

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
4.	<p><i>NSA v The State of Western Australia</i></p> <p>[2023] WASCA 53</p> <p>Delivered 06/04//2023</p>	<p>49-55 yrs at time offending. 57 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Short and minor criminal history.</p> <p>Good childhood; supportive parents and younger siblings.</p> <p>Victim of sexual abuse aged 10 yrs.</p> <p>Dyslexic; left school yr 10.</p> <p>Regular employment history; worked variety of jobs.</p> <p>Two adult children in addition to S and T; at time of sentencing with current partner four yrs.</p> <p>Reasonable physical health.</p>	<p>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.</p> <p>The victims, S and T, are brother and sister and NSA's children. T has a cognitive impairment.</p> <p>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).</p> <p>When S was 12 yrs old NSA penetrated her vagina with his finger (ct 2).</p> <p>In addition to the conduct the subject of cts 1 and 2 NSA would engage in other inappropriate conduct towards S.</p> <p>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).</p> <p>In custody, NSA used intermediaries to suborn S to not cooperate in the prosecution against him (ct 4).</p>	<p>Ct 1: 5 yrs imp (cum). Ct 2: 1 yr imp (cum). Ct 3: 4 mths imp (cum). Ct 4: 8 mths imp (cum).</p> <p>Ct 2 reduced from 3 yrs imp for totality and Ct 4 reduced from 18 mths imp for totality.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>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.</p> <p>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.</p>	<p>Allowed.</p> <p>Appeal concerned error in law (cum of sentence of ct 2 with ct 1). Individual sentences not challenged.</p> <p>Resentenced (20% discount):</p> <p>Ct 1: 5 yrs imp (cum). Ct 2: 3 yr imp (conc). Ct 3: 4 mths imp (cum). Ct 4: 11 mths imp (cum).</p> <p>Ct 4 reduced from 18 mths for totality.</p> <p>TES 6 yrs 3 mths imp.</p> <p>EFP.</p> <p>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. ...</p> <p>At [75] ... the sexual acts the</p>

				Demonstrated lack of victim empathy and insight into consequences of his behaviour.	<p>subject of ct 1, ... did not include the offending the subject of ct 2.</p> <p>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.</p>
3.	<p><i>LTT v The State of Western Australia</i></p> <p>[2022] WASCA 31</p> <p>Delivered 15/03/2022</p>	<p>69 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No relevant previous criminal history.</p> <p>Born UK; one brother; parents separated when aged 2 yrs; no further contact with his father;</p>	<p>Cts 1; 2; 5; 11 & 15: Sex pen child lineal relative U16 yrs (digital).</p> <p>Cts 3; 4; 7; 9; 13; 16 & 18: Indec deal child lineal relative U16 yrs.</p> <p>Cts 6; 12 & 17: Sex pen child lineal relative U16 yrs.</p> <p>Cts 8 & 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>Cts 1-2; 5; 11 & 15: 2 yrs 6 mths imp (conc).</p> <p>Ct 3: 2 yrs imp (conc).</p> <p>Ct 4: 8 mths imp (conc).</p> <p>Ct 6: 2 yrs 8 mths imp (conc).</p> <p>Ct 7: 2 yrs 3 mths imp (cum).</p> <p>Ct 8: 1 yr imp (conc).</p> <p>Ct 9: 8 mths imp (conc).</p> <p>Cts 12 & 17: 2 yrs 8 mths imp (conc).</p> <p>Ct 13: 2 yrs 3 mths imp</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [42] The appellant's offending was serious ...</p> <p>At [44]-[49] As a young girl ... the victim of the appellant's offending was extremely vulnerable. ... the ...</p>

