

Indecent dealing with a child

ss 320(4), 321(4), 322(5) and 329(4) *Criminal Code* and repealed equivalent provisions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

From 1 January 2021

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

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| agg | aggravated |
| att | attempted |
| AOBH | assault occasioning bodily harm |
| conc | concurrent |
| cum | cumulative |
| ct | count |
| dep lib | deprivation of liberty |
| EFP | eligible for parole |
| imp | imprisonment |
| indec | indecent |
| ISO | intensive supervision order |
| PG | plead guilty |
| sex pen | sexual penetration without consent |
| susp | suspended |
| TES | total effective sentence |

| No. | Case | Antecedents | Summary/Facts | Sentence | Appeal |
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| 24. | <p><i>The State of Western Australia v MGA</i></p> <p>[2024] WASCA 108</p> <p>Delivered 17/09/2024</p> | <p>35–36 yrs at time offending. 37 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; traffic offences; stealing; assault; drug offences; multiple breaches of FVRO; no sexual offences.</p> <p>Dysfunctional childhood characterised by violence, instability, and neglect; parents separated at 6 yrs old; lived with father who was strict.</p> <p>Left school mid yr 8 to work as a tiler; struggled with literacy; bullied.</p> <p>Worked in hospitality after tiling; planned to return to tiling.</p> <p>Three significant relationships; 18 yr old son from first relationship; four children from second relationship.</p> <p>Injured from a motorcycle accident; may be suffering PTSD.</p> <p>Long history of drug and alcohol abuse; commenced alcohol at 13 yrs; cannabis at 12 yrs; methyl at 15 yrs.</p> | <p>Cts 1, 2, 3, 6, 8, 9, 10, 11, 12: Sex pen child U16 yrs. Cts 4, 7: Indec deal child U16 yrs. Ct 5: Encouraging child to engage in sexual behaviour.</p> <p>The respondent was invited to live at a friend’s house. His friend had a 14-yr old daughter who was also living at the house. After staying at the house for a month, the respondent began to engage in sexual activity with the child.</p> <p><u>Cts 1 & 2</u></p> <p>On an occasion when the respondent and the victim were together in the living room, the respondent penetrated the victim’s vagina with his fingers. He then later penetrated the victim’s vagina with his penis.</p> <p><u>Cts 3 & 4</u></p> <p>On an occasion when the victim was with the respondent in the shed, he pulled the victim on top of him and penetrated her vagina with his penis. Sometime later he rested his hand on the complainant’s leg and rubbed her thigh.</p> <p><u>Ct 5</u></p> <p>On a separate occasion, the respondent threw a condom at the victim and told her to come and get him when she wanted to ‘use this’.</p> <p><u>Ct 6</u></p> <p>On a separate occasion when the victim and respondent were in the shed, he asked for oral sex. The victim complied.</p> <p><u>Ct 7</u></p> <p>In the living room of the property, the respondent touched the thigh and knee</p> | <p>Cts 1, 2, 6, 8, 10, 11, 12: 18 mths imp (conc). Cts 3: 18 mths imp (cum). Ct 9: 18 mths imp (cum) Cts 4, 7: 6 mths imp (conc). Ct 5: 12 mths imp (conc).</p> <p>TES: 3 yrs imp.</p> <p>EFP.</p> <p>The respondent was sentenced on the basis that the complainant was a willing participant in the sexual activity.</p> <p>The sentencing judge found that the respondent did not use any force or bribery or physical violence to procure the victim’s involvement.</p> <p>Offending has resulted in the victim having feelings of embarrassment and ‘grossness’; has constant memories of the events; found the trial experience horrible.</p> <p>The sentencing judge found that the respondent was aware the victim was at school but made no express finding that he was aware she was 14 yrs old.</p> <p>Lacked insight into the offending; failed to take responsibility for his actions.</p> | <p>Appeal allowed.</p> <p>Appeal concerned length of individual sentences and first limb of totality principle.</p> <p>Resentenced:</p> <p>Cts 1, 6, 8, & 11: 2 yrs 9 mths imp (conc). Cts 3: 3 yrs imp (cum). Ct 9: 3 yrs imp (cum) Cts 2, 10, & 12: 3 yrs imp (conc).</p> <p>TES: 6 yrs imp.</p> <p>EFP.</p> <p>At [67] ‘whilst [the respondent] was not in a position of care, supervision or authority over the complainant (which would have attracted a higher maximum penalty), he occupied a privileged position in the household. He had unsupervised access to the house and to the complainant. He abused that trusted position by engaging in sexual conduct with the complainant.’</p> <p>At [68] ‘the complainant was vulnerable both having regard to her age and the fact that the respondent was residing in her home. There was a very significant age disparity...’</p> <p>At [69] ‘the offending was not a momentary aberration; the respondent engaged in sexual conduct with the complainant over an approximately four-month period.’</p> <p>At [73] ‘we would accept that if there had been a finding that the respondent knew that the complainant was 14 yrs old at the time of the offences and persisted in the offending notwithstanding that knowledge, that would have been an aggravating factor. However, the absence of such knowledge is not a mitigating factor, it is simply the absence of an aggravating factor. Clearly, it is incumbent on a mature adult man, as the respondent was, to ensure that the young person with whom he was engaging sexually is not under the age of 16 yrs.’</p> <p>At [74] ‘it is generally not meaningful to talk about children who are below the age of consent as being willing participants in sexual conduct. The cooperation or participation of a child in such conduct can never be based on a mature understanding of the nature and consequences of the activity.’</p> <p>At [78] ‘General deterrence was a very important sentencing consideration ... The respondent was convicted after trial and the pre-sentence report indicated that he lacked insight and had failed to take</p> |

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| | | | <p>of the victim.</p> <p><u>Cts 8, 9 & 10</u></p> <p>After the respondent had moved out of the home, he arranged for the victim to visit him in a caravan park. There, the respondent sexually penetrated the victim with his fingers, then twice with his penis.</p> <p><u>Cts 11 & 12</u></p> <p>The night following the offending subject of cts 8–10, the respondent introduced his penis into the mouth of the victim and then penetrated her vagina.</p> | | <p>responsibility for his offending.’</p> <p>At [79] ‘there was nothing remarkable about the respondent’s personal circumstances... Whilst he had a good work record, he did not have the benefit of prior good character.’</p> <p>At [93] ‘making allowance for any differences, [the comparable cases] support a conclusion that both the individual sentences of 18 mths imprisonment for the sexual penetration offences and the total effective sentence of 3 yrs immediate imprisonment are inconsistent with sentences imposed in comparable cases.’</p> <p>At [94] ‘in our view ... the sentence of 18 mths imprisonment imposed for each of those offences was unreasonable or plainly unjust.’</p> |
| <p>23.</p> | <p><i>NQB v The State of Western Australia</i></p> <p>[2024] WASCA 93</p> <p>Delivered 31/07/2024</p> | <p>29–33 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Born in India; older brother and parents remain in India; poor family.</p> <p>Attended college in India; completed an Engineering degree in WA.</p> <p>Sexually assaulted by friends of his brother at 10 yrs old; mocked by village.</p> <p>Worked in managerial roles; struggled to find engineering employment; managed supermarket; assaulted at work and returned a short time later.</p> <p>Began drinking excessively following assault at work; suicide attempt whilst on bail.</p> <p>Met JA’s mother online and formed a relationship shortly after; had two children of his own</p> | <p>Ct 1: Indec deal child de facto relative U16 yrs. Ct 5: Att sex pen child de facto relative U16 yrs. Cts 2, 7, 9, 15, 16, 19, 20 & 21: Sex pen child de facto relative U16 yrs.</p> <p>The victim of the offending is JA, the appellant’s de-facto child. The victim was 12–15 yrs old at the time of offending.</p> <p><u>Ct 1</u></p> <p>In JA’s bedroom, the appellant placed his hand beneath JA’s shirt and squeezed her breast.</p> <p><u>Ct 2</u></p> <p>On the same occasion or around the same time as ct 1, the appellant started touching JA and asked her to suck his penis. JA did not understand; the appellant pushed her head onto his penis, and she opened her mouth.</p> <p><u>Ct 5</u></p> <p>On a separate occasion the appellant told JA about sex and told her he</p> | <p>Ct 1: 6 mths imp (conc). Ct 2: 3 yrs imp (cum). Ct 5: 2 yrs imp (conc). Ct 7: 3 yrs imp (cum). Ct 9: 4 yrs imp (cum). Ct 15: 4 yrs imp (conc). Ct 16: 4 yrs imp (conc). Ct 19: 3 yrs imp (conc). Ct 20: 4 yrs imp (conc). Ct 21: 4 yrs imp (cum).</p> <p>TES: 14 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found that the offending was ‘of the highest order’, and at the ‘highest end of the scale’ for offending of its kind.</p> <p>The sentencing judge did not consider that the appellant’s attempt at suicide after his arrest was an indicator of remorse. The sentencing judge did accept that the appellant had embarked on a pathway towards being remorseful.</p> <p>The offending had a severe impact on the victim; she has resorted to emotional eating and gained 20kg; depression and anxiety; self-harmed frequently; frequent suicidal thoughts; low self-esteem; stress from court</p> | <p>Appeal allowed.</p> <p>Appeal concerned the first limb of the totality principle.</p> <p>Resentenced:</p> <p>Ct 21: 18 mths imp (cum).</p> <p>TES: 11 yrs 6 mths.</p> <p>EFP.</p> <p>At [85] ‘the totality of the appellant’s offending was very serious and deserving of a substantial term of imprisonment. The fact that the offending was representative in nature does not mean that the appellant fell to be punished for matters for which he was not convicted, but it does place the offences into a proper context ... That context was one of continuing and persistent sexual abuse of a serious nature against the appellant’s stepdaughter over a three-year period.’</p> <p>At [89] ‘the offending involved a gross breach of the appellant’s trusted role as a stepfather. He had been in that role since JA was 4 years old. However, it is important to note that that role was an element of the offence and thus not an additional aggravating factor.’</p> <p>At [91] ‘from the outset, the appellant sought to ensure that JA did not disclose the offending by telling her that if she did it would destroy the family.’</p> <p>At [93] ‘as to the appellant’s personal circumstances, the only significant mitigating factor was his pleas of guilty.’</p> |

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| | | with JA's mother. | <p>wanted to try it with her. The appellant took JA's underwear off and attempted to penetrate her vagina with his penis.</p> <p><u>Ct 7</u></p> <p>On a separate occasion JA was in the appellant's bedroom. The appellant started touching JA and performed cunnilingus on her.</p> <p><u>Ct 9</u></p> <p>On a separate occasion, the appellant locked JA in her bedroom and put his penis in her anus.</p> <p><u>Cts 15 & 16</u></p> <p>On a separate occasion the appellant told JA to go to his bedroom. The appellant then penetrated JA's anus, then her vagina with his penis.</p> <p><u>Cts 19 & 20</u></p> <p>Whilst the JA was in the appellant's bedroom, he asked her to suck his penis. JA complied and the appellant later had penile/vaginal sex with her.</p> <p><u>Ct 21</u></p> <p>On another occasion, the appellant told JA to come to his bedroom. When JA complied, he had sex with her.</p> | <p>proceedings; constant nightmares.</p> <p>JA's mother has struggled financially and emotionally since the offending.</p> <p>The sentencing judge found that the offences represented a course of conduct by the appellant over a period of about three years, from when JA was 12 until she was 15. The sentencing judge characterised the offending as the appellant using JA as his 'sexual tool and object to meet his own needs.'</p> <p>Assessed as being of average risk of reoffending.</p> | <p>At [105] 'the sentencing judge considered that the present case could be distinguished from other cases on the basis of the number and nature of the aggravating factors. Regrettably, this was not a unique case. The aggravating factors were significant, but they were not materially more serious than the aggravating factors in many of the other cases referred to.'</p> <p>At [106] 'the total sentence imposed here is higher by a significant margin than many of the comparable cases referred to ... The inconsistency between the sentence imposed here and those imposed in comparable cases is an indicator of implied error. Whilst there are always limitations in the use of comparable cases, the importance of consistency in sentencing cannot be understated.'</p> |
| 22. | <p><i>The State of Western Australia v ZER</i></p> <p>[2024] WASCA 84</p> <p>Delivered 16/07/2024</p> | <p>45-46 yrs at time offending. 56 at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant criminal history.</p> <p>Born in SA; grew up on a farm; happy childhood; one of four children.</p> <p>Left school in yr 11; not academically inclined and struggled to keep up.</p> | <p>Cts 1-5, 9, & 15: Agg sex pen child U16 yrs. Ct 11: Agg indec deal U16 yrs.</p> <p>The respondent and his wife were approved foster carers. The victim, D was placed in the respondent's care as a foster child. At the time of offending, D was between 13 and 15 yrs old.</p> <p><u>Ct 1 & 2</u></p> <p>The respondent messaged D to come to his room. When she arrived, he locked</p> | <p>Ct 1: 3 yrs imp (conc). Ct 2: 4 yrs imp (cum). Ct 3: 3 yrs imp (conc). Ct 4: 3 yrs imp (conc). Ct 5: 3 yrs imp (conc). Ct 9: 3 yrs imp (conc). Ct 11: 18 mths imp. Ct 15: 18 mths imp (cum).</p> <p>TES: 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found D was vulnerable</p> | <p>Appeal allowed.</p> <p>Appeal concerned first limb of totality principle.</p> <p>Resentenced:</p> <p>Ct 15: 3 yrs 9 mths imp (cum).</p> <p>TES: 7 yrs 9 mths imp.</p> <p>At [65] 'as D's foster parent, the respondent was responsible for her care, had supervision of her, and authority over her.'</p> <p>At [66] 'the seriousness of the offending in this case is readily</p> |

