

Indecent Assault & Agg Indecent Assault

s 323 & s 324 *Criminal Code*

From 1 January 2014

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

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

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

AOBH	assault occasioning bodily harm
agg	aggravated
att	attempted
burg	burglary
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
GBH	grievous bodily harm
imp	imprisonment
indec	indecent
ISO	intensive supervision order
PG	plead guilty
PNG	plead not guilty
sex pen	sexual penetration without consent
susp	suspended
TES	total effective sentence
TIC	time in custody
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	<p><i>The State of Western Australia v Syred</i></p> <p>[2020] WASCA 185</p> <p>Delivered 09/11/2020</p>	<p>26 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after PG (22% discount).</p> <p>Minor criminal history; no prior sexual offending or sentences of imp.</p> <p>Supportive family.</p> <p>Left school at yr 11.</p> <p>Good work history.</p> <p>Issues with cannabis and alcohol use.</p>	<p>Cts 1-2 & 4: Agg indec assault. Ct 3: Agg sex pen.</p> <p>The female victim was aged 19 yrs. The offending occurred at Syred's home.</p> <p>During the evening Syred and the victim consumed alcohol and had consensual sex. The victim, who was fatigued and intoxicated, then rolled over and went to sleep.</p> <p>Whilst she was asleep Syred took a total of 29 photographs and 9 videos of the victim on his mobile phone. The images included a selfie with his tongue out towards the victim's vagina (ct 1); photographs of her vagina (ct 2); video penetrating her vagina with his finger (ct 3); video masturbating himself and ejaculating over her body and further photographs depicting his semen on her breasts (ct 4).</p> <p>In the morning Syred and the victim again had consensual sex. He never told the victim about his sexual activities while she was asleep or the video and images he had taken.</p> <p>The victim left Syred's home later that day. They never had any further physical contact and a few mths later they ceased contact all together.</p> <p>Syred later bragged about the photos and videos he had taken and showed some of the images to his friends. The girlfriend of one of his friend's advised the victim.</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 18 mths imp (conc). Ct 4: 18 mths imp (conc).</p> <p>TES 18 mths imp conditionally susp 18 mths.</p> <p>The sentencing judge found the seriousness of the offending agg by the humiliating and degrading manner in which he treated the victim; the 'sex pen itself in isolation was at the lower end of that sort of offence' and the offending the subject of ct 4 fell 'at least in the middle if not higher end of the range of offences of agg unlawful and indec assault'.</p> <p>Significant and on-going impact on victim's psychological wellbeing.</p> <p>Remorseful; steps taken towards rehabilitation; undertaken private counselling.</p>	<p>Allowed.</p> <p>Appeal concerned type of sentence.</p> <p>Resentenced (22% discount):</p> <p>Ct 1: 12 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 6 imp (cum).</p> <p>TES 3 yrs imp. EFP.</p> <p>At [25] The ... offending on ct 3 was a relatively serious example of this kind of offending. It is true that the degree of intrusiveness of the sex pen in this case was not as egregious as that with which this court commonly deals. However, it was significant that the complainant was asleep at the time ..., which both placed her in a vulnerable position and made it abundantly clear ... that she was not consenting to any sexual activity at that time. ... That conduct,</p>

			When interviewed Syred initially lied about the location of his mobile phone, before providing it to police and admitting the offending.		<p>which did actually degrade and humiliate the victim, significantly elevated the degree of criminality involved in the offending. While [he] did not generally circulate the images he created, it was an agg factor that he showed some of them to a friend who was also within the victim's social circle.</p> <p>At [29] In our view, the seriousness of the agg sex pen offence in this case was such that the sentencing judge was bound to conclude that it was inappropriate to conditionally susp the sentence of imp he intended to impose for ct 3. ...</p> <p>At [34] ... While the offending occurred during the one incident, in our view the agg indec assault offences do elevate the overall seriousness of the offending in a manner which requires some degree of accumulation of the sentences. ...</p>
9.	<i>Peterson v The State of Western</i>	38 yrs at time sentencing.	Ct 1: Agg burglary. Ct 2: Indec assault.	Ct 1: 5 yrs 4 mths imp. Ct 2: No penalty.	Dismissed.

