



CRIMINAL JUSTICE
COMMISSION

REPORT ON
A REVIEW OF POLICE POWERS
IN QUEENSLAND

VOLUME II:
ENTRY, SEARCH AND SEIZURE

MAY 1993

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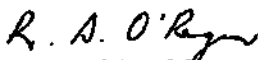
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Dear Sirs

In accordance with section 2.18 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its Report on a Review of Police Powers in Queensland, Volume II.

Yours faithfully


R.S. O'REGAN QC
Chairman

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FOREWORD

In 1989, in the Report of the Commission of Inquiry, Fitzgerald QC recommended a comprehensive review of police powers in Queensland. These two volumes mark the first of a series of reports on police powers to be produced by the Criminal Justice Commission. To deal thoroughly with such a topic in a single report would have meant considerable delay. The Commission therefore decided to release a series of reports for discussion in stages.

The first volume is an introduction to the complex subject of police powers. It sets out the review process undertaken by the Commission as well as describing similar reviews by committees and commissions in other jurisdictions. The volume also discusses the nature of police powers and their relationship to police effectiveness and various concepts and definitions that frequently arise in discussing police powers.


The very difficult question of consolidating into one piece of legislation police powers that are spread across a large number of different Acts is also raised in Volume I. In so doing, the report includes a comprehensive list of those powers that are currently conferred upon police officers. This is the first time that all of the powers of the Queensland Police have been collected into one document and it enables one to view these individual police powers in context. A perusal of Appendix 3 will reveal the enormity of the review task and the breadth of powers to be considered in any proposed scheme of consolidation. The final chapter of the volume discusses the prospect of such a scheme outlining the difficulties associated with a complete consolidation of police powers and proposing a scheme of partial consolidation for consideration.

Released with Volume I is a second volume dealing with the police powers of entry, search and seizure prior to arrest. Volume II addresses matters relating to the stopping and searching of persons, the issue and execution of search warrants and many other more specific questions within this broad subject area.

The Commission makes a number of recommendations for changes to and clarification of the law relating to entry, search and seizure in Queensland. The recommendations reflect two broad principles upon which the Commission proceeded. Firstly, that police powers should only be increased where the need to do so was demonstrated and secondly, that at all times, increased accountability should accompany any increase in police powers. They have been made after considerable research and contain proposals which the Commission believes are practical.

The Commission proposes to release further volumes on the power to demand name and address, the power to arrest without warrant, the power to detain for questioning, electronic surveillance and the power to take body samples.

The subject of police powers is controversial involving many competing interests. It is hoped that these and future reports will contribute towards the introduction into Queensland of a scheme of police powers which reflects an appropriate balance between the competing interests involved.



R.S. O'REGAN QC
Chairman

ACKNOWLEDGEMENTS

The Commission has received assistance and goodwill from numerous organisations and individuals in the preparation of this report. More than 100 written submissions were received in response to the issues paper and the Commission acknowledges with thanks the contribution of the authors of those submissions. A list of authors is included in Appendix 4 of Volume I. The Commission is grateful to Avril Alley of the Research and Co-ordination Division for her hard work in reviewing and summarising those submissions.

A number of authors of submissions attended and spoke at the public hearings held by the Commission and their contribution is appreciated. Throughout the review officers of the Commission have consulted with officers of the Queensland Police Service, members of the legal profession and other interested individuals and organisations. Although too numerous to mention individually, the Commission is grateful for the time that these people made available to discuss some of the complex issues surrounding police powers.

As part of the review the Commission sought advice from the Queensland Police Service and a number of other government departments concerning the circumstances surrounding the use of many of the powers contained in Queensland legislation. The Commission appreciates the valuable and timely advice provided by officers of those departments.

The preparation of the first two volumes of this report has been a combined effort. Dr David Dixon an external consultant provided a useful paper which was the basis of the chapters on the nature, history and development of police powers. Frazer Moss, who was employed as a consultant for six months, contributed much of the research into search and seizure powers of other jurisdictions. Shanthi Herd has been employed part-time as a consultant and has had the painstaking task of preparing the tables contained in Appendix 3 and 5 of Volumes I and II respectively. Both Frazer and Shanthi deserve thanks for their hard work and their goodwill throughout the project.

In the final five months the Research and Co-ordination Division was fortunate to have the services of David Cameron from the Official Misconduct Division who brought not only considerable knowledge to the task but also an unflinching enthusiasm which helped us all through the final often tedious stages of drafting. For this the Commission thanks him.

Deserving of special recognition are Amanda Carter and Megan Atterton of the Research and Co-ordination Division who have both worked unstintingly at producing draft after draft of these volumes. Amanda has worked tirelessly at editing and appropriately referencing the report and has assisted Megan in the painstaking task of transforming it from the writers' poor handwriting or inexpert typing to the document in its present form. We thank them especially for maintaining their good humour throughout the trying times.

I would like to express my gratitude to the staff of the Research and Co-ordination Division and to Dr Satyanshu Mukherjee, former Director of the Division under whose guidance the review was conducted, for their forbearance and support.

Finally I would like to thank Mr O'Regan QC, Chairman, the Commissioners, the Directors and the former Chairman Sir Max Bingham QC and former Commissioner Dr Janet Irwin for their input and encouragement.

A handwritten signature in black ink, reading "S.M. Johnson". The signature is written in a cursive style with a large, looping initial "S" and a long, sweeping underline.

Susan M. Johnson
Principal Research Officer
Acting Director
Research and Co-ordination Division

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ABBREVIATIONS

ALRC	Australian Law Reform Commission
Blackburn Inquiry	Royal Commission of Inquiry into the Arrest, Charging and Withdrawal of Charges Against Harold James Blackburn and Matters Associated Therewith (New South Wales)
Coldrey Committee	Consultative Committee on Police Powers of Investigation in Victoria
Commission	Criminal Justice Commission (Queensland)
Fitzgerald Inquiry	Commission of Inquiry Pursuant to Orders in Council (Queensland)
Gibbs Committee	Review Committee of Commonwealth Criminal Law (Australia)
LRCC	Law Reform Commission of Canada
Lucas Inquiry	Committee of Inquiry into the Enforcement of Criminal Law in Queensland
Mitchell Committee	Criminal Law and Penal Methods Reform Committee of South Australia
NSWLRC	New South Wales Law Reform Commission
PACE Act 1984	Police and Criminal Evidence Act 1984
Philips Commission	Royal Commission on Criminal Procedure (England and Wales)
RCPPP	Royal Commission on Police Powers and Procedure (England and Wales)
Runciman Commission	Royal Commission on Criminal Justice (England and Wales)
Sturgess Inquiry	Inquiry into Sexual Offences Involving Children and Other Related Matters (Queensland)
WALRC	Western Australian Law Reform Commission
Williams Commission	Australian Royal Commission of Inquiry into Drugs

EXECUTIVE SUMMARY OF VOLUME I

The primary purpose of Volume I of the Criminal Justice Commission's (hereinafter referred to as the 'Commission') report on the subject of police powers is to describe the framework and context within which recommendations contained in subsequent volumes concerning various aspects of police powers will be made. Volume I also proposes a scheme for the consolidation of police powers for discussion which, if implemented, will address a number of the shortcomings of the current system of police powers.

With this in mind, the chapters in the first volume of this report are structured as follows:

- Chapter One describes the background to and manner of preparation of this report, including previous efforts to review police powers;
- Chapter Two describes the nature of police powers, in terms of their development and the purposes which such powers serve;
- Chapter Three gives an explanation of concepts and definitions which are used in the language and affect the content of police powers, in particular, those of a legal nature;
- Chapter Four examines the relationship between police powers and police effectiveness;
- Chapter Five considers reviews of police powers and criminal procedure undertaken in other jurisdictions, including within Australia; and
- Chapter Six provides an explanation of the issues concerning consolidation and proposes a possible scheme of consolidation of police powers.