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| | | <p>Worked as a shearer from 16 yrs; later worked in a grain handling business.</p> <p>One serious relationship — his wife since 25 yrs old; family are supportive of him; youngest son diagnosed with autism.</p> | <p>the door behind her, placed her on the bed and licked her vagina. The respondent then penetrated D’s vagina with his penis.</p> <p><u>Ct 3</u></p> <p>On another occasion, whilst D was driving in the car with the respondent, he asked her to suck his penis. D did so.</p> <p><u>Ct 4 & 5</u></p> <p>On two other occasions, the respondent was driving with D in the front passenger seat. The respondent told D to suck his penis, which she did.</p> <p><u>Ct 9</u></p> <p>When D was in the family’s shed with the respondent, the respondent pulled D’s pants down and put his fingers inside her vagina.</p> <p><u>Ct 11</u></p> <p>On a separate occasion in the shed, the respondent caused D to hold his penis.</p> <p><u>Ct 15</u></p> <p>Whilst at the respondent’s place of work, the respondent penetrated D’s vagina with his penis.</p> | <p>due to her age, and because she had been placed in the respondent’s care after having been sexually abused in another home.</p> <p>The sentencing judge found the offending occurred in the context of the respondent developing an ‘infatuation’ with D that crossed boundaries. Accordingly, the sentencing judge found personal deterrence was not a factor, as re-offending seemed unlikely.</p> <p>The sentencing judge made no finding as to remorse, but did note a degree of remorse from the respondent displayed in the pretext calls.</p> | <p>apparent. The respondent committed multiple sexual offences over approximately 12 months against a 14-year-old girl who was his foster child. The vulnerability of the victim as a foster child was heightened by the fact that she had been sexually abused previously, a fact known to the respondent ... To describe his actions as an infatuation places a gloss of legitimacy on what was plainly very serious illegal conduct.’</p> <p>At [68] ‘general deterrence was a very important sentencing consideration in the present case...The need to ensure the protection of children is no less significant with children in foster care arrangements than with other children.’</p> <p>At [69] ‘as to personal deterrence, it is generally safe to assume that a person who has been prepared to repeatedly cross legal and moral boundaries will need to be deterred from doing so again...The fact that such an offender has been unable to restrain their sexual interest despite knowing that the object of their interest is a child will usually justify personal deterrence being afforded some weight in the sentencing exercise.’</p> <p>At [70] ‘as to rehabilitation, the basis for the finding that the respondent had good prospects of rehabilitation was that there was nothing to indicate that he offended in a similar way in the 10 years that had elapsed since the offending...There was nothing remarkable in this. It is not unusual for offenders who commit sexual offences against children not to be convicted until many years later and for them to have otherwise exemplary characters and supportive families.’</p> <p>At [71] ‘... if there was any fleeting moment of remorse at the time of the pretext calls it was not sustained. It was much more likely that his conduct in [the pre-text] calls was a self-serving attempt to placate D so that she would not pursue the matter. In any event, when viewed as a whole, it could not be sensibly maintained that the respondent was truly remorseful.’</p> <p>At [72] ‘although the respondent has sought to distinguish his case on the basis of what is said to be an unusual combination of personal factors, when seen in proper context there is nothing remarkable about his personal circumstances.’</p> <p>At [84] ‘when regard is had to the statutory maximum penalties, the seriousness of the offending, the particular vulnerability of the victim, the need for the sentence to reflect general deterrence and appropriate punishment of offending of this nature...the total effective sentence of 5 yrs 6 mths imprisonment fails to adequately reflect the high level of criminality of the respondent’s overall offending.’</p> |
| 21. | ZLE v The State of Western Australia [No 2] | <p>51 yrs at time offending. 54 yrs at time sentencing.</p> <p>Convicted after trial.</p> | <p>Cts 1–4: Indec deal child U13 yrs.</p> <p>At the time of offending, the appellant was living at a house in a suburb with</p> | <p>Ct 1: 12 mths imp (cum). Ct 2: 4 mths imp (conc). Ct 3: 3 mths imp (cum). Ct 4: 3 mths imp (cum).</p> | <p>Appeal dismissed (leave refused on all grounds).</p> <p>Appeal concerned length of sentence imposed on ct 1 and first limb of totality principle.</p> |

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| | <p>[2024] WASCA 69</p> <p>Delivered 21/06/2024</p> | <p>Born in Vietnam; migrated to Australia at 25 yrs old.</p> <p>Previously in a de-facto relationship; father of three children.</p> <p>Qualified painter; owned painting business.</p> | <p>his wife and 8 yr old stepdaughter, M.</p> <p><u>Ct 1</u></p> <p>The appellant entered M's bedroom whilst she was lying on her bed. He proceeded to lie on top of M and touched her vagina over her pyjamas.</p> <p><u>Ct 2</u></p> <p>Later in the morning, the appellant entered M's bedroom again and kissed her on the lips.</p> <p><u>Ct 3 & 4</u></p> <p>Later that day, the appellant called M into the kitchen and kissed her on the lips for approximately five seconds. As the appellant kissed M, he took her hand and placed it on his penis, on the outside of his clothing.</p> | <p>TES: 18 mths imp.</p> <p>EFP.</p> <p>The offending was found to be within the low range of seriousness for offences of the same type.</p> <p>The sentencing judge found the appellant's conduct constituted a form of grooming. The appellant had purchased game cards for M, telling her to keep the offending a secret otherwise he would stop buying cards for her.</p> <p>The sentencing judge found that M was both scared and upset as a result of what the appellant did to her.</p> | <p>At [50] 'as to the seriousness of the offending, this case involved four counts of sexual offending against a young child, including one instance of the appellant fondling the victim's genitalia.'</p> <p>At [53] 'custodial sentences for offences of indecent dealing with children are not unusual. Sentences for such offences have ranged from 9–18 mths (pre-transitional) with sentences at the higher end of the range involving the fondling of the genitalia. The individual sentences imposed in this case are not inconsistent with sentences imposed in other cases. Nor is the total effective sentence inconsistent with comparable cases.'</p> <p>At [55] 'having regard to the maximum penalty, the circumstances of the offences, the appellant's personal circumstances and comparable cases, it is not reasonably arguable that the sentence of 12 mths' imprisonment on ct 1 was manifestly excessive or that the total effective sentence of 18 mths imp was disproportionate to the overall criminality.'</p> |
| <p>20.</p> | <p><i>XBX v The State of Western Australia</i></p> <p>[2024] WASCA 43</p> <p>Delivered 26/04/2024</p> | <p>59 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal record.</p> <p>Finished school at the end of yr 10.</p> <p>Number of trade related certificates; hardworking throughout his life.</p> <p>Married with three children at time sentencing; no longer in contact.</p> <p>Diagnosed with ADHD.</p> <p>Minor misuse of alcohol.</p> | <p>Ct 1: Persistently engaged in sexual conduct a child U16 yrs.</p> <p>Cts 2-3, 5–7, and 9–10: Indec deal child U13 yrs.</p> <p>Ct 4 & 8: Sex pen child U13 yrs.</p> <p>The victim's mother, TN, commenced a relationship with the appellant's son, SB. The victim, TN, SB, and the victim's older brother all lived together. At the relevant times, the family would frequently visit the appellant and spend the night there.</p> <p><u>Ct 1</u></p> <p>The appellant began sexually offending against the victim shortly after her 7th birthday. The last occasion was just before her 8th birthday.</p> <p><u>Cts 2–4</u></p> <p>Whilst in the appellant's swimming pool, the appellant approached the victim and told her to pull his penis. She placed her hand underneath his clothing</p> | <p>Ct 1: 10 yrs imp (HS).</p> <p>Ct 2: 3 yrs imp (conc).</p> <p>Ct 3: 3 yrs imp (conc).</p> <p>Ct 4: 4 yrs imp (conc).</p> <p>Ct 5: 3 yrs imp (conc).</p> <p>Ct 6: 3 yrs imp (conc).</p> <p>Ct 7: 2 yrs imp (conc).</p> <p>Ct 8: 3 yrs imp (conc).</p> <p>Ct 9: 2 yrs imp (conc).</p> <p>Ct 10: 6 mths imp (conc).</p> <p>The sentencing judge found the issue of totality largely fell away due to the operation of the statutory framework of s 321A.</p> <p>The offending has traumatised the victim; the family have had to remove themselves from family events associated with the appellant's wife; victim worries people will discover the offending and is concerned people will make fun of her.</p> <p>The sentencing judge found the offending constituted a significant amount of grooming. The appellant had emotionally manipulated the victim by telling her to keep the offending to herself.</p> | <p>Appeal allowed (Mazza JA dissenting).</p> <p>Appeal concerned length of sentence imposed on ct 1.</p> <p>Resentenced:</p> <p>Ct 1: 7 yrs 4 mths imp.</p> <p>TES: 7 yrs 4 mths imp.</p> <p>EFP.</p> <p>At [101] 'the 20-year maximum for s 321A sets a ceiling that must be reserved for cases falling into the worst possible category. However, the range of conduct that is encompassed by s 321A is extraordinarily wide...It cannot be assumed that there is a neat or evenly spaced graduation of seriousness such that a particular case to be readily placed at a definite point on that continuum. However, there must be room within that scale to reflect the relativities between cases.'</p> <p>At [102] 'in assessing the seriousness of this offence, I would not view the offending as necessarily less serious because it did not include penile or digital penetration. On the other hand, the offending did not involve the use of violence or threats or the infliction of physical injuries.'</p> <p>At [103] 'the personal circumstances of the appellant were</p> |

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| | | | <p>and moved her hand up and down his penis. The appellant then told her to lick his penis. The victim licked his penis multiple times. The appellant directed her to do this multiple times and at one point, the victim sucked the appellant's penis.</p> <p><u>Ct 5</u></p> <p>On one occasion when the victim and the appellant were alone in his shed, the appellant showed the victim a DVD depicting pornographic material.</p> <p><u>Ct 6 & 7</u></p> <p>One two separate occasions when the appellant and victim were alone in the shed, the appellant used sex toys on the victim.</p> <p><u>Ct 8</u></p> <p>One another occasion in the swimming pool, the appellant ducked beneath the water and licked the victim's vagina.</p> <p><u>Ct 9</u></p> <p>On once occasion, the appellant presented the victim with a sex toy. He then exposed his erect penis in front of her.</p> <p><u>Ct 10</u></p> <p>On one occasion, the appellant told the victim to kiss her cousin. As directed, she went over to her cousin and kissed her on the lips.</p> | <p>The sentencing judge did not go as far to expressly find that the appellant was remorseful.</p> | <p>unremarkable.'</p> <p>At [105] 'in my view, the only cases that are relevantly comparable are <i>KMB, Coulter</i> and <i>NSA</i>. The outcomes in those cases support the appellant's contention that the sentence imposed on ct 1 was manifestly excessive.'</p> <p>At [111] 'these cases [cases of similar offending not including s 321A cts] suggest that a total sentence of 10 years' imprisonment for the prescribed offences in this case would be unusually high. In saying that, I acknowledge that ct 1 included some additional sexual conduct that was not the subject of separate charges.'</p> <p>At [112] 'the cases I have referred to do not suggest the sentence imposed on ct 1, whilst being inconsistent with other cases dealing with s 321A, is otherwise consistent with sentences imposed for similar offending more broadly. Indeed, they suggest to the contrary, particularly when the appellant's guilty pleas are taken into account.'</p> <p>At [112] '... the appellant's sentence cannot be reconciled with the sentences imposed in other similar cases.'</p> <p>At [158] 'for the avoidance of doubt, it should not be assumed that I would have imposed the same sentence had the appellant been charged only with individual prescribed offences.'</p> |
| 19. | <p><i>JFB v The State of Western Australia</i></p> <p>[2024] WASCA 41</p> <p>Delivered 24/04/2024</p> | <p>31–35 yrs at time offending. 40 yrs at time sentencing.</p> <p>Convicted after late PG (cts 1–4 and cts 11–14 25% discount). Convicted after trial (cts 5–9).</p> <p>Criminal history; driving, drug and dishonesty offences; no prior</p> | <p>Cts 1–4, 7, 9, and 11–14: Indec deal child de facto relative U16 yrs. Cts 5–6, and 8: Sex pen child de facto relative U16 yrs.</p> <p>Over a period of four years, the appellant sexually abused his de facto daughter, a child who was between 8 and 12 yrs during the period of her</p> | <p>Ct 1: 2 yrs imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 3 yrs 10 mths imp (cum). Ct 6: 3 yrs 6 mths imp (conc). Ct 7: 12 mths imp (conc). Ct 8: 4 yrs 2 mths imp (HS). Ct 9: 12 mths imp (conc).</p> | <p>Appeal dismissed (leave granted).</p> <p>Appeal concerned first limb of totality principle.</p> <p>At [12] 'while we accept that the total effective sentence imposed on the appellant was certainly high, and at the upper end of the range of sentences customarily imposed for offending of this type, we are not satisfied that the total effective sentence was so high as to manifest error.'</p> |

