

Acts or omissions causing bodily harm or danger

s 304 Criminal Code

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
AOBH	assault occasioning bodily harm
conc	concurrent
cum	cumulative
ct	count
dep lib	deprivation of liberty
EFP	eligible for parole
GBH	grievous bodily harm
imp	imprisonment
methyl	methamphetamine
PCJ	pervert the course of justice
PG	plead guilty
poss	possession
susp	suspended
SW	search warrant
TES	total effective sentence
wiss	with intent to sell or supply

s 304(1) Acts/omissions (max penalty 7 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
<p style="text-align: center;">Transitional provisions repealed (14/01/2009)</p> <p>Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in <i>Yates v The State of Western Australia</i> [2008] WASCA 144 overruling the majority decision in <i>The State of Western Australia v Wallam</i> [2008] WASCA 117 on that point.</p>					

s 304(2) Acts/omissions with intent (max penalty 20 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>Gomboc v The State of Western Australia</i></p> <p>[2023] WASCA 115</p> <p>Delivered 24/07/2023</p>	<p>31-34 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after late PG (cts 2, 4, 6, 8, 10, 11, 12, 13, 15, 19, 22, 23, 26 & 32) (18% discount).</p> <p>Convicted after very late PG (cts 5, 7, 9, 28 & 29) (8% discount).</p> <p>Limited criminal history; previous conviction for common assault involving then fiancé.</p> <p>Only child; good upbringing; family remain supportive.</p>	<p>Cts 2 & 11: Agg AOBH. Cts 4; 10; 12-13; 15; 19; 22: Threat to harm. Ct 5: Act with intent to harm. Cts 6; 9; 23; 28-29 & 32: Threat to kill. Ct 7: Agg unlawful wounding. Ct 8: Wilful and unlawful damage. Ct 26: Armed to cause fear.</p> <p>Gomboc was in a relationship with the victim, which lasted for a number of yrs. They had purchased a house together.</p> <p>During the course of their relationship, Gomboc subjected the victim to regular physical and verbal abuse. He punched and kicked her, strangled her, negligently wounded her with a knife, smothered her with a pillow, threw objects at her, and repeatedly threatened to kill her, and was often armed when he did so.</p>	<p>Ct 2: 10 mths imp (cum). Cts 4; 7 & 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp. Cts 6; 9; 23 & 28: 3 yrs imp (conc). Cts 8 & 12: 10 mths imp (conc). Cts 10 & 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Ct 19 & 22: 16 mths imp (conc). Ct 26: 18 mths imp (conc). Ct 29: 3 yrs 6 mths imp (cum). Ct 32: 3 yrs imp (cum). TES 11 yrs 10 mths imp. EFP.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence. Individual sentences not challenged.</p> <p>Resentenced:</p> <p>Cts 2; 6; 9; 23; 28 & 32: 3 yrs imp (conc). Cts 4; 7 & 13: 12 mths imp (conc). Ct 5: 4 yrs 6 mths imp (cum). Cts 8 & 12: 10 mths imp (conc). Cts 10 & 15: 14 mths imp (conc). Ct 11: 2 yrs 2 mths imp (conc). Cts 19 & 22: 16 mths imp</p>

	<p>Completed yr 12; experienced verbal abuse and bullying at school.</p> <p>Good work history; 7 yrs of army service; qualified scaffolder.</p> <p>Relationship with victim ended 2018; new romantic relationship commenced 2021; partner remains supportive.</p> <p>Good physical health; significant history of mental health problems; PTSD arising during time in military service.</p> <p>Heavy alcohol and cannabis use.</p>	<p>In addition to having taken photographs of several of her injuries, the victim regularly made audio recordings of the offending.</p> <p>The victim was left with severe anxiety and post-traumatic stress disorder, suffered physically, mentally, emotionally and financially</p>	<p>The sentencing judge found there were a number of serious features of the appellant's offending as a whole; it persisted for three and a half years; there were 19 separate and distinct offences over that period of time and he had time to reflect on his conduct and choose not to do it again, but did not; he deployed a number of methods and weapons to clearly communicate to the victim that he could end her life at his hands and very quickly, so as to make her fearful of him; the appellant was physically stronger than the victim, who was vulnerable to his physical violence; the offending was in the context of a domestic relationship; the threats to kill or harm were often accompanied by the presence of weapons and physical violence, which no doubt elevating the fear of harm or death the victim experienced, and the fact that his offending routinely incorporated statements</p>	<p>(conc). Ct 26: 18 mths imp (cum). Ct 29: 3 yrs 6 mths imp (cum).</p> <p>TES 9 yrs 6 mths imp. EFP.</p> <p>At [9] ... it is clear that it was necessary that the appellant be sentenced to a very significant TES. The appellant's offending was abhorrent and sickening. Notwithstanding [his] pleas of guilty, his mental health issues and the otherwise high regard in which he was held by others, the persistent, callous and menacing nature of his offending required a long term of imp. The threatened and actual violence used by the appellant must be denounced by the courts in the strongest possible terms. ...</p> <p>At [194] ... Her Honour rightly recognised that the totality of the appellant's offending was extremely serious and called for a very substantial term of imp. It</p>
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				<p>designed to degrade and humiliate the victim.</p> <p>The sentencing judge found the submissions made by the appellant's counsel served to minimise the responsibility for his offending and shifted the responsibility onto the victim; his physical and verbal abuse in a domestic setting was 'very entrenched behaviour' and he remained at risk of reoffending unless he addressed his attitude and behaviour.</p> <p>Offending profound impact on the victim; continues to require daily medication and ongoing therapy.</p> <p>Limited demonstrated remorse.</p>	<p>was necessary that a TES be imposed for the appellant's abhorrent and sickening offending that properly punished him and denounced offending like it in the strongest possible terms. ...</p> <p>At [198] ... we cannot avoid the conclusion that the TES imposed on the appellant did not bear a proper relationship to the overall criminality involved in all of the offences.</p> <p>At [220] In our view, this is truly one of those cases when the metaphor of taking one 'last look at the total, just to see whether it looks wrong' is apt. And when we take a last look at the sentence of almost 12 yrs, in light of the appellant's PGs and such potential for rehabilitation as he has, the sentence looks wrong.</p> <p>At [223] ... Nevertheless, as we have set out at length above, the persistent, callous and menacing nature of his offending required a long</p>
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					term of imp. Offending of this kind must be denounced by severe penalties.
