

# Child Sex Offences – Intra-familial

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

agg	aggravated
att	attempted
burg	burglary
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
GBH	grievous bodily harm
indec	indecent
imp	imprisonment
ISO	intensive supervision order
PCJ	pervert the course of justice
pen	penetrate
PG	plead guilty
sex pen	sexual penetration without consent
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
11.	<i>NQB v The State of Western Australia</i> <b>[2024] WASCA 93</b>  Delivered 31/07/2024	<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 with JA’s mother.</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 &amp; 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 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 &amp; 16</u></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 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>Appeal allowed.</p> <p>Appeal concerned the first limb of the totality principle.</p> <p>Resentenced:</p> <p>Ct 21: 18 mths imp (cum). TES: 11 yrs 6 mths. 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 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> <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>

			<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 &amp; 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><b>10.</b></p> <p><i>The State of Western Australia v ZER</i></p> <p><b>[2024] WASCA 84</b></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>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>Cts 1–5, 9, &amp; 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 &amp; 2</u></p> <p>The respondent messaged D to come to his room. When she arrived, he locked 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 &amp; 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>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 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>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 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</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>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>
<p>9.</p>	<p><b><i>RHW v The State of Western Australia</i></b></p> <p><b>[2024] WASCA 83</b></p> <p>Delivered 16/07/2024</p>	<p>37 yrs at time offending. 39 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No relevant criminal history.</p> <p>Raised in a large family; father used excessive physical punishment.</p> <p>Left school before yr 12 to commence an apprenticeship; worked in building trade.</p> <p>Suffered from depression and anxiety.</p> <p>No substance abuse; regular alcohol consumption.</p>	<p>2 x Sex pen child U16 yrs</p> <p>The victim of the offending is the appellant’s biological daughter, A. At the time of offending A was 14 yrs old.</p> <p><u>Ct 1</u></p> <p>On one evening the appellant was home with A watching a movie. The appellant fell asleep with A lying in front of him. The appellant was awoken by A’s bottom moving next to his groin area. The appellant became sexually aroused, and after initially mistaking A for his wife, reached over and penetrated A’s vagina by rubbing her clitoris.</p> <p><u>Ct 2</u></p> <p>Immediately after committing ct 1, the appellant inserted his finger into A’s</p>	<p>Ct 1: 6 mths imp (cum). Ct 2: 2 yrs 6 mths imp (cum).</p> <p>TES: 3 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge accepted that A was particularly vulnerable because, to the knowledge of the appellant, A was struggling with mental health issues and bullying at the time of offending.</p> <p>The victim wrote a letter to the sentencing judge that omitted any mention of the offending. The letter stated that she wished for the appellant to return home, and she could not cope without seeing him.</p> <p>The sentencing judge found that there was a level of persistence to the offending; ct 2 was a more serious offences as the appellant had</p>	<p>Appeal allowed (leave refused on grounds 1 and 5).</p> <p>Appeal concerned the sentencing judge’s finding that the appellant had minimised his conduct, and the type and length of sentence imposed.</p> <p>Resentenced:</p> <p>Ct 1: 4 mths imp (cum). Ct 2: 20 mths imp.</p> <p>TES: 2 yrs imp.</p> <p>EFP.</p> <p>At [61] ‘it is apparent from a consideration of the materials before the sentencing judge that, in our opinion, her Honour erred in finding that the appellant “minimised” his offending in the statement he made to [the psychologist].’</p> <p>At [62] ‘in our view, there was no material difference between that the appellant said to detectives in the VRI and what he later said to [the psychologist]. During the VRI, the appellant consistently said that he</p>

