

**CRIMINAL JUSTICE COMMISSION  
SUBMISSION IN RESPONSE TO  
THE REVIEW OF POLICE POWERS  
DISCUSSION PAPER**

*August 1997*

**Criminal Justice Commission**



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## INTRODUCTION

The Criminal Justice Commission (CJC) welcomes the opportunity to consult with the Government on the *Review of Police Powers Discussion Paper*.

The ultimate decision on such policy matters lies with the Government of the day. However, for several reasons the CJC considers it appropriate to express its views in relation to the matters raised in the Discussion Paper.

First, the CJC has statutory responsibilities under the *Criminal Justice Act 1989* to monitor and report on such issues. Relevant provisions of the Act include:

21.(1) The Commission shall -

- (a) continually monitor, review, co-ordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice

...

23. The responsibilities of the Commission include -

...

- (b) monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally;

...

- (e) researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State ...

...

- (j) reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime (in particular, organised crime) and the efficiency of law enforcement by the police service.

Second, the CJC has conducted extensive research in the area of police powers. The Commission of Inquiry Pursuant to Orders in Council (the 'Fitzgerald Inquiry') recommended that the CJC conduct a comprehensive review of police powers. The CJC commenced research into this review in November 1990. In September 1991, the Minister for Police and Emergency Services and the CJC jointly released a discussion paper titled *Police Powers in Queensland*. Over the following three years the CJC produced five volumes of its *Report on a Review of Police Powers in Queensland* (CJC 1993a, 1993b, 1993c, 1994a and 1994b) followed in 1995 by *Telecommunications Interception and Criminal Investigation in Queensland: A Report*. These reports presented a very detailed analysis of police powers in Queensland and other Australian and overseas jurisdictions and contained over 150 recommendations. The reports were, in turn, the subject of public review by the Parliamentary Criminal Justice Committee, which conducted public hearings and prepared its own reports in relation to the issues dealt with in the CJC's review.

Third, through its complaints function the CJC is aware of continuing complaints about police misuse and abuse of powers. Many of these complaints are the result of misconceptions on the part of members of the community about the existence or operation of particular police powers and their rights in respect of the exercise of these powers. Accordingly, the CJC has an interest in the law being clarified and standardised to reduce the numbers of complaints arising in these circumstances.

## THE CJC'S APPROACH

The CJC is cognisant that its recommendations and the proposals contained in the Discussion Paper need to be viewed as a whole package rather than addressing each proposal in isolation. However, to facilitate comparisons, the format of the CJC's submission follows the structure of the Discussion Paper.

To ensure that the CJC has represented the position expressed in the Discussion paper correctly, and also to enable this document to be read on a 'stand-alone' basis, each proposal is either re-stated or summarised and the CJC response is then indicated. Where the Discussion Paper is silent on an issue which the CJC considers to be important, this is indicated in the text and the CJC's preferred approach is stated.

The CJC's starting point for determining its response to the various issues raised in the Discussion Paper was to ascertain if the proposal was consistent with previous CJC recommendations contained in its *Report on the Review of Police Powers in Queensland*. Where there was a divergence between the Discussion paper and the CJC position, or the Discussion Paper addressed a matter which the CJC had not considered, regard was had to the two key principles which underpinned the CJC's review of police powers:

- police powers should only be increased where the need to do so has been demonstrated; and
- at all times, increased accountability should accompany any increase in police powers.

In addition, in preparing its responses, the CJC has endeavoured to recognise the administrative and operational realities of modern policing.

## GENERAL ISSUES

There are a number of general matters arising from the Discussion Paper which the CJC would like to address at the outset. The CJC's responses to the specific proposals contained in the Discussion Paper should be read as being qualified by its comments in respect of these matters.

The CJC notes that the proposals contained in Part A of the Discussion Paper have the Government's endorsement in principle. However, the CJC also notes the comments of the Minister for Police and Corrective Services and Minister for Racing in the introduction to the Discussion Paper, that the Government is still seeking community views on these proposals.

Second, the CJC encountered difficulties responding to some of the proposals contained in the Discussion Paper because the proposed power was couched in general terms with little detail to explain the effect of the proposed power in operation. In many cases, the CJC's response to a proposal could be substantially altered by the drafting of the power in the proposed police powers legislation. It is therefore, very important that there be an opportunity for further consultation when draft legislation has been developed.

Third, paragraph 1.9 of the Discussion Paper identifies a number of Acts, including the *Juvenile Justice Act 1992* which, 'because of their specialised nature, will require retention of current provisions'. The CJC acknowledges that the proposed police powers legislation could contain provisions recognising that the provisions of those Acts have precedence over the police powers legislation where there is a



conflict. However, not all police powers which are exercisable in respect of juveniles are contained in the *Juvenile Justice Act 1992*. The CJC would therefore caution that careful consideration be given to the impact of the proposed police powers legislation on the enforcement of the law against juvenile offenders and the administration of juvenile justice.

Fourth, various powers proposed in the Discussion Paper are often limited in their operation to offences which carry a maximum penalty of 7 years imprisonment or more. In its review of police powers, the CJC also often used this threshold. However, as a consequence of the recent amendments to the *Criminal Code*, which increased penalties across a wide range of offences, the number of offences attracting a maximum penalty of seven years imprisonment or more has greatly increased, and now includes many relatively minor indictable offences, such as, graffiti offences committed in educational institutions and unlawful use of a motor vehicle. In view of the effect of these recent amendments to the *Criminal Code*, it may be appropriate either to consider increasing the maximum period of imprisonment before which the proposed powers will apply, or identifying the offences at which particular police powers are targeted by offence type.

Fifth, the CJC endorses the strong emphasis in the Discussion Paper on the development of statutory safeguards and systems of accountability. However, the CJC emphasises that disciplinary procedures must also be utilised as a deterrent to this behaviour, rather than relying solely on the exclusion of evidence which has been improperly obtained. It is particularly important that the safeguards and the consequences of breaching them are clearly articulated in the legislation or the accompanying codes of conduct or procedural codes.

