

Aggravated dangerous driving occasioning death & vehicular manslaughter

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
occ	occasioning
BAC	blood alcohol content
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
att	attempted
EFP	eligible for parole
DDOGBH	dangerous driving occasioning grievous bodily harm
DDOD	dangerous driving occasioning death
DDOBH	dangerous driving occasioning bodily harm
agg	aggravated
circ	circumstances
TES	total effective sentence
SCP	summary conviction penalty

No.	Case	Antecedents	Summary/ facts	Sentence	Appeal
20.	<p><i>Green v Haase</i></p> <p>[2012] WASC 213</p> <p>Delivered 21/06/2012</p>	<p>21 yrs at time offending. 22 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record – 4 x unlicensed driving or contravening learner’s permit; driving in excess of 0.02; disqualified from driving on 4 separate occasions.</p> <p>Appalling childhood – exposure to drug use, domestic violence and general dysfunction.</p> <p>Long term cannabis dependence.</p> <p>Suffered PTSD as a result of the accident and has been socially ostracised by his friends – depression and low self esteem.</p>	<p>1 x Agg DDOD RTA s 59(1)(a) . 1 x Agg DDOBH RTA s 59(1)(a) .</p> <p>Offence date 8/09/11 – max penalty 20 yrs.</p> <p>Appellant had never held driver’s license and, at the time of offending, had only a learner’s permit and was disqualified from driving due to unpaid fines.</p> <p>Appellant consumed a large quantity of cannabis the night prior to the offending and, at the time of the incident, was under the influence of drugs such that he was incapable of controlling a car.</p> <p>Appellant failed to stop, or even slow down, at a stop sign and drove straight through the intersection, colliding with another car. There were no issues with visibility or weather and no reasonable explanation for this failure. The appellant’s passenger – a 16 yr old friend who he was giving a lift to work, died two weeks after the accident as a result of injuries received. The passenger in the other car received a fractured toe and a dislocated toe.</p>	<p>2 yrs 6 mths imp. 4 mths imp.</p> <p>TES 2 yrs 10 mths imp.</p> <p>EFP.</p> <p>Remorse.</p>	<p>Dismissed – leave refused at the appeal hearing.</p> <p>At [27]-[28] Most serious aggravating factors of the offending were that the appellant was under the influence of cannabis and disqualified from driving.</p> <p>At [36] Appellant’s persistent disregard for the law and failure to have learnt from previous driving convictions made immediate imprisonment the only appropriate option having regard to the need for personal deterrence.</p>

			Appellant stayed at the scene and rendered what assistance he could.		
19.	<i>Brown v State of Western Australia</i> [2011] WASCA 111 Delivered 9/05/2011	36 yrs at time sentencing. Convicted after trial. Minor prior criminal record – several poss prohibited drug wiss (including 2 counts after crash and before trial); several poss prohibited drug; driving under influence alcohol. No conviction in superior court and no previous terms imprisonment. Long & entrenched history illicit drug use - chronic methyl user. After incident began using heroin and continued to do so until incarcerated. Unable make connection between drug use and incident. 5 children (aged 9 – 16 yrs at time sentencing); sister murdered in 2000 and appellant never dealt with loss.	1 x Manslaughter s 280 <i>Criminal Code</i> . Offence date 1/12/06 – max penalty 20 yrs. Offending fell into high range criminality. Appellant driving 4WD heavily under influence of methyl (blood concentration 0.66 milligrams per litre). Victim riding motorbike on road in front of appellant, travelling in same direction. Road dual carriage way, well lit and straight. At time accident weather was fine. Appellant has driven into back motorbike, causing the bike and the victim to be pulled under the 4WD and dragged along the road. Victim ejected from beneath 4WD approx 150m from point of impact and bike dragged a further 100m until 4WD stopped. After collision 4WD travelled 250m and stopped on a footpath after passing through an intersection and crossing to the wrong side of the road.	8 yrs 6 mths imp. TES 8 yrs 6mths imp. No genuine remorse or victim empathy – denies responsibility for death of victim.	Dismissed – high but within limits sound sentencing discretion. At [109] Sentencer not bound by past cases. Range of sentences do not fix boundaries between which indiv sentence should or must fall. Past sentences provide guidance and stand as yardstick when examining an indiv sentence as per <i>Hili v The Queen</i> [2010] HCA 45; (2010) 272 ALR 465 [54]. Application for Special Leave to Appeal to the High Court of Australia refused.
18.	<i>Devine v State of Western Australia</i> [2010] WASCA	21 yrs at time of offending. Convicted after trial. No relevant prior criminal record.	1 x Agg DDOD <i>RTA</i> s 59(1)(b) . 1 x Agg DDOGBH <i>RTA</i> s 59(1)(b). Offence date 13/05/08 – max penalty 20 yrs and 14 yrs respectively.	5 yrs 6 mths imp. 1 yr 6 mths imp. TES 7 yrs imp.	Allowed – individual sentences not disturbed; ordered that 6 mths of count 2 be served before count 1 begins, then sentences run concurrently.

