

Dangerous driving occasioning death

No circumstances of aggravation

Prior to 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
occ	occasioning
BAC	blood alcohol content
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
att	attempted
EFP	eligible for parole
DDOGBH	dangerous driving occasioning grievous bodily harm
DDOD	dangerous driving occasioning death
DDOBH	dangerous driving occasioning bodily harm
agg	aggravated
circ	circumstances
TES	total effective sentence
SCP	summary conviction penalty

No.	Case	Antecedents	Summary/ facts	Sentence	Appeal
15.	<p><i>Timbrell v The State of Western Australia [No 2]</i></p> <p>[2013] WASCA 269</p> <p>Delivered 28/11/2013</p>	<p>21 yrs at time of offending. 22 yrs at time of sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record; no prior traffic convictions; no unpaid fines.</p> <p>Attended private Catholic School; house captain; completed Bachelor of Commerce degree; represented the State in underage football.</p> <p>Employed with a finance company.</p> <p>No difficulties with alcohol or illicit drugs.</p> <p>Strong and stable family.</p> <p>Due to the collision now suffering from an adjustment disorder; experiencing symptoms of increased depression and stress, social avoidance, increased irritability, feelings of guilt, reduced self-confidence, increased emotionality & greater level of dependence on his</p>	<p>Ct 1: DDOGBH RTA s59(1)(b) Ct 2: DDOD RTA s59(1)(b)</p> <p>The appellant was driving his motor vehicle on Leach Highway in Shelley. He drove into the intersection of Leach Highway and Vahland Avenue in contravention of a red traffic control light.</p> <p>The bullbar of his vehicle struck another motor vehicle in the intersection. The other vehicle had been travelling on Vahland Avenue. Mr Liddiard was the driver and his sister, Ms Liddiard, was a passenger. Mr Liddiard lawfully entered the intersection on a green traffic control light in order to execute a right turn. The force of the impact propelled his vehicle into a light pole. The appellant's vehicle rolled.</p> <p>Mr Liddiard died at the scene from spinal and head injuries suffered as a result of the collision. Ms Liddiard received rib fractures, a punctured and collapsed lung, multiple lower limb lacerations, a hip wound, facial cuts, a chipped tooth and whiplash injuries. The collapsed lung was</p>	<p>Ct 1: 8 mths imp. Ct 2: 12 mths imp (conc).</p> <p>TES 12 mths imp.</p> <p>Extreme and genuine remorse and contrition.</p> <p>Character references spoke well of him.</p> <p>Judge not satisfied that appellant deliberately drove through the red light.</p> <p>Sentencing judge noted that appellant had a 'momentary and appalling lapse of either judgment or attention...'</p> <p>VIS described as</p>	<p>Allowed by majority.</p> <p>Mazza J dissenting.</p> <p>Terms of conc and order stand. TES of 12 mths imp susp for 9 mths.</p> <p>At [56] ... By comparison with other cases, the appellant's culpability was towards the low end of the scale of seriousness. There was no suggestion he was under the influence of illicit drugs. There was no evidence he had been exceeding the speed limit. It was not alleged the appellant had deliberately ignored the red traffic control signal ... the cause of his inattention is unknown.</p> <p>At [111] Patterns of sentencing with respect to the recently increased penalties are yet to emerge ...</p>

		parents.	<p>a life-endangering injury. Ms Liddiard spent a week in hospital after the collision. The appellant received a head injury. He was treated in hospital but the injury was relatively minor.</p> <p>The appellant undertook a preliminary breath test at the scene. His blood alcohol level was zero. The speed limit where the incident occurred was 70 km/hr. There was no evidence to suggest the appellant had been speeding. Also, there was no evidence to suggest he had braked before the collision. The road was dry, the weather conditions were clear and the intersection was well lit.</p> <p>Ideal driving conditions.</p> <p>As a result of the head injury the appellant had no memory of the incident and could not say why he drove into the intersection.</p>	<p>‘absolutely heartbreaking’.</p> <p>Very low risk of re-offending.</p>	
14.	<p><i>Lutumba v The State of Western Australia</i></p> <p>[2013] WASCA 172</p> <p>Delivered 01/08/2013</p>	<p>29 yrs at time of offence & sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record in WA.</p> <p>Born in Congo; Arrived in WA in 2009 as a refugee.</p> <p>Early life traumatic; his environment</p>	<p><u>Indictment</u></p> <p>Ct 1: DDOD <i>RTA s59(1)(b)</i></p> <p>Ct 2: DDOGBH <i>RTA s59(1)(b)</i></p> <p>Ct 3: DDOGBH <i>RTA s59(1)(b)</i></p> <p>Ct 4: DDOGBH <i>RTA s59(1)(b)</i></p> <p><u>s32 Notice</u></p> <p>DDOBH</p> <p>DDOBH</p> <p>Unauthorised driving (learner)</p>	<p><u>Indictment</u></p> <p>Ct 1: 5 yrs imp.</p> <p>Ct 2: 3 ½ yrs imp.</p> <p>Ct 3: 3 ½ yrs imp.</p> <p>Ct 4: 3 ½ yrs imp.</p> <p><u>s32 Notice</u></p> <p>4 mths imp.</p> <p>4 mths imp.</p> <p>\$250 fine</p>	<p>Allowed.</p> <p>Sentencing judge’s decision in relation to Ct 1 on the indictment, and orders in relation to accumulation and concurrency of the individual sentences of imp, set aside.</p> <p>Re-sentenced to 3 yrs 6 mths</p>

