

# **Deprivation of Liberty**

*s 333 Criminal Code*

**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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
9.	<p><b><i>Merritt v The State of Western Australia</i></b></p> <p><b>[2019] WASCA 203</b></p> <p>Delivered 17/12/2019</p>	<p>21 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Long and extensive criminal history; prior serious convictions for serious sexual and violent offending towards girls and women.</p> <p>Dysfunctional childhood; characterised by neglect; instability and extensive physical abuse in State care.</p> <p>Indigenous heritage; few positive role models.</p> <p>Illicit drug use.</p>	<p>Ct 1: Dep lib. Ct 2: Burglary. Ct 3: Agg indec assault. Cts 4-8: Agg sex pen.</p> <p>The victim, P, was a female about 13 ½ yrs of age.</p> <p>P was at home with her sister when Merritt entered the home without consent. His face was covered to conceal his identity.</p> <p>Entering her bedroom Merritt grabbed P by the back of her head and told her to get up and do as she was told.</p> <p>Merritt then forced P to walk into bushland where he committed various sexual offences against her.</p> <p>Merritt was identified, more than twenty yrs later, through DNA technology.</p>	<p>Ct 1: 4 yrs 6 mths imp (conc). Ct 2: 5 yrs 5 mths imp (conc). Ct 3: 2 yrs 9 mths imp (conc). Ct 5 &amp; 8: 4 yrs 2 mths imp (conc). Ct 6: 6 yrs imp (cum). Ct 7: 6 yrs 6 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>At time of sentencing was a declared dangerous sex offender and subject to a continuing detention order.</p> <p>In 1994 (5 days after committing the above offences) the appellant committed further sexual offences against a 9 yr old female. Sentenced in 1995 to a TES of 10 yrs imp with EFP.</p> <p>The sentencing judge</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; individual sentences not challenged.</p> <p>At [70] ... it is beyond question that the offences committed by him were of the utmost gravity. As serious as the offences were ... the offences committed [5 days later] were, if anything, even more serious. They involved the coercion of a very young and vulnerable child into bushland, where the appellant sexually penetrated her in such a way as to inflict serious physical injuries that required surgery. ... it could not be said that the offences under consideration were uncharacteristic of the appellant. To the contrary, they were entirely consistent with his prior offending to that point. He plainly posed then a danger to the community.</p>

				<p>found the offending towards the higher end of the scale; clearly persistent and unrelenting and involved various forms of penetration; the offences are not isolated or uncharacteristic.</p> <p>The sentencing judge found the offending had a devastating impact on the victim and that she suffered ‘a terrible ordeal’.</p> <p>Some acceptance of responsibility; a significant danger of serious sexual reoffending.</p>	<p>At [71] ... the appellant remains unrehabilitated and poses a serious risk of reoffending.</p> <p>At [72] ... By the time the appellant came to be sentenced ... for the offences committed ... he was no longer youthful and so the increased importance of efforts to rehabilitate a youthful offender was no longer applicable. ... The time he has spent in custody subject to the continuing detention order and the period referred to in [23] ... were relevant considerations in the application of the totality principle.</p> <p>At [73] However, having regard to all relevant circumstances and all relevant sentencing factors ... the TES imposed ... did not infringe the first limb of the totality principle.</p> <p>At [75] ...the TES was not unreasonable or plainly unjust.</p>
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<p>8.</p>	<p><b><i>Eravelly v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 139</b></p> <p>Delivered 10/08/2018</p>	<p>Convicted after trial.</p> <p>No prior criminal history in Australia; prior criminal convictions in USA for voyeurism and battery.</p> <p>Raised stable, hardworking and respected family.</p> <p>Held in high regard by family and friends.</p> <p>Good employment history; successful career as international airline pilot.</p> <p>Married three times; suffered loss of second wife due to illness; third wife remains supportive; two children.</p>	<p>Ct 1: Burglary. Ct 2: Dep lib. Ct 3: Unlawful wounding. Cts 4 &amp; 8: Agg sex pen.</p> <p>Eravelly was a stranger to the victim.</p> <p>In the early hours of the morning Eravelly broke into the victim's unit whilst she was sleeping. Once inside he threatened to cut her with a knife, tied her hands behind her back, blindfolded her and sexually penetrated her vagina, anus and mouth with his penis.</p> <p>The victim sustained cuts and abrasions, including a 2cm long laceration to her wrist that required suturing.</p> <p>Eravelly was identified many years later through an international DNA database.</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 1 yrs imp (conc). Ct 4: 4 yrs imp (cum). Cts 5-7: 5 yrs imp (conc). Ct 8: 6 yrs imp.</p> <p>TES 13 yrs imp.</p> <p>The trial judge found while the offending was not in the worst category, it was very serious; it was premediated; he arrived with a knife, a torch, a stocking to conceal his identify and a rope to bind his victim.