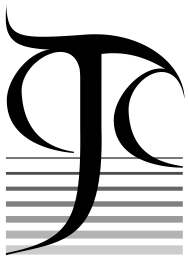
Police Powers in Queensland

Findings from the 1999 Defendants Survey



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Mission: To promote integrity in the Queensland Public Sector and an effective, fair and accessible criminal justice system.

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Executive summary

What is the Defendants Survey?

The Defendants Survey is an important element of the CJC's contribution to monitoring police practices and behaviour. The Survey gathers information about police arrest, questioning and searching practices from the perspective of those people who have experienced them at first hand — defendants. When used in conjunction with the results of other research activities, the information gained provides valuable insight into the exercise of police powers and the effectiveness of new legislative provisions.

So far the Defendants Survey has been conducted twice: in 1996, prior to the introduction of the *Police Powers and Responsibilities Act 1997* (PPRA), and again in 1999 to assess the impact of the PPRA.

> The PPRA, proclaimed April 1998, consolidated pre-existing police powers, conferred some new powers on police, broadened some powers and restricted others. It also introduced safeguards to increase police accountability and to enhance suspects' knowledge of their rights. Since the 1999 Defendants Survey was conducted, the *Police Powers and Responsibilities Act 2000* has been passed and assented to, although relevant provisions will not commence until 1 July 2000. This new Act, which retains most of the elements of the 1997 Act, consolidates police powers provisions from a large number of other Acts.

Both the 1996 and 1999 Surveys involved interviews with defendants appearing before eight magistrates courts, excluding defendants remanded in custody and those charged with less serious driving matters. Participation was voluntary and anonymity was assured.

Impact of the PPRA: Findings from the 1999 Survey

Arrest and alternative processes

The PPRA's introduction of the Notice to Appear as an alternative to arrest has resulted in marked changes to the processing of defendants from initial contact through to their first appearance at court. In particular, since the 1996 Survey there has been a decline in the proportion of respondents who said they:

- had been arrested by police
- had attended a police station
- were fingerprinted.

However, the results also show that:

- the majority of respondents given a notice had received it at a police station, rather than 'in the field'
- just over a quarter of those receiving a notice also said they had been arrested.

From this it appears that the Notice to Appear is frequently being used in *conjunction* with arrest rather than as an *alternative* to it.

Knowledge of arrest status

The PPRA imposes obligations on police to provide information to defendants about their arrest status. However, in both the 1996 and 1999 samples at least 20 per cent of respondents were either wrong or unsure about their custodial status. Respondents to the 1999 Survey who said they had been under arrest were no more likely to say police had informed them of this than were respondents to the 1996 Survey.

Questioning

Since the introduction of the PPRA, there has been:

- more electronic recording of questioning 'in the field'
- a significant increase in the proportion of respondents who said they received a caution before being questioned 'in the field'
- a marked increase in the proportion of respondents who were informed of their right to have a solicitor, or a friend or relative, present during the interview (although there was no increase in the proportion of interviews where a lawyer was actually present).

There appears to be a high level of compliance with the 'four-hour limit' on questioning and a continuing high level of compliance with provisions relating to juveniles. It would seem, however, that provisions governing the questioning of Aboriginals and Torres Strait Islanders were less likely to be complied with.

Searches

The proportion of the total sample who reported being subject to personal, property and vehicle searches was similar in both Surveys.

In 1999 there was an increase in the proportion of those present for a property search who reported that they had read a search warrant. However:

- around a third of the respondents who reportedly underwent a property search said they had not received a notice of obligations (although searches conducted by consent or in an emergency do not require the provision of such a notice)
- less than half of the respondents who reported that property had been seized said they had been given a receipt.

The Survey showed a high level of compliance with the requirement that strip searches be conducted by a person of the same sex, although more than half of the respondents who underwent a strip search said they had not been permitted to dress the upper half of their body before proceeding with undressing their lower half.

Emerging issues

The 1999 Defendants Survey has highlighted these issues for closer attention and monitoring:

- *Respondents' understanding of their arrest status*

  It appears that police are still not routinely providing information to suspects about their custodial status (a conclusion supported by the findings of the CJC's 1999 review of police interview tapes). Clearer instructions to police and closer monitoring of interview practices could help reduce suspects' confusion. The Interview Reference Sheet, issued by the QPS in May 2000 for placement in police interview rooms, may also assist.

- *Notices to Appear*

  Most respondents who received a Notice to Appear had attended a police station before the notice was given to them and often after they had been arrested. Strategies for promoting greater use of notices as a genuine alternative to arrest include making portable tape-recording equipment routinely available to operational police and developing the capacity for police to collect fingerprints 'in-the-field'.

- *Questioning 'in the field'*

  It would appear that many suspects who are questioned 'in the field' are still not being cautioned, although practices have certainly improved since 1996. Mandatory electronic recording of 'in-the-field' questioning would substantially increase compliance with the cautioning provisions of the legislation.

- *Questioning Aboriginal and Torres Strait Islander suspects*

  It would seem that the provisions of the PPRA relating to the questioning of Aboriginal and Torres Strait Islander suspects are not always followed, possibly because it is not always easy for police to judge the level of disadvantage that an Aboriginal or Torres Strait Islander suspect may display in comparison to the general population. The QPS has recently produced a training video that that may help increase awareness among police officers about these provisions.

- *Presence of solicitor at interview*

  The proportion of interviewees who had a solicitor present during a formal interview has not increased since 1996, despite a very significant increase in the proportion who said police informed them of their right to a solicitor. Clearly, the lack of free and available legal advice presents a major barrier to suspects who may otherwise wish to have a solicitor with them while being questioned.

- *Searches*

  Several provisions of the PPRA relating to searches appear not to have been fully complied with, most notably the requirement to provide a receipt for seized property. Given the problems that can arise with regard to police integrity and property handling, particularly relating to drug seizures, there is a clear need for operational police to adhere closely to legislative and procedural requirements governing searches.

Abbreviations

ABS	Australian Bureau of Statistics
CJC	Criminal Justice Commission
CRISP	Crime Reporting Information System for Police
IPN	Identifying Particulars Notice (IPN)
QCSC	Queensland Corrective Services Commission
OPM	Operational Procedures Manual (QPS)
QLA	Queensland Legislative Assembly
QPS	Queensland Police Service
NTA	Notice to Appear
PPRA	*Police Powers and Responsibilities Act 1997* (Qld)

Chapter 1: Introduction

This report presents the main findings of a survey of defendants' perceptions of the investigation and arrest process, conducted by the Criminal Justice Commission (CJC) in mid-1999.[1] Where relevant, comparisons are made with a similar survey conducted in 1996 before the *Police Powers and Responsibilities Act 1997* (PPRA) came into force.[2] This introductory chapter provides the background to the Defendants Survey, and includes a description of the PPRA and the strategies in place to monitor this new legislation.

Background to Defendants Survey

In 1996, the CJC initiated a strategy to gather information at regular intervals about police arrest, questioning and searching practices from the perspective of those people who had experienced these practices at first hand — defendants. In addition, the 1996 Survey was designed to provide baseline measures for monitoring the impact of the new police powers legislation, the PPRA, which was about to be introduced.

Nearly 500 defendants were surveyed in 1996. In face-to-face, individual interviews, they were asked to comment (anonymously) on their treatment by police (both positive and negative), and whether, and to whom, they had complained about their treatment. The results of the 1996 Defendants Survey were published in the CJC report *Defendants' Perceptions of the Investigation and Arrest Process* (November 1996). See over the page for a summary of the main findings.

The 1996 report foreshadowed that a second survey, conducted some time after the PPRA had taken effect, would enable an assessment to be made of the extent, if any, to which reforms to police powers had 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.

This report addresses these issues by presenting the results of those questions in the 1999 Defendants Survey relevant to monitoring the impact of the PPRA.

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1 Two further reports presenting data from the 1999 Survey have already been released:
- *Defendants' Perceptions of Police Treatment*, Research Paper, Vol. 6 No. 1 (March 2000)
- *Reported Use of Force by Queensland Police*, Research Paper, Vol. 6 No. 2 (April 2000).

2 The PPRA was proclaimed on 6 April 1998. Since the 1999 Defendants Survey was conducted, the *Police Powers and Responsibilities Act 2000* has been passed and assented to, but relevant provisions will not commence until 1 July 2000. This new Act, which retains most of the elements of the 1997 Act, consolidates provisions related to police powers from a large number of other Acts.

Main findings arising from the 1996 Defendants Survey:

- Police appeared generally to have complied with the requirement that records of interview for indictable offences be electronically recorded, and that suspects be formally cautioned prior to the commencement of such interviews.
- There appeared to be a high level of compliance with statutory provisions relating to the interviewing of juveniles.
- There was considerable misunderstanding among respondents about whether, and at what point, they had been arrested. This confusion appeared to have been due largely to the failure of police to inform respondents that they were under arrest or that they were free to choose whether to accompany police to the police station.
- Respondents who were questioned 'in-the-field', or informally at the police station, were much less likely to be cautioned; such interviews were also less likely to have been audio-recorded.
- There was some evidence that police were arresting people in situations where a summons would have been more appropriate.
- By and large, police had done little to facilitate the attendance of solicitors at the police station and, in some instances, appear to have ignored or refused respondents' requests for a solicitor to be present.
- Very few Indigenous respondents had an independent third person present with them during the interview, even though QPS policy created a presumption in favour of such a person being present.
- The policy concerning the appropriateness of strip searching, especially at places other than police stations, needed to be tightened.
- It was quite common for respondents whose property or person was searched to state that they had not been informed by the police of the reason for that search or that police had not allowed them sufficient time to view a search warrant.
- Nearly one in ten respondents stated that they had been assaulted by police and a further 5 per cent complained of generally rough treatment. Complaints about rudeness, impoliteness and intimidatory behaviour were also fairly frequent.
- A substantial proportion of respondents said they would like police to provide them with information about the arrest/charging process or about their legal rights.

Key features of the PPRA

Until the PPRA, the statutory powers available to Queensland police were contained in more than 90 separate statutes, with little uniformity among the powers. Other powers were authorised under the common law and therefore were only to be found in case law. The Queensland Police Service (QPS) Operational Procedures Manual (OPM) supplemented the law, providing guidance to police in the day-to-day exercise of their powers. This diversity in the source of police powers made it almost impossible for police, or members of the public, to know the full extent of the powers conferred on Queensland police.

The stated purposes of the PPRA were to:

- consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law
- provide additional powers necessary for effective modern policing and law enforcement
- provide consistency in the nature and extent of the powers and responsibilities of police

- standardise the way the powers and responsibilities of police officers are to be exercised
- ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under the Act
- enable the public to better understand the nature and extent of the powers and responsibilities of police officers.

The PPRA is now the starting point for reference to all police powers. Essentially, it replaces all specific police powers except for those conferred by a limited number of Acts listed in schedules to the PPRA and Regulations.[3]

A key element of the reform package was the development of a Police Responsibilities Code. The Code sets out mandatory requirements about the way police officers must perform their duties as well as operational guidelines intended to help police officers and other readers to understand the operation of the Act and the Code.[4] A copy of the Code must be available at any police station for inspection by anyone who asks to inspect it.

A police officer must comply with the Act in exercising powers and performing responsibilities under the PPRA and an officer who does not do so may be dealt with according to law. Examples of the means of dealing with a breach include:

- correction by way of counselling under the Police Service (Discipline) Regulation 1990, section 11 — for minor contraventions such as forgetting to fill in a register
- misconduct proceedings under the *Police Service Administration Act 1990* — for a breach such as maliciously strip searching a suspect in a public place
- official misconduct proceedings under the *Criminal Justice Act 1989* — for a breach such as improperly disclosing to a criminal information obtained through a listening device
- criminal offence proceedings — for a breach such as deliberately holding a person in custody at the end of a detention period with no intention of applying for an extension of time (this may constitute an offence of deprivation of liberty under section 355 of the Criminal Code).

The OPM remains in existence, supplementing the Act and the Code with orders, policies and procedures governing the day-to-day exercise of police powers.

Changes to specific police powers

The PPRA went further than simply consolidating pre-existing police powers. It conferred some new powers on police, broadened some powers and restricted others. The key changes are:

- new statutory powers to preserve crime scenes and to set up roadblocks
- broader street-policing powers such as the power to demand the name and address of people and to order people to move on in certain defined circumstances

3 A process is currently under way to incorporate those powers into the PPRA and repeal those provisions that are inconsistent with the PPRA.

4 Operational guidelines do not form part of the Regulations.

- clearer arrest powers
- the power for police to issue a Notice to Appear as an alternative to requiring a person to appear in court to face charges
- a regulated scheme of post-arrest detention, which provides police with the power to detain a person who has been lawfully arrested for an indictable offence for a short period in order to question the person or otherwise investigate the offence
- consolidated, more detailed, powers of search and seizure, including the power to obtain and execute covert search warrants
- more consistent powers of electronic surveillance with stricter reporting requirements.

The increase in police powers has been accompanied by an increase in police accountability requirements and in suspects' rights, including requirements that police:

- provide their details to those who have been searched, moved on, arrested or had their name and address demanded
- issue receipts for property seized
- enter details of entries, searches, arrests, electronic surveillance on specially created registers and provide copies of register entries to suspects upon request
- advise persons who are questioned by police of their rights, including the right to legal advice
- advise suspects of their status — namely, whether they are under arrest or free to leave the police station.

Many of the provisions relating to police powers and the rights of suspects apply only to people who are suspected of committing an indictable offence, rather than a simple offence. In particular, the powers and rights associated with questioning are limited to questioning for indictable offences (see chapter 4 for further discussion).

> Indictable offences are the more serious offences, some of which may be heard in the Magistrates Court, but most of which will be heard in the District or Supreme Courts. Simple offences are less serious offences and are heard in the Magistrates Court.

Most of the other changes introduced by the PPRA (such as provisions relating to listening devices) do not have a direct impact on defendants' experiences of the investigation process. Those current police powers that are relevant to the Defendants Survey will be discussed in more detail later in this report.

Police powers research and monitoring

The Defendants Survey is an important element of the CJC's contribution to monitoring police practices and behaviour. When used in conjunction with the results of other research activities, the information gained provides valuable insight into the exercise of police powers and the effectiveness of new legislative provisions.

The process of monitoring the implementation of the PPRA was the responsibility of the Police Powers Reference Group, established by the Minister for Police under section 134 of the PPRA, which requires that the operation of the Act be regularly reviewed. This

provision has been retained in the *Police Powers and Responsibilities Act 2000*. However, as at May 2000, it was unclear whether the Police Powers Reference Group would be retained to oversee this review.

As part of its contribution to monitoring police powers, the CJC, which has representation on the Police Powers Reference Group, has engaged in research projects aimed at evaluating various aspects of the legislation — see below.

Recent CJC research projects related to monitoring police powers

Review of QPS interview tapes

A total of 176 taped police interviews conducted in the week of 3–9 August 1998 were reviewed by CJC officers to assess compliance with provisions of the new legislation relating to cautions, questioning and the provision of information. This research resulted in the paper *Analysis of Interview Tapes: Police Powers Review Briefing Paper* (1999). It is intended that this exercise will be repeated in late 2000.

Assessment of the use of Notices to Appear

In May 1999, the CJC published the research paper *Police Powers in Queensland: Notices to Appear*, which explored the impact of the introduction of Notices to Appear on watchhouse workloads, complaints against police, and rates of failure to appear at court. The paper used data from both the CRISP (Crime Reporting Information System for Police) database and the QPS Custody–Search Index. The paper also examined the potential 'net-widening' effect of the new procedure.

The Research and Evaluation Branch of the QPS Ethical Standards Command has also published regular statistical reports on the operation of aspects of the legislation.

Structure of the report

The results from the two Defendants Surveys are presented in the following chapters:

Chapter 2: Methodology and sample characteristics

Chapter 3: Arrest and alternative processes

Chapter 4: Questioning

Chapter 5: Searches.

The concluding chapter discusses the implications of the findings.

Chapter 2: Methodology and sample characteristics

This chapter describes how the 1999 Defendants Survey was conducted and the sort of people who responded. Specifically, it looks at:

- the procedure
- the instrument
- the sample
- limitations of the research methodology.

Procedure

The sample frame for the 1999 Survey consisted of all defendants appearing before the eight magistrates courts selected for the study, excluding 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 the interviewer recorded the respondent's answers on a prepared questionnaire (see appendix A).

Interviewers approached defendants in the waiting areas of Brisbane, Southport, Beenleigh, Ipswich, Maroochydore, Cairns, Townsville and Rockhampton Magistrates Courts, first identifying themselves as employees of the CJC,[6] and then explaining the nature of the study being conducted. (See appendix B for a transcript of what interviewers said to potential respondents.) Defendants were assured of the anonymity and confidentiality of their response, and were invited to participate in the study. Interviews were 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]

Approval to approach defendants 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. The QPS, the Director of Legal Aid Queensland, and the Clerk of the Court of each of the courts were also notified. Each day, wherever possible, interviewers also notified duty solicitors, individual police prosecutors and any voluntary court support staff.[9]

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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.

