS activated an iCloud and an email account but did not advise the Sex Offender Management Squad of this within the required seven day period.		
6.	<b>LJH v The State of Western Australia</b>  <b>[2016] WASCA 155</b>  Delivered 05/09/2016	34 yrs at time sentencing.  Convicted after early PG (14-15% discount).  No prior criminal history.  Raised in NZ; parents separated when 6 yrs old; little contact with his father; physically abusive step-father.	Cts 1, 7, 11, 21, 26, 29, 33, 37 and 41: Sex pen of de facto child U 16 yrs (penile/vaginal pen). Cts 5, 9, and 19: Sex pen of de facto child U 16 yrs (digital pen). Cts 3, 6, 10, 12, 14, 16, 18, 20, 25, 28, 31, 38, 39 and 40: Sex pen of de facto child U 16 yrs (cunnilingus and fellatio). Cts 23 and 35: Procuring a de facto child U 16 yrs to engage in sexual behaviour. Cts 2, 4, 8, 13, 15, 17, 22, 24, 27, 30, 32, 34 and 36: Indec recording of de facto child U 17 yrs. Cts 42 and 43: Poss CEM.  LJH was in a de facto relationship with the victim's mother since the victim was 1 yr old. LJH commenced an intimate physical relationship with the victim when she was around 13 yrs. The victim was aged between 14-15 yrs at the time of the offences and she regarded LJH as her father. The offences are a representative of a sequence of offending conduct.  <u>Ct 1</u> LJH had penile/vaginal intercourse with	Cts 1, 7, 11, 21, 26, 29, 33, 37 and 41: 6 yrs imp each. Cts 5, 9, and 19: 3 yrs imp each. Cts 3, 6, 10, 12, 14, 16, 18, 20, 25, 28, 31, 38, 39 and 40: 4 yrs imp each. Cts 23 and 35: 4 yrs imp each. Cts 2, 4, 8, 13, 15, 17, 22, 24, 27, 30, 32, 34 and 36: 2 yrs imp each. Cts 42 and 43: 1 yr imp each.  All cts conc, expect for one sentence of 4 yrs imp for oral sex pen, one sentence of 2 yrs imp for indec recording and one sentence of 1 yr imp for poss CEM cum with sentence of 6 yrs imp for penile pen.  TES 13 yrs imp.	Allowed.  Appeal concerned discount for PG and length of TES.  Re-sentenced with 20% discount for PG to:  Cts 1, 7, 11, 21, 26, 29, 33, 37 and 41: 5 yrs imp each. Cts 5, 9, and 19: 2 yrs im each. Cts 3, 6, 10, 12, 14, 16, 18, 20, 25, 28, 31, 38, 39 and 40: 3 yrs imp each. Cts 23 and 35: 3 yrs imp each. Cts 2, 4, 8, 13, 15, 17, 22, 24, 27, 30, 32, 34 and 36: 18 mths imp each. Cts 42 and 43: 8 mths imp each.  Cts 1, 5 and 12 cum, and other cts conc on ct 1.  TES 10 yrs imp.  EFP.

			<p>the victim in his bedroom.</p> <p><u>Cts 2-7</u> LJH visually recorded the offences for 13 mins. LJH kissed the victim's breasts and digitally penetrated her. The victim performed fellatio on LJH. LJH then had penile/vaginal intercourse with her. The victim was also recorded masturbating.</p> <p><u>Cts 8-14</u> LJH visually recorded the offences.</p> <p>The first recording was for 20 mins. The sexual activity included LJH digitally penetrating the victim's vagina, she stroked his penis, LJH performed cunnilingus on her, LJH had penile/vaginal intercourse with her and the victim performed fellatio on him.</p> <p>The second recording was for 9 mins on the same day. The victim stroked LJH's penis and performed fellatio on him. LJH masturbated, straddling the victim's chest and ejaculated on her chest.</p> <p><u>Cts 15-21</u> LJH visually recorded the offences.</p> <p>The first recording was for 2 mins. LJH masturbated and tells the victim to "Hurry up". The victim then performed fellatio on LJH.</p>	<p>EFP.</p> <p>PG made in the face of an unanswerable case.</p> <p>The sentencing judge described very serious sexual offending over an extended 21 mths involving 'the grossest breach of trust that a father figure could ever commit'.</p> <p>The sentencing judge rejected LJH's submission of remorse.</p>	<p>At [84] ... the recordings were not provided by the appellant to anybody else, nor were they posted on any internet site to which others might have access.</p> <p>At [85] The respondent does not contend that the appellant's offending is in the most serious category. The cases reveal various circumstances not present in this case but which, when present, agg the seriousness of the offending behaviour.</p> <p>At [123] The TES imposed on the appellant is equal to or greater than the TES imposed in many appellate decisions where the offender was convicted after trial in cases involving multiple victims, or younger victims, or a longer period of offending, or a combination of these.</p> <p>At [126] the offences committed by the appellant were extremely serious. They were committed, after a period of grooming, over a period of approx 18 mths. The offending was both sustained and repetitive. The appellant abused the victim for his own sexual gratification. He engaged the victim in various forms of sexual</p>
--	--	--	--	---	---

