

## Attacks with a glass or bottle

ss 301, 294 and 297 *Criminal Code*

**Prior to 1 January 2014**

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
TIC	time in custody
TES	total effective sentence
SJA	single judge appeal

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
12.	<p><b><i>Holden v The State of Western Australia</i></b></p> <p>[2011] WASCA 238</p> <p>Delivered 15/09/2011</p>	<p>21 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record – AOBH; assault; discharging firearm to cause fear; being armed to cause fear; reckless driving; disorderly behaviour.</p>	<p>1 x GBH s 297 <i>Criminal Code</i>.</p> <p>Max penalty 10 yrs imp.</p> <p>Appellant and victim unknown to each other.</p> <p>Appellant celebrating his 21<sup>st</sup> birthday and was in a nightclub with a group of his friends. For no discernible reason, appellant stepped forward and deliberately swung his arm at the victim while holding a glass in his hand. Glass struck victim in the head and caused serious injuries. Appellant extremely intoxicated and had used methylamphetamine at time offending – later had no recollection of the offending.</p> <p>Victim received lacerations to his left cheek, neck, eyelid and to temporal artery and jugular veins in his neck. Required over 80 stitches and sustained nerve damage on the left side of his face and ligament damage to the left side of his face which causes his eyelid to droop.</p> <p>Random, senseless and unprovoked act of violence on an innocent and unsuspecting person. Appellant used considerable force and the attack was made to particularly vulnerable part of the body (the head).</p>	<p>4 yrs 3 mths imp.</p> <p>TES 4 yrs 3 mths imp.</p> <p>EFP.</p> <p>Remorseful; genuine insight into offending.</p>	<p>Allowed.</p> <p>TES reduced to 3 yrs imp.</p> <p>EFP.</p> <p>At [12] Review sentences for ‘glassing’ injuries undertaken in <i>Powell v Tickner</i> illustrates that 4 yrs 3 mths imp significantly higher than other sentences imposed.</p> <p>At [13] Also appropriate to consider sentences in cases of GBH, whether ‘glassing’ offences or not. In relation to GBH sentences, original sentence manifestly excessive.</p>
11.	<p><b><i>Plant v Harrington</i></b></p> <p>[2010] WASC 364</p> <p>Delivered</p>	<p>24 yrs at time sentencing.</p> <p>Convicted after PG. Co-operated with police.</p>	<p>1 x Unlawful wounding s 301(1) <i>Criminal Code</i>.</p> <p>Max penalty 5 yrs imp.</p>	<p>8 mths imp.</p> <p>TES 8 mths imp.</p> <p>Genuine remorse.</p>	<p>Offender’s appeal dismissed - in range and appropriate disposition.</p>

	7/12/2010	No relevant prior criminal record.  Single mother of 3 yr old child.	Appellant and victim known to each other. Appellant recently discovered ex-boyfriend had been unfaithful with victim. Victim sent appellant text messages in recent past relating to this infidelity.  Appellant and victim at bar. Victim saw appellant and said 'hello' and bumped into her as walked away. Appellant smashed glass in to side of victim's head. Appellant struck victim second time (unclear whether glass used in this instance). Second hit was meant and not a reflexive action but 'deliberate and angry assault'.  Victim received a 3 cm cut behind left ear and two 1 cm cuts on collarbone.  Actions disproportionate to actions of victim. Prior history between appellant and victim caused offence to be seen as primarily stemming from pre-existing anger and more serious than offence in context sudden or serious altercation – especially as appellant not affected by drugs or alcohol at time		Noted increased need general deterrence in light of <i>Powell v Tickner</i> [2010] WASCA 224.
10.	<b><i>Powell v Tickner</i></b>  [2010] WASCA 224  Delivered	29 yrs at time offending.  Convicted after PG at earliest opportunity.  Prior criminal record - disorderly behaviour in public (\$500 fine).	1 x Unlawful wounding s 301(1) <i>Criminal Code</i> .  Max penalty 5 yrs imp.  Victim and respondent had verbal altercation at a pub. A short time later the victim left the pub. The respondent told co-offender about	18 mths imp.  Original sentence suspended in the SJA of <i>Tickner v Powell</i> [2010] WASCA 142.	State appeal against SJA decision allowed.  TES 15 mths immediate imp (backdated for TIC).

