

Crimes and Misconduct Commission

Inquiry into Policing in
Indigenous Communities

Townsville Submission

June 2007

Contributors

On the 26th of May 2007 a workshop was facilitated by James Cook University, School of Law, to discuss policing in Indigenous communities. Concerned members of the public and representatives of numerous organisations joined with James Cook University School of Law staff and students at the Townsville campus, to address the questions raised in the *Issues Paper*.¹

The School of Law is pleased to have the opportunity to make a submission on policing in Indigenous communities on behalf of all contributors present at our workshop. The views presented at this workshop are detailed below.

Please note that this workshop was convened prior to the Federal government's announcements regarding a proposed total ban on alcohol for Indigenous communities and other measures. These new Federal initiatives are not canvassed in this submission.

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¹ Crime and Misconduct Commission, Inquiry into Policing in Indigenous Communities, *Issues Paper* (April 2007).

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1. Preliminary matters regarding the Issues Paper

1.1 The terms of reference of the inquiry are too restrictive

The terms of reference of the *Issues Paper* aim to examine the situation of people in ‘remote Indigenous communities’. We submit that these terms of reference are too narrow given the population distribution of Indigenous people throughout Queensland.

An estimated 3.5% of Queensland’s population are Indigenous people. This is the second largest population of Indigenous people in Australia.² The *Baseline Report* (2006) details that, of this Indigenous population in Queensland:

48 per cent live in regional areas;
30 per cent live in major cities; and
22 per cent live in either remote or very remote areas.³

The terms of reference implicitly exclude, for example, the greater Townsville area in the definition of ‘remote communities’. Townsville, as a regional centre, has a pressing interest in policing standards and should be considered in this inquiry.

1.1.1 Recommendation:

This inquiry should apply to policing practices relating to Indigenous people in Queensland generally and not be restricted to DOGIT or remote communities.

1.2 Inadequate consultation and circulation of the Issues Paper

It is apparent that the degree of circulation and public awareness of the *Issues Paper*, particularly for members of the community dealing closely with Indigenous people and communities, was lacking.

For example, the Townsville ATSI Legal Centre was not contacted or consulted regarding this *Issues Paper* by the Crimes and Misconduct Commission (CMC). The ATSI Legal Centre was notified by the School of Law. Better circulation of the *Issues Paper* would have enabled a more comprehensive collection of the evidence required to make effective decisions and conclusions.

² Queensland Government, Department of local Government, Planning, Sport and Recreation, *Queensland’s Aboriginal and Torres Strait Islander Population* (2006) 20.
<http://www.lgp.qld.gov.au/?id=3594> at 18 May 2007.

³ Queensland Government, ‘Partnerships Queensland: Future Directions Framework for Aboriginal and Torres Strait Islander Policy in Queensland 2001 – 2010’ *Baseline Report* (2006) 14
<http://www.datsip.qld.gov.au/partnerships/partnerships-baseline-report.cfm> at 18 May 2007.

1.3 Previous Recommendations from other Inquiries

A number of inquiries have been generated pertaining to Indigenous people and their relationship with the police. Examples are the Royal Commission into Aboriginal Deaths in Custody (1991) (RCIADIC),⁴ the Inquiry into the Death of Mulrunji (2006)⁵ and the *Baseline Report* (2006)⁶. The present inquiry would not be necessary if the statistics and recommendations generated from these reports had been fully utilised and implemented.

This observation is supported by the statement made by Acting State Coroner, Christine Clements in the *Inquest into the death of Mulrunji* (2006) when she stated that it was ‘reprehensible that the detailed recommendations of the Royal Commission into Aboriginal Deaths in Custody should have to be referred to so many years after the Royal Commission’.⁷

We submit that the current inquiry duplicates much of which has been addressed over fifteen years ago in the RCIADIC (1991).

1.3.1 Recommendation:

For the inquiry to have real practical benefits, the main outcomes of this investigation must be that the Queensland Police Service (QPS) and the Queensland government be required to answer the criteria for change as outlined in volume five of the *National Report*, RCIADIC.⁸

1.3.2 Recommendation:

If the QPS and the Queensland government are reluctant or unable to implement these recommendations the QPS and/or the Queensland government should overtly state which criteria they will not or cannot implement.

1.3.3 Recommendation:

That recommendations generated by the Inquest into the death of Mulrunji be implemented by the QPS and the Queensland government.⁹

⁴ Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1-5.

⁵ Office of the State Coroner Queensland, ‘Inquest into the death of Mulrunji’ *Finding of Inquest 27* September (2006).

⁶ Queensland Government, ‘Partnerships Queensland: Future Directions Framework for Aboriginal and Torres Strait Islander Policy in Queensland 2001-2010’ *Baseline Report* (2006) <http://www.datsip.qld.gov.au/partnerships/partnerships-baseline-report.cfm> at 18 May 2007.

⁷ Office of the State Coroner Queensland, ‘Inquest into the death of Mulrunji’ *Finding of Inquest 27* September (2006) 28.

⁸ See Appendix I.

⁹ See Appendix II.

1.4 Increase of Police

It would seem that a likely outcome of this inquiry is an increase in the number of police in Indigenous communities. We submit that this is not a preferred option.

An increase of police officers to locations where the population of Indigenous people is high has the potential to lead to over-policing, resulting in higher contact with the criminal justice system for Indigenous people.

Over-policing has been described as an increase in intensity regarding policing methods employed regarding Aboriginal people and Aboriginal communities. Over policing refers to the proportion of police numbers in particular locations and the nature and degree of police intervention.¹⁰

The Redfern Raid of 1990 in New South Wales provides an example of over-policing. The disproportionate percentage of Indigenous persons charged with street offences also exemplifies this and has been well documented.¹¹

As Cunneen states:

In the great majority of cases, Aboriginals come into custody as a result of relatively trivial and often victimless offences, typically street offences related to alcohol and language. Many of these 'offences' would not occur, or would not be noticed, were it not for the adoption of particular policing policies which concentrate police numbers in certain areas, and police effort on the scrutiny of Aboriginals... The presence of police in large numbers leads to innumerable further trivial charges creating a vicious circle in which Aboriginals are criminalised.¹²

Many Indigenous persons view this as a form of harassment.¹³ Furthermore, police are armed. This signifies more power and instils fear in Aboriginal people. It is therefore submitted that robust police numbers and a visible increase in police presence does nothing to enhance the relationship between Indigenous people and the police.

¹⁰ Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (2001) 85.

¹¹ Elizabeth Eggleston, *Fear, Favour or Affection* (1976); Greta Bird, 'The 'Civilizing Mission' Race and the Construction of Crime', *Contemporary Legal Issues* No 4 (1987); Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991); Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (2001); Tamara Walsh, 'Offensive Language, Offensive Behaviour and Public Nuisance: Empirical and Theoretical Analyses' 24 (2005) *The University of Queensland Law Journal* 123.

¹² Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (2001) 90-91.

¹³ Chris Cunneen, 'Enforcing Genocide? Aboriginal Young People and the Police' in Rob White and Santana Perrone, *Crime and Social Control: An Introduction* (1997) 36.

Increase of Police continued...

In support of this, the *Palm Island: Future Directions Report (2006)* indicated that an increase of police on Palm Island would be a misguided solution.¹⁴ Quantity does not replace quality.

1.4.1 Recommendation:

Rather than increase police numbers, funding should be directed to improve police service quality. The key to improving quality commences, but is not restricted to, better education on Indigenous issues for all police officers.¹⁵

1.4.2 Recommendation:

The solution of many problems also lies within the community. An alternative model of community policing should also be implemented with appropriate funding and planning to achieve successful outcomes.¹⁶

1.5 Whole of Government Approach

The suggestion that the police/aboriginal relationship is problematic is too narrow. This is not just a policing issue, this is a State Government issue. Effective improvement requires the adoption of a holistic approach. Legislative efforts, health support such as the provision of diversionary centres for intoxicated persons and policy decisions require revision.

1.5.1 Recommendation:

That the RCIADIC recommendations, and other recommendations in this submission, particularly in relation to the decriminalisation of public drunkenness and other legislative changes that would prevent high interaction between the police and Indigenous people, be effected.

¹⁴ Resource Officer Report, *Palm Island Future Directions Report (2006)* 39
<http://www.datsip.qld.gov.au/resources/publications/palm-island-future-directions-report.cfm>
at 25 April 2007.

¹⁵ This is detailed below in section 4, Changes to improve the delivery to policing services to remote Indigenous communities.

