



CRIMINAL JUSTICE
COMMISSION

REPORT ON
A REVIEW OF POLICE POWERS
IN QUEENSLAND

VOLUME II:
ENTRY, SEARCH AND SEIZURE

MAY 1993

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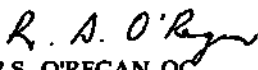
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Dear Sirs

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


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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.

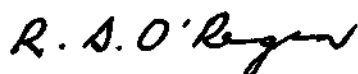
The very difficult question of consolidating into one piece of legislation police powers that are spread across a large number of different Acts is also raised in Volume I. In so doing, the report includes a comprehensive list of those powers that are currently conferred upon police officers. This is 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.

A handwritten signature in black ink, appearing to read 'R. S. O'Regan', with a stylized, cursive script.

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 unfailing 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 inexperienced 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 fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Susan M. Johnson
Principal Research Officer
Acting Director
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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

326

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.

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.

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

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.

The more recently enacted legislative provisions prescribe safeguards or measures for accountability in the exercise of the powers. For example section 19 of the *Drugs Misuse Act 1986* requires the officer who has detained a person to be searched to provide that person with his or her name, rank, station and number. If anything is seized from the person the officer must inform the person where the seized item is being taken. Both section 20 of the *Drugs Misuse Act 1986* and section 4.4 of the *Weapons Act 1990* require the relevant police officer to provide details of each detention and search for inclusion in a register, which is open for inspection by the person searched. The register is required to record:

- the name of the person detained, or if the name is unknown, a description of the person;
- the place at which the person was detained;
- the reason for the detention;
- the date, time and length of detention; and
- if the person is searched, where the search took place.

Failure to complete the register or to make it available for inspection is deemed to be prima facie evidence that the detention and search were unlawful.

As mentioned previously, there are various 'levels' of search presently permitted at law in Queensland. Generally, as regards the less intrusive type of search, there was a call in the submissions received by the Commission for some safeguards, including the keeping of a register of searches and the noting of anything found and seized.

The Queensland Police Service submission acknowledges that police officers have available to them a diverse range of powers to stop and search persons suspected of having committed certain offences. The Queensland Police Service submits that these powers are currently sufficient and that there does not appear to be a need to significantly extend police powers further. However, it does advocate that the powers be consolidated into one general section. The advantages perceived by the Queensland Police Service in consolidation are, first, that the powers of stopping, detention, search and seizure will be clearly spelt out in one statute, rather than being dispersed over a multitude. Secondly, the use of the power would be regulated by adequate safeguards which do not apply to many of the search provisions of the various Acts now in force.

The Queensland Police Service proposes that legislation should permit a police officer, who reasonably suspects that a person in a public place is carrying:

- a stolen item;
- an unlawfully obtained item;

- a weapon;
- any other illegal item (e.g. dangerous drugs); or
- an item with which a person intends to commit an offence;

to stop, detain and search that person. If any such items are found, the Queensland Police Service submits that the police officer should be able to seize and retain them as evidence. The submission specifically states that the proposal does not address the issue of body cavity searches or searches where the person is on private property. In the latter case, the Queensland Police Service states that search warrant provisions should be relied upon.

The safeguards suggested by the Queensland Police Service for the exercise of the power by police officers are:

- That where a search is to be conducted the police officer concerned will be required to provide the reason for the search to the person to be searched.
- When requested by a person who is to be searched, the police officer is to supply his or her name, rank, registered number (if any) and station/establishment, and, if in plain clothes, to produce identification.

The Queensland Council for Civil Liberties approached the issue on the basis of whether a search is needed for protective reasons such as custodial security or whether it is needed for investigative reasons. If required for investigative reasons the Council argues against a general power to conduct warrantless searches of persons.⁴¹ It submits that there should be prior judicial scrutiny of the grounds for a search and that authorisation through the issuing of a warrant should be an essential protection against unjustified searches.

Delays in obtaining warrants can be reduced through the use of modern technology. The Council contends that the primary means of dealing with the special problems of the mobility of people and vehicles should be through arrangements for the issue of telewarrants rather than the expansion of the powers to search without warrant. If, however, there is to be any extension of the power to search without warrant the Council states that the powers should be confined to serious crimes and to cases where delay would result in the loss or destruction of evidence. Any power of search should be counter-balanced by effective controls which should include a requirement for the keeping of records of what was done, by whom and why.

41 The position of the Council on the first limb will be addressed in the forthcoming volume dealing with arrest.

Furthermore, the Council considers that an effective system of sanctions for unlawful searches and seizures is important. It believes that evidence obtained unlawfully should be excluded from use in court proceedings unless the officer acted in the honest belief that the action was lawful (the good faith exception) or the evidence would have inevitably been discovered (a windfall exception).

The Youth Affairs Network of Queensland submits that personal searches should only occur when absolutely necessary and be subject to substantial safeguards, as they represent significant compromise of civil rights. It advocates that, except for a weapons search, pre-arrest search of a person should not take place and that the search power should not permit cavity searches or the taking of samples.

The Queensland Association of Independent Legal Services (QAILS) contends that searches of the person should only be permitted incidental to charging and arrest or upon production of a warrant, with the only exception being where there exists a genuine and immediate threat to public safety. It states that the detention and search of a person who has not been charged or arrested represents a significant intrusion on that person's privacy, and that the process of obtaining a warrant provides a check that there are indeed reasonable grounds for believing that a search is necessary. Through the ability to obtain warrants by telephone/radio, which QAILS supports, it says the police need not experience significant delay in obtaining valid warrants.

QAILS also argues that certain safeguards should be applicable to searches generally. These include those safeguards appearing in more recent legislation, such as the requirement that the police officer conducting the search be obliged to provide the person to be searched with the officer's name, rank and station,⁴² and that a register be maintained in which details of the search are entered. The Association believes that such safeguards provide a minimum degree of accountability for an officer's actions in undertaking a search and should be applicable to all searches. It supports strong penalties for the non-adherence by an officer to the procedures for search and makes such non-adherence an offence by the officer.

The Logan Youth Legal Service agrees with the QAILS submission and expresses its concern about the alleged practice of strip-searching young people prior to arrest and without a warrant. A representative of that Service stated that on two occasions whilst working in the city he observed strip-searches being conducted on young people in what he described as an indecent manner. He argues that the present situation is open to abuse and that safeguards need to be implemented to protect young people. The Logan Youth Legal Service proposes that, in the case of all searches, young people receive oral and written information relating to their

42 The Association believes that the provision of the officer's details should be in writing, as, given the stress associated with a search situation, it is unlikely that the person searched will remember details provided verbally.

rights. Such information would include the relevant officer's name, station and the reason for the search. In the case of strip searches it proposes that an independent person, preferably nominated by the person to be searched, should be present.

One senior member of the Queensland Police Service, in a personal and confidential submission to the Commission, argues that police must be given the power to search every person located within a reasonable distance of a crime scene, where such a person is suspected on reasonable grounds of:

- having recently committed or being about to commit a crime;
- being in possession of a firearm or stolen property;
- being in unlawful possession of prohibited drugs, a utensil, or money from the sale of drugs or purchase of drugs; and
- behaving in such a manner or under such circumstances to suggest that a search will prevent the disposal or destruction of evidence or prevent the commission of a crime.

He does argue, however, that police must be required to identify themselves and explain the reason for the search and enter all particulars in a general Search Register. These requirements are endorsed in quite a number of the submissions. The Commission also received submissions from members of the public who argue that a person should only be searched after he or she has been arrested.

The Queensland Law Society is opposed to any proposal that would see the enactment of a general power for police to stop and search persons and seize property prior to a person being placed under arrest. Notwithstanding this objection, the Society does see merit in the consolidation of search powers, provided that such a consolidation was flexible in recognising that different powers should be available depending upon the seriousness of the matter being investigated; that is, the Society does not want any consolidating legislation applying the greatest power usually reserved for the most serious offence as the single power applicable to all offences. In particular, it opposed the granting of a power to conduct a search of the kind contained in section 259 of the *Criminal Code*⁴³ prior to arrest. The Society said that it would "view as a fundamental infringement of citizens' rights for them to be subject pre-arrest to the range of bodily searches authorised by that

43 Under this section a police officer of the same sex as an arrestee or a medical practitioner or dentist upon the direction of a police officer, may search a person who is in lawful custody and take possession of anything that may afford evidence of the commission of an offence. If the arrestee does not consent to the search in writing the officer must make an application to a magistrate for an order that the act be done without consent.

section".⁴⁴ Such powers should be limited to the most serious offences and only after arrest. Further, the Society proposed general safeguards as to the exercise of search powers, namely the requirements that police officers exercising such powers provide his or her name, rank and station and that a register be kept in which the details of the search are entered.

Other Jurisdictions

Commonwealth of Australia

The Australian Law Reform Commission (hereinafter referred to as 'ALRC') considered the issues as part of its examination of the criminal investigation process. In its report, *Criminal Investigation* (1975), the ALRC recommended that all searches and seizures be unlawful unless made pursuant to either a court order or warrant, or, if made without a warrant, in accordance with one of the following criteria:

- (a) in response to circumstances of such seriousness and urgency as to require and justify immediate action without the authority of such an order or warrant;
- (b) at the invitation, or with the consent, of the person occupying the premises or in charge of the vehicle in question; a signed acknowledgement being prima facie evidence that such an invitation was made or consent given, the absence of such acknowledgement being prima facie evidence that it was not; or
- (c) pursuant to specifically designated authority.

In respect of category (a), the ALRC was of the view that legislation should not attempt to limit the circumstances of 'seriousness and urgency' by defining that term but envisaged that the term should expressly include:

- (i) emergency searches necessary to prevent the loss of evidence; and
- (ii) searches of persons and vehicles suspected on reasonable grounds to be carrying an article which is an offensive weapon, or is either the fruit, instrument or material evidence of the commission of a serious offence (defined as an offence punishable by more than six months imprisonment).

44 Bodily searches authorised under this section include: the examination of the person including orifices; taking of samples of blood, saliva, dental impressions or hair and the provision of urine tests on request. This section also authorises the taking from the person's body any substance or thing, provided the taking is unlikely to cause bodily harm to the person if the person co-operates therewith.

The ALRC specifically identified 'emergency searches to prevent loss of evidence' as being matters of seriousness and urgency, as it could envisage circumstances where the obtaining of a warrant would be impracticable. It did not endeavour to define what those circumstances might be but hoped that the courts would interpret the statement along the lines of that adopted by the United States courts in their interpretation of the Fourth Amendment to the United States Constitution⁴⁵ (ALRC 1975, para. 205).

The inclusion by the ALRC of situation (ii) as a situation of seriousness and urgency was made in recognition of the utility to law enforcement that such a power had demonstrated in the past. The ALRC was persuaded that it was appropriate and necessary to retain the power and even extend it slightly to conform with police practice and accordingly recommended that the power to search persons without warrant should be available where there are reasonable grounds to suspect that there may be found an offensive weapon; or something which is the fruit of a serious crime, the means by which it was committed, or material evidence to prove its commission.

The requirement of reasonable grounds was said to be appropriate so as to ensure that the exercise of the power could be subject to an objective test. The ALRC recommended that disciplinary action be taken if the exercise of the power was found to be unreasonable.

It was concluded that search of persons or vehicles should be permitted where consent is given, provided that the consent is given voluntarily and given after the person has been informed of his or her right to refuse consent. The ALRC suggested that in order to achieve an informed consent and the protection of the individual's rights, any consent obtained should be acknowledged in writing. The absence of such written acknowledgement would be *prima facie* evidence that no notification of rights was made, or consent given.

Australian Royal Commission of Inquiry into Drugs

The Australian Royal Commission of Inquiry Into Drugs (hereinafter referred to as the 'Williams Commission') identified search powers as having a special importance for the enforcement of drug laws. The seizure of drugs which prevents their use is a goal and the drugs seized will be important evidence in any subsequent

45 The Fourth Amendment proscribes search without probable cause and, by judicial interpretation, without a warrant. Notwithstanding, the United States courts have recognised an exception to the need to have a warrant in circumstances where there is probable cause and there are fast developing situations which preclude resort to a magistrate. Such situations include searches incidental to arrest, stop and frisk searches of suspicious persons for weapons and searches of motor vehicles which may be driven away before a warrant can be obtained. The ALRC equated the term probable cause with 'reasonable grounds for suspicion' (ALRC 1975, para. 199).

prosecution of offenders. Nevertheless, it stated that the powers of search and seizure should not be used to make the initial discovery of the location of drugs as that was the role of police investigation (Williams Commission 1979, p. 128). However, the Williams Commission did recognise that as consent for a search is unlikely to be forthcoming, powers of search must be given by law.

It is also recognised that the extent of search permitted may need to be more thorough than a frisk search as used for a weapons check due to the ease of concealment of drugs (Williams Commission 1979, p. F29). In considering what laws may be appropriate, the Williams Commission distinguished between serious offences which may be described as drug trafficking and the less serious offences relating to drug use or dependence. For both types of offences it recommended a number of guidelines for the conduct of such action as evidence before the Williams Commission confirmed that searches of persons were a principal source of complaints against police (Williams Commission 1979, p. F32). However, the Williams Commission's guidelines differed between the two classes of offences. The extent of the powers proposed were greater for drug trafficking than drug dependence offences, while there were additional safeguards for drug dependence offences to those provided for drug trafficking offences.

For the enforcement of the serious offences of drug trafficking, the Williams Commission recommended that a power be given to police to stop, search and detain a person in a public place where they have reasonable grounds for believing that drugs or documents (including money) relating to the commission of an indictable offence under the legislation recommended by the Commission are present on the person. It said that simply because the person 'looks the type', without any corroborating facts, would not be reasonable grounds for believing the presence of drugs.

The Williams Commission's recommended guidelines for the exercise of such a power included:

- (a) that for reasons of modesty and of preventing false accusations females should only be searched by females;
- (b) that it should be the duty of the police officer conducting the search to ensure maximum practicable privacy as personal searches may require the removal of the suspect's clothing;
- (c) that to minimise allegations of abuse, an officer ought to be authorised to use force to detain a suspect but not be authorised to use force to search him. Rather, persons refusing to undergo a search should be taken before a magistrate who, after receiving evidence on oath, may order that the person be searched or discharge him without search;

- (d) that, with reference to guideline (c), the grounds justifying a search depend on an officer's judgment and cannot be reduced to general rules. Often hearsay is the only evidence available to an officer and this should be expressly stated to be able to be received by a magistrate when considering the authorisation for a search; and
- (e) that where a magistrate's order to search is given, persons executing that order should be expressly entitled to use such force as is reasonably necessary to effect the search so as to remove any reluctance for them to do so.

In relation to drug trafficking offences the Williams Commission was undecided whether only authorised officers should be able to exercise the recommended power of search in an effort to prevent abuse of the power or whether it should be available to any officer.

For the purpose of enforcing the law against drug dependence, the Williams Commission recommended that legislation provide a power for authorised police officers, without warrant, to stop and search persons in a public place where they have a reasonable belief that unauthorised drugs, or other articles liable to forfeiture under the drugs legislation proposed by the Williams Commission, are present. It said that such a power was necessary in such circumstances as where drugs are in transit and there is no time to obtain a search warrant. Nevertheless, the proposal did limit the power to authorised officers only as a precaution against abuse. The guidelines listed above for search for evidence of drug trafficking were also recommended in the case of offences of drug dependence.

New South Wales

The powers of police in New South Wales to stop and search a person were considered by the New South Wales Law Reform Commission (hereinafter referred to as 'NSWLRC') in its Discussion Paper *Police Powers of Arrest and Detention*, 1987. At that time, legislative provisions permitting police to stop and search persons included section 357E *Crimes Act 1900* (NSW) which, without qualification, empowered a police officer to stop, search and detain any person whom he or she suspected of having or conveying anything stolen or otherwise unlawfully obtained, or anything used or intended to be used in the commission of an offence.

For the purposes of the discussion paper, the NSWLRC tentatively proposed a collection of rules which were to provide a 'comprehensive and integrated scheme' aimed at balancing the interest of the community in securing the personal liberty of

the individual and its interest in promoting effective law enforcement. These rules included a proposal for a power of police officers to stop, detain and search persons in the following circumstances:

- (i) the officer wishes to search a particular person for unlawfully obtained or prohibited articles;
- (ii) the police officer has reasonable grounds for suspecting that he or she will find evidence relevant to the commission of an offence on that person;
- (iii) the power may only be exercised in a public place or in any other place to which members of the general public have ready access;
- (iv) the power should not be exercised in a dwelling in which the suspected person lives or where he or she is lawfully entitled to be for the time being; and
- (v) the person may be detained for the purpose of conducting a search only for so long as is reasonable and necessary for the conduct of the search. (NSWLRC 1987, pp. 87-90)

South Australia

The matter was considered by the Criminal Law and Penal Methods Reform Committee of South Australia (hereinafter referred to as the 'Mitchell Committee') in Chapter Five of its report *Criminal Investigation*: issued in July 1974.

The Mitchell Committee identified the difficulty of balancing the privacy of the individual against the right of the general public to be protected from the dangerous or unlawful acts of the individual. It considered the South Australian legislation permitting stop, search and detention of persons as it then existed, specifically section 68 of the *Police Offences Act 1953*, and noted that such legislation was intended to be exercised in circumstances which may not justify arrest. However, the section was limited to the carrying of stolen goods. It recommended that the power to stop, search and detain a person or vehicle under section 68 be extended to situations where an officer has a reasonable suspicion that a person is carrying prohibited items and a vehicle is conveying anything used or intended to be used in the commission of an indictable offence.

