DEFENDANTS' PERCEPTIONS OF THE INVESTIGATION AND ARREST PROCESS

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RESEARCH AND COORDINATION DIVISION

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Anne Edwards of the Criminal Justice Commission's Research and Coordination Division managed the project and, with the assistance of Louise Gell, was primarily responsible for writing the final report. Tracey Stenzel prepared the document for publication.

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ABBREVIATIONS

ABS	Australian Bureau of Statistics
CJC	Criminal Justice Commission
GSO	Government Statistician's Office
OPM	Operational Procedures Manual (Queensland Police Service)
QCSC	Queensland Corrective Services Commission
QPS	Queensland Police Service

EXECUTIVE SUMMARY

CHAPTER 1: INTRODUCTION

This research report presents the findings of a survey of 489 defendants appearing in Queensland Magistrates Courts. The survey was designed to collect information about police arrest, questioning and searching practices from the perspective of people who had been subject to the exercise of these powers. The primary objectives of the study were to:

- identify any problems with current police powers and the manner in which they are exercised, to help inform the development of proposed new police powers legislation
- establish baseline measures to assist in monitoring the implementation and impact of this new legislation, when it is proclaimed.

It should be emphasised that information provided by interviewees was not cross-checked against other sources, and was not necessarily accurate in all instances. The survey therefore primarily provides a measure of respondents' **perceptions** of police practice, rather than of **actual** police behaviour. However, we have assumed that where perceptions were widely held, they were likely to be indicative of actual police practice.

CHAPTER 2: METHODOLOGY AND SAMPLE CHARACTERISTICS

The survey questionnaire was administered in face-to-face interviews with people appearing before Brisbane, Southport, Beenleigh, Ipswich, Maroochydore, Rockhampton and Cairns Magistrates Courts. The survey included juvenile defendants but excluded defendants held in custody. Interviewers achieved a response rate of 75 per cent.

The survey sample had the following characteristics:

- 84 per cent were male
- 78 per cent were aged under 30
- 5 per cent were juveniles
- 13 per cent were Aboriginals or Torres Strait Islanders
- the majority were charged with property or drug offences
- around two-thirds had previously been in trouble with police.

CHAPTER 3: ARREST AND QUESTIONING

The main findings of the survey in relation to arrest and questioning were that:

- Many respondents to the survey were confused about when, if at all, they had been arrested. For example, 13 per cent of the sample said that they had not been arrested, even though they had been taken to a police station and fingerprinted.

- Regardless of whether respondents believed that they were formally under arrest, many felt compelled to comply with police directions. For example, of the 388 respondents (79% of the total sample) who said that they went to the police station in a police car, 76 per cent said that they attended because they 'thought they had to'.

- There was some evidence that police had relied on their arrest power in circumstances where a summons would have been more appropriate.

- About three-quarters of the respondents who were formally interviewed recalled being warned by police that they were not obliged to answer any questions. However, it appears that warnings were much less likely to be given prior to the commencement of informal questioning.

- All but 14 per cent of the respondents who said that they had participated in a formal interview stated that the interview had been electronically recorded by police. Informal interviews 'in the field' and at the police station were much less likely to have been recorded.

- Most respondents who were formally interviewed said that they answered all questions put to them, even though 80 per cent said that they were aware that they were entitled to remain silent.

- It would appear from the estimates provided by respondents' that the great bulk of interviews were completed within four hours.

CHAPTER 4: THE INVOLVEMENT OF SOLICITORS AND OTHER INDEPENDENT PERSONS

Key findings in relation to the involvement of solicitors and other independent persons were as follows:

- Only 2 per cent of respondents said that a solicitor was present while they were at the police station.

- Only 14 per cent of the sample said that police had asked them if they wanted a solicitor. However, it should be noted that police are not currently required to inform suspects of their right to a solicitor.

- Of the 62 respondents who requested a solicitor, half said that their request had been ignored or refused by police.

- The most common reason cited by respondents for not requesting a solicitor was that they did not need one, or that they did not know they could have one.

- Forty-four per cent of respondents said that they understood 'not at all well' or 'not very well' what was going to happen to them following their contact with police.

- Of the 21 indigenous respondents who said they were formally interviewed by police, only 2 (10%) reported the presence of an independent third person. This was despite QPS policy stating that, in the case of indigenous suspects, the existence of a 'special need' should be assumed until the contrary is clearly established.

- There was apparently a high level of compliance with the requirement of the *Juvenile Justice Act 1992* for an independent third person to be present when a juvenile is formally interviewed.

CHAPTER 5: SEARCHES

The main findings of the survey in relation to searches were:

- Slightly less than a quarter of respondents said that they had been subjected to a personal search before being taken to a police station. Seventeen respondents reported that they were strip searched, with four claiming that this had occurred on the side of the road.

- Around one-third of the sample reported being searched at a police station, with strip searches allegedly being conducted in more than a third of these cases. There was some unexplained regional variation in the frequency with which strip searches at police stations appeared to have been conducted.

- Twenty-seven per cent of the sample said that their residence had been searched by police and 13 per cent that their vehicles had been searched. Property searches were most frequently conducted in relation to drug offences.

- A considerable number of respondents claimed that the police did not tell them why their person or property was being searched. Several respondents claimed that they were not given the opportunity to read search warrants.

CHAPTER 6: GENERAL SATISFACTION WITH THE PROCESS

- Forty per cent of the sample made positive comments about their interaction with police

- Almost half the sample were unhappy with one or more aspects of their treatment by police. The most common criticisms were that police: were impolite, rude or verbally abusive (10% of respondents); had assaulted the respondent (9%); or had failed to inform respondents of their rights.

- There were no statistically significant racial, gender or age differences in the proportion of respondents who expressed dissatisfaction with police.

- Only 29 per cent of the respondents who were critical of police treatment had told a third party, most often the police or a solicitor.

- The most often cited reason for not complaining was 'It would not do any good'.

CHAPTER 7: CONCLUSION

Many of the issues identified by this report can only be satisfactorily addressed by substantial amendment to the existing legal framework which governs the arrest, detention and questioning of suspects. The legislative proposals made by the CJC in its previously published Review of Police Powers address many of the problems identified by the survey. These proposals were designed to ensure that:

- police are placed under a legal obligation to inform suspects of their rights, obligations and status

- police are given a strictly regulated power to detain suspects for questioning after arrest, thereby removing the incentive for police to perpetuate the fiction of 'voluntary attendance' and to avoid clearly informing suspects of their arrest status

- questioning of suspects is subject to proper regulation from the point of first contact

- police are provided with workable alternatives to arrest
- the 'right' to have a solicitor present at a police station is given substance
- improved accountability and monitoring mechanisms are put in place to govern the conduct of personal and property searches.

The survey results also indicate that:

- police procedures which are specifically governed by legislation (such as the interviewing of juveniles) appear to generate the highest levels of compliance
- the QPS needs to develop organisational strategies for enhancing police professionalism in dealing with suspects, particularly in relation to the use of force
- there is a need to better understand why many respondents who expressed dissatisfaction about some aspect of their treatment by police chose not to make an official complaint.

To facilitate on-going monitoring, this survey will be repeated at regular intervals. It is planned to conduct the next survey approximately one year after the new police powers legislation currently being developed has taken effect.

CHAPTER 1
INTRODUCTION

This research report presents the findings of a survey undertaken in May and June 1996 of nearly 500 defendants appearing on criminal charges in Queensland Magistrates Courts. Interviews for the survey were conducted by Criminal Justice Commission (CJC) research staff at Brisbane Central, Southport, Beenleigh, Ipswich, Maroochydore, Cairns and Rockhampton courts. The survey was designed primarily to collect information about police arrest, questioning and searching practices from the perspective of people who had been subject to the exercise of those powers. Respondents were also asked about their treatment by police and whether, and to whom, they had made any complaints about this treatment.

Our primary objectives in undertaking the survey were to:

- identify any problems with current police powers and the manner in which they are exercised, to help inform the development of proposed new police powers legislation
- establish baseline measures to assist in monitoring the implementation and impact of this new legislation.

It is intended that the survey will be repeated at two-yearly intervals to facilitate ongoing monitoring of police investigation and arrest practices. These surveys, in conjunction with complaints data routinely collected by the CJC, will also be used to identify any trends in defendant satisfaction with police behaviour.

This introductory chapter explains why the CJC initiated this project, briefly reviews related studies, sets out the advantages and limitations of the research methodology employed, and outlines the structure of the report.

BACKGROUND TO THE RESEARCH

Under the *Criminal Justice Act 1989,* the CJC has a responsibility to:

- monitor and report 'on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally'—section 23(b)
- to research, generate and report on 'proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice'—section 23(e).

In addition, the CJC, through its Official Misconduct Division, deals with large numbers of complaints against police. Many of these complaints directly or indirectly raise issues about the appropriateness of various police powers and the manner in which they are exercised.

In discharge of its statutory responsibilities—and in response to Recommendation B II (4) of the 1989 *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Fitzgerald Report)—the CJC has undertaken a comprehensive review of police powers in Queensland. The results of this review were published in five volumes released during 1993 and 1994. Over eighty recommendations were made for changes to the law and practice of police powers. None of these recommendations has yet received a formal response from Government, but it is understood that comprehensive new police powers legislation is currently being jointly prepared by the Queensland Police Service (QPS) and the Department of Justice, for introduction into Parliament some time in 1997.

In conducting the police powers review, we relied primarily on submissions, and interviews with police and practitioners to determine current practices and identify possible problem areas. These sources generated much useful information, but impressionistic and anecdotal data need to be treated cautiously; especially given that those who provide this information are often 'players' in the police powers debate. An important aim in undertaking the survey, therefore, was to collect additional data about:

- the degree of understanding that defendants have of the investigation and arrest process, and of their rights and obligations in that process
- the extent to which police powers are being exercised consistently across different areas of the State and towards different groups within the community
- police compliance with existing legal and procedural requirements (although these findings need to be treated cautiously because of the possibility of faulty recall and understanding on the part of respondents).

A second reason for conducting the survey was to establish some baseline measures for monitoring the impact of any new police powers legislation which might be introduced by the Government, in accordance with the CJC's monitoring responsibilities under section 23(b) of the *Criminal Justice Act*. Other data sources to be utilised in the proposed evaluation will include surveys of police officers, QPS records, CJC complaints data, and consultations with legal practitioners. By repeating the defendants' survey some time after the new legislation has taken effect, and comparing these findings with other relevant data, we should be able to ascertain the extent, if any, to which these reforms have resulted in:

- an increase in defendants' understanding of their legal rights and obligations
- greater consistency in the way in which police powers are applied
- enhanced police compliance with legislative and procedural requirements
- a reduction in defendants' dissatisfaction with the investigation and arrest process.

The third rationale for conducting the survey derives from the CJC's role as a complaints investigation body, and from its general statutory responsibility to oversee the QPS. In order to assess the effectiveness of the CJC's investigative and pro-active strategies, it is important to be able to measure whether the standard of police conduct is improving or declining over time. This cannot be done solely by examining the volume of, or trends in, the number of 'official' complaints against police, because:

- people who are dissatisfied with some aspect of police behaviour do not always make a formal complaint against the officer(s) concerned
- the willingness of people to complain about perceived police misconduct may vary over time, depending on the public's knowledge of, and confidence in, the complaints process
- changes in police administrative practices, and in the way in which police discretion is exercised, can also have an impact on the number of complaints that are formally recorded.

A regular survey of defendants will provide an alternative 'window' into police practices and behaviour, to supplement the complaints data routinely generated by the CJC and the QPS. Obviously, respondents' claims to have been mistreated by police should not be accepted at face value. However, assuming that the likelihood of respondents misinterpreting or misrepresenting what happened to them does not vary significantly from year to year, periodic surveys will assist the CJC to ascertain whether there has been any *change* in the

underlying incidence of police misconduct. Such information, in conjunction with other data, will assist the formulation of appropriate investigative, preventive and research strategies to improve police conduct.[1]

OTHER STUDIES

Section 57 of the *Criminal Justice Act* requires that the CJC avoid needlessly duplicating work undertaken by other agencies and research bodies within and outside Queensland.

The only research of a comparable nature undertaken in Queensland was a small-scale survey of 34 defendants appearing at three Magistrates Courts, undertaken as part of the background research for our review of police powers in Queensland. These interviews provided some useful background information, but the sample size was too small, and the sampling frame too limited, to enable generalisations to be made with any confidence. In addition, the survey focused on only a few aspects of the arrest process.

A research project undertaken in 1992 surveyed 383 young people about their experiences with and perceptions of police (Alder et al, 1992). While the survey yielded useful information about the issue of police and young people, the selection of young people who made up the survey sample was not random. In addition, the specific nature of the population surveyed means that the findings are limited in their relevance to an adult population.

In 1993, the Victorian Federation of Community Legal Centres surveyed clients who had complained of mistreatment by police during the course of their arrest and detention (Biondo & Palmer 1993). This survey generated some valuable information, but, because the focus was only on people who were dissatisfied with their treatment by police, the findings were not representative of the full range of experiences of people arrested by police. The survey also had a very low response rate: 2,500 survey forms were distributed to community legal centres and some other community agencies throughout Victoria, but there were only 189 responses in the final sample.

Several law reform bodies have conducted inquiries into various aspects of the arrest process.[2] In addition, in 1995 Blagg and Wilkie published a study of police powers in relation to juveniles, on behalf of the Australian Youth Foundation. However, most of these reports have been submission-based, with the experiences of defendants being included only by way of case studies, if at all. Inquiries have also been conducted, from time to time, into the arrest and detention of individuals who have died or who have suffered serious injury while in police custody but these reviews, by their nature, have focused on exceptional events rather than routine practices.[3]

There appears to have been only one overseas study that is even broadly comparable to the survey which we have conducted. The study in question involved the distribution of a mail-back questionnaire to 4,299

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1 The CJC has developed a similar surveying strategy for the general population: see CJC 1995.

2 See for example Australian Law Reform Commission 1975, *Criminal Investigation: Report No.2 An Interim Report*, AGPS, Canberra; Victorian Consultative Committee on Police Powers of Investigation (Coldrey, J) 1986, *Report on Section 460 of the Crimes Act 1958: Custody and Investigations*, Government Printer, Melbourne; New South Wales Law Reform Commission 1990, *Criminal Procedure: Police Powers of Detention and Investigation after Arrest*, Report LRC 66, Sydney; Cosgrove, H.E. 1990, *Police Powers of Interrogation and Detention*, Law Reform Commisioner of Tasmania, Hobart.

3 Several examples of such inquiries are reported in the following publications: Office of the Ombudsman, 1993. *Inquiry into the Circumstances Surrounding the Injuries Suffered by Angus Rigg in Police Custody and into the Subsequent Police Investigations*, Sydney; Parliamentary Commissioner for Administrative Investigations, 1993. *Report on an Investigation into Various Aspects of Police Conduct Arising from the Arrest, Charging and Detention of Joseph Bartlett Dethridge at Fremantle Police Station on 8–9 May 1992*, Western Australia; CJC 1994b *A Report of an Investigation into the Arrest and Death of Daniel Alfred Yock*, Brisbane.

'conflict customers' of Surrey Police (Harris Research Centre 1993).[4] The response rate to the survey was 24 per cent for those who were not arrested and 15 per cent for arrestees. These rates compare very unfavourably to the response rate of 75 per cent which we obtained by using face-to-face interviews (see chapter 2). This shortcoming aside, it is not possible to generalise from British research to Queensland, given that the two jurisdictions have quite different police powers regimes.

STUDY LIMITATIONS

It is important in this introductory chapter to also draw attention to the limitations of the survey methodology which we have employed.

First, for logistic reasons, we were able to conduct interviews at only seven of the 29 permanent Magistrates Courts operating in Queensland. In selecting these locations we were careful to choose the busiest courts and to ensure a reasonable geographic spread. However, the survey does not fully represent all people appearing before Magistrates Courts in Queensland. In particular, we were not able to collect data from any courts in inland centres or courts that operated on a circuit basis only. We doubt that a more comprehensive survey would have produced significantly different aggregate results, but a larger study would have enabled us to document more thoroughly the extent and nature of interregional variations.

Second, the survey did not cover defendants who had been remanded in custody, because of the difficulty of conducting interviews under such circumstances. As most people who are apprehended by police are granted bail, this exclusion probably did not have a great impact on the overall findings of the survey. However, it is quite possible that some of those who were remanded in custody would have had different perceptions of the investigation and arrest process, considering that this group was more likely to have committed serious offences.

Third, and most importantly, the information that interviewees gave us about the investigation and arrest process was not necessarily accurate, and was not cross-checked against other sources. Defendants who have been arrested (the great majority of our sample) are normally bailed to appear before a Magistrates Court up to 14 days after their arrest. It is quite possible that, by the time respondents were interviewed, some had forgotten certain details of their encounter with police. Others may have misunderstood what happened at the time of their encounter, especially given that many may have been alcohol-affected or stressed, or both. It is also possible that some respondents deliberately provided misleading information to our interviewers. **For these reasons, the survey is a better measure of respondents' *perceptions* of police practices, than of *actual* police behaviour.** However, we have assumed that where perceptions are widely held, they are likely to be indicative of actual practice.

Notwithstanding these limitations, the survey is a valuable supplement to other information that has been collected about police investigation and arrest processes in Queensland. In particular, the survey provides a baseline which, in conjunction with other data, can be used to monitor the impact of proposed new police powers legislation, trends in police behaviour towards defendants, and defendants' use of, and attitudes towards, official complaints mechanisms.

4 'Conflict customers' consisted of people who had been in contact with police for a variety of reasons. The term conflict customer included those who were summonsed to appear in court, had been stopped and searched by police, or had been issued various traffic infringement notices, as well as those who were arrested by police.

STRUCTURE OF REPORT

The remainder of the report is structured under the following headings:

- methodology and sample characteristics
- arrest and questioning
- the involvement of lawyers and other independent persons
- searches
- defendants' views of the police.

The concluding chapter discusses the main policy implications arising from the study.

CHAPTER 2
METHODOLOGY AND SAMPLE CHARACTERISTICS

This chapter describes the methodology used in the survey and outlines the demographic characteristics of the survey sample. Specific aspects examined are:

- the survey procedure
- sample selection and response rate
- the survey instrument
- sample characteristics, such as interview location, gender, age and racial origin of respondents, most serious offence charged and respondents' prior contact with police.

SURVEY PROCEDURE

The sample frame consisted of all defendants appearing before the seven Magistrates Courts selected for the study, except for those defendants remanded in custody and those charged with less serious driving matters.[5] The data were collected by means of a structured face-to-face interview during which a questionnaire was completed. Potential respondents were approached in the waiting areas of Brisbane, Southport, Beenleigh, Ipswich, Maroochydore, Cairns and Rockhampton Magistrates Courts. Interviewers identified themselves as employees of the CJC,[6] and proceeded to explain the nature of the study being conducted (see appendix A). Respondents were assured of the anonymity and confidentiality of their response, and were invited to participate in the study. If the respondent accepted, the interview was conducted in either a private interview room or in the waiting area, depending on the availability of a room and the wishes of the respondent.[7] Generally, respondents opted to be interviewed in the waiting area itself rather than in a private room, often for fear of missing their name being called.[8]

Interviewers were instructed to include in the sample juveniles waiting outside the Childrens Court, if possible. This required interviewers to make inquiries as to Childrens Court sitting days, and to arrange to attend on those days. The Childrens Court often operates in the same building as the Magistrates Court but usually sits in a separate courtroom. Responses from juveniles were collected from Southport, Beenleigh, Ipswich and Cairns.