Sixth, the CJC stresses the need for independent monitoring of the use of the new powers and police compliance with statutory safeguards and internal accountability mechanisms. The CJC is the appropriate body to discharge this role due to its unique structure and position in the criminal justice system, particularly with regard to:

- its statutory responsibilities
- its access to and understanding of the Queensland Police Service (QPS)
- its ability to utilise the complaints mechanism for the investigation and enforcement of official misconduct and disciplinary breaches and to further its research and monitoring responsibilities
- the fact that it has already undertaken a good deal of the baseline research required to adequately perform a monitoring role (e.g. the Defendants' Survey, CJC 1996).

Finally, the CJC assumes that the operation of the new police powers legislation will be evaluated and reviewed after an appropriate period. Information collected as part of the monitoring process should provide the basis for this evaluation.

## SPECIFIC CONCERNS

In many instances the CJC has agreed with the proposals contained in the Discussion Paper or has suggested only relatively minor modifications which do not change the underlying intent of the recommendation. However, there are a few proposals in the Discussion Paper with which the CJC does have some significant concerns. These relate specifically to:

- the need for clear provisions relating to the exercise of the power to conduct strip searches
- some aspects of the proposed powers to enter and search without warrant, particularly, the extension of the emergency search powers under the *Drugs Misuse Act 1986* to permit such searches to be conducted in the investigation of any offence for which a search warrant may be obtained
- the broad range of offences in respect of which it is proposed a listening device may be obtained
- the broad operation of the power to arrest without warrant in connection with indictable offences, and the absence of any statutory obligation on police to first consider alternatives to arrest
- the proposed power to enter private premises (excluding dwelling houses) for the purposes of making enquiries
- the proposed power to detain an arrested person for questioning for up to 18 hours without independent review (the CJC notes that the Minister for Police has publicly announced that this aspect of the proposal will be reviewed); the review of detention after that period by 'prescribed persons' who are not judicial officers; and the failure to adopt a free legal advice scheme which the CJC considers is essential to safeguard the rights of people in custody.

**PART A**



# **I. CONSOLIDATION AND RATIONALISATION OF POLICE POWERS**

## **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper proposes that police powers be rationalised and consolidated into a single Act.

## **CJC RESPONSE:**

**The CJC supports the proposal to consolidate and standardise police powers in Queensland.**

The CJC has been a strong advocate for the consolidation and standardisation of police powers. In its *Report on a Review of Police Powers in Queensland Volume I: An Overview* (1993a) the CJC discussed the problems with the current 'system' of police powers, noting that 'there was not in existence a complete list of police powers' (p. 94) and the powers were not uniform in their terminology or operation.

This situation creates the potential for both deliberate and inadvertent abuse of power by police, contributes to confusion amongst members of the public about their rights, undermines public confidence in a criminal justice system which does not appear to operate consistently and rationally.

The benefits of consolidation are obvious. Standardised powers would make it easier for police to perform their duties, as the parameters of their powers would be clear. Members of the public would have a greater knowledge and understanding of their rights and of the bases for the exercise by police of their powers.

Nevertheless, while it is highly desirable that police powers be clearly delineated, it is also necessary for police to have some scope for the exercise of discretion to permit them to execute their duties effectively. The police powers legislation should permit this flexibility while providing guidance to officers on the exercise of their discretion.

# **2. TAKING POSSESSION OF EXHIBITS**

## **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper recommends that:

- a police officer who is **lawfully** in or on any place be able to take possession of any thing which the officer finds and suspects on reasonable grounds will afford evidence of the commission of an offence
- police be empowered to re-enter or remain in the premises for the purpose of taking possession of the thing(s), on the basis that it may be necessary to make several trips from the premises to their vehicle in order to remove all of the evidence from the premises.

## **CJC RESPONSE:**

1. The CJC considers that the proposed powers are too wide.
2. The CJC generally supports a power authorising the seizure of objects discovered by chance and the re-entry of premises, but only where the police are lawfully in a place pursuant to a search warrant. The 'chance discovery' power should be limited to objects found in the course of a reasonable search pursuant to a warrant and which provide evidence of an indictable offence.
3. The CJC considers that a power to re-enter premises should be limited to situations involving the execution of a search warrant and 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 (see CJC rec. 9.9).

The CJC believes that the proposed power for officers lawfully in a place to seize things suspected of affording evidence of an offence is far too wide. When this power is considered with the proposed power to 'enter to make enquiries' (see section 19 of the Discussion Paper), the potential combined effect is a dramatic extension of current police powers to enter places and seize objects. In effect the proposals give police a power to enter places without warrant (not dwelling houses) to 'make enquiries or investigations', and to seize any thing which is found which the officer suspects on reasonable grounds affords evidence of an offence.

The Discussion Paper does not correctly represent the current common law position on this issue. It states that a police officer who is 'lawfully in or on a place' can take possession of evidence which he or she may find. However, the cases limit this power to situations where the officer is in a place to conduct a lawful search, not merely 'lawfully in a place'. The Discussion Paper provides no explanation or justification for this proposed extension of power. Accordingly, consistent with the principle that police powers should only be increased where the need to do so has been demonstrated, the CJC does not support the power in the form proposed.

This proposal should be distinguished from chance discovery of evidence during a lawful search under a warrant. The CJC recognises that a police officer performing a lawful search under a warrant may come across objects that may afford evidence of the commission of another offence. However, the CJC is mindful of the need to ensure that warrants issued on one ground are not used to justify unconfined searches for objects that are totally unrelated to the initial grounds for entry. Accordingly, the CJC believes that a balanced solution is to limit the power to seize objects found to those objects that are in 'plain view' of an officer conducting a lawful search on the premises and which provide evidence of an indictable offence.

