

# **Manslaughter**

*s 280 Criminal Code*

**Prior to 1 January 2014**

**Transitional Sentencing Provisions:** Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
TES	total effective sentence
PG	plea guilty
susp	suspended
AOBH	assault occasioning bodily harm
VRO	violence restraining order

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
18.	<p><b><i>Armstrong v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 290</b></p> <p>Delivered 23/12/2013</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after PG (originally charged with murder but following negotiations was charged with manslaughter).</p> <p>Criminal record; short; relatively minor; one charge of AOBH.</p> <p>Difficult childhood witnesses domestic violence.</p> <p>History of alcohol and cannabis use.</p> <p>Married; 3 young children.</p> <p>Good character.</p>	<p>1 x Manslaughter.</p> <p>The appellant, victim and their respective families were neighbours. The families mixed socially and the appellant regarded the victim as one of his best friends.</p> <p>The appellant and victim spent the day drinking alcohol and consuming some cannabis. In the evening the appellant, the victim and their families had a barbecue together.</p> <p>Sometime later an argument developed between the victim and his partner. There was confrontation between the victim and appellant concerning the way the victim had been verbally abusing his partner. During the course of the confrontation, the victim threw a chair at the appellant.</p> <p>An argument developed between the two men with possibly some pushing and shoving. The victim grabbed a knife and came at the appellant with the knife in his hand. They both struggled over the knife. Eventually the appellant turned the knife back onto the victim and stabbed the victim several times. All 4 wounds (first occurred as self-defence) were the combined cause of death.</p> <p>Counsel conceded that the offending was 'at the high end of the scale of seriousness of the offence of manslaughter'.</p>	<p>10 yrs imp.</p> <p>EFP.</p> <p>Remorseful; distressed by what he had done.</p> <p>Experienced symptoms of trauma as a result.</p> <p>Sentencing judge described the 3 wounds inflicted after obtaining the knife as being committed 'perhaps in a frenzy of anger or incoherence or lack of control.'</p> <p>Low risk of violent reoffending.</p> <p>Good prospects of rehabilitation.</p> <p><b>NB:</b> At time of sentencing max penalty was 20 yrs</p>	<p>Allowed.</p> <p>Re-sentenced to 8 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge had taken into account an erroneous maximum penalty.</p> <p>At [28] ... the appellant must be resentenced on the basis that the maximum penalty is 20 years' imprisonment and not life imprisonment.</p> <p>At [29] ... the appellant is not criminally responsible for the first stab wound that was inflicted on the victim. At that point he was clearly acting in self-defence. However, after that wound was inflicted, the appellant disarmed the victim and took possession of the knife...</p>

				imp. Now life imprisonment.	
17.	<p><b><i>The State of Western Australia v Auckram</i></b></p> <p><b>[2013] WASCA 256</b></p> <p>Delivered 06/11/2013</p>	<p>52 yrs at time offence.</p> <p>Convicted after re-trial (1<sup>st</sup> trial hung jury) – Acquitted of murder but convicted of manslaughter (PG to manslaughter rejected by appellant).</p> <p>No prior criminal or traffic record except for a very minor &amp; very old traffic offence.</p> <p>Good character; did not abuse alcohol; did not use illicit drugs or other substances.</p> <p>History of stable employment; stable marriage; Mrs Auckram remains supportive of him.</p> <p>In 1998 diagnosed with tonsillar carcinoma; shortly after the commission of this offence, suffered a recurrence of the carcinoma; it was necessary to undergo surgery; Further treatment &amp; rehabilitation would take some time.</p>	<p>1 x Manslaughter.</p> <p>The victim was aged 41 yrs and was the step son of the respondent. He was mentally ill with a dependency on prescription drugs.</p> <p>The relationship between the respondent and Mrs Auckram and the victim, had become strained over several years. The trial judge was satisfied the victim had made threats to cause harm, including to kill, the respondent and Mrs Auckram. Shortly before the offence, a psychiatrist who was treating the victim had told Mrs Auckram the victim had expressed a wish to kill the respondent. Mrs Auckram conveyed this information to the respondent.</p> <p>Prior to the offence, the victim had recently and unexpectedly returned from Cambodia. He was living with the respondent and Mrs Auckram. The respondent decided to confront the victim and set some ground rules for living in his home. Mrs Auckram was at work. No-one else was present.</p> <p>The discussion soon became an argument. The victim said words to the effect that he would 'slaughter the lot of you'. Shortly afterwards the respondent obtained a hunting rifle and ammunition from his bedroom. The respondent believed the</p>	<p>4 yrs 11 mths imp conditionally suspended 18 mths.</p> <p>Conditions included programme and supervision requirements.</p> <p>Credit given for time spent in custody.</p> <p>During VROI made a substantial number of admissions.</p> <p>Judge decided that 'overall' the respondent's offending was 'a serious example of manslaughter', but was 'some distance from the most serious offence of this kind imaginable'.</p> <p>Judge gave 20%</p>	<p>Allowed.</p> <p>Re-sentenced to 6 yrs imp.</p> <p>EFP.</p> <p>At [99] The making of an offer to plead guilty to the subject offence will be a mitigating factor even though the offender did not enter a plea of guilty to the subject offence when he or she was arraigned.</p> <p>At [129] In my opinion, it must be emphasised that sentencing for manslaughter is not to be approached by endeavouring to formulate different categories or gradations of the offence ...</p> <p>At [159] I have reduced the sentence I would otherwise have imposed to reflect:</p> <p>(a) The mitigating factors I have enumerated at [153] above; and</p>

