# DEFENDANTS' PERCEPTIONS OF THE INVESTIGATION AND ARREST PROCESS

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RESEARCH AND COORDINATION DIVISION

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Anne Edwards of the Criminal Justice Commission's Research and Coordination Division managed the project and, with the assistance of Louise Gell, was primarily responsible for writing the final report. Tracey Stenzel prepared the document for publication.

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# ABBREVIATIONS

| | |
|---|---|
| ABS | Australian Bureau of Statistics |
| CJC | Criminal Justice Commission |
| GSO | Government Statistician's Office |
| OPM | Operational Procedures Manual (Queensland Police Service) |
| QCSC | Queensland Corrective Services Commission |
| QPS | Queensland Police Service |

# EXECUTIVE SUMMARY

## CHAPTER 1: INTRODUCTION

This research report presents the findings of a survey of 489 defendants appearing in Queensland Magistrates Courts. The survey was designed to collect information about police arrest, questioning and searching practices from the perspective of people who had been subject to the exercise of these powers. The primary objectives of the study were to:

- identify any problems with current police powers and the manner in which they are exercised, to help inform the development of proposed new police powers legislation
- establish baseline measures to assist in monitoring the implementation and impact of this new legislation, when it is proclaimed.

It should be emphasised that information provided by interviewees was not cross-checked against other sources, and was not necessarily accurate in all instances. The survey therefore primarily provides a measure of respondents' **perceptions** of police practice, rather than of **actual** police behaviour. However, we have assumed that where perceptions were widely held, they were likely to be indicative of actual police practice.

## CHAPTER 2: METHODOLOGY AND SAMPLE CHARACTERISTICS

The survey questionnaire was administered in face-to-face interviews with people appearing before Brisbane, Southport, Beenleigh, Ipswich, Maroochydore, Rockhampton and Cairns Magistrates Courts. The survey included juvenile defendants but excluded defendants held in custody. Interviewers achieved a response rate of 75 per cent.

The survey sample had the following characteristics:

- 84 per cent were male
- 78 per cent were aged under 30
- 5 per cent were juveniles
- 13 per cent were Aboriginals or Torres Strait Islanders
- the majority were charged with property or drug offences
- around two-thirds had previously been in trouble with police.

## CHAPTER 3: ARREST AND QUESTIONING

The main findings of the survey in relation to arrest and questioning were that:

- Many respondents to the survey were confused about when, if at all, they had been arrested. For example, 13 per cent of the sample said that they had not been arrested, even though they had been taken to a police station and fingerprinted.

- Regardless of whether respondents believed that they were formally under arrest, many felt compelled to comply with police directions. For example, of the 388 respondents (79% of the total sample) who said that they went to the police station in a police car, 76 per cent said that they attended because they 'thought they had to'.

- There was some evidence that police had relied on their arrest power in circumstances where a summons would have been more appropriate.

- About three-quarters of the respondents who were formally interviewed recalled being warned by police that they were not obliged to answer any questions. However, it appears that warnings were much less likely to be given prior to the commencement of informal questioning.

- All but 14 per cent of the respondents who said that they had participated in a formal interview stated that the interview had been electronically recorded by police. Informal interviews 'in the field' and at the police station were much less likely to have been recorded.

- Most respondents who were formally interviewed said that they answered all questions put to them, even though 80 per cent said that they were aware that they were entitled to remain silent.

- It would appear from the estimates provided by respondents' that the great bulk of interviews were completed within four hours.

## CHAPTER 4: THE INVOLVEMENT OF SOLICITORS AND OTHER INDEPENDENT PERSONS

Key findings in relation to the involvement of solicitors and other independent persons were as follows:

- Only 2 per cent of respondents said that a solicitor was present while they were at the police station.

- Only 14 per cent of the sample said that police had asked them if they wanted a solicitor. However, it should be noted that police are not currently required to inform suspects of their right to a solicitor.

- Of the 62 respondents who requested a solicitor, half said that their request had been ignored or refused by police.

- The most common reason cited by respondents for not requesting a solicitor was that they did not need one, or that they did not know they could have one.

- Forty-four per cent of respondents said that they understood 'not at all well' or 'not very well' what was going to happen to them following their contact with police.

- Of the 21 indigenous respondents who said they were formally interviewed by police, only 2 (10%) reported the presence of an independent third person. This was despite QPS policy stating that, in the case of indigenous suspects, the existence of a 'special need' should be assumed until the contrary is clearly established.

- There was apparently a high level of compliance with the requirement of the *Juvenile Justice Act 1992* for an independent third person to be present when a juvenile is formally interviewed.

## CHAPTER 5: SEARCHES

The main findings of the survey in relation to searches were:

- Slightly less than a quarter of respondents said that they had been subjected to a personal search before being taken to a police station. Seventeen respondents reported that they were strip searched, with four claiming that this had occurred on the side of the road.

- Around one-third of the sample reported being searched at a police station, with strip searches allegedly being conducted in more than a third of these cases. There was some unexplained regional variation in the frequency with which strip searches at police stations appeared to have been conducted.

- Twenty-seven per cent of the sample said that their residence had been searched by police and 13 per cent that their vehicles had been searched. Property searches were most frequently conducted in relation to drug offences.

- A considerable number of respondents claimed that the police did not tell them why their person or property was being searched. Several respondents claimed that they were not given the opportunity to read search warrants.

## CHAPTER 6: GENERAL SATISFACTION WITH THE PROCESS

- Forty per cent of the sample made positive comments about their interaction with police

- Almost half the sample were unhappy with one or more aspects of their treatment by police. The most common criticisms were that police: were impolite, rude or verbally abusive (10% of respondents); had assaulted the respondent (9%); or had failed to inform respondents of their rights.

- There were no statistically significant racial, gender or age differences in the proportion of respondents who expressed dissatisfaction with police.

- Only 29 per cent of the respondents who were critical of police treatment had told a third party, most often the police or a solicitor.

- The most often cited reason for not complaining was 'It would not do any good'.

## CHAPTER 7: CONCLUSION

Many of the issues identified by this report can only be satisfactorily addressed by substantial amendment to the existing legal framework which governs the arrest, detention and questioning of suspects. The legislative proposals made by the CJC in its previously published Review of Police Powers address many of the problems identified by the survey. These proposals were designed to ensure that:

- police are placed under a legal obligation to inform suspects of their rights, obligations and status

- police are given a strictly regulated power to detain suspects for questioning after arrest, thereby removing the incentive for police to perpetuate the fiction of 'voluntary attendance' and to avoid clearly informing suspects of their arrest status

- questioning of suspects is subject to proper regulation from the point of first contact

- police are provided with workable alternatives to arrest
- the 'right' to have a solicitor present at a police station is given substance
- improved accountability and monitoring mechanisms are put in place to govern the conduct of personal and property searches.

The survey results also indicate that:

- police procedures which are specifically governed by legislation (such as the interviewing of juveniles) appear to generate the highest levels of compliance
- the QPS needs to develop organisational strategies for enhancing police professionalism in dealing with suspects, particularly in relation to the use of force
- there is a need to better understand why many respondents who expressed dissatisfaction about some aspect of their treatment by police chose not to make an official complaint.

To facilitate on-going monitoring, this survey will be repeated at regular intervals. It is planned to conduct the next survey approximately one year after the new police powers legislation currently being developed has taken effect.

# CHAPTER 1
# INTRODUCTION

This research report presents the findings of a survey undertaken in May and June 1996 of nearly 500 defendants appearing on criminal charges in Queensland Magistrates Courts. Interviews for the survey were conducted by Criminal Justice Commission (CJC) research staff at Brisbane Central, Southport, Beenleigh, Ipswich, Maroochydore, Cairns and Rockhampton courts. The survey was designed primarily to collect information about police arrest, questioning and searching practices from the perspective of people who had been subject to the exercise of those powers. Respondents were also asked about their treatment by police and whether, and to whom, they had made any complaints about this treatment.

Our primary objectives in undertaking the survey were to:

- identify any problems with current police powers and the manner in which they are exercised, to help inform the development of proposed new police powers legislation
- establish baseline measures to assist in monitoring the implementation and impact of this new legislation.

It is intended that the survey will be repeated at two-yearly intervals to facilitate ongoing monitoring of police investigation and arrest practices. These surveys, in conjunction with complaints data routinely collected by the CJC, will also be used to identify any trends in defendant satisfaction with police behaviour.

This introductory chapter explains why the CJC initiated this project, briefly reviews related studies, sets out the advantages and limitations of the research methodology employed, and outlines the structure of the report.

## BACKGROUND TO THE RESEARCH

Under the *Criminal Justice Act 1989,* the CJC has a responsibility to:

- monitor and report 'on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally'—section 23(b)
- to research, generate and report on 'proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice'—section 23(e).

In addition, the CJC, through its Official Misconduct Division, deals with large numbers of complaints against police. Many of these complaints directly or indirectly raise issues about the appropriateness of various police powers and the manner in which they are exercised.

