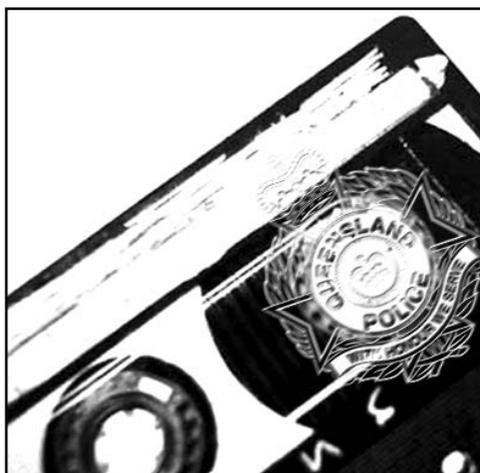
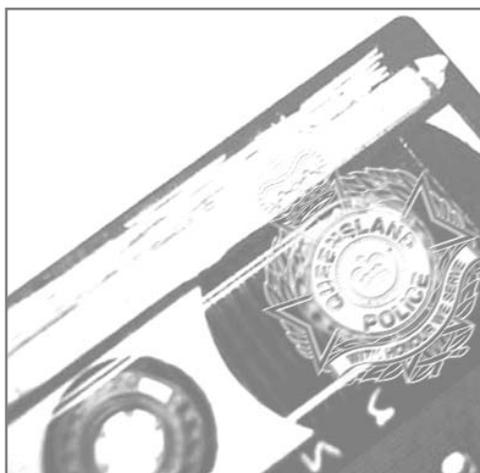
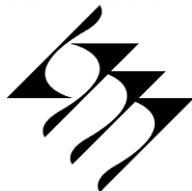


# Listening in

Results from a CMC audit  
of police interview tapes



CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

**Monitoring Integrity in the Queensland Police Service**

**No. 1, April 2004**

**CMC Vision:** To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

**CMC Mission:** To combat crime and improve public sector integrity.

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# Foreword

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The *Police Powers and Responsibilities Act 1997* and the Police Responsibilities Code 1998 came into operation on 6 April 1998. The legislation significantly expanded and codified a host of police powers. At the time, the new powers provided to police in regard to questioning of suspects were the subject of considerable attention and debate. However, a number of procedures and safeguards were carefully incorporated into the legislation to protect the rights of the individual in those circumstances. Since the 1997 Act was proclaimed, further amendments to the legislation have been made, resulting in the current *Police Powers and Responsibilities Act 2000* and Police Responsibilities Code 2000.

This report presents findings from an audit of police interview audio tapes — the second one conducted since 1999 — involving people suspected of having committed indictable offences. This audit has been conducted as part of the Crime and Misconduct Commission’s function of undertaking research into police powers and the use of those powers.

Conducting this further audit has provided an opportunity to compare police compliance with the legislative obligations defined in the *Police Powers and Responsibilities Act 2000* with compliance recorded in the first audit from 1998.

The overall results of this audit indicate some improvement in police compliance. However, there was little or no evidence of improvement in compliance with some important obligations. The research highlights a number of issues requiring attention by way of training and supervision.

This report is the first in an important new CMC series, Monitoring Integrity in the Queensland Police Service. The series will report on CMC research projects that seek to address, promote and enhance integrity in the QPS. In the future, the CMC will produce integrity-related research reports on a regular basis with a view to further enhancing the overall integrity of the QPS.

**Brendan Butler SC**  
Chairperson  
Crime and Misconduct Commission



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# Abbreviations

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ALS	Aboriginal Legal Service
CIB	Criminal Investigation Bureau
CMC	Crime and Misconduct Commission
JAB	Juvenile Aid Bureau
OPM	Operational Procedures Manual
PP&R Act 2000	<i>Police Powers and Responsibilities Act 2000</i>
QPS	Queensland Police Service
1997 Act	<i>Police Powers and Responsibilities Act 1997</i>
1998 Code	Police Responsibilities Code 1998
2000 Code	Police Responsibilities Code 2000

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# Acknowledgments

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Research into the integrity of the Queensland Police Service (QPS) by the Crime and Misconduct Commission (CMC) represents a critically important aspect of our police oversight function. These efforts require the ongoing commitment, support and cooperation of the QPS. The CMC would like to acknowledge the assistance of the QPS, and in particular the Central Tapes Registry, for making the interview tapes available for this research.

This project was managed by Laurie Cullinan, research officer with the CMC's Research and Prevention Unit, who was also responsible for writing the final report. Other members of the project team were Julie Butner and Kelly Ede.

This audit report was prepared for publication by the CMC's Publications Unit.

**Dr Paul Mazerolle**

Director, Research and Prevention  
Crime and Misconduct Commission



# Summary

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In August 1998 the Criminal Justice Commission (CMC) conducted the first audit of police interview tapes following the introduction of the *Police Powers and Responsibilities Act 1997*.<sup>1</sup> This report presents the findings of the second audit of police interview audio tapes of people suspected of committing an indictable offence, and compares the results with those from the audit conducted in 1998.

The audit replicated, as closely as possible, the methodology employed in the first tapes audit.<sup>2</sup> The sample consisted of 125 randomly selected tapes of interviews conducted during the period 3–9 August 2001. The audit was conducted as part of the CMC’s function of researching police powers and the use of those powers.<sup>3</sup>

## Key findings of the audit

### Interview characteristics

- ▶ Most of the interviews occurred in a police establishment (93%), most commonly a police station (77%).
- ▶ The average length of interview was 24 minutes and 8 seconds.

### Interviewing officers

- ▶ Just over half of the interviews (54%) were conducted in the presence of two police officers.
- ▶ Most interviewing officers were attached to the Criminal Investigations Bureau (33%) or the Juvenile Aid Bureau (10%), or were on general duties (11%).
- ▶ More than three-quarters of interviewing officers were male (78%) and most held the rank of either constable (39%) or senior constable (30%).

### Suspect characteristics

- ▶ The majority of suspects interviewed were male (85%) and the largest proportion were aged between 20 and 29 years (37%).

## **Offence types**

- ▶ Based on the most serious offence, the most common types of offences for which suspects were questioned were property offences, which consisted of theft and break and enter (48%), property damage (7%) and fraud (5%).

## **Interview status**

- ▶ Over half of the suspects questioned (57%) voluntarily participated in a formal record of interview, and 11 per cent were arrested for the purpose of being questioned in relation to an indictable offence. In the remaining 32 per cent of cases the suspect's status was unclear.

## **Rights and cautions**

- ▶ A little over half of the suspects who voluntarily participated in questioning were informed that they were not under arrest (59%) and were free to leave at any time (54%). These proportions were slightly lower than those recorded in the 1998 audit.
- ▶ In 88 per cent of interviews, suspects were informed of their right to silence and of the fact that anything they said might be used in evidence. The police compliance rate remained at the same level as in the 1998 audit.
- ▶ Where there was time-out from the interview ( $n = 23$ ), the suspect was reminded of the right to silence on only four occasions. (In 18% of interviews there was at least one time-out.)
- ▶ In 70 per cent of interviews, suspects were asked whether they understood their rights. On five occasions police offered to rephrase or repeat the caution if the person did not understand. In 17 per cent of interviews the suspect was asked by the interviewing officer to restate the caution. This result is almost identical to the 1998 audit.

## **Right to a friend or relative and lawyer**

- ▶ Eighty-two per cent of suspects were advised of their right to telephone, speak to and have a friend or relative present at the interview. The results are a small improvement on the 1998 audit where 76 per cent were advised of their right to a friend/relative.
- ▶ Suspects exercised their right to have a friend present at 20 interviews (16%). This result was similar to the 1998 audit.
- ▶ The person present was usually a relative or friend (45%) or a parent/guardian (35%). Less often, the interview friend was a justice of the peace (15%). The same groups were favoured in the 1998 audit.

- ▶ In 102 interviews (82%), suspects were informed of their right to a lawyer. Of the remaining 23 suspects, 12 terminated the interviewing procedure and one indicated that they had contacted a lawyer before the interview.
- ▶ In 10 interviews (8%) there was no evidence that the suspect received any explanation of their rights to a lawyer, either before or during the taped interview. Whether or not the 12 suspects who terminated their interview were advised of their rights to a lawyer can not be determined.
- ▶ The level of police compliance with the legislative requirement to advise suspects of their right to a lawyer has remained the same as in 1998.
- ▶ In 26 per cent of interviews the interviewing officer did not clearly separate their explanation of the suspect's right to the presence of a friend or relative from their explanation of the right to a lawyer. In these cases the officer would incorrectly state that the suspect was entitled to have present at the interview a friend, relative or lawyer.