In respect of the chance discovery of evidence, the CJC has previously recommended 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 (CJC rec. 9.7).

In respect of the power to re-enter premises, the CJC recognises that, in practice, police who are executing a search warrant may need to leave the particular building to search under or around it or for some other purpose connected with the search. In such a case, where departure from the premises is brief and is for the purposes of the search authorised under the warrant, re-entry would be authorised by the original warrant.

### **3. SEARCH ETC. OF PERSONS AND VEHICLES WITHOUT WARRANT**

#### **3.1 Suspects and vehicles for illegal or stolen items etc.**

##### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper proposes a power for police to stop, detain and search a person and anything in the possession of the person or a vehicle where the officer has reasonable grounds to suspect that the person has possession of, or there is in the vehicle:

- (i) a weapon in contravention of the *Weapons Act 1990*
- (ii) dangerous drugs etc. under the *Drugs Misuse Act 1986*
- (iii) stolen property
- (iv) unlawfully obtained property
- (v) implements of housebreaking or car theft
- (vi) tainted property within the meaning assigned to it in the *Crimes (Confiscation) Act 1989*.
- (vii) evidence of the commission of an offence punishable by 7 years imprisonment or more and which the police officer has reasonable grounds to suspect may be destroyed or concealed; or
- (viii) anything with which a person intends to cause harm to another or to him or herself.

The Discussion Paper also recommends that where it would be inappropriate to conduct a search in view of other members of the public, police should have a power to take a person to the nearest appropriate place where adequate facilities exist to conduct the search.

##### **CJC RESPONSE:**

1. **The CJC generally supports the Discussion Paper proposal regarding the search of persons and vehicles without warrant. However, there is a need to clarify the position in relation to search powers in other Acts.**
2. **The CJC believes that more detailed information is required regarding proposals for the conduct of pre-arrest warrantless strip searches and the use of force in the conduct of these searches and that these proposals should be spelt out in legislation or regulations.**

The proposal is generally consistent with previous CJC recommendations (CJC recs 7.1, 7.2, 7.4 and 7.11). However, the CJC also recommended that the powers to search persons and vehicles 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*
- section 679B(1)(b) *Criminal Code*

be the subject of review, with more information about their operation being required to justify their retention (see CJC recs 7.3 and 7.12). It is unclear from the Discussion Paper whether these provisions will continue to operate.

The CJC is concerned that the Discussion Paper does not address two issues which the CJC considers to be of particular relevance and importance. These are the use of force in the conduct of pre-arrest searches, and the conduct of pre-arrest strip searches.

In respect of the use of force, the CJC recommended 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 cooperate with the police officer conducting the search (CJC rec. 7.9).

The CJC has also made the following recommendations regarding pre-arrest strip searches:

- they should only be conducted as a last resort
- they should be conducted by a police officer of the same sex as the suspect and no member of the opposite sex should 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
- they should be conducted in appropriately private surroundings
- consideration is to be given to whether the particular circumstances of the case warrant such intrusive action
- they should be subject to specific information-giving and record-keeping requirements (referred to later in this submission) (CJC rec. 7.8).

It is important to note that there are a variety of searches which could fall into the category of a strip search. For example, at one end of the spectrum a search may only involve the removal of outer clothing. Alternatively, the search may involve the removal of all clothing other than underwear or the removal of all clothes including underwear. At its most intrusive, a strip search may involve the removal of all clothing and examination of the underarms, genital area and between the buttocks.

Due to the potentially very intrusive nature of this type of search, it is important that the circumstances in which this power may be exercised are clearly defined and police are provided with guidelines for the making of decisions about when, how and what level of search to conduct.



The same issues also arise in respect of pre-arrest body cavity searches (see CJC rec. 7.10).

## 3.2 Persons in custody

### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper proposes to empower police officers and any person acting under the direction of a police officer to search a person in custody and to seize any thing which the officer suspects on reasonable grounds:

- (i) may afford evidence of any offence
- (ii) could be used by the person to cause injury, or to effect an escape
- (iii) should be held for safe keeping during the period of custody.

### **CJC RESPONSE:**

1. The CJC generally supports the proposal for the power to search people in custody.
2. The CJC is concerned that the Discussion Paper does not indicate whether strip searches or body cavity searches may be conducted for the purposes of the proposed power. The CJC believes that a clear proposal in respect of this issue should be formulated by Government and should be the subject of consultation before police powers legislation proceeds.

In the past, the CJC has been concerned that police in some parts of the State routinely conduct some form of strip search of people in custody. The CJC is of the view that any legislation authorising the search of people in custody should address these matters and provide guidelines for the exercise of the powers and safeguards against their overuse or abuse.

## 3.3 Establishment of roadblocks

### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper proposes a police power to stop and search any vehicle where a police officer reasonably suspects that:

- (i) a person who has committed an indictable offence punishable by at least 7 years imprisonment may be travelling in a vehicle;
- (ii) a person subject of an offence (offender or victim) against section 355 of the *Criminal Code* (Deprivation of Liberty) may be travelling in a vehicle; or
- (iii) a person who has escaped from lawful custody may be travelling in a vehicle.

The police officer may only detain a vehicle at a roadblock for such time as is reasonably necessary to determine if the vehicle is the subject of the roadblock.

## **CJC RESPONSE:**

The CJC supports a police power to set up roadblocks, but believes that the proposal to empower police officers of *any rank* to set up a roadblock with the object of apprehending a person suspected of committing an indictable offence punishable by 7 years imprisonment is too wide. Instead, the CJC prefers the form of police roadblock power recommended in its *Report on a Review of Police Powers in Queensland* (rec. 7.15 see below) which is limited to offences carrying a maximum penalty of 14 years imprisonment or more.

