

Child Sex Offences

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

agg	aggravated
att	attempted
AOBH	assault occasioning bodily harm
burg	burglary
CEM	Child exploitation material
conc	concurrent
cum	cumulative
ct	count
CRO	conditional release order
dep lib	deprivation of liberty
EFP	eligible for parole
GBH	grievous bodily harm
imp	imprisonment
indec	indecent
ISO	intensive supervision order
PG	plead guilty
sex pen	sexual penetration without consent
susp	suspended
SOTP	sex offender treatment program
TES	total effective sentence

Child aged under 13 yrs

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
58.	<p><i>WRT v The State of Western Australia</i></p> <p>[2020] WASCA 68</p> <p>Delivered 01/05/2020</p>	<p>51-52 yrs at time offending. 69 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; sentence of imp for drug offending 1981.</p> <p>Single at time sentencing; no contact with the victim; separated from her mother.</p> <p>Carer, along with his older sister, of his 91 yr old mother.</p> <p>Left school young age.</p> <p>Hardworking; constant work history; employed very well paid and skilled job in the oil industry; worked many yrs around the world.</p> <p>No drug or alcohol issues.</p> <p>Health issues; suffers diabetes; cardiovascular disease; gout; degenerative lumber spine issues and carpal tunnel syndrome.</p>	<p>Cts 1 & 5: Indec dealing child U13. Ct 2: Att sex pen child U13. Cts 3-4: Sex pen child U13. Ct 6: Dep lib.</p> <p>The victim was WRT's biological daughter and the offending occurred over a period of about 10 yrs, commencing when she was aged 4 yrs.</p> <p>WRT would harshly discipline the victim and would hit her with objects, including a wooden broom and wooden spoon.</p> <p>When the victim was aged 4 yrs WRT lay next to her on her bed. She was naked. He engaged in a game he called 'riding the horsey' in which he put her on top of him and rubbed her vagina against his penis (ct 1).</p> <p>On the next occasion WRT was pretending to take a nap when the victim got onto the bed. He made her perform fellatio until he ejaculated (ct 4).</p> <p>WRT made the victim perform oral sex in this way on other occasions.</p> <p>When the victim was 8 or 9 yrs old WRT tried to penetrate her vagina with his penis. He was unsuccessful in the attempt (ct 2).</p> <p>On another occasion, when the victim was aged 8 or 9 yrs., WRT had her sit on his face. He</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 3 yrs imp. Ct 4: 3 yrs (conc). Ct 5: 2 yrs (cum). Ct 6: 3 yrs (cum).</p> <p>TES 8 yrs imp.</p> <p>The sentencing judge found the offending the subject of cts 1 to 5 aggravated by the abuse of trust; the victim was a very young child and the appellant was significantly older; it occurred over a long period of time and involved such a normalisation of the behaviour that the victim came to believe she was the instigator of it.</p> <p>The sentencing judge found the aggravating factors of the offending the subject of ct 6 were that it occurred over a period of more than 26 hrs; involved the use of physical restraints and it humiliated the victim.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; length of sentence ct 6 and error in making ct 6 fully cumulative.</p> <p>At [48] ... His offending conduct was appalling. The appellant's victim was his daughter. She was vulnerable and as entitled to expect that her father would protect her from harm, not inflict it upon her. The appellant used handcuffs, a chain and cable ties to restrain [her]. He purchased the chain and cable ties for the purpose of using them in this way. He detained and restrained [her] in a manner and in circumstances calculated to humiliate her and that involved an element of cruelty. ... The appellant's offence of dep lib was sustained – he detained [her] for a period of 26 hrs.</p> <p>At [52] ... we are satisfied that it was not reasonably</p>

			<p>performed cunnilingus on her (ct 3).</p> <p>WRT performed cunnilingus on the victim on a number of other occasions.</p> <p>When the victim was 12 yrs old WRT took her to a motel. When in bed with the victim he rubbed her vagina for a period of time (ct 5).</p> <p>At aged 14 yrs the victim was suspended from school. WRT grounded her. Without permission she left the house and stayed out overnight. WRT reported her missing to police. She was quickly contacted and agreed to attend a police station.</p> <p>On hearing this WRT purchased a 2m length of chain, a D shackle, cable ties and duct tape. He inserted a bolt into the concrete floor of the victim's bedroom and removed most of her belongings and clothes.</p> <p>After collecting the victim WRT handcuffed her and chained her to the floor. She complained the handcuffs were uncomfortable so he cable tied her ankles to keep her chained to her bedroom. She was given a bucket to use as a toilet. She was allowed a shower, but with the chain still attached to her legs. She was left chained in her bedroom overnight.</p> <p>The following day WRT took the victim and his mother with him in his car. The victim was restrained with cable ties and the handcuffs to prevent her from leaving the car. He also cable-tied a lunchbox lid around her neck labelling her a</p>	<p>No demonstrated remorse; strongly denied the sexual offending; lacked insight into the dep lib offence; maintaining his actions were justified.</p>	<p>arguable that the sentence for ct 6 is unreasonable or plainly unjust.</p> <p>At [63] ... the appellant has fallen well short of demonstrating that his TES of 8 yrs imp infringes either limb of the totality principle.</p> <p>At [68] ... The serious features of his sexual offending against his daughter included the following. The offending was an abuse of what is perhaps the ultimate position of trust, namely the relationship between parent and child. The offending commenced when the complainant was very young ... and, as a result, highly vulnerable. It continued over many yrs. While the offending did not include penile pen of [her] vagina, it included an att to do so and offences of both fellatio and cunnilingus. Those latter cts, ... did not reflect isolated conduct. ... It is true, ..., that his offending did not involve violence. But it had other insidious effects on his victim. The</p>
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			<p>runaway. She was left restrained in the car for about an hr.</p> <p>When he returned home WRT again restrained the victim using the chain and cable ties.</p> <p>The following day the police arrived at the home. WRT was not at home. They found the victim still chained to her bedroom floor. She had been restrained for at least 26 hrs.</p>		<p>appellant's offending against his daughter so normalised his depraved conduct that [she] came to believe, with the appellant's encouragement, that she was the instigator of it.</p> <p>At [71] ... In this case, appropriate punishment of the appellant's serious and sustained offending against his daughter, and general deterrence of such offending, required that the appellant be sentenced to a very substantial term of immediate imp, notwithstanding his age and ill health</p> <p>At [73]-[74] In our opinion, the TES ... did not, even arguably, infringe the first limb of the totality principle. ... Further, the TES does not infringe the second limb of the totality principle. ...</p>
57.	<p><i>Brennan v The State of Western Australia</i></p> <p>[2020] WASCA 20</p>	<p>33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Minor criminal history; no prior convictions for offences of violence or sexual</p>	<p>1 x Sex pen child U13 yrs.</p> <p>The victim, P, was aged 12 yrs. She lived with her family in a country town.</p> <p>Brennan was a close family friend and he regularly visited P's family home.</p>	<p>5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending 'forceful and violent'; he overpowered P</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [56] ... It was self-evidently a serious example</p>

	<p>Delivered 24/02/2020</p>	<p>impropriety.</p> <p>Supportive family.</p> <p>History of gainful employment; variety of occupations.</p>	<p>On a day during the school holidays Brennan attended P's family home. P was home alone. She agreed he could come into the house and wait for her mother and stepfather.</p> <p>At some point Brennan grabbed P and had sexual intercourse with her. He remained at the house and left some time after P's mother returned home.</p> <p>Some three years later P reported the matter to the police.</p>	<p>and penetrated her in circumstances where she was 'struggling and resisting'; his offending was opportunistic.</p> <p>Serious adverse effects on victim; moved away from home afraid of seeing the appellant in the town in which she lived; difficulties sleeping; school performance affected and eventually stopped attending; friendships suffered; episodes of self-harm; suffered hair loss resulting from stress.</p> <p>Low risk of re-offending.</p>	<p>of its type, having regard to the combination of the following factors, namely P's age; her vulnerability, including that she was home alone without the protection of her mother or stepfather, as the appellant well knew; [his] use of force to overcome P's resistance ...; that [he] forcibly sexually penetrated P's vagina with his penis; that he took advantage of his position as a family friend of the victim; and that his actions have had a serious adverse ongoing effect upon the victim. ... the fact that the appellant sexually penetrated P without her consent is a very significant agg sentencing factor.</p>
56.	<p><i>Coulter v The State of Western Australia</i></p> <p>[2019] WASCA 2015</p> <p>Delivered 10/12/2019</p>	<p>51 yrs at time sentencing.</p> <p>Convicted after PG. <u>Indictment 2020</u> (25% discount). <u>Indictment 673</u> (15% discount.)</p> <p>No prior criminal history.</p> <p>Born New Zealand; suffered sexual abuse at a young age.</p>	<p><u>Ind 2002</u> Ct 1: Persistently engaged in sexual conduct child U16 yrs.</p> <p><u>Ind 673</u> Cts 1 & 10: Indec recording of child U13. Cts 2; 4-6; 8-9; 11-15 & 17: Sex pen Child U13. Cts 3; 7 & 16: Indec dealing child U13.</p> <p><u>Ind 2002</u> The offending occurred on three separate occasions over a period of just over one year,</p>	<p><u>Ind 2002</u> Ct 1: 13 yrs imp (cum).</p> <p><u>Ind 673</u> Cts 1; 7; 10 & 16: 4 yrs imp (conc). Cts 2; 5-6; 8-9; 11-15 & 17: 8 yrs imp (conc). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 8 yrs imp (cum).</p>	<p>Allowed.</p> <p>Appeal concerned totality principle and length of sentence and error in finding worst of its kind (IND 2002).</p> <p>Re-sentenced Indictment 2002:</p> <p>9 yrs imp, cum with TES on IND 673.</p>

		<p>Left school yr 10; literacy skills limited by dyslexia.</p> <p>Qualified boilermaker; good work history and strong work ethic.</p> <p>History of illicit drug and alcohol abuse.</p> <p>Suffers Crohn's disease; otherwise in good health.</p>	<p>when the victim, A, was aged between 6 and 7 yrs. The offending occurred at Coulter's home.</p> <p>On the first occasion Coulter, A's mother, another male adult and A were together. A was administered a stupefying substance and was shown a pornographic movie involving children. The adults performed various sex acts in A's presence.</p> <p>A was then made in effect to imitate the various sex acts she had just seen on Coulter and the adult male.</p> <p>These acts were video recorded by A's mother.</p> <p>On the second occasion Coulter, A and A's mother were present. A was provided with a stupefying substance and was shown a pornographic movie involving a mother, a father and a child. A's mother then performed a sex act on Coulter, after which A then twice performed the same sex act on Coulter.</p> <p>The third occasion took place on A's 7th birthday. Coulter, A, A's mother, her partner and another male were present.</p> <p>A was provided with a stupefying substance and was shown a pornographic movie. The adults then engaged in a series of sex acts with each other in A's presence. Under instruction A then engaged in a number of sex acts. This was, in part, video recorded by A's mother.</p>	<p>TES 21 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant and his co-offenders acted in concert at the time the offences were committed, and each was jointly liable for the offences committed by the co-offenders.</p> <p>The sentencing judge found there were 'no comparable cases' and there were various features of the appellant's overall offending in both indictments that fell within the 'worst category'.</p> <p>Significant adverse effects suffered by A.</p> <p>Appellant remorseful.</p>	<p>TES 17 yrs imp.</p> <p>EFP.</p> <p>At [57] There are other facts and circumstances, which, in our view, also go against a conclusion that the offence in IND 2002 falls within the 'worst category', ... Further, the appellant did not engage in penile penetration of the victim's vagina; he did not have parental responsibility of A; and there was an absence of any finding that the appellant posed an elevated risk of reoffending. The three occasions that constituted the offence were not said to be representative of other sexual offending against A.</p> <p>At [58] Having regard to all relevant circumstances, we are satisfied that the appellant's offending in relation to IND 2002 was not within the 'worst category' of case, ... The sentence the subject of IND 2002 must be set aside. ...</p>
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55.	<p><i>Mule v The State of Western Australia</i></p> <p>[2019] WASCA 9</p> <p>Delivered 16/01/2019</p>	<p>52 yrs at time offending. 54 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Prior criminal history.</p> <p>Happy childhood; schooling uneventful.</p> <p>Estranged wife; three adult children.</p> <p>New relationship disintegrated several months prior to offending.</p> <p>Build-up of stresses leading up to offending; loss of a brother-in-law and more recently his father.</p>	<p>Cts 1 & 2: Dep liberty. Cts 3-5: Sex pen child U13 yrs.</p> <p>The two victims, a boy and girl aged 5 and 4 yrs respectively, were unknown to Mule.</p> <p>Mule entered the playground area of a childcare facility and enticed the victims to leave with him. He walked the victims approx 750 m to the home at which he was residing.</p> <p>At the property Mule sexually offended against the children. He then walked them to a nearby park and abandoned them.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp (cum). Ct 4: 4 yrs imp (cum). Ct 5: 4 yrs imp (conc).</p> <p>TES 10 yrs imp. EFP.</p> <p>The sentencing judge found a number of aggravating factors increased the appellant's culpability; there was an element of brazenness in his actions; the children were vulnerable; he was a stranger to them; he took advantage of their young age and the distraction of the childcare workers to lure them away; he gave or</p>	<p>Dismissed.</p> <p>Appeal concerns totality principle.</p> <p>At [41] ... His Honour's statement of the aggravating features of the offending encapsulates the egregious character of the appellant's overall criminal conduct.</p> <p>At [42] It is apparent that there was some premeditation and planning by the appellant in that he was in the vicinity of the supervised childcare facility for about 20 minutes before he enticed the children to leave with him; he walked with the children ... to his</p>

		Good employment history; on unemployment benefits at time offending.		promised the children treats or rewards; the sexual offending against each child occurred in the presence of the other child; he persisted in the sexual offending despite them disliking what was happening and wanting to leave; there was an element of sexual gratification in his conduct; he engaged in unprotected sex; he abandoned the children; extreme levels of emotional stress suffered by the victims and their families.	place of residence before he sexually assaulted them; and he walked with the children from his home to [a park] before he abandoned them The essence of the appellant's very serious criminality is to be found in those facts in combination with the aggravating factors mentioned by his Honour. At [45] ... the TES sentence ... did not infringe the first limb of the totality principle. An aggregate sentence of that length was necessary in order properly to reflect the very serious nature of the appellant's overall offending ... An accumulation of the individual sentences for cts 1, 3 and 4 was required. The TES bears a proper relationship to the criminality involved in all of the offences, ...
54.	<i>The State of Western Australia v CGT</i> [2018] WASCA 226 Delivered	50-51 yrs at time offending. 76 yrs at time sentencing. Convicted after trial. Born and raised Germany; mother widowed; father lost in WWII; family hardships	7 x Sex pen child U13 yrs. The victim, EC, was aged 5-6 yrs and is CGT's biological granddaughter. On occasions CGT would mind his three grandchildren, EC and her two siblings.	Ct 1: 3 yrs imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 3 yrs imp (conc). Ct 5: 2 yrs imp (conc). Ct 6: 3 yrs imp (cum). Ct 7: 2 yrs imp (conc).	Allowed. Appeal concerned totality principle. Re-sentenced to: Ct 4: 3 yrs imp (cum). Ct 6: 2 yrs 9 mths imp.

21/12/2018	<p>typical of that time.</p> <p>Average grades; completed school.</p> <p>Moved to Australia with wife; two young daughters.</p> <p>Married three times; suffered loss of first and second wives to cancer; much younger current wife.</p> <p>Supportive family in NSW.</p> <p>Good employment history; worked own business many yrs; retired.</p> <p>Ongoing health issues; multiple surgical interventions.</p>	<p><u>Cts 1, 2, 4 & 6</u> On at least four separate occasions CGT penetrated EC with his penis.</p> <p><u>Cts 3, 5 & 7</u> On at least three separate occasions CGT digitally penetrated EC.</p>	<p>TES 6 yrs imp. EFP.</p> <p>The trial judge found the offences a gross breach of trust against his young and vulnerable granddaughter; the abuse was chronic and went on for a period at least a year.</p> <p>The trial judge found the respondent's offending had 'hugely contributed' to the dysfunction in EC's life.</p> <p>The trial judge found the offences required the imposition of terms of imp, nothing less could possibly capture the seriousness of the offending.</p> <p>Very low risk category for reoffending.</p>	<p>All other cts unaltered.</p> <p>TES 8 yrs 9 mths imp. EFP.</p> <p>At [51]-[75] Discussion on comparable cases.</p> <p>At [76] The respondent's offending was very serious. ... His offending involved the abuse of his position of trust as the victim's grandfather. ... was not momentary or impulsive, but sustained and repetitive. The respondent used coercion and threats to ensure that the victim complied with his demands and maintained secrecy regarding the abuse. The victim was very young and vulnerable ... and there was a marked disparity between her age and that of the respondent. The offending included multiple acts of penile penetration, and the respondent persisted in his conduct despite being told by the victim ... that the penetration hurt her. ... the respondent's position of denial was a significant</p>
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					<p>factor in the victim being placed into foster care and being estranged from her family. The long-term emotional consequences for the victim were devastating. ...</p> <p>At [82] ... The trial judge found that the respondent's medical conditions were capable of being adequately treated in a prison context. The respondent's age was comparable to that of a number of other offenders. ... Whilst his age was a relevant factor, it was not such as could justify a total sentence of the order that was imposed in this case, having regard to the nature and seriousness of the offences, and all relevant sentencing factors.</p> <p>At [84] The TES sentence ... was not commensurate with the overall seriousness of the offending. ... The sentence imposed was unreasonable and plainly unjust, ...</p>
53.	<i>Underwood v The State of Western Australia</i>	38 yrs at time offending. Convicted after PG (20%)	Ct 1: Indec dealing child U13 yrs. Ct 2: Indec dealing child 13-16 yrs. Ct 3: Indec dealing child 13-16 yrs.	Ct 1: 3 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (conc).	Dismissed. Appeal concerned totality

<p>[2018] WASCA 189</p> <p>Delivered 26/10/2018</p>	<p>discount).</p> <p>Significant criminal history; prior convictions for sexual offending against children.</p> <p>Deprived upbringing; physically and sexually abused during childhood.</p> <p>Supportive grandparents; grandmother deceased.</p> <p>Isolated and bullied at school.</p> <p>Separated from partner since offending.</p> <p>History of substance abuse.</p>	<p>Ct 4: Use elec comm with intent to expose a person U16 yrs to indecent material. Cts 6-10: Sex pen child 13-16 yrs.</p> <p>Over a period of several months Underwood committed various sexual offences against two male children, TP aged 8 yrs and ND aged 13 yrs.</p> <p>The offending involved one episode against the victim TP and six episodes against the victim ND.</p>	<p>Ct 4: 9 mths imp (conc). Ct 6: 2 yrs imp (cum). Ct 7: 4 yrs 6 mths imp (cum). Ct 8: 9 mths imp (cum). Ct 9: 1 yr 9 mths imp (conc). Ct 10: 2 yrs imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the offending at ‘the higher end of the scale of seriousness’; the appellant breached ‘a situation of trust’ and the offending was ‘far from uncharacteristic’; he abused both victims for his own sexual gratification.</p> <p>The sentencing judge found although the appellant’s offending did not involve threats, physical coercion or acts of violence, the absence of those factors did not diminish the seriousness of what he actually did to the victims.</p> <p>Significant treatment needs; lack of insight into his</p>	<p>principle.</p> <p>At [42] The appellant took advantage of his friendship with the victims’ parents to sexually abuse their children. There was an element of grooming in relation to ND. The appellant invited and encouraged ND to engage in further and different sexual activity. The seriousness of the offences escalated. The offending involved a significant degree of moral corruption of ND. The appellant’s criminal behaviour was persistent....</p> <p>At [43] The victims were highly vulnerable.</p> <p>At [48] ... the TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the seriousness of the overall offending, the vulnerability of the victims, the pattern of sentencing in reasonably comparable cases</p>
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				offending behaviour; well above average risk of sexually reoffending.	and the matters of mitigation referred to by his Honour ...
52.	<p><i>HTD v The State of Western Australia</i></p> <p>[2018] WASCA 202</p> <p>Delivered 16/08/2018</p>	<p>74 yrs at time offending. 75 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Married 30 yrs, three children; numerous grandchildren.</p> <p>Current relationship 9 yrs; partner and family (excluding victim's parents) supportive.</p> <p>University educated; worked many years chosen field; retired; prior good character.</p>	<p>1 x Indec dealing child lineal relative U16 yrs.</p> <p>The victim 'E' was aged 5 yrs and HTD was her grandfather.</p> <p>E hurt her back. The following day HTD gave E a massage, ostensibly to relieve soreness in her back, during which he rubbed her body with massage oil and touched her buttocks.</p>	<p>16 mths imp.</p> <p>EFP.</p> <p>The trial judge did not accept it was 'an innocent therapeutic massage' and that the 'obvious reason for doing this act was the exploration of some kind of sexual curiosity or gratification'.</p> <p>The trial judge found the offence did not rank amongst the most serious examples of this kind of crime but it could not be said to be at a low level of objective criminality.</p> <p>The trial judge found imp was the only appropriate disposition; suspension not warranted given nature and gravity of offending.</p> <p>No remorse or acceptance of responsibility.</p>	<p>Appeal allowed (length of sentence).</p> <p>Re-sentenced:</p> <p>8 mths imp; suspended 12 mths.</p> <p>Appeal concerned error in finding offending sexually motivated; length of imp and error in failing to suspend the term of imp.</p> <p>At [34] ... There is no basis in the trial record for disturbing his Honour's finding that the offending was sexually motivated. He was entitled to make that finding beyond reasonable doubt. ...</p> <p>At [63] and [64]... the appellant was fully clothed while he massaged E; ... the appellant did not engage in grooming behaviour either on the occasion in question or during previous visits by E to his house; ... the appellant did not coerce E; ... the</p>

					<p>massage was a single event and did not occur in the course of other uncharged indecent dealings or sexual activities; ... the appellant's criminality involved touching E's naked buttocks and did not extend to the touching of her breasts, genitals or anus. ... the absence of those features informs the nature and extent of the appellant's objective criminality and the place which his criminal conduct occupies on the scale of seriousness of offences of the kind in question.</p> <p>At [67] ... the sentence ... was not commensurate with the seriousness of the offence. ... the length of the sentence was manifestly excessive. ...</p>
51.	<p><i>The State of Western Australia v BKJ</i></p> <p>[2018] WASCA 136</p> <p>Delivered 08/08/2018</p>	<p>40-53 yrs time offending. 55 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born QLD; raised remote and isolated cattle station; felt unsupported and</p>	<p>Cts 1; 9-10; 18; 21; 23; 38; 40 & 47: Indec dealing child lineal relative U16 yrs.</p> <p>Cts 2-7; 16; 24; 26; 28; 30; 32; 34; 36; 42; 44; 50 & 56-57: Sex pen child lineal relative U16 yrs.</p> <p>Cts 11; 13; 15; 17; 19; 22; 25; 27; 29; 31; 33; 35; 37; 39; 41; 43; 45-46; 48 & 51-53: Indecent recording child lineal relative U16 yrs.</p> <p>Cts 14; 20 & 54: Procuring a child lineal relative U16 yrs to engage in sexual behaviour.</p> <p>Cts 8; 12 & 58: Procuring a child lineal relative U16 yrs to do indecent act.</p>	<p>Ct 10; 12; 40-41: 18 mths imp (conc).</p> <p>Ct 13: 18 mths imp (cum).</p> <p>Cts 1-3; 5-6; 8-9; 18-19; 21-22; 25; 28; 31; 38; 47; 56-57: 2 yrs imp (conc).</p> <p>Cts 17; 23; 27; 33-35; 37; 39; 43; 45-46; 48-49; 51-53; 55; 58: 2 yrs 6 mths imp (conc).</p> <p>Cts 11; 15: 2 yrs 6 mths</p>	<p>Dismissed.</p> <p>Appeal challenged length of individual sentences (cts 1 and 59 and cts of sex pen and procuring a child to sexually penetrate) and totality principle (ct 4).</p> <p>At [112] All of the offences challenged ... were, in our</p>

