

## Child Sex Offences

**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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
CRO	conditional release order
ISO	intensive supervision order

Child aged under 13 yrs

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
61.	<p><i>Pool v The State of Western Australia</i></p> <p>[2013] WASCA 274</p> <p>Delivered 02/12/2013</p>	<p>34-41 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after PG (following negotiations) - Cts 1, 3-4 discontinued.</p> <p>Criminal record; none of which had attracted a term of imp; offences include trespass &amp; unlawful use of optical surveillance device.</p> <p>Left school at 17 yrs; worked in various occupations.</p> <p>In early 30's commenced using cannabis &amp; methyl.</p> <p>Suffered significant depression at various times; including when offending.</p> <p>Married since 2005; two sons; youngest suffers from mild cerebral palsy &amp; frequent seizures.</p> <p>Psychiatric, Psychological &amp; PSR Reports indicate the offences were committed in the context of marked amphetamine</p>	<p>Indecent deal child u13 yrs s320(4) <i>Criminal Code</i> x 1.</p> <p>Att indecent record child 13-16 yrs s552, 321(6), 321(8)(a) <i>Criminal Code</i> x 1.</p> <p>Indecent deal child 13-16 yrs s321(4), 321(8)(b) <i>Criminal Code</i> x 4.</p> <p>Agg burg in dwelling 401(2) <i>Criminal Code</i> x 2.</p> <p>Agg indecent record child 13-16 yrs s321(6), 321(8)(b) <i>Criminal Code</i> x 3.</p> <p>Indecent ass s323 <i>Criminal Code</i> x 3.</p> <p>Indecent record child s321(6), 321(8)(a) <i>Criminal Code</i> x 1.</p> <p>Dep lib s333 <i>Criminal Code</i> x 1.</p> <p>Agg sex pen s326 <i>Criminal Code</i> x 1.</p> <p>Sex pen s325 <i>Criminal Code</i> x 1.</p> <p>The offending occurred over a period of about 7 yrs and involved numerous acts of sexual violation against 5 victims.</p> <p><u>Ct 2:</u> The appellant and his wife were friends of the victim's mother and regularly babysat the victim. When the victim was 7 yrs old, she stayed at the appellant's home. Whist his wife was asleep in the same room the appellant rubbed the victim's breasts and vagina.</p> <p><u>Ct 3:</u> The victim was aged 13 yrs. She was a neighbour of the appellant. One evening the victim stayed at the appellant's home and went to have a shower. The</p>	<p>TES 11 yrs 9 mths imp.</p> <p>EFP.</p> <p>High risk of sexual re-offending.</p> <p>Expressed some regret but has attempted to justify &amp; minimise its severity.</p> <p>Each victim suffered significant &amp; ongoing psychological trauma.</p> <p>Sentencing judge described appellant's attitude as 'predatory'.</p> <p>High risk of future sexual offending.</p>	<p>Dismissed.</p> <p>McLure dissenting.</p> <p>At [71] ... The humiliation and degradation ... was made worse by the appellant's use of a mobile telephone to record visual images of his assaults upon them.</p> <p>At [72] I accept, however that the appellant's individual offences against CLT and TJC were at the lower end of the scale of seriousness in child sex cases and that his individual offences against MJR and MT were not in the worst category of home invasion cases involving sexual violence.</p> <p>At [77] The number of victims, the duration of the offending, the planning, premeditation and persistence, the escalation in the</p>

		<p>abuse &amp; considerable psychological instability.</p>	<p>appellant attempted to record the victim showering from outside. The victim undressed and started to shower before noticing the appellant's phone.</p> <p><u>Cts 6-10:</u> The victim was aged 13 yrs and was the same victim as in Ct 3. The victim slept the night at the appellant's home. Whilst she slept the appellant touched her breast. The appellant then masturbated with his penis close to the victim's face, ejaculated and wiped the fluid on her lips. He then held his erect penis against her lips for a few seconds and again touched her breast. The appellant used a video camera to record his actions.</p> <p><u>Cts 11-13:</u> The 17 yr old victim was at her boyfriend's house; asleep and fully clothed. The appellant entered the house through an unlocked carport/ kitchen door. The appellant cut the victims outer clothing as she slept with scissors; exposing various parts of her body. He then rubbed her exposed vagina. The victim awoke after hearing a loud bang and the appellant ran from the house. Some months after the incident the victim noticed some videos on her mobile. The videos had been taken by the appellant during the burglary and included a depiction of his hand rubbing the victim's vagina. The victim and appellant were unknown to each other.</p> <p><u>Ct 14:</u> The victim was aged 14 yrs and unknown to the appellant. The appellant used a video camera to film the victim through her bedroom window. The victim noticed the appellant looking at her through the</p>		<p>seriousness of the criminal conduct, the appellant's lack of insight and his high risk of recidivism required the imposition of a very lengthy term of imprisonment.</p>
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			<p>window. When the appellant was arrested about 14 months later; police found 3 cassettes hidden in the bodywork of his motor vehicle. The cassettes contained footage of the victim.</p> <p><u>Cts 15-19:</u> The victim was a 37 yr old woman. The victim and appellant were unknown to each other. The appellant entered the victim's house through an unsecured rear sliding door. After scrimmaging through the house he went to the victim's bedroom, placed his hand over her mouth, wrapped his hand around her throat, and tied her hands together and to the bed. He sexually assaulted and digitally penetrated her with his fingers and vibrator. At the same time he used his mobile to record and take photographs of the victim.</p>		
60.	<p><b><i>JAW v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 261</b></p> <p>Delivered 20/11/2013</p>	<p>66 yrs at time offending. 69 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including other prior convictions for sexual offending against children including against his step-granddaughter and step-grandson.</p> <p>Undertaken sex offender treatments programmes in prison whilst serving sentence.</p> <p>Unhappy childhood; sexually abused by a family friend.</p>	<p>Sex pen child u 13 yrs s320(2) <i>Criminal Code</i> x 2. Incite a child y 13 yrs to do indecent act s320(5) <i>Criminal Code</i> x1.</p> <p>The appellant lived next door to the victim and her family. She would visit his home from time. On this occasion the victim (then 5 yrs old) went next door to the appellant's house after school. She was sitting on the couch in the lounge room watching TV when the appellant picked her up and took her to his bedroom and placed her on the bed. He pulled her dress up, pulled down her underwear and placed his penis in her anus.</p> <p>The appellant then took the victim into the lounge room and placed her on the couch. Her dress was up and her underwear down. The appellant lay on top of the victim and put his penis in her anus.</p>	<p>TES 5 yrs 4 mths imp.</p> <p>Cum upon 4 yrs 8 mths imp already serving for sexual offences against same child.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>High risk of re-offending; noted the escalating seriousness of the appellant's offending.</p> <p>No remorse.</p>	<p>Dismissed.</p> <p>At [78] The offending in this case was clearly very serious. The penile penetration of the anus of a 5 or 7 yr old child is a serious and degrading offence. The offending was not opportunistic.</p> <p>At [88] Advanced age can be relevant to determining whether a sentence is crushing for the purposes of the second limb of the totality principle ... However, age is only one factor in the sentencing</p>

		Good health; gainfully employed most of his life; married for 21 yrs; marriage ended when released from prison in 2000; online relationship recently ended.	On another occasion the appellant asked the victim to lick his penis but she refused to do so and the indecent act did not occur.	Sentencing judge found that the appellant's encouragement of the victim to visit his house was part of a grooming process.  Current offences considered to be separate and discrete, and to be much more serious than the earlier offences.	process, and advanced age can never be a justification for a sentence which is not fairly proportionate to the offence or which is otherwise inappropriate ... While the appellant is no longer a young man, he is not of a very advanced age and he is .... in good health.
59.	<i>SG v The State of Western Australia</i>  [2013] WASCA 26  Delivered 15/10/2013	35 yrs at time of sentencing.  Convicted after trial.  Lengthy criminal record in Qld and WA; no prior convictions for sexual offences.  Dysfunctional childhood; exposure to domestic violence and abuse; introduced to illicit substances by stepmother at 11 yrs.  Became a street kid; began using amphetamines at 15 yrs.  Fractured education; spent many years in juvenile detention and prison; most offending attributed to drug abuse.	Indecent deal child u13 yrs s320(4) <i>Criminal Code</i> x 2. Sex pen child u 13 yrs s320(2) <i>Criminal Code</i> x 1. Agg sex pen de facto child s329(2) <i>Criminal Code</i> x 6. Sex pen de facto child s329(2) <i>Criminal Code</i> x 2.  The victim was the appellant's de facto daughter, who was aged between 11 and 16 yrs at the time of offending. The offending occurred while the appellant was living in a de facto relationship with the victim's mother. Over the years, the appellant and the victim's mother had 3 more children together.  The appellant began grooming the victim within months or even week of moving in with the family. The appellant used bribery and promises together with intimidation and physical coercion to obtain sexual favours.  The acts included masturbating in her presence, digital penetration, having the victim perform oral	TES 12 yrs imp.  EFP.  No real acceptance of responsibility or any remorse.  Moderate to high risk of re-offending.	Appeal dismissed – on papers.  At [27] ... it is well-established that cases of intra-familial sexual abuse typically attract significant sentences of imprisonment.  At [34] ... The offending was calculated and persistent. The appellant, who was a father figure to the complainant, set about exploiting the complainant in an utterly callous way to satisfy his own sexual desires.

		Drug use and heavy drinking increased after his baby daughter died and he suffered from depression.	sex on him and sexual penetration. The sexual activity often caused the victim significant pain. The offending persisted even while the victim was grieving for the death of her mother's baby.  The appellant did not use contraception, which resulted in the victim becoming pregnant when she was 15. Penetration also occurred when she was pregnant and after the baby was born.		
58.	<i>JWD v The State of Western Australia</i>  [2013] WASCA 233  Delivered 07/10/2013	34 yrs at time sentencing.  Convicted after PG.  Chaotic and dysfunctional childhood; very limited contact with biological father; step-father was a violent alcoholic who physically abused the appellant and his mother; ran away from home on a regular basis.  Removed by DCP and lived with aunty; then lived with grandmother; spent long periods living on the streets, sometimes supporting himself through prostitution.  Long standing drug and alcohol abuse.  Stable relationship; partner is schizophrenic and appellant acts as his carer.	Sex pen lineal relative, a child s329(2) <i>Criminal Code</i> x 7. Indecent deal lineal relative, a child s329(4) <i>Criminal Code</i> .  Between 1996 and 2001 the appellant committed various sexual acts against the victim, his biological half-brother. The offending commenced when the victim was 12 yrs of age and continued until he was 16. It was accepted that the offences were representative of a course of conduct by the appellant.  The acts included having the victim perform oral sex on him, urinating in the victim's mouth, masturbating in the victim's presence, having the victim masturbate him, performing oral sex on the victim, anal penetration and licking the victim's anus.	TES 6 yrs imp.  EFP.  Appellant made voluntary disclosure of offences.  Some progress towards rehabilitation.  Risk of re-offending was in the moderate to low category.  Appellant's relationship to the victim gave him an opportunity to influence the victim.  Affect upon the victim had been profound, including contracting an STD and psychological effects.	Allowed.  Re-sentenced to 4 yrs imp.  EFP.  At [39] It became apparent on the hearing of the appeal that the essential contention was that the total effective sentence of 6 yrs imp breached the first limb of the totality principle because it was not a proper reflection of the voluntary disclosure and of the efforts that the appellant had made towards his rehabilitation in the 12 yr period that had elapsed since the last offence was committed.  At [54] The voluntary

		Borderline personality disorder.			disclosure reflected acceptance of responsibility, genuine remorse and resulted in offences coming to light that may otherwise have remained undealt with. There is public interest in recognising the value of such a disclosure.
57.	<i>DO v The State of Western Australia</i>  [2013] WASCA 218  Delivered 20/09/2013	36 yrs at time sentencing.  Convicted after trial (sex offences). Convicted after PG (indecent recordings).  Criminal record in Qld for poss child pornography.  Separated from his wife; 3 young sons.  Charges in IND 742/12 committed whilst on bail for the offences on IND 1467/11.	<u>IND 1467/11</u> Sex pen child U13 yrs x 4. Indecent deal child U13 yrs x 16. Indecent recording x4. Poss child exploitation material x1.  <u>IND 742/12</u> Indecent deal child U13 yrs x 2.  <u>IND 1467/11 – Cts: 1-13, 15-21</u> The offending occurred when the appellant was a parent helper at his son’s school and occurred over several years.  On 4 occasions the appellant put his hand down a boy’s shorts and penetrated the anus of the boy with his finger and on 16 other occasions he put his hand down a boy’s shorts and indecently touched the boy on the penis or the bottom. The offending involved a total of 7 boys, between 6 - 9 yrs and occurred over 3 yrs: 11 of the offences occurred in the classroom, 7 occurred outside the class room (1 on the school oval), and 2 occurred at an aquatic centre where the school was conducting swimming lessons.	Sentence range 6 mths – 2 yr 6 mths imp (cum & conc).  IND 747/12 cum on IND 1467/11.  TES 10 yrs imp.  EFP.  Position of trust and some authority within the school environment; also father of school friends of the victims.  Sentencing judge found that involved grooming boys by trying to normalise the behaviour to make them think it was acceptable.  Lack of insight into	Allowed.  IND 1467/11 orders for cumulation on Cts 6 & 9 set aside.  Re-sentenced to TES 8 yrs imp.  At [35] ... the nature of the offending, while serious, was not of the most serious kind of sexual offending against children. Most of the offending involved ‘touching’, not sexual penetration ... and the sexual penetration offences (none of which involved penile penetration) involved one complainant rather than multiple complainants.t

			<p><u>IND 1467/11 - Cts: 22-25</u></p> <p>The appellant took 53 photographs of boys, aged between 6 -12 yrs using a mobile phone. The photographs were taken in the male changing room at an aquatic centre while the appellant was assisting teachers with swimming lessons organised by the school. The images were taken when the boys were wholly or partly naked while getting changed and focused on their genitals and buttocks.</p> <p>The appellant took a further 19 photographs in the same circumstances, using a different mobile phone. The images were of boys 8-12 yrs. The appellant's offending came to light when a student saw the appellant surreptitiously taking such photographs and reported it to a teacher.</p> <p>When the appellant was arrested, a search of a thumb drive in his possession revealed 1,938 images of child exploitation material of boys aged between 6 – 14 yrs. A search of the appellant's computer revealed 2 video images of child exploitation material and 3 still images of boys.</p> <p><u>IND 747/12</u></p> <p>The victim was a 6 yr old boy. The appellant was a family friend and was staying at the victim's house. During the early hours of the morning he went to the victim's bedroom, picked him up from his bed and carried him to the appellant's own bed. The appellant lay the victim down on the bed, removed his pyjama pants and lay next to him. He then patted the victim's naked buttocks and flicked the victim's penis with his fingers. The victim told police it had occurred on 3 previous occasions, and the appellant had told him</p>	<p>offending; moderate to high risk of re-offending.</p>	
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			not to tell anyone.		
56.	<p><b><i>KWLD v The State of Western Australia</i></b></p> <p><b>[No 4] [2013] WASCA 185</b></p> <p>Delivered 14/08/2013</p> <p>On appeal from Children's Court</p>	<p>15-17 yrs at time offences. 18 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record; breach VRO, make threatening statement, fraud, poss child exploitation material and stalking.</p> <p>Troubled childhood; born of a very brief liaison between his parents who were not in a relationship; little positive contact with biological father; Short term emergency accommodation by DCP from 13 yrs.</p> <p>Unresolved personal issues; from young age been exposed to domestic violence, substance abuse and criminality.</p> <p>Intelligent and did well at school.</p> <p>At time of offending was likely to have been suffering a depressive illness; borderline personality disorder with significant anti-social personality traits.</p>	<p>Ct 1: Att sex pen child 13-16 yrs. Ct 2: Sex pen child 13-16 yrs. Ct 3: Sex pen child 13-16 yrs. Ct 4: Sex pen child 13-16 yrs. Ct 5: Sex pen child 13-16 yrs. Ct 6: Sex pen child 13-16 yrs. Ct 7: Sex pen child 13-16 yrs. Ct 8: Involving a child in child exploitation. Ct 9: Poss child exploitation material. Ct 10: Agg burg. Ct 11: Agg burg. Ct 12: Dep liberty. Ct 13: Impersonating public officer.</p> <p>The sexual offences involved 4 different female victims. TB was 14 yrs, SM was 13 yrs and both MC and SW were 15 yrs.</p> <p><u>Victim MC:</u> At the time of the offences MC and the appellant were in a relationship. In June 2010 the appellant initiated contact with MC by electronic communication. He arranged to meet with her to see a movie. After meeting they walked together to a secluded location where they had sexual intercourse until he ejaculated. MC asked the appellant to use a condom but he refused.</p> <p>After the incident the appellant and MC developed a relationship which lasted for about 3 months. The appellant sought information of a private nature from MC with the intention of ensuring her trust and dependency upon him.</p>	<p>Ct 1: 18 mths imp. Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 9 mths imp (conc). Ct 5: 9 mths imp (conc). Ct 6: 9 mths imp (conc). Ct 7: 9 mths imp (conc). Ct 8: 6 mths imp (conc). Ct 9: 4 mths imp (conc). Ct 10: 15 mths imp (conc). Ct 11: 9 mths imp (conc). Ct 12: 12 mths imp (conc). Ct 13: 3 mths imp (conc).</p> <p>TES 30 mths imp.</p> <p>EFP.</p> <p>Trial of Issues – there was a dispute as to whether each of the victims had freely and voluntarily consented to the relevant sexual acts.</p> <p>Sentencing judge viewed the offences against TB and SM as</p>	<p>Dismissed on papers.</p> <p>At [94] Based on the findings of the sentencing judge the appellant had engaged in a pattern of behaviour. This involved targeting girls who were younger and previously unknown to him. He then engaged in emotional coercion and persistence to obtain their compliance. Other than in the case of MC this did not occur in the context of a genuine relationship.</p> <p>At [104] – [105] An appeal is not an opportunity to seek new material with a view to retrying the issues on a different basis. The general rule is that an appeal court must decide an appeal on the evidence and material before the court below... the test in an appeal against sentence is whether if the evidence had been before the sentencing judge a different sentence should</p>