			<p>The second recording on the same day was for 22 mins. LJH touched the victim's breasts and the victim performed fellatio on him. LJH masturbated, digitally penetrated the victim and performed cunnilingus on her. LJH had penile/vaginal intercourse with the victim and ejaculated on her genital area.</p> <p><u>Cts 22-23</u> LJH visually recorded the offence for 2 mins 40 secs. The victim wore a strap-on dildo, one end penetrated her vagina and she penetrated LJH's anus with the other end.</p> <p><u>Cts 24-31</u> These offences were captured on three visual recordings and photographed by LJH.</p> <p>The first recording was for 17 secs and shows the victim performing fellatio on LJH. The 12 photographs show the victim performing fellatio on LJH and LJH engaged in penile/vaginal intercourse with the victim.</p> <p>The second recording was for 7 mins. LJH masturbated, the victim performed fellatio on him and stroked his penis, and LJH had penile/vaginal intercourse with her.</p> <p>The third recording was for 14 mins and shows LJH touching the victim's breasts</p>	<p>pen. Those offences which involved the use of a sexual device involved an extra dimension of depravity. The victim ... is racked by nightmares and anxiety. The victim feels worthless and ashamed. The offences were a gross abuse of trust. An agg feature of them was that many of the offences were recorded by the appellant.</p> <p>At [127] The most significant mitigating factor in the case is the PG. While we acknowledge that the prosecution case was strong by virtue of the appellant recording much (but not all) of the offending, the PG were entered at the first reasonable opportunity, a little over a week after he was charged. By doing so, the appellant spared the victim, at a very early stage, the anxiety that she may have to relive her experiences in a trial. Having regard to the criteria in s 9AA(2) of the <i>Sentencing Act</i>, the appropriate discount for each offence is 20%.</p>
--	--	--	--	--

			<p>and the victim performing fellatio on LJH until he ejaculates into her mouth.</p> <p><u>Cts 32-33</u> LJH took three photographs of himself having penile/vaginal intercourse with the victim.</p> <p><u>Cts 34-35</u> LJH visually recorded for 2 mins and took six photographs of the victim wearing a strap-on dildo, one end penetrating her vagina and the other penetrating LJH's anus.</p> <p><u>Cts 36-37</u> LJH visually recorded himself having penile/vaginal intercourse with the victim for 34 secs.</p> <p><u>Ct 38</u> Whilst motocross riding with the victim, LJH stopped and took the victim into the bushes. He had penile/vaginal intercourse with her and ejaculated on her stomach. The victim asked LJH to stop, but he told her it was too late.</p> <p><u>Cts 39-41</u> LJH gave the victim alcohol, cannabis and a crystal substance which she smoked. He then undressed the victim and the victim performed fellatio on LJH as he performed cunnilingus on her. LJH had penile/vaginal intercourse with her and</p>	
--	--	--	--	--

