

Sexual relationship with child

s 321A *Criminal Code* and sexual offending committed in the context of either a consensual or non consensual relationship

Prior to 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
att	attempted
EFP	eligible for parole
indec	indecent
pen	penetrate
TES	total effective sentence
CRO	conditional release order
CBO	community based order

‘Consensual’ relationship

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<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>Childhood marred by father’s alcoholism and domestic abuse between parents; mother moved away and left him with his father.</p> <p>Does not use drugs and rarely uses alcohol – did not let victim use drugs or alcohol.</p> <p>Isolated; immature; lonely.</p>	<p>Victim and respondent in consensual relationship. Offending period approx 3 mths. Victim aged 12-13 yrs during the time of offending.</p> <p>6 x Sex pen 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 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 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> <p>Relationship ended when victim’s mother (did not know of relationship) caught victim at the appellant’s house and dragged her home against her wishes. Mother took victim to police station to report offending and victim, in her interview, appears reluctant to speak about</p>	<p>TES 3 yrs imp susp 2 yrs.</p>	<p>Dismissed.</p> <p>At [26]-[29] Psych reports stated respondent had cognitive distortions and was therefore only able to recognise illegality of acts but not potential for harm to victim but on appeal it was noted that the authors of the reports had not seen the victim’s police interview (which would have shed a different light on the respondent’s assertions as to the nature of the relationship) – dangerous to rely on these reports.</p> <p>At [37] Disparity of 8 yrs in ages was a gap in chronological age rather than emotional age or maturity.</p> <p>At [54] Abuse is not proved solely by disparity in age although it is a relevant factor.</p>

			<p>the matter and stresses the fact they were in a relationship.</p> <p>No evidence of any harm, physical or psychological, being done to victim as result of offending.</p> <p>Victim had sexual relationship prior to the one she had with respondent.</p>		<p>At [50]-[65] Discussion as to the legislative purpose of ss 320 and 321 <i>Criminal Code</i>.</p> <p>At [153]-[159] Good summary and discussion of comparative cases.</p>
13.	<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 aged 16 yrs 9 mths. Victim 2 aged 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>Victim 1:</u> Cts 1- 4: Sex pen of a child u18 under care, supervision or authority (penile pen vagina) Cts 5 & 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>Victim 2:</u> Ct 8: Persistent sexual conduct child u 16 yrs s 321A <i>Criminal Code</i>.</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& 6: 18 mths imp each ct. Ct 7: 12 mths imp. Ct 8: 5 yrs imp.</p>	<p>Allowed - on totality.</p> <p>TES reduced to 5 yrs imp.</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>12.</p>	<p><i>CJ v The State of Western Australia</i></p> <p>[2009] WASCA 42</p> <p>Delivered 19/12/2008</p>	<p>35 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Single parent of an 18 yr old son; primary school teacher.</p> <p>Strained relationship with her mother, but the father very supportive.</p> <p>Sexually abused as a child.</p> <p>Emotionally vulnerable; depressed (no causal link to offending); isolated.</p>	<p>Victim aged 14-15 yrs. Victim and appellant knew each other through school and church. Victim close friends with the appellant's son.</p> <p>4 x Sex pen child 13- 16 yrs s 321(2) <i>Criminal Code</i>.</p> <p><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.</p> <p><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.</p> <p><u>Ct 3:</u> Occurred 1 wk after the victim's 15th birthday. 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</p>	<p>TES 27 mths imp. EFP.</p> <p>A restraining order was also ordered.</p> <p>Remorse, shame and humiliation, and loss of position as teacher.</p>	<p>Allowed.</p> <p>TES reduced to 18 mths susp 12 mths.</p> <p>At [78] Victim's consent irrelevant but fact victim initiated sexual acts is relevant factor.</p> <p>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>
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			intercourse.		
<i>Transitional provisions repealed – 14/01/2009</i>					
11.	<i>JAF v The State of Western Australia</i> [2008] WASCA 231 Delivered 12/11/2008	34 yrs at time offending. Convicted after fast-track PG. Married; 2 small children; wife pregnant with 3 rd child. Depressed and vulnerable; mistakenly diagnosed with testicular cancer and had one testicle removed. Offending out of character.	Victim 14-15 yrs. Offending period 4 mths. 12 x Indecent deal child 13-16 yrs. 21 x Sex pen child 13-16 yrs. 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. 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. Offending aggravated by breach of trust and repetition of acts.	TES 5 yrs 8 mths imp. Remorse.	Allowed. TES reduced to 4 yrs imp. 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. 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 difficult to complain of the conduct.
10.	<i>Van Doorn v The State of Western Australia</i>	29 yrs at time of offending. Convicted after fast-track PG.	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.	TES 4 yrs imp. EFP.	Allowed. TES reduced to 2 yrs 6