		<p>Numerous references spoke well of character and qualities as a father, employee and union representative.</p> <p>Suffered post-traumatic stress disorder relating to his offending.</p>	<p>victim had 'a gun somewhere close by', and the respondent wanted to 'get something for protection'. He loaded the rifle with several rounds of ammunition and looked for the victim. He walked into a passageway and moved towards the lounge room.</p> <p>The victim walked from the lounge room into the passageway and moved towards his bedroom. He was not armed. However, the respondent believed the victim had a gun in his bedroom. Also, the respondent saw something in the victim's hand. It was in fact a coffee mug. The respondent did not know what it was, but he thought it might be a weapon of some kind.</p> <p>The respondent raised the rifle and, without warning, fired at the victim from a distance of about 3 or 4 m. The bullet struck the victim in the right bicep and caused him a life-threatening injury.</p> <p>The victim, upon being hit by the first shot, turned around and dropped to the floor on his hands and knees. The respondent fired again. The bullet struck the victim in the back and he became prone on the floor. The respondent fired another two shots. One bullet struck the victim in the back and the other entered his head near the top of his left ear. At least 2 of the final 3 shots inflicted life-threatening injuries.</p> <p>The respondent stepped over the victim and walked into the kitchen area and called 000 however he did</p>	<p>discount for benefits to the State, witnesses and victims for offers to PG and admissions.</p> <p>Deeply and genuinely remorseful; accepted responsibility for his offending.</p> <p>Clinical psychologist said offending was preceded by years of bullying behaviour by the victim.</p> <p>Very low risk of re-offending.</p>	<p>(b) The real risk the respondent may die in custody...</p> <p>At [177] Where an accused person wishes to make an unconditional offer to plead guilty to a lesser charge it would be prudent to place it on the record prior to trial, at least in the presence of the trial judge ...</p>
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			<p>not attempt any first aid or other measures of the kind suggested by the operator. After the call, the respondent went to the front yard of his home. He placed the rifle on the bonnet of a vehicle and raised his arms in surrender when police arrived.</p> <p>Defence case was that the respondent's actions in shooting the victim were not unlawful because they were committed in self-defence. State argued the respondent's self-defence claim fell away after the first shot which incapacitated the victim.</p>		
16.	<p><b><i>Heaton v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 207</b></p> <p>Delivered 04/09/2013</p>	<p>46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extensive criminal record.</p> <p>Childhood of being subjected to &amp; witnessing violence.</p> <p>Completed High School; Apprentice carpenter; employed in that trade.</p> <p>Began using illicit drugs at 21 yrs; commenced using morphine &amp; home baked heroin from 37 yrs.</p>	<p>1 x Manslaughter.</p> <p>The appellant and victim had been together on 29 and 30 September 2010. During that time, the victim had been administered heroin by the appellant at a house in Morley. He was aware that this was the first time the victim had used the drug. At the time the appellant left the address in Morley, the victim could not be aroused. The appellant carried her to his car as she was unconscious.</p> <p>While the deceased was in the appellant's charge, she remained unconscious and unable to be roused. After the appellant picked up two others from their address in Cloverdale, the victim remained in an unconscious state and she was heard to be making gargling or gurgling noises. During the journey from Cloverdale to Scarborough Beach, the victim's head had to be supported by one passenger who also queried with the appellant whether the victim was alright. They argued about whether an ambulance should be called. The appellant's</p>	<p>5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Remorse.</p> <p>Not sentenced on the basis of having administered the heroin to the deceased.</p> <p>Sentencing judge found the appellant acted irresponsibly and recklessly by not taking the deceased for medical treatment or back to her friend's home. He was satisfied that the appellant ignored the</p>	<p>Dismissed.</p> <p>At [117] ... although the heroin which ultimately caused the death of the deceased was supplied and injected by the appellant into the deceased, it was done so with her knowledge and consent...</p> <p>At [191] Judge's conclusion that the case fell in the mid to upper end of offences caused by omission to perform a duty was justified.</p> <p>At [191] ... The appellant's conduct was unnecessary, selfish and reckless to the deceased's wellbeing...</p>

			<p>reaction to expressed concerns was that the victim was 'fine'. It was not until they discovered that the victim had no pulse that the appellant finally called for medical assistance. The victim could not be resuscitated. She died from acute combined heroin and alcohol intoxication. Death would not have occurred but for the heroin which had been administered.</p> <p>The State's case was that the appellant was criminally negligent in failing to provide the deceased with the necessities of life – namely medical care.</p>	<p>deceased's 'best interests' in favour of doing other things in circumstances where it would have been 'so easy to have ensured her safety'. He observed that had the appellant done so, there was 'no doubt on the evidence' that the deceased would have survived.</p> <p><b>NB:</b> At time of sentencing max penalty was 20 yrs imp. Now life imprisonment.</p>	
15.	<p><b><i>Dodd v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 80</b></p> <p>Delivered 22/03/2013</p>	<p>25 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history – no previous convictions for violence but not of good character.</p> <p>3 children – live with their mothers; at time of sentencing another was carrying his unborn</p>	<p>1 x Manslaughter.</p> <p>The victim was aged 27 yrs when killed and had 4 young children.</p> <p>About a month prior, the appellant contacted the victim through a social network site. A casual relationship developed between them.</p> <p>The day before the victim's death the appellant travelled with the victim from Perth to Geraldton in a motor vehicle driven by Mr Minney. The appellant introduced the victim to Mr Minney as 'a</p>	<p>10 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>The judge was satisfied that during the journey the appellant argued with the victim as a result of his consumption of alcohol (and</p>	<p>Dismissed – on papers.</p> <p>At [31] there is no sentencing tariff for manslaughter because of the great variation that is possible in the circumstances of the offending and the offenders.</p> <p>At [32] The great variation in these circumstances explains the difficulty in discerning sentencing patterns for</p>