	23/11/2010	Good employment history.	<p>altercation and pointed victim out. As victim getting into his car, co-offender has run up and smashed and glass to the left side of his face. The respondent has then run up and smashed a glass on the right side of the victim's face. Glass shattered on impact and left respondent with cuts on hand/palm that required medical attention. Victim suffered major injuries to right side of face – deep lacerations near eyes and ear lobe. Required extensive plastic surgery and has scars around his eye. Respondent intoxicated at time offending.</p> <p>Unprovoked, cowardly and deliberate attack on defenceless victim with no reasonable explanation or excuse for behaviour.</p>	<p>TES 18 mths imp susp.</p> <p>Genuine remorse</p>	<p>At [85]-[87] Discussion of the role of community expectations in sentencing.</p> <p>At [123] General deterrence must be given increased weight in this type of offending.</p>
9.	<p><b><i>Scolaro v Shephard</i> [No 2]</b></p> <p><b>[2010] WASC 271</b></p> <p>Delivered 8/10/2010</p>	<p>Early 20s at time offending.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record.</p>	<p>1 x Unlawful wounding s 301(1) <i>Criminal Code</i>.</p> <p>Max penalty 5 yrs imp.</p> <p>Victim and appellant in nightclub. Victim jokingly slid a drink belonging to member of the appellant's party in front of her. Appellant took offence. Victim threw part drink at appellant. Appellant poured drink down victim's back as she was walking away with her back to the appellant. When victim turned around, appellant smashed glass into victim's face. Appellant received cuts on palm hand from glass shattering on impact. Appellant left scene immediately after.</p>	<p>18 mths imp.</p> <p>TES 18 mths imp.</p> <p>Magistrate accepted remorseful – rejected by Martin CJ on appeal.</p>	<p>Offender's appeal allowed.</p> <p>TES reduced to 12 mths imp - small degree of provocation on the part of victim not taken into account by Magistrate.</p>

			Victim required extensive plastic surgery – 32-36 internal and external stitches.  At [215] serious and violent offence.		
8.	<b><i>Nguyen v Lassau</i></b>  [2010] WASC 240  Delivered 6/09/2010	27 yrs at time offending.  Convicted after PG at early opportunity.  Minimal prior criminal record – no convictions for violence.  Acknowledged alcohol problem and taken steps to address it.  Vietnamese family; arrived in Australia aged 9 yrs; ceased education in yr 10 to work in family market.	1 x Unlawful wounding s 301(1) <i>Criminal Code</i> .  Max penalty 5 yrs imp.  Appellant and victim on dance floor in nightclub. Altercation erupted. Appellant pushed the victim, who then pushed him back. Appellant threw whiskey glass from approx 1m away – struck front of the victim’s scalp and caused 6cm laceration. Throwing the glass was deliberate – appellant intended to hit victim.  Disproportionate reaction to a push in a crowded area – lucky no-one else injured and injury wasn’t worse.	8 mths imp.  TES 8 mths imp.  Genuine remorse.	Offender’s appeal allowed.  TES reduced to 6 mths 1 day imp susp 9 mths.  Served 10 wks 2 days in prison prior to appeal and had been on bail after that pending appeal.
7.	<b><i>Duggan v Coelho</i></b>  [2009] WASC 372  Delivered 10/12/2009	28 yrs at time appeal.  Convicted after PG at earliest opportunity.  PG was critical factor in appeal succeeding – Hall J found in appeal 18 mth sentence where jurisdictional maximum 2 yrs could not have allowed proper consideration of value of PG.	1 x Unlawful wounding s 301(1) <i>Criminal Code</i> .  Max penalty 5 yrs imp.  Appellant’s group friend became involved in altercation near dance floor of nightclub – pushing and shoving. Victim of unlawful wounding was rugby tackled by appellant during the fracas. Parties separated and appellant walked outside. Appellant re-entered premises, taken glass from another patron, walked up to	18 mths imp.  TES 18 mths imp.  PSR available for sentencing – demonstrated genuine remorse, understanding of consequences of	Offender’s appeal allowed.  TES reduced to 12 mths susp 12 mths.  PG was critical factor in appeal succeeding – Hall J found in appeal 18 mth sentence where jurisdictional

