Chapter 9 Summary assault and obstruct offences

9.1 Introduction

This chapter presents the Council's recommendations regarding simple, or 'summary' offences that can be charged for less serious examples of assaults and obstructions of a public officer, such as assault or obstruct a police officer in the performance of their duties under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) and assault by a prisoner of a corrective services staff member under section 124(b) of the *Corrective Services Act 2006* (Qld) (CSA). The advice provided responds to the requirement under the Terms of Reference for the Council to review these provisions and 'assess the suitability of providing for separate offences in different Acts targeting the same offending', as well as advising on options for reform to the current offence framework.

In presenting the Council's advice, the chapter also considers current guidelines that support prosecution agencies in determining if a summary charge of assault should be preferred over a charge of serious assault under section 340 of the *Criminal Code*, and the potential need for additional guidance.

9.2 Assault and obstruct offences

9.2.1 Current position in Queensland

Assault or obstruct a police officer in the performance of the officer's duties: PPRA s 790

The offence of assault or obstruct a police officer in the performance of the officer's duties under section 790 of the PPRA carries a maximum penalty of a $5,338 fine (40 penalty units) or 6 months' imprisonment. This is increased to a fine of $8,007 (60 penalty units) or 12 months' imprisonment if the offence is committed within, or in the vicinity of, licensed premises. The definition of assault in the *Criminal Code* applies to this section, while 'obstruct' includes hinder, resist and attempt to obstruct.

Over 80 per cent of assault or obstruct offences committed against police officers (82.4%) involve a charge brought under section 790, in cases where this is the most serious offence (MSO) sentenced. Looking solely at acts of assault (i.e. excluding acts of obstruction), just over half (51.7%) of assaults on police officers are prosecuted under section 790 of the PPRA, rather than as a serious assault under section 340 of the *Criminal Code*.. See Table 7-1 in Chapter 7 for more information.

Assault or obstruct a watch-house officer in the performance of the officer's duties: PPRA s 655A

The offence of assault or obstruct a watch-house officer in the performance of the officer's duties was introduced into the PPRA relatively recently in September 2018.[1] The maximum penalty is consistent with that which applies to the non-aggravated form of assault or obstruct a police officer under section 790 — that is, 40 penalty units, or 6 months' imprisonment.

In 2018–19, there were 10 cases sentenced involving this charge and in six, this was the most serious offence sentenced.[2] Three assaults on a watch-house officer committed after the commencement of the new PPRA offence provision were charged and sentenced as a serious assault under section 340(1)(c)–(d) or (2AA) of the *Criminal Code*. None of these sentenced charges was the MSO.

CSA ss 124(b) and 127

Section 124(b) of the CSA creates the offence of a prisoner assaulting or obstructing a staff member who is performing a function or exercising a power under this Act or is in a corrective services facility. It has a maximum penalty of 2 years' imprisonment. For this offence, 'prisoner' does not include a person who is released on parole.[3]

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1 *Police Powers and Responsibilities and Other Legislation Amendment Act 2018* (Qld) s 33. This provision commenced on 20 September 2018.

2 See Table 2-3: Frequency of summary offences sentenced in Queensland courts in Chapter 2 for more information.

3 *Corrective Services Act 2006* (Qld) sch 4 (because s 124 is in chapter 3, part 2 and is excluded).

Over the 10-year data period, there were 147 sentenced cases involving a charge under this section. In 81 cases, this charge was the MSO. This compares to the 202 charges (MSO) sentenced under the more serious charge of serious assault under section 340(2) of the *Criminal Code*.[4]

The lower proportion of matters proceeded with under section 124(b) of the CSA, compared with those sentenced as a section 340 charge, may be explained both by the fact that section 340(2) applies the broader definition of a 'prisoner', which includes a prisoner released on parole, and that assaults by prisoners who are in custody can be dealt with as a breach of discipline rather than by way of a criminal charge. The sanctions that can be applied to a prisoner administratively on being found to have committed what is determined to be a 'major breach of discipline'[5] can include:

- a reprimand without further punishment;
- an order that the privileges the prisoner might have otherwise received be forfeited; or
- an order that the prisoner undergo a period of separate/solitary confinement[6] for not more than 7 days.[7]

A prisoner must not be charged with an offence because of an act (such as an assault) or omission if already punished for that act or omission as a breach of discipline.[8] In its submission, Queensland Corrective Services (QCS) notes that dealing with assaults as a breach of discipline is the case for 'a significant number of cases' where a corrective services officer does not progress a formal complaint.[9]

Under section 127, it is an offence for a person to obstruct (which includes to hinder, resist and attempt to obstruct) a staff member performing a function or exercising a power under that Act, or the proper officer of a court who is performing a function or exercising a power under that Act, without a reasonable excuse. The maximum penalty is a fine of $5,338 (40 penalty units) or one year's imprisonment. For this offence, 'person' does not include a prisoner, other than a prisoner who is released on parole.[10]

Prosecutions under section 127 are far less common than those under section 124(b), with 26 sentenced cases involving a charge under this section over the 10-year data period. This offence was the MSO in only 11 cases over this period (see Chapter 2, Table 2-5 for more information). In comparison, there were 18 sentenced charges involving a corrective services officer prosecuted under the more serious offence of serious assault under sections 340(1)(c)–(d) and (2AA) of the *Criminal Code*.[11]

Other miscellaneous Acts

There are over 60 other Queensland Acts that carry offence provisions relating to persons acting in roles such as 'authorised officers'. They target assault and various acts including wilful obstruction, intimidation and attempts. ('Obstruct' is defined under a number of provisions as including assault.) Many of these provisions state that this conduct is an offence 'unless the person has a reasonable excuse'.

The offences for which a sentence was imposed over the 10-year data period examined, and associated sentencing outcomes, are reported in Chapter 2 of this report. Excluding offences charged under section 790 of the PPRA or under sections 124(b) or 127 of the CSA, the most commonly sentenced offences with 40 cases or more involving these charges over the relevant period, from the most to the least commonly charged, were:

- resisting authorised person after being refused entry to premises (*Liquor Act 1992* (Qld), s 165A(4));
- obstruction generally under section 166 of the *Liquor Act 1992* (Qld);

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4 Some of the 202 offences sentenced under s 340(2) may have involved an assault by a prisoner released on parole due to the definition of 'prisoner' that applies for the purposes of s 340(2). These figures therefore are not directly comparable.

5 Defined to mean 'a breach of discipline decided under section 113 [of the Act] to be proceeded with as a major breach of discipline': *Corrective Services Act 2006* (Qld) sch 4. Specific acts that constitute breaches of discipline for the purposes of section 113 are set out in s 5 of the *Corrective Services Regulations 2017* (Qld) and include a range of actions, including contravening a lawful direction of a corrective services officer, and acting in a way that is contrary to the security or good order of a corrective services facility.

6 *Corrective Services Act 2006* (Qld) s 118(2).