In discharge of its statutory responsibilities—and in response to Recommendation B II (4) of the 1989 *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Fitzgerald Report)—the CJC has undertaken a comprehensive review of police powers in Queensland. The results of this review were published in five volumes released during 1993 and 1994. Over eighty recommendations were made for changes to the law and practice of police powers. None of these recommendations has yet received a formal response from Government, but it is understood that comprehensive new police powers legislation is currently being jointly prepared by the Queensland Police Service (QPS) and the Department of Justice, for introduction into Parliament some time in 1997.

In conducting the police powers review, we relied primarily on submissions, and interviews with police and practitioners to determine current practices and identify possible problem areas. These sources generated much useful information, but impressionistic and anecdotal data need to be treated cautiously; especially given that those who provide this information are often 'players' in the police powers debate. An important aim in undertaking the survey, therefore, was to collect additional data about:

- the degree of understanding that defendants have of the investigation and arrest process, and of their rights and obligations in that process
- the extent to which police powers are being exercised consistently across different areas of the State and towards different groups within the community
- police compliance with existing legal and procedural requirements (although these findings need to be treated cautiously because of the possibility of faulty recall and understanding on the part of respondents).

A second reason for conducting the survey was to establish some baseline measures for monitoring the impact of any new police powers legislation which might be introduced by the Government, in accordance with the CJC's monitoring responsibilities under section 23(b) of the *Criminal Justice Act*. Other data sources to be utilised in the proposed evaluation will include surveys of police officers, QPS records, CJC complaints data, and consultations with legal practitioners. By repeating the defendants' survey some time after the new legislation has taken effect, and comparing these findings with other relevant data, we should be able to ascertain the extent, if any, to which these reforms have resulted in:

- an increase in defendants' understanding of their legal rights and obligations
- greater consistency in the way in which police powers are applied
- enhanced police compliance with legislative and procedural requirements
- a reduction in defendants' dissatisfaction with the investigation and arrest process.

The third rationale for conducting the survey derives from the CJC's role as a complaints investigation body, and from its general statutory responsibility to oversee the QPS. In order to assess the effectiveness of the CJC's investigative and pro-active strategies, it is important to be able to measure whether the standard of police conduct is improving or declining over time. This cannot be done solely by examining the volume of, or trends in, the number of 'official' complaints against police, because:

- people who are dissatisfied with some aspect of police behaviour do not always make a formal complaint against the officer(s) concerned
- the willingness of people to complain about perceived police misconduct may vary over time, depending on the public's knowledge of, and confidence in, the complaints process
- changes in police administrative practices, and in the way in which police discretion is exercised, can also have an impact on the number of complaints that are formally recorded.

A regular survey of defendants will provide an alternative 'window' into police practices and behaviour, to supplement the complaints data routinely generated by the CJC and the QPS. Obviously, respondents' claims to have been mistreated by police should not be accepted at face value. However, assuming that the likelihood of respondents misinterpreting or misrepresenting what happened to them does not vary significantly from year to year, periodic surveys will assist the CJC to ascertain whether there has been any *change* in the

underlying incidence of police misconduct. Such information, in conjunction with other data, will assist the formulation of appropriate investigative, preventive and research strategies to improve police conduct.[1]

## OTHER STUDIES

Section 57 of the *Criminal Justice Act* requires that the CJC avoid needlessly duplicating work undertaken by other agencies and research bodies within and outside Queensland.

The only research of a comparable nature undertaken in Queensland was a small-scale survey of 34 defendants appearing at three Magistrates Courts, undertaken as part of the background research for our review of police powers in Queensland. These interviews provided some useful background information, but the sample size was too small, and the sampling frame too limited, to enable generalisations to be made with any confidence. In addition, the survey focused on only a few aspects of the arrest process.

A research project undertaken in 1992 surveyed 383 young people about their experiences with and perceptions of police (Alder et al, 1992). While the survey yielded useful information about the issue of police and young people, the selection of young people who made up the survey sample was not random. In addition, the specific nature of the population surveyed means that the findings are limited in their relevance to an adult population.

In 1993, the Victorian Federation of Community Legal Centres surveyed clients who had complained of mistreatment by police during the course of their arrest and detention (Biondo & Palmer 1993). This survey generated some valuable information, but, because the focus was only on people who were dissatisfied with their treatment by police, the findings were not representative of the full range of experiences of people arrested by police. The survey also had a very low response rate: 2,500 survey forms were distributed to community legal centres and some other community agencies throughout Victoria, but there were only 189 responses in the final sample.

Several law reform bodies have conducted inquiries into various aspects of the arrest process.[2] In addition, in 1995 Blagg and Wilkie published a study of police powers in relation to juveniles, on behalf of the Australian Youth Foundation. However, most of these reports have been submission-based, with the experiences of defendants being included only by way of case studies, if at all. Inquiries have also been conducted, from time to time, into the arrest and detention of individuals who have died or who have suffered serious injury while in police custody but these reviews, by their nature, have focused on exceptional events rather than routine practices.[3]

There appears to have been only one overseas study that is even broadly comparable to the survey which we have conducted. The study in question involved the distribution of a mail-back questionnaire to 4,299

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1 The CJC has developed a similar surveying strategy for the general population: see CJC 1995.

2 See for example Australian Law Reform Commission 1975, *Criminal Investigation: Report No.2 An Interim Report*, AGPS, Canberra; Victorian Consultative Committee on Police Powers of Investigation (Coldrey, J) 1986, *Report on Section 460 of the Crimes Act 1958: Custody and Investigations*, Government Printer, Melbourne; New South Wales Law Reform Commission 1990, *Criminal Procedure: Police Powers of Detention and Investigation after Arrest*, Report LRC 66, Sydney; Cosgrove, H.E. 1990, *Police Powers of Interrogation and Detention*, Law Reform Commisioner of Tasmania, Hobart.

3 Several examples of such inquiries are reported in the following publications: Office of the Ombudsman, 1993. *Inquiry into the Circumstances Surrounding the Injuries Suffered by Angus Rigg in Police Custody and into the Subsequent Police Investigations*, Sydney; Parliamentary Commissioner for Administrative Investigations, 1993. *Report on an Investigation into Various Aspects of Police Conduct Arising from the Arrest, Charging and Detention of Joseph Bartlett Dethridge at Fremantle Police Station on 8–9 May 1992*, Western Australia; CJC 1994b *A Report of an Investigation into the Arrest and Death of Daniel Alfred Yock*, Brisbane.

'conflict customers' of Surrey Police (Harris Research Centre 1993).[4] The response rate to the survey was 24 per cent for those who were not arrested and 15 per cent for arrestees. These rates compare very unfavourably to the response rate of 75 per cent which we obtained by using face-to-face interviews (see chapter 2). This shortcoming aside, it is not possible to generalise from British research to Queensland, given that the two jurisdictions have quite different police powers regimes.

## STUDY LIMITATIONS

It is important in this introductory chapter to also draw attention to the limitations of the survey methodology which we have employed.

First, for logistic reasons, we were able to conduct interviews at only seven of the 29 permanent Magistrates Courts operating in Queensland. In selecting these locations we were careful to choose the busiest courts and to ensure a reasonable geographic spread. However, the survey does not fully represent all people appearing before Magistrates Courts in Queensland. In particular, we were not able to collect data from any courts in inland centres or courts that operated on a circuit basis only. We doubt that a more comprehensive survey would have produced significantly different aggregate results, but a larger study would have enabled us to document more thoroughly the extent and nature of interregional variations.

Second, the survey did not cover defendants who had been remanded in custody, because of the difficulty of conducting interviews under such circumstances. As most people who are apprehended by police are granted bail, this exclusion probably did not have a great impact on the overall findings of the survey. However, it is quite possible that some of those who were remanded in custody would have had different perceptions of the investigation and arrest process, considering that this group was more likely to have committed serious offences.

Third, and most importantly, the information that interviewees gave us about the investigation and arrest process was not necessarily accurate, and was not cross-checked against other sources. Defendants who have been arrested (the great majority of our sample) are normally bailed to appear before a Magistrates Court up to 14 days after their arrest. It is quite possible that, by the time respondents were interviewed, some had forgotten certain details of their encounter with police. Others may have misunderstood what happened at the time of their encounter, especially given that many may have been alcohol-affected or stressed, or both. It is also possible that some respondents deliberately provided misleading information to our interviewers. **For these reasons, the survey is a better measure of respondents' *perceptions* of police practices, than of *actual* police behaviour.** However, we have assumed that where perceptions are widely held, they are likely to be indicative of actual practice.

Notwithstanding these limitations, the survey is a valuable supplement to other information that has been collected about police investigation and arrest processes in Queensland. In particular, the survey provides a baseline which, in conjunction with other data, can be used to monitor the impact of proposed new police powers legislation, trends in police behaviour towards defendants, and defendants' use of, and attitudes towards, official complaints mechanisms.

4 'Conflict customers' consisted of people who had been in contact with police for a variety of reasons. The term conflict customer included those who were summonsed to appear in court, had been stopped and searched by police, or had been issued various traffic infringement notices, as well as those who were arrested by police.

