

Indecent dealing with a child

ss 320(4), 321(4), 322(5) and 329(4) *Criminal Code* and repealed equivalent provisions where the offending falls within the definition of indecent dealing found in ss 320(4), 321(4) and 322(5)

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
indec	indecent
TES	total effective sentence
ISO	intensive supervision order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
21.	<p data-bbox="219 328 443 424"><i>BGE v The State of Western Australia</i></p> <p data-bbox="219 464 443 523">[2013] WASCA 136</p> <p data-bbox="219 563 443 622">Delivered 31/05/2013</p>	<p data-bbox="465 328 801 355">27 yrs at time offending.</p> <p data-bbox="465 395 801 422">Convicted after trial.</p> <p data-bbox="465 462 801 592">Extensive prior criminal history including for sexual penetration of a child 13-16 yrs.</p> <p data-bbox="465 632 801 863">Deprived upbringing. Witnessed violent incident where uncle fatally stabbed and aunt seriously injured. Expelled from school at 12, lacking structure, routine and purpose since.</p> <p data-bbox="465 903 801 962">Never been gainfully employed.</p> <p data-bbox="465 1002 801 1061">Affected by alcohol at time of offending.</p> <p data-bbox="465 1101 801 1367">Admitted to Forensic Psychologist that he had had many different sexual partners including his relatives and that he would have sexual intercourse with any woman at any time.</p>	<p data-bbox="824 328 1440 355">Victim was appellant's cousin.</p> <p data-bbox="824 395 1440 422">1 x Indecent deal u 13 yrs s320(4) <i>Criminal Code</i>.</p> <p data-bbox="824 462 1440 624">Victim aged 12 yrs. Appellant was at the victim's home. He spent the day drinking with members of the victim's family. The victim's older sister, who was aged 20, was present during the day but left in the early part of the evening.</p> <p data-bbox="824 663 1440 754">During the evening the appellant went to the victim's bedroom. The older sister was not there. The victim was in bed.</p> <p data-bbox="824 802 1440 963">The victim felt heavy breathing on her and felt the appellant attempting to rub against her chest, pulling at her bra strap and trying to place a finger in her bra. She kicked her feet and felt something between her legs.</p> <p data-bbox="824 1011 1440 1262">The appellant grabbed the victim's hands and put them against the bed. The appellant attempted to pull at her shorts and was endeavouring to remove them. She screamed and almost simultaneously, her mother entered the bedroom, turned on the light and saw the appellant between the victim's legs with the victim's shorts unzipped and one of her breasts exposed.</p>	<p data-bbox="1462 328 1765 355">20 mths imp.</p> <p data-bbox="1462 395 1765 422">EFP.</p> <p data-bbox="1462 462 1765 863">Sentenced on the basis that when he entered the victim's bedroom, he honestly believed that the older sister was in the bed. However, sentencing judge found that when the appellant began interfering with the victim in her bed the appellant's belief was not reasonable.</p> <p data-bbox="1462 903 1765 1098">According to Forensic Psychological report showed no understanding of impact of his offence on the victim.</p> <p data-bbox="1462 1137 1765 1228">He externalised blame towards the victim's older sister.</p> <p data-bbox="1462 1268 1765 1367">Distorted sexual attributes towards women and underage</p>	<p data-bbox="1787 328 2112 355">Dismissed on papers.</p> <p data-bbox="1787 395 2112 1166">At [28] Generally, as a matter of principle, an offender who has been convicted of indecent dealing with a child under the age of 13 years, and who honestly but unreasonably believed that the victim was of the age of consent and was consenting to the relevant act, will be less culpable than an offender who did not have an honest belief that the victim was of the age of consent or was consenting. However, whether and, if so, to what extent, an honest belief will, in a particular case, be a mitigating factor, depends on all the relevant facts and circumstances.</p>