Approval to approach potential interviewees in court precincts was granted by the Chief Stipendiary Magistrate, who then notified magistrates of the presence of researchers in each of the courts selected. We also notified the Queensland Police Union of Employees, the Director of the Legal Aid Office, and the Clerk of the Court of each of the courts.

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5 Charges such as drink-driving and unlicensed driving were not included because of the routine nature of the procedure associated with these offences.

6 All interviewers carried a letter identifying themselves in these terms.

7 Private interview rooms were available in Brisbane, Southport, Beenleigh, Ipswich and Cairns.

8 A defendant's name is called out in the waiting room of the Magistrates Court either to summon the person to appear in the courtroom or to meet the duty solicitor.

Inspectors in Charge of each of the police divisions in which the survey was conducted were notified of the research on 14 June 1996, approximately half way through the data collection period. Data from surveys conducted prior to 17 June 1996 were compared with data obtained after this date. There was no discernible difference between the two groups, indicating that even if local police were aware of the study, this did not influence their conduct towards defendants during the period of the survey.

The Clerk of the Court of each of the courts was notified in person at the beginning of the study period of the presence of interviewers. In addition, wherever possible, interviewers notified on a daily basis duty solicitors, individual police prosecutors and any voluntary court support staff.[9]

A team of 10 interviewers worked between 27 May 1996 and 22 July 1996 to obtain the sample. To facilitate interpretation of responses, interviewers were selected who were familiar with legal concepts and the criminal justice process.

All interviewers attended an instruction session and were issued with an instruction booklet which included information about:

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

It was stressed to interviewers that their function was not to solicit complaints. Interviewers were instructed that, if respondents asked for information about making a complaint, they should be given a copy of the CJC pamphlet *Making a Complaint against a Member of the Queensland Police Service*.

Interviewers were given a sheet on which to record the outcome of each approach made to potential respondents, to facilitate the calculation of a response rate. Where possible, interviewers also recorded the reason an interview was declined.

Interviews with respondents took between five and 20 minutes, depending on the number of questions applicable in each situation.

SAMPLE SELECTION AND RESPONSE RATE

The Magistrates Courts chosen for inclusion in the survey were selected to enable maximum utilisation of the resources available for the project and to gain a good geographical coverage. Brisbane, Southport, Beenleigh, Ipswich and Cairns were included because they process large numbers of cases. Maroochydore and Rockhampton were added to provide some regional balance.

9 Court support schemes were in operation in Ipswich, Beenleigh, Maroochydore and Southport. These are voluntary programs staffed by various non-government organisations, which provide information to people appearing at court regarding questions about such matters as obtaining legal advice.

The final sample consisted of 489 completed questionnaires.[10] According to records kept by interviewers, this represented a response rate of 75 per cent.[11] A total of 152 eligible potential respondents declined to be interviewed. Reasons given included: 'I'm not interested', 'I can't focus on anything else at the moment', 'Too stressed', 'I want to get out of here', 'I'm just about to go into court', 'No time', 'There's no use', 'Can't be bothered', 'Want to speak to my solicitor first', 'Too much on my mind', 'Don't trust the CJC', 'Want to get back to court', and 'Don't want to'.

Given the high response rate, it is likely that the survey results broadly reflect the views and experiences of the total population of defendants appearing in the courts concerned.

THE SURVEY INSTRUMENT

The final questionnaire consisted of 104 questions, divided into eight sections:

- demographics
- first contact with the police
- pre-arrest search
- the arrest
- post-arrest search and questioning
- the formal interview
- independent persons
- complaints and further comments.

Respondents were asked only those questions relevant to their situation. Appendix B provides a copy of the questionnaire.

Twenty-seven questions were taken directly from a survey conducted by the Research and Coordination Division in 1992, as part of the CJC's review of police powers (CJC 1994a). One question was taken from the Surrey Police *Survey of Conflict Customers* (Harris Research Centre 1993).[12]

A draft of the questionnaire was provided to the QPS for comment. Several questions were added as a consequence of the feedback which was received.

The questionnaire was piloted in Brisbane Magistrates Court on 8 and 9 May 1996 with 16 respondents. Several questions which were misunderstood were changed as a result of the pilot survey. In several cases, further options were added to a question when a response did not fall within those options provided. Problems with coding responses were also identified and overcome.

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10 A number of incomplete questionnaires were discarded.

11 Eight of the 10 interviewers recorded the number of approaches made to potential respondents and the outcomes of these approaches. The response rate is based on the number of responses to the survey divided by the number of potential respondents approached by interviewers. The calculation of the response rate excludes responses to those interviewers who forgot to record the information.

12 Question 92: 'How well would you say you understood what was going to happen following your contact with the police?'

CHARACTERISTICS OF THE SAMPLE

LOCATION OF INTERVIEWS

As shown in table 2.1, one-third of the interviews were conducted in Brisbane. The number of interviews conducted in the other courts ranged from 59 in Southport to 33 in Maroochydore. Table 2.1 also shows the regional distribution of appearances before Magistrates Courts in Queensland during the financial year 1993–94. In comparing the two sets of data, it can be seen that Southport Magistrates Court was under-represented in the survey sample, while Beenleigh and Rockhampton were somewhat over-represented.

TABLE 2.1 — LOCATION OF INTERVIEWS COMPARED WITH ALL APPEARANCES IN QUEENSLAND MAGISTRATES COURTS BY REGION (1993–94)

	SURVEY SAMPLE		MAGISTRATES COURT APPEARANCES	
Location	**Number**	**Per cent of sample**	**Number**	**Per cent of all appearances in Queensland**
Brisbane	162	35	35,178	32
Southport	59	13	28,512	26
Beenleigh	58	13	5,490	5
Ipswich	43	9	5,339	5
Maroochydore	33	7	6,606	6
Cairns	55	12	8,825	8
Rockhampton	53	11	2,499	2
Other regions	–	–	17,801	16
TOTAL	**463**	**100**	**110,250**	**100**

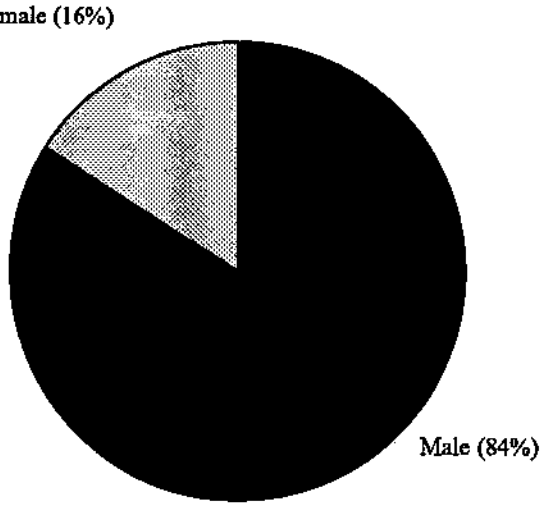
Source: Government Statistician's Office, unpublished data.
Note: The 26 respondents who were aged 16 years or less were excluded from this table as they were appearing before the Childrens Court.

GENDER OF RESPONDENTS

Figure 2.1 shows that 84 per cent of respondents were male. The gender distribution of adult respondents in the survey sample was almost identical to that of the total population of persons appearing before Queensland Magistrates Courts during 1993–94 (GSO unpublished data).[13]

13 To achieve a population broadly comparable to the GSO sample, we excluded persons charged with: drink-driving, licence offences, State Transport/Main Roads Act offences, 'other' traffic offences and 'other' driving offences.

FIGURE 2.1 — GENDER OF RESPONDENTS



Note: n = 489

AGE OF RESPONDENTS

Seventy-eight per cent of the respondents (379) were aged under 30 years, with 26 respondents, or 5 per cent of the sample, aged under 16 years. Of the 26 juvenile respondents, 81 per cent were male.

Table 2.2 compares the age profile of adult respondents to the survey with the population of adult defendants appearing before Queensland Magistrates Courts in the financial year 1993–94. The table shows that the age distribution of the survey sample was roughly the same as for the total defendant population.

TABLE 2.2 — AGE OF ADULT RESPONDENTS IN THE SURVEY SAMPLE COMPARED WITH ALL APPEARANCES IN QUEENSLAND MAGISTRATES COURTS (1993–94)

	ADULT RESPONDENTS (SURVEY SAMPLE)		MAGISTRATES COURT APPEARANCES	
Age group	**Number**	**Per cent**	**Number**	**Per cent**
17–19	122	26	10,873	18
20–29	231	50	29,197	49
30–39	74	16	12,413	21
40–49	29	6	4,945	8
50–59	7	2	1,682	3
60 and over	–	–	740	1
TOTAL	**463**	**100**	**59,850**	**100**

Source: Government Statistician's Office, unpublished data.

Notes:

1. The 26 respondents who were aged 16 years or less were excluded as they would have been appearing before the Childrens Court and cannot be compared to the population appearing before the adult court.
2. Magistrates Court appearances for less serious driving offences were excluded from the data presented here to maintain comparability with the survey sample.
3. Magistrates Court appearance data exclude 18,293 people who did not state their age.

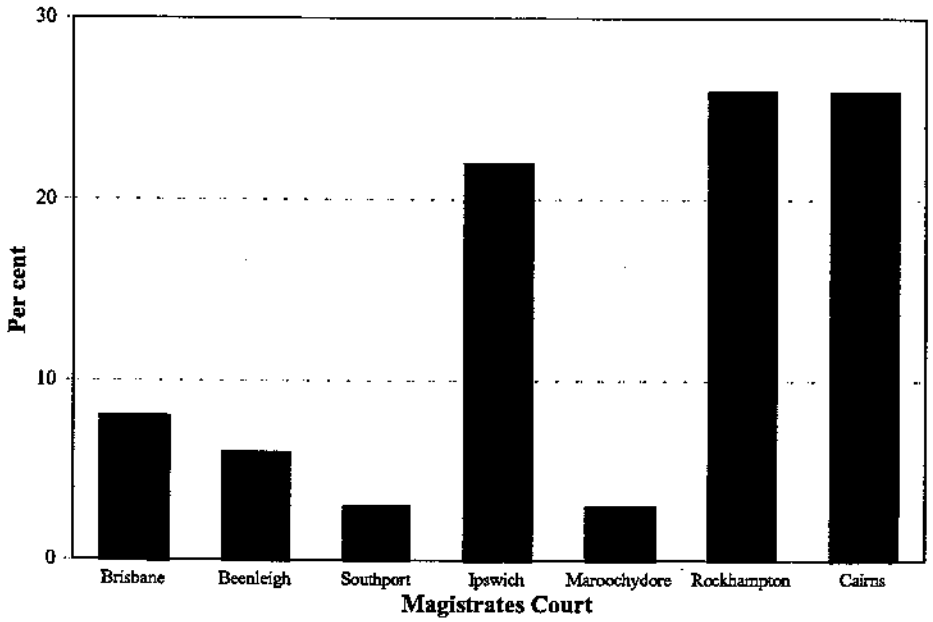
ABORIGINALITY OF RESPONDENTS

There were 61 Aboriginal and Torres Strait Islander respondents[14] in the survey sample, making up 13 per cent of the total sample. By comparison, at the time of the 1991 Census indigenous people accounted for only 2 per cent of the Queensland population (GSO 1995). This means that Aboriginal and Torres Strait Islander respondents were present in the sample at a rate around 6.5 times greater than their representation in the general population.

Information about the Aboriginality of persons appearing before Magistrates Courts in Queensland is not collected. However, a recent study by the Australian Institute of Criminology found that indigenous adults in Queensland are 11.6 times more likely to be in prison than non-indigenous adults, and 13.3 times more likely to be in police custody (Queensland Police Service Review 1996). Queensland Corrective Services Commission (QCSC) figures indicate that indigenous people made up 22 per cent of people held in custody by the QCSC on 30 June 1995 (QCSC n.d.). These data suggest that, if anything, indigenous defendants may have been under-sampled by the study. This may be partly because we only surveyed defendants who had been granted bail.

Figure 2.2 shows that courts with the highest percentage of Aboriginal and Torres Strait Islander respondents were Cairns (26%), Rockhampton (26%) and Ipswich (22%).

FIGURE 2.2 — ABORIGINAL AND TORRES STRAIT ISLANDER RESPONDENTS AS A PROPORTION OF ALL RESPONDENTS BY COURT



MOST SERIOUS OFFENCE CHARGED

Table 2.3 shows the most serious offence with which adult respondents said that they were charged. The most common charges related to theft offences (136 respondents or 29%), drug offences (135 respondents or 29%) and assault offences (58 respondents or 13%).

14 A total of 53 respondents said they were Aboriginal, and a further eight respondents said they were Torres Strait Islanders. Eleven respondents said they were both Aboriginal and a Torres Strait Islander.

Compared with the general Magistrates Court population in 1993–94, the sample contained a higher proportion of offenders charged with theft, drug and assault offences and a much lower proportion charged with public order offences and 'other' offences (see table 2.3). A possible explanation for this discrepancy is that many people charged with drunkenness and other minor public order offences are likely to forfeit bail and therefore do not actually appear in court to face charges.

TABLE 2.3 — MOST SERIOUS OFFENCE CHARGED: SURVEY SAMPLE COMPARED WITH ALL APPEARANCES IN QUEENSLAND MAGISTRATES COURTS (1993–94)

Offence category	SURVEY SAMPLE		MAGISTRATES COURT APPEARANCES	
	Number	Per cent	Number	Per cent
Homicide	1	<1	197	<1
Sexual assault	8	2	777	1
Assault	58	13	6,727	9
Robbery	9	2	383	<1
Fraud	16	3	2,623	3
Theft	136	29	10,764	14
Property damage	21	5	2,631	3
Dangerous driving	3	<1	4,018	5
Drug	135	29	12,340	16
Public order offences	41	9	20,526	27
Other	34	7	14,722	19
TOTAL	**462**	**100**	**75,708**	**100**

Source: ABS, unpublished.

Notes:

1. Survey sample excludes 26 respondents who were aged 16 years or less.
2. Public order offences include: drunkenness, abusive language, offensive behaviour, disorderly conduct.
3. Other offences include: trespassing and vagrancy, weapons offences, and enforcement of orders.
4. Survey sample excludes one adult respondent for whom information about the offence charged was missing.
5. Percentages may not always add to 100% due to rounding error.

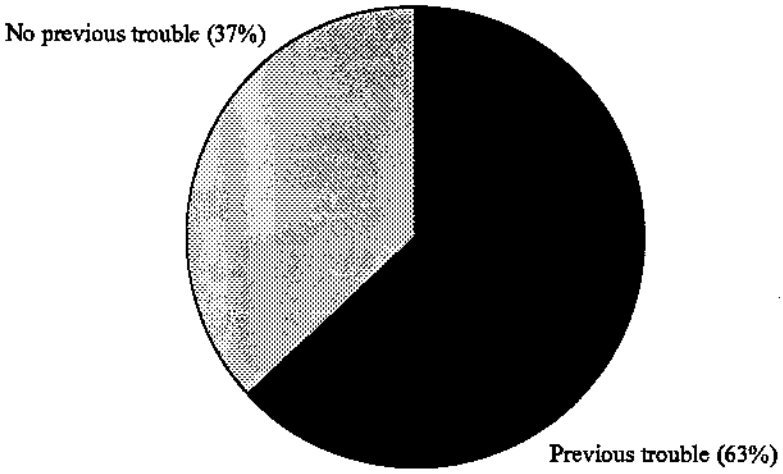
Appendix C shows the most serious offence committed by respondents in each court. Southport and Beenleigh had the highest percentage of respondents whose most serious offence was theft, while Brisbane and Maroochydore had the highest percentage of respondents whose most serious offence was a drug offence. Ipswich and Cairns had the highest percentage of respondents whose most serious offence was assault.

PRIOR TROUBLE WITH THE POLICE

Respondents were asked if they had ever 'previously been in trouble with the police'. This question was often answered with a list of offences, although it is unknown whether respondents had been convicted of these offences. Nearly two-thirds of the sample (309 respondents or 63%) indicated that they had been in trouble

with the police in the past (see figure 2.3). Information about the prior criminal history of persons appearing before Queensland Magistrates Courts is not collected, so it is not possible to make a comparison with the general court population.

FIGURE 2.3 — PREVIOUS TROUBLE WITH POLICE



Note: n = 488 (information for one respondent was missing).

CONCLUSION

In summary, the survey sample had the following characteristics:

- most were male
- most were aged under 30
- 5 per cent were juveniles
- 13 per cent were Aboriginals or Torres Strait Islanders
- the majority were charged with property or drug offences
- around two-thirds had previously been in trouble with police.

To the extent to which comparisons can be made, the demographic characteristics of the survey sample appear to be broadly comparable to the general population of adult defendants appearing in Queensland Magistrates Courts. This factor, and the high response rate (75%), mean that it is likely that the responses of those surveyed are reasonably typical of defendants in general.

CHAPTER 3
ARREST AND QUESTIONING

This chapter focuses on issues relating to the arrest and questioning of suspects. The first section provides a brief overview of current law and police procedures governing the arrest and questioning of suspects. The second section outlines how defendants in the sample were dealt with from the point of initial contact through to charging. The remaining sections summarise key survey findings relating to the process of arrest and questioning.

ARREST AND QUESTIONING: CURRENT LAW AND POLICY

THE GENERAL FRAMEWORK

The source of police authority is mostly found in legislation, although some police powers are authorised under the common law. In addition, the QPS Operational Procedures Manual (OPM) guides police in the day-to-day exercise of their duties. The manual contains:

- Orders—an order is a direction regarding a specific course of action; police must comply with an order.
- Policies—a policy states the attitude of the QPS towards a particular subject and must be complied with under ordinary circumstances. Police must justify their decision not to comply with a policy.
- Procedures—a procedure states the way a particular task is to be undertaken, and is consistent with orders and policies.

Failure to comply with the OPM may constitute grounds for considering disciplinary action.

ARREST PROCEDURES

An adult who is suspected of committing a criminal offence may be dealt with in one of two ways, according to the circumstances:

- Depending on the nature of the offence a person may be arrested either by execution of a warrant (usually issued by a justice) or without a warrant. In practice, most people are arrested without a warrant. Once arrested, the person is in lawful custody and must be either released on bail (by police or the court) or remanded in custody by the court pending the hearing of the charges.
- The person may be issued with a summons to appear before the court on a specified date to answer the charge or charges. The summons process requires police to lay a complaint (or 'information') before a justice or magistrate who issues the summons. The summons must then be served on the person.

In the case of juveniles, a third option is the issue by police of an Attendance Notice, which is a notice signed by a police officer requiring the juvenile to appear before the Childrens Court at a specified time and place. Section 23 of the *Juvenile Justice Act 1992* provides that Attendance Notices are to be used wherever possible as an alternative to arrest of juveniles.

Where a person has been charged with a criminal offence other than by way of summons or Attendance Notice, he or she must have been arrested at some point. The arrest may have occurred at any point during the suspect's interaction with police and may in some cases only occur as a formality after questioning at a police station but before charging. In other cases, the person will have been arrested before being taken to the police station. Whether or not a person has been arrested is important, since it is the act of arrest that places a person in lawful custody and as a consequence:

- gives police some additional powers such as the power to fingerprint and photograph the suspect
- imposes certain obligations on police in their dealings with the suspect.

The law concerning offences for which a person may be arrested without warrant is complex and inconsistent.[15] The type of offence is important in determining whether an arrest is permitted. There are various restrictions on the types of offences that allow police to make an arrest. Under the *Criminal Code* an offence may be a crime (that is, a more serious offence such as homicide or most sexual offences), a misdemeanour (generally, less serious offences, such as common assault) or a simple offence (any offence that may be tried summarily before a Magistrates Court). The general rule is that a person may be arrested without warrant for a crime, unless the legislation specifically prevents this. However, with less serious offences (that is, misdemeanours and simple offences), there is no such general rule and arrest without warrant must be specifically authorised by legislation.

