

Child Sex Offences

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

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

Child aged under 13 yrs

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
22.	<p>OMC v The State of Western Australia</p> <p>[2023] WASCA 86</p> <p>Delivered 30/05/2023</p>	<p>30-31 yrs at time offending. 33 yrs at time sentencing.</p> <p><u>IND X</u> Convicted after trial. <u>IND Y</u> Convicted after late PG.</p> <p>Short criminal history; no prior convictions for violence or sexual offending.</p> <p>Aged 12 mths when parents separated; lived with his mother until aged 12 yrs, then resided with his father; prosocial upbringing; suffered adverse psychological effects from parents' conflict.</p> <p>Good family support.</p> <p>Good employment history.</p> <p>Partner miscarried around time offending began; stress of FIFO work impact on his relationship.</p>	<p><u>IND X</u> Cts 1-6 & 8-9: Indec deal child U13 yrs. Ct 7: Att indec deal child U13 yrs. <u>IND Y</u> Ct 1: Poss CEM.</p> <p>The victim was aged between 10 and 11 yrs at the time of the offending. She was the daughter of OMC's then partner and he was a father figure to her.</p> <p>The offences were representative of a course of ongoing sexualised conduct towards the victim over a period of 18 mths.</p> <p>The offending occurred in the family home, when OMC was alone with the victim.</p> <p>OMC indec dealt with the victim by rubbing her vagina with his fingers or squeezing her breasts (cts 1-6). He touched her vagina both over and under her clothing.</p> <p>On one occasion OMC pulled the victim onto her bed and att to touch her vagina (ct 7).</p> <p>On another occasion OMC called out to the victim to come into his bedroom. When the victim eventually did so he was standing, naked, in the doorway (ct 8).</p> <p>The victim would try to prevent what was</p>	<p><u>IND X</u> Cts 1; 2 & 5: 18 mths imp (conc). Ct 3: 2 yrs imp. Ct 4: 2 yrs imp (conc). Ct 5: 18 mths imp (conc). Cts 6 & 9: 2 yrs imp (cum). Ct 7: 12 mths imp (conc). Ct 8: 8 mths imp (conc). <u>IND Y</u> Ct 1: 12 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p><u>IND X</u> The sentencing judge characterised the offending against the victim as 'very serious'; the touching consisted a gross breach of trust; the victim was aged between 10-11 yrs; a degree of force was used in the offending and that it must have been clear to the appellant that the victim was unhappy as she repeatedly asked him to stop and leave her alone; he manipulated her by telling her she could not tell her mother</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [39] ... The appellant took advantage of a vulnerable young child by persistently sexually abusing her over a period of at least 18 mths. The offences were particularly agg by the use of a degree of force and that the appellant frequently persisted when the victim made it clear to him that she did not want him to touch her. The appellant sought to manipulate the victim by telling her that if she complained about his actions he would be out of her life and he would be unable to pay for the things that she liked. ... [he] was undeterred by her protests and attempts to resist this behaviour.</p> <p>At [40] The appellant's actions have had and are likely to have an ongoing adverse effect upon the victim.</p>

			<p>happening to her and would tell OMC to go away.</p> <p>When arrested OMCs laptop was seized and was found to contain six videos depicting penetrative sex of a female child, including very young children, one of whom looked no more than 3 or 4 yrs old.</p>	<p>or he would be in trouble and would no longer be in her life and the period of time over which the offending occurred.</p> <p><u>IND Y</u> The sentencing judge found this offence serious and the material ‘graphic and revolting’.</p> <p>Offending significant negative impact on the victim.</p> <p>No acceptance of responsibility; continued to deny the offending.</p>	<p>At [46] In our opinion, having regard to all of the relevant facts and circumstances of the present case and all relevant sentencing factors, the TES ... bears a proper relationship to the overall criminality in all of the offences committed by the appellant. ...</p>
21.	<p><i>Guagliardo v The State of Western Australia</i></p> <p>[2023] WASCA 71</p> <p>Delivered 02/05/2023</p>	<p>36-40 yrs at time offending. 44 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Positive childhood; youngest of two children; strong relationship with his mother; family remain supportive.</p> <p>Educated to yr 12; commenced university studies before completing TAFE diploma.</p> <p>Employed computing field a</p>	<p><u>IND 1475</u> Cts 3-4; 6-8: Indec deal child U13 yrs. Cts 5; 9-10: Sex pen child U13 yrs.</p> <p><u>IND 2189</u> Cts 1-4: Poss CEM.</p> <p><u>IND 1475</u> The four female victims, P, M, R and S, were all aged 10 yrs or under at the time of the offending.</p> <p>Guagliardo was friends with the victims’ parents.</p> <p>P, aged 10 yrs, was travelling as a passenger seated in the front of Guagliardo’s car. During the trip he put his hands on her inner</p>	<p><u>IND 1475</u> Ct 3: 12 mths imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 3 yrs imp (conc). Ct 6: 6 mths imp (cum). Ct 7: 12 mths imp (conc). Ct 8: 18 mths imp (conc). Ct 9: 4 yrs imp (cum). Ct 10: 4 yrs imp (conc).</p> <p>TES 7 yrs 6 mths imp.</p> <p><u>IND 2189</u> Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 2 yrs imp (conc).</p>	<p>Dismissed (on papers).</p> <p>Appeal concerned length of sentence ct 4 (IND 2189) and totality principle.</p> <p>At [60] In the present case the seriousness of the contact sex offences was reflected in the fact that there were four victims and that the offences involved significant breaches of trust. In each case the appellant had access to the children because he was a trusted friend of the family. He obtained access by causing the families to believe that he was</p>

		<p>number of yrs; past 19 yrs worked as a labourer, delivery driver and storeman; sole financial provider; struggles financially.</p> <p>Married 22 yrs; wife remains supportive; two young children.</p> <p>Diagnosed and medicated for ADHD from aged 12 yrs; suffers chronic fatigue; gall bladder issues; abdominal pain; migraines; anxiety and depression.</p> <p>No issues with alcohol or illicit substance use.</p>	<p>thigh. He then touched and rubbed her vagina over her clothing (ct 3).</p> <p>Sometime later Guagliardo was with M. While she was sitting on the armrest of a couch he told her he would massage her. During the massage he placed his hand under her underwear and around her genital area, without touching it. He then touched her just above the clitoris. M asked him to stop, but he continued. (ct 4).</p> <p>M got up and returned a short time later. Guagliardo again placed his hand under her underwear. She asked him to stop, but he did not do so. While his hands were inside her underwear he penetrated her labia with his fingers (ct 5).</p> <p>R, aged between 7 and 9 yrs of age, was on her bed. Guagliardo offered to give her a massage and she agreed. He commenced massaging her, groping her breasts above her shirt. He stopped when R's mother came into the room (ct 6).</p> <p>On another occasion, R, aged 9-10 yrs of age, was sitting next to Guagliardo. She agreed to a massage. When he commenced doing so she told him to stop, but he continued. He grabbed R's breasts under her shirt (ct 7) then moved down towards her hips. She again told him to stop but he continued. Guagliardo then put his hands in her pants and started rubbing her vaginal area (ct 8).</p>	<p>TES 2 imp (cum with IND 1475).</p> <p>TES 9 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending very serious and not at the lowest or lower end of the scale; the quantity of the CEM was significant; some of the material was classified in the worst category, including material that displayed a significant level of perversion or debauchery; the appellant committed the offending over a lengthy period, being a three-yr-period of consistent interaction with CEM files; the material was downloaded on numerous occasions and he copied it across other devices, indicative of a person with a real and significant interest in CEM; the children involved were vulnerable and he preyed on that vulnerability in order to take possession of the CEM; the offending ended only when the CEM was seized, it was not a case of him voluntarily desisting.</p>	<p>providing massages for therapeutic purposes. He used this access, and the opportunity to touch the children without arousing suspicion, to satisfy his own perverted sexual desires. Whilst no physical or verbal coercion was involved, none was needed. On three occasions the touching advanced to actual sex pen. The victims were vulnerable having regard to their age. S was particularly vulnerable due to her autism.</p> <p>At [67] Having regard to the max penalties for the offences, the seriousness of the offending conduct (including the number of offences and the number of victims), the personal circumstances of the appellant and the sentences imposed in broadly comparable cases, it is not reasonably arguable that the TES ... imposed on IND 1475 was plainly unreasonable or unjust.</p> <p>At [69] In respect of the CEM offences committed by the appellant the seriousness is</p>
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			<p>S, aged 7 yrs, has autism. She suffered from stomach pains. In consultation with her mother Guagliardo would sometimes massage her stomach to relieve her pain. On one occasion he was massaging her he put his fingers inside her vagina, causing her pain (ct 9). On another occasion he kissed and licked her vulva (ct 10).</p> <p><u>IND 2189</u></p> <p>On the investigation of Guagliardo in relation to allegations of sexual offending, his mobile telephone, and a number of his computer devices were seized. His mobile phone and three of the devices were found to contain CEM at Cat 1, 2, 3, 4 and 5. The material depicted children in the 8-13 yr age category engaging in sexual activity. The total number of images was 35,435 and 323 videos.</p> <p>When spoken to by police Guagliardo denied the offending.</p>	<p>Offending profound emotional and psychological effects on the victims; all required counselling to cope with the effects of the offending.</p> <p>Appellant continued to deny the offending; no demonstrated remorse; real risk of reoffending; guarded prospects of rehabilitation.</p>	<p>reflected in the very large number of images and videos, the period of time over which the material was collected and the nature of that material. It included numerous images and videos in the most serious categories. Whilst there was no evidence that [he] had engaged in this activity for commercial reward, the factors referred to place this into a serious category of offending of this type.</p> <p>At [75] Having regard to the max penalty for the offence of poss of CEM, the seriousness of the offending conduct in this case (including the number of images and the nature of those images), the personal circumstances of the appellant and sentences imposed in broadly comparable cases, it is not reasonably arguable that the sentence ... on ct 4 on IND 2189 was manifestly excessive.</p> <p>At [76] As to whether the overall TES of 9 yrs and 6 mths imp infringed the first limb of the totality principle,</p>
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					the offending on both indictments occurred within the same time period but involved separate and distinct conduct. In the circumstances cum sentences were appropriate, ...
20.	<p><i>The State of Western Australia v THN</i></p> <p>[2023] WASCA 18</p> <p>Delivered 02/02//2023</p>	<p>40-42 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history.</p> <p>Raised in loving and supportive family; close relationship with siblings and other family members; family supportive.</p> <p>Living and caring for mother with various health issues.</p> <p>Commenced, did not complete, yr 10.</p> <p>Stable employment history; various vocations; lost current role on conviction of current offences.</p> <p>Divorced; negatively impacted by breakdown of next relationship; suffered depression and att suicide.</p>	<p>Cts 1-3 & 5: Indec deal child U13 yrs. Ct 4: Sex pen child U13 yrs.</p> <p>Charges not representative of the totality of THN's sexual offending against A and B, and do not represent isolated incidents.</p> <p>The victims, two sisters A and B were aged 10-11 yrs and 5-6 yrs respectively.</p> <p>THN was a close and long-time friend of A and B's mother. When she separated from her husband THN began staying most weekends at the family home. A and B regarded him as their uncle.</p> <p>B was alone on her bed when THN entered the room. She told him to leave. He ignored her and put his fingers inside her underwear and touched her anal area (ct 1). On another occasion B was lying on a bed he put his fingers inside her underwear and rubbed his fingers on her vagina (ct 5).</p> <p>Almost every weekend THN would regularly touch A's vagina. On one occasion penetrating her vagina with his finger (cts 2-4).</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 2 yrs imp (cum). Ct 5: 18 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp.</p> <p>TES.</p> <p>The trial judge found significant aggravating features in the respondent's offending; the victims were vulnerable young children; he held a privileged and entrusted role in the victims lives and the offences occurred in their own home; there was a significant age difference and power disparity between him and each of the victims; there was an element of psychological coercion and grooming; it was persistent and sustained over time and included multiple and distinct offending behaviour and he</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentence (ct 4) and totality principle.</p> <p>Resentenced:</p> <p>Ct 1: 18 mths imp (cum). Ct 2: 15 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 4 yrs imp (cum). Ct 5: 18 mths imp (conc).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [49] In our view, having regard to ... the serious nature of the offending charged in ct 4 ... the limited mitigating factors; and .. all relevant sentencing principles, the sentence ... imposed after trial for ct 4 (which represents only 10% of the max penalty) is unreasonable or plainly unjust.</p>