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| | <p>sexual offending.</p> <p>Born in Perth; eldest of two siblings; father left the family; mother formed another relationship; maintained close relationship with mother.</p> <p>Left school in yr 10.</p> <p>Worked consistently in construction and labouring, later in a furniture removal business.</p> <p>Past issues of substance abuse; used cannabis in high school; three separate periods of 12–18 mths of methyl use.</p> | <p>abuse. The offending occurred almost every time the victim’s mother went out.</p> <p><u>Cts 1–4</u></p> <p>On each occasion, the appellant was in his bedroom masturbating. The appellant then called the victim into the room and asked her to touch his penis, which she did. On each occasion the appellant continued to masturbate while touching the victim on the vaginal area outside of clothing.</p> <p><u>Ct 5</u></p> <p>The appellant invited the victim into his bedroom to watch a movie. The appellant locked the bedroom door, removed the victim’s pants and digitally penetrated her vagina.</p> <p><u>Ct 6</u></p> <p>On another occasion, the victim was awoken to the appellant lying behind her digitally penetrating her vagina.</p> <p><u>Cts 7 & 8</u></p> <p>Whilst on the couch with the appellant, he asked her to suck his penis. The victim refused and the appellant placed his hand down her pants and touched her buttocks. The appellant then sat across the victim’s lap, grabbed the victim’s jaw and forced his penis into her mouth.</p> <p><u>Ct 9</u></p> <p>On a separate occasion, the appellant sat next to the victim on the couch and played with her hair and touched her breasts.</p> <p><u>Cts 11-14</u></p> <p>On two separate occasions, the</p> | <p>Ct 11: 2 yrs imp (conc). Ct 12: 16 mths imp (conc). Ct 13: 2 yrs imp (conc). Ct 14: 16 mths imp (conc)</p> <p>TES: 10 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found that the appellant had a degree of remorse given some of his admissions. However, the appellant was not entirely remorseful.</p> <p>Victim described the pervasive effect of the offending; prevented her from having a close relationship with her mother; difficult relationship with her brother as he resembled the appellant; left isolated.</p> <p>The sentencing judge found that the offending had escalated over time, as the appellant became emboldened by the victim having not complained. The offending only stopped due to the appellant’s separation from the victim’s mother.</p> <p>The sentencing judge did not accept that appellant had no sexual interest in the victim. The appellant had used the victim for his sexual gratification, and he did so because he did not want to use prostitutes. The offending against the victim was ‘nothing short of callous.’</p> | <p>At [13] ‘in addition, the offences of sexual penetration for which the appellant was found guilty after trial all occurred on separate days and were serious example of their type. Not only did they involve the inherent seriousness and breach of trust involved in any intrafamilial sexual offending ... the offences also involved persistence over the protest of the victim, a degree of force (such as grabbing her jaw and pulling her mouth open) and caused pain to the victim. Furthermore, the offences for which the appellant was convicted were not isolated occasions but representative of more extensive sexual abuse, the effect of which has had a profound and pervasive effect on the victim’s life.’</p> <p>At [61]–[62] ‘while recognising the limited utility of previous cases in an appeal such as the present one, the appellant identified a number of decisions which he submitted supported the conclusion that the TES in the present case did not bear a proper relationship to the overall criminality... A number of those previous decisions ... concerned sentences imposed by this Court more than 10 years ago.</p> <p>At [72] ‘... the offending as a whole was committed despite the victim’s repeated protest and was, as the learned sentencing judge recognised, callously indifferent to the victim’s wishes and had a profound and pervasive effect on her.’</p> <p>At [73] ‘it was appropriate, therefore, that there be accumulation of a number of the sentences to recognise the variety of the offending, the separate occasions upon which it occurred, and the period of time over which the appellant abused the victim. To have accumulated the sentences for three of the 13 offences was a sound exercise of sentencing discretion.’</p> <p>At [81] ‘in a case such as the present, where the appellant did not plead guilty to the most serious of the offences for which he was convicted, and the victim was required to give evidence and be cross-examined, the impact of the guilty pleas will necessarily carry less weigh in determining the appropriate total effective sentence. The risk of further trauma and psychological harm to the victim, in such a case, cannot be said to have been avoided.’</p> <p>At [94] ‘... the total effective sentence imposed by the learned sentencing judge was severe, and at the upper limit of sentences customarily imposed for offending of its type.’</p> |
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| | | | appellant invited the victim into his bedroom and asked her to touch his penis. On each occasion the victim touched and rubbed his penis, as he masturbated. As he masturbated, he placed his hand down her pants and rubbed her vaginal area. | | |
| 18. | <i>AAE v The State of Western Australia</i> [2024] WASCA 35 Delivered 09/04/2024 | 32 yrs at time sentencing. Convicted after PG (20% discount). No criminal history. Born in NZ; youngest of three children; moved to Australia at 9 yrs old; positive upbringing; parents and sister supportive. Struggled at school; completed yr 12. Gainfully employed since finishing school: hospitality industry. Met his wife at 16 yrs; relationship continued until arrest; three children, one of which was born after arrest. No significant mental health issues; emotional detachment and socially avoidant. | 1 x Distribute CEM. 1 x Poss CEM. 21 x Indec record child lineal relative U16 yrs. 19 x Indec deal child lineal relative U16 yrs. 7 x Sex pen child lineal relative U16 yrs. 2 x Att sex pen child lineal relative U16 yrs. 1 x Indec record child U13 yrs. The victims, A and K were the children of AAE. At the relevant time A was 4 yrs old and K was between 7 and 8 yrs old. An UC from Department of Homeland Security engaged in communication with the appellant on a social media application. The substance of these communications constituted the distribute CEM offence. A WAPOL SW at the appellant's parent's home located a USB thumb drive containing CEM. The contents of the USB constituted the poss CEM offence. The appellant's hard drive and phone were also seized, containing numerous explicit recordings of the appellant and his daughter, A. As well as explicit recordings of the appellant and his son, K. The recordings located by police identified 20 separate incidents of offending by the appellant. The offending included numerous occasions of penile-vaginal penetration of A, digital penetration of A, use of sex toys on A, indec touching of A, as well as A stroking the appellant's penis. On | <u>Cum</u> 1 x distribute CEM (10 mths imp). 1 x possess CEM (8 mths imp). 1 x indec record child lineal relative (12 mths imp). 1 x sex pen child lineal relative (5 yrs imp). 1 x sex pen child lineal relative (3 yrs imp). 1 x sex pen child lineal relative (5 yrs imp). 1 x indec deal child lineal relative (2 yrs imp) All other cts conc. TES 17 yrs 6 mths imp. EFP. The sentencing judge found that the appellant offended for his own sexual gratification; he had groomed the victims, encouraged and convinced them to allow his offending and used scare tactics and bribes to prevent disclosure. The sentencing judge did not accept the appellant's disclosure to the psychologist that A was a willing participant; the footage clearly showed A recoiling during the offending. In particular, the offending against A was 'towards the upper end of the scale.' The sentencing judge found that the appellant made no significant admissions to police during the searches and pleaded guilty during negotiations. The sentencing judge found that the appellant was genuinely remorseful, though he lacked genuine insight into the severity of the offending. Offending had caused great stress to the appellant's wife; vomits when she thinks of the offences; financially impacted; difficult to | Appeal dismissed (leave granted). Appeal concerned first limb of totality principle. At [85] 'it is beyond doubt, and not disputed by the appellant, that the totality of his offending was extremely serious and deserving of a substantial term of imprisonment.' At [87] '... the appellant's offending was, taken as a whole, extremely serious. It involved persistent sexual offending over approximately one year against the appellant's two very young children.' At [88] 'the offending involved a gross breach of the appellant's trusted role as a father. As a parent, he had privileged access to the children and was able to misuse their love for him to obtain their compliance with his sexual demands and to ensure their silence. It is telling that neither of the children revealed the offending and that the prosecution case relied entirely on recordings.' At [89] 'in respect of the appellant's 4-year-old daughter ... there was an element of depravity in this offending. It is apparent that the appellant's sexual interest prevailed over any concern for the physical or psychological welfare of his children.' At [90] 'his communications with the law enforcement officer revealed a callous disregard for the welfare of his children and a willingness to exploit them for his own deviant purpose.' At [91] 'the appellant also possessed and distributed child exploitation material. The material he possessed was at all levels of seriousness and included 12 still images and 20 videos in the most serious category. In addition, he indecently recorded other children. This reveals that his sexual interest in children extended beyond his own children.' At [96] 'we do not accept the appellant's submission to the effect that the sentence of 22 yrs 6 mths' imprisonment imposed in <i>SCN</i> operates as a ceiling for sentences of child sexual offending.' At [103] 'having regard to the maximum penalties, the seriousness of the offending taken as a whole, the personal circumstances of the appellant and the limited guidance afforded by comparable cases, the appellant has failed to establish that the total effective sentence of 17 yrs and 6 mths imprisonment breached the first limb of the totality |

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| | | | <p>numerous occasions A is recoiling from the appellant during the offending. The offending against K consisted of indec touching, K fondling the appellant's penis, and genital-genital touching.</p> <p>Further images were located of the appellant's 4-year-old niece, as well as numerous photos surreptitiously taken of unknown female victims at the appellant's workplace.</p> | <p>gauge the impact on the children, have not disclosed the offending during interviews.</p> | <p>principle.'</p> |
| <p>17.</p> | <p><i>The State of Western Australia v Mojana</i></p> <p>[2023] WASCA 189</p> <p>Delivered 28/11/2023</p> | <p>33 yrs at time sentencing.</p> <p>Convicted at trial.</p> <p>No criminal history.</p> <p>Born in Phillipines; emigrated to Australia in 2007; unremarkable childhood.</p> <p>Consistent employment; well-regarded within the Filipino community.</p> <p>No substance abuse; no evidence of poor mental health.</p> | <p>Cts 1–2 & 4–8: Indec deal child U13 yrs.</p> <p>Cts 1–6 concerned the victim, A. At the time of offending, A was aged between 6 and 8 yrs.</p> <p>Cts 7–8 concerned A's brother, B. At the time of offending, B was aged about 14 yrs.</p> <p>The victim's father owned a restaurant in Perth. The respondent's wife worked at the restaurant, and on occasion, the respondent worked there as well. The respondent became good friends with the victim's parents.</p> <p><u>Cts 1 & 2</u></p> <p>At the restaurant, while the respondent's wife was serving a customer, the respondent touched A on his crotch, over his pants. On another occasion, the respondent touched A's crotch. A's father was in the back of the restaurant.</p> <p><u>Ct 4</u></p> <p>In a multi-storey car park, the respondent touched A on the crotch, over his clothes.</p> <p><u>Ct 5</u></p> <p>At A's house, the respondent</p> | <p>Ct 1: 6 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 4: 6 mths imp (conc). Ct 5: 6 mths imp (conc). Ct 6: 6 mths imp (conc). Ct 7: 12 mths imp (conc). Ct 8: 18 mths imp (HS).</p> <p>TES: 2 yrs imp.</p> <p>The sentencing judge found the offences were a breach of trust reposed in the respondent by the victim's parents. The respondent was a trusted family friend.</p> <p>The offending had changed the victim's lives for the worse; each suffers from anxiety, depression and sleep difficulties; their schooling and relationships have been adversely affected.</p> <p>The sentencing judge characterised the offending against A as falling towards the lower end of the scale of seriousness; it involved momentary touching above clothing.</p> <p>The sentencing judge found that the respondent had showed no remorse. The respondent had, to some extent acknowledged the offending.</p> <p>The sentencing judge found that the respondent was generally cooperative with police, allowing officers to forensically examine his phone.</p> | <p>Appeal allowed.</p> <p>Appeal concerned length of sentence imposed for all cts, and total sentence.</p> <p>Resentenced:</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 12 mths imp (conc). Ct 6: 9 mths imp (cum). Ct 7: 12 mths imp (conc). Ct 8: 18 mths imp (conc HS).</p> <p>TES: 3 yrs 3 mths.</p> <p>EFP.</p> <p>At [49] 'the respondent was a trusted friend of the victim's family ... All of the offending constituted a serious breach of trust.'</p> <p>At [50] 'the offending was representative of a lengthy course of sexually abusive conduct...the offending against A was also brazen, occurring in the victim's father's restaurant and at A's parent's residences, where others were in the vicinity.'</p> <p>At [52] 'if offending is said to be at a low level, it does not necessarily mean that it was not serious. Nor does it detract from the effect the conduct may have had on the victim.'</p> <p>At [56] 'Count 8 was rightly regarded by the sentencing judge as being the most serious individual offence committed by the respondent.'</p> <p>At [55] 'each offence against A involved a significant degree of criminality and was not, as contended for the respondent, at the bottom of the scale.'</p> |

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| | | | <p>approached A in the kitchen a touched him on the crotch.</p> <p>Ct 6 At A's mother's house, the respondent kissed A on the lips and touched him on the crotch.</p> <p><u>Ct 7</u></p> <p>While at B's mother's house, the respondent kissed B on the lips and tried to get him onto a mattress. Once on the mattress, the respondent put his hand down the front of B's pants and touched his penis and testicles.</p> <p><u>Ct 8</u></p> <p>At B's mother's house, B complied with a request by the respondent to give him a hug and lay down next to him. The respondent then showed B a pornographic video in which a male was engaging in penetrative sexual intercourse with a female, who looked to be underage. The respondent then asked B whether he ever masturbated, then put his hand down B's shorts, grabbed the shaft of B's penis and testicles, and rubbed up and down.</p> | | <p>At [61] 'the individual sentences of 6 months' immediate imprisonment are not merely lenient; each is manifestly inadequate.'</p> |
| 16. | <p>DWG v The State of Western Australia</p> <p>[2023] WASCA 133</p> <p>Delivered 07/09/2023</p> | <p>46-57 yrs at time offending. 65 yrs at time sentencing.</p> <p>Convicted after very late PG (2% discount).</p> <p>No criminal history.</p> <p>Married; two children from previous marriage; estranged since being charged with current offences; parents in deteriorating health; younger brother with whom he has no relationship since offending became apparent.</p> | <p>Cts 1-2; 6; 10-11; 15; 17-18 & 21: Indec deal child 13-16 yrs. Cts 5; 7 & 16: Sex pen child 13-16 yrs. Ct 9: Att sex pen child 13-16 yrs. Ct 20: Att sex pen child U13 yrs. Cts 22 & 23: Agg indec assault.</p> <p>The offending involved three victims, SB; JW and BB.</p> <p><u>Cts 1, 2, 5-7, 9-11, 15 and 16</u> The victim, SB, was 14-15 yrs old and a neighbour of DWG's wife. The offending occurred over a period of 1 yr.</p> | <p>Cts 1-2; 6; 10-11 & 15: 18 mths imp (conc). Cts 5 & 22: 2 yrs imp (cum). Cts 7 & 20: 3 yrs imp (cum). Cts 9; 17-18; 21 & 23: 2 yrs imp (conc). Ct 16: 2 yrs 6 mths imp (conc).</p> <p>TES 10 yrs imp.</p> <p>Appellant originally convicted after trial of 24 cts involving child sex offences against the three victims. A TES of 10 yrs 8 mths imp was imposed. The appellant appealed conviction and a new trial was ordered. The second trial was aborted. The third trial commenced, during which the appellant entered PG to 16 of the 24 cts in full</p> | <p>Appeal dismissed.</p> <p>Appeal concerned length of sentence (principle of restraint).</p> <p>At [152] '... the TES imposed on the appellant, and the time before the appellant is EFP, is 8 mths shorter than was the case under the original sentence. The appellant has gained a benefit from the success of his appeal against conviction, ... There can be no perception that the appellant is being punished for having instituted the appeal against conviction. There is no infringement of the principle of restraint in these circumstances.'</p> <p>At [157] 'in our view, the only potentially significant differences in the criminality found in the two sentencing exercises concern the appellant's PG at the third trial and the lesser number of cts of which he was convicted at the third trial.'</p> |