		child.	<p>Pearce-Belottie dog cunt’ and referred to her as a ‘bloody dog cunt’ on numerous occasions throughout the journey.</p> <p>Mr Minney stopped the vehicle, at the appellant’s request, near Greenough. The appellant dragged the victim from the vehicle and assaulted her. She suffered bruising and swelling around her eyes. The appellant then dragged the victim back into the vehicle. Mr Minney continued driving to Geraldton.</p> <p>The following day, the journey terminated at a house in Spalding. The appellant then walked with the victim towards an area of coastal scrubland. Subsequently, her body was located in this area. The trial judge found that the victim died shortly after she and the appellant left the house in Spalding.</p> <p>The victim’s body was not discovered until days later. By then her body had decomposed to a significant degree. The decomposition affected the determination of the nature and extent of her injuries and cause of death. It was determined that the victim had suffered facial injuries that resulted from the application of substantial blunt force to her head.</p> <p>The trial judge found, based on the state of the victim’s clothing; that the appellant had attempted to have sexual intercourse with the victim.</p>	<p>possibly, other substances) combined with his complete lack of respect for her.</p> <p>The judge characterised the appellant’s offending as a ‘very high level’ of seriousness for this type of offence and that the case was ‘at the upper end of the range of seriousness’ for the offences of manslaughter.</p> <p><b>NB:</b> At time of sentencing max penalty was 20 yrs imp. Now life imprisonment.</p>	<p>manslaughter.</p> <p>At [33] Sentences for manslaughter should, however, reflect the value which the Parliament has placed upon human life.</p> <p>At [35] The trial judge did not decide that the appellant’s offending was in the ‘worst category’.</p> <p>At [45] The trial judge correctly characterised the offending as at a ‘very high level’ and ‘at the upper end of the range of seriousness’ for offences of manslaughter.</p> <p>At [46] The appellant committed an unprovoked and savage attack upon a vulnerable, unarmed and defenceless woman.</p>
14.	<i>McNamara v The State of Western</i>	32 yrs at time offending. 33 yrs at time sentencing.	1 x Manslaughter.	12 yrs imp.	Dismissed.

