

A report on the monitoring of the infringement
notices provisions of *The Criminal Code*
Volume 2: Scrutiny of the operation
of the provisions

Ombudsman Western Australia

Serving Parliament – Serving Western Australians

Volume 2 of 5

About this Report

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The office of the Ombudsman acknowledges Aboriginal and Torres Strait Islander people of Australia as the traditional custodians of Australia. We recognise and respect the exceptionally long history and ongoing cultural connection Aboriginal and Torres Strait Islander people have to Australia, recognise the strength, resilience and capacity of Aboriginal and Torres Strait Islander people and pay respect to Elders past, present and future.

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1 Introduction

1.1 About the Ombudsman

1.1.1 The role of the Ombudsman

The Ombudsman is a Commissioner and officer of the Western Australian Parliament. The Ombudsman is independent and impartial and reports directly to Parliament, rather than the government of the day.

1.1.2 Functions of the Ombudsman

The Ombudsman has functions in relation to the investigation of State government departments, local governments and universities. These investigations are initiated through complaints received by the Ombudsman, the Ombudsman's own motion or reference from Parliament.

The Ombudsman also has an important function to review certain child deaths and family and domestic violence fatalities, as well as a range of additional functions, including statutory inspection and monitoring functions. One of these additional functions is monitoring the infringement notices provisions of *The Criminal Code*.

1.2 About Criminal Code infringement notices

1.2.1 *The Criminal Code*

The *Criminal Code Act Compilation Act 1913* establishes the Code of Criminal Law and that it may be cited as *The Criminal Code*, as follows:

2. *The Criminal Code established*

The provisions contained in the Code of Criminal Law set forth in the Schedule to this Act, and hereinafter called the **Code**, shall be the law of Western Australia with respect to the several matters therein dealt with.

The said Code may be cited as "*The Criminal Code*".

The Law Reform Commission of Western Australia stated that:

Following the development of a *Criminal Code* in Queensland by Sir Samuel Griffiths in 1899, a *Criminal Code* was enacted in Western Australia in 1902 to provide a legislative basis for the criminal law. The *Code* of 1902 and subsequent amendments were compiled in the *Criminal Code Act 1913* (WA) and, although amended many times since, that Act continues to define and codify many criminal offences in Western Australia today.¹

¹ Law Reform Commission of Western Australia, *Project 92 - Review of the criminal and civil justice system in Western Australia – Final Report*, Law Reform Commission of Western Australia, Perth, September 1999, p. 29.

1.2.2 The *Criminal Code Amendment (Infringement Notices) Act 2011*

The *Criminal Code Amendment (Infringement Notices) Act 2011* amended *The Criminal Code* to include 'Chapter LXXIII – Infringement Notices' (**the infringement notices provisions of *The Criminal Code***). Pursuant to section 721 of *The Criminal Code*, regulations may be made to allow infringement notices to be issued for Code offences, being the *Criminal Code (Infringement Notices) Regulations 2015* (**the Regulations**). In addition, *The Criminal Code* is taken to be a prescribed Act for the purposes of the *Criminal Procedure Act 2004* (**the CP Act**) Part 2.

Together, *The Criminal Code*, the CP Act and the Regulations allow authorised officers to issue Criminal Code infringement notices associated with a modified penalty for prescribed offences (as set out in detail at section 2.1).

The infringement notices provisions of *The Criminal Code* and the Regulations came into operation on 4 March 2015.

The (then) Minister for Police, the Hon. Robert Frank Johnson MLA, stated in the Second Reading Speech (**the Second Reading Speech**) of the Criminal Code Amendment (Infringement Notices) Bill 2010 (**the Bill**) that:

The Criminal Code Amendment (Infringement Notices) Bill 2010 introduces a new scheme into Western Australia by which infringement notices can be issued for Criminal Code offences that are considered relatively low level or minor. Historically, infringement or penalty notices have been used for myriad offences of a regulatory nature, such as parking offences, minor traffic offences, fare evasion, littering, breaches of requirements for heavy vehicle drivers, and breaches of business registration and reporting requirements. More recently, there have been moves in Australia and the United Kingdom to expand the use of infringement notices for offences usually characterised as criminal in nature. In the United Kingdom, summary or public order offences such as being drunk and disorderly and threatening behaviour may be dealt with by way of a penalty notice for disorder. In New South Wales, criminal infringement notices, or CINs, can be issued for eight nominated criminal offences, including common assault, shoplifting, offensive conduct and offensive language. Victoria is currently undergoing a three-year trial to issue infringement notices for offences such as shop theft, disorderly or offensive conduct and alcohol-related offences. The arguments for the transition of infringement notice schemes from offences of a regulatory nature into areas traditionally viewed as being the province of the criminal justice system have largely focused on the potential productivity—time—savings for police and the criminal justice system, with the attraction for affected persons being a quick and relatively simple process whereby the payment of a fixed penalty expiates the offence with, usually, no record of a conviction, notwithstanding the implied admission of culpability.

The key objectives of any such scheme are to reduce the administrative demands on police in relation to relatively minor offences by providing a quick alternative to arrest for police officers in dealing with minor matters; to reduce the time taken by police in preparation for and appearance at court; to allow police to remain on front-line duties rather than having to take the offender back to the police station; to provide an additional general tool in the array of responses available to police; to provide police with greater flexibility in their response to criminal behaviour; to save the court system the cost of having to deal with relatively minor offences and thereby reducing both court

time and trial backlogs; and to provide a diversionary option for the community as a means of avoiding court appearances for minor offences, yet still providing an incentive for behaviour change.²

1.2.3 Monitoring of the infringement notices provisions of *The Criminal Code* by the Ombudsman

Section 723 of *The Criminal Code* provides as follows:

723. Monitoring of Chapter by Ombudsman

- (1) For the period of 12 months after the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of this Chapter and the regulations made under this Chapter and the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67.
- (2) The scrutiny referred to in subsection (1) is to include review of the impact of the operation of the provisions referred to in that subsection on Aboriginal and Torres Strait Islander communities.
- (3) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority's participation in the operation of the provisions referred to in subsection (1).
- (4) The Ombudsman must, as soon as practicable after the expiration of that 12 month period, prepare a report on the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister for Police and the Commissioner of Police.
- (5) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of the provisions referred to in subsection (1).
- (6) The Minister is to lay (or cause to be laid) a copy of the report furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.

The period of 12 months referred to in Section 723(1) of *The Criminal Code* commenced on 5 March 2015 (**the monitoring period**).

The (then) Minister for Police, the Hon. Robert Frank Johnson MLA, stated in the Second Reading Speech of the Bill, in relation to the scope of the monitoring, that:

The operation of the [Criminal Code infringement notices provisions] will be subject to ongoing monitoring and will be evaluated after the first 12 months to ensure that the proposed scheme has met its aims. The evaluation will examine, amongst other things, the impact of the use of infringement notices on

² The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

resource implications, case length and case flow, the impact of the trial on vulnerable defendants, and the effect, if any, on sentencing outcomes of trial offence matters that are determined by the court.³

The (then) Minister representing the Minister for Police, the Hon. Peter Collier MLC, also commented on the role of the Ombudsman, as follows:

In terms of monitoring, of course that will be done in Western Australia ... ideally by the Ombudsman. There will still be a report through police et cetera but the Ombudsman will ultimately be responsible for the review and the monitoring. That will determine such things as the effectiveness of the [Criminal Code infringement notices provisions], whether it has been effective, the level of payment, and the extent of matters to be heard in court as opposed to prior to the legislation. That will come as a direct result of the Ombudsman's role.⁴

1.3 Monitoring work and activities

In order to:

- keep under scrutiny the operation of the provisions of the Chapter, and the regulations made under the Chapter, and the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67; and
- review of the impact of the operation of the provisions on Aboriginal and Torres Strait Islander communities,

the office of the Ombudsman (**the Office**) undertook the following:

- reviewed relevant international and national literature and any relevant reports of government, independent statutory officers, and non-government organisations;
- undertook scrutiny, engagement and conducted consultation with relevant state government departments and engagement and consultation with relevant state government authorities and non-government organisations, including those that provide services to Aboriginal and Torres Strait Islander communities and people requiring advocacy services;
- developed and distributed a consultation paper;
- collected and analysed information and data;
- undertook a cost-benefit analysis;
- developed a draft report and provided the draft report to the relevant state government departments and authorities for their consideration and response; and
- developed a final report including findings and recommendations.

³ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁴ The Hon. Peter Collier MLC, Minister representing the Minister for Police, Legislative Council, Parliamentary Debates (Hansard), 23 February 2011, pp. 909c-916a.

1.3.1 Literature review

The Office conducted a review of relevant international and national literature regarding the provisions for, and the operation of, similar criminal law infringement systems, as well as literature on the impacts of similar systems on Aboriginal and Torres Strait Islander communities and other relevant communities. The Office also conducted a review of relevant reports of government, independent statutory officers, and non-government organisations. The information drawn from this review is referred to as **the research literature** throughout this report.

1.3.2 Engagement and consultation

Police Officers

In addition to scrutiny, engagement and consultation with relevant state government departments, including Western Australia Police (**WAPOL**), (the then) Department of the Attorney General (**DOTAG**), (the then) Department of Aboriginal Affairs and (the then) Department for Child Protection and Family Support, the Office engaged with police officers regarding the operation of Criminal Code infringement notices. The engagement with police officers included considering 16 forums with 149 police officers from the following metropolitan and regional Police Districts (**Police Officer Forums**):

- Central Metropolitan;
- South Metropolitan;
- North West Metropolitan;
- South East Metropolitan;
- South West;
- Goldfields-Esperance;
- Kimberley; and
- Pilbara.

These Police Officer Forums were held to further our understanding of the operation of Criminal Code infringement notices by engaging with police officers who had issued, or had been authorised to issue, Criminal Code infringement notices. Further details are set out in Volume 4.

1.3.3 Consulting other state government authorities and non-government organisations

The Office consulted the following state government authorities and non-government organisations:

- Commissioner for Children and Young People;
- Aboriginal Legal Service of Western Australia;
- Community legal services; and
- Men's Outreach Service Inc. (Broome).

Consultation Paper

To assist in obtaining views from members of the public and interested parties regarding their experiences of Criminal Code infringement notices, the Office developed a Consultation Paper, entitled *Monitoring of the infringement notices provisions of The Criminal Code: Consultation Paper (the Consultation Paper)*. To accompany the Consultation Paper, the Office developed a *Community Feedback Information Sheet* and a *Response Template*. Responses to the Consultation Paper could be provided to the Office using the *Response Template*, by letter or via email.

The Consultation Paper and *Community Feedback Information Sheet* were issued on 18 April 2016 and made available on the Office's website at www.ombudsman.wa.gov.au/CCINs. The Consultation Paper was advertised in *The West Australian* newspaper, community newspapers, the *Koori Mail* and on Aboriginal radio stations in Kriol, Wangatja and English languages. The Consultation Paper was also distributed by mail to relevant state government departments and authorities and non-government organisations seeking their response. Additionally, the Office contacted non-government organisations that provide services, including medical services, to Aboriginal and Torres Strait Islander communities, people who are homeless, and people requiring advocacy services.

The Consultation Paper sought responses by 20 May 2016. Eleven responses were received from a wide range of state government departments and authorities and non-government organisations, including responses from organisations representing Aboriginal and Torres Strait Islander communities. Further details are set out at Volume 4.

Community Consultation Forum

The Office held a Community Consultation Forum on 18 August 2016. The Forum was attended by the following five stakeholders:

- Aboriginal Legal Service of Western Australia;
- Outcare;
- Ruah Community Services;
- Women's Health and Family Service; and
- Youth Legal Service.

1.3.4 Information collection and analysis

The Office collected information from WAPOL and other public authorities regarding the operation of Criminal Code infringement notices. In addition, the Office also requested and received information from relevant courts. The information collected and received included:

- data regarding all Criminal Code infringement notices issued by WAPOL during the monitoring period, and all recorded instances of WAPOL taking formal action⁵ in response to the two prescribed offences, both during the monitoring period and for the 12 months prior to the monitoring period. Throughout this report:
 - the data for the monitoring period and for the 12 months prior to the monitoring period is collectively referred to as **the WAPOL state-wide data**; and
 - the 12 months prior to the monitoring period is referred to as **the benchmarking period**.
- data relating to court hearings for the two prescribed offences in the Magistrates Court and Children's Court (**the court data**); and
- data regarding all unpaid Criminal Code infringement notices referred to the Fines Enforcement Registry by WAPOL (**the DOTAG state-wide data**).

The Office analysed the information collected using qualitative and quantitative techniques. From this analysis, the Office developed draft findings and draft recommendations. The Office consulted with the stakeholders listed above regarding the results of this analysis.

1.3.5 Cost-benefit analysis

A key element for the Ombudsman to include in his scrutiny of the infringement notices provisions of *The Criminal Code* was whether the provisions had met aims to reduce costs and divert resources to other uses.⁶ In order to assist the Office to evaluate whether the infringement notices provisions of *The Criminal Code* had met these aims, the Office engaged Deloitte Touche Tohmatsu to consider the resource implications of the infringement notices provisions of *The Criminal Code*; more particularly to undertake a cost-benefit analysis study. This study was undertaken by Deloitte Access Economics. The objectives of the cost-benefit analysis study were to identify:

- the costs and benefits, and the total net cost or benefit, of the infringement notices provisions of *The Criminal Code* and the operation of the infringement notices

⁵ In this report, the term 'formal action' is used to encompass all instances where police officers recorded that action was taken in response to an alleged offence. Formal action includes, for example, Criminal Code infringement notices, arrests, summons and referrals to a juvenile justice team. Actions that are not considered 'formal actions' included warnings and cautions.

⁶ 'The key objectives of any such [Criminal Code infringement notices provisions] scheme are to reduce the administrative demands on police in relation to relatively minor offences by providing a quick alternative to arrest for police officers in dealing with minor matters; to reduce the time taken by police in preparation for and appearance at court; to allow police to remain on front-line duties rather than having to take the offender back to the police station...to save the court system the cost of having to deal with relatively minor offences and thereby reducing both court time and trial backlogs...' and '[t]he operation of the [Criminal Code infringement notices] scheme will be subject to ongoing monitoring and will be evaluated after the first 12 months to ensure that the proposed scheme has met its aims. The evaluation will examine, amongst other things, the impact of the use of infringement notices on resource implications, case length and case flow ...', the Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

provisions of *The Criminal Code* during the monitoring period for the two prescribed offences; and

- the projected costs and benefits, and the projected total net cost or benefit, of the operation of the infringement notices provisions of *The Criminal Code* for four years beyond the monitoring period.

The full report of the cost-benefit analysis is provided as Volume 5.

1.3.6 Draft report

The Office provided state government departments and authorities with the relevant parts of our draft findings and draft recommendations for their consideration and response.

1.3.7 Final report

Having considered the responses of state government departments and authorities, the Office prepared this final report, including findings and recommendations, to furnish a copy to the Minister for Police and the Commissioner of Police.

1.4 Reviewing the impact of the infringement notices provisions of *The Criminal Code* on Aboriginal and Torres Strait Islander communities

As identified above, section 723(2) of *The Criminal Code* provides that the scrutiny referred to in section 723(1) is to include review of the impact of the infringement notices provisions of *The Criminal Code* on Aboriginal and Torres Strait Islander communities.

In keeping under scrutiny the operation of the infringement notices provisions of *The Criminal Code* at all stages, the Office considered how the infringement notices provisions of *The Criminal Code* and associated regulations impacted on Aboriginal and Torres Strait Islander communities.

To inform this consideration, the Office sought to consult Aboriginal and Torres Strait Islander communities regarding their experiences of Criminal Code infringement notices. In particular, the Office:

- placed advertisements in a national Aboriginal newspaper regarding the Ombudsman's role and the Consultation Paper (see Volume 4);
- ran advertisements on Aboriginal radio stations in Kriol, Wangatja and English languages, regarding the Ombudsman's role and the availability of the Consultation Paper (see Volume 4);
- developed a *Community Feedback Information Sheet* setting out culturally appropriate information on the Ombudsman's role, including a mechanism for providing feedback (see Volume 4). The Office distributed this to non-government organisations working with Aboriginal people;
- consulted the (then) Department of Aboriginal Affairs, the Aboriginal Legal Service of Western Australia, and the Western Australian Aboriginal Advisory Council (**WAAAC**);

- engaged people with expertise in the area of the impact of criminal justice processes on Aboriginal and Torres Strait Islander communities, in relation to our analysis, draft findings and draft recommendations; and
- as noted above, in addition the Office contacted non-government organisations that provide services, including medical services, to Aboriginal and Torres Strait Islander communities.

In addition, following the release of the Consultation Paper, the Office invited stakeholders who worked with the Aboriginal community to a Community Consultation Forum to ensure information received in response to the Consultation Paper, particularly in relation to the impact of the infringement notices provisions of *The Criminal Code* on Aboriginal and Torres Strait Islander communities, had been understood and represented correctly. The Community Consultation Forum was held on 18 August 2016 and was facilitated by the Office's Principal Aboriginal Liaison Officer and an Aboriginal community facilitator (engaged by the Office).

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2 The infringement notices provisions of *The Criminal Code*

2.1 Legislative requirements

Section 11 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (the **FPINE Act**) defines an infringement notice as follows:

11. Terms used

...

infringement notice means a notice issued under a written law, other than this Act, to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court;

...

The Criminal Code enables Regulations to be made, allowing infringement notices to be issued for Code offences, as follows:

721. Regulations to allow infringement notices to be issued for Code offences

...

(3) Regulations made under subsection (2) —

- (a) may, despite the CP Act section 5(2), prescribe any offence under this Code to be a prescribed offence for Part 2 of the CP Act;
- (b) may prescribe classes of person to whom an infringement notice cannot be issued for an alleged offence under this Code; and
- (c) may prescribe circumstances in which an infringement notice cannot be issued for an alleged offence under this Code.

Prescribed offences are defined in Regulation 4, as follows:

4. Prescribed offences under *The Criminal Code* and modified penalties

- (1) The offences under *The Criminal Code* that are specified in Schedule 1 are offences for which an infringement notice may be issued under the CP Act Part 2.
- (2) The modified penalty specified opposite an offence in Schedule 1 is the modified penalty for that offence for the purposes of the CP Act section 5(3).

Schedule 1 of the Regulations specifies the prescribed offences for which a Criminal Code infringement notice may be issued and modified penalties, as follows:

Offences under <i>The Criminal Code</i>	Modified Penalty \$
s. 74A (2) Behaving in a disorderly manner —	
(a) in a public place or in sight or hearing of any person in a public place; or	
(b) in a police station or lock-up	500
s. 378 Stealing anything capable of being stolen	500

In relation to the prescribed offence of behaving in a disorderly manner, *The Criminal Code* provides:

74A. Disorderly behaviour in public

(1) In this section —

behave in a disorderly manner includes —

- (a) to use insulting, offensive or threatening language; and
- (b) to behave in an insulting, offensive or threatening manner.

(2) A person who behaves in a disorderly manner —

- (a) in a public place or in the sight or hearing of any person who is in a public place; or
- (b) in a police station or lock-up, is guilty of an offence and is liable to a fine of \$6 000.

...

In this report, this prescribed offence is referred to as **the prescribed offence of disorderly behaviour**.

Chapter XXXVI of *The Criminal Code* provides for the prescribed offence of stealing. In relation to the penalty for stealing, section 378 of *The Criminal Code* provides:

378. Penalty for stealing

Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.

Alternative offence: s. 382, 383, 388, 390A, 409, 414, 417 or 429.

Punishment in special cases

- (1) If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for 10 years.
- (2) If the thing stolen is a motor vehicle and the offender —
 - (a) wilfully drives the motor vehicle in a manner that constitutes an offence under the *Road Traffic Act 1974* section 60 or 60A; or
 - (b) drives the motor vehicle in a manner that constitutes an offence under section 61 of the *Road Traffic Act 1974* (i.e. the offence known as dangerous driving), the offender is liable to imprisonment for 8 years.

[(3), (4) deleted]

- (4a) If the thing stolen is an aircraft the offender is liable to imprisonment for 10 years.
- (5) If the offence is committed under any of the circumstances following, that is to say —
 - (a) If the thing is stolen from the person of another;
 - (b) If the thing is stolen in a dwelling, and its value exceeds \$10 000, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling;
 - (c) If the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;
 - (d) If the thing is stolen from a vessel which is in distress or wrecked or stranded;
 - (e) If the thing is stolen from a public office in which it is deposited or kept;
 - (f) If the offender, in order to commit the offence, opens any locked room, box, or other receptacle by means of a key or other instrument;the offender is liable to imprisonment for 14 years.
- (6) If the offender is a person employed in the Public Service, and the thing stolen is the property of Her Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for 10 years.

- (7) If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for 10 years.
- (8) If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment for 10 years.
- (9) If the thing stolen is any of the things following, that is to say —
 - (a) Property which has been received by the offender with a power of attorney for the disposition thereof;
 - (b) Money received by the offender with a direction that the same should be applied to any purpose or paid to any person specified in the direction;
 - (c) The whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;
 - (d) The whole or part of the proceeds arising from any disposition of any property which have been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction;

the offender is liable to imprisonment for 10 years.

In this report, this prescribed offence is referred to as **the prescribed offence of stealing**.

Section 8(1) of the CP Act provides for the issuing of Criminal Code infringement notices in relation to prescribed offences, as follows:

8. Issuing infringement notices

- (1) An authorised officer who has reason to believe that a person has committed a prescribed offence may issue an infringement notice that complies with section 9 [of the CP Act] for the alleged offence.

Regulation 6 provides for authorised officers and approved officers, as follows:

6. Authorised officers and approved officers

- (1) Every police officer, other than a senior police officer, is an authorised officer for the purposes of the CP Act Part 2.

...
- (3) Every senior police officer is an approved officer for the purposes of the CP Act Part 2.
- (4) The Commissioner of Police may, in writing, appoint a person who is not a police officer to be an approved officer for the purposes of the CP Act Part 2.

In addition, Regulation 5 provides for when Criminal Code infringement notices cannot be issued, as follows:

5. When infringement notices cannot be issued (*The Criminal Code* s. 721(3)(b) and (c))

However, an infringement notice cannot be issued under the CP Act Part 2 for an offence specified in Schedule 1 in the following situations —

- (a) if, on the day on which the alleged offence is believed to have been committed, the alleged offender is under 17 years of age;
- (b) if —
 - (i) the alleged offence is under *The Criminal Code* section 378; and
 - (ii) the value of the thing alleged to have been stolen exceeds \$500.

In introducing the Bill into Parliament, the (then) Minister for Police, the Hon. Robert Frank Johnson MLA, described Criminal Code infringement notices as follows:

The Criminal Code Amendment (Infringement Notices) Bill 2010 introduces a new scheme into Western Australia by which infringement notices can be issued for Criminal Code offences that are considered relatively low level or minor.

...

The introduction of [Criminal Code infringement notices] will allow police more flexibility when they are enforcing minor incidents of crime. It is not mandatory for police to issue a [Criminal Code infringement notice] under the scheme proposed in the bill. Police may exercise their discretion to caution, summons, arrest or, indeed, to issue a [Criminal Code infringement notice] on a case-by-

case basis. Therefore, police officers will be able to issue a [Criminal Code infringement notice] at their discretion to eligible persons.⁷

In subsequent debate in the Western Australian Parliament of the Second Reading of the Bill, the (then) Minister representing the Minister for Police, the Hon. Peter Collier MLC stated that:

A range of factors will need to be considered to determine whether a [Criminal Code infringement notice] is an appropriate outcome and police will be able to identify whether a person has had a [Criminal Code infringement notice] issued to him or her in the past when they are processing the [Criminal Code infringement notice] ... Also, the gravity of the offence committed and the level of investigation required into the offence will have an impact on whether a [Criminal Code infringement notice] is issued as will the circumstances of the commission of the offence and the circumstances of the individual concerned.⁸

⁷ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁸ The Hon. Peter Collier MLC, Minister representing the Minister for Police, Legislative Council, Parliamentary Debates (Hansard), 23 February 2011, pp. 909c-916a.

3 The operation of the infringement notices provisions of *The Criminal Code* in detail

3.1 WAPOL's operationalising of Criminal Code infringement notices

3.1.1 WAPOL developed a policy to provide police officers with guidance on Criminal Code infringement notices

As part of the implementation of Criminal Code infringement notices, WAPOL developed a policy to provide police officers with guidance on how and when to issue Criminal Code infringement notices. This policy, *CR-01.00 Criminal Code Infringement Notice (CCIN)*⁹ (**WAPOL's CCIN Policy**¹⁰), provides police officers with information about key aspects of Criminal Code infringement notices, including:

- information regarding the legislative requirements:
 - who can, and who cannot, be issued with a Criminal Code infringement notice; and
 - when a Criminal Code infringement notice can, and cannot, be issued;
- information regarding policy considerations:
 - factors to consider when determining whether a Criminal Code infringement notice is the most appropriate course of action (having considered alternative legislative options); and
 - the process for issuing a Criminal Code infringement notice.

Each aspect of the policy, relating to the main steps in the Criminal Code infringement notices process, is examined in detail in the following chapter.

3.1.2 WAPOL developed a new computer application for the management of non-traffic infringements

As part of the implementation of Criminal Code infringement notices, WAPOL developed a new computer application for the management of non-traffic infringements, the Non-Traffic Infringement Management Solution (**NTIMS**). While NTIMS was developed to allow WAPOL to implement Criminal Code infringement notices, it is now also being used for other non-traffic infringements, for example infringements related to firearms. The costs associated with the development of NTIMS are discussed in detail in Volume 5.

3.1.3 Police officers undertook training on the legislative requirements for Criminal Code infringement notices and WAPOL's CCIN Policy

In addition to the development of WAPOL's CCIN Policy, discussed above, WAPOL reported that police officers were required to complete training specific to Criminal Code infringement notices prior to being able to issue a Criminal Code infringement notice. This training included two modules, one module which provided police officers with an overview of legislation and WAPOL policy relevant to Criminal Code infringement notices, and a

⁹ Western Australia Police, Police Manual, *CR-01.00 Criminal Code Infringement Notice (CCIN)*.

¹⁰ WAPOL's CCIN Policy is provided as guidance for police officers when issuing Criminal Code infringement notices and is not publically available.

second module which explained how to use NTIMS. Upon completion of the training, police officers were also required to complete an assessment and achieve 100 per cent accuracy.

During the monitoring period, the two training modules, for Criminal Code infringement notices and NTIMS, were delivered either face-to-face or online using WAPOL's training portal 'Blackboard'. Face-to-face training was delivered predominantly to police officers in metropolitan areas and the South West District as part of the pilot. At the end of the monitoring period, WAPOL reported that:

- 697 police officers had completed both Criminal Code infringement notice and NTIMS training on a face-to-face basis;
- 4,104 police officers had completed the Criminal Code infringement notice training using Blackboard; and
- 3,720 police officers had completed the NTIMS training using Blackboard.

At the Police Officer Forums, the majority of participants who received face-to-face training expressed the view that this training was sufficient and that the process for issuing Criminal Code infringement notices and NTIMS were both easy to understand. With regard to training using Blackboard, some participants expressed the view that the training was not as effective as face-to-face training, primarily because there was no dedicated time to undertake the training, which was usually done while undertaking other tasks and participants were unable to have questions answered while completing the modules.