### **Special needs groups**

- ▶ Twenty-two of the suspects who participated in a formal interview identified themselves as having a special need.<sup>4</sup> A further 15 suspects were assessed by the coding officer as falling within that category.
- ▶ In 10 cases police asked questions of the suspect that did not relate to the offence, in order to better determine whether the suspect was capable of understanding their rights and was able to answer questions in relation to the offence.

### **Juveniles**

- ▶ There were 10 juveniles interviewed, and a support person was present during all these interviews. This was also the case for the 14 juveniles interviewed in the 1998 audit.
- ▶ In 60 per cent of cases relating to juveniles the support person was a parent/guardian; in the other cases the support person was a relative/friend or a justice of the peace. The same groups were identified in the 1998 audit, with a parent/guardian being the most favoured.

### **Indigenous suspects**

- ▶ Five suspects who participated in a formal record of interview expressly stated on tape that they were Indigenous. A further six suspects were assessed by the coding officer as being either Aboriginal or Torres Strait Islander. This is a substantially smaller number of Indigenous suspects than in the 1998 audit.<sup>5</sup>

- ▶ A support person was present during only two out of five of the recorded interviews with Indigenous suspects in 2001. This was a smaller proportion than in the 1998 audit, which recorded the presence of a support person at 8 of the 12 interviews where the suspect specifically identified as Indigenous.
- ▶ In five interviews the suspect expressly stated that they did not want a support person present. In three of those interviews, the suspect's decision not to have a support person present was questioned by the interviewing officer.
- ▶ In two of the interviews where the suspect identified as Indigenous it was recorded on tape that the Aboriginal Legal Service (ALS) was notified of the interview. This was a slightly smaller proportion than in the 1998 audit, which recorded contact with a legal aid organisation in six of the interviews where suspects specifically identified themselves as Indigenous.

### ***People with an impaired capacity***

- ▶ Five people were identified as having an impaired capacity. One of these had an intellectual disability and four had a mental illness.
- ▶ A support person was present for two of the three interviews where impaired capacity was determined by the coding officer, but in the two cases where impaired capacity was specifically stated on the tape, no support person was provided.

### ***People affected by alcohol or drugs***

- ▶ In 10 cases the suspect was under the influence of alcohol or drugs. Questioning was delayed in all but one of the four cases where this was specifically identified on the tape.

### **Right to an interpreter**

- ▶ In two interviews the suspect displayed an inadequate knowledge of the English language, which interfered with their ability to speak reasonably fluently. In both cases an interpreter was present to assist with the questioning where necessary.

### **Suspension of interview and delays**

- ▶ Interview time-outs occurred in 23 interviews (18%). This is a substantial increase on the 1998 audit where only eight interviews recorded one or more time-outs.

### **Threats, inducements and promises**

- ▶ In 90 interviews (72%) the interviewing officer asked the suspect whether any threat, promise or inducement was held out to them to get them to participate in the interview. In all but one case the suspect responded that they were not

threatened nor was any promise or inducement held out to them to participate in the interview. In the remaining case the suspect made no response.

- ▶ The police compliance rate for asking whether any threat, promise or inducement had been held out to the suspect had dropped 16 per cent in the current audit from 88 per cent (119 cases) in 1998.

## Conclusion

Overall the audit results indicate some improvement in police compliance with the legislative obligations defined in the *Police Powers and Responsibilities Act 2000* and the Police Responsibilities Code 2000. However, the results are somewhat disappointing in view of the fact that the legislation has now been in existence since 1998. In addition, the first tapes audit identified a number of areas in need of improvement, and these do not appear to have been effectively addressed.

The following are the main areas where there was little or no evidence of improvement, and in some cases a decline in the police compliance rate:

- ▶ **Advising a suspect of their right to silence and the use in evidence of any information they might provide.** There was no improvement in police compliance in this area. Police also neglected, in most interviews, to check the suspect's understanding of those rights. In addition, if there was time-out from the interview, suspects were rarely reminded of these rights.
- ▶ **Separating the explanation of the suspect's right to a friend/relative from that of their right to a lawyer, to make it clear that they are entitled to both.** In 26 per cent of interviews the interviewing officer did not make this distinction.
- ▶ **Asking the suspect questions that do not relate to the offence, in order to assess their ability to understand their rights, and their ability to participate in a formal interview.** The audit identified that police asked such questions in only 45 per cent of interviews where the suspect was identified as being a person with a special need.
- ▶ **Informing a legal aid organisation of the intended questioning of an Indigenous suspect and questioning any refusal by the suspect to have an Indigenous support person present during questioning.** The level of compliance was lower than in the 1998 audit for both.
- ▶ **Asking suspects whether they participated in the interview of their own free will and establishing that police made no threats, promises or inducements to them before the interview.** The 16 per cent decrease in recorded compliance is concerning and merits attention.

This audit identifies a number of areas for improvement, particularly in relation to addressing the rights of suspects. It is therefore recommended that audits of taped records of interview continue to be conducted in the future — whether by the CMC or in collaboration with the Ethical Standards Command of the QPS. As part of its police powers monitoring function,<sup>6</sup> the CMC will continue to monitor complaints relating to the exercise of police powers in the investigation of people suspected of committing an indictable offence and may undertake separate and independent audits should the need arise.

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### **Endnotes**

- 1 The *Police Powers and Responsibilities Act 1997* came into operation on 6 April 1998. The first tapes audit was conducted in 1998, and the findings were incorporated into an internal briefing paper which was sent to the QPS in March 1999.
- 2 The 1998 audit involved listening to tape recordings of 135 interviews of people suspected of committing an indictable offence, conducted between 3 and 9 August 1998.
- 3 *Crime and Misconduct Act 2001*, s. 52(2)(b); *Criminal Justice Act 1989*, s. 23(b) and (g).
- 4 People with special needs included Indigenous people, juveniles, people with an impaired capacity, intoxicated and drug-affected people, and those with inadequate knowledge of the English language.
- 5 In the 1998 audit 12 of the 27 Indigenous suspects were reported as ‘definitely being from an Indigenous background’ and 15 were assessed as such by the coding officer.
- 6 *Crime and Misconduct Act 2001*, s. 52(2).

# Introduction

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This report presents findings of the second audit of police interview tapes involving people suspected of having committed indictable offences. The first audit was conducted in 1998, four months after commencement of the *Police Powers and Responsibilities Act 1997* ('the 1997 Act') and the Police Responsibilities Code 1998 ('the 1998 Code'). The 1997 Act significantly changed the legal requirements for questioning suspects. Further amendments to the 1997 Act have occurred,<sup>1</sup> resulting in the current *Police Powers and Responsibilities Act 2000* ('the PP&R Act 2000') and the Police Responsibilities Code 2000 ('the 2000 Code'). The PP&R Act 2000 restructured the questioning provisions of the 1997 Act and the 1998 Code to ensure clarity and readability in the obligations placed on police when interviewing a person suspected of committing an indictable offence. Both audits have been conducted as part of the CMC's function to research police powers and the use of those powers.<sup>2</sup>

This analysis reports on police compliance with legislative and procedural requirements relating to:

- ▶ interview status
- ▶ suspect cautioning and explanation of rights
- ▶ right to the presence of a friend or relative and a lawyer
- ▶ safeguards for special needs groups
- ▶ right to an interpreter
- ▶ suspension of interview and delays
- ▶ threats, inducements or promises by police.

## Legal and regulatory framework

Chapter 7 of the PP&R Act 2000 sets out the powers and responsibilities relating to the investigation and questioning of people suspected of committing an indictable offence. In addition, part 5 of the 2000 Code details what is required of police when questioning such people. The Responsibilities Code presents scripted examples that instruct police on what they must say to suspects. Further guidance

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1 The Act was further amended in 1999 and 2000.

2 *Crime and Misconduct Act 2001*, s. 52(2)(b); *Criminal Justice Act 1989*, s. 23(b) and (g).

and instruction is provided to police in the QPS *Operational Procedures Manual* ('the OPM'). Chapter 2 of the OPM details the requirements of police officers during the investigative process and Chapter 6 relates to the management of people with special needs. For the purposes of the audit, reference to police compliance relates only to chapters 2 and 6 of the OPM.

Section 5 of the PP&R Act 2000 imposes certain requirements on police officers when exercising their powers and performing their functions. Whether a failure to comply with the Act is treated as a breach of discipline, police misconduct or official misconduct depends on the nature and seriousness of the breach.<sup>3</sup> If a matter is assessed as a breach of discipline there is no requirement for the police service to report the matter to the CMC. Such matters are normally dealt with by the police service itself, as provided for by the *Police Service Administration Act 1990*. The CMC's jurisdiction extends to matters that would, if proved, be regarded as police misconduct or official misconduct, but does not include breaches of discipline.