## STRUCTURE OF REPORT

The remainder of the report is structured under the following headings:

- methodology and sample characteristics
- arrest and questioning
- the involvement of lawyers and other independent persons
- searches
- defendants' views of the police.

The concluding chapter discusses the main policy implications arising from the study.

# CHAPTER 2
# METHODOLOGY AND SAMPLE CHARACTERISTICS

This chapter describes the methodology used in the survey and outlines the demographic characteristics of the survey sample. Specific aspects examined are:

- the survey procedure
- sample selection and response rate
- the survey instrument
- sample characteristics, such as interview location, gender, age and racial origin of respondents, most serious offence charged and respondents' prior contact with police.

## SURVEY PROCEDURE

The sample frame consisted of all defendants appearing before the seven Magistrates Courts selected for the study, except for those defendants remanded in custody and those charged with less serious driving matters.[5] The data were collected by means of a structured face-to-face interview during which a questionnaire was completed. Potential respondents were approached in the waiting areas of Brisbane, Southport, Beenleigh, Ipswich, Maroochydore, Cairns and Rockhampton Magistrates Courts. Interviewers identified themselves as employees of the CJC,[6] and proceeded to explain the nature of the study being conducted (see appendix A). Respondents were assured of the anonymity and confidentiality of their response, and were invited to participate in the study. If the respondent accepted, the interview was conducted in either a private interview room or in the waiting area, depending on the availability of a room and the wishes of the respondent.[7] Generally, respondents opted to be interviewed in the waiting area itself rather than in a private room, often for fear of missing their name being called.[8]

Interviewers were instructed to include in the sample juveniles waiting outside the Childrens Court, if possible. This required interviewers to make inquiries as to Childrens Court sitting days, and to arrange to attend on those days. The Childrens Court often operates in the same building as the Magistrates Court but usually sits in a separate courtroom. Responses from juveniles were collected from Southport, Beenleigh, Ipswich and Cairns.

Approval to approach potential interviewees in court precincts was granted by the Chief Stipendiary Magistrate, who then notified magistrates of the presence of researchers in each of the courts selected. We also notified the Queensland Police Union of Employees, the Director of the Legal Aid Office, and the Clerk of the Court of each of the courts.

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5 Charges such as drink-driving and unlicensed driving were not included because of the routine nature of the procedure associated with these offences.

6 All interviewers carried a letter identifying themselves in these terms.

7 Private interview rooms were available in Brisbane, Southport, Beenleigh, Ipswich and Cairns.

8 A defendant's name is called out in the waiting room of the Magistrates Court either to summon the person to appear in the courtroom or to meet the duty solicitor.

Inspectors in Charge of each of the police divisions in which the survey was conducted were notified of the research on 14 June 1996, approximately half way through the data collection period. Data from surveys conducted prior to 17 June 1996 were compared with data obtained after this date. There was no discernible difference between the two groups, indicating that even if local police were aware of the study, this did not influence their conduct towards defendants during the period of the survey.

The Clerk of the Court of each of the courts was notified in person at the beginning of the study period of the presence of interviewers. In addition, wherever possible, interviewers notified on a daily basis duty solicitors, individual police prosecutors and any voluntary court support staff.[9]

A team of 10 interviewers worked between 27 May 1996 and 22 July 1996 to obtain the sample. To facilitate interpretation of responses, interviewers were selected who were familiar with legal concepts and the criminal justice process.

All interviewers attended an instruction session and were issued with an instruction booklet which included information about:

- the sample and the methodology
- approaching potential respondents
- the questionnaire
- what to do if an interviewee complained of police misconduct
- rules for coding data
- how to handle approaches from court personnel.

It was stressed to interviewers that their function was not to solicit complaints. Interviewers were instructed that, if respondents asked for information about making a complaint, they should be given a copy of the CJC pamphlet *Making a Complaint against a Member of the Queensland Police Service*.

Interviewers were given a sheet on which to record the outcome of each approach made to potential respondents, to facilitate the calculation of a response rate. Where possible, interviewers also recorded the reason an interview was declined.

Interviews with respondents took between five and 20 minutes, depending on the number of questions applicable in each situation.

## SAMPLE SELECTION AND RESPONSE RATE

The Magistrates Courts chosen for inclusion in the survey were selected to enable maximum utilisation of the resources available for the project and to gain a good geographical coverage. Brisbane, Southport, Beenleigh, Ipswich and Cairns were included because they process large numbers of cases. Maroochydore and Rockhampton were added to provide some regional balance.

9 Court support schemes were in operation in Ipswich, Beenleigh, Maroochydore and Southport. These are voluntary programs staffed by various non-government organisations, which provide information to people appearing at court regarding questions about such matters as obtaining legal advice.

The final sample consisted of 489 completed questionnaires.[10] According to records kept by interviewers, this represented a response rate of 75 per cent.[11] A total of 152 eligible potential respondents declined to be interviewed. Reasons given included: 'I'm not interested', 'I can't focus on anything else at the moment', 'Too stressed', 'I want to get out of here', 'I'm just about to go into court', 'No time', 'There's no use', 'Can't be bothered', 'Want to speak to my solicitor first', 'Too much on my mind', 'Don't trust the CJC', 'Want to get back to court', and 'Don't want to'.

Given the high response rate, it is likely that the survey results broadly reflect the views and experiences of the total population of defendants appearing in the courts concerned.

## THE SURVEY INSTRUMENT

The final questionnaire consisted of 104 questions, divided into eight sections:

- demographics
- first contact with the police
- pre-arrest search
- the arrest
- post-arrest search and questioning
- the formal interview
- independent persons
- complaints and further comments.

Respondents were asked only those questions relevant to their situation. Appendix B provides a copy of the questionnaire.

Twenty-seven questions were taken directly from a survey conducted by the Research and Coordination Division in 1992, as part of the CJC's review of police powers (CJC 1994a). One question was taken from the Surrey Police *Survey of Conflict Customers* (Harris Research Centre 1993).[12]

A draft of the questionnaire was provided to the QPS for comment. Several questions were added as a consequence of the feedback which was received.

The questionnaire was piloted in Brisbane Magistrates Court on 8 and 9 May 1996 with 16 respondents. Several questions which were misunderstood were changed as a result of the pilot survey. In several cases, further options were added to a question when a response did not fall within those options provided. Problems with coding responses were also identified and overcome.

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10 A number of incomplete questionnaires were discarded.

11 Eight of the 10 interviewers recorded the number of approaches made to potential respondents and the outcomes of these approaches. The response rate is based on the number of responses to the survey divided by the number of potential respondents approached by interviewers. The calculation of the response rate excludes responses to those interviewers who forgot to record the information.

12 Question 92: 'How well would you say you understood what was going to happen following your contact with the police?'

# CHARACTERISTICS OF THE SAMPLE

## LOCATION OF INTERVIEWS

As shown in table 2.1, one-third of the interviews were conducted in Brisbane. The number of interviews conducted in the other courts ranged from 59 in Southport to 33 in Maroochydore. Table 2.1 also shows the regional distribution of appearances before Magistrates Courts in Queensland during the financial year 1993–94. In comparing the two sets of data, it can be seen that Southport Magistrates Court was under-represented in the survey sample, while Beenleigh and Rockhampton were somewhat over-represented.

**TABLE 2.1 — LOCATION OF INTERVIEWS COMPARED WITH ALL APPEARANCES IN QUEENSLAND MAGISTRATES COURTS BY REGION (1993–94)**

| | SURVEY SAMPLE | | MAGISTRATES COURT APPEARANCES | |
|---|---|---|---|---|
| **Location** | **Number** | **Per cent of sample** | **Number** | **Per cent of all appearances in Queensland** |
| Brisbane | 162 | 35 | 35,178 | 32 |
| Southport | 59 | 13 | 28,512 | 26 |
| Beenleigh | 58 | 13 | 5,490 | 5 |
| Ipswich | 43 | 9 | 5,339 | 5 |
| Maroochydore | 33 | 7 | 6,606 | 6 |
| Cairns | 55 | 12 | 8,825 | 8 |
| Rockhampton | 53 | 11 | 2,499 | 2 |
| Other regions | – | – | 17,801 | 16 |
| **TOTAL** | **463** | **100** | **110,250** | **100** |

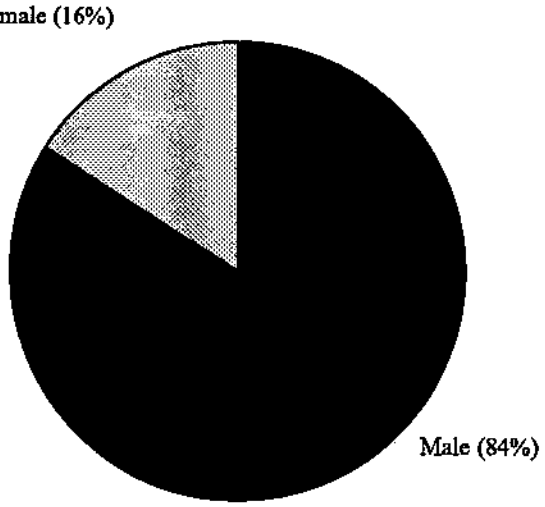
*Source:* Government Statistician's Office, unpublished data.
*Note:* The 26 respondents who were aged 16 years or less were excluded from this table as they were appearing before the Childrens Court.

