Part 3:
Detention in police custody

This part of the report responds to the second term of reference and deals with issues relating to the detention of people in police custody in Queensland's Indigenous communities. We were required to consider 'current practices relating to detention in police custody, including the monitoring of detainees in watch-houses and other police facilities' in Queensland's Indigenous communities and 'the possible involvement of community justice groups or other civilians in the monitoring of detainees' (see Chapter 1 for further details).[226]

This second term of reference regarding detention in police custody has a close connection with our first term of reference, in that detention issues have a powerful impact on relations. Indeed, the detention of Indigenous people in police custody is very much an emblematic issue in Indigenous affairs in Australia.

The Royal Commission into Aboriginal Deaths in Custody, for example, noted that the arrest and detention of Aboriginal people, particularly for minor behaviour such as drunkenness, was a 'constant irritation' and a 'daily exacerbation' of police and Aboriginal relations (Johnston 1991, vol. 3, p. 25). Our inquiry came about primarily because of two incidents related to police custody and their consequences:

1. The death of Mulrunji and subsequent riots on Palm Island
2. The riot at Aurukun after, not a death, but the detention of a man in police custody and allegations of police assault (see Chapter 1 for further details of these events).

Because of the serious responsibility that comes with deprivation of someone's liberty, and the particular history and emotion surrounding detention in police custody, the careful management of such detention is absolutely vital to maintaining public confidence in the QPS, especially for Indigenous Queenslanders. Careful management of detention in police custody is also vital for police officers — for example, in order to manage the risk of false allegations being made against them.

In considering detention-related issues in this part, we have relied heavily on data we obtained from the QPS from a sample of four watch-house custody registers, those of the Western Cape York communities of Aurukun, Pormpuraaw, Kowanyama and Weipa (see Chapter 1 for a further description of the Western Cape York watch-house custody register data).

226 The inquiry's focus has been on watch-house issues but it must be acknowledged that detention in police custody may involve other custodial settings, such as police vehicles.

Chapter 13 examines the patterns of detention in police watch-house custody, including the numbers of people detained, the types of offences that lead to watch-house detention and the lengths of time people are usually held. We also consider the patterns for juveniles, for whom police have the strongest obligations to limit watch-house detention. We conclude by suggesting that there is not endless scope for police to limit the use of detention. In general, it appears that police are limiting the detention of people in watch-houses in the Indigenous communities considered, perhaps close to as much as is possible.

Chapter 14 deals with the health, safety and supervision of people in watch-houses. It provides by way of background a brief overview of Indigenous deaths in custody since the Royal Commission. It then considers issues relating to watch-house facilities, the care of detainees by police, and community involvement in watch-houses in Queensland's Indigenous communities.

13

PATTERNS OF DETENTION IN POLICE WATCH-HOUSE CUSTODY

People detained in police watch-house custody are generally people who are suspected to have committed an offence. Most commonly they are in the watch-house after they have been arrested by police. Since the time of the Royal Commission into Aboriginal Deaths in Custody, in particular, efforts have been made to reduce the risks associated with a person's detention in police custody and to reduce Indigenous overrepresentation in police watch-house custody by encouraging police to use alternatives to arrest and detention in the watch-house, and otherwise encouraging that watch-house detention be limited whenever possible.

This chapter describes the patterns of detention in police watch-house custody in Queensland's Indigenous communities. We draw heavily on the data we extracted from the watch-house registers of four Western Cape York watch-houses — Aurukun, Kowanyama, Pormpuraaw and Weipa — to consider the following key questions:

- **how frequently are Indigenous offenders admitted to the watch-houses?**
- **what offence types are they detained for?**
- **what are the patterns of watch-house detention for juveniles?**
- **how long do detainees stay in these watch-houses?**

Determining the patterns of watch-house detention in this chapter serves the following two purposes:

1. **It allows us to consider whether the patterns of detention in police custody are different from those described in the Royal Commission into Aboriginal Deaths in Custody, and, if so, what implications this has for policy and practice.**
2. **It provides an indication of the workload of watch-houses in Queensland's Indigenous communities that we can draw on in our later discussion of supervision and monitoring and the potential to involve community members in such roles (see Chapter 14).**

Before we consider the data on the patterns of detention in police watch-house custody in Queensland's Indigenous communities, we must provide some background information:

- **about the findings and impact of the Royal Commission regarding the detention of Indigenous people in police watch-house custody**
- **to explain how police are now able to detain a person in the watch-house and the mechanisms that exist to encourage police to limit watch-house detention wherever possible (including alternatives to arrest and diversionary mechanisms).**

The Royal Commission on watch-house custody

The Royal Commission highlighted the overrepresentation of Indigenous people in police custody. The data collected by the Royal Commission showed that in 1988, Aboriginal people were placed in police cells at over 20 times the rate of non-Aboriginal people, and that Queensland had one of the highest rates of police custody for Indigenous people (McDonald 1992, pp. 307–8). In addition, the Royal Commission found that in some cases people were held in watch-house custody for very long periods — up to 31 days (Johnston 1991, vol. 3, p. 233).

The Royal Commission identified public drunkenness as the single most significant factor contributing to the detention of Aboriginal people in custody and it recommended that public drunkenness be decriminalised (Johnston 1991, vol. 3, p. 6). It also recommended a range of other measures to deal with the problem of drunkenness and to otherwise reduce Aboriginal overrepresentation in police watch-house custody. For example:

- arrest should only be used by police as a last resort
- a range of alternatives to police intervention and detention should be provided
- police must increase the use of cautioning
- police must increase the release of people from police detention through police bail (Johnston 1991, vol. 3, p. 6).

Since the time of the Royal Commission, a range of strategies have been put in place in response to these recommendations and the Queensland Government considers that the recommendations have been largely implemented in this state (see QLA (Beattie) 2007a, p. 14; Queensland Government 2007a, 2007c; see also 2006c).[227]

Despite the strategies that have been put in place since the time of the Royal Commission, when the overrepresentation of Indigenous people in police custody is considered over time, data for Queensland do not show any consistent downward trend.[228]

- In 1988, 28.8 per cent of police custody incidents involved Indigenous people; compared with the non-Indigenous population, Indigenous people were 17.9 times more likely to be involved in a police custody incident.
- This rate decreased in 1992 (23.5%; 10.9 times more likely), increased in 1995 (32.3%; 17.6 times more likely), and then decreased in 2002 (24.4%; 10.5 times more likely) (Taylor & Bareja 2005, p. 24).[229]

Currently, how can police detain offenders in police watch-house custody?

Where people are in police watch-house custody, they are most commonly there after they have been arrested by police. People arrested by police are taken to the watch-house, where police can initiate formal criminal proceedings against them by charging them with an offence. Police have the power to arrest (without a warrant) where they reasonably suspect the person has committed or is committing an offence, and providing that it is reasonably necessary to arrest for specified reasons, such as:

- to prevent the continuation or repetition of the offence or the commission of another offence
- to establish a person's identity
- to prevent the person escaping
- to ensure the person appears before a court

227 Although, as described below, the recommendation that public drunkenness should be decriminalised (recommendation 79) was not accepted in Queensland. In addition, recommendations relating to increasing the use of police bail to release people from police custody have been said to require ongoing implementation (recommendations 89 & 91; see QLA (Beattie) 2007a, p. 14; Queensland Government 2007a).

228 The Australian Institute of Criminology (AIC) National Police Custody Survey, which has been conducted periodically since the Royal Commission, provides a census of people held in police watch-house custody throughout Australia as an annual one-month snapshot. The AIC National Police Custody Survey publishes only data aggregated at the state and national level. As with our watch-house data presented later in this part of the report, the AIC data count occasions when a person is physically lodged in a watch-house cell.

229 The variation over time may be an effect of sample size.

- to preserve the safety or welfare of any person
- because of the nature and seriousness of the offence (s. 365 of the *Police Powers and Responsibilities Act 2000*).

Although it is less common, people may be brought into watch-house custody after they are arrested with a warrant. This process does not occur on the spot at the point of the alleged offending but involves police preparing an application for approval by a magistrate or justice, and then serving it on the suspect. Arrest with a warrant will often occur in circumstances where a person has failed to appear in court or has breached an existing court order (ss. 369 & 389 of the *Police Powers and Responsibilities Act 2000*). As in the case of the more typical form of arrest described above (that is, arrest without a warrant), once police arrest an offender on a warrant that person is transported to a watch-house and formally charged.

People may also be in police watch-house custody for reasons other than arrest, including:

- to allow questioning in relation to offences under investigation (under s. 403 of the *Police Powers and Responsibilities Act 2000*) or to prevent domestic violence (under s. 69 of the *Domestic and Family Violence Protection Act 1989*)
- when offenders are in transit between court and other locations (these people are remanded or sentenced prisoners).

A range of mechanisms encourage police to limit watch-house detention

At many points in the process, mechanisms exist to encourage police to limit watch-house detention.

Alternatives to arrest

Police can limit the number of offenders taken into police watch-house custody by using alternatives to arrest and detention wherever possible. Although the Queensland Government considers that it has implemented the Royal Commission recommendation that arrest be used as a last resort (recommendation 87),[230] this principle is not explicitly stated in Queensland law or the QPS Operational Procedures Manual (OPM) (DICMU 2002, vol. 2, p. 419).[231] Rather, a range of law and policy initiatives introduced since the time of the Royal Commission aim to provide alternatives to arrest, especially for young people. In the case of juveniles, strong obligations are imposed on police by law to consider alternatives to arrest and detention.

Alternatives to arrest and detention, and police discretion to apply them, are broadest in relatively minor cases. In such cases, for example, police may decide not to commence any formal legal proceedings against the offender but to:

- take no action
- provide a verbal warning or informal caution on the spot without any legal repercussions.[232]

Although public drunkenness has not been decriminalised in Queensland (as was recommended by the Royal Commission),[233] the QPS OPM provides guidance to police limiting the exercise of their discretion in arresting persons for being drunk in a public place.

230 The Royal Commission recommendation was said to be implemented largely through the introduction of 'notices to appear' as an alternative method by which police may initiate proceedings against a person other than by arrest and detention in a watch-house.

231 Except in so far as Queensland's Charter of Juvenile Justice Principles contained in the *Juvenile Justice Act 1992* at Schedule 1 includes that 'a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort'. In contrast, the Northern Territory Police Custody Manual and General Orders explicitly state 'arrest of a person should be an action of last resort' (cited in HREOC 2006).

232 The QPS does not routinely collect data on how often police either take no action or issue a warning.

233 A number of submissions to the inquiry continued to call for the decriminalisation of public drunkenness in Queensland (JCU Law School, pp. 8, 29, 31; LAQ; ATSILS (Qld Sth), p. 9).

The OPM states: 'Officers should not arrest persons for being drunk in a public place, unless they consider that it is necessary to arrest the person to preserve the safety or welfare of any person, including the person arrested' (see OPM, Chapter 16 & 13.4.11). In addition, a statutory duty has been imposed on police to divert from custody persons arrested for being drunk in a public place where police are satisfied it is more appropriate that they be taken to a place of safety to recover (usually a relative's home) (see s. 10 of the *Summary Offences Act 2005*, s. 378 of the *Police Powers and Responsibilities Act 2000*).[234]

In the case of juvenile offenders, rather than commencing formal proceedings, unless a serious offence is involved, police must first consider whether in the circumstances it would be more appropriate to:

- take no action
- provide a formal caution[235]
- provide a direct referral to a youth justice conference[236]
- refer the child to a drug diversion assessment program (s. 379 of the *Police Powers and Responsibilities Act 2000* and s. 11 of the *Juvenile Justice Act 1992*).

Where police decide to commence formal legal proceedings against an offender, they are encouraged to do this wherever possible by a process that does not require that an offender be taken into police custody. For example, since 1998, notices to appear have been available to police in Queensland in order to limit the incidence of custody associated with arrest (s. 382 of the *Police Powers and Responsibilities Act 2000*). In some cases, police can also issue an infringement notice or a complaint and summons (s. 42 of the *Justices Act 1886*).[237]

Where formal proceedings are to be commenced against a juvenile, the law states that the preferred method for dealing with them, other than for a serious offence, is by way of notice to appear or complaint and summons (s. 12 of the *Juvenile Justice Act 1992*).

Diversion from custody

Even after a person has been arrested and taken into custody, the law continues to encourage police to divert offenders from police custody (and, in some cases, the criminal justice system), or to otherwise release them from custody. Again, there are strong obligations on police to consider discontinuing arrest and releasing juveniles.

In the appropriate circumstances, police are obliged to consider discontinuing arrest and releasing a person:

- For public drunkenness. In addition to the measures described above encouraging police to minimise the detention of people for drunkenness, police are also obliged to consider discontinuing arrest (see ss. 378 & 394 of the *Police Powers and Responsibilities Act 2000*).
- For minor drugs offences (such as the possession of a small amount of cannabis or an implement for smoking cannabis). In appropriate cases, the police must offer diversion to a 'drug assessment program' and, if this is agreed, discontinue arrest (see ss. 379 & 394 of the *Police Powers and Responsibilities Act 2000*).

234 In cases where the person is unwilling to go to or stay at a sobering centre or a place of safety, police are unable to compel them and in such situations police may decide they have no alternative other than arrest and watch-house detention. Also, it should not be assumed that diversion to a sobering-up centre or another place of safety is necessarily a safer option than taking someone into police custody. We are aware of one Indigenous death occurring in 2007 at a diversionary centre for people affected by alcohol after the man was taken there by Queensland police (QPS 2007b).

235 The officer verbally warns the person and a written record is made of the warning (s. 15 of the *Juvenile Justice Act 1992*.

236 A youth justice conference is a form of victim–offender mediation based on the principles of restorative justice (see ss. 22 & 23 of the *Juvenile Justice Act 1992*).

237 Although it should be noted that people may be first arrested and detained in the watch-house and then issued with a notice to appear or an infringement notice (s. 378 of the *Police Powers and Responsibilities Act 2000*).

- Where the reason for arresting an adult no longer exists, or is unlikely to happen again if the person is released (as where the person's identity is confirmed or they are unlikely to continue the offending). In appropriate cases, police have a duty to release a person if it is more appropriate to proceed by issuing a notice to appear in court, or a summons or infringement notice (s. 377 of the *Police Powers and Responsibilities Act 2000*; see also s. 7 of the *Bail Act 1980*).
- Where the reason for arresting a juvenile no longer exists, or is unlikely to happen again if the person is released. In appropriate cases, police have a duty to consider whether to discontinue arrest and release the child if in the circumstances it would be appropriate to take no action, caution them, refer them to a youth justice conference, or issue a notice to appear or summons (s. 380 of the P*olice Powers and Responsibilities Act 2000*).

Police bail

Where none of the above options are invoked to limit detention, police must then either release the detainee on bail[238] or take them before a court as soon as practicable to have bail issues considered (usually within 24 hours) (s. 7 of the *Bail Act 1980*).

Transportation to the safest facilities

Where a person is detained in the watch-house and is refused police bail, the QPS has adopted a policy in small police stations (such as those in all Queensland's Indigenous communities) that detainees should be transported wherever practicable to the nearest watch-house staffed on a 24-hour basis, such as the Cairns, Mt Isa or Townsville watch-houses (Johnston 1991, vol. 3, p. 221; QPS OPM 10.5.6, 16.18.4, 16.18.5).

In the case of children, there are strict obligations on police that children to be held in custody should be held 'wherever reasonably possible' in a youth detention centre (OPM 16.18.1). Children are not to be held overnight in watch-houses except in exceptional circumstances, such as where the child can remain close to family, where this avoids lengthy transportation to a youth detention centre, and where the child is able to appear in court the next day (OPM 16.8.5).

Watch-house detention in Queensland's Indigenous communities

Despite the legal and policy focus on limiting the detention of people in police watch-house custody, there are limited published data about admissions to police custody in Queensland,[239] and there are no published data on watch-house detention in specific locations in Queensland (see Taylor & Bareja 2005). It is therefore difficult to examine any trends in Queensland's Indigenous communities either over time or across all Queensland's Indigenous communities.

In this section of the report we present information largely obtained from the watch-house custody registers for 2006 and 2007 for four watch-houses in Western Cape York — Weipa, Aurukun, Pormpuraaw and Kowanyama (see Chapter 1 for further details). Although this is a limited sample of Queensland's Indigenous communities, these data allow us to consider the patterns of detention in these watch-houses.

238 Police only have power to grant bail in certain circumstances (s. 7 of the *Bail Act 1980*). For example, police cannot grant bail in the most serious offences, such as murder, for which bail can only be granted by the Supreme Court (s. 13 of the *Bail Act 1980*). In most cases, a person released from custody after being granted bail will be required to sign a bail undertaking, which includes a promise that the person will appear in court at a specified time, bail conditions, and an acknowledgment that if the defendant fails to appear in court or comply with the conditions then a certain sum of money is payable and the person will have committed an offence.

239 The AIC police custody survey referred to above represents the only published data (see Taylor & Bareja 2005).

How many Indigenous people[240] are detained in the watch-houses?

In terms of the number of admissions to the watch-houses, our sample showed that during the two-year period 2006 and 2007:

- Aurukun watch-house had 1248 admissions, an average of 52 detainees per month; of these admissions, the vast majority were admissions made after arrest (88%, *n* = 1095)
- Weipa watch-house had 712 admissions, an average of 30 detainees per month; of these admissions, the majority were admissions made after arrest (67%, *n* = 476)
- Kowanyama watch-house had 561 admissions, an average of 23 detainees per month; of these admissions, the vast majority were admissions made after arrest (84%, *n* = 469)
- Pormpuraaw watchhouse had 284 admissions, an average of 12 detainees per month; of these admissions, the vast majority were admissions made after arrest (92%, *n* = 260).

