

# Acts or omissions causing bodily harm or danger

s 304 Criminal Code

**Prior to 1 January 2014**

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order

s 304(1) Acts/omissions (max penalty 7 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	<p><i>Colbung v The State of Western Australia</i></p> <p>[2013] WASCA 257</p> <p>Delivered 06/11/2013</p>	<p><u>Supreme Court</u> 21 yrs at time offending.</p> <p>Convicted after very late PG (5 days before trial).</p> <p>Second trial – first aborted as the appellant failed to give proper notice of an alibi defence.</p> <p><u>District Court</u> Convicted after PG (very late PG on Ct 2).</p> <p>*****</p> <p>Extensive and serious criminal record including agg armed robb, agg robb, agg burg.</p> <p>Dysfunctional upbringing; left school at Year 9; undertook business course at TAFE.</p> <p>Diagnosed with depression whilst in juvenile detention.</p> <p>Limited employment history; ‘significant</p>	<p><u>Supreme Court</u> Ct 1: Agg burg. Ct 2: Agg armed robb. Ct 3: Steal MV. Ct 4: Steal MV.</p> <p><u>District Court</u> Ct 1: Act or omission causing GBH Ct 2: Steal MV &amp; drive reckless.</p> <p><u>Supreme Court</u> The victims, a young man and woman, were asleep at their residence. Both victims woke from noise outside and saw the appellant and co-offender walking towards their front door. The male victim armed himself with a knife and golf club. The female victim retreated to an ensuite toilet and called the police. The appellant and co-offender then forced entry into the house. The appellant was armed with a screwdriver and a knife. The co-offender was armed with a knife and pointed it at the male victim and held the blade about 50 cm from the victim’s chest. The co-offender demanded the car keys from the victim and threatened to stab him if he moved. The appellant then rummaged through the bedroom and stole the victim’s handbag, wallet, iphone, car keys and other keys. The appellant and co-offender then left the house.</p> <p>The appellant and co-offender then dragged the male victim’s off-road motorbike from the garage and placed the motorbike in the back of the victim’s</p>	<p><u>Supreme Court</u> Ct 1: 2 yrs 8 mths imp (conc). Ct 2: 3 yrs 11 mths imp. Ct 3: 4 mths imp (cum). Ct 4: 6 mths imp (cum).</p> <p>TES 4 yrs 9 mths imp.</p> <p>EFP.</p> <p><u>District Court</u> Ct 1: 2 yrs 9 mths imp. Ct 2: 2 yrs 9 mths imp.</p> <p>TES 2 yrs 9 mths imp served cum upon Supreme Court sentence.</p> <p>EFP.</p> <p>*****</p> <p>Aggregate term 7 yrs 6 mths imp.</p> <p><u>Supreme Court</u> No recollection of</p>	<p>Dismissed – on papers.</p> <p>At [44] ... The appellant’s offending was very serious.</p> <p>AT [66] ... The objective circumstance of the offending as a whole were very serious ... The aggregate term of 7 years and 6 months was of a severity that was appropriate in all the circumstances of the case ...</p>