6.	<p><i>Meadowcroft v The State of Western Australia</i></p> <p>[2023] WASCA 98</p> <p>Delivered 21/06/2023</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after trial (ct 1). Convicted after PG (cts 3 and 4).</p> <p>No prior criminal history; prior traffic convictions for alcohol-related driving offences; no offending for more than thirty yrs.</p> <p>Death of father mths preceding trial; carer for his mother, now in a nursing home; suffered financially, including loss of his home, due to providing assistance to his parents.</p> <p>Father of three; close family.</p> <p>Good work history; qualified painter; employed as a trainer for 7 yrs in a correctional services facility.</p>	<p>Ct 1: Act with intent to harm.</p> <p>Ct 3: Driver failing to stop after incident occasioning GBH.</p> <p>Ct 4: Driver failing to report incident occasioning GBH.</p> <p>The victim was cycling home and crossing a roundabout when Meadowcroft, driving a four-wheel drive utility vehicle equipped with a bull bar, came from the victim's left at speed.</p> <p>The victim was half-way across the road when he stopped on seeing Meadowcroft's vehicle approaching. Annoyed, that he was forced to ride around the front of Meadowcroft's vehicle, the victim made multiple obscene finger gestures at Meadowcroft.</p> <p>After passing the victim Meadowcroft did a U-turn. He then crossed to the incorrect side of the road, mounted the kerb and into the path of the victim. His vehicle struck the victim and his bike, causing the victim to fly through the air and into a fence.</p> <p>After the impact Meadowcroft drove from the scene. At no stage did he stop or report the incident to police.</p> <p>The victim suffered very significant injuries, including to his spine resulting in him being a tetraplegic and confined to a wheelchair.</p>	<p>Ct 1: 8 yrs imp.</p> <p>Ct 3: 2 yrs imp (conc).</p> <p>Ct 4: 1 yr imp (conc).</p> <p>Sentence for ct 1 to commence 6 mths after commencement of other sentences.</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge was satisfied beyond reasonable doubt that the appellant had an intention to endanger the life of the victim; this intention, combined with the act of driving 'speaks to the singular serious example of this particular offence'.</p> <p>The trial judge did not accept the appellant was only travelling at a little over 20 km per hr; he did not reduce his acceleration, nor did he apply his brakes before the collision; the appellant crossed to the</p>	<p>Dismissed (leave refused – error in finding).</p> <p>Appeal concerned length of sentence and error in finding (appellant had a subjective intent to endanger the life of the victim).</p> <p>At [110] ... his Honour's findings regarding the intent of the appellant were plainly open. ... His Honour found that the appellant intended to drive close to [the victim] and, even if he did not intend to hit him, he did intend to drive in a manner that endangered the life of [the victim]. Having regard to the fact that the driving involved crossing the road, mounting the kerb, driving across the gravel verge and towards a cyclist on the footpath, that conclusion was, with respect, irresistible.</p> <p>At [116] His Honour was satisfied beyond reasonable doubt that the appellant</p>

				<p>incorrect side of the road, mounted the concrete kerb and continued to drive on the verge for a distance of 12 metres before making contact with the victim and his bicycle on the footpath.</p> <p>Injuries significant impact on victim's life; spent extended period in hospital engaged in rehabilitation; suffered PTSD and depression; unable to work since the collision.</p> <p>Time in custody likely to be more arduous as a result of previous employment with Department of Corrections.</p> <p>Demonstrated remorse; unlikely to reoffend; good prospects of rehabilitation.</p>	<p>intended to endanger the life of [the victim]. ... The risk of death was significant and aggravates the offending.</p> <p>At [117] ... the injuries inflicted amount to a very serious example of GBH, let alone bodily harm ... It is accurate to describe [the victim's] injuries as catastrophic.</p> <p>At [118] ... the potential for [the victim] to have been killed is readily apparent from the appellant's manner of driving a turbo-charged vehicle equipped with a bull bar at a cyclist. This significantly increases the seriousness of the appellant's offending.</p> <p>At [126] There is no doubt that the sentence of 8 yrs imp imposed on ct 1 was a severe one. However, having regard to the circumstances of the offence and the catastrophic consequences for the victim that sentence was appropriate. ...</p> <p>At [127] This was an</p>
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					offence involving a deliberate act intended to harm the victim. That places it into a more serious category than driving offences involving mere negligence. ...