The Office notes that the Community Development and Justice Standing Committee has previously 'noted the limitations of computer-based training'¹¹ and, in exploring this as an issue, observed that 'WA Police acknowledged that training should ideally be provided face-to-face or on-the-job, where it can be contextualised for participants.'¹² The Committee went on to observe that:

To the Committee, [the] evidence indicates that WA Police is between a rock and a hard place. On the one hand, the number of topics on which its workforce must be educated is increasing. On the other, it is not adequately resourced to address these expanded training requirements in a classroom environment. The solution to this problem – indeed, the solution for many policing jurisdictions – is an increasing reliance on computer-based training.¹³

¹¹ Community Development and Justice Standing Committee, *How do they manage? An investigation of the measures WA Police has in place to evaluate management of personnel*, Parliament of Western Australia, Perth, March 2016, p. 50.

¹² Community Development and Justice Standing Committee, *How do they manage? An investigation of the measures WA Police has in place to evaluate management of personnel*, Parliament of Western Australia, Perth, March 2016, p. 51.

¹³ Community Development and Justice Standing Committee, *How do they manage? An investigation of the measures WA Police has in place to evaluate management of personnel*, Parliament of Western Australia, Perth, March 2016, p. 52.

3.1.4 WAPOL commenced issuing Criminal Code infringement notices on 30 March 2015

WAPOL commenced issuing Criminal Code infringement notices on 30 March 2015, initially as a pilot in the Perth metropolitan area and the South West. WAPOL reported that the following Local Policing Teams, Response Teams and specialised areas were selected as locations for inclusion in the pilot:

- Armadale
- Belmont
- Bunbury
- Busselton
- Canning Vale
- Cannington
- Ellenbrook
- Gosnells
- Kensington
- Kiara
- Mandurah
- Mundijong
- Perth
- Pinjarra
- Rottneest
- South East Metropolitan Response Team
- South West
- Perth
- Water Police
- Curtin House
- Mounted Police
- Regional Operations

From 30 March 2015 to 2 August 2015, Criminal Code infringement notices were operationalised across the State. Criminal Code infringement notices were issued state-wide from 3 August 2015. As identified at section 1.2.3, the monitoring period commenced on 5 March 2015. Importantly, and considered where relevant throughout this Report, this means that Criminal Code infringement notices were being operationalised during the monitoring period and almost five months of the monitoring period had elapsed prior to state-wide issuing of Criminal Code infringement notices being achieved.

3.2 WAPOL issued 2,978 Criminal Code infringement notices during the monitoring period

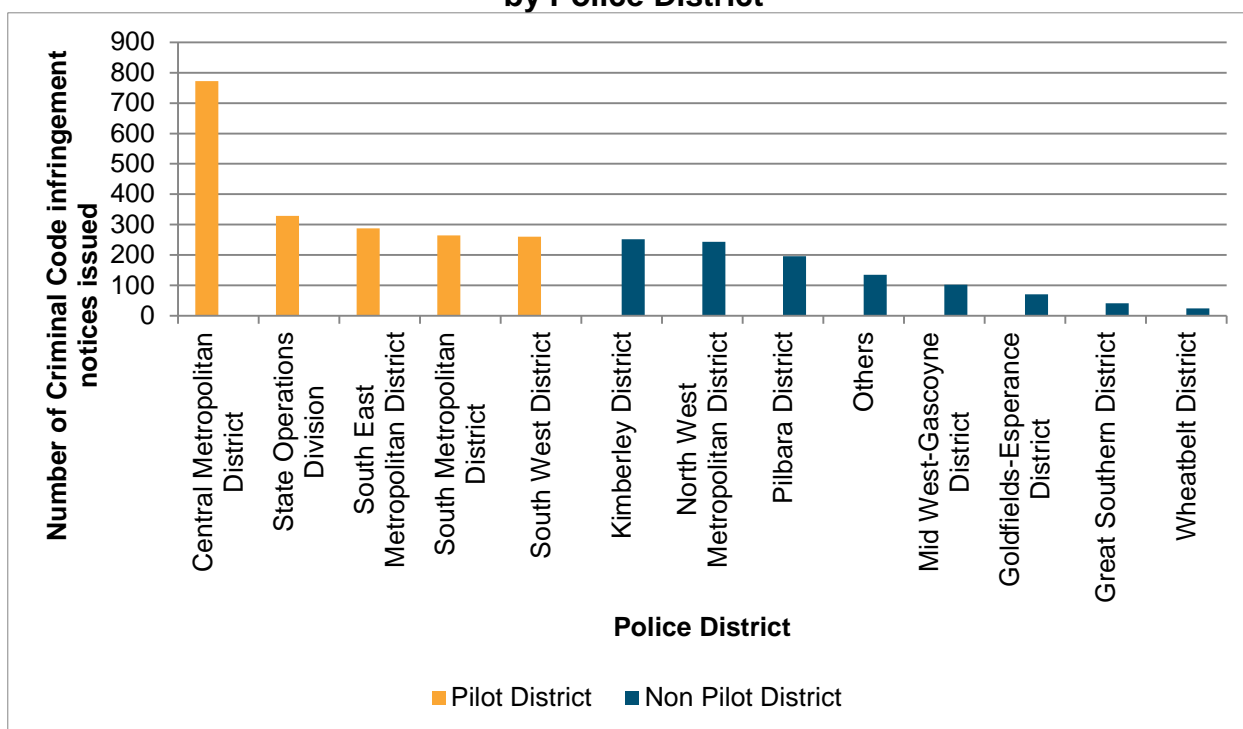
The Office found that, during the monitoring period, WAPOL issued a total of 2,978 Criminal Code infringement notices. The 2,978 Criminal Code infringement notices were issued to 2,817 individual alleged offenders. The issuing of multiple Criminal Code infringement notices to one alleged offender is discussed in further detail at section 3.4.6.

For the purposes of the Office's monitoring, and in order to provide a complete picture of the operation of the infringement notices provisions of *The Criminal Code*, the Office examined all 2,978 Criminal Code infringement notices. Further, as police officers exercised their discretion to issue a Criminal Code infringement notice in 2,978 separate instances, to inform our understanding of the circumstances in which police officers determined it was appropriate to issue the notice, the Office considered the characteristics of the recipients in all 2,978 instances (including instances where a recipient had previously been issued a Criminal Code infringement notice).

Of the 2,978 Criminal Code infringement notices, 2,031 (68 per cent) were issued in metropolitan Police Districts and 947 (32 per cent) were issued in regional Police Districts.

Police Districts involved in the pilot phase of the introduction of Criminal Code infringement notices generally issued more Criminal Code infringement notices than Police Districts not included in the pilot phase. In particular, Central Metropolitan District, which was the first Police District to implement Criminal Code infringement notices, issued approximately two and a half times the number of Criminal Code infringement notices (771 or 26 per cent), than the next highest Police District, the State Operations Division (which issued 329 or 11 per cent). Of the 771 Criminal Code infringement notices issued by Central Metropolitan District, 422 (55 per cent) were issued by Perth Police Station (Figure 1).

Figure 1: Number of Criminal Code infringement notices issued; by Police District



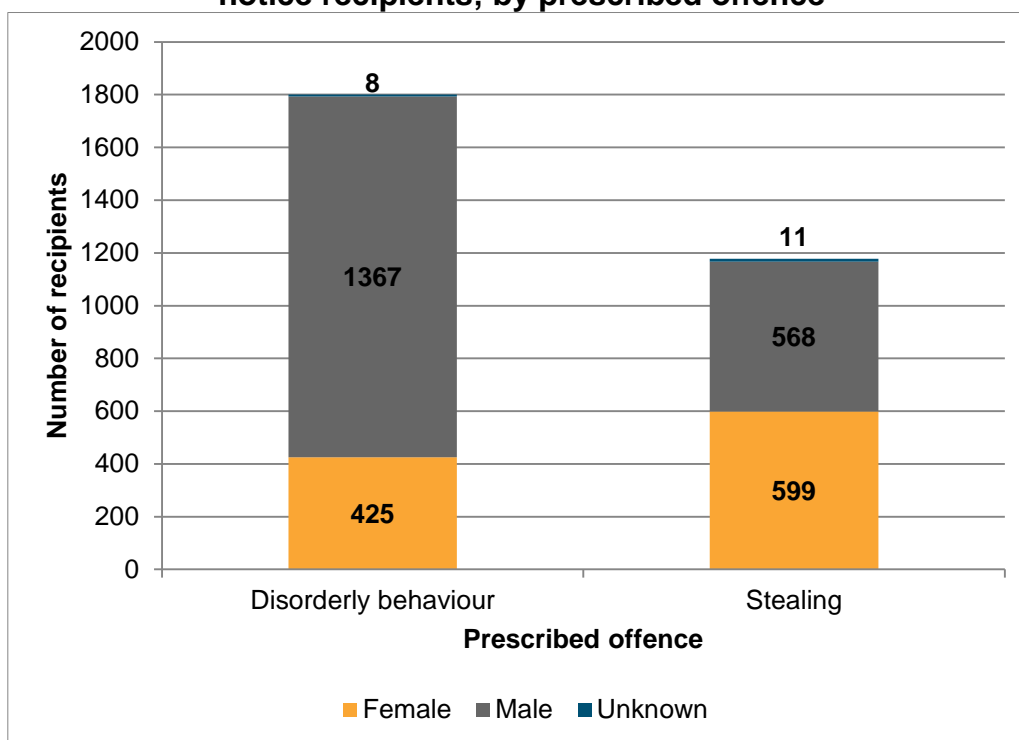
Source: Ombudsman Western Australia

3.2.1 Sixty-five per cent of Criminal Code infringement notices were issued to male recipients

The Office found that, overall, the 2,978 Criminal Code infringement notices were issued to more male recipients (1,935 or 65 per cent) than female recipients (1,024 or 34 per cent) at a rate of almost 2-1. However, the proportion of male and female recipients issued a Criminal Code infringement notice differed between the two prescribed offences (Figure 2):

- male recipients accounted for 76 per cent (1,367) of Criminal Code infringement notices issued for the prescribed offence of disorderly behaviour;
- male and female recipients accounted for approximately 50 per cent each (568 males, 599 females) of the prescribed offence of stealing; and
- the gender of recipients was unknown in one per cent (19) of all Criminal Code infringement notices issued.

Figure 2: Gender of Criminal Code infringement notice recipients; by prescribed offence



Source: Ombudsman Western Australia

The Office then analysed the data from the benchmarking period to determine whether the above findings were consistent with the rate of arrests and summons of male and female alleged offenders for the two prescribed offences. The Office found that, consistent with the issuing of Criminal Code infringement notices, of the 9,805 alleged offenders arrested or summonsed for the two prescribed offences in the benchmarking period, there were more male alleged offenders (6,556 or 67 per cent) than female alleged offenders (3,224 or 33 per cent); with males arrested or summonsed at a rate of almost 2-1.

The proportion of male and female alleged offenders who were arrested or summonsed also differed between the two prescribed offences:

- male alleged offenders accounted for 72 per cent (3,680) of the 5,084 arrests and summons for the prescribed offence of disorderly behaviour;
- male alleged offenders accounted for 61 per cent (2,876) and female alleged offenders for 39 per cent (1,871) of the 4,721 arrests and summons for the prescribed offence of stealing; and
- the gender of recipients was unknown in less than one per cent (25) of all arrests and summons.

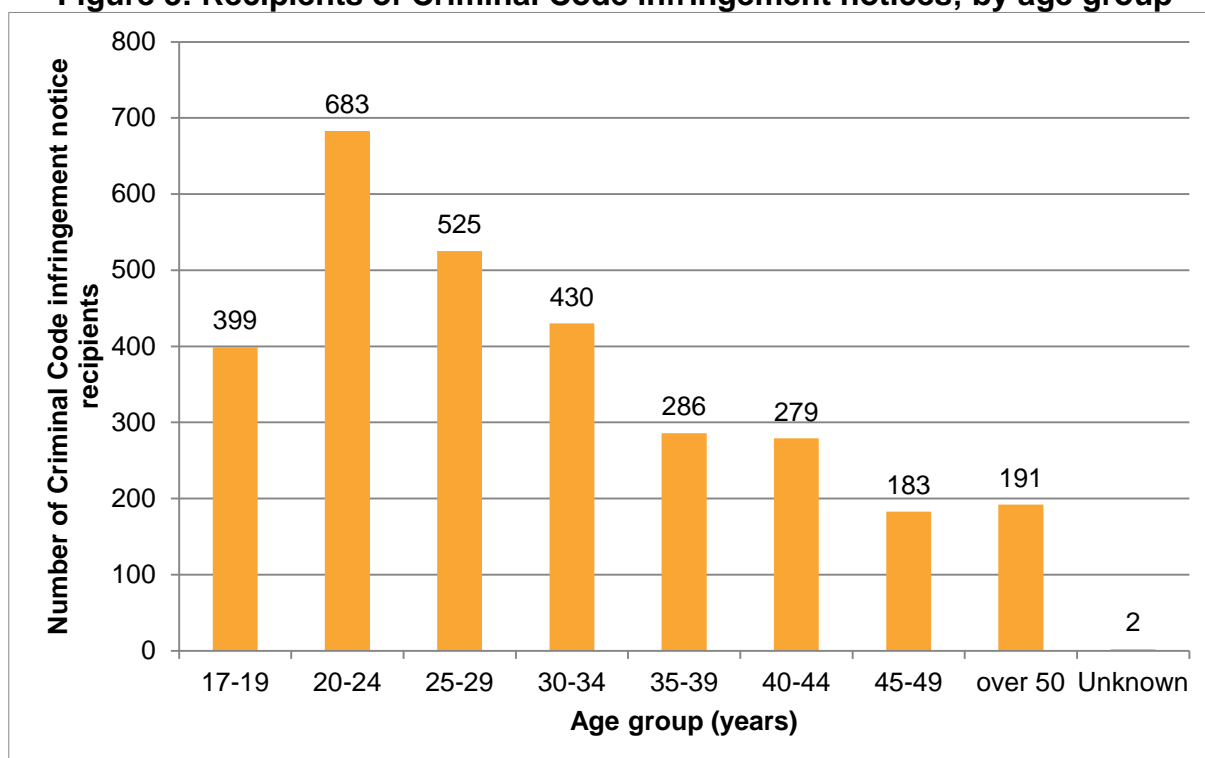
Of particular note, while approximately equal numbers of females and males were issued a Criminal Code infringement notice for the prescribed offence of stealing, males accounted for a higher proportion (61 per cent) of arrests and summons for this prescribed offence.

3.2.2 Twenty-three per cent of Criminal Code infringement notices were issued to recipients aged between 20 and 24 years

The Office found that 23 per cent of Criminal Code infringement notices were issued to recipients aged between 20 and 24 years (683 recipients), with 18 per cent issued to recipients aged between 25 and 29 years (525 recipients) (Figure 3).

Seventeen year olds accounted for three per cent of Criminal Code infringement notice recipients (89 recipients). Of these 89 recipients, 30 (34 per cent) were recorded by WAPOL as being Aboriginal. The impact of the infringement notices provisions of *The Criminal Code* on these young people is explored in detail in Volume 3.

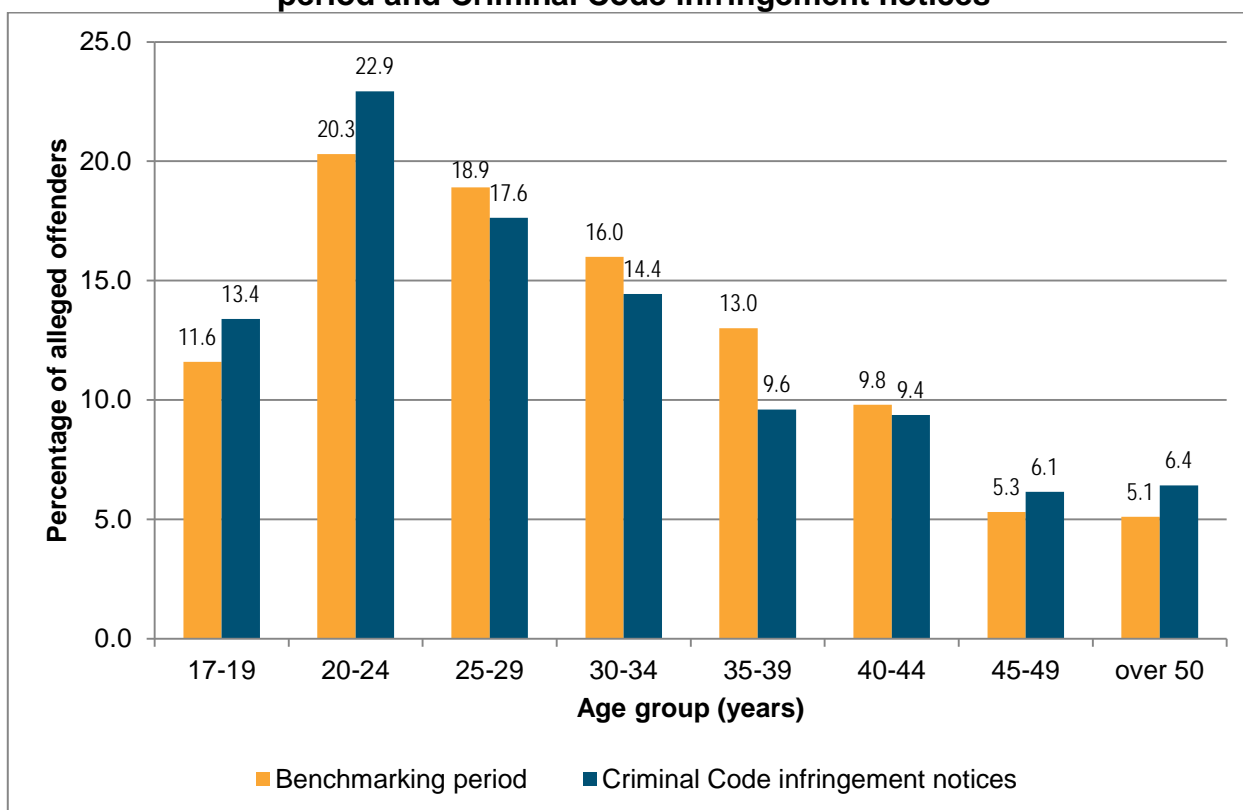
Figure 3: Recipients of Criminal Code infringement notices; by age group



Source: Ombudsman Western Australia

The Office then analysed the data from the benchmarking period to determine whether the above findings were consistent with the age of alleged offenders who were arrested and summonsed for the two prescribed offences. In order to include analysis of 17 year old alleged offenders, the Office also considered the number of alleged offenders who were issued a juvenile caution (oral or written) or referred to a juvenile justice team. As shown in Figure 4 below, Criminal Code infringement notices were issued to alleged offenders across age groups at a similar rate to the benchmarking period.

Figure 4: Percentage of alleged offenders across age groups; the benchmarking period and Criminal Code infringement notices



Source: Ombudsman Western Australia

3.2.3 Thirty-six per cent of Criminal Code infringement notices were issued to recipients recorded by WAPOL as being Aboriginal

For the 2,978 Criminal Code infringement notices issued, WAPOL provided further data regarding the characteristics of the recipients. This included the characteristic of 'Offender Appearance', which included categories of 'Caucasian', 'Aboriginal' and 'Unknown'. WAPOL data relating to 'Offender Appearance' refers to a variable which is determined and recorded by WAPOL. Where the Office has used the WAPOL state-wide data to review the impact of the infringement notices provisions on Aboriginal and Torres Strait Islander communities, the Office has included alleged offenders and Criminal Code infringement notice recipients recorded by WAPOL as 'Aboriginal'. The WAPOL state-wide data does not identify alleged offenders and/or recipients who are of Torres Strait Islander 'appearance'.

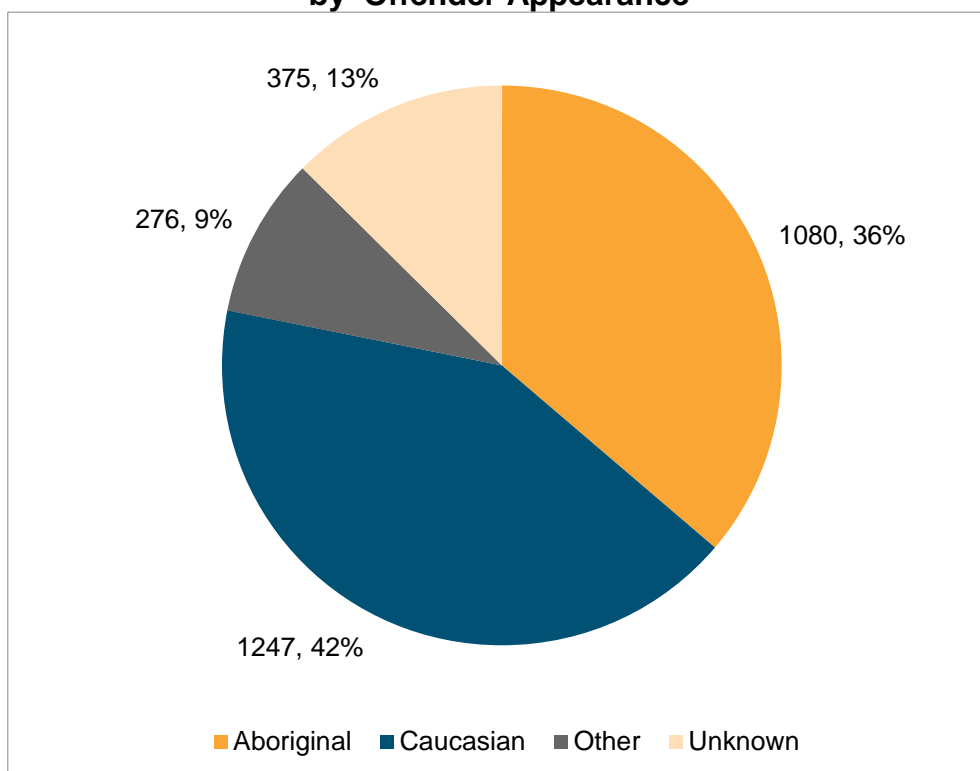
The Office found that, of the 2,978 Criminal Code infringement notices issued during the monitoring period, WAPOL recorded that:

- 1,247 (42 per cent) Criminal Code infringement notices were issued to recipients who were recorded as being Caucasian;
- 1,080 (36 per cent) Criminal Code infringement notices were issued to recipients who were recorded as being Aboriginal;
- 'Offender Appearance' was not recorded in relation to 375 (13 per cent) Criminal Code infringement notices; and

- 276 (9 per cent) of recipients of Criminal Code infringement notices were recorded as being from other ethnicities (Figure 5).

For comparison, 3.1 per cent of Western Australia's population identified as Aboriginal and/or Torres Strait Islander in the 2016 Census of Population and Housing.¹⁴ The impact of the infringement notices provisions of *The Criminal Code* on Aboriginal and Torres Strait Islander communities is discussed in detail in Volume 3.

Figure 5: Criminal Code infringement notices issued; by 'Offender Appearance'



Source: Ombudsman Western Australia

Recommendation 1

WAPOL considers ways to improve data collection relating to the ethnicity of recipients of Criminal Code infringement notices, in particular the collection of accurate and comprehensive data relating to recipients who are Aboriginal and/or Torres Strait Islander. In doing so, WAPOL should ensure that this is done in a way that:

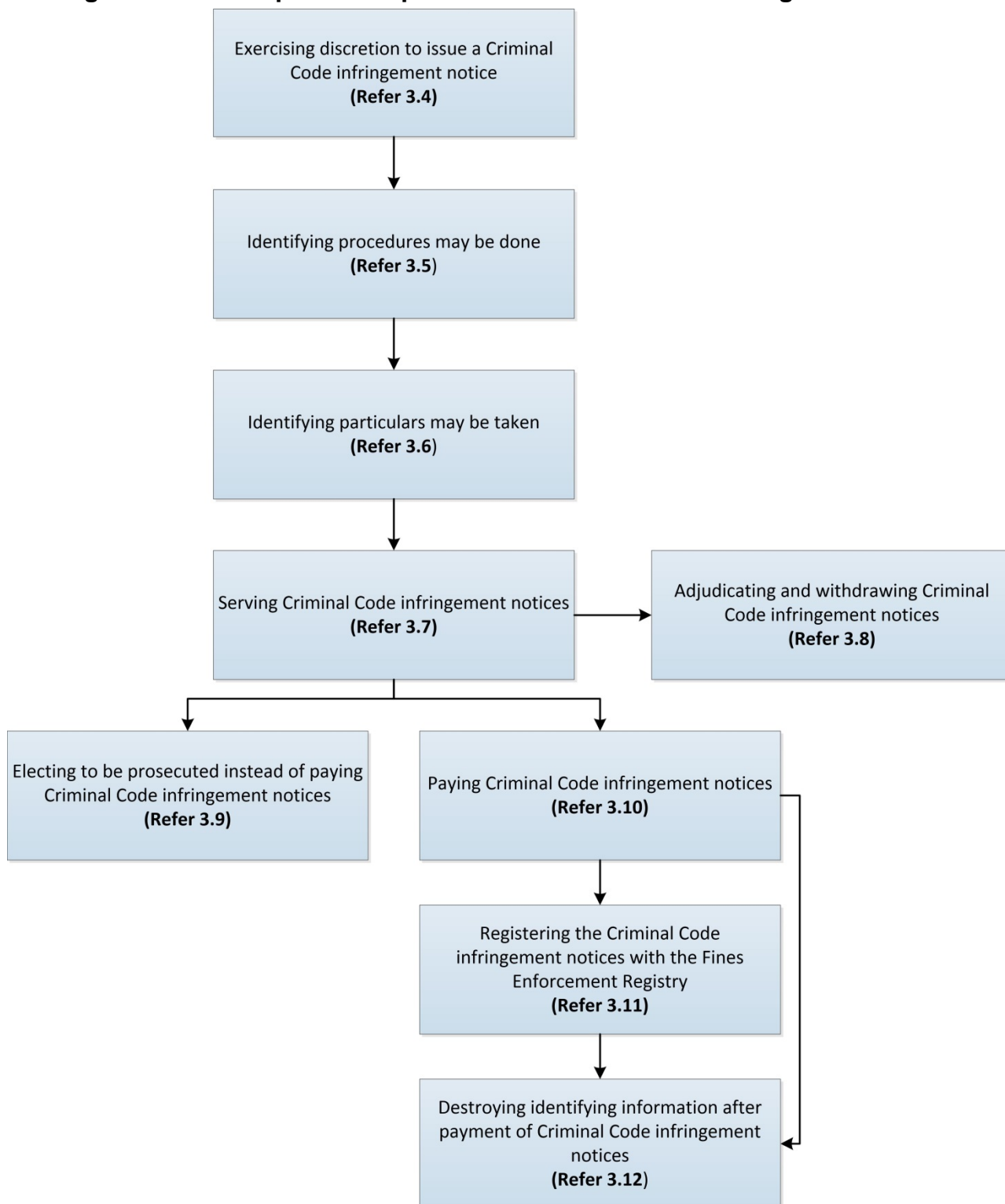
- collaborates and consults with Aboriginal communities;
- recognises that Aboriginal people may not wish to identify as Aboriginal to police officers and that choice not to identify is recognised and respected; and
- includes consideration of collaborating with other agencies to obtain more reliable data.

¹⁴ Australian Bureau of Statistics, 2016 Census: Aboriginal and/or Torres Strait Islander Peoples Quickstats, 2016, ABS, Canberra, June 2017.

3.3 The Office's approach to monitoring the operation of the infringement notices provisions of *The Criminal Code*

As part of fulfilling its monitoring responsibilities, the Office identified the main steps in the operation of Criminal Code infringement notices. These are illustrated in Figure 6.

Figure 6: Main steps in the operation of Criminal Code infringement notices



The Office examined each step in the operation of Criminal Code infringement notices, as identified in Figure 6, in detail. In particular, the Office examined whether WAPOL implemented the infringement notices provisions of *The Criminal Code* as required by legislation.