		<p>potential' as footballer.</p> <p>In relationship; two daughters; partner supportive of him.</p> <p>Alcohol and drug user.</p> <p>Previous parole order cancelled; previous non-compliance of several juvenile community orders.</p> <p>Intoxicated at time of offending.</p>	<p>motor vehicle. They then drove off.</p> <p>Police later observed the appellant riding the stolen motorbike. Police pursued the motorbike for a short distance before losing sight of it.</p> <p><u>District Court</u> The appellant was seen by police at night driving a stolen motor vehicle and a pursuit ensued. The appellant drove at speeds in excess of 140 km in a 60 km zone, drove on the incorrect side of the road and without lights. Police eventually lost sight of the vehicle.</p> <p>Days later the appellant was a passenger in another vehicle. Police observed the vehicle travelling in excess of the speed limit. The vehicle stopped and police stopped next to the vehicle.</p> <p>The victim alighted from the vehicle to speak with the driver. A second officer also alighted. While the victim was standing next to the driver's side of the vehicle the appellant alighted from the vehicle and sat in the driver's seat of the police vehicle. The victim ran to the driver's side of the police vehicle; however, the appellant reversed the vehicle. The open door struck the victim and he was dragged backwards and fell to the ground. The victim struck his head on the road surface and became unconscious. The appellant fled the scene in the stolen police vehicle. During the incident, the vehicle ran over the victim's legs. The appellant made no attempt to stop or assist the victim.</p> <p>The victim suffered serious injuries including</p>	<p>alleged offending; changed his PG on basis of the evidence against him in the State brief.</p> <p>Only 4 % discount given.</p> <p>VIS indicated victims suffered significant anger, distress and trauma.</p> <p>Sentencing judge gave credit for 'some understanding of the effect on your victims and some acceptance of responsibility and remorse'.</p> <p>High risk of re-offending.</p> <p><u>District Court</u></p> <p>Remorseful.</p> <p>Victim's rehabilitation process has been lengthy; has not fully recovered; appears to have some residual disabilities.</p>	
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			concussion, ligament damage to his ankle, cartilage damage to his hip and muscle damage to his back.	15% discount for PG for Ct 1 and 5% for Ct 2.	
9.	<b><i>Bolton v The State of Western Australia</i></b>  [2012] WASCA 2  Delivered 6/01/2012	56 yrs at time sentencing.  Prior criminal record – one minor offence only.  Educated to year 9.  Positive figure in immediate and extended family; worked with wife as live-in carers for children of drug-using parents.  Health issues – type 2 diabetes; blood pressure problems; arthritis. No evidence health would make prison sentence more onerous so of limited mitigatory value.	1 x GBH with intent. 1 x Unlawful wounding with intent. 1 x Unlawfully doing an act endangering life.  Very serious instance of offending.  Offending occurred in context of ongoing feud between two Aboriginal family groups.  Victims were attending wake of family member at a property close to the appellant’s home. Police attended to ensure that trouble did not erupt and secured undertakings from senior members of both families that neither family would approach the other – appellant was aware of this undertaking. Despite the undertaking, a brawl between the two family groups erupted involving at least 50 people during which rocks and bottles were thrown. Appellant was watching the brawl from the front of his property when he obtained or was given a double-barrel shotgun from inside his house. Appellant inserted two cartridges into the gun, stood behind his ute and took aim at a member of the opposing family. This person was armed with a rake but did not pose an immediate threat to anyone at that stage. Victim 1 saw appellant take aim and ran to knock the intended target out of the way, sustaining shotgun injuries to her abdomen causing a perforated bowel and requiring surgery (ct 1). The appellant then took aim and shot at victim 2 who was sitting on a fence at the front of a property. Victim 2 was not involved in the	5 yrs imp. 4 yrs 6 mths imp. 1 yr 3 mths imp.  TES 6 yrs 3 mths imp.  No real remorse or acceptance of responsibility.	Dismissed.  At [41] Context of long-running feud did not mitigate the appellant’s culpability to any significant extent.  At [42] TES well within the range of a sound exercise of the sentencing discretion.

			<p>brawl and was approx 90m away from the appellant. Victim 2 sustained injuries requiring surgery (ct 2). A family member of victim 1, who had not been involved in the brawl, started to drive victim 3 to the hospital. The driving was slow and careful so as to avoid injuring anyone in the brawl and avoid the debris on the road and did not pose a threat to anyone. Appellant aimed and shot at the car, striking the front left hand-side of the vehicle.</p>		
8.	<p><i>Narrier v The State of Western Australia</i></p> <p>[2011] WASCA 193</p> <p>Delivered 16/11/2011</p>	<p>22 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy prior criminal record – 11 x steal motor vehicle; 3 x steal motor vehicle and drive recklessly; numerous dangerous and reckless driving.</p> <p>Good family background; supportive family even after offending.</p> <p>Two children (youngest 9 wks old).</p> <p>History amphetamine and alcohol abuse.</p>	<p>1 x Unlawfully doing an act endangering life. 1 x Steal motor vehicle and drive recklessly.</p> <p>Very serious instance of offending.</p> <p>Appellant and co-offender stole a car. Two police officers leaving the scene of the accident noticed the stolen car owing to the way it was being driven and the noise it was making – appellant was driving. Officers followed the car with the intention of pulling it over. Officers activated their lights and sirens but the vehicle failed to stop and a police pursuit ensued. Stolen vehicle stopped and police thought the appellant and co-offender were going to try and escape on foot. Officers drove slowly towards the rear of the car. Car accelerated heavily and reversed at the police car. Officers tried to move so as to avoid collision but car changed directions, continued to accelerate and struck the police vehicle. Police vehicle was hit with such force that it moved sideways. Officers again tried to drive away but car again changed direction, accelerated and struck the police vehicle again. Car drove off and police continued their pursuit. Officers were eventually able to force the car off the road.</p>	<p>12 mths imp each ct. 2 yrs imp.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [25] s 304(1) relevantly new provision and no appellate authority in existence.</p>