	<p><b>Australia</b></p> <p><b>[2013] WASCA 63</b></p> <p>Delivered 07/03/2013</p>	<p>Convicted after very late PG – charged murder but PG to manslaughter 8<sup>th</sup> day of trial - accepted in full satisfaction.</p> <p>Prior criminal record including offences of violence and had been imp on at least three previous occasions.</p> <p>Disadvantaged background.</p> <p>Long history of illicit drug use beginning as a teenager which made appellant suspicious, paranoid and aggressive.</p> <p>At time of committing offence, was using methyl daily and selling it to support his own habit and lifestyle.</p> <p>Suffers significant depressive symptoms.</p> <p>Married with two young children, although separated from his wife at time of sentencing.</p>	<p>The victim owed the appellant \$700 for the purchase of illicit drugs. There was an angry exchange of text messages between the appellant and the victim in connection with the victim's failure to pay the debt. The appellant agreed, at the victim's request, to attend at the victim's home to discuss the debt and a burglary at the home which the victim believed had been committed by the appellant some days earlier.</p> <p>When he arrived at the victim's home, the appellant was aware that the victim was present, but was unaware that 3 other men were also in the home. The wooden front door of the house was open and the security screen door was closed.</p> <p>The appellant brought with him a loaded .22 semi automatic sawn off rifle with the safety catch disengaged. When the appellant went to the front door there was a brief exchange of verbal insults between him and the victim through the security door. The appellant then fired a bullet at the security screen door towards the interior of the house, which penetrated the door and hit the far wall of the lounge room. The appellant entered the home and fired another bullet while he was in the vicinity of the front doorway. This shot penetrated the window of the meals area and hit the brickwork of the house next door. The victim ran from the meals area towards the front bedroom. The appellant entered the meals area and fired a third bullet, which struck the victim to the right side of the head as he emerged from the bedroom.</p>	<p>EFP.</p> <p>Sentencing judge decided the appellant should receive a 'small reduction' in his sentence for the very late plea, and any remorse which, hopefully, accompanied it.</p> <p>Sentencing judge noted the appellant's offending was 'towards the top of the range of serious of manslaughter cases'.</p> <p><b>NB:</b> At time of sentencing max penalty was 20 yrs imp. Now life imprisonment.</p>	<p>At [54] There is no sentencing tariff for manslaughter because of the great variation that is possible in the circumstances of the offending and the offenders. Each case must be decided on its own facts.</p> <p>At [115] It must be accepted that the sentence imposed upon the appellant is, in post-transitional terms, the longest sentence to be reviewed in the court.</p> <p>At [117] This was a very serious example of the crime of manslaughter, albeit not at the top of the range of such offences. There were very few mitigating factors that were of any great weight either alone or in combination. The plea of guilty was made in the midst of the trial for purely pragmatic reasons. The appellant's expressions of remorse were belated and completely inconsistent with his defence up to the point in the trial where he pleaded</p>
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			<p>When the appellant discharged the rifle he was not in any immediate danger from the victim. It was open to the appellant to leave the premises.</p> <p>The appellant fled after shooting the victim.</p>		<p>guilty. The appellant's personal circumstances were hardly favourable. Any mitigation that could be given to the appellant's depression was slight.</p>
13.	<p><i>Hishmeh v The State of Western Australia</i></p> <p><b>[2012] WASC 183</b></p> <p>Delivered 20/09/2012</p>	<p>29 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after trial (agg burg and dep lib cts). Convicted after PG (manslaughter – jury unable to reach verdict on murder charge).</p> <p>No relevant prior criminal record.</p> <p>4<sup>th</sup> of 7 children; family emigrated from Lebanon.</p> <p>Married; 2 children (6 yrs and 18 mths of age); owns/operates substantial and successful business</p>	<p>1 x Manslaughter. 1 x Agg burg. 2 x Dep lib.</p> <p>At [61] Offending at upper range of seriousness for offences of manslaughter.</p> <p>Victim 1 was known to co-offender 1 as a drug dealer. Victim 2 was at the home of victim 1 and engaged in a drug transaction at the time of the offending – a fact all offenders were aware of.</p> <p>Appellant and two co-offenders, after ascertaining that victim 1 was home, forced their way into victim 1's home with the intent of robbing her of the money and drugs believed to be at her home. Appellant detained victim 2, as per the pre-arranged plan, so that he could not assist victim 1. Co-offender 2 punched victim 1 in the face and tied her up with plastic clip ties and proceeded to punch her in the face and head repeatedly. Co-offender 2 also choked victim 1. Victim 1 was also repeatedly struck with a hammer to her arms knees and thighs. Injuries suffered by victim 1 – both the assault and the choking – caused fatal haemorrhaging in her brain.</p>	<p>8 yrs 6 mths imp. 5 yrs imp. 2 yrs and 3 yrs imp.</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>Genuine remorse; low risk future violence.</p> <p><b>NB:</b> At time of sentencing max penalty was 20 yrs imp.</p>	<p>Dismissed.</p> <p>At [59] Court is no longer constrained in sentencing by effect transitional provisions had on the maximum penalty (ie in practice a sentence greater than 2/3 statutory maximum could not be imposed) but sentences handed down prior to the introduction of and subsequent repeal of those provisions are still of use in providing guidance as to the sentences properly imposed.</p> <p>At [70] Sentences imposed for manslaughter in last 10 years or so have tended to increase and that is consistent with the sanctity of human life.</p> <p>At [71]-[82] Some discussion of cases.</p>