<p><i>Australia</i></p> <p>[2019] WASCA 207</p> <p>Delivered 27/12/2019</p>	<p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; at time offending subject to a susp imp order for an offence committed in QLD which was very similar on its facts to present offending; present offences committed while subject of outstanding arrest warrants in QLD and NSW.</p> <p>Very difficult childhood; death of his mother aged 5 yrs; upbringing marred by domestic violence; absence of emotional and financial support; physically and emotionally abused and neglected.</p> <p>No contact with extended family.</p> <p>Limited and difficult education; left school yr 9.</p> <p>Intermittent periods of employment.</p> <p>Long-term issues with alcohol and illicit drug use.</p>	<p>Sometime after midnight the victim, T, and her housemate observed Peterson outside their villa. T returned to bed.</p> <p>A short time later T woke to find Peterson crouched next to her bed. His hand under the covers between her legs, one finger touching her vagina outside her underwear. He told her to be quiet.</p> <p>T told Peterson to get out, which he did. She followed him to the back door and locked it. She then called the police.</p> <p>Peterson was later identified by CCTV footage.</p>	<p>EFP.</p> <p>The sentencing judge found the offending a serious example of its type; it occurred at night and involved a gross violation of the victim's security; she was entitled to feel safe in her own home.</p> <p>Denial of some facts; no remorse; little regard to impact offending has had on the victim; significant risk to public safety and of sexual re-offending.</p>	<p>Appeal concerned error in mitigation discount (deprived background diminished with age).</p> <p>At [56] ... it is clear that the sentencing judge found that the appellant's 'very difficult childhood', as his Honour put it, 'shaped' him into the adult he had become.</p> <p>At [57] ... his Honour failed to give 'full weight' to the appellant's very significant childhood deprivation in exercising the sentencing discretion. ... Accordingly, we are satisfied that his Honour erred ...</p> <p>At [59] ... the offences were very serious and have had lasting adverse effects upon T. ... [His] risk of sexual re-offending is significant. ...</p> <p>At [63] The decisions in <i>Prempeh</i> and <i>Pool</i> do not establish that the sentence ... imposed on the appellant for ct 1 was inconsistent with the standards of sentencing</p>
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					<p>customarily observed with respect to that offence or inconsistent with the place which the appellant's criminal conduct occupies on the scale of seriousness of this kind of offence.</p> <p>At [65] Having regard to all relevant circumstances and all relevant sentencing factors, including the appellant's very difficult childhood and the impact and ongoing effects that has had upon him, we are of the opinion that a sentence of 5 yrs 4 mths imp for ct 1 is appropriate.</p> <p>...</p>
8.	<p><i>Merritt v The State of Western Australia</i></p> <p>[2019] WASCA 203</p> <p>Delivered 17/12/2019</p>	<p>21 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Long and extensive criminal history; prior serious convictions for serious sexual and violent offending towards girls and women.</p> <p>Dysfunctional childhood; characterised by neglect; instability and extensive physical abuse in State</p>	<p>Ct 1: Dep lib. Ct 2: Burglary. Ct 3: Agg indec assault. Cts 4-8: Agg sex pen.</p> <p>The victim, P, was a female about 13 ½ yrs of age.</p> <p>P was at home with her sister when Merritt entered the home without consent. His face was covered to conceal his identity.</p> <p>Entering her bedroom Merritt grabbed P by the back of her head and told her to get up and do as she was told.</p> <p>Merritt then forced P to walk into bushland where</p>	<p>Ct 1: 4 yrs 6 mths imp (conc). Ct 2: 5 yrs 5 mths imp (conc). Ct 3: 2 yrs 9 mths imp (conc). Ct 5 & 8: 4 yrs 2 mths imp (conc). Ct 6: 6 yrs imp (cum). Ct 7: 6 yrs 6 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>At time of sentencing was</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; individual sentences not challenged.</p> <p>At [70] ... it is beyond question that the offences committed by him were of the utmost gravity. As serious as the offences were ... the offences committed [5 days later] were, if anything, even more serious. They involved the coercion of a very young and vulnerable</p>