Common examples where legislation authorises a police officer to arrest a person without warrant include where the person:

- uses indecent or obscene language in a public place
- obstructs police in the performance of their duties
- is found in possession of, or using, a dangerous drug
- commits certain traffic offences such as drink-driving or careless driving
- is drunk in a public place.

The OPM policies endeavour to place restrictions on the circumstances in which police should make an arrest by requiring police 'where practicable' to proceed by way of complaint and summons rather than arrest (policy 3.5.4) and to refrain from arresting a suspect in minor matters where a summons would be effective (policy 3.5.9). Circumstances where arrest might be justified for a minor offence include where there is a danger of the person committing further offences or failing to appear before court, concealing or destroying evidence, interfering with witnesses or otherwise 'obstructing the course of justice' (policy 3.5.9).

QUESTIONING OF SUSPECTS

Once a person has been arrested, the police officer's ability to question the suspect is limited by two factors:

- It is a requirement that an arrested person be taken before a magistrate as soon as practicable in order that bail might be considered (unless bail is granted by police).[16] What is 'as soon as practicable' will

15 See CJC 1993c, pp. 586–589 and that report's appendix 6.

16 *Criminal Code*, s. 552; *Justices Act 1886*, s. 69.

depend on the circumstances, but the police are not entitled to delay taking the person before a magistrate in order to interview the person or make further investigations.[17] If a magistrate is not available, the person may be held in custody overnight or over a weekend. The requirement to take a person before a magistrate as soon as practicable after arrest means that police cannot question the person after arrest if this would delay the taking of the person before the court.

- Rule 3 of the Judges' Rules states:[18]

> Persons in custody should not be questioned without the usual caution first being administered.

For the purposes of this Rule, the term 'in custody' is not confined to a person who has been arrested, but includes any person who has been taken to a police station 'under such circumstances that he believes he must stay there'.[19] The 1930 Circular, which was issued to clarify aspects of the Rules, has led to some uncertainty about the operation of Rule 3. It states in part:

> Rule 3 was never intended to encourage or authorise the questioning or cross-examination of a person in custody after he has been cautioned, on the subject of the crime for which he is in custody . . .

Police in Queensland have generally interpreted this statement as meaning that a person in custody may not be questioned at all, although there are decisions to the contrary (CJC 1994a, pp. 663–664).[20]

To avoid these limits on questioning, police may decide not to arrest the suspect and to rely instead on a person's 'voluntary attendance' so that questioning is unrestricted by the requirement to go before the court or by the operation of the Judges' Rules (CJC 1994a, pp. 664–667).

In our review of police powers, we reported that police 'make extensive use of the concept of "voluntary co-operation" to circumvent many of the restrictions imposed on questioning' by existing law and procedural requirements (CJC 1994a, p. 676). Suspects may either believe that they must accompany officers to the police station, may be told that they will be arrested if they do not go, or may be physically treated as if they are under arrest. The 'voluntariness' of their attendance, as the Australian Law Reform Commission observed (1975, p. 32), is usually fictional.[21]

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17 *Williams v. The Queen* (1986) 161 CLR 278. 'Wilful delay' in taking a person before a magistrate is an offence under *Criminal Code* s. 137.

18 The Rules were drawn up by judges in the United Kingdom in 1912 and were subject to clarification in 1930 and 1964. They have been held to be applicable in Queensland, although there has been some inconsistency about which version of the Rules is to be applied (CJC 1994a, pp. 661–665). The 1930 version of the Judges' Rules is contained in the QPS Operational Procedures Manual (policy 2.14.7) and officers should comply with the rules. The Rules do not have the force of law but are administrative directions which should be enforced by police 'as tending to the fair administration of justice'. Failure to observe the Rules may (but not necessarily will) result in rejection by the court of an accused's statement to police.

19 *Smith v. The Queen* (1956) 97 CLR 100 at p. 129 per Williams J.

20 The High Court in *Williams v. The Queen* (1986) 161 CLR 278: 'There is nothing to prevent a police officer from asking a suspect questions designed to elicit information about the commission of an offence and the suspect's involvement in it, whether or not the suspect is in custody' (per Mason and Brennan JJ at p. 300; see also Wilson and Dawson JJ at p. 306).

21 In its review of police powers, the CJC recommended that there should be a regulated scheme which would oblige officers to inform suspects of their rights and status, provide free legal advice and provide for limited pre-charge detention for questioning and other investigative purposes (1994a, p. 677).

CAUTIONING A SUSPECT

Rule 2 of the Judges' Rules (1930) states:

> Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking him any questions, or any further questions, as the case may be.

However, the Rules do not necessarily require that a person is cautioned before questioning begins. It has been suggested that QPS practice is that cautions are often not given until quite late in the process of questioning (CJC 1994a, p. 682). This is because police are not required to caution a person if they are simply 'making inquiries' and have not yet made up their mind to charge the person.

The caution to be given is to the effect of 'You are not obliged to say anything, but anything you say may be given in evidence' (Rule 5 of the 1930 Judges' Rules concerning cautioning before formal charging; OPM policy 2.14.7).

RECORDING INTERVIEWS

There is no statutory requirement for a police interview with an accused person to be audiotaped or videotaped, although this is the usual practice. Since 1989 the QPS, as a matter of policy, has required all interviews with suspects for indictable offences to be electronically recorded.[22] A detailed instruction manual has been produced and the OPM requires officers who conduct electronically recorded interviews to do so in accordance with the manual (order 2.14.2). Where the interview is not taped, police will usually prepare a written record of the interview. If the accused person has adopted the police record of interview (either by signing it or reading through and stating that it is correct), the record may be admitted in court (*R v. West* [1973] Qd R 338). If the record is not admitted, the police officer may still be able to rely on it as an aid to memory.

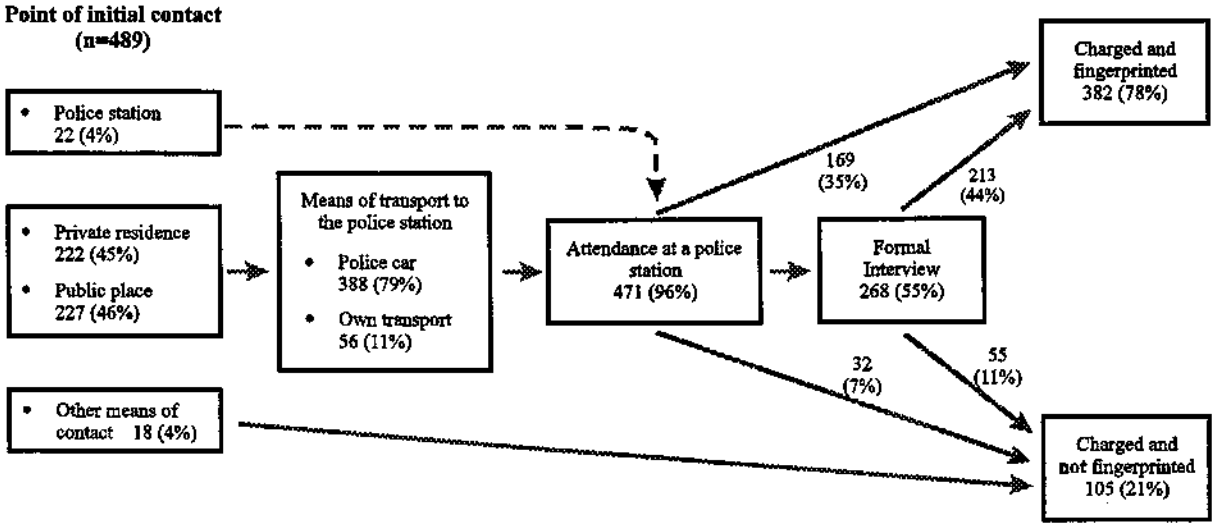
The failure to follow procedures laid down in police instructions and guidelines may be a reason for the court to exclude the accused's statement on the grounds of unfairness (*Driscoll v. R* (1977) 137 CLR 517).

22 There are few exceptions to this requirement; e.g. where the equipment is unavailable because of breakdown.

SURVEY FINDINGS: OVERVIEW

Figure 3.1 gives an overview of how defendants in the sample were dealt with from the point of initial contact through to charging by police.

FIGURE 3.1 — THE PROCESSING OF DEFENDANTS FROM INITIAL CONTACT WITH POLICE THROUGH TO CHARGING AND FINGERPRINTING



Notes:
1. Percentages shown are percentages of the total sample.
2. 'Other means of contact' included cases where the respondent was most probably summonsed.
3. Information on means of transport to police station was missing for five respondents
4. Two respondents who attended the police station could not remember what had occurred after their arrival. Information relating to their formal interview, fingerprinting and charging is therefore missing.
5. 'Charged and not fingerprinted' includes an indeterminate number of defendants who were summonsed or issued a Court Attendance Notice.

It bears repeating that the survey recorded only respondents' understanding of the process, rather than what actually happened to them. While there is a high probability that most respondents would have correctly recalled where they first had contact with police, how they got to the police station and whether they had been fingerprinted or photographed, they may have been less clear about whether they had undergone a formal record of interview (as distinct from informal questioning). Also, as discussed below, many respondents were confused about when and whether they were under arrest.

Key points to note from figure 3.1 are as follows:

- There was a fairly even split between those respondents who first had contact with the police at a private residence and those whose first contact had been in a public location (such as a street, licensed premises or shopping centre).
- All but 4 per cent of the sample reported attending a police station at some stage in the process.
- Most of those who went to a police station said that they were taken there in a police car.

- Slightly more than half of the sample said that they had been formally interviewed by police at a police station. (Police often do not conduct records of interview for minor drug offences or public order offences because the prosecution in these cases normally does not rely on confessional evidence.)

- Seventy-eight per cent of the sample said that they had been fingerprinted. It can be assumed that virtually all of these respondents had been formally arrested at some point in the process, given that this is normally the only way in which fingerprints can be obtained. In fact, it seems likely that most of the respondents who attended a police station had been arrested (regardless of whether they had been fingerprinted), given the well documented reluctance of police to use the cumbersome and time consuming summons procedure (CJC 1993c, pp. 605–610).[23]

SURVEY FINDINGS: ISSUES RELATING TO ARREST

In analysing the survey data, we focused on two questions relating to the arrest process:

- how clear an understanding did respondents have of their arrest status?

- was there any evidence of arrest being used in circumstances where a summons would have been more appropriate?

RESPONDENTS' KNOWLEDGE OF ARREST STATUS

Only 37 per cent of the sample—181 respondents—claimed to have been told by police that they had been arrested. As shown in table 3.1, 33 per cent of this group stated that they were not informed of their arrest until after they had arrived at the police station.

TABLE 3.1 — POINT AT WHICH RESPONDENTS WERE INFORMED BY POLICE THEY WERE UNDER ARREST

Stage in Process	Number	Per cent
Initial point of contact	101	59
In transit to the police station	14	8
At the police station:		
• Before the formal interview	30	17
• After the formal interview	20	12
In the watchhouse	4	2
Other	3	2
Total	**172**	**100**

Note: Information for nine respondents was missing.

23 Respondents were asked to indicate whether they had been arrested at any stage. However, it cannot be assumed that those who answered 'No' to this question had been summonsed, or issued with an Attendance Notice, given the widespread confusion amongst respondents as to what constituted an arrest.

In the majority of cases, as shown by table 3.2, respondents relied on some other event or 'clue' as an indicator that they had been arrested. For example, 23 per cent said that they first realised they were under arrest when they were taken to the police station, and 13 per cent that they became aware when they were put in a police car. Given current police arrest practices it is likely that, in many of these cases, the person was not actually under arrest at this stage.

TABLE 3.2 — HOW RESPONDENTS FIRST BECAME AWARE THEY HAD BEEN ARRESTED

Response	Number	Per cent
I was told I was under arrest	113 [24]	38
I was taken to the police station	67	23
I was put in the police car	37	13
I was taken to the watchhouse	28	10
I was handcuffed	21	7
I was told to go with police	9	3
I was 'caught red-handed'	6	2
I was charged	5	2
I handed myself in to police	2	<1
Other	6	2
Total	**294**	**100**

Notes:

1. 'Other' responses are as follows: 'When they told us to get out of the car and they started searching us', 'When they wanted to tape an interview', 'I asked and they said yes', 'I only realised later when they started talking about bail', 'They were chasing us' and 'Grabbed me and threw me on the ground'.
2. Twenty responses were treated as missing because respondents misunderstood the question, and four responses were missing.
3. Table excludes respondents who said that they were unaware that they had been arrested.
4. Percentages may not always add to 100% due to rounding error.

Regardless of whether respondents believed that they were formally under arrest, many apparently felt that they had little choice but to comply with police directions. For example:

- Of the 388 respondents who said that they went to the station in a police car, 76 per cent stated that they attended because they 'thought they had to'. Nearly half of these respondents said that they had been *told* by police that they 'had to' go.

- Nineteen per cent of the total sample (94 respondents) said that, at some stage while at the police station, they had asked if they could leave. Of those who claimed to have made such a request, 24 (26%) said that they were told they could leave as soon as the police had finished: the remainder said that their request was ignored or refused. According to one respondent: 'I was told I was not being detained, but not to leave'.

24 This number is less than the total number of defendants who said that they had been told by police that they had been arrested. The discrepancy arises because some defendants concluded that they had been arrested before being told so by police.

- Twenty-one respondents who said that they had attempted to leave the police station had been under the impression that they were not under arrest. Despite this, their attempts to leave were not successful.

As a further indication of the level of confusion relating to arrest status, the survey included 62 respondents (13 per cent of the sample) who, despite having been fingerprinted, said that they had never been arrested.

Given that many defendants were stressed and possibly affected by alcohol or other drugs at the time of their encounter with the police, it is probable that some may have misunderstood what was happening. However, we would argue that the current law of arrest in Queensland has also contributed substantially to the confusion documented by this survey.

Because of the present limitations on questioning after arrest, police have an incentive to promote the fiction of 'voluntary attendance' and delay making an arrest until as late in the process as possible. A submission from a police officer to the CJC's review of police powers indicates exactly this point: 'the suspect is unsure as to his rights and obligations and the police are forced to take part in a charade or exercise in bluff in order to obtain evidence' (CJC 1994a, p. 678). There is also no clear statutory obligation on police to inform suspects of their arrest status, as evidenced by our finding that many respondents reported that they were never told by police that they were under arrest.

As we argued in Volume IV of our police powers report, the present law of arrest and questioning is unsatisfactory from the perspective of both police and suspects (CJC 1994a, p. 670–677). Police are frequently placed in the unfair position of having to rely on bluff and deception in order to be able to question suspects about offences. Conversely, suspects are often unaware of their rights, status and obligations while in police 'company'.

To overcome these problems we recommended in our report:

- the introduction of a regulated scheme of questioning which would enable police, in appropriate circumstances, to question suspects after they have been arrested
- parallel regulation of the questioning of 'voluntary attendees', to reduce the incentive for police to rely on this fiction instead of exercising their powers of arrest
- that police be obliged to clearly inform suspects of their arrest status from the outset of any dealings with such persons.

Implementation of these measures would assist substantially to reduce the confusion identified by the survey.

THE USE OF ARREST

In our review of police powers in Queensland we concluded that, in practice, police officers were not restricting their use of the arrest power to a 'last resort' option. We therefore recommended that legislation should limit the circumstances in which arrest without warrant is appropriate and impose on officers an obligation to consider alternatives before arresting a person.

Owing to the design of the survey, it was not possible to ascertain precisely how many respondents had been arrested, as opposed to proceeded against by way of summons or, in the case of juveniles, a Court Attendance Notice. However, as indicated, virtually all of those respondents who said that they had been fingerprinted would have been arrested at some stage in the process.

Of the 26 juveniles in the sample, 50 per cent said that they had been fingerprinted, compared with 80 per cent of adult respondents. This finding suggests that greater use is being made of alternatives to arrest where juveniles are involved, although interpretation of these data is complicated by the fact that additional restrictions apply to the fingerprinting of juveniles.

In the case of adults, it is difficult to ascertain in how many cases a summons would have been a more appropriate course of action, given the limited information we have about the circumstances surrounding the arrest. However, the sample included 26 adult respondents who stated that they had first been approached by police while at home or work, had been taken to a police station and fingerprinted, but had not been formally interviewed. The majority of these respondents (16) had been charged with drug offences, suggesting that it was unlikely that fingerprints would have been required to prove the persons's involvement in the offence. In these instances it is difficult to see why an arrest was required other than, perhaps, to obtain fingerprints for the purpose of maintaining accurate criminal history records. In Volume V of our police powers review, we recommended that police should be empowered to issue notices for persons to attend at a police station for fingerprinting. This proposal, if implemented, would remove the need to effect an arrest for this purpose (CJC 1994c, p. 840).

SURVEY FINDINGS: QUESTIONING

Issues relating to questioning which were addressed by the survey include:

- how common was it for police to question respondents about offences prior to conducting a formal record of interview at the police station?
- how often, and at what point in the process, did police comply with the requirement to warn suspects that they are not obliged to answer questions?
- how many interviews were electronically recorded?
- how long did it normally take for police to conduct a record of interview with a respondent?

Issues relating to the presence of independent persons during questioning will be discussed in the following chapter.

INFORMAL QUESTIONING

As shown by figure 3.1 (page19), 55 per cent of respondents said that they had participated in a formal record of interview at a police station. In addition, respondents were asked if police had questioned them at the point of initial contact about the offence, or at the police station prior to the commencement of the formal interview. As to be expected, the survey results indicated that informal questioning is widespread. According to table 3.3:

- Fifty-six per cent of the sample (272 respondents) said that they were questioned about the offence by police at the point of first contact. Of those questioned, 54 per cent estimated that the questioning lasted less than 10 minutes, but the sample also included 44 respondents who said that they were questioned for half an hour or more.
- A third of the sample (163 respondents) said that they were questioned about the offence by police at the station prior to any formal interview being conducted.

TABLE 3.3 — WARNINGS PROVIDED TO DEFENDANTS AT EACH STAGE OF POLICE QUESTIONING

Stage at which questioning about offence occurred (according to respondent)	Total number	Per cent of sample	Per cent of those questioned who said they were warned
Informally at the initial point of contact	272	56	33
Informally at a police station	163	33	42
Formal interview at a police station	272	56	74

Of the 268 respondents (figure 3.1, p. 19) who reported participating in a formal record of interview, 79 per cent claimed that they had been informally questioned—either in the field, at the station or both—about the offence(s) prior to their interview. Conversely, 30 per cent of respondents in the sample said that they had been informally questioned, but had not taken part in a formal record of interview.

The apparently widespread reliance on informal questioning raises important policy issues. As discussed below, such exchanges are considerably less likely to be preceded by a caution, or to be electronically recorded, than are formal records of interview. For these reasons it is important that any regulated scheme which is developed to govern the questioning of suspects should encompass questioning which takes place outside the framework of the formal record of interview.

USE OF WARNINGS

As outlined in the first part of this chapter, QPS policy, which is based on the Judges' Rules, states that 'whenever a police officer has made up his mind to charge a person with a crime, he should first caution such a person before asking him any questions, or any further questions, as the case may be' (OPM policy 14). The required warning to the suspect is to the effect that 'you are not obliged to say anything, but anything you say may be given in evidence'.

According to the survey, it was relatively uncommon for respondents who were questioned prior to the formal record of interview to be given a warning. Table 3.3 above shows that, of the 272 respondents who said that they had been questioned at the point of initial contact, only 33 per cent (89) stated that they had received a warning. Similarly, only 42 per cent of the 163 respondents who said that they were informally questioned at the police station claimed to have received a warning. (Four of these respondents said police had previously warned them when they were questioned at the initial point of contact.) By contrast, 74 per cent of the respondents who said that they participated in a formal interview reported having received a warning. It is not surprising that the use of warnings was more common at this later stage, as police would naturally have been anxious to avoid the possibility that the record of interview could be rejected by the court as evidence.