		<p>Abstained sexual behaviour time of offending on belief suffering STD; later testing indicated he had not contracted the disease.</p> <p>Diagnosed with ADHD in high school; various health issues; kidney disease; four heart attacks; first aged 21 yrs; heart surgery.</p> <p>Alcohol abuse and recreational illicit drugs use in teens; largely abstained from drinking from 21 yrs; daily cannabis use from 17 yrs.</p>		<p>exploited the vulnerability of the immature victims for his own selfish sexual gratification.</p> <p>The trial judge found the offending in ct 4 not isolated, but rather part of (albeit an escalation of) a persistent course of conduct; it was accompanied by a threat of more serious offending to follow and a threat of punishment if she did not comply.</p> <p>Offending devastating psychological impact on victims.</p> <p>Respondent not remorseful; continues to deny offending; no demonstrated insight or acceptance of responsibility; no participating in sex offenders' treatment programs while in custody.</p>	<p>...</p> <p>At [51] ... The TES imposed ... was less than the sentence which we would regard as commensurate with the seriousness of the offence charged in ct 4. As the trial judge correctly recognised, the fact that the respondent offended on multiple separate occasions against two complainants requires some accumulation of the sentences in order for the TES to reflect the overall criminality involved in all of the offending. ...</p>
19.	<p><i>Newton v The State of Western Australia</i></p> <p>[2023] WASCA 7</p> <p>Delivered 17/01/2023</p>	<p>31-34 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p>	<p>Cts 1; 28; 30; 33; 35; 37 & 39: Indec deal child U13 yrs.</p> <p>Cts 2-6; 9; 10; 14; 16; 20; 22; 24 & 26: Sex pen child U13 yrs.</p> <p>Cts 7; 8, 11-13; 15; 17-19; 21; 23; 25; 27; 29; 31; 32; 34; 36; 38 & 40: Indec recording child U13 yrs.</p> <p>Cts 41 & 42: Poss CEM.</p>	<p>Cts 1; 28; 30; 33; 37 & 39: 18 mths imp (conc).</p> <p>Ct 2: 5 yrs imp.</p> <p>Cts 3; 4 & 20: 5 yrs imp (conc).</p> <p>Ct 5: 4 yrs imp (cum).</p> <p>Cts 6; 7; 9; 11-13; 15; 17-19; 21; 23; 25; 27; 29; 31; 32; 34;</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (individual sentences not challenged).</p> <p>At [7] While we accept that the TES imposed on the appellant</p>

		<p>Only child from parents' union; three older half-siblings; parents profoundly deaf; mother suffering cancer time of sentencing.</p> <p>Left school yr 11; TAFE studies; university degree.</p> <p>Employed various roles; most recent work ceased following charges.</p> <p>Number of short-term relationships; no significant unions since aged 20 yrs.</p> <p>History of cannabis and alcohol use.</p>	<p>Ct 43: Fail to obey data access order.</p> <p>Newton was a close friend of the victim's mother and her stepfather. Over a period of about four and a half yrs Newton repeatedly sexually abused the victim from when she was eight yrs old.</p> <p>The sexual activity occurred in a caravan occupied by Newton and at another address at which he resided.</p> <p>The offences involved the penetration of the victim's vagina with his penis. He also penetrated her mouth and vagina with his penis and took photographs of the offending.</p> <p>On other occasions Newton took photographs standing naked over the victim, while her legs were in the air and his penis was pointed toward her vagina and while the victim was kneeling in front of his erect penis.</p> <p>On the execution of a SW at Newton's address, a computer and hard drive were located, which later revealed 11,009 images or videos of CEM material.</p> <p>Six comic books depicting children engaged in sexual poses or activities were also found.</p> <p>Also located was Newton's tablet device, for which he refused to provide the passcode.</p>	<p>36; 38; 40 & 42: 12 mths imp (conc). Cts 8 & 35: 12 mths imp (cum). Cts 10; 14; 16; 26; 22 & 24: 4 yrs imp (conc). Ct 41: 15 mths imp (conc). Ct 43: 3 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the offending serious; the victim was very young; the significant age disparity between her and the appellant; the gross breach of trust; the persistence of the offending and the fact the appellant recorded much of it.</p> <p>The sentencing judge found the CEM material in the appellant's poss included material in the more serious category of CEM.</p> <p>Accepting of responsibility; evidence of remorse; average risk of reoffending.</p>	<p>was certainly high, and at the upper end of the range of sentences customarily imposed following pleas of guilty for offending of this type, we are not satisfied that the TES was so high as to manifest error. The sexual offending ... involved a high degree of criminality and the fact that he recorded the offending, for his own gratification, distinguished his offending from a number of the previous cases relied upon by him. The offending, as a whole, called for a very substantial term of imp and we are not satisfied that the learned sentencing judge erred in imposing the sentence that she did.</p> <p>At [63] ... The sentence was certainly severe. It nevertheless fits broadly within the range of sentences imposed for offending of this type, and the present case had a number of particular features not present in many of the authorities.</p> <p>At [64] ... the offending itself was very serious. In particular it involved four distinct</p>
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					<p>categories of offending, the presence of which called for accumulation of terms of imp, thus increasing the TES. The presence of these additional categories serves to distinguish the present case from many of the cases on which the appellant relied.</p> <p>At [65] ... the sexual offending against the victim was itself very serious, given the victim's young age, the significant age disparity between the appellant and the victim, the gross breach of trust for his own sexual gratification and the significant period over which and numerous (18) occasions on which the offending occurred. The seriously damaging effects on the victim the appellant persistently and callously treated the victim as a sexual plaything for his sexual gratification.</p> <p>At [66] ... the ... offending included recording and retaining photographs of his offending on the victim. That conduct contributed substantially to [his] overall</p>
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					<p>criminality. [He] recorded his abuse of the victim for his own sexual gratification, in essence to extend and prolong his gratification from abusing the victim into the future. In this way, the victim could be said to have been re-victimised each time [he] viewed, and used, those images for his sexual gratification.</p> <p>At [67] ... the very significant quantity of CEM in the appellant's poss called for a further increase in the TES.</p> <p>At [68] ... As this Court has recognised, a cum sentence will often be appropriate for failure to comply with a data access order.</p>
18.	<p><i>XMB v The State of Western Australia</i></p> <p>[2023] WASCA 4</p> <p>Delivered 05/01/2023</p>	<p>58 yrs at time offending. 67 yrs at time sentencing.</p> <p>Convicted after retrial.</p> <p>No prior criminal history.</p> <p>Born NZ; child when witnessed father's suicide.</p> <p>Very strong work history; employed since aged 13 yrs.</p>	<p>Cts 1-4; 6; 9 & 10 Sex pen child U13 yrs. Cts 5; 7; 8 & 11-13: Indec deal child U13 yrs.</p> <p>XMB lived with his son, who had two children from a former relationship. A daughter, C, and a son, X. The children's mother had another relationship with a man who had a daughter, M, of similar age to C.</p> <p>C and X are therefore XMB's biological grandchildren and C and M stepsisters.</p>	<p>Cts 1 & 9: 3 yrs 6 mths imp (cum). Cts 2; 3; 4; 6 & 10: 3 yrs 6 mths imp (conc). Cts 5; 8 & 12: 18 mths imp (conc). Cts 7 & 11: 12 mths imp (cum). Ct 13: 12 mths imp (conc).</p> <p>TES 9 yrs imp.</p> <p>The sentencing judge found</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence after retrial.</p> <p>At [67] The offending in this case had a number of significant aggravating features, including the age disparity, the breach of trust, the persistence of the offending and the use of grooming and threats to ensure</p>