		<p>care.</p> <p>Indigenous heritage; few positive role models.</p> <p>Illicit drug use.</p>	<p>he committed various sexual offences against her.</p> <p>Merritt was identified, more than twenty yrs later, through DNA technology.</p>	<p>a declared dangerous sex offender and subject to a continuing detention order.</p> <p>In 1994 (5 days after committing the above offences) the appellant committed further sexual offences against a 9 yr old female. Sentenced in 1995 to a TES of 10 yrs imp with EFP.</p> <p>The sentencing judge found the offending towards the higher end of the scale; clearly persistent and unrelenting and involved various forms of penetration; the offences are not isolated or uncharacteristic.</p> <p>The sentencing judge found the offending had a devastating impact on the victim and that she suffered ‘a terrible ordeal’.</p> <p>Some acceptance of responsibility; a significant danger of serious sexual reoffending.</p>	<p>child into bushland, where the appellant sexually penetrated her in such a way as to inflict serious physical injuries that required surgery. ... it could not be said that the offences under consideration were uncharacteristic of the appellant. To the contrary, they were entirely consistent with his prior offending to that point. He plainly posed then a danger to the community.</p> <p>At [71] ... the appellant remains unrehabilitated and poses a serious risk of reoffending.</p> <p>At [72] ... By the time the appellant came to be sentenced ... for the offences committed ... he was no longer youthful and so the increased importance of efforts to rehabilitate a youthful offender was no longer applicable. ... The time he has spent in custody subject to the continuing detention order and the period referred to in [23] ... were relevant</p>
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					<p>considerations in the application of the totality principle.</p> <p>At [73] However, having regard to all relevant circumstances and all relevant sentencing factors ... the TES imposed ... did not infringe the first limb of the totality principle.</p> <p>At [75] ...the TES was not unreasonable or plainly unjust.</p>
7.	<p><i>Pickett v The State of Western Australia</i></p> <p>[2019] WASCA 178</p> <p>Delivered 12/11/2019</p>	<p>21 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Atrocious juvenile criminal history; including two convictions for manslaughter by motor vehicle aged 14 yrs.</p> <p>Third child of nine children; non-drinking parents; stable home.</p> <p>Struggled at school often in trouble; frequent truancy; expelled aged 11 yrs.</p> <p>Very little employment history.</p>	<p>Ct 1: Agg burglary. Ct 2: Armed robbery. Ct 3: Agg indec assault. Cts 5 & 6: Agg sex pen.</p> <p>The victim, aged 27 yrs, was home alone. In the early hrs of the morning she was woken by the sound of Pickett, in the company of a co-offender, breaking into her home (ct 1).</p> <p>The victim called the police and hid in her bedroom. Pickett entered the room and, pretending to be armed with a knife, demanded money from her. She gave him \$55 in cash (ct 2).</p> <p>Pickett then made the victim remove her nightdress, so she was naked. He then compelled her to touch herself (ct 3). He also made her walk naked outside, past the co-offender who was keeping watch.</p> <p>Pickett also sexually penetrated the victim without</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (conc). Ct 5: 4 yrs imp (cum). Ct 6: 3 yrs imp (conc).</p> <p>TES 9 yrs imp.</p> <p>Sentence to be served partly cum upon a TES of 10 yrs 9 mths imp already serving.</p> <p>Indefinite imp order made under s 98 of the <i>Sentence Act 1995</i>.</p> <p>It was accepted the sexual offending was premeditated.</p> <p>No remorse or victim</p>	<p>Appeal allowed.</p> <p>Appeal concerned indefinite imp order (imposed 23 June 2000).</p> <p>Resentenced:</p> <p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (cum). Ct 5: 5 yrs imp (cum). Ct 6: 5 yrs imp (conc).</p> <p>TES 13 yrs imp.</p> <p>TES with other sentences approx. 14 yrs 7 mths imp.</p> <p>At [81] The judge emphasised ... the seriousness of the</p>