		<p>On bail at time of agg burg offences.</p>	<p><u>Victim SW:</u> SW was 1 of 40-50 girls in Perth randomly targeted by the appellant to engage in chat via social media with a view to becoming friends.</p> <p>In 2011 the victim initiated contact with SW through Facebook. She was previously known to him. The appellant manipulated the victim including threatening to terminate their friendship unless she sent sexually explicit photographs of herself to him. She did as requested and took photographs of herself, which she sent to him.</p> <p>In respect of the charge of poss child exploitation material this related to the photograph sent to the appellant by SW. In the course of his evidence the appellant conceded that he had wanted this photograph because he found it sexually arousing.</p> <p><u>Victim TB:</u> The appellant initiated contact with TB in 2011 using mobile phone texts and internet. He asked TB to meet with him at a beach and she agreed. Prior to meeting the victim the appellant said that if she did not meet with him he would kill himself. After they met the appellant tried to coerce TB to engage in sexual behaviour. He attempted to sexually penetrate her with his penis. He then digitally penetrated her without her consent. After she walked home the appellant made contact with her by phone and made threats towards her, her family and himself.</p> <p><u>Victim SM:</u> The appellant initiated contact with SM in early 2011 by electronic media. He persuaded her to meet with</p>	<p>being the most serious and that the appellant had used the difference in age between he and the complainants and his own level of maturity to achieve his objective with them.</p> <p>Noted by judge that the appellant is an intelligent young man who was fully aware of the nature of the offences he was committing; high risk of re-offending.</p>	<p>have been imposed.</p> <p>At [113] ... It is far from clear that the habits or behaviour of young people in regards to social media are recognised fields of special expert knowledge.</p> <p>At [116] I have taken the opportunity to examine the extensive Facebook exchanges... When read in their entirety they amply support the conclusion that the appellant was engaged in manipulative behaviour. He maintained control by becoming angry, threatening to withdraw or threatening to tell others what had occurred.</p> <p>At [144]-[145] It is an error for a sentencing judge to either reduce or extend a term of imprisonment based upon an assumption that the offender will be paroled... There is no reason to suppose that the sentencing judge imposed</p>
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			<p>him at a service station. They then walked back to her house. The appellant forced himself on her with threats of self-harm and manipulation. She complied and he penetrated her vagina until he ejaculated. The appellant was wearing a condom but it broke. He laughed at this.</p> <p>State's case was that in respect of each of the complaints the appellant had used emotional manipulation and persistence to achieve his objective.</p> <p><u>Agg burg:</u> The appellant and his co-offender formed a common intention to go to the victim's house and threaten and intimidate the occupants. The intention was that this would be done whilst he pretended to be a police officer conducting a search for drugs. The appellant dressed as a police officer armed with a knife sharpening implement, entered the house of 49B Dongara Street, Innaloo and declared he was a police officer and demanded to know where the drugs were.</p> <p>The appellant left and met the co-offender who was leaving 49A Dongara Street. He grabbed her and pretended to place her under arrest. He then entered 49A declaring himself to be a police officer and yelled to the occupants, including a 10 yr old child to get on the floor and place their arms behind their backs whilst he demanded to know the location of their drugs.</p>		<p>a sentence that was longer than was otherwise appropriate to take into account an assumption that the appellant would be released on parole.</p>
55.	<b>Murphy v The State of Western Australia</b>	49 yrs at time sentencing.  Convicted after trial.	<p>Ct 1: Indecent deal 13-16 yrs. Ct 2: Sex pen 13-16 yrs. Ct 3: Sex pen 13-16 yrs. Ct 4: Indecent deal 13-16 yrs.</p>	<p>Ct 1: 18 mths (conc). Ct 2: 3 yrs 6 mths imp. Ct 3: 3 yrs 6 mths imp (conc).</p>	<p>Dismissed.  At [30] The sentencing judge characterised the</p>

<p><b>[2013] WASCA 178</b></p> <p>Delivered 12/08/2013</p>	<p>No prior convictions.</p> <p>Completed Year 11 at school and worked in varying occupations, including working with children at rocky Bay Crippled Children's Association.</p> <p>Strong support from his first wife, his children from his first marriage and friends.</p>	<p><i>Counts 1-4 each alleged that the victim was under the care, supervision or authority of the appellant.</i></p> <p>Ct 6: Indecent deal u13 yrs. Ct 9: Attempt to pervert the course of justice.</p> <p>The two victims B and K were siblings in the foster care of the appellant and his then (second) wife. They resided with another sibling J together in the family home in Kelmscott along with his wife's daughter from a prior relationship.</p> <p><u>Ct 1:</u> In late 2008 the appellant's wife took her daughter to England for 3 weeks. Ct 1 took place in her absence. In the shed at the Kelmscott property the appellant cuddled and tongue-kissed B, then touched her bottom with his hands over her clothing.</p> <p><u>Ct 2-4:</u> In 2009 B, aged 14, and J were helping the appellant renovate a house. The appellant pulled B's pants and underpants to her knees and inserted his finger into her vagina while masturbating himself. After sucking his finger and inserting it again into B's vagina several times, the appellant performed cunnilingus on B, only stopping when J returned. Later the same day the appellant put his hand inside B's bra and touched her nipple. The appellant told B that if she told anyone, she would be kicked out of the family home.</p> <p><u>Ct 6:</u> In 2010 K and B swapped beds, with the then 12 yr old K sleeping on the top bunk bed and B on the lower bunk. The appellant pulled down K's singlet and bra, removed her dressing gown and touched her</p>	<p>Ct 4: 18 mths imp (conc). Ct 6: 18 mths imp (cum on Ct 2). Ct 9: 3 yrs imp (cum on Ct 6).</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Shown no remorse or insight into his offending behaviour.</p> <p>Sentencing judge found that the offences were not isolated, but part of a continuing course of such conduct by the appellant.</p> <p>Also found that the appellant used the pretext of taking K to the toilet at night as an opportunity to sexually molest B.</p>	<p>appellant's offending as a very serious instance of its type. Indeed it is ... The appellant targeted the same vulnerable child he had sexually abused, which was a further gross breach of the trust which had been reposed in him. The vulnerability of the complainants was heightened by the fact that they were foster children placed in the care of the appellant and his wife by DCP.</p> <p>At [34] I accept that the total sentence is close to the upper limit of the sound discretionary range. However, apart from his prior good character, there is nothing in the appellant's favour by way of mitigation. Further, the sexual offences are representative and the circumstances of the offending as a whole are undoubtedly serious.</p>
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			<p>breasts with his hands.</p> <p><u>Ct 9:</u> The appellant left the Kelmscott house after he was charged. In contravention of his bail conditions, the appellant continuously contacted family members. Between a period of just under 4 mths the appellant made 260 calls from his mobile to those of his wife and B. The appellant met with B and J on a number of occasions, phoned B multiple times each day, bought her gifts and asked her to drop the charges, telling her that bad things would happen to him in prison.</p>		
54.	<p><b><i>ERA v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 163</b></p> <p>Delivered 19/07/2013</p>	<p>64 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record.</p> <p>In 1983 and 1984, the appellant committed incest with his daughter. She was 10 or 11 and he was 35 or 36. The incest involved numerous acts of penile/vaginal intercourse. On 5 May 1984 he pleaded guilty to 1 count of incest and sentenced to 5 yrs imp with min of 2 yrs 4 mths imp.</p> <p>Good work history.</p>	<p>Indecent deal u 14 yrs s183 (repealed) <i>Criminal Code</i> x 10. Carnal knowledge u 13 yrs s185 (repealed) <i>Criminal Code</i> x 1 Sex pen lineal relative s329(2) <i>Criminal Code</i> x 10</p> <p>The appellant sexually abused two generations of children within his family.</p> <p>L and J are the appellant's nieces. The offending against them occurred in 1974 and 1975.</p> <p>N and C are the appellant's grand-daughters (son's children). The offending against them occurred between 2005 and 2008. N was about 8-11 and C was about 7-10. The appellant was about 57-60.</p> <p>In 1974, the appellant was living in rural WA with his then wife and their two children. In 1974 victim's L and J were staying with their mother and the appellant and his family for several months. L was aged 11 or 12, J was 8 and he was 26 or 27.</p>	<p>TES 16 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found N and C were groomed from a very young age by rewards, including money. It was apparent that both girls had reached a point where such conduct was unremarkable, only being occasionally memorable.</p> <p>The offences were not isolated occurrences. They were representative and part of an ongoing course of conduct.</p>	<p>Dismissed.</p> <p>At [134] The appellant was not sentenced merely for offences which he had committed many years ago. His offending against N and C was appalling and relatively recent. This is a matter of some importance in applying the second limb of the totality principle. The present case did not involve an offender who had ceased intra-familial sexual offending a long time ago. Also, it did not involve an offender who had been wholly or substantially rehabilitated.</p>

		<p>During the period of the appellant's offending against L and J, he had intimate relations with their mother on several occasions.</p> <p><u>Cts 1 and 3</u> In relation to L, the appellant indecently dealt with L, then a child under the age of 14 yrs. The offending occurred between 1 December 1974 and 30 June 1975 at a house in rural WA where the appellant rubbed the victim's vagina and rubbed his penis against her vagina.</p> <p><u>Cts 4-8 and 10 -13</u> In relation to J, in each count the appellant indecently dealt with J, then a child under the age of 14 years; except for one which the appellant had unlawful carnal knowledge of J, then a child under the age of 13 years. The offending occurred between 1 December 1974 and 30 June 1975 at the appellant's place of work in rural WA. In Ct 4 the appellant rubbed J's vagina with his hand. In Ct 5 on the same occasion; the appellant used J's hand to masturbate his penis. In Ct 6 the appellant touched J's vagina with his fingers. In Ct 7, on the same occasion the appellant rubbed his penis against J's vagina until he ejaculated. In Ct 8 the appellant used J's hand to masturbate his penis. In Ct 10, on the same occasion the appellant rubbed his penis against J's vagina until he ejaculated. In Ct 11 the appellant rubbed his penis against J's vagina until he ejaculated. In Ct 12 the appellant used J's hand to masturbate his penis. In Ct 13 the appellant penetrated J's vagina with his penis.</p> <p><u>Cts 16-19</u> Counts 16-19 relate to N. The offending occurred</p>	<p>Victim J sustained significant long-term damage.</p> <p>The appellant denied the offences to Psychiatrist and suggested they had been fabricated in the context of a conflict with his daughter-in-law; Also denied having a sexual interest in children.</p> <p>Considerable risk of re-offending.</p> <p>No remorse or victim empathy.</p> <p>Sentencing Judge noted that offending was not in the worst category, but was nonetheless very serious.</p>	
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			<p>between 1 January 2005 and 31 December 2007 at rural locations near a WA country town. Each count alleged that on separate unknown dates during the period of offending the appellant sexually penetrated N, a child who he then knew to be a lineal relative by penetrating her vagina with his penis.</p> <p><u>Cts 21-26</u> Counts 21-26 relate to C. The offending occurred between 1 January 2006 and 31 December 2008 in rural WA. The appellant knew C was his lineal relative. In Ct 21 the appellant inserted his finger into her vagina. In Ct 22 on the same date the appellant inserted a vibrating sex toy into the victim's vagina. In Ct 23 on the same date the appellant inserted his penis into C's vagina. In Ct 24 on a date unknown the appellant inserted his finger into her vagina. In Ct 25 on the same occasion the appellant inserted a vibrating sex toy into her vagina. In Ct 26 on the same date and place as Ct 24 the appellant inserted his penis into C's vagina.</p>		
53.	<p><i>Asplin v The State of Western Australia</i></p> <p>[2013] WASCA 72</p> <p>Delivered 15/03/2013</p>	<p>Convicted after trial.</p> <p>No relevant prior convictions.</p> <p>Highly intoxicated at the time of offending.</p>	<p>1 x Indecent dealing with a child u 13 s320(4) <i>Criminal Code</i>.</p> <p>The victim and the appellant's daughter, both 6 yrs old, were very good friends. The victim went for a sleepover at the appellant's house.</p> <p>Sometime that evening the appellant entered the bedroom and touched the victim's vagina under her underwear.</p> <p>The appellant made no admissions and adduced no evidence at the trial.</p>	<p>20 mths imp.</p> <p>EFP.</p> <p>No admissions in VROI.</p> <p>Aggravated by breach of trust.</p> <p>Psychological evidence shows he knew he had a sexual attraction to young girls and that he had sought out child</p>	<p>Dismissed.</p> <p>At [54] There is no tariff for offences involving sexual offences against children, but ordinarily, acts of indecent dealing by adults with young children, especially when committed in circumstances of breach of trust, will result in the imposition of a term of imprisonment.</p>

				pornography.	<p>At [58] ... the sentence imposed by his Honour was a severe one for a single incident of indecent dealing with a child under the age of 13. However... not persuaded it was plainly unjust or unreasonable.</p> <p>At [59] ... real issues in this case of specific and general deterrence. The appellant poses a not insignificant risk of re-offending. The sexual abuse of children is a serious crime. So often the wellbeing and happiness of children is adversely affected by such abuse and sometimes in ways, and for lengths of time, which cannot be anticipated. The safety of children is of paramount importance to the community.</p>
52.	<p><i>PJS v The State of Western Australia</i></p> <p>[2013] WASCA 54</p>	<p>Convicted after trial.</p> <p>At time of sentencing appellant was serving an existing term of imp for another offence.</p>	<p>Ct 1: Indecent dealing with a child u13 s320(4) <i>Criminal Code</i>.</p> <p>Ct 2: Indecent dealing with a child u13 s320(4) <i>Criminal Code</i>.</p> <p>The appellant was in a de facto relationship with the</p>	<p>Ct 1: 2 yrs imp (conc).</p> <p>Ct 2: 3 yrs imp.</p> <p>TES 3 yrs imp.</p>	<p>Dismissed – leave refused on papers.</p>