7 Ibid s 121(2).

8 Ibid s 115(2). Conversely, a prisoner must not be punished for an act or omission as a breach of discipline if the prisoner has been convicted or acquitted of an offence for the same act or omission: s 115(1).

9 Submission 21 (Queensland Corrective Services) 11.

10 *Corrective Services Act 2006* (Qld) s 125.

11 See n 4. It is likely some of those prosecuted under section 340(2) may have been prisoners released on parole. For this reason, the comparable s 340 figures are likely to be higher.

- obstruct/hinder an ambulance officer under section 46 of the *Ambulance Service Act 1991* (Qld);
- obstruction of Commonwealth public officials under section 149 of the Commonwealth *Criminal Code Act 1995;*
- removal of a prohibited person under section 173ED(3) of the *Liquor Act 1992* (Qld);
- obstruction of an authorised person in the exercise of a power under section 135(1) of the *Transport Operations (Passenger Transport) Act 1994* (Qld); and
- obstruction of an inspector under section 182 of the *Fisheries Act 1957* (Qld).

Many victims of such offences would be classed as 'compliance officers' for the purposes of the Council's section 340 analysis. There were 31 charges of serious assault sentenced under sections 340(1)(c)–(d), (2AA) involving this class of officer, suggesting summary charges are more likely to be preferred in the case of acts of assault or obstructions of these officers.

Reviewing sentencing outcomes for the above listed offences, the majority of sentences imposed involve the imposition of a monetary penalty. The maximum penalties for these offences vary significantly from 16 penalty units for obstruct or hinder a person acting under the *Ambulance Service Act*, 50 penalty units for resisting an authorised person under section 165A(4) of the *Liquor Act* (or 100 penalty units for other acts of obstruction under section 166 of that Act), 60 penalty units for obstructing an authorised person under the *Transport Operations (Passenger Transport) Act*, and 1,000 penalty units for obstruction of an inspector under the *Fisheries Act*. The Commonwealth *Criminal Code* offence of obstruction of Commonwealth public officials carries a maximum penalty of 2 years' imprisonment.

Obstruct/hinder an ambulance officer was the offence most likely to attract a custodial or community-based order, although proportionally, some offences with a small number of people charged were more likely to result in these types of penalties:

- obstruction of a person performing functions under section 150C(1) of the *Fire and Emergency Services Act 1990*, which carries a maximum penalty of 100 penalty units or 6 months imprisonment; and
- assault or resist a security officer under the *State Buildings Protective Security Act 1983*, which carries a maximum penalty of 10 penalty units or 6 months imprisonment.

9.2.2 Position in other jurisdictions

It was not possible for the Council to undertake a comprehensive review of all assault and obstruct offences in other jurisdictions. However, based on a limited cross-jurisdictional review, it is clear that some jurisdictions have retained a number of summary assault and obstruct offences, while others have established a more streamlined approach, meaning the choice of charges may be more limited (e.g. in Western Australia, a decision between prosecuting a charge under the offence of serious assault or obstruction of a public officer under the WA's *Criminal Code*, or preferring a charge of common assault or some other criminal offence of general application).

In New Zealand, an offence of assault on a police, prison, or traffic officer is established under section 10 of the *Summary Offences Act 1981* (NZ), which carries a maximum penalty of a $4,000 fine or 6 months' imprisonment. A separate offence of resist or obstruct these same classes of officer exists under section 23 of that Act, which carries a lower maximum penalty of a $2,000 fine or 3 months' imprisonment. The fact that the victim of an offence is a constable, or a prison officer acting in the course of his or her duty, or an emergency health or fire services provider acting in the course of his or her duty at the scene of an emergency is also an aggravating factor under the *Sentencing Act 2002* (NZ), which applies to courts when sentencing for any offence where it can be reasonably treated as such, including offences such as common assault, aggravated assault and wounding under the *Crimes Act 1961* (NZ).

9.2.3 Issues

Co-existence of summary and indictable charges

Queensland's *Criminal Code* was established to codify Queensland's criminal law. The current *Queensland Legislation Handbook's* primary purpose is to assist departmental policy or instructing officers in working with the Office of the Queensland Parliamentary Counsel in drafting legislation. It provides: 'if the Criminal Code provides for an offence, it is undesirable that another Act should erode its nature as a comprehensive code by providing for the same or essentially the same offence'.[12]

12 Department of the Premier and Cabinet, *Queensland Legislation Handbook* (6th ed, 2019) 10 [2.12.4].

In practice, there are a number of offences that have been introduced over time that essentially replicate offences in the *Criminal Code*, while existing as summary offences — meaning they can only be dealt with by a Magistrates Court. One example is the offence of assaulting, resisting or wilfully obstructing a police officer, which has existed in section 340 since the Code's commencement on 1 January 1901. The PPRA (s 790, and its precursors) deals with this same conduct. This offence also appeared in the earlier 1997 PPRA,[13] and as section 10.20A of the 1990 PPRA, in which it was inserted in 1993 due to the repeal of the *Police Act 1937* (Qld) in which this offence also appeared.[14]

Even within the *Criminal Code* itself, as illustrated in the discussion in Chapter 8, there is some overlap between conduct that could either fall within section 340 (which is classified as a crime) and section 199 (which is classified as a misdemeanour).

A charge under section 199 must be dealt with summarily (by a Magistrates Court),[15] whereas in the case of a charge under section 340 of the Code, the prosecution has the power to elect if the charge is to be dealt with in this way.[16] As discussed further in Chapter 10, the Council recommends that the current arrangements for summary disposition should be retained.

There are other practical procedural differences between offence types, such as whether a warrant is generally required for arrest,[17] and whether there is a limitation on commencing prosecutions after a defined period.[18]

A recent example that provides some explanation for why summary offences may be introduced, even when there is an existing *Criminal Code* offence that deals with the same conduct, is the introduction of the new offences of assaulting and obstructing a watch-house officer. The Explanatory Note to the Bill introducing these new offences noted:

> Currently, if a watch-house officer is assaulted or obstructed in the course of their duties, the only option for charging an offender is under the *Criminal Code*. This may result in the watch-house officer not making any complaint of assault, or result in a disproportionate charge against a person as there is no simple offence alternative.
>
> … the new offences will ensure that any penalty issued by the courts and any consequent criminal history is reflective of the offence being a simple offence and not indictable.[19]

The existence of a discretion by police to charge a person with the summary offence of 'assault police' under the PPRA, rather than with the offence of 'serious assault' under section 340 of the *Criminal Code* — although section 340 can also be dealt with summarily — could be argued, therefore, to provide an important protection against more minor criminal conduct being dealt with under the more serious form of criminal offence, which carries a higher maximum penalty. This might be important not only from the perspective of ensuring proportionate sentences, but that the person's criminal history reflects the fact the assault was of a more minor nature than had the person been charged under section 340.

