

POLICE STRIP SEARCHES IN QUEENSLAND
AN INQUIRY INTO THE LAW AND PRACTICE

June 2000

Research and Prevention Division



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

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Dear Sirs

In accordance with section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you the report *Police Strip Searches in Queensland: An Inquiry into the Law and Practice*. The Commission has adopted the report.

Yours faithfully

Brendan Butler sc
Chairperson

Foreword

Our inquiry into police strip-search practices in Queensland has confirmed that being subjected to a strip search by a police officer is a traumatic and degrading experience for most people.

But the inquiry has not found any evidence of widespread abuse by Queensland police regarding their power to conduct strip searches. To the contrary, we are satisfied that strip searches, particularly in watchhouses, are conducted primarily to minimise the risk posed by some people in what is generally a very volatile and threatening environment.

Recent media reports of alleged inappropriate strip searches conducted by police officers on minor offenders or fine defaulters appear to reflect the exception rather than the rule. However, the apparent routine strip searching of certain categories of detainees at some watchhouses is a concern. In particular, routine strip searches conducted at some watchhouses on Corrective Services prisoners and on juveniles from youth detention centres could be regarded as discriminatory.

Our inquiry has identified a number of issues that need to be addressed by the Queensland Police Service (QPS) to ensure that the police power to conduct strip searches is exercised in appropriate circumstances and can be effectively monitored for accountability purposes. In the main, those

issues relate to a confusion with current legislative and QPS requirements and to an inconsistency in strip-search procedures adopted by watchhouses across the State. Police need clear guidance on when and how to conduct strip searches.

We are also mindful of the practical difficulties many police officers have with recording information about strip searches. However, without such information, the QPS and the CJC are unable to gauge whether this very intrusive power is being exercised in a fair and just manner.

This inquiry has required a balancing of many difficult and important issues and concerns. We are satisfied that the recommendations made in this report are workable and provide for a proper level of accountability. The recommendations also reflect the importance of protecting the identity of people who are subjected to strip searches to an extent that is compatible with the safety of the searching officer, the person being searched and other people in the vicinity.

We expect our recommendations to be implemented but, as is standard practice in inquiries of this nature, we will be maintaining a monitoring role.

Brendan Butler sc
Chairperson
Criminal Justice Commission

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Preface

The information referred to the CJC in this inquiry was substantially based on sections of the *Police Powers and Responsibilities Act 1997* (PPRA) and the Police Responsibilities Regulation 1998 (in particular, the Police Responsibilities Code contained within the Regulation).

On 1 July 2000, the PPRA and Code were repealed and replaced by the *Police Powers and Responsibilities Act 2000* and Police Powers and Responsibilities Regulation 2000. Relevant provisions of the PPRA and the Code have effectively been reproduced in the new Act or the new Regulation. (Appendix C gives a complete list of the sections of the PPRA and Code mentioned in this report along with their equivalent sections in the new Act and the new Code.)

Although the new Act and the new Code have changed the wording and structure of some of the provisions, there have been no substantial changes relevant to strip searching.

During the course of this inquiry and in preparing this report, the CJC received assistance from many individuals and organisations. In particular, the QPS from the outset has willingly provided us with all the information and assistance we requested.

It is apparent that the QPS has regarded the issues raised during the inquiry as important both to it and to the general public. Particular

thanks are due to the QPS liaison officer for the project, Senior Sergeant Adam Bambling, and his predecessor, Senior Sergeant Helen Payne, and to the staff at various watchhouses around Queensland.

We received 44 submissions to our *Police Powers in Queensland: Strip Searching Issues Paper* published in December 1999. Many of the submissions formed the basis for the community consultation meetings and the public hearings.

A list of respondents to the Issues Paper is set out in appendix A, which also lists the individuals and organisations who attended the meetings and the public hearings.

The people who participated in community consultation meetings in Cairns and Townsville and in the public hearings in Brisbane in February 2000 provided us with views and information upon which we could develop a practical and human dimension to the issues.

The project was managed by Wayne Briscoe of the CJC's Research and Prevention Division with assistance provided by other officers of the division, particularly Julie Butner, Laurie Cullinan and Tara McGee.

Accompanying this report is a summary of the main issues and recommendations.

List of recommendations

Introduction

This report is the result of an inquiry conducted by the CJC in response to public disquiet about the power of QPS officers to conduct strip searches. The power is an important one in that its exercise involves an invasion of a person's physical integrity and can result in extreme embarrassment and vulnerability on the part of the person searched. The power is, however, a vital tool for police to ensure the safety of everyone concerned, the protection of property and the investigation of alleged illegal activity.

This report's recommendations, listed below under chapter headings, are based on these fundamental principles:

- **A person's physical integrity is a fundamental right that should be respected even in situations where the person is in custody. A strip search is an affront to a person's physical integrity. A person should not be subjected to a strip search without a justifiable reason.**
- **Given the intrusiveness of the police power to conduct strip searches, there need to be strict accountability processes.**
- **Policies and procedures relating to strip searches need to be simple, practical and consistent.**
- **QPS officers are entitled to clear guidance on when and how to conduct strip searches.**
- **Recommendations requiring legislative amendments should be kept to a minimum to facilitate early implementation and future adjustments. The Police Responsibilities Code and the QPS *Operational Procedures Manual* will generally be easier to amend than the Police Powers and Responsibilities Act.**
- **At all times a watchhouse manager's principal concern must be the health and safety of all people in the watchhouse.**

Chapter 3: Legal and regulatory framework

- 3.1** The terms 'personal search' and 'strip search' should be defined in the Code. The same definitions should also be included or referred to in relevant provisions of the QPS Manual, the guidelines to be developed by the QPS (see chapter 7), training material and in all other QPS material relevant to personal searches conducted by QPS officers.
- 3.2** The definition of a 'personal search' should be along the following lines:
A personal search is a search of a person by or at the direction of a QPS officer. A

personal search may involve a *pat-down search*, that is, a search which involves the searching of the clothing of a person and/or a *strip search*, which involves searching the external body of a person following the removal of clothing.

- 3.3** The definition of 'strip search' should be along the following lines:
- the removal of all of a person's clothing
 - the removal or lifting of a male person's lower clothing, which reveals underwear or nakedness
 - the removal or lifting of a female person's upper or lower clothing (including stockings or pantyhose), which reveals underwear or nakedness
 - requiring a person to change into other clothing under the supervision of a QPS officer or other person acting at the direction of a QPS officer.

- 3.4 The QPS should consider whether the current provisions in the Act regarding cavity-search orders should be amended to allow a watchhouse manager to apply for an order in circumstances other than where a person, detained in relation to an indictable offence, is believed to have internally concealed an item that ‘may provide evidence of the commission of the offence’.

Chapter 4: The purpose of strip searching

Routine strip searches

- 4.1 Section 56 of the PPRA (s. 269 of the Act 2000) should be amended to bring it into line with operational guideline 3, attached to section 7 of the Code, and current QPS instructions prohibiting routine strip searches.
- 4.2 The Manual should make it clear that the decision to conduct a strip search under section 56 of the PPRA is a discretionary matter for the watchhouse manager. However, the Manual should also specify that that discretion should only be exercised after the watchhouse manager has considered all relevant factors that may indicate a detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk.

The Manual should provide a non-exhaustive list of risks that the watchhouse manager should be aware of, such as that the detainee:

- is concealing an item connected with the commission of an offence
- is concealing an item that is illegal
- may escape from police custody
- may harm himself/herself or another person
- may damage property
- may be in possession of an item that could be stolen from the detainee while in police custody.

Where no relevant factors are apparent to the watchhouse manager, but the manager believes the detainee still

poses a risk, the manager should be able to authorise a strip search.

- 4.3 The QPS should consider whether section 26 of the PPRA (ss. 27 and 28 of the Act 2000) needs to be amended in line with recommendation 4.2.

Corrective Services prisoners and juveniles from youth detention centres

- 4.4 The QPS should ensure all QPS officers are aware that current QPS instructions prohibiting routine strip searches and the CJC’s proposed legislative prohibition on routine strip searches (see recommendation 4.1) also apply to Corrective Services prisoners and juveniles from youth detention centres. The Manual should emphasise that no detainee, irrespective of category, should be routinely strip searched. Subject to recommendations 4.5 and 4.6, the decision to strip search a Corrective Services prisoner or a juvenile from a youth detention centre upon arrival at the watchhouse should be based on the belief that that detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk.
- 4.5 The QPS should attempt to resolve the following concerns with the Corrective Services Department and the Department of Families, Youth and Community Care Queensland at the earliest opportunity:
- that Corrective Services officers and youth detention centre officers do not conduct strip searches to the same standard that the QPS expects of its watchhouse staff
 - that items may be transferred between prisoners or juveniles from youth detention centres while they are being transported to the watchhouse, and
 - that prisoners or juveniles from youth detention centres will hide items internally before arriving at the watchhouse.

4.6 Until the QPS has gained sufficient confidence in the ability of Corrective Services officers and youth detention centre officers to conduct comprehensive strip searches of prisoners before leaving prison to travel to watchhouses and juveniles before leaving youth detention centres and to provide adequate supervision of prisoners and juveniles during transit to watchhouses, the following practice should be adopted: (This practice, or variations of it, has already been adopted in some watchhouses.)

- 1 Conduct a pat-down search of all Corrective Services prisoners and juveniles from youth detention centres entering the watchhouse, as per the guidelines developed by the QPS (see chapter 7).
- 2 Conduct a strip search involving all of the steps set out in the guidelines to be developed by the QPS (see chapter 7), *only* if the watchhouse manager believes that an individual prisoner poses a particular risk and that a strip search may reveal an item that could be used to realise that risk.
- 3 Require all other Corrective Services prisoners to change into prison browns, under the supervision of watchhouse staff. The Corrective Services Department should, in this interim period, provide sufficient numbers of prison browns to all watchhouses that may be required to handle Corrective Services prisoners.
- 4 Complete the required entries in the Custody/Search Index for each Corrective Services prisoner, including the fact that a strip search was conducted and the reasons for the search. If only a pat-down search and a change into prison browns was required, this should also be noted in the Custody/Search Index.

A QPS officer's duty of care

4.7 The Manual should provide that a QPS officer's 'duty of care' should not in itself be a sufficient reason to justify conducting a strip search of a detainee.

Liability for failure to strip search

4.8 The QPS, in consultation with relevant associations of police employees, should consider the adequacy of existing provisions relating to the potential liability of QPS officers for damages resulting from action taken or not taken, in good faith and without negligence, within the course of their employment.

Factors indicating risk

4.9 The Manual should provide a non-exhaustive list of factors that may indicate to the watchhouse manager that an individual detainee poses a particular risk.

Chapter 5: Short-term detainees

5.1 The Manual should emphasise that the risk posed by a particular detainee is not necessarily dependent on the time the detainee is expected to stay at the watchhouse. In all cases, the watchhouse manager's principal concern must be the safety of detainees and other people in the watchhouse. However, the Manual should identify factors that may indicate to the watchhouse manager that a particular short-term detainee does not pose a particular risk. The list of factors should not be exhaustive and should be reviewed regularly.

Chapter 6: Deciding to strip search and explaining the reasons

The decision to search

- 6.1** The Manual should prohibit watchhouse managers from delegating the decision to conduct a strip search on a detainee.
- 6.2** The Manual should provide that, when exercising their discretion to authorise a strip search on a detainee, watchhouse managers should take into account the fact that the detainee has already been strip searched by the arresting officer prior to the completion of the charging process.

6.3 The Manual should clearly set out the responsibilities of watchhouse managers and arresting officers regarding personal searches. In watchhouses where the arresting officer and the watchhouse manager are two different people:

- Until the detainee is accepted into the custody of the watchhouse manager, the decision whether to conduct a personal search, and the type of personal search conducted, should be the responsibility of the arresting officer.
- An arresting officer who conducts a personal search at a watchhouse should, as far as practicable, adhere to the guidelines to be developed by the QPS (see chapter 7) and to any special procedures adopted by that watchhouse for conducting personal searches.
- Once the detainee is in the custody of the watchhouse manager, the manager should have primary responsibility to decide whether or not a personal search is to be conducted. That decision should be informed by relevant information from the arresting officer. Whether or not the arresting officer should be involved in such a search should also be the decision of the watchhouse manager.

6.4 The Manual should provide that the decision by the watchhouse manager to conduct a pat-down search on a detainee who is in the custody of the watchhouse manager should be able to be delegated to other QPS officers in appropriate circumstances.

Providing reasons for a strip search

6.5 The Manual should be amended to make it clear that, if at all practicable, the detainee should be provided with the reasons for a strip search *before* the search commences. The reasons should

be provided orally. Detainees should be asked if they understand why the search is to be conducted and whether they are prepared to participate in the search willingly, with reference made, if necessary, to the possibility of force being used.

6.6 The Manual should require *the fact* that reasons for a strip search were given to the detainee to be recorded in the Custody/Search Index.

6.7 The Manual should provide that, if it is apparent to the QPS officer who will be conducting a strip search that the detainee to be searched is unable, because of the effects of drugs or alcohol, to comprehend the reasons such a search is to be conducted, the reasons should be provided to the detainee when the person is able to comprehend why the search was conducted. Similarly, if a strip search needs to be conducted without delay and there is no time to provide reasons for conducting the search, the reasons should be provided to the detainee as soon after the search as is practicable. The fact that reasons were provided after the search in these circumstances should be recorded in the Custody/Search Index.

6.8 A general information brochure on police powers in watchhouses should be made available to detainees. That brochure should set out the main reasons personal searches are conducted. Posters setting out such information and the entitlement under section 119R of the PPRA (s. 415 of the Act 2000) should be prominently displayed in all watchhouses.

Recording details of a strip search

6.9 The QPS should ensure that all QPS officers are aware of the requirement in section 99(a) of the Code (s. 54 of the Code 2000) that a record be made in the Custody/Search Index of the reasons for each strip search.

- 6.10** Section 99(a) of the Code (s. 54 of the Code 2000) should be amended so that it does not require the recording of reasons for pat-down searches conducted in watchhouses.
- 6.11** The Manual should require that whenever force is used to conduct a strip search, all relevant details of the use of force, including the names of all QPS officers involved in conducting the search, should be recorded in the Custody/Search Index.
- 6.12** As a matter of urgency, the QPS should address problems experienced by QPS officers in accessing and using the Custody/Search Index. The QPS should also investigate ways of making the recording of 'off-site' strip searches an easier and more efficient task.

Chapter 7: How personal searches are conducted

- 7.1** The QPS should ensure that all officers are aware that section 111 of the PPRA (ss. 382, 383, 387 and 388 of the Act 2000) and section 6 of the Code (ss. 382 and 383 of the Act 2000) apply to all personal searches, including pat-down searches, no matter where conducted.
- 7.2** The QPS should develop a single set of clear guidelines on how QPS officers should conduct personal searches (including pat-down and strip searches) based on the model guidelines set out at the end of this chapter. The guidelines should apply to all watchhouses and, as far as practicable, to searches conducted outside a watchhouse.
- 7.3** The guidelines should require QPS officers to respect any apparent and relevant cultural sensitivities and physical, psychological, medical or intellectual characteristics of a detainee before, and, if needed, during the search.
- 7.4** The guidelines should address the safety of the officer conducting the personal search and other people in the vicinity. Officers should not be required to undertake procedures that are overly offensive to them or that will place them in a position of physical danger.
- 7.5** The guidelines should be developed on an ongoing basis so as to take into account best practice in conducting personal searches in a variety of different circumstances and should be regularly reviewed after consultation with relevant bodies.
- 7.6** The guidelines should appear as 'best practice policies' in the Manual. As they cannot cover all possible contingencies in situations where a search may be contemplated, it would be inappropriate to categorise the guidelines as 'orders' in the Manual.
- 7.7** To maintain consistency and predictability of decision making, the guidelines should not be added to or varied in any significant way by the Standing Operating Procedures (SOPs) at individual watchhouses without first obtaining authorisation from the Commissioner of Police.
- 7.8** The guidelines should be introduced by a directive from the Commissioner of Police to QPS officers emphasising that their power to conduct personal searches is a matter of great significance to an individual's rights.
- 7.9** The guidelines should be included in any training provided to new recruits, first year constables and in continuing education and training for all QPS officers.
- 7.10** The Manual should make it clear that section 126 of the PPRA (s. 376 of the Act 2000) also applies to a situation where a strip search is necessary and the person to be searched does not cooperate with the search.

Chapter 8: Who should search and who should be present

Sex of person doing the search

- 8.1** The current legislative provisions stipulating that a QPS officer can conduct a strip search only on a person of the same sex as the officer, in all cases other than emergencies, are sufficient and should be retained.
- 8.2** In emergencies where it is not practicable for an officer of the same sex (as the person to be searched) to conduct a strip search, the Manual should require a record to be made in the Custody/Search Index.
- 8.3** The current legislative requirement that strip searches should not be conducted in an area where a person of the opposite sex to the person being searched or a person not directly associated with the search can view the search (unless an immediate search is necessary) should be retained. The Manual should provide that, if it is apparent to the watchhouse manager that a pat-down search could be embarrassing to a particular detainee, then this search, if practicable, should also be conducted in an area where people of the opposite sex and people not directly associated with the search cannot see it.

Use of civilians

- 8.4** The Manual should provide that civilians other than medical practitioners and police liaison officers should not be permitted to conduct or assist in personal searches of detainees. A medical practitioner or police liaison officer should conduct a personal search (including strip and pat-down searches):
- only at the request of a watchhouse manager and under the watchhouse manager's supervision
 - only after receiving training in conducting personal searches

- only if there is no QPS officer of the same sex as the person to be searched available
 - only if, in the opinion of the watchhouse manager, it is safe for the medical practitioner or police liaison officer to conduct the search.
- For police liaison officers, these restrictions should be in addition to the current restrictions imposed by the Manual.

Presence of other officers

- 8.5** The Manual should provide that the decision to strip search in the presence of more than one QPS officer should be made by the watchhouse manager, taking into account all relevant considerations, including any requests by the detainee for more than one officer to be present. However, unless a forced strip search is to be conducted, the Manual should prohibit more than two QPS officers from being present during the search.

Presence of additional person

- 8.6** The Manual should provide that a person to be strip searched should be able to request that an additional person be either in the search room or nearby. That request should be granted by the watchhouse manager if, in the manager's opinion, it is practicable and the request is reasonable in all the circumstances. The request and the details of the decision should be noted in the Custody/Search Index.

Presence of support people

- 8.7** The QPS should ensure that all officers are aware of the requirement in section 7(8) of the Code that an interview friend or a support person be present when a young person (including a young person from a youth detention centre) or a person with a relevant disability is strip searched. The provision applies whether or not the search is consensual and irrespective of where the search is

conducted. QPS officers should also be made aware that the exception in section 7(9) may, in some cases, be more applicable to searches conducted outside watchhouses. A definition of ‘support person’ should be included in the legislation. The definition should not include QPS officers.

- 8.8** Section 7(8) of the Code should be amended to provide that, after the procedure and reasons for the procedure have been explained by the interview friend or support person, the detainee should be able to elect to have this person remain in the room while the strip search is being conducted. The Manual should provide that the election not to have the person remain should be recorded in the Custody/Search Index.
- 8.9** If the exception in section 7(9) of the Code is relied on to deny the presence at the strip search of an interview friend or a support person, the Manual should provide that that fact and the reasons should be recorded in the Custody/Search Index.
- 8.10** The QPS should provide a standard written information sheet to support people on their role and on the powers of QPS officers to conduct strip searches.

Transgender detainees

- 8.11** The Manual should be amended to provide that detainees who claim to be transgender persons are to be treated as people of the gender with which they identify.

Use of interpreters

- 8.12** The Manual and prominently displayed posters in watchhouses (in various relevant languages) should refer to the availability of interpreters to assist non-English-speaking people to understand common reasons for, and the procedures involved in, strip searches.

Chapter 9: Electronic surveillance and recording of strip searches

Electronic surveillance

- 9.1** The Manual should provide that strip searches should be electronically monitored only if, in the opinion of the watchhouse manager, there is reason to believe that the QPS officer conducting the search may be in danger and that it is not otherwise possible to protect the officer, or that the watchhouse manager believes that the detainee may make a false complaint about how the strip search was conducted.

Video recording

- 9.2** The Manual should provide that it is the watchhouse manager’s responsibility to determine whether, in any particular case, a video recording of a strip search should be made, taking into account considerations such as the fact that the detainee is not cooperating with the search officer or that the detainee is or is likely to be violent. The fact that a video recording was made of a strip search should be recorded in the Custody/Search Index.
- 9.3** Where a video recording is to be made of a strip search, the Manual should provide that the detainee is to be informed:
- of the fact that a recording is to be made
 - of the possibility that the tape may be used in any future investigation relating to the strip search
 - that, subject to legal proceedings, the tape will be destroyed after a stated period of time.
- 9.4** The Manual should provide that a detainee may request that a video recording be made of a strip search, but that a watchhouse manager can refuse the request after taking into account relevant circumstances of the watchhouse and of the detainee.

- 9.5** The QPS should develop a policy on the registration and secure storage of videotapes of strip searches. A register should be kept of the tapes, any authorised copies, and their movement.
- 9.6** Section 7 of the Code (s. 390 of the Act 2000) should be amended so that it provides that a copy of a video recording of a strip search can only be provided to:
- a court
 - the CJC
 - the person searched or his/her lawyer
 - the Commissioner of Police
 - the Ethical Standards Command of the QPS
 - and the prosecuting authority.
- 9.7** Unauthorised use and possession of videotapes of strip searches, or copies, by QPS officers or anybody else should be an offence.

Audio recording

- 9.8** The QPS should consider the most appropriate procedures to adopt for the secure storage and handling of audiotapes of strip searches.

Chapter 10: Strip searching people other than at a watchhouse

- 10.1** The Manual should make it clear that the legislative provisions relating to strip searches apply to all strip searches wherever conducted.
- 10.2** The Manual should provide that, unless the person to be searched consents to the search being conducted in the location indicated by the QPS officer, strip searches should be conducted, whenever practicable, at a watchhouse or police station.

Chapter 11: Related issues

- 11.1** The QPS should consider staffing and resource issues relevant to strip searching detainees in remote, small and older watchhouses during its

current watchhouse upgrade program. Such issues include:

- the need for appropriate cell extraction equipment to facilitate the safe movement of violent and potentially violent detainees
- the availability of appropriate alternative clothing including suicide-resistant smocks
- the availability of video-recording equipment for the recording of strip searches, where appropriate.

- 11.2** Adequate remote surveillance equipment should be made immediately available in all watchhouses.

- 11.3** QPS officers should receive ongoing training on when and how to conduct strip searches. The training should include ways of being sensitive to issues affecting certain categories of detainees such as children, pregnant women, older detainees, detainees with disabilities and detainees from relevant cultural or religious backgrounds.

- 11.4** The QPS should not use its potential liability for damages resulting from toxic shock syndrome as a justification for refusing to supply tampons to detainees in watchhouses.

- 11.5** The Manual should prohibit detainees using privately provided sanitary products in watchhouses because of the risk that items may be concealed in sanitary products brought into the watchhouse by detainees or by their families or friends.

- 11.6** The Manual should provide that detainees are not to be requested to remove tampons during a strip search.

- 11.7** The QPS should consider developing an ongoing public education program on police powers, including the police power to conduct strip searches.

Glossary

Act

Unless otherwise clear in the context, this refers to both the *Police Powers and Responsibilities Act 1997* and the *Police Powers and Responsibilities Act 2000*.

Act 2000

Police Powers and Responsibilities Act 2000 (Qld).

Arresting officer

The police officer who commences a prosecution against a person regardless of the means by which the prosecution is commenced.

Body-cavity search

QPS officers cannot conduct body-cavity searches without authorisation from a magistrate and then the search must be conducted by a medical practitioner. The current legislation allows a watchhouse manager to apply for a cavity-search order only when the manager believes that a detainee (who has been charged with an indictable offence) has internally concealed an item that ‘may provide evidence of the commission of the offence’. As the legislation currently stands, the manager cannot apply for a cavity-search order simply because the manager believes a detainee (charged with an indictable offence or not) has internally concealed an item that could be harmful to the detainee or others.

Charging officer

An officer responsible for accepting a charge against an arrested person at a police station or police establishment.

CJC

Criminal Justice Commission.

Code

Unless otherwise clear in the context, this refers to both the *Police Responsibilities Code 1998* and the *Police Responsibilities Code 2000*.

Code 2000

The *Police Responsibilities Code 2000*.

Corrective Services prisoners

Detainees (under the jurisdiction of the Department of Corrective Services) who are temporarily housed in a watchhouse/holding cell while in transit between prison and court.

Custody/Search Index

The most important database and data-gathering facility available to the QPS, the Index includes a record of searches of persons. The database is also used to provide security risk information on people held in police custody.

Detainee

Primarily refers to a person detained by the QPS in a watchhouse, but, where appropriate, may also be read as applying to any person strip searched by a QPS officer, irrespective of whether the person is in the custody of a police officer.

FOO

Fine option order: a court order that allows an offender to do community service instead of paying a fine.

Frisk search	Introduced by the Act 2000, which defines it as: (a) a search of a person conducted by quickly running the hands over the person's outer garments; and (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.
GMO	Government Medical Officer.
Holding cells	Holding cells can detain people for up to 24 hours. Queensland has 135 holding cells.
Interview friend	Person who may accompany a child to be searched and help explain police procedures.
Issues Paper	<i>Police Powers in Queensland: Strip Searching Issues Paper</i> , CJC, December 1999.
Manual	Queensland Police Service <i>Operational Procedures Manual</i> .
NTA	Notice to Appear: a document, which looks like an infringement notice, that can be issued 'on the spot' to an offender stipulating when the offender must appear in court. The offender does not need to be arrested or taken to a watchhouse.
Pat-down search	Involves searching the outer clothing of a detainee.
Personal search	Includes frisk, pat-down, and body-cavity searches (frisk searches have only just been introduced with the Act 2000 and body-cavity searches may not be performed by QPS officers).
Prisoner	Corrective Services prisoner.
Prisoner inspection officer	The QPS officer who inspects prisoners in custody.
PPRA	<i>Police Powers and Responsibilities Act 1997</i> (Qld).
QPS	Queensland Police Service.
Queensland Acts mentioned in report	<i>Anti-Discrimination Act 1991</i> <i>Bail Act 1980</i> <i>Corrective Services Act 1988</i> <i>Criminal Justice Act 1989</i> <i>Domestic Violence (Family Protection) Act 1989</i> <i>Drugs Misuse Act 1986</i> <i>Justice Act 1886</i> <i>Police Powers and Responsibilities Act 1997</i> <i>Police Powers and Responsibilities Act 2000</i> <i>Police Service Administration Act 1990</i> <i>State Penalties Enforcement Act 1999</i>
Responsible officer	The officer who arrests or detains a person or accepts a person into a watchhouse.
Service	Queensland Police Service.

SETONS	Self-Enforcing Ticketable Offence Notice System: a court (with powers of a magistrates court) for the computerised processing of offences that are subject to prosecution by infringement notice or ‘tickets’.
Short-term detainees	May be people who are detained in a watchhouse for such offences as unpaid fines and minor assault, or prisoners on their way to or from court or prison. They are usually detained for a matter of hours, though circumstances may prolong their stay. The maximum period a detainee can be held in a watchhouse before being released or transferred to a prison is seven days (except Mount Isa Watchhouse where the maximum period is 14 days).
SOP	Standing Operating Procedures — organisational directives that establish a standard course of action for QPS responses. As they are developed by QPS officers in charge of regions, they can vary considerably from watchhouse to watchhouse.
SPER	State Penalties Enforcement Registry.
Strip search	Strip searches of prisoners and detainees by police are usually conducted as a precaution to ensure the physical safety of police, the person to be searched and other people in the area. They may also be performed to locate illegal goods or evidence of a crime, and to remove items that might be used to help a detainee escape from custody or damage property, or could be stolen from the person while in custody. There is some disagreement about what constitutes a strip search, but most people agree that a personal search would amount to a strip search if a person was required to remove all clothing, or a female was required to remove all clothing from either the top or bottom half of her body, or a male was required to remove all clothing from the lower half of his body. In Queensland, police strip searches do not include body-cavity searches.
Support person	Person who may accompany the person to be searched and help explain police procedures, especially when the detainee is a child, a person with a disability or someone who cannot speak English. (In relation to a child, known as ‘interview friend’.)
Watchhouse	Refers to all QPS detention facilities and, depending on the context, anywhere else where strip searches are conducted. There are two types of QPS detention facilities: watchhouses and holding cells. Watchhouses provide facilities to detain people beyond 24 hours. Holding cells can detain people for up to 24 hours. Queensland has 60 watchhouses and 135 holding cells.
Watchhouse Custody Register	A manually updated hard-copy register of detainees, which is kept at each watchhouse.
Watchhouse manager/keeper	The QPS officer in charge of a watchhouse.

Introduction

Aims of inquiry

The power of police officers in Queensland to conduct strip searches has been a matter of public concern for some time. Before this inquiry began, the Taskforce on Women and the Criminal Code,¹ the Australian and Queensland Councils for Civil Liberties² and the Queensland Anti-Discrimination Commissioner had all expressed concerns, particularly in relation to the strip searching of women. There has also been substantial media coverage of allegations of inappropriate strip searches conducted at some Queensland watchhouses.

However, when the volume of complaints received by the CJC and the volume of strip searches conducted by QPS officers are both taken into account, few people have actually complained to the CJC about inappropriate strip searches.³ This may partly reflect an unwillingness on the part of some people or some groups of people to complain (such as prisoners, children and certain cultural groups), but it could also indicate general satisfaction with the way searches are conducted by QPS officers. For example, the recent CJC Defendants Survey (see page 3) found that just under two-thirds of respondents who said that they had been strip searched by a QPS officer were satisfied with how the search had been conducted.⁴

Nevertheless, even though the number of complaints relating to strip searches has been small (compared to the number of complaints the CJC has received overall), the issues they have raised have generated substantial public and media attention. Unless these issues are comprehensively addressed, the controversy about strip-search practices is likely to continue unabated with potentially adverse

consequences for the public standing of the QPS. It is also apparent that QPS officers responsible for conducting strip searches would benefit from having their powers and responsibilities in this area clarified.

Accordingly, and in keeping with its statutory responsibility to monitor police powers and practices in Queensland, the CJC has reviewed the law, policies and procedures relating to strip searches by QPS officers.

The broad aims of the inquiry were to:

- identify issues relating to strip searches that are of concern to
 - QPS officers
 - people who have been strip searched
 - the general public
- document the reasons for strip searches
- determine the level of compliance with legislative and other requirements
- devise strategies for dealing with identified problems.

This report presents the results of the inquiry.

CJC jurisdiction

Several provisions of the *Criminal Justice Act 1989* (Qld) provide a statutory basis for undertaking this inquiry:

- **Section 23(b)** refers to ‘monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally’ as one of the CJC’s responsibilities. To the extent that strip searching is conducted as part of police investigations, an inquiry into strip searching is within the CJC’s statutory responsibility.
- **Section 23(e)** provides as a further responsibility of the CJC ‘researching,

generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State'. This report recommends reform of a number of practices relating to strip searching by QPS officers, including the recording of reasons for strip searches.⁵

- **Section 23(g)** provides that the CJC is to monitor the performance of the QPS 'with a view to ensuring that the most appropriate policing methods are being used, consistent with trends in the nature and incidence of crime, and to ensuring the ability of the police service to respond to those trends'.
- **Section 56(3)(d)** provides that it is a function of the Research and Prevention Division of the CJC to research and make recommendations on 'law reform pertinent to criminal justice' and on 'reform of processes of enforcement of the criminal law', both of which may be relevant to the current circumstances and manner in which strip searches are conducted by QPS officers.
- **Section 56(3)(h)** is also relevant, particularly in light of information gathered by the CJC, or available to the CJC (see pages 3–4). That section provides that the Research and Prevention Division is:

to prepare for the ... [CJC] reports, and suggested directions to the commissioner of the police service, relating to its findings in the course of discharging its functions and to its recommendations as to remedial action or appropriate response

Two of the CJC's corporate goals are also relevant to a project of this kind:⁶

To reduce the incidence of ... official misconduct and misconduct in the Queensland Police Service.

To contribute to the effectiveness and integrity of the criminal justice system.

In addition, the CJC has an important role in monitoring the implementation of the *Police Powers and Responsibilities Act 1997* (PPRA) and related legislation. The PPRA introduced a number of substantial changes to the way police officers conduct personal searches, including strip searches. This report reviews the operation of those provisions as well as police procedures not specifically mandated by the PPRA.⁷

Scope of report

Although this inquiry is primarily concerned with police powers to conduct strip searches, it has not been possible to consider strip searches in isolation from other personal searches because many of the concerns are the same; for example, the need to use QPS officers of the same sex as the person to be searched and the need for QPS officers to have an appreciation of certain cultural sensitivities.

QPS officers have legislative authority to conduct personal searches in certain circumstances. These searches may range from a simple 'pat down' of a person's outer clothing to a search involving the person being required to remove all clothing. Many strip searches occur as a follow-on from pat-down searches.

When relevant, therefore, the report refers to pat-down searches as well as strip searches.

As QPS officers do not have any authority to conduct body-cavity searches, this report does not review the efficacy or otherwise of such searches.

Because strip searches are mostly conducted in watchhouses, the information included in this report relates mainly to watchhouse strip searches, but we have also considered those strip searches conducted by QPS officers in places other than watchhouses (see chapter 10).

For the purposes of this report, the term ‘watchhouse’ refers to all QPS detention facilities and, depending on the context, anywhere else where strip searches are conducted.⁸

Although the term ‘detainee’ is used in this report primarily to refer to a person detained by the QPS in a watchhouse, where appropriate it should also be read as applying to any person strip searched by a QPS officer, irrespective of whether the person is in the custody of a police officer.

The recommendations made in this report should be read, where appropriate, as applying to searches conducted by QPS officers at any location. This will need to be taken into account by the QPS when considering the implementation of the recommendations.

Definition of ‘strip search’

For the purposes of this report, a strip search involves:⁹

- the removal of all of a person’s clothing
- the removal or lifting of a male’s lower clothing, which reveals underwear or nakedness
- the removal or lifting of a female’s upper or lower clothing (including stockings or pantyhose), which reveals underwear or nakedness
- the requirement to change into other clothing under the supervision of a QPS officer or someone acting at the direction of a QPS officer.

Conduct of inquiry

The primary sources of data were:

- submissions to a paper we published in December 1999 entitled *Police Powers in Queensland: Strip Searching Issues Paper*
- an analysis of relevant CJC complaints data
- the 1999 CJC Defendants Survey

- a survey of strip-search practices at 10 Queensland watchhouses
- discussions with watchhouse managers and staff and visits to watchhouses
- community consultation meetings in Cairns and Townsville
- public hearings in Brisbane.

We also reviewed information on search practices adopted by other agencies, namely Victoria Police, the New South Wales Police Service, the Australian Customs Service, the Department of Families, Youth and Community Care Queensland and the Queensland Corrective Services Department.

Submissions to the CJC

The Issues Paper resulted in 44 submissions from individuals and organisations with an interest and/or expertise in issues relevant to the inquiry.¹⁰

Complaints to the CJC

From July 1990 to 16 June 2000, the CJC received 148 complaints alleging inappropriate strip searches by QPS officers. Sixty-six of those complaints were received after 6 April 1998 (when the relevant provisions of the PPRA commenced).

To identify and examine issues that have concerned complainants, we have reviewed and analysed 63 of those complaints.¹¹

The CJC Defendants Survey

The Defendants Survey is a confidential, voluntary survey of defendants appearing before the arrest court at seven magistrates courts throughout Queensland.¹² It was last conducted in May–June 1999 and included questions on personal searches by QPS officers.

Watchhouse Survey

With the assistance of the QPS, 10 watchhouses recorded on a ‘watchhouse register for strip searches’ relevant details of

all strip searches conducted in those watchhouses in the first week of October 1999.¹³

Discussions with watchhouse staff

Following the Watchhouse Survey, CJC research staff and the QPS liaison officer for this inquiry held face-to-face or tele-conference discussions with watchhouse staff at each of the watchhouses that had participated in the survey. Those discussions allowed watchhouse staff to raise issues of particular concern to them when performing watchhouse duties and conducting strip searches. Visits to a number of watchhouses were also arranged for research staff of the CJC working on this inquiry. After the publication and distribution of the Issues Paper, the Chairperson of the CJC and other CJC officers visited the Cairns and Townsville Watchhouses for discussions with managers and other staff.¹⁴

Community consultation

On 7 and 8 February 2000, the Chairperson and two CJC officers conducted community consultation meetings on this inquiry in Cairns and Townsville.¹⁵ The CJC representatives were accompanied by the QPS liaison officer for this inquiry and the QPS

solicitor. The meetings were well attended with representatives from a variety of legal and community bodies and the QPS. Many issues relevant to the police power to conduct strip searches in those communities were discussed.

Public hearings

On 10 and 11 February 2000, the CJC held public hearings into issues relevant to this inquiry. The hearings were presided over by all CJC Commissioners. Evidence was taken from 18 witnesses, representing a variety of organisations and interests,¹⁶ who were invited on the basis of their perceived interest in and/or knowledge of the topic. Most had made written submissions to the Issues Paper.¹⁷

Structure of report

Chapter 2 overviews the major issues.

Chapter 3 describes the legal and regulatory framework governing the exercise of the police power to conduct strip searches.

Chapters 4–10 discuss specific issues relating to strip searches and proposals considered by the CJC for addressing those issues.

Chapter 11 discusses other issues that have a bearing on strip-search practices in Queensland.

Endnotes

- 1 Office of Women's Policy, Queensland Department of Equity and Fair Trading, *Taskforce on Women and the Criminal Code: Discussion Paper*, September 1999 at pp. 203–208. See also *Report of the Taskforce on Women and the Criminal Code*, February 2000.
- 2 See, for example, O'Gorman T, *Address to the Second Australasian Conference of Women & Policing* 1999.
- 3 In any 12-month period, it is likely that more than 120 000 people will pass through Queensland watchhouses (based on manually collated and unverified QPS figures from 59 watchhouses for the 12-month period 30 April 1997 to 30 April 1998, which put the number at 120 362). However, over a 10-year period (July 1990 to June 2000), the CJC received only 148 complaints alleging inappropriate strip searches. This figure includes 66 complaints received from 6 April 1998 to 16 June 2000, the period we chose to study because it marked the introduction of the PPRA. We analysed 63 of those complaints for the purpose of this inquiry.
- 4 Around 59% (n=76) of respondents reported that they were satisfied with the search because of, for example, the courteous behaviour of the officer conducting the search or the fact that the search was not intrusive or rough. 'Dissatisfaction' was related to factors such as embarrassment, the belief that the search was unnecessary, the apparent lack of necessity for the search, the unpleasant nature of the officer conducting the search, the lack of privacy and the intrusiveness of the search.
- 5 See chapter 6.
- 6 CJC, *Strategic Plan 1999–2002*.
- 7 *The Police Powers and Responsibilities Act 2000* (Qld) and the Police Responsibilities Code 2000, which repeal and replace the PPRA, commenced on 1 July 2000. (Appendix C gives a complete list of the sections of the PPRA and Police Responsibilities Code mentioned in this report along with their equivalent sections in the new Act and Code.)
- 8 There are two types of QPS detention facilities: watchhouses and holding cells. Watchhouses provide facilities to detain a number of people beyond 24 hours. Holding cells can detain people for up to 24 hours. Queensland has 60 watchhouses and 135 holding cells.
- 9 See also chapter 3.
- 10 For a list of respondents to the Issues Paper, see appendix A.
- 11 The analysis is set out in appendix B.
- 12 See *Police Powers in Queensland: Findings from the 1999 Defendants Survey*, CJC, June 2000. The Survey was designed to closely replicate the 1996 Defendants Survey (see *Defendants' Perceptions of the Investigation and Arrest Process*, CJC 1996).
- 13 The following watchhouses participated: Beenleigh, Brisbane City, Bundaberg, Cairns, Mount Isa, Rockhampton, Southport, Toowoomba, Townsville and Warwick. A detailed analysis of the results of this survey is set out in appendix B.
- 14 A research officer of the CJC addressed a conference of watchhouse managers in Brisbane on 15 May 2000 on issues relating to this inquiry.
- 15 For a list of attendees at the meetings, see appendix A.
- 16 For a list of witnesses before the public hearings, see appendix A.
- 17 The public hearings were held pursuant to s. 25(1) of the Criminal Justice Act, which authorises the CJC to 'conduct a hearing in relation to any matter relevant to the discharge of its functions or responsibilities and ... [to] receive evidence orally or in writing, on oath or affirmation, or by way of statutory declaration.' The hearings were consistent with s. 21(2)(a) of the Criminal Justice Act, which provides that, in discharging its functions, the CJC shall 'wherever practicable, consult with persons or bodies of persons known to it to have special competence or knowledge in the area of the administration of criminal justice concerned, and seek submissions from the public.' Section 90(1) of the Criminal Justice Act provides that a CJC hearing must be 'closed to the public unless the commission orders, whether before or during the hearing, that it be open to the public'. Having regard to the wide public interest in the police power to conduct strip searches and the belief that the evidence to be presented at the hearings would be primarily policy orientated and not related to specific allegations of inappropriate strip searches, the CJC determined that a closed hearing would be contrary to the public interest (see ss. 90(2) and (3) of the Criminal Justice Act).

Overview

This chapter provides a brief overview of the major issues and concerns raised during this inquiry. More detailed consideration is given in the chapters that follow.

Why strip search?

In certain circumstances, strip searching of suspects by police is a necessary part of an investigation — for example, if the purpose of the search is to locate suspected stolen property or other evidence relating to a suspected offence.

More importantly, a strip search may often be a necessary precaution to ensure the physical safety of police, the person to be searched and other people in the area — for example, medical practitioners, nursing staff, cleaners and maintenance staff, cell visitors, legal representatives and other support personnel.

The safety of people in police custody has received greater attention in Australia recently with the heightened awareness of the risk of some people harming themselves when placed in custody — even if the detention is only for a short time.

Although there is currently no clear legislative or QPS guidance on when strip searches should be conducted, ideally they should be conducted only when a person is considered to pose a particular risk and it is

believed that a strip search may reveal an item that could be used to realise that risk.

Relevant risks include that the person:

- may be concealing an item connected with the commission of an offence
- may be concealing an item that is illegal
- may be concealing an item that could help the person escape from police custody
- may have something that could cause self-harm or harm to others
- may have something that could damage property
- may have something that could be stolen from the person while in police custody.

Depending on the circumstances, the experience for a person being strip searched may amount to an extreme invasion of privacy, accompanied by embarrassment and humiliation. This may be particularly so if the person is being detained for a fairly minor matter such as an outstanding warrant for an unpaid fine, or for a short period, and when no other circumstances are apparent to the person that might justify the strip search.

Personal freedom, privacy and dignity are widely recognised as basic human rights to be upheld unless there are exceptional circumstances. The courts will normally go to great lengths to ensure that those rights are upheld.

