

Child Sex Offences – Intra-familial

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
indec	indecent
pen	penetrate
TES	total effective sentence
ISO	intensive supervision order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
19.	<p><i>MHE v The State of Western Australia</i></p> <p>[2019] WASCA 133</p> <p>Delivered 29/08/2019</p>	<p>38-39 yrs at time offending. 40 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born WA; very stable home environment; supportive family and friends.</p> <p>Two brothers; he and both siblings' victims of sexual abuse when children; two offenders charged and convicted.</p> <p>Educated to yr 12; completed 6 months farm studies in Switzerland.</p> <p>Good work history.</p> <p>One prior long-term relationship; de facto relationship with MG about 5 yrs prior to offending.</p> <p>MG charged on joint ind with five separate offences.</p>	<p>21 x Sex pen de facto child. 66 x Indec dealing de facto child.</p> <p>MHE and MG (co-offender) were in a de facto relationship. The three victims were MG's children. Two daughters, S, aged 15 and K, aged 11 yrs and a son, L, aged 8 yrs.</p> <p>The offending occurred on 14 separate days over a period spanning about a year. All but three of the offences occurred in the last 6 months of that period.</p> <p>Three offences were committed against S, 83 against K and one against L.</p> <p>The offending against S involved MHE rubbing her buttocks on one occasion and a further occasion when he stroked her buttocks and penetrated her vagina with his finger.</p> <p>The offending against K involved MHE allowing K to masturbate his penis and having her perform fellatio on him. MHE also masturbated his penis in K's presence, rubbed K's vagina and clitoris and poked or tickled her breasts, buttocks, anus or genital area.</p> <p>On a further occasion MHE and MG were watching TV. Knowing K and L were in the room and watching, MG lifted her shirt and exposed her breasts. MHE used a fork to tickle her breasts (cts 58 and 59).</p>	<p>Sentenced 87 offences; all but four cts made wholly concurrent.</p> <p>Ct 58: 18 mths imp (cum). Ct 59 18 mths imp (conc).</p> <p>TES 12yrs 6 mths imp. EFP.</p> <p>The sentencing judge found some of the individual acts of indecency ranked towards the very upper end of the scale of such offences and the appellant's offending ranked towards the upper end of objective seriousness, particularly because there were three victims.</p> <p>The sentencing judge found the appellant breached his position of trust, power and influence over the victims, who depended on him for support, care and guidance; two of the victims, K and L, were very young; the offending was repeated, particularly</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence (cts 58 and 59) and totality principle.</p> <p>Re-sentenced: Cts 34 and 36: 12 mths imp. Cts 58 and 59: 4 mths imp. Ct 68: 3 yrs.</p> <p>Cts 3, 40 and 6 cum; all other sentences conc.</p> <p>TES 10 yrs imp. EFP.</p> <p>At [64] ... the gravamen of these offences [cts 58 and 59] is the exposure of K and L, both young children, to a form of sexual touching between the appellant and the victim's mother. ... There was no physical contact with L, Nor was anything said to L about what was occurring.</p> <p>At [65] While the appellant committed a very large number of offences against</p>

			<p>The majority of the offences were discovered when a CCTV system set up in the lounge room of the home was viewed.</p>	<p>against K, as to be routine; a number of individual offences and the offending overall revealed an extreme degree of depravity.</p> <p>Initially denied any offending; number of admissions made after CCTV footage seized from his home; voluntary disclosure of a number of offences that would not otherwise have come to light.</p> <p>Expressed willingness to undertake sex offender treatment; no demonstrated significant or genuine remorse; some shift of responsibility and blame on 11 yr-old victim.</p>	<p>K, ct 58 was the only offence involving L. ... there was no evidence or material before the sentencing judge to suggest, much less establish, that L was aware of the appellant's offending behaviour against K ...</p> <p>At [66] ... the appellant's offence against L, in ct 58, must be viewed as towards the lower end of the range of seriousness for offences of indec dealing with a child known to be the offender's de facto child.</p> <p>At [95] The appellant's offending undoubtedly had a number of serious features ... We accept, ... that the appellant persistently and callously treated K as a sexual plaything for his own sexual gratification. ...</p> <p>At [96] However, ... the appellant's offending did not include any penile/vaginal or penile/anal penetration.</p>
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					imposed in many appellate decisions where the offender was convicted, after trial, of multiple offences of sex pen that (1) included penile/vaginal penetration, (2) involved younger victims, (3) were committed over a substantially longer period of time, (4) involved a course of conduct of which the convictions were representative, (5) involved violence or threats of violence, or (6) involved a combination of those features. ...
18.	<p><i>LYN v The State of Western Australia</i></p> <p>[2019] WASCA 45</p> <p>Delivered 12/03/2019</p>	<p>53 yrs at time sentencing.</p> <p>Very late PG (17% discount).</p> <p>Prior criminal history; 4 yrs imp for sexual offending against his eldest biological daughter (2005 ind); not re-offended since this period of imp.</p> <p>Prior participation in counselling and high intensity sex offender treatment program whilst incarcerated; subject to</p>	<p>Cts 1, 4, 6, 8-10 & 14: Sex pen child lineal relative U16 yrs.</p> <p>Cts 11 & 16: Indec dealing child lineal relative U16 yrs.</p> <p>The victims, GL and AJ, are LYN's biological daughters. GL was aged between 4 and 11 yrs and AJ was aged between 4 and 9 yrs (2006 ind).</p> <p>The offending involved LYN digitally penetrating GL and AJ. He also made GL perform fellatio on him and penetrating her vagina with his penis.</p> <p>The offending against GL and AJ came to an end when offending against their older half-</p>	<p>Ct 1, 6 & 9: 2 yrs 9 mths imp (conc).</p> <p>Ct 4: 2 yrs 9 mths imp.</p> <p>Ct 8: 3 yrs imp (cum).</p> <p>Ct 10: 4 yrs 6 mths imp (cum).</p> <p>Ct 11: 2 yrs imp (conc).</p> <p>Ct 14: 4 yrs 6 mths imp (conc).</p> <p>Ct 16: 2 yrs 3 mths imp (conc).</p> <p>TES 10 yrs 3 mths imp. EFP.</p> <p>The sentencing judge found the offending</p>	<p>Allowed.</p> <p>Appeal concerned totality principle (in context with the sentence imposed on 2005 ind).</p> <p>Resentenced:</p> <p>Cts 4, 8 and 16 cum. All other sentences conc with each other and with cts 4, 8 and 16.</p> <p>Individual sentences not interfered with.</p>

