

*Aboriginal Deaths In Custody: Evaluation of the Queensland Police Service's Implementation of the Recommendations of the Royal Commission Into Aboriginal Deaths in Custody**

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ABSTRACT

It is now some three years since Commissioner Elliott Johnson QC handed down his much publicised Royal Commission into Aboriginal Deaths in Custody (RCADC) National Report. There is no doubt that Commissioner Johnson's recommendations caused a sharp twinge to not only the conscience of Police Service administrators but also governments as a whole throughout Australia.

Certainly in Queensland's case, the recommendations have had a profound effect. Queensland's population of approximately 70,000 Aboriginal and Torres Strait Islander people, out of a total population of 265,465¹ Australia wide, meant that considerable soul searching and innovation would be needed to develop programs to meet the ideals outlined in the recommendations.

Of the 339 recommendations contained in the National Report of the RCADC, the Queensland Police Service (QPS) had responsibility for implementing 100. The QPS has sole responsibility for 25 in Queensland and shared responsibility for the remaining 75 together with other State government agencies.

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1 Australian Bureau of Statistics, Census Matrix Software (1991), Cat No 2714.0, Canberra.

We are now at a point where sufficient time has elapsed since the release of the RCADC Report to take stock of the response, and consider the breadth of the initiatives introduced. It is therefore the purpose of this paper to provide a descriptive account of the various initiatives introduced by the QPS in response to the recommendations of the Royal Commission.

In broad terms the major initiatives of QPS can be categorised into the following groups:

1. Custody Programs
2. Watchhouse Issues
3. Cross-cultural Training
4. Cross-cultural Support and Liaison Mechanisms
5. Policing remote Aboriginal and Torres Strait Island Communities

1. *Custody Programs*

It would be fair to say that the primary focus of police as custodial officers, prior to the Royal Commission, was the security of prisoners. However, since the commencement of the Royal Commission, the focus of custodial officers altered to include, along with security, the care and supervision of prisoners. Commissioner Johnston QC made numerous recommendations in the National Report impacting directly on the care and supervision of police prisoners. The initial response by the Police Service was directed to addressing those recommendations.

As a result, five basic sub-programs related to custody emerged:

A. *Custody Awareness Lecture Package*

It was the Royal Commission's view² that custodial officers generally did not fully appreciate their legal obligations of "duty of care" with respect to people held in custody.

Action was taken immediately to develop a "Custody Awareness" lecture package highlighting the "duty of care" that is owed by custodians to their prisoners. The lecture package was finalised in April 1992 and provided comprehensive lecture notes, overhead transparencies and a Custody Awareness training video.³ Lecture kits were distributed to regional and district training officers who have responsibility for the ongoing training. In addition, as part of the implementation process, a round of lectures were provided state wide for trainers and watchhouse keepers.

The objectives of the package are that, at the completion of the program, watchhouse management and staff will achieve an improved understanding and heightened awareness of:

- (a) legal obligations and "duty of care" liabilities;
- (b) assessment, inspection, and supervision responsibilities; and
- (c) the mental and physical health requirements of people in custody.

2 Johnson, E, *National Report — Royal Commission into Aboriginal Deaths in Custody*, Vol 1 (1991) at 3.

3 Another Custody Awareness video was produced specifically for Aboriginal and Torres Strait Islander Community Police.

In conjunction with the above, police training officers (District Education and Training Officers) that complete the program will have the resources and information needed to provide ongoing training on custody procedures to all sworn police personnel in the Regions.

The lectures were divided into two main sections. The first focused on legal and procedural matters associated with custody and was designed for delivery by police trainers, whilst the second section focused on medical aspects of custody and was designed to be delivered by a medically trained instructor.

In addition, the material is being used in Pre-Service Training and In-Service Training courses at the Queensland Police and Emergency Services Academy.

All State and Territory police agencies have obtained copies of the videos produced in connection with this package and a number of them are using these videos⁴ as part of their training.

B. Custody Issues

A consistent, constant and updated flow of information relevant to custody matters was developed by the Commission. It was decided by the QPS to incorporate aspects of the training in the Queensland Police Service distance education, industrially based "Competency Acquisition Program" (CAP).