The Mitchell Committee recommended that the period of detention be defined and limited to no more than two hours unless a longer period is authorised by a magistrate. If a person is not arrested within that period then he or she should be released together with any goods seized unless a magistrate orders the goods to be retained (Mitchell Committee 1974, p. 58).

England and Wales

At the time that the Royal Commission on Criminal Procedure (hereinafter referred to as the 'Philips Commission') was considering the issue of stop and search of persons, the situation in England and Wales closely resembled the present situation in Queensland. There was a broad spectrum of items for which stop and search was permitted by legislation, ranging from items such as the eggs of protected birds to offensive weapons and prohibited drugs. The powers were often exercisable on different criteria and in different circumstances with no common rationale, having accrued piecemeal over many years as different problems were addressed by Parliament (Philips Commission 1981, p. 25).

Submissions to the Philips Commission called for the placing of the powers on a rational basis reflecting the current environment. It was said that this would assist in clarification of police powers to both the police and the public. Against this was the concern, echoed by many, that any rationalisation of the powers of stop and search should not lead to an extension of those powers. Another position taken in a few submissions to the Philips Commission was that powers of stop and search were not required at all. The argument ran that if there were reasonable grounds sufficient to justify stopping and searching a person then there must also be sufficient grounds for an arrest to which a power to search attaches.

The Philips Commission accepted the arguments made to it for the retention and rationalisation of the powers, for improving safeguards and for greater clarity and certainty. It rejected the calls for the abolition of the power either substantially or altogether. The Philips Commission's research had indicated that the availability of the powers of stop and search of persons was of use in the detection of crime and the arrest of offenders.⁴⁶ Also, the Philips Commission stated, the power to stop and search persons and the power of arrest were not always the same. The powers are exercised at different stages in the investigation. There was concern that the abolition of the power may lead to an increased use of the power of arrest which the Philips Commission did not wish to encourage (Philips Commission 1981, paras 3.17-3.19).

In the event, the Philips Commission proposed to place the powers of stop and search of persons on a balanced footing with significant emphasis on increased safeguards. It suggested a consolidation of existing powers of stop and search into one statute wherein a police officer (whether in uniform or not)⁴⁷ would have the power to stop and, if need be, search any person in a public place whom the officer "suspects on reasonable grounds" of conveying stolen goods or being in possession of prohibited articles. The Philips Commission stated that such a provision would

⁴⁶ See pp. 316-317 (*infra*) for more detail.

⁴⁷ The Philips Commission did not consider the wearing of a uniform was essential but, where a uniform is not worn, identification as a police constable was clearly necessary.

absolve the need for the Parliament to make special provisions for stop and search whenever it created a new offence for possessing a particular article (Philips Commission 1981, para. 3.20).

The Philips Commission acknowledged that even a limited extension may give rise to a concern that the power would be abused and that, without stringent controls, such abuse may be possible. Consequently, safeguards against random, arbitrary and discriminatory searches were considered essential. The principal safeguard proposed by it was the test of 'reasonable suspicion' which was to be satisfied before the power could be exercised. To minimise the occasions that such a test was loosely applied the Philips Commission proposed the additional requirements that the person stopped be notified of the reason for the search, that the officer tell the person the officer's name and number, that all searches be recorded in registers, and that the registers of searches be monitored by supervising officers. It believed that the extent of search on the street should be limited to a fairly superficial examination of a person's clothing and baggage.

It was recommended that a copy of the record of search should be made available within a reasonable period upon the request of the person searched. This would permit the person searched to challenge the search on an informed basis. It also recommended that the failure by an officer to give the reasons for the search should make the search unlawful. If the officer proceeds with a search despite resistance, the Philips Commission accepted that the officer would be open to an action for assault and disciplinary action. However, it did not favour the making of anything found in the course of an unlawful search inadmissible in evidence at a trial. The Philips Commission considered that such a consequence would not be particularly effective in deterring unlawful searches and preferred the spectre of a civil action and disciplinary proceedings as a deterrent (Philips Commission 1981, para. 3.28).

It said that a defect of the exclusionary evidence rule was that it could only apply to a small percentage of cases. The Philips Commission's research showed that only a minority of those who are stopped and searched are arrested, and a sizeable minority of those arrested are not charged. Of the persons arrested a significant proportion are not prosecuted and, of those who are prosecuted, the overwhelming majority plead guilty. In addition, it found that of those persons who do run to a trial, very few challenge the legality of the police exercise of their powers. Consequently, the Philips Commission concluded, an automatic exclusionary rule can operate to secure the rights of only a very small minority of those against whom a particular power has been exercised which leads to doubt as to the effectiveness of such a rule (Philips Commission 1981, para 4.125).

The Government accepted the majority of the Philips Commission's recommendations for the stopping and search of persons incorporating them into the *Police and Criminal Evidence Act 1984 (PACE Act)*. However, the Act does depart from the Philips Commission's recommendations in some respects.

The Government did not accept the Philips Commission's recommendation that there should be a single statutory provision regulating stop and search which replaced existing powers. The *PACE Act 1984* does provide a general power but, with the exception of six stop and search provisions which were repealed, the powers of stop and search in other enactments remain. However, the safeguards and the measures for accountability incorporated into the exercise of the power in the *PACE Act 1984* (detailed below) are, with limited exception, expressed to apply to all statutory provisions empowering police to stop and search persons and vehicles prior to arrest (s. 2).

Section 1 of the Act contains a general power which permits police to stop and detain a person for the purpose of a search of the person. However, a search may not be carried out unless the officer has reasonable grounds for suspecting that stolen or prohibited items will be found (s. 1(3)). Those grounds must exist 'prior' to the officer exercising the power to stop and detain. The Code of Practice to the Act states:

Where an officer has the reasonable grounds for suspicion necessary to exercise a power of stop and search he may detain the person concerned for the purposes of and with a view to searching him. There is no power to stop and detain a person against his will in order to find grounds for a search. (emphasis added) - Code A Clause 2.1

If an officer does have the necessary grounds and does stop a person he or she is not then obliged to search the person if it subsequently appears to the officer that a search is not required or is impracticable. This is expressly stated in sub-section 2(1) of the Act. Consequently, a stop will not be unlawful if, upon speaking to the person stopped or for other reasons, the officer decides that a search is not warranted, provided the officer had reasonable grounds for suspicion before stopping the person.

The power to stop and search persons may be exercised by an officer:

- (a) in any place to which at the time, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission [such as parks, streets, sports grounds]; or
- (b) in any other place to which people have ready access at the time when the officer proposes to exercise the power but which is not a dwelling [such as a house garden]. (s. 1(1))

Before exercising the power in circumstance (b), the officer must have grounds to believe that the person the officer wishes to search does not live there and that he does not have express or implied permission of the resident to be there (s. 1(5)).

The Government accepted the Philips Commission's recommendations for safeguards and measures of accountability. The safeguards imposed by the Act which are also applicable to other statutory provisions empowering police to stop and search persons prior to arrest include:

- before undertaking a search the officer must take reasonable steps to inform the person of the officer's name, station, the object of the search and the grounds for making the search (s. 2(3));
- except if it is not practicable to make a record of a search (such as if a large group is to be searched), the officer must inform the person that he or she are entitled to a record of the search and where an application for the record may be made (s. 2(3)(d));
- a person may be detained only for such time as is reasonably necessary for the purposes of the search at the place the person or vehicle was detained or nearby (s. 2(8));
- in exercising the power of search, an officer cannot require a person to remove any of his or her clothing in public other than an outer coat, jacket or gloves. Consequently, a search beyond this must take place out of public and, if there is no suitable place nearby, the more extensive search cannot take place. However, there is no restriction on an officer asking a person to remove more than his or her jacket or gloves in a public place and he or she may do so willingly (s. 2(9));
- the thoroughness and extent of a search must depend on what is suspected of being carried, and by whom (Code A clause 3.3);
- an officer must be in uniform to exercise the power to stop a vehicle (s. 2(9));
- if an officer is in plain clothes he or she must show a person his or her identity card before conducting a search of the person (s. 2(2));
- except if it is impracticable to do so, an officer must make a record of the search (s. 3(1)). This must be done on the spot or, if not practicable to be made on the spot (e.g. due to bad weather), as soon practicable after the search (s. 3(2));
- the record must include the name of the person searched if the officer knows it, but the officer may not detain a person in order to find out that person's name (s. 3(3)). If the person's name is unknown a description of the person must be included in the record (s. 3(4)); and
- the record of search must detail the object of the search; the grounds for making it; the date and time that it was made; the place where it was

made; whether anything, and if so what, was found; whether any injury to a person or damage to property was caused by the search; and the identification of the officer who made the search (s. 3(6)). The person's ethnic origin should also be included (Code A Clause 4.5).

The recommendation of the Philips Commission that the failure by officers to comply with the procedures should make the search unlawful which would entitle the person to resist and sue for assault was not incorporated into the Act.

In 1989, a paper examining the use of stop and search powers under the Act was published (Dixon et al. 1989, pp. 185-206). The paper focused on the effectiveness, as a limit on the use of the power, of the requirement under the Act that, before the power can be exercised, the officer must have "reasonable grounds to suspect" the person or vehicle to be stopped and searched is carrying stolen or prohibited articles. The authors identified a number of difficulties with the requirement.

First, they said that "the significant issue in the legislative control of stop and search became the attempt to exclude stereotyping as an adequate ground for suspicion justifying the use of coercive powers" (Dixon et al. 1989, p. 186). They argue that this focus has failed to take account of a significant type of suspicion relied upon by police which is suspicion through incongruence. That is, suspicion which may be raised when a person does not fit into the situation e.g. a group of youths in an industrial estate at night or a scruffy person driving an expensive car. The authors reason that categories of suspicion are not created unilaterally by the police but are a product of negotiation and interaction with the public. Suspicion may depend on the time of the day, the location, the dress of the person and, importantly, the responses (both oral and by actions) the suspicious person gives to an officer's approach or the officer's questioning. They conclude that the use of suspicion, based on the recognition of incongruity, is highly valued in police culture and the rooting of this practice of suspicion in the culture of police work makes it highly resistant to change. An attempt to change that working practice is likely to be resisted as interference by management which is seen by many junior officers as being out of touch with reality of street policing (Dixon et al. 1989, p. 189).

The second shortcoming of the *PACE Act 1984* test of "suspicion on reasonable grounds" which was identified by the authors was the scheme's treatment of stop and search as an artificially distinct event. They say this ignores stopping and searching as part of a social process stretching from informal contact to arrest. The suspicion about persons may ebb and flow through this social process as officers stop and talk to people in the street.

The authors also state that regulation of stop and search is made more difficult by its importance to uniformed patrol officers. The power provides them with a rare opportunity to do pro-active and self-motivated policing. The credit given for initiative and the arrest record of officers leading to desirable postings or promotions was also identified as a factor frustrating the regulation of a power to

stop and search (Dixon et al. 1989, p. 190). The authors believe a further problem with the Act lies with the belief on the part of some officers that they can avoid the statutory requirement of 'suspicion on reasonable grounds' by claiming that the suspect consented to the search.⁴⁸

The author says that these difficulties reflect the scheme's conception of how social activity can be analysed and understood. They observe that "rather than being contextual and cumulative, *PACE Act 1984* suspicion is individual and specific. The relevant issue is not how a person fits, but how he or she looks and acts. The basis must be a legally identifiable fact, not an experiential hunch" (Dixon et al. 1989, p. 191). They state this concept faces major difficulties and refer to illustrative examples in support of that statement, such as situations where the police officer is faced with more than one actual or potential suspect:

... a bystander reports to a police officer that she saw that X was carrying a knife. The officer stops and searches X, who is accompanied by Y. No knife is found on X: the officer may then claim to have reasonable grounds for suspecting that Y is now carrying the knife and can search him. But what if Y chooses not to wait for the result of the search of X, and walks away? Until the search of X proves unsuccessful, there are no reasonable grounds for suspecting Y, and consequently no power to detain him to be searched.

The authors argue that *PACE Act 1984* has failed in its effort to control stop and search through its failure to satisfy at least some of a number of conditions that they consider necessary for a realistic chance of success, namely:

- (i) **Clear Expression of the Desired Standards** - The authors note that the Philips Commission stated that a positive definition of reasonable grounds for suspicion was impossible and had rejected legislating or codifying some agreed standards. However, the Code of Practice to the Act sets out guidelines on what could or could not amount to suspicion which the authors say are unworkable. Dixon et al. suggest that such guidelines may be unclear and impractical. They say the test of suspicion requiring that it must be such as would be shared by an objective third party calls for a perhaps unrealistically deep inquiry by an officer (Dixon et al. 1989, p. 194).

48 In December 1985 the Home Office issued a circular on *PACE* advising police and the courts that "In any situation where a constable exercises a power of search under this Act, the co-operation of the citizen should not be taken as implying consent, and the exercise of the power should be noted in the appropriate record. Whilst it is legitimate to invite co-operation from the public in circumstances where there is no power to require it, the subject of a voluntary search must properly understand the position and not be left with the impression that a power is being exercised. Voluntary search must not be used as a device for circumventing the safeguards established in Part I of the Act." (Zander, M. 1990, p. 8)

- (ii) **Effective Training in Order to Modify Police Culture** - The research of Dixon et al. revealed that *PACE Act 1984* had not led to a fundamental change in the ethos and practice of policing. It had not been sold by Parliament as such. They state, "PACE was presented as a new set of procedures, not as a new approach to policing. . . . Our interviews and observational fieldwork suggest that many officers have found the PACE provisions either impracticable or open to various interpretations: consequently, many of them try to avoid PACE, preferring to rely on attempts to gain something which will pass for consent, backed by the alternative of arrest" (Dixon et al. 1989, p. 197). In particular, they suggest that insufficient, if any, attention was paid to studies of police work which showed that police officers do not think legalistically, and that (particularly in street policing) non-legal factors dominate their decision-making process (Dixon et al. 1989, p. 196).
- (iii) **Favourable Political Circumstances** - The *PACE Act 1984* provisions on stop and search were introduced in an environment of considerable political controversy and its reception by police officers did not occur in a favourable or even neutral environment. According to the authors this may well have contributed to junior officers treating the provisions, at best, as inhibitory rules and, as their field-work suggested, often attempting to avoid them.
- (iv) **The Backing of Effective Sanctions For Non-Compliance** - The authors identify a number of sanctions (and their ineffectiveness) incorporated into the *PACE Act 1984* which may be imposed in the event of a breach of the stop and search requirements, including:
 - (a) accountability via police authorities. They refer to research which has shown the influence of external bodies is minimal;⁴⁹
 - (b) disciplinary action as a result of complaint or supervision. Research undertaken by the authors and others revealed that few people complain officially about being stopped and searched and any supervision through review of search records was limited. Further, discrepancies in search records would rarely be detected except upon complaint or investigation;
 - (c) exclusion of items discovered in an unlawful search as evidence in a trial under section 78 of the Act (exclusion of unfair evidence). The poor deterrent that this makes was discussed earlier in this chapter.

49 See Dixon et al., 1989, p. 200 for more information.

- (v) **Public Knowledge of Rights and The Limits of Police Powers** - In a research interview sample by the authors, 77 per cent of the officers interviewed reported that people never or rarely know their rights when being stopped and searched. Dixon (et al. 1989) suggested that an adequate appearance of consent can usually be engineered as the public in general do not know the law on stop and search.

Canada

The Law Reform Commission of Canada (hereinafter referred to as 'LRCC') recommended that search of persons without warrant be permitted when:

- (a) the person has been arrested and it is reasonably prudent to search;
- (b) the person gives consent (informed consent) to the officer to do so; or
- (c) an officer believes on reasonable grounds that an object of seizure is to be found on the person and a delay in obtaining a warrant would result in danger to human life or safety (LRCC 1984).

As this chapter deals with stop and search prior to arrest category (a) is not discussed here. Categories (b) and (c) shall be dealt with in turn.

Parallel with England and Wales, the LRCC's recommendation of a power to search where the person consents to the search was conditional upon such consent being an informed consent. The LRCC recommended that before undertaking the search the officer must inform the person orally or in writing that the person has a right to refuse to consent and to withdraw his or her consent at any time. The LRCC said that they valued the notion of an informed consent rather than a consent obtained through intimidation or fear where persons were unsure of their rights (LRCC 1984, p. 34). To encourage the use of documentation which provided clear evidence of consent, it recommended that the signature of the occupier on a document advising them of his or her rights be prima facie proof that the occupier was informed of his or her rights and gave his or her consent.

Category (c) was supported by the LRCC in line with its belief that whenever human life or safety is endangered by the delay necessary to obtain a warrant, the sacrifice of warrant protections is clearly justifiable (LRCC 1984, p. 37).

Other Considerations

The Queensland Criminal Code Review Committee 1992 recommended the retention of the present section 15 of the *Drugs Misuse Act 1986*. This provides for the power to detain and search persons if the police believe, on reasonable grounds, that the person has in his or her possession anything that may afford evidence as to the commission of a drug offence or may be liable to forfeiture under the *Crimes (Confiscation of Profits) Act 1989*. The Criminal Code Review Committee expressly stated that this power should be confined to evidence of drugs offences and not extended to a general power in relation to the investigation of all indictable offences.