		<p>ANCOR obligations since release.</p>	<p>sister, AP, was discovered (2005 ind).</p> <p>The offending against AP spanned a period of about 8 yrs, when she was between 6 and 14 yrs of age.</p>	<p>‘plainly of the utmost seriousness’; aggravated by having commenced when the victims were very young and particularly vulnerable; there was a significant and continuing breach of the trust of a parent to a child; he used them for his own sexual gratification and he used his position as their father to groom them from a young age, bribing and threatening them not to tell anyone.</p> <p>The sentencing judge found the offending representative of a course of conduct and representative of the ongoing deviant sexual interest he had in his own daughters.</p> <p>Terrible impact on the victims; psychological issues and incidents of significant self-harm.</p> <p>Low risk of reoffending.</p>	<p>TES reduced to 8 yrs imp. EFP.</p> <p>At [49] While the appellant’s sexual offending against his daughters was very serious, and had a devastating effect upon them, it did not possess some of the more egregious features of the offending in the other cases referred to ...</p> <p>At [52] ... the TES of 14 yrs 3 mths imp imposed for the offending against all three daughters fails to properly reflect the mitigating effect of the PG to the offences charged in the 2016 ind and the rehabilitative effect of the appellant’s prior incarceration. ...</p> <p>At [53] ... In our view, a TES of 12 yrs imp properly reflects the overall criminality involved in all the offences against AP, GL and AJ, viewed in their entirety and having regard to the circumstances of the</p>
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					case, including those referable to the appellant personally. ...
17.	<p><i>Indich v The State of Western Australia</i></p> <p>[2019] WASCA 13</p> <p>Delivered 22/01/2019</p>	<p>31 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; no relevant prior convictions.</p> <p>Indigenous Australian; raised by maternal great aunt; no contact with his father; minimal contact with his mother as a child.</p> <p>Experienced learning difficulties at school; partially completed yr 11.</p> <p>Employed various labouring positions.</p> <p>Married; relationship difficulties at time offending.</p> <p>Medicated for depression; reported suicidal ideation.</p> <p>Exposed to illicit drug use aged 16 yrs; history of alcohol; methyl and cannabis use.</p>	<p>2 x Sex pen de facto child U16 yrs.</p> <p>The victim, A, was aged 14 yrs. Indich was her stepfather.</p> <p>Indich suggested to A they have sex. She followed him into his bedroom where he had sexual intercourse with her. A showered before they both watched a movie together.</p> <p>On another occasion Indich had anal intercourse with A for a period of time.</p> <p>It was accepted A had given Indich the idea that she was agreeable to having sex with him.</p> <p>The offences were not representative of ongoing sexual conduct between Indich and A.</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 3 yrs 2 mths imp (cum).</p> <p>TES 7 yrs 2 mths imp. EFP.</p> <p>The sentencing judge found the offending 'very serious'; it involved the sexual invasion of a 14-yr-old girl by a man who was not only an adult but who was her stepfather and in the position of being required to care for her welfare; he abrogated those responsibilities for his own sexual desires and sexual gratification.</p> <p>Serious and adverse effects on the victim.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and error in failing to take into account remorse.</p> <p>At [39] There is nothing in the materials before his Honour which indicates that the appellant accepted that what he did was morally wrong or that he was sorry for the impact the offences had had on the victim.</p> <p>At [70] ... the appellant's TES may be seen as high. However, ..., it was open to the sentencing judge to exercise his sentencing discretion to order that the sentences for cts 1 and 2 be served wholly cumulatively, having regard to the first limb of the totality principle. ...</p> <p>At [71] ... the TES ... can be seen to bear a proper relationship to the overall</p>

					<p>criminality involved in both offences viewed in their entirety, having regard to all relevant facts and circumstances ...</p> <p>At [76] ... there is limited mitigation to be found in the absence of other proved conduct of the kind charged in cts 1 and 2. The appellant is not a person of good character generally. The fact that he deliberately sexually penetrated his stepdaughter, on two entirely separate occasions, limits the degree to which the offending can be characterised as an out of character aberration.</p>
16.	<p><i>The State of Western Australia v CGT</i></p> <p>[2018] WASCA 226</p> <p>Delivered 21/12/2018</p>	<p>50-51 yrs at time offending. 76 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Born and raised Germany; mother widowed; father lost in WWII; family hardships typical of that time.</p> <p>Average grades; completed school.</p>	<p>7 x Sex pen child U13 yrs.</p> <p>The victim, EC, was aged 5-6 yrs and is CGT's biological granddaughter.</p> <p>On occasions CGT would mind his three grandchildren, EC and her two siblings.</p> <p><u>Cts 1, 2, 4 & 6</u></p> <p>On at least four separate occasions CGT penetrated EC with his penis.</p> <p><u>Cts 3, 5 & 7</u></p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 3 yrs imp (conc). Ct 5: 2 yrs imp (conc). Ct 6: 3 yrs imp (cum). Ct 7: 2 yrs imp (conc).</p> <p>TES 6 yrs imp. EFP.</p> <p>The trial judge found the offences a gross breach of</p>	<p>Allowed.</p> <p>Appeal concerned totality principle.</p> <p>Re-sentenced to: Ct 4: 3 yrs imp (cum). Ct 6: 2 yrs 9 mths imp.</p> <p>All other cts unaltered.</p> <p>TES 8 yrs 9 mths imp. EFP.</p>

		<p>Moved to Australia with wife; two young daughters.</p> <p>Married three times; suffered loss of first and second wives to cancer; much younger current wife.</p> <p>Supportive family in NSW.</p> <p>Good employment history; worked own business many yrs; retired.</p> <p>Ongoing health issues; multiple surgical interventions.</p>	<p>On at least three separate occasions CGT digitally penetrated EC.</p>	<p>trust against his young and vulnerable granddaughter; the abuse was chronic and went on for a period at least a year.</p> <p>The trial judge found the respondent's offending had 'hugely contributed' to the dysfunction in EC's life.</p> <p>The trial judge found the offences required the imposition of terms of imp, nothing less could possibly capture the seriousness of the offending.</p> <p>Very low risk category for reoffending.</p>	<p>At [51]-[75] Discussion on comparable cases.</p> <p>At [76] The respondent's offending was very serious. ... His offending involved the abuse of his position of trust as the victim's grandfather. ... was not momentary or impulsive, but sustained and repetitive. The respondent used coercion and threats to ensure that the victim complied with his demands and maintained secrecy regarding the abuse. The victim was very young and vulnerable ... and there was a marked disparity between her age and that of the respondent. The offending included multiple acts of penile penetration, and the respondent persisted in his conduct despite being told by the victim ... that the penetration hurt her. ... the respondent's position of denial was a significant factor in the victim being placed into foster care and</p>
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					<p>being estranged from her family. The long-term emotional consequences for the victim were devastating. ...</p> <p>At [82] ... The trial judge found that the respondent's medical conditions were capable of being adequately treated in a prison context. The respondent's age was comparable to that of a number of other offenders. ... Whilst his age was a relevant factor, it was not such as could justify a total sentence of the order that was imposed in this case, having regard to the nature and seriousness of the offences, and all relevant sentencing factors.</p> <p>At [84] The TES sentence ... was not commensurate with the overall seriousness of the offending. ... The sentence imposed was unreasonable and plainly unjust, ...</p>
15.	<i>PJB v The State of Western Australia</i>	61 at time sentencing. Convicted after trial.	Cts 8 & 9: Indec dealing child lineal relative U16 yrs. Ct 10: Indec dealing child U13 yrs.	Ct 8: 12 mths imp (conc). Ct 9: 24 mths imp (conc). Ct 10: 9 mths imp (cum).	Dismissed. Appeal concerned errors in

<p>[2018] WASCA 150</p> <p>Delivered 29/08/2018</p>	<p>No prior criminal history.</p> <p>Happy childhood.</p> <p>Hard worker; consistently employed since completing yr 12.</p> <p>Prior good character.</p> <p>Twice married; one child from first marriage; second wife positive influence and supportive.</p> <p>History of alcohol and cannabis use; abusing at time offending; at time of sentencing no longer using cannabis; continued excessive alcohol use.</p>	<p>The victim, ALB, was aged 12-13 yrs and is PJB's biological daughter.</p> <p>The victim MRB was PJB's niece.</p> <p>Ct 10 occurred some 9-10 yrs after the offending the subject of cts 8 and 9.</p> <p>ALB had just showered when PJB entered the bathroom on the pretext of checking a switch. He put both hands on ALBs breasts, telling her he was checking her development (ct 8).</p> <p>On another occasion when she was frightened and could not sleep ALB got into PJBs bed. He rubbed his erect penis against her body. She got up and ran out of the room (ct 9).</p> <p>MRB was sitting at a desk when PJB approached and asked her what she was doing. He then leant across and rubbed her breasts on the outside of her clothing (ct 10).</p>	<p>TES 2 yrs 9 mths imp. EFP.</p> <p>The sentencing judge found that at the time of the offending the appellant had a deviant sexual interest in female children; the offences involved a gross breach of trust and seriously affected the victims.</p> <p>The sentencing judge found the offending the subject of ct 8 was not an isolated incident; the appellant touched ALBs breasts on many occasions up until she was 17 yrs old.</p> <p>The sentencing judge found the offending the subject of ct 9 an isolated but particularly serious offence.</p> <p>No genuine remorse or demonstrated engagement or interest in programs addressing his sexual interests in young girls,</p>	<p>findings (rehabilitation and risk of re-offending); length of sentence (ct 10) and totality principle.</p> <p>At [29] ... it has not been demonstrated that his Honour erred by failing to find, that as a result of the passage of time since the commission of ct 10, demonstrated that the appellant had been rehabilitated.</p> <p>At [30] ... there was no such material before his Honour which supported a conclusion that the appellant posed a low risk of reoffending.</p> <p>At [38] ... we accept that the touching to the breasts of MRB was not as serious as other examples of indecent dealing Nevertheless, the offence had a number of serious features. The victim was vulnerable by reason of her age and her relationship to the appellant. ... the offence was not a one-off aberration. The appellant</p>
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				<p>which he continues to deny; some risk of re-offending.</p>	<p>had an established sexual attraction towards young girls and acted upon that attraction. The offence was an abuse of trust and ... had a serious effect upon the victim. ... the sentence that was imposed on ct 10 was appropriate as to type and length.</p> <p>At [39] ... the overall criminality involved was not at the high end of the scale of seriousness of offences of this type. However, the offending had some serious aspects. The appellant committed three offences involving two victims, one of whom was his daughter, the other his niece, both of whom were young. The conduct in ct 8 was representative of a continuing course of conduct of that type against her. Ct 9 was a serious example of its type ... The appellant abused his position of trust against both victims.</p>
14.	<i>The State of Western Australia v BKJ</i>	40-53 yrs time offending. 55 yrs at time sentencing.	Cts 1; 9-10; 18; 21; 23; 38; 40 & 47: Indec dealing child lineal relative U16 yrs. Cts 2-7; 16; 24; 26; 28; 30; 32; 34; 36; 42; 44;	Ct 10; 12; 40-41: 18 mths imp (conc). Ct 13: 18 mths imp (cum).	Dismissed. Appeal challenged length