Members of the Queensland Police Service from the rank of Constable to Senior Sergeant are required to complete a set number of credit points before they can move to the next incremental pay point. The units produced on custodial issues are electives within this program.

The assessment and performance criteria for the "Custody Issues" unit require the participant to demonstrate competency in:

- Inspection of prisoners;
- assessment of the physical and health needs of a prisoner;
- assessment of a prisoner's need for medical assistance in a given scenario; and
- assessment of special needs of prisoners.

C. Review of Custody Procedures

In addition to the Custody Awareness Training, a project was undertaken to review QPS custody instructions and practices with a view to developing a consolidated and comprehensive Custody Manual. The recommendations of the RCADC provided a blueprint on which the review of custody procedures, policies, practices and training was based.

During the developmental process, input was sought from Aboriginal and Torres Strait Islander organisations, including ATSIC State and Regional Councils, health service organisations, a large cross section of police service personnel and other interest groups. As a result, the Manual was implemented on 30 August 1993, and provided a consolidated set of instructions for police in the form of policies, orders and procedures for the care and supervision of people in custody.

4 Video "Custody Awareness", for State Police Officers, video "Custody Awareness", for Aboriginal and Torres Strait Islander Community Police, Queensland Police Service, Brisbane.

In addition, the "old" Watchhouse Charge Book was replaced with a Watchhouse Custody Register which provided an upgraded "medical screening process".

The implementation of the new procedures involved a second round of associated training throughout the State for watchhouse keepers and trainers. The regional and district training officers were then responsible for the ongoing training of all officers.

Currently, the Commissioner's Office, Inspectorate is conducting a review of the contents and a compliance audit of the Manual. Other mechanisms have also been put into place to ensure the new procedural package is operationally sound and meets custodial obligations and expectations.

D. Computerised Custody Index

The RCADC Report was critical of the quality and nature of information available on Aboriginal and Torres Strait Islander police custodies. In addition, the Report recommended that the Aboriginal legal services be notified of the arrest of Aboriginal and Torres Strait Islander people. This latter recommendation posed a more difficult problem in Queensland than that experienced in other States in that there are over twenty separate Aboriginal legal services throughout the State.

In order to address the issues, a computerised Custody Index was developed and introduced in conjunction with the Custody Manual. The Index records details of people arrested, detained or questioned as a suspect for an indictable offence.

The Custody Index is a mechanism to ensure accountability regarding police custody and is designed to assist in locating people in police custody or those being questioned in relation to indictable offences. Initial data received indicates that the Index will provide high quality statistics in the future. The Index also facilitates the Queensland Police Service's policy of notification of the arrest of Aboriginal and Torres Strait Islander people to each of the Aboriginal legal services in Queensland.

An evaluation of the Custody Index is being conducted in conjunction with the compliance audit of the Custody Manual.

E. Development of a Cell Visitors/Diversion Centre Operator's Manual

Recommendation 145 of the RCADC provided for the introduction and support of Cell Visitor Schemes. A number of schemes have developed at various watchhouses throughout the State.

To provide a framework for these programs, a Cell Visitors/Diversion Centre Operator's Manual is currently being developed by the QPS with particular assistance from various Aboriginal and Torres Strait Islander communities, legal services and health agencies. The aim of the manual is to provide guidelines for police, cell visitors and persons working in diversionary centres.⁵ Information relating to watchhouse security, prisoner health care, communications and legal issues such as self-defence, use of force, duty of care and workplace health and safety matters are included in the manual.

Alternate Supervision of Prisoners

The RCADC recommended that prisoners be inspected every 15 minutes for the first two hours of custody and then every hour after the first two hours of detention.⁶ In addition,

5 To date "diversionary" centres have been established at Brisbane, Mt Isa and Cairns.

6 Above n2 at 99, rec 137.

the RCADC recommended that the frequency of prisoner inspections should be more frequent where the prisoner is assessed as being at risk.

While the intention of this recommendation is supported in principle by QPS, staffing levels at most watchhouses are not sufficient to provide the level of supervision recommended by the Royal Commission. For example, a police officer in a one person station may not be able to provide the required level of supervision and meet other policing demands. It was estimated that an additional 900 staff would be required to provide that level of supervision in all watchhouses. To provide an adequate level of supervision for prisoners in smaller centres, QPS is looking at a program to have trained community members on call on a casual basis to provide prisoner supervision when the need arises.