		<p>unnurtured by parents.</p> <p>Left school yr 11; worked 5 yrs before travelling Australia and settling in WA; employed mining industry 20 yrs; fly-in-fly out worker.</p> <p>One significant relationship; with C's mother.</p> <p>No mental health issues; no illicit drugs or alcohol use.</p>	<p>Ct 59: Distributed CEM. Cts 60 & 61: Poss CEM.</p> <p>BKJ is the biological father of the victim, 'C'. He engaged in sexual activity with C when she was aged between 2 and 12 yrs.</p> <p>The offences also involved C performing sexual acts on BKJ.</p> <p>BKJ recorded many of the offences on video or by digital photograph, or both. He uploaded and distributed some of this material onto the worldwide web.</p> <p>When interviewed by police BKJ made admissions to producing, storing and uploading CEM and he disclosed to police the whereabouts of three USB thumb drives he had secreted in his home, which had not been found during the search.</p> <p>Four USB thumb drives and a computer hard drive located at BKJ's home contained 13,498 CEM images ranging from Category 1 through to Category 6 on the Child Degradation Category Chart. Some of these images included him in sexual acts with C.</p> <p>A further 408 digital files were also found, of which 174 consisted of videos from Category 4 and Category 5 on the Child Degradation Category Chart, including 31 showing sexual activity between BKJ and C.</p>	<p>imp (cum). Cts 16; 24; 29-30; 32; 36; 42; 44; 50 & 60: 3 yrs imp (conc). Cts 7; 20: 3 yrs 6 mths imp (conc). Ct 14: 3 yrs 6 mths imp (cum). Cts 54 & 61: 4 yrs imp (conc). Ct 59: 4 yrs imp (cum). Cts 26: 5 yrs imp (conc).</p> <p>TES 14 yrs imp. EFP.</p> <p>The sentencing judge found the overall offending as 'at the high upper end of the scale of seriousness'; the respondent robbed C of her innocence and of her entitlement to live in a secure and loving home; his conduct was a gross breach of trust by him as C's father; he used C as a sex object for his own sexual gratification, directly, but also vicariously, be disseminating images of the sexual abuse on the internet.</p> <p>The sentencing judge found</p>	<p>opinion, serious examples of their type. ...</p> <p>At [114] Each of these offences reflect a high degree of depravity on the respondent's part. ...</p> <p>At [115] There are many aggravating factors in the commission of each of these offences, including: ... C's very young age. ... The gross breach of trust shown by the respondent ... The offences were not an isolated aberration and were committed over a period of about 10 yrs. ... The respondent groomed C and, having done so, normalised his sexual behaviour towards her. ... The offences were premeditated and planned. ... The offences involved a high degree of depravity and were seriously humiliating. ... The respondent recorded, ... his actions. He later viewed it himself. He uploaded the material onto the internet and obtained satisfaction from knowing others might view it. ... The offending has had a profound negative effect</p>
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				<p>the offending was representative of a course of conduct over a significant period of time; the offences were planned and premediated and the respondent groomed and exploited an ‘extremely vulnerable’ C from a very young age, to the point where he normalised, in C’s mind, his sexual behaviour.</p> <p>The sentencing judge described the acts perpetrated upon C as being ‘gross and degrading’ and done for the respondent’s ‘perverse sexual gratification’.</p> <p>The sentencing judge found the offences relating to the CEM as ‘offending ... at the highest end’ of its type.</p> <p>No genuine remorse; empathy or insight into his offending.</p> <p>Low-moderate risk of reoffending.</p>	<p>upon C ...</p> <p>At [120] ... The leniency of the individual sentences is moderated by the place of those sentences in the TES ... imposed.</p> <p>At [121] ... the individual sentences do not reach – although some of them approach – a degree of leniency which can be characterised as unreasonable or plainly unjust.</p> <p>At [138] By reason of the respondent’s voluntary disclosure of the whereabouts of the material which is the subject of ct 59 and the contribution of the sentence for that offence to the TES, we have, ... come to the conclusion that the individual sentence on ct 59 is not manifestly inadequate.</p> <p>At [158] ... the TES that was imposed upon the respondent fell to the lower end of that range. However, we have not been persuaded that it infringed the first limb of the totality principle. ...</p>
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<p>50.</p>	<p><i>NN v The State of Western Australia</i></p> <p>[2018] WASCA 92</p> <p>Delivered 12/06/2018</p>	<p>14-17 yrs at time offending (cts 1-3 and 6-7).</p> <p>32 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor criminal history; no relevant sexual offending.</p> <p>Eldest of seven children; dysfunctional family environment where females of the household degraded.</p> <p>Despised his mother; trusted relationship with his father, a violent and strict disciplinarian.</p> <p>Attended number of schools; completed high school through distance education; Certificate 3 in horticulture; 2 yrs university studies, left before completing degree.</p> <p>Good work history; employed assistant manager at time arrest.</p> <p>No identified mental health issues.</p>	<p>Ct 1: Procuring a child lineal relative to do indecent act.</p> <p>Cts 2-5: Sex pen child lineal relative.</p> <p>Cts 6-7: Indec dealing child lineal relative.</p> <p>The victims, L and K, are NN's sisters. The offending against L began when she was aged 10 yrs and ended when she was aged about 15 yrs.</p> <p>NN was 4 yrs older than L and 10 yrs older than K.</p>	<p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 18 mths imp (conc).</p> <p>Ct 3: 18 mths imp (conc).</p> <p>Ct 4: 3 yrs imp.</p> <p>Ct 5: 2 yrs imp (cum).</p> <p>Ct 6: 6 mths imp (conc).</p> <p>Ct 7: 15 mths imp (conc).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the appellant disliked L and took pleasure in humiliating and degrading her; he was aware that his sisters were vulnerable to the conduct of their father, that there was no protection from their mother and he used his own close relationship with their father as a weapon, making threats to enforce compliance.</p> <p>No remorse or insight into his offending.</p> <p>Average or moderate risk of sexual re-offending.</p>	<p>Dismissed.</p> <p>Appeal asserted express error (provisions of <i>Young Offenders Act</i>); and totality principle.</p> <p>At [78] and [79] ... this appeal, ... turns on whether the trial judge correctly applied the principles contained in the <i>Young Offenders Act</i> when sentencing the adult appellant for offences committed when he was under the age of 18 yrs ... It is clear that the trial judge did properly apply those principles. ... The application of those principles is also evident in the sentence ... imposed in respect of cts 1 -3 and 6 -7. The sentences of imp for those offences were of a length which was significantly shorter than may have been expected if the offences were committed by the appellant as an adult ...</p> <p>At [86] ... it is appropriate to focus on cts 4 and 5 on the</p>
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					ind, which related to charges of offences committed when the appellant was an adult. Both cts 4 and 5 were very serious examples of offences against s 329(2) of the <i>Criminal Code</i> L was in a vulnerable position in a dysfunctional abusive household, which the appellant well knew. The offending was not isolated or uncharacteristic, but part of a pattern of sexual violence by the appellant towards his younger sister.
49.	<i>KMT v The State of Western Australia</i> [No 2] [2018] WASCA 49 Delivered 11/04/2018	35 yrs at time sentencing. Convicted after trial. No prior criminal history. Left school yr 9; began four-yr apprenticeship. Employed; att to commence regional business venture unsuccessful. Married; two daughters and two sons at time offending (the second born after the offences occurred). New relationship at time	2 x Indec dealing child lineal relative U16 yrs 3 x Sex pen child lineal relative U16 yrs. The victim, S, was the eight-yr-old biological daughter of KMT. At the time of the offending KMT lived with S, his wife and their two other children. <u>Ct 1</u> KMT touched the outside of S's vagina. <u>Cts 2 and 3</u> On another occasion KMT touched and placed his finger inside S's vagina. <u>Ct 4 and 5</u> On another occasion KMT penetrated S's vagina with his finger and penis.	Ct 1: 20 mths imp (cum). Ct 2: 20 mths imp (conc). Ct 3 & 4: 30 mths imp (conc). Ct 5: 60 mths imp. TES 6 yrs 8 mths imp. EFP. The trial judge found the charges representative of other occasions; there was 'not a high degree of perversion' in the offending, but a significant age disparity and S was the appellant's biological daughter.	Dismissed. Appeal concerned length of sentence, failure to obtain PSR; failure to challenge assertions in VIS and failure to produce character references. At [133] The TES imposed was not outside the range. At [135] ... There is no basis to conclude that the absence of a pre-sentence report could have affected the sentence imposed or led to any error by the sentencing judge.

		sentencing; supportive partner. Satisfactory health.		The trial judge found the appellant had stopped offending of his own volition; but noted the seriousness of the offending and its effects.	At [136] ... There is no basis to interfere with the sentence by reason of the lack of a challenge to the victim impact statement. At [137] ... The content of any further character references, ... would be unlikely to have affected the sentence imposed.
48.	<i>LWD v The State of Western Australia</i> [2017] WASCA 174 Delivered 19/09/2017	33 yrs at time sentencing. Convicted after trial. No significant criminal history. Left school aged 15 yrs. Worked numerous jobs. Father one child (with mother of victims). No history of illicit drug or alcohol use. Diagnosed and medicated for depression. Psychiatric report noted the appellant did not report having symptoms of severe	Cts 3-4, 8-9, 11-13: Sex pen of de facto child U16 yrs. Ct 10: Procured de facto child U16 yrs to engage in sexual behaviour. LWD was in relationship with the mother of the two victims, P and J. When the relationship commenced P was 4 yrs old and J was 3 yrs old. The sexual offending began soon after the relationship commenced and continued until P was about 14-15 yrs old and J was about 10 yrs old. <u>Ct 3</u> LWD told P to go into a room, wedged the door closed, pulled down her pants and digitally penetrated her vagina. <u>Ct 4</u> On another occasion P and J were in the bedroom they shared when LWD walked in with his penis out of his pants. Telling both victims to pull down their pants and lie face down he digitally	Cts 3 & 4: 3 yrs imp (cum). Ct 8: 3 yrs imp (conc). Ct 9: 7 yrs imp (cum). Ct 10: 4 yrs imp (conc). Cts 11 & 13: 5 yrs imp (conc). Ct 12: 6 yrs imp (conc). TES 13 yrs imp. EFP.	Dismissed. Appeal concerned appellant's mental health - fresh evidence that if known would have resulted in a lesser sentence. At [89] It was believed at the time of sentencing that the appellant suffered from a depressive illness. Though he exhibited some psychotic symptoms at that time there was no suggestion that he suffered from schizophrenia. At [90] The original diagnosis of psychotic depression remains open as a possibility. It is also unclear whether the appellant's condition has developed

		<p>depression or other serious mental illnesses at time of offending; he was not cognitively impaired at the time; would have appreciated the moral wrongfulness of his conduct and a sentence of imp would not weigh more heavily on him than it would on a person in normal health.</p>	<p>penetrated J's vagina.</p> <p><u>Ct 8</u> On another occasion LWD tried to pull down P's pants. She tried to run away, he grabbed her, placed her on a mattress and performed cunnilingus on her.</p> <p><u>Cts 9-10</u> On another occasion P was naked and lying down. LWD rubbed her vagina with a piece of ice, before inserting it into her vagina. He also forced her to penetrate her vagina with her finger.</p> <p><u>Cts 11-12</u> On a further occasion LWD penetrated P's vagina and anus with his penis.</p> <p><u>Ct 13</u> On another occasion LWD made P remove her clothing. He then penetrated her vagina with his penis.</p>		<p>since he was sentenced or is one of long standing. ... even if the appellant had undiagnosed schizophrenia at the time of sentencing, the additional evidence does not establish that a different sentence should have been imposed ...</p> <p>At [91] In the years since he was sentenced the appellant has displayed some symptoms which appear to be more consistent with schizophrenia. There is not, however, any suggestion that this is an illness that the appellant had at the time of the offending or that it in any way contributed to that offending.</p> <p>At [92] The real issue is whether, by reason of his mental illness, imp will be a significantly more harsh punishment for the appellant than it would be for a person in sound mental health. This is not established by the evidence.</p> <p>At [93] ... deterioration in mental health is not a factor</p>
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					that invariably leads to a conclusion that a sentence is unjust. ... At [95] Even if the additional evidence met the criteria for admissibility it does not establish that the sentences imposed were unjust.
47.	<i>SCN v The State of Western Australia</i> [2017] WASCA 138 Delivered 26/07/2017	42 yrs at time sentencing. Convicted after PG (10% discount). Adopted; positive and unremarkable childhood; adjustment difficulties when family moved to UK aged 13-14 yrs; compounded by parents separation; returned to WA aged 19 yrs. Left school aged 15 yrs; completed painting and decorating apprenticeship; successful in his trade; largely self-employed. No longer in contact with parents or siblings; unsuccessful attempts to contact his birth mother. Twice married; three children.	Cts 1, 4, 6, 8 & 40-42: Procure sex pen of child U13. Cts 2, 3, 5, 7, 23-26, 33-36, 38-39, 43, 45-47 & 49: Procure indec dealings with child U13. Ct 9: Indec recorded a child lineal relative. Cts 10-11: Distributed CEM. Cts 12-14 & 18: Procure sex pen child 13-16 (while under his care, supervision or authority). Cts 15-16: Indec dealings with child 13-16 (while under his care, supervision or authority). Cts 17 & 19: Sex pen child 13-16 (while under his care, supervision or authority). Ct 20: Indec record child U13. Cts 21-22: Indec record child under circ of agg. Cts 27-30: Sex pen of child U13. Ct 31: With intent to commit a crime, showed offensive material to a child. Ct 32: Procure to indec record child U13. Ct 37: Procure, encourage or incite child U13 to do an indecent act. Cts 48, 51 & 56: Stupefying in order to commit indictable offence. Cts 50, 53 & 55: Procure sex pen of child 13-16. Cts 52 & 54: Procure indec dealings with child 13-16. Cts 57-62: Compelled another person to provide a	Cts 1 & 50: 2 yrs 8 mths imp (conc). Cts 2, 28-29: 2 yrs imp (conc). Cts 3, 9-10, 20-22: 2 yrs 3 mths imp (conc). Cts 4, 8, 12, 18, 30, 42, 53 & 55: 3 yrs imp (conc). Cts 5 & 7: 1 yr 10 mths imp (conc). Cts 6, 13-14: 2 yrs 8 mths imp (conc). Ct 11: 14 mths imp (conc). Cts 15, 16, 23-26, 39, 46-48, 51 & 56: 1 yr 6 mths imp (conc). Cts 17 & 19: 4 yrs 6 mths imp (conc). Ct 27: 1 yr 9 mths imp (conc). Cts 31, 33 & 35: 10 mths imp (conc). Ct 32: 1 yr 6 mths imp (cum). Cts 34 & 40: 2 yrs 4 mths imp (conc).	Appeal dismissed. Appeal concerned length of sentence on ct 60 (9 yrs); totality and discount for the PG. At [6] This is a case which is in a class of its own. The nature and the extent of the offending are unlike any other case. ... At [117] ... there are no comparable cases in WA to provide a benchmark for the purposes of broad consistency. At [99] It was plainly open to the sentencing judge to come to the view that the prosecution case was a very strong one and that the PG, though reasonably early, were not entered at the first

		<p>First wife suffered serious brain injury when pregnant with victim.</p> <p>Married eight yrs to second wife; separated 2013.</p>	<p>sexual service, and that the person was a child.</p> <p>The victim is SCN's biological daughter and he had sole custody of her. The offending occurred over a two year period when she was aged between 11 and 13 yrs.</p> <p>SCN had a sexual relationship with the victim and provided her to men for their sexual gratification. He met the men 'C', 'A', 'B', 'CL', 'M' and 'V' through online advertisements in the personal section of websites.</p>	<p>Cts 36-38, 43, 45, 49 & 54: 11 mths imp (conc). Ct 41: 2 yrs 6 mths imp (conc). Ct 52: 1 yr 7 mths imp (conc). Ct 57: 10 yrs imp (cum). Ct 58: 11 yrs imp (head). Ct 59: 3 yrs 6 mths imp (conc). Cts 60-61: 9 yrs imp (conc). Ct 62: 10 yrs imp (conc).</p> <p>TES 22 yrs 6 mths imp.</p> <p>The sentencing judge found the appellant's offending represented one of the most serious examples of sexual offending against children to have come before the courts in WA; some of his conduct 'involved a high degree of depravity and exploitation'; the victim showed loyalty to the appellant during the investigation and this illustrated the extent of her vulnerability and trust.</p> <p>The sentencing judge noted the appellant had completely disregarded his</p>	<p>reasonable opportunity. ... The discount given was not plainly unjust or unreasonable.</p> <p>At [103] As to the seriousness of the appellant's offending, it involved not only prolonged and repeated sexual abuse of a child by her natural father but also seeking out other men and making the child available to those men to be sexually abused. ... The appellant encouraged, cajoled and compelled his daughter to comply with the abuse. Some of the abuse involved deviant and demeaning conduct. Video recordings and indecent photographs of the abuse were made and distributed. ... the appellant permitted his daughter to be administered a stupefying substance to better facilitate the commission of sexual offences upon her.... She was vulnerable and dependent upon him. He abused the love and trust that she felt for him by using it to make her compliant with his sexual desires. The child's</p>
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				<p>daughter's welfare; even during his interview with police when expressing regret about what had occurred he said 'It was fun while it lasted ... but it went way over the line'.</p> <p>The sentencing judge found that while money was paid for some of the photographs, it was clear that the appellant's primary motive was not financial gain.</p> <p>Remorseful; empathetic; risk of reoffending assessed 'well above the low category'.</p>	<p>physical safety and psychological wellbeing were disregarded or dismissed. The breach of trust involved was both extraordinary and extreme.</p> <p>At [104] It does not follow that a course of offending involving one victim is necessarily less serious than one involving multiple victims. Such an approach would ignore the relevance of other factors. In this case, those other factors were of great importance and served to place this offending into a very high category of criminality.</p> <p>At [105] One of the most serious aspects of the offending ... was that the appellant compelled the complainant to provide sexual services to a number of other men. This was reflected in the sexual servitude charges ... Sentences imposed for that offence have not been considered in other cases in this court to date. ...</p>
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					At [109] ... a relationship of sexual servitude can occur wherever an offender is in a position to compel another person to provide sexual services to others. That power imbalance is not confined to women or children from other countries whose poverty and circumstances make them vulnerable. It can also arise, as here, where a father has sole custody of a child who is vulnerable to and dependent on the father.
46.	<p><i>SGT v The State of Western Australia</i></p> <p>[2017] WASCA 136</p> <p>Delivered 20/07/2017</p>	<p>32-37 at time offending. 40 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant criminal history.</p> <p>Born in Greece; moved to Australia aged 7 yrs.</p> <p>Stable upbringing; supportive family.</p> <p>Educated to yr 10.</p> <p>Married 13 yrs; lived apart 6-7 yrs; three children.</p> <p>Consistent employment</p>	<p>Cts 1, 3-5: Indec dealings of child lineal relative. Ct 2: Encouraging a child lineal relative to engage in sexual behaviour.</p> <p>The victim is SGT's biological daughter.</p> <p>SGT was driving the victim home when he stopped the car and told her he would give her \$50 if she let him touch her. She said no, but SGT touched her vagina. She was aged 7 yrs (ct 1).</p> <p>On another occasion SGT stopped the car and made her touch his penis (ct 2).</p> <p>On another occasion he showed her a child pornographic video. She was 8-9 yrs old (ct 3).</p> <p>On another occasion SGT touched her vagina as she slept. When she resisted he told her if she did</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 2 yrs imp (cum). Ct 3: 6 mths imp (cum) (reduced from 18mths imp). Ct 4: 2 yrs 6 mths imp (conc). Ct 5: 2 yrs imp (conc).</p> <p>TES 4 yrs 6 mths imp.</p> <p>The sentencing judge found the offending was not an isolated incident and that the appellant was in a position of trust and authority, while the complainant was highly vulnerable and defenceless.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence on cts 1 and 5 and totality principle.</p> <p>At [45] The offences in relation to cts 1 and 5 were serious ... There is no basis for suggesting that the sentences imposed were plainly unreasonable or unjust.</p> <p>At [47] ... It is well established that in cases of intrafamilial sexual abuse matters personal to the offender are of less</p>

		<p>history.</p> <p>Good physical and mental health.</p>	<p>not let him do it he would kill her mother. She was aged 9-10 yrs (ct 4).</p> <p>On another occasion as the victim slept SGT touched her vagina over her clothes. She was aged 11-12 yrs old (ct 5).</p>	<p>The sentencing judge found the appellant sought to normalise his conduct and groom his victim and referred to his 'truly disturbing and vile statement' that 'all little girls do this to their dads'. The showing of the pornographic video was an effort on his part to normalise the sexual abuse.</p>	<p>mitigatory weight than might otherwise be the case. Sentencing considerations in such cases focus on the need to protect young, defenceless children from abuse at the hands of those who are in a position of trust and authority over them and who are in a position to conceal their offending.</p> <p>At [49] ... The offences involved a course of conduct over several yrs by which the appellant sexually abused his daughter in circumstances where she was clearly vulnerable. He did not PG and there was nothing mitigating in his personal circumstances, other than his lack of a criminal record, which is a matter that carries little weight in cases of this nature.</p>
45.	<p><i>RGT v The State of Western Australia</i></p> <p>[2017] WASCA 120</p> <p>Delivered 29/06/2017</p>	<p><u>Indictment 44 of 2015</u> 29 at time sentencing.</p> <p><u>Indictment 43 of 2015</u> 30 at time sentencing.</p> <p><u>Indictment 43 of 2015</u> Convicted after late PG (12.5% discount).</p>	<p><u>Indictment 43 of 2015</u> Cts 1-2; 5-6: Sex pen of child U16 yrs. Cts 3-4; 7: Indec deals of child 13-16 yrs.</p> <p><u>Indictment 44 of 2015</u> Cts 1; 4; 6-8; 10; 13; 16-19; 21: Sex pen of lineal relative U16. Cts 2-3; 9; 12; 15; 20; 22: Indec recording of lineal relative U16.</p>	<p><u>Indictment 43</u> Ct 1: 5 yrs imp (head). Ct 2: 5 yrs imp (conc). Ct 3: 10 mths imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 4 yrs 6 mths imp (conc). Ct 6: 4 yrs imp (cum) (reduced from 4 yrs 6</p>	<p>Allowed (<u>44 of 2015</u>). Dismissed (<u>43 of 2015</u>).</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>Re-sentenced on ct 21 on Ind</p>