5.	<p><i>Cheeseman v The State of Western Australia</i></p> <p>[2023] WASCA 78</p> <p>Delivered 19/05/2023</p>	<p>35 yrs at time offending. 36 yrs at time sentencing.</p> <p>Significant criminal history.</p> <p>Convicted after early PG (25% discount).</p> <p>Eldest of two children; mother gambling problem, falsely attributed the families financial issues on appellant; distressed and harbouring anger and resentment left home aged 15 yrs; no contact with his parents until aged 21 yrs; since reconnected.</p> <p>Experience extreme anger and distress in early 20s on learning sister a victim of sexual abuse; became her main source of emotional and physical support.</p> <p>Completed yr 10; commenced working;</p>	<p><u>Indictment</u> Cts 1-3: Act with intent to harm. Ct 4: Poss firearm without a licence. Cts 5, 7 & 8: Poss ammunition without a licence. Ct 6: Poss firearm reasonably suspected to be stolen.</p> <p><u>Section 32 Notice</u> Chs 1-2: Carried a controlled weapon. Ch 3: Poss of items intended to be used as a disguise with intent to commit an offence. Chs 4-5: Driving while MDL suspended.</p> <p><u>Indictment</u> Ct 1 Cheeseman drove into a carpark. An unknown male passenger and a firearm were in the vehicle. After parking the vehicle Cheeseman approached the victim, seated in the driver's seat of his car. Cheeseman did not know the victim. They had a brief conversation, during which Cheeseman asked for and was given a cigarette by the victim.</p> <p>Cheeseman returned to his vehicle and after about 15 minutes reparked next to the victim's vehicle. He asked the victim whether he had</p>	<p>Ct 1: 3 yrs 6 mths imp (cum ct 2). Ct 2: 4 yrs 6 mths imp. Ct 3: 4 yrs 6 mths imp (conc). Ct 4: 6 mths imp (conc ct 6; cum ct 2). Ct 5: 3 mths imp (conc cts 7 and 8; cum ct 2). Ct 6: 6 mths imp (conc ct 4; cum ct 2). Ct 7: 3 mths imp (conc cts 5 and 8; cum ct 2). Ct 8: 3 mths imp (conc cts 5 and 7; cum ct 2).</p> <p>TES 7 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the three victims were strangers to the appellant, all of whom were innocent and going about their own business, thus the offending was entirely unprovoked and gratuitous; the victims</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; errors in sentencing (appellant fired the shots) and fact (appellant not truly remorseful) and totality principle.</p> <p>At [62] In our view, the sentencing remarks cannot reasonably be understood as meaning that the appellant was sentenced on the basis that he had an equal degree of criminality to that of the person who fired the shots. ...</p> <p>At [69] When the sentencing remarks are considered as a whole, it is clear that her Honour sentenced the appellant on the basis that it was the unknown shooter, who was the passenger in the appellant's car, and not the appellant who fired the</p>

	<p>employed various roles; completed trade pre-apprenticeship; limited employment history since aged 28 yrs due to imprisonment and substance abuse.</p> <p>Previously a member of an OMC.</p> <p>Three significant relationships; two children from first union; seriously violent to her; subsequently convicted and imp; no longer has contact with his children. Second relationship marred by drug use; in a relationship at time of sentencing; partner remains supportive.</p> <p>Commenced methyl use aged 18 yrs; alcohol use early 20s; under the influence of substances, including methyl, at time of offending.</p> <p>Suffered periods of depression, anxiety and trauma symptoms; prescribed antidepressant medication 6 yrs.;</p>	<p>any drugs, before accusing him of being a police officer. After briefly moving his vehicle he again parked next to the victim's vehicle. Cheeseman again questioned the victim about being a police officer. Following this short exchange Cheeseman reversed his vehicle and drove towards the car park exit. As he did so the male passenger produced the firearm and fired one round at the victim's car. The bullet struck the rear windscreen, travelled through the vehicle and struck the rear-vision mirror, coming to rest on the vehicle's dashboard. When, in an effort to escape, the victim drove out of the car park Cheeseman followed him, before overtaking the victim's vehicle and driving away.