</p> <p>The trial judge found the appellant was in denial and without remorse, with no insight into his offending or victim empathy.</p> <p>Average risk of reoffending.</p> <p>Accepted the appellant's experience in prison would be more isolating</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [96] ... the appellant subjected the complainant to a sustained, humiliating and degrading series of sexual assaults. The attack was premeditated. It involved the appellant violating the sanctity of both the complainant's home and her body. The attack engendered great fear into the complainant. The appellant broke into her unit at night and took advantage of the complainant's vulnerability by attacking her while she was alone in the unit, asleep in her bed. ... This very serious sustained series of sexual assaults demanded a very significant term of immediate imp.</p> <p>At [99] ... the TES bears a proper relationship to the overall criminality involved in all the offences, viewed in their</p>
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				and difficult than usual as a foreign national.	entirety and having regard to the circumstances of the case, ...
7.	<p><b><i>CYD v The State of Western Australia</i></b></p> <p><b>[2018] WASCA 66</b></p> <p>Delivered 11/05/2018</p>	<p>37 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal history; no relevant prior offending.</p> <p>Longstanding childhood issues.</p>	<p>Ct 1: Dep lib. Ct 2: Indec assault. Ct 3: Dep lib. Ct 4: Indec assault.</p> <p>The victim, M, was aged 18 yrs. CYD was her step-father, having been in a relationship with her mother since she was 5 yrs old.</p> <p><u>Cts 1 and 2</u> CYD took M for a driving lesson. On a country road he switched the fuel from petrol to gas. This tank contained little fuel so as the vehicle lost power he took over driving and reversed the car into a secluded track.</p> <p>CYD told M he was going to walk down the road to try for a mobile signal to call for assistance. Shortly afterwards he returned with pliers, wearing a mask and a voice-changing mechanism he had earlier concealed on his person.</p> <p>CYD held the pliers to M's throat, tied her hands together and placed cable ties around her neck, which he secured to the headrest. He then fondled her breasts, rubbed her vaginal area on the outside of her clothing and told her she was going to be gang-raped. When M cried loudly he desisted, cut the cable ties and ran away.</p> <p>Shortly afterwards CYD returned to the vehicle, pretending that he knew nothing of the incident.</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2 &amp; 4: 2 yrs imp (conc each other and ct 3). Ct 3: 5 yrs imp (cum).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge characterised the offences as very serious; involved premeditation and planning; there was an element of 'sexual intent' in the offences.</p> <p>The sentencing judge found the offences were committed in circumstances designed to instil fear and involved the use of force and physical restraints on a vulnerable young woman with whom he was in a trusting family relationship.</p> <p>The sentencing judge accepted cts 1 and 2</p>	<p>Dismissed.</p> <p>Appeal concerns length of sentences cts 1 and 3 and totality principle.</p> <p>At [80] It is difficult to find previous cases which are broadly comparable with the appellant's offending in relation to cts 1 and 3.</p> <p>At [81] ... it is not reasonably arguable that the sentence for ct 1 or the sentence for ct 3 is unreasonable or plainly unjust.</p> <p>At [85] ... it was necessary, in order properly to mark the very serious nature of the appellant's overall offending, for the individual sentences imposed on each of cts 1 and 3 to be served cum. Cts 1 and 3 involved separate, distinct and very serious offending.</p>

			<p>Interviewed by police CYD claimed no knowledge and no involvement in the assault. He was subsequently charged and released to bail, on the condition he not contact M or be present when she visited the family home.</p> <p><u>Cs 3 and 4</u> Some weeks later CYD waited for M to leave his home after she visited family. Having earlier covered two spotlights on his car with blue and red plastic he followed her in his vehicle. Causing the spotlights to flash intermittently M stopped her vehicle, believing it be a police vehicle.</p> <p>Disguising his appearance and altering his voice with the voice-changing mechanism, CYD approached M's vehicle and forced her to move into the passenger seat. After wrapping her head with a bandage to cover her eyes he drove her vehicle to a country road.</p> <p>CYD demanded M remove her clothing. Noticing the bandage had displaced he put duct tape over her eyes. He then then forcibly removed her clothing. Using her mobile phone he took photographs of her naked body before sending them to his own mobile, with a text message purporting to be from her.</p> <p>CYD then drove M in her vehicle back to where he had earlier deceived her into stopping. He disposed of the red and blue plastic and the voice-changing mechanism.</p> <p>CYD later sent a text to M claiming he was going to</p>	<p>were an aberration; but this could not be said about cts 3 and 4.</p> <p>Remorseful; cooperative with authorities after committing cts 3 and 4</p>	
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			make a complaint to the police that she was sending him naked photos of herself.		