## GENDER OF RESPONDENTS

Figure 2.1 shows that 84 per cent of respondents were male. The gender distribution of adult respondents in the survey sample was almost identical to that of the total population of persons appearing before Queensland Magistrates Courts during 1993–94 (GSO unpublished data).[13]

13 To achieve a population broadly comparable to the GSO sample, we excluded persons charged with: drink-driving, licence offences, State Transport/Main Roads Act offences, 'other' traffic offences and 'other' driving offences.

## FIGURE 2.1 — GENDER OF RESPONDENTS




*Note:* n = 489

## AGE OF RESPONDENTS

Seventy-eight per cent of the respondents (379) were aged under 30 years, with 26 respondents, or 5 per cent of the sample, aged under 16 years. Of the 26 juvenile respondents, 81 per cent were male.

Table 2.2 compares the age profile of adult respondents to the survey with the population of adult defendants appearing before Queensland Magistrates Courts in the financial year 1993–94. The table shows that the age distribution of the survey sample was roughly the same as for the total defendant population.

## TABLE 2.2 — AGE OF ADULT RESPONDENTS IN THE SURVEY SAMPLE COMPARED WITH ALL APPEARANCES IN QUEENSLAND MAGISTRATES COURTS (1993–94)

| | ADULT RESPONDENTS (SURVEY SAMPLE) | | MAGISTRATES COURT APPEARANCES | |
|---|---|---|---|---|
| **Age group** | **Number** | **Per cent** | **Number** | **Per cent** |
| 17–19 | 122 | 26 | 10,873 | 18 |
| 20–29 | 231 | 50 | 29,197 | 49 |
| 30–39 | 74 | 16 | 12,413 | 21 |
| 40–49 | 29 | 6 | 4,945 | 8 |
| 50–59 | 7 | 2 | 1,682 | 3 |
| 60 and over | – | – | 740 | 1 |
| **TOTAL** | **463** | **100** | **59,850** | **100** |

*Source:* Government Statistician's Office, unpublished data.

*Notes:*

1. The 26 respondents who were aged 16 years or less were excluded as they would have been appearing before the Childrens Court and cannot be compared to the population appearing before the adult court.
2. Magistrates Court appearances for less serious driving offences were excluded from the data presented here to maintain comparability with the survey sample.
3. Magistrates Court appearance data exclude 18,293 people who did not state their age.

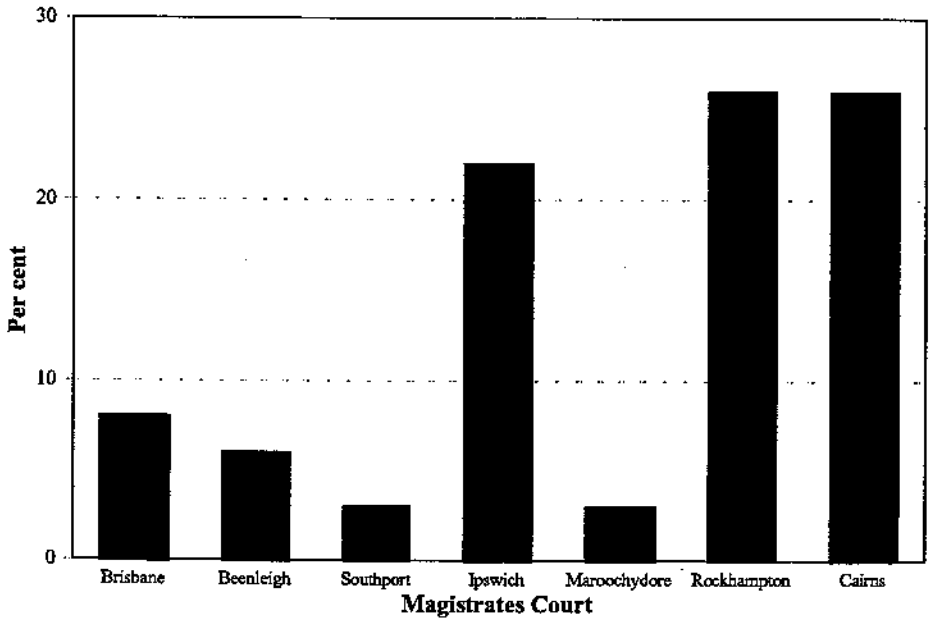
## ABORIGINALITY OF RESPONDENTS

There were 61 Aboriginal and Torres Strait Islander respondents[14] in the survey sample, making up 13 per cent of the total sample. By comparison, at the time of the 1991 Census indigenous people accounted for only 2 per cent of the Queensland population (GSO 1995). This means that Aboriginal and Torres Strait Islander respondents were present in the sample at a rate around 6.5 times greater than their representation in the general population.

Information about the Aboriginality of persons appearing before Magistrates Courts in Queensland is not collected. However, a recent study by the Australian Institute of Criminology found that indigenous adults in Queensland are 11.6 times more likely to be in prison than non-indigenous adults, and 13.3 times more likely to be in police custody (Queensland Police Service Review 1996). Queensland Corrective Services Commission (QCSC) figures indicate that indigenous people made up 22 per cent of people held in custody by the QCSC on 30 June 1995 (QCSC n.d.). These data suggest that, if anything, indigenous defendants may have been under-sampled by the study. This may be partly because we only surveyed defendants who had been granted bail.

Figure 2.2 shows that courts with the highest percentage of Aboriginal and Torres Strait Islander respondents were Cairns (26%), Rockhampton (26%) and Ipswich (22%).

FIGURE 2.2 — ABORIGINAL AND TORRES STRAIT ISLANDER RESPONDENTS AS A PROPORTION OF ALL RESPONDENTS BY COURT




## MOST SERIOUS OFFENCE CHARGED

Table 2.3 shows the most serious offence with which adult respondents said that they were charged. The most common charges related to theft offences (136 respondents or 29%), drug offences (135 respondents or 29%) and assault offences (58 respondents or 13%).

14 A total of 53 respondents said they were Aboriginal, and a further eight respondents said they were Torres Strait Islanders. Eleven respondents said they were both Aboriginal and a Torres Strait Islander.

Compared with the general Magistrates Court population in 1993–94, the sample contained a higher proportion of offenders charged with theft, drug and assault offences and a much lower proportion charged with public order offences and 'other' offences (see table 2.3). A possible explanation for this discrepancy is that many people charged with drunkenness and other minor public order offences are likely to forfeit bail and therefore do not actually appear in court to face charges.

**TABLE 2.3 — MOST SERIOUS OFFENCE CHARGED: SURVEY SAMPLE COMPARED WITH ALL APPEARANCES IN QUEENSLAND MAGISTRATES COURTS (1993–94)**

| Offence category | SURVEY SAMPLE | | MAGISTRATES COURT APPEARANCES | |
|---|---|---|---|---|
| | Number | Per cent | Number | Per cent |
| Homicide | 1 | <1 | 197 | <1 |
| Sexual assault | 8 | 2 | 777 | 1 |
| Assault | 58 | 13 | 6,727 | 9 |
| Robbery | 9 | 2 | 383 | <1 |
| Fraud | 16 | 3 | 2,623 | 3 |
| Theft | 136 | 29 | 10,764 | 14 |
| Property damage | 21 | 5 | 2,631 | 3 |
| Dangerous driving | 3 | <1 | 4,018 | 5 |
| Drug | 135 | 29 | 12,340 | 16 |
| Public order offences | 41 | 9 | 20,526 | 27 |
| Other | 34 | 7 | 14,722 | 19 |
| **TOTAL** | **462** | **100** | **75,708** | **100** |

*Source:* ABS, unpublished.

*Notes:*

1. Survey sample excludes 26 respondents who were aged 16 years or less.
2. Public order offences include: drunkenness, abusive language, offensive behaviour, disorderly conduct.
3. Other offences include: trespassing and vagrancy, weapons offences, and enforcement of orders.
4. Survey sample excludes one adult respondent for whom information about the offence charged was missing.
5. Percentages may not always add to 100% due to rounding error.

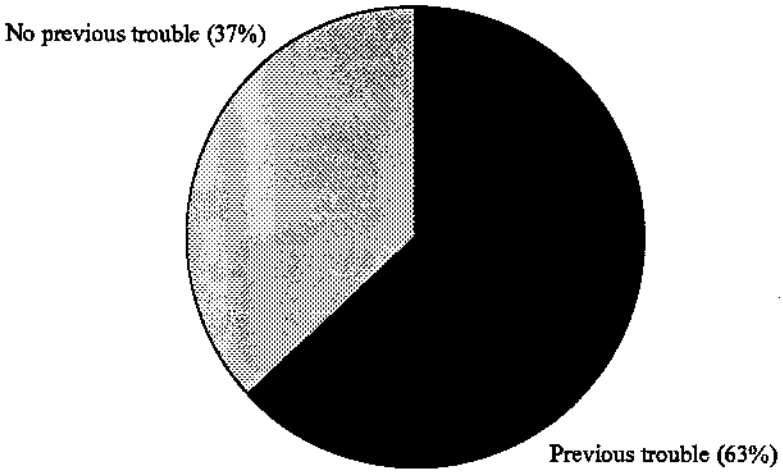
Appendix C shows the most serious offence committed by respondents in each court. Southport and Beenleigh had the highest percentage of respondents whose most serious offence was theft, while Brisbane and Maroochydore had the highest percentage of respondents whose most serious offence was a drug offence. Ipswich and Cairns had the highest percentage of respondents whose most serious offence was assault.