¹⁶ This is detailed below in section 4, Changes to improve the delivery to policing services to remote Indigenous communities.

2. The relationship between police/people remote Indigenous communities.

2.1 Historical Factors shaping police/community relations

The historical factors shaping police/community relations have been well documented in previous reports such as the RCIADIC. Volume two of the *National Report* (1991) states that:

Historically the police have acted as the most consistent point of Aboriginal contact with colonial power. This is pertinent to the present situation, for past history relating to police action is very much alive in the minds of Aboriginal people. Similarly, police share a certain heritage relation to the treatment of Aboriginal people.¹⁷

The relationship between Indigenous people and the police requires improvement. The poor relationship between the police and Indigenous people in Australia has been the subject of both national and international concern.¹⁸ We submit that the historical factors shaping police/community relations have been extensively canvassed in prior inquiries and therefore shall not be reproduced in this submission.

2.2 Relationship between police and Indigenous people is worse

The only additional observation is that following the death of Mulrunji Doomadgee on Palm Island, the relationship between police/ community, particularly on Palm Island, Queensland's largest indigenous community¹⁹ has indeed worsened.

It was also noted at the forum that the blue wristbands, worn by QPS officers in support of Senior Sergeant Chris Hurley, did not positively contribute to the relationship between the police and Indigenous people. The sporting of these bands contributed to tension and strengthened the divide between Indigenous people and the police.

¹⁷ Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 2, 10.5.1.

¹⁸ Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia* (1991) 45, 79, 210; Amnesty International, *Australia: Police Brutality Against Queensland Aborigines* (1997) <http://web.amnesty.org/library/ENGASA120031997?open&of=ENG-AUS> at March 2007.

¹⁹ Queensland Government, Department of Local Government, Planning, Sport and Recreation, *Queensland's Aboriginal and Torres Strait Islander Population* (2006), 10 <http://www.lgp.qld.gov.au/?id=3594> at 18 May 2007.

2.3 Particular characteristics of remote Indigenous communities that influence policing

Alcohol laws in remote Indigenous communities

Restrictions on the quantity and type of liquor that can be transported into remote Indigenous communities have been gradually implemented in Queensland. At present, restrictions exist in the Far North Queensland communities of Aurukun, Hope Vale, Kowanyama, Lockhart River, Mapoon, Napranum, Northern Peninsula Area Communities (Seisia, Injinoo, Umagico, New Mapoon and Bamaga), Palm Island, Pormpuraaw, Wujal Wujal and Yarabah.²⁰

In conjunction with these alcohol restrictions is the policy of zero tolerance for the violation of these liquor restrictions. Zero tolerance results in higher contact between Indigenous people and the police.

The imposition of zero tolerance poses a challenge and influences policing in remote Indigenous communities. This is particularly so, as many Indigenous communities and many individual Indigenous people suffer with the illness of alcoholism. Arrest for intoxication is not the appropriate action to deal with this widespread problem, particularly if zero tolerance to intoxication is adopted.

Recommendation 79 of the RCIADIC stated that, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.²¹

2.3.1 Recommendation:

Dry or restricted Communities should be developed through a comprehensive negotiation process and not imposed on the community externally.

2.3.2 Recommendation:

Imposing the policy of a dry community with the policy of zero tolerance is an insensitive policy. Zero tolerance, as a policy, should be abolished.

²⁰ Queensland Government, Community Information, 'Snapshot of alcohol restrictions', *Meeting Challenges, Making Choices* http://www.mcmc.qld.gov.au/community/community_maps.php at 29 May 2007.

²¹ See also recommendation 80, 81, 82 & 86 of the RCIADIC, Appendix I of this submission.

Drivers licence laws in remote Indigenous communities

Many Indigenous people in remote communities are drawn into the criminal justice system by police due to issues related to driving offences.

In remote Indigenous communities such as Palm Island, driving is less complicated due to the absence of a built environment. We suggest that the current driving test is culturally difficult.

The requirements deemed necessary to hold a driver's licence do not reflect the driving conditions of remote Indigenous communities. If revised, a more appropriate licence might reduce the amount of offences Indigenous people are charged with.

This would also positively contribute to the relationship between Indigenous people and the police.

2.3.2 Recommendation:

A licence and accompanying test should be developed that could apply and be restricted to remote Indigenous communities. This would be particularly useful for locations such as Palm Island.

Persons in possession of this limited licence would be restricted to driving in that designated location.

We submit that this would reduce the population of Indigenous people in custody or in breach of laws for driver's licence and similar traffic offences.

2.4 Contemporary Issues affecting relations

Improvements in Police Culture

The culture of the police, particularly in their treatment and regard for Indigenous people requires improvement. Policing has been described as exhibiting a certain regularity and pattern based on common perceptions.²² Police have developed codes of action and reaction in the execution of police duties.²³ Commissioner Johnston noted in the RCIADIC that, long standing policies, practices and procedures were merely carried forward from the colonial era. They were familiar and, through this familiarity, tended to be accepted without question.²⁴ Certain colonial practices have been deeply embedded within the police service.²⁵

At present the relationship between many Indigenous people and the police can be described as an 'us and them' position. This has been embedded in the culture of the police. We submit that more needs to be done to rectify this within the culture of the police. We suggest that this must commence with better training of police.

Inadequacies in Police Training

There remains a lack of adequate police training.²⁶ For example, police lack appropriate knowledge of their powers and, as a corollary to this, how these powers might be abused. This is exemplified by the unnecessary arrest of Mulrunji Doomadgee on Palm Island in 2004.

Senior Sergeant Hurley, responsible for Queensland's largest Indigenous community,²⁷ had not received any training on policing in Indigenous communities apart from 'his experience and a one-week workshop held 'some years ago'. He could not recall what this training encompassed exactly, but it included 'cultural beliefs' and 'having respect.'²⁸ Furthermore, Sergeant Michael Leafe, also serving on Palm Island at the time Mr Doomadgee was arrested, had received no training

²² Rob White and Santina Perrone, *Crime and Social Control: An Introduction* (1997) 44.

²³ Christine Stafford, 'Colonialism, Indigenous peoples and the criminal justice systems of Australia and Canada: Some comparisons' in Kayleen M. Hazlehurst (ed), *Legal Pluralism and the Colonial Legacy* (1995) 236,

²⁴ Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 4, 54.

²⁵ Rose D Bird, 'Land Rights and Deep Colonising: The Erasure of Women' (1996) 3 (85) *Aboriginal Law Bulletin* 6, 10.

²⁶ Police training and education is addressed in this submission in section 4.

²⁷ Queensland Government, Department of Local Government, Planning, Sport and Recreation, *Queensland's Aboriginal and Torres Strait Islander Population 2006*, 10 <http://www.lgp.qld.gov.au/?id=3594> at 18 May 2007.

²⁸ Palm Island Aboriginal Council, 'Inquest into the Death of Mulrunji on Palm Island on 19 November 2004', (Final Submissions on behalf of the Palm Island Aboriginal Council, 2006) 30.

regarding policing in an Aboriginal community, and had not previously served in an Indigenous community.²⁹ This lack of training is unacceptable.

Training is addressed in section four of this submission. All currently serving officers should be adequately trained. Training is connected to and influences police culture. Some officers hold views of minority groups which are unacceptable.³⁰ Without proper training, the views of existing officers, as role models for younger officers become accepted and unchallenged.³¹ It is evident that this mode of 'on the job training' has the negative potential to perpetuate a police culture that impedes the fostering of better Aboriginal/police relations.

Zero tolerance policy results in too many arrests

The policy of zero tolerance is a 'law and order' approach to policing and results in too many arrests. We submit that this is an inappropriate expression of power.

Zero tolerance policy has the capacity to provoke Indigenous people.

In this way, zero tolerance leads to further criminalisation of Indigenous people. For example, when viewed in the context of minor offences, such as street offences, a pattern emerges.³² Defiance, resistance and assertion by Indigenous people leads to more charges, widely known as the 'trifecta'.³³

It is submitted that zero tolerance does nothing to positively contribute to the relationship between Indigenous people and the police. It does not improve the delivery of policing services to Indigenous communities.

The forum in Townsville was also informed about man-handling of people by police under the policy of zero tolerance.

In relation to this, recommendation 60 (a) of the RCIADIC states that Police Services take all possible steps to eliminate violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers.

2.4.1 Recommendation:

The policy of zero tolerance should be abolished.