To do this, the Office analysed:

- WAPOL state-wide data regarding:
 - all Criminal Code infringement notices issued by WAPOL during the monitoring period; and
 - all instances of WAPOL taking formal action in response to the two prescribed offences, both during the monitoring period and the benchmarking period;
- the court data regarding court hearings for the two prescribed offences in the Magistrates Court and Children's Court;
- DOTAG state-wide data regarding all unpaid Criminal Code infringement notices referred to the Fines Enforcement Registry by WAPOL during the monitoring period; and
- information collected from police officers working in metropolitan and regional Police Districts who participated in the Police Officer Forums.

The findings of the Office's analysis are set out below.

3.4 Exercising discretion to issue a Criminal Code infringement notice

3.4.1 WAPOL complied with *The Criminal Code* and the Regulations and issued 100 per cent of Criminal Code infringement notices for the two prescribed offences

As already discussed at section 2.1, Regulation 4 and Schedule 1 of the Regulations prescribe two offences for which Criminal Code infringement notices may be issued. These are the prescribed offences of stealing and disorderly behaviour. The Office examined the WAPOL state-wide data regarding the 2,978 Criminal Code infringement notices issued by WAPOL and found that 100 per cent of the Criminal Code infringement notices issued by WAPOL were issued for the two prescribed offences. Of the 2,978 Criminal Code infringement notices issued:

- 1,178 (39.5 per cent) were issued for the prescribed offence of stealing; and
- 1,800 (60.5 per cent) were issued for the prescribed offence of disorderly behaviour.

3.4.2 Police officers identified four main factors which influenced whether they used their discretion to issue Criminal Code infringement notices

The infringement notices provisions of *The Criminal Code* and the Regulations set out the requirements in relation to the issuing of a Criminal Code infringement notice, including who can, and cannot, be issued a Criminal Code infringement notice, and when a Criminal Code infringement notice can be issued. WAPOL's CCIN Policy further provides for the factors to be considered by an authorised officer when determining whether a Criminal Code infringement notice is the most appropriate course of action (having considered alternative legislative options such as arrest, summons, caution, referral to a Juvenile

Justice Team, or ordering the person to ‘move on’). The decision regarding which legislative option to proceed with in each situation is at the discretion of the responding authorised officer.

As already identified, WAPOL issued 2,978 Criminal Code infringement notices. The Office compared this total of 2,978 Criminal Code infringement notices with the number of instances where Criminal Code infringement notices were potentially eligible to be issued, in accordance with the infringement notices provisions of *The Criminal Code*. To do so, the Office analysed the WAPOL state-wide data to identify all recorded instances¹⁵ of the two prescribed offences (not just those for which Criminal Code infringement notices were issued), where the alleged offender was aged 17 or over and, pursuant to Regulation 5, where the instance related to the prescribed offence of stealing, the value of the thing alleged to have been stolen did not exceed \$500. To ensure that instances where non-prescribed offences (for which a Criminal Code infringement notice could not be issued) were excluded, the Office only counted instances where a single prescribed offence was detected at the incident.

The Office found that 8,001 arrests and summonses occurred during the monitoring period in instances where Criminal Code infringement notices were potentially eligible to be issued, based on the conditions set out above. It is important to note that these conditions were adopted to identify instances where Criminal Code infringement notices may have been issued in accordance with the infringement notices provisions of *The Criminal Code*; it does not take into account WAPOL’s policy considerations regarding the factors that police officers should consider in exercising their discretion to issue a Criminal Code infringement notice, for example whether the alleged offender is a repeat offender.

On this basis, the Office’s analysis suggests that Criminal Code infringement notices were issued in approximately 27 per cent of instances (2,978¹⁶ of 10,979) where Criminal Code infringement notices were potentially eligible to be issued. The use of Criminal Code infringement notices as a diversionary option for each of the two prescribed offences (in place of arrests and summonses) is discussed further in Chapter 4.

At the Police Officer Forums, participants identified a number of factors that may influence a police officer’s decision to issue a Criminal Code infringement notice instead of proceeding with other legislative options. These factors were:

- establishing an alleged offender’s identity and postal address;
- investigative requirements, particularly for the prescribed offence of stealing;
- the need to put a stop to the offending behaviour; and
- consideration of an alleged offender’s criminal history.

Each of these factors is explored in further detail below.

¹⁵ The WAPOL state-wide data only includes offences reported to and recorded by WAPOL, where an alleged offender was identified and WAPOL took formal action. That is, the data does not include offences where an offender was not identified, or an informal action (such as a caution or informal warning) was taken.

¹⁶ The Office notes that the cost-benefit analysis, discussed in more detail in Chapter 4, estimated that a total of 3,942 Criminal Code infringement notices would have been issued during the monitoring period if they had been issued on a state-wide basis over the entire monitoring period.

3.4.3 Establishing an alleged offender's identity and postal address

Legislative requirements

Part 3 of the *Criminal Investigation (Identifying People) Act 2002 (the CIIP Act)* provides police officers with the power to request certain personal details, including from a person who has committed, or may be able to assist in the investigation of, an offence or a suspected offence, as follows:

16. Name, address etc., duty to give to police etc.

(1) In this section —

...

personal details, in relation to a person, means —

- (a) the person's full name;
- (b) the person's date of birth;
- (c) the address of where the person is living;
- (d) the address of where the person usually lives.

(2) If an officer reasonably suspects that a person whose personal details are unknown to the officer —

- (a) has committed or
- (b) may be able to assist in the investigation of an offence or a suspected offence,

the officer may request the person to give the officer any or all of the person's personal details.

...

In relation to the requirement to establish an alleged offender's identity, during debate in the Western Australian Parliament of the Second Reading of the Bill the (then) Minister for Police, the Hon. Robert Frank Johnson MLA stated that:

To be eligible for a [Criminal Code infringement notice] the person must be at least 17 years of age and that person's identity must be confirmed.¹⁷

WAPOL's CCIN Policy

WAPOL's CCIN Policy states that police officers must be certain of both the identity and postal address of the alleged offender, prior to issuing a Criminal Code infringement notice. This policy reflects the fact that, while Criminal Code infringement notices were intended to be 'on the spot' infringements, police officers do not currently have mobile devices which would enable them to issue a Criminal Code infringement notice 'on the

¹⁷ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

spot'. Police officers are currently only able to enter the alleged offender's identity and postal address details, and the details of the Criminal Code infringement notice, into NTIMS at the police station. The Criminal Code infringement notice is subsequently served, either in person or by post.

WAPOL's CCIN policy further specifies that if there is any doubt as to the identity of the alleged offender and postal address, police officers should proceed with other legislative options, as follows:

Confirmation of Identity and Postal Address

Police officers must be certain of the identity and postal address of the alleged offender, prior to issuing a CCIN.

...

Section 722 of the *Criminal Code Amendment (Infringement Notices) Act 2011* refers to the *Criminal Investigation (Identifying People) Act Part 7* and Section 67 where the alleged offender is taken to be a charged suspect, and has been charged with the alleged offence. This provides police officers with the authority to request the name and address of the alleged offender, and then request verification of those particulars which may include but are not limited to, the taking of DNA, fingerprints, palm prints or photograph to confirm identity.

In the absence of evidence or other verifiable information via police communications or WA Police intelligence holdings, to confirm an alleged offender's identity and postal address, a CCIN cannot be issued.

If there is any doubt as to the identity of the alleged offender and postal address, police officers should proceed with other legislative options to deal with the matter. [Original emphasis]

The process for verifying an alleged offender's identity through identifying procedures is discussed in detail at section 3.5. In summary, in order to be certain of an alleged offender's identity, an officer may request a charged suspect to consent to an identifying procedure being done on the suspect for the purpose of obtaining one or more of a charged suspect's identifying particulars. Of relevance here is that, at the Police Officer Forums, participants expressed the view that undertaking identifying procedures can take up to two hours, which includes transporting the alleged offender back to the station. The majority of police officers indicated that if they did not have to undertake identifying procedures, which involves transporting alleged offenders to the police station, they would be more inclined to issue a Criminal Code infringement notice.

At the Police Officer Forums, participants expressed the view that, while the alleged offender's identity can usually be established easily, it was occasionally difficult to establish a postal address, particularly for people who do not have a fixed address and for Aboriginal people living in regional or remote communities. It is therefore important that WAPOL considers any future opportunities to facilitate the issuing of Criminal Code infringement notices 'on the spot'. Further to this point, during the investigation, WAPOL advised the Office that it is currently developing a 'Frontline Mobility Program', which is focusing on facilitating greater mobility for police officers through the provision of mobile devices for specific policing functions. This may include enabling police officers to enter

the alleged offender's identity and postal address details, and the details of the Criminal Code infringement notice, into NTIMS without returning to the police station. That is, the Criminal Code infringement notice would be able to be processed 'on the spot'.

However, the Frontline Mobility Program is not currently intended to incorporate the mobile capability to print and issue Criminal Code infringement notices 'on the spot'.

Recommendation 2

So long as it is cost-beneficial to do so, WAPOL continues to pursue opportunities to facilitate the processing of Criminal Code infringement notices 'on the spot'.

Recommendation 3

So long as it is cost-beneficial to do so, WAPOL considers any future opportunities to facilitate the issuing of Criminal Code infringement notices 'on the spot' (by mobile capability or other new technology developments as they become available and economically feasible).

3.4.4 Investigative requirements

Legislative requirements

The CP Act provides that:

8. Issuing infringement notices

- (1) An authorised officer who has reason to believe that a person has committed a prescribed offence may issue an infringement notice that complies with section 9 [of the CP Act] for the alleged offence.
- (2) The infringement notice must be served under section 10 within 21 days after the day on which the alleged offence is believed to have been committed.

WAPOL's CCIN Policy

WAPOL's CCIN Policy specifies that police officers should 'conduct a primary investigation to establish an offence has been committed', as follows:

Process for Issuing A CCIN

- Conduct a primary investigation to establish an offence has been committed. *Prima Facie* evidence must exist.
- ...
- Record the following information in your notebook to facilitate the creation of a CCIN on NTIMS:
 - complainant's details and account;
 - witnesses details and account;
 - stolen property details (if applicable);

- description of the incident;
- alleged offender's details and account;
- CCIN offence; and
- Any other relevant information.

In order to ensure compliance with the legislative requirements to serve a Criminal Code infringement notice within 21 days, WAPOL's CCIN Policy provides that a Criminal Code infringement notice cannot be issued in the following circumstances:

When a CCIN Cannot Be Issued

...

- In cases where there are circumstances requiring further investigation actions which cannot be completed within the 21 day time period for issuing a CCIN;

WAPOL's CCIN Policy also provides a timeframe in which the service of a Criminal Code infringement notice must be completed:

Timeframe

The service of a CCIN must be completed within 21 days from the date of the offence.

A CCIN served by postal service is deemed to have been served on the person named in the CCIN on the fourth working day after it was posted. Refer *Schedule 2 cl.3 (11) Criminal Procedure Act 2004 (CPA)*. NTIMS automatically calculates a four working day allowance for postal service to ensure the CCIN is served within 21 days after the date of the offence.

The training provided to police officers (discussed at section 3.1.3) provides further guidance on the investigation process for issuing a Criminal Code infringement notice. WAPOL's Criminal Code infringement notice training presentation states:

- Conduct a primary investigation to establish an offence has been committed
- Ensure the offence is a prescribed CCIN offence
- Request the alleged offender's name and postal address to confirm identity
- Consider the relevance of any:
 - Bail or Court imposed conditions
 - Prohibition order, barring notice, prohibited behaviour order move-on notice or any other legally justified sanction notice

In relation to the recording of information, WAPOL's Criminal Code infringement notice training presentation states:

Record the following information in your notebook to facilitate the creation of a CCIN on NTIMS:

- complainant's details and account
- witnesses' details and account
- stolen property details (if applicable)

- description of the incident and CCIN offence
- alleged offender's details and account

Note: Police do not retain the alleged stolen property for the CCIN related offence; it is to be returned to the property owner. If circumstances permit, a photograph of the property should be taken.

WAPOL's training presentation further states that:

- To reduce paperwork no hardcopy case file will be created – statements do not need to be obtained, nor CCTV footage seized
- Comprehensive notes are to be made in officers' notebook

WAPOL's CCIN Policy set out above instructs police officers to conduct a 'primary investigation to establish an offence has been committed'. This instruction to police officers reflects the requirements of section 8(1) of the CP Act, which provides that an authorised officer may issue an infringement notice if they have 'reason to believe' that a person has committed a prescribed offence. WAPOL's CCIN Policy also instructs police officers to issue and serve a Criminal Code infringement notice within 21 days from the day of the alleged offence, consistent with the requirements of section 8(2) of the CP Act.

At the Police Officer Forums, where the alleged offence was the prescribed offence of disorderly behaviour, participants did not express any concerns about being able to conduct a primary investigation and serve a Criminal Code infringement notice within the 21 day timeframe. This was stated on the basis that the view of police officers was that establishing this offence does not require extensive investigation.

However, many participants expressed the view that an investigation of the prescribed offence of stealing frequently takes more than 21 days to complete. This is because, for stealing offences, a 'primary investigation' typically involves a number of investigative tasks, including gathering physical evidence and interviewing witnesses. These police officers reported that they do not determine the most appropriate legislative option until after the primary investigation has been finalised. That is, these police officers undertake the investigative process required for all legislative options even if they later decide to issue a Criminal Code infringement notice.

Additionally, participants at regional Police Officer Forums expressed the view that stealing offences are often triaged in Perth and returned to the regional station with an assigned priority order. Participants identified that this process can take considerable time, making it very difficult to complete the investigation in the timeframe required to issue a Criminal Code infringement notice. These participants suggested that extending the legislative timeframe allowed to issue a Criminal Code infringement notice to 365 days would remove this potential barrier to the issuing of Criminal Code infringement notices.

Recommendation 4

The *Criminal Procedure Act 2004* be amended to allow Criminal Code infringement notices to be served more than 21 days after the day on which the alleged offence is believed to have been committed, to provide sufficient time for police officers to conduct a primary investigation to establish whether a prescribed offence has been committed.

3.4.5 The need to put a stop to the offending behaviour

Legislative requirements

There are no legislative provisions restricting the use of Criminal Code infringement notices based on the need to put a stop to offending behaviour. The infringement notices provisions of *The Criminal Code* and the Regulations also do not provide police officers with the power to place conditions (such as leaving a particular place) on an alleged offender as part of issuing a Criminal Code infringement notice.

WAPOL's CCIN Policy

WAPOL's CCIN Policy specifies that a Criminal Code infringement notice cannot be issued in the following circumstances:

When a CCIN Cannot Be Issued

...

- Continuation of the offence – when the alleged offender refuses police requests to cease the offence e.g. offensive language, offensive behaviour

...

If police officers determine that conditions on an alleged offender are necessary, they may proceed with another legislative option, either in conjunction with, or instead of, issuing a Criminal Code infringement notice. For example, respondents to the Consultation Paper expressed the view that alleged offenders can be, and are, issued Criminal Code infringement notices at the same time as a Move On Order.¹⁸ A Move on Order allows police officers to order an alleged offender to leave a particular place or public transport for a defined period.¹⁹ If a Criminal Code infringement notice is not issued and a decision is made, for example, to arrest the alleged offender, police officers have an opportunity to seek bail conditions, potentially restricting the alleged offender's behaviour until the matter is heard by a court.

At the Police Officer Forums, participants expressed the view that being able to place conditions on an alleged offender can be a useful tool in preventing reoffending, particularly for the prescribed offence of disorderly behaviour. Police officers identified that issuing a Move on Order in addition to a Criminal Code infringement notice can be useful in certain situations. However, where police officers believed that the offending behaviour

¹⁸ Nyoongar Outreach Services, submission dated 20 May 2016.

¹⁹ *Criminal Investigation Act 2006 (WA)*, section 27.

would continue, they expressed the view that, in accordance with WAPOL's CCIN Policy, they cannot issue a Criminal Code infringement notice, and will instead use their discretion to arrest or summons an alleged offender.

In summary, in this context, WAPOL's CCIN Policy is not consistent (as it must be) with the CP Act, in that it states that Criminal Code infringement notices cannot be issued where there is continuation of an offence. It could, however, be consistent with the CP Act for WAPOL's CCIN Policy to state that this may be a matter that police officers could consider in the decision to issue a Criminal Code infringement notice.

Recommendation 5

WAPOL ensures that WAPOL's CCIN Policy regarding the issuing of a Criminal Code infringement notice in situations of the continuation of an alleged offence is consistent with the *Criminal Procedure Act 2004*.

3.4.6 Consideration of an alleged offender's criminal history

Legislative requirements

There are no legislative provisions restricting the use of Criminal Code infringement notices based on a person's prior offending history.

During debate in the Western Australian Parliament of the Second Reading of the Bill, the (then) Minister representing the Minister for Police, the Hon. Peter Collier MLC stated that a range of factors, including prior offending history, would need to be considered when determining whether or not to issue Criminal Code infringement notices, as follows:

How many times can a [Criminal Code infringement notice] be given? The emphasis for [Criminal Code infringement notice]s must be court diversion. If an arbitrary number is put on the number of times a person can receive a [Criminal Code infringement notice] before police will then be required to start charging the person, this will have a negative impact on this diversionary process. If the police were to say a person could have only three [Criminal Code infringement notice]s and after that they continue to commit offences for which a [Criminal Code infringement notice] is available, police will have to start charging the person, this would make a nonsense out of the diversionary process. For example, if a person has had three [Criminal Code infringement notice]s in five years and they then commit a fourth offence, the police officer would have to charge that person rather than issue them with a [Criminal Code infringement notice] even though it may be appropriate to issue a [Criminal Code infringement notice]. A range of factors will need to be considered to determine whether a [Criminal Code infringement notice] is an appropriate outcome and police will be able to identify whether a person has had a [Criminal Code infringement notice] issued to him or her in the past when they are processing the [Criminal Code infringement notice]. If a person has three [Criminal Code infringement notice]s in two weeks, the police officer may choose to proceed to charge that person. Also, the gravity of the offence committed and the level of investigation required into the offence will have an impact on whether a

[Criminal Code infringement notice] is issued as will the circumstances of the commission of the offence and the circumstances of the individual concerned.²⁰

WAPOL's CCIN Policy

WAPOL's CCIN Policy provides that the following must be considered when conducting an assessment for issuing Criminal Code infringement notices:

Process for Issuing a CCIN

...

- ... Police Officers must consider the following when conducting an assessment for issuing a CCIN:
 - Prior criminal history;
 - Prior CCIN history;
 - The relevance of any;
 1. Bail conditions
 2. Outstanding warrants
 3. Custodial sentence including home detention
 4. Court imposed conditions
 5. Prohibition order, barring notice, prohibited behaviour order move-on notice, or any other legally justified sanction notice
 6. Ensure the offence is a prescribed CCIN offence.

...

In relation to prior offending (or repeat offenders) WAPOL's Criminal Code infringement notice training presentation states:

Repeat Offenders

A CCIN can be issued notwithstanding previous convictions for same/like offences.

The issuing officer should assess whether or not it is appropriate to issue a CCIN to repeat offenders.

The issuing officer should consider the balance of time saved against the need to have an appropriate penalty imposed for the offence to ensure that community expectations are adequately reflected.

In summary, the infringement notices provisions of *The Criminal Code* and the Regulations do not specify the circumstances in which Criminal Code infringement notices can or cannot be issued to a person with a prior offending history. This was intended to provide police officers with the flexibility to consider a range of factors, including the time between, and seriousness of, prior offences. In particular, debate considered avoiding setting a limit

²⁰ The Hon. Peter Collier MLC, Minister representing the Minister for Police, Legislative Council, Parliamentary Debates (Hansard), 23 February 2011, pp. 909c-916a.

on the number of prior offences or prior Criminal Code infringement notices issued as this would 'have a negative impact on this diversionary process'.²¹

At the Police Officer Forums, many participants expressed the view that they do not issue Criminal Code infringement notices to an alleged offender with a prior offending history. These police officers observed that, particularly for the prescribed offence of stealing, many alleged offenders have a prior offending history and, accordingly, are not issued a Criminal Code infringement notice. Moreover, at the Police Officer Forums, many participants also expressed the view that, in a single incident, if an alleged offender was alleged to have stolen items from multiple locations (in the case of shoplifting), this was considered to be a pattern of behaviour and therefore they would not issue a Criminal Code infringement notice. This was the case even if the total value of the items was less than or equal to \$500.

In addition, participants in regional and remote locations expressed the view that Criminal Code infringement notices were not applicable or useful in addressing criminal behaviour in their Police Districts due to the high number of repeat offenders. In these cases, police officers stated that they would prefer to caution, arrest, or summons an alleged offender, and in some cases convey the alleged offender home without a charge, as this was likely to be more effective in deescalating the behaviour.

The Office's analysis of the impact of prior Criminal Code infringement notices

As identified at section 3.2, the Office found that the 2,978 Criminal Code infringement notices issued during the monitoring period were issued to 2,817 individual alleged offenders. The Office's analysis of the 2,817 individual alleged offenders found that, during the monitoring period:

- 2,686 alleged offenders were only issued one Criminal Code infringement notice (95 per cent of individual alleged offenders);
- 131 alleged offenders were issued with more than one Criminal Code infringement notice (5 per cent of individual alleged offenders), as follows:
 - 113 alleged offenders were issued two Criminal Code infringement notices;
 - 12 alleged offenders were issued three Criminal Code infringement notices;
 - three alleged offenders were issued four Criminal Code infringement notices;
 - one alleged offender was issued five Criminal Code infringement notices;
 - one alleged offender was issued six Criminal Code infringement notices; and
 - one alleged offender was issued seven Criminal Code infringement notices.

The Office's findings suggest that Criminal Code infringement notices issued during the monitoring period were issued predominantly to alleged offenders who had not previously been issued a Criminal Code infringement notice. The use of Criminal Code infringement notices as an incentive for behaviour change is discussed in detail at section 4.7.

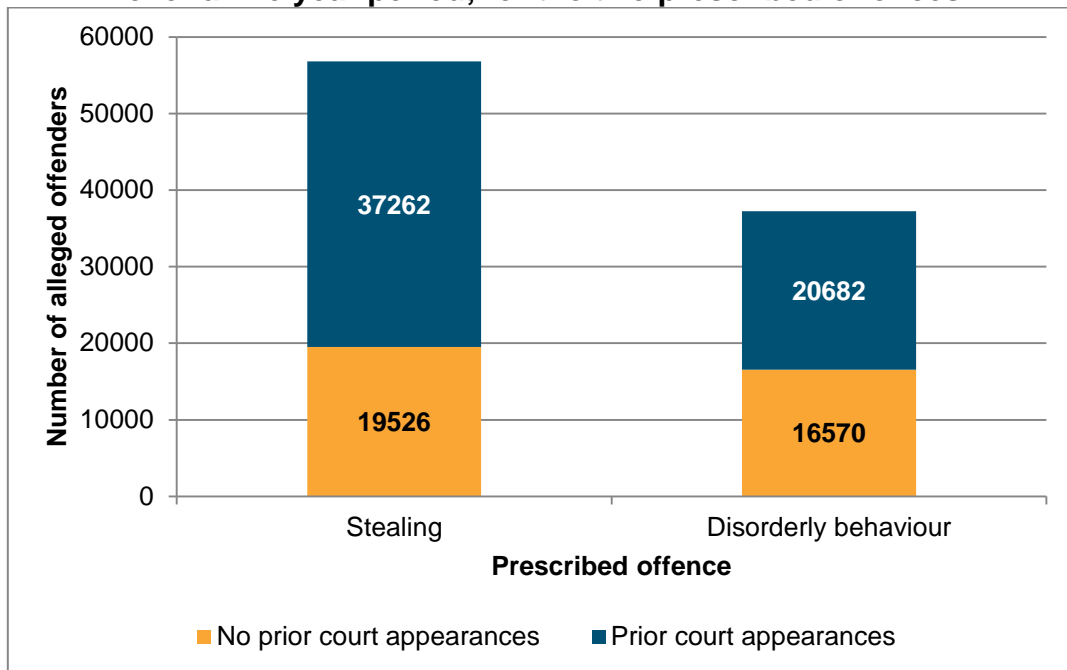
²¹ The Hon. Peter Collier MLC, Minister representing the Minister for Police, Legislative Council, Parliamentary Debates (Hansard), 23 February 2011, pp. 909c-916a.

The Office's analysis of the impact of prior criminal history

In order to further assess the potential impact of alleged offenders' criminal histories on police officers exercising their discretion to issue a Criminal Code infringement notice, the Office reviewed the court data over a five year period. The Office identified alleged offenders who had appeared before the court more than once for either of the two prescribed offences in the five year period. The Office considered court data over a five year period in order to provide a more robust analysis of the offending history of alleged offenders for the two prescribed offences.

The Office's analysis, as shown in Figure 7 below, found that 66 per cent of alleged offenders charged with the prescribed offence of stealing had appeared before the court more than once in the five year period and would therefore be considered 'repeat offenders'. For the prescribed offence of disorderly behaviour, 56 per cent of alleged offenders had appeared before the court more than once in the five year period.

Figure 7: Number of alleged offenders with prior court appearances over a five year period; for the two prescribed offences



Source: Ombudsman Western Australia

Collectively, the Office's analysis supports the views expressed at the Police Officer Forums that police take into consideration prior Criminal Code infringement notices and criminal history when deciding whether or not to issue a Criminal Code infringement notice, as discussed during debate in the Western Australian Parliament of the Second Reading of the Bill. The Office found that this was particularly the case for the prescribed offence of stealing, and, in such instances, police may decide against issuing a Criminal Code infringement notice.

The Office has found that WAPOL's CCIN Policy is consistent with *The Criminal Code* and the Regulations in specifying that prior history is a factor 'Police Officers must consider ... when conducting an assessment for issuing a CCIN'. Further, WAPOL's training advice that '[t]he issuing officer should assess whether or not it is appropriate to issue a CCIN to

repeat offenders. The issuing officer should consider the balance of time saved against the need to have an appropriate penalty imposed for the offence to ensure that community expectations are adequately reflected' is also consistent with *The Criminal Code* and the Regulations.

However, in operationalising this policy, the Office's findings suggest that there may be instances where a view is taken that a Criminal Code infringement notice should never be issued if the alleged offender has a prior criminal history.

Recommendation 6

WAPOL ensures compliance with WAPOL's CCIN Policy and training regarding repeat offenders.

3.5 Identifying procedures may be done

3.5.1 Legislative requirements

The infringement notices provisions of *The Criminal Code* provide for alleged offenders to be considered to be charged suspects for the purposes of the CIIP Act Part 7 and section 67, as follows:

722. Alleged offenders taken to be charged suspects for purposes of *Criminal Investigation (Identifying People) Act 2002*

If under the CP Act an infringement notice is issued to an alleged offender for an alleged offence under this Code, then —

- (a) for the purposes of the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67 the alleged offender is taken —
 - (i) to be a charged suspect; and
 - (ii) to have been charged with the alleged offence;and
- (b) without limiting the operation of section 67 of that Act, identifying information obtained under Part 7 of that Act from the alleged offender must be destroyed if —
 - (i) the alleged offender pays the modified penalty prescribed for the offence; and
 - (ii) destruction is requested under section 69 of that Act by or on behalf of the alleged offender;

...

Section 49 in Part 7 of the CIIP Act sets out how identifying procedures may be requested for charged suspects, as follows:

49. Request for charged suspect to undergo identifying procedure

- (1) If it is practicable to do so, an officer may request a charged suspect to consent to an identifying procedure being done on the suspect for the purpose of obtaining one or more of a charged suspect's identifying particulars.