	<p>[2008] WASCA 177</p> <p>Delivered 25/08/2008</p>	<p>Prior good character; full time employment.</p> <p>ADHD; immature and lacking in judgment.</p> <p>Alcohol and cannabis abuse.</p>	<p>Victim and appellant in consensual relationship.</p> <p><u>Cts 1 & 2 - Indecent deal child 13-16 yrs:</u> Appellant kissed the victim on the mouth, and touched her buttock with his hand.</p> <p><u>Ct 3 - Att sex pen child 13-16 yrs:</u> Appellant attempted to penetrate victim's vagina with his penis.</p> <p><u>Cts 4 & 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).</p> <p><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.</p> <p><u>Ct 7: Indecent deal child 13-16 yrs:</u> Appellant kissed the victim on the lips.</p> <p>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.</p>	<p>Cts 1 and 2: 3 mths imp each ct.</p> <p>Ct 3: 3 yrs imp.</p> <p>Cts 4 & 5: 3 yrs 6 mths imp each ct.</p> <p>Ct 6: 6 mths imp.</p> <p>Ct 7: 3 mths imp.</p> <p>Remorse; no apparent on-going interest in prepubescent girls; low risk reoffending.</p>	<p>mths imp. EFP.</p> <p><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)</p> <p>At [24] The offences in cts 4 and 5 were essentially one episode and the bringing of 2 charges somewhat artificial.</p>
9.	<p><i>The State of Western Australia v Lee</i></p> <p>[2008] WASCA 150</p>	<p>25 yrs at time of offending.</p> <p>Convicted after fast-track PG.</p> <p>No relevant prior criminal record.</p> <p>Good employment history.</p>	<p>2 victims.</p> <p>Cts 1 & 2: Sexual relationship child u 16 yrs s 321A <i>Criminal Code</i>.</p> <p><u>Ct 1:</u> Victim 1, 15 yrs. Boyfriend-girlfriend</p>	<p>TES 3 yrs imp.</p> <p>18 mths imp each ct.</p>	<p>Dismissed.</p>

	Delivered 21/07/2008	Substance abuse problem until the age of 22 yrs.	relationship. Included 7 instances penile penetration of vagina and 4 instances digital penetration of vagina. <u>Ct 2:</u> Victim 2, friend of victim 1. Offending began one day prior to victim 2's 15 th birthday. Victim was a virgin. Involved 4 instances penile penetration of vagina. No evidence of exploitation or peculiar vulnerability on the part of the victims. No evidence the respondent was a sexual predator.		
<p style="text-align: center;">s 321A Criminal Code changed from 'Sexual relationship with child u 16' to 'Persistent sexual conduct with child u 16' (27/04/2008)</p> <ul style="list-style-type: none"> • Removal of the prohibition that no other offences of sexual nature can be charged during the period the sexual relationship is alleged on the same indictment. • Court cannot order prosecutor to give person charged particulars of the sexual acts alleged to constitute the offence – previously provided only that an indictment need not contain particulars. • Removal of the ability to use an acquittal or conviction of sexual relationship with a child as a defence to an alleged sexual offence against the same child occurring during the period of the alleged relationship. 					
8.	<i>Riggall v The State of Western Australia</i> [2008] WASCA 69 Delivered 27/03/2008	22 yrs at time of offending. Honest; hardworking; caring.	Victim and appellant in a consensual homosexual relationship. Victim aged 14 yrs. 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). Acts included anal sex pen, fellatio, and acts of masturbation.	CBO and 100 hrs of unpaid community work. Remorse; unlikely to reoffend; not attracted to children.	Allowed. Spent conviction ordered. At [22] Relevance of consent will vary in each case. At [49] ' <i>...it is unlikely that consent will exist in any</i>