To provide a comparison with the numbers of admissions from our Western Cape York watch-house data sample, we obtained a QPS count of detainee numbers in the Indigenous community watch-houses in the 12 months from 1 July 2005 to 30 June 2006.[241] This showed that:

- Bamaga, Lockhart River and Pormpuraaw watch-houses had on average about 10 admissions per month
- Mornington Island, Thursday Island and Yarrabah had about 20 to 25 admissions per month
- Aurukun, Doomadgee, Kowanyama, Weipa and Woorabinda had around 50 to 55 admissions per month[242]
- Palm Island had about 120 admissions per month.[243]

To put these numbers in perspective, larger watch-houses in Queensland have a far greater number of admissions than those in Queensland's Indigenous communities. For example, as we have stated earlier, Queensland's largest and most well-resourced watch-house, the Brisbane City Watch-house, averages 2000 admissions per month.[244]

240 Our analysis of the watch-house custody registers from the four Western Cape communities showed that during 2006 and 2007 almost all people admitted to the watch-houses were Indigenous. At the communities of Aurukun, Kowanyama and Pormpuraaw, where the large majority of the population is Indigenous, 99.7 per cent of watch-house prisoners were Indigenous. Although the majority of the population in the Weipa police division is non-Indigenous, the majority of prisoners admitted to the Weipa watch-house were Indigenous (82% Indigenous, 1% non-Indigenous and 17% Indigenous status not known). (The population of Weipa township is 2830, which includes 2348 non-Indigenous people and 482 Indigenous people. Nearby Napranum has a population of 840, the vast majority of whom are Indigenous. Old Mapoon, with a mostly Indigenous population of 240, is also in the Weipa police division (ABS 2007a).)

241 This count was undertaken by the QPS to inform the business case for the digital closed-circuit television (CCTV) project (see Chapter 14). The QPS data comprised a count of watch-house admissions only and no further information was recorded. Counting admissions for any given period simply requires tallying each completed record in the custody register in the period, which is made easier by the fact that each register comprises 100 consecutively numbered records.

242 The monthly average number of admissions for Kowanyama in the QPS count was 49, which was double our register sample figure of 24. The monthly average number of admissions for Weipa in the QPS count was 55, which was almost double our register sample figure of 30. However, the QPS count and our sample provide similar counts for Aurukun and Pormpuraaw. This suggests that there was a substantial decrease in admissions at Kowanyama and Weipa after the 2005–06 financial year, but this is not indicated by the offence data. It is possible that the QPS count for Kowanyama and Weipa mistakenly includes all admissions for the calendar years of 2005 and 2006 given that they were double our count, but we could not confirm this.

243 In 2005–06 the Cooktown watch-house admitted prisoners from Hope Vale and Wujal Wujal (as well as Cooktown), and had about 20 admissions per month on average. The Murgon watch-house admitted prisoners from Cherbourg (and Murgon and other nearby towns) and had about 70 admissions per month.

244 Source: QPS presentation to the Australian Winter School conference, 2006.

What proportion of all offenders are arrested and detained in the watch-houses?

From the watch-house custody registers we examined, we cannot determine what proportion of all offenders against whom police took some action were detained in the watch-house. However, QPS crime report data on offenders include information on whether police responded to each offender by way of arrest, caution, notice to appear, summons or referral to a community or youth justice conference.[245] We therefore considered QPS crime report data for Aurukun, Kowanyama, Pormpuraaw and Weipa to get an indication of the proportion of all offenders who are arrested and detained in the watch-house.

Table 13.1 shows the police response to offenders in all offence categories at the four Western Cape York QPS divisions examined in the two-year period 2004–05 and 2005–06.[246]

Table 13.1: Police response to offenders (number and percentage for all cleared offences[247]), Western Cape York police divisions, 2004–05 and 2005–06

	Aurukun		Kowanyama		Pormpuraaw		Weipa		Total	
Police response	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%
Arrest	1209	47.6	432	46.5	329	36.9	409	31.1	2379	41.9
Caution	129	5.1	36	3.9	35	3.9	106	8.1	306	5.3
Notice to appear	1064	41.9	434	46.7	518	58.1	750	57.0	2766	48.7
Other[248]	83	3.3	21	2.3	9	1.0	47	3.6	160	2.8
Summons	32	1.3	5	0.5	0	0.0	2	0.2	39	0.7
Community conference	21	0.8	2	0.2	0	0.0	2	0.2	25	0.4
Total	**2538**	**100**	**930**	**100**	**891**	**100**	**1316**	**100**	**5675**	**100**

Source: QPS crime report data, 2007.

245 The QPS data refer to 'community conference', which is known as 'youth justice conference' when juveniles are involved.

246 Note that this is a different two-year period from that in our analysis of watch-house custody registers.

247 An offence is deemed to be 'cleared' by the QPS in a wide range of circumstances, but essentially it is when police have taken an action (such as arrest, notice to appear, caution, informal counselling) against an offender. The method of clearance recorded by the QPS for statistical reporting purposes is the clearance action first taken by police against the offender. Usually that will be the only action taken, but sometimes the police may later take a different action. For example, a person may be arrested and detained but then issued a notice to appear. In that case the method of clearance will be recorded in official QPS statistics as 'arrest' (see QPS 2007a, p. 141). Other information provided by the QPS, however, indicates that the recorded response may sometimes depend on the time that the information is called into the call centre and recorded in the QPS system. For example, if a person is arrested and the officer calls the details into the call centre before issuing a notice to appear, that offender will be recorded as arrested. If, however, the officer subsequently issues a notice to appear or gives a caution and calls the details into the call centre after that action has been taken, the offender may be recorded as having been issued a notice or given a caution (pers. comm., QPS Statistical Services, 26 March 2009). (As we noted above, the police are encouraged to consider discontinuing an arrest and proceeding by alternative means, including considering cautioning or issuing a notice to appear. Our Western Cape York watch-house register sample shows a number of instances where police recorded that people detained in the watch-house were later released with a notice to appear (around 6% of all admissions) and a small number of instances where detainees were cautioned and released. Police are not required to record in the register whether a notice to appear had been issued or a caution given, so there may have been more occasions when this happened. This is consistent with other research that has indicated in Queensland around 20 per cent of people who were arrested were subsequently issued a notice to appear (CJC 1999)).

248 The category 'other' action by police accounts for when the offender is known and sufficient evidence has been obtained but there is a bar to prosecution or other official process, such as the complainant refusing to prosecute or the death of the offender (QPS 2007a, p. 142).

Although some caution should be exercised in interpreting the data in Table 13.1, as they record only one police response taken against an offender, the table shows that:

- alternatives to arrest, especially notices to appear, were used quite frequently by police in these Indigenous communities
- just under half the offenders at Aurukun and Kowanyama were arrested by police and about the same proportion received a notice to appear
- at Pormpuraaw and Weipa, about one-third of offenders were arrested but over half were given notices to appear
- only about 5 per cent of offenders were given a formal caution (almost all of those offenders were juveniles)
- referrals by police to community conferences were very rare, with only 25 over two years (almost all referrals to conferences were of juveniles); Aurukun police made most of the referrals.[249]

By way of comparison, in 2004–05 and 2005–06 QPS data on the police response to offenders across Queensland show that:

- around 38 per cent of all offenders were arrested
- just over 50 per cent of all Indigenous offenders were arrested (QPS 2005a, 2006a).

These data do not suggest that police in Queensland's Indigenous communities are overusing arrest as a means of responding to offenders.

- The proportion of offenders for whom police respond by way of arrest ranged from about 30 per cent to 48 per cent across the four watch-houses.
- This is comparable to data showing that, in Queensland overall, police respond to about 38 per cent of all offenders and about half of Indigenous offenders by way of arrest.

The evidence presented in Chapter 4 on crime patterns in Indigenous communities, which suggests that there are very high levels of violent crime in these communities and that there may be a high proportion of recidivist offenders, also tends to support our interpretation of these data as suggesting that, in general, police do not appear to be overusing arrest. Alternative responses such as cautioning may have only limited scope for application in such circumstances.

The limited use by police of community conferences is of some concern. It may be the result of the limited availability of youth justice conferencing in these communities, as described in Chapter 6. It may also be due in part to the high proportion of recidivist offenders, as described in Chapter 4.

What offences lead to arrest and detention in the watch-houses?

We examined all admissions to the four Western Cape York watch-houses of offenders arrested in the community, to determine the types of offences that resulted in detention in police custody.[250] The frequency of offence types that led to an admission to the watch-house is shown in Table 13.2. For each admission, we only considered the most serious offence recorded by the QPS.

249 The court may also make referrals to community conferences, so the number of referrals by police is not the full extent of referrals made.

250 The data presented in Table 13.2 include only admissions of people detained after being arrested in the community in relation to an offence or those detained for preventive or investigative detention; that is, the data exclude admissions of people who were transferred from custody elsewhere for a court appearance, people admitted after a court appearance, having been remanded or sentenced to imprisonment/detention, or prisoners admitted who were in transit to another watch-house (including those admissions would have 'double-counted' offence types).

Table 13.2: Frequency of the offence types of people in watch-house custody in Western Cape York watch-houses (2006 and 2007)

Offence types	Aurukun		Kowanyama		Pormpuraaw		Weipa	
	n	%	*n*	%	*n*	%	*n*	%
Property	344	32	30	6	28	11	149	31
Good order	295	28	122	26	46	18	84	17
Justice	185	17	92	20	48	18	128	27
Person	135	14	73	16	76	29	68	14
Detention	53	5	39	8	14	5	19	4
By-law	0	0	67	14	38	15	0	0
Liquor Act	30	3	30	6	0	0	9	2
Weapon	15	1	0	0	0	0	0	0
Traffic	0	0	0	0	8	3	19	4

Source: QPS watch-house custody registers.

Note: Only the most serious offence charged against each suspect is included in Table 13.2. The classification of offences in this table largely reflects that used in the QPS Annual Statistical Reviews (which is based on the Australian National Classification of Offences). 'Justice' offences include failure to appear in court, breach of a domestic/family violence order, breach of bail conditions, breach/suspension of parole or probation order, escape custody and other justice process offences. 'Detention' is not strictly an offence type but rather it refers to the use by police of their powers to detain people in custody for a limited period in relation to either offences under investigation or domestic violence situations.

Table 13.2 shows that:

- A higher proportion of admissions to the watch-house were due to offences against the person (that is, violent offences) at Pormpuraaw (29%) than at the other locations (Aurukun 14%, Kowanyama 16%, Weipa 14%). (Our further analysis of the data showed that for the four watch-houses most of the offences against the person that led to admission were 'serious assault' offences.)[251]
- There is a distinct pattern of high proportions of watch-house admissions associated with property offences in Aurukun (32%) and Weipa (31%). (Our further analysis of the data showed that in both places the property offences most frequently occurring were break and enters, followed by vehicle thefts.) In contrast, property offences accounted for only a small proportion of admissions to the watch-house in Kowanyama (6%) and in Pormpuraaw (11%).[252]
- Admissions for justice offences were common across the four watch-houses, accounting for about one-fifth to a quarter of all watch-house admissions (Aurukun 17%, Kowanyama 20%, Pormpuraaw 18% and Weipa 27%). (Our further analysis of the watch-house data showed that in Aurukun and Weipa these justice offences were most frequently the offence of failure to appear in court, whereas in Kowanyama and Pormpuraaw they were most frequently charges of breaching a domestic violence order, with the next most frequent justice offence being failure to appear in court.)

251 Our categorisation of 'serious assault' includes assault occasioning actual bodily harm, assault occasioning grievous bodily harm, serious assault (including serious assault of police), unlawful wounding and similar offences, but excludes common assault and assault of police offences under s. 790 of the *Police Powers and Responsibilities Act 2000*.

252 Nationally, property offences account for 19.3 per cent of admissions to watch-house cell custody (AIC National Police Custody Survey, Taylor & Bareja 2005, p. 30), which makes Aurukun and Weipa substantially higher than the national average, and Kowanyama and Pormpuraaw substantially lower. Property offences rates at Aurukun, Pormpuraaw and Weipa police divisions were well above the state average in 2006, but around the state average at Kowanyama. It is possible that property offenders at Kowanyama and Pormpuraaw were often not admitted to the watch-house but were dealt with differently by police, although there appears to be an association between the high level of property offences in Aurukun (see Chapter 4) and the high proportion of admissions to the watch-house for property offences there.

- Admissions to the watch-house for good order offences were common across the four watch-houses.

  In Kowanyama and Pormpuraaw, where local 'law and order' by-laws exist, a substantial proportion of watch-house admissions result from by-law offences. (Our further examination of the admissions for local by-law offences in these locations showed that this type of offending, when it leads to admission to the watch-house, is mainly public-order-type offending, often involving intoxication.)[253]

  If we add the 'by-law' and 'good order' categories it can be seen that a high proportion of admissions in all locations were the result of public-order-type offences. This accounted for:

  – 40 per cent of all admissions at Kowanyama
  – 33 per cent at Pormpuraaw
  – 28 per cent at Aurukun
  – 17 per cent at Weipa.[254]
- Only a very small proportion of people were admitted to the watch-houses for Liquor Act offences (which include breaches of the AMP).

Table 13.2 shows an important difference from the patterns noted in detention in police custody at the time of the Royal Commission, in that people are not being detained in police watch-houses for failure to pay fines. At the time of the Royal Commission, failure to pay fines was identified as the reason for many people ending up in custody (including in prison) (McDonald 1992, p. 293; see also Johnston 1991, vol. 3, pp. 117–26; Fitzgerald 2001, p. 131).

In Queensland in 2000, the State Penalties Enforcement Register (SPER) was established to reduce the number of people in custody for unpaid fines. Unpaid fines issued in Queensland are now transferred to the SPER system and it is responsible for the collection and enforcement of these fines. The process of 'warrants of commitment', whereby police could formerly detain people in custody for fine default, no longer exists.

We did not see any evidence of failure to pay a fine leading to detention in police custody. On the contrary, during consultations we often heard that there was a great deal of dissatisfaction from police, and a degree of dismissiveness from offenders, in relation to unpaid fines. Police frequently expressed the view that 'there have to be consequences. Fines provide no consequence.' We also heard of community members 'boasting' about accruing large amounts of unpaid fines[255] and generally being dismissive about offending and justice processes resulting in the imposition of a fine.

253 For example, at Kowanyama 81 per cent of all prisoners admitted for by-law offences (n = 58) were charged under by-law 's. 40 Public drunkenness' (however, this offence was usually recorded as 's. 40 Drunk and disorderly'), 16 per cent (11) were charged under 's. 33 Obscene language and offensive behaviour', and 3 per cent (2) were charged under 's. 35 Possession of dangerous articles'. In 78 per cent of by-law admissions, police had recorded that the offender was intoxicated or displayed signs of being intoxicated. It should be noted that we considered all those admitted for by-law offences, not just those admitted to the watch-house where by-law offences were the most serious offence type (as in Table 13.2).

254 Although our results are generally higher, they are consistent with the national results (across Australia) of the 2002 AIC National Police Custody Survey, which showed that public order offences were the category of offences that most frequently led to the detention of Indigenous people (23.5%) and non-Indigenous people (17%) in police watch-house custody (Taylor & Bareja 2005, pp. 29–30).

255 As we have already said in Chapter 9, the fine amounts imposed for AMP breaches are potentially very large. Section 168B of the *Liquor Act 1992* provides maximum penalties for a single offence of up to 375 penalty units (currently $37 500) and for a third or later offence of up to 750 penalty units (currently $75 000 or 18 months imprisonment). However, the average fine amount imposed for a breach of the alcohol restrictions is far less than these maximum amounts (see O'Connor 2008).

How serious are the public order offences?

The large proportion of admissions associated with good order and by-law offences may indicate a pattern of overpolicing if such offending frequently relates to minor or trivial offence behaviours.

As we have discussed in Chapters 4 and 8, our consideration of the evidence suggests that, although public order offences are the most serious offence type associated with a high proportion of admissions to the watch-house in all locations, it cannot be assumed that these represent admissions to the watch-house for relatively minor or trivial offences. Rather, the evidence — including our analysis of the watch-house data on the nature of by-law offences at Kowanyama (presented in Chapter 4) — suggests that these offences are most frequently used to deal with violent or threatening behaviours.

In such cases a reasonable police strategy may be to remove the offender from the situation and allow things to cool down by arresting the offender and detaining them in the watch-house; diversion from watch-house custody may not be an appropriate option.

Public drunkenness

During our consultations, we heard from local police that they viewed arrest and detention of suspects as a last resort, particularly in relation to drunkenness. For example, police told us that they do not detain people who are drunk if they are not causing anyone else problems by being aggressive or violent. Rather than arrest, police indicated they preferred to take the intoxicated person to their home or to the home of a relative willing to take them in. However, if there was no-one to take in an intoxicated person, police told us they are likely to resort to watch-house detention.

It is difficult to examine any aspect of police handling of public drunkenness offences throughout Queensland as the QPS does not record crime statistics on this offence.[256] The matter is further complicated by the fact that, when public drunkenness is associated with some disorderly or violent behaviour, for example, there are alternative public order charges that police may apply. Our sample of watch-house custody registers allowed us to examine the number of QPS records of admissions to the four Western Cape York watch-houses for public drunkenness charges. We found:

- for Aurukun watch-house[257] from January 2003 to the end of 2007 there was an average of 1.2 admissions per month for the charge of being drunk in a public place (in the absence of other charges), which was 2.3 per cent of all admissions[258]

256 That is, for the offence of being drunk in a public place under s. 10 of the *Summary Offences Act 2005* which were not recorded in the CRISP system and are not reported on by the QPS (see QPS 2007a).

257 The QPS provided the inquiry with a watch-house register from Aurukun that recorded admissions for public drunkenness only, for the period August 2002 to February 2006. The use of a register for that purpose suggests that detention for drunkenness may have been a frequent occurrence in past years. The use of a specific 'drunks register' at Aurukun appears to have been discontinued in February 2006.