The definition of 'breach of discipline' in section 1.4 of the *Police Service Administration Act 1990* was specifically amended by the PP&R Act 2000, which provided that any breach of the Act constituted a breach of discipline. It can therefore be assumed that a breach of the PP&R Act, unless it includes some degree of aggravation (e.g. detaining a suspect for questioning beyond the timeframe allowed by the legislation), would be treated as a breach of discipline and dealt with in accordance with the *Police Service Administration Act 1990* (s. 7.4). This also applies to breaches of the 2000 Code.

Police misconduct is defined in the *Crime and Misconduct Act 2001* (Schedule 2) as conduct, other than official misconduct, of a police officer that—

- (a) is disgraceful, improper or unbecoming a police officer; or
- (b) shows unfitness to be or continue as a police officer; or
- (c) does not meet the standard of conduct the community reasonably expects of a police officer.

Official misconduct is defined in section 15 of the *Crime and Misconduct Act 2001* as conduct that could, if proved, be—

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.<sup>7</sup>

Police officers are also required to comply with the OPM in the performance of their duties; noncompliance with its provisions may result in disciplinary action (see s. 9[1][c] of the *Police Service (Discipline) Regulations 1990*).

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<sup>3</sup> See examples given in PP&R 2000, s. 5.

# Sampling procedure

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## How interview tapes were selected for the audit

The sample consisted of 345 audio tapes, of which 125 were formal records of interview of people suspected of committing an indictable offence. The legislative requirements placed on police officers when questioning suspects relate only to indictable offences, and for this reason it was necessary to exclude 220 tapes from the sample. The tapes excluded from the audit were ‘in the field’ interviews, interviews that were outside the sample period, and interviews of non-indictable offences (see Table 1 below).

It was the intention in this audit to replicate as closely as possible the methodology used in the 1998 audit. The CMC requested from the QPS Central Exhibits Registry a computer-generated list of all police interview tapes for the period from 3 to 9 August 2001. The seven days selected were chosen because they coincided with the period examined in the 1998 audit (3–9 August 1998). The first 25 tapes listed for each day were selected, providing a sample of 175 tapes. After listening to approximately two-thirds of the tapes it became evident that a further 175 tapes would be needed to yield a final sample approximately equal to that of the 1998 audit. Consequently, the next 25 tapes on the computer-generated list for each day of the period 3–9 August 2001 were requested from QPS Central Exhibits Registry.

**Table 1. Sample exclusions, 2001 tapes audit**

Original sample	345
In-the-field interviews	210
Out of date range	3
Non-indictable	7
Final sample	125

## Process used for data collection

A coding sheet was designed to replicate as closely as possible the information collected in the 1998 audit, and was expanded in some areas to collect more detailed information. The coding sheet was created in SPSS Data Entry Builder, which allowed data to be immediately entered into an SPSS data file.

Two CMC research officers listened to and coded interview tapes received from the QPS Central Exhibits Registry. When a tape was identified as not being an interview of a person suspected of committing an indictable offence, the research officer discontinued listening to the tape and coded it as requiring no further action.

## Qualifications in interpreting the data

The data recorded by CMC researchers were taken directly from the interview tapes. The officers undertaking the coding were unaware of any conversations that might have taken place between the police interviewing officer and suspect before the recorded interview. Such a conversation might, for example, involve the investigating officer asking questions of the suspect, giving a caution and/or providing information as required by legislation or the OPM.

While it is possible that such conversations took place before the taped interview, section 262 of the PP&R Act 2000, which relates to the giving of rights and cautions, states:

A police officer who is required under this division to give to a relevant person information (including a caution) must, if practicable, electronically record the giving of the information to the person and the person's response.

Section 41 of the 2000 Code states that, if it is not reasonably practicable to electronically record such information, the officer must make a written record of the giving of the information and the person's response. In this case section 264 of the Act regulates how that written record is to be made.

Section 263(2) further states that 'the questioning must, if practicable, be electronically recorded'. Examples of situations where it may not be practicable to electronically record information are also provided in the Act. For example:

### 263(2) (example 3)

Electronically recording a confession or admission may be impracticable because the confession or admission is made to a police officer when it is not reasonably practicable to use recording facilities.

Although none of the tapes analysed were made in circumstances where it was not practicable to record information electronically, it is possible that additional written records exist. However, the CMC did not request any supplementary documentation for the purpose of this audit.

In general, some caution should be exercised when using the audit results to determine the extent of breaches of discipline by police officers. It is possible that additional comments relevant, for example, to an officer's failure to caution could have been made before the recording commenced.

# Characteristics of the interviews

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## Place of interview

In 93 per cent of cases, suspects were interviewed at a police establishment — a police station, watch-house or other police location. The most common police establishment used for interviewing suspects was a police station (77%). See Table 2 below for details on the number of interviews conducted at various places of interview.

**Table 2. Place of interview, 2001 tapes audit**

	<i>n</i>	%
Police station	96	76.8
Watch-house	12	9.6
Other police location	8	6.4
Correctional centre	2	1.6
Residence	1	0.8
Shop/business	1	0.8
Hospital	1	0.8
Unknown	4	3.2
<b>Total</b>	<b>125</b>	<b>100</b>

Note: Data from 1998 are not comparable.

## Time of interview

In 84 per cent of cases ( $n = 105$ ) both commencement time and completion time were stated on the taped record of interview. Time of interview is presented in Table 3 (next page).

The results are slightly different from those of the 1998 audit.

## Length of interviews

The length of interviews ranged from less than 1 minute to more than 2 hours, with an average duration of 24 minutes and 8 seconds. In almost 80 per cent of cases the interview lasted less than 30 minutes, with two of the 120 interviews taking over 2 hours. Table 4 provides a breakdown of length of interviews.

The study found that the average interview length had increased by 5 minutes since the 1998 audit.

**Table 3. Time of interviews**

	1998 tapes audit		2001 tapes audit	
	<i>n</i>	%	<i>n</i>	%
8.01 am – 12.00 noon	29	28.9	14	13.3
12.01 pm – 4.00 pm	28	20.7	43	41.0
4.01 pm – 8.00 pm	25	18.5	20	19.0
8.01 pm – 12.00 midnight	15	11.1	20	19.0
12.01 am – 4.00 am	13	9.6	6	5.7
4.01 am – 8.00 am	15	11.1	2	1.9
<b>Total</b>	<b>135</b>	<b>100</b>	<b>105</b>	<b>100</b>

Note: In the 2001 audit, either the commencement time or the completion time was missing in 20 cases.

**Table 4. Length of interview**

	1998 tapes audit		2001 tapes audit	
	<i>n</i>	%	<i>n</i>	%
5 minutes or less	9	6.7	21	17.5
6–10 minutes	28	20.7	20	16.7
11–15 minutes	17	12.6	13	10.8
16–20 minutes	25	18.5	14	11.7
21–25 minutes	20	14.8	15	12.5
26–30 minutes	18	13.3	11	9.2
30 minutes – 1 hour	18	13.3	15	12.5
1–2 hours	0	0	9	7.5
More than 2 hours	0	0	2	1.7
<b>Total</b>	<b>135</b>	<b>100</b>	<b>120</b>	<b>100</b>

Notes:

1. Total interview times could not be calculated in five cases (4.0% of the total sample).
2. In 15 cases the length of the interview was determined by timing the taped interview with a stopwatch.

## Interviewing officers

### Number of officers present at interview

Almost half of the interviews included in this audit (46%) were conducted by a single officer. A slightly higher proportion (54%) involved two officers, and in one case more than two officers were present at the interview. These are very similar results to those of the 1998 audit (40% conducted by a single officer; 56% by two officers). See Table 5 for details.

**Table 5. Number of officers present at interviews**

	1998 tapes audit		2001 tapes audit	
	<i>n</i>	%	<i>n</i>	%
One officer	54	40.0	57	45.6
Two officers	75	55.6	67	53.6
More than two officers	2	1.5	1	0.8
Unsure	4	2.9	0	0.0
<b>Total</b>	<b>135</b>	<b>100</b>	<b>125</b>	<b>100</b>

### Work area of interviewing officer

In one-third (33%) of recorded interviews the interviewing officer was attached to the Criminal Investigations Bureau (CIB). After that the most common work areas of interviewing officers were general duties (11%) and the Juvenile Aid Bureau (JAB) (10%). Unfortunately, almost one-third of the interviewing officers (32%) did not identify their work area. See Table 6 for details.

**Table 6. Work area of interviewing officer, 2001 tapes audit**

	<i>n</i>	%
CIB	41	32.8
General duties	14	11.2
JAB	13	10.4
Drug	5	4.0
Eastern Corridor Property Team	4	3.2
Corrective Services Investigation Unit	3	2.4
Casino Crime Squad	1	0.8
Organised Crime Group	1	0.8
Property Team	1	0.8
Railway Squad	1	0.8
Taskforce Argos, State Crime Operations	1	0.8
Unknown	40	32.0
<b>Total</b>	<b>125</b>	<b>100</b>

Note: Data from 1998 are not comparable due to coding differences.