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| | | <p>Good employment history.</p> <p>Some physical health conditions; manageable in prison.</p> <p>No reported illicit substance use or excessive alcohol consumption.</p> | <p>DWG agreed to help SB with his go-karting interests. SB would often attend DWG's home where he would engage in sexual behaviour with SB, including masturbation and fellatio and, on one occasion, DWG had SB push his penis into his anus. SB felt disgusted by what had happened and took a shower.</p> <p><u>Cts 17, 18, 20 and 21</u> JW was DWG's step-grandson, who was 11-12 yrs old at the time of the offending.</p> <p>The offences took place at DWG's home, while they were alone in his house. DWG would masturbate JW's penis and he would have JW masturbate him.</p> <p>On one occasion DWG convinced JW to put his penis into his mouth. DWG then tried to put JW's penis into his mouth. JW blocked his face with his hands. He told JW it was normal and it would feel good. He then attempted to force JW's head onto his penis, but JW resisted.</p> <p><u>Cts 22 and 23</u> The victim BB was DWG's nephew. He was 16 yrs old at the time of the offending.</p> <p>After giving BB driving lessons DWG told BB to suck his penis. When BB did not want to, he encouraged him to try, telling him there was nothing to be afraid of. BB, petrified, repeatedly told DWG he did not want to do it. DWG masturbated, removed BB's shorts and underwear and then touched his penis with his own. BB froze. He then placed BB's hand on his penis and moved it up and down.</p> | <p>satisfaction of indictment.</p> <p>The sentencing judge found a number of aggravating features of the offending; the disparity in ages between the appellant and the complainants; the breach of trust involved in the offending; two of which were within the family unit; the persistent nature of the offending against SB and JW, which included an element of grooming and normalisation of conduct; the lack of resistance by the complainants, who did not consider that they were in a position to offer any resistance; the offending against all complainants was planned and premeditated; the various sexual acts involved included some of the most serious types of offending and the degrading and humiliating nature of the offending.</p> <p>The sentencing judge found that a term of imprisonment was the only appropriate sentencing option; to reflect there were three complainants and that the offending occurred on numerous occasions over 10.5 yrs.</p> <p>Limited remorse.</p> | <p>At [160] '... in all the circumstances of this case, an 8-month reduction was proportionate to the reduced overall criminality involved in the offences of which the appellant was convicted at the third trial as compared to the first trial ...'</p> <p>At [162] 'this court has not previously considered the application of the principle of restraint where the offender is sentenced for a lesser number of offences after retrial ...'</p> |
| 15. | JTR v The State of Western Australia [2023] WASCA 131 | <p>47 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> | <p>43 x Sex pen child U13 yrs. 1 x Att sex pen child U13 yrs. 221 x Indec deal child U13 yrs. 122 x Indec recording child U13 yrs. 6 x Producing CEM.</p> | <p>TES 25 yrs.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's</p> | <p>Dismissed (leave refused on ground 2).</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [148] '... the appellant's offending, when viewed overall, is</p> |

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| <p>Delivered 01/09/2023</p> | <p>No prior criminal history.</p> <p>Youngest of four siblings; positive childhood; supportive parents.</p> <p>Schooling a positive experience; completed university degree.</p> <p>Good employment history; developed own business; successful for a long period of time before experiencing financial difficulties, business eventually failed, millions of dollars in debt.</p> <p>Married; four children together; separated before offending uncovered; commenced another relationship.</p> <p>Sustained serious injuries in an accident in 2021, which also resulted in the death of his new partner.</p> <p>History of self-harm; att suicide time of separation from former wife; experienced suicidal ideation following death of his partner; engaged in serious self-harm when arrested; diagnosed with major depressive disorder with anxious distress at time sentencing.</p> <p>History of alcohol abuse and misuse of prescription medication; resorted to drug and alcohol use as a means of managing stress; in remission at time sentencing due to his detention.</p> | <p>25 x Poss CEM. 1 x Procuring child U13 yrs to do indec act.</p> <p>Over a period of six yrs, and on an enormous number of occasions, JTR sexually abused 22 children, including his four biological children, niece and nephew and the children of family friends and neighbours.</p> <p>The children's ages ranged from 2 yrs of age to 13 yrs of age. The majority of the offences were committed against children under the age of 10 yrs.</p> <p>JTR recorded all his offending conduct. Sometimes he used a hidden camera and on other occasions he used a handheld camera.</p> <p>In addition to his acts of child sexual abuse JTR was found in possession of approx 1 million images and 30,000 videos of CEM, which he had methodically classified across 26 separate electronic devices.</p> <p>The offences charged were based on the review of the large number of USBs and hard drives, as well as the 26 recording devices found in his home and business.</p> <p>None of the children offended against made any disclosures to police.</p> | <p>offending, viewed as a whole, one of the worst cases of its kind to come before the WA courts; the mere reference to the number of offences committed did not reveal that on many occasions the offending was prolonged or involved multiple offences; the number of offences did also not reveal the truly egregious and depraved nature of the offending.</p> <p>The sentencing judge referred to four factors that required a 'very significant measure of accumulation in the sentences'; firstly, on many occasions one episode of offending against a particular victim involved multiple offences; secondly, the offending against many of the children involved multiple offences and occurred on multiple occasions; thirdly, the sheer magnitude of the offending and fourthly, the poss of a significant quantity of CEM on so many devices.</p> <p>Offending had, and continues to have, a destructive effect on the lives of the children offended against.</p> <p>Appellant not genuinely remorseful; no acceptance of responsibility for his offending; nature and extent of the offending precluded a finding that the offending was an aberration, or that unlikely to offend again.</p> | <p>disturbing and of the utmost seriousness ... the appellant persistently engaged in predatory behaviour over a substantial period of time and in relation to an extraordinary number of children driven by an entrenched sexual interest in children.'</p> <p>At [149] 'in almost every instance, the appellant's offending constituted a breach of trust. Four of the victims were his ow children, who were entitled to expect his love and protection ...'</p> <p>At [150] 'of all the appellant's 419 offences, 274 of them were committed against his youngest daughter, over about six yrs and in the course of 153 separate events ...'</p> <p>At [153] 'most of the offences were committed with a brazen assurance ...'</p> <p>At [154] 'the fact that the appellant recorded all the offences that he committed against children also marks the seriousness of his offending conduct ...'</p> <p>At [155] 'it must also be remembered that the appellant was convicted of a considerable number of offences relating to his poss of CEM. ... those offences concerned the poss and categorisation of approx 1 million images and 30,000 videos depicting CEM. The appellant had collected a massive database of CEM which recorded offending that had taken place against real children, including highly degrading and painful abuse.'</p> <p>At [172] '... the objective seriousness of the appellant's overall offending is at the very highest level, and there was a very clear need for sentences to be imposed that satisfied the obvious requirement for both general and specific deterrence ...'</p> <p>At [176] 'the TES had to reflect the fact that the appellant committed a considerable number of offences against a total of 22 children. Many of the offences were not at the high end of the scale of seriousness when viewed in isolation. However, when taken as a whole, they establish that the appellant persistently and frequently acted on an entrenched sexual interest in very young and vulnerable children, and in doing so breached the trust reposed in him as a father, a family member, and a friend.'</p> <p>At [177] 'additionally, substantial cumulation was necessary to reflect the repetitive and prolonged sexual offending against the appellant's youngest daughter, which occurred on 153 separate occasions ...'</p> <p>At [178] 'finally, a further degree of cumulation was called for in order to adequately reflect the extreme serious nature of the offences concerning the appellant's poss of CEM and give some effect to the principles applicable in sentencing for such offences.'</p> |
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| | | | | | At [207] ‘in our opinion, the TES was not crushing. It follows that the second limb of the totality principle was not infringed.’ |
| 14. | <p><i>OMC v The State of Western Australia</i></p> <p>[2023] WASCA 86</p> <p>Delivered 30/05/2023</p> | <p>30-31 yrs at time offending. 33 yrs at time sentencing.</p> <p><u>IND X</u> Convicted after trial.</p> <p><u>IND Y</u> Convicted after late PG.</p> <p>Short criminal history; no prior convictions for violence or sexual offending.</p> <p>Aged 12 mths when parents separated; lived with his mother until aged 12 yrs, then resided with his father; prosocial upbringing; suffered adverse psychological effects from parents’ conflict.</p> <p>Good family support.</p> <p>Good employment history.</p> <p>Partner miscarried around time offending began; stress of FIFO work impact on his relationship.</p> | <p><u>IND X</u> Cts 1-6 & 8-9: Indec deal child U13 yrs. Ct 7: Att indec deal child U13 yrs.</p> <p><u>IND Y</u> Ct 1: Poss CEM.</p> <p>The victim was aged between 10 and 11 yrs at the time of the offending. She was the daughter of OMC’s then partner and he was a father figure to her.</p> <p>The offences were representative of a course of ongoing sexualised conduct towards the victim over a period of 18 mths.</p> <p>The offending occurred in the family home, when OMC was alone with the victim.</p> <p>OMC indec dealt with the victim by rubbing her vagina with his fingers or squeezing her breasts (cts 1-6). He touched her vagina both over and under her clothing.</p> <p>On one occasion OMC pulled the victim onto her bed and att to touch her vagina (ct 7).</p> <p>On another occasion OMC called out to the victim to come into his bedroom. When the victim eventually did so he was standing, naked, in the doorway (ct 8).</p> <p>The victim would try to prevent what was happening to her and would tell OMC to go away.</p> <p>When arrested OMCs laptop was seized and was found to contain six videos depicting penetrative sex of a female child, including very young children, one of whom looked no more than 3 or 4 yrs old.</p> | <p><u>IND X</u> Cts 1; 2 & 5: 18 mths imp (conc). Ct 3: 2 yrs imp. Ct 4: 2 yrs imp (conc). Ct 5: 18 mths imp (conc). Cts 6 & 9: 2 yrs imp (cum). Ct 7: 12 mths imp (conc). Ct 8: 8 mths imp (conc).</p> <p><u>IND Y</u> Ct 1: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p><u>IND X</u> The sentencing judge characterised the offending against the victim as ‘very serious’; it was a gross breach of trust; the victim was aged between 10-11 yrs; a degree of force was used in the offending and it must have been clear to the appellant that the victim was unhappy as she repeatedly asked him to stop and leave her alone; he manipulated her by telling her she could not tell her mother or he would be in trouble and would no longer be in her life and the period of time over which the offending occurred.</p> <p><u>IND Y</u> The sentencing judge found this offence serious and the material ‘graphic and revolting’.</p> <p>Offending significant negative impact on the victim.</p> <p>No acceptance of responsibility; continued to deny the offending.</p> | <p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [39] ... The appellant took advantage of a vulnerable young child by persistently sexually abusing her over a period of at least 18 mths. The offences were particularly agg by the use of a degree of force and that the appellant frequently persisted when the victim made it clear to him that she did not want him to touch her. The appellant sought to manipulate the victim by telling her that if she complained about his actions he would be out of her life and he would be unable to pay for the things that she liked. ... [he] was undeterred by her protests and attempts to resist this behaviour.</p> <p>At [40] The appellant’s actions have had and are likely to have an ongoing adverse effect upon the victim.</p> <p>At [46] In our opinion, having regard to all of the relevant facts and circumstances of the present case and all relevant sentencing factors, the TES ... bears a proper relationship to the overall criminality in all of the offences committed by the appellant. ...</p> |