			<p>her consent (cts 5 and 6).</p>	<p>empathy; high risk of reoffending.</p>	<p>appellant's offending, the escalation of its seriousness in November and December 1998 and the rapidity with which the appellant offended each time he was released from custody. We accept all of those matters. Nevertheless, the combination of ... the fact that most of the offending was committed, when the appellant was a child of less than 14 yrs or ... when he had just turned 14 yrs old; ... the appellant's youth – being just 21 yrs old – when he committed his most recent offences; ... the lengthy horizon – more than 7 yrs – before[he] would be released; and ... the absence of any expert opinion ... means that [his] criminal history could not, in our respectful opinion, on its own justify the making of an indefinite imp order.</p> <p>At [83] In the absence of expert psychiatric or psychological evidence, offences committed at the age of 21 yrs or less (and</p>
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					<p>generally at the age of 14 yrs or less) provide an insufficient foundation to conclude, on the balance of probabilities, that, when released from prison aged almost 30 yrs, the appellant would be such a danger to society or part of it as to reasonably justify the making of an indefinite imp order.</p> <p>At [93] In resentencing the appellant, the starting point is the very serious nature of the appellant's offending, and the effects it has had upon his victim.</p>
6.	<p><i>Moore v The State of Western Australia</i></p> <p>[2019] WASCA 35</p> <p>Delivered 19/02/2019</p>	<p>44 yrs at time offending. 46 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; convictions for very similar offending; imprisoned most of his adult life.</p> <p>Parents separated prior to his birth; never met his father; in foster care from a very young age; adopted by foster parents.</p> <p>Adoptive parents caring and supportive; victim of</p>	<p>Cts 1-5: Agg burg. Ct 6: Agg indec assault. Ct 7: Stealing.</p> <p>Moore followed and propositioned a female in a park. She ran and managed to elude him.</p> <p><u>Cts 1-2</u> In an attempt to try and locate the female Moore went to a unit owned by the victim, McKenzie. He opened a window with the intent of entering the unit to look for her and indecently assault her. He ran when seen by McKenzie.</p> <p>Moore then ran to a unit owned by the victim, McGauran. He entered this unlocked unit, still searching for the female with the intention of indecently assaulting her. Once inside he spoke to</p>	<p>Ct 1: 15 mths imp (conc). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs 6 mths imp (cum). Ct 4: 2 yrs imp (conc). Ct 5: 5 yrs 6 mths imp (cum). Ct 6: 5 yrs 6 mths imp (conc). Ct 7: 6 mths imp (conc).</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending serious; the appellant had been</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle. Individual sentences were not challenged.</p> <p>At [64] The appellant is at a high risk of reoffending in a sexual manner if he continues to resist treatment and makes no progress in dealing with the issues which underpin his sexual offending. His prospects of rehabilitation are not encouraging.</p>

