STATUTORY REVIEW: OPERATION AND EFFECTIVENESS OF THE 2009 AMENDMENTS TO SECTIONS 297 AND 318 *CRIMINAL CODE*

I. Introduction

In accordance with a Liberal election commitment at the 2008 Western Australian State election, amendments to sections 297 and 318 of the *Criminal Code* were made by the *Criminal Code Amendment Act 2009* (the 2009 amendments). These amendments prescribed mandatory sentences for persons (including juveniles aged 16 – 17 years old) convicted of assaulting specific public officers where the officer is performing his or her official duties and the assaults resulted in either bodily harm or grievous bodily harm. The officers included in this category were:

- police officers,
- prison officers as defined in the *Prisons Act 1981,*
- security officers as defined in the *Public Transport Authority Act 2003*,
- ambulance personnel,
- contract workers providing court security services or custodial services under the *Court Security and Custodial Services Act 1999*, and
- contract workers performing functions under the *Prisons Act 1981.*

The *Criminal Code Amendment Act 2009* introduced sections 297(5), (6), (7) and (8) and 318(2), (3), (4) and (5). These amendments became due for review in September 2012 in accordance with section 740A of the *Criminal Code* (also introduced by the *Criminal Code Amendment Act 2009*), which states:

(1) The Minister shall carry out a review of the operation and effectiveness of the amendments made to this Code by the *Criminal Code Amendment Act 2009* as soon as practicable after the third anniversary of the day on which those amendments came into operation.

(2) The Minister shall prepare a report based on the review made under subsection (1), and shall, as soon as is practicable after that preparation, cause the report to be laid before each House of Parliament.

II. Terms of Reference and Stakeholders Consulted

The Department is not charged with re-opening the policy decisions underpinning the amendments but with examining their operation and effectiveness to date. The review necessarily focuses on the amendments to section 318 rather than on those to section 297, as since the *Criminal Code Amendment Act 2009* came into effect, no charges have been lodged under section 297 in 'prescribed circumstances'. This may reflect the fact that assaults on public officers which result in grievous bodily harm are rarer than the less serious assaults encompassed by section 318.

In assessing the operation and effectiveness of the amended provisions, their purpose must be borne in mind. The aim behind these amendments was to provide added protection to particular categories of public officers. On 17 March 2009 during parliamentary debates on the Criminal Code Amendment Bill, the then Attorney General the Hon Christian Porter MLA stated that in determining which public officers would be included in the provisions 'we looked at uniformed officers and people who find it is an intrinsic, and not ancillary, part of their public duties to face violent conduct on a daily basis, and those people who the statistics showed had the greatest need because of existing violent offences and sentencing practices'.

The review was informed by consultation with the entities which employ and engage these officers: Western Australia Police, the Department of Corrective Services, the St John's Ambulance Service, and the Department of Transport. Consultation also took place with the Director of Public Prosecutions. The Commissioner for Children and Young People, the Chief Magistrate, the President of the Children's Court, the Chief Judge of the District Court, and the Chief Justice were also consulted.

Some matters were excluded from the review, as they have been addressed by legislative amendments which have affected, either directly or indirectly, the relevant provisions. First, the *Criminal Code Amendment Act 2013* includes Youth Custodial Officers in the list of public officers specified in sections 297 and 318. Second, the *Sentencing Legislation Amendment Act 2014* provides, among other things, that all adult offenders convicted of assaulting a public officer in prescribed circumstances must serve the mandatory minimum sentence before being eligible for parole. These issues are therefore not addressed in this review.

There are no equivalent laws in other Australian jurisdictions to which the 2009 amendments may be compared to assess their operation. While other jurisdictions (notably Tasmania) have recently investigated mandatory sentencing for assaults on police officers, those which have considered implementing such a regime have decided against it.

III. 'Prescribed Circumstances' and the Relevant Procedures

An assault on one of the officers set out above only attracts a mandatory sentence if the assault results in either bodily harm (section 318) or grievous bodily harm (section 297). The definition of 'assault' in section 222 of the *Criminal Code* is broad:

> A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

'Applies force' includes 'applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort'. Grievous bodily harm is defined as 'any bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health', and bodily harm is 'any bodily injury which interferes with health or comfort'.

The WA Police Prosecuting Services Division (PSD) has developed a set of internal guidelines, *Laying of Charges - Assault Public Officer (Prescribed Circumstances)* (PSD Guidelines), which outline how it is determined whether 'bodily harm' has been sustained.

Initially, accounts of the process of *applying* the PSD Guidelines differed in one crucial respect: the identity of the final decision maker. The Director for Public Prosecutions (DPP) stated that the ultimate decision lay with the Commissioner and that a Consultant State Prosecutor attached to the Perth Police Prosecutions Branch (the Consultant) provides only advice. By contrast, the Police Commissioner advised that 'appropriately, the decision to proceed or not is made by the Office of the Director of Public Prosecutions Senior Consultant in consultation with a PSD Inspector'. Following further inquiries, WA Police advised that there had been a change and that as of 30 June 2013 the determination of whether a charge involving 'prescribed circumstances' proceeds or not is at the discretion of WA Police Prosecuting Services Division. That discretion is now exercised by a panel of three senior personnel within the division (the Panel), specifically:

- Prosecuting Services Division Assistant Divisional Officer (ADO) ;
- Prosecuting Services Division Prosecuting Regional Coordinator (PRC); and
- A Prosecuting Services Division Senior Solicitor

WA Police further advised that a police prosecutor does not have the authority to 'downgrade' a charge to remove prescribed circumstances without the consent of the Panel. A determination of the panel is binding and not reversible without referral to the Panel, and only a significant change of circumstances will result in a reversal of the original decision. WA Police noted that this policy does not affect the operation of discontinuance where a prima facie case cannot be supported and evidence has not been adduced in court. Although it seems there was previously some confusion regarding the identity of the final decision maker, there now appears to be certainty: decisions regarding summary prosecutions under the mandatory sentencing provisions of section 318 are made within WA Police.