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| 13. | <p><i>Coutts v The State of Western Australia</i></p> <p>[2023] WASCA 38</p> <p>Delivered 01/03/2023</p> | <p>29-30 yrs at time offending. 32 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history.</p> <p>Traumatic and dysfunctional childhood; eldest of two sons and two older half-brothers; parents separated when aged 4 yrs; in care of his father until aged 12 yrs; father often wheelchair-bound due to muscular disorder; returned to live with his mother after period in foster care; mother own difficulties, including misuse of prescription medication and mental health issues.</p> <p>Subjected to severe, repeated and degrading sexual and physical abuse by his father; removed from his care by child protection aged 12 yrs; six-mths spent in foster care; father subsequently imp for the abuse; father deceased.</p> <p>Close relationship with mother; no longer in contact with other family members.</p> <p>Disrupted education; completed yrs 1 and 2 at primary school; then home schooled by his father; rarely completed homework and schoolwork; later attended three primary schools; diagnosed with ADHD; struggled with schoolwork; victimised by peers; repeated yr 7; frequently susp and expelled in high school; continuing limitations with literacy and numeracy; certificates in education and hospital/patient care assistance.</p> | <p>Cts 1-8: Sex pen child 13-16 yrs. Ct 9: Indec deal child 13-16 yrs.</p> <p>The two victims, were B, a boy aged 15 yrs, and D, a girl aged 14 yrs.</p> <p>The offending in respect of B arose out of one incident. The offending in respect of D occurred over a six-mth period and the charges representative of ongoing sexual conduct.</p> <p><u>Cts 1 & 2</u> Coutts met B on an online dating application. B told Coutts he was 18 yrs old. They exchanged sexualised indecent messages, including images and recordings.</p> <p>On meeting for the first time Coutts and B engaged in sexual intercourse. This marked the beginning of a sexual relationship. Coutts believed that B was over the age of 16 yrs. Sometime later he discovered that B was 15 yrs old.</p> <p>After becoming aware of B's age Coutts met B and drove him to his home where they engaged in further sexual activity.</p> <p><u>The earlier proceedings:</u> Coutts also exchanged sexual images with B after he became aware he was under the age of 16 yrs. This conduct resulted in Coutts being charged and dealt with separately with one ct each of using an electronic communication with intent to expose a person U16 to indec material and possess CEM.</p> <p><u>Cts 3-9</u> Coutts was a friend of D's family and he had gained the trust of her mother. He would spend time with D and invite her to spend weekends at his home.</p> <p>D came to believe she was in a relationship with Coutts and the</p> | <p>Cts 1 & 5: 3 yrs 6 mths imp (conc). Cts 2 & 3: 4 yrs 6 mths imp (cum). Cts 4 & 8: 4 yrs 6 mths imp (conc). Ct 6: 4 yrs imp (conc). Ct 7: 2 yrs 6 mths imp (conc). Ct 9: 1 yr 6 mths imp (cum).</p> <p>TES 10 yrs 6 mths imp.</p> <p>EFP.</p> <p><u>Earlier proceedings:</u> Coutts PG to the separate charges against B and was sentenced to 12 mths imp and 6 mths imp respectively, both sentences conditionally susp 18 mths.</p> <p>The sentencing judge found the offending agg by the fact there were two victims; there was a significant age difference between the appellant and each of the victims; it involved breaches of trust; D was sexually inexperienced and, as a result of the offending conduct, suffered an infection; the offending in each case was repeated; he secured the cooperation of the victims by friendship and in the case of D, she believed they were in a relationship.</p> <p>The sentencing judge found the appellant's childhood trauma impacted his offending and would make him a more vulnerable prisoner.</p> <p>Victims adversely affected by offending.</p> <p>Expressed remorse; well above average risk of reoffending.</p> | <p>Allowed.</p> <p>Appeal concerned totality principle.</p> <p>Resentenced (20% discount): Ct 2: 4 yrs imp (cum). Ct 9: 1 yr 6 mths imp (conc).</p> <p>All other individual sentences and orders for cum or conc unaffected.</p> <p>TES 8 yrs 6 mths imp.</p> <p>TES.</p> <p>At [36] We have set out the earlier proceedings ... they are relevant to the present appeal for the following reasons. First, they provide context to the offences that are the subject of the appeal. Secondly, it is now apparent that the appellant was untruthful in the earlier proceedings about when the sexual relationship with B ceased. ... the appellant's lack of honesty regarding his conduct in relation to B is relevant in assessing his remorse and the need for personal deterrence. Thirdly, the appellant was on bail for the earlier offences at the time he committed the offences against D. ...</p> <p>At [78] ... the appellant had some significant mitigating factors. ... Whilst [he] had not been honest about his conduct or sexual behaviour when dealt with for the prior offences, he was completely frank when dealt with for these offences ... Further, whilst personal factors are usually accorded lesser weight, the appellant's history of childhood trauma was relevant. It explained, without justifying, his sexual conduct and was relevant in assessing his moral culpability.</p> <p>At [91] ... When the appellant's PG are taken into account the difference between the sentences is greater than would be expected, even allowing for the fact that there were two victims ...</p> <p>At [99] Taking all relevant factors into account the TES ... is disproportionate to the overall offending. ... The TES is unreasonable and unjust. ...</p> |
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| | | <p>Employed various jobs from aged 16 yrs; no regular work since 28-29 yrs; on disability support pension due to mental health issues.</p> <p>History of self-harm from aged 9 yrs; suffers depression, anxiety and trauma symptoms; visual and auditory hallucinations when stressed; diagnosed with McArdle's disease, same medical condition as his father.</p> <p>Abuse of opioid prescription medication from aged 18 yrs; some alcohol and cannabis use.</p> | <p>relationship became a sexual one. Coutts and D engaged in sexual conduct, including intercourse and digital penetration.</p> | | |
| 12. | <p><i>De Mouilpied v The State of Western Australia</i></p> <p>[2023] WASCA 22</p> <p>Delivered 07/02//2023</p> | <p>50 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Supportive parents.</p> <p>Bachelor of Nursing.</p> <p>Good employment history; police officer aged 19-26 yrs; paediatric nurse time of arrest.</p> <p>Married 16 yrs; separated; two further relationships; single at time sentencing.</p> <p>Suffered stroke aged 26 yrs; heart condition, not causing any significant long-term health issues; experienced number of traumatic events, including episodes of violence and suicide as police officer and nurse; antidepressants at time sentencing.</p> | <p>Ct 1: Producing CEM. Ct 2-10 & 12: Indec deal child 13-16 yrs. Ct 11 & 13: Indec act. Ct 14: Poss CEM.</p> <p>The three female victims, all aged 15 yrs, would walk past De Mouilpied's home on the way to school. De Mouilpied would stand at his window facing the street and masturbate. His behaviour was seen by the victims (cts 2-13).</p> <p>During a search of De Mouilpied's home his mobile phone was located. Sixty-two video clips of CEM were found on the device. These recordings were made when he would interact over webcam with female children under 16 yrs of age on an internet chat site and he would invite the children to 'play', that is engage in sexual activity.</p> <p>On at least eight occasions the child or children complied with De Mouilpied's requests. On other occasions, the child or children did not engage in sexual activities but were present and watched De Mouilpied masturbate (cts 1 & 14).</p> <p>Eight of the video clips were classified at Cat 1; 2 and Cat 4. The Cat 4 video</p> | <p>Ct 1: 2 yrs 10 mths imp. Ct 2-10 & 12: 5 mths imp (conc, cum ct 1). Ct 11 & 13: 2 mths imp (conc, cum ct 1). Ct 14: 15 mths imp (conc).</p> <p>TES 3 yrs 5 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending the subject of ct 1 'a very serious offence and is not offending at the lower or lowest level end of the scale of offending of this kind'.</p> <p>The sentencing judge found the appellant's offending serious; he procured or encouraged children to engage in sexual behaviour, one child as young as four yrs of age; by this conduct he exploited, humiliated and corrupted the children; he also deliberately masturbated and exposed children to that sexual behaviour; he recorded the conduct on his mobile phone to do with it as he saw fit; continually re-victimising the children involved every time he viewed the footage.</p> <p>Remorseful; developed insight into his offending on undertaking psychological treatment.</p> | <p>Dismissed (leave refused).</p> <p>Appeal concerned error (characterisation of seriousness of offending subject of ct 1); length of sentence on ct 1 and totality principle.</p> <p>At [52] It cannot reasonably be said that the offending the subject of ct 1 was at the lower or lowest end of the scale of offending of its kind. Over an extended period of time, the appellant produced 62 video clips in which he filmed himself masturbating while a significant number of young children watched. The appellant's behaviour had the capacity to disturb, shock and corrupt his young victims. Moreover, eight of the video clips involved the appellant enticing children, who were very young, to engage in sexual behaviour. The worst instance was the video clip the appellant produced that showed a very young child being sex pen twice by an adult.</p> <p>At [53] Although the appellant was not in the same room as his child victims, nor did he touch them, the use of video chat rooms to remotely entice victims to engage in sexual behaviour or to watch an adult engage in sexual behaviour involves serious and substantial criminality. ...</p> <p>At [54] It is clear ... the appellant produced the CEM for his sexual gratification and for the thrill it provided. While there is nothing to suggest [he] intended to distribute the CEM he produced, had [he] intended to distribute the CEM, whether or not for profit, his offending would have been worse. The absence of these circumstances does not mean that his actions did not constitute serious, or very serious, offending.</p> <p>At [64] ... it is clear that the sentence imposed on ct 1 properly reflected the seriousness of the appellant's offending. ... The sentence is not manifestly excessive.</p> |

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| | | | <p>clip depicted a child of about 4 yrs of age engaging in sexual acts with an adult male.</p> <p>Also located on De Moulpied's mobile phone were video clips of him masturbating to school children walking past his window. These videos were not the subject of any of the charges dealt with.</p> | | <p>At [67] The offending the subject of cts 2 – 13 involved deliberate, persistent and highly offensive behaviour towards three separate victims over the course of eight days. The victims were vulnerable children walking to school, as the appellant well knew and relied upon. ... Given its separate and distinct nature, the offending required additional overall punishment to the offending the subject of ct 1.</p> <p>At [68] In our opinion, the TES ... was a proper reflection of the appellant's overall criminality involved in all of the offences, viewed in their entirety, having regard to the circumstances of the case, ...</p> |
| 11. | <p><i>The State of Western Australia v THN</i></p> <p>[2023] WASCA 18</p> <p>Delivered 02/02//2023</p> | <p>40-42 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p> <p>Raised in loving and supportive family; close relationship with siblings and other family members; family supportive.</p> <p>Living and caring for mother with various health issues.</p> <p>Commenced, did not complete, yr 10.</p> <p>Stable employment history; various vocations; lost current role on conviction of current offences.</p> <p>Divorced; negatively impacted by breakdown of next relationship; suffered depression and att suicide.</p> <p>Abstained sexual behaviour time of offending on belief suffering STD; later testing indicated he had not contracted the disease.</p> <p>Diagnosed with ADHD in high school; various health issues; kidney disease; four heart attacks; first aged 21 yrs; heart surgery.</p> <p>Alcohol abuse and recreational</p> | <p>Cts 1-3 & 5: Indec deal child U13 yrs. Ct 4: Sex pen child U13 yrs.</p> <p>Charges not representative of the totality of THN's sexual offending against A and B, and do not represent isolated incidents.</p> <p>The victims, two sisters A and B were aged 10-11 yrs and 5-6 yrs respectively.</p> <p>THN was a close and long-time friend of A and B's mother. When she separated from her husband THN began staying most weekends at the family home. A and B regarded him as their uncle.</p> <p>B was alone on her bed when THN entered the room. She told him to leave. He ignored her and put his fingers inside her underwear and touched her anal area (ct 1). On another occasion B was lying on a bed he put his fingers inside her underwear and rubbed his fingers on her vagina (ct 5).</p> <p>Almost every weekend THN would regularly touch A's vagina. On one occasion penetrating her vagina with his finger (cts 2-4).</p> | <p>Ct 1: 18 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 2 yrs imp (cum). Ct 5: 18 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp.</p> <p>TES.</p> <p>The trial judge found significant aggravating features in the respondent's offending; the victims were vulnerable young children; he held a privileged and entrusted role in the victims lives and the offences occurred in their own home; there was a significant age difference and power disparity between him and each of the victims; there was an element of psychological coercion and grooming; it was persistent and sustained over time and included multiple and distinct offending behaviour and he exploited the vulnerability of the immature victims for his own selfish sexual gratification.</p> <p>The trial judge found the offending in ct 4 not isolated, but rather part of (albeit an escalation of) a persistent course of conduct; it was accompanied by a threat of more serious offending to follow and a threat of punishment if she did not comply.</p> <p>Offending devastating psychological impact on victims.</p> <p>Respondent not remorseful; continues to deny offending; no demonstrated insight or acceptance of responsibility; no participating in sex offenders' treatment programs while in</p> | <p>Allowed.</p> <p>Appeal concerned length of individual sentence (ct 4) and totality principle.</p> <p>Resentenced:</p> <p>Ct 1: 18 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 4 yrs imp (cum). Ct 5: 18 mths imp (conc).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [49] In our view, having regard to ... the serious nature of the offending charged in ct 4 ... the limited mitigating factors; and .. all relevant sentencing principles, the sentence ... imposed after trial for ct 4 (which represents only 10% of the max penalty) is unreasonable or plainly unjust. ...</p> <p>At [51] ... The TES imposed ... was less than the sentence which we would regard as commensurate with the seriousness of the offence charged in ct 4. As the trial judge correctly recognised, the fact that the respondent offended on multiple separate occasions against two complainants requires some accumulation of the sentences in order for the TES to reflect the overall criminality involved in all of the offending. ...</p> |

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| | | illicit drugs use in teens; largely abstained from drinking from 21 yrs; daily cannabis use from 17 yrs. | | custody. | |
| 10. | Oreo v The State of Western Australia [2022] WASCA 62 Delivered 03/06/2022 | 48-49 yrs at time offending. 50 yrs at time sentencing. Convicted after early PG (25% discount). Minor prior criminal history. Two siblings; loving and caring parents; not subjected to abuse; father alcohol-dependent; witnessed his father assault his mother. Parents deceased; supportive sister. Homosexual; came out 3 yrs prior to sentencing; difficulties dealing with his sexuality. Completed yr 10 high school. Sound work history; employed at time of offending. History of amphetamine and methyl abuse. | Cts 1-2; 6-8: Indec deal child 13-16 yrs. Cts 3-5; 9: Sex pen child 13-16 yrs. Ct 10: Procured a child U13 yrs to do indec act. Ct 11: Poss CEM. The offending involved two separate victims, J and T, both 14-yr old boys, and three separate incidents. The first victim, J, met Oreo on an online dating application. On the site J indicated he was about 20 yrs old. When Oreo questioned J as to his age he told Oreo he was 16 yrs old. Oreo met J at a public toilet. J was wearing his school uniform. Inside a toilet stall they kissed and engaged in a number of sexual acts (cts 1-6). Oreo and J continued to communicate with each other about meeting for sex. A few days later they again arranged to meet. Oreo picked J up in his car before he went to school. J was again wearing his school uniform. After parking the car Oreo kissed J on the mouth, touched his penis and performed oral sex on him, before dropping J near his school (cts 7-9). After this incident J's mother found text messages on her son's phone about meeting men for sex and contacted the police. When interviewed J disclosed the offending and identified Oreo from a digiboard. About a month later Oreo met the second victim, T, through a dating application. They began communicating by text and in one text message T told Oreo he was 14 yrs-old. | Cts 1 & 2: 4 mths imp (conc). Cts 3 & 4: 18 mths imp (conc). Ct 5: 3 yrs imp (cum). Cts 6 & 7: 4 mths imp (conc). Cts 8 & 10: 12 mths imp (conc). Ct 9: 18 mths imp (cum). Ct 11: 12 mths imp (cum). TES 5 yrs 6 mths imp. EFP. The sentencing judge found there was a significant likelihood the appellant was aware J was under the age of 16 yrs and that he was aware T was 14-yr old. The sentencing judge found the offending aggravated by the fact it involved two different 14-yr-old males; the offending and surrounding text messages indicated a sexual interest in underage males and his willingness to act on that interest; it was premediated; involved unprotected pen sexual activity; there was a significant age disparity; he sent messages and intended to distribute the image of T's penis in an att to enlist other adult males to engage in sexual activity with T and he suggested J use illicit drugs as a sexual aid. The sentencing judge concluded that some accumulation was appropriate to reflect the fact that there were two separate complainants and three separate incidents. High risk of reoffending; some acceptance of responsibility; no insight into the impact of his offending behaviour or taken full responsibility for his offending behaviour. | Allowed. Appeal concerned miscarriage of justice (erroneous understanding conduct in relation to J was criminal in that J was U18 yrs and any belief J was at least 16 yrs not mitigating). Sent back to District Court for re-sentencing. At [48] ... it was an admitted fact that J had told the appellant he was 16 yrs old. While we accept that the appellant may have faced some challenges in proving an honest belief, we cannot conclude that he had no reasonable prospect of doing so. The fact that counsel's misapprehension effectively deprived the appellant of the opportunity to att to prove that fact constitutes a miscarriage of justice in these circumstances. At [52] ... we are satisfied that the misunderstanding of defence counsel gave rise to a miscarriage of justice in all the circumstances of this case. |