In the case of other summary assault offences, the justification for introducing these offences has included the visibility of establishing this form of conduct as an offence under legislation targeting specific matters, and the ability for an offence to be prosecuted by an agency other than police. For example, section 190 of the *Work Health and Safety Act 2011* (Qld) establishes an offence of assaulting, threatening or intimidating an inspector or person assisting an inspector (or attempting to do so). The Explanatory Notes to the Bill that introduced this new section justify this on the basis that:

> Although this is also an offence at general criminal law, the inclusion of this provision is intended to ensure greater deterrence by giving it more prominence and allowing its prosecution by the regulator.[20]

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13 *Police Powers and Responsibilities Act 1997* (Qld) (repealed) s 120.

14 *Police Act 1937 (*Qld) (repealed) s 59.

15 See *Criminal Code* (Qld) s 552BA and definition therein of a 'relevant offence', which includes an offence against the Code if the maximum term of imprisonment to which the defendant is liable is not more than 3 years.

16 See *Criminal Code* (Qld) s 552A.

17 An offender may generally be arrested without a warrant for a crime, but ordinarily a warrant is required in the case of a misdemeanour. See *Criminal Code* (Qld) s 5.

18 *Justices Act 1886* (Qld) s 52 sets out time limits for proceedings provides that, unless some other time is limited for making the complaint by the law relating to the particular case, the complaint must be made within one year from the time when the matter of complaint arose. In contrast, indictable offences are not subject to a time limit for bringing prosecutions, even if they are dealt with summarily: *Criminal Code* (Qld) s 552F.

19 Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 (Qld) 24–25.

20 Explanatory Notes, Work Health and Safety Bill 2011 (Qld) 8.

Charging discretion

It is the decision of independent prosecution agencies — generally, the Queensland Police Service (QPS) or the Office of the Director of Public Prosecutions, Queensland (ODPP) — using their discretion and assessment of the evidence, as to whether a person is charged, and what charge or charges are used.

As the seriousness of the injury increases, so too does the pool of different *Criminal Code* charges from which police and prosecutors can select.

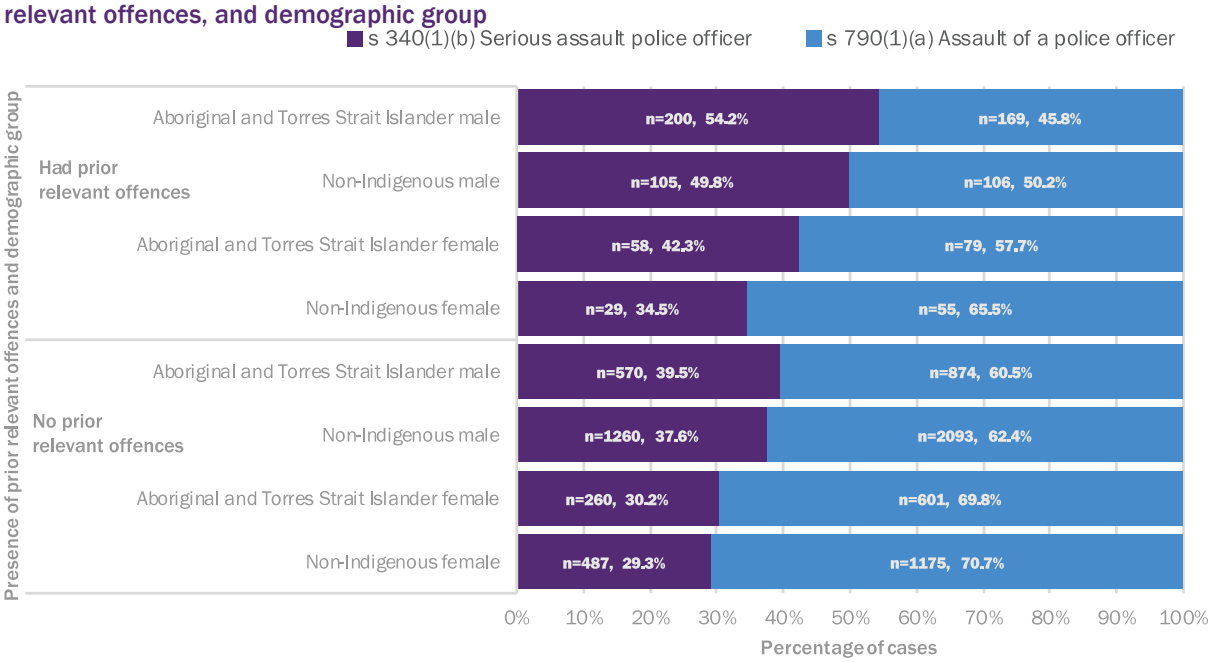
The ODPP publishes the *Director's Guidelines*, 'designed to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency'. They are issued to ODPP staff, others acting on the ODPP's behalf, and to police.[21]

If a summary charge (dealt with in the Magistrates Courts) is an option, the *Director's Guidelines* state it should be preferred when choosing what to charge or which court to sentence in, unless this would not provide adequate punishment taking into account the maximum penalty of the summary charge, the circumstances of the offence and the antecedents of the offender, or there is some relevant connection with an offence that must be dealt with in a higher court.[22] Further guidance on jurisdictional decisions mentions the gravity of the injury, whether it involved spitting, biting or a needle-stick injury and the risk of contracting an infectious disease is a factor, and the importance in every case of considering all circumstances, including the nature of the assault, its context, and the accused's criminal history.[23]

The Council tested the application of one of these factors — an accused's relevant criminal history[24] — to determine if this showed any differences in patterns as to whether a charge of assault police is more likely to be charged under section 790 of the PPRA rather than serious assault under section 340 of the Code. This analysis is very limited as it does not take into account the seriousness and circumstances of the offence, or the existence of other charges that must be dealt with in a higher court.

With these significant limitations in mind, the analysis tends to show that the existence of relevant prior convictions means a charge under section 340 of the *Criminal Code* is more likely to be preferred than a charge of assault or obstruct police under section 790 of the PPRA, which suggests the *Director's Guidelines* are being applied as intended to guide decision-making. The differences observed, in particular, between male and female offenders may be attributable to one of a number of factors, including the nature and seriousness of the conduct involved, whether any bodily injury was caused and, if so, the extent of this injury.

Figure 9-1: Proportion of sentenced cases involving the assault of a police officer, by the presence of prior relevant offences, and demographic group

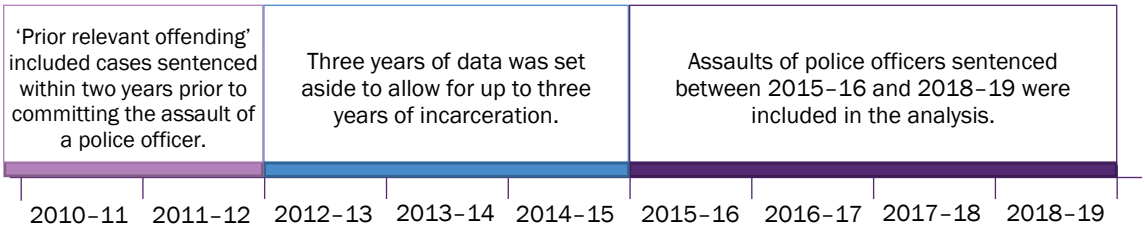


Data include adult and juvenile cases sentenced between 2015–16 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

21 Office of the Director of Public Prosecutions (Queensland), *Director's Guidelines* (30 June 2019) 1.

Offences sentenced from 2015–15 to 2018–19 provided the basis for this analysis. A similar methodology was applied to that discussed earlier in this report, albeit in reverse — see Figure 9-2 and compare with Table A4-5 in Appendix 4. A prior offence was operationalised as any sentenced offence where the offender was released from custody prior to (and within two years of) the date that the offender committed a new offence.