- (2) An officer who requests a charged suspect to consent to an identifying procedure being done on the suspect must at the time inform the suspect of these matters —
- (a) the purpose of the procedure;
 - (b) how the procedure will be done;
 - (c) that information derived from the procedure may be compared with or put in a forensic database;
 - (d) the circumstances in which destruction may be requested under section 69;
 - (e) that the procedure may provide evidence that could be used in a court against the suspect;
 - (f) that if the suspect does not consent or withdraws consent to the procedure —
 - (i) the suspect may be arrested; and
 - (ii) the procedure may be done on the suspect against the suspect's will.

Section 51 in Part 7 of the CIIP Act further provides when an identifying procedure may be done, as follows:

51. When identifying procedure may be done

- (1) If —
- (a) under section 49 a request is made to a charged suspect; and
 - (b) the suspect is informed under that section; and
 - (c) the suspect consents to the identifying procedure being done,
- then the identifying procedure may be done on the suspect.
- (2) If —
- (a) subsection (1)(a) and (b) apply but the charged suspect does not consent or withdraws consent to the identifying procedure;
 - (b) it is not practicable to make a request to a charged suspect under section 49,

an officer may —

- (c) if the charged suspect is not in custody — without a warrant arrest the suspect and detain him or her for a reasonable period in order to do the identifying procedure; and
- (d) do the identifying procedure on the charged suspect against the suspect's will.

3.6 Identifying particulars may be taken

3.6.1 Legislative requirements

The identifying particulars that can be obtained during an identifying procedure are defined in section 47 in Part 7 of the CIIP Act, and differ depending on whether the charged suspect is charged with a 'serious offence' or not, as follows:

47. Terms used

In this Part —

...

identifying particular, in relation to a charged suspect charged with a serious offence, means —

- (a) a print of the suspect's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the suspect (including of an identifying feature of the suspect);
- (c) a measurement of any identifying feature of the suspect;
- (da) an impression of an identifying feature of the suspect (including a dental impression);
- (db) a sample of the suspect's hair taken for purposes other than obtaining the suspect's DNA profile;
- (d) the suspect's DNA profile;
- (e) an identifying particular of the suspect that is prescribed for the purposes of this definition;

identifying particular, in relation to a charged suspect charged with an offence other than a serious offence, means —

- (a) a print of the suspect's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the suspect (including of an identifying feature of the suspect);
- (c) a measurement of any identifying feature of the suspect;
- (d) an identifying particular of the suspect that is prescribed for the purposes of this definition, which cannot include an identifying particular listed in paragraph (da), (db) or (d) of the definition of **identifying particular**, in relation to a charged suspect charged with a serious offence.

That is, a charged suspect must be charged with a serious offence for identifying particulars to include:

- an impression of an identifying feature of the suspect;
- a sample of the suspect's hair taken for purposes other than obtaining the suspect's DNA profile; and/or
- the suspect's DNA profile.

Section 3 of the CIIP Act defines a serious offence, as follows:

3. Terms used

- (1) In this Act, unless the contrary intention appears —

...

serious offence means an offence the statutory penalty for which is or includes life imprisonment or imprisonment for 12 months or more;

...

For the purpose of a Criminal Code infringement notice, stealing is a serious offence, with *The Criminal Code* providing:

378. Penalty for stealing

Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.

...

For the purpose of a Criminal Code infringement notice, disorderly behaviour in public is an offence other than a serious offence, with *The Criminal Code* providing:

74A. Disorderly behaviour in public

...

- (2) A person who behaves in a disorderly manner —
(a) in a public place or in the sight or hearing of any person who is in a public place; or
(b) in a police station or lock-up,

is guilty of an offence and is liable to a fine of \$6 000.

...

During debate in the Western Australian Parliament of the Second Reading of the Bill, the (then) Minister representing the Minister for Police, the Hon. Peter Collier MLC stated that identifying particulars would only be taken when ‘absolutely necessary’, :

Hon Kate Doust also asked how someone is to be identified for the purpose of issuing a [Criminal Code infringement notice] if they do not have a driver’s licence. It is accepted that in some instances it may be difficult for a police officer to identify a person. However, it is necessary for a person to be identified in order that police can establish that person’s identity should the person elect to have the matter heard in court. Police currently have the capacity under the Criminal Investigation (Identifying People) Act to take a charged suspect’s identifying particulars. Applying this power to [Criminal Code infringement notices] does not alter the ability already available to police in which it is necessary to identify a person. If this ability was not available for [Criminal Code infringement notices], it would mean that when a person’s identity could not be established, that person would not be able to receive a [Criminal Code infringement notice] as the only option for police to identify the person would be to charge them with the offence and commence the court proceedings. If a

person could produce some form of identification such as a bank card or a student card, this may be sufficient for the purposes of identifying the person. [Criminal Code infringement notices] are supposed to be on-the-spot infringements and, therefore, **police officers would only bring a person back to a police station to establish that person's identity in situations in which it is absolutely necessary to do so**, as this process is time-consuming and means that the particular officer is off the street for that period of time.²² [Emphasis added]

3.6.2 WAPOL's CCIN Policy

WAPOL's CCIN Policy states that:

Identifying Particulars

Upon issuance of a CCIN to an alleged offender [for] a prescribed offence, for the purposes of the *Criminal Investigation (Identifying People) Act 2002 Part 7* and *section 67* the alleged offender is taken to be a charged suspect and to have been charged with the alleged offence.

Identifying particulars are to be obtained from the charged suspect as per Police Manual FO-01.03.12.3 (Identifying particulars that may be taken from a charged suspect).

Police Manual FO-01.03.1 *Identifying Information Generally* (the **Identifying Information Policy**) provides in the cited section FO-01.03.12.3 *Identifying particulars that may be taken from a charged suspect (s.47 CIIPA)*, as follows:

The following Identifying particulars **may be taken** from a charged suspect via **non-intimate or intimate procedures**.

In respect to charged suspects, charged with a serious offences (penalty at least 1 year imprisonment) -

- (a) A print of the suspect's hands (including fingers), feet (including toes) or ears;
- (b) A photograph of the suspect (including of an identifying feature of the suspect);
- (c) A measurement of any identifying feature of the suspect;
- (d) An impression of an identifying feature of the suspect (including a dental impression);
- (e) A sample of the suspect's hair taken for purposes other than obtaining the suspect's DNA profile;
- (f) The suspect's DNA profile; [Emphasis added]

That is, the section of the Identifying Information Policy referred to as applicable in WAPOL's CCIN Policy, specifies the identifying particulars that may be taken where a Criminal Code infringement notice recipient is alleged to have committed the prescribed offence of stealing (a serious offence). The relevant section of the Identifying Information

²² The Hon. Peter Collier MLC, Minister representing the Minister for Police, Legislative Council, Parliamentary Debates (Hansard), 23 February 2011, pp. 909c-916a.

Policy also does not provide guidance regarding the taking of identifying particulars for offences that are not serious offences (including the prescribed offence of disorderly behaviour).

During the Police Officer Forums, participants expressed differing views regarding the WAPOL policy considerations for obtaining identifying particulars. Some police officers expressed the view that they were always required to take identifying particulars if the identifying particulars of the Criminal Code infringement notice recipient had not previously been taken. This view is consistent with an earlier section of the Identifying Information Policy which states:

FO-01.03.12.2 Taking of Identifying Particulars

Fingerprints and Photographs **must be taken** from all persons charged with any offence, on every occasion new charges are preferred, or where the person is arrested subject to a warrant in the 1st instance.

DNA **must be taken** from every offender charged with an offence, the statutory penalty for which includes imprisonment for 12 months or more, when a permanent DNA profile is unable to be confirmed to be held on the forensic database. [Emphasis added]

Taken together, the Office identified two issues with WAPOL's policies regarding identifying particulars and Criminal Code infringement notices, as follows:

- section FO-01.03.12.3 of the Identifying Information Policy, *Identifying particulars that may be taken from a charged suspect* (s.47 CIIPA) (referred to in WAPOL's CCIN Policy), provides guidance on which identifying particulars may be taken from a charged suspect, but does not provide any guidance to police officers about how this discretion should be exercised. Section FO-01.03.12.3 of the Identifying Information Policy is also not applicable to the prescribed offence of disorderly behaviour (as this is not a serious offence); and
- if a police officer refers to section FO-01.03.12.2 of the Identifying Information Policy, *Taking Of Identifying Particulars*, to obtain further guidance, the policy is inconsistent with an intention that 'police officers would only bring a person back to a police station to establish that person's identity in situations in which it is absolutely necessary to do so ...'.²³

Recommendation 7

WAPOL ensures that WAPOL's CCIN Policy regarding obtaining identifying particulars from alleged offenders who are to be issued with a Criminal Code infringement notice is consistent with section 47 in Part 7 of the *Criminal Investigation (Identifying People) Act 2002*, and the intent that 'police officers would only bring a person back to a police station to establish that person's identity in situations in which it is absolutely necessary to do so'.

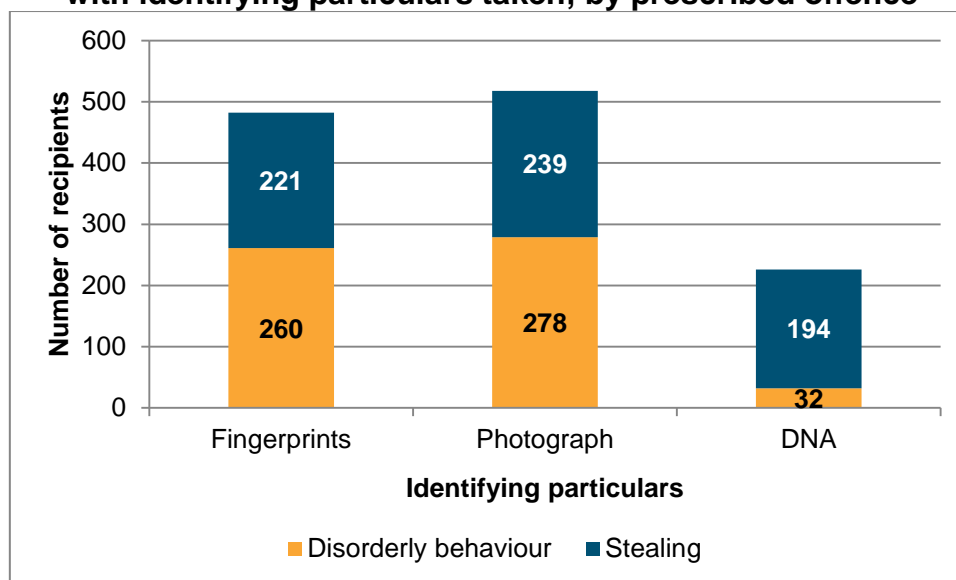
²³ The Hon. Peter Collier MLC, Minister representing the Minister for Police, Legislative Council, Parliamentary Debates (Hansard), 23 February 2011, pp. 909c-916a.

3.6.3 WAPOL obtained identifying particulars from 18 per cent of recipients of Criminal Code infringement notices

The Office found that, during the monitoring period, WAPOL obtained one or more identifying particulars from 530 (18 per cent) of the 2,978 recipients of Criminal Code infringement notices. Of the 1,080 Aboriginal recipients of Criminal Code infringement notices, WAPOL obtained one or more identifying particulars from 178 (16 per cent) recipients.

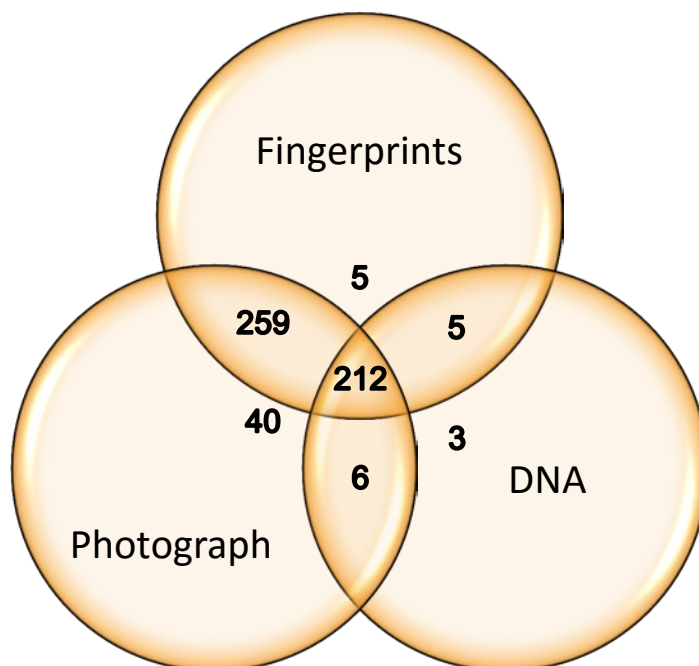
Photographs and fingerprints were the most common identifying particulars to be obtained across both prescribed offences (Figure 8). As shown in Figure 9, these two identifying particulars were frequently also collected together.

Figure 8: Number of Criminal Code infringement notice recipients with identifying particulars taken; by prescribed offence



Source: Ombudsman Western Australia

Figure 9: Number of Criminal Code infringement notice recipients; by identifying particulars taken



Source: Ombudsman Western Australia

3.6.4 In four instances, it appears that WAPOL obtained DNA without legal authority

As discussed above, identifying particulars, as defined in section 47 in Part 7 of the CIIP Act, do not include DNA where the offence is an offence other than a serious offence. The prescribed offence of disorderly behaviour is an offence other than a serious offence. Where a Criminal Code infringement notice was issued for disorderly behaviour (1,800 instances), the Office found that WAPOL records indicated that DNA was obtained in 32 instances. Accordingly, the Office sought further information from WAPOL regarding the legal authority to collect DNA in these 32 instances.

WAPOL reported that in 16 of these 32 instances, DNA was not collected from the alleged offender, and these 16 instances were a data entry error in NTIMS. Of the 16 instances where DNA was collected and entered correctly, 12 related to incidents where an additional offence was committed at the same time as the offence for which a Criminal Code infringement notice was issued, and the DNA was collected in relation to this additional offence. In the remaining four instances, WAPOL confirmed that DNA was collected where a Criminal Code infringement notice was issued for the prescribed offence of disorderly behaviour. In these four instances, it appears that WAPOL collected DNA without legal authority.

WAPOL further reported that the Exhibit Management Unit within WAPOL checks all DNA samples obtained and submitted to ensure police officers have complied with legislation. If WAPOL does not have legal authority to obtain a DNA sample for a certain offence, the sample will not be loaded onto the WAPOL database and will be destroyed. In all four

instances where it appears that DNA was obtained without legal authority, WAPOL destroyed the sample.

Recommendation 8

In accordance with the *Criminal Investigation (Identifying People) Act 2002*, WAPOL ensures that police officers do not obtain DNA without legal authority.

Recommendation 9

WAPOL identifies that if there are instances in which DNA has been taken without legal authority, WAPOL ensures that the DNA is destroyed.

3.7 Serving Criminal Code infringement notices

3.7.1 Legislative requirements

The CP Act provides that a Criminal Code infringement notice must be served within 21 days after the day on which the alleged offence is believed to have been committed, as follows:

8. Issuing infringement notices

...

- (2) The infringement notice must be served under section 10 within 21 days after the day on which the alleged offence is believed to have been committed.

Section 10 of the CP Act provides as follows:

10. Service of infringement notices

Unless section 12(1)(b)(i) applies, an infringement notice must be served on an alleged offender —

- (a) if the offender is an individual, in accordance with Schedule 2 clause 2 or 3; or
- (b) if the offender is a corporation, in accordance with Schedule 2 clause 3 or 4; or
- (c) if the offender's address is ascertained at the time of or immediately after the alleged offence was committed, by posting it to the offender at that address.

Schedule 2 of the CP Act provides for the method of service for documents, including Criminal Code infringement notices, including as follows:

Schedule 2 — Service of documents and other things

...

2. Personal service on individuals

- (1) This clause does not apply in relation to serving a corporation.
- (2) To serve a document or other thing on an individual (the ***named person***) in accordance with this clause, another person must —
 - (a) hand it to the named person in person; ...

3. Postal service on individuals and corporations

...

- (11) A document or other thing that is posted under this clause is to be taken to have been served on the named person on the fourth working day after the date on which it was posted unless the postal service returns it to the sender or the contrary is proved.

3.7.2 WAPOL's CCIN Policy

WAPOL's CCIN Policy directs officers to issue a Criminal Code infringement notice as follows:

Procedure

...

How is a CCIN issued?

A CCIN is issued to the alleged offender via the NTIMS information technology application.

A CCIN can be either delivered by post or personally served on the alleged offender by hand. (Refer to 'Process for issuing a CCIN').

...

Timeframe

The service of a CCIN must be completed within 21 days from the date of the offence.

A CCIN served by postal service is deemed to have been served on the person named in the CCIN on the fourth working day after it was posted. Refer *Schedule 2 cl.3 (11) Criminal Procedure Act 2004*. NTIMS automatically calculates a four working day allowance for postal service to ensure the CCIN is served within 21 days after the date of the offence.

...

Creating a CCIN on NTIMS

It is imperative that a CCIN is created on NTIMS as soon as possible after the alleged offence to ensure lawful requirement of issuing the CCIN within 21 days of the incident is met.

The details for the CCIN may be entered on NTIMS by a Police Auxiliary Officer, Customer Service Officer or another Police Officer, however, under all circumstances the issuing officer must complete the process in NTIMS to cause the infringement to be issued. [Original emphasis]

3.7.3 WAPOL complied with legislative requirements and served 99.9 per cent of Criminal Code infringement notices within 21 days of being issued

As noted above, police officers are not able to serve Criminal Code infringement notices 'on the spot'. To serve Criminal Code infringement notices, police officers need to attend a police station and enter the details of the Criminal Code infringement notice into NTIMS. Once this has occurred, Criminal Code infringement notices are posted or served personally on the recipients.

The Office analysed the WAPOL state-wide data to determine whether the service of Criminal Code infringement notices was completed within 21 days of the date of the alleged offence, as required by section 8 of the CP Act (noting that Schedule 2 of the CP Act provides that a Criminal Code infringement notice served by post is deemed to have been served on the fourth working day after it was posted).

The Office found that, of the 2,978 Criminal Code infringement notices issued, 2,974 (99.9 per cent) were served on the recipient within 21 days.

Of the 2,978 Criminal Code infringement notices issued, 580 (19.5 per cent) were recorded as being issued in person, and the average time to service was five days. The remaining 2,398 Criminal Code infringement notices (80.5 per cent) were issued by postal service and the average time these notices were deemed to be served was seven days.²⁴

Four Criminal Code infringement notices issued during the monitoring period were served, or deemed to be served, more than 21 days after the day on which the alleged offence is believed to have been committed, as follows:

- one Criminal Code infringement notice was deemed to be served 22 days after the date of the alleged offence;
- one Criminal Code infringement notice was deemed to be served 23 days after the date of the alleged offence;
- one Criminal Code infringement notice was deemed to be served 37 days after the date of the alleged offence; and
- one Criminal Code infringement notice was served 43 days after the date of the alleged offence.

²⁴ The Office's calculation includes the four working day allowance under which a document is taken to have been served if served by post, as provided for by Schedule 2 of the CP Act.

WAPOL served 99.9 per cent of Criminal Code infringement notices within 21 days of the day on which the alleged offence is believed to have been committed.

3.8 Adjudicating and withdrawing Criminal Code infringement notices

3.8.1 Legislative requirements

The CP Act provides that an approved officer may withdraw an infringement notice, as follows:

15. Withdrawal of infringement notices

- (1) An approved officer may withdraw an infringement notice.
- (2) To withdraw an infringement notice an approved officer must give the alleged offender a notice in a form prescribed under the prescribed Act stating that the notice has been withdrawn.
- (3) An infringement notice may be withdrawn whether or not the modified penalty has been paid.
- (4) If an infringement notice is withdrawn after the modified penalty is paid, the amount of money paid is to be refunded.

The Regulations prescribe an approved officer, as follows:

6. Authorised officers and approved officers

...

- (3) Every senior police officer is an approved officer for the purposes of the CP Act Part 2.
- (4) The Commissioner of Police may, in writing, appoint a person who is not a police officer to be an approved officer for the purposes of the CP Act Part 2.

...

Schedule 2 of the Regulations also prescribes the format for a Criminal Code infringement notice form and a Criminal Code infringement notice withdrawal form, as follows:

7. Forms

For the purposes of the CP Act Part 2 —

- (a) Form 1 is the prescribed form for an infringement notice; and
- (b) Form 2 is the prescribed form for the withdrawal of an infringement notice.

3.8.2 WAPOL's CCIN Policy

WAPOL's CCIN Policy sets out guidelines for adjudication and withdrawal of Criminal Code infringement notices, as follows:

Adjudication

Adjudication is required when an alleged offender believes the CCIN was issued in error. The alleged offender can apply to have the matter reviewed by a senior police officer. A claim for adjudication will need to meet one or more of the following criteria:

- The CCIN was issued to the wrong person (false particulars);
- The alleged behaviour was due to an established mental illness or impairment. (A medical certificate must be provided confirming the mental illness or impairment);
- The issue of the CCIN was incorrect at law e.g. the alleged offender was under 17 years at the date of the offence, the offence was not a prescribed CCIN offence at the date of the offence; or
- An alternative means of action is more appropriate than the issuance of a CCIN.

To request the CCIN to be assessed for adjudication, the recipient, or their legal representative will need to contact in writing the Manager, Infringement Management & Operations (IMO). Contact details for IMO are located on the CCIN and WA Police Internet site.

Withdrawal of a CCIN

...

1. A senior police officer may withdraw a CCIN issued by a police officer pursuant to this section; and
2. A senior police officer must withdraw a CCIN immediately if directed to do so by the Director of Public Prosecutions.

If a CCIN is inadvertently issued to a person under 17 years of age, or the issue of the CCIN was incorrect at law or is withdrawn for any other reason *Section 15(4)CPA* of the states,

'The prescribed amount for the offence for which the CCIN was issued is not payable and if the amount has been paid it is to be repaid to the alleged offender.'

Criminal Code infringement notices themselves do not include any information about the recipient's right to seek to have the notice withdrawn. WAPOL's website provides information about 'seeking a review' (on the Criminal Code Infringement FAQs webpage), as follows:

Can I seek a review of a CCIN?

Yes, adjudication of the infringement may be sought by applying in writing to Infringement Management & Operations, refer to the address on the back of the infringement notice.²⁵

Volume 3 explores in detail the information provided to recipients and, of particular note, recommends that WAPOL ensures that, when a Criminal Code infringement notice is served, written information is provided to assist vulnerable recipients to understand their rights and responsibilities, including their right to seek to have the notice withdrawn.

3.8.3 Less than one per cent of recipients sought to have their Criminal Code infringement notice adjudicated and withdrawn

The Office analysed the WAPOL state-wide data to determine whether recipients of Criminal Code infringement notices had sought to have the matter adjudicated by an approved officer, as provided by legislation. The Office found that 27 recipients of the 2,978 Criminal Code infringement notices issued (0.9 per cent) sought to do so. As a result of the 27 corresponding adjudications:

- eighteen (66 per cent) Criminal Code infringement notices were withdrawn;
- five Criminal Code infringement notices were not withdrawn, of these:
 - one Criminal Code infringement notice was paid in full;
 - one recipient was issued with a Final Demand notice; and
 - three Criminal Code infringement notices were referred to the Fines Enforcement Registry;
- two Criminal Code infringement notices were undergoing adjudication by an approved officer at the time that the data was provided to the Office by WAPOL; and
- for two recipients of Criminal Code infringement notices the matter was being determined by a court:
 - WAPOL had elected to prosecute one recipient; and
 - one recipient had elected to be prosecuted (the process for which is discussed immediately below).

²⁵ Western Australia Police, 'Criminal Code Infringement FAQs', viewed 16 June 2016, <<https://www.police.wa.gov.au/Police-Direct/Infringements/Criminal-Code-Infringements/Criminal-Code-Infringement-FAQs>>.

3.9 Electing to be prosecuted instead of paying Criminal Code infringement notices

3.9.1 Legislative requirements

Section 9(1)(f) of the CP Act and Form 1 of Schedule 2 of the Regulations set out both the form and substance of the alleged offender's right to elect to be prosecuted for the alleged offence rather than pay the modified penalty.

Section 9(1)(f) of the CP Act provides that the content of an infringement notice must inform the recipient of the option to elect to have an alleged offence heard and determined by a court, as follows:

9. Form and content of infringement notices

(1) An infringement notice must —

...

(f) inform the alleged offender —

- (i) that within 28 days after the date of the notice the alleged offender may elect to be prosecuted for the alleged offence; and
- (ii) how to make such an election; ...

In the Second Reading of the Bill the (then) Minister for Police, the Hon. Robert Frank Johnson MLA stated that:

Where a person is issued with a [Criminal Code infringement notice] for any offence, the person can then elect to either pay the fine or have the matter heard in court. Unpaid fines would be referred to the Fines Enforcement Registry. That mechanism will allow people to contest the facts of a case when they argue that they did not commit the offence for which the [Criminal Code infringement notice] was issued. Even when issued with a [Criminal Code infringement notice], it is obviously necessary for people to have the capacity to contest in court the facts by which they are charged by that notice...²⁶

3.9.2 WAPOL's CCIN Policy

WAPOL's CCIN Policy provides that police officers should inform Criminal Code infringement notice recipients of the option to have the matter dealt with in court:

²⁶ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

Process for Issuing A CCIN

...

- Explain payment methods and the option for the matter to be dealt with in court.

...

In addition to the verbal information that is provided by police officers at the time of the alleged offence, Part F of the Criminal Code infringement notice itself provides information about how to elect to have a matter dealt with by being prosecuted. If the recipient chooses to do so, they are required to complete the 'Court Election' section of the Criminal Code infringement notice and post it to the WAPOL Infringement Management and Operations Unit at the address contained on the form within 28 days of receiving the Criminal Code infringement notice.

Information about electing to go to court is also included on WAPOL's website under the Criminal Code Infringement FAQs as follows:

May I elect to go to Court and what happens if I do?

You can elect to go to Court. You should complete the Elect to Court section of the Infringement Notice and post it to Infringement Management & Operations Unit at the address contained on the form.²⁷

Alternatively, the recipient can elect to go to court once the unpaid infringement notice has been registered with the Fines Enforcement Registry.

3.9.3 Less than two per cent of recipients of Criminal Code infringement notices elected to be prosecuted for the offence

The Office found that, of the 2,978 Criminal Code infringement notices issued, 41 (1.4 per cent)²⁸ recipients elected to be prosecuted instead. Of these 41 recipients:

- thirty-four recipients (83 per cent) were issued a Criminal Code infringement notice for the prescribed offence of disorderly behaviour;
- thirty recipients (73 per cent) were recorded as being non-Aboriginal, two (4.9 per cent) were recorded as being Aboriginal, and the 'Offender Appearance' of nine recipients (22 per cent) was recorded as being unknown; and
- thirty recipients (73 per cent) were issued with a Criminal Code infringement notice in a metropolitan Police District.

Of the 41 recipients who elected to be prosecuted, at the time of writing, 35 cases had been finalised by the court, with the following outcomes:

²⁷ Western Australia Police, 'Criminal Code Infringement FAQs', viewed 16 June 2016, <<https://www.police.wa.gov.au/Police-Direct/Infringements/Criminal-Code-Infringements/Criminal-Code-Infringement-FAQs>>.

²⁸ WAPOL records indicate that one additional recipient initially elected to go to court but did not proceed as the Criminal Code infringement notice was withdrawn.

