

Sexual assaults – adult victims

ss 325 & 326 *Criminal Code*

From 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
PNG	plead not guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
indec	indecent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
ISO	intensive supervision order
TIC	time in custody
VRO	violence restraining order
circ	circumstances

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<p><i>Plumley v The State of Western Australia</i></p> <p>[2018] WASCA 33</p> <p>Delivered 19/03/2018</p>	<p>48 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; traffic and dishonesty offences; no prior violent or sexual offending; no prior sentences of imp.</p> <p>Close family; seven siblings; parents deceased; difficulties coping with grief after their deaths.</p> <p>Left school yr 9.</p> <p>Employed various unskilled jobs.</p> <p>Single at time offending; number of short term relationships.</p> <p>Homeless; living in his vehicle at time of offending.</p> <p>Medicated for depression.</p> <p>Abused alcohol from 17 yrs; ceased drinking aged</p>	<p>Ct 1: Att sex pen. Ct 2: Stealing.</p> <p>The 32 yr old victim, a Chinese national, was in WA for a holiday. Plumley was not known to her.</p> <p>The victim was out walking near the river when she became aware Plumley was behind her.</p> <p>The victim went to a nearby public toilet to change, before going for a swim.</p> <p>When she finished her swim the victim returned to the toilet block. She was changing when Plumley entered the block. She shouted ‘what are you doing’ before running into a cubicle. The cubicle door did not lock so Plumley pushed it open and forced his way in.</p> <p>Forcing the victim to her knees Plumley attempted to get her to perform oral sex on him. She screamed so he eventually released her.</p> <p>As he left the toilet block he took the victim’s handbag, containing her passport, credit card and \$300 in cash.</p>	<p>Ct 1: 4 yrs 3 mths imp. Ct 2: 6 mths imp (conc).</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>The sentencing judge found ct 1 a serious offence and ‘outrageous conduct’. Whilst penetration did not occur it was not due to his lack of trying, rather it was due to the victim struggling and screaming.</p> <p>The sentencing judge found no sentence other than imp was appropriate and the term imposed needed to reflect the ‘brazen nature’ and ‘very serious’ circumstances of the offending.</p> <p>Little understanding of impact of his offending on the victim; at risk of re-offending unless underlying causes of his behaviour addressed.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence on ct 1.</p> <p>Re-sentenced:</p> <p>Ct 1 3 yrs 3 mths imp. Ct 2: 6 mths imp (cum).</p> <p>TES 3 yrs 9 mths imp. EFP.</p> <p>At [47] The offence ... was an objectively serious example of an att to commit sex pen. ...</p> <p>At [50] ... the only reason that the appellant did not complete the offence was due to the resistance of the victim. However, that does not mean that he can be sentenced as if he had committed a completed offence.</p> <p>At [51] ... the length of the sentence did not properly reflect the PG and the maximum penalty for the offence. ... it must be concluded that the sentence</p>

		21 yrs; no history of illicit substance abuse.			<p>imposed for ct 1 reveals implied error. The sentence imposed was not consistent with sentences imposed in the comparable cases referred to ...</p> <p>At [54] ... Although the stealing was committed immediately following the att sex pen, it was a distinct offence that involved additional criminality.</p> <p>At [55] It was suggested ... that the stealing offence was opportunistic. This is an inappropriate description in circumstances where the opportunity to take the victim's handbag was created by the appellant. He forced her into the cubicle and to the ground. He knew that she was helpless to prevent the theft of her property. He took her money, credit card and passport leaving her desperate and causing her additional trauma.</p>
13.	<i>Atkinson v The State of Western Australia</i>	45 yrs at time sentencing. 25 and 27 yrs at time offending.	Cts 1 & 5: Agg burglary. Cts 2, 6-8: Agg sex pen. Cts 3 & 9: Dep lib.	Ct 1: 7 yrs 6 mths imp (head) Ct 2: 7 yrs imp (conc).	Allowed. Appeal concerned length