Figure 9-2: Prior relevant offences methodology



In cases where an Aboriginal or Torres Strait Islander male offender had prior relevant offences and assaulted a police officer, 54.2 per cent of cases resulted in a sentenced charge of serious assault, and 45.8 per cent in the lesser summary charge under the PPRA of assaulting a police officer. This was slightly higher than the proportion of non-Indigenous males. Of those who had committed relevant prior offences, 49.8 per cent were sentenced for a charge of serious assault, compared to 50.2 per cent who received a sentence for the lesser summary charge.

Female offenders with relevant prior convictions were less likely to be sentenced for serious assault (as opposed to the equivalent summary charge), compared to male offenders. Aboriginal and Torres Strait Islander women were more likely to be sentenced for a charge of serious assault (42.3%) compared to non-Indigenous females (34.5%).

Those offenders sentenced who did not have any relevant prior convictions were more likely to be sentenced for the summary charge of assaulting a police officer under the PPRA rather than for an offence of serious assault. Aboriginal and Torres Strait Islander male offenders were the most likely to be sentenced for a charge of serious assault in these circumstances (39.5%), closely followed by non-Indigenous males (37.6%). Non-Indigenous women were the least likely to be sentenced for serious assault (29.3%), followed by Aboriginal and Torres Strait Islander female offenders (30.2%).

Disease test orders

In the case of serious assault — involving the offender biting, spitting on or throwing at or applying a bodily fluid or faeces to a public officer — the arrest of an alleged offender for this offence triggers the ability for police to apply to a Magistrates or Childrens Court for a disease test order. If a bodily fluid may have been transmitted to a person during or soon after the commission of a 'chapter 18 offence', this order allows an officer to ask a doctor or prescribed nurse to take blood and urine samples from a relevant person under chapter 18 of the PPRA to determine if the person may have transmitted a relevant disease to the victim, or another person.[25]

The ability to seek this testing order is limited to only certain listed offences (referred to as 'chapter 18 offences'), which include a serious assault if: (i) blood, saliva or another bodily fluid has penetrated, or may have penetrated, the victim's skin' or (ii) blood, saliva or another bodily fluid has entered, or may have entered, a mucous membrane

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22 Ibid 15, 17–18 ('13. Summary Charges').

23 Ibid 17–18 ('13. Summary Charges').

24 A 'relevant' prior offence was defined to include any offence classified as an act intended to cause injury by the Australian and New Zealand Standard Offence Classification (ANZSOC). In addition, a selection of other violent offences were also included, these were robbery, going armed so as to cause fear, threatening violence, deprivation of liberty, assault with intent to steal, demanding property with menaces with intent to steal, affray, riot, and assaults of public officers and justice officials. Although some homicide offences involve direct acts of violence, they were not included in this analysis due to the small number of cases and because the circumstances of these offences are typically very different from those in which assaults on public officers are committed.

25 *Police Powers and Responsibilities Act 2000* (Qld) ss 538(1), (2). The next chapter in that Act, chapter 18A, deals with breath, saliva, blood and urine testing of persons suspected of committing particular assault offences (grievous bodily harm, wounding and serious assaults carrying the maximum 14-year penalty). It was introduced by the *Safe Night Out Legislation Amendment Act 2014* (Qld). It is not concerned with disease testing, but with proving an offender's intoxication. It applies testing powers under the *Transport Operations (Road Use Management) Act 1995* (Qld), s 80 for this purpose. It works in conjunction with chapter 35A of the *Criminal Code* (Qld) (proof) and *Penalties and Sentences Act 1992* (Qld), pt 5 div 2 sub-div 2 (circumstance of aggravation). It is a circumstance of aggravation for a prescribed offence that the offender committed the offence in a public place while the offender was adversely affected by an intoxicating substance. This carries a mandatory penalty of a community service order.

of the victim.[26] It does not apply to an assault that involves spitting saliva onto intact skin,[27] or to other less serious forms of assault, such as an assault under the PPRA. For this reason, an alleged offender may initially be charged with serious assault, even if the charges are later downgraded to an offence under the PPRA.

The Queensland Law Society commented on disease test order provisions in its submission:

> As to the availability of disease test orders as a matter of course for certain serious assault offences, it is accepted that this might inappropriately motivate police to charge with this offence in certain cases. Given the court has discretion in other cases on application to make such an order, and in our committee members' experience uniformly will do so absent cogent reasons not to (ie. there having been no risk of transmission whatsoever), standardising the basis on which such an order can be obtained for *all offences* is desirable — perhaps on application only.[28]

The purpose of chapter 18 'is to help ensure victims of particular sexual offences and serious assault offences, and certain other persons receive appropriate medical, physical and psychological treatment'.[29] In a submission to the Council, Queensland Advocacy Incorporated (QAI) suggested that 'police, correctional and emergency services personnel need more information about disease transmission' and pointed to a lack of medical evidence of disease transmission through spitting.[30] QAI was further concerned:

> These laws share the false premise that appropriate care and support to police or others can be meaningfully informed by the status of the alleged accused. The rationale for testing is to alleviate any distress police or other emergency service personnel may experience following an incident. Nevertheless, test results will likely be misleading and where a positive result is returned, only cause additional but baseless anxiety, given that there is no risk of transmission.[31]

In terms of weighing the objective statistical risk of disease transmission against a complainant's subjective concern, note Derrington J's comment in *R v Kalinin*:[32]

> The first [alleged sentencing error was that the offender] had subjected the complainants to a 'very high risk' whereas [the officer] had been advised by a doctor that the risk was low. This error, however, is not of great consequence because even after advice by the doctor, [the officer] has indicated that the possibilities of infection to himself and his family had a very serious impact on his life and his family relationships.[33]

Recent amendments inserting a new chapter 18B into the PPRA provide for a special COVID-19 test order to be made for a person who coughs, sneezes or spits on or at a police officer or another person in the suspected commission of a 'relevant offence' — defined as an offence against either section 317, section 335 or section 340 of the *Criminal Code*.[34] This is a temporary provision, allowing for a respiratory tract sample to be taken,[35] which expires on the day the COVID-19 emergency ends or 31 December 2020 (whichever is later).[36]

Table 9-1 (below) shows the number of cases in which a disease test order was issued by Queensland courts from 2005–06 to 2018–19. The data analysed did not identify the specific offence the disease test order applied to and so the data presented show all offences that were before the court for that offender on the day the disease test order was made.