IV. Statistics – charges lodged, convictions secured and rates of assaults

As noted above, no charges have yet been lodged under the mandatory sentencing provisions of section 297. However, during the three year period since the commencement of these provisions, 106 charges were lodged in the lower courts under section 318 which specified a mandatory component. The vast majority of these were lodged in the Magistrates Court, though 17 charges were levelled against juveniles and were therefore heard in the Children's Court.

Of the 106 charges that were lodged in the lower courts by police, twenty charges were later dismissed or withdrawn, and three charges are still yet to be finalised. Of the remaining 86 charges that were finalised and resulted in a conviction, 39 charges had the mandatory component of the legislation enforced, and resulted in a mandatory period of imprisonment or detention. In addition, 45 charges finalised were 'downgraded' to remove the 'prescribed circumstances' component of the charge. These charges also resulted in a conviction. Two outcomes are still under investigation.

For the 39 charges that resulted in a mandatory sentence, the average sentence handed down was equal to or greater than the legislated mandatory penalty. Adults receiving an imprisonment sentence received an average of seven months' imprisonment, while juveniles receiving a juvenile conditional release order (which is an intensive supervision order with detention) received an average of 6 months on the order.

It is not possible to measure all assaults on public officers: not all of these will be reported, and many reported crimes will never be prosecuted owing to insufficient evidence. The Department is however able to track the number of criminal charges. To assess the impact of the 2009 amendments, information about charges under sections 297 and 318 during the three year period since their commencement has been compared with charges lodged under these sections in the three years immediately prior to the amendments.

Information taken from the lower courts case management system comparing these two time periods shows a 14% decrease in charges for assaulting public officers under sections 297 and 318 and obstructing public officers under section 172 during the first three years following the 2009 amendments. Specifically, there has been a 27% decrease in section 318 charges, and a 30% decrease in section 172 charges. Additionally, even though the number of total charges lodged has decreased, charges for offences related to section 297 have remained constant.

These figures suggest that either the rate, the reporting or the prosecution of these assaults has decreased. It is notable that charges for obstructing a public officer have also decreased; this may suggest that members of the public are exercising more caution in their interactions with public officers. One must however be cautious about attributing these statistics to the impact of the 2009 amendments. In particular, it should be noted that crime rates overall decreased during this period, even as the Western Australian population increased – all charges for criminal offences (including traffic offences) decreased by 14% over the same period.

In addition, non-domestic assault made up 7.1% of WA Police's published selected verified offences in 2008/09, and 6.0% in 2012/13. 'Verified offences' are all offences reported to or becoming known to WA Police within the relevant time period that have not been determined to be falsely or mistakenly reported. The number of verified offences will not necessarily have been committed in the period indicated, as these are monthly figures and there may be a difference between the month an offence occurs and the month it is reported.

Information provided by WA Police and the Police Union is also discussed below and a detailed analysis of the Department's own data is attached as **Annexure 1**.

V. Stakeholder Consultation

The submissions were generally supportive of the amendments although in most cases limited information was provided.

Variations in the responses reflect the differences between the stakeholders' positions. The ODPP has, as set out below, some involvement in the processes surrounding the provisions but its staff members are not directly impacted. By contrast, WA Police is involved in implementing the provisions and its officers constitute one of the classes of public officers protected. The Department of Corrective Services, the St John's Ambulance Service, and the Department of Transport also employ officers sought to be protected by the amendments but these organisations have no involvement implementing the provisions and appear in some cases to be unfamiliar with the relevant processes. The Heads of Jurisdiction have first-hand experience of how the amendments are operating in court, although for the most part these matters are heard before magistrates rather than in the higher courts. The Commissioner for Children and Young People has no involvement with the implementation of these provisions.

WA Police

The Police Commissioner referred to the PSD Guidelines mentioned above, advising that they were intended to promote a consistent approach to management and assessment of alleged assaults on public officers. The Commissioner noted that the PSD Guidelines are also considered to provide a measure of protection as it is not intended that persons should be imprisoned for what are determined to be relatively minor assaults, and the process of applying them 'is also used as an authority to remove prescribed circumstances regarding bodily harm if that office decided the charge was not to proceed'.

The Commissioner advised that in determining whether a matter meets the standard of 'assault public officer (prescribed circumstances)' PSD actively consider whether the victim was a public officer appropriately performing a function of their office at the time of the assault, that PSD requests additional information from the Investigating Officer and that all decisions are made in line with the PSD Guidelines as well as the DPP *Statement of Prosecution Policy and Guidelines 2005.* He further advised that care is taken to maintain independence and accountability and for instance that where an officer is assaulted in the course of exercising their duties, they are directed to have the assault investigated by a different officer, preferably one who was not involved in the relevant incident.

The Commissioner stated that WA Police 'recognise and appreciate that the Government has enacted legislation to protect police officers' and that 'the provision requiring courts to impose a period of incarceration…is considered appropriate provided it also acts as a deterrent to the general community'. The Commissioner expressed hope that in the longer term 'attitudes will change and there will be a greater awareness and acceptance…that attacks on police officers and public officers [are] unacceptable', and stated that 'it is just as important to tackle the root cause of such problems, specifically to deal with alcohol-related issues'.

For the Police Commissioner, the question whether this attitudinal change had been 'achieved as a result of the Code amendments is unclear at this time' and he concluded that 'to determine if the legislation is achieving its intended objectives and meeting community expectations, it is likely that a formal longer term study and evaluation will be required'. He advised information provided by the WA Police Prosecuting Services Division indicated that in real terms there has been an overall 33% reduction in the number of assaults on police from 1346 to 892 over a four year period, although it was unclear whether this reduction can be attributed to the amendments as it is not known what other factors may have contributed.