## PRIOR TROUBLE WITH THE POLICE

Respondents were asked if they had ever 'previously been in trouble with the police'. This question was often answered with a list of offences, although it is unknown whether respondents had been convicted of these offences. Nearly two-thirds of the sample (309 respondents or 63%) indicated that they had been in trouble

with the police in the past (see figure 2.3). Information about the prior criminal history of persons appearing before Queensland Magistrates Courts is not collected, so it is not possible to make a comparison with the general court population.

**FIGURE 2.3 — PREVIOUS TROUBLE WITH POLICE**




*Note:* n = 488 (information for one respondent was missing).

## CONCLUSION

In summary, the survey sample had the following characteristics:

- most were male
- most were aged under 30
- 5 per cent were juveniles
- 13 per cent were Aboriginals or Torres Strait Islanders
- the majority were charged with property or drug offences
- around two-thirds had previously been in trouble with police.

To the extent to which comparisons can be made, the demographic characteristics of the survey sample appear to be broadly comparable to the general population of adult defendants appearing in Queensland Magistrates Courts. This factor, and the high response rate (75%), mean that it is likely that the responses of those surveyed are reasonably typical of defendants in general.

# CHAPTER 3
# ARREST AND QUESTIONING

This chapter focuses on issues relating to the arrest and questioning of suspects. The first section provides a brief overview of current law and police procedures governing the arrest and questioning of suspects. The second section outlines how defendants in the sample were dealt with from the point of initial contact through to charging. The remaining sections summarise key survey findings relating to the process of arrest and questioning.

## ARREST AND QUESTIONING: CURRENT LAW AND POLICY

### THE GENERAL FRAMEWORK

The source of police authority is mostly found in legislation, although some police powers are authorised under the common law. In addition, the QPS Operational Procedures Manual (OPM) guides police in the day-to-day exercise of their duties. The manual contains:

- Orders—an order is a direction regarding a specific course of action; police must comply with an order.
- Policies—a policy states the attitude of the QPS towards a particular subject and must be complied with under ordinary circumstances. Police must justify their decision not to comply with a policy.
- Procedures—a procedure states the way a particular task is to be undertaken, and is consistent with orders and policies.

Failure to comply with the OPM may constitute grounds for considering disciplinary action.

### ARREST PROCEDURES

An adult who is suspected of committing a criminal offence may be dealt with in one of two ways, according to the circumstances:

- Depending on the nature of the offence a person may be arrested either by execution of a warrant (usually issued by a justice) or without a warrant. In practice, most people are arrested without a warrant. Once arrested, the person is in lawful custody and must be either released on bail (by police or the court) or remanded in custody by the court pending the hearing of the charges.
- The person may be issued with a summons to appear before the court on a specified date to answer the charge or charges. The summons process requires police to lay a complaint (or 'information') before a justice or magistrate who issues the summons. The summons must then be served on the person.

In the case of juveniles, a third option is the issue by police of an Attendance Notice, which is a notice signed by a police officer requiring the juvenile to appear before the Childrens Court at a specified time and place. Section 23 of the *Juvenile Justice Act 1992* provides that Attendance Notices are to be used wherever possible as an alternative to arrest of juveniles.

Where a person has been charged with a criminal offence other than by way of summons or Attendance Notice, he or she must have been arrested at some point. The arrest may have occurred at any point during the suspect's interaction with police and may in some cases only occur as a formality after questioning at a police station but before charging. In other cases, the person will have been arrested before being taken to the police station. Whether or not a person has been arrested is important, since it is the act of arrest that places a person in lawful custody and as a consequence:

- gives police some additional powers such as the power to fingerprint and photograph the suspect
- imposes certain obligations on police in their dealings with the suspect.

The law concerning offences for which a person may be arrested without warrant is complex and inconsistent.[15] The type of offence is important in determining whether an arrest is permitted. There are various restrictions on the types of offences that allow police to make an arrest. Under the *Criminal Code* an offence may be a crime (that is, a more serious offence such as homicide or most sexual offences), a misdemeanour (generally, less serious offences, such as common assault) or a simple offence (any offence that may be tried summarily before a Magistrates Court). The general rule is that a person may be arrested without warrant for a crime, unless the legislation specifically prevents this. However, with less serious offences (that is, misdemeanours and simple offences), there is no such general rule and arrest without warrant must be specifically authorised by legislation.

Common examples where legislation authorises a police officer to arrest a person without warrant include where the person:

- uses indecent or obscene language in a public place
- obstructs police in the performance of their duties
- is found in possession of, or using, a dangerous drug
- commits certain traffic offences such as drink-driving or careless driving
- is drunk in a public place.

The OPM policies endeavour to place restrictions on the circumstances in which police should make an arrest by requiring police 'where practicable' to proceed by way of complaint and summons rather than arrest (policy 3.5.4) and to refrain from arresting a suspect in minor matters where a summons would be effective (policy 3.5.9). Circumstances where arrest might be justified for a minor offence include where there is a danger of the person committing further offences or failing to appear before court, concealing or destroying evidence, interfering with witnesses or otherwise 'obstructing the course of justice' (policy 3.5.9).

## QUESTIONING OF SUSPECTS

Once a person has been arrested, the police officer's ability to question the suspect is limited by two factors:

- It is a requirement that an arrested person be taken before a magistrate as soon as practicable in order that bail might be considered (unless bail is granted by police).[16] What is 'as soon as practicable' will

15 See CJC 1993c, pp. 586–589 and that report's appendix 6.

16 *Criminal Code*, s. 552; *Justices Act 1886*, s. 69.

depend on the circumstances, but the police are not entitled to delay taking the person before a magistrate in order to interview the person or make further investigations.[17] If a magistrate is not available, the person may be held in custody overnight or over a weekend. The requirement to take a person before a magistrate as soon as practicable after arrest means that police cannot question the person after arrest if this would delay the taking of the person before the court.

- Rule 3 of the Judges' Rules states:[18]

> Persons in custody should not be questioned without the usual caution first being administered.

For the purposes of this Rule, the term 'in custody' is not confined to a person who has been arrested, but includes any person who has been taken to a police station 'under such circumstances that he believes he must stay there'.[19] The 1930 Circular, which was issued to clarify aspects of the Rules, has led to some uncertainty about the operation of Rule 3. It states in part:

> Rule 3 was never intended to encourage or authorise the questioning or cross-examination of a person in custody after he has been cautioned, on the subject of the crime for which he is in custody . . .

Police in Queensland have generally interpreted this statement as meaning that a person in custody may not be questioned at all, although there are decisions to the contrary (CJC 1994a, pp. 663–664).[20]

To avoid these limits on questioning, police may decide not to arrest the suspect and to rely instead on a person's 'voluntary attendance' so that questioning is unrestricted by the requirement to go before the court or by the operation of the Judges' Rules (CJC 1994a, pp. 664–667).

In our review of police powers, we reported that police 'make extensive use of the concept of "voluntary co-operation" to circumvent many of the restrictions imposed on questioning' by existing law and procedural requirements (CJC 1994a, p. 676). Suspects may either believe that they must accompany officers to the police station, may be told that they will be arrested if they do not go, or may be physically treated as if they are under arrest. The 'voluntariness' of their attendance, as the Australian Law Reform Commission observed (1975, p. 32), is usually fictional.[21]

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17 *Williams v. The Queen* (1986) 161 CLR 278. 'Wilful delay' in taking a person before a magistrate is an offence under *Criminal Code* s. 137.

18 The Rules were drawn up by judges in the United Kingdom in 1912 and were subject to clarification in 1930 and 1964. They have been held to be applicable in Queensland, although there has been some inconsistency about which version of the Rules is to be applied (CJC 1994a, pp. 661–665). The 1930 version of the Judges' Rules is contained in the QPS Operational Procedures Manual (policy 2.14.7) and officers should comply with the rules. The Rules do not have the force of law but are administrative directions which should be enforced by police 'as tending to the fair administration of justice'. Failure to observe the Rules may (but not necessarily will) result in rejection by the court of an accused's statement to police.

19 *Smith v. The Queen* (1956) 97 CLR 100 at p. 129 per Williams J.

20 The High Court in *Williams v. The Queen* (1986) 161 CLR 278: 'There is nothing to prevent a police officer from asking a suspect questions designed to elicit information about the commission of an offence and the suspect's involvement in it, whether or not the suspect is in custody' (per Mason and Brennan JJ at p. 300; see also Wilson and Dawson JJ at p. 306).