		<p><u>Indictment 44 of 2015</u> Convicted after early PG (15% discount).</p> <p>Prior criminal history; no prior convictions for sexual offending.</p> <p>Parents separated when very young; raised by his mother and stepfather.</p> <p>Experienced sexual and physical abuse.</p> <p>Left school before yr 12.</p> <p>Qualified tradesman; inconsistent work history.</p> <p>Long history of illicit drug abuse; heavy user of methyl at time of offending.</p>	<p>Cts 5; 11; 14: Indec dealings of lineal relative U16.</p> <p><u>Indictment 43 of 2015</u> The victims were a boy K, aged 7-9 yrs and a girl, F, aged 13 yrs.</p> <p>K was RGT's partner's son and he took care of K whilst his mother was at work.</p> <p>On one occasion RGT pulled down K's pants and performed fellatio on him (ct 1).</p> <p>On another occasion RGT performed fellatio on K. Despite K asking him 'not to suck his doodle' (ct 2).</p> <p>RGT and his family were guests at the home of F's guardian and her grandmother. Whilst massaging F, RGT began to unclip her bra (ct 3). He left the room but returned and rubbed her breasts and licked and sucked her nipples (ct 4) before leaving. He again returned and made F take his penis into her mouth, holding her hair and rocking her head back and forth (ct 5). A short time later he returned, positioned F onto her hands and knees and penetrated her vagina with his penis for one to two minutes (ct 6).</p> <p>Later the same day RGT slapped F on her buttocks and told her he wanted to 'ride her' and asked her what she wished to do to him (ct 7).</p> <p><u>Indictment 44 of 2015</u> The victim A was RGT's two yr old daughter. The</p>	<p>mths). Ct 7: 6 mths imp (conc).</p> <p>Total: 9 yrs imp (partially conc with sentence on ind 44 - to commence having served 10 yrs). EFP.</p> <p><u>Indictment 44</u> Ct 1: 8 yrs imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs imp (conc). Ct 4: 8 yrs imp (conc). Ct 5: 4 yrs imp (conc). Ct 6: 8 yrs imp (conc). Ct 7: 8 yrs imp (conc). Ct 8: 10 yrs imp (conc). Ct 9: 3 yrs imp (conc). Ct 10: 10 yrs imp (conc). Ct 11: 5 yrs imp (conc). Ct 12: 3 yrs imp (conc). Ct 13: 8 yrs imp (conc). Ct 14: 4 yrs imp (conc). Ct 15: 3 yrs imp (conc). Ct 16: 8 yrs imp (conc). Ct 17: 9 yrs imp (conc). Ct 18: 10 yrs imp (conc). Ct 19: 8 yrs imp (conc). Ct 20: 3 yrs imp (conc). Ct 21: 8 yrs imp (cum). Ct 22: 3 yrs imp (conc).</p> <p>Total: 16 yrs imp. EFP.</p> <p>TES 19 yrs imp.</p>	<p>44 of 2015 to 5 yrs imp (cum with ct 1). All other sentences and orders to stand.</p> <p>Substituted TES on <u>Ind 44 of 2015</u> of 13 yrs imp. EFP.</p> <p>New overall TES of 16 yrs imp. EFP.</p> <p>At [64] Turning ... to the offences the subject of ind 44 of 2015, the victim, ... was just 2 yrs of age. She could not have been more vulnerable ... The offences constituted a gross breach of the trust reposed in any parent. The appellant's offending was not isolated. ... The fact that the offences were recorded on the appellant's mobile telephone is an aggravating factor. This is because of the potential for the offending conduct to be viewed again by the appellant or to be distributed to others.</p> <p>At [65]... The acts committed by the appellant on K would have been deeply humiliating for the</p>
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			<p>offending occurred over a period of approx. six months.</p> <p>RGT performed cunnilingus on her for about 24 seconds. He recorded it on his mobile phone (cts 1-2).</p> <p>Another time RGT exposed A's vagina and recorded a video of her vagina to his mobile phone (ct 3).</p> <p>On another occasion RGT performed cunnilingus on A for approx 12 seconds, before rubbing her vagina with his hand for about 5 seconds (cts 4-5). He then performed cunnilingus on her again for about five to eight seconds (cts 6-7). He then penetrated her vagina with his penis for about 30 seconds, before performing a further act of cunnilingus (ct 8). He recorded these acts on his mobile phone (ct 9).</p> <p>On another occasion RGT exposed A's vagina. He penetrated and rubbed her vagina with his penis (ct 10). He also masturbated and ejaculated onto A's vagina (ct 11). He recorded all acts on his mobile phone (ct 12).</p> <p>On a further occasion RGT performed cunnilingus and rubbed A's vagina with his hand, recording it on his mobile phone (cts 13-15).</p> <p>On another occasion RGT performed cunnilingus on A for about 15 seconds before rubbing and digitally penetrating her vagina for about 30 seconds. He also penetrated her vagina with his</p>	<p>EFP.</p> <p><u>Indictment 43 of 2015</u> The sentencing judge identified the very young age of the victim K, the breach of trust and the very great age gap between him and the victim.</p> <p>The sentencing judge found the offending against the victim F, 'extremely brazen and persistent' in nature.</p> <p><u>Indictment 44 of 2015</u> The sentencing judge described the offending as 'monstrous' and in the category of worst cases.</p> <p>Little or no true remorse; claimed no recollection of offending in respect of victim A.</p> <p>Moderate to high risk of reoffending.</p>	<p>victim. ... K was very young ... and was in no position to defend himself against the appellant's predations.</p> <p>At [66] Although the offences committed against F occurred on one day, the appellant pursued F and persisted in the offending ... where it culminated with the acts of sex pen ... committed by the appellant using physical force.</p> <p>At [69] ... TES imposed upon the appellant ... is substantially beyond the sentences imposed in any of the cases we have mentioned. ... when all of the circumstances of this case are compared with some of the cases that have been cited ... and bearing in mind the appellant's pleas of guilty, we conclude that the overall TES ... does not bear a proper relationship to the overall criminality involved in all of the offences ...</p>
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			<p>penis for about 80 seconds, before performing cunnilingus on her again. He recorded these acts on his mobile phone (cts 16-20).</p> <p>On another occasion RGT performed cunnilingus on A whilst recording it on his mobile phone (cts 21-22).</p>		
<p>44.</p>	<p><i>KAT v The State of Western Australia</i></p> <p>[2017] WASCA 11</p> <p>Delivered 18/01/2017</p>	<p>68 yrs at time offending.</p> <p>Convicted after PG (ct 1 15% discount and cts 2-5 25% discount).</p> <p>Minor criminal history; no prior sexual offending.</p> <p>Married 40 yrs; deeply affected by wife's death; only significant intimate relationship.</p> <p>Low to average intelligence.</p> <p>Good work history and military service; retired.</p> <p>Poor health; suffers multiple conditions, including diabetes; obesity; osteoarthritis; high blood pressure; heart problems; depression and hearing loss.</p>	<p>Ct 1: Sex pen of child U13 yrs. Cts 2-5: Indec dealings of child U13 yrs.</p> <p>The victim, C, was aged 10 yrs and KAT was her step-grandfather.</p> <p>The offences occurred over a four month period, when C stayed with KAT during the Christmas and Easter school holidays.</p> <p>On at least three occasions on different days KAT fondled C's breasts (cts 2-4).</p> <p>On one other occasion KAT performed cunnilingus on C (ct 1), then licked her stomach area and bottom (ct 5).</p>	<p>Ct 1: 4 yrs imp (conc). Ct 2: 1 yr 2 mths imp (conc). Ct 3: 1 yr 2 mths imp (conc). Ct 4: 1 yr 2 mths imp (conc). Ct 5: 1 yr 6 mths imp (conc).</p> <p>TES 4 yrs imp. EFP.</p> <p>The sentencing judge identified the enormous difference in age between the appellant and the victim; the significant breach of trust and the persistence of the offending occurring on multiple occasions.</p> <p>The appellant denied 'deliberate sexual activity with C' and has difficulties with identifying inappropriate activity of</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [102] Although there was no violence, threats or intimidation involved in ct 1 and the offence was not premeditated, it was ... a serious example of its type. The victim was young and vulnerable. ... The offence was not an isolated aberration of sexual or indecent misconduct. Any notion that C's behaviour somehow justified the appellant's actions was rightly rejected by the sentencing judge and affords no mitigation whatever. The offence ... was an invasion and abuse of C's bodily integrity and constituted a gross breach of trust.</p>

				this nature.	
43.	<p><i>Van Zyl v The State of Western Australia</i></p> <p>[2017] WASCA 1</p> <p>Delivered 10/01/2017</p>	<p>Late 40's at time offending. 73 yrs time sentencing.</p> <p>PG (25% discount).</p> <p>Prior conviction for sex offences against 10 yr old female.</p> <p>Appalling childhood experiences; supportive family.</p> <p>No mental disorder; no psychiatric needs.</p> <p>Favourable health relative to age.</p> <p>SOTP whilst in custody.</p>	<p>Cts 1, 4-6, 9-11 & 13: Sex pen of child U16. Cts 2-3, 7-8 & 12: Indec dealing of child U14.</p> <p>Van Zyl and his wife were living with the victim, A, and his parents. A was 9-10 yrs old. Most offending occurred at A's house.</p> <p><u>Ct 1</u> While babysitting A, Van Zyl performed fellatio on A for a number of minutes.</p> <p><u>Cts 2 & 3</u> On two separate occasions whilst bathing with A, Van Zyl rubbed his penis on A's penis. On the second occasion Van Zyl ejaculated into a sink.</p> <p><u>Cts 4-6</u> On another occasion Van Zyl placed A's penis into his mouth, then twice placed his penis into A's mouth.</p> <p><u>Cts 7-8</u> On two separate occasions Van Zyl masturbated A's penis.</p> <p><u>Ct 9-11</u> On two separate occasions Van Zyl placed A's penis into his mouth. Following one of these occasions he then placed his penis into A's mouth, making him gag.</p> <p><u>Ct 11</u> On another occasion Van Zyl placed A's penis into a vacuum cleaner, causing him discomfort.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2-3: 1 yr imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 2 yrs imp (cum). Ct 6: 2 yrs imp (conc). Ct 7-8: 18 mths imp (conc). Ct 9-10: 2 yrs imp (conc). Ct 11: 15 mths imp (cum). Ct 12: 15 mths imp (conc). Ct 13: 2 yrs 3 mths imp (cum).</p> <p>TES 7yrs 6 mths imp. EFP.</p> <p>The sentencing judge characterised the offending as being 'at the higher end of the scale of seriousness'.</p> <p>The appellant was found to be in a position of trust; the offending sustained and repetitive; A was groomed to facilitate the abuse and there were elements of perversion in cts 12-13.</p> <p>Low risk of reoffending; remorseful; cooperative with police.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [26] ... The appellant's conduct has had a profound impact upon A's life. While the offending did not involve threats, physical coercion or acts of violence, the absence of these factors only shows that the offending could have been worse. It does not diminish the seriousness of what the appellant actually did to A.</p> <p>At [30] The appellant's advanced age is plainly a relevant sentencing factor ... when weighed against the seriousness of the offending and the need to provide general deterrence, this factor does not justify the imposition of a lesser TES.</p>

			Van Zyl then had A wear a condom and penetrate his anus with his penis.		
42.	<i>JDF v The State of Western Australia</i> [2016] WASCA 221 Delivered 14/12/2016	42-44 yrs at time offending. Convicted after trial. No WA criminal history. Minor criminal history in Victoria. No prior history of sexual offending. Single, no children. Left school aged 15 yrs. History of labouring and factory work. Diagnosed with depression. No history of alcohol or substance abuse.	Van Zyl then had A wear a condom and penetrate his anus with his penis. Cts 1-3: Sex pen of child U13 yrs. Ct 4 and 6: Sex pen of child 13-16 yrs (care, supervision or authority). The victim, C was from a dysfunctional and violent family. Her mother was disinterested in her welfare so she went to live with JDF, with the approval of the DCP. C was aged between 12-14 yrs when the offending occurred. Shortly after C commenced living with JDF he pushed her onto a couch, held her down as she struggled and performed cunnilingus on her. (ct 1). He then penetrated her vagina with his fingers (ct 2). A few days later JDF penetrated Cs vagina with his penis (ct 3). JDF repeatedly engaged in sexual penetration with C. She recalled an occasion when JDF sexually penetrating her and ejaculated in her vagina (ct 4). On another occasion C recalled JDF penetrated her vagina with his penis and ejaculated on her stomach (ct 6). The offences were representative counts of offending.	Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 3 yrs 6 mths imp (conc). Ct 3: 4 yrs 6 mths imp (conc). Ct 4: 5 yrs imp (cum). Ct 6: 4 yrs 6 mths imp (conc). TES 8 yrs 6 mths imp. EFP. The sentencing judge found C was vulnerable and came to the appellant for protection and he had breached her trust as her carer. No remorse and emphatically denied responsibility for his offending behaviour. Low risk of sexual reoffending against children.	Dismissed – on papers. Appeal concerned totality principle. Individual sentences were not challenged. At [44] ... The TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the seriousness of the overall offending, the vulnerability of C, the pattern of sentencing in reasonable comparable cases and the very limited mitigation referred to by the trial judge.
41.	<i>PNS v The State of Western</i>	44 yrs at time offending. 48 yrs at time sentencing.	<u>Ind 963 of 2015</u> Ct 1: Indec recording of child 13-16 yrs.	<u>Ind 963 of 2015</u> Ct 1: 1 yr 4 mths imp	Allowed.

<p>Australia</p> <p>[2016] WASCA 174</p> <p>Delivered 07/10/2016</p>	<p>Early PG (25% discount).</p> <p>Significant and troubling criminal history, including convictions of sexual offending against children in 1998; 2000; 2004 and 2013.</p> <p>Unremarkable upbringing.</p> <p>Single; no dependents.</p> <p>Previous marriage with four step-children; separated after PNS sexually offended against two of the children.</p> <p>Significant gaps in work history.</p> <p>Long history of cannabis use.</p> <p>PNS had undergone intensive sex offender treatment twice.</p>	<p>Ct 2: Indec recording of child 13-16 yrs. Ct 3: Indec dealings of child 13-16 yrs. Ct 4: Poss CEM. Ct 5: Poss CEM.</p> <p><u>Ind 457 of 2015</u> 1 x Indec dealings of child U13 yrs.</p> <p><u>Section 32 Notice</u> Ct 1: Failing to comply with reporting obligations Ct 2: Poss cannabis (0.9g). Ct 3: Poss smoking implement. Ct 4: Permitted premises to be used for the use of a prohibited drug or plant.</p> <p>Offending spanned almost 5 yrs.</p> <p><u>Ind 963 of 2015 (cts 1- 3)</u> In February 2013, Police executed a search at the PNS' home and found a 4gb thumb drive and 500gb hard drive containing two videos made by PNS. The first video was of victim, J, aged 14 yrs, asleep with his underwear pulled down and PNS pulling his buttocks apart, exposing his anal passage (cts 3 and 1). The second video showed J lying down with his erect penis protruding out the top of his underwear. The video focused on the victim's genitalia (ct 2).</p> <p>The drives also contained 381 images and 72 videos of CEM categorised as (ct 4): Cat 1: 156 images; Cat 2: 59 images and 26 videos; Cat 3: 35 images and one video; Cat 4: 126 images and 41 videos; and</p>	<p>(conc). Ct 2: 1 yr 4 mths imp (cum). Ct 3: 1 yr 4 mths imp (cum). Ct 4: 1 yr 8 mths imp (cum). Ct 5: 1 mth imp (conc).</p> <p><u>Ind 457 of 2015</u> 1 yr 8 mths imp.</p> <p><u>Section 32 Notice</u> Ct 1: 4 mths imp (conc). Ct 2: \$100 fine. Ct 3: \$300 fine. Ct 4: 2 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that PNS was at a high risk of sexual reoffending against children; no remorse.</p> <p>Retribution, deterrence and the protection of society were important factors in sentencing PNS, the protection of society being particularly important in light of his continuing attitude of disobedience to</p>	<p>Appeal concerned length of individual sentences and totality.</p> <p>Re-sentenced on cts on <u>Ind 963 of 2015</u> to:</p> <p>Ct 1: 1 yr 4 mths imp (conc with ct 5 and conc with sentences for all other counts).</p> <p>Ct 2: 1 yr 4 mths imp (conc with ct 3 but cum on the sentence for ind 457 and the sentence for ct 4 on ind 963).</p> <p>Ct 3: 1 yr 4 mths imp (conc with ct 2 but cum on the sentence for ind 457 and the sentence for ct 4 on ind 963).</p> <p>Ct 4: 12 mths imp (cum).</p> <p>Ct 5: 1 mth imp (conc with ct 1 and conc with sentences for all other counts).</p> <p>Other sentences remain the same.</p> <p>TES 4 yrs imp.</p> <p>At [40] ... the TES in this case is substantially greater</p>
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			<p>Cat 5: 5 images and 4 videos.</p> <p><u>Ind 457 of 2015</u> In February 2015 the victim, M, aged 8 yrs, was at a supermarket checkout with her mother. As PNS passed the victim he pressed his fingers between her buttocks over her clothing.</p> <p><u>Ind 963 of 2015 (ct 5)</u> In May 2015, Police conducted a search of PNS' home and found a laptop containing two images of category 1 CEM, which PNS admitted downloading and using for sexual gratification.</p> <p><u>Section 32 Notice</u> During the search in May 2015, Police found cannabis and a smoking implement Which PNS admitted using. He also allowed friends to smoke cannabis in his house.</p> <p>PNS was a reportable offender pursuant to the <i>Community Protection (Offender Reporting) Act 2004</i>. PNS activated an iCloud and an email account but did not advise the Sex Offender Management Squad of this within the required seven-day period.</p>	the law.	<p>than sentences that have been imposed for much more serious offending.</p> <p>At [41] It is ... a significant factor that the appellant has been previously convicted of offending of a similar nature to the present offences and has served three terms of imp for such offending. He has also been assessed as being at a high risk of reoffending. ... it is apparent that the issue of personal deterrence assumes particular importance in this case.</p>
40.	<p><i>GO v The State of Western Australia</i></p> <p>[2016] WASCA 132</p> <p>Delivered 27/07/2016</p>	<p><u>Appellant O</u> 35 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Good upbringing.</p>	<p><u>Appellant "Ms O"</u> Cts 4-6 and 12: Indec dealing of child U13 yrs. Ct 3: Sex pen of child U13 yrs.</p> <p><u>Appellant "Mr B"</u> Cts 6 and 9-13: Indec dealing of child U13 yrs. Cts 7-8: Sex pen of child U13 yrs.</p> <p>Ms O and Mr B were in a sexual relationship. The</p>	<p><u>Appellant O</u> Ct 3: 4 yrs 6 mths imp (conc). Ct 4: 2 yrs 6 mths imp (conc). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 4 yrs 6 mths imp (cum).</p>	<p>Dismissed.</p> <p>Appeals concerned the length of the sentences.</p> <p>At [250] Ms O committed multiple serious sexual offences against two of her children, both of whom were</p>

		<p>Mother of six children; all in the care of DCP.</p> <p>Breast cancer in remission at time sentencing.</p> <p>Continuing relationship with the appellant B; relationship marred by domestic violence and substance abuse.</p> <p>Long standing methyl addiction.</p> <p><u>Appellant B</u> 38 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy and serious criminal history including numerous offences of assault, agg burg and an armed robbery.</p> <p>Good upbringing.</p> <p>Left school in yr 9; limited employment history.</p> <p>Significant history of alcohol and illicit drug abuse; heavy methyl addiction.</p>	<p>victims W and M were the biological children of Ms O.</p> <p>The offences were committed over 6 mths.</p> <p>Ms O penetrated W's anus with the handle of a knife (ct 3). On another occasion Ms O inserted a spoon (ct 4) and on a further occasion a fork (ct 5) into the middle of W's bottom.</p> <p>Mr B and Ms O procured W to touch Ms O's vagina (ct 6).</p> <p>Mr B performed fellatio on W (ct 7). Ms O interrupted Mr B and eventually pulled him away.</p> <p>Mr B forced W to take Mr B's penis in his mouth and moved it backwards and forwards a number of times (ct 8). Ms O stopped Mr B</p> <p>Mr B rubbed a spanner between W's buttocks on the outside of his clothes with sufficient force to cause his bottom to bleed (ct 9).</p> <p>Mr B removed his and W's clothing and rubbed his penis against W while they laid stomach to stomach (ct 10).</p> <p>Mr B made W rub his penis (ct 11).</p> <p>Mr B and Ms O put various objects, including a broom, doll, fork, knife and spoon, on M's vagina (ct 12).</p> <p>Mr B exposed his penis and asked M to kiss it (ct</p>	<p>Ct 12: 2 yrs 6 mths imp (cum).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p><u>Appellant B</u> Ct 6: 4 yrs 6 mths imp (conc). Ct 7: 4 yrs 6 mths imp (conc). Ct 8: 5 yrs 6 mths imp (cum). Ct 9: 2 yrs imp (cum). Ct 10: 4 yrs imp (conc). Ct 11: 4 yrs imp (conc). Ct 12: 2 yrs 6 mths imp (conc). Ct 13: 3 yrs imp (cum).</p> <p>TES 10 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found Mr B's offending was more frequent and more flagrant and that he used a degree of force and coercion against W. He described Ms O's offending as a breach of trust of a greater scale.</p> <p>The sentencing judge</p>	<p>particularly young and completely vulnerable. They were of an unusually depraved nature and were committed, in some instances, together with Mr B. They were an abject breach of trust.</p> <p>At [255] ...we do not regard the sentence imposed on ct 6 as being manifestly excessive. While it is a high individual sentence... it involved very substantial criminality beyond that usually encountered in such cases and was, in our opinion, substantially more serious than in other cases.</p> <p>At [257] Much of what we have already said about the seriousness of Ms O's offending applies to Mr B, although Ms O's offending involved a greater breach of trust. Not only was Mr B's offending more numerous, it was...more frequent and more flagrant and involved, in the case of W, a degree of force and coercion.</p>
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			13).	<p>characterised the offending of both appellants as very serious. He noted the very young age of the victims and given the considerable depravity, ranked the indec dealing offences amongst some of the most serious he had seen or was aware of.</p> <p>Both appellants maintained innocence and exhibited no victim empathy.</p>	
39.	<p><i>Bechara v The State of Western Australia</i></p> <p>[2016] WASCA 77</p> <p>Delivered 12/05/2016</p>	<p>43 yrs at time offending. 49 years at time sentencing.</p> <p>Convicted early PG (20% discount).</p> <p>Prior criminal history of inciting a person U16 yrs to commit an act of indec.</p> <p>Born in Lebanon; immigrated to Australia in 1985.</p> <p>Divorced; single at time of offending.</p> <p>Previously employed by family, but full time career for his elderly mother for a number of years.</p>	<p>4 x Using elec comm to procure a child to engage in sexual activity or expose a child to indec matter. 2 x Procuring a child U13 yrs to do an indec act.</p> <p>Bechara lived in NSW and adopted false personas to contact children through an online chat programme.</p> <p><u>Cts 1 and 2</u> Using the persona of a 14 yr-old boy Bechara communicated online with the victim, a 13 yr-old girl. He repeatedly asked her to send naked images of herself or photographs of her breasts and vagina. She complied when Bechara told her he would never speak to her again if she did not. Bechara sent two photographs of an erect penis to her.</p> <p><u>Cts 3 - 6</u> Under the false persona of a 13 yr-old boy</p>	<p>16 mths imp on each ct.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge acknowledged the appellant's cooperation; demonstrated remorse and responsibility for his offending and the hardship imp would create on the appellant and his mother.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>Re-sentenced to 12 mths imp each count. Cts 1, 3 and 5 cum and 2, 4 and 6 conc.</p> <p>TES 3 yrs imp. EFP. (3 yrs 6mths imp. When considered with NSW offence).</p> <p>At [55] The appellant offended against more than one victim; the offending involved 'real children' who, on occasions, exposed themselves to the appellant</p>