9 Court support schemes were in operation in Ipswich, Beenleigh, Maroochydore, Southport and Townsville. 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.

A team of 18 interviewers worked between 24 May and 22 July 1999 to obtain the sample. All interviewers were experienced in data collection and interviewing. In addition, they attended an instruction session where they were issued with a booklet containing information about:

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

It was stressed to interviewers that their function was not to solicit complaints. They were told that if respondents asked for information about making a complaint, they were simply to hand over a copy of the CJC pamphlet *Making a Complaint against a Member of the Queensland Police Service*.

To facilitate the calculation of a response rate, interviewers were given a sheet on which to record the number of approaches they made to individual defendants and the outcome of each approach. They were also asked to record the reason an interview was declined. Interviews took between five and 20 minutes, depending on the number of questions applicable in each situation.

The final sample comprised 1005 respondents, just over twice the number collected in 1996. The sample size was doubled in 1999 to enable more detailed analyses and to facilitate valid comparisons between the two samples.

Instrument

The final questionnaire consisted of 139 questions, divided into seven sections:

1 Notice to Appear	5 Questioning at the police station
2 First contact with the police	6 Complaints and further comments
3 Attendance at the police station	7 Demographic information
4 Searches	

Respondents were asked only those questions relevant to their situation.

The questionnaire retained 60 questions from the instrument used in 1996. Wherever possible, the exact wording of particular questions was retained.[10] Seventy-nine new questions were introduced to assess the extent to which police had complied with the new arrangements introduced by the PPRA, and to clarify some of the information gathered in the rest of the Survey. The QPS was given a draft of the questionnaire for comment and several questions were added as a result of the feedback received. Further refinements were made after the questionnaire was piloted in Brisbane Magistrates Court in May 1999 with 19 respondents.

10 In the 1999 Survey, 52 questions retained the exact wording used in 1996. A further eight questions from 1996 were used with wording changes.

Sample

This section describes the response rate to the Survey, the location of interviews and the characteristics of the 1999 sample, concluding with a comparison of the characteristics of the 1996 and 1999 samples.

Response rate

In all, 1546 defendants were approached, of whom 1087 agreed to participate in the study and 1013 actually completed the interview, representing a response rate of 66 per cent.[11] The final sample was 1005 (eight questionnaires were excluded because of inconsistent responses across the questionnaire). Common reasons given by defendants for declining to participate in the study were: 'I haven't got enough time', 'Not interested', 'Waiting to see the duty lawyer', 'Too nervous', 'Don't believe it will change anything', 'Too much on my mind', 'Don't want to talk about it', 'Don't want to get involved'. Others declined on the advice of their lawyer.

Location of interviews

Table 1 shows the number and proportion of interviews completed at each court, compared with the work volumes of each court as measured by the number of appearances. Brisbane provided the largest contribution to the sample, followed by Beenleigh, Cairns, Southport and Townsville. The collection rate at Rockhampton proved to be well below acceptable levels early on, and so, after three weeks, Rockhampton was withdrawn as a survey location; however, the 20 responses collected were included in the final sample.

Table 1: Survey respondents compared with all magistrates court appearances by location

	1999 sample		1997–98 magistrates court appearances	
Court	**No.**	**%**	**No.**	**%**
Brisbane	282	28.9	13 158	28.8
Beenleigh	155	15.9	3 650	8.0
Cairns	129	13.2	7 270	15.9
Southport	120	12.3	7 106	15.6
Townsville	115	11.8	5 650	12.0
Ipswich	89	9.1	3 307	7.2
Maroochydore	69	7.1	2 625	5.8
Rockhampton	18	1.8	3 052	6.7
TOTAL	**977**	**100.0**	**45 818**	**100.0**

Source: QStats unpublished data for total appearances.

Notes:

1. The juvenile respondents to the Defendants Survey have been excluded as they appeared before the Children's Court.
2. QStats data exclude driving offences other than dangerous driving.

For reasons that are unclear, Beenleigh was over-represented in the sample, and Southport and Cairns slightly under-represented. It may be that the numbers were affected by seasonal fluctuations in court appearances. Survey samples for the remaining locations are roughly proportionate to the work volumes of their respective courts.

11 The total number of acceptances to the study includes survey questionnaires that were incomplete because the interview was interrupted. The two main reasons for incomplete interviews were the respondent's appointment with Legal Aid, or the respondent's appearance before the court.

Characteristics of the 1999 sample

- about half were charged with a drug or theft offence
- most were male
- most were aged under 30
- 2 per cent were juveniles
- 6 per cent were Aboriginal or Torres Strait Islanders
- 8 per cent were from a non–English-speaking background
- more than half had not completed secondary school
- less than half were in the labour force
- 61 per cent had previously been in trouble with police, although only 39 per cent had previously been charged with a criminal offence.

This section compares survey respondents with the general population of magistrates court defendants (QStats data) and persons apprehended by the police (QPS data) in terms of most serious offence charged, gender and age. For both QStats and QPS data, 1997–98 has been used as the comparison period. In addition, the sample is compared with the general population for educational attainment, Aboriginality and employment status. The latter two are also presented for the prison population. Comparative data are shown for adults only (17 years and above unless otherwise indicated).

Most serious offence charged

Table 2 shows that almost a third of the respondents had been charged with a drug offence, with theft and assault offences making up the next largest group.

Table 3 (next page) shows that the distribution of offence types was broadly similar to that of the total population of appearances, the main differences being that the Survey has over-sampled drug, assault, theft and property damage offenders and under-sampled defendants charged with dangerous driving and 'other' offences.

Table 2: Most serious offence charged (1999 Defendants Survey)

	Survey respondents	
Offence type	**No.**	**%**
Homicide	1	0.1
Sexual assault	5	0.5
Assault	161	16.1
Robbery	9	0.9
Fraud	41	4.2
Theft	196	19.5
Property damage	45	4.5
Dangerous driving	10	1.0
Drug	318	31.7
Offensive behaviour	112	11.2
Trespassing and vagrancy	18	1.8
Weapons	23	2.3
Enforcement of order	53	5.3
Other traffic	3	0.3
Other	7	0.7
TOTAL	**1002**	**100.0**

Notes:
1. Information for three respondents was missing.
2. 'Assault' includes obstruct police and resist arrest.

Age and gender

Table 4 (next page) shows that the largest age groups were the 20–29 and 17–19 groups. Together, these made up 70 per cent of the sample. In addition, there were 23 juvenile respondents. The sample matches reasonably closely the age patterns of adult offenders apprehended by the QPS and adults appearing before magistrates courts (see figure 1, next page), the main difference being that the survey sample was slightly younger.

Table 3. Offence type: Total magistrates court appearances and 1999 Defendants Survey

Offence type	1997–98 court appearances		1999 Survey respondents (adult)	
	No.	%	No.	%
Homicide	199	0.2	0	0.0
Sexual assault	1 018	1.1	5	0.5
Assault	7 915	8.5	157	16.1
Robbery	502	0.5	8	0.8
Fraud	2 900	3.1	41	4.2
Theft	10 963	11.7	182	18.7
Property damage	2 632	2.8	44	4.5
Dangerous driving	4 102	4.4	10	1.0
Drug	15 353	16.5	315	32.3
Other	47 907	51.2	212	21.7
TOTAL	**93 492**	**100.0**	**974**	**100.0**

Source: QStats, unpublished data 1997–98.

Notes:

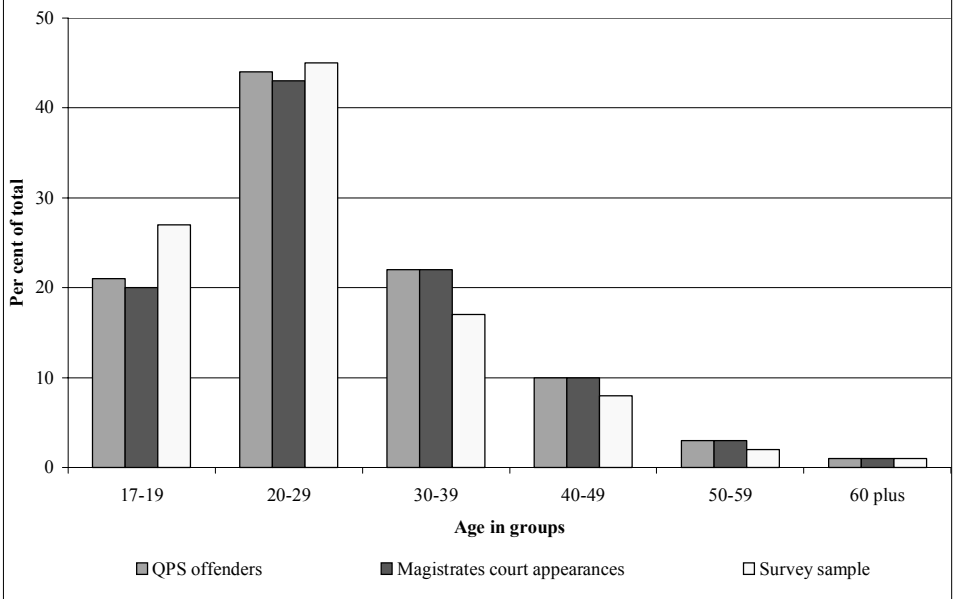
1. Information for three respondents was missing.
2. For the purposes of comparison with the survey data, magistrates court data exclude 'other driving' offences.
3. 'Assault' includes obstruct police and resist arrest.

Table 4: Age of respondents (1999 Defendants Survey)

Age group	No.	%
Under 17	23	2.3
17–19	259	25.9
20–29	440	44.0
30–39	170	17.0
40–49	81	8.1
50–59	21	2.1
60 and over	6	0.6
TOTAL	**1000**	**100.0**

Note: Information for five respondents was missing.

Figure 1: Age of 1999 Defendants Survey adult respondents, all adult offenders apprehended by the QPS, and all adults appearing before Queensland magistrates courts, 1997–98

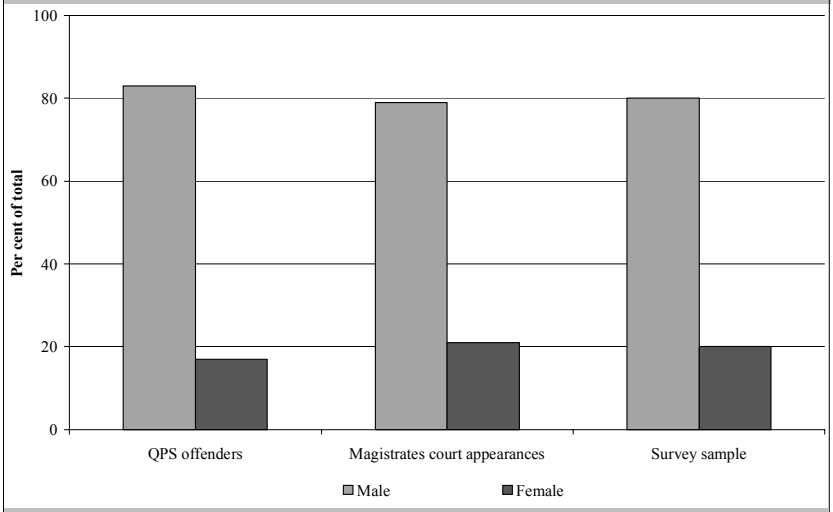


Source: QStats, unpublished data 1997–98; QPS Statistical Review 1997–98.

Note: Survey sample does not include juveniles.

Women made up 20 per cent of the sample (see figure 2). The gender breakdown of adult respondents is almost identical to the breakdown for the population of adult offenders apprehended by police and adult defendants appearing before magistrates courts.

Figure 2: Gender of 1999 Defendants Survey respondents, all adult offenders apprehended by the QPS, and all adults appearing before Queensland magistrates courts, 1997–98



Source: QStats, unpublished data 1997–98; QPS Statistical Review 1997–98.

Cultural background

Aboriginal and Torres Strait Islander defendants comprised 6 per cent of the sample, which is twice the proportion of Aboriginals and Torres Strait Islanders in the total Queensland population. Aboriginals and Torres Strait Islanders made up 3.1 per cent of the total population of the State as at 30 June 1996 (ABS 1996).

While the proportion of defendants in the sample was higher than the proportion of Aboriginals and Torres Strait Islanders in the population, it is likely that the Survey has under-counted this group. The 1998 prison census found that 23 per cent of the prison population was Aboriginal or Torres Strait Islander (ABS 1998); this is nearly four times the proportion of Indigenous defendants in the survey sample.

In 1996, Aboriginal and Torres Strait Islander respondents comprised 13 per cent of the sample, compared with only 6 per cent in 1999. The lower representation in 1999 may be partly attributable to the reduced availability of Aboriginal and Torres Strait Islander interviewers. The 1999 Survey employed two (one based in Cairns and one based in Brisbane and Ipswich), but neither were available full time. In 1996, on the other hand, there was a full-time Aboriginal interviewer in Cairns.

Around 8 per cent of respondents reported that they came from a non–English-speaking background. Table 5 shows the country of origin.

Table 5: Country of origin (1999 Defendants Survey)

Country of origin	No.	%
English-speaking	915	91.6
Non–English-speaking:		
• Europe	32	3.2
• Asia	15	1.5
• Polynesian etc.	13	1.3
• USSR–Baltic States	12	1.2
• Other	12	1.2
TOTAL	**999**	**100.0**

Note: Information for six respondents was missing.

Education and employment

Table 6 shows that more than half of the 1999 respondents had not completed secondary school, whereas this is the case for only 35.5 per cent of the Queensland adult population aged 15 to 64 years (ABS 1999). Similarly, 40 per cent of Queenslanders have some form of post-school qualification (ABS 1999), compared with only 20 per cent of the survey sample.

Table 6: Highest level of education (1999 Defendants Survey)

Highest level of education	No.	%
Incomplete primary	11	1.1
Incomplete secondary	587	58.5
Completion of secondary	197	19.6
Basic vocational	44	4.4
Skilled vocational	58	5.8
Diploma	26	2.6
Degree or higher	77	7.7
Other	3	0.3
TOTAL	**1003**	**100.0**

Note: Information for two respondents was missing.

Table 7 shows that about half of the respondents were in the labour force (49%, either full or part time), compared to a labour force employment: population ratio for Queensland of 59.2 per cent (ABS 1999). The rate of unemployment was much higher than for the population as a whole, although respondents were more likely to be employed than prisoners, of which only 28 per cent were employed prior to being admitted to prison.

Table 7: Employment status of adult respondents compared with prison inmates as at 3 March 1998

	Prison inmates as at 3.3.98		1999 adult survey respondents	
Employment status (prior to admission)	**No.**	**%**	**No.**	**%**
Student	48	1.0	76	7.8
Home duties	36	0.8	23	2.4
Retired	–	–	1	0.1
Pension	381	8.2	107	11.1
Unemployed	2796	60.2	290	30.0
Employed	1295	27.8	470	48.6
Other	91	2.0	–	–
TOTAL	**4647**	**100.0**	**967**	**100.0**

Source: QCSC unpublished data.

Notes:
1. Information for 10 respondents was missing.
2. 'Employed' includes people who were self-employed, part-time or full-time employed.
3. 'Other' includes unknown, not stated, not applicable.

Previous contact with police

Respondents were more likely than not to have previously been 'in trouble' with police (see figure 3), although less than half of the sample reported that they had previously been charged with a criminal offence (see figure 4).

Figure 3. Previous trouble with police (1999 Defendants Survey)

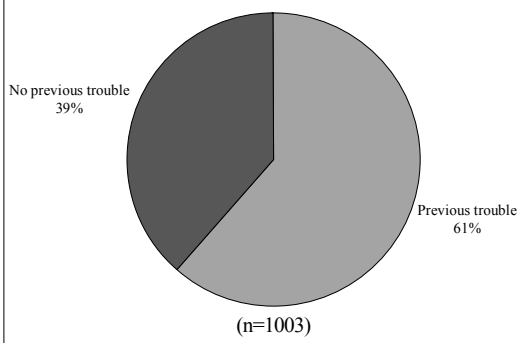
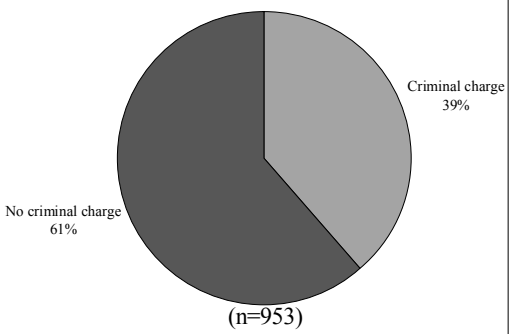


Figure 4. Reported criminal history (1999 Defendants Survey)



Note: Information about previous trouble with police was missing for two respondents, and information about reported criminal history was missing for 52 respondents.

Comparison with 1996 Survey

Comparison of the 1996 and 1999 samples shows that there is very little variation between the two on key demographic characteristics.