	<p>[2017] WASCA 154</p> <p>Delivered 17/08/2017</p>	<p>Convicted after early PG (25% discount).</p> <p>Minor criminal history.</p> <p>Dysfunctional family; parents separated when young adult; eldest sister epileptic; younger brother involved in heavy drug use; mother imprisoned for fraud.</p> <p>Strained relationship with mother for many yrs, now close; maintains some contact with father.</p> <p>Frequently truant at school; expelled in yr 10.</p> <p>Single; no children.</p> <p>Worked many yrs mining industry; currently unemployed.</p> <p>Long history of alcohol and illicit drug use.</p> <p>Diagnosed bipolar disorder; history of non-compliance with medication.</p>	<p>Ct 4: Att agg robbery.</p> <p>The offences arise from two separate incidents. One in 1997 and the other in 1999.</p> <p><u>Cts 1-4 (1997)</u></p> <p>The victim, N, was 18 yrs old and home alone. He forced his way into her home after knocking on her door wearing a balaclava on his face.</p> <p>Atkinson held a knife to N's throat, tied her up and covered her face before sexually penetrating her and demanding money, which she said she did not have.</p> <p>He warned her not to talk, scream or move before leaving the premises.</p> <p><u>Cts 5-9 (1999)</u></p> <p>The victim, E, was 19 yrs old and home alone.</p> <p>Atkinson let himself into her home and covered her face, before tying her up and repeatedly sexually penetrating her.</p> <p>He told her not to phone anyone because he would be watching before leaving the premises.</p> <p>In 2016 Atkinson's DNA was matched to the 1999 offences. During a second police interview he voluntarily disclosed the 1997 offences to police.</p>	<p>Ct 3: 2 yrs imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 7 yrs 6 mths imp (cum ct 1). Ct 6: 7 yrs imp (conc). Ct 7: 3 yrs imp (conc). Ct 8: 7 yrs imp (conc). Ct 9: 2 yrs imp (conc).</p> <p>TES 15 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences only came to light following a DNA match to the 1999 offences and it was to the appellant's credit that he made some admissions with respect to the 1997 offences.</p> <p>The sentencing judge found the appellant's cooperation indicated some degree of contrition and acceptance of culpability and that he understood the issues likely to have been confronted by the two victims. He took a neutral stance on the appellant's remorse as the</p>	<p>of sentence, totality, failure to consider remorse and discount for voluntary disclosure of guilt on cts 1-4.</p> <p>Re-sentenced:</p> <p>Ct 1: 5 yrs 6 mths imp. Ct 2: 5 yrs 2 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 1 yr 6 mths imp.</p> <p>All other sentences and orders for cum, conc and EFP otherwise unaffected.</p> <p>TES 13 yrs imp.</p> <p>At [61] The offences were extremely serious offences of their type. They involved planning and the use of force to overwhelm young and vulnerable victims at night in their homes. Physical restraints and threats were used, including the use of weapons, in order to obtain the victim's compliance. The offences caused great psychological trauma to the victims and have had long-lasting effects.</p>
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					were the same as those imposed for the similar offending in cts 5 to 9. This cannot be accounted for by any significant difference in the offending. The two groups of offences were of a comparable level of seriousness. Indeed, the respondent accepted before this court that, if anything, the second group of offences were more serious.
12.	<p><i>WRN v The State of Western Australia</i></p> <p>[2017] WASCA 145</p> <p>Delivered 04/08/2017</p>	<p>30-32 yrs at time offending. 53 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Aboriginal from central Australia.</p> <p>De facto relationship 35 yrs; four children; grandchildren.</p> <p>Committed to his family; respected member of his community; cultural leader; mentor and traditional elder.</p> <p>Full productive life; held</p>	<p>2 x Sex pen.</p> <p>The victims, CPA, aged 16, and KAY, aged 20, are related to WRN by marriage. He knew them as children and they called him uncle.</p> <p>CPA went out drinking and ended up sleeping on a relatives couch. WRN was at the house. During the night she awoke to find WRN performing cunnilingus on her. She was unable to move because his weight was on the lower part of her body. He eventually stopped when she was able to push his head away.</p> <p>Some 2 yrs later KAY and some relatives had been drinking and ended up at WRN's house. She and WRN remained when the others went to the shops. During their absence an incident occurred between her and WRN. Upset she confronted WRN later that evening. He reacted forcefully, took her to a bedroom, pulled down her pants and</p>	<p>Ct 1: 2 yrs imp (cum). Ct 3: 5 yrs imp (cum).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found the offences involved a significant breach of trust; there was a significant age disparity between him and the two victims and ct 3 was agg by the significant force used.</p> <p>Sentencing judge found the appellant's various health conditions would make incarceration more onerous; but could be</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [33] ... in circ where the appellant was convicted after trial, the serious features of his offending meant that the TES of 7 yrs was within the range of an appropriate exercise of discretion.</p> <p>At [35] Both offences were committed against much younger females, both of whom were, by marriage, part of the appellant's family ... On each occasion the appellant and the victim were alone in</p>