		<p>Poor health with coronary artery and heart related conditions. Insulin dependent diabetic.</p> <p>Psychological evaluation concluded a dependent personality disorder and major depressive disorder, plus a low level of understanding and comprehension of his offending or the consequences of his actions.</p> <p>The appellant was also convicted in NSW of producing, disseminating or poss. child pornography for material found on the same computer; sentenced to 6 mths 24 days imp.</p>	<p>Bechara communicated online with the victims, two sisters, S aged 11 yrs and T.</p> <p>Bechara told S and T that he loved them and during their online chats asked them to wear miniskirts and remove their underwear whilst using webcam.</p> <p>Bechara also asked S to show her breasts and vagina over webcam and she did so on at least one occasion after he told her he would never speak to her again. He also attempted to send S a photograph of his penis. He sent to S, moving emoticon pictures showing a vagina being rubbed and a penis entering a vagina. During some chats with S Bechara told her he was masturbating.</p> <p>On at least ten occasions T complied with Bechara's requests to show him her breasts and vagina on webcam. He recorded her actions and stored images of T's vagina and naked chest on his computer. He sent to T, moving emoticon pictures showing a vagina being rubbed and a figure performing oral sex.</p> <p>On Bechara's computer police found a 21pg document containing a record of approx 200 girls who he had communicated with electronically.</p>		<p>and the offending was persistent (and ... the relatively unfavourable psychological report).</p> <p>At [62] The TES ... when considered with the sentence for the NSW offence... represented the highest sentence imposed for this type of offending when compared with the sentences imposed in other cases.</p>
38.	<p><i>Lewsam v The State of Western Australia</i></p> <p>[2016] WASCA 60</p>	<p>50 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Considerable criminal record; no prior convictions</p>	<p><u>Indictment</u></p> <p>4 x Sex pen child U13 yrs. 24 x Indec dealings of child U13 yrs. 85 x Indec recording of child U13 yrs. 2 x Att indec recording child U13 yrs. 3 x Indec act in public. 2 x Poss CEM.</p>	<p>TES 16 yrs 6 mths imp.</p> <p>Sentencing judge stated that the nature of the individual sexual offending was not in the most serious category, but balanced against that</p>	<p>Allowed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p>

<p>Delivered 26/04/2016</p>	<p>for sexual offences.</p> <p>Difficult upbringing, including time in foster care; physically abused by stepfather.</p> <p>Left home at age 12 to live on the streets.</p> <p>Separated from wife 10 yrs previously; no contact with his three children.</p> <p>Limited employment history.</p>	<p><u>Section 32 Notice</u> 1 x Obstructing an officer. 2 x Poss drug paraphernalia. 1 x Poss unlicensed firearm. 1 x Poss indec or obscene article.</p> <p>Over a three-year period Lewsam regularly attended the toy section of several Kmart stores. He approached female children and used a digital recording device to view up their skirts and record images of their underwear and bottoms.</p> <p>On some occasions Lewsam rubbed the victim's vagina on the outside of her underwear, or pulled the victim's underwear down to reveal her vagina. On other occasions he kissed the victims or sucked on their tongues. On one occasion he had a victim touch his exposed penis. On four occasions Lewsam penetrated the victim's vagina with his fingers. On another occasion he recorded himself rubbing the genital area of a 2-3 yr old boy at an unknown residence.</p> <p>In total there were 78 victims, none of whom were known to Lewsam. 75 of the victims were identified as being very young children between 2-6 yrs of age and 19 were indecently dealt with.</p> <p>A search of Lewsam's computer located child exploitation material; comprising over 7000 images, including 620 images and 12 videos depicting children engaged in penetrative sexual activity with adults (Cat 4) and 15 images depicting children involved in sadism (Cat 5).</p>	<p>the sheer number of victims and the manner in which offences were committed.</p> <p>The sentencing judge found that the appellant purposely attended toy departments with the specific intention of finding young children and an opportunity to sexually abuse them for his own sexual gratification.</p> <p>Sentencing judge found the appellant to be a serial paedophile with a high risk of reoffending.</p>	<p>Orders for cum and conc sentences set aside. Appellant re-sentenced to TES 12 yrs imp. EFP.</p> <p>At [38] None of the cases in this court... are truly comparable with the present case. The present case is unusual in two respects. The first is the very large number of children victimised by the appellant. The second is that, while any sexual offence against a child is inexcusable, the nature of the individual offences committed in the present case was towards the lower end of the scale of seriousness of offences of this type.</p> <p>At [44] The appellant's most serious offending conduct, involving digital pen over a short period of time and having one child touch his penis, was of a much lower order of seriousness than that considered in like cases. The TES imposed on the appellant after an early PG was longer than that imposed in any other case involving the sexual abuse of children</p>
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					<p>which has been identified by the court or the parties.</p> <p>At [51] The appellant clearly acted in a premeditated manner on a large number of occasions to target 75 children with whom he had no connection. Those children were ... entitled to feel safe playing in the toy aisle of a department store. The appellant took advantage of the vulnerability of those small children to satisfy his own deviant sexual urges.</p>
37.	<p><i>JAW v The State of Western Australia</i></p> <p>[2016] WASCA 40</p> <p>Delivered 09/03/2016</p>	<p>30-34 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Good employment history; 20 yrs service in the Royal Australian Navy, honourably discharged as a result of health problems.</p> <p>Well educated, diploma of engineering.</p> <p>TAFE lecturer prior to trial.</p> <p>No issues with alcohol or</p>	<p>Cts 2-4, 6, 10, 12, 16-17: Indec dealing of child U13 yrs. Cts 5, 9, 11, 13-14: Sex pen of child U13 yrs. Ct 18: Poss child pornography.</p> <p>The offending occurred from 1998 to 2002. Victim A and victim D are brother and sister. JAW was a neighbour and in a romantic relationship with the victims' mother F. JAW regarded F and the children as family and the victims frequently visited his home without F.</p> <p><u>Ct 2</u> When A was aged 8 or 9 yrs JAW showed A and D a pornographic movie, telling A that girls have a part that feels really good when you play with it and that boys like it when you touch their penis. Afterwards JAW told the victims not to tell anyone what they had seen.</p>	<p>Ct 2: 12 mths imp (cum). Ct 3: 18 mths imp (cum). Ct 4: 18 mths imp (conc). Ct 5: 4 yrs imp (cum). Ct 6: 18 mths imp (conc). Ct 9: 4 yrs imp (conc). Ct 10: 18 mths imp (conc). Ct 11: 4 yrs imp (conc). Ct 12: 18 mths imp (conc). Ct 13: 4 yrs imp (conc). Ct 14: 4 yrs imp (conc). Ct 16: 6 mths imp (cum). Ct 17: 18 mths imp (conc). Ct 18: \$400 fine.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of individual sentences and TES.</p> <p>At [142] Save for cts 16 and 17, the appellant had conducted himself, in effect, as a father figure to A and D... The offending was made more serious in respect of A by reason of her young age and vulnerability. The appellant groomed A, exploited her curiosity and ... portrayed his actions as a game... The offending against A was no momentary</p>

		<p>illicit substances.</p> <p>No mental health issues.</p> <p>Father is a prison officer.</p>	<p><u>Cts 3 and 4</u> A couple of days later, A asked JAW to show her the spot on her body ‘that felt good’. He got A to remove her underwear, sat her in front of a mirror and placed his finger on her clitoris. He also placed A’s hand over his erect penis. He told A not to tell anyone as it was their secret.</p> <p><u>Ct 5</u> Approx one week later JAW performed cunnilingus on A for about 2 mins. He again told A it was their secret and not to tell anyone.</p> <p><u>Ct 6</u> A few weeks after cts 3 and 4, JAW pulled down his pants and exposed his erect penis to A. He placed her hand on his penis and had her masturbate him for 3-5 minutes. Again he told A not to say anything to anyone.</p> <p><u>Cts 9 and 10</u> When A was almost 11 yrs JAW got into bed with her. He licked his fingers then rubbed her clitoris for about five minutes. He then grabbed A’s hand and put it on his erect penis on top of his pants.</p> <p><u>Ct 11</u> On another occasion when A was almost 11 yrs, JAW had her perform fellatio upon him. After this incident she performed fellatio upon him ‘once every two weeks’.</p> <p><u>Cts 12, 13 and 14</u> A was holding JAW’s penis and he got her to</p>	<p>The sentencing judge took into account as mitigatory factors: that the appellant had stopped offending against A of his own volition; and the hardship he would encounter in prison (due to his father being a prison officer).</p> <p>Sentencing judge found the offending, save for cts 16, 17 and 18, constituted a gross abuse of trust; the appellant groomed A and D.</p> <p>The sentencing judge found the appellant’s conduct formed an ongoing pattern of sexual abuse of A.</p> <p>The sentencing judge found that the appellant harboured a sexual interest in young girls, a sexual interest in A as a young girl and an ongoing interest in A as an adult.</p>	<p>or isolated aberration. On the contrary, the offences were committed over a period of several yrs and were representative of a course of regular sexual abuse over that time.</p>
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			<p>perform fellatio. He then licked A's vagina for 3-5 minutes.</p> <p><u>Cts 16 and 17</u> A was 11 or 12 yrs and had her hand on JAW's penis when he put his fingers on her clitoris. He was interrupted by F, and told A to tell F they were just watching TV.</p> <p><u>Ct 18</u> Police found two images of naked girls at JAW's home.</p>		
36.	<p><i>The State of Western Australia v PJW</i></p> <p>[2015] WASCA 113</p> <p>Delivered 03/06/2015</p>	<p>32 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Criminal history, including 2001 convictions of indec dealing with a child U13 yrs and indec recording a child U13 yrs.</p> <p>Significant health difficulties at a young age; disadvantaged upbringing.</p> <p>Engaged in rudimentary employment.</p> <p>Emotionally immature; limited self-awareness.</p>	<p>7 x Sex pen of de facto child U16 yrs. 2 x Indec dealings of de facto child U16 yrs.</p> <p>The offending was committed over 10 mths. The victim was seven yrs old and was the biological daughter of PJW's de facto partner. PJW lived with the victim.</p> <p>The victim was asleep in a bedroom. PJW entered the room, removed his underpants and inserted his finger in the victim's anus twice (cts 1-2) before inserting his penis in her anus (ct 3).</p> <p>On another date, PJW ejaculated in the victim's mouth (ct 4).</p> <p>On another date, PJW showed the victim a pornographic film (ct 6). He rubbed his penis against her anus on the outside of her underwear (ct 7).</p> <p>On another date, PJW invited the victim to enter a garden shed where he removed some of her</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp (cum on ct 4). Ct 4: 2 yrs 6 mths imp (conc). Ct 6: 18 mths imp (conc). Ct 7: 18 mths imp (conc). Ct 8: 4 yrs imp (conc). Ct 9: 4 yrs imp (conc). Ct 11: 2 yrs 8 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Offending aggravated by victim's age, relationship with the respondent, the victim's vulnerability, the respondent's significant breach of trust and the</p>	<p>Allowed.</p> <p>Orders for conc and cum set aside. Re-sentenced to:</p> <p>Ct 1: 2 yrs imp (cum) Ct 2: 2 yrs imp (conc) Ct 3: 4 yrs imp (conc) Ct 4: 2 yrs 6 mths imp (conc) Ct 6: 18 mths imp (cum) Ct 7: 18 mths imp (cum) Ct 8: 4 yrs imp (conc) Ct 9: 4 yrs imp Ct 11: 2 yrs 8 mths imp (conc)</p> <p>TES 9 yrs imp.</p> <p>At [43] His offending was not momentary or impulsive. It was sustained and repetitive...The respondent engaged in some deliberate</p>

		<p>clothes, lowered his pants and penetrated her anus with his penis (ct 8).</p> <p>On another date, PJW entered the victim's bedroom and inserted his penis in her vagina (ct 9).</p> <p>On another date, PJW performed cunnilingus on the victim (ct 11).</p>	<p>period of time over which the offences were committed.</p>	<p>grooming of the victim to facilitate his abuse of her for his sexual gratification... the sexual abuse caused her physical pain... The emotional consequences for the victim were damaging. She has experienced nightmares, anxiety and sadness. Cts 1, 2, 3 and 9 were committed while the victim was sleeping in her own bed. She was especially vulnerable and defenceless.</p> <p>At [49] The respondent's continuing denial of the current offending, as well as his minimisation of his responsibility for the 2001 offending gives rise to considerable concern. His stance is an impediment to his rehabilitation... the risk that he may reoffend in a similar manner was an important sentencing factor.</p> <p>At [50] The respondent has shown no remorse or victim empathy.</p> <p>At [51] The proper exercise of the sentencing discretion required greater</p>
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					accumulation of the individual sentences in order to mark the very serious nature of the respondent's overall offending and to reflect the primary sentencing considerations of appropriate punishment and personal general deterrence, having regard to the need to protect vulnerable children.
35.	<i>DKA v The State of Western Australia</i> [2015] WASCA 112 Delivered 03/06/2015	47-49 yrs at time offending. 56 yrs at time sentencing. Convicted after trial. Irrelevant criminal history. Left school after completing yr 11. Always employed; well-regarded and respected by work colleagues. Supportive new partner.	7 x Indec dealings of de facto child U16 yrs. 2 x Sex pen of de facto child U16 yrs. The victim, K, was the daughter of DKA's de facto partner. DKA lived with the victim. The offending occurred over two and a half yrs. <u>Ct 1</u> DKA took K's hand, placed it onto his shorts and moved her hand up and down on his penis. He then lowered his shorts, exposed his erect penis and used his hand on her hand to rub his erect penis, despite K trying to pull away. K was 10 yrs old. <u>Cts 2-3</u> On another date, while K was asleep, DKA went into her bedroom and put his hand inside her pyjamas and underwear, and touched her vagina. K awoke with a fright. DKA put K's hand down his shorts and onto his penis and told her to play with his penis. DKA continued to play with K's vagina while forcing K's hand up and down on his penis. K was 10 yrs old.	Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs imp (conc). Ct 6: 2 yrs imp (conc). Ct 7: 2 yrs imp (conc). Ct 10: 4 yrs imp (conc). Ct 11: 2 yrs imp (conc). Ct 17: 18 mths imp (conc). Ct 20: 5 yrs 8 mths imp. TES 7 yrs 8 mths imp. EFP. Trial judge found that the appellant had sexually offended against K on an ongoing systematic basis over an extended period of time of about two and a half years. The appellant denied the offending; trial judge found	Dismissed – on papers. At [42] ...ct 20 involved especially egregious offending... The offence occurred while K was in her own home and under the appellant's care and supervision. She was extremely vulnerable. The offence involved some premeditation and planning. Later, the appellant endeavoured to buy K's silence by giving her money. All of the offending, including ct 20, caused K to suffer significant long-term harm. At [44] The term of 5 yrs 8 mths was commensurate with the seriousness of the offence and was within the range

			<p><u>Cts 6-7</u> On another date, DKA went into K's bedroom after she had gone to bed. He put her up against the wall, touched her vagina and tried to insert his fingers into her vagina. It was very painful and K told him it hurt. At the same time he pulled down his pants and made her play with his penis. K was 11 yrs old.</p> <p><u>Cts 10-11</u> On another date, after showing K pornography, DKA placed K on his bed, removed her clothing and inserted his fingers into her vagina. At the same time he forced her to masturbate his penis. K was 11 yrs old.</p> <p><u>Ct 17</u> On another date, while DKA watched pornography, he made K sit on the floor next to him and he used his foot to rub the outside of her vagina through her clothes. K was 11 yrs old.</p> <p><u>Ct 20</u> On another date, DKA took K into his bedroom, made her lie on the bed, knelt over her and penetrated her vagina with his penis. DKA persisted in sexually penetrating K, despite her yelling in pain and attempting to move away from or avoid his actions. K was 12 yrs old.</p>	<p>he had no remorse or acceptance of responsibility; no steps towards rehabilitation.</p> <p>Trial judge found that the overall offending was towards the upper end of the scale of offending against a child.</p>	<p>open to the trial judge on a proper exercise of the sentencing discretion.</p> <p>At [48] ... his Honour was correct in stating that, while the appellant's overall offending '[was] not the most serious offending', it was 'towards the upper end of the scale of seriousness of offending' of the kind in question.</p> <p>At [55] The term of 7 yrs 8 mths was required in order to reflect the very serious nature of the appellant's offending and to give effect to the primary sentencing considerations of appropriate punishment and personal and general deterrence, having regard to the need to protect vulnerable children.</p>
34.	<p><i>Saraceno v The State of Western Australia</i></p> <p>[2015] WASCA</p>	<p>Convicted after PG.</p> <p>Generally favourable personal circumstances.</p>	<p>Ct 1: Indec recording of child U13 yrs. Ct 2: Indec recording of child U13 yrs.</p> <p>Saraceno lived with his partner and her 12 yr-old daughter. On two occasions Saraceno installed a</p>	<p>Ct 1: 10 mths imp (cum) Ct 2: 10 mths imp (cum)</p> <p>TES 20 mths imp.</p>	<p>Dismissed.</p> <p>At [55] It was conduct that in some respects was more serious than the possession of</p>

	<p>100</p> <p>Delivered 22/05/2015</p>	<p>Undertook 41 sessions of psychological counselling prior to sentencing.</p> <p>Appellant was sentenced in Victoria for related offending (child pornography) to a TES of 2 mths imp followed by 3 yrs recognisance release order.</p>	<p>concealed camera in the bathroom of the house and deliberately activated it immediately prior to the victims using the bathroom. The victims were friends of the Saraceno's step-daughter and were sleeping over. The camera recorded the victims undressing and taking a shower. The victim in ct 1 was 12 yrs old. The victim in ct 2 was 11 yrs old.</p> <p>In each ct, Saraceno removed the camera and downloaded the footage to a computer. Approx two yrs later, AFP executed a search warrant at Saraceno's home in Victoria and found the footage on his computer. He admitted that he used the footage for his sexual gratification.</p> <p>A number of other still images and videos were found on Saraceno's computer for which he was charged and sentenced for in Victoria.</p>	<p>EFP.</p> <p>The sentencing judge found the following factors aggravating: breaches of trust; degree of pre-meditation and planning; gratification of a sexual interest in young girls.</p>	<p>child pornography in that it involved the covert recording of naked children who were known to the appellant and under his care.</p> <p>At [62] Having regard to the serious circumstances of the offences I am unable to conclude that sentences of 10 mths in each case to be served cum were in error. That position is not affected when account is taken of the Victorian offences.</p>
33.	<p>LFG v The State of Western Australia</p> <p>[2015] WASCA 88</p> <p>Delivered 04/05/2015</p>	<p>64-67 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history, including convictions for child sex offences.</p> <p>Stable health issues.</p>	<p>1 x Indec dealings of child U13 yrs. 9 x Indec dealings of child 13-16 yrs. 5 x Sex pen of child 13-16 yrs.</p> <p>LFG and the victim were second cousins. The offending spanned a period of two to three yrs. The victim was 11-14 yrs at time offending.</p> <p><u>Ct 1</u> LFG and the victim were alone at the victim's grandmother's house. LFG asked to see the victim's pubic hair. The victim showed him his pubic hair for a few seconds.</p> <p><u>Ct 4</u> On another date, LFG took the victim for a walk. He masturbated the victim to ejaculation.</p>	<p>Ct 1: 8 mths imp. Ct 4: 2 yrs imp (cum). Ct 9: 2 yrs 10 mths (cum). Ct 22: 2 yrs imp. Ct 23: 2 yrs 10 mths imp. Ct 24: 18 mths (cum). Ct 25: 2 yrs imp. Ct 26: 2 yrs 10 mths imp. Ct 27: 18 mths imp (cum). Ct 28: 2 yrs imp. Ct 29: 2 yrs 10 mths imp. Ct 30: 18 mths imp. Ct 31: 2 yrs imp. Ct 32: 2 yrs 10 mths imp. Ct 33: 18 mths imp.</p> <p>TES 7 yrs 10 mths imp.</p>	<p>Dismissed.</p> <p>At [402] The appellant's offending was correctly characterised by the trial judge as falling towards the higher end of the scale of seriousness for this type of offending.</p> <p>At [407]... the complainant was, to some extent, an 'easy target' for the appellant, and the appellant took advantage of the complainant's unfortunate domestic situation.</p>

			<p><u>Ct 9</u> On another date, LFG started performing fellatio on the victim in a car outside of the victim's grandmother's house. The grandmother interrupted him, so he placed a pillow over the victim's groin area. When the grandmother left, he continued performing fellatio to ejaculation.</p> <p><u>Cts 22-33</u> On four different dates, LFG took the victim to a hotel. On each occasion, he masturbated the victim and performed fellatio on him to ejaculation (cts 22-23, 25-26, 28-29 and 31-32). On each occasion, LFG asked the victim to masturbate him. The victim did so. LFG then masturbated himself to ejaculation (cts 24, 27, 30 and 33).</p>	<p>EFP.</p> <p>Prolonged course of conduct directed at gaining the victim's trust and grooming him for the commission of the offences.</p> <p>High risk of reoffending; not remorseful; steadfastly maintained a denial of the offending; no steps to rehabilitation.</p> <p>Significant adverse effect on the victim's emotional and social well-being.</p>	<p>At [419] ...the TES was not disproportionate to the appellant's overall offending and it cannot reasonably be said that he has been left without any reasonable prospect of useful life after his release.</p>
32.	<p><i>AIM v The State of Western Australia</i></p> <p>[2014] WASCA 155</p> <p>Delivered 27/08/2014</p>	<p>70 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history of significance.</p> <p>Married; 3 adult children; number of grandchildren.</p> <p>Constantly employed; actively involved in community activities.</p> <p>Number of positive references.</p>	<p>7 x Indec dealings of child U13yrs. 6 x Sex pen of child U13 yrs.</p> <p>Cts 1-9 concerned a girl 'A'. Cts 10-13 concerned another girl 'H'.</p> <p><u>Cts 1-4</u> The victim 'A' was in years 3 and 4 at the local primary school where AIM was her school teacher. All the offences occurred on the school grounds. He used physical force, threats and he ignored the victim's attempts to repel his sexual advances.</p> <p>On four separate occasions AIM rubbed his hand on A's vagina on the outside of her clothing.</p>	<p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The appellant was interviewed and denied any wrongdoing.</p> <p>No remorse.</p> <p>The charges concerning both victims were representative of his conduct.</p> <p>Appellant had groomed</p>	<p>Dismissed - on papers.</p> <p>At [48] the appellant will be 80 when he becomes eligible for parole and will be 82 upon the completion of the total effective sentence. It must be accepted that the appellant may well die in gaol or that a very significant proportion of his remaining life will be spent in custody.</p>