</p> <p>Cts 2 and 3 On the same day Cheeseman drove his vehicle with the same unknown male passenger in the backseat. He pulled alongside a vehicle being driven by the victim of ct 2 and the victim of ct 3 seated in the passenger seat. Cheeseman's passenger then pointed the firearm through the driver's-side window in the direction of the two victims. He fired a single round from the firearm at the two victims, striking the rear of their vehicle. Cheeseman then accelerated away.</p> <p>Cts 4-8 At the time of the offending the subject of cts 1-3 Cheeseman was subject to two MDL revocations and was suspended from driving.</p>	<p>were vulnerable and could do nothing to protect themselves from the gunshots; the impact of the offending on the victims was likely to be grave; the firearm involved in the offending was stolen and, thus, was a firearm he should never had had and he was subject to a MDL susp at the time the offences were committed and, therefore, should not have been driving.</p> <p>The sentencing judge concluded that the appellant and another or others willingly engaged in random acts of life-endangering violence, which included having a firearm discharge at truly innocent victims.</p> <p>The sentencing judge observed that while committing the offences in company was not an agg factor, without a co-offender, the offences could not have been committed in the time, place and manner that they were.</p>	<p>shots. The appellant was, as he acknowledged by his PG, criminally liable for the acts of the unknown shooter. ...</p> <p>At [75]-[76] In our view, the appellant's lack of acknowledgement of an insight into the impact of his offending on the victims weighed decisively against remorse as a mitigating factor. ... Had the appellant identified the unknown shooter to the police, that would, no doubt, have been a significant mitigating factor. ...</p> <p>At [86] As the sentencing judge observed, it was nothing more than good luck that the potential for serious harm was not realised. In relation to ct 1, the bullet entered the cab of the victim's vehicle and went perilously close to hitting him; it hit the driver's side of the rear view mirror in close proximity to the victim's head. On cts 2 and 3, while the bullet hit the tray of the victim's vehicle, given the speed of travel of</p>
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		<p>otherwise in reasonably good health.</p>	<p>Cheeseman was arrested the following day and a search of his vehicle located a modified bolt action rifle, which had been stolen during a burglary. He knew this to be the case. Also located in his vehicle was a full box of .22 calibre ammunition and a jar containing loose .22 calibre cartridges, a pouch containing three rounds and one round within the rifle.</p> <p>A backpack containing two throwing knives, a butterfly knife, two bandannas and four face marks were also located in his vehicle.</p> <p>During a search of Cheeseman's home two shotgun shells and one 9mm cartridge were also located.</p>	<p>In the course of dealing with totality, the sentencing judge found cts 2 and 3 more serious than ct 1, as they were the second occasion he had deliberately and consciously decided to go and randomly shoot at innocent victims.</p> <p>Showed very little victim empathy; failed to provide the identity of the male shooter to police; high risk of re-offending.</p>	<p>the vehicle, the bullet could very easily have gone into the cab of the vehicle's vehicle and, in any event, a driver's reaction to the firing of a gun is inherently unpredictable.</p> <p>At [87] ... the separation in time and place between the commission of ct 1 and the commission of cts 2 and 3 reinforced the appellant's overall culpability. ... it was both appropriate and necessary to impose some accumulation between the sentences for ct 1 and the sentences for cts 2 and 3, to ensure that the sentence properly reflected the appellant's overall criminality.</p> <p>At [89] In evaluating the appellant's overall criminality, it is important to recognise that his offending also included a number of offences against the Firearms Act.</p> <p>At [94] Taking into account all the circumstances of the appellant's offending and his</p>
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					personal circumstances, and having regard to all relevant sentencing factors, we are satisfied that the appellant's TES was an appropriate reflection of his overall criminality. ...