It is difficult to compare these figures with the data collected in the 1998 audit, because the coding for this item changed considerably with the current audit. In the 1998 audit, work area was coded only if interviewing officers stated they were attached to a specialist squad; all other officers were assumed to be on general duties. In the current audit, on the other hand, officers were coded as 'general duties' only if they specifically stated this on the tape. As a result, there were considerably fewer 'general duties' officers recorded in the 2001 audit than in 1998 (11% compared with 53%). If the 'unknown' and 'general duties' are added together for 2001, the difference is much smaller, but there has still been a drop in the number of interviews conducted by general duties officers. Given the change in coding procedures on this item, it is difficult to draw any firm conclusions from these particular data.

Data relating to specialist squads are more reliable, due to greater consistency in coding across the two audits. These data show that the proportion of interviews conducted by CIB officers has increased only slightly across the two audits (from 27% to 33%), whereas the proportion conducted by JAB officers has increased considerably. The 2001 audit showed that around 10 per cent of interviews were conducted by JAB officers — almost twice as many as in 1998. It is interesting to note that this increase has occurred despite there being no increase in the number of juvenile suspects interviewed (in fact, the number of juvenile suspects in the sample dropped by four between 1998 and 2001).

### **Gender and rank of interviewing officer**

In the majority of cases the interviewing officer was male (78%) and was most likely to hold the rank of Constable (39%) or Senior Constable (30%).

### **Particulars of interviewing officers**

Paragraph 2.14.1 of the OPM requires the interviewing officer to state clearly the particulars of those present at the interview, and to identify who will be conducting the interview. The most common pieces of identifying information provided by police officers were name, rank and registered number. Of the 125 interviewing officers, three did not provide any identifying information to the person being interviewed. Of the remaining 122 officers, 79 per cent identified themselves to the suspect by providing their name, rank and registered number, 19 per cent provided a combination of any two pieces of identifying information, and 2.4 per cent provided one item of identifying information.

Where a second officer was present, 89 per cent provided all three pieces of identifying information and the remaining 11 per cent provided a combination of any two pieces of information. See Table 7 for details.

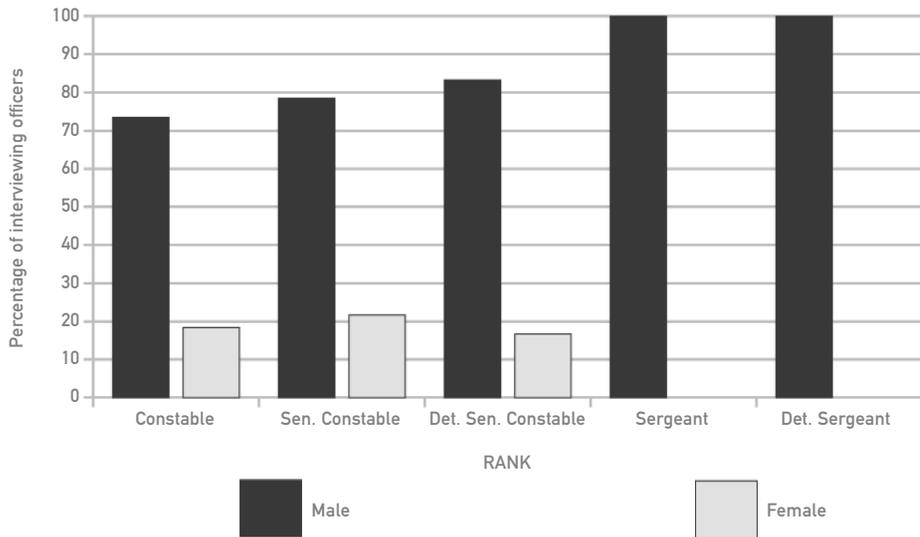
**Table 7. Identification by interviewing officers, 2001 tapes audit**

	Interviewing officer		Second officer present	
	<i>n</i>	%	<i>n</i>	%
By name only	1	0.8	0	0.0
By registered number only	1	0.8	0	0.0
By rank only	1	0.8	0	0.0
By name and registered number only	3	2.5	1	1.6
By name and rank only	20	16.4	6	9.4
By rank and registered number only	0	0.0	0	0.0
By name, rank and registered number	96	78.7	57	89.1
<b>Total</b>	<b>122</b>	<b>100</b>	<b>64</b>	<b>100</b>

**Notes:**

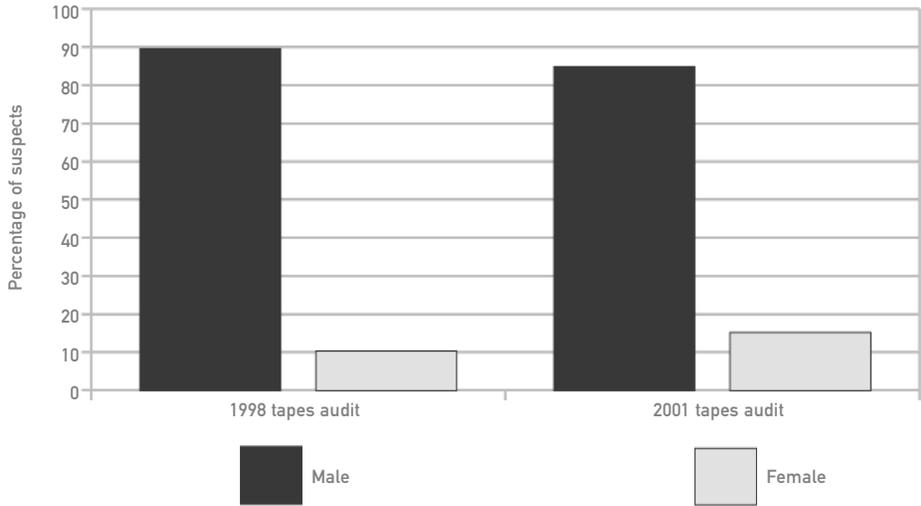
1. Three interviewing officers and four second officers did not identify by any of these details.
2. These data were not collected in the 1998 audit.

**Figure 1. Rank of interviewing officer by gender, 2001 tapes audit**



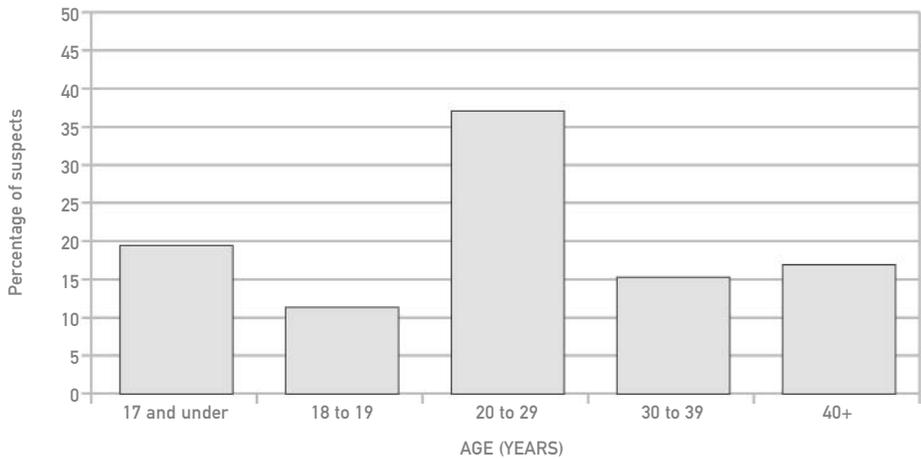
Note: In six cases the interviewing officer's gender was not stated, and in seven cases rank was not stated.

**Figure 2. Gender of suspects**



Note: In the 1998 audit, the gender of one of the suspects could not be determined.

**Figure 3. Age of suspects, 2001 tapes audit**



Notes:

1. In one case the age of the suspect was not stated.
2. These data were not collected in the 1998 audit.

## Characteristics of suspects

### Gender

Eighty-five per cent of suspects interviewed by police in relation to an indictable offence were male. The proportion of males is somewhat lower than in the earlier audit in 1998 (see Figure 2, previous page).

### Age

The most common age group for suspects interviewed by police in relation to an indictable offence was 20–29 years (37%). Juveniles (i.e. those 17 years and under) comprised 19 per cent ( $n = 24$ ). For the 1998 audit, the age of the suspect was recorded only if the suspect was a juvenile; as a result, it was not possible to make comparisons between the two audits (Figure 3, previous page).