Office of the Director of Public Prosecutions

The DPP noted that pursuant to section 5 of the *Criminal Code* his office rarely prosecutes offences under section 318 of the *Code,* as this is an 'either way' offence usually prosecuted before a Magistrate with the prosecution conducted by WA Police. Where there are accompanying indictable charges, the ODPP will conduct the prosecution in the District Court. The DPP advised that his office is however solely responsible for the prosecution of the indictable offence in section 297(4) of the *Criminal Code*: assaults occasioning grievous bodily harm on a public officer performing a function of their office or employment. He advised that since July 2010 his office has prosecuted only one offence under section 297(4) of the *Criminal Code* and that the offender pleaded guilty and was convicted. The DPP noted that in the ODPP's experience, WA Police will ordinarily charge an offender under section 318 of the *Criminal Code* rather than section 297(4) as the relevant offending rarely results in grievous bodily harm as defined in the *Code.*

Since July 2010, the ODPP has prosecuted one charge of assault in prescribed circumstances under section 318(1)(d) in which the offender pleaded guilty and was convicted, one charge in which the offender pleaded not guilty but was convicted, and remitted one matter to the Magistrates Court for determination. The DPP advised that in addition, since July 2010 the ODPP has prosecuted 86 other matters that were charged under section 318(1)(d) of the *Code* in the absence of prescribed circumstances. Of these 86 matters, the ODPP:

- prosecuted 58 matters in which the offender pleaded guilty and was convicted;
- prosecuted 2 matters in which the offender pleaded not guilty but was convicted;
- discontinued 6 matters; and
- remitted 20 matters back to the Magistrates Court for determination.

The DPP noted that the Western Australian Court of Appeal has not yet directly considered the mandatory sentencing provisions for assaults on public officers but that in *Roncevic v The State of Western Australia* [2012] WASCA 43 at [34] the Court of Appeal stated that offences of assault against public officers were very serious and that primary sentencing considerations should be 'general deterrence' so as to protect officers performing their duties.

The DPP also noted that the existence of the PSD Guidelines reflects the fact that 'where judicial discretion is removed it does not remove discretion so much as redistribute it to other parts of the criminal process'.

Department of Corrective Services

The then Acting Commissioner for Corrective Services advised in 2013 that since the introduction of the 2009 amendments to the *Criminal Code,* there had been no assaults on prison officers resulting in a conviction under section 297 or 318. The Acting Commissioner advised that it was not considered appropriate to prosecute under these provisions for the assaults that had occurred (including a serious assault on a prison officer in 2012). Further, the Department of Corrective Services (DCS) continued to support the 2009 amendments and considered it 'imperative that there are appropriate protections for prisoner officers and other "frontline" public officers who serve and protect the community'.

St John Ambulance Service

The Ambulance Service Director of the St John Ambulance Service did not provide any figures but advised that the service 'continued to see assaults on ambulance officers and believed the legislation is not acting as a suitable deterrent'. Assaults had been reported to police and charges laid but 'to my knowledge the Act has not been applied in these cases'. Nevertheless, the Director stated that 'mandatory sentencing should continue' and that the Service remained 'strongly in favour of any legislation which seeks to protect our officers in the execution of their duties'.

The Director advised that rates of assaults on ambulance officers seemed to have remained the same since the amendments and estimated that around a dozen paramedic staff were assaulted each year and more were subject to threats of assault. It was noted that alcohol-affected or drug-affected people and psychiatric patients who are moved to assault an officer are unlikely to be inclined to think about the existence of legislation.

The Director considered that police procedures following assaults were bureaucratic and time consuming and stated that as it did not seem any cases had ended up in court, many officers felt it was preferable not to report assaults. He concluded that there was a lack of confidence in the amendments and that they needed to be administered in a way that inspired more trust on the part of public officers. Without more detail it is difficult to interpret this information but it seems there is scope for improved communication between the St John Ambulance Service and WA Police on the issue of how decisions relating to the amended provisions in sections 297 and 318 are made.

Department of Transport

The Director General of the Department of Transport advised that since 2009 there had been three prosecutions for assaults on Transit Officers under section 318, all relating to an incident on 20 November 2011. The offenders were convicted on 7 September 2012 and one received a sentence of 14 months' imprisonment; the other a sentence of 10 months' imprisonment; and the third a sentence of 18 months' imprisonment. Mr Waldock noted that the incident attracted considerable media attention and that since this time there had not been any further instances of serious assaults on Transit Officers and concluded that it would be 'reasonable to presume that the profile of the incident and the significant penalties imposed have acted as a deterrent to other persons of a like-mind'.

Commissioner for Children and Young People

The Commissioner for Children and Young People noted that in 2009 she had written to the then Attorney General expressing the view that people under 18 years should be excluded from the proposed amendments to sections 297 and 318. She attached a copy of this correspondence, together with her updated Youth Justice Issues paper, and reiterated that

‘a distinction must be made between our penalties for adult offenders and the way we treat young people’.

The Commissioner noted that from information presented to her by the Department, she understood that in the three years following the introduction of the amendments, only a small number of young people had been charged under the relevant provisions in section 318. She noted also that it was ‘difficult to comment on the operation and effectiveness of the provisions…in the absence of more detailed information’ but emphasised her in principle support for judicial discretion in the sentencing of young offenders on the basis that in order to ‘ensure that young people receive the appropriate penalty for a crime, each case should be considered on its own merit to assess the nature of the offence, age of the offender, the impact on the victim, the likelihood of reoffending and any aggravating or mitigating circumstances’.

The Commissioner also advised that Western Australia has the second highest rate of youth detention of any Australian state or territory – in the 3 months ending June 2012, Western Australia had 0.069% of young people in detention compared with the Australian average of 0.035%.

Heads of Jurisdiction

The Chief Justice of Western Australia advised that, as expected, neither he nor his judicial colleagues had ‘any particular experience of the operation of the relevant provisions’ given that they generally affect sentences imposed by the Magistrates Court. His Honour advised that although there had been at least one appeal from a sentence imposed under these sections, this was insufficient to provide any meaningful basis for comment.