<p>[2018] WASCA 136</p> <p>Delivered 08/08/2018</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>50 & 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 & 51-53: Indecent recording child lineal relative U16 yrs.</p> <p>Cts 14; 20 & 54: Procuring a child lineal relative U16 yrs to engage in sexual behaviour.</p> <p>Cts 8; 12 & 58: Procuring a child lineal relative U16 yrs to do indecent act.</p> <p>Ct 59: Distributed CEM.</p> <p>Cts 60 & 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 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</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 & 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 & 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.</p> <p>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 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</p>	<p>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</p>
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			<p>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>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 sexual gratification'.</p> <p>The sentencing judge found the offences relating to the CEM as</p>	<p>high degree of depravity and were seriously 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</p>
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				<p>‘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>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 persuaded that it infringed the first limb of the totality principle. ...</p>
13.	<p><i>NN v The State of Western Australia</i></p> <p>[2018] WASCA 92</p> <p>Delivered 12/06/2018</p>	<p>14-17 yrs at time offending (cts 1-3 and 6-7).</p> <p>32 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor criminal history; no relevant sexual offending.</p> <p>Eldest of seven children; dysfunctional family environment where females of the household degraded.</p> <p>Despised his mother; trusted relationship with his father, a violent and strict disciplinarian.</p>	<p>Ct 1: Procuring a child lineal relative to do indecent act.</p> <p>Cts 2-5: Sex pen child lineal relative.</p> <p>Cts 6-7: Indec dealing child lineal relative.</p> <p>The victims, L and K, are NN’s sisters. The offending against L began when she was aged 10 yrs and ended when she was aged about 15 yrs.</p> <p>NN was 4 yrs older than L and 10 yrs older than K.</p>	<p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 18 mths imp (conc).</p> <p>Ct 3: 18 mths imp (conc).</p> <p>Ct 4: 3 yrs imp.</p> <p>Ct 5: 2 yrs imp (cum).</p> <p>Ct 6: 6 mths imp (conc).</p> <p>Ct 7: 15 mths imp (conc).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the appellant disliked L and took pleasure in humiliating and degrading her; he was aware that his sisters were vulnerable to the conduct of their father, that there was no</p>	<p>Dismissed.</p> <p>Appeal asserted express error (provisions of <i>Young Offenders Act</i>); and totality principle.</p> <p>At [78] and [79] ... this appeal, ... turns on whether the trial judge correctly applied the principles contained in the <i>Young Offenders Act</i> when sentencing the adult appellant for offences committed when he was under the age of 18 yrs ... It is clear that the trial judge did properly apply</p>

		<p>Attended number of schools; completed high school through distance education; Certificate 3 in horticulture; 2 yrs university studies, left before completing degree.</p> <p>Good work history; employed assistant manager at time arrest.</p> <p>No identified mental health issues.</p>		<p>protection from their mother and he used his own close relationship with their father as a weapon, making threats to enforce compliance.</p> <p>No remorse or insight into his offending.</p> <p>Average or moderate risk of sexual re-offending.</p>	<p>those principles. ... The application of those principles is also evident in the sentence ... imposed in respect of cts 1 -3 and 6 -7. The sentences of imp for those offences were of a length which was significantly shorter than may have been expected if the offences were committed by the appellant as an adult ...</p> <p>At [86] ... it is appropriate to focus on cts 4 and 5 on the ind, which related to charges of offences committed when the appellant was an adult. Both cts 4 and 5 were very serious examples of offences against s 329(2) of the <i>Criminal Code</i>. ... L was in a vulnerable position in a dysfunctional abusive household, which the appellant well knew. The offending was not isolated or uncharacteristic, but part of a pattern of sexual violence by the appellant towards his younger sister.</p>
12.	<i>YDN v The State</i>	40-43 yrs at time offending.	<u>Indictment</u>	<u>Indictment</u>	Allowed.