		<p>Wife and children remain supportive and want him to return home.</p>	<p>vagina for a further one or two minutes before removing his hand.</p> <p>A did not initially complain about the offending, but her behaviour changed. Some 18 months later, the appellant presented himself to a police station and confessed to the offending. The appellant was not the subject of any investigation, and the confession was completely unbidden.</p>	<p>realised that A was not his wife.</p> <p>The sentencing judge found that the appellant had minimised the offending when interviewed by the psychologist.</p> <p>The sentencing judge found the appellant was genuinely remorseful.</p>	<p>did not initially realise that the person lying next to him on the couch was his daughter. But after a short period of time, perhaps 20 to 30 seconds into the commission of the act of sex pen that constituted ct 1, and prior to the further act of sex pen that constituted ct 2, the appellant realised that it was A whom he was penetrating.’</p> <p>At [78] ‘the statement that an offender’s voluntary disclosure of guilt is “ordinarily a significant matter to the credit of the offender”, is to be understood to mean that it is a matter of mitigation <i>in addition to</i> the discount given for a plea, or pleas, of guilty.’</p> <p>At [79] ‘the appellant’s confession was not motivated by fear of discovery or acceptance of the likelihood of being proven guilty...in this case, the appellant made a completely voluntary disclosure of his guilt, apparently against the wishes of A, in circumstances where the offending may not otherwise have ever come to light ...’</p> <p>At [80] ‘on any objective analysis, the appellant’s offending was very serious.’</p> <p>At [83] ‘as we have said, the appellant’s voluntary disclosure of his guilt was a significant additional mitigating factor. Nevertheless, in our opinion, even when viewed with all the other circumstances...it could not justify the imposition of any sentencing option other than immediate imprisonment ...’</p> <p>At [86] ‘however, the appellant’s voluntary disclosure of his offending was a mitigating factor that required, by itself, a substantial additional degree of moderation to the sentence to be imposed...there is a strong public interest in offenders voluntarily confessing to their wrongdoings ...’</p> <p>At [87] ‘in our opinion, the individual sentence imposed on ct 2 in this case did not appropriately reflect the fact, and the importance, of the appellant’s voluntary disclosure and subsequent cooperation with law enforcement authorities.’</p>
8.	<p><b>ZLE v The State of Western Australia [No 2]</b></p> <p><b>[2024] WASCA 69</b></p> <p>Delivered 21/06/2024</p>	<p>51 yrs at time offending. 54 yrs at time sentencing.</p> <p>Convicted after trial.</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>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 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>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>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</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> <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</p>

			<p>Later in the morning, the appellant entered M’s bedroom again and kissed her on the lips.</p> <p><u>Ct 3 &amp; 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>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>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>7.</p>	<p><b><i>XBX v The State of Western Australia</i></b></p> <p><b>[2024] WASCA 43</b></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. Cts 2-3, 5–7, and 9–10: Indec deal child U13 yrs. Ct 4 &amp; 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 7<sup>th</sup> birthday. The last occasion was just before her 8<sup>th</sup> 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 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>Ct 1: 10 yrs imp (HS). Ct 2: 3 yrs imp (conc). Ct 3: 3 yrs imp (conc). Ct 4: 4 yrs imp (conc). Ct 5: 3 yrs imp (conc). Ct 6: 3 yrs imp (conc). Ct 7: 2 yrs imp (conc). Ct 8: 3 yrs imp (conc). Ct 9: 2 yrs imp (conc). 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>The sentencing judge did not go as far to expressly find that the appellant was remorseful.</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>AFP.</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 unremarkable.’</p> <p>At [105] ‘in my view, the only cases that are relevantly comparable are <b>KMB</b>, <b>Coulter</b> and <b>NSA</b>. 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</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 &amp; 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>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>
6.	<p><b>JFB v The State of Western Australia</b></p> <p><b>[2024] WASCA 41</b></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 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>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 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,</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). 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</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> <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</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>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 &amp; 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 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.</p>	<p>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>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 weight 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>
5.	<i>AAE v The State of Western Australia</i>	32 yrs at time sentencing. Convicted after PG (20%	1 x Distribute CEM. 1 x Poss CEM. 21 x Indec record child lineal relative	<u>Cum</u> 1 x distribute CEM (10 mths imp). 1 x possess CEM (8 mths imp).	Appeal dismissed (leave granted).  Appeal concerned first limb of totality principle.