<p>12.</p>	<p><i>The State of Western Australia v Munda</i></p> <p>[2012] WASCA 164</p> <p>Delivered 22/08/2012</p> <p><i>Western Australia v Munda</i></p> <p>(2012) 43 WAR 137</p> <p>*****</p> <p><i>Munda v Western Australia</i></p> <p>[2013] HCA 38</p>	<p>32 yrs at time offending. 33 yrs at times sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Lengthy prior criminal record – including violent assaults against victim and other women in his family and assault public officer.</p> <p>Offending breached life-long VRO; offending occurred 2 mths after the expiration of SIO for GBH on same victim.</p> <p>Lived traditional Aboriginal life in early years.</p> <p>Good English communication skills; educated to yr 10; good employment record but unemployed for 4 yrs prior to offending.</p> <p>Long history alcohol abuse but capable of abstaining for lengthy periods of time when living in dry communities or working on cattle stations; history of cannabis abuse.</p>	<p>1 x Manslaughter.</p> <p>At [131] Very serious instance of offending and within the upper range of seriousness for manslaughter offences.</p> <p>Respondent and victim in de facto relationship for 16 yrs and had four children together (2, 7, 10 and 16 yrs). History of domestic violence – including previous violent assaults by the appellant on the victim which resulted in terms of imprisonment.</p> <p>Respondent repeatedly assaulted the victim in a sustained and violent attack – throwing her across the room, ramming her head into fibro walls, punching her to the face and head numerous times. Victim repeatedly asked respondent to stop. After the assault finished, victim and respondent went to sleep. Respondent sexually penetrated the victim when he awoke the next morning. Respondent then left the house to get some food. On his return he noticed the victim had stopped breathing. Respondent attempted basic first aid and then called for medical assistance.</p> <p>Victim suffered bruising to her head, face, chest and limbs, bleeding and swelling of her brain, a fracture to her left jaw and 5 broken ribs.</p> <p>Victim and respondent both affected by alcohol at the time of offending and the respondent was additionally affected by cannabis.</p>	<p>5 yrs 3 mths imp.</p> <p>TES 5 yrs 3 mths imp.</p> <p>Limited understanding of link between alcohol and violence; some remorse.</p> <p><b>NB:</b> At time of sentencing max penalty was 20 yrs imp.</p>	<p>Allowed.</p> <p>Sentence increased to 7 yrs 9 mths imp.</p> <p>At [106]-[108] No tariff for manslaughter owing to great variation of circumstances but sentences imposed should reflect the value which Parliament has placed on human life.</p> <p>At [109]-[122] and [138]-[142] Discussion of comparable cases.</p> <p>At [124]-[129] Discussion and affirmation of the factors identified in <i>R v Fernando</i> (1992) 76 A Crim R 58 which can lead a person of Aboriginal background into offending and which, in appropriate cases, may be relevant to sentencing. Although the relevance of those factors was at [134] afforded little weight in this case.</p> <p>At [130] Sentences imposed for drunken violence against</p>
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					<p>Aboriginal women in Aboriginal communities, especially where death results, must reflect the sentencing factors of the protection of vulnerable women as well as personal and general deterrence.</p> <p>At [31]-[41] Discussion as to the interaction of s 31(4) and 41(4) <i>Criminal Appeals Act</i> and the residual discretion of the court to refuse a State appeal notwithstanding the conclusion a different sentence should have been imposed. Note that s 41(1) is determined not to have abrogated common law principles as they apply to State appeals (only that of double jeopardy being abolished) – State appeals retain a different purpose and fall to be decided under different principles than those of an offender’s appeal.</p> <p>At [66] Wrong in principle to reduce the weight given to general deterrence where alcohol fuelled violence is</p>
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					<p>endemic in the community.</p> <p>*****</p> <p>High Court dismissed appeal.</p> <p>At [53] – [55] Court made some observations about the need for sentences to reflect the seriousness of alcohol fuelled offending in the domestic setting.</p> <p>At [64] – [78] Court confirmed that an Appeal Court retains residual discretion to refuse State appeals of sentences that are manifestly inadequate.</p>
<b><i>Maximum penalty increased to life imprisonment (17/03/2012)</i></b>					
<b>11.</b>	<p><b><i>Macaree v The State of Western Australia</i></b></p> <p><b>[2011] WASCA 207</b></p> <p>Delivered 30/09/2011</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Good antecedents – offending out of character.</p>	<p>1 x Manslaughter.</p> <p>At [151] Very serious instance of manslaughter.</p> <p>A friend of the victim’s had a one night stand with the appellant. The victim’s friend discovered the betrayal and sent some abusive and threatening text messages to the appellant. Victim’s friend decided to confront the appellant at his house and the victim offered to drive him there.</p> <p>On arrival at the appellant’s house, the victim stayed out the front while his friend went to the</p>	<p>6 yrs imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Some remorse.</p>	<p>Dismissed.</p> <p>At [142]-[152] Although sentencing judge was in error to sentence appellant on basis deliberately fired crossbow, sentence imposed was appropriate.</p> <p>At [146] Offending involved high degree of criminality notwithstanding appellant</p>

			<p>house and banged on the door. The appellant's brother answered and denied the appellant was home. Appellant, in his bedroom, heard shouting and recognised the victim's friend's voice. Appellant picked up and loaded a cross-bow – using a bolt with a broader head designed to administer shock and blood loss in order to kill. Appellant left his bedroom and confronted victim's friend with crossbow. Victim's friend ran out of the house, down the driveway and onto the street. Victim was standing in driveway near appellant's vehicle – did not threaten or move toward appellant in anyway. Appellant pushed victim twice with crossbow and told him to leave. On last occasion, bolt fired into victim's chest. Victim died within minutes.</p>		<p>acted on spur of moment with no intent to harm or kill victim.</p> <p>At [150] <i>'It is important not to lose sight of the unnecessary loss of life which has resulted from the appellant's actions'.</i></p>
<b><i>Transitional provisions repealed (14/01/2009)</i></b>					
<b>10.</b>	<p><b><i>Luff v The State of Western Australia</i></b></p> <p><b>[2008] WASCA 89</b></p> <p>Delivered 18/04/2008</p>	<p>36 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Made at earliest opportunity to both offences - charged murder but PG to manslaughter accepted in full satisfaction.</p> <p>Prior criminal record - includes violent offences and offences of dishonesty.</p>	<p>1 x Manslaughter (victim A). 1 x AOBH (victim B).</p> <p>Appellant and victim A had been friends approx 30 yrs. Appellant and his family living with victim A for approx 6 mths prior to offence. Appellant and victim A had argument over comments made by victim A likening his behaviour to that of victim B. Appellant punched victim 1 several times in face. Victim A fell backwards and appeared to lose consciousness. Ambulance and police called. Victim A assured police he was fine and the</p>	<p>7 yrs 4 mths imp. 8 mths imp.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Extremely remorseful.</p>	Dismissed.