The apparently low rate of cautioning prior to the formal interview may be accounted for, in part, by the following factors:

- In some instances, officers may not have formed the requisite 'intention to charge' at the time of undertaking the initial questioning.

- As noted above, many of these informal 'interviews' were of short duration and some may not have been designed to elicit details of the alleged offence (even though the respondent claimed that he or

she had been questioned about the offence). In such situations, there is no obligation on police to give a warning.

- Some respondents may not have realised that they had received a warning and some others may have deliberately given incorrect information to interviewers.

However, even allowing for these factors, the proportion of respondents who recalled being warned prior to or during informal questioning seems very low.

On the other hand, for those respondents who said that they had participated in a formal interview, it is likely that the actual use of cautions was higher than shown in table 3.3. Sixty-six per cent of the respondents who said that they had not been warned also stated that the interview had been electronically recorded. In such cases, it would be most surprising if police had not complied with procedure by ensuring that a warning was recorded on the tape (although it is quite possible that many respondents did not comprehend that they had received a warning).

Other relevant findings about the use of warnings were that:

- Of the 62 respondents formally interviewed by police who said that they had not been warned, 66 per cent (41) said that they nevertheless knew that they did not have to answer any questions.

- Even where respondents were aware of their right to remain silent, most still cooperated with police. Of the 272 respondents who said that they had participated in a formal record of interview, 80 per cent said that they knew that they did not have to answer any questions. Of this group, 84 per cent said that they had answered all the questions asked by the police during the interview.

On one view, these findings show that whether or not a warning is issued is likely to make little difference to the outcome of investigations. However, the sample included 22 respondents (4% of the total sample) who, on their own account, participated in a formal record without being aware that they could exercise their right to silence. Had these respondents had a better understanding of their legal position, they might well have responded differently to police questioning.

The survey findings have two major implications for the development of future policy on the use of warnings:

- As discussed above, only a minority of respondents recalled being warned prior to or during informal questioning 'in the field' or at the police station. There is therefore a distinct possibility that some respondents in the study had made admissions without the benefit of a warning. To deal with such situations, we recommended in our police powers report that suspects should be cautioned prior to the commencement of any questioning and that unrecorded admissions made in such circumstances should not be admitted as evidence unless they were subsequently recorded on tape (CJC 1994a).

- It is probable that, in several instances, respondents were given a warning, but for some reason (such as the interviewee's state of mind at the time, or the manner in which the warning was delivered) did not absorb this information. Arguably, the scope for misunderstanding in such cases could be reduced if police, in addition to giving an oral warning, were required to hand suspects a card setting out their rights and obligations in simple language. Greater education of the public about their rights in such situations would also help to reduce misunderstanding.

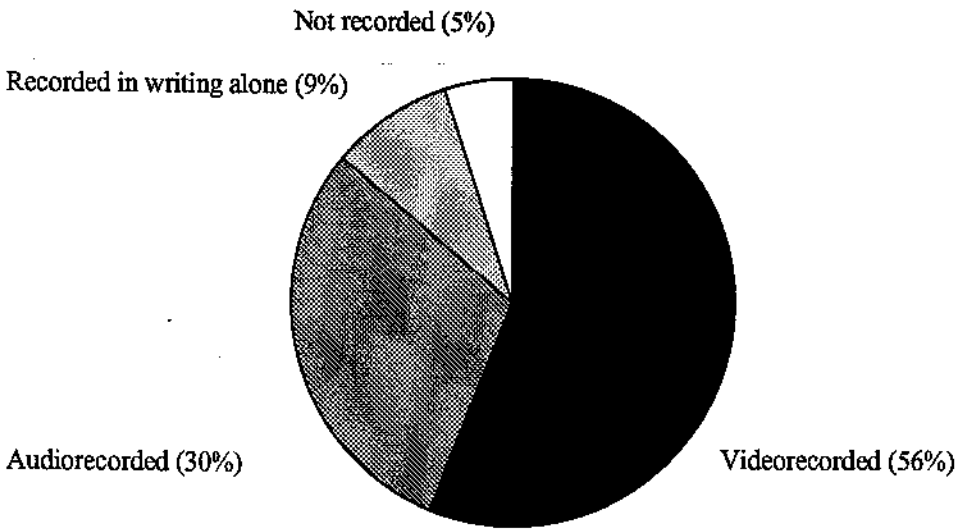
RECORDING OF INTERVIEWS

As discussed in the first part of this chapter, QPS policy states that, as a general rule, all formal records of interviews with suspects for indictable offences must be electronically recorded. The survey findings indicate that this policy is apparently being complied with in most instances.

Figure 3.2 shows that, of the 272 respondents who stated that they were formally interviewed by police at a police station, 56 per cent said that they were recorded on videotape and a further 30 per cent that they were recorded on audiotape alone. The remaining 14 per cent of respondents said either that the interview had been recorded in writing only (9 per cent) or that no record at all had been made (5 per cent). It is not possible to ascertain in how many of these cases (if any) QPS policy was breached, given that:

- some respondents may have mistaken informal questioning for a formal record of interview
- some respondents may have misunderstood or forgotten what took place during the interview
- some respondents were only charged with simple offences, which are not covered by the mandatory recording requirement
- police are exempt from the requirement to record the interview electronically if the equipment is unavailable because of breakdown.

FIGURE 3.2 — RESPONDENTS' RECOLLECTIONS OF THE METHOD OF RECORDING THE FORMAL INTERVIEW



Note: n = 271 (information for one respondent was missing).

The survey also shows that, as expected, it is much less common for police to electronically record conversations with suspects prior to the formal interview. Only 11 per cent of respondents who stated that they were questioned about the offence at the point of initial contact said that they had been recorded on audiotape (although this may have understated the actual extent of recording, given that many operational police now carry concealed tape-recorders as a protection against false and malicious complaints).

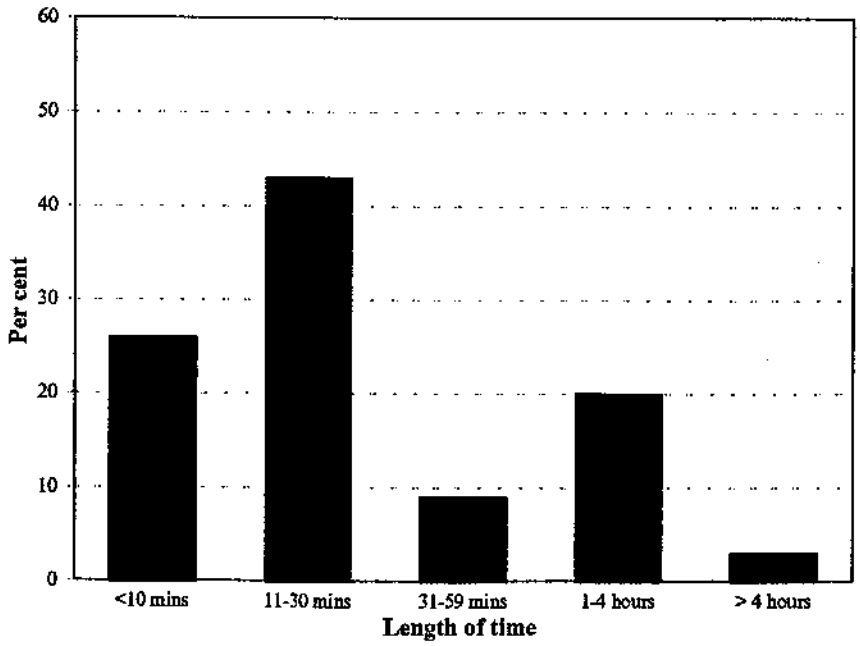
Current QPS policy does not require the use of electronic recording prior to the formal record of interview. However, the *Report of the Queensland Police Service Review* has recently recommended the provision of personal tape-recorders for all police officers in order to ensure accurate and admissible records of informal interviews conducted in the field (1996, p. 91). The CJC has also made procedural recommendations to the QPS urging the more extensive use of tape-recorders in the field.

LENGTH OF FORMAL INTERVIEWS

An important issue in the discussion about police powers concerns whether police should be able to detain suspects for a 'reasonable time' for the purposes of questioning, or whether a 'fixed time' regime should apply. In Volume IV of our police powers report (1994a) we proposed that there should be a maximum time of four hours, with provision for extension from a magistrate. However, it was difficult to formulate recommendations in this area because the QPS does not keep records detailing the length of time currently taken to question suspects about offences.

Figure 3.3 shows that, according to respondents, the majority of formal interviews (185 or 69% of interviews conducted) took less than half an hour. There were only five respondents (2%) who estimated that their interview took longer than four hours. These interviews on the whole related to matters involving multiple charges. The longest estimated interview—10 hours—was conducted with a respondent who was subsequently charged with attempted murder, sexual offences and drug offences.

FIGURE 3.3 — RESPONDENTS' ESTIMATES OF THE LENGTH OF THE FORMAL INTERVIEW



Note: n = 271 (information for one respondent was missing).

Taken at face value, these findings suggest that the four-hour limit (with provision for extension) previously proposed by the CJC would present few practical difficulties for police. However, given that many people have difficulty estimating time accurately, these data need to be verified by more objective information taken

from police records. Also, the survey was restricted to large population centres and excluded persons who had been remanded in custody (some of whom would have been charged with very serious offences which may have required extensive questioning).

CONCLUSION

The key survey findings concerning the process of arrest and questioning are as follows:

- There was considerable confusion among respondents as to when (and sometimes whether) they had been arrested.
- Many respondents who clearly had been arrested said that they were never told by police that they were under arrest.
- Four out of five respondents went to the police station in a police vehicle rather than in their own transport.
- Many respondents felt that regardless of whether they were officially under arrest, they had little choice but to do what the police said.
- There was some evidence that police had relied on their arrest power in circumstances where a summons would have been more appropriate.
- According to respondents, warnings were generally given prior to the commencement of formal records of interview. However, it seems that such warnings were less likely to be given where the respondent was being questioned informally 'in the field' or at the police station. It is also likely that some respondents did not understand that they had received a warning.
- There appeared to be broad compliance with the requirement that records of interview for indictable offences be electronically recorded. However, it seems that informal interviews 'in the field' and at the police station were much less likely to have been recorded.

Overall, these findings lend support to the recommendations of our police powers report that:

- police powers of arrest be clarified to enable police, in appropriate circumstances, to question suspects after they have been arrested (to remove the incentive for police to promote the fiction of 'voluntary attendance')
- police be placed under a statutory obligation to inform suspects either that they are under arrest or are free to leave
- informal questioning 'in the field' or at the station be included in the scope of any regulated questioning scheme
- measures be implemented to encourage the use of alternatives to arrest.

CHAPTER 4
THE INVOLVEMENT OF SOLICITORS AND OTHER INDEPENDENT PERSONS

This chapter examines issues relating to the presence of independent persons during the questioning process. The chapter is organised into two sections:

- the involvement of solicitors
- the involvement of independent third persons (regarding the questioning of indigenous people and juveniles).

Each section describes current law and policy and then presents relevant findings from the survey.

THE INVOLVEMENT OF SOLICITORS

CURRENT LAW AND POLICY

The courts have affirmed that a suspect may seek legal advice when questioned by police (*R v. Borsellino* [1978] Qd R 507; *R v. Hart* [1979] Qd R 8). Refusal by police to allow access to a solicitor does not necessarily make the subsequent interrogation inadmissible in criminal proceedings, but the refusal may be grounds for exercise of the discretion to reject the alleged confession if the judge considers it unfair to the accused person to allow such a confession into evidence (*Driscoll v. R* (1977) 137 CLR 517).[25]

There is no obligation on police in Queensland, either at common law or in the OPM, to inform a person that he or she may consult a solicitor. However, officers are to allow suspects who are being interviewed to contact a legal representative 'upon request'. Access to a telephone, and if necessary a telephone directory, is to be provided (policy 2.14.10). The OPM also states that interviewing officers who are advised of the presence of a legal representative 'should ensure that the legal representative is immediately located and accompanied to the suspect and should ensure that suspect and legal representative have an opportunity to consult privately' (procedure 2.14.10).

SURVEY FINDINGS

Only 2 per cent of the sample (nine respondents) stated that a solicitor was present while they were at the police station.[26] In three of these nine cases the solicitor reportedly did not arrive at the police station until after the formal record of interview had been conducted.

It can be seen from figure 4.1 that most respondents, on their own account, neither requested a solicitor nor were asked by the police if they wanted one. Only 70 respondents (14%) said that the police asked them if they wanted a solicitor. Of the 59 respondents for whom information was available, 23 per cent stated that he or she was not asked this question until during or after the record of interview (figure 4.2, below).

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25 For an example of where a statement was rejected on these grounds, see *Borsellino* [1978] Qd R 507.

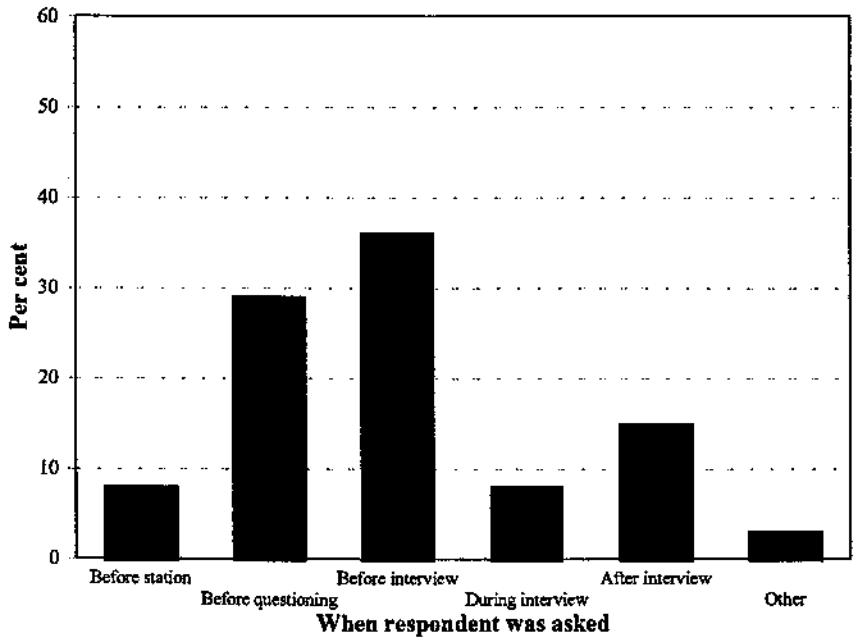
26 These respondents were generally charged with more serious offences: one was charged with rape, three were charged with armed robbery, three were charged with assault, one with arson, and one with unlawful possession of a dangerous drug.

FIGURE 4.1 — RESPONDENTS' ACCESS TO AND USE OF A SOLICITOR

	Number	Solicitor present
Police asked respondent if he/she wanted a solicitor.	58	0
	12	3
Respondent requested a solicitor.	50	5
Respondent neither requested a solicitor nor was asked by police if he/she wanted a solicitor.	348	1
Total	**468**	**9**

Note: Information for 21 respondents was missing.

FIGURE 4.2 — RESPONDENTS' RECOLLECTION OF WHEN THEY WERE ASKED IF THEY WANTED A SOLICITOR



Notes:
1. n = 59 (information for 11 respondents was missing).
2. Figure excludes respondents who did not recall being asked if they wanted a solicitor.

As figure 4.1 shows, although 62 respondents had requested a solicitor, only eight actually had a solicitor present with them at the police station. Table 4.1 presents the reasons cited by the remaining respondents for why they did not have a solicitor present. The majority reported that the police ignored or denied their request,

with a further three respondents stating that police had advised them that they did not need a solicitor. A group of six respondents said that their solicitor had been called but had not been available. If the information provided to our interviewers was correct, a denial of a request to call a solicitor is a clear breach of QPS policy by the police officers concerned.

TABLE 4.1 — REASONS CITED BY RESPONDENTS WHO HAD REQUESTED A SOLICITOR FOR NOT HAVING A SOLICITOR PRESENT

Reason given by the respondent	Number	Per cent
Request for solicitor ignored or denied	30	63
Solicitor was not available	6	13
Police said I didn't need a solicitor	3	6
I didn't need a solicitor	2	4
Don't know	1	2
Other	6	13
No reason recorded	6	n.a.
Total	54	100

Note: Percentages may not always add to 100% due to rounding error.

Table 4.2 presents data on the reasons given by the balance of respondents (those not included in figure 4.1) for *not* requesting a solicitor. This table includes answers from respondents who said that they had been told by police that they could have a solicitor present, but who made no effort to contact one, and respondents who neither requested nor were offered access to a solicitor.

TABLE 4.2 — REASONS CITED BY RESPONDENTS FOR NOT REQUESTING A SOLICITOR

Reason given by the respondent	Number	Per cent
Didn't need one	178	44
Didn't think of it	86	21
Didn't know I could have one	70	17
Could not afford one	15	4
I was confused	14	3
Solicitor not available	8	2
There was no time	8	2
Don't have a solicitor	5	1
Didn't want any trouble	2	<1
Other	17	4
Total	**403**	**100**

Notes:
1. Information for two respondents was missing.
2. Percentages may not always add to 100% due to rounding error.

Table 4.2 shows that:

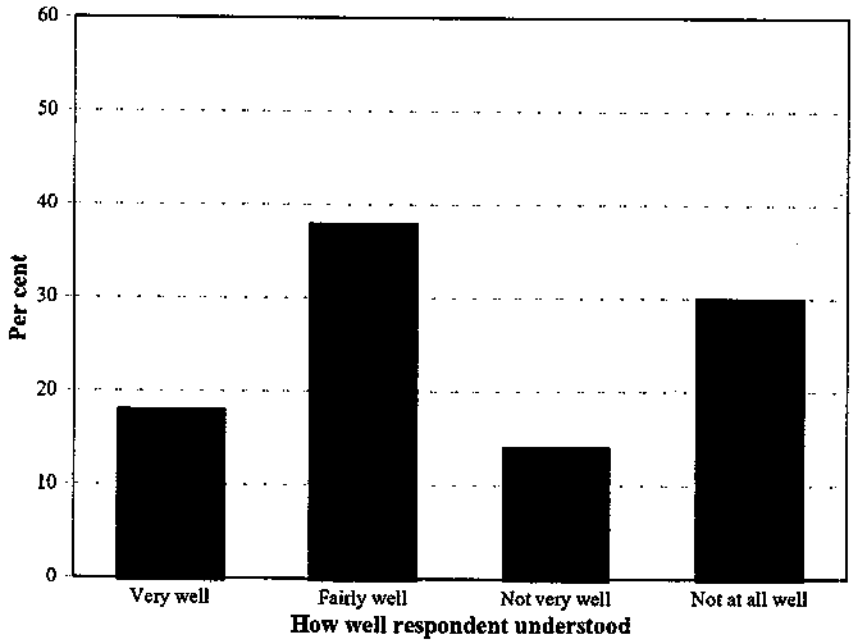
- The most common reason which respondents gave for not requesting a solicitor was that they did not need one (178 cases, or 44% of those who did not request a solicitor). This group included 111 respondents who said they participated in a formal record of interview at the police station. Respondents often justified their response by asserting that a solicitor was not required because they were guilty of the offence charged.

- Lack of information was the next most significant factor, with 86 respondents (21%) saying that they 'didn't think of it' and 70 (17%) that they did not know that they could have a solicitor attend.