Table 8 indicates that the proportional representation of most of the magistrates courts was similar in both samples. The exception is Rockhampton, which, as already noted, was excluded from the 1999 Survey because of the low numbers collected early in the data-collection period. The shortfall in the Rockhampton numbers was, however, offset by the inclusion of Townsville as a new collection site in 1999.

Table 8: Comparison of 1996 and 1999 Defendants Survey samples — location of interviews

	1996 survey sample		1999 survey sample	
Court	**No.**	**%**	**No.**	**%**
Brisbane	162	33.1	283	28.2
Beenleigh	65	13.3	169	16.8
Cairns	61	12.5	129	12.8
Southport	65	13.3	122	12.1
Townsville	–	–	116	11.5
Ipswich	50	10.2	94	9.4
Maroochydore	33	6.7	72	7.2
Rockhampton	53	10.8	20	2.0
TOTAL	**489**	**100.0**	**1005**	**100.0**

Note: These numbers include juveniles.

Comparison on offence categories shows, again, that the samples are very close (see table 9), except the 1999 sample has a smaller proportion of defendants charged with theft than the 1996 sample.

The two samples are also broadly comparable in relation to age and gender, although the 1999 sample included 20 per cent female respondents, compared with 16 per cent in 1996.

Finally, in 1996, 63 per cent of the sample reported having previously been in trouble with police, compared with 61 per cent in 1999.

Table 9: Comparison of Defendants Survey samples — offence categories

	1996 sample		1999 sample	
	No.	**%**	**No.**	**%**
Homicide	1	0.2	1	0.1
Sexual assault	8	1.6	5	0.5
Assault	63	12.9	161	16.1
Robbery	11	2.3	9	0.9
Theft	149	30.5	196	19.6
Fraud	16	3.3	41	4.1
Property damage	22	4.5	45	4.5
Dangerous driving	3	0.6	10	1.0
Drug	135	27.7	318	31.7
Other	80	16.4	216	21.6
TOTAL	**488**	**100.0**	**1002**	**100.0**

Notes:
1. Information for one respondent was missing in 1966 and three in 1999.
2. 'Assault' includes obstruct police and resist arrest.
3. These numbers include juveniles.

In summary, there is a high degree of comparability between the two samples. The main exceptions are:

- offence categories — a smaller proportion of defendants in the 1999 sample were charged with theft offences than in the 1996 sample
- Aboriginality — the proportion of Aboriginal and Torres Strait Islander respondents has halved since 1996.

Limitations of the research methodology

The limitations are described more fully in the 1996 report. In brief, they are:

1. Exclusion of detainees who are not eventually charged

The methodology provides information only about individuals who are charged with a criminal offence, not about the entire population of people who have contact with police and who are subject to the exercise of their powers. A British study of police station attendees (Phillips & Brown 1998) showed that suspects charged with a criminal offence comprised less than half of all people detained at a police station, with a number of detainees receiving a caution (14%), being transferred elsewhere (9%), being held for a warrant and then released (7%), being released pending further inquiries (2%), or having no further action taken against them (18%).

While this must be acknowledged as a limitation, a study seeking to survey all detainees would require a different and more complex methodology. Such a study would be a more difficult and expensive project, as it would involve data collection either 'in-the-field' or at watchhouses. Cost considerations aside, this style of survey was deemed inappropriate for the following reasons:

- it would have been a considerable imposition on police for interviewers to interview detainees 'in-the-field' or at a watchhouse
- unless carefully planned, this approach would be likely to jeopardise the anonymity of respondents
- it would most probably be considered inappropriate for a complaints body such as the CJC to interview detainees at the point of their initial contact with police.

2. Limited geographic coverage

For logistic and budget reasons, the Survey was conducted only in magistrates courts with high workloads. This meant that it was not possible to collect information from defendants in rural areas, smaller urban courts and inland locations. While inclusion of these groups would have provided more information, the additional time and expense entailed could not be justified.

3. Exclusion of defendants remanded in custody

As with the 1996 Survey, defendants appearing in court who were remanded in custody were excluded from the sample frame. Defendants remanded in custody are more likely than those who have not been remanded to have committed serious offences. As a group they may also have different experiences and perceptions of the investigation and arrest process. The reasons for excluding these defendants were:

- the difficulty of gaining access to defendants in custody, and of conducting confidential interviews in a custodial environment, particularly police watchhouses
- concerns about inconvenience to custodial officers and watchhouse staff.

Given that most defendants obtain bail, the exclusion of defendants in custody is unlikely to have greatly affected the overall findings of the Survey.

4. Accuracy of the information collected

The information provided by defendants about police practices may have been inaccurate for a variety of reasons. Firstly, as defendants are generally bailed to appear in court 14 days after their initial contact with police, some respondents may have forgotten some details of the encounter, especially as a third of the sample admitted to being either moderately or greatly affected by drugs or alcohol at the time of their first contact with police. Secondly, some respondents may not have understood some procedures (formal cautions, explanations given by police about their rights, formal interview procedures), particularly if they were distressed or, again, alcohol- or drug-affected. Finally, it is also possible that some respondents may have provided interviewers with false or misleading information deliberately.

While these factors may limit the accuracy of the Survey as a measure of police practices at a single point in time, they do not detract from its utility as a measure of *change* in practices over time. This is because levels of inaccuracy (memory decay, misunderstanding, false or misleading information) should remain fairly constant.

It is also reassuring that, where alternative data exist — for example, the CJC's review of interview tapes (1999a) — the findings are broadly consistent with those of the Defendants Survey. This suggests that the Survey provides a reasonably good indication of overall patterns, even if the veracity of individual responses cannot be verified.

Chapter 3: Arrest and alternative processes

This chapter outlines the legal framework relating to bringing a defendant before the court. The results of the 1999 Defendants Survey are then presented under the following headings:

- how defendants came to court
- Notices to Appear
- knowledge of arrest status
- provision of information.

The chapter concludes by considering the key implications of the survey findings.

Legal framework

Bringing a defendant before the court

Before the PPRA, there were two ways of dealing with an adult who had committed an offence:

- arrest (with or without warrant) followed by charge and either release on bail or remand in custody until appearing before the court
- complaint and summons, involving a police officer laying a complaint and a justice or magistrate issuing a summons to be served on the alleged offender requiring the person to appear before a court.

The PPRA introduced a third process for dealing with an adult suspect — the issuing of a Notice to Appear (NTA), which requires the person to appear before the court on a specified day, at least 14 days ahead. The notice can be issued:

- 'on the spot' by the police officer who apprehends the suspect, or
- at the police station to a person who has been arrested, instead of charging the person and granting bail.

The Police Powers and Responsibilities Regulation 1998 encourages police to use an NTA or a complaint-and-summons process in preference to an arrest, even when an arrest is lawful.

> Juveniles continue to be dealt with by arrest or by an Attendance Notice under the *Juvenile Justice Act 1992*, which is similar to the NTA.

Grounds for arrest without warrant

The PPRA simplified the grounds for arrest, removing the distinction between crimes and misdemeanours (the two types of indictable offences) in the power of arrest without warrant. Under the PPRA, the only distinction to be made is whether the offence is a simple offence or an indictable offence.

Now a police officer can arrest without warrant a person suspected of committing an offence (either simple or indictable) if it is reasonably necessary to do so. The PPRA sets out reasons that may make it necessary to arrest (rather than proceed by way of an NTA or complaint and summons) — see below.

Reasons it may be necessary to make an arrest

- to prevent a continuation or repetition of the offence
- to establish the suspect's identity
- to obtain particulars if the suspect fails to respond to a Notice to Attend for fingerprinting or photographing [now called an Identifying Particulars Notice]
- to ensure that the suspect appears before the court
- to obtain or preserve evidence
- to prevent harassment of or interference with witnesses
- to prevent fabrication of evidence
- to preserve the safety or welfare of any person, including the suspect
- to prevent the suspect fleeing from a police officer
- because the suspect has assaulted a police officer
- because of the nature and seriousness of the offence.

In the case of indictable offences only, police may also arrest a person reasonably suspected of an offence in order to question the person or otherwise investigate the offence. This is a considerable departure from the previous law, which was very unclear and allowed police to question a suspect after arrest in only a very few circumstances (see chapter 4 for further discussion of this point).

Discontinuing an arrest

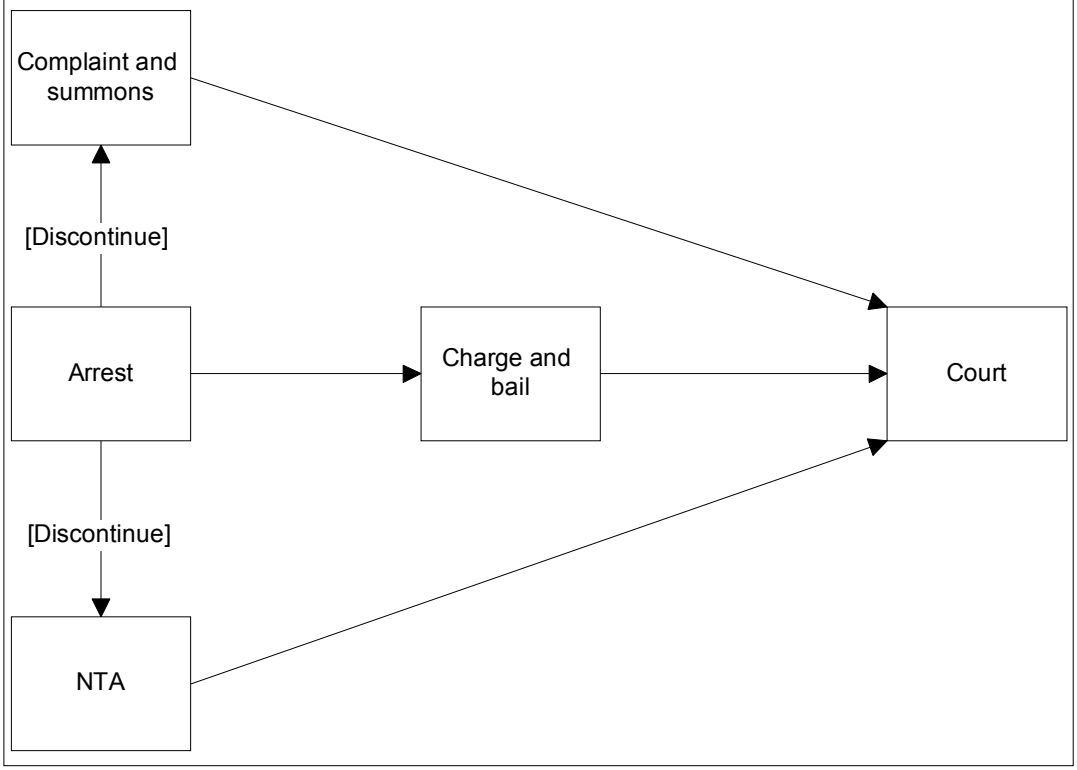
Before the PPRA, the police were obliged to take a person before a court as soon as reasonably practicable after arrest, unless the person was granted bail sooner. There was considerable disagreement about whether or not police could release a person who was no longer suspected of the offence, without first taking the person before a court. (See CJC 1994 if further information is required.)

Under the PPRA, police are duty-bound to release an arrested person at the earliest reasonable opportunity if the person is no longer a suspect. The Act also provides that the arrest may be discontinued if the reason for the arrest no longer exists and it is more appropriate to take the person before the court by way of an NTA or summons. For example, a person may have been arrested, in heated circumstances, to prevent the continuation or repetition of an offence. Once the suspect has 'cooled down' at the police station, it may be more appropriate to issue the suspect with an NTA and release the person, pending appearance at the court.

Options for bringing a suspect to court

The ways by which an adult suspect who has not been remanded in custody may eventually be brought before the court are illustrated in figure 5, next page.

Figure 5. Means of proceeding to court under the PPRA



Provision of information to arrestees

The results of the 1996 Survey showed that many people were unaware of when, or if, they were arrested. The PPRA attempts to remedy this lack of awareness by imposing strict obligations upon police officers to inform those arrested without warrant of what is happening. A police officer is now required to provide the following information as soon as reasonably practicable after the arrest:

- that the person is under arrest
- the nature of the offence for which the person has been arrested
- (if the officer is not in uniform) identification as a police officer including name, rank and station.

Before releasing the suspect from police custody, the suspect should be provided with the name, rank and station of the arresting officer in writing.

The Police Responsibilities Code attached to the PPRA also requires police, in certain circumstances, to advise suspects who are not under arrest of their status. The provision applies if a police officer wants to question a person 'in custody' for an *indictable* offence, other than a person who has been arrested.[12] In this context, a person 'in custody' is a person who is in the company of a police officer for the purpose of being questioned as a suspect about any involvement in the commission of an indictable offence. Thus, these provisions apply to 'volunteers'.

12 Or other than a person refused bail, in custody because bail has been revoked, or who is serving a sentence of imprisonment.

Before questioning a 'volunteer', the officer must caution the person of the following:

- if the person is approached somewhere other than the police station and is invited to attend the police station for questioning, the police officer must advise the person that he or she is not under arrest and does not have to go with the police officer
- if the 'volunteer' attends a police station for questioning while not in the company of police, the police officer must ask the person if he or she attended freely
- before questioning the 'volunteer', the police officer must advise the person that he or she is not under arrest and is free to leave at any time unless arrested.

These warnings to 'volunteers' were not required prior to the PPRA and Code. The provisions of the PPRA and Code aim to ensure that police make clear to suspects whether they are under arrest or free to leave.

Fingerprints

Until the PPRA was enacted, police could fingerprint a person only if the person had been arrested. Consequently, many people were arrested (rather than being proceeded against by complaint and summons) in order to enable the police to take fingerprints. As noted earlier, the PPRA attempts to reduce the reliance on arrest by providing an easier alternative to the complaint and summons, namely the NTA. In order to encourage use of the NTA (and, to a lesser extent, the complaint-and-summons procedure), some alternative processes were needed to enable fingerprints of suspects to be taken. The PPRA does this by providing that a police officer, when serving an NTA or a complaint and summons, can now:

- take the person's fingerprints, or
- give the person a written notice to attend at a police station within 48 hours to have fingerprints taken.

The power to take fingerprints of a person who has been arrested is retained under the PPRA, although it is limited to:

- offences punishable by at least one year's imprisonment
- offences against the PPRA, *Regulatory Offences Act 1985*, *Vagrants, Gaming and Other Offences Act 1931* and the *Weapons Act 1990*.

Survey results

How defendants came to court

Respondents were asked by what means they had come to court. Table 10 shows that the majority had received an NTA, with a further 26 per cent having been arrested, charged and granted bail. Only 3 per cent of the sample had attended court as a result of being issued a complaint and summons.

Table 10. Means of proceeding to court (1999 Defendants Survey)

Means of proceeding	No.	%
Notice to Appear	695	69
Arrest and bail	266	26
Complaint and summons	31	3
Attendance Notice	9	1
TOTAL	**1001**	**99**

Notes:

1. Information for four respondents was missing.
2. The 'arrest and bail' category includes 15 respondents who said they had received a 'bench charge sheet', a notice that is most likely to have been provided to a person who has been arrested and bailed.
3. The means of proceeding to court was verified when interviewers asked respondents to show them any papers that had been provided to them.

As described earlier in this chapter, there are several different 'paths' to court that a suspect can take following contact with police. The proportions of the 1999 and 1996 samples following these various paths are depicted in figures 6 and 7 (next page).

A comparison between 1996 and 1999 indicates that:

- the proportion of the sample who said they attended a police station decreased from 96 per cent to 78 per cent[13]
- the proportion who said they were arrested by police fell from 65 per cent in 1996 to 39 per cent in 1999.[14]

The introduction of NTAs as an alternative means of proceeding against suspects is likely to have accounted for these changes. The next section is devoted to describing the new procedure and how it is being employed by police.

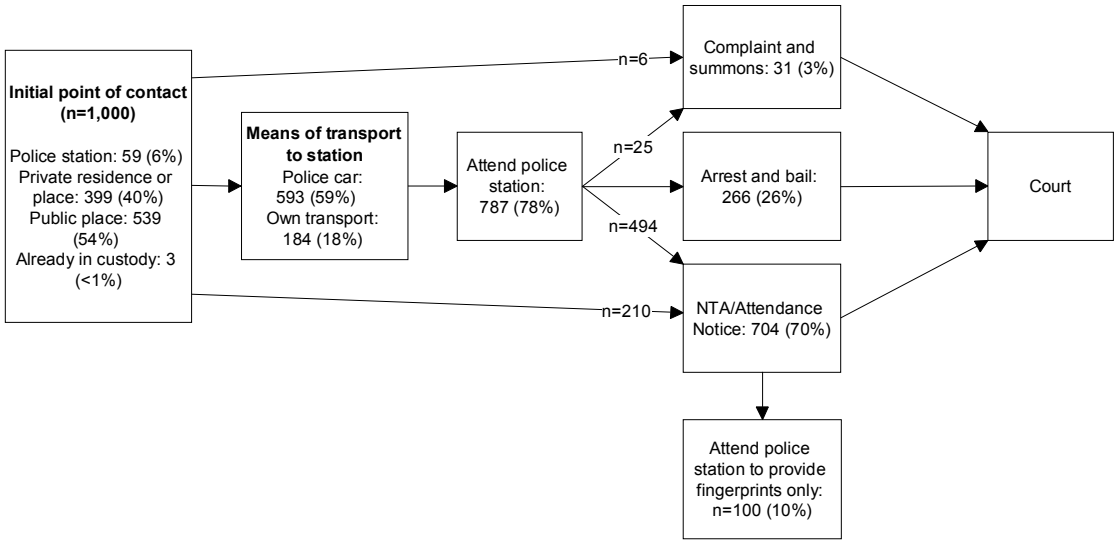
Notices to Appear

The CJC research paper *Police Powers in Queensland: Notices to Appear* (1999b) noted that, before the introduction of NTAs, most proceedings initiated against suspects were commenced by way of arrest (86%), with the remaining 14 per cent commencing by way of summons. The paper reported that in the first six months of the introduction of NTAs, it appeared that as many as 50 per cent of all proceedings against suspects had been commenced by an NTA, with 45 per cent initiated by arrest and 5 per cent by complaint and summons. However, the paper also noted that a large proportion of defendants receiving NTAs had been arrested at some point in the process, suggesting that NTAs may have been used as a 'fast track' form of arrest, rather than as an alternative to arrest. The 1999 results are broadly consistent with these findings.