		<p>disrupted by ongoing fighting, widespread disease and famine; saw his father and brother both killed.</p> <p>Full time employment since been in WA; financially supported his mother.</p> <p>Former partner, who was pregnant with their unborn son, remained in Congo when he relocated to WA. In early 2012, his son died from malnutrition.</p> <p>Very limited English skills.</p>	<p>Drive vehicle contrary to compliance notice</p> <p>Disorderly behaviour in public</p> <p>All of the offences, except for the offence of disorderly behaviour in public, arose out of single course of conduct while the appellant drove a motor vehicle on 1 January 2012.</p> <p>At about 8:45pm the appellant drove his sedan on Dunreath Drive towards Perth Airport. Dunreath Drive is a single carriageway with one lane provided for each direction of travel. The appellant was transporting four passengers, being three adults and a 6 yr old child.</p> <p>Immediately prior to the incident, the appellant was seen by other road users to be travelling dangerously close to the rear of a Mercedes truck. This limited his view of oncoming traffic.</p> <p>About 1.9km from the airport, at the approach to a right-hand curve in Dunreath Drive, the appellant crossed double white dividing lines onto the incorrect side of the carriageway. He performed this manoeuvre in an attempt to overtake the truck, which had reduced its speed in accordance with a 'reduce speed' sign. The</p>	<p>\$600 fine \$300 fine</p> <p>Ordered to serve 12 mths of term imposed on Ct 3 on indictment before commenced to serve term imposed for Ct 1 on indictment.</p> <p>All other terms conc.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>MDL disq 6 yrs.</p> <p>Appears to have been contrite and remorseful for his offending and its impact on the victims.</p>	<p>imp (Ct 1) and TES 4 yrs 6 mths imp.</p> <p>At [39] ... the appellant's criminal conduct was not in the upper range of seriousness for offences of dangerous driving occasioning death, where the offence is not committed in circumstances of aggravation.</p> <p>At [41] ... bearing in mind the increase in the maximum penalty, with effect from 1 August 2008, it is apparent from my scrutiny of earlier sentencing decisions that the term of 5 years' imprisonment is outside the range available on a proper exercise of sentencing discretion.</p> <p>At [51] It was appropriate, in the circumstances, for the seriousness of the appellant's offending, and the consequences for multiple victims, to be recognised by some accumulation of the individual sentences of imprisonment. However, when the total effective sentence of 6</p>
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			<p>appellant's vehicle collided head on with an oncoming vehicle which contained a driver and a passenger.</p> <p>As a result of the collision, the rear driver's side passenger in the appellant's vehicle, a woman, suffered multiple severe injuries. She died shortly after in hospital (Ct 1). The deceased woman's partner, who was seated in the middle rear seat, was seriously injured (Ct 2). The two occupants of the oncoming vehicle sustained extensive injuries amounting to GBH (Cts 3 and 4). The deceased's 6 yr old son, who was seated in the rear of the vehicle, and the front seat passenger, received injuries amounting to bodily harm (Cts 1 and 2 on s32 notice). The appellant broke his ankle.</p> <p>When the offences occurred, the appellant was driving contrary to the conditions of his learner's permit in that he was not properly supervised and he failed to display 'L' plates. He should not have been driving in the circumstances. The appellant's vehicle was, to his knowledge, subject to a compliance notice and was therefore unfit for use on the road.</p>		<p>years' imprisonment is evaluated in the context of the maximum penalties for the offences for which individual sentences of imprisonment were imposedthe only conclusion reasonably open is that the sentencing outcome infringed the first limb of the totality principle. ...</p>
13.	<i>Easthope v Whitney</i>	21 yrs at time offending. 23 yrs at time sentencing.	2 x DDOD RTA s 59(1)(b). Tried and sentenced in Mag Ct. Offence	28 mths imp each ct. TES 30 mths imp.	Offender's appeal dismissed. At [64] no tariff for this type of