<p><i>of Western Australia</i></p> <p>[2018] WASCA 62</p> <p>Delivered 04/05/2018</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; predominantly drug and traffic offences.</p> <p>Only child; father in defence services so frequently moved.</p> <p>Reasonable progress in school until yr 8; left school yr 11.</p> <p>Army service until aged 26 yrs; subsequently employed various low or unskilled occupations; seasonal work in commercial fishing industry.</p> <p>Two significant adult relationships; first with E's mother; separated when E aged 2 yrs.</p> <p>Significant illicit substance use; dealing drugs in order to support habit; ability to maintain steady work and forge relationships affected by substance dependency.</p>	<p>Ct 1: Indec dealing child lineal relative U16 yrs. Ct 2: Sex pen child lineal relative U16 yrs. Cts 3-6: Sex pen child lineal relative. Cts 7-9: Sex pen lineal relative over 18 yrs. Ct 10: Poss CEM.</p> <p><u>Section 32</u> Ch 1: Supply methyl (0.1g). Ch 2: Poss cannabis wiss (20g). Ch 3: Poss or copy indec or obscene article. Ch 4: Poss methyl (0.1g). Ch 5: Poss drug paraphernalia.</p> <p>The victim, E, was YDN's daughter. E was in foster care but was removed due to sexual abuse. YDN then took over the care of E.</p> <p>YDN was in a relationship when E first came to live with him, but when this relationship broke down he began to treat E as his sexual partner. During the offending period, YDN and E engaged in sexual contact 2-5 times every week.</p> <p><u>Ct 1</u> The conduct began with YDN massaging E's breasts.</p> <p><u>Ct 2</u> On the first occasion they had intercourse E was 15 yrs old. YDN penetrated her vagina with his penis wearing a condom. The condom broke so he took E to hospital where she was supplied with a 'morning after' pill and implanted with a contraceptive device. Thereafter intercourse between YDN and E took place on a regular</p>	<p>Cts 1, 3-4, 7-9: 3 yrs imp (conc). Ct 2: 6 yrs imp (head). Ct 3: 3 yrs imp. Ct 4: 3 yrs imp. Ct 5: 4 yrs 6mths imp (conc). Ct 6: 4 yrs 6 mths imp (cum). Ct 10: 1 yr 6 mths imp (cum).</p> <p><u>Section 32</u> Ch 1: 1 yr 6 mths imp (cum). Chs 2 & 4: 6 mths imp (conc). Ch 3: \$500 fine. Ch 5: \$200 fine.</p> <p>TES 13 yrs 6 mths imp. EFP.</p> <p>Co-operative; aware relationship with E wrong; demonstrated lack of insight into damage offending caused E and his responsibilities as a parent.</p>	<p>Appeal concerned plea discount; length of sentence (cts 2, 7-9 & ch 1) and totality principle.</p> <p>Plea discount and length of sentences cts 7-9 conceded by State.</p> <p>Sentences for cts 7-9 and ch 1 set aside.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> Ct 2: 5 yrs imp. Ct 7: 15 mths imp. Ct 8: 15 mths imp. Ct 9: 15 mths imp.</p> <p><u>Section 32</u> Ch 1: 4 mths imp.</p> <p>Cts 2, 6 and 10 and ch 1 cum with each other. All other sentences conc.</p> <p>TES 11 yrs 6 mths imp. EFP.</p> <p><u>Cts 7-9</u> At [38] ... the sentencing judge could not have arrived at the maximum</p>
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		<p>basis.</p> <p><u>Ct 3</u> On another occasion, being a representative count, YDN made E perform oral sex on him.</p> <p><u>Ct 4</u> On another occasion, being a representative count, YDN performed cunnilingus on E.</p> <p><u>Ct 5</u> On another occasion YDN had anal sex with E, stopping when she told him she was in pain.</p> <p><u>Ct 6</u> When E was aged 17-18 yrs, YDN again had anal sex with E. He again stopped when she told him she was in pain.</p> <p><u>Ct 7</u> On another occasion when E was 18 yrs-old, YDN caused E to perform fellatio on him. He recorded this incident on video.</p> <p><u>Cts 8 & 9</u> On two further occasions YDN engaged in sexual intercourse with E, aged 18 yrs.</p> <p><u>Ct 10</u> During a search of YDN's residence a variety of electronic devices were located and found to contain CEM in the form of images and videos. Some of the images and videos depicted E posing and engaging in sexual acts. 122 items were in category 1; 5 items in category 2; 74</p>	<p>penalty as to the ultimate sentence if proper sentencing principles were applied, ...</p> <p><u>Ch 1</u> At [46] ... the present case did not involve the appellant selling methyl, or otherwise obtaining any commercial reward for the 0.1 g of methyl he shared with a friend. ...</p> <p>At [47] The harshness of the sentence ... imposed ... was not ameliorated by an order that it be served conc or partly conc with other sentences.</p> <p>At [48] ... While a sentence of immediate imp was warranted in all the circumstances, a cum sentence ... is not capable of being regarded as commensurate with the seriousness of this offence.</p> <p><u>Ct 2</u> At [58] [This] represents a serious example of an offence against s 329(2) of the <i>Criminal Code</i> ... The</p>
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			<p>items in category 3; 84 items in category 4; 1 items in category 5 and 6 items in category 6.</p> <p><u>Section 32</u> <u>Ch 1</u> YDN shared his methyl with a friend.</p> <p><u>Chs 2-5</u> During the search of his residence a quantity of cannabis was located in parts of his bedroom, along with methyl, two smoking implements and cash. Also found was a photo depicting bestiality.</p>		<p>appellant knew that E was in a vulnerable position by reason of past sexual abuse ... and the family separation which she had experienced ... She was dependent on the appellant for emotional and other support. Rather than discharge his parental duty to provide protection and support, the appellant used E for his own sexual gratification. ... it was the beginning of a regular course of conduct so that ct 2 was, ... a representative ct. ... it cannot be viewed as an isolated act.</p> <p><u>Cts 7 - 9</u> At [63] ... They are relatively serious examples of that offence, given that they represented a sustained course of conduct by the appellant against his daughter who was only 18 yrs old, committed in the context of a history of sexual abuse committed against her when she was a child.</p> <p><u>TES</u></p>
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					At [69] In considering the overall criminality involved in all the offences, it is relevant to note that the sexual offences against the appellant's daughter occurred in a sustained manner over a period of about three yrs. The offences were significantly agg by the fact that many of them were visually recorded by the appellant ... the vulnerability of the victim at the time of the offending, and the fact that to the appellant's knowledge she had previously been sexually abused ...
11.	KMT v The State of Western Australia [No 2] [2018] WASCA 49 Delivered 11/04/2018	35 yrs at time sentencing. Convicted after trial. No prior criminal history. Left school yr 9; began four-yr apprenticeship. Employed; att to commence regional business venture unsuccessful. Married; two daughters and	2 x Indec dealing child lineal relative U16 yrs 3 x Sex pen child lineal relative U16 yrs. The victim, S, was the eight-yr-old biological daughter of KMT. At the time of the offending KMT lived with S, his wife and their two other children. <u>Ct 1</u> KMT touched the outside of S's vagina. <u>Cts 2 and 3</u> On another occasion KMT touched and placed	Ct 1: 20 mths imp (cum). Ct 2: 20 mths imp (conc). Ct 3 & 4: 30 mths imp (conc). Ct 5: 60 mths imp. TES 6 yrs 8 mths imp. EFP. The trial judge found the charges representative of other occasions; there was 'not a high degree of perversion' in the	Dismissed. Appeal concerned length of sentence, failure to obtain PSR; failure to challenge assertions in VIS and failure to produce character references. At [133] The TES imposed was not outside the range. At [135] ... There is no basis to conclude that the

		<p>two sons at time offending (the second born after the offences occurred).</p> <p>New relationship at time sentencing; supportive partner.</p> <p>Satisfactory health.</p>	<p>his finger inside S's vagina.</p> <p><u>Ct 4 and 5</u> On another occasion KMT penetrated S's vagina with his finger and penis.</p>	<p>offending, but a significant age disparity and S was the appellant's biological daughter.</p> <p>The trial judge found the appellant had stopped offending of his own volition; but noted the seriousness of the offending and its effects.</p>	<p>absence of a pre-sentence report could have affected the sentence imposed or led to any error by the sentencing judge.</p> <p>At [136] ... There is no basis to interfere with the sentence by reason of the lack of a challenge to the victim impact statement.</p> <p>At [137] ... The content of any further character references, ... would be unlikely to have affected the sentence imposed.</p>
10.	<p><i>LWD v The State of Western Australia</i></p> <p>[2017] WASCA 174</p> <p>Delivered 19/09/2017</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No significant criminal history.</p> <p>Left school aged 15 yrs.</p> <p>Worked numerous jobs.</p> <p>Father one child (with mother of victims).</p> <p>No history of illicit drug or alcohol use.</p> <p>Diagnosed and medicated</p>	<p>Cts 3-4, 8-9, 11-13: Sex pen of de facto child U16 yrs.</p> <p>Ct 10: Procured de facto child U16 yrs to engage in sexual behaviour.</p> <p>LWD was in relationship with the mother of the two victims, P and J. When the relationship commenced P was 4 yrs old and J was 3 yrs old. The sexual offending began soon after the relationship commenced and continued until P was about 14-15 yrs old and J was about 10 yrs old.</p> <p><u>Ct 3</u> LWD told P to go into a room, wedged the door closed, pulled down her pants and digitally penetrated her vagina.</p>	<p>Cts 3 & 4: 3 yrs imp (cum).</p> <p>Ct 8: 3 yrs imp (conc).</p> <p>Ct 9: 7 yrs imp (cum).</p> <p>Ct 10: 4 yrs imp (conc).</p> <p>Cts 11 & 13: 5 yrs imp (conc).</p> <p>Ct 12: 6 yrs imp (conc).</p> <p>TES 13 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned appellant's mental health - fresh evidence that if known would have resulted in a lesser sentence.</p> <p>At [89] It was believed at the time of sentencing that the appellant suffered from a depressive illness. Though he exhibited some psychotic symptoms at that time there was no suggestion that he suffered from schizophrenia.</p>