## Types of offences

In the majority of cases the most serious offence for which a suspect was questioned was a property offence. The offences included theft and break and enter (48%), property damage (7%), and fraud (5%). Figure 4 below indicates little difference in the proportion of offences in each of these broad offence categories compared with the 1998 audit.

**Figure 4. Most serious offence category**

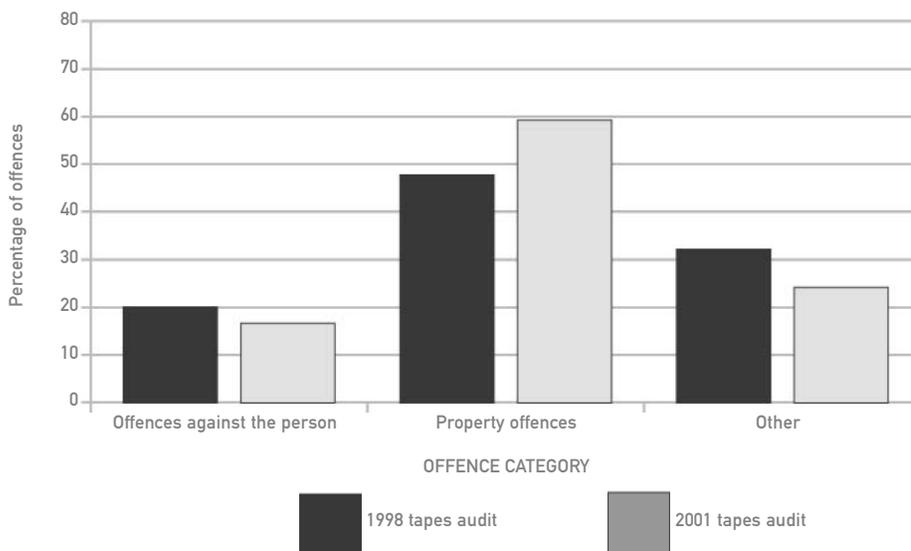
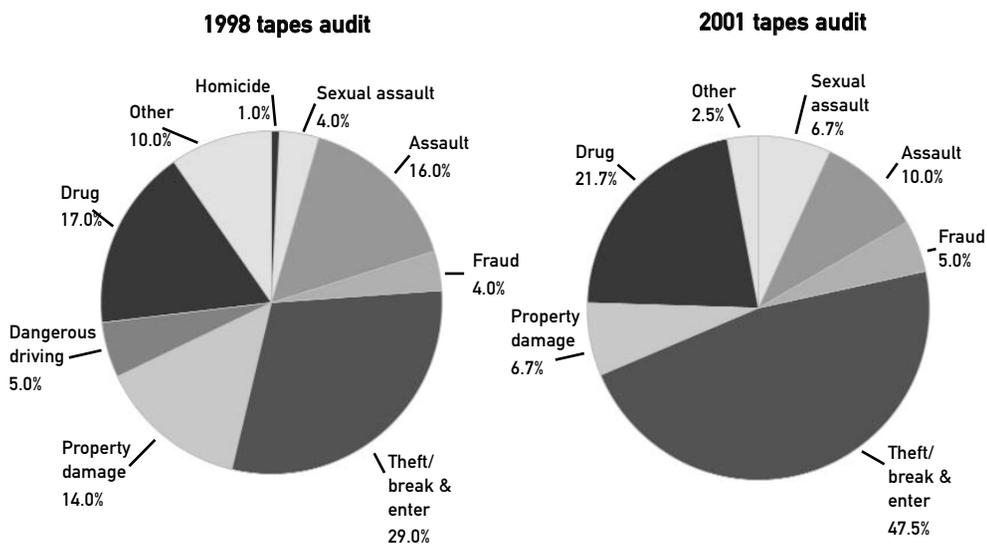


Figure 5 presents the most serious individual offences for which suspects were interviewed in both the 1998 and 2001 tapes audits. The graphs show that the most common types of offences in the 2001 audit were theft and break and enter (48%), drug offences (22%), and assault (10%). These three offence categories were also the most common in the 1998 audit. However, the proportion of theft and break and enter offences was considerably lower (29%). The 1998 audit also revealed a considerably higher proportion of property damage offences than was the case in the 2001 audit (14% compared with 7%).

**Figure 5. Types of offences for which suspects were interviewed**



# Key findings of the audit

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## Interview status

A person may either:

- ▶ voluntarily agree to be questioned in relation to an indictable offence (PP&R Act 2000, s. 246) or
- ▶ be arrested for questioning in relation to their suspected involvement in an offence or for the purpose of investigating an offence (PP&R Act 2000, s. 198[2]).

Chapter 7, Part 2 of the Act details what is required when a person arrested for an indictable offence is questioned. Part 3 of the same chapter details the safeguards that operate in the interests of both volunteers and people under arrest when they are being questioned.

When a suspect is questioned voluntarily, it must be made clear to the person that they are not under arrest and are free to leave at any time. The 2000 Code (s. 33) details what the police officer must say:

‘I am [name and rank] of [name of police station or police establishment].  
I wish to question you about [briefly describe offence].’

Where the suspect is approached by a police officer:

‘Are you prepared to come with me to [place of questioning]?’

‘Do you understand that you are not under arrest and you do not have to come with me?’

*or*

Where the person attends, unaccompanied by police, at a police station or establishment:

‘Did you come here of your own free will?’

‘Do you understand you are not under arrest?’

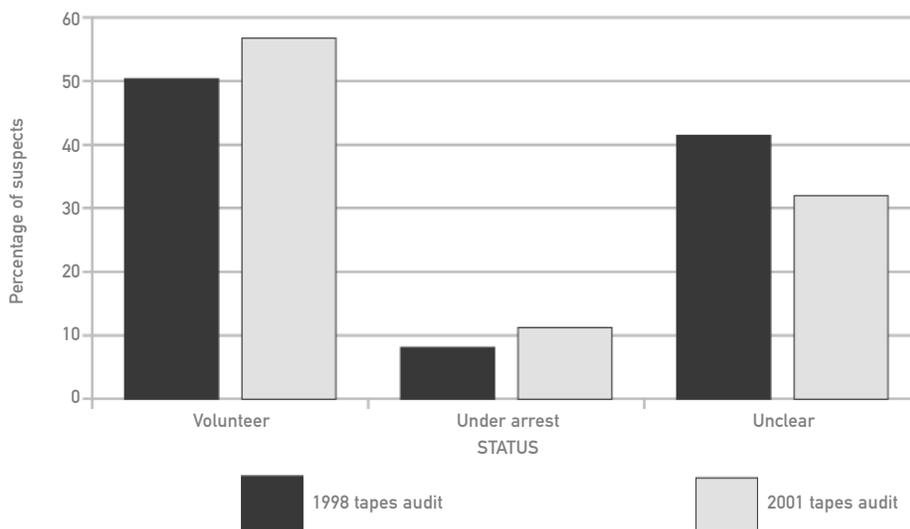
‘Do you understand you are free to leave at any time unless you are arrested?’

People under arrest must, as soon as possible after they are arrested, be informed that they are under arrest and have explained to them the offence(s) for which they are being questioned (PP&R Act 2000, s. 222).

### **Audit findings**

Of the 125 interviews analysed in the 2001 audit, 57 per cent were voluntary and 11 per cent were with suspects under arrest. In the remaining 32 per cent of cases, the suspect's status was unclear. Of those identified as being under arrest, 79 per cent had their arrest status confirmed to them by the interviewing officer during the recorded interview. The custody status profile of interviewed suspects was broadly similar to that of the 1998 audit, as Figure 6 shows.

**Figure 6. Interview status**



### **Cautioning of suspects**

Police officers are required, where practicable, to electronically record the questioning of a person suspected of committing an indictable offence (s. 263[2]) and make a copy of the tape available to the suspect (s. 265[2]). The recording must include the giving of cautions and explanation of rights by the interviewing officer to the suspect, as well as any response from the suspect (s. 262 of the Act, and s. 41 of the Code).

## Free to leave

Where a person has voluntarily agreed to be questioned by police in relation to the occurrence of an indictable offence, it must be made clear to them that they are not under arrest and are free to leave at any time (s. 258 and s. 33).

### ***Audit findings***

Of the 71 suspects who were identified from the interview as being volunteers, a little over half (59%) were informed that they were not under arrest, and a similar proportion (54%) were informed that they were free to leave at any time. This is a drop since the 1998 audit, where 66 per cent of volunteers were informed that they were free to leave.

## Right to silence

If a suspect agrees to being questioned, police must, before questioning begins, inform the person of their right to remain silent and explain that anything they say will be recorded and may be presented in evidence to the court (2000 Code, s. 37). Where questioning is suspended or delayed the legislation requires the interviewing officer, on resuming the interview, to remind the suspect of their right to silence (2000 Code, s. 37[4]).