		<p>General good health.</p> <p>No evidence of rehabilitation.</p>	<p><u>Cts 5-6</u> On two separate occasions AIM penetrated A's vagina with his finger. In Ct 6, as he penetrated her vagina he masturbated to the point where he ejaculated over her.</p> <p><u>Ct 7</u> AIM exposed his penis to A and started rubbing it. He asked the victim to kiss his penis but she refused.</p> <p><u>Cts 8-9</u> AIM penetrated A's vagina with his penis. His acts of sexual penetration caused the victim physical pain. The offending against A continued until she transferred to another primary school. At about this time, AIM ceased working as a teacher.</p> <p><u>Ct 10</u> H is AIM's granddaughter and was living with him and his wife. AIM commenced abusing her from 4 yrs of age. The abuse continued for the next three years. The abuse would occur on the pretence of playing games and would end up with the victim being rewarded with a chocolate covered sweet. On one occasion AIM made the victim to tickle him, he pulled his pants down and moved H's hands up and down his penis to the point of ejaculation.</p> <p><u>Cts 11-13</u> These offences were committed in AIM's bedroom in the one incident. He lay on his bed without trousers or underwear. He asked H to play</p>	<p>'A'.</p> <p>Both victims badly affected; ongoing consequences.</p> <p>The sentencing judge characterised the offences against each victim as being at the upper end of the range of seriousness.</p>	
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			<p>with him and to take her pants off. AIM got the victim to masturbate him and then suck his penis. He then told her he wanted to show her how to have sex. He inserted his penis into her vagina.</p> <p>AIM would tell the victim that the sexual activity between grandfathers and granddaughters was normal.</p>		
31.	<p><i>The State of Western Australia v Hassell</i></p> <p>[2014] WASCA 158</p> <p>Delivered 27/08/2014</p>	<p>59 yrs at time offending. 61 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record including one of indecent assault and multiple drink driving.</p> <p>Constant employed for 23 yrs.</p> <p>Long term problem with alcohol abuse; excessive alcohol consumption is linked to his past and present offending.</p> <p>No positive signs towards rehabilitation; moderated his drinking after offending.</p> <p>Shortly after offending, his former partner of 25 yrs passed away.</p>	<p>Ct 1: Indec dealings of child U13 yrs. Ct 2: Indec dealings of child U13 yrs.</p> <p>The victim was 10 yrs of age with developmental issues. She attended a special needs school.</p> <p>The victim and her mother went to a friend's house with the intention of staying overnight. Later that evening, Hassell and his adult son attended. The adults stayed up all night drinking. Hassell became very intoxicated.</p> <p>The next day whilst Hassell was sitting next to the victim he began rubbing the victim's feet with his feet and intimated that she should go inside. The victim went inside. Hassell also went inside, pushed the victim into a bedroom and closed the door. There he kissed the victim on various parts of her head and then her lips with an open mouth in a plainly sexual way.</p> <p>Sometime later the victim was playing with other children. Hassell entered the room and touched the victim on the neck. She left to escape his advances. Later, Hassell pulled the victim by her wrists into a bedroom and rubbed her vaginal area on the outside of her bather shorts.</p>	<p>Ct 1: 14 mths imp.</p> <p>Ct 2: 18 mths imp (conc).</p> <p>TES 18 mths imp susp 14 mths.</p> <p>In ROI he claimed he could not recall offences.</p> <p>No remorse; blamed the victim; unwilling to take responsibility for his actions.</p>	<p>Allowed.</p> <p>Ct 1: 14 mths imp. Ct 2: 18 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>At [43] There was nothing exceptional about the facts and circumstances of the present case. Although the offending was not at the most serious end of the spectrum, the criminal conduct was persistent and accompanied by physical coercion and threats.... A particularly aggravating aspect of it was the vulnerability of the victim. Not only was she young, but she was developmentally delayed.</p> <p>At [51] It is accepted that this court has a residual</p>

			At one point Hassell threatened to kill the victim. The victim told her mother and he replied saying that 'she came onto me'.		discretion in a State appeal not to interfere with the sentences imposed, even though a ground or grounds of appeal have been made out.
<i>Transitional provisions repealed – 14/01/2009</i>					
<i>Transitional provisions enacted – 31/08/2003</i>					

Child aged 13-16 yrs

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
30.	<i>The State of Western Australia v NDY</i> [2020] WASCA 172 Delivered 23/10/2020	34 & 44-45 yrs at time offending. 47 yrs at time sentencing. Convicted after trial. Prior criminal history; generally dealt with by fines. Disadvantaged childhood; one of five children; raised by mother and step-father; kicked out of home 14 yrs; lived 3 mths with biological violent father; then lived between hostels and on	Cts 1-4 & 7: Indec dealing child 13-16 yrs. Cts 5 & 8: Agg sex pen child 13-16 yrs. Ct 6: Att agg sex pen child 13-16 yrs. The female victim, A, was aged 15 yrs. She is NDY's niece and her mother NDY's sister. The female victim Y was aged 13-15 yrs. Y's mother and A's mother are close friends. Y saw NDY as an uncle-like or father figure. Sometime in 2006 A stayed with NDY. She slept the night with him in his double bed. A woke up to find N's hand down her pants and touching her genital area (ct 1).	Ct 1: 18 mths imp (cum). Ct 2: 12 mths imp (cum). Ct 3: 14 mths imp (conc). Cts 4 & 7: 16 mths imp (conc). Ct 5: 2 yrs 6 mths imp. Ct 6: 2 yrs imp (conc). Ct 8: 3 yrs imp (conc). TES 5 yrs imp. The trial judge found NDY had a sexual interest in both victims who were in a familial relationship with him, one biological	Allowed. Appeal concerned length of individual sentences (cts 5, 6 & 8) and totality principle. Resentenced: Ct 5: 4 yrs imp (conc). Ct 6: 3 yrs 2 mths imp (conc). Ct 8: 5 yrs imp (cum with cts 1 & 2). Sentences for cts 1 - 4 and

		<p>unemployment benefits.</p> <p>Good work history; odd manual and labouring jobs from aged 16 yrs; some training as a chef; much of working life employed as a cook; truck driver on mine sites.</p> <p>Suffered workplace injury 2014; underwent shoulder surgery; workers compensation and physiotherapy; made redundant late 2015; not worked since; in receipt of unemployment benefits.</p> <p>Married 12 yrs; two children; relationship disintegrated 2007.</p> <p>History of methyl use; alcohol and drug free time sentencing.</p>	<p>In 2014 or 2015, when Y was 13 yrs old, she and her mother stayed overnight at the home of A's mother's. NDY was staying at the house. Y slept in the same bed as her mother and NDY. In the early hrs of the morning Y woke up to find her mother was no longer in the bed and NDY touching her breasts (ct 2).</p> <p>On another occasion in 2015 Y, who was aged 13 yrs, was home alone. NDY went to the house and whilst sitting on a couch with Y he started kissing her (ct 3). He then touched her breasts (ct 4) and digitally penetrated her (ct 5). Y did not want to participate in the sexual activity.</p> <p>On another occasion, when Y was about to turn 14 yrs old, NDY took her to the home he was housesitting. He slept in the same bed as Y and during the evening att to have sexual intercourse with her (ct 6) and then touched her breasts and bottom (ct 7).</p> <p>On another occasion when Y was aged 15 yrs, she and NDY were collecting take-away food. During the drive he pulled down a side street, stopped the car and pulled down his pants. He asked Y to perform oral sex. She asked to go home, but he grabbed her head and forced her to do so (ct 8).</p>	<p>and one cultural, and that he was prepared to act on that sexual interest when opportunity arose.</p> <p>The trial judge found NDY's offending against A was opportunistic.</p> <p>The trial judge found there was an element of grooming to NDY's offending against Y; it was more than one-off and opportunistic; he sexually offended against her over a two-yr period and when the opportunity presented itself by reason of his association with her through her mother and Y was particularly vulnerable by reason of her own personal and family circumstances.</p> <p>The trial judge was positively satisfied the seriousness of the offending was such that a sentence of imp was the only sentencing option; agg by the substantial age disparity between NDY and his victims.</p>	<p>7 not interfered with.</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [105] There were a number of agg features of the two sex pen offences charged in cts 5 and 8. There was a very significant age difference between [NDY] and Y. He abused the trust placed in him by taking the opportunity of sexually offending against Y. It was clear that Y was not consenting and [he] used force to overcome her resistance to him. Y was in a very vulnerable position, and the offending had ... a considerable adverse effect upon her A further agg feature of ct 8 was that the sexual offending occurred in a public place. ... [and] that the offending occurred as part of an ongoing pattern of sexual abuse of a girl who looked on [him] as an uncle or father figure.</p> <p>At [108] ... we are satisfied</p>
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				<p>Impact of offending against both victims substantial and ongoing.</p> <p>No remorse or insight into seriousness of his offending.</p>	<p>that the individual sentences ... imposed for cts 5 and 8 respectively are unreasonable or plainly unjust. Error is to be implied from individual sentences for those cts which are manifestly inadequate.</p> <p>At [109] Material error having been established, it will be necessary for this court to determine for itself the appropriate sentences to be imposed for all the offences. In these circumstances, it is unnecessary to determine whether the sentence of ... imp for ct 6 ... is also manifestly inadequate.</p> <p>At [110] ... the TES is properly characterised as unreasonable or plainly unjust.</p>
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<p>29.</p>	<p><i>EKO v The State of Western Australia</i></p> <p>[2020] WASCA 88</p> <p>Delivered 08/06/2020</p>	<p>25-26 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>No previous psychiatric history; diagnosed with major depressive disorder; multiple instances of suicidal thoughts and past suicide attempts.</p>	<p>15 x Indec dealing child 13-16 yrs (care, supervision or authority).</p> <p>9 x Procure child 13-16 yrs to engage sexual behaviour (care, supervision or authority).</p> <p>6 x Sex pen child 13-16 yrs (care, supervision or authority).</p> <p>6 x indec dealing child of or over 16 yr (care, supervision or authority).</p> <p>7 x Sex pen child of or over 16 yrs (care, supervision or authority).</p> <p>1 x Procure child of or over 16 yrs to engage sexual behaviour (care, supervision or authority).</p> <p>EKO was a secondary school teacher.</p> <p>The two female victims, DW and NA were aged 13-14 yrs and 17 yrs respectively. Both victims were students at the school where EKO was teaching.</p> <p>EKO engaged in sexual activity with DW on six separate occasions, the subject of cts 1-30.</p> <p>EKO engaged in sexual activity with NA on two separate occasions, the subject of cts 31-44.</p>	<p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending 'serious'; she breached a relationship of trust; initiated the sexual behaviour; she was in a position of authority and power and she deliberately exploited her position for her own sexual gratification; her offending was compounded by the fact she offended against not one, but two students for whom she was responsible.</p> <p>The sentencing judge found an aggravating feature of the appellant's offending was it occurred not only between teacher and student, but also on school grounds; in an environment students ought reasonably to have felt safe.</p> <p>The sentencing judge found the appellant was</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [65] The seriousness of the appellant's overall offending, ... is apparent from a number of factors. ..., the victims were under [her] care, supervision or authority at the time of the offending. ..., [she] offended against two victims. ..., the offending involved a gross breach of the trust and responsibility vested in [her] as a teacher. ..., [she] initiated the offending. There was evidence of grooming and manipulative behaviour ... some of the offending occurred on school grounds and in an environment where students ought reasonably to feel safe. ..., [she] knew that what she was doing was wrong. The offending did not involve an isolated lapse of judgement. It involved ongoing behaviour over a lengthy period against both DW and NA. The 44 cts in</p>
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<p>28.</p>	<p><i>Impicciatore v The State of Western Australia</i></p> <p>[2020] WASCA 33</p> <p>Delivered 20/03/2020</p>	<p>45 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after trial. Convicted after PG to breach of bail (20% discount).</p> <p>Minor criminal history.</p> <p>History of illicit drug and alcohol abuse; use of methyl immediately prior to the offending.</p>	<p>4 x Sex pen child 13-16 yrs.</p> <p>The victim was aged 13 yrs.</p> <p>Impicciatore visited the house where the victim lived with her father. The father boasted he was in a sexual relationship with the victim and suggested they could both have sex with her at the same time.</p> <p>Impicciatore and the victim's father went into a bedroom where the victim was lying naked on the bed. Both men undressed and lay on either side of her.</p> <p>The father instructed his daughter what to do. Impicciatore then engaged in sexual activity with the victim. He wore a condom.</p> <p>During this time the father fondled the victim.</p> <p><u>Breach of Bail</u> Impicciatore failed to appear in the District Court in accordance with his bail undertaking. He was eventually arrested in NSW and extradited to WA.</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 4 yrs imp. Ct 3: 4 yrs imp. Ct 4: 5 yrs 6 mths imp (cum).</p> <p><u>Breach of Bail</u> 6 mths imp (cum with cts 1 and 4).</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's actions in the upper end of the level of seriousness and depravity; he participated in, exploited and took advantage of a clearly vulnerable, defenceless young girl entirely for his own sexual gratification; he knew his actions were both unlawfully and morally wrong and he sexually abused and was involved in the corruption of a young child.</p> <p>The sentencing judge found the appellant</p>	<p>Dismissed.</p> <p>Appeal concerned length of individual sentences; totality principle and errors of fact.</p> <p>At [140] All of the evidence supported the fact that the appellant knew that it was the complainant's father who had sexually abused her in his presence, and who encouraged the appellant to abuse her in turn.</p> <p>At [153] The individual offences were very serious, involving as they did the depraved exploitation of a vulnerable young girl in circ where the appellant knew the girl was being forced into the activity by her father. None of the sentences for those offences were unjust or unreasonable.</p> <p>At [155] While the appellant's offences were not intrafamilial offences, as such, as they involved the encouragement and</p>
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					<p>characterised as humiliating. ...</p> <p>At [272] ... we are satisfied that none of the individual sentences for the appellant's sexual offending was unreasonable or plainly unjust. ... each individual sentence represented a sound exercise of the sentencing discretion. ...</p> <p>At [273] Insofar as the sentence for the charge of breaching bail is challenged, the sentence ... was not manifestly excessive. ... This was a serious instance of breach of bail. The appellant deliberately absconded from the jurisdiction to avoid a trial. ...</p>
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<p>27.</p>	<p><i>Merritt v The State of Western Australia</i></p> <p>[2019] WASCA 203</p> <p>Delivered 17/12/2019</p>	<p>21 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Long and extensive criminal history; prior serious convictions for serious sexual and violent offending towards girls and women.</p> <p>Dysfunctional childhood; characterised by neglect; instability and extensive physical abuse in State care.</p> <p>Indigenous heritage; few positive role models.</p> <p>Illicit drug use.</p>	<p>Ct 1: Dep lib. Ct 2: Burglary. Ct 3: Agg indec assault. Cts 4-8: Agg sex pen.</p> <p>The victim, P, was a female aged about 13 ½ yrs of age.</p> <p>P was at home with her sister when Merritt entered the home without consent (ct 2). His face was covered to conceal his identity.</p> <p>Entering her bedroom Merritt grabbed P by the back of her head and told her to get up and do as she was told (ct 1).</p> <p>Merritt then forced P to walk into bushland where he committed various sexual offences against her (cts 3-8).</p> <p>Merritt was identified, more than twenty yrs later, through DNA technology.</p>	<p>Ct 1: 4 yrs 6 mths imp (conc). Ct 2: 5 yrs 5 mths imp (conc). Ct 3: 2 yrs 9 mths imp (conc). Ct 5 & 8: 4 yrs 2 mths imp (conc). Ct 6: 6 yrs imp (cum). Ct 7: 6 yrs 6 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>At time of sentencing was a declared dangerous sex offender and subject to a continuing detention order.</p> <p>In 1994 (5 days after committing the above offences) the appellant committed further sexual offences against a 9 yr old female. Sentenced in 1995 to a TES of 10 yrs imp with EFP.</p> <p>The sentencing judge found the offending towards the higher end of the scale; clearly</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; individual sentences not challenged.</p> <p>At [70] ... it is beyond question that the offences committed by him were of the utmost gravity. As serious as the offences were ... the offences committed [5 days later] were, if anything, even more serious. They involved the coercion of a very young and vulnerable child into bushland, where the appellant sexually penetrated her in such a way as to inflict serious physical injuries that required surgery. ... it could not be said that the offences under consideration were uncharacteristic of the appellant. To the contrary, they were entirely consistent with his prior offending to that point. He plainly posed then a danger to the community.</p> <p>At [71] ... the appellant</p>
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<p>26.</p>	<p><i>KNY v The State of Western Australia</i></p> <p>[2019] WASCA 89</p> <p>Delivered 28/06/2019</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; no prior convictions for sexual offending.</p> <p>Supportive family; excellent upbringing; diagnosed ADHA.</p> <p>Bullied at school because of his sexuality.</p> <p>Good employment history; retail and hospitality.</p> <p>History of cannabis and methyl use; problematic methyl use prior to his relationship with victim A.</p>	<p>Ct 1: Agg sex pen. Cts 2 & 3: Sex pen child 13-16 yrs.</p> <p><u>Ct 1</u> KNY and the victim, A, lived together in a same-sex relationship.</p> <p>KNY recorded himself sexually penetrating A, whilst A was unconscious. A discovered the video. He had no recollection of the encounter and was unaware he had been recorded and the recording kept by KNY. A asked KNY to delete the video file, he agreed, however he did not do so.</p> <p><u>Cts 2 and 3</u> The victim, B, was aged 15 yrs, and is A's younger brother.</p> <p>KNY and A had ended their relationship.</p> <p>In the weeks before B turned 16 yrs old KNY allowed B, B's mother and other members of his family to stay at his home.</p> <p>Shortly after moving into the home KNY began a sexual relationship with B. On two occasions KNY sexually penetrated B, knowing he was aged 15 yrs. On the occasion the subject of ct 3 B suffered bleeding from his anus following the incident.</p>	<p>Ct 1: 6 yrs imp (cum). Ct 2: 2 yrs 6 mths imp (cum). Ct 3: 5 yrs imp (conc).</p> <p>TES 8 yrs 6 mths imp. EFP.</p> <p><u>Ct 1</u> The trial judge found the appellant committed 'a gross act of betrayal'; ct 1 was 'seriously aggravated by reason of the fact the appellant recorded the offence without A's knowledge'; the recording was 'brazen' and was made for his 'own prurient purposes' and this added substantially to A's humiliation.</p> <p>Offending substantial negative effect on victim A's mental health.</p> <p>Absolutely no remorse and no insight into his</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and totality principle.</p> <p>Individual sentences cts 2 and 3 not challenged.</p> <p>At [69] The circ of ct 1 were plainly serious. The appellant committed an act of sex pen upon A while A was clearly unconscious and not in a position to consent or to object. The appellant took advantage of A's vulnerability for his sexual gratification. The offending was substantially agg by the appellant video recording the offence. ...</p> <p>At [75] ... the sentence on ct 1 was not unreasonable or plainly unjust. ...</p> <p>At [78] The offences upon B were, in</p>
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				<p>offending against A.</p> <p><u>Cts 2 and 3</u> The trial judge found the appellant did not care that B was a child at the time the offences were committed; he took advantage of B, ‘a vulnerable young man’; there was a substantial disparity in age between the appellant and B and there was a significant power and experience imbalance between them; the appellant supplied B with drugs, including methyl.</p>	<p>themselves, serious. The appellant, knowing full well that the victim was under the age of 16, took advantage of B’s vulnerability and engaged in two acts of sex pen, one of which resulted in physical injury to B.</p> <p>At [79] The appellant’s overall criminality against A and B was of a high order, and has had serious psychological effects upon them.</p> <p>At [82] ... the TES imposed upon the appellant ... was an appropriate reflection of the ... overall criminality having regard to all of the circumstances, ...</p>
25.	<p><i>Underwood v The State of Western Australia</i></p> <p>[2018] WASCA 189</p>	<p>38 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>Significant criminal history; prior convictions for sexual</p>	<p>Ct 1: Indec dealing child U13 yrs.</p> <p>Ct 2: Indec dealing child 13-16 yrs.</p> <p>Ct 3: Indec dealing child 13-16 yrs.</p> <p>Ct 4: Use elec comm with intent to expose a person U16 yrs to indecent material.</p> <p>Cts 6-10: Sex pen child 13-16 yrs.</p>	<p>Ct 1: 3 mths imp (cum).</p> <p>Ct 2: 12 mths imp (conc).</p> <p>Ct 3: 12 mths imp (conc).</p> <p>Ct 4: 9 mths imp (conc).</p> <p>Ct 6: 2 yrs imp (cum).</p> <p>Ct 7: 4 yrs 6 mths imp (cum).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [42] The appellant took advantage of his friendship</p>

<p>Delivered 26/10/2018</p>	<p>offending against children.</p> <p>Deprived upbringing; physically and sexually abused during childhood.</p> <p>Supportive grandparents; grandmother deceased.</p> <p>Isolated and bullied at school.</p> <p>Separated from partner since offending.</p> <p>History of substance abuse.</p>	<p>Over a period of several months Underwood committed various sexual offences against two male children, TP aged 8 yrs and ND aged 13 yrs.</p> <p>The offending involved one episode against the victim TP and six episodes against the victim ND.</p>	<p>Ct 8: 9 mths imp (cum). Ct 9: 1 yr 9 mths imp (conc). Ct 10: 2 yrs imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the offending at ‘the higher end of the scale of seriousness’; the appellant breached ‘a situation of trust’ and the offending was ‘far from uncharacteristic’; he abused both victims for his own sexual gratification.</p> <p>The sentencing judge found although the appellant’s offending did not involve threats, physical coercion or acts of violence, the absence of those factors did not diminish the seriousness of what he actually did to the victims.</p> <p>Significant treatment needs; lack of insight into his offending behaviour; well above average risk of</p>	<p>with the victims’ parents to sexually abuse their children. There was an element of grooming in relation to ND. The appellant invited and encouraged ND to engage in further and different sexual activity. The seriousness of the offences escalated. The offending involved a significant degree of moral corruption of ND. The appellant’s criminal behaviour was persistent....</p> <p>At [43] The victims were highly vulnerable.</p> <p>At [48] ... the TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the seriousness of the overall offending, the vulnerability of the victims, the pattern of sentencing in reasonably comparable cases and the matters of mitigation referred to by his</p>
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				sexually reoffending.	Honour ...
24.	<p><i>The State of Western Australia v Fyffe</i></p> <p>[2018] WASCA 173</p> <p>Delivered 10/10/2018</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG (12.5% discount) and trial of issues regarding consent.</p> <p>Prior criminal history; significant juvenile convictions; one conviction for poss indec or obscene article; otherwise no convictions of a sexual nature.</p> <p>Single.</p> <p>Unemployed.</p> <p>No history of illicit drug use; prior excessive alcohol use.</p>	<p>1 x Sex pen child 13-16 yrs.</p> <p>The victim was aged about 13 yrs 2 mths. She and a friend were staying in the family home alone, overnight.</p> <p>The victim and her friend arranged for others to attend the house for a party. Fyffe was contacted, and he agreed to purchase alcohol for the party.</p> <p>Fyffe was at the home prior to the arrival of the party guests. Alone in the home with the victim he told her 'you know you want this' before sexually penetrating her, after she told him 'no, I don't'.</p>	<p>15 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found there was a 'short sexual encounter involving sexual penetration' by the respondent of the victim's vagina and she told the respondent to stop but he continued; she did not consent to the sex pen.</p> <p>The sentencing judge found there was a considerable age disparity between the respondent and the victim; she had not had sex before and the offending had a significant effect upon her.</p> <p>No remorse; lack of insight into his offending behaviour.</p> <p>Good prospects of rehabilitation and reform; low risk of re-offending.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Re-sentenced.</p> <p>3 yrs 6 months imp.</p> <p>EFP.</p> <p>At [20] ... the fact that the sex pen occurred against the will of the complainant, who told the respondent she did not want to engage in that conduct, was a very serious agg feature of the offence. ... The assault occurred in the complainant's home and bedroom, where she was entitled to feel safe. ... The offence involved penile penetration ... regarded as more serious than, for example, digital penetration. ... There was a significant age difference of 9 yrs between the complainant and respondent. ... The complainant was very young ... The respondent</p>