		<p>Highly dysfunctional family background – parental neglect and violence; left home 15yrs and made ward of state; drug and alcohol abuse.</p> <p>De facto partner approx 7 yrs; 2 children.</p>	<p>ambulance was cancelled.</p> <p>Appellant went to backyard, where victim B was drinking with another person. Appellant abused victim B and punched him in the head with clenched fist (AOBH). Appellant returned to kitchen and found victim A. Appellant again assaulted victim A – punched him and kicked him several times in the head with steel capped boots after he fell to the floor. Victim A died as result assault. Autopsy revealed victim A had blood alcohol level on 0.559%. Appellant not affected by alcohol.</p>		
<p>9.</p>	<p><b><i>The State of Western Australia v Walley</i></b></p> <p><b>[2008] WASCA 12</b></p> <p>Delivered 7/12/2007</p>	<p>Age not mentioned in appeal judgment however reference is made to the sentencing judge's remarks of the respondent's comparative youth at [12].</p> <p>Convicted after PG earliest opportunity - charged murder but PG to manslaughter accepted in full satisfaction.</p> <p>No relevant prior criminal record.</p> <p>"Blighted' life; victim sexual and domestic abuse; alcoholic parents; alcohol, glue and drug abuse; found in sentencing to have become "desensitised" to violence between men and women as result of background.</p>	<p>1 x Manslaughter.</p> <p>Victim was respondent's de facto partner.</p> <p>Respondent and victim went to respondent's mother's house. Other family members present and alcohol consumed throughout day. Respondent became upset and began arguing with victim. Respondent became aggressive toward her mother – punching her several times. Mother left house and respondent continued to argue with victim in driveway. Respondent went inside house, smashed plates and other items in kitchen and went back outside carrying 3 knives. Family member took knives off her. Respondent and victim continued to argue. Respondent went inside and came back outside with another knife, 20-30cm in length. Respondent plunged knife into victim's neck and ran away – wound approx 9cm deep and severed jugular vein.</p>	<p>1 yr 8 mths imp.</p> <p>TES 1 yr 8 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES increased to 3yrs imp.</p> <p>EFP.</p> <p>NB: double jeopardy applied to State appeals.</p> <p>At [18] – [19] emphasised need for deterrence and fact that intoxication not mitigating factor in offences of this kind.</p> <p>At [23] "desensitisation" to violence between men and women mitigating (reduces moral culpability) but also increases need for personal deterrence.</p>

					At [32] Comparative cases of limited value because of difference in circumstances each offence. Sentence must reflect value placed on human life.
8.	<p><b><i>Colledge v The State of Western Australia</i></b></p> <p><b>[2007] WASCA 211</b></p> <p>Delivered 17/10/2007</p>	<p>44 yrs at time offending.</p> <p>Convicted after PG. Originally charged with murder but PG to manslaughter accepted in full satisfaction.</p> <p>Prior criminal record - includes convictions for AOBH and GBH.</p> <p>Single; unemployed; average upbringing.</p>	<p>1 x Manslaughter.</p> <p>Appellant and victim acquainted. Victim had substance abuse problems (heroin &amp; amphetamines). Victim told friends staying with appellant until she had repaid \$200 debt to him. Appellant, victim and others drinking at appellant's house. Appellant and victim retired to appellant's room. Approx 4am two loud thumps heard. Appellant's bed sheets hanging on temporary washing line next morning and victim never seen again.</p> <p>Short time after victim went missing, bad smell noticed coming from back of appellant's property. Appellant explained it by reference to a neighbour's use of blood and bone in the garden.</p> <p>Police interviewed appellant after victim reported missing. Appellant told them victim spent night on couch and he had last seen her when she went to clinic next morning. Also said victim afraid of police and likely hiding from them.</p> <p>Two days later police searched appellant's home. Strong odour from rear shed – appellant attributed it to his having killed a pig. In shed police found yellow van with stained mattress and bedding in it.</p>	<p>10 yrs imp.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p>	Dismissed.

			<p>Police found victim's body buried in ground between another shed and fence in area signposted as male urinal - approx 1m deep and covered with lime. Maglite torch found in house with blood from victim on it. Traces cleaned up blood found in appellant's room – cast off pattern on ceiling consistent with having come from Maglite torch. Victim's body too badly decomposed to determine cause of death – no skeletal fractures.</p> <p>Appellant claimed self defence during course psychological evaluation for PSR but would not repeat version on oath – victim attacked him with sword; he hit her on head with torch in self defence; both went back to sleep; victim dead in morning; appellant panicked and disposed of body. Rejected on evidence by judge – classed as higher end of range of seriousness.</p>		
7.	<p><b><i>Bell v The State of Western Australia</i></b></p> <p><b>[2003] WASCA 216</b></p> <p>Delivered 17/09/2003</p>	<p>21 yrs at time offending. 25 yrs at sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - includes convictions for fraud; burglary; drugs.</p> <p>“Dreadful childhood”; sexually abused by father aged 7-13 yrs (father sentenced 9 yrs imp for abuse); ran away home at 15 yrs, living in hostels until 18 yrs;</p>	<p>1 x Manslaughter.</p> <p>Appellant and victim at nightclub. Returned with friends to appellant's house and used illicit drugs. Victim wanted more drugs but was unable to inject herself due to level intoxication – asked appellant to inject her. Appellant injected victim with drugs. Appellant later told other people that victim had fallen asleep. Next morning, appellant told friends taking victim home and carried her to the car. No independent verification of when victim died but accepted she died as result of overdose of drug she consumed, ultimately with the assistance of the appellant. Appellant says discovered she was dead</p>	<p>10 yrs imp.</p> <p>TES 10 yrs imp. Equivalent to 6 yrs 8 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES reduced to 5 yrs imp (reduced from 7 yrs 6 mths to reflect introduction of transitional provisions).</p> <p>EFP.</p> <p>At [26] No negligence ‘willed act which directly caused the death of the deceased’.</p>



