

Unlawful Wounding Offences

s 301 *Criminal Code* – excluding ‘glassing’ offences

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
SIO	suspended imprisonment order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<p><i>Reynolds v The State of Western Australia</i></p> <p>[2017] WASCA 214</p> <p>Delivered 24/11/2017</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (20% discount) (ct 1).</p> <p>Convicted after trial (cts 2-3).</p> <p>Extensive criminal history; offending across four States; no significant gaps since age of 18 yrs.</p> <p>On bail for ct 1 at time of committed offences subject of cts 2 and 3.</p> <p>Abandoned by both parents at a young age; childhood dogged by lack of opportunity and homelessness.</p> <p>Sporadic history of employment as a mechanic.</p> <p>15 yr relationship; two children 13 and 8 yrs; 2015-2016 partner suffered cognitive deficits from brain aneurism.</p> <p>Insular and isolated family life; no friends or support within the community.</p> <p>Some mental health issues; illicit drug use from 12 yrs; fluctuated in and out of daily drug use since; time spent on methadone program for heroin addiction.</p>	<p>Ct 1: Receiving. Ct 2: GBH. Ct 3: Unlawful wounding.</p> <p><u>Ct 1</u> Police executed a search warrant at Reynolds' home and located various items, valued at about \$12,800, recently stolen from a home burglary.</p> <p><u>Cts 2 & 3</u> Mr B's home was burgled and some of his CDs were stolen. He believed the CDs were at Reynold's home. Mr B, accompanied by Mr T, decided to go to Reynolds home to retrieve them.</p> <p>Mr B and Mr T went to a locked gate at the rear of Reynolds' property. His partner appeared and they asked for the return of the CDs. Mr B was told to go away.</p> <p>Reynolds came into the backyard and exchanged angry words with the two men, before going back into his unit and asking his partner to call police.</p> <p>Reynolds was already carrying a pocketknife but he armed himself with another and went back outside. As Mr B was looking through a hole in the gate Reynolds stabbed him in the eye with one of the knives (ct 2).</p> <p>As both victims walked away Reynolds jumped the fence and came towards Mr T, stabbing him</p>	<p>Ct 1: 9 mths imp (cum). Ct 2: 5 yrs imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES 5 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the overall offending on cts 2 and 3 in the upper range of seriousness by use of a knife and there were two victims. The offences were unprovoked and did not occur in self-defence or defence of his household.</p> <p>Limited capacity for empathy; little remorse; justified his actions.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle and length of sentence.</p> <p>At [36] ... the offence of unlawfully doing GBH committed by the appellant was at the upper end of seriousness. The victim suffered the permanent loss of sight in his right eye. The consequences of this injury to the victim have been serious and profound. ... The use of a weapon is ... an aggravating factor. ... the offence was unprovoked. [Mr B] did not enter or attempt to enter the appellant's premises and posed no threat to the appellant or the appellant's family.</p> <p>At [39] The appellant's overall offending was very serious. Not only did he stab [Mr B] but he also stabbed [Mr T]. Although the injuries that [Mr T] suffered were not as serious as those suffered by [Mr</p>

			<p>twice in the back (ct 3).</p> <p>As a result of the attack Mr B was blinded in one eye. Mr T's two wounds were able to be sutured and glued.</p>		<p>B], the potential for serious injury is obvious. The receiving charge the subject of ct 1 was a serious example of its type.</p> <p>At [40] ... It was well open to her Honour to impose some additional punishment for [ct 1], bearing in mind that it was committed some time before cts 2 and 3. ... it is aggravating that cts 2 and 3 were committed while the appellant was on bail for ct 1.</p>
5.	<p><i>The State of Western Australia v Smith</i></p> <p>[2016] WASCA 153</p> <p>Delivered 31/08/2016</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and lengthy prior criminal history, including convictions for breaching VRO, agg common assault and being armed in public in a way that may cause fear.</p> <p>History of domestic violence towards his partners.</p> <p>Emotional trauma associated with the death of his father.</p>	<p><u>Indictment</u></p> <p>Ct 1: Agg unlawful wounding. Ct 2: Agg GBH. Ct 3: Att steal motor vehicle. Ct 4: Assault public officer. Ct 5: Obstructing public officer.</p> <p><u>s.32 notice</u></p> <p>Ch 1: Trespass. Ch 2: Steal motor vehicle. Ch 3: Cruelty to an animal.</p> <p><u>Ct 1</u></p> <p>Smith and the victim were in a domestic relationship. They were at home using drugs and Smith left the house armed with a hammer and in an agitated state. He returned with the hammer and argued with the victim. He</p>	<p><u>Indictment</u></p> <p>Ct 1: 6 mths imp (conc). Ct 2: 18 mths imp. Ct 3: 3 mths imp (conc). Ct 4: 6 mths imp (cum). Ct 5: 3 mths imp (conc).</p> <p><u>s.32 notice</u></p> <p>Ch 1: \$500 fine. Ch 2: 3 mths imp (conc). Ch 3: 2 mths imp (cum).</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence for cts 1 and 2 and totality.</p> <p>Re-sentenced to:</p> <p>Ct 1 (ind): 2 yrs imp (conc). Ct 2 (ind): 3 yrs 6 mths imp.</p> <p>Sentences for ct 4 (ind) and ch 3 (s32 notice) and 6 mths imp for SIO cum upon each other and cum upon new sentence for ct 2 (ind). All other sentences conc.</p>