		<p>for depression.</p> <p>Psychiatric report noted the appellant did not report having symptoms of severe depression or other serious mental illnesses at time of offending; he was not cognitively impaired at the time; would have appreciated the moral wrongfulness of his conduct and a sentence of imp would not weigh more heavily on him than it would on a person in normal health.</p>	<p><u>Ct 4</u> On another occasion P and J were in the bedroom they shared when LWD walked in with his penis out of his pants. Telling both victims to pull down their pants and lay face down he digitally penetrated J's vagina.</p> <p><u>Ct 8</u> On another occasion LWD tried to pull down P's pants. She tried to run away, he grabbed her, placed her on a mattress and performed cunnilingus on her.</p> <p><u>Cts 9-10</u> On another occasion P was naked and lying down. Pushing her legs into an upright position LWD rubbed her vagina with a piece of ice, before inserting it into her vagina. He also forced her to penetrate her vagina with her finger.</p> <p><u>Cts 11-12</u> On a further occasion LWD penetrated P's vagina and anus with his penis.</p> <p><u>Ct 13</u> On another occasion LWD made P remove her clothing. He then penetrated her vagina with his penis.</p>	<p>At [90] The original diagnosis of psychotic depression remains open as a possibility. It is also unclear whether the appellant's condition has developed since he was sentenced or is one of long standing. ... even if the appellant had undiagnosed schizophrenia at the time of sentencing, the additional evidence does not establish that a different sentence should have been imposed ...</p> <p>At [91] In the years since he was sentenced the appellant has displayed some symptoms which appear to be more consistent with schizophrenia. There is not, however, any suggestion that this is an illness that the appellant had at the time of the offending or that it in any way contributed to that offending.</p> <p>At [92] The real issue is whether, by reason of his mental illness, imp will be</p>
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					<p>a significantly more harsh punishment for the appellant than it would be for a person in sound mental health. This is not established by the evidence.</p> <p>At [93] ... deterioration in mental health is not a factor that invariably leads to a conclusion that a sentence is unjust. ...</p> <p>At [95] Even if the additional evidence met the criteria for admissibility it does not establish that the sentences imposed were unjust.</p>
9.	<p><i>SCN v The State of Western Australia</i></p> <p>[2017] WASCA 138</p> <p>Delivered 26/07/2017</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after PG (10% discount).</p> <p>Adopted; positive and unremarkable childhood; adjustment difficulties when family moved to UK aged 13-14 yrs; compounded by parents separation; returned to WA aged 19 yrs.</p> <p>Left school aged 15 yrs;</p>	<p>Cts 1, 4, 6, 8 & 40-42: Procure sex pen of child U13.</p> <p>Cts 2, 3, 5, 7, 23-26, 33-36, 38-39, 43, 45-47 & 49: Procure indec dealings with child U13.</p> <p>Ct 9: Indec recorded a child lineal relative.</p> <p>Cts 10-11: Distributed CEM.</p> <p>Cts 12-14 & 18: Procure sex pen child 13-16, where child under care, supervision or authority of offender.</p> <p>Cts 15-16: Indec dealings with child 13-16, where child under care, supervision or authority of offender.</p> <p>Cts 17 & 19: Sex pen child 13-16, where child under care, supervision or authority of the offender.</p>	<p>Cts 1 & 50: 2 yrs 8 mths imp (conc).</p> <p>Cts 2, 28-29: 2 yrs imp (conc).</p> <p>Cts 3, 9-10, 20-22: 2 yrs 3 mths imp (conc).</p> <p>Cts 4, 8, 12, 18, 30, 42, 53 & 55: 3 yrs imp (conc).</p> <p>Cts 5 & 7: 1 yr 10 mths imp (conc).</p> <p>Cts 6, 13-14: 2 yrs 8 mths imp (conc).</p> <p>Ct 11: 14 mths imp (conc).</p> <p>Cts 15, 16, 23-26, 39, 46-</p>	<p>Appeal dismissed.</p> <p>Appeal concerned length of sentence on ct 60 (9 yrs); totality and discount for the PG.</p> <p>At [6] This is a case which is in a class of its own. The nature and the extent of the offending are unlike any other case. ...</p> <p>At [117] ... there are no comparable cases in WA to</p>

		<p>completed painting and decorating apprenticeship; successful in his trade; largely self-employed.</p> <p>No longer in contact with parents or siblings; unsuccessful attempts to contact his birth mother.</p> <p>Twice married; three children.</p> <p>First wife suffered serious brain injury when pregnant with victim.</p> <p>Married eight yrs to second wife; separated 2013.</p>	<p>Ct 20: Indec record child U13. Cts 21-22: Indec record child under circ of agg. Cts 27-30: Sex pen of child U13. Ct 31: With intent to commit a crime, showed offensive material to a child. Ct 32: Procure to indec record child U13. Ct 37: Procure, encourage or incite child U13 to do an indecent act. Cts 48, 51 & 56: Stupefying in order to commit indictable offence. Cts 50, 53 & 55: Procure sex pen of child 13-16. Cts 52 & 54: Procure indec dealings with child 13-16. Cts 57-62: Compelled another person to provide a sexual service, and that the person was a child.</p> <p>The victim is SCN's biological daughter and he had sole custody of her. The offending occurred over a two-year period when she was aged between 11 and 13 yrs.</p> <p>SCN had a sexual relationship with the victim and provided her to men for their sexual gratification. He met the men 'C', 'A', 'B', 'CL', 'M' and 'V' through online advertisements in the personal section of websites.</p>	<p>48, 51 & 56: 1 yr 6 mths imp (conc). Cts 17 & 19: 4 yrs 6 mths imp (conc). Ct 27: 1 yr 9 mths imp (conc). Cts 31, 33 & 35: 10 mths imp (conc). Ct 32: 1 yr 6 mths imp (cum). Cts 34 & 40: 2 yrs 4 mths imp (conc). Cts 36-38, 43, 45, 49 & 54: 11 mths imp (conc). Ct 41: 2 yrs 6 mths imp (conc). Ct 52: 1 yr 7 mths imp (conc). Ct 57: 10 yrs imp (cum). Ct 58: 11 yrs imp (head). Ct 59: 3 yrs 6 mths imp (conc). Cts 60-61: 9 yrs imp (conc). Ct 62: 10 yrs imp (conc).</p> <p>TES 22 yrs 6 mths imp.</p> <p>The sentencing judge found the appellant's offending represented one of the most serious examples of sexual offending against children to have come before the</p>	<p>provide a benchmark for the purposes of broad consistency.</p> <p>At [99] It was plainly open to the sentencing judge to come to the view that the prosecution case was a very strong one and that the PG, though reasonably early, were not entered at the first reasonable opportunity. ... The discount given was not plainly unjust or unreasonable.</p> <p>At [103] As to the seriousness of the appellant's offending, it involved not only prolonged and repeated sexual abuse of a child by her natural father but also seeking out other men and making the child available to those men to be sexually abused. ... The appellant encouraged, cajoled and compelled his daughter to comply with the abuse. Some of the abuse involved deviant and demeaning conduct. Video recordings and indecent</p>
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				<p>courts in WA; some of his conduct ‘involved a high degree of depravity and exploitation’; the victim showed loyalty to the appellant during the investigation and this illustrated the extent of her vulnerability and trust.</p> <p>The sentencing judge noted the appellant had completely disregarded his daughter’s welfare; even during his interview with police when expressing regret about what had occurred he said ‘It was fun while it lasted ... but it went way over the line’.</p> <p>The sentencing judge found that while money was paid for some of the photographs, it was clear that the appellant’s primary motive was not financial gain.</p> <p>Remorseful; empathetic; risk of reoffending assessed ‘well above the low category’.</p>	<p>photographs of the abuse were made and distributed. ... the appellant permitted his daughter to be administered a stupefying substance to better facilitate the commission of sexual offences upon her.... She was vulnerable and dependent upon him. He abused the love and trust that she felt for him by using it to make her compliant with his sexual desires. The child’s physical safety and psychological wellbeing were disregarded or dismissed. The breach of trust involved was both extraordinary and extreme.</p> <p>At [104] It does not follow that a course of offending involving one victim is necessarily less serious than one involving multiple victims. Such an approach would ignore the relevance of other factors. In this case, those other factors were of great importance and served to place this offending into a very high category of</p>
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					<p>criminality.</p> <p>At [105] One of the most serious aspects of the offending ... was that the appellant compelled the complainant to provide sexual services to a number of other men. This was reflected in the sexual servitude charges ... Sentences imposed for that offence have not been considered in other cases in this court to date. ...</p> <p>At [109] ... a relationship of sexual servitude can occur wherever an offender is in a position to compel another person to provide sexual services to others. That power imbalance is not confined to women or children from other countries whose poverty and circumstances make them vulnerable. It can also arise, as here, where a father has sole custody of a child who is vulnerable to and dependent on the father.</p>
8.	<i>SGT v The State of Western</i>	32-37 at time offending. 40 yrs at time sentencing.	Cts 1, 3-5: Indec dealings of child lineal relative. Ct 2: Encouraging a child lineal relative to	Ct 1: 2 yrs imp (cum). Ct 2: 2 yrs imp (cum).	Dismissed.