					<p>exploited the vulnerability of an immature victim ... [her] first sexual experience was of sex pen against her will.</p> <p>At [21] ... sex pen without consent is a serious invasion of the victim's right to bodily integrity and autonomy. Ordinarily, such a violation demands a significant sentence of imp even in the absence of unusual or agg factors.</p> <p>At [29] It was not open to the sentencing judge, ... to conclude that a sentence of only 15 mths' immediate imp was commensurate with the seriousness of the offence. That sentence fails to recognise the seriousness of a penile-vaginal sexual pen of a girl who recently turned 13 yrs of age against her will. The respondent persisted in the face of the complainant telling him she did not want to engage in such conduct. ... The sentence imposed fell well short of sentences customarily imposed for</p>
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					offending of this kind, even against adult victims.
23.	<p><i>Williams v The State of Western Australia</i></p> <p>[2018] WASCA 161</p> <p>Delivered 21/09/2018</p>	<p>18-19 and 31 yrs at time offending. 53 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior relevant criminal history.</p> <p>Born in UK; migrated to Australia with family as a young child; second oldest of five.</p> <p>Well respected by family, friends and work colleagues.</p> <p>Good employment history.</p> <p>Prior marriage; two adult children.</p>	<p>5 x Indec dealing child U14 yrs. 2 x Agg indecent dealing child 13-16 yrs (care, supervision or authority).</p> <p>The offending involved three victims and occurred over a 13-yr period, but in two separate and distinct periods.</p> <p>Cts 1 -5 occurred in 1983 – 1984 and involved the sexual abuse of two boys, aged 8 and 10 yrs, who were living with Williams’ parents as foster children.</p> <p>Cts 14 and 15 occurred in 1996 and involved the sexual abuse of a boy, aged 13 yrs, whilst under his care at a youth centre.</p>	<p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the appellant’s youth was a powerful mitigating factor in respect of cts 1-5.</p> <p>The trial judge found a suspended sentence was not appropriate; a sentence of imp was the only appropriate outcome.</p>	<p>Allowed.</p> <p>Appeal concerned totality principle.</p> <p>Re-sentenced.</p> <p>TES 3 yrs 2 months imp.</p> <p>EFP.</p> <p>At [50] ... the appellant was aged between 18 and 19 when cts 1-5 occurred and was living at home with his parents. He had no prior history of sexual offending. The offences were opportunistic in nature. ... the appellant’s youth was a significant mitigating factor in respect of these offences. ... the subsequent offences, which occurred many yrs later ... were very much less serious in nature.</p> <p>At [52] Having regard to the appellant’s youth when cts 1 – 5 committed and the degree of seriousness of the offending overall, the TES</p>

					<p>was disproportionate to the appellant's overall criminal conduct. ...</p> <p>At [53] ... there were seven offences ... involving young vulnerable victims; ... there was a significant age difference between the appellant and each of the victims; ... there was no finding that the offences were representative of any continuing course of abuse in respect of any of the victims; ... the offending conduct in respect of cts 5, 14 and 15 was towards the lower end of the scale of seriousness ...</p>
22.	<p><i>Headley v The State of Western Australia</i></p> <p>[2018] WASCA 37</p> <p>Delivered 19/03/2018</p>	<p>31-46 yrs at time offending. 68 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; including prior convictions of sexual offending against a number of boys in the 1970s and 1982.</p> <p>Medicated for various health conditions.</p>	<p>13 x Indec dealing with child U14 yrs. 6 x Incite child U14 to indecently deal. 1 x Att carnal knowledge against order of nature. 4 x Agg indecent assault. 3 x Agg sex pen. 3 x Agg indecent deals of child 13-16 yrs. 1 x Agg sex pen of child 13-16 yrs.</p> <p>The offending occurred between 1980 and 1994 and involved the sexual abuse of five boys aged between 10 and 13 yrs.</p>	<p>TES 12 yrs imp. EFP.</p> <p>The trial judge found the offending occurred over an extensive period of about 14 yrs, it was sustained, planned and premediated. The charges were representative of a course of conduct and not isolated instances of abuse.</p> <p>The trial judge found the</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [18] The appellant had a prior criminal record ... Those convictions demonstrated that the appellant had a sexual attraction to young boys and a willingness to act upon it whenever the</p>

				<p>appellant groomed the victims, giving them money, alcohol and the opportunity to drive his motor vehicle. He induced the victims to engage in sexual activity with him.</p> <p>The trial judge found the appellant pursued disadvantaged and vulnerable boys from dysfunctional families, taking advantage of their unfortunate circumstances to have regular contact with them.</p> <p>The trial judge found no evidence imp would 'greatly adversely affect' the appellant's health.</p> <p>Unremorseful; no victim empathy; no acceptance of responsibility for his criminal conduct.</p>	<p>opportunity arose.</p> <p>At [42] There was little by way of mitigation, apart from his advanced age, his medical conditions and his contribution towards the efficient conduct of the trial. The appellant was not youthful or inexperienced for sentencing purposes. ...</p> <p>At [43] ... A custodial term [of 12 yrs] was required in order properly to reflect the very serious nature of the appellant's offending as a whole, and to give effect to the sentencing considerations of appropriate punishment and general deterrence, having regard to the need to protect vulnerable children.</p> <p>At [44] ... Despite the appellant's advanced age and medical conditions, and notwithstanding it is possible that he may die in prison or that upon release he may not have any prospect of a useful life, a more lenient TES was not appropriate.</p>
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<p>21.</p>	<p><i>Menmuir v The State of Western Australia</i></p> <p>[2018] WASCA 13</p> <p>Delivered 08/02/2018</p>	<p>47 yrs at time offending. 47 yrs (nearly 48) at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Long criminal history; prior sentences of imp; no prior convictions for sexual offending.</p> <p>Left school yr 10.</p> <p>Completed electrician apprenticeship.</p> <p>Single.</p> <p>Two children, aged 20 and 18 yrs.</p> <p>Disability pensioner many yrs; history of mental health problems; suffers bipolar affective disorder.</p> <p>Long standing alcohol and illicit drug use; affected employment.</p>	<p>Ct 1: Indec deals of child 13-16 yrs. Cts 2, 5, 9 & 13: Supplied cannabis. Cts 3-4; 6-8 & 10-12: Sex pen child 13-16 yrs.</p> <p>Victim K, aged 14 yrs. Over a period of several months she would attend Menmuir's home to obtain cannabis. He would request sexual favours in exchange for the cannabis.</p> <p><u>Cts 1 and 2</u> K exposed her breasts and allowed Menmuir to touch her nipples for 1-2 minutes. He then gave her 1.5g of cannabis.</p> <p><u>Cts 3, 4 & 5</u> About a week later K performed oral sex on Menmuir and then he performed oral sex on her. In exchange she was given 1.5g of cannabis.</p> <p><u>Cts 6, 7, 8 & 9</u> About one week later K performed oral sex on Menmuir, before allowing him to perform cunnilingus. He then had protected sexual intercourse with K for about five minutes. In exchange she was given 1.5g of cannabis and \$50.</p> <p><u>Cts 10, 11, 12 & 13</u> On another occasion Menmuir performed cunnilingus and inserted his finger into K's vagina. K also performed oral sex on him. In exchange she was given 1.5g of cannabis.</p>	<p>Ct 1: 12 mths imp (cum). Cts 2, 5 & 13: 12 mths imp (conc). Ct 3-4, 6-7 & 10-11: 2 yrs imp (conc). Cts 8 & 12: 2 yrs imp (cum). Ct 9: 12 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was in a position of power and influence; the period of offending showed a level of persistence and there was an element of grooming; K was vulnerable and wanted cannabis and he exploited the situation to his advantage.</p> <p>Genuinely remorseful; significant voluntary disclosures; some insight into his offending; elevated risk of further offending given he cannot address substance use issues.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [58] ... offending in present case, ... more serious than ... in <i>Walters [2018] WASCA 3</i> ...</p> <p>At [59] ... the appellant's offending was very serious. His offending was not momentary or impulsive. It was sustained and repetitive. The appellant groomed, corrupted and exploited K for his sexual gratification. An especially egregious aspect of his offending was the appellant's persuasion of K to prostitute herself in exchange for a prohibited drug. K was vulnerable and was adversely affected, to a significant extent, by the offending.</p> <p>At [60] ... although the TES ... was high, it was nevertheless within the range open to his Honour</p>
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					on a proper exercise of his discretion. ... the TES was commensurate with the overall seriousness of the offending.
20.	<p><i>Walters v The State of Western Australia</i></p> <p>[2018] WASCA 3</p> <p>Delivered 09/01/2018</p>	<p>70 yrs at time offending. 86 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; prior sentence of imp. No prior sexual offending.</p> <p>Child during Great Depression.</p> <p>Left school grade 6.</p> <p>Gainfully employed; variety of occupations.</p> <p>Most of adult life spent in the Kimberley; engaged in a positive sense with indigenous people.</p> <p>Five children.</p> <p>Primary caregiver to a physically disabled indigenous 20 yr old at time sentencing.</p>	<p>2 x Sex pen child 13-16 yrs.</p> <p>Victim, indigenous female, aged 13-14 yrs.</p> <p>On a number of occasions the victim attended Walters home and engaged in sexual behaviour with him in exchange for money.</p> <p><u>Ct 1</u> Walters penetrated the victim's vagina with his penis and then provided her with money.</p> <p><u>Ct 2</u> On another occasion Walters had intercourse with the victim until he ejaculated. He again provided her with money.</p> <p>As a result the victim fell pregnant. At the time her baby was born she was 15 yrs of age. A DNA test confirmed Walters to be the child's father.</p>	<p>Ct 1: 1 yr 6 mths imp (cum).</p> <p>Ct 2: 3 yrs imp (cum).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentenced on basis that he did not positively know the victim's age and he was careless as to that fact.</p> <p>The sentencing judge found the appellant sexually offended against the victim on more than one occasion; it was not an isolated event; there was a very considerable age gap between him and the victim; she was young and vulnerable and he exploited her; paying her money in return for sexual services.</p> <p>The sentencing judge found the appellant</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [25] ... Each offence was a serious example of its type. The victim, who was vulnerable ... was exploited by the appellant purely for his sexual gratification.</p> <p>At [26] Ct 2 was particularly egregious because, as a consequence, the victim became pregnant. ... The adverse consequences of the offences continue to mar the victim's life.</p> <p>At [28] ... As to the appellant's health ... it was not given any particular emphasis in this case. The conditions that the appellant suffers from are all typical for his age and</p>

		Health atypical for his age; prostate cancer, not a serious threat to immediate health; some hearing loss, wears hearing aids; suffered from broken bones; walks with aid of a stick.		engaged in unprotected sexual intercourse with the victim; resulting in pregnancy; adverse impact of the offending on the victim significant.	do not appear to be immediately life-threatening. There was no evidence at first instance, nor before this court, that they cannot be properly treated in prison or that they make his incarceration more onerous. At [29] ... While the two offences were separate, they were not isolated offences. At [32] ... This is one of those cases where the appellant's offending was so serious that it would be inappropriate to interfere with the TES imposed, despite the appellant's advanced age and notwithstanding that it is possible that the appellant may die in gaol ...
19.	<i>Topuz v The State of Western Australia</i> [2017] WASCA 186 Delivered 17/10/2017	32 yrs at time offending. Convicted after late PG; first day of trial (25% discount). Plea accepted in full satisfaction of indictment. No prior criminal history.	1 x Sex pen child 13-16 yrs. Topuz met the victim, a 15 yr-old male, through a social networking application. When signing up on the application the victim stated he was 18 yrs-old. Given the age restrictions on the application Topuz interacted with the victim on the belief he was an adult.	9 mths imp susp 12 mths. The sentencing judge approached sentencing on the basis that the appellant appreciated at the time of the offence that the victim appeared about 15-17 yrs old and by reason of the	Dismissed. Appeal concerned length of sentence. At [63] ... This was clearly one of the relatively rare cases ... where a sentence of immediate imp was not

		<p>Born and raised in Turkey; accepted in Australia on a migrant protection visa by reason of his sexuality.</p> <p>Held in high regard in the community.</p> <p>Strong work ethic; self-employed; operating two shops; employee to three people.</p>	<p>Topuz and the victim arranged to meet in person at Topuz' business premises. On arrival Topuz led the victim to an area out of view of the public and they kissed. Topuz undressed himself and the victim until they were completely naked. When requested, the victim performed oral sex on him for a short time.</p> <p>Several days later the victim contacted Topuz and told him he was under age and threatened to report him to police if he did not pay him a sum of money.</p>	<p>victim's appearance and their age disparity should have been careful to ensure the victim was, in fact, over the age of 16 yrs before engaging in sexual relations with him.</p> <p>Offending a 'one-off out of character event'; co-operative; remorseful and insight into his offending.</p> <p>Significant adverse effects on victim.</p>	<p>required. The appellant's very good antecedents, combined with the fact that he had not targeted a child and the complainant had sought sexual contact on an adult dating application were significant mitigating circumstances.</p> <p>At [64] ... while the offence was far from the most serious kind of offending against s 321(2) of the Code, it remains a serious offence. ... A significant age disparity is, as the court recognised ... an aggravating factor which is capable of being characterised as involving an 'element of abuse'. ... the appellant admitted that the complainant appeared to him to be a boy aged between 15 and 17 yrs.</p> <p>At [65] ... notwithstanding the late plea, the sentencing judge gave the appellant a 25% reduction in the head sentence That appears to have been an error of law in the appellant's favour.</p>
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					At [67] In all of the circ of this case ... it was open to the sentencing judge to be satisfied that the seriousness of the ... offence was such that only a sentence of imp could be justified, and that it was not appropriate to use any of the sentencing options listed before suspended imp ...
18.	<p><i>RGT v The State of Western Australia</i></p> <p>[2017] WASCA 120</p> <p>Delivered 29/06/2017</p>	<p><u>Indictment 44 of 2015</u> 29 at time sentencing.</p> <p><u>Indictment 43 of 2015</u> 30 at time sentencing.</p> <p><u>Indictment 43 of 2015</u> Convicted after late PG (12.5% discount).</p> <p><u>Indictment 44 of 2015</u> Convicted after early PG (15% discount).</p> <p>Prior criminal history; no prior convictions for sexual offending.</p> <p>Parents separated when very young; raised by his mother and stepfather.</p> <p>Experienced sexual and</p>	<p><u>Indictment 43 of 2015</u> Cts 1-2; 5-6: Sex pen of child U16 yrs. Cts 3-4; 7: Indec deals of child 13-16 yrs.</p> <p><u>Indictment 44 of 2015</u> Cts 1; 4; 6-8; 10; 13; 16-19; 21: Sex pen of lineal relative U16. Cts 2-3; 9; 12; 15; 20; 22: Indec recording of lineal relative U16. Cts 5; 11; 14: Indec dealings of lineal relative U16.</p> <p><u>Indictment 43 of 2015</u> The victims were a boy K, aged 7-9 yrs and a girl, F, aged 13 yrs.</p> <p>K was RGT's partner's son and he took care of K whilst his mother was at work.</p> <p>On one occasion RGT pulled down K's pants and performed fellatio on him (ct 1).</p> <p>On another occasion RGT performed fellatio on K. Despite K asking him 'not to suck his doodle' (ct 2).</p>	<p><u>Indictment 43</u> Ct 1: 5 yrs imp (head). Ct 2: 5 yrs imp (conc). Ct 3: 10 mths imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 4 yrs 6 mths imp (conc). Ct 6: 4 yrs imp (cum) (reduced from 4 yrs 6 mths). Ct 7: 6 mths imp (conc).</p> <p>Total: 9 yrs imp (partially conc with sentence on ind 44 - to commence having served 10 yrs). EFP.</p> <p><u>Indictment 44</u> Ct 1: 8 yrs imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs imp (conc). Ct 4: 8 yrs imp (conc). Ct 5: 4 yrs imp (conc).</p>	<p>Allowed (<u>44 of 2015</u>). Dismissed (<u>43 of 2015</u>).</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>Re-sentenced on ct 21 on Ind 44 of 2015 to 5 yrs imp (cum with ct 1). All other sentences and orders to stand.</p> <p>Substituted TES on <u>Ind 44 of 2015</u> of 13 yrs imp. EFP.</p> <p>New overall TES of 16 yrs imp. EFP.</p> <p>At [64] Turning ... to the offences the subject of ind 44 of 2015, the victim, ...</p>

		<p>physical abuse.</p> <p>Left school before yr 12.</p> <p>Qualified tradesman; inconsistent work history.</p> <p>Long history of illicit drug abuse; heavy user of methyl at time of offending.</p>	<p>RGT and his family were guests at the home of F's guardian and her grandmother. Whilst massaging F, RGT began to unclip her bra (ct 3). He left the room but returned and rubbed her breasts and licked and sucked her nipples (ct 4) before leaving. He again returned and made F take his penis into her mouth, holding her hair and rocking her head back and forth (ct 5). A short time later he returned, positioned F onto her hands and knees and penetrated her vagina with his penis for one to two minutes (ct 6).</p> <p>Later the same day RGT slapped F on her buttocks and told her he wanted to 'ride her' and asked her what she wished to do to him (ct 7).</p> <p><u>Indictment 44 of 2015</u> The victim A was RGT's two yr old daughter. The offending occurred over a period of approx. six months.</p> <p>RGT performed cunnilingus on her for about 24 seconds. He recorded it on his mobile phone (cts 1-2).</p> <p>Another time RGT exposed A's vagina and recorded a video of her vagina to his mobile phone (ct 3).</p> <p>On another occasion RGT performed cunnilingus on A for approx 12 seconds, before rubbing her vagina with his hand for about 5 seconds (cts 4-5). He then performed cunnilingus on her again for about five to eight seconds (cts 6-7). He then penetrated her vagina with his penis for about 30 seconds, before performing a further act of cunnilingus (ct 8). He</p>	<p>Ct 6: 8 yrs imp (conc). Ct 7: 8 yrs imp (conc). Ct 8: 10 yrs imp (conc). Ct 9: 3 yrs imp (conc). Ct 10: 10 yrs imp (conc). Ct 11: 5 yrs imp (conc). Ct 12: 3 yrs imp (conc). Ct 13: 8 yrs imp (conc). Ct 14: 4 yrs imp (conc). Ct 15: 3 yrs imp (conc). Ct 16: 8 yrs imp (conc). Ct 17: 9 yrs imp (conc). Ct 18: 10 yrs imp (conc). Ct 19: 8 yrs imp (conc). Ct 20: 3 yrs imp (conc). Ct 21: 8 yrs imp (cum). Ct 22: 3 yrs imp (conc).</p> <p>Total: 16 yrs imp. EFP.</p> <p>TES 19 yrs imp. EFP.</p> <p><u>Indictment 43 of 2015</u> The sentencing judge identified the very young age of the victim K, the breach of trust and the very great age gap between him and the victim.</p> <p>The sentencing judge found the offending against the victim F,</p>	<p>was just 2 yrs of age. She could not have been more vulnerable ... The offences constituted a gross breach of the trust reposed in any parent. The appellant's offending was not isolated. ... The fact that the offences were recorded on the appellant's mobile telephone is an aggravating factor. This is because of the potential for the offending conduct to be viewed again by the appellant or to be distributed to others.</p> <p>At [65]... The acts committed by the appellant on K would have been deeply humiliating for the victim. ... K was very young ... and was in no position to defend himself against the appellant's predations.</p> <p>At [66] Although the offences committed against F occurred on one day, the appellant pursued F and persisted in the offending ... where it culminated with the acts of sex pen ...</p>
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			<p>recorded these acts on his mobile phone (ct 9).</p> <p>On another occasion RGT exposed A's vagina. He penetrated and rubbed her vagina with his penis (ct 10). He also masturbated and ejaculated onto A's vagina (ct 11). He recorded all acts on his mobile phone (ct 12).</p> <p>On a further occasion RGT performed cunnilingus and rubbed A's vagina with his hand, recording it on his mobile phone (cts 13-15).</p> <p>On another occasion RGT performed cunnilingus on A for about 15 seconds before rubbing and digitally penetrating her vagina for about 30 seconds. He also penetrated her vagina with his penis for about 80 seconds, before performing cunnilingus on her again. He recorded these acts on his mobile phone (cts 16-20).</p> <p>On another occasion RGT performed cunnilingus on A whilst recording it on his mobile phone (cts 21-22).</p>	<p>'extremely brazen and persistent' in nature.</p> <p><u>Indictment 44 of 2015</u> The sentencing judge described the offending as 'monstrous' and in the category of worst cases.</p> <p>Little or no true remorse; claimed no recollection of offending in respect of victim A.</p> <p>Moderate to high risk of reoffending.</p>	<p>committed by the appellant using physical force.</p> <p>At [69] ... TES imposed upon the appellant ... is substantially beyond the sentences imposed in any of the cases we have mentioned. ... when all of the circumstances of this case are compared with some of the cases that have been cited ... and bearing in mind the appellant's pleas of guilty, we conclude that the overall TES ... does not bear a proper relationship to the overall criminality involved in all of the offences ...</p>
17.	<p><i>Greenland v The State of Western Australia</i></p> <p>[2017] WASCA 83</p> <p>Delivered 21/04/2017</p>	<p>21 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after PG (5% discount) and trial of issues regarding consent.</p> <p>No prior criminal history.</p> <p>Third of four children; parents separated when aged six; close supportive family and friends.</p>	<p>Ct 1: Sex pen of child 13-16 yrs. Ct 2: Att sex pen of child 13-16 yrs. Ct 3: Sex pen of child 13-16 yrs. Ct 4: Sex pen of child 13-16 yrs.</p> <p>The victim was aged 15 yrs and a member of a surf club. Greenland was her instructor.</p> <p>The victim was showering in the change rooms when Greenland walked in, undressed and joined her in the cubicle. They kissed. The victim resisted further sexual conduct but he pushed her legs apart, pressed her against the wall and had sexual intercourse with</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 18 mths imp (cum) (reduced from 4 years for totality reasons).</p> <p>TES 5 yrs 6 mths imp.</p> <p>The sentencing judge characterised the appellant's offending as a serious example of its</p>	<p>Dismissed.</p> <p>Appeal concerned the finding of absence of consent; plea discount and totality.</p> <p>At [131] ... On the appellant's evidence, following the events the subject of the charges, she and the appellant entered into a relationship</p>