	<p>94</p> <p>Delivered 18/05/2010</p>	<p>Good support from close family throughout life; continuous work history following completion of brick laying apprenticeship.</p> <p>Appellant broke collarbone trying to free passengers from car following crash.</p>	<p>Categorised as towards higher end of scale of seriousness – “premeditated, clear-headed deliberate decision to drive at ridiculous speeds on a dark country road where the speed limit was 110km per hr. He had three passengers in his car and did not respond to his girlfriend’s demands to slow down. The appellant understood that death was a likely consequence of his predilection for driving at dangerous speeds.”</p> <p>Travelling at night on dark country road with 3 passengers. Appellant stated wanted to see how fast car would go and sped off. Reached 210-220km per hr when passenger asked him to slow down. Appellant did not slow down and shortly after lost control of the car, crashing into power pole killing one passenger and seriously injuring another.</p> <p>Trial judge found travelling in excess of 171km per hr at time of crash ie upwards of 61km per hr over the speed limit.</p>	<p>Evidence of remorse (PSR; apology to families); suffered nightmares, anxiety attacks, depression & attempted suicide.</p> <p>Testimony given that on previous occasions reached speeds in excess of 190km/hr with three passengers.</p> <p>Testimony given that appellant had stated he would die in a car accident “going flat out”.</p>	<p>TES reduced to 6 yrs imp – reflects criminality.</p> <p>NB: McLure P notes that cases with DD offences without agg circ not comparable to those with agg factors because of differences in statutory penalty; sentences prior to amendments to RTA in 2004 & 2007 relating to DD of little assistance because of differences in statutory penalty; dangerous driving charged under <i>Criminal Code</i> s 280 some use for comparison because statutory penalty is the same.</p>
17.	<p><i>Barron v State of Western Australia</i></p> <p>[2010] WASCA</p>	<p>47 yrs at time of offending.</p> <p>Convicted after trial before Magistrate – matter committed to District Court for sentencing due to inadequacy of</p>	<p>1 x DDOD RTA s 59(1)(a).</p> <p>Offence date 21/12/07 – max penalty 20 yrs.</p>	<p>7 yrs 6 mths imp. Lifetime driver’s license disqualification. (highest sentence for</p>	<p>Dismissed – not manifestly excessive for circumstances.</p>