Conclusion

The development in Queensland of the power to search without a warrant before arrest has occurred as follows. The very restricted common law principle that such searches are not allowed prior to arrest without a warrant has been eroded by the passing of some nine Acts conferring a power prior to arrest, each of which addresses the needs of one particular area and was formulated without any apparent consideration of the other Acts. Given the concerns about the development of powers which affect the rights and liberties of the individual citizen, anecdotal evidence of abuse of these powers and on the other hand concerns about the growing crime rate and the need to combat this, it is appropriate to analyse the growth of these powers and make recommendations, as set out hereafter.

Persons and vehicles are mobile and the power to search without warrant in some circumstances is seen to be necessary because of the risk of loss or destruction of evidence which could result from a failure to conduct a search immediately upon encountering the person or vehicle.

However a distinction is made between persons and vehicles etc. to reflect the particular emphasis that our legal tradition has placed on the inviolability of the person's body. An unlawful stop and search of a vehicle may result in an action for trespass to chattels but few would equate its seriousness with the assault or false arrest action which may arise out of an unlawful search of a person. Different jurisdictions have placed differing emphasis upon these rights and the degree to which they should be protected. The Philips Commission in the United Kingdom said:

We believe that people in the street who have committed property offences or have in their possession articles which it is a criminal offence to possess should not be entirely protected from the possibility of being searched . . . But the grounds for stop and search must be firmly based upon reasonable suspicion and the exercise of the powers must be subject to strict safeguards. (LRCC 1983, p. 180)

In contrast American law places greater emphasis upon the importance of the individual interests affected, only allowing warrantless search of a person pre-arrest on the basis of protection from concealed weapons (LRCC 1983, p. 179).

In determining the circumstances under which police are allowed to stop and search a person the Commission has looked at the usefulness of the particular powers and whether the potential benefit to the community from conferring these powers on police outweighs the cost of the intrusion to the liberty of the individual.

There are obvious anomalies in the nine different Acts allowing police to exercise this power (see Table 1). For example, the power to stop a person about whom the relevant suspicion exists is available to search for evidence of offences under the *Racing and Betting Act 1980* but is not available to search for evidence of murder or rape. Further, any police officer who has reasonable grounds to suspect that a person is in possession of prohibited drugs or weapons may stop and search that person. However, if it is suspected that a person is in possession of stolen goods, only an officer of the rank of sergeant or above is permitted to search the person. There is a demonstrated need for more consistency if these powers are to form part of a cohesive scheme of police powers.

Search of Persons for Weapons and Drugs

There are some circumstances where the majority of submissions supported the police having the power to stop and search a person. The most obvious of these is where a person is reasonably suspected to be in possession of a weapon. To a lesser extent there was support for the police power to stop and search a person for prohibited drugs although there was concern expressed about the extent of the search permitted by this power. For example, some individuals and organisations submitted that the power to conduct an internal body cavity search, contained in section 17 *Drugs Misuse Act 1986* and discussed below, should not be available to police in relation to suspicion of possession of small amounts of drugs apparently for personal use as the penalties imposed by the courts are often only a relatively small fine and therefore do not appear to be treated as 'serious offences'.

While there has been little research in Queensland as to the effectiveness of such powers the Philips Commission in the United Kingdom reviewed the use of stop and search powers under the *Misuse of Drugs Act 1971* with a view to determining how many stops and searches were successful. They found that in 1978 31.1 per cent of the stops and searches lead to the discovery of illegal possession of drugs. The study also looked at the years 1972 to 1978. The highest percentage over that time was 33.4 per cent (1973) and the lowest was in 1976 when 25.4 per cent of their searches were successful (Philips Commission 1981a, p. 80).

7.1 Recommendation - Search of Persons for Weapons and Drugs

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.

Stolen Goods

The other powers of police to search persons are more difficult. A number of the provisions outlined in Table 1 (attached) reveal a police power to search a person for stolen goods or goods otherwise unlawfully obtained - e.g. *Vagrants, Gaming and Other Offences Act 1931*, *Hawkers Act 1984*, *Pawnbrokers Act 1984* and *Second-hand Dealers and Collectors Act 1984*. These powers are subject to the restriction that they may only be exercised where there exists "reasonable grounds for suspecting" that property in possession of the person is stolen or unlawfully obtained. The Commission acknowledges that these Acts empower police to stop and search a person in circumstances which may lead only to the detection of an offence which would not be viewed by many as a "serious offence". Nevertheless, there is evidence in the United Kingdom that such powers are effective in detecting crime. A study was undertaken by the Philips Commission of the stops of persons and vehicles conducted pursuant to the *Metropolitan Police Act 1839* enabling search for stolen goods. It looked at 18 districts in July 1978 and January 1979. The percentage of arrests from stops in 1978 averaged 13 per cent, ranging from six per cent in one district to 21 per cent in another. In January 1979 the average percentage of arrest from stops was 12 per cent, ranging from a low of four per cent to a high of 18 per cent (Philips Commission 1981a, pp. 81-84). In view of this and bearing in mind the requirement that the suspicion must be based on reasonable grounds (see Chapter Three for an explanation of this requirement) and the safeguards against abuse of the power recommended later in this chapter, the Commission can see justification for the retention of this power.

Furthermore, the *Vagrants, Gaming and Other Offences Act 1931* provision is restricted to police officers of or above the rank of sergeant. The Commission is of the view that no useful purpose is served by such a restriction. The nature of the power is such that it is most likely to be exercised by police on the street and the

majority of those officers most likely to be on the street and therefore in a position to exercise the power are below the rank of sergeant. The following examples were provided to the Commission of frustrations caused by this anomalous restriction.⁵⁰

- a. Two constables have reported they were instructed to attend a complaint regarding a person stealing property from a shop. The suspect was allegedly in possession of the stolen property. The suspect refused to consent to a search or to voluntarily hand over the property. The police officers were seriously delayed in making their investigations.
- b. A report was received at a country centre that \$18,000 worth of jewellery had been stolen from a cattle station. An employee who had recently left the property was nominated as a suspect. It was discovered that the suspect had departed the town in a bus. The destination of the suspect was ascertained through enquiries. She was met at the Brisbane terminal of the bus company by two detectives, neither of whom was a sergeant. They asked the suspect to accompany them to the police station for questioning. The suspect refused. The detectives could not detain the suspect nor could they search her for the missing jewellery as they had insufficient rank to exercise the search authority under the *Vagrants, Gaming and Other Offences Act 1931*. The suspect left the scene and has not been located since.

The Commission recognises that these are not necessarily examples of offenders escaping justice because of the limitation on police officers' power of search; one will never know whether the suspects were or were not in possession of the stolen property. However, the examples demonstrate that the impediment to a further and more complete investigation was the rank of the investigating officers.

7.2 Recommendation - Stolen Goods

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*).

50 Information provided to the Commission from officers of the Queensland Police Service.

Other Specific Powers to Search a Person

The Commission makes the following observations in relation to the power to search a person specified in other legislation:

It is possible to see a justification when viewed in isolation, for the existence of a power to search for betting instruments because of the cost to the community of unlawful bookmaking. However, the Commission finds it difficult to justify singling out this type of offence. Other offences such as murder, rape etc. which carry much higher penalties reflecting a greater degree of seriousness in the eyes of the community, do not carry with them the power to search suspected persons for evidence of the offence without a warrant.

The Commission does not accept the argument proposed by some that because the power is available for such things as betting instruments and evidence of offences under the *Casino Control Act 1982* it should also be available for evidence of more serious offences. A justification for the extension of the power should be based on more substantial grounds relating to the benefit and costs of the particular power under consideration. While not doubting that the powers as they currently exist were based on sound policy considerations, they exist under legislation administered by different ministers with different goals in mind. The concern is that the effect on the overall armoury of police powers was not a major consideration of the time.

Viewing police powers across the board, the Commission sees merit in the proposal that the power to search persons without warrant be available only with respect to serious offences. Any other specific power concerning offences of less seriousness would need to show such extraordinary circumstances as to justify a broader application of the power.

In preparing its report the Commission tabulated the powers of police under different pieces of legislation. These tables clearly demonstrate the anomalies in the granting of powers to search persons. While the Commission has attempted to conduct a comprehensive review, it is not in the position to make conclusive statements about each of the powers currently granted. However, it can state that there is a need for reviewing each of these powers against the principle that pre-arrest powers of police without prior judicial authority should be reserved for the more serious offences.

Casino Control Act 1982 (cheating etc.)

Section 106 of the *Casino Control Act 1982* provides for the search of persons suspected on reasonable grounds of cheating in casinos (s. 103) or suspected of unlawfully using prohibited equipment such as counterfeit chips or marked cards (s. 104). The Casino Control Division of the Queensland Treasury reports that the

powers under section 106 were used on 18 occasions in 1991 and on 15 occasions up to August 1992. There is no distinction made between the stop and search power under section 106 or the arrest power. The Casino Control Division is of the view that the power to search should remain in the Act. The Commission is of the view that this power may be essential to the effective supervision of Queensland casinos because the ability to stop and search a casino patron about whom the relevant suspicion exists is arguably essential to control the multimillion dollar activity. Nevertheless, the Commission feels that this power should be the subject of review as the offences at which this power is aimed do not attract heavy penalties. If their retention is considered justified, the Commission recommends the normal safeguards and record making procedures be followed.

Racing and Betting Act 1980 (SP bookmaking etc.)

Section 235 of the *Racing and Betting Act 1980* authorises the search of a person suspected on reasonable grounds to have breached certain sections of the Act such as carrying on unlawful bookmaking (s. 214) or possession of unauthorised instruments of betting (s. 217). While the department that administers the legislation was not in possession of information concerning the extent of use of this power by the police, anecdotal evidence provided by police officers attached to the Commission reveals that the powers have been used in some investigations of unlawful bookmaking. Weighing in favour of the retention of this power are the covert nature of SP bookmaking, the cost to the public caused by its continuance, the difficulty of apprehending offenders and the ease with which evidence such as betting slips can be concealed or destroyed. As well, the Commissioner for Police recently announced that an SP bookmaking squad was to be established which may well indicate an expectation of an increase in the use of these powers.

However, there are also arguments against its retention. The offence is a 'money' offence attracting relatively light penalties yet the powers provided to the police are extensive. (A person or vehicle can be searched without a warrant in relation to the suspected breach of nine different sections of this Act.) Further, at present these powers do not appear to be frequently used. Given the Commission's view that these powers should be tightly controlled because of the potential for abuse, it presently appears somewhat difficult, on balance, to justify the retention of this power. However, the Commission is wary of making a final recommendation as to the retention of any of these powers. Rather it is appropriate that they be the subject of a review where the relevant department can put its case fully in relation to this issue.

Health Act 1937 (possessing cyanide)

Section 131 of the *Health Act 1937* provides for the search of persons suspected on reasonable grounds of possessing cyanide. Although Queensland Health stated as at August 1992 that the power had not been used within the preceding twelve months, the department was of the view that the power should be retained because

of the seriousness of the activities to which the provision applies. Further the death of two brothers from self-induced cyanide poisoning since the department's report exemplifies the relevance of such a power. The same tension exists here in relation to the competing issues of potential for abuse and the need for this power, particularly in an emergency. Its retention should also be the subject of review.

Vagrants, Gaming and Other Offences Act 1931 (racecourse offences)

Section 31 of the *Vagrants, Gaming and Other Offences Act 1931* authorises a search of any trainer or jockey or any other person on a racecourse (upon the request of stipendiary stewards) who may reasonably be suspected of having in his or her possession such items as an electric battery or a hypodermic needle. This Act is currently the subject of a comprehensive review by the Vagrants, Gaming and Other Offences Act Review Committee and any final recommendations should take account of that report. The Commission understands that the Committee has predictably recommended that this section be moved to the *Racing and Betting Act 1980*. The Commission recognises that the power may well be required to confront the difficult problem of supervising the honest conduct of horse racing and associated activities in which vast sums of money are invested by honest punters whose confidence in the control of this sport is vital. As with the other *Racing and Betting Act 1980* offences, the penalties attracted are minor and this power should also be the subject of further review.

7.3 Recommendation - Specific Powers to Search Persons

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.

Crimes (Confiscation of Profits) Act 1989 (possession tainted property)

Section 32 *Crimes (Confiscation of Profits) Act 1989* is the only Queensland section which currently provides police with the power to search a person where they believe evidence will be lost or destroyed if they delay the search to obtain a warrant. This power relates to the obtaining of evidence of 'tainted' property and is aimed at facilitating the operation of the recently introduced 'proceeds of crime' legislation. This type of legislation reflects the underlying philosophy of modern law enforcement in that it is aimed at deterring criminal behaviour by seeking to relieve criminals of the profits of their criminal activity. Similar legislation exists throughout Australia as well as in the United States and Great Britain. The power may only be exercised where the officer reasonably believes that evidence will be concealed, lost or destroyed and only in circumstances of such seriousness as to require and justify immediate search. In view of the ease of concealing certain tainted property such as cash or cheques which, for example, may be easily carried on the person of a passenger boarding an overseas flight and in view of the restrictions upon the use of this power the Commission recommends that the power be retained.

7.4 Recommendation - Tainted Property

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

Emergency Powers to Search Persons

The Commission has considered whether there is a need for a general emergency provision authorising police to stop, detain and search persons without a warrant where a delay is likely to result in the loss or destruction of evidence.

The ALRC recommended that the police be given a power to conduct emergency searches of the person without the need for a court order or a warrant in cases where it is necessary in order to prevent the loss of evidence. The Queensland Council for Civil Liberties, although generally opposing an extension of the power, submitted that if there was to be an extension it should be confined to "serious crimes" and to cases where delay would result in the loss or destruction of evidence. A specific provision confined to 'tainted property' is contained in the *Crimes (Confiscation of Profits) Act 1989* (s. 32) and is discussed above. This provision appears to be based on and adopts some of the language used in the recommendations of the ALRC as outlined earlier in this chapter.

The Commission is of the view that a more general emergency power to search the person pre-arrest without warrant for evidence which may be lost or destroyed if the search is delayed should be granted but only in relation to serious offences.

7.5 Recommendation - Emergency Powers to Search Persons

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*).

The Power to Stop and Detain

The Commission is of the view that clarity should exist in relation to precisely what the power of search entitles a police officer to do. While most of the Acts referred to above clearly authorise a police officer to stop and detain a person for the purpose of conducting the search, several of the Acts are silent on the stop and detain aspect of the search.

Where a suspect does not wish to be searched yet the police have the authority to conduct a search, such search can only be conducted if the suspect is stopped from leaving. Accordingly, it is necessary for the police to have a power to stop and detain a person in order to carry out a lawful search. Once stopped, the detention should be only for as long as is required to comply with the information-giving requirements of Recommendation 11.6 (*infra*) and to conduct the search.

A potential problem arises in a situation where the search is required to be conducted by an officer of the same sex (see Recommendation 7.7 and 7.8 *infra*) and such an officer is not present when the suspect is stopped. In these circumstances the police officer 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 such an officer is not available (most likely to occur where a female suspect is to be searched) arrangements should be made for another suitable person of the same sex (e.g. a nurse) to assist the police officer in the search.

7.6 Recommendation - Power to Stop and Detain

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.

Extent of Search

Currently there is no clear statement to the police of the extent of the search permissible under the various provisions outlined in Table 1, with the exception of the body cavity searches permitted under section 17 *Drugs Misuse Act 1986*.

The current police practice appears to be based upon what is reasonable in the circumstances. For example, if the search was for a rifle it would be difficult to justify the need for a strip search. However some of the submissions received by the Commission report that some police have inappropriately used their powers to search persons and have conducted more intrusive searches than were seemingly necessary. As mentioned earlier, a worker with the Logan Youth Legal Service claims to have seen police officers strip searching young people in the city in what he described as an indecent manner.

The Commission is of the view that there need to be very clear guidelines indicating the extent to which police may search persons on the street.

Because this power is one of search prior to arrest it should be confined to as minimal an intrusion upon the privacy of the individual as is necessary in the circumstances. The thoroughness and extent of the search should depend on what is suspected of being carried and by whom. Searches of persons in the street (or other public place) should in most cases be restricted to examination of outer clothing. In such a public place, the police should not be able to require a person to remove anything other than such items as coats, jackets, gloves, headgear or footwear. This is similar to the provisions of the *PACE Act 1984* Code of Practice A.

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, what is commonly referred to as a 'frisk' search of the suspect may be conducted by an officer of the same sex as the suspect.

Where any search of the person is conducted the police should ensure that it is carried out in a manner least likely to cause embarrassment to the suspect. This search should be conducted at the place where the person was initially detained or nearby. Where a suspect requests that it be carried out elsewhere in order to avoid embarrassment and such request is reasonable in the circumstances, the police should make every effort to accommodate that request.

While some of the provisions clearly state that the police may also search any bags carried by the person, this is not included in all the provisions. The Commission believes that, in order to ensure consistency, the principle be applied across the board. However, the search of such baggage should only be allowed where there are reasonable grounds to suspect that the object of search is contained therein.

7.7 Recommendation - Extent of Pre-Arrest Search of Person

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.