258 Alcohol restrictions under an AMP began at Aurukun on 31 December 2002. Aurukun watch-house data were available for the period August 2002 to December 2007. The 'drunks register' recorded 54 admissions over the five months to December 2002 — a monthly average of 10.8 admissions, which is a far higher average than since the introduction of the AMP (1.2 admissions per month). We do not have admissions data before August 2002, so we cannot determine if the high number of admissions for drunkenness in the months immediately before the AMP implementation was typical in earlier years or not. It is possible that the police may have changed their practices over time and are detaining people on other alcohol-related charges instead of for public drunkenness. For example, the offence of breaching an AMP could serve as a substitute charge to public drunkenness where a drunk person is carrying alcohol in a restricted area. We found, however, that the number of admissions to Western Cape York watch-houses for AMP breaches was quite low. (See Table 13.2 above; there were 30 admissions for Liquor Act offences — which were mostly AMP breaches — to the Aurukun watch-house and the same number at Kowanyama in 2006 and 2007, an average of just over one per month; Weipa and Pormpuraaw watch-houses had far fewer admissions for Liquor Act offences.) Other offences that may be substituted for public drunkenness are good order offences such as public nuisance or the local by-law equivalents. However, we have presented some evidence that people were not frequently being detained on good order charges simply for being drunk.

- for Kowanyama there was an average of only 0.25 admissions per month in 2006 and 2007, which was 1.0 per cent of all admissions[259]
- Weipa watch-house recorded 1.2 admissions monthly in 2006 and 2007, which was 4.0 per cent of all admissions
- there were no admissions to the watch-house at Pormpuraaw in 2006 and 2007 for public drunkenness only.

The number of watch-house admissions for only the offence of public drunkenness in these four Western Cape communities ranged from zero to a little over one per month, which lends some support to the claims of local police that they do not routinely detain people for public drunkenness alone without some other aggravating behaviour.[260] The offence of public drunkenness only in these communities accounts for a small proportion of watch-house admissions (less than 3% in the four locations combined).[261]

Although we considered watch-house data from only four communities on Western Cape York, these data suggest that the picture may have changed substantially since the time of the Royal Commission, when public drunkenness was identified as the single most significant contribution to the detention of Aboriginal people in police custody.

Our findings in this regard are consistent with the trend for Queensland as a whole shown in the results of the AIC National Police Custody Survey; these results show a marked decrease from 1995 to 2002 in the proportion of Indigenous and non-Indigenous police custody incidents resulting from public drunkenness in Queensland (Taylor & Bareja 2005, pp. 40–1). The small proportion of watch-house admissions we found associated with public drunkenness only (less than 3% in the four locations combined) was considerably less than the proportion of about 14 per cent of all police custody incidents across Queensland that were found to be due to public drunkenness in the 2002 AIC National Police Custody Survey (Taylor & Bareja 2005, p. 40).

How often are juveniles detained in police watch-house custody? For what offences?

We stated above that there are special obligations imposed on police to limit the detention of juveniles in police watch-house custody. During our consultations, police told us that they try to avoid detaining children in the watch-house. However, officers at several locations said they were frustrated by the high level of offending and repeat offending by children. Some police said that, to stop children re-offending, they had little option but to arrest juveniles and detain them in the watch-house.

259 It is possible that intoxicated people were detained at the Kowanyama watch-house for a by-law offence rather than the alternative charge of public drunkenness. However, our data on by-law admissions suggest that the number of such cases was very low.

260 We were unable to compare the frequency of admissions to the Western Cape York watch-houses for public drunkenness with the number of offenders charged with drunkenness, to determine if any people were charged but not detained, as the QPS does not record public drunkenness in its crime statistics. For this reason we also could not compare the rate of public drunkenness offending between locations or with a state average.

261 We checked to see if police charged prisoners with charges additional to public drunkenness, and found only two cases of this over the two-year period, one at Aurukun (where the prisoner was also charged with failure to appear in court) and one at Kowanyama (where the other charge was a breach of the peace).

We examined the four Western Cape York watch-house registers for information about the detention of juveniles. We found major differences between locations:

- Detention of juveniles was rare at Pormpuraaw, with only four admissions of children to the watch-house during the two-year period 2006 and 2007; all four admissions followed arrest. The four admissions comprised only 1 per cent of all Pormpuraaw watch-house admissions and involved just two unique individuals. [262] [263]
- At Kowanyama during 2006 and 2007 there were 27 admissions of juveniles to the watch-house. Juveniles comprised 5 per cent of total admissions to the Kowanyama watch-house. Most admissions of juveniles (*n* = 19 or 70%) followed arrest; the admissions involved 13 unique individuals.
- The situation was quite different at Aurukun, where there were 341 admissions of juveniles to the watch-house. Juveniles comprised 27 per cent of all admissions. The vast majority of these juvenile admissions (*n* = 282 or 83%) followed arrest. The admissions involved 87 unique individuals, some of whom were detained repeatedly:
  - 45 (52%) were admitted more than once in the two-year period and they accounted for 240 admissions
  - 33 of these juveniles were admitted three times or more
  - 16 of these children were admitted six times or more
  - one teenager was recorded as being detained on 16 occasions after arrest during the two years and was admitted a further five times from custody for court (he was aged 12 at the beginning of the period).

  At Aurukun children were typically detained for property offences (80% of juvenile admissions involved property offences), usually break and enter or similar offences and unlawful use of a motor vehicle. The juvenile property offenders had often been detained in relation to multiple incidents, which had mostly occurred at the community store, council building or tavern. Often more than one child was detained in relation to the same incident. It was quite common for the child to be charged with both break and enter and car theft (unlawful use) and sometimes also with wilful damage of property.
- The situation at Weipa was similar to Aurukun, with 166 admissions of juveniles over the two years, mostly for property offences. Juveniles comprised 23 per cent of all admissions. However, many of the admissions at Weipa involved juvenile detainees from other Cape York communities, usually Aurukun, arriving before a court appearance. Just over half of the juvenile admissions (*n* = 89 or 54%) followed arrest and involved 41 unique individual juveniles. Most of these were from Napranum. Seventeen juveniles were admitted more than once, with one child admitted on 10 occasions after arrest.

When do admissions to police watch-house custody occur?

In order to consider the usual workload of watch-houses in Queensland's Indigenous communities, and the implications for resourcing watch-houses appropriately, it is necessary to consider not just the average number of admissions per month but also other information regarding the pattern of admissions. Our examination of the Western Cape York watch-house registers showed that there were peaks and troughs of detainee admissions.

262 We used prisoner name and date of birth to identify unique individuals.

263 The count of unique individuals presented here includes only those offenders detained after arrest in the community and excludes those admitted from custody elsewhere.

Daily admissions

The number of detainees admitted each day over 2006 and 2007 at each of the four watch-houses is shown in Figures 1–8 in Appendix 6. These graphs show considerable differences between watch-houses in the frequency of admissions. However, it can also be seen that even at Aurukun, the busiest of these watch-houses, there were no admissions, or only one or two admissions, on the majority of days. On the other hand, the Aurukun watch-house received five or more detainees in the one day on 88 occasions over the two-year period.

Admissions by days of the week

We also considered admissions to the watch-houses by days of the week, as shown in Figures 13.1–13.4.

Figure 13.1: Day of week admitted to the watch-house in Aurukun

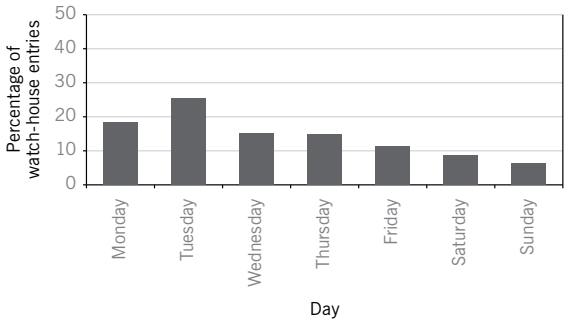


Figure 13.2: Day of week admitted to the watch-house in Kowanyama

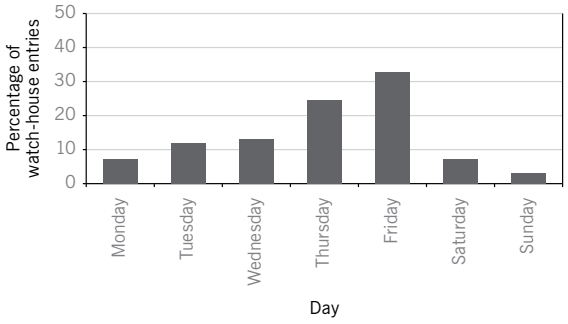


Figure 13.3: Day of week admitted to the watch-house in Pormpuraaw

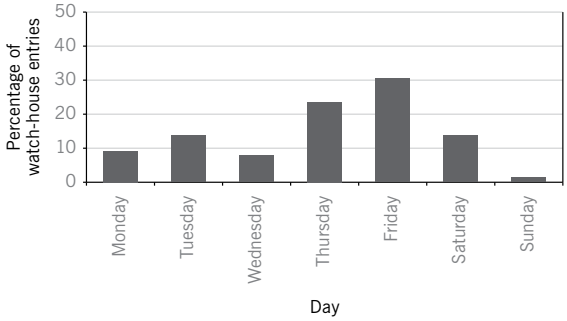
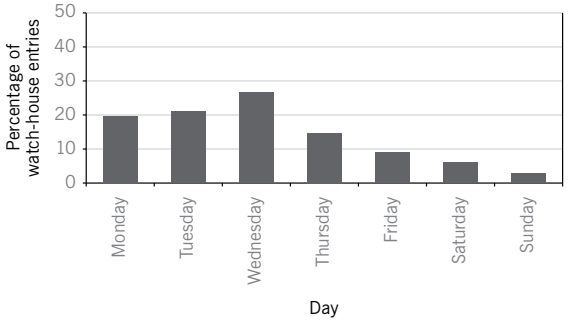


Figure 13.4: Day of week admitted to the watch-house in Weipa



Source: QPS watch-house custody registers.

As can be seen in Figures 13.1–13.4:

- in all locations, fewest admissions occurred on weekends
- at Aurukun there were more admissions on Mondays and Tuesdays
- at both Kowanyama and Pormpuraaw the busiest days were Thursdays and Fridays
- at Weipa the busiest days for admissions were Mondays, Tuesdays and Wednesdays.

The lower number of admissions to the watch-house made on the weekend may reflect the pattern of offending — for example, offending may have been reduced on these days because the taverns were closed on weekends,[264] or because welfare payments were not arriving on

264 However, the liquor outlet at Weipa opened on weekends during the relevant period.

these days. However, the low number of admissions to the watch-house on weekends may also reflect police work patterns, whereby they seek to work as much as possible a standard week and minimise those rostered on shift to work weekends.

The busy days we identified in Aurukun, Pormpuraaw and Kowanyama coincide with those days of the week for which court was scheduled.[265] However, scheduled court days do not fully explain the pattern, as court was not held every week; Magistrates Court sittings throughout Cape York were held on a monthly basis (that is, one day, two consecutive days or three consecutive days every month, but typically the same days of the week each month).[266]

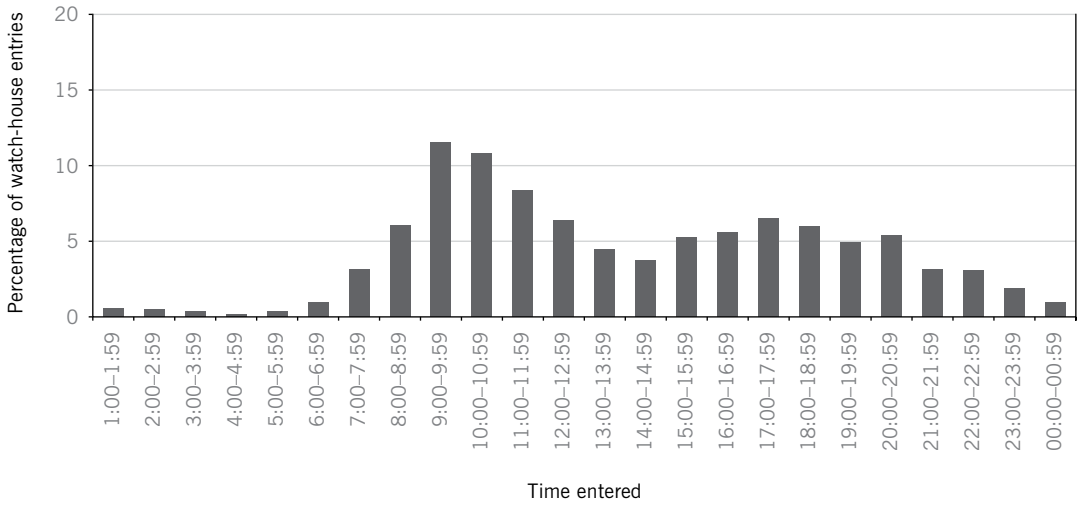
Further examination of the watch-house data showed that the 'busy days' of the week we identified above usually had more admissions whether court was held or not. During the weeks that court sat, admission numbers were largely driven by detainees arriving from prison or youth detention centres for court appearances. In the other three weeks of each month when there was no court sitting, admissions on the busy days were driven by arrests, which were often arrests on warrant for failure to appear in court or for offences such as break and enter. On several occasions in most of the locations, the Tactical Crime Squad from Cairns was present and was involved in arresting the offenders.

The pattern was different at Weipa, where the scheduled court days fell on Wednesdays and Thursdays but the busy watch-house days were Mondays, Tuesdays and Wednesdays. It is likely that this different pattern in Weipa is because to a degree it acts as a service centre for court for Western Cape York communities, so that the pattern of busy days in the watch-house reflects many of the detainees being flown in from elsewhere a day or two before court.[267]

Admissions by time of the day

Across all four watch-houses, the patterns of admission by time of day were similar, as shown in Figures 13.5–13.8. Admissions were very low in the hours from around midnight to 8 am.

Figure 13.5: Time of day admitted to the watch-house in Aurukun, 2006 and 2007



Source: QPS watch-house custody registers.

265 Court sessions were almost always scheduled for the same days of the week.

266 District Court sits infrequently in the Indigenous communities, typically only twice per year.

267 Our analysis of the busiest days for admissions at Weipa watch-house showed that frequently prisoners were arriving for court from Aurukun and other Cape York communities (and a few were in transit between Weipa, the Cape communities and Cairns). Those prisoners were admitted a day or two before their court appearance, most likely because of flight schedules, resulting in many prisoners being held overnight.

Figure 13.6: Time of day admitted to the watch-house in Kowanyama, 2006 and 2007

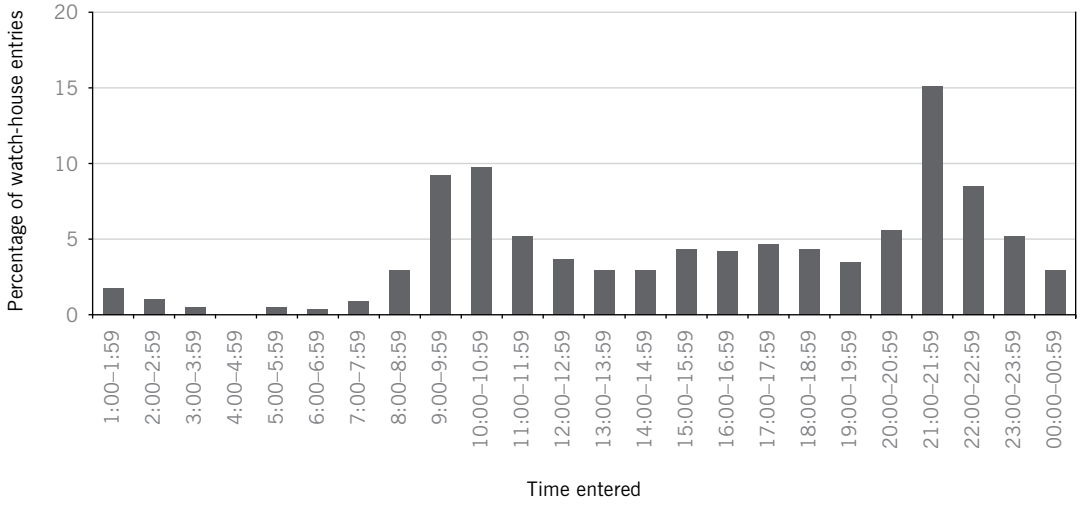


Figure 13.7: Time of day admitted to the watch-house in Pormpuraaw, 2006 and 2007

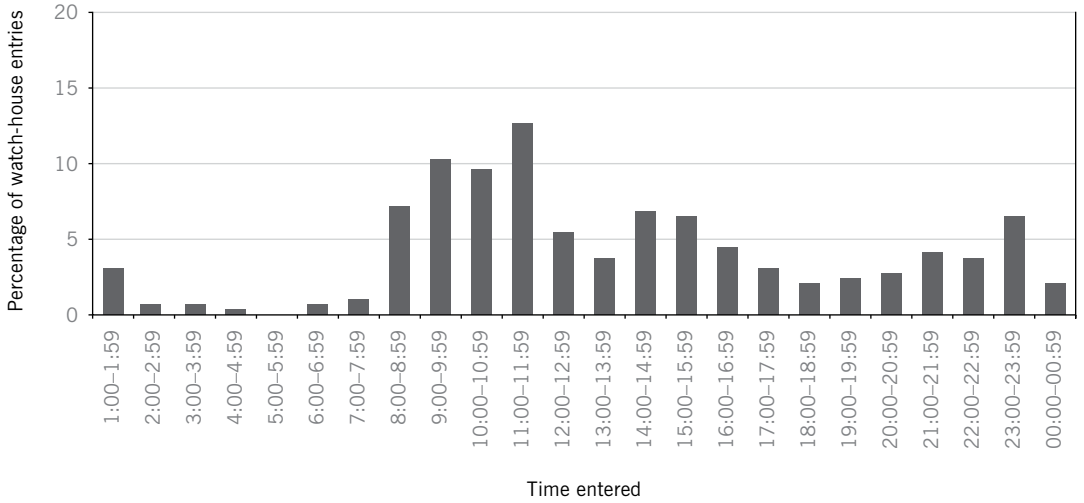
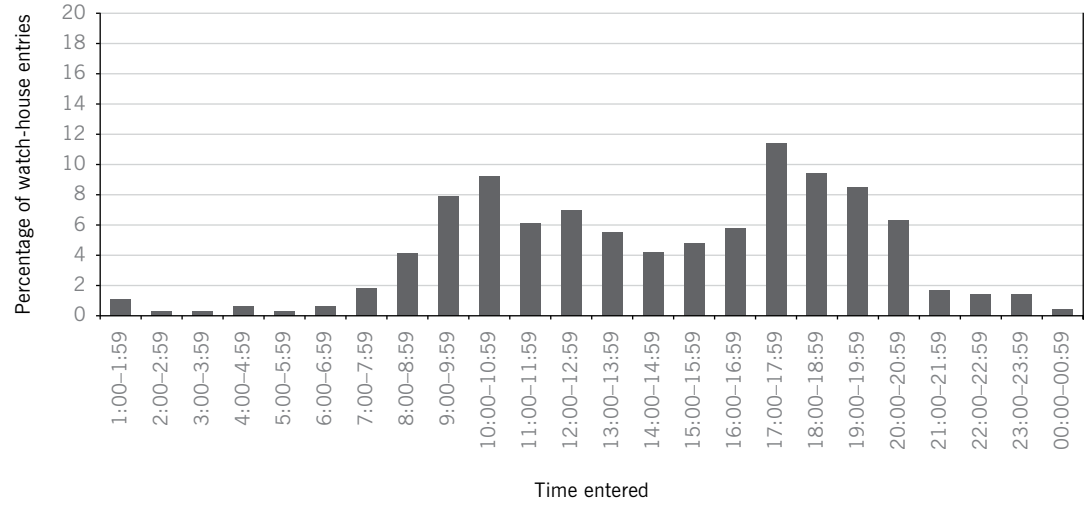


Figure 13.8: Time of day admitted to the watch-house in Weipa, 2006 and 2007



Source: QPS watch-house custody registers.