	<p>27</p> <p>Delivered 18/02/2010</p>	<p>statutory penalty.</p> <p>Prior criminal record - 2 prior convictions for dangerous driving occ death (1983 killed brother and received 12mth term; 1996 killed close friend and received 18mth term); 5 prior convictions driving without a license; 3 convictions driving BAC excess 0.08%.</p> <p>Strained relationship with father caused appellant to leave home at 15 yrs – commenced using alcohol heavily.</p> <p>Good work history, stable marriage since 18 yrs old and 2 children.</p>	<p>Appellant attended work function on evening in question and did not, on arrival, intend to drive home. However, he had an altercation at the function and decided to drive home. Appellant hit and killed a pedestrian walking on a gravel verge on an unlit road. Road prior to crash site straight and visibility was good. Passing motorist alerted police to crash and victim died at scene.</p> <p>Appellant claimed to remember nothing between leaving the function and stopping after the crash.</p> <p>BAC at time of crash calculated to be 0.187%.</p> <p>Dealt with in the Magistrates Court for driving under the influence of alcohol. Was fined \$1,000 and disqualified from holding or obtaining a driver's licence for 9 mths.</p>	<p>single count of DDOD circ of agg handed out in WA).</p> <p>TES 7 yrs 6mths imp.</p> <p>High risk future re-offending in same manner – history and failure to recognise alcohol problem and significance of offending behaviour.</p> <p>High need for personal deterrence.</p>	
16.	<p><i>State of Western Australia v Butler</i></p> <p>[2009] WASCA 110</p> <p>Delivered</p>	<p>24 yrs at time offending.</p> <p>Convicted after PG at first opportunity.</p> <p>One prior conviction for driving BAC excess 0.02% while on probationary license – otherwise of prior good character.</p> <p>At time offence, doing fly in /fly out</p>	<p>1 x Agg DDOD RTA s 59(1)(a) .</p> <p>1 x Agg DDOBH RTA s 59(1)(a).</p> <p>Offence date 18/04/08 - max penalty 20 yrs and 14 yrs respectively.</p> <p>Been on a two day binge immediately before offence - drinking in excess of 10 hrs day before offence and had slept</p>	<p>2 yrs 10 mths imp.</p> <p>10 mths imp.</p> <p>TES 3 yrs 8 mths imp.</p> <p>EFP after 22 mths.</p> <p>Evidence of grief</p>	<p>Dismissed.</p> <p>NB: Original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.</p>

	25/06/2009	work in Kalgoorlie and his social life revolved heavily around alcohol and binge drinking in time off – heavy alcohol use attributed to breakdown in long term de-facto relationship and appellant’s depression as a result.	<p>approx 6 hrs and woke up feeling “seedy and hung-over”.</p> <p>Respondent speeding in residential street when attempted to overtake two cars in front of him (one of whom was turning). Respondent accelerated heavily, collided with turning car and, as a result, his car has mounted the curb and become airborne before colliding with a baby in its pram and the baby’s mother. Both were in their front yard at the time of the collision. The baby has died at the scene and the mother sustained injuries.</p> <p>BAC at time of crash calculated to be in excess 0.166% - respondent could not say what time last drink was. Offence occurred at almost 1pm in the afternoon – approx 10 or 11 hrs after stopped drinking – held that could not be found he was aware of his level of intoxication.</p>	and remorse; accepted imprisonment inevitable; taken independent steps to address alcohol issues.	
<i>Transitional Provisions Repealed (14/01/2009)</i>					
15.	<i>State of Western Australia v Gibbs</i> [2009] WASCA 7 Delivered	28 yrs old at sentencing. Convicted after early PG. No relevant prior criminal record but had lost license twice as a result of demerit suspensions.	2 x Agg DDOD RTA s 59(1)(b). Offence date 10/05/07 – max penalty 20 yrs. Respondent driving at excessive speeds	3 yrs imp each ct. TES 4 yrs 6 mths. At time sentencing appellant serving 12 mth sentence on	Allowed in part. Sentences undisturbed but period of license disqualification increased from

	12/01/2009	Prior good character – at time sentencing involved in new relationship and partner was pregnant.	(accepted to be between 153km per hr and 161km per hr) on Tonkin Highway immediately prior to crash on a weekday afternoon. Victims travelling on single motorcycle in front of respondent (driver and pillion passenger). Motorcycle indicated prior to changing into respondent's lane but respondent was travelling too fast and ploughed into the back of the bike. Sentencing judge found victim could not have been expected to appreciate how excessively fast respondent travelling (speed limit 100km per hr) and that respondent must have been aware of danger his excessive speed posed.	drug offences that occurred after the accident. Extremely remorseful – stayed at scene and rendered assistance. Marriage breakdown and business failure as result of post traumatic stress disorder and drug addiction caused by crash.	2 yrs to 5 yrs.
14.	<i>State of Western Australia v Garlett</i> [2007] WASCA 274 Delivered 13/12/2007	46 yrs at time offence. Convicted after PG. No relevant prior criminal record.	1 x Manslaughter <i>Criminal Code</i> s280. 1 x GBH. Offence date 6/11/05 – max penalty 20 yrs and 10 yrs respectively. Sentencing judge placed offences at high end of scale of seriousness. Respondent deliberately drove on wrong side of road and mounted a curb, approx 50-60km per hour, to knock over the complainant, breaking his leg. Respondent then did a u-turn and deliberately struck deceased from behind. At the time of the offences, the complainant, deceased and	6 yrs imp. 2 yrs 8 mths imp. Disqualified driving for life. TES 6 yrs. Genuine remorse and accepted responsibility for actions.	Dismissed. NB: Double jeopardy considerations regarding State appeals applicable at time of hearing.