			<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.</p> <p>The friendship was instigated by the victim, as was the first sexual encounter. This was not the victim's first sexual experience.</p> <p>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.</p> <p>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><i>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>At [33] Discussion of legislative reform of child sexual offences and consent –legislation not aimed at sexually active children but at inadequate punishment of sexual abuse.</p>
7.	<p><i>Deering v The State of Western Australia</i></p> <p>[2007] WASCA 212</p> <p>Delivered 17/10/2007</p>	<p>23 yrs at time offending.</p> <p>Convicted after a fast-track PG.</p> <p>No relevant prior criminal record.</p> <p>Previously overweight and diagnosed with diabetes - lost weight but continues to question attractiveness to women.</p> <p>Emotionally immature; low self-confidence.</p>	<p>Victim and appellant in consensual physical and emotional relationship. Victim aged 13 yrs.</p> <p>Ct 1: Sex pen child 13-16 yrs (digital pen penis).</p> <p>Ct 2-5: Sex pen child 13-16 yrs (penile pen penis).</p> <p>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.</p>	<p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Ct 1: 18 mths imp.</p> <p>Cts 2-5: 3 yrs 6 mths imp each ct.</p>	<p>Allowed.</p> <p>TES reduced to 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Weight given to appellant's voluntary disclosure to police.</p>

			<p>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.</p> <p>The victim did not appear to be harmed in any way, although the acts may have caused the victim to become sexually active at a younger age than otherwise have been the case.</p>		
6.	<p><i>The State of Western Australia v Rock</i></p> <p>[2007] WASCA 121</p> <p>Delivered 29/05/2007</p>	<p>31 yrs at time offending.</p> <p>Convicted after a trial.</p> <p>No relevant prior criminal record.</p> <p>Stable family upbringing; good education.</p> <p>Depression; self-esteem issues and issues with inter-personal relationships.</p>	<p>Multiple victims - victim 1 14 yrs; victim 2 14 yrs; victim 3 15 yrs.</p> <p>3 x Agg sex pen child 13-16 yrs.</p> <p>10 x Sex pen child 13-16 yrs.</p> <p><u>Victim 1:</u> Met on internet – told appellant she was 14 yrs. Victims 1 & 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></p>	<p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Refusal to accept responsibility; medium/low risk of reoffending.</p> <p>Ct 1: 16 mths imp.</p> <p>Ct 2: 16 mths imp.</p>	<p>Allowed.</p> <p>TES increased to 8 yrs imp.</p> <p><u>Sentences on appeal:</u> Cts 1 & 2: 2 yrs imp each ct. Ct 3: 2 yrs 8 mths imp. Ct 4: 4 yrs imp. Cts 5, 6, 9, 12 & 13: 2 yrs 8 mths imp each ct. Cts 7, 8, 10 & 11: 16 mths imp each ct.</p> <p>NB: After the original sentencing of this matter, the respondent was also</p>