		<p>sexual abuse aged 5-8 yrs.</p> <p>Behavioural problems from young age; completed school aged 16 yrs; connected with his biological mother when a teenager.</p> <p>No long-term relationships; single at time of sentencing; 20-yr-old daughter from a brief union.</p> <p>Commenced alcohol and cannabis use in his teens; methyl and heroin use by age 20 yrs.</p> <p>History of schizophrenia, att suicide and depression.</p>	<p>McGauran. McKenzie, who had followed him to the unit, intervened causing him to leave. A short time later he was apprehended by police, charged and released on bail.</p> <p><u>Cts 3-7</u> The next day Moore gained entry to the home of the victims, Drewett and Ford, by throwing a gas bottle through a door. Hearing the noise Ford hid, whilst Drewett went to investigate. Finding Moore inside his home Drewett told him to leave. After a brief argument he threw the gas bottle at the victim and left.</p> <p>Minutes later Moore entered the unlocked home of the victims Dunn and Funnell. He entered the bedroom in which the victims were sleeping and stole a number of items. He fled when confronted by Dunn.</p> <p>Almost immediately Moore entered the home of the victim RB. She was home alone. He approached her, told her to be quiet and grabbed and pulled at her clothing with the intent of exposing her breasts. He then hit her in the face, causing her mouth to bleed, before dragging her to her bedroom and onto her bed. When she began screaming loudly he desisted and left the home, taking with him her wallet.</p>	<p>released from prison three days before committing ct 1; he was on bail for cts 1 and 2 when he committed cts 3-7; there was a degree of persistence in relation to the offending the subject of cts 1 and 2; there was violence in the commission of the offence the subject of ct 3; his criminal conduct in relation to ct 4 was brazen; there was a degree of persistence in his assault of RB.</p> <p>No demonstrated remorse or victim empathy; continues to deny the offending; history of refusing to accept responsibility; resistant to treatments and unwilling to engage in programs or address issues underlying his sexual offending.</p>	<p>At [67] Although cts 1-2 were committed in close temporal proximity, and cts 3-7 were also committed in close temporal proximity, it was necessary to accumulate some of the individual sentences in order to ensure that the TES imposed ... was commensurate with the seriousness of his overall offending.</p> <p>At [68] ... the TES ... did not infringe the first limb of the totality principle. A custodial term of that length was required in order properly to mark the very serious character of the appellant's offending as a whole, ... The TES bears a proper relationship to the criminality involved in all of the offences, viewed together, and having regard to all relevant facts and circumstances ... including the seriousness of the overall offending, the vulnerability of the victims (especially RB), the pattern of sentencing in prior cases with some comparable</p>
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					features, and the limited mitigation.
5.	<p><i>McAlpine v The State of Western Australia</i></p> <p>[2018] WASCA 195</p> <p>Delivered 30/10/2018</p>	<p>40-42 yrs at time offending. 70 at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; conviction for indec assault.</p> <p>Twice married; three children; second wife in poor health and relies on him for assistance with daily living.</p> <p>Deregistered as a medical practitioner; suffered social isolation and reduced income earning capacity; history of severe depression.</p>	<p>Cts 1-4: Indec assault. Cts 5-6 & 10: Sex pen.</p> <p>McAlpine was a practising child psychiatrist. The victim, AL, was his patient, aged 17 yrs.</p> <p>AL was an in-patient in hospital and while in her room McAlpine kissed her passionately on the lips and gave her a hug, telling her ‘this is our secret’ (ct 1).</p> <p>Over the next year McAlpine exploited AL for his own sexual gratification.</p> <p>On another occasion during a scheduled treatment McAlpine kissed AL sexually. He also placed her hand on his erect penis and told her that she was special (cts 2 & 3).</p> <p>McAlpine also engaged in uncharged conduct, namely fondling and licking her breasts. Sexual conduct of this kind was a ‘recurring theme’ and occurred at many of the schedule treatment sessions in his rooms.</p> <p>On another occasion McAlpine kissed AL’s breasts and performed cunnilingus on her (cts 4 & 5).</p> <p>On another occasion whilst in McAlpine’s rooms he had AL perform fellatio on him (ct 6).</p> <p>On another occasion, on AL’s 18th birthday, McAlpine had intercourse with her during a scheduled treatment session in his rooms (ct 10).</p>	<p>Cts 1-2: 9 mths imp (conc). Cts 3-4: 12 mths imp (conc). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 2 yrs 2 mths imp (cum). Ct 10: 3 yrs imp (cum).</p> <p>TES 5 yrs 2 mths imp. EFP.</p> <p>The trial judge found the appellant abused the trust that AL and her parents had placed in him; he had engaged in a sexual relationship with AL under the guise of therapy and in the course of what were supposed to be psychiatric treatments sessions; there was a significant age disparity between the appellant and AL; when the sexual relationship began AL was still a child; she was very vulnerable and dependent upon the appellant; the offending contributed to AL’s mental health decline and the offending did not</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [60] The appellant flagrantly misused his skill, experience and status as a child psychiatrist to sexually abuse AL. She was aged 17 in relation to all of the offences except for ct 10 ... AL needed significant therapeutic assistance. The appellant ignored his professional and ethical obligations, and exploited AL for his own purposes. The appellant knew that AL was highly vulnerable and had become increasingly dependent upon him. He also knew that she was unable to make a free and voluntary decision about consent to any of the sexual conduct of which he was convicted. Although AL’s illness predated the appellant’s involvement with her, the appellant’s abuse of AL as a patient at least partly caused the decline in her mental health ... and</p>

			<p>McAlpine's sexual relationship with AL continued after her 18th birthday and there were multiple occasions when he had sex with her in his rooms.</p>	<p>involve an isolated incident, it occurred over an extended period of time.</p> <p>The trial judge found the appellant's motivation at all times was cynical and self-interested and that he knew he was exploiting and taking advantage of a vulnerable young woman.</p> <p>Some insight into the inappropriateness of his relationship with AL; not truly remorseful; continues to minimise his offending behaviour.</p>	<p>remains a contributing factor in her ongoing psychiatric difficulties.</p>
4.	<p><i>CYD v The State of Western Australia</i></p> <p>[2018] WASCA 66</p> <p>Delivered 11/05/2018</p>	<p>37 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal history; no relevant prior offending.</p> <p>Longstanding childhood issues.</p>	<p>Ct 1: Dep lib. Ct 2: Indec assault. Ct 3: Dep lib. Ct 4: Indec assault.</p> <p>The victim, M, was aged 18 yrs. CYD was her step-father, having been in a relationship with her mother since she was 5 yrs old.</p> <p><u>Cts 1 and 2</u> CYD took M for a driving lesson. On a country road he switched the fuel from petrol to gas. This tank contained little fuel so as the vehicle lost power he took over driving and reversed the car into a secluded track.</p> <p>CYD told M he was going to walk down the road to try for a mobile signal to call for assistance.</p>	<p>Ct 1: 4 yrs imp (cum). Ct 2 & 4: 2 yrs imp (conc each other and ct 3). Ct 3: 5 yrs imp (cum).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge characterised the offences as very serious; involved premeditation and planning; there was an element of 'sexual intent' in the offences.</p> <p>The sentencing judge</p>	<p>Dismissed.</p> <p>Appeal concerns length of sentences cts 1 and 3 and totality principle.</p> <p>At [80] It is difficult to find previous cases which are broadly comparable with the appellant's offending in relation to cts 1 and 3.</p> <p>At [81] ... it is not reasonably arguable that the sentence for ct 1 or the sentence for ct 3 is unreasonable or plainly</p>