Case study

A man was arrested on outstanding warrants for unpaid fines and placed in a cell at a remote watchhouse. Owing to his violent demeanour and reputation (he had been a boxer and was recorded on the police computer system as a person to be treated with caution), and the fact that he continued to struggle with the two officers involved, he was placed in a padded cell and handcuffed behind his back. A pat-down search was conducted but no strip search. The officers involved apparently did not consider there to be sufficient reason to strip search the man. Within 20 minutes the padded cell was alight and the man later died from third-degree burns to 80–90 per cent of his body. It is suspected that the fire was started by the man with a lighter hidden on or in his body. The matter is currently the subject of a coronial inquest.

For these reasons, QPS officers are authorised by legislation, common law and QPS procedures to conduct strip searches only in certain circumstances and in such a way as to minimise any adverse effects on the person being searched. An unauthorised strip search may have serious consequences for the QPS officer involved — including criminal, civil or disciplinary proceedings.¹

From the CJC’s discussions with staff at several watchhouses, it is apparent that dangerous and potentially dangerous items have been discovered by QPS officers conducting strip searches at watchhouses. These items have been recorded or retained and include knives, razor blades, disposable razors, metal blades, combs, lighters, toothbrushes (which can be sharpened), drugs, needles, syringes and pieces of steel.

Apart from the obvious danger that weapons such as knives and razor blades pose to people within the watchhouse, a major concern to watchhouse staff are lighters and matches. Fire, smoke and lethal gases from smouldering mattresses and melting plastic or lexon are even more dangerous in situations where people are not easily evacuated.

Items discovered as a result of strip searches have been found in every conceivable location on, and in, a person’s body. Drugs have been hidden in the ear, vagina and anus. Syringes, needles, drugs and even spoons have been found secreted in a person’s anus. Items have been hidden in slits made in thongs, taped under breasts, sewn into the hems of clothing, in underwear, between the buttocks, behind testicles, in mouths and in the hair.

Alternatives to strip searches and pat-down searches such as metal detectors and prongs are often useful, but have limitations. For example, a metal detector will not necessarily detect narrow metal items such as needles; and prongs, which are designed to reach in and retrieve items from pockets, quite often will

not reach into the very bottom and corners of some pockets.

Who is strip searched?

Data available to the CJC indicate the following about the circumstances in which people are strip searched at watchhouses:²

- Most detainees will be male, between 20 and 29 years of age.
- Most will have been brought to a watchhouse having been arrested and subsequently charged with assault, or a drug- or alcohol-related offence.
- Virtually all will be strip searched by an officer of the same sex.
- Most will be required to remove all clothing including underwear.
- Most strip searches will be justified on the basis that the person may be concealing something that may cause harm to the person or someone else.
- The search will usually be conducted out of the view of other people, most likely in a cell.
- There will usually be no electronic recording of the search, which will be over in less than five minutes.
- Often nothing will be found.

When to strip search?

Legislation and QPS directives

The current legislation and QPS directives relating to strip searches by QPS officers are confusing and inconsistent, and may very well have resulted in officers conducting strip searches in situations where they would not otherwise have done so. Effective monitoring of the exercise of the power is also hampered by unclear legislative provisions.

Factors to take into account before conducting a strip search

It appears that at least some categories of detainees, including Corrective Services prisoners and juveniles from youth detention centres, are being routinely strip searched at

some watchhouses — in other words, no consideration appears to be given by some watchhouse staff to whether each individual detainee poses a particular risk.

Short-term detainees

There appears to be a general sense among people who contacted the CJC during this inquiry that anyone arrested and detained for failing to pay an outstanding fine should not be strip searched. However, although such detainees may pose only a small risk to the safety of themselves or other people in the watchhouse, the CJC has heard of occasions where a QPS officer would have been justified in strip searching such a person.

The QPS, and the watchhouse manager in particular, have a responsibility to maintain a safe environment for all detainees and staff at the watchhouse. There will be occasions where it will be necessary to strip search short-term detainees being held on relatively minor matters to ensure their safety and the safety of others.

Who decides to conduct the strip search and the provision of reasons

The legislation does not impose any restrictions on the rank of QPS officer who may decide to conduct a strip search in a watchhouse. This may lead to a detainee being strip searched at the discretion of a very junior officer, who may not have had the experience and wisdom that a more senior officer would have. It may also be the case that arresting officers are conducting or assisting in strip searches at watchhouses in circumstances where the person being searched may feel particularly intimidated.

With the limited guidance given to QPS officers on how to exercise their discretion to conduct a strip search, it is not surprising that inconsistent practices have come about between officers and between watchhouses.

The current requirement to record the reasons

for conducting a strip search is unclear and appears to be followed inconsistently. This may indicate that detainees are not being told why they are being strip searched before the search, if at all. If this is so, then an important control on the police power to conduct strip searches is missing.

How to conduct a personal search

There is currently no set of guidelines for QPS officers to follow when conducting pat-down searches or strip searches, which may lead to inconsistent practices between watchhouses and to detainees being searched in different ways.

Who should conduct the search and who else should be present

The current legislation and QPS guidelines in relation to the sex of the officer conducting a personal search appear to be widely adhered to. Nevertheless, concerns have been expressed about the apparent failure of QPS officers to ensure that an appropriate support person is present during the strip search of a juvenile or a person with an intellectual or other relevant disability.

Electronic surveillance and recording of strip searches

Although videotaping strip searches may reduce the opportunities for QPS officers to conduct inappropriate strip searches, it appears that in practice very few videotapes are made. Security concerns about the storage of such tapes would need to be allayed before their more general use could be encouraged.

Strip searches conducted other than at a watchhouse

Strip searches conducted outside a watchhouse are subject to the same obligations as those conducted inside a watchhouse. This is not clear from the current QPS guidelines and may have resulted in some people being searched outside a watchhouse with less regard to privacy than if

they were searched inside a watchhouse.

Related issues

There are several broad issues relating to police powers to conduct strip searches that may have an impact on the need to conduct strip searches in certain circumstances and/or on the way such searches are conducted of particular detainees.

For example, the current practice of prohibiting smoking in watchhouses may have resulted in some people attempting to hide matches or lighters on themselves before entering a watchhouse. Further, the lack of certain facilities at some watchhouses may encourage staff at those watchhouses to conduct strip searches in circumstances where they would not have been contemplated in better-resourced watchhouses.

General principles governing this inquiry

The CJC has been guided in this inquiry by the following principles, which have also influenced its recommendations:

- **A person’s physical integrity is a fundamental right that should be respected even in situations where the person is in custody. A strip search is an affront to a person’s physical integrity. A person should not be subjected to a strip search without a justifiable reason.**
- **Given the intrusiveness of the police power to conduct strip searches, there need to be strict accountability processes.**
- **Policies and procedures relating to strip searches need to be simple, practical and consistent.**
- **QPS officers are entitled to clear guidance on when and how to conduct strip searches.**
- **Recommendations requiring legislative amendments should be kept to a minimum to facilitate early implementation and future adjustments. The Police Responsibilities Code and the QPS Manual will generally be easier to amend than the Police Powers and Responsibilities Act.**
- **At all times the watchhouse manager’s principal concern must be the health and safety of all people in the watchhouse.**

Endnotes

- 1 The officer’s potential liability is reinforced by s. 5 of the PPRA (s. 5 of the Act 2000), which provides that:
 - (1) It is Parliament’s intention that police officers should comply with this Act in exercising powers and performing responsibilities under it.
 - (2) For ensuring compliance with Parliament’s intention, a police officer who contravenes this Act may be dealt with as provided by law.

Some examples of an officer’s potential liability are: a minor contravention may result in correction by way of counselling; actions amounting to misconduct under the *Police Service Administration Act 1990* (Qld) or the *Criminal Justice Act 1989* (Qld) may lead to disciplinary proceedings resulting in the officer’s dismissal; and a contravention may also result in charges of assault or deprivation of liberty under the *Criminal Code* (Qld).

- 2 See appendix B for an analysis of the data.

Legal and regulatory framework

The information referred to the CJC in this inquiry was substantially based on sections of the *Police Powers and Responsibilities Act 1997* (PPRA) and the Police Responsibilities Regulation 1998 (in particular, the Police Responsibilities Code contained within the Regulation). On 1 July 2000, the PPRA and Code were repealed and replaced by the *Police Powers and Responsibilities Act 2000* and Police Powers and Responsibilities Regulation 2000. Relevant provisions of the PPRA and the Code have effectively been reproduced in the new Act or the new Regulation. (Appendix C gives a complete list of the sections of the PPRA and Code mentioned in this report along with their equivalent sections in the new Act and the new Code.) Although the new Act and the new Code have changed the wording and structure of some of the provisions, there have been no substantial changes relevant to strip searching.

This chapter briefly describes the relevant legislation and QPS directives that regulate the power of QPS officers to conduct personal searches.

Since the commencement in April 1998 of the PPRA and the Code,¹ police strip-search powers have been the subject of quite detailed legislative requirements. The common law (also referred to as ‘case law’ and ‘judge-made law’) in relation to police powers is now largely usurped by the legislation, but in those situations where it is not apparent that the legislation applies, the common law may still give necessary direction.²

The QPS *Operational Procedures Manual* (the Manual) imposes further, non-legislative, restrictions on how QPS officers are to conduct and record the details of personal searches.

Personal searches

Although there is no definition of a ‘personal search’ in the legislation or in the Manual, QPS officers are authorised to conduct personal searches by the PPRA, in the circumstances outlined in this chapter.

There is no legislative restriction on the extent of a personal search conducted by QPS officers on a detainee, apart from the prohibition on body-cavity searches.

It is generally understood that QPS officers can conduct one or both of two types of personal searches on a person: pat-down searches and strip searches.³ For each, there are many variations on the extent of the search and the manner in which it is executed.

In addition to strip searches and pat-down searches, QPS officers may simply require a person to remove an item of external clothing. This would often be regarded as a part of the pat-down procedure.

Although the term ‘pat-down search’ is not defined in the legislation it would appear to be any personal search not involving the removal of clothing apart from shoes, socks, belts, hats and other minor items. It is only when a person is required to remove clothing other than such minor items that a search is regarded as less a pat-down search and more a strip search. It is also only then that the protective provisions found in section 111 of the PPRA and section 7 of the Code, referred to below, apply.⁴

Defining a strip search

Although the term ‘strip search’ is used in the everyday parlance of QPS officers and in the Manual, the term is not used in the PPRA or the Code. When used in the Manual, it is used in reference to section 111 of the PPRA and sections 6 and 7 of the Code.⁵

Section 111 of the PPRA refers to the protection of the dignity of a person during a search where items of clothing are to be removed. It specifically refers to the situation where a QPS officer requires the removal of all items of clothing other than underwear, or all clothing. In such circumstances, restrictions are imposed on the conduct of the search to protect the privacy and dignity of the person.

Section 7 of the Code specifically applies to officers conducting searches that involve:

- the removal of all items of a person's clothing or all items of outer clothing from —
- (a) the upper or lower part of the body of a female; or
- (b) the lower part of the body of a male.

From these provisions it would appear that special requirements are to be adhered to by QPS officers when removing or requiring to be removed:

- all of a female person's *outer* clothing from either the upper or lower part of the body
- all of a male person's *outer* clothing from the lower part of the body
- all of a person's clothing
- all of a female person's clothing from either the upper or lower part of the body
- all of a male person's clothing from the lower part of the body.

Nevertheless, it has become apparent from discussions with, and submissions from, watchhouse staff and other QPS officers that there are divergent views about when a personal search amounts to a 'strip search' for the purposes of the Manual, and when the special protective provisions in section 111 of the PPRA and section 7 (at least) of the Code apply.

Some watchhouse staff understand that a search is a strip search only when all of a person's clothing is removed; others that it would be a strip search of a *female* if her upper and/or lower clothing were removed,

and of a *male* if his lower clothing only were removed.

Some watchhouse staff believe that the removal of clothing down to underwear or the removal of 'outer clothing' constitutes a strip search — other officers would disagree.

Some officers believe that requiring a person to remove all clothes and to change into standard prison-issue clothing ('browns') does not constitute a strip search, even though the person would have to be supervised while getting changed. Some officers hold that the lifting of underwear, such as the lifting of a bra, constitutes a strip search.

In the submissions received in response to the Issues Paper, at consultation meetings and at the public hearings, the CJC heard the same confusion among organisations and individuals who work closely with people who have been, or who are more likely than other people to be, the subject of strip searches. Most, however, agree that a personal search would amount to a strip search if:

- a person was required to remove all clothing
- a female was required to remove all clothing covering the top half or all clothing covering the bottom half of her body, or
- a male was required to remove all clothing from the lower half of his body.

There was also a general consensus that the lifting of underwear would amount to a strip search and that being required to change into other clothing (such as prison browns) under the supervision of a QPS officer should be regarded as a strip search. Further, the removal of clothing down to underwear would generally be regarded as a strip search, although it was not clear if this was a commonly held view of QPS officers.

Legislative authority

The PPRA and the Code authorise QPS officers, in certain circumstances, to conduct personal searches, including pat-down and strip searches. Other Queensland legislation also empowers QPS officers to conduct personal searches in specific circumstances. A list of such legislation is referred to in the appendix to the Issues Paper.⁶

Generally, a QPS officer can require a person to undergo a personal search:

- under a warrant
- without a warrant in certain circumstances
- if the person is in the custody of the QPS.

In any other situation where a QPS officer does not have specific authority to conduct a personal search, such a search can still be conducted with the consent of the person.⁷

Search with a warrant

A QPS officer may conduct a personal search with a warrant issued by a magistrate or a justice of the peace. Section 29 of the PPRA imposes some restrictions on when a search can be authorised under a warrant.

Section 29: Powers under search warrants [s. 74 of the Act 2000]

A police officer has the following powers under a search warrant —

...

- (h) if authorised under the warrant — power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;

...

- (m) if authorised under the warrant — power to do whichever of the following is authorised —
- (i) to search anyone or anything in or on or about to board, or be put in or on, a transport vehicle;

Section 26 of the Code (ss. 27 and 28 of the Act 2000) provides that the officer, in the application for a search warrant, must state the reason it is necessary to search ‘anyone found at the place’. A person who is subject to

a personal search under a search warrant who is not also the occupier of the premises where the search is conducted is not entitled to a copy of the warrant from the QPS, but obviously may seek a copy from the occupier of the premises.

Search without a warrant: not in custody

A person not in custody may be searched without a warrant if the officer reasonably suspects that one of the circumstances set out in section 26 of the PPRA exists.

Section 26: Searching persons without warrant [ss. 27 and 28 of the Act 2000]

- (1) A police officer who reasonably suspects any of the circumstances mentioned in subsection (2) exist may, without a warrant, stop, detain and **search a person** and anything in the person’s possession.
- (2) The circumstances for subsection (1) are as follows —
 - (a) that the person has something that may be
 - (i) a weapon, knife or explosive the person may not lawfully possess; or
 - (ii) an unlawful dangerous drug; or
 - (iii) stolen property; or
 - (iv) unlawfully obtained property; or
 - (v) tainted property; or
 - (vi) evidence of the commission of a 7 year imprisonment offence the police officer reasonably suspects may be concealed on the person or destroyed;
 - (b) that the person has something that may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug;
 - (c) that the person has something the person intends to use to cause harm to himself, herself or someone else.
- (3) The police officer may seize all or part of a thing —
 - (a) that may provide evidence of the commission of an offence; or
 - (b) that the person intends to use to cause harm to himself, herself or someone else. [emphasis added]

Search without a warrant: in custody

A person in custody may be searched by a QPS officer under section 56 of the PPRA. Unlike an authorised search of a person *not* in custody, there are no obvious restrictions on when a search can be conducted of a person in custody.

Section 56: Search of persons in custody [s. 269 of the Act 2000]

- (1) This section applies if a person —
 - (a) is lawfully arrested, refused bail, or is in custody because bail has been revoked; or
 - (b) is in custody under a sentence of imprisonment or, for a child, a detention order; or
 - (c) is otherwise lawfully detained under another Act.
- (2) A police officer may search and re-search a person to whom this section applies.
- (3) A police officer may seize from the person anything found on the search that the police officer reasonably suspects may provide evidence of the commission of an offence.
- (4) Also, the police officer may take and retain, while the person is in custody, anything that —
 - (a) may endanger anyone's safety; or
 - (b) may be used for an escape; or
 - (c) the police officer reasonably considers should be kept in safe custody while the person is in custody.

Use of force

The PPRA authorises QPS officers and others assisting them to use such force as is 'reasonably necessary' to enable them to exercise their powers under the Act, including the power to conduct strip searches. Section 126 (see s. 376 of the Act 2000)⁸ provides:

Power to use force against individuals

- (1) It is lawful for a police officer exercising powers under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force for exercising the powers.
- (2) Also, it is lawful for a police officer to use reasonably necessary force to prevent a person from escaping from lawful custody.

- (3) The force a police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.

This provision is not restricted to authorising QPS officers to use force. It also authorises people assisting QPS officers to use force (for example, doctors).

There is no legislative requirement to record whether force was used.

Legislative controls

The authority of a QPS officer to conduct a personal search is limited by a number of provisions in the PPRA and the Code that are designed to safeguard the dignity of the person to be searched and to minimise embarrassment. The limitations are reinforced by accountability requirements, such as the requirement to record relevant details of each search.

Protection of privacy and dignity

Section 111 of the PPRA provides that in certain circumstances a personal search must be conducted with reasonable privacy and by a QPS officer of the same sex as the person being searched.

Section 111: Protecting the dignity of persons during a search [ss. 382, 383, 387 and 388 of the Act 2000]

- (1) This section applies to a search of a person under this Act.
- (2) A police officer may require the person to remove items of clothing.
- (3) However, if it is necessary for the person to remove all clothing other than underwear, or all clothing, the search must be conducted in a place providing reasonable privacy for the person.
- (4) Unless an immediate search is necessary, the person conducting the search must be either —
 - (a) a police officer of the same sex as the person to be searched; or
 - (b) if there is no police officer of the same sex available to search the person — someone else acting at the direction of a police officer and of the same sex as the person to be searched; or

- (c) a doctor acting at the direction of a police officer. (*Example:* An immediate search by a person of the opposite sex may be necessary because the person searched may have a bomb strapped to the body or a firearm concealed on them.)
- (5) If the police officer seizes clothing because of the search, the police officer must ensure the person is left with or given reasonably appropriate clothing. (*Example:* The clothing may be evidence of the commission of an offence.)
- (6) Also, if it is impracticable to search for a thing that may be concealed on a person where the person is, the police officer may take the person to a place with adequate facilities for conducting the search.

Section 6 of the Code (ss. 382 and 383 of the Act 2000) imposes a number of restrictions on **all personal searches** whether or not the person to be searched is in custody and whether or not the search involves the removal of clothing:

- (1) A police officer searching a person must —
 - (a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and
 - (b) take reasonable care to protect the dignity of the person; and
 - (c) unless an immediate and more thorough search of a person is necessary, restrict a search of the person in public to an examination of outer clothing [*Example:* A more thorough search may be immediately necessary because a police officer reasonably suspects an immediate search is necessary to protect the safety of the person, including, for example, because the person to be searched may have a bomb strapped to his or her body or a concealed firearm or knife and intends to use the firearm or knife for an unlawful purpose]; and
 - (d) if a more thorough search of a person is necessary but does not have to be conducted immediately—conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.
- (2) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person where the person is, the

police officer must consider the following —

- (a) whether the thing sought may be concealed on the person;
- (b) whether, for an effective search, the search should be conducted somewhere else;
- (c) the need to protect the dignity of the person.

It is not apparent that QPS officers regard this provision as relevant to pat-down searches. This may be because it may not be possible to protect a person's dignity and prevent embarrassment if a pat-down search has to be conducted, for practical reasons, on the street or at a watchhouse charge counter.

Section 6 of the Code contains operational guidelines for personal searches and, in particular, searches that involve the removal of all items of a person's clothing.⁹ The guidelines include, for example:

Generally, police officers should hold a brief conversation before starting a search to help obtain evidence and so avoid unnecessary searches.

Further:

The grounds for a search because of a reasonable suspicion must exist before the search is conducted. Locating the thing sought is not a ground for the search but may confirm the suspicion.

An example of how to state the purpose of the search is given as:

The purpose of this search is to look for something that may be a dangerous drug.

Section 7 of the Code (ss. 387, 388, 389 and 390 of the Act 2000) provides guidance to QPS officers conducting a search that involves the removal of all items of a person's clothing or all items of outer clothing from the upper or lower part of a female or the lower part of a male.

Section 7(2) to (9):

- (2) If reasonably practicable —
 - (a) the police officer conducting the search must, before the search is conducted —
 - (i) tell the person he or she will be required to remove clothing during the search; and

- (ii) tell the person why it is necessary to remove the clothing; and
- (iii) ask for the person's cooperation; and
- (b) the person must be given the opportunity to remain partly clothed during the search, for example, by allowing the person to dress his or her upper body before being required to remove items of clothing from the lower part of the body.
- (3) The search must be conducted as quickly as reasonably practicable and the person searched must be allowed to dress as soon as the search is finished.
- (4) The police officer conducting the search must ensure, as far as reasonably practicable, the person being searched can not be seen by anyone of the opposite sex or by anyone who does not need to be present.
- (5) If a video camera monitors the area where the person is searched, the police officer must, unless the person viewing the monitor is a police officer of the same sex as the person being searched —
 - (a) ensure the camera is turned off; or
 - (b) conduct the search out of view of the camera.
- (6) However, if the video camera is not turned off, any recording of the search must not be shown to anyone other than —
 - (a) the person searched or his or her lawyer; or
 - (b) a doctor treating the person searched; or
 - (c) a person deciding if a proceeding is to be started against the person for an offence; or
 - (d) a police officer investigating an offence involving the person; or
 - (e) a police officer, lawyer, public prosecutor or witness involved in a proceeding against the person; or
 - (f) a court.
- (7) The police officer conducting the search must not make physical contact with the genital or anal areas of the person being searched, but may require the person to hold his or her arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made.
- (8) If the person to be searched is a child or somebody else who, because of a medical or psychiatric condition or an intellectual disability, may not be able to understand the purpose of the search, the police officer must conduct the search in the presence of —
 - (a) for a child — an interview friend; or
 - (b) for someone else — a person the police officer considers able to give

the person to be searched appropriate support.

- (9) However, the police officer may search the person in the absence of a person mentioned in subsection (8)(a) or (b) if the police officer reasonably suspects —
 - (a) delaying the search is likely to result in evidence being concealed or destroyed; or
 - (b) an immediate search is necessary to protect the safety of the person.

An important operational guideline attached to this section (not in the new Act or Code) advises QPS officers not to conduct routine personal searches involving the removal of clothing (that is, a strip search):

Police officers should be aware that while the Act allows a police officer to require someone to remove clothing when the person is being searched, and searches involving the removal of outer clothing may be necessary, **searches involving the removal of clothing should not be routinely conducted**, and if conducted, searches that are not appropriately conducted may invite adverse public criticism of the police service. [emphasis added]

Accountability

Officer's details

Section 112(1) to (3) of the PPRA requires QPS officers who intend to conduct a personal search to provide the person to be searched with certain details as 'soon as reasonably practicable' (but, presumably, before the search commences). Such details include telling the person that the search will be conducted by a QPS officer (if not in uniform) and the name, rank and station of the officer.

Section 112(1) to (3): Supplying police officer's details [s. 394 of the Act 2000]

- (1) This section applies if a police officer —
 - (a) searches ... a person; ...
- (2) The police officer must, as soon as is reasonably practicable, inform the person the subject of the power of the following —
 - (a) if not in uniform —
 - (i) that he or she is a police officer; and
 - (ii) of his or her name, rank and station; or
 - (b) if in uniform — state his or her name, rank and station.

- (3) If the police officer is not in uniform the police officer must also produce for inspection his or her identity card.

Stating the purpose of the search

For a personal search other than with a search warrant, section 112(4) of the PPRA requires QPS officers to state the purpose of the search. That section provides:

If the police officer is searching a person ... other than under a search warrant, the police officer must state the purpose of the search and the reason for seizing any property.

If a search is conducted with a search warrant, the reasons for the search will be stated in the warrant.

Recording searches in the register

Under section 99(a) of the Code, certain details of all searches, including ‘the purpose of the search’, need to be recorded in the ‘register’.

Section 99(a): Searches [s. 54 of the Code 2000]

The following details of a search must be included in the register —

- (a) for a search of a person —
 - (i) if known — the name of the person; and
 - (ii) when and where the person was searched; and
 - (iii) the purpose of the search; and
 - (iv) whether the search involved the removal of outer clothing in circumstances requiring the search to be conducted out of public view; and
 - (v) for a search because of a reasonable suspicion — how long the person was detained for the search; and
 - (vi) a description of anything seized because of the search.

Although the term ‘register’ is not defined in the Code, it is apparent from paragraph 16.8.1 of the Manual that the term is understood to refer to the QPS-wide electronic Custody/Search Index as opposed to, or in addition to, the Watchhouse Custody Register.¹⁰

Section 119P of the PPRA (s. 413 of the Act 2000) provides that information relating to personal searches must be recorded ‘as soon as reasonably practicable after the act is done

or the information becomes available.’

Further, section 119R of the PPRA provides, in part, that:

(2) At any time within 3 years after the enforcement act¹¹ [that is, a personal search] is done, the person to whom the act was done may ask any police officer who is entitled to inspect the register to give the person a copy or printout of the information recorded in the register about the act.

(3) The police officer must comply with the request as soon as reasonably practicable. [note added]

Cavity searches

A QPS officer conducting a personal search is not permitted to make physical contact with the person’s genital or anal areas.¹²

Where watchhouse managers believe that a detainee (who has been charged with an indictable offence¹³) has internally concealed an item that ‘may provide evidence of the commission of the offence’, they may apply to a magistrate for an order approving a cavity search by a medical practitioner.¹⁴ However, there is no general provision in the legislation that allows watchhouse managers to apply for a cavity-search order, even when they believe that a detainee (charged with an indictable offence or not) has internally concealed an item that could be harmful to the detainee or others.¹⁵

Duty of care

Section 290 of the *Criminal Code* (Qld) provides:

When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is the person’s duty to do that act: and the person is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

This provision creates a duty to do specific tasks where failure to do so could endanger a person’s life or health. For example, if QPS officers do not search people entering a watchhouse whom they believe pose a risk of harming others — and someone is injured by

a concealed item that could have been revealed during a search — the officers may have committed a breach of their statutory duty imposed by section 290 of the Criminal Code. This section of the Code is often referred to by QPS officers as a statement of the duty of care that they owe to a person under their care and control.¹⁶

Section 290 of the Criminal Code does not specifically authorise QPS officers to conduct personal searches. The common law authority referred to below, or the specific statutory provisions referred to above, would have to be relied upon to justify the search.

Common law

There is no general common law power for a police officer to stop and search a person and seize property, unless the person has been arrested. Police officers must, therefore, rely on legislative powers to search anyone prior to arrest. The common law has for a long time, however, supported the right of a police officer to search a person under arrest and in custody, provided it is reasonable in all the circumstances of the particular case.¹⁷

Donaldson L.J. in a 1981 United Kingdom decision stated:¹⁸

It is the duty of the courts to be over zealous to protect the personal freedom, privacy and dignity of all who live in these islands. Any claim to be entitled to take action which infringes these rights is to be examined with very great care.

But such rights are not absolute. They have to be weighed against the rights and duties of police officers, acting on behalf of society as a whole. It is the duty of any constable who lawfully has a prisoner in his charge to take all reasonable measures to ensure that the prisoner does not escape or assist others to do so, does not injure himself or others, does not destroy or dispose of evidence and does not commit further crime such as, for example, malicious damage to property.

This list is not exhaustive, but it is sufficient for present purposes. What measures are reasonable in the discharge of this duty will depend upon the likelihood that the particular prisoner will do any of these things unless

prevented. This in turn will involve the constable in considering the known or apparent disposition and sobriety of the prisoner. What can never be justified is the adoption of any particular measures without regard to all the circumstances of the particular case.

At common law, in every case where a police officer searches a detainee or deprives a detainee of property, the officer should have ‘a very good reason to do so’.¹⁹ A search conducted routinely, without a focus on whether it is necessary, will likely not be tolerated under the common law and will legitimise the use of force to resist. A routine search might also lead to a civil action for trespass to the person.²⁰

The common law must be read in light of relevant statutory provisions.²¹

QPS requirements

Operational Procedures Manual

The Manual includes directions from the Commissioner of Police relating to personal searches by QPS officers. The directions mainly restate and reinforce what is required of QPS officers under the PPRa and the Code (although, in some respects, in a more detailed and confusing manner). The Manual has no legislative force; however, a breach of a requirement could result in disciplinary proceedings against the officer concerned.

Custody/Search Index

Paragraph 16.8.1 of the Manual says that the Custody/Search Index is designed to, among other things, ‘record details of searches of persons ...’. The information on the register is also used to provide security risk information on people held in police custody.

The Manual provides that the officer responsible for the search is to complete the ‘relevant register’ in accordance with section 99 of the Code (para 16.10.1) and that the officer is to include on the register the date, time and reason for the strip search

(para 16.10.3).²² The Manual gives no further directions on how best to fulfil the legislative requirements.

When to conduct a personal search

The Manual states that a person is to be searched following arrest and again on reception at the watchhouse if, in the opinion of the responsible officer, ‘a need exists’ (para 16.10.1). This is not a requirement of the legislation. The Manual goes further and provides that for searches at a watchhouse, the responsible officer is to conduct the ‘search’ (presumably referring to a pat-down search) at the charge counter before the person is locked in a cell (para 16.10.2). Again, this is not a legislative requirement.

The Manual (para 16.10.2) notes that when a detainee is not held in a cell at the watchhouse and is to be bailed shortly after arrival, ‘it may be appropriate not to search that [detainee] ... and remove any property’:

The charging officer should record that fact in the Watchhouse Custody Register [as distinct from the Custody/Search Index] entry relating to the ... [detainee].

It is not clear whether these provisions apply to pat-down searches, strip searches or both.

How a search is to be conducted

Consistent with the legislative requirements, the Manual (para 16.10.2) provides that the search is to be conducted in such a way as to preserve the dignity of the person to be searched. If the person is required to remove all clothing other than underwear, or all clothing, the search must be conducted somewhere reasonably private (para 16.10.1).

Unless an immediate search is necessary, the person conducting the search must be a QPS officer of the same sex as the person being

searched. If there is no such officer available, someone else of the same sex as the person being searched, or a doctor of either sex, can conduct the search at the direction of the responsible QPS officer. If clothing is seized, the person being searched must be left with, or given, suitable clothing (para 16.10.1).

The use of force

A decision to conduct a forced strip search should only be made after the safety of all QPS officers involved has been taken into account.²³

Transgender persons

Unlike the legislation, which makes no specific mention of transgender persons, the Manual makes special provision for the searching of such persons (para 16.10.4). The provisions appear to be primarily concerned with ensuring that such people are treated as if they were of the sex they identify with. However, the provisions also provide that transgender persons are to be searched according to their genitalia — which, of course, could be at odds with the sex with which they identify.

Standing operating procedures

To give effect to the requirements of the Manual at a local level, QPS officers in charge of regions can develop Standing Operating Procedures (SOPs). SOPs are organisational directives that establish a standard course of action for QPS responses (for example, attending a minor traffic accident or a major incident).

For the purposes of this report, the CJC reviewed the SOPs for six of the ten watchhouses that participated in the survey, finding that SOPs can vary from watchhouse to watchhouse, at times quite significantly.²⁴

CONCLUSIONS DRAWN BY CJC

A major shortcoming of the legislation and provisions is the absence of definitions for ‘personal search’, ‘strip search’ and ‘pat-down search’ to guide QPS officers through the maze of requirements.

What distinguishes a strip search from a pat-down search is the fact that all or a significant part of a person’s body will be in the view of a QPS officer or someone acting at the direction of a QPS officer, and possibly other people. Nakedness or partial nakedness has the potential to be regarded by the person being searched as an invasion of bodily integrity in circumstances where the person is physically and psychologically vulnerable.

An indication of what would constitute an acceptable state of undress before special protective provisions, over and above the protective provisions operating for pat-down searches, should apply, is the state of undress in which an ordinary person would feel comfortable in public. Most women would not feel comfortable appearing in public partially or fully naked or wearing only underwear; similarly, most men would not feel comfortable appearing in public fully naked or only in underpants.

Although cavity searches are not within the ambit of this inquiry, the CJC considers that the current limitations on applying for an order for a cavity search may limit a watchhouse manager’s ability to protect the health and safety of detainees and other people for whom the manager is responsible.

The CJC recommends:

- 3.1** The terms ‘personal search’ and ‘strip search’ should be defined in the Code. The same definitions should also be included or referred to in relevant provisions of the Manual, the guidelines to be developed by the QPS (see chapter 7), training material and in all other QPS material relevant to personal searches conducted by QPS officers.
- 3.2** The definition of a ‘personal search’ should be along the following lines:
- A personal search is a search of a person by or at the direction of a QPS officer. A personal search may involve a pat-down search, that is, a search which involves the searching of the clothing of a person and/or a strip search, which involves searching the external body of a person following the removal of clothing.*
- 3.3** The definition of a ‘strip search’ should be along the following lines:
- the removal of all of a person’s clothing
 - the removal or lifting of a male person’s lower clothing, which reveals underwear or nakedness
 - the removal or lifting of a female person’s upper or lower clothing (including stockings or pantyhose), which reveals underwear or nakedness
 - requiring a person to change into other clothing under the supervision of a QPS officer or other person acting at the direction of a QPS officer.
- 3.4** The QPS should consider whether the current provisions in the Act regarding cavity-search orders should be amended to allow a watchhouse manager to apply for an order in circumstances other than where a person, detained in relation to an indictable offence, is believed to have internally concealed an item that ‘may provide evidence of the commission of the offence’.
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Endnotes

- 1 The Police Responsibilities Code 1998 and 2000 appear as a schedule to the Police Powers and Responsibilities Regulation 1998 and 2000 respectively. The main provisions of the Code relate to the responsibilities a QPS officer must comply with for giving effect to the PPRA. A number of provisions formerly in the 1998 Code now appear in the Act 2000.
- 2 Usually, the common law on a particular issue will pre-date any relevant legislative enactment. Also, if there is no legislation, often there will be some common law authority that can be looked at for guidance as to what the law is on that issue. If there is legislation, it may have been the subject of interpretation by a court, in which case it may need to be read in light of the court's interpretation.
- 3 The Act 2000 introduces a third type of personal search, the 'frisk search', defined as:
 - (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
 - (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

QPS officers can conduct frisk searches only at specified special events.
- 4 Section 111 of the PPRA and s. 7 of the Code are set out in full at pp. 13–15.
- 5 Paragraph 16.10.3 of the Manual.
- 6 The Act 2000 consolidates most of these provisions.
- 7 See s. 5 of the Code.
- 8 See also s. 127 of the PPRA (s. 377 of the Act 2000), which relates more specifically to the use of force in critical situations.
- 9 Under s. 135 of the PPRA, operational guidelines are not part of the Code. (See also s. 2(5) of the Code.) There are no operational guidelines under the new Code or Act.
- 10 A manually updated hard-copy register of detainees, which is kept at each watchhouse.
- 11 'Enforcement act' is defined in the dictionary to the Act as including 'the search of the person'.
- 12 Section 7(7) of the Code. See also ss. 86 and 87 of the Code (s. 29 of the Code 2000, s. 279 of the Act 2000).
- 13 Section 288 of the Act 2000 provides that the person must be in custody for an indictable offence 'whether or not the person has been charged with the offence'.
- 14 Section 63 of the PPRA (ss. 288 and 289(1) of the Act 2000).
- 15 In practice, a detainee might be transferred to a hospital or put under close observation if it is suspected that drugs or other items have been secreted that may pose a health danger. Victorian police can obtain authority from a senior police officer for a cavity search to be conducted by a medical practitioner where the detainee consents, where there is 'very reliable evidence or information to justify the search' and where 'the search is necessary': see para. 10.2.3.2 of the Victoria Police, *Operating Procedures, Victoria Police Manual*. Under section 48 of the *Corrective Services Act 1988* (Qld), the general manager of a prison can authorise a medical officer, a registered nurse who is a corrective services officer or a legally qualified medical practitioner to search the person of a prisoner including the orifices of the prisoner's body, even in the absence of consent, if the general manager believes on reasonable grounds:
 - (a) that the prisoner is in possession of anything that may threaten the security or good order of the prison or that may endanger or be used to endanger the prisoner or any other person; or
 - (b) that the search may afford evidence of the commission of an offence by the prisoner during the prisoner's term of imprisonment or period of detention or the commission of a breach of discipline by the prisoner.
- 16 For a more detailed discussion of 'duty of care', see chapter 4.
- 17 See, for instance, *Leigh v. Cole* (1853) 6 Cox C.C. 329 and *Lindley v. Rutter* [1981] QB 128.
- 18 *Lindley v. Rutter* [1981] QB 128 at 134.
- 19 *Id.*, p. 135. Compare this requirement to s. 56 of the Act (see p. 13) where no such restriction is imposed on QPS officers conducting searches of people in custody.
- 20 *Brazil v. Chief Constable of Surrey* [1983] 3 All ER 537 per Lord Goff L.J. at 540–541.
- 21 Although in relation to common law powers, obligations and liabilities, s. 6 of the PPRA provides (s. 7 of the Act 2000):

Unless this Act otherwise provides, this Act does not affect —

 - (a) the powers, obligations and liabilities a constable has at common law; or
 - (b) the powers a police officer may lawfully exercise as an individual, including for example, powers for protecting property.
- 22 Section 99(a) of the Code is set out at p. 16.
- 23 See para. 16.10.2, which notes that QPS officers may be exposed to violent or aggressive persons. In particular, it provides: 'responsible officers are to take all reasonable care to ensure: (i) their own safety and the safety of others who are involved in conducting the search ...'. See also, appendix 2.23 of the Manual ('Risk Control Measures for Conducting Searches').
- 24 Brisbane City, Mount Isa, Southport, Toowoomba, Townsville and Warwick Watchhouses. We also reviewed the SOPs of the Gladstone Watchhouse.

The purpose of strip searching

This chapter examines two different approaches adopted by watchhouses for instigating a strip search.

- 1 Every detainee entering a watchhouse, or every detainee who falls into a particular category, poses a risk¹ and a strip search is required to locate any item that could be used to realise that risk.
- 2 A detainee should only be strip searched if there is an indication that he/she poses a particular risk and that a strip search may reveal an item that could be used to realise that risk.

Although there are some practical arguments in support of the first approach, it is difficult to defend after considering the need to respect each individual's physical integrity. QPS officers are also less likely to be held personally liable for conducting an inappropriate strip search or for failing to conduct a strip search if consideration has been given to the risk each individual poses.

The law and procedures

Under section 26 of the PPRA (ss. 27 and 28 of the Act 2000), a QPS officer can search a person who is not in custody *only* if the officer 'reasonably suspects' that any one of a number of particular circumstances exist.² By comparison, under section 56 of the PPRA (s. 269 of the Act 2000), a person lawfully detained by the QPS can be searched, including strip searched, at any time and for no directly apparent reason.³

A possible explanation for the difference in the two provisions is that, once within the ambit of section 56, the detainee has already been denied certain freedoms. Further, the detainee will normally be within the control

of a watchhouse manager who will have responsibility for that person's health and safety and the health and safety of other people within the watchhouse.

The watchhouse manager's responsibility over detainees in the watchhouse is specifically referred to in section 90A of the PPRA (s. 396 of the Act 2000):

The manager of a watchhouse may give or cause to be given to a person in custody in the watchhouse any reasonably necessary directions, or take or cause to be taken any reasonably necessary steps, for ensuring the good management and control of the watchhouse.

At the public hearings (day 2), a watchhouse manager explained his understanding of the effect of section 56:

... from the watchhouse perspective all searches in watchhouses are conducted under section 56 of the Act and the law there says that if you're in a watchhouse, if you're in custody, we've got unqualified ... authority to search you. There's no hurdles to jump before we decide to search you. We've got an unqualified authority to search you. If we want to seize something from you there's qualified powers to take something from you and then again if we want to retain that property we've got a few more things we've got to satisfy, but the initial search and re-search, it says, is there and I assume it's there for the protection of that person and other people within the watchhouse.

Nevertheless, when read in light of other provisions in the legislation and the Manual, the apparent *carte blanche* authority given by section 56 to conduct personal searches is misleading. For example, section 112(4) of the PPRA provides (s. 394 of the Act 2000):⁴

If the police officer is searching a person ... other than under a search warrant, the police officer **must state the purpose of the search** and the reason for seizing any property. [emphasis added]

Similarly, section 99(a) of the Code (s. 54 of the Code 2000) says that the purpose of each

search, including strip searches, has to be recorded in the ‘register’.

Operational guideline 3, attached to section 7 of the Code, specifically relates to strip searches (no equivalent in the Act 2000):

Police officers should be aware that while the Act allows a police officer to require someone to remove clothing when the person is being searched, and searches involving the removal of outer clothing may be necessary, **searches involving the removal of clothing should not be routinely conducted**, and if conducted, searches that are not appropriately conducted may invite adverse public criticism of the police service. [emphasis added]

However, it is apparent that these limitations on when — and how — strip searches can be conducted in watchhouses have not always been reflected in the SOPs or in practice.

A number of the SOPs reviewed by the CJC specifically refer to the prohibition on routine strip searches. For example, the SOPs of the Southport Watchhouse state that ‘searches involving the removal of clothing should not be routinely conducted’.⁵ The SOPs of the Toowoomba Watchhouse say:

Police have NOT got an absolute right to search every person brought into custody. Adequate reason MUST exist prior to a search being conducted.

If strip searches are not to be routinely conducted, circumstances must exist in individual cases suggesting that a person should be strip searched. No assistance is provided in this regard by the legislation. The Manual and SOPs provide some assistance, but not consistently. For example, while the SOPs of the Townsville Watchhouse provide:

Discretion is to be exercised when carrying out full strip searches. Strip searches are to be carried out on prisoners suspected of secreting property, drugs, weapons etc. on their person.

there is also a provision stating:

In determining whether a strip search is required to be performed, the Duty Senior Sergeant or his/her delegate must consider whether the circumstances are such as to raise a reasonable suspicion that the prisoner may have possession of:

- (i) Articles which could be used as weapons to injure any person or property;
- (ii) Articles with which the prisoner could take or attempt to take their own life including belt, necktie, shoe laces, long socks, drawstrings;

Case study 1

In 1995, a female motorist complained to the CJC that she was strip searched at a watchhouse unnecessarily. A CJC investigation found that the SOPs of that particular watchhouse called for all detainees to be strip searched.

The CJC wrote to the Commissioner of Police recommending that instructions be issued to ensure that appropriate criteria be considered before any detainee was strip searched in any watchhouse. In reply, the CJC was told that that watchhouse’s SOPs did not accurately reflect QPS policy.