			<p>ejaculated over her stomach. The victim covered her face with her arms so she did not have to look at LJH.</p> <p><u>Cts 42-43</u> Police analysed LJH's computer hard drive and found the visual recordings and photographs outlined above (ct 42). They also found CEM of unidentified children ranging in age from 6-15 yrs (ct 43). Ct 43 consisted of five videos in category 1; one video in category 2; three videos in category 3; 29 videos in category 4; one video in category 5 and three videos in category 6.</p>		
5.	<p><b><i>Lewsam v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 60</b></p> <p>Delivered 26/04/2016</p>	<p>50 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Considerable criminal record; no prior convictions for sexual offences.</p> <p>Difficult upbringing, including time in foster care; physically abused by stepfather.</p> <p>Left home at age 12 to live on the streets.</p> <p>Separated from wife 10 yrs previously; no contact with his three children.</p>	<p><u>Indictment</u> 4 x Sex pen child U13 yrs. 24 x Indec dealings of child U13 yrs. 85 x Indec recording of child U13 yrs. 2 x Att indec recording child U13 yrs. 3 x Indec act in public. 2 x Poss CEM.</p> <p><u>Section 32 Notice</u> 1 x Obstructing an officer. 2 x Poss drug paraphernalia. 1 x Poss unlicensed firearm. 1 x Poss indec or obscene article.</p> <p>Over a three year period the appellant regularly attended the toy section of several Kmart stores. He approached female children and used a digital recording device to view up their skirts and record images of their underwear and</p>	<p>TES 16 yrs 6 mths imp.</p> <p>Sentencing judge stated that the nature of the individual sexual offending was not in the most serious category, but balanced against that the sheer number of victims and the manner in which offences were committed.</p> <p>Sentencing judge found that the appellant purposely attended toy departments with the specific intention of finding young children and an opportunity to sexually abuse them for</p>	<p>Allowed.</p> <p>Appeal concerned totality principle; individual sentences were not challenged.</p> <p>Orders for cum and conc sentences set aside. Appellant re-sentenced to TES 12 yrs imp. EFP.</p> <p>At [38] None of the cases in this court... are truly comparable with the present case. The present case is unusual in two respects. The first is the very large number of children victimised by the appellant. The second is that, while any sexual offence against a child is inexcusable, the nature of</p>

		Limited employment history.	<p>bottoms.</p> <p>On some occasions the appellant rubbed the victim's vagina on the outside of her underwear, or pulled the victim's underwear down to reveal her vagina. On other occasions the appellant kissed the victims or sucked on their tongues. On one occasion he had a victim touch his exposed penis. On four occasions the appellant penetrated the victim's vagina with two fingers. On another occasion the appellant recorded himself rubbing the genital area of a 2-3 yr old boy at an unknown residence.</p> <p>In total there were 78 victims, none of whom were known to the appellant. 75 of the victims were identified as being very young children between 2-6 yrs of age and 19 were indecently dealt with.</p> <p>A search of the appellant's computer located child exploitation material; comprising over 7000 images, including 620 images and 12 videos depicting children engaged in penetrative sexual activity with adults (Cat 4) and 15 images depicting children involved in sadism (Cat 5).</p>	<p>his own sexual gratification.</p> <p>Sentencing judge found the appellant to be a serial paedophile with a high risk of reoffending.</p>	<p>the individual offences committed in the present case was towards the lower end of the scale of seriousness of offences of this type.</p> <p>At [44] The appellant's most serious offending conduct, involving digital pen over a short period of time and having one child touch his penis, was of a much lower order of seriousness than that considered in like cases. The TES imposed on the appellant after an early PG was longer than that imposed in any other case involving the sexual abuse of children which has been identified by the court or the parties.</p> <p>At [51] The appellant clearly acted in a premeditated manner on a large number of occasions to target 75 children with whom he had no connection. Those children were ... entitled to feel safe playing in the toy aisle of a department store. The appellant took advantage of the vulnerability of those small children to satisfy his own deviant sexual urges.</p>
4.	<b><i>JAW v The State of Western Australia</i></b>	30-34 yrs at time offending. 46 yrs at time sentencing.	Cts 2-4, 6, 10, 12, 16-17: Indec dealing of child U13 yrs.	Ct 2: 12 mths imp (cum). Ct 3: 18 mths imp (cum).	Dismissed – on papers.