Under the Discussion Paper proposal, very junior and inexperienced officers would have authority to set up roadblocks without any requirement to refer to senior officers for advice or approval of such action. The proposal would also authorise the setting up of a roadblock to apprehend a suspect in respect of relatively minor offences, such as graffiti offences involving educational institutions or unlawful use of a motor vehicle, as these offences now carry maximum penalties of 7 years imprisonment.

Roadblocks restrict the right of law-abiding citizens to travel freely from one place to another without interference. There is also the potential to cause accidents where motorists are not expecting to find an obstruction on a road. While the CJC recognises the investigative value of roadblocks, it believes that they should only be used by police in the investigation of more serious crimes or in special police operations and only with the authority of more senior and experienced officers.

The CJC has previously recommended a power to conduct a roadblock<sup>1</sup> 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; or
  - \* a person who has escaped from lawful custody; or
  - \* the victim of an abduction.
- that the Commissioner of Police or Deputy Commissioner (Operations) have limited power to authorise a roadblock in a specified area in which there has been serious or frequent criminal activity which warrants such an exercise
- 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

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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.

vehicle unless there are reasonable grounds to suspect that giving the reason will prejudice the operation (CJC rec. 7.15).

## 4. SEARCH ETC. OF PLACES

### 4.1 With a warrant and *with* the knowledge of the occupier

#### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper proposes a single legislative provision for the issue and execution of all search warrants. Applications for search warrants are to be made to a Justice. The issuing of the warrant is subject to the Justice being satisfied there are reasonable grounds for suspecting there is:

- (i) in any place; or
- (ii) in the possession of any person in that place;

anything which might provide evidence of the commission of an offence or which is liable to forfeiture.

The objects of the search are to be described as accurately as possible in the application for the search warrant and in the search warrant itself. The warrants must be executed within a fixed period of time after which they will expire.

It is proposed that the warrants will authorise police to:

- (i) enter at any time or re-enter the place for a reasonable period after the execution of the warrant for the purposes associated with the execution of the warrant including removing seized property;
- (ii) pass through, from, over, under and along any other place for the purpose of making that entry or re-entry;
- (iii) search the place so entered or re-entered;
- (iv) detain any person found in the place for a reasonable period to ascertain whether that person has possession of any thing which is sought by the warrant;
- (v) if authorised by the issuing justice, search any person found therein for any thing named in the warrant where that thing is capable of concealment upon the person.
- (vi) use such assistance as is considered necessary by the police officer;

- (vii) seize and retain any thing, photograph and videotape any thing, found in, on or about the place or on any person found therein, that the police officer reasonably suspects:
- (a) may provide evidence of the commission of the offence;
  - (b) is intended to be used for the commission of the offence; or
  - (c) is liable to forfeiture or that may be used as evidence in any forfeiture proceedings under the provisions of an Act; and
- (viii) in the case of animals, muster, hold, photograph and inspect any animal that the police officer reasonably suspects may afford evidence as to the commission of an offence.

There will also be provision for the judicial officer issuing the warrant to direct the person whose property is the subject of a search warrant to produce all documents and computer records that are described in the search warrant. Failure to comply would constitute a contempt of the issuing authority.

Where a search warrant is refused by a Justice of the Peace, a police officer may make a further application to a magistrate, who must be advised of the previous application. Further, at the time of an application for a search warrant, the police officer making the application will be required to advise the Justice of the Peace of all applications for a search warrant made within the preceding twelve months in relation to the place specified in the search warrant or the occupier of the place.

## **CJC RESPONSE:**

The CJC response to these issues will be considered under the following headings:

- *Who may issue a search warrant*
- *Objects of search*
- *Description of objects of search*
- *Period of validity of search warrants*
- *Time of executing search warrant*
- *Demand for entry and use of reasonable force to enter premises*
- *Details of the search warrant to be provided to occupier*
- *Entry and re-entry pursuant to the warrant*
- *Search of persons present during execution of warrant*
- *Use of assistants in execution of warrant*

- *Issuing authority to be notified of previous applications for search warrants*
- *Where initial application for warrant is refused*
- *Directing suspects to assist the police.*

#### *Who may issue a search warrant*

1. **The Discussion Paper does not specifically address the issue of who should have authority to issue a search warrant. The CJC believes that in view of the legislative changes to the *Justices of the Peace and Commissioners for Declarations Act 1991* the power to issue a search warrant should be limited 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 (see CJC rec. 8.2).**

The CJC is of the view that the authority empowered to issue a search warrant should be a person with some level of training or understanding of the law relating to the issue of warrants, the role of the issuing authority and the powers conferred by a warrant.

#### *Objects of search*

2. **The CJC does not support the proposed wide operation of the search warrant power to all types of offences. The CJC believes that the power to apply for and obtain a search warrant should be limited to the investigation of indictable offences and those other types of offences specified in the CJC's recommendation 8.7.**

The Discussion Paper proposes that the search warrant power be available in respect of the investigation of all offences for which an offender may be arrested with or without warrant. This proposal is consistent with the current law situation under section 679 of the *Criminal Code*. However, if the Discussion Paper proposal to make all offences arrestable offences is carried into law, this should increase the range of offences for which police currently can obtain a search warrant. The Discussion Paper does not address this issue and the outcome may well be inadvertent. However, the combined effect of the two proposals will be to increase the intrusive investigative powers of police in respect of some offences.

In its review of police powers the CJC examined the various legislative provisions for the issue of search warrants in Queensland and other Australian jurisdictions. The CJC preferred the provisions of the *Search Warrants Act 1985* (NSW) which limited search warrants to indictable offences and other specified offences or classes of offences.

The CJC accordingly recommended 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 (CJC rec. 8.7).