### ***Audit findings***

In 88 per cent of interviews, suspects were both informed of their right to silence and told that anything they said might be used in evidence. In 6 per cent of interviews the suspect was not informed of their right to silence. In the remaining 6 per cent of interviews the suspect was informed of their right to silence, but not told that evidence could be used against them. These compliance rates are similar to those found in the 1998 audit. See Table 8 for details.

Time-out from the interview occurred in 23 cases. In four of those interviews the suspect was reminded by the interviewing officer, when the interview resumed, of their right to silence and that anything they said might be used in evidence.

**Table 8. Notification of rights**

	1998 tapes audit (n = 135)	2002 tapes audit (n = 125)
Right to silence	95.6%	93.6%
Evidence used against you	88.1%	88.0%
Right to silence and evidence used against you	87.4%	88.0%

## Understanding rights

Where police believe a person has not understood either their right to leave or their right to silence, the officer must ask the person to explain the caution in their own words. If the officer still believes the person has not understood the caution, they must further explain those rights to them (2000 Code, s. 33[5] & (6) and s. 37[2] & [3]).

### *Audit findings*

In 70 per cent of interviews the person being questioned was asked by police whether they understood their rights. The process for checking such matters, however, rarely went any further than asking the person being interviewed: 'Do you understand this?' If the person answered 'Yes' the issue would not be taken any further. In five cases police went a little further and offered to rephrase or repeat the caution if the person did not understand. In 17 per cent of interviews police checked a person's understanding by asking them to restate the caution. This result is almost identical to the 1998 audit where the suspect was asked to restate the caution in 18 per cent of interviews.

## Copy of tape

A copy of the taped record of interview must be made available by police, without charge, either to the person who was questioned or to their lawyer within 7 days after taping of the interview (s. 265[2] of the Act).

### *Audit findings*

In 46 per cent of recorded interviews, police informed suspects that they were entitled to a copy of the taped interview; there is no further information provided in the tapes to indicate whether suspects were in fact provided with these. It is therefore difficult to draw any accurate conclusions as to the level of police compliance on this issue.

## Right to a friend/relative and a lawyer

Before questioning begins, police are required to explain to the suspect their right to speak with a **friend or relative**, to inform that person of their whereabouts and, if they wish, to have that person present during questioning (s. 249 of the Act; s. 34 of the Code). Police must also inform a suspect of their right to contact a **lawyer**, to inform them of their whereabouts and, if they wish, to have a lawyer present during questioning (s. 250 of the Act; s. 34 of the Code).

## **Audit findings**

### **Friend or relative (interview friend)**

In 23 cases (18%) the suspect was not advised on the tape of their right to telephone, speak to and have a friend or relative present at the interview. However, at three of those interviews a friend or relative was recorded as present. Where a friend or relative was already present, the officer may have considered it unnecessary to inform the suspect of this provision.

The results represent a small improvement on the 1998 audit, where 24 per cent ( $n = 33$ ) were recorded as not having been advised of their right to a friend or relative.<sup>4</sup> Of these suspects, seven had a friend or relative present.

Suspects in the 2001 audit exercised their right to have an interview friend present in 20 cases (16%), which was down slightly from the 24 cases (18%) in the 1998 audit. Five of the suspects in the 2001 audit specifically requested an interview friend. In four of these cases, however, the friend was unable to attend. There were two reasons for non-attendance:

- ▶ The person nominated by the suspect was an inappropriate choice, such as a co-offender ( $n = 2$ ).
- ▶ The person nominated could not be contacted ( $n = 2$ ).

Table 9 summarises the results from both tapes audits.

**Table 9. Notification of right to an interview friend**

	1998 tapes audit ( $n = 135$ )		2001 tapes audit ( $n = 125$ )	
	<i>n</i>	%	<i>n</i>	%
Suspect informed of the right to an interview friend	102	75.6	102	81.6
Suspect requested an interview friend	22	16.3	5	4.0
Interview friend present at interview	24	17.8	20	16.0

Interview friends were mainly relatives or friends (45%) or parents/guardians (35%). The only other interview friend chosen was a justice of the peace (15%). In one case, the identity of the interview friend could not be established. The same groups of interview friends were favoured in the 1998 audit. See Table 10 (next page) for details.

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4 In the 1998 audit, separate data were collected in relation to whether the suspect was informed of their right to telephone a third person and of their right to have that person present during questioning. In these 33 cases the suspect was not informed of either right. In an additional 15 cases the suspect was informed only that they could telephone a third person ( $n = 6$ ) or that they could have the person present ( $n = 9$ ), but not both.

**Table 10. Categories of interview friend**

	1998 tapes audit		2001 tapes audit	
	<i>n</i>	%	<i>n</i>	%
Parent or guardian of juvenile	12	50.0	7	35.0
Relative or friend	6	25.0	9	45.0
Justice of the Peace	2	8.3	3	15.0
Person from QPS list	1	4.2	0	0.0
Not known	3	12.5	1	5.0
<b>Total</b>	<b>24</b>	<b>100</b>	<b>20</b>	<b>100</b>

### Lawyer

In 82 per cent of interviews ( $n = 102$ ), suspects were informed of their right to a lawyer. After having those rights explained, three suspects indicated that they had spoken to a lawyer before the interview and two suspects asked for a lawyer to be present at the interview. In both of the latter two cases, the lawyer requested did not attend; one lawyer could not be contacted, and no reason was given as to why the other was not there. There was another case where, although the suspect did not request a lawyer, one was present at the interview.

Of the other 23 suspects (18%) who were not advised of their right to a lawyer, 12 terminated the process because they did not want to be interviewed. One of the remaining 11 suspects indicated that they had contacted a lawyer before the interview, presumably because the person was already aware of their rights. Nevertheless, as standard procedure and in the exercise of best practice, the explanation of a person's right to a lawyer should be recorded on tape.

The level of police compliance in advising suspects of their right to a lawyer (82%) is identical to that recorded in the 1998 audit. Table 11 presents the results from the 1998 and 2001 audits.

Although the 2001 audit indicates a reasonably high rate of police compliance, it should be noted that the legislative provisions governing the right to a friend or relative and lawyer are mandatory. Any failure by police to comply with those provisions is therefore unsatisfactory, in terms both of protecting the rights of suspects and of unnecessarily jeopardising the successful prosecution of the case.

**Table 11. Notification of right to a lawyer**

	1998 tapes audit (n = 135)		2001 tapes audit (n = 125)	
	n	%	n	%
Suspect informed of the right to a lawyer	111	82.2	102	81.6
Suspect requested a lawyer	unknown	unknown	3	2.4
Suspect spoke with a lawyer	unknown	unknown	8	6.4
Lawyer present at interview	5	3.7	2	1.6

Note: Data regarding requesting a lawyer, speaking to a lawyer and having a lawyer present include cases where the suspect was not informed of these rights.

### Confusing rights to a friend/relative and to a lawyer

An additional issue arising from the tapes audit relates to making it clear to the suspect that their right to a friend or relative is additional to their right to a lawyer. In 26 per cent of interviews the interviewing officer did not provide a separate explanation of these rights. The officer would incorrectly state that the suspect was entitled to have present at the interview a friend, a relative or a lawyer. Examples of this are:

‘We can get a friend here or a solicitor if you want — that can be arranged. Do you understand this?’

‘You can contact a friend/relative or legal representative and tell them you are being questioned. Do you understand?’

The interviewing officer had incorrectly substituted ‘or’ for ‘and’. This can lead the suspect to understand that they are entitled to have either a friend/relative or a lawyer present at the interview, but not both. In the second example, the suspect could believe that they can telephone either a friend/relative or a lawyer and tell them they are being questioned — but not both. Again, procedural inadequacies such as these not only breach mandatory legislative requirements but may also compromise the successful prosecution of the case.

### People with special needs

Chapter 6 of the OPM describes what constitutes a special need, how to establish whether a special need exists, and the procedure for questioning people with special needs. The OPM provides:

Where a person is assessed as having a special need the OPM (section 6.3.2) requires the police officer to establish, before the interview, whether the person is:

- (i) capable of understanding the questions posed
- (ii) capable of effectively communicating answers
- (iii) capable of understanding what is happening to him/her
- (iv) fully aware of the reasons why the questions are being asked
- (v) fully aware of the consequences which may result from questioning, and
- (vi) in the opinion of the investigating officer, capable of understanding his or her rights at law.

In doing so the officer must take into account the nature and complexity of the matter, why the person needs to be questioned, their level of education, knowledge of the English language, age, employment and cultural background. These matters should provide some assessment of the suspect's capacity to be interviewed. In most cases the interviewing officer will have had time, prior to the interview, to communicate with the suspect and draw conclusions as to that person's capacity to participate in an interview.