21 In its review of police powers, the CJC recommended that there should be a regulated scheme which would oblige officers to inform suspects of their rights and status, provide free legal advice and provide for limited pre-charge detention for questioning and other investigative purposes (1994a, p. 677).

## CAUTIONING A SUSPECT

Rule 2 of the Judges' Rules (1930) states:

> Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking him any questions, or any further questions, as the case may be.

However, the Rules do not necessarily require that a person is cautioned before questioning begins. It has been suggested that QPS practice is that cautions are often not given until quite late in the process of questioning (CJC 1994a, p. 682). This is because police are not required to caution a person if they are simply 'making inquiries' and have not yet made up their mind to charge the person.

The caution to be given is to the effect of 'You are not obliged to say anything, but anything you say may be given in evidence' (Rule 5 of the 1930 Judges' Rules concerning cautioning before formal charging; OPM policy 2.14.7).

## RECORDING INTERVIEWS

There is no statutory requirement for a police interview with an accused person to be audiotaped or videotaped, although this is the usual practice. Since 1989 the QPS, as a matter of policy, has required all interviews with suspects for indictable offences to be electronically recorded.[22] A detailed instruction manual has been produced and the OPM requires officers who conduct electronically recorded interviews to do so in accordance with the manual (order 2.14.2). Where the interview is not taped, police will usually prepare a written record of the interview. If the accused person has adopted the police record of interview (either by signing it or reading through and stating that it is correct), the record may be admitted in court (*R v. West* [1973] Qd R 338). If the record is not admitted, the police officer may still be able to rely on it as an aid to memory.

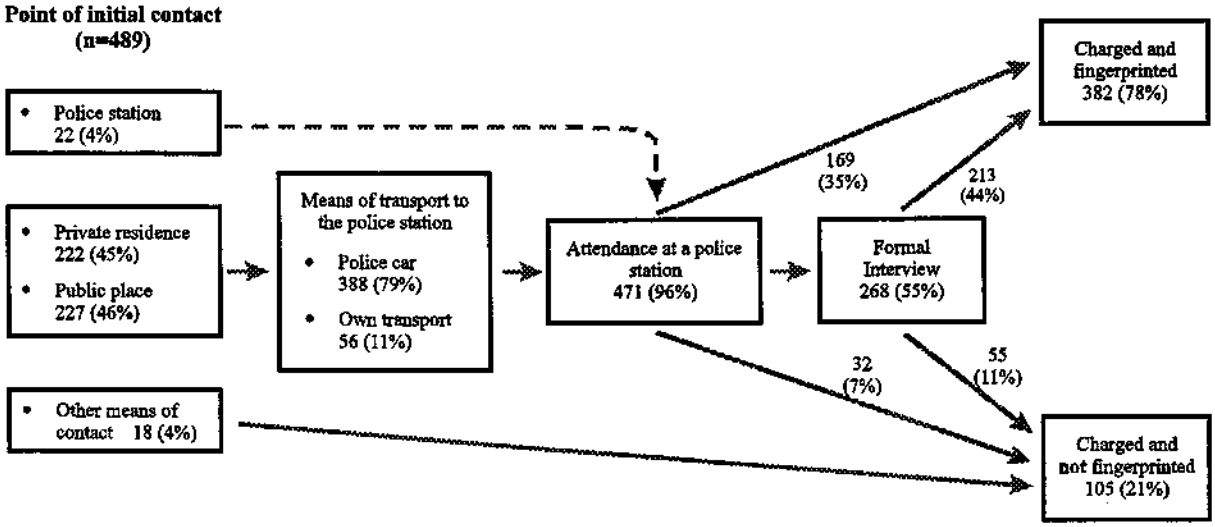
The failure to follow procedures laid down in police instructions and guidelines may be a reason for the court to exclude the accused's statement on the grounds of unfairness (*Driscoll v. R* (1977) 137 CLR 517).

22 There are few exceptions to this requirement; e.g. where the equipment is unavailable because of breakdown.

# SURVEY FINDINGS: OVERVIEW

Figure 3.1 gives an overview of how defendants in the sample were dealt with from the point of initial contact through to charging by police.

**FIGURE 3.1 — THE PROCESSING OF DEFENDANTS FROM INITIAL CONTACT WITH POLICE THROUGH TO CHARGING AND FINGERPRINTING**




Notes:
1. Percentages shown are percentages of the total sample.
2. 'Other means of contact' included cases where the respondent was most probably summonsed.
3. Information on means of transport to police station was missing for five respondents
4. Two respondents who attended the police station could not remember what had occurred after their arrival. Information relating to their formal interview, fingerprinting and charging is therefore missing.
5. 'Charged and not fingerprinted' includes an indeterminate number of defendants who were summonsed or issued a Court Attendance Notice.

It bears repeating that the survey recorded only respondents' understanding of the process, rather than what actually happened to them. While there is a high probability that most respondents would have correctly recalled where they first had contact with police, how they got to the police station and whether they had been fingerprinted or photographed, they may have been less clear about whether they had undergone a formal record of interview (as distinct from informal questioning). Also, as discussed below, many respondents were confused about when and whether they were under arrest.

Key points to note from figure 3.1 are as follows:

- There was a fairly even split between those respondents who first had contact with the police at a private residence and those whose first contact had been in a public location (such as a street, licensed premises or shopping centre).
- All but 4 per cent of the sample reported attending a police station at some stage in the process.
- Most of those who went to a police station said that they were taken there in a police car.

- Slightly more than half of the sample said that they had been formally interviewed by police at a police station. (Police often do not conduct records of interview for minor drug offences or public order offences because the prosecution in these cases normally does not rely on confessional evidence.)

- Seventy-eight per cent of the sample said that they had been fingerprinted. It can be assumed that virtually all of these respondents had been formally arrested at some point in the process, given that this is normally the only way in which fingerprints can be obtained. In fact, it seems likely that most of the respondents who attended a police station had been arrested (regardless of whether they had been fingerprinted), given the well documented reluctance of police to use the cumbersome and time consuming summons procedure (CJC 1993c, pp. 605–610).[23]

## SURVEY FINDINGS: ISSUES RELATING TO ARREST

In analysing the survey data, we focused on two questions relating to the arrest process:

- how clear an understanding did respondents have of their arrest status?

- was there any evidence of arrest being used in circumstances where a summons would have been more appropriate?

### RESPONDENTS' KNOWLEDGE OF ARREST STATUS

Only 37 per cent of the sample—181 respondents—claimed to have been told by police that they had been arrested. As shown in table 3.1, 33 per cent of this group stated that they were not informed of their arrest until after they had arrived at the police station.

**TABLE 3.1 — POINT AT WHICH RESPONDENTS WERE INFORMED BY POLICE THEY WERE UNDER ARREST**

| Stage in Process | Number | Per cent |
|---|---|---|
| Initial point of contact | 101 | 59 |
| In transit to the police station | 14 | 8 |
| At the police station: | | |
| • Before the formal interview | 30 | 17 |
| • After the formal interview | 20 | 12 |
| In the watchhouse | 4 | 2 |
| Other | 3 | 2 |
| **Total** | **172** | **100** |

*Note:* Information for nine respondents was missing.

23 Respondents were asked to indicate whether they had been arrested at any stage. However, it cannot be assumed that those who answered 'No' to this question had been summonsed, or issued with an Attendance Notice, given the widespread confusion amongst respondents as to what constituted an arrest.

In the majority of cases, as shown by table 3.2, respondents relied on some other event or 'clue' as an indicator that they had been arrested. For example, 23 per cent said that they first realised they were under arrest when they were taken to the police station, and 13 per cent that they became aware when they were put in a police car. Given current police arrest practices it is likely that, in many of these cases, the person was not actually under arrest at this stage.

**TABLE 3.2 — HOW RESPONDENTS FIRST BECAME AWARE THEY HAD BEEN ARRESTED**

| Response | Number | Per cent |
|---|---|---|
| I was told I was under arrest | 113 [24] | 38 |
| I was taken to the police station | 67 | 23 |
| I was put in the police car | 37 | 13 |
| I was taken to the watchhouse | 28 | 10 |
| I was handcuffed | 21 | 7 |
| I was told to go with police | 9 | 3 |
| I was 'caught red-handed' | 6 | 2 |
| I was charged | 5 | 2 |
| I handed myself in to police | 2 | <1 |
| Other | 6 | 2 |
| **Total** | **294** | **100** |

*Notes:*

1. 'Other' responses are as follows: 'When they told us to get out of the car and they started searching us', 'When they wanted to tape an interview', 'I asked and they said yes', 'I only realised later when they started talking about bail', 'They were chasing us' and 'Grabbed me and threw me on the ground'.
2. Twenty responses were treated as missing because respondents misunderstood the question, and four responses were missing.
3. Table excludes respondents who said that they were unaware that they had been arrested.
4. Percentages may not always add to 100% due to rounding error.

Regardless of whether respondents believed that they were formally under arrest, many apparently felt that they had little choice but to comply with police directions. For example:

- Of the 388 respondents who said that they went to the station in a police car, 76 per cent stated that they attended because they 'thought they had to'. Nearly half of these respondents said that they had been *told* by police that they 'had to' go.