The Chief Judge of the District Court advised that the 2009 amendments have had only limited impact in his jurisdiction and that he was unaware of any case in which their operation had caused any concern or difficulty in a sentencing hearing in the District Court. His Honour expressed concern however that the operation of the amendments ‘has a tendency to transfer sentencing discretion from courts to police and prosecution authorities’. He explained:

> Where an offence has been committed for which a mandatory sentence of imprisonment is required by sections 297 or 318 of the *Criminal Code* but the facts of the offence or the personal circumstances of the offender may make it unjust for a term of imprisonment to be imposed, there is a prospect that the prosecution will not be for the offence committed but for a lesser offence…it is highly undesirable for police or prosecuting authorities to need to consider charging a person with an offence which is less serious than the offence which has been committed by reason of mandatory sentencing provisions. Unlike sentencing decisions, prosecution decisions are not public decisions and the reasons for the decisions are not always disclosed. Further, the decisions are not subject to review upon appeal.

His Honour concluded that in his view, ‘it would be far preferable for prosecutions to be for offences that have been committed and for judicial officers to have an unfettered sentencing discretion. Judicial officers would express all the factors they have taken into account in imposing a sentence and their decisions would be subject to appeal in the ordinary way’.

The President of the Children’s Court noted that the lists in the Children’s Court were always under pressure and he was unable to state whether this had increased since the amendments. Specifically, the President advised that he was ‘not in a position to say whether some matters have progressed to hearing rather than by way of pleas of guilty because of the introduction of mandatory sentences’ and was ‘not sure whether and if so the extent to which mandatory sentences has increased the workload of the Court’. As noted

previously, of the 106 charges lodged under section 318 in prescribed circumstances during the first three years following the 2009 amendments, 17 were heard in the Children's Court.

The Chief Magistrate noted with respect to section 297 that this offence can only be dealt with on indictment so the Magistrates Court only deals with these matters from the initial court appearance until they are committed for trial or sentence to the District Court. The Chief Magistrate advised that there had been no significant change in the number of charges lodged under section 297 since the 2009 amendments. He stated that persons charged under section 318 in prescribed circumstances pleaded not guilty at much higher rates than the general rate of not guilty pleas in the Magistrates Court. The Chief Magistrate suggested that the 'consequence of a mandatory term of imprisonment would appear to have clearly influenced the decision to plead not guilty to the matters' and noted that a high rate of not guilty pleas 'would indicate an increase in the workload of the Magistrates Court'.

The Chief Magistrate suggested that 'the amendments to section 318 appear to have resulted in a much higher percentage of pleas of not guilty leading to an increased demand upon Magistrate resources' and that it 'would also appear likely that there were greater delays and more appearances…whilst matters were negotiated resulting in either the withdrawal or downgrading of charges'. He noted however that given the relatively small number of charges under section 318 in prescribed circumstances, the overall impact of the higher rate of not guilty pleas in respect of these charges was not significant in the context of the volume of work in the Magistrates Court.

Mental Health Law Centre

The Mental Health Law Centre (MHLC) was not consulted in the course of this review, but an unsolicited submission on 'Mandatory Sentencing and the Mental Health Court' was submitted. In its submission, the MHLC notes that the amended provisions in sections 297 and 318 do not contain any exemption for persons with serious but treatable mental illnesses where such illness is causally related to their offending. It argues that one of the underpinnings of the criminal law system is the recognition of the difference between a morally culpable defendant who has made a decision to offend and a defendant who is not morally culpable, and that mandatory sentencing provisions offend this principle.

The MHLC considers that mandatory sentencing 'discriminates unfairly and wrongly against children and adults with a mental illness and/or mental impairment' and provides examples where the laws have apparently been applied to a psychiatric patient suffering post-traumatic stress disorder and a mentally impaired person who was 'in terror' of the police and 'defended himself against a misunderstood threat'. The MHLC notes that mandatory sentencing regimes remove judicial discretion to take account of these relevant circumstances: '[o]rdinarily, judges and magistrates would take the relationship between culpability and mental illness or impairment into account in considering how an offender should be sentenced'. The MHLC also argues, relevantly to the terms of the present review:

> Deterrence is unlikely to be relevant or applicable to a person afflicted with a serious mental illness or impairment at the time of the actions that led to the charges. A person suffering such symptoms in many cases may have, or have had at the time of the offence, a limited ability to understand the wrongfulness of their actions or the ability to control them. This is particularly so when a person…commits an offence while experiencing psychosis...

The MHLC notes that minimum mandatory sentencing provisions do not remove discretion from the criminal justice system but redistribute it away from the judiciary. The MHLC argues that this relocation is inappropriate: 'By the choosing of a particular offence provision, individual officers…decide, in effect, whether or not the accused will go to jail if found guilty'.

The MHLC acknowledges that the criminal justice system makes provision for the mentally impaired accused. It argues however, firstly that the criteria for the defence of unsoundness of mind in section 27 of the *Criminal Code* are overly onerous and, secondly, that the provisions of the *Criminal Law (Mentally Impaired Accused) Act 1996* (CLMIA Act) are so harsh as to discourage defendants from availing themselves of this defence. The CLMIA Act is currently under review and there is no proposal to review section 27 of the *Criminal Code*.

Police Union Report

The Western Australian Police Union of Workers (Police Union) was not consulted, but information taken from the Union's 'Mandatory Sentencing Report' was considered. The Report, released in April 2013, expresses support for the intent of the amendments but is critical of their implementation and claims that statistics showed a reversal of the initial decrease in assaults on public officers following the introduction of the amendments.

As the DPP noted in his response to the present review, this claim was based on a slight increase in the total number of assaults (892) in the third year following the passage of the mandatory sentencing amendments when compared to the second year (850). He noted that there has however been an overall 33% reduction in the number of assaults on public officers (not limited to police officers) over a four year period (from 1392 per annum to 892) and submitted that on this basis it was incorrect to state that the initial decrease had been 'reversed'.