The Deputy Commissioner of Police then issued a memorandum to all Assistant Commissioners reinforcing the policies set out in the Manual, which require QPS officers proposing to strip search a detainee to inform the person of the purpose of the search (see also chapter 6).

The memorandum directed that any SOP requiring detainees to be strip searched should be amended to accord with QPS policy.

In 1996, the CJC informed the Deputy Commissioner that it was continuing to receive complaints about inappropriate strip searches and asked if the Deputy Commissioner’s instructions had been implemented. The Deputy Commissioner replied that he had received advice from all regions indicating that the SOPs now complied with his direction and with QPS policy.

In April 1999, the Commissioner of Police issued a further directive to all regions referring to continuing concerns about allegations of routine strip searches and directing that the QPS policies as set out in section 16.10 of the Manual and operational guideline 3, attached to section 7 of the Code, be adhered to.

- (iii) Articles which could be used in making or attempt to make an escape or in assisting other prisoners to escape;
- (iv) Personal property and valuables which could be stolen from the person;
- (v) Any other article which may be used to commit further offences;
- (vi) Any article which may afford evidence of the commission of the offence for which the person is in custody, or any other offence.

The SOPs of the Southport Watchhouse provide that ‘reasons for a strip search have been identified and placed under the glass top at the charge counter’. That list reads:

- 1 Has a history of self-harm, suicide or suspected self-harm or suspected possession of a weapon
- 2 Drunk, under the influence of drugs or is a drug addict
- 3 Prisoner’s demeanour is uncooperative, refuses to declare property on demand, history of violence
- 4 Prisoner previously found to have contraband items in his custody
- 5 Is a Corrective Services prisoner
- 6 Reasonable suspicion that strip search may afford evidence of the commission of an offence
- 7 Possible that prisoner has property on his person which could be taken by another prisoner.

The list in the SOPs of the Mount Isa Watchhouse is similar to the Southport list, but also includes:

the period, if any, the person is to be held in custody; any previous criminal history; and history of escape attempts or threats to this effect.

The Brisbane City Watchhouse SOPs simply say:

... where the Responsible Officer considers it necessary and the reasonableness of the search is justified in the circumstances and able to be explained in a court of law, then the search will be carried out in compliance with ... [the Manual].

Three of the SOPs reviewed gave no guidance. Not surprisingly, there is confusion within the QPS as to when a strip search in a watchhouse is justified.

Routine strip searches

QPS policy opposes routine strip searching of detainees at watchhouses; however, some individual police officers advocate it.⁶ Their reasoning is based on the perceived ‘duty of care’ owed by watchhouse staff to everyone in the watchhouse and on the belief that a strip search of a person who shows none of the characteristics of a person who poses a particular risk might still reveal an item that could be used by the person to cause harm.

Some police expressed a concern that even ‘at risk’ detainees may exhibit none of the usual outward signs of a propensity to harm themselves or others. Therefore, it might be safer for all concerned if every detainee who is expected to remain in a watchhouse for more than a few hours is strip searched.

At the public hearings (day 1), the Government Medical Officer (GMO) said:

... inmates that go through in a custodial setting should be strip searched ... We’ve been involved quite a lot really with injury and damage done to inmates as a result of things being smuggled in, and people either have not been searched or just [given a] pat down, and they’ve managed to secrete some sort of injurious substance into the watchhouse, and we’re getting involved in the medical issues that arise.

The GMO’s justification for recommending that all detainees be strip searched included:

I’ve been to a number of overdoses; I’ve been to a number of needle-stick injuries on police officers and other prisoners; I’ve been to a number of self-harm situations where something that was deemed to be harmless in fact wasn’t harmless and the person has hurt themselves with it, and we see a fairly skewed audience, obviously ... I’ve also been present in a number of searches when there’s been a medical issue in association with the reason for the search. There was one just a short while ago ... where drugs had actually been brought in on somebody by somebody who handed herself in on a traffic warrant, and she brought the drugs in. All they needed was a syringe which was stolen from my office while I was actually treating that person.

The doctor opined that most of the smuggled items that have caused problems have been

smuggled in by people who are not hardened criminals:

These are people with relatively minor offences such as warrants of commitment for minor things and we know that some of the issues have arisen in groups that you wouldn't normally target. It's all very well having a list and saying which group do you belong to and I've certainly seen the rubber stamp in the Beenleigh Bench Book, you know, and they've got to now tick down as to which category they go into.

Some of the people I've been involved in who have smuggled drugs in and used them in custody, which is why I've seen them, have not come into any of those categories and it would worry me that we are actually judging people for the wrong criteria.

If strip searches are to be conducted on a routine basis, the GMO suggested:

... the training of the officers doing it has got to be extremely good.

However, in the absence of any legislative or QPS-wide guidelines on when to conduct a strip search and the fairly clear prohibition on routine strip searching, the decision to search still has to be rationalised by watchhouses and individual QPS officers. A watchhouse manager said at the hearings (day 2):

... the only thing in [the Code] is an operational guideline which says 'strip searches are not to be routine'. So that's our hurdle. So we say was it routine or wasn't it routine. You will decide based on all your evidence you've heard before you whether it was routine or not and that's the way I see the law in relation to police searches in watchhouse situations.

Now, my role at the watchhouse is to ensure that prisoners don't escape or die. It's a simple objective and the law provides me with the authority to search prisoners which in turn allows me to minimise the risk of harm to these prisoners. ... We shouldn't have to defend what we're doing because we're doing it with the best interests of those prisoners at heart. ... If on the other hand you make recommendations to put hurdles in front of us before we can strip search, well then, I'd be disappointed and I think we've just moved a little bit closer to that day when there's going to be a death in custody.

This approach suggests that strip searches should be conducted at the discretion of the watchhouse manager, albeit case by case.

A Chief Superintendent of the QPS suggested at the hearings (day 2) that such a discretion should be exercised in 'appropriate circumstances', although it is not clear what those circumstances would be:

The Service is not seeking to move or to expand into routinely strip searching all prisoners.

We are quite satisfied with the status quo in relation to having a discretion, of the watchhouse keeper being the person to exercise the discretion and to do it in appropriate circumstances.

CONCLUSIONS DRAWN BY CJC

To avoid potentially unnecessary, embarrassing and humiliating searches on all detainees, QPS officers are discouraged by the legislation and the Manual from conducting routine strip searches on detainees.⁷

It is also clear that there is a wide community reluctance to accept that strip searching should be routine for all detainees or for all detainees who fall into a particular category. That reluctance is based on the potential for strip searches to be a humiliating experience for the detainee and an unpleasant one for the QPS officers doing the search.

The fact that not all watchhouses conduct strip searches routinely indicates that it is not necessary to strip search detainees routinely to meet the safety and other concerns of the watchhouse manager. Furthermore, most watchhouses would not have sufficient resources to conduct routine strip searches properly.

Many people hold that the decision to strip search a detainee should be a discretionary matter for the watchhouse manager. Leaving such a decision to the discretion of a watchhouse manager would at least ensure that the manager's experience and 'intuition' regarding the potential danger posed by a particular detainee would be used in making the decision. It would not, however, lead to

consistent strip-searching practices across all watchhouses in Queensland.

The CJC agrees that the decision to conduct a strip search on a detainee in a watchhouse should be a decision within the discretion of the watchhouse manager. However, that decision should only be made after the watchhouse manager has considered whether the detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk. If there are no apparent indications of risk, the watchhouse manager should still be able to authorise a strip search on the basis of a belief that the risk nevertheless exists.⁸ To help them, the Manual should provide a non-exhaustive list of risks to be aware of, as set out in section 26 of the PPRA and listed in recommendation 4.2 below.⁹

The QPS should consider whether section 26 of the PPRA is sufficient to assist officers outside the watchhouse environment in identifying when a strip search is appropriate, or whether it should be amended to be brought more in line with the CJC's recommendations relating to the identification of particular risks in the watchhouse environment.

The CJC recommends:

- 4.1** Section 56 of the PPRA (s. 269 of the Act 2000) should be amended to bring it into line with operational guideline 3, attached to section 7 of the Code, and current QPS instructions prohibiting routine strip searches.
- 4.2** The Manual should make it clear that the decision to conduct a strip search under section 56 of the PPRA is a discretionary matter for the watchhouse manager. However, the Manual should also specify that that discretion should only be exercised after the watchhouse manager has considered all relevant factors that may indicate a detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk.

The Manual should provide a non-exhaustive list of risks that the watchhouse manager should be aware of, such as that the detainee:

- is concealing an item connected with the commission of an offence
- is concealing an item that is illegal
- may escape from police custody
- may harm himself/herself or another person
- may damage property
- may be in possession of an item that could be stolen from the detainee while in police custody.

Where no relevant factors are apparent to the watchhouse manager, but the manager believes the detainee still poses a risk, the manager should be able to authorise a strip search.

- 4.3** The QPS should consider whether section 26 of the PPRA (ss. 27 and 28 of the Act 2000) needs to be amended in line with recommendation 4.2.

Prisoners and juveniles

Many QPS officers sincerely believe that if a person is a Corrective Services prisoner or from a youth detention centre it is advisable, and sometimes necessary, to strip search that person.¹⁰

Prisoners

The Watchhouse Survey revealed that the most common factor justifying the strip search of a detainee is the fact that the detainee was a 'Corrective Services prisoner' — that is, a person who is on the way to or from a prison and is waiting to appear or has already appeared before a court. This factor was referred to in 47 of the 311 cases, even though it was not even listed as an option in the list of 'risk factors' provided in the survey document.¹¹

However, the Watchhouse Survey indicates that (at least for the period of the survey), Corrective Services prisoners were less

likely than the next highest category of watchhouse detainee ('arrested and charged') to have articles seized during a strip search at the watchhouse. Only 13 of the 126 (10%) prisoners strip searched were found to have items hidden, whereas 26 of the 169 (15%) detainees who had been arrested and charged were found to have items hidden.

It has not been established that Corrective Services prisoners are more likely than other categories of detainees to have lighters, cigarettes and certain other items internally secreted (in the knowledge, for example, that they would be going to a smoke-free environment from a prison where smoking is permitted). Nevertheless, anecdotal evidence provided to the CJC during discussions with watchhouse staff and items found at a number of watchhouses, suggests that a significant number of potentially dangerous items are brought into watchhouses by prisoners. This is despite the fact that prisoners are routinely strip searched before being transported to the watchhouse. At the public hearings (day 2) the Corrective Services Department noted:

Any person who is entering or leaving a [correctional] centre [e.g., to go to a watchhouse] would be subjected to a strip search ... we ... use two officers to search ... and ... never allow them to touch the body. So there is the potential to have items ... hidden in cavities in the body that could possibly slip through.

One explanation given by the department for this is that quite often the prison van taking people from a prison to the watchhouse will collect prisoners from a number of other prisons on the way and there may be some exchange of items in the van. Also, cavity searches are not routinely conducted on prisoners leaving prison and there is therefore little control over what is transported internally.¹²

The CJC has heard that by the time prisoners arrive at the watchhouse they would normally already have been searched several times. At the public hearings (day 1), the Prisoners'

Legal Service noted:

prisoners will be strip searched four times if not more in one session because they get strip searched when they leave the prison, they will often be strip searched actually by transport and escort, as well, strip searched by the police [at the watchhouse], go to Court, they may have to give evidence in their own defence, come back out, strip searched again by the police [at the watchhouse], maybe strip searched by the transport and escort and then strip searched again at Corrective Services on their return there, and then they may even be strip searched again by their unit officers when they get back to their unit inside the gaol.

This approach is, according to the Queensland Law Society (public hearings, day 1):

saying that this class of people will always be a risk and a problem irrespective of being able to show any good reason for having to do it. ... unless there's some good reason that, for example, it's shown that there's been deficiencies in the way that Corrective Services people have carried things out and there has been a history of weapons being able to be secreted, I can't see a reason for saying that Corrective Services people fall into a special category. Again, it'd have to be a good reason.

Similarly, the Bar Association of Queensland noted (public hearings, day 1):

the same criteria [for strip searching] should apply to everybody. Some people [who] come in from Corrective Services by virtue of that very fact will probably be more likely to fit the criteria. People coming into the watchhouse for very short periods of time are by virtue of that fact less likely to fit the criteria, but that doesn't say that everybody who's in for a short period of time won't be strip searched, and it doesn't say that every person coming from Corrective Services should be strip searched. ... it shouldn't be lost sight of that the mere fact that people are prisoners doesn't mean that they've lost their right to privacy or dignity, and they shouldn't be strip searched any more than is necessary according to the proper criteria, and a factor that no doubt will be taken into account is if they were strip searched prior to leaving prison or things like that.

On the same day, the Prisoners' Legal Service noted:

The other thing about strip searching Corrective Services prisoners ... is that often we're talking about prisoners who are on remand so they may well not be guilty and, in fact, they're prisoners who often — who have

pleaded not guilty because they're the ones who have to keep on going back to Court again and again for this mention, that mention and, finally, for the committal and then for the trial, and in the end they may well be found not guilty of the crime, and yet they're the ones who will be strip searched the most of anybody in the system.

It is apparent that the items most commonly secreted on prisoners are lighters and cigarettes. As all watchhouses (except Mount Isa Watchhouse) have a no-smoking policy, there is a strong incentive for prisoners who are smokers to smuggle cigarettes or tobacco and lighters into a watchhouse.¹³ In some of the more remote parts of the State, prisoners may be in a watchhouse for up to seven days; in Mount Isa, for up to 14 days.

Strip searching watchhouse detainees simply because they are Corrective Services prisoners could be seen as discriminatory and, in some cases, abusive, particularly given the number of times they are routinely subjected to strip searches in the Corrective Services environment. This is especially so for the many female prisoners who come from abusive backgrounds.¹⁴

An alternative view is that prisoners are strip searched so often in the corrections system, it would make little difference to them to be strip searched again at the watchhouse. At the public hearings (day 1), for example, Legal Aid Queensland observed:

By the time people are in Corrective Services custody and serving sentences or have been remanded and are on remand in corrective services organisations, to some degree they've given away such an enormous proportion of their dignities and rights that while it would be nice to have protection in the watchhouse, it's fairly meaningless. They're stripped whenever they come in or go out and they see a lawyer and they're used to it.

This view is supported by the fact that none of the allegations of inappropriate strip searches reviewed by the CJC were made by Corrective Services prisoners.

Juveniles

It is apparent from discussions with watchhouse staff that juveniles from youth detention centres are regarded as posing risks similar to Corrective Services prisoners.

Incidents of young people being found with dangerous or potentially dangerous items concealed on their bodies or clothing have led some watchhouse staff to believe that all young people arriving from detention centres should be strip searched.

Youth detention centres are operated through the Department of Families, Youth and Community Care Queensland. While detained at such a facility, a young person is the primary responsibility of the Director-General of that Department.¹⁵ However, once in the watchhouse, juveniles transported from detention centres are the primary responsibility of the watchhouse manager.

Although the QPS provides transport for juveniles travelling to a watchhouse from a detention centre, it is not responsible for the searching of juveniles before they leave the detention centre.

CONCLUSIONS DRAWN BY CJC

People should not be strip searched simply because they are prisoners or juveniles from youth detention centres.

This practice discriminates against certain detainees simply because they are on their way to or from a prison or detention centre. As the Prisoners' Legal Service rightly noted, some of these detainees may ultimately be found not guilty of the crime with which they have been charged.

The decision to strip search a detainee upon arrival at the watchhouse should be based on the watchhouse manager's belief that the person poses a risk and that a strip search may reveal an item that could assist the person to realise that risk.

The situation is obviously complicated by the fact that many watchhouse staff believe:

- the Corrective Services Department and the Department of Families, Youth and Community Care Queensland do not conduct strip searches to the same standard that the QPS expects of its watchhouse staff
- items will possibly be transferred between prisoners while they are being transported to the watchhouse
- prisoners and juveniles will possibly hide items internally, before arriving at the watchhouse.

The QPS and the relevant departments should attempt to resolve these concerns at the earliest opportunity.

Until watchhouse managers have gained sufficient confidence in the departments' strip searching of prisoners and supervision of prisoners during transit to watchhouses, it would be acceptable for the practice described in recommendation 4.6 to be adopted in relation to such people entering a watchhouse. This practice, or variations of it, has already been adopted in some watchhouses.

In the case of young people, strip searching may be more traumatic than it would be for older detainees.

From discussions with officers of the Department of Families, Youth and Community Care Queensland, it appears that the department routinely strip searches juveniles leaving a youth detention centre in the belief that this will avoid the juvenile having to be strip searched at the watchhouse. This is not the case in some watchhouses.

To avoid unnecessary trauma to juveniles it would not be appropriate to require them to change into prison browns, as is recommended for prisoners in recommendation 4.6.

The CJC recommends:

- 4.4** The QPS should ensure all QPS officers are aware that current QPS instructions prohibiting routine strip searches and the CJC's proposed legislative prohibition on routine strip searches (see recommendation 4.1) also apply to Corrective Services prisoners and juveniles from youth detention centres. The Manual should emphasise that no detainee, irrespective of category, should be routinely strip searched. Subject to recommendations 4.5 and 4.6, the decision to strip search a Corrective Services prisoner or a juvenile from a youth detention centre upon arrival at the watchhouse should be based on the belief that that detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk.
- 4.5** The QPS should attempt to resolve the following concerns with the Corrective Services Department and the Department of Families, Youth and Community Care Queensland at the earliest opportunity:
- that Corrective Services officers and youth detention centre officers do not conduct strip searches to the same standard that the QPS expects of its watchhouse staff
 - that items may be transferred between prisoners or juveniles from youth detention centres while they are being transported to the watchhouse, and
 - that prisoners or juveniles from youth detention centres will hide items internally before arriving at the watchhouse.
- 4.6** Until the QPS has gained sufficient confidence in the ability of Corrective Services officers and youth detention centre officers to conduct comprehensive strip searches of prisoners before leaving prison to travel to watchhouses and juveniles before leaving youth detention centres and to provide adequate supervision of prisoners and juveniles during transit to watchhouses, the following practice should be adopted:

(This practice, or variations of it, has already been adopted in some watchhouses.)

- 1 Conduct a pat-down search of all Corrective Services prisoners and juveniles from youth detention centres entering the watchhouse, as per the guidelines developed by the QPS (see chapter 7).
- 2 Conduct a strip search involving all of the steps set out in the guidelines to be developed by the QPS (see chapter 7), *only* if the watchhouse manager believes that an individual prisoner poses a particular risk and that a strip search may reveal an item that could be used to realise that risk.
- 3 Require all other Corrective Services prisoners to change into prison browns, under the supervision of watchhouse staff. The Corrective Services Department should, in this interim period, provide sufficient numbers of prison browns to all watchhouses that may be required to handle Corrective Services prisoners.
- 4 Complete the required entries in the Custody/Search Index for each Corrective Services prisoner, including the fact that a strip search was conducted and the reasons for the search. If only a pat-down search and a change into prison browns was required, this should also be noted in the Custody/Search Index.

An officer's 'duty of care'

Some QPS officers justify conducting strip searches solely on the basis of their perceived 'duty of care' towards the person searched and anyone in the vicinity (see also page 30 'Liability for failure to strip search').

'Duty of care' is only one of three elements that must be satisfied before a person can bring a successful claim for compensation based on negligence. To establish such a claim in negligence against a QPS officer and/or the

QPS, a person would need to show that:

- the officer was under a duty of care to take all reasonable steps to prevent the person from suffering some loss or injury
- the officer failed to take such reasonable steps
- the officer's failure to take such reasonable steps resulted in the person sustaining some loss or injury.

At the public hearings (day 2) the QPS explained its position in relation to the significance of the duty of care of QPS officers towards detainees and others:

... the duty of care obligations which are placed on watchhouse keepers [include] ... to protect not only the person who's being searched, [but also] the watchhouse keeper themselves, the cleaners, the other people who work there, the medical staff, visitors — including lawyers who come to visit their clients ... They [watchhouse keepers] must maintain a safe environment for all people within that watchhouse, including the person who's being strip searched. And that's the exercise that the watchhouse keeper goes through. And our submission is that that duty must outweigh a person's individual rights or dignity, on certain occasions.

The Manual is equally vague about the relevance of an officer's duty of care. For example, paragraph 16.1.1 provides:¹⁶

Officers have a duty of care to those persons in their custody, which is recognised in both criminal and civil law. Each is derived from notions of common humanity.

Often, QPS officers' perceived duty of care towards a detainee under their control appears to be a significant, if not the sole, factor in the decision whether or not to strip search the detainee. It is apparent that in some watchhouses strip searches are conducted more routinely than in others, on the basis of the perceived duty of care towards all detainees.¹⁷

'Duty of care' was cited as the 'risk factor' justifying a strip search in about 10 per cent of cases in the Watchhouse Survey, even though it was not specifically listed as a risk

factor on the survey form. Some of the submissions to the Issues Paper from QPS officers stressed their concern for the safety of the detainee, other detainees and other people in the vicinity of the detainee when processing or otherwise handling a detainee, in terms of their ‘duty of care’.¹⁸

A duty of care does not, in itself, indicate that particular detainees pose a risk of, for example, concealing an item connected with the commission of an offence or harming themselves or damaging property, nor that a strip search may reveal an item that could be used to realise that risk. It is not until a QPS officer suspects that a detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk that the officer would have a duty to conduct a strip search or to do something else to prevent the risk from being realised. The relevant risk factors must be identifiable or at least potentially present before the officer would be under a duty to take action.

If, however, the sole reason for strip searching a detainee is to avoid any potential liability for negligence on the part of the QPS officer for any injury that a detainee may cause, irrespective of the presence of relevant risk factors, it could be argued that a full strip search and a cavity search should be required in the case of *every* detainee.

The Issues Paper (page 14) posed the question:

... would it be helpful if the legislation or Manual included examples of situations where a QPS officer has a duty of care and where a strip search may be a sensible way to fulfil that duty of care?

Although some submissions to the Issues Paper supported the introduction of such examples, one watchhouse manager warned:¹⁹

Most situations encountered by police differ in many ways, the examples provided by the legislation or Manual may limit instances where strip searches may be required, but cannot be foreseen.

CONCLUSIONS DRAWN BY CJC

While QPS officers have a duty not to act negligently towards detainees, whether or not they are acting properly will turn on an assessment of the risk posed by the individual detainee. The citing of a legal term such as ‘duty of care’ cannot by itself justify a strip search when that risk is extremely low or nonexistent; hence ‘duty of care’ should not in itself be a sufficient reason to justify conducting a strip search of a detainee. Aside from the residual discretion of watchhouse managers to authorise strip searches in any case where they suspect it is called for, watchhouse managers should be able to identify relevant factors that indicate the detainee poses a particular risk (see page 31).

The CJC recommends:

- 4.7** The Manual should provide that a QPS officer’s ‘duty of care’ should not in itself be a sufficient reason to justify conducting a strip search of a detainee.
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Liability for failure to strip search

Some QPS officers are concerned that they could be held personally liable for damages resulting from, for example, detainees harming themselves in the watchhouse in circumstances where a strip search was not conducted and where the detainees harmed themselves with an item secreted on their body. For that reason, an officer may be tempted to conduct strip searches routinely.

There is no legislative provision protecting QPS officers from liability for actions done, or not done, in good faith and without negligence, within the course of their employment.²⁰ Such provisions commonly appear in legislation regulating employees in other public sector agencies. For example, section 101 of the Criminal Justice Act provides, in part:²¹

- (1) An act done or omission made —
 (a) by the commission, any commissioner or an officer of the commission ...

does not render the commission or any person liable to any claim, demand or action, if the act is done, or the omission is made, in good faith and without negligence for the purpose of the discharge of the functions and responsibilities of the commission or of any of the functions of an organisational unit of the commission.

Although section 10.5 of the Police Service Administration Act provides that the Crown can be joined in an action for a civil wrong committed by a police officer, the officer remains personally liable. In practice, the Crown will pay any compensation awarded by the court, other than punitive damages. Under section 10.6 of that Act, the Crown is then entitled to seek a contribution from the officer, although, in practice, this does not appear to happen. Section 10.5 simply provides a mechanism for the injured party to be able to claim compensation from the Crown. There has not yet been a successful claim against the QPS or an individual QPS officer for damages resulting from an alleged inappropriate strip search or for damages from a failure to conduct a strip search.

CONCLUSIONS DRAWN BY CJC

The QPS, in consultation with relevant associations of police employees, should examine existing provisions relating to the liability of QPS officers for damages resulting from action taken, or not taken, in good faith and without negligence, within the course of their employment. Obviously, this is an issue with a far greater ambit than strip searches. However, it is apparent that the potential for personal liability for damages resulting from a failure to conduct a strip search is a major factor taken into account by some QPS officers in deciding whether to conduct a strip search. This concern may sometimes overshadow a rational consideration of the actual risks an individual detainee poses.

The CJC recommends:

- 4.8** The QPS, in consultation with relevant associations of police employees, should consider the adequacy of existing provisions relating to the potential liability of QPS officers for damages resulting from action taken or not taken, in good faith and without negligence, within the course of their employment.

Factors indicating risk

Section 56 of the PPRA gives no guidance to QPS officers in identifying which detainees pose a risk. While section 26 of the Act could be read as providing some guidance, it applies only to searches of people who are not in police custody. Furthermore, the section relates more to the *items* the officer believes the person is concealing than to factors indicating that the person poses a risk.

If the officer honestly believes a person may have secreted an object that could cause harm, a search may be conducted to locate that item. However, if the belief is simply that the person *may* cause harm, the section would not necessarily authorise the search. In such a case, a sharp object in an inside pocket could prove lethal if not detected.

The Manual provides no assistance to the watchhouse manager in determining if a detainee poses a particular risk. However, the QPS submission to the Issues Paper noted that, in deciding to conduct a ‘search’, police need to consider the reason they believe such a search is necessary.²² The QPS submission lists the following factors collated from training materials and SOPs that could assist watchhouse managers to identify people posing particular risks:

- the period (if any) the person is to be held in custody
- circumstances surrounding the offence with which the person is charged
- demeanour, e.g. degree of alcohol/ drugs

- whether the prisoner has property which may be taken by other prisoners and used to injure themselves or others
- known history
 - previous or present threat of suicide or self-harm
 - previous violence
 - previous instances/attempts of concealing contraband while in custody
 - previous escapes or attempts or threats of escape
 - criminal history ...

The Watchhouse Survey identified ‘corrective services prisoner’ (n=47), ‘noticeably alcohol affected’ (n=39), ‘duty of care’ (n=36), ‘noticeably agitated’ (n=32), ‘history of self-harm’ (n=32), ‘noticeably drug affected’ (n=19) and ‘evidence of drug use’ (n=15) as the most common risk factors justifying strip searches. Similar factors were identified in the CJC complaints data on the 20 per cent of files on which risk factors were recorded.

Any of the factors referred to in the QPS submission, the Watchhouse Survey or the CJC complaints data may reveal that a detainee poses a particular risk and that a strip search may indicate an item that could be used to realise that risk. There could be other less apparent factors that an officer would not be expected to observe.

The need for all QPS officers to have ready access to a list of known risk factors (and to be aware that the list is not exhaustive) is highlighted by the fact that watchhouse staff quite often find dangerous or potentially dangerous items in cells (or evidence of them having been there in the form of, for example, scratching or graffiti) after detainees have left, irrespective of whether the detainees had been strip searched beforehand or whether they had been held for a short time only.

CONCLUSIONS

The decision to strip search a person should be based upon the risk that that person poses and on the view that a strip search may reveal an item that could be used to realise that risk. To assess the risk, if any, that a person poses, QPS officers should be aware of risk factors a person may exhibit. To date there has been little or no consistent QPS-wide guidance to QPS officers in identifying those factors.

Collectively, QPS officers would be able to identify the most relevant risk factors. The QPS should develop a comprehensive list of those factors and should distribute the list to all QPS officers. Some of those factors have already been identified by the QPS in its submission to the Issues Paper, highlighted above.

Other factors will be identified from time to time as officers experience different circumstances, and should be added to the list. Officers should not be bound by the list.

The CJC recommends:

- 4.9** The Manual should provide a non-exhaustive list of factors that may indicate to the watchhouse manager that an individual detainee poses a particular risk.
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Endnotes

- 1 The risk could be that the detainee:
 - may be concealing an item connected with the commission of an offence
 - may be concealing an item that is illegal
 - may be concealing an item that could help the person escape from police custody
 - may have something that could cause self-harm or harm to others
 - may have something that could damage property, or
 - may have something that could be stolen from the person while in police custody.
- 2 Section 26 is set out in full on page 13.
- 3 Section 56 is set out in full on page 14.
- 4 See also, paras 16.10.1, 16.10.3 and 16.9.4 of the Manual.
- 5 Referring to operational guideline 3 attached to s. 7 of the Code; see p. 14–15. The Act and Code 2000 contain no operational guidelines.
- 6 According to submissions to the Issues Paper from individual police officers and evidence given by the Government Medical Officer at the public hearings. The GMO has had extensive experience working in watchhouses (including conducting strip searches on detainees under the direction of QPS officers).
- 7 See operational guideline 3 attached to s. 7 of the Code and para. 16.10.2 of the Manual.
- 8 See chapter 6 for a discussion on which QPS officer should make the decision that a strip search be conducted on a detainee in a watchhouse.
- 9 These risks are also set out in a number of the SOPs reviewed by the CJC.
- 10 Conclusion reached from submissions to the Issues Paper, the public hearings, the Watchhouse Survey and from discussions with QPS officers.
- 11 Some watchhouses have this as a matter of policy (for example, see the SOPS of the Southport Watchhouse).
- 12 It was also noted by the department that items have been transported from watchhouses or courts back to a prison.
- 13 See chapter 11.
- 14 See chapter 11.
- 15 *Juvenile Justice Act 1992* (Qld).
- 16 See also paras 16.13 (health of prisoners) and 16.14.2 (watchhouse) of the Manual.
- 17 See, for example, submissions 4, 20 and 33.
- 18 For example, submissions 20 and 21.
- 19 Submission 21.
- 20 The liability of officers in such circumstances appears to be emphasised by s. 5 of the Act which provides (s. 5 of the Act 2000):
 - (1) It is Parliament’s intention that police officers should comply with this Act in exercising powers and performing responsibilities under it.
 - (2) For ensuring compliance with Parliament’s intention, a police officer who contravenes this Act may be dealt with as provided by law.
- 21 See also, for example, s. 129(1) of the *Fire and Rescue Authority Act 1990* (Qld) which provides:
No matter or thing done or omitted to be done by any person pursuant to this Act or bona fide and without negligence for the purposes of this Act subjects that person to any liability.
- 22 Submission 30, referring to s. 7 of the Code and, in particular, operational guideline 3.

Short-term detainees

A QPS review of the Custody/Search Index indicates that most detainees at watchhouses are not strip searched.¹ Although it is likely that just about all detainees are subjected to a pat-down search, the QPS review found that only about 10 per cent are strip searched. Strip searches are primarily carried out on people who are detained for longer than a few hours and on people who are being detained on more serious matters.

Nevertheless, the media attention on allegations of inappropriate strip searches conducted by QPS officers has tended to focus on cases involving people detained in watchhouses on relatively minor matters and for relatively short periods. These matters also represent a substantial proportion of the complaints made to the CJC of inappropriate strip searches. This chapter examines whether there are any reasons for handling short-term detainees differently from other detainees.

Reasons for being detained

The CJC complaints data have shown that a significant number of people who complain to the CJC about inappropriate strip searches are people detained on matters such as unpaid fines (n=9, 15%), minor assault (n=8, 13%), obstructing police (n=7, 11%) and 'other' (n=9, 15%), which consists mainly of minor public order offences such as prostitution, standing on a carriageway so as to inconvenience a police vehicle, and under-age drinking. These people are generally detained at a watchhouse for quite short periods; that is, for hours rather than days.

Some watchhouse staff will require people who refuse to give their name, or who give identifying details that cannot be easily verified, to undergo a strip search, even if they are only to be held for a short time. The

justification used is that the QPS officer may be unable to check if the detainee has a history of self-harm or dangerous behaviour.

The Manual, but not the legislation, discourages watchhouse managers from strip searching some short-term detainees. For example, paragraph 16.10.2 provides, in part:

When a prisoner is not to be held in a cell at the watchhouse and is to be bailed shortly after arrival, it may be appropriate not to search that prisoner and remove any property. The charging officer should record that fact in the Watchhouse Custody Register entry relating to the prisoner.

The SOPs of some watchhouses are even more definite that some detainees need not be strip searched. For example, the Toowoomba Watchhouse SOPs state:

It should be noted that Police have NOT got an absolute right to search every person brought into custody. Adequate reason MUST exist prior to a search being conducted, e.g. a UIL [under the influence of liquor] or quick B&E [break and enter] arrestee who will be processed and bailed should not be strip searched or searched at all unless adequate reasons exist.

At other watchhouses, officers strip search only short-term detainees who will be sharing a cell during their stay at the watchhouse, rather than holding them in isolation in a cell or allowing them to remain out of a cell but in view of the charge counter. This inconsistency in search practices was also a concern shared by some people and organisations consulted during this inquiry.

Fine defaulters

Many short-term detainees or potentially short-term detainees at watchhouses are detained for failing to pay fines.² Often, such people will have come to the attention of the police as a result of an unrelated incident such as a traffic infringement.

At the time fines are imposed, most people would be informed that a failure to pay the fine may result in a term of imprisonment. However, some fine defaulters may be unaware that it may also result in detention in a watchhouse and a strip search. (The options available to fine defaulters to avoid having to be taken into custody or to avoid having to stay in a watchhouse for any length of time are set out in appendix D.)

Intoxication and cash bail

People detained in a watchhouse as a result of being under the influence of alcohol account for a fair proportion of watchhouse detainees. The QPS supports watchhouse officers being able to release such detainees into the care and control of relevant diversionary centres on ‘cash bail’; that is, on an undertaking that the person will appear in court on a stated date or forfeit the cash deposit as bail.³ The amount required to be ‘put up’ will vary, but may be as low as five cents.⁴

Although detainees will still normally be subjected to a pat-down search on arrival at the watchhouse, it is unlikely that they will be strip searched if they are released on bail in those situations. For example, at the Townsville consultation meeting, the Townsville Watchhouse manager informed the CJC that people released to an alcohol diversion centre — Gurindal — are rarely strip searched at the watchhouse. (See appendix D.)

Alternatives to strip searching

From discussions with watchhouse staff, it is apparent that short-term detainees are more likely to be subjected to a pat-down search than a strip search.⁵ There will, however, be exceptions where there are no facilities at the watchhouse to separate short- and long-term detainees or where short-term detainees show a tendency to harm themselves or others. Although there seems to be a general

reluctance to strip search short-term detainees, the CJC has been told that watchhouse staff have sometimes found dangerous and illicit items in holding cells after such detainees have been released.⁶

If a person needs to be detained in a watchhouse cell until such time as an outstanding fine is paid, or until release or transferral to a prison, there is an argument that the person should not be treated any differently from other detainees and that the safety of the person and others at the watchhouse should be the watchhouse manager’s main priority. At the public hearings (day 1), a Chief Superintendent of Police noted:

... you just can’t presume from someone’s past or the charges, or whatever, what sort of person they really are and whether they’re likely ... to have something hidden on them which could either harm themselves or other prisoners or the police, and that’s where we come back to the current instructions in the Operational Procedures Manual which leave the discretion with the watchhouse keeper because they see the person’s demeanour, and they also have access to any past incarceration records, etc., etc., and they’re probably out of all of us the best people on the spot to make a judgment about whether to strip search or not. History has shown us on all of the investigations and all of the anecdotal evidence we have clearly indicates that you just can’t make a presumption because someone is in perhaps on an old traffic fine from 1965 for \$30 or \$40 that they haven’t been able to find the money or they are not going to be a person who could harm themselves or other people.

One community legal centre expressed the view that short-term detainees should be subjected to strip searches:⁷

if they exhibit the behaviours, characteristics or common risk factors set out in the Issues Paper.

Similarly, the GMO (public hearings, day 1) observed from her experience at watchhouses:

How on earth do you know who the high-risk inmates are? The vast majority of people we see have a drug and alcohol issue. In fact, our statistics suggest as many as 75 per cent of the clients that we see have a drug and

alcohol issue in relation to their custodial position.⁸ Those people aren't coming in under the Drugs Misuse Act; those people are coming in for nonpayment of parking fines, for not paying a railway ticket, for minor infringements, and the reason they don't pay their fines is that they have no money because they're on drugs, and that is an enormous percentage of people that we're seeing in a watchhouse.

And therefore somebody handing themselves in for nonpayment of a minor fine infringement, they're still, in our opinion, just as high risk of secreting drugs on their person, of bringing in possibly a weapon for self-harm as any other person who has been charged with murder or mayhem of some description and that is our experience of these people.

... often people who say, 'Look I'm only going to be here an hour' in fact are not there an hour. They're there a day or two [as a result of not being able to get somebody to pay the outstanding amount for them] ...

So I don't think you can make hard and fast rules about groups because I don't think you know which person belongs to which group ... We don't lump them all together but we tend to be fairly cynical about the prisoner's knowledge of whether he's going to get out or not ...

In the same vein, the doctor also said:⁹

It is often not known which detainees will be there for a short time. Claims that 'my fine will be paid' or 'my address will be confirmed' are often not forthcoming. Even people detained for relatively short periods of time and who present as 'low risk' can be found with or suspected of having smuggled drugs or other contraband into watchhouses. Most people in watchhouses are in for relatively minor matters such as unpaid fines — but may nevertheless be experienced offenders who may be hiding items in clothing or on their bodies which may be harmful to themselves or others. The media profile of people who are strip searched by police is misleading.

The Bar Association of Queensland expressed the view (day 1) that people should not be treated differently simply because they are, for example, short-term detainees:

My view, if I could summarise it, is this: that the same criteria should apply to everybody. Some people [who] come in from Corrective Services by virtue of that very fact will probably be more likely to fit the criteria. People coming into the watchhouse for very short periods of time are by virtue of that fact less likely to fit the criteria, but that doesn't say that everybody who's in for a short period of time won't be strip searched, and it doesn't

say that every person coming from Corrective Services should be strip searched.

The CJC posed the following question in the Issues Paper (page 16):

If the strip searching of short-term detainees is not preferred, what alternative procedures may be followed to ensure such people are unable to harm themselves or others?

In response, the following alternatives were suggested:

- holding short-term detainees in an area where they cannot cause harm¹⁰
- using metal detectors and pat-down searches¹¹
- having concerned or responsible people stay with detainees during their short-term detention¹²
- monitoring detainees in cells more regularly, either electronically or in person.¹³

At the public hearings, the suggestion was made that the QPS look at new and developing technology to use in detecting items that may have been secreted on a detainee's body or clothing. For example, the Youth Advocacy Centre suggested (day 2):

... there's the whole issue of technology — what [current technology is] ... available that in fact might find what we need to find without the invasive procedures that we've currently got. So I think it's about being more creative. We don't have to walk away from the problem, it's there, but we can look at it from different points of view.

At some watchhouses, one or more of the alternatives set out above have been used, albeit subject to conditions existing at the watchhouse at the time the short-term detainee was in custody. For example, at the public hearings (day 2), the Brisbane City Watchhouse manager noted:

Well, if we've got a short-term detention, or possible short-term detention, it depends on how many persons are being processed at the time and the number of the staff that we've got. If it's quiet, I'd be prepared to have that person sit in the front observation cell, where it's made out of lexon, you can't do anything without being seen, and they can sit there for

a couple of hours. We can give them a phone call, they can go back and sit in there. But if it comes to the stage where we start getting an influx of prisoners, then the decision has to be made, well, we've got to shift that person, so where do we shift them to? Once we start mixing them with other prisoners, then the decision to search has to be made — what are we going to do?

A serious concern expressed by QPS officers has been the lack of resources at some watchhouses to offer alternatives. For example, a QPS officer noted that:¹⁴

Given staffing levels and other duties required to be performed, constant monitoring is a totally unworkable option.

The same officer noted that placing a short-term detainee alone in a cell, with a police officer or other person monitoring the person for the entire time he/she is in custody, would be a 'totally absurd proposition'.

Similarly, the Toowoomba Watchhouse manager observed:¹⁵

Given the overcrowding in police watchhouses and the shortage of staff, constant surveillance of prisoners is not an option at Toowoomba. Police are able in most cases to identify prisoners at risk of self harming and can monitor them more closely. In most instances at Toowoomba it is only the skill of staff and pure luck that has prevented any serious injury to officers or inmates involved in an incident of this kind. A new watchhouse complex with better surveillance equipment and more staff to monitor short term prisoners would assist.

If there is a death or serious injury, it is unlikely to be satisfactory to have failed to have strip searched a detainee on the basis of the nature of the offence or the time the detainee was expected to be held in custody. A respondent to the Issues Paper observed:¹⁶

For example, if a fire occurred as a result of arson in a watchhouse resulting in deaths, it would be unsatisfactory for QPS staff to indicate that a person was not strip searched as they were only in custody on a fine warrant.

CONCLUSIONS DRAWN BY CJC

Detainees should not be treated differently simply because they might be in a watchhouse for only a short period. The primary duty of the watchhouse manager is to ensure the safety of all persons within the watchhouse (while at the same time preventing unnecessary embarrassment and loss of dignity for detainees). Nonetheless, there are certain factors relevant to short-term detention that a watchhouse manager should consider before deciding to strip search a short-term detainee. For example:¹⁷

- can the detainee make an immediate payment, or expeditiously be granted a fine option order in relation to an outstanding warrant?¹⁸
- does the detainee have to mix with other detainees? (for example, the detainee may be the only detainee in the watchhouse)
- can the detainee be kept in a holding cell within full view of the watchhouse counter or not in a cell at all?
- will the detainee be released into the care of a diversionary centre within a short time?
- will the detainee be granted cash bail and released?
- does the watchhouse have adequate facilities to ensure that the detainee will not cause any harm to self or others?

The CJC recommends:

5.1 The Manual should emphasise that the risk posed by a particular detainee is not necessarily dependent on the time the detainee is expected to stay at the watchhouse. In all cases, the watchhouse manager's principal concern must be the safety of detainees and other people in the watchhouse. However, the Manual should identify factors that may indicate to the watchhouse manager that a particular short-term detainee does not pose a particular risk. The list of factors should not be exhaustive and should be reviewed regularly.