²⁹ Ibid 60.

³⁰ Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (2001) 215.

³¹ Ibid.

³² Rob White and Santina Perrone, *Crime and Social Control: An Introduction* (1997) 37.

³³ Russell Hogg and Kerry Carrington, *Policing the Rural Crisis* (2006) 123. The 'trifecta' refers to combinations of charges of offensive behaviour/language, resist arrest and assault police.

Street offences problem

Public order legislation has been applied to Indigenous people disproportionately throughout much of Australian history.³⁴ Offences, such as Queensland's offence of public nuisance³⁵ and public drunkenness³⁶ and their regular exercise against Indigenous people, has been a recurring theme in literature about, and in the experience of, many Indigenous people.

Commissioner Johnston, in the RCIADIC report stressed that '[t]oo many Aboriginal people are in custody too often'.³⁷

This is a problem of the law itself coupled with the zero tolerance policy practice.

A perusal of the statistics reveals that often police are the sole victims of public nuisance charges and offensive language is often the cause of this charge.³⁸

Recommendation 86(a) of the RCIADIC states that the use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge.

Bearing in mind that Mulrunji Doomadgee was arrested for public nuisance, and that public drunkenness is not a crime in most Australian states, the following recommendation was made by the Townsville Indigenous Human Rights Group.

2.4.1 Recommendation:

The repeal of s 10 of the *Summary Offences Act 2005* (Qld) (offence to be drunk in a public place), and strict police procedures and guidelines with penalties for non-adherence for arrests made under s 6 of the *Summary Offences Act 2005* (Qld) (offence of being a public nuisance).

³⁴ Mark Findlay, Stephen Odgers and Stanley Yeo, *Australian Criminal Justice* (3rd ed., 2005) 327.

³⁵ *Summary Offences Act 2005* (Qld) s 6.

³⁶ *Summary Offences Act 2005* (Qld) s 10.

³⁷ Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, 44. See recommendations 86(a) and 87.

³⁸ Tamara Walsh, *No Offence: the enforcement of offensive language and offensive behaviour offences in Queensland* (April 2006) 23.

Police discretion

An important issue is that much of the arrest and charge for street offences remains at the discretion of the police.

The exercise of police discretion must be better directed through legislative change. Structures, checks and reviews must be established to monitor the exercise of police discretion.

Recommendation 87(b) of the RCIADIC, in relation to arrest being a last resort, recommended that police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;

Recommendation 87(c) stated that Administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons.

The Doomadgee case exemplified abuse of power. In this instance, there was no serious offence, seemingly no power to arrest and inadequate reason to imprison. There was a perception that there was no discretion to arrest and indeed, no alternatives were considered by Senior Sergeant Hurley. In an interview, Senior Sergeant Hurley concluded that it was 'standard practice to go to the station'.³⁹ He had no appreciation of the principles espoused by the RCIADIC report or the QPS policy that arrest should be a last resort.⁴⁰

2.4.2 Recommendation:

The *Police Powers and Responsibilities Act 2000* (Qld) s 365 (arrest without warrant) should be amended to clearly enunciate the principle of arrest as a last resort.

A system of checks and reviews on the exercise of police discretion should be implemented.

All police need to be educated about the principle of arrest as a last resort and the alternatives to arrest, particularly in relation to street offences.

³⁹ Palm Island Aboriginal Council, 'Inquest into the Death of Mulrunji on Palm Island on 19 November 2004', (Final Submissions on behalf of the Palm Island Aboriginal Council, 2006) 30.

⁴⁰ Ibid.

3 How policing services are currently delivered in Indigenous communities.

3.1 Current provision of policing services

It is acknowledged that in many remote communities, police are often the only service providers living in the community. As a result, communities may rely on police to solve problems which are not strictly of a policing nature. This places extra responsibility and adds further complexity to the relationship between Indigenous people and the police.

To remedy this, there have been efforts by police to employ social workers in some communities. Mt Isa community is an example where this has occurred.

3.2 Challenges police face in providing services

Alcohol

Many problems that require policing involve alcohol.⁴¹ There is a pressing need to address the issue of alcoholism in communities. This also supports the initial statement made in this submission that the approach required to policing in Indigenous communities must be a whole of government approach and cannot be restricted to the QPS.

Resentment

There is resentment toward policing methods within Indigenous communities. This is particularly due to the extent of power exercised over Indigenous communities.

There is also resentment toward police. This is exemplified by the lack of use of the PCYC on Palm Island. Many residents of Palm Island will not use the facilities of the PCYC as they identify this building with the police.

⁴¹ Queensland Government, 'Partnerships Queensland: Future Directions Framework for Aboriginal and Torres Strait Islander Policy in Queensland 2001 – 2010' *Baseline Report* (2006) 116 <http://www.datsip.qld.gov.au/partnerships/partnerships-baseline-report.cfm> at 18 May 2007.

3.3 Policing Methods and Priorities

Prior preparation

At present, police are not prepared properly for working in Indigenous communities.

There are difficulties with policing practices in Indigenous communities, for example, discretion to arrest. What seems to occur at the moment is, if in doubt, arrest and prosecute. Police should have a peace-keeping role rather than a law-an-order role.

The forum in Townsville heard that much of the Aboriginal Legal Service work conducted at the moment is brought about by over-policing in communities and the arguably incorrect use of discretion to arrest.

Appropriate police conduct in Indigenous communities is paramount to the future relationship between the police and Indigenous people.

Protocols should be part of the ‘bag of tricks’ that police take with them to Indigenous communities. The development of protocols was also outlined in the RCIADIC.

Recommendation 223 of the RCIADIC stated that Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people.

Police treatment of Police Liaison Officers

There are problems with the police treatment (and lack of power) of the PLOs.⁴² The Townsville Indigenous Human Rights Group noted at the forum that on Palm Island, PLO Lloyd Bengaroo made a conscious effort not to witness the incident between Mulrunji and Senior Sergeant Hurley as he ‘didn’t want to get into trouble’.

The Group believes many PLOs are treated as ‘Jacky-Jackys’ by police, and are therefore often afforded little respect in their communities. This also makes the recruitment of PLOs difficult due to this stigma.

⁴² See section 4, The Role of the Police Liaison Officer.

Police treatment of Indigenous people in custody, particularly young people

Information was presented to the Townsville forum raising serious concerns about policing practices in relation to police interaction with Indigenous people, particularly Indigenous youths.

Examples discussed were:

- In Townsville young people had been sprayed in the eyes with pepper spray and not provided with immediate water treatment as per the QPS guidelines;
- In Charters Towers, youths had been taken to the watch house and questioned without being given the opportunity to exercise their rights to call parents or legal representatives; and
- In Charters Towers young people have been paraded, handcuffed, in the streets.

A further issue, reinforcing the need for a whole of government approach, is that in Townsville, youths are kept in the watch-house over night because there is no other accommodation, especially for young girls.

4 Changes to improve the delivery of policing services to remote Indigenous communities.

4.1 Relevant policing policies and approaches previously recommended

The RCIADIC made numerous recommendations regarding policing.

The Queensland government and the QPS have had ample time to address the recommendations outlined in the *National Report* (1991) of the RCIADIC. Appendix I specifically details these recommendations.

Again, we submit that the current inquiry duplicates much of which has been addressed over fifteen years ago in the RCIADIC (1991).

Recommendations 1.3.1, 1.3.2 and 1.3.3 of this submission address this matter.

4.2 Effective policing initiatives in Indigenous communities

We acknowledge that Police have implemented successful preventative programs such as:-

Homelands Program

Cairns Example:

In Cairns this program operates to assist people, predominately from Cape York and the Lockhart River who are homeless and displaced in Cairns having left their communities, to return to their communities.

Police work in conjunction with the local community and service providers such as Centrelink, the Department of Communities and the Cairns City Council, to assist Indigenous people to return to their communities. This assistance can include reduced airfares, temporary accommodation, food, clothing and medical services.⁴³

⁴³ Queensland Police Service, 'Homelands Partnership'
http://www.police.qld.gov.au/Resources/Internet/services/reportPublications/documents/Bulletin_303_p24-25.pdf at 29 May 2007.

Street Checks

Police keep a watchful eye on the behaviour of youths who are on the street. Police discuss this behaviour with the parents of these children. This involves and informs the parents of the youths' behaviour and has been said to be an effective procedure in monitoring conduct.