The Police Union report also discusses 'bodily harm', and contains several examples of police officers who apparently sustained injuries (including severed fingers, broken teeth and ligament damage) yet whose attackers were not charged with assault public officer under prescribed circumstances. Some of these examples were cited in *The West Australian*, and in his response to the present review, the DPP provided background information to these four examples, noting that, respectively:

- the officer's injury had not been reported to the Prosecuting Division Perth (PDP), and it appears the victim's superiors made a decision not to include 'prescribed circumstances' in the charge;

- the Consultant approved the 'prescribed circumstances' but the charge was later downgraded on the trial date by a Police Prosecutor without reference to the Consultant, following consultation with the victim and investigating officer and negotiations with the defence. Although the Prosecutor considered the prosecution case was 'sufficient', he had concerns about the ability of the prosecution to negate a defence of accident at trial;

- the Consultant and the Inspector agreed that due to a paucity of medical evidence confirming the nature of the victim's injury, a final decision would be deferred until additional medical evidence was obtained. Subsequently, while the Consultant was on leave, the case officer forwarded a medical report to the Inspector at PDP but it lacked specific information regarding the back injury. Accordingly, the Inspector decided that 'prescribed circumstances' were not approved based on a lack of supporting medical evidence and the accused pleaded guilty to a downgraded charge and was eventually placed on an intensive supervision order; and

- the Consultant initially approved 'prescribed circumstances' but that at the time of this decision the Consultant had not seen CCTV footage of the relevant incident. Having seen the footage, he took the view that the officer's conduct towards the accused cast considerable doubt on proof of the element that the officer was performing a function of her office in the seconds leading up to the assault. The senior solicitor

from PDP continued to negotiate with defence counsel; the accused pleaded guilty to other offences but not to the assault. The senior solicitor eventually authorised the charge of assault to be discontinued by the Police Prosecutor.

The report advised that the Police Union's members did not criticise the guidelines *per se*, but rather the 'gatekeepers' who implement them; and that many officers 'feel as if there is no clarity about where their injury fits within the concept of the legislation'. The report recommended that:

- there be continued consultation between the victim and the investigator;
- regular reports be undertaken to monitor the impact of the legislation;
- the 'Assault Public Officer Trends in Western Australia Report' completed by the Crime Research Centre at the University of Western Australia in 2009 be published and distributed to all public officers in the state;
- there be greater accountability of decision whether or not to prosecute;
- better quality evidence be provided to the Prosecuting division about injuries; and
- the interpretation of 'bodily harm' be clarified in WA Police internal guidelines.

None of these recommendations advocated legislative change; rather, they focused on the way in which the provisions are implemented in practice. In his submission to the current review, the Commissioner for Police noted that the PSD had identified the following matters to improve and enhance the current processes in relation to both the prosecution of offenders and communication with officers:

1) offences of this nature should in all circumstances be investigated by a suitably qualified detective, unless there is a reason why this should not occur;

2) the police officer the victim of the assault should never investigate the offence unless there is a defensible reason for such investigation (ie remoteness);

3) all matters of this nature should be referred to the PSD for consideration as to whether 'prescribed circumstances' should be approved;

4) at no time should a matter which has been approved for 'prescribed circumstances' be downgraded unless the matter is returned to the PSD for further consideration, and in all circumstances the investigating officer should be consulted and they in turn should consult with the victim;

5) when offenders are convicted for these offences there should be a continuing and active marketing of the outcome through the media to promote the importance of general deterrents to would-be offenders; and

6) further research should be commissioned to provide a better understanding of how to decrease the numbers of assaults on police.

The Police Commissioner advised that WA Police is continually reviewing and improving the processes and policies relating to the mandatory sentencing provisions, and that some deficiencies had been identified vis-à-vis communication with officers, a lack of understanding of what constitutes 'bodily harm', and quality of evidence. The Commissioner concluded that the PSD was positively contributing to improving current processes and, where appropriate, actively assisting in improving understanding of the legislation.

Following further queries, the Commissioner advised on 15 August 2013 that this procedure is also followed with respect to alleged victims who are *not* police officers but fall into one of

the other categories of public officers covered by section 318(5): the case officer is responsible for consulting with all of these alleged victims and informing them if a charge is to be withdrawn or downgraded.

VI. Conclusion and Recommendations

One problem identified in stakeholder consultation was what is seen as a lack of transparency in the process of determining whether to charge an alleged offender with assault in prescribed circumstances. This factor featured prominently in the submission from the St John Ambulance Service and was also identified by the Police Union and the Mental Health Law Centre. Unlike judges' sentencing decisions, prosecuting decisions are not made public, and it seems the process adopted has engendered confusion and resentment among some of the public officers sought to be protected as well as concern on the part of advocates for the mentally impaired.

It is difficult to express any conclusion on the practical operation of these amendments from an investigative or prosecutorial viewpoint given the recent change in the process for determining when a person is to be charged with the summary offence in section 318 in 'prescribed circumstances'. The alleged problems set out in, for instance, the Police Union report, may no longer be relevant but it is too early to assess whether this will be the case.

With the exception of WA Police and the ODPP, the submissions were generally lacking in detail, reflecting the relatively short time since the amendments commenced operation, and this has constrained the review. It is important to bear in mind that correlation is not causation and it should be noted that stakeholders expressed divergent views on the effectiveness of the 2009 amendments. As noted above, the statistics gathered by the Department would tend to *support* the proposition that assaults on public officers have decreased as a result of the 2009 amendments, yet they do not *prove* that this is the case.

In the circumstances, the Police Commissioner's suggestion that '[t]o determine if the legislation is achieving its intended objectives and meeting community expectations, it is likely that a formal longer term study and evaluation will be required' has considerable merit.