			another youth were armed (complainant with samurai sword and deceased with baseball bat) and threatening a group of children – part of an ongoing feud between two families. Offences committed with motivation of protecting group of children.		
13.	<p><i>Farmer v State of Western Australia</i></p> <p>[2007] WASCA 219</p> <p>Delivered 19/10/2007</p>	<p>18yrs at time of offences.</p> <p>Convicted after PG at first opportunity.</p> <p>At time offences, appellant on supervised release order and had extensive juvenile record.</p> <p>On morning offences committed, appellant “coming down from using amphetamines” (aggravating factor in sentencing).</p> <p>“Appallingly dysfunctional background” and history amphetamine abuse (began at 14 yrs old).</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280. 3 x Unlawfully cause bodily harm <i>Criminal Code</i> s 304(1)(a).</p> <p>Offence date 20/12/05 – max penalty 20 yrs and 5 yrs respectively.</p> <p>Appellant drove stolen car in police pursuit through three suburbs at speeds of up to 140km per hour. Car carrying 5 passengers – the appellant’s cousin, girlfriend, sister and two younger brothers. Appellant drove through several red traffic lights, on the wrong side of the road and ignored his sister when she yelled at him to stop on several occasions. Police aborted the pursuit and the appellant has continued driving at speed. The appellant has lost control of the car (min speed at time calculated to be 115 km per hr), moved onto the wrong side of the road and collided with a kerb. The car has become airborne and struck a power pole restraining wire, causing the car to then collide with a tree in the front yard of a</p>	<p>5 yrs 4 mths imp. 2 yrs imp each count.</p> <p>TES 8 yrs 8 mths.</p> <p>Also convicted of 14 other charges on same indictment (counts 3, 8 and 14 cumulative to add up to 8yrs 8mths, all others concurrent).</p>	<p>Allowed.</p> <p>TES reduced to 7 yrs 4 mths.</p> <p>NB: Individual sentences not altered.</p>

			house. The car stopped when it became wedged in the tree. The appellant's girlfriend died at the scene and three passengers required hospitalisation. The remaining passenger and the appellant have fled the scene. The appellant, with legal representation, handed himself in to police the next day and admitted being involved in the collision but declined to be interviewed.		
12.	<i>Taylor v State of Western Australia</i> [2007] WASCA 218 Delivered 19/10/2007	19 yrs at time offences. Convicted after pleas of guilty. Generally good antecedents.	5 x Manslaughter <i>Criminal Code</i> s 280. Offence date 25/09/04 – max penalty 20 yrs. Travelling at 110-130 km per hr in 70 km per hr zone. Ploughed into car crossing at intersection and killed all 5 occupants. Amphetamine, cannabis and methylamphetamine in blood at time collision. Sentencing judge deemed crash being caused by reckless driving occasioned by speed and drugs.	4 yrs imp each count. TES 8 yrs.	Dismissed – sentence within discretionary range.
11.	<i>Penny v State of Western Australia</i> [2006] WASCA 173 Delivered	25yrs at time of offences. Convicted after guilty plea at earliest opportunity. Offences committed while appellant on parole for steal motor vehicle and drive	1 x Manslaughter <i>Criminal Code</i> s 280. Offence date 5/10/05 – max penalty 20 yrs. Circumstances placed offence in upper range of seriousness – “appellant was extremely reckless and deliberately	8 yrs imp. (starting point 16yrs before mitigating factors and transitional provisions). TES 8 yrs imp cum	Allowed. TES reduced to 8 yrs. NB: Individual sentences not altered.