			<p>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 engaged in sexual intercourse against victim's wishes (ct 4). The respondent did not wear a condom.</p> <p><u>Victim 3:</u> Met on internet – initially told appellant 16 yrs but on meeting in person, admitted only 15 yrs. Respondent and Victim 3 then began a relationship.</p> <p>During course of relationship, respondent and victim engaged in sexual intercourse (cts 5, 6, 9, 12 & 13) and oral sex (cts 7, 8, 10 & 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 offending.</p>	<p>Ct 3: 2 yrs imp.</p> <p>Ct 4: 2 yrs 8 mths imp.</p> <p>Cts 5, 6, 9, 12 & 13: 2 yrs imp each ct. Cts 7, 8, 10 and 11: 16 mths imp each ct.</p>	<p>charged and convicted for possession of child pornography – 12 mths imp cum on 8 yrs.</p>
5.	<p><i>Tyler v The State of Western Australia</i></p> <p>[2005] WASCA 237</p> <p>Delivered 07/12/2005</p>	<p>29-30 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Significant prior criminal record - including offences of dishonesty and violence; no history of sexual offences.</p> <p>Disrupted childhood as a result of separated parents.</p>	<p>Victim aged 14 yrs (appellant believed 16 yrs).</p> <p>Very serious and diverse range of offences.</p> <p>Ct 1: Sexual relationship child u 16 yrs. Ct 2: Agg burglary. Ct 3: AOBH. Ct 4: Threat to kill. Ct 5: Agg burglary.</p>	<p>TES 6 ½ yrs imp.</p> <p>EFP.</p> <p>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.</p>	<p>Dismissed.</p>

		Previous alcohol and drug abuse issues.	<p>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.</p> <p>The charges of assault, threats and burglary all relate to a separate victim (appellant's ex de facto partner).</p>	Medium/high risk of reoffending.	
<i>Transitional provisions enacted – 31/08/2003</i>					
4.	<i>R v Hunt</i> [2002] WASCA 324 Delivered 01/11/2002	28 yrs at time offending. Convicted after fast-track PG.	<p>Victim's family lived next door to the respondent's father. Victim aged 14 yrs (friendship with appellant began 13 yrs).</p> <p>6 x Sex pen child 13-16 yrs.</p> <p>Over the course of approx 4 mth period the victim and the respondent had consensual sexual intercourse on at least 6 occasions.</p> <p>Appellant knew victim's age and relationship ceased when the victim's father found out about it. The mother had known of the</p>	TES 3 yrs imp. EFP.	Dismissed – lenient but within range. NB: Double jeopardy applied to State appeals.

			relationship and acquiesced. Victim impact statement showed no adverse effect upon the victim.		
s 321A Criminal Code Sexual relationship with a child amended (21/09/2002)					
<ul style="list-style-type: none"> Defence of alleged offender being not more than 3 years older than the child added. 					
3.	<i>R v Western</i> [2001] WASCA 194 Delivered 27/06/2001	66 yrs at time of offending. 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. Poor intellect mitigating factor.	Offending period approx 1 ½ years. Victim aged 11-12 yrs. 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. 1x Sexual relationship child u 16 yrs s 321A <i>Criminal Code</i> . Victim engaged in sexual acts willingly. 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. Appellant admitted he thought the victim was about 13 yrs. Large disparity between ages of respondent and victim aggravated offending.	TES 2 yrs imp.	Allowed. TES increased to 4 ½ yrs imp. EFP. At [21] Original sentence failed to adequately reflect the culpability which the respondent had in this case even though intellectual deficit mitigatory. At [46] Inadequate recognition given to the requirement for an appropriate deterrent sentence. NB: Double jeopardy applied to State appeals.
2.	<i>Indich v R</i>	34 yrs at time offending.	Two different victims. The victim the subject of Count 2 was aged 14 yrs.	TES 4 yrs imp.	Dismissed.