In light of all the submissions received, this report makes two recommendations:

1. That the Department of the Attorney General investigate the feasibility of including an exemption for persons with a mental illness, cognitive impairment or disability in the relevant provisions of sections 297 and 318 of the *Criminal Code* so that a judicial decision maker would retain the discretion to consider any mental impairment an accused may have when imposing a sentence.

2. That a further review of the operation and effectiveness of the amendments made by the *Criminal Code Amendment Act 2009* be conducted in five years' time.

ANNEXURE 1: STATISTICAL ANALYSIS

STATISTICAL ANALYSIS

The following are a series of tables containing data sourced from the lower courts case management system CHIPS, and the data mart tables in REL. The data is a count of charges lodged in the courts for offences under section 297 and section 318 of the *Criminal Code 1913*, as these sections need to be reviewed as per section 740A of the *Criminal Code 1913*.

In addition, section 172 (relating to obstructing police officers) is also examined, as it is possible that the amendments to sections 297 and 318 may have had a wider effect on offending and charges being referred to court.

The amendments to section 297 and section 318, which inserted provisions requiring mandatory sentencing for offences under these sections committed in 'prescribed circumstances', commenced on 21 September 2009. The data here covers the three years before, and three years after, 21 September 2009 to compare equivalent periods of time. For more detail, please refer to the tables in the appendix, which display the data for each of the six years in question.

The first part of this analysis concerns charges lodged under sections 172, 297 and 318 generally; the second part examines charges under the 'mandatory sentencing' provisions of sections 297 and 318 that were inserted in 2009.

Part I: Sections 172, 297 and 318

Charges Lodged

Tables 1 to 7 relate to charges lodged in the Children's Court and Magistrates Court between 21 September 2006 and 20 September 2012. All charges lodged have been included, and charges under sections 172, 297 and 318 have been specified.

The number of charges lodged in court in the three years following the amendment shows a 14% decrease overall compared to the 3 years prior to the amendment. Looking more closely, there has been a 27% decrease in section 318 charges, and a 30% decrease in section 172 charges over the same period.

Additionally, even though the number of total charges lodged has decreased, charges for offences under section 297 has remained constant.

Table 1: Number of Charges Lodged in the Children's Court and Magistrates Court

Legislation Section	***Before Amendment***	***After Amendment***
172 Criminal Code	8,085	5,675
297 Criminal Code	656	656
318 Criminal Code	5,375	3,913
Other Sections	636,976	547,244
Total	**651,092**	**557,488**

As there has been a decrease in all types of charges lodged, it is helpful to look at the change in the proportion of charges lodged for the relevant sections. Table 2 shows that section 318 charges have decreased as a proportion of all charges lodged, when comparing the three years before and after the amendment, while section 297 charges have slightly increased.

Table 2: Percentage of Charges Lodged in Children's and Magistrates Court, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	1.24%	1.02%
297 Criminal Code	0.10%	0.12%
318 Criminal Code	0.83%	0.70%
Other Sections	97.83%	98.16%
Total	**100.00%**	**100.00%**

Table 3 and Table 4 show the same information as the above Tables 1 and 2, but for the Children's Court only. While there has been a decrease in section 318 charges lodged in the Children's Court after the amendment, section 318 charges have increased slightly as a proportion of all charges lodged in the court. Section 297 charges in the Children's Court have increased slightly in number and proportion.

Table 3: Number of Charges Lodged in the Children's Court, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	711	505
297 Criminal Code	102	108
318 Criminal Code	897	796
Other Sections	68,129	58,952
Total	**69,839**	**60,361**

Table 4: Percentage of Charges Lodged in the Children's Court, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	1.02%	0.84%
297 Criminal Code	0.15%	0.18%
318 Criminal Code	1.28%	1.32%
Other Sections	97.55%	97.67%
Total	**100.00%**	**100.00%**

Tables 5 and 6 show the same information as Tables 1 and 2, but for the Magistrates Court only. As the Magistrates Court accounts for the majority of all charges lodged, the conclusions for Tables 5 and 6 are similar to those of Tables 1 and 2.

The Magistrates Court accounts for 89% of all charges lodged, both before and after the amendment. However, the Magistrates Court only accounts for 84% of section 297 charges lodged (before and after the amendment). Additionally, the Magistrates Court accounts for 83% of section 318 charges lodged before the amendment, and 80% of section 318 charges lodged after the amendment. That is, in the three years before the amendments, juveniles represented 17% of all section 318 charges lodged in courts, which changed to 20% of all charges lodged in three years after the amendment.

Table 5: Number of Charges Lodged in the Magistrates Court, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	7,374	5,170
297 Criminal Code	554	548
318 Criminal Code	4,478	3,117
Other Sections	568,847	488,292
Total	**581,253**	**497,127**

Table 6: Number of Charges Lodged in the Magistrates Court, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	1.27%	1.04%
297 Criminal Code	0.10%	0.11%
318 Criminal Code	0.77%	0.63%
Other Sections	97.87%	98.22%
Total	**100.00%**	**100.00%**

The following table shows the gender split for charges lodged in court before and after the 2009 amendments. While there has been a very slight increase in the proportion of charges lodged against women accused for the three years after the amendment compared to the three years before, there has been a greater increase in the proportion of section 318 charges lodged for women accused. Charges where the gender of the accused is unknown have been ignored.

Table 7: Number of Charges Lodged in the Children's Court and Magistrates Court, by Legislation Section and Gender

Gender	*Legislation Section*	*Before Amendment*	*After Amendment*
Female	**172 Criminal Code**	21.02%	21.27%
	297 Criminal Code	9.58%	10.19%
	318 Criminal Code	31.49%	34.25%
	Other Sections	22.29%	22.33%
Male	**172 Criminal Code**	78.98%	78.73%
	297 Criminal Code	90.42%	89.81%
	318 Criminal Code	68.51%	65.75%
	Other Sections	77.71%	77.67%

Charges Finalised

Tables 8 to 11 relate to charges finalised in the Children's Court, Magistrates Court, District Court and Supreme Court between 21 September 2006 and 20 September 2012. Only charges finalised for offences under sections 172, 297 or 318 have been included.