	<p>[2011] WASC 190</p> <p>Delivered 12/08/2011</p>	<p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>Overcome educational difficulties to finish education; employed.</p>	<p>date 26/09/2009 – max penalty 10 yrs but SCP jurisdictional limit.</p> <p>Appellant driving with BAC 0.124 when he struck and killed two pedestrians. The victims were in a relationship with one another and the female had been stepping out onto the road in front of traffic – all of whom had seen her and avoided hitting her – while the male victim had been attempting to pull her back off the road immediately prior to the incident. There were also other people on the road at the time of the incident.</p> <p>Gravamen of offending was driving with BAC 0.124, speeding and failing to pay attention which lead to appellant not seeing victims on road as other cars had.</p>	<p>EFP.</p> <p>Severely affected by deaths.</p>	<p>offence due to wide variety of circumstances as they relate to the offender and the offending.</p> <p>At [79] when victim’s behaviour as a contributory accident it is appropriate to consider it in relation to the seriousness of the offending.</p>
12.	<p>Winwood v Brown</p> <p>[2011] WASC 123</p> <p>Delivered 11/05/2011</p>	<p>22 yrs at time offending and 23 yrs at time sentencing.</p> <p>Convicted after trial. No prior criminal record.</p> <p>Only child; supportive family; completed yr 12; employed as an apprentice roof plumber in (father’s business).</p> <p>No alcohol or illicit drug problems.</p>	<p>1 x DDOD RTA s 59(1)(b).</p> <p>Tried and sentenced in Mag Ct. Offence date 2/08/09 – max penalty 10 yrs but SCP jurisdictional limit.</p> <p>Appellant pursuing another car at speed through residential streets in Bunbury. Pursuit result of past animosities between appellant and other driver. Appellant started pursuit by following other driver as he left a carpark in an attempt to avoid</p>	<p>16 mths.</p> <p>TES 16 mths.</p> <p>EFP.</p> <p>Deeply remorseful, accepts full responsibility and acknowledges impact on victim’s family.</p>	<p>Offender’s appeal dismissed – length sentence not challenged only failure to suspend.</p> <p>At [55]-[56] general deterrence still major consideration in sentencing, notwithstanding legislative changes to offence.</p> <p>At [64] distinguished from <i>Hunt</i> (where suspended imp imposed on appeal) as appellant aware</p>

			<p>further animosity. Pursuit lasted approx 20 min. After negotiating roundabout, appellant struck victim as he was crossing the road. Appellant saw victim standing on median strip prior to collision – continued pursuit at speed regardless thereby making offence serious.</p> <p>At time of incident roads well lit by street lights, visibility was fine and weather was fine. Appellant, at time incident, travelling at 70-75 km/hr (speed limit 60 km/hr). Victim was very intoxicated at time incident (BAC 0.257%) and was listening to messages on his mobile phone as he crossed the road.</p> <p>Appellant BAC 0 immediately after crash.</p>		<p>presence victim on median strip; appellant in <i>Hunt</i> had no warning victim's car was going to pull out into his path.</p> <p>At [68] persistent manner of dangerous driving determinative factor in upholding term immediate imp.</p>
11.	<p><i>Hunt v Callaghan</i></p> <p>[2011] WASC 10</p> <p>Delivered 11/02/2011</p>	<p>19 yrs at time of offending.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p>	<p>1 x DDOD RTA s 59(1)(b).</p> <p>Tried and sentenced in Mag Ct. Offence date 14/11/08 – max penalty 10 yrs but SCP jurisdictional limit.</p> <p>Appellant driving at night on residential street when victim reversed out of driveway and a collision occurred. Visibility of appellant was hindered by cars being parked along the side of the road. Victim's driving found to have been a significant cause of the collision.</p>	<p>18 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES 18 mths imp susp 2 yrs.</p> <p>At [257] Seriousness of offence at lower end of the range.</p>