Domestic Violence Program

Police and Police Liaison Officers make preventative visits to homes known for domestic violence. Follow up visits are also made to these homes.

Whilst this is effective, the program is not sufficiently resourced.

Community Justice Groups

Community justice groups obtain funding through the Queensland government and are usually comprised of local people within individual communities.

A useful function of community justice groups is that they are responsible for developing alcohol management plans.

Community justice groups are also involved in implementing local strategies to address justice issues in their communities.

Whilst the forum heard that the Community justice programs were successful, the following problems were raised:

- There is over reliance on volunteers;
- Responsibilities have increased but with little recognition;
- There is not sufficient funding for transport;
- There are difficulties attracting males and young people to these groups; and
- There is a need for further training and community awareness to facilitate recruitment.

Issues with these programs generally

There is a lack of promotion and awareness of the positive efforts achieved by police officers in Indigenous communities.

This is due to the insufficient generation of awareness of the programs and the positive effects and possibilities these programs have had in Indigenous communities.

4.2.1 Recommendation:

More funding should be allocated to marketing the positive policing strategies mentioned above.

4.3 The Police Liaison Officer

Police Liaison Officers (PLOs) are employed by the QPS. The function of the PLO is to establish and maintain a positive rapport between Indigenous and multicultural communities and the QPS.

The QPS website outlines the role of the PLO as follows:

To promote trust and understanding through their liaison role by assisting the community and police to:

- Reduce and prevent crime;
- Divert people from the criminal justice system;
- Advise and educate police officers on culture and cultural issues;
- Improve community knowledge of law and order issues and policing services

However, PLOs do not have the powers of a police officer.⁴⁴

⁴⁴ Queensland Police Service Website, 'Role of a Police Liaison Officer' <http://www.police.qld.gov.au/join/plo/default.htm> at 30 March 2007.

PLOs occupy a difficult and ambiguous position

We submit that the role of the PLO is particularly difficult, having to operate in both the police and the Indigenous worlds. It is unfair to expect people to do this.

PLOs are the ‘meat in the sandwich’ – there are difficulties in operating as part of the police force. This is also due to their lack of independence and power. This risks making the PLO passive rather than pro-active.

Retention of PLOs is difficult

The PLOs are difficult to retain because of their career path. At present PLOs progress from their position of PLO to police officer in the police service. This results in an insufficient continuity of the role of a PLO.

Bearing in mind that this position as intermediary is difficult, the role needs to be better developed.

4.3.1 Recommendation:

PLOs should remain as PLOs and not become police officers.

PLOs should report to the local Council, not to the police service to ensure their independence.

4.4 Recruitment and Training of Officers for Remote Communities

Criticisms of current arrangements for training

Cross cultural training is currently too limited in time and scope. The current 8 hours of Indigenous cultural awareness for members of the police force is completely inadequate.

At present, cultural awareness training for the QPS is done in-house at the QPS Academy and is not facilitated/ conducted by Indigenous people.

This inadequacy of police training on Indigenous issues is an urgent concern.

Recruitment and Training continued...

4.4.1 Recommendations:

Extent of training:

Training on policing Indigenous people and on Indigenous issues must extend to all members of the QPS.

Training should be updated and on-going for all officers.

We submit that a more comprehensive training regime would include:

- a number of days training at the QPS Academy;
- a number of days induction upon starting in each new Indigenous community, this would be to get to know elders, key people and processes (as bearing in mind that all communities are different); and
- A full day each year as an ongoing commitment to training.

Training should be conducted by Indigenous people

Content of training:

Training should be based on a curriculum of Indigenous issues developed either by or with consultation of community Elders.

- ALL police are to receive training of cultural awareness;
- Police are to be trained regarding patterns of relationships this includes the history of police / Aboriginal relations;
- Body language;
- Ethical decision making; and
- Improved knowledge of customary law

Cultural awareness education should be a mandatory, assessable unit in the qualification process for members of the QPS.

To reiterate, the RCIADIC recommendations canvassed the training of police officers. Much of what was discussed at the forum in Townsville has been documented in the RCIADIC (Recommendation 228) and also in the recommendations following the Inquest into the death of Mulrunji (Recommendations 6, 7, 8, 9). The suggestions regarding police training have not changed. What is required now is affirmative action by the QPS.

Community protocol documents that guide stakeholders:

4.4.2 Recommendation:

A community protocol document should be produced on Palm Island by all stakeholders for police, health, town council and the education service.

This protocol document should have guidelines on :

- How to respond;
- Who to contact - who are the elders, who are the indigenous network;
- How to interact; and
- Interpretation of oral tradition into a written form.

4.5 Potential improvements to the way that police operate

The RCIADIC Recommendations

One recommendation of the RCIADIC was that the implementation of the RCIADIC recommendations was to be monitored and reported.

The forum was informed that reporting from some government departments seems to have ceased. This occurred in 1998/1999, although it is acknowledged that some government departments do still report.

There is evidence that suggests the recommendations of the RCIADIC have not been implemented effectively. These recommendations were designed to improve the way that police operate.

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Potential improvements continued...

4.5.1 Recommendation:

An annual review of the Queensland government and the QPS should be conducted regarding the implementation of the recommendations that are accepted following this inquiry. A body such as the CMC could have a role to play annually over the first five years and then bi-annually.

Education

Better education of all QPS officers is paramount to effective improvement of the operation of the police.

4.6 Appropriate policing model for individual communities

Community policing

This refers to Indigenous people who are involved in community and police initiated schemes. The RCIADIC approved the involvement of Indigenous people in the policing of their own communities (see Recommendations 214, 215, 220, 221).

This model of community policing was tested in Dubbo, New South Wales. It was successful in reducing crime, alcohol consumption and provided Indigenous people with empowerment and a sense of responsibility.

The forum was informed that the model identifies what was taken from the Indigenous male during early colonial times in Australia:

- Image/ identity
- Relationships
- Responsibility

The Dubbo model attempts to improve these aspects, commencing at improving the individual first. In turn, this leads to a positive impact on family and community. This model is opposite to the hierarchical power model which operates through the police force.

Similar efforts have been attempted by the Julalikari Council in Tennant Creek and the Northern Territory and also the Community Justice Panels at Echuca and elsewhere in Victoria.

The problem with sustaining the model in Dubbo was lack of funding.

4.6.1 Recommendation:

That the RCIADIC recommendations 214, 215, 220, 221 & 222 be implemented.

Murri Court

We submit that there should be more emphasis on the Murri Court.

4.7 Other impacts on delivery of policing services

Resources Issue

The money that *is* being allocated is not being applied effectively.

For example, on Palm Island there was extensive funding of the PCYC. The issue here is that this was identified as part or in connection with the police. Many residents of Palm Island will simply not attend the facility due to its links with the QPS.

Data Analysis

The forum was informed that through the reporting process following the RCIADIC, data supplied from departments, such as the Department of Transport, has not been analysed or used effectively to provide indicators that may be assistive to the development of better policing services.

5 Community assistance to police regarding delivery of policing services to community.

5.1 Community initiatives assisting police to achieve safe, peaceful communities

Diversionsary procedures

There must be better development of diversionary procedures.
Prison is not the appropriate location for individuals suffering with alcoholism.

Take people away from the law-and-order approach

Community policing and the development of the role of the PLO in conjunction with successful initiatives mentioned above is a move away from the law-and-order approach.

The cessation of the policy of zero tolerance has also been discussed.

6 Resolution of complaints against police

6.1 Culturally appropriate, timely and effective

It is recognised that the CMC does not solely handle police misconduct complaints.

CMC is inappropriate

The CMC is not the appropriate institution for complaints against the police.

The problem with the CMC is that people do not access it because they do not understand it.

There is a disincentive to make complaints at present as the complaints procedure is too bureaucratic. The complaints procedure requires simplification.

There needs to be a new community based complaints process, operating as an alternative to the CMC

People require education about complaints, support and representation.

People should also have confidence that their complaints are anonymous.

6.2 Access to information about complaint progress/ outcome

Community legal centres currently shoulder much of the bureaucratic and procedural burden pertaining to the individual when that individual makes a police misconduct complaint. This situation is not tenable.

6.3 Effectiveness of police handling complaints against police

Police cannot be self regulating.

Complaints about police behaviour/process/attitudes etc should be heard by an independent and impartial body, not by the police.

If this is not possible, there should be at the least, an opportunity provided for an aggrieved member of the public to speak to an Indigenous staff member.