### **Audit findings**

Thirty per cent ( $n = 37$ ) of the sample were identified as people with special needs (see Table 12). They included Aborigines and Torres Strait Islanders, juveniles, people with an impaired capacity, intoxicated and drug-affected people, and those with an inadequate knowledge of the English language.

Of the 37 cases identified as being of a special needs category, 15 were assessed as such by the CMC coding officer. The behaviour of these individuals led the coding officer to believe that there were problems with their capacity to be interviewed. The assessments were made from speech and/or behaviour that suggested the person fell within one of the special needs categories. Indicators included references to the Aboriginal Legal Service, slow speech patterns, apparent level of understanding, and age.

**Table 12. Special needs group, 2001 tapes audit**

	<i>n</i>	%
Indigenous	11	29.7
Juveniles (under 17 years)	10	27.0
Impaired capacity	5	13.5
Under influence of drugs/alcohol	10	27.0
Inadequate knowledge of English language	2	5.4
<b>Total</b>	<b>37</b>	<b>102.6</b>

Note: Percentages add to more than 100% because one suspect both had an impaired capacity and was under the influence of drugs or alcohol.

In 10 cases police asked questions of the suspect that did not relate to the offence, to help them determine whether the suspect was capable of understanding their rights and was able to answer questions in relation to the offence.

## **Safeguards for special needs groups**

In addition to the general cautioning provisions contained in the PP&R Act 2000, the legislation also provides additional safeguards for special needs groups such as Indigenous people, juveniles, people with an impaired capacity, and those who are intoxicated.<sup>5</sup>

### **Juveniles**

The PP&R Act requires that a child suspected of having committed an indictable offence must have a support person present while being questioned and must, before questioning, be given the opportunity to speak with that support person in a place where their conversation cannot be overheard (s. 252). A support person is defined in the PP&R Act 2000 as:

*(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) an adult 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 support persons and interpreters; or
- (xvi) 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).

### **Audit findings**

Ten of the suspects who participated in a formal record of interview (8.0% of the entire sample) were identified as juveniles. In each of those cases a third person was present during the interview. In 60 per cent of cases the support person was a parent or guardian. Others were relatives or friends (20%) or justices of the peace (20%).

In the 1998 audit, juveniles made up 10 per cent ( $n = 14$ ) of the suspects interviewed. A support person was present for each of these interviews. The same groups of support

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5 Sections 251, 252, 253 and 254 of the PP&R Act, respectively.

people were identified in the 1998 audit, with a parent or guardian being the most favoured ( $n = 10$ ).

### **Indigenous suspects**

If the police officer believes a suspect is an Aboriginal or a Torres Strait Islander, a number of procedures must be followed before questioning can commence (see PP&R Act 2000, s. 251; the 2000 Code, s. 36). First, if the suspect has not spoken to a lawyer, they will be informed that a legal aid organisation will be notified that they are in custody. Before taking such action the police officer must look at the person's level of education and understanding. If, on consideration of such matters, the officer believes that the suspect is no more disadvantaged than the general population, a legal aid organisation will not be contacted.

Questioning must not commence until a support person is present and the suspect has been given the opportunity to speak with the support person in private. The suspect, however, has the option of waiving the right to have a support person present; in such cases the waiver must be either in writing or expressly stated in the electronic record of interview. A support person is defined in the PP&R Act 2000 as:

- (a) *for an Aborigine or Torres Strait Islander who is at least 17 —*
  - (i) an adult relative or another adult chosen by the person; or
  - (ii) a lawyer acting for the person; or
  - (iii) a representative of a legal aid organisation; or
  - (iv) a person whose name is included in a list of support persons and interpreters.

### **Audit findings**

Eleven of the suspects who participated in a formal record of interview (8.8% of the entire sample) were identified as being either Aboriginal or Torres Strait Islander. Of those, five had expressly stated on tape that they were of Indigenous origin. The Indigenous status of the remainder was assessed by the CMC coding officers. This assessment was based on obvious speech patterns, references to relatives on Palm Island, and contact with the Aboriginal Legal Service (ALS). The number of Indigenous suspects interviewed was substantially lower than in the 1998 audit ( $n = 27$ ).<sup>6</sup>

A support person was present during the recording of two interviews with Indigenous suspects. In five interviews the suspect expressly stated that they did not want a support person present. In those circumstances the legislation requires police to question the suspect on their decision. This occurred in three of the five interviews. The 1998 audit recorded that a support person was present in 8 of the 12 interviews with suspects who specifically identified themselves as Indigenous.

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<sup>6</sup> Twelve of the 27 suspects in the 1998 audit were reported as 'definitely being from an Indigenous background' and 15 were assessed as such by the coding officer.

In two cases it was recorded on tape that a legal aid organisation, namely the ALS was notified of the interview. This is less than in the 1998 audit, which recorded that a legal aid organisation was notified in six interviews where it was specifically stated that the suspect was Indigenous.

The PP&R Act 2000 removes the obligation to have contact with a legal aid organisation where it is established that the person's level of education and understanding is of a standard that does not disadvantage them from the rest of the Australian community. In two cases, level of education was recorded during the taped record of interview. In those cases the suspects had completed schooling to grades 7 and 8, respectively. However, their low level of formal education did not seem to affect their ability to understand the questioning.

### **People with an impaired capacity**

Section 253 of the PP&R Act 2000 prescribes safeguards for people with impaired capacity. The OPM lists impaired capacity as one of many circumstances that create a special need, although the term 'impaired capacity' is not defined in the legislation.

Where a police officer believes a suspect may have an impaired capacity, questioning must take place in the presence of a support person, defined in the PP&R Act 2000 as:

- (c) for a person with impaired capacity — a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person's interests.

If the impairment becomes apparent during the interview, the officer must cease questioning until such time as the suspect has been given an opportunity to speak privately with a support person and arrange for their presence.

### ***Audit findings***

Suspects were considered to have an impaired capacity if they:

- ▶ were intellectually disabled ( $n = 1$ )
- ▶ had a mental illness ( $n = 4$ ).

In two cases, the impaired capacity of the suspect was specifically referred to in the taped record of interview. In the other three cases it was the coding officer who judged that the suspect had impaired capacity. Their judgment relied on the suspect displaying slow speech and having difficulty understanding questions, references to attempts at suicide, and mention of the consumption of prescribed medication. Support people were present in two of the three cases where it was determined by the coding officer that the suspect had an impaired capacity. In the two cases where impaired capacity

was specifically stated on the tape, neither suspect was provided with a support person. This suggests a failure to comply with section 253 of the PP&R Act 2000.

### **People affected by drugs or alcohol**

Section 254 of the PP&R Act 2000 requires police to delay the questioning of any person who is obviously under the influence of drugs or alcohol. Questioning can commence when the police officer is reasonably satisfied that the person is no longer affected by the substance, and is able to understand the officer's explanation of their rights and comprehend the questions put to them.

#### ***Audit findings***

There were 10 interviews where the person being questioned was under the influence of either alcohol or drugs. In six of those cases the condition of the person was assessed by the coding officer, the decision being based on the slow speech pattern of the suspect and any reference by the suspect to the taking of drugs and/or alcohol. In three out of the four cases where the intake of alcohol or drugs was specifically disclosed on tape, questioning was delayed. In the case where questioning was not delayed, the suspect was asked whether he was under the influence of drugs or alcohol and clearly replied that he was 'stoned'. The officer also neglected to ask the suspect whether he understood the cautions and rights that had been given. The suspect was not asked to restate the caution, nor did the interviewing officer offer to rephrase any questions.

### **Right to an interpreter**

Where it is established that a suspect is having difficulties speaking the English language, due either to a lack of knowledge or to a physical disability, the police officer must arrange for an interpreter to be present during questioning of the suspect (s. 260 of the Act; s. 39 of the Code). Police may ask the suspect questions unrelated to the offence to establish whether (a) they can understand the questions put to them, (b) they are capable of giving a suitable response, and (c) they can appreciate why the questions are being asked (s. 39 of the Code).

#### ***Audit findings***

In two interviews the suspect displayed an inadequate knowledge of the English language. In both cases an interpreter was present to assist with the questioning as necessary.

The 1998 audit also identified two suspects with language difficulties, but there was no interpreter present for either of those interviews. Results from the 2001 audit on this issue therefore represent an improvement in compliance.

## Suspension of interview and delays

The 1997 Act (s. 234) introduced a framework that prevented suspects being questioned for lengthy periods without a break. A suspect must not be detained for more than 8 hours in any 24-hour period, and within that 8 hours must not be questioned for more than a total of 4 hours.