Accompanying Volume I is a set of tables which give a comprehensive list of police powers contained in the statutes of the Queensland Parliament, current as at 1 July 1992. These statutory powers of police are tabulated so as to include the type of power involved (powers to enter and search premises, to arrest persons, to demand name and address etc.), the circumstances in which police officers may exercise the powers, and the persons and things affected by such exercise.

CHAPTER ONE: THE BACKGROUND TO THIS REPORT

The Commission's report on police powers, consisting of a series of volumes, is the direct result of the recommendations of the Commission of Inquiry Pursuant to Orders in Council (hereinafter referred to as the 'Fitzgerald Inquiry'). The Fitzgerald Inquiry recommended that police powers, as an aspect of criminal law enforcement, ought to be reviewed for the purposes of reform.

The review undertaken by the Commission is by no means the first in Queensland. The Committee of Inquiry into the Enforcement of Criminal Law in Queensland published its findings in 1977, which included numerous recommendations for the reform of police powers, although few of its recommendations were acted upon at the time. In 1985, the Inquiry into Sexual Offences Involving Children and Other Related Matters (Queensland) dealt with various sexual offences and included recommendations affecting police powers, specifically, the power to take body samples from suspects. This recommendation was acted upon by the parliament. However, the review undertaken by this Commission is the most comprehensive undertaken in Queensland to date.

The Commission commenced its review of Queensland police powers in November 1990, bearing in mind the specific recommendations of the Fitzgerald Inquiry that any review of police powers ought to consider the proper and balanced relationship between individual rights and the public interest as they relate to police powers, and should be based upon wide research (rather than concentrating upon specific and narrow issues).

Several distinct research strategies were employed in the production of this volume and the other volumes of this report which will follow, including:

- a review of the literature on police powers in Australia and other common law countries;
- an examination of current laws and their operation in other jurisdictions in Australia and in the United Kingdom, Canada and other countries;
- the development and publication in September 1991 of an issues paper in conjunction with the Office of the Minister for Police and Emergency Services;
- the review and analysis of more than 100 submissions received from individuals and interest groups in response to that paper;

- a public hearing, conducted on 10 and 11 June 1992, into the issue of police powers at which concerned persons and organisations could ventilate issues raised in the submissions concerning police powers;
- a review of police powers conferred under legislation administered by departments other than the Queensland Police Service and the collection and review of information provided by departments concerning the exercise of such powers by police and departmental officers;
- a collection and review of anecdotal evidence provided by police officers in various districts throughout Queensland of particular cases where it is said that police investigation of offences has been hampered by a lack of powers;
- numerous meetings and seminars involving police officers, lawyers, academics, social workers and researchers; and
- interviews with persons who have been charged with criminal offences.

The most compelling fact revealed is the need for far greater research to be conducted before meaningful recommendations can be made in relation to a number of matters affecting police powers. This Commission is of the view that this can be achieved only by the creation and maintenance of records by police and others involved in the criminal justice system.

CHAPTER TWO: THE NATURE OF POLICE POWERS

This chapter and Chapter Four were adapted from material prepared by Dr David Dixon, an external consultant to the Commission, who has conducted extensive research into police powers in England, and more recently, in New South Wales.

The focus of this chapter is not upon specific powers, but upon 'police powers' as a concept; the relationship between powers and duties of police, the role of powers in policing practices and the legal concept of police powers in response to concerns about crime and disorder.

The limitations of the legalistic conceptions of police powers as merely exemptions from legal liability (for example, an arrest would amount to assault and false imprisonment if not otherwise authorised) is identified. Matters of social and political substance, such as what amounts to 'acceptable' state intervention, find no expression in the legalistic conception.

The manner in which the legislature and the judiciary have indirectly and perhaps unintentionally affected the content of police powers is also considered in this chapter. The legislature has allowed an incremental and ad hoc accretion of police powers which has resulted in confusion and anomaly, while the judiciary has not satisfactorily articulated the principles and policies underlying the exercise of police powers, resulting in contradictory case authority and a selective concern for citizen's rights.

The important point is made in this chapter that it is not possible to neatly delineate between police powers and police practices which have developed in jurisdictions based on emergent or common law. What a power means is usually defined, at least in part, by how it is used and how it is permitted in practice to be used.

Judicial decisions may stamp practice with authority or illegitimacy. Likewise, judicial inaction may effectively increase police powers by failing to impose sanctions in respect of unauthorised conduct (such as excluding evidence obtained illegally). Judges and others within the criminal justice system also condone legal fictions about police practices which allow them to become substantially, if not formally legalised, (e.g. the effect of 'consent' of a suspect to police activity). Even in the absence of judicial review, practice, over time, claims its own authority.

The chapter concludes with a discussion of the purpose of police powers; again a purely legalistic answer is too simplistic. Police powers can be regarded as tools of social discipline and control which, if used excessively, can be dysfunctional or counter-productive for such purpose. Providing new police powers by legal change need not necessarily mean extending powers; providing formal legal powers may authorise less than what previously was common practice, and accordingly reduce the potential for dysfunctionality.

CHAPTER THREE: CONCEPTS AND DEFINITIONS

This chapter gives an explanation of frequently occurring concepts and definitions which are used in the language and affect the content of police powers. These have largely a legal content, and create distinctions which are easily (and understandably) lost on the layreader. In particular, the concepts and definitions listed below are discussed in this chapter.

- 'Suspicion' and 'Belief'
- 'Reasonable'
- 'Consent'
- Codes of Practice

- 'Reasonable Force'
- Classification of Offences in Queensland
- Remedies for Police Misconduct

In relation to consent, the problem is identified of police seeking the consent of a suspect to certain police activity, where the police have a coercive power to engage in that activity. The question is raised as to whether the police continue to use consent as an alternative to the power; and it is concluded that if policing by consent is to be endorsed, it must be on the basis that the consent of the suspect be real and informed, in order for it to be considered as consent.

In relation to Codes of Practice, the Commission considers it appropriate for procedures which directly affect the public to be included in Codes of Practice as also recommended in a number of other jurisdictions. These Codes of Practice should be public documents having the force of law. At present, much police behaviour is regulated by the Police Commissioner's General Instructions to police, which may be changed unilaterally by the Commissioner and which are not widely available.

CHAPTER FOUR: THE EFFECTIVENESS OF POLICE AND POLICE POWERS

This chapter explores the relationship between the powers available to police and police effectiveness and questions the often made assumption that an increase in police power will mean a corresponding decrease in crime rates.

A number of factors militate against making such an assumption. It is not possible to rely upon police records as an accurate measure of actual crime rates; they are at best an indication of police activity which will not necessarily reflect the crime rate. In any event, most criminal activity is unaffected by police, either because it is not reported or is not detected. Further, experiments such as the Kansas City Preventive Patrol Experiment indicate that the style of policing has no significantly differential effect on crime or fear of crime or on attitudes towards police.

Given the lack of empirical evidence to indicate the relationship between police powers and levels of crime and the fact that an increase in police powers often includes as a corollary the reduction of rights of citizens, calls for increased police powers need to be analysed specifically. The problem which such powers are intended to redress should be carefully identified and consideration given to how the power would help to solve it, what alternatives are available, and the costs of increasing powers. It may be that the costs outweigh the benefits.

CHAPTER FIVE: HOW OTHER JURISDICTIONS HAVE REVIEWED POLICE POWERS

Since the 1970s, there has been an increasing concern with the reform of criminal procedure in common law countries. The Commission has drawn from the extensive reviews conducted elsewhere in Australia, England, Wales and Canada on police powers.

While it is recognised that any scheme which may operate in another jurisdiction cannot be simply transposed to Queensland, there are lessons to be learned from the extensive research conducted and the varied practices introduced in other jurisdictions.