- nineteen recipients (54 per cent) were fined, of these:
 - ten recipients (53 per cent) received a fine greater than \$500;
 - four recipients (21 per cent) received a fine equal to \$500;
 - five recipients (26 per cent) received a fine less than \$500; and
 - the average fine imposed was \$547;
- seven recipients (20 per cent) had their case dismissed or were acquitted;
- four recipients (11 per cent) received a conditional release order; and
- the outcomes for five recipients (14 per cent) were not recorded by WAPOL.

That is, in 30 cases where the recipient elected to be prosecuted, the matter was finalised and the outcome was recorded. A sentence was imposed in 23 of these 30 cases (77 per cent). The sentence imposed included a fine in 19 of these 23 cases (83 per cent) and the average fine imposed was \$547.

The Office analysed the court data in relation to court outcomes for offenders who were arrested or summonsed for the two prescribed offences²⁹ to determine how often a fine was imposed on the alleged offender, and if so the average amount of the fine. For comparison, the Office found that, where a charge was finalised in the monitoring period, a sentence was imposed on the offender in 91 per cent of cases. Where a sentence was imposed, the sentence included a fine in 93 per cent of cases, and the average fine imposed was \$522.

The Office findings that the average fine of \$547 for those who elected to be prosecuted, \$522 for those otherwise arrested and summonsed and \$500 for a Criminal Code infringement notices suggest that fine outcomes, regardless of methodology, are highly comparable. The Office's findings suggest that there was a comparatively lower rate of sentences imposed on the 30 recipients of Criminal Code infringement notices whose cases had been finalised by the court and the outcome recorded by WAPOL, than that imposed on alleged offenders who had been arrested or summonsed for the two prescribed offences. The low proportion of Criminal Code infringement notice recipients who elect to be prosecuted in court is particularly relevant to recipients from vulnerable communities, and Aboriginal and Torres Strait Islander communities, and this issue is explored in detail in Volume 3. Of particular note, Volume 3 recommends that WAPOL ensures that, when a Criminal Code infringement notice is served, written information is provided to assist vulnerable recipients to understand their rights and responsibilities, including their right to elect to go to court.

The Office notes that the findings above are based on the patterns in the use of Criminal Code infringement notices, and patterns in sentencing outcomes, over the initial 12 month monitoring period, including the pilot period, and that these patterns could change over time.

²⁹ The data provided by the Magistrates Court included all stealing offences in accordance with section 378 of *The Criminal Code*; the data does not include the value of the stolen item. In order to compare this data with offences which are likely to be eligible for a Criminal Code infringement notice the Office removed all stealing offences involving stealing a motor vehicle, and the offence of 'Stealing from Dwelling/House over \$10,000'. The Office also excluded data where an alleged offender appeared for multiple charges and/or the matter was transferred to a higher court.

3.10 Paying Criminal Code infringement notices

3.10.1 Legislative requirements

Section 11 of the FPINE Act defines an infringement notice and a modified penalty, as follows:

11. Terms used

...

infringement notice means a notice issued under a written law, other than this Act, to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court;

...

modified penalty means the amount of money prescribed in a written law and specified in an infringement notice as the amount that the offender is to pay if he or she wants the matter dealt with out of court;

...

The CP Act sets out the effect of paying a modified penalty, including as follows:

16. Modified penalty, effect of paying

- (1) If the modified penalty stated in an infringement notice is paid within the period in section 9(1)(f) or any extension of it and the notice is not withdrawn, the bringing of proceedings and the imposition of sentences are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (2) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

Section 9(1)(f) of the CP Act further provides that the form and content of infringement notices must provide specific information to the alleged offender, including as follows:

9. Form and content of infringement notices

(1) An infringement notice must—

...

- (f) inform the alleged offender —

...

- (iii) that if the alleged offender does not want to be prosecuted for the alleged offence, the modified penalty for the offence may be paid to an approved officer within 28 days after the date of the notice; and
- (iv) how and where the modified penalty may be paid;

...

The CP Act provides that an approved officer may extend the time to pay a modified penalty, as follows:

14. Extensions of time

- (1) An approved officer may, in a particular case, extend the period in section 9(1)(f) ...
- (2) An extension may be allowed even if the period has elapsed.

Section 14 of the FPINE Act further provides that WAPOL may issue a final demand notice in relation to an unpaid modified penalty, and that this notice must contain a statement specifying the modified penalty and enforcement fees, as follows:

14. Final demand may be issued to alleged offender

- (1) If under a prescribed enactment –
 - (a) an infringement notice has been issued; and
 - (b) the infringement notice has not been withdrawn under that enactment; and
 - (c) the modified penalty has not been paid as required by the infringement notice; and
 - (d) the time for paying the modified penalty has elapsed,the prosecuting authority may issue a final demand.
- (2) A final demand must be served on the alleged offender.
- (3) A final demand must identify the infringement notice concerned and the alleged offence.
- (4) A final demand must contain a statement to the effect that unless within 28 days after the date of issue of the final demand —
 - (a) the modified penalty, and enforcement fees, specified in the final demand are paid to the person to whom or which, under the principal enactment, the modified penalty is to be paid;
 - (b) an election is made by the alleged offender and given to the person to whom or which, under the principal enactment, the modified penalty is to be paid,

the infringement notice may be registered with the Registry after which a licence suspension order may be made and further enforcement fees may be imposed.

- (5) A final demand must contain such information as may be prescribed.

3.10.2 WAPOL's CCIN Policy

WAPOL's CCIN Policy states that:

Effect of Payment of Modified Penalty

Once the CCIN penalty has been paid in full, no further criminal proceedings can be taken against the alleged offender for that offence.

Payment of a CCIN is not to be regarded as an admission of liability for the purposes of any civil claim, action or proceedings arising out of the same occurrence.

Payment in full of a CCIN absolves the recipient from prosecution and does not result in a criminal conviction ... However, a record of issued CCIN will be maintained on both IMS and NTIMS.

3.10.3 Twenty one per cent of Criminal Code infringement notices issued during the monitoring period were paid

The Office found that, as at 22 April 2016,³⁰ 624 (21 per cent) of the 2,978 Criminal Code infringement notices issued had been paid, as follows:

- 515 (17 per cent) had been paid after the initial infringement notice had been issued; and
- 109 (4 per cent) had been paid after a final demand notice was issued.

Of the remaining 2,354 Criminal Code infringement notices:

- 480 had progressed to a final demand but their Criminal Code infringement notice had not been registered with the Fines Enforcement Registry;
- 1,805 had been referred to the Fines Enforcement Registry; and
- 69 were either not due for payment, withdrawn, elected to be prosecuted, or subject to adjudication.

³⁰ The Ombudsman's monitoring period of 12 months referred to in Section 723(1) of *The Criminal Code* concluded on 4 March 2016. In order to examine the rates of payment of Criminal Code infringement notices, the Office took into account that a Criminal Code infringement notice may have been issued on 4 March 2016. As the modified penalty may be paid within 28 days after the date of the notice, payment for these Criminal Code infringement notices may not have occurred prior to 1st April 2016. WAPOL further informed the Office that Final Demand notices may be issued up to two weeks after the time for paying the modified penalty has elapsed (potentially on 15 April 2016). Accordingly, the Office considered the payment status of Criminal Code infringement notices issued in the monitoring period that were due to have been paid, and which would have escalated to a Final Demand in the event of non-payment. WAPOL provided this data from NTIMS as at 22 April 2016.

3.10.4 Twenty-four per cent of Criminal Code infringement notices issued for the prescribed offence of disorderly behaviour were paid prior to referral to the Fines Enforcement Registry

As identified above, the Office found that, as at 22 April 2016, of the 2,978 Criminal Code infringement notices issued during the monitoring period, 624 (21 per cent) had been paid prior to referral to the Fines Enforcement Registry. Of these:

- 425 (68 per cent) were issued for the prescribed offence of disorderly behaviour. That is, 24 per cent of the 1,800 Criminal Code infringement notices issued for disorderly behaviour were paid prior to referral to the Fines Enforcement Registry; and
- 199 (32 per cent) were issued for the prescribed offence of stealing. That is, 17 per cent of the 1,178 Criminal Code infringement notices issued for stealing were paid prior to referral to the Fines Enforcement Registry.

Of the 425 paid Criminal Code infringement notices that were issued for disorderly behaviour:

- 258 (61 per cent) were paid by recipients who were recorded as non-Aboriginal;
- 155 (36 per cent) were paid by recipients whose 'Offender Appearance' was unknown; and
- 12 (3 per cent) were paid by recipients who were recorded as Aboriginal.

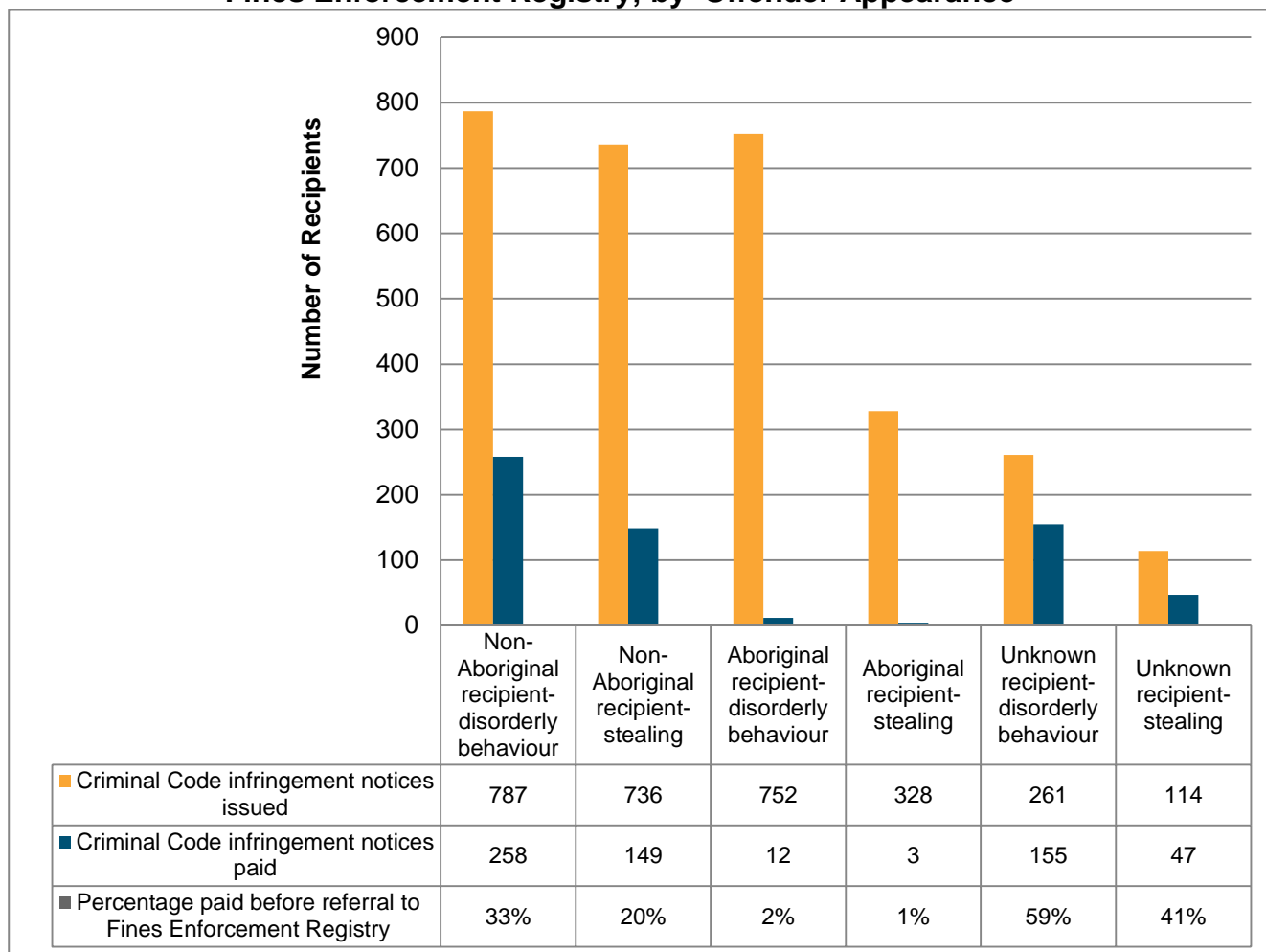
Of the 199 paid Criminal Code infringement notices that were issued for stealing:

- 149 (75 per cent) were paid by recipients who were recorded as non-Aboriginal;
- 47 (24 per cent) were paid by recipients whose 'Offender Appearance' was unknown; and
- three (1 per cent) were paid by recipients who were recorded as Aboriginal.

3.10.5 Criminal Code infringement notice payment rates prior to referral to the Fines Enforcement Registry for the two prescribed offences ranged from one per cent to 59 per cent

To put these payments into perspective, the Office compared the number of paid Criminal Code infringement notices with the number of Criminal Code infringement notices issued. The Office also found that, for non-Aboriginal recipients and recipients of Criminal Code infringement notices whose 'Offender Appearance' was unknown, the payment rates prior to being referred to the Fines Enforcement Registry ranged from 20 per cent (for non-Aboriginal recipients for the prescribed offence of stealing) to 59 per cent (for recipients of unknown 'Offender Appearance' for the prescribed offence of disorderly behaviour). The Office also found that, for recipients of Criminal Code infringement notices who were recorded by WAPOL as Aboriginal, the payment rate was one per cent (for the prescribed offence of stealing) and two per cent (for the prescribed offence of disorderly behaviour) and this is discussed in detail in Volume 3.

Figure 10: Criminal Code infringement notice payment rates prior to referral to the Fines Enforcement Registry; by 'Offender Appearance'



Source: Ombudsman Western Australia

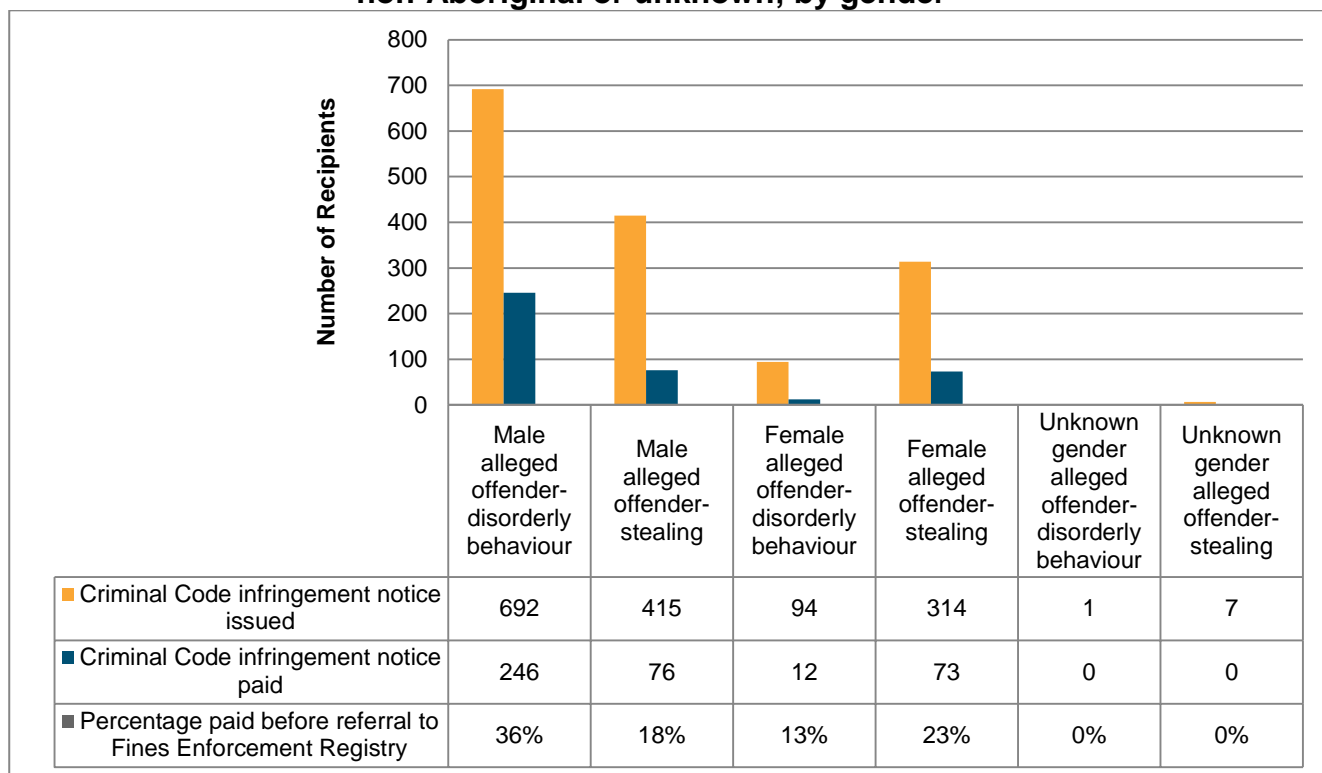
3.10.6 Criminal Code infringement notice recipients who had no prior recorded police contact had the highest payment rates prior to referral to the Fines Enforcement Registry

To improve our understanding of the characteristics of those recipients identified as having higher payment rates, the Office conducted further analysis of their gender and prescribed offence.

The Office's findings below relating to non-Aboriginal recipients, show that:

- for the prescribed offence of disorderly behaviour, 36 per cent of male recipients paid the Criminal Code infringement notice prior to referral to the Fines Enforcement Registry; and
- for the prescribed offence of stealing, 23 per cent of female recipients paid the Criminal Code infringement notice prior to referral to the Fines Enforcement Registry.

Figure 11: Criminal Code infringement notice payment rates prior to referral to the Fines Enforcement Registry for recipients with ‘Offender Appearance’ of non-Aboriginal or unknown; by gender



Source: Ombudsman Western Australia

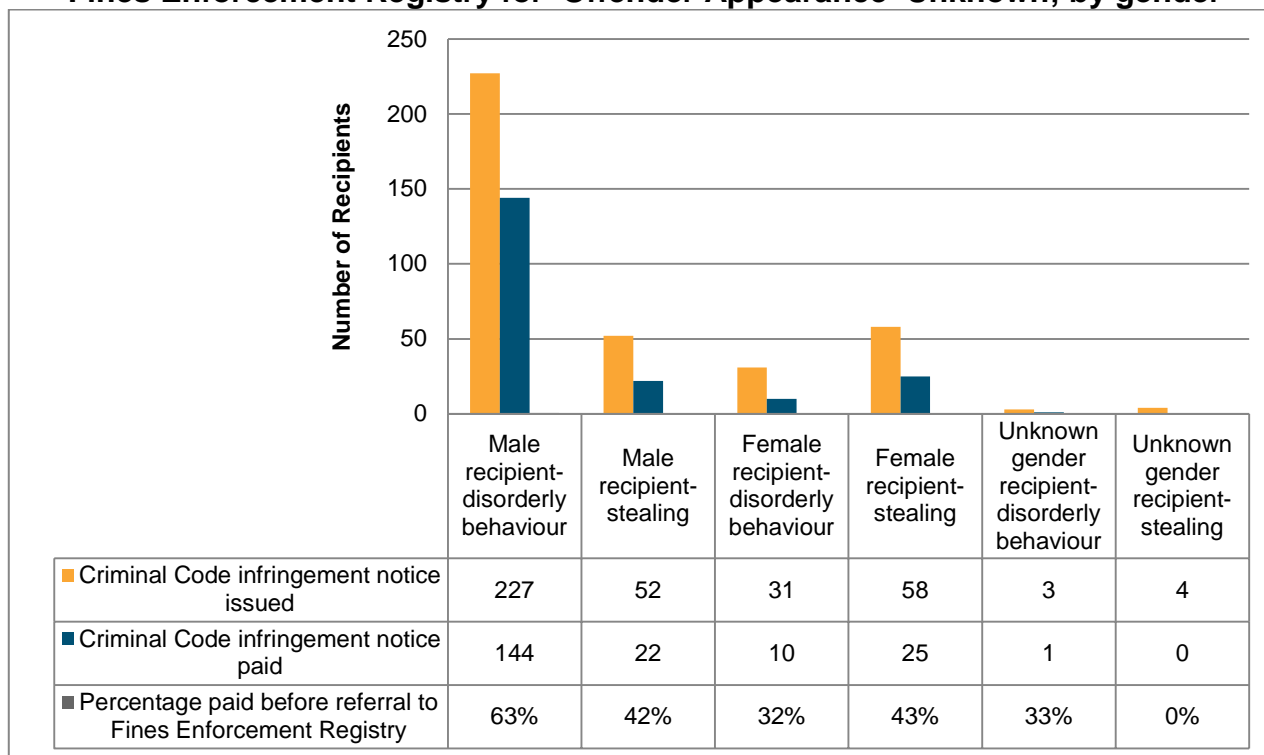
The Office’s findings relating to recipients whose ‘Offender Appearance’ was unknown, show that:

- for the prescribed offence of disorderly behaviour, 63 per cent of male recipients paid the Criminal Code infringement notice prior to referral to the Fines Enforcement Registry; and
- for the prescribed offence of stealing, approximately 42 per cent of both male and female recipients paid their Criminal Code infringement notice prior to referral to the Fines Enforcement Registry.

The Office therefore found that the highest payment rates of Criminal Code infringement notices prior to referral to the Fines Enforcement Registry were for recipients whose ‘Offender Appearance’ was unknown.

Where an ‘Offender Appearance’ is recorded as unknown, this indicates that WAPOL has not recorded this information in any WAPOL database on any previous occasion. The relatively high level of payment suggests that those recipients that have had either no prior contact with WAPOL, or contact that was not recorded by WAPOL (such as a caution), pay their Criminal Code infringement notice prior to referral to the Fines Enforcement Registry more often than other groups.

Figure 12: Criminal Code infringement notice payment rates prior to referral to the Fines Enforcement Registry for ‘Offender Appearance’ Unknown; by gender



Source: Ombudsman Western Australia

3.10.7 For recipients who had no prior recorded police contact and the highest payment rates, payment rates increased with age for both prescribed offences

To better understand the characteristics of those recipients identified with higher payment rates the Office again undertook further analysis of the WAPOL state-wide data to determine whether the age of the recipient was a factor for the prescribed offence of disorderly behaviour.

Table 1 below sets out the Office’s analysis of payment rates by age groups for non-Aboriginal recipients for the prescribed offence of disorderly behaviour. The Office found that, while the younger age groups received the highest number of Criminal Code infringement notices, payment rates were relatively stable at around 33 per cent.

Table 1: Payment rates of Criminal Code infringement notices for the prescribed offence of disorderly behaviour for non-Aboriginal recipients, by age group

	17-19 age group	20-24 age group	25-29 age group	30-34 age group	35-39 age group	40-44 age group	45-49 age group	Over 50 age group
Criminal Code infringement notice issued for disorderly behaviour	97	223	157	122	53	60	40	35
Criminal Code infringement notice paid before referral to Fines Enforcement Registry	32	74	55	37	17	18	13	12
Percentage paid before referral to Fines Enforcement Registry	33%	33%	35%	30%	32%	30%	33%	34%

Source: Ombudsman Western Australia

In contrast, Table 2 below, which sets out the Office’s analysis of payment rates by age groups for recipients whose ‘Offender Appearance’ was unknown for the prescribed offence of disorderly behaviour, shows that payment rates averaged at around 60 per cent, and increased with age.

Table 2: Payment rates of Criminal Code infringement notices for the prescribed offence of disorderly behaviour for ‘Offender Appearance’ unknown, by age group

	17-19 age group	20-24 age group	25-29 age group	30-34 age group	35-39 age group	40-44 age group	45-49 age group	Over 50 age group	Age unknown
Criminal Code infringement notice issued for disorderly behaviour	65	77	53	25	12	10	7	11	1
Criminal Code infringement notice paid before referral to Fines Enforcement Registry	32	45	34	18	9	5	4	8	0
Percentage paid before referral to Fines Enforcement Registry	49%	58%	64%	72%	75%	50%	57%	73%	0%

Source: Ombudsman Western Australia

Table 3 below sets out the Office’s analysis of payment rates by age groups for non-Aboriginal recipients for the prescribed offence of stealing. The Office found that recipients in the younger age groups received the highest number of Criminal Code infringement notices. In addition, payment rates increased from less than 20 per cent for the younger age groups, to 56 per cent for those recipients over 50 years of age (prior to referral to the Fines Enforcement Registry).

Table 3: Payment rates of Criminal Code infringement notices for the prescribed offence of stealing for non-Aboriginal recipients, by age group

	17-19 age group	20-24 age group	25-29 age group	30-34 age group	35-39 age group	40-44 age group	45-49 age group	Over 50 age group
Criminal Code infringement notice issued for stealing	94	141	113	109	83	80	50	66
Criminal Code infringement notice paid	18	26	17	12	11	11	17	37
Percentage paid before referral to Fines Enforcement Registry	19%	18%	15%	11%	13%	14%	34%	56%

Source: Ombudsman Western Australia

Table 4 below sets out the Office’s analysis of payment rates by age groups for recipients whose ‘Offender Appearance’ was unknown for the prescribed offence of stealing. The Office found that there were lower numbers of Criminal Code infringement notices issued. This is consistent with the Office’s earlier findings that, for stealing offences, there are higher rates of prior police contact, and therefore a recipient’s ‘Offender Appearance’ is more likely to be recorded on WAPOL databases. For these recipients, payment rates averaged at just over 40 per cent prior to referral to the Fines Enforcement Registry.

Table 4: Payment rates of Criminal Code infringement notices for the prescribed offence of stealing for ‘Offender Appearance’ unknown, by age group

	17-19 age group	20-24 age group	25-29 age group	30-34 age group	35-39 age group	40-44 age group	45-49 age group	Over 50 age group	Age unknown
Criminal Code infringement notice issued for stealing	22	27	19	14	4	8	4	15	1
Criminal Code infringement notice paid	8	9	5	8	3	4	2	7	1
Percentage paid before referral to Fines Enforcement Registry	36%	33%	26%	57%	75%	50%	50%	47%	100%

Source: Ombudsman Western Australia

socioeconomic conditions of a community or neighbourhood as a whole. These are primarily the collective characteristics of the area's residents, but may also be characteristics of the area itself, such as a lack of public resources, transport infrastructure or high levels of pollution.³⁵

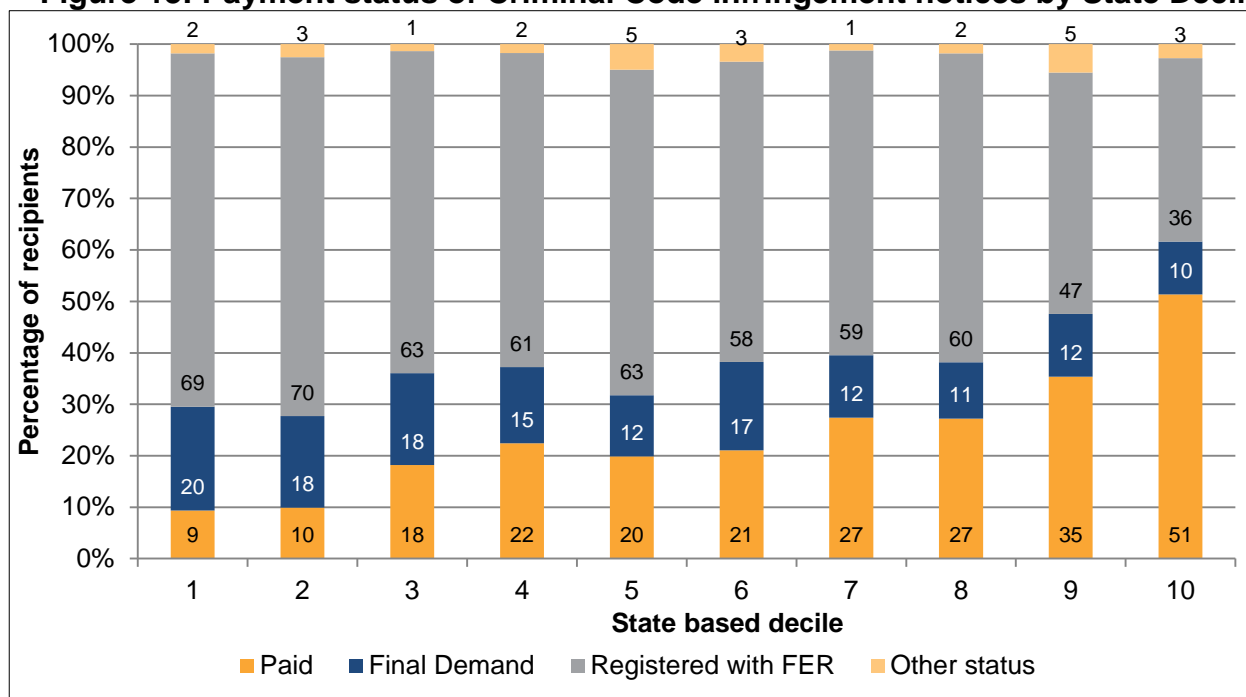
In undertaking this analysis the Office excluded recipients when the address provided:

- was not a residential address (for example, a Post Office Box);
- was identified by the Office as relating to a homelessness or community support organisation;
- was an interstate address; and/or
- was in an area not classified by the ABS (for example, in a suburb which did not exist in 2011).