13 This change is statistically significant: $\chi^2 = 80.2$, df 1, $p<0.01$.

14 This change is statistically significant: $\chi^2 = 88.6$, df 1, $p<0.01$.

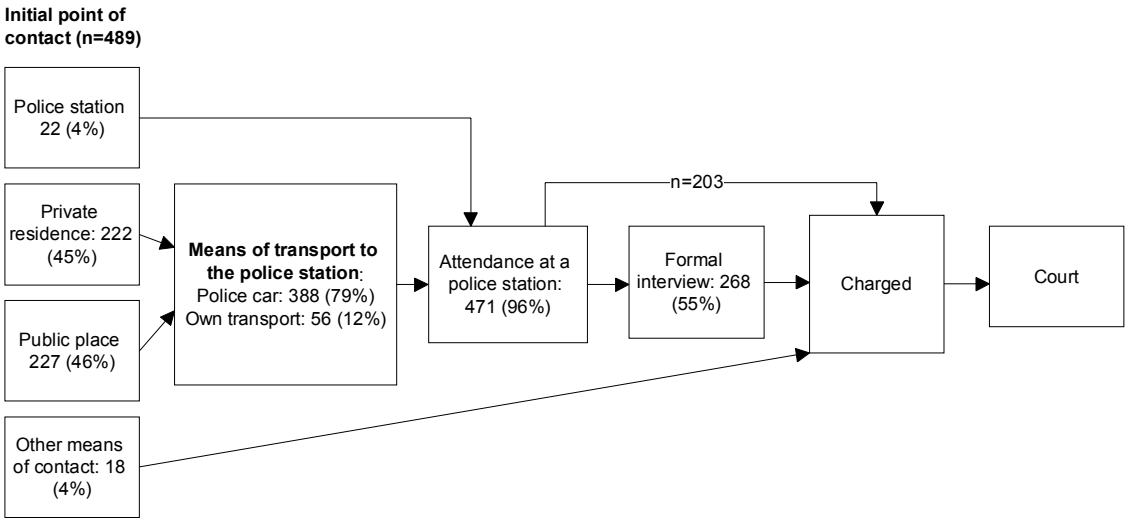
Figure 6. 'Paths' to court (1999 Defendants Survey)



Notes:

1. Percentages shown are the percentages of the total sample.
2. Location of initial approach was missing for five respondents.
3. Information about means of transport to the police station was missing for 10 respondents.
4. Information about means of proceeding to court was missing for five respondents.

Figure 7. 'Paths' to court (1996 Defendants Survey)



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.

Survey respondents who had received an NTA were asked a separate set of questions relating to where they were at the time of receiving the notice, and their understanding of the notice. Table 11 shows that the majority of notices were given to respondents at a police station, with only a third being delivered to respondents at the first point of contact with police.

Table 11. Point at which defendants received the NTA/Attendance Notice (1999 Defendants Survey)

Point of delivery	No.	%
At the police station	426	61
Point of first contact with police	232	33
Unclear/Other	38	5
Missing	8	1
TOTAL	**704**	**100**

In fact, of the total group of respondents who received an NTA, 81 per cent had attended a police station and just over a quarter (27%) also said they had been arrested. The CJC's 1999 study found that 21 per cent of offenders recorded on the Custody–Search Index as having received an NTA had also been arrested.

Almost all defendants who received an NTA (94%) said police had given them information about the notice, with 89 per cent saying they understood the notice. However, the sample does not include those defendants who failed to appear at court because they did not understand the NTA (and who may not have had the notice explained to them by police). The CJC study (1999a) found that failure-to-appear rates of defendants who were proceeded with by way of NTA were well above failure-to-appear rates of both arrest and summons groups. It is therefore likely that the survey results overestimated the level of understanding of defendants who receive NTAs.

Almost a third of respondents who received an NTA (31%) also received an Identifying Particulars Notice (IPN) to provide police with fingerprints. Most of these respondents said they subsequently provided fingerprints to police (94%).

Knowledge of arrest status

It was not easy to assess the arrest status of defendants from their responses to the survey questionnaire. Unless defendants came to court by way of an arrest-and-bail procedure, in which case they had clearly been under arrest at some point, there was no simple way to determine whether or not they had been arrested in the course of their encounter with police. Many respondents misconstrued their arrest status, often because they had an incorrect understanding of Queensland law and QPS procedure.

Table 12 presents the responses of all defendants to the question 'Were you arrested at any stage?'. The table shows:

- 59 respondents who had, in fact, been arrested and bailed to appear in court said they had not been arrested, and
- a group of 66 respondents said they did not know whether they had been arrested.

Table 12: Means of proceeding by perception of arrest status (1999 Defendants Survey)

	Were you arrested at any stage?					
	Yes		No		Don't know	
Means of proceeding	**No.**	**%**	**No.**	**%**	**No.**	**%**
Arrest and bail (n=266)	187	19	59	6	20	2
NTA/Attendance Notice (n=704)	192	19	466	46	44	4
Complaint and summons (n=31)	13	1	16	2	2	<1
TOTAL	**392**	**39**	**541**	**54**	**66**	**7**

Notes:

1. Information for six respondents was missing.
2. The means of proceeding to court was verified by interviewers asking respondents to show them any papers that had been provided to them.

In attempting to assess whether the remaining groups of respondents were correct in their response to the question 'Were you arrested at any stage?', responses to a range of other questions were considered. Other defendants may also have misunderstood their arrest status. For example, table 13 shows that 12 of those who said they had been arrested said that police had told them they were *not* under arrest; 100 respondents said they did not think they had to go to the police station; and 34 said they went to the station to cooperate with police. These responses suggest that these people had volunteered to attend the police station and had not been under arrest at that stage.

Table 13. Responses to other relevant questions of respondents who reported that they had been arrested (1999 Defendants Survey)

Survey response	**No.**	**%** (n=393)
Police informed respondents they were under arrest	231	59
Police told respondents they had to go to the police station	212	54
Respondents were placed in a cell at the police station	182	46
Respondents did not think they had to go to the police station	100	25
Respondents objected to going to the police station	83	21
Police asked respondents to attend the police station	54	14
Respondents attended the police station 'to cooperate'	34	9
Police informed respondents they were not under arrest	12	3

Some of those respondents who said they had not been under arrest may also have been mistaken (see table 14). Of the entire group of respondents reporting that they had not been arrested, over half said they attended the police station because they 'thought they had to'; nearly half said police had not informed them that they were not under arrest; a third

Table 14: Responses of respondents reporting no arrest and their responses to other relevant questions (1999 Defendants Survey)

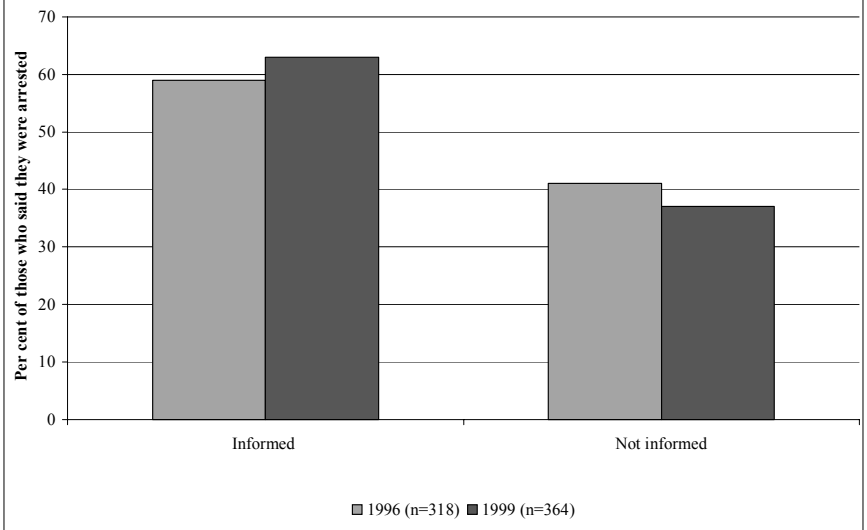
Survey response	**No.**	**%** (n=542)
Respondents thought they had to go to the police station	303	56
Police had not informed respondents they were not under arrest	254	47
Police told respondents they had to go to the police station	186	34
Police asked respondents to attend the police station	161	30
Respondents were placed in a cell at the police station	47	9
Respondents objected to going to the police station	39	7

said they were told by police that they had to attend the police station; 7 per cent said they objected to going to the police station; and 9 per cent said they had been placed in a cell at the watchhouse.

From these responses, it would seem that at least 20 per cent of the defendants surveyed in 1999 were either wrong or unclear about their arrest status. This level of misunderstanding about arrest status is similar to that revealed in the 1996 Survey.

Between the 1996 and 1999 Surveys, there was little change in the proportion of defendants who, having self-identified as been arrested, also recalled being informed by police that they were under arrest. This was despite the fact that the PPRA imposed new obligations on police to provide clear information to arrested suspects. See figure 8.

Figure 8: Respondents who reported they had been arrested and their recollections of whether police had told them they were under arrest (1996 and 1999 Defendants Surveys)



Note: The figure does not include respondents who said they could not remember whether police had informed them they were under arrest.

As in 1996, a large number of respondents said they first became aware of their arrest by some other means than being informed by police, such as when they were put in a police car, handcuffed, taken to a police station or watchhouse, or charged with a criminal offence. Table 15 shows that, contrary to what might be expected, there was actually an 11 per cent decrease between 1996 and 1999 in the proportion of respondents who said they first became aware of their arrest status by being told by the police. Possible reasons for the continued confusion among the respondents about their arrest status are as follows:

- Some respondents, particularly those who were intoxicated, may not have remembered having been provided with information about their arrest status, or may have misunderstood the information. However, intoxication levels are unlikely to have changed substantially across the two samples.[15]

15 Respondents were not asked in 1996 whether or not they had been intoxicated. Therefore it was not possible to test for differences between the two samples.

Table 15. How respondents first became aware they had been arrested (1996 and 1999 Defendants Surveys)

	% of valid responses from respondents who reported that they had been arrested	
Response	**1996 sample** (n=294)	**1999 sample** (n=393)
I was told I was under arrest	38	27
I was put in the police car	13	13
I was taken to the station/watchhouse	33	12
I was handcuffed	7	10
I was told to go with the police	3	6
By the use of physical force	<1	3
I was 'caught red-handed'	2	2
I was charged	2	1
I handed myself in to police	<1	1
Other	2	3

- Prior to the introduction of the PPRA, the police had an incentive to rely on the 'fiction of voluntary attendance' to delay making an arrest until late in the process, because of the limitations on questioning after arrest. With the introduction of new legislative provisions allowing detention after arrest for the purposes of questioning, this incentive no longer exists. However, it may be that some police, used to working under the old arrangements, have been slow to change their approach to conform with the new legislative provisions.
- The post-PPRA process of arrest and detention for questioning is complicated by the introduction of the new obligation on police to discontinue an arrest. It is often the case that the initial custodial status of suspects may change during the course of their interaction with police. While police are required to inform defendants that they are under arrest under the PPRA, police are not required to inform suspects if this status changes, which may add to the confusion experienced by defendants.

Provision of information

Under the PPRA, police officers are required to provide details about their name and station to those persons they have searched, arrested, stopped or detained. All respondents to the 1999 Survey were asked whether police had done so. (As police were not obliged to provide this information to suspects in 1996, these questions had not been asked in the 1996 Defendants Survey.)

Table 16 (next page) shows that respondents who were proceeded against by way of an NTA were far better informed than those who had been arrested or summonsed. There are two possible explanations for this:

- A much higher proportion of the respondents who had been arrested said they were either moderately or seriously affected by alcohol or drugs at the time, and so may not have remembered clearly (47% of the arrest group said they had been intoxicated,

compared with only 29% of the NTA group).

- When an officer issues an NTA there is a section of the notice that requires them to fill in their name and police station. Respondents who received an NTA may have obtained this information directly from the NTA rather than from the police officer.

Table 16. Information provided to respondents by means of proceeding to court (1999 Defendants Survey)

	% within each group		
Information provided by police	**Arrest** (n=266)	**NTA** (n=704)	**Summons** (n=31)
Gave their names	38	63	52
Gave their police station	39	62	48

Notes:

1. NTA includes Attendance Notice.
2. The 'arrest and bail' category includes 15 respondents who said they had received a 'bench charge sheet', a notice that is most likely to have been provided to a person who has been arrested and bailed.
3. Information about provision of names was missing for eight respondents and information about provision of the police station was missing for 12 respondents.
4. The means of proceeding to court was verified by interviewers asking respondents to show them any papers that had been provided to them.

Fingerprinting

The proportion of the sample who were fingerprinted decreased from 78 per cent in 1996 to 62 per cent in 1999.[16] This appears to have been due, in part, to the introduction of NTAs. As discussed, the majority of respondents to the survey (70%) were issued with an NTA. Fingerprinting of NTA respondents (61%) was slightly less frequent than for arrested respondents (66%). For reasons which are not clear, some survey locations showed larger declines in fingerprinting than others: for example, fingerprinting in Maroochydore dropped by 37 per cent, while in Cairns there was a 3 per cent increase.

As mentioned earlier, about a third of respondents who received an NTA were also given an IPN requiring them to provide fingerprints. An additional 31 per cent of NTA respondents provided fingerprints to police without having received an IPN. It is likely that the fingerprinting of an NTA recipient who did not receive an IPN indicates that the respondent had been arrested at some point in the process.

It is also possible that new provisions in the PPRA requiring that the identifying particulars of a suspect who is later found not guilty must be destroyed have had the effect of dissuading some police from taking the identifying particulars in the first place.

16 This change is statistically significant: $\chi^2 = 40.3$, df 1, $p<0.01$.

Arrest and alternative processes: Key findings

The NTA has been enthusiastically embraced by police as the preferred means of dealing with suspects. The survey data also show, however, that:

- the majority of respondents subject to an NTA had received it at a police station, rather than 'in-the-field'
- just over a quarter of the NTA group also said they had been arrested.

It appears from these responses, and from other research conducted by the CJC (1999b), that the NTA is being frequently used in conjunction with arrest rather than as an alternative to it. This use is arguably inconsistent with the principal intention of the new procedure, as stated by the then Minister in his Second Reading of the Police Powers and Responsibilities Bill:

> The adoption of this process, coupled with a power to obtain the fingerprints and photograph of a suspect, would address the current over-reliance by police on their arrest powers while retaining a person's right to have a matter determined by a court. (QLA 1997, p. 4083).

The survey findings also indicate that respondents to the 1999 Survey were as likely as those in 1996 to be mistaken or confused about whether or not they were under arrest. This is despite the PPRA placing additional obligations on police to inform respondents about their arrest status.

Finally, the data show that there has been some decline in fingerprinting since 1996 — a trend that appears to be associated with the increased use of NTAs.

Chapter 4: Questioning

This chapter outlines the legal framework relating to questioning suspects. The results of the 1999 Defendants Survey are then presented under the following headings:

- point at which respondents were questioned
- 'in-the-field' questioning
- interviews at police stations
- provision of information to interviewees
- involvement of solicitors, friends and relatives
- Aboriginal and Torres Strait Islander interviewees
- juvenile interviewees
- general level of understanding.

Legal framework

Detention for questioning and investigation

Police now have the power to detain a person arrested for an indictable offence, for the purpose of investigation or questioning. Prior to the PPRA the police were obliged to take an arrested person before the court as soon as practicable after arrest, unless bail was granted. That requirement, combined with the Judges Rules about questioning a person in custody, impeded the ability of the police to question a person who had been arrested. As a result, police began to rely on a suspect's alleged 'voluntary attendance' at the police station or the concept of 'assisting police with inquiries' in order to question suspects about offences without formally arresting them.