			<p>Shortly afterwards he returned with pliers, wearing a mask and a voice-changing mechanism he had earlier concealed on his person.</p> <p>CYD held the pliers to M's throat, tied her hands together and placed cable ties around her neck, which he secured to the headrest. He then fondled her breasts, rubbed her vaginal area on the outside of her clothing and told her she was going to be gang-raped. When M cried loudly he desisted, cut the cable ties and ran away.</p> <p>Shortly afterwards CYD returned to the vehicle, pretending that he knew nothing of the incident.</p> <p>Interviewed by police CYD claimed no knowledge and no involvement in the assault. He was subsequently charged and released to bail, on the condition he not contact M or be present when she visited the family home.</p> <p><u>Cs 3 and 4</u> Some weeks later CYD waited for M to leave his home after she visited family. Having earlier covered two spotlights on his car with blue and red plastic he followed her in his vehicle. Causing the spotlights to flash intermittently M stopped her vehicle, believing it be a police vehicle.</p> <p>Disguising his appearance and altering his voice with the voice-changing mechanism, CYD approached M's vehicle and forced her to move into the passenger seat. After wrapping her head with a bandage to cover her eyes he drove her vehicle to a country road.</p> <p>CYD demanded M remove her clothing. Noticing</p>	<p>found the offences were committed in circumstances designed to instil fear and involved the use of force and physical restraints on a vulnerable young woman with whom he was in a trusting family relationship.</p> <p>The sentencing judge accepted cts 1 and 2 were an aberration; but this could not be said about cts 3 and 4.</p> <p>Remorseful; cooperative with authorities after committing cts 3 and 4</p>	<p>unjust.</p> <p>At [85] ... it was necessary, in order properly to mark the very serious nature of the appellant's overall offending, for the individual sentences imposed on each of cts 1 and 3 to be served cum. Cts 1 and 3 involved separate, distinct and very serious offending.</p>
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			<p>the bandage had displaced he put duct tape over her eyes. He then then forcibly removed her clothing. Using her mobile phone he took photographs of her naked body before sending them to his own mobile, with a text message purporting to be from her.</p> <p>CYD then drove M in her vehicle back to where he had earlier deceived her into stopping. He disposed of the red and blue plastic and the voice-changing mechanism.</p> <p>CYD later sent a text to M claiming he was going to make a complaint to the police that she was sending him naked photos of herself.</p>		
3.	<p><i>Singh v The State of Western Australia</i></p> <p>[2017] WASCA 47</p> <p>Delivered 16/03/2017</p>	<p>27 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Good character.</p> <p>Indian national; on student visa in Australia.</p> <p>Raised in a supportive environment, but with significant financial challenges.</p> <p>Attended school to the end of yr 10; completed Bachelor's degree; completed Master's degree in computer science in Australia.</p>	<p>Ct 1: Indec assault. Ct 2: Indec assault. Ct 3: Sex pen.</p> <p>Offending occurred against passengers while Singh was working as a taxi driver.</p> <p><u>Ct 1</u></p> <p>Singh persistently touched the victim's thigh in a sexual manner. He also asked the victim a number of sexual questions and regularly rubbed his groin throughout the journey. He asked the victim if she would like to do something with him and said that they could come to an arrangement other than payment for the journey.</p> <p><u>Cts 2 and 3</u></p> <p>Offending occurred on the same evening as ct 1.</p> <p>The victim was 18 yrs old and intoxicated.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 4 yrs imp.</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found that the State case was so strong that the prospects of an acquittal were pretty much non-existent.</p> <p>Sentencing judge accepted that Singh's cultural background was likely to have played a role in the offending, but noted that such cultural matters were not free of controversy in India.</p>	<p>Dismissed.</p> <p>Appeal concerned length of individual sentence for ct 1, and totality.</p> <p>At [45] ... ct 1 had a number of serious elements...He was in a position of trust as a taxi driver. His victim was a vulnerable young woman. She did not have the option of getting out of the car until she got home. His offending was part of a course of conduct that persisted for almost the entire 28 minutes that the victim spent in the car with him. He persisted notwithstanding the victim</p>