	31/08/2006	recklessly (released from prison 19 days prior to offences).At time offence, appellant disqualified from holding driver's license. Significant prior criminal record – numerous and serious motor vehicle offences; history of re-offending when on parole or release orders. Substantial amount of life spent in detention (juvenile and adult)– only 6mths out of custody since turned 18yrs; highly dysfunctional family environment; educated to age 13yrs and never been employed; history of alcohol and drug (cannabis and amphetamine) use.	disregarded the safety of his passenger, Mr Bolton, and other road users.” Appellant driver in police pursuit of stolen vehicle. During course of pursuit, appellant ignored stop signs, drove through barrier at the end of a cul-de-sac and eventually lost control of car. Appellant then mounted kerb, drove on footpath before collided with cyclone fence and a tree. Part of fence buckled and a support pole impaled passenger (appellant's cousin) and killed him. Appellant fled on foot but was apprehended by police approx 500m away. Speed limit in area 50 km per hr and appellant travelling “significantly in excess” of this limit. Blood test indicated presence of cannabis.	on 960 days owed for parole breach. Not EFP. Also convicted at same time 1 x steal motor vehicle and drive recklessly – 3 yr sentence to run concurrent with manslaughter sentence. Sentence ordered cumulative on sentence on parole for.	
<i>Amendments to RTA s59 – reversal of onus of proof (01/01/2005)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					
10.	White v R [2003] WASCA 197 Delivered	42 yrs at time offending. Convicted after PG at first opportunity. “Significant involvement” with law in other States.	2 x Manslaughter <i>Criminal Code</i> s 280. Offence date 4/11/02 – max penalty 20 yrs imp. Described in sentencing as “an instance of	10 yrs imp each count. TES 10 yrs. Equivalent to 6 yrs 8	Dismissed – high but not outside discretionary range in circumstances.

	28/08/2003	Had never held driver's license and had driven for only short periods. Led mostly itinerant life with irregular employment history.	dreadful driving, well and truly within the definition of grossly reckless driving.” Appellant driving at night in a borrowed car. On passenger's evidence, appellant driving “somewhat recklessly” between 60-70km per hr in a 50 km per hr zone. Passenger warned appellant approaching stop sign. Appellant said in sarcastic manner “what stop sign?” and accelerated through the junction hitting a car carrying a young family. The parents have been killed as a result of the collision. Appellant not injured and ran from scene to police station where taken into custody. BAC at time crash .072% (deemed in sentencing to have involved an impairment of functionality but not grossly so)	mths imp after implementation of transitional provisions. Genuine remorse shown.	
9.	<i>D'Amico v R</i> [2000] WASCA 343 Delivered 10/11/2000	20 yrs at time offending. Convicted after trial. Prior criminal record - Children's Court minor offences but only one traffic conviction. Brought up by single mother (teenage parents split up when appellant in yr 1); had brief period where fell into bad company as a youth but at time of	1 x Manslaughter <i>Criminal Code</i> s 280. 1 x Bodily harm. Offence date 22/11/97 – max penalty 20 yrs and 5 yrs respectively. Held to be serious offence but not highest level criminal negligence involving vehicular manslaughter. Conflicting evidence at trial as to level of lighting in area, distance travelled before striking victims and speed. Appellant drove three men to chemist shop	8 yrs imp. 2yrs imp. TES 8 yrs imp. Equivalent to 5 yrs 4 mths imp after implementation of transitional provisions. Remorse even	Allowed. TES reduced to 5 yrs imp.

		<p>offences was enrolled at TAFE; left school at 16 yrs, although deemed to be intelligent and above average student, and commenced work at pharmacy where continued working until shortly before incident.</p>	<p>where two of the men attempted to break into the shop. Not far from there was a party and some of passengers wanted to attend. Appellant drove to party but people there did not want her to stay as they knew of the attempt to break in to the chemist shop and did not want police attracted to the party. Two men from party approached car and asked appellant to leave. A fight erupted and one of the passengers drew a knife and one of the party goers was struck in the face and fell to the ground. A security vehicle has arrived and one of the party goers kicked her car while another threw a bottle at it. Witnesses heard engine revving and tyres squeal and the appellant has then driven off at speed with no lights on. Rapid acceleration deemed at trial to have caused appellant to lose control of car and swerve left. Car struck 4 people – killing one and injuring another. Appellant did not brake until 100m after impact.</p>	<p>though maintained not guilty plea.</p>	
8.	<p>R v White [2000] WASCA 118 Delivered 5/05/2000</p>	<p>35 yrs at time offending. Convicted after trial. Prior criminal record - including traffic offences (including speeding, excess 0.08% three prior occasions, 4 no MDL). At time offence did not hold valid</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280. Offence date 2/08/97 – max penalty 20 yrs. Not considered as one of the worst cases in sentencing and this was upheld on appeal. Appellant driving, with two passengers, in suburban street at speed, squealing wheels</p>	<p>2 yrs imp. TES 2 yrs imp. Equivalent to 16 mths imp after implementation of transitional provisions.</p>	<p>Allowed. TES increased to 4 yrs. NB: Double jeopardy applied to State appeals.</p>