- Nineteen per cent of the total sample (94 respondents) said that, at some stage while at the police station, they had asked if they could leave. Of those who claimed to have made such a request, 24 (26%) said that they were told they could leave as soon as the police had finished: the remainder said that their request was ignored or refused. According to one respondent: 'I was told I was not being detained, but not to leave'.

24 This number is less than the total number of defendants who said that they had been told by police that they had been arrested. The discrepancy arises because some defendants concluded that they had been arrested before being told so by police.

- Twenty-one respondents who said that they had attempted to leave the police station had been under the impression that they were not under arrest. Despite this, their attempts to leave were not successful.

As a further indication of the level of confusion relating to arrest status, the survey included 62 respondents (13 per cent of the sample) who, despite having been fingerprinted, said that they had never been arrested.

Given that many defendants were stressed and possibly affected by alcohol or other drugs at the time of their encounter with the police, it is probable that some may have misunderstood what was happening. However, we would argue that the current law of arrest in Queensland has also contributed substantially to the confusion documented by this survey.

Because of the present limitations on questioning after arrest, police have an incentive to promote the fiction of 'voluntary attendance' and delay making an arrest until as late in the process as possible. A submission from a police officer to the CJC's review of police powers indicates exactly this point: 'the suspect is unsure as to his rights and obligations and the police are forced to take part in a charade or exercise in bluff in order to obtain evidence' (CJC 1994a, p. 678). There is also no clear statutory obligation on police to inform suspects of their arrest status, as evidenced by our finding that many respondents reported that they were never told by police that they were under arrest.

As we argued in Volume IV of our police powers report, the present law of arrest and questioning is unsatisfactory from the perspective of both police and suspects (CJC 1994a, p. 670–677). Police are frequently placed in the unfair position of having to rely on bluff and deception in order to be able to question suspects about offences. Conversely, suspects are often unaware of their rights, status and obligations while in police 'company'.

To overcome these problems we recommended in our report:

- the introduction of a regulated scheme of questioning which would enable police, in appropriate circumstances, to question suspects after they have been arrested
- parallel regulation of the questioning of 'voluntary attendees', to reduce the incentive for police to rely on this fiction instead of exercising their powers of arrest
- that police be obliged to clearly inform suspects of their arrest status from the outset of any dealings with such persons.

Implementation of these measures would assist substantially to reduce the confusion identified by the survey.

## THE USE OF ARREST

In our review of police powers in Queensland we concluded that, in practice, police officers were not restricting their use of the arrest power to a 'last resort' option. We therefore recommended that legislation should limit the circumstances in which arrest without warrant is appropriate and impose on officers an obligation to consider alternatives before arresting a person.

Owing to the design of the survey, it was not possible to ascertain precisely how many respondents had been arrested, as opposed to proceeded against by way of summons or, in the case of juveniles, a Court Attendance Notice. However, as indicated, virtually all of those respondents who said that they had been fingerprinted would have been arrested at some stage in the process.

Of the 26 juveniles in the sample, 50 per cent said that they had been fingerprinted, compared with 80 per cent of adult respondents. This finding suggests that greater use is being made of alternatives to arrest where juveniles are involved, although interpretation of these data is complicated by the fact that additional restrictions apply to the fingerprinting of juveniles.

In the case of adults, it is difficult to ascertain in how many cases a summons would have been a more appropriate course of action, given the limited information we have about the circumstances surrounding the arrest. However, the sample included 26 adult respondents who stated that they had first been approached by police while at home or work, had been taken to a police station and fingerprinted, but had not been formally interviewed. The majority of these respondents (16) had been charged with drug offences, suggesting that it was unlikely that fingerprints would have been required to prove the persons's involvement in the offence. In these instances it is difficult to see why an arrest was required other than, perhaps, to obtain fingerprints for the purpose of maintaining accurate criminal history records. In Volume V of our police powers review, we recommended that police should be empowered to issue notices for persons to attend at a police station for fingerprinting. This proposal, if implemented, would remove the need to effect an arrest for this purpose (CJC 1994c, p. 840).

## SURVEY FINDINGS: QUESTIONING

Issues relating to questioning which were addressed by the survey include:

- how common was it for police to question respondents about offences prior to conducting a formal record of interview at the police station?
- how often, and at what point in the process, did police comply with the requirement to warn suspects that they are not obliged to answer questions?
- how many interviews were electronically recorded?
- how long did it normally take for police to conduct a record of interview with a respondent?

Issues relating to the presence of independent persons during questioning will be discussed in the following chapter.

### INFORMAL QUESTIONING

As shown by figure 3.1 (page19), 55 per cent of respondents said that they had participated in a formal record of interview at a police station. In addition, respondents were asked if police had questioned them at the point of initial contact about the offence, or at the police station prior to the commencement of the formal interview. As to be expected, the survey results indicated that informal questioning is widespread. According to table 3.3:

- Fifty-six per cent of the sample (272 respondents) said that they were questioned about the offence by police at the point of first contact. Of those questioned, 54 per cent estimated that the questioning lasted less than 10 minutes, but the sample also included 44 respondents who said that they were questioned for half an hour or more.
- A third of the sample (163 respondents) said that they were questioned about the offence by police at the station prior to any formal interview being conducted.

**TABLE 3.3 — WARNINGS PROVIDED TO DEFENDANTS AT EACH STAGE OF POLICE QUESTIONING**

| Stage at which questioning about offence occurred (according to respondent) | Total number | Per cent of sample | Per cent of those questioned who said they were warned |
|---|---|---|---|
| Informally at the initial point of contact | 272 | 56 | 33 |
| Informally at a police station | 163 | 33 | 42 |
| Formal interview at a police station | 272 | 56 | 74 |

Of the 268 respondents (figure 3.1, p. 19) who reported participating in a formal record of interview, 79 per cent claimed that they had been informally questioned—either in the field, at the station or both—about the offence(s) prior to their interview. Conversely, 30 per cent of respondents in the sample said that they had been informally questioned, but had not taken part in a formal record of interview.

The apparently widespread reliance on informal questioning raises important policy issues. As discussed below, such exchanges are considerably less likely to be preceded by a caution, or to be electronically recorded, than are formal records of interview. For these reasons it is important that any regulated scheme which is developed to govern the questioning of suspects should encompass questioning which takes place outside the framework of the formal record of interview.

## USE OF WARNINGS

As outlined in the first part of this chapter, QPS policy, which is based on the Judges' Rules, states that 'whenever a police officer has made up his mind to charge a person with a crime, he should first caution such a person before asking him any questions, or any further questions, as the case may be' (OPM policy 14). The required warning to the suspect is to the effect that 'you are not obliged to say anything, but anything you say may be given in evidence'.

According to the survey, it was relatively uncommon for respondents who were questioned prior to the formal record of interview to be given a warning. Table 3.3 above shows that, of the 272 respondents who said that they had been questioned at the point of initial contact, only 33 per cent (89) stated that they had received a warning. Similarly, only 42 per cent of the 163 respondents who said that they were informally questioned at the police station claimed to have received a warning. (Four of these respondents said police had previously warned them when they were questioned at the initial point of contact.) By contrast, 74 per cent of the respondents who said that they participated in a formal interview reported having received a warning. It is not surprising that the use of warnings was more common at this later stage, as police would naturally have been anxious to avoid the possibility that the record of interview could be rejected by the court as evidence.

The apparently low rate of cautioning prior to the formal interview may be accounted for, in part, by the following factors:

- In some instances, officers may not have formed the requisite 'intention to charge' at the time of undertaking the initial questioning.

- As noted above, many of these informal 'interviews' were of short duration and some may not have been designed to elicit details of the alleged offence (even though the respondent claimed that he or

she had been questioned about the offence). In such situations, there is no obligation on police to give a warning.

- Some respondents may not have realised that they had received a warning and some others may have deliberately given incorrect information to interviewers.

However, even allowing for these factors, the proportion of respondents who recalled being warned prior to or during informal questioning seems very low.

On the other hand, for those respondents who said that they had participated in a formal interview, it is likely that the actual use of cautions was higher than shown in table 3.3. Sixty-six per cent of the respondents who said that they had not been warned also stated that the interview had been electronically recorded. In such cases, it would be most surprising if police had not complied with procedure by ensuring that a warning was recorded on the tape (although it is quite possible that many respondents did not comprehend that they had received a warning).

Other relevant findings about the use of warnings were that:

- Of the 62 respondents formally interviewed by police who said that they had not been warned, 66 per cent (41) said that they nevertheless knew that they did not have to answer any questions.

- Even where respondents were aware of their right to remain silent, most still cooperated with police. Of the 272 respondents who said that they had participated in a formal record of interview, 80 per cent said that they knew that they did not have to answer any questions. Of this group, 84 per cent said that they had answered all the questions asked by the police during the interview.

On one view, these findings show that whether or not a warning is issued is likely to make little difference to the outcome of investigations. However, the sample included 22 respondents (4% of the total sample) who, on their own account, participated in a formal record without being aware that they could exercise their right to silence. Had these respondents had a better understanding of their legal position, they might well have responded differently to police questioning.

