

Historical Child Sex Offences

Repealed *Criminal Code* provisions

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
CEM	Child exploitation material
conc	concurrent
cum	cumulative
ct	count
CRO	conditional release order
EFP	eligible for parole
imp	imprisonment
indec	indecent
ISO	intensive supervision order
PG	plead guilty
sex pen	sexual penetration without consent
susp	suspended
SOTP	sex offender treatment program
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
5.	<p><i>The State of Western Australia v BNY</i></p> <p>[2023] WASCA 84</p> <p>Delivered 24/05/2023</p>	<p>47-48 yrs at time offending. 86 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p> <p>Marriage ended in about 1984 after offending against victim's sisters was discovered; later relationship ended 2003.</p> <p>Good work history.</p> <p>Alcohol 'problematically' from time to time.</p> <p>Suffers angina; triple bypass surgery recommended; requires treatment for skin cancers.</p>	<p>Cts 1 & 5: Unlawful indec deal child U14 yrs. Ct 6: Unlawful carnal knowledge girl U13 yrs.</p> <p>The victim, aged 5 or 6 yrs, was one of BNY's three step-granddaughters who would occasionally stay at his home.</p> <p>On one occasion BNY went into the room where the victim was sleeping. He reached under the blankets, pulled her underwear aside and touched and then 'played with' her vagina (ct 1). BNY told the victim he loved her and to keep it a secret.</p> <p>On another occasion, when the victim was in his bed, BNY put his penis in her mouth. He held her head and moved it up and down until he ejaculated (ct 5). The victim vomited.</p> <p>On another occasion the victim was staying at BNY's home and playing with makeup. She asked BNY if she looked pretty, and he picked her up and placed her on the dining room table. He then sexually penetrated her. The victim felt pain and began to cry and there was some vaginal bleeding.</p>	<p>Ct 1: 2 yrs imp (conc). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 3 yrs imp (conc).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>Respondent convicted and sentenced in 1994 to a TES of 5 yrs imp for unlawful and indec dealings with a girl U13 yrs and unlawful and indec dealings with a girl U14 yrs, committed against the victim's sisters, KR and KE.</p> <p>The trial judge found the delay of about 30 yrs since the respondent was sentenced for the offending against KR and KE should be taken into account because of the combination of the respondent's age and the delay; 'appropriate adjustments to the terms of imp' should be made and a sentence of at least 5 yrs additional would have been imposed.</p> <p>The trial judge found offending occurred when the victim was very vulnerable because of her young age; she was in the respondent's care; he was in a position of trust and he used that</p>	<p>Allowed - on grounds concerning manifest inadequacy and totality.</p> <p>Resentenced:</p> <p>Ct 1: 2 yrs imp (conc). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 5 yrs 6 mths imp (conc).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [85] We are persuaded that her Honour used the word 'delay', in the course of reducing the sentences she would otherwise have imposed for cts 5 and 6 ... Her Honour did not make the basic error of treating 'mere delay' as, in and of itself, mitigatory.</p> <p>At [95] The facts and circumstances of the respondent's offending on ct 6 were egregious. ... the respondent was aged 47 or 48 and the complainant was aged 5 or 6. The respondent penetrated the complainant's vagina with his penis. ... The penetration caused the complainant physical</p>