- Issues about access—such as expense, or no solicitor being available—were only of secondary importance. However, these obstacles would most likely have assumed greater significance if more people had known that they could have requested a solicitor

It is not possible to ascertain from the survey whether any individual respondent would have benefited from having a solicitor present, but there were many in the sample who professed to having a poor understanding of the investigation and arrest process. Figure 4.3 shows responses to the question: 'How well would you say you understood what was going to happen following your contact with the police?' Respondents were given four options that ranged from 'very well' to 'not at all well'. Figure 4.3 shows that 30 per cent said they understood 'not at all well' what was going to happen, with a further 14 per cent stating that they understood 'not very well'. Among the respondents who declared that they did not need a solicitor, 35 per cent said that they did not have a good understanding of what was going to happen.

FIGURE 4.3 — HOW WELL RESPONDENTS SAID THEY UNDERSTOOD WHAT WOULD HAPPEN FOLLOWING CONTACT WITH POLICE



Note: n = 486 (information for three respondents was missing).

The main policy implications arising from the survey findings relating to the use of solicitors are as follows:

- A substantial proportion of respondents in the survey did not know that they were entitled to contact a solicitor. Moreover, it appears that, in most cases, police made no effort to inform respondents that this option was available. As we argued in our police powers review, legal rights are of little value unless people are aware of these rights. For this reason, we recommended in that review that the police (via the proposed custody officer) be obliged to inform all suspects of their right to seek legal advice in relation to a criminal charge (CJC 1994a).

- The sample included 30 respondents who claimed that the police had refused or ignored their request to contact a solicitor. This group accounted for more than half of all respondents who said that they had made such a request. Although it is possible that some respondents gave incorrect information to our interviewers, the survey findings suggest that the policy set down in the OPM—that officers are to allow suspects who are being interviewed to contact a legal representative 'upon request'—is not being adhered to consistently. If this is the case, it may be necessary to give some statutory underpinning to this policy.

- Given the limited understanding which many defendants appear to have of the arrest and questioning process, many would probably have benefited from access to free legal advice at the police station (as recommended in CJC 1994a, p. 714).[27] However, our data also indicate that the most common reason cited by defendants for not requesting a lawyer was that they did not need one. It therefore seems likely that, even if a free legal advice scheme was in place, many suspects would not utilise the scheme (as has been the experience in the United Kingdom).[28] If so, the cost of providing legal services under such a scheme may be considerably less than some commentators have suggested.

THE INVOLVEMENT OF INDEPENDENT THIRD PERSONS

Some people, because of their age, mental state or cultural or language background, may not be able to understand fully the nature of the investigative process, the purpose and meaning of questions put to them, or the consequences of their answers to police. These individuals may be particularly vulnerable to being overborne by police questioning. Consequently, special measures, including the presence of an independent third person during a police interview, have been introduced to ensure that the rights of such people are protected. The position of two groups who were represented in this study, namely Aboriginal people and Torres Strait Islanders and juveniles, is considered below.

27 See CJC 1994a, chapter 21 for a description of this scheme.

28 Research on the British free legal advice scheme has established that only 32 per cent of arrestees actually requested a solicitor to be present after they had been informed of the scheme (Brown et al. 1992).

QUESTIONING OF ABORIGINAL PEOPLE AND TORRES STRAIT ISLANDERS

CURRENT LAW AND POLICY

There is evidence that many indigenous people are particularly vulnerable to questioning by people in authority and that some may be susceptible to agreeing with whatever is put to them (CJC 1996, pp. 19–28[29]). To provide guidance to police officers in questioning indigenous people, Justice Forster of the Northern Territory Supreme Court developed a set of guidelines known as the 'Anunga Rules' (*R v. Anunga & Ors* (1976) 11 ALR 412). These Rules do not have the status of law but have been widely referred to in cases involving police questioning of indigenous people. The consequence of not abiding by the rules is that any 'confession' may be excluded from evidence.

The OPM states that officers should refer to the Anunga Rules as a guideline when interviewing Aboriginal and Torres Strait Islander suspects (policy 6.3.6). The OPM further states that:

> When an officer intends to question an Aborigine or Torres Strait Islander, whether as a witness or as a suspect, the existence of a [special] need should be assumed until the contrary is clearly established . . . (policy 6.3.6)

Where a special need has been established, QPS guidelines recognise the following measures should be taken when indigenous people are interviewed:

- Access to an independent third person should be granted. The role of the third person is to give support and to ensure that the suspect is not disadvantaged while being interviewed. The OPM orders that police are to arrange for a third person to be present, preferably a lawyer or a member of the Queensland Aboriginal and Torres Strait Islander Legal Service. However, the policy states that if the suspect does not wish such a person to attend, a relative or another person nominated by the suspect should be present.

- Police should arrange for an interpreter to be present when a person is 'unable to adequately understand' English (policy 6.3.7). The person should be given the opportunity to choose an interpreter, but a range of people, including relatives, witnesses and police officers, are not considered suitable.

- Upon request for legal advice or assistance at any stage, police should 'endeavour to contact the appropriate Legal Service' (policy 6.3.6).

SURVEY FINDINGS

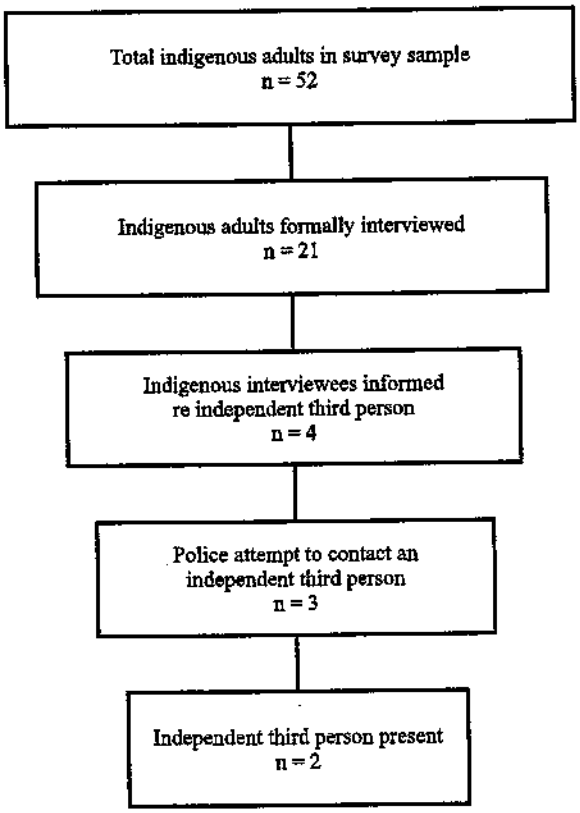
Of the 52 adult indigenous people in the sample, 21 (40%) said that they were interviewed formally by police.[30] As shown by figure 4.4, of this group, four (20%) said they were told that they could have an independent person accompany them in the interview, three (15%) that the police tried to contact someone and only two (10%) that an independent person was actually present. (In one case the person was a parent;

29 Although the CJC report specifically focused on Aboriginal people, there is evidence that many Torres Strait Islander people exhibit similar characteristics: see for example Kennedy, R & Kennedy, J 1990, *Adha Gar Tidi: Cultural Sensitivity in Western Torres Strait* (Work Papers of the Summer Institute of Linguistics, Australian Aborigines and Islanders Branch, series B, vol 14), SIL, Darwin.

30 The proportion of indigenous respondents who said that they had been formally interviewed was well below the overall survey figure of 55 per cent (this difference is statistically significant). This may have been, in part, because a greater proportion of indigenous defendants were arrested for 'street' offences for which police did not feel it necessary to conduct a formal record of interview. Another interpretation is that police may have endeavoured to avoid some of the perceived complications caused by the OPM requirements by minimising the use of interviews in cases involving indigenous suspects.

in the other, a Justice of the Peace).[31] In the third case in which police had attempted to contact someone, the local Aboriginal and Torres Strait Islander Legal Service had advised the respondent that it would not be necessary to have a third person present at the interview.

FIGURE 4.4 — THE INVOLVEMENT OF AN INDEPENDENT THIRD PERSON WHEN INTERVIEWING AN INDIGENOUS DEFENDANT



Note: One indigenous respondent who was formally interviewed did not provide information about the presence of an independent third person.

Reasons provided by respondents as to why they did not have an independent person present were either that the respondent did not know they could have someone else attend the interview (nine respondents), or that they did not want or need an independent person with them during the interview (four respondents).

As far as could be ascertained, no indigenous respondent had an interpreter present during the interview. None of the indigenous respondents said that they had a solicitor present. In relation to policy 6.3.6 concerning legal assistance, three said that they had asked for a solicitor but that police had ignored or refused their request.

In interpreting these data, it is relevant to note that the interviews for this survey were conducted in major population centres, rather than Aboriginal communities. The survey therefore may well have included some urbanised indigenous people who the police correctly assessed as not having a 'special need'. However, even allowing for this likelihood, the proportion of cases in which an independent person was present was very low—especially given that the OPM specifies that the existence of a special need should be assumed until the contrary is clearly established. In the light of CJC research suggesting that Aboriginal and Torres Strait

31 One respondent who should have answered the section relating to the use of independent persons missed this section. The percentages presented in this section, therefore, are based on a denominator of 20.

Islander people are often at a cultural, sociological and language disadvantage when involved in the criminal justice system (CJC 1996), these findings indicate that there may be a need either to strengthen and clarify the provisions of the OPM, or to provide them with a legislative underpinning.

QUESTIONING OF JUVENILES

CURRENT LAW AND POLICY

In addition to the restrictions on arrest of juveniles referred to in chapter 3, there are statutory safeguards concerning the questioning of juveniles.[32] In particular, section 36 of the *Juvenile Justice Act 1992* provides that a juvenile's statement to police in relation to an indictable offence may not be admitted in court unless a parent, legal representative, justice of the peace or other adult nominated by the juvenile was present when the statement was made.

The courts have also recognised that when a juvenile is being interrogated on a very serious matter, all reasonable steps should be taken to avoid, or at least minimise, the risk of the child being overborne by the situation and, in particular, the dominance of police officers, even if they are acting in good faith.[33]

The QPS OPM states further that:

- every juvenile is to be considered as a person with a special need (order 6.3.9)
- formal interviews of juveniles for indictable offences must be in the presence of an independent person (policy 5.6.15)
- records of interview with juveniles should be electronically recorded wherever possible (policy 5.6.16)
- parents are to be advised of the whereabouts of a juvenile who is arrested or detained (policy 5.6.18)
- a parent or person interested in the welfare of children who wishes to accompany the juvenile to the watchhouse should be allowed to do so and should be allowed to enter the watchhouse, unless circumstances prevent this (policy 5.6.24).

SURVEY FINDINGS

With the *possible* exception of one case, police appeared to have acted in accordance with their statutory obligation to ensure that an independent person is present when a juvenile suspect is formally interviewed.

Of the 26 juvenile respondents to the survey, 20 (77%) said that they had been interviewed formally by police.[34] Only one respondent—a 13-year-old male charged with obstruction of police—reported not having had somebody else present during the formal interview. This respondent claimed that his parents had been at the police station when he was interviewed, but had not actually accompanied him into the interview: 'They weren't asked to come in'. It is possible, given the nature of this offence, this respondent was mistaken about

32 In Queensland, for the purposes of criminal charges and proceedings, a juvenile is a person aged up to and including 16 years.

33 *R v. C (an infant)* [1976] Qd R 341 (Andrews J). However, in *R v. Crawford* (1985) 2 Qd R 22, a 16-year-old refused an offer to have an adult with him during an interview. The confession was held to have been rightly admitted by the trial judge.

34 Three of the juveniles who said that they were formally interviewed were not asked about the presence of independent persons.

whether a formal interview had been conducted. In 13 cases, the independent person was a parent or relative, while three respondents did not know the person (two said that they had been accompanied by a Justice of the Peace, and the third did not know where the independent person was from). In no case was a solicitor present, according to the respondents.

CONCLUSION

Key survey findings concerning the involvement of solicitors and other independent persons in the interview process were as follows:

- Only a handful of respondents said that a solicitor was present during the interview.
- In excess of half of the respondents who said that they had requested a solicitor claimed that the police had ignored or refused that request.
- A substantial proportion of respondents were unaware that they could have a solicitor present, or failed to think of it at the time.
- In most cases, police apparently made no effort to inform respondents that they had a right to contact a solicitor. However, it should be noted that police are under no obligation to do so.
- The most common reason which respondents offered for not having a solicitor present was that 'they did not need one'. However, 35 per cent of this group also acknowledged that they did not have a good understanding of what was going to happen following their contact with the police.
- Very few of the indigenous respondents who recalled being formally interviewed by police said they had an independent third person present with them during the interview; despite QPS policy stating that, where an indigenous suspect is to be interviewed, the existence of a special need should be assumed until the contrary is clearly established.
- Where juvenile respondents were concerned, there appeared to be a high level of compliance with the statutory requirement that an independent person be present during the interview.

Overall, these findings indicate that:

- there is a need to implement legislative and other measures, including better community education, to ensure that suspects are aware of, and able to exercise, their right to have a solicitor present at the police station
- current OPM provisions relating to the interviewing of indigenous persons should be clarified and strengthened and consideration given to providing a legislative underpinning to these provisions.

CHAPTER 5
SEARCHES

This chapter focuses on the conduct of:

- personal searches, particularly strip searches
- property searches.

Each section summarises the relevant law and discusses the survey results.

PERSONAL SEARCHES

CURRENT LAW AND POLICY

There is no general power to stop and search a suspect. However, specific legislation authorises police to stop, detain and search people in certain circumstances; for example, where police reasonably suspect a person to be in possession of prohibited drugs,[35] a weapon liable to seizure[36] or stolen goods.[37]

Once a person has been arrested and is in lawful custody, section 259 of the *Criminal Code* gives police officers a general power to 'search' the person, including the power to take anything (including clothes) which may afford evidence of the commission of the offence. Officers may use reasonable force to carry out authorised searches.[38] Reasons for the search should normally be given to the person who is being searched.

The legislation that authorises police to search refers only to a general power to 'search' and the extent of that power is not clear. It appears that current police practice is based on what is reasonable in the circumstances (CJC 1993b, p. 323). The OPM states that in all cases involving the search of persons, officers should take all reasonable care to ensure that the dignity of the person searched is preserved (policy 2.8).

Different types of personal searches may be distinguished:

- a 'frisk' or pat-down search (involving the patting down of a suspect but not the removal of more than outer garments)
- an examination or removal of outer clothing (for example, asking a person to remove a coat or hat)
- a strip search[39]
- an internal examination of body cavities by a medical practitioner.

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35 Section 15 *Drugs Misuse Act 1986.*

36 Section 4.3 *Weapons Act 1990.*

37 Section 24(b) *Vagrants, Gaming and Other Offences Act 1931.*

38 The search must be carried out by a police officer of the same sex as the accused. Medical practitioners and dentists may also be authorised by a magistrate under this section to examine the person and take forensic samples.

39 There is no definition of strip search included in the OPM. A strip search can mean either the removal of clothing down to underwear, or the removal of clothing including underwear.

OPM policy is that a person in custody should be searched following arrest and again on reception at a watchhouse if, in the opinion of the arresting officer, a need exists. The OPM orders the officer, before any search, to consider first whether a need to search the person exists. Reasons for a search include the possible possession of articles that can be used to harm the prisoner or other prisoners, articles that could be used for escape, and other articles that may be used to commit offences.

At the watchhouse, a search will generally be conducted at the charge counter, before the prisoner is placed in a cell, unless a strip search is conducted. Where it is considered necessary to conduct a strip search, the watchhouse keeper is directed to ensure privacy, allow the prisoner to dress as soon as possible and ensure that the search is conducted by an officer of the same sex or a medical practitioner (policy 16.10.3). The OPM recognises that when a prisoner is not to be held in a cell at the watchhouse and is to be bailed shortly after arrival, it may be better not to search that prisoner or remove any property (procedure 16.10.2).

It appears that strip searches may also be carried out in some circumstances before arrest, although this practice has attracted criticism (CJC 1993b, pp. 324–326). The OPM provides that officers who conduct a strip search of any person in custody are to ensure that the search is conducted in privacy and that adequate replacement clothing is provided (order 2.8.1). It is understood that the term 'in custody' for this purpose applies to those people who are detained for searching. There is little, if any, guidance in the OPM as to when a strip search should be considered necessary.

Any person in lawful custody following arrest and charge may also be subject to a search by a medical practitioner at the direction of a police officer, including an examination of their bodily orifices and the taking of samples.[40] There are some safeguards on this general power. The examination must be either authorised by a magistrate or carried out with the person's consent in writing, and the police officer must inform the person of his or her right to have two people of the person's choice present at the time of the examination.

Under the *Drugs Misuse Act 1986*, invasive body searches are permitted prior to arrest and without the need for authorisation by a magistrate. Section 17 of the *Drugs Misuse Act 1986* provides that a police officer of or above the rank of Inspector may require a person reasonably suspected of having secreted a dangerous drug within his or her body to submit to an internal examination by a medical practitioner. If the suspect refuses, the examination may be conducted using such force as is reasonably necessary.

SURVEY FINDINGS

The following discussion of survey findings distinguishes between personal searches conducted prior to arrival at a police station and those conducted at a police station.

PRE-STATION SEARCHES

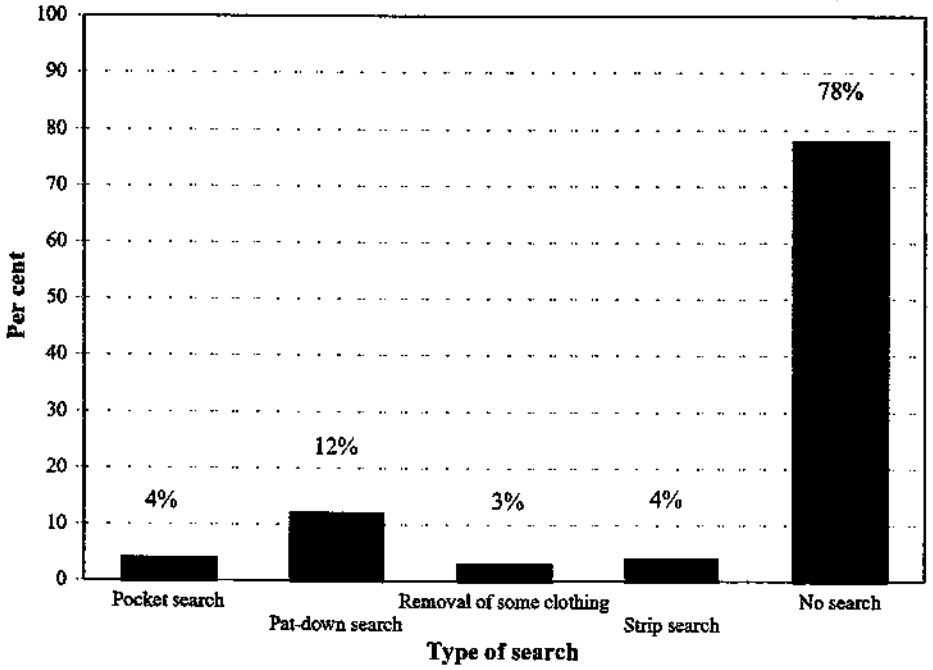
Twenty-two per cent of the sample (106 respondents) reported being personally searched by police somewhere other than at a police station. Figure 5.1 shows that the majority of these respondents said they had only been the subject of relatively non-invasive searches, such as pat-down searches (12%) and pocket searches (4%). However, 3 per cent of the sample (17 respondents) claimed to have undergone a strip search (as that term was understood by the respondent).[41]

40 Section 259 *Criminal Code*.

41 Respondents were asked to distinguish between 'removal of clothing' and 'strip search'. The term 'strip search', however, was not specifically defined in the questionnaire.