		<p>Prior criminal record - two prior convictions involving violence.</p> <p>Good work history; excellent prospects; good academic record; earning significant income and described by others as hard working.</p> <p>Unsettled childhood – moved between parents numerous times. Family supportive now – living with mother and step-father.</p> <p>Medical reports: suffering severe depression and, as result, abusing alcohol.</p> <p>Recent breakdown of relationship (involving child) led to anxiety, frustration and low self esteem as well as financial stress and the loss of his home.</p> <p>Taken steps of own accord prior to sentencing to combat depression and alcohol abuse. Made significant lifestyle changes of own accord.</p>	<p>victim and struck him on the side of the face with the glass.</p> <p>Victim received 3 lacerations to the face (near left eye) and has required 5 stitches. There was further fighting and the appellant has also received head injuries.</p>	<p>actions and empathy for victim.</p>	<p>maximum 2 yrs could not have allowed proper consideration of value of PG.</p>
<p><b><i>Transitional Provisions Repealed (14/01/2009)</i></b></p>					

6.	<p><i>Tang v The State of Western Australia</i></p> <p>[2010] WASCA 30</p> <p>Delivered 18/02/2010</p>	<p>23 yrs at time offending.</p> <p>Convicted after trial before jury.</p> <p>Prior criminal record - disorderly behaviour; drugs; attempt pervert course justice; and several convictions involving violence.</p> <p>Childhood marred with domestic violence – alcoholic father a harsh disciplinarian and mother gambling problem. Numerous parental break ups before final separation which saw mother live in Canada for 3 yrs with little contact.</p> <p>Good work history.</p> <p>Regular use of drugs and alcohol 2 yrs prior to offence – contributing factor to offences in sentencing. No recognition of problem and did not follow up on prevention/rehab program appointments.</p>	<p>1 x Unlawful wounding s 301(1) <i>Criminal Code</i>. 1 x Unlawful wounding s 301(2) <i>Criminal Code</i>.</p> <p>Max penalty 5 yrs and 7yrs imp respectively.</p> <p>Appellant and victim 1 in nightclub. Victim 1 perceived appellant deliberately bumped into him and told appellant to “look out”. Appellant punched victim 1 and a fight between two began. Bouncer intervened and appellant swung bottle at victim 1’s head. Victim 1 blocked bottle with hand causing bottle to break. Victim 1 required skin graft to cover wound and index finger cannot be straightened.</p> <p>Appellant then ejected from nightclub. Appellant re-entered club and sought out bouncer (victim 2) who had ejected him. Broke bottle against interior wall and went outside and began yelling racist obscenities at victim 2 (hiding bottle from sight of victim). Victim asked appellant to leave and appellant swung bottle directly at victim 2’s head. Appellant then walked off.</p> <p>Victim 2 required 54 stitches to face and has (2 yrs after attack) very prominent scar on forehead (received no treatment from plastic surgeon).</p>	<p>12 mths imp. 4 yrs imp.</p> <p>TES 5 yrs</p> <p>EFP after 3 yrs.</p> <p>PSR - no remorse or insight into offending; high risk re-offending.</p>	<p><b>CONVICTION APPEAL ONLY</b></p>
5.	<p><i>Stark v State of Western Australia</i></p> <p>[2007] WASCA</p>	<p>Convicted after trial.</p> <p>Appellant person of “otherwise impeccable character” and made useful contribution to society.</p>	<p>1 x Unlawful wounding with intent to maim, disfigure, disable or do grievous bodily harm s 294 <i>Criminal Code</i>.</p> <p>Max penalty 20 yrs imp.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p>	<p>Offender’s appeal dismissed.</p> <p>Failure to suspend did not result in error.</p>