			<p>Appellant's BAC over 0.05% but this was not relied during trial. Appellant driving at 80 km/hr in a 60km/hr zone at time of collision with an overload of passengers in the vehicle (including one in the boot).</p> <p>Culpability lay in excessive speed in those particular circumstances.</p>		
10.	<p><i>State of Western Australia v Olive</i></p> <p>[2011] WASCA 25</p> <p>Delivered 16/02/2011</p>	<p>22 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Poor driving record – disqualified driving at time offending.</p> <p>Apart from behaviour on roads, person of good character; stable home; hard worker; suffers dyslexia and inability control impulses.</p>	<p>3 x DDOD RTA s 59(1)(b).</p> <p>Tried in Mag Court and committed pursuant to s 5(9) <i>Criminal Code</i> for sentencing.</p> <p>Offence date 7/03/08 – max penalty 4yrs each count.</p> <p>Respondent driving on two lane highway at night. At a point where two lanes merge into one, the respondent driven past car in an attempt to beat it to the merge point. Respondent caused this car to veer out of its lane and hit another car – three people killed as result. Respondent had been driving at speed approx 120-130km/hr prior to and during incident – speed limit 100km/hr.</p> <p>Respondent not aware of collision between two cars and kept driving.</p>	<p>3 x 18mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Remorse and grief.</p>	<p>Dismissed.</p> <p>At [96] total effective sentence lenient but not so low as to be plainly unreasonable or unjust.</p> <p>NB: Individual sentences not challenged only TES.</p>

<p>9.</p>	<p><i>Taylor v State of Western Australia</i></p> <p>[2009] WASCA 226</p> <p>Delivered 17/12/2009</p>	<p>18 yrs at time offence.</p> <p>Convicted after trial.</p> <p>One prior conviction (driving offence involving alcohol when child).</p> <p>Good antecedents.</p>	<p>1 x DDOD RTA s 59(1)(b). 1 x DDOGBH.</p> <p>Offence date 23/07/07 – max penalty 4yrs each count.</p> <p>Cannot be categorised as being most serious kind of offence or towards upper end of range.</p> <p>Driving a vehicle belonging to a friend – tyres bald but this was not known by appellant. At, or near, a set of lights a commodore has pulled up alongside the car and revved its engine – accepted by sentencing judge as invitation to race. Speed limit in area was 80km per hr, the area was dark and the road was wet from light rain. The appellant accepted the invitation and the race lasted approx 90seconds with the appellant reaching 120 km per hr before slowing to 90 km per hr. Cars have touched at some point and both drivers lost control and left the road. When appellant’s car stopped one of the passengers, who was not wearing a seatbelt at the time, was not in the car – she had been thrown from the vehicle and died at the scene. The driver of the other car sustained life threatening injuries.</p> <p>The driver of other car had BAC of 0.13%</p>	<p>2 yrs 2 mths imp. 1 yr 2 mths imp.</p> <p>TES 2 yrs 2 mths imp.</p> <p>Deeply ashamed and remorseful.</p> <p>NB: Original sentence also imposed after Transitional Provisions were repealed.</p>	<p>Allowed.</p> <p>TES reduced to 1 yr 8 mths.</p> <p>NB: State relied in part on dual characterisation of DD offences in <i>Koltasz</i> and followed in <i>Kay</i> – heavily criticised by Wheeler JA (leading judgement) as being of limited use as the distinction does not adequately mark out wide and disparate range of circumstances and quality of driving seen in this offence category. Such a categorisation can lead to errors.</p>
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			at time crash and was 30 yrs old. He was convicted after a fast track plea of guilty and the sentencing judge considered his injuries to be extra-curial punishment. He was sentenced to 12 mths with EFP.		
<i>Transitional Provisions Repealed (14/01/2009)</i>					
8.	<i>Longbottom v State of Western Australia</i> [2008] WASCA 203 Delivered 8/10/2008	19 yrs at time offending. Convicted after trial – charged with 2 x manslaughter, willing to plead to DDOD but plea was not accepted (note: after trial found not guilty of manslaughter and convicted of offences originally offered to plead to). At time offence license suspended for offence driving with BAC excess 0.08%.	2 x DDOD <i>RTA</i> s 59(1)(b). Offence date 10/11/05 – max penalty 4 yrs. Appellant and friends drinking at various spots in Esperance. Appellant drove from last place (Pier Hotel), accompanied by three passengers. They were travelling to the home of one of the passengers. Appellant driving in 50km per hr zone at an approx speed of 80km per hr. One of his passengers told him twice to slow down but he did not. The passenger then said she wanted to get out of the car but the appellant did not slow or stop to allow her to do so. The appellant lost control of the car, travelled across the gravel verge and crashed into the home of one of the deceased. BAC at time crash 0.089%.	1 yr 8 mths imp each charge. TES 3 yrs 4 mths imp. Remorse and grief.	Dismissed. Only accumulation of sentences challenged on grounds effectively meant punished twice for commission of elements common to each offence.
7.	<i>Eves v State of</i>	29 yrs at time sentencing.	3 x DDOD <i>RTA</i> s 59(1)(b).	1 yr 8 mths imp	Appeal allowed by majority