	Delivered 28/02/2013		<p>victim's mother. At that time the victim was 9 or 10 and the appellant 35.</p> <p><u>Ct 1:</u> The appellant asked the victim to show him his buttocks. The victim refused. The appellant picked the victim up by the waist, turned him around so that he was on his hands and knees, pulled down the victim's shorts and underwear, and undid his own trousers. The appellant then fondled the victim's buttocks.</p> <p><u>Ct 2:</u> While the appellant fondled the victim's buttocks, he masturbated and said, 'I wish your bum was a vagina'.</p>	To be served cumulatively upon existing term.	
51.	<p><i>JS v The State of Western Australia</i></p> <p><b>[2012] WASCA 198</b></p> <p>Delivered 09/10/ 2012</p>	<p>54 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>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).</p> <p>Good employment history.</p> <p>Assisted with care of aged</p>	<p>2 victims (brother and sister) – appellant close friends of the victim's parents.</p> <p><u>Ct 1:</u> Indecent dealing with a child u13 s 320(4) <i>Criminal Code.</i></p> <p><u>Ct 3:</u> Indecent dealing with a child u13 s 320(4) <i>Criminal Code.</i></p> <p><u>Ct 4:</u> Indecent dealing with a child u13 s 320(4) <i>Criminal Code.</i></p> <p><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.</p> <p><u>Ct 2:</u> Victim 2, 5 yrs old. Victim 2 and family visiting</p>	<p>Ct 1: 2 yrs imp.</p> <p>Ct 3: 2 yrs imp.</p> <p>Ct 4: 2 yrs imp.</p> <p>TES 4 yrs imp.</p> <p>Not EFP.</p> <p>Denied offending (and all past offending); no insight into offending; no remorse or victim empathy; poses ongoing risk to young children.</p>	Dismissed – leave refused on papers.

		mother.	<p>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.</p> <p><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 and fondled his penis. Appellant again asked if victim 2 liked it and victim replied no again.</p>		
<b>50.</b>	<p><b><i>RFS v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 58</b></p> <p>Delivered 16/03/2012</p>	<p>31 – 45 yrs at time offending. 55 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Tragic childhood; father abused alcohol and physically, mentally and sexually abused appellant.</p> <p>Left school at 14 yrs.</p> <p>Sought psychological help as soon as his family learned of offending and before being contacted by police.</p> <p>At time offending, married with 3 children.</p>	<p>6 victims. Victims aged 7 – 16 yrs. Offending period 15 yrs.</p> <p>2 x Indecent dealing with a child u 14. 6 x Sex pen child u 13 yrs. 3 x Sex pen child over 13 yrs. 6 x Indecent dealing with a child 13 – 16 yrs. 3 x Indecent assault.</p> <p>Victims were children of close family friends or friends of appellant's daughters. One victim was appellant's sister-in-law. Three victims were also employed by the appellant – aggravating factor.</p> <p>Offending involved digital penetration of vagina or touching vagina or breasts of victims'. Offending largely opportunistic in nature.</p> <p>Offending came to light when appellant stopped payment demanded by one of the victim's for her silence. Appellant then told family of offending, reported it to police and sought professional help.</p>	<p>TES 9 yrs 6 mths imp.</p> <p>Low risk re-offending; genuine remorse; insight into offending.</p>	<p>Allowed.</p> <p>TES reduced to 7 yrs 6 mths imp.</p> <p>At [51] Offending very serious given number of offences, age of victims and length of time over which offending occurred.</p>
<b>49.</b>	<b><i>JAW v The State</i></b>	66 yrs at time offending.	Appellant lived next door to victim. Offending		Dismissed.

	<p><i>of Western Australia</i></p> <p><b>[2012] WASCA 7</b></p> <p>Delivered 16/01/2012</p>	<p>68 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – child sex offences (9 offences against step-granddaughter aged 5-11 yrs incl indec deal, digital pen and penile pen – TES 9 yrs imp; 7 offences against step-grandson aged 4 yrs – TES 2 yrs imp); wilful exposure.</p> <p>Sexually abused as a child by a family friend.</p> <p>Previously married; current long distance relationship with woman met on internet; employed most of his working life.</p>	<p>representative of course of conduct approx 1 mth in duration. Victim aged 5 yrs.</p> <p>Ct 1: Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i>.</p> <p>Ct 2: Sex pen child u13 yrs s 320(2) <i>Criminal Code</i>.</p> <p>Victim would visit appellant at his home and offending occurred in appellant’s bedroom.</p> <p>Appellant removed victim’s underpants and his clothing and lay on top of victim. He put his penis on her vagina (ct 1) and then performed cunnilingus on her (ct 2).</p> <p>Offending discovered after victim’s mother questioned victim.</p>	<p>Ct1: 2 yrs imp.</p> <p>Ct 2: 4 yrs 8 mths imp.</p> <p>TES 4 yrs 8 mths imp.</p> <p>EFP.</p> <p>High risk re-offending; no real prospect rehabilitation; no remorse; denial of offending.</p>	<p>Only sentence for ct 2 challenged.</p> <p>At [32] Sentence for ct 2 not at the high end of the sentencing range.</p> <p>At [35] The fact that an offence is not isolated is a relevant sentencing consideration and is relevant to personal deterrence and the protection of the public.</p> <p>At [36] – [38] References to uncharged acts and the fact the offending was not an isolated incident relevant in so far as they suggested that the current offences were not an uncharacteristic aberration - they were not taken by the sentencing judge as aggravating factors nor was the appellant punished for acts he was not convicted of.</p>
48.	<p><i>EPD v The State of Western Australia</i></p>	<p>Convicted after trial.</p> <p>No prior criminal record.</p>	<p>5 victims - appellant was their teacher.</p> <p>13 x Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i>.</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><b>[2011] WASCA 264</b></p> <p>Delivered 7/12/2011</p>	<p>Primary school teacher.</p> <p>Prior good character.</p>	<p>Offending was gross abuse of trust.</p> <p>Appellant groomed victims – gave them presents, extra attention and assistance. All offending, except one count occurred in the appellant’s classroom.</p> <p>Offending consisted of touching the victims on various places in their bodies – including their legs, bottoms and penises.</p>	<p>Low risk re-offending.</p>	<p>At [220] – [226] Re-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.</p> <p>At [218] Appellant not lineal relative of victims and touching not as serious as other examples of indecent dealing, offending is nevertheless serious conduct.</p> <p>At [219] Appellant’s prior good character and trustworthiness made it easier for him to groom victims and to commit offences against them.</p>
47.	<p><b><i>GGM v The State of Western Australia</i></b></p> <p><b>[2011] WASCA 259</b></p> <p>Delivered 29/11/2011</p>	<p>51 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record – indecent dealing u 16 yrs.</p> <p>Suffered erectile dysfunction since 14 yrs old.</p>	<p>Victims were two sisters. Victims born in 1989 and 1991. Offending period 1994-1999.</p> <p>5 x Sex pen child u 13 yrs.</p> <p>Victims’ parents were separated. Victim 1 lived with mother and victim 2 with father. Victim 1 spent considerable time with victim 2 and father. Victims’ father severe alcoholic incapable of properly caring for victims. Victims came to know appellant as he</p>	<p>3 yrs 6 mths each ct.</p> <p>TES 7 yrs imp.</p> <p>No remorse or insight into offending; previous rehabilitation during the 1980s did not prevent re-offending; continued to deny offending; low-</p>	<p>Dismissed – leave refused on papers.</p> <p>At [28] <i>‘Although the appellant did not commit an act of penile penetration, the acts of cunnilingus and digital penetration were particularly degrading</i></p>

		<p>History alcohol abuse which was linked to offending.</p> <p>Supportive family; good employment history.</p>	<p>was a close friend of their father who spent considerable time at their home.</p> <p><u>Ct 1:</u> Appellant and victim 1 at same BBQ. Appellant took victim 1 outside and made her lie down on a rug with him on the pretext of looking at the stars. Appellant then removed victim 1's underwear and engaged in cunnilingus.</p> <p><u>Ct 2:</u> Appellant taking victim 1 to pub when he diverted to a vacant block of land. Appellant removed her underwear and, against victim 1's protestations, engaged in cunnilingus.</p> <p><u>Ct 3:</u> Victim 1 was asleep in her bed when appellant again engaged in cunnilingus and awoke her as a result.</p> <p><u>Ct 4:</u> Victim 1, aged approx 10 yrs. Victim awoke in bed to find appellant rubbing her body. Victim 1 rolled away from him. Appellant left and came back later. On his return, appellant removed her clothing and digitally penetrated her vagina, causing her enough pain to make her cry.</p> <p><u>Ct 5:</u> Victim 2, aged 4-5 yrs. Victim 2 in bed with her sister when appellant entered and began to tickle her. Appellant then removed her underwear and engaged in cunnilingus.</p>	<p>moderate risk re-offending.</p>	<p><i>and intrusive to such young complainants and represented serious criminal conduct.'</i></p> <p>At [30] Offences of sex pen of young children generally result in immed imp due to need to protect children and requirement of general deterrence.</p> <p>At [31] As offending involved 2 victims and occurred at different times, some degree accumulation is appropriate.</p>
46.	<p><i>Samson v The State of Western Australia</i></p> <p>[2011] WASCA 173</p>	<p>19 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Lengthy prior criminal record – no offences of sexual nature.</p>	<p>Victim selected randomly by appellant and was not known to him. Victim aged 5 yrs.</p> <p>1 x Sex pen child u 13 yrs s 320(2) <i>Criminal Code</i>. 6 x s 32 offences (unrelated to sexual offending).</p> <p>Offending occurred in remote community at</p>	<p>TES 7yrs imp.</p> <p>EFP.</p> <p>7 yrs imp.</p> <p>Sentence range 3-12</p>	<p>Dismissed.</p> <p>Appeal filed 2 years out of time – delay not satisfactorily explained.</p> <p>At [18] &amp; [62] appellant's</p>

	Delivered 5/08/2011	Deprived childhood; no permanent residence; recently released from prison and living in abandoned house furnished with stolen items.  Severe paranoid schizophrenia requiring medication to control (delusional thinking and auditory hallucinations) – poor history taking medication, complying with treatment and no insight into illness or need for treatment; mental illness had no direct causal link to offending.  History poly substance abuse; anti social personality disorder.	Jigalong. Victim was in care of grandmother as her mother had gone shopping. Victim was playing with other children near her home. Appellant was in a vacant house near where the children were playing. Appellant called out to victim and she followed him into the house. Appellant took her to a back bedroom, removed her pants and penetrated her vagina with his penis. – unknown how long conduct lasted. Victim managed to escape and ran home with no pants on and blood and faeces on her legs. Victim treated at local clinic but due to severity of injuries was flown to Princess Margaret Hospital for Children – examination conducted under anaesthetic and five 1 cm lacerations were found outside the anal orifice. Appellant fled area and was not arrested until the following day.	mths imp (all concurrent).  Remorse.  Significant risk re-offending.	mental illness and refusal to take medication increase need for protection of community and increases likelihood of his re-offending and justifies high sentence rather than mitigating his culpability.
45.	<b><i>LJP v The State of Western Australia</i></b>  [2010] WASCA 85  Delivered 7/05/2010	26-27 yrs at time of offending.  Convicted after fast track PG.  No prior relevant criminal record.  Emotionally vulnerable state after his third nervous breakdown and was in a state of considerable crisis at the time of offending.	Victim was appellant's second cousin. Offending period approx 4 mths. Victim aged 11 yrs.  5 x Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i> . 1 x Sexual penetration of a child u13 s 320(2) <i>Criminal Code</i> .  Four discrete incidents in total.  <u>Ct 1 - Indecent dealing with a child u13 s 320(4):</u> Appellant was looking after the victim while the mother was at work. The appellant and victim each exposed his penis and each took turns touching the other's penis. <u>Cts 2 &amp; 3 -Indecent dealing with a child u13 s</u>	TES 3 yrs imp.  EFP.  Remorse; participation in rehabilitation; voluntarily disclosed 4 counts.  Ct 1: 6 mths imp.  Ct 2: 6 mths imp.	Allowed.  TES reduced to 18 mths imp.  EFP.  Minority dissenting judgment stated that a suspended sentence should have been imposed.

			<p><u>320(4):</u> The appellant was looking after the victim and the victim's 8 yr old brother while the mother was at work. The appellant attempted to insert his penis in a water balloon while the victim was watching. The appellant then held a water balloon while the victim tried to insert his penis in the balloon.</p> <p><u>Ct 4 - Indecent dealing with a child u13 s 320(4):</u> The appellant was looking after the victim at the victim's home. The victim was reading a book on his bed and the appellant came in and asked the victim to show him his penis. The victim consented and the appellant placed his hand on the victim's penis.</p> <p><u>Cts 5 &amp; 6 Indecent dealing child u13 s 320(4); Sex pen child u13 s 320(2).</u> The appellant was looking after the victim at an address where the victim's mother was house-sitting. The appellant and the victim were in the swimming pool, where the victim and appellant took pulling down their pants and exposing themselves to each other. They then took turns in going under water to look at each other's penis. The appellant then ducked his head under water and placed the victim's penis in his mouth for a few seconds.</p>	<p>Ct 3: 6 mths imp.</p> <p>Ct 4: 6 mths</p> <p>Ct 5: 6 mths</p> <p>Ct 6: 2 yrs 6 mths imp.</p>	
44.	<p><i>The State of Western Australia v SJH</i></p> <p>[2010] WASCA 40</p> <p>Delivered 14/12/2009</p>	<p>20 yrs at time of offending.</p> <p>Convicted after a fast track PG.</p> <p>No prior criminal record.</p> <p>Respondent's parents relationship unstable involving domestic abuse, with the father suffering from alcoholism; mother moved away and left</p>	<p>Victim and respondent were in a consensual relationship at the time of offending - victim initiated some of the activity. Offending period approx 3 mths. Victim aged 12-13 yrs during the time of offending.</p> <p>6 x Sex Pen a child u13 s 320(2) <i>Criminal Code.</i></p> <p>6 x Indecent dealing with a child u13 s 320(4) <i>Criminal Code.</i></p> <p>3 x Sex Pen a child between 13 and 16yrs s 321(2) <i>Criminal Code.</i></p> <p>3 x Indecent dealing with a child between 13 and 16</p>	<p>TES 3 yrs imp susp 2 yrs.</p> <p>Reports stated that the respondent had psychological problems which fell short of insanity.</p>	Dismissed.

		<p>him with his father.</p> <p>The respondent did not drink or take any illicit drugs.</p> <p>Isolated and immature: cognitive distortions whereby he did not see the harm done, but acknowledged that it was illegal. Reports stated that the respondent had psychological problems which fell short of insanity.</p>	<p>yrs s 321(4) <i>Criminal Code</i>.</p> <p>The victim and respondent had met years earlier as the victim was friends with the respondent's younger sister. They then began a relationship and first had consensual intercourse when the victim was 12. The relationship carried on for approx 3mths and intercourse occurred many times during that period, as did all the other offences. On at least some occasions the intercourse was at the victim's suggestion, and all of the offences were claimed to be consensual by both the victim and the respondent.</p>		
43.	<p><b><i>Bropho v The State of Western Australia [No 2]</i></b></p> <p><b>[2009] WASCA 94</b></p> <p>Delivered 29/05/2009</p>	<p>Late 50's at time of offending; 78 yrs at the time of sentencing.</p> <p>Convicted after a trial.</p> <p>No prior relevant criminal record - convictions for stealing, damage, drunkenness, breaking and entering, resisting arrest, trespass and assaulting a public officer.</p> <p>Senior Aboriginal elder; old age and poor health (chronic renal failure, diabetes, heart disease, under-active thyroid and depression).</p>	<p>Victim aged 11-22 yrs. 18 yrs between time offending and conviction.</p> <p>The appellant was the victim's mother's uncle, and was a grandfather-figure to the victim. The offences were considered to be at the highest level. The appellant was an authority figure, and the victim was particularly vulnerable due to family circumstances, drug use, and lack of ordinary home.</p> <p>7 x Unlawful carnal knowledge of a child u13 s 185(1) <i>Criminal Code</i> (repealed - max penalty 20 yrs imp).</p> <p>Along with the charges on the indictment, evidence of uncharged acts was led as relationship evidence by the Prosecution.</p> <p><u>Ct 1:</u> Victim 11 yrs - went to a house of a friend of the appellant's to ask the appellant for \$20 for food. The appellant touched her breast, gave her the money, and</p>	<p>TES 3 yrs imp.</p> <p>No remorse; denied offences.</p> <p>Ct 1: 3 yrs imp.</p>	<p>State appeal against sentence allowed; conviction appeal dismissed.</p> <p>TES increased to 6 yrs imp.</p> <p>EFP.</p> <p>At [164] <i>'The sentencing judge placed too much emphasis upon the respondent's condition of health'</i>.</p> <p>NB: double jeopardy applied to State appeals.</p>