As shown in Figures 13.5–13.8, admissions were most frequent in the mornings, peaking between about 9 am and 11 am. A second, lower peak occurred in the late afternoon to early evening. Kowanyama had a distinct peak of admissions between 8 pm and 11 pm. Weipa had a similar pattern to the other locations, with admissions occurring in two peaks, the first between about 9 am and 1 pm and a higher evening peak between 5 pm and 9 pm.

The daily patterns of admissions may reflect offending activity, police activity and shift patterns, court hours, tavern opening hours, flight arrival times or other factors. For example, it is unlikely that the peak in watch-house admissions occurring in the mornings reflects when crimes most frequently occur; instead it is likely to reflect when police were on shift and were dealing with matters that had been brought to their attention. The afternoon peaks are likely to reflect tavern opening hours during the data period. At Kowanyama the evening peak of admissions appears to reflect the local practice of evening patrols conducted jointly by police, community police and the community justice group.

The information we have presented about when admissions to the watch-houses occur shows that there are predictable patterns in terms of the days of the week and the times of the day when the watch-house in a particular community is likely to be busy. We found that busy periods for admissions are largely driven by court sittings, execution of warrants for justice offences and arrests for property offences, and also are likely to reflect police work patterns and shift structures.

How long are people held in the watch-houses before they are released or transferred?

Senior police confirmed during our consultations that QPS practice was to transfer all detainees out of Queensland's Indigenous communities as soon as possible, and that this was a risk reduction strategy in place for custody matters. Local police confirmed that, if possible, rather than holding detainees who are not going to be released, police transfer them out of the community on the same day they are arrested, remanded or sentenced, usually to a larger regional watch-house.[268] Police said they do this because of the risks of holding detainees in the community watch-houses, which include the limited number of staff available to supervise detainees, the generally low level of health of Indigenous detainees and the limited medical services available in the communities.

The QPS Air Wing is used to transfer detainees when it is available; commercial or charter flights are also used when necessary. The inquiry was told that detainee flights were a significant expense for the QPS. We heard that the QPS Far Northern Region spent over $100 000 in 2006–07 flying detainees out of remote communities.[269] A senior officer advised us that, overall, detainee flights were very expensive, but the Executive of the QPS 'understood the imperative' of making that expenditure. In the Torres Strait Islands, in addition to the QPS Air Wing, police watercraft are a major method of transporting detainees. In some areas, police vehicles are frequently used to transport detainees to larger watch-houses.

The practice of transferring police detainees is not without risk, as evidenced by the death of a detainee in a community police vehicle near Hope Vale in 2003 and another fatality in a QPS vehicle near Mareeba in 2007 (Barnes 2005; QPS 2007c). Air travel, though much faster than land transport over the vast distances in remote areas, also involves risk; for example, it means that medical assistance will not be available for the period of the flight.

268 Remanded or sentenced prisoners transferred to the larger watch-houses such as those at Mt Isa, Cairns, Townsville and Rockhampton would usually be transferred again to the nearest correctional centre or youth detention centre.

269 We have not attempted to confirm the cost to the QPS of prisoner flights.

In our community meetings a small number of people expressed concern about police prisoners being flown out of the community and not being given return transport. It was said that people taken to regional cities in police custody and then released from custody may become 'stuck there'. Those who raised this concern with us did not seem to be aware of the Homelands Project, which has been implemented by the QPS in Far North Queensland to address this concern. The program repatriates people from the Cairns CBD area (including those released from custody) to their home community (see QPS 2006c, p. 29).

We examined the watch-house data from the four Western Cape York communities to see how long people are held. Table 13.3 shows the numbers and proportions of detainees held for particular durations.

Table 13.3: Duration of detention of detainees in Western Cape York watch-houses, 2006 and 2007

	Aurukun		Kowanyama		Pormpuraaw		Weipa	
Duration	*n*	%	*n*	%	*n*	%	*n*	%
0–2 hours	341	28.0	161	28.6	116	44.4	94	14.4
2–4 hours	318	26.1	179	31.9	65	24.9	98	15.0
4–8 hours	303	24.9	134	23.8	60	23.0	101	15.4
8–24 hours	145	11.9	47	8.4	7	6.5	133	20.3
over 24 hours	112	9.2	41	7.3	3	1.1	229	35.0

Source: QPS watch-house custody registers.

Table 13.3 shows that a substantial proportion of detainees were held in custody for less than four hours, with the vast majority held for less than 24 hours; the exception was at Weipa, where over one-third of detainees were held for more than 24 hours.

The median period of detention was:

- 3.7 hours at Aurukun
- 3.4 hours at Kowanyama
- 2.5 hours at Pormpuraaw
- 13 hours at Weipa.[270]

We found that juveniles were on average held for slightly longer than adult detainees, except at Weipa, where juveniles were held considerably longer (average 22.1 hours).

Longer stays and overnight stays

The longest stay for any detainee in 2006 and 2007 was 122 hours (about 5 days) at Kowanyama watch-house.

The frequency with which detainees were held for extended periods varied considerably across the four locations. A detainee was held for longer than 24 hours:

- at Aurukun, on average every 6.5 days
- at Kowanyama, on average every 14 days
- at Pormpuraaw, on average every 87 days
- at Weipa far more frequently, on average every 3 days.

270 We report the 'median' period because detention periods form a skewed distribution (the mean period is influenced by lesser numbers of long periods).

Despite the efforts of the QPS to transfer detainees out of these communities, our analysis of Western Cape York watch-house registers showed that about one in seven detainees were held overnight[271] (14% of all admissions) at watch-houses in the three Aboriginal communities. Over half (52%) of all detainees admitted to the Weipa watch-house were held overnight.

We considered possible reasons for overnight stays, based on information from the registers. Admissions later in the day (when police may be unable to arrange transport out until the following day for sentenced or remanded detainees), admissions as a result of offences against justice processes, which include breach of bail, probation or parole, and admissions after arrest on warrant (in which case police may have less discretion to release) were the most consistent predictors of overnight stays.[272] However, other factors also play a part, including sentences of imprisonment (and awaiting transport), nature or seriousness of the offence, and possibly also local police practices regarding the exercise of discretion.

It was clear from the Weipa registers that many detainees were admitted a day or two before a court appearance, having arrived from custody elsewhere in Cape York. It is likely that the high proportion of longer and overnight stays at Weipa reflects this practice and the limited availability of flights.

Juveniles and overnight stays

Watch-house registers from the Western Cape York communities showed that juveniles were rarely held overnight at Kowanyama and Pormpuraaw, but were held overnight far more frequently at Aurukun and, especially, at Weipa. This reflects the high number of juvenile offenders in these communities. Over the two-year period 2006 and 2007:

- No juveniles were held overnight at Pormpuraaw (there were only four admissions of juveniles to the watch-house). At Kowanyama, three of the 27 admissions of juveniles resulted in a child remaining in cells overnight. All juveniles detained at Kowanyama and Pormpuraaw were released or transferred in under 24 hours.
- At Aurukun, 53 of the 341 juvenile admissions, or about one in six of the admissions of juveniles (16%), resulted in the child staying in cells overnight. Of the 53 juveniles held overnight, 16 had been admitted from custody elsewhere for a court appearance at Aurukun.[273] The other 37 juveniles held overnight had been admitted after their arrest in Aurukun, almost all for property-related offences.[274] Most were ultimately not released but were transferred out of Aurukun in custody (26 of the 37). At Aurukun, 90 per cent of the juveniles admitted were released or transferred in under 24 hours (287 admissions), but of the others 16 children were held for up to 48 hours and a further 16 were held for more than 48 hours. The longest stay by a juvenile in the Aurukun watch-house was 60 hours (about 2.5 days).

271 We defined an 'overnight' stay as a prisoner having been admitted between the hours of 11 pm and 6 am the next day and held for 4 hours or more. From our examination of the registers, we saw that very few prisoners were released after about 1 am.

272 We used multivariate logistic regression analysis of known factors to predict causes of overnight stays by prisoners.

273 Juveniles transferred in custody to Aurukun watch-house for a court appearance had been in detention at Cleveland Youth Detention Centre, Townsville. The transport logistics involved increase the likelihood of an overnight stay at the Aurukun watch-house.

274 We noted examples where the watch-house registers at Aurukun recorded that Youth Justice Services, Department of Communities were notified by police where a child who had been arrested was about to be held overnight.

- At Weipa, two in three juveniles admitted were held overnight (98 juveniles or 59% of the 166 juvenile admissions). Of the 98 juveniles held overnight at Weipa, 31 had been admitted after arrest and 66 were admitted from custody for a court appearance or after a court appearance, having been remanded or sentenced to detention.[275] At Weipa only 56 per cent of juveniles were released or transferred in under 24 hours (85 admissions). Of the others, 50 children were held for up to 48 hours and a further 17 were held more than 48 hours. The longest stay in custody by a juvenile at Weipa was 88 hours (about 4 days).

We do not have a definite explanation for these long stays for juveniles, but as noted above it is likely that they may have been caused by the limited availability of flights.

What proportion of offenders are being released on bail or remanded in custody?

We examined the data to try to identify those detainees released from watch-house custody on bail into the community and those detainees remanded in custody, in order to assess whether or not the police were under-utilising bail and over-utilising remand. Unfortunately, the reason for release of detainees was not always apparent from the watch-house registers.[276] The data do not distinguish between those detainees released into the community on police bail and those released into the community for other reasons, such as because they had been issued with a notice to appear.[277]

Accordingly, our examination only enabled us to answer these questions:

- How often were detainees bailed or otherwise released into the community?
- How often were detainees transferred out of the community in custody (either because they were under sentence of imprisonment or detention, or because they were remanded in custody for court)?[278]

Our analysis of the Western Cape York watch-house registers shows that:

- The majority of detainees who had been admitted after arrest were bailed or otherwise released into the community (78% of detainees at the three Aboriginal communities, but only 53% at Weipa).[279]

275 The reason for admission was not specified for one juvenile who was held overnight. Many of the juveniles admitted from custody were from other communities, most often Aurukun.

276 Where it was not clear from the register why a prisoner had been released, it is likely that either (a) the prisoner had been released to attend court, and had not received a custodial sentence, so was not returned to the watch-house, or (b) the prisoner received a notice to appear but this was not recorded in the register.

277 Prisoners 'released into the community' include those prisoners given bail by police or the court (the majority of those released were given police bail), given a notice to appear in court by police, released after a court appearance that did not result in a custodial sentence, or released after detention under police powers or domestic violence legislation.

278 Where it was evident in the register that a prisoner had been remanded in custody, it was sometimes not clear whether the prisoner had been remanded by the court or refused bail by police. According to some records in the registers, police had contacted a magistrate in Cairns in relation to bail decisions.

279 Juveniles were more likely than adults to remain in custody. About two-thirds (67%) of juveniles in watch-houses in the Western Cape York Aboriginal communities were released into the community, whereas 80 per cent of adults were released into the community. Only 37 per cent of juveniles were released into the community from the Weipa watch-house. (A lower proportion of juveniles than adults are released into the community, possibly because of the types or numbers of offences committed and/or offending histories, and subsequent custodial sentences or use of remand by the courts.)

- Only 22 per cent of those held in the three Aboriginal community watch-houses were transferred out of the watch-house in custody (in contrast to 45% at Weipa). Across the watch-houses in the three Aboriginal communities, detainees who had been arrested in the community and who were later transferred out of the community in custody had most often been charged with serious assault or property offences,[280] or had been detained for breaching a domestic violence order or breaching a court order,[281] or arrested on a warrant for failure to appear in court.[282]
- For less serious offences such as public nuisance, minor drug offences and Liquor Act offences, it was very rare for detainees not to be released into the community.

Figures 9–12 in Appendix 6 give further details of these data.

The proportion of police detainees in the Western Cape York communities transferred out of the community in custody under sentence of imprisonment, or remanded in custody for court, is broadly consistent with AIC National Police Custody Survey data showing that about one-fifth of all police detainees were released to court or prison (and this pattern was consistent for Indigenous detainees) (Taylor & Bareja 2005, pp. 46–7).

Summary and conclusions: a different pattern from that at the time of the Royal Commission

Since the Royal Commission highlighted the overrepresentation of Indigenous people in police custody and the risks associated with police custody, a range of measures have been put in place to encourage police to limit police watch-house custody as much as possible. However, despite the focus on such measures, statewide data do not indicate any clear downward trend in the detention of Indigenous people in police watch-house custody across Queensland.

Despite the focus on watch-house issues in law, policy and policing over a number of years, it remains difficult to obtain information on the patterns of detention in watch-houses other than at a statewide level.

Our examination of the available data shows that the number of detainees admitted to the watch-houses varies across communities, from 120 per month at Palm Island to around 10 per month at Bamaga, Lockhart River and Pormpuraaw.

Our analysis of QPS crime report data for the four Western Cape York locations shows that police are quite frequently using notices to appear as an alternative to arrest and detention of offenders in the watch-house. Cautions are being used to a lesser extent, but of most concern is that youth justice conferences or community conferences are very rarely used. The limited use of youth justice conferences may simply reflect their lack of immediate availability, as they have been conducted only every six months or so (see Chapter 6 for details). There is evidence to suggest that this is one diversionary option that has some potential to have a crime prevention effect (see Chapter 16), so the use of conferences, in particular, as a diversion strategy should be encouraged wherever appropriate.

280 The property offenders transferred out in custody were mostly juveniles from Aurukun. It was common for them to face multiple charges.

281 Breaches of court orders included breaches of bail conditions (the majority of breaches), probation orders or parole conditions. When a person breaches parole, police must, on locating the person, return them to prison.

282 When a warrant is issued for failure to appear in court, police must, on locating the person, put the person before the court.

➡ Action

That police be encouraged to make increased use of community conferencing as a way of proceeding against juvenile offenders. We have noted elsewhere that the Department of Communities should expand the availability of conferencing.

We also considered the offence types that most frequently led to admission to the watch-house in the four Western Cape York locations. We found:

- Of the Western Cape York communities considered, Pormpuraaw watch-house had the highest proportion of detainees held for violent offences (or offences against the person) and this was the most frequent reason for the detention of people at Pormpuraaw.
- Unusually, in Aurukun and Weipa, watch-house admissions were most frequently associated with property offences; this can be explained by the high number of juveniles in these communities committing property offences together.
- Public order offending accounts for a high proportion of admissions into watch-house custody in all locations. However, it should not be assumed that these mostly involve minor or trivial behaviours. Rather, the evidence considered by our inquiry suggests that these offences are often applied by police to respond to violence or threats of violence.
- Consistent with what we were told by local police officers, the data we considered suggest that public drunkenness alone now very rarely forms the basis of a person's detention in police custody. Rather, drunkenness associated with other offending behaviour, such as violence or threats of violence, seems to be the basis for the more usual scenarios that result in detention in custody for public order or good order type offences.
- Across all of the locations we examined, breaches of justice processes, most notably failure to appear in court, were common offences leading to detention in police watch-houses. In Kowanyama and Pormpuraaw, watch-house admissions were often associated with breaches of domestic violence orders.

The area of offending leading to watch-house detention that is of greatest concern to us — in that a number of such detentions may be 'avoidable' — is breach of justice process offences, in particular the large number of admissions to the watch-house that result from failure to appear in court. In such cases, police are likely to have only limited discretion to respond other than by arrest of the offender (see s. 365 of the *Police Powers and Responsibilities Act 2000*). Police and community justice groups may be able to play a greater role in trying to reduce the number of offences of failure to appear in court, and thereby avoid a substantial number of watch-house admissions.

➡ Action

That a greater preventive focus on failure to appear in court, and other breach of justice process offences where appropriate, be developed by police and community justice groups. In those communities with high levels of justice process offences, such strategies should be incorporated into the crime prevention and criminal justice component of local plans.

Our consideration of the data on the detention of juveniles shows that juveniles were very rarely detained in the watch-houses in Pormpuraaw and Kowanyama. On the other hand, they were frequently held in police custody in Aurukun and Weipa, reflecting high rates of property offending and re-offending and high numbers of property offenders.

We found that there were predictable patterns for admissions, which tend to be concentrated on certain weekdays (the particular weekdays in each location appear to be influenced by court days and perhaps police rostering); admissions were most frequent in the mornings, peaking between about 9 am and 11 am, and then in the late afternoon to early evening. It appears that the pattern of admission mostly reflects when police were on shift and were dealing with matters that had been brought to their attention, rather than when offending mostly occurs.