**Transitional provisions repealed (14/01/2009)**

Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in *Yates v The State of Western Australia* [2008] WASCA 144 overruling the majority decision in *The State of Western Australia v Wallam* [2008] WASCA 117 on that point.

**s 304(2) Acts/omissions with intent (max penalty 20 yrs imp)**

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>Starr v The State of Western Australia</i></p> <p>[2011] WASCA 170</p> <p>Delivered 4/08/2011</p> <p>Co-offender of <i>Eriha v The State of Western Australia</i> [2011] WASCA 167</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – agg burg; threats to injure; resist arrest; poss smoking implement; agg AOBH; breach VRO; breach bail; assault police officer; AOBH; common assault; unlawful damage.</p> <p>Difficult childhood; victim violent abuse; left home at 14 yrs old and lived on streets; educated to yr 9.</p> <p>Some employment in various fields.</p> <p>Drug use.</p>	<p>Ct 1: Kidnapping. Ct 2: AOBH. Ct 4: Act likely to endanger health, life or safety.</p> <p>Victim 17 yrs at time offending and slightly built. Appellant and victim known to each other and appellant harboured considerable animosity towards victim prior to offending.</p> <p>Victim at service station waiting for a friend. Appellant and two co-offenders pulled into service station, all three got out of the ute and ran towards the victim. Co-offender 1 punched victim in side of face and victim fell to ground. Co-offender 1 then kicked victim numerous times in the head and chest – victim suffered lacerations and abrasions. Appellant and co-offender 2 then forced victim into the ute and drove him to a group of units. Victim dragged out of ute and carried into a unit by both appellant and co-offender 2, where he was forced to the concrete floor. While victim on floor, appellant and both co-offenders repeatedly kicked and punched him. Assault continued for 5-10 minutes and at end of assault victim in very bad physical condition – bleeding, difficulty standing and</p>	<p>Ct 1: 6 yrs imp. Ct 2: 2 yr imp. Ct 4: 3 yrs imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>No acceptance of responsibility; blamed co-offenders; no victim empathy.</p> <p>At [117] Considered by sentencing judge as least culpable of the three offenders but offending conduct described as ‘cowardly, brutal and sadistic.’</p>	<p>Dismissed – application for extension of time refused on papers.</p>