Strip Search

A search involving the removal of more than outer clothing, commonly described as a 'strip search', should only be conducted as a matter of last resort and should be performed in a private place by an officer of the same sex. The particularly intrusive nature of these searches and the fact that they will usually necessitate the taking of the suspect to a separate location for the search to be conducted, together with possible delays occasioned by the need for the police officer of the same sex to be present are factors which convince the Commission that there should be strict controls on the use of this power.

As with the 'frisk' search, where an 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 (e.g. a nurse) to assist the police and conduct the search.

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.

Use of Force

Paragraph 3.2 of the Code of Practice⁵¹ which accompanies the *PACE Act 1984* in England and is available at all Police stations for members of the public, practitioners and police officers states that force is only to be used as a last resort and that a compulsory search may only be made if it has been established that a person is unwilling to co-operate, as for example by refusing to open a bag. Further it states that where necessary, reasonable force may be used to detain and to search the person in relation to whom the appropriate reasonable grounds for suspicion exists.

51 See Chapter Three for an explanation of the Code of Practice.

7.9 Recommendation - Use of Reasonable Force

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.

Body Cavity Searches

As mentioned at the start of this chapter, the most intrusive pre-arrest search power is that contained in section 17 *Drugs Misuse Act 1986* providing for internal and body cavity searches of suspects. The section provides that a police officer of or above the rank of inspector who reasonably suspects that a person has secreted within his or her body or in any of his or her body cavities a dangerous drug, may require a person to permit a medical practitioner nominated by the police officer and a person acting in aid of the police officer to conduct an examination of any internal part of a person's body or an examination of any cavity of the person's body by any means whatever, whether or not associated with or facilitated by the use of any machine, instrument or device. Reasonable force may be used where the suspect refuses to permit the examination (s. 17(2)).

This provision is the only one of its kind identified by the Commission that is available to police prior to arrest. Police officers to whom the Commission has spoken indicate that it is rarely used. Given the safeguards which accompany the use of this power and the seriousness of the potential offence which it contemplates, the Commission considers the provision should be substantially retained but with modification.

Section 259 of the *Criminal Code* of Queensland allows for a similar type of search to be conducted of persons in lawful custody upon a charge of committing an offence however where the suspect does not consent in writing to the examination, the examination cannot be conducted unless the approval of a stipendiary magistrate is granted. The Commission can see no good reason why such a requirement should not also apply to searches under section 17 *Drugs Misuse Act 1986*, especially having regard to the fact that they are conducted prior to arrest.

7.10 Recommendation - Body Cavity Searches Conducted Prior to Arrest

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*.

THE POWER TO STOP, DETAIN AND SEARCH VEHICLES WITHOUT WARRANT

The Present Position in Queensland

There is no one Queensland statute which provides a general power for the stopping and searching of vehicles.⁵² It is necessary to refer to the individual statutes which empower police to carry out stops and searches of vehicles to ascertain what powers they have and when they may be exercised. These powers are set out in Table 2. Upon analysis of the legislation, it is clear that safeguards and measures for accountability imposed by Parliament are not consistent or, in the case of some statutes, non-existent. In any event, the powers or safeguards exist only for the immediate purposes of each individual statute.

The circumstances under which such powers may currently be exercised by police include:

- if a police officer suspects on reasonable grounds that there is any weapon liable to seizure under the Act (s. 4.3(a) *Weapons Act 1990*);
- if a police officer reasonably suspects a vehicle, or anything in it, may contain prohibited drugs (s. 14 *Drugs Misuse Act 1986*); and
- where a police officer suspects on reasonable grounds that there is an instrument of betting or anything capable of being used in contravention of sections 216, 217 or 228 of the Act in or in a vehicle (s. 235 *Racing and Betting Act 1980*).

There are also a number of provisions conferring powers on public officers. A review of Table 3 will show that in many of these cases a police officer will be able to exercise these powers. For example, such powers may be exercised by police in the following circumstances:

- if an investigator, (which includes any police officer) suspects on reasonable grounds that a vehicle, boat, or aircraft is being, or has been, used in the commission of an offence against the Act or may provide evidence of such an offence (s. 175 *Liquor Act 1992*); and
- in the execution of his or her duties under the Act (s. 18(2)(c)(i)(a) *Queensland Marine Act 1958*).

52 The reference to 'vehicle' includes vessels and aircraft.

Where the provisions to stop and search vehicles under the *Drugs Misuse Act 1986* and the *Weapons Act 1990* are used, the same safeguard and accountability measures for the stop and detention of persons under those Acts are applicable, namely the requirement to complete the register of searches.

Overall, the submissions received by the Commission did not deal in any detail with the power to stop, search and detain vehicles or vessels. The submissions of the Queensland Council for Civil Liberties on the issue of searches of persons were also directed to the search of vehicles, as were the submissions of the Queensland Police Service. A number of the submissions did, however, recommend that a register be kept of vehicles searched with or without warrant and that such a register should be kept at the headquarters of the relevant police district.

QAILS considers that police officers should be required to obtain the authorisation of a magistrate before proceeding with the search of a vehicle. It accepts that as police will often need to stop and search a vehicle with little or no notice, they will need the power to detain a vehicle for the period reasonably necessary to obtain a warrant by radio or telephone. The Association recommends that the vehicle should only be detained for so long as is necessary and that police should not be authorised to cause damage to the vehicle except to the extent necessary to open a door, boot, container etc. if the person refuses to provide a key. It also recommends that the owner or driver be given reasons for the search and have the right to be present during the search.

The Queensland Police Union of Employees on the other hand recommends that police officers be given a power of search without warrant in emergency situations with respect to offences which carry a penalty of a maximum term of imprisonment of seven years or more. The powers sought by the Queensland Police Union include a request for the right to search a vehicle without warrant where an officer suspects on reasonable grounds that a search would provide evidence concerning an offence about to be committed or which has been committed; or that evidence would be material to an offence committed by a person. In addition, the Union states that the ability to exercise the power must be based on the premise that a delay in obtaining a search warrant would result in the loss or destruction of evidence. The Union proposes that a record of all searches of vehicles and premises be maintained in the Search Register and entered into the Queensland Police Service computer as soon as possible. The Union also suggests that upon the conclusion of any search the police officer must be required to furnish to the person searched a Notice of Search which lists all relevant details concerning the police officer and property seized as a result of the search. The Union contends that if any police officer engages in wilful non-compliance with the prescribed search procedures or exceeds his or her powers, then the search should be rendered unlawful.

One member of the public submitted that the safeguards required in connection with a search of a motor vehicle need not be as rigorous as for the search of a person. He proposes that the person in charge of the vehicle should be given a card which

gives the police officer's details and the justification for the search. He further argues that failure to have reasonable grounds for a search should render the police officer liable for damages. Where the search of a vehicle involves damage to any component and fails to discover evidence of an indictable offence, he believes the State should restore the vehicle to its pre-search condition and provide a replacement vehicle during the period of repair.

One senior police officer, in a confidential submission, submitted that a police officer should have the power to search vehicles if he or she believes on the balance of probabilities that a person in the vehicle is suspected of having anything concealed upon their person or in the vehicle which would provide evidence of the commission of any criminal offence. Another member of the public proposed a broad power that police be allowed to stop and search a vehicle in any suspicious circumstances reasoning that "only guilty people need fear a search".

In broad terms, the Queensland Police Service recommends that the power to search a vehicle be available on the same grounds as the search of a person, namely, that a search of a vehicle in a public place be permitted if it is reasonably suspected to contain:

- a stolen item;
- an unlawfully obtained item;
- a weapon;
- an illegal item; or
- an item with which a person intends to commit an offence.

Other Jurisdictions

Commonwealth of Australia

As with its recommendations concerning search of persons, the ALRC in 1975 recommended that police be empowered to search vehicles without a warrant where there are reasonable grounds to suspect that there may be found an offensive weapon; or something which is the fruit of a serious crime, the means by which it was committed or material evidence to prove its commission.

In 1990, the Review of Commonwealth Criminal Law (hereinafter referred to as the 'Gibbs Committee') considered the question of whether a member of the Australian Federal Police should be empowered to stop and search a vehicle for

evidence of an offence. In its *Fourth Interim Report*, the Gibbs Committee (1990, para 40.22 - 40.27) stated that, in view of its recommendation that warrants for the search of vehicles be retained, there should not be a further provision having the effect of empowering a police officer without warrant to stop and search a vehicle for evidence. The Gibbs Committee, however, reconsidered the question and in its *Fifth Interim Report* 1991 recommended that there should be a power given to police to stop and search vehicles. It said that the power should not extend to persons and should be available only if the officer suspects on reasonable grounds that things stolen or otherwise unlawfully obtained, or things used or intended to be used in the commission of a serious offence (an offence punishable by at least five years imprisonment) will be found. If found the officer would be entitled to seize any such thing.

Adopting the proposals of the NSWLRC, contained in the discussion paper *Police Powers of Arrest and Detention* (1987, paras 40.22 - 40.27), the Gibbs Committee recommended that the power to stop and search should be exercisable only in a public place to which members of the public have ready access, and that a vehicle may be detained for the purpose of conducting such a search only for so long as is reasonably necessary for the conduct of the search. It also recommended that the power should not authorise an officer to damage the vehicle or its contents except to the extent necessary to open a door, boot, glove-box or container when the person in charge of the vehicle fails to provide the key necessary to open it (Gibbs Committee 1990, para. 4.36).

On 27 September 1991 the Commonwealth Parliament passed the *Crimes Amendment Act 1991* (Act No. 140 of 1991) which affords the Australian Federal Police the power to search aircraft, vehicles or vessels without warrant in emergency situations. This legislation takes up, in part, the recommendations of the ALRC in 1975 and the recommendations of the Gibbs Committee for the stop and search of vehicles through amendments to the *Crimes Act 1914*.⁵³ The amendments provide:

1. that the emergency search power may only be used in a public place or in some other place to which members of the public have ready access;
2. that in exercising the power the officer may:
 - (a) stop and detain the conveyance;
 - (b) search the conveyance and any receptacle in or on the conveyance; and
 - (c) seize the object of search if found;

3. that the power is exercisable only if the officer suspects on reasonable grounds that:
 - (a) a thing relevant to an indictable offence is in or on a conveyance;
 - (b) it is necessary to stop, detain or search the conveyance in order to prevent the thing from being concealed, lost or destroyed; and
 - (c) the circumstances are so serious and urgent that it is necessary to act without a search warrant
4. in conducting the search the officer:
 - (a) may use such assistance as is necessary;
 - (b) may not detain the vehicle longer than is reasonable and necessary to search it and any receptacle found in or on the conveyance; and
 - (c) may use force as is necessary but must not damage the conveyance or receptacle found in or on it by forcing entry without first giving the person in charge of the conveyance a reasonable opportunity to open it.

In introducing the power the Commonwealth Government said that it considered such powers as essential to the effective operation of the Australian Federal Police, particularly in their investigation of drug offences and in respect of firearms and explosives (Australia, House of Representatives 1991, Debates, no. 13, p. 400).

The Williams Commission had earlier recognised the importance of search powers for the enforcement of drug laws and recommended that the police be granted the power to stop, detain and search vehicles on the same grounds as that recommended for search of persons (see Australian Royal Commission of Inquiry into Drugs pp. 8-9).

England and Wales

A power to stop and search vehicles in similar terms to that for stop and search of persons was supported by the Philips Commission. It recommended that such a power be exercisable only by officers in uniform and the officer must first have reasonable grounds for suspecting that the vehicle is conveying stolen goods or prohibited articles. It rejected the submissions that the power be exercisable in a random manner such as was permitted for the purposes of the *Road Traffic Act 1972*. The Philips Commission said such a power would run contrary to its general principle that the liberty of a person to go about their business should only be infringed on suspicion of the person's involvement in an offence. The Commission

specifically rejected the use of a random stop under the *Road Traffic Act 1972* as a subterfuge for exercising the power of search upon suspicion which it proposed (Philips Commission 1981, para. 3.31).

As mentioned earlier in this chapter the United Kingdom Government did not accept all aspects of the Philips Commission recommendations. However, the provisions of the *PACE Act 1984* substantially reflect them. Sections 1 and 2 of that Act were outlined earlier relating to police power to stop and detain and search persons. Those provisions also allow police to stop and search vehicles on the same grounds. The same safeguards are imposed along with an additional provision which requires the prescribed notification of the search to be left with an unattended vehicle which was searched (s. 2(6) *PACE Act 1984*).

Canada

The LRCC adopted situations enabling the search of vehicles without warrant similar to those it adopted for the search of persons without warrant, namely:

- (a) with the consent of the person competent to consent to such a search;
- (b) where an officer believes on reasonable grounds that an object of seizure is to be found in the vehicle and a delay in obtaining a warrant would result in danger to human life or safety;
- (c) where an officer has arrested a person who is in control of, or occupant of, a movable vehicle AND the officer believes on reasonable grounds that an object of seizure is to be found in the vehicle and the delay necessary to obtain a warrant would result in the loss or destruction of the object of seizure.

For instances of search without warrant of persons and vehicles, the LRCC recommended that the officer undertaking such a search and seizing items be required to complete a post-seizure report detailing the time and place of the search, the reason for the search, and an inventory of things seized. It believed it should be mandatory that a copy of the report be provided to the person searched or whose vehicle has been searched. It said it was not sufficient to supply a report only upon a request as a person may not know of his or her ability to request the report. The LRCC said such measures provided a level of accountability for an officer's actions.

Notably, the LRCC did not recommend that a register of all warrantless searches be maintained. It recommended that a register be completed only where a warrantless search resulted in articles being seized. The stated reasons for this were, first, that the cost of reporting all warrantless searches would place undue strain on police resources. Second, the LRCC considered that the encroachment upon

individual interests suffered as a result of a warrantless intrusion was often limited and relatively fleeting, particularly when nothing is seized. Third, it also saw dangers to individual privacy which may result from mandatory reporting.

Other Considerations

The Criminal Code Review Committee has recommended the inclusion in the *Criminal Code* of a provision empowering a police officer to stop, search and seize a conveyance or anything in it, if he or she believes on reasonable grounds, that the conveyance or anything in it may afford evidence of the commission of an indictable offence (Criminal Code Review Committee 1992, p. 118 draft clause 257). The proposed provision (draft clause 257) includes a power for police to remove the vehicle and anything in it to another place in order to carry out the search if the officer believes on reasonable grounds that it is not practicable to carry out a search of the conveyance or anything in it at the place where the conveyance is stopped. The officer must, if practicable, inform the person in charge of the vehicle and the owner that they are entitled to be present when the conveyance is searched and the conveyance must not be detained longer or taken further than reasonable in the circumstances.

The provision is similar to section 14 of the *Drugs Misuse Act 1986*. The Criminal Code Review Committee considered that such an incursion into a citizen's rights was necessary in the investigation of serious offences although it believed the incursion should be balanced by a number of safeguards (Criminal Code Review Committee 1992, p. 262). It recommended those safeguards should include the imposition of a duty on the police officer conducting such a search to advise the person in charge of the conveyance of the reason for the stopping and detention of the conveyance and to record details of the search in a register. That register is to be made available for inspection by the owner of the conveyance. Also, a receipt listing the articles seized in the search should be issued to the person who had been in possession of the thing seized. Failure by the officer to comply with the requirements of completing the register and permitting inspection of it would be *prima facie* evidence that the search was unlawful (Criminal Code Review Committee 1992, p. 121 draft clause 260).

Conclusion

The Commission recognises that the search of a person's motor vehicle is not of the same intrusive nature as a search of the person. Nevertheless the common law has always recognised the privacy of an individual's premises and this has been extended to his or her vehicle. The sections outlined in Table 2 reveal circumstances where the legislature has seen fit to infringe upon this privacy. While the exercise of some of those powers requires a warrant, this chapter deals with those which are exercisable without a warrant.

As noted in relation to the current law regarding stop, detain and search of persons, varying degrees of powers have been conferred in somewhat inconsistent fashion. Much assistance would be derived by having consistent drafting across all the provisions and by having appropriate safeguards applied across the board.

The circumstances under which a vehicle can be searched without a warrant may be summarised as:

- to search for evidence of certain drug offences (*Drugs Misuse Act 1986* (s. 14));
- to search for property suspected of being stolen or otherwise unlawfully obtained (*Hawkers Act 1984* (s. 38)*; *Pawnbrokers Act 1984* (s. 52)*; *Second-hand Dealers and Collectors Act 1984* (s. 59)*; *Vagrants, Gaming and Others Offences Act 1931* (s. 24));
- to search for prohibited weapons (*Weapons Act 1990* (s. 4.3));
- to search for instruments of betting (*Racing and Betting Act 1980* (s. 235)); and
- to search and inspect animals in relation to which it is suspected on reasonable grounds an offence has been, is being or may be committed (s. 679B(1)(b) of the *Criminal Code*).

Although some argue that police should only ever search a vehicle with the authority of a warrant, the Commission is not satisfied that this is practicable in all cases. The Commission does not want to endorse an indiscriminate application of the power without warrant. It stands by the principle that generally an intrusion upon the privacy of an individual should be preceded by judicial authority. However, it recognises that the exigencies of police investigation may require an urgent search of a vehicle. Accordingly, the Commission recognises that in some circumstances a power to search without warrant is necessary.