	<p>[1999] WASCA 146</p> <p>Delivered 25/08/1999</p>	<p>Convicted after trial on ct 1. Convicted after PG on ct 2.</p>	<p>Ct 1: Sex pen child 13 - 16 yrs: Ct 2: Sexual relationship child u 16 yrs s 321A <i>Criminal Code.</i></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>Ct 1: 12 mths imp. Ct 2: 3 yrs imp.</p>	
1.	<p><i>Dempsey v The Queen</i></p> <p>Supreme Court Library No. 960059</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).</p>	<p>TES 4 yrs 3 mths imp. 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 2: Sex pen child 13-16 yrs (penile pen anus).</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 & 4: Sex pen child 13-16 yrs (penile pen vagina; penile pen anus).</p>	<p>Cts 1-4: 3 yrs imp each ct.</p>	
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'Non consensual' relationship

4.	<p><i>KMB v The State of Western Australia</i> [2010] WASCA 212</p> <p>Delivered 29/10/2010</p>	<p>32 - 42 yrs at time offending. 44 yrs at sentencing.</p> <p>Convicted after trial.</p> <p>Hard working; thyroid cancer now in remission</p>	<p>Victim step-daughter of appellant. Offending period 10 yrs. Victim aged between 8-18 yrs.</p> <p>Appellant married victim's mother and his name was placed on birth certificate. Victim believed him to be biological father until mother told her truth at 18 yrs. After approx 4 yrs marriage, appellant and victim's mother separated – victim remained living with appellant. Victim testified appellant raped her 'continuously', on daily basis. Victim gave evidence appellant got her pregnant at 12 yrs and that she had had an abortion and been placed on birth control as a result (medical records supported but stated father was an</p>	<p>TES 14 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Dismissed – severe but within range.</p>
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		<p>unnamed 12 yr old boy). Offending within upper end range seriousness held on appeal that appellant ‘predator of worst kind’ at [124]</p> <p>Three discrete incidents offending on indictment.</p> <p><u>Incident 1:</u> Ct 1: Have sexual relationship with child u16 s321A <i>Criminal Code</i>. 3 incidents relied on – victim aged 8yrs appellant sex pen vagina with penis; few days later, appellant sex pen vagina with penis and ejaculated; victim approx 10yrs, appellant sex pen vagina with penis and ejaculated.</p> <p><u>Incident 2:</u> Ct 2: Sex pen de facto child (pen vagina with tongue). Ct 3: Sex pen de facto child (digital pen vagina). Ct 4: Sex pen de facto child (pen vagina with penis). Victim aged 17 yrs at time offending.</p> <p><u>Incident 3:</u> Ct 5: Sex pen de facto child (pen vagina with tongue). Ct 6: Sex pen de facto child (digital pen vagina) Ct 7: Sex pen de facto child (pen vagina with penis). Victim aged 18 yrs at time offending and had recently moved out of appellant’s home.</p>	<p>Ct 1: 10 yrs 6 mths imp.</p> <p>Ct 2: 18 mths imp.</p> <p>Ct 3: 18 mths imp.</p> <p>Ct 4: 4 yrs imp.</p> <p>Ct 5: 18 mths imp.</p> <p>Ct 6: 18 mths imp.</p> <p>Ct 7: 4yrs imp.</p>	
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Transitional provisions repealed – 14/01/2009

s 321A Criminal Code changed from ‘Sexual relationship with child u 16’ to ‘Persistent sexual conduct with child u 16’ (27/04/2008)

- Removal of the prohibition that no other offences of sexual nature can be charged during the period the sexual relationship is alleged on the same indictment.
- Court cannot order prosecutor to give person charged particulars of the sexual acts alleged to constitute the offence – previously provided only that an indictment need not contain particulars.
- Removal of the ability to use an acquittal or conviction of sexual relationship with a child as a defence to an alleged sexual offence against the same child occurring during the period of the alleged relationship.