			<p>walking. Victim then taken back to ute, forced into it and driven to an isolated bush location. Appellant tied victim's feet together and took off victim's shirt. Appellant and co-offender 1 then urinated on victim.</p> <p>Ute had crane fixed to rear tray and appellant hooked victim's legs to crane and raised it so that victim was suspended upside down. Appellant and both co-offenders repeatedly kicked and forcefully kicked victim to head, chest and stomach as he was suspended upside down. Victim lowered to ground and a word was carved in his chest by one co-offender as a 'memento'. Victim thought that he was going to be killed at this point.</p> <p>Co-offender 1 then repeatedly struck victim with claw hammer on each hand – causing intense pain and serious permanent injury. Co-offender 1 then struck victim repeatedly in legs with metal tyre iron and struck victim's feet with hammer. Victim had by now been stripped to his boxer shorts and socks and could barely hobble.</p> <p>Appellant and both co-offenders got back in ute and drove away - deliberately leaving victim seriously injured with no assistance in remote location (ct 5). By time appellant and co-offenders left it was dusk – victim spent night in bush and at dawn next day managed to crawl 4-5m to dirt road. Victim seen by a man on his way home from motor biking with his son. Man has carried victim to his car and driven him to hospital (admitted suffering mild hypothermia, dehydration and serious injuries from the attack including split kneecap, multiple breaks in his shin bone, multiple fractures to his hands and extensive bruising and lacerations all over his body) – victim then transferred by air to Perth hospital.</p>		
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			<p>Required extensive treatment from orthopaedic and plastic surgeons and remained in hospital for 3 weeks.</p> <p>At time sentencing victim had limited use of hands, could not walk without leg pain, has suffered anxiety attacks, serious depression and has attempted suicide.</p>		
6.	<p><i>Eriha v The State of Western Australia</i></p> <p>[2011] WASCA 167</p> <p>Delivered 2/08/2011</p> <p>Co-offender of <i>Starr v The State of Western Australia</i> [2011] WASCA 170</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – burglary; att burglary; AOBH; carry controlled weapon in manner likely to cause fear; had not previously served term imp.</p> <p>Difficult childhood; domestic violence; ran away from home at same time left school (part way through yr 11).</p> <p>Entrenched propensity for violence.</p>	<p>Ct 1: AOBH. Ct 2: Kidnapping. Ct 3: AOBH. Ct 4: GBH with intent. Ct 5: Act with intent to do harm.</p> <p>Offending within worst category of offences of this type.</p> <p>Victim 17 yrs at time offending and slightly built. Appellant and victim known to each other and appellant harboured considerable animosity towards victim prior to offending.</p> <p>Victim at service station waiting for a friend. Appellant and two co-offenders pulled into service station, all three got out of the ute and ran towards the victim. Appellant punched victim in side of face and victim fell to ground. Appellant then kicked victim numerous times in the head and chest – victim suffered lacerations and abrasions (ct 1). Two co-offenders then forced victim into the ute and drove him to a group of units (ct 2 – kidnapping extended for a period of several hours). Victim dragged out of ute and carried into a unit by both co-offenders, where he was forced to the concrete</p>	<p>Ct 1: 1 yr imp. Ct 2: 5 yrs imp. Ct 3: 2 yrs imp. Ct 4: 9 yrs imp. Ct 5: 3 yrs imp.</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>High risk re-offending.</p>	<p>Dismissed.</p> <p>At [59]-[62] As offending fell within worst category, irrespective of previous sentences imposed, court entitled to impose sentence at or near the statutory maximum. Offending in this case involved criminality of highest order and demanded long custodial sentence on grounds denunciation, public protection and general and specific deterrence – appellant’s conduct cruel, deliberate, methodical and sustained.</p>