	<b>44</b> Delivered 16/02/2007		Appellant and victim at nightclub. Victim thought recognised appellant and began to talk to him. After brief conversation, appellant said did not know victim and smashed bottle he was holding in victim's face.  Victim sustained severe wound to left cheek. Unprovoked attack.	No attempt to avoid culpability or responsibility for offence.	
<b>4.</b>	<b><i>Walker v Allen</i></b>  <b>[2006] WASC 89</b>  Delivered 19/05/2006	Convicted after PG.  In full time employment at time offending.	1 x Unlawful wounding s 301(1) <i>Criminal Code</i> .  Max penalty 5 yrs imp.  Victim removing bags from car when accidentally bumped into appellant. Appellant began to talk to victim, victim walked off ignoring appellant. Appellant tried talk to victim again and victim pushed left shoulder into appellant's left shoulder. Appellant swung arm, with glass in hand, towards victim's face and hit him on the left side. Victim punched appellant a couple of times and he has fallen to the ground.  Victim received 5cm cut to face requiring 6 stitches.	9 mths imp.  TES 9 mths imp.  Demonstrated remorse.	Offender's appeal allowed.  Sentence within range but given personal circumstances and offending sentence suspended 7mths.
<b>3.</b>	<b><i>Long v Mayger</i></b>  <b>(2004) 142 A Crim R 289;</b> <b>[2004] WASCA 41</b>	18 yrs at time offending.  Convicted after trial.  No prior criminal record.	1 x Unlawful wounding s 301(1) <i>Criminal Code</i> .  Max penalty 5 yrs imp.  Victim standing with near dance floor in tavern with a group when bumped from behind by	11 mths imp.  TES 12 mths (already served 1 mth in custody at time sentencing).	Offender's appeal allowed.  TES 12 mths suspended 2 yrs.



	Delivered 4/02/2004	Favourable antecedents and excellent prospects rehabilitation. Actively pursued community service.	another patron. Bump caused victim's drink to splash in the face of one of the group. Victim and patron got into a fight. Others attempted to break fight up. Appellant, intervening on behalf of patron, struck victim on side of face and back of head with beer bottle (appellant standing behind and slightly to left victim). Blow caused bottle to smash.  Victim required 40 stitches.	EFP.	
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					
2.	<b><i>Janerka v Bethell</i></b>  [2002] WASCA 198  Delivered 26/07/2002	19 yrs at time sentencing.  Convicted after PG earliest opportunity. Co-operated fully with police.  Part-time employment; studying at University.	1 x Unlawful wounding s 301(1) <i>Criminal Code</i> .  Max penalty 5 yrs imp.  Appellant and girlfriend on beach and had a small fire going. Victim approached and asked them, to put fire out. Words were exchanged and fire kicked out, spraying appellant and girlfriend with sand. Egged on by girlfriend, appellant picked up empty whisky bottle and approached victim from behind, asking if he could join their party. Appellant swung arm and hit victim in face (close to left eye) with bottle.  Injuries received serious (including bruising, fractures, lacerations and internal injuries to eye) and unknown at time appeal if victim recover normal vision in left eye.	8 mths imp.  TES 8 mths imp. Equivalent to approx 5 mths imp after implementation of transitional provisions.  Genuinely remorseful -aided victim after attack until ambulance arrived.	Offender's appeal dismissed.

			Deliberate attack.		
1.	<b><i>Etrelezis v R</i></b>  <b>[2001] WASCA 327</b>  Delivered 26/10/2001	20 yrs at time offending. 22 yrs at time sentencing.  Convicted after trial.  No relevant prior criminal record.  Anger and aggression out of character.  Good character references, family relationships and employment history.	1 x GBH s 297 <i>Criminal Code</i> .  Max penalty 10 yrs imp.  Appellant and victim at a hotel. Squeezing through the crowd, victim accidentally bumped appellant, causing him to spill his drink on a girl. Argument ensued. Victim head-butted appellant (found to be an insignificant head-butt). Appellant punched victim in the eye with the hand holding his glass.  Glass shattered and victim received laceration un upper eyelid that required stitches and surgery.  No remorse found by sentencing Judge – express error.	3 yrs imp.  TES 3 yrs imp. Equivalent to 2 yrs imp after implementation of transitional provisions.  EFP.	Offender’s appeal allowed.  TES 3 yrs imp susp 1 yr.  Insufficient weight given to mitigating factors. The finding that the head-butt was insignificant was against the evidence. Found on appeal that the appellant had expressed remorse through his counsel and a letter his father wrote to the Judge.