				girls. High risk of re-offending in a sexual manner if he does not make changes.	
20.	<i>JS v The State of Western Australia</i> [2012] WASCA 198 Delivered 9/10/2012	54 yrs at time sentencing. Convicted after trial. Prior criminal history – evil designs; 3 convictions for agg sex assault (victim was appellant’s biological daughter and aged 9 and 12 yrs at time offending); 4 convictions of agg indecent assault (3 occasions victim was 14 yr old daughter of his then partner); breach protective bail (condition that he not have contact with any child). Good employment history. Assisted with care of aged mother.	2 victims (brother and sister) – appellant close friends of the victim’s parents. Ct 1: Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i> . Ct 3: Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i> . Ct 4: Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i> . <u>Ct 1:</u> Victim 1, 8 yrs old. Appellant staying with victim’s family as he did not have accommodation of his own. Appellant was on a mattress on the lounge room floor with victim 1 and 2 as well as their younger sister. Appellant put his hands down victim 1’s pyjama pants and rubbed her vagina. <u>Ct 2:</u> Victim 2, 5 yrs old. Victim 2 and family visiting appellant’s home. Appellant placed victim 2 on his lap, put his hand down victim 2’s pants and fondled his penis. Appellant asked victim 2 if he liked it and victim 2 said no. Appellant then gave victim 2 a cuddle or spoke reassuringly to him. <u>Ct 3:</u> Victim 2, 5 yrs old. Appellant at park with victim 2, his mother and some of her other children. Appellant and victim 2 went to the toilet together and appellant put his hands down victim 2’s pants	Ct 1: 2 yrs imp. Ct 3: 2 yrs imp. Ct 4: 2 yrs imp. TES 4 yrs imp. Not EFP. Denied offending (and all past offending); no insight into offending; no remorse or victim empathy; poses ongoing risk to young children.	Dismissed – leave refused on papers.

			and fondled his penis. Appellant again asked if victim 2 liked it and victim replied no again.		
19.	<i>KJW v The State of Western Australia</i> [2012] WASCA 162 Delivered 22/08/2012	46 yrs at time sentencing. Convicted after trial. Minor prior criminal record. At time of arrest, appellant living inter-state with a woman with 2 children. Good work history; educated to yr 10.	2 victims - appellant's step-daughters. Offending occurred between 1999 and 2005. Ct 1: Indecent dealing with a child u13 s 321(4) <i>Criminal Code</i> . Ct 4: Indecent dealing with a child u13 s 321(4) <i>Criminal Code</i> . Ct 5: Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i> . Ct 6: Indecent dealing with a child u13 s 321(4) <i>Criminal Code</i> . Ct 7: Indecent dealing with a child u13 s 321(4) <i>Criminal Code</i> . Offending was of serious nature. Victims were not related- the appellant was married to the mother of victim 1 until 1999 and the mother of victim 2 from 2002-2006. Cts 1, 4, 5, 6 involved the appellant rubbing the victim's vagina under her clothing – generally when the victim was asleep (the victim awakening to find the appellant touching her). Ct 7 involved the appellant touching the victim's breasts, again while she asleep.	Ct 1: 18 mths imp. Ct 4: 18 mths imp. Ct 5: 18 mths imp. Ct 6: 18 mths imp. Ct 7: 12 mths imp. TES 4 yrs imp. EFP. Low risk re-offending; denies offending; no remorse.	Dismissed – leave refused on papers.
18.	<i>PDT v The State of Western Australia</i>	33 yrs at time offending. Convicted after fast-track PG.	Victim was appellant's daughter. Victim aged 2 yrs. 1 x Indecent dealing with a lineal relative u 16 s 329(4) <i>Criminal Code</i> .	2 yrs imp.	Allowed. TES reduced to 12 mths imp.

	<p>[2012] WASCA 134</p> <p>Delivered 20/06/2012</p>	<p>No prior criminal record.</p> <p>Severely dysfunctional and unsettled childhood; subjected to domestic violence; poor literacy and suspected dyslexia.</p> <p>Relationship with wife had deteriorated in period leading up to offending; subsequently separated from wife after offending.</p> <p>Drinking on day of offending and had taken a pill of unknown type which may have disinhibited him.</p> <p>Engaged in psychological counselling following offending – hospitalised with depression and suicidal ideation stemming from guilt over offending.</p> <p>Good employment history.</p>	<p>Victim was standing at the end of her bed watching a cartoon. Victim had removed her nappy and was naked from the waist down. Appellant knelt behind the victim, removed his penis from his clothing and rubbed it between the victim's thighs for a short period. Appellant accepted his penis probably touched the victim's genital area. The appellant's wife entered the room as this was happening and the appellant stopped.</p> <p>Appellant's wife rang the police and the appellant waited for them to arrive. Appellant later participated in an interview and admitted the offending behaviour in a remorseful manner.</p> <p>Offending committed to provide appellant with sexual gratification notwithstanding no penetration occurred.</p>	<p>EFP.</p> <p>Remorseful; low risk re-offending.</p>	<p>At [24] Victim particularly vulnerable due to her age and the offending was a gross breach of trust.</p> <p>At [27] No tariff for cases of sexual offending involving children but acts of indecent dealing by adults on young children ordinarily result in immediate imprisonment. Comparable cases indicate that for a single incident of indecent dealing involving fondling of the genitalia a term of 18 mths immediate imp is generally not exceeded.</p>
17.	<p><i>EPD v The State of Western Australia</i></p> <p>[2011] WASCA 264</p>	<p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Primary school teacher.</p>	<p>5 victims - appellant was their teacher.</p> <p>11 x Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i>.</p> <p>Offending was gross abuse of trust.</p>	<p>Sentence range 12 mths – 2 yrs 6 mths imp.</p> <p>TES 5 yrs imp.</p>	<p>Allowed.</p> <p>TES reduced to 2 yrs 4 mths imp.</p> <p>At [220] – [226] Re-</p>