The granting to police of the power to question a person after arrest means that police should no longer have an incentive to resort to creating the fiction of voluntary attendance. This power is part of a regulated scheme which:

- imposes many obligations on police officers, including strict time limits; and
- increases suspects' rights during questioning, including the right to legal advice.

These rights and obligations, discussed in more detail below, apply only to people suspected of committing indictable offences.

Who can be detained?

A person reasonably suspected of having committed an indictable offence and who has been lawfully arrested, refused bail, whose bail has been revoked or who is serving a sentence of imprisonment may be detained.[17] Of these categories of person, only arrested persons will have been included in the Defendants Survey.

17 In the case of a person in custody under the *Corrective Services Act 1988* or the *Juvenile Justice Act 1992*, a police officer may apply to a magistrate for an order to remove the person into the custody of the police officer.

For how long can the person be detained?

The arrested person may be detained for a reasonable time, up to eight hours, to investigate or question the person about the offence. During the eight-hour period, the person must not be questioned for more than four hours. The period of detention other than the questioning period is the 'time-out period'.

Examples of 'time out' are:

- time to take the person from the place of arrest to the nearest place where the investigating officer has facilities for recording the questioning
- time to allow the person to speak with a lawyer, friend, relative, parent, guardian, interpreter or other person
- time to allow the person to receive medical attention, to recover from the effects of alcohol or to rest.

If the police consider it necessary to detain the person beyond the eight-hour period, in order to continue questioning or investigation, they must seek the authority of a magistrate or justice of the peace.

What happens at the end of the detention period?

Once the reasonable time for detention ends, the police may:

- release the person without charge
- release the person and issue an NTA or a summons
- charge the person and release the person on bail
- charge the person and take the person before the court, if bail is not granted by police
- return the person to custody if in custody before the detention period — that is, the suspect was removed from the custody of Corrective Services.

Rules governing questioning

The PPRA and Code contain a detailed set of rules governing police questioning of suspects for indictable offences. In particular, suspects' rights are clearly articulated and police are obliged to inform suspects of these rights. The rights and obligations, described below, apply to any person who is 'in custody' for an indictable offence. For these purposes, a person is 'in custody' if in the company of a police officer for the purpose of being questioned as a suspect about any involvement in the commission of an indictable offence. This includes suspects who have been arrested and those who have attended at a police station or elsewhere 'voluntarily' for questioning.

Right to silence

Nothing in the PPRA affects the person's right to remain silent. In fact, under the PPRA the police are obliged to caution the person (that is, advise the person of the right to remain silent) before starting to question the person. Prior to the PPRA, the caution was not required to be given until the police officer had decided to charge the person. Often this would not occur until well into the questioning process.

Right to legal advice

Contrary to popular belief, prior to the PPRA the police were not obliged to advise a suspect of the right to have a lawyer present. Under the PPRA and Code, the police are now obliged, before questioning a person 'in custody' for an indictable offence, to inform the person of the right to contact a friend or relative and a lawyer. The friend/relative and the lawyer may be present for the questioning and police must delay the questioning for a reasonable time to allow the person to contact those nominated and for the persons to attend. If reasonably practicable, the police should allow the person 'in custody' to speak to the lawyer in private.

Special provisions apply in the case of Aboriginal and Torres Strait Islander suspects and children. For example, in certain cases the police officer is obliged to notify a representative of an Aboriginal or Torres Strait Islander legal organisation that an Aboriginal or Torres Strait Islander suspect is in custody. In the case of a child suspect, police must not question the child unless an interview friend is present.

A police officer is also obliged to inform the person in custody of the right to an interpreter, if necessary, and must delay the questioning until an interpreter arrives.

Recording of interviews

When the 1996 Survey was conducted, there was no statutory requirement for a police interview with a suspect to be audio- or video-taped but, as a matter of policy, the QPS required all interviews with suspects for indictable offences to be electronically recorded.

The PPRA now specifies that the questioning of a suspect in custody must, if practicable, be electronically recorded. Any information the police are required to give suspects about their rights (such as the right to contact a friend or lawyer, or the right to remain silent) must also be included on the electronic record, if practicable. Where it is not practicable to record the questioning electronically, the police officer should make a written record of the questioning. A written confession must be read back to the suspect and electronically recorded.

Survey results

Point at which respondents were questioned

Respondents were asked about three forms of police questioning:

- At that time [that is, when first approached by police] did the police ask you any questions about these charges?
- When you were at the police station, did the police interview you about the matters you've been charged with?
- When you were at the police station, did the police ask you any questions that were not part of a formal taped interview?

The first two of these questions were identical for both Surveys. The third question had some slight wording changes in 1999.[18]

Table 17 shows some change since 1996 in respondents' recollections of when they were questioned. At each point in the process, fewer respondents said they were questioned. The largest decrease (10%) has been in the category of 'informal questioning at a police station'.

Table 17: Respondents' recollections of the point at which they were questioned — 1996 and 1999 Defendants Surveys

Respondents' recollection	% of total sample	
	1996 (n=489)	1999 (n=1005)
Not questioned	13	17
At point of first contact with police	55	49
Formal interview at a police station	56	48
Informally at a police station	43	33

Note: Some respondents were questioned more than once.

The next two sections present data on 'in-the-field' questioning and formal interviews, focusing on length of questioning, recording of questioning and cautioning during questioning.

'In-the-field' questioning

Length of questioning

As in 1996, most of 'in-the-field' questioning was short in duration (see table 18). However, in contrast to 1996, none of the respondents in 1999 reported having been questioned for more than four hours.

Table 18: Respondents' recollections of length of 'in-the-field' questioning (1996 and 1999 Defendants Surveys)

	1996 (n=265)		1999 (n=490)	
Length of questioning	No.	%	No.	%
Less than 10 minutes	145	55	21	44
11–30 minutes	83	31	171	35
31–60 minutes	20	8	60	12
61 mins–4 hours	15	6	30	6
More than 4 hours	2	1	–	–

Note: Information about length of 'in-the-field' questioning was missing for three respondents in 1996 and 14 in 1999.

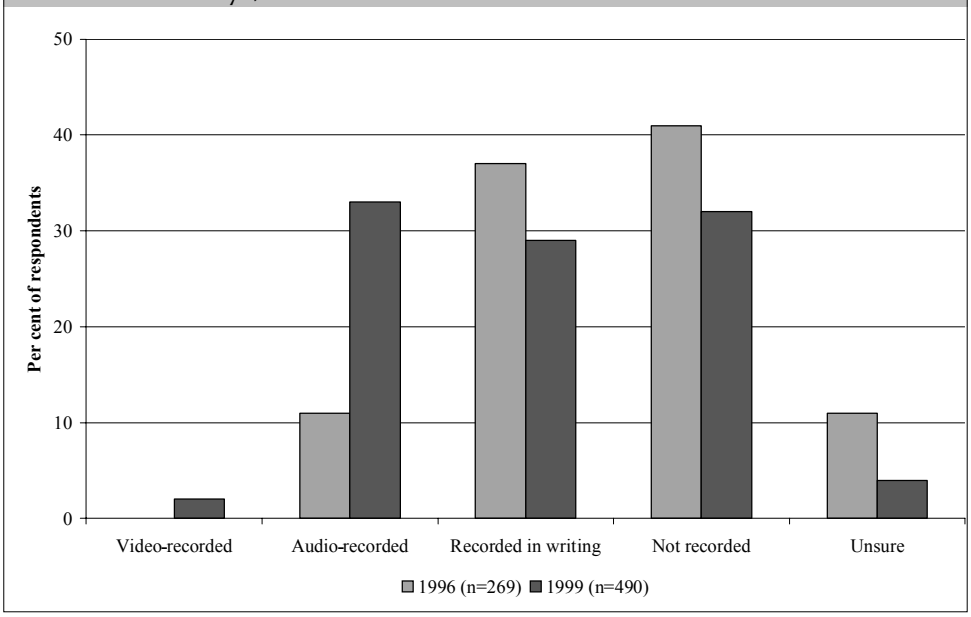
18 In 1996, the question was worded: 'Did the police ask you any questions at the police station before they started the formal interview?'.

Recording of questioning

Figure 9 shows there has been a substantial change between the two survey years in respondents' recollections of how questioning was recorded, with a marked increase in the proportion of respondents who had been questioned at the first point of contact with police who reported that they had been either audio- or video-recorded (up from 11% to 35%).

The increase in tape-recording of 'in-the-field' questioning is most likely due to the PPRA requirement that all questioning, 'if practicable', should be electronically recorded. Many operational police appear to have interpreted this provision as requiring that all discussions with suspects be recorded. In addition, the introduction of NTAs means that officers no longer need to take a suspect to a police station for a formal interview, but may rely on tape-recorded questioning conducted somewhere other than at a police station.

Figure 9. Respondents who said they had been questioned 'in the field' and their recollections of how the questioning was recorded (1996 and 1999 Defendants Surveys)

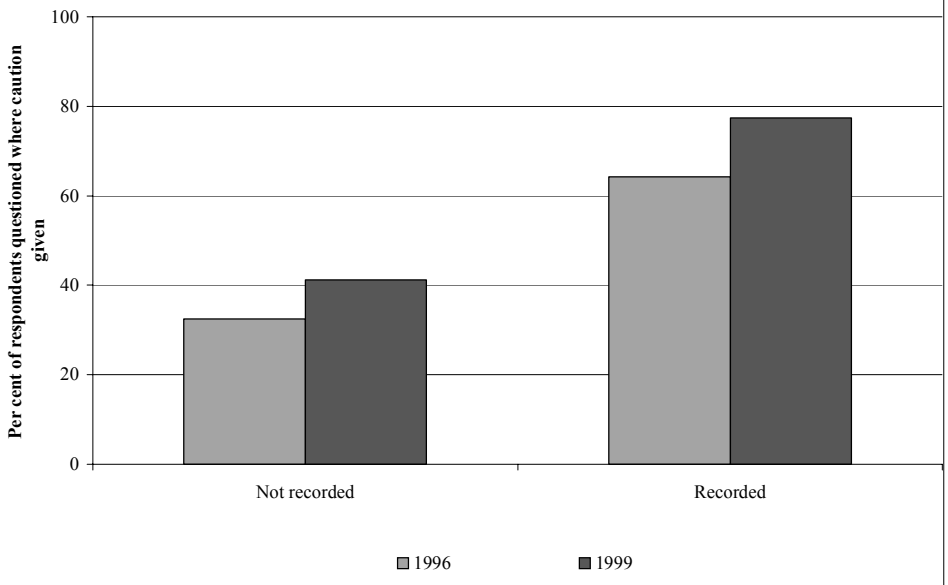


Cautioning during questioning

Between 1996 and 1999 there was an increase from 34 per cent to 54 per cent in the proportion of respondents who said they had been cautioned when questioned 'in the field'. This trend was mainly associated with the increase in electronic recording. As shown by figure 10, in both years respondents who were recorded were much more likely to have been cautioned than those who were not recorded. However, figure 10 also shows that there was a greater tendency in 1999 to give cautions regardless of whether questioning was recorded.

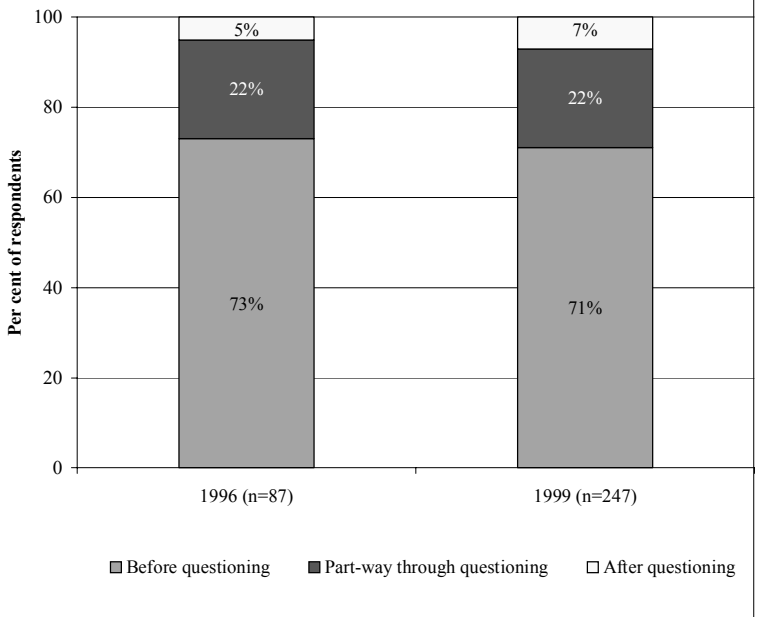
Figure 11 shows the point at which the caution 'in the field' was given, according to respondents. In both 1996 and 1999, over 70 per cent of the cautions were reportedly given prior to the commencement of any questioning. In both years, in 22 per cent of cases the cautions were not given until part-way through questioning. In some instances this may have been because the person being questioned was not at first a suspect.

Figure 10. Respondents who said they had been questioned 'in the field' and their recollections of whether they had been cautioned (1996 and 1999 Defendants Surveys)



Note: Information was missing for 44 respondents in 1996 and 48 in 1999.

Figure 11. Respondents who reported being cautioned 'in the field' and their recollections of when they were cautioned (1996 and 1999 Defendants Surveys)



Notes:

1. Information was missing for one respondent in 1996 and 26 in 1999.
2. This figure includes only those respondents who were given a caution.

Interviews at police stations

Length of interviews

Table 19 presents respondents' recollections of the length of electronically recorded interviews conducted at a police station. The data indicate that very few respondents in either sample said they had been questioned for more than four hours.

Table 19. Respondents' recollections of the length of recorded interviews (1996 and 1999 Defendants Surveys)

	1996 (n=232)		1999 (n=385)		Tapes Review (n=176)	
Length of questioning	**No.**	**%**	**No.**	**%**	**No.**	**%**
Less than 10 minutes	62	27	71	18	45	26
11–30 minutes	103	44	177	46	89	51
31–60 minutes	36	16	90	23	22	13
61 mins–4 hours	28	12	41	11	–	–
More than 4 hours	3	1	3	1	–	–

Source: CJC 1999a

Notes:

1. Information about length of recorded interviews was missing for one respondent in 1996 and three in 1999.
2. In the Tapes Review, information about length of interviews was missing for 20 respondents.
3. Tapes Review data are from CJC 1999a.

A CJC review of a randomly selected sample of tapes of records of interview conducted in mid-1998 (the Tapes Review) also found that there were no interviews that took longer than four hours (CJC 1999a). Together, these data indicate that there is a high level of compliance with the four-hour limit on questioning set by the PPRA. However, as the 1996 Survey shows, even where there was no time restriction, police rarely had a need to question people for this long.

Recording of interviews

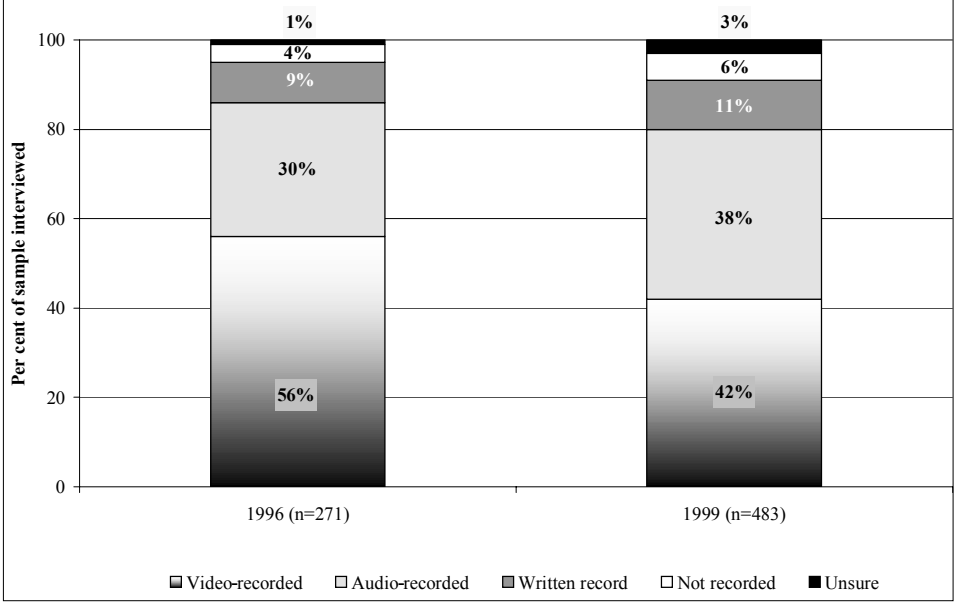
Figure 12 shows that in both survey periods the great bulk of interviews in police stations were video- or audio-recorded. However, the proportion of interviews which respondents said were not electronically recorded increased from 13 to 17 per cent between 1996 and 1999. There was also a substantial decline between 1996 and 1999 in the use of video-recording.

It would be unusual for a formal interview at a police station to be unrecorded, as the PPRA clearly obliges police to record interviews electronically 'if practicable'.

Possible explanations for the *apparent* non-recording of 17 per cent of the interviews conducted in 1999 include:

- some respondents may have been charged with a simple offence rather than an indictable offence — simple offences do not require electronic recording of interviews
- some respondents may have mistaken preliminary questioning for a formal interview
- some respondents, especially those who were intoxicated at the time, may have forgotten or not realised that their interview had been electronically recorded.