Searches for Weapons, Drugs and Stolen Goods

The most clearly supported powers in this regard are those allowing for searches for weapons and prohibited drugs. To a lesser extent the power to search for stolen goods is accepted. It is a traditional common law power of police, although it is now extended prior to arrest. As was noted in the discussion of search of person

* Under the *Justice Legislation (Miscellaneous Amendments) Act 1992* these powers are to no longer be conferred directly on police officers; under the *Hawkers Act 1984* they are to be conferred on "authorised police officers" and in the other two Acts, upon "authorised officers". The relevant provisions are expected to be proclaimed to have effect by the end of 1993.

powers, the experience in the United Kingdom reveals that the powers are effective in the detection of drugs and stolen property. The danger posed by weapons is sufficient justification for a power to search for them.

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

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*).

Stop Vehicles and Search for Other Specific Items

As mentioned earlier other specific powers exist to stop vehicles and search for betting instruments (s. 235 *Racing and Betting Act 1980*) and animals (s. 679B(1)(b) *Criminal Code*). It is difficult to see any common factors which distinguish these objects to the degree that the search without warrant provisions ought to apply.

7.12 Recommendation - Other Specific Powers to Search Vehicles

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.

Emergency Search of Vehicles

The Commission has considered the need for a general power of search of vehicles that is not restricted to specified items but is restricted by circumstances at the time. It was recommended that police be given an emergency power to search persons without a warrant where delay is likely to result in the loss or destruction of evidence of an offence with a maximum penalty of seven years imprisonment or more. The Commission believes that such a power should also extend to vehicles.

7.13 Recommendation - Emergency Power to Search Vehicles

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).

Search of an Unattended Vehicle

The powers of the police to break into a locked vehicle both where the owner is present and where the vehicle is unattended are less clear. The power to break into a vehicle is clearly provided in only one Act - the *State Counter-Disaster Organization Act 1975* section 25 - where a vehicle or vessel is impeding counter-disaster operations. It seems clear that this power can be exercised in relation to an unattended vehicle. However, the other provisions concerning search of vehicles do not have such an apparent application. The provisions of the *Hawkers Act 1984*, the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984* specifically refer to a vehicle 'in the possession of a person, apparently limiting the power to attended vehicles.

Section 19 of the *Drugs Misuse Act 1986* provides for police officers to supply certain information to persons when an officer stops a vehicle pursuant to the provisions of that part. Again this seems to anticipate that the power to stop and search the vehicle be exercised in the presence of the person in charge of the vehicle. Similarly the Criminal Code Review Committee's recommendation concerning stopping and searching of vehicles, requires the police officer to identify himself or herself to the person in charge of the conveyance and inform the person of the reason for the search. Obviously this anticipates that a person will be in attendance at the vehicle when the power is exercised (draft s. 257).

In the United Kingdom, the *PACE Act 1984* confers a power to search vehicles in section 1. It makes special provision for the search of an unattended vehicle and requires notification of the search to be left with the unattended vehicle (inside the vehicle if possible), as well as requiring the police to fulfil the record-keeping requirements as mentioned earlier in relation to search of the person.

The Commission is of the view that, except for the specific power under the *State Counter-Disaster Organization Act 1975* and situations where a police officer has reasonable grounds to suspect that an explosive substance or the like is contained in a vehicle, the searching of an unattended vehicle, whether or not it involves breaking into a vehicle, should only be permitted in cases where police have obtained a warrant.

7.14 Recommendation - Searches of Unattended Vehicles

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.

ROADBLOCKS

Connected with the power to stop, search and detain vehicles is the issue of the power of police to establish roadblocks or roadchecks.⁵⁴ A roadblock or roadcheck 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.

With the exception of section 8 of the *Public Safety Preservation Act 1986*, which is an Act limited to situations such as major accidents and terrorist situations and the provisions of the *Traffic Act 1949*, which permits stop and detention for random breath testing, Queensland police currently have no powers to establish a roadblock or roadcheck. The authority vested in a police officer to locate offenders and bring them to justice at common law is hence often relied upon for the establishment of roadblocks. This broad interpretation of the common law has been neither confirmed nor excluded by the courts.

The establishment of a roadblock may have a number of significant advantages for law enforcement and the community, namely, that it may enable the quick capture of a dangerous offender or assist in the rescue of a victim of abduction. A roadblock

54 These terms are often used interchangeably.

may also serve the purpose of alerting members of the community to who or what is being sought, which may encourage community participation in advising police of sightings. Against these possible benefits should be weighed the inconvenience to innocent persons of having their vehicles stopped and their privacy intruded upon if the vehicle is searched.

Submissions Received

There appears to be a fairly widespread view in the public submissions that the police should have the power to set up a roadblock.

The Queensland Police Service submits that power to set up roadblocks in certain circumstances should be given and that the roadblock authority should comprise a two part mechanism in the following terms:

1. Where an indictable offence has been alleged and a police officer is of the opinion that:

- (a) the offender may be travelling in any vehicle or vessel from the scene of the alleged offence;
- (b) a victim may be held in any vehicle or vessel travelling from the scene of an alleged offence; or
- (c) evidence of the alleged offence is being transported from the scene of the alleged offence in any vehicle or vessel;

a police officer should have authority to require the halting of and reasonable force to stop any vehicle or vessel for the purposes of the next succeeding section.

2. Where a vehicle or vessel has been lawfully stopped and a police officer suspects on reasonable grounds that it contains:

- (a) the alleged offender;
- (b) the victim of an alleged offence;
- (c) evidence which might lead to the location of the victim or the identity of the alleged offender; or
- (d) evidence of the alleged offence;

a police officer has authority to search the vehicle or vessel for the offender, victim or evidence and to search persons in it for evidence of the alleged offence.

Although the recommended provision refers to an indictable offence, the text which follows it indicates that the Queensland Police Service proposes that the authority to establish a roadblock would exist only in circumstances where a serious indictable offence has been alleged to have been committed. A search would not be authorised simply upon a vehicle being stopped, but rather, only when the police officer has reasonable grounds to believe those matters listed in provision 2 above. It appears from the submission that the Queensland Police Service proposes that any officer should be able to exercise the power of stop, search and detain when the criteria are satisfied. It recommends that the police officer who is to conduct the search must provide to the person in charge of the vehicle or vessel which is to be searched, and any person in it who is to be searched, the reason for the search. If the person in charge of the vehicle which is to be searched or a person in the vehicle who is to be searched requests it, the officer must supply his or her surname, rank and establishment and if the officer is in plain clothes, to produce identification (Queensland Police Service submission 1992, p. 18).

The Queensland Police Union of Employees recommends that police be given the power to establish roadblocks and roadchecks in emergency situations where it would on reasonable grounds lead to the apprehension of a suspect for an offence carrying a penalty of a term of imprisonment for seven years or greater. The Union also recommends that the power be available if there is a continuing breach of the *Traffic Act 1949* or the *Criminal Code* which is creating life endangering circumstances. These last circumstances are stated to be particularly directed towards a police chase situation. The Union also considers the power should be available where the establishment of a roadblock was for the purpose of protecting life, such as a siege situation. In all instances, the establishment of the roadblock should be entered into the Queensland Police Service computer after having been authorised by a commissioned police officer. It suggests that the authorising officer be required to monitor the need for the continuation of the roadblock, ordering its withdrawal if the circumstances no longer require its operation (Queensland Police Union of Employees submission 1992, p. 20).

Many of the other submissions support the view that only a senior police officer should be empowered to authorise the establishment of a roadblock. The Legal Aid Office (Queensland) suggests that a senior police officer, such as an officer of or above the rank of inspector, must authorise the establishment of a roadblock. The Office believes the circumstances in which a roadblock may be authorised and established include:

- where a dangerous person such as a prison escapee is at large;
- where the police are trying to locate the victim of an abduction; and
- where the police have information that a serious offence is to be committed, such as persons on their way to carry out an armed hold-up.

The Office also suggests that police should disclose the reasons for stopping and searching a vehicle in an effort to gain greater public co-operation. It considers that the distribution of photographs and descriptions of the person being searched for may also encourage public co-operation and reduce the incidence of mistaken identity (Legal Aid Office (Queensland) submission 1992, p. 22).

The Queensland Watchdog Committee submitted that roadblocks should be authorised by an officer of the rank of senior sergeant or higher, but in circumstances where time is vital, the Committee suggests that any officer be authorised to establish a roadblock. It believes that generally, roadblocks and roadchecks should not be used for alleged or suspected offences for which the maximum penalty is less than six months jail. It is also of the view that particular offences should be specified rather than the power being available for a class of offences (Queensland Watchdog Committee submission 1992, p. 20).

The Queensland Law Society states that it is unaware of any statistics that show that roadblocks are effective in capturing offenders. The Society is, however, of the view that if police were to be granted such a power then it should only be used for serious offences which involve injury or risk of injury to the person - e.g. murder, rape, abduction. Furthermore, a roadblock should only be established upon the authority of a senior officer where there are reasonable grounds to suspect that the offender is in the area. The Society supports the requirement that police explain to persons why they are being stopped (Queensland Law Society submission 1992, p. 20).

Of the few submissions that did not support a power to set up roadblocks, one suggested that the power was not necessary, as if the situation was sufficiently dangerous, the powers under the *Public Safety Preservation Act 1986* could be invoked.

Upon consideration of all the material, the overall consensus appeared to be that police should have the power to set up roadblocks in relation to serious offences, under the authority of a senior police officer.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee (1991, p. 60) also reported on the question of whether Australian Federal Police should have the power to establish roadblocks/roadchecks. It accepted the model proposed by the NSWLRC although suggested some modifications. A draft provision having the following features was proposed:

- (i) authority to establish a roadcheck may be given by a police officer of or above the rank of a Superintendent;
- (ii) the authorising officer must himself or herself suspect that there is likely to be in a particular locality a vehicle which is carrying:
 - (a) a person who has committed a serious offence, or is the subject of an outstanding warrant issued by a court, or is unlawfully at large; or
 - (b) anything unlawfully obtained as the result of the commission of a serious offence, or anything used or intended to be used in the commission of such an offence;
- (iii) the authorising officer must himself or herself believe on reasonable grounds that it is necessary in the interest of public safety to authorise a roadcheck;
- (iv) any officer making a roadcheck may stop and search all vehicles or any vehicles in the authorised locality to ascertain whether the vehicle stopped is carrying such persons or things;
- (v) the term 'serious offence' is defined as one punishable by at least five years imprisonment;
- (vi) authority to establish the roadcheck must be in writing or if that is impracticable it may be given by telephone or radio;
- (vii) the authorisation must specify a period not exceeding seven days during which the roadcheck may continue;
- (viii) the officer may seize any thing found as a result of the search which has been unlawfully obtained as a result of a serious offence or which has been used or intended to be used in the commission of such an offence; and
- (ix) it is an offence not to comply with a lawful and reasonable request made by an officer conducting a roadcheck.

New South Wales

The discussion paper of the NSWLRC also contained a proposal for a power of police to establish roadblocks. That proposal was in terms that:

Where a police officer of or above the rank of superintendent believes it is necessary on reasonable grounds and in the interest of public safety, he or she may authorise in writing a police officer to make a search of any vehicle in a nominated area or passing a nominated location for the purpose of ascertaining whether the vehicle is carrying unlawfully obtained or prohibited articles or a person who:

- (1) has committed a serious offence (one which carries a maximum penalty of 12 months imprisonment);
- (2) is reasonably suspected of being about to commit a serious offence;
- (3) is the subject of an outstanding warrant issued by a court; or
- (4) is a prisoner unlawfully at large. (NSWLRC 1987, p. 91)

The NSWLRC proposed that, before the power could be authorised, the police officer must believe on reasonable grounds that a vehicle which satisfies the specified criteria is likely to be in the nominated area or location. It recommended that authorisation be able to be given by radio or telephone provided that, in all instances, the authorisation be adequately recorded.

The NSWLRC received a large number of submissions in response to the discussion paper but, as a result of financial and staff restraints, a subsequent report of the NSWLRC containing recommendations on reform was limited to the issue of detention and investigation after arrest. The report did not deal with the issue of the stop and search of persons and vehicles and no final recommendations have as yet been made by the NSWLRC on that issue.

England and Wales

The position of the Philips Commission on stop and search of vehicles in connection with criminal offences influenced their position on the ability of the police to establish roadblocks. In England and Wales, there existed two situations where the police used their powers to stop vehicles in connection with criminal offences but where they had no reasonable grounds for suspicion that the particular vehicle was being used to convey stolen or prohibited goods. These were:

- (i) where a person whose arrest was sought in connection with a serious offence was known to be moving in a particular area; and

- (ii) in circumstances where there is a spate of crime at identifiable times, such as housebreaking on weekends, and in order to detect such crimes the police find it necessary to check the occupants and contents of vehicles passing in and out of a particular area at certain times.

The Philips Commission recognised the value of such procedures but believed they should be confined to particular types of serious crime and should be regularised by the introduction of a measure of supervisory control. It proposed that officers of a certain rank or higher only should be authorised to consent to a roadcheck for a limited and specified period in circumstances where:

- (i) a person whose arrest is sought in connection with a grave offence is believed on reasonable grounds to be moving in a particular area; or
- (ii) when there is reason to suppose that a grave offence⁵⁵ may be committed in a defined area over a specified period.

The Philips Commission recommended that an officer stopping vehicles in these circumstances should be obliged to explain to the driver the reason for the stop, such reason having been noted in the authorisation. It stated there should be no consequential power of search of a vehicle which is stopped at a roadcheck unless the officer has reasonable grounds to suspect there is evidential material in the vehicle.

The Philips Commission rejected that authorisation for roadchecks should only be available by warrant from a magistrate as roadchecks were an operational matter which afforded little opportunity for scrutiny. However, the authorisation of roadchecks should be recorded and scrutinised periodically by senior officers to avoid arbitrary and indiscriminate use (Philips Commission 1981, pp. 31-32).

Section 4 of the *PACE Act 1984* permitting the establishment of roadchecks in certain circumstances differed in a number of ways from the recommendations of the Philips Commission:

- a roadcheck may be authorised by an officer of the rank of superintendent or, differing from the Philips Commission, by an officer of any rank in the case of urgency provided it is reported to a superintendent or higher as soon as practicable;
- the Philips Commission recommended that the establishment of a roadcheck be permitted only when it relates to grave offences (serious arrestable offences). The Act appears to enable the establishment of a roadcheck in urgent circumstances for any offence, not only grave or serious arrestable offences;

⁵⁵ The Philips Commission made reference to examples such as arson, sexual attacks, supply of prohibited drugs or burglary of substantial amounts.

- a roadcheck may be established when the police are looking for potential witnesses to an offence when the authorising officer believes the offence committed was a serious arrestable offence. This is an additional reason for the establishment of a roadcheck to that recommended by the Philips Commission and requires no belief or suspicion on the part of the officer that the police are likely to find a witness - pot luck is permitted; or
- the person in charge of a vehicle stopped is entitled to a written statement of the reason for the roadcheck within a period of 12 months if he or she asks for it but there is no obligation on an officer to advise the driver of that right. The Philips Commission had recommended reasons be given upon the stopping of a vehicle.

Other States

The Commission's inquiries of police services in other states reveal that most of them use roadblocks, relying on a common law power rather than any specific legislative authority. The only state having a legislative power to set up a roadblock appears to be South Australia, which is a reasonably new power, granted in 1990 (*Summary Offences Act 1953*, s. 74b). It requires the authorisation of a police officer of or above the rank of inspector who believes on reasonable grounds that the establishment of a roadblock would significantly improve the prospects of apprehending a person suspected of having committed a major offence or who has escaped from lawful custody.

Conclusion

The Commission believes that the use of roadblocks does assist the police in the investigation of offences and the detection of offenders. The Commission does not believe that the police should have to rely upon their common law duty in order to conduct roadblocks and is of the view, consistent with the approach taken to other powers, that the power should be clearly stated in a statute with appropriate restrictions upon its use. The fact that most of the public submissions endorse the existence of such a power, albeit with a variety of conditions upon its use, supports this view.

7.15 Recommendation - Roadblocks⁵⁶

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.

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CHAPTER EIGHT

ISSUE OF SEARCH WARRANTS

INTRODUCTION

As stated earlier, the circumstances when a warrant authorising entry and search may be issued have been greatly expanded through statutory enactment. These legislative provisions take two forms - general and specific.

Section 679 of the *Criminal Code* is general in form and provides for the issue of search warrants in respect of 'offences' generally where the offender may be arrested with or without warrant, stating (in part):

If it appears to a justice, on complaint made on oath, that there are reasonable grounds for suspecting that there is in any house, vessel, vehicle, aircraft or place -

- (a) Anything with respect to which any offence which is such that the offender may be arrested with or without a warrant has been, or is suspected, on reasonable grounds, to have been committed; or
- (b) Anything whether animate or inanimate and whether living or dead as to which there are reasonable grounds for believing that it will of itself or by or on scientific examination afford evidence as to the commission of any offence; or
- (c) Anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence;

he may issue his warrant directing a police officer or police officers named therein or all police officers to enter, by force if necessary, and to search such house, vessel, vehicle, aircraft, or place, and to seize any such thing if found, and to take it before a justice to be dealt with according to law.