The Commonwealth of Australia has commissioned reviews of matters related to criminal procedure, and police powers in particular. Reference is made to the 1975 Australian Law Reform Commission's (hereinafter referred to as the 'ALRC') report titled *Criminal Investigation*; and the review undertaken in 1987 by the Review Committee of Commonwealth Criminal Law (hereinafter referred to as the 'Gibbs Committee'), which published a series of discussion papers and interim reports before delivering its final report. A number of recommendations made by the ALRC were taken up by the Gibbs Committee and the draft legislation appearing in the earlier report by the ALRC formed the basis of the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991*.

Most of the Australian States and Territories have undertaken reviews of a similar nature, including Victoria (in particular, the Consultative Committee on Police Powers of Investigation), New South Wales (the New South Wales Law Reform Commission, pursuant to a reference in 1982), Tasmania (the Law Reform Commission of Tasmania in 1988), South Australia (the Criminal Law and Penal Methods Reform Committee in 1971), Western Australia (the Western Australian Law Reform Commission over a period of time up to 1992) and the Northern Territory (the Police Power Review Committee, which published its reports in 1990).

A comprehensive review of the criminal justice system in England and Wales was conducted from 1978 to 1981 by the Royal Commission on Criminal Procedure (hereinafter referred to as the 'Philips Commission'), which reviewed the criminal process from the start of a police investigation to the trial of the accused. It was on the basis of the recommendations of the Philips Commission that the *Police and Criminal Evidence Act 1984* was ultimately enacted.

The Law Reform Commission of Canada (hereinafter referred to as the 'LRCC') has undertaken a progressive review of a range of criminal justice issues over the past 20 years. The recommendations made in the series of reports formed the basis of a draft consolidated code on criminal procedure prepared by the LRCC and published in 1991.

No review conducted in Queensland has covered the issue of police powers in as much depth as many of these reviews. The Commission draws on the material made available by the research of other jurisdictions in order to present a comprehensive background to the options for reform in Queensland.

CHAPTER SIX: CONSOLIDATION OF POLICE POWERS

There are at present more than 90 separate enactments of the Queensland Parliament which confer powers upon police, each having been drafted to confer powers upon police independently of other enactments. Such an ad hoc approach has resulted in a lack of uniformity and the creation of anomalies across the various Acts. Further, it has led to the undesirable situation where it is not possible for either the police or the public to know the extent of police powers and how and when they may be exercised. This chapter proposes a general scheme of consolidation of police powers for public discussion.

Although the benefits of consolidation are clear (including the facilitation of police training and execution of police duties) there are a number of reservations concerning consolidation which must be considered. Primary among these concerns is that an inappropriate scheme of consolidation may permit unnecessary invasions of civil liberties, for example, by conferring the same invasive powers in respect of both serious and minor offences.

The problems of formulating an appropriate scheme of consolidation are highlighted by the fact that police are conferred with powers not only in a direct manner (under 'first level' legislation), but also in an indirect manner (under 'second level' legislation). The difference lies in the capacity in which the officer exercises the power; in the case of second level legislation, the police officer is acting in some other public capacity. A number of the government departments which administer such second level legislation were concerned that a scheme of consolidation which affects powers of police would also detrimentally affect the powers of departmental officers who also act in these other public capacities.

Powers may be conferred on police officers indirectly in a number of circumstances; where police officers are called to aid other public officers, where they are empowered to exercise the powers of the public officers, where police officers are appointed as public officers by virtue of their office, and where police officers are expressly appointed to some other public office.

The Fitzgerald Inquiry suggested a scheme in which regulatory (as opposed to prohibitive) legislation is administered and enforced by government bodies and departments other than the Queensland Police Service. Such legislation roughly correlates with 'second level' legislation. Accordingly, the Commission proposes that the powers of police who are called to aid public officers should be limited to the protection of life, health and safety of the public officers and members of the public, and the protection of their property. Police powers in these circumstances should not extend to the exercise of the public officer's powers.

There is insufficient data available to make recommendations concerning the other circumstances in which powers are conferred upon police indirectly, but the Commission is of the view that a further review of these powers and the powers of public officers is appropriate.

An ill-considered scheme of consolidation might lead on one hand to the police having insufficient powers to enable them to fulfil their role according to the expectations of the public, or on the other hand, to arming the police with powers which are not justifiable in the circumstances. However, a scheme which successfully takes account of these reservations may be possible.

The Commission suggests that a consolidation of all police powers into one Act is neither desirable nor feasible. Rather, the Commission proposes for discussion a scheme which would be a compromise between a complete consolidation of all police powers into one piece of legislation and the ad hoc approach which has existed to date.

Such a scheme would allow a number of existing provisions to be repealed, reducing the total number of police powers provisions in the various Acts, would provide a central reference point from which the full extent of police powers may be ascertained and would provide a procedural code regulating the exercise of police powers, regardless of the source of the power.

It is suggested that a central police powers Act and supporting legislative framework might operate in the following way:

- it would ultimately be expressed to apply to all circumstances in which police purport to exercise powers, whether in a primary or secondary capacity;
- while it is not possible to bind future parliaments, an attempt should be made to give a police powers Act paramountcy over existing and future legislation when interpreting other Acts;
- the police powers Act would have a series of schedules, listing the Acts of the Queensland Parliament which confer powers on police and which have not been repealed by the enactment of the consolidated legislation;

- the police powers Act would provide a procedural code regulating the manner in which such powers are exercised whatever the source of that power, although it may not regulate the circumstances in which such powers arise.

Including schedules of Acts containing police powers in a police powers Act will require an amendment to these schedules each time parliament passes legislation conferring further powers upon police. This would specifically highlight the police powers issue for both parliamentary and public debate.

Such a scheme would not affect the powers exercisable by other public officers, but would apply to all powers exercisable by police, whether in a primary or secondary capacity.

Although not achieving the objective of completely centralising the law on police powers, a scheme of this nature can be tailored such that concerns for civil liberties and police effectiveness need not be sacrificed in the name of uniformity.

SUMMARY OF RECOMMENDATIONS: VOLUME II

CHAPTER SEVEN: STOP AND SEARCH

7.1 Recommendation - Search of Persons for Weapons and Drugs 317

The Commission is of the view that the problem of drug detection and the ease of concealing dangerous drugs on the person justifies the continuation of the power to search the person for anything that may afford evidence as to the commission of an offence under the *Drugs Misuse Act 1986* in circumstances where the police officer has reasonable grounds for suspecting the person of such possession. Similarly the danger posed by unlawful possession of firearms provides justification for the retention of the power to search provided for in the *Weapons Act 1990*. The exercise of these powers is to be subject to the information-giving and record-keeping requirements of Recommendation 11.6.

7.2 Recommendation - Stolen Goods 318

The Commission is of the view that the anomaly whereby only police officers of the rank of sergeant or above may exercise a power to search any person reasonably suspected of being in possession of anything stolen or reasonably suspected of being stolen or property unlawfully obtained be removed. It is recommended that the power under the *Vagrants, Gaming and Other Offences Act 1931* be made available to all police officers, subject to the information-giving and record-keeping requirements of Recommendation 11.6 (infra).

7.3 Recommendation - Specific Powers to Search Persons 321

The Commission recommends that the specific powers to search the person contained in:

- section 106 *Casino Control Act 1982*
- section 235 *Racing and Betting Act 1980*
- section 131 *Health Act 1937*
- section 31 *Vagrants, Gaming and Other Offences Act 1931*

be the subject of further review and that more information be provided in order to justify their retention. It is recommended that police officers and departmental officers record the nature and frequency of the use of these

powers; that the outcome of the exercise of these powers is recorded; and that submissions be made as to any circumstances that exist in support of retaining powers. This action is required in order to enable a more informed decision to be made.

7.4 Recommendation - Tainted Property

322

The Commission recommends that the power contained in section 32(1)(a) of the *Crimes (Confiscation of Profits Act) 1989* be retained.