		<p>History of methyl use; affected by drugs at time offending.</p> <p>Offending occurred while appellant was subject to an SIO of 10 months imp, susp 12 mths.</p>	<p>threatened to hit her with the hammer. The victim turned her back to Smith and he violently hit her head with the hammer, exposing her skull.</p> <p><u>Ct 2</u> Smith struck the victim again as she tried to flee, hitting and fracturing her hand.</p> <p><u>Ct 3</u> Police found Smith walking down the street. As the officer got out of his patrol car and approached Smith, Smith ran to the other side of the car, got into the driver's seat and attempted to drive away.</p> <p><u>Cts 4-5 and ch3</u> The officer tried to stop Smith and was struck on the arm by the car's door. They wrestled for control of the car. Smith pulled out a knife and the officer attempted to knock it from his hand. The officer then attempted to taser Smith.</p> <p>A police dog grabbed Smith by his leg and pulled him from the car. Smith struck the dog on the head with the hammer and hit the officer's arm with the hammer. He attempted to hit the dog again, but the officer tasered him and he fell to the ground. Continuing to fight the officer, still armed with the hammer, he was tasered a third time. The officer kicked the hammer from Smith's hand and restrained him until assistance arrived.</p>	<p><u>SIO</u> Ordered to serve 6 mths of 10 mths SIO (conc).</p> <p>TES 2 yrs 2 mths imp. EFP.</p> <p>The sentencing judge noted the offences reflected an escalation in his offending behaviour, but that Smith had not been before the courts from 2005-2010.</p> <p>Remorseful; claimed no recollection of actions due to drug intoxication.</p> <p>Psychological report indicated developing insight into his behaviour and reasons for it.</p> <p>High risk of re-offending if illicit drug use continues.</p>	<p>TES 4 yrs 8 mths imp. EFP.</p> <p>At [30] The respondent had a history of domestic violence towards his partners, and this underscored the importance of personal deterrence as a sentencing factor.</p> <p>At [39] ... the respondent's offending was serious... The respondent armed himself with a ... weapon capable of inflicting serious harm, and his attacked upon the victim was unprovoked... The respondent's conduct in striking the victim ... had the potential to cause her extremely serious injury. He was physically stronger and more powerful than her.</p> <p>At [95] ... it was significant that the injury in fact sustained [for ct 2] was a defensive wound caused by an attempt to strike the victim with a hammer, in circumstances where the respondent had just struck</p>
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				<p>her with the hammer to the back of her head. The use of the hammer in that manner was likely to permanently injure or even kill the victim. The level of violence employed against the victim was high. The infliction of the injury formed part of a sustained attack against the victim which ceased only after she was able to take refuge at the neighbour's premises. The victim had not provoked the attack, and posed no threat to the respondent.</p> <p>At [100] The respondent acknowledged that he had perpetrated domestic violence on a regular basis.</p> <p>At [104] Any AOBH to a police officer performing his or her important community function is a serious matter. That is particularly so where weapons are involved. The respondent produced a knife, which he did not have the opportunity of using, and employed a claw</p>
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					hammer to inflict bodily injury...
4.	<p><i>Hunter-Aragu v The State of Western Australia</i></p> <p>[2015] WASCA 80</p> <p>Delivered 29/04/2015</p>	<p>20 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Irrelevant prior criminal history.</p> <p>Supportive family.</p>	<p>Ct 1: Criminal damage. Ct 2: Unlawful wounding. Ct 3: Agg robbery. Ct 4: GBH.</p> <p>The appellant behaved aggressively outside of a nightclub. He demanded money and mobile phones from other people.</p> <p>He became involved in a physical altercation with Lyle. Lyle went to a taxi and sat in the front passenger seat. The appellant threw a rock at the taxi, smashing the window (ct 1) and causing a wound to Lyle's left arm (ct 2).</p> <p>The appellant then sought to confront Gabriel. Gabriel raised his hands, to indicate that he did not want a confrontation, and backed away. The appellant pursued him. Gabriel fell to the ground and the appellant kicked him in the chest. The appellant stomped on Gabriel's head rendering Gabriel unconscious and causing a serious brain injury. The appellant dragged Gabriel about 15 metres, robbed him of his mobile phone and \$100 cash and abandoned him. Gabriel was found a few hours later, still unconscious.</p> <p>Offending caused devastating adverse consequences for Gabriel, including problems walking, talking and poor vision and balance.</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 6 mths imp. Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 4 yrs 3 mths imp (cum).</p> <p>TES 7 yrs 3 mths imp.</p> <p>EFP.</p> <p>It was an extremely serious example of gratuitous violence.</p> <p>Serious permanent consequences for Gabriel; impacted seriously on Gabriel's partner.</p> <p>Remorse; motivated to rehabilitate.</p>	<p>Dismissed.</p> <p>At [55] ...the offence of unlawfully doing GBH against Mr Gabriel was extremely serious...the offence of robbery against Mr Gabriel was serious... the individual sentence for robbery was high but nevertheless within the appropriate sentencing range.</p>
3.	<p><i>The State of Western Australia v</i></p>	<p>31 yrs at time offending.</p> <p>Convicted after early PG.</p>	<p>Ct 1: Agg armed robbery. Ct 2: Unlawful wounding.</p>	<p>Ct 1: 2 yrs 6 mths imp. Ct 2: 12 mths imp (conc).</p>	<p>Allowed.</p> <p>Re-sentenced to 4 yrs imp</p>