The second form of legislation permitting search of premises with warrant is directed towards specific offences or classes of offences. Examples of these forms of statutory enactment include section 18 *Drugs Misuse Act 1986* directed towards drug offences, section 133(1) *Nature Conservation Act 1992* (to be proclaimed) directed obviously enough towards conservation of nature, and section 178(1) *Liquor Act 1992* directed towards regulation of liquor sales and consumption.

There has been a gradual accumulation of powers permitting search of premises with warrant over the last 15 to 20 years. Tables 4 and 5 detail the terms of the provisions currently available to police and other nominated government officials to enter private premises for the purpose of search and seizure.

When considering the operation of section 679 of the *Criminal Code* the High Court of Australia in *George v. Rockett* ((1990) 170 CLR 104 at 110) delivered a useful general commentary on search warrants demonstrating a recognition by the Court of the balance between an individual's privacy and the need by society for intrusion by the State in certain circumstances:

A search warrant thus authorizes an invasion of premises without the consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue. In prescribing conditions governing the issue of search warrants, the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his privacy and property. Search warrants facilitate the gathering of evidence against, and the apprehension and conviction of, those who have broken the criminal law. In enacting section 679, the legislature has given primacy to the public interest in the effective administration of criminal justice over the private right of the individual to enjoy his privacy and property. The common law has long been jealous of the prima facie immunity from seizure of papers and possessions: see Holdsworth, *A History of English Law*, vol. 10 (1938), pp. 668-672. Except in the case of a warrant issued for the purpose of searching a place for stolen goods, the common law refused to countenance the issue of warrants at all and refused to permit a constable or government official to enter private property without the permission of the occupier: *Leach v Money* (1765) 19 State Tr. 1001; *Entick v Carrington* (1765) 19 State Tr. 1029. Historically, the justification for these limitations on the power of entry and search was based on the rights of private property: *Entick* (1765) 19 State Tr., at p. 1066. In modern times, the justification has shifted increasingly to the protection of privacy: see Feldman, *The Law Relating to Entry, Search and Seizure* (1986), pp. 1-2.

As a corollary to the prima facie immunity at common law from entry and search, where the legislature has made an exception permitting entry and search with a warrant the courts interpret that legislation strictly. The High Court of Australia said of this in *George v. Rockett* ((1990) 170 CLR 104 at 111):

State and Commonwealth statutes have made many exceptions to the common law position, and section 679 is a far-reaching one. Nevertheless, in construing and applying such statutes, it needs to be kept in mind that they authorise the invasion of interests which the common law has always valued highly and which, through the writ of trespass, it went to great lengths to protect. Against that background, the enactment of conditions which must be fulfilled before a search warrant can be lawfully issued and executed is to be seen as a reflection of the legislature's concern to give a measure of protection to these interests. To insist on strict compliance with the statutory conditions governing the issue of search warrants is simply to give effect to the purpose of the legislation.

In 1987 the former Police Complaints Tribunal of Queensland recommended a review of the whole question of search warrants. Its report included an extensive statement about the frequent complaints about police searches under warrants and detailed a number of instances. The Tribunal urged consideration of the following:

- a clear identification of the need for the issue of a warrant;
- scope of the warrant clearly indicated;
- insistence on presence of reasonable grounds;
- the exercise by a justice of the peace of a proper judicial discretion;
- identifying items or types of items which may be seized;
- procedures subsequent to seizure;
- return of unwanted items as soon as reasonably possible;
- return of all exhibits in due course, except where otherwise ordered or specified;
- repair of all damage occasioned by the use of force to effect an entry; and
- in respect of items seized, an inventory be made and a copy of such inventory be left with the occupier from whom a receipt should be obtained.

It said at the time:

It is not proposed to go into detail, except to indicate our view that the law at present is fragmented, uncertain and indeed, capable of causing unnecessary hardship and friction . . . There needs to be a comprehensive review of all legislation authorising search and seizure. (Police Complaints Tribunal Queensland 1987, p. 2)

The matter was raised again at some length in the 1989 report of the Tribunal (pp. 18-21) where it once more voiced its concern about search warrants, their issue and execution.

It appears from the Commission's research that the issue and execution of search warrants continue to be cause for concern and an examination of the issues with a view to some reform is warranted.

This chapter will cover the following aspects of the issuing of search warrants:

- Who should be able to issue a warrant?
- Should the criteria require satisfaction of matters based on suspicion or belief? (include reference to fact that issuing authority must also believe).
- Should the police officer be required to inform the issuing authority of previous applications for search warrants in respect of the premises?

- What should be the objects of search? i.e. persons etc.
- With what degree of particularity should the objects be specified?
- Should a general warrant be available?
- Should a search warrant be available to conduct a covert search?
- Should a warrant be available to search for property that is expected to be brought onto the premises in the next 72 hours?
- What methods should be available for the granting of a warrant e.g. telephone, facsimile, radio etc.
- Period of validity of warrant.

WHO SHOULD BE ABLE TO ISSUE A WARRANT?

The Present Position in Queensland

The power to issue a warrant to enter and search does not always rest with the same authority. In some cases it is possible for a lay justice of the peace to grant a warrant permitting a police officer to enter and search premises.⁵⁷ In others, the warrant must be granted by a stipendiary magistrate.⁵⁸ Table 4 in Appendix 5 outlines the authority required for entry and search of premises under the different statutes.

General Instruction 9.453(f) of the Queensland Policeman's Manual provides that

in every instance when it is a requirement of law, and in all other instances whenever practicable, the issuing authority is to be a Stipendiary Magistrate. In such other instances where a Stipendiary Magistrate is not readily available and the issue of a search warrant is to be undertaken by a justice of the peace, it is preferable that such justice be a staff member of a Court House, and not an employee of the Police Department.

This General Instruction is in accordance with the recommendation in the report of the Committee of Inquiry into the Enforcement of Criminal Law in Queensland (hereinafter referred to as the 'Lucas Inquiry'). The Lucas Inquiry also recommended that in the case of a search of a solicitor's office it be mandatory for the warrant to be issued by a magistrate (Lucas Inquiry 1977, p. 117).

⁵⁷ Examples are: s. 18(3) *Drugs Misuse Act 1986*; ss. 131A and 168A *Health Act 1937*; s. 25(4)(d) *Mental Health Services Act 1974*.

⁵⁸ Examples are: s. 109 *Health Rights Commission Act 1991*; ss. 179 and 180 *Liquor Act 1992*; ss. 134 and 135 *Nature Conservation Act 1992*.

In connection with the issue of warrants by justices of the peace the Police Complaints Tribunal, in its report of 1987 commented:

At present, on a warrant issued by a Justice of the Peace a person's home may be entered by force if necessary and the occupants subjected at least to the humiliation of the presence of police personnel and, frequently, police dogs invariably at some most inconvenient time of night or morning. . . . It is our view that Justices of the Peace have in many cases little clear conception of their powers and the responsibilities which should attach to their exercise. The number of Justices is in the tens of thousands and the warrant, ostensibly at any rate, authorises the grossest invasion of privacy possible. The need for caution and conviction should be apparent, but we suggest that there is a tendency to "rubber-stamp" the information given by a police officer in a stereotyped form, albeit one prescribed under a Statute.

No action appeared to have been taken to address this cause of criticism by the Tribunal and in its 1989 report the Tribunal again focused on what it considered to be a frequent lack of exercise of proper judicial discretion by justices of the peace when issuing warrants. The Tribunal was of the view that search warrants should be able to be issued only by those justices who hold or whose experience has acquainted them with the performance of judicial office - judges or magistrates or those employed in Court Registries.

The role of the authority to issue a warrant was highlighted by the High Court of Australia in *George v. Rockett* (supra p. 111) when considering section 679 of the *Criminal Code* (Qld). It quoted with approval a passage from the judgement of Burchett J. in *Parker v. Churchill* (1985) 9 FCR 316 at 322:

The duty, which the Justice of the Peace must perform in respect of an information, is not some quaint ritual of the law, requiring a perfunctory scanning of the right formal phrases, perceived but not considered, and followed by an inevitable signature. What is required by the law is that the Justice of the Peace should stand between the police and the citizen to give real attention to the question whether the information proffered by the police does justify the intrusion they desire to make into the privacy of the citizen and the inviolate security of his personal and business affairs.

The issue of a warrant necessarily requires the assessment of evidence and may require consideration of matters of law. The type and complexity of evidence with which justices may be confronted and the need for critical analysis is well illustrated in the *Report of the Inquiry into the Death of David John Gundy* prepared as part of the Royal Commission into Aboriginal Deaths in Custody (1991, pp. 44-61).

In the submissions received by the Commission opinion was divided on who should be authorised to issue search warrants.

The Queensland Police Service and Police Union both supported a restriction to the types of persons able to issue search warrants. The Police Union argued that the

power should be limited to justices of the peace employed in a Magistrates Court or court hierarchy within the State and that such persons have prerequisite knowledge concerning the issuing of search warrants.

The Queensland Police Service submitted the power should be restricted to justices of the peace as that term is defined in the *Justices of the Peace and Commissioners for Declarations Act 1991*. The legislation has to some extent addressed the concerns of the Police Complaints Tribunal mentioned earlier. The legislation establishes a number of categories of justices of the peace with varying powers exercisable by each category:

- justice of the peace (qualified);
- justice of the peace (Magistrates Court); and
- commissioners for declarations.

Every person who holds office as a Supreme Court Judge, District Court Judge or a magistrate is a 'justice of the peace' (s. 3.04(1)). A 'justice of the peace' has and may exercise all the powers conferred on the justice of the peace or on a commissioner for declarations by the *Justices Act 1886* or any other Act, and may take an affidavit or attest any instrument or document that may be taken or arrested under any Act or law.

Every person who holds office as a registrar of the Supreme Court or of a District Court, or as a clerk of the court or registrar of a Magistrates Court, not being a police officer, is, if they are a legal practitioner - a justice of the peace (Magistrates Court). If they are not a legal practitioner they are a justice of the peace (qualified) (s. 3.04(2)). Other persons may be appointed to justices of the peace (qualified) and justices of the peace (Magistrates Court) following application to the Attorney-General and subject to the completion of all the requirements of an approved course of training. Justices of the peace (qualified) and justices of the peace (Magistrates Court) are empowered by the Act to issue warrants.

Commissioners for declaration include every clerk 18 years or older employed as an officer of the public service in an office of the Supreme Court, a District Court or a Magistrates Court and such other persons who may be appointed by the Governor in Council to that office. The powers of commissioners for declarations are essentially limited to the taking of affidavits and the attestation of documents. They are not entitled to issue warrants.

A number of members of the public submitted that only stipendiary magistrates should have the power to issue search warrants. The Queensland Watchdog Committee argued that many justices of the peace would not be competent to decide whether or not a search warrant is justified and believes that the power should be restricted to magistrates and higher ranks of the judiciary with some limited scope

for justices of the peace who have special credentials to issue warrants. This view of creating a specified class of justices of the peace who would be authorised to issue warrants was endorsed by the Queensland Law Society, the Legal Aid Office, a number of senior police officers who made submissions in their personal capacity, and a number of members of the public. A handful of submissions suggested the only persons who are empowered to issue search warrants should be judges of the District Court and, in one submission, a judge of the Supreme Court.

Other Jurisdictions

Commonwealth of Australia

The granting of a search warrant involves consideration of evidence and may require determination of questions of law. For this reason the Gibbs Committee in its 1990 Fourth Interim Report recommended that the power to grant a search warrant not be available to a lay justice of the peace, but be available only to magistrates and justices employed by the courts. This recommendation was also influenced by the recognition by the Committee of advances in technology (such as facsimile and telephone) which permit instantaneous communication from the remotest regions and their recommendation that warrants be able to be granted by such means. Applications for the issue of a warrant could be made to a magistrate or qualifying justice by such means.

England and Wales

In arriving at its recommendations on the issue, the Philips Commission was faced with existing law which provided for three levels of authorised person who could authorise the entry and search dependent on the offence, the legislation and the circumstances. These were, by a senior police officer, by a magistrate and by a higher judicial authority. The Philips Commission considered separately; (i) search under warrant for prohibited goods such as drugs and weapons; and (ii) search for evidence of a crime in premises other than those controlled or occupied by an arrested suspect. It accepted the need for the first. In respect of the second, the Philips Commission said that it should be granted only in exceptional circumstances and in respect only of grave offences.

Assuming the adoption of its scheme generally, the Philips Commission recommended that, in general, authorisation and supervision could be provided by the magistracy (justices of the peace). However, where there was particular urgency in searching for prohibited goods⁵⁹, the Philips Commission concluded

⁵⁹ Goods for which it is an offence to knowingly possess such as firearms, prohibited drugs, stolen goods and explosives.

that a police officer of rank not lower than uniformed superintendent should be able to authorise the search of premises. If the search is to obtain evidence of an offence, it recommended the issuing authority be a circuit judge in recognition of the seriousness of the intrusion. This latter situation was not a reference to the search of premises controlled or occupied by an arrested suspect for evidence. The Philips Commission dealt with that issue separately when examining the powers of police upon arrest. Rather, it related to evidence which may be found at premises of other, perhaps quite innocent, individuals or organisations such as banks or solicitors.

The Government did not accept the Philips Commission's recommendation that a senior officer be permitted to grant a search warrant in urgent circumstances. Nor did the Government accept the Philips Commission's recommendation that searches for evidence require the authority of a circuit judge in all instances. Rather, authority of a circuit judge is necessary only where the objects of seizure are held on a confidential basis. Consequently, justices of the peace are the relevant issuing authority except where confidential material is concerned.

Section 8 of the *PACE Act 1984*, prescribes that authorisation of entry and search is limited to justices of the peace on written application of a constable where the justice himself is satisfied that there are reasonable grounds for believing that a serious arrestable offence has been committed. This section is in addition to and not to the exclusion of powers to issue search warrants under other Acts (s. 8(5)).⁶⁰

Canada

In Canada, the LRCC recommended (LRCC 1984, pp. 16-17) that the authorisation of a warrant lie with a justice of the peace.

Under section 487 of the Canadian *Criminal Code* a justice of the peace is authorised to issue a search warrant in certain clearly specified circumstances. While this prior judicial authorisation is part of a mechanism to protect individual's rights, in practice it may not be as effective as it seems.

The LRCC conducted a survey of search warrant procedures and concluded that almost 60 per cent of them were invalidly issued and that figure varied from city to city with a high of 83 per cent and a low of 29 per cent. This does not mean however that they all could not have been validly issued.

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Those other Acts are listed in Appendix 5 to the Philips Commission's (Royal Commission on Criminal Procedure - *The Investigation and Prosecution of Criminal Offences in England and Wales: The Law and Procedure*).

Some of the errors were purely clerical while in other areas there was a consistent failure on the part of police to adhere to existing statutory requirements. The LRCC was of the view that the existence of differing local attitudes to the issuing of search warrants was a profound factor in explaining the differences between cities. It said that despite the repeated reference in case law to the zeal of the common law in preventing unjustified invasions of private rights, the warrant process has not uniformly been viewed as a judicial one. The LRCC referred to an observational study by Ericson (1981, pp. 153-154) of the activities of police detectives in Ontario:

The detectives have developed longstanding relationships with particular Justices of the Peace and relied on their routine co-operation to ease their tasks. Thus one detective said he regularly used two out of four possible Justices of the Peace available in his divisional area because he has a "good relationship" with them, which translated meant a "co-operative" relationship. Occasionally this co-operation went well beyond the point of signing a warrant without question. On one occasion, two detectives went to five addresses, mainly for the purpose of locating a suspect. Anticipating resistance from the various occupants, they took along some unsigned search warrants and "left handed" them (signed a J.P.'s name) as they went. These warrants were later logged in the divisional records, and the two Justices of the Peace whose names were used were subsequently contacted and the collaboration gained. In another situation the detectives arrived at an address to undertake a property search only to discover that the Justice of the Peace had dated the search warrant but had mistakenly not signed it. Commenting, "Just like the old days, left-handing a warrant," one detective signed the name of the Justice of the Peace and proceeded to effect the search.⁶¹

The LRCC went on to say that while research showed that some issuing authorities were properly aware of their functions e.g. judges and justices in Edmonton, the more common apprehension remains the suspicion that a number of justices treat search warrant issuing as a formality:

While obtaining a warrant was by no means a formality in all of the cities surveyed, there were some instances in which the detail presented in the application to the issuer was so sketchy as to call into question whether the issuer really bothered to evaluate the documents he was given. In Montreal, for example, informations rarely included any elaborations of the officer's grounds for belief. In some cases, the applicant simply reported that reasonable grounds arose from inquiries conducted by the police. This sort of description gives an adjudicator no objective basis for making a judicial determination as to whether or not to issue a warrant. To simply concede to the police officer's assertion that he has the grounds for conducting a search is to render the warrant process close to meaningless. (LRCC 1983, p. 87, para. 221)

61 While some suggestion was made in Ericson (1981, p. 232) that apparently offensive police actions were carried out solely as 'practical jokes' on the researcher, this does not appear to pertain specifically to the two cited cases.

Other Considerations

The relationship between particular justices of the peace and detectives which was identified by Ericson in his study may exist in parts of Queensland. Although no comprehensive study has been carried out, discussions with a number of police revealed that they had preferred justices of the peace to whom they regularly applied for warrants. It was not infrequent for police to whom the Commission spoke to refer to 'our justice of the peace', who was often described as a 'good' justice of the peace.