		<p>responsible positions in the community and workforce.</p> <p>Increasing and significant health problems likely to impact on his long term survival; diabetic; heart disease; chronic obstructive pulmonary and cerebrovascular disease; end stage renal disease requiring dialysis three times per week.</p>	<p>had sexual intercourse with her. She resisted, tried to rip his hair, scratch his eyes and pinch him. Her attempts to resist were unsuccessful.</p>	<p>treated adequately in prison.</p>	<p>the home of a relative. The victims were entitled to believe that they were in a safe environment. Further, the appellant took advantage of CPA's vulnerability while she was asleep, and took advantage of her greater size and strength to force himself upon KAY. He had unprotected sexual intercourse ... and used force to do so. The offences have caused significant and enduring harm to the two victims.</p>
<p>11.</p>	<p><i>Singh v The State of Western Australia</i></p> <p>[2017] WASCA 47</p> <p>Delivered 16/03/2017</p>	<p>27 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Good character.</p> <p>Indian national; on student visa in Australia.</p> <p>Raised in a supportive environment, but with significant financial challenges.</p> <p>Attended school to the end of yr 10; completed</p>	<p>Ct 1: Indec assault. Ct 2: Indec assault. Ct 3: Sex pen.</p> <p>Offending occurred against passengers while Singh was working as a taxi driver.</p> <p><u>Ct 1</u></p> <p>Singh persistently touched the victim's thigh in a sexual manner. He also asked the victim a number of sexual questions and regularly rubbed his groin throughout the journey. He asked the victim if she would like to do something with him and said that they could come to an arrangement other than payment for the journey.</p> <p><u>Cts 2 and 3</u></p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp.</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found that the State case was so strong that the prospects of an acquittal were pretty much non-existent.</p> <p>Sentencing judge accepted that Singh's cultural background was likely to have played a</p>	<p>Dismissed.</p> <p>Appeal concerned length of individual sentence for ct 1, and totality.</p> <p>At [45] ... ct 1 had a number of serious elements... He was in a position of trust as a taxi driver. His victim was a vulnerable young woman. She did not have the option of getting out of the car until she got home. His offending was part of a course of conduct that persisted for almost the</p>

		<p>Bachelor's degree; completed Master's degree in computer science in Australia.</p> <p>Singh's counsel submitted that Singh had little to no experience with women and that India has different cultural attitudes about women's manner of dress and what it might convey.</p>	<p>Offending occurred on the same evening as ct 1.</p> <p>The victim was 18 yrs old and intoxicated.</p> <p>While driving the victim home, Singh stopped the taxi at a park saying that he needed to check something. The victim sat on the bench for a smoke and Singh sat next to her. He placed the victim's hand on his groin and the victim resisted.</p> <p>Singh forced the victim onto her back, pinned her arms to her side and rubbed his groin against her crotch. He then ripped her underwear off and despite the victim's struggles and pleas, had unprotected sexual intercourse with her until he ejaculated inside of her. During the act, he kissed her neck and squeezed her breasts.</p> <p>Singh flew back to India the following day after being interviewed by police and released.</p>	<p>role in the offending, but noted that such cultural matters were not free of controversy in India.</p> <p>Sentencing judge found that Singh did not mistakenly assume that his attention to the victims was welcome; the victims gave unambiguously clear indications that they were not interested and not willing; Singh physically forced his attentions on them; Singh mislead the police in various respects.</p> <p>Moderate to high risk of reoffending.</p>	<p>entire 28 minutes that the victim spent in the car with him. He persisted notwithstanding the victim making repeated efforts to make clear to him that she was not interested in him. His offending has had a significant impact on her. His offence in ct 1 was not an isolated or once-off aberration; very soon after it, he committed cts 2 and 3. He [had] ... a medium to high risk of reoffending...</p> <p>At [57] ... the agg features of the offending ... place the TES... well within an appropriate exercise of discretion... The appellant was a taxi driver, a role that has an element of trust. Both his victims were vulnerable young women; one ... was ... more vulnerable by reason of intoxication. The offending was persistent in the face of clear statements by the victims that they were not interested in him and for him to stop what he was doing. The appellant responded to the second</p>
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					<p>victim's resistance by using force. He had unprotected sexual intercourse... Ct 2 in itself was a serious offence of indec assault. The appellant's offending the subject of cts 2 and 3 followed soon after his conduct the subject of ct 1. Rebuffed by his first victim, he forced himself upon another young female passenger. Ct 3, standing alone, had many serious elements that could have justified a somewhat higher sentence. The appellant had a medium to high risk of reoffending. Personal deterrence remained an important factor.</p>
<p>10.</p>	<p><i>SJN v The State of Western Australia</i></p> <p>[2016] WASCA 215</p> <p>Delivered 06/12/2016</p>	<p>62 yrs at time sentencing. 54 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history; minor offences. No prior offences of a sexual nature.</p> <p>Abandoned by his parents and physically abused as a child.</p>	<p>1 x Sex pen.</p> <p>SJN came upon the victim, aged 18 yrs, highly intoxicated and upset after separating from her friends following an argument.</p> <p>The victim accepted an invitation to SJN's home, where they drank alcohol and smoked cannabis.</p> <p>SJN offered the victim his bed while he slept on the couch. She lay down on the bed and passed out.</p>	<p>5 yrs 6 mths imp. EFP</p> <p>The sentencing judge observed that while the offence was without violence, threats or coercion, he noted the 'particularly sinister and predatory character' of the offending.</p> <p>Highly adverse</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence.</p> <p>At [25] ... the appellant exploited a highly vulnerable young woman. He did so planning to engage in some type of sexual activity with her ... the appellant remained sober enough to be in</p>