### ***Audit findings***

Interview time-outs were recorded for 23 interviews (18%). Multiple time-outs occurred in six of those interviews, and in one interview there were four time-out periods. The most common reason for a time-out was to change the interview tape. Other reasons were to contact an interpreter, to take a refreshment break, to call a friend, and to attend with police in their vehicle. The number of time-outs and the reasons for them are presented in Tables 13 and 14.

**Table 13. Number of interview time-outs, 2001 tapes audit**

Number of time-outs	Number of interviews
One	17
Two	3
Three	2
Four	1

Note: Data from 1998 are not directly comparable.

**Table 14. Reason for delay, 2001 tapes audit**

	<i>n</i>	%
Change tape	18	78.3
Call friend/interview friend	3	13.0
Recover from drugs/alcohol	3	13.0
Refreshment break	3	13.0
Contact solicitor	2	8.7
Driving with officers	2	8.7
Call interpreter	1	4.3
Unsure	1	4.3

Notes:

1. Percentages add to more than 100% because multiple time-outs were recorded in some cases.
2. Data from 1998 are not directly comparable.

The results indicate a marked increase in time-out periods from those recorded in the 1998 audit (18% v. 6%), where only eight interviews recorded at least one time-out. The 1998 audit recorded that the most common usage of time-out periods was to contact a support person and ask them to attend the interview.

## **Threats, inducements or promises**

Section 2.14.2 of the OPM requires the interviewing officer, before terminating the interview, to ask the suspect whether any threat, promise or inducement was held out to them to get them to participate in the interview. The 1998 Code expressly required police to avoid any situation that might suggest they were attempting to use threats or promises to obtain a statement (s. 62). The PP&R Act 2000 and the 2000 Code do not contain a similar provision. The PP&R Act 2000 requires only that a police officer, when questioning a suspect, 'must not obtain a confession by threat or promise' (s. 247).

### ***Audit findings***

In 72 per cent of interviews ( $n = 90$ ) the police officer asked the suspect whether any threat, promise or inducement was held out to them to get them to participate in the interview. In all but one of these cases the suspect responded that they were not threatened, nor was any promise or inducement held out to them to participate in the interview. In the remaining case, the suspect gave no response.

In the 1998 audit 88 per cent of suspects ( $n = 119$ ) were asked whether any threat, promise or inducement had been held out to them. In all but two of these cases the suspect replied that no such threats had been made. Of the remaining two cases, one suspect seems to have answered incorrectly; the suspect was of Indigenous origin and had complied with police in all other aspects of the interview. In the other case the suspect's response was not recorded.

Overall, police compliance with this requirement has dropped by 16 per cent since the 1998 audit. This may be a result of the police requirements now appearing only in the OPM, and not in the Responsibilities Code as was the case at the time of the 1998 audit.

# Conclusion

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Since the creation of the new police powers framework in 1998, the CMC has performed two audits of police interview tapes. The first audit, performed in 1998, showed that police were making reasonable attempts to comply with the new legislative regime. The report also drew attention to the mandatory nature of most of those provisions and the need for police officers to pay greater attention to such matters.

The second audit examined taped records of interview conducted in 2001. At the time of the interviews the new legislative framework had been in operation for over three years. With the passage of time, and with knowledge of the 1998 audit results, it seems reasonable to expect that the results of the second audit would reveal a higher rate of police compliance.

The results of the 2001 audit do indicate a clear improvement in some areas relating to the questioning of suspects of indictable offences. Unfortunately there has not been a corresponding improvement in relation to some of the more important rights of suspects:

- ▶ cautioning — right to silence
- ▶ right to a friend/relative and lawyer
- ▶ safeguards for special needs groups
- ▶ safeguards for Indigenous suspects
- ▶ threats, inducements and promises.

In those areas there was little evidence of improvement, and in some cases a decline in the rate of police compliance. It appears that, in some circumstances, interviewing officers may have become complacent in the performance of their mandatory responsibilities.

The conclusions drawn from the data were based solely on the information captured in the interview tapes. It is not enough for police to fulfil their legislative responsibilities before taping the interview. Where practicable, the whole process should be captured on tape so that it is evident to the court that the legislative requirements have been complied with. Providing this level of transparency

protects police and the rights of the suspect, and serves to support the successful prosecution of an indictable offence. If that information is not available in the record of interview, no specific conclusions can be drawn regarding the interviewing officer's compliance with the legislation.

## Cautioning — right to silence

Since the 1998 audit there has been no improvement in police compliance with the requirement to advise suspects of their right to silence and the use in evidence of any information they may provide. In addition, where there was a time-out from the interview, suspects were rarely reminded of those rights before questioning recommenced and police rarely checked the suspect's understanding of the right to silence. These issues were identified in the 1998 audit.

To some extent the relatively low rate of police compliance in the 1998 audit was explained by the fact that the police powers legislation had been in existence for only four months at the time of the audit. The interviews that were the subject of the current audit were conducted in September 2001. The interviewing officers would have been aware of their legislative obligations for over three years and compliance rates should have improved. The right to silence is a fundamental right of the suspect when being questioned by police in relation to an indictable offence, and it is therefore difficult to explain why police would fail to explain this right to suspects before they commenced questioning. While it is possible that this right was explained prior to the taping, section 262 of the PP&R Act 2000 states that such information must, if practicable, be recorded during the taped interview.

## Right to a friend/relative and lawyer

Since the 1998 audit the level of police compliance with the requirement to advise a suspect of their right to a friend or relative has improved only slightly. However, in relation to advising suspects of their right to a lawyer, compliance has improved considerably. Confusion arose in cases where the interviewing officer incorrectly stated that the suspect was entitled to contact, and have present during questioning, a friend/relative **or** lawyer. In these cases suspects were led to believe that they were entitled to either a friend/relative or a lawyer, but not both. The required wordings of these rights are clearly stated in the 2000 Code. It is one of the suspect's most important rights to have a friend/relative **and** lawyer present during the interview.

## **Safeguards for special needs groups**

Both the legislation and the OPM recognise that certain minority groups within the community have special needs and must be afforded certain safeguards when being interviewed in relation to an indictable offence. The safeguards include: assessing the suspect's level of understanding and ability to participate in questioning; having a support person or interpreter present during the interview; and suspending the interview where a person is affected by drugs or alcohol.

At times it is difficult to recognise that a suspect has a special need. Because of this, the legislation and OPM prescribe procedures to assist interviewing officers in making an assessment. One of the procedures involves asking the suspect questions that do not relate to the offence to assess their ability to understand their rights and cautions, and their ability to participate in a formal interview. The audit identified that police asked such questions in only 45 per cent of interviews where suspects specifically identified themselves as having a special need.<sup>7</sup>

## **Safeguards for Indigenous suspects**

The PP&R Act 2000 recognises the special needs status of Aborigines and Torres Strait Islanders and provides safeguards to protect them during the questioning process. It is important that police officers make an effort to ensure compliance with those provisions. Unfortunately, the audit identified deficiencies in relation to the notification of a legal aid organisation and the process relating to the presence of a support person.

## **Threats, inducements and promises**

It is essential to both the integrity of the police investigation process and the successful prosecution of a criminal matter that the interviewing officer make no threats, promises or inducements to the suspect during questioning. Prior to the 1997 Act, there was substantial concern expressed by defence lawyers and the Queensland Council for Civil Liberties about the incidence of duress suffered by suspects during questioning by police. Police should therefore be diligent in checking with the suspect, during the taped record of interview, that they participated in the interview of their own free will, and that no threats promises or inducements were made to them by police before the interview. The results from the 2001 audit reveal a 16 per cent decrease in compliance since the 1998 audit. This trend raises concern that the important checks and balances provided by this provision are not being fully adhered to.

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7 This does not include cases where the coding officer judged the person as having a special need.

## **Consequence of noncompliance with the legislation and OPM**

The audit suggests that noncompliance by police officers with the legislative requirements governing the questioning of suspects occurred in the following areas:

- ▶ cautions
- ▶ right to a friend or relative and lawyer
- ▶ Indigenous suspects
- ▶ people with an impaired capacity
- ▶ people affected by drugs or alcohol
- ▶ threats, inducements and promises.

Breaches of this nature by police officers would most likely be assessed as minor contraventions of the PP&R Act 2000, because each involves a failure to follow procedure and does not involve any aggravating circumstance.

## **Future directions**

In view of the findings of the 2001 audit, it seems prudent to ensure that audits of taped records of interview continue to be conducted at regular intervals. The CMC will undertake further discussions with the QPS to determine how best to review, determine compliance with, and report on issues relating to the exercise of police powers in the investigation of individuals suspected of committing an indictable offence. These discussions are likely to explore the feasibility of introducing strategies to target officers who are the subject of complaints for noncompliance. In the meantime, the CMC will continue to monitor trends in complaints in this area, as part of its function of monitoring police powers.