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| | | | <p>Oreo then sent T multiple sexually explicit text messages and arranged to meet him, implicitly for the purpose of engaging in sexual activity (ct 10).</p> <p>During the text messages Oreo asked T to send him a photo of his penis and he complied. On receiving the photo Oreo messaged another phone contact stating, 'I have a horny 14-yr-old for you tomorrow'. He then attempted to send the photo of T's penis to this person, but the message failed to send (ct 11).</p> <p>The meeting with T did not occur. Oreo was arrested the following morning.</p> | | |
| 9. | <p><i>LNV v The State of Western Australia</i></p> <p>[2021] WASCA 203</p> <p>Delivered 02/12/2021</p> | <p>57 yrs time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Born Italy; raised in Australia from aged 3 yrs; good upbringing.</p> <p>Left school aged 16 yrs; employed various roles; unemployed prior to offending.</p> <p>Divorced; three adult children.</p> <p>Suffering depression at time offending; death of family member and father's ill health.</p> <p>Good physical health.</p> <p>Regular user of cannabis since his youth; occasional use of methyl.</p> | <p>Ct 1: Indec dealings with child U13 yrs.</p> <p>Ct 3: Indec dealings with child U13 yrs.</p> <p>Ct 4: Sex pen of a child U13 yrs.</p> <p>LNV was in a relationship with the mother of the victim, JR, a male aged 8 yrs.</p> <p>On two separate occasions during the relationship LNV sexually abused JR while he was in his mother's bedroom on the bed watching television.</p> <p>On the first occasion LNV placed his hand over JR's clothing and onto JR's genital area and squeezed his penis (ct 1).</p> <p>On the second occasion, LNV lay near JR, pulled down JR's pants and placed his hand on his genital area over the top of his underwear and rubbed and slapped JR's penis (ct 3).</p> <p>When JR rolled over and under the blankets LNV then inserted his finger into JR's anus, underneath his clothing (ct 4). This hurt JR.</p> | <p>Ct 1: 12 mths imp (conc).</p> <p>Ct 2: 12 mths imp (conc).</p> <p>Ct 3: 2 yrs imp (cum).</p> <p>TES 2 yrs imp. EFP.</p> <p>Cum with two earlier terms of imp totalling 14 yrs 6 mths.</p> <p>EFP after 14 yrs 6 mths imp.</p> <p>The trial judge found the offending 'serious' and a significant breach of trust against a particularly vulnerable victim, given his youth and the presence of a deviant sexual interest in children, together with a proven willingness to commit crimes fuelled by hatred, gives rise to concerns about public protection.</p> <p>The trial judge found some additional punishment was required to reflect the appellant's wrongdoing towards JR and that any additional punishment would be moderate because of the lengthy sentence he was already serving.</p> <p>Counselling and treatment undertaken during 4 ½ yrs in custody; but no meaningful steps made towards rehabilitation; continues to deny any sexual interest in children; no victim empathy or insight into his offending.</p> | <p>Dismissed - leave refused.</p> <p>Appeal concerned totality principle.</p> <p>At [54] ... They are self-evidently serious offences. ... There was very little that could be said in mitigation. ... the TES of 2 yrs' imp was plainly an appropriate reflection of the appellant's overall criminality and could not, arguably, be said to infringe either limb of the totality principle.</p> <p>At [55] ... The offences against JR were separate and distinct in nature and warranted, in our view, additional punishment. To do otherwise would be to fail to reflect the serious and additional criminality involved in this offending and would result in a TES that would not properly reflect all of what the appellant did. Nor would it have properly recognised the serious harm done to the victim.</p> <p>At [56] ... It is unarguable that, had the appellant been sentenced for the offences he committed against JR and was not subject to the other sentences, he would have received a substantially higher TES.</p> <p>At [59] We do not regard the TES of 16 yrs 7 mths' imp as being crushing as that term is understood. ...</p> |
| 8. | <i>SAL v The State of</i> | 41 yrs at time sentencing. | IND 673 | IND 673 | Dismissed - leave refused plea discount. |

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| <p><i>Western Australia</i></p> <p>[2021] WASCA 192</p> <p>Delivered 16/11/2021</p> | <p><u>IND 673</u> Convicted after PG (15% discount).</p> <p><u>IND 469</u> Convicted after PG (10% discount).</p> <p><u>IND 625</u> Convicted after late PG (5% discount).</p> <p>Minor prior criminal history.</p> <p>Dysfunctional and traumatic background; victim of child sexual abuse; ward of State aged 14 yrs.</p> <p>Left school yr 9.</p> <p>Employed various unskilled occupations; worked intermittently as a sex worker, encouraged or pressured to do so by W.</p> <p>Three long-term relationships commencing aged 14-15 yrs marred by physical and sexual violence.</p> <p>Satisfactory physical health; history of self-harm; suicidal thoughts; chronic symptoms of depression and anxiety; medicated.</p> <p>Commenced using cannabis aged 10 yrs; alcohol from age 12 yrs; methyl from aged 28 yrs.</p> | <p>2 x Indec recorded a child U13 yrs. 12 x Sex pen of a child U13 yrs. 3 x Indec dealings with a child U13 yrs.</p> <p><u>IND 469</u> 17 x Indec dealings with a child U13 yrs. 13 x Sex pen of a child U13 yrs. 4 x Procured a child U13 yrs to do indecent act. 3 x Encouraged a child U13 to engage in sexual behaviour. 3 x Stupefying in order to commit indictable offence. 1 x Procured a child U13 yrs to engage in sexual behaviour. 2 x Engaged in conduct knowing it may result in a child suffering harm as a result of sexual abuse (while under her care and control).</p> <p><u>IND 625</u> 2 x Stupefying in order to commit indictable offence. 7 x Sex pen of a child 13-16 yrs. 2 x Encouraged a child 13-16 yrs to engage in sexual behaviour.</p> <p>The victims of the offending the subject of IND 673 and IND 469 were SAL's natural daughter and son, who were both U13 yrs at the time of offending. This offending was committed over a period spanning between 2011 and 2015.</p> <p>The victim of the offences the subject of IND 625 was DMC, who was a female aged 13-14 yrs. These offences were committed in one prolonged incident in 2011.</p> <p>SAL's partner, W, and their friend, Mr Coulter, were co-offenders in respect of the above offending.</p> <p><u>IND 673</u> All offences occurred on the same day and involved SAL's daughter, who had just turned 8 yrs old. They were</p> | <p>9 yrs imp, cum.</p> <p><u>IND 469</u> 13 yrs imp, cum.</p> <p><u>IND 625</u> 6 yrs imp.</p> <p>TES 28 yrs imp. EFP.</p> <p>The sentencing judge found the circumstances of the offending 'truly unique'; almost the worst imaginable and in a class of their own; the offending was 'shocking' and 'one of the most serious examples of sex offending within a family to have come before a court in this State'.</p> <p>The sentencing judge found the appellant and W engaged in conduct that was both perverted and born out of a warped sense of desire for carnal lust without any regard whatever to the victims and in doing so had stolen the victims' innocence.</p> <p>The sentencing judge found the offending was aggravated by the fact the appellant was the biological mother of two of the victims, whose duty was to protect and nurture them; the offending constituted 'enormous breaches' of the mother/child relationship and she delivered the children into the hands of other adult offenders; the offences were depraved and perverted and in order to commit the offences she administered a stupefying drug,</p> | <p>Appeal concerned plea discount and totality principle.</p> <p>At [101] ... Although it may be accepted that the appellant's childhood deprivation and, in particular, the sexual abuse she suffered, has had an adverse psychological effect upon her and, perhaps, ... damaged her personality and her ability to properly parent her children, it did not diminish her ability to know that to perpetrate childhood sexual abuse upon the victims in this case was morally wrong, and thus did not diminish her moral culpability for the offending.</p> <p>At [103] ... any diminution in the appellant's moral culpability is well and truly outweighed by the prodigious, deliberate, planned and systematic offending she engaged in.</p> <p>At [125] ... we are not persuaded that the reduction of 15% on IND 673 was unreasonable or plainly unjust. It was not manifestly inadequate.</p> <p>At [128] Having regard to all ... circumstances relevant to IND 469, we have not been persuaded that a reduction of 10% was unreasonable or plainly unjust. It was not manifestly inadequate.</p> <p>At [129]-[130] ... The appellant entered her PG [in respect of IND 625] at a late stage in the proceedings, after the matter had been set down for trial and ... evidence had been pre-recorded. ... Having regard to all of the circumstances, the reduction of 5% was not unreasonable plainly unjust. It was not manifestly inadequate.</p> <p>At [153] The seriousness of the appellant's offending is self-evident. It involves such a high level of overall criminality that its seriousness can hardly be overstated. The offending taken as a whole is, having regard to other cases that have come before this court, the worst we have seen.</p> <p>At [154] The appellant's role in the offending was as an active participant, a facilitator and an aider of her co-offenders. The appellant was not an unwilling or unwitting participant. To the contrary, she actively encouraged her own children to participate in their abuse and normalised it. [Her children] were completely and utterly vulnerable. They were made available to other adults, both men and women, to sexually abuse. The offences were in no way isolated. They were repeated. ...</p> <p>At [155] ... We note the appellant's use of stupefying substances and the high degree of perversion and deviancy frequently employed in the commission of the offences. ... The SD memory card, which was discovered some yrs after the offending, gives rise in [the victim] that the recording has been distributed to others. The possibility of her being re-victimised in the future by the distribution of the recording remains.</p> |
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committed by SAL, together with W and Mr Coulter.

At various stages during the offending SAL said and did things designed to secure the child's cooperation and normalise the behaviour.

The offences were recorded and disseminated and came to light when a memory card containing the video footage was found and handed to police.

The three victims were subsequently interviewed and disclosed the offending the subject of IND 469 and IND 625.

IND 469
These offences involved SAL's daughter and son, then aged as young as 4 yrs.

The victims were shown pornographic movies of sexual activity involving children and adults; some of the offending involved the use of a vibrator.

During some of the offending SAL's daughter, and on at least one occasion her son, were administered the drug methyl by having them smoke a pipe.

Some of the sexual activity was filmed, but the footage has not been recovered.

IND 625
DMC was good friends with one of W's children and she would regularly visit SAL and W's home. She became close with SAL.

When DMC was 13 or 14 yrs old SAL and W told her they had a surprise for her. They then injected her with methyl.

W, in the presence of SAL, then subjected DMC to numerous sexual acts that continued over an extended period of time. Some of the sexual activity caused her extreme pain and were

At [156] The seriousness of the offending against DMC must not be overlooked. The appellant groomed DMC [and she was] provided with methyl and sex pen on multiple occasions by the appellant and W over an extended period of time.

At [166] ... We recognise the appellant had a dysfunctional upbringing, including the childhood sexual abuse ... However, having regard to the sheer magnitude and seriousness of the crimes committed by the appellant and the need for proper punishment, denunciation and general and specific deterrence, very little weight can be given to those personal circumstances. ...

At [167] ... The offending the subject of the three indictments was so serious and the mitigating factors so few, that, ..., we remain unpersuaded that the first limb of the totality principle has been infringed.