In the absence of an independent body that addresses police misconduct complaints the forum would like to submit the following recommendations:

6.3.1 Recommendation:

(a) The Responsibilities of the CMC

Currently the CMC is charged with the power to investigate complaints made by Aboriginal and Torres Strait Islanders against members of the police force

(b) Changes to the CMC

(i) That the CMC create a facility for a body that can be assembled as required to act as a 'gatekeeper' for complaints made by ATSI people against members of the police force;

(ii) That this body would consist of local elders, member/s of the legal profession, representatives of government departments, local Council members and other stakeholders so as to provide for a representation of independent community interests'

(iii) That the body would have a legislative function; and

(iv) That the main function of the body would be to evaluate complaints as to their merits before the complaints reach the CMC. The benefits of this process would be that the workload of the CMC would be lessened, and, critically, that the complainant would be less alienated, confused and disaffected by the bureaucratic process.

6.3.2 Recommendation:

That where police investigation of police is necessary due to particular circumstances, it is not only important that investigation be done in an impartial manner, but must also be seen to be done in an impartial manner.

7 Detention monitoring and surveillance

7.1 Does current planned level of monitoring and surveillance provide safe and accountable custody environment

There is an over-reliance on the ability of technology to monitor people in custody. This is an inadequate solution. There must be human as opposed to electronic monitoring.

The reliance on technology detracts from the requirement of police to know their duty of care.

Duty of care must be emphasised.

RCIADIC Recommendations:

The RCIADIC recommendations need to be implemented. See RCIADIC recommendations relating to Custodial Health and Safety in Appendix I.

Inquest into the Death of Mulrunji Recommendations:

The recommendations generated from the Inquiry into the Death of Mulrunji also addressed supervision, monitoring and care in custody.

Recommendation 26 states that: People in custody should not be left unmonitored under any circumstances. The Police Commissioner should conduct an urgent review to ensure that this practice is not undertaken elsewhere in Queensland and that staffing levels are adequate to ensure that persons kept in custody are never left unmonitored.

7.2 'Cell watch' initiatives – community members monitoring cells

We submit that it is impractical to have community surveillance.

For example, what would individuals' liability be in the case of accident or death, or if they fail to note or report an incident?

The police need to take their duty of care more seriously rather than rely on yet another group of volunteers.

8 Keeping people out of custody

8.1 Use of arrest

We submit the adherence to 'education before incarceration' should be adopted by the QPS.

For example, there is a high rate of arrest for Indigenous offenders when a Caution would be sufficient.

8.2 Alternatives to arrest

As mentioned, legislative change is needed to better control the use of police discretion and how legislative power is exercised. This issue has been addressed earlier in the submission.

8.3 Use of detention or diversion from detention

The forum was informed that, commencing July 2007, a new system regarding alcohol related offences and an alcohol diversion program will be implemented. In this program, there are to be 5 rehabilitation houses with persons spending 8 weeks in the house and then referred back to court. We acknowledge that this is a positive initiative.

Lack of facilities:

Despite these initiatives, there is a lack of diversionary facilities. Indeed, there is no community patrol / diversion facility on Palm Island.

This results in the revolving door scenario, with many Indigenous people moving in and out of the criminal justice system for alcohol related offences.

There is a need for further diversionary centres, these should be implemented and should be staffed with skilled health workers and similar professionals.

People with medical problems should not go to the watch house.

Diversion from Custody:

- Palm Island and all DOGIT communities need 'dry out' diversion facilities.

- Public drunkenness needs to be de-criminalised

9 Consolidation of Recommendations

- 9.1** This inquiry should apply to policing practices relating to Indigenous people in Queensland generally and not be restricted to DOGIT or remote communities.
- 9.2** For the inquiry to have real practical benefits, the main outcomes of this inquiry must be that the Queensland Police Service (QPS) and the Queensland government be required to answer the criteria for change as outlined in volume five of the National Report, RCIADIC.
- 9.3** If the QPS and/ or the Queensland government are reluctant or unable to implement any of these recommendations the QPS and/or the Queensland government should overtly state which criteria they will not or cannot implement.
- 9.4** That the recommendations generated by the Inquest into the death of Mulrunji be implemented by the QPS.
- 9.5** Rather than increase police numbers, funding should be directed to improve police service quality. The key to improving quality commences, but is not restricted to, better education on Indigenous issues for all police officers.
- 9.6** The solution of many problems also lies within the community. An alternative model of community policing should also be implemented with appropriate funding and planning to achieve successful outcomes.
- 9.7** Dry or restricted Communities should be developed through a comprehensive negotiation process and not imposed on the community externally.
- 9.8** Imposing the policy of a dry community with the policy of zero tolerance is an insensitive policy. Zero tolerance, as a policy, should be abolished.

9.9 A licence and accompanying test should be developed that could apply and be restricted to remote Indigenous communities. This would be particularly useful for locations such as Palm Island.

Persons in possession of this limited licence would be restricted to driving in that designated location.

9.10 The repeal of s 10 of the Summary Offences Act 2005 (Qld) (offence to be drunk in a public place), and strict police procedures and guidelines with penalties for non-adherence for arrests made under s 6 of the Summary Offences Act 2005 (Qld) (offence of being a public nuisance).

9.11 The Police Powers and Responsibilities Act 2000 (Qld) s 365 (arrest without warrant) should be amended to clearly enunciate the principle of arrest as a last resort.

A system of checks and reviews on the exercise of police discretion should be implemented.

All police need to be educated about the principle of arrest as a last resort and the alternatives to arrest, particularly in relation to street offences.

9.12 More funding should be allocated to marketing the positive policing strategies mentioned above.

9.13 PLOs should remain as PLOs and not become police officers.

PLOs should report to the local Council, not to the police service to ensure their independence.

9.14

Extent of training:

Training on policing Indigenous people and on Indigenous issues must extend to all members of the QPS.

Training should be updated and on-going for all officers.

We submit that a more comprehensive training regime would include:

- a number of days training at the QPS Academy;
- a number of days induction upon starting in each new Indigenous community, this would be to get to know elders, key people and processes (as bearing in mind that all communities are different); and
- A full day each year as an ongoing commitment to training.

Training should be conducted by Indigenous people

Content of training:

Training should be based on a curriculum of Indigenous issues developed either by or with consultation of community Elders.

- ALL police are to receive training of cultural awareness;
- Police are to be trained regarding patterns of relationships this includes the history of police / Aboriginal relations;
- Body language;
- Ethical decision making; and
- Improved knowledge of customary law.

Cultural awareness education should be a mandatory, assessable unit in the qualification process for members of the QPS.

9.15 Community protocol documents that guide stakeholders:

A community protocol document should be produced on Palm Island by all stakeholders for police, health, town council and the education service.

This protocol document should have guidelines on :

- How to respond;
- Who to contact - who are the elders, who are the indigenous network;
- How to interact; and
- Interpretation of oral tradition into a written form.

9.16 (a) The Responsibilities of the CMC

Currently the CMC is charged with the power to investigate complaints made by Aboriginal and Torres Strait Islanders against members of the police force

(b) Changes to the CMC

(i) That the CMC create a facility for a body that can be assembled as required to act as a 'gatekeeper' for complaints made by ATSI people against members of the police force;

(ii) That this body would consist of local elders, member/s of the legal profession, representatives of government departments, local Council members and other stakeholders so as to provide for a representation of independent community interests'

(iii) That the body would have a legislative function; and

(iv) That the main function of the body would be to evaluate complaints as to their merits before the complaints reach the CMC. The benefits of this process would be that the workload of the CMC would be lessened, and, critically, that the complainant would be less alienated, confused and disaffected by the bureaucratic process.

9.17

An annual review of the Queensland government and the QPS should be conducted regarding the implementation of the recommendations that are accepted following this inquiry. A body such as the CMC could have a role to play annually over the first five years and then bi-annually.

Appendix I

RCIADIC Recommendations regarding Police (and Government)

(These Recommendations have been selected and reproduced from the RCIADIC National Report)

Post-Death Investigations

15. That within three calendar months of publication of the finding and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister of the Crown with responsibility for that agency or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person.

19. That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known.

20. That the appropriate Aboriginal Legal Service be notified immediately of any Aboriginal death in custody.

21. That the deceased's family or other nominated person and the Aboriginal Legal Service be advised as soon as possible and, in any event, in adequate time, as to the date and the time of the coronial inquest.

32. That the selection of the officer in charge of the police investigation into a death in custody be made by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank.