2. *Watchhouse Issues*

QPS have 185 operating watchhouses throughout the State in a wide range of climatic conditions. They are located in remote, rural and metropolitan centres; some new, others over a hundred years old. Some watchhouses in remote locations in the Gulf and Cape York area are only accessible by aircraft during "the Wet" and then only when weather conditions permit flying. Some watchhouses are in constant use while others are used only once or twice a year. These circumstances and conditions provide a constant challenge to watchhouse managers.

In response to recommendation 332 of the RCADC,⁷ on 27–30 July 1992 a workshop of all Australian state police organisations was held in Alice Springs to develop "Standard Guidelines for Police Custodial Facilities in Australia". The guidelines emanating from this workshop were later endorsed by the Australian Police Minister's Council. In turn they were adopted by the QPS to direct future watchhouse development. These guidelines, by necessity of the diversity of the Australian environment and climatic regions, are broad statements of desirable standards.

In line with these guidelines, all new watchhouses are now fitted with electronic monitoring/surveillance equipment. In addition particular emphasis has been placed on the provision of specific "visitors" areas in all new watchhouse designs for Aboriginal and Torres Strait Islander communities.

A key aspect of these developments is that extensive liaison is undertaken with interested community groups, including Aboriginal and Torres Strait Islander community members, to ensure the best possible design is achieved.

Upgrades to existing watchhouses are being undertaken in accordance with each Region's priorities within their Minor Works Program. All minor and reconstruction works have been funded by the QPS Capital Works Program without the assistance of any external funding or special allocation related to the RCADC.

7 Id at 144, rec 332.

3. *Cross-Cultural Training*

The cornerstone to providing an effective policing service relies heavily on effective communications. Therefore, it was not surprising that the Royal Commission recommended that a substantial component of police training relate to interaction between police and Aboriginal and Torres Strait Islander people.

QPS has developed a number of programs to provide appropriate training to cater for a variety of policing roles. Cross-cultural education and training has been achieved through five programs. Programs include:

A. *Mobile Cross-Cultural Training Unit (MOCATU)*

This program was directed at, but not limited to, all operational police. The Bureau of Ethnic Affairs was contracted by the QPS to provide cross-cultural training for police throughout the State. It is anticipated that approximately 4,000 of 6,247 sworn Police Service personnel will have completed this training by the end of May 1994.

The MOCATU Module is designed to provide an awareness of cross-cultural issues relevant to policing a multicultural society. To this end the module examines cross-cultural communication processes in a broad context, rather than providing information in detail on any specific group.

In particular the Module aims to:

- Define a key concept of culture and communication;
- demonstrate an understanding of the dynamics of cross-cultural communication;
- identify barriers to cross-cultural communication;
- develop basic individual strategies to overcome barriers to cross-cultural communication; and
- develop basic organisational strategies to overcome barriers to cross-cultural communication.

This Unit's activities also form part of the industrial based Competency Acquisition Program (CAP).

B. *Contemporary Issues Module of the CAP*

Three further CAP units are being developed to provide cross-cultural training. The first unit "Race Relation" is completed and currently being used. The unit contains the following topics:

- Race, prejudice and ethnocentrism;
- racism;
- a historical perspective to 1860;
- a historical perspective from 1860;
- land rights;
- opposing racism;
- terminology and aspects of communication; and
- implications for police.

The remaining two units, "Aboriginal and Torres Strait Island People and the Law" and "Aboriginal and Torres Strait Contemporary Issue" are available in May and October

1994 respectively. Extensive consultation has been undertaken with Aboriginal and Torres Strait Island consultants working for the QPS with regard to these Units.

C. Aboriginal and Torres Strait Islander Community Based Intensive Cross-Cultural Training

This cross-cultural training program was piloted at Cherbourg Aboriginal community in 1991. The project provided the opportunity for first-year constables to spend four weeks of their first year of service living in an Aboriginal community and interacting with residents without carrying out reactive policing duties. First-year constables were involved in day to day activities of the community including assisting at the schools and on camping trips. The project relies heavily on the involvement of representatives from the local community.