		<p>Good employment history.</p>	<p>Whilst asleep SJN removed her clothes and had sexual intercourse with her.</p> <p>In the morning SJN gave the victim his first name and telephone number.</p> <p>The victim later learned she was pregnant. She called SJN. He denied having sexual intercourse with her.</p> <p>The child was later DNA tested and SJN was revealed to be the father.</p>	<p>consequences to the victim.</p> <p>Low risk of reoffending; no remorse or victim empathy.</p>	<p>control and plied the victim with more alcohol and cannabis... the appellant deliberately contributed to her intoxicated state for the purpose of taking advantage of her.</p> <p>At [26] ... the appellant engaged in unprotected sexual intercourse with the victim who became pregnant. As a result, she had a serious emotional conflict about whether to have the child, and now must face the very difficult prospect of what to tell her child about her father.</p>
<p>9.</p>	<p><i>AMH v The State of Western Australia</i></p> <p>[2016] WASCA 180</p> <p>Delivered 19/10/2016</p>	<p>31 yrs at time offending.</p> <p>PG to Ct 7 (10% discount). Convicted after trial remaining counts.</p> <p>Minor criminal history; no previous relevant offending.</p> <p>15-16 yrs witnessed his mother in a physically abusive relationship.</p> <p>Emotionally unstable as a</p>	<p>Ct 1: Dep liberty. Cts 2, 6 & 7: Agg AOBH. Ct 3 & 4: Agg sex pen. Ct 5: Sex coercion.</p> <p>AMH and the victim, A, had a violent and abusive de-facto relationship. They separated and AMH spied and stalked A, and committed acts of violence upon her.</p> <p>The time between the initial offending and the report to police was approx 10 days.</p> <p>AMH tried to persuade A to attend a function with him. He drove to where she was staying, forced</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 1 yr imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 7 yrs 6 mths imp (cum). Ct 5: 3 yrs 6 mths imp (cum). Ct 6: 1 yr 6 mths imp (conc). Ct 7: 2 yrs 8 mths imp (conc).</p> <p>TES 11 yrs imp. EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; individual sentences not challenged.</p> <p>At [42] ... the appellant's overall offending was extremely serious. While it was not in the worst category of offending of its kind, it approached that level. The offending was premeditated, sustained, cruel and humiliating ...</p>

		<p>result of a succession of family tragedies.</p> <p>History of heroin abuse; abstinent from the drug at time offending.</p>	<p>her into his car and drove towards Ravenswood (ct1).</p> <p>During the drive and at an isolated area AMH verbally abused and repeatedly struck A in the head (ct2) and forced A to perform fellatio on him (ct3). Threatening to insert a rusty tool into A's anus, he used it to strike A on the legs. He also kicked her in the ribs (ct 6). Forcing A, naked, onto all fours he inserted a spanner into her anus (ct 4). He forced A to put a drink bottle into her vagina and threatened to kick it in if she didn't push it all the way in (ct 5). He repeatedly bashed her to the head and ribs (ct 7).</p> <p>AMH burnt her with a cigarette or lighter. He also placed the flame close to her genitals. He continually threatened to harm A and her family.</p> <p>AMH forced A to telephone her employer and quit her job. At various points he got A to call and send text messages, so that police would not look for her. AMH took A to his mother's house and when police attended told her she had to get over the fence. She complied, despite being badly injured.</p> <p>A suffered a swollen ear, severely bruised eyeball and eye socket, and bruising and burns to her body. Her rib cage and left leg were badly injured.</p>	<p>The sentencing judge found the offending premeditated and very serious examples of their kind and agg 'by his callous, selfish and ... cruel and evil behaviours after the event ...'.</p> <p>The offending was found to be not about sexual gratification, but about sexual dominance, embarrassment and humiliation.</p> <p>No remorse or victim empathy.</p>	<p>The appellant's post-offence conduct cannot be ignored and underscores the appellant's criminality.</p>
8.	<i>FWB v The State of Western Australia</i>	<p>47 yrs at time sentencing. 42-44 yrs at time offending for indictment 1.</p>	<p><u>Indictment 1</u> Ct 1-4, 6-10: Sex pen of de facto child U 16 yrs. Ct 5: Indec dealings with de facto child U 16 yrs.</p>	<p><u>Indictment 1</u> Ct 1-2 and 7: 2 yrs imp each (conc). Ct 3, 6 and 10: 6 yrs imp</p>	<p>Allowed. Appeal concerned totality.</p>