This does not suggest that there is impropriety in the issuing of warrants but in light of the earlier Police Complaints Tribunal findings and other studies such as Ericson's, it suggests a need to monitor the issuing of warrants by justices of the peace.

The Complaints Section of the Commission has received a number of complaints concerning the issuing of warrants. Some of these relate specifically to the issuing of warrants by justices of the peace. One case alleges that a justice of the peace who became qualified to issue warrants notified the local police of his availability and was told that he would not be required as the police already had their justice of the peace.

A complaint was received from another justice of the peace about the failure of police in his district to avail themselves of his service. He claimed that he had performed numerous functions for police over a number of years but after making complaints of 'bad police work' in seeking warrants his services were no longer being used.

The Commission is of the view that there is a need to monitor police use of the service of justices of the peace who are qualified to issue warrants. Any preference for a particular justice of the peace should be discouraged and wherever practicable a rotation system should be adhered to. Further, while it is accepted that there are new training procedures in place for justices, there does need to be some evaluation of the effectiveness of that training in respect of the issue of warrants. For example, it may also be appropriate to randomly select warrants as part of a periodic check from each district to ensure that they are validly issued.

8.1 Recommendation - Monitoring the Issue of Search Warrants

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.

The Commission considers that search warrants should be judicial in nature and not capable of issue by the police themselves. The exercise of a power to search must be justifiable on each occasion to the satisfaction of an independent authority who is

empowered to issue a warrant. This is an important check against the infringement of people's privacy and civil liberties.

The Commission is in agreement with a number of submissions that the issuing authority 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 if issued. The *Justices of the Peace and Commissioners for Declarations Act 1991* would appear to satisfy this requirement by providing for special categories of justices of the peace and permitting only justices who qualify for certain categories to issue warrants.

8.2 Recommendation - Who May Issue a Search Warrant

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.

SHOULD THE CRITERIA REQUIRE SATISFACTION OF MATTERS BASED ON SUSPICION OR BELIEF?

A further matter to consider is whether it should be sufficient for the issue of a warrant for the police to have reasonable grounds to 'suspect' that the connection exists between the object of search and a particular offence and that it exists between the object of search and the premises to be searched; or whether the police must have reasonable grounds to 'believe' that the connections exist.

Currently there is no consistency between the statutes on what is required in the satisfaction of the connection criteria. The wording of the provisions include "reasonable grounds for suspecting" (s. 31(1) *Crimes (Confiscation of Profits), Act 1989*) "reasonable cause to suspect" (s. 684 *Criminal Code*), "reasonably suspects" (s. 168A(1) *Health Act 1937*) and "believes that" (s. 58 *Second-hand Dealers and Collectors Act 1984*).

The difference between these criteria is detailed in Chapter Three of this report.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee considered this issue. After reviewing the terms of section 10 *Crimes Act 1914* (Cwlth), which is in similar terms to section 679 *Criminal Code*, and the submissions it received on the issue, the Committee recommended that the test for the connection between the items sought and the premises to be searched remain the test of "reasonable grounds for suspecting". The Committee said:

Given that the premises will not have been entered at the time of application for the warrant, to impose on the issuing officer the higher onus of being satisfied that there are reasonable grounds for believing that the thing would be on the premises would not appear to be justified. (Gibbs Committee 1990, para. 38.50)

The Committee did not comment on what it considered to be the appropriate test for the connection of the object of the search to an offence. The *Crimes Act 1914* prescribes three alternative tests to be satisfied for that connection:

- that the object of search is a thing with respect to which any offence against any law of the Commonwealth or Territory has been, or is 'suspected' on reasonable grounds to have been committed;
- that the object of search is a thing as to which there are reasonable grounds for 'believing' that it will afford evidence as to the commission of an offence; or
- that the object of search is a thing as to which there are reasonable grounds for 'believing' that it is intended to be used for the purpose of committing any such offence.

England and Wales

As mentioned earlier, the Philips Commission approached the issue of search warrants by considering separately a search for prohibited goods and a search for evidence (other than after arrest). It concluded that warrants for prohibited items should only be issued if it is shown to the issuing authority that there is 'suspicion' based on reasonable grounds that the object of the proposed search is on the premises specified. For evidence of a crime it considered that the applicant for a warrant would need to satisfy the issuing authority that, *inter alia*, there are reasonable grounds for 'believing' that the items will be found on the premises to be searched, and that there are reasonable grounds for 'believing' that the evidence will be of substantial value and not merely incidental.

Section 8 of the *PACE Act 1984* adopts a higher standard of criteria to be satisfied than that recommended by the Philips Commission. The section provides that the issuing authority (a justice of the peace) must be satisfied that, amongst other

things, there are reasonable grounds for 'believing' that a serious arrestable offence has been committed and that there is material on the premises specified in the application which is likely to be of substantial value to the investigation of the offence.

Canada

In its report on search and seizure, the LRCC recommended that in determining whether or not to issue a search warrant, the issuing authority must consider whether he or she is satisfied, upon the facts alleged in the information, that there are reasonable grounds to 'believe' that an object of seizure is to be found in the place to be searched (LRCC 1984, p. 17). The LRCC defined "objects of seizure" as meaning things, funds and information which are reasonably 'believed' to be: takings of an offence; evidence of an offence; or contraband.

Other Considerations

Section 679 of the *Criminal Code* currently provides that for the issue of a search warrant there must be reasonable grounds for the applicant to 'suspect' that the objects of the search are at the particular premises which the applicant wants to search. One of the following criteria must also be satisfied:

- (a) the object of search is a thing with respect to which any offence which is such that the offender may be arrested with or without warrant has been, or is 'suspected', on reasonable grounds, to have been, committed;
- (b) the object of search is a thing whether animate or inanimate and whether living or dead as to which there are reasonable grounds for 'believing' that it will of itself or by or on scientific examination, afford evidence as to the commission of any offence; or
- (c) the object of search is a thing as to which there are reasonable grounds for 'believing' that it is intended to be used for the purpose of committing any such offence.

The Criminal Code Review Committee has recommended that the reference to 'believing' in criteria (b) and (c) be replaced by 'suspecting'. This was apparently for the sake of uniformity as there appears to be little practical distinction (Criminal Code Review Committee 1992, draft s. 259).

Conclusion

The Commission is of the view that the power to obtain a search warrant should require the issuing authority to 'suspect' on reasonable grounds that the object is to be found in the premises to be searched. The Commission concurs with the reasoning

of the Gibbs Committee that it is not justified to impose the higher requirement that the issuing authority must 'believe' on reasonable grounds that the object is to be found on the premises when the officer has not yet entered the premises.

As well as suspecting that the object is in the premises to be searched, a police officer must satisfy the issuing authority that there are reasonable grounds to believe/suspect that it is a thing connected with an offence. As outlined above, the *Criminal Code* currently requires a 'suspicion' as to criterion (a) above and a belief as to the other criteria. This is similar to the requirement in the *Commonwealth Crimes Act 1914*. The Criminal Code Review Committee recommended a suspicion in respect of all criteria, thus simplifying the provision.

The distinction between 'belief' and 'suspicion' is a very difficult one to draw and appears to be a semantic rather than practical distinction. Most police with whom the Commission officers spoke are unaware of the difference in practice. Their focus is upon the "reasonable grounds" requirement rather than whether it requires a 'suspicion' or 'belief'.

There is a clear need to standardise the requirements across the legislation and in order to simplify and clarify the law in this respect, the Commission recommends that the test of 'reasonable grounds to suspect' which is to apply in relation to the connection between the object and the premises, be the appropriate test to apply to the connection between the object and the offence.

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

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.

SHOULD THE APPLICANT BE REQUIRED TO MAKE THE ISSUING AUTHORITY AWARE OF ANY PREVIOUS APPLICATIONS FOR WARRANTS IN RESPECT OF THE PREMISES?

The Present Position in Queensland

The laws relating to search warrants in Queensland do not require the applicant for a search warrant to provide to the issuing authority information concerning any previous applications for warrants in respect of the premises or of the results of any previous searches of premises.

The Complaints Section of the Criminal Justice Commission has received a number of complaints from persons who claim that their premises had been searched unsuccessfully a number of times and who feel that they are the subject of harassment. One involved a person whose premises were searched unsuccessfully for cannabis three times in less than three months. Each search warrant was issued by a different justice of the peace. Another example was given of premises searched unsuccessfully five times within a 12 month period although some of those searches were carried out by agencies other than the Queensland Police Service. It is difficult to know on each occasion of an application for a warrant whether it might be part of a series of acts designed to harass a person because no information is presented to the issuing authority as to any other applications for warrants. The harassment need not be intended on the part of police but could arise if an anonymous informant informs a number of different police officers that a person or premises is involved in, for example, drug dealing, and those officers, independently of each other, seek a warrant to search the premises. It may well be that neither the police nor the issuing authority are aware of any other applications for a warrant.

Another problem that could arise is that of 'forum-shopping' whereby if police are refused a warrant by one authority, they may make another application to a different authority with no obligation upon the police officer to inform the issuing authority of the previous application. In order to decide the application with the appropriate degree of judiciality, it is important for the authority to be as fully informed as possible when considering the application.

Other Jurisdictions

New South Wales

In 1991, the *Search Warrants Act 1985* (NSW) was amended to include a provision which specified in more detail the information that was to be provided to a justice upon an application for a search warrant. One of the aims of the new section 12A was to ensure that unlimited applications could not be made for a warrant to any justice on the same information (NSW Legislative Assembly 1991, p. 4424). Included in the information to be provided to the justice is:

- (e) if a previous application for the same warrant was refused- details of the refusal and any additional information required by section 12C

Section 12C provides that if an application for a search warrant has been refused, a further application may not be made to that justice or any other justice unless further information is provided to justify another application. If, however the initial refusal was by an authorised justice who was not a magistrate, a further application may be made to a magistrate without the need for additional information. These amendments sought to overcome the problems of 'forum-shopping'.

England and Wales

The Code of Practice under the *PACE Act 1984* (Code B) sets out the action to be taken by a police officer before an application is made for a search warrant. It requires a police officer to, inter alia, check that the information upon which the application is based is accurate, recent and has not been provided maliciously or irresponsibly (cl. 2.1). The officer is also required to make reasonable enquiries to establish whether the premises have been previously searched and, if so, how recently (cl. 2.3). There does not appear to be a requirement that the officer inform the issuing authority of this information.

Canada

The LRCC also identified the problem of 'forum-shopping' and sought to address it in a manner which would give appropriate recognition to the refusal to issue a warrant. The LRCC recognised that:

Circumstances may change after an initial application for a warrant; evidence supporting the application may become firmer. Moreover, we recognize that if an initial refusal to issue a warrant were to be binding in relation to an investigation as a whole, this could inhibit adjudicators from ruling against applications perceived to be insufficient.

The LRCC recommended a provision based on the Canadian *Criminal Code* section 178.12(1)(e1) requiring information to be provided in support of an application for authorisation to intercept electronic surveillance (LRCC 1984, p. 193).

Their final recommendation in this regard was that:

A peace officer or other person applying for a search warrant shall disclose on the information all previous applications made with respect to the search of the same person, place or vehicle for objects of seizure related to the same or a related transaction of which the applicant is aware. (LRCC 1984, p. 18)

The inclusion of the words 'of which the applicant is aware' was a response to objections raised during the consultation process that the applicant may not be in a position to know of other applications with respect to the same search warrant.

The proposal of the LRCC appears to overcome the forum-shopping problem but may not necessarily overcome the harassment problem because it is limited to applications concerning the same transaction.

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

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.⁶² This information should be available from the computerised register 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

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.

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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.

8.6 Recommendation - Computer Register of Search Warrant Applications

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).

WHAT SHOULD BE THE OBJECTS OF SEARCH?

The Queensland legislation (s. 679 *Criminal Code*) currently provides for a police officer to apply for a search warrant where there are reasonable grounds for suspecting that there is in any house etc.:

- (a) Anything with respect to which any offence which is such that the offenders may be arrested with or without warrant has been, or is suspected, on reasonable grounds, to have been, committed; or
- (b) Anything whether animate or inanimate and whether living or dead as to which there are reasonable grounds for believing that it will of itself or by or on scientific examination, afford evidence as to the commission of any offence; or
- (c) Anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence.

The issuing authority must thus be satisfied on reasonable grounds in relation to two issues, namely that the object is in the premises and secondly, that it would afford the evidence set out in paragraphs (a), (b) or (c) (above).

Other statutory provisions define the object of search in different ways. The *Drugs Misuse Act 1986* section 18 allows a search for 'evidence of the commission of an offence'; the *National Crime Authority (State Provisions) Act 1984* section 12 allows a search for 'things connected with a special investigation of the National Crime Authority'; the *Pawnbrokers Act 1984* section 51 allows a search for 'stolen or otherwise unlawfully obtained goods'; and the *Weapons Act 1990* section 4.8 allows a search for 'anything . . . in the possession of any person in or upon any place or premises contrary to the provisions of the Act'.

The Queensland Police Union of Employees suggests that warrants be available to search for the following objects of search:

- (a) anything which may afford evidence of an offence;

- (b) anything whether animate/inanimate, living/dead as to which there are reasonable grounds to believe that it will of itself or by or on scientific examination afford evidence as to the commission of an offence;
- (c) anything as to which there are reasonable grounds to believe that it is needed for use for the purpose of committing any offence;
- (d) any person who is the victim of abduction or any similar offence; or
- (e) any person who has committed an offence against the statute laws of Queensland or who is the subject of a warrant issued by a Court.

More generally the submissions called for power to search for 'evidence of a particular type of crime'; 'articles which will assist in providing evidence of the offence'; 'property which is the proceeds of an offence, or will by itself or by scientific examination provide evidence as to the commission of an offence'; and 'any object known to be stolen or illicit'.

The Queensland Police Service submitted that the current statutory provisions do not allow for a search for a suspect who may be hiding in privately occupied premises or for a victim who may have been abducted and restrained in private premises against his or her will.⁶³ The police must therefore rely on the common law power to enter premises to effect an arrest in the first case and in the second case the common law duty of a constable to preserve life. The Service suggests that specific statutory recognition be given to those common law powers.

A number of individuals agreed that provision should be made to obtain a warrant to search for suspects on private property and abductees. One person suggested it should extend to situations where the location of a person is required to give effect to the law, or where the health or well-being of a person is in question.

The Queensland Law Society supported the call for warrants to be available to search for suspected offenders and abduction victims.

Concerning victims of abduction, section 684 of the *Criminal Code* presently provides for a search warrant to be issued to search for a woman or girl who is unlawfully detained for immoral purposes. A woman or girl is deemed to be detained for immoral purposes if she is under the age of 16 years; or being 16 or over and under 18 years, is so detained against her will or against the will of her father or mother or of any person who has the lawful care of her; or being of or above 18 years of age is so detained against her will; and is detained for the purpose of a man having carnal knowledge of her. This is obviously a much more restrictive provision than that sought by the Police Service and others as it only applies to a specific category of abduction victims or persons unlawfully detained.

⁶³ A limited exception to this is contained in the *Health Act 1937*.

Other Jurisdictions

Commonwealth of Australia

Section 10 of the *Crimes Act 1914* sets out the objects of search and it is in almost identical terms to section 679 of the *Criminal Code* Queensland, the terms of which were set out earlier. The Gibbs Committee did not recommend any change to the objects of search.

New South Wales

In the *Search Warrants Act 1985* (NSW), a search warrant may be sought on essentially the same grounds as are set out in section 679 of the *Criminal Code* (Qld) (i.e. on the basis of a twofold test of reasonable grounds) although the objects of search are wider than section 679. Rather than incorporating the two tests into one section, the New South Wales legislation has two relevant sections.

Section 5 (of the *Search Warrants Act 1985* (NSW)) provides that a member of the police force may apply for a search warrant if the member has reasonable grounds for believing that there is on any premises:

- (a) a thing connected with a particular indictable offence;
- (b) a thing connected with a particular firearms offence;
- (c) a thing connected with a particular narcotics offence; or
- (d) a thing stolen or otherwise unlawfully obtained.

Section 4 defines a thing as being connected with a particular offence if it is:

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

By virtue of section 4(2) a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been or is to be committed.

England and Wales

Section 8 of the *PACE Act 1984* provides for the issue of a search warrant where there are reasonable grounds for believing that a serious arrestable offence has been committed and:

- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
- (c) that the material is likely to be relevant evidence; and
- (d) that it does not consist of or include items subject to legal professional privilege, excluded material or special procedure material . . .⁶⁴

"Relevant evidence" means anything that would be admissible in evidence at a trial for the offence (s. 8(4)).

Canada

The LRCC in its working paper on search and seizure identified five classifications of things in which the criminal law enforcement system traditionally has a certain interest. These are things, funds or information:

- necessary for the physical protection of peace officers and other individuals;
- which represent the "fruits of crime", an expression comprehending both the "takings" and "profits" received in connection with an offence;
- which are possessed in circumstances constituting an offence;
- which provide evidence of the commission of an offence; and
- which are the instruments or means by which an offence has been or may be committed.

⁶⁴ Items subject to legal professional privilege include:

- (i) communications in connection with the giving of legal advice between the professional legal adviser and his client "or any person representing his client"; and
- (ii) communications in connection with it in contemplation of legal proceedings and for the purposes of such proceedings made between the professional legal adviser and his client or any person representing his client or between such a legal adviser or his client or an such representative and any other person (s. 10).