After the above exclusion criteria were applied, the Office analysed the state based deciles of the addresses provided by the remaining 2,701 Criminal Code infringement notice recipients. The Office analysed the payment rates of these 2,701 Criminal Code infringement notices in order to determine if there were any patterns or trends considering the socio-economic status of recipients. As shown in Figure 13 below, generally, payment rates increased as advantage increased; from nine per cent of Criminal Code infringement notices issued to recipients in decile 1 to 51 per cent of Criminal Code infringement notices issued to recipients in decile 10. Conversely, the percentage of Criminal Code infringement notices registered with the Fines Enforcement Registry decreased as advantage increased; from 69 per cent of Criminal Code infringement notices issued to recipients in decile 1 to 36 per cent of Criminal Code infringement notices issued to recipients in decile 10. The Office's analysis therefore suggests that recipients with greater levels of socio-economic disadvantage were the least likely to pay their Criminal Code infringement notices prior to registration with the Fines Enforcement Registry.

³⁵ Australian Bureau of Statistics, *Technical Paper: Socio-Economic Indexes for Areas (SEIFA 2011)*, ABS, Canberra, March 2013, p. 6.

Figure 13: Payment status of Criminal Code infringement notices by State Decile



Source: Ombudsman Western Australia

The process for registering an unpaid infringement with the Fines Enforcement Registry, and the steps taken by the Fines Enforcement Registry to recover the debt are set out below.

3.11 Registering Criminal Code infringement notices with the Fines Enforcement Registry

3.11.1 Legislative requirements

Section 6 of the FPINE Act establishes the Fines Enforcement Registry:

6. Registry established

As part of the Magistrates Court, a registry called the Fines Enforcement Registry is established.

Section 7 of the FPINE Act defines the Registrar of the Fines Enforcement Registry, as follows:

7. Registrar

...

- (2) The Registrar is an officer of the Magistrates Court and the functions of the Registrar are to be taken to be functions of that Court.
- (3) Any notice, order or warrant issued by the Registrar is to be taken to be a notice, order or warrant issued by the Magistrates Court.

The FPINE Act further provides for the referral of a Criminal Code infringement notice to be registered by the prosecuting authority, as follows:

15. Infringement notice may be registered

If —

- (a) 28 days have elapsed since the date of issue of a final demand to an alleged offender; and
- (b) the modified penalty, and enforcement fees, specified in the final demand have not been paid in accordance with the final demand; and
- (c) an election has not been made by the alleged offender in accordance with the final demand,

the prosecuting authority may register the infringement notice.

3.11.2 WAPOL's CCIN Policy

WAPOL's CCIN Policy regarding non-payment of a Criminal Code infringement notice states that:

NON-Payment of CCIN

The CCIN must be paid in full within 28 days. If the CCIN is not paid in full, a Final Demand will be issued by NTIMS providing a further 28 days to pay in full. Failure to pay the CCIN in the designated timeframe will result in the outstanding debt being forwarded to the Fines Enforcement Registry (FER).

3.11.3 During the monitoring period, 1,202 unpaid Criminal Code infringement notices were registered with the Fines Enforcement Registry

As set out in the legislation, failure to pay a Criminal Code infringement notice after the Final Demand Notice period may result in the outstanding debt being registered with the Fines Enforcement Registry, which is administered by DOTAG. In describing the infringement process, DOTAG stated that:

The infringement process

- the prosecuting authority issues an infringement notice. Depending on the prosecuting authority and the legislation through which they are issuing the infringement notice, you usually have a minimum of 28 days to pay
- if no payment is received, the prosecuting authority will issue a final demand notice (a fee applies and an extra 28 days is allowed for payment)
- if no payment is received, the infringement notice is referred to the Fines Enforcement Registry
- the infringement is registered at the Fines Enforcement Registry and is made an order of the court (a fee applies and an extra 28 days is allocated to payment); You can either pay, or choose to have your matter referred to a Magistrate
- if you still do not pay the infringement, a notice of intention to enforce is issued and you have a further extra 28 days to pay

- if no payment is received, your driver's and/or vehicle licence may be suspended and/or an enforcement warrant may be issued to recover the outstanding debt
- the enforcement warrant authorises the Sheriff to immobilise your vehicle and/or seize and sell property to satisfy your debt.

Driving under licence suspension is a serious offence which will incur further penalties and could also mean that, in the case of an accident, your insurance company may not cover you.

While under licence suspension for fine default, you are not eligible for an extraordinary licence, which could also affect your job if you need a licence for your work. In addition, if fines are unpaid you will not be issued a police clearance certificate.

Drivers suspended while holding a probationary licence will have to sit their driver's licence test again.³⁶

It is important to note that a Criminal Code infringement notice is an 'infringement notice', as distinct from a 'fine'.³⁷ Infringement notices and fines, when not paid, result in different further penalties or consequences, which are explored in detail in Volume 3.

In order to examine Criminal Code infringement notices registered with the Fines Enforcement Registry, the Office analysed the DOTAG state-wide data regarding all Criminal Code infringement notices registered during the monitoring period. This does not include those Criminal Code infringement notices that were issued during the monitoring period and registered with the Fines Enforcement Registry after the monitoring period had concluded.³⁸

The Office found that:

- during the monitoring period, 1,202 unpaid Criminal Code infringement notices were registered with the Fines Enforcement Registry;
- of the 1,202 registered Criminal Code infringement notices:
 - 673 (56 per cent) were issued for the prescribed offence of disorderly behaviour; and
 - 529 (44 per cent) were issued for the prescribed offence of stealing.

The Office's analysis also found that, of the 1,202 registered Criminal Code infringement notices:

- 480 (40 per cent) were recorded by DOTAG as relating to a non-Aboriginal recipient;
- 457 (38 per cent) were recorded by DOTAG as relating to an Aboriginal and/or Torres Strait Islander recipient; and

³⁶ Department of the Attorney General, 'Infringement Notices', viewed 17 July 2016, <http://www.courts.dotag.wa.gov.au//infringement_notices.aspx?uid=4916-1423-2566-8813>.

³⁷ Section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* provides that a 'fine means a monetary penalty imposed on an offender by a court in criminal proceedings for an offence'.

³⁸ As at 22 April 2016, a total of 1,805 Criminal Code infringement notices had been referred to the Fines Enforcement Registry.

- 265 (22 per cent) were unknown.

The Office further examined the DOTAG state-wide data to assess the degree of payment after registration with the Fines Enforcement Registry. At the conclusion of the monitoring period, of the 1,202 registered Criminal Code infringement notices:

- 84 (7 per cent) had been paid in full, of these:
 - nine (11 per cent) were issued to Aboriginal recipients;
 - 37 (44 per cent) were issued to non-Aboriginal and/or Torres Strait Islander recipients; and
 - 38 (45 per cent) were unknown;
- Of the 1,118 unpaid registered Criminal Code infringement notices:
 - the average amount owing was \$560.48; and
 - the highest amount owing was \$797.95.

The imposition of additional fees for unpaid Criminal Code infringement notices registered with the Fines Enforcement Registry is discussed in detail in Volume 3.

3.12 Destroying identifying information after payment of Criminal Code infringement notices

3.12.1 Legislative requirements

As discussed at section 3.5, in order to be certain of an alleged offender's identity when issuing a Criminal Code infringement notice, an authorised officer may request a charged suspect to consent to an identifying procedure being done on the suspect for the purpose of obtaining one or more of a charged suspect's identifying particulars.

Section 722 of *The Criminal Code* further provides that identifying information is to be destroyed if requested by, or on behalf of, an alleged offender, and the relevant modified penalty is paid in full, as follows:

722. Alleged offenders taken to be charged suspects for purposes of *Criminal Investigation (Identifying People) Act 2002*

If under the CP Act an infringement notice is issued to an alleged offender for an alleged offence under this Code, then —

- (a) for the purposes of the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67 the alleged offender is taken —
 - (i) to be a charged suspect; and
 - (ii) to have been charged with the alleged offence; and
- (b) without limiting the operation of section 67 of that Act, identifying information obtained under Part 7 of that Act from the alleged offender must be destroyed if —
 - (i) the alleged offender pays the modified penalty prescribed for the offence; and
 - (ii) destruction is requested under section 69 of that Act by or on behalf of the alleged offender;

...

Section 69 of the CIIP Act allows certain people to request the destruction of identifying information, as follows:

69. Request for destruction of identifying information

If another provision of this Act refers to the destruction of identifying information being requested under this section, the request may be made —

- (a) if the identifying information is of a person who is an adult at the time the request may be made — by the adult; or
- (b) if the identifying information is of a person who is a child at the time the request may be made — by a responsible person; or
- (c) if the identifying information is of a person who is an incapable person at the time the request may be made — by a responsible person or the Public Advocate, and must be made to the Commissioner of Police.

3.12.2 WAPOL's CCIN Policy

The Identifying Information Policy states that:

Destruction

- Requests for destruction of identifying information should be made in writing and addressed to the Commissioner of Police.
- The officer in charge of Forensic Analysis Coordination Team is responsible for arranging the destruction of identifying information.

WAPOL's *Identifying Procedures Consent Form Charged Suspect* also requires police officers to tick a box confirming that they have provided the following relevant information (verbally) at the time of undertaking identifying procedures:

In the event that the charge against you is finalised without a finding of guilt, or the Criminal Code Infringement Notice (CCIN) has been paid, you may make a request to the Commissioner of Police to have the relevant identifying information destroyed.³⁹

3.12.3 It is estimated that no requests for the destruction of identifying information were made during the monitoring period

The Office attempted to determine how many requests for destruction of identifying information relating Criminal Code infringement notices were made to the Commissioner of Police during the monitoring period.

³⁹ Western Australia Police, *Identifying Procedures Consent Form Charged Suspect*, p. 1.

It was not possible to determine this by examining the WAPOL state-wide data or other WAPOL records. WAPOL advised the Office that, in 2015, identifying particulars were collected in 26,559 instances (including 21,201 instances involving charged suspects) and in 2015 there were 56 requests for the destruction of identifying particulars. This data suggests that requests for destruction of identifying particulars are made in approximately 0.2 per cent of instances.

The Office further found that, during the monitoring period, WAPOL obtained one or more identifying particulars from 530 recipients of Criminal Code infringement notices. As at 22 April 2016, the recipient had paid the modified penalty for the prescribed offence in 93 instances. That is, 93 recipients of Criminal Code infringement notices were eligible to request the destruction of their identifying information pursuant to section 69 of the CIIP Act. Taking into account the Office's finding above, that requests for destruction of identifying particulars are made in approximately 0.2 per cent of instances, it is estimated that no requests for the destruction of identifying information were made during the monitoring period.

Recommendation 10

WAPOL considers further ways of providing information to recipients of Criminal Code infringement notices regarding their right to request that their identifying information be destroyed if their identifying information was collected under Part 7 of the *Criminal Investigation (Identifying People) Act 2002*, and they have paid the modified penalty for the prescribed offence.

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4 The economic effect of the infringement notices provisions of *The Criminal Code*⁴⁰

4.1 Economic objectives of the infringement notices provisions of *The Criminal Code*

In the Second Reading of the Bill, the (then) Minister for Police, the Hon. Robert Frank Johnson MLA identified a number of economic objectives for introducing the *Criminal Code Amendment (Infringement Notices) Act 2011*, as follows:

The key objectives of any such scheme are to reduce the administrative demands on police in relation to relatively minor offences by providing a quick alternative to arrest for police officers in dealing with minor matters; to reduce the time taken by police in preparation for and appearance at court; to allow police to remain on front-line duties rather than having to take the offender back to the police station; to provide an additional general tool in the array of responses available to police; to provide police with greater flexibility in their response to criminal behaviour; to save the court system the cost of having to deal with relatively minor offences and thereby reducing both court time and trial backlogs; and to provide a diversionary option for the community as a means of avoiding court appearances for minor offences, yet still providing an incentive for behaviour change.⁴¹

In relation to the intended impacts on the court system, the (then) Minister for Police went on to state:

The proposed scheme is considered advantageous as it is a means of diverting low-level offenders from the court system when the likely outcome would be a fine. The prosecution and the court system are saved the cost of having to deal with these more minor offences and this scheme will also assist with court time and trial backlogs as well as saving police time and resources.

The operation of the [Criminal Code infringement notices provisions] will be subject to ongoing monitoring and will be evaluated after the first 12 months to ensure that the proposed scheme has met its aims. The evaluation will examine, amongst other things, the impact of the use of infringement notices on resource implications, case length and case flow, the impact of the trial on vulnerable defendants, and the effect, if any, on sentencing outcomes of trial offence matters that are determined by the court.⁴²

⁴⁰ The information in this Chapter draws upon, and summarises, the findings of Deloitte Access Economics, *Ombudsman Western Australia Cost Benefit Analysis of the Infringement Notices Provisions of The Criminal Code*, Deloitte Access Economics, April 2017, which is provided in full as Volume 5 of this report.

⁴¹ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁴² The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

A key element of the Ombudsman’s scrutiny of the infringement notices provisions of *The Criminal Code* was whether the provisions had met the economic objectives described above. Accordingly, the Office has considered, and made findings and, where relevant, recommendations, in the following key areas:

- overall findings regarding the achievement of the economic objectives of the infringement notices provisions of *The Criminal Code*;
- findings relating to the use of Criminal Code infringement notices as a diversionary option;
- findings relating to police resourcing:
 - reducing the administrative demands on police; and
 - reducing the time taken by police in preparation for and appearance at court;
- findings related to the impact on the court system:
 - reducing court time; and
 - reducing trial backlogs; and
- findings relating to the use of Criminal Code infringement notices to provide an incentive for behaviour change.

4.2 The Office’s approach to monitoring the achievement of the economic objectives of the infringement notices provisions of *The Criminal Code*

In order to determine whether the economic objectives of the infringement notices provisions of *The Criminal Code*, as set out in the Second Reading Speech of the Bill, were achieved, the Office undertook two key phases of analysis.

The Office analysed the WAPOL and DOTAG state-wide data and the court data to determine the extent to which the infringement notices provisions of *The Criminal Code* resulted in the diversion of alleged offenders away from the courts. The Office’s analysis and associated findings are discussed at section 4.4 below.

Informed by these findings, the Office engaged Deloitte Touche Tohmatsu to undertake a specialised, comprehensive cost-benefit analysis to test whether the stated intended economic objectives of the infringement notices provisions of *The Criminal Code*, in relation to police and the courts, had been achieved (**the cost-benefit analysis**).⁴³ In addition to obtaining a comprehensive understanding of the economic effect of the infringement notices provisions of *The Criminal Code* in the first 12 months of the operation of the provisions, the Office also sought to identify the net cost or benefit of the operation of the provisions extrapolated over a full five year period (including the first 12 months).

The cost-benefit analysis essentially involved the construction of two models, the ‘base case’ model and the ‘change’ model. For the purposes of the cost-benefit analysis, the ‘base case’ was defined as a continuation of the status quo, that is, the hypothetical (or ‘counter-factual’) situation where the infringement notices provisions of *The Criminal Code*

⁴³ Deloitte Access Economics, *Ombudsman Western Australia Cost Benefit Analysis of the Infringement Notices Provisions of The Criminal Code*, Deloitte Access Economics, April 2017.

had not been implemented and the option of a Criminal Code infringement notice was unavailable to WAPOL. The 'change' model was based on the introduction of the infringement notices provisions and forecast the trends in Criminal Code infringement notices over a five year period, using analysis of the preceding periods. The net costs and benefits of the infringement notices provisions of *The Criminal Code* were estimated by comparison of the two models.

Through this analysis, it was possible to identify savings in terms of 'opportunity costs', that is, observed time savings attributable to the infringement notices provisions of *The Criminal Code*, to which standard cost rates can then be applied to calculate an overall economic benefit. For example, if an hour of police time is saved because of the infringement notices provisions of *The Criminal Code*, then the salary cost for an hour is assigned as a benefit.

In consultation, WAPOL indicated that the increased availability of police officers to attend to these incidents may result in the arrest or summons of additional alleged offenders across all offences, with subsequent court appearances. In other words, WAPOL has indicated that, insofar as the infringement notices provisions of *The Criminal Code* result in time savings to police officers, this enables police officers to identify and respond to other incidents (that those police officers otherwise would not have been available to attend).

The assumptions underlying the analysis are discussed in detail in Volume 5.

4.3 Overall findings regarding the achievement of the economic objectives of the infringement notices provisions of *The Criminal Code*

The overall finding of the cost-benefit analysis was that the total estimated gross benefit from the introduction of the infringement notices provisions of *The Criminal Code* equates to almost \$13.04 million (in present value terms or \$14.25 million in unadjusted terms) over the five year assessment period.

Some 59 per cent (\$7.70 million in present value terms or \$8.41 million in unadjusted terms) of the total benefit estimated accrues to WAPOL officers in the form of opportunity costs (measured by time savings). Operational efficiencies realised by the Magistrates Court account for the remaining 41 per cent (\$5.34 million in present value terms or \$5.83 million in unadjusted terms) of the total benefits. This is as a result of cases that are avoided under the operation of the infringement notices provisions of *The Criminal Code*.

The introduction of the infringement notices provisions of *The Criminal Code* over the five year period gives rise to a net benefit of \$9,279,686, which is equivalent to an average annual net benefit of \$1.86 million. This result is derived from total estimated costs for the five years of \$3,759,295 and total estimated benefits of \$13,038,982.⁴⁴ It is equivalent to a

⁴⁴ It is important to note that the net result of the cost benefit analysis is strongly influenced by the forecast total Criminal Code infringement numbers. As there had been a progressive operationalising across police districts during the monitoring period, it was estimated that for a full year implementation there would have been 3,942 Criminal Code infringements issued. To estimate the 2016-17 total, that figure was then combined with historical growth estimates, as well as an estimate of take up rate, to obtain a total of 4,703.

benefit-cost ratio of 3.47. In other words, it is estimated that, for every \$1.00 spent over the first five years of the operation of the infringement notices provisions of *The Criminal Code* (that is, the monitoring period and a further four years), there will be a return of \$3.47.

The cost-benefit analysis indicates that this represents a very strong return to the community from implementation of the legislation and is reflective of the relatively low costs incurred in implementing and operating the infringement notices provisions of *The Criminal Code* relative to the benefits yielded by way of reducing the opportunity costs of police and court time.

The overall findings of the analysis are summarised in Table 5 below. Each monitoring year represented in the table corresponds to a monitoring period of 5 March of one year to 4 March of the following year (for example 2011-12 is 5 March 2011 to 4 March 2012).

Table 5: Summary of findings of the cost-benefit analysis, by monitoring year, at present value⁴⁵

Modelled benefits / costs	2015-16 \$	2016-17 \$	2017-18 \$	2018-19 \$	2019-20 \$	Total \$
Benefit 1 – Saving in the cost of police time	1,069,098	1,722,702	1,678,728	1,635,876	1,594,118	7,700,522
Benefit 2 – Saving in the cost of court time	741,657	1,194,151	1,163,668	1,133,964	1,105,019	5,338,459
Total benefit	1,810,755	2,916,853	2,842,396	2,769,841	2,699,137	13,038,982
Cost 1 - Capital development costs of NTIMS	(4,983,825)	-	-	-	1,743,551	(3,240,274)
Cost 2 - Annual operating costs of NTIMS	(112,238)	(112,238)	(104,895)	(98,033)	(91,619)	(519,022)
Total costs	(5,096,062)	(112,238)	(104,895)	(98,033)	1,651,932	(3,759,295)
Net benefit	(3,285,307)⁴⁶	2,804,615	2,737,501	2,671,808	4,351,069	9,279,686
Benefit-cost ratio	-	-	-	-	-	3.47

Source: Deloitte Access Economics

⁴⁵ Totals in this and subsequent tables in the economic analysis may not add due to rounding.

⁴⁶ The estimated cost-benefit of the infringement notices provisions of *The Criminal Code* over the first 12 months of operation (that is, the monitoring period) was a net cost of \$3,285,307. This finding was largely due to the effect of the full development cost of NTIMS being attributed to the first year of operation. As a conservative assumption, the full cost of the system development has been attributed in the cost-benefit analysis to the implementation, although the Office notes that NTIMS is used for all non-traffic infringement notices and not solely for *Criminal Code* infringement notices. The apportionment of these costs in the model over time (with capital costs attributed to the first year of monitoring and the benefit of the residual value of the system attributed in the final year) is the main reason for the uneven pattern of costs and benefits appearing across the five year period in this table.

Key components of the table above are:

- all benefits and costs in the table are expressed in present value terms. To achieve this, a discount rate of seven per cent per annum was applied in a standard discounted cash flow framework;
- benefit 1 (\$7,700,522) refers to the savings in police officer time associated with the arrests, summonses, court preparation and court attendance that are avoided when Criminal Code infringement notices are issued instead; and
- benefit 2 (\$5,338,459) refers to the savings in court time associated with court hearings that are avoided when Criminal Code infringement notices are issued instead of arrests and summonses.

The full report of the cost-benefit analysis, setting out its findings in detail, together with the underlying calculations and assumptions is provided in Volume 5.

The net benefit identified in Table 5 accrues from the anticipated benefits identified in the Second Reading Speech. As part of the analysis of the robustness of the key assumptions of the model (referred to as ‘sensitivity analysis’ in Volume 5) analysis was also undertaken of what the net cost-benefit would be if various other scenarios had been modelled. Included in Volume 5 are the detailed findings for six alternative scenarios, for example if the change in revenue resulting from the introduction of the infringement notices provisions of *The Criminal Code* had been included in the calculation, or if there had been an assumption of consistent shared use of NTIMS with other types of infringements. All alternative scenarios result in a net economic benefit (that is a benefit above 1.00), with two of the six cases, an increase from 3.47, two a decline and two either up or down depending on test parameters.⁴⁷

4.3.1 Summary of assumptions to the overall findings

The estimated benefits in the monitoring period are attributed to the savings in police time associated with the arrests, summonses, court preparation and court attendance that are avoided when Criminal Code infringement notices are issued instead. As discussed in detail at section 4.4 below, during the monitoring period, the 1,800 Criminal Code infringement notices issued for the prescribed offence of disorderly behaviour are taken to be a ‘substitution’ for 533 arrests and 1,267 summonses. However, the 1,178 Criminal Code infringement notices issued for the prescribed offence of stealing are taken to be a ‘substitution’ for processes other than arrests and summonses (including where no formal action may have been taken). In the cost-benefit analysis, if substitution for a summons or arrest is considered to occur, then the cost associated with the summons or arrest is attributed as a benefit towards the net result, otherwise there is no benefit. These estimates are shown in Table 6 below.

⁴⁷ Deloitte Access Economics, *Ombudsman Western Australia Cost Benefit Analysis of the Infringement Notices Provisions of The Criminal Code*, Deloitte Access Economics, April 2017, pp. 22-27.

**Table 6: Forecast Criminal Code infringement notices,
by monitoring year and prescribed offence**

Transition to CCIN	2015-16	2016-17	2017-18	2018-19	2019-20
<i>Prescribed offence of stealing</i>					
CCIN substituted for an arrest	0	0	0	0	0
CCIN substituted for a summons	0	0	0	0	0
CCIN substituted for other processes	1,178	1,806	1,883	1,964	2,048
Sub total	1,178	1,806	1,883	1,964	2,048
<i>Prescribed offence of disorderly behaviour</i>					
CCIN substituted for an arrest	533	858	894	932	972
CCIN substituted for a summons	1,267	2,039	2,126	2,217	2,311
CCIN substituted for other processes	0	0	0	0	0
Sub total	1,800	2,897	3,020	3,149	3,284
Total CCINs substituted	1,800	2,897	3,020	3,149	3,284
Total CCINs	2,978	4,703	4,903	5,113	5,332

Source: Deloitte Access Economics

As the above estimated benefits are attributed to the savings associated with the arrests, summonses, court preparation and court attendance that are avoided when Criminal Code infringement notices are issued instead, any future changes to the way in which Criminal Code infringement notices are operationalised will affect this result. For example, and as discussed in detail at section 4.4 below, there were distinct differences in how Criminal Code infringement notices were used in response to each of the two prescribed offences; in the event that the number of offences for which Criminal Code infringement notices are prescribed is expanded, the nature of these offences will determine whether or not the intended economic benefits are achieved. The Office also notes that the estimated benefits are based on the patterns in the use of Criminal Code infringement notices over the initial 12 month monitoring period, including the pilot period, and that these patterns could change over time.

4.4 Findings relating to the use of Criminal Code infringement notices as a diversionary option

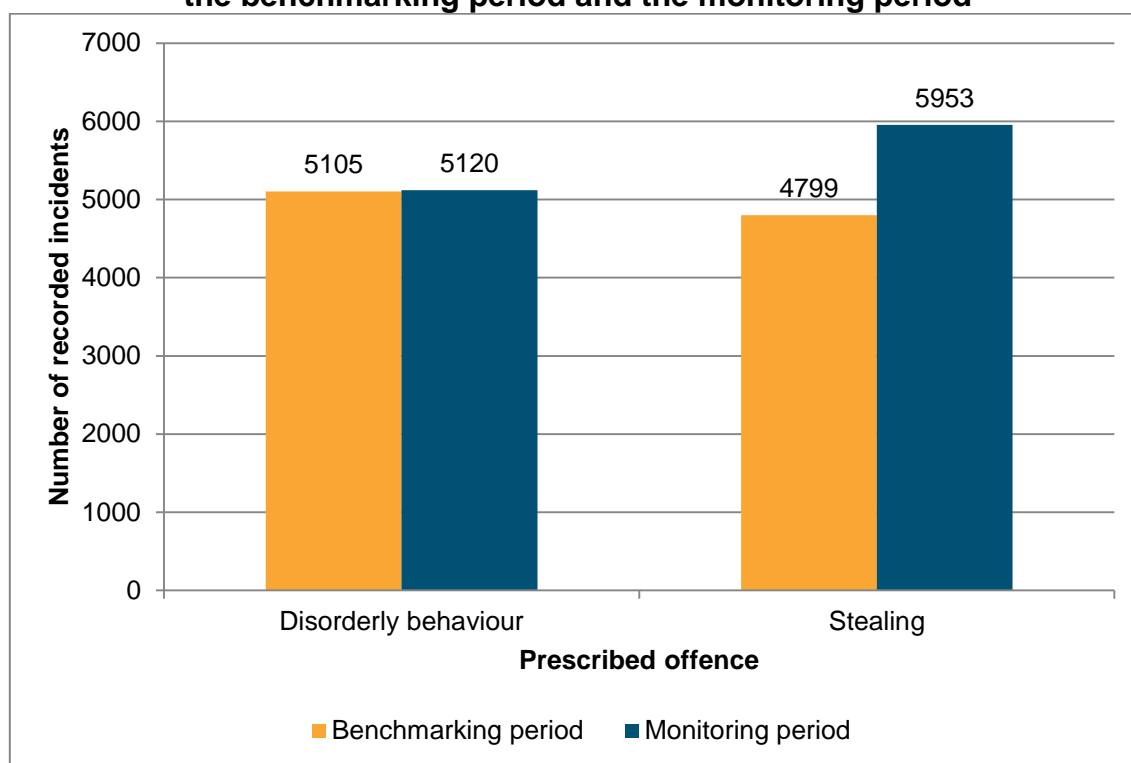
The first step in monitoring the achievement of the economic objectives of the infringement notices provisions of *The Criminal Code* was to analyse the use of Criminal Code infringement notices as ‘a diversionary option for the community as a means of avoiding court appearances for minor offences’.⁴⁸ To do this, the Office undertook a comparative analysis of the actions taken by WAPOL in response to the two prescribed offences, during the benchmarking and monitoring periods.