	<p>Walley</p> <p>[2014] WASCA 85</p> <p>Delivered 23/04/2014</p>	<p>Criminal history including manslaughter.</p> <p>Exposed to violence in early childhood and during relationships with male sexual partners.</p> <p>Left school at 12 yrs old.</p> <p>Engaged in substance abuse and criminal behaviour in teenage yrs.</p> <p>Consumed methyl for some time.</p> <p>Mother of 5 children; do not reside with her.</p> <p>Respondent's 14 yr old daughter PG to agg robb and sentenced to 6 months YCBO.</p> <p>Charge against adult co-offender did not proceed because of identification issues.</p>	<p>The respondent attended the BWS liquor store in Palmyra with her 14 year old daughter and another adult female. The respondent was armed with a black handled knife with a 10 cm long serrated blade. She brandished the knife, approached an employee and threatened him with the knife.</p> <p>The employee backed away and the responded walked behind the service counter and picked up a bottle of bourbon and dropped it which caused it to smash.</p> <p>She picked up another bottle and was then approached by another employee who confronted and challenged her. The responded lunged at this employee with the knife, striking him underneath the shoulder blade. This caused a 1 cm deep penetration wound. He later attended hospital and the wound was sutured.</p> <p>After the knifing the two employees retreated. The respondent took more bottles of alcohol and placed them on the service counter. She then picked up several bottles and threw them at one of the employees. While the respondent was taking the bottles and throwing them, the respondent's adult female companion and the respondent's 14 year old daughter entered the store, took the bottles of alcohol and ran.</p>	<p>TES 2 yrs 6 mths imp. EFP.</p> <p>Vague recollection of the offence due to intoxication.</p> <p>Remorseful although limited understanding of impact to victim.</p> <p>Moderate to high risk of re-offending in a violent manner.</p> <p>Admitted in PSR that she formed a plan with the others while drinking to commit the offence to obtain more alcohol.</p>	<p>Ct 1.</p> <p>Respondent conceded appeal should be upheld.</p> <p>At [16] The sentencing judge's statement that the respondent did not have a history of serious violence is surprising in view of the conviction of manslaughter I which she used a knife and fatally stabbed her partner in a drunken argument.</p> <p>At [16] This was a serious case of aggravated armed robbery. The offending was not spontaneous and she armed herself with and was willing to use a knife.</p> <p>At [19] The sentence imposed for the robbery charge was manifestly inadequate and this had the result that the total sentence was manifestly inadequate.</p>
<p>2.</p>	<p>Blurton v The State of Western Australia</p> <p>[2014] WASCA</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after late PG (PG Cts 1 & 2 in full satisfaction of</p>	<p>Ct 1: AOBH. Ct 2: Acts with intent to cause bodily harm. Ct 3: Unlawful wounding. Ct 4: Criminal damage.</p>	<p>Ct 1: 12 mths imp. Ct 2: 2 yrs 6 mths imp. TES 3 yrs 6 mths imp.</p>	<p>Dismissed.</p> <p>At [38] ... As his Honour rightly said, the offences were unprompted and</p>