<p><i>Western Australia</i></p> <p>[2008] WASCA 7</p> <p>Delivered 16/01/2008</p>	<p>Convicted after trial.</p> <p>Prior criminal record - convictions relating to motor vehicle offences (including dangerous driving, driving excess 0.02%, refusing breath test & driving contrary to extraordinary license); no convictions since age 21 yrs.</p> <p>Good character and good work history (at time offences owned own business and employed 6 people during busy season).</p>	<p>Offence date 26/01/06 – max penalty 4 yrs.</p> <p>Appellant driving landcruiser and towing empty trailer from Bunbury to Perth, having worked the day in Bunbury. Other drivers noticed appellant’s vehicle swerving from side to side. Appellant ignored warnings from over drivers trying to alert him to his dangerous driving and attempting to get him to pull over. At a point where dual lanes merge, the Appellant’s trailer has moved 1m beyond an unbroken white line onto the other side of the road, hitting a car travelling in the opposite direction, causing it to spin onto the wrong side of the road and collide with a van travelling behind the appellant. The car has then burst into flames, hit a tree and bounced back onto the road. The two men travelling in the car were incinerated. The van has also burst into flames and the driver, after being pulled from the wreckage by a passerby, has died at the scene. Appellant tired and unwell at time and should have known not fit to drive.</p>	<p>each ct.</p> <p>TES 5 yrs imp.</p> <p>Remorse demonstrated (sentencing judge incorrectly stated no remorse).</p>	<p>(Miller JA dissenting). Orders for cumulation set aside and partial cumulation ordered.</p> <p>TES 3 yrs 4 mths imp.</p>
<p align="center"><i>Amendments to RTA s59 – reversal of onus of proof (01/01/2005)</i></p>				

<p>6.</p>	<p>“DRI” (a child) v Read</p> <p>[2004] WASCA 240</p> <p>Delivered 7/10/2004</p>	<p>17 yrs at time offending.</p> <p>Convicted after negotiated PG – initially charged with manslaughter.</p> <p>Excellent antecedents.</p>	<p>1 x Dangerous driving occasioning death.</p> <p>The appellant and victim (best friends) went for a drive after being out for the evening - appellant was a learner driver. Appellant remembered that he had received a text message while driving and went to pull over but the deceased offered instead to operate the steering wheel while the appellant operated the pedals. The pair negotiated a corner then the appellant accelerated down the next street. The vehicle left the road and struck a tree. The vehicle was extensively damaged and the victim later died from injuries sustained in the impact.</p>	<p>9 mths detention.</p> <p>TES 9 mths detention.</p>	<p>Allowed.</p> <p>TES 9 mths detention suspended for 12 mths.</p> <p>When taken in combination, the principles of sentencing young offenders, the general deterrence achieved through initial term, the attitude of the secondary victims and the prosecution, the deep remorse, youth and good character of appellant together with fact there was no need for personal deterrence and the fact that the sentence would be served in an adult prison required suspension of term.</p>
<p>5.</p>	<p>Kay v State of Western Australia</p> <p>[2004] WASCA 222</p> <p>Delivered 30/09/2004</p>	<p>Age not known but youth not mitigating factor.</p> <p>Convicted after trial (DDOBH PG on s 32 notice following trial conviction of other three charges).</p> <p>Prior criminal record - convictions for careless driving, dangerous driving causing bodily harm and numerous speeding convictions. This was the third time the appellant had struck a vehicle from the rear whilst driving</p>	<p>2 x DDOD RTA s 59(1)(b).</p> <p>1 x DDOGBH. 1 x DDOBH.</p> <p>Offence date 10/07/01 – max penalty 4 yrs death and GBH and bodily harm 6 mths (1st offence) or 18 mths (2nd or subsequent offence).</p> <p>Appellant drove road train (freight weighing 28 tons) into the rear of a car stopped at a railway crossing. The railway</p>	<p>4 yrs imp each ct. 3 yrs imp. 1yr imp.</p> <p>TES 8 yrs imp.</p>	<p>Allowed - on grounds 1 (imposition max penalty) and ground 5 (totality).</p> <p><u>Sentences on appeal:</u> 2 yrs 4 mths imp each death. 1 yr 4 mths imp GBH. 8 mths imp DDOBH.</p> <p>TES reduced to 6 yrs imp.</p> <p>NB: Division of dangerous driving into two categories</p>