4.	<p><i>Hewins v The State of Western Australia</i></p> <p>[2023] WASCA 2</p> <p>Delivered 05/01/2023</p>	<p>20 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after late PG - cts 1-3 (3% discount). Convicted after trial (ct 4).</p> <p>Minor criminal history.</p> <p>Born UK; raised loving and supportive family.</p> <p>Educated to yr 10.</p> <p>Worked number of occupations.</p> <p>Birth of child while on bail.</p> <p>History of substance use; at time of offending under the influence of ecstasy and alcohol.</p>	<p>Cts 1 & 4: Agg burg. Ct 2: With intent to harm did an act resulting in bodily harm. Ct 3: Criminal damage.</p> <p>Mr Gornall and Mr Smith shared a house. Hewins and his brothers, Thomas, Samuel and Jacob, had visited the house.</p> <p>Hewins, his brothers, Mr Gornall and a Ms Barlett were at a nightclub. Hewins was pursuing a romantic relationship with Ms Bartlett and he became angry when he perceived that Mr Gornall and Ms Bartlett were flirting with each other. When Hewins confronted Mr Gornall and head-butting him he was evicted from the premises.</p> <p>That same evening Mr Smith was at home. He went to bed at about 11.30pm, but some hrs later he awoke to find four men in his bedroom. Three of the men physically assaulted him. Two of them punched him repeatedly while the third struck him with a baseball bat. A fourth man stood near the door of his room, pointing a gun at him. After the assault the man with the gun told him that if he said anything they would be back. The four men then left the</p>	<p>Ct 1: 5 yrs 2 mths imp (cum). Ct 2: 3 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 3 yrs imp (cum).</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offences 'very serious'; the appellant instigated both agg burglaries; they were premeditated and he went to the house with his brothers as 'back up', taking weapons and intending to inflict harm; he personally used violence in the first burglary in circ where he was part of a group attack upon an innocent third party and it involved the use of a weapon and in circ where a gun was pointed.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [57] When all of the relevant facts and circumstances are considered in respect of c 1, including all of those which are favourable to the appellant, and bearing in mind the max penalty, it cannot reasonably be contended that the sentence imposed was manifestly excessive. It was not unreasonable or plainly unjust. Implied error has not arguably been established.</p> <p>At [59] There can be no doubt that the appellant's overall criminality, having regard to the facts and circumstances of all of the offences, was very high.</p>

		<p>scene in a vehicle.</p> <p>The house and some of its contents had been extensively damaged. The damage caused to the house cost \$20,342.84 to repair. This did not include the value of the furnishing that were damaged and not replaced.</p> <p>Mr Smith suffered bleeding and swelling to his nose, face and chest. He experienced difficulty breathing through his nose for a number of wks and migraine headaches and issues with his balance for a period of time after the incident.</p> <p>Later that afternoon Mr Gornall and Mr Smith returned home. A group of people came to help clean up. The group were sitting in the house when they heard yelling and screaming outside. Hewins and his brothers Thomas and Jacob had returned looking for Mr Gornall. They had brought with them a taser and a firearm.</p> <p>The three men entered the house through an open door. Jacob pointed a gun and told everyone if they recorded the event they would be shot. Jacob used the taser on two men. Mr Gornall and another ran from the house. Hewins pursued them. Mr Smith ran into a garage where he was further assaulted by one of Hewins' brothers.</p> <p>When interviewed by police Hewins denied going to the house and any wrongdoing.</p>	<p>The sentencing judge found the seriousness of the appellant's conduct was not reduced by the fact he was not personally armed in either agg burglary; he knew of the existence of the weapons carried by others and that they would be used; the appellant's criminal culpability for both agg burglaries was 'extremely high'.</p> <p>The sentencing judge found that despite the appellant having had the opportunity after the first agg burglary to reflect on his behaviour and conduct he went ahead and committed the second agg burglary.</p> <p>Lacked insight and victim empathy.</p>	<p>Having ... committed cts 1, 2 and 3, [he] and two of his brothers returned to the house later that day ... and committed another violent home burglary, terrorising Mr Gornall and those who had come to clean up after the earlier offences.</p> <p>At [60] Again, the offending was premeditated, violent and terrifying. Her Honour was correct to note that the offending the subject of ct 4 was a second separate instance of serious offending that justified some degree of accumulation.</p> <p>At [63] Having regard to the extremely serious nature of the offending, the sentence properly reflected the overall criminality of all of the offences after taking into account all relevant sentencing principles and factors, including the mitigating factors. The TES was not unreasonable or plainly unjust. Implied error has not arguably been established.</p>