			<p>asked her to return later. She returned at night. The appellant then offered to give her \$500 in return for sex. The appellant Sex Pen the victim with his penis.</p> <p><u>Ct 2:</u> Victim was 11 yrs. She went to a house of a friend of the appellant's. The appellant had Sex Pen with his penis gave her money.</p> <p><u>Ct 3:</u> Victim was approx 12 yrs. The appellant Sex Pen the victim with his penis in the toilet of a friend's house.</p> <p><u>Ct 6:</u> Victim was almost 13 yrs. The appellant Sex Pen the victim with his penis until ejaculation. He then gave her \$80.</p> <p><u>Ct 7:</u> Victim 12 yrs. The appellant bailed the victim out of a detention facility. The appellant Sex Pen the victim and ejaculated. He then gave her cigarettes and \$5.</p>	<p>Ct 2: 2 yrs imp.</p> <p>Ct 3: 2 yrs imp.</p> <p>Ct 6: 2 yrs imp.</p> <p>Ct 7: 3 yrs imp.</p>	
<b><i>Transitional provisions repealed – 14/01/2009</i></b>					
<b>42.</b>	<p><b><i>Schriever v The State of Western Australia</i></b></p> <p><b>[2008] WASCA 133</b></p> <p>Delivered 1/07/2008</p>	<p>23-26 yrs at time offending.</p> <p>Convicted after fast track PG – disclosed offences which would have remained undiscovered .</p> <p>No prior criminal record.</p> <p>Successfully completing a mathematics and computer degree at the time of sentencing.</p> <p>History of difficulty in intimate relationships; history of</p>	<p>Appellant de facto partner of children's aunt. 2 victims, male and female, who were siblings. The victim 1 5-8 yrs; victim 2 10-11 yrs. Offending period approx 3 yrs.</p> <p>2 x Sex Pen of child u13 s 320(2) <i>Criminal Code</i>. 7 x Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i>.</p> <p>The victims were staying at their aunt's house while their parents worked when the offences were committed.</p> <p><u>Cts 1, 2, 3:</u> Appellant touched the victim 1's vagina with his</p>	<p>TES 4 yrs 8 mths imp.</p> <p>EFP.</p> <p>No remorse; engaging in treatment; low risk re-offending.</p> <p>Cts 1, 2 and 3: 8 mths</p>	<p>Appeal allowed – TES reduced to 4 yrs 2 mths.</p> <p>Discount for voluntary disclosure not properly given.</p> <p>At [22] PG that is itself the result of a voluntary disclosure of guilt gives a further element of leniency to sentencing process.</p>

		accessing internet child-pornography.	<p>hand on three separate occasions.</p> <p><u>Ct 4:</u> Appellant penetrated the victim 1's vagina with his tongue. The victim was asleep when the offence was committed.</p> <p><u>Cts 5 and 6:</u> Appellant touched the victim 1's vagina with his hand on two separate occasions.</p> <p><u>Ct 7:</u> Appellant touched victim 2's penis and scrotum with his hand.</p> <p><u>Ct 8:</u> Appellant masturbated victim 2's penis with his hand.</p> <p><u>Ct 9:</u> Appellant performed fellatio on victim 2's penis.</p>	<p>imp each ct.</p> <p>Ct 4: 2 yrs imp.</p> <p>Cts 5 and 6: 8 mths imp each.</p> <p>Ct 7: 8 mths imp.</p> <p>Ct 8: 8 mths imp.</p> <p>Ct 9: 2 yrs imp.</p>	
41.	<p><b><i>L v The State of Western Australia</i></b></p> <p><b>[2007] WASCA 186</b></p> <p>Delivered 07/09/2007</p>	<p>35 yrs at time offending.</p> <p>Convicted after early PG (but not at first 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>Appellant was victim's uncle. Victims were sisters aged 9 and 7 yrs. Offending occurred on two separate days.</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.</p>	<p>TES 32 mths imp.</p> <p>EFP.</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. Ct 3: 8 mths imp. Ct 4: 8 mths imp. Ct 5: 16 mths imp. Ct 6: 16 mths imp.</p>	<p>Appeal allowed – TES reduced to 24 mths with EFP.</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>

			Ct 6: Appellant masturbated in the presence of victim.		
40.	<b><i>Hodder v The State of Western Australia</i></b>  [2005] WASCA 257  Delivered 16/12/2005	59 yrs at time sentencing.  Convicted after trial.  Prior criminal record - indecent acts; indecent assault; indecent exposure.  Lived with his 88 yr old mother who had medical problems and required care and attention.	Victim 11 yrs. Victim did not know the appellant.  1 x Indecent dealing with a child u13 s 320(4) <i>Criminal Code</i> .  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.  No actual touching of the victim.	TES 16 mths imp.  EFP.  No remorse.	Allowed.  TES reduced to 12 mths imp.
39.	<b><i>"KSB" (A child) v The State of Western Australia</i></b>  [2004] WASCA 296  Delivered 19/11/2004	16 yrs at time of offending.  Convicted after early PG.  No prior criminal record of sexual offending.  Under the influence of both alcohol and cannabis at the time of the offence.	Victim 11 yrs.  1 x Sex pen child u13 (digital pen anus) 1 x Burg s 401(2)(a).  Appellant broke into the house where the victim lived with her parents with intent to burglarise the property. Appellant digitally penetrated victim's anus in course robbery - opportunistic offence.  Also sentenced for: 2 x Stealing. 1 x Breach of youth CBO. 1 x Assault public officer.	TES 3 yrs detention.  EFP.  2 mths detention.  2 mths detention.	Allowed.  TES reduced to 2 ½ yrs.  EFP.  At [11] weight must be given for youth and the prospect of rehabilitation; as well as general and personal deterrence.
38.	<b><i>The State of Western Australia v JPR</i></b>  [2004] WASCA 183	37 yrs at time offending. 61 yrs at time sentencing.  No significant prior criminal record.	The appeal involved two separate sentences handed down on separate dates from 2 separate trials with 2 different victims.  The total offending period took place over 10 yrs. 24 yrs between offending and sentencing.	TES 6 yrs 4 mths imp (both sets offences).  EFP.  No remorse.	Allowed.  TES increased to 8 yrs (both offences).  Sentence for 2 <sup>nd</sup> offences

	Delivered 01/06/2004	Ill health - including heart disease, diabetes and hypertension, all being managed by medication; poor prognosis.	<p>The respondent as in the position of the first victim's father, acting as a foster parent. The victim was 10 yrs, and was in the care of the respondent. The respondent coerced the sexual conduct through violence and fear.</p> <p>The second victim was aged 10 yrs.</p> <p><u>First Offences:</u>  1 x Indecent dealing with a child u13 s 189(2).  1 x unlawful carnal knowledge of a child u13 s185(1).  1 x Indecent dealing with a child u16 s 189(1).</p> <p><u>Second Offences:</u>  2 x Unlawful carnal knowledge of a child u13 s185(1)</p>	<p>TES 5 yrs 4 mths.</p> <p>TES 1 yr imp.</p>	<p>challenged.</p> <p>At [17] While 'stale' offences may lead to a conclusion that rehabilitation has already taken place in the interim, lack of remorse is the first step towards rehabilitation.</p> <p>At [19] 'Where, as in this case' there is an absence of remorse and only the passing of time without conviction there is no justification on the basis of delay between offending and sentence to significantly reduce what would otherwise be an appropriate sentence'.</p> <p>NB: double jeopardy applied to State appeals.</p>
<b>Transitional provisions enacted – 31/08/2003</b>					
37.	<b><i>R v "W" (A Child)</i></b>  <b>[2003] WASCA 118</b>  Delivered 13/06/2003	16 yrs at time of offending. 17 yrs at time sentencing.  Minor prior criminal record.  Severe intellectual handicap; behavioural problems, and bullied at school; attempted	Victim 12 yrs. Respondent did not know victim.  Two discrete incidents - occurred when both victim and the respondent were both staying at the victim's aunt's home on separate occasions. Both offences began while she was asleep. <u>Ct 1 - Sex pen child u13 yrs:</u> Respondent digitally pen victim's vagina - stopped	TES 1 yr detention.  Ct 1: 9 mths imp. Ct 2: 1 yr imp.  Limited understanding of offending due to intellectual disability;	Dismissed.  At [18] 'The intellectual disability was significant. There was ... some reduction of moral culpability, notwithstanding the respondent knew what

		<p>suicide in the past. Substance abuse issues.</p> <p>Stable relationship with girlfriend who just had a son; supportive parents.</p>	<p>when she began to wake up. The respondent denied the allegation when confronted by the victim. <u>Ct 2 - Sex pen:</u> Respondent engaged in sexual intercourse with victim. When questioned by the Police, respondent admitted to having sex with the victim but claimed consensual.</p>	<p>possibility for reoffending in the future due to lack of understanding and coping skills.</p>	<p><i>he was doing was wrong'.</i></p>
36.	<p><b><i>Pendleton v The Queen</i></b> <b>[2002] WASCA 4</b></p> <p>Delivered 24/06/2002</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after PG (not at earliest stage).</p> <p>Prior criminal record - 9 convictions for minor offences; stealing as a servant; no previous sexual convictions.</p> <p>Primary school teacher – victims were students; taught at 3 schools during offending period.</p> <p>Married twice; two sons.</p> <p>Sexually abused as child.</p>	<p>12 victims - all aged 4 yrs or 5 yrs. Offending period 5 yrs.</p> <p>Exceptionally serious offending. Offences committed at school or at victim's homes.</p> <p><u>1<sup>st</sup> set offences:</u> 6 x Possessing child pornography s 60(4) <i>Censorship Act 1996 (WA).</i></p> <p><u>2<sup>nd</sup> set offences:</u> 1 x Showing offensive material to a child u13 yrs s 204A <i>Criminal Code.</i></p> <p><u>3<sup>rd</sup> set offences:</u> 20 x Indecent dealing with a child u13 yrs s 320(4) <i>Criminal Code.</i></p> <p><u>4<sup>th</sup> set offences:</u> 18 x Procuring a child u 13yrs to do an indecent act s 320(5) <i>Criminal Code.</i></p> <p><u>5<sup>th</sup> set offences:</u> 9 x Sex pen child u 13 yrs s 320(2) <i>Criminal Code.</i></p> <p><u>6<sup>th</sup> set offences:</u> 76 x Indecent recording of a child u13 s 320(6) <i>Criminal Code.</i></p>	<p>TES 12 yrs imp.</p> <p>Not EFP.</p> <p>Remorseful; high risk of reoffending; chance treatment may be successful</p> <p>1<sup>st</sup> set: 1 yr imp each ct.</p> <p>2<sup>nd</sup> set: 1 yr imp each ct.</p> <p>3<sup>rd</sup> set: 4 yrs imp each ct.</p> <p>4<sup>th</sup> set: 4 yrs imp each ct.</p> <p>5<sup>th</sup> set: 5 yrs imp each ct.</p> <p>6<sup>th</sup> set: 2 yrs imp each ct.</p>	<p>Allowed- appeal against refusal to order parole.</p> <p>EFP granted.</p>

			<p><u>Ct1:</u> Handwritten text of pornographic story involving children aged 7-9.</p> <p><u>Ct 2:</u> File of 11 computer generated pornographic images of children.</p> <p><u>Ct 3:</u> Scrapbook containing pornographic photos of adults and children.</p> <p><u>Ct 4:</u> Magazine containing photographs of young women and a story involving child pornography.</p> <p><u>Ct 5:</u> Quantity of pornographic sketches and pornographic depictions of children.</p> <p><u>Ct 6:</u> Handwritten text of a pornographic story involving a child.</p> <p><u>Cts 7-59</u> All involved 1 victim in pre-primary or Grade 1 at the time of offences.</p> <p><u>Ct 7:</u> Giving the victim a pornographic magazine.</p> <p><u>Cts 8-14:</u> Indecent dealing with a child by touching her vagina with his finger. 2 occasions Sex Pen victim's anus with his finger. 1 occasion of Sex Pen the victim's vagina with his finger.</p> <p><u>Cts 15-17:</u> Indecent dealing by procuring the child to touch and kiss the appellant's penis.</p> <p><u>Cts 18-20:</u> Indecent dealing by touching the victim's anus and vagina with his finger.</p> <p><u>Cts 21-31:</u></p>		
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			<p>2 x touching the victim's vagina with his finger.  2 x Sex Pen the victim's anus with his finger.  4 x Sex Pen the victim's vagina with his finger.  3 x rubbing the victim's vagina with his finger.  <u>Cts 32 &amp; 33:</u>  2 x Indecently recording incidents with the victim.  <u>Cts 34-59:</u>  Involved photographs of the taken of the victim and labelled by the appellant, recording her name and age.  <u>Cts 60-130:</u>  Indecent recording of 11 other victims. The degree of indecency varied from relatively low to very high.</p>		
35.	<p><b><i>R v Western</i></b></p> <p><b>[2001] WASCA 194</b></p> <p>Delivered 27/06/2001</p>	<p>66 yrs at time of offending.</p> <p>Convicted after fast track PG. "Sad, lonely, single male", inarticulate and vague; limited education; early signs of brain damage. Borderline intellectual function; significantly impaired judgment; suffered from early onset progressive dementia for which there is no treatment.</p> <p>Poor intellect mitigating factor.</p>	<p>Victim 11-12 yrs. Offending period approx 1 ½ years.</p> <p>Victim was actually u13 yrs but the respondent was charged under s 321A to alleviate the need to specify dates and particularise the circumstances of the offences.</p> <p>Victim engaged in sexual acts willingly.</p> <p>The respondent had sexual intercourse with the victim on at least 15 occasions, and kissed her on at least 30 occasions. On 11 occasions the respondent fondled the victim's breasts. On 17 occasions the responded digitally penetrated the victim's vagina.</p> <p>Appellant admitted he thought the victim was about 13 yrs. Large disparity between ages of respondent and victim aggravated offending.</p>	TES 2 yrs imp.	<p>Allowed.</p> <p>TES increased to 4 ½ yrs imp.</p> <p>EFP.</p> <p>NB: double jeopardy applied to State appeals.</p> <p>At [21] original sentence failed to adequately reflect the culpability which the respondent had in this case even though intellectual deficit mitigatory.</p> <p>At [46] inadequate recognition given to the requirement for an appropriate deterrent sentence.</p>

<p><b>34.</b></p>	<p><b><i>Scrutton v The Queen</i></b></p> <p><b>[2000] WASCA 360</b></p> <p>Delivered 24/11/2000</p>	<p>Convicted after trial.</p> <p>Prior criminal record - convictions for child sex offences.</p>	<p>The victim was aged 8 yrs at the time of the offences. Appellant family friend. 15 yrs between offending and disclosure.</p> <p>4 x Unlawfully and indecently deal child u 14 yrs s183 <i>Criminal Code</i>.</p> <p>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.</p> <p>The victim attempted to swim away, but the appellant forced his head under water and then once again touched the victim's penis.</p>	<p>TES 2 yrs imp - cumulative on term currently serving term for separate child sex offences.</p> <p>Not EFP.</p> <p>Minimal empathy; high risk re-offending; willing to engage in treatment.</p>	<p>Dismissed.</p> <p>No error in refusing parole.</p> <p>Delay in bringing charges not mitigatory - appellant had not been rehabilitated and had offended against other children during that time.</p>
<p><b>33.</b></p>	<p><b><i>McGarry v R</i></b></p> <p><b>[1999] WASCA 276</b></p> <p>Delivered 06/12/1999</p>	<p>35-36 yrs at the time of offence.</p> <p>Convicted after fast-track PG.</p> <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>Drinking problem until 1991, and completely stopped drinking</p>	<p>The victim was 11 yrs. The victim was not known to the appellant.</p> <p>1 x Indecent dealing with a child u13 s 320(4) 3 x Impersonating a member of the Police Force s 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>TES 5 yrs imp.</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>	<p>Allowed.</p> <p>TES reduced to 3 yrs imp.</p>

		in 1997.	<u>Impersonating Police:</u> Appellant called the victim's home pretending to be a police officer to ask her about the above event.		
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### Child aged 13-16 yrs