Endnotes

- 1 QPS, *A State-wide examination of strip searches: 6 April 1998–2 May 1999* August 1999 at p. 5. Includes an analysis of data recorded on the Custody/Search Index, which must be read in light of the significant limitations of the database.
- 2 For further discussion on fine defaulters, see appendix D.
- 3 See para. 16.2.1 of the Manual.
- 4 For example, at the Southport Watchhouse.
- 5 A possible exception is in relation to Corrective Services prisoners and juveniles from youth detention centres. At some watchhouses, these types of detainees are routinely strip searched regardless of the likely duration of their stay. For further discussion, see chapter 4.
- 6 See also the case study on p. 6 about a fine defaulter who died after his padded cell was set alight. It is suspected that the fire was started by a lighter hidden on or in the man's body.
- 7 Submission 9.
- 8 According to some recent results from the drug use pilot project being run at the Southport Watchhouse, around two-thirds of all arrestees test positive to a drug at the time of arrest: see Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice* (No. 142 December 1999) 'Drug Use Monitoring in Australia (DUMA): Preliminary Results from the Southport Site' 1999.
- 9 Submission 15.
- 10 Submissions 8, 12, 17, 27.
- 11 Submissions 9, 13, 17, 27.
- 12 Submissions 10, 12, 16.
- 13 Submissions 17, 27, 32. A watchhouse manager (submission 21) noted that the holding of Corrective Services prisoners for up to 7 days poses a problem for the adequate monitoring of short-term detainees:

... most damage is caused to prisoners and to property when prisoners become bored and restless and want to take their anger out on something. If ... prisoners [were transported] to a proper Correctional facility at the earliest opportunity the risk of damage would be greatly reduced ... This would ensure there is less chance of contact between long term and short term prisoners and would enable staff to monitor short term prisoners better rather than spending most of their time looking after the long term prisoners.
- 14 Submission 19.
- 15 Submission 21.
- 16 Submission 25.
- 17 See chapter 6 for a discussion on which QPS officer should make the decision that a strip search be conducted on a detainee in a watchhouse.
- 18 Although after December 2000, when the *State Penalties Enforcement Act 1999* (Qld) is expected to commence, it will not be possible to apply for a fine option order from a watchhouse.

Deciding to strip search and explaining the reasons

This chapter examines:

- who makes the decision to conduct a strip search
- the requirement for informing the person to be searched of the reasons for the search
- the requirement for recording the reasons for the search including any use of force.

The decision to search

Responsibilities of the watchhouse manager and the arresting officer

The legislation and Manual are silent as to who makes the decision to conduct a strip search. In relation to a person in custody, section 56 of the PPRA (s. 269 of the Act 2000) simply provides that ‘a police officer may search and re-search a person to whom this section applies’. Even though all police officers have the power to conduct a strip search under that provision, in some watchhouses it is apparent that the watchhouse manager will be the person who makes the decision whether or not to do so.

Pat-down searches are conducted more routinely than strip searches and so there is less likely to be a clear separation of duties — in some cases, it will be the arresting officer who brings the detainee to the charge counter; in others, it will be the watchhouse officer delegated to receive detainees at the time they are brought in (the charging officer).

The Manual (para 16.10.1) provides that a person is to be ‘searched’ following arrest and again on reception at the watchhouse if, in the opinion of the ‘responsible officer’, ‘a need exists’. This is not a legislative requirement and the Manual is silent both as to the circumstances in which a search would be

warranted and the type of search to be conducted. However, it is apparent that this part of the Manual has been interpreted to allow for a person to be searched at the watchhouse at the discretion of and by the arresting officer, and then again at the discretion of and by a watchhouse officer. These searches may be in addition to searches conducted before the detainee is brought to the watchhouse.

In the watchhouse environment, QPS officers may perform different and distinct roles or may perform a combination of roles. This will often depend on the facilities and resources available at the particular watchhouse. There are 195 commissioned detention facilities in Queensland (60 watchhouses and 135 holding cells) of various sizes and with diverse resources. In some watchhouses the arresting officer, the charging officer, the watchhouse manager and the prisoner inspection officer may all be one and the same person, making it impossible to separate the functions of each position (see glossary). Although it is not necessary to have a separate officer for each duty, the Manual (para 16.4.1) advises that ‘where practicable, the charging officer should not also be the arresting officer’.

Where the arresting officer and the charging officer are separate people, some confusion appears to exist about which one should make the decision to conduct a personal search and which one should actually conduct the search. However, at the public hearings (day 2), the QPS suggested that in those situations, the decision to search detainees after they have been brought to the watchhouse by an arresting officer should be made by the watchhouse manager.

Arresting officer

In 67 of the 311 strip searches conducted at the watchhouses covered by the Watchhouse Survey, the arresting officer conducted the strip search. In a further 16 cases, a watchhouse officer and the arresting officer were both recorded as conducting the strip search. It cannot be gleaned from the information available to the CJC whether all the strip searches conducted by an arresting officer were conducted prior to the completion of the charging process.¹

The Manual (para 16.9.2) provides that where a person has been arrested, the arresting officer is to ensure during the charging process at the watchhouse that the person is ‘supervised until the [person] ... is transferred or released from the arresting officer’s custody’. Under the Manual it is possible for both the arresting officer and a watchhouse officer to conduct separate searches on a person received at the watchhouse. These searches may be in addition to searches conducted before the detainee is brought to the watchhouse.² More specifically, the Manual says:

The arresting officer is to:

- (i) search the prisoner if in the opinion of that officer a need exists. See s. 16.10: ‘Search and examination of persons in custody’ of this Manual ...

The charging officer is specifically authorised to conduct a ‘search’ once the detainee is in the custody of the watchhouse; that is, after the charging process is complete. Paragraph 16.9.4 of the Manual provides:

If the arrested person is not to be released from custody the charging officer is to: ...

- (ii) search the prisoner if required as authorised by s. 56 of the Police Powers and Responsibilities Act ...

The possibility of an arresting officer and a watchhouse officer both conducting a personal search on a detainee upon reception at the watchhouse has been entrenched in some SOPs.³

Respondents to the Issues Paper and witnesses at the public hearings were divided on whether arresting officers, as well as watchhouse staff, do, or should be able to, make the decision to conduct a strip search on a detainee once the detainee is in the custody of the watchhouse manager.

Personal searches conducted prior to a person being released into the custody of the watchhouse manager are invariably part of the investigative process and will usually be searches for evidence that may lead to charges being laid. By the time the person is received into the custody of the watchhouse manager, that part of the investigation process directly involving the detainee should be finished. There is an argument that personal searches from that point on should only be for watchhouse purposes — that is, primarily, for the safety of the detainee, other people in the watchhouse and property within the watchhouse. The arresting officer’s primary responsibility for the detainee should be over.

There have been suggestions that some arresting officers seek to retain control over a person after the person has been admitted into the custody of the watchhouse manager — for retribution purposes.⁴ According to this view, an officer might wish to conduct a strip search or influence the decision to conduct a strip search as payback for the detainee failing to cooperate with the officer or because of a hostile attitude taken by the detainee towards the arresting officer. In response to this, the QPS stated (public hearings, day 2) that such an action would be a ‘dangerous path’ for the officer to take and, if it were to happen, it would more likely happen before arrival at the watchhouse.

It was suggested by Legal Aid Queensland, at the public hearings (day 1), that even the provision of information by the arresting officer to watchhouse staff or comments made by the arresting officer in the presence of staff could be perceived as influencing the

decision of staff to conduct a personal search or a particular type of personal search. A common perception among detainees, it was alleged, is that the decision to conduct a personal search is a corporate decision; for example, if the arresting officer on arrival at the watchhouse says something to the effect that ‘it’s so and so again and he’s been doing his usual stuff’:

... that will be sufficient signal for the watchhouse ... to make it unpleasant for him or her. Once you’re taken into police custody and into the watchhouse, it’s considered a corporate decision by them to do it [strip search] to me, and because it’s arbitrary the perception is that sometimes it’s done for arbitrary reasons.

Although the decision to conduct a personal search of the detainee after the charging process is complete will primarily be the responsibility of the watchhouse manager, the Manual has acknowledged that this decision will obviously be influenced by relevant information provided by the arresting officer. The arresting officer will usually have a more detailed knowledge of the detainee and the circumstances in which the detainee came to the notice of the police in the first place. That knowledge may be vital to a decision whether to conduct a personal search or whether to conduct a more thorough search than would otherwise have been contemplated.⁵

All QPS officers have the power to conduct personal searches and should therefore be familiar with the most appropriate method. Nevertheless, every watchhouse will have its own particular routines designed to make the watchhouse as safe and efficient as possible, given the particular circumstances of that watchhouse. The arresting officer will not necessarily be aware of these routines. Watchhouse staff will also tend to be more experienced in conducting strip searches.

Watchhouse staff

For personal searches conducted some time after detainees have been received at a

watchhouse, the decision to search or re-search would more than likely be in response to an incident or suspicion that the detainees posed a danger to themselves or others unless a search was conducted. The person who makes that decision will most likely depend on the circumstances of each case and the availability of officers at the time.

At the public hearings (day 1), the Queensland Law Society, the Bar Association of Queensland and the Queensland Council for Civil Liberties were all of the view that, where practicable, the watchhouse manager should be the person making this decision rather than a more junior staff member. The Law Society noted from anecdotal evidence that:

problems arise where ... a junior officer is the one who makes the decision to strip search ... in terms of who exercises the decision, it shouldn’t be a junior officer who exercises that decision; it must be superintended by a more senior officer accompanied with a recording of the reason for the search so that can be scrutinised if it needs to be later.

The Bar Association submitted:

Commonsense would support ... [the proposal that the discretion to search should be exercised by a more senior officer, not the more junior staff] in that, as everybody knows, when you start off in a job you tend to be nervous, you don’t have the experience to make those sorts of difficult judgments and one would have thought that by and large, with the exception again of the emergency search, that it should be made by someone of some experience; usually, where it’s in a watchhouse, the watchhouse keeper I would have thought would be the logical person to make the decision.

The Queensland Council for Civil Liberties, although supporting this view, queried whether it would be practicable in suburban and regional watchhouses. However, even in smaller centres, there will always be a watchhouse manager or an officer in charge of the police station. Although that person may not be very senior in rank, it could be inferred that the officer’s superiors have at least had confidence in the officer’s abilities to run the watchhouse or station effectively.

CONCLUSIONS DRAWN BY CJC

All QPS officers should know in what circumstances, and how, to conduct a strip search. However, in the watchhouse situation, where the safety of people and property may be at stake, as well as the dignity and privacy of the detainee, the decision to conduct a strip search should be made at the highest level of authority practicable in all the circumstances. It is more likely that that person will have experience in making such decisions and will have had the necessary training in, and understanding of, the requirements of the legislation and Manual.

The question of who should be able to authorise pat-down searches in watchhouses has not been raised with the CJC. However, the watchhouse manager has the ultimate responsibility for the safety of all people and property within the watchhouse and a pat-down search may often be a sensible strategy for ensuring a safe environment.

There appears to be confusion among watchhouse staff, other QPS officers and others about the role of the arresting officer in conducting strip searches at a watchhouse. The CJC is of the view that until a detainee is accepted into the custody of a watchhouse manager the decision whether or not to conduct a personal search, and the type of personal search conducted, should be the responsibility of the arresting officer.

For example, if the arresting officer believes that a detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk, it would be advisable to conduct a strip search. Whether that happens prior to taking the detainee to the watchhouse or upon arrival at the watchhouse must be a decision to be made by the arresting officer, taking into account all the circumstances of the case. The arresting officer's responsibility in this regard does not disappear simply because the detainee has

been brought to the watchhouse.

Once the detainee is in the custody of the watchhouse manager, the decision whether or not to conduct a personal search should be the primary responsibility of the watchhouse manager or delegate, although, of course, that decision should be informed by relevant information from the arresting officer.

Whether or not the arresting officer should be involved in such a search should also be the decision of the watchhouse manager. A manager may, for example, authorise an arresting officer to conduct or assist in a strip search where there has been a sudden influx of detainees. However, an arresting officer needs to be aware of the risk that ongoing investigations could be compromised by any personal involvement in the search of a detainee who has already been placed in the custody of the watchhouse manager.

If the arresting officer has already strip searched the detainee, the watchhouse manager should take that fact into account when authorising a further strip search of the detainee.

The decision to strip search a detainee who is in the custody of the watchhouse manager should be made by the watchhouse manager. That decision should not be able to be delegated. Such a requirement will emphasise the seriousness of the decision and will help ensure that strip searches are performed only in fitting circumstances.

Although the decision to conduct a pat-down search should also be the primary responsibility of the watchhouse manager, the CJC acknowledges that this is a decision that should be able to be delegated to other QPS officers. Such searches are usually less intrusive than strip searches and may need to take place more frequently. It may be impracticable to require the watchhouse manager to authorise each pat-down search, particularly at busy times.

The CJC recommends:

- 6.1** The Manual should prohibit watchhouse managers from delegating the decision to conduct a strip search on a detainee.
- 6.2** The Manual should provide that, when exercising their discretion to authorise a strip search on a detainee, watchhouse managers should take into account the fact that the detainee has already been strip searched by the arresting officer prior to the completion of the charging process.
- 6.3** The Manual should clearly set out the responsibilities of watchhouse managers and arresting officers regarding personal searches. In watchhouses where the arresting officer and the watchhouse manager are two different people:
- Until the detainee is accepted into the custody of the watchhouse manager, the decision whether to conduct a personal search, and the type of personal search conducted, should be the responsibility of the arresting officer.
 - An arresting officer who conducts a personal search at a watchhouse should, as far as practicable, adhere to the guidelines to be developed by the QPS (see chapter 7) and to any special procedures adopted by that watchhouse for conducting personal searches.
 - Once the detainee is in the custody of the watchhouse manager, the manager should have primary responsibility to decide whether or not a personal search is to be conducted. That decision should be informed by relevant information from the arresting officer. Whether or not the arresting officer should be involved in such a search should also be the decision of the watchhouse manager.
- 6.4** The Manual should provide that the decision by the watchhouse manager to conduct a pat-down search on a detainee who is in the custody of the watchhouse manager should be able to be delegated to other QPS officers in appropriate circumstances.

Providing reasons for a strip search

There is a requirement under section 112(4) of the PPRA (s. 394 of the Act 2000) for QPS officers conducting a personal search to inform the person of ‘the purpose of the search and the reason for seizing any property’.⁶ It is unclear whether section 112 refers to all personal searches, including pat-down searches, or is restricted to strip searches.

Although the Manual (para 16.8.1) provides that the Custody/Search Index is designed to record details of personal searches, there is no direction in the legislation or Manual as to how a person is to be informed of the purpose of the search and the reason for seizing property.

From the CJC’s consultations, it would appear that the requirement to inform a person of the purpose of a search is generally understood to apply only to strip searches and, where the requirement is fulfilled, it is done orally prior to the search commencing. It is unclear how many QPS officers would inform detainees about to undergo a pat-down search of the purpose of such a search.

There is no direction in the legislation or in the Manual as to whether the detainee has to understand, or at least acknowledge, the purpose given. Nor is there any legislative or QPS requirement for QPS officers to record the fact that they have explained the reasons for the search to the detainee.

Section 119R of the PPRA (s. 415 of the Act 2000) provides that a person who is searched is entitled to request a copy or printout of the information recorded in the ‘register’ about the search. A police officer must comply with the request ‘as soon as reasonably practicable’. Again, it is unknown whether this provision is being used by people who have been subjected to personal searches and whether the QPS response to such requests is consistent.

In the Defendants Survey, 26 per cent (n=34) of the respondents reported having been told the reason for their strip search and 66 per cent (n=97) reported that they had not been told the reason. From the Watchhouse Survey, the QPS reported that in 20 of the 311 recorded strip searches, no reasons were given to the detainees. Seven of those were from one watchhouse and the majority of the seven were Corrective Services prisoners. This may indicate that some watchhouse staff do not consider that the legislative requirement about the provision of reasons applies to some types of detainees. It may also indicate that some watchhouse staff do not believe that Corrective Services prisoners have the same right as other people to be informed about what is to happen to them.

In response to the question in the Issues Paper (page 13), ‘Should the person to be searched be given the reasons for the search?’, various suggestions were made on ways in which the provision of reasons could be made less onerous for QPS officers. Some officers suggested that reasons should be given orally and according to a set script. The script could be varied according to whether a pat-down or strip search was contemplated (or a pat-down search followed by a strip search, depending on the result of the pat-down search). An example proffered by a QPS officer working in a watchhouse (albeit an example based on the belief that strip searching should be routine) is:⁷

As you’re now in custody it is standard procedure for you to be searched as you are going to be placed in a cell with other searched prisoners. For your safety and the safety of other prisoners I am required to search you before placing you in the cell.

Other suggestions were to hand the person to be searched a card setting out standard reasons for the search (perhaps marked to indicate which reason was appropriate to the individual detainee), and to place wall charts around the watchhouse explaining the reasons for searches and how they are conducted.

CONCLUSIONS DRAWN BY CJC

The provision of reasons fulfils at least three functions:

- It may encourage the detainee to participate voluntarily in the search.
- It may provide the detainee with an opening to challenge the need for a search or for a particular type or degree of search.
- It provides protection to the QPS officer involved by establishing a justification for the search.

Fairness dictates that, if at all practicable, detainees should be told the reasons for a strip search before the search commences. They should be asked if they are prepared to participate in the search willingly, with reference made, if necessary, to the possibility of force being used.

Whenever practicable, reasons for conducting a strip search should be provided orally to the persons to be searched and the persons should be asked if they understand why the search is to be conducted.⁸ It would be inappropriate to require that the reasons be given according to a set script as this may result in at least the appearance that searches are conducted on a routine basis when, elsewhere in this report, the CJC has recommended that searches should be conducted only on the basis of the risk that an individual detainee poses.

The fact that reasons were provided to the detainee should also be recorded on the Custody/Search Index (see discussion page 46). The reasons provided to the person should be the same reasons as the reasons recorded on the Index.

The CJC is not convinced that it would be practicable to require that the person be given a separate written notification of the reasons. Such written notification would have to be in a language capable of being understood by the particular detainee. This requirement would

be impossible to adhere to in situations where searches are conducted outside a watchhouse. Written notification would also involve staff in another administrative function when it is apparent that they are already overburdened with administrative tasks.

Although the provision of spoken reasons will not be ideal in all situations, it is likely to be more flexible than a requirement that reasons be provided in writing. If considered necessary, an interpreter could be sought via telephone to translate the reasons given.

Nevertheless, the CJC is of the view that a general information brochure on police powers in watchhouses should be made available to detainees. That brochure should set out the main reasons personal searches are conducted. Posters setting out such information should also be prominently displayed in all watchhouses. The QPS would need to examine how best to present and display such posters, particularly in areas where there may be a significant proportion of the population from non-English-speaking backgrounds.

A precedent for the availability of brochures in these circumstances is the ‘information card’ provided by customs officers to detainees. The cards are available in English and multiple foreign languages and provide a detailed explanation of the detainee’s rights and exactly what the search will involve.⁹

The brochure and the posters should refer to the entitlement under section 119R of the PPRA (s. 415 of the Act 2000).

If it is apparent to the officer who will be conducting the search that the person to be searched is unable, because of the effects of a drug or alcohol, to comprehend the reasons a search is to be conducted, the reasons should be explained to the detainee after the search. The fact that reasons were given after the search and why should be recorded in the Custody/Search Index.

In situations where an immediate search needs to be conducted, there may not be time to provide the detainee with the reasons beforehand. In those cases, it would also be reasonable to require the officer who conducted the search to give the detainee the reasons as soon as possible afterwards. Again, the fact that reasons were given after the search and why should be recorded in the Custody/Search Index.

The CJC recommends:

- 6.5** The Manual should be amended to make it clear that, if at all practicable, the detainee should be provided with the reasons for a strip search *before* the search commences. The reasons should be provided orally. Detainees should be asked if they understand why the search is to be conducted and whether they are prepared to participate in the search willingly, with reference made, if necessary, to the possibility of force being used.
- 6.6** The Manual should require *the fact* that reasons for a strip search were given to the detainee to be recorded in the Custody/Search Index.
- 6.7** The Manual should provide that, if it is apparent to the QPS officer who will be conducting the strip search that the detainee to be searched is unable, because of the effects of drugs or alcohol, to comprehend the reasons such a search is to be conducted, the reasons should be provided to the detainee when the person is able to comprehend why the search was conducted. Similarly, if a strip search needs to be conducted without delay and there is no time to provide reasons for conducting the search, the reasons should be provided to the detainee as soon after the search as is practicable. The fact that reasons were provided after the search in these circumstances should be recorded in the Custody/Search Index.

6.8 A general information brochure on police powers in watchhouses should be made available to detainees. That brochure should set out the main reasons personal searches are conducted. Posters setting out such information and the entitlement under section 119R of the PPRA (s. 415 of the Act 2000) should be prominently displayed in all watchhouses.

Recording details of a strip search

The central recording of information on strip searching, if adhered to by all QPS officers conducting strip searches, would help ensure that officers fulfil their responsibilities under legislative and QPS requirements.

The Code and the Manual require reasons for conducting personal searches to be noted in the Custody/Search Index.¹⁰ However, it is apparent that this requirement is not consistently adhered to, irrespective of whether the search is conducted in the watchhouse or outside the watchhouse.

Different watchhouses have adopted different recording practices. Staff at some watchhouses enter the reasons for strip searches in the hard copy Watchhouse Custody Register. Some watchhouses use custom-made stamps, which include a list of possible reasons that can be stamped on the back of the Watchhouse Custody Register and completed for each detainee with a simple tick. Some watchhouse staff enter the information in both the Watchhouse Custody Register and the Custody/Search Index. It is also apparent that in some watchhouses, or at least for some detainees, no record is made of the reasons the detainee was strip searched.

There are some difficulties facing QPS officers and watchhouses in complying with the current legislative and QPS requirements for recording reasons for strip searches in the

Custody/Search Index. For example, many QPS officers, including watchhouse managers with whom the CJC has consulted, were unaware of the requirement that the reasons for the search have to be included in the Custody/Search Index as opposed to the Watchhouse Custody Register. Watchhouse staff have indicated that they simply do not have the time to record information in the Custody/Search Index, particularly when the watchhouse is busy. If the information is recorded at all it is likely to be done, in bulk, at the end of a shift. This may result in inaccuracies and the temptation to abbreviate the entries, which could in turn lead to ambiguities when an investigation is conducted into a particular strip search.¹¹

To many QPS officers, the Custody/Search Index is not user-friendly when it comes to putting in information about strip searches. There may be problems accessing the Index at the time a strip search is being conducted. There is no separate field on the Index dedicated to the reasons for a strip search. If the reasons are provided, they have to be inserted into a general information field with no obvious connection to the entry for the fact that a strip search was conducted.

A submission to the Issues Paper suggested that electronic recording of the session where the detainee is informed of the purpose of the strip search may be a useful record and may be less time consuming than having to complete the Custody/Search Index.¹² However, there would be no central source of information on the provision of reasons to detainees. At least if the information is recorded on the Index, it would be more accessible for auditing and monitoring purposes.

The QPS plans to introduce a fully electronic charging system in Queensland (Polaris). This system will avoid any duplication between the Watchhouse Custody Register and the Custody/Search Index and any confusion over

which details are to be added to which register. However, due to budgetary and other constraints it is unlikely that the system will be fully operational for some time. In the interim, it may be unavoidable to have to record relevant details of strip searches on both the Index and, depending on the circumstances of particular watchhouses, the Watchhouse Custody Register.

Recording details of forced strip searches

A number of respondents to the Issues Paper and witnesses at the public hearings agreed with the suggestion made in the Issues Paper that where force is used in relation to strip searches, that fact should be recorded, at least in the Custody/Search Index. These respondents supported the recording of the use of force for different reasons.

Some respondents, including QPS officers, favoured recording the use of force on the basis that it would protect QPS officers from allegations of inappropriate strip searches or allegations of the inappropriate use of force. Such recording would also be a safeguard for detainees subjected to forced strip searches.

The suggestion in the Issues Paper that the use of force be recorded was supported by some individual QPS officers. One officer suggested that this would ‘corroborate police actions’.¹³ Similarly, another officer said that it would show ‘the demeanour of the prisoner for future reference’.¹⁴ A watchhouse manager saw it as ‘protection against false/malicious allegations’.¹⁵

A community legal centre suggested that the use of force should always be recorded in writing to prevent searches being used as a ‘punitive or intimidatory tactic’.¹⁶ Another community legal centre suggested that the recording of the use of force may explain injuries sustained as a result of force being used and may protect the officer who conducted the search from an allegation that

there was an unlawful assault.¹⁷ A similar comment was made by the mother of a young woman subjected to a strip search.¹⁸

A legal service for Aboriginal and Torres Strait Islander peoples explained why they saw recording as a safeguard for detainees subjected to a forced strip search:¹⁹

Strip searches often take place in an intimidating atmosphere where the person is denied the opportunity to have a lawyer present and where several police officers may make their presence known to the person being searched on the basis that the person may be physically restrained during the search if they object to the search.

A respondent to the Issues Paper suggested that a copy of the reasons for the use of force should be provided to the detainee.²⁰ The Prisoners’ Legal Service also suggested that a copy of the record of the strip search, including details of the force used, should be available to the detainee’s legal representatives.²¹

CONCLUSIONS DRAWN BY CJC

The current legislative requirement to record reasons for conducting strip searches in the Custody/Search Index provides a valuable protection for QPS officers who conduct searches appropriately. Although not a current legislative or QPS requirement, whenever force is used to conduct a strip search, all relevant details of the use of force, including the names of all QPS officers involved in conducting the search, should also be recorded in the Custody/Search Index.

Because pat-down searches are conducted more often and are less intrusive, the CJC sees no advantage in section 99(a) of the Code (s. 54 of the Code 2000) continuing to require the recording of reasons for pat-down searches conducted in watchhouses.

If the recording requirements are adhered to consistently, the result will enable the exercise of this significant police power to be monitored by the QPS and the CJC for accountability and other purposes.

As a matter of urgency, the QPS needs to resolve the problems experienced by officers accessing and using the Custody/Search Index, which is the most important database and data-gathering facility available to the QPS. There should be separate fields for each type of information an officer is required to put into the system. For personal searches, there may need to be separate fields covering, for example:

- the type of search conducted
- the fact that force was required
- the reasons for conducting the search
- the fact that reasons were provided to the person searched
- who authorised the search
- who conducted the search
- who was present during the search.

Other factors include ease of access to the system and the possibility of having a separate, compulsory, field for recording reasons for strip searches.

It is apparent that some watchhouses do not have the staff or facilities to enable the required entries to be completed as soon as each search has been conducted. The QPS should investigate ways of facilitating the completion of the entries, at all watchhouses, without imposing an unrealistic administrative burden on watchhouse staff.

In watchhouses where it is considered important, for reasons peculiar to that watchhouse, to also have a hard-copy record of the details of strip searches (such as, for example, an easily accessible source of information relating to detainees for officers taking over from a previous shift, or for when it is impossible to make the entries as soon as the search has been conducted), the CJC encourages the QPS to develop a stamp that could be used at those watchhouses.

The stamp should cover a number of common reasons for conducting strip searches, but

should also enable the relevant officer to note other reasons. The stamp should provide a place for recording that the reasons were given and when they were given, and the fact that the search was a forced strip search.

The CJC recommends:

- 6.9** The QPS should ensure that all QPS officers are aware of the requirement in section 99(a) of the Code (s. 54 of the Code 2000) that a record be made in the Custody/Search Index of the reasons for each strip search.
- 6.10** Section 99(a) of the Code (s. 54 of the Code 2000) should be amended so that it does not require the recording of reasons for pat-down searches conducted in watchhouses.
- 6.11** The Manual should require that whenever force is used to conduct a strip search, all relevant details of the use of force, including the names of all QPS officers involved in conducting the search, should be recorded in the Custody/Search Index.
- 6.12** As a matter of urgency, the QPS should address problems experienced by QPS officers in accessing and using the Custody/Search Index. The QPS should also investigate ways of making the recording of 'off-site' strip searches an easier and more efficient task.

Acknowledgment of receipt of reasons

The Issues Paper (page 13) posed these questions:

If the person to be searched should be given the reasons for the search, should he or she be asked to acknowledge the receipt of the reasons (for example, by signing the Watchhouse Custody Register)? If so, how can these two steps be best accomplished?

The CJC has received a mixed response. Although there was some support for the concept of an acknowledgment, on the basis that it would encourage QPS officers to

adhere to the requirement to provide reasons, another view was that it could be a counterproductive exercise. For example, a watchhouse manager suggested that many detainees would be unwilling to comply with any request made by a QPS officer, let alone a request to acknowledge in writing that they agreed to be searched by a QPS officer.²² Investigators reviewing an allegation of an unauthorised search may regard the absence of a written acknowledgment of reasons being given for the search as an indication that the relevant QPS officer did not provide the person with the reasons in the first place. Similarly:²³

A note by police that the person refuses to sign may assist with the investigation but could be interpreted by investigators that police have not informed the person of the reasons for the search.

Another suggestion was that the detainees to be searched could be asked to sign a form to acknowledge that they had been informed of the purpose of the search, and perhaps that they had agreed to submit to the search.²⁴ The detainees could be given a copy of the signed form and the QPS could retain the original — perhaps to update the Custody/Search Index with that information at a more convenient time.

Other respondents were less supportive of an acknowledgment requirement, primarily on practical grounds.

CONCLUSIONS DRAWN BY CJC

The administrative burden of gathering written acknowledgments from all people who are strip searched by QPS officers throughout Queensland would outweigh the possible advantages in having written, albeit possibly contentious, confirmation that reasons were provided.

It would be difficult to include an accurate acknowledgment in the computerised Custody/Search Index. If the acknowledgment were in writing in the Watchhouse Custody Register, it would be difficult to prevent assertions that the acknowledgment was provided under duress. There would also be no central record of all acknowledgments to monitor compliance with the requirement to provide reasons. If the acknowledgment were to be made on a separate card, there would need to be a system developed to collate and store the information on the cards.

It may be more productive to impress upon all QPS officers that the provision of reasons for strip searches is an important responsibility, which, if not complied with, could result in serious consequences for the QPS officer involved.

Endnotes

- 1 When detainees are brought into a watchhouse they are usually placed in a holding cell while the arresting officer completes the Bench Charge Sheet. Once the paperwork is complete the arresting officer will take the detainees to the charge counter where the charging officer will ensure that the charge is appropriate. The charging officer can reject the charge on the basis that it is not 'correct in law'. The charging officer can also refuse to accept detainees into custody if they are 'unconscious or apparently unconscious or in need of or apparently in need of urgent or immediate medical treatment': see para. 16.9.1 of the Manual.
- 2 Paragraph 16.10.1 of the Manual provides: A person should be searched following arrest and again on reception at a watchhouse if, in the opinion of the responsible officer, a need exists.
- 3 For example, at the Toowoomba Watchhouse, the SOPs provide:

The Watchhouse Keeper has the responsibility for the searching of prisoners prior to lodgment in the cells. An arresting officer will perform this role. However, it must be noted that the responsibility for the search remains in the Watchhouse Keeper, therefore the Watchhouse Keeper will **also search** the prisoner prior to lodgment in the cells. [emphasis added]

Again, it is unclear whether this is a reference to pat-down searches only or to both pat-down and strip searches. The SOPs of the Warwick and Southport Watchhouses have similar provisions.
- 4 For example, the Queensland Law Society at the public hearings, day 1.
- 5 Paragraph 16.9.3 of the Manual requires the arresting officer to advise the charging officer of any:
 - (i) incident of which the officer is aware where the prisoner:
 - (a) was involved in, or threatened any violence;
 - (b) suffered any injury;
 - (c) was emotionally upset or disturbed;
 - (d) attempted or threatened self-harm; or
 - (e) received any medical attention ...
 - (ii) known or suspected medical history/condition of the prisoner, including information on the Service computer system relating to the prisoner; and
 - (iii) other information that may assist in providing appropriate treatment for the prisoner.
- 6 See chapter 3.
- 7 Submission 19.
- 8 See p. 96 in chapter 11 in relation to people who are unable to understand what is being proposed.
- 9 Australian Customs Service, Canberra, *Customs Act 1901, Part XII, Division 1B Detention and Search of Suspects — Operating Directions and Explanatory Notes* December 1999.
- 10 Section 99(a) of the Code (s. 54 of the Code 2000) and para. 16.8.1 of the Manual.
- 11 A watchhouse manager made this point in a submission to the Issues Paper (submission 21).
- 12 Submission 21.
- 13 Submission 5.
- 14 Submission 6.
- 15 Submission 20.
- 16 Submission 27.
- 17 Submission 13.
- 18 Submission 10.
- 19 Submission 38.
- 20 Submission 10.
- 21 Submission 1.
- 22 Submission 21.
- 23 Submission 21.
- 24 Submission 9.

How personal searches are conducted

The way strip searches are conducted was the principal concern of many respondents to the Issues Paper and witnesses at the public hearings.

Although pat-down searches have not been a main focus of this inquiry, a number of the legislative and QPS requirements relating to how personal searches are to be conducted do not distinguish between strip searches and pat-down searches. Further, QPS officers across the State do not have one set of guidelines to assist them in conducting a personal search. These factors have resulted in confusion among QPS officers and inconsistent search practices across the State.

In this chapter the CJC considers the variety of procedures currently adopted by QPS officers when conducting personal searches and recommends that the QPS adopt one set of guidelines to be followed by all QPS officers. To assist the QPS, the CJC has devised a set of model guidelines, set out at the end of this chapter.

Pat-down searches

At some watchhouses, it would appear that a pat-down search is always conducted on a person being detained, irrespective of the reason for detention or the potential length of the person's stay at the watchhouse. Although pat-down searches are not defined, there is some fairly limited guidance in the legislation as to how they should be conducted.

Section 6 of the Code (ss. 382 and 383 of the Act 2000) contains operational guidelines,¹ which appear to relate more to pat-down than strip searches. They read:

- 2 Operational guidelines for searches of persons — general
- 2.1 The following is an example of how to

state the purpose of a search —

'The purpose of this search is to look for something that may be a dangerous drug.'

- 2.2 Generally, police officers should hold a brief conversation before starting a search to help obtain evidence and so avoid unnecessary searches.

...

- 2.4 A police officer searching a person should, if reasonably practicable, wear gloves.
- 2.5 The following techniques may help in a safe and effective search of a person —
 - (a) ask the person to hand over anything that may cause harm to someone else, including, for example, a knife, another weapon or a syringe;
 - (b) ask the person to shake his or her hair vigorously;
 - (c) ask the person to lean forward slightly against a stable object, for example, a vehicle or counter in preparation for the search;
 - (d) stand slightly to one side behind the person;
 - (e) start the search at the person's head and continue down to the person's feet.
- 2.6 Police officers should keep the following in mind —
 - (a) small quantities of drugs may be concealed in belts, collars, hat bands and the lining of clothes;
 - (b) weapons and syringes may be concealed under clothing in areas of the body such as the shoulder, back, side, inside thigh, ankle and forearm.

Paragraph 16.10.2 of the Manual sets out basic procedures for conducting personal searches, again apparently more relevant to pat-down searches than strip searches:

The responsible officer should ensure that any person conducting a personal search:

- (i) wears protective gloves;
- (ii) where considered safe and practicable, has the person being searched:
 - (a) empty their own pockets;
 - (b) remove any items of clothing or jewellery required to be searched or held for security or safety reasons;

- (c) run their hands through their hair; and
- (d) unfold their collar, cuffs, sleeves or other parts of clothing;
- (iii) wherever practicable, uses aids such as tongs or forceps to locate and remove items — hands should not be used if avoidable ...
- (v) systematically searches all items of the person's clothing, including footwear and headgear. Property contained in pockets or other items of apparel should be removed and searched one item at a time;
- (vi) where applicable, removes any potentially dangerous articles and valuables from a prisoner (this includes ties, belts, cigarette lighters, and matches, for the purpose of safety);
- (vii) where applicable and considered necessary, permits a prisoner to retain spectacles, having due regard to the safety of the prisoner and other prisoners in custody (this should be recorded in the Watchhouse Custody Register); and
- (viii) wash their hands when searching is completed.

In some watchhouses, the SOPs incorporate more specific guidelines than the Manual to assist a QPS officer in conducting a pat-down search.² For example, the SOPs of the Townsville Watchhouse include the following:³

- 4 Put on gloves before commencing to search the prisoner.
- 5 Ask the prisoner to empty all pockets and place the contents on the Charge Counter.
- 6 Advise the prisoner to remove any articles which could cause self-harm, harm to others or may be taken by others e.g. jewellery, shoe laces, belt or head bands, drawstrings, long socks and place them on the Charge Counter.
- 7 Advise the prisoner to stand facing the Charge Counter, legs spread shoulder width apart and arms extended out with their hands on the Charge Counter.
- 8 Begin the search by running your fingers through the prisoner's hair. The prisoner may also be allowed to do this portion of the search by running their fingers vigorously through their hair.
- 9 Position yourself slightly to one side of the rear of the prisoner in preparation for searching one side of the prisoner.
- 10 Work down from the head to the neck, and turn up the prisoner's collar. The collar should be squeezed.
- 11 Proceed to search downward, running

your hands over the shoulder and down the arm to the hand. Next run your hand up under the armpit and down the shirt front, checking the pockets, and ending at the belt line. Search the back in the same manner. Areas to which you should pay particular attention are the armpits, small of the back and the chest area. If a female prisoner is involved and it is considered necessary, the female should be taken to a place of privacy. She should then be advised to undo her bra and lean forward. Take hold of the centre of the bra, pull it out and shake it.

- 12 Check the waistband next by moving your hands over it and also by squeezing it to detect any contraband which may be secreted in the band itself. Give special attention to the belt loops since they are ideal for secreting contraband items.
- 13 Run your hands around the prisoner's waist and proceed down the buttocks and legs. Use both hands when searching the legs. Pay particular attention to the seams and cuffs of the pants. Check the crotch area as you check each leg, run your hand well up into the groin area.
- 14 Position yourself to the other side at the rear of the prisoner and repeat steps 9–12.
- 15 Advise prisoner to remove shoes and socks. Carefully check each shoe. Turn socks inside out and shake.
- 16 Once you have completed the clothed search, carefully check the items removed from the prisoner. To protect yourself, allow the prisoner to observe as you search their personal property.

Some watchhouse staff have expressed strong reservations about conducting such an intrusive pat-down search as is described in clause 13 of the guidelines above. Although detainees remain dressed, the experience could be as humiliating and embarrassing to some detainees as a strip search would be.

A normal pat-down search will involve the QPS officer requesting the person being searched to remove some items of clothing or adornment — such as hats, shoes, socks, belts and jewellery. In most situations such a search would not be particularly embarrassing or humiliating. However, for some individuals or for some groups of people, a personal search involving the removal of certain items of clothing would still be considered as

serious as an intrusive pat-down search or a strip search, amounting in some cases to a perception that the QPS officer involved in the search was sexually abusing the person. For example, the removal of headwear for Sikhs or certain Muslim women would be particularly offensive.⁴

Strip searches

The legislation throws little light on how strip searches are to be conducted. The operational guidelines in section 6 of the Code,⁵ although obviously directed primarily at pat-down searches, may give some guidance. Section 7(2), (3) and (7) of the Code (ss. 387, 288, 389 and 390 of the Act 2000) is more specific to strip searches.⁶ Section 111 of the PPRA (ss. 382, 383, 387 and 388 of the Act 2000) also gives some assistance.⁷

Apart from directions about searching transgender persons, the Manual adds nothing to assist QPS officers in conducting strip searches. Similarly, the SOPs are generally silent about how to conduct strip searches. It is apparent from the CJC's consultations, submissions and complaints received in relation to strip searches, that different practices have been developed in different watchhouses.

Model guidelines developed by Chief Superintendent Crawford of the QPS have been used as the basis for guidelines set out in the SOPs of some watchhouses. For example, the SOPs of the Townsville Watchhouse provide, in part:

- 3 Advise the prisoner to remove all clothing, footwear, bandages, prosthetic devices, wigs or hairpieces. If a female prisoner is being searched, ask her to remove all hairpins, combs etc. and place them with her personal property.
- 4 Begin the search with the prisoner's head by having them lean forward and run their fingers vigorously through their hair. If the hair is dreadlocks or matted, you will have to use your fingers to squeeze the prisoner's hair. Remember to look before you touch and check slowly and carefully.

- 5 Advise the prisoner to stand facing you. Check nasal, ear and mouth cavities. Remember to check the crevice behind the ear, and have the prisoner lift their hair away from the ears and neck. When checking the mouth, have the prisoner remove any false teeth or plates they may have and check them.
- 6 Advise the prisoner to stand with arms extended and fingers spread. Check the front of the prisoner carefully. Then have the prisoner raise their arms above their head, and check the armpit area. If a female prisoner is being searched, have her lift her breasts if necessary to check under them. — *visual only*
- 7 Advise a male prisoner to lift his penis and scrotum and check under them. — *visual only*
- 8 Inspect the top of the feet and toes, then have the prisoner turn around so that you can check the back of the neck and the back area. — *visual only*
- 9 Advise the prisoner to lift their feet, one at a time so that you may inspect the soles of the feet, and the areas between the toes. — *visual only*
- 10 Finally advise the prisoner to squat down and cough. This will allow you to have a visual check of the anal and or vaginal area. — *visual only*
- 11 Advise the prisoner to get dressed.
- 12 Items found during the search should be lodged in the prisoner's property. If contraband is found then place same in a sealed plastic bag or envelope and give to the arresting officer to keep for the investigating officer.
- 13 SENSITIVITY — Whenever possible allow the prisoner to remain partly clothed at all times, i.e. replace upper clothing before removing lower ones.
- 14 SPEED — The search should be done quickly to allow the prisoner to dress.

The different practices at various watchhouses may reflect confusion with the legislative and Manual requirements. They may also reflect different perceptions of the danger involved in dealing with detainees and different attitudes towards detainees as well as particular types of detainees.

The CJC has received complaints alleging that, as part of the strip-search procedure, the person was required to squat while fully naked, and in some cases, 'waddle like a duck'. (Squatting may loosen items concealed

between the buttocks or in the anus or vagina.) Some watchhouses require the person to be searched to bend forward after removal of all clothing and to squat (and, at some watchhouses, to cough three times). Other watchhouses consider this to be unnecessary.

Some QPS officers will require a male being searched to lift his penis and scrotum and for females to lift their breasts to ensure that nothing is concealed under them.

At the public hearings (day 1), a GMO observed that the most common places for women to secrete things is between their legs, at the front, ‘especially if they’re large ladies, or under their breasts ... in their bras’. For men, the most common place is between the buttocks.

At least in relation to the watchhouses with which the GMO has had experience, she did not believe that ‘squatting and waddling like a duck’ was a standard procedure. Although the GMO had not observed anyone being required to ‘waddle like a duck’, she explained that squatting may be a useful search technique:

It depends at what speed they’ve put them in. Sometimes this [secreting items] happens in the back of police cars – that somebody’s arrested for an offence, they’ve got something with them, they’ll put it into the vagina very quickly but they haven’t got a chance to get it right in and sometimes when you ask them to squat it’ll fall out.

However, if it were appropriate to require a detainee to squat, the doctor was of the view that procedures should be in place to minimise the obvious embarrassment — such as, for example, ensuring that the person is not required to be totally naked at that point or at any other point during the search. She also acknowledged that some people would have difficulty squatting without assistance, a fact that should be catered for in any guidance given to QPS officers. Victorian police are instructed:⁸

Persons should not be made to adopt unnecessary, unusual or abnormal physical postures or positions.