<p>[2016] WASCA 118</p> <p>Delivered 11/07/2016</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>FWB on bail for indictment 1 at time offending on indictment 2.</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 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>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>Overall TES 20 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending against M as involving "the most gross breach of trust" and "at or near the top of the range of gravity, justifying the maximum penalty as a starting point".</p> <p>Offending occurred when M was alone and FWB</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>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</p>
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			<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 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>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 sexual offending and a moderate risk of future violent offending, most likely family violence.</p>	<p>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 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>
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					<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 the first and second indictments, especially in the context of the PG, was not commensurate with the overall seriousness of the offending the subject of the first and second indictments.</p>
7.	<p><i>Scaddan v The State of Western Australia</i></p> <p>[2015] WASCA 173</p> <p>Delivered 02/09/2015</p>	<p>20 yrs at time offending.</p> <p>Convicted after late PG.</p> <p>Supportive family.</p> <p>Good employment record.</p> <p>Voluntarily participated in</p>	<p>Ct 1: Agg sex pen. Ct 2: Agg sex pen.</p> <p>H was in a fully committed relationship with the appellant. H was 18 yrs old. Relationship was, at times, tempestuous.</p> <p>Offences occurred after a previous incident where appellant penetrated H's vagina with his fingers in</p>	<p>Ct 1: 1 yr imp (conc). Ct 2: 2 yrs 8 mths imp (conc).</p> <p>TES 2 yrs 8 mths imp.</p> <p>EFP.</p> <p>Permanent VRO made in</p>	<p>Dismissed – on papers.</p> <p>At [27] The appellant's offending was unquestionably serious. It occurred against a backdrop of the earlier incident. H made it clear from the outset that she did</p>

		psychological counselling since offending.	<p>circumstances where he mistakenly believed H had consented. The appellant apologised for his behaviour and for a time he and H broke up.</p> <p>They were in bed and the appellant reached over to H and put his hand inside her pants. The appellant pushed his fingers inside her vagina and moved in and out without her permission (ct 1). H was visibly upset. The appellant rolled H onto her back, pinned her down, forcefully pulled down her pants and prised apart her legs. He pushed his penis into her vagina and had sexual intercourse with her against her will for approx. five mins until he ejaculated (ct 2). H repeatedly said “No” during the incident.</p> <p>The appellant later apologised to H and her father. The appellant admitted his wrongdoing to police.</p>	<p>H’s favour.</p> <p>Offences have had a significant adverse impact upon H’s wellbeing.</p> <p>Genuine remorse.</p> <p>Sentencing judge found low risk of reoffending.</p>	<p>not consent to engaging in sexual activity with the appellant. Despite H’s repeated objections, he penetrated her vagina with his fingers and then with his penis. The second offence was committed with a degree of force... The act of sexual intercourse was more than momentary, and only stopped after he ejaculated. It was, upon any analysis, a traumatic experience which has had a substantial negative impact upon H. While the appellant later apologised for his conduct, his apologies were too little, too late.</p>
6.	<p><i>Williams v The State of Western Australia</i></p> <p>[2015] WASCA 110</p> <p>Delivered 03/06/2015</p>	<p>37 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after late PG (on second day of trial after defence counsel had cross-examined the victim and other State witnesses).</p> <p>Long criminal history, including numerous convictions for violent behaviour.</p>	<p>Ct 1: Agg sex pen. Ct 2: Agg sex pen. Ct 3: Attempted agg sex pen. Ct 4: Threat to injure. Ct 5: Wounding.</p> <p>The victim was 24 yrs old and was visiting a friend at a hostel. The appellant was renting a campervan, which was parked permanently at the hostel.</p> <p>The victim and appellant had arranged to go out and drink wine. They arranged for the victim to sleep in his campervan and the appellant to sleep</p>	<p>Ct 1: 5 yrs imp. Ct 2: 3 yrs imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>Trial judge found it very difficult to give a great deal of weight to appellant’s claim of</p>	<p>Dismissed.</p> <p>At [59] It is true that the appellant admitted the sexual activity, the subject of cts 1 and 2, and that, without his admissions...ct 2 would not have been discovered and...ct 1 would have been more difficult to prove. However, the appellant’s voluntary disclosure in the video-recorded interview</p>