<p>Australia</p> <p>[2017] WASCA 136</p> <p>Delivered 20/07/2017</p>	<p>Convicted after trial.</p> <p>No relevant criminal history.</p> <p>Born in Greece; moved to Australia aged 7 yrs.</p> <p>Stable upbringing; supportive family.</p> <p>Educated to yr 10.</p> <p>Married 13 yrs; lived apart 6-7 yrs; three children.</p> <p>Consistent employment history.</p> <p>Good physical and mental health.</p>	<p>engage in sexual behaviour.</p> <p>The victim is SGT's biological daughter.</p> <p>SGT was driving the victim home when he stopped the car and told her he would give her \$50 if she let him touch her. She said no, but SGT touched her vagina. She was aged 7 yrs (ct 1).</p> <p>On another occasion SGT stopped the car and made her touch his penis (ct 2).</p> <p>On another occasion he showed her a child pornographic video. She was 8-9 yrs old (ct 3).</p> <p>On another occasion SGT touched her vagina as she slept. When she resisted he told her if she did not let him do it he would kill her mother. She was aged 9-10 yrs (ct 4).</p> <p>On another occasion as the victim slept SGT touched her vagina over her clothes. She was aged 11-12 yrs old (ct 5).</p>	<p>Ct 3: 6 mths imp (cum) (reduced from 18t mths imp).</p> <p>Ct 4: 2 yrs 6 mths imp (conc).</p> <p>Ct 5: 2 yrs imp (conc).</p> <p>TES 4 yrs 6 mths imp.</p> <p>The sentencing judge found the offending was not an isolated incident and that the appellant was in a position of trust and authority, while the complainant was highly vulnerable and defenceless.</p> <p>The sentencing judge found the appellant sought to normalise his conduct and groom his victim and referred to his 'truly disturbing and vile statement' that 'all little girls do this to their dads'. The showing of the pornographic video was an effort on his part to normalise the sexual abuse.</p>	<p>Appeal concerned length of sentence on cts 1 and 5 and totality.</p> <p>At [45] The offences in relation to cts 1 and 5 were serious ... There is no basis for suggesting that the sentences imposed were plainly unreasonable or unjust.</p> <p>At [47] ... It is well established that in cases of intrafamilial sexual abuse matters personal to the offender are of less mitigatory weight than might otherwise be the case. Sentencing considerations in such cases focus on the need to protect young, defenceless children from abuse at the hands of those who are in a position of trust and authority over them and who are in a position to conceal their offending.</p> <p>At [49] ... The offences involved a course of conduct over several yrs by which the appellant sexually abused his</p>
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					daughter in circumstances where she was clearly vulnerable. He did not PG and there was nothing mitigating in his personal circumstances, other than his lack of a criminal record, which is a matter that carries little weight in cases of this nature.
7.	<p><i>RGT v The State of Western Australia</i></p> <p>[2017] WASCA 120</p> <p>Delivered 29/06/2017</p>	<p><u>Indictment 44</u> 29 at time sentencing.</p> <p><u>Indictment 43</u> 30 at time sentencing.</p> <p><u>Indictment 43</u> Convicted after late PG (12.5% discount).</p> <p><u>Indictment 44</u> Convicted after early PG (15% discount).</p> <p>Prior criminal history; no prior convictions for sexual offending.</p> <p>Parents separated when very young; raised by his mother and stepfather.</p> <p>Experienced sexual and physical abuse.</p>	<p><u>Indictment 43</u> Cts 1-2; 5-6: Sex pen of child U16 yrs. Cts 3-4 & 7: Indec deals of child 13-16 yrs.</p> <p><u>Indictment 44</u> Cts 1; 4; 6-8; 10; 13; 16-19 & 21: Sex pen of lineal relative U16. Cts 2-3; 9; 12; 15; 20 & 22: Indec recording of lineal relative U16. Cts 5; 11 & 14: Indec dealings of lineal relative U16.</p> <p><u>Indictment 43</u> The victims were a boy K, aged 7-9 yrs and a girl, F, aged 13 yrs.</p> <p>K was RGT's partner's son. RGT took care of him whilst his mother was at work.</p> <p>On one occasion RGT pulled down K's pants and performed fellatio on him (ct 1). On another occasion he performed fellatio on K, despite K asking him not to (ct 2).</p> <p>RGT and his family were staying at F's home.</p>	<p><u>Indictment 43</u> Ct 1: 5 yrs imp (head). Ct 2: 5 yrs imp (conc). Ct 3: 10 mths imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 4 yrs 6 mths imp (conc). Ct 6: 4 yrs imp (cum) (reduced from 4 yrs 6 mths). Ct 7: 6 mths imp (conc).</p> <p>Total: 9 yrs imp (partially conc with sentence on ind 44 - to commence having served 10 yrs). EFP.</p> <p><u>Indictment 44</u> Cts 1 & 21: 8 yrs imp (cum). Cts 2-3, 9, 12, 15, 20 & 22: 3 yrs imp (conc). Cts 4, 6-7, 13, 16 & 19: 8 yrs imp (conc). Cts 5 & 14: 4 yrs imp</p>	<p>Allowed (Ind 44). Dismissed (Ind 43).</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>Re-sentenced on ct 21 on Ind 44 of 2015 to 5 yrs imp (cum with ct 1). All other sentences and orders to stand.</p> <p>Substituted TES on Ind 44 of 13 yrs imp. EFP.</p> <p>New overall TES of 16 yrs imp. EFP.</p> <p>At [64] Turning ... to the offences the subject of ind 44 of 2015, the victim, ... was just 2 yrs of age. She could not have been more</p>

		<p>Left school before yr 12.</p> <p>Qualified tradesman; inconsistent work history.</p> <p>Long history of illicit drug abuse; heavy user of methyl at time of offending.</p>	<p>During a massage RGT unclipped her bra (ct 3), rubbed her breasts and sucked her nipples (ct 4). He also made F perform fellatio on him (ct 5) and sexually penetrated her vagina (ct 6).</p> <p>Later the same day RGT slapped F on her buttocks and made a sexually suggestive comment to her (ct 7).</p> <p><u>Indictment 44</u> The victim A was RGTs two yr old daughter. The offending occurred over a period of about six mths.</p> <p>RGT performed cunnilingus on A whilst recording the act on his mobile phone (cts 1-2).</p> <p>Another time RGT exposed A's vagina and recorded an image of her vagina on his mobile phone (ct 3).</p> <p>On another occasion RGT performed cunnilingus on A several times, rubbed her vagina (cts 4-7) and sexually penetrated her vagina, before performing a further act of cunnilingus (ct 8). He recorded these acts on his mobile phone (ct 9).</p> <p>On another occasion RGT penetrated and rubbed A's vagina with his penis (ct 10) before masturbating and ejaculating onto her vagina (ct 11). He recorded these acts on his mobile phone (ct 12).</p> <p>On a further occasion RGT performed</p>	<p>(conc). Cts 8, 10 & 18: 10 yrs imp (conc). Ct 11: 5 yrs imp (conc). Ct 17: 9 yrs imp (conc).</p> <p>Total: 16 yrs imp. EFP.</p> <p>TES 19 yrs imp. EFP.</p> <p>Indictment 43 of 2015 The sentencing judge identified the very young age of the victim K, the breach of trust and the very great age gap between him and the victim.</p> <p>The sentencing judge found the offending against the victim F, 'extremely brazen and persistent' in nature.</p> <p>Indictment 44 of 2015 The sentencing judge described the offending as 'monstrous' and in the category of worst cases.</p> <p>Little or no true remorse; claimed no recollection of offending in respect of</p>	<p>vulnerable ... The offences constituted a gross breach of the trust reposed in any parent. The appellant's offending was not isolated. ... The fact that the offences were recorded on the appellant's mobile telephone is an aggravating factor. This is because of the potential for the offending conduct to be viewed again by the appellant or to be distributed to others.</p> <p>At [65]... The acts committed by the appellant on K would have been deeply humiliating for the victim. ... K was very young ... and was in no position to defend himself against the appellant's predations.</p> <p>At [66] Although the offences committed against F occurred on one day, the appellant pursued F and persisted in the offending ... where it culminated with the acts of sex pen ... committed by the appellant using physical force.</p>
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			<p>cunnilingus on A, before rubbing her vagina. This was recorded on his mobile phone (cts 13-15).</p> <p>On another occasion RGT used his mobile phone to record himself performing cunnilingus and penetrating A's vagina with his fingers and penis. (cts 16-20).</p> <p>On another occasion RGT performed cunnilingus on A whilst recording it on his mobile phone (cts 21-22).</p>	<p>victim A.</p> <p>Moderate to high risk of reoffending.</p>	<p>At [69] ... TES imposed upon the appellant ... is substantially beyond the sentences imposed in any of the cases we have mentioned. ... when all of the circumstances of this case are compared with some of the cases that have been cited ... and bearing in mind the appellant's pleas of guilty, we conclude that the overall TES ... does not bear a proper relationship to the overall criminality involved in all of the offences ...</p>
6.	<p><i>LJH v The State of Western Australia</i></p> <p>[2016] WASCA 155</p> <p>Delivered 05/09/2016</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after early PG (14-15% discount).</p> <p>No prior criminal history.</p> <p>Raised in NZ; parents separated when 6 yrs old; little contact with his father; physically abusive step-father.</p>	<p>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 U16 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 U16 yrs (cunnilingus and fellatio). Cts 23 and 35: Procuring a de facto child U16 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 U17 yrs. Cts 42 and 43: Poss CEM.</p> <p>LJH was in a de facto relationship with the victim's mother since the victim was 1 yr old.</p>	<p>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.</p>	<p>Allowed.</p> <p>Appeal concerned discount for PG and length of TES.</p> <p>Re-sentenced with 20% discount for PG to:</p> <p>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.</p>