⁴⁸ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

4.4.1 WAPOL recorded a 12 per cent increase in the total number of recorded incidents of the two prescribed offences; this was driven by a 24 per cent increase in the number of stealing offences

The Office's analysis of the benchmarking data found that there were 9,904 recorded incidents of the two prescribed offences across the state of Western Australia during the 12 months prior to the introduction of Criminal Code infringement notices, compared with 11,073 recorded incidents during the monitoring period, representing a 12 per cent increase. This increase was driven predominantly by a 24 per cent increase in the number of stealing offences, from 4,799 in the benchmarking period, to 5,953 in the monitoring period (Figure 14). It is important to note that recorded incidents only include offences reported to and recorded by WAPOL, where an alleged offender was identified and WAPOL took formal action. That is, the data does not include offences where an offender was not identified, or an informal action (such as a caution or informal warning) was taken.

Figure 14: Number of recorded incidents by offence type; the benchmarking period and the monitoring period



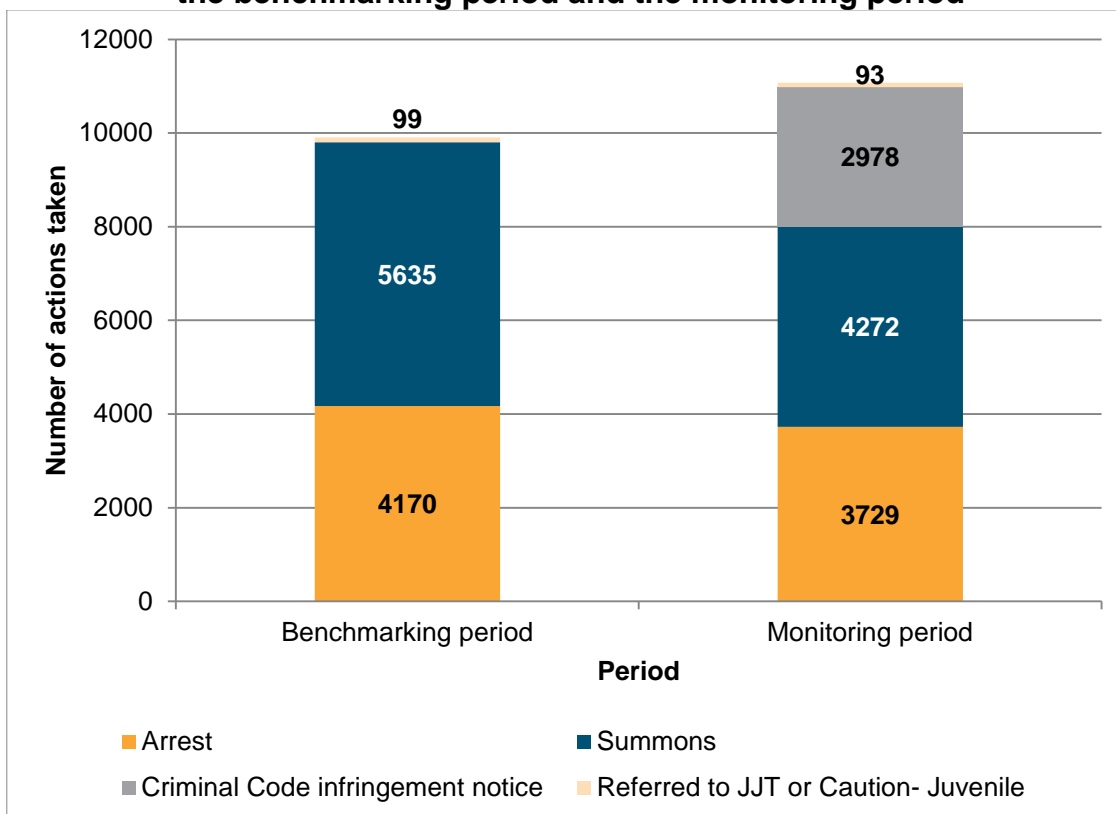
Source: Ombudsman Western Australia

4.4.2 During the monitoring period, for the two prescribed offences, the number of arrests and summonses decreased by 1,804 and 2,978 Criminal Code infringement notices were issued

The Office further found that, while the overall number of recorded incidents of the two prescribed offences increased from the benchmarking period to the monitoring period, the number of arrests and summonses for these offences fell 18 per cent over the same period, from 9,805 during the benchmarking period to 8,001 in the monitoring period (Figure 15). That is, arrests and summonses fell collectively by 1,804 for the two prescribed offences. This suggests that the introduction of Criminal Code infringement

notices diverted alleged offenders away from the courts, through a reduction in the number of arrests and summonses.

Figure 15: Action taken in response to the two prescribed offences; the benchmarking period and the monitoring period



Source: Ombudsman Western Australia

However, as also shown in Figure 15 above, while arrests and summonses decreased by 1,804, during the monitoring period, police officers issued 2,978 Criminal Code infringement notices. To further analyse and understand this difference, the Office analysed the actions taken for each of the two prescribed offences, as set out below.

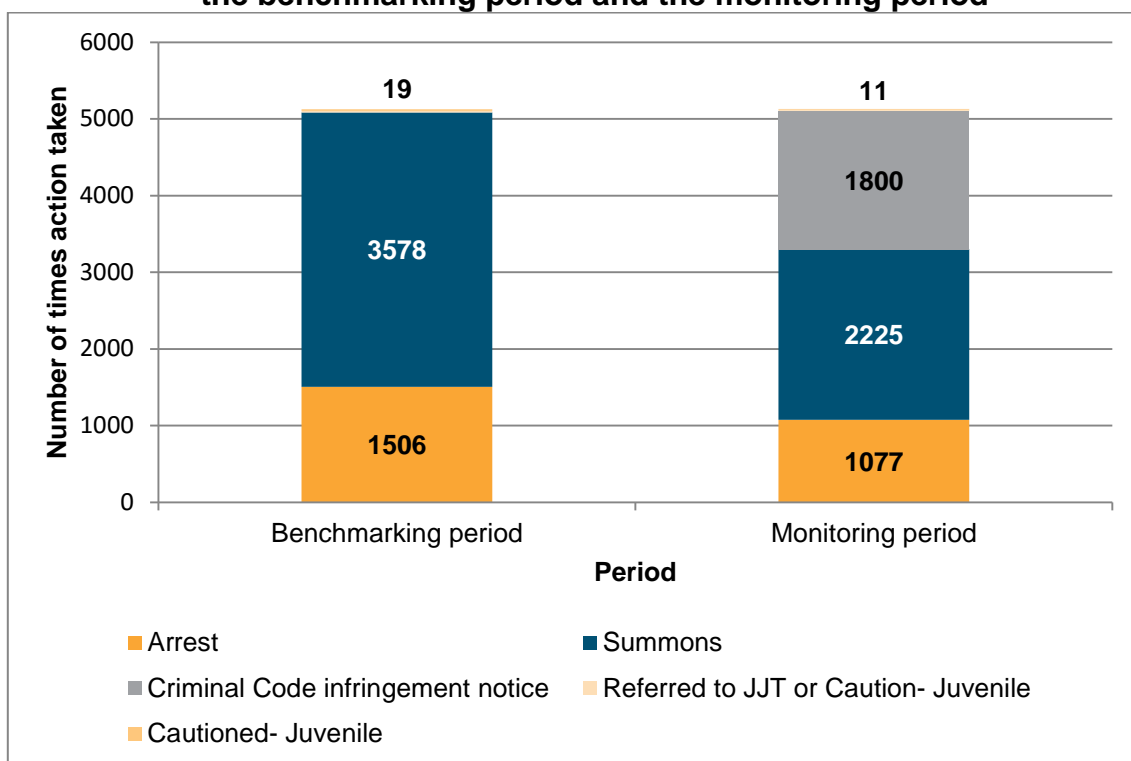
4.4.3 For the prescribed offence of disorderly behaviour, Criminal Code infringement notices were issued in instances where an alleged offender would otherwise have been arrested or summonsed

For the prescribed offence of disorderly behaviour, the Office's analysis found that arrests and summonses decreased by a total of 1,782 (from 5,084 to 3,302) (Figure 16):

- the number of arrests decreased from 1,506 to 1,077; and
- the number of summonses decreased from 3,578 to 2,225.

The number of Criminal Code infringement notices issued for the prescribed offence of disorderly behaviour was 1,800.

Figure 16: Action taken in response to disorderly behaviour; the benchmarking period and the monitoring period



Source: Ombudsman Western Australia

The Office’s analysis set out above suggests that, for the prescribed offence of disorderly behaviour, Criminal Code infringement notices were issued in instances where an alleged offender would otherwise have been arrested or summonsed. That is, Criminal Code infringement notices operated as a diversionary option for the prescribed offence of disorderly behaviour. Accordingly, in the cost-benefit analysis, and as shown in Table 6, the 1,800 Criminal Code infringement notices issued for the prescribed offence of disorderly behaviour are taken to be a ‘substitution’ for 533 arrests and 1,267 summonses.

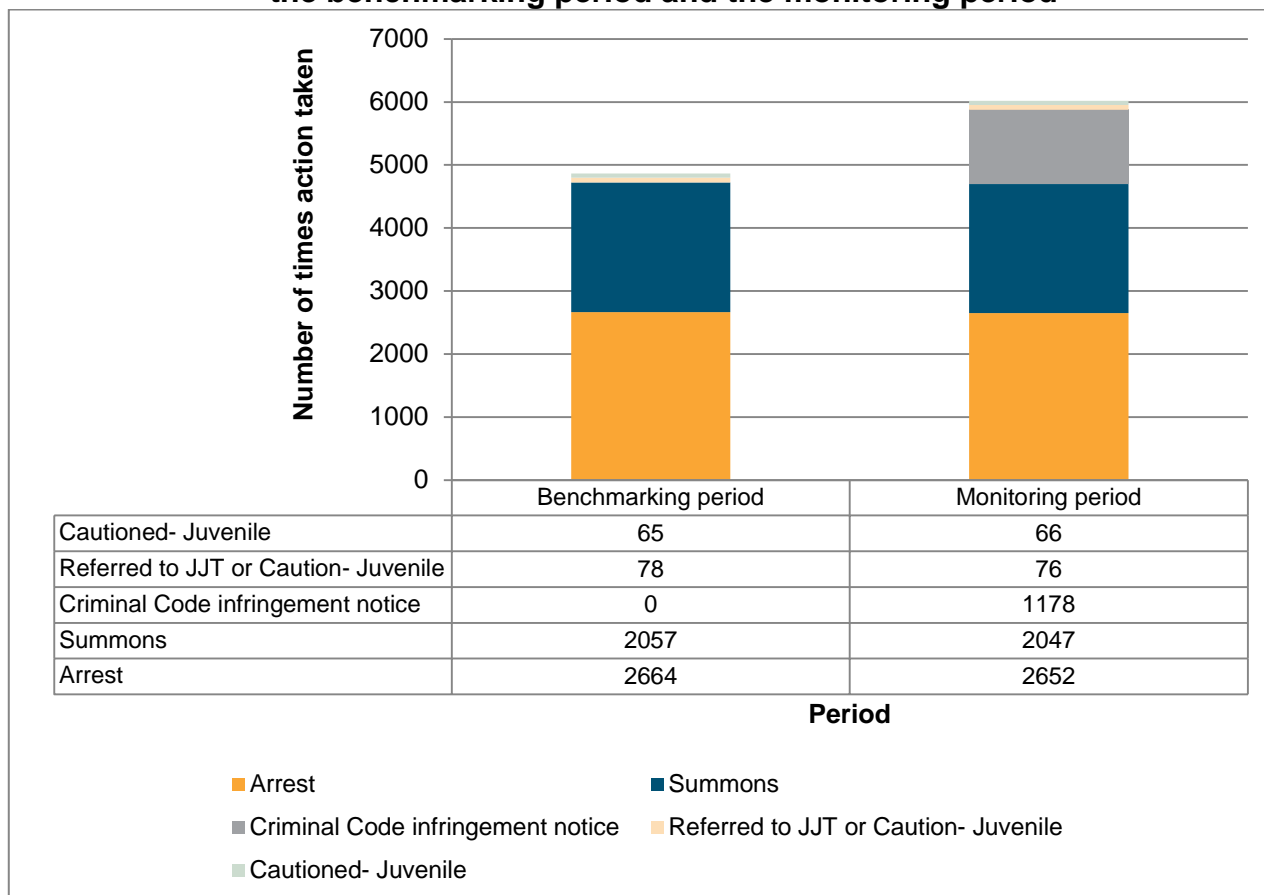
4.4.4 For the prescribed offence of stealing, Criminal Code infringement notices were issued for alleged offences where previously an alleged offender may not have been arrested or summonsed

For the prescribed offence of stealing, the Office’s analysis found that arrests and summonses decreased by a total of 22 (from 4,721 to 4,699) (Figure 17):

- the number of arrests decreased from 2,664 to 2,652; and
- the number of summonses decreased from 2,057 to 2,047.

The number of Criminal Code infringement notices issued for the prescribed offence of stealing was 1,178.

Figure 17: Action taken in response to stealing; the benchmarking period and the monitoring period



Source: Ombudsman Western Australia

The Office’s analysis set out above suggests that, for the prescribed offence of stealing, Criminal Code infringement notices were issued for alleged offences where previously an alleged offender may not have been arrested or summonsed. Accordingly, in the cost-benefit analysis, and as shown in Table 6, the 1,178 Criminal Code infringement notices issued for the prescribed offence of stealing are taken to be a ‘substitution’ for processes other than arrests and summonses.

4.4.5 There are two key factors affecting why Criminal Code infringement notices are not being used instead of arrests and summonses for the prescribed offence of stealing

As discussed in detail at section 3.4.6, considerations of prior criminal history can be a factor when issuing a Criminal Code infringement notice for the prescribed offence of stealing. A further factor contributing to the Office’s finding that Criminal Code infringement notices are not being used instead of arrests and summonses was suggested at the Police Officer Forums. At the Police Officer Forums, participants expressed the view that there are benefits of Criminal Code infringement notices to alleged victims of stealing offences. Police officers reported that for the prescribed offence of stealing, the victims of the alleged offence (particularly retail store owners) were, in accordance with WAPOL’s CCIN

Policy, able to retain their property.⁴⁹ Prior to the introduction of Criminal Code infringement notices, if the victim of an alleged stealing offence requested police officers to take formal action (that is, arrest or summons the alleged offender), the property would need to be retained by WAPOL as evidence. In addition, should an alleged offender be arrested or summonsed, the victim (and/or their staff) may need to attend court to give evidence.⁵⁰ Police officers expressed the view that, based on their experience with victims, the loss of the stolen property and the time requirements to attend court were a barrier to victims requesting police officers to take formal action, and previously in these instances the alleged offender may have received a caution or informal warning.

4.5 Findings relating to police resourcing

4.5.1 Objectives of the infringement notices provisions of *The Criminal Code* relating to Western Australia Police

As identified at section 4.1, the Second Reading Speech identified a number of benefits for WAPOL from the infringement notices provisions of *The Criminal Code*. In summary, these were:

- reducing ‘the administrative demands on police’;⁵¹ and
- reducing ‘the time taken by police in preparation for and appearance at court’.⁵²

In subsequent debate in the Western Australian Parliament of the Second Reading of the Bill, the (then) Minister for Police, the Hon. Robert Frank Johnson MLA, further stated:

I just pick up the other issue that the member for Armadale raised ... He questioned whether this legislation was better for police. I can assure him that this is what the police want. They do not want to spend the time taking an offender from, say, a shopping centre back to the police station, going through all the formal charging of that person and then having to get the case heard before a court. They might go to court, as the member for Armadale would know, and spend half the day there, which is a waste of police time. This legislation is better for police and it is better for the offender. I think the offenders would prefer to simply cop it sweet, pay a fine, not spend all that time in court and not attract a criminal record in that instance. Is it better for police? Is it better for the offender? I think it is. I think everybody is a winner here.

...

The member for Armadale questioned whether there were resource implications. I have to tell him that this legislation is much better for police resourcing than the present system because of the time that will be saved. We are putting on, as the member has said, 500 extra police officers in our first five

⁴⁹ WAPOL’s CCIN Policy provides that ‘[p]olice do not seize the alleged stolen property for the CCIN related offence ... it is to be retained by the property owner’.

⁵⁰ The Office notes that victims and other witnesses are usually not required to attend court unless the person charged with the offence pleads not guilty and the matter proceeds to trial.

⁵¹ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁵² The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

years of government and we are on track in doing that. There will be more police officers going out there doing front-line service, and I would prefer them doing that, as I am sure most members would, rather than wasting time taking offenders back to the station, going to court, and sometimes spending up to a day in court; and, if the offender does not turn up, the police might even have to go back to court again. Therefore, there is a lot of time saved; it is far better for resourcing.⁵³

Consistent with the Second Reading Speech and debate in the Western Australian Parliament of the Second Reading of the Bill, WAPOL's CCIN Policy states (as relevant to the issue of police resourcing) that:

Purpose

The key purpose of CCINs are:

- to reduce administrative demands on police by providing an alternative to arrest or summons in dealing with minor criminal matters;
- reduce time taken by police in preparation for and appearance at court for minor criminal matters;
- to allow police to remain on frontline duties negating the requirement to process the offender at a police station, unless conducting further inquiries, in accordance with the *Criminal Investigation Act 2006 (CIA)* or to confirm identification ...⁵⁴

Through the cost-benefit analysis, the Office examined whether each of the objectives of the infringement notices provisions of *The Criminal Code*, ascribed to WAPOL, was met or is anticipated to be met. The findings of the cost-benefit analysis are discussed below.

4.5.2 The anticipated outcome of reducing administrative demands on police officers will be achieved

The cost-benefit analysis considered whether the infringement notices provisions of *The Criminal Code* reduced the administrative demands on police officers and, if so, the net benefit of this reduction (or if not, the net cost). To do so, the cost-benefit analysis modelled the arrests and summonses that were avoided by police officers using Criminal Code infringement notices, and the impact of this effect on police officer time (at the time of the incident).

The savings in police officer time were then quantified, to identify the dollar value of total benefit. The cost-benefit analysis also took into account the custodial procedures related to Criminal Code infringement notices (such as the recording of photographic or fingerprint identification or DNA data). The cost of these custodial procedures was subtracted from the total benefits to produce the net benefit.

The findings of this aspect of the cost-benefit analysis are summarised in Table 7 below.

⁵³ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 9 November 2010, pp. 8351b-8363a.

⁵⁴ Western Australia Police, Police Manual, *CR-01.00 Criminal Code Infringement Notice (CCIN)*.

Table 7: Modelling of savings in police officer time taking into account arrests, summonses and custodial procedures, at present value⁵⁵

Modelled benefit	2015-16 \$	2016-17 \$	2017-18 \$	2018-19 \$	2019-20 \$	Total
Savings from arrests and summonses avoided	478,602	770,213	803,091	837,372	873,117	3,762,394
Costs of custodial procedures associated with CCINs	(78,524)	(124,977)	(130,312)	(135,875)	(141,675)	(611,362)
Total benefit	400,078	645,236	672,779	701,497	731,442	3,151,032
Total benefit calculated at present value	400,078	645,236	628,765	612,715	597,075	2,883,869

Source: Deloitte Access Economics

It can be observed from the table that:

- the savings for each year are substantially greater than the associated costs; and
- the total benefit at present value was \$2,883,869.

The underlying calculations for the benefit accrued to WAPOL from avoiding arrest and summonses are shown in Table 8 below.

⁵⁵ Present value means a discount rate of seven per cent per annum was applied.

Table 8: Calculation of benefit accrued from savings in police officer time from avoided arrests and summonses, by prescribed offence and monitoring year, at present value

Modelled outcomes for prescribed offences	2015-16	2016-17	2017-18	2018-19	2019-20	Total
<i>Prescribed offence of stealing</i>						
Total time saved per arrest avoided (hours)	9.63	9.63	9.63	9.63	9.63	
Police officer salary costs (\$ per hour ⁵⁶)	49.71	49.71	49.71	49.71	49.71	
Count of arrests avoided	0	0	0	0	0	0
Benefit of arrests avoided (\$)	0	0	0	0	0	0
Total time saved per summons avoided (hours)	9.43	9.43	9.43	9.43	9.43	
Count of summons avoided	0	0	0	0	0	
Benefit of summons avoided (\$)	0	0	0	0	0	
<i>Prescribed offence of disorderly behaviour</i>						
Total time saved per arrest avoided (hours)	5.47	5.47	5.47	5.47	5.47	
Count of arrests avoided	533	858	895	933	973	
Benefit of arrests avoided ⁵⁷ (\$)	144,815	233,050	242,998	253,371	264,186	1,138,420
Total time saved per summons avoided (hours)	5.30	5.30	5.30	5.30	5.30	
Count of summons avoided	1,268	2,040	2,127	2,218	2,312	
Benefit of summons avoided (\$)	333,787	537,163	560,093	584,001	608,930	2,623,974
Total benefit	478,602	770,213	803,091	837,372	873,117	3,762,394
Total benefit calculated at present value	478,602	770,213	750,552	731,393	712,723	3,443,483

Source: Deloitte Access Economics

It can be observed from this table that:

- all savings accrue from the prescribed offence of disorderly behaviour (due to the assessment of where ‘substitution’ occurs, as shown in Table 8 above); and

⁵⁷ Due to rounding of police officer salary costs in the tables, the calculated benefits may not equal multiplication of components within this and subsequent tables.

- the benefit accrued from summonses avoided is proportionally greater than the benefit accrued from arrests avoided (due to the greater underlying number of summonses that normally occur).

In conclusion, the cost-benefit analysis found that the infringement notices provisions of *The Criminal Code* give rise to a total benefit over the five year period of \$2,883,869 which is equivalent to a net annual average benefit of \$576,774. Overall, it can be concluded that the anticipated outcome of reducing administrative demands on police will be achieved.

4.5.3 The anticipated outcome of reducing time taken by police to prepare for and appear in court will be achieved

The cost-benefit analysis considered whether the infringement notices provisions of *The Criminal Code* reduced the time taken by police to prepare for and appear in court, and, if so, the net benefit of this reduction (or if not, the net cost). To do so, the cost-benefit analysis modelled the total reduction in cases which would appear before the court and the average police time per case, and then multiplied this by the average police officer salary per hour. The cost-benefit analysis also took into account the cost attributable to Criminal Code infringement notices that were taken to court, which was to be subtracted from the total benefits to obtain the net benefit.

The findings of this aspect of the cost-benefit analysis are summarised in Table 9 below.

Table 9: Modelling of savings in police officer time from avoided court attendance, at present value⁵⁸

Modelled benefits	2015-16 \$	2016-17 \$	2017-18 \$	2018-19 \$	2019-20 \$	Total \$
Saving from court attendance avoided	696,184	1,120,366	1,168,191	1,218,058	1,270,053	5,472,853
Cost for CCINs involving custodial procedures	(27,164)	(42,900)	(44,731)	(46,641)	(48,632)	(210,067)
Total benefit	669,020	1,077,466	1,123,460	1,171,417	1,221,421	5,262,786
Total benefit calculated at present value	669,020	1,077,466	1,049,963	1,023,161	997,043	4,816,653

Source: Deloitte Access Economics

It can be seen from the above table that:

- the savings from court attendance avoided are substantially greater than the associated costs for each year; and
- the total benefit, at present value, is \$4,816,653.

The underlying calculations for the benefit accrued to WAPOL are summarised in Table 10 below.

⁵⁸ Present value means a discount rate of seven per cent per annum was applied.

Table 10: Calculation of benefits⁵⁹ accruing from savings in police officer time from avoided court attendance; for the prescribed offence of disorderly behaviour,⁶⁰ by monitoring year, in 2016 dollar value

Modelled outcome	2015-16 \$	2016-17 \$	2017-18 \$	2018-19 \$	2019-20 \$	Total \$
<i>Prescribed offence of disorderly behaviour – non-trial cases avoided</i>						
Cases with non-trial hearings avoided (number)	1,760	2,852	2,953	3,079	3,211	
Police officer salary costs (\$ per hour)	49.71	49.71	49.71	49.71	49.71	
Time per case with non-trial hearing (hours)	6.92	6.92	6.92	6.92	6.92	
Benefit of cases avoided with non-trial hearings (\$)	605,107	973,797	1,015,366	1,058,708	1,103,901	4,756,880
<i>Prescribed offence of disorderly behaviour – trial cases avoided</i>						
Cases with trial hearings avoided (number)	74	119	124	130	135	
Time per case with trial hearing (hours)	17.17	17.17	17.17	17.17	17.17	
Benefit of cases with trial hearings avoided (\$)	91,077	146,569	152,826	159,349	166,152	715,973
Total benefit	696,184	1,120,366	1,168,191	1,218,058	1,270,053	5,472,853
Total benefit calculated at present value	696,184	1,120,366	1,091,768	1,063,899	1,036,742	5,008,959

Source: Deloitte Access Economics

It can be observed from the above table that 87 per cent of the benefit (\$4,756,880 of \$5,472,853) accrues from the avoidance of non-trial hearings.

In conclusion, the cost-benefit analysis found that the infringement notices provisions of *The Criminal Code* give rise to a net benefit over the five year period of \$4,816,653, which is equivalent to a net annual average benefit of \$963,331.

Overall, it can be concluded that the anticipated outcome of reducing time taken by police to prepare for and appear in court will be achieved.

⁵⁹ In this table, cases with trial and non-trial hearings are not treated as mutually exclusive for calculations of benefit.

⁶⁰ There were no savings accruing to the prescribed offence of stealing.

4.6 Findings relating to the impact on the court system

4.6.1 Objectives of the infringement notices provisions of *The Criminal Code* relating to the courts

As identified at section 4.1, in the Second Reading of the Bill, the (then) Minister for Police, the Hon. Robert Frank Johnson MLA, identified a number of benefits for the courts from the infringement notices provisions of *The Criminal Code*:

The proposed scheme is considered advantageous as it is a means of diverting low-level offenders from the court system when the likely outcome would be a fine. The prosecution and the court system are saved the cost of having to deal with these more minor offences and this scheme will also assist with court time and trial backlogs as well as saving police time and resources.