		<p>Difficult and traumatic childhood.</p> <p>History of anxiety and depression.</p> <p>Long history of illicit drug and alcohol abuse.</p> <p>At time offending, there was a warrant outstanding for the appellant's arrest for alleged offences in SA.</p>	<p>on a couch in the hostel. After drinking a considerable quantity of wine, the victim went to sleep in the appellant's campervan and the appellant returned to the hostel.</p> <p>A little later, the appellant went to the campervan. The appellant admitted that he penetrated the victim's vagina with his penis (ct 1) and performed cunnilingus on her (ct 2). The victim was unaware, as a result of her being intoxicated and having been asleep.</p> <p>The victim awoke with the appellant on top of her. Her shorts and underwear had been removed. The appellant was pinning her down, with one of his arms across her throat.</p> <p>The appellant pushed a shard of glass against the victim's throat, cutting her. She was extremely frightened. The appellant endeavoured to force the victim's legs apart so he could again penetrate her vagina with his penis (ct 3). He said to her, 'Don't move or I'll cut your throat' (ct 4).</p> <p>The appellant lost his grip on the victim and she bit the appellant's hand and, after a struggle, she escaped from the campervan. She ran along the side of the hostel and into the reception area. The victim was half naked and hysterical.</p> <p>The victim suffered cuts to her neck, left arm and leg, caused by the appellant's use of a shard of glass during his attack (ct 5).</p> <p>The appellant claimed that the victim consented to</p>	<p>remorse.</p> <p>Trial judge did not accept the appellant's claim that he thought the victim was awake and consciously consenting.</p> <p>Trial judge reduced sentence for ct 2 because offending was revealed by what appellant admitted to police.</p> <p>Very high risk of re-offending; considerable danger to the public.</p>	<p>with police was not indicative of any remorse or of a desire to purge his guilt. The appellant made the admissions in connection with attempting to exculpate himself by fabricating a version of events...</p> <p>At [60] ...the TES of 11 yrs imp, with EFP, was condign punishment and towards the upper end of the range available to his Honour on a proper exercise of the sentencing discretion...The term of 11 yrs was required to give effect to the primary sentencing factors of appropriate punishment and personal and general deterrence.</p>
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			at least some of the sexual activity.		
5.	<i>PSS v The State of Western Australia</i> [2015] WASCA 98 Delivered 19/05/2015	15 yrs 11 mths at time offending. 16 yrs 8 mths at time sentencing. Convicted after PG. Committed cts 1-2 while on bail for cts 3-4. No history for violent or sexual offending. Criminal history, including agg burgs, stealing, trespass, poss a prohibited weapon, breach of bail and IYSO. Turbulent childhood. Extensive cannabis use from age 13. Commenced sexual relations from age 12.	Ct 1: Agg burg. Ct 2: Sex pen. Ct 3: Common assault. Ct 4: Common assault. Ct 5: Poss prohibited dug. <u>Ct 1 and 2</u> The victim was 24 yrs old. The appellant was taller and heavier than the victim. He committed the offences under the influence of alcohol and cannabis. Between 2.00am and 3.00am, the appellant climbed through a window into the victim's house. The victim was alone and asleep in bed. She woke from noises. The appellant crawled into her bed, held her down with his left leg and said "I want sex". She began to cry loudly and replied that she could not as she was a Christian. The victim pushed the appellant on the chest but he stood his ground. He forcefully demanded that the appellant hug him. She was crying and shaking with fear, but agreed. The appellant kissed the victim, forcing his tongue into her mouth. He forced the victim on her knees and forced his erect penis into her mouth. He took hold of her head with both hands and pulled her towards him while thrusting his hips forward and back. He ejaculated in the victim's mouth and then left the house. <u>Ct 3 and 4</u> The appellant was with two others at a train station. The appellant approached the victim, who was standing with her partner. The victim's	Ct 1: 3 yrs detention (conc). Ct 2: 3 yrs 9 mths detention. Ct 3: 3 mths detention (conc). Ct 4: 4 mths detention (conc). Ct 5: NFP. TES 3 yrs 9 mths detention. Eligible for supervised release after 22.5 mths. Sentencing judge classified sex pen as a very serious offence of its kind. Penetration was violent, frightening, humiliating and degrading. Impact of offending on victim was serious and profound. Sentencing judge found appellant had some remorse and empathy.	Dismissed. At [26]-[30] Discussion of comparable cases. At [35] Having regard to the seriousness of the circumstances of the sex pen offence, the sentence imposed by the sentencing judge was within the sound exercise of the sentencing discretion.

			<p>partner had been assaulted by a co-offender. The appellant held the victim by her arms, restraining her from assisting her partner. When the victim stood in front of her partner to protect her partner from being assaulted further, the appellant grabbed her by the arms and pulled her down to the ground.</p> <p>The second victim had seen the appellant attacking a person on the platform and ran down the stairs to try and prevent the assault. The appellant ran at the second victim and punched and kicked him repeatedly.</p> <p><u>Ct 5</u> The appellant was found in poss of a small bag of cannabis.</p>		
4.	<p><i>The State of Western Australia v Vartolo</i></p> <p>[2015] WASCA 53</p> <p>Delivered 18/03/2015</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Minor irrelevant criminal history.</p> <p>Supportive mother.</p> <p>Left school at 16 yrs; constant employment.</p> <p>Used synthetic cannabis and binge drinking at time offending; stopped using substances before sentencing.</p>	<p><u>Indictment</u> Ct 1: Sex pen. Ct 2 : Sex pen.</p> <p><u>Section 32</u> Stealing x 1.</p> <p>After drinking at home with her boyfriend, the victim went to bed and fell asleep. The victim's boyfriend went out. He later returned home, in an intoxicated state, with the respondent. The respondent was a complete stranger to the victim. The victim's boyfriend fell asleep in the bathroom.</p> <p>The respondent entered the victim's bedroom and lay naked beside her. He fondled her breasts and used his fingers to rub her genitals, before</p>	<p><u>Indictment</u> Ct 1: 1 yr imp (conc). Ct 2 : 2 yrs imp (conc).</p> <p><u>Section 32</u> \$250 fine.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>Lifetime VRO.</p> <p>Reports stated that the respondent minimised and blamed others for his offending; no victim empathy; no remorse;</p>	<p>Allowed.</p> <p>Original sentence set aside.</p> <p>Re-sentenced to: Ct 1: 2 yrs imp (conc). Ct 2 : 3 yrs 6 mths imp (conc).</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [64] The circumstances of each offence were undoubtedly serious.</p> <p>At [65] While it is true that</p>