	Delivered 7/12/2011	Prior good character.	Appellant groomed victims – gave them presents, extra attention and assistance. All offending, except one count occurred in the appellant’s classroom. Offending consisted of touching the victims on various places in their bodies – including their legs, bottoms and penises.	Low risk re-offending.	sentenced as result of partially successful on conviction appeal. Sentence and conviction on cts 1 – 6 set aside – none of the individual sentences were manifestly excessive. At [218] Appellant not lineal relative of victims and touching not as serious as other examples of indecent dealing, offending is nevertheless serious conduct. At [219] Appellant’s prior good character and trustworthiness made it easier for him to groom victims and to commit offences against them.
16.	<i>GJT v The State of Western Australia</i> [2011] WASCA 263 Delivered 30/11/2011	38 or 39 yrs at time offending. 54 yrs at time sentencing. Convicted after PG earliest opportunity. No relevant prior criminal record. Support of current wife and his adult children.	Victim was appellant’s de facto daughter. Victim aged 12 yrs. Approx 15 yrs between offending and criminal proceedings. Offending occurred over two separate episodes. Ct 1: Indecent deal de facto child u 16 yrs s 329(4) <i>Criminal Code</i> . Ct 2: Indecent deal de facto child u 16 yrs s 329(4) <i>Criminal Code</i> . Ct 3: Indecent deal de facto child u 16 yrs s 329(4) <i>Criminal Code</i> . Ct 4: Indecent deal de facto child u 16 yrs s 329(4)	Ct 1: 14 mths imp. Ct 2: 14 mths imp. Ct 3: 12 mths imp. Ct 4: 12 mths imp.	Allowed. TES 8 mths imp suspended for 3 mths substituted. McLure P and Mazza J both held open to sentencing judge to suspend term and that imposition term immed imp resulted in manifestly excessive sentence. Held

			<p><i>Criminal Code.</i></p> <p><u>Ct 1:</u> Victim was sleeping on sofa in lounge room of family home. Appellant rubbed victim's vagina with fingers on the outside of her underwear while she was asleep. Victim woke up and appellant walked away. Victim tried to ask appellant about incident the following morning and appellant became angry.</p> <p><u>Cts 2, 3 & 4:</u> Victim asleep in her bed. Appellant entered bedroom, sat on her bed and began to rub victim's vagina on outside of underwear (ct 2). Appellant then began to rub victim's breasts while groaning and breathing heavily (ct 3). Victim opened her eyes and appellant stopped rubbing breasts. Appellant cradled victim in arms and kissed her, putting his tongue in her mouth (ct 4). Appellant repeatedly told victim he loved her and victim repeatedly told appellant to stop. Appellant left bedroom and went to work. Victim immediately went to mother and told her what happened. Victim's mother spoke to appellant about offending. After initial denying offending, appellant agreed to engage in counselling and stayed living in the family home. Attended counselling but the marriage between the victim's mother and appellant broke down in 1999.</p> <p>Appellant engaged in counselling for approx 4 yrs and has taken steps to minimise risk re-offending.</p>	<p>TES 28 mths imp.</p> <p>EFP.</p> <p>Low risk re-offending; remorseful; limited victim empathy.</p>	<p>appropriate term was 16 mths imp suspended – TES reduced on appeal to reflect fact at time of judgement appellant served 8 mths imp.</p> <p>Buss JA dissented and held not open to suspend term.</p> <p>At [81]-[84] Discussion of relevance of delay in charging to sentencing process – fundamental importance to distinguish between those cases where delay has given rise to genuine claims remorse and rehabilitation as owing to fear, shame and/or family dynamics delay in reporting of intra-familial sexual abuse is common.</p> <p>At [74]-[77] and [85]-[119] Discussion of comparable cases.</p>
15.	<i>SAP v The State of Western</i>	40 yrs at time offending.	Victim was appellant's step-daughter. Victim aged 8 yrs.		Dismissed – leave refused on papers.