The operation of the [Criminal Code infringement notices provisions] will be subject to ongoing monitoring and will be evaluated after the first 12 months to ensure that the proposed scheme has met its aims. The evaluation will examine, amongst other things, the impact of the use of infringement notices on resource implications, case length and case flow, the impact of the trial on vulnerable defendants, and the effect, if any, on sentencing outcomes of trial offence matters that are determined by the court.⁶¹

In summary, the identified benefits for the courts were:

- reducing court time;⁶² and
- reducing trial backlogs.⁶³

In addition, the evaluation was to examine:

- case length and case flow;⁶⁴ and
- the effect, if any, on sentencing outcomes of trial offence matters that are determined by the court.⁶⁵

⁶¹ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁶² The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁶³ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁶⁴ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

⁶⁵ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

4.6.2 There has been a reduction in court time as a result of the introduction of the infringement notices provisions, representing a benefit of over \$5 million dollars

The cost-benefit analysis considered whether the infringement notices provisions of *The Criminal Code* reduced the number of cases going to court and, if so, the net benefit of this reduction (or if not, the net cost) as representing court time saved. This was achieved by estimating the number of cases avoided due to the introduction of Criminal Code infringement notices and applying an average cost per case to estimate a total benefit. This estimation was based on historical growth trends for the prescribed offences and comparison between the baseline and monitoring periods. As there was no way to measure accurately the average time spent in court for each of the prescribed offences, the benefit of reducing court time was based on the 'cost per case' measured in a key performance indicator used by DOTAG (discussed below). The benefit was then the number of cases avoided, multiplied by the estimate of the cost saving per case.

The Office notes that the number of court appearances that may have been avoided due to the introduction of the infringement notices provisions of *The Criminal Code* may only have a limited impact on the Magistrates Court overall. For example, the 1,760 court appearances avoided during the monitoring period (as identified in Table 12 below) would have accounted for only 1.7 per cent of the 100,560 criminal cases lodged in the Magistrates Court during the 2014-15 financial year.⁶⁶

The savings benefit was based on calculations of the average cost of a case at the Magistrates Court. DOTAG reported this by way of a key performance indicator in its *Department of the Attorney General 2014-15 Annual Report*, 'Magistrates Court – Criminal – Cost per Case'. This was then adjusted by the proportion of employee benefit costs.⁶⁷ This resulted in a conservative estimate of cost, based only on variable costs rather than all costs, (in order to be consistent with the methodology for equivalent WAPOL estimates) which could then be applied to the estimated number of cases which avoided going to court.

The cost-benefit analysis also took into account the costs associated with those Criminal Code infringement notices that were prosecuted in court, which was subtracted from the total benefits to obtain the net benefit.

The findings of this aspect of the cost-benefit analysis are summarised in Table 11 below.

⁶⁶ Department of the Attorney General, *Report on Criminal Cases in the Magistrates Court of Western Australia*, Department of the Attorney General, 2015, Perth, p. 1.

⁶⁷ Stated in the total operating expenses in the Department of the Attorney General, *Annual Report 2014-2015*, Department of the Attorney General, 2015, Perth, p. 124.

**Table 11: Calculation of savings related to court hearings avoided,
at present value⁶⁸**

Modelled benefits	2015-16 \$	2016-17 \$	2017-18 \$	2018-19 \$	2019-20 \$	Total \$
Saving from court cases avoided	761,788	1,225,943	1,278,274	1,332,840	1,389,735	5,988,579
Cost of CCINs which were prosecuted in court	(20,131)	(31,792)	(33,149)	(34,564)	(36,040)	(155,675)
Total benefit	741,657	1,194,151	1,245,125	1,298,276	1,353,695	5,832,904
Total benefit calculated at present value	741,657	1,194,151	1,163,668	1,133,965	1,105,018	5,338,459

Source: Deloitte Access Economics

It can be observed from the above table that:

- the savings from court cases avoided are substantially greater than the associated costs for each year; and
- the total benefit at present value is \$5,338,459.

The underlying calculations for the benefit accruing from court cases avoided are summarised in Table 12 below.

⁶⁸ Present value means a discount rate of seven per cent per annum was applied.

**Table 12: Calculation of benefit accrued due to court hearings avoided,
at 2016 dollar value**

Modelled benefits	2015-16 \$	2016-17 \$	2017-18 \$	2018-19 \$	2019-20 \$	Total \$
Stealing – cases avoided	0	0	0	0	0	
Cost per case	432.81	432.81	432.81	432.81	432.81	
Stealing – benefit of cases avoided	0	0	0	0	0	0
Disorderly behaviour– cases avoided	1,760	2,832	2,953	3,079	3,211	
Cost per case	432.81	432.81	432.81	432.81	432.81	
Disorderly behaviour – benefit of cases avoided	761,788	1,225,943	1,278,274	1,332,840	1,389,735	5,988,579
Total benefit	761,788	1,225,943	1,278,274	1,332,840	1,389,735	5,988,579
Total benefits calculated at present value	761,788	1,225,943	1,194,649	1,164,154	1,134,438	5,480,972

Source: Deloitte Access Economics

It can be observed from the above table that:

- all savings accrue from the prescribed offence of disorderly behaviour;
- the total benefit from cases avoided over the five years, at present value, was \$5,480,972.

In conclusion, the cost-benefit analysis found that the infringement notices provisions of *The Criminal Code* give rise to a net benefit for this component of \$5,338,459, which is equivalent to a net annual average benefit of \$1,067,692. Overall, it can be concluded that the anticipated outcome of reducing court time will be achieved.

4.6.3 Trial backlogs have been reduced for the prescribed offences

The cost-benefit analysis considered whether the infringement notices provisions of *The Criminal Code* reduced trial backlogs. The cost-benefit analysis model found that, as a result of the infringement notices provisions of *The Criminal Code*, for the prescribed offence of disorderly behaviour, there would be 582 cases that would otherwise have gone to a trial hearing during the five year period (this result is summarised in Table 10).

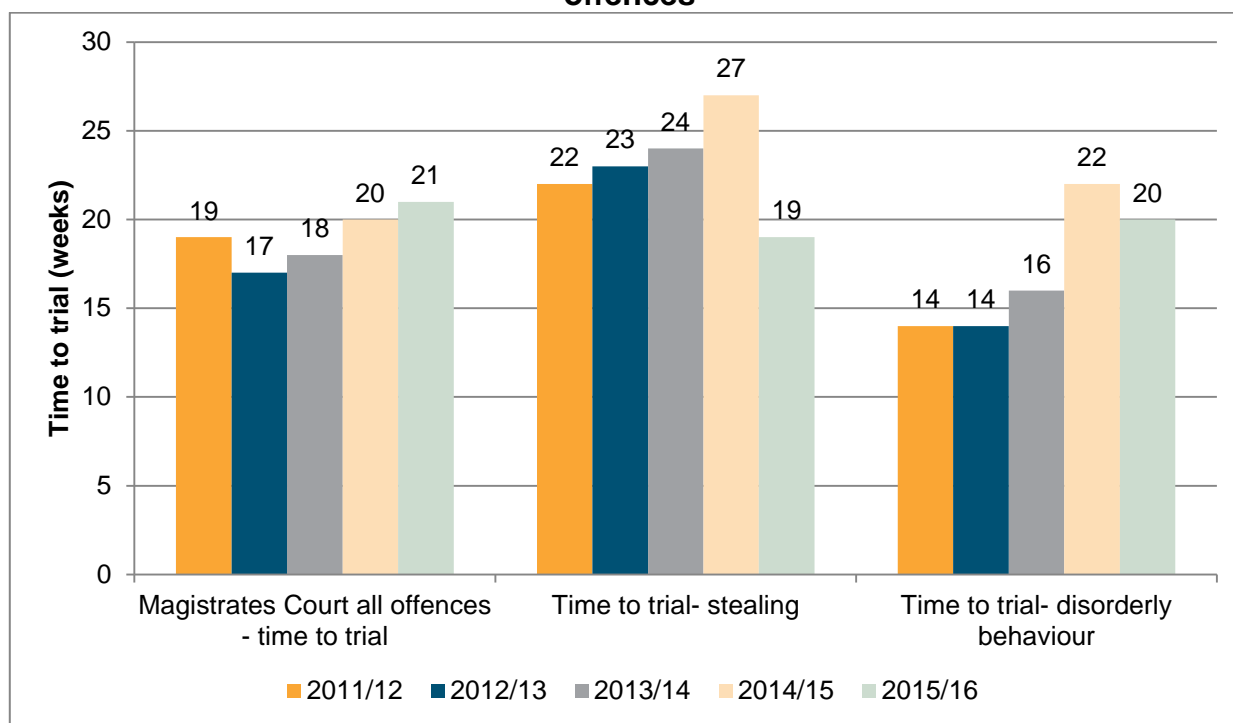
To understand how this finding could affect trial backlogs, the Office examined whether there were any changes in ‘time to trial’ since the introduction of the infringement notices provisions of *The Criminal Code*. The *Department of the Attorney General 2014-15 Annual Report* defines time to trial as:

... a measure of the median time taken from a specified initial date (e.g. lodgement) to the first trial date. The proportion of matters needing a trial, and the time required for the court and associated services to satisfy complex pre-trial issues, increases with the seriousness and complexity of the matter.⁶⁹

Time to trial is a Key Performance Indicator for all court jurisdictions, and is reported in DOTAG's annual reports. For trial backlogs to be reduced, the Office would expect that the time to trial would need to decrease.

In addition to considering the key performance indicator of time to trial for the Magistrates Court across the last five years, the Office also analysed the court data to determine median time to trial for the prescribed offences of stealing and disorderly behaviour (Figure 18).

Figure 18: Time to trial by year;⁷⁰ the Magistrates Court and the two prescribed offences



Source: Ombudsman Western Australia

It can be observed from the above figure that:

- time to trial has increased overall in the Magistrates Court over the last five years; and
- time to trial has decreased for both of the prescribed offences comparing the monitoring period with prior years.

⁶⁹ Department of the Attorney General, *Department of the Attorney General 2014-15 Annual Report*, Department of the Attorney General, 2015, Perth, p. 119.

⁷⁰ The Magistrates Court data is based on financial years, and taken from the Department's Annual Report 2015-16. The prescribed offences are based on monitoring year. Each monitoring year corresponds to a monitoring period of 5 March of one year to 4 March of the following year (for example 2011-12 is 5 March 2011 to 4 March 2012).

The Office also found that the number of matters requiring a trial hearing for the two prescribed offences has trended downwards for the last five years, with a significant decline in the monitoring period (Table 13).

Table 13: Number of alleged offenders that had a trial hearing, by monitoring year and prescribed offence

Monitoring year ⁷¹	Number of alleged offenders that had a trial hearing - stealing	Number of alleged offenders that had a trial hearing-disorderly behaviour
2011-12	1,078	387
2012-13	722	393
2013-14	813	328
2014-15	648	286
2015-16	226	103

Source: Ombudsman Western Australia

The Office's findings support that the infringement notices provisions of *The Criminal Code* may assist in reducing trial backlog for the prescribed offences.

4.6.4 Case length and case flow have not been effected by the introduction of the infringement notices provisions, subject to two qualifications

Case length and case flow are measures of how a case (or matter) progresses through the court system and how long it takes to achieve a final outcome. In this way, they are measures of the efficiency and effectiveness of the court system. DOTAG recognises that:

To be accessible, the court system must be available to resolve disputes in a timely manner. Accessibility is diminished if there are lengthy delays in bringing matters to trial or finalising matters brought before the courts. The time taken to achieve an outcome in the courts is considered a primary indicator of the accessibility of the court system and therefore the extent to which the agency level outcome is achieved. The timely resolution of matters brought before the courts is also a measure of the efficiency of the courts system.⁷²

⁷¹ Each monitoring year corresponds to a monitoring period of 5 March of one year to 4 March of the following year (for example 2011-12 is 5 March 2011 to 4 March 2012).

⁷² Department of the Attorney General, *Department of the Attorney General 2014-15 Annual Report*, Department of the Attorney General, 2015, Perth, p. 119.

DOTAG's key effectiveness indicators accordingly include:

... measures of time to trial, time to finalise matters and time to finalise non-trial matters. The measure used is dependent on the type of matter and the jurisdiction ...⁷³

The measure of time to trial, discussed at section 4.6.3, is also an indicator of case flow. To further assess the impact of the infringement notices provisions of *The Criminal Code* on both case length and case flow, the Office analysed trends in the time taken to finalise cases for the prescribed offences. The Office analysed the time elapsed between offence date and final hearing date. This can be considered a measure of the time efficiency and effectiveness with which a case is dealt. The Office also analysed the time elapsed between lodgement date of the case with the court and final hearing date. This is a more accurate measure of the length of time a case takes to be finalised by the court system.

As a case may involve more than one of the prescribed offences, the information was categorised in the following terms:

- overall cases (cases where there was at least one of the prescribed offences of either disorderly behaviour or stealing);
- cases for the prescribed offence of disorderly behaviour (cases where there was at least one prescribed offence of disorderly behaviour); and
- cases for the prescribed offence of stealing (cases where there was at least one prescribed offence of stealing).

Median time in weeks was used as the measure of the 'average' time taken for a case. Median was chosen as it is a less susceptible measure than the mean to the effect of extreme values.

The Office's analysis is summarised in Table 14 below. Each monitoring year represented in the table corresponds to a monitoring period of 5 March of one year to 4 March of the following year (for example 2011-12 is 5 March 2011 to 4 March 2012).

⁷³ Department of the Attorney General, *Department of the Attorney General 2014-15 Annual Report*, Department of the Attorney General, 2015, Perth, p. 119.

**Table 14: Median time to finalisation in weeks, by
monitoring year for the prescribed offences**

Monitoring year	Cases overall (which included alleged offences of either disorderly behaviour or stealing)	Cases which included alleged offences of disorderly behaviour	Cases which included alleged offences of stealing
2011-12	7	5	13
2012-13	7	6	14
2013-14	8	5	15
2014-15	8	5	15
2015-16	10	6	15

Source: Ombudsman Western Australia

From this table, it can be observed that the trend for time to finalisation was relatively stable for the prescribed offence of disorderly behaviour in the period between 2011-12 and 2014-15. In 2015-16 there was a small increase in time to finalisation for that prescribed offence in comparison with the previous year. For the prescribed offence of stealing there was an increase in time to finalisation between 2011-12 and 2013-14, but no change between 2013-14 and 2015-16.

The Office found that a different trend occurs if case length is measured as the time between lodgement and final hearing. Under that definition, observed case length for cases involving the prescribed offence of disorderly behaviour remained stable at zero median weeks (in other words the lodgement and final hearing date occurred within seven days of each other), and median case length for cases involving the prescribed offence of stealing increased from three to five weeks in the monitoring period.

In conclusion, the Office found no evidence that the introduction of Criminal Code infringement notices impacted case flow or led to a decrease in case length for the two prescribed offences, subject to two critical qualifications. First, as identified at section 4.6.2, the 1,760 court appearances avoided during the monitoring period would have accounted for only 1.7 per cent of the 100,560 criminal cases lodged in the Magistrates Court during the 2014-15 financial year.⁷⁴ Second, it is important to note that, for the two prescribed offences, the introduction of the infringement notices provisions of *The Criminal Code* was intended to divert a particular cohort of alleged offenders away from court. As per WAPOL's CCIN Policy, the Criminal Code infringement notices may be used to divert alleged offenders with limited prior criminal histories, where it is established that an offence has been committed, and where prima facie evidence exists. Had these matters gone to court it is likely that they would be finalised more quickly than other more complex matters. The removal of these matters from the assessment of case flow or case length

⁷⁴ Department of the Attorney General, *Report on Criminal Cases in the Magistrates Court of Western Australia*, Department of the Attorney General, 2015, Perth, p. 1.

may result in an overall increase in the median time to finalisation, although this would need further monitoring to confirm these preliminary results.

4.6.5 There are changes in the patterns of sentencing outcomes for cases related to the prescribed offences

To measure the effect of the introduction of Criminal Code infringement notices on sentencing outcomes of offence matters determined by the court, the Office examined trends in finalised matters, where a sentence had been imposed, for the five monitoring years from 2011-12 to 2015-16. Each monitoring year represented in Table 15 corresponds to the monitoring period of 5 March of one year to 4 March of the following year (for example 2011-12 is 5 March 2011 to 4 March 2012).

Finalised matters where a sentence was imposed were categorised for this analysis as those which included the following outcomes:

- all orders;
- imprisonment;
- detention;
- suspended imprisonment;
- all fines;
- spent convictions;
- dismissal; and
- no punishment.

The number and percentage of fines as an outcome⁷⁵ were examined by monitoring year, as shown in Table 15 below. The imposition of fines was selected as a measure for analysis because, as a financial penalty, it was expected to be the outcome most sensitive to the introduction of Criminal Code infringement notices (which also impose a financial penalty). It was expected to be a leading indicator for any prospective change in sentencing outcomes.

Only finalised matters with a sentence imposed were included in the analysis.

⁷⁵ It is important to note that an offender can have more than one charge, and a charge can have more than one outcome (for example, a sentence can include a fine and a community based order).

Table 15: Percentage of finalised outcomes for which the outcome was a fine; where a sentence was imposed for the prescribed offences, by monitoring year

Monitoring year	Total outcomes	Percentage of finalised outcomes which were a fine
2011-12	14,853	84.4%
2012-13	15,868	85.8%
2013-14	15,785	81.5%
2014-15	16,291	73.4%
2015-16	14,454	75.7%

Source: Ombudsman Western Australia

It can be seen from the table that:

- generally, the percentage of fines as an outcome decreased from 2011-12 to 2015-16: from an initial 84 per cent to a final 76 per cent; and
- the change for the monitoring period compared to the baseline was, however, an increase of 2.3 per cent.

The trend observed over the five years is statistically significant⁷⁶ and can be interpreted as meaning that there was a medium-term reduction in the proportion of outcomes which included fines. However this effect was not continued between the baseline and monitoring periods. To examine this trend in more detail, the Office continued the analysis by:

- grouping the outcomes into individual cases (to avoid any possible bias which might occur where some individuals had multiple outcomes at a hearing); and
- excluding charges with outcomes of dismissed or no punishment or no sentence (this was done so the analysis could focus on sentencing outcomes for cases where individuals had experienced a penalty).

The results of the Office's additional analysis are shown below in Table 16.

⁷⁶ The reduction over the five year period was statistically significant at the 0.01 level (SPSS version 23.0, Somers' d significance test, T= -29.832, value= -0.060, asymptotic standardised error=0.002).

Table 16: Percentage of cases for which there was at least one outcome of a fine, cases involving finalised outcomes where a sentence was imposed for the prescribed offences, by monitoring year

Monitoring year	Total cases	Percentage of cases where a fine was an outcome
2011-12	11,536	90.1%
2012-13	12,107	90.2%
2013-14	11,259	88.1%
2014-15	10,289	87.6%
2015-16	9,463	84.9%

Source: Ombudsman Western Australia

From the table it was found that:

- over the five years the percentage of cases which included an outcome of a fine decreased from 90 per cent to 85 per cent;⁷⁷ and
- the change in the monitoring period compared to the baseline was a decrease of 2.7 per cent in cases with an outcome of a fine.

It appears the reduction in the proportion of fines is a small but significant continuing trend, which has continued in the 2015-16 monitoring period, noting that:

- some of the finalised matters in this period would have been the result of charges which occurred before the 2015-16 monitoring period; and
- there was a pre-existing trend for reduction in proportion of fines.

The Office also examined whether the trends discussed above differed between the two prescribed offences. However the results were inconclusive in terms of assessing the impact of the introduction of Criminal Code infringement notices:

- for the prescribed offence of disorderly behaviour there was a 2.9 per cent decrease in case outcomes with a fine over the five year period,⁷⁸ which largely was attributable to a decrease of 2.3 per cent between the baseline year of 2014-15 and the 2015-16 monitoring year; and
- for the prescribed offence of stealing there was a 5.2 per cent decrease in case outcomes with a fine over the five year period,⁷⁹ which was attributable in part to a change of 0.7 per cent between 2014-15 and 2015-16.

⁷⁷ The reduction over the period was statistically significant at the 0.01 level (SPSS version 23.0, Somers' d significance test, T=-12.641, value= -0.025, asymptotic standardised error=0.002).

⁷⁸ The reduction over the five year period was statistically significant at the 0.01 level (SPSS 23.0 Somers' d significance test, T= -6.059, value= - 0.012, asymptotic standardised error=0.002).

⁷⁹ Despite the increase in the final year, the reduction over the five year period was statistically significant at the 0.01 level (SPSS 23.0, Somers' d significance test, T= -6.909, value= -0.026, asymptotic standardised error= 0.004).

There is some evidence for a decrease in the percentage of fines as a sentencing outcome for disorderly offences, which is consistent with the introduction of Criminal Code infringement notices. For the prescribed offence of stealing, the evidence is inconclusive in terms of assessing the impact of the introduction of the infringement notices provisions of *The Criminal Code*.

Overall, the current results represent a trend towards a change in sentencing outcomes where there is reduced use of financial penalties by the court for the two prescribed offences.

4.7 Findings relating to the use of Criminal Code infringement notices to provide an incentive for behaviour change

4.7.1 Objectives of the infringement notices provisions of *The Criminal Code* relating to behaviour change

In the Second Reading Speech, the (then) Minister for Police Hon. Robert Frank Johnson MLA described the key objectives of the *Criminal Code Amendment (Infringement Notices) Act 2011* in relation to the community as follows:

The key objectives of any such scheme are to ... provide a diversionary option for the community as a means of avoiding court appearances for minor offences, **yet still providing an incentive for behaviour change** ...⁸⁰
[Emphasis added]

4.7.2 Findings regarding behaviour change

As identified at section 3.4.6, the Office found that the 2,978 Criminal Code infringement notices issued during the monitoring period were issued to 2,817 individual alleged offenders. Of the 2,817 individual alleged offenders, 2,686 (95 per cent) were issued one Criminal Code infringement notice during the monitoring period.

The Office's analysis also identified that 131 alleged offenders were issued more than one Criminal Code infringement notice during the monitoring period. Collectively, these 131 alleged offenders received 292 Criminal Code infringement notices. The Office found that, of these 292 Criminal Code infringement notices:

- 155 (53 per cent) were issued for the prescribed offence of disorderly behaviour; and
- 137 (47 per cent) were issued for the prescribed offence of stealing.

The Office's findings suggest that, for these 131 alleged offenders, a Criminal Code infringement notice did not prevent future alleged incidents of the two prescribed offences. It is important to note that, in relation to periods for studies of recidivism, the Australian Institute of Criminology expresses the view that:

⁸⁰ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

Time is inherent in all recidivism models, as recidivist offending must be observed as a sequence of events separated by units of time. Recidivism studies often differ in the length of time over which events are observed. This has obvious implications for the interpretation of recidivism estimates. The longer an individual is followed, the more likely it is that any recidivist events will be indicated.⁸¹

At this stage it cannot be determined whether the introduction of Criminal Code infringement notices will achieve the objective of providing an incentive for behaviour change.

⁸¹ Payne, J, *Recidivism in Australia: findings and future research*, Australian Institute of Criminology, ACT, 2007, p. 50.

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5 Extension of Criminal Code infringement notices to other offences

The Office's findings set out in detail in Chapter 4 demonstrate that the key economic objectives of the infringement notices provisions of *The Criminal Code* have been achieved. Overall, the cost-benefit analysis found that the total estimated gross benefit from the introduction of the infringement notices provisions of *The Criminal Code* equates to \$13.04 million⁸² over five years. The Office also made the following findings in relation to the economic effect of the infringement notices provisions of *The Criminal Code*:

- the anticipated outcome of reducing administrative demands on police officers will be achieved;
- the anticipated outcome of reducing time taken by police to prepare for and appear in court will be achieved;
- there has been a reduction in court time as a result of the introduction of the infringement notices provisions;
- trial backlogs have been reduced for the prescribed offences; and
- there are changes in the patterns of sentencing outcomes for cases related to the prescribed offences.

The Office also identified that the 1,800 Criminal Code infringement notices issued for the prescribed offence of disorderly behaviour were issued in instances where an alleged offender would otherwise have been arrested or summonsed. That is, these 1,800 alleged offenders avoided a court appearance. In addition, at the Police Officer Forums, participants expressed the view that there are benefits of Criminal Code infringement notices to alleged victims of stealing offences. Police officers reported that for the prescribed offence of stealing, the victims of the alleged offence (particularly retail store owners) were, in accordance with WAPOL's CCIN Policy, able to retain their property.

More generally, the Office notes that, in other jurisdictions, infringement notice schemes have expanded in scope and there are a range of criminal offences that may be dealt with by way of an infringement notice. For example, in the Australian Capital Territory, the *Magistrates Court (Crimes Infringement Notices) Regulation 2008* and the *Magistrates Court (Liquor Infringement Notices) Regulation 2010* prescribe a range of offences as offences that can be dealt with through a 'Criminal Infringement Notice', including: Deface Private Premises; Deface Public Premises; Urinating In A Public Place; Fail To Cease Noise From Premises; Fail to Keep Incident Register; Fail To Leave Premises When Directed; Supply Liquor to Intoxicated Person; Supply Liquor to Intoxicated Person–Employee; Fail to Keep Licence or Permit at Premises; Abuse Threaten Intimidate Staff; Consume Liquor at Certain Public Places; and Consume Liquor In Public Place.⁸³

Also in New South Wales, the range of offences for which a penalty notice may be issued has increased significantly over time:

⁸² In present value terms, or \$14.25 million in unadjusted terms.

⁸³ *Magistrates Court (Crimes Infringement Notices) Regulation 2008(ACT)*, sections 9 and 10, Schedule 1; *Magistrates Court (Liquor Infringement Notices) Regulation 2010 (ACT)*, sections 7 and 8, Schedule 1.

In 1996, Parliament adopted the *Fines Act*. At its inception, the Act contained 43 statutory provisions authorising the use of penalty notices. Since then, the list has grown to 110 statutory provisions, creating more than 7,000 offences that may be enforced by way of penalty notice.⁸⁴

In relation to the expansion of penalty notices, the New South Wales Law Reform Commission has observed that:

Penalty notices were introduced, and have expanded in scope, because of their significant advantages, especially their cost benefits. They save time and money for the agencies that issue them, for courts that avoid lengthy lists of minor offences, and for recipients who do not have to take time off work to attend court or pay court or legal costs. The penalty is immediate and certain and is usually significantly lower than the maximum penalty available for the offence, were it to be dealt with by a court. Penalty notice recipients also avoid having a conviction recorded.⁸⁵

At this stage, in Western Australia, Criminal Code infringement notices can only be issued for the two prescribed offences of stealing and disorderly behaviour. Given the identified cost-savings, and benefits to victims of crime and alleged offenders, an expansion of the range of prescribed offences for which police officers may issue a Criminal Code infringement notice is expected to result in increased cost savings and the accrual of further benefits.

The Office notes, importantly, that the consideration of expanding the range of prescribed offences should include consideration of the Office's findings in Volume 3 of this report, namely the impact of the infringement notices provisions of *The Criminal Code* on Aboriginal and Torres Strait Islander and other vulnerable communities and measures recommended by this report to address those findings where relevant.

Recommendation 11

That Schedule 1 of the *Criminal Code (Infringement Notices) Regulations 2015* be amended to enable the use of Criminal Code infringement notices for a range of other appropriate offences subject to consideration of the findings and recommendations in this report regarding the impact on Aboriginal and Torres Strait Islanders and vulnerable communities.

⁸⁴ New South Wales Law Reform Commission, *Report 132: Penalty Notices*, New South Wales Law Reform Commission, Sydney, 2012, pp. xv - xvi.

⁸⁵ New South Wales Law Reform Commission, *Report 132: Penalty Notices*, New South Wales Law Reform Commission, Sydney, 2012, pp. xv - xvi.

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