		<p>driver's license.</p> <p>Developed pattern serious alcohol abuse at age 13 and had taken no steps to address problem, let alone accept problem existed.</p>	<p>and causing car to fish tail (ie doing a burn out). Lost control and crashed into tree. Victim suffered head injuries and spent weeks in intensive care. Injuries predisposed her to pneumonia and she eventually died (seven weeks after crash).</p> <p>BAC at time crash 0.138%.</p>	<p>EFP.</p> <p>No remorse; did not accept alcohol played role in crash until sentencing phase (previously believed unfamiliarity with car was cause).</p>	
7.	<p><i>Clinch v The Queen</i></p> <p>[1999] WASCA 57</p> <p>Delivered 15/06/1999</p>	<p>19 yrs at sentencing.</p> <p>Convicted after fast track PG.</p> <p>Very serious prior criminal record - numerous convictions for breach bail/probation, stealing and driving motor vehicle, burglary and assault with intent commit GBH.</p> <p>On parole and bail at time of offences. Disqualified from driving for life at time of offences. Evidence before sentencing judge to suggest brain damage suffered by appellant in car crash in 1992 affected temporal lobe, in particular ability to control behaviour and his personality.</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280.</p> <p>Offence date 17/08/98 – max penalty 20 yrs.</p> <p>Appellant followed victim from train to home and broke into house. Victim locked herself in bedroom from fear. Appellant stole money and car keys before leaving scene in her car. Police observed appellant driving in dangerous manner shortly after and pursuit began – appellant drove at high speed on wrong side of road and police immediately aborted chase. Appellant continued on wrong side road for approx 350m before colliding with deceased's car at a crest in the road (deceased travelling correct side of road). Accepted at sentencing appellant significantly affected by cannabis and alcohol at time crash and was “not I a fit state to drive the vehicle”.</p>	<p>8 yrs imp.</p> <p>TES 8 yrs. Equivalent to 5 yrs 4 mths imp after implementation of transitional provisions.</p> <p>Not EFP.</p> <p>Also convicted at same time 2 x agg burg; 1 x steal & wilfully drive motor vehicle in reckless manner – sentence 12 mths each charge to run concurrent with manslaughter sentence.</p>	<p>Appeal against decision to refuse parole only.</p> <p>Dismissed –likely to remain a risk to community if released on parole.</p>