7.5 Recommendation - Emergency Powers to Search Persons

323

The Commission recommends that the power be available to a police officer who has reasonable grounds to suspect that a search of a person is necessary where the delay occasioned by the need to obtain a warrant is likely to result in the concealment, loss or destruction of material evidence of the commission of an indictable offence punishable by a maximum of seven years imprisonment or more, subject to the information-giving and record-keeping requirements of Recommendation 11.6 (infra).

7.6 Recommendation - Power to Stop and Detain

323

The Commission recommends that there be explicit and consistent legislative power to stop and detain a suspect but only for so long as is reasonably necessary to provide information to the suspect as required in Recommendation 11.6 and to conduct a lawful search. Where the search must be conducted by a police officer of the same sex (see Recommendation 7.7 and 7.8 infra) the police officer who stopped the suspect must immediately take steps to arrange for an officer of the same sex to attend at the scene as soon as is reasonably practicable. Where no officer of the same sex is available within a time that is reasonable in all the circumstances the police officer must arrange for another suitable person of the same sex to attend and assist the police officer.

The Commission recommends the following guidelines and controls apply to pre-arrest searches of the person:

- pre-arrest searches should be conducted with a minimum of intrusion to individual privacy (governed by what is being searched for and why);
- searches conducted in the street and other public places should not require the removal of more than outer clothing such as coats, jackets, gloves, headgear or footwear;
- where, upon removal of outer clothing, the police officer is still unable to determine whether or not the person is in possession of the suspected property, a 'frisk' search of the suspect may be conducted by an officer of the same sex as the suspect;
- the search should be conducted where detained or elsewhere if this is reasonably requested by the suspect to avoid embarrassment;
- searches of personal property such as bags etc. should be allowed but only where the relevant suspicion extends to the property; and
- the searches be subject to the information-giving and record-keeping requirements of Recommendation 11.6.

7.8 Recommendation - Strip Searches

The Commission recommends that the following guidelines and controls apply to strip searches of persons prior to arrest:

- strip searches are only to be conducted as a last resort;
- the searches are to be conducted by a police officer of the same sex as the suspect and no member of the opposite sex is to be present at or within view of the place where the search is conducted during the search except at the express request of the suspect. Where a police officer of the same sex is not available to conduct the strip search, arrangements should be made for another suitable person of the same sex to assist the police and conduct the search;
- the searches are to be conducted in appropriately private surroundings;

- due regard is to be paid to the intrusive nature of these type of searches and consideration is to be given as to whether the particular circumstances of the case warrant such an intrusion; and
- the conduct of a strip search is subject to the information-giving and record-keeping requirements of Recommendation 11.6.

7.9 Recommendation - Use of Reasonable Force 327

The Commission recommends that legislation be drafted stating that reasonable force is only to be used as a last resort where the suspect has made it clear that he or she will not co-operate with the police officer conducting the search.

7.10 Recommendation - Body Cavity Searches Conducted Prior to Arrest 327

The Commission recommends that section 17 *Drugs Misuse Act 1986* be amended to require that a person consent in writing to the internal or body cavity search and, if the person does not so consent, the police should seek the approval of a stipendiary magistrate in a manner similar to that contained in section 259 *Criminal Code*. The Commission also believes that the provisions allowing the person to have present where reasonable two persons of his or her choice (such as a doctor) while the search is being conducted should be included in section 17 *Drugs Misuse Act 1986*.

7.11 Recommendation - Searches of Vehicles for Drugs, Weapons and Stolen Goods 336

The Commission recommends that the power to search vehicles without a warrant be available where a police officer has reasonable grounds to suspect that:

- a vehicle or anything in it may afford evidence of the commission of an offence under the *Drugs Misuse Act 1986*;
- there is in a vehicle or in anything in it a weapon liable to seizure under the *Weapons Act 1990*; or
- there is in a vehicle or in anything in the vehicle anything stolen or reasonably suspected of being stolen or otherwise unlawfully obtained.

It also recommends that section 24 of the *Vagrants, Gaming and Other Offences Act 1931* be amended to remove the restriction of the power to officers of the rank of sergeant or above (see Recommendation 7.2 supra).

The exercise of these powers is subject to the information-giving and record-keeping requirements of Recommendation 11.6 (infra).

7.12 Recommendation - Other Specific Powers to Search Vehicles 336

The Commission recommends that the review of specific police powers to search a person (see Recommendation 7.3) should also encompass the specific powers to stop vehicles and search without a warrant for betting instruments (s. 235 *Racing and Betting Act 1980*) and animals (s. 679B(1)(b) *Criminal Code*). More information is required to justify the retention of these specific powers and it is recommended that police officers and departmental staff keep records as to the nature and frequency of the use of the powers so as to assess the need for them. It is also recommended that the public officers' powers contained in Table 3 be included in this record-keeping exercise and further review.

7.13 Recommendation - Emergency Power to Search Vehicles 337

The Commission recommends that the power be available to a police officer who has reasonable grounds to suspect that a search of a vehicle without a warrant is necessary where the delay occasioned by the need to obtain a warrant, is likely to result in the concealment, loss or destruction of material evidence of the commission of an indictable offence punishable by a maximum of seven years imprisonment or more, subject to the information-giving and record-keeping requirements of Recommendation 11.6 (infra).

7.14 Recommendation - Searches of Unattended Vehicles 338

The Commission recommends that police officers be authorised to search without a warrant an unattended vehicle, whether or not it involves breaking into the vehicle, only where a police officer has reasonable grounds to suspect that an explosive substance or the like is contained therein or where the power in section 25 of the *State Counter-Disaster Organization Act 1975* applies.

The Commission recommends a power to conduct a roadblock with the following features:

- that it be authorised in writing by a police officer of the rank of inspector or above except in cases of urgency when it can be authorised by an officer of any rank provided it is reported to an inspector or higher as soon as practicable;
- that it be permitted when there are reasonable grounds to suspect that there is in a particular vehicle or in any vehicle:
 - * a person whose arrest is sought in connection with an offence carrying a maximum term of imprisonment of 14 years or more;
 - * a person who has escaped from lawful custody;
 - * the victim of an abduction;
- that a limited power be granted to the Commissioner of Police or Deputy Commissioner (Operations) to authorise the establishment of a roadblock in a specified area in which there has been a heavy incidence of criminal activity which by its seriousness and/or frequency warrants such an exercise - e.g. where there has been a spate of car thefts from a suburban shopping centre on Thursday nights, police could be authorised to set up a roadblock at the exit of the carpark on a particular Thursday night to spotcheck exiting motor vehicles.
- that the police officer who stops a vehicle at a roadblock be required to give the reason for the roadblock to the person in charge of the vehicle prior to taking any further action to search the vehicle unless there are reasonable grounds to suspect that giving the reason will prejudice the operation.

1 A roadblock may be defined as the detention and if necessary, search of vehicles on a particular road in order to establish whether an offender, victim or evidence of an offence is being conveyed in the vehicle.

CHAPTER EIGHT: ISSUE OF SEARCH WARRANTS

8.1 Recommendation - Monitoring the Issue of Search Warrants 357

The Commission recommends that a process be put in place for senior police to monitor the use of services of justices of the peace who are qualified to issue warrants so as to ensure that police do not rely inappropriately upon a particular justice of the peace.

8.2 Recommendation - Who May Issue a Search Warrant 358

In view of the legislative changes afforded by the *Justices of the Peace and Commissioners for Declarations Act 1991* the Commission recommends that the power to issue a search warrant be available to stipendiary magistrates, justices of the peace (Magistrates Courts) and justices of the peace (qualified) as those terms are defined in section 1.04 of the Act, subject to Recommendation 8.12.