		<p>road trains.</p> <p>Good work history and strong family support.</p>	<p>crossing lights had been activated and a train was approaching and the train's horn had been sounded numerous times as it approached the crossing. The collision has propelled the car under the train as it passed the crossing. The road train has then struck the train and the force of this collision has detached the engine of the train and caused it to overturn. Two of the cars passengers were killed and another suffered bodily harm. A passenger in the road train has suffered grievous bodily harm.</p> <p>Immediately prior to collision, appellant driving at an excessive speed for the vehicle in which he was driving through a country town. Collision attributed in sentencing entirely to appellant – driving in an arrogant and dangerous manner. No excuses could be found for dangerous driving – no evidence of driving for long hours or problems of personal nature which affected concentration.</p>		<p>(momentary inattention/ misjudgement and selfish disregard other road users) adopted by Miller J (following <i>Koltasz</i>) in leading judgement criticised in <i>Taylor v State of Western Australia</i> [2009] WASCA 226 by Wheeler JA in leading judgement as being of limited assistance.</p>
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Transitional Provisions Enacted (31/08/2003)

4.	<i>Koltasz v The Queen</i>	Youth mitigating factor – age not specified but appellant described as	Count 1: DDOD. Count 2: DDOD.	2 yrs 6 mths imp. 2 yrs 6 mths imp.	Dismissed.
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	<p>[2003] WASCA 38</p> <p>Delivered 12/03/2003</p>	<p>“very young man”.</p> <p>Good antecedents.</p>	<p>Count 3: DDOGBH.</p> <p>Offence date 8/04/2000 – max penalty 4 yrs death and GBH.</p> <p>Appellant’s culpability at higher end of scale.</p> <p>At 4.45am the appellant failed to negotiate a sweeping right hand bend on a country road. His vehicle left the road and collided with a power pole, killing two passengers who were in the rear of the vehicle and seriously injuring the front seat passenger.</p> <p>Appellant had consumed alcohol after leaving work at 4.30pm, consumed further drinks at his own home, returned to the hotel until midnight, then drove to two parties arriving at the second about 3am.</p> <p>Appellant was sleep deprived for 21 hours prior to offending and had a BAC reading of 0.1 % at time of collision.</p> <p>Appellant had no memory of offending.</p>	<p>12 mths imp.</p> <p>TES 2 yrs 6 mths imp.</p> <p>Equivalent to 20 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>At [40] Victims voluntarily assuming risk of driving with appellant knowing he was sleep deprived and affected by alcohol does not lessen moral culpability of appellant. Nor does fact victims were not wearing seatbelt.</p> <p>At [49] A deterrent sentence is called for in instances of DDOD to mark the seriousness of offending – suspension of TES generally inappropriate.</p> <p>At [50] There is a need for a strong deterrent message to be sent to young people that, whilst affected by alcohol and fatigue, DD causing death or GBH, a deterrent sentence of imprisonment is inevitable.</p> <p>NB: Division of dangerous driving into categories found in this decision has since been criticised by the Court of Appeal.</p>
<p>3.</p>	<p><i>Wood v The Queen</i></p>	<p>22 yrs at time offending.</p> <p>Convicted after trial.</p>	<p>1 x DDOD RTA s 59(1)(b).</p> <p>Offence date 24/04/2000 – max penalty 4</p>	<p>18 mths imp.</p> <p>TES 18mths imp.</p>	<p>Dismissed.</p> <p>Appeal focused on whether</p>