		<p>Two significant relationships; commenced alcohol use breakdown of second relationship.</p>	<p>The offences were not isolated instances, they occurred during weekend visits over a period just short of 19 mths. At the time the victims, C and M, were between 8-9 yrs of age and between 8-10 yrs respectively.</p> <p>XMB engaged in sexual activity with C. It involved digital pen, fellatio and cunnilingus. XMB also made C masturbate him and there was an incident he masturbated in her presence.</p> <p>The offences against M also involved XMB digitally penetrating her. On one occasion he exposed his erect penis to M and invited her to touch it. She refused.</p>	<p>the offending serious involving a high level of criminality; agg by the young age of the victims; the large age disparity between the appellant and the victims; it occurred over an extended period of time; the appellant groomed each of the victims and engaged in increasingly more serious offences against them; he provided the victims with treats, consistent with masking what he was doing; and there were other uncharged acts.</p> <p>Offending substantial impact on both victims.</p> <p>No evidence of remorse.</p>	<p>compliance and silence. ..., the fact that there were two victims was also an important consideration.</p> <p>At [73] Having regard to all relevant circumstances and sentencing factors, including the number and circ of the offences, involving two victims, taken together with the max penalties and the sentences imposed in comparable cases, in our respectful view, even giving full weight to the mitigating factors in the appellant's favour, the first sentence was manifestly inadequate. We are satisfied that the sentencing judge was correct to conclude that the original sentence of 6 yrs and 6 mths' imp was manifestly inadequate in that it was not a proper reflection of the total criminal conduct, notwithstanding the appellant's personal circumstances.</p>
17.	<p><i>CDL v The State of Western Australia</i></p> <p>[2022] WASCA</p>	<p>53-57 yrs at time offending. 60 yrs at time sentencing.</p> <p>Convicted after trial (cts 1-6 & 8).</p>	<p>Cts 1-3: Persistently engaged in sexual conduct child U16 yrs.</p> <p>Cts 4-6 & 8: Produced CEM.</p> <p>Ct 9: Poss CEM.</p>	<p>Ct 1: 4 yrs imp (conc).</p> <p>Ct 2: 4 yrs imp (cum).</p> <p>Ct 3: 3 yrs imp (cum).</p> <p>Ct 4: 3 yrs 6 mths imp (conc).</p> <p>Ct 5: 3 yrs 6 mths imp (conc).</p>	<p>Dismissed (leave refused) – on papers.</p> <p>Appeal concerned totality principle.</p>

<p>18</p> <p>Delivered 18/02/2022</p>	<p>Convicted after very late PG (ct 9) (5% discount).</p> <p>No prior criminal history.</p> <p>Born and raised in WA; good childhood; siblings with whom he still maintains contact.</p> <p>Educated to yr 12; did well at school.</p> <p>Employed variety of occupations.</p> <p>Divorced; son from union.</p> <p>Involved in children's sport.</p> <p>Diabetic; experiences sciatic back pain following work injury.</p> <p>No issues with alcohol or illicit drugs.</p>	<p>CDL maintained contact with his ex-wife who had re-married and given birth to triplets. He would often look after the triplets and, on occasions, he took them on outings. CDL offended against two of the triplets, E and C, over a period of yrs.</p> <p>Later CDL met and befriended B and M's mother. He would babysit the children.</p> <p>The victim, E, was aged between 6 and 8 yrs of age; the victim, C, was aged between 6 and 10 yrs of age; the victim, M, was aged 11 or 12 yrs of age and the victim B, was a toddler, aged 22 mths.</p> <p>CDL indec dealt with E, C, B and M. He made video recordings of E on 80 separate occasions; C on 71 separate occasions and B on 30 separate occasions.</p> <p>The charges in respect of E, C and B are representative of the appellant's offending behaviour.</p> <p>CDL video recorded some of the offences he committed against E, C, B and M. The CEM he produced was classified at Cat 1 to 3.</p> <p>A number of computer devices were seized from CDL's home. They contained 26,425 videos and images of children aged under 1 yr to approx 10 yrs of age. Cat 1: 893 videos and 21,260 images; Cat 2: 109 videos and 204 images; Cat 3: 111 videos and 1,237</p>	<p>Ct 6: 2 yrs 4 mths imp (conc). Ct 8: 6 mths imp (cum). Ct 9: 12 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending against E, C and B demonstrated a high degree of perversion or deviance on the appellant's part; E, C and B were very young and could not have been more vulnerable; the offending was brazen; there was 'a considerable age difference' between the appellant and each of the victims; he was in a position of trust and authority and the offending involved a significant abuse of trust; he repeatedly used the opportunity to look after the children to sexually abuse them; the offending was repetitious and, in the case of E and C, occurred on many occasions over a period of yrs; the offending against B was limited to four occasions in the space of a matter of wks.</p> <p>No expressions of remorse and</p>	<p>At [74] ... Without question, the offending was very serious. The appellant committed offences in respect of four victims, all of whom were very young and highly vulnerable. B was a toddler. E and C were each young girls, ... The appellant took advantage of the relationships that he had with their mothers to sexually abuse the victims. The offending against E and C occurred over about a yr in the case of E and over a period of yrs in the case of C. While the offending in relation to B occurred over a much shorter period and was less physically invasive, having regard to B's age and all the circumstances of the offending, it involved a high degree of criminality.</p> <p>At [75] Not only did the appellant commit the offences the subject of cts 1, 2 and 3, he recorded what he had done ... The only reasonable inference that can be drawn from the appellant's recording of the material is that he wished to watch it in the future for his sexual gratification. In</p>
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			images; Cat 4: 731 videos and 1,418 and in Cat 5: 178 videos and 328 images.	no effort made towards rehabilitation.	addition, the appellant committed the offence against M ... and was found in poss of a very substantial amount of CEM ... Some accumulation was required having regard to the number of victims and offences committed by the appellant, to the seriousness of the offences and to her Honour's reduction of the individual sentences for cts 1, 2, 3, 8 and 9 in applying the totality principle. ...
16.	<p><i>LNV v The State of Western Australia</i></p> <p>[2021] WASCA 203</p> <p>Delivered 02/12/2021</p>	<p>57 yrs time sentencing.</p> <p>Convicted after trial.</p> <p>Minor prior criminal history.</p> <p>Born Italy; raised in Australia from aged 3 yrs; good upbringing.</p> <p>Left school aged 16 yrs; employed various roles; unemployed prior to offending.</p> <p>Divorced; three adult children.</p> <p>Suffering depression at time offending; death of family member and father's ill</p>	<p>Ct 1: Indec dealings with child U13 yrs.</p> <p>Ct 3: Indec dealings with child U13 yrs.</p> <p>Ct 4: Sex pen of a child U13 yrs.</p> <p>LNV was in a relationship with the mother of the victim, JR, a male aged 8 yrs.</p> <p>On two separate occasions during the relationship LNV sexually abused JR while he was in his mother's bedroom on the bed watching television.</p> <p>On the first occasion LNV placed his hand over JR's clothing and onto JR's genital area and squeezed his penis (ct 1).</p> <p>On the second occasion, LNV lay near JR, pulled down JR's pants and placed his hand on his genital area over the top of his underwear and rubbed and slapped JR's penis (ct 3).</p>	<p>Ct 1: 12 mths imp (conc).</p> <p>Ct 2: 12 mths imp (conc).</p> <p>Ct 3: 2 yrs imp (cu.).</p> <p>TES 2 yrs imp. EFP.</p> <p>Cum with two earlier terms of imp totalling 14 yrs 6 mths.</p> <p>EFP after 14 yrs 6 mths imp.</p> <p>The trial judge found the offending 'serious' and a significant breach of trust against a particularly vulnerable victim, given his youth and the presence of a deviant sexual interest in children, together with a proven willingness to commit crimes fuelled by hatred, gives</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [54] ... They are self-evidently serious offences. ... There was very little that could be said in mitigation. ... the TES of 2 yrs' imp was plainly an appropriate reflection of the appellant's overall criminality and could not, arguably, be said to infringe either limb of the totality principle.</p> <p>At [55] ... The offences against JR were separate and distinct in nature and warranted, in our view, additional punishment. To do</p>

		<p>health.</p> <p>Good physical health.</p> <p>Regular user of cannabis since his youth; occasional use of methyl.</p>	<p>When JR rolled over and under the blankets LNV then inserted his finger into JR's anus, underneath his clothing (ct 4). This hurt JR.</p>	<p>rise to concerns about public protection.</p> <p>The trial judge found some additional punishment was required to reflect the appellant's wrongdoing towards JR and that any additional punishment would be moderate because of the lengthy sentence he was already serving.</p> <p>Counselling and treatment undertaken during 4 ½ yrs in custody; but no meaningful steps made towards rehabilitation; continues to deny any sexual interest in children; no victim empathy or insight into his offending.</p>	<p>otherwise would be to fail to reflect the serious and additional criminality involved in this offending and would result in a TES that would not properly reflect all of what the appellant did. Nor would it have properly recognised the serious harm done to the victim.</p> <p>At [56] ... It is unarguable that, had the appellant been sentenced for the offences he committed against JR and was not subject to the other sentences, he would have received a substantially higher TES.</p> <p>At [59] We do not regard the TES of 16 yrs 7 mths' imp as being crushing as that term is understood. ...</p>
15.	<p><i>SAL v The State of Western Australia</i></p> <p>[2021] WASCA 192</p> <p>Delivered 16/11/2021</p>	<p>41 yrs at time sentencing.</p> <p><u>IND 673</u> Convicted after PG (15% discount).</p> <p><u>IND 469</u> Convicted after PG (10% discount).</p> <p><u>IND 625</u> Convicted after late PG (5% discount).</p>	<p><u>IND 673</u> 2 x Indec recorded a child U13 yrs. 12 x Sex pen of a child U13 yrs. 3 x Indec dealings with a child U13 yrs.</p> <p><u>IND 469</u> 17 x Indec dealings with a child U13 yrs. 13 x Sex pen of a child U13 yrs. 4 x Procured a child U13 yrs to do indec act. 3 x Encouraged a child U13 to engage in sexual behaviour.</p>	<p><u>IND 673</u> 9 yrs imp, cum.</p> <p><u>IND 469</u> 13 yrs imp, cum.</p> <p><u>IND 625</u> 6 yrs imp.</p> <p>TES 28 yrs imp. EFP.</p>	<p>Dismissed (leave refused - plea discount).</p> <p>Appeal concerned plea discount and totality principle.</p> <p>At [101] ... Although it may be accepted that the appellant's childhood deprivation and, in particular, the sexual abuse she suffered, has had an adverse</p>