6.	<p><b><i>McAllister v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 183</b></p> <p>Delivered 12/10/2017</p>	<p>47 at time offending. 49 at time sentencing.</p> <p>Convicted after late PG (5% discount) (ct 1). Convicted after trial (ct 2).</p> <p>Prior criminal history; traffic and alcohol related offences.</p> <p>Born UK; moved to Australia aged 9 yrs; abused and traumatised as a child during time at Fairbridge Farm.</p> <p>Self-employed removalist; good character references; business collapsed after his detention in custody for these offences.</p> <p>Two adult children previous marriage.</p> <p>Medicated for depression; otherwise in good physical health.</p> <p>No history of illicit substances abuse.</p>	<p>Ct 1: Dep lib. Ct 2: With intent to harm did an act likely to endanger life, health or safety.</p> <p>McAllister owned his own business and the victim was a former employee.</p> <p>When McAllister's business was burgled and items stolen he believed the victim to be the offender.</p> <p>With a promise of work McAllister contacted the victim and arranged to meet him at his business premises. The victim attended at the scheduled time. McAllister and two of his associates, Annakin and Bowden, the co-offenders, arrived soon after.</p> <p>McAllister was armed with a baseball bat and the two co-offenders with wooden sticks. They proceeded to assault and verbally abused the victim for a period of about 30 minutes.</p> <p>During the assault the victim denied any involvement in the burglary. McAllister called the victim a liar and threatened to smash his knee caps if he went to the police.</p> <p>The victim's hands were tied behind his back. He again denied any knowledge of the burglary or location of the stolen property so McAllister struck him on the knee with the bat, while laughing and joking with the co-offenders.</p> <p>At some point a substance, believed to be petrol,</p>	<p>Ct 1: 15 mths imp (cum). Ct 2: 3 yrs 9mths imp (cum). TES 5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending involved a degree of premeditation over a sustained period; there were three armed offenders against an unarmed victim; who for part of the assault, had his hands tied behind his back; it was completely unprovoked.</p> <p>The trial judge found the appellant believed the victim had committed the burglary and this factor required him to place significant emphasis on general deterrence to remind the community that vigilante behaviour will not be tolerated.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; parity and totality principles.</p> <p>At [44] ... it is not reasonably arguable that the sentence of 15 mths' immediate imp for ct 1 was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (10 years' imp), and after taking into account all relevant facts and circumstances and all relevant sentencing factors ...</p> <p>At [50] ... it is not reasonably arguable that the sentence of 3 years 9 months' immediate imp for ct 2 was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (20 years' imp), and after taking into account all</p>

			<p>was sprayed on the victim's face, mouth and clothes and he was threatened with being set on fire.</p> <p>The victim eventually claimed to know where the stolen property was located and offered to show them. He then managed to escape and call police.</p> <p>The victim suffered a broken eye socket which required surgery. He has ongoing problems with his jaw locking and his face droops on the left side.</p>	<p>The trial judge found the appellant significantly more culpable than his co-offenders having regard to the element of vigilantism in his conduct</p> <p>No significant remorse shown.</p>	<p>relevant facts and circumstances and all relevant sentencing factors,</p> <p>At [56] ... the trial judge found, and was entitled to find, that the appellant was the instigator of the offending. The appellant lured the victim to the appellant's business premises with a promise of work, the appellant arranged for Mr Annakin and Mr Bowen to be present and there was an element of vigilantism in his conduct. ... the appellant entered a very late PG on ct 1 and went to trial on ct 2 whereas Mr Annakin and Mr Bowen entered early PG on both cts.</p> <p>At [61] The appellant's overall offending was serious. It was necessary for the trial judge to order that the individual sentence for ct 1 be served cum upon the individual sentence for ct 2 in order properly to mark the serious character of the</p>
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					offending on cts 1 and 2 as a whole.