#### *Description of objects of search*

3. **The CJC supports the proposal regarding the description of the objects the subject of a search warrant. This proposal is consistent with CJC recommendation 8.8.**

#### *Period of validity of search warrants*

4. **The CJC supports the Discussion Paper proposal limiting the period of validity of search warrants. This proposal is consistent with CJC recommendation 8.13.**

#### *Time of executing search warrant*

5. **The Discussion Paper does not propose any limit on the time of day at which a search warrant can be executed. The CJC believes that, generally, no search warrants should be executed during night-time hours unless specifically authorised by the issuing justice or magistrate who has taken appropriate matters into consideration (see CJC rec. 9.1). For this purpose, the CJC suggests adopting the *Criminal Code* definition of 'night' as between the hours of 9pm and 6am.**

The CJC can see no basis for a power generally permitting search warrants to be executed outside of reasonable daytime hours. Section 679 of the *Criminal Code* provides that warrants issued under that section 'shall be executed by day unless the justice, by the warrant, specially authorises it to be executed

at night'. The New South Wales *Search Warrants Act 1985* also prevents the issuing authority from authorising the execution of a warrant at night unless satisfied that there are reasonable grounds for doing so. There is no evidence in the Discussion Paper which would support a general power to execute warrants at any time of the day or night, nor is there information to indicate that this power is generally available in other jurisdictions.

The CJC has previously recommended that generally no warrant is to be executed between the hours of 10pm and 6am unless specifically authorised by the issuing authority. The *Criminal Code*, on the other hand, defines 'night' as between the hours of 9pm and 6am. In the interests of consistency, the CJC considers that the Code definition should apply.

The CJC has also recommended that the legislation outline the circumstances in which the issuing authority may authorise execution outside those hours. These should include, but not be 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 CJC has recommended 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 (CJC rec.9.1).

#### *Demand for entry and use of reasonable force to enter premises*

6. **The Discussion Paper does not address the issue of the use of force in the execution of search warrants. The CJC believes that this issue requires careful attention to protect the rights of owners and occupiers of properties the subject of search warrants. The CJC 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 CJC recommends that it be 'such force as is reasonably necessary' (also see CJC rec. 8 10 referred to below).**

The CJC has also recommended 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 CJC rec. 8.10).

Where entry is made by force, either with or without demand before entry, the CJC has recommended that the police officer should be required to record the reasons for this on the back of the warrant and that the details subsequently be entered on the Search Register referred to in CJC recommendations 11.3 and 11.5 (CJC rec. 9.4).

*Details of the search warrant to be provided to occupier*

7. The CJC supports the Discussion Paper proposal that a copy of the search warrant be provided to the occupier of premises the subject of the warrant. This proposal is consistent with CJC recommendation 11.2.

*Entry and re-entry pursuant to the warrant*

8. The CJC generally supports the Discussion Paper position in respect of the power to re-enter premises pursuant to a search warrant. However, the CJC would caution that a provision to permit re-entry to premises pursuant to a search warrant will need to be carefully drafted to ensure that the power is limited and only permits re-entry where it 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. These matters are canvassed in CJC recommendation 9.9.

*Search of persons present during execution of warrant*

9. The CJC has some concerns about the Discussion Paper proposal that police be authorised by a search warrant to 'detain any person found in the place for a reasonable period to ascertain whether that person has possession of any thing which is sought by virtue of the warrant'. If this is only proposing detention for the purposes of search, then the CJC supports the proposal. However, if that is what is intended, then why not use that expression? The CJC would only support a power to detain a person found in premises during the execution of a search warrant for the specific purpose of searching the person, and only where the police officer has reasonable grounds to suspect that the objects of the search are being carried on or concealed upon the person (CJC rec. 9.8).

The CJC has recommended that a 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 (CJC rec. 9.8). If the police have no grounds to suspect that the person has any thing the subject of the search warrant in his or her possession, then the CJC can see no justification for the detention of the person.

Further, the CJC questions the granting of a power in all instances to search persons who are present at the time of the execution of a search warrant. There should be no need to search persons where the objects of the search are of substantial size and incapable of concealment on the person e.g. stolen electrical goods. On the other hand, where the objects of the search are drugs, there is a clear need for the power to search persons found on the premises. Accordingly, the CJC believes that this power should be expressly limited to situations where the police have reasonable grounds to suspect that the objects of the search are being carried on, or are concealed upon, the person.

*Use of assistants in execution of warrant*

10. The CJC does not support the Discussion Paper proposal that search warrants generally authorise police to 'use such assistance as is considered necessary' when executing warrants. The CJC believes that the authority of the justice or magistrate issuing the warrant should be specifically obtained for other persons to assist in the execution of a search warrant. However, 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 and report later on the use of such assistance to the issuing authority (CJC rec. 9.3).

The CJC 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, the CJC is of the view that where the police anticipate that they may need the assistance of persons with particular skills in the execution of a search warrant, they should inform the justice at the time of application for the warrant and obtain specific approval for that class of person to assist in the execution of the warrant.

*Issuing authority to be notified of previous applications for search warrants*

11. **The CJC supports the Discussion Paper proposal that in all applications for search warrants the issuing authority be informed of all other applications made in the previous twelve months in respect of the same premises.**
12. **The CJC considers that the 'results' of all searches should be entered on the computerised search register. Information about the results of all previous searches relating to a particular individual or premises the subject of an application for a search warrant should be included in the information put before the authority from whom the warrant is sought.**
13. **A police officer may apply for a search warrant where he or she has reasonable grounds to suspect that the search will reveal evidence of the commission of an offence. It is the CJC's view that police applying for a search warrant should be required to set out in the complaint what steps have been taken to verify the information upon which the application is based, or what other basis exists for relying on it.**

The CJC receives numerous complaints about police repeatedly conducting drug searches which produce no evidence of an offence. In the CJC's view, many of these searches could be avoided if procedures governing the seeking of search warrants and the recording of the outcome of searches were amended. In response to complaints about unjustified searches the CJC has recommended to the QPS that the 'results' of all drug searches should be entered on the computerised 'drug index' and should be included in the information put before the authority from whom the warrant is sought. The results of previous searches are clearly relevant to the assessment of whether there is a reasonable suspicion that a further search may secure evidence of an offence.