	<p>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>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</p>	<p>(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</p>	<p>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. ... 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</p>
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			<p>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 his penis (ct 18).</p>	vulnerable victim.	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.
2.	<p><i>NE v The State of Western Australia</i></p> <p>[2021] WASCA 172</p> <p>Delivered 17/09/2021</p>	<p>53 yrs at time sentencing. 26-32 yrs at time offending.</p> <p>Convicted after late PG (20% discount).</p> <p>Minor criminal history.</p> <p>Two siblings; lived with various family members after death of his mother aged 5 yrs; portion of his childhood spent living in children's homes and with foster families; no meaningful relationship with his father since mother's death.</p> <p>Seriously injured motor vehicle accident aged 18 yrs; requires 16-18 hrs care a day; faces serious health issues and future surgical intervention; physical health continuing to</p>	<p>Cts 1-3; 9-10 & 12: Indec deal child U13 yrs.</p> <p>Cts 4-5; 7-8 & 11: Sex pen child U13 yrs.</p> <p>Ct 6: Procured child U13 yrs to do indec act.</p> <p>The cts on the ind representative of an ongoing course of conduct over a period of six yrs.</p> <p>The victim was NE's de facto daughter. The sexual abuse commenced when she was 6 yrs old and continued until she was 11 yrs old.</p> <p>NE is, and was at the time of the offending, a tetraplegic.</p> <p><u>Cts 1 & 2</u></p> <p>When the victim was about 6 yrs old NE asked her to select and watch a pornographic video with him. During the video he got the victim to remove her underwear. He then placed his hand on her vagina.</p>	<p>Cts 1; 3 & 10: 18 mths imp (conc).</p> <p>Ct 2: 3 mths imp (cum).</p> <p>Cts 4; 7; 8 & 12: 3 yrs imp (conc).</p> <p>Ct 5: 3 yrs imp (cum).</p> <p>Cts 6 & 9: 2 yrs imp (conc).</p> <p>Ct 11: 5 yrs imp.</p> <p>TES 8 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending agg by the appellant's repetitive, sustained and persistent conduct; the gross breach of trust and the manipulation and grooming of a young and vulnerable victim and subjecting her to a high level of psychological coercion and, given his medical condition, she had to be an active physical participant in</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [57] The appellant's tetraplegia did not give him a license to engage in a course of very serious child sexual offending without appropriate punishment. ...</p> <p>At [59] ... there are a number of features of the appellant's offending which, even in light of his early PG, would ordinarily make a sentence in excess of 10 yrs appropriate. These include the very young age of the victim, who was only about 6 yrs old when the abuse began, the persistence and nature of the offending, and the devastating effect which the offending had on the victim. The victim was</p>

		<p>deteriorate.</p> <p>Not in a relationship at time sentencing; two sons with victim's mother; primary carer of his children during their childhood.</p> <p>Drug use when young.</p>	<p><u>Cts 3 & 4</u> On another date, when the victim was aged about 7 yrs old, NE asked her to put on a pornographic video depicting a man performing cunnilingus on a woman. He then told the victim to remove her underwear and lay down on a bench. He then positioned his wheelchair alongside the bench and performed cunnilingus on her.</p> <p><u>Ct 5</u> NE was lying in bed when he asked the victim, aged 8 yrs, to sit on his face. The victim complied and he performed cunnilingus on her.</p> <p><u>Ct 6</u> On another occasion, when the victim was 8 yrs old, NE told her to pull out a vibrator and turn it on. On his instructions she placed the vibrator on the outside of her vagina.</p> <p><u>Cts 7 & 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 & 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,</p>	<p>her own abuse; the offending the subject of ct 12 involved another child and the large age disparity between him and the victim.</p> <p>The sentencing judge found prison would be more onerous for the appellant due to his tetraplegia and ongoing deterioration of his physical health; however the seriousness of the offending such that imp the only appropriate sentencing option.</p> <p>Remorseful and accepting of responsibility; insight into his offending; negligible risk of reoffending.</p> <p>Continuing devastating impact on victim.</p>	<p>also in a particularly vulnerable position, even after the appellant and the victim's mother separated. ... In our view, the agg features of the offending which the sentencing judge identified placed the offending in this case at the higher end of the range of seriousness of sexual offending against a single child complainant.</p> <p>At [60] ... We are not persuaded that the sentencing judge erred in balancing the mitigating and agg factors in this case. To the contrary, in our view, the TES ... imposed properly reflected the overall criminality involved in all of the appellant's offences viewed in their entirety, having regard to all of the circumstances of the case including those personal to the appellant. ...</p>
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			<p>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.	<i>The State of Western Australia v AHD</i>	<p>45-47 yrs time offending. 49 yrs at time sentencing. Convicted after PG (25%</p>	<p>Cts 1 & 2: Indec dealings with de facto child U16 yrs. Ct 4: Sex pen of de facto child U16 yrs (penile/vaginal pen).</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</p>	<p>Allowed. Appeal concerned length of sentences cts 4, 5, 6 & 7 and</p>