<p><b>[2016] WASCA 40</b></p> <p>Delivered 09/03/2016</p>	<p>Convicted after trial.</p> <p>No criminal history.</p> <p>Good employment history; 20 yrs service in the Royal Australian Navy, honourably discharged as a result of health problems.</p> <p>Well educated, diploma of engineering.</p> <p>TAFE lecturer prior to trial.</p> <p>No issues with alcohol or illicit substances.</p> <p>No mental health issues.</p> <p>Father is a prison officer.</p>	<p>Cts 5, 9, 11, 13-14: Sex pen of child U13 yrs. Ct 18: Poss child pornography.</p> <p>The offending occurred from 1998 to 2002. Victim A and victim D are brother and sister. The appellant was a neighbour and in a romantic relationship with the victims' mother F. The appellant regarded F and the children as family and the victims frequently visited his home without F.</p> <p><u>Ct 2</u> When A was aged 8 or 9 yrs the appellant showed A and D a pornographic movie, telling A that girls have a part that feels really good when you play with it and that boys like it when you touch their penis. Afterwards the appellant told the victims not to tell anyone what they had seen.</p> <p><u>Cts 3 and 4</u> A couple of days later, A asked the appellant to show her the spot on her body 'that felt good'. He got A to remove her underwear, sat her in front of a mirror, spread her legs and placed his finger on her clitoris, rubbing it back and forth for a few seconds. The appellant also placed A's hand over his erect penis. The appellant told A not to tell anyone as it was their secret.</p> <p><u>Ct 5</u></p>	<p>Ct 4: 18 mths imp (conc). Ct 5: 4 yrs imp (cum). Ct 6: 18 mths imp (conc). Ct 9: 4 yrs imp (conc). Ct 10: 18 mths imp (conc). Ct 11: 4 yrs imp (conc). Ct 12: 18 mths imp (conc). Ct 13: 4 yrs imp (conc). Ct 14: 4 yrs imp (conc). Ct 16: 6 mths imp (cum). Ct 17: 18 mths imp (conc). Ct 18: \$400 fine.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge took into account as mitigatory factors: that the appellant had stopped offending against A of his own volition; and the hardship he would encounter in prison (due to his father being a prison officer).</p> <p>Sentencing judge found the offending, save for cts 16, 17 and 18, constituted a gross abuse of trust; the appellant groomed A and D.</p>	<p>Appeal concerned length of individual sentences and TES.</p> <p>At [142] Save for cts 16 and 17, the appellant had conducted himself, in effect, as a father figure to A and D... The offending was made more serious in respect of A by reason of her young age and vulnerability. The appellant groomed A, exploited her curiosity and ... portrayed his actions as a game... The offending against A was no momentary or isolated aberration. On the contrary, the offences were committed over a period of several yrs and were representative of a course of regular sexual abuse over that time.</p>
---	---	--	--	---

			<p>Approx one week later, the appellant pulled down A's pants and underwear and performed cunnilingus for about 2 mins. He again told A it was their secret and not to tell anyone.</p> <p><u>Ct 6</u> A few weeks after cts 3 and 4, the appellant pulled down his pants and exposed his erect penis to A. He placed her hand on his penis and had her masturbate him for 3-5 minutes. Again he told A not to say anything to anyone.</p> <p><u>Cts 9 and 10</u> When A was almost 11 yrs the appellant got into bed with her. He licked his fingers, put them under A's pyjama pants and underwear and rubbed her clitoris for about five minutes. The appellant then grabbed A's hand and put it on his erect penis on top of his pants.</p> <p><u>Ct 11</u> On another occasion when A was almost 11 yrs, the appellant had her kneel and perform fellatio upon him. After this incident she performed fellatio upon him 'once every two weeks'.</p> <p><u>Cts 12, 13 and 14</u> A was holding the appellant's penis and he got her to perform fellatio and told her to 'lick it like an ice-cream or a lollipop'. The appellant then licked A's vagina for</p>	<p>The sentencing judge found the appellant's conduct formed an ongoing pattern of sexual abuse of A.</p> <p>The sentencing judge found that the appellant harboured a sexual interest in young girls, a sexual interest in A as a young girl and an ongoing interest in A as an adult.</p>	
--	--	--	---	---	--