			<p>floor. While victim on floor, appellant and both co-offenders repeatedly kicked and punched him. Assault continued for 5-10 minutes and at end of assault victim in very bad physical condition – bleeding, difficulty standing and walking (ct 3). Victim then taken back to ute, forced into it and driven to an isolated bush location. Co-offender 1 tied victim's feet together and took of victim's shirt. Appellant and co-offender 1 then urinated on victim.</p> <p>Ute had crane fixed to rear tray and co-offender 1 attached victim's legs to crane and raised it so that victim was suspended upside down. Appellant and both co-offenders repeatedly kicked and forcefully kicked victim to head, chest and stomach as he was suspended upside down. Victim lowered to ground and a word was carved in his chest by one co-offender as a 'memento'. Victim thought that he was going to be killed at this point.</p> <p>Appellant then repeatedly struck victim with claw hammer on each hand – causing intense pain and serious permanent injury (ct 4). Appellant then struck victim repeatedly in legs with metal tyre iron and struck victim's feet with hammer. Victim had by now been stripped to his boxer shorts and socks and could barely hobble.</p> <p>Appellant and both co-offenders got back in ute and drove away - deliberately leaving victim seriously injured with no assistance in remote location (ct 5). By time appellant and co-offenders left it was dusk – victim spent night in bush and at dawn next day managed to crawl 4-5m to dirt road. At approx 8.30am victim seen by a man on his way motor biking with his son. Man has carried victim to his car and driven him to hospital (admitted suffering</p>		
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			<p>mild hypothermia, dehydration and serious injuries from the attack including split kneecap, multiple breaks in his shin bone, multiple fractures to his hands and extensive bruising and lacerations all over his body) – victim then transferred by air to Perth hospital. Required extensive treatment from orthopaedic and plastic surgeons and remained in hospital for 3 weeks.</p> <p>At time sentencing victim had limited use of hands, could not walk without leg pain, has suffered anxiety attacks, serious depression and has attempted suicide.</p>		
5.	<p><i>Delavale v The State of Western Australia</i></p> <p>[2009] WASCA 111</p> <p>Delivered 6/04/2009</p>	<p>25 yrs at time offending.</p> <p>Prior criminal history – multiple armed robberies.</p> <p>Family remain supportive of him.</p> <p>Long history drug abuse – heroin, cannabis and amphetamines.</p>	<p>1 x Unlawfully doing an act endangering life with intent.</p> <p>Offending at upper end of the range of seriousness.</p> <p>Victim was appellant’s former partner. Relationship had been characterised by violence and serious assaults – victim travelled to England in order to get away from the appellant. Victim has no contact with appellant during the time she was in England and for the seven months following her return to Australia.</p> <p>Appellant told a mutual friend that he had sensitive photographs of the victim which she might like to retrieve. Victim arranged to meet appellant after receiving that message from the mutual friend. At that meeting arrangements were made for another meeting in 3 days time. Victim was not seen or heard from after the date of that second meeting. Victim was reported missing 3 days after the date of the second meeting.</p> <p>Appellant went to the police 4 days after the date</p>	<p>7 yrs 6 mths imp.</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>No acceptance of responsibility; minimal remorse.</p>	<p>Dismissed.</p> <p>At [17] s 304(2) encompasses a broad range of offending behaviour of varying levels of seriousness.</p> <p>At [19]-[21] Fact that the appellant was in an amphetamine induced rage at the time of offending is not mitigatory and does not reduce appellant’s culpability.</p> <p>At [23] It is well established that where the offences are near the top of the range of seriousness and culpability they should attract a starting point</p>

			<p>of the second meeting to report her death – police found victim’s body on the bathroom floor of the appellant’s house. Victim had been dead between 12 and 60 hrs before she was found.</p> <p>Victim died as a result of a sustained and vicious assault by the appellant – bruising to underlying tissue and muscles; damage to hyoid bone caused by being choked; multiple fractures to her ribs; acute subdural haematoma; facial, head and brain injuries. Injuries described in sentencing as ‘horrific’.</p> <p>Appellant failed to get medical help for the victim even though she died at least 7 hrs after the assault.</p>		<p>close to the maximum sentence available.</p> <p>At [25] No established range of offences as the offence is a relatively new one.</p>
4.	<p><i>The State of Western Australia v BLM</i></p> <p>[2009] WASCA 88</p> <p>Delivered 20/05/2009</p>	<p>27 yrs at time offending. 29 yrs at time appeal.</p> <p>Convicted after trial.</p> <p>Prior criminal record – AOBH; assault.</p> <p>Parents separated when 3 yrs old; lived with grandparents after separation and only saw parents in school holidays.</p> <p>Educated to yr 10; good employment history.</p>	<p>Ct 1: Unlawfully doing an act causing bodily harm with intent. (victim 1). Ct 2: AOBH (victim 2).</p> <p>Respondent refused entry to a tavern. Entry refused as respondent had previously been involved in a violent incident at the tavern which was the subject of current criminal proceedings. Respondent became angry and aggressive towards tavern owner and the victims (two off duty police officers) came to owner’s assistance and helped remove the respondent from premises. Police officers escorted respondent home shortly after.</p> <p>Respondent returned to the tavern armed with a large stick. On arrival at the tavern, patrons gathered in car park due to electricity outage. Respondent approached victim 1 and without warning struck him with the stick on the leg, face, head and body – victim 1 struck approx 8 times. Victim 2 went to assist victim 1 but was prevented from reaching him when a relative of the</p>	<p>Ct 1: 3 yrs 4 mths imp. Ct 2: 12 mths imp. TES 3 yrs 4 mths imp. EFP.</p> <p>At [124] Sentencing judge found that victims, although off duty, were acting in their capacity as public officers – entitled, if not obliged, to intervene. Offending therefore more serious.</p> <p>PSR – tendency to normalise aggression.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> Ct 1: 6 yrs imp. Ct 2: 6 mths imp.</p> <p>TES increased to 6 yrs imp.</p> <p>EFP.</p> <p>At [108]-[112] Comprehensive discussion of principles relating to sentencing for multiple offences, the one transaction rule and the totality principle.</p> <p>At [151]-[160] Some discussion comparative</p>