Of the 106 respondents who said that they had been subject to a personal search other than at a police station, only 32 per cent stated that they were given a reason for the search (although 70 per cent said that they knew what the police were looking for). This finding lends weight to the recommendation in our review of police powers that there should be a statutory obligation on police to inform suspects of their intention to conduct a search, and their reasons for undertaking that search (1993a, p. 467–469).

FIGURE 5.1 — MOST INVASIVE SEARCH REPORTEDLY CONDUCTED OTHER THAN AT A POLICE STATION



Notes:
1. n = 489
2. Many respondents were subject to more than one type of search. This figure shows only the most invasive type of search conducted.

Strip Searches

Of the 17 respondents who claimed to have been strip searched, nine (53%) said that they had been approached and searched by police in their own homes, four said that they had been pulled over by police for a driving offence and searched by the side of the road; two said that they were approached while at somebody else's home; one stated that he was stopped in the street while on foot; and one said he was approached while sleeping outside 'in the bush'. Most of these alleged strip searches had occurred in relation to drug charges, with only four of the 17 respondents being charged with non-drug-related offences.

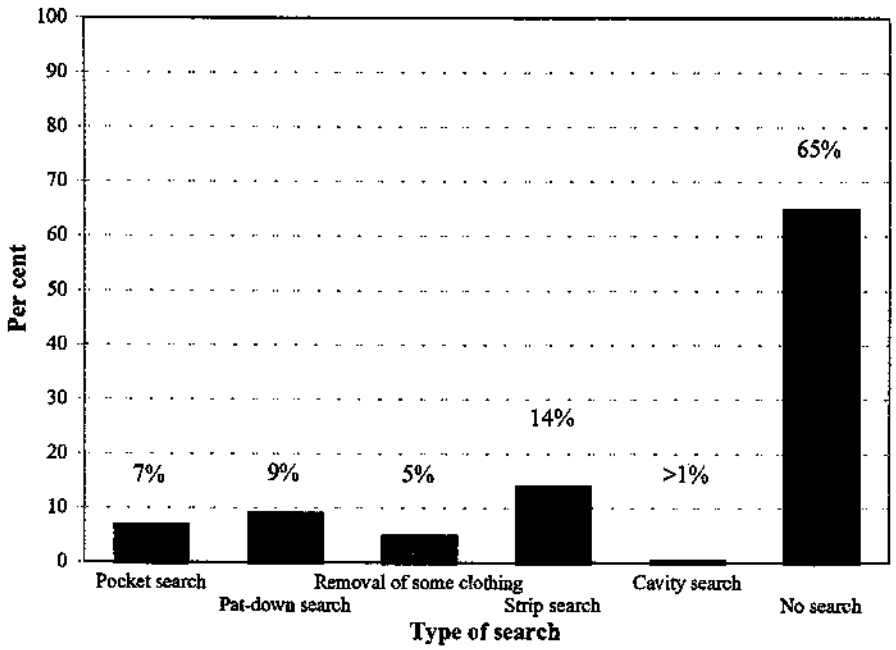
Although it is not unlawful in Queensland for police to conduct a strip search somewhere other than a police station, the appropriateness of undertaking such highly intrusive searches in these circumstances must be questioned. In our review of police powers in Queensland, we recommended that legislation should provide that searches conducted pre-arrest must be carried out with a 'minimum of intrusion to individual privacy' (CJC 1993b, p. 325), and that such searches conducted in a public place should be limited to the removal of

no more than outer clothing. We further argued that, a strip search, should only be conducted as a matter of last resort and should be performed in a private place by an officer of the same sex' (CJC 1993b, p. 325).[42]

SEARCHES CONDUCTED AT A POLICE STATION

Just over a third of the sample (172 respondents or 35%) reported being searched at a police station. Figure 5.2 shows that 14 per cent of the sample (67 respondents) said that they were subject to a strip search of some kind. As respondents were not asked if they had been held in a watchhouse, it is not possible to establish whether these searches were conducted upon a person's admission to a watchhouse cell, or prior to that time. Only two respondents claimed to have undergone a body cavity search, although it was unclear whether this took the form of an internal search (which can only be done by a medical practitioner) or an external inspection only.

FIGURE 5.2 — MOST INVASIVE PERSONAL SEARCH REPORTEDLY CONDUCTED AT A POLICE STATION



Notes:

1. n = 471
2. Many respondents were subject to more than one type of search. This figure shows only the most invasive type of search conducted.

42 Provisions for the search of persons in Britain under the *Police and Criminal Evidence Act 1994* go further than this and exclude strip searching altogether other than at police stations: '. . . it is clear from the provisions for search of persons in police detention that strip searching is an exceptional procedure to be carried out only at a police station . . .' (Lidstone & Palmer 1996, p. 304). Lidstone and Palmer continue by noting: 'If there is a reasonable belief that anything may be concealed which requires a more thorough search than is permitted . . . and that it may be used to escape from custody, then resort may be had to the use of handcuffs' (p. 304).

Strip Searches

The bulk of respondents who reported being strip searched were charged with drug offences (33%) and theft (30%). Of the two respondents who said that they had been subject to a body cavity search, one had been charged with assault and the other with a drug offence.

Although we are not in a position to judge the appropriateness of individual searches, we did find substantial regional variations in the frequency with which strip searches were conducted at police stations. For example, 41 per cent of respondents at one of the courts claimed to have been subjected to this form of search, compared with only 3 per cent at another court. These regional differences could not be accounted for simply in terms of different offence profiles (such as more drug offenders being processed in one court than another). Such data indicate that there may be a need for more explicit legislative and procedural direction as to when strip searches should be conducted, to promote greater consistency across regions.

PROPERTY SEARCHES

CURRENT LAW AND POLICY

The general rule is that police may not enter premises to conduct a search unless they have a search warrant or the person consents. Police guidelines state that the officer executing a search warrant should tell the occupant his or her name, number and station and the reason for police attendance, and should allow the occupant 'reasonable time to view the search warrant' (procedure 2.8.4). Only one copy of the warrant is issued and is retained by the police officer.[43]

Police are also instructed to observe the following principles when executing a search warrant:

- to seek entry by obtaining the occupant's cooperation, and to warn the person that police may enter by force[44]
- to ensure that 'as little as possible physical and emotional disturbance occurs' in executing the warrant and that 'as far as possible, places which are searched should be returned to the condition in which they were found'
- to ensure that 'the utmost propriety is observed at all times, and situations which have the potential to embarrass a resident are avoided' (procedure 2.8.4).

43 The CJC has recommended that all search warrants be issued in duplicate and that, other than in the case of authorised covert searches, a copy of the warrant which includes a summary of the occupier's rights should be given to the occupier on entry or, where the premises are unoccupied, left in a conspicuous place (1993a, p. 461). The Drugs Misuse Regulations currently provide for the occupier whose premises are searched under the *Drugs Misuse Act 1986* to be given an occupier's notice which includes information about the occupier's rights and the powers of police.

44 There is some uncertainty about whether the current law requires police to demand admission and have that demand refused, before using force to enter (see CJC 1993a, pp. 406–408).

In addition to the powers exercised under the authority of a search warrant, statutory powers have been granted to police to enter premises and search without a warrant in particular cases. Those circumstances generally relate to emergencies where it would not be practicable to wait for the issue of a warrant, and include:

- in special or urgent circumstances where a police officer believes that anything that may afford evidence of an offence against the *Drugs Misuse Act 1986* is on the premises and will be concealed or destroyed unless the premises are entered and searched immediately[45]
- where a police officer suspects on reasonable grounds that a person is in possession of and is threatening to use a weapon such that death or injury to any person is likely[46]
- in cases of domestic violence, where a police officer may enter and search for weapons and any person who may possess a weapon that is suspected to have been or is likely to be used[47]
- in an emergency in the interests of preserving public safety.[48]

Police have wider powers of search in relation to motor vehicles. Specific legislative provisions authorise police to stop and search vehicles where they reasonably suspect particular offences may have been committed. For example, a police officer may search a vehicle if: he or she reasonably suspects the vehicle or anything in it may afford evidence of a drug offence;[49] where he or she suspects on reasonable grounds that the vehicle contains a weapon liable to seizure;[50] or where the vehicle is used by a person who is arrested in connection with a property offence.[51]

SURVEY FINDINGS

Table 5.1 shows that 27 per cent of the sample said that their residence had been searched by police and 13 per cent that their vehicles had been searched. Searches of residences were most likely to have been conducted in cases where the respondent was subsequently charged with a drug offence (56% of residence searches) or a theft offence (30%). A similar pattern was evident for vehicle searches.

45 Section 18(12).

46 *Weapons Act 1990* s. 4.5.

47 *Domestic Violence (Family Protection) Act 1989* s. 32.

48 *Public Safety Preservation Act 1986* s. 8.

49 *Drugs Misuse Act 1986* s. 24.

50 *Weapons Act 1990* s. 113.

51 *Criminal Code* s. 680A.

TABLE 5.1 — CONDUCT OF PROPERTY SEARCHES

	Vehicle searches (n = 66)	Residence searches (n = 132)
Per cent of total sample	13	27
Per cent of those searched who said they were told of a warrant	27	57
Per cent of respondents who said they viewed the warrant	18	44
Per cent of respondents who said they read the warrant	9	26

Note: Three respondents had not been home when police had conducted searches and were therefore unable to answer questions about warrants.

Table 5.1 also shows the proportion of respondents who said that they were told there was a search warrant, and the proportion who saw and then read the warrant. Key points to note are:

- In the majority of residential searches, respondents said that they were told by the police that there was a warrant to conduct the search. It is not possible to ascertain if the remaining searches had been conducted without a warrant, or if the respondent had not been told—or did not recall—that there was a warrant.
- As expected, most vehicle searches appear to have been conducted without a warrant.
- Around three-quarters of the respondents who said that they were told of a warrant reported having viewed the warrant.
- Only slightly more than half of the respondents who said that they saw a warrant reported actually having read it. The most common reason given for not reading the warrant was that there was not enough time. Several respondents said that the police would not let them read it. If this information is correct, police would appear to have contravened their obligation to allow the occupier 'reasonable time to view' the search warrant (OPM procedure 2.8.4).

Of those respondents whose premises were searched, 77 per cent (101) said that they were aware of what the police were searching for. The majority said they knew this because the police told them. Of the remaining respondents, 25 per cent said they 'Just knew', and 15 per cent said they knew from the warrant itself. One respondent said he knew because 'They already had something'; another said 'They were looking for anything they could find—they made that obvious'; and a third stated that he guessed what police were searching for from the way they were conducting the search.

Of those respondents who said that their vehicle had been searched, 62 per cent (41 respondents) stated that they knew what police were searching for. Most respondents reported that this was because the police told them (51%) or they 'just knew' (15 respondents or 37%).

According to respondents, the police found something in 77 per cent (101) of the house searches. In 85 per cent of these successful searches, drugs or drug-related utensils were reportedly found, with a further 12 per cent of searches revealing stolen property. In one search, the respondent said that a person had been found hiding. In another, a weapon had been found and, in a third, chequebooks.

In 52 per cent of the vehicle searches nothing was found, according to respondents. In the remaining cases police reportedly located drugs or drug-related utensils (32% of searches) stolen property (14% of searches) and a weapon.

IMPLICATIONS

There are three important policy implications arising from our findings concerning property searches.

First, in the absence of a systematic process for recording all searches conducted by police, it is impossible to determine the 'reasonableness' of police searching practices. The survey results show that more than three-quarters of the house searches and nearly half of the vehicle searches were successful in so far as something was found by police. However, given that the sample consisted only of people charged by police rather than all people searched by police, one would expect a very high success rate for searches. In our police powers review, we proposed that police be required to record on a computerised Search Register details about all personal, vehicle and property searches conducted. Such a measure would enhance accountability and facilitate monitoring of the exercise of search powers to ensure that they were being used appropriately.

Second, it appears that, in a sizeable minority of cases, police did not inform the respondent of the reason for the search. As discussed above in relation to personal searches, we have previously argued that there should be a statutory obligation on police to provide such information to suspects (CJC 1993a, p. 467–469). The requirement for police to provide information to a suspect about the reason for the search is also designed to enhance police accountability for searches by:

- forcing police officers to turn their minds to the reason for the search of a person or property and consider what type of search is reasonable in the circumstances
- enabling suspects and/or their legal advisors to assess the reasonableness or the legality of the search.

Third, several respondents reported that police produced a search warrant which the respondent was then not allowed to read, or was not given sufficient time to read. This problem could be addressed by establishing a statutory requirement that police leave a copy of the search warrant with the occupier (CJC 1993a, pp. 461, 485).

CONCLUSION

Key survey findings concerning the conduct of searches were as follows:

- Slightly less than a quarter of respondents said that they were subject to some kind of personal search prior to being taken to a police station. Most of these searches were of a relatively non-intrusive nature, but the sample included 17 respondents who said that they had been strip searched, including four who claimed to have been searched on the side of the road.
- Just over a third of the sample reported being searched at a police station. Of this group, 39 per cent said that they had been strip searched. There were some unexplained regional variations in the frequency with which such searches were allegedly conducted.
- Around a third of the sample said that their residences and/or vehicles had been searched.
- Searches were most frequently undertaken in relation to drug offences. The high incidence of drug-related searches is partly a function of the much wider search powers permitted under the *Drugs Misuse Act 1986*.
- According to respondents, police 'found something' in 77 per cent of house searches and in 48 per cent of vehicle searches.

- A considerable number of respondents claimed that the police did not tell them why their person or property was being searched (although many acknowledged that they knew what the police were looking for).

- Several respondents whose property had been searched in accordance with a warrant said that they did not have the opportunity to read the warrant.

These findings lend support to previous CJC recommendations that:

- the conduct of strip searches be subject to tighter regulation

- police be placed under a statutory obligation to inform suspects of the reason for a search being conducted

- police be required to record details of all searches conducted on a computerised Search Register (to assist in monitoring whether searches are 'reasonable')

- police be required to leave a copy of a search warrant with the occupier.

CHAPTER 6
RESPONDENTS' VIEWS OF POLICE

This chapter looks at how respondents regarded their treatment by the police and presents data on the willingness of respondents to complain about what they saw as inappropriate police conduct. The chapter concludes by highlighting some areas of concern identified by the survey.

RESPONDENTS' ASSESSMENTS

Respondents were asked three general questions about how they had been treated by the police:

- Is there anything positive you would like to say about how you were treated by police?
- Were you unhappy with any aspect of your treatment by police? If so, what were you unhappy about?
- In what ways do you think the police could have improved their treatment of you?

The following section summarises the answers provided to these various questions and briefly compares the responses provided by different groups within the sample.

POSITIVE COMMENTS

Positive comments were made by 196 respondents (40% of the sample). Table 6.1 shows that the most frequent comments were that police were friendly, reasonable and polite.

TABLE 6.1 — POSITIVE COMMENTS MADE BY RESPONDENTS

Comment made	Number	Per cent
No positive comment made	293	60
Positive comment:		
• Friendly	44	9
• All right/reasonable	43	9
• Polite	40	8
• Matter-of-fact	17	3
• Not unpleasant	8	2
• Understanding	8	2
• Helpful	7	1
• Other	29	6
Total	**489**	**100**

Note: Comments listed in this table are the first mentioned positive comment made by the respondent.

Other positive comments included that police had given the respondent a lift home, allowed the respondent a cigarette or a drink, and made sure the process was completed quickly.

A number of respondents, while being critical of some officers, mentioned particular officers who had been polite or helpful. Of the 197 people who made positive comments, 32 per cent were also dissatisfied with some aspect of their treatment by police.

REASONS FOR DISSATISFACTION

Slightly under half of the sample stated that they were unhappy with one or more aspects of their treatment by police. Table 6.2 shows the main reason which respondents gave for being dissatisfied.[52]

TABLE 6.2 — MAIN REASON FOR DISSATISFACTION WITH POLICE TREATMENT

Reason for dissatisfaction	Number	Per cent
No dissatisfaction expressed	260	53
Dissatisfaction expressed:		
• Impolite, rude or verbally abusive	48	10
• Assaulted me	43	9
• Intimidated me	28	6
• Tight cuffs or generally rough treatment	25	5
• Didn't tell me my rights	20	4
• Conduct of the search	13	3
• Didn't allow access to facilities or outside contact	9	2
• Provoked or upset me	6	1
• No way of getting home after being released	5	1
• Shouldn't have charged me	5	1
• Other	27	6
TOTAL	**489**	**100**

Notes:
1. Reasons listed in this table are the most serious causes of dissatisfaction.
2. Percentages may not always add to 100% due to rounding error.

As shown by table 6.2, the most common criticism of police was that they were impolite, rude or verbally abusive (10%). A substantial proportion of respondents also claimed to have been assaulted (9%), intimidated (6%) or generally treated roughly (5%) by police.

The alleged assaults, where described by respondents, generally consisted of punching, kicking, choking, slapping, or being thrown around a room. One respondent complained of being 'head-butted', and one of being placed in a headlock. Another respondent said police threw a torch at him, one that he was hit with a torch while getting in the car, and one that he was hit with a baton. One respondent said police had 'set the

52 Up to three reasons could be recorded. Only the most serious reason for dissatisfaction was counted.

dog squad on me', and that the dog had mauled his leg. Another two respondents said they had been 'kneed'; one in the face and one in the stomach. These incidents, if they occurred, were clearly quite serious. However, it must be stressed that, because respondents were guaranteed anonymity, we were not able to verify any of these claims.

Other relatively common criticisms of police behaviour related to the failure to inform suspects of their rights, and to the manner in which searches were conducted.

Several additional negative comments were made by respondents in response to a 'general comments' question asked at the end of the survey. For example:

- An additional two respondents made comments about the difficulties they encountered in getting home after they had been released by police.
- Two respondents expressed concern that police did not provide them with sufficient privacy in relation to their charges.
- Two respondents complained about being subject to derogatory and discriminatory language. In the first case, a transgender respondent charged with a prostitution offence reported that police had persistently called her by her former male name even though they knew her female name, and were aware of her wish to be treated as a female. In the second case, an Aboriginal respondent reported that police had used racist language while he was in their custody.

As far as we could establish, no respondents alleged that they had been subject to 'verballing' or the fabrication of evidence.

SUGGESTIONS FOR IMPROVED TREATMENT

Many respondents had views on how their treatment by police could have been improved. The coding of this question allowed for three responses from each person. Results presented here are for the first response given by each respondent.

A total of 303 respondents (62% of the sample) made suggestions about how they should have been treated by police. Table 6.3 shows that 16 per cent of the sample wanted police to be more polite in their dealings with respondents and 7 per cent wanted to be provided with more information about one or more aspects of the process. A group of 24 respondents (5%) said that police should not have assaulted them.

TABLE 6.3 — RESPONDENTS' SUGGESTIONS FOR IMPROVING POLICE TREATMENT

Suggestion for improvement	Number	Per cent
No suggestion made	186	38
Police should have:		
• been more polite	78	16
• provided information about process/legal rights	51	10
• refrained from assaulting the respondent	24	5
• not arrested/incarcerated the respondent	21	4
• given the respondent a chance to explain himself/herself	16	3
• provided access to facilities	15	3
• not harassed the respondent	11	2
• called Murri Watch	10	2
• not kept the respondent waiting	10	2
• not treated the respondent as a criminal	10	2
• allowed outside contact	9	2
• assisted the respondent with transport after release	5	1
• Other	43	9
Total	**489**	**100**

Notes:
1. Comments listed in this table are the first mentioned suggestion for improvement made by the respondent.
2. Percentages may not always add to 100% due to rounding error.