33. That all officers involved in the investigation of a death in police custody be selected from an Internal Affairs Unit or from a police command area other than that in which the death occurred and in every respect should be as independent as possible from police officers concerned with matters under investigation. Police officers who were on duty during the time of last detention of a person who died in custody should take no part in the investigation into that death save as witnesses or, where necessary, for the purpose of preserving the scene of death.

The Criminal Justice System: Relations with Police

60. That Police Services take all possible steps to eliminate:

- a. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and
- b. The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers. When such conduct is found to have occurred, it should be treated as a serious breach of discipline.

61. That all Police Services review their use of para-military forces such as the New South Wales SWOS and TRG units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.

Diversion from Police Custody

(These recommendations involve police but reflect the initial comments in this submission regarding the fact that the Aboriginal/ Police relationship cannot be restricted to police but requires an holistic approach)

79. That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.

80. That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.

81. That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.

82. That governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences.

84. That issues related to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organisations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan.

86. That:

- a. The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and
- b. Police Services should examine and monitor the use of offensive language charges.

87. That:

- a. All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;
- b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;
- c. Administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons and in particular should take account of the following matters:
 - i. all possible steps should be taken to ensure that allowances paid to police officers do not operate as an incentive to increase the number of arrests;
 - ii. a statistical data base should be established for monitoring the use of summons and arrest procedures on a Statewide basis noting the utilisation of such procedures in particular divisions and stations;
 - iii. the role of supervisors should be examined and, where necessary, strengthened to provide for the overseeing of the appropriateness of arrest practices by police officers;
 - iv. efficiency and promotion criteria should be reviewed to ensure that advantage does not accrue to individuals or to police stations as a result of the frequency of making charges or arrests; and
 - v. procedures should be reviewed to ensure that work processes (particularly relating to paper work) are not encouraging arrest rather than the adoption of other options such as proceeding by summons or caution; and
- d. Governments, in conjunction with Police Services, should consider the question of whether procedures for formal caution should be established in respect of certain types of offences rather than proceeding by way of prosecution.

88. That Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal organisations, whether there is a sufficient emphasis on community policing. In the course of that process of review, they should, in negotiation with appropriate Aboriginal organisations and people, consider whether:

- a. There is over-policing or inappropriate policing of Aboriginal people in any city or regional centre or country town;
- b. The policing provided to more remote communities is adequate and appropriate to meet the needs of those communities and, in particular, to meet the needs of women in those communities; and
- c. There is sufficient emphasis on crime prevention and liaison work and training directed to such work.

Custodial Health and Safety

122. That Governments ensure that:

- a. Police Services, Corrective Services, and authorities in charge of juvenile centres recognise that they owe a legal duty of care to persons in their custody;
- b. That the standing instructions to the officers of these authorities specify that each officer involved in the arrest, incarceration or supervision of a person in custody has a legal duty of care to that person, and may be held legally responsible for the death or injury of the person caused or contributed to by a breach of that duty; and
- c. That these authorities ensure that such officers are aware of their responsibilities and trained appropriately to meet them, both on recruitment and during their service.

123. That Police and Corrective Services establish clear policies in relation to breaches of departmental instructions. Instructions relating to the care of person in custody should be in mandatory terms and be both enforceable and enforced. Procedures should be put in place to ensure that such instructions are brought to the attention of and are understood by all officers and that those officers are made aware that the instructions will be enforced. Such instructions should be available to the public.

124. That Police and Corrective Services should each establish procedures for the conduct of de-briefing sessions following incidents of importance such as deaths, medical emergencies or actual or attempted suicides so that the operation of procedures, the actions of those involved and the application of instructions to specific situations can be discussed and assessed with a view to reducing risks in the future.

125. That in all jurisdictions a screening form be introduced as a routine element in the reception of persons into police custody. The effectiveness of such forms and of procedures adopted with respect to the completion of such should be evaluated in the light of the experience of the use of such forms in other jurisdictions.

126. That in every case of a person being taken into custody, and immediately before that person is placed in a cell, a screening form should be completed and a risk assessment made by a police officer or such other person, not being a police officer, who is trained and designated as the person responsible for the completion of such forms and the assessment of prisoners. The assessment of a detainee and other procedures relation to the completion of the screening form should be completed with care and thoroughness.

127. That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following:

- a. The introduction of a regular medical or nursing presence in all principal watch-houses in capital cities and in such other major centres as have substantial numbers detained;
- b. In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness, injury or self-harm at the time of reception;
- c. The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;
- d. the establishment of locally based protocols between police, medical and para-medical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises;
- e. The establishment of proper systems of liaison between Aboriginal Health Services and police so as to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody; and
- f. The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by officers with respect to the management of:
 - i. intoxicated persons;
 - ii. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions;
 - iii. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour,
 - iv. persons with an impaired state of consciousness;
 - v. angry, aggressive or otherwise disturbed persons'
 - vi. persons suffering from mental illness;
 - vii. other serious medical conditions;
 - viii. persons in possession of, or requiring access to, medication; and
 - ix. such other persons or situations as agreed.

128. That where persons are held in police watch-houses on behalf of a Corrective Services authority, that authority arrange, in consultation with Police Services, for medical services (and as far as possible other services) to be provided not less adequate than those that are provided in correctional institutions.

129. That the use of breath analysis equipment to test the blood alcohol levels at the time of reception of persons taken into custody be thoroughly evaluated by Police Services in consultation with Aboriginal Legal Services, Aboriginal Health Services, health departments and relevant agencies.

130. That:

a. Protocols be established for the transfer between Police and Corrective Services of information about the physical or mental condition of an Aboriginal person which may create or increase the risks of death or injury to that person when in custody;

b. In developing such protocols, Police Services, Corrective Services and health authorities with Aboriginal Legal Services and Aboriginal Health Services should establish procedures for the transfer of such information and establish necessary safeguards to protect the rights of privacy and confidentiality of individual prisoners to the extent compatible with adequate care; and

c. Such protocols should be subject to relevant ministerial approval.

131. That where police officers in charge of prisoners acquire information relating to the medical condition of a prisoner, either because they observe that condition or because the information is voluntarily disclosed to them, such information should be recorded where it may be accessed by any other police officer charged with the supervision of that prisoner. Such information should be added to the screening form referred to in Recommendation 126 or filed in association with it.

132. That:

a. Police instructions should require that the officer in charge of an outgoing shift draw to the attention of the officer in charge of the incoming shift any information relating to the well being of any prisoner or detainee and, in particular, any medical attention required by any prisoner or detainee;

b. A written check list should be devised setting out those matters which should be addressed, both in writing and orally, at the time of any such handover of shift; and

c. Police services should assess the need for an appropriate form or process of record keeping to be devised to ensure adequate and appropriate notation of such matters.

133. That:

a. All police officers should receive training at both recruit and in-service levels to enable them to identify persons in distress or at risk of death or injury through illness, injury of self-harm;

b. Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining unconscious or semi-rousable persons and the specific action to be taken by officers in relation to those matters which are to be the subject of protocols referred to in Recommendation 127;

c. In designing and delivering such training programs, custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services; and

d. Where a police officer or other person is designated or recognised by a police service as being a person whose work is dedicated wholly or substantially to cell guard duties then such person should receive a more intensive and specialised training than would be appropriate for other officers.

134. That police instructions should require that, at all times, police should interact with detainees in a manner which is both humane and courteous. Police authorities should regard it as a serious breach of discipline for an officer to speak to a detainee in a deliberately hurtful or provocative manner.

135. In no case should a person be transported by police to a watch-house when that person is either unconscious or not easily roused. Such persons must be immediately taken to a hospital or medical practitioner or, if neither is available, to a nurse or other person qualified to assess their health.

136. That a person found to be unconscious or not easily rousable whilst in a watch-house or cell must be immediately conveyed to a hospital, medical practitioner or a nurse. (Where quicker medical aid can be summoned to the watch-house or cell or there are reasons for believing that movement may be dangerous for the health of the detainee, such medical attendance should be sought).