		<p>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.</p> <p><u>Ct 1</u> LJH had penile/vaginal intercourse with 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>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.</p> <p>TES 13 yrs imp.</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>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.</p> <p>Cts 1, 5 and 12 cum, and other cts conc on ct 1.</p> <p>TES 10 yrs imp.</p> <p>EFP.</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</p>
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			<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>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</p>	<p>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 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</p>
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		<p>penile/vaginal intercourse with her.</p> <p>The third recording was for 14 mins and shows LJH touching the victim's breasts 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</p>		<p>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>
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			<p>and 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><i>FWB v The State of Western Australia</i></p> <p>[2016] WASCA 118</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>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><u>Indictment 1</u> Ct 1-4, 6-10: Sex pen of de facto child U16 yrs. Ct 5: Indec dealings with de facto child U16 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> 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</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>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>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>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>FWB on bail for indictment 1 at time offending on indictment 2.</p>	<p>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 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</p>	<p>Overall TES 20 yrs imp. 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 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</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... 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</p>
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			<p>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>sexual offending and a moderate risk of future violent offending, most likely family violence.</p>	<p>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 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</p>
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					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.
4.	<p><i>The State of Western Australia v PJW</i></p> <p>[2015] WASCA 113</p> <p>Delivered 03/06/2015</p>	<p>32 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history, including 2001 convictions of indec dealing with a child U13 yrs and indec recording a child U13 yrs.</p> <p>Significant health difficulties at a young age; disadvantaged upbringing.</p> <p>Engaged in rudimentary employment.</p> <p>Emotionally immature; limited self-awareness.</p>	<p>7 x Sex pen of de facto child U16 yrs. 2 x Indec dealings of de facto child U16 yrs.</p> <p>The offending was committed over 10 mths. The victim was seven yrs old and was the biological daughter of the respondent's de facto partner. The respondent lived with the victim.</p> <p>The victim was asleep in a bedroom. The respondent entered the room, removed his underpants and inserted his finger in the victim's anus twice (cts 1-2) before inserting his penis in her anus (ct 3).</p> <p>On another date, the respondent ejaculated in the victim's mouth (ct 4).</p> <p>On another date, the respondent showed the victim a pornographic film (ct 6). He rubbed his penis against her anus on the outside of her underwear (ct 7).</p> <p>On another date, the respondent invited the victim to enter a garden shed where he removed some of her clothes, lowered his pants and penetrated her anus with his penis (ct 8).</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp (cum on ct 4). Ct 4: 2 yrs 6 mths imp (conc). Ct 6: 18 mths imp (conc). Ct 7: 18 mths imp (conc). Ct 8: 4 yrs imp (conc). Ct 9: 4 yrs imp (conc). Ct 11: 2 yrs 8 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Offending aggravated by victim's age, relationship with the respondent, the victim's vulnerability, the respondent's significant breach of trust and the period of time over which the offences were committed.</p>	<p>Allowed.</p> <p>Orders for conc and cum set aside. Re-sentenced to:</p> <p>Ct 1: 2 yrs imp (cum) Ct 2: 2 yrs imp (conc) Ct 3: 4 yrs imp (conc) Ct 4: 2 yrs 6 mths imp (conc) Ct 6: 18 mths imp (cum) Ct 7: 18 mths imp (cum) Ct 8: 4 yrs imp (conc) Ct 9: 4 yrs imp Ct 11: 2 yrs 8 mths imp (conc)</p> <p>TES 9 yrs imp.</p> <p>At [43] His offending was not momentary or impulsive. It was sustained and repetitive...The respondent engaged in some deliberate grooming of the victim to facilitate his abuse of her for his</p>

			<p>On another date, the respondent entered the victim's bedroom, removed some of her clothes, removed his shorts and inserted his penis in her vagina (ct 9).</p> <p>On another date, the respondent performed cunnilingus on the victim (ct 11).</p>		<p>sexual gratification... the sexual abuse caused her physical pain...The emotional consequences for the victim were damaging. She has experienced nightmares, anxiety and sadness. Cts 1, 2, 3 and 9 were committed while the victim was sleeping in her own bed. She was especially vulnerable and defenceless.</p> <p>At [49] The respondent's continuing denial of the current offending, as well as his minimisation of his responsibility for the 2001 offending gives rise to considerable concern. His stance is an impediment to his rehabilitation... the risk that he may reoffend in a similar manner was an important sentencing factor.</p> <p>At [50] The respondent has shown no remorse or victim empathy.</p> <p>At [51] The proper exercise of the sentencing discretion required greater</p>
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					accumulation of the individual sentences in order to mark the very serious nature of the respondent's overall offending and to reflect the primary sentencing considerations of appropriate punishment and personal general deterrence, having regard to the need to protect vulnerable children.
3.	<p><i>DKA v The State of Western Australia</i></p> <p>[2015] WASCA 112</p> <p>Delivered 03/06/2015</p>	<p>47-49 yrs at time offending. 56 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Irrelevant criminal history.</p> <p>Left school after completing yr 11.</p> <p>Always employed; well-regarded and respected by work colleagues.</p> <p>Supportive new partner.</p>	<p>7 x Indec dealings of de facto child U16 yrs. 2 x Sex pen of de facto child U16 yrs.</p> <p>The victim, K, was the daughter of the appellant's de facto partner. The appellant lived with the victim at the time of offending. The offending occurred over two and a half yrs. The mother was away from the house on each occasion.</p> <p><u>Ct 1</u> The appellant took K's hand, placed it onto his shorts and moved her hand up and down on his penis. He then lowered his shorts, exposed his erect penis and used his hand on her hand to rub his erect penis, despite K trying to pull away. K was 10 yrs old.</p> <p><u>Cts 2-3</u> On another date, while K was asleep, the appellant went into her bedroom and put his hand inside her pyjamas and underwear and</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs imp (conc). Ct 6: 2 yrs imp (conc). Ct 7: 2 yrs imp (conc). Ct 10: 4 yrs imp (conc). Ct 11: 2 yrs imp (conc). Ct 17: 18 mths imp (conc). Ct 20: 5 yrs 8 mths imp.</p> <p>TES 7 yrs 8 mths imp.</p> <p>EFP.</p> <p>Trial judge found that the appellant had sexually offended against K on an ongoing systematic basis over an extended period of time of about two and a half years.</p>	<p>Dismissed – on papers.</p> <p>At [42] ...ct 20 involved especially egregious offending... The offence occurred while K was in her own home and under the appellant's care and supervision. She was extremely vulnerable. The offence involved some premeditation and planning. Later, the appellant endeavoured to buy K's silence by giving her money. All of the offending, including ct 20, caused K to suffer significant long-term harm.</p> <p>At [44] The term of 5 yrs 8 mths was commensurate</p>