INTER-GROUP COMPARISONS

Responses to questions relating to respondents' assessment of their treatment by police were broken down according to: Aboriginality, age and gender of the respondent; the type of offence with which the respondent was charged; and, the court at which the interviews were conducted. The main findings were as follows:

- There was no statistically significant difference in the proportions of indigenous and non-indigenous respondents who said that they were dissatisfied with their treatment by police. However, non-indigenous respondents were more likely than indigenous respondents to volunteer positive comments about the police: 42 per cent as opposed to 28 per cent.

- Younger respondents were less likely to provide positive comments than older respondents: 19 per cent of those aged under 16 years provided positive comments compared to 66 per cent of those aged 40–49 years. However, there were no statistically significant age differences in the proportion of respondents who were dissatisfied with their treatment.

- Respondents who were charged with an assault offence were more likely to express dissatisfaction with their treatment and more likely to allege that they had been assaulted.

- There were some regional variations in the proportion of respondents providing positive comments: 49 per cent of the respondents in one court provided positive comments compared to only 23 per cent in another.

In summary, we did not find any major inter-group differences in the proportion of respondents expressing dissatisfaction with police treatment. However, there was greater variation in the willingness of different categories of respondents to positive comments.

WILLINGNESS TO COMPLAIN

Of the 229 respondents who stated that they were unhappy about some aspect of their treatment by police, only 29 per cent said that they had made a complaint to a third party.[53]

Table 6.4 shows that most of these complaints were made either to the police themselves, or to a solicitor. Only 3 per cent of complaints were made directly to the CJC. Based on CJC experience, it is likely that many of the complaints made to solicitors would not have come to CJC or police attention.

TABLE 6.4 — PERSON OR AGENCY TO WHOM RESPONDENT COMPLAINED

Person/agency	Number	Per cent
Police	33	52
Solicitor/lawyer	19	30
Government-funded worker (e.g. correctional officer)	3	5
CJC	2	3
Doctor	2	3
Combination	1	2
Other	3	5
TOTAL	**63**	**100**

Note: Information for one respondent was missing.

To ascertain if respondents were more likely to complain about some matters than others, we divided the sample into three groups: those who had alleged that they had been assaulted; those who were unhappy with the manner of police; and those who were dissatisfied for some other reason. We found no statistically significant difference between these three groups. This finding suggests that, while official complaints statistics significantly understate the *extent* to which defendants' are dissatisfied with their treatment by police, these statistics probably provide a reasonably accurate indication of the *types* of matters which cause most dissatisfaction. In accordance with this interpretation, allegations about rude behaviour and the use of excessive force—the two matters most commonly raised by respondents to our survey—also figure prominently in complaints against police recorded by the CJC and the QPS.[54]

Table 6.5 shows the reasons which were given by respondents for not making a complaint to anyone. The most common explanations were that: 'It wouldn't do any good' (43 per cent of those who said they did not complain) and 'Couldn't be bothered' or 'Not serious enough' (a combined total of 19%). Lack of knowledge

53 Information for five respondents who had stated they were unhappy with police was missing in relation to making a formal complaint.

54 In 1995, 33 per cent of the allegations against police recorded by the Professional Standards Unit of the QPS related to allegations of rude or intimidatory behaviour. In 1995–96, complaints of assault accounted for 19 per cent of all allegations of police misconduct recorded by the CJC.

about how to make a complaint was a relatively minor factor, being cited by only 9 per cent of those respondents who had not complained. Similarly, only 9 per cent of this group cited fear of possible repercussions as a reason for not complaining.

TABLE 6.5 — REASONS GIVEN FOR NOT MAKING A COMPLAINT TO A THIRD PARTY: RESPONDENTS WHO WERE UNHAPPY WITH POLICE TREATMENT

Reason given	Number	Per cent
It wouldn't do any good	68	43
Too much trouble/apathy	17	11
Not serious enough	12	8
Fear of repercussions	15	9
Did not know how to make a complaint	14	9
Didn't think of it	7	4
Other	26	16
TOTAL	**159**	**100**

Notes:
1. Comments listed in this table are the first mentioned reason given by the respondent.
2. Information for one respondent was missing.

This pattern of responses aligns quite closely with reasons given by the general public for not complaining about their dissatisfaction with police. Our 1995 survey of public attitudes towards the QPS also found the most common reasons for not reporting dissatisfaction were that it would not do any good, followed by 'not serious enough' and 'too much trouble' (CJC 1995).

AREAS OF CONCERN IDENTIFIED BY THE SURVEY

In some respects, the significant number of respondents expressing dissatisfaction is not surprising: most people are likely to find the process of being arrested, questioned and charged an unpleasant—indeed, traumatic—experience, no matter how professionally police behave. However, the survey has identified several areas of concern which warrant attention by the QPS.

- The largest single cause of dissatisfaction among respondents related to the 'manner' adopted by police (including the use of intimidatory and/or derogatory language). Suspects, like anyone else, are entitled to be treated in a professional manner. In the words of one respondent: 'Even though we were wrong, we're human'. In addition, if police could be encouraged to employ a more consistently professional manner in dealing with suspects, this could assist in reducing complaints against police and might also help reduce the level of antagonism shown by suspects towards police in future encounters.

- A substantial proportion of respondents claimed to have been assaulted by police or to have generally been treated roughly. We have no means of ascertaining how many of these alleged incidents actually occurred, or, if they did, how many could be excused as an exercise of 'necessary force'. However, the frequency of such claims indicate that there is a need to monitor more closely

the police use of force and explore ways of reducing the incidence of conflictual encounters between police and suspects.[55]

- Another significant cause of dissatisfaction was the perceived failure of police to provide respondents with information or to advise them of their rights. This finding again highlights the desirability of strengthening police legal obligations to inform suspects about their rights, obligations and status—an issue canvassed at some length in previous chapters of this report.

- Several respondents complained that they had encountered difficulties getting home after they had been released by police. While police are not under any legal obligation to assist people who they have arrested to return home, there are some circumstances where this would be appropriate (for example, where the person has been brought to the police station from some distance away, has no money and does not have access to any other means of transport). Police already provide this assistance on occasions, as attested to by positive comments made by some survey respondents, but there are no policy guidelines as to when this should done. Perhaps a body such as the Watchhouse Register Group could be requested to formulate guidelines in relation to this issue.[56]

The survey also showed that many respondents who were unhappy with how they had been treated by police did not make a complaint to anyone else. Moreover, when respondents did complain, it was often to a solicitor, rather than to the QPS or CJC. Such findings strongly suggest that official complaints statistics understate, to a substantial degree, the extent of defendant dissatisfaction with the police. For this reason, it is important to conduct regular surveys of the kind described here, rather than relying solely on complaints data as a barometer of the level of dissatisfaction with police behaviour. There needs to be further research conducted into the reasons which people give for not complaining to ascertain if there are ways in which the reporting rate could be increased.

CONCLUSION

Key findings reported in this chapter are as follows:

- About half of the sample reported that they were unhappy with one or more aspects of their treatment by police. Conversely, 40 per cent made positive comments about the way police treated them.

- The most common criticisms related to the manner of the police, the use of excessive force and the failure of police to inform respondents of their rights.

- No cases were identified where a suspect specifically alleged that he or she had been 'verballed' or that evidence against him or her had been fabricated.

- There were no statistically significant racial, gender or age differences in the proportion of respondents who said that they were dissatisfied with how they were treated by police.

- Less than one-third of the respondents who said they were unhappy about some aspect of their treatment by police complained about this to someone else. Most of the complaints were made to the police, or to a solicitor.

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55 The CJC is currently completing an analysis of approximately 300 complaints files relating to allegations of assault against police. It is intended to utilise these data to develop strategies for reducing the incidence of such complaints against members of the QPS.

56 The Watchhouse Register Group, composed of relevant government agencies, was formed in September 1994 by the Acting Anti-Discrimination Commissioner to monitor conditions in watchhouses.

- The most common reason given by respondents for not complaining was that 'It would not do any good'.

The chapter has also drawn attention to several issues which warrant attention, including

- the frequency with which respondents expressed concern about the general manner of the police, or alleged that some form of excessive force had been employed
- the need to develop policy guidelines about the circumstances under which police should assist persons who have been arrested to get home
- the need for further research to be conducted into why many people do not complain about perceived inappropriate conduct by police.

CHAPTER 7
CONCLUSION

This final chapter briefly summarises the key findings of the survey, identifies the main policy implications, and outlines the CJC's plans for conducting future surveys in this area.

SUMMARY OF KEY FINDINGS

There were several positive findings arising from the survey, including that:

- police appear generally to have complied with the requirement that records of interview for indictable offences be electronically recorded, and that suspects be formally cautioned prior to the commencement of such interviews
- there appeared to be a high level of compliance with statutory provisions relating to the interviewing of juveniles
- in no case did respondents specifically allege that they had been 'verballed', or that evidence against them had been fabricated
- there was no evidence that indigenous or young respondents were *systematically* treated worse than other respondents by police (although respondents in these groups were less likely to volunteer favourable comments about their treatment).

On the other hand, the survey also highlighted a number of issues which need to be addressed by the Government when drafting new police powers legislation, and by the QPS. In particular, we found that:

- There was considerable misunderstanding among respondents about whether, and at what point, they had been arrested. This confusion appears to have been due largely to the failure of police, in many cases, either to inform respondents that they were under arrest or that they were free to choose whether or not to accompany police to the police station.
- Respondents who were questioned 'in the field', or informally at the police station, were substantially less likely to be cautioned; such interviews were also less likely to have been audio-recorded.
- There was some evidence that police were arresting persons in situations where a summons would have been more appropriate.
- By and large, police did little to facilitate the attendance of solicitors at the police station and, in some instances, appear to have ignored or refused respondents' requests for a solicitor to be present.
- Very few indigenous respondents had an independent third person present with them during the interview, even though QPS policy creates a presumption in favour of such a person being present.
- Policy concerning the appropriateness of strip searching, especially at places other than police stations, need to be tightened.

- It was relatively common for respondents whose property or person was searched to state that they had not been informed by the police of the reason for that search or that police had not allowed them sufficient time to view a search warrant.

- Nearly one in ten respondents stated that they had been assaulted by police and a further 5 per cent complained of generally rough treatment. Complaints about rudeness, impoliteness and intimidatory behaviour were also fairly frequent.

- A substantial number of respondents said they would like police to provide them with information about the arrest/charging process or about their legal rights.

POLICY IMPLICATIONS

Many of the issues identifed above, and at other points in this report, can only be satsifactorily addressed by substantial amendment of the existing legal framework which governs the arrest, detention and questioning of suspects. In this regard, the CJC, in its five volume review of police powers in Queensland, has put forward a comprehensive set of legislative proposals designed to ensure that:

- police are placed under a legal obligation to inform suspects of their rights, obligations and arrest status

- police are given a strictly regulated power to detain suspects for questioning after arrest, thereby removing the incentive for police to perpetuate the fiction of 'voluntary attendance' and to avoid clearly informing suspects of their arrest status

- questioning of suspects is subject to proper regulation from the point of first contact

- police are provided with workable alternatives to arrest

- the 'right' to have a solicitor present at a police station is given substance

- improved accountability and monitoring mechanisms are put in place to govern the conduct of personal and property searches

It is, of course, the responsibility of Government to determine the ultimate form of any new police powers legislation. However, we consider that our recommendations—which are the product of extensive research and consultation—provide an appropriate response to the problems and shortcomings identified by this study.

It may be possible to address some issues by rewriting and strengthening the requirements set down in the OPM, rather than by introducing new legislation. However, we would caution against an over-reliance on this option, given that the survey shows that police appear most likely to comply with procedural requirements which have legislative backing (such as those relating to the interviewing of juveniles) or for which clear guidance has been provided by the courts (such as in relation to the issuing of a formal caution). If there is to be reliance on internal procedures and policies, rather than legislation, it is crucial that appropriate monitoring strategies be put in place and that substantial sanctions be applied against officers who deliberately breach these requirements.

Our analysis of the causes of defendant dissatisfaction with police treatment has also highlighted the need for the QPS to develop organisational strategies for enhancing police professionalism in dealing with

suspects, particularly in relation to the use of force. Current QPS initiatives—such as Project Honour[57] and Project Lighthouse[58]—have the potential to address these issues, if they are properly resourced and have the appropriate degree of organisational support. The CJC is also actively investigating ways of reducing the incidence of assault and excessive force allegations made against police.[59]

Finally, from the perspective of the CJC, an important issue identified by the survey is the need to develop a better understanding of why many respondents who expressed dissatisfaction about some aspect of their treatment by police chose not to make an official complaint.

THE FUTURE

As discussed in the introductory chapter, it is intended to repeat this survey at regular intervals, replicating the survey methodology, sampling procedure and questionnaire format as closely as possible. The next survey will be conducted approximately one year after the new police powers legislation currently being developed has taken effect. By using the survey findings in conjunction with other information sources—such as interviews with police and legal practitioners, and data from QPS records—we will be able to assess the extent to which the various issues identified by this study have been effectively addressed by the new legislation, and identify any new problems which may have emerged. Thereafter, we plan to conduct the survey at two-yearly intervals; in order both to facilitate ongoing monitoring of police investigation and arrest practices, and to provide the CJC and QPS with an additional measure—apart from complaints data—of trends in the incidence of possible police misconduct.

57 Project Honour is a QPS initiative to raise and reinforce ethical standards among Queensland police officers.

58 Project Lighthouse is an ongoing project dealing with matters pertaining to the use of force.

59 See the forthcoming CJC research report on Complaints of Assault Against Police.

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APPENDICES

APPENDIX A
POLICE POWERS RESEARCH

The Research and Coordination Division of the Criminal Justice Commission (CJC) is conducting a research project which concerns the exercise of police powers in Queensland. Police powers are the laws which allow police to do things such as enter a building, stop and search a person, seize property, arrest a person, and question and charge a person.

One of the functions of the CJC is to conduct research to answer questions about the way police use their powers.

The Queensland Government is currently considering changes in the law relating to the exercise of police powers. If there is a change in the law, it would be important to see if police change what they do in practice as well. The Research and Co-ordination Division of the CJC is currently conducting research to answer this question. Interviews with about 400 people charged with criminal offences will be conducted to find out what happens when people are arrested by police. Every two years, the same survey will be conducted to see if there are any changes in the experiences of those who are arrested by police. This will be a way of monitoring the impact of any new police powers legislation.

APPENDIX B
POLICE POWERS SURVEY QUESTIONNAIRE
(WITH FREQUENCIES AND PERCENTAGES ADDED)

Note: Percentages may not always add to 100% due to rounding error: only valid percentages are shown.

1	*ID number:*		
2	*Today's date (dd/mm/yy):*	__ / __ / __	
3	*Court:*		
	(Post coded)		
	Brisbane	162	33%
	Beenleigh	65	13%
	Southport	65	13%
	Ipswich	50	10%
	Rockhampton	53	11%
	Cairns	61	13%
	Maroochydore	33	7%
4	*Interviewer number:*		
5	*What have you been charged with?*		
	(Post coded: most serious offence recorded)		
	Homicide	1	<1%
	Sexual assualt	8	2%
	Assault	63	13%
	Robbery	11	2%
	Fraud	16	3%
	Theft	149	31%
	Property	22	5%
	Driving	3	<1%
	Drug	135	28%
	Other	80	16%
	Missing	1	

Section 1: Demographics

6	*Sex of the respondent:*		
	Male	410	84%
	Female	79	16%

7	*Age of the respondent:* (Post coded)		
	Under 16 years	26	5%
	17-19 years	122	25%
	20-29 years	231	47%
	30-39 years	74	15%
	40-49 years	29	6%
	50-59 years	7	1%
8	*Are you Aboriginal?*		
	Yes	53	11%
	No	434	89%
	Missing	2	
9	*Are you a Torres Strait Islander?*		
	Yes	19	4%
	No	470	96%
10	*Are you from a non-English speaking background?*		
	No	456	93%
	Yes	33	7%

Section 2: First Contact with the Police

11	*What date were you charged (dd/mm/yy)?*	__/__/__	
12	*Where were you when the police first approached you about the matters you have been charged with?*		
	In the street while on foot	99	20%
	On the road while driving	43	9%
	In your home	171	35%
	In some other person's home	33	7%
	At your place of work	12	3%
	GO TO Q18 ← At a police station	22	5%
	At a pub or nightclub	18	4%
	At a shopping centre or mall	26	5%
	Somewhere else	65	13%

13	*At that time did the police ask you any questions about these matters?*		
	Yes	272	59%
	GO TO Q18 ← No	190	41%
	Missing/not applicable/don't remember	27	
14	*How long did they question you?* (Post coded)		
	Less than 10 minutes	146	54%
	11-30 minutes	85	31%
	31-60 minutes	22	8%
	61-120 minutes	12	4%
	More than 121 minutes	7	3%
15	*How did the police record the interview?*		
	It wasn't recorded	110	40%
	In writing in a notebook	101	37%
	On audio tape	30	11%
	Don't know	31	11%
16	*Did the police tell you at that time that you did not have to answer any questions if you did not want to?*		
	Yes	89	33%
	GO TO Q18 ← No	170	63%
	GO TO Q18 ← Don't remember	13	5%
17	*When did the police tell you this?*		
	Before the questioning	64	73%
	Part-way through the questioning	20	23%
	After the questioning	4	5%
	Missing	1	

Section 3: Pre-Arrest Search

Search of Person

18	*Did the police search your person somewhere other than at a police station?*		
	Yes	106	22%
	GO TO Q23 ← No	382	78%

19	*What type of search was it?*		
	(Note: these are frequency counts for each type of search: respondents may have been the subject of more than one type of search)		
	Pocket turn-out	84	79%
	Pat-down	74	70%
	Removal of clothing	21	20%
	Strip search	17	16%
	Body cavity search	0	-
20	*What did you think they were searching for?*		
	(Post coded)		
	Drugs	50	48%
	Stolen property	6	6%
	Money	1	1%
	Weapon	7	7%
	Didn't know	32	30%
	Combination	5	5%
	Other	4	4%
	Missing	1	
21	*Did the police tell you why they were searching you?*		
	Yes	34	32%
	GO TO Q23 ← No	67	64%
	GO TO Q23 ← Don't know or don't remember	4	4%
	Missing	1	
22	*What reason did they give you for the search?*		
	(Post coded)		
	Looking for evidence	8	27%
	Looking for an illegal substance	15	50%
	Looking for stolen property	5	17%
	Looking for a weapon	2	7%
	Missing	4	

Search of Property

23	*At any time, did the police search your property (for example, your home, your car, your belongings)?*		
	Yes	214	44%
	GO TO Q52 ON PAGE 11 ← No	275	56%

Search of Vehicle

24	*Did the police search your vehicle?*		
	Yes	66	31%
	GO TO Q33 ← No	148	69%
25	*Did the police say they had a warrant?*		
	Yes	18	27%
	GO TO Q29 ← No	47	71%
	Don't know	1	2%
26	*Did you see the warrant?*		
	Yes	12	67%
	GO TO Q29 ← No	6	33%
27	*Did you read the warrant?*		
	GO TO Q29 ← Yes	6	50%
	No	6	50%
28	*Why did you not read the warrant?*		
	(Post coded)		
	Police wouldn't let me	2	33%
	Not enough time	2	33%
	I chose not to read it	2	33%
29	*Did you know what the police were searching for?*		
	Yes	41	62%
	GO TO Q31 ← No	25	38%
30	*How did you know what the police were searching for?*		
	From the warrant	4	10%
	They told me	21	51%
	Other	16	39%
31	*Did the police find anything?*		
	Yes	32	48%
	GO TO Q33 ← No	34	52%

32	*What did the police find?* (Post coded)			
		Drugs/drug related	21	66%
		Stolen property	9	28%
		Weapon	2	6%