8.3 Recommendation - Requirement of 'Suspicion' Rather than 'Belief' 361

The Commission recommends that the issuing authority must:

- have reasonable grounds to 'suspect' that the objects of the search are to be found on the premises for which the warrant is sought; and
- have reasonable grounds to 'suspect' that the objects of the search are connected with an offence which has been, is being, or may be committed.

8.4 Recommendation - Issuing Authority to be Notified of Previous Applications for Search Warrants 364

The Commission recommends that in all applications the issuing authority be informed of any other applications for warrants, whether successful or unsuccessful and whether concerning the same circumstances or not, made in the previous twelve months in respect of the same premises.² This information should be available from the computerised register

² The Commission recognises that an exception to this rule may have to be made in respect of premises such as those of major financial institutions upon whose premises numerous search warrants may be executed.

recommended in Recommendation 8.6. In this way, if the premises have been subject to a series of searches over a period, the issuing authority can seek from the applicant further information concerning the previous applications in order to make a decision on the application in the context of the history of searches of the premises. In circumstances where it is impracticable to obtain this information the officer should be required to inform the issuing authority of what steps have been taken to try to obtain the information and the reason why the information was not available at the time of making the application. The police officer is to obtain this information when practicable and inform the issuing authority when the warrant is returned.

8.5 Recommendation - Where Initial Application for Warrant is Refused

364

In order to address the potential problem of 'forum-shopping' in applications for search warrants the Commission recommends as follows:

- that as a general rule, where an application for a search warrant has been refused no further application should be made to any magistrate or authorised justice unless further information has been obtained;
- that there be an exception to this where the initial refusal is by an authorised justice (other than a stipendiary magistrate), one further application may be made to a magistrate without the need for additional information to be obtained; and
- that in all cases, the applicant should be required to inform the issuing authority of any previous applications for a warrant concerning the same circumstances which were refused.

8.6 Recommendation - Computer Register of Search Warrant Applications

365

In order to fulfil the above recommendations the Commission also recommends that a centralised, computerised register be used to record applications for search warrants and their results, and that police officers be required to check the computer for information to provide to the issuing authority upon the application for the warrant. Moreover, wherever practicable a printout of the results of that search should accompany the application for the warrant. Access to this register should be limited (see Recommendation 11.5).

The Commission recommends that an "object of search" should be defined in similar terms to sections 4 and 5 of the *Search Warrants Act 1985* (NSW). Thus the Commission recommends that a member of the police force be authorised to apply for a search warrant where there are reasonable grounds to suspect that there is in or on any premises:

- a thing connected with a particular indictable offence;
- a thing connected with a particular offence under the *Drugs Misuse Act 1986*;
- a thing connected with a particular offence under the *Weapons Act 1990*;
- a thing stolen, or suspected of being stolen or otherwise unlawfully obtained;
- a person unlawfully detained.

A thing is connected with a particular offence if it is:

- a thing with respect to which an offence has been committed;
- a thing that will afford evidence of the commission of the offence;
or
- a thing that was used, or is intended to be used, for the purpose of committing the offence.

A reference to an offence is to include a reference to an offence that there are reasonable grounds to suspect has been or is to be committed.

The Commission recommends that the objects of search must be described with as much particularity as possible but accepts that there will be circumstances where the police will only be able to supply a description of the kind of things that are suspected of being on the premises.

The Commission also recommends that the description appear on the face of the warrant.

8.9 Recommendation - No General Warrants

378

The Commission recommends against the adoption of general warrants authorising entry and search of 'any' premises for the object of search without having to specify the offence to which the suspicion relates.

8.10 Recommendation - Covert Search Warrants

382

The Commission recommends that a warrant to covertly enter and search premises be available in strictly limited circumstances as follows:

- The application must relate to a serious indictable offence.
- The application must be authorised by an officer of the rank of inspector or above.
- The application must be made to a Supreme Court judge.
- The judge must be satisfied that the grounds indicate circumstances of such seriousness as to justify the covert execution of a search warrant.
- The police officer must report to the judge as soon after the execution of the warrant as is reasonably practicable and not later than 72 hours after execution and the report should include a written report of the details of its execution.
- The judge is then to provide a direction to the police officer specifying the details and circumstances of the search of which the occupier is to be informed in writing and the period of time within which the occupier must be provided with such information.
- Details of the search are to be recorded on the Search Register as soon as is practicable but access to those details is to be strictly limited until the occupier has been provided with the information.

8.11 Recommendation - Objects to be brought onto premises within the next 72 hours

384

The Commission recommends that a provision be included to allow police to apply for a warrant where there are reasonable grounds to suspect that the objects of search will be on the premises within the next 72 hour period. If not executed within the 72 hour period a further application is to be made, if necessary, at the end of that period.

8.12 Recommendation - Telewarrants³

393

The Commission recommends that only in urgent circumstances or where the remoteness of the location precludes obtaining a warrant in the ordinary manner, should a warrant be available by radio, facsimile, telephone or other means of remote communication.

The Commission recommends that telewarrants should only be available from stipendiary magistrates and not justices of the peace. The procedure for the application and granting of telewarrants should follow that contained in the *Drugs Misuse Act 1986* section 18.

The Commission recommends that the maximum period of validity for a telewarrant be 48 hours. The more limited the period the more it will discourage use of this facility except in urgent circumstances.

8.13 Recommendation - Period of Validity of Search Warrants

396

The Commission recommends that a warrant be valid for a period of seven days or such other period as specified in the warrant.⁴ The Commission recommends that where a longer period is specified, the issuing authority be required to be satisfied that the nature of the investigation is such as to justify the longer period of validity.

CHAPTER NINE: THE EXECUTION OF SEARCH WARRANTS

9.1 Recommendation - Time of Executing Search Warrant

402

The Commission agrees with the recommendation of the Criminal Code Review Committee that generally no warrant is to be executed between the hours of 10pm and 6am unless specifically authorised by the issuing authority. However consistently with the aim of clarification the Commission recommends that the legislation outline the circumstances in which the issuing authority may authorise execution outside those hours. To this end the Commission recommends the incorporation into legislation

3 In other legislation these are described as 'telewarrants' and 'telewarrant' is defined to include warrants obtained by telephone, facsimile, and radio.

4 Warrants issued by means of telephone etc. are discussed at p. 385

of the same grounds as those set out in section 19 of the New South Wales *Search Warrants Act 1985*, which provide a helpful guide to police and issuing authorities while allowing some flexibility. Those grounds include, but are not limited to circumstances where:

- (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night;
- (b) there is likely to be less risk to the safety of any person if it is executed at night; or
- (c) an occupier is likely to be on the premises only at night to allow entry without the use of force.

With respect to a search for a person unlawfully detained, the Commission recommends that the fact that the warrant is issued to search for a person is sufficient grounds for it to be executed at any time of the day or night.

9.2 Recommendation - Who May Execute a Search Warrant

406

The Commission agrees that the exigencies of criminal investigation require that warrants may be executed by any police officer as defined in section 2.2(2) of the *Police Service Administration Act 1990*. However, the Commission recommends that the name of the officer in charge of the execution be written on the warrant (Recommendation 11.3) and be provided to the occupier (Recommendation 11.2).

9.3 Recommendation - Use of Assistants in Execution of Warrant

406

The Commission recognises that with the increase in sophistication and complexity of crimes there will often be a need for police to take other persons with them when executing a search warrant. However, consistently with the emphasis upon the need for prior judicial authorisation, the Commission recommends that the justice must authorise the attendance of a person acting in good faith and in aid of a police officer. The Commission is of the view that it may be too restrictive to require a particular person to be specified in the warrant but it might be better to allow for an authorisation of a particular class of person such as an accountant. It is recommended that the person or type of person be particularised with as much detail as possible, although the circumstances will dictate the extent to which this

can be done. Where a warrant does not name a particular individual, but names a class of individuals the Commission recommends that the legislation require the police to limit the assistants to those that are believed to be necessary for the successful execution of the warrant.