Police officers applying for search warrants have an obligation to take all reasonable steps to investigate the validity of information upon which they intend to rely as the basis for the search. While the CJC recognises the need to protect the identities of informants, it believes that police must still be able to demonstrate that the information forming the grounds for the search warrant raises a reasonable suspicion that the search will reveal evidence of the commission of an offence. In the CJC's view, merely asserting that 'confidential information' is 'reliable', is not sufficient. Officers need to set out in the complaint what steps have been taken to verify the information or what other basis exists for relying on it.

The CJC believes that these recommendations should apply to all applications for search warrants, not just warrants obtained under the *Drugs Misuse Act 1986*.

*Where initial application for warrant is refused*

14. The CJC supports the proposal contained in the Discussion Paper that where an application for a search warrant has been refused by a justice of the peace, a police officer may make further application to a magistrate. However, the CJC is of the view that only *one* further application may be made to a magistrate without the need for additional information in support of the application to be obtained (see CJC rec. 8.5 referred to below).

In order to address the potential problem of 'forum-shopping' in applications for search warrants the CJC has recommended 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;
- 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
- 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 (CJC rec. 8.5).

*Directing suspects to assist the police*

15. The CJC supports the proposal to direct persons whose property is the subject of a search warrant to produce all documents and computer records described in the search warrant.

The CJC recognises that in the case of very complex computer systems, police will be unable to access information on those systems without the assistance of a person who has intimate knowledge of the system.

## 4.2 Without a warrant to prevent loss etc. of evidence

### **DISCUSSION PAPER PROPOSAL:**

It is proposed that the emergency search powers available under the *Drugs Misuse Act 1986*, the *Crimes (Confiscation) Act 1989* and the *Weapons Act 1990* be extended to permit such searches to be conducted in the investigation of any offence for which a search warrant may be obtained. An additional accountability measure is the requirement that the police officer must, as soon as practicable, justify the search to a magistrate and seek an order with respect to any thing that was seized during the search. If the search is found not to be justified, the magistrate may make an order for the disposal, return or destruction of any thing seized and evidence obtained from the search will not be admissible in any subsequent proceedings unless it is in the public interest (to be determined by the court hearing the charges to which the evidence relates).

In determining whether the search without warrant was justified, the magistrate must take into account:

- (i) any reasonable grounds that existed prior to the conduct of the search;
- (ii) in the circumstances prior to the search, the apparent likelihood that evidence would have been concealed or destroyed
- (iii) any thing that was located as a result of the search
- (iv) whether it is in the public interest to allow such evidence to be presented to a court.

### **CJC RESPONSE:**

1. **The CJC opposes the general power to enter and search without warrant proposed in the Discussion Paper, but does support a more limited power which would be available in emergencies and situations involving specific types of offences which may require more immediate responses.**
2. **The CJC also believes clarification is required of the consequences for officers who abuse these powers.**

When the CJC was undertaking its review of police powers, the Queensland Police Union of Employees advocated a general power permitting searches without warrant similar to that proposed in the Discussion Paper. The CJC considered the Union's submission, but did not support a general power to search without warrant. The CJC accepts that there may be some circumstances where the interests of justice would best be served by allowing a power of search without warrant; however, these circumstances should be carefully circumscribed. The concern with allowing warrantless searches is the diminution of legal control over the exercise of the search power. Part of the protection of the warrant is in having the reasonableness of the entry considered by a neutral and detached authority rather than being decided by the officer investigating the offence.

The CJC also has doubts about the effectiveness of the 'after-the-event' controls proposed in respect of the power. Where a search without warrant has resulted in the seizure of objects which provide evidence of the commission of an offence, it is most unlikely that a magistrate to whom the police officer must later report to justify the search will find that the search was unlawful. Further, the proposal does not state whether police would be required to justify a search without warrant to a magistrate where the search did not result in the seizure of objects. The CJC considers that it is most important that unsuccessful searches without warrant should also be subject to this accountability mechanism.

The CJC recommended a general emergency power for police to enter and search premises without warrant where police have reasonable grounds to suspect that material evidence of an offence is in a place and will be concealed or destroyed unless that place is entered and searched immediately. However, the CJC recommended that this power be limited to the investigation of offences carrying a maximum penalty of seven years imprisonment or more (CJC rec. 10.14). Outside of these circumstances

the CJC recommended the retention or creation of powers to enter and search premises without warrant in the following specific circumstances:

- under section 18(12) of the *Drugs Misuse Act 1986* in special or urgent circumstances to search for evidence of the commission of a drug offence (CJC rec. 10.2)
- under the *Weapons Act 1990* to search for weapons where death or injury is threatened (CJC rec. 10.3)
- under the *Crimes (Confiscation) Act 1989* to search for tainted property (CJC rec. 10.4)
- under the *Domestic Violence (Family Protection) Act 1989* to deal with domestic violence (CJC rec. 10.5)
- under the *State Counter-Disaster Organization Act 1975* to deal with a state of disaster (CJC rec. 10.6)
- under the *Public Safety Preservation Act 1986* in an emergency to preserve public safety (CJC rec. 10.7)
- under the *Casino Control Act 1982* 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 (CJC rec. 10.8)
- under the *Noise Abatement Act 1978* to prevent the continuation of 'excessive noise' (CJC rec. 10.10)
- entry to dealers' (i.e. pawnbrokers, second-hand dealers and collectors, auctioneers and agents etc.) premises be confined to entry during business hours without a warrant (CJC rec. 10.13).