There were 235 unique disease test orders issued by Queensland courts from 2005–06 to 2018–19. Over three-quarters of the cases where a disease test was ordered involved at least one section 340 serious assault offence (77.4%, n=182) and nearly half were for section 340 offences involving the aggravating circumstance of biting, spitting or other bodily fluids (48.1%, n=113).

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26 *Police Powers and Responsibilities Act 2000* (Qld) s 538(1)(g). The offences, other than serious assault, that constitute a chapter 18 offence are listed in s 538(1). They are all sexual offences and must be committed in the same context regarding blood, saliva or another bodily fluid.

27 Ibid s 538(3)(c).

28 Submission 30 (Queensland Law Society) 13 (emphasis added).

29 *Police Powers and Responsibilities Act 2000* (Qld) s 537.

30 Preliminary submission 35 (Queensland Advocacy Incorporated) 9–10.

31 Ibid 10.

32 [1998] QCA 261, 5.

33 Ibid (Derrington J). A more recent example of emotional harm regarding testing, without reference to statistical risks of transmission, is *R v Cooney* [2019] QCA 166 (which QAI noted).

34 *Police Powers and Responsibilities Act 2000* (Qld) ss 548I (When application for order may be made), s 548H (Definition of 'relevant offence').

35 Ibid s 548O.

36 Ibid s 548U.

Cases involving serious assault of a police officer made up the largest proportion of cases at 65.1 per cent (n=153) and the majority of those cases involved the aggravating circumstance of biting, spitting or other bodily fluids (n=100). Cases involving the offence of assault or obstruction of a police officer under the PPRA (s 790) was the next most common at 17.0 per cent (n=40).

A much smaller proportion of cases in which a disease test order was made involved a serious assault of a public officer offence (7.7%, n=18); however the vast majority of these involved the aggravating circumstance of biting, spitting or other bodily fluids (n=13).

Table 9-1: Disease test orders under Chapter 18 of the *Police Powers and Responsibilities Act 2000* (Qld)

Offence	Number of cases (n)	Proportion of all cases involving a disease test order (%)
Cases involving a disease test order	235	100.0
Cases involving s 340 offence	182	77.4
Cases involving s 340 offence with bodily fluid	113	48.1
Cases involving s 340(1)(a) intent assault police offence	8	3.4
Cases involving s 340(1)(b) assault police offence	153	65.1
Cases involving s 340(1)(b)(i) assault police offence with bodily fluid	100	42.6
Cases involving s 340(1)(c) assault performing duty	3	1.3
Cases involving s 340(1)(d) assault performed duty	4	1.7
Cases involving s 340(1)(g) assault person over 60	2	0.9
Cases involving s 340(2) assault corrections officer	2	0.9
Cases involving s 340(2AA) assault public officer offence	18	7.7
Cases involving s 340(2AA)(i) assault public officer offence with bodily fluid	13	5.5
Cases involving PPRA s 790 assault or obstruct police officer offence	40	17.0

Data include higher and lower courts, cases from 2005–06 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) The data applied disease test orders to all offences heard within the court event; therefore, where there was more than one offence heard in the court event, it was not possible to identify which offence the order applied to.
(2) As the analysis looked at all offences within the court event, the total number of cases is greater than the total number of unique disease test orders issued and percentages sum to more than 100%.

It was not possible for the Council to determine to what extent the ability to apply for a disease test order for serious assault may, or may not, influence the initial charging decision by police, and whether the charge of serious assault, which allowed for the order to be made, was the offence for which the offender was ultimately convicted.

A 'catch all' assault and obstruct offence under the *Summary Offences Act 2005* (Qld)

The Council identified a number of options in its Issues Paper to address issues with the current level of overlap in conduct captured under sections 340 and 199 of the *Criminal Code*, and in conduct that can be charged as summary offences under other legislation.

The Council identified that if section 199 were to be recast as a summary offence, this may provide an opportunity to consider the repeal of a number of summary offences scattered across the Queensland statute book that appear to serve the primary purpose, as for section 790 of the PPRA, of providing an alternative charge to what would otherwise need to proceed as a more serious charge under section 340 of the *Criminal Code*.

Alternatively, it is suggested that section 199 could be retained in its current form, either retaining the same or a higher penalty, and sections 340(1)(b) and 340(2AA) amended to limit the criminal conduct captured to assaults, rather than extending to acts of resistance or wilful obstruction. This is ultimately the option favoured by the Council.

This still leaves open the question, however, of whether it would be preferable to formulate a summary offence that might replace the multitude of offences introduced across the Queensland statute book that are ultimately aimed at the same form of criminal conduct — assault and obstruction of a public officer in the performance of their duties.

9.2.4 Stakeholder views

There was strong support for the retention of summary offences as an alternative to charging the more serious offence of serious assault under the *Criminal Code*.

In its submission to the Council, the QPS stated that the current legislative framework is appropriate.[37] In supporting the current approach, it referred to the broad range of conduct that can be involved and level of harm:

> Unfortunately, police officers may be unlawfully assaulted in a myriad of ways with differing degrees of severity. Having different offence provisions allow an offence to be preferred that carries and appropriate maximum penalty that addresses the alleged behaviour. For example, it may be considered appropriate to prefer the simple offence under s 790 of the PPRA in circumstances where a police officer was lightly slapped causing no injury. In contrast, if a police officer was seriously injured as a consequence of an assault, an indictable offence with a greater maximum penalty may be considered to be more appropriate.[38]

Sisters Inside also supported the current two-tiered approach as having the advantage of enabling people to be charged with a lesser offence, where appropriate:

> We contend that it is desirable to maintain this duality [of offences in both the *Criminal Code* and PPRA] so that people have the benefit of being charged with the lesser, summary offence contained in s 790 of the PPRA, when that is appropriate.[39]

However, it raised concerns that 'currently the requirements for establishing whether an action should be charged as a summary or indictable offence are not clear'.[40] This means that 'too much discretion is afforded to police. In our experience police misuse this discretionary power and always elect to charge a person with the indictable offence'.[41]

Similar concerns about the lack of a clear rationale for some assaults being charged under the *Criminal Code* rather than as a section 790 PPRA offence were expressed at a roundtable hosted by the Council, the focus of which was on understanding the drivers of Aboriginal and Torres Strait Islander overrepresentation and issues for people in circumstances of vulnerability. A view was expressed that charges of assault under the Code seemed to be more commonly preferred where the person charged was an Aboriginal or Torres Strait Islander person.