		<p>Minor prior criminal history.</p> <p>Dysfunctional and traumatic background; victim of child sexual abuse; ward of State aged 14 yrs.</p> <p>Left school yr 9.</p> <p>Employed various unskilled occupations; worked intermittently as a sex worker, encouraged or pressured to do so by W.</p> <p>Three long-term relationships commencing aged 14-15 yrs marred by physical and sexual violence.</p> <p>Satisfactory physical health; history of self-harm; suicidal thoughts; chronic symptoms of depression and anxiety; medicated.</p> <p>Commenced using cannabis aged 10 yrs; alcohol from age 12 yrs; methyl from aged 28 yrs.</p>	<p>3 x Stupefying in order to commit indictable offence.</p> <p>1 x Procured a child U13 yrs to engage in sexual behaviour.</p> <p>2 x Engaged in conduct knowing it may result in a child suffering harm as a result of sexual abuse (while under her care and control).</p> <p><u>IND 625</u></p> <p>2 x Stupefying in order to commit indictable offence.</p> <p>7 x Sex pen of a child 13-16 yrs.</p> <p>2 x Encouraged a child 13-16 yrs to engage in sexual behaviour.</p> <p>The victims of the offending the subject of IND 673 and IND 469 were SAL's natural daughter and son, who were both U13 yrs at the time of offending. This offending was committed over a period spanning between 2011 and 2015.</p> <p>The victim of the offences the subject of IND 625 was DMC, who was a female aged 13-14 yrs. These offences were committed in one prolonged incident in 2011.</p> <p>SAL's partner, W, and their friend, Mr Coulter, were co-offenders in respect of the above offending.</p> <p><u>IND 673</u></p> <p>All offences occurred on the same day and involved SAL's daughter, who had just</p>	<p>The sentencing judge found the circumstances of the offending 'truly unique'; almost the worst imaginable and in a class of their own; the offending was 'shocking' and 'one of the most serious examples of sex offending within a family to have come before a court in this State'.</p> <p>The sentencing judge found the appellant and W engaged in conduct that was both perverted and born out of a warped sense of desire for carnal lust without any regard whatever to the victims and in doing so had stolen the victims' innocence.</p> <p>The sentencing judge found the offending was aggravated by the fact the appellant was the biological mother of two of the victims, whose duty was to protect and nurture them; the offending constituted 'enormous breaches' of the mother/child relationship and she delivered the children into the hands of other adult offenders; the offences were depraved and perverted and in order to commit the offences</p>	<p>psychological effect upon her and, perhaps, ... damaged her personality and her ability to properly parent her children, it did not diminish her ability to know that to perpetrate childhood sexual abuse upon the victims in this case was morally wrong, and thus did not diminish her moral culpability for the offending.</p> <p>At [103] ... any diminution in the appellant's moral culpability is well and truly outweighed by the prodigious, deliberate, planned and systematic offending she engaged in.</p> <p>At [125] ... we are not persuaded that the reduction of 15% on IND 673 was unreasonable or plainly unjust. It was not manifestly inadequate.</p> <p>At [128] Having regard to all ... circumstances relevant to IND 469, we have not been persuaded that a reduction of 10% was unreasonable or plainly unjust. It was not manifestly inadequate.</p>
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		<p>turned 8 yrs old. They were committed by SAL, together with W and Mr Coulter.</p> <p>At various stages during the offending SAL said and did things designed to secure the child's cooperation and normalise the behaviour.</p> <p>The offences were recorded and disseminated and came to light when a memory card containing the video footage was found and handed to police.</p> <p>The three victims were subsequently interviewed and disclosed the offending the subject of IND 469 and IND 625.</p> <p><u>IND 469</u> These offences involved SAL's daughter and son, then aged as young as 4 yrs.</p> <p>The victims were shown pornographic movies of sexual activity involving children and adults; some of the offending involved the use of a vibrator.</p> <p>During some of the offending SAL's daughter, and on at least one occasion her son, were administered the drug methyl by having them smoke a pipe.</p> <p>Some of the sexual activity was filmed, but the footage has not been recovered.</p> <p><u>IND 625</u></p>	<p>she administered a stupefying drug,</p>	<p>At [129]-[130] ... The appellant entered her PG [in respect of IND 625] at a late stage in the proceedings, after the matter had been set down for trial and ... evidence had been pre-recorded. ... Having regard to all of the circumstances, the reduction of 5% was not unreasonable plainly unjust. It was not manifestly inadequate.</p> <p>At [153] The seriousness of the appellant's offending is self-evident. It involves such a high level of overall criminality that its seriousness can hardly be overstated. The offending taken as a whole is, having regard to other cases that have come before this court, the worst we have seen.</p> <p>At [154] The appellant's role in the offending was as an active participant, a facilitator and an aider of her co-offenders. The appellant was not an unwilling or unwitting participant. To the contrary, she actively encouraged her own children to participate in their abuse and normalised it. [Her children] were</p>
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			<p>DMC was good friends with one of W's children and she would regularly visit SAL and W's home. She became close with SAL.</p> <p>When DMC was 13 or 14 yrs old SAL and W told her they had a surprise for her. They then injected her with methyl.</p> <p>W, in the presence of SAL, then subjected DMC to numerous sexual acts that continued over an extended period of time. Some of the sexual activity caused her extreme pain and were accompanied by threats.</p>		<p>completely and utterly vulnerable. They were made available to other adults, both men and women, to sexually abuse. The offences were in no way isolated. They were repeated. ...</p> <p>At [155] ... We note the appellant's use of stupefying substances and the high degree of perversion and deviancy frequently employed in the commission of the offences. ... The SD memory card, which was discovered some yrs after the offending, gives rise in [the victim] that the recording has been distributed to others. The possibility of her being re-victimised in the future by the distribution of the recording remains.</p> <p>At [156] The seriousness of the offending against DMC must not be overlooked. The appellant groomed DMC [and she was] provided with methyl and sex pen on multiple occasions by the appellant and W over an extended period of time.</p> <p>At [166] ... We recognise the</p>
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					<p>appellant had a dysfunctional upbringing, including the childhood sexual abuse ... However, having regard to the sheer magnitude and seriousness of the crimes committed by the appellant and the need for proper punishment, denunciation and general and specific deterrence, very little weight can be given to those personal circumstances. ...</p> <p>At [167] ... The offending the subject of the three indictments was so serious and the mitigating factors so few, that, ..., we remain unpersuaded that the first limb of the totality principle has been infringed.</p>
14.	<p><i>VRE v The State of Western Australia</i></p> <p>[2021] WASCA 185</p> <p>Delivered 19/10/2021</p>	<p>19 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Difficult upbringing; bullied.</p> <p>Occasional contact with his mother; no contact with biological father; supportive grandmother.</p>	<p>1 x Sex pen child U13 yrs.</p> <p>The victim, A, was 6-7 yrs old and was VRE's stepsister.</p> <p>At the time of the offending VRE and A lived in the same house, along with VRE's mother and stepfather.</p> <p>Early in the day, VRE kissed and licked A in the mouth. Later that same day he removed A's clothes and, for a very brief period, he performed cunnilingus upon her.</p>	<p>18 mths imp.</p> <p>EFP.</p> <p>The trial judge found, while the offending did not involve physical threats, coercion or violence, the appellant engaged in 'serious offending'; he took advantage of a young and vulnerable victim who was his stepsister and who was entitled to expect his</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned type of sentence.</p> <p>At [34] Contrary to the submission of the appellant, the present offence was not 'so minor'. Such a characterisation fails to have regard to the very young age of the victim, her vulnerability and the impact of the offending upon her. ...</p>

		<p>Completed yr 10 high school.</p> <p>Never worked; in receipt of unemployment benefits at time sentencing.</p> <p>Severe expressive language disorder.</p>		<p>protection.</p> <p>The trial judge found prison would be more difficult for the appellant due to his language disability; however a susp term of imp inappropriate given the nature, gravity and extent of the offending.</p> <p>Low risk of reoffending.</p> <p>Offending confusing and difficult on victim.</p>	<p>While perhaps opportunistic, it must be said that the appellant plainly took advantage of his stepsister who, ... was entitled to the appellant's protection. ...</p> <p>At [35] We reject the proposition that the offending has had little effect upon the victim. It is clear ... that the offending has not been forgotten by her and has adversely affected her wellbeing and happiness. ... she feels guilt for reporting what occurred and for the appellant's subsequent incarceration. ...</p> <p>At [39] ... in our opinion, the sentence of 18 mths' immediate imp was a merciful sentence which properly took into account the mitigating circumstances. The sentence ... is not unreasonable or plainly unjust.</p>
13.	<p><i>NE v The State of Western Australia</i></p> <p>[2021] WASCA 172</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>Cts 1-3; 9-10 & 12: Indec deal child U13 yrs. Cts 4-5; 7-8 & 11: Sex pen child U13 yrs. 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). Ct 2: 3 mths imp (cum). Cts 4; 7; 8 & 12: 3 yrs imp (conc). Ct 5: 3 yrs imp (cum). Cts 6 & 9: 2 yrs imp (conc).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [57] The appellant's tetraplegia did not give him a</p>

	<p>Delivered 17/09/2021</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 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><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</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 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>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 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</p>
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			<p>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 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</p>	<p>Remorseful and accepting of responsibility; insight into his offending; negligible risk of reoffending.</p> <p>Continuing devastating impact on victim.</p>	<p>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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			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.		
12.	<p><i>YNT v The State of Western Australia</i></p> <p>[2021] WASCA 89</p> <p>Delivered 27/05/2021</p>	<p>59 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Good worth ethic; series of long-term steady employment; FIFO worker at time offending.</p> <p>Dysfunctional home life; suffering depression; living with an alcoholic at time offending; unexpected breakdown of his first marriage.</p>	<p>2 x Sex pen child U13 yrs (digital pen).</p> <p>The victim was the granddaughter of YNT's de facto partner. She was aged 10-11 yrs old and, at the time of the offending, she and her mother were living with YNT and her grandmother.</p> <p>The offences occurred over a period of about 7 months and the two charged acts were part of an ongoing course of conduct.</p> <p>The conduct occurred at night, when the victim's mother was at work and when her grandmother was drunk and had taken antidepressants.</p> <p><u>Ct 1</u> One night YNT came into the victim's bedroom and sat next to her on her bed. He placed his hand on her thigh, moved his hand up and ultimately penetrated her vagina with his finger. He then tried multiple times to have sexual intercourse with her, becoming angry and frustrated when he was unsuccessful. YNT told her not to tell her mother or grandmother what had happened.</p> <p>After this incident YNT repeatedly came into the victim's bedroom when her mother was</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 4 yrs imp (cum). TES 6 yrs imp. EFP.</p> <p>The trial judge found the offending a gross breach of trust; the victim a vulnerable child who had never had a father figure and who saw the appellant as a family member.</p> <p>The trial judge found the offending sexually motivated and that the appellant's generosity to the victim and her mother fostered in him a sense of entitlement.</p> <p>Significant psychological damage suffered by victim; periods of self-harming and attempt at suicide.</p> <p>Continued to deny the offending; very low risk of reoffending on account of his age.</p>	<p>Dismissed.</p> <p>Appeal concerned length of individual sentences and totality principle.</p> <p>At [209] ... there were a number of seriously aggravating features of the appellant's offending. The appellant was the only father figure whom the complainant had ever known and was treated by her as a family member. The impact of that breach of trust on the complainant's ability to trust others in the future is likely to be profound. The psychological impact of the offending on the complainant was severe, and at least contributed to the complainant's self-harming. The offending was not an isolated or out-of-character event, but part of an established pattern of similar offending. The offending in ct 2 had the aggravating factor of</p>