The CJC also recommended 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
- there be a review of the power under the *Traffic Act 1949* to enter premises to make enquiries
- the power under the *Art Unions and Public Amusements Act 1992* to enter premises, make enquiries and seize documents be made the subject of a monitoring warrant.

The CJC has a further concern about the general police power proposed. Other than providing for the disposal, return or destruction of things seized during a warrantless search and exclusion of the evidence obtained where the search was found to be unjustified, the proposal does not provide for any other consequences for the officer who conducted the search. If it is not proposed that there should be any consequences for officers who abuse these powers, what incentive is there for these police to exercise their discretion reasonably?

### 4.3 Entry *without* a warrant to prevent imminent injury to persons or substantial damage to property

#### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper recommends a power authorising police to enter any place without a warrant, where the officer has reasonable grounds to suspect that (i) imminent injury to a person; or (ii) substantial damage to the property of another may occur. In addition it is proposed that the police have power to:

- (i) detain (for a reasonable time) any person within the place;
- (ii) search the place and any detained persons for any thing which may be used to cause personal injury or property damage; and
- (iii) seize and retain any such thing.

Proposed statutory safeguards include:

- the detention of a person will only be permitted to prevent the repetition or continuation of acts of violence or to search the person
- a person detained may only be searched where there are reasonable grounds to suspect that the person has a weapon or explosive or dangerous substance concealed on their person
- limiting the period for which seized property may be retained to seven days, unless action has been taken against the person from whom the property was seized or it is unlawful for that person to have that property.

#### **CJC RESPONSE:**

1. **The CJC supports the Discussion Paper proposal that a police officer have power to enter any place without a warrant, where the officer has reasonable grounds to suspect that (i) imminent injury to a person, or (ii) substantial damage to the property of another, may occur.**

2. **The CJC does not support the proposal that police have a power to ‘detain (for a reasonable time) any person within the place’. The CJC proposes the following alternative formulation of the proposed power:**

**that the police have power to detain any person found within that place who is reasonably suspected of threatening the injury or damage which gave rise to the entry, for the purpose of searching the person where there are reasonable grounds to suspect that the person may have any thing which may be used to cause personal injury or property damage.**

3. **The CJC also does not support the proposed power to detain persons found in premises in these circumstances ‘to prevent the repetition or continued acts of violence’, as in such cases the police have grounds to arrest the person for an offence.**

The CJC has previously recommended a power to enter and search without warrant to effect an arrest or to prevent serious injury or damage (CJC rec. 10.1). In particular, the CJC recommended 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. Unless there is reason to believe that it would further inflame the situation or provide an opportunity to the person threatening the injury to prepare him or herself for resistance, proper announcement is to be made before entry to give the occupier the opportunity to permit entry without force.

The CJC also recommended a limited form of the common law power to enter to prevent a breach of the peace be included in legislation. The recommendation proposed a power to enter and search without a warrant in order to prevent injury to a person or prevent **serious** damage to property (CJC rec. 10.1)0.

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*, the CJC was not satisfied that there was a need for a more general power in the criminal law to prevent a breach of the peace (CJC rec. 10.1).

The CJC does not support the general power proposed in the Discussion Paper to detain any person within the place entered. The CJC believes that in the circumstances described the police should have a limited power to detain certain persons located within the place, but only for the purposes of search.

## **5. PROVISION FOR THE ISSUE OF A NOTICE TO PRODUCE DOCUMENTS**

### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper recommends a power for police to serve a Notice to Produce Documents on a person or corporation, being an 'innocent' third party requiring the production of documents (including electronic information) which are in the possession of that person or corporation and are relevant to the investigation of an offence. The proposal is subject to a number of safeguards, including:

- the police be required to have reasonable grounds to suspect that the 'third party' possesses relevant documentary evidence
- the application be made to a magistrate
- the third party will still be able to claim legal professional privilege
- the police officer applying for the Notice will be required to advise the magistrate of all applications for such Notices made within the previous 12 months in relation to the suspected offender.

### **CJC RESPONSE:**

1. The CJC supports the proposal that police have a power to apply for a Notice to Produce Documents.
2. The CJC endorses the safeguards proposed in the Discussion Paper, particularly, the requirements for the application to be made to a magistrate and for advice to be given to the magistrate of all applications made in relation to the suspect within the previous 12 months.

This issue was not addressed in the CJC's police powers review. However, the matter was covered in the Queensland Police Service Review to which the CJC had substantial input. The CJC considers that granting the police this power is essential to enhancing the capacity of the QPS to investigate organised crime and other complex criminal activities, such as sophisticated fraud.

## **6. USE OF LISTENING DEVICES FOR THE INVESTIGATION OF SERIOUS OFFENCES**

Types of offences in respect of which a listening device may be used (para. 6.12)

### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper proposes that the types of offences for which a listening device may be used generally reflect those offences which may be subject to telephone interceptions referred to in the

Commonwealth *Telecommunications (Interceptions) Act 1979*. The offences listed in the Discussion Paper are **indictable** offences which involve:

- (i) serious risk of, or actual, loss of life
- (ii) serious risk of, or actual, serious injury to any person
- (iii) serious damage to property (in circumstances endangering the safety of any person)
- (iv) serious fraud
- (v) serious loss of revenue to the State
- (vi) official corruption
- (vii) serious theft
- (viii) organised crime
- (ix) conduct related to prostitution or SP bookmaking
- (x) child abuse (including child pornography)
- (xi) conspiracies; and
- (xii) drug offences (punishable by 20 years or more imprisonment).

The Discussion Paper notes that the *Invasion of Privacy Act 1971* currently permits a listening device to be issued for any offence, which may be 'too wide', and that the listed offences restrict the offences for which a listening device may be installed.