		sister and mother committed suicide within 6mths each other; illicit drug abuse issues.  Qualified chef; good employment history.	when he got to place he was taking her to. Appellant disposed of body in bush and placed victim's belongings in various places to cause confusion if they were found. Victim's body discovered 3 yrs after dumped by bushwalker. Victim had 3 yr old son at time death. Appellant interviewed by police after disappearance of victim – maintained he dropped her at bus stop and knew nothing about her disappearance.		At [29] Degree of violence and nature of acts (performed deliberately even where no intent) are primary issues in assessing seriousness of offending and justifying sentence.
	<b>Transitional provisions enacted (31/08/2003)</b>				
6.	<b>Nguyen v The Queen</b>  [2001] WASCA 176  Delivered 13/6/2001	27 yrs at time offending.  Convicted after trial (along with 7 co-offenders; 2 PG to assault and 2 PG to manslaughter; one acquittal). Substantial prior criminal record.  History drug use and gambling.	1 x Manslaughter. 1 x Agg burg. 1 x AOBH. 11 offenders (including appellant) went to a unit with intent to attack victim. Victim received multiple stab wounds in attack and died as he was trying to escape. Second victim wounded during attack. Appellant recruited at pool hall by others to participate in serious assault. Appellant not armed himself and accepted in sentencing that appellant did not assault anyone although he did enter unit (culpability reduced as did not actively assault anyone himself). Accepted in sentencing that appellant one of 'inner ring' and was actively involved in recruitment of others to participate in attack.	7 yrs imp. 5 yrs imp. 2 yrs imp.  TES 12 yrs imp. Equivalent 8 yrs imp after implementation of transitional provisions.  EFP.	Dismissed.
5.	<b>The Queen v Gordon</b>	45 yrs at time offending.	1 x Manslaughter.	7 yrs imp.	Dismissed – sentence lenient but not so low as to manifest

	<p><b>[2000] WASCA 401;</b></p> <p>Delivered 15/12/2000</p>	<p>Convicted after PG.</p> <p>On parole at time offence for several offences, including previous assault on victim.</p> <p>Lengthy prior criminal history – incl previous conviction for manslaughter (of de facto wife in brutal attack whilst intoxicated; 3 yrs imp); numerous assaults; escape custody; resist arrest; offending predominantly alcohol related.</p> <p>Strong possibility severe tribal payback on release.</p>	<p>Victim de facto partner of respondent.</p> <p>Respondent consumed large amount alcohol (lived in dry community and left frequently to drink) and argued with victim. Protracted and brutal attack then inflicted by respondent – multiple injuries (100 lacerations, bruises or abrasions); no defensive injuries. Likely that respondent used piece of metal as weapon.</p> <p>Respondent tried to revive victim and when he could not, did not seek medical assistance (could have resulted in life being saved). Could have taken up to 6 hrs for victim to die.</p> <p>After death, respondent undressed, showered and reclothed victim (after washed her clothes).</p> <p>Respondent severely mutilated arms as act contrition when realised victim died.</p> <p>Day after attack, respondent reported death to police – told police died of heart attack and that she had complained of sore chest previous night but refused to go to hospital. Admitted to hitting victim in face a few times and suggested other injuries caused by someone else.</p>	<p>TES 7 yrs imp.</p> <p>Equivalent 4 yrs 8 mths imp after implementation of transitional provisions.</p> <p>Not EFP.</p>	<p>error.</p> <p>NB: double jeopardy applied to State appeals.</p>
4.	<p><b>R v McDonald</b></p> <p><b>[2000] WASCA 336</b></p> <p>Delivered 8/11/2000</p>	<p>22 yrs at sentencing.</p> <p>Convicted after PG (originally charged murder).</p> <p>Prior criminal record - no violent or serious offending.</p>	<p>1 x Manslaughter.</p> <p>Respondent and victim, 21 yrs of age, known each other many years and were 'going out' with each other at time offence.</p> <p>Respondent lived in retirement village with grandmother and 15 yr old sister. Respondent and appellant been at birthday party and were dropped</p>	<p>3 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths imp susp 2 yrs.</p> <p>Genuine distress and remorse.</p> <p>6 mths reduction for</p>	<p>Dismissed.</p> <p>Extension of time refused (application brought by AG, after DPP declined to appeal, 7 ½ mths out of time).</p> <p>NB Double jeopardy applied to State appeals.</p>

			<p>at respondent's home at approx 1am. Respondent went into unit and thought victim was going home. Victim entered unit and said wanted to stay in room respondent shared with sister. Respondent said no and insisted he leave. Argument followed and victim attacked respondent in bedroom and living area. Victim's conduct uncharacteristic and respondent was fearful. During the course of the altercation, respondent inflicted stab wound to victim's chest with small knife which had been on kitchen bench. Altercation stopped, victim took knife from respondent and both examined wound – slight bleeding at first which worsened with time (wound 6 – 7 cm deep and had penetrated heart). Respondent asked victim to wait outside for father to collect him – respondent phoned victim's father shortly before stabbing to ask him to pick victim up as he was intoxicated. Respondent rang victim's father again and was told he was on his way. Victim went outside to wait, still in possession of knife. Respondent, still fearful and knowing victim had knife, locked front door, instructed grandmother not to open it and barricaded herself in bedroom with sister.</p> <p>Respondent's grandmother opened front door, saw victim's deteriorating condition and rang ambulance. Victim died shortly after father arrived and prior to ambulance's arrival. Respondent not aware that wound serious or life threatening.</p>	time spent in custody prior to sentencing.	
3.	<b><i>R v Churchill</i></b> <b>[2000] WASCA</b>	27 yrs at sentencing.  Convicted after PG prior to	1 x Manslaughter.  Victim and respondent in relationship.	3 yrs 6 mths imp. Equivalent to 2 yrs 4 mths imp after	Dismissed.