		<p>touched her vagina. K awoke with a fright. The appellant put K's hand down his shorts and onto his penis and told her to play with his penis. The appellant continued to play with K's vagina while forcing K's hand up and down on his penis. K was 10 yrs old.</p> <p><u>Cts 6-7</u> On another date, the appellant went into K's bedroom after she had gone to bed. He put her up against the wall, pulled her pants down, touched her vagina and tried to insert his fingers into her vagina. It was very painful and K told him it hurt. At the same time he pulled down his pants and made her play with his penis. K was 11 yrs old.</p> <p><u>Cts 10-11</u> On another date, after showing K pornography, the appellant placed K on his bed, removed her clothing and inserted his fingers into her vagina. At the same time he forced her to masturbate his penis. K was 11 yrs old.</p> <p><u>Ct 17</u> On another date, while the appellant watched pornography, he made K sit on the floor next to the chair and he used his foot to rub the outside of her vagina through her clothes. K was 11 yrs old.</p> <p><u>Ct 20</u> On another date, the appellant took K into his bedroom, made her lie on the bed, knelt over her and penetrated her vagina with his penis. The</p>	<p>The appellant denied the offending; trial judge found he had no remorse or acceptance of responsibility; no steps towards rehabilitation.</p> <p>Trial judge found that the overall offending was towards the upper end of the scale of offending against a child.</p>	<p>with the seriousness of the offence and was within the range open to the trial judge on a proper exercise of the sentencing discretion.</p> <p>At [48] ... his Honour was correct in stating that, while the appellant's overall offending '[was] not the most serious offending', it was 'towards the upper end of the scale of seriousness of offending' of the kind in question.</p> <p>At [55] The term of 7 yrs 8 mths was required in order to reflect the very serious nature of the appellant's offending and to give effect to the primary sentencing considerations of appropriate punishment and personal and general deterrence, having regard to the need to protect vulnerable children.</p>
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			appellant persisted in sexually penetrating K, despite her yelling in pain and attempting to move away from or avoid his actions. K was 12 yrs old.		
2.	<i>BGR v The State of Western Australia</i> [2014] WASCA 82 Delivered 17/04/2014	59-61 yrs at time offending. 72 yrs at time sentencing. Convicted after early PG. Prior criminal record -no relevant prior or post offending convictions. Mild depressive condition. Sexual abused as a child. At time of offending significant alcohol problem including regular binge drinking episodes; on admitting offences, ceased to consume alcohol. Married twice; children from both marriages. Stopped offending prior to the victim's first disclosure of his conduct. Successfully completed sex offender treatment programme.	6 x Indecent dealings of lineal relative U16. The victim was between 4-7 yrs old and was the appellant's biological granddaughter. The appellant offended primarily while the victim was alone with him and under his care and supervision. <u>Ct 1:</u> The appellant was looking after the victim at his home. He took her into a bedroom and undressed her. He undressed himself, lay on the bed with the victim and kissed her chest and stomach. The appellant touched the victim's vagina with his hand. He then kissed her groin area and her buttocks. The appellant instructed the victim not to tell anyone. <u>Ct 2:</u> The appellant was again looking after the victim at his house. He masturbated in front of her and ejaculated into a towel. <u>Ct 3:</u> The victim was staying with the appellant at his home. The appellant took down the victim's underpants and kissed and licked her vagina and groin area. <u>Ct 4:</u>	TES 15 mths imp. EFP. Admitted guilt to his family and elders of the Jehovah's Witness Church. Full admissions when confronted with victims claims 10 years after offending; voluntarily disclosed details of the offending that went beyond what victim told police. Admitted to 'grooming' the victim. Disclosed that he had sexually abused another girl. No finding that the offending was representative. Demonstrated remorse, shame, insight and	Allowed. (Buss J dissenting). Re-sentenced to 15 mths' imp susp 7 mths. At [40] ...no discount was given for the appellant's voluntary disclosure of prejudicial information that would not otherwise have been available to investigating authorities. That failure is an error that enlivens this court's jurisdiction to intervene if it is satisfied that different sentence should have been imposed. At [45] A review of the sentences customarily imposed for sexual offending against children confirms that ordinarily a sentence of immediate imprisonment is imposed. At [51] In the unusual circumstances of this case, I am satisfied that

		Regained the support of his wife and church.	<p>The victim was visiting the appellant at his home together with other family members. After hearing the children talk about 'balls', the victim asked him what it meant. The appellant took the victim's hand and applied pressure so her hand pressed on his testicles.</p> <p><u>Ct 5:</u> The appellant was pushing the victim on a swing in his yard. He turned the victim upside down and kissed her vagina and groin area through her underpants.</p> <p><u>Ct 6:</u> The appellant took the victim to her own house to collect some items. He took her to one of the bedrooms where he undressed the victim and kissed and licked her vagina and groin area.</p> <p>When the victim was 6-7 she made a complaint to her mother. A police investigation commenced but did not proceed because of the traumatic effect it had on the victim. The case was reopened 8-9 years later.</p>	<p>accepted responsibility for his offending.</p> <p>Accepted responsibility and harm and pain caused to victim.</p> <p>Changed man; low risk of re-offending.</p>	sentences of immediate imprisonment are not the only appropriate sentencing option.
1.	<p>ARK v The State of Western Australia</p> <p>[2014] WASCA 45</p> <p>Delivered 26/02/2014</p>	<p>32 yrs when offending commenced. 37 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including obstruct public officer, and agg AOBH.</p> <p>Dysfunctional childhood.</p>	<p>5 x Agg sex pen of defacto child (penile). 3 x Agg sex pen of defacto child (digital). 1 x Att agg sex pen of defacto child (penile).</p> <p>The victim was aged between 11 -15 yrs.</p> <p>The appellant was the stepfather of the victim.</p> <p>The appellant was an intimidating partner and stepfather who was; on occasion, violent and threatening to the victim's mother. He would, on</p>	<p>6 yrs imp each Ct. 4 yrs imp each Ct. 4 yrs imp.</p> <p>Ct 6 cum with Ct 4. All other conc.</p> <p>TES 12 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [83] Sexual offences involving children are of the utmost seriousness, particularly where an abuse of trust is involved. The fact that the offending could have conceivably been worse, or that certain aggravating features such</p>

		<p>Commendable work history.</p> <p>Breached bail for these offences by contacting the victim; bail was revoked and held in custody.</p> <p>Victim's mother supported the appellant at trial.</p>	<p>occasions, hit the victim and her sister when he was displeased with them.</p> <p>Most of the offences were committed by the appellant entering the victim's bedroom at night and sexually penetrating her.</p> <p>The appellant was physically aggressive when the victim resisted his advances. He used manipulation and intimidation to coerce the victim and ensure her continued compliance with his demands. The appellant ignored the victim's distress when he had sexual intercourse with her.</p> <p>All offences were committed upon the one victim, who was the daughter of the appellant's partner.</p> <p>The victim suffered chronic emotional abuse in circumstances where it was plain, to both the victim and appellant, that if the victim's mother had to choose between them, she would choose the appellant.</p> <p>After the victim reported the offences to police, and the appellant was charged, the appellant breached protective bail conditions by contacting the victim and attempting to manipulate her.</p>	<p>The charges were representative of an ongoing course of conduct.</p> <p>Strong prosecution case.</p> <p>No remorse or acceptance of responsibility.</p> <p>Sentencing judge found that the family dynamics were all about the victim's mother maintaining her relationship with the appellant.</p> <p>Found that offending fell towards 'the upper end of the scale' for such offending.</p> <p>Low- medium risk of re-offending.</p>	<p>as physical violence or extreme perversion are absent, does not diminish the gravity of the offences themselves. ..The fact that a worse case may be envisaged does not preclude a case from falling within the worst category of cases for offences of that type.</p> <p>At [94] ... It is clear that the sentence imposed on the appellant in this case was well within the range available to the sentencing judge.</p> <p>At [95] This was a serious case of sexual offending with little to be said by the way of mitigation in favour of the appellant ...</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					

<i>Transitional Provisions Enacted (31/08/2003)</i>					