<p>6.</p> <p><i>Punch v The Queen</i></p> <p>(1993) 9 WAR 486</p> <p>Delivered 31/05/1993</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial prior criminal record - serious crimes and traffic offences going back over 30 yrs; included 4 previous breaches of parole.</p> <p>On bail for “serious crimes” when offence occurred.</p> <p>At time offence, driver’s license was disqualified for life.</p> <p>“Tragic background” involving early separation from parents and family, hardship, alcohol abuse and economic hardships. Also noted in PSR that appellant was “institutionalised, having spent most of his adult life in prison for various violent crimes.”</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280.</p> <p>Offence date 18/09/91 – max penalty 20 yrs.</p> <p>Offence merited punishment in the upper ranges of sentences appropriate for manslaughter.</p> <p>The court held in sentencing that the appellant that the appellant was intoxicated to such an extent at time of collision he could not control car.</p> <p>Appellant drove car with defective brakes at speed through a red light during peak hour time, colliding with the driver’s side of another, killing the driver. Following accident fled scene and hid from police.</p>	<p>10 yrs imp.</p> <p>TES 12 yrs imp. Equivalent to 8 yrs imp after implementation of transitional provisions.</p> <p>Also convicted at same time 6 other offences – total 2 yrs cum with manslaughter sentence.</p> <p>Deemed to pose continuing danger to society.</p>	<p>Dismissed - application for leave to appeal refused as sentence within discretionary range.</p> <p>At 497 Noted that vehicular manslaughter is becoming more distressingly and increasingly common and that the court is obliged to have regard to the prevalence of an offence in determining an appropriate sentence. As such. Less weight should be given to mitigating factors in sentencing.</p>
<p>5.</p> <p><i>McKenna v The Queen</i></p> <p>(1992) 7 WAR 455</p> <p>Delivered 19/05/1992</p>	<p>18 yrs at time offending</p> <p>Convicted after PG.</p> <p>Prior criminal record - 24 prior convictions relating to use motor vehicles (19 of those occurred while had no valid license and include 3 x reckless driving and 1 x dangerous</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280.</p> <p>Offence date 18/08/91 – max penalty 20 yrs.</p> <p>Placed in worst category of vehicular manslaughter.</p> <p>Appellant drove stolen car through</p>	<p>7 yrs and 12 wks imp.</p> <p>TES 8 yrs imp (included time already spent in custody pending sentence). Equivalent to 5 yrs 4</p>	<p>Dismissed.</p>

		<p>driving); also had 10 convictions relating to stealing/break and enter offences; involved in two prior police pursuits.</p> <p>Dreadful family upbringing – abused by family member at 8 yrs old; no effective parental control since 8 yrs old. Emotionally traumatised background with long history anti-social and addictive behaviour. Serious drug and alcohol abuse since aged 13 yrs.</p>	<p>Subiaco at very high speed with police in pursuit (speeds between 100-150 km per hr). Collided with three cars before striking cyclist on pushbike from the rear. Victim was thrown 10ft into the air and landed on a parked car 20m away. Victim sustained “shocking injuries” and was killed instantly.</p> <p>Under influence ecstasy and amphetamine at time offence.</p> <p>Strong element premeditation – stole car chasing the rush of a police chase.</p>	<p>mths imp after implementation of transitional provisions.</p> <p>Remorse; real prospect rehabilitation.</p>	
4.	<p><i>The Queen v S (No2) (a Child)</i></p> <p>(1992) 7 WAR 434</p> <p>Delivered 3/04/1992</p>	<p>15 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Extensive prior criminal record -120 prior convictions.</p> <p>Youngest of six children. Family lifestyle “extremely disruptive and chaotic with periods of violence” (included suicide family member, frequent moving, disrupted schooling, truancy) Prolonged alcohol, petrol and drug abuse. Tested as functionally illiterate with limited capacity for self direction and problem solving.</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280.</p> <p>Offence date 18/08/91 – max penalty 20yrs.</p> <p>Serious case but not in worst category.</p> <p>Appellant driving stolen car with two passengers with police in pursuit. Driving at speed, at night with no lights on a badly lit road, in the wet and on the wrong side of the road. Appellant struck car at intersection from behind and victim (passenger in car) was thrown from the car and died at the scene. Speed at time crash accepted at approx 80-100 km per hr,</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp. Equivalent to 16 mths imp after implementation of transitional provisions.</p> <p>Sentenced in Children’s Court (first sentence of type imposed under <i>Children’s Court Act</i>). Also convicted at</p>	<p>Allowed.</p> <p>TES increased to 3yrs 8 mths (appropriate sentence deemed 4 yrs with credit for 4 mths already served).</p> <p>NB: Double jeopardy applied to State appeals.</p>