		<p>Long-standing and respected member and volunteer of surf lifesaving community.</p> <p>Good work ethic; trusted and valued employee.</p> <p>Met and married his wife after the offending.</p>	<p>her (ct 1). The victim was distressed when she was picked up by her mother.</p> <p>The victim returned the following day to speak with Greenland. She joined him on patrol and agreed when he suggested a nude swim. In the water they kissed. He tried to escalate further sexual contact but she told him ‘no’. On the beach he made her lie on her stomach, removed her bikini briefs and attempted to insert his penis into her vagina (ct 2). She resisted so he had anal intercourse with her (ct 3).</p> <p>A short time later they returned to the club. He pushed the victim to her knees, put his hands around her neck and put his penis into her mouth (ct 4).</p> <p>Following these incidents Greenland and the victim continued a sexual relationship for approximately six months and had sex between 20 to 30 times.</p> <p>Greenland claimed the victim consented.</p>	<p>kind. While the victim acquiesced in some low level sexual conduct, she made her resistance clear both physically and verbally and he used force and aggression to achieve his sexual gratification.</p> <p>The sentencing judge considered some accumulation was necessary to ensure the TES bore a proper relationship to the overall criminality; as the offending occurred on separate days and involved different forms of pen, with an escalating level of abuse, corruption and aggression.</p> <p>Remorseful; absence of remorse regarding aggressive forceful conduct.</p> <p>Low risk of reoffending.</p>	<p>characterised by control, domination and bondage. ... she said she would not call it a relationship; that what occurred was 'forced upon her' and 'inflict[ed]'. She ... was treated as the appellant's sexual object or sexual toy. She was young and confused. She liked a part of the appellant, the person she knew at the surf club. She did not like how he treated her sexually.</p> <p>At [152]... the sentencing judge did not err in taking into account ... the fact that the complainant and other witnesses were required to give evidence at the trial of issues.</p> <p>At [209] ... The absence of consent very significantly agg the appellant’s offending, and serves to distinguish it from many other cases involving offending under s 321 of the Criminal Code. The appellant occupied a position of trust as an employee of the ... club and as the complainant’s</p>
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					instructor. He was ... older than the complainant and significantly more sexually experienced ... knew the complainant was 15 yrs old and that she was a virgin ... The appellant focused on fulfilling his perceived needs and wants and disregarded the complainant's wishes. ... The appellant's offending has had a profound and enduring effect on the complainant.
16.	<p><i>JDF v The State of Western Australia</i></p> <p>[2016] WASCA 221</p> <p>Delivered 14/12/2016</p>	<p>42-44 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No WA criminal history. Minor criminal history in Victoria. No prior history of sexual offending.</p> <p>Single, no children.</p> <p>Left school aged 15 yrs.</p> <p>History of labouring and factory work.</p> <p>Diagnosed with depression.</p> <p>No history of alcohol or substance abuse.</p>	<p>Cts 1-3: Sex pen of child U13 yrs. Ct 4 and 6: Sex pen of child 13-16 yrs (care, supervision or authority).</p> <p>The victim, C was from a dysfunctional and violent family. Her mother was disinterested in her welfare so she went to live with JDF, with the approval of the DCP.</p> <p>C was aged between 12-14 yrs when the offending occurred.</p> <p>Shortly after C commenced living with JDF he pushed her onto a couch, held her down as she struggled and performed cunnilingus on her. (ct 1). He then penetrated her vagina with his fingers (ct 2).</p> <p>A few days later JDF penetrated Cs vagina with his penis (ct 3).</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 3 yrs 6 mths imp (conc). Ct 3: 4 yrs 6 mths imp (conc). Ct 4: 5 yrs imp (cum). Ct 6: 4 yrs 6 mths imp (conc).</p> <p>TES 8 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found C was vulnerable and came to the appellant for protection and he had breached her trust as her carer.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [44] ... The TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances and all relevant sentencing factors, including the seriousness of the overall offending, the vulnerability of C, the pattern of sentencing in reasonable comparable</p>

			<p>JDF repeatedly engaged in sexual penetration with C. She recalled an occasion when JDF sexually penetrating her and ejaculated in her vagina (ct 4).</p> <p>On another occasion C recalled JDF penetrated her vagina with his penis and ejaculated on her stomach (ct 6).</p> <p>The offences were representative counts of offending.</p>	<p>No remorse and emphatically denied responsibility for his offending behaviour.</p> <p>Low risk of sexual reoffending against children.</p>	<p>cases and the very limited mitigation referred to by the trial judge.</p>
15.	<p><i>PNS v The State of Western Australia</i></p> <p>[2016] WASCA 174</p> <p>Delivered 07/10/2016</p>	<p>44 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Significant and troubling criminal history, including convictions of sexual offending against children in 1998; 2000; 2004 and 2013.</p> <p>Unremarkable upbringing.</p> <p>Single; no dependents.</p> <p>Previous marriage with four step-children; separated after PNS sexually offended against two of the children.</p> <p>Significant gaps in work history.</p> <p>Long history of cannabis use.</p>	<p><u>Ind 963 of 2015</u> Ct 1: Indec recording of child 13-16 yrs. Ct 2: Indec recording of child 13-16 yrs. Ct 3: Indec dealings of child 13-16 yrs. Ct 4: Poss CEM. Ct 5: Poss CEM.</p> <p><u>Ind 457 of 2015</u> 1 x Indec dealings of child U13 yrs.</p> <p><u>Section 32 Notice</u> Ct 1: Failing to comply with reporting obligations Ct 2: Poss cannabis (0.9g). Ct 3: Poss smoking implement. Ct 4: Permitted premises to be used for the use of a prohibited drug or plant.</p> <p>Offending spanned almost 5 yrs.</p> <p><u>Ind 963 of 2015 (cts 1- 3)</u> In February 2013, Police executed a search at PNS' home and found a 4gb thumb drive and 500gb hard drive containing two videos made by PNS. The first video was of victim, J, aged 14 yrs, asleep with his underwear pulled down and PNS pulling his buttocks</p>	<p><u>Ind 963 of 2015</u> Ct 1: 1 yr 4 mths imp (conc). Ct 2: 1 yr 4 mths imp (cum). Ct 3: 1 yr 4 mths imp (cum). Ct 4: 1 yr 8 mths imp (cum). Ct 5: 1 mth imp (conc).</p> <p><u>Ind 457 of 2015</u> 1 yr 8 mths imp.</p> <p><u>Section 32 Notice</u> Ct 1: 4 mths imp (conc). Ct 2: \$100 fine. Ct 3: \$300 fine. Ct 4: 2 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences and totality.</p> <p>Re-sentenced on cts on <u>Ind 963 of 2015</u> to:</p> <p>Ct 1: 1 yr 4 mths imp (conc with ct 5 and conc with sentences for all other counts).</p> <p>Ct 2: 1 yr 4 mths imp (conc with ct 3 but cum on the sentence for ind 457 and the sentence for ct 4 on ind 963).</p> <p>Ct 3: 1 yr 4 mths imp (conc with ct 2 but cum on the sentence for ind 457 and the sentence for ct 4 on ind 963).</p>

		<p>PNS had undergone intensive sex offender treatment twice.</p>	<p>apart, exposing his anal passage (cts 3 and 1). The second video showed J lying down with his erect penis protruding out the top of his underwear. The video focused on the victim's genitalia (ct 2).</p> <p>The drives also contained 381 images and 72 videos of CEM categorised as (ct 4). Cat 1: 156 images; Cat 2: 59 images and 26 videos; Cat 3: 35 images and one video; Cat 4: 126 images and 41 videos; and Cat 5: 5 images and 4 videos.</p> <p><u>Ind 457 of 2015</u> In February 2015 the victim, M, aged 8 yrs, was at a supermarket checkout with her mother. As PNS passed the victim he pressed his fingers between her buttocks over her clothing.</p> <p><u>Ind 963 of 2015 (ct 5)</u> In May 2015, Police conducted a search of PNS' home and found a laptop containing two images of category 1 CEM, which PNS admitted downloading and using for sexual gratification.</p> <p><u>Section 32 Notice</u> During the search in May 2015, Police found cannabis and a smoking implement Which PNS admitted using. He also allowed friends to smoke cannabis in his house.</p> <p>PNS was a reportable offender pursuant to the <i>Community Protection (Offender Reporting) Act 2004</i>. PNS activated an iCloud and an email account but did not advise the Sex Offender Management Squad of this within the required seven-day period.</p>	<p>that PNS was at a high risk of sexual reoffending against children; no remorse.</p> <p>Retribution, deterrence and the protection of society were important factors in sentencing PNS, the protection of society being particularly important in light of his continuing attitude of disobedience to the law.</p>	<p>Ct 4: 12 mths imp (cum).</p> <p>Ct 5: 1 mth imp (conc with ct 1 and conc with sentences for all other counts).</p> <p>Other sentences remain the same.</p> <p>TES 4 yrs imp.</p> <p>At [40] ... the TES in this case is substantially greater than sentences that have been imposed for much more serious offending.</p> <p>At [41] It is ... a significant factor that the appellant has been previously convicted of offending of a similar nature to the present offences and has served three terms of imp for such offending. He has also been assessed as being at a high risk of reoffending. ... it is apparent that the issue of personal deterrence assumes particular importance in this case.</p>
14.	<i>NHT v The State</i>	68 yrs at time sentencing.	Cts 1-3 & 5: Indec dealing with child U14 yrs.	Ct 1: 18 mths imp (conc).	Dismissed.

<p><i>of Western Australia</i></p> <p>[2016] WASCA 167</p> <p>Delivered 27/09/2016</p>	<p>56 yrs at time offending for ct 8.</p> <p>Convicted after trial.</p> <p>No prior relevant convictions.</p> <p>Migrated to Australia from Lebanon in 1969.</p> <p>Normal childhood.</p> <p>Father to 11 biological children; strict and religious father; supportive and caring father to a number of his children; good grandfather; currently married to his third wife.</p> <p>Retired; consistent employment history; was a productive and hardworking member of the community.</p> <p>Self-reported physical health issues; no mental health problems or illicit substance abuse.</p>	<p>Ct 4: Unlawful carnal knowledge with child U13 yrs. Cts 6-7: Att unlawful carnal knowledge with child U13 yrs. Ct 8: Indec deal with child 13-16 yrs.</p> <p>NHT married A's mother and he eventually adopted her. A did not know NHT was not her biological father at the time of offending. The offending against A was committed over four to five years.</p> <p>Victim N was NHT's 15 yr old niece by marriage.</p> <p>There was a 22 yr gap between the offending against A and N.</p> <p><u>Ct 1</u> A (aged 8-9 yrs) was lying in bed with her parents. NHT touched her clitoral area.</p> <p><u>Ct 2</u> NHT drove A (aged 8-9 yrs) to a remote location; made her masturbate his erect penis and perform fellatio on him.</p> <p><u>Ct 3</u> NHT showered with A (aged 8-10 yrs). He kissed her, moved his hands over her and pushed his erect penis against her vaginal area.</p> <p><u>Ct 4</u> A (aged 8-10 yrs) was in a swimming pool with NHT. He briefly inserted his penis into her vagina.</p> <p><u>Ct 5</u> A (aged 11-12 yrs) was in bed. NHT sat on the bed</p>	<p>Ct 2: 2 yrs 9 mths imp (conc). Ct 3: 2 yrs 3 mths imp (conc). Ct 4: 4 yrs 6 mths imp. Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 4 yrs imp (cum). Ct 7: 4 yrs imp (conc). Ct 8: 3 mths imp (cum).</p> <p>TES 8 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the indec dealing offences fell towards the upper end of the scale of seriousness of indec dealing offences.</p> <p>Offending had significant and ongoing adverse impact on A.</p> <p>Continued refusal to accept responsibility for his offending.</p> <p>Sentencing judge found that NHT would not offend against young female girls who are biologically related to</p>	<p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [45] The intrusiveness of the conduct, particularly that involving fellatio and att pen of A's vagina with the appellant's penis, was significant and sustained. The appellant was about 22 yrs older than A, who understood him to be her father. He was in a position of trust and authority. Although violence was not employed, there was a strong element of coercion involved in the offences given the appellant's authority as A's father, the domineering role he assumed as a strict disciplinarian who resorted readily to physical punishment, and the fact that he physically imposed himself upon her. Particularly when A was living alone with the appellant...the appellant took advantage of her vulnerability when she</p>
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			<p>and masturbated himself and took A's hand and moved it up and down his penis until he ejaculated.</p> <p><u>Ct 6</u> At his business premises NHT took A (aged 11-12 yrs) into a locked office and attempted to insert his penis into her vagina.</p> <p><u>Ct 7</u> NHT laid on top of A (aged 11-12 yrs) and unsuccessfully attempted to penetrate her with his penis.</p> <p><u>Ct 8</u> N accepted a lift from NHT. NHT stopped in a nearby street and kissed her on the lips twice.</p>	<p>him.</p> <p>Delay had some limited mitigatory value. Credit given for NHT voluntarily returning to Australia, knowing that he would be charged.</p>	<p>totally depended on him for care and protection.</p> <p>At [46] The offences occurred on seven occasions over a period of about 5 yrs. While the sentencing judge was not satisfied that the appellant had committed any uncharged offences against A, the number of offences, and the period over which they were committed, demonstrate that the offending was not isolated or out of character for the appellant. The appellant was not remorseful and has not taken any steps to reduce the future risk which he poses to the community.</p> <p>At [47] The offence against N...showed that the appellant remained willing to act on his sexual interest in children after a considerable period of time.</p>
13.	<p><i>Nayna v The State of Western Australia</i></p> <p>[2016] WASCA 169</p>	<p>18 yrs at time offending. 20 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history.</p>	<p>Ct 3: Sex pen of child 13-16 yrs. Ct 4: Indec dealings of child 13-16 yrs.</p> <p>The victim, A, was aged 13 yrs. Nayna was the boyfriend of A's older sister and spent a significant amount of time at her family home. Nayna was aware</p>	<p>Ct 3: 14 mths imp. Ct 4: 4 mths imp (conc).</p> <p>TES 14 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Appeal concerned type and length of sentence.</p> <p>Re-sentenced to:</p>

	<p>Delivered 08/09/2016</p> <p>Published 27/09/2016</p>	<p>Immature at time offending.</p> <p>Prior to offending, involved in a motorcycle accident causing serious injuries with sever and chronic pain.</p> <p>Good prospects of rehabilitation - supportive father.</p> <p>Educated to year 11; commenced an apprenticeship.</p>	<p>of A's age.</p> <p>Over time Nayna and A became sexually attracted to each other. A was flattered by Nayna's attention and allowed Nayna to touch her breasts. On occasion, A 'flashed' her breasts to Nayna.</p> <p><u>Ct 3</u> On one occasion, A stood in front of Nayna as he was sitting on a sofa. Nayna pulled down her pants and underwear, fondled her bottom and briefly inserted his finger into her vagina. He pulled her pants up and asked her 'Can I lick your pussy?' A laughed.</p> <p><u>Ct 4</u> On a later occasion, Nayna was sitting on the sofa. A sat next to him and Nayna touched her breasts under her T-shirt and bra.</p>	<p>The sentencing judge found that A consented to ct 4 but not ct 3. The act of pen was spontaneous and momentary.</p> <p>Sentencing judge found A to be too immature to anticipate consequences of Nayna's sexual behaviour with her; Nayna was more mature than A.</p> <p>Nayna's severe and chronic pain made him more vulnerable to impulsive behaviour that made him feel good.</p> <p>Nayna's youth and immaturity accepted as powerful mitigating factors.</p> <p>No remorse; no evidence that Nayna gained insight as a result of his offending.</p>	<p>Ct 3: 10 mths imp, susp 10 mths, without conditions. Ct 4: 4 mths imp, susp 10 mths, without conditions (conc).</p> <p>At [54] Ct 3 did not have the serious features sometimes present in this type of offending.</p> <p>At [55] While A's young age was agg...the appellant ... was barely an adult and was immature... the offending occurred in the context of a history of factually consensual and furtive sexual behaviour ... It occurred at a time when the appellant was vulnerable to impulsive behaviour due to severe pain due to injuries he had suffered.</p> <p>At [56] Youth, immaturity and good antecedents were important mitigating factors.</p>
12.	<i>Tapper v The State of Western Australia</i>	<p>43 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after very late PG</p>	<p>3 x Sex pen of child 13-16 yrs.</p> <p>Tapper was contacted by C through an online dating website. C was 15 but her online profile stated she</p>	<p>2 yrs imp on each ct (conc).</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appellant challenged type and length of sentence.</p>

<p>[2016] WASCA 140</p> <p>Delivered 05/08/2016</p>	<p>(10% discount).</p> <p>No prior criminal history.</p> <p>Serving police officer from 1996-2014, serving at time of offending.</p> <p>Educated to yr 12.</p> <p>Prior good character; very good antecedents; co-operative with police</p>	<p>was aged 19. Tapper and C exchanged messages online before arranging to meet.</p> <p>Tapper collected C from school and drove her to his home. She was wearing her school uniform. Tapper penetrated C's vagina with his penis in the lounge room (ct 1) and again in his bedroom (ct 2).</p> <p>On another occasion Tapper collected C and drove her to his home where they had sexual intercourse (ct 3).</p> <p>When the offences were reported C acknowledged falsely informing Tapper that she was aged 19 and that she had willingly participated in the sexual activity.</p>	<p>The sentencing judge was not satisfied that the appellant honestly believed that C was of legal age.</p> <p>The sentencing judge found the offending not at the high end of the scale.</p> <p>The sentencing judge noted the disparity in age; the persistence in the offending, in that there were two occasions separated by a significant period of time and that the appellant initiated the sexual intercourse, despite the appellant's obvious doubt about C's age.</p> <p>Modest amount of contrition and remorse.</p> <p>Low risk of re-offending.</p>	<p>At [75] ... it was open to the sentencing judge to decide that the facts and circumstances militating against suspending the terms of imprisonment outweighed the facts and circumstances militating in favour of suspension. I attach particular importance to the repetition of the offending; the 28-year disparity in age between the appellant and C; the appellant's knowledge that it was unlawful for him to sexually penetrate a child under the age of 16; the appellant's very strong suspicion about C's age and his decision to ignore the real risk that she was under the age of 16; that the appellant, and not C, took the initiative in the acts of sexual intercourse which occurred; and the appellant's sole interest in C was to have sex with her secretly and send her on her way.</p> <p>At [84] General deterrence is an important sentencing</p>
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					factor, especially in the case of potential offenders who are substantially older than the child and are wilfully blind ... to the child's true age.
11.	<p><i>AJ v The State of Western Australia</i></p> <p>[2016] WASCA 13</p> <p>Delivered 18/01/2016</p>	<p>55 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Difficult childhood.</p> <p>Physical difficulties as a result of his service in the Australian Defence Force.</p> <p>Difficulties with family, employment and accommodation since offending was discovered.</p> <p>Stable employment and of good character.</p> <p>The appellant wrote letters of apology to his family.</p>	<p>Ct 1: Persistently engaging in sexual conduct with child aged U16 yrs.</p> <p>Ct 2: Persistently engaging in sexual conduct with child aged U16 yrs.</p> <p><u>Ct 1</u> Offending occurred over 6 yrs. The victim A was aged 9-15 yrs and was AJ's lineal daughter.</p> <p>Offending involved repetitive, generally non-penetrative touching and rubbing of A's vagina, with some cunnilingus-like features on some of the behaviour; rubbing of the breasts, squeezing of the buttocks, kissing of the vagina. AJ touched A's breasts and vagina weekly. AJ bargained with A by agreeing to her requests if he could 'have a feel'.</p> <p><u>Ct 2</u> Offending occurred over 3.5 yrs. The victim M was aged 7-11 yrs and was AJ's lineal daughter.</p> <p>The offending with M was the same as with A. AJ also procured M to touch his penis occasionally, and simulated sexual intercourse by laying on M when both of them were naked. M said that the conduct occurred more than 10 times a month.</p>	<p>Ct 1: 5 yrs imp (cum). Ct 2: 4 yrs imp (cum).</p> <p>TES 9 yrs imp.</p> <p>Sentencing judge found that the appellant was very remorseful and had a low risk of reoffending.</p> <p>Sentencing judge gave discount for the appellant's voluntary confession of unreported offending to police.</p>	<p>Dismissed.</p> <p>Appeal concerned totality and length of sentence.</p> <p>At [59] Each offence was committed over a significant time... The sexual conduct occurred frequently and on regular occasions ... it is clear ... that the appellant's offending involved many individual incidents of sexual conduct.</p> <p>At [60] The age of the appellant's victims when the offending began ... is also a significant agg feature ... The fact that the appellant was the victim's father... is also an agg factor. The offending involved a gross breach of trust and, in the case of A, involved demands for sex as a condition for allowing her to engage in ordinary</p>

					<p>childhood activities... (and) threats.</p> <p>At [61]... it was not in the worst category of offending against that section. The aggravating feature of penetrative sex was not established in the present case.</p> <p>At [64] ... the appellant voluntarily confessed unreported offending to the police... However, the discount which could properly be applied was limited by the fact that the appellant made the disclosures to police only after he knew that many family members were aware of his offending and could reasonably have anticipated (if he did not know) that the matter would be reported to the police.</p> <p>At [65] It is relevant to note that the appellant denied the offending when confronted by his wife in September 2013... (and) initially denied offending</p>
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					against M ...
10.	<p><i>Buckley v The State of Western Australia</i></p> <p>[2015] WASCA 242</p> <p>Delivered 01/12/2015</p>	<p>32 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior relevant criminal history.</p> <p>Positive childhood; close and supportive parents.</p> <p>Left school after yr 10; good employment history prior to motor vehicle accident.</p> <p>History of anxiety and depression.</p> <p>Long history of illicit substance abuse.</p>	<p>1 x Sex pen of child 13-16 yrs.</p> <p>Victim aged 15 yrs 7 mths.</p> <p>Buckley and the victim knew each other and had been friends for a few weeks.</p> <p>Buckley and the victim attended a party. They both consumed cannabis and alcohol. Later that evening Buckley had consensual sexual intercourse with the victim.</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found that the act of sexual intercourse was consensual, but that the appellant took advantage of the victim by reason of her state of intoxication.</p> <p>Sentencing judge accepted that the victim was sexually experienced, but by reason of the appellant's age, the onus was on the appellant to refrain from sexual conduct with her.</p>	<p>Allowed.</p> <p>Re-sentenced to 18 mths imp. EFP.</p> <p>Appeal allowed on ground alleging length of sentence was manifestly excessive. Ground alleging wrong type of sentence imposed was dismissed.</p> <p>At [34] ... appellant knew, at the time of the offence, that the victim was 15 yrs of age and that she was intoxicated. He took advantage of her state of intoxication ... there was considerable disparity in the respective ages (17 yrs) and maturity of the appellant and the victim. . However, the degree of taking advantage in this case was not as great as that seen in other cases, bearing in mind here that the victim was almost 16 years old. Additionally, there was an absence of such factors as force, coercion, grooming or persistence.</p>