			<p>3-5 minutes.</p> <p><u>Cts 16 and 17</u> A was 11 or 12 yrs and had her hand on the appellant's penis when he put his fingers on her clitoris. The appellant was interrupted by F, and told A to tell F they were just watching TV.</p> <p><u>Ct 18</u> Police found two images of naked girls at the appellant's home.</p>		
3.	<p><b><i>D'Rozario v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 171</b></p> <p>Delivered 02/09/2015</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal history, including convictions of use elec comm with intent to expose a person U16 yrs to indecent material, use elec comm with intent to procure a person U13 yrs to engage in sexual activity, poss child pornography and failing to comply with reporting obligations.</p> <p>Supportive family; supportive partner.</p> <p>Completed tertiary studies in business; obtained university degree in HR and employed as a senior accounts manager from 2009-2013.</p>	<p><u>Indictment</u> Ct 1: Use elec comm with intent to procure a person U16 yrs to engage in sexual activity. Ct 2: Sex pen of child 13-16 yrs. Ct 3: Sex pen of child 13-16 yrs. Ct 4: Sex pen of child 13-16 yrs. Ct 5: Sex pen of child 13-16 yrs. Ct 6: Poss CEM.</p> <p><u>Section 32 Notice</u> Fail to comply with obligations imposed by the <i>Community Protection (Offender Reporting) Act 2004</i> x 11.</p> <p><u>Ct 1</u> The appellant initiated contact with M, who was aged 15. The appellant and M regularly engaged in telephone and text sex. The appellant was aware of M's age.</p> <p><u>Cts 2-6</u> The appellant initiated contact with K</p>	<p><u>Indictment</u> Ct 1: 12 mths imp Ct 2: 3 yrs imp Ct 3: 3 yrs imp Ct 4: 3 yrs imp Ct 5: 3 yrs imp Ct 6: 12 mths imp</p> <p><u>Section 32 Notice</u> 6 mths imp on each of the 11 breaches.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>At [14] The sentencing judge identified the agg factors of the indictable offences to include the appellant's conduct in contacting and grooming the victims; the age difference between the appellant and the victims; the appellant's prior criminal record; that the breach offences involved unreported contact with young girls which, whilst not amounting to criminal offence, was similar in nature and manner to his interactions with the victims of the indictable offences; and ct 1 was committed when the appellant was on parole.</p> <p>At [15] Mitigating factors include an early PG, for which the trial judge gave 25% discount, his</p>

		<p>Attended 11 psychological counselling sessions by time sentencing.</p>	<p>who, to the appellant's knowledge, was aged 15. Cts 2-5 involved digital penetration and cunnilingus. The offences were representative. Ct 6 related to naked photographs of K.</p> <p><u>Section 32 Notice</u> The appellant failed to report his unsupervised contact, which was of a sexual nature, with B (aged 16), R (aged 14-16), N (aged 16), KC (aged 15-16), S (aged 15-16) and J (aged 16). Appellant also failed to report that he had reactivated or set up new internet and mobile telephone accounts.</p>		<p>qualified cooperation with police at the time of his arrest and his remorse. The sentencing judge also accepted that as a result of his upbringing he was socially isolated and lacked confidence. Further, the appellant had not undertaken the sex offenders treatment programme while in custody for his prior offending or any equivalent programme when on parole.</p>
2.	<p><b><i>The State of Western Australia v McCarthy</i></b></p> <p><b>[2014] WASCA 210</b></p> <p>Delivered 14/11/2014</p>	<p>39 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>No relevant criminal history.</p> <p>Indigenous; from well-respected family; good character; good standing in the community.</p> <p>Left school at year 11; constantly employed in civil construction and mining.</p> <p>Married; four young children.</p> <p>Favourable character references.</p>	<p>Ct 1: Distribution of CEM. Ct 2: Distribution of CEM. Ct 3: Distribution of CEM. Ct 4: Poss CEM. Ct 5: Poss CEM.</p> <p>On three separate dates the respondent sent CEM in the form of a video and images to an undercover police officer. In the first instance he also distributed the video amongst a group of persons who shared a common interest in CEM. The video showed a young girl undressing and 'behaving in an inappropriate way before the camera'.</p> <p>15 images showed a girl aged about 8 naked and playing on and around a</p>	<p>Ct 1: \$2,500 fine. Ct 2 \$2,500 fine. Ct 3: \$2,500 fine. Ct 4: CSIO 12 mths. Ct 5: CSIO 12 mths (conc).</p> <p>TES 12 mths imp conditionally suspended for 2 yrs and \$7,500 fine.</p> <p>Maintained his innocence.</p> <p>Low risk of re-offending.</p>	<p>Allowed.</p> <p>Re-sentenced to TES 2 yrs imp.</p> <p>EFP.</p> <p>At [76] Those who commit offences in respect of CEM are, like the respondent, commonly of prior good character, are well regarded by those who know them and have done good work in the community. It is not unusual to see an offender who has no prior criminal record and assessed as having a low risk of reoffending. Offenders are not infrequently people who have standing in the</p>