	<p>Australia</p> <p>[2011] WASCA 155</p> <p>Delivered 15/07/2011</p>	<p>Convicted after late PG – 2 weeks prior to trial.</p> <p>No prior criminal record.</p> <p>Good employment history; supportive sister and current partner (not victim’s mother).</p> <p>Anxiety and depression; alcohol abuse.</p>	<p>Ct 1: Indecent deal de facto child u 16 yrs s 329(4) <i>Criminal Code</i>.</p> <p>Ct 2: Indecent deal de facto child u 16 yrs s 329(4) <i>Criminal Code</i>.</p> <p>Ct 3: Indecent deal de facto child u 16 yrs s 329(4) <i>Criminal Code</i>.</p> <p><u>Ct 1:</u> Appellant and victim showering together. Appellant took victim’s hand, placed it on his penis and forced her to masturbate him until ejaculation.</p> <p><u>Ct 2:</u> Appellant and victim showering together. Appellant passionately kissed victim on lips for prolonged time – only stopping when victim’s mother entered bathroom. Appellant claimed victim asked him to show her how to kiss a boy.</p> <p><u>Ct 3:</u> Appellant and victim watching TV in lounge room alone – victim giving appellant back massage and appellant grabbed her hands and put them down the front of his tracksuit pants, forcing her to masturbate him. Appellant stopped when victim’s mother entered room and guessed what was happening.</p>	<p>Ct 1: 20 mths imp.</p> <p>Ct 2: 16 mths imp.</p> <p>Ct 3: 16 mths imp.</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>No remorse; despite PG maintained denial cts 1 & 3; no insight into harm offending caused.</p> <p>Low risk re-offending.</p>	<p>At [28] Absence aggravating features such as no violence, no pornography or no threats does not reduce seriousness of offending.</p>
14.	<p>LWJR v The State of Western Australia</p> <p>[2009] WASCA 200</p>	<p>32 yrs at time offending. 61 yrs at time sentencing.</p> <p>Convicted after fast-track PG – co-operated with police.</p>	<p>2 victims were appellant’s daughters. Offending period approx 18 mths. Victims aged 3-5 yrs. 28 yrs between last offence and conviction.</p> <p>7 x Indecent deal u13 s189(2) <i>Criminal Code</i> (max penalty 7 yrs).</p>	<p>TES 7 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES reduced to 5yrs imp.</p> <p>Sentencing judge in error when did not sentence on</p>

	Delivered 12/11/2009	<p>Causal link between offending and alcoholism; wife found out about offending and left; appellant stopped drinking and reconciled with wife; written letters of apology to victims at their request.</p> <p>No offending since and viewed by sentencing judge as completely rehabilitated (not challenged by State).</p>	<p><u>Ct 1:</u> Victim 1, 3 yrs. Appellant, naked, placed victim, wearing only T-shirt, on penis (no penetration).</p> <p><u>Cts 2 & 3:</u> Victim 2, 5 yrs. Appellant placed penis in victim's mouth and made her perform oral sex (ct 2). As this was occurring, appellant digitally penetrated vagina (ct 3).</p> <p><u>Cts 4-7:</u> Victim 2, 5 yrs. Three counts fellatio (cts 4, 5 & 6) and one count digital penetration (ct 7).</p>		basis that appellant completely rehabilitated (State did not challenge assertion; evidence confirmed it).
<i>Transitional Provisions Repealed (14/01/2009)</i>					
13.	<p><i>JD v The State of Western Australia</i></p> <p>[2008] WASCA 147</p> <p>Delivered 1/07/2008</p>	<p>40 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Marriage broke down as result of offending; family home sold and lost his interest in business he had previously run with his wife.</p>	<p>Victim appellant's step-daughter. Victim aged 17 yrs. Victim has learning disability and her mental age is that of average 10 yr old.</p> <p>1 x Indecent deal child.</p> <p>Victim slept in a caravan next to the family home. Victim watching movie on her bed, dressed in pyjamas. Appellant went outside the house as he was feeling unwell from drinking alcohol (possibly interacted with medication). Appellant entered caravan, removed trouser and underwear and lay on victim's bed. Appellant rubbed his erect penis against victim's genitalia on top of her clothing. Appellant kissed victim on mouth and inserted tongue in her mouth.</p> <p>Appellant realised what he was doing was wrong</p>	<p>10 mths imp.</p> <p>TES 10 mths imp.</p> <p>Accepted responsibility at all times; deep remorse.</p>	<p>Allowed.</p> <p>TES 10 mths susp 2 yrs.</p>