			<p>at work. Each time the same scenario occurred.</p> <p><u>Ct 2</u> One of these occasions occurred not long after the victim's 11th birthday. YNT came into her room and got into her bed. She tried to push him away. This made YNT mad, and he called her a 'stupid bitch' He then pinned her to the bed and, instead of penetrating her vagina with one finger as on other occasions, he forced three of his fingers into her vagina while covering her mouth with his other hand to muffle her screams. This caused the victim extreme pain. He penetrated her forcefully for some time before leaving.</p>		<p>the use of force to overcome the complainant's resistance to the offending. Covering the complainant's mouth, while forcefully and painfully digitally penetrating [her] vagina and verbally abusing her, were particularly traumatic and egregious aspects of that offending.</p>
11.	<p><i>The State of Western Australia v AHD</i></p> <p>[2021] WASCA 13</p> <p>Delivered 29/01/2021</p>	<p>45-47 yrs time offending. 49 yrs at time sentencing.</p> <p>Convicted after PG (25% 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>Cts 1 & 2: Indec dealings with de facto child U16 yrs.</p> <p>Ct 4: Sex pen of de facto child U16 yrs (penile/vaginal pen).</p> <p>Cts 5 & 7: Sex pen of de facto child U16 yrs (penile/anal pen).</p> <p>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</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 (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</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences cts 4, 5, 6 & 7 and 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>No formal qualifications.</p> <p>Consistent work history.</p> <p>Occasional use of methyl.</p> <p>Suffers diabetes and depression.</p>	<p>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 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.</p>	<p>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 premeditated and 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</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 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</p>
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			<p>She required hospitalisation and surgery.</p> <p><u>Breach of CBO</u></p> <p>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>	offending; high risk of reoffending.	<p>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 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>
10.	<p><i>UGN v The State of Western Australia</i></p> <p>[2021] WASCA</p>	<p>49-55 yrs at time offending. 68 yrs at time sentencing.</p> <p>Convicted after trial.</p>	<p>Ct 1 & 6: Sex pen child U13 yrs. Cts 2-5; 7-8: Indec dealing child U13 yrs.</p> <p>The victim, C, was a female aged 7-12 yrs.</p>	<p>Ct 1: 3 yrs 6 mths imp. Ct 2: 21 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 18 mths imp (cum). Ct 5: 4 mths imp (conc).</p>	<p>Dismissed.</p> <p>Appeal concerned both limbs of the totality principle. Individual sentences not</p>

<p>10</p> <p>Delivered 28/01/2021</p>	<p>Extremely limited criminal history; no prior sexual offending.</p> <p>Born Vietnam; five siblings; difficult and impoverished life; parents died when he was young; maintains regular contact with only one of his siblings.</p> <p>Spent 2 yrs refugee camp before being granted asylum in Australia in 1979.</p> <p>Very little formal education; left school aged 7 yrs; significant literacy issues and struggled to learn English.</p> <p>Twice married; supportive family; living with his wife and stepdaughter, her husband and very young child at time sentencing.</p> <p>Stable employment history; reliable and diligent worker; employed 40 yrs various processing plants.</p> <p>No physical health difficulties.</p>	<p>The age gap between UGN and the victim was about 41 ½ yrs.</p> <p>The offending occurred over a period of five yrs and involved five separate incidents. The offences of sexual penetration involved UGN penetrating C's vagina with his finger.</p> <p>UGN was a friend of C's mother. He regularly visited the family home and C's mother frequently entrusted him with her care.</p> <p>On one occasion UGN rubbed C's vagina before sexually penetrating her. At the same time he masturbated until he ejaculated (cts 1 and 2).</p> <p>On another occasion UGN grabbed C's hand and put it on his penis. She pulled her hand away. He continued to lean over her and masturbate until he ejaculated (cts 3 and 4).</p> <p>On another occasion, in the presence of a neighbour, UGN grabbed C in the area between her buttocks (ct 5).</p> <p>On another occasion UGN masturbated, while at the same time he rubbed C's vagina. He then sexually penetrated her (cts 6 and 7).</p> <p>On another occasion UGN showed C a DVD depicting adults engaging in sexual activity (ct 8).</p>	<p>Ct 6: 3 yrs 6 mths imp (cum). Ct 7: 21 mths imp (conc). Ct 8: 8 mths imp (conc).</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant offended against C in the same manner as described in cts 1 and 2 on other uncharged occasions.</p> <p>The sentencing judge found the offending was agg by being part of a course of sexual conduct that occurred over a period of at least five yrs; he groomed C by buying her treats, and as the yrs went by, money and clothes and given the large age difference between him and C.</p> <p>The sentencing judge found the appellant took advantage of the trust C's mother had placed in him, in order to abuse a vulnerable child; some of the offending took place in C's home where she was entitled to feel safe and some of the offending was clearly premeditated.</p>	<p>challenged.</p> <p>At [45] The offences committed by the appellant were plainly serious. ...</p> <p>At [47] The offences involved five separate incidents and were agg by having been committed over a period of about five yrs. Some accumulation of the individual sentences was therefore warranted. The offences were not isolated events and were, in effect, representative of ongoing sexual behaviour towards C. The offending was motivated by the appellant's sexual attraction towards C.</p> <p>At [48] The offending was further agg because the appellant groomed and rewarded C to the point where the appellant's behaviour was normalised. C's mother trusted the appellant ... The offending breached the trust that had been placed in [him]. Some of the offences were premeditated. Some were committed in C's home where she was entitled to be safe.</p>
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				<p>Offending serious effect on victim; continues to have profound effects upon her life as an adult; ruined her relationship with her mother.</p> <p>Low risk of reoffending; no demonstrated genuine remorse; continued to deny the offending.</p>	<p>At [52] ... The objective circumstances of the offending were, in our opinion, very serious. The fact that the cts of sex pen did not involve the penile penetration of C's vagina is not to the point. Having regard to what the appellant actually did and the effect of his offending upon C, it cannot reasonably be said that the sentencing judge overestimated the objective seriousness of what the appellant did to C.</p>
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Child aged 13-16 yrs

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
9.	<p><i>Coutts v The State of Western Australia</i></p> <p>[2023] WASCA 38</p> <p>Delivered 01/03/2023</p>	<p>29-30 yrs at time offending. 32 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history.</p> <p>Traumatic and dysfunctional childhood; eldest of two sons and two older half-brothers; parents separated when aged 4 yrs; in care of his father until aged 12 yrs; father often wheelchair-bound due to muscular disorder; returned</p>	<p>Cts 1-8: Sex pen child 13-16 yrs. Ct 9: Indec deal child 13-16 yrs.</p> <p>The two victims, were B, a boy aged 15 yrs, and D, a girl aged 14 yrs.</p> <p>The offending in respect of B arose out of one incident. The offending in respect of D occurred over a six-mth period and the charges representative of ongoing sexual conduct.</p> <p><u>Cts 1 & 2</u> Coutts met B on an online dating application. B told Coutts he was 18 yrs old. They exchanged sexualised</p>	<p>Cts 1 & 5: 3 yrs 6 mths imp (conc). Cts 2 & 3: 4 yrs 6 mths imp (cum). Cts 4 & 8: 4 yrs 6 mths imp (conc). Ct 6: 4 yrs imp (conc). Ct 7: 2 yrs 6 mths imp (conc). Ct 9: 1 yr 6 mths imp (cum).</p> <p>TES 10 yrs 6 mths imp.</p> <p>EFP.</p> <p><u>Earlier proceedings:</u> Coutts PG to the separate charges against B and was sentenced to 12 mths imp and 6 mths imp respectively, both sentences</p>	<p>Allowed.</p> <p>Appeal concerned totality principle.</p> <p>Resentenced (20% discount):</p> <p>Ct 2: 4 yrs imp (cum). Ct 9: 1 yr 6 mths imp (conc).</p> <p>All other individual sentences and orders for cum or conc unaffected.</p> <p>TES 8 yrs 6 mths imp.</p>