<p>[2021] WASCA 13</p> <p>Delivered 29/01/2021</p>	<p>discount ct 7; 20% discount cts 4-6 and 15% discount cts 1-2).</p> <p>PG accepted in full discharge of the ind.</p> <p>Prior criminal history; no previous convictions for sex offending.</p> <p>Mostly stable childhood; some alcohol and violence between his parents.</p> <p>No formal qualifications.</p> <p>Consistent work history.</p> <p>Occasional use of methyl.</p> <p>Suffers diabetes and depression.</p>	<p>Cts 5 & 7: Sex pen of de facto child U16 yrs (penile/anal pen). Ct 6: Sex pen of de facto child U16 yrs (penile/oral pen).</p> <p><u>Breach</u> 1 x Breach of CBO.</p> <p>The victim was ADH's de facto daughter, she was aged between 6-7 at the time of the offending the subject of cts 1, 2, 4, 5 and 6 and aged 8 when ct 7 was committed.</p> <p>The cts on the ind were a representative of an ongoing course of conduct over a period of two and a half yrs.</p> <p>AHD sexually abused the victim in the family home.</p> <p>The victim complained to her mother about the offending the subject of cts 1 and 2. However her mother believed ADH's denials.</p> <p>When the victim complained to her grandmother ADH was charged with the offences the subject of cts 1 and 2. He was released to bail, subject to protective bail conditions. However, he returned to live with the victim at the family home. His offending against the victim escalated and cts 4, 5 and 6 were committed while he was on bail and subject to the protective</p>	<p>(conc). Ct 6: 3 yrs imp (conc). Ct 7: 4 yrs 6 mths imp (cum).</p> <p><u>Breach</u> 3 mths imp (conc).</p> <p>TES 9 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the victim vulnerable; she was subject to the respondent's power and authority and his offending constituted a gross breach of trust; when the victim complained to her mother and her mother believed the respondent's denials this increased the victim's vulnerability, as he knew that her mother would provide no assistance to the victim.</p> <p>The sentencing judge found the respondent most likely motivated by sexual gratification; the victim was young and she became so accustomed to the abuse she became compliant; the sex abuse the subject of cts 4, 5, 6 and 7 was premediated and</p>	<p>totality principle.</p> <p>Ct 1: 9 mths imp (conc). Ct 2: 9 mths imp (conc). Ct 4: 6 yrs imp (cum) Ct 5: 6 yrs imp (cum) Ct 6: 5 yrs 6 mths imp (conc). Ct 7: 7 yrs imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>At [53]-[76] Discussion of comparable cases.</p> <p>At [78] The respondent's offending in relation to ct 7 was extremely serious. The offending was not isolated. The sexual abuse against the complainant was ongoing. It is true that the respondent did not use force or threats in relation to this ct. However, force or threats were unnecessary having regard to the age of the complainant and the respondent having normalised the sexual abuse because of its regularity and frequency. The respondent was the complainant's step-father and therefore was in a position of authority and</p>
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			<p>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 transmitted to the victim. As a result the victim suffered severe pelvic inflammatory disease and peritonitis. She required hospitalisation and surgery.</p> <p><u>Breach of CBO</u> ADH punched his partner in the head and struck her with a mop handle. He was convicted in the Magistrate Court of common assault and placed on a CBO.</p>	<p>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>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 premeditated 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</p>
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					<p>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>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					