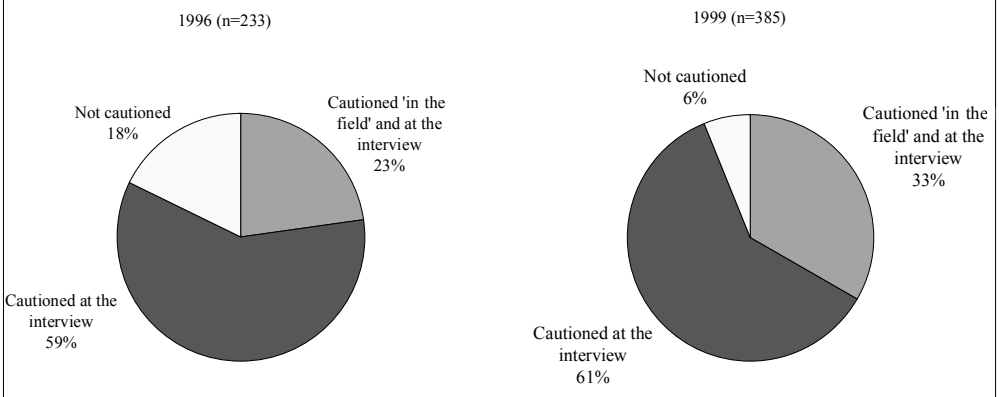
Figure 12. Respondents' recollections of how the interview at the police station was recorded (1996 and 1999 Defendants Surveys)



Cautioning of defendants

Figure 13 shows that the proportion of respondents who recalled having been cautioned when undergoing a recorded interview has increased since 1996. Figure 13 also shows an increase since 1996 in the proportion of respondents who were cautioned twice — when they had initially been questioned and again when they were interviewed at the police station. The Tapes Review found that in 96 per cent of the records of interviews examined, the suspect had been notified of the right to silence.

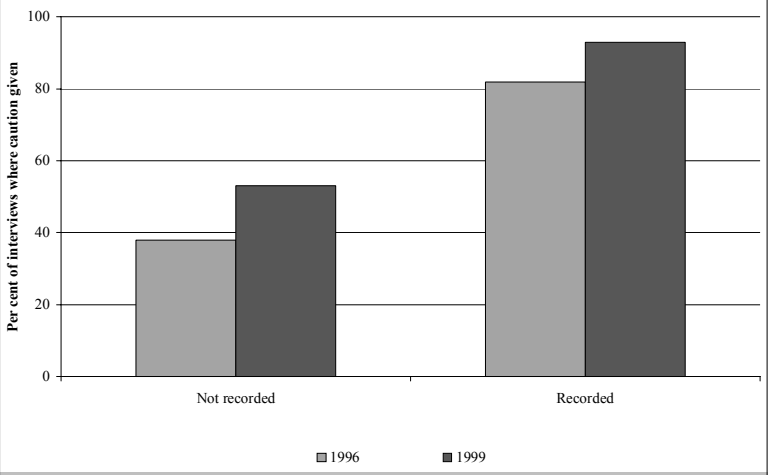
Figure 13. Respondents who said the interview at the police station was recorded and their recollections of when they were cautioned (1996 and 1999 Defendants Surveys)



Note: Information was missing for three respondents in 1996 and 15 in 1999.

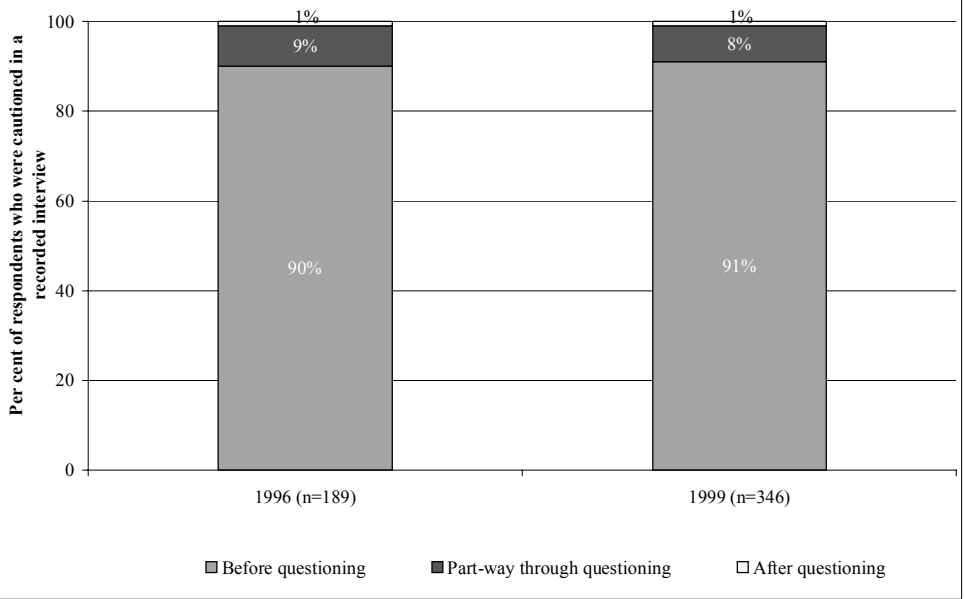
Figure 14 shows that the reported provision of cautions by police has increased in both electronically recorded and non-electronically recorded interviews conducted at police stations. It is possible that, in many of the instances where 'interviews' were not electronically recorded and there was no caution provided, the respondent had confused informal questioning with a formal interview. In both years, the great majority of respondents remembered having been cautioned before the commencement of the recorded interview (see figure 15).

Figure 14. Respondents who said they had been interviewed at the police station and their recollections of when they were cautioned (1996 and 1999 Defendants Surveys)



Note: Information was missing for four respondents in 1996 and 22 in 1999.

Figure 15. Respondents' recollections of when they were cautioned during a recorded interview conducted at a police station (1996 and 1999 Defendants Surveys)



Notes:

1. Information was missing for one respondent in 1996 and eight in 1999.
2. This figure includes only those respondents who were cautioned.

Questioning practices: summary

Since the introduction of the PPRA there has been a trend towards greater electronic recording of 'in-the-field' questioning, with a corresponding increase in the provision of cautions to respondents who were questioned 'in the field'. On the other hand, electronic recording of interviews conducted at a police station appears to have declined slightly between 1996 and 1999.

These changes suggest the emergence of a new approach by police to the process of questioning suspects. With the greater availability of tape recorders 'in the field', and the advent of the NTA, police no longer need to transport a suspect to a police station for a formal recorded interview. In addition, the PPRA states that questioning of suspects who are in custody must, if practicable, be electronically recorded. Further, any admission or confession made by a suspect is not admissible as evidence in court unless it has been electronically recorded. What is probably occurring between the two survey years is either:

- a blurring of the distinction between informal first instance questioning (traditionally not recorded) and the formal, recorded police interview (traditionally electronically recorded at a police station), or
- an increase in the number of formal interviews occurring 'in the field'.

Future surveys will no doubt assist in interpreting these results.

Provision of information to interviewees

This section relates only to those respondents who said they participated in an electronically recorded interview at a police station. It is likely that most of these interviews involved offences that police suspected of being indictable offences, given that interviews with suspects charged with simple offences need not be tape-recorded.

Under the PPRA, police are required to inform suspects of their right to have:

- a solicitor present during the interview
- a friend or relative present during the interview.

Suspects also have to be given a copy of the taped interview, or to have a copy made available to them.

Table 20 compares the responses from the 1996 and 1999 samples with the Tapes Review data. Table 20 shows there has been a marked increase since 1996 in the proportion of the sample who said that the police had informed them of their right to have a relative/friend or a solicitor present. The level of compliance with requirements relating to the provision of information reported by defendants in the 1999 Survey is close to the level of compliance in the Tapes Review study, indicating that the Survey has a high degree of validity as a measure of police practices in this area.

Table 20 also shows that those respondents who participated in an electronically recorded interview in 1999 reported substantial compliance by police with the obligation to give them, or make available to them, a copy of the taped interview.

Table 20. Information provided to defendants whose interviews were taped (1996 and 1999 Defendants Surveys and Tapes Review data)

Information reportedly provided	% of interviews 1996 (n=233)	1999 (n=385)	Tapes Review† (n=136)
Informed of the right to have a solicitor present*	22	72	83
Informed of the right to have a relative/friend present*	8	73	77
Copy of the interview provided/made available	–	81	–

* These changes are statistically significant: $p<0.01$.
† Tapes Review data are from CJC 1999a.

Involvement of solicitors, friends and relatives

Presence of solicitors

Only one of the respondents from 1999 who said he had participated in a formal taped interview reported having a solicitor present with him (see figure 16). A second defendant indicated that she had spoken with a solicitor by telephone while in police custody, but that 'It was a Sunday and the lawyer didn't want to come in'. The single defendant who did have a solicitor present said he had been able to confer privately with his legal counsel, and that police had delayed conducting the interview for 45 minutes until the solicitor had arrived.

Involvement of lawyers was even less common than in 1996, when four interviewees said that they had a solicitor with them (2% of all those who underwent a formal taped interview). This finding is again very similar to the Tapes Review study, which found that, of the 107 suspects who were notified on tape of their right to a solicitor, only 5 per cent had a lawyer present with them while they were being interviewed. Possible reasons for this very low 'take up' rate include respondents:

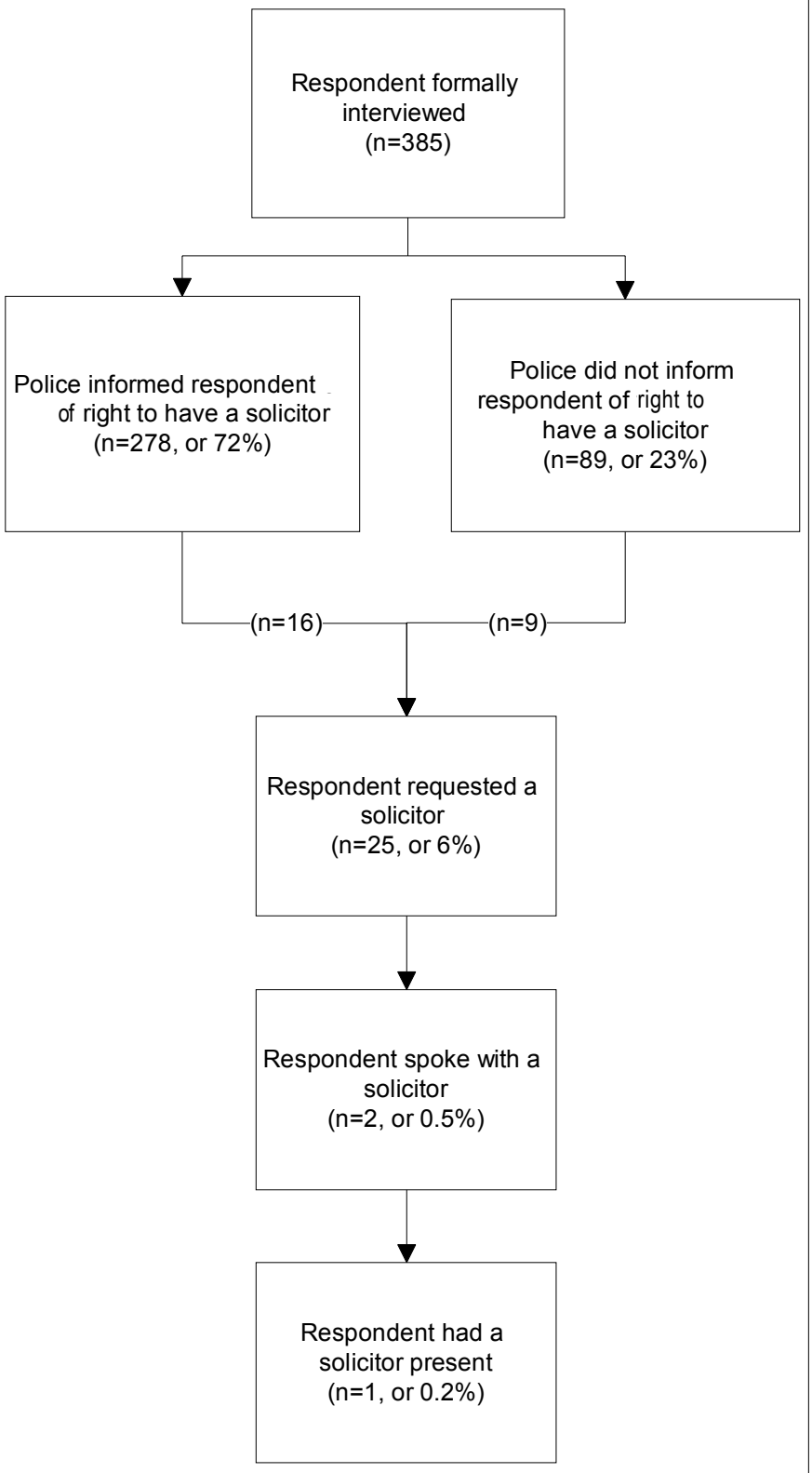
- believing the alleged offence did not warrant a solicitor
- being unwilling to incur costs that they may be unable to meet
- being unsure of the procedure for involving a solicitor
- being actively or passively discouraged by police from consulting a solicitor.

Although survey data cannot address the first three of these points, issues of active and/or passive resistance by police to the presence of a solicitor can be addressed, at least to some extent.

The data show that 23 per cent of respondents who were formally interviewed reported not being told of their right to have a solicitor present during the interview, although the Tapes Review results suggest a higher rate of compliance with this obligation. If it was the case that 23 per cent of formal interviews had proceeded without the provision of this information, this would be a legitimate cause for concern, given that it is now mandatory for suspects to be informed of this right.

The data show that of the 25 respondents who claim to have requested a solicitor, only three actually obtained the services of a solicitor. Possible explanations as to why so few

Figure 16. Availability of solicitors for interviews (1999 Defendants Survey)



Note: The missing cases are due to some respondents being unsure as to whether or not they had been informed of their right to a solicitor.

respondents ultimately consulted a solicitor include that respondents may have:

- changed their mind as the process unfolded
- may have been unable to make contact with a solicitor
- contacted a solicitor who then declined to become involved.

It is also possible that in some instances police more actively impeded access to legal support. It would appear from unsolicited comments made by some respondents that police were at times unwilling to assist respondents in the exercise of their right to legal services.[19] Several British studies of police powers have also noted cases in which police have influenced the decision of a suspect to involve a legal adviser (see Sanders et al. 1989, Brown et al. 1992).

In a separate question asked of all respondents to the 1999 Survey, 27 per cent of the sample said they had sought legal advice, other than from a duty solicitor, before attending court. This response would indicate that, even though few respondents called and spoke to a solicitor while in custody, a much higher proportion independently sought legal advice before their court appearance.

Presence of friends and relatives

Friends and relatives are more likely than solicitors to be present during a formal taped interview, although the numbers are still very small. Figure 17 shows that 33 respondents in the 1999 study said that they had a friend or relative with them. In many cases, this person had accompanied the respondent from the point of initial contact with police. Almost all of these respondents were able to speak with their friend or relative privately, and in all but two cases police held off questioning the suspect until the friend or relative had arrived.