Of the four watch-houses we examined in detail, we found that, overall, few detainees were detained for very long, except at Weipa. A substantial proportion of detainees were held in the watch-house for less than four hours and the vast majority were held for less than 24 hours. The different pattern at Weipa is likely to be as a result of that location often acting as a service centre for court for other communities, so that offenders are transferred to Weipa for court and problems with flight availability may result in a longer stay. Although, in general, juveniles were rarely held overnight, it was common in Weipa; this is perhaps also related to the availability of flights and the use of Weipa as an important centre for court appearances.

We found that most of those detained in police custody in the Western Cape York watch-houses are bailed or otherwise released into the community, rather than transferred out of the community (to remand or court) in police custody. For the less serious offences such as public nuisance, it was very rare for detainees not to be released into the community. Those transferred out of these communities in police custody had most often been charged with serious assault or property offences (recidivist offenders), or had been detained for breaching justice processes.

Overall, we can conclude:

1. That our examination of data in relation to four Western Cape York locations found evidence suggesting substantial differences from the patterns identified at the time of the Royal Commission.

   In particular, we did not see any evidence of people being detained in police custody for failure to pay fines. We did not see a high proportion of watch-house detentions resulting from public drunkenness alone, but rather we see evidence suggesting that, although a high proportion of detentions involve public-order-type offending, often this relates to violence and threats of violence. This information, together with the information we have presented in Chapter 4 about the high crime levels and high proportion of recidivist offenders, suggests that police may well be approaching the limits of the capacity of diversionary strategies and other strategies to further limit the detention of people in the watch-houses.

   Although the focus on diversion and other strategies to limit the detention of offenders in the watch-house is to be continued and encouraged, again our conclusions strongly suggest that an increased focus on crime prevention must form a central part of any further efforts to reduce the overrepresentation of Indigenous people in police custody in Queensland.
2. The workload of the watch-houses in Queensland's Indigenous communities is variable although predictable within particular communities. Workload is obviously not merely a factor of the number of admissions, but also police resources in any given location, the availability of extra resources at the busy times, and how long people are held for. On Palm Island, the number of watch-house admissions, given the policing resources available, is clearly high. At other locations, given the limited police resources available, admissions to the watch-house are likely to have a substantial impact on other aspects of policing. This is likely to be true for all communities, despite the fact that in some the number of admissions per month was relatively low.

14

CUSTODIAL HEALTH AND SAFETY

The responsibility of the QPS and police officers to care for those they detain is an onerous one. This responsibility has come under intense scrutiny during events such as the Royal Commission into Aboriginal Deaths in Custody and various coronial inquests around the country since that time.

There continue to be powerful moral and political imperatives in relation to all aspects of the detention of Indigenous people in custody, but particularly in relation to deaths in custody. A death in custody is the ultimate risk, but many other risks arising from detention must also be managed.

This chapter examines the policy and practices of police in relation to custodial health and safety of prisoners in watch-houses in Indigenous communities. To set the scene, we have provided a brief overview of the Indigenous deaths in police custody in Queensland since the Royal Commission. The chapter then goes on to discuss custodial health and safety in three areas relevant to the terms of reference:

1. **Watch-house facilities, including the replacement and upgrading of facilities since the Royal Commission and the transfer of prisoners from watch-houses in Indigenous communities.**
2. **Care of detainees by police, including conducting appropriate assessments and inspections of prisoners, the use of electronic surveillance, and the use of resuscitation and first aid.**
3. **Community involvement, including contact visits by family and friends, cell visitor schemes and the potential for community involvement to increase the accountability of police or provide supervision to police prisoners in the watch-house.**

Indigenous deaths in police custody in Queensland

The Royal Commission reported in 1991 that, until that time, there had been little appreciation of, or dedication to, the duty of care owed by custodial authorities and their officers to people in custody. It found 'many system defects in relation to care, many failures to exercise proper care and in general a poor standard of care' (Johnston 1991, vol. 1, p. 3). In addition to proposing that deaths of Aboriginal people must be reduced by reducing the overrepresentation of Aboriginal people in custody, the Royal Commission made a large number of recommendations about the health and safety of people in police custody (recommendations 122 to 149 and 158 to 166). The Queensland Government and the Aboriginal Legal Service Deaths in Custody Monitoring Unit (DICMU) consider that, with one exception, these recommendations have all been implemented since at least 2002 (DICMU 2004).[283]

After the Royal Commission, there is no doubt that there has been a vastly improved focus on custodial health and safety. However, a number of reports and coronial inquests in Queensland have continued to be critical of aspects of the health and safety of people in

283 The exception is recommendation 141, which relates to the need for detainees in watch-houses never to be left unattended and without appropriate supervision and care (DICMU 2004; QLA (Beattie) 2007a, p. 14; see the further discussion below regarding care of detainees by police under 'Leaving prisoners unattended').

police custody (see CJC 1996a; Barnes 2006a, 2006b, 2007b; Clements 2006; see also Barnes 2005). Many of the issues that have been raised mirror precisely those highlighted at the time of the Royal Commission.

How many Indigenous deaths in police custody in Queensland have there been?

At the time of the Royal Commission, research indicated that from 1980 to 1988 there were 16 Indigenous deaths in police cells in Queensland and 22 such non-Indigenous deaths (Biles, McDonald & Fleming 1992).

Since the time of the Royal Commission, the AIC has been tasked with the collection and publication of data on deaths in police custody throughout Australia.

According to the AIC, between 1990 and 2007:

- In Queensland, 18 Indigenous people died in 'police custody or custody related operations'. From 1990 the AIC study has used a broad definition of 'police custody and custody related operations' that takes in all forms of police custody: in institutional settings (police stations, cells, vehicles and hospitals), police operations (such as raids, police shooting incidents) and custody-related police operations (for example, most sieges, vehicle pursuits).
- In Queensland, Indigenous deaths comprised 20.7 per cent of all deaths in 'police custody and custody related operations'. This proportion is about the same as the national average for Indigenous people (19.7%) (Curnow & Joudo Larsen 2009, p. 76).
- In Queensland, three Indigenous people died in police cells and two in 'other custodial settings' (such as a police vehicle) (Curnow & Joudo Larsen 2009, p. 81).[284] (It should be noted that, in addition to these deaths, a further death occurred in a community police van in 2003 while the person was being transported from Hope Vale to a QPS watch-house in Cooktown.)
- Nationally, 20 Indigenous people died in police cells or 'other custodial settings'. Of all jurisdictions, Queensland is among the highest in terms of the number of both Indigenous deaths (three) and non-Indigenous deaths (15) in police cells (Curnow & Joudo Larsen 2009, p. 81).[285]

How have Indigenous deaths in police custody occurred in Queensland?

Coronial and police reports indicate that, of the 18 Indigenous deaths in Queensland police custody and custody-related operations between 1990 and 2007, two were self-inflicted, six were by natural causes, nine were classed as accidental (accidents included deaths caused by head injury, gunshot and external/multiple causes) and one was 'other/unknown' (Curnow & Joudo Larsen 2009, p. 79).

The number of deaths due to hanging in police custody in Australia was identified as a serious concern by the Royal Commission into Aboriginal Deaths in Custody. However, since the release of the Royal Commission's report in 1991, the magnitude of this problem has reduced dramatically, both in Queensland and across the country. During the 10-year period between 1980 and 1989, 86 hanging deaths occurred in police custody throughout Australia, but 45 were recorded in the 18 years after that. There was a decline from an average of 8.6 deaths per year in the earlier period to an average of 2.5 deaths per year in the later period (Curnow & Joudo Larsen 2009, p. 31). One Indigenous death in police custody in Queensland during the period 1990 to 2007 was a death by hanging (Curnow & Joudo Larsen 2009, p. 78).

284 Eight other deaths occurred in public hospitals, four in public places and one in another location.

285 Western Australia had the highest number of Indigenous deaths in police cells (five).

Another key area of concern for the Royal Commission was death in police custody due to drug or alcohol toxicity. Across Australia, the number of deaths due to drug or acute alcohol toxicity has fluctuated since the Royal Commission but since 1998 it has been extremely low to non-existent (Curnow & Joudo Larsen 2009, p. 31). None of the Indigenous deaths in police custody in Queensland between 1990 and 2007 were due to acute drug or alcohol toxicity (Curnow & Joudo Larsen 2009, p. 78).

We considered the findings of coronial inquests or other medical evidence and reports regarding the cause of Indigenous deaths that have occurred in police cells or other custodial settings from 1990 to 2007:[286]

1. Allan Lee-Chue died after having a heart attack while he was seated in the rear of a police vehicle that was transporting him to Mareeba (Barnes 2009).
2. Mulrunji died in a cell at the Palm Island watch-house on 19 November 2004. The coroner found the cause of death to be intra-abdominal haemorrhage due to the rupture of his liver and portal vein, injuries which occurred while Senior Sergeant Hurley was putting Mulrunji into the watch-house (Clements 2006; *Hurley v. Clements & ors* [2008] QDC 323).
3. Calvin Wayne Bee died in a watch-house cell at Normanton on 19 August 2003. The coroner found the cause to be a 'sudden unexpected death in epilepsy' (Barnes 2006a).
4. A Hope Vale man died in an Aboriginal community police van while being transported to the QPS watch-house in Cooktown on 28 April 2003. The coroner found the cause to be self-inflicted hanging (Barnes 2005).[287]
5. Robert Reginald James Parker died on 16 October 1998. The coroner found that the death was caused by burns sustained by accident in a cell of the Cloncurry watch-house (Halliday 2001).
6. Daniel Yock died on 7 November 1993. The cause of death indicated by the autopsy report was a heart attack that occurred after he was put into the rear of a police van in West End to be transported to the Brisbane City Watch-house (CJC 1994).

Although every death in custody is a tragedy deserving of the closest scrutiny, Indigenous deaths in police custodial facilities in Queensland are relatively rare events. We can see from the above that the number of deaths occurring in police watch-house cells has decreased dramatically in Queensland since the Royal Commission.[288] The decrease in deaths in watch-houses has been accompanied by improvements in watch-house facilities and improvements in the standard of care provided to detainees subsequent to the Royal Commission's recommendations. We turn now to examine these aspects and to consider what role, if any, there is for the community to be involved in monitoring detainees in the watch-houses.

286 We have included the death that occurred not in QPS custody but rather in the custody of community police employed by the local Aboriginal council.

287 We have not referred to the deceased man by name as the coroner's findings state that the wishes of the family were that the deceased not be referred to by name.

288 The data on deaths in police custody only provide part of the picture regarding the health and safety of people in police custody. Unfortunately, there are no data available on the number of prisoners who were injured, including incidents of self-harm not resulting in death, while in police detention, or the number of critical incidents in custody such as medical emergencies. Although police would have records of any injuries to or self-harm attempts by prisoners in police watch-house custody, these are not readily accessible data. The AIC has published the results of a pilot study of injuries to police detainees in NSW which showed that these data could be collected, and argued that it was important performance management information for police services (Sallybanks 2005). No national or state comparison data have been published.

Watch-house facilities

What issues have been raised about watch-house facilities?

The Royal Commission highlighted a 'very urgent need' for the upgrading of police custodial facilities (Johnston 1991, vol. 3, p. 232). For example, the watch-house at Wujal Wujal at that time was described as 'nothing more than a primitive dungeon', and the watch-house at Lockhart River was also singled out for criticism. The Royal Commission also noted as a matter of serious concern that many watch-houses of a very substandard quality and with insufficient staff to provide proper levels of supervision were being used for lengthy periods of detention; as we stated above, in some cases this was up to 31 days (Johnston 1991, vol. 3, p. 233).

In response to these concerns of the Royal Commission, there has been concentrated attention from police services on:

- improving the standard of watch-house facilities through their replacement or upgrading; design problems have been a special focus, particularly the elimination of hanging points (Johnston 1991, pp. 232–50; DICMU 2000; see also QPS OPM 16.12.8)
- reducing the length of time prisoners spend in watch-houses, particularly those small, remote or less well-resourced watch-houses.

Despite the increased attention these matters have received, issues relating to the standard of watch-house facilities continue to arise. For example, a number of coronial inquests have made recommendations for improvements to watch-houses after deaths in police custody:

- The inquest into the death of Robert Parker in the watch-house at Cloncurry showed that the death was caused by burns sustained in the cell, and recommended the replacement of cell materials with fireproof alternatives and changes in cell design to allow police to easily visually inspect prisoners (Halliday 2001).
- An inquest into the deaths of two non-Indigenous men in the Bundaberg watch-house showed that one death was by hanging from the door hinge on the cell door. The coroner recommended that modifications be made to eliminate these hanging points (Barnes 2007b).
- An inquest into the death of a non-Indigenous man in the Hervey Bay watch-house showed that the cause of death was asphyxia caused by seizure resulting from severe alcohol intoxication. The coroner recommended that the QPS conduct an urgent review of the doors on all padded cells to determine whether they should be replaced by doors that allow officers to visually inspect prisoners (Barnes 2006b).

The inquest into the death of the Hope Vale man who hanged himself in an Aboriginal community police van while being transported to the nearest watch-house at Cooktown highlighted the risks associated with the absence of watch-house facilities, which has been an issue in some of Queensland's Indigenous communities (see Barnes 2005, pp. 15–16).

In addition to the coronial inquests, Valentin's report to the Australian Government on policing levels in remote Indigenous communities states that the Queensland Government nominated that extra funds were needed for police 'lockups' located in various remote communities to be brought to current standards (2007, p. 10).

What are watch-house facilities like now?

Currently, Queensland's Indigenous communities all have their own police station and watch-house located in the community, with the following exceptions:

- Cherbourg has a police station, but the watch-house facility is located at nearby Murgon
- Napranum is serviced by the police station and watch-house facility at nearby Weipa, as is Old Mapoon 80 km to the north
- Bamaga police station and watch-house provides services to all the communities located within a close proximity in the Northern Peninsula Area

- the Torres Strait Islands only have two police watch-houses; the main watch-house is at the police station on Thursday Island and there is a small watch-house at the nearby Horn Island police station.

Wujal Wujal was without a police station or watch-house for a lengthy period, but a new police station and watch-house were opened there in August 2008, so that police no longer have to travel to and from the station and watch-house in Cooktown some 75 km away (Spence 2008b). The watch-house at Hope Vale was completed in 2005 but closed for a period because of design faults, including the existence of hanging points; the watch-house re-opened in 2007.

Submissions to our inquiry raised the lack of watch-house facilities as an issue in the Torres Strait Islands. Members of the Mer Island Justice Committee suggested that all Torres Strait Island communities should have their own watch-house in case of serious incidents (Mer Island Justice Committee, p. 2). The QATSIP officers on Badu Island felt that the lack of 'holding cells' at the Badu police office endangered them and community members on those few occasions when they had to deal with a person resisting efforts to subdue violent behaviour. The submission of Queensland Corrective Services also suggested that the limited watch-house facilities in the Torres Strait Islands — an area of some 42 000 square kilometres — creates difficulties in terms of the need for prisoner transport (p. 4).

In our consultations at Cherbourg we heard many people say that they wanted 'to get our jail back'. (Many years ago there was a detention facility at Cherbourg but according to local police it was closed after a death in custody, and despite continuing pressure to build another facility the government has refused to do so as there is a 24 hour watch-house at nearby Murgon). These demands were driven by a belief that a local 'jail' would be a deterrent to offending. A further motivation was the belief that prisoners would be safer in a local facility which could be more easily monitored by community members.

We walked through the watch-houses at the police stations we visited. The watch-houses in Indigenous communities are all relatively small and are staffed on an 'as needs' basis by local general duties officers. We observed that the standard of the facilities varied considerably, with some new and some old, but we were not in a position to properly assess the adequacy of the facilities in terms of safety. Our general observations, as well as consultations conducted in the community, suggested:

- Some watch-houses we visited had problems awaiting rectification. For example, the floor surface in the cell used for violent prisoners at Lockhart River was split and peeling off, probably because of water damage. That cell was unusable and had been closed for some time.
- Several people at Murgon and Cherbourg commented about the poor condition of the Murgon watch-house.
- In the Torres Strait, Horn Island is a relatively new facility, which local police advised was not used often. The Thursday Island facility is comparatively old and is used frequently, according to local police.
- At Kowanyama, several people complained to us about the condition of the watch-house. They claimed that the cells were dirty, that there were often mosquitoes and 'bugs' in the cells, and that the bedding was inadequate. Similarly, at Pormpuraaw we heard complaints about mosquitoes in cells because of large holes in the mesh security screens.
- A senior police officer told the inquiry that there is a need for a 'violent detention cell' in the remote Indigenous community watch-houses. This is because, he said, Aboriginal prisoners tend to be 'either docile and easy to get on with, or as good as impossible to control'.
- The OIC at one community pointed out that the cell used for violent prisoners provided very inadequate protection against prisoners injuring themselves, as it had only a hard plastic-like surface on the cell walls and floor. He referred to it as the 'padded cell' but agreed that this was a misnomer.

What has been the government response?

The Queensland Government and the QPS recognise that the standard of watch-house facilities in Queensland requires ongoing attention.

The QPS has a continuous program of regular watch-house inspections carried out internally, including by the watch-house manager and also by an 'independent' regional duty officer, district duty officer or shift supervisor where practicable (OPM 16.22.2, 16.13). In addition, other internal audits of watch-houses are carried out from time to time. For example, at the same time that we were visiting Indigenous communities for this inquiry, the QPS was conducting an audit of the watch-houses in Indigenous communities in order to inform its planned upgrade of CCTV surveillance (see the further discussion below under 'Use of electronic surveillance'). In addition, the QPS's Ethical Standards Command had undertaken in 2006 a fairly comprehensive inspection of 18 watch-houses across the state, which included consideration of building and maintenance problems.