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| | | | accompanied by threats. | | |
| 7. | <p><i>NE v The State of Western Australia</i></p> <p>[2021] WASCA 172</p> <p>Delivered 17/09/2021</p> | <p>53 yrs at time sentencing. 26-32 yrs at time offending.</p> <p>Convicted after late PG (20% discount).</p> <p>Minor criminal history.</p> <p>Two siblings; lived with various family members after death of his mother aged 5 yrs; portion of his childhood spent living in children's homes and with foster families; no meaningful relationship with his father since mother's death.</p> <p>Seriously injured motor vehicle accident aged 18 yrs; requires 16-18 hrs care a day; faces serious health issues and future surgical intervention; physical health continuing to deteriorate.</p> <p>Not in a relationship at time sentencing; two sons with victim's mother; primary carer of his children during their childhood.</p> <p>Drug use when young.</p> | <p>Cts 1-3; 9-10 & 12: Indec deal child U13 yrs.</p> <p>Cts 4-5; 7-8 & 11: Sex pen child U13 yrs.</p> <p>Ct 6: Procured child U13 yrs to do indec act.</p> <p>The cts on the indictment representative of an ongoing course of conduct over a period of six yrs.</p> <p>The victim was NE's de facto daughter. The sexual abuse commenced when she was 6 yrs old and continued until she was 11 yrs old.</p> <p>NE is, and was at the time of the offending, a tetraplegic.</p> <p><u>Cts 1 & 2</u> When the victim was about 6 yrs old NE asked her to select and watch a pornographic video with him. During the video he got the victim to remove her underwear. He then placed his hand on her vagina.</p> <p><u>Cts 3 & 4</u> On another date, when the victim was aged about 7 yrs old, NE asked her to put on a pornographic video depicting a man performing cunnilingus on a woman. He then told the victim to remove her underwear and lay down on a bench. He then positioned his wheelchair alongside the bench and performed cunnilingus on her.</p> <p><u>Ct 5</u> NE was lying in bed when he asked the</p> | <p>Cts 1; 3 & 10: 18 mths imp (conc).</p> <p>Ct 2: 3 mths imp (cum).</p> <p>Cts 4; 7; 8 & 12: 3 yrs imp (conc).</p> <p>Ct 5: 3 yrs imp (cum).</p> <p>Cts 6 & 9: 2 yrs imp (conc).</p> <p>Ct 11: 5 yrs imp.</p> <p>TES 8 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending agg by the appellant's repetitive, sustained and persistent conduct; the gross breach of trust and the manipulation and grooming of a young and vulnerable victim and subjecting her to a high level of psychological coercion and, given his medical condition, she had to be an active physical participant in her own abuse; the offending the subject of ct 12 involved another child and the large age disparity between him and the victim.</p> <p>The sentencing judge found prison would be more onerous for the appellant due to his tetraplegia and ongoing deterioration of his physical health; however the seriousness of the offending such that imp the only appropriate sentencing option.</p> <p>Remorseful and accepting of responsibility; insight into his offending; negligible risk of reoffending.</p> <p>Continuing devastating impact on victim.</p> | <p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [57] The appellant's tetraplegia did not give him a license to engage in a course of very serious child sexual offending without appropriate punishment. ...</p> <p>At [59] ... there are a number of features of the appellant's offending which, even in light of his early PG, would ordinarily make a sentence in excess of 10 yrs appropriate. These include the very young age of the victim, who was only about 6 yrs old when the abuse began, the persistence and nature of the offending, and the devastating effect which the offending had on the victim. The victim was also in a particularly vulnerable position, even after the appellant and the victim's mother separated. ... In our view, the agg features of the offending which the sentencing judge identified placed the offending in this case at the higher end of the range of seriousness of sexual offending against a single child complainant.</p> <p>At [60] ... We are not persuaded that the sentencing judge erred in balancing the mitigating and agg factors in this case. To the contrary, in our view, the TES ... imposed properly reflected the overall criminality involved in all of the appellant's offences viewed in their entirety, having regard to all of the circumstances of the case including those personal to the appellant. ...</p> |

victim, aged 8 yrs, to sit on his face. The victim complied and he performed cunnilingus on her.

Ct 6

On another occasion, when the victim was 8 yrs old, NE told her to pull out a vibrator and turn it on. On his instructions she placed the vibrator on the outside of her vagina.

Cts 7 & 8

On another occasion, when the victim was 8 yrs old, NE asked her to look at his erect penis. He then told her to kiss his penis with her lips and put his penis in her mouth. She complied.

Cts 9 & 10

When the victim was 11 yrs old NE's relationship with her mother ended. She and her mother moved out of NE's home, but after a few wks she returned to live with NE.

The victim was sleeping on a mattress in NE's room when he asked her to come on the bed next to him. He then asked her to masturbate his penis, which she did. As she did so he rested his hand on her vagina.

Ct 11

NE's disability required him to wear a condom to hold the tubes of his urinary bag in place. It was changed regularly as part of his care. When the victim was 11 yrs old NE asked the victim to remove the condom. He then asked her to sit on his penis and put it into her vagina as far as she could without it hurting. The victim complied.

Ct 12

The victim was 11 yrs old when she and a friend went to NE's house. The victim's friend was asked and encouraged to change NE's condom while the victim instructed her how to do it. In order to remove the condom

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| | | | NE's penis needed to be erect, so the victim told her friend how to do that. They both then played with his penis until it became erect. | | |
| 6. | <p><i>WNO v The State of Western Australia</i></p> <p>[2021] WASCA 141</p> <p>Delivered 12/08/2021</p> | <p>27 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; no prior convictions of a sexual nature.</p> <p>Upbringing marked by degree of deprivation and disadvantage; very close to his mother; grief-stricken after her death.</p> <p>Completed yr 9 high school.</p> <p>Worked in IT with older brother; employment prospects upon release from prison.</p> <p>Using methyl on a daily basis at time offending.</p> | <p>Cts 1; 2; 4-6; 8-10 & 12: Indec deal child 13-16 yrs. Cts 3; 7 & 11: Sex pen child 13-16 yrs.</p> <p>The victim, J, was aged 14 yrs. She was WNO's niece.</p> <p>J's parents were on a week-long overseas holiday. She and her 17 yr old brother were staying at the family home by themselves.</p> <p>The morning after J's parents departed Perth WNO rang J and asked her if she wanted to go out. She declined. He then asked if she wanted to come to his house instead. J again declined. Upset by J's refusals he travelled to her house and yelled at her. He then apologised and asked her to go with him to the shops. She agreed. On the way WNO pulled over his vehicle and kissed her on the lips. He also put his hand inside her pants and touched her buttocks (ct 1).</p> <p>Later that day WNO asked J to give him 'a proper kiss'. Despite her refusal he again kissed her on the lips (ct 2).</p> <p>That evening WNO drove to J's house. J was in her bedroom. He entered her room locked the door and put on a movie. She told him he was not meant to be in her room and attempted to leave. Before she could do so he grabbed her, pulled her onto her bed and put his hand under her top and pants, squeezing her breast and rubbing the outside and inside of her vagina (ct 3).</p> <p>WNO spent the night in her bedroom and the next morning, while they were outside, he gave J a hug and kissed her on the lips. She wiped her lips, he told</p> | <p>Cts 1; 2; 4 & 5: 6 mths imp (conc). Ct 3: 3 yrs imp (cum). Ct 6: 9 mths imp (cum). Ct 7: 2 yrs imp (cum). Cts 8 & 9: 9 mths imp (conc). Cts 10 & 11: 6 mths imp (cum). Ct 12: 18 mths imp (conc).</p> <p>TES 6 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious; it was sustained over a period of five days; was persistent; overbearing and oppressive conduct and to a degree premeditated; it was a gross breach of trust and J was particularly vulnerable, given the absence of her parents and the inability of her grandfather and older brother to offer her protection.</p> <p>The sentencing judge found no other penalty other than imp was appropriate.</p> <p>Offending profound and adverse effect upon J.</p> <p>Appellant not truly remorseful; risk of reoffending dependent upon his methyl use in the future.</p> <p>Although not the subject of charges the appellant had, on previous occasions, slept in J's bed and touched her breasts, bottom and vagina.</p> | <p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [38] His Honour rightly regarded the offences committed by the appellant as serious. ...</p> <p>At [40] All of the appellant's offending was serious. The appellant treated J not as his niece, but as his girlfriend. He did so in a controlling and sometimes forceful way. Without in any way minimising the seriousness of the unwelcome kissing, some of which was accompanied by behaviour which could be described as 'groping', the acts of digital pen were particularly serious. The act of masturbating while touching [her] buttocks in her bed was also highly offensive.</p> <p>At [41] In our opinion, the TES imposed ... did not infringe the totality principle. The appellant's offending, considered as a whole, exhibited a high degree of criminality. ... Some accumulation of the sentences was required, given that the offending occurred on different days in separate incidents. ...</p> |

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| | | | <p>her not to do that and kissed her again (ct 4). He then left J's house. Later that day, as she was walking to the shops, WNO stopped to talk with her. He pulled her close and kissed her on the lips (ct 5). He then drove J to the shops, behaving as if they were in an intimate relationship. On the drive home he squeezed one of her breasts over her clothing (ct 6).</p> <p>The next evening WNO again went to J's home. In her bedroom he squeezed her breasts under her bra and touched and penetrated her vagina with his fingers (ct 7).</p> <p>Two days later WNO drove to J's house in the morning and told her not to go to school. She ignored him. Angry, he screamed at her and slapped her hard across the cheek. When he continued to prevent her from leaving she gave up attempting to get to school. WNO then drove J to a family member's house, on the way kissing her on the lips (ct 8). On the way back he hugged and kissed her in the car and, on one occasion, touched her breasts (ct 9). Back at her house he again kissed her on the lips (ct 10).</p> <p>The following day WNO picked J up as she walked home from school. He stayed the night in her bedroom. He squeezed her breasts on top of her bra and put his hand in her pants and, over her underwear, pushed his fingers inside her vagina. She told him to stop and pulled his hand out of her pants (ct 11). Later that night J woke up to find he was still next to her in her bed. He had his hand on her buttocks and was masturbating (ct 12).</p> | | |
| 5. | <p><i>Miller v The State of Western Australia</i></p> <p>[2021] WASCA 138</p> | <p>47 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> | <p>5 x Indec dealing child U13 yrs.</p> <p>The two female victims, RC and RD, were aged 8 or 9 yrs and 10 yrs respectively.</p> | <p>Ct 1: 18 mths imp (cum). Ct 2: 6 mths imp (cum). Ct 3: 18 mths (cum). Ct 4: 10 mths (conc). Ct 5: 16 mths imp (conc).</p> | <p>Dismissed (leave refused).</p> <p>Appeal concerned type of individual sentences and totality principle.</p> <p>At [45]-[46] ... Having regard to the agg factors identified by her Honour and the impact the appellant's offending had on his victims</p> |

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| | <p>Delivered 06/08/2021</p> | <p>No prior criminal history.</p> <p>Born NZ; happy and supportive childhood; family supportive.</p> <p>Married; three children.</p> <p>Well educated; intelligent; science degree.</p> <p>Good employment history; worked as a geologist; operating own business at time sentencing.</p> <p>Long history of serious alcohol abuse; commenced drinking alcohol aged 15 yrs; often drinks alone; drinking excessively at time offending.</p> <p>Suffers from anxiety; experiencing stress at work time of offending.</p> | <p>RC and RD were friends with Miller's 8 yr-old son and they frequently played with him at his home.</p> <p>The offences were committed 10 mths apart and in the presence of Miller's son.</p> <p>On the first occasion, RC was naked and wrapped only in a towel when Miller twice touched her vagina with his fingers (ct 1). He stopped only when RC repeatedly told him to do so.</p> <p>On the second occasion, RD was in the bath with Miller and his son. All three were naked. Miller coaxed her over to him, positioned her on his lap and held her above his penis (ct 2). After a short time in the bath he stood with RD in the bathroom and encouraged her to touch his penis, which she did (ct 3). RD then entered the shower. Miller followed her and washed her back and shoulders (ct 4). RD moved away and got back into the bath. Miller again followed her and slid into the bath behind her. He then lifted and positioned her onto his lap (ct 5).</p> | <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the acts committed by the appellant were 'a serious example of this kind of offending'; the seriousness of the offending such that only a term of imp could be justified.</p> <p>The sentencing judge found the offending agg by the 'very significant age difference' between the appellant and each of the victims; the offending involved two victims; both young and vulnerable children; it involved a breach of the trust placed in the appellant by the victims' parents; the offences were committed in front of his son and with respect to cts 2 – 5, the offending was persistent and continued despite the victim doing her best to avoid his actions.</p> <p>Offending profound and continuing adverse consequences on the victims and their parents.</p> <p>Remorseful; voluntarily undertaken counselling to address his alcohol abuse and other issues; remained abstinent from alcohol since being charged; low risk of relapse with alcohol.</p> | <p>and their families, there is no doubting the seriousness of the appellant's criminal conduct. ... Each incident was persistent and far from fleeting. In respect of ct 1, the appellant touched RC's vagina twice. She repeatedly told him to stop. ... Cts 2 – 5 involved the appellant offending against RD, initially in the bath, then in the shower, and then again in the bath. The conduct against RD involved the appellant twice making her sit on his lap while he was naked, on or near his penis, and encouraging her to touch his penis, which she did. All of the offending took place in the presence of his son and took advantage of the friendships the appellant's son had made with the victims. ... The appellant exploited the trust reposed in him by the victims' parents, who had been neighbours and friends.</p> <p>At [48] While the appellant has taken steps to address his long-term alcoholism, the evidence [does] not reveal that he is rehabilitated. Further, while his alcoholism may have disinhibited the appellant at the time of the commission of these offences, it does not explain, much less mitigate, what he did to the victims. The true cause of the appellant's offending remains unknown. In these circumstances, it is not possible to gauge the appellant's risk of reoffending.</p> <p>At [54] ... the seriousness of the offences was such that it was well open to the sentencing judge to conclude that suspending the terms of imp was not appropriate. We would go further and state that her Honour would have erred had she susp the terms of imp. As to the length of the TES, we are far from persuaded that it infringed the first limb of the totality principle. ...</p> |
| 4. | <p><i>RLB v The State of Western Australia</i></p> <p>[2021] WASCA 82</p> <p>Delivered 11/05/2021</p> | <p>30 yrs at time offending. 41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Limited criminal history; convicted of incest offences with victim's mother.</p> <p>Reasonably consistent employment history.</p> <p>Single; never married; no children.</p> <p>No substance abuse issues.</p> | <p>7 x Indec dealing child 13-16 yrs.</p> <p>The offences were committed on three separate occasions over a period of two-mths.</p> <p>The victim, aged 13 yrs, was RLB's niece. RLB was also in an incestuous sexual relationship with the victim's mother, his half-sister, at the time of the offending.</p> <p>All the offences occurred while the victim and her mother were at RLBs home and while RLB was lying next to the victim.</p> <p>RLB put his hands under the victim's clothing and touch her breasts and</p> | <p>Cts 1; 3 & 5: 18 mths imp (conc). Cts 2; 4 & 6: 2 yrs imp (cum). Ct 7: 2 yrs imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending was not isolated; the offences were committed over a relatively short period of time; there was a significant age disparity between the appellant and the victim; the victim was a young teenager; vulnerable to his sexual approaches; he was her uncle; in a position of trust and he further abused that trust knowing the victim had a crush on him.</p> <p>Offending profound effect on victim.</p> | <p>Allowed.</p> <p>Appeal concerned totality principle.</p> <p>Resentenced:</p> <p>Cts 1 & 3: 18 mths imp (conc). Cts 2 & 4: 2 yrs imp (cum). Ct 5: 6 mths imp (cum). Cts 6 & 7: 2 yrs imp (conc).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [35] The appellant's offending was undoubtedly serious. ... Five of the appellant's offences involved skin-on-skin contact with the appellant's penis, the victim's genitalia or the victim's breasts. The appellant's offences were committed against a 13-yr-old victim who</p> |