5.	<p><b><i>Atkinson v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 154</b></p> <p>Delivered 17/08/2017</p>	<p>45 yrs at time sentencing. 25 and 27 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Minor criminal history.</p> <p>Dysfunctional family; parents separated when young adult; eldest sister epileptic; younger brother involved in heavy drug use; mother imprisoned for fraud.</p> <p>Strained relationship with mother for many yrs, now close; maintains some contact with father.</p> <p>Frequently truant at school; expelled in yr 10.</p> <p>Single; no children.</p> <p>Worked many yrs mining industry; currently unemployed.</p> <p>Long history of alcohol and illicit drug use.</p>	<p>Cts 1 &amp; 5: Agg burglary. Cts 2, 6-8: Agg sex pen. Cts 3 &amp; 9: Dep lib. Ct 4: Att agg robbery.</p> <p>The offences arise from two separate incidents. One in 1997 and the other in 1999.</p> <p><u>Cts 1-4 (1997)</u></p> <p>The victim, N, was 18 yrs old and home alone. He forced his way into her home after knocking on her door wearing a balaclava on his face.</p> <p>Atkinson held a knife to N's throat, tied her up and covered her face before sexually penetrating her and demanding money, which she said she did not have.</p> <p>He warned her not to talk, scream or move before leaving the premises.</p> <p><u>Cts 5-9 (1999)</u></p> <p>The victim, E, was 19 yrs old and home alone.</p> <p>Atkinson let himself into her home and covered her face, before tying her up and repeatedly sexually penetrating her.</p> <p>He told her not to phone anyone because he would be watching before leaving the premises.</p>	<p>Ct 1: 7 yrs 6 mths imp (head) Ct 2: 7 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 7 yrs 6 mths imp (cum ct 1). Ct 6: 7 yrs imp (conc). Ct 7: 3 yrs imp (conc). Ct 8: 7 yrs imp (conc). Ct 9: 2 yrs imp (conc).</p> <p>TES 15 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences only came to light following a DNA match to the 1999 offences and it was to the appellant's credit that he made some admissions with respect to the 1997 offences.</p> <p>The sentencing judge found the appellant's cooperation indicated some degree of contrition and acceptance of culpability and that he</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence, totality, failure to consider remorse and discount for voluntary disclosure of guilt on cts 1-4.</p> <p>Re-sentenced:</p> <p>Ct 1: 5 yrs 6 mths imp. Ct 2: 5 yrs 2 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 1 yr 6 mths imp.</p> <p>All other sentences and orders for cum, conc and EFP otherwise unaffected.</p> <p>TES 13 yrs imp.</p> <p>At [61] The offences were extremely serious offences of their type. They involved planning and the use of force to overwhelm young and vulnerable victims at night in their homes. Physical restraints and threats were used, including the use of weapons, in order to obtain</p>

		<p>Diagnosed bipolar disorder; history of non-compliance with medication.</p>	<p>In 2016 Atkinson's DNA was matched to the 1999 offences. During a second police interview he voluntarily disclosed the 1997 offences to police.</p>	<p>understood the issues likely to have been confronted by the two victims. He took a neutral stance on the appellant's remorse as the psychologist and psychiatrist had differing views as to whether the appellant had victim empathy and was genuinely remorseful.</p> <p>Moderate to low-risk of reoffending.</p>	<p>the victim's compliance. The offences caused great psychological trauma to the victims and have had long-lasting effects.</p> <p>At [64] ... the appellant's disclosure of the 1997 offending was significant because it was a disclosure to the authorities of otherwise unknown offences. ... It might be suggested that the appellant made the disclosure because he feared ... other undisclosed DNA evidence that would implicate him. However, there was no suggestion of that ... and in fact it was not the case. Whatever the appellant's motivations, and he said that he was motivated by remorse, the fact is that but for his disclosure there is no reason to think that the appellant would have been charged with the 1997 offences. In these circumstances his disclosure was a significant matter to the credit of the appellant to be taken into</p>
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					<p>account in sentencing on cts 1 to 4.</p> <p>At [65] ... the individual sentences for cts 1 to 4 were the same as those imposed for the similar offending in cts 5 to 9. This cannot be accounted for by any significant difference in the offending. The two groups of offences were of a comparable level of seriousness. Indeed, the respondent accepted before this court that, if anything, the second group of offences were more serious.</p>