<p>61</p> <p>Delivered 21/03/2014</p>	<p>indictment).</p> <p>Recent violent criminal history; including armed robbery, deprivation of liberty, common assault & unlawful damage.</p> <p>Father of five young children.</p> <p>Not of good character.</p> <p>Intoxicated and angry on the night of the offence.</p>	<p>The appellant was at a family party at a Cavesham Hall. Late in the evening the appellant had an argument with his partner and as a result, he left. Drunk and angry, he walked onto West Swan Road and remained there, posing a hazard to himself.</p> <p>The two victims, both off-duty police officers, were passengers in a motor vehicle driving on West Swan Road. The appellant stood in front of their vehicle on the roadway causing the driver to slow down and drive around him. As she did and without reason, the appellant struck the vehicle several times with his fist. The driver stopped the car.</p> <p>One of the victims got out of the car and approached the appellant. The appellant swung a number of punches at him, which missed, but eventually the victim was struck to the left side of the jaw with a clenched fist. At this point, others who had been at the party, including two co-offenders, joined in the attack. The victim as knocked to the ground, kicked and punched by various people.</p> <p>The second victim got out of the car to assist. He made known to the victim that he was a police officer. The appellant approached the second victim and punched him in the face. Others also attacked him. The victim ended up on the ground, struggling with the co-offenders. As a result he sustained a laceration to his lip.</p> <p>The first victim then came to the second victim's</p>	<p>EFP.</p> <p>Little victim empathy.</p> <p>Voluntarily handed himself into Police.</p> <p>Appellant and co-offender assisted police in the prosecution of third co-offender.</p> <p>In VROI admitted to fighting with victims but denied using anything as a weapon.</p> <p>Sentencing judge found was principal offender.</p>	<p>unprovoked by the victims. The appellant assaulted both men out of anger brought on by self-induced intoxication, a factor which affords no mitigation.</p>
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1.	<p><i>Moir v The State of Western Australia</i></p> <p>[2014] WASCA 25</p> <p>Delivered 04/02/2014</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal record including burglary, dishonesty, traffic offences and breaching court orders.</p> <p>Suffered significant trauma as a child and adult; history of severe sexual abuse and domestic violence.</p> <p>Abused alcohol for many years.</p> <p>Diagnosed with ADHD; some characteristics of post-traumatic</p>	<p><u>Indictment</u> Ct 1: Unlawful wounding. Ct 2: Stealing.</p> <p><u>s32 notice</u> Ct 1: Assault public officer. Ct 2: Trespass. Ct 3: Obstruct public officer.</p> <p><u>Breach</u> Breach of ISO - agg unlawful wounding. (By re-offending and non-compliance).</p> <p><u>Breach</u> The appellant was drinking at a nightclub when she encountered the victim and his partner.</p>	<p><u>Indictment</u> Ct 1: 16 mths imp (cum). Ct 2: 6 mths imp.</p> <p><u>s32 notice</u> Ct 1: 6 mths imp (cum). Ct 2: 3 mths imp. Ct 3: 3 mths imp.</p> <p><u>Breach</u> 9 mths imp (cum).</p> <p>TES 2 yrs 7 mths imp.</p>	<p>Dismissed – on papers.</p> <p>At [24] When viewed as a whole, the appellant's offending was unquestionably serious. On two separate occasions she, without any justification, unlawfully wounded her victims.</p>

		<p>stress disorder; personality disorder with emotionally unstable paranoid and antisocial features.</p> <p>Claimed that the offences on Indictment and s32 were whilst she was adversely affected by the effects of her medication.</p> <p>At time of committing these offences was subject to an 18 mth ISO imposed for agg unlawful wounding.</p>	<p>During a conversation with them, she threw the contents of her glass over the victim's partner. Either the victim or his partner then threw the contents of their drink at the appellant. She reacted by throwing the rest of the contents of her glass at the victim and, in doing so, the glass she was holding left her hand and struck the victim just above his left eye with such force that the glass broke and inflicted a 5 cm cut to the victim's forehead.</p> <p><u>Indictment and s32 notice</u> The victim and her 10 year old son were at their community library. The appellant, who was intoxicated, was seated at a computer station a couple of seats away from them. Without warning the appellant struck the victim to the left side of her face with a partially filled bottle of whisky which broke on contact. The victim suffered a 10cm cut to her left eyebrow and damage to the retina of her left eye. She then fled after stealing a purse from the victim's handbag.</p> <p>The appellant then went to and entered an acquaintances address in Orelia without his consent. The victim returned home and made several requests for her to leave however his requests were ignored. The police were contacted. Instead of leaving, the appellant took a bath and then hid under the victim's bed. She refused all requests by police to leave. Eventually she climbed out a window, stood in the garden and pleaded with the victim to allow her to stay. She resisted police attempts to arrest</p>	<p>EFP.</p> <p>Appellant told sentencing judge she intended to re-engage in rehabilitation programs.</p> <p>Both unlawful wounding offences were unprovoked, unexpected and unjustified.</p>	
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			her and kicked a police officer in the face and leg.		
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					
<i>Maximum penalty increased from 3 yrs to 5 yr imp (20/01/1995)</i>					

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