Considerable sums of money have been spent on the continuous program of replacement and upgrading of watch-house facilities. For example:

- The Beattie Government claimed to have spent more than $144 million in the 10 years to 2007 on upgrading watch-house facilities in Queensland, and stated that it was committed to 'the continual upgrade and further improvement of watchhouse facilities around the state' (Spence 2007c).[289]
- The State Budget for 2008–09 included an allocation of funding for the replacement of the Murgon watch-house (and the extension of the Thursday Island station) (Queensland Government 2008j, p. 3).
- The State Budget for 2009–10 has provided funding to commence work on replacing the police station at Lockhart River (Queensland Government 2009d).
- The Queensland Government has undertaken to improve the situation in the Torres Strait Islands. It has committed to constructing a new $10 million police station at Badu Island and has purchased a $4.9 million police aircraft to be based on Horn Island, which should be operational by the end of 2009 (Queensland Labor 2009; correspondence received from the QPS, 3 September 2009).

The provision of safe watch-house facilities, although expensive, remains an important priority if we are to ensure the safety of prisoners in police custody in Queensland.

Care of detainees by police

In addition to the watch-house facilities themselves, the care provided to detainees by police is a vital part of ensuring the health and safety of those in custody. Police officers receive guidance on their responsibilities to provide care to people in police custody through legislation, training and the QPS OPM. The OPM (16.13) states:

> Police officers and watchhouse officers have a duty to exercise reasonable care to protect all prisoners from illness or injury during their detention and to exercise reasonable care in the provision of food, medical care, shelter etc for those prisoners. Safeguards, including monitoring prisoners, should be put in place to observe the behaviour of prisoners.

The OPM describes the general duty of care that police officers and watch-house officers have to people in their custody in terms of their duties relating to the 'preservation of human life' and 'to provide the necessities of life'. The OPM notes that in certain respects the duty owed by

289 The CJC undertook a review of police watch-houses in Queensland in 1996 and recommended that the QPS receive increased funding to accelerate the replacement and refurbishment of watch-houses (CJC 1996a). In its follow-up report to parliament in 1997, the CJC noted that the QPS had received significant funding for both new construction and the watch-house upgrade program (CJC 1997).

officers is like that of 'a parent in relation to that parent's child'. The OPM also notes that a failure to fulfil the duty imposed on officers may make the officer liable for the result (OPM 16.1.1; see also 16.13).

Police we spoke with during consultations gave the impression that police were very aware of their duty of care and the risks associated with holding prisoners. It was also conveyed that there was a general awareness of the complications for police associated with holding people in detention at small stations in particular. One officer stated that police 'make every effort not to lock someone up' and that they consider the implications of the supervisory demands before doing so. It was noted that a decision to hold someone in police custody at a small station may mean that police may be unable to go home or sleep that night (yet may be expected to be on duty again the following day), and that they may not be available to respond to incidents in the community if they are to meet their obligations to properly supervise their prisoner. A number of officers made mention of 'what happened with Hurley' and it appeared that the Palm Island incident had left a heightened awareness among police of the risks associated with detaining people in custody.

The discussion below focuses on particular aspects of the care of detainees that are parts of the general duty of care owed by police.

Assessment

The Royal Commission highlighted the importance of police having an effective system for the physical and psychological assessment of people taken into police custody. It argued that, although police officers should not be expected to make a diagnosis of a prisoner's medical condition, they did have an ongoing duty to assess prisoners in order to make decisions about whether a prisoner needs professional medical attention, special supervision or transfer to an appropriate facility. Of particular concern to the Royal Commission were the number of deaths of people whose behaviour police assumed to be due to intoxication but who were in fact suffering from some very serious illness or injury (Johnston 1991, vol. 3, pp. 195–6). The Royal Commission also stressed the importance of establishing an effective and reliable system for recording and disseminating information about the vulnerabilities of a prisoner (Johnston 1991, vol. 3, p. 203).

As a result of the recommendations of the Royal Commission, health assessment forms are to be completed for each prisoner in order to:

- help to determine whether medical attention is required, and
- assess a prisoner's level of risk to determine appropriate detention and supervision arrangements.

The QPS introduced an integrated computer system (called Polaris) to record information about prisoners, including warnings if a person is thought to have suicidal tendencies. The OPM requires that checks for such information should be conducted when prisoners are to be detained in a watch-house (OPM 16.13.1).[290]

However, coronial inquests into deaths occurring in police custody show that ensuring that adequate assessments are made of detainees' medical needs continues to be a problem. For example:

- The inquest into the death of a non-Indigenous woman while in police custody at the Cairns police station showed that the death was caused by injuries sustained in a motor vehicle crash immediately preceding her being taken into police custody. In this case the police failed to recognise the seriousness of the detainee's deteriorating condition because they assumed that her behaviours were explained by her intoxication (Barnes 2007c, pp. 18–20).

290 The Polaris system has been progressively replaced by the QPRIME system and the OPM refers to both.

- The inquest into the deaths of two non-Indigenous men in the Bundaberg watch-house showed that both deaths were self-inflicted (one by hanging and one by strangulation) and both occurred shortly after each prisoner had been sentenced by the court to a period of imprisonment for his offence behaviour. In both cases the police failed to conduct adequate assessments of the prisoner after this change of the prisoner's circumstances (Barnes 2007b, pp. 18–19).

The comments of the Acting State Coroner in the Mulrunji inquest were highly critical of police assessment of Mulrunji's health. Her comments include that:

- No assessment was undertaken of Mulrunji's health when he was received into police custody at the Palm Island watch-house and there was no adequate reason for this failure.
- The direction to police to conduct a thorough initial health check ought to be strengthened. In particular, where a person taken into custody is unable to be properly assessed initially because they are violent, aggressive or uncooperative, consideration must be given to conducting an assessment by another means (such as through the cell door), by another officer or otherwise at the first available opportunity.
- Officers urgently needed a much greater level of practical guidance on how to conduct health assessments and the assessment tool currently used by police was inadequate and should be replaced.
- There was an urgent need for the QPS to consider increased and improved training of police officers in relation to health assessments, particularly for OICs of watch-houses (Clements 2006, pp. 29–30).

The government's response supported each of the Acting State Coroner's recommendations in relation to the assessment of prisoners, and changes have subsequently been made to police policies and procedures (Queensland Government 2006c). The amendments made to the OPM since the coronial findings provide better direction to officers about the health assessments and reassessments to be conducted on detainees. In particular, a new series of checklists has been provided to help police conduct assessments (OPM Appendix 16.1).

The checklists provide a more thorough way for health assessments to be conducted. The new emphasis on the assessment of a prisoner's best verbal response provided through the basic medical checklist is a good development. However, the OPM could be somewhat confusing for officers as the series of four checklists that police are to use in various circumstances appear to be complex, and there are some fine distinctions between the checklists that are not easy to understand.

The OPM now requires that every prisoner, whether held in a watch-house or not, is to be assessed and reassessed as appropriate so that police can decide whether the prisoner is fit to be held in police custody, or should receive or be transported for medical attention (OPM 16.13.1). The four checklists by which police are to conduct these assessments and reassessments are as follows:

- Checklist 1: The basic 'medical checklist' is provided for the assessment and reassessment of people in custody and 'is to be used as a quick reference guide for courses of action to be taken and in emergent situations' (Appendix 16.1). This checklist provides for an assessment to be made of a person's 'coma scale' according to whether the prisoner's 'best verbal response' demonstrates that the prisoner is orientated, confused, unintelligible or unable to respond. Both the 'unintelligible' and 'unable to respond' categories are said to require immediate first aid and for police to call the Queensland Ambulance Service. Where a person is 'confused', police must consider obtaining a medical opinion.

- Checklist 2: This is the 'Health Questionnaire and Observations Checklist' for those in police custody who are to be held in a watch-house.[291] The initial assessment of all those to be held in a watch-house must be conducted 'at the earliest available opportunity'. Exceptions can only be made where a person is being immediately released or in the case of those being transferred from a correctional centre (OPM 16.13.1). If a person is violent, aggressive or uncooperative, they must be monitored closely until the assessment can be made (OPM 16.13.1). This checklist is the tool by which officers are to determine matters such as:
  - whether medical attention or treatment, or medical advice, is required (by way of reference to checklists 3 and 4 discussed below)
  - whether a person otherwise requires medication or treatment
  - whether the person needs to be segregated from other prisoners
  - the level of supervision and health requirements needed to manage the risks associated with intoxication, overdose or withdrawal
  - the level of supervision and health requirements needed to manage the risk of suicide or self-harm.
- Checklists 3 and 4: A further two checklists are provided for assessments and reassessments of all prisoners in police custody (that is, whether or not they are in the watch-house) and to help police to decide when medical help is to be sought. Each checklist provides a list of symptoms. One list gives symptoms for which it is said medical attention or treatment 'should generally be sought as soon as possible'; these symptoms include 'unconscious or deteriorating conscious state', 'persistently vomiting' and 'suffering hallucinations'. The other list gives symptoms requiring 'medical attention at the first convenient opportunity' or that 'close observation of the person is to be made'; these symptoms include 'vomiting or nausea', 'minor pain and discomfort', 'having difficulty making sensible conversation', 'having difficulty understanding what has happened (confused)' and 'needing assistance to stand or walk' (OPM Appendix 16.1).

The policy at 16.13.1 sets out a range of circumstances in which the responsible officer 'must immediately assess and re-assess' the appropriate level of supervision and health requirements, including where a prisoner:

- is overtly suicidal or at risk of self-harm
- has personal circumstances that may have changed while in custody — for example:
  - being refused bail or sentenced to a period of imprisonment
  - breakup of a personal relationship or conflict with family members
- has, or apparently has, an illness
- is, or apparently is, injured
- is believed to be heavily intoxicated or affected by drugs
- is believed to be alcohol dependent (OPM 16.13.1).

The OPM provides detailed directions for police on management of people at risk of suicide or self-harm and on preventing illness or death from alcohol or drug intoxication, overdose or withdrawal (OPM 16.13.1).

291 The 'Health Questionnaire and Observations Checklist' replaced the old form titled 'Prisoner's Health, Medication and Personal Details' from June 2007. The old form is a printed part of each record in all watch-house custody registers but the new checklist form is now required to be completed instead and then attached to the register.

Health assessments of prisoners — what did the data show?

The inquiry was able to consider only limited data in terms of the health assessments carried out by police of people detained in watch-houses in Indigenous communities. The information we considered was that recorded by police in the four Western Cape York watch-house custody registers, which did not allow us to undertake any analysis of the thoroughness or appropriateness of the assessments carried out by police, for example. Examination of our sample of four Western Cape York watch-house custody registers showed that:

- Police completed the required health assessment checklist for the majority of prisoners admitted (an average of 94.5% were completed for the four locations).
- Where the checklist was not completed (5.5% of records), either the checklist had been left blank[292] or a brief notation had been made — usually 'too intoxicated', 'refused' or 'too aggressive' to answer the checklist questions.[293]
- Across the four watch-houses, in between 22 and 51 per cent of register records, the health assessment indicated that one or more health 'risk factors' had been identified for the prisoner (examples of 'risk factors' specified in the checklist are a previous suicide attempt, treatment for a mental health problem, and alcohol or drug dependency).[294]
- Between 42 and 74 per cent of records indicated that there were no health 'risk factors' identified for the prisoner.

By way of comparison, an earlier watch-house report found that 94 out of 272 (34.5%) admissions to the then Brisbane City Watch-house were assessed as having one or more health risk factors (CJC 1996a).

At Aurukun watch-house we saw a poster, prominently displayed near the cells, which outlined practical guidance to officers about their duty of care and the assessment of health risks. Given the apparent complexity of the OPM, the poster appeared to be a useful reminder to officers of the key aspects of their responsibilities. We were told that it was a QPS-published poster, but we did not notice it on display at other locations and we do not know if it was up to date in relation to the revised OPM.

Given that the watch-house data we considered show that a high proportion of detainees were assessed as having one or more health risk factors, attention to ensuring appropriate inspections of detainees is critical.

Inspections

The Royal Commission (Johnston 1991, vol. 3, p. 215) established the need for frequent and thorough physical checking of prisoners and reported:

> Mere visual surveillance from a distance should in no circumstances be considered sufficient … when a prisoner is sleeping it will be sufficient to establish he or she is breathing in the normal way, is in the coma [or recovery] position if drunk and is not showing obvious signs of distress or injury. At other times, I think it important that the checking include some active personal interaction by way of greeting and conversation, with some inquiry made as to the prisoner's health and needs.

292 Where the checklist was blank, it was common that the prisoner had come from another custodial institution (prison or youth detention) and therefore completion of the checklist was not required according to the OPM (OPM 16.13.1).

293 At Aurukun watch-house, 5.6% of Health Checklists were not completed, at Kowanyama 7.6%, at Pormpuraaw 5.1%, and at Weipa 3.7%.

294 At Aurukun watch-house, 28% of prisoners admitted had one or more health 'risk factors' identified by police. At Kowanyama this was 51% of prisoners, at Pormpuraaw 22% and at Weipa 40%. The difference between locations is notable, but we are not able to explain the variation.

The Royal Commission also stressed the importance of police maintaining accurate records of prisoner inspections for reasons such as to protect officers against allegations of carelessness or misconduct, and to act as a permanent record available to officers on subsequent shifts for whom it may be critical to know of a person's previous behaviour, complaints and condition (Johnston 1991, vol. 3, p. 216).

Subsequently, guidance provided to Queensland police has emphasised the importance of conducting prisoner inspections at least once an hour. However, recent coronial decisions indicate that difficulties with ensuring that adequate inspections are carried out by police continue to arise:

- The inquest into the deaths of two non-Indigenous men in the Bundaberg watch-house showed that there was an entrenched practice at that watch-house of not complying with the requirements of the OPM to conduct inspections of prisoners in person. Evidence given by some officers indicated that they were not aware of their obligations to personally conduct inspections, and evidence of the watch-house manager indicated his view that such inspections were not always possible or necessary. One man lay dead in his cell for an hour and 20 minutes before police became aware that he had died.

  The coroner recommended that the requirements for police to conduct inspections as set out in the OPM be reviewed and that watch-house managers be reminded of the requirements (Barnes 2007b).
- The inquest into the death of a non-Indigenous man by asphyxia in the Hervey Bay watch-house showed that police failed to conduct any physical inspections of the prisoner as required once he was lodged in his cell because the prisoner had smeared the cell with faeces and was naked. The prisoner lay dead in his cell for two hours before police became aware of his death. The coroner stated that 'at the time of the incident, even though both watchhouse keepers had relatively recently undergone custody training, it seems their knowledge of appropriate procedures was inadequate'.

  The coroner recommended the implementation of procedures to enable inspections to be undertaken in all circumstances (Barnes 2006b).

In addition to these cases, the Acting State Coroner's statements in relation to the care provided by police to Mulrunji (and the other man detained in the same cell) have become well known. She said:

> There was no attempt whatsoever to check on Mulrunji's state of health after the fall and its sequelae. The so called checks on the two intoxicated prisoners in the cells was woeful, even excluding the possibility of serious injury having occurred. Neither officer remained in the cell for more than seconds on each occasion they entered to check the prisoner. It was not until Sergeant Leafe suspected that Mulrunji might in fact be dead, that any close scrutiny was made. (Clements 2006, p. 27)

She also stated:

> … Mulrunji cried out for help from the cell after being fatally injured, and no help came. The images from the cell video tape of Mulrunji, writhing in pain as he lay dying on the cell floor, were shocking and terribly distressing to the family and anyone who sat through that portion of the evidence. The sounds from the cell surveillance tape are unlikely to be forgotten by anyone who was in court and heard that tape played. There is clear evidence that this must have been able to be heard from the police station dayroom where the monitor was running. Indeed the timing of Senior Sergeant Hurley's visit to the cell suggests that the sounds were heard. But the response was completely inadequate and offered no proper review of Mulrunji's condition or call for medical attention. The inspections were cursory and dangerous even if Mulrunji had been merely intoxicated. The so called arousal technique of nudging Mulrunji with a foot is not appropriate … It was simply the quickest but also the most demeaning way in which a police officer might elicit a response. (Clements 2006, p. 32)

The Acting State Coroner's comments included that the OPM should be 'urgently reviewed' to provide a much greater level of practical guidance to officers on how to conduct checks of people in their custody (Clements 2006, p. 30).

The government response supported the Acting State Coroner's recommendations in relation to the checks on prisoner health and changes have subsequently been made to police policies and procedures (Queensland Government 2006c).

The guidance provided to police in the OPM has been amended since the Mulrunji inquest to include an explicit requirement that, during an inspection, an officer is to make a reassessment of each prisoner's health (see 16.13.3).

The OPM currently states that:

- Watch-house managers are responsible for making sure that the regular prisoner inspections occur (16.13.3).
- Watch-house managers, on commencing duty and immediately before finishing duty, are to conduct an assessment of each prisoner; watch-house managers are to physically inspect each prisoner at the shift changeovers (OPM 16.22.1).
- Otherwise, inspections are to be conducted regularly at varying intervals but at intervals of no more than one hour. The frequency of inspections is to be consistent with the prisoner's risk assessment level and the OPM states that prisoners displaying suicidal tendencies should be closely or constantly monitored until medical attention can be obtained (see OPM 16.9.5, 16.13.3 and 16.13.1).
- Inspections must be conducted personally by an officer irrespective of whether or not video monitoring equipment is installed. Inspections are to be conducted regardless of circumstances where prisoners are naked, where the cell has been soiled with urine or faeces, when only one officer is on duty in the watch-house, or any other circumstance (16.13.3).
- During an inspection, officers are required to 'assess' each prisoner to determine whether a prisoner is in need of medical treatment, whether the prisoner should remain alone or be placed with other prisoners, and the frequency of further inspections (OPM 16.13.3).
- To conduct an inspection, officers are required to:
  - read the information in the Watch-house Custody Register before the first inspection
  - observe a prisoner's physical appearance and demeanour
  - ask prisoners who are awake if they are well
  - pay particular attention to any prisoner apparently intoxicated to ensure that intoxication is not masking symptoms of a serious medical condition
  - ensure that a sleeping prisoner is breathing comfortably and appears well
  - wake a sleeping prisoner where the officer is unsure or concerned (OPM 16.13.3).
- All details of the prisoner inspections must be recorded in the Prisoner/Watch-house Inspection Register, including any differences from previous assessments, any injuries observed and any actions taken (OPM 16.13.3).