			and left – thought about suicide but realised devastating effect that would have and did not attempt it. Victim told mother next morning and appellant made full admissions and then went to police station and repeated those admissions. Appellant arrested and, out of remorse, did not apply for bail – spent 101 days in custody on suicide watch. Once on bail, enrolled in Safecare.		
12.	<i>P v The State of Western Australia</i> [2007] WASCA 220 Delivered 19/10/2007	44 yrs at time sentencing. Convicted after fast track PG. No prior criminal record. Separated from wife approx 7 mths prior to offending. Employed. Taking medication for depression at time offending.	Victim was appellant's daughter. Victim aged 15 yrs. Offending period approx 2 wks. Ct 1 & 2: Indecent deal child. <u>Ct 1:</u> Appellant and victim on camping trip with neighbours. Appellant and victim sleeping in rear of utility. Appellant leaned over and began to kiss victim on lips. Victim pushed appellant away but appellant undid her bikini top, pushed her singlet up and fondled her breasts. Victim pushed him away again and appellant stopped. <u>Ct 2:</u> Victim staying at appellant's house. Appellant returned home intoxicated and asked victim for a cuddle and attempted to put his arm around her. Appellant fondled victim's breast on the outside of her clothing. Victim ran to her bedroom and then to a friend's house.	8 mths imp each ct. TES 16 mths imp. EFP. Remorse; some victim empathy.	Dismissed. At [44] No error in failing to suspend sentences. At [46] Two offences separated by time and second offence was circumstance of aggravation. At [47] Touching on the outside of the clothes as opposed to under them is of marginal significance – the impact was much the same whichever way it occurred and the gravamen of the offence is the touching itself.
11.	<i>L v The State of Western Australia</i>	35 yrs at time offending. Convicted after early PG (but not at first	Appellant was victim's uncle. Victims were sisters aged 9 and 7 yrs. Offending occurred on two separate days.	TES 32 mths imp. EFP.	Appeal allowed – TES reduced to 24 mths with EFP.

	<p>[2007] WASCA 186</p> <p>Delivered 07/09/2007</p>	<p>opportunity).</p> <p>No prior criminal record.</p> <p>The appellant was a 'priesthood holder' and 'bishopric' of his church, and actively involved in the church.</p>	<p>6 x Indecent deal with a child u 13 s 320(4) <i>Criminal Code</i>.</p> <p>Two discrete incidents. Offending occurred when the victims were visiting the appellant's farm and he was alone with them.</p> <p><u>Incident 1:</u> Ct 1: Appellant procured victim to touch his penis. Ct 2: Appellant exposed his penis to victim.</p> <p><u>Incident 2:</u> Ct 3: Appellant urinated in the presence of victim. Ct 4: Appellant urinated in the presence of victim. Ct 5: Appellant masturbated in the presence of victim. Ct 6: Appellant masturbated in the presence of victim.</p>	<p>Originally denied the accusations; remorse; minimised offending; low risk re-offending</p> <p>Ct 1: 16 mths imp. Ct 2: 8 mths imp.</p> <p>Ct 3: 8 mths imp. Ct 4: 8 mths imp. Ct 5: 16 mths imp. Ct 6: 16 mths imp.</p>	<p>At [50] <i>'There is no principle which suggests that the totality principle should take second place to a so-called "multiple victims principle" in cases where each victim is aware of offending conduct perpetrated on the other'</i>.</p>
<p>10.</p>	<p><i>Hodder v The State of Western Australia</i></p> <p>[2005] WASCA 257</p> <p>Delivered 16/12/2005</p>	<p>59 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record - indecent acts; indecent assault; indecent exposure.</p> <p>Lived with his 88 yr old mother who had medical problems and required care and attention.</p>	<p>Victim 11 yrs. Victim did not know the appellant.</p> <p>1 x Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i>.</p> <p>The victim and appellant were at a bus station when the appellant made gestures to his groin and mouth, and then showed the victim money in his wallet, insinuating that he would pay for oral sex. The appellant then made an indecent comment to the victim.</p> <p>No actual touching of the victim.</p>	<p>TES 16 mths imp.</p> <p>EFP.</p> <p>No remorse.</p>	<p>Allowed.</p> <p>TES reduced to 12 mths imp.</p>
<p><i>Transitional Provisions Enacted (31/08/2003)</i></p>					