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
32.	<i>Pool v The State of Western Australia</i>  [2013] WASCA 274  Delivered 02/12/2013	34-41 yrs at time offending. 42 yrs at time sentencing.  Convicted after PG (following negotiations) - Cts 1, 3-4 discontinued.  Criminal record; none of which had attracted a term of imp; offences include trespass & unlawful use of optical surveillance device.  Left school at 17 yrs; worked in various occupations.  In early 30's commenced using cannabis & methyl.  Suffered significant depression at various times; including when offending.  Married since 2005; two sons; youngest suffers from mild cerebral palsy & frequent	Indecent deal child u13 yrs s320(4) <i>Criminal Code</i> x 1. Att indecent record child 13-16 yrs s552, 321(6), 321(8)(a) <i>Criminal Code</i> x 1. Indecent deal child 13-16 yrs s321(4), 321(8)(b) <i>Criminal Code</i> x 4. Agg burg in dwelling 401(2) <i>Criminal Code</i> x 2. Agg indecent record child 13-16 yrs s321(6), 321(8)(b) <i>Criminal Code</i> x 1. Indecent ass s323 <i>Criminal Code</i> x 3. Indecent record child s321(6), 321(8)(a) <i>Criminal Code</i> x 1. Dep lib s333 <i>Criminal Code</i> x 1. Agg sex pen s326 <i>Criminal Code</i> x 1. Sex pen s325 <i>Criminal Code</i> x 1.  The offending occurred over a period of about 7 yrs and involved numerous acts of sexual violation against 5 victims.  <u>Ct 2:</u> The appellant and his wife were friends of the victim's mother and regularly babysat the victim. When the victim was 7 yrs old, she stayed at the appellant's home. Whilst his wife was asleep in the same room the appellant rubbed the victim's breasts	TES 11 yrs 9 mths imp.  EFP.  High risk of sexual re-offending.  Expressed some regret but has attempted to justify & minimise its severity.  Each victim suffered significant & ongoing psychological trauma.  Sentencing judge described appellant's attitude as 'predatory'.  High risk of future sexual offending.	Dismissed.  McLure dissenting.  At [71] ... The humiliation and degradation ... was made worse by the appellant's use of a mobile telephone to record visual images of his assaults upon them.  At [72] I accept, however that the appellant's individual offences against CLT and TJC were at the lower end of the scale of seriousness in child sex cases and that his individual offences against MJR and MT were not in the worst category of home invasion cases involving sexual violence.  At [77] The number of

		<p>seizures.</p> <p>Psychiatric, Psychological &amp; PSR Reports indicate the offences were committed in the context of marked amphetamine abuse &amp; considerable psychological instability.</p>	<p>and vagina.</p> <p><u>Ct 3:</u> The victim was aged 13 yrs. She was a neighbour of the appellant. One evening the victim stayed at the appellant's home and went to have a shower. The appellant attempted to record the victim showering from outside. The victim undressed and started to shower before noticing the appellant's phone.</p> <p><u>Cts 6-10:</u> The victim was aged 13 yrs and was the same victim as in Ct 3. The victim slept the night at the appellant's home. Whilst she slept the appellant touched her breast. The appellant then masturbated with his penis close to the victim's face, ejaculated and wiped the fluid on her lips. He then held his erect penis against her lips for a few seconds and again touched her breast. The appellant used a video camera to record his actions.</p> <p><u>Cts 11-13:</u> The 17 yr old victim was at her boyfriend's house; asleep and fully clothed. The appellant entered the house through an unlocked carport/ kitchen door. The appellant cut the victim's outer clothing as she slept with scissors; exposing various parts of her body. He then rubbed her exposed vagina. The victim awoke after hearing a loud bang and the appellant ran from the house. Some months after the incident the victim noticed some videos on her mobile. The videos had been taken by the appellant during the burglary and included a depiction of his hand rubbing the victim's vagina. The victim and appellant were unknown to each other.</p>		<p>victims, the duration of the offending, the planning, premeditation and persistence, the escalation in the seriousness of the criminal conduct, the appellant's lack of insight and his high risk of recidivism required the imposition of a very lengthy term of imprisonment.</p>
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			<p><u>Ct 14:</u> The victim was aged 14 yrs and unknown to the appellant. The appellant used a video camera to film the victim through her bedroom window. The victim noticed the appellant looking at her through the window. When the appellant was arrested about 14 months later; police found 3 cassettes hidden in the bodywork of his motor vehicle. The cassettes contained footage of the victim.</p> <p><u>Cts 15-19:</u> The victim was a 37 yr old woman. The victim and appellant were unknown to each other. The appellant entered the victim's house through an unsecured rear sliding door. After scrimmaging through the house he went to the victim's bedroom, placed his hand over her mouth, wrapped his hand around her throat, and tied her hands together and to the bed. He sexually assaulted and digitally penetrated her with his fingers and vibrator. At the same time he used his mobile to record and take photographs of the victim.</p>		
31.	<p><i>Downie v The State of Western Australia</i></p> <p>[2013] WASCA 244</p> <p>Delivered 22/10/2013</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after late PG – sentenced by separate judges on separate days.</p> <p>No criminal history.</p> <p>Parents separated when 5 yrs; between 6 yrs and 13 yrs was physically and sexually abused by his stepfather.</p>	<p><u>Indictment 131/2012</u> Indecent deal child 13-16 yrs x 2. Sex pen child 13-16 yrs x 1. Distribute child exploitation material x 1. Possess child exploitation material x 1.</p> <p><u>Indictment 757/12</u> Indecent deal child 13-16 yrs x 11 Sex pen child 13-16 yrs x 8</p> <p><u>Indictment 131/2012</u> <u>Cts 1-3:</u> The appellant 'met' the 14 yr old male victim online.</p>	<p><u>Indictment 131/12</u> TES 3 yrs 6 mths imp (cum).</p> <p><u>Indictment 757/12</u> TES 3 yrs 6 mths imp (cum).</p> <p>TES 7 yrs imp.</p> <p>Medium to high risk of</p>	<p>Dismissed.</p> <p>At [74] ..., the inappropriate use of language by his Honour does not equate to an erroneous sentence.</p> <p>At [81] There can be no doubt that the appellant's overall offending was very serious...</p>

		<p>Completed year 12; excellent employment history.</p> <p>Separated from wife; 2 teenage children.</p> <p>Socially withdrawn and experiences social anxiety and discomfort.</p> <p>Undertaken Sycamore Tree programme and wished to participate in sex offender treatment program.</p>	<p>The appellant was 34 yrs; however he told the victim that he was 28 yrs. An arrangement was made for the appellant and victim to meet in a public toilet. They met as agreed. The appellant undid the victim's jeans and rubbed his penis. He then took the victim's hand and placed it on the appellant's penis and indicated to the victim to rub it, which he did. The appellant then placed his mouth over the victim's penis and performed fellatio until the victim ejaculated.</p> <p><u>Cts 4-5:</u> Police later executed a search warrant at the victim's home and seized a computer. Analysis discovered 1,241 still images and 22 movie files of child pornography. Investigators found that the appellant used an internet file sharing program to distribute 64 images of child pornography to the USA.</p> <p><u>Indictment 757/12</u> <u>Ct 1-5:</u> The victim was, at the time, either at or close to 14 yrs. The appellant and victim 'met' online and started communicating on the internet. During those communications the appellant was grooming the victim. Eventually the appellant and victim met in person and the appellant drove the victim to a car park in Fremantle. There they tongue-kissed and masturbated each other's penis and performed fellatio on each other. The appellant then drove the victim to another location and gave him \$300.</p> <p><u>Ct 7-10:</u> The appellant and victim met, having agreed to spend the night together in a hotel. The appellant paid for the room. While there, the appellant and victim</p>	<p>re-offending.</p> <p>Sentencing judge noted the appellant did not fully comprehend the seriousness of the situation.</p> <p>Sentencing judge described offences as 'highly premeditated' and involving a degree of 'depravity, paedophilic lust, grooming, planning and enthusiasm.</p> <p>Lacked real insight into his offending.</p>	<p>At [83] The offences dealt with by McCann DCJ were separate and distinct from the offences dealt with by Curthoys DCJ. They were also more numerous and considerably more serious...</p>
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			<p>tongue-kissed, masturbated each other and performed fellatio on each other to ejaculation.</p> <p><u>Cts 11-14:</u> The appellant and victim then went to IKEA, where the appellant bought the victim some items. Later, they drove to a restaurant for dinner. They then returned to the hotel and engaged in more sexual activity. After tongue-kissing, the appellant masturbated himself in the victim's presence and they then engaged in fellatio on each other.</p> <p><u>Cts 15-19:</u> The following morning they tongue-kissed, masturbated each other and performed fellatio one each other to ejaculation. After checking out of the hotel, they went to an ATM, where the appellant provided the victim with money.</p>		
30.	<p><i>SG v The State of Western Australia</i></p> <p>[2013] WASCA 26</p> <p>Delivered 15/10/2013</p>	<p>35 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal record in Qld and WA; no prior convictions for sexual offences.</p> <p>Dysfunctional childhood; exposure to domestic violence and abuse; introduced to illicit substances by stepmother at 11 yrs.</p> <p>Became a street kid; began using amphetamines at 15 yrs.</p>	<p>Indecent deal child u13 yrs s320(4) <i>Criminal Code</i> x 2.</p> <p>Sex pen child u 13 yrs s320(2) <i>Criminal Code</i> x 1.</p> <p>Agg sex pen de facto child s329(2) <i>Criminal Code</i> x 6.</p> <p>Sex pen de facto child s329(2) <i>Criminal Code</i> x 2.</p> <p>The victim was the appellant's de facto daughter, who was aged between 11 and 16 yrs at the time of offending. The offending occurred while the appellant was living in a de facto relationship with the victim's mother. Over the years, the appellant and the victim's mother had 3 more children together.</p> <p>The appellant began grooming the victim within months or even week of moving in with the family. The appellant used bribery and promises together</p>	<p>TES 12 yrs imp.</p> <p>EFP.</p> <p>No real acceptance of responsibility or any remorse.</p> <p>Moderate to high risk of re-offending.</p>	<p>Appeal dismissed – on papers.</p> <p>At [27] ... it is well-established that cases of intra-familial sexual abuse typically attract significant sentences of imprisonment.</p> <p>At [34] ... The offending was calculated and persistent. The appellant, who was a father figure to the complainant, set about exploiting the complainant in an utterly callous way to satisfy his own sexual</p>

		<p>Fractured education; spent many years in juvenile detention and prison; most offending attributed to drug abuse.</p> <p>Drug use and heavy drinking increased after his baby daughter died and he suffered from depression.</p>	<p>with intimidation and physical coercion to obtain sexual favours.</p> <p>The acts included masturbating in her presence, digital penetration, having the victim perform oral sex on him and sexual penetration. The sexual activity often caused the victim significant pain. The offending persisted even while the victim was grieving for the death of her mother's baby.</p> <p>The appellant did not use contraception, which resulted in the victim becoming pregnant when she was 15. Penetration also occurred when she was pregnant and after the baby was born.</p>		<p>desires.</p>
29.	<p><i>JWD v The State of Western Australia</i></p> <p>[2013] WASCA 233</p> <p>Delivered 07/10/2013</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Chaotic and dysfunctional childhood; very limited contact with biological father; step-father was a violent alcoholic who physically abused the appellant and his mother; ran away from home on a regular basis.</p> <p>Removed by DCP and lived with aunty; then lived with grandmother; spent long periods living on the streets, sometimes supporting himself through prostitution.</p> <p>Long standing drug and alcohol</p>	<p>Sex pen lineal relative, a child s329(2) <i>Criminal Code</i> x 7.</p> <p>Indecent deal lineal relative, a child s329(4) <i>Criminal Code</i>.</p> <p>Between 1996 and 2001 the appellant committed various sexual acts against the victim, his biological half-brother. The offending commenced when the victim was 12 yrs of age and continued until he was 16. It was accepted that the offences were representative of a course of conduct by the appellant.</p> <p>The acts included having the victim perform oral sex on him, urinating in the victim's mouth, masturbating in the victim's presence, having the victim masturbate him, performing oral sex on the victim, anal penetration and licking the victim's anus.</p>	<p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Appellant made voluntary disclosure of offences.</p> <p>Some progress towards rehabilitation.</p> <p>Risk of re-offending was in the moderate to low category.</p> <p>Appellant's relationship to the victim gave him an opportunity to influence the victim.</p>	<p>Allowed.</p> <p>Re-sentenced to 4 yrs imp.</p> <p>EFP.</p> <p>At [39] It became apparent on the hearing of the appeal that the essential contention was that the total effective sentence of 6 yrs imp breached the first limb of the totality principle because it was not a proper reflection of the voluntary disclosure and of the efforts that the appellant had made towards his rehabilitation in the 12 yr period that had elapsed since the last offence was committed.</p>

		<p>abuse.</p> <p>Stable relationship; partner is schizophrenic and appellant acts as his carer.</p> <p>Borderline personality disorder.</p>		<p>Affect upon the victim had been profound, including contracting an STD and psychological effects.</p>	<p>At [54] The voluntary disclosure reflected acceptance of responsibility, genuine remorse and resulted in offences coming to light that may otherwise have remained undealt with. There is public interest in recognising the value of such a disclosure.</p>
28.	<p><b><i>KWLD v The State of Western Australia</i></b></p> <p><b>[No 4] [2013] WASCA 185</b></p> <p>Delivered 14/08/2013</p>	<p>15-17 yrs at time offences. 18 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record; breach VRO, make threatening statement, fraud, poss child exploitation material and stalking.</p> <p>Troubled childhood; born of a very brief liaison between his parents who were not in a relationship; little positive contact with biological father; Short term emergency accommodation by DCP from 13 yrs.</p> <p>Unresolved personal issues; from young age been exposed to domestic violence, substance</p>	<p>Ct 1: Att sex pen child 13-16 yrs. Ct 2: Sex pen child 13-16 yrs. Ct 3: Sex pen child 13-16 yrs. Ct 4: Sex pen child 13-16 yrs. Ct 5: Sex pen child 13-16 yrs. Ct 6: Sex pen child 13-16 yrs. Ct 7: Sex pen child 13-16 yrs. Ct 8: Involving a child in child exploitation. Ct 9: Poss child exploitation material. Ct 10: Agg burg. Ct 11: Agg burg. Ct 12: Dep liberty. Ct 13: Impersonating public officer.</p> <p>The sexual offences involved 4 different female victims. TB was 14 yrs, SM was 13 yrs and both MC and SW were 15 yrs.</p> <p><u>Victim MC:</u> At the time of the offences MC and the appellant were in a relationship. In June 2010 the appellant initiated contact with MC by electronic communication. He arranged to meet with her to see</p>	<p>Ct 1: 18 mths imp. Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 9 mths imp (conc). Ct 5: 9 mths imp (conc). Ct 6: 9 mths imp (conc). Ct 7: 9 mths imp (conc). Ct 8: 6 mths imp (conc). Ct 9: 4 mths imp (conc). Ct 10: 15 mths imp (conc). Ct 11: 9 mths imp (conc). Ct 12: 12 mths imp (conc).</p>	<p>Dismissed on papers.</p> <p>At [94] Based on the findings of the sentencing judge the appellant had engaged in a pattern of behaviour. This involved targeting girls who were younger and previously unknown to him. He then engaged in emotional coercion and persistence to obtain their compliance. Other than in the case of MC this did not occur in the context of a genuine relationship.</p> <p>At [104] – [105] An appeal is not an opportunity to seek new material with a view to retrying the issues on a different basis. The</p>