137. That:

a. Police instructions and training should require that regular, careful and thorough checks of all detainees in police custody be made;

b. During the first two hours of detention, a detainee should be checked at intervals of not greater than fifteen minutes and that thereafter checks should be conducted at intervals of no greater than one hour;

c. Notwithstanding the provision of electronic surveillance equipment, the monitoring of such persons in the periods described above should at all times be made in person. Where a detainee is awake, the check should involve conversation with that person. Where the person is sleeping the officer checking should ensure that the person is breathing comfortably and is in a safe posture and otherwise appears not to be at risk. Where there is any reason for the inspecting officer to be concerned about the physical or mental condition of a detainee, that person should be woken and checked; and

d. Where any detainee has been identified as, or is suspected to be, a prisoner at risk then the prisoner or detainee should be subject to checking which is closer and more frequent than the standard.

138. That police instructions should require the adequate recording, in relevant journals, of observations and information regarding complaints, requests or behaviour

relating to mental or physical health, medical attention offered and/or provided to detainees. Instructions should also require the recording of all cell checks conducted.

139. The Commission notes recent moves by Police Services to install TV monitoring devices in police cells. The Commission recommends that:

a. The emphasis in any consideration of proper systems for surveillance of those in custody should be on human interaction rather than on high technology. The psychological impact of the use of such equipment on a detainee must be born in mind, as should its impact on that person's privacy. It is preferable that police cells be designed to maximise direct visual surveillance. Where such equipment has been installed it should be used only as a monitoring aid and not as a substitute for human interaction between the detainee and his/her custodians; and

b. Police instructions specifically direct that, even where electronic monitoring cameras are installed in police cells, personal checks be maintained.

140. That as soon as practicable, all cells should be equipped with an alarm or intercom system which gives direct communication to custodians. This should be pursued as a matter of urgency at those police watch-houses where surveillance resources are limited.

141. That no person should be detained in a police cell unless a police officer is in attendance at the watch-house and is able to perform duties of care and supervision of the detainee. Where a person is detained in a police cell and a police officer is not so available then the watch-house should be attended by a person capable of providing care and supervision of persons detained.

142. That the installation and/or use of padded cells in police watch-houses for punitive purposes or for the management of those at risk should be discontinued immediately.

143. All persons taken into custody, including those persons detained for intoxication, should be provided with a proper meal at regular meal times. The practice operating in some jurisdictions of excluding persons detained for intoxication from being provided with meals should be reviewed as a matter of priority.

144. That in all cases, unless there are substantial grounds for believing that the well being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a police cell. Wherever possible an Aboriginal detainee should be accommodated with another Aboriginal person. The views of the Aboriginal detainee and such other detainee as may be affected should be sought. Where placement in a cell alone is the only alternative the detainee should thereafter be treated as a person who requires careful surveillance.

145. That:

a. In consultation with Aboriginal communities and their organisations, cell visitor schemes (or schemes serving similar purposes) should be introduced to service police watch-houses wherever practicable;

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b. Where such cell visitor schemes do not presently exist and where there is a need or an expressed interest by Aboriginal persons in the creation of such a scheme, government should undertake negotiations with local Aboriginal groups and organisations towards the establishment of such a scheme. The involvement of the Aboriginal community should be sought in the management and operation of the schemes. Adequate training should be provided to persons participating in such schemes. Governments should ensure that cell visitor schemes receive appropriate funding;

c. Where police cell visitor schemes are established it should be made clear to police officers performing duties as custodians of those detained in police cells that the operation of the cell visitor scheme does not lessen, to any degree, the duty of care owed by them to detainees; and

d. Aboriginal participants in cell visitor schemes should be those nominated or approved by appropriate Aboriginal communities and/or organisations as well as by any other person whose approval is required by local practice.

146. That police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody.

147. That police instructions should be amended to make it mandatory for police to immediately notify the relatives of a detainee who is regarded as being 'at risk', or who has been transferred to hospital.

148. That whilst there can be little doubt that some police cell accommodation is entirely substandard and must be improved over time, expenditure on positive initiatives to reduce the number of Aboriginal people in custody discussed elsewhere in this report constitutes a more pressing priority as far as resources are concerned. Where cells of a higher standard are available at no great distance, these may be able to be used. More immediate attention must be given to programs diverting people from custody, to the provision of alternative accommodation to police cells for intoxicated persons, to bail procedures and to proceeding by way of summons or caution rather than by way of arrest. All these initiatives will reduce the call on outmoded cells. The highest priority is to reduce the numbers for whom cell accommodation is required. Where, however, it is determined that new cell accommodation must be provided in areas of high Aboriginal population, the views of the local Aboriginal community and organisations should be taken into account in the design of such accommodation. The design or re-design of any police cell should emphasise and facilitate personal interaction between custodial officers and detainees and between detainees and visitors.

158. That, while recognising the importance of preserving the scene of a death in custody for forensic examination, the first priority for officers finding a person, apparently dead, should be to attempt resuscitation and to seek medical assistance.

159. That all prisons and police watch-houses should have resuscitation equipment of the safest and most effective type readily available in the event of emergency and staff who are trained in the use of such equipment.

160. That:

- a. All police and prison officers should receive basic training at recruit level in resuscitative measures, including mouth to mouth and cardiac massage, and should be trained to know when it is appropriate to attempt resuscitation; and
- b. Annual refresher courses in first aid be provided to all prison officers, and to those police officers who routinely have the care of persons in custody.

161. That police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee's condition.

Improving The Criminal Justice System: Aboriginal People and Police

214. The emphasis on the concept of community policing by Police Services in Australia is supported and greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live.

215. That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including:

- a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;
- b. Any problems perceived by Aboriginal people; and
- c. Any problems perceived by police. Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.

220. that organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates.

221. That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of

justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal affairs budget.

222. That the national Police Research Unit make a particular study of efforts currently being made by Police Services to improve relations between police and Aboriginal people with a view to disseminating relevant information to Police Services and Aboriginal communities and organisations, as to appropriate initiatives which might be adopted.

223. That Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of:

- a. Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained;
- b. The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication;
- c. Concerns of the local community about local policing and other matters; and
- d. processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their communities.

224. That pending the negotiation of protocols referred to in Recommendation 223, in jurisdictions where legislations, standing orders or instruction do not already so provide, appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person other than such arrests or detentions for which it is agreed between the Aboriginal legal Services and the Police Services that notification is not required.

225. That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate.

226. That in all jurisdictions the processes for dealing with complaints against police need to be urgently reviewed. The Commission recommends that legislation should be based on the following principles:

- a. That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services;
- b. That the name of a complainant should remain confidential (except where its disclosure is warranted in the interests of justice), and it should be a serious offence

for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint;

c. that where it is decided by the independent authority to hold a formal hearing of a complaint, that hearing should be in public;

d. That the complaints body report annually to Parliament;

e. That in the adjudication of complaints made by or on behalf of Aboriginal person one member of the review or adjudication panel should be an Aboriginal person nominated by an appropriate Aboriginal organisation(s) in the State or Territory in which the complaint arose. The panel should also contain a person nominated by the Police Union or similar body;

f. That there be no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint;

g. That Aboriginal Legal Services be funded to ensure that legal assistance, if required, is available to any Aboriginal complainant;

h. That the complaints body take all reasonable steps to employ members of the Aboriginal community on the staff of the body;

i. That the investigation of complaints should be undertaken either by appropriately qualified staff employed by the authority itself, or by police officers who are, for the purpose of and for the duration of the investigation, under the direction of and answerable to, the head of the independent authority;

j. That in the course of investigations into complaints, police officers should be legislatively required to answer questions put to them by the head of the independent authority or any person acting on his/her behalf but subject to further legislative provisions that any statements, made by a police officers in such circumstances may not be used against him/her in other disciplinary proceedings;

k. That legislation ensure that the complaints body has access to such files, documents and information from the Police Services as is required for the purpose of investigating any complaint.

227. That the Northern Territory Police Service School-based Program be studied by other Police Services and that the progress and results of the program should be monitored by those services.

228. That police training courses be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions. Furthermore, such training should incorporate information as to:

a. The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;

- b. The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and
- c. The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection and assimilation.

229. That all Police Services pursue an active policy of recruiting Aboriginal people into their services, in particular recruiting Aboriginal women. Where possible Aboriginal recruits should be taken in groups.

230. That where Aboriginal applicants wish to join a service who appear otherwise to be suitable but whose general standard of education is insufficient, means should be available to allow those persons to undertake a bridging course before entering upon the specific police training.

231. That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances.

232. That the question of Community Police in Queensland and the powers and responsibilities of Community Councils in relation to them be urgently reviewed.

Appendix II

Recommendations and comments of Inquest into the Death of Mulrunji.