<p>9.</p>	<p><i>Ferry v The Queen</i></p> <p>[2003] WASCA 207</p> <p>Delivered 3/09/2007</p>	<p>45 yrs at time offending.</p> <p>Convicted after re-trial.</p>	<p>Appellant was victim's employer. Victim aged 12 yrs.</p> <p>1 x Indecent deal child u 13 yrs.</p> <p>Appellant fondled the victim's breasts. Victim psychologically vulnerable at the time – appellant aware victim prone to morbid thinking, fantasy and thoughts of self harm.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp. Equivalent to 16 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>No remorse; no acceptance responsibility.</p>	<p>Allowed.</p> <p>TES reduced to 15 mths imp.</p> <p>EFP.</p> <p>At [81] <i>'The pattern of sentencing would suggest that for a single incident of indecent dealing involving touching the breasts of a young girl, non-custodial sentence are quite common and that custodial penalties, when imposed, range from as little as 9 months to 18 months at the most. Sentences which are at the highest end of the range usually involve fondling of genitalia...'</i></p>
<p>8.</p>	<p><i>R v Haynes</i></p> <p>[2002] WASCA 219</p> <p>Delivered 16/07/2002</p>	<p>50 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history – sex pen boy 13-16 yrs (befriended victim over period of time, took him home, gave him cannabis and sexually assaulted him – sentenced 4 yrs imp).</p>	<p>Victim was friend of son of woman respondent had been seeing. Respondent also knew victim's father well. Victim aged 14 yrs.</p> <p>1 x Indecent deal child 13-16 yrs s 321(4) <i>Criminal Code</i>.</p> <p>Victim was going to help respondent make soft drink deliveries the next morning so victim spent the night at the respondent's house. Victim and respondent watched two movies and victim fell asleep on a mattress on the floor. Victim awoke to</p>	<p>3 yr ISO imposed with supervision and programme requirements and condition that no unsupervised contact with males u 17 yrs. Medium-high risk re-offending; little remorse.</p>	<p>Allowed.</p> <p>ISO set aside and 18 mths imp substituted.</p> <p>TES increased to 18 mths imp.</p> <p>EFP.</p> <p>At [10] Express error in imposing ISO for 3 yrs –</p>

		Good employment history; employed.	find respondent touching his penis. Respondent was lying naked next to the victim. Victim jumped up and threw coffee table at respondent and grabbed a hammer for protection – in anger, victim threw hammer through canvas side of respondent’s delivery truck. Respondent apologised and called a taxi for the victim and gave victim money to pay the fare. Victim told father what happened when he arrived home. Victim was in tears, upset and shocked.		legislation only permits ISO up to 24 mths. At [11]-[12] Offending tin this instance required sentence of imp – personal and general deterrence; protection of children; seriousness of offending itself. NB: Double jeopardy applied to State appeals
7.	Scrutton v The Queen [2000] WASCA 360 Delivered 24/11/2000	Convicted after trial. Prior criminal record - convictions for child sex offences.	Appellant family friend. Victim aged 8 yrs. 15 yrs between offending and disclosure. 4 x Unlawfully and indecently deal child u 14 yrs s183 <i>Criminal Code</i> . The appellant took the victim swimming. He placed his pants down the front of the victim’s bathers and touched his penis. The appellant then forced the victim’s hand down the front of the appellant’s bathers, forcing the victim to touch the appellant’s penis. The victim attempted to swim away, but the appellant forced his head under water and then once again touched the victim’s penis.	TES 2 yrs imp - cumulative on term currently serving term for separate child sex offences. Equivalent to 16 mths imp after implementation of transitional provisions.. Not EFP. Minimal empathy; high risk re-offending; willing to engage in treatment.	Dismissed. No error in refusing parole. Delay in bringing charges not mitigatory - appellant had not been rehabilitated and had offended against other children during that time.
6.	McGarry v R [1999] WASCA 276	35-36 yrs at the time of offence. Convicted after fast-track PG.	The victim was 11 yrs. The victim was not known to the appellant. 1 x Indecent dealing with a child u13. 3 x Impersonating a member of the Police Force s	TES 5 yrs imp. Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions..	Allowed. TES reduced to 3 yrs imp.