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| | | | nipples, he also touched the top of her vagina; on two occasions he placed her hand down his shorts and used it to rub his penis. He also pushed and thrust his penis against her bottom and vagina. | | was vulnerable by reason of her age, her relationship as the appellant's niece and the fact that she had a crush on [him]. ... At [36] On the other hand, evaluation of the TES imposed on the appellant must take account the following ... None of the appellant's offences involved sex pen. ... the appellant's offences were committed against a single victim. ... on three occasions. ... The victim of the appellant's offending was a 13-yr-old. ... At [39] ... the TES ... exceeds a sentence that bears a proper relationship to the appellant's overall criminality, ... The sentence is not merely high; it is unreasonable or plainly unjust. ... At [47] ... some degree of accumulation is necessary to reflect the seriousness of the appellant's offending and his overall criminality. ... |
| 3. | GSO v The State of Western Australia [2021] WASCA 58 Delivered 01/04/2021 | 61 yrs at time sentencing. Convicted after trial. No prior criminal history. Completed yr 12. Completed cabinetmaker apprenticeship; worked in this trade for a period of time; obtained TAFE certificates in business; employed lengthy periods with a number of businesses. Married; five adult children; ran household when wife became seriously ill; later cared for and acted as parent to his grandchildren (including K and N) as his son and daughter-in-law dealt with severe substance abuse problems. | 4 x Indec dealing child U13 yrs. The three female victims, K, S and R, were aged 6-12 yr; 11-12 yrs and 12 yrs respectively. K was GSO's step-granddaughter. All the offences were committed at GSO's family home over a period of about five yrs. The offences involved GSO touching K's vagina and masturbating in front of the victims K, S and R. GSO's offending was not isolated and the cts on the ind were a representative of uncharged acts in respect of K. On separate occasions he licked her breasts; att to put his hands underneath her pants and, on more than one occasion, masturbated in her presence. On one of the occasions K observed him masturbating she was in the company of her sister, N and in a separate incident she was in company with another child, C. Two further uncharged acts involved K's sister N aged 8 yrs. On these occasions N saw GSO masturbating. | Ct 1: 3 yrs imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (cum). Ct 4: 12 mths imp (cum). TES 5 yrs imp. EFP. The sentencing judge characterised the appellant's offending as very serious; it was not entirely opportunistic; it occurred on and off over a lengthy period of time and with a degree of persistence with respect to the offending involving K. The sentencing judge found the offending seriously aggravated; involved a breach of trust and the victims K and N were very vulnerable. No evidence of remorse; risk of further offending against children not known. | Allowed. Appeal concerned length of sentence ct 1 and totality principle. Resentenced: Ct 1: 3 yrs imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 12 mths imp (cum). TES 4 yrs imp. EFP. At [52] ... we do not regard the sentence imposed on ct 1 as being manifestly excessive. ... while the sentence was towards the higher end of the appropriate discretionary range, it did not go beyond the upper limit of that range. The sentence was not unreasonable or plainly unjust. ... At [54] The appellant committed four offences in respect of three young children, one of whom was his step-granddaughter. On each occasion he had been entrusted with the care of the victim. Clearly, ct 1 was the most serious of the four offences, but the acts of masturbation, which were the subjects of cts 2, 3 and 4, were doubtless extremely offensive to the victims. As the uncharged acts revealed, the circumstances of these three offences were not isolated and can fairly be said to be brazen. ... At [57] ... we are mindful that the sentence imposed on ct 1 was high, but acknowledge some accumulation of the individual sentences was appropriate. In light of this and all the relevant circumstances, ... we have been persuaded that the TES ... infringed the first limb of the totality principle. |

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| 2. | <p>The State of Western Australia v AHD</p> <p>[2021] WASCA 13</p> <p>Delivered 29/01/2021</p> | <p>45-47 yrs time offending. 49 yrs at time sentencing.</p> <p>Convicted after PG (25% discount ct 7; 20% discount cts 4-6 and 15% discount cts 1-2).</p> <p>PG accepted in full discharge of the ind.</p> <p>Prior criminal history; no previous convictions for sex offending.</p> <p>Mostly stable childhood; some alcohol and violence between his parents.</p> <p>No formal qualifications.</p> <p>Consistent work history.</p> <p>Occasional use of methyl.</p> <p>Suffers diabetes and depression.</p> | <p>Cts 1 & 2: Indec dealings with de facto child U16 yrs. Ct 4: Sex pen of de facto child U16 yrs (penile/vaginal pen). Cts 5 & 7: Sex pen of de facto child U16 yrs (penile/anal pen). Ct 6: Sex pen of de facto child U16 yrs (penile/oral pen).</p> <p><u>Breach</u> 1 x Breach of CBO.</p> <p>The victim was ADH's de facto daughter, she was aged between 6-7 at the time of the offending the subject of cts 1, 2, 4, 5 and 6 and aged 8 when ct 7 was committed.</p> <p>The cts on the ind were a representative of an ongoing course of conduct over a period of two and a half yrs.</p> <p>AHD sexually abused the victim in the family home.</p> <p>The victim complained to her mother about the offending the subject of cts 1 and 2. However her mother believed ADH's denials.</p> <p>When the victim complained to her grandmother ADH was charged with the offences the subject of cts 1 and 2. He was released to bail, subject to protective bail conditions. However, he returned to live with the victim at the family home. His offending against the victim escalated and cts 4, 5 and 6 were committed while he was on bail and subject to the protective bail conditions.</p> <p>AHD used coercion to secure the victim's submission and as the offending progressed, it became a normal part of her life, to be tolerated, until it became unnecessary for him to</p> | <p>Ct 1: 9 mths imp (conc). Ct 2: 9 mths imp (cum). Ct 4: 3 yrs 9 mths imp (cum). Ct 5: 3 yrs 9 mths imp (conc). Ct 6: 3 yrs imp (conc). Ct 7: 4 yrs 6 mths imp (cum).</p> <p><u>Breach</u> 3 mths imp (conc).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the victim vulnerable; she was subject to the respondent's power and authority and his offending constituted a gross breach of trust; when the victim complained to her mother and her mother believed the respondent's denials this increased the victim's vulnerability, as he knew that her mother would provide no assistance to the victim.</p> <p>The sentencing judge found the respondent most likely motivated by sexual gratification; the victim was young and she became so accustomed to the abuse she became compliant; the sex abuse the subject of cts 4, 5, 6 and 7 was premediated and planned; ct 7 was committed when the respondent had gonorrhoea, which he transmitted to the victim.</p> <p>Offending profound impact on the victim; highly disturbed and traumatised; continues to suffer complications from the sexually transmitted disease including ongoing pelvic pain and increased risk of infertility.</p> <p>Expressed remorse but no demonstrated insight into his offending; high risk of reoffending.</p> | <p>Allowed.</p> <p>Appeal concerned length of sentences cts 4, 5, 6 & 7 and totality principle.</p> <p>Ct 1: 9 mths imp (conc). Ct 2: 9 mths imp (conc). Ct 4: 6 yrs imp (cum) Ct 5: 6 yrs imp (cum) Ct 6: 5 yrs 6 mths imp (conc). Ct 7: 7 yrs imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>At [53]-[76] Discussion of comparable cases.</p> <p>At [78] The respondent's offending in relation to ct 7 was extremely serious. The offending was not isolated. The sexual abuse against the complainant was ongoing. It is true that the respondent did not use force or threats in relation to this ct. However, force or threats were unnecessary having regard to the age of the complainant and the respondent having normalised the sexual abuse because of its regularity and frequency. The respondent was the complainant's step-father and therefore was in a position of authority and power in relation to her. His offending constituted a gross breach of trust. The complainant was especially vulnerable because of her very young age, the respondent's status as her step-father and her mother's ongoing failure or refusal to protect her. ... The offending on ct 7 was premediated and planned. [He] was not deterred by his arrest and prosecution for the offending the subject of cts 1 and 2. He indulged his sexual preoccupation with the complainant and cared nothing for her welfare and well-being. ...</p> <p>At [88] ... the offending in relation to each of ct 4 and ct 5 was significantly agg by the offending having occurred while the respondent was on bail for the offences charged in cts 1 and 2. [He] deliberately breached the protective conditions of the grant of bail. ... [that] demonstrated an attitude of defiance of the law and a determination not only to continue, but indeed to escalate, his offending in the knowledge that the complainant's mother would not protect her.</p> <p>At [92] ... the offending in relation to ct 6 was significantly agg by the offending having occurred while the respondent was on bail ... and by</p> |

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| | | | <p>coerce her.</p> <p>When committing the offences the subject of ct 4, 5 and 7 ADH covered the victim's face. He told the victim not to tell anyone what had happened.</p> <p>At the time of committing ct 7 ADH had a venereal disease, which he transmitted to the victim. As a result the victim suffered severe pelvic inflammatory disease and peritonitis. She required hospitalisation and surgery.</p> <p><u>Breach of CBO</u> ADH punched his partner in the head and struck her with a mop handle. He was convicted in the Magistrate Court of common assault and placed on a CBO.</p> | | <p>the respondent having ejaculated into the complainant's mouth.</p> |
| 1. | <p><i>UGN v The State of Western Australia</i></p> <p>[2021] WASCA 10</p> <p>Delivered 28/01/2021</p> | <p>49-55 yrs at time offending. 68 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extremely limited criminal history; no prior sexual offending.</p> <p>Born Vietnam; five siblings; difficult and impoverished life; parents died when he was young; maintains regular contact with only one of his siblings.</p> <p>Spent 2 yrs refugee camp before being granted asylum in Australia</p> | <p>Ct 1 & 6: Sex pen child U13 yrs. Cts 2-5; 7-8: Indec dealing child U13 yrs.</p> <p>The victim, C, was a female aged 7-12 yrs.</p> <p>The age gap between UGN and the victim was about 41 ½ yrs.</p> <p>The offending occurred over a period of five yrs and involved five separate incidents. The offences of sexual penetration involved UGN penetrating C's vagina with his finger.</p> | <p>Ct 1: 3 yrs 6 mths imp. Ct 2: 21 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 18 mths imp (cum). Ct 5: 4 mths imp (conc). Ct 6: 3 yrs 6 mths imp (cum). Ct 7: 21 mths imp (conc). Ct 8: 8 mths imp (conc).</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant offended against C in the same manner as described in cts 1 and 2 on other uncharged</p> | <p>Dismissed.</p> <p>Appeal concerned both limbs of the totality principle. Individual sentences not challenged.</p> <p>At [45] The offences committed by the appellant were plainly serious. ...</p> <p>At [47] The offences involved five separate incidents and were agg by having been committed over a period of about five yrs. Some accumulation of the individual sentences was therefore warranted. The offences were not isolated events and were, in effect, representative of ongoing sexual behaviour towards C. The offending was motivated by the appellant's sexual attraction towards C.</p> <p>At [48] The offending was further agg because the appellant groomed</p> |

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| | <p>in 1979.</p> <p>Very little formal education; left school aged 7 yrs; significant literacy issues and struggled to learn English.</p> <p>Twice married; supportive family; living with his wife and stepdaughter, her husband and very young child at time sentencing.</p> <p>Stable employment history; reliable and diligent worker; employed 40 yrs various processing plants.</p> <p>No physical health difficulties.</p> | <p>UGN was a friend of C's mother. He regularly visited the family home and C's mother frequently entrusted him with her care.</p> <p>On one occasion UGN rubbed C's vagina before sexually penetrating her. At the same time he masturbated until he ejaculated (cts 1 and 2).</p> <p>On another occasion UGN grabbed C's hand and put it on his penis. She pulled her hand away. He continued to lean over her and masturbate until he ejaculated (cts 3 and 4).</p> <p>On another occasion, in the presence of a neighbour, UGN grabbed C in the area between her buttocks (ct 5).</p> <p>On another occasion UGN masturbated, while at the same time he rubbed C's vagina. He then sexually penetrated her (cts 6 and 7).</p> <p>On another occasion UGN showed C a DVD depicting adults engaging in sexual activity (ct 8).</p> | <p>occasions.</p> <p>The sentencing judge found the offending was agg by being part of a course of sexual conduct that occurred over a period of at least five yrs; he groomed C by buying her treats, and as the yrs went by, money and clothes and given the large age difference between him and C.</p> <p>The sentencing judge found the appellant took advantage of the trust C's mother had placed in him, in order to abuse a vulnerable child; some of the offending took place in C's home where she was entitled to feel safe and some of the offending was clearly premeditated.</p> <p>Offending serious effect on victim; continues to have profound effects upon her life as an adult; ruined her relationship with her mother.</p> <p>Low risk of reoffending; no demonstrated genuine remorse; continued to deny the offending.</p> | <p>and rewarded C to the point where the appellant's behaviour was normalised. C's mother trusted the appellant ... The offending breached the trust that had been placed in [him]. Some of the offences were premeditated. Some were committed in C's home where she was entitled to be safe.</p> <p>At [52] ... The objective circumstances of the offending were, in our opinion, very serious. The fact that the acts of sex pen did not involve the penile penetration of C's vagina is not to the point. Having regard to what the appellant actually did and the effect of his offending upon C, it cannot reasonably be said that the sentencing judge overestimated the objective seriousness of what the appellant did to C.</p> |
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Transitional Provisions Repealed (14/01/2009)

Transitional Provisions Enacted (31/08/2003)

**s 189 Criminal Code Indecently deal child u 13 yrs repealed (1/08/1992)
ss 320(4), 321(4), 322(5) and 329(4) Criminal Code (indecently deal with child offences) enacted (1/08/1992)**

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

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

Indecent deal de facto/lineal child u 16 yrs s 329(4) *Criminal Code* maximum penalty 10 yrs imp

Indecent deal de facto/lineal child over 16 yrs s 329(4) *Criminal Code* maximum penalty of 5 yrs imp

Indecent deal with child under care/supervision or authority s 321(4) *Criminal Code* maximum penalty of 10 yrs imp

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

s 183 Criminal Code Indecently deal child u 14 yrs repealed (23/03/1990)
NB: maximum penalty under this section was 7 yrs imp.

Office of the Director of Public Prosecutions