The project was evaluated by external consultants from the Queensland University of Technology and their report indicated the pilot program had proved very successful. As a result, the project has been expanded to Doomadgee, Mornington Island and Kowanyama in the far north of Queensland.

To date, approximately 260 first year constables have undertaken the program. While the training program is resource intensive, the results produced are very positive.

D. Kowanyama Cross-Cultural Communication Workshop

The QPS has recognised the need to provide appropriate cross-cultural awareness and community training for members working in specialist areas and whose role involves frequent interaction with Aboriginal and Torres Strait Islander people.

The Yalga-Binbi Institute was engaged to facilitate a pilot Cultural Awareness and Communication workshop in November 1992, at Kowanyama, a remote Aboriginal community situated on the west side of Cape York in north Queensland.

Participants were provided with an appreciation of the history and customs of the Aboriginal people, particularly as they relate to the people of Kowanyama and their culture. Social and cultural issues and how they interact with policing were explored. Most sessions of the workshop involved participation with community members.

E. Pre-Service (Recruit) Training

Cross-cultural issues are central to the Pre-Service Program. This includes a half-day visit to a local Aboriginal centre where tribal leaders discuss various matters of interest. In addition, recruits are addressed on what statewide cross cultural policing initiatives have been introduced over recent years and how these may impact on them in the future. Also, they are given nine hours of lectures and tutorials from teachers at the Queensland University of Technology on general cross-cultural issues.

Cross-cultural communication and awareness issues are not treated as a separate "add on" subject in the training but are integrated into all mainstream training issues. Finally, assessment criteria for this training are framed in a way appropriate to examining a recruit's competency in this area.

4. Cross-Cultural Recruitment and Support

The QPS has established a central Cross-Cultural Support Section within the Community Policing Support Branch (now Policing Policy and Strategy Branch) headed by an Inspector of Police. In addition, Regions have designated Cross-Cultural Support Officers attached to the Assistant Commissioner's office.

The role of these officers is to: develop strategies to resolve cross-cultural policing needs; identify Aboriginal and Torres Strait Islander perspective when developing policies; provide advice, information and resource material regarding cross-cultural policing issues; and provide liaison with Aboriginal and Torres Strait Islander people.

A. *Aboriginal and Torres Strait Islander Liaison Officers*

The National RCADC Report recommended that police services pursue their chosen initiatives for improving relations between police and Aboriginal people and that all Police services pursue an active policy of recruiting Aboriginal people into their services.⁸

QPS currently employ a total of 47 Aboriginal and Torres Strait Islander people as liaison officers at Thursday Island, Mareeba, Innisfail, Cairns, Mt Isa, Townsville, Rockhampton, Gympie and Cunnamulla. The function of the Liaison Officers is to act in a liaison, problem solving and peace keeping role in co-operation with sworn officers.

A measure of the enthusiasm of members of the Aboriginal and Torres Strait Islander Community to be involved is seen in the original number of applicants — 109 from the three Police Regions in which the scheme was originally operated (Far Northern Region 42; Northern Region 13; Central Region 54). The scheme has generally enjoyed success in the Far Northern, Northern and Central Regions since inception, with the activities of the Aboriginal Police Liaison Officers having positive results in the communities where they serve.

Queensland Police observe that the introduction of the scheme has led to a marked improvement in Aboriginal-Police relations, in particular the number of complaints against police by members of the Aboriginal community have reduced significantly.

Other positive benefits flowing from the scheme include a reduction in criminal offences, particularly in business areas of the centres involved. The number of drunkenness arrests of indigenous persons has reduced as Liaison Officers transport such persons to diversionary centres or places of care.⁹

A comprehensive review of the program is currently being undertaken with a view to improving and upgrading its operation.

B. *TAFE Bridging Course*

Recommendation 230¹⁰ endorsed the notion of providing support in the form of bridging courses for Aboriginal and Torres Strait Islander people wishing to join the Police Service and whose general standard of education was insufficient. The Service has actively supported a TAFE Bridging Course at Johnstone College, Innisfail. The course is designed to assist Aboriginal and Torres Strait Islander people raise their standard of education to enhance their potential as police recruits. To date, 20 Aboriginal and Torres Strait Islander people have been offered positions within the QPS recruitment program from that bridging course. Following the success of the initial pilot program at Johnstone TAFE, the bridging course is now available at the Southbank TAFE, Brisbane.