	Delivered 06/12/1999	<p>Prior criminal record - substantial history of sexual offending (indecent exposure, sexually related loitering, wilful exposure, breaking and entering, aggravated indecent assault, indecently dealing with a lineal relative).</p> <p>Emotionally abused by his father.</p> <p>Good employment history.</p>	<p>16(1) <i>Police Act 1892</i>.</p> <p>Extremely serious and disturbing incident of sexual deviation involving children; however was not on the highest end of the scale.</p> <p>The victim had been depicted in a promotional publication for her primary school, and the appellant had located her telephone number and address from the telephone directory.</p> <p><u>Indecent dealing:</u> Appellant knocked on the victim's window to gain her attention. While she was looking he exposed his penis and masturbated until ejaculation.</p> <p><u>Impersonating Police:</u> Appellant called the victim's home pretending to be a police officer to ask her about the above event.</p>	<p>Not EFP.</p> <p>Significant control issues; remorse was more aimed towards the consequences than feeling remorse for what he had done; high risk reoffending.</p>	
5.	<p><i>Biggs v The Queen</i></p> <p>Supreme Court Library No 960657</p> <p>Delivered 11/11/1996</p>	<p>53 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p>	<p>Victim was appellant's step-daughter. Victim aged 13 yrs.</p> <p>1 x Indecent deal child.</p> <p>Appellant placed his hands under the victim's clothes and touched her bare breasts. Appellant moved his hand toward her pubic area but victim crossed her lags and the appellant stopped.</p>	<p>\$10,000 fine to be paid within 48 hrs.</p>	<p>Dismissed.</p> <p>Substantial fine but not excessive in circumstances, particularly given appellant's financial situation and the fact that a term of imp could have been imposed.</p>
4.	<p><i>Santa Maria v The Queen</i></p> <p>Supreme Court Library No 960582</p>	<p>60 yrs at time offending.</p> <p>No prior criminal record.</p> <p>Convicted after trial.</p> <p>Good employment history;</p>	<p>Appellant's son was engaged to victim's sister. Victim aged 15 yrs.</p> <p>1 x Indecent deal child 13-16 yrs.</p> <p>Victim, her sister and fiancée (appellant's son) at appellant's home setting up for the victim's sisters'</p>	<p>TES 9 mths imp. Equivalent to 6 mths imp after implementation of transitional provisions..</p> <p>Unlikely to re-offend.</p>	<p>Allowed.</p> <p>\$3,500 fine substituted.</p> <p>State submitted in sentencing that fine would be an appropriate</p>

	Delivered 1/10/1996	honourably discharged from Armed Services	engagement party that night. Sister and fiancée went out to collect more party supplies and victim was left alone with appellant. Appellant invited victim to watch television with him. Appellant invited victim to sit next to him, which victim did. Appellant was positioned in such a way that victim partly leaning on him. Appellant briefly touched victim's breast over the top of her clothing. Victim jumped up and appellant apologised profusely.		sentencing option. Appellant served approx 2 wks in custody prior to release on bail pending appeal. Parker J, agreeing, noted that this decision should not be seen as reflecting appropriate tariff or as a precedent for other sentences for this type of offence.
3.	R v Lonesborough Supreme Court Library No 950421 Delivered 15/08/1995	38 yrs at time offending. Convicted after trial. Significant prior criminal record – dishonesty offences. History of poor health – brain tumour in remission.	Victim aged 14 yrs. Respondent shared a house with victim's friend and mother. 3 x Indecent deal child. Victim staying with her friend for 2 days. Respondent living in same house as friend and her mother. On the first evening, respondent rubbed victim's leg after movie they were all watching finished. Victim and friend went to bedroom and respondent followed the. Victim was sitting on the bed and respondent held both victim's hands against the wall and fondled her breasts over her clothing for a few minutes. Respondent then lay on the bed for approx 5 minutes. Victim and friend then returned to living room. Following day, respondent flicked a tissue he had used for his blood nose at victim. Victim flicked the tissue away. Respondent picked up soiled tissue,	\$1500 fine each ct. TES \$4500 fine with 24 hrs to pay.	Dismissed. Key factor was that appellant had been at liberty for 4 mths following the imposition of the sentence prior to the hearing of the appeal. NB: Double jeopardy applied to State appeals.