		<p>abuse and criminality.</p> <p>Intelligent and did well at school.</p> <p>At time of offending was likely to have been suffering a depressive illness; borderline personality disorder with significant anti-social personality traits.</p> <p>On bail at time of agg burg offences.</p>	<p>a movie. After meeting they walked together to a secluded location where they had sexual intercourse until he ejaculated. MC asked the appellant to use a condom but he refused.</p> <p>After the incident the appellant and MC developed a relationship which lasted for about 3 months. The appellant sought information of a private nature from MC with the intention of ensuring her trust and dependency upon him.</p> <p><u>Victim SW:</u> SW was 1 of 40-50 girls in Perth randomly targeted by the appellant to engage in chat via social media with a view to becoming friends.</p> <p>In 2011 the victim initiated contact with SW through Facebook. She was previously known to him. The appellant manipulated the victim including threatening to terminate their friendship unless she sent sexually explicit photographs of herself to him. She did as requested and took photographs of herself, which she sent to him.</p> <p>In respect of the charge of poss child exploitation material this related to the photograph sent to the appellant by SW. In the course of his evidence the appellant conceded that he had wanted this photograph because he found it sexually arousing.</p> <p><u>Victim TB:</u> The appellant initiated contact with TB in 2011 using mobile phone texts and internet. He asked TB to meet with him at a beach and she agreed. Prior to meeting the victim the appellant said that if she did not meet</p>	<p>Ct 13: 3 mths imp (conc).</p> <p>TES 30 mths imp.</p> <p>EFP.</p> <p>Trial of Issues – there was a dispute as to whether each of the victims had freely and voluntarily consented to the relevant sexual acts.</p> <p>Sentencing judge viewed the offences against TB and SM as being the most serious and that the appellant had used the difference in age between he and the complainants and his own level of maturity to achieve his objective with them.</p> <p>Noted by judge that the appellant is an intelligent young man who was fully aware of the nature of the offences he was committing; high risk of re-offending.</p>	<p>general rule is that an appeal court must decide an appeal on the evidence and material before the court below... the test in an appeal against sentence is whether if the evidence had been before the sentencing judge a different sentence should have been imposed.</p> <p>At [113] ... It is far from clear that the habits or behaviour of young people in regards to social media are recognised fields of special expert knowledge.</p> <p>At [116] I have taken the opportunity to examine the extensive Facebook exchanges... When read in their entirety they amply support the conclusion that the appellant was engaged in manipulative behaviour. He maintained control by becoming angry, threatening to withdraw or threatening to tell others what had occurred.</p> <p>At [144]-[145] It is an error for a sentencing judge to either reduce or extend a</p>
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			<p>with him he would kill himself. After they met the appellant tried to coerce TB to engage in sexual behaviour. He attempted to sexually penetrate her with his penis. He then digitally penetrated her without her consent. After she walked home the appellant made contact with her by phone and made threats towards her, her family and himself.</p> <p><u>Victim SM:</u> The appellant initiated contact with SM in early 2011 by electronic media. He persuaded her to meet with him at a service station. They then walked back to her house. The appellant forced himself on her with threats of self-harm and manipulation. She complied and he penetrated her vagina until he ejaculated. The appellant was wearing a condom but it broke. He laughed at this.</p> <p>State's case was that in respect of each of the complaints the appellant had used emotional manipulation and persistence to achieve his objective.</p> <p><u>Agg burg:</u> The appellant and his co-offender formed a common intention to go to the victim's house and threaten and intimidate the occupants. The intention was that this would be done whilst he pretended to be a police officer conducting a search for drugs. The appellant dressed as a police officer armed with a knife sharpening implement, entered the house of 49B Dongara Street, Innaloo and declared he was a police officer and demanded to know where the drugs were.</p> <p>The appellant left and met the co-offender who was</p>		<p>term of imprisonment based upon an assumption that the offender will be paroled... There is no reason to suppose that the sentencing judge imposed a sentence that was longer than was otherwise appropriate to take into account an assumption that the appellant would be released on parole.</p>
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			leaving 49A Dongara Street. He grabbed her and pretended to place her under arrest. He then entered 49A declaring himself to be a police officer and yelled to the occupants, including a 10 yr old child to get on the floor and place their arms behind their backs whilst he demanded to know the location of their drugs.		
27.	<p><i>Murphy v The State of Western Australia</i></p> <p>[2013] WASCA 178</p> <p>Delivered 12/08/2013</p>	<p>49 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior convictions.</p> <p>Completed Year 11 at school and worked in varying occupations, including working with children at rocky Bay Crippled Children's Association.</p> <p>Strong support from his first wife, his children from his first marriage and friends.</p>	<p>Ct 1: Indecent deal 13-16 yrs.  Ct 2: Sex pen 13-16 yrs.  Ct 3: Sex pen 13-16 yrs.  Ct 4: Indecent deal 13-16 yrs.  <i>Counts 1-4 each alleged that the victim was under the care, supervision or authority of the appellant.</i>  Ct 6: Indecent deal u13 yrs.  Ct 9: Attempt to pervert the course of justice.</p> <p>The two victims B and K were siblings in the foster care of the appellant and his then (second) wife. They resided with another sibling J together in the family home in Kelmscott along with his wife's daughter from a prior relationship.</p> <p><u>Ct 1:</u>  In late 2008 the appellant's wife took her daughter to England for 3 weeks. Ct 1 took place in her absence. In the shed at the Kelmscott property the appellant cuddled and tongue-kissed B, then touched her bottom with his hands over her clothing.</p> <p><u>Ct 2-4:</u>  In 2009 B, aged 14, and J were helping the appellant renovate a house. The appellant pulled B's pants and underpants to her knees and inserted his finger into her vagina while masturbating himself. After sucking his finger and inserting it again into B's vagina</p>	<p>Ct 1: 18 mths (conc).  Ct 2: 3 yrs 6 mths imp.  Ct 3: 3 yrs 6 mths imp (conc).  Ct 4: 18 mths imp (conc).  Ct 6: 18 mths imp (cum on Ct 2).  Ct 9: 3 yrs imp (cum on Ct 6).</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>Shown no remorse or insight into his offending behaviour.</p> <p>Sentencing judge found that the offences were not isolated, but part of a continuing course of such conduct by the appellant.</p> <p>Also found that the appellant used the</p>	<p>Dismissed.</p> <p>At [30] The sentencing judge characterised the appellant's offending as a very serious instance of its type. Indeed it is ...The appellant targeted the same vulnerable child he had sexually abused, which was a further gross breach of the trust which had been reposed in him. The vulnerability of the complainants was heightened by the fact that they were foster children placed in the care of the appellant and his wife by DCP.</p> <p>At [34] I accept that the total sentence is close to the upper limit of the sound discretionary range. However, apart from his prior good character, there is nothing in the appellant's</p>

			<p>several times, the appellant performed cunnilingus on B, only stopping when J returned. Later the same day the appellant put his hand inside B's bra and touched her nipple. The appellant told B that if she told anyone, she would be kicked out of the family home.</p> <p><u>Ct 6:</u> In 2010 K and B swapped beds, with the then 12 yr old K sleeping on the top bunk bed and B on the lower bunk. The appellant pulled down K's singlet and bra, removed her dressing gown and touched her breasts with his hands.</p> <p><u>Ct 9:</u> The appellant left the Kelmscott house after he was charged. In contravention of his bail conditions, the appellant continuously contacted family members. Between a period of just under 4 mths the appellant made 260 calls from his mobile to those of his wife and B. The appellant met with B and J on a number of occasions, phoned B multiple times each day, bought her gifts and asked her to drop the charges, telling her that bad things would happen to him in prison.</p>	<p>pretext of taking K to the toilet at night as an opportunity to sexually molest B.</p>	<p>favour by way of mitigation. Further, the sexual offences are representative and the circumstances of the offending as a whole are undoubtedly serious.</p>
26.	<p><b><i>Brand v The State of Western Australia</i></b></p> <p><b>[2011] WASCA 269</b></p> <p>Delivered 22/12/2011</p>	<p>21 yrs at time offending.</p> <p>Minor prior criminal record – common assault; damage.</p> <p>History of compliance with previously imposed community based sentencing dispositions.</p> <p>Undertaking traineeship and performing well at the time of sentencing.</p>	<p>Victim 15 yrs 2 mths old. Offending period one night. Victim did not initiate sexual activity but consented to it.</p> <p>8 x Sex pen 13-16 yrs s 321(2) <i>Criminal Code</i>.</p> <p>No element of abuse to consent.</p> <p>Appellant and victim communicating via social networking site for approx 6 weeks prior to offending. Victim's profile stated she was 19 yrs old.</p>	<p>18 mth ISO.</p> <p>Low risk re-offending; remorse.</p>	<p>At [43] Offending of this kind inherently serious. Policy reasons underlying legislation are to protect vulnerable children from others who would prey on them and from themselves, irrespective of their maturity and sexual</p>

		<p>Since 10 yrs old experienced mental health issues – history suicidal ideation and ADHD; required hospitalisation; anger control disorder; personality disorder with narcissistic and paranoid tendencies.</p> <p>In stable relationship at time sentencing.</p>	<p>Appellant and victim arranged to meet in person. Appellant took victim to his caravan and before entering asked how old she was – victim replied she was 17 yrs old. Shortly after entering caravan appellant and victim consensually engaged in sexual activity – including penile pen of vagina, cunnilingus and fellatio.</p> <p>Appellant sentenced on basis that believed victim to be over 16 yrs at all relevant times.</p>		<p>experience.</p> <p>At [44] Consent and belief of age are not a defence in these circumstances but are relevant to sentencing as they impact on the seriousness of offending.</p>
25.	<p><b><i>KS v The State of Western Australia</i></b></p> <p><b>[2011] WASCA 85</b></p> <p>Delivered 7/04/2011</p>	<p>Aged 58 at the time of sentencing.</p> <p>Convicted after fast-track PG.</p> <p>No criminal history. No evidence of impropriety during the course of his teaching.</p> <p>General good character.</p> <p>Intense and obsessive personality. Possible Asperger's Syndrome (high functioning autism).</p>	<p>Victim 13 yrs at the time of the first offence.</p> <p>The appellant was a school teacher, and an advisor to male parishioners between the ages of 14 and 16 at his church. The victim's mother was a single mother, and the victim would sometimes stay at the appellant's home so that they could attend church together on Sunday while the mother worked.</p> <p>Vulnerable victim, and breach of position of trust.</p> <p>Cts 1-3: Indecent deal child 13-16 yrs. Cts 4-5: Sex pen child 13-16 yrs.</p> <p><u>Ct 1:</u> Appellant placed his hand inside the victim's underwear and touched his penis with his hand.</p> <p><u>Ct 2:</u> Appellant placed his hand inside the victim's underwear and touched his penis with his hand.</p> <p><u>Ct 3:</u> Appellant placed his hand inside the victim's underwear and touched his penis with his hand. The appellant stopped when the victim's brother entered</p>	<p>TES 4 yrs 8 mths imp.</p> <p>EFP.</p> <p>Voluntary disclosure of matters which would have otherwise remained unknown.</p> <p>Low risk of reoffending. Remorseful and ashamed of actions.</p>	<p>Allowed.</p> <p>TES reduced to 3 yrs imp.</p> <p>EFP.</p> <p>Where the accused voluntarily discloses information which would otherwise have remained unknown, adequate weight must be given to the disclosure, and leniency should be shown.</p>

			<p>the room.  <u>Cts 4 &amp; 5:</u>  The appellant removed the victim's pants and performed fellatio on the victim. This occurred twice in the same evening.</p>		
24.	<p><b><i>Hine v The State of Western Australia</i></b></p> <p><b>[2010] WASCA 216</b></p> <p>Delivered 1/11/2010</p>	<p>Aged between 20 yrs and 23 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No relevant prior criminal record.</p> <p>Experienced hearing difficulties since birth – negative affect social development.</p> <p>Struggled academically and held variety retail and factory positions.</p>	<p>7 x Use elec comm with intent to procure person believed to be child u16 to engage in sex activity s204B(2)(b)(i) <i>Criminal Code</i>.</p> <p>4 x Possess child porn s 60(4) <i>Classification (Publications, Films &amp; Computer Games) Enforcement Act 1996 (WA)</i>.</p> <p>13 x Sex pen 13-16yrs s 321(2) <i>Criminal Code</i>.</p> <p>1 x Indec deal 13-16yrs s 321(4) <i>Criminal Code</i>.</p> <p>2 x Indec record 13-16yrs s 321(6) <i>Criminal Code</i>.</p> <p>11 victims aged between 13 yrs and 15 yrs.</p> <p>Offending occurred over period approx 2 ½ yrs.</p> <p><u>Count 1:</u>  Relates to online chat that ended with appellant having sex with 15yr old in front seat of his car.</p> <p><u>Counts 2-5:</u>  Relates to online chat in which appellant used a false name online and told 14yr old he was 18 and would pay her \$100 for oral sex. The appellant took victim to a car park and victim performed oral sex on appellant, receiving \$100.</p> <p><u>Counts 6 &amp; 7:</u>  Relates to appellant collecting victim from school and then picking up a friend of his. Alcohol was provided and victim performed oral sex on appellant while in car with his friend. Victim then performed oral sex on appellant's friend while appellant had sex with her.</p>	<p>Sentence range 12-18 mths imp.</p> <p>Sentence range 2-18 mths imp.</p> <p>Sentence range 20 mths-3 yrs imp.</p> <p>12 mths imp.</p> <p>6 mths; 18 mths imp.</p> <p>TES 12 ½ yrs imp.</p> <p>EFP.</p>	<p>Allowed – on totality only.</p> <p>TES reduced to 9 ½ yrs (indiv sentences not disturbed).</p> <p>Aggravating factors - lied about age, name and employment; offered money; engaged in grooming; offending persistent and over extended duration; only stopped when caught; considerable risk re-offending; abuse trust.</p>

			<p><u>Count 8:</u> Relates to appellant providing alcohol to victim until she was intoxicated. Appellant took photos of victim's breasts while she was in an unconscious state. Photos found on computer hard drive by police.</p> <p><u>Count 9:</u> Relates to online chat with 15 yr old and the discovery by police of 2 naked pictures of her on hard drive.</p> <p><u>Count 10:</u> Relates to online chat with 13yr old. Appellant offered to pay victim if electronically send him photos of herself in various states of undress. Victim sent 9 photos of breasts and one of genitals (found on hard drive) but no money changed hands.</p> <p><u>Count 11:</u> Involved victim from count 9. Appellant drove complainant to his house after she had an argument with her parents. Appellant took victim into his bedroom and told her she could stay if she had sex with him. Victim had sex with appellant.</p> <p><u>Counts 13-15:</u> Involved victim from counts 9 &amp; 12 and two of their friends aged 14 yrs. Appellant picked up three victims near school and drove them to Arena Joondalup. Went into toilet cubicle, one victim performed oral sex on appellant. Shortly after, appellant digitally penetrated vagina another victim. Shortly after that, appellant inserted penis into vagina of third victim. Appellant drove to bank and gave victims \$200 and dropped them off near the school.</p> <p><u>Count 16:</u> Involved victim from count 11. Appellant masturbated in front of webcam, linked to victim's computer, on three occasions. Appellant asked victim</p>	
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			<p>to masturbate herself in front of her webcam.</p> <p><u>Count 17:</u> Relates to online chats with 14 yr old over period 7 weeks which culminated in appellant and victim having sex in front seat of appellant's car in secluded location.</p> <p><u>Count 18:</u> Relates to online chat in which appellant asked victim for oral sex in exchange for \$100. Victim refused and appellant said he had spent day having sex with underage girls of 14 and that she was next.</p> <p><u>Count 19:</u> Relates to online chats with 14 yr old in which appellant used false name, job and age. Appellant asked victim to engage in sexual activity, offering \$100 for oral sex, \$200 for sexual intercourse and \$300 for a threesome. Victim refused.</p> <p><u>Counts 21-23:</u> Relate to 14 yr old victim whom appellant met online. In online chat, appellant offered \$200 for oral sex. Victim refused, appellant doubled offer to \$400. Victim again refused. Appellant requested topless pictures under guise of offering her employment at a clothing store (of which he purported to be the manager). Victim sent topless pictures which were found on appellant's computer. Appellant met victim in shopping centre and, in public toilets, made victim perform oral sex and paid her \$200.</p> <p><u>Counts 24-27:</u> Stem from police search of appellant's home – found 20 video files child porn (including some of victims); 219 still images of child pornography.</p>		
23.	<b><i>KWJW v The State of Western Australia</i></b>	39 yrs at time offending. Convicted after fast-track PG.	Victim aged 13-14 yrs. Offending period 10 mths. 3 x Indecent deal child 13-16 yrs.	TES 7 yrs imp. EFP.	Dismissed.