The Commission recommends that in exceptional circumstances where the presence of a particular person is necessary but was not foreseen at the time of applying for the warrant (e.g. a locksmith to open a safe) a police officer should be authorised to call for that assistance. The use of such assistance is to be included in the report to the issuing authority.

9.4 Recommendation - Demand for Entry and Use of Reasonable Force to Enter Premises

413

The Commission recommends that as a general principle demand is to be made before force is used to effect entry. Where the circumstances require that force be used, the Commission recommends that it be "such force as is reasonably necessary". The Commission recommends that this requirement may be waived in the following circumstances:

- 1) where to make demand before entry is likely to endanger the life or safety of any person;
- 2) where to make demand before entry is likely to result in the loss or destruction of material evidence of an indictable offence; or
- 3) where the warrant authorises a covert entry and search (see Recommendation 8.10).

Where entry is made by force, either with or without demand before entry, the Commission recommends that the police officer is to record the reasons for this on the back of the warrant and that the details subsequently be entered on the Search Register (see Recommendations 11.3 and 11.5).

9.5 Recommendation - Identification to Occupier

414

The Commission believes that wherever practicable the officer in charge should identify himself or herself to the occupier of premises upon which a warrant is to be executed. This should occur at the time when a demand for entry is made, where such a demand is necessary in accordance with Recommendation 9.4. It should not require the request of the occupier who may be in a state of surprise or confusion at the encounter with police.

9.6 Recommendation - Details of the Search Warrant to be Provided to Occupier 418

The Commission recommends that a copy of the search warrant be provided to the occupier upon entry to the premises or where the premises are unoccupied, left in a conspicuous place in the premises subject to Recommendation 8.10 concerning the covert execution of the warrant (see also Recommendation 11.2).

9.7 Recommendation - Chance Discovery of Items Not Covered by the Warrant 425

The Commission recommends that the police be entitled to seize:

- objects other than those named in the warrant which provide evidence of the offence contained in the search warrant; and
- objects which provide evidence of an indictable offence not mentioned in the warrant;

where they discover them in the course of a reasonable search pursuant to the terms of the original warrant.

9.8 Recommendation - Search of Persons Present During Execution of Warrant 429

The Commission recommends that the power be granted to search persons who are present during the execution of a search warrant in circumstances where the police officer has reasonable grounds to suspect that the objects of the search are being carried on or concealed upon the person.

9.9 Recommendation - Entry and Re-entry Pursuant to the Warrant 432

The Commission recommends that legislation specify that the power to enter authorised by the search warrant includes a power to re-enter any part of the premises where the re-entry is so associated in time or circumstance that it may properly be regarded as part of the initial entry and search authorised by the warrant.

CHAPTER TEN: ENTRY AND SEARCH WITHOUT A WARRANT

10.1 Recommendation - Entry and Search Without a Warrant to Effect an Arrest or to Prevent Serious Injury or Damage 446

The Commission recommends that legislative effect be given to the common law power to enter and search without a warrant for the purpose of arrest where an officer has reasonable grounds to suspect that the person is on the premises. Except in exigent circumstances, proper announcement is to be made before entry.

The Commission recommends that the power to enter and search without a warrant in order to prevent injury to a person or prevent serious damage to property be placed on a statutory basis.

With respect to the common law power to enter without a warrant to deal with or prevent a breach of the peace, the Commission is not satisfied that there exists a need for a more general power in the criminal law in view of the above Recommendations and the specific statutory powers contained in the *Domestic Violence (Family Protection) Act 1989* and the *Weapons Act 1990*.

10.2 Recommendation - Entry and Search for Drugs Without Warrant 447

The Commission recommends that the power conferred by section 18(12) *Drugs Misuse Act 1986* to enter premises without a warrant in special or urgent circumstances to search for evidence of the commission of a drug offence be retained, including the requirement that a record of such search be entered in the Search Register (see Recommendation 11.5).

10.3 Recommendation - Entry and Search for Weapons Without Warrant 448

The Commission recommends that the power conferred by section 4.5 of the *Weapons Act 1990*, providing for search for weapons where death or injury is threatened, be retained.

10.4 Recommendation - Entry and Search for Tainted Property Without Warrant 448

The Commission recommends that the power conferred by section 32 of the *Crimes (Confiscation of Profits) Act 1989* to enter premises without a warrant and search for tainted property in circumstances of seriousness and urgency be retained.

10.5 Recommendation - Entry to Premises Without Warrant to Deal With Domestic Violence 449

The Commission recommends that the power conferred by section 32 of the *Domestic Violence (Family Protection) Act 1989* to enter premises without warrant to deal with domestic violence be retained.

10.6 Recommendation - Entry Without Warrant Where a State of Disaster has been Declared 449

The Commission recommends that the power conferred by section 25 of the *State Counter-Disaster Organization Act 1975* to authorise entry without warrant to deal with a state of disaster be retained.

10.7 Recommendation - Entry Without Warrant to Preserve Public Safety 449

The Commission recommends that the power conferred by section 8 of the *Public Safety Preservation Act 1986* to enter without warrant in an emergency in order to preserve public safety be retained.

10.8 Recommendation - Entry to Casino Without Warrant 450

The Commission recommends that the power conferred by section 113 of the *Casino Control Act 1982* authorising police officers to enter public areas of the Casino and, with the authority of a Casino Control Inspector, to enter areas to which the public are denied access be retained.

10.9 Recommendation - Entry to Second-hand Dealers etc. Using Force to Require Warrant 451

The Commission recommends that the power to enter the premises of second-hand dealers and pawnbrokers by force if necessary should be made the subject of a search warrant.

10.10 Recommendation - Entry Without Warrant to Prevent Excessive Noise 451

The Commission recommends that the power conferred by section 33 of the *Noise Abatement Act 1978* to enter to prevent continuation of "excessive noise" be retained.

10.11 Recommendation - Entry to Make Enquiries etc. under the Traffic Act to Require a Warrant 452

The Commission recommends that the power conferred by section 43 of the *Traffic Act 1949* to enter premises to make enquiries etc. which a police officer is authorised to make under the *Traffic Act 1949* be reviewed to determine whether it should be the subject of a search warrant.

10.12 Recommendation - Entry to Make Enquiries into Art Unions, Bingo etc. to Require Warrant 453

The Commission recommends that the power conferred by section 62 of the *Art Unions and Amusements Act 1986*⁵ to enter premises to make enquiries and seize documents etc. concerning art unions, bingo etc. be made the subject of a monitoring warrant.

10.13 Recommendation - Entry of Dealers' Premises During Business Hours Without Warrant 456

The Commission recommends that the powers contained in:

- *Pawnbrokers Act 1984*, section 50(1)(b) and (2);
- *Second-hand Dealers and Collectors Act 1984*, section 57(1)(b) and (2);
- *Auctioneers and Agents Act 1971*, section 56; and
- *Weapons Act 1990*, section 4.6.

be preserved but be confined to the entry to those premises during business hours without a warrant.

⁵ Please note that since the commencement of this review, this has been repealed and replaced by the *Art Unions and Public Amusements Act 1992*, which restricts the exercise of powers to inspectors who must be officers of the Department.

10.14 Recommendation - Emergency Power to Enter and Search Without Warrant

456

The Commission recommends that police be authorised to enter and search premises without a warrant where a police officer has reasonable grounds to suspect that material evidence of an offence carrying a maximum penalty of seven years imprisonment or more is in a place and it will be concealed or destroyed unless that place is entered and searched immediately. This is to be subject to the information-giving and record-keeping requirements of Recommendation 11.6 *infra*.

CHAPTER ELEVEN: ACCOUNTABILITY FOR SEARCHES: INFORMATION-GIVING AND RECORD-KEEPING

11.1 Recommendation - Consultation with Queensland Police Service

459

The Commission recommends that consultation on these proposals occur with the Queensland Police Service to ensure that the proposed changes to police operational procedures and policies are integrated with the Commission's recommendations.