					<p>At [36] ... personal deterrence was not a major sentencing consideration... given the 'one-off' nature of the offending and the absence of any prior offending of a similar kind, or evidence that the appellant harbours a sexual interest in children.</p> <p>At [41] ...the appellant's criminality fell towards the lower end of the scale of seriousness of offences contrary to s 321(2) of the <i>Criminal Code</i>.</p>
9.	<p><i>Cairns v The State of Western Australia</i></p> <p>[2015] WASCA 198</p> <p>Delivered 25/09/2015</p>	<p>56 to 57 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>No criminal history.</p> <p>Favourable antecedents.</p> <p>Appellant's childhood described as unremarkable.</p> <p>Consistent record of gainful employment; former police officer; pastor of an evangelical church; owned driving school at time</p>	<p>1 x Persistent sex conduct with child U16 yrs.</p> <p>Offending occurred over a period of 22 mths. The victim, E, was aged 14-15 yrs. E lived with Cairns on occasion. Cairns was a father-figure and pastoral carer for E.</p> <p>Cairns and E engaged in frequent sexual behaviour prior to her turning 16 yrs and for a number of mths after she turned 16 yrs.</p> <p>The sexual relationship included Cairns stimulating intercourse with E's hand to the point of ejaculating into her hand, mutual genital touching, multiple digital pen of E's vagina, and rubbing of his erect penis against E's vagina without penetration.</p> <p>Later, when E may have been 16 yrs, penile pen of</p>	<p>5 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found a serious breach of trust and appellant's actions were persistent and prolonged and profoundly damaging to E.</p> <p>Sentencing judge found that the sexual acts were consensual, but noted that, insofar as E demonstrated sexualised behaviour, it was a reflection of the</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged length of sentence.</p> <p>At [27] This case is a particularly serious example of its type by virtue of the frequency of the sexual conduct and the length of time over which it occurred; the large age difference... the nature of the sexual conduct... the abuse of trust; and the harm done to E. This was not... offending at the lower end of the scale. The absence of</p>

		<p>sentencing.</p> <p>Married twice; has two, estranged adult children.</p>	<p>E's vagina occurred. This was not relied upon as a fact of offending, but for contextual purposes only.</p>	<p>relationship and the conspicuously unequal position she was in.</p> <p>Genuine remorse, acceptance of responsibility and co-operation with police.</p> <p>Low risk of reoffending.</p>	<p>agg factors... does not turn them into mitigating factors... While the favourable personal circumstances of the appellant were relevant, the leniency that could reasonably be afforded to them is limited.</p> <p>At [29] – [32] Discussion of comparative cases.</p>
8.	<p><i>Pallister v The State of Western Australia [No 2]</i></p> <p><i>[2015] WASCA 221</i></p> <p>Delivered 09/09/2015</p> <p>Published 06/11/2015</p>	<p>23 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Dysfunctional early family life.</p> <p>Cannabis and alcohol disorder.</p>	<p>1 x Sex pen of child 13-16 yrs.</p> <p>Victim was 13 yrs at the time of the offence.</p> <p>Pallister shared a house with three people. The victim came to the house with some friends, intending to stay overnight. The victim had been drinking before she arrived.</p> <p>At about 10pm, Pallister went to bed. Sometime later, one of his housemates entered the bedroom and told him that the victim wanted to have sex with him. He said he was willing to have sex with her. Immediately afterwards the victim came into the room, got into his bed and he had sexual intercourse with her.</p> <p>Pallister admitted having sex with the victim, but told police that he thought she was 18 or 19 yrs of age.</p>	<p>9 mths imp.</p> <p>The sentencing judge found the victim had initiated the sexual activity and that there was no force or inducement on the part of the appellant.</p> <p>The sentencing judge found that the appellant had not supplied the victim with alcohol and cannabis for the purpose of reducing her inhibitions.</p> <p>The sentencing judge found the gravamen of the offence was the corruption of the victim because of the age disparity.</p>	<p>Allowed.</p> <p>Re-sentenced to 4 mths imp, susp 4 mths.</p> <p>At [18] There are two unusual features of this case which, in our view, meant that it did not require the imposition of a term of imm imp. First, the appellant held an honest belief that the complainant was 16 yrs of age or more. In addition, having viewed the taped record of interview of the complainant, we think it is understandable that the appellant thought she was at least 16 yrs of age.</p> <p>At [19] Secondly, there was</p>

				<p>Psychiatric report stated that the appellant had not been suffering any mental illness at time offending.</p> <p>The sentencing judge found the offending was toward the lower end of the range of such offences.</p>	<p>a positive finding by the primary judge that there was no element of grooming, inducement or coercion by the appellant. The appellant did not act in a predatory manner or misuse the age difference between them to persuade the complainant to engage in sexual activity. Whilst he had provided the complainant with alcohol and cannabis at the party, he had not done so with the object of lowering her inhibitions or inducing her to consent to sexual activity. The sexual activity was entirely instigated by the complainant...</p>
7.	<p><i>D’Rozario v The State of Western Australia</i></p> <p>[2015] WASCA 171</p> <p>Delivered 02/09/2015</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal history, including convictions of use elec comm with intent to expose a person U16 yrs to indecent material, use elec comm with intent to procure a person U13 yrs to engage in sexual activity, poss child pornography and failing to comply with reporting</p>	<p><u>Ind</u></p> <p>Ct 1: Use elec comm with intent to procure a person U16 yrs to engage in sexual activity.</p> <p>Ct 2: Sex pen of child 13-16 yrs.</p> <p>Ct 3: Sex pen of child 13-16 yrs.</p> <p>Ct 4: Sex pen of child 13-16 yrs.</p> <p>Ct 5: Sex pen of child 13-16 yrs.</p> <p>Ct 6: Poss CEM.</p> <p><u>Section 32 Notice</u></p> <p>11 x Fail to comply with obligations imposed by the <i>Community Protection (Offender Reporting) Act 2004</i>.</p>	<p><u>Ind</u></p> <p>Ct 1: 12 mths imp</p> <p>Ct 2: 3 yrs imp</p> <p>Ct 3: 3 yrs imp</p> <p>Ct 4: 3 yrs imp</p> <p>Ct 5: 3 yrs imp</p> <p>Ct 6: 12 mths imp</p> <p><u>Section 32 Notice</u></p> <p>6 mths imp on each of the 11 breaches.</p> <p>TES 5 yrs imp.</p>	<p>Dismissed – on papers.</p> <p>At [14] The sentencing judge identified the agg factors of the indictable offences to include the appellant’s conduct in contacting and grooming the victims; the age difference between the appellant and the victims; the appellant’s prior criminal record; that the breach offences involved</p>

		<p>obligations.</p> <p>Supportive family; supportive partner.</p> <p>Completed tertiary studies in business; obtained university degree in HR and employed as a senior accounts manager from 2009-2013.</p> <p>Attended 11 psychological counselling sessions by time sentencing.</p>	<p><u>Ct 1</u> D'Rozario initiated contact with M, who was aged 15. He and M regularly engaged in telephone and text sex. He was aware of M's age.</p> <p><u>Cts 2-6</u> D'Rozario initiated contact with K who, to his knowledge, was aged 15. Cts 2-5 involved digital penetration and cunnilingus. The offences were representative. Ct 6 related to naked photographs of K.</p> <p><u>Section 32 Notice</u> D'Rozario failed to report his unsupervised contact, which was of a sexual nature, with B (aged 16), R (aged 14-16), N (aged 16), KC (aged 15-16), S (aged 15-16) and J (aged 16). He also failed to report that he had reactivated or set up new internet and mobile telephone accounts.</p>	EFP.	<p>unreported contact with young girls which, whilst not amounting to criminal offence, was similar in nature and manner to his interactions with the victims of the indictable offences; and ct 1 was committed when the appellant was on parole.</p> <p>At [15] Mitigating factors include an early PG, for which the trial judge gave 25% discount, his qualified cooperation with police at the time of his arrest and his remorse. The sentencing judge also accepted that as a result of his upbringing he was socially isolated and lacked confidence. Further, the appellant had not undertaken the sex offenders treatment programme while in custody for his prior offending or any equivalent programme when on parole.</p>
6.	<p><i>HMN v The State of Western Australia</i></p> <p>[2015] WASCA</p>	<p>20-21 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Criminal history.</p>	<p><u>Ind BUN 50/2014</u> 2 x Use elec comm with intent to expose a person U16 yrs to indecent material. 1 x Use elec comm with intent to procure a person U16 yrs to engage in sexual activity.</p>	<p><u>BUN 50/2014</u> and <u>BUN 154/2014</u> 7.5 mths imp (conc) for each offence.</p>	<p>Allowed.</p> <p>Resentenced to: 12 mth ISO with programme and supervision</p>

<p>128</p> <p>Delivered 23/06/2015</p>	<p>Has an intellectual disability.</p> <p>Parents have an intellectual disability; grandmother looked after appellant from age three to 16; participated in special education classes in school.</p> <p>At time offending for BUN 50/2014, appellant was serving an 18 mth ISO for four cts of use elec comm with intent to procure a child U13 yrs to engage in sexual activity (BUN 67/2012).</p> <p>Received counselling after ISO; supports were no longer available to appellant at time offending.</p>	<p><u>Ind BUN 154/2014</u> Use elec comm with intent to procure a person U16 yrs to engage in sexual activity x 3. Use elec comm with intent to expose a person U16 yrs to indecent matter x 1.</p> <p><u>Ind BUN 50/2014</u> The victim was 13 yrs old. HMN sent numerous sexualised messages on Facebook and by SMS to the victim. HMN also sent the victim a photograph of his genitals and repeatedly requested she do the same, which she did.</p> <p><u>Ind BUN 154/2014</u> These offences involve three victims.</p> <p>HMN engaged in conversations on Facebook with a girl who he believed to be 13 yrs old. It was in fact a police officer posing as a child. He repeatedly requested that she take naked photographs of herself to send to him.</p> <p>HMN conversed on Facebook and another social media programme with a girl believed to be 15 yrs old. He requested that the victim take a naked photograph of herself and send it to him.</p> <p>HMN engaged in highly sexualised conversations on Facebook and other social media programmes with a 13 yr old girl who had a severe learning disability. He repeatedly requested that she take naked photographs of herself and send them to him, which she did.</p>	<p><u>BUN 67/2012</u> Appellant resented to 7.5 mths imp (conc) for each offence.</p> <p>TES 7.5 mths imp.</p>	<p>requirements.</p> <p>At [15] Three psychological reports... refer to the appellant's intellectual disability, his short-term memory difficulties and his lack of true understanding and comprehension of the wrongfulness of his conduct...</p> <p>At [22] ...the appellant's disability significantly increases his vulnerability to potential exploitation and assault in a custodial setting. That may cause the appellant to present as a greater risk to the community on his release.</p> <p>At [28] ... the appellant is an adult only in chronological age. His delayed psychological development and maturity, attributable to his intellectual impairment, is more commensurate with that of the complainants (other than the police officer posing as a child). That reduces the appellant's</p>
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			<p><u>Ind BUN 67/2012 (offences subject of ISO)</u></p> <p>HMN was 19 yrs old and the victim was 12 yrs old. He requested that she participate in sexual activity and they exchanged highly sexualised messages. He also unsuccessfully attempted to make arrangements to meet the victim.</p>		<p>moral culpability for the offending.</p> <p>At [29] ... having regard to all sentencing considerations, retribution and punishment should also be given very little weight in the sentencing of the appellant. The most significant sentencing objective is the protection of the public, in particular children. The appellant's risk of reoffending, which is high, is best managed with intensive counselling, support and supervision...</p>
5.	<p><i>Floresta v The State of Western Australia</i></p> <p>[2015] WASCA 93</p> <p>Delivered 07/05/2015</p>	<p>18 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Irrelevant prior juvenile criminal history.</p> <p>Disadvantaged and dysfunctional background; no proper adult support; no close friends; no proper schooling; victim of physical and sexual abuse.</p> <p>ADHD; depression.</p>	<p>1 x Sex pen of child 13-16 yrs.</p> <p>At the time of offending, the victim was aged 14 yrs and Floresta was a few weeks shy of his 19th birthday. They met three weeks before the offence. Floresta knew the victim's age.</p> <p>The victim went to Floresta's house. He was very drunk. He followed the victim into a bedroom and locked the door. He asked the victim for sex and she refused more than once. He then forced the victim onto his bed, removed her shorts and underwear, forced open her legs and had sexual intercourse with her against her will. The victim kicked at Floresta and struggled with him, telling him to stop. He eventually stopped and got off her. She dressed and left the room.</p>	<p>2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found the appellant immature for his age; remorseful; low risk of reoffending.</p> <p>Seriousness of offence aggravated by absence of consent.</p>	<p>Dismissed – on papers.</p>

			Floresta admitted that it was wrong to have sex with the victim because she was underage, but claimed she consented.		
4.	<p><i>LFG v The State of Western Australia</i></p> <p>[2015] WASCA 88</p> <p>Delivered 04/05/2015</p>	<p>64-67 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal history; convictions for child sex offences.</p> <p>Stable health issues.</p>	<p>1 x Indec dealings of child U13 yrs. 9 x Indec dealings of child 13-16 yrs. 5 x Sex pen of child 13-16 yrs.</p> <p>LFG and the victim were second cousins. The offending spanned a period of 2-3 yrs. The victim was 11-14 yrs at time offending.</p> <p><u>Ct 1</u> LFG and the victim were alone at the victim's grandmother's house. LFG asked to see the victim's pubic hair. The victim showed LFG his pubic hair for a few seconds.</p> <p><u>Ct 4</u> On another date, LFG took the victim for a walk. LFG masturbated the victim to ejaculation.</p> <p><u>Ct 9</u> On another date, LFG started performing fellatio on the victim in a car outside of the victim's grandmother's house. The grandmother interrupted him, so he placed a pillow over the victim's groin area. When the grandmother left, LFG continued performing fellatio to ejaculation.</p> <p><u>Cts 22-33</u> On four different dates, LFG took the victim to a hotel. On each occasion he masturbated the victim and performed fellatio on him to ejaculation (cts 22-23, 25-26, 28-29 and 31-32). On each occasion, LFG</p>	<p>Ct 1: 8 mths imp. Ct 4: 2 yrs imp (cum). Ct 9: 2 yrs 10 mths (cum). Ct 22: 2 yrs imp. Ct 23: 2 yrs 10 mths imp. Ct 24: 18 mths (cum). Ct 25: 2 yrs imp. Ct 26: 2 yrs 10 mths imp. Ct 27: 18 mths imp (cum). Ct 28: 2 yrs imp. Ct 29: 2 yrs 10 mths imp. Ct 30: 18 mths imp. Ct 31: 2 yrs imp. Ct 32: 2 yrs 10 mths imp. Ct 33: 18 mths imp.</p> <p>TES 7 yrs 10 mths imp.</p> <p>EFP.</p> <p>Prolonged course of conduct directed at gaining the victim's trust and grooming him for the commission of the offences.</p> <p>High risk of reoffending; not remorseful; steadfastly maintained a denial of the offending;</p>	<p>Dismissed.</p> <p>At [402] The appellant's offending was correctly characterised by the trial judge as falling towards the higher end of the scale of seriousness for this type of offending.</p> <p>At [407]... the complainant was, to some extent, an 'easy target' for the appellant, and the appellant took advantage of the complainant's unfortunate domestic situation.</p> <p>At [419] ...the TES was not disproportionate to the appellant's overall offending and it cannot reasonably be said that he has been left without any reasonable prospect of useful life after his release.</p>

			asked the victim to masturbate him. The victim did so. LFG then masturbated himself to ejaculation (cts 24, 27, 30 and 33).	no steps to rehabilitation. Significant adverse effect on the victim's emotional and social well-being.	
3.	<i>GNR v The State of Western Australia</i> [2015] WASCA 5 Delivered 14/01/15	18 yrs at time of offending. Convicted after early PG. Criminal history; agg burglary, burglary, stealing, receiving and damaging property. Appellant aged 20 yrs at time of trial, and victim aged 16 yrs. Relationship continuing.	1 x Sex pen of child aged between 13-16 yrs. GNR met victim when he was aged 18 yrs and she was 13-14 yrs. He knew victim was under the age of consent. The victim persuaded GNR to have sex. Both lived in same house and entered a committed relationship supported by their parents. The offence came to light after the victim gave birth to GNR's child in hospital. Under the mandatory reporting regime, the Department of Child Protection was advised.	12 mth CBO with 50 hrs community service and supervision requirements. The sentencing judge considered appellant's rehabilitation partial and not complete.	Dismissed. At [33] The purpose of s 321 is protective of the welfare and best interests of children under 16. At [37] The appellant knew at the time of the offence that the victim was under the age of consent and what he was doing was wrong. At [39-40] The offence committed by the appellant is neither trivial nor technical. Parental support or condonation does not reduce the objective seriousness of the offence nor does it eliminate or reduce the need to give weight to general deterrence. At [61] The purpose of s 321 'is not only to protect children from abuse by sexual predators but also to protect children from

					<i>themselves...'</i>
2.	<p><i>The State of Western Australia v Staniforth-Smith</i></p> <p>[2014] WASCA 170</p> <p>Delivered 05/09/2014</p>	<p>46-47 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after trial (Cts 1 & 3). Convicted after PG (Ct 2).</p> <p>No previous criminal history of significance.</p> <p>Hardworking; successful farmer.</p> <p>Following breakdown of marriage, led an isolated life.</p> <p>Suffered depression.</p> <p>Habitual user of cannabis.</p> <p>Good character; positive references and support from family.</p> <p>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</p>	<p>Ct 1: Indec dealings child 13-16 yrs. Ct 2: Agg indec assault. Ct 3: Agg sex pen.</p> <p>The victim was Staniforth-Smith's step son, he was aged between 15 and 17 yrs. Following the breakdown of his marriage to the victim's mother he continued to have contact with the victim.</p> <p><u>Ct 1:</u> Sometime in 2010 the victim stayed with Staniforth-Smith. During this time the victim confided to him that he was concerned about the presence of hair on his buttocks. Staniforth-Smith gave the victim some hair removal cream and the victim went to the bathroom to apply it. Despite the victim stating that he did not want assistance he insisted and applied the cream to the victim's buttocks, anal and genital areas.</p> <p><u>Ct 2-3:</u> Cts 2 and 3 occurred on the same day about a year later when the victim lived with Staniforth-Smith. The victim was between 16 and 17 yrs old. After both consuming alcohol and cannabis the victim fell asleep. Sometime later he woke to find Staniforth-Smith using a sex toy to masturbate his penis. Staniforth-Smith then placed the victim's penis in his mouth. The victim got up and left the room.</p> <p>At trial, prosecution led evidence of an uncharged sexual act committed interstate when the victim was 15 yrs old.</p>	<p>Ct 1: 4 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 14 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Voluntarily reported the matter to police but only after victim disclosed offences.</p> <p>Made significant admissions; did not fully recall or accept the entirety of what he did.</p> <p>Remorse; genuine concern for victim.</p> <p>Victim had attempted suicide and self-harm.</p> <p>The sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</p>	<p>Dismissed.</p> <p>At [54] It is sufficient to say that there is no established range for offences of this nature and that the sentence imposed on count 3 is not so clearly inconsistent with other sentences as to indicate an error.</p> <p>At [55] Although an offender's personal circumstances in the case of sexual abuse of children do not generally carry as much weight as they might do in other cases, they are not irrelevant. In the respondent's case there were a number of mitigating factors that could, in combination, properly be characterised as unusual.</p>
1.	<p><i>Gavenlock v The State of Western</i></p>	<p>21-22 yrs at time offending. 26 yrs at time sentencing.</p>	<p>Ct 1: Indec deal child 13-16 yrs. Ct 2: Indec deal child 13-16 yrs.</p>	<p>Ct 1: 6 mths imp. Ct 2: 9 mths imp.</p>	<p>Allowed.</p>

<p>Australia</p> <p>[2014] WASCA 36</p> <p>Delivered 18/02/2014</p>	<p>Convicted after trial.</p> <p>Criminal record – one conviction reckless driving.</p> <p>Exposed to and victim of domestic violence as a child; parents separated.</p> <p>Constantly employed; good strong work ethic.</p> <p>At time of sentencing married with 20 mth old son; wife pregnant with their second child; remains supportive of him.</p> <p>No history of problematic illicit drug or alcohol use.</p> <p>Suffers depression.</p> <p>Well regarded by his family and employer.</p>	<p>Ct 3: Indec deal child 13-16 yrs. Ct 6: Sex pen child 13-16 yrs. Ct 7: Sex pen child 13-16 yrs.</p> <p>The victim was aged 13-14 yrs.</p> <p>The victim’s parents had separated and the victim and her sister stayed with their father during school holidays. Gavenlock and the victim’s father were friends. Occasionally Gavenlock would stay overnight, including on nights when the victim and her sister were present. Over time, Gavenlock came to know the victim and her sister and developed a sexual interest in the victim.</p> <p><u>Cts 1-3</u> Occurred on the same occasion when Gavenlock and victim were watching television. Gavenlock put his hand down the victim’s pants and rubbed her vagina. He then took the victim’s hand and placed it on his penis on the outside of his pants. She removed her hand, but he grabbed it again and placed on his penis on the outside of his pants, and moved her hand up and down.</p> <p><u>Ct 6</u> The victim was asleep. Gavenlock woke her and asked her if she wanted to have sex with him. He, without consent, then penetrated the victim’s vagina with his penis. He continued for a short time, then asked the victim to masturbate him, which she refused to do. He masturbated himself to ejaculation.</p> <p><u>Ct 7:</u> On a different occasion; the victim woke to find</p>	<p>Ct 3: 9 mths imp. Ct 6: 3 yrs imp. Ct 7: 18 mths imp.</p> <p>Cts 6 & 7 cum. Cts 1, 2 & 3 conc.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>In ROI denied engaging in any sexual behaviour with victim; admitted that the relationship he developed with her ‘had overstepped the mark’</p> <p>Sentencing judge found that the victim might have had a crush on the appellant and it appeared that the victim and appellant were behaving like boyfriend and girlfriend. .</p> <p>Low risk of re-offending.</p>	<p>Orders for cum on Counts 6 and 7 set aside.</p> <p>Resentenced to 3 yrs imp.</p> <p>EFP.</p> <p>At [42] ... The sentence was more than was required to satisfy the sentencing objectives of punishment, retribution, general deterrence and reform. ...It is apparent that his Honour made two material express errors: by failing to give weight to the appellant’s youth at the time that he committed the offences and in giving weight to the need for personal deterrence when there was no basis to do so...</p>
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<i>Transitional provisions repealed – 14/01/2009</i>					
<i>Transitional provisions enacted – 31/08/2003</i>					