## **CJC RESPONSE:**

**The CJC considers that the proposed range of offences in respect of which a listening device may be obtained is too broad and is inconsistent with the approach taken in the Commonwealth *Telecommunications (Interception) Act 1979*. The CJC recommends that the offences in respect of which a listening device may be issued should be limited to those contained in its previous recommendation (CJC rec. 24.3 set out below).**

The Discussion Paper states that the proposed list of offences generally 'reflect those nominated in the Commonwealth *Telecommunications (Interception) Act 1979* as applying to telephone interceptions'. However, this is not correct. The *Telecommunications (Interception) Act* provisions are restricted to offences which carry a maximum penalty of seven years or more and which satisfy one or more of the listed criteria. For example, there is no provision to enable the use of telecommunications interceptions to investigate serious theft *per se*; an interception would only be possible (under the Commonwealth Act) if it could also be established that there was an organised dimension to the commission of such an offence or if the offence had resulted in a serious loss of revenue of a State or the Commonwealth. There is also no general power under the Commonwealth Act to use interceptions to investigate conspiracies; the conspiracy must be to commit an offence of the type specified in the Act.

The CJC has previously argued that listening devices are at least as intrusive as telecommunications interceptions, and possibly more so. On this basis, it would be inappropriate to allow listening devices to be used in a wider range of circumstances than is consistent with the provisions of the *Telecommunications (Interception) Act*.

In its review of police powers, the CJC considered the types of offences for which a listening device may be sought. The CJC took the view that because of the particularly intrusive nature of listening devices, they should be limited to situations involving a serious offence. The CJC considered that the classification of offences contained in the *Telecommunications (Interceptions) Act 1979* (Cth) was a useful model, but was deficient in two areas—organised crime and official corruption. (The



*Telecommunications (Interception) Amendment Act 1995* has since been amended to include those types of offences.)

CJC recommendation 24.3 states that warrants for listening devices should be available only in respect of:

- an offence under Part II of the *Drugs Misuse Act* punishable by 20 years or more imprisonment
- an indictable offence punishable by imprisonment for a period of seven years or more where the conduct constituting the offence involves: the serious risk of loss, or the loss of, a person's life; serious risk of, or serious, personal injury; serious damage to property in circumstances endangering the safety of a person; trafficking in drugs; serious fraud; serious loss to the revenue of the State or Commonwealth or official corruption
- an indictable offence punishable by imprisonment for a period of seven years or more and which satisfies the following criteria: two or more offenders and substantial planning and organisation are involved; the offence involves, or is of a kind which ordinarily involves the use of sophisticated methods and techniques; the offence is committed or is of a kind which is ordinarily committed, in conjunction with offences of a like kind.

The CJC notes that the Discussion Paper proposes the use of listening devices in situations involving 'child abuse (including child pornography)'. The CJC is concerned that this definition is too broad and could encompass, for example, an offence under sections 285 and 324 of the *Criminal Code* (failure to provide the necessaries of life). The CJC does not oppose the use of listening devices in appropriate situations involving serious child sexual assault, child pornography or organised paedophile activity. However, it appears that most of these instances would be covered under the CJC's recommendations. The CJC stresses the need for clear and detailed drafting of any provisions designed to enable the use of listening devices in the investigation of sexual offences against children.

## Powers ancillary to installation and operation of listening devices (para. 6.13)

### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper proposes to include in the legislation necessary, ancillary matters which a judge may authorise a police officer to perform in the installation and operation of a listening device. Paragraph 6.16 sub-paragraph (viii) also refers to the need to have the prior approval of the judge authorising the warrant to, covertly or through subterfuge, enter to install a device; exercise rights of access; extract electricity; use reasonable force; and intercept and record conversations. Paragraph 6.13(v) further refers to authorisation for a police officer to 'intercept and record private conversations by means of the listening device.'

### **CJC RESPONSE:**

These proposals are generally consistent with previous CJC recommendations. The CJC supports the proposals subject to the following provisos:

- some criteria specifying when and what type of force may be used in particular circumstances (see CJC rec. 24.7)

- where practicable, a warning be given that force will be used
- inclusion of an explicit provision for compensation for the owners of property damaged as a result of the installation of a listening device.

The CJC recommended in its *Report on a Review of Police Powers in Queensland* that the judge issuing the warrant may authorise:

- the use of such force against property as is reasonably necessary for the purpose of carrying out anything authorised by the warrant
- the use of reasonable force against any person in the course of effecting an entry or exit of the premises, where it is necessary for the protection of the police officer or the protection of others (CJC rec. 24.7).

The recommendation also required: a warning be given that force is going to be used, unless it is impracticable to give such a warning; and provision be made for compensation to the owner for any damage to property.

In the interests of clearly defined police powers, the CJC suggests that criteria governing the use of force in the context of surveillance devices be contained in the proposed legislation.

The CJC notes that the Discussion Paper contains a proposal concerning compensation in paragraph 17.1, although the scenario described there does not relate to damage caused during installation or retrieval of a listening device. As acknowledged in the CJC's report (1994b, p. 770), it will be rare for force to be used, but where it is employed, the owner of the property should be compensated for any damage caused. The prohibition referred to in paragraph 17.1 of the Discussion Paper should not apply to damage caused in circumstances involving the installation, service, relocation or retrieval of a surveillance device.

## Listening device valid for a number of locations (para. 6.14)

### **DISCUSSION PAPER PROPOSAL:**

The Discussion Paper refers to the problem of 'suspects, including drug traffickers, avoiding detection by listening devices by later disclosure of location of the offence', and argues that it is therefore reasonable that one warrant cover the use of a listening device in a number of locations.

The Paper proposes that a judge be permitted to authorise the installation of a listening device in a class of premises (for example, motel rooms), but only where police have reasonable grounds to suspect the target offender will be in those premises. The Paper notes:

This authority is particularly important where the suspect only stays in the one place for a short time, for example less than one day. Generally one day is insufficient time to apply for and install a device.

The Discussion Paper expressly notes that it is not the intention to allow police generally to install listening devices in any number of **private** places on one warrant.