4.	<p><b><i>Pureau v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 115</b></p> <p>Delivered 26/06/2017</p>	<p>24 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Born in NZ; arrived in Australia aged 17 yrs.</p> <p>Prior criminal history; including a conviction of AOBH in a domestic setting.</p> <p>Employed plasterer.</p> <p>No illicit substance or</p>	<p>Ct 3: Threat to kill. Ct 4: Agg AOBH. Ct 5: Dep lib.</p> <p>The victim, M, was several wks pregnant and had been in relationship with appellant approx 6 wks. They shared a home with three other people.</p> <p>M left to attend appointments, borrowing appellant's mobile phone and car. When she returned he was angry with her for being away for so long. They argued and he abused and spat in M's face. She called out for someone to call the police, however other occupants did not do so as illicit substances were in the house.</p>	<p>Ct 3: 3 yrs imp (cum). Ct 4: 2 yrs imp (conc). Ct 5: 3 yrs imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The judge found appellant's overall offending constituted a very serious example of domestic violence and the real seriousness of the offence was his threats to unlawfully kill</p>	<p>Dismissed.</p> <p>Appeal challenged the individual sentences on cts 3 and 5 and concerned totality.</p> <p>At [75] ... M was defenceless and particularly vulnerable by reason of the greater physical strength of the appellant and her pregnancy. The offences occurred in a domestic setting. The fact that the</p>

		alcohol use.	<p>Appellant left the house. Other occupants bound M with tape and assaulted her. Bulk of injuries caused by others.</p> <p>Appellant returned. Armed with a knife and taser and wearing gloves, he ordered M into a room and told her he was going to kill her. He pointed the knife and threatened her with the taser, telling her the more she screamed the more pain he would inflict. He att to taser M in the face but she raised her arms to protect herself, the taser cut her thumb.</p> <p>Appellant pulled M's hair and dragged her from room. She was subjected to further threats and assaults before she was able to escape.</p> <p>Between everyone involved, ordeal lasted more than five hrs.</p>	<p>M and the deprivation of liberty. The real harm was psychological.</p> <p>Appellant denied the offending.</p> <p>Lack of remorse and genuine empathy.</p>	<p>offences were committed in such a setting increases the seriousness of what the appellant did. It does not matter that their relationship was brief.</p> <p>At [76] ... Although the offences occurred in the one transaction, the imposition of conc sentences would have resulted in a TES that would be an inadequate and inappropriate reflection of the overall criminality of the appellant's conduct.</p>
3.	<p><b><i>AMH v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 180</b></p> <p>Delivered 19/10/2016</p>	<p>31 yrs at time offending.</p> <p>PG to Ct 7 (10% discount). Convicted after trial remaining counts.</p> <p>Minor criminal history; no previous relevant offending.</p> <p>15-16 yrs witnessed his mother in a physically abusive relationship.</p> <p>Emotionally unstable as a result of a succession of family tragedies.</p>	<p>Ct 1: Dep liberty. Cts 2, 6 &amp; 7: Agg AOBH. Ct 3 &amp; 4: Agg sex pen. Ct 5: Sex coercion.</p> <p>AMH and the victim, A, had a violent and abusive de-facto relationship. They separated and AMH spied and stalked A, and committed acts of violence upon her.</p> <p>The time between the initial offending and the report to police was approx. 10 days.</p> <p>AMH tried to persuade A to attend a function with him. He drove to where she was staying, forced her into his car and drove towards Ravenswood (ct1).</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 1 yr imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 3 yrs 6 mths imp (cum). Ct 6: 1 yr 6 mths imp (conc). Ct 7: 2 yrs 8 mths imp (conc).</p> <p>TES 11 yrs imp. EFP.</p> <p>The sentencing judge found the offending</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; individual sentences not challenged.</p> <p>At [42] ... the appellant's overall offending was extremely serious. While it was not in the worst category of offending of its kind, it approached that level. The offending was premeditated, sustained, cruel and humiliating ... The appellant's post-offence conduct cannot be</p>