Arrest and Policing

1. The arrest of Mulrunji was not an appropriate exercise of police discretion. There were a range of alternatives to arrest available that should have been preferred. These include giving a caution, issuing a direction or commencing proceedings by way of notice to appear or summons.
2. The *Police Powers and Responsibilities Act 2000* (PPR Act) should be amended to reflect the principle of arrest as a last resort. This might be achieved by amending s 198⁴⁵ to provide that a police officer may only arrest an adult without warrant where the officer reasonably suspects that he or she has committed an offence and where they reasonably believe that no other action, in all the circumstances, is appropriate given the matters set out in s 198.
3. The PPR Act should be amended to include an explicit statutory duty to consider and utilise alternatives to the detention of intoxicated persons in police cells.
4. The Operational Procedures Manual (OPM) should be amended to instruct officers to consider arrest as a last resort and consider all alternatives before arresting a person, particularly in cases of minor offences.
5. The OPM should be amended to reinforce the need to consider and utilise alternatives to the detention of intoxicated persons in police cells.
6. The inappropriate arrest of Mulrunji reflects a lack of awareness of the legal bases upon which a person may be arrested without warrant. The Police Commissioner should consider whether this reflects upon police training generally or a need for further training of Senior Sergeant Hurley or other officers who gave evidence at this inquest.
7. The decision to arrest Mulrunji also reflects a lack of awareness of the alternatives to arrest and confusion about their availability in the case of intoxicated persons. The Police Commissioner should consider whether this reflects upon police training generally or a need for further training of Senior Sergeant Hurley and other officers who gave evidence at this inquest.
8. The decision to arrest Mulrunji and the evidence of Senior Sergeant Hurley discloses a lack of awareness of, and a failure to take into account, the recommendations of the RCIADIC relating to the arrest of Aboriginal people for drunkenness and public order offences. The Police Commissioner should

⁴⁵ Now s 365.

consider whether this reflects upon police training generally or a need for further training of Senior Sergeant Hurley and the other officers who gave evidence at this inquest.

9. The Police Commission should give particular attention to the training of officers working in Aboriginal communities. Such training should be provided prior to any service in Aboriginal communities and should deal specifically with the recommendations of the RCIADIC and how these are relevant to policing and the exercise of discretion to arrest. Training should include 'experiential training' based on the Kowanyama trial, as identified in the Cape York Justice Study.
10. Immediate attention should be given by the Queensland Government to the proper funding and support of the Community Justice Group on Palm Island.

Diversionsary Centres and Community Patrols

11. Urgent attention should be given by the Queensland Government to the establishment of a diversionsary centre on Palm Island to provide an alternative to police custody for people who come to the attention of police while intoxicated.
12. Such a centre should be established following consultation with the Palm Island community and its design and operation must be responsive to local conditions and needs.
13. The establishment of a diversionsary centre should be accompanied by the development of a protocol with the Queensland Police Service, in conjunction with the Palm Island community, as to its use as an alternative to detention.
14. The establishment of a diversionsary centre should also be accompanied by training of police officers working on Palm Island as to the use of the centre as an alternative to detention.
15. Urgent attention should be given by the Queensland Government to the establishment of a community patrol on Palm Island.
16. The structure and functions of such a community patrol should be developed following consultation with the Palm Island community.
17. It is vital that any community patrol that is implemented on Palm Island is adequately supported and funded to ensure its success.

Assessment and Monitoring of Health

18. There was no assessment of Mulrunji's health upon being received into police custody at the Palm Island Watchhouse. There was no adequate reason for this failure.
19. The OPM should be amended to fortify the direction given to police in relation to the conduct of a thorough initial health assessment of any person brought into police custody. In particular, the OPM should note that where a person taken into custody is unable initially to be properly assessed because they are violent, aggressive or non-cooperative, consideration must be given to conducting an assessment by another means (such as through the cell door) or having another officer conduct the assessment. In the event that an assessment still cannot be conducted, further attempts must be made at the earliest available opportunity.
20. The OPM should be urgently reviewed with a view to providing a much greater level of practical guidance to officers on how to conduct health assessments and checks of persons in their custody.
21. Pending such review, the OPM should be immediately amended to incorporate the Medical Checklist currently used by Victorian Police. Queensland police should receive training in the use of that checklist and commence using it immediately.
22. The failure to properly assess Mulrunji's health suggests a lack of appropriate training for officers in the conduct of health assessments of people in custody. The Police Commissioner should urgently consider increased and improved training of police officers in relation to health assessments, particularly for officers in charge of watchhouses who should receive more intensive and specialised training.
23. The content and scope of such training should take into account the RCIADIC recommendations, in particular:
 - Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining unconscious or semi-conscious persons and the specific action to be taken by officers in relation to those matters; and
 - In designing and delivering such training programs, custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services.

Supervision, Monitoring and Care in Custody

24. The Police Commissioner should consider the need for greater training in relation to monitoring equipment of officers who are in positions that may require them to have responsibility for people held in custody.
25. Theoretical and practical training in first aid and resuscitation should be mandatory for all officers who are in charge of a police watchhouse. Watchhouses should be resourced with appropriate equipment to enable first aid and resuscitation to be provided whilst maintaining proper workplace health and safety standards and protection for police officers.
26. People in custody should not be left unmonitored under any circumstances. The Police Commissioner should conduct an urgent review to ensure that this practice is not undertaken elsewhere in Queensland and that staffing levels are adequate to ensure that persons kept in custody are never left unmonitored.

Investigation of Mulrunji's Death

27. The involvement in the investigation of Mulrunji's death of officers from Townsville and Palm Island was inappropriate and undermined the integrity of the investigation.
28. In all deaths in custody, officers investigating the death should be selected from a region other than that in which the death occurred. The OPM should be amended to require this.
29. The OPM should be amended to require the appointment of the officer in charge of an investigation into a death in custody by the Chief Commissioner, a Deputy Commissioner or Assistant Commissioner.
30. The OPM should be amended to made explicit the need to consider, when selecting officers for involvement in an investigation of a death in custody, the impartiality and the appearance of impartiality in the conduct of the investigation.
31. The involvement in the investigation of Mulrunji's death of officers who knew Senior Sergeant Hurley personally, or were friends with him, was inappropriate and compromised the integrity of the investigation.
32. The OPM should be amended to explicitly require officers involved in an investigation into a death in custody to disclose any relationship with an officer involved in, or a witness to, that death.
33. The investigation's appearance of impartiality was further undermined by the following conduct:-
 - It was inappropriate for Hurley to meet the investigating officers at the airport upon their arrival;

- It was inappropriate for Hurley to drive the investigators to the scene of Mulrunji's arrest; and
 - It was completely unacceptable for investigators to eat dinner at Hurley's house while the investigation was being conducted.
34. The OPM should be amended to more clearly state the need for officers involved in an investigation to consider the impartiality and the perception of impartiality in the conduct of the investigation at all times.
 35. The discussion by Senior Sergeant Hurley of the death of Mulrunji with Sergeant Leafe and Police Liaison Officer Bengaroo prior to being interviewed was inappropriate and contrary to the OPM. It had the potential to undermine the integrity of the investigation and undermine the appearance of integrity of the investigation.
 36. The OPM should be amended to require the officer in charge of an investigation of a death in custody to instruct officers involved in, or witness to, the death not to discuss the matter with other witnesses prior to being interviewed.
 37. Consideration should be given by the Police Commissioner to the training officers receive to ensure they are aware of their obligations under the OPM if involved in deaths in custody. In particular the Commissioner should ensure that officers strictly comply with section 16.24(vi) to (vii) of the OPM and **immediately** arrange for the next of kin to be notified where a death in custody occurs.
 38. The CMC should be actively involved in all investigations into deaths in custody from the outset. Consideration should be given to having a senior officer of the CMC involved in all investigations into deaths in custody.
 39. Difficulties in cross-cultural communication between police and Aboriginal witnesses may have impaired the effectiveness of the investigation of this matter by police. Significant attention should be given by the Police Commissioner to the training of officers, particularly those who are working in or near large Indigenous communities such as Palm Island in relation to communication with Indigenous people and the use of support persons and interpreters. This is a matter that is fundamental to the effective and fair administration of justice in Queensland.
 40. The OPM should be amended to include, as an appendix, Chapter 9 of the Supreme Court of Queensland Equal Treatment Benchbook on 'Indigenous Language and Communication'. The OPM should direct officers to follow and apply the contents of that chapter to the greatest extent possible.