		Favourable character references.	<p>penetrating her vagina with his fingers (ct 1). He inserted his penis into her vagina, moved on top of her and engaged in sexual intercourse (ct 2).</p> <p>The victim began to wake up. She initially thought the respondent was her boyfriend, but soon realised she was wrong. The respondent continued intercourse with her, until she pushed him off and went to find her boyfriend.</p> <p>The respondent stole a laptop computer and an iPod and walked out of the unit.</p> <p>The respondent denied being at the house until he was informed of CCTV contradicting his account. He admitted to having sex with the victim, but claimed it was consensual.</p>	<p>motivated by reduced sentence to PG; moderate to low risk of reoffending.</p>	<p>the respondent did not inflict violence or threaten violence towards H, such behaviour was unnecessary given her unconscious state... The absence of violence or threats of violence is not mitigating, it merely constitutes an absence of a further aggravating factor.</p> <p>At [71] Discussions of comparative cases.</p>
3.	<p><i>The State of Western Australia v Staniforth-Smith</i></p> <p>[2014] WASCA 170</p> <p>Delivered 05/09/2014</p>	<p>46-47 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after trial (Cts 1 & 3).</p> <p>Convicted after PG (Ct 2).</p> <p>No previous criminal record of significance.</p> <p>Hardworking; successful farmer.</p> <p>Following breakdown of marriage, led an isolated life.</p> <p>Suffered depression.</p>	<p>Ct 1: s321(4) <i>Criminal Code</i> indec dealings child 13-16 yrs.</p> <p>Ct 2: s324 <i>Criminal Code</i> Agg indec assault.</p> <p>Ct 3: s326 <i>Criminal Code</i> Agg sex pen.</p> <p>The victim had been the respondent's step son who was aged between 15 and 17 years. Following the breakdown of the victim's mother and respondent the victim would visit the respondent.</p> <p><u>Ct 1:</u> Sometime in 2010 the victim stayed with the respondent. During this time the victim confided to the respondent that he was concerned about the presence of hair on his buttocks. The respondent gave the victim some hair removal cream and the victim went to the bathroom to apply it. Despite</p>	<p>Ct 1: 4 mths imp (cum).</p> <p>Ct 2: 6 mths imp (conc).</p> <p>Ct 3: 14 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Voluntarily reported the matter to police but only after victim disclosed offences.</p> <p>Made significant admissions; did not fully recall or accept the entirety of what he did.</p>	<p>Dismissed.</p> <p>At [54] It is sufficient to say that there is no established range for offences of this nature and that the sentence imposed on count 3 is not so clearly inconsistent with other sentences as to indicate an error.</p> <p>At [55] Although an offender's personal circumstances in the case of sexual abuse of children do not generally carry as much weight as they might</p>

		<p>Habitual user of cannabis.</p> <p>Good character; positive references and support from family.</p> <p>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</p>	<p>the victim stating that he did not want assistance, the respondent insisted and applied the cream to the victim's buttocks, anal and genital areas.</p> <p><u>Ct 2-3:</u> Cts 2 and 3 occurred on the same day about a year later when the victim had lived with the respondent. At this time the victim was between 16 and 17 years old. After both consuming alcohol and cannabis the victim fell asleep. Sometime later he woke to find the respondent using a sex toy to masturbate his penis. The respondent then placed the victim's penis in his mouth. The victim got up and left the room.</p> <p>At trial, prosecution led evidence of an uncharged sexual act committed interstate when the victim was 15 yrs old.</p>	<p>Remorse; genuine concern for victim.</p> <p>Victim had attempted suicide and self-harm.</p> <p>Sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</p>	<p>do in other cases, they are not irrelevant. In the respondent's case there were a number of mitigating factors that could, in combination, properly be characterised as unusual.</p>
2.	<p><i>SDS v The State of Western Australia</i></p> <p>[2014] WASCA 109</p> <p>Delivered 22/05/2014</p>	<p>24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after late PG (maintained PNG to trial but failed to appear at trial).</p> <p>Criminal record including multiple aobh, agg aobh, multiple breach protective bail conditions, common assault and criminal damage; previously served terms of imp.</p> <p>Family discontent and domestic violence were</p>	<p><u>Indictment</u> s 326 <i>Criminal Code</i> Agg sex penetration.</p> <p><u>Section 32</u> s 313 <i>Criminal Code</i> Agg common assault.</p> <p>The victim was 22 yrs. The victim and appellant had been in a de facto relationship for 2 years. They had a child together.</p> <p>The appellant was at a house in Geraldton with a number of others. The victim went to the house to speak to the appellant. During the evening the appellant and victim argued in a bedroom of the house. The appellant refused to permit the victim to leave the bedroom. He dragged her by the arm when she attempted to leave. The appellant threw</p>	<p><u>Indictment</u> 6 yrs imp.</p> <p><u>Section 32</u> 6 mths imp (conc).</p> <p>EFP.</p> <p>Denied committing the offences when interviewed.</p> <p>No real remorse; blamed victim and thought his offending was an appropriate way to respond to actual or</p>	<p>Dismissed.</p> <p>At [52] There is no 'hierarchy' of sexual penetration and the seriousness of each offence of sexual penetration without consent must be determined by reference to its particular facts and circumstances.</p> <p>At [57] The facts and circumstances of the offending in the present case are very unusual.</p>