Sisters Inside was further concerned:

> There is a relatively low threshold for satisfying serious assault under the Criminal Code and there is no explicit delineation between acts occasioning bodily harm and those that do not. This means that the police and prosecuting authority lack clear guidelines for determining whether to charge the person with a summary or indictable offence.[42]

It suggested that 'the legislation requires clarification to ensure that less serious assaults and obstructions are not punished disproportionately'.[43]

The broad nature of section 340 was also criticised by Sisters Inside on the basis it:

> captures low-level behaviour from unwell, vulnerable people and criminalises them instead of diverting them to mental health services and rehabilitation centres. Legislation and police guidelines should be drafted to recognise that actions on the lower end of the spectrum that do not cause bodily harm should rightly remain summary offences.[44]

It raised similar issues in relation to the decision to charge an offender for assaulting a corrective services officer under section 124(b) of the CSA or section 340 of the *Criminal Code*.[45]

Sisters Inside contrasted the Queensland approach to structuring the serious assault offence with the method in NSW, the Northern Territory, Victoria, the ACT, Tasmania and South Australia, where the legislation explicitly differentiates penalties based on whether bodily harm was caused:

> For example, the New South Wales legislation specifies that where no actual bodily harm is caused to the officer (or specified person) the maximum penalty is 5 years, whereas assaults that cause bodily harm attract a maximum penalty of 7 years and assaults amounting to grievous bodily harm have a maximum penalty of 12 years.
>
> In Victoria the legislation provides that assaulting, threatening, resisting or obstructing a police officer carries a maximum penalty of 5 years.... In Victoria, if a person commits a more serious assault they are charged under the

37 Submission 25 (Queensland Police Service) 2.

38 Ibid.

39 Preliminary submission 21 (Sisters Inside) 4.

40 Ibid.

41 Submission 17 (Sisters Inside) 3.

42 Preliminary submission 21 (Sisters Inside) 5.

43 Ibid 4–5 and Submission 17 (Sisters Inside) 6.

44 Submission 17 (Sisters Inside) 4.

45 Preliminary submission 21 (Sisters Inside) 6.

> serious injury and gross violence provisions elsewhere in the Act, which apply equally to civilians and police or public officers. We submit that the Queensland Acts should incorporate greater specificity, as in other Australian jurisdictions, in order to reduce the occurrence of unwarranted criminalisation.[46]

QAI referred to the graduation of penalties in NSW under section 60 of the *Crimes Act 1900* (NSW), and in the Northern Territory under section 188A of the *Criminal Code* (NT), noting that in the ACT, charges are brought under general offence provisions and the fact that the complainant is a police officer is taken into account as an aggravating feature.[47]

Legal Aid Queensland (LAQ) stated that 'the various offences set out in the *Criminal Code* and PPRA adequately cover a multitude of circumstances'[48] and argued that 'there is no evidence to support a change' in penalties for relevant summary offences:[49]

> There is a benefit in retaining multiple offences that can be charged both under the Criminal Code and summarily. The reason for this is that it allows prosecution discretion to proceed with a charge that best fits the factual circumstances of each case.[50]

Similarly, the Aboriginal and Torres Strait Islander Legal Service (ATSILS) supported the two-tiered approach:

> It is appropriate that there are a range of offences which reflect the range of circumstances in which these incidents occur. There is a very large spectrum of fact situations which involve serious assault charges but an even greater spectrum of fact situations in objectively less serious circumstances where it is not in the interests of justice to bring the more serious charges.
>
> That great variety of circumstances in which serious assault charges can arise is both explicitly and implicitly recognised in *The Director's Guidelines*.[51]

The Bar Association of Queensland (BAQ) identified two broad categories of benefit in retaining 'multiple offences targeting the same or similar behaviour':[52]

> Firstly, it allows flexibility in prosecutorial authorities in charging an offence that most adequately reflects the criminality in a particular case…
>
> Secondly, offending, and particularly assaults, occur in many different circumstances. As such, the subtle differences in elements may target or capture particular acts not as suitably reflected through a different offence. That is so in concepts of "obstruct" as opposed to "assault".[53]

BAQ was 'not aware of any amendments necessary to the available summary offences. For each summary offence with a lower maximum penalty there is an indictable alternative that can be, and often is, charged when the offence is factually more serious'.[54]

The Queensland Law Society (QLS) stated that generally, 'a restrictive approach to substantive criminal provisions is preferable. The prospect of multiple offences in respect of similar conduct can cause confusion and lead to overcharging'.[55] However, the QLS noted that section 340 is arguably 'artificial' in that its purpose, derived from victim status and not assault outcome, can cause 'peculiar outcomes' such as 'a higher sentence for touching a public officer without consent where no injury is caused than if an ordinary citizen is more seriously harmed'.[56] The QLS stated that if section 340 is retained:

> there is benefit in having different levels of offence to reflect the very broad range of circumstances the offences cover and the fact that the vast majority of cases involve minor assaults finalised at the Magistrates Court level.[57]

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46 Ibid.

47 Preliminary submission 35 (Queensland Advocacy Incorporated) 10.

48 Submission 29 (Legal Aid Queensland) 2.

49 Ibid 7.

50 Ibid 6.

51 Submission 22 (ATSILS) 4

52 Submission 27 (Bar Association of Queensland) 7.

53 Ibid.

54 Ibid 10.

55 Submission 30 (Queensland Law Society) 11.

56 Ibid 11.

57 Ibid 11.

Its position in respect of current penalties applicable to relevant summary offences was that 'the penalties that apply for such matters when charged summarily are appropriate generally and provide adequate scope for sentencing in such cases'.[58]

QCS supported the retention of all offences, with an apparent preference for section 340 prosecutions:

> The behaviour that constitutes an offender obstructing a CSO in the exercise of their power (sections 124(b) and 127 of the CS Act) may not rise to the level of assault captured by section 340 of the Criminal Code appropriately captures the assault behaviour. The maximum penalties for sections 124(b) and 127 do not reflect the seriousness of an assault and are often charged in conjunction with section 340 of the Criminal Code. Therefore, it is useful to retain these offences in the CS Act and section 199 of the Criminal Code for the instances where prosecution of a defendant under section 340 of the Criminal Code fails.[59]

The Department of Environment and Science (DES) noted a lack of consistency across the Acts administered by DES as to whether the definition of 'obstruct' included acts of 'assault' and supported consistency across Acts administered by the department to include acts of 'assault'.[60] It further viewed provisions that create an offence of obstruction only in circumstances where an officer is acting as a statutory power as too limited, and preferred a formulation that would include obstruct/assault in circumstances where an authorised officer is executing powers or duties to ensure assaults against DES officers are caught by the relevant offence provisions.[61]

Another concern of the DES was the lack of consistency in maximum penalties across Acts administered by the department 'ranging from a modest fine to imprisonment' with the department being of the view that 'the maximum penalty for these offences should be broadly consistent across the existing obstruct/assault provisions', and that maximum penalties should be increased.[62] It specifically supported the availability of imprisonment to 'increase the deterrence value of these offences'.[63]

9.2.5 Council's view

As discussed above, existing legislative drafting guidelines in Queensland provide: 'if the Criminal Code provides for an offence, it is undesirable that another Act should erode its nature as a comprehensive code by providing for the same or essentially the same offence'.[64]

In practice, there are a number of offences that have been introduced over time that essentially replicate offences in the *Criminal Code*, while existing as summary offences — meaning they can only be dealt with by a Magistrates Court.