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<p>3.</p>	<p><i>Billett v The State of Western Australia</i></p> <p>[2022] WASCA 158</p> <p>Delivered 01/12/2022</p>	<p><u>Billett</u> 27 yr at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; prior conviction for violent offending.</p> <p>Parents separated aged 18 yrs; close relationship with mother and sister; little contact with alcoholic father, now in care suffering dementia.</p> <p>Struggled at school; left yr 10; recently completed a Certificate in community services; aspires to do youth work.</p> <p>Worked intermittently; unemployed past five yrs; undertaking volunteer work.</p> <p>Two significant relationships; three children, youngest aged 12 mths at time sentencing; current partner positive and stable influence..</p>	<p><u>Billett</u> Ct 1: Agg burg. Ct 2: Threat to harm. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 5: Act with intent to harm.</p> <p><u>Klinger</u> Ct 1: Agg burg. Ct 3: Unlawful damage. Ct 4: Agg burg. Ct 6: AOBH. Ct 7: Threat to harm.</p> <p>Billett, Klinger and another man were socializing at a tavern.</p> <p>During the evening Billett obtained an address for a Mr Scerri. Some wks earlier there had been an incident involving him and Mr Scerri. So Billett harboured a grievance against him.</p> <p>After Billett told TL and Klinger about the incident all three decided to go together to attend the address and confront Mr Scerri.</p> <p>After driving to the address all three got out of the vehicle. Billett had with him a machete, Klinger a 15-inch tyre wall tester and TL a tomahawk.</p> <p>The house was occupied by a Mr Sorell, who was house-sitting for the owner. Mr Scerri was living in a caravan parked at the front of the premises. Billett and Klinger entered the</p>	<p><u>Billett</u> Cts 1 & 4: 18 mths imp (conc). Cts 2 & 5: 12 mths imp (conc). Ct 3: 7 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p><u>Klinger</u> Cts 1 & 4: 18 mths imp (conc). Ct 3: 7 mths imp (conc). Cts 6 & 7: 12 mths imp (conc).</p> <p>TES 18 mths imp.</p> <p>The sentencing judge found the home burglaries serious, particularly as they involved forcible entry into premises known or suspect to be occupied and accompanied by threatened or actual violence.</p> <p>The sentencing judge found the offending the subject of cts 1 and 4 agg by the fact the respondents were in company with each, that they knew or ought to have known the premises were occupied, they were both</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentences cts 1, 4 and 5 and totality principle.</p> <p>Resentenced cts 1 and 4:</p> <p><u>Billett</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>Cts 1, 2, 3 and 5 conc with the sentence imposed ct 4.</p> <p><u>Klinger</u> Ct 1: 3 yrs imp (conc). Ct 4: 4 yrs 3 mths imp (conc).</p> <p>Cts 1, 3 6 and 7 conc with the sentence imposed ct 4.</p> <p>TES 4 yrs 3 mths imp. EFP.</p> <p>At [57] ... the seriousness of the offending was self-evident ... There were a significant number of aggravating features: ... this</p>
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	<p>Long-term history of alcohol and substance abuse; allowed access to alcohol and firearms as a child; commenced binge drinking whilst at school.</p> <p>Diagnosed with ADHD aged 8 yrs; medicated until aged 12 yrs; diagnosed and medicated with depression at 15 yrs; suffers sleep apnoea; use of cannabis to assist sleep.</p> <p><u>Klinger</u> 29 yrs time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history.</p> <p>Third child of four children; father 'a big drinker'; both father and mother frequently physical and emotionally abusive; parents separated when young child; lived with his mother until moving to live with his father aged 11 yrs.</p> <p>Attended high school until yr 9; educated special</p>	<p>house through an unlocked door and to a bedroom occupied by Mr Sorrell. TL remained outside, acting as a lookout.</p> <p>Billett approach Mr Sorrell, pointing the machete at him and asked for the whereabouts of Mr Scerri. Mr Sorrell told him he was in the caravan. Billett told Mr Sorrell not to move and that he was a dead man, whilst pointing the machete at him. Mr Sorrell was in fear for his life. When Billett and Klinger left the room he ran from the house, jumped a fence and hid.</p> <p>Meanwhile, Billett and Klinger ran to the caravan. They smashed windows of the caravan then forced open the caravan door.</p> <p>Mr Scerri crawled onto his bed and curled into a ball to protect himself. He felt a couple of blows and then something harder all over his body. He recognised the voice of Billett telling him to stay away from his house and kids. Klinger then screamed words to the effect 'Do you want to die?'.</p> <p>Mr Scerri att to get up to defend himself. He believed he saw three men, one he recognised as Billett. Mr Scerri could see one of the men had a tomahawk. Mr Scerri was able to chase the men from the caravan.</p> <p>Police arrived at the house to find Mr Scerri bleeding from a large cut to his ankle and numerous cuts to his body. He was taken to hospital by ambulance and treated for various</p>	<p>armed and both made threats and did harm.</p> <p><u>Billett</u> Accepting of responsibility; understanding of seriousness of offending; steps taken to change his lifestyle; maintaining abstinence from alcohol and illicit substances.</p> <p><u>Klinger</u> Significant remorse and insight into his offending.</p>	<p>was not opportunistic offending, but, rather, planned conduct with the respondents agreeing to attend at the premises and arming themselves with weapons before arriving; ... the offences were committed in company and at night; ... the offences were at residential premises where it was likely, and indeed the respondents fully expected, residents to be present; ... the purpose of the burglary offences was to enter and, at least, intimidate the occupant by threatening him with weapons; ... the burglary on the house involved threats to Mr Sorrell, and threatening behaviour with weapons; ... the burglary on the caravan involved forcible entry and the breaking of windows; ... threats to Mr Scerri and a serious assault upon him; ... Mr Scerri was outnumbered and tramped, and thus vulnerable to the attack upon him; and ... the offences were, in essence, a revenge or vigilante attack ...</p>
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		<p>school leaving yr 10.</p> <p>Numerous jobs; difficulties maintaining employment; attempted to join the army; survived on Centrelink benefits.</p> <p>Number of intimate relationships; son born a short time prior to sentencing.</p> <p>History of alcohol abuse; increasing when he suffered depression.</p>	<p>injuries. The most serious a 5 cm laceration and fracture to his ankle that required surgery.</p>		<p>At [58] ... offences committee as vigilante action are particularly serious. ... Plainly, Klinger was a willing and active participant in what he believed to be a revenge attack.</p> <p>At [60] The second burglary, that the caravan, was particularly serious because it involved forced entry and the smashing of windows and an assault upon an outnumbered victim on his bed at night. ... The fact that Mr Scerri curled upon his bed in an effort to protect himself is a good indication of the ferocity of the attack.</p>