			<p>respondent's pushed him in the chest. Respondent then punched victim 1 in the face without warning. Respondent also punched tavern owner a short time later.</p> <p>Attack on victim 1 caused significant injuries - regular migraines, short term memory loss, facial and head scars, numbness in face, paralysis in left hand, calcium deposit on back of skull, indent on top of skull, lacks confidence, fearful, depression, poor concentration.</p> <p>Respondent intoxicated at time offending and motivated solely by revenge. Respondent surrendered to police a day or two after offending – claimed could only remember hitting victim 2 due to intoxicated state.</p> <p>Generated significant publicity with bloodied photos of victim 1 in media.</p>		<p>cases for s 304(2).</p> <p>At [177]-[180] Error in ordering sentence for ct 2 wholly concurrent with sentence for ct 1.</p> <p>Repeal of transitional provisions and its effect on sentences discussed in detail at several points in the decision.</p> <p>At [41]-[43] Except in worst cases of offending, following repeal of transitional provisions, appropriate sentencing range is identified by reference to the minimum terms required to be served so as to avoid disparity in sentencing and an increased penalty range. cf dissenting judgement of Buss JA and Miller JA on this point.</p>
<b><i>Transitional provisions repealed (14/01/2009)</i></b>					
<b>3.</b>	<b><i>The State of Western Australia v Redman</i></b>	<p>27 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>1 x Unlawfully doing an act causing bodily harm with intent.</p> <p>1 x GBH.</p>	<p>2 yrs imp.</p> <p>2 yrs imp.</p>	<p>Dismissed.</p> <p>Dismissed by majority (McClure and Wheeler</p>

	<p><b>[2009] WASCA 1</b></p> <p>Delivered 09/01/2009</p>	<p>No prior criminal record.</p> <p>A seaman in the Navy; excellent service record; conviction ended naval career.</p> <p>Good family relationship; good character references.</p>	<p>GBH offence towards the low end of the scale of seriousness.</p> <p>Respondent and friend and victims 1 &amp; 2 went to a cafe for food after nightclub shut. Two groups not known to each other. All four intoxicated.</p> <p>Respondent and victim 1 got into an argument, respondent walked away and was followed by victim 1. Respondent said he did not want a confrontation. Victim 1 continued to argue. Respondent pushed victim 1 and victim 1 slumped against a door. Respondent then punched victim 1 three or four times in the face, causing fractures to mandible and nose (bodily harm).</p> <p>Victim 2 got up and walked towards respondent. Respondent pushed victim 2 in the chest, then punched him. Victim 2 fell backwards and struck his head on brick paving (GBH). Victim 2 placed in induced coma for 2 days and later died as result of an embolism caused by deep vein thrombosis resulting from immobilisation in hospital bed.</p>	<p>TES 3 yrs.</p> <p>EFP.</p> <p>Co-operated with police; volunteered information against his interest.</p> <p>Genuine remorse, but had not fully acknowledged the extent of wrongdoing.</p>	<p>JJA, Martin CJ dissenting) – circumstances of offences and mitigating factors justified sentence toward lower end of scale.</p>
2.	<p><b><i>Yates v The State of Western Australia</i></b></p> <p><b>[2008] WASCA 144</b></p> <p>Delivered 10/07/2008</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Good employment history; guaranteed employment on release.</p> <p>Formed new relationship prior to sentencing.</p> <p>Unsettled childhood.</p>	<p>1 x Unlawfully doing an act endangering life with intent.</p> <p>1 x Unlawful damage.</p> <p>Offending held to be high-mid level of seriousness.</p> <p>Victim, a former good friend of the appellant, was in a relationship with appellant's former partner. Appellant unaware of their relationship and was actively misled by former partner to believe that they were in a long distance relationship. Offending precipitated by the discovery of the relationship between his partner and friend.</p>	<p>6 yrs imp.</p> <p>6 mths imp.</p> <p>TES 6 yrs imp.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> Sentence for unlawfully doing an act endangering life with intent reduced to 3 yrs imp.</p> <p>TES reduced to 3 yrs imp.</p> <p>At [102] No established range as this is only the second occasion on which</p>