Search of Place

33	*Did the police search any place where you lived or worked, or any other place?*			
		Yes	132	62%
		GO TO Q42 ← No	82	38%
34	*Did the police say they had a warrant?*			
		Yes	75	57%
		GO TO Q38 ← No	54	41%
		GO TO Q40 ← Don't know (I wasn't present)	3	2%
35	*Did you see the warrant?*			
		Yes	58	77%
		GO TO Q38 ← No	17	23%
36	*Did you read the warrant?*			
		GO TO Q38 ← Yes	34	59%
		No	24	41%
37	*Why did you not read the warrant?* (Post coded)			
		Police wouldn't let me	4	17%
		Not enough time	10	42%
		I chose not to	7	29%
		Other	3	13%
38	*Did you know what the police were searching for?*			
		Yes	99	77%
		GO TO Q40 ← No	30	23%
		Missing	3	

39	*How did you know what the police were searching for?*		
	From the warrant	14	14%
	They told me	56	57%
	Other	28	29%
	Missing	1	
40	*Did the police find anything?*		
	Yes	101	77%
	GO TO Q42 ← No	30	23%
	Missing	1	
41	*What did the police find?* (Post coded)		
	Drugs/drug related	85	85%
	Stolen property	12	12%
	Weapon	1	1%
	Other	2	2%
	Missing	1	

Other Searches

42	*Did the police search anything else, for example, your bag?*		
	Yes	97	46%
	GO TO Q52 ← No	116	54%
	Missing	1	
43	*What did they search?*		
	Bag	62	64%
	Purse/wallet	24	25%
	Yard	11	11%
44	*Did the police say they had a warrant?*		
	Yes	17	18%
	GO TO Q48 ← No	80	82%
45	*Did you see the warrant?*		
	Yes	15	88%
	GO TO Q48 ← No	2	12%

46	*Did you read the warrant?*		
	GO TO Q48 ← Yes	8	53%
	No	7	47%
47	*Why did you not read the warrant?* (Post coded)		
	Police wouldn't let me	2	29%
	Not enough time	3	43%
	I chose not to	1	14%
	Other	1	14%
48	*Did you know what the police were searching for?*		
	Yes	62	64%
	GO TO Q50 ← No	35	36%
49	*How did you know what the police were searching for?*		
	From the warrant	8	13%
	They told me	28	45%
	Other	26	42%
50	*Did the police find anything?*		
	Yes	32	33%
	GO TO Q52 ← No	64	67%
	Missing	1	
51	*What did the police find?* (Post coded)		
	Drugs/drug related	23	74%
	Stolen property	3	10%
	Other	5	16%
	Missing	1	

Section 4: The Arrest

52	*Were you arrested at any stage?*		
	Yes	318	65%
	GO TO Q56 ← No	151	31%
	GO TO Q56 ← Don't know or don't remember	20	4%

53	*How did you first realise you were under arrest?*		
	GO TO Q55 ← They told me I was under arrest	113	36%
	They took me to the station	67	21%
	They put me in the car	37	12%
	They said I had to go with them	9	3%
	They handcuffed me	21	7%
	They took me to the Watchhouse	28	9%
	Other	39	12%
	Missing	4	
54	*Did the police tell you at any stage that you were under arrest?*		
	Yes	181	57%
	GO TO Q56 ← No	128	41%
	Don't know	7	2%
	Missing	2	
55	*At what point did the police tell you that you were under arrest?* (Post coded)		
	Initially	101	56%
	In transit to the police station	14	8%
	At the police station: before the interview	30	17%
	At the police station: after the interview	20	11%
	At the watchhouse	4	2%
	Other	3	2%
	Don't remember	7	4%
	Missing	2	
56	*Did you go to a police station at any stage?*		
	Yes	471	97%
	GO TO Q66 ← No	17	3%
	Missing	1	
57	*Did you think you had to go to the police station?*		
	Yes	368	79%
	GO TO Q59 ← No	99	21%
	Missing	4	

58	*What did the police say to you about going to the police station?*		
	They said I had to	204	55%
	They asked me to go	89	24%
	They said it was my choice	16	4%
	Other	60	16%
59	*Why did you go?* (Post coded)		
	I had to	263	57%
	I was under arrest	17	4%
	Police had lots of evidence	16	3%
	To clear things up	35	8%
	To answer questions	25	5%
	To co-operate	39	8%
	Don't know	4	1%
	Other	62	13%
	Missing	10	
60	*How did you get to the police station?*		
	Police vehicle	393	84%
	Own vehicle	54	12%
	Walked	15	3%
	Other	5	1%
	Missing	4	
61	*Did you object to going to the police station?*		
	Yes	83	18%
	No	385	82%
	Missing	3	
62	*Did you ask to leave the police station at any time?*		
	Yes	94	20%
	GO TO Q64 ← No	375	80%
	Missing	2	

63	*What happened?* (Post coded)		
	Police told me to shut up	8	9%
	Police ignored or refused my request	40	44%
	They let me leave	4	4%
	They said I could leave when they were finished	24	27%
	Verbally abusive	1	1%
	Physically abusive	1	1%
	Other	12	13%
	Missing	4	

Section 5: Post-Arrest Search and Questioning

64	*Were you searched at the police station?*		
	Yes	172	37%
	GO TO Q66 ← No	293	63%
	Missing	6	
65	*What type of search was it?* (Note: these are the frequency counts for each type of search: respondents may have been the subejct of more than one type of search)		
	Search of bag/wallet	43	25%
	Pocket turn-out	102	59%
	Pat-down	86	50%
	Removal of clothing	44	26%
	Strip search	67	39%
	Body cavity search	2	1%
66	*Did the police ask you any questions at the police station before they started the formal interview?*		
	Yes	163	33%
	GO TO Q70 ← No	326	67%

67	*What did they ask you about?* (Post coded)		
	About the offence	98	60%
	About someone else's involvement in the offence	13	8%
	Combination	38	23%
	About other offences	7	4%
	Other	3	2%
	Can't remember	4	2%
68	*Did the police tell you at this point that you didn't have to answer their questions?*		
	Yes	69	43%
	GO TO Q70 ← No	91	56%
	Don't remember	2	1%
	Missing	1	
69	*When did they tell you this?*		
	They had already told me	14	21%
	Before the questioning	45	66%
	Part-way through the questioning	8	12%
	After the questioning	1	1%
	Missing	1	

Section 6: The Formal Interview

70	*(When you were at the police station) Did the police interview you about the matters you've been charged with?*		
	Yes	272	56%
	GO TO Q77 ← No	215	44%
	Missing	2	
71	*How was the interview recorded?*		
	Not recorded	12	4%
	In writing	23	8%
	On audio tape	81	30%
	On video tape	152	56%
	Unsure	3	1%
	Missing	1	

72	*How long did the interview take?* (Post coded)		
	Less than 10 minutes	70	26%
	11-30 minutes	115	43%
	31-60 minutes	41	15%
	61-120 minutes	24	9%
	More than 121 minutes	19	7%
	Missing	3	
73	*Did you answer all the questions asked by the police during the interview?*		
	Yes	229	85%
	No	37	14%
	Some/most	4	1%
	Missing	2	
74	*Did you know that you did not have to answer any questions if you did not wish to?*		
	Yes	217	80%
	No	54	20%
	Missing	1	
75	*Did the police tell you that you did not have to answer any questions if you did not wish to?*		
	Yes	202	75%
	GO TO Q77 ← No	62	23%
	GO TO Q77 ← Don't remember	7	3%
	Missing	1	
76	*When did the police tell you this?*		
	They had already told me	21	10%
	Before the interview	157	78%
	Part-way through the interview	21	10%
	After the interview	3	1%
77	*Did the police ask you if you wanted a solicitor?*		
	Yes	70	14%
	GO TO Q79 ← No	400	82%
	GO TO Q79 ← Don't remember	16	3%
	Missing	3	

78	*When did they ask you?* (Post coded)		
	Before going to the police station	4	7%
	In transit to the police station	1	2%
	At the police station: before questioning	17	28%
	At the police station: after questioning	10	16%
	At the police station: before the interview	11	18%
	At the police station: during the interview	5	8%
	At the police station: after the interview	7	11%
	Other	6	10%
	Missing	9	
79	*Did you ask for a solicitor to be present?*		
	GO TO Q81 ← Yes	62	13%
	No	418	87%
	GO TO Q81 ← Don't remember	1	<1%
	Missing	8	
80	*Why not?*		
	I didn't think of it at the time	87	21%
	I didn't know I could have one	76	18%
	I can't afford one	15	4%
	I didn't need one	171	41%
	Other	67	16%
	Missing	2	
81	*Did you have a solicitor present with you at any time while you were at the police station?*		
	Yes	9	2%
	GO TO Q83 ← No	467	95%
	Missing/not applicable	13	3%

82 *At what point in the process did the solicitor arrive at the police station?*

(Post coded)

Before going to the police station	2	22%
At the police station: before questioning	1	11%
At the police station: after questioning	2	22%
At the police station: before the interview	1	11%
At the police station: after the interview	3	33%

83 *Why not?*

I didn't think of it at the time	57	23%
I didn't know I could have one	43	18%
I can't afford one	9	4%
I didn't need one	83	34%
My request was ignored or refused by police	30	12%
Other	22	9%

84 *Were you fingerprinted?*

Yes	383	79%
No	101	21%
Missing	5	

85 *Were you photographed?*

Yes	371	77%
No	112	23%
Missing	6	

Section 7: Independent Persons

Applicable to Aboriginal/Torres Strait Islanders (ATSI) and juveniles who were formally interviewed

86 *Did the police tell you that you could have another person present with you (at the interview)?*

	ATSI adults		Juveniles	
Yes	4	20%	14	82%
No	15	75%	3	18%
Don't remember	1	5%	0	-
Missing	1		3	

87	*Did the police try and contact someone to be with you (at the interview)?*	ATSI adults		Juveniles	
	Yes	3	15%	11	65%
	No	16	80%	6	35%
	Don't know	1	5%	0	-
	Missing	1		3	

88	*Did you have another person with you (at the interview)?*	ATSI adults		Juveniles	
	GO TO Q90 ← Yes	2	10%	16	94%
	No	18	90%	1	6%
	Missing	1		3	

89	*Why not?* (Post coded)	ATSI adults		Juveniles	
	Didn't know I could have one	9	60%	0	-
	Didn't want one	1	7%	0	-
	Other	5	33%	0	-
	Parents present at station but not at the interview	0	-	1	100%
	Missing	3		0	-
	GO TO Q92				

90	*Did you know the other person?*	ATSI adults		Juveniles	
	Yes	1	50%	13	81%
	No	1	50%	3	19%
	Missing	0		3	

91	*Where was the other person from?* (Post coded)	ATSI adults		Juveniles	
	Parent	1	50%	13	81%
	Justice of the Peace	1	50%	2	13%
	Don't know	0		1	6%

Section 8: Complaints and Further Comments

92	*How well would you say you understood what was going to happen following your contact with the police?*		
	Very well	89	18%
	Fairly well	183	38%
	Not very well	69	14%
	Not at all well	145	30%
	Missing	3	
93	*Have you ever previously been in trouble with the police?*		
	Yes	309	63%
	GO TO Q95 ← No	179	37%
	Missing	1	
94	*What was that about?*		
	(Post coded: most serious offence recorded)		
	Homicide	2	1%
	Assault	30	10%
	Robbery	9	3%
	Fraud	5	2%
	Theft	76	25%
	Property	27	9%
	Driving	59	20%
	Drug	57	19%
	Other	36	12%
	Missing	8	
95	*Were you unhappy with any aspect of the police treatment of you?*		
	Yes	229	47%
	GO TO Q100 ← No	258	53%
	Missing	2	

96 *What were you unhappy about?*

(Post coded: most serious comment recorded)

Impolice, rude or verbally abusive behaviour	48	21%
Assault	43	19%
Intimidation	28	12%
Tight handcuffs/rough treatment	25	11%
Didn't tell me my rights	20	9%
Related to the conduct of the search	13	6%
Provoked/upset me	6	3%
Didn't allow me to eat/drink/smoke/go to the toilet	5	2%
No way of getting home after release	5	2%
Shouldn't have charged me	5	2%
Didn't allow a solicitor	2	1%
Didn't allow a phone call	2	1%
Property not returned	2	1%
Other	25	11%

97 *Did you make a complaint to anyone in relation to these concerns?*

Yes	64	29%
GO TO Q99 ← No	160	71%
Missing	5	

98 *To whom did you make the complaint?*

Police	33	52%
Solicitor/lawyer	19	30%
Criminal Justice Commission	2	3%
Doctor	2	3%
Other	7	11%
Missing	1	

GO TO Q100

99	*Why did you not make a complaint?* (Post coded: first mentioned comment recorded)		
	It wouldn't make any difference	67	42%
	I couldn't be bothered	17	11%
	It wasn't serious enough	12	8%
	It would only make things worse	14	9%
	Didn't know how to make a complaint	14	9%
	Didn't think to complain	7	4%
	I intend to make a complaint	4	3%
	I thought their treatment was routine	4	3%
	There was nobody to complain to	3	2%
	Other	17	11%
	Missing	1	
100	*Is there anything positive you would like to say about the way you were treated by police?*		
	No positive comments	293	60%
	Positive comments made:		
	Friendly	44	9%
	All right/reasonable	43	9%
	Polite	40	8%
	Matter-of-fact	17	3%
	Not unpleasant	8	2%
	Understanding	8	2%
	Helpful	7	1%
	Other	29	6%
101	*In what ways do you think the police could have improved their treatment of you?*		
	Suggestions for improvement	303	62%
	No suggestion for improvement	186	38%
102	*Do you have anything else you would like to add about any aspect of your experience with the police?*		
	Comment provided	93	19%
	No comment provided	396	81%

Thank you for your time here this morning / this afternoon.

QUESTIONS NOT TO BE ASKED OF THE RESPONDENT
INTERVIEWER TO COMPLETE

103 *Does the respondent appear to be physically disabled?*

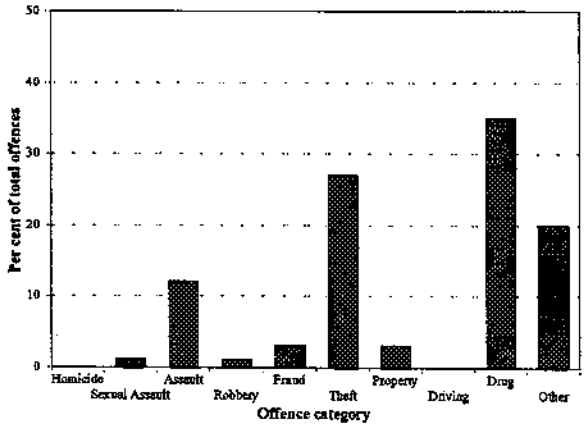
No	489	100%
Yes	0	-

104 *Is the respondent's ability to answer this questionnaire in any way impaired?*

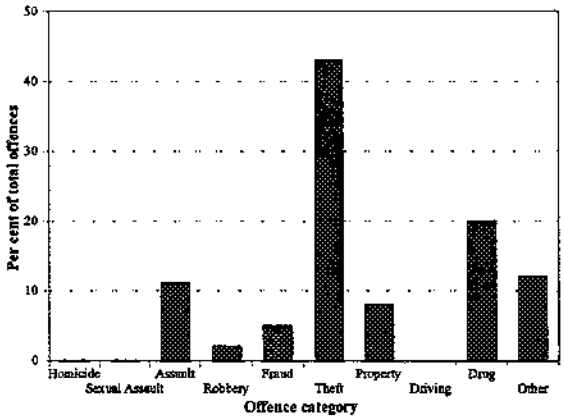
No	486	99%
Intellectually disabled or delayed	0	-
Drug or alcohol affected	2	<1%
Other	1	<1%

APPENDIX C
RESPONDENTS TO THE SURVEY: MOST SERIOUS OFFENCE CHARGED BY REGION

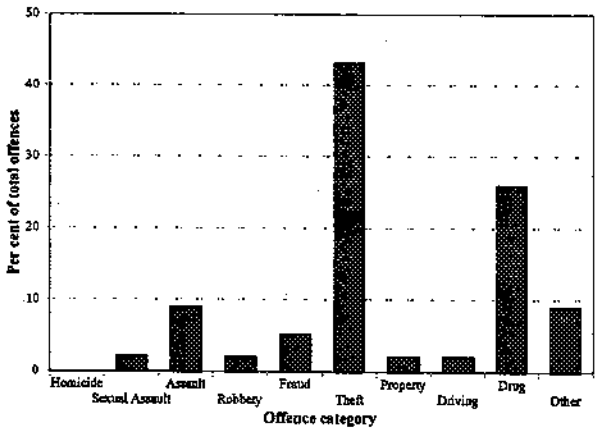
BRISBANE
(n = 162)



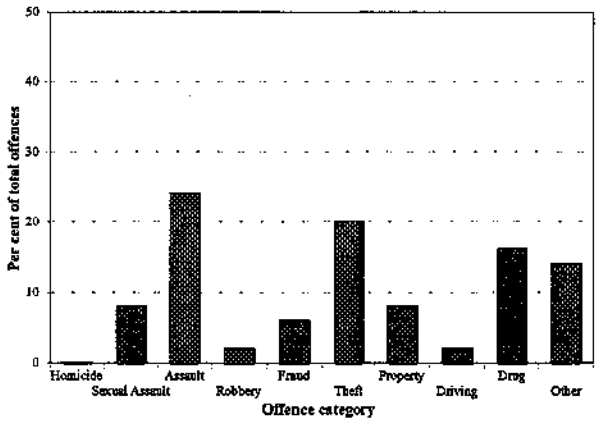
SOUTHPORT
(n = 65)



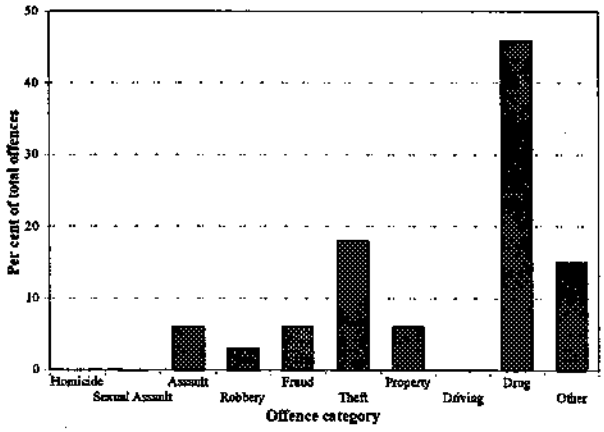
BEENLEIGH
(n = 65)



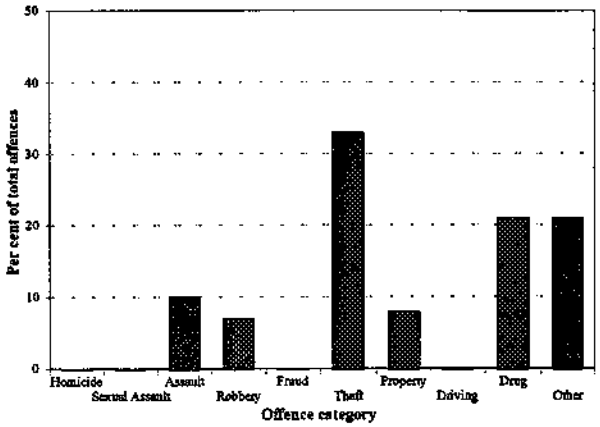
IPSWICH
(n = 50)



MAROOCHYDORE
(n = 33)



ROCKHAMPTON
(n = 53)



CAIRNS
(n = 61)