The legislation and Manual are silent on the need to respect a person’s cultural, religious and physical sensitivities, apart from a reference to transgender detainees.⁹ The SOPs for the watchhouses reviewed by the CJC are also silent on these issues.

Customs officers who conduct strip searches are instructed to:¹⁰

... refrain from personal comment or display of curiosity. The behavior, attitude and professionalism of officers must recognise the sensitivities of the person undergoing [the] search.

Victorian police are instructed to:¹¹

Conduct every search with consideration for the privacy, dignity, modesty and rights of the person concerned.

Some detainees might feel intimidated if approached by an officer wearing gloves. The Australian Customs Service instructions read:¹²

If gloves are to be worn, then the fact that they are needed for health and safety reasons (for both the officer and the detainee) should be explained prior to obtaining consent and at the time they are put on. Officers should emphasise to the person that they will not be touched during the course of the search. Officers should never enter the search room already wearing gloves.

More generally, the Department of Families, Youth and Community Care Queensland, says:¹³

Staff conducting unclothed searches must maintain a high level of sensitivity throughout the search procedure. Due regard must be given to privacy, decency, sexual assault histories, cultural differences and the maintenance of the self-respect of the young person.

The same procedures emphasise to staff conducting such searches that the searching officer ‘is not permitted to touch the young person during an unclothed search’.

If a detainee does not cooperate in a strip search, the QPS officer is authorised to use such force as is ‘reasonably necessary’ to enable the officer to exercise the power.¹⁴ Use of force is not specifically referred to in either the Code or the Manual.

CONCLUSIONS DRAWN BY CJC

There is a widely recognised distinction between a pat-down search and a strip search based on whether the search requires the removal of at least some of the detainee's clothes. However, apart from the general statements in section 6(1) of the Code (ss. 382 and 383 of the Act 2000), there appears to be less recognition in the legislation of the need to respect a person's privacy and dignity when the search is something less than a strip search. Section 6 of the Code is not sufficient to ensure the minimisation of embarrassment, preservation of dignity and respect for privacy for pat-down searches. The QPS should ensure that all QPS officers are aware that section 111 of the Act (ss. 382, 383, 387 and 288 of the Act 2000) and section 6 of the Code apply to all personal searches including pat-down searches.

Even if QPS officers follow the best possible personal-search practices, the CJC accepts that some relevant items may remain undiscovered. Nevertheless, by adopting best-practice procedures, it is more likely that such items will be discovered safely and with a minimum of embarrassment.

The CJC supports the view expressed by several watchhouse staff that a set of clear guidelines on how to conduct personal searches, including strip searches, in a variety of circumstances, may assist them in conducting searches in the best way. If the guidelines were to apply to all watchhouses, then it is possible that there will be less divergence between them in how searches are conducted and more certainty that they will be conducted properly. One set of guidelines should apply to all personal searches including pat-down and strip searches and should be designed to provide the maximum assistance to QPS officers.

The guidelines should require QPS officers to respect apparent cultural sensitivities and

physical, psychological, medical or intellectual characteristics of a detainee before, and, if appropriate, during the search. For example, alternatives to squatting should be found for older people and people with certain physical disabilities; if the removal of a Muslim woman's or a Sikh's headdress is required, the significance of the act to that person should be respected and a culturally sensitive approach adopted.

The guidelines should also consider the safety of the officer conducting the personal search and other people in the vicinity. Officers should not be required to undertake procedures that are overly offensive to them or that place them in a physical danger. Adherence to the guidelines should generally assist in this regard, although there will obviously be cases where they will not apply.

The guidelines should be reviewed continually to take into account best practice in a variety of different circumstances and should appear as 'best practice policies' in the Manual. As they cannot cover all possible contingencies in situations where a search may be contemplated, it would be inappropriate to categorise the guidelines as 'orders'.

The guidelines should be referred to or duplicated in the SOPs of each watchhouse. To maintain consistency and predictability of decision making, they should not be added to or varied in any significant way by the SOPs at individual watchhouses without first obtaining authorisation from the Police Commissioner.

The QPS should examine how best to ensure adherence to the guidelines. They should be introduced by a directive from the Commissioner of Police to QPS officers, emphasising that the exercise of their power to conduct personal searches is a matter of great moment to an individual's rights. An example of such a statement, relating to all personal searches, is in the Victoria Police Manual (Operating Procedures).¹⁵

When considering searching a person there is a need to balance the:

- Possible infringement of the individual's rights against any perceived risk to security.
- Possible outcome of the search against the degree of force, the difficulty, the inconvenience, and the advisability of continuing in the circumstances.

Another example is in appendix A of the New South Wales Police Service's *Code of Practice for Crime* in relation to persons in custody:

Remember:

- do not strip search a prisoner unless the seriousness and urgency of the circumstances require and justify a more intrusive search of the surface of the body
- do not strip search a prisoner, unless the prisoner knows in substance the reason why it is being imposed ...

The shedding of clothes involves an invasion of the modesty or dignity of the prisoner concerned ... It is emphasised that you must be professional at all times and thoroughly conversant with the law of searching, and in particular strip searching, as the action may be subject to criticism or complaint at a later date.

The guidelines should be regularly reviewed, after consultation with relevant bodies, and included in all police training.

The CJC recommends:

- 7.1** The QPS should ensure that all officers are aware that section 111 of the PPRA (ss. 382, 383, 387 and 388 of the Act 2000) and section 6 of the Code (ss. 382 and 383 of the Act 2000) apply to all personal searches, including pat-down searches, no matter where conducted.
- 7.2** The QPS should develop a single set of clear guidelines on how QPS officers should conduct personal searches (including pat-down and strip searches) based on the model guidelines set out at the end of this chapter. The guidelines should apply to all watchhouses and, as far as practicable, to searches conducted outside a watchhouse.
- 7.3** The guidelines should require QPS officers to respect any apparent and relevant cultural sensitivities and physical, psychological, medical or intellectual

characteristics of a detainee before, and, if needed, during the search.

- 7.4** The guidelines should address the safety of the officer conducting the personal search and other people in the vicinity. Officers should not be required to undertake procedures that are overly offensive to them or that will place them in a position of physical danger.
- 7.5** The guidelines should be developed on an ongoing basis so as to take into account best practice in conducting personal searches in a variety of different circumstances and should be regularly reviewed after consultation with relevant bodies.
- 7.6** The guidelines should appear as 'best practice policies' in the Manual. As they cannot cover all possible contingencies in situations where a search may be contemplated, it would be inappropriate to categorise the guidelines as 'orders' in the Manual.
- 7.7** To maintain consistency and predictability of decision making, the guidelines should not be added to or varied in any significant way by the Standing Operating Procedures (SOPs) at individual watchhouses without first obtaining authorisation from the Commissioner of Police.
- 7.8** The guidelines should be introduced by a directive from the Commissioner of Police to QPS officers emphasising that their power to conduct personal searches is a matter of great significance to an individual's rights.
- 7.9** The guidelines should be included in any training provided to new recruits, first year constables and in continuing education and training for all QPS officers.
- 7.10** The Manual should make it clear that section 126 of the PPRA (s. 376 of the Act 2000) also applies to a situation where a strip search is necessary and the person to be searched does not cooperate with the search.

Model guidelines

The model guidelines set out below have been developed with regard to existing guidelines in SOPs as well as guidelines developed by:

- Chief Superintendent Crawford of the QPS
- Victoria Police, the New South Wales Police Service and the Australian Customs Service
- the Department of Families, Youth and Community Care Queensland for strip searching juveniles in youth detention centres.

These guidelines do not cover all the CJC's recommendations on such matters as:

- the decision to conduct the search (see chapter 6)
- the provision of reasons for the search (see chapter 6)
- recording the reasons for the search (see chapter 6)
- who is to conduct the search (see chapter 8)
- monitoring the search (see chapter 9)
- special considerations relating to searches conducted outside the watchhouse (see chapter 10).

Depending on the Government's and the QPS's response to recommendations made by the CJC in the context of discussions in those chapters, the guidelines adopted by the QPS may need to be more comprehensive.

Model Guidelines for Conducting Personal Searches

When it is necessary to conduct a personal search on a detainee the following procedures are to be adopted, unless there are good reasons for adopting an alternative procedure in a particular case. Where practicable, any variance from the guidelines and reasons for variance should be recorded.

At all times, the health and safety of QPS officers, other people in the vicinity and the person to be searched should be overriding concerns. QPS directives on health and safety issues involved in personal searches need to be observed at all times.

If the search is to be conducted in a watchhouse, it can be conducted in a public area, such as the watchhouse counter *only* if the search does not require the removal of clothing other than footwear, socks, headwear, belts, jewellery and other adornments. If a search requires the removal of other clothing, it should be conducted in private. In some cases, depending on the circumstances of the watchhouse and the sensitivities of the person to be searched, a less intrusive search may also need to be conducted in private.

Unless the search must be done immediately and gloves are not readily available, the QPS officer conducting any personal search should always wear latex gloves, regardless of whether the search will require the officer to touch the clothing or body of the detainee. The use of gloves should be explained to the detainee prior to the search as a health and safety measure for both the QPS officer and the detainee. Gloves should be put on in the presence of the person to be searched and disposed of safely after each search.

Where available, a metal detector should be used at the beginning of every search, but should never be relied upon as being able to detect all relevant items that may contain metal.

During the search, tongs or forceps should be used instead of hands to check for and retrieve items from pockets and other recesses in clothing, if at all practicable.

At no stage before, during or after the search, should personal remarks (or sounds or gestures amounting to the same) be made about the detainee's body, appearance, or presentation (smell, cleanliness etc.), or about the proposed search.

A female detainee should be asked before the search whether she is menstruating. If she says yes, then every reasonable opportunity should be provided for the woman to attend to her personal hygiene needs before the search. A woman should never be asked to remove an internally worn tampon for inspection.

Before conducting a personal search on detainees, and after explaining the reason for the search, the detainees should be asked if they have any concerns with being searched and with the manner of the search as explained to them. As far as practicable, but with the safety of detainees and other people within the vicinity as the paramount concern, the detainees' concerns should be taken into account when conducting the search.

For all personal searches (i.e. pat-down and strip), paragraphs 1–17 apply. For strip searches, paragraphs 18–24 also apply.

PAT-DOWN SEARCH

- 1** Ask the detainee if they have any item on their body or in their clothing that they believe may injure a person conducting the search.
- 2** Ask the detainee to remove personal items from pockets and other parts of their clothing, to turn pocket linings out and to place the personal items in a place where they can be seen by the searching officer.
- 3** Ask the detainee to remove jewellery, watches, footwear, socks, belts, headwear and prosthetic devices, and place the items where they can be seen by the searching officer. Body rings attached to any place other than the face should not be removed in a public area. No force should be used to remove an item connected to the body such as rings unless:
 - the item is considered to be evidence of the commission of an offence
 - the item is illegal
 - it is considered that the item may be used to facilitate an escape
 - it is considered that the detainee intends to use the item to harm themselves or another person
 - the item may be used to damage property
 - the officer reasonably considers that the item should be kept in safe custody while the detainee is in custody.
- 4** Ask the detainee to stand still with arms and legs apart while a metal detector is waved over their entire body.
- 5** If at any stage of the search it is believed that the detainee has secreted a dangerous item such as a syringe or a razor blade in a seam of clothing or other place that may injure the searching officer, proceed to strip search the detainee according to paragraphs 18 to 24 below.
- 6** Ask the detainee to face the charge counter or a wall with legs spread shoulder width apart and arms extended out with hands on the charge counter or against the wall.
- 7** Either run your fingers through the detainee's hair or squeeze the detainee's hair, without pulling the hair or ask the detainee to run their fingers vigorously through their own hair.
- 8** Position yourself slightly to one side at the rear of the detainee.
- 9** Starting with that side of the detainee, carefully check the neck and collar or the neck seams in the detainee's clothing.
- 10** Proceed to search from top to bottom running your hands over the shoulder and down the arm to the hand. Run your hand under the armpit and down the trunk of the body, checking pockets, seams and other

recesses in the clothing ending at the waistline. For female detainees, pass the hand over and under the breast.

- 11** Search the detainee's back in the same manner.
- 12** Ask the detainee to loosen waistbands, if necessary.
- 13** Check waistbands by moving your hands over them to detect items secreted in the bands or waistline seams and in belt loops.
- 14** Run your hands around the detainee's waist and proceed down the buttocks and legs. Use both hands when searching the legs, paying particular attention to seams and cuffs.
- 15** When searching the trunk and legs of a detainee, do not pass your hands over the detainee's genital area.
- 16** Position yourself to the other side of the rear of the detainee and repeat steps 9 to 15.
- 17** If there is no intention to conduct a strip search (i.e. removal of clothing), inspect further removed items in the presence of the detainee. Ensure socks are turned completely inside out. Pay special attention to the soles and heels of the detainee's footwear.

STRIP SEARCH

- 18** Ask the detainee to remove all upper clothing and to raise their arms above their head and to turn around. Check armpits.
- 19** Check upper clothing before asking the detainee to put their upper clothing back on. Pay special attention to seams, cuffs and linings.
- 20** Ask the detainee to remove all lower clothing for a visual examination. Have the detainee lean against a wall with legs apart. Have the detainee turn around.
- 21** If considered necessary, **for a male detainee** ask him to lift his penis and scrotum and **for a female detainee** ask her to lift her breasts.
- 22** If considered necessary, and if the person appears to be physically capable of doing so, ask the detainee to squat. Do not ask the detainee to 'waddle' or perform any other manoeuvre while squatting.
- 23** Ask the detainee to lift their feet one at a time to enable you to inspect under the foot and between the toes.
- 24** Check lower clothing before asking the detainee to put their lower clothing back on. Pay special attention to seams, cuffs and linings.

Endnotes

- 1 Under s. 135 of the Act, operational guidelines are not part of the Code, although obviously they provide guidance to QPS officers and may be relevant in QPS disciplinary proceedings. There are no operational guidelines in the Act 2000 or the Code 2000.
- 2 Some of those guidelines are based on model guidelines developed by Chief Superintendent Crawford, QPS.
- 3 See also the SOPs of the Southport Watchhouse.
- 4 Anti-Discrimination Commission, public hearings, day 1.
- 5 Section 6 of the Code is set out in full in chapter 3.
- 6 Section 7(2), (3) and (7) of the Code is set out in chapter 3.
- 7 Section 111 of the Act is set out in chapter 3.
- 8 Victoria Police, *Operating Procedures, Victoria Police Manual* at para. 1.8.5.4.
- 9 For a discussion on provisions of the Manual relating to transgender detainees see chapter 8.
- 10 Australian Customs Service, Canberra, *Customs Act 1901, Part XII, Division 1B Detention and Search of Suspects Operating Directions and Explanatory Notes* December 1999 at para. 3.19.
- 11 Victoria Police, *Operating Procedures, Victoria Police Manual* at para. 1.8.4.1.
- 12 Australian Customs Service, Canberra, *Customs Act 1901, Part XII, Division 1B Detention and Search of Suspects Operating Directions and Explanatory Notes* December 1999 at para. 3.19. This document is classified 'Customs-in-Confidence'.
- 13 Department of Families, Youth and Community Care Queensland, *Procedures on Unclothed Searching*, implemented January 2000.
- 14 Section 126 of the PPRA, which is set out in full in chapter 3.
- 15 At para. 1.8.1.

Who should search and who should be present

This chapter addresses concerns raised about such matters as:

- the sex of the officer conducting the search
- the use of civilians
- the use of interpreters
- the need for independent support persons, at least for some detainees.¹

Sex of person doing the search

Section 111 of the PPRA (ss. 382, 383, 387, 388 of the Act 2000) requires that, unless an immediate search is necessary, a personal search (including a pat-down search) must be conducted by a QPS officer of the same sex as the person being searched, or by a medical practitioner of either sex at the direction of a QPS officer, or by someone else of the same sex as the person being searched at the direction of a QPS officer.² Section 7(4) of the Code (s. 388 of the Act 2000) provides that a QPS officer conducting a strip search must ensure ‘as far as reasonably practicable’ that the person being searched ‘cannot be seen by anyone of the opposite sex or by anyone who does not need to be present’.

Information available to the CJC from the Watchhouse Survey³ and the Defendants Survey⁴ indicates a high rate of compliance with these legislative requirements, at least in relation to strip searches. (The CJC has no information relating to compliance with the requirement that pat-down searches be conducted by a QPS officer of the same sex as the person being searched.)

It appears that the requirements for strip searches have rarely been difficult to fulfil even though in isolated and small communities

where there are few, if any, female QPS officers there may be a delay in searching a female detainee while a female officer travels from another area or is called from off-duty.

Some other jurisdictions have placed greater emphasis on the need to conduct pat-down searches in private than is apparent from the Queensland legislation and the Manual. For example, the Victoria Police Manual says:⁵

A ‘pat-down’ search ... should be conducted as privately as possible.

In New South Wales, in relation to all personal searches, police are directed to:⁶

When searching make a reasonable effort to reduce embarrassment and loss of dignity to those being searched. Conduct the search at or nearby the place where the person ... was stopped.

CONCLUSIONS DRAWN BY CJC

The CJC is persuaded that the current legislative provisions stipulating that a QPS officer can conduct a personal search only on someone of the same sex as the officer, in all cases other than where an immediate search is required, are sufficient and should be retained. Similarly, the current requirement that strip searches should not be conducted in an area where a person of the opposite sex to the person being searched can view the search (unless an immediate search is necessary) should be retained.

Situations that require an officer to conduct an immediate strip search on a person of the opposite sex are rare. When they do arise, the reason should be recorded in the Custody/Search Index.

If it is apparent to the watchhouse manager that a pat-down search could be embarrassing to a particular detainee, if practicable, that

search should also be conducted in an area where a person of the opposite sex to the person being searched cannot view the search.

The current prohibition on strip searches being conducted in the view of other people not directly associated with the search (unless an immediate search is necessary) should also be retained. The same should apply to pat-down searches.

The CJC recommends:

- 8.1** The current legislative provisions stipulating that a QPS officer can conduct a strip search only on a person of the same sex as the officer, in all cases other than emergencies, are sufficient and should be retained.
- 8.2** In emergencies where it is not practicable for an officer of the same sex (as the person to be searched) to conduct a strip search, the Manual should require a record to be made in the Custody/Search Index.
- 8.3** The current legislative requirement that strip searches should not be conducted in an area where a person of the opposite sex to the person being searched or a person not directly associated with the search can view the search (unless an immediate search is necessary) should be retained. The Manual should provide that, if it is apparent to the watchhouse manager that a pat-down search could be embarrassing to a particular detainee, then this search, if practicable, should also be conducted in an area where people of the opposite sex and people not directly associated with the search cannot see it.

Use of civilians

Section 111 of the PPRA (s. 382 of the Act 2000) provides that if a QPS officer of the same sex as the detainee is not available, a medical practitioner of either sex or any other person of the same sex as the detainee

can conduct the personal search at the direction of a QPS officer.

It appears to be rare for a person to be subjected to a strip search by a person other than a QPS officer. In the Watchhouse Survey, two (out of 311) detainees were strip searched by medical practitioners at the direction of a QPS officer. Up to six detainees were searched by a Corrective Services officer, presumably at the direction of a QPS officer.⁷

Police liaison officers (PLOs) are not encouraged to conduct searches of persons in custody except when:⁸

- (i) lawful authority exists to conduct a search;
- (ii) a person of the same cultural background and gender as the relevant PLO refuses to cooperate with an officer attempting to search the person;
- (iii) the PLO consents to conduct a search of the person in custody; and
- (iv) the person in custody consents to being searched by the PLO.

A GMO informed the CJC at the public hearings that she had been called upon on a number of occasions to conduct strip searches on detainees.

Despite the legislative authority for civilians to be able to conduct personal searches of detainees at the direction of a QPS officer, there appears to be a general reluctance on the part of QPS officers to request civilians to do so, even when it would take some effort to locate a QPS officer of the same sex as the person to be searched. This is because of the potential dangers that such assistance may pose to the civilians. Health professionals appear generally reluctant to assist with such searches for similar reasons.⁹

There has been a recent move towards training civilian QPS staff to take on various watchhouse duties. In the future there may be a perceived need to use civilians to conduct searches at watchhouses, either under the direction of a QPS officer or, with legislative

change, independently.¹⁰ This practice has not been ruled out by the Government. In the context of Parliamentary debate on the Act 2000 and in response to a question relating to civilians employed at the new Brisbane City Watchhouse and whether they will be conducting or assisting in strip searches, the Minister for Police, The Honourable Tom Barton, replied:¹¹

When it comes to work required to be done by a sworn police officer, such as strip searches, only sworn police do that. Some consideration is being given to this issue in the review of the Police Service Administration Act that would cover those people ... At this time, only sworn police can be involved in strip searches. It is not a role for non-sworn watchhouse officers who assist police and take away the administrative burden. If this is to go any further, it will certainly come before the Parliament.

In fact, civilians *can* currently be involved in strip searches, but only at the direction of a QPS officer. Civilian staff at watchhouses will not be able to conduct strip searches independently unless an amendment is made to the legislation.

CONCLUSIONS DRAWN BY CJC

Strip searches and some pat-down searches are an invasion of a person's privacy and may pose a serious threat to the health and safety of the person conducting such searches. Therefore, civilians other than medical practitioners and police liaison officers in the context referred to in paragraph 16.10.1 of the Manual should not be permitted to conduct or assist in personal searches of detainees.

A medical practitioner or police liaison officer should conduct a personal search:

- only at the request of a watchhouse manager and under the manager's supervision
- only after receiving appropriate training in conducting personal searches
- only if there is no QPS officer of the same sex as the person to be searched available

- only if, in the opinion of the watchhouse manager, it is safe to do so.

A further reason for this restriction is that there is less ability to monitor the actions of non-QPS officers. For example, the CJC has less extensive jurisdiction over QPS civilian employees than it does over QPS officers. Whereas the CJC can investigate allegations of 'misconduct' and 'official misconduct' in relation to QPS officers, it can only investigate allegations of official misconduct in relation to public employees who are not QPS officers.¹²

The CJC recommends:

8.4 The Manual should provide that civilians other than medical practitioners and police liaison officers should not be permitted to conduct or assist in personal searches of detainees. A medical practitioner or police liaison officer should conduct a personal search (including strip and pat-down searches):

- only at the request of a watchhouse manager and under the watchhouse manager's supervision
- only after receiving training in conducting personal searches
- only if there is no QPS officer of the same sex as the person to be searched available
- only if, in the opinion of the watchhouse manager, it is safe for the medical practitioner or police liaison officer to conduct the search.

For police liaison officers, these restrictions should be in addition to the current restrictions imposed by the Manual.

Presence of other officers

From the CJC's discussions with watchhouse staff, it appears to be normal practice for only one QPS officer to conduct strip searches, except where force is required.¹³ From the Watchhouse Survey, 75 per cent of the searches were conducted with only one officer present. This is despite appendix 2.23 of the Manual (Risk control measures for

conducting searches), which reads:

To ensure their own safety and the safety of others, members involved in a search should ... wherever possible, only conduct searches when accompanied by another member ...

A similar requirement appears in some other jurisdictions. For example, the Australian Customs Service requires strip searches to be conducted by a customs officer in the presence of a witness.¹⁴ Similarly, the Victoria Police Manual provides, in relation to all personal searches:¹⁵

As far as possible, two police members should be present for every search.

New South Wales police are directed:¹⁶

If possible conduct the search in the presence of a senior officer not connected with the investigation.

The Queensland Corrective Services Department requires the presence of at least two officers of the same sex as the prisoner,¹⁷ and the Department of Families, Youth and Community Care Queensland requires at least two staff members to be present during a strip search of a juvenile held in a youth detention centre.¹⁸

The requirement for more than one officer to be present appears to be based on the belief that the search will be conducted more properly if there is a witness to the search and that it may offer some degree of protection for the detainee as well as for the person conducting the search.¹⁹

Section 111(3) of the PPRA (s. 388 of the Act 2000) requires that strip searches be conducted 'in a place providing reasonable privacy' and section 7(4) of the Code (s. 388 of the Act 2000) provides that as far as reasonably practicable, the person being searched should not be seen by anyone of the opposite sex or by anyone who does not need to be present.

With forced strip searches, more than one officer usually conducts the search, obviously because of safety concerns.

CONCLUSIONS DRAWN BY CJC

The number of QPS officers present during a strip search may be of concern to the detainee, particularly if having more than one officer present is taken as a tactic of intimidation. It may also add to the embarrassment that many detainees feel at being required to undergo a strip search. However, the CJC is also aware of the safety concerns that the watchhouse manager will have for staff conducting a potentially dangerous procedure, even in circumstances where the detainee appears to be harmless.

The decision whether a person should be strip searched in the presence of more than one officer should be the decision of the watchhouse manager, taking into account all relevant considerations. For example, a manager may be concerned about a detainee becoming agitated during a search and so may authorise a second officer to be present to protect the first officer. In some watchhouses there will be insufficient staff to allow more than one officer to be present.

Unless a forced strip search is to be conducted, the Manual should prohibit more than two QPS officers being present during a strip search. If the detainee requests more than one officer to be present, the watchhouse manager should take this request into consideration before the search is conducted.

The CJC recommends:

- 8.5** The Manual should provide that the decision to strip search in the presence of more than one QPS officer should be made by the watchhouse manager, taking into account all relevant considerations, including any requests by the detainee for more than one officer to be present. However, unless a forced strip search is to be conducted, the Manual should prohibit more than two QPS officers from being present during the search.
-

Presence of additional person

Although the CJC is aware of a number of allegations that a person has been searched in the presence of friends, strangers, co-accused or co-detainees, there is no evidence available to us to indicate that this is a widespread problem or that, when it does occur, it is not in circumstances justifying an ‘immediate’ search under section 111(4) of the PPRA (s. 382 of the Act 2000).

In some cases, as discussed at the public hearings (day 1), the psychological impact of a strip search on a detainee may be reduced by the presence of an independent person. The Queensland Law Society raised the possibility of an ‘official visitor type scheme’ at watchhouses under which an independent person could be present at the search to ensure that it is conducted properly.

The Queensland Council for Civil Liberties supported the concept of an independent person being made available for any detainee being subjected to a strip search, but raised concerns about whether the person being searched would appreciate the presence of such a person. The GMO expressed a similar concern:

... as a woman if I was strip searched, I would want the minimal number of people in the room. I wouldn't want the whole pack to get my rights observed and I really wouldn't want them to see me naked, because it's not a pretty sight, and I think that's what a lot of women see, they would not like lots of people there to observe rights. I think there would just be the police officer and her, and 'Let's get it over and done with, for goodness sake'.

The Bar Association of Queensland raised the concern that such ‘independent’ people will be ‘simply someone friendly who's available who will simply become a witness for the police’. Another option would be for the detainee to be able to nominate a person to be present during the search.

CONCLUSIONS DRAWN BY CJC

Except when an immediate search is necessary, strip searches should never be conducted within the presence or view of civilians who are not directly involved in the search. This includes ‘other detainees’ for searches conducted in a watchhouse and ‘other people in the vicinity of the search’ for searches conducted outside a watchhouse.²⁰

However, the person to be searched should be able to request that an additional person be present while the strip search is conducted. For example, an Aboriginal or Torres Strait Islander person may appreciate the presence of an Aboriginal or Torres Strait Islander police liaison officer, particularly if the detainee cannot speak English.

The request should be granted by the watchhouse manager if, in the manager's opinion, it is practicable and the request is reasonable in all the circumstances. The request and the details of the decision should be noted in the Custody/Search Index.

The CJC recommends:

8.6 The Manual should provide that a person to be strip searched should be able to request that an additional person be either in the search room or nearby. That request should be granted by the watchhouse manager if, in the manager's opinion, it is practicable and the request is reasonable in all the circumstances. The request and the details of the decision should be noted in the Custody/Search Index.

Presence of support people

There is a general legislative requirement that an appropriate person has to be present during a strip search of a young person or a person with certain disabilities. However, that requirement is subject to an exception that appears to be invoked more regularly than the general rule.

Section 7(8) of the Code (s. 389 of the Act 2000), referring to strip searches, provides:

If the person to be searched is a child or someone else, who, because of a medical or psychiatric condition or an intellectual disability, may not be able to understand the purpose of the search, the police officer must conduct the search in the presence of —

- (a) for a child — an interview friend; or
- (b) for someone else — a person the police officer considers is able to give the person to be searched appropriate support.

The exception to this requirement is provided in section 7(9) of the Code (s. 389 of the Act 2000), which reads:

However, the police officer may search the person in the absence of a person mentioned in subsection 8(a) or (b) if the police officer reasonably suspects —

- (a) delaying the search is likely to result in evidence being concealed or destroyed; or
- (b) an immediate search is necessary to protect the safety of a person.

Section 7 of the Code is not restricted to strip searches conducted at watchhouses. In fact, section 7(9)(a) is perhaps even more relevant to searches conducted outside a watchhouse than to searches conducted in a watchhouse because evidence is more likely to be concealed or destroyed by a suspect prior to being charged at a watchhouse.

The Manual and the SOPs reviewed by the CJC are silent in relation to the specific requirements of section 7(8) of the Code. From discussions with watchhouse staff, it is apparent that it is rare for an interview friend or a person of the type referred to in section 7(8)(b) of the Code to be present during the search of a child or person with a relevant disability. It is unclear whether this is because of a general misunderstanding of the requirements or because of a heavy reliance on the exception referred to in section 7(9). There is no requirement that the absence of an interview friend or support person and the reasons for the absence be recorded on the Custody/Search Index.

Children

There is no lower age limit on when a child can be subjected to a search under section 26 of the PPRA (ss. 27 and 28 of the Act 2000).²¹ Searches conducted under section 56 of the PPRA (s. 269 of the Act 2000)²² would be restricted to children of or over the age of criminal responsibility, which in Queensland is 10 years of age.²³ At the public hearings (day 2), the Youth Advocacy Centre noted that it was aware of 11- and 12-year-olds being strip searched by QPS officers.

An ‘interview friend’ for the purposes of section 7(8) of the Code is defined in Schedule 3 of the Act as meaning:²⁴

- (b) for a child
 - (i) a parent or guardian of the child; or
 - (ii) a lawyer acting for the child; or
 - (iii) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or
 - (iv) if no-one mentioned in subparagraphs (i) to (iii) is available, a relative or friend of the child who is acceptable to the child; or
 - (v) if the child is an Aborigine or a Torres Strait Islander and no one mentioned in subparagraphs (i) to (iv) is available — a person whose name is included in the list of interview friends and interpreters; or
 - (vi) if no-one mentioned in subparagraphs (i) to (v) is available, a justice of the peace other than a justice of the peace who is a member of the Queensland Police Service, or a justice of the peace (commissioner for declarations).

The list is obviously broad enough to enable the QPS to find someone suitable for most young people who need to be strip searched. As such people are also required to be in attendance when a child is questioned by police,²⁵ there is no apparent reason they would not be equally available for a child who needs to undergo a strip search, except when the search cannot be delayed.

It is apparent that the requirement of the presence of an interview friend is to ensure

that the child understands what is happening, to ensure that correct procedures are followed, and to enable the QPS officer conducting the search to be aware of any concerns the child may have.²⁶

The CJC does not know of any case where an interview friend has been present during a strip search of a child at a watchhouse or outside a watchhouse, as is required by section 7(8)(a) of the Code. To the contrary, of the six children (a 14-year-old, three 15-year-olds and two 16-year-olds) recorded as being strip searched at the surveyed watchhouses during the week data was collected, none had an interview friend present at the time of the search. There is no recorded reason the exception in section 7(9) of the Code would have been invoked in any of the cases, although any of the following facts may have been taken into account by the watchhouse manager:

- the 14-year-old child was affected by drugs and noticeably irritated
- a 15-year-old had been escorted to the watchhouse from a youth detention centre and he may well have been strip searched at the watchhouse on a routine basis²⁷
- another 15-year-old had a history of writing graffiti in cells and was searched for a 'Nikko' pen
- the third 15-year-old removed his clothes of his own accord
- a 16-year-old child was also recorded as a Corrective Services prisoner²⁸
- the second 16-year-old was recorded as being 'noticeably agitated'.

When the Youth Advocacy Centre was asked at the public hearings (day 2) whether the requirement of an interview friend was being adhered to, the Centre's education officer said:

I spoke with one of our case workers yesterday directly on that point and her comment to me was that she'd never been aware of that happening when she talked to young people about strip searching. It seems to be more honoured in the breach than in the observance ...

At the Townsville community consultation meeting, the CJC heard that children arriving at the watchhouse from the youth detention centre are strip searched in the presence of two QPS officers and no interview friend. Again, it was unclear whether the exception in section 7(9) of the Code was specifically invoked in each case.

People with disabilities

The CJC is unaware of any cases where a person's medical, psychiatric or intellectual disability has been cause for the QPS to organise for an appropriate third party to be present during a strip search. It is also not obvious that QPS officers are trained to observe whether a person has a disability relating to their capacity to understand the nature and purpose of a search.²⁹ There is no definition in the legislation or in the Manual of an 'appropriate support person' for the purposes of section 7(8) of the Code.

CONCLUSIONS DRAWN BY CJC

The protection offered to vulnerable detainees by section 7(8) of the Code is fundamental as it helps ensure that these detainees are on an equal footing with those who are able to comprehend the proposed exercise of a significant police power. Yet on the evidence available to the CJC, there would appear to be inadequate compliance with this requirement.

The exception appears to be more applicable to searches conducted outside rather than inside watchhouses. Nevertheless, it is the only provision enabling QPS officers to forgo the requirements of section 7(8). There is no requirement to record the fact that the exception has been invoked.

Whether the presence of an interview friend or support person during a strip search would, in any particular case, be of any assistance to a child or person with a relevant disability may be debatable. For some children, having

another person present while being strip searched may be even more humiliating than simply having a QPS officer present. However, the presence of such a person to be able to explain the reasons for and procedures involved in the proposed strip search to the child or the person with a disability is vital. Afterwards, the detainee should be able to elect whether to have the interview friend or support person remain in the room while the strip search is being conducted. The election not to have the person remain should be recorded in the Custody/Search Index.

It would be useful for the QPS to provide a standard written information sheet to interview friends and support people on their role and on the powers of QPS officers to conduct a strip search. This may assist such people to explain to the detainee the procedures and reasons for the search.

The CJC recommends:

- 8.7** The QPS should ensure that all officers are aware of the requirement in section 7(8) of the Code that an interview friend or a support person be present when a young person (including a young person from a youth detention centre) or a person with a relevant disability is strip searched. The provision applies whether or not the search is consensual and irrespective of where the search is conducted. QPS officers should also be made aware that the exception in section 7(9) may, in some cases, be more applicable to searches conducted outside watchhouses. A definition of ‘support person’ should be included in the legislation. The definition should not include QPS officers.
- 8.8** Section 7(8) of the Code should be amended to provide that, after the procedure and reasons for the procedure have been explained by the interview friend or support person, the detainee should be able to elect to have this person remain in the room while the strip

search is being conducted. The Manual should provide that the election not to have the person remain should be recorded in the Custody/Search Index.

- 8.9** If the exception in section 7(9) of the Code is relied on to deny the presence at the strip search of an interview friend or a support person, the Manual should provide that that fact and the reasons should be recorded in the Custody/Search Index.
- 8.10** The QPS should provide a standard written information sheet to support people on their role and on the powers of QPS officers to conduct strip searches.

Transgender detainees

The searching of transgender persons was a concern raised at the community consultation meetings in Cairns and Townsville, in submissions to the Issues Paper and at the public hearings.

The legislation makes no specific mention of transgender persons, while the provisions in the QPS Manual are not very helpful.³⁰ On the one hand, the QPS provisions are concerned with ensuring that such people are treated as if they were of the gender they identify with; yet, on the other hand, they also require transgender persons to be searched according to their genitalia — which, in the case of pre-operative transgender persons, will be at odds with the gender with which they identify.

Paragraph 16.10.4 of the Manual provides:

A transgender person is a person who has undergone sexual reassignment surgery or treatment, or is in the process of undergoing sexual reassignment, and identifies with being a person of the opposite biological sex, and is accepted as being a transgender person by the community in which that person resides.

Policy

In cases involving transgender persons, the watchhouse keeper should discreetly ask the person whether that person wishes to be classed as a male or a female. If the person asks to be treated as a female, the watchhouse keeper should discreetly inquire as to the person’s genitalia. If the person has

male genitalia, then that person should be searched by a male officer. Where the person has female genitalia, then that person should be searched by a female officer.

Order

Transgender persons, both male and female, who have not undergone sexual reassignment surgery are to be searched by a person of the same biological sex.

Procedure

In dealing with cell placement, reasonable care should be taken to protect transgender persons from other prisoners and ideally, an empty cell should be used wherever possible. However, in instances where an unoccupied cell is not available, transgender persons should be placed with prisoners who have the same type of genitalia.

Organisations such as the Anti-Discrimination Commission and the Office of Women's Policy within the Department of Equity and Fair Trading have expressed the view that a transgender person should be able to be searched by an officer of the same gender as the gender the person identifies with. On occasion, it appears that such a request has been acceded to, despite the guidelines set out in the Manual. For example, the CJC was informed at the Townsville community consultation meeting of a pre-operative male to female transgender detainee who was asked whether she would prefer to be strip searched by a male or female QPS officer. The detainee opted for a female officer. A female officer was then asked if she would feel comfortable searching a person who identified as a female but still had male genitalia. The female officer had no objection and the detainee was searched by her.

Informal consultations with the transgender community in Queensland have indicated a clear preference to be searched by a person of the same gender with which they identify.³¹ Young pre-operative male to female transgender people have found the experience of being strip searched by male officers to be particularly humiliating. Even if a female officer was unable to conduct the search, it was considered that the presence of a female officer during the search would help.

A concern was expressed that a detainee could untruthfully claim to be a transgender person. If an officer conducts the search in the belief that such a person was being truthful, it could be very embarrassing for the officer.³²

The Department of Corrective Services does not have a written policy on the searching of transgender prisoners.³³ Each prisoner is assessed on admission on a case-by-case basis according to three criteria: (i) a psychological assessment including gender identification and orientation; (ii) actual genital status; and (iii) an assessment of the safety needs of the prisoner and others. The assessment determines whether the prisoner is assigned to a male or female prison; wherein the prisoner is subject to the same strip-search conditions as the other prisoners.

The Australian Customs Service directs its officers to ask transgender persons whether they prefer a male or female officer to conduct the search.³⁴ The Victoria Police has no formal policy, although the CJC has been told of an informal opinion that such people will usually be treated according to the gender they identify with.³⁵ In New South Wales, strip searches of transgender prisoners (pre-operative or post-operative) are 'performed by officers of the gender of identification of the inmate' except in emergencies.³⁶

CONCLUSIONS DRAWN BY CJC

Taking into account the views of transgender people and the practice in other jurisdictions, the CJC believes a detainee should not be required to undergo a strip search by a QPS officer of the opposite gender to the one with which the detainee identifies.

The CJC recommends:

8.11 The Manual should be amended to provide that detainees who claim to be transgender persons are to be treated as people of the gender with which they identify.

Use of interpreters

The legislation is silent about the use of interpreters for people who are unable to understand English.

Although the CJC has not been told of particular problems with the availability and the use of interpreters in these situations, in its submission to the Issues Paper and in evidence to the public hearings (day 1), the Anti-Discrimination Commission emphasised the desirability of readily accessible interpreter services for non-English-speaking people. The Commission noted:

We [the Anti-Discrimination Commission] would most certainly accept a complaint if there's no legislation that would override it where a person did not get an interpreter and had been strip searched and didn't understand. I mean, it just would fit squarely within our legislation, so I mean, I guess it's just something to take into account. As I said, short of a legislative overriding of our legislation [the *Anti-Discrimination Act 1991* (Qld)], there would seem to be less favourable treatment on the basis of race, with languages not English. So from that point of view I'd have to say it's discriminatory.

However, at the public hearings (day 2), the QPS noted:

... the National Interpreter Service is available 24 hours a day, whether you're in Brisbane or Karumba or Stonehenge. Police officers there who need the service of an interpreter to facilitate communication with ... [over the telephone] persons of any nationality have access to that service, and so that I believe [the issue of the availability of interpreters] is adequately addressed also at this stage.

Nevertheless, the Manual refers to the use of interpreters only in the context of investigating criminal offences, complex legal matters and during court proceedings.³⁷ There is no specific reference to the use of interpreters while a person is in the watchhouse.

CONCLUSIONS DRAWN BY CJC

The availability of interpreters to assist a non-English-speaking detainee understand the reasons for and the procedures involved in a proposed strip search is vital to ensure that all detainees are dealt with fairly and equally. Even though it may already be the practice at some watchhouses to ensure that non-English-speaking detainees have ready access to interpreters at all relevant stages of their detention, the CJC is of the view that this should be entrenched in QPS procedures.

Interpreters need not be physically present at the search, but should at least be able to talk to the detainee by telephone before and perhaps during the search.

Information relating to the availability of interpreters should be made available to non-English-speaking people with whom QPS officers are attempting to communicate. This could be achieved, for example, by posters in watchhouses in a variety of relevant languages.

The CJC recommends:

8.12 The Manual and prominently displayed posters in watchhouses (in various relevant languages) should refer to the availability of interpreters to assist non-English-speaking people to understand common reasons for, and the procedures involved in, strip searches.

Endnotes

- 1 See chapter 6 for a discussion of the appropriateness of the arresting officer conducting or being present during a strip search at a watchhouse.
- 2 Section 111 of the Act is set out in chapter 3. Paragraph 16.10.1 of the Manual and a number of watchhouse SOPs emphasise this requirement. See chapter 3 for a discussion of relevant provisions of the legislation and Manual.
- 3 See appendix B for an analysis of the Watchhouse Survey, the CJC complaints data and the Defendants Survey.
- 4 The results of the Defendants Survey indicate that there is widespread compliance with the requirement that strip searches be conducted by a person of the same sex as the person being searched. In those cases where the sex of the searcher was known (129 out of 131), 95% (n=123) of searches were conducted by QPS officers of the same sex as the person being searched. See appendix B for a more detailed analysis.
- 5 Victoria Police, *Operating Procedures, Victoria Police Manual* at para. 1.8.3.2.
- 6 New South Wales Police Service, *Code of Practice for Crime: Stop, Search and Detain*. The Australian Customs Service also provides for pat-down searches to be conducted in private. For example:

... the person must be advised of his/her option under the law that the frisk can be carried out in a private place ... Conversely, the person can opt for the frisk to be conducted in public at the baggage examination bench.