			<p>Later that same day the victim had a bath at home. She cried, as her vagina was still stinging and was red and swollen. She told her mother it was because it hurt.</p> <p>The victim reported the offending in 1995. However, it was not until 2019 that she was able to speak 'properly' to the police.</p>	<p>position to facilitate the offending; he told her what he had done to her was 'a secret' and that 'it was because he loved her'.</p> <p>Offending profound effect on the victim; harrowing VIS; altered the course of her life; struggled with severe mental illness and never held employment.</p> <p>Respondent continued to maintain his innocence; completion of SOTP; unlikely to reoffend.</p>	<p>pain. ... The complainant was distressed and wept. The respondent sought to induce the complainant's silence by telling her that what he had done to her was 'a secret' and that 'it was because [he] loved her'. Those comments would, no doubt, have caused [her] emotional conflict. At the material time, the respondent was entrusted with the complainant's care. He abused that trust by exploiting [her] for his own sexual gratification and without regard for her welfare.</p> <p>At [100] In our opinion, the individual sentence imposed on the respondent for ct 6 was not commensurate with the seriousness of the offence. ... the length of the sentence was unreasonable or plainly unjust. ...</p> <p>At [117] In our opinion, the TES of 3 yrs immediate imp imposed ... resulted in an overall TES that did not bear a proper relationship to the overall criminality involved in all of the respondent's offences against the complainant, KR and KE, having regard to all relevant</p>
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					<p>facts and circumstances and all relevant sentencing factors.</p> <p>At [119] The facts and circumstances of the respondent's offending on ct 5 were a very serious instance of offending against s 183 (repealed) of the Code. The facts and circumstances of the respondent's offending on ct 1 were serious.</p> <p>At [121] Each of the offences alleged in cts 1, 5 and 6 occurred on a separate date. Significant weight had to be given to the importance of properly marking the respondent's offending against the complainant on three separate occasions. The objective facts and circumstances of the respondent's offending against the complainant, viewed as a whole, were extremely serious.</p> <p>At [124] ... The overall TES was substantially less than the overall TES that was open to the trial judge on a proper exercise of the sentencing discretion.</p> <p>At [125] Unfortunately, from the</p>
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					respondent's perspective, the extremely serious nature of his overall offending, considered as a whole, and the necessity for denunciation of his criminal conduct and the demands of general deterrence, significantly reduced the extent to which humanitarian considerations could be accommodated in the overall sentencing disposition. Notwithstanding that it is possible that the respondent may die in custody or that upon release he may not have any prospect of a useful life, the overall TES for the offending against the complainant, KR and KE was unreasonable or plainly unjust.
4.	<p><i>SMO v The State of Western Australia</i></p> <p>[2022] WASCA 70</p> <p>Delivered 23/06/2022</p>	<p>75 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born UK; emigrated to Australia aged 21 yrs.</p> <p>Qualified chef; good employment history; now retired.</p> <p>Married to N's aunt until 2004; one child and two grandchildren</p>	<p>Cts 1-5: Unlawful indec deal girl U13 yrs.</p> <p>Ct 6: Unlawful carnal knowledge girl U3 yrs.</p> <p>The victim, N, was aged 11 or 12 yrs of age. SMO was her uncle.</p> <p>All of the offences were committed when SMO was visiting N's family home.</p> <p><u>Cts 1 and 2</u> SMO approached N, who was standing by herself. He put his hand</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 15 mths imp (conc). Ct 3: 18 mths imp (cum). Ct 4: 13 mths imp (conc). Ct 5: 16 mths imp (conc). Ct 6: 5 yrs imp (cum).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending was repeated and involved a degree of persistence; was a gross abuse of trust, by</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [43] The appellant's overall offending was plainly serious. [He] was a trusted figure in N's life. The offending involved a gross abuse of that trust. The offending was not isolated but occurred in three separate incidents over a period of approx one yr. ... The offending occurred in N's own</p>