8 Id at 121, rec 231 and rec 229.

9 Adcock, T, *Let's Get Together* (1993), Aboriginal and Torres Strait Islander Police Liaison Team (unpublished).

10 Above n2 at 121, rec 230.

C. Support for Aboriginal and Torres Strait Islander Recruits

A support strategy was developed to ensure that Aboriginal and Torres Strait Islander Recruits have sufficient academic and social support during their pre-service training at the Queensland Police and Emergency Services Academy and during their first year of operational service. As a result a Student Support Officer commenced duty as a part of the support structure in late 1992.

In summary, responsibilities of this position are to provide academic counselling, conduct tutorials, arrange for extra tuition as required and provide advice on students needs. The Student Support Officer is in constant contact with staff at the Queensland Police and Emergency Services Academy so that any concerns can be dealt with in a prompt and sensitive manner.

D. Future QPS Recruitment and Support Strategies

A QPS census indicated that significant progress had been made in Aboriginal and Torres Strait Islander employment in the Police Service. Seveny six Aboriginal and Torres Strait Islander people are now employed as sworn officers with another six currently in training. This amounts to 1.2 per cent of the current sworn strength of 6,247 police officers. In addition, as mentioned above, QPS currently employ a further 47 Aboriginal and Torres Strait Islander people as liaison officers. An additional 10 in clerical positions.

The Police Service is continuing in its endeavours to further increase the number of Aboriginal and Torres Strait Islander people employed by the Queensland Police Service. A strategy is currently being developed for the recruitment and support of Aboriginal and Torres Strait Islander people into the Police Service. In the meantime, the current recruiting process has been amended to ensure, as far as possible, that Aboriginal and Torres Strait Islander people are not disadvantaged by the selection process.

5. Policing in Remote Aboriginal Communities

Aboriginal and Torres Strait Islander Deed of Grant in Trust (DOGIT) community Councils have the authority, pursuant to the provisions of the *Community Services (Aboriginal) Act 1984* and the *Community Services (Torres Strait) Act 1984*, to employ Community Police Officers. In addition, Mornington Island and Aurukun Shire Councils have similar authorities. The by-laws of each community provide the Community Police Officers with powers to maintain peace and good order within the community.

Several initiatives have been undertaken to improve policing services for those DOGIT communities. These include an Induction Package for Police, a Training Package for community members to participate on selection panels, and a Community Police Training Package.

A. Induction Package for Police

The Police Service has recognised the need to adequately prepare and train police who are to work in DOGIT communities. As a result, consultants were engaged by the Service to develop an induction training package for police officers who will be working in DOGIT communities. The package is intended to provide information that will assist the members to effectively police those communities. The consultants have produced material which is currently under consideration.

B. Training Package for Community Members to Participate on Selection Panels

It is QPS policy to request community input into the selection of police officers for gazetted positions in DOGIT communities. Consultants were engaged to develop a suitable training package for Aboriginal and Torres Strait Islander community members to participate on those selection panels. The consultants have produced material which is currently under consideration.

C. Community Police Training

The QPS has developed and provided a comprehensive eleven module training package and supporting videos to assist training Aboriginal and Torres Strait Islander Community Police. The training is currently presented by either the Cross-Cultural Liaison Officer or the District Education and Training Officer travelling to the communities while "on the job" training is being provided by the police stationed in the community.

Recently the Service engaged the Johnstone TAFE College, Innisfail to develop and implement a train-the-trainer course for those officers required to provide training for the Community Police. The 5 day course focuses on how to provide training in an appropriate form to Aboriginal and Torres Strait Islander students. The first course was completed in late 1993.

D. Review of Policing on DOGIT Communities

Commissioner Johnston QC recommended that Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal communities, whether there is sufficient emphasis on community policing. He further recommended¹¹ that the question of Community Police in Queensland and the powers and responsibilities of the Community Councils in relation to them be urgently reviewed. As a response to the recommendations, QPS is currently finalising a review of the delivery of policing services to the DOGIT communities.