			<p>held victim's hands together and pushed the tissue into her mouth. Victim and friend went outside and respondent followed them and threw the remains of his glass of water on victim. Respondent then trod on her toes, slapped her face and threw a bike at her. Respondent then grabbed her hands and touched her breasts, saying that as she wasn't fighting she must like it.</p> <p>Victim and friend were watching TV when respondent called for them to come out. As victim walked past respondent he reached over her shoulder and touched her breast.</p>		
2.	<p>Goodvinn v R</p> <p>Supreme Court</p> <p>Library No</p> <p>950358</p> <p>Delivered</p>	<p>Convicted after trial. For Feb convictions.</p> <p>Convicted after trial in relation to victim 2.</p> <p>Convicted after PG in relation to victim 3.</p> <p>Priro criminal record – indecent exposure (11 yr old victim).</p> <p>Good work history.</p> <p>Depression; marital problems.</p>	<p><u>Feb 1995 conviction:</u></p> <p>Appellant and victim 1's mother were friends. Victim 1 aged 6 yrs. 3 yrs between offending and conviction.</p> <p>1 x Indecent deal child u 13 s 320(4) <i>Criminal Code</i>.</p> <p>Appellant had been with victim, victim's brother and mother at speedway. Victim's mother wanted to go out after speedway finished and victim and brother were to spend night at appellant's house. Appellant, victim and brother slept together on a double bed. Victim awoke to find appellant touching his penis.</p> <p><u>March 1995 convictions:</u></p> <p>Victim 2 aged 7 yrs. Victim 3 aged 11 yrs.</p> <p>1 x Indecent deal child u 13 s 320(4) <i>Criminal Code</i> (victim 2).</p> <p>4 x Indecent deal child u 13 s 320(4) <i>Criminal Code</i></p>	<p>18 mths imp.</p> <p>EFP.</p> <p>\$1,000 fine.</p> <p>12 mths each ct.</p> <p>EFP.</p>	Dismissed.

			(victim 3). Appellant rubbed victim 2's penis on top of clothing. Appellant touched victim 3's vagina on three separate occasions on the top of her clothing and touched her breasts over the top of clothing on one occasion.	TES 36 mths imp. Equivalent to 24 mths imp after implementation of transitional provisions.. (Feb and March convictions). EFP.	
1.	Humes v R Supreme Court Library No 940687 Delivered 7/12/1994	34 yrs at time offending. Convicted after PG at first opportunity. Prior criminal record – armed robbery; assault prison officer; assault; stealing; AOBH; dep lib.	Victim unknown to appellant. Victim aged 17 yrs. 2 x Indecent assault. Appellant and victim, unknown to each other, travelling on same train. Appellant sat next to victim, placed his arm around her and rubbed and kissed her neck and face. Victim told appellant to leave her alone but appellant continued. Another passenger intervened and told appellant to stop. Victim then moved away from appellant. Victim got off train and appellant followed her. Appellant grabbed victim and tried to push her towards the station toilets. Appellant held victim from behind and fondled her breasts. Train security officers attended and the appellant ran off.	TES 2 yrs imp. Equivalent to 16 mths imp after implementation of transitional provisions.. Not EFP.	Dismissed. TES appropriate to seriousness of offending and refusal to order parole not an error.

s 189 Criminal Code Indecently deal child u 13 yrs repealed (1/08/1992)

ss 320(4), 321(4), 322(5) and 329(4) Criminal Code (indecently deal with child offences) enacted (1/08/1992)

The following sentences were enacted as a result of this legislative change:

Indecent deal child u 13 yrs s 320(4) *Criminal Code* maximum penalty of 10 yrs imp

Indecent deal de facto/lineal child u 16 yrs s 329(4) *Criminal Code* maximum penalty 10 yrs imp
Indecent deal de facto/lineal child over 16 yrs s 329(4) *Criminal Code* maximum penalty of 5 yrs imp
Indecent deal with child under care/supervision or authority s 321(4) *Criminal Code* maximum penalty of 10 yrs imp

Definition of sexual penetration extended to included oral penetration of vagina or penis (previously charged as indecent deal) (1/08/1992)

s 183 *Criminal Code* Indecently deal child u 14 yrs repealed (23/03/1990)

NB: maximum penalty under this section was 7 yrs imp.