		<p>to live with his mother after period in foster care; mother own difficulties, including misuse of prescription medication and mental health issues.</p> <p>Subjected to severe, repeated and degrading sexual and physical abuse by his father; removed from his care by child protection aged 12 yrs; six-mths spent in foster care; father subsequently imp for the abuse; father deceased.</p> <p>Close relationship with mother; no longer in contact with other family members.</p> <p>Disrupted education; completed yrs 1 and 2 at primary school; then home schooled by his father; rarely completed homework and schoolwork; later attended three primary schools; diagnosed with ADHD; struggled with schoolwork; victimised by peers; repeated yr 7; frequently susp and expelled in high school; continuing limitations with literacy and numeracy; certificates in education and</p>	<p>indecent messages, including images and recordings.</p> <p>On meeting for the first time Coutts and B engaged in sexual intercourse. This marked the beginning of a sexual relationship. Coutts believed that B was over the age of 16 yrs. Sometime later he discovered that B was 15 yrs old.</p> <p>After becoming aware of B's age Coutts met B and drove him to his home where they engaged in further sexual activity.</p> <p><u>The earlier proceedings:</u> Coutts also exchanged sexual images with B after he became aware he was under the age of 16 yrs. This conduct resulted in Coutts being charged and dealt with separately with one ct each of using an electronic communication with intent to expose a person U16 to indec material and possess CEM.</p> <p><u>Cts 3-9</u> Coutts was a friend of D's family and he had gained the trust of her mother. He would spend time with D and invite her to spend weekends at his home.</p> <p>D came to believe she was in a relationship with Coutts and the relationship became a sexual one.</p>	<p>conditionally susp 18 mths.</p> <p>The sentencing judge found the offending agg by the fact there were two victims; there was a significant age difference between the appellant and each of the victims; it involved breaches of trust; D was sexually inexperienced and, as a result of the offending conduct, suffered an infection; the offending in each case was repeated; he secured the cooperation of the victims by friendship and in the case of D, she believed they were in a relationship.</p> <p>The sentencing judge found the appellant's childhood trauma impacted his offending and would make him a more vulnerable prisoner.</p> <p>Victims adversely affected by offending.</p> <p>Expressed remorse; well above average risk of reoffending.</p>	<p>TES.</p> <p>At [36] We have set out the earlier proceedings ... they are relevant to the present appeal for the following reasons. First, they provide context to the offences that are the subject of the appeal. Secondly, it is now apparent that the appellant was untruthful in the earlier proceedings about when the sexual relationship with B ceased. ... the appellant's lack of honesty regarding his conduct in relation to B is relevant in assessing his remorse and the need for personal deterrence. Thirdly, the appellant was on bail for the earlier offences at the time he committed the offences against D. ...</p> <p>At [78] ... the appellant had some significant mitigating factors. ... Whilst [he] had not been honest about his conduct or sexual behaviour when dealt with for the prior offences, he was completely frank when dealt with for these offences ... Further, whilst personal factors are usually accorded</p>
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		<p>hospital/patient care assistance.</p> <p>Employed various jobs from aged 16 yrs; no regular work since 28-29 yrs; on disability support pension due to mental health issues.</p> <p>History of self-harm from aged 9 yrs; suffers depression, anxiety and trauma symptoms; visual and auditory hallucinations when stressed; diagnosed with McArdle's disease, same medical condition as his father.</p> <p>Abuse of opioid prescription medication from aged 18 yrs; some alcohol and cannabis use.</p>	<p>Coutts and D engaged in sexual conduct, including intercourse and digital penetration.</p>		<p>lesser weight, the appellant's history of childhood trauma was relevant. It explained, without justifying, his sexual conduct and was relevant in assessing his moral culpability.</p> <p>At [91] ... When the appellant's PG are taken into account the difference between the sentences is greater than would be expected, even allowing for the fact that there were two victims ...</p> <p>At [99] Taking all relevant factors into account the TES ... is disproportionate to the overall offending. ... The TES is unreasonable and unjust. ...</p>
8.	<p><i>Amedi v The State of Western Australia</i></p> <p>[2022] WASCA 172</p> <p>Delivered 23/12/2022</p>	<p>22 yrs 7 mths at time offending.</p> <p>24 yrs at time sentencing.</p> <p>No prior criminal history.</p> <p>Convicted after very late PG (cts 3 and 7) (5% discount).</p> <p>Convicted after trial (cts 1, 4-6).</p>	<p>Cts 1; 3-7: Sex pen child 13-16 yrs.</p> <p>The victim, D, was aged between 15 yrs 10-and-a-half mths and 15 yrs 11 mths.</p> <p>Amedi met D online via a messaging application in a chat group predominantly used by swinging couples.</p> <p>D told Amedi she was aged 17 yrs, but</p>	<p>Ct 1: 2 yrs imp (cum).</p> <p>Ct 3: 2 yrs imp (conc).</p> <p>Ct 4: 2 yrs imp (conc).</p> <p>Ct 5: 4 yrs imp (cum).</p> <p>Ct 6: 2 yrs imp (conc).</p> <p>Ct 7: 2 yrs imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge rejected</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned first limb of totality principle and length of individual sentences.</p> <p>At [58] The individual sentences imposed for each of cts 1, 3, 4, 6 and 7 concerned offences in which it was not alleged that the offending was agg by the absence of consent</p>

		<p>Second youngest of six children to Kurdish parents; raised in a nurturing and supportive family; close relationship with parents and siblings.</p> <p>Completed yr 12; Bachelor of Applied Science; TAFE diploma.</p> <p>Exclusive relationship with current partner; partner supportive; intends to marry a Kurdish woman.</p> <p>Disability support work; employed draftsman at time sentencing.</p> <p>No significant health issues; addicted to sexual behaviour and history of use of online sites to meet others for sexual behaviour.</p> <p>Cannabis use.</p>	<p>still at school and wore a uniform.</p> <p>The communications between Amedi and D through the messaging application were sexually explicit, including sending each other nude photographs of their genital areas. They eventual met in person.</p> <p>On the first occasion they arranged to meet, D did not turn up. So Amedi sent her messages to the effect that unless she met him he would distribute nude photographs of her which she had sent to him. When she messaged him, asking what he wanted he told her he wanted sex. They arranged to meet at her workplace.</p> <p>On Amedi's arrival at D's workplace they met in a toilet, where they engaged in anal intercourse (ct 1).</p> <p>Following this first encounter, Amedi and D continued to exchange messages about meeting each other, and others, for sexual activity. D told Amedi she did not want to engage in anal sex again.</p> <p>About two weeks later Amedi and D again met D, this time at her home. They smoked cannabis and again engaged in sexual activity, including anal intercourse (cts 3; 4-7).</p>	<p>submissions a conditionally susp term of imp should be imposed.</p> <p>The sentencing judge found ct 5 the most serious offence as anal pen occurred without D's consent and ct 1 was agg by the fact he threatened to distribute intimate images of her and he did not wear a condom.</p> <p>The sentencing judge found the victim vulnerable; there was an age disparity of almost seven yrs; the appellant exerted some pressure on D to engage in sexual activity and he attempted to secure her participation in sexual activity by offering to pay her.</p> <p>Offending adverse effects on victim; requires ongoing counselling.</p> <p>Very little demonstrated remorse, insight or victim empathy.</p>	<p>on the part of the complainant. It is also the case that D was close to the age of 16. However, the offending concerned a vulnerable victim and a not insignificant age disparity between her and the appellant.</p> <p>At [59] On each of the two occasions on which the appellant engaged in sexual activity with D, he exerted some pressure on her to engage in that activity. The offending on ct 1 was agg by the appellant's threats to distribute intimate images of D if she did not meet with him for the purpose of sexual activity. ... all of the offending was agg because the appellant did not wear a condom. Cts 6 and 7 involved ... forceful oral pen. Cts 6 and 7 occurred after the act of anal pen the subject of ct 5.</p> <p>At [61] Ct 5, was, The most serious offence committed by the appellant involving, as it did, an act of anal pen which, to the appellant's knowledge occurred despite D's express</p>
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					<p>refusal of consent.</p> <p>At [62]-[63] ... it is not reasonably arguable that any of the individual sentences imposed ... was manifestly excessive. They were not unreasonable or plainly unjust. To the contrary, each represented an appropriate exercise of the sentencing discretion. ... the offending involved two separate incidents. Some accumulation of the sentences was appropriate. ...</p>
7.	<p><i>OTR v The State of Western Australia</i></p> <p>[No 2] [2022]</p> <p>WASCA 123</p> <p>Delivered 27/09/2022</p>	<p>20-43 yrs at time offending. 57 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Limited criminal history.</p> <p>Youngest of three children; father died aged two yrs; mother remarried; volatile relationship with step-father; spent time with grandparents.</p> <p>Bullied at school; suffered physical injuries; attended a psychologist on exhibiting potential for self-harm.</p> <p>Strong employment history;</p>	<p>Ct 1: Indec deal child U14 yrs. Cts 4-7: Indec deal child 13-16 yrs. Cts 8-10, 12, 13, 15-18: Sex pen child U13 yrs. Ct 11: Procured a child U13 yrs to engage in sex behaviour.</p> <p>OTR engaged in sexual activity with three victims, GN and JP, both boys and his biological daughter CT.</p> <p>The offences against JP and CT were representative of an overall pattern of conduct towards each of them over time.</p> <p><u>Ct 1 – offending against GN</u> OTR was aged 20 or 21 yrs.</p>	<p>Ct 1: 6 mths imp (cum). Ct 4, 6, 7 & 18: 2 yrs imp (conc). Ct 5: 1 yr 6 mths imp (cum). Cts 8-10 & 15: 3 yrs 6 mths imp (conc). Ct 11: 2 yrs imp (cum). Cts 12 & 17: 4 yrs imp (conc). Ct 13: 4 yrs 6 mths imp (conc). Ct 16: 5 yrs imp.</p> <p>TES 9 yrs imp (IND/667).</p> <p>IND/667 cum on earlier TES of 5 yrs imp imposed on IND/666 concerning sexual offences committed against two boys U13 yrs.</p> <p>TES 14 yrs imp.</p>	<p>Dismissed (leave refused – totality principle).</p> <p>Appeal concerned length of TES and totality principle.</p> <p>At [81] It was necessary, in our view, in order to properly mark the appellant’s overall criminality, to order some accumulation of the sentences concerning CT. CT was subjected to repeated and prolonged sex offending which has had severe consequences for CT’s mental and physical wellbeing. ... In all the circumstances it was appropriate to order that the ...</p>