See Australian Customs Service, Canberra, *Customs Act 1901, Part XII, Division 1B Detention and Search of Suspects Operating Directions and Explanatory Notes* December 1999 at para. 2.8.
- 7 In five of the six cases, watchhouse staff or the arresting officer were also present, but it is not known who actually conducted the search. In one case it is clear that a Corrective Services officer conducted the search.
- 8 Paragraph 16.10.1 of the Manual.
- 9 Informal discussions with watchhouse staff.
- 10 Under s. 350 of the Act 2000, an authorised civilian at a special event is entitled to ask an entrant to remove one or more outer garments and to inspect the garments, independently of a QPS officer.
- 11 Hansard 16 March 2000 at 548.
- 12 See s. 29 of the Criminal Justice Act.
- 13 However, in its submission to the Issues Paper, the Youth Advocacy Centre provided an example of a young person being voluntarily searched in his bedroom in the presence of four male officers; submission 12.
- 14 See Australian Customs Service, Canberra, *Customs Act 1901, Part XII, Division 1B Detention and Search of Suspects Operating Directions and Explanatory Notes* December 1999 at para. 3.17.
- 15 Victoria Police, *Operating Procedures, Victoria Police Manual* at para. 1.8.4.1.
- 16 New South Wales Police Service, *Code of Practice for Crime, Annexure A*.
- 17 Queensland Corrections, *Operational Specifications for all Custodial Corrections Centres operated by Queensland Corrections* March 1999, clause 4.5.
- 18 Department of Families, Youth and Community Care Queensland, *Procedures for unclothed searching*, implemented January 2000.
- 19 It is the Corrective Services Department policy to require two officers of the same sex as the person to be searched to be present during the search, for ‘protection for all sides’: public hearings, day 2.
- 20 For a discussion of issues relating to searches conducted outside of watchhouses, see chapter 10.
- 21 Section 26 is set out in full in chapter 3.
- 22 Section 56 is set out in full in chapter 3.
- 23 Section 29(1) of the *Criminal Code* (Qld).
- 24 See definition of ‘support person’ in dictionary to the Act 2000.
- 25 Section 97 of the PPRA (s. 252 of the Act 2000).
- 26 See, for example, the discussion of the role of an ‘interview friend’ in the context of section 9E of the *Juvenile Justice Act 1992* (Qld) in *R v C* [1997] 2 Qd R 465. The same considerations discussed in that case would apply to s. 7(8) of the Code.
- 27 For a discussion on strip searches conducted on a routine basis, see chapter 4.
- 28 It is unlikely that a 16-year-old would be detained in a prison in Queensland. It is more likely that this child was also from a youth detention centre and was strip searched because of that fact: see chapter 4.
- 29 For a discussion on issues affecting people with disabilities, see chapter 11.
- 30 Paragraph 16.10.4.
- 31 Informal discussions with representatives of a QPS/transgenderists liaison committee and of the Queensland chapter of a transgenderists support association on 23 February 2000.

- 32 Although in Queensland it is possible to have a transgender person's driver's licence amended to record the driver as being of the gender he or she identifies with, there is no universally acceptable certification of a person's gender identification and no recognition in Queensland law of the possibility of changing gender. Some psychiatrists will confirm a transgender person's gender status in writing and for a number of purposes (for example, segregation in prison) this will be sufficient. The *Anti-Discrimination Act 1991* (Qld) does not cover discrimination on the ground of gender identification.
- 33 Informal discussions with departmental policy officers.
- 34 Australian Customs Service, Canberra, *Customs Act 1901, Part XII, Division 1B Detention and Search of Suspects Operating Directions and Explanatory Notes* December 1999 at para. 3.16.
- 35 Advice from Force Directives, Office of the Chief of Staff, Victoria Police 29 March 2000.
- 36 New South Wales Department of Corrective Services, *Operations Procedures Manual* at para. 7.37.4.2.5(2). Note that in New South Wales, unlike in Queensland, it is unlawful to discriminate against a person on the grounds of the person being transgender.
- 37 Paragraph 6.3.7 of the Manual provides, in part:
- Interpreters
The National Accreditation Authority for Translators and Interpreters (NAATI) accreditation is the only accepted qualification in Australia for the profession of translation and interpreting, including Australian Sign Language (AUSLAN) for the Deaf or people with hearing and/or speech impairments. Not all languages spoken or signed in Queensland are tested for NAATI accreditation ...
- Policy
Interpreters and translators accredited by NAATI at the level of 'interpreter' or 'translator' or higher, should be used when investigating criminal offences, complex legal matters and during court proceedings.

Electronic surveillance and recording of strip searches

This chapter discusses the remote surveillance and electronic recording of strip searches, which raise concerns about privacy.

Electronic surveillance of a strip search can offer some physical protection to the QPS officer conducting the search. It may also offer protection against false claims by either the detainee or the officer as to what happened during the search in that there will be a witness to the procedure, albeit not necessarily an independent one.

The video-recording of searches carries with it enormous responsibilities relating to the safe storage of, and access to, the tapes. However, a videotape of the search may provide the QPS officer as well as the detainee with a totally independent verification of their version of events should the search become the subject of an investigation.

The legislation

Although the legislation and the Manual promote privacy and respect for the dignity of the person who is the subject of a strip search,¹ section 7(5) and (6) of the Code² (s. 390 of the Act 2000) acknowledges that in certain circumstances strip searches can be electronically monitored and videorecorded. However, anyone viewing the monitor during the search must be the same sex as the person being searched.

Section 7(5) and (6) reads:

- (5) If a video camera monitors the area where the person is searched, the police officer must, unless the person viewing the monitor is a police officer of the same sex as the person being searched —
 - (a) ensure the camera is turned off; or
 - (b) conduct the search out of view of the camera.

- (6) However, if the video camera is not turned off, any recording of the search must not be shown to anyone other than —
 - (a) the person searched or his or her lawyer; or
 - (b) a doctor treating the person searched; or
 - (c) a person deciding if a proceeding is to be started against the person for an offence; or
 - (d) a police officer investigating an offence involving the person; or
 - (e) a police officer, lawyer, public prosecutor or witness involved in a proceeding against the person; or
 - (f) a court.

Electronic surveillance

The SOPs of a number of watchhouses are silent on how to ensure that no officer of the opposite sex to the detainee and no other person is able to view the search by way of a monitor. From discussions with watchhouse staff during this inquiry, in some watchhouses — at least in those where it is not possible to turn the camera off and there is nowhere else to conduct the search³ — the monitor is usually turned off. Another simple solution suggested to the CJC in those circumstances would be to place a cover over the camera lens.

In some watchhouses, the camera and monitor are left on but the monitor is viewed, if necessary, only by QPS officers of the same sex as the person being searched. This has been justified on the basis of protection for the QPS officer conducting the search — if the officer is in trouble, immediate assistance will be available. Other watchhouses cover the possible need for assistance in the search room by having another QPS officer stationed outside the search room, with the door left ajar. This may need to be done where, for example, there is only one female watchhouse

officer available to conduct the search of a female detainee and the detainee has exhibited an aggressive attitude towards police. In such a case, a male watchhouse officer standing at the door may be a wise precaution.

The monitors in the watchhouses visited by officers of the CJC are located in high-activity areas. It is possible that QPS officers and other people will be in the vicinity of the monitor and will inadvertently observe the search or any part of it.

The QPS submission to the Issues Paper noted:⁴

... depending on the physical layout of a watchhouse, staff make every effort not to conduct a strip search in front of a video camera. For example, Warwick Watchhouse conducts searches in the blanket room, the only suitable room in the watchhouse that offers privacy and is without video camera devices.

Nevertheless, it is not uncommon for strip searches to be conducted within the view of surveillance cameras. In 38 per cent (n=117) of the strip searches recorded in the Watchhouse Survey, a surveillance camera was present in the area where the strip search was conducted. In 72 of those searches the camera was reported as being turned on during the search, but in only 23 cases was the person being searched moved out of the range of the camera. In the 46 cases where the person was not moved out of range, 42 searches were reported as having been conducted in a cell and the other four were at the front counter.⁵

Although there have been some allegations (n=10) in the CJC complaints data of people of the opposite sex to the person being searched observing the monitor when the search was being conducted, very few of those cases have been substantiated.⁶

At the public hearings (day 2), the QPS was of the strong view that the prohibition against QPS officers of the opposite sex to the

detainee and other people being able to view the search by way of a monitor would rarely, if ever, be breached:

In any event, if there was a breach, which in our submission would not occur, the Code of Conduct, the Police Service Administration Act and the Commissioner's Directions — any breach of those three would result in, in my view, a very serious breach of discipline and a sanction that could be imposed — maybe dismissal from the Police Service. The Commissioner would most certainly regard that as a serious ... [case] of misconduct. It could also in my submission amount to official misconduct such that the Criminal Justice Act provisions would be invoked.

Electronic surveillance of strip searches for the purpose of protecting the officer conducting the search is an issue for small and remote watchhouses where relatively few officers will be on duty. Where there is a camera in the cell in which the search is being conducted, use of the remote surveillance equipment (if, in fact, it exists at all) by an officer of either sex may be the only method of ensuring the safety of the officer conducting the search.

CONCLUSIONS DRAWN BY CJC

Strip searches should not be electronically monitored unless, in the opinion of the watchhouse manager, there is reason to believe that the QPS officer conducting the search may be in danger and that it is not otherwise possible to offer protection, or that the watchhouse manager anticipates the detainee may make a false complaint about how the strip search was conducted. Alternatives, such as having two QPS officers present during the search⁷ or having an additional officer stationed outside the door of the search room, may be advisable. In some cases, it may be wise for a video recording to be made of the search but for the search not at the same time be monitored. In those cases, the monitor could be turned off during the search. Where there is no, or no adequate, remote-surveillance equipment available in a watchhouse, the CJC strongly recommends

its immediate installation, for the protection of watchhouse staff and other people in the watchhouse.⁸

The CJC recommends:

9.1 The Manual should provide that strip searches should be electronically monitored only if, in the opinion of the watchhouse manager, there is reason to believe that the QPS officer conducting the search may be in danger and that it is not otherwise possible to protect the officer, or that the watchhouse manager believes that the detainee may make a false complaint about how the strip search was conducted.

Video recording

There is no legislative or QPS requirement that video recordings of strip searches conducted by QPS officers be made in any particular circumstances or under any restrictions.

At the public hearings (day 1), the Queensland Council for Civil Liberties was not convinced that video recordings of strip searches would achieve any worthwhile outcomes because, to its knowledge, there are very few allegations made to the CJC or elsewhere about inappropriate touching, particularly of women's bodies, during searches. The Council's view is that complaints are more likely to allege that there has been an unjustified search or that there has been a full strip search in circumstances where such a search was not expected and was unwarranted:

So my view is that, if there's no complaints about that, then why introduce the aspect of a video?

Nevertheless, section 7 of the Code (s. 390 of the Act 2000) contemplates the possibility that strip searches will be video-recorded.

Section 219RAA of the *Customs Act 1901* (Cwlth) specifically refers to the ability of

officers to videotape a strip search:⁹

- (1) In inviting a detainee to consent to an external search, an officer of Customs must have told the detainee:
 - (a) that, at the discretion of Customs, a videotape or other electronic record may be made of the external search; and
 - (b) that, if such a record is made, the record could be used in evidence against the detainee in a court; and
 - (c) that, if such a record is made, a copy of the record will be provided to the detainee; and
 - (d) that the invitation [to consent to the search], and any giving of consent, was being or would be itself recorded by audiotape, videotape or other electronic means or in writing.
- (2) The invitation to consent and any giving of consent must have been recorded by audiotape, videotape or other electronic means or in writing.
- (3) The officer making the videotape or other electronic record must be of the same sex as the detainee ...

The QPS does not appear to have a definite view at this stage on the desirability of videorecording strip searches, although it has recognised potential dangers and advantages to the practice. The QPS submission to the Issues Paper noted:¹⁰

It is not the practice to videotape strip searches and, depending on the physical layout of a watchhouse, staff make every effort not to conduct a strip search in front of a video camera. For example, Warwick Watchhouse conducts searches in the blanket room, the only suitable room in the watchhouse that offers privacy and is without video-camera devices.

However, while avoiding the use of video cameras maintains the dignity of the person being searched, the absence of a videotape record denies the Service the opportunity to offer evidence of what happened in the event of a complaint being made about the conduct of a strip search.

The only exception to the practice not to videotape may be when a person is violent and potentially a danger to themselves and or others. Such persons are often placed in a padded cell in the watchhouse. Padded cells are monitored via video cameras as the padding used to prevent a person from inflicting self-harm also restricts visibility into the cell by the watchhouse staff.

Forced strip searches

A number of watchhouses are now equipped with video-recording and surveillance equipment at least in their padded cells. Padded cells are primarily used for detaining people who are aggressive or potentially suicidal. If strip searches are conducted in those cells there is likely to be a recording made, although this does not appear to be the subject of any specific direction in the Manual.¹¹ However, the SOPs of some watchhouses do give some direction. For example, the Brisbane City Watchhouse SOPs state:

Violent/aggressive prisoners ... and those with suicidal tendencies are to be segregated from other prisoners and placed in a violent detention cell or other cell monitored by Video Surveillance in the interest of safety of those prisoners and other persons.

The only major objection at the public hearings (day 1) to the videotaping of forced strip searches was made by Legal Aid Queensland. This organisation was concerned about the perception among some of its client base that strip searching is used as a form of extrajudicial punishment and the belief that videotaping the search would be regarded as further punishment for misbehaving or giving the police ‘cheek’:

... the policeman has the power at the moment to arbitrarily decide that you’ve got to take your clothes off, and ... that in itself is a humiliating and degrading extrajudicial punishment if it’s not being done for a justified reason ... having to take your clothes off in those circumstances and then having somebody televise it is another couple of turns of the screw.

Nevertheless, Legal Aid Queensland recognised that:

... there may well be a circumstance where a decision has to be taken by a watchhouse keeper that in this exceptional circumstance it is necessary for the protection of all concerned [to make a video recording]. But it should be an exceptionally high bar that can only be jumped in exceptional circumstances where there is a real problem and four or five people are holding somebody down. It shouldn’t be able to be used as a standard

reason — ‘Well, we thought he might be a bit violent’. It should only be videoed ... in our submission in absolutely exceptional circumstances and with some sort of legislative sanction. In other words you have to get over a legislative bar before you can video it.

Evidence for future investigations

Video-recording what happens in a cell where a violent, aggressive or suicidal person is being detained may provide evidence in a future investigation relating to the treatment of the detainee by watchhouse staff, but may also provide evidence of the need to conduct a forced strip search.

Some watchhouses videorecord detainees who exhibit violent behaviour. In the example referred to in case study 2, the video facilities at the watchhouse recorded the forced strip search of the detainee after the QPS officers entered the cell. That video recording provides a very clear record of the events leading up to the search and the procedures employed for conducting the search.

At the public hearings (day 1), the Queensland Council for Civil Liberties agreed that the videotaping of a forced strip search would offer a degree of protection to the QPS officer conducting the search against a possible future complaint. In relation to the example referred to in case study 2, the Council stated:

... if I was representing that client and he denied all that and the police said it happened obviously I’ve got to, in any proceeding, put my client’s instructions. That video, I think, says it all. So I say in relation to those, sort of, violent prisoners who have to be searched a video in that regard is probably a good idea. ... I think that padded cell incident serves to almost immediately knock a complaint on the head as soon as it’s made. The video is produced. It will speak for itself.

The Prisoners’ Legal Service also supported videotaping in circumstances where force may be used (day 1):

... in the prison system ... it has been the only way of having a proper investigation of an allegation of force, to be able to have a

videotape of the — they call it the detention unit, where people are taken when they've committed a disciplinary breach or their behaviour is bad. And it's been a big campaign I suppose amongst prison advocates to have video cameras in those units so that they don't get used, as is alleged in the past, as places where prisoners are beaten. So I suppose I come from a slightly different tradition than the lawyers that have been dealing mainly with the police.

A videotape of the incident below (case study 2) was submitted as evidence by the QPS during the public hearings (day 1).

Although this strip search used relatively unorthodox methods (that is, up to 10 watchhouse officers, a mattress and the forced removal of clothes), it appears such action was necessary to prevent the person from continuing to cause damage to the cell and possibly himself or others. The video recording provides an explanation for the search and why the action taken was necessary.

Case study 2

We had a prisoner come in on New Year's Eve. He was playing up: he was attacking the cell; he was violently aggressive. He was shifted from a holding cell to a larger cell. It didn't do any good. So he ended up in our violent detention cell. As a practice, we put on a video player and recorded his actions in that cell for the next — well, I don't know, 20 or 30 minutes. We also had audio pick-up as well. Reviewing the tape later on, what he did, he's lying in the cell — all he had on was a pair of trousers and underpants.¹²

He was lying in that cell. He got up. Five ball-bearings fell out of his jocks. They were the size of Jaffas. What they actually were were those clackers you put on your desk and you pull back a couple of ball-bearings and they clack, clack. He had five of them in his jocks on New Year's Eve. Now, why, I can't say. But they fell out. On the videotape it shows. He looks down, looks at them, picks them all up and he's got them in his hands. Now, we've got a viewing strip in the padded cell door made out of armoured glass. The manufacturer said 'unlikely to break.' He picked it up. The first one he threw broke the glass. It didn't shatter or anything, but it broke the layers in the sandwich. The next four he threw just bounced off the wall. You could hear them on the videotape. Now, he picked them up again and by this time we had noticed or heard the sounds. So we're at the door and there's a bit of a dilemma, because I was at the door and he said, 'You

come in and you get these down the forehead.' Now, you could kill somebody with a ball-bearing like that. So, we went and got a couple of mattresses. We instructed him to turn around and face the wall and put his arms up against the wall.

We opened the door the first time and he spun around straightaway and went to grab them. So we instructed him to turn around again. And then we opened the door and we rushed him, pinned him up against the wall, put him down on the ground, pulled all his clothes off, collected everything in that cell with which again he could harm himself, he's obviously violent, and that's the way we left him.

Now, we went and got a doona and smock and threw them in but he didn't dress in them. He spent the next 10 or 15 minutes walking around, spitting on every wall in that padded cell. That wasn't good enough. He then went around trying to blow snot on all the walls. That wasn't good enough. Then he went round and he urinated on all four walls, and during that time he urinated over the smock we provided him. Now, I didn't see — he was later charged with the damage, and the damage was \$1450, but he was on drugs and he was cyclic — you know, good/bad, good/bad, he apologises and he abuses you; apologises, and he — actually the police officer in the watchhouse who I instructed to charge him with the wilful damage put his name on the bench charge sheet. He's been getting death threats now from that prisoner and he's now a suspect for a stalking offence.

In other submissions to the Issues Paper, individual police and community organisations also expressed the view that a video recording of some searches may provide evidence that the search was conducted appropriately, or inappropriately, should that become an issue. A firm of solicitors was of the view that videotaping forced strip searches may offer some protection to QPS officers.¹³

A watchhouse manager suggested that video recordings should be made routinely for the protection of police against false and malicious allegations.¹⁴

Dangers of video-recording

Although the advantages of video recordings, in terms of protection for both police and detainees, are obvious, the dangers are no less obvious.

If there is a possibility that copies of the videotape can be viewed or used by people with no legitimate reason to have access to the recording, this would amount to a complete invasion of privacy of the person whose search was recorded. The person could suffer considerable humiliation. It could also be regarded as a gross breach of trust. The potential legal liability of the QPS would be great.

Although there are restrictions in the legislation on who may see a video recording of a strip search,¹⁵ there are no restrictions on the storage and movement of the tapes.¹⁶ There is also no direct penalty, apart from the possibility of disciplinary proceedings and proceedings for official misconduct and misconduct, for dealing with videotapes inappropriately. The Bar Association of Queensland said at the public hearings (day 1):

I must say videos would become a serious logistical problem in terms of safe storage. Not that I'm suggesting that police officers generally would misuse them, but it only takes one or two individuals to misbehave and in any group you'll find them and it will cause a

serious embarrassment to somebody if one was to be made public.

A similar concern was expressed by Legal Aid Queensland:

... among some of our client base there is an anti-police bias inevitably because of the nature of our client base, whether reasonable or not is at this stage not important, but there is a genuine fear amongst them that if there are lots of videos of people being made to undress, particularly females, they will be viewed for improper purposes, even unofficially improper purposes.

I don't mean deliberately set up to do it but someone will put it on for a laugh or a joke and no amount of reassurance as to how well they're locked up will stop that fear if a client knows that somewhere in police custody there is a video of them being undressed and then objecting to it and being humiliated and embarrassed.

There's always the fear the next time they have a run in with the police it will either be used against them or they'll be threatened with it or they'll go and have a look. So it's really more from a point of view of perceptions than of realities. However many protections you put in, if you leave in police hands lots and lots of videos of people being humiliatingly undressed, particularly females, there is the danger of the perception that some police will misuse those videos. So we are against it both on human dignity grounds, but also from the point of view that it's a bit like the old typed interview, it leaves very open and very difficult to refute the proposition that they've been used improperly. It will have the opposite effect that videoing did with interviews, videoing an interview has stopped the allegation of misbehaviour. Videoing here will have the opposite effect. It will create another very difficult to answer set of accusations about how easy it is to do it.

Detainee's request for a video recording to be made

A suggestion has been made that if a detainee requests a video recording be made of a strip search, then, if possible, such a recording should be made.¹⁷ Even in that type of situation, however, there would be difficulties in establishing that the detainee actually requested the video recording be made and privacy concerns about the storage and auditing of the movement of the original and any copies.

To avoid disputes about whether the detainee did in fact request the videotape be made, it was suggested that the request could be audiotaped, or made in writing before the search.

Retention, storage, copies and viewing

A number of submissions to the Issues Paper made suggestions on how long tapes should be retained but provided little other guidance as to how tapes should be stored and how their movement should be tracked.

In response to the Issues Paper, a community legal centre suggested that tapes should be retained for three years (the time limit for bringing a civil action for assault), and perhaps longer for contentious matters.¹⁸ Another respondent suggested that tapes should be sealed and remain untouched unless legal action is pending.¹⁹ A watchhouse manager suggested that tapes be retained for three months; another suggested six months.²⁰

The QPS *Electronic Recording of Interviews and Evidence Manual* provides that videotapes of interviews are to be kept at the 'Central Tape Facility' [in Brisbane] for 12 months 'subsequent to all aspects of the case being disposed of including any appeals ... relevant video tapes will then be destroyed.'²¹ This Manual also provides that a copy of a videotape on sexual abuse investigations can only be made when ordered by the presiding judge or magistrate, or on the written authority of a superintendent or officer of higher rank.²² Copies are not, 'under any circumstances' to be provided to suspects or defendants or their legal adviser. The Director of Public Prosecutions, and other authorised people, can view the videotape, subject to certain restrictions set out in that Manual.

CONCLUSIONS DRAWN BY CJC

The CJC shares the concerns of respondents and witnesses before the public hearings that the possibility of a videotape of a strip search being viewed by an unauthorised person, or being used in an unauthorised manner, could have a devastating effect on the detainee subjected to the search.

Nevertheless, there will be circumstances in which it may be desirable for a video recording to be made of the search, such as where watchhouse staff have to search a detainee who does not voluntarily submit to the search or who is likely to be violent or may otherwise resist the search. A video recording of the search may provide the officers involved or the detainee with some protection. The fact that the search is being recorded for a possible future investigation into allegations arising from the search may deter some QPS officers from conducting themselves improperly during the search and may encourage them to do whatever they can to maintain the dignity of the person being searched. It may also provide evidence to dispel allegations of inappropriate police behaviour.

The watchhouse manager, taking the above considerations into account, would be the best person to decide whether, in any particular case, a video recording of a strip search should be made.

Where a video recording is to be made, the detainee should be informed of that fact and should also be informed that the tape may be used in any future investigation relating to the strip search, and that, subject to legal proceedings, the tape will be destroyed after a stated period. The fact that a video recording was made of a strip search should be recorded in the Custody/Search Index.

It is apparent to the CJC that almost all QPS strip searches are conducted properly. There

is, therefore, no current apparent overriding reason a detainee should have a legislative right to have a video recording made of a strip search. If such a right did exist, it is likely that there would be substantial cost implications for the QPS, such as the necessity to provide video-recording equipment at the site of all strip searches. The exercise of such a right would create an administrative burden for watchhouse staff in recording information, maintaining registers, copying, storing and disposing of the tapes. Nevertheless, the CJC is of the view that the detainee should not be precluded from requesting that a video recording be made. The watchhouse manager should not be obliged to accede to the request but may do so after taking into account all the circumstances of the watchhouse and the detainee. It would impose an excessive administrative burden on watchhouse staff to require them to record such a request.

In relation to those strip searches that are videotaped, the CJC is very concerned about security of the tapes and, in particular, the potential for a person to be humiliated as a result of videotapes falling into unauthorised hands or being used in an unauthorised manner. The current operational policy and procedures relating to the retention of videotapes of interviews would seem to be an appropriate basis for a new QPS policy relating to the retention of videotapes of strip searches. This new policy should ensure that tapes are stored securely and that a register is kept of them, any authorised copies, and their movement.

Section 7(6) of the Code (s. 390 of the Act 2000) restricts the categories of people who can 'be shown' a video recording of a strip search, but it does not restrict the categories of people who can be given a copy of such a video recording. It is important that section 7 of the Code be amended also to restrict who can be provided with copies of the video recording of a strip search. The wider the

distribution of copies, the greater the likelihood of the tape being used inappropriately. Appropriate bodies to receive copies would be: a court, the CJC, the person searched or his/her lawyer, the Commissioner of Police, the Ethical Standards Command of the QPS, and the prosecuting authority.

There should be a strong sanction relating to the unauthorised use and possession of videotapes of strip searches (including copies) by QPS officers or anybody else. Currently, official misconduct proceedings can be taken only against police officers²³ and QPS civilian staff who have inappropriately dealt with video recordings. There are no formal sanctions to cover other people misusing tapes. Any attempt to deter such behaviour should reflect the potential devastation that could result from the misuse of the videotapes. Unauthorised use and possession of the videotapes by QPS officers or anybody else should be an offence.²⁴

The CJC recommends:

- 9.2** The Manual should provide that it is the watchhouse manager's responsibility to determine whether, in any particular case, a video recording of a strip search should be made, taking into account considerations such as the fact that the detainee is not cooperating with the search officer or that the detainee is or is likely to be violent. The fact that a video recording was made of a strip search should be recorded in the Custody/Search Index.
- 9.3** Where a video recording is to be made of a strip search, the Manual should provide that the detainee is to be informed:
- of the fact that a recording is to be made
 - of the possibility that the tape may be used in any future investigation relating to the strip search
 - that, subject to legal proceedings, the tape will be destroyed after a stated period of time.

- 9.4** The Manual should provide that a detainee may request that a video recording be made of a strip search, but that a watchhouse manager can refuse the request after taking into account relevant circumstances of the watchhouse and of the detainee.
- 9.5** The QPS should develop a policy on the registration and secure storage of videotapes of strip searches. A register should be kept of the tapes, any authorised copies, and their movement.
- 9.6** Section 7 of the Code (s. 390 of the Act 2000) should be amended so that it provides that a copy of a video recording of a strip search can only be provided to:
- a court
 - the CJC
 - the person searched or his/her lawyer
 - the Commissioner of Police
 - the Ethical Standards Command of the QPS
 - and the prosecuting authority.
- 9.7** Unauthorised use and possession of videotapes of strip searches, or copies, by QPS officers or anybody else should be an offence.

Audio recording

Where video-recording facilities are not available, an audio recording of what is said before and during a forced strip search may be possible.

During the public hearings, the suggestion was made that there may be some benefits in a requirement that QPS officers involved in a strip search of a person at least audiotape the search. This would then be a record of what was said before, and during, the search. For example, the assertion by a QPS officer that information on the purpose and reasons for the search was provided to the detainee would be instantly verifiable. Similarly, an allegation by a detainee that such information was not given or that inappropriate words were spoken before or during the search could be checked.

The concept of audiotaping what was said before and during strip searches met with mixed reactions. For example, the Prisoners' Legal Service noted (public hearings, day 1):

... if that was a regular occurrence then that would serve as some kind of safeguard that strip searches were conducted with an explanation to the person of why it was being conducted and so forth.

Similarly, the Office of Women's Policy considered that audiotaping the interaction between QPS officers and the person subjected to the search could be a useful protection to all parties (day 2):

So I think that explanation and the way in which that is delivered is extremely important and ... **the possibility of audio recording to protect both the person and the police officer** — minimum standards ... that **could be proof of the fact that the police officer has followed the correct procedures in outlining the reasons for the search and would also obviously give evidence of the interaction, the way in which the police officer interacted with the person** ... and that would be followed through without its being an invasion of the privacy of the person being strip searched. [emphasis added]

A contrary view was expressed by the Department of Corrective Services (day 2):

I can't say that I can see that an audiotape of a strip search procedure would be particularly useful in terms of the process, but there may be some elements that I'm not aware of that people would gain out of that process.

The QPS saw no advantage to audiotapes in light of the availability of video recordings (day 2):

The submission of the Service is that where it's appropriate, videos ought be used. It would be in our view a backward step in technology if audio recordings were kept when the facility to videotape is there. It's available.

The Queensland Council for Civil Liberties was also sceptical (day 2):

My concern about that is my concern about what's currently happening with some police in relation to off-tape pressure ... applied to get that person's consent. I accept that on paper it's a good alternative to give the person the choice but if pressed my answer would be I'd prefer that it not happen. I'd prefer that the search, particularly the strip search, be videoed.

It is conceivable that there will be things said by a QPS officer before the audio recording is activated or while the recording device is turned off which will influence what the person being searched does or says. Also, the person to be strip searched could say things while the audio recording is being made that might give a false impression of what is happening. For example, the detainee shouting out something to the effect of ‘take your hands off me’ when the officer has not touched the detainee could complicate any future investigation of an allegation of an inappropriate strip search.

CONCLUSIONS DRAWN BY CJC

The CJC was initially attracted to the suggestion that audiotapes be made of strip searches that are not videotaped. However, it is apparent that an audiotape, more so than a videotape, will provide only a limited, and possibly misleading, record of the search. If the detainee says nothing at the crucial

moments, it would be difficult to establish that the audiotape is an accurate record of the full circumstances of the strip search. Also, words could be recorded that could purposefully have been made out of context or maliciously.

Nevertheless, a watchhouse manager already has a discretion to make an audiotape and may wish to do so, for example, where a forced strip search is to be conducted in a watchhouse without video-recording facilities. The CJC does not wish to impose any restrictions on the exercise of such a discretion other than to recommend that there be appropriate controls in place on the storage and handling of the tapes such as currently exist for audiotapes of interviews.²⁵

The CJC recommends:

- 9.8** The QPS should consider the most appropriate procedures to adopt for the secure storage and handling of audiotapes of strip searches.
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Endnotes

- 1 See, for example, s. 111 of the Act set out in chapter 3.
 - 2 For a discussion of s. 7 of the Code see chapter 3.
 - 3 If there is another room with no camera installed, it may be appropriate for the detainee to be searched in that room: see, for example, the SOPs of the Southport Watchhouse.
 - 4 Submission 30.
 - 5 These four included three people who removed their clothing without being requested to and one intoxicated person who was searched at the front desk by having his clothes lifted.
 - 6 Only three allegations have been substantiated although a number of other matters are yet to be finalised.
 - 7 See the discussion on the number of officers to be present in the search room in chapter 8.
 - 8 For a discussion on issues relating to the facilities available at watchhouses, see chapter 11.
 - 9 More detailed legislation is being considered in South Australia. The *Summary Offences (Searches) Amendment Bill 1999* is currently before the South Australian Parliament. If enacted, the legislation will provide that a strip search is to be videotaped unless it is 'not reasonably practicable to do so': see the proposed new version of s. 81(3)(e) of the *Summary Offences Act 1953 (SA)*.
 - 10 Submission 30.
 - 11 Paragraph 16.22.9 of the Manual however, provides:

Padded cells
The watchhouse keeper should, in situations where a padded cell is available:

 - (i) only use padded cells for the management of violent or aggressive prisoners in the interests of safety of those prisoners and other persons; and
 - (ii) ensure that a padded cell is not used for punishment of prisoners.
- Officers should, where a prisoner is considered suicidal or exhibits behaviour which leads to the belief that the prisoner may be suicidal, strip and issue the prisoner with a suicide resistant smock, where available, ensuring that the prisoner's dignity is maintained, prior to being placed in a padded cell.
- 12 The CJC has viewed the videotape of this incident and it accords with the witness's account.
 - 13 Submission 32. See also, submission 9.
 - 14 Submission 20. See also, the submission of another watchhouse manager, submission 21.
 - 15 Section 7(6) of the Code, see above at p. 73.
 - 16 The QPS *Electronic Recording of Interviews and Evidence Manual*, although it does not specifically refer to video recordings of strip searches, may provide some guidance to the QPS if a more formalised approach to the handling and disposal of videotapes of strip searches is contemplated. That manual covers the retention and disposal of audiotapes and videotapes of interviews.
 - 17 Submission 1.
 - 18 Submission 9.
 - 19 Submission 16.
 - 20 Submissions 20, 21.
 - 21 Paragraph 1.4.1.
 - 22 Paragraph 1.2.7.
 - 23 Misconduct proceedings can also be taken against police.
 - 24 In the Summary Offences (Searches) Amendment Bill currently before the South Australian Parliament, the proposed new s. 81(3e) of the Summary Offences Act would impose a maximum penalty of \$10,000 or two years' imprisonment for a similar offence.
 - 25 QPS, *Electronic Recording of Interviews and Evidence Manual*.

Strip searching people other than at a watchhouse

QPS officers have the power to conduct strip searches at any time in any location (subject only to the limitations referred to in chapter 3). This chapter looks specifically at those concerns expressed about strip searches conducted by QPS officers in places other than watchhouses.

Legislative and QPS requirements

QPS officers have the power to conduct strip searches on people who are not detained in a watchhouse in a wide variety of circumstances including, for example:

- if the officer has been authorised under a warrant to conduct a search¹
- if the officer reasonably suspects:²
 - (a) that the person has something that may be —
 - (i) a weapon, knife or explosive the person may not lawfully possess; or
 - (ii) an unlawful dangerous drug; or
 - (iii) stolen property; or
 - (iv) unlawfully obtained property; or
 - (v) tainted property; or
 - (vi) evidence of the commission of a 7 year imprisonment offence the police officer reasonably suspects may be concealed on the person or destroyed;
 - (b) that the person has something that may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug;
 - (c) that the person has something the person intends to use to cause harm to himself, herself or someone else.

When a strip search is conducted other than at a watchhouse, the QPS officer conducting the search is subject to most of the requirements watchhouse staff are subjected to when performing such duties in a watchhouse. Section 111 of the PPRA applies to ‘a search

of a person under this Act’,³ which would mean that all searches conducted under a warrant or section 26 (ss. 27 and 28 of the Act 2000) would be regulated by section 111.⁴

Similarly, section 6 of the Code (ss. 382 and 383 of the Act 2000) specifically contemplates the search of a person in public. Section 6 provides, in part:⁵

- (1) A police officer searching a person must —
 - (a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and
 - (b) take reasonable care to protect the dignity of the person; and
 - (c) unless an immediate and more thorough search of a person is necessary, **restrict a search of the person in public** to an examination of outer clothing; and
 - (d) if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person **out of public view**, for example, in a room of a shop or, if a police station is nearby, in the police station. [emphasis added]

Section 7 of the Code does not distinguish between searches conducted in a watchhouse and searches conducted elsewhere. Section 7(1) (s. 387 of the Act 2000) reads:⁶

- (1) This section applies if a police officer conducts a search that involves the removal of all items of a person’s clothing or all items of outer clothing from —
 - (a) the upper or lower part of the body of a female; or
 - (b) the lower part of the body of a male.

Operational guideline 3, attached to section 7 of the Code (no operational guidelines in the Act 2000 or the Code 2000), which states that strip searches should not be conducted on a routine basis, applies to strip searches

conducted in watchhouses and anywhere else:

Operational guideline for search involving the removal of clothing

Police officers should be aware that while the Act allows a police officer to require someone to remove clothing when the person is being searched, and searches involving the removal of outer clothing may be necessary, searches involving the removal of clothing should not be routinely conducted, and if conducted, searches that are not appropriately conducted may invite adverse public criticism of the police service.

Section 99(a) of the Code (s. 54 of the Code 2000), referring to the recording of details of all personal searches in the ‘register’, is also not restricted to searches at a watchhouse.⁷

Although the provisions of the Manual that specifically deal with searches (chapter 16) relate to searching of people in custody, the Manual also provides that the provisions of the PPRA and the Code are to apply to all stages of a police operation. For example, paragraph 2.1.1 of the Manual provides:

The provisions of the *Police Powers and Responsibilities Act* are for general application to all facets of police operations.

The requirements of the PPRA and the Code to record the details of personal searches in the ‘register’ supersede provisions in other legislation requiring registers to be kept of search details. Thus, for example, the reference in the *Drugs Misuse Act 1986* (Qld) to maintaining a register of details of searches made under that Act must now be read as a requirement to include that information in the Custody/Search Index only.⁸

Number of non-watchhouse strip searches

According to the CJC complaints files and the 1999 Defendants Survey, it would appear that only a small proportion of strip searches are conducted outside a watchhouse. Seventy-six per cent of respondents to the Defendants Survey who stated that they were subjected to a strip search reported being searched at a

watchhouse, with the second highest number of searches reported as being conducted at the defendant’s home (n=23, 18%).

In its submission to the Issues Paper, the QPS confirmed that ‘by far the majority of strip searches are conducted at watchhouses, because the person being searched has been charged and detained in custody.’⁹

Almost all (97%) strip searches referred to in the CJC complaints data relate to searches conducted at a watchhouse.¹⁰ This may be partly because people are likely to be less aggrieved by a strip search conducted within the privacy of their own home than by one conducted at a watchhouse. The figures might also indicate that people who are strip searched other than at a watchhouse are generally searched as part of an investigation into suspected criminal activity, so that any concern they may have about why or how the strip search was conducted pales in comparison to concerns they may have about the police investigation.

Concerns about non-watchhouse searches

The extent to which the legislative provisions relating to strip searches are being adhered to by QPS officers who conduct strip searches outside a watchhouse (for example, at private homes and ‘on the street’) is unknown. However, from discussions with QPS officers, it is apparent that at least some officers are not aware of their obligation under the legislation to record the details of strip searches conducted outside a watchhouse.

In its submission to the Issues Paper, the Youth Advocacy Centre¹¹ gave examples of cases where it was alleged that such searches were inappropriately conducted by QPS officers, including in public toilets, in a railway ticket office and at a private house.

At the public hearings (day 2), the Youth Advocacy Centre expressed concern with

searches conducted ‘on the street’:

Anecdotally, I regularly give talks to young people about the law and their interaction with the law and what they can and can’t do in relation to those situations and a number of them have reported to me consistently over the years, and I would have been doing this now for some 15 years ... when, on the street, not only have they been stopped and asked by a police officer to turn out their pockets but also, ‘Just come round the corner with me and drop your trousers.’ Now, I have to say that I don’t recall a situation involving a young woman in that scenario, but certainly a number of young men have reported that happening to me over a period of time ... It also seems from our experience with young people that very rarely are items actually found which are relevant to the police in terms of pursuing an investigation. That [finding items] doesn’t seem to be a common outcome at all.

The Youth Advocacy Centre also expressed concern as to whether such searches were being recorded in the Custody/Search Index:

... we wonder, in fact, whether searches of that nature, for example, are getting recorded in the Register. Whether, in fact, it’s only the formal, as it were, strip searches that happen, perhaps at the watchhouse, maybe at the police station, that get recorded, but whether these other instances beyond the police station are actually finding their way down into the register, and obviously most young people aren’t going to be going along to check that out for themselves.

During the community consultation meeting in Cairns, the CJC was informed of patients of a mobile detoxification team who were allegedly subjected to strip searches by QPS officers in inappropriate places such as the toilet of a hotel and on the median strip of a road. Strip searches under the Drugs Misuse Act were regarded as the most problematic in this regard.

Youth and Family Service (Logan City), in its submission to the Issues Paper, noted:¹²

In our experience the conduct of a strip search outside a watchhouse/police station is of great concern to, in our case, young clients. In fact, it is apparent that the power is misused, largely as an intimidatory tactic or as an ad hoc method of establishing a reasonable ground for a search. No lower age limit is provided. In the case of young persons it is

essential that full reasons be given, explained, and are understood. Further, that the young person has the support of an independent person or interview friend at the time of the search.

Immediate searches

Situations where a strip search may need to be conducted by a QPS officer immediately are more likely to arise at locations other than at a watchhouse. For example, in a domestic violence situation where the only QPS officer in attendance suspects that one of the parties is concealing a weapon that could be used to harm other people, an immediate search will be required. If the person to be searched is female and the QPS officer is male, and a female officer is not immediately available, it will be necessary for the male officer to conduct the search.¹³ To avert the possibility of serious injury, there may be no time for the QPS officer to be concerned about who else is present.

If a similar situation arose involving a juvenile or a person with impaired capacity, the requirements relating to the presence of an appropriate support person would not apply.¹⁴

CONCLUSIONS DRAWN BY CJC

Although there are no specific QPS directions relating to strip searches conducted other than at a watchhouse, the legislative requirements apply equally to all strip searches, wherever conducted. There is no reason to treat searches conducted outside a watchhouse any differently from searches conducted in a watchhouse, although the absence of the disciplined structure of the watchhouse may tempt some QPS officers to treat searches outside a watchhouse less formally.

There is no reliable method of determining the current level of observance of requirements relating to strip searches conducted by QPS officers other than at watchhouses given the paucity of data kept on

such searches. The recording of information relating to such searches is vital for the protection of people subjected to them and for the QPS officers conducting them.

The CJC is particularly concerned about allegations that some young people are not afforded the protections set out in the legislation when subjected to strip searches outside a watchhouse. If these allegations are true, it may be due to noncompliance by QPS officers with current legislative requirements, but may equally be due to the lack of clear direction given to QPS officers by the Manual and the legislation. It is essential that it be made abundantly clear to all QPS officers that the legislative provisions relating to searches apply to all strip searches wherever conducted.

The guidelines that the CJC has recommended be developed by the QPS for conducting personal searches should, as far as practicable, apply to QPS officers conducting searches in any location.¹⁵

The QPS should investigate ways of making the recording of ‘off-site’ strip searches easier and more efficient.¹⁶ One solution may be for the QPS officer to be able to radio through the search details for immediate entry into the Custody/Search Index.

Whenever practicable, strip searches should be conducted at a watchhouse or police station, unless the person to be searched consents to the search being conducted in the location indicated by the QPS officer.

The CJC recommends:

10.1 The Manual should make it clear that the legislative provisions relating to strip searches apply to all strip searches wherever conducted.

10.2 The Manual should provide that, unless the person to be searched consents to the search being conducted in the location indicated by the QPS officer, strip searches should be conducted, whenever practicable, at a watchhouse or police station.

