

**Submission  
No 6**

## **INQUIRY INTO VIOLENCE AGAINST EMERGENCY SERVICES PERSONNEL**

**Organisation:** Office of the Director of Public Prosecutions, WA  
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**Position:** Director of Public Prosecutions, WA  
**Date Received:** 2 June 2016



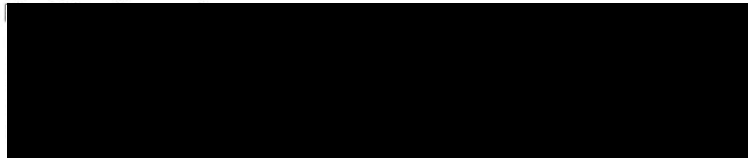
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**Office of the Director**

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Our Ref: ADM2016/92 NV  
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Dear Sir

**INQUIRY INTO VIOLENCE AGAINST EMERGENCY SERVICES PERSONNEL**

I refer to your letter dated 19 May requesting submissions regarding your inquiry into violence against emergency services personnel.

This submission from the Office of the Director of Public Prosecutions for Western Australia (ODPP) is principally in relation to Cl.2(d) of your Terms of Reference – the experience of other jurisdictions.

**Legislative Position in Western Australia**

Assaults against public officers are principally prosecuted under section 297(4) or section 318(1) of the Western Australian *Criminal Code*. Amendments were made to these provisions by the *Criminal Code Amendment Act 2009* (commencing 22 September 2009) which 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 result in either grievous bodily harm or bodily harm. The officers in this category include :

- Police officers;
- Prison officers;
- Public transport security officers;
- Ambulance personnel;
- Court security and custodial security officers (in 2013 this was extended to youth custodial officers); and
- Prison contract workers.

The mandatory sentencing provisions in Western Australia are not extended to the following specific categories of emergency services public officers : Fire and Emergency Services officers, private and volunteer fire brigade officers, personnel working in a hospital or in the course of providing a health service

to the public. "Lifesavers" and "marine rescuers" are not identified in a specific category of "public officers" in the legislation in Western Australia. Any assault against a "lifesaver" or a "marine rescuer" that occurs while the person is performing his or her official duties would be prosecuted as non-specific "assault against a public officer".

The current prescribed penalties for assaults in Western Australia against public officers who fall within your definition of "emergency services personnel" (as defined in Cl.2(a) of your terms of reference) are :

<b>Category</b>	<b>s.297 GBH</b>	<b>s.318 Assault (must suffer bodily harm)</b>
Police Officer	14 years imprisonment  <b>Mandatory Minimum</b> Adult : 12 mths imprisonment which must not be suspended. Juvenile : 3 mths imprisonment or detention which must not be suspended	7 years imprisonment  If armed or in company - 10 years  <b>Mandatory Minimum</b> Adult : 6 mths imprisonment ; if aggravated 9 mths imprisonment, both which must not be suspended. Juvenile : 3 mths imprisonment or detention which must not be suspended
Ambulance Officer	14 years imprisonment  <b>Mandatory Minimum</b> Adult : 12 mths imprisonment which must not be suspended. Juvenile : 3 mths imprisonment or detention which must not be suspended	7 years imprisonment  If armed or in company - 10 years  <b>Mandatory Minimum</b> Adult : 6 mths imprisonment ; if aggravated 9 mths imprisonment, both which must not be suspended. Juvenile : 3 mths imprisonment or detention which must not be suspended
Firefighters & SES workers	14 years imprisonment  <b>No Mandatory Minimum</b>	7 years imprisonment  If armed or in company - 10 years  <b>No Mandatory Minimum</b>
Protective Services Officers	14 years imprisonment  <b>Mandatory Minimum</b> Adult : 12 mths imprisonment which must not be suspended. Juvenile : 3 mths imprisonment or detention which must not be suspended	7 years imprisonment  If armed or in company - 10 years  <b>Mandatory Minimum</b> Adult : 6 mths imprisonment ; if aggravated 9 mths imprisonment, both which must not be suspended. Juvenile : 3 mths imprisonment or detention which must not be suspended