A number of submissions were made in support of retaining these summary offences, in addition to those that exist under the *Criminal Code,* to allow the lower seriousness of these offences to be reflected in the charges brought.

The Council agrees that it is important to retain separate levels of offences in this case, even if these offences ostensibly capture the same forms of criminal behaviour, to ensure that people who commit these offences are not exposed to the possibility of a more severe penalty being imposed for actions that are relatively minor — for example, in the case of an assault, a light push where no injury has been caused.

Retaining these offence distinctions not only means that a different penalty framework is applied, but also ensures that criminal histories present a more accurate reflection of the seriousness of charges of which an offender has been convicted and sentenced than would be the case should all assaults be dealt with under section 340 of the *Criminal Code*, and all acts of obstruction be charged under section 199 of the Code.

However, taking into account the proliferation of summary assault and obstruct offences in Queensland over time, adding to the general complexity of the criminal law, the Council's preference is for a new summary offence to be created under the *Summary Offences Act 2005* (Qld) to replace the existing offences of assault and obstruct, which it recommends should be repealed over time. The offence should be drafted in such a way as to allow for separate analysis of outcomes for assaults of a public officer and acts of obstruction, allowing these different forms of conduct to be separately identified on an offender's criminal history.

The Council recommends this new summary offence should carry a maximum penalty of 6 months' imprisonment or 100 penalty units. The maximum fine recommended is consistent with a number of existing assault and obstruct provisions, and also the maximum fine that can be imposed by law by a Magistrates Court for an indictable offence

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58 Ibid 15

59 Submission 21 (Queensland Corrective Services) 15.

60 Submission 26 (Department of Environment and Science) 2–3.

61 Ibid.

62 Ibid 3–4.

63 Ibid 4 [33].

64 Department of the Premier and Cabinet, *Queensland Legislation Handbook* (6th ed, 2019) 10 [2.12.4].

dealt with summarily. By providing for imprisonment as an option to a court in sentencing, it should more than sufficiently provide for these less serious forms of assault and obstruct offences, and there should be few provisions that need to be retained on the basis that a higher maximum penalty is warranted.

The requirement to review and consider repealing existing provisions over time should not apply to national laws or national scheme legislation, given that the objective in that case is to achieve national consistency rather than consistency with Queensland laws and drafting practices.

Retention of the existing discrete assault and obstruct offences for police and corrective services officers is supported as another exception, with no change to the current penalties that apply. This recommendation is made on the basis that these are the most frequently charged forms of assault and obstruct offences, and that the penalties set take into account the specific contexts in which this offending occurs. Any new offence of assault or obstruct established under the *Summary Offences Act* should therefore expressly exclude police and corrective services officers from its scope.

To address identified stakeholder concerns regarding when the charging of an assault under section 340 of the *Criminal Code* is preferred over an alternative summary charge, the Council recommends that the QPS should develop internal guidelines to supplement the existing ODPP's *Director's Guidelines*, which advise charging officers about what factors might influence the charging discretion — such as the level of injury caused.

Recommendation 9–1: Section 790 of the PPRA and sections 124(b) and 127 of the CSA

The separate summary offences of assault or obstruct a police officer under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) and assault or obstruct a corrective services staff member under section 124(b) or 127 of the *Corrective Services Act 2006* (Qld) should be retained to provide an option to prosecution agencies to charge an offender with a less serious form of offence in circumstances where the seriousness of the assault or obstruction falls below that which would justify a prosecution proceeding as a section 340 serious assault or section 199 obstruct public officer charge under the *Criminal Code*.

Recommendation 9–2: Maximum penalties for section 790 of the PPRA and sections 124(b) and 127 of the CSA

The current maximum penalties that apply to assaults charged under section 790 of the *Police Powers and Responsibilities Act 2000* (40 penalty units or 6 months' imprisonment, or 60 penalty units or 12 months' imprisonment if the assault or obstruction happens within, or in the vicinity of, licensed premises) and sections 124(b) (2 years' imprisonment) and 127 (40 penalty units or one year's imprisonment) of the *Corrective Services Act 2006* should be retained.

Recommendation 9–3: New summary offence of assault or obstruct under the *Summary Offences Act 2005*

A new summary offence should be introduced under *the Summary Offences Act 2005* (Qld), which establishes an offence of assault or obstruct a public officer (other than officers to which sections 790 of the *Police Powers and Responsibilities Act 2000* and 124(b) and 127 of the *Corrective Services Act 2006* apply) as a summary offence alternative to an offence being charged under sections 340 or 199 of the *Criminal Code*. The objective of introducing this offence should be, over time, to replace the myriad summary offences that exist across the Queensland statute book that effectively target the same behaviour — assault and obstruct a public officer — many of which carry significantly different penalties despite the behaviour involving the same acts of assault and/or obstruction.

The maximum penalty that should apply to this new offence should be 100 penalty units, which is also the maximum fine that can be issued by a Magistrates Court under section 552H of the *Criminal Code*, or 6 months' imprisonment.

Recommendation 9–4: Repeal of other assault and obstruct offences

Existing summary offences of assault and obstruct should be repealed over time as relevant legislation is reviewed and/or amended. Offences established under national laws or national scheme legislation should be exempted from this requirement.

Recommendation 9–5: Development of internal QPS guidelines to guide exercise of charging discretion

The Queensland Police Service should develop internal guidelines — to supplement the existing *Director's Guidelines* of the Office of the Director of Public Prosecutions — that will advise officers about what factors might influence the charging discretion when deciding whether to prefer a section 340 offence or a summary charge. This could also address any matters that should not be taken into account in exercising this discretion. The intention of these guidelines should be to support the consistent and appropriate exercise of discretion across the state.

9.3 Failure to comply with a public health direction under the *Public Health Act 2005*

In addition to criminal laws, governments have responded to the COVID-19 pandemic by widening powers under health legislation. Quasi-criminal health directives (carrying fines for breaches and, more recently, imprisonment) were created.

In Queensland, a new Part 7A of chapter 8 of the *Public Health Act 2005* (Qld) ('Particular powers for COVID-19 emergency, applicable during that period')[65] gives the Chief Health Officer power[66] to make public health directions restricting movement and contact, requiring people to stay at or in a stated place or not to enter or stay at or in a stated place, and to make any other direction the Chief Health Officer considers necessary to protect public health.

The legislation also extends powers to emergency officers ('general' and 'medical')[67] to give a person a written direction if the emergency officer reasonably believes it is necessary to assist in containing, or to respond to, the spread of COVID-19 within the community.[68]

It is an offence to fail to comply with a public health direction[69] or direction from an emergency officer,[70] unless the person has a reasonable excuse.