<p><b>[2024] WASCA 35</b></p> <p>Delivered 09/04/2024</p>	<p>discount).</p> <p>No criminal history.</p> <p>Born in NZ; youngest of three children; moved to Australia at 9 yrs old; positive upbringing; parents and sister supportive.</p> <p>Struggled at school; completed yr 12.</p> <p>Gainfully employed since finishing school: hospitality industry.</p> <p>Met his wife at 16 yrs; relationship continued until arrest; three children, one of which was born after arrest.</p> <p>No significant mental health issues; emotional detachment and socially avoidant.</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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 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</p>	<p>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)</p> <p>All other cts conc.</p> <p>TES 17 yrs 6 mths imp.</p> <p>EFP.</p> <p>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.</p> <p>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.'</p> <p>The sentencing judge found that the appellant made no significant admissions to police during the searches and pleaded guilty during negotiations.</p> <p>The sentencing judge found that the appellant was genuinely remorseful, though he lacked genuine insight into the severity of the offending.</p> <p>Offending had caused great stress to the appellant's wife; vomits when she thinks of the offences; financially impacted; difficult to gauge the impact on the children, have not disclosed the offending during interviews.</p>	<p>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.'</p> <p>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.'</p> <p>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.'</p> <p>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.'</p> <p>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.'</p> <p>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.'</p> <p>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.'</p> <p>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 principle.'</p>
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			appellant's workplace.		
6.	<p><b>JTR v The State of Western Australia</b></p> <p><b>[2023] WASCA 131</b></p> <p>Delivered 01/09/2023</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</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</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. 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>TES 25 yrs.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's 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>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 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>

		detention.			<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> <p>At [207] ‘in our opinion, the TES was not crushing. It follows that the second limb of the totality principle was not infringed.’</p>
5.	<p><b>OMC v The State of Western Australia</b></p> <p><b>[2023] WASCA 86</b></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 &amp; 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><u>IND X</u> Cts 1; 2 &amp; 5: 18 mths imp (conc). Ct 3: 2 yrs imp. Ct 4: 2 yrs imp (conc). Ct 5: 18 mths imp (conc). Cts 6 &amp; 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’; the touching consisted a gross breach of trust; the victim was aged between 10-11 yrs; a degree of force was used in the offending and that 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>Appeal 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>