Nurses, Doctors & hospital staff	14 years imprisonment  <b>No Mandatory Minimum</b>	7 years imprisonment  If armed or in company - 10 years  <b>No Mandatory Minimum</b>
Lifesavers	14 years imprisonment  <b>No Mandatory Minimum</b>	7 years imprisonment  If armed or in company - 10 years  <b>No Mandatory Minimum</b>
Marine Rescuers	14 years imprisonment  <b>No Mandatory Minimum</b>	7 years imprisonment  If armed or in company - 10 years  <b>No Mandatory Minimum</b>

In Western Australia section 297 of the *Criminal Code* is an indictable offence, however, section 318 is an "either way" offence. Pursuant to section 5 of the *Criminal Code* the ODPP rarely prosecutes offences under section 318 of the *Criminal Code*. Section 318 offences are ordinarily prosecuted before a Magistrate, with the prosecutions conducted by the West Australian Police without reference to the ODPP. Where there is other accompanying indictable charges a prosecution of an offence under section 318 may be committed to the District Court of Western Australia and proceed on indictment. In such circumstances the ODPP will conduct the prosecution in the District Court.

#### **ODPP Statistics - Offences contrary to Section 297(4)**

The ODPP is solely responsible for the prosecution of the indictable offence contained in section 297(4) of the *Criminal Code*.

Since July 2010 the ODPP has prosecuted 1 offence under section 297(4) of the *Criminal Code* (assault of a police officer) in which the offender pleaded guilty and was convicted and sentenced to 1 years imprisonment.

It is the experience of my Office that the West Australian Police will ordinarily charge an offender under section 318 of the *Criminal Code* rather than under section 297(4) of the *Criminal Code*. This can be attributed to the fact that the offending rarely results in "*grievous bodily harm*" as defined in section 5 of the *Criminal Code*.

#### **ODPP Statistics - Offences contrary to Section 318**

ODPP statistics in relation to prosecution of offences contrary to section 318 of the *Criminal Code* must be read in like of the fact that these offences are ordinarily prosecuted as a summary offence by the West Australian Police in the Magistrate's Court of Western Australia.

Since July 2010, ODPP prosecution of assaults against police officers pursuant to section 318 indicate :

- In 3 matters the offender was convicted and sentenced to imprisonment for between 16 months and 2 years;
- 1 matter is yet to be determined;
- 1 matter was discontinued; and
- 1 matter was remitted to the Magistrate's Court for determination.

Similarly, ODPP prosecutions of assaults against a person working in a hospital and a doctor have resulted in 1 matter being remitted to the Magistrate's Court for determination and 1 conviction and sentence of 3 years imprisonment.

We are otherwise unable to obtain any further information from our database relating to prosecutions of assaults against other categories of emergency services personnel.

### **Court of Appeal & Mandatory Sentencing**

Since the introduction of mandatory sentencing in respect to section 318 (in prescribed circumstances) on 22 September 2009, the Western Australian Court of Appeal has not directly considered the issue of "mandatory sentencing" as it relates to that provision.

In **Roncevic v The State of Western Australia** [2012] WASCA 43 at [34] the Western Australian Court of Appeal stated that offences of assault against public officers are very serious and that primary sentencing considerations should be "general deterrence" so as to protect officers performing their duties.

### **Other Material**

You may find the *Statutory Review of the Operation and Effectiveness of the 2009 Amendments to Sections 297 and 318 of the Criminal Code* Tabled in the Western Australian Legislative Assembly on 26 June 2014 [Paper No. 1784] of assistance to your current inquiry.

If the ODPP can be of further assistance, please do not hesitate to contact me.

Yours sincerely



Nari Vanderzanden

For

Joseph McGrath SC  
DIRECTOR OF PUBLIC PROSECUTIONS