Transitional provisions enacted – 31/08/2003

<p>3.</p>	<p><i>Rogers v The Queen</i> [2004] WASCA 147 Delivered 2/07/2004</p>	<p>37 yrs at time offending. Convicted after negotiated PG (3 cts on indictment dropped in exchange PG on cts 4 & 5). No relevant prior criminal record.</p>	<p>Victim appellant’s step-daughter. Offending period approx 13 mths. Victim aged 8 yrs. Counts representative of sexual relationship lasting approx 12 mths. Ct 4: Sex pen de facto child u 16 yrs (penile pen vagina). Ct 5: Sex pen de facto child u 16 yrs (penile pen vagina). Victim’s mother in hospital at time offending – she was regularly hospitalised during that period due to illness and appellant had sole care of victim and her siblings. <u>Ct 4:</u> Appellant home with victim and one of the</p>	<p>TES 8 yrs imp. Ct 4: 8 yrs imp. Ct 5: 8 yrs imp. Attempted to avoid blame.</p>	<p>Dismissed. At [90] repeated sexual offending over period of time places offender’s culpability at the higher level on the scale. At [94]-[95] greater awareness in last decade of immense damage done to children as a result sexual abuse/assault as seen a firming up of sentences for that type offending. At [98] generally, owing to</p>
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			<p>victim's brothers. Appellant locked victim's brother out of the house and called victim into his bedroom. Victim lay down on bed next to appellant and appellant removed her underwear and rolled her onto her side. Appellant inserted his penis into her vagina.</p> <p><u>Ct 5:</u> Victim's siblings at school and victim kept home by appellant. Appellant again called victim into his bedroom. Victim lay down on bed next to appellant and appellant removed her underwear and rolled her onto her side. Appellant inserted his penis into her vagina. Told victim on both occasions that it was their "little secret" and not to tell anyone.</p>		<p>age disparity between offender and victim it is of no import that there is an absence of threats or physical violence.</p>
<p>s 321A Criminal Code Sexual relationship with a child amended (21/09/2002)</p>					
<ul style="list-style-type: none"> Defence of alleged offender being not more than 3 years older than the child added. 					
2.	<p><i>B v The Queen</i></p> <p>[2002] WASCA 236</p> <p>Delivered 28/08/2002</p>	<p>Convicted after PG.</p> <p>No relevant prior criminal record.</p> <p>Victim of sexual abuse.</p>	<p>Appellant father of 4 victims (twin girls, one boy and a younger girl). Victims aged 3-6 yrs.</p> <p>4 x Sexual relationship child u 16 yrs s 321A <i>Criminal Code</i>.</p> <p>Offending one of the worst cases ever seen by courts and child abuse specialist (including staff at PMH). At [31] '<i>I know of no case involving such concentrated and depraved abuse by a father of his infant children</i>'.</p> <p>Included repeated incidents of digital and penile sex pen of vagina and anus, victims</p>	<p>TES 20 yrs imp. Equivalent to approx 13 yrs 4 mths imp after implementation of transitional provisions.</p>	Dismissed.

			<p>being forced to perform fellatio on appellant (including swallowing ejaculate).</p> <p>Victim's mother left home with children but appellant obtained family court order returning the children to his custody. During period of offending, the appellant was at home looking after the victim and receiving social security payments for doing so.</p>		
1.	<p>R v M</p> <p>[1999] WASCA 53</p> <p>Delivered 15/06/1999</p>	<p>40 yrs at time appeal.</p> <p>No relevant prior criminal record.</p> <p>Wife intellectually handicapped (mother of victim and sibling; married 18 yrs); children removed from appellant and wife's care in 1995 – concerns as to neglect, unclean environment; inadequately food, clothing and supervision.</p>	<p>Victim appellant's son. Victim aged 2-8 yrs.</p> <p>1 x Sexual relationship lineal child u 16 yrs s 321A <i>Criminal Code</i>.</p> <p>Appellant would squeeze and pull victim's penis and make victim perform fellatio on him. Appellant also physically abused victim. Offending disclosed after victim placed in foster care.</p>	<p>TES 3 yrs imp.</p> <p>Equivalent to 2 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>No insight; externalised blame; high risk re-offending without treatment.</p>	<p>State appeal allowed.</p> <p>TES increased to 4 ½ yrs imp.</p> <p>NB: Double jeopardy applied to State appeals – without that consideration appropriate TES 6 yrs imp.</p>