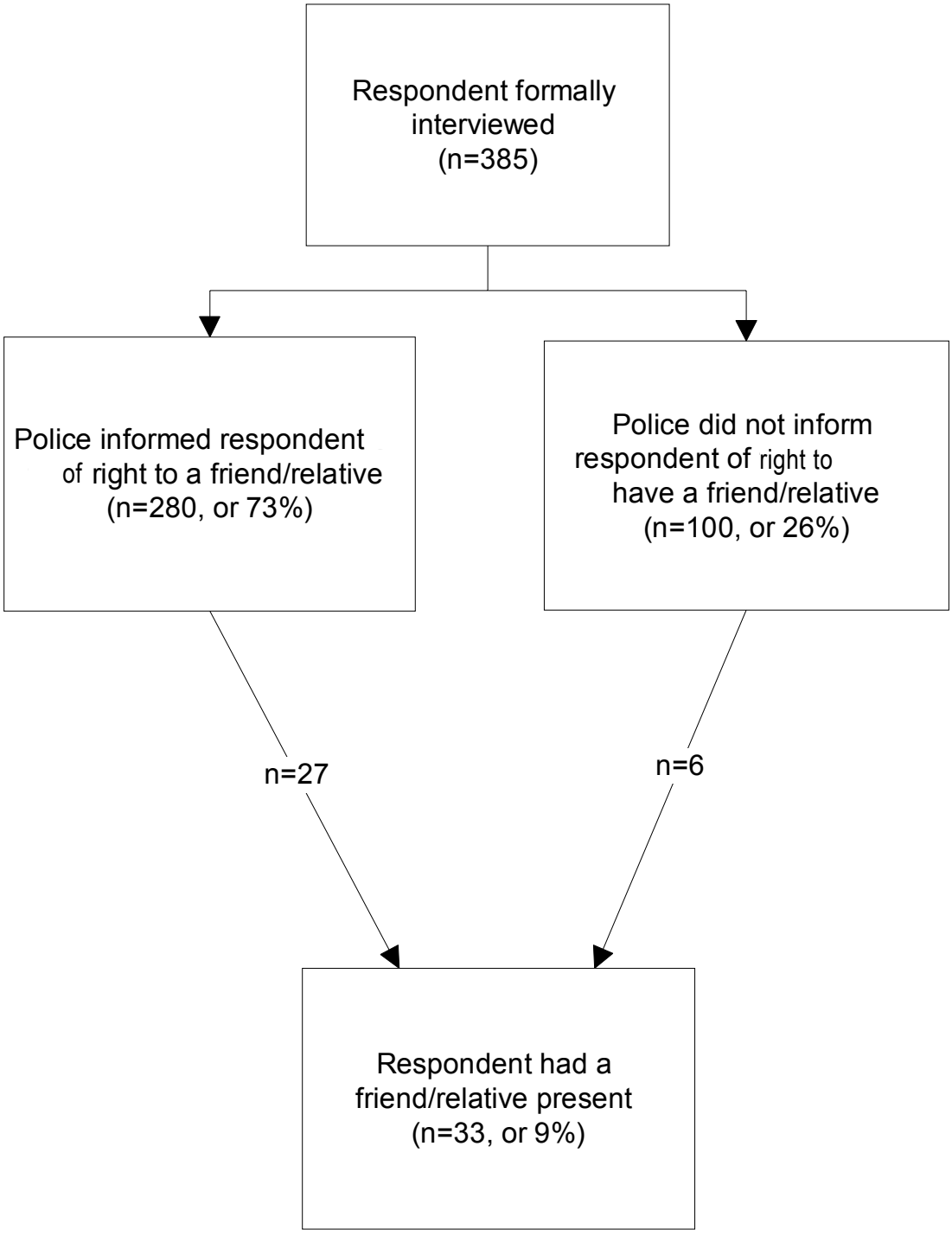
Aboriginal and Torres Strait Islander interviewees

As discussed earlier, there are additional obligations on police when interviewing Aboriginals or Torres Strait Islanders. Section 96 of the PPRA obliges police to contact a legal aid organisation and notify the organisation that the person is in custody, unless the person has arranged for a lawyer to be present, or if the police officer is of the view that the person's level of education and understanding is such that the person is not at a disadvantage. A police officer must not question a person without an 'interview friend' being present, unless the person has waived this right and the waiver has been recorded.

In the 1999 survey sample, there were 63 Aboriginal or Torres Strait Islander respondents, of whom 24 reported participating in a formal taped interview. Of these respondents, only five said they had a friend or relative present with them (in a further three cases, police asked the respondents why they did not want someone else present). None of the respondents had a solicitor present, although five reported that police contacted a legal aid organisation to notify them that the person was being held for questioning.

19 For example, despite having been informed by police that he had the right to a solicitor, respondent #836 said that 'as soon as I asked for one to be present, they declined permission for me to ring one'. A second respondent (#92) said that when asked if he could call a solicitor 'the police officer said I couldn't'.

Figure 17. The presence of a friend/relative during formal taped interviews (1999 Defendants Survey)



Note: The missing cases are due to some respondents being unsure as to whether or not they had been informed of their right to a friend/relative.

By comparison, the Tapes Review study found that police invoked section 96 of the PPRA in a relatively high proportion of interviews where there were Aboriginal or Torres Strait Islander interviewees. Of the 12 identified interviews involving Aboriginals or Torres Strait Islanders examined in that study:

- eight suspects had a third person present with them during the interview (with a solicitor being present in three cases); and
- in six cases, the interview tape recorded that a legal aid organisation had been notified.

Given the small numbers of Aboriginal and Torres Strait Islander interviewees in both the Defendants Survey and the Tapes Review samples, it is difficult to come to any firm conclusions about the extent to which police are employing the special provisions of the PPRA for Aboriginal and Torres Strait Islander interviewees.

The QPS has recently produced a police powers training video that highlights issues relating to the questioning of suspects from Aboriginal and Torres Strait Islander backgrounds. Greater awareness among police about provisions relating to Indigenous suspects may help increase the number of Aboriginal or Torres Strait Islander interviewees who have a friend present with them during the interview.

Juvenile interviewees

When interviewing children, police are legally required to ensure that a friend is present at the interview. This right cannot be waived by the interviewee.

The 1999 Survey identified 12 juvenile respondents who had participated in a formal taped interview. Of these 12, three reported that they had neither a friend or relative, nor a solicitor, present with them during the formal questioning. Each of these interviewees, however, remembered having been informed of the right to have either a friend, relative or solicitor present.

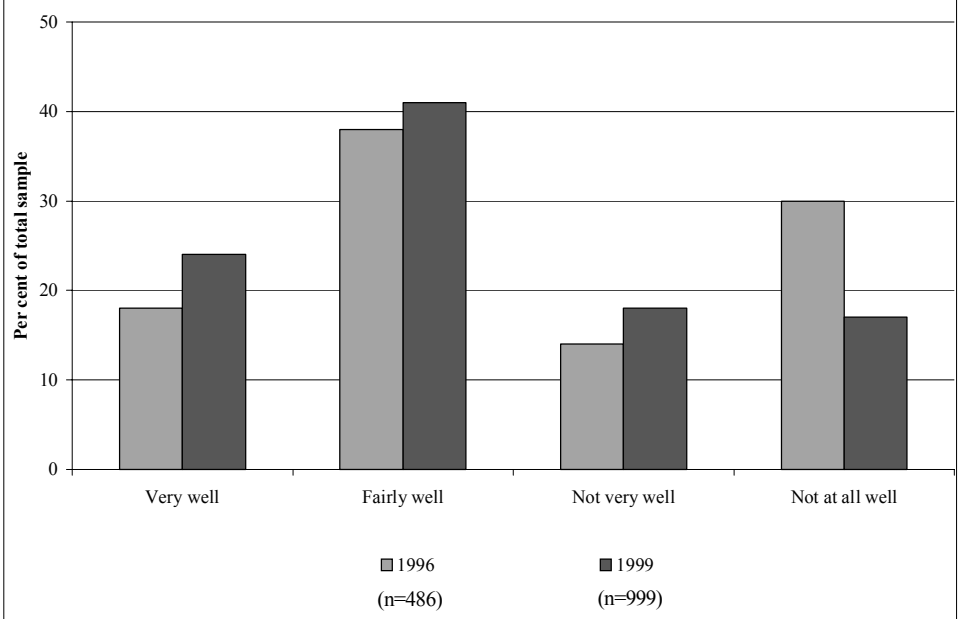
It may have been the case that these three juvenile interviewees had an 'interview friend' present who was someone other than a friend, relative or solicitor (such as a social worker, or a representative of Families, Youth and Community Care Queensland). The Tapes Review study found that one of 11 juveniles in the sample had been accompanied by a justice of the peace rather than a friend, relative or solicitor. This study concluded that all the juveniles in the sample had been appropriately accompanied during the interview, most often by parents, friends or relatives. Similarly, the 1996 Defendants Survey found a high level of compliance with this requirement.

General level of understanding

Respondents in both 1996 and 1999 were asked 'How well would you say you understood what was going to happen following your contact with the police?'. This is a useful general measure of defendants' comprehension of their situation and of what will occur as a result of their contact with police. The question was asked of all respondents about their impression of the entire process, and was not limited to questioning.

Figure 18 shows that, since 1996, the level of understanding among defendants has clearly improved. Given that respondents in 1999 are no more likely than in 1996 to have a solicitor present with them during questioning, this improved understanding can almost certainly be attributed to improved information provision by police. This, in turn, is most likely due to the new legislative obligations on police to provide certain information to suspects.

Figure 18. How well respondents said they understood what would happen following contact with police (1996 and 1999 Defendants Surveys)



Note: Information was missing for three respondents in 1996 and six in 1999.

Questioning: Key findings

A comparison of the 1996 and 1999 Surveys indicates that the PPRA has contributed to:

- greater electronic recording of questioning conducted 'in the field'
- an increase in the proportion of respondents who said they received a caution before being questioned or interviewed, especially for questioning conducted 'in the field'
- a very substantial increase in the proportion of respondents who were informed of their right to have a solicitor present during the interview, or a friend or relative present
- an increase in respondents' general understanding of what would happen to them following their contact with police.

As in 1996, there was a high level of compliance with provisions relating to questioning of juveniles. The main areas requiring attention are as follows:

- While cautioning of suspects who were questioned 'in the field' increased significantly since 1996, it would seem that there was still a large group of respondents in 1999 who were questioned 'in the field' without being cautioned.
- Only a small proportion of Aboriginal or Torres Strait Islander respondents who had been formally interviewed reported having a friend, relative or support person present.
- Although in 1999 respondents were markedly more likely to have been informed by police of their right to have a solicitor present during a formal interview, 23 per cent still reported not being informed of this right. Given that there is now a legislative requirement on police to provide such information, the data raise some concerns about the level of police compliance with this aspect of the PPRA.
- Respondents were no more likely than in 1996 to have a solicitor actually present even though many more were informed of this right. Clearly, without some form of free legal advice scheme, this right has little substance.

Chapter 5: Searches

This chapter outlines the legal framework relating to searches, and searching without a warrant. The results of the 1999 Defendants Survey are then presented in relation to personal searches, property searches, vehicle searches and seized property.

Legal framework

Search of persons

Stop-and-search powers

The report on the 1996 Defendants Survey noted that the police had no general power to stop and search a person without a warrant. However, there were a number of specific powers to stop and search persons such as the power to search for prohibited drugs (under the *Drugs Misuse Act 1986*), stolen property (under the *Vagrants, Gaming and Other Offences Act 1931*), and prohibited weapons (under the *Weapons Act 1990*). The PPRA consolidates these and the other specific stop-and-search powers into one section.[20]

The PPRA also confers new powers to stop and search a person who is reasonably suspected of having:

- evidence of the commission of an offence that carries a penalty of seven years imprisonment or more — the police officer is entitled to stop and search that person and the person's possessions if the officer reasonably suspects that the evidence may be concealed on the person or destroyed
- something the person intends to use to cause self-harm or harm to another.

If it is impracticable to search for something that may be concealed on a person, the police officer is authorised to take the person to a more suitable place to conduct the search.

Search of a person in custody

For many years, police have had the power to search a person in custody and seize anything that may provide evidence of the commission of an offence. The authority to seize items that may constitute a danger to the person or to other persons was less clear; although, as a matter of practice, police would seize such items. The PPRA now gives police a clear statutory authority to take and hold until the person is released any item that:

- may endanger anyone's safety
- may be used for an escape
- should be kept in safe custody while the person is in custody.

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20 The provision (section 26) also allows a search for unlawfully obtained property, tainted property, and implements used for housebreaking, unlawfully using or stealing a motor vehicle or administering a dangerous drug.

The extent of the search

Prior to the enactment of the PPRA and the Code, the OPM was the only source of guidance about the extent of a search permitted under the existing powers. The PPRA now includes a section outlining the permissible extent of a search. It specifically allows a police officer to require the person to remove items of clothing; although if it is necessary to remove clothing down to underwear, the search must be conducted in a place with reasonable privacy. The person conducting the search should be a police officer, or other person, of the same sex as the person being searched, or a medical practitioner. The only exception to this requirement is where an immediate search is necessary.

The Code provides more detailed guidance on the manner of conducting searches.

Internal body cavity searches

The powers that previously existed under the Criminal Code and the Drugs Misuse Act to conduct an internal body cavity search of, and take samples from, a person who is in lawful custody have been incorporated into the PPRA. Such procedures can only be carried out with the written consent of the suspect or by order of a magistrate and must be carried out by suitably qualified medical or dental practitioners.

Search of premises

There is a general rule that police may not enter and search premises without the consent of the occupier or a search warrant. However, exceptions to this general rule existed in various statutes such as the Drugs Misuse Act and the Weapons Act. These exceptions are now consolidated into one section of the PPRA, which allows for entry and search of premises without a warrant where a police officer reasonably suspects that evidence of the commission of an offence will be concealed or destroyed if the place is not entered immediately. As soon as practicable after the search, the police officer must apply to a magistrate for an order approving the search.

The PPRA also allows police to enter premises without a warrant to search for a person whom they are seeking to arrest.

Vehicle searches

The power to stop and search vehicles without a warrant remains very similar to the power to stop and search persons. The PPRA has consolidated the pre-existing specific powers and has broadened the power to include, among other things, searches for:

- evidence of the commission of an offence (carrying a penalty of seven years imprisonment or more) that may be concealed or destroyed
- anything that a person intends to use to cause self-harm or harm to another.

Specific provision is made to allow the police, in certain circumstances, to take a vehicle to a place with the facilities to search for something that may be concealed in the vehicle.

Information to be provided

The PPRA now requires a police officer who searches a person, vehicle or premises to provide the following information as soon as reasonably practicable:

- name, rank and station
- (if not in uniform) identification as a police officer
- the purpose of the search
- the reason for seizing any property.

Where property is seized, the police are now required to issue a receipt that describes what was seized, when, where and from whom it was seized and where it will be taken. If no-one is present for the search, the receipt must be left in a conspicuous place.

A police officer who searches an unattended vehicle is also required by section 8.4 of the Code to leave a notice in a conspicuous place advising that the vehicle has been searched, the officer's details, and that a record of the search may be obtained from the named police station.

Search warrants

The PPRA and Code contain detailed provisions concerning the issuing and execution of search warrants. This section will discuss those provisions that are relevant to the defendants' perceptions and will also note any changes to the search warrant powers since the first survey.

Prior to the PPRA, a warrant to search premises generally did not also authorise a search of persons present, although exceptions were found in some Acts, such as the Drugs Misuse Act and the *Racing and Betting Act 1980*. The PPRA now provides a range of powers that can be exercised under the warrant without further authority, including the power to:

- detain anyone at the premises for the time reasonably necessary to find out if the person has anything sought under the warrant
- detain a person who is reasonably suspected of being involved in the commission of an offence for the time taken to search the premises.

A police officer may search anyone found at the premises for anything sought under the warrant that could be concealed on the person only if such a search is specifically authorised by the warrant.

Information to be provided to occupier

The report on the 1996 Defendants Survey stated that police guidelines require the officer executing a search warrant to tell the occupant his or her name, number and station and the reason for police attendance. The officer was also to allow the occupier reasonable time to view the search warrant, but the warrant was retained by the officer. At that time, only searches conducted under the Drugs Misuse Act required the giving of a notice to the occupier, stating the occupier's rights and the powers of police.

The PPRA now requires all police officers who execute a search warrant on premises:

- to inform the occupier that they are police officers and provide names, ranks and stations; if not in uniform, the officers must present identification
- to give the occupier a copy of the warrant and a statement summarising the person's rights and obligations under the warrant
- if any property is seized, to give the occupier a receipt listing the items and details of where and when the property was seized; the receipt must also state who seized the property and where the property is to be taken.

The copy of the warrant, statement of rights and obligations and any receipt must be left in a conspicuous place if the occupier is not present at the time of entry and search.

Survey results

Respondents to the 1999 Defendants Survey were asked about three types of searches: personal searches (including searches of bags and wallets, and bodily searches), property searches (including at places of residence or work), and vehicle searches. Table 21 shows that there has been little change between 1996 and 1999 in the frequency with which respondents reported having been subjected to these different types of searches.

Table 21. Respondents who reported undergoing a search (1996 and 1999 Defendants Surveys)

	1996		1999	
Type of search	**No.**	**% of total** (n=489)	**No.**	**% of total** (n=1005)
Personal	239	49	467	46
Property	132	27	231	23
Vehicle	66	13	155	15

Note: Multiple responses were permitted.

The next three sections present more detailed findings for each of these categories.

Personal searches

In 1999, 467 defendants (46% of the sample) reported being subjected to a total of 545 personal searches. Table 22 shows that the majority of these searches were of the less invasive variety — searches of bags, pat-down searches, and searches involving the removal of outer clothing alone. However, one-third of reported searches involved either the removal of all clothes except underwear, or a full strip search.

Table 22: Type of personal search reportedly conducted (1999 Defendants Survey)

Type of search	**No.**	**% of respondents undergoing a personal search** (n=467)
Bag/wallet	59	13
Pat down/pocket turn-out	252	54
Removal of outer clothing	57	12
Strip to underwear	26	6
Strip including underwear	150	32

Note: Multiple responses were permitted.

Just under half of all those respondents who were personally searched reported that police

were looking for drugs (46%), although only a quarter of respondents who had undergone a personal search said that police told them why they were being searched. In 22 per cent of searches, police found something; in more than half of these cases, police found drugs.

Around two-thirds of respondents who were searched by police (67%) reported that they were satisfied with the way the search had been conducted. Reasons most often cited by respondents were that the search had been routine, or had not been too intrusive or rough. However, figure 19 shows that levels of satisfaction were somewhat lower for respondents who reported having undergone a strip search. Sixty per cent of the strip-search group said they were satisfied with the search, compared with 73 per cent of those who did not report being strip searched.