	<p><b>230</b></p> <p>Delivered 28/8/2000</p>	<p>retrial (first trial on charge murder, jury could not agree verdict).</p> <p>Prior criminal record - previous violent convictions; 2 in which knife used; no prior imprisonment imposed.</p> <p>Domestic violence between parents as result alcohol abuse; parents separated; father died when respondent was 10 yrs; mother died when she was 15 yrs.</p> <p>History alcohol abuse; 3 children (not in her care).</p>	<p>Victim, respondent and others drinking at respondent's home after drinking at various other places during the night. Argument between respondent and guest – guest left. Later that night, respondent went into bedroom where friend and de facto sleeping and told them victim stabbed himself. All went to respondent's room and found victim collapsed in a pool of blood – deep stab wound to base of neck, approx 9 cm deep, with hilt abrasions on skin. No defensive wounds. All went to police station and respondent again suggested victim stabbed himself. At time spoke to police, respondent BAC 0.37%.</p>	<p>implementation of transitional provisions.</p> <p>EFP.</p>	
2.	<p><b><i>Haworth v The Queen</i></b></p> <p><b>[2000] WASCA 175;</b></p> <p>Delivered 30/6/00</p>	<p>18 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Co-accused found guilty murder.</p> <p>No prior criminal record.</p> <p>Unhappy and deprived background; gone off rails at 17 yrs.</p>	<p>1 x Manslaughter.</p> <p>Victim at home when heard noises from outside and thought someone interfering with meter box or hot water system. Victim went outside armed with cricket bat. Victim saw appellant and girlfriend out front of flat and swung cricket bat. Bat hit appellant in elbow. Appellant abused victim and threatened to return and kill him.</p> <p>Appellant and girlfriend went to friend's house where appellant complained of being hit by bat. Appellant and co-offender left to confront victim – co-offender armed with kitchen knife and appellant armed with brick. On arrival at victim's home,</p>	<p>8 yrs imp.</p> <p>TES 8 yrs imp. Equivalent to 5 yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	Dismissed.

			<p>victim still outside. Confrontation occurred. Appellant threw brick but missed victim. Co-accused stabbed victim in chest and he died shortly after.</p> <p>Co-offender surrendered to police 3 days after offence. Appellant surrendered to police 4 days after offence – admitting involvement in incident.</p> <p>Gravamen of offence was joint enterprise to confront victim when both armed – extremely serious offence as two armed persons deliberately confronted another and caused his death.</p>		
1.	<p><b><i>Pryor v The Queen</i></b></p> <p><b>Supreme Crt Library No 950676</b></p> <p>Delivered 12/12/95</p>	<p>25 yrs at time offending.</p> <p>Convicted after PG. Not at earliest opportunity.</p> <p>Originally charged with murder – PG of manslaughter accepted because question as to admissibility of ROI due to appellants extreme amphetamine intoxication and difficulties with ability to prove specific intent because of high level of intoxication.</p> <p>Prior criminal history – assaults; nuisance types offences; break and enter; stealing.</p> <p>History alcohol abuse (ceased</p>	<p>1 x Manslaughter.</p> <p>Extremely serious example manslaughter – deliberate stabbing unarmed and defenceless person.</p> <p>Victim was a boarder at appellant's father's house and friend of appellant. Appellant and de facto also staying at house. Appellant accused victim and de facto on previous occasions of having an affair – also voiced suspicion to others.</p> <p>Appellant came out of bedroom, visibly affected by amphetamines (either just used or coming down) and asked time. Appellant went back to room and came back out approx 30 minutes later armed with knife and confronted victim about relationship with de facto – victim had been asleep on sofa. Appellant grabbed victim and struggle ensued. Appellant struck victim in chest with knife – wound approx 14cm deep and went through upper and</p>	<p>7 yrs 5 mths imp.</p> <p>TES 9 yrs imp (spent 19 mths in custody prior sentence). Equivalent to 6 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p>	Dismissed - sentence heavy, but does not manifest error.

		when friend died alcohol poisoning) and amphetamine use (began when mother dying cancer); parents separated when aged 7yrs.	lower lobe of lungs. Appellant and de facto went to neighbours and asked them to call ambulance. Appellant then woke father and said victim accidentally stabbed himself. Appellant and de facto left house and went to a friend's – showered, changed clothes. Arrested by police next day – initially claimed found victim lying in pool of blood and that someone broken in and stabbed him; then told police had altercation with victim and that victim fell on something during the course of it to cause wound. In second ROI, admitted to stabbing.		
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