		History of heroin abuse; abstinent from the drug at time offending.	<p>During the drive and at an isolated area AMH verbally abused and repeatedly struck A in the head (ct2) and forced A to perform fellatio on him (ct3). Threatening to insert a rusty tool into A's anus, he used it to strike A on the legs. He also kicked her in the ribs (ct 6). Forcing A, naked, onto all fours he inserted a spanner into her anus (ct 4). He forced A to put a drink bottle into her vagina and threatened to kick it in if she didn't push it all the way in (ct 5). He repeatedly bashed her to the head and ribs (ct 7).</p> <p>AMH burnt her with a cigarette or lighter. He also placed the flame close to her genitals. He continually threatened to harm A and her family.</p> <p>AMH forced A to telephone her employer and quit her job. At various points he got A to call and send text messages, so that police would not look for her. AMH took A to his mother's house and when police attended told her she had to get over the fence. She complied, despite being badly injured.</p> <p>A suffered a swollen ear, severely bruised eyeball and eye socket, and bruising and burns to her body. Her rib cage and left leg were badly injured.</p>	<p>premeditated and very serious examples of their kind and agg 'by his callous, selfish and ... cruel and evil behaviours after the event ...'.</p> <p>The offending was found to be not about sexual gratification, but about sexual dominance, embarrassment and humiliation.</p> <p>No remorse or victim empathy.</p>	ignored and underscores the appellant's criminality.
2.	<p><b><i>FWB v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 118</b></p> <p>Delivered 11/07/2016</p>	<p>47 yrs at time sentencing. 42-44 yrs at time offending for indictment 1.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no prior sexual offending.</p>	<p><u>Indictment 1</u> Ct 1-4, 6-10: Sex pen of de facto child U 16 yrs. Ct 5: Indec dealings with de facto child U 16 yrs.</p> <p><u>Indictment 2</u> Ct 1: Dep lib. Ct 2: Threat to kill. Ct 3: Agg sex pen. Ct 4: GBH with intent.</p>	<p><u>Indictment 1</u> Ct 1-2 and 7: 2 yrs imp each (conc). Ct 3, 6 and 10: 6 yrs imp each (conc). Ct 4 and 9: 4 yrs imp each (conc). Ct 5: 1 yr imp (conc). Ct 8: 6 yrs (cum ct 3).</p>	<p>Allowed.</p> <p>Appeal concerned totality.</p> <p>Only re-sentenced on <u>indictment 1</u> to:</p> <p>Ct 8: 6 yrs imp (cum with 2 yrs on ct 1).</p>

	<p>Left school aged 15 yrs.</p> <p>Recent steady employment.</p> <p>Regularly consumes alcohol and occasionally smokes cannabis. Daily use of amphetamines and heroin, but did not believe he had a substance abuse problem.</p> <p>FWB on bail for indictment 1 at time offending on indictment 2.</p>	<p><u>Indictment 1</u> FWB had been the de facto father of the victim, M, since she was about 2 yrs old.</p> <p>When M was aged 11-12 yrs, FWB digitally penetrated her vagina twice (ct 1-2). He then penetrated her vagina with his penis (ct 3). He slapped M's face when she tried to escape. FWB then made M suck his penis, before masturbating and ejaculating on her face (ct 4). Later, M awoke with FWB touching her vagina (ct 5). The following night, FWB went into M's bedroom and had sexual intercourse with her (ct 6).</p> <p>When M was aged 12-13 yrs, FWB filmed himself sexually abusing M over two hrs. FWB put his fingers in her vagina (ct 7) and then had sexual intercourse with her (ct 8). FWB made M suck his penis (ct 9), before having sexual intercourse with her again (ct 10). FWB continued the abuse and repeated the acts until he ejaculated onto her stomach. M was crying and was fearful of FWB who threatened to harm her or members of her family.</p> <p><u>Indictment 2</u> FWB and H (M's mother) had been in a de facto relationship for 13 yrs, but had separated approx. 6 mths earlier.</p> <p>The dep lib charge (ct 1) was a continuing offence. When visiting H, FWB produced a knife and threatened to kill her, telling her that he loved her, couldn't live without her and wanted her to suffer like she had made him suffer (ct 2). FWB tied H's</p>	<p>TES 12 yrs imp (cum with TES on indictment 2).</p> <p><u>Indictment 2</u> Ct 1: 1 yr imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 8 yrs imp (conc). Ct 4: 5 yrs imp (conc).</p> <p>TES 8 yrs imp (cum with TES on indictment 1).</p> <p>Overall TES 20 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending against M as involving "the most gross breach of trust" and "at or near the top of the range of gravity, justifying the maximum penalty as a starting point".