There has been a decrease in the number of charges finalised under the relevant sections, when comparing the three years before and after the amendment, however, this can be attributed to the decrease in lodgements over the same period.

Table 8: Number of Charges Finalised in the Children's Court and Magistrates Court

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	7693	5743
297 Criminal Code	650	610
318 Criminal Code	5264	3953
Total	**13607**	**10306**

More important is the proportion of charges finalised that resulted in a conviction, compared to the remaining charges that were dismissed or withdrawn.

Table 9 shows that the period following the amendment has seen a small increase in convictions under the three relevant sections in the Children's Court when compared to the period before the amendment, while the Magistrates, District and Supreme Courts combined have recorded a small decrease in convictions.

Table 8: Percentage of Charges Finalised in the Children's Court and Magistrates Court which Resulted in a Conviction

Jurisdiction	*Before Amendment*	*After Amendment*
Children's Court	81.44%	83.68%
Adult Courts	89.42%	86.37%
Total	**88.45%**	**85.99%**

Table 10 shows the proportion of charges resulting in a conviction for the Children's Court only. Charges under section 297 and 172 are slightly more likely to result in a conviction after the amendment compared to before the amendment.

Table 10: Percentage of Charges Finalised in the Children's Court, which Resulted in a Conviction, by Legislation Section

Jurisdiction	*Before Amendment*	*After Amendment*
172 Criminal Code	71.59%	74.86%
297 Criminal Code	62.35%	65.93%
318 Criminal Code	91.17%	91.26%
Total	**81.44%**	**83.68%**

The opposite can be said for charges resulting in a conviction in the adult courts. Charges under section 297 are less likely to result in a conviction after the 2009 amendments than before. This is also the case for section 318.

Table 9: Percentage of Charges Finalised in the Magistrates Court, which Resulted in a Conviction, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	93.87%	91.94%
297 Criminal Code	56.40%	53.56%
318 Criminal Code	86.51%	82.37%
Total	**89.42%**	**86.37%**

Tables 12 to 14 show the proportion of convictions for offences under sections 172, 297 or 318, where the sentence received for the charge was imprisonment or detention. For both the Children's Court and the adult courts, the proportion of convictions resulting in imprisonment or detention has increased in the three years following the amendment, when compared to the three years prior to the amendment.

Table 10: Percentage of Charge Convictions in the Children's Court and Magistrates Court with an outcome of Imprisonment or Detention, by Legislation Section

Jurisdiction	*Before Amendment*	*After Amendment*
Children's Court	8.31%	9.71%
Adult Courts	12.51%	13.17%
Total	**12.04%**	**12.70%**

For the Children's Court only, the increase in convictions resulting in imprisonment or detention has increased for charges under both section 297 and section 318.

Table 11: Percentage of Charge Convictions in the Children's Court with an outcome of Imprisonment or Detention, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	4.21%	3.05%
297 Criminal Code	33.96%	36.67%
318 Criminal Code	9.18%	11.04%
Total	**8.31%**	**9.71%**

For the adult courts, the increase in convictions resulting in imprisonment or detention has increased for charges under section 318.

Table 12: Percentage of Charge Convictions in the Magistrates Court with an outcome of Imprisonment or Detention, by Legislation Section

Legislation Section	*Before Amendment*	*After Amendment*
172 Criminal Code	6.47%	6.05%
297 Criminal Code	66.77%	66.79%
318 Criminal Code	18.46%	20.78%
Total	**12.51%**	**13.17%**

Part II: Mandatory Sentencing Provisions – sections 297 and 318

The final tables relate to section 318 charges laid by police, where the mandatory component of subsection (2)(a), (4)(a) or (4)(b) is specified in the charge. The electronic brief information has been sourced to identify the original charge.

In the three years following the amendment, 106 charges were lodged in the lower courts, which originally related to section 318 and specified a mandatory component. In table 15, it can be seen that the majority of these were lodged in the Magistrates Court, though 17 charges were for offences committed by juveniles.

Table 13: Number of charges lodged in the lower courts where the charge laid by police had a mandatory component, by legislation

Legislation Section	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
318(1)(d)&(2)(a)		10	7
318(1)(d)&(4)(b)	18	30	41
Total	**18**	**40**	**48**

Of the 106 charges that were lodged in the lower courts by police, twenty charges were later dismissed or withdrawn, and three charges are still yet to be finalised (Table 16).

Of the remaining 86 charges that were finalised and resulted in a conviction, 39 charges had the mandatory component of the legislation enforced, and resulted in a mandatory period of imprisonment or detention. In addition, 45 charges finalised were as the result of a downgrade by the prosecution or the magistrate, generally to remove the prescribed circumstances component of the charge. These charges also resulted in a conviction. Two outcomes are still under investigation.

Table 14: Number of charges lodged in the lower courts where the initial charge laid by police had a mandatory component, by outcome

Outcome	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
Mandatory Sentence	**5**	**11**	**23**
Dismissed/Withdrawn	**5**	**10**	**5**
Conviction on Downgrade	**8**	**18**	**19**
Other		**1**	**1**
Total	18	39	45

For the 39 charges that resulted in a mandatory sentence, the average sentence handed down was equal to or greater than the legislated mandatory penalty. Adults receiving an imprisonment sentence received an average of seven months' imprisonment, while juveniles receiving a juvenile conditional release order (which is an intensive supervision order with detention) received an average of 6 months on the order. This information is in Table 17.