		<p>from relationship; now lives alone.</p> <p>Poor physical health.</p>	<p>on her breast and fondled it beneath her top. He then touched her vagina, first over her underwear and then beneath it.</p> <p><u>Ct 3</u> About one month later, SMO rubbed the inside of N's vagina over her underpants.</p> <p><u>Cts 4-6</u> N had celebrated her 12th birthday. In the evening SMO entered her bedroom and touched her breasts under her top for a short period. He then took his penis out of his pants and made her touch it. N withdrew her hand.</p> <p>SMO then sat on N's bed and pulled her towards him. He made N sit on his erect penis and penetrated her vagina. This caused her pain so he pushed her off. As he left the room SMO told N, 'This is just between you and I'.</p> <p>All of this offending occurred over a few minutes.</p> <p>A short time later SMO and his wife left N's house. N's mother heard her crying and found her in a state of extreme distress, sobbing, crying and vomiting.</p>	<p>virtue of being her uncle and the offending occurring in N's family home, when family were nearby and she was in an environment in which she was entitled to feel safe.</p> <p>The trial judge accepted the appellant's relatively advanced age and poor general health meant imp would be more onerous.</p> <p>Victim's mental and physical health severely impacted; receiving psychological and psychiatric help some 40 yrs after the offending.</p>	<p>home with family members nearby. ... He sought to secure N's silence in respect of cts 4 to 6 by telling her 'this is just between you and I'. ...</p> <p>At [44] A significant agg feature of this case is the adverse impact that the offending has had on the victim. ...</p> <p>At [48] ... In our opinion, having regard to the two separate and earlier incidents of sexual offending which were the subject of cts 1 to 3, some accumulation of the sentences imposed ... for those offences was appropriate. The offending the subject of ct 3 was serious offending involving as it did the touching of N's vagina ... In doing so, the appellant took advantage of her obvious vulnerability. Separate and additional punishment over and above the sentence the subject of ct 6 was well justified. ... In our opinion, the TES bears a proper relationship to the overall criminality involved in all of the offences viewed in their entirety and having regard to all relevant facts and circumstances ... (including, most importantly, his</p>
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					age and ill health) ...
3.	<p><i>JYL v The State of Western Australia</i></p> <p>[2021] WASCA 222</p> <p>Delivered 30/12/2021</p>	<p>25-31 yrs and 37-43 yrs at time offending. 73 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>One of eight children to parents' union.</p> <p>No medical conditions that could not be adequately dealt with in prison.</p>	<p>Cts 1-3; 6-13: Indec deal child U14 yrs. Cts 4-5: Incest. Ct 14: Agg indec assault.</p> <p>Over a number of yrs JYL perpetrated a serious and prolonged course of intra-familial sexual offending against two victims.</p> <p>The first victim, ER, was aged 10-15 yrs. She was JYL's sister and 15 yrs younger than. JYL. The second victim, MM, was aged 8-14 yrs and JYL's natural daughter.</p> <p>The offending against ER was separated in time from the offending against MM.</p> <p>All cts are a representative of a prolonged course of abuse in each case.</p> <p><u>Cts 1-5</u> During the school holidays ER would live with JYL and his wife. Shortly after she began staying at the home JYL began sexually abusing her. The abuse escalated in seriousness over time and as she developed through puberty, ending only when she fell pregnant to JYL.</p>	<p>Cts 1 & 3: 12 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 4: 5 yrs imp (cum). Ct 5: 5 yrs imp (conc). Ct 6: 18 mths imp (conc). Cts 7-8: 2 yrs imp (cum). Cts 9 & 11: 2 yrs imp (conc). Ct 10: 3 yrs imp (cum). Ct 12-13: 3 yrs imp (conc). Ct 14. 2 yrs 6 mths imp (conc).</p> <p>TES 14 yrs imp.</p> <p>The trial judge found the significant features of the appellant's offender were the young age of the victims and the fact that one was his natural daughter; the long periods of time over which the offending took place; he groomed the victims and engaged in increasingly more serious offences over time; he was in a position of trust and abused that trust; the offending were not isolated instances; were separated by yrs and showed that his actions cannot be said to have been an aberration or out of character, rather an expression of a disordered sexual interest in young female family members in which he indulged himself 'purposefully, persistently and</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [146] Some accumulation in the individual sentences imposed was necessary to reflect not only the different types of offending against each complainant but also to reflect that there were two complainants who had been subjected to offending conduct over different and comparatively lengthy periods of time.</p> <p>At [148] ... The fact that ER became pregnant is a significant agg feature of the appellant's offending against her.</p> <p>At [150] ... the appellant's offending involved a high level of criminality, particularly when regard is had to ER's pregnancy.</p> <p>At [159] ... The appellant groomed the complainants and engaged in offending of an increasingly serious nature. ... In the case of ER, the offending ... only ceased after ER became pregnant. ER was required to</p>