		<p>Singh's counsel submitted that Singh had little to no experience with women and that India has different cultural attitudes about women's manner of dress and what it might convey.</p>	<p>While driving the victim home, Singh stopped the taxi at a park saying that he needed to check something. The victim sat on the bench for a smoke and Singh sat next to her. He placed the victim's hand on his groin and the victim resisted.</p> <p>Singh forced the victim onto her back, pinned her arms to her side and rubbed his groin against her crotch. He then ripped her underwear off and despite the victim's struggles and pleas, had unprotected sexual intercourse with her until he ejaculated inside of her. During the act, he kissed her neck and squeezed her breasts.</p> <p>Singh flew back to India the following day after being interviewed by police and released.</p>	<p>Sentencing judge found that Singh did not mistakenly assume that his attention to the victims was welcome; the victims gave unambiguously clear indications that they were not interested and not willing; Singh physically forced his attentions on them; Singh misled the police in various respects.</p> <p>Moderate to high risk of reoffending.</p>	<p>making repeated efforts to make clear to him that she was not interested in him. His offending has had a significant impact on her. His offence in ct 1 was not an isolated or once-off aberration; very soon after it, he committed cts 2 and 3. He [had] ... a medium to high risk of reoffending...</p> <p>At [57] ... the agg features of the offending ... place the TES... well within an appropriate exercise of discretion... The appellant was a taxi driver, a role that has an element of trust. Both his victims were vulnerable young women; one ... was ... more vulnerable by reason of intoxication. The offending was persistent in the face of clear statements by the victims that they were not interested in him and for him to stop what he was doing. The appellant responded to the second victim's resistance by using force. He had unprotected sexual intercourse... Ct 2 in itself was a serious offence of indec assault. The appellant's offending</p>
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					the subject of cts 2 and 3 followed soon after his conduct the subject of ct 1. Rebuffed by his first victim, he forced himself upon another young female passenger. Ct 3, standing alone, had many serious elements that could have justified a somewhat higher sentence. The appellant had a medium to high risk of reoffending. Personal deterrence remained an important factor.
2.	<i>Panda v The State of Western Australia</i> [2017] WASCA 5 Delivered 12/01/2017	57 at time offending. 59 at time sentencing. Convicted after trial. No prior criminal history. Born in India. Married; two children. Qualified medical practitioner. Notified by the Australian Health Practitioner Regulation Agency (AHPRA) that he must not consult with female patients unless a chaperone was present. Cts 5, 11-13 occurred after this notification and without a	8 x Unlawful and indec assault. The offending occurred over a period of almost eight months and involved five female patients. The offending occurred in the course of examining, diagnosing or treating their medical complaints. <u>Ct 1</u> Victim M, aged 32, presented with tonsillitis. He told M he wanted to check her for skin cancers. Not wearing gloves he briefly 'jiggled' her breasts. <u>Ct 2</u> Panda then had M open her legs, grabbed her vagina lips between thumb and forefinger and moved each from side to side, one after the other. He was not wearing gloves. <u>Ct 3</u>	Ct 1: 12 mths imp (conc). Ct 2: 21 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 21 mths imp (cum with ct 2). Ct 5: 9 mths imp (cum with ct 2). Ct 11: 9 mths imp (cum with ct 2). Ct 12: 6 mths imp (conc). Ct 13: 6 mths imp (conc). TES 5 yrs imp. EFP. The sentencing judge found the offending was a serious breach of trust and of the appellant's professional responsibilities. Each	Dismissed – on papers. Appellant challenged length of sentence and appeal concerned totality principle. At [97] ... The appellant was in 'a position of trust' and that elevated the seriousness of his offending ... The consent of M and C to the examinations which the appellant performed was obtained by fraud or deceit. The appellant did not seek the consent of N before purporting to perform the breast examination. The ... offending against T, N and