</p> <p>Offending occurred when M was alone and FWB sometimes engineered opportunities to be alone with her. The sentencing judge said that the offending</p>	<p>TES 8 yrs imp (cum with TES on indictment 2).</p> <p>TES 16 yrs imp.</p> <p>EFP.</p> <p>At [65] The charges in the first indictment were representative of a course of conduct.</p> <p>At [66]... in relation to the first indictment... The two episodes of offending involved planning and premeditation... The offending occurred in the family home, a relatively isolated farmhouse, where M was vulnerable and the appellant could abuse her for an extended period without fear of being discovered... The appellant filmed the offences the subject of cts 7, 8, 9 and 10. He had previously told M that once he had recorded the abuse he would stop offending against her. That was not the case... The appellant's offending against M's mother...</p>
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			<p>wrists with cable ties, forced her into a car and drove her to the vicinity of a country town. FWB ordered H out of the vehicle, removed her clothing had sexual intercourse with her until he ejaculated (ct 3). FWB stabbed H in the chest (ct 4) and during the struggle she cut her finger on the knife. When H got out of the car FWB dragged her by the hair back into the car. FWB said he was taking her for medical assistance but H feared for her safety and jumped from the moving car and ran to a nearby house. As a result of being stabbed H suffered a 5cm wound that caused one of her lungs to collapse.</p>	<p>against M had features of sex pen without consent; offending was not the result of grooming.</p> <p>FWB's offending against H "was a terrifying ordeal" and involved "criminality of the highest degree".</p> <p>FWB was at a moderate to high risk of future sexual offending and a moderate risk of future violent offending, most likely family violence.</p>	<p>would have adversely affected M in view of the threats to harm her family which the appellant made in the course of his offending against M.</p> <p>At [69] The appellant claimed to have little or no recollection of the offending and, accordingly, little weight could be given to any remorse. No victim empathy was apparent.</p> <p>At [70] the TES of 12 yrs' imp, especially in the context of the PG, was not broadly consistent with reasonably comparable cases and was not commensurate with the overall seriousness of the offending... The proper exercise of the sentencing discretion required lesser accumulation of the individual sentences.</p> <p>At [90] ...the TES of 8 yrs' imp for the offences in the second indictment was...well within the range open to the sentencing</p>
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					<p>judge ... and reflects ... totality issues arising as a result of the appellant standing for sentence not only in relation to the offences in the second indictment but also the offences in the first indictment.</p> <p>At [91] the overall TES of 20 yrs' imp in relation to the first and second indictments, especially in the context of the PG, was not commensurate with the overall seriousness of the offending the subject of the first and second indictments.</p>
1.	<p><b><i>Adams v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 191</b></p> <p>Delivered 28/10/2014</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>No relevant criminal history.</p> <p>Parents separated when 3 yrs old; raised by his mother; very difficult upbringing.</p> <p>Previously married; long term relationship; no children.</p>	<p><u>Indictment</u></p> <p>1 x Deprivation of liberty. 1 x Att armed robbery. 1 x Armed robbery. 9 x Fraud. 9 x Attempted fraud. 1 x Possess identification material w/i to commit an offence.</p> <p><u>Section 32 Notice</u></p> <p>1 x Stealing Commonwealth property. 1 x Bringing stolen goods into State. 2 x Stealing. 3 x Poss prohibited weapon. 1 x Poss controlled weapon.</p>	<p>TES 10 yrs imp.</p> <p>EFP.</p> <p>\$300 fine.</p> <p>Remorse; victim empathy; acceptance of responsibility.</p> <p>Sentencing judge described robberies and sexual offences as involving 'a significant measure of</p>	<p>Allowed – Grounds 3 &amp; 6.</p> <p><u>Section 32 notice</u></p> <p>Ct 1 varied – release after serving 7 mths of it on recognizance in the sum of \$10,000.</p> <p>At [8] It is very difficult, for the purposes of comparison in the context of the first limb of the totality principle, to identify any relevant total effective sentences</p>