There is a particular public health direction relevant to the Council's review. The Chief Health Officer issued the *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction* on 27 April 2020. It was effective from that date and has been updated since.[71] It prohibits a person from intentionally spitting at, coughing or sneezing on public officials and 'workers', or threatening to do so, in a way that would reasonably be likely to cause apprehension or fear of being exposed to COVID-19.

The class of person it protects is a 'public official' and 'another worker while the worker is … at the worker's place of work, or … travelling to or from that place of work'. It recognises that a worker's place of work may be their residential premises, by excluding 'any part of the premises used solely for residential purposes'.

The relevant definitions are extensive, can overlap, include some Commonwealth positions and are arguably redundant in the sense that at its base, 'health worker' and 'public official' are widely defined and 'worker includes, without limitation', a retail worker, a person who works at an airport, for an electricity, gas, water or other utility company or in the transport industry or a transport-related industry, and a member of the Australian Defence Force. Further examples of public officials and workers include:

> hospital staff, bus drivers, train drivers, ferry deckhands, taxi drivers, ride share drivers, food delivery workers, security guards, electricity, gas and water meter readers and postal delivery staff (including persons working for an entity under a contract, directly or indirectly, on behalf of the Queensland Government or the Commonwealth Government).

The maximum fine for breaching both public health and emergency officer directions is 100 penalty units ($13,345).

An amendment introducing a maximum penalty of 6 months' imprisonment for breaching public health directions issued under section 362B commenced on 21 July 2020 (the fine remains in place).[72] Imprisonment would only be open if court proceedings for a breach were instituted, as opposed to the issuing of a penalty infringement notice. Health directions, including the *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction*, have been updated to reflect the term of imprisonment.

The infringement notice amount for breaching a health direction varies depending on the nature of the direction. It is 30 penalty units ($4,003) for an individual or 50 penalty units ($6,672) for a corporation in respect of failure to comply with a public health direction restricting entry into Queensland from another state by:

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65 Inserted by the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (Qld).

66 *Public Health Act 2005* (Qld) s 362B.

67 See *Public Health Act 2005* (Qld) ss 333, 335.

68 Ibid s 362G.

69 Ibid 362D.

70 Ibid s 362J.

71 The *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction (No. 3)*, issued under the Chief Health Officer's powers pursuant to the *Public Health Act 2005* (Qld) s 362B. <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/protecting-public-officials-and-workers-direction>.

72 Section 362D of *Public Health Act 2005* (Qld), as amended by the *Corrective Services and Other Legislation Amendment Act 2020* (Qld) s 55X.

- entering Queensland in contravention of the direction;
- giving information about a matter that is not true and correct in contravention of the direction; and
- failing to stay at or in a stated place in contravention of the direction.[73]

For all other breaches of health direction (such as that regarding spitting and coughing) and all breaches of emergency officer directions, the infringement notice amount is 10 penalty units for individuals ($1,334) or 50 penalty units ($6,672) for corporations.[74]

A person who is given an infringement notice in Queensland can elect to pay the fine in full to the administering authority or request that the matter be determined by a Magistrates Court.[75]

The QPS advised the Council[76] that during the period 27 April to 31 July 2020, six penalty infringement notices were issued by the QPS relating to the *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction* (there are many other directions not relevant to the Council's review).

Four notices to appear in court were issued for alleged breaches of this same direction during the same period. A further notice to appear was issued for an alleged offence against section 143(1) of the *Public Health Act 2005* (Qld) (Person must not recklessly put someone else at risk of contracting a controlled notifiable condition).[77]

The health directions do not displace the criminal law and the police charging discretion is not changed. Therefore, criminal offences, which can attract the entire range of sentencing options, could be preferred to prosecuting a breach of health directions. The QPS *Operational Procedures Manual* notes:

> Arresting officers should select an offence which accurately reflects the nature and extent of the criminal behaviour under investigation and which is supported by the admissible evidence. Where the circumstances of a particular case indicate two or more alternative charges may be made out, the offence carrying the greater penalty should be preferred, subject to the Director of Public Prosecutions (State) Guidelines.[78]

The maximum fine of 100 penalty units is the same as the highest fine a Magistrates Court can impose for any indictable offence dealt with summarily.[79] The maximum for the District Court is 4,175 penalty units for an individual, or $557,153.[80] A court can generally issue a fine in addition to other penalties.

The statutory maximum fine for a charge of assault or obstruct police under the PPRA varies from 40 penalty units ($5,338) or 6 months' imprisonment to 60 penalty units ($8,007) or 12 months' imprisonment (within or in vicinity of licensed premises). An offence of obstruction can be dealt with via infringement notice (3 penalty units/$400 or 6 penalty units/$800 if within or in vicinity of licensed premises), but an assault offence cannot.[81]

From 2009–10 to 2018–19, for serious assault of a police officer involving bodily fluids (s 340(1)(b)(i)), the average fine amount was $1,320 (n=35). Similarly, for assaults of public officers involving bodily fluids (s 340(2AA)(i)), the average fine amount was $1,125 (n=6).[82] However, as discussed in Chapter 7, the much more usual penalty applied to these types of offences is a custodial penalty.

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73 *State Penalties Enforcement Regulation 2014 (Qld)* sch 1.

74 Ibid.

75 *State Penalties Enforcement Act 1999* (Qld) s 15.

76 Emails from Strategic Policy Branch, Queensland Police Service to Manager, Research and Statistics, Queensland Sentencing Advisory Council, 17 June 2020 and 12 August 2020.

77 Maximum penalty: 200 penalty units ($26,690) or 18 months' imprisonment. Subsection 2 of that section is an offence of recklessly transmitting a controlled notifiable condition to someone else — Maximum penalty: 400 penalty units ($53,380) or 2 years' imprisonment. A note to this section acknowledges that 'the Criminal Code, section 317 provides for the crime of intentionally transmitting a serious disease to a person'. COVID-19 is a controlled notifiable condition — see *Public Health Act 2005* (Qld) s 63 and *Public Health Regulation 2018* (Qld) sch 1.

78 Queensland Police Service, 'Chapter 3 — Prosecution Process', *Operational Procedures Manual* (31 July 2020, Issue 77, Public Edition) 13 [3.4.2] 'The decision to institute proceedings'.

79 *Criminal Code* s 552H. Otherwise, if an Act creates an offence and does not provide a sentence, the maximum fine that a Magistrates Court may impose for a single offence is 165 penalty units ($22,019) for an individual: *Penalties and Sentences Act 1992* (Qld) s 46(1).

80 *Penalties and Sentences Act 1992* (Qld) ss 5A and 46(1)(b). At the time of this report, the prescribed dollar value of a penalty unit was $133.45: *Penalties and Sentences Regulation 2015* (Qld) s 3. The same provisions place no limit on the amount of fines the Supreme Court can impose. The Supreme Court would deal with assault-type offences only in unusual circumstances.

81 *State Penalties Enforcement Regulation 2014 (Qld)* sch 1.

82 Note: small sample size.