			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.		
4.	<i>NSA v The State of Western Australia</i> <b>[2023] WASCA 53</b>  Delivered 06/04//2023	49-55 yrs at time offending. 57 yrs at time sentencing.  Convicted after PG (20% discount).  Short and minor criminal history.  Good childhood; supportive parents and younger siblings.  Victim of sexual abuse aged 10 yrs.  Dyslexic; left school yr 10.  Regular employment history; worked variety of jobs.  Two adult children in addition to S and T; at time of sentencing with current partner four yrs.  Reasonable physical health.	Ct 1: Persistently engaged in sexual conduct child U16 yrs. Ct 2: Sex pen child U13 yrs (digital). Ct 3: Poss CEM. Ct 4: Att PCJ.  The victims, S and T, are brother and sister and NSA's children. T has a cognitive impairment.  By reason of a Family Court order S was placed in the care of her father. Over a period of five yrs, from the time she was 11 or 12 yrs old, NSA engaged in varying kinds of sexual conduct with S (ct 1).  When S was 12 yrs old NSA penetrated her vagina with his finger (ct 2).  In addition to the conduct the subject of cts 1 and 2 NSA would engage in other inappropriate conduct towards S.  NSA's mobile phone was found to contain three photographs of T, aged about 12 years old, posing in women's lingerie and high-heeled shoes. The photographs were classified at Cat 1 (ct 3).  In custody, NSA used intermediaries to suborn S to not cooperate in the prosecution against him (ct 4).	Ct 1: 5 yrs imp (cum). Ct 2: 1 yr imp (cum). Ct 3: 4 mths imp (cum). Ct 4: 8 mths imp (cum).  Ct 2 reduced from 3 yrs imp for totality and Ct 4 reduced from 18 mths imp for totality.  TES 7 yrs imp.  EFP.  The sentencing judge found the offending against S was prolonged and insidious having regard to the pretexts created by the appellant in order to cover his offending and his ongoing sexualisation of S; S was particularly vulnerable and T a very vulnerable young person by reason of his cognitive impairment.  The sentencing judge found the att to PCJ serious; he enlisted the assistance of others close to his daughter to guilt her into withdrawing her assertions.  Demonstrated lack of victim empathy and insight into consequences of his behaviour.	Allowed.  Appeal concerned error in law (cum of sentence of ct 2 with ct 1). Individual sentences not challenged.  Resentenced (20% discount):  Ct 1: 5 yrs imp (cum). Ct 2: 3 yr imp (conc). Ct 3: 4 mths imp (cum). Ct 4: 11 mths imp (cum).  Ct 4 reduced from 18 mths for totality.  TES 6 yrs 3 mths imp.  EFP.  At [49] ... s 321A(13) precluded the sentencing judge from ordering the sentence she imposed on ct 2 to be served cum upon the term imposed on ct 1. ... it was not open to the sentencing judge to order the accumulation of the sentence on ct 2 with the sentence on ct 1. ...  At [75] ... the sexual acts the subject of ct 1, ... did not include the offending the subject of ct 2.  At [120] ... the appellant's offending the subject of ct 1 had a number of serious elements. The appellant's offending involved an egregious breach of the position of trust occupied by the parent of a child. As the appellant's daughter, S was, ... 'particularly vulnerable'. The offending was extremely prolonged, occurring over a period spanning five yrs. The appellant engaged in a series of pretexts to facilitate his carrying out of the various sexual acts. Further, ... the offending has had a profound adverse effect upon S.
3.	<i>LTT v The State of Western Australia</i> <b>[2022] WASCA 31</b>  Delivered	69 yrs at time sentencing.  Convicted after PG (25% discount).  No relevant previous criminal	Cts 1; 2; 5; 11 & 15: Sex pen child lineal relative U16 yrs (digital). Cts 3; 4; 7; 9; 13; 16 & 18: Indec deal child lineal relative U16 yrs. Cts 6; 12 & 17: Sex pen child lineal relative U16 yrs.	Cts 1-2; 5; 11 & 15: 2 yrs 6 mths imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 8 mths imp (conc). Ct 6: 2 yrs 8 mths imp (conc). Ct 7: 2 yrs 3 mths imp (cum). Ct 8: 1 yr imp (conc).	Dismissed.  Appeal concerned totality principle.  At [42] The appellant's offending was serious ...