		Cognitive impairments linked to substance abuse.	police travelling approx 60-70 km per hr. BAC at time offence 0.115%.	same time 7 other offences – 3 mths on each count to run concurrent with each other and manslaughter sentence. Expressed “great sorrow” at outcome of events.	
3.	<i>The Queen v Stebbings</i> (1990) 4 WAR 538 Delivered 10/10/1990	23yrs at time offending. No prior criminal record. From good home and observed by sentencing judge to be “a pleasant, clean cut young man”. Employed at time offence with an excellent work record.	2 x Manslaughter <i>Criminal Code</i> s 280. 1 x GBH <i>Criminal Code</i> s 297. Offence date 21/08/89 – max penalty 20 yrs and 7 yrs respectively. Appellant driving, just after midnight, at speed between 180-200km per hr in a 70km per hr zone with two passengers in car. Collided with a car at an intersection – impact so severe car almost ripped in half. The driver and one passenger in the car struck were killed and another passenger seriously injured. There was a skid mark of 32.4m prior to the point of impact and marks extending 40m beyond that point to attest to the speed and violence of the collision, as well as witness testimony.	18 mths imp each ct. 12 mths. TES 18 mths. Equivalent to 12 mths imp after implementation of transitional provisions. Genuinely remorseful; suffered severe depression after offence.	Allowed. <u>Sentences on appeal:</u> 3 yrs imp each ct manslaughter. 2 yrs imp GBH. TES increased to 3 yrs imp.

CASES NOT APPEALED BUT USEFUL FOR COMPARISON

2.	<p><i>The State of Western Australia v Mitchell</i></p> <p>[2008] WASC 114</p> <p>Delivered 17/06/2008</p>	<p>27 yrs at time offence.</p> <p>Convicted after early PG.</p> <p>One previous conviction excess BAC 0.08% (0.135%).</p> <p>At time collision license disqualified for drink driving offence and a warrant had been issued in his name for failing to answer bail while on a further drink driving offence.</p> <p>Supportive family and good work history. In year preceding collision, developed alcohol problem that was regarded by sentencing judge as being “severe” at time crash.</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280.</p> <p>Offence date 10/12/07 – max penalty 20 yrs.</p> <p>“...grossly negligent driving and conduct of extreme gravity.”</p> <p>Defendant drinking since early afternoon for approx 8 hrs prior to the collision. Prior to collision seen to be driving erratically. Defendant made a right hand turn into a lane designated solely for buses and driven onto the freeway, travelling in the wrong direction. Defendant has collided with car travelling correct way on freeway at a bend in the road. Driver of car suffered multiple chest and head injuries and has died at the scene. Mitchell suffered minor injuries, including broken right ankle.</p> <p>BAC at time crash 0.205%.</p>	<p>6 yrs imp.</p> <p>TES 6 yrs 6 mths imp.</p> <p>Also convicted of 7 offences on s 32 (included 3 arising from crash and 3 related to drink driving incident in Oct 2007). Sentences included one of 6 mths to be served cumulatively on manslaughter sentence.</p> <p>Observed to be deeply remorseful and has realised extent alcohol problem and taking steps to address it.</p>	<p align="center">NOT APPEALED</p>
1.	<p><i>The State of Western</i></p>	<p>18 yrs at time offending.</p>	<p>1 x Agg DDOD <i>RTA</i> s 59(1)(b). 1 x Agg DDOGBH.</p>	<p>3 yrs 9 mths imp. 6 mths imp.</p>	<p align="center">NOT APPEALED</p>

<p><i>Australia v Pickett</i></p> <p>Ind 609 of 2010</p>	<p>Convicted after PG (negotiated – originally charge 2 x DDOBH in addition to charges convicted of).</p> <p>Prior criminal record - extensive juvenile record but not driving offences.</p> <p>Never held driver’s license.</p> <p>Chaotic and violent childhood – violent, alcoholic father; mother left family when appellant 8 yrs old; father imprisoned when appellant 11 yrs old; lived grandmother (no food, min supervision) until her death when appellant 13yrs old; lived various extended family.</p> <p>History drug and alcohol abuse since 12 yrs old.</p> <p>Left school in yr 7 and has never held a job.</p>	<p>Offence date 26/10/09 – max penalty 20yrs and 14 yrs respectively.</p> <p>Appellant involved in a high speed police pursuit through suburban area. Drove at up to 80km per hr in excess speed limit. Ignored passenger’s demands she slow down. Appellant crashed into Nissan micra, driven by victim GBH and carrying her two children (11 yr old son died as result injuries). Appellant had not slept for several days prior to accident as result of drug intoxication.</p>	<p>TES 4 yrs 3 mths imp.</p> <p>Lack remorse, empathy and insight into offending; high risk re-offending if criminogenic factors not addressed.</p>	
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