The survey findings have two major implications for the development of future policy on the use of warnings:

- As discussed above, only a minority of respondents recalled being warned prior to or during informal questioning 'in the field' or at the police station. There is therefore a distinct possibility that some respondents in the study had made admissions without the benefit of a warning. To deal with such situations, we recommended in our police powers report that suspects should be cautioned prior to the commencement of any questioning and that unrecorded admissions made in such circumstances should not be admitted as evidence unless they were subsequently recorded on tape (CJC 1994a).

- It is probable that, in several instances, respondents were given a warning, but for some reason (such as the interviewee's state of mind at the time, or the manner in which the warning was delivered) did not absorb this information. Arguably, the scope for misunderstanding in such cases could be reduced if police, in addition to giving an oral warning, were required to hand suspects a card setting out their rights and obligations in simple language. Greater education of the public about their rights in such situations would also help to reduce misunderstanding.

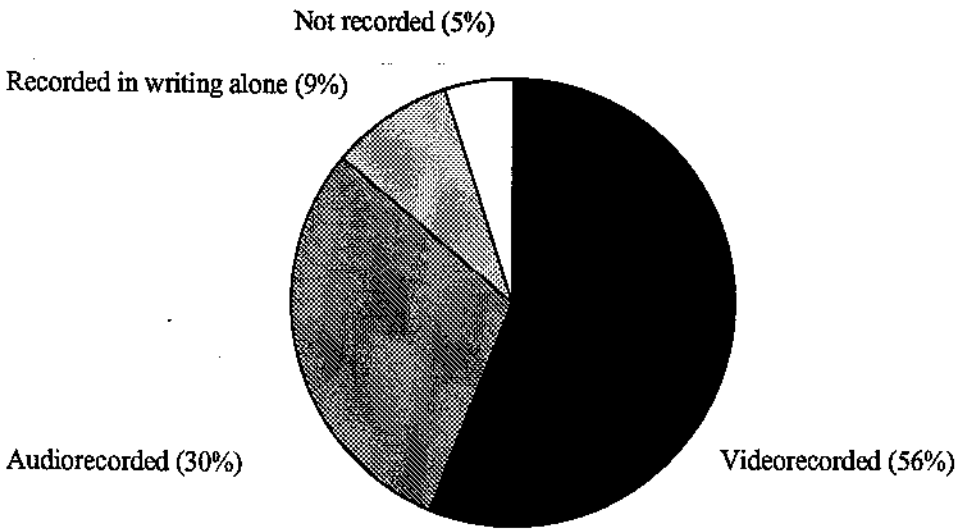
## RECORDING OF INTERVIEWS

As discussed in the first part of this chapter, QPS policy states that, as a general rule, all formal records of interviews with suspects for indictable offences must be electronically recorded. The survey findings indicate that this policy is apparently being complied with in most instances.

Figure 3.2 shows that, of the 272 respondents who stated that they were formally interviewed by police at a police station, 56 per cent said that they were recorded on videotape and a further 30 per cent that they were recorded on audiotape alone. The remaining 14 per cent of respondents said either that the interview had been recorded in writing only (9 per cent) or that no record at all had been made (5 per cent). It is not possible to ascertain in how many of these cases (if any) QPS policy was breached, given that:

- some respondents may have mistaken informal questioning for a formal record of interview
- some respondents may have misunderstood or forgotten what took place during the interview
- some respondents were only charged with simple offences, which are not covered by the mandatory recording requirement
- police are exempt from the requirement to record the interview electronically if the equipment is unavailable because of breakdown.

**FIGURE 3.2 — RESPONDENTS' RECOLLECTIONS OF THE METHOD OF RECORDING THE FORMAL INTERVIEW**




Note: n = 271 (information for one respondent was missing).

The survey also shows that, as expected, it is much less common for police to electronically record conversations with suspects prior to the formal interview. Only 11 per cent of respondents who stated that they were questioned about the offence at the point of initial contact said that they had been recorded on audiotape (although this may have understated the actual extent of recording, given that many operational police now carry concealed tape-recorders as a protection against false and malicious complaints).

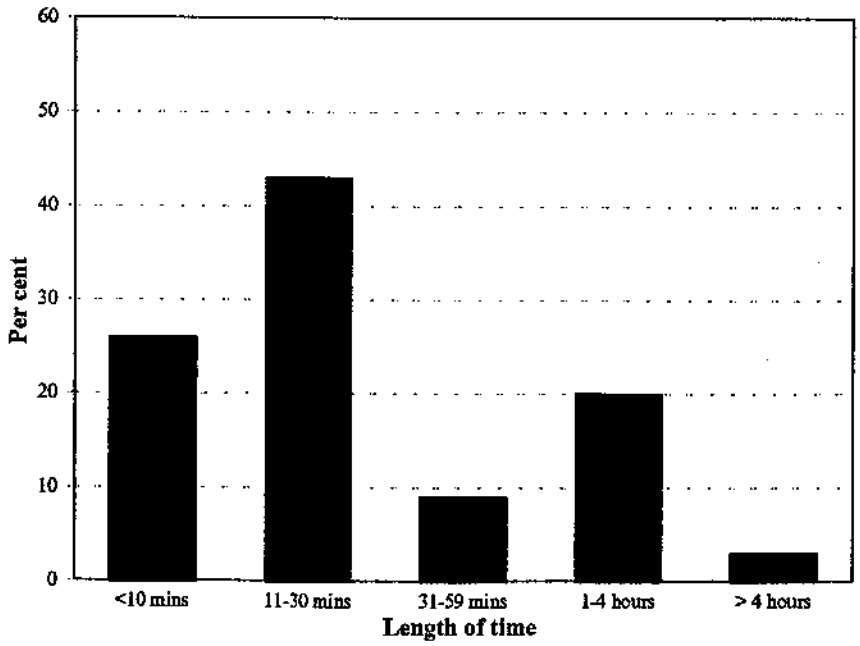
Current QPS policy does not require the use of electronic recording prior to the formal record of interview. However, the *Report of the Queensland Police Service Review* has recently recommended the provision of personal tape-recorders for all police officers in order to ensure accurate and admissible records of informal interviews conducted in the field (1996, p. 91). The CJC has also made procedural recommendations to the QPS urging the more extensive use of tape-recorders in the field.

## LENGTH OF FORMAL INTERVIEWS

An important issue in the discussion about police powers concerns whether police should be able to detain suspects for a 'reasonable time' for the purposes of questioning, or whether a 'fixed time' regime should apply. In Volume IV of our police powers report (1994a) we proposed that there should be a maximum time of four hours, with provision for extension from a magistrate. However, it was difficult to formulate recommendations in this area because the QPS does not keep records detailing the length of time currently taken to question suspects about offences.

Figure 3.3 shows that, according to respondents, the majority of formal interviews (185 or 69% of interviews conducted) took less than half an hour. There were only five respondents (2%) who estimated that their interview took longer than four hours. These interviews on the whole related to matters involving multiple charges. The longest estimated interview—10 hours—was conducted with a respondent who was subsequently charged with attempted murder, sexual offences and drug offences.

**FIGURE 3.3 — RESPONDENTS' ESTIMATES OF THE LENGTH OF THE FORMAL INTERVIEW**




*Note*: n = 271 (information for one respondent was missing).

Taken at face value, these findings suggest that the four-hour limit (with provision for extension) previously proposed by the CJC would present few practical difficulties for police. However, given that many people have difficulty estimating time accurately, these data need to be verified by more objective information taken

from police records. Also, the survey was restricted to large population centres and excluded persons who had been remanded in custody (some of whom would have been charged with very serious offences which may have required extensive questioning).

## CONCLUSION

The key survey findings concerning the process of arrest and questioning are as follows:

- There was considerable confusion among respondents as to when (and sometimes whether) they had been arrested.
- Many respondents who clearly had been arrested said that they were never told by police that they were under arrest.
- Four out of five respondents went to the police station in a police vehicle rather than in their own transport.
- Many respondents felt that regardless of whether they were officially under arrest, they had little choice but to do what the police said.
- There was some evidence that police had relied on their arrest power in circumstances where a summons would have been more appropriate.
- According to respondents, warnings were generally given prior to the commencement of formal records of interview. However, it seems that such warnings were less likely to be given where the respondent was being questioned informally 'in the field' or at the police station. It is also likely that some respondents did not understand that they had received a warning.
- There appeared to be broad compliance with the requirement that records of interview for indictable offences be electronically recorded. However, it seems that informal interviews 'in the field' and at the police station were much less likely to have been recorded.

Overall, these findings lend support to the recommendations of our police powers report that:

- police powers of arrest be clarified to enable police, in appropriate circumstances, to question suspects after they have been arrested (to remove the incentive for police to promote the fiction of 'voluntary attendance')
- police be placed under a statutory obligation to inform suspects either that they are under arrest or are free to leave
- informal questioning 'in the field' or at the station be included in the scope of any regulated questioning scheme
- measures be implemented to encourage the use of alternatives to arrest.