The inquiry could not assess the frequency or adequacy of prisoner inspections carried out in watch-houses in Indigenous communities. However, the existing evidence in a number of cases in Queensland shows a level of non-compliance with the OPM requirement for physical inspections of every prisoner to be carried out on at least an hourly basis. We identify an action below that the QPS should begin a regular program of auditing CCTV footage to ensure that such inspections are being carried out as required.

Leaving prisoners unattended

The Royal Commission considered the problem of prisoners being left unattended in watch-houses. It found that many police stations outside metropolitan areas were holding people in custody, including overnight, notwithstanding the absence of staff in some places and notwithstanding the lack of any effective means by which a prisoner could raise the alarm in an emergency. The Royal Commission was critical of the situation that existed in some remote Queensland Aboriginal communities where Aboriginal community police, who had no training whatsoever in the assessment or supervision of prisoners, were placed in charge of lockups (Johnston 1991, vol. 3, p. 219). It recommended:

> That no person should be detained in a police cell unless a police officer is in attendance at the watchhouse 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 watchhouse should be attended by persons capable of providing care and supervision of persons detained. (Recommendation 141, Johnston 1991, vol. 3, p. 248)

The evidence in the Mulrunji inquest indicated that people in custody on Palm Island were left unattended for up to an hour while police undertook other duties. In part this practice was said to be the result of inadequate staffing levels on Palm Island. However, it was clear from the evidence that leaving prisoners unattended was not always a matter of operational necessity. Evidence was provided of one instance where a severely intoxicated Indigenous man was left unattended in a cell in the watch-house when two officers left the watch-house to make some inquiries that were not urgent, in circumstances where one officer could certainly have stayed in the watch-house, and while they were out they had a cup of tea (see coronial inquest transcript R1242 L8–18; R1239 L20–30; R1275 L25 – R1276 L2; HREOC 2006, p. 28). Senior Sergeant Hurley's evidence indicated that he thought it was sufficient that an inspection was conducted once an hour (R1240 L28 – R1241 L5).

The Acting State Coroner's comments in the inquest included the recommendation that people in custody should not be left unmonitored under any circumstances and that staffing levels should be adequate to ensure that people in custody are never left unmonitored (Clements 2006, p. 30).

In the aftermath of the Mulrunji death, the then Premier admitted that the Royal Commission recommendation regarding the need for constant care and supervision of any detainee in the watch-house needed ongoing attention (QLA (Beattie) 2007a, p. 14). The Queensland Government's response to the Acting State Coroner's comments in the Mulrunji inquest expressed in-principle support for the recommendation that people should never be left unmonitored in police custody but also stated that the QPS could not commit to its implementation 'in all instances but is committed to ensuring that this situation is minimised as much as possible' (Queensland Government 2006c).

Although amendments have been made to QPS policy and procedures since the Mulrunji inquest, the OPM continues to acknowledge that for operational reasons there may be times when it is necessary for a person in custody to be left unattended temporarily in a watch-house or holding cell. For example, at a single-officer station, for operational reasons an officer may be required to leave the person in custody unattended in a holding cell where there is an unacceptable risk that the person's release would endanger the safety or welfare of any person and where the officer must respond to an urgent incident involving significant risk to person or property (OPM 16.12.9). The OPM states that officers should not leave people in custody unattended where a suitable alternative exists and any decision to leave a person in custody must be able to be justified in the circumstances (OPM 16.12.9).

Before officers leave a person in custody unattended, the OPM provides that they must consider recalling another officer to duty, obtaining assistance from another station or transferring the person to another watch-house (OPM 16.12.9). However, in most remote Indigenous communities, obtaining assistance from another station or transferring a prisoner

at short notice is not possible because of the lengthy travel times. The option of recalling officers to duty may not be available at stations where staff numbers are few, as there may simply be no other officers.

Police OICs at some communities admitted during our consultations that prisoners are occasionally left unsupervised. One OIC at a two-officer station explained that this happened rarely, but said 'we try to supervise every prisoner, but if it is 2 am in the morning and we've [both] been up all day, then they are on their own'. He also said that police from time to time asked community police officers to be present in the watch-house, either to supervise a prisoner while police were absent attending a call, or when a prisoner was violent and police felt they might need a witness to any possible incident.

Another OIC explained that calls for assistance involving serious incidents also meant that a prisoner may be left alone for short periods. At his station (where there were more than two officers), officers on duty or on call-out would attend the incident and, if the officers were likely to be absent from the station for longer than 30 minutes, their local policy required them to call out another officer to supervise the watch-house.

One of the most frequent complaints made to the inquiry by community members was the failure of police to respond to calls for assistance, and the need for police to supervise prisoners was seen as contributing to this problem. Community members told us that, on some occasions, police claimed that they could not respond to calls for assistance because they were on 'suicide watch' over prisoners in the cells.

The increases to police staffing levels in many Indigenous communities, which included that two-officer stations have become four-officer stations, should have helped to alleviate the difficulties faced by police in balancing the competing demands of responding to calls for service in the community and providing adequate care to detainees in the watch-house (see Chapters 6 and 9).

Our inquiry was not able to consider how frequently or the length of time for which prisoners are left unattended in watch-houses in Indigenous communities. There is no requirement that police routinely record and report such information. However, as it has been previously recommended that police prisoners should at all times be supervised and never left unattended, we identify an action below that the QPS introduce a requirement that all such incidents that occur because of circumstances of operational necessity must be recorded and audited by the QPS. Apart from the accountability this process provides, the information has clear implications for QPS assessment of staffing needs in Queensland's Indigenous communities.

Use of electronic surveillance

The Royal Commission found that, at best, electronic CCTV surveillance equipment is only a monitoring aid and should never be treated as a substitute for human interaction between custodial staff and prisoners. In addition it noted the danger that the use of electronic monitoring equipment in custodial facilities can breed complacency (Johnston 1991, vol. 3, p. 217).

For some time, watch-houses in Indigenous communities have had VHS video CCTV surveillance of cell areas of the watch-house.

Although the QPS OPM specifies that prisoner inspections are to be conducted personally, irrespective of whether or not 'video monitoring' equipment is installed, a number of coronial decisions have illustrated that police have inappropriately relied on observing prisoners on the CCTV monitor. For example:

- The inquest into the deaths of two non-Indigenous men in the Bundaberg watch-house showed that some officers believed prisoner inspections could be carried out by looking at the prisoners on the CCTV monitor. The coroner stated: 'To suggest that the purposes of cell inspections can be achieved by a method that does not even enable a watchhouse staff member to tell whether a person is alive or dead is ludicrous' (Barnes 2007b, p. 21).

- The inquest into the death of a non-Indigenous man at the Hervey Bay watch-house shows the inadequacies of relying on observation of a prisoner on the monitor. The coroner stated: 'While this mode of monitoring a prisoner may be adequate when he or she is moving about, when a prisoner is prone or still, it does not enable the viewer to determine whether the prisoner is asleep, unconscious or dead' (Barnes 2006b, p. 12).

The Acting State Coroner was also critical of the use of video monitoring equipment in the Mulrunji inquest, although it is not entirely clear what difficulties she identified. Her comments included that police should consider the need for greater training in relation to the use of monitoring equipment (Clements 2006, p. 30).

The day after the government announced our inquiry on 6 February 2007, after a period of pressure from the Police Union, the Queensland Government committed to auditing all existing surveillance systems in watch-houses across Queensland's Indigenous communities and to undertake an upgrade to ensure digital CCTV coverage of all cells and other public areas in watch-houses in Indigenous communities. The Hon. JC Spence, the then Minister for Police and Corrective Services, stated that this meant, for example, that in Yarrabah an additional 22 cameras would be installed in that police station (QLA (Spence) 2007, p. 128).

The QPS audit confirmed that, for the most part, the video surveillance systems were outmoded and inadequate. The upgrade to digital CCTV occurred immediately in Aurukun, Palm Island and Woorabinda and upgrades to all other watch-houses in Indigenous communities were completed over the following period to March 2008 (QLA (Beattie) 2007b, p. 114). The new digital CCTV systems have a number of advantages over the old video technology, including better quality of the images and sound recorded,[295] and better accountability provided through automatic recording, tamper-proof design and automatic storage for 186 days (cells and exercise yard) or 14 days (public front counter area).

In the 2007 Queensland Budget, $1.5 million was allocated to this upgrade (Spence 2007a). The total cost of the upgrade to digital CCTV surveillance in police watch-houses in the Indigenous communities was $6.4 million in capital funding and $0.5 million in operating funding (Queensland Government 2008k).

The rationale provided at the time the government committed to the upgrade was principally because 'the police want greater protection' and to 'protect officers when allegations are made against them', but also to provide additional protection and supervision for offenders in all custodial areas of watchhouses (QLA (Spence) 2007, p. 128; Spence 2007c).

During the inquiry's consultations, both police and community members[296] were generally supportive of the upgrade to digital CCTV. However, a small number of police and community members expressed some dissatisfaction with the high cost of the project. For example, some OICs queried whether the funds could be put to better use as they suggested that some watch-houses in remote communities either hold few prisoners or hold prisoners for only short periods of time.

Police we spoke to during consultations said that the CCTV system would assist in terms of dealing with situations such as assault by prisoners, false allegations of misconduct made against police, and prisoners suffering health crises or self-harm. One OIC made the point that the new system is limited in its ability to increase the safety of a person in custody because effective monitoring of a prisoner must really be done in person. This officer argued that the real value of the system will be its use to resolve complaints against police.

295 The QPS digital CCTV systems that are installed record sound in the cell and exercise yard areas, but not in the front counter areas.

296 This statement is true for those community members who indicated that they were aware of the change.

Submissions to the inquiry expressed support for the upgrade on the basis that it would improve prisoner safety (submissions of Sisters Inside, p. 6; Legal Aid Queensland, p. 4). The submission compiled after a workshop at the Law School of James Cook University, however, sounds a note of caution about overreliance on technology to monitor people in custody and states that human monitoring rather than electronic is what is needed (p. 28).

There are limits to how effective any electronic surveillance system can be in ensuring that prisoners are kept safe:

- If no-one is watching, it does not provide any safeguard at all. Officers are most likely to be monitoring the digital CCTV footage from time to time as they undertake a range of other activities; not only are they likely to be mostly focused on other things but they are likely to be absent from time to time from the area where monitors are available.
- The problem of police turning down the volume of the audio from the cells, so that it does not distract them in the police station when a prisoner is being a nuisance and creating a disturbance, that have arisen in the past with the video CCTV technology may remain with the new system.
- Even if it were the case that the constant monitoring of digital CCTV footage is possible, it provides no information about prisoner safety when that person is motionless (in which case they may be asleep, unconscious, dying or dead) and only limited information if they are non-verbal, which is another important aspect of any health assessment.

The accompanying text box illustrates the benefit of electronic surveillance for police in relation to some watch-house admissions.

A custody incident described by police

To illustrate the difficulties that police in remote communities can have in relation to custody, the OIC at one community related to us the story of a recent arrest.

The OIC was driving to the community store; he was off-duty and in plain clothes with his children in his car. He was flagged down when passing a house and he was told that someone was at the house causing problems. From the car he saw a man who was known to him who was very drunk. The man was abusing the occupants of the house, who were becoming agitated. The man was then abusive to the OIC. The man refused to leave the premises when requested by the OIC.

According to the OIC, the other people present were 'telling off' the drunken man. When the commotion caused more people to arrive, the OIC decided that the situation could turn violent. The OIC withdrew from the scene and went to the police station. He changed into uniform and picked up another officer, and together the two officers returned to the house in the police vehicle. The officers tried to talk the man into leaving but he became more aggressive, so they decided to arrest him. While they tried to put the man into the police vehicle he resisted. As the two officers struggled with him, some in the crowd turned their attention from the man to the police and began to accuse them of being 'too rough'. The OIC noted that such situations can present significant risks for police, because if 'things had turned nasty' the nearest police assistance would not arrive for several hours. The police were able to get the man safely into the vehicle and they drove back to the police station.

After being placed in a cell at the watch-house the man became quite violent, rushing at the cell walls and head-butting the wall. The man would not calm down and continued to throw himself around the cell, so police called his family to come to visit him. When family members arrived at the watch-house, the man had settled and gone to sleep. The family decided to remain in the watch-house to sit with him.

The next morning the man seemed well but could not remember any events from the night before. When he was released, he gave the OIC a wave and said 'see ya, Sarge' as he walked off. However, later that day the OIC heard that the man was complaining of feeling sore. The OIC said to us that he would not be surprised if the man made a complaint against police. The OIC went on to exclaim 'thank God for video surveillance' in the watch-house, as otherwise he thought it would be difficult for anyone to believe that the man had not been assaulted in the cells.

Electronic surveillance can be useful as a tool to help the police to monitor people in custody but it is not a substitute for inspections and personal contact. It provides a useful accountability tool, especially if regularly audited, and can provide protection to both prisoners and police. It may also enhance community relations if it can be used to defuse potentially volatile situations in the community arising from negative perceptions among community members of what went on in the watch-house.

Resuscitation and first aid

The Royal Commission determined that there was a clear need for regular training for police officers to be able to competently attempt resuscitation, and that police should attempt resuscitation in all but the clearest of cases (Johnston 1991, vol. 3, p. 283). More recently, coronial inquests into the deaths of people in police custody have demonstrated that police failed to attempt resuscitation and/or did not know how to try to resuscitate a person (Barnes 2007c, p. 20; Clements 2006). For example, in the inquest into the death of Mulrunji the Acting State Coroner stated:

> No attempt at resuscitation was made by any police officer even when there was a degree of uncertainty about whether Mulrunji had died. (Clements 2006, p. 27)
>
> …
>
> When there was serious doubt about Mulrunji's health it was alarming to think that there was no-one who had either the skills, the medical or safety equipment or the inclination to implement an attempt at cardio pulmonary resuscitation. There was still uncertainty at that time that Mulrunji had died. (Clements 2006, p. 33)

Her comments included recommendations that:

- theoretical and practical training in first aid should be mandatory for all OICs of a police watch-house
- watch-houses should have appropriate first aid and resuscitation equipment (Clements 2006, p. 30).

The Queensland Government's response expressed its support for the implementation of these recommendations (Queensland Government 2006c).

The evidence we presented earlier showed that between 22 per cent and 51 per cent of the prisoners admitted to the four Western Cape York watch-houses we examined were assessed as having one or more health risk factors. This emphasises the importance of ensuring adequate first aid and resuscitation training for officers working in watch-houses.

Community involvement in the watch-house

Community involvement in the watch-house can bring important benefits for prisoner health and safety. It can provide an important form of moral support for prisoners and can improve communication between police and prisoners about possible problems. Community involvement in the watch-house may also have the important benefit of increasing the levels of trust and confidence that the community has in the police. As one councillor at Aurukun noted: 'We want to be sure that people are looked after properly. Historically Aboriginal prisoners were ill-treated. Somebody who is a local needs to be involved in cells.'

A range of community involvement in the watch-house is possible, from contact visits by family members and other visitors (such as members of community justice groups) to provide care and comfort to detainees, through to trained community members providing supervision to prisoners within the watch-house, including in the absence of police.

The importance of Aboriginal prisoners having access to outside support while in custody, whether they be friends, family or other visitors, was well documented at the time of the Royal Commission (Johnston 1991, vol. 3, pp. 228–38). It recommended that:

- police should take all reasonable steps to encourage and facilitate visits by family and friends of persons detained
- it should be 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
- cell visitor schemes should be introduced to service police watch-houses wherever practicable; these schemes should, however, in no way lessen, to any degree, the duty of care owed by police officers to those detained (recommendations 145–7, Johnston 1991, vol. 3, p. 249).

The Royal Commission documented a range of cell visitor schemes operating across Australian jurisdictions, most of which were relatively new at that time.[297] Queensland at this time was piloting a cell visitor scheme in Brisbane and other major regional centres. In addition, the Royal Commission also documented that there was a range of schemes operating across the country whereby community members were involved in the supervision of prisoners in some country areas where staffing made it difficult or impossible for police to provide supervision at all times. For example, in Cherbourg at that time, local people employed by the council as community police had been appointed as watch-house keepers to supervise prisoners.

Currently in Queensland's Indigenous communities, community involvement is largely limited to rather ad hoc arrangements to provide care and comfort to watch-house detainees. In this section we consider whether the available evidence suggests that greater efforts should be made to involve members of the community in providing care and comfort or in providing supervision to watch-house detainees.

'Care and comfort' visits by family and friends

The QPS OPM states that the watch-house manager should permit a visit by any person with an interest in the health and welfare of a prisoner, subject to the consent of the prisoner and operational and/or security needs of the watch-house (OPM 16.22.10).

Our consultations confirmed that visits by family members to prisoners in custody were generally allowed and even encouraged by police in Queensland's Indigenous communities. When a person was likely to remain in custody, it was said that police would contact family members directly or through an intermediary such as an Elder or the community justice group. The need for police officers to supervise visitors meant that visits were typically brief.

We observed that several watch-houses in Indigenous communities are designed to allow visitors to sit outside the watch-house in areas adjoining some cells and to be able to see and speak to prisoners. Generally a small covered area gives visitors some protection from the sun or rain. Mesh grilles prevent the passing of objects from one side to the other. Watch-house design that allows for greater contact between prisoners and members of the community in this way is commendable.

297 In fact, most had been established in response to recommendations made in the Royal Commission's interim report (see Johnston 1991, vol. 3, pp. 228–30).

Most OICs said that they allowed family members to bring food for prisoners.[298] At Aurukun we heard from community members and service providers that in late 2006 police stopped this practice. They said that police had made the decision because there were not enough officers to monitor the provision of food.[299] The community members felt that the decision contributed to problems between the community and the police that culminated in the riot in January 2007 (see Chapter 1). This suggests that the level of openness and transparency in the way that the watch-house is operated can directly affect the levels of trust and confidence of the community in relation to watch-house matters; police should be aware of the important role that contact visits by family and friends may play in maintaining trust and confidence.