15/03/2022	<p>history.</p> <p>Born UK; one brother; parents separated when aged 2 yrs; no further contact with his father; lived with family members; later returned to live with his mother.</p> <p>Trade apprenticeship; worked number of roles.</p> <p>Came to Australia 1973; regularly employed.</p> <p>Married over 50 yrs; three children; separated as a result of offending.</p> <p>Poor health; diabetic; arthritis; hernias (may require surgery); depression and anxiety resulting from court action; on mental health plan.</p>	<p>Cts 8 &amp; 14: Indec recording child lineal relative U16 yrs.</p> <p>The victim, was LTT's granddaughter, aged between 7 and 11 yrs old at time offending.</p> <p>The offending occurred at LTT's home. There were five distinct incidents, spread over a period of about four yrs. They were representative of more regular offending conduct.</p> <p>The first incident occurred when the victim was aged 7 or 8 yrs. After removing her clothing LTT rubbed her clitoris with his fingers. (ct 1).</p> <p>At the time of the second incident the victim was 8 yrs old. He removed her clothing and rubbed her clitoris (ct 2) and put her hand on his erect penis (ct 3).</p> <p>The third incident occurred when the victim was 10 yrs old. LTT made the victim put on lingerie (ct 4). He then rubbed her clitoris (ct 5) before performing cunnilingus on her (ct 6). He made her rub his erect penis and testicles until he ejaculated (ct 7). He recorded the victim during the course of this offending (ct 8)</p> <p>The fourth incident occurred when the victim was aged 11 yrs. LTT made the victim put on lingerie (ct 9). He put his hand on her vagina and rubbed the victim's clitoris (ct 11) before engaging in cunnilingus (ct 12). He then had the victim rub his penis until he ejaculated (ct 13). He recorded the victim whilst this was occurring (ct 14).</p> <p>The fifth incident occurred when the victim was 11 yrs old. He removed her clothing, rubbed her clitoris with one hand (ct 15) and squeezed her breast with the other (ct 16). He also engaged in cunnilingus (ct 17) and had her rub</p>	<p>Ct 9: 8 mths imp (conc). Cts 12 &amp; 17: 2 yrs 8 mths imp (conc). Ct 13: 2 yrs 3 mths imp (conc). Ct 14: 1 yrs imp (cum). Ct 16: 1 yrs (cum). Ct 18: 2 yrs imp (cum).</p> <p>TES 8 yrs 11 mths imp.</p> <p>The sentencing judge found the victim's young age and vulnerability agg circumstances of the offending; the offending a gross and serious breach of the appellant's position of trust; he exploited a vulnerable and immature victim for his own sexual gratification; there was a substantial age and power disparity between him and the young victim; the victim was groomed; the offending premeditated and planed, persistent and sustained over a long period of time.</p> <p>Devastating impact on victim and her parents.</p> <p>The sentencing judge not persuaded appellant genuinely remorseful; attempts made to minimise or justify offending behaviour; shifting blame to young and vulnerable victim.</p>	<p>At [44]-[49] As a young girl ... the victim of the appellant's offending was extremely vulnerable. ... the ... offending involved a gross breach of trust in more than one respect. As the victim's grandfather, [he] occupied a position with the privilege and responsibility of a very high level of trust. Moreover, the victim's parents trusted the appellant, ... to care for and look after their daughter. The appellant's offending was a gross betrayal of that trust. ...</p> <p>Self-evidently, ... there was an enormous disparity in their age and their power. ... The appellant's offending was premeditated and planned. The appellant groomed the victim. ... Further, [he] repeatedly told the victim not to tell anyone about the abuse, thus taking active steps to conceal his offending. ... The offending was sustained over a period of yrs. ... The appellant engaged in a concerted process of exploiting, for his own sexual gratification, the vulnerability of a person who was entitled, and whose parents were entitled, to rely on [him] as a source of care and support.</p> <p>At [55] Given that there were five distinct incidents, spread over a period of several yrs, the appellant's criminality justified and sustained a significant degree of accumulation in the sentencing exercise.</p>
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			<p>the outside of her vagina.</p> <p><u>Cts 7 &amp; 8</u> 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.</p> <p><u>Cts 9 &amp; 10</u> 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.</p> <p>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.</p> <p><u>Ct 11</u> 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.</p> <p><u>Ct 12</u> 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 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.</p>		
1.	<p><i>The State of Western Australia v AHD</i></p> <p>[2021] WASCA 13</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</p>	<p>Cts 1 &amp; 2: Indec dealings with de facto child U16 yrs. Ct 4: Sex pen of de facto child U16 yrs (penile/vaginal pen). Cts 5 &amp; 7: Sex pen of de facto child</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).</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences cts 4, 5, 6 &amp; 7 and totality principle.</p>

<p>Delivered 29/01/2021</p>	<p>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>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 coerce her.</p> <p>When committing the offences the subject of ct 4, 5 and 7 AHD 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</p>	<p>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>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 the respondent having ejaculated into the complainant's mouth.</p>
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transmitted to the victim. As a result the victim suffered severe pelvic inflammatory disease and peritonitis. She required hospitalisation and surgery.

Breach of CBO

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.

*Transitional Provisions Repealed (14/01/2009)*

*Transitional Provisions Enacted (31/08/2003)*