Endnotes

- 1 Section 29 of the PPRA (s. 74 of the Act 2000).
- 2 Section 26 of the PPRA (ss. 27 and 28 of the Act 2000).
- 3 Section 111(1) of the PPRA (see part 3, division 2 of the Act 2000).
- 4 Section 111 of the PPRA is set out in chapter 3.
- 5 Section 6 of the Code is set out in full in chapter 3.
- 6 Section 7 of the Code is set out in full in chapter 3.
- 7 Section 99(a) of the Code is set out in full at p. 16.
- 8 Paragraph 2.1.2 of the Manual provides that the Custody/Search Index is to be used to register details about most enforcement acts, including the searching of a person (other than a search under s. 73 of the *Domestic Violence (Family Protection) Act 1989*). The Act 2000 consolidates a number of legislative provisions relating to police powers, including the power to conduct personal searches.

- 9 Submission 30.
- 10 The term ‘watchhouse’ in this report includes holding cells (in police stations).
- 11 Submission 12.
- 12 Submission 27. See chapters 4, 8 and 11 for further discussion on issues relating to young people.
- 13 See s. 111(4) of the Act, set out in chapter 3, which provides that an immediate search can be conducted by a QPS officer of the opposite gender to the person being searched. See chapter 8 for a discussion on searches conducted by QPS officers of the same sex as the person being searched.
- 14 For a discussion of s. 7(8) and 7(9) of the Code as it applies to children and to people with impaired capacity, see chapters 8 and 11.
- 15 See chapter 7.
- 16 See chapter 6.

Related issues

During this inquiry, a number of issues were raised that, while not specifically about the QPS power to strip search, have an important bearing on whether or not a strip search is conducted and the way it is conducted on particular detainees. These issues are:

- the use of watchhouses as holding areas for Corrective Services prisoners
- the prohibition on smoking in most watchhouses
- the lack of certain facilities at some watchhouses
- sensitivities or difficulties peculiar to certain groups of people (namely, young men, women, Indigenous and cultural groups, people with disabilities and the elderly).

The chapter concludes by looking at some preventive measures to reduce the need for strip searching in the first place and to reduce complaints about the way strip searches are conducted.

Use of watchhouses as holding areas

From discussions with watchhouse staff, it is apparent that some watchhouses are being used as holding areas for Corrective Services prisoners for the maximum period detainees can be held at a watchhouse before being transferred to a prison.¹ The Corrective Services Department suggested at the public hearings (day 2) that this situation is often unavoidable given the overcrowding in some prisons.

Clearly, some watchhouse staff are concerned about the possibility of items concealed by prisoners being used to harm either the prisoners or others in the watchhouse. This is particularly the case when prisoners cannot be

isolated from other detainees. With prisoners being kept for the maximum period in the watchhouse before being transferred to a prison, it may be particularly difficult to keep other detainees separated from them. This places a strain on watchhouse resources.

To ensure a safe environment at the watchhouse in these situations, strip searching may become a more regular management practice than it otherwise would need to be.

The Corrective Services Department also noted at the public hearings:

The responsibility for the management of people in a watchhouse is almost exclusively conducted by the Queensland Police Service. There have been ongoing discussions over a number of years about Corrective Services taking over this responsibility. For that to happen there'd have to be an allocation of funds for that to be possible. I certainly think that there are merits in Corrective Services taking over that role. However it's not an inexpensive process so I think that the resource issues are the ones that haven't been sorted out to date.

Although Corrective Services prisoners become the responsibility of the watchhouse manager when entering the watchhouse, in some watchhouses, such as Brisbane City and Townsville, Corrective Services staff have a presence at the watchhouse, or near it, and will often conduct any personal searches necessary to ensure the safe movement of prisoners to and from court and to and from the watchhouse. In Townsville, for example, part of the watchhouse is dedicated to a Corrective Services facility where prisoners who are attending court are under the direct supervision of correctional officers rather than watchhouse staff.

In response to a suggestion that the Corrective Services Department should have

sole responsibility for the running of watchhouses, the CJC recommended in its 1996 *Report on Police Watchhouses in Queensland*, that the QPS should retain responsibility for the operation of watchhouses. The CJC noted:²

The QCSC [Corrective Services Department] ... [has a] practice of not accepting, or delaying accepting, prisoners from watchhouses into the prison system ... In fact, handing responsibility for watchhouses to the QCSC would tend to reinforce the view that it is appropriate to use watchhouses as extensions of the prison system. ... The CJC believes that the QPS should retain responsibility for operating watchhouses. The proposal that the QCSC assume responsibility for watchhouses fails to recognise the function of watchhouses as short term places of detention of people in police custody waiting to appear before a court. The CJC supports the position that the police should not be acting as gaolers, but if watchhouses were used only in accordance with their real purpose police would not be required to perform this function.

It is apparent that the overcrowding of prisons in Queensland remains a problem.³ It is also apparent that in situations where prison accommodation is not available, the Corrective Services Department has continued to use watchhouses as an extension of the prison system, although this has been less of a concern since the introduction of the seven-day limit on detainees being kept in watchhouses.⁴

If Corrective Services prisoners were not held in the watchhouse before or after an appearance in court, this would result in a sharp drop in the number of detainees in some watchhouses who staff believe should be strip searched. This is particularly so, given the belief by some staff that prisoners pose a greater threat to the safety of the watchhouse than other detainees. Some staff are also concerned about the mixing of prisoners and other detainees. In such cases, the other detainees may need to be strip searched purely because they are in contact with prisoners.

CONCLUSIONS DRAWN BY CJC

Privacy and dignity are fundamental human needs that are no less important to prisoners than they are to the person brought to the watchhouse on a warrant for an unpaid fine, or to a person detained in a watchhouse on a charge of being drunk and disorderly.

The CJC would support the examination of any initiatives that will result in Corrective Services prisoners not having to be detained in watchhouses or that reduce the time they are required to stay in a watchhouse. Some watchhouses have separate facilities where prisoners can be isolated from other detainees. The CJC would support the establishment of such facilities at all watchhouses where prisoners are currently held. This may at least lead to a reduction in the number of strip searches conducted on other detainees purely because they are being held with prisoners. If such a facility is within the watchhouse, the delineation between the responsibilities of the watchhouse manager and the Corrective Services officers will need to be established at Ministerial level.

Prohibition on smoking

From the CJC's discussions with watchhouse staff, the possibility of detainees concealing cigarettes, lighters or matches appears to be a major factor in the decision to strip search detainees, and, in particular, newly arrived Corrective Services prisoners. There have been incidents where cells have been burnt and detainees killed or injured as a result of fires started from lighters or matches smuggled into the watchhouse (see case study 1, page 6).

Cigarettes and lighters were the most common items found during the Watchhouse Survey.⁵ The GMO who appeared at the public hearings (day 2) estimates that:

probably 90 to 95 per cent of our clients in watchhouses smoke, so it's a very much

higher percentage in the watchhouse population than in the general population.

Nevertheless, the QPS has adopted a policy that all but bans smoking in watchhouses.

Paragraph 16.22.21 of the Manual provides:

Smoking by prisoners in watchhouses

POLICY

Despite the Service's smoke-free workplace policy, officers in charge of watchhouses may exercise reasoned discretion and permit smoking by detainees under certain circumstances.

Officers in charge of watchhouses may permit detainees to smoke if, as a result of not permitting the detainees to smoke, aggressive behaviour resulting in other detainees or members of the Service being placed at risk of injury is occurring.

PROCEDURE

Officers in charge of watchhouses should not exercise their discretion to permit a detainee to smoke unless they first consider:

- (i) the extent to which aggressive behaviour displayed by a detainee is a result of not permitting that detainee to smoke;
- (ii) the level of risk which the detainee's behaviour poses to other detainees or members;
- (iii) the period of time for which the detainee will be held at the watchhouse; and
- (iv) the health risks posed to other detainees and to members which would arise from permitting a detainee to smoke.

ORDER

Officers in charge of watchhouses who permit a detainee to smoke are to make a record in the Watchhouse Custody Register of the time, date and reason for permitting smoking.

In some watchhouses, an individual detainee may be allowed to smoke in a secure area outside the watchhouse building as a reward for good behaviour. To the CJC's knowledge, only the Mount Isa Watchhouse has adopted a general policy of allowing detainees to smoke in the watchhouse.⁶ Detainees must provide their own cigarettes but are not allowed to have lighters or matches. Watchhouse staff light cigarettes when needed. Smoking is considered a privilege that can be withdrawn from any prisoner who misbehaves. For example, if detainees are found with a lighter, they will not be permitted to smoke. It appears that virtually all detainees behave

properly because they do not wish to lose the privilege.⁷ Very few lighters have been found concealed. Mount Isa Watchhouse staff have indicated that allowing detainees to smoke has resulted in a calmer environment, because nearly all detainees are smokers. Alcohol dependent detainees also appear to be calmer if allowed to smoke.

In its 1996 *Report on Police Watchhouses in Queensland* the CJC observed:⁸

The denial of cigarettes is another example of prisoners experiencing worse conditions than would be the case if they were in a correctional facility. Prisoners may be able to put up with the denial of cigarettes in the watchhouse for a day or so, but this becomes increasingly difficult when prisoners are held in watchhouses for much longer periods.

The Prisoners' Legal Service regards the denial of cigarettes to detainees as 'cruel' and potentially dangerous. The Service also regarded this as an issue with a broader context than simply nicotine addiction.⁹

I think that one of the reasons why Woodford went up in smoke when it first opened was because they had a no-smoking policy and they very quickly had to change that policy, and I think that there needs to be arrangements whereby people can smoke if they need to. It's an extremely stressful situation to be in the watchhouse, and for a prisoner from the Corrective Services Department to be on trial waiting for their verdict or waiting to give evidence in their own defence, and to deprive them of their legal addiction at that time is cruelty. The other thing about that, though, is we treat nicotine addicts cruelly, but I think we also have to recognise that we treat people who are addicted to illegal drugs very cruelly as well by expecting them to withdraw with no ill effects and by themselves in a locked room, and part of our submission is that, you know, obviously — and I suppose it's being addressed through the drug courts and all sorts of other ways, but I think it needs to be recognised in this context that a lot of the people are in the watchhouse because of their addiction to illegal drugs and we need to have some mechanism for dealing with that addiction beyond just asking them to deal with withdrawal by themselves.

From the CJC's discussions with QPS officers in watchhouses, it appears to be a widespread belief that people coming from

detention centres and correctional institutions often have cigarettes, matches or lighters secreted on them because they are allowed to smoke in prison, but not in watchhouses.

At the public hearings (day 1), a watchhouse manager noted his reluctance to exercise his discretion to allow smoking:

... I've only ever done it once because, if you do it for one prisoner, the grapevine will get around and every prisoner will know that you will allow smoking ... if you've got 90 prisoners, to start with, where are they going to keep their cigarettes, who's going to have access to the lighters, and then that's where your problems start. I mean does property start getting lost, and who's going to keep control of everything there? It's easier from a management point of view and it's safer from the management's point of view to restrict access to lighters and matches and in that case cigarettes as well ... But it still gets in. And I can only assume it's — in some cases, or probably the majority of cases — being secreted within bodily orifices. But on other occasions we miss them; we don't strip search every prisoner. ... We actually never find them secreted on them. What normally happens is you smell smoke and then you start a search and then you find it. And then normally there's a plastic bag associated with it and on occasions you give it the sniff test and you know exactly where it's been. In a normal strip search, down their jocks, in the crease of their backside. A lot of them just straightforward try and put it in their socks but that never succeeds. And that's the only place they can secrete it really and hopefully get away with it. During a pat-down search it's rare that you actually force your hand into the crevice of their backside or anywhere like that.

The GMO also noted some practical concerns with any proposal to enable smoking by detainees in watchhouses (day 2):

They're [detainees] often very anxious and if you can give them a smoke, they'll often calm down. But there is no environment in a lot of watchhouses in which to do this. Just occasionally if there's an exercise yard, a police officer may be able to take somebody out. But ... every hour saying 'Who wants a smoke?' — you know, there's three officers in Beenleigh watchhouse, 30 clients in there and they all want to smoke. How on earth do you secure getting a prisoner out, getting him out into the yard, smoking, and then going back in again. That's all the officers would be doing.

It is not a possibility in a place like Beenleigh. In Ipswich, it's sometimes easier. They may only have three people there. There is an exercise yard that's secure — well, it's the vehicle bay, but secure — so an officer may take somebody out and let him have a smoke as a treat.

But I believe that the watchhouses have got to be smoke free zones. There are officers who don't want to work in an environment where they smoke. There are the occasional non-smoking prisoners who don't want to sit in an environment where they smoke. So I think we have to do that.

The doctor suggested alternative ways of dealing with a detainee's addiction to nicotine such as, for example, nicotine patches.

However, the doctor noted:

Queensland Health is very reluctant to give the general population nicotine patches on the PBS, so I'm in the process of approaching some of the drug companies to look at doing a pilot study to see if in fact it reduces some of our anxiety problems and our behaviour problems of people in custody, and then of course the problems with the lighters and the cigarettes wouldn't be an issue.

In Queensland, prison inmates are able to smoke in restricted areas and not in air-conditioned areas. In the more modern facilities there are devices in the wall that prisoners can use to light the cigarettes — so lighters and matches are not needed.

CONCLUSIONS DRAWN BY CJC

The current QPS policy on smoking in watchhouses is appropriate. If smoking were generally allowed in watchhouses, and if watchhouse staff were prepared to light cigarettes for detainees, there may be fewer detainees attempting to conceal lighters or matches and having to be strip searched.

However, smoking would remain a serious risk to the health and comfort of non-smoking people working or detained in the watchhouse. Further, the threat of deliberately or accidentally lit fires in watchhouses would still be present if smoking were generally permitted.

The QPS may wish to investigate alternatives

to cigarettes for keeping smokers calm in watchhouses — such as nicotine patches. At the same time, consideration could also be given to ways of ensuring detainees with other addictions are kept calm during their period of detention in the watchhouse.

Lack of certain facilities

Queensland watchhouses have varying levels of resources and facilities. In some cases, this may have an impact on the need to strip search detainees or on the way searches are conducted. For example, in a watchhouse that has enough cells it may be possible to separate different classes of detainees instead of strip searching certain ‘at risk’ detainees.

The QPS is upgrading the facilities of watchhouses throughout Queensland. The QPS submission to the Issues Paper noted that:¹⁰

a significant proportion of the Service’s capital works program has been devoted to the progressive upgrade program.

The apparent design faults in some existing, even modern, watchhouses that were referred to in the Issues Paper are likely to be addressed within the capital works program. The capital works program is unlikely, however, to respond to concerns such as low staffing levels in watchhouses in remote areas, which may have an impact on the ability of a watchhouse officer to conduct a forced strip search on an aggressive or violent detainee.

CONCLUSIONS DRAWN BY CJC

Watchhouses in remote areas, small watchhouses and older watchhouses may have special difficulties that do not exist or do not exist to the same extent in larger and more modern watchhouses. For example, it may not be possible to safely conduct a forced strip search on a potentially suicidal but violent detainee when there are only one or two watchhouse officers on duty. If a strip search cannot be conducted or cannot be conducted safely, then the watchhouse staff may need suitable equipment on hand to be able to move the detainee safely to and from the watchhouse and within the watchhouse when required. There will also need to be adequate personal or electronic surveillance on the detainee. It may not be appropriate to allow detainees who have been forcibly strip searched to get dressed in their own clothes. All watchhouses should have a sufficient supply of suitable clothing for those occasions.

The CJC recommends:

- 11.1** The QPS should consider staffing and resource issues relevant to strip searching detainees in remote, small and older watchhouses during its current watchhouse upgrade program. Such issues include:
- the need for appropriate cell extraction equipment to facilitate the safe movement of violent and potentially violent detainees
 - the availability of appropriate alternative clothing including suicide-resistant smocks
 - the availability of video-recording equipment for the recording of strip searches, where appropriate.
- 11.2** Adequate remote surveillance equipment should be made immediately available in all watchhouses.
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Dealing with sensitivities

There is no doubt that certain individuals and certain groups of people are more sensitive to being strip searched than others, namely young men, women, Indigenous and cultural groups, people with disabilities and the elderly. Failure on the part of police to recognise this and make allowance for it may result in these people being more adversely affected by a strip search than need be so.

Young men

On the first day of the public hearings (day 1), the Youth Advocacy Centre referred to a young man in a detention centre¹¹ saying to his solicitor about strip searching:

Well, what does it matter? Everyone in here has seen me naked. You get strip searched all the time.

The Centre noted:

... that sort of feeling that your body is no longer yours, that it's sort of like a piece of meat, I think if we're going to really engage our children in the justice system, make it meaningful to them, we've actually got to have proper processes that protect them, that actually get them through the process in one piece, as it were, in order to do the rehabilitative things that we're trying to do, in order to give them a respect for other people. If they feel unrespected themselves, I think it's very difficult to encourage them to respect the other way.

The next day, in response to a question relating to making strip searches less confronting for young people, the Youth Advocacy Centre responded:

I think it's partly an attitudinal thing. I think some officers probably deal with these situations better than others. It may come down to a matter of training, but I think the officer is going to need to deal with it in a reasonably sympathetic manner, albeit that it's an investigative process, but if the officer's attitude starts out as being fairly aggressive in this process then obviously that's going to make it even more difficult for the young person. So I think demeanour and manner and how it's carried out are probably really critical in that situation.

The CJC has heard of specific concerns about boys and young men being strip searched by

male QPS officers close to their own age. At the Cairns community consultation meeting, a community legal service noted that young men would prefer to be searched by older QPS officers. Similarly, the Youth Advocacy Centre noted in its submission to the Issues Paper:¹²

... many young men express concern at being strip searched in front of other men.

At the public hearings (day 1), the Centre observed:

And I think developmentally for young people there's also an issue. They are going through a period when their bodies are changing. They tend to be very conscious that that is happening. They go through those times when they don't want people looking at them and their bodies because they themselves aren't quite sure what is happening with it, and I think that makes them particularly vulnerable. And to that degree I think again they differ from the comments that were made I think from Mr O'Gorman yesterday when he was suggesting, possibly quite rightly, that men in general perhaps do not feel as affected by a strip search as maybe a woman.

But I think for young men who are developing, growing, a bit more conscious of what's happening, I think those issues are still very real for them. We've certainly had experience of young men who have been strip searched being quite traumatised by that experience, and feeling quite humiliated and upset by what happened.

So we may not be able to make such a broad distinction, I would suggest, between young men and young women in this situation.

Women

Power

A suggestion was made by the Office of Women's Policy, Department of Equity and Fair Trading, that before conducting a strip search on a female detainee, the QPS officer should be required to consider the possible effects on the detainee of the power differential between the QPS officer and the detainee. Although in the watchhouse there is an obvious power differential between QPS officers and all detainees, irrespective of sex, it has been argued that the differential in relation to women may be more pronounced. At the public hearings, the Office of Women's

Policy observed:¹³

... women's physiological make-up should be acknowledged in understanding the impact of strip searches on women. For example, menstruation or pregnancy may result in the impact of the procedure being more acute. It is critical that QPS officers have an understanding of the power differential between the police officer conducting the search and the person being searched and the potential for the person being searched to be embarrassed, humiliated during and after the procedure. The effects of this power differential are not automatically gender specific but may be exacerbated for women particularly if the woman is a victim or survivor of sexual abuse and/or a relationship involving an abusive power differential.

Abuse

Many women in the criminal justice system have been the subject of sexual and/or physical abuse.¹⁴ A woman who has been previously abused may find a strip search a particularly traumatic experience. To some women a strip search may be regarded as a further act of abuse — particularly if there is no obvious justification for the search.

Pregnancy

There are no legislative or Manual provisions relating to conducting strip searches of pregnant detainees. The SOPs reviewed by the CJC are also silent in this regard.

Menstruation

Watchhouses do not supply or permit the use of tampons; only sanitary napkins. Paragraph 16.32.16 of the Manual provides:

Sanitation and exercise**PROCEDURE**

The watchhouse manager should:

- (v) supply soap, toilet paper, towels, and **sanitary napkins** to prisoners, where necessary. [emphasis added]

It appears that this policy has developed primarily from the QPS's concern about potential liability for damages resulting from toxic shock syndrome. This is despite the extremely low possibility of a detainee acquiring toxic shock syndrome while in the watchhouse.¹⁵

Other concerns include the belief that tampons can be used to assist detainees to hide items vaginally and that privately supplied sanitary products can conceal items of concern.

One watchhouse's procedures for handling female detainees who are menstruating purports to cover all these concerns:¹⁶

The possibility exists of female prisoners acquiring Toxic Shock Syndrome through the use of sanitary tampons during their menstrual period. In order to alleviate this possibility, the following procedures are to be adhered to.

- 1 On arrival at the watchhouse, female prisoners are to be discretely asked, preferably by a female member, if they are in their menstrual cycle. If so, they are to be advised that sanitary napkins are available and will be provided as required. Watchhouse staff will provide sanitary napkins and prisoners **will not be permitted** to use their own supply. [emphasis added]
- 2 A sanitary disposal bin has been placed in the female section and is to be used in the disposal of these items. Disposable sanitary bags are to be issued to female prisoners for use in disposal of used items. Prisoners are to be encouraged to dispose of used items in a hygienic manner prior to placing in the disposal unit.
- 3 Disposable gloves are to be worn by officers when handling used items. Diseases such as hepatitis B and C, and HIV are carried by blood and body fluids and all officers should be mindful of these risks.
- 4 Watchhouse staff should be mindful of the possibility of drugs and other contraband being secreted in sanitary napkins. Open packets of prisoners' napkins should be inspected and then placed with their property on arrival.
- 5 Female prisoners CANNOT be forced to change a tampon or may refuse or fail to comply with these standing orders. In these circumstances, a suitable notation is to be made on the Charge Register medical section. Tampon strings could be seen as a risk item and care is to be taken in the event that a prisoner will not comply with these instructions.
- 6 Any prisoner suspected of contracting Toxic Shock Syndrome is to be conveyed immediately to the Townsville General Hospital.

The Australian Customs Service Operating Directions provide:¹⁷

In *exceptional* circumstances, a person can be requested to remove externally worn sanitary protection or continence aids. Officers must be able to substantiate the basis for such a request and a replacement item must be available in the case of sanitary napkins ...

It is **NOT** permissible as part of an external search [strip search] to ask a female to remove an internally worn tampon for inspection. If there are doubts in the officer's mind that the tampon may be disguising an internal concealment of narcotics, then this together with other factors needs to be considered in reaching a decision on whether detention for internal search may be justified. It is *not* acceptable to suggest to a detainee that removal of a tampon might avoid the possibility of an internal search.

The Department of Corrective Services provides tampons free of charge to female prisoners. However, there is no departmental policy on searching prisoners who are menstruating. The CJC has been informed that the current practice is documented at a local (correctional centre) level and that the searching officer will not require a prisoner to remove a tampon for inspection. Where a menstruating prisoner is subject to a strip search and sufficient grounds still exist following the search, the prisoner may be isolated under observation, or a body-cavity search under section 48 of the *Corrective Services Act 1988* (Qld) may be ordered by the general manager of the centre.¹⁸

Indigenous and cultural groups

The Watchhouse Survey reported that Aboriginal and Torres Strait Islander peoples represented 27 per cent of the detainees subjected to strip searches. This is reflective of the overall prison population of Aboriginal and Torres Strait Islander peoples in Queensland.

Although there is no indication that Aboriginal and Torres Strait Islander peoples are strip searched in a higher proportion to their representation in watchhouses,¹⁹ there

are a number of cultural issues with which watchhouse staff may need to be familiar. For example, in its submission to the Issues Paper, the Anti-Discrimination Commission said:²⁰

Recognition of the cultural diversity of Indigenous individuals and communities continues to present major issues for non-Indigenous service providers, for example, English is not the first language spoken by the vast majority of Aboriginal and Torres Strait Islanders living in northern Queensland and for some living in regional and urban centres, therefore the assistance of Indigenous Police Liaison Officers [presumably, to explain the reasons for the search, as opposed to conducting the search, see chapter 8] would be appropriate in providing a sense of cultural sensitivity.

While the practice of strip searching continues to operate, the issue of the *effects* of strip searching for Indigenous detainees needs to be raised through consultations with relevant Indigenous organisations such as Murri Watch and the numerous Aboriginal and Islander Community Legal Services that operate throughout Queensland.

Other submissions to the Issues Paper recognised a need for QPS officers to receive training in cultural awareness, in particular, awareness of Aboriginal and Torres Strait Islander cultural beliefs and traditions that may be relevant to how a pat-down or strip search should be conducted or whether a personal search should be conducted at all. For example, the Aboriginal and Torres Strait Islander Advisory Board noted:²¹

As is recognised in the Queensland Police Service, there is a need for police procedures to be culturally appropriate and police officers to demonstrate cross-cultural awareness. We see strip searching as one of those procedures where cultural values are most likely to be violated, perhaps unintentionally, and therefore urge that this be specifically addressed in cross-cultural awareness training for police.

Similarly, at the public hearings (day 1), the Queensland Council for Civil Liberties noted:

It is important that culturally sensitive issues be addressed because if white police officers are not aware of them then they're going to make mistakes and cause problems for themselves and the people they search. ... asking police to be culturally aware of these issues is simply asking police to understand some of the issues that face, say, the Indigenous community.

The Council also suggested that officers should be trained to be aware of cultural issues relevant to detainees from a variety of religious and cultural backgrounds.

The Anti-Discrimination Commission suggested at the public hearings (day 2) that it may be appropriate for QPS officers to adopt a more sensitive approach to people who appear to be aggressive if that aggression can be explained in a cultural context:

... just because someone appears to show signs of concealment, perhaps aggression, it needs to be understood within a cultural context, whatever that cultural context is, rather than ... 'I think maybe that's a sign that that person may either be self-harming or violent'. ... If it's understood within the cultural context it should be an informed decision ... what we would aim to see happen is that people are making informed decisions and you can only make an informed decision if it's not based on either a culturally insensitive or culturally wrong assumption and so if you're given training at least all you can do is say 'right, I'm going to make an assumption based on a culturally correct view' and that's all we would ask. ... our concern is without that training that the decision is based on some prejudice that just doesn't match up with the real notion of perceived violence or self-harm.

The CJC heard at the community consultation meeting in Cairns and in the public hearings in Brisbane of the particular difficulty some Aboriginal women have in complaining about inappropriate strip searches and in discussing such matters generally. At the public hearings (day 2), the Office of Women's Affairs stated:

It would certainly be my belief that for Aboriginal women, it would be particularly degrading and humiliating to be asked to strip and also for cultural reasons it may well be very difficult for them to pose a complaint ...

A similar concern was expressed at the Cairns consultation meeting by a solicitor working with Aboriginal women in Far North Queensland.

People with disabilities and the elderly

In its submission to the Issues Paper, and at the public hearings, the Anti-Discrimination Commission expressed concern about the

ability of QPS officers to recognise the limitations some people may have in understanding the nature and reasons for strip searching, or the difficulties others may have in being able to cooperate with a direction to remove clothing.

In its submission to the Issues Paper, the Anti-Discrimination Commission suggested:²²

If a person with an intellectual disability is to be strip searched, information about the reasons for the strip search should be conveyed in a manner enabling full comprehension. The greater the intellectual disability, the greater the need to consider the manner used and appropriate testing to ensure that comprehension is appropriate.

Guidelines need to consider the privacy and dignity of persons with a physical disability. The strip search should treat all persons with equal dignity. It may be that assistance required to remove clothing be provided by the person's carer in cases where the person cannot dress and toilet themselves.

Section 7(8)(b) of the Code (s. 389 of the Act 2000) requires that if a person has a 'medical or psychiatric condition or an intellectual disability' such that he or she 'may not be able to understand the purpose of the search', the search must be conducted in the presence of 'an appropriate support person'. If QPS officers are not trained to identify whether a person has such a disability, the protection afforded by section 7(8)(b) of the Code will not be provided.²³

CONCLUSIONS DRAWN BY CJC

If the watchhouse manager believes that any detainee poses a particular risk and that a strip search may reveal an item that could be used to realise that risk, the search should be conducted, irrespective of the age, sex, disability or cultural background of the detainee. The safety of the person and of other people in the watchhouse must be the watchhouse manager's primary responsibility.

Nevertheless, QPS officers should, as far as practicable, take apparent sensitivities into account in their approach to a particular

detainee and should be encouraged to respect the difficulties certain people may have with being strip searched that other people may not have. For example, any special needs and concerns of a pregnant detainee in relation to a proposed strip search should be taken into account by the QPS officer conducting the search so as not to compromise the woman's physical and psychological health and that of her unborn child, and every alternative to strip searching should be explored. If the watchhouse manager is aware that a detainee is from an abusive background, consideration should be given to accommodating any particular fears the detainee may have; for example, the search could be conducted in the presence of two officers of the same sex as the detainee.

The possibility of QPS liability for damages resulting from toxic shock syndrome acquired by a female detainee while she is in a watchhouse is so remote that it should not be a justification for refusing to supply tampons as opposed to pads to female detainees. Because of the risk that items may be concealed in sanitary products brought into the watchhouse by detainees or by their families or friends, the CJC would urge the QPS to adopt a policy prohibiting the use of privately provided sanitary products in watchhouses. If there is a concern that an item has been hidden vaginally, the watchhouse manager should seek authority from a magistrate for a medical practitioner to conduct a cavity search.²⁴

It may be apparent to the watchhouse manager that other detainees may require assistance or may need to be dealt with in a sensitive manner. Every practicable effort should be made to ensure that the detainee is dealt with sensitively. For example, elderly detainees should not be required to undertake physical manoeuvres that may be difficult for them.²⁵ Physically disabled people may require the searching officer to assist them in removing clothing.

Obviously, the issue of the QPS addressing the needs of people with disabilities is not limited to strip searching. It is a matter the QPS will need to deal with in the context of people's understanding of each stage of their arrest and detention. It would be extremely difficult to educate non-medically trained people to recognise all medical, intellectual, psychiatric or physical disabilities that may affect a person's ability to understand what is being proposed or to cooperate in the search. It is a matter that can only be dealt with by continual training and access to assistance from specialist facilities.²⁶

It is important that all QPS officers receive training on identifying common and relevant sensitivities or needs, exercising their discretion to strip search such detainees, and on ways to conduct an effective strip search.

The CJC recommends:

- 11.3** QPS officers should receive ongoing training on when and how to conduct strip searches. The training should include ways of being sensitive to issues affecting certain categories of detainees such as children, pregnant women, older detainees, detainees with disabilities and detainees from relevant cultural or religious backgrounds.
- 11.4** The QPS should not use its potential liability for damages resulting from toxic shock syndrome as a justification for refusing to supply tampons to detainees in watchhouses.
- 11.5** The Manual should prohibit detainees using privately provided sanitary products in watchhouses because of the risk that items may be concealed in sanitary products brought into the watchhouse by detainees or by their families or friends.
- 11.6** The Manual should provide that detainees are not to be requested to remove tampons during a strip search.
-

General preventive measures

Keeping people out of watchhouses

Because most strip searches conducted by QPS officers occur in watchhouses, avoiding situations where people are required to be detained in watchhouses will most likely reduce the number of people strip searched as well as reduce the number of allegations that people were subjected to inappropriate strip searches.

Several initiatives have been instigated in Queensland in an attempt to reduce the number of people having to be admitted to or detained for a lengthy period at watchhouses, which may, in turn, reduce the need for strip searches. These initiatives are discussed in appendix D and include:

- Notices to Appear
- Initiatives directed at fine defaulters including:
 - EFTPOS facilities
 - Fine Option Orders
 - *State Penalties Enforcement Act 1999* (Qld)
 - QPS officer's discretion not to execute a warrant
- Bail Hostels for women with children
- Diversionary schemes for alcohol affected people.

Training and education

Concerns have been raised with the CJC about the adequacy of training within the QPS on certain matters that may have a bearing on whether a strip search is conducted on a particular detainee and on the way strip searches are conducted.²⁷ For example, there appears to be a fairly widespread confusion with and, in some cases, ignorance of, the requirements of the legislation and the Manual relating to the recording of information relevant to strip searches. This may, in part, be due to the lack of cohesion

between provisions in the PPRA, the Code and the Manual, but it may also be due to a deficiency in the training provided to QPS officers on the legislative and QPS requirements.

The attitude a QPS officer displays towards the person who is to be strip searched may lead the person to believe that the search is to be conducted for retribution or other purposes, unrelated to any risk that the detainee may pose. At the public hearings (day 2), the GMO noted:

The approach by the officer has got to be appropriate to start with. They've got to explain: we are going to search you, the reasons for searching a prisoner are as follows ... I know some officers go over the top. I've seen it; I've heard it, not female officers necessarily but officers generally. Sometimes they get a bit bombastic; sometimes they're not appropriate in some of their comments. So I think part of that education of officers of their approach in a watchhouse environment which is not an easy environment for anybody, and one of the major problems we see are people who are stressed. Somebody who is in custody for whatever reason has a high anxiety level, and this is just one more thing to cop. So, very often the police officers are met with a barrage of bad language and a barrage of anxiety and, 'I'm going to kill myself if you do this,' and this is something that we accept is part of the anxiety of being arrested. The vast majority of police officers I've worked with, and I've worked with police now for 12 years, are courteous and appropriate; some aren't; some need a little bit of training with people skills, but the vast majority in my opinion are now well trained, totally appropriate and they do their job with integrity and ability.

One response to the attitude problem some officers may have was proposed by the Office of Women's Policy, which suggested that QPS officers should undertake experiential training in strip searching to increase their understanding of the 'invasive nature of strip searching'. This suggestion did not find favour with the Queensland Police Union of Employees, which responded (day 2):

To have our members suffer the indignity just because they're going to learn something out of it, someone thinks, I don't think that's called for at all.

The Office of Women's Policy also suggested (day 2) that:

The training of the police officers to understand the way in which they both verbally and non-verbally interact with the person in the strip searching is extremely important.

Some of witnesses at the public hearings, respondents to the Issues Paper and watchhouse staff supported the idea of a public education program on the need for QPS officers to conduct strip searches in certain circumstances.²⁸ From the CJC's review of complaints data, it is apparent that some detainees are not well informed about police powers relating to strip searches or about the need to conduct strip searches in appropriate circumstances.

One of the reasons some detainees may be offended by being searched at a watchhouse is that they do not understand that watchhouse staff have a right to conduct strip searches. At the public hearings (day 2), the Office of Women's Policy suggested:

[the requirement to explain the reasons for conducting a search] should be supported by appropriate signage at police stations and community education to inform the public of why strip searches are required when being detained in police custody. ... one of the reasons that this experience can be so traumatic and shocking for people particularly in cases where they've been apprehended for lack of payment of fines is the unexpected nature of it and the disproportionality between what they've been detained for and the strip searching.

CONCLUSIONS DRAWN BY CJC

The CJC supports the development of initiatives to reduce the number of people having to be admitted to or detained for any time in watchhouses.

It is very important that all QPS officers are trained in identifying risk factors and in being aware of the use to which particular items can be put to realise those risks. Officers should know how best to interact with people they intend to strip search. All watchhouse managers should, where practicable, have additional training in exercising their discretion to authorise a strip search in the watchhouse environment, in a fair and reasonable manner.

The CJC supports the development of a public education program on the police power to conduct strip searches and the reasons they are conducted.²⁹

The CJC recommends:

11.7 The QPS should consider developing an ongoing public education program on police powers, including the police power to conduct strip searches.

Endnotes

- 1 Seven days in all watchhouses except Mount Isa where the maximum period is 14 days. By Ministerial correspondence dated 4 August 1999, the Minister for Police, The Honourable Tom Barton, gave approval 'to continue the retention of Corrective Services prisoners at the Mount Isa Watchhouse for up to 14 days as an exception to the general retention policy of up to 7 days.'
- 2 At p. 38.
- 3 See CJC 2000, *Prisoner Numbers in Queensland*.
- 4 Fourteen days at Mount Isa Watchhouse.
- 5 Fifteen out of 47 items found: see appendix B.
- 6 A factor that may have influenced the adoption of this policy at Mount Isa is that, unlike other watchhouses where the maximum period for which a person can be detained is seven days, the maximum period a person can be detained in the Mount Isa Watchhouse is 14 days. See note 1 above.
- 7 The Mount Isa Watchhouse is due to be replaced. When that happens, it is unlikely that smoking will be allowed in the new building, particularly if it is made of closed walls and is air conditioned.
- 8 At p. 86.
- 9 Public hearings, day 1. Similar comments were expressed by the Bar Association of Queensland on day 1 of the public hearings.
- 10 Submission 30.
- 11 Although youth detention centres are not the focus of this report, this young person's perceptions are likely to be as relevant to juveniles in watchhouses as they are to juveniles in detention centres, given that the former are often on their way to or from youth detention centres. For a detailed examination of personal searches conducted in youth detention facilities see Forde L. 1999, *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*.
- 12 Submission 12.
- 13 Public hearings, day 1. Similar concerns were expressed by the Department of Corrective Services during the second day of the public hearings.
- 14 In submission 29 to the Issues Paper, Sisters Inside, an advocacy service for female prisoners, noted that:

Eighty-five per cent of women prisoners have been sexually abused. (This figure is consistent with the rest of Australia. See for example Stella Simmering and Ruby Diamond 'Strip Searching and Urine Testing: Women in Prison' *Polemic* vol. 7 no. 1 1996 36–39.) A survey conducted in 1989 by Women's House in Brisbane found that 70–80% of women in prison were survivors of incest.

A 1992 Australia-wide survey (Patricia Eastal, *Survivors of Sexual Assault; A National Survey* in Eastal, P (ed.) *Without Consent: Confronting Adult Sexual Violence*, 74–91.)
- 15 A GMO has informed the CJC that confirmed cases of toxic shock syndrome in Queensland are exceedingly rare — in the order of five cases a year. A particular problem with the diagnosis for toxic shock syndrome is that there is invariably an alternative diagnosis.
- 16 The SOPs of the Townsville Watchhouse. The SOPs of the Brisbane City Watchhouse are in similar terms.
- 17 Australian Customs Service, Canberra, *Customs Act 1901, Part XII, Division 1B Detention and Search of Suspects Operating Directions and Explanatory Notes* December 1999 at para. 3.18.
- 18 Under s. 48 of the Corrective Services Act, the general manager of a prison can authorise a cavity search. Only a magistrate can authorise such a search of detainees under the PPR.
- 19 There are broader issues still to be resolved concerning Aboriginal and Torres Strait Islander peoples' over-representation in the criminal justice system which are outside the scope of this report.
- 20 Submission 7.
- 21 Submission 26.
- 22 Submission 7.
- 23 For a discussion of s. 7(8) of the Code, see chapter 8.
- 24 See chapter 3 for a discussion on procedures for authorising and conducting cavity searches.
- 25 Referred to by the Queensland Law Society on day 1 of the public hearings.
- 26 See p. 98.
- 27 For example, the Queensland Council for Civil Liberties: public hearings, day 1.
- 28 See, for example, Legal Aid Queensland during day 1 of the public hearings.
- 29 For a discussion on the display of relevant information at watchhouses, see chapter 6 and recommendation 6.8.

Appendix A:

Respondents, attendees and witnesses

Respondents to Issues Paper:

Aboriginal and Torres Strait Islander Advisory Board
Anonymous 1
Anonymous 2
Anonymous 3
Anonymous 4
Anti-Discrimination Commission, Queensland
Aspinall, G. (QPS)
Baker, R.
Banks, P.
Bar Association of Queensland
Brady, Pastor M.
Cavanagh, S. (QPS)
Central Queensland Community Legal Centre
Children's Committee, Queensland Law Society
Citizens' Advice Bureau and Highway Legal Service
Claire, A.
Condon, M. (QPS)
Corner, C.
Corrective Services Department
Culliford, Dr E.
Gillespie, M.
Hasenkam, G. (QPS)
Hill, M.
Hill, M. (QPS)
Holcombe, V.H. (QPS)
Hunt, D.J. (QPS)
Leaf, M. (QPS)
Lee Turnbull & Co., Solicitors
Legal Aid Queensland
National Children's and Youth Law Centre
Office of Women's Policy, Department of Equity and Fair Trading
Ormiston, O.
Prisoners' Legal Service Inc.

Queensland Aboriginal and Torres Strait Islanders Legal Services Secretariat Limited
Queensland Police Service
Queensland Police Union of Employees
Sisters Inside Inc.
Smith, R.
Stevenson, S.
Williams, P. (QPS)
Wyborn, R.
Youth Advocacy Centre Inc.
Youth Advocate, Legal Aid Queensland
Youth & Family Service (Logan City) Inc.

Attendees at Cairns consultation meeting (7 February 2000):

Andrews, J. (Cairns Community Legal Service)
Cuthbert, K. (Cairns Community Legal Service)
Deemal, F. (Njiku Jowan Legal Service)
Hunter, W. (Tharpuntoo Legal Service)
Leftwich, L. (Njiku Jowan Legal Service)
McCallum, C. (QPS)
Patrick, M. (Legal Aid Queensland)
Price, T. (Legal Aid Queensland)
Straatemeir, R. (QPS)
Ybarlucea, C. (North Queensland Women's Legal Service)

Attendees at Townsville consultation meeting (8 February 2000):

Abrahams, S. (Gurindal Cell Visitors Program)
Bevan, P. (Bevan & Griffin)
Gleeson, J. (Lee Turnbull & Co)
Harland, D. (QPS)

Hocken, P. (QPS)
Hopkins, J. (Gurindal Cell Visitors Program)
Kennedy, A. (Legal Aid Queensland)
Mitchell, B. (Townsville Community Legal Service)
Roche, T. (QPS)
Smallwood, D. (Aboriginal and Torres Strait Islander Legal Service)

Witnesses at public hearings: Brisbane 10–11 February 2000

Becker, K. (QPS)
Belfrage, S. (Office of Women's Affairs, Department of Equity and Fair Trading)
Booth, S. (Anti-Discrimination Commission, Queensland)
Culliford, Dr E. (Government Medical Office)
Doonan, P. (QPS)
Fletcher, K. (Prisoners' Legal Service)
Glynn, T. (Bar Association of Queensland)
Holm, K. (Office of Women's Affairs, Department of Equity and Fair Trading)
Hunter, A. (Queensland Corrective Services Department)
Kilroy, D. (Sisters Inside)
Knight, R. (QPS)
O'Gorman, T. (Queensland Council for Civil Liberties)
Posner, H. (Legal Aid Queensland)
Reidy, S. (Queensland Law Society)
Strofield, C. (QPS)
Sycz, D. (Queensland Police Union of Employees)
Taylor, T. (Operations, Corrective Services Department)
Wight, J. (Youth Advocacy Centre Inc.)

Appendix B:

Data analysis

This appendix presents the results of an analysis of strip-searching practices in Queensland, using three main data sources: a survey of Queensland watchhouses, an analysis of CJC complaints data, and relevant data from the 1999 Defendants Survey. Copies of these surveys and associated coding sheets are available on request from the CJC.

The appendix is presented in three sections — data sources, who was searched, and the search.

Data sources

Watchhouse Survey

With the cooperation of the QPS, 10 watchhouses throughout the State agreed to complete data-recording sheets for each person strip searched across all shifts during the period 4–10 October 1999 (see table 1). Details on 311 strip searches were collected. The largest number of surveys were completed in Beenleigh, Cairns and Southport, followed closely by Brisbane and Rockhampton.