11.2 Recommendation - Copy of the Search Warrant

461

The Commission recommends that all search warrants be issued in duplicate and that a copy of the warrant is to be provided to the occupier upon entry to the premises or where the premises are unoccupied, left in a conspicuous place in the premises. This is to be done immediately after the officer identifies himself or herself and prior to reading out the terms of the warrant. The occupier's copy should have on its back a summary of the rights of the occupier and the authority conferred by the warrant. This is subject to Recommendation 8.10 concerning covert execution of search warrants.

11.3 Recommendation - Recording the Result of the Search

464

The Commission recommends that the result of the execution of the search warrant be recorded on the back of the police officer's copy of the warrant. It should include:

- the reason for any failure to demand entry and/or the use of force to effect entry;

- any injury or damage which occurred or allegedly occurred at the time of executing the warrant;
- the date, time and place of the search; and
- the name, rank and station of the officer in charge of the search.

The Commission recommends that where property is seized a list of property seized is to be given to the occupier prior to leaving the premises or, where the premises are unoccupied, left in a conspicuous place, subject to Recommendation 8.10 concerning covert execution of search warrants. Where the volume of material or other circumstances surrounding the seizure make it impracticable to complete the list of property taken at the scene this is to be noted and a list of property is to be provided to the occupier as soon as is reasonably practicable thereafter.

11.4 Recommendation - Report to Issuing Authority

465

The Commission recommends that the police officer in charge of the execution of a warrant should report the outcome to the issuing authority within 10 days of the execution or expiry of the search warrant (within 72 hours in the case of a warrant for a covert search, see Recommendation 8.10). Where property has been seized the issuing authority is to make an order as to where the property is to be held.

11.5 Recommendation - Computerised Search Register

467

The Commission recommends that a central computerised register be created into which details of all applications for search warrants and all searches including the result of the search must be entered as soon as is reasonably practicable after completion of the search. Any order made by the issuing authority with respect to the custody of seized property should also be entered onto the register. The computerised system should be designed so that all searches are logged and the log cannot be altered. Generally only police should have access to the database with access to various sections of the system regulated through individual identity numbers. Access to details of covert searches is subject to Recommendation 8.10.

The Commission also recommends that provision be made to enable the person searched or his or her legal representative to obtain a printout of the information pertaining to the search.

The Commission also recommends that a formal request should be made to other agencies or bodies who are likely to execute warrants in Queensland to participate in this system e.g. the National Crime Authority and the Australian Federal Police.

11.6 Recommendation - Record-keeping Requirements for Searches Without Warrant

469

The Commission recommends that where a person, vehicle or premises is to be searched without a warrant, the officer is to inform the suspect of his or her intention to conduct a search of the person, vehicle or premises and inform him or her of the reason for the detention and search. The officer should identify himself or herself and if not in uniform, provide proof that he or she is a police officer. On completion of the search the officer should also inform the person that details of the search will be entered on the Search Register at the officer's station and the person or his or her legal representative will be entitled to access to that information.

The Commission recommends that where property is seized the police officer should provide the person with a list of the property. Where the volume of material or the circumstances surrounding the seizure make it impracticable to complete the list of property taken at the scene, this is to be noted and a list is to be provided as soon as is reasonably practicable.

The Commission recommends that details of all searches conducted without warrant be recorded in the police officer's official notebook or in some other appropriate manner as soon as is practicable.

The Commission further recommends that details, including the reason for the search and the list of property seized (if any) be entered onto the computerised Search Register as soon as is reasonably practicable.

The Commission recommends that further consideration be given to the feasibility of providing police officers with small printed cards containing:

- the officer's name, rank and station;
- a note that the details of the search and the property seized (if applicable) will be entered on the Search Register at the police station named;

and requiring officers to hand one to each person who is searched or whose premises or vehicle is searched without warrant, where no list of seized property is provided at the scene.

11.7 Recommendation - Special Provisions re Entry of Dealers' Premises 471

The Commission recommends that the power to enter dealers' premises contained in section 57(1)(b) and (2) of the *Second-hand Dealers and Collectors Act 1984*, section 50(1)(b) and (2) of the *Pawnbrokers Act 1984*, section 56 of the *Auctioneers and Agents Act 1971* and section 4.6 of the *Weapons Act 1990* as amended in accordance with Recommendation 10.13 be subject to the following record-keeping requirements:

- Where property is seized, the police officer should be required to complete a list of property seized. Where the volume of material or other circumstances surrounding the seizure make it impracticable to complete the list of property taken at the scene this is to be noted and a list of property is to be provided as soon as is reasonably practicable. The information should be entered onto the computerised Search Register by the police officer as soon after the seizure as is reasonably practicable.
- Where no property is seized the police officer is to enter into his or her official notebook or in some other appropriate manner a record of such search containing date and time of such entry and name and address of the premises entered.

11.8 Recommendation - Procedures for Consent Searches 475

The Commission recommends that where the sole authority for a search is the suspect's consent, the person be informed of his or her right not to allow the search. Where the suspect consents to the search, the police officer is to follow the procedure governing searches without warrant outlined in Recommendation 11.6. The consent of the suspect is to be recorded in the Search Register as the authority for the search where such consent is the sole authority for the search.

CHAPTER TWELVE: CONSOLIDATION OF SEARCH AND SEIZURE

12.1 Recommendation - Proposed Legislation for Search Warrants 480

The Commission recommends that legislation modelled on the *Search Warrants Act 1985* (NSW) be introduced. It recommends that the following provisions be included in the Act:

1. Persons authorised to execute search warrants and conduct searches
2. Persons authorised to issue search warrants

3. Search warrants in respect of indictable offences, drug offences, weapons offences, stolen goods, detained persons and other specified offences
4. Grounds for the warrant
5. Authority to be advised of previous applications
6. Where initial application for warrant is refused
7. Particularity of objects of search
8. Telewarrants etc.
9. Covert Execution of Search Warrants
10. Period of validity of warrant
11. What may be seized during the search
12. Search of persons on premises
13. Copy of the search warrant to be given to the occupier
14. Demand for entry and use of force to enter premises
15. Use of assistants to execute warrant
16. Time of execution of warrant
17. Re-entry to premises
18. Recording the result of the search
19. Report to Issuing Authority
20. Search Register

12.2 Recommendation - Proposed Legislation for Entry and Search of Premises Without Warrant

488

The Commission recommends that, as well as the 20 points previously recommended for inclusion in the draft Act, the following provisions be included in a Part dealing with searches without warrant:

21. Circumstances in which entry and search without warrant is authorised
23. Result of Search
24. Search Register
25. Special provisions re entry of dealers' premises during business hours without a warrant
26. Application of other provisions

12.3 Recommendation - Proposed Legislation for Monitoring Warrants

493

The Commission recommends that there should be included in the Act a provision with the following features:

27. Monitoring warrants

12.4 Recommendation - Proposed Legislation for Stop and Search of Persons

495

It is recommended that the proposed Act include the following provisions:

28. Circumstances in which police may stop and search a person
29. Power to stop and detain
30. Search of the person's property
31. The extent of the search
32. Strip searches
33. Body Cavity Searches
34. Use of reasonable force

35. Information to be given concerning the search

36. Result of Search

37. Search Register

12.5 Recommendation - Proposed Legislation for Stop and Search of Vehicles

500

The Commission recommends that there be a Part included in the proposed new Act that will partially consolidate the law relating to stop and search of vehicles. It should include the following provisions:

38. Circumstances in which a police officer may stop and search vehicles:

39. Information-giving and record-keeping requirements in stop and search of vehicles:

40. Search without a warrant of an unattended vehicle

12.6 Recommendation - Proposed Legislation for Roadblocks⁶

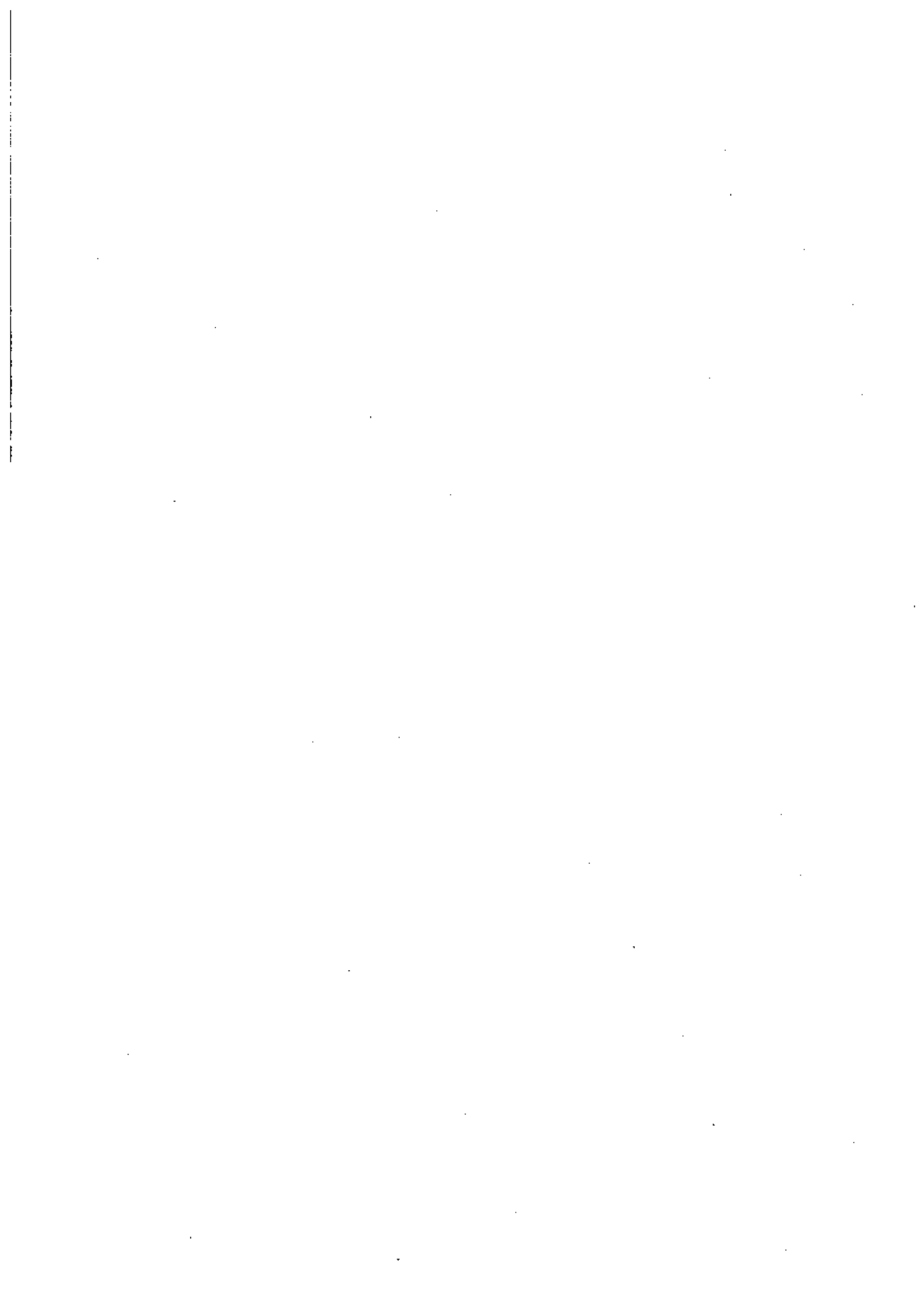
501

A provision should be inserted authorising police to conduct roadblocks. It should be in the following terms.

41. The establishment of a roadblock

42. Information to be provided to all drivers stopped

⁶ A roadblock may be defined as a detention and if necessary, search of vehicles on a particular road in order to establish whether an offender, victim or evidence of an offence is being conveyed in a vehicle.



CHAPTER SEVEN

STOP AND SEARCH

OVERVIEW

Over the years calls have been made for a reform of the law relating to the stop and search of persons and vehicles, with police arguing that additional powers would assist them in their investigations and the enforcement of the law. Some members of the public have supported the police in this view. On the other hand, certain sections of the public believe that police already have sufficient powers and indeed some have argued that they have too many powers, and that any additional grant of power could result in unwarranted intrusion upon the freedom of an individual. Others have advocated a need for further safeguards upon the exercise of existing powers. Is there a need for change to some or all of the aspects of the law relating to the stop, search and detention of persons and vehicles? Certain significant issues must be addressed in considering any need for change, including the following:

- what is the current situation?
- should police have such powers?
- what should be the extent of those powers, for example should it allow a 'frisk' search or a 'strip' search?
- assuming that police should have such powers, when should those powers be able to be exercised viz: under what circumstances should police be able to stop/search people and/or vehicles?
- should there be safeguards upon the exercise of those powers, and if so, what should those safeguards be?

As mentioned earlier, there is no authority at common law which empowers police officers to detain and search a person or his or her vehicle 'prior' to that person's arrest. In Queensland, however, nine statutes do provide powers in certain circumstances which enable police to stop, detain and search persons or their vehicles prior to arrest and without a warrant. Tables 1 and 2 outline circumstances in which police may exercise these powers. Despite the fact that a number of submissions to the Criminal Justice Commission (hereinafter referred to as the 'Commission') made no distinction between the search of persons on one hand and the search of vehicles and vessels on the other, there were a sufficient number of submissions which distinguished between the two to justify their treatment under separate headings.

THE POWER TO STOP, DETAIN AND SEARCH PERSONS WITHOUT WARRANT PRIOR TO ARREST

The Present Position in Queensland

Under current legislation police officers are authorised to stop, detain and search persons without a warrant in a variety of circumstances. Examples of those circumstances include:

- where a police officer reasonably suspects a person to have prohibited drugs in his or her possession (s. 15 *Drugs Misuse Act 1986*);
- where a police officer suspects on reasonable grounds that a person has possession of a weapon liable to seizure (s. 4.3 *Weapons Act 1990*);
- where a police officer of the rank of sergeant or above reasonably suspects a person to have possession of stolen goods (s. 24(b) *Vagrants, Gaming and Other Offences Act 1931*); and
- where a police officer suspects on reasonable grounds that a person has contravened section 103 or section 104 of the *Casino Control Act 1982* (s. 106 *Casino Control Act 1982*).

(See Table 1 for an exhaustive list of the provisions for search of persons).

The extent of the search permitted varies between provisions, with the spectrum of invasiveness ranging from a 'frisk' search where no clothing is removed, to a 'strip' search and examination of body cavities. Section 24 of the *Vagrants, Gaming and Other Offences Act 1931* and section 4.3 of the *Weapons Act 1990* simply provide that an officer may 'search' a person without warrant. Section 15 of the *Drugs Misuse Act 1986*, in addition to permitting a search, permits the officer to take the person to another place for the purpose of the search, where the officer reasonably believes it is not practicable to conduct the search at the place where the person was detained.

The most extensive and arguably most controversial power is contained in the *Drugs Misuse Act 1986*. Section 17 of that Act provides for a police officer of or above the rank of inspector to require a person whom he or she reasonably suspects of having secreted within his or her body a dangerous drug, to submit to an internal examination by a medical practitioner. The provision does not require the consent of the suspect or the authority of a magistrate. If the suspect refuses, the examination may be conducted using such force as is reasonably necessary. No warrant is necessary before the conduct of such an examination and the person does not have to be under arrest.