			<p>Cts 6-14 MM lived in the family home when her father, JYL, began to sexually abuse her. The first offence occurred when JYL made her put her hand on his erect penis and move it up and down. After this, he made MM engage in this type of conduct several times a month.</p> <p>When MM was about 9 yrs old JYL commenced making her perform fellatio on him. This conduct occurred several times a month, sometimes in conjunction with the masturbatory conduct.</p> <p>From the time MM was 9 or 10 yrs old JYL was performing cunnilingus on MM several times a month.</p> <p>By the time MM was aged 10 yrs old JYL att digital and penile/vaginal penetration on a number of occasions.</p>	<p>remorselessly for yrs' for his own sexual gratification.</p> <p>Significant and profound negative effects on the victims; suffered rejection by their families.</p>	<p>have a termination procedure as a 16-yr-old girl and has suffered ongoing significant psychological effects as a result of the offending. In the case of MM, the offending involved representative cts of fellatio and cunnilingus, as well as att digital and penile penetration. ... Like ER, MM suffered ongoing psychological trauma as a result of the offending. ... The appellant took advantage of [their] vulnerabilities and offended against them in a gross breach of trust reposed in him. ...</p>
2.	<p><i>NE v The State of Western Australia</i></p> <p>[2021] WASCA 172</p> <p>Delivered 17/09/2021</p>	<p>26-32 yrs at time offending. 53 yrs at time sentencing.</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</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>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>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</p>

	<p>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 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>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> 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><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>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 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>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 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</p>
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			<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, 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</p>		viewed in their entirety, having regard to all of the circumstances of the case including those personal to the appellant. ...
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			<p>the victim was 11 yrs old NE asked the victim to remove the condom. He then asked her to sit on his penis and put it into her vagina as far as she could without it hurting. The victim complied.</p> <p><u>Ct 12</u> The victim was 11 yrs old when she and a friend went to NE's house. The victim's friend was asked and encouraged to change NE's condom while the victim instructed her how to do it. In order to remove the condom NE's penis needed to be erect, so the victim told her friend how to do that. They both then played with his penis until it became erect.</p>		
1.	<p><i>DRH v The State of Western Australia</i></p> <p>[2021] WASCA 97</p> <p>Delivered 02/06/2021</p>	<p>35-37 yrs at time offending. 58 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior relevant criminal history.</p> <p>Single.</p> <p>Partner in a cleaning business at time of sentencing.</p> <p>Character references describe the appellant as a kind, caring and supporting person.</p>	<p>Ct 5: Encourage child 13-16 yrs to engage in sexual behaviour.</p> <p>The victim, BM, was aged 13-14 yrs.</p> <p>In 1996 DRH was BM's grade 7 primary school teacher. At the beginning of 1997 BM entered secondary school and around this time he began meeting with DRH. BM would regularly visit DRH at his home and he would also occasionally spend the night. DRH would sometimes speak to BM about nudity and other matters and give him cigarettes and alcohol.</p>	<p>3 yrs imp.</p> <p>EFP.</p> <p>The trial judge was satisfied beyond reasonable doubt that the offending the subject of ct 5 was not an isolated occasion.</p> <p>The trial judge found the offending serious; there was an age difference of 22 yr between the appellant and BM; BM was vulnerable as a result of his personal circumstance; BM trusted the appellant, which trust</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and finding offence charged on ct 5 not an isolated incident.</p> <p>At [90] In our opinion, the trial judge's finding that the appellant had engaged in acts of a sexual nature with BM before the appellant committed ct 5 was not inconsistent with the jury's verdicts of not guilty on cts 1, 2 and 7 or with the directed acquittals on cts 3, 4 and 6. ...</p>

		In good health time of sentencing.	<p>At the time of the offending BM was staying at DRH's house because he had been kicked out of home. They both drank alcohol and were naked. DRH was on all fours and bent over a bed when BM tried to anally penetrate him with his penis, however he could not achieve penetration.</p> <p>Afterwards BM felt disgusted at himself.</p> <p>In 2017 BM contacted the police and reported the offending.</p>	<p>arose originally out of the appellant having been his teacher before the sexual activity commenced; he groomed BM resulting in BM having become accepting of the sexual acts between them and he permitted BM to drink and smoke cannabis so that he would be more accommodating.</p> <p>Detrimental and enduring impact on victim.</p> <p>No evidence of remorse or steps taken towards rehabilitation.</p>	<p>At [99] In our opinion, the appellant's offending on ct 5 was serious. ... The offending was not isolated or an aberration. ... The offending was preceded by the grooming of BM. At all material times BM was, to the appellant's knowledge, vulnerable. The offending involved predatory behaviour by the appellant. He did not evince any remorse.</p>
<i>Transitional provisions repealed – 14/01/2009</i>					
<i>Transitional provisions enacted – 31/08/2003</i>					