		<p>Bachelor of Education; qualified schoolteacher; 27-yr teaching career; ended 2010 after charges of sex offending against a child (acquitted).</p> <p>Married aged 23 yrs; three children; separated.</p> <p>Treated for anxiety; depression; hypertension and gastric ulcers.</p>	<p>OTR and the victim GN are second cousins. GN was 11 yrs old.</p> <p>OTR provided GN with alcohol. Drunk and feeling dizzy and a little bit ill, GN lay down on a mattress. OTR put his hand on GN's penis and stroked it.</p> <p><u>Cts 4-7 – offending against JP</u> The offending against JP occurred over a period of about 2 yrs, when OTR was aged between 36 and 38 yrs.</p> <p>JP is OTR's nephew. At the time of the offending OTR was aged between 13 and 14 yrs. OTR would engage in sexual activity with JP, involving mutual masturbation and masturbating in front of JP.</p> <p><u>Cts 8-13; 15-18 – offending against CT</u> The offending against CT occurred over a period of about 3 or 4 yrs, very soon after the offending against JP ended.</p> <p>At the time of the offending OTR was aged between 38 and 43 yrs and CT was aged between 4 and 7 yrs.</p> <p>OTR engaged in sexual activity with CT, involving touching; digital and penile penetration and fellatio. On one</p>	<p>The sentencing judge found the offences involved a significant abuse of trust; all three victims had a familial connection and close relationship with the appellant; who took advantage of his position of trust to deprive each child of his or her innocence for his own sexual gratification; there was an element of coercive or forceful behaviour in the offending involving GN and CT.</p> <p>Offending significant impact on victims; offending considerable harm to both GN and CT and psychological consequences likely to affect them for the rest of their lives.</p> <p>No remorse or contrition; no acceptance of responsibility for his criminal conduct.</p>	<p>term for [ct 16] and the ... term for [ct 11] be served cum. So too it was necessary to provide for accumulation of the sentence concerning GN and some accumulation of the sentences concerning JP. A degree of accumulation is to be expected where there are multiple victims.</p> <p>At [82] In addition, in order to properly mark the seriousness of the overall offending, [it] was correct to order that the TES in relation to the offending the subject of IND/667 should be served cum upon the TES ... in relation to the offending the subject of IND/666. ... The objective seriousness of the offending against GN, JP and CT as a whole – and in particular the offending against CT – demanded condign punishment.</p> <p>At [84] The TES of 14 yrs' imp bears a proper relationship to the overall criminality involved in all of the offences, viewed in their entirety, having regard to all relevant facts and circumstances and all relevant</p>
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			occasion OTR placed an electric toothbrush on her clitoris.		sentencing factors.
6.	<p><i>GUE v The State of Western Australia</i></p> <p>[2022] WASCA 121</p> <p>Delivered 20/09/2022</p>	<p>69 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal history.</p> <p>Married 23 yrs; three sons; divorced.</p> <p>Current partner (victim's aunt) very significant ongoing physical disabilities; requires physical assistance; her full-time carer.</p> <p>Long work history; employed various business enterprises; retired at time sentencing.</p> <p>Currently in good health; heart attack 2015; medicated for cholesterol and blood pressure.</p>	<p>3 x Sex pen child 13-16 yrs.</p> <p>The victim was 7 yrs old when GUE entered a relationship with her aunt. The offending occurred when the victim was 'at the very latest' 13 yrs and a few mths old.</p> <p>GUE agreed to teach the victim to play the drums. Her lessons spanned a period of about two yrs.</p> <p>GUE, who had a qualification in massage, would sometimes give various members of the victim's family massages. When the victim had muscle soreness she asked GUE for massages. The massages took place after drum lessons.</p> <p>At some point after the massages began GUE began to groom the victim to accept him touching her in a sexual manner.</p> <p>GUE engaged in a pattern of sexual abuse. On multiple occasions he would stimulate her clitoris and, on occasions, would massage her breasts.</p> <p>On one occasion GUE digitally pen the victim's vagina. When she told him it hurt he stopped (ct 1).</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 3 yrs 3 mths imp (cum). Ct 3: 3 yrs 6 mths imp (conc).</p> <p>TES 6 yrs 9 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offences 'very serious instances of offences of their kind'; the offending agg by having occurred over a period of grooming calculated to make the victim receptive to the abuse; each offence was part of a course of sexual offending; the large age disparity of 41 ½ yrs between the victim and the appellant; the appellant's abuse of a position of significant trust.</p> <p>The trial noted the effect the appellant's imp would have on his partner.</p> <p>Little risk of reoffending.</p>	<p>Dismissed (leave refused – length of sentence).</p> <p>Appeal concerned totality principle and length of sentence (individual sentences not challenged).</p> <p>At [61] ... the appellant's offending had serious features. [He] groomed the complainant in order to facilitate his abuse of her. His offences were not isolated; they were part of a course of sexual offending against the complainant. There was a very substantial age disparity between the complainant and the appellant. Being a girl of 12 or 13 yrs of age at the time of the offending, the complainant was vulnerable. The appellant abused his position of trust as the partner of the complainant's aunt who was treated by her as an uncle and who was trusted to teach her drumming. ...</p> <p>At [63] ... In our view, it was open to the trial judge, on a proper exercise of her</p>

			On another occasion he touched the victim's clitoris and performed oral sex on her (cts 2 and 3).		Honour's discretion, to impose the sentences that were ultimately imposed. At [72] ... given the seriousness of the appellant's offending, the mitigatory effect of his partner's debilitating health problems can be given only quite limited weight.
5.	<i>Oreo v The State of Western Australia</i> [2022] WASCA 62 Delivered 03/06/2022	48-49 yrs at time offending. 50 yrs at time sentencing. Convicted after early PG (25% discount). Minor prior criminal history. Two siblings; loving and caring parents; not subjected to abuse; father alcohol-dependent; witnessed his father assault his mother. Parents deceased; supportive sister. Homosexual; came out 3 yrs prior to sentencing; difficulties dealing with his sexuality. Completed yr 10 high school.	Cts 1-2; 6-8: Indec deal child 13-16 yrs. Cts 3-5; 9: Sex pen child 13-16 yrs. Ct 10: Procured a child U13 yrs to do indec act. Ct 11: Poss CEM. The offending involved two separate victims, J and T, both 14-yr old boys, and three separate incidents. The first victim, J, met Oreo on an online dating application. On the site J indicated he was about 20 yrs old. When Oreo questioned J as to his age he told Oreo he was 16 yrs old. Oreo met J at a public toilet. J was wearing his school uniform. Inside a toilet stall they kissed and engaged in a number of sexual acts (cts 1-6). Oreo and J continued to communicate	Cts 1 & 2: 4 mths imp (conc). Cts 3 & 4: 18 mths imp (conc). Ct 5: 3 yrs imp (cum). Cts 6 & 7: 4 mths imp (conc). Cts 8 & 10: 12 mths imp (conc). Ct 9: 18 mths imp (cum). Ct 11: 12 mths imp (cum). TES 5 yrs 6 mths imp. EFP. The sentencing judge found there was a significant likelihood the appellant was aware J was under the age of 16 yrs and that he was aware T was 14-yr old. The sentencing judge found the offending aggravated by the fact it involved two different 14-yr-old males; the offending and surrounding text messages indicated a sexual	Allowed. Appeal concerned miscarriage of justice (erroneous understanding conduct in relation to J was criminal in that J was U18 yrs and any belief J was at least 16 yrs not mitigating). Returned to District Court for re-sentencing. At [48] ... it was an admitted fact that J had told the appellant he was 16 yrs old. While we accept that the appellant may have faced some challenges in proving an honest belief, we cannot conclude that he had no reasonable prospect of doing so. The fact that counsel's

		<p>Sound work history; employed at time of offending.</p> <p>History of amphetamine and methyl abuse.</p>	<p>with each other about meeting for sex.</p> <p>A few days later they again arranged to meet. Oreo picked J up in his car before he went to school. J was again wearing his school uniform. After parking the car Oreo kissed J on the mouth, touched his penis and performed oral sex on him, before dropping J near his school (cts 7-9).</p> <p>After this incident J's mother found text messages on her son's phone about meeting men for sex and contacted the police. When interviewed J disclosed the offending and identified Oreo from a digiboard.</p> <p>About a month later Oreo met the second victim, T, through a dating application. They began communicating by text and in one text message T told Oreo he was 14 yrs-old.</p> <p>Oreo then sent T multiple sexually explicit text messages and arranged to meet him, implicitly for the purpose of engaging in sexual activity (ct 10).</p> <p>During the text messages Oreo asked T to send him a photo of his penis and he complied. On receiving the photo Oreo messaged another phone contact stating, 'I have a horny 14-yr-old for</p>	<p>interest in underage males and his willingness to act on that interest; it was premediated; involved unprotected pen sexual activity; there was a significant age disparity; he sent messages and intended to distribute the image of T's penis in an att to enlist other adult males to engage in sexual activity with T and he suggested J use illicit drugs as a sexual aid.</p> <p>The sentencing judge concluded that some accumulation was appropriate to reflect the fact that there were two separate complainants and three separate incidents.</p> <p>High risk of reoffending; some acceptance of responsibility; no insight into the impact of his offending behaviour or taken full responsibility for his offending behaviour.</p>	<p>misapprehension effectively deprived the appellant of the opportunity to att to prove that fact constitutes a miscarriage of justice in these circumstances.</p> <p>At [52] ... we are satisfied that the misunderstanding of defence counsel gave rise to a miscarriage of justice in all the circumstances of this case.</p>
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			<p>you tomorrow'. He then attempted to send the photo of T's penis to this person, but the message failed to send (ct 11).</p> <p>The meeting with T did not occur. Oreo was arrested the following morning.</p>		
4.	<p><i>Tullock v The State of Western Australia</i></p> <p>[2022] WASCA 11</p> <p>Delivered 11/02/2022</p>	<p>45 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Very long and serious criminal history; significant period of his adult life spent in custody.</p> <p>Born and raised WA.</p> <p>Left school yr 7.</p> <p>Limited employment history.</p> <p>Four children.</p> <p>Entrenched and extensive history of illicit substance use; commenced using alcohol and cannabis early teens; using methyl and heroin 15 yrs; intoxicated by methyl and alcohol at time offending, but not to a significant degree.</p>	<p>1 x Sex pen of a child U16 yrs.</p> <p>The victim, K, was aged 15 yrs. She was intoxicated, having consumed a significant amount of alcohol earlier in the day.</p> <p>Tullock, who was not previously known to K, met her in the Perth CBD. He gave her sips from an alcopop drink and told her that he could provide her with more alcohol. K agreed to walk with him to collect it.</p> <p>It would have been obvious to Tullock that K was intoxicated.</p> <p>In a stairwell of a carpark, K was too drunk to speak, leaning against a wall and trying to stay awake.</p> <p>Just before 6.10 pm, Tullock grabbed K's forearm, bruising it. He then pulled down her pants and had sexual intercourse with her, without a condom. He ejaculated inside her. During intercourse K passed out so he</p>	<p>7 yrs 8 mths imp.</p> <p>EFPP.</p> <p>The sentencing judge found the appellant's meeting with K opportunistic and his conduct 'somewhat predatory'; he was much older than K, who was vulnerable by reason of her age and level of intoxication; he took her to a secluded location, described by K as a 'dirty stairwell in a public carpark' under the pretext of providing an already drunk K with more alcohol and he used some degree of physical force on K.</p> <p>The sentencing judge found the serious features of the offending and the appellant's criminal history underscored the need to give significant weight to the sentencing objectives of punishment, protection of the public and personal and general deterrence and expressly found no mitigating circumstances.</p>	<p>Dismissed (leave refused) - on papers.</p> <p>Appeal concerned length of sentence.</p> <p>At [29] ... It was indisputably a various serious example of its type. The offence involved a high degree of criminality. The appellant enticed K to an isolated location with the promise of more alcohol. Her state of intoxication was such that she could, in no way, protect herself. The appellant took sexual advantage of a child who was vulnerable by reason of her age and her state of intoxication. K plainly did not consent and was, at one point, unconscious. The appellant engaged in sexual intercourse with K that culminated in his ejaculation inside her. ... His actions exposed her to the risk of</p>