		<p>present throughout his formative years.</p> <p>Left school at end of year 9; completed TAFE courses.</p> <p>Employed for 6 mths at tyre company.</p> <p>History of alcohol and illicit substance abuse.</p> <p>Assessed as in 'mild' range for depression and anxiety.</p> <p>Two children from previous relationship.</p> <p>History of domestic violence in previous relationships.</p> <p>Took some steps towards his rehabilitation while on remand.</p>	<p>a doona over the victim and then struck her to the head and body. During the assault he threatened her.</p> <p>The victim left the bedroom when another occupant opened the door. The appellant and victim went into the lounge room with the others.</p> <p>Later the victim returned to the bedroom to sleep. The appellant went to the bedroom a few hours later. He struck the victim to the head and face. The appellant instructed the victim to remove her clothing. She was frightened of the appellant and, as a result, removed her clothes and lay on the bed. The appellant lit a cigarette while the victim was lying on the bed. He then pressed the lit cigarette against the victim's labia minora for a few seconds. This caused pain and burn marks.</p>	<p>suspected infidelity.</p> <p>Sentencing Judge satisfied beyond reasonable doubt that the appellant's sole purpose was to inflict pain and humiliation on the victim.</p> <p>Judge noted the offence was a serious example and in the upper range of such offending.</p> <p>Medium/ moderate risk of sexual and domestic violence reoffending.</p>	<p>At [64] Personal deterrence was important because the appellant has a history of violence towards women with whom he is in a family or domestic relationship. This violence has escalated in severity.</p>
1.	<p><i>The State of Western Australia v Doualeh</i></p> <p>[2014] WASCA 3</p> <p>Delivered 09/01/2014</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including agg robbery and aobh.</p> <p>Parents separated when</p>	<p>1 x s 326 <i>Criminal Code</i> Agg sex penetration.</p> <p>In the early hours of the morning the respondent was at the Claisebrook Train Station. He was under the influence of alcohol. The only other person at the station was the victim. She was under the influence of solvents. The respondent sat down next to the victim and asked if he could sniff from one of her bottles of solvent. She said</p>	<p>3 yrs 2 mths imp.</p> <p>EFP.</p> <p>Shown 'very belated' remorse and accepted responsibility.</p> <p>Sentencing judge</p>	<p>Allowed.</p> <p>Re-sentenced to 4 yrs 6 mths imp.</p> <p>At [38] While the respondent has said that he intends to turn his life around, the conduct he</p>

		<p>14yrs.</p> <p>Completed schooling; commenced University.</p> <p>No physical or mental health issues; alcohol abuse problem.</p> <p>Psychologist considered respondent had ‘an unhealthy attitude towards young women and regarded young, non-Muslim women as sex objects’.</p> <p>Intoxicated at the time of offence.</p>	<p>no. The respondent then asked her to perform oral sex on him. She refused. The respondent persisted in his requests and the victim continued to refuse.</p> <p>The victim tried to escape the respondent but was overpowered. He punched her to the head and face in order to overcome her resistance. The respondent managed to insert his penis in her mouth.</p> <p>The victim finally managed to force the respondent away from her by pushing and kicking.</p>	<p>described offending as ‘very serious, involving a degrading sexual act on a clearly intoxicated and obviously vulnerable young woman late at night at a deserted train station’.</p> <p>Penetrated victim on 2 occasions but only charge in respect of the 2nd occasion.</p> <p>Clear from CCTV footage respondent was at all time in reasonable control of his faculties and fully aware that his conduct was wrong.</p> <p>High risk of further sexual offending.</p>	<p>exhibited while in prison after this offending is not encouraging. The psychological report indicates that the respondent has aggressive and antisocial tendencies, and that his unhealthy attitude towards young women was a major contributing factor to his offending. He was assessed as being at a high risk of sexual reoffending. Having regard to that assessment, the serious nature of the offending and the respondents’ antecedents, the issues of personal deterrence and protection of the public are of particular significance in this case.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					