	<p><b>[2010] WASCA 29</b></p> <p>Delivered 25/02/2010</p>	<p>Alcohol problem at the time of offences.</p> <p>Unhappy childhood, with domestic violence amongst his parents.</p>	<p>2 x Indecently procure child 13-16 yrs 2 x Indecently deal child under supervision. 4 x Sex pen child 13-16 yrs.</p> <p>Appellant was close friends with the victim's parents and their families socialised together frequently (the appellant was best friends from school with the victim's father). The victim was very close to the appellant and referred to him as his 'best friend'.</p> <p><u>Cts 1-4 – indecent deal; procure child:</u> Appellant masturbated until ejaculation in front of the victim. Appellant encouraged the victim to masturbate in front of him. During these times there was mutual touching between the appellant and the victim.</p> <p><u>Ct 5 – sex pen:</u> Appellant placed the victim's penis in his mouth.</p> <p><u>Ct 6 – sex pen:</u> Appellant placed his penis in the victim's mouth then masturbated in front of the victim.</p> <p><u>Cts 7&amp; 8 – indecent deal' procure child:</u> Appellant took the victim camping. The appellant masturbated in front of the victim and encouraged the victim to do the same.</p> <p><u>Ct 9 – indecent deal:</u> Victim was staying overnight at the appellant's house. The appellant entered shower when victim showering. Appellant slapped victim on the buttocks with his erect penis.</p> <p><u>Ct 10 – sex pen:</u> Appellant placed his penis in the victim's mouth until ejaculation.</p> <p><u>Ct 11- sex pen:</u> Appellant placed the victim's penis in his mouth.</p>	<p>Confused by actions, could not explain how the events occurred.</p> <p>Cts 1-4: 12 mths imp each ct.</p> <p>Ct 5: 22 mths imp.</p> <p>Ct 6:22 mths imp.</p> <p>Cts 7 &amp; 8: 22 mths imp each ct.</p> <p>Ct 9: 28 mths imp.</p> <p>Ct 10: 28 mths imp.</p> <p>Ct 11: 22 mths imp.</p>	
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<p>22.</p>	<p><i>D v The State of Western Australia</i></p> <p>[2009] WASCA 155</p> <p>Delivered 25/08/2009</p>	<p>31 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Excellent antecedents.</p>	<p>Victim 1 was 16 yrs 9 mths; victim 2 was 15 yrs 7 mths.</p> <p>The appellant was the physical education teacher at the high school which both victims attended. Both victims consented to the acts. No evidence of coercion.</p> <p>The second victim was vulnerable due to problems she was having at home. The sexual relations with the second victim sometimes occurred with the appellant's female partner present and participating.</p> <p><u>1<sup>st</sup> victim:</u>  Cts 1-4: Sex pen of a child u18 under care, supervision or authority ( penile pen vagina)  Cts 5 &amp; 6: Sex pen of a child u18 under care, supervision or authority (cunnilingus).  Ct 7: Sex pen of a child u18 under care, supervision or authority (fellatio).</p> <p><u>2<sup>nd</sup> victim:</u>  Ct 8: Persistent sexual conduct child u 16 yrs.</p>	<p>TES 7 yrs 6 mths imp.</p> <p>Medium/low risk of reoffending.</p> <p>Cts 1-4: 2 ½ yrs imp each ct.  Cts 5&amp; 6: 18 mths imp each ct.  Ct 7: 12 mths imp.  Ct 8: 5 yrs imp.</p>	<p>Allowed.</p> <p>TES reduced to 5 yrs imp.</p> <p>Original sentence offended totality principle.</p> <p>At [61] The offences committed by the appellant were serious and general deterrence remains a weighty discretionary factor in cases of this nature.</p>
<p>21.</p>	<p><i>Simon v The State of Western Australia</i></p> <p>[2009] WASCA 10</p> <p>Delivered 13/01/2009</p>	<p>18-19 yrs at the time of offending.</p> <p>Convicted after PG.</p> <p>No relevant prior criminal record.</p> <p>Raised in a remote community in northern WA; low level literacy, unable to write.</p> <p>Good antecedents.</p>	<p>The victim was 14 yrs. The appellant was the victim's next door neighbour.</p> <p>1 x Sex pen a child 13-16 yrs s 321(2) <i>Criminal Code</i>.</p> <p>Appellant went to the victim's home. After they talked for a while, the appellant asked the victim if she would like to have sexual intercourse. The victim agreed. The appellant and the victim went to the victim's bedroom and had a single act of sexual intercourse.</p> <p>The victim had previously had sexual intercourse</p>	<p>TES 14 mths susp 2 yrs.</p> <p>14 mths imp.</p>	<p>Dismissed.</p> <p>Deterrence significant factor.</p>

		Immature for his age.	with others.  Offending discovered when the girl contracted a sexually transmitted disease.  Appellant cooperated fully with police and admitted acts. Knew the victim was under 16 believed 15 yrs but was unaware it was an offence.		
<b><i>Transitional provisions repealed – 14/01/2009</i></b>					
<b>20.</b>	<b><i>CJ v The State of Western Australia</i></b>  <b>[2009] WASCA 42</b>  Delivered 19/12/2008	35 yrs at time offending.  Convicted after fast-track PG.  Single parent of an 18 yr old son; primary school teacher.  Strained relationship with her mother, but the father very supportive.  Sexually abused as a child. Emotionally vulnerable; depressed (no causal link to offending); isolated.	Victim 14-15 yrs. Victim and appellant knew each other through school and church. Victim close friends with the appellant's son.  4 x Sex pen child 13- 16 yrs s 321(2) <i>Criminal Code</i> .  <u>Ct 1:</u> Victim was staying at a caravan park with the appellant and her son. The appellant and victim were sleeping on the same bed in separate sleeping bags. The victim woke in the night and kissed the appellant. Later that day the victim entered the room of the appellant. They removed their clothes and had sexual intercourse. <u>Ct 2:</u> Occurred 2 wks after Ct 1. The victim was staying at the appellant's home. During the night he went to the appellant's room. They removed their clothes and had sexual intercourse. <u>Ct 3:</u> Occurred 1 wk after the victim's 15 <sup>th</sup> birthday.	TES 27 mths imp.  EFP.  A restraining order was also ordered.  Remorse, shame and humiliation, and loss of position as teacher.	Allowed.  TES reduced to 18 mths susp 12 mths.  At [78] victim's consent irrelevant but fact victim initiated sexual acts is relevant factor.  At [79] must be equality before the law - whether equality of concern for male and female victims or equality sentencing male and female offenders.

			<p>The victim was staying at the appellant's home. During the night he went to the appellant's room. They removed their clothes and had sexual intercourse.</p> <p><u>Ct 4:</u> The victim was staying at the appellant's home, along with another friend. While the appellant's son and other friend were asleep, the victim went to the appellant's room. They removed their clothes and had sexual intercourse.</p>		
19.	<p><i>JAF v The State of Western Australia</i></p> <p>[2008] WASCA 231</p> <p>Delivered 12/11/2008</p>	<p>34 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Married; 2 small children; wife pregnant with 3<sup>rd</sup> child.</p> <p>Depressed and vulnerable; mistakenly diagnosed with testicular cancer and had one testicle removed.</p> <p>Offending out of character.</p>	<p>Victim 14-15 yrs. Offending period 4 mths.</p> <p>12 x Indecent deal child 13-16 yrs. 21 x Sex pen child 13-16 yrs.</p> <p>Appellant teacher at victim's school (not her class teacher) and victim sometimes babysat the appellant's children. Victim vulnerable as unable to understand the consequences of having a relationship with a married man.</p> <p>Appellant and the victim in an emotional as well as physical relationship. Victim regarded the relationship as 'boyfriend and girlfriend'. The victim and appellant engaged in different sexual acts over the period of the relationship. The acts progressed from fondling to cunnilingus and fellatio, through to sex pen of the victim's vagina with the appellant's penis. Appellant took precautions against STDs and pregnancy.</p> <p>Offending aggravated by breach of trust and repetition of acts.</p>	<p>TES 5 yrs 8 mths imp.</p> <p>Remorse.</p>	<p>Allowed.</p> <p>TES reduced to 4 yrs imp.</p> <p>At [12] In relation to offenders who are not 'predators', and whose behaviour is plainly out of character, while general deterrence remains a factor of importance, personal deterrence, while remaining a factor to be considered, is of less weight.</p> <p>At [13] The appellant's position and good reputation did assist him in finding the opportunities to be alone with the complainant, but this is not a case in which he abused his position in order to establish dominance over her or in order to make it</p>

					difficult to complain of the conduct.
18.	<i>Van Doorn v The State of Western Australia</i>  [2008] WASCA 177  Delivered 25/08/2008	29 yrs at time of offending.  Convicted after fast-track PG.  Prior good character; full time employment.  ADHD; immature and lacking in judgment.  Alcohol and cannabis abuse.	The victim was 13 yrs at time of offences, and 14 yrs at the time of the last offence. The appellant was the victim's neighbour.  Victim and appellant in consensual relationship.  <u>Cts 1 &amp; 2 - Indecent deal child 13-16 yrs:</u> Appellant kissed the victim on the mouth, and touched her buttock with his hand. <u>Ct 3 - Att sex pen child 13-16 yrs:</u> Appellant attempted to penetrate victim's vagina with his penis. <u>Cts 4 &amp; 5: Sex pen child 13-16 yrs:</u> Appellant penetrated vagina with his penis - penis fell out and was reinserted (giving rise to separate count of sex pen). <u>Ct 6: Using electronic communications to expose child u 16 yrs to indecent material:</u> Appellant filmed himself with his mobile phone masturbating and then sent the video to the victim. <u>Ct 7: Indecent deal child 13-16 yrs:</u> Appellant kissed the victim on the lips.  Incidents were reported by the victim's parents. Victim allegedly untruthfully told the appellant that her father was dying to gain sympathy - appellant terminated relationship when he discovered victim was untruthful.	TES 4 yrs imp.  EFP.  Cts 1 and 2: 3 mths imp each ct.  Ct 3: 3 yrs imp.  Cts 4 & 5: 3 yrs 6 mths imp each ct.  Ct 6: 6 mths imp.  Ct 7: 3 mths imp.  Remorse; no apparent on-going interest in prepubescent girls; low risk reoffending.	Allowed.  TES reduced to 2 yrs 6 mths imp.  EFP.  <u>Sentences on appeal:</u> Ct 3: 14 mths imp. Ct 4: 2 yrs 4 mths imp. Ct 5: 12 mths imp. Ct 6: 2 mths (photo not video)  At [24] the offences in cts 4 and 5 were essentially one episode and the bringing of 2 charges somewhat artificial.
17.	<i>The State of Western Australia v Lee</i>	25 yrs at time of offending.  Convicted after fast-track PG.	2 victims.  Cts 1 & 2: Sexual relationship child u 16 yrs.	TES 3 yrs imp.  18 mths imp each ct.	Dismissed.

	<p><b>[2008] WASCA 150</b></p> <p>Delivered 21/07/2008</p>	<p>No relevant prior criminal record.</p> <p>Good employment history.</p> <p>Substance abuse problem until the age of 22 yrs.</p>	<p><u>Ct 1:</u> Victim 1, 15 yrs. Boyfriend-girlfriend relationship. Included 7 instances penile penetration of vagina and 4 instances digital penetration of vagina.</p> <p><u>Ct 2:</u> Victim 2, friend of victim 1. Offending began one day prior to victim 2's 15<sup>th</sup> birthday. Victim was a virgin. Involved 4 instances penile penetration of vagina.</p> <p>No evidence of exploitation or peculiar vulnerability on the part of the victims. No evidence the respondent was a sexual predator.</p>		
16.	<p><b><i>Poulton v The State of Western Australia</i></b></p> <p><b>[2008] WASCA 97</b></p> <p>Delivered 15/04/2008</p>	<p>23 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - drug offences; stealing; disorderly behaviour; obstructing public officer; assaulting public officer.] Alcohol and substance abuse issues.</p> <p>Unfortunate family life.</p>	<p>Victim 14 yrs. Victim employed by the appellant to clean his home. Short offending period.</p> <p><u>Cts 1, 2 &amp; 3 - Sex pen child 13-16 yrs:</u> Victim at appellant's home for purpose cleaning. On each occasion, appellant penetrated vagina with penis.</p> <p><u>Ct 4 - Indecent deal child 13-16 yrs:</u> Appellant rubbed victim's breast with hand..</p> <p><u>Ct 5 -Indecent record child 13-16 yrs:</u> Appellant used mobile phone to video the acts the subject of ct 4.</p> <p>Acts were consensual. Appellant believed victim to be 15 yrs. Alleged that the victim was infatuated with the appellant. Offending aggravated by repetitive nature.</p>	<p>TES 4 yrs imp.</p> <p>EFP.</p> <p>No remorse.</p>	<p>Allowed.</p> <p>TES reduced to 2 yrs 9 mths imp.</p> <p>EFP</p> <p>At [36] Despite consent, deterrent sentence called for.</p>
15.	<p><b><i>Riggall v The State of Western</i></b></p>	<p>22 yrs at time of offending.</p>	<p>Victim 14 yrs. Victim and appellant in a homosexual relationship.</p>	<p>TES community based order with a</p>	<p>Allowed.</p>

	<p><b>Australia</b></p> <p><b>[2008] WASCA 69</b></p> <p>Delivered 27/03/2008</p>	<p>Honest; hardworking; caring.</p>	<p>2 x Indecent dealing with a child between 13 and 16 s 321(4). 2 x Sex Pen of a child between 13 and 16 s 321(2).</p> <p>Acts included anal Sex Pen, fellatio, and acts of masturbation.</p> <p>Victim and appellant met at the appellant's work. The victim told the appellant (and the appellant's friends) that he was 19. Nothing to suggest that the victim was under the age of 19 yrs. Did not appear immature or naive. The friendship was instigated by the victim, as was the first sexual encounter. This was not the victim's first sexual experience. As soon as the appellant was informed (by the victim's mother) of the victim's true age, the appellant ceased all sexual contact with the victim. Incidents reported to the police by victim's parents. No evidence that the victim was harmed at all.</p> <p>Culpability in sentencing deemed to lay in appellant's failing to enquire as to victim's true age – rejected on appeal at [14]-[15].</p>	<p>programme requirement, and 100 hrs of unpaid community work. The appellant became a 'reportable offender'.</p> <p>Remorse; unlikely to reoffend; not attracted to children.</p>	<p>Spent conviction ordered.</p> <p>At [22] relevance of consent will vary in each case.</p> <p>At [49] '<i>...it is unlikely that consent will exist in any relevant sense where for example the child is very young, or plainly very immature, or where the offender is in a family relationship with the child, or occupies some other position of authority in relation to him or her</i>'.</p> <p>Discussion of legislative reform of child sexual offences and consent – at [33] legislation not aimed at sexually active children but at inadequate punishment of sexual abuse.</p>
<p>14.</p>	<p><b>Miles v The State of Western Australia</b></p> <p><b>[2007] WASCA 258</b></p>	<p>22 yr at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No prior criminal record.</p> <p>17 yr old girlfriend at time offending -</p>	<p>Victim 14 yrs.</p> <p>Cts 1 &amp; 2: Sex pen child 13-16 yrs.</p> <p>Offending occurred on same evening. Appellant and victim went out together. Alcohol consumed during evening. Returned</p>	<p>TES 21 mths imp.</p> <p>EFP.</p> <p>Some remorse.</p>	<p>Dismissed.</p>

	Delivered 22/11/2007	reflected a tendency towards young women.	to appellant's home. Appellant penetrated vagina with tongue (ct 1) and penis (ct 2). Victim young and under influence alcohol – appellant took advantage.  Admitted offending only when told DNA evidence would be used.	Ct 1: 16 mths imp. Ct 2: 21 mths imp.	
13.	<b><i>Deering v The State of Western Australia</i></b>  [2007] WASCA 212  Delivered 17/10/2007	23 yrs at time offending.  Convicted after a fast-track PG.  No relevant prior criminal record.  Previously overweight and diagnosed with diabetes - lost weight but continues to question attractiveness to women.  Emotionally immature; low self-confidence.	Victim 13 yrs. Victim and appellant in consensual physical and emotional relationship.  Ct 1: Sex pen child 13-16 yrs (digital pen penis). Ct 2-5: Sex pen child 13-16 yrs (penile pen penis).  Appellant worked with the victim's mother and moved in with the victim's mother, the victim and the victim's 2 siblings. Also living in the house was another female and her 2 children.  The appellant and the victim began a relationship approx 1-2 months after he moved in. The relationship lasted approx 1 yr. Appellant had genuine feelings for the victim and did not pressure her into consenting. The victim's mother discovered the relationship after approx 5 mths and asked the appellant to move out of the house. The appellant and victim continued the relationship. The victim's mother contacted police and insisted the victim tell the police about the relationship.  The victim did not appear to be harmed in any	TES 5 yrs imp.  EFP.  Ct 1: 18 mths imp. Cts 2-5: 3 yrs 6 mths imp each ct.	Allowed.  TES reduced to 2 yrs 6 mths imp EFP.  Weight given to appellant's voluntary disclosure to police.