		<p>Former AFP, Customs and Immigration officer.</p>	<p>1 x Unlicensed ammunition. 2 x Possess stolen or unlawfully obtained property. 1 x Possess false number plates.</p> <p>Sometime before the appellant left the AFP in 2006, he dishonestly appropriated a number of items belonging to his employer, including a police radio, a ballistic vest &amp; a container of OC spray.</p> <p>Between 2006 and 2010 the appellant resided and was employed as a customs officer in Darwin. Whilst his neighbours were on holiday the appellant broke into their unit and stole property and identification. The appellant subsequently transferred to Perth between November 2010 and January 2011 and took with him these items.</p> <p>In 2011 the appellant became an immigration officer. During this time he applied online for credit cards using the stolen identity details as well as incorrect information as to his employment, assets and liabilities. Some of the false information as to his employment came from documents he had accessed through his employment. The applications were approved. The appellant also attempted to apply for further credit cards but when asked for further documentation he did not proceed or did not collect the card.</p> <p>In 2011 the appellant stole a cheque from a letterbox and deposited into one of his false accounts, withdrew money from the credit account he had opened and stole cheques from a cheque deposit box at a bank and then deposited the cheque into an access account he had opened.</p>	<p>premeditation, sexual motivation and planning'; described fraud as 'deliberate, systematic and planned criminality over a significant period'.</p> <p>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further dishonesty offences.</p>	<p>imposed in previous cases. The nature, extent and diversity of the appellant's overall offending, by a person with his antecedents, is very unusual. No previous case is truly comparable.</p> <p>At [61] The past, present and likely future conditions of the appellant's imprisonment, by reason of his status as a former police officer, were a relevant sentencing consideration that his Honour was bound to take into account.</p> <p>At [138] The appellant's overall offending was self-evidently very serious. It was varied and substantial. It involved deliberate, systematic and planned criminality executed with considerable sophistication... The appellant used the skills he had gained in the work he had undertaken in the banking and law enforcement sectors to commit the offences, and</p>
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			<p>In 2012 the appellant rented a self-storage unit and post office box under the false name and address previously stolen. The box was used as a mailing address for invoices for the rented storage unit and applications for bank accounts.</p> <p>In March 2012 the appellant received two parking infringements for failing to display an unexpired ticket. Affixed to the vehicle were registration plates from another vehicle. The purpose being he would avoid paying the parking fees.</p> <p>On 30 March 2012 the victim, a 19 yr old Finnish national, was at a bus stop waiting for a bus. The appellant approached the victim, armed with a BB gun and demanded money. He forced the victim to a secluded location where he digitally penetrated her and performed cunnilingus. The victim tried to attempt to remove the handgun however the appellant produced a large black-handled knife from his backpack and threatened to slash her throat.</p> <p>One month later the appellant approached another female victim. He exposed a handgun tucked into his shorts. Terrified, the victim threw her handbag at the appellant and ran.</p> <p>A search warrant was executed on the appellant's house where police located 38 items of mail stolen by the appellant from addresses in Perth. A further search warrant was executed at the storage facility where nine items of stolen mail was located. Also found were unlicensed registration plates, weapons</p>		<p>went to considerable lengths to avoid detention.</p> <p>Discussion on the scope of section 32 notices and Commonwealth offences.</p> <p>At [174] Ground 3 is capable of affecting the total effective sentence imposed by his Honour. However, having regard to all of the circumstances of the case and particularly to the seriousness of the appellant's overall offending and the need for deterrence, I would not impose a different sentence.</p>
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			and unlicensed ammunition.		
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					