The review was developed to discuss and report on:

- Current policing methods and any problems of issues associated with these methods;
- practical and affordable ways of improving the delivery of policing services on these communities;
- options for improving police/community interaction and to increase the involvement of the community in solving law and order problems;
- whether a single policing strategy for these communities is possible, or alternatively, how individual community needs can be addressed; and
- whether Aboriginal and Torres Strait Islander Community Police should be retained in their current form and how the use of such personnel can be maximised.

The review involves extensive consultation with members of each of the communities and it is anticipated the first draft of the report will be available for further consultation in May 1994.

11 Id at 121, rec 23.

Examples

It is our opinion that the following three examples provide some evidence that the initiatives have met with some success.

- No person died in Queensland Police custody between 1 July 1992 and 30 June 1993 (although one person died in November 1993) compared with 3 in 1992, 3 in 1991 and 4 in 1990.¹²
- Torres Strait Islander Constable Marcus Pedro was sworn-in on 4 February, 1994. Pedro commented that whilst growing up on the remote island of Moa he had dreamed of being a Police Officer but never thought he would have the academic ability to do so. Pedro undertook the “Bridging Program” before commencing at the Queensland Police Emergency Services Academy. Pedro’s success is attributed to the “Bridging Course” and the “Support Officer” assistance mentioned above.
- A number of first-year constables undertaking the “Intensive Cross-Cultural” Training Program at Cherbourg commented that before going to Cherbourg they would have been “afraid” to have a conversation with an Aboriginal person. After a month at Cherbourg they now realised there was nothing to fear.

6. Conclusion

A. Monitoring and Evaluating Deaths in Custody

While the incidence of deaths in custody may be reduced by the implementation of the recommendations of the RCADC, deaths in custody will still occur. It was recognised by Commissioner Wyvill and outlined in the RCADC Regional Report of Inquiry in Queensland that eight of the twenty-seven deaths investigated were “unavoidable deaths”.

Because of the broad scope of the definition of a death in custody, the number of deaths in custody may not, by itself, provide a good indicator of whether the adopted strategies, procedures and policies for the safe and effective maintenance of people in custody are appropriate. For example, in circumstances where a person is arrested and is assessed as being at risk due to health — immediate and appropriate medical assistance is provided — and yet the person dies later in hospital, it is considered to be a death in custody. Therefore, regardless of how well custodians perform, such an instance can be used by some to indicate that custodians have not improved their procedures.

It is important that each case is judged on its merits and not on the fact that the death is classified as a death in custody. It should be generally appreciated that the fact that a person has died in custody, especially given the broad scope of the definition, does not necessarily indicate that the system has failed, or that someone is at fault.

B. Future Directions

The work of the RCADC Commission has established that Aboriginal [and Torres Strait Islander] people do not die at a greater rate than non-Aboriginal people in custody.¹³ The

12 McDonald, D and Howlett, C, *Deaths in Custody (No 4)* (1993), Australian Institute of Criminology, Canberra.

13 Johnson, E, *National Report — Royal Commission into Aboriginal Deaths in Custody, Overview and Recommendations* (vol 1, 1991) at 6.

over-representation of Aboriginal deaths in custody is the result of the over-representation of Aboriginal people in custody. Therefore the priority in reducing Aboriginal deaths in custody should be directed to reducing the over-representation of Aboriginal and Torres Strait Islander people in custody.

Police Services generally deal with disadvantaged sectors of the community who often have significant health and welfare problems. Aboriginal and Torres Strait Islander people are, generally, a large proportion of that group. It is therefore important that the reasons for the disadvantages that lead to interaction with police and incarceration need to be addressed. It was clear that although a significant number of the recommendations of the RCADC impact upon the Criminal Justice System, the majority of the recommendations are directed to the "underlying social issues".

The initiatives undertaken by QPS to improve the care and supervision of prisoners, divert prisoners from custody and improving police Aboriginal relations are, to some extent, the short-term strategies directed at reducing the number of deaths in custody. Achieving greater success in reducing Aboriginal and Torres Strait Islander deaths in custody will rely on the long-term strategies which involve education, employment, health, self determination, land rights and housing as outlined in the National Report of the Royal Commission.