			way, although the acts may have caused the victim to become sexually active at a younger age than otherwise have been the case.		
12.	<i>Emery v The State of Western Australia</i>  [2007] WASCA 135  Delivered 13/02/2007	52 yrs at time offending. 64 yrs at time sentencing.  Convicted after trial (along with a female co-offender).  Prior criminal record – stealing.  Generally good antecedents; positive references.	Victim 13 yrs – deemed more vulnerable than most children of her age.  1 x Sex pen child 13-16 yrs (co-offender penetrated victim’s vagina with tongue). 1 x Sex pen child 13-16 yrs (appellant penetrated victim’s vagina with penis) 1 x Indecent deal child 13-16 yrs (appellant touched victim’s breasts).  Female co-offender 35 yrs.  The victim was befriended by the female co-offender who gave her cigarettes and alcohol. The victim’s mother knew of the friendship but trusted the co-offender. The victim knew the appellant through the co-offender. On the night in question, victim was given something to drink. She recalled waking up on a bed. The appellant and the co-offender were in the room with her.  Offences regarded as very serious, involving an element of depravity against a very vulnerable child. The appellant took advantage of the trust the victim had in the female co-offender.	TES 6 yrs imp.  EFP.  Low risk of reoffending; no remorse.	Dismissed.  Argument as to parity rejected (co-offender sentenced to 3 yrs 4 mths imp).
11.	<i>The State of Western Australia v Rock</i> [2007] WASCA 121	31 yrs at time offending.  Convicted after a trial. No relevant prior criminal record.	Multiple victims - victim 1 14 yrs; victim 2 14 yrs; victim 3 15 yrs.  3 x Agg sex pen child 13-16 yrs. 10 x Sex pen child 13-16 yrs.	TES 6 yrs imp.  EFP.  Refusal to accept	Allowed.  TES increased to 8 yrs imp.  <u>Sentences on appeal:</u>

	<p>Delivered 29/05/2007</p>	<p>Stable family upbringing; good education.</p> <p>Depression; self-esteem issues and issues with inter-personal relationships.</p>	<p><u>Victim 1:</u> Met on internet – told appellant she was 14 yrs. Victims 1 &amp; 2 attended party at appellant’s house. After consuming alcohol, Victim 1 went to lie down. Respondent entered the bedroom and penetrated victim’s vagina with tongue (ct 1). Victim 1 asked respondent to stop, respondent refused and penetrated vagina again with tongue (ct 2). Victim 1 then left.</p> <p><u>Victim 2:</u> Respondent, knowing victim 2 was 14 yrs, began relationship with her. During the relationship the respondent and Victim 2 had sexual intercourse (ct 3). When Victim 2 attempted to end the relationship due to the disparity in their ages, the respondent forcefully penetrated engaged in sexual intercourse against victim’s wishes (ct 4). The respondent did not wear a condom.</p> <p><u>Victim3:</u> Met on internet – initially told appellant 16 yrs but on meeting in persona, admitted only 15 yrs. Respondent and Victim 3 then began a relationship. During course of relationship, respondent and victim engaged in sexual intercourse (cts 5, 6, 9, 12 &amp; 13) and oral sex (cts 7, 8, 10 &amp; 11)</p> <p>Respondent claimed he believed victim 3 was 16 yrs and that he had memory problems so he could only remember having sexual intercourse with victim 3 once. Respondent admitted knowing victims 1 and 2 but denied</p>	<p>responsibility; medium/low risk of reoffending.</p> <p>Ct 1: 16 mths imp.</p> <p>Ct 2: 16 mths imp.</p> <p>Ct 3: 2 yrs imp.</p> <p>Ct 4: 2 yrs 8 mths imp.</p> <p>Cts 5, 6, 9, 12 &amp;13: 2 yrs imp each ct. Cts 7, 8, 10 and 11: 16 mths imp each ct.</p>	<p>Cts 1 &amp; 2: 2 yrs imp each ct. Ct 3: 2 yrs 8 mths imp. Ct 4: 4 yrs imp. Cts 5, 6, 9, 12 &amp; 13: 2 yrs 8 mths imp each ct. Cts 7, 8, 10 &amp; 11: 16 mths imp each ct.</p> <p>NB: After the original sentencing of this matter, the respondent was also charged and convicted for possession of child pornography – 12 mths imp cum on 8 yrs.</p>
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			offending.		
<b>10.</b>	<b><i>Tyler v The State of Western Australia</i></b> <b>[2005] WASCA 237</b>  Delivered 07/12/2005	29-30 yrs at time offending.  Convicted after PG. Significant prior criminal record - including offences of dishonesty and violence; no history of sexual offences.  Disrupted childhood as a result of separated parents.  Previous alcohol and drug abuse issues.	Victim 14 yrs (appellant believed 16 yrs).  Very serious and diverse range of offences. Ct 1: Sexual relationship child u 16 yrs. Ct 2: Agg burglary. Ct 3: AOBH. Ct 4: Threat to kill. Ct 5: Agg burglary.  Friendship between appellant and victim developed into consensual sexual relationship. During the relationship the victim and appellant engaged in sexual conduct on no less than 14 occasions. The appellant would have sex with the victim in public places (such as parks, vacant blocks or ditches) and would often penetrate victim from behind. The appellant would 'summon' the victim to have sexual intercourse with him via text messages on his mobile phone. No threats or force used but disparity in ages aggravated offending. Relationship ended when the victim and appellant fought over money.  The charges of assault, threats and burglary all relate to a separate victim (appellant's ex de facto partner).	TES 6 ½ yrs imp.  EFP. Ct 1: 3 yrs imp. Ct 2: 18 mths imp. Ct 3: 2 yrs imp. Ct 4: 18 mths imp. Ct 5: 2 yrs imp.  Medium/high risk of reoffending.	Dismissed.
<b>9.</b>	<b><i>Germain v The State of Western Australia</i></b>  <b>[2004] WASCA 293</b>	27 yrs at time offending.  Convicted after early PG.  No prior criminal record.  Prior good character.	Victim 12 yrs (told appellant 14 yrs).  Victim and appellant met at a party. The victim was intoxicated (cannabis and alcohol) as was appellant (alcohol). Began play-fighting and two indecent acts committed. The victim and appellant then undressed and 3 acts of sex pen	TES 32 mths imp.  EFP.  No paedophilic orientation; medium - low risk of	Dismissed.

	Delivered 08/11/2004	Father had just passed away.	occurred (cunnilingus; fellatio; digital pen vagina). Appellant attempted to penile pen vagina but could not. Consensual - no suggestion coercion or force.	reoffending.	
8.	<b><i>The State of Western Australia v ABM</i></b>  [2004] WASCA 90  Delivered 11/05/2004	23-24 yrs at time offending.  Convicted after PG of sex pen (penile pen vagina). Convicted after trial of sex pen (cunnilingus and digital pen vagina).  Minor prior criminal record – fraud; traffic offences.  Unable to read.  3 children (5, 4 & 2 yrs old); gainfully employed; financially supports de facto partner and children.	Victim 14-15yrs – intellectually disabled. Victim was cousin of appellant’s de facto partner.  3 x Sex pen child 13-16 yrs.  Victim visited respondent’s home to see his children and her cousin. Offending occurred on 2 separate overnight stays.  <u>Incident 1:</u> Victim was asleep at the respondent’s house on the couch. The respondent told the victim to lay her head in his lap. The respondent then touched the victim’s breast, and digitally penetrated her vagina. <u>Incident 2:</u> Victim was asleep in the bedroom of one of the respondent’s children (child present but asleep). The respondent came into the room and got in bed with the victim. He penetrated victim’s vagina with his tongue, and then penetrated victim’s vagina with penis (it was only the last which the respondent PG).  Offending disclosed when victim confided in a teacher at school about unusual bleeding after the intercourse and teacher reported the matter to the police.  Victim consented on both occasions - complete	TES 18 mth imp susp and placed on 18 mth ISO.  Low/medium risk of reoffending; blamed the victim for his actions, claiming she instigated the acts and tempted him into sexual relations.	Dismissed.

			absence of premeditation, coercion or persuasion.		
<i>Transitional provisions enacted – 31/08/2003</i>					
7.	<b><i>Marris v The Queen</i></b>  [2003] WASCA 171  Delivered 14/04/2003	Aged approx 20 yrs at the time of offence.  Convicted after fast-track PG. Made full admissions to police.  No prior convictions.  Good character and personal references.	Victim 13 yrs (told appellant 13 yrs). Victim and appellant introduced by a friend. Offences occurred in course of one incident.  2 x Indecent deal child 13-16 yrs. 4 x Sex pen child 13-16 yrs.  The appellant and victim were joking and playing, and began to engage in sexual conversation. The appellant showed the victim his penis and the victim showed the appellant her public region and breasts. Appellant invited the victim to sit in his car with him – victim agreed. Appellant and victim then had sexual intercourse -no undue pressure, blackmail or force of any kind.	TES 3 yrs imp. Equivalent to approx 2 yrs imp after implementation of transitional provisions.  EFP  Low risk of reoffending; genuine remorse.	Appeal allowed.  TES reduced to 18 mths susp imp.  At [13] consent of the child and the degree of pressure or persuasion on the part of the adult relevant to sentencing.
6.	<b><i>R v Hunt</i></b>  [2002] WASCA 324  Delivered 01/11/2002	28 yrs at time offending.  Convicted after fast-track PG.	Victim 14 yrs (friendship with appellant began 13 yrs). Victim's family lived next door to the respondent's father.  6 x Sex pen child 13-16 yrs.  Over the course of approx 4 mth period the victim and the respondent had consensual sexual intercourse on at least 6 occasions.  Appellant knew victim's age and relationship ceased when the victim's father found out about it. The mother had known of the relationship and acquiesced. Victim impact	TES 3 yrs imp. Equivalent to approx 2 yrs imp after implementation of transitional provisions.  EFP.	Dismissed – lenient but within range.

			statement showed no adverse effect upon the victim.		
5.	<b>R v Avery</b>  [2002] WASCA 136  Delivered 09/04/2002	20 yrs at time offending.  Convicted after PG (not at earliest opportunity).  No prior criminal record.  Prior good character.  Socially immature; family and girlfriend supportive after conviction; employer gave respondent leave without pay during period imp.	Victim 13 yrs (initially said 14 yrs but on meeting said 13 yrs). Met on internet.  <u>Incident 1:</u> 4 x Indecent deal child 13-16 yrs. The respondent twice touched the victim's breasts, touched her vagina and procured the victim to touch his penis. <u>Incident 2:</u> 4 x Indecent deal child 13-16 yrs. The respondent touched the victim's breasts, and procured the victim to touch his penis. 1 x Indecent deal child 13-16 yrs. (digital pen vagina). <u>Incident 3:</u> 4 x Indecent deal child 13-16 yrs. The respondent touched the victim's breasts, and procured the victim to touch his penis. 5 x Indecent deal child 13-16 yrs (3 x digital pen vagina; cunnilingus; penile pen vagina)  No force or coercion but victim was a virgin. Victim terminated relationship – respondent recognised relationship inappropriate.	TES 2 yrs imp. Equivalent to approx 16 mths imp after implementation of transitional provisions.  EFP.  Remorse; willing to undergo therapy and sex offender treatment.	Allowed.  TES increased to 4 yrs imp.  EFP.  NB: double jeopardy applied to State appeals.  Corruption of victim key factor.
4.	<b>R v Millar</b>  [2001] WASCA 54  Delivered 07/03/2001	23 yrs at time offending.  Extensive prior criminal record – no sexual offending.  Difficult birth; did not walk until 4 yrs old; unfortunate childhood; separated parents; stepfather emotionally and physically abusive to the respondent	Victim 13 yrs. Offending occurred on one date. Victim met respondent while visiting mother.  <u>Cts 1 &amp; 2 - Sex pen child 13-16 yrs:</u> Respondent digitally penetrated victim's vagina and then engaged in sexual intercourse. <u>Ct 3 – Agg sex pen without consent:</u> After cts 1 & 2, victim attempted to leave. The respondent asked her to stay, but she refused.	TES 3 yrs imp. Equivalent to approx 2 yrs imp after implementation of transitional provisions.  EFP.  Suitable for sex	Allowed.  TES increased to 5yrs imp.

		<p>and his mother; stepfather introduced the respondent to crime and substance abuse; 2 children from previous relationship.</p> <p>Academic difficulty; immature for age.</p> <p>Previous admissions to Graylands Hospital.</p> <p>Substance abuse (cannabis and occasionally heroin).</p>	<p>The respondent took her by the waist and forced her to the ground and engaged in sexual intercourse until ejaculation.</p> <p>Offending disclosed when victim returned home and told friends.</p> <p>Victim impact statement showed offending had significant effect on the victim.</p>	<p>offenders treatment programme.</p>	
3.	<p><b>Indich v R</b></p> <p><b>[1999] WASCA 146</b></p> <p>Delivered 25/08/1999</p>	<p>Aged 34 at the time of the offences.</p> <p>Convicted after trial of Count 1; Convicted after PG to Count 2.</p> <p>No antecedents specifically stated.</p>	<p>Two different victims. The victim the subject of Count 2 was aged 14 yrs.</p> <p>Ct 1: Sex pen child 13 - 16 yrs: Ct 2: Sexual relationship child u 16 yrs.</p> <p>Appellant not in position of trust or care in relation to either victim.</p> <p>Victim 2 was mature beyond her age, and did not suffer any trauma as a result of the sexual relationship. No victim impact statement tendered.</p> <p>Offending on ct 2 was not high on the scale of seriousness. The sexual acts were not depraved and there was no lack of degree of care.</p>	<p>TES 4 yrs imp. Equivalent to approx 2 yrs 8 mths imp after implementation of transitional provisions.</p> <p>Ct 1: 12 mths imp. Ct 2: 3 yrs imp.</p>	Dismissed.
2.	<p><b>Kakai v The Queen</b></p> <p><b>CCA 156 of</b></p>	<p>18 yrs at time offending.</p> <p>Convicted after PG.</p>	<p>The victim aged 13 yrs at time of offence.</p> <p>1 x Sex pen child 13-16 yrs.</p>	<p>TES 2 yrs 6 mths imp. Equivalent to approx 20 mths imp after implementation of</p>	<p>Allowed.</p> <p>TES reduced to 18 mths imp.</p>

	<p><b>1998.</b></p> <p>Delivered 23/02/1999</p>	<p>Offending breached CRO.</p> <p>Prior juvenile convictions – including dep lib and sex pen</p> <p>From Uganda; parents and sister had been killed during the Idi Amin regime when he was 5 yrs old; came to Perth as a refugee at 15 yrs.</p> <p>Left school before the end of yr 10 to work to support extended family.</p>	<p>Appellant and victim met at party. Victim was a virgin. Appellant and victim engaged in consensual sexual intercourse and appellant used condom. Appellant initially said he was aware of victim's age but later claimed he believed she was 15 yrs.</p> <p>Initially placed on home detention but that was breached.</p> <p>Victim impact statement showed victim felt shame and remorse; victim's family suffered greatly as a result; victim's grades at school suffered; victim's self-esteem lowered.</p>	<p>transitional provisions.</p>	<p>Significant that appellant used a condom and stopped when the victim complained of pain.</p>
<p><b>1.</b></p>	<p><b><i>Dempsey v The Queen</i></b></p> <p><b>Supreme Court Library No. 960059</b></p> <p>Delivered 09/02/1996</p>	<p>22 yrs at time offending (indictment 1) and 23 yrs at time offending (indictment 2).</p> <p>Convicted after PG.</p> <p>Prior criminal record – no sexual offences.</p> <p>Unfortunate family background.</p>	<p>Two victims – male aged 13 yrs; female aged 14 yrs. Offending period each victim approx 1 mth. Overall offending period 2 yrs.</p> <p>1 x Att sex pen child 13-16 yrs 6 x Sex pen child 13-16 yrs.</p> <p>Sexual conduct in relation to both victims consensual and done in the context of a relationship.</p> <p><u>Indictment 1 (male victim):</u> Appellant befriended male victim while victim was homeless. Sexual relationship developed over time – not victim's first sexual experience. Offending occurred at different times. Ct 1: Att sex pen child 13-16 yrs (penile pen anus). Ct 2: Sex pen child 13-16 yrs (penile pen anus).</p>	<p>TES 4 yrs 3 mths imp. Equivalent to approx 3 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Cts 1-3: 15 mths imp each ct.</p>	<p>Allowed.</p> <p>TES reduced to 1 yr 9 mths EFP.</p> <p><u>Sentences on appeal:</u> <u>Indictment 1:</u> Ct 1: 6 mths imp. Cts 2 and 3: 9 mths imp each ct. <u>Indictment 2:</u> Cts1-4: 1 yrs imp each ct.</p>

			<p>Ct 3: Sex pen child 13-16 yrs (penile pen anus).</p> <p><u>Indictment 2 (female victim):</u>  Appellant befriended female victim and sexual relationship developed. Not first sexual experience for victim. Offending occurred at different times.</p> <p>Ct 1: Sex pen child 13-16 yrs (penile pen vagina in back of appellant's van).</p> <p>Ct 2: Sex pen child 13-16 yrs (penile pen vagina while victim intoxicated).</p> <p>Ct 3 &amp; 4: Sex pen child 13-16 yrs (penile pen vagina; penile pen anus).</p>		
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Cts 1-4: 3 yrs imp each ct.