		<p>No mental health, emotional, substance abuse or interpersonal problems.</p>	<p>mattress. 13 images depicted prepubescent females, some of whom were naked, in various poses.</p> <p>Police made inquiries about the IP address of the sender. The first was traced to the respondent's wife. The second others to his employer.</p> <p>Police executed a search warrant at the respondent's home and seized various it including a laptop computer. The computer was later analysed and found to contain CEM in the form of 6,231 still images and 29 videos.</p> <p>The bulk of images were at a low level, however a significant portion were not, depicting sexual activity between children and adults.</p>		<p>community and have achieved much in their life.</p> <p>At [79] While the respondent's personal circumstances are favourable, they cannot, on the facts of this case, have reasonably justified the imposition of a conditionally suspended imprisonment order.</p> <p>At [80] The orders made at the first instance cannot be justified upon hardship to others... There are exceptional cases where hardship may be mitigating. This is not one of those cases.</p> <p>At [91] The combination of fines and conditionally suspended imprisonment was an erroneous reflection of the respondent's overall criminality.</p> <p>At [93] Error having been established, this court's intervention is now required in this case to correct the sentences that were originally imposed and to maintain proper sentencing standards with respect to offences of possession and distribution of CEM.</p>
1.	<i>Shelley v The State of Western Australia</i>	41yrs of age at sentencing.	1 x Possess CEM.	16 mths imp.	Allowed.

	<p><b>[2014] WASCA 154</b></p> <p>Delivered 08/08/2014</p>	<p>Convicted after early PG.</p> <p>No prior criminal record in Australia or UK.</p> <p>Difficult upbringing.</p> <p>Migrated from UK in 2008.</p> <p>Excellent antecedents; constant record of employment.</p> <p>Availed himself of treatment after his arrest.</p>	<p>The appellant came to the attention of police through his activities on a file-sharing website.</p> <p>The appellant voluntarily attended the Online Child Exploitation Squad at the request of Police. He brought with him his laptop computer. Police seized the computer, examined it and found child exploitation material.</p> <p>The categories included:</p> <ul style="list-style-type: none"> <li>• Images depicting erotic posing with no sexual activity.</li> <li>• Sexual activity between children or solo masturbation by a child.</li> <li>• Non-penetrative sexual activity between adults and children.</li> <li>• Penetrative sexual activity between children and adults.</li> <li>• Sadism or bestiality.</li> </ul> <p>Altogether the appellant possessed 91 images and 40 videos.</p>	<p>EFP.</p> <p>Candid during the ROI; admitted to downloading similar material over a period of four years.</p> <p>Remorseful and empathic towards victims.</p> <p>Low/ moderate risk of re-offending.</p>	<p>Re-sentenced to 11 mth CSIO susp for 12 mths.</p> <p>Time served in prison taken into account.</p> <p>At [36] Although the amount and the nature of the child exploitation material in this case was not as bad as in many other cases, there was nevertheless a significant number of images and videos.</p> <p>At [37] – [38] the present case has features which distinguish it from the ordinary case. Most significantly in our minds is the appellant’s level of cooperation... The appellant brought with him his laptop computer... was forthcoming in his interview... [his] actions resulted in the detection of an offence which might well have gone undetected... And consistently with the remorse shown and his cooperation with police, he voluntarily embarked upon an intensive course of rehabilitation. The commitment that he showed to this course of rehabilitation was, having regard to other cases seen in this court, exceptional.</p> <p>At [42] We observe that the term</p>
--	--	---	---	--	--

						of 16 mths imp was well within the range of sentences customarily imposed for offences of possession of child exploitation material, even under the now repealed s60(4) <i>Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)</i> rather than the maximum now provided under s220 of the <i>Criminal Code</i> .
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>						
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>						

Office of the Director of Public Prosecutions