Given the possible benefits to the prisoner of contact visits from family and friends and the positive effects this can have on police–community relations, police in Queensland's Indigenous communities should continue to do all they can to facilitate such contact visits, where appropriate.

'Care and comfort' visits provided by cell visitor schemes

A further avenue of community involvement is provided in some watch-houses through cell visitor schemes. Such schemes are focused on providing care and comfort to prisoners, but their stated aims can also include aspects of prisoner health and safety.

The stated aims of cell visitor schemes in Queensland are to:

- help prevent suicide and self-harm
- assist with observation and identification of detainees' needs and problems, including the identification of symptoms suggesting the need for medical attention
- enhance communication between detainees, watch-house staff and others
- offer company, support, information and referrals (see QPS OPM 16.23; Mackenzie undated).

As part of the response to the Royal Commission, Queensland now has two categories of such schemes in operation:

1. The Queensland Government has historically provided funding through its Diversion from Custody Program[300] to a number of diversionary centres that also provide cell visitor schemes in Brisbane and other larger cities in Queensland. The most consistent service has been that provided by Murri Watch Aboriginal and Torres Strait Islander Corporation, a community-based organisation, which from the time of the Royal Commission has provided a volunteer cell visitor scheme in Brisbane and other major regional centres.
2. The QPS administers a Part-Time Cell Visitor Scheme intended for operation in smaller centres where full-time programs are not available. (Although it is largely aimed at the Aboriginal and Torres Strait Islander communities, it can assist people from all backgrounds.)

   This scheme allows community members, on a voluntary basis, to visit people in police custody to provide comfort, support, advice and liaison with police. The QPS Part-Time Cell Visitor Scheme is described by the QPS as a 'desirable complement' to careful supervision of prisoners to meet the needs of prisoners (OPM 16.23).

298 All prisoners are provided with meals in the watch-house by police.

299 Our examination of the Aurukun watch-house register showed that police had arrested large numbers of people in December 2006, with several prisoners held for one or two nights before being released. In contrast, previously during 2006 very few prisoners had been held overnight.

300 Formerly administered by DATSIP.

The QPS submission to our inquiry acknowledges that this scheme has 'limitations' but states that it 'has proved effective in assisting police and detainees to make custody less stressful' (p. 13). The QPS acknowledges that the scheme is dependent on the commitment of local police and volunteers in the community and states that 'improved community support for the Cell Visitor Scheme would assist both police and detainees involved in the custody process' (submission of the QPS, p. 14).

The need for improved training for cell visitors has been identified in the past (see Johnston 1991, vol. 3, pp. 222 & 230). The QPS, in collaboration with others, including a large number of Indigenous service providers, has developed a comprehensive guidance document for cell visitors and diversionary centre workers, which is also available to police (Mackenzie undated).

In Queensland's Indigenous communities, few communities had a recognisable, functioning cell visitor program. An exception was Palm Island, which has a Cell Watch program run by the Palm Island Men's Group. The government response to the Acting State Coroner's comments in the Mulrunji inquest noted that it had approved $496 000 over three years for the program, commencing in June 2006 (Queensland Government 2006c). This Palm Island scheme received $66 007 in 2008. From January to June 2008 the service was said to have supported 84 clients (Nelson-Carr 2008b).

Elsewhere, cell visits apparently occurred on a semi-organised or ad hoc basis, using volunteers usually drawn from community justice groups. The involvement of community justice groups, however, was variable:

- In several communities, group members were said to visit prisoners when requested to do so by police. Community justice group coordinators advised that they were contacted by the police to arrange the visits on a fairly ad hoc basis or during 'court week'. Visits were said to be quite common during court week because of the numbers in the watch-house at that time, but also because of awareness about the low morale of those just sentenced to a term of imprisonment. We also heard that sometimes visiting Elders admonished prisoners in such circumstances for their offending behaviour.
- In some communities, the community justice groups did not have any role in visiting watch-house prisoners. Reasons for this included difficulties in arranging transport (members of one group were largely dependent on the police for transportation, but the police had few vehicles at their disposal),[301] the pressures on the group to perform a range of functions (see the further discussion in Chapter 17), and the everyday demands on individual members to meet family and other responsibilities. Several members of one group claimed that they had never been inside the watch-house.
- At Cherbourg we were advised that there had been a cell watch program at Murgon, but it had ceased. Both the local police and the community justice group members agreed that the program lapsed because there had been problems with the availability of volunteers. One Sergeant said that his experience had been that the scheme was very hard to organise and sustain over the longer term. Another officer explained that 'it burns people out and they end up not wanting to do it any more'. He went on to say that the only people interested in the role are elderly, and these people may have difficulty coping with the demanding hours and conditions of such programs. We also heard some general criticism from community members that police could have done more to support the program.

Community justice groups were largely in favour of having a role in visiting prisoners. Some were wary of cultural issues; for example, one member warned that 'if a relative is in custody it may be a problem'. It was generally agreed that care needed to be taken to ensure that the individual involved was an appropriate person to provide support.

301 Local police and the justice group advised us that police would assist justice group members with transport where possible, but police had only two vehicles, which were frequently needed for operational purposes.

It was frequently suggested during consultations that the sustainability of cell visitor schemes might be improved by paying visitors for the service. This is the model adopted in South Australia, where the Aboriginal Visitors Scheme has been in operation since 1989. The South Australian scheme operates only in Adelaide and larger regional centres and is not available in remote communities. In South Australia the police are obliged to contact the Aboriginal Visitors Scheme whenever they are keeping an Aboriginal person in a police cell. Although it may be that providing payment to cell visitors in South Australia has allowed for a reliable and sustainable program over a number of years (at least in the larger regional centres), it should also be noted that the costs of administering this scheme outweigh the cost of payments to visitors (pers. comm., senior officer of the South Australian Department of the Premier and Cabinet, 16 December 2008).

It was also suggested to our inquiry by South Australian police that under the SA scheme these community members could provide a further accountability mechanism in relation to police behaviour. However, those involved in the administration of the scheme clarified that its purposes were very much focused on improving care, comfort and communication for detainees, and any monitoring of appropriate police behaviour would be incidental to those roles (pers. comm., senior officer of South Australian Department of the Premier and Cabinet, 16 December 2008).

Though it appears that cell visitor schemes make a positive contribution, such schemes cannot ensure the health and safety of detainees. For example, in South Australia, deaths in custody have occurred even where there was involvement of an Aboriginal visitor under their scheme (Johns 2007).

Cell visitor schemes may be important in aiding communication between police and detainees, but to expect such schemes to provide another level of 'supervision' or 'accountability' for police in any formal sense is, in our view, expecting too much. Certainly such schemes may enhance the transparency of the police detention process and, given the volatility generated by some watch-house problems in many communities, this enhanced transparency can only help to improve relations between the community and the police. We also agree with the QPS view noted above, that cell visitor schemes are a desirable complement to the careful supervision of prisoners. However, as with family visits, the primary function of cell visits should be seen as the provision of care and comfort to detainees. Efforts should be made to ensure that cell visitor schemes are encouraged, but they may remain unsustainable unless levels of community commitment are high.

'Supervision' provided by community members

Many police and community members expressed support for the idea of having community members involved in the supervision of prisoners in the watch-house, including in the absence of police from the watch-house. However, it was universally recognised that, to ensure the service could be relied on, it would require a properly developed and resourced program to provide security vetting, adequate training and payment to the community members involved.

The only suggestion of this currently occurring was the information described above that some local police would have community police officers provide watch-house supervision when operational requirements demanded that QPS officers leave the watch-house while someone was detained there.

One experienced OIC in a remote community suggested that PLOs could be used under the new service delivery model to assist in providing watch-house supervision where necessary, saying: 'I think the idea has merit … I could use a PLO with those skills.' Some PLOs we spoke with in Brisbane, however, noted that this would be a radical departure from the current role of PLOs in regional and metropolitan areas, which is quite strictly focused on 'liaison'.

One submission noted that it was impractical to have community supervision and raised questions about legal liability in case of accident or death, or the failure to note or report an incident. The submission stated that police should take their duty of care more seriously, rather than rely on 'yet another group of volunteers' (submission of JCU Law School, p. 28). During our consultations, senior police also queried whether it was appropriate, or even possible, for police to divest their duty of care to prisoners to community members in any circumstances.

The information we have presented regarding the workloads of watch-houses in Queensland's Indigenous communities suggests that, in some communities at least, a scheme to enable community members to provide supervision in the watch-house would be useful regularly, or often. However, given the difficulties that have been encountered:

- in ensuring that police themselves are adequately trained and can meet the standard of care required to properly care for detainees
- in sustaining functional cell visitor schemes to provide care and comfort,

it is our view that the QPS should not delegate supervisory responsibilities to community members unless they are appropriately trained employees of the QPS.

We suggest that two sound options exist for community members to play a role in supervision in the watch-house:

1. Where the watch-houses may be busy enough, such as at Palm Island — by appointing and training local community members as full-time civilian watch-house assistants, as currently exist in some metropolitan and regional watch-houses. Such a strategy would also serve to increase the capacity of these stations to respond to calls for service and undertake preventive policing (see Chapter 9), and may also provide some administrative support to local police.
2. For Indigenous people in policing roles (see Chapter 10) — by providing them with the QPS training for watch-house assistants and regular opportunities for playing a role in supervision in the watch-house under the direction of the OIC. These Indigenous people in policing roles could then provide an extra resource to be called on when circumstances of operational necessity would otherwise require detainees to be left unattended.

Summary and conclusions: continuing to reduce the risks associated with watch-house detention

The number of deaths occurring in police watch-house cells has decreased dramatically in Queensland since the Royal Commission, but all such deaths remain tragic events that warrant the closest scrutiny.

The decrease in deaths has been accompanied by improvements in watch-house facilities and improvements in the standard of care provided to detainees after the Royal Commission's recommendations.

Watch-house facilities must remain a priority

In response to concerns raised by the Royal Commission, police services have given a great deal of attention to improving the standard of watch-house facilities. Nevertheless, issues relating to the standard of watch-house facilities have continued to arise, with a number of coronial inquests into deaths in police custody recommending further improvements.

We saw that the standard of watch-house facilities varied considerably in the Indigenous communities we visited — for example, a number of complaints and concerns were raised in relation to the watch-houses at Lockhart River, Murgon, Kowanyama and Pormpuraaw. A large number of people also raised concerns about the limited watch-house facilities in the Torres Strait Islands.

The Queensland Government and the QPS recognise that the standard of watch-house facilities in Queensland requires ongoing attention. The QPS has a continuous program of regular inspection of watch-house facilities in place, and other internal audits are carried out from time to time. Considerable sums of money have also been spent on the continuous program of replacement and upgrading of watch-house facilities. The provision of safe watch-house facilities, although expensive, remains an important priority if we are to ensure the safety of prisoners in police custody in Queensland.

Auditing and recording may improve care provided by police to detainees

Although police officers should not be expected to make a diagnosis of a prisoner's medical condition, they have an ongoing duty to assess prisoners in order to make decisions about whether a prisoner needs professional medical attention, special supervision or transfer to an appropriate facility.

As a result of the Royal Commission, health assessment forms are now to be completed for each prisoner in order to help police determine whether medical attention is required and assess a prisoner's level of risk when they are making appropriate detention and supervision arrangements. However, recent coronial inquests into deaths in police custody, including that of Mulrunji, show that adequate assessment of detainees' medical needs continues to be a problem. Subsequent to the recommendations made in the Mulrunji inquest, a new series of checklists has been introduced for conducting health assessments.

Our analysis of Western Cape York watch-house registers showed:

- police completed the required health assessment checklist for the vast majority of prisoners admitted
- where the checklist was not completed, it was often indicated that the prisoner was 'too intoxicated', 'refused' or was 'too aggressive' to answer the checklist questions
- about a third of the health assessments indicated that one or more 'risk factors' had been identified for the prisoner (such as a previous suicide attempt, treatment for a mental health problem, or alcohol or drug dependency).

Another key aspect of the care provided to detainees is the physical inspection and checking of prisoners. Again, improvements in this area have been made since the Royal Commission, but there are still difficulties with ensuring that adequate inspections are carried out by police.

Although our inquiry could not assess the frequency or adequacy of prisoner inspections carried out in watch-houses in Indigenous communities, the existing evidence from a number of deaths in custody shows a level of non-compliance with the OPM requirements for regular physical inspections of every prisoner.

Since our inquiry was announced, the electronic surveillance systems in watch-houses in Queensland's Indigenous communities have been upgraded to ensure digital CCTV coverage of all cells and public areas. The Queensland Government committed to the upgrade to protect officers against allegations made against them, and to provide additional protection and supervision for offenders in the watch-houses. However, there are limits to the effectiveness of electronic surveillance systems in ensuring that prisoners are safe. Even if it were the case that the constant monitoring of digital CCTV footage was possible, CCTV provides no information about prisoner safety when that person is motionless and only limited information when the person is non-verbal, which is another important aspect of any health assessment.

Although electronic surveillance systems are no substitute for inspections, they do provide a tool by which audits can be conducted to ensure that inspections of prisoners are made in accordance with QPS policies and procedures. Given the high risks associated with caring for people in watch-house custody, and the history of coronial inquests revealing a level of non-compliance with the policies, the QPS should take advantage of the new technology to conduct regular audits of the inspection regimes in Queensland's Indigenous community watch-houses.

➡ Action

That the QPS conduct a program of regular audits of police inspections of prisoners in cells by means of digital CCTV footage in order to determine the frequency of inspections being carried out in person, and the frequency with which verbal response is sought from those prisoners who are awake.

Some police officers we spoke to during our consultations admitted that prisoners are occasionally left unsupervised when other operational demands arise.

The current procedures recognise that a prisoner should not be left in custody unattended unless there are reasons of operational necessity, no suitable alternative exists and the risks have been assessed.

We recognise that, in practice, such justifiable circumstances may arise from time to time in remote communities. However, we also consider that these circumstances should be documented and that there should be close and careful monitoring of the circumstances that give rise to a prisoner being left unattended. Aside from the accountability this process provides, the information has clear implications for QPS assessment of staffing needs in Queensland's Indigenous communities.

➡ Action

That the QPS introduce a requirement that all incidents of a detainee being left unattended in a watch-house must be recorded and audited by the QPS.

Another option for the QPS to consider, in terms of its potential both to reduce the need for detainees to be left unattended and to improve the overall standard of care provided to detainees by police, would be to make an officer (or a watch-house assistant) from another place available in some locations on those days that are predictably busy days in the watch-house, such as court days.

Originally raised by the Royal Commission, the need for police officers to be able to competently provide resuscitation and first aid whenever appropriate continues to be an area of concern. The need for ongoing awareness and training of officers is already very clear.

Encouraging 'care and comfort' visits by community members

Community involvement in the watch-house can have important benefits for prisoner health and safety. It can provide moral support for prisoners, improve communication between police and prisoners, and increase the levels of trust and confidence that the community has in the police.

Currently where visitation is provided by family and friends, or through cell visitor schemes, it is principally focused on providing 'care and comfort'. It is our view that this focus is appropriate; visitors should see their primary role as providing such care and comfort — that is, to boost morale.

The 'training' needed by such visitors is minimal. It should be enough to give visitors a clear understanding of their role and for them to be made aware of the vital importance of providing police with any information they obtain from a prisoner that is relevant to police making an accurate health assessment.

Given the possible benefits to prisoners of contact visits providing 'care and comfort' from family and friends, and the positive effects this can have on police and community relations, police in Queensland's Indigenous communities should continue to do all they can to facilitate such contact visits, where appropriate.

Cell visitor schemes in Queensland's Indigenous communities are currently mostly informal, rather ad hoc and possibly unsustainable. The success of such schemes is subject to there being adequate commitment and time available on the part of local police to coordinate and supervise visits, and commitment by community members to undertake such visits. We agree with the QPS that such schemes are a desirable complement to the careful supervision of prisoners and that, like family visits, they can enhance the transparency of the police detention process. Given the volatility generated by alleged watch-house problems in many communities, this enhanced transparency can only help to improve relations between the community and the police.

Although we support such schemes, it is our view that the workload for organising and implementing such a scheme should not fall upon the OIC of the police stations in these communities. Rather, someone within the community should be a point of contact for the police and that person should be responsible for contacting willing community members and organising cell visits when necessary. Our proposal is that the community justice group coordinator and/or members be responsible for coordinating the cell visitor scheme in those places where there is community support for such a scheme. However, recognising the heavy workload that these groups already face, we propose in Part 4 of this report that:

- the role and functions of community justice groups be reviewed
- the presence of various local justice initiatives in each community and the responsibilities of police, councils, justice groups and community members be included in a community-specific local justice agreement (see Chapter 17).

➡ Action

That the review of the roles and functions of community justice groups proposed in Chapter 17 specifically consider the extent to which the community justice group coordinator and/or members can contribute to the provision of a sustainable cell visitor scheme in each of Queensland's Indigenous communities.

Viable options for community involvement in supervising detainees

Given the risks involved in monitoring prisoners in watch-houses, especially those prisoners with health problems, the difficulties that have been encountered in ensuring that police themselves are adequately trained to properly care for prisoners, and the difficulties in sustaining a cell visitor scheme in many of these communities, it is our view that the effort required to implement and sustain a system of civilian monitoring of prisoners would outweigh any benefit unless these community members are employed and appropriately trained by the QPS:

- as full-time civilian watch-house assistants, as exist in some other locations in Queensland
- in Indigenous policing roles, so that they could regularly play a part in watch-house supervision and in circumstances of operational necessity could perform this role in the absence of QPS police officers.

➡ Action

That the viable options for involving community members in the supervision of watch-houses in Queensland's Indigenous communities are:

- in some stations where the watch-house workloads warrant it, employing local community members as civilian watch-house assistants on a permanent basis
- training Indigenous people in policing roles to perform a watch-house assistant role in Queensland's Indigenous communities; it is then possible that they could provide supervision to prisoners in the absence of police where such absence is a matter of operational necessity.