2.	<p><i>Ridgway v The State of Western Australia</i></p> <p>[2021] WASCA 143</p> <p>Delivered 13/08/2021</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extensive criminal history; convicted wide variety of offences over more than 20 yrs; numerous sentences of imp.</p> <p>Parents separated aged 7 yrs; lived with his mother; childhood marred by father's substance use and</p>	<p>Ct 2: Att PCJ.</p> <p>Ct 3: With intent to harm did an act resulting in bodily harm.</p> <p>Ct 5: Poss unlicensed ammunition.</p> <p>Ridgway was in custody on remand when a SW was executed at the home where he usually lived with his partner, ADT. A quantity of methyl was located at the home and ADT was charged with two offences, including poss of methyl wiss.</p> <p>Some days later Ridgway was released to bail and returned to live at the house. He arranged</p>	<p>Ct 2: 12 mths imp (cum).</p> <p>Ct 3: 3 yrs 6 mths imp (cum).</p> <p>Ct 5: 6 mths imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious and it was an aggravating factor that the offending was committed while he was on</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned errors of fact (injuries suffered and seriousness of victim's injuries); length of individual sentence ct 3 and totality principle.</p> <p>At [50] Having regard to the relevant testimony of STH, the six photographs and the evidence of Dr Wee, it was well open to the sentencing</p>

		<p>violence.</p> <p>Left school during yr 11.</p> <p>Sporadic work history; unemployed time sentencing; full-time employment available upon his release from prison.</p> <p>Three children from three relationships; married ADT after this offending; wife and mother-in-law supportive.</p> <p>Long-standing history of illicit drug use, particularly heroin and methyl; attempts made to rehabilitate himself; past participation in drug rehabilitation programs, including naltrexone implants.</p> <p>Suffers anxiety; depression and antisocial personality disorder.</p>	<p>for the victim, STH, to sign a statutory declaration form, blank save for the details of the witness before whom he had purportedly executed the document.</p> <p>Ridgway later completed the factual details of the statutory declaration, falsely stating the methyl found during the search belonged to STH. He then provided the completed statutory declaration form to police.</p> <p>Two days later STH went to Ridgway's home. Ridgway was angry with him for not giving the false statutory declaration to the police. He grabbed STH by his shirt and neck chain and dragged him inside. He then punched STH a number of times to the face and body, forced him onto a couch and continued to beat him over a long period of time. He also sprayed aerosol degreaser onto STH's arm and set it on fire, causing a burn to his arm. STH fled the house and hid.</p> <p>Sometime later STH was found by police and taken to hospital. He sustained a broken nose, bruising and a small superficial penetrating wound to his arm, caused by Ridgway stabbing him with scissors.</p> <p>Ridgway was arrested the next day at his home. A SW located 42 rounds of .22 calibre ammunition hidden in a vent in a bedroom.</p>	<p>home detention bail.</p> <p>The sentencing judge found the offence of att PCJ was pre-planned; he involved STH in the offence; although it was not carried out over a longer period of time and the police were not induced to act on the false statutory declaration.</p> <p>The sentencing judge found ct 3 towards the low to mid-end of the scale of seriousness; the violence against STH were acts of vengeance; the injuries sustained by STH were not serious or permanent, but the deliberate act of setting STH alight using a flammable substance had the potential to result in very serious consequences and was a high risk act.</p> <p>Some signs of remorse; participated in counselling while in custody; motivated to avoid further illicit substance use.</p>	<p>judge to make the findings he did about the injuries suffered by STH, including the impugned findings concerning bruising, tenderness and the small superficial penetrating wound to the left arm.</p> <p>At [52] ... Dr Wee identified one of the four wounds, being the 'small superficial penetrating wound to the left arm', as more recent. This was consistent with STH's evidence that he had been stabbed in the arm with scissors by the appellant. ... his Honour did not find that there were four penetrating wounds to the left arm. He referred only to one such wound. His Honour did not err in his finding ...</p> <p>At [54] – [54] There is no merit in the claim that his Honour erroneously assessed the injuries suffered by STH as being 'towards the low to mid-end of the scale' ... Finally, his Honour did not err in his finding that the act of setting STH alight using a flammable substance had the</p>
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					<p>potential to result in a ‘potential risk to [STH’s] life, health and safety’. Such an act plainly had this potential. ...</p> <p>At [67] Ct 2 ... was a reasonably serious example of its type. The appellant hatched a plan in which he recruited STH to falsely take the blame for the offence committed by ADT. [He] had STH sign the blank statutory declaration form, then later completed the factual details in which STH purportedly stated that the methyl found during the search of the house ... belonged to him. ...</p> <p>Although the police were not actually deceived, the appellant’s actions had the potential to divert the investigation away from its true path. This offending was committed separately to cts 3 and 5, and plainly warranted additional punishment in order to properly reflect the appellant’s overall criminality.</p>
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					At [68] As to ct 5 ... The presence of the ammunition ... increases the appellant's overall criminality, even though the sentence was ultimately ordered to be served conc.