Compared with the total number of prisoners processed, some locations (notably Brisbane) were under-

represented in the survey and others (such as Beenleigh) were over-represented. This could indicate either different strip-searching practices or varying rates of completion of the survey.

According to the survey, most people (96%, n=268) were strip searched only once while detained in the watchhouse. Nine (3%) were searched twice and two (0.8%) three times or more. (There are 32 missing cases for this variable, and these have been excluded from analysis.)

Complaints data analysis

To collect information about the circumstances in which these complaints arose, 63 CJC complaints files containing allegations relating to strip searches by police were reviewed. The files related to searches conducted from December 1994 to December 1998. Approximately 35 per cent of the alleged searches were conducted after the PPRA was proclaimed in 1998.

Table 2 provides a breakdown of the number of complaints relating to searches conducted at watchhouses¹ received by the CJC. Brisbane Watchhouse was the subject of 25 per cent of the complaints received, with Cairns recording the second highest at 13 per cent. Brisbane is the largest watchhouse in the State and Cairns also has a high throughput, which may partly explain the large number of complaints relating to these locations.

Of the 63 complaints analysed, 30 (48%) were referred to the QPS, 20 (32%) were not

Table 1 — Watchhouse survey rate of return

Watchhouse	No. of surveys returned	Per cent
Beenleigh	64	20.6
Cairns	59	19.0
Southport	57	18.3
Brisbane	43	13.8
Rockhampton	41	13.2
Mount Isa	26	8.4
Bundaberg	10	3.2
Toowoomba	5	1.6
Warwick	4	1.3
Townsville	2	0.6
Total	311	100.0

Source: CJC Watchhouse Survey, 1999.

investigated, 10 (16%) were not substantiated by the CJC, two (3%) were withdrawn and the outcome of one was not recorded on the file.

1999 Defendants Survey

The Defendants Survey was conducted by the CJC in 1996 and 1999, with the aim of collecting information about police arrest, questioning and searching practices from the perspective of people who had been subject to the exercise of these powers. The strip-search data presented in this report are from the 1999 survey, which included several questions related specifically to 'searches of the person'.

The 1999 Defendants Survey data were collected at eight Magistrates Courts in Queensland using a structured face-to-face interview.² Respondents were all defendants appearing before the Magistrates Court, excluding those remanded in custody or those appearing for less serious driving charges. A total of 1005 individuals were surveyed, of whom 131 (13%) reported being strip searched while being detained in custody.³ The data presented in this report are summaries of these 131 persons only, not the entire sample of 1005.

Who was searched?

Sex of the person strip searched

According to the Watchhouse Survey, 83 per cent of those strip searched were male and 17 per cent female (see figure 1). The Defendants Survey showed a similar breakdown for those who were strip searched. Both of these results are highly comparable to more general QPS adult offence data.

By contrast, in the 63 complaints files examined, 57 per cent related to searches of

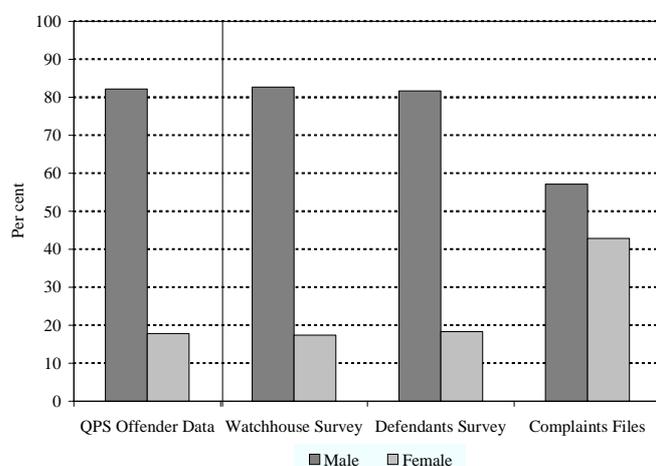
Table 2 — Watchhouse/police station where strip search conducted (Complaints to CJC December 1994–December 1998)

Watchhouse	No. of searches	Per cent
Brisbane	15	24.6
Cairns	8	13.1
Maroochydore	4	6.6
Toowoomba	4	6.6
Fortitude Valley	3	4.9
Holland Park	3	4.9
Southport	3	4.9
Atherton	2	3.3
Beenleigh	2	3.3
Innisfail	2	3.3
Ipswich	2	3.3
Mount Isa	2	3.3
Smithfield	2	3.3
Cannonvale	1	1.6
Cunnamulla	1	1.6
Hervey Bay	1	1.6
Mareeba	1	1.6
Mt Gravatt	1	1.6
Rockhampton	1	1.6
Sandgate	1	1.6
Townsville	1	1.6
Warwick	1	1.6
TOTAL	61	100.0

Note: There were two cases where the watchhouse/police station could not be identified from the complaints files.

Source: CJC complaints files.

Figure 1 — Comparison of sex of QPS offenders to sex of those strip searched



Source: QPS Statistical Review, 1998–9, pp. 70–1; CJC Watchhouse Survey, 1999; CJC Defendants Survey, 1999; and CJC complaints files.

males and 43 per cent to females. The over-representation of females in the CJC complaints files may indicate that:

- women are less likely to be familiar with watchhouse procedure than males, particularly when such matters have resulted from their involvement in a minor offence such as public disorder, unpaid fines and obstructing police
- women may feel more humiliated and embarrassed than men by a request from a police officer to remove their clothing.

Age of the person strip searched

The Watchhouse Survey recorded that 50 per cent of those searched were between the ages of 20 and 29 years. The next most common age group was 30–39 years (24%), followed by under 20 years of age (16%).

The Defendants Survey sub-sample had a similar age breakdown, as did the general population of offenders apprehended by the QPS (see figure 2). On the other hand, young people were over-represented in the CJC complaints files. This may indicate that young people, like women, may feel more humiliated and embarrassed by a strip search, and feel especially aggrieved by the procedure when they are charged or questioned in relation to a minor offence.

Searches of children

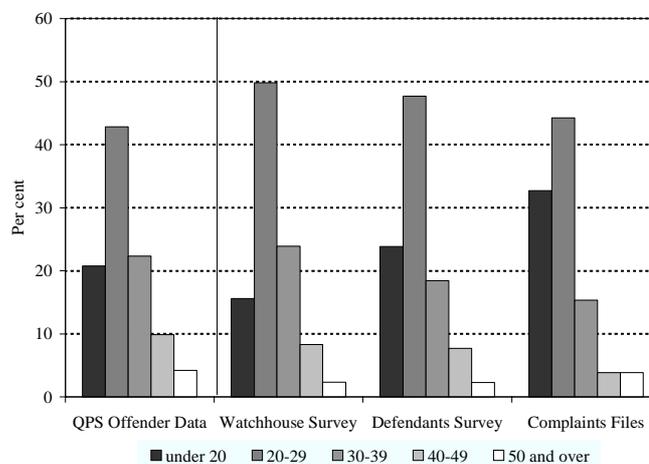
The Code requires that a strip search of a child (a person aged under 17 years) be conducted in the presence of an ‘interview friend’.⁴ There are, however, two exceptions to this provision. The interview friend does not have to be present for the search if:

- the delay is likely to result in evidence being concealed or destroyed; or
- an immediate search is necessary for the safety of a person (s. 7[9]).

Six children were recorded as being strip searched at the surveyed watchhouses in the week that data were collected. None of these children had an interview friend present at the time of the search. One child, aged 14, was drug-affected and noticeably agitated, which may have been why the strip search was conducted in the absence of an interview friend (though this is not obvious). Three 15-year-olds were strip searched: one was being escorted from a youth detention centre; another was known as having a history of writing graffiti in cells when being held, and was strip searched for a ‘Nikko’ pen; the third 15-year-old removed his clothes of his own accord. One 16-year-old child was recorded as a Corrective Services prisoner,⁵ so the search may have been routine at that watchhouse. A second 16-year-old was described as noticeably agitated.

Eight of the CJC complaints files (13%) related to the searching of children. Two of these children were Aboriginal or Torres Strait Islanders and two were females. Two of the children

Figure 2 — Comparison of age of QPS offenders to age of those strip searched



Source: QPS Statistical Review, 1998–99, pp. 70–1; CJC Watchhouse Survey, 1999; CJC Defendants Survey, 1999; and CJC complaints files.

Note: Information for 10 of the watchhouse searches was unavailable.

were arrested and charged, two were detained on suspected trafficking of drugs, three were detained on suspected possession of drugs and in the final case the reason for detention was not recorded on the file. In four cases it was recorded that all clothing, including underwear, was removed; in the other four, the type of search was not recorded on the file. There was no record of an interview friend or relative being present during any of these searches.

In the Defendants Survey data, there were six children (5%) who reported that they were searched while in custody. Of these, two had an interview friend or relative present, and two did not. None of the children had a solicitor present. Four of the children were male and two were female. Five of the strip searches involved the removal of all clothing including underwear and the other one involved the removal of clothing only (not underwear). All children were searched by an officer of the same sex.

Indigenous status

In the Watchhouse Survey data, over a quarter (27%) of those strip searched identified as being of Aboriginal or Torres Strait Islander descent, which reflects the overall Queensland prison population where Indigenous people account for approximately 23 per cent of prisoners.⁶ Only 13 per cent of the complaints related to Aboriginal or Torres Strait Islander peoples. However, data on the complainant's race were missing in 52 per cent of complaints files.

Of those respondents to the Defendants Survey who said they had been strip searched, only 10 (8%) were Indigenous. However, Indigenous people were generally under-represented.

Most serious offence

Data on the most serious offence for which persons were charged were available from the complaints files and from the Defendants Survey. A substantial proportion of these complaints related to relatively minor offences: alcohol-related offences; obstructing police; and nonpayment of fines (see table 3). This may be because persons charged with such offences are more likely to perceive the search as unwarranted.

Status of person searched

According to the Watchhouse Survey, a substantial proportion of those strip searched were Corrective Services prisoners or juveniles from youth detention centres. By contrast, none of the complaints received came from people in this category. See table 4, next page.

Table 3 — Most serious offence with which person charged: complaints to the CJC about strip searching

	No. of complaints	Per cent
Assault	12	19.4
Drugs	12	19.4
Public drunkenness/ drink-driving/ dangerous driving	12	19.4
Unpaid fines	9	14.5
Obstructing police	7	11.3
Theft/fraud/robbery	1	1.6
Other	9	14.5
Total	62	100.0

Source: CJC complaints files, 1999.

Table 4 — Status of the person at the time of strip search

	Watchhouse Survey		Complaints Files	
	No. of people	Per cent	No. of people	Per cent
Arrested and charged	169	54.3	45	71.4
Corrective Services prisoner/juveniles from youth detention centres	126	40.5	0	–
Arrested for questioning	8	2.6	2	3.2
Volunteer for questioning	2	0.6	0	–
Other detainee	6	1.9	16	25.4
Total	311	100.0	63	100.0

Source: CJC Watchhouse Survey, 1999; CJC complaints files, 1999.

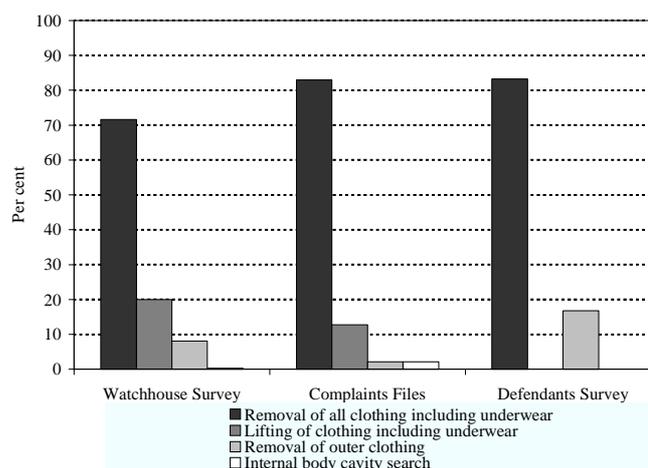
The search

From the various data sources it was possible to establish some details in relation to:

- the type of search
- the persons conducting the search
- reasons for the search
- the place where the search took place
- use of surveillance cameras
- risk factors identified to justify the search
- time taken to conduct the search
- articles seized as a result of the search.

Type of strip search

According to the Watchhouse Survey, 71 per cent of people strip searched were required to remove all clothing including underwear; 20 per cent were required to lift their clothing including underwear; and 8 per cent were required to remove only their outer clothing. An internal body-cavity search was performed on only one person (0.3%). The complaints files and Defendants Survey data show a similar pattern (see figure 3).

Figure 3 — Comparison of type of search

Source: CJC Watchhouse Survey, 1999; CJC complaints files; CJC Defendants Survey, 1999.

Only one complaints file related to an alleged cavity search, the facts of which are in dispute. In five (8%) of the complaints files it was alleged that the searcher made contact with the genital area of the person being searched, but in two of these the facts were in dispute.

Persons conducting the search

The Watchhouse Survey indicated that around 70 per cent of strip searches were conducted by watchhouse staff, with arresting officers conducting only around one-fifth (22%) of them (see table 5). Another 5 per cent were conducted by both watchhouse staff and the arresting officer.

Information on who conducted the search was unavailable for a large percentage of complaints files and was not collected for the Defendants Survey.

Table 5 — Person conducting strip search

Searcher	No. of searches	Per cent
Watchhouse staff	217	69.8
Arresting officer	67	21.5
Watchhouse and arresting officer	16	5.1
Corrective Services escort officer	6	1.9
Medical practitioner	2	0.6
Stripped without request*	3	1.0
TOTAL	311	100.0

Source: CJC Watchhouse Survey, 1999.

Note: * These are the watchhouse prisoners who stripped of their own accord without a request to do so from a member of staff.

Number of persons conducting search

In the Watchhouse Survey, 75 per cent of strip searches were conducted with one person present, 20 per cent had two people present and 5 per cent had more than two. In five cases, there were civilians present. These five people were recorded as being of the same sex as the person being searched. In three cases this was a medical practitioner, in the other two, Corrective Services officers were present.

In 32 of the complaints files, the number of persons present during the search was not recorded. In 12 cases one other person was present. In a further 12 cases, two other people had been present, and in seven cases, more than two other people were alleged to have been present. One of these seven people (a female) had two other female prisoners present and another female had a male police liaison officer present. None of the persons to which the complaints related had a friend, relative or medical practitioner present at the time of the search.

Sex of persons conducting search

It is a requirement of the PPRA that unless an immediate search is necessary the search must be conducted by a police officer of the same sex as the person to be searched, someone else who is of the same sex as the person to be searched acting at the direction of a police officer, or a doctor acting at the direction of a police officer.⁷

Initial analyses of the Watchhouse Survey data indicate that there were 18 cases where the sex of the person being searched was different to that of the searcher/s. However, further analysis of the data showed that there were recording inconsistencies in 14 of these cases. This means that it is probable that the question was misinterpreted.

Of the four cases where there appeared to be searches conducted by people of the opposite sex, two were cases where the person voluntarily stripped despite protestations of the police officers present. In the other two cases, there were four officers present at the search of a male. In both of these cases there was one female police officer present.

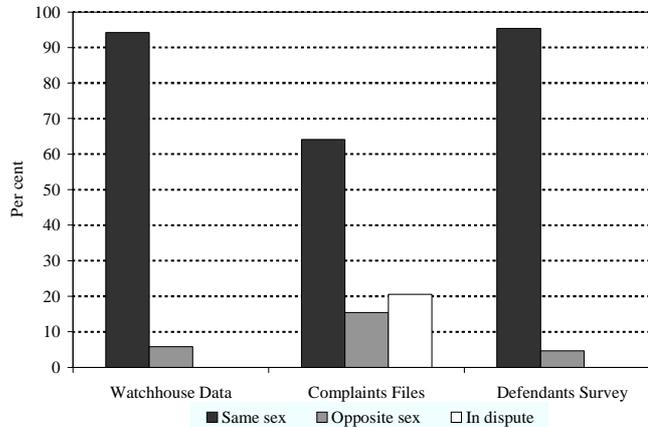
In three cases it was reported that it was difficult to obtain a same-sex officer to conduct the strip search, but the search was conducted by a same-sex officer nonetheless.

Information on the sex of the person conducting the search was available for 39 of the complaints files examined. Of these:

- 25 files indicated that complainants were searched by a police officer/watchhouse staff who was of the same sex as themselves
- six files recorded the person as not being of the same sex⁸
- in eight cases the issue of whether the searcher was of the same sex was in dispute.

The recent findings from the 1999 Defendants Survey (see figure 4) show that there was substantial compliance with the requirement that the search be conducted by a person of the same sex.

Figure 4 — Proportion of searches conducted by person of same sex



Source: CJC Watchhouse Survey, 1999; CJC complaints files; Defendants Survey, 1999.

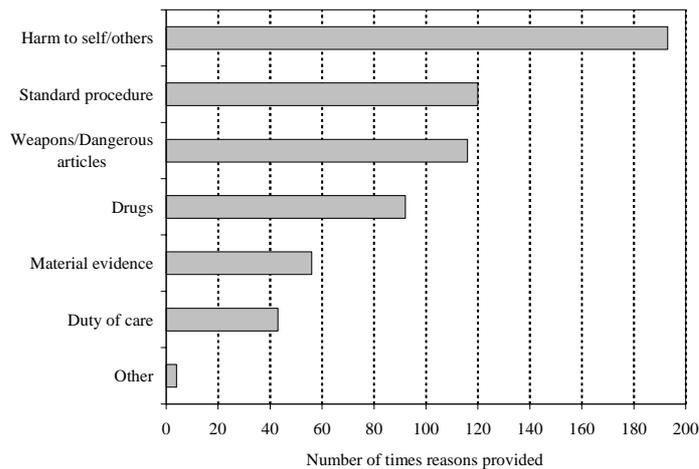
Reasons for strip search

Section 112(4) of the PPR (s. 394 of the Act 2000) requires QPS officers to state the purpose of the search and section 99(a) of the Code (s. 54 of the Code 2000) requires the purpose to be recorded, presumably in the Custody/Search Index.

Officers completing the Watchhouse Survey were asked to record the reason for the search. According to the survey, reasons were provided to 94 per cent of those searched. Figure 5 shows that the most common reasons were that the detainees may have had something intended to be used to cause harm to themselves or others (n=193), ‘standard procedure’ (n=120), looking for weapons/dangerous articles (n=116), and looking for drugs (n=92).

Twenty people, mostly Corrective Services prisoners, were not given reasons for a strip search. Three people in Cairns were arrested and charged with no explanation being recorded that might justify the failure to provide reasons for the search. In Townsville there were two cases where people removed their clothes of their own accord. The remaining two cases were from Rockhampton: both of these persons were too intoxicated to understand the explanation for the search or to perform a strip search, so the search was a ‘lifting of clothing’ type of search.

Figure 5 — Reasons provided for conducting strip search



Source: CJC Watchhouse Survey, 1999.

Note: Multiple responses were allowed.

There were 25 complaints files (40%) where the reason for the search was recorded. The most frequently cited reason was ‘looking for drugs’ (n=11),⁹ followed by ‘routine procedure’ (n=8), ‘looking for weapons or dangerous articles’ (n=8), and ‘looking for material evidence’ (n=6).

In the Defendants Survey sub-sample, 34 persons (26%) said that they were told the reason for the search. Of these, 17 were searches for illegal substances, four for weapons, one was a search for stolen property and four were a combination of other factors. In eight cases the person did not remember or the information was not recorded by the interviewer.

Both the complaints files and Defendants Survey data suggest that a much smaller proportion of persons were given reasons for the search than what was reported by watchhouse staff on the Watchhouse Survey. Possible explanations for this discrepancy are as follows:

- in some instances survey forms were not completed until the end of a shift and the officers' recall may have been inaccurate
- the fact that reasons were not given to a person may prompt the person to complain
- persons strip searched may not have remembered or understood that what they were being told were reasons for the search.

Searching in preparation for holding in a cell

In 98 per cent of searches recorded in the Watchhouse Survey, the person was being strip searched in preparation for being held in a cell.

Of the remaining six people, one was searched on advice from the drug squad that he was concealing speed on his person and in his wheelchair. One detainee was noticeably drug-affected and wanted to use the toilet, so he was searched before being allowed to use the toilet. The other detainee was reported to have been attempting suicide by slitting his arms, and razor blades were seized during this process. Another person, a Corrective Services prisoner, threatened to slit his throat, and again razor blades were seized as a result of the search. A second prisoner was lighting fires in his cell and a cigarette lighter was seized. A third prisoner was a known drug user and drugs were seized as a result of the search.

Place where strip search conducted

Section 111 of the PPRA (s. 388 of the Act 2000) provides that in certain circumstances a strip search must be conducted with reasonable privacy.

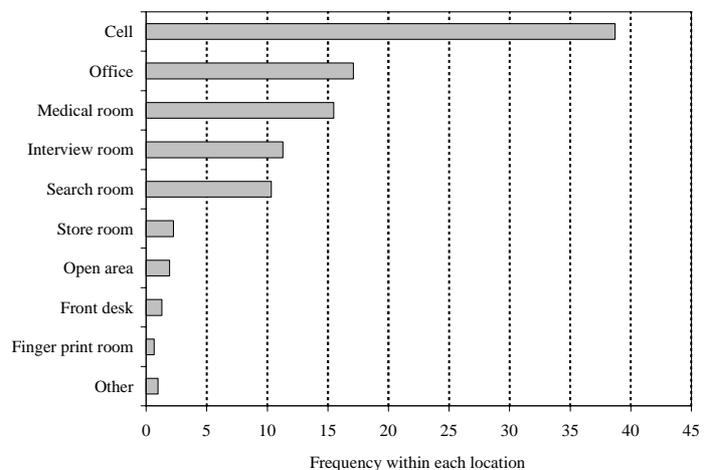
The Watchhouse Survey indicated that in 97 per cent of cases, the strip search was probably conducted in private and out of view of others. A

watchhouse cell was the most frequently used place (39%), followed by an office (17%), a medical room (16%), an interview room (16%), an interview room (16%), a search room (11%), and a search room (10%). See figure 6.

Public areas of the watchhouse, such as the front desk (n=4) and open areas (n=6) were used in 3 per cent of cases. In three of the four cases where a search was conducted at the

front desk, police noted that the persons in question (all male) had voluntarily removed their clothes against the instruction of searching officers. In the fourth case, the person was

Figure 6 — Place of strip search



Source: CJC Watchhouse Survey, 1999.

extremely drunk, uncooperative and police had lifted his clothes, rather than removed them. Of the six searches that were conducted in an open area, three were conducted in a private alcove out of the view of any passing persons. The other three searches were conducted on Corrective Services prisoners.

Use of surveillance camera

In 38 per cent of cases in the Watchhouse Survey, a surveillance camera was recorded as being present in the area where the strip search was conducted. In 72 of those searches the camera was turned on, but in only 23 cases was the person moved out of range of the camera. Of these 23 cases, 22 were in a cell and the other one was in an open area.

In 46 cases the person to be strip searched was not moved out of range of a camera: 42 of these searches were conducted in a cell and the other four were at the front desk.

In 14 of the complaints files it was recorded that there was a camera in the area. In four files the camera was recorded as being either turned off or out of sight, six indicated the camera was on and there were a further four where the allegation was in dispute.

Risk factors

Risk factors regarded as justifying the strip search were recorded in 210 cases in the Watchhouse Survey (71%). See table 6. The most commonly cited risk factor is 'Corrective Services prisoner', although this was not a listed option.

One respondent from Mount Isa reported that any person coming into the secured area of a watchhouse is a risk factor. In another instance, staff of Warwick Watchhouse had been alerted to a risk, as they had received intelligence information from New South Wales regarding a detainee's history of carrying firearms.

There were only 13 complaints files in which risk factors were identified (and one of these cases is in dispute). The factors that were recorded on the file were: person was noticeably agitated (n=5); person had a history of self-harm (n=5); person was noticeably alcohol-affected (n=5); person had a psychiatric history (n=4); person was noticeably drug-affected (n=1); person expressed family/relationship problems (n=1); and person was an Aboriginal or Torres Strait Islander (n=1).¹⁰

Table 6 — Risk factors recorded by watchhouse officers

Risk factors	Frequency	Per cent
Corrective Services prisoner	47	17.3
Noticeably alcohol-affected	39	14.3
Duty of care	36	13.2
Noticeably agitated	32	11.8
History of self-harm	22	8.1
Noticeably drug-affected	19	7.0
Evidence of drug use	15	5.5
Aboriginal or Torres Strait Islander	10	3.7
Psychiatric history	9	3.3
Family/relationship problems	9	3.3
Violent offender	9	3.3
Share cell	9	3.3
First-time offender	5	1.8
Property found on prisoner	4	1.5
Evidence of self-harm	4	1.5
Known to conceal items	3	1.1
Total	272	100.0

Source: CJC Watchhouse Survey, 1999.

Time taken to conduct search

According to the Watchhouse Survey, the longest time taken to conduct a strip search was 10 minutes (n=1) with 98 per cent (n=304) of searches being carried out in five minutes or less

(see table 7). The one search that took 10 minutes was an internal cavity search conducted by a medical practitioner.

Time taken to conduct the search was not recorded on the complaints files nor by the Defendants Survey.

Articles seized

The Watchhouse Survey data indicated that articles were seized during 43 strip searches (14%). They included drugs, weapons, and other potentially dangerous articles. The most common articles seized were cigarettes and lighters (see table 8).

In the Defendants Survey, 19 (15%) respondents reported that items were seized during a strip search. These items were drugs and drug utensils (n=11), money (n=2) and stolen property (n=1). The seized item was not recorded in five cases.

Table 7 — Time taken to conduct search

No. of minutes	No. of searches	Per cent
1	52	16.9
2	133	43.2
3	37	12.0
4	7	2.3
5	75	24.4
6	2	0.6
7	0	0.0
8	1	0.3
9	0	0.0
10	1	0.3
TOTAL	308	100.0

Note: There were three missing cases and these were excluded from analysis.

Source: CJC Watchhouse Survey, 1999.

Table 8 — Articles seized

Item	No. of articles seized
Cigarettes and lighter	15
Clothing	7
Money	7
Draw cord	5
Drugs	3
Dangerous articles	3
Razor blade	2
Jewellery	2
Weapons	1
Comb	1
Plastic	1
Total	47

Note: Multiple responses were allowed.

Source: CJC Watchhouse Survey, 1999.

Endnotes

- In this report, the term 'watchhouse' refers to all QPS detention facilities.
- At Brisbane, Southport, Beenleigh, Ipswich, Maroochydore, Cairns, Townsville and Rockhampton.
- 'Strip searched' for the purposes of the Defendants Survey includes those persons who reported the removal of clothing not including underwear, the removal of clothing including underwear and body cavity searches. Cases were selected on the basis of the 'first search' reported only.
- Section 7(8)(a) of the Code.
- Although it is more likely that this child was also from a youth detention centre.
- Australian Bureau of Statistics 1998, *Prisoners in Australia*, page 63.
- Section 111(4) of the Act.
- If an immediate search was necessary or if the search was conducted by a medical practitioner at the direction of a QPS officer, the sex of the person conducting the search would be irrelevant under the legislation.
- Until March 2000, police officers also had the power to search such persons under the Drugs Misuse Act.
- Some detainees exhibited multiple risk factors.

Appendix C:

Comparison of legislative provisions

Police Powers and Responsibilities Act 1997 (section number)	Police Powers and Responsibilities Act 2000 (section number)
5	5
6	7
26	27, 28
29	74
30	75
56	269
63(1)	288, 289(1)
90A	396
97	252
103	262
111	382, 383, 387, 388
112	394
119P	413
119R	415
126	376
127	377
131	455
Police Powers and Responsibilities Code 1998 (section number)	
2(5)	no operational guidelines
5	6(1)
6	382, 383
7	387, 388, 389, 390
87	279
	Police Responsibilities Code 2000 (section number)
86	29
99(a)	54

Keeping people out of watchhouses

This appendix briefly describes some initiatives that may have an effect on the number of people detained in watchhouses in Queensland.

Notices to appear

Until recently, most adult criminal proceedings were commenced by a QPS officer arresting a person and then transporting the person to a watchhouse where the person was searched and formally charged. Once charged, the person would then be released on bail or detained in the watchhouse until being brought before a court.

Since April 1998, when the PPRA came into force, QPS officers have been able to issue certain adult alleged offenders with a document that looks like an infringement notice instead of arresting and charging those people. The document, called a 'Notice to Appear' (NTA), contains brief details about the alleged offence and states when and where the recipient must appear in court. NTAs can be issued 'on the spot': the alleged offender does not need to be arrested or taken to a watchhouse.¹

In May 1999, the CJC published a research paper that examined the use of NTAs in their first six months of operation.² That paper revealed that about 50 per cent of all proceedings commenced by the QPS against adults were instituted by an NTA.³ The paper also revealed that, although the number of alleged offenders being processed through the Brisbane City Watchhouse in the first six months after NTAs were introduced decreased substantially, more than half of the NTAs issued throughout Queensland were issued after the alleged offender had already been taken into police custody (for example, after the alleged offender had already been arrested and taken to a watchhouse but before the person had been charged).⁴

Fine defaulters

A significant proportion of watchhouse detainees are detained on outstanding warrants relating to unpaid fines (fine defaulters). Many people who complain to the CJC about inappropriate strip searches are fine defaulters who were detained in watchhouses. As observed in chapter 5, there is a public perception that fine defaulters should not be subjected to strip searches. However, given the circumstances of the particular watchhouse at the time the fine defaulter is detained, and given the particular characteristics of the fine defaulter, the watchhouse manager may be justified in authorising a strip search for the safety of the fine defaulter, other people and property within the watchhouse. It is only if fine defaulters can be kept out of the watchhouse that they will not face the prospect of a strip search.

There are already options available for a fine defaulter to avoid being detained in a watchhouse and prison,⁵ the most obvious being to pay the outstanding amount before an arrest warrant is issued.

In its submission to the Issues Paper, the QPS highlighted the opportunities given to fine defaulters to avoid being detained by the QPS in the first place:⁶

Prior to a Warrant of Commitment being forwarded to the QPS, the issuing agencies provide persons with several opportunities to pay their outstanding fine. For example, a warrant issued for failure to vote is preceded by three letters from the Electoral Commission, two notices (28 days apart) from the SETONS⁸ court and then a further delay before the warrant is actually issued. In the case of Traffic Infringement Notices, firstly the TIN is issued followed by a letter if payment is not made, then two further notices are sent (28 days apart) before the matter is referred to the SETONS court. The SETONS court then issues a further two notices before a warrant is issued. Following the issue of the

warrant a letter is forwarded to the person advising that a warrant has been issued.⁷

Payment of the fine

If detainees pay the outstanding amount prior to being taken to the watchhouse or upon arrival at the watchhouse, they will be released immediately. The majority of watchhouses have electronic funds transfer (EFTPOS) facilities, including access to credit and savings accounts where applicable, to assist detainees to pay outstanding fines as soon as possible. In a number of areas of the State, EFTPOS machines have been fitted to squad cars to facilitate the payment of outstanding fines.

Watchhouse staff will invariably enable a detainee to contact relatives or friends who may be willing to pay the outstanding amount to secure the detainee's release. There will be cases, however, where people will be detained for a longer period because they are unable to arrange payment as quickly as they had at first hoped. At the public hearings (day 2), the QPS noted:

The principal complaint, as I understand it, is that it's people who are taken into custody on a short term basis where they are subjected to a strip search. Now, the person may sit in the watchhouse for a period of time waiting for payment. A person may say, look, Mum will be here in three hours or Mum will be here shortly. So the person is allowed to wait and not be processed through the watchhouse system. They will be if it is available, seated in or located in a holding cell within the viewing of police officers.

Often the case is that three hours and the money never comes or because of demands placed on the watchhouse staff a person has to be processed, has to be placed into the population within the watchhouse. It's at that point in time then that the decision is made as to whether or not a person will be subjected to a strip search.

The QPS appears to favour releasing fine defaulters and other potentially short-term detainees as soon as possible:⁸

Every consideration is given to releasing persons in custody on bail, or transferring them from watchhouses to Remand or Diversionary Centres as soon as practical and subject to all legal requirements. For example, in 1996 the Service introduced an EFTPOS

facility into the Brisbane Watchhouse to allow anyone brought in on an unsatisfied Warrant of Commitment to pay the outstanding amount and be released without being processed as a detainee. EFTPOS facilities are now widely available in both Watchhouses and police stations in Queensland.

Informal discretion not to execute a warrant

QPS officers currently have no legislative discretion to ignore an outstanding warrant.⁹ However, the CJC has been informed that an informal discretion is often adopted by individual QPS officers to give people extra time to pay their fines, before taking them to the watchhouse.

At the public hearings (day 1), the Queensland Council for Civil Liberties suggested giving QPS officers the discretion not to arrest people on outstanding warrants for unpaid fines in the first place:

If in the recent fines legislation introduced into Parliament [*State Penalties Enforcement Act 1999* (Qld) — the SPER legislation] there is a recognition of the total undesirability of having people cut out fines in gaol, then the next step that has to be addressed is, police have to be told, encouraged, and if necessary, in relation to the recalcitrant minority, forced to a position of [not] ... automatically when you find someone with an unpaid fine say 'into the watchhouse and you stay there until you can find the money'.

Some police stations have established initiatives designed to encourage known fine defaulters to pay their outstanding fines. These initiatives appear to have been quite successful in the recovery of outstanding fines and in reducing the number of fine defaulters being taken to the watchhouse.¹⁰

Fine option orders

A fine option order (FOO) is a court order that allows an offender to do community service instead of paying a fine. An application for an FOO can be made at any time after a person is fined including while the person is being detained in a watchhouse. If detainees make a successful application for an FOO while at the watchhouse, they will be released. However, an application may take

some hours to be processed and cannot be made on weekends or public holidays. A strip search may be required within that time, depending on the circumstances and policies of the watchhouse.

Under the SPER legislation, which is likely to come into operation in late 2000, it will no longer be possible for a detainee in a watchhouse to apply for an FOO. This may result in fewer fine defaulters being given early release from a watchhouse.

The reason for this restriction may be due to a belief that under the SPER legislation fine defaulters will have sufficient opportunities to arrange for their fines to be paid or to apply for an FOO prior to a warrant being issued against them. The decision to restrict the opportunities to apply for an FOO has been made despite the fact that a significant number of FOO applications are currently made by fine defaulters detained in watchhouses.¹¹

SPER

The SPER legislation will repeal the fine recovery provisions set out in Part 4A of the *Justices Act 1886* (Qld) (which apply to infringement notices imposed by state authorities and court-imposed fines) and will also replace the current SETONS registry.

Whereas the SETONS registry is concerned only with the recovery of infringement notices (for example, speeding tickets), the new SPER registry will be responsible for the recovery of both infringement notices and court-imposed fines.

Under the SPER legislation, the SPER registrar will be able to rely on a number of additional options for recovering outstanding fines, including garnishee of wages, seizure of goods, and motor vehicle licence suspension. In most cases, the SPER registrar will be able to issue warrant for the arrest of a fine defaulter only after having tried a number of other recovery options.

The SPER registry will also include a proactive 'call centre', which will provide

direct contact with fine defaulters to encourage them to pay outstanding amounts, as opposed to the current system which relies on reminder notices sent by mail. The call centre will also assist fine defaulters to make alternative arrangements to pay their fine, for example, by instalment payments. Fine defaulters will also be able to telephone the call centre to pay their fine by credit card.

Under the SPER legislation, fine defaulters who fail to pay their fine and who are arrested and taken to a watchhouse will redeem their fine at twice the rate as under the current system because the default period has been doubled from \$30 to \$60 per day.¹²

It is apparent that there will need to be appropriate training of QPS officers to ensure that fine defaulters are encouraged to fully utilise the payment options available under the new SPER legislation, thus avoiding the need to detain such people in a watchhouse. For example, before a QPS officer executes a warrant issued against a fine defaulter, the officer should give the fine defaulter an opportunity to telephone the call centre to arrange for payment of the fine by credit card.

It is understood that at the time the SPER legislation comes into force there will be a minimum two month amnesty period which will give fine defaulters some additional time to pay their outstanding fines without being arrested and taken to a watchhouse.¹³ During the amnesty period, no further warrants will be issued or enforced. This will reduce the number of fine defaulters being detained at watchhouses during the amnesty period.

Bail hostels for women with children

Women who have the sole or primary responsibility for the care of young children may find the experience of being detained in a watchhouse and being separated from their children particularly problematic. For example, at the public hearings (day 1), the Prisoners' Legal Service noted:

... a colleague who is a social worker was called to the watchhouse to pick up a nursing baby [3 months old and still being breast fed] that the police had in their custody because they'd arrested the mother ... on outstanding warrants ... for failure to pay a train fare. ... the social worker[']s ... problem was to try to get the baby fed, and the baby hadn't been fed formula before ... [the baby] wasn't allowed to be in the watchhouse because the police said it wasn't safe, and in those circumstances and from my colleague's report of that incident, even the police in the watchhouse were saying ... we don't understand why this woman is here; why for failure to pay a train fare does she get separated from her infant child.

The *Report of the Taskforce on Women and the Criminal Code*¹⁴ recommended that the Government examine the possibility of establishing bail hostels for women who are refused bail. The main argument for bail hostels is that women would not need to be separated from their children.

Diversiónary centres for alcohol-affected people

It has been estimated that up to 90 per cent of detainees in watchhouses have alcohol or drug-related problems.¹⁵

In some parts of Queensland, diversionary centres have been established to provide care and alternative short-term accommodation for people who are being detained in watchhouses on charges related to drunkenness.¹⁶ Where a diversionary centre exists and a detainee arrested for drunkenness agrees to go to that centre, a watchhouse officer may release the detainee on cash bail into the custody of a responsible person from the centre.¹⁷ The amount of money required to bail a detainee in this situation will usually be nominal and will sometimes be paid by the diversionary centre or even a watchhouse officer.

Diversiónary centres have been established to implement certain recommendations made by the Royal Commission into Aboriginal Deaths in Custody. Accordingly, most of the centres cater predominantly for Aboriginal and Torres Strait Islander detainees although

the CJC has been informed that at least the centres operated by Murri Watch (in Brisbane) and Gurindal (in Townsville) cater for any intoxicated adult person. The CJC is aware of some concerns about the adequacy of funding for juvenile diversionary centres.

Where a diversionary centre is available to be used for the release from a watchhouse of persons arrested for drunkenness, the watchhouse manager is to develop standing orders for the watchhouse and a protocol with the relevant diversionary centre.¹⁸ The section on diversionary centres in the Townsville Watchhouse SOPs provides:

Prisoners charged with drunkenness are to be placed in the bulk cell after completion of the charging process. Watchhouse staff are to assess whether or not the prisoner is fit to be diverted to the Diversion Centre ... and whether the prisoner wishes to be diverted. If considered suitable to be diverted, watchhouse staff will contact the Gurindal Cell Visitor Organisation ... advising the names and numbers of prisoners to be diverted to that centre. The Cell Visitors will call at the watchhouse to collect those prisoners.

When prisoners are bailed into the custody of the Cell Visitors, a notation to this effect is to be entered into the Custody Register. The Diversion Centre is open to ALL members of the public who wish to be diverted to that centre.

The Manual does not make it compulsory for a watchhouse manager to inform a diversionary centre about the arrival and detention of a person who has been arrested for drunkenness.

Diversiónary centres play an important role in reducing the number of detainees being held at watchhouses for lengthy periods of time and may reduce the need for strip searches to be carried out on some detainees. It is apparent to the CJC that watchhouse staff are appreciative of the services provided by the centres.

Under the Act 2000,¹⁹ a QPS officer who has arrested a person for drunkenness will be able to take the person directly to a diversionary centre, and release the person, rather than having to first take the person to a watchhouse, as is currently the case.

Under section 211 of the Act 2000 (which is unlikely to be proclaimed before 2001), a QPS officer who has arrested a person for a minor drugs offence must, in certain circumstances, offer the person the opportunity to attend a drug-diversion assessment program. If the person signs an agreement to attend the program, the QPS officer must release the person without taking the person to a watchhouse.

Cash bail

Where cash bail is granted, a failure to appear in court as required will result in the

forfeiture of the money paid. Usually, no conviction will be recorded against the person who failed to appear in court. Although there is a provision in the *Bail Act 1980* (Qld) which gives a magistrate the power to issue a warrant for the arrest of a person who fails to answer cash bail, this is rarely used.²⁰

Cash bail is also available for street offences although the money required to be deposited for those offences is considerably higher than for drunkenness.²¹

Endnotes

- 1 A similar scheme — known as Attendance Notices — has been in place for juveniles since 1992.
- 2 *Police Powers in Queensland: Notices to Appear*.
- 3 Forty-five per cent were initiated by an arrest and charge and 5% were initiated by a complaint and summons: see p. 4 of the research paper.
- 4 See pp. 6–7 of the Notices to Appear research paper.
- 5 *Prisoner Numbers in Queensland: An examination of population trends in Queensland's correctional institutions*, March 2000, chapter 6.
- 6 Submission 30.
- 7 In its submission to the Issues Paper, the QPS gave the example of holding a 'warrant day' in Townsville. Despite the best efforts of police to promote this event through the media and raise public awareness many people did not take the opportunity to satisfy their outstanding warrants. Nevertheless, as a result of the Warrant Day, approximately \$80 000 worth of warrants were executed. The CJC has also been told about a police officer in Townsville who was delegated to telephone fine defaulters with one or two outstanding warrants requesting payment. It appears that the initiative had a 50 per cent success rate. A recent exercise in Cairns aimed to target approximately 500 people with an average of four outstanding warrants. Only 10 per cent of people ended up in the watchhouse. Ninety per cent of the warrants targeted were either paid in full or a fine option order was sought.
- 8 Submission 30.
- 9 See, for example, para. 13.20.5 of the Manual.
- 10 See note 7 above.
- 11 In informal discussions with the SETONS clerk and the Brisbane Magistrates Court senior fines clerk.
- 12 See s. 39 and the definition of 'cut-out rate' in Schedule 2 of the State Penalties Enforcement Act.
- 13 See s. 167 of the State Penalties Enforcement Act.
- 14 February 2000, p. 430.
- 15 CJC 1996 *Report on Police Watchhouses in Queensland*, p. 63.
- 16 For example, Murri Watch in Brisbane and Gurindal in Townsville.
- 17 Paragraph 16.21.1 of the Manual.
- 18 *Ibid.*
- 19 Section 210 of the Act 2000.
- 20 Queensland Law Reform Commission, *Bail Act 1980* (Report 43) 1993 at p. 7.
- 21 For example, the SOPs of the Southport Watchhouse set out a guide for the setting of cash bail although the watchhouse keeper still has the discretion to set bail according to the circumstances of each case. The scale is:

Drunkenness	5 cents to \$5
Language	\$20 to \$100
Behaviour	\$20 to \$100
Assault police	\$100 to \$200
Obstruct police	\$100 to \$200
Liquor offences	\$25 to \$50
Gaming	\$75 to \$200.

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