Figure 19. Respondents' satisfaction with personal searches (1999 Defendants Survey)

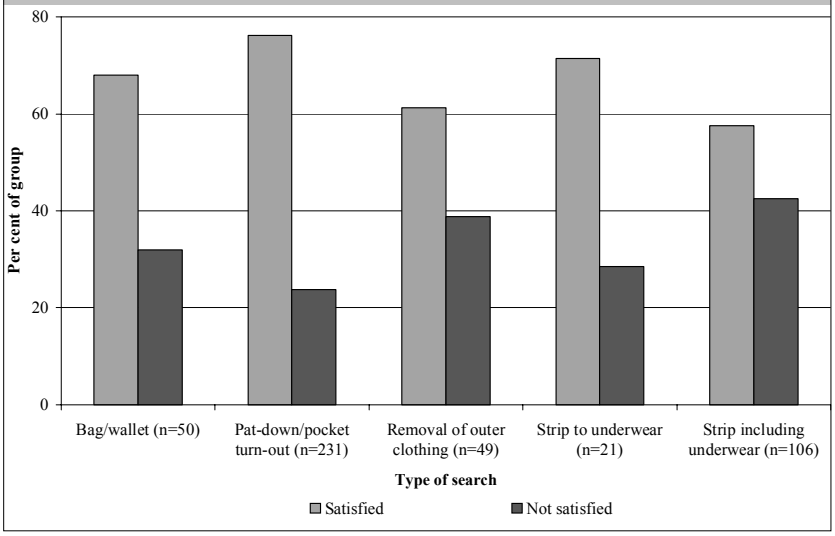

Table 23 sets out the reasons provided by dissatisfied respondents, the most commonly cited reasons being that the search had been too intrusive or rough, or that it had been unnecessary.

Table 23: Reasons for dissatisfaction with personal searches — 1999 Defendants Survey

Reasons for dissatisfaction	No.	% (n=448)
No dissatisfaction expressed	305	68
Too intrusive/rough	27	6
Search was unnecessary	21	5
Lack of privacy	19	4
Felt embarrassed/humiliated	17	4
Unpleasant manner of police	16	4
Lack of information provided	12	3
Other	31	7

Notes:
1. Reasons cited relate to the first-mentioned search (some respondents were searched more than once).
2. Only one reason was coded for each respondent.
3. Information for 19 respondents was missing.

Particular provisions relating to strip searches

Searches of persons that involve the removal of all clothing are bound by particular legislative provisions which specify that the search must be conducted:

- in a place that provides reasonable privacy
- by a police officer of the same gender as the subject of the search.

In addition, the Police Responsibilities Code states that, if reasonably practicable, the person being searched must be given the opportunity to remain partly clothed during the search.

There were 163 respondents who said that they had been the subject of a strip search in 1999 (that is, a search requiring the removal of all clothing, either including or not including underwear). Eleven of these respondents said they had been strip searched more than once. Those who reported being strip searched were asked, in relation to each search, whether they had been allowed to dress their upper body before undressing their lower body, and whether the search had been conducted by a person of the same gender.

The results of the Survey show that there was widespread compliance with the requirement that the search be conducted by a person of the same gender — 92 per cent of strip searches were reportedly conducted by a person of the same gender. However, in 59 per cent of the searches respondents stated that they had not been permitted to dress their upper half before proceeding with undressing their lower half.

Most searches had been conducted indoors, either at a police station or a private residence, but there were four cases where the respondents claimed to have been searched in a public street (see table 24).

Table 24. Reported location of strip searches (1999 Defendants Survey)

Location of search	No.	%
Police station or watchhouse	136	78
Private residence	25	14
In the street	4	2
Shopping centre	3	2
Other	6	3
TOTAL	**174**	**99**

Notes:

1. Information for two searches was missing.
2. The total number of strip searches is greater than the number of defendants who were strip searched because some were strip searched more than once.
3. 'Strip search' includes 'strip to underwear' and 'strip including underwear'.
4. Some respondents said they were strip searched more than once.

Property searches

Less than a quarter of respondents in the 1999 Survey (232 individuals, or 23% of the sample) reported that their home or place of work had been searched by police. In 79 per cent of these cases, respondents said they had been present during the search.

Table 25 presents information relating to the conduct of searches where the respondent had been present. It shows that just over half of these respondents had seen a search warrant, and only just over a third had been provided with a notice of obligations. Where no notice was said to have been provided, it is possible that some of the searches were conducted either by consent (which requires neither a warrant nor a notice of obligations),

or under section 31 of the PPRA, which allows for an emergency search to prevent the loss of evidence.[21]

In 87 per cent of cases where respondents said police told them of a search warrant, the respondents also said that they were left with a copy of the warrant.

Table 25. Respondents' recollections about the conduct of property searches (1996 and 1999 Defendants Surveys)

	(% of respondents)	
	1996 (n=129)	**1999** (n=182)
Respondent was told of a search warrant	58	64
Respondent saw the search warrant	45	57
Respondent read the search warrant	26	41
Respondent was given a copy of the warrant	N/A	56
Respondent was given a notice of obligations	N/A	38

Note: This table presents information only for those respondents who said they had been present during the search of their property.

Table 25 shows an increase since 1996 in the reported use of warrants for searches of premises, and a 15 per cent increase in the proportion of respondents present during the search who said they had read a search warrant. This is most likely due to the new requirement that police give a copy of the warrant to the occupier of the premises.

In 77 per cent of property searches, something was found, mostly drugs or drug-related paraphernalia.

Slightly more than half of the sample (53%) said they were happy with how the search was conducted. Table 26 shows that the most common grounds for dissatisfaction were that police had made a mess or damaged the person's property, or had been unpleasant.

Table 26. Reasons for dissatisfaction with property search (1999 Defendants Survey)

Reason for dissatisfaction	**No.**	**% of defendants who underwent a property search** (n=219)
No dissatisfaction expressed	116	53
Made a mess or damaged property	28	13
Unpleasant manner of police	17	7
Search conducted in my absence	12	5
Lack of information or warrant	11	5
No right to search	5	2
Search was unnecessary	2	1
Felt embarrassed/humiliated	1	<1
Other	27	12

Notes:
1. Reason cited relates to the first mentioned search (some respondents were searched more than once).
2. Only one reason was coded for each respondent.
3. Information for 13 respondents was missing.

Vehicle searches

In the 1999 Survey, 15 per cent of respondents (155 individuals) reported that their car had been searched. Of these 155 respondents, 113 (73%) had been present during the search. None of the respondents whose car had been searched in their absence said that they had been left with a notice on their car to notify them about the search (although it may have been in some instances that someone else had been

21 In the case of a section 31 search, police must seek a search warrant 'as soon as practicable' after conducting the search.

present during the search of the vehicle, negating the need for a notice to be left). Those respondents who said their car had been searched, but that they had not been present, gave a variety of reasons as to how they knew their car had been searched. The most common reasons were that:

- the police, or someone else, had told them about the search
- they had seen the car being searched from a distance
- their car had been damaged or left in disarray and they suspected that police had conducted a search
- the police had some items that had been in their vehicle.

Seized property

When property is seized, the PPRA now requires police to provide a receipt describing the property seized, when, where and from whom it was seized, and where it will be taken.

Just over a third of all respondents (384 or 38%) reported that some of their property had been seized as a result of a search. Table 27 shows that less than half of these respondents (160 or 42%) said that they had been given a receipt for their seized property,[22] although some respondents who had not been given a receipt for their seized property had not been present during the search.

Table 27. Defendants reportedly receiving receipts for seized property (1999 Defendants Survey)

	Defendants who reported a property seizure	
Was a receipt given to the defendant?	**No.**	**%**
Yes	160	42
No	212	55
Receipt for some items only	1	<1
Don't remember	10	3
TOTAL	**383**	**100**

Note: Information for two respondents was missing.

Twenty-two per cent of respondents who said that they had not been given a receipt reported that police had found drugs as a result of the search. The seeming failure of police to routinely supply receipts for seized property, including in instances where the seized property is a quantity of drugs, highlights a potential risk area.

Seizure is the first step in the management of property, a system that has come under the scrutiny of both the CJC and the QPS in recent years. Problems with property-handling procedures relating to the seizure of drugs were identified in the 1997 CJC report *Police and Drugs*. This report observed that property handling and storage were inadequate for the purposes of protecting the integrity of those officers responsible. In response to that report, the QPS commenced a review of property-handling procedures, called Project Alchemy, which resulted in 67 recommendations for the overhaul of property management. These recommendations are currently being implemented by the QPS.

22 One respondent said they had been given a receipt for only some of the items seized.

Searches: Key findings

- There was little change between the 1996 and 1999 Surveys in the proportion of the total sample who reported being subject to personal, property and vehicle searches.
- The 1999 Survey revealed an apparently high level of compliance with the requirement that strip searches be conducted by a person of the same sex. However, more than half of the respondents who underwent a strip search stated they had not been permitted to dress the upper half of their body before proceeding with undressing their lower half.
- In 1999, there was a substantial increase in the proportion of those present for a property search who reported that police produced a search warrant. However, only around a third of the respondents who reportedly underwent a property search said they had received a notice of obligations — even allowing for the fact that searches conducted by consent do not require the provision of a notice of obligations, this seems very low.
- Less than half of the respondents who reported that property had been seized said they had been given a receipt for their seized property. Of particular concern is the finding that a substantial proportion of respondents who had drugs seized reported not being provided with a receipt.

Chapter 6: Key findings and future monitoring

This final chapter summarises the key findings arising from the 1999 Defendants Survey, examines the impact of the PPRA, and concludes by highlighting several issues requiring further attention and monitoring.

Key findings arising from the 1999 Defendants Survey

Arrest and alternative processes

The introduction of the new NTA procedure has resulted in marked changes to the processing of defendants from initial contact through to their first appearance at court. In particular, the following statistically significant changes since the 1996 Survey have been identified:

- a decline in the proportion of respondents who said they had been arrested by police
- a decrease in the proportion of respondents who attended a police station
- a decrease in the proportion of the sample who were fingerprinted.

The data also show that:

- the majority of respondents given an NTA had received it at a police station, rather than 'in-the-field'
- just over a quarter of those receiving NTAs also said they had been arrested.

It appears from these responses, and from other CJC research (1999b), that the NTA is frequently being used in *conjunction* with arrest rather than as an *alternative* to it.

Knowledge of arrest status

The new legislation imposes obligations on police to provide information to defendants about their arrest status. However, in both the 1996 and 1999 samples around 20 per cent of respondents were either wrong or unsure about their custodial status. Respondents to the 1999 Survey who said they had been under arrest were no more likely to say police had informed them of this than were respondents to the 1996 Survey.

Questioning

Questioning practices have changed noticeably since the introduction of the PPRA, as evidenced by:

- more electronic recording of questioning 'in the field'
- a significant increase in the proportion of respondents who said they received a caution before being questioned 'in the field'
- a marked increase in the proportion of respondents who were informed of their right to have a solicitor, or a friend/relative, present during the interview (although there was no increase in the proportion of interviews where a lawyer was actually present).

There appears to be a high level of compliance with the 'four-hour limit' on questioning and a continuing high level of compliance with provisions relating to juveniles. Provisions governing the questioning of Aboriginals and Torres Strait Islanders were less likely to be complied with.

Searches

The proportion of the total sample who underwent personal, property and vehicle searches was similar in both Surveys. In 1999 there was an increase in the proportion of those present for a property search who reported that they had read a search warrant. However:

- around a third of the respondents who reportedly underwent a property search said they had not received a notice of obligations (although searches conducted by consent or in an emergency do not require the provision of such a notice)
- less than half of the respondents who reported that property had been seized said they had been given a receipt.

The Survey showed a high level of compliance with the requirement that strip searches be conducted by a person of the same sex, although more than half of the respondents who underwent a strip search said they had not been permitted to dress the upper half of their body before proceeding with undressing their lower half.

Questions about the impact of the PPRA

Was there an increase in defendants' understanding of their legal rights and obligations?

New provisions in the PPRA oblige police to provide a range of information to suspects. These new provisions have resulted in increases in the proportions of respondents who said they were:

- told they were entitled to have a solicitor, or a friend/relative, present during an interview
- cautioned when informally questioned or interviewed.

However, given that police officers are now legally obliged to provide this information, it is of some concern that there was still a substantial number of respondents who reported that the police had not complied with these requirements.

In addition, according to respondents, police did not always issue:

- receipts for seized property
- notices of obligation relating to search of premises
- notices on vehicles searched in the absence of the respondent.

Overall, a greater proportion of respondents said that they understood what would happen following their contact with police, although respondents appeared to be just as likely in 1999 as in 1996 to be wrong or confused about their arrest status.

Was there increased police compliance with legislative and procedural requirements?

The introduction of the PPRA in 1997 substantially changed the legislative and procedural requirements relating to police powers, so it is not possible to compare levels of compliance in 1996 with the situation in 1999. Future surveys will assist with the monitoring of police compliance with their new obligations. However, as indicated, there appears to have been less than full compliance with provisions relating to:

- informing suspects that they are under arrest
- providing cautions 'in the field'
- questioning Aboriginal and Torres Strait Islander suspects
- issuing notices of obligations following a property search and receipts for seized property.

Was there less defendant dissatisfaction with the investigation and arrest process?

A comprehensive presentation of survey results relating to defendants' satisfaction with the investigation and arrest process has been provided in the CJC paper *Defendants' Perceptions of Police Treatment: Findings from the 1999 Defendants Survey*. As discussed in detail in that paper, there was little change in the proportion of respondents who said they were dissatisfied with police treatment of them. However, the pattern of concerns raised by defendants changed between 1996 and 1999, notably:

- allegations of assault decreased and allegations of 'rough treatment' increased[23]
- allegations of rude or verbally abusive behaviour decreased
- fewer defendants complained that police had not informed them about their rights.

Conversely, there was a statistically significant increase in the proportion of respondents who provided positive comments about police treatment.

Emerging issues

The 1999 Defendants Survey has highlighted several issues that warrant closer attention and monitoring:

- **Respondents' understanding of their arrest status**

  This does not seem to have improved since the 1996 Survey, despite the new obligations on police to keep suspects informed. It may be that public knowledge about the process of arrest and investigation, and about suspects' rights during this process, is generally poor, indicating a need to provide public education about the rights and obligations of suspects while in the company of police. However, it also appears that police are still not routinely providing information to suspects about their custodial status (a conclusion supported by the findings of the CJC's 1999 review of interview tapes). Clearer instructions to police and closer monitoring of interview practices could help reduce suspects' confusion. The Interview Reference Sheet, issued by the QPS in May 2000 for placement in police interview rooms, may assist in this regard.

23 'Assault' includes hitting or striking. 'Rough treatment' includes: pushed, shoved, rough handling, use of force, grabbed, thrown, heavy-handed, twisted fingers around, dragged from car, tight holds.

- **Notices to Appear**

  Most respondents who received an NTA had attended a police station before the notice was given to them and often after they had been arrested. Arguably, therefore, one of the principal objectives of the NTA is not being met. Strategies for promoting greater use of NTAs as a genuine alternative to arrest include making portable tape-recording equipment routinely available to operational police and developing the capacity for police to collect fingerprints 'in the field'.

- **Cautioning 'in the field'**

  It would appear that many respondents who are questioned 'in the field' are still not being cautioned, although practices have certainly improved since 1996. Mandatory electronic recording of 'in-the-field' questioning would undoubtedly improve compliance with the cautioning provisions of the legislation.

- **Questioning of Aboriginal and Torres Strait Islander suspects**

  It would seem that the provisions of the PPRA relating to the questioning of Aboriginal and Torres Strait Islander suspects were not always followed. Judging the level of disadvantage that an Aboriginal or Torres Strait Islander suspect may display in comparison to the general population can be difficult for a police officer, who may not be aware of the potential difficulties that Indigenous suspects can experience. The QPS has recently produced a training video that may help increase awareness among police officers about these provisions.

- **Presence of solicitor**

  The proportion of interviewees who had a solicitor present during a formal interview has not increased since 1996, despite a very significant increase in the proportion of interviewees who said police informed them of their right to a solicitor. Clearly, the lack of free and available legal advice presents a major barrier to suspects who may otherwise wish to have a solicitor with them while being questioned.

- **Searches**

  Several provisions of the PPRA relating to searches appear not to have been fully complied with, most notably the requirement to provide a receipt for seized property. Given the problems that can arise with regard to police integrity and property handling, particularly relating to drug seizures, there is a clear need for operational police to adhere closely to legislative and procedural requirements governing searches.

Conclusion

The responses of the defendants interviewed in the 1999 Survey have revealed substantial compliance by police with many legislative requirements. Although an encouraging finding, in 1996 (and before the implementation of the PPRA), many of the current legislative obligations did not apply. Ideally, police should be complying fully with their legal obligations, but the 1999 results suggest that this is not always occurring. Conducting the Defendants Survey again will assist in ascertaining whether there has been further progress by police officers towards full compliance with the provisions of the PPRA.