		<p>chaperone being present.</p> <p>Suffered depression and attempted suicide prior to sentencing.</p> <p>No substance abuse issues.</p>	<p>Victim C, aged 18, attended to obtain blood results. She agreed to Panda completing a skin check. While not wearing gloves he touched her breasts.</p> <p><u>Ct 4</u> Panda asked C to remove her underpants. She refused, so he spread her legs, moved her underpants to one side and put his fingers on her vagina. He was not wearing gloves.</p> <p><u>Ct 5</u> Victim T, aged 24, attended with a cough. Panda cupped her breast with his hand. With his stethoscope near her nipple he had her breathe in and out. He did not have the stethoscope in his ears. Panda repeated this procedure with her other breast. He stroked T's hand and suggested they meet up for sex.</p> <p><u>Ct 11</u> Victim N, aged 20, attended to collect a prescription. Panda suggested a breast examination, during which he fondled her breasts.</p> <p><u>Cts 12 and 13</u> Victim A, aged 20, attended for knee scan results. Panda hugged A and attempted to kiss her on two occasions, connecting with her cheek and the side of her mouth as she turned her head.</p>	<p>offence was not part of a legitimate or proper medical examination.</p> <p>The appellant acted selfishly and for his own sexual gratification.</p> <p>Unlikely to return to medical practice.</p> <p>No remorse or victim empathy.</p>	<p>A, in breach of the condition imposed by AHPRA, demonstrated the wilfulness of his offending against those complainants.</p> <p>At [98] ... the complainants were young and vulnerable. Three of them were suffering from mental illnesses when they consulted the appellant or had suffered from mental health difficulties previously.</p> <p>At [100] ... His offending was not an isolated lapse of judgment or an uncharacteristic aberration.</p>
1.	<p><i>The State of Western Australia v Staniforth-Smith</i></p> <p>[2014] WASCA 170</p>	<p>46-47 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after trial (Cts 1 & 3). Convicted after PG (Ct 2).</p>	<p>Ct 1: Indec dealings child 13-16 yrs. Ct 2: Agg indec assault. Ct 3: Agg sex pen.</p> <p>The victim had been the respondent's step son who was aged between 15 and 17 years. Following the breakdown of the victim's mother</p>	<p>Ct 1: 4 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 14 mths imp.</p> <p>TES 18 mths imp.</p>	<p>Dismissed.</p> <p>At [54] It is sufficient to say that there is no established range for offences of this nature and that the sentence imposed</p>

<p>Delivered 05/09/2014</p>	<p>No previous criminal record of significance.</p> <p>Hardworking; successful farmer.</p> <p>Following breakdown of marriage, led an isolated life.</p> <p>Suffered depression.</p> <p>Habitual user of cannabis.</p> <p>Good character; positive references and support from family.</p> <p>Voluntarily engaged in psychological counselling for almost 12 months prior to sentencing.</p> <p>Thoughts of self-harm following contact with police.</p>	<p>and respondent the victim would visit the respondent.</p> <p><u>Ct 1:</u> Sometime in 2010 the victim stayed with the respondent. During this time the victim confided to the respondent that he was concerned about the presence of hair on his buttocks. The respondent gave the victim some hair removal cream and the victim went to the bathroom to apply it. Despite the victim stating that he did not want assistance, the respondent insisted and applied the cream to the victim's buttocks, anal and genital areas.</p> <p><u>Ct 2-3:</u> Cts 2 and 3 occurred on the same day about a year later when the victim had lived with the respondent. At this time the victim was between 16 and 17 years old. After both consuming alcohol and cannabis the victim fell asleep. Sometime later he woke to find the respondent using a sex toy to masturbate his penis. The respondent then placed the victim's penis in his mouth. The victim got up and left the room.</p> <p>At trial, prosecution led evidence of an uncharged sexual act committed interstate when the victim was 15 yrs old.</p>	<p>EFP.</p> <p>Voluntarily reported the matter to police but only after victim disclosed offences.</p> <p>Made significant admissions; did not fully recall or accept the entirety of what he did.</p> <p>Remorse; genuine concern for victim.</p> <p>Victim had attempted suicide and self-harm.</p> <p>Sentencing judge took uncharged act into account as indicating the existence of a sexual interest.</p> <p>Low risk of re-offending.</p>	<p>on count 3 is not so clearly inconsistent with other sentences as to indicate an error.</p> <p>At [55] Although an offender's personal circumstances in the case of sexual abuse of children do not generally carry as much weight as they might do in other cases, they are not irrelevant. In the respondent's case there were a number of mitigating factors that could, in combination, properly be characterised as unusual.</p>
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