1.	<i>Thurston-Moon v The State of Western Australia</i> [2021] WASCA 124 Delivered 15/07/2021	41 yrs at time offending. 42 yrs at time sentencing. No prior criminal history. Convicted after PG (20% discount). Married; two children. Owner of lawnmowing and gardening business; well-regarded by those who know him. Good mental health.	Ct 1: Armed likely to cause fear. Ct 2: With intent to harm did an act resulting in bodily harm. The offending occurred in broad daylight in and about a shopping precinct on a suburban street. It was witnessed by multiple bystanders. Thurston-Moon was sitting with some work colleagues. The victim, GCH, was nearby, asking members of the public for money. Following a verbal argument with GCH, Thurston-Moon walked to his vehicle and armed himself with a line trimmer (commonly known as a whipper snipper). In the meantime, GCH entered a liquor store and was temporarily out of sight. However, on seeing GCH leave the store Thurston-Moon started the whipper snipper and walked towards him. GCH retreated into the store. Thurston-Moon shouted at GCH while revving the motor of the whipper snipper. Fearing for his safety GCH picked up a bottle for protection. Thurston-Moon briefly walked away so GCH put down the bottle and left the store.	Ct 1: 12 mths imp (conc). Ct 2: 18 mths imp (conc). TES 18 mths imp. EFP. The sentencing judge found the offending very serious; the appellant was at all times the aggressor and it was wanton, gratuitous violence which was totally unjustified. The sentencing judge found the offending premeditated and sustained over a period of time; the appellant ignored the plight of the victim and the concerns of other innocent members of the public. No genuine remorse; no real insight into the seriousness of his offending; low risk of	Dismissed. Appeal concerned error in finding (high degree of significant potential harm beyond that suffered by victim) and type and length of individual sentences. At [38] Clearly, the appellant was not using the whipper snipper in a manner for which it is intended to be used. [He] chose to use [it] as a weapon. He twice struck the [victim] with it by holding the spinning lines in a more or less horizontal position, hitting the victim on the arm and his buttocks. ... It is not uncommon for people to stumble, trip or fall in this process. An attacker may, himself or herself, suddenly change positions. In such unpredictable and sudden circumstances, the spinning lines of a whipper

			<p>As GCH walked away Thurston-Moon continued to yell and pursue him, revving the motor of the whipper snipper. In the middle of the roadway he lunged at GCH with the whipper snipper, striking him on the arm. This did not cause him any injury.</p> <p>As GCH ran to the other side of the street, Thurston-Moon walked back in the direction of his colleagues. Then, without provocation, Thurston-Moon again pursed GCH with the whipper snipper's line spinning. Lunging at GCH he struck him with the spinning line of the machine, inflicting multiple lacerations to his buttocks.</p> <p>Thurston-Moon walked back to his colleagues, smiling and gesturing to them with his thumbs up.</p>	reoffending.	<p>snipper could have potentially lacerated the victim in such areas as his genitals, hands or fingers and, if he had crouched or fallen, his face, eyes or ears, all with the potential to cause significantly more serious injury than that which he actually suffered. ...</p> <p>At [41] In our opinion, having regard to the evidence ..., it was well open to his Honour to conclude, as he did, that by reason of the nature of the whipper snipper there was a high degree of significant potential harm which could have been caused to the victim over and above that which was actually suffered by him.</p> <p>At [52] His Honour's statement that the offending was, objectively, very serious, can hardly be disputed. Nor can his Honour's characterisation that the appellant's actions involved the unjustified infliction of gratuitous</p>
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					<p>violence upon the victim. At all times, the appellant was the aggressor. He chose to walk to his work vehicle, pick up the whipper snipper from the trailer and, over a period of minutes, pursue his unarmed and vulnerable victim. ... It is clear from the appellant's words and actions that he was intent upon inflicting harm and, by giving his colleagues the 'thumbs up', was pleased with himself for what he had done.</p> <p>At [53] The laceration wounds were relatively low-level having regard to the range of injuries that may constitute bodily harm. However, as his Honour correctly found, the use of the whipper snipper had the potential to cause significantly more serious injuries than those that were actually inflicted. Furthermore, it is evident ... that the victim was pursued across a road on which cars were travelling, and then along a footpath, where he had to avoid a vehicle</p>
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					<p>entering the road from a driveway or laneway. Thus, the victim was exposed to further potential injury as a result of being struck by a vehicle, either on the roadway or the footpath.</p> <p>At [55] The mitigating factors identified by his Honour ... are significant, but, when weighed against the very serious circumstances of the offending and the need to denunciate and deter such conduct, they did not permit a shorter term of imp or leave open a susp or conditionally susp term of imp.</p>
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Transitional provisions enacted (31/08/2003)

Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in *Yates v The State of Western Australia* [2008] WASCA 144 overruling the majority decision in *The State of Western Australia v Wallam* [2008] WASCA 117 on that point.