		No diagnosed mental health conditions or disorders, but on remand prescribed medication for depressive-like-symptoms.	<p>poured water on her face, after which she regained consciousness.</p> <p>At the time of the offence K's blood alcohol level was close to 0.18%.</p>	<p>Offending serious and ongoing adverse effect on victim.</p> <p>No demonstrated victim empathy or remorse.</p>	<p>pregnancy and disease. At the time of the offence, he had a positive hepatitis C status. The offence was accompanied by a degree of force which left K bruised. ...</p> <p>At [30] Her Honour was correct to find that there were no mitigating factors in the case. ... The appellant poses a risk of further serious offending. While his prior criminal record is not an aggravating factor, her Honour was entitled ... to regard the record as underscoring the need to impose a sentence which, among other things, emphasised the sentencing objectives of punishment, personal and general deterrence and the protection of the public. Unfortunately, the appellant's prospects of rehabilitation, at this point, do not appear strong.</p>
3.	<p>WNO v The State of Western Australia</p> <p>[2021] WASCA 141</p> <p>Delivered</p>	<p>27 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history; no prior convictions of a sexual nature.</p>	<p>Cts 1; 2; 4-6; 8-10 & 12: Indec deal child 13-16 yrs. Cts 3; 7 & 11: Sex pen child 13-16 yrs.</p> <p>The victim, J, was aged 14 yrs. She was WNO's niece.</p> <p>J's parents were on a week-long</p>	<p>Cts 1; 2; 4 & 5: 6 mths imp (conc). Ct 3: 3 yrs imp (cum). Ct 6: 9 mths imp (cum). Ct 7: 2 yrs imp (cum). Cts 8 & 9: 9 mths imp (conc). Cts 10 & 11: 6 mths imp (cum). Ct 12: 18 mths imp (conc).</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [38] His Honour rightly regarded the offences committed by the appellant as</p>

	12/08/2021	<p>Upbringing marked by degree of deprivation and disadvantage; very close to his mother; grief-stricken after her death.</p> <p>Completed yr 9 high school.</p> <p>Worked in IT with older brother; employment prospects upon release from prison.</p> <p>Using methyl on a daily basis at time offending.</p>	<p>overseas holiday. She and her 17 yr old brother were staying at the family home by themselves.</p> <p>The morning after J's parents departed Perth WNO rang J and asked her if she wanted to go out. She declined. He then asked if she wanted to come to his house instead. J again declined. Upset by J's refusals he travelled to her house and yelled at her. He then apologised and asked her to go with him to the shops. She agreed. On the way WNO pulled over his vehicle and kissed her on the lips. He also put his hand inside her pants and touched her buttocks (ct 1).</p> <p>Later that day WNO asked J to give him 'a proper kiss'. Despite her refusal he again kissed her on the lips (ct 2).</p> <p>That evening WNO drove to J's house. J was in her bedroom. He entered her room locked the door and put on a movie. She told him he was not meant to be in her room and attempted to leave. Before she could do so he grabbed her, pulled her onto her bed and put his hand under her top and pants, squeezing her breast and rubbing the outside and inside of her vagina (ct 3).</p> <p>WNO spent the night in her bedroom</p>	<p>TES 6 yrs 9 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious; it was sustained over a period of five days; was persistent; overbearing and oppressive conduct and to a degree premeditated; it was a gross breach of trust and J was particularly vulnerable, given the absence of her parents and the inability of her grandfather and older brother to offer her protection.</p> <p>The sentencing judge found no other penalty other than imp was appropriate.</p> <p>Offending profound and adverse effect upon J.</p> <p>Appellant not truly remorseful; risk of reoffending dependent upon his methyl use in the future.</p> <p>Although not the subject of charges the appellant had, on previous occasions, slept in J's bed and touched her breasts, bottom and vagina.</p>	<p>serious. ...</p> <p>At [40] All of the appellant's offending was serious. The appellant treated J not as his niece, but as his girlfriend. He did so in a controlling and sometimes forceful way. Without in any way minimising the seriousness of the unwelcome kissing, some of which was accompanied by behaviour which could be described as 'groping', the acts of digital pen were particularly serious. The act of masturbating while touching [her] buttocks in her bed was also highly offensive.</p> <p>At [41] In our opinion, the TES imposed ... did not infringe the totality principle. The appellant's offending, considered as a whole, exhibited a high degree of criminality. ... Some accumulation of the sentences was required, given that the offending occurred on different days in separate incidents. ...</p>
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2.	<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>In good health time of sentencing.</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>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</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 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>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> <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</p>

			<p>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>Detrimental and enduring impact on victim.</p> <p>No evidence of remorse or steps taken towards rehabilitation.</p>	<p>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>
1.	<p><i>Jetter v The State of Western Australia</i></p> <p>[2021] WASCA 80</p> <p>Delivered 07/05/2021</p>	<p>44 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; no prior sexual offending; history of using violence.</p> <p>Born to very young parents; adopted by an aunt; raised in loving environment; three younger sisters; maintained contact with biological parents and their other children.</p> <p>Sexually assaulted as a child; in his 20s when adoptive mother died.</p> <p>Left school yr 11; excelled at sport; bullied by other children; disciplined by teachers when he retaliated.</p> <p>Worked on a station before</p>	<p>Cts 1 & 2: Sex pen child 13-16 yrs. Ct 3: GBH.</p> <p>Jetter and the victim did not know each other. The victim was aged 15 yrs, 11 mths and 1 wk.</p> <p>The victim told Jetter she was 18 yrs old.</p> <p>The victim approached Jetter and suggested they consume drugs together. In the stairwell of a carpark they had sexual intercourse. The victim was a willing participant (ct 1).</p> <p>Later that same day the victim and Jetter travelled to the house at which Jetter was staying. The house belonged to his aunt.</p> <p>The victim stayed at the house with Jetter for a few nights. During that time she and Jetter had sexual intercourse. The victim was a willing participant (ct 2).</p>	<p>Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 2 yrs 6 mths imp (conc). Ct 3: 3 yrs imp (cum).</p> <p>TES 5 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's moral culpability was decreased; by the victim telling him she was aged 18 yrs; she was not coerced into the offending and willingly participated in the acts of sexual intercourse.</p> <p>The sentencing judge found the gravamen of the sexual offending was that having only just met the victim and not knowing anything about her, he did not do more to ascertain her age before embarking in sexual activity with her.</p> <p>The sentencing judge characterised the sexual offending as falling at the lower end of the scale of seriousness</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence cts 1 and 2 and totality principle.</p> <p>Resentenced (25% discount):</p> <p>Ct 1: 3 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 3: 2 yrs 9 mths imp (cum).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>At [12] The State conceded that the sentence of 2 yrs 6 mths imp for each of cts 1 and 2 was manifestly excessive as to length (but not as to type). ...</p> <p>At [63] ... the appellant's culpability in relation to the sexual offending was ameliorated by ... [his] honest</p>

		<p>leaving school; undertook traineeships and completed certificate in civil construction and engineering; unemployed since leaving school.</p> <p>Two children; aged 18 yrs and 9 yrs; limited contact with them.</p> <p>Attempts at self-harm and suicidal ideations in his 20s; methyl use from aged 22; never undertaken programs or rehabilitation to address his substance abuse.</p>	<p>On her third day at the house Jetter and his aunt spoke to the victim about the recent death of the aunt's brother. When the victim laughed in response the aunt slapped her in the face. Jetter then swung a baseball bat at the victim, the second swing hitting her in the arm (ct 3).</p> <p>The victim ran from the house. A neighbour intercepted the victim and called the police. A short time later he was arrested.</p> <p>The victim suffered a fractured arm and underwent surgery, involving the open reduction and internal fixation of the humerus and the application of a brace.</p> <p>Jetter admitted having had consensual intercourse with the victim, believing she was aged over 18 yrs. He also admitted striking her with the bat and breaking her arm.</p>	<p>for offending of this type.</p> <p>Seriousness of the offence of GBH increased by the appellant's use of a weapon; the victim's young age; her vulnerability and that she suffered a serious injury, requiring surgery.</p> <p>No sexual interest in children; not especially troubled by having struck the victim with a bat, regarded this violence as a normal response.</p> <p>Cooperative; remorseful and disgusted by the fact he engaged in sexual intercourse with a 15 yr old; high risk of future offending involving violence; an average risk of future sexual offending due to his impulsivity and unaddressed drug abuse.</p>	<p>belief that the complainant was aged 18 and the absence of any reason for him to doubt that the complainant was of that age; ... the complainant was very close to the legal age of consent, namely 16 yrs; ... [and] the complainant was a willing participant in the acts of sexual intercourse; ...</p> <p>At [64] However, on the other hand, there was a very substantial age disparity between the appellant and the complainant. The complainant was especially vulnerable because, like the appellant, she was indigent, homeless and a drug abuser. In those circumstances, the public interest which underpins the offence in question required that the appellant obtain some reliable confirmation (apart from the complainant's assertion) as to her age before engaging in sexual intercourse with her.</p>
<i>Transitional provisions repealed – 14/01/2009</i>					
<i>Transitional provisions enacted – 31/08/2003</i>					

Office of the Director of Public Prosecutions