Table 15: Average sentence length in months for outcomes equivalent to imprisonment for charges lodged in the lower courts where the final charge had a mandatory component, by sentence type

Sentence	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
Detention			3
Imprisonment	7	6	7
Juvenile Conditional Release Order		7	6

Appendix 1: Tables by Year

Table 1: Number of Charges Lodged in the Children's Court and Magistrates Court

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	2648	2721	2716	2244	1622	1809
297 Criminal Code	216	207	233	224	221	211
318 Criminal Code	1701	1808	1866	1413	1243	1257
Other Sections	195098	216772	225106	199533	173860	173851
Total	**199663**	**221508**	**229921**	**203414**	**176946**	**177128**

Table 2: Percentage of Charges Lodged in the Children's Court and Magistrates Court, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	1.33%	1.23%	1.18%	1.10%	0.92%	1.02%
297 Criminal Code	0.11%	0.09%	0.10%	0.11%	0.12%	0.12%
318 Criminal Code	0.85%	0.82%	0.81%	0.69%	0.70%	0.71%
Other Sections	97.71%	97.86%	97.91%	98.09%	98.26%	98.15%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Table 3: Number of Charges Lodged in the Children's Court, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	220	236	255	220	133	152
297 Criminal Code	36	28	38	49	28	31
318 Criminal Code	249	274	374	287	248	261
Other Sections	20698	23196	24235	23105	18789	17058
Total	**21203**	**23734**	**24902**	**23661**	**19198**	**17502**

Table 4: Percentage of Charges Lodged in the Children's Court, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	1.04%	0.99%	1.02%	0.93%	0.69%	0.87%
297 Criminal Code	0.17%	0.12%	0.15%	0.21%	0.15%	0.18%
318 Criminal Code	1.17%	1.15%	1.50%	1.21%	1.29%	1.49%
Other Sections	97.62%	97.73%	97.32%	97.65%	97.87%	97.46%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Table 5: Number of Charges Lodged in the Magistrates Court, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	2428	2485	2461	2024	1489	1657
297 Criminal Code	180	179	195	175	193	180
318 Criminal Code	1452	1534	1492	1126	995	996
Other Sections	174400	193576	200871	176428	155071	156793
Total	**178460**	**197774**	**205019**	**179753**	**157748**	**159626**

Table 6: Percentage of Charges Lodged in the Magistrates Court, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	1.36%	1.26%	1.20%	1.13%	0.94%	1.04%
297 Criminal Code	0.10%	0.09%	0.10%	0.10%	0.12%	0.11%
318 Criminal Code	0.81%	0.78%	0.73%	0.63%	0.63%	0.62%
Other Sections	97.72%	97.88%	97.98%	98.15%	98.30%	98.23%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Table : Number of Charges Finalised in the Children's Court and Magistrates Court

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	2505	2573	2615	2323	1649	1771
297 Criminal Code	221	208	221	204	197	209
318 Criminal Code	1773	1671	1820	1507	1181	1265
Total	**4499**	**4452**	**4656**	**4034**	**3027**	**3245**

Table 8: Percentage of Charges Finalised in the Children's Court and Magistrates Court which Resulted in a Conviction

Jurisdiction	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
Children's Court	81.87%	80.62%	81.70%	80.98%	83.70%	87.06%
Adult Courts	89.50%	90.00%	88.77%	86.01%	87.04%	86.17%
Total	**88.59%**	**88.97%**	**87.81%**	**85.30%**	**86.59%**	**86.29%**

Table : Percentage of Charges Finalised in the Children's Court, which Resulted in a Conviction, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	73.36%	72.17%	69.53%	70.49%	76.42%	80.38%
297 Criminal Code	60.00%	62.50%	64.52%	65.52%	54.05%	84.00%
318 Criminal Code	91.30%	89.56%	92.22%	91.00%	91.63%	91.21%
Total	**81.87%**	**80.62%**	**81.70%**	**80.98%**	**83.70%**	**87.06%**

Table 9: Percentage of Charges Finalised in the Magistrates Court, which Resulted in a Conviction, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	93.63%	94.15%	93.81%	91.20%	92.32%	92.55%
297 Criminal Code	57.37%	56.35%	55.43%	54.71%	56.33%	50.00%
318 Criminal Code	87.31%	87.39%	84.86%	81.48%	83.62%	82.29%
Total	**89.50%**	**90.00%**	**88.77%**	**86.01%**	**87.04%**	**86.17%**

Table 10: Percentage of Charge Convictions in the Children's Court and Magistrates Court with an outcome of Imprisonment or Detention, by Legislation Section

Jurisdiction	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
Children's Court	6.16%	10.74%	8.30%	7.33%	7.27%	14.61%
Adult Courts	12.29%	12.32%	12.90%	10.98%	14.62%	14.51%
Total	**11.62%**	**12.16%**	**12.32%**	**10.48%**	**13.65%**	**14.52%**

Table 11: Percentage of Charge Convictions in the Children's Court with an outcome of Imprisonment or Detention, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	1.79%	6.54%	4.49%	4.07%	1.06%	3.15%
297 Criminal Code	33.33%	40.00%	30.00%	36.84%	35.00%	38.10%
318 Criminal Code	7.14%	11.66%	9.06%	7.33%	7.39%	18.47%
Total	**6.16%**	**10.74%**	**8.30%**	**7.33%**	**7.27%**	**14.61%**

Table 12: Percentage of Charge Convictions in the Magistrates Court with an outcome of Imprisonment or Detention, by Legislation Section

Legislation Section	*Sep 06 to Sept 07*	*Sep 07 to Sept 08*	*Sep 08 to Sept 09*	*Sep 09 to Sept 10*	*Sep 10 to Sept 11*	*Sep 11 to Sept 12*
172 Criminal Code	6.62%	6.08%	6.73%	4.91%	6.76%	6.85%
297 Criminal Code	62.39%	70.59%	67.65%	64.52%	70.79%	65.17%
318 Criminal Code	17.37%	18.69%	19.36%	17.64%	22.42%	23.00%
Total	**12.29%**	**12.32%**	**12.90%**	**10.98%**	**14.62%**	**14.51%**