	<p>[2002] WASCA 95</p> <p>Delivered 23/04/2002</p>	<p>No prior criminal record of any kind (including minor traffic offences).</p> <p>Prior good character; excellent antecedents.</p>	<p>yrs.</p> <p>Victim travelling on freeway with wife on motorbike at approx 9am. He has stopped to retrieve pair sunglasses that had fallen and was walking along the emergency lane. Wife has waited with bike for him to return. Victim clearly visible on side of road. Appellant travelling same stretch of freeway at between 80 and 100 km per hr (speed limit 100km per hr). Appellant's car has collided with victim after drifting from the left hand lane into the emergency lane. Victim was thrown into air and has come to rest in the centremost lane. Appellant did not break until after point of impact. Appellant had no sleep in night immediately preceding morning of collision and had only 5-7 hrs sleep in the 48hrs immediately prior to the collision. Trial judge concluded appellant momentarily fallen asleep prior to collision – appellant should have known sleep deprived state made it dangerous for her to be driving.</p>	<p>Equivalent to 12 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Extreme remorse and regret.</p>	<p>imprisonment necessary or if other sentencing options open and whether suspension of term appropriate.</p>
<p>CASES NOT APPEALED BUT USEFUL FOR COMPARISON</p>					
<p>2.</p>	<p><i>State of Western Australia v</i></p>	<p>27 yrs at time offence.</p>	<p>1 x Manslaughter <i>Criminal Code</i> s 280.</p>	<p>6 yrs imp.</p>	<p>NOT APPEALED</p>

	<p><i>Mitchell</i></p> <p>[2008] WASC 114</p> <p>Delivered 17/06/2008</p>	<p>Convicted after early PG.</p> <p>One previous conviction excess BAC 0.08% (0.135%).</p> <p>At time collision license disqualified for drink driving offence and a warrant had been issued in his name for failing to answer bail while on a further drink driving offence.</p> <p>Supportive family and good work history. In year preceding collision, developed alcohol problem that was regarded by sentencing judge as being “severe” at time crash.</p>	<p>Offence date 10/12/07 – max penalty 20 yrs.</p> <p>“...grossly negligent driving and conduct of extreme gravity.”</p> <p>Defendant drinking since early afternoon for approx 8 hrs prior to the collision. Prior to collision seen to be driving erratically. Defendant made a right hand turn into a lane designated solely for buses and driven onto the freeway, travelling in the wrong direction. Defendant has collided with car travelling correct way on freeway at a bend in the road. Driver of car suffered multiple chest and head injuries and has died at the scene. Mitchell suffered minor injuries, including broken right ankle.</p> <p>BAC at time crash 0.205%.</p>	<p>TES 6 yrs 6 mths imp.</p> <p>Also convicted of 7 offences on s 32 (included 3 arising from crash and 3 related to drink driving incident in Oct 2007). Sentences included one of 6 mths to be served cumulatively on manslaughter sentence.</p> <p>Observed to be deeply remorseful and has realised extent alcohol problem and taking steps to address it.</p>	
1.	<p><i>State of Western Australia v Pickett</i></p> <p>Ind 609 of 2010</p>	<p>18 yrs at time offending.</p> <p>Convicted after PG (negotiated – originally charge 2 x DDOBH in addition to charges convicted of).</p> <p>Prior criminal record - extensive juvenile record but not driving</p>	<p>1 x DDOD RTA s 59(1)(b). 1 x DDOGBH.</p> <p>Offence date 26/10/09 – max penalty 20yrs and 14 yrs respectively.</p> <p>Appellant involved in a high speed police pursuit through suburban area. Drove at up</p>	<p>3 yrs 9 mths imp. 6 mths imp.</p> <p>TES 4 yrs 3 mths imp.</p> <p>Lack remorse, empathy and insight</p>	NOT APPEALED

		<p>offences.</p> <p>Never held driver's license.</p> <p>Chaotic and violent childhood – violent, alcoholic father; mother left family when appellant 8 yrs old; father imprisoned when appellant 11 yrs old; lived grandmother (no food, min supervision) until her death when appellant 13yrs old; lived various extended family.</p> <p>History drug and alcohol abuse since 12 yrs old.</p> <p>Left school in yr 7 and has never held a job.</p>	<p>to 80km per hr in excess speed limit. Ignored passenger's demands she slow down. Appellant crashed into Nissan micra, driven by victim GBH and carrying her two children (11 yr old son died as result injuries).</p> <p>Appellant had not slept for several days prior to accident as result of drug intoxication.</p>	<p>into offending; high risk re-offending if criminogenic factors not addressed.</p>	
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