		<p>Suffered symptoms of depression, anxiety and panic attacks due to separation from son following breakdown of first serious relationship at 28 yrs of age.</p>	<p>Appellant went to the home of a mutual friend after discovering that his partner was there. On arrival, appellant saw victim's car at the front of the house and drew the correct assumption that he was in a relationship with his partner.</p> <p>Appellant used a hammer to smash the windows and panels of the victim's car. Appellant also sent a series of threatening texts to numerous people, including the victim. Victim also threatened the appellant.</p> <p>Very early the next morning, appellant returned to the house where the victim was staying and began yelling loudly. Victim exchanged verbal abuse with appellant. Appellant drove off and victim and male owner of the house followed him in a car.</p> <p>Appellant stalled his car on a median strip while attempting to do a u-turn. Victim got out the car carrying a 6 ft crowbar and stood so as to prevent appellant driving off. Appellant drove his car at the victim, hitting him and drove off.</p> <p>Victim suffered 2 serious displaced fractures to major bones in his leg. Required 9 operations and injuries medically assessed as GBH.</p>		<p>the court has considered a penalty imposed under s 304(2).</p> <p>At [99]-[102] Court of Appeal refused to issue a guideline judgement as to sentences for s 304(2) – preferable to let relevant sentencing and legal issues emerge on case by case basis especially as the offence is one which can encompass a wide variety of conduct of disparate levels of seriousness.</p>
1.	<p><i>The State of Western Australia v Wallam</i></p> <p>[2008] WASCA 117</p> <p>Delivered</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Extensive prior criminal record – beginning at 13 yrs old; motor vehicle offences; burglaries; assaults on police officers; violent</p>	<p>1 x Unlawfully doing an act endangering life with intent.</p> <p>1 x Armed robbery.</p> <p>Victim was a member of family with whom the respondent's family had a history of conflict. Respondent was at a drive through bottle shop with his partner and two children in the car (6 mths and 2 yrs old). Respondent and partner both substantially</p>	<p>12 mths imp.</p> <p>2 yrs 6 mths imp.</p> <p>TES 3 yrs 6mths imp.</p> <p>No remorse.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u></p> <p>Sentence for unlawfully doing an act endangering life with intent increased to 3 yrs imp.</p> <p>TES increased to 5 yrs 6</p>

5/06/2008	<p>offending.</p> <p>History of breaching bail and supervision orders.</p> <p>Traumatic upbringing in environment of domestic violence; dysfunctional family; subjected to sexual abuse at home; bullied at school; homeless for a period of time as a teenager.</p> <p>Severely disrupted education; no qualifications.</p> <p>Periods of juvenile detention.</p> <p>History poly-substance abuse – alcohol, cannabis, amphetamines, toluene and aerosols. Introduced to substance abuse by peers and family members at approx 12 yrs old.</p>	<p>affected by alcohol. Appellant has verbally threatened victim on seeing him purchasing liquor. Respondent was driving away from victim when he made a u-turn and accelerated to drive past the victim. Victim threw a can at which hit the respondent's car. Respondent drove a little further down the road and made another u-turn. Respondent drove towards the victim, who was on a footpath, and struck him with the car. Respondent then drove off.</p> <p>Victim suffered lacerations to his forehead, torn ligaments in his knees, a tear to the Achilles tendon, spinal injuries and extensive bruising.</p> <p>Armed robbery unconnected to act endangering life with intent.</p>		<p>mths imp.</p> <p>At [100] First time sentence imposed under s 304(2) was considered on appeal – no tariff for the offence.</p> <p>At [126] Offence under s 304(2) very serious one as it bears a maximum term of imprisonment of 20 yrs. Also of significance that the offence targets the intentional infliction of bodily harm.</p> <p>NB: Only the sentence for s 304(2) was challenged as manifestly inadequate.</p>
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***Transitional provisions enacted (31/08/2003)***

Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in *Yates v The State of Western Australia* [2008] WASCA 144 overruling the majority decision in *The State of Western Australia v Wallam* [2008] WASCA 117 on that point.

Office of the Director of Public Prosecutions