"Excluded material" consists of three categories of material held on a confidential basis:

- (i) personal records
- (ii) samples of human tissue or fluid taken for the purpose of diagnosis or medical treatment and which are held in confidence
- (iii) journalistic material consisting of documents or records held in confidence.

(For a more extensive explanation of the complex provisions see Zander 1990, p. 20-37).

The LRCC condensed and rationalised these categories into the following definition of objects of seizure:

"Objects of Seizure" means things, funds and information which are:

- (a) takings of an offence;
- (b) evidence of an offence; or
- (c) possessed in circumstances constituting an offence.

"Takings of an offence" means stolen property or other property taken illegally from the victim of an offence. It includes property into, or for which, takings of an offence officially in the possession of an individual have been converted or exchanged.

The LRCC also considered the question of the power to search for and rescue persons illegally detained and pointed to two disadvantages of the failure to accord statutory recognition to the fact that individuals detained unlawfully are legitimate objects of search and seizure. First was the police reluctance to proceed without documentary authority. Second, the power to search for and rescue such a person as an incident to arrest of an offender may be stymied if the person is detained at a location other than where the offender is apprehended (LRCC 1984, p. 46). Because of the apparent need for a power to enter and search for persons illegally detained and the widespread support for such a power received by the LRCC during its consultations the LRCC recommended that:

When authorised to do so by warrant or without a warrant where there is danger to human life or safety, police officers may search for and rescue a person detained in circumstances constituting an offence. (LRCC 1984, p. 48)

Other Considerations

The Criminal Code Review Committee (draft s. 259) made the broad recommendation that search warrants be available to search for anything with respect to which there are reasonable grounds to suspect that:

- (a) an offence has been or may be committed; or
- (b) it will afford evidence relevant to the commission of an offence; or
- (c) it has been or may be used for the purpose of committing an offence.

These constitute a slight amendment to the terms of section 679 and are based on the simplified form recommended by Murray in his review of the Western Australian *Criminal Code* (Murray, M.J. 1983, pp. 627-628).

The Committee also recommended a provision allowing a search warrant to be issued to search for a person where there are reasonable grounds to suspect that the person is being unlawfully detained. Such a warrant could authorise police and assistants to enter and search a place at any time of the day or night, free the person detained, if found; and use such force as is reasonably necessary for those purposes (draft s. 268).

Conclusion

The Commission is of the view that the approach of the Criminal Code Review Committee to combine the powers currently under section 679 *Criminal Code* and under the *Drugs Misuse Act 1986*, comprising the vast majority of search warrants in Queensland, is appropriate and should be adopted. However, the Commission is not convinced that the provision as recommended by Murray is significantly simpler or clearer than the current section 679. The Commission prefers the terms used in sections 4 and 5 of the *Search Warrants Act 1985* (NSW) which provide a clearer presentation of the objects which may form the subject of an application for a search warrant.

The Commission believes the amendment in relation to persons detained is justified and involves only a minimal extension of the powers to search. Presently, police may only obtain a warrant to search for a woman or girl who is detained for immoral purposes and is therefore restricted to the category of detainees. The Commission is of the view that this restriction is not justified and that all persons who are detained in a manner which may reasonably be believed to constitute a criminal offence should be afforded the protection of the police being able to obtain a warrant to search for them.

8.7 Recommendation - Objects of Search

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.

In relation to the submission calling for search warrants to search for suspects the Commission is not convinced that this is necessary. Where a person is suspected of an offence, the appropriate warrant to be obtained is an arrest warrant which can also authorise entry to premises. Where the arrest is to be made without a warrant, there is a common law power to enter premises in order to effect the arrest. The Commission recognises the desire of the police to have these common law powers expressed in legislation and this accords with the Commission's approach of clarification and simplification. However, the Commission is of the view that the appropriate statutory power should be the power of entry to effect an arrest. This point is discussed in Chapter Ten "Entry and Search Without Warrant".

WITH WHAT DEGREE OF PARTICULARITY SHOULD THE OBJECTS BE SPECIFIED?

The Present Position in Queensland

The scope of a search warrant is defined by the description of the object of the search. The degree of particularity in the description of the search object is especially important as it determines the scope of the search warrant. The issue has been commented upon by the High Court of Australia in *George v. Rockett*. The Court, in considering the operation of section 679 *Criminal Code*, stated:

A thing must be identified either as a specific object or as an object which answers a particular description. The scope of a search warrant is defined by the description of the object of the search. It is by reference to the means of identification of the object of the search that the sufficiency of both reasonable grounds for suspecting and reasonable grounds for believing must be judged. Where a specific object is identified, the question whether there are reasonable grounds for believing that, if

it exists and is found, it will afford evidence as to the commission of an offence is a discrete question to be answered according to the facts set out in the complaint. Where the object is identified by description, the broader and less specific the description, the more difficult it is likely to be to satisfy the requirement that a thing answering the description will afford evidence of the commission of an offence. Conversely, the narrower and more specific the description, the more difficult it may be to satisfy the requirement of reasonable grounds for suspecting that the designated object is in a particular location . . .

The description of the object of the search is a reference point for delimiting the scope of the warrant. The wider and less specific the description of the object, the wider will be the powers of seizure which the warrant confers. On the other hand, as has been seen, the wider and less specific the description of the designated object, the more difficult will be the task of persuading the justice that there are reasonable grounds for belief that the object so described will, if found, afford evidence of the commission of the particular offence. (*George v. Rockett* (1990) 170 CLR 104 at 117-118)

A useful statement of the law concerning the particularisation of description of the objects of search is also contained in the *Fourth Interim Report* (1990, p. 260) of the Gibbs Committee which looked at section 10 *Crimes Act* 1914, i.e. a provision modelled on section 679 of the *Queensland Criminal Code*:

There need not be an itemisation or specific description of particular documents or things (*Queen v Tillett*) and, in *Jones v German*, Lord Russell C.J. at p. 424 said "I cannot find anywhere laid down that a search warrant must specify goods; and indeed, it is easy to suggest many cases where it might be impossible for the person laying the information to do so". However, the thing or class of things for which the search is authorised must be "delimited with reasonable certainty"; *Trimboli v Onley* (No.1). Views as to the degree of certainty have varied. Thus, in the last mentioned case, a reference in effect to "papers and other things" as to which there are "reasonable grounds for believing that the same will afford evidence as to the commission of offences" was held to be adequate, but in *Arno v Forsyth* Fox J. said that a warrant under section 10 must indicate the things to which it relates by reference to some characteristic other than the offence which it is said to constitute or evidence.

The difficulties which may arise in being too confining in the setting of parameters for the description of the objects of search are highlighted by Lockhart J. in *Arno v. Forsyth* (1986) 65 ALR 125 at 139:

When investigators are proceeding into alleged tax evasion on a large scale it may be impossible to define documents in search warrants other than in rather general terms. If the terms are so general or vague as to suffer from the vice of a general warrant then plainly it is bad; but it must be remembered that at the time the warrant is issued the matter is obviously at an investigatory stage and there will not be sufficient evidence in a form admissible at a criminal trial to prove the alleged offences. The purpose of the search is to obtain such evidence. It is necessary to reconcile the two competing public interests that offences involving tax frauds

should be detected and punished on the one hand and the right of the individual to the protection of the law from unjustified interference with his privacy and property on the other. It is in the public interest that those who commit offences involving fraud in relation to tax should be brought to justice. It is at least equally in the public interest that individual liberty should be protected by the courts whose function it is to protect individuals from abuse of power by the Executive arm of government. The balancing of the claims of the due administration of justice and those of the citizen whose rights must be jealously protected is not determined in a sterile vacuum but with due regard to the legislation involved and criminal activity suspected. The complexity of taxation frauds which often involve numerous persons and entities, and the concomitant difficulties associated with the gathering of documentary evidence to support the laying of charges highlights the dangers of too readily striking down warrants on the ground of generality in cases of this kind: see generally R v Inland Revenue Commissioners; Ex parte Rossminster Ltd [1980] AC 952, especially Lord Diplock at p. 1010.

The Law Society of Queensland believed that a search warrant should closely specify the articles to be seized and the applicant police officer should specify what property is suspected to be on the premises.

The Legal Aid Office believes a warrant should state the articles to be seized as they relate directly to the offence being investigated. These items should be specified so that the holder of the warrant is not authorised to go on a 'fishing expedition'.

Similarly the Queensland Watchdog Committee stated that search warrants should not sanction "fishing expeditions". QAILS said in their submission that the particularity with which the item is described will vary according to the offence concerned however the search warrant should always contain a reference to a characteristic of the items to be seized.

In a confidential submission to the Commission, an individual, who has experienced a search warrant executed on his premises, stated:

The articles to be searched for and seized should be specifically described in detail and not, simply refer to "documentation".

Other individuals expressed the view that the warrant should clearly define the articles to be seized or the class of articles to be seized.

On the other hand one writer was of the view that it is difficult to be specific about items to be seized and police officers should be authorised to seize 'all articles which could be the subject of the offence or other offences'. Another thought it might be sufficient just to designate the offence under investigation and/or any particulars known or articles being searched for.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee acknowledged that entry and search of premises under a search warrant represents a serious intrusion on personal rights of privacy and dignity. Accordingly, it believed that minimum standards which need to be met before the grant of a search warrant must be carefully set and those standards be capable of meaningful application. The Committee approved a provision of the standard contained in section 22(4) *National Crime Authority Act 1984* (Cwlth) and section 36(7) *Proceeds of Crime Act 1987* (Cwlth) which require a search warrant to state a description of the 'kind of things' authorised to be seized. It considered that such provisions did not appear to greatly change the existing law.

The Gibbs Committee was of the view that at the time that an application for a search warrant is made, an investigation should have reached a stage where the investigator should be able to supply elements of descriptions of the kind of things suspected of being on the premises. The investigator may not know all things but may know some things. However, the Gibbs Committee also acknowledged that an investigator, in making his or her application, is concerned that the warrant should describe the things to be seized in the widest possible terms. It believed this concern would be mitigated by the Committee's other recommendation that a person executing a warrant may seize a thing they come upon while searching under the warrant which does not fall within the description of items authorised to be seized but which the person believes on reasonable grounds will provide evidence of the commission of a serious offence (Gibbs Committee 1990, p. 275).⁶⁵

In consideration of all these matters, the Gibbs Committee believed that the existing requirements of description of the objects of search which had to be met before the grant of a warrant should not be relaxed other than to permit a description of the kind of things in question. That is, the search warrant should describe the thing or the kind of thing being searched for.

England and Wales

The Philips Commission believed that warrants should specify the object or objects of search with as much detail as possible. They saw this as of particular importance where entry would have to be gained through another's property or where some parts of buildings with multiple tenancy require to be searched. Section 15 of the *PACE Act 1984* which applies to an application for a warrant under any enactment, adopted the Commission's recommendation by providing that the applicant officer must "identify, so far as is practicable, the articles or persons to be sought".

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See Recommendation 9.7 for this Commission's views on that issue.

Canada

The recommended statutory provision of the LRCC dealing with the degree of particularity of description of objects of seizure reads:

Where a justice is satisfied, upon an application made [under s. 6], that there are reasonable grounds to believe that an object of seizure is to be found upon a person or in a place or vehicle, he may issue a warrant authorizing a peace officer to search that person, place or vehicle and seize the object of seizure if it is found as a result of that search. (emphasis added). (LRCC 1984, p. 16, draft clause 5)

The LRCC was of the view that the objects capable of lawful seizure should be restricted to those named in the warrant. It believed that the concept of particularity, which it considered to be an essential characteristic of a warrant, required that the warrant authorise entry of 'specified' premises to search for 'specified' objects with a view to a 'specified' offence (LRCC 1984, pp. 17 and 27). The LRCC's draft clause 5 requires the applicant officer to identify a specific object or an object of a specific description as the object of seizure. The notion of particularity is also reflected in the LRCC's draft clause 14 which provides that an officer may only search those areas mentioned in the warrant where it is reasonable for the 'objects specified in the warrant' to be found (LRCC 1984, p. 27).

Conclusion

It is an essential part of the power to enter premises that there be judicial scrutiny and this will only be effective if the issuing authority is provided with as much detail as possible and issues the warrant in those terms. Otherwise the role of the issuing authority as a protector of the citizen's privacy against unwarranted intrusion by the State will be greatly diminished.

The issuing authority can only be properly satisfied of the necessity for the warrant if he or she has particulars of the objects of search.

8.8 Recommendation - Description of Objects of Search

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.

SHOULD A GENERAL WARRANT BE AVAILABLE?

With few exceptions, Queensland statutes authorising the issue of warrants for police officers to enter and search premises require that the warrant specify both the objects of seizure or types of objects of seizure being searched for and the premises to be searched. Before the issue of such warrants is valid, an applicant must establish a connection between:

- the object and the offence being investigated; and
- the object and the premises which the police want to search (the connection criteria).

One exception to the connection criteria is section 76L(2D) of the *Health Act 1937* which permits a justice to issue a warrant authorising a police officer to enter and search 'any' place in an effort to locate the child who is the subject of the warrant and return the child to a hospital. The application for the warrant must be accompanied by an order made by a medical practitioner that the child has left or been removed from a hospital without permission. The warrant takes the form of a quasi-general warrant. For the officer to make a valid entry of premises under the warrant he or she must reasonably suspect the child to be on those particular premises, but otherwise the officer is unrestricted as to where he or she may enter and search.

The above may be contrasted with a warrant known as a general warrant. South Australian legislation (s. 67 *Summary Offences Act 1953*) permits the Commissioner of Police to issue general search warrants which authorise the holder of the warrant to enter and search 'any' premises at any time of the day or night where he or she has reasonable cause to suspect that:

- there is an object which may afford evidence of a felony or misdemeanour;
- there are stolen goods;
- any felony or misdemeanour has been recently committed or is about to be committed; or
- there is anything that may be intended to be used for the purpose of committing a felony or misdemeanour.

The suspicion need not relate to any particular offence or offences and the officer need not testify to that suspicion before being authorised to enter and search (Mitchell Committee 1974, p. 63). The general warrant may simply be issued by the Commissioner of Police to such officers as the Commissioner thinks fit. The warrant may be granted for a period of up to six months and revoked at any point of time within that period.

Further exceptions to the connection criteria, are the "monitoring warrant" provisions which are found in section 134 *Nature Conservation Act 1992*, section 49 *Classification of Films Act 1991*, and section 25 *Classification of Publications Act 1991*. Under these provisions, the applicant for a "monitoring warrant" need only establish to the satisfaction of a magistrate that it is 'reasonably necessary' that the applicant have access to a nominated place to find out if the Act is being complied with. They are restricted to places other than dwellings. The applicant does not have to nominate particular objects of search and the reason to search does not have to relate to a particular offence which the applicant suspects, believes or knows has been, is being or may be committed (see p. 493 for further discussion of monitoring warrants).

A number of operational police to whom the Commission has spoken consider that a modified general warrant should be available to permit them to search for objects in 'any' premises where they have reasonable grounds to suspect the objects of search are located. To obtain such a warrant, the officers advocate that the police would be obliged to establish a connection between the object and offence investigated but not between the object and particular premises. The warrant would authorise the police to search any premises but the decision on which premises are searched under the authority of the warrant would be left to the police on the basis of them identifying at which premises they reasonably suspect the objects of search to be located. They reason that this would avoid the need to seek further warrants in the event that the search of one premises reveals nothing or where the suspected offender or objects of search is moving or being moved from place to place. The officers say that the delays in having to obtain a warrant on each occasion are frustrating and may also lead to the loss or destruction of the evidence.

Where the availability of a general warrant has been reviewed in other jurisdictions there has been a recommendation for its abolition. In South Australia the Mitchell Committee recommended the repeal of the legislation. It pointed out the problem of balancing the right of the individual to resist and prevent invasion of his premises, the breaking into and seizure with the attendant inconvenience, discomfort and distress which may be caused to the individual and family members, against the requirement that the police shall not be impeded in the execution of their duty to solve crime and to bring criminal offenders to justice. The Mitchell Committee saw the advantage to the public in requiring a judicial warrant and recommended that a judicial warrant be obtained in all instances so as to provide a check upon unwarranted intrusion into or interference with premises. The ALRC was of the same view stating that the power of entry and search must be capable of justification to an independent person on every single occasion that it is used due to the power's great destructive potential to privacy and civil liberties (ALRC 1975, para. 196).

Conclusion

The Commission recommends against the adoption of general search warrants in which police are empowered to enter and search any premises without having to specify the offence to which their suspicion relates.

In the Commission's view the primary principle to be applied to the power to enter and search is that the power must be capable of justification to the issuing authority on each occasion that it is to be exercised. The justification must be in the form that the object of search or types of object of search are related to a particular offence and that there is some likelihood that the objects of search are located on the particular premises to be searched; i.e. the connection criteria must apply.

The only exceptions to this general principle are the powers to enter and search premises in emergency situations as recommended in Chapter Ten.

The Commission is not satisfied that any perceived benefits to be gained by the availability of general warrants would be sufficient to justify a departure from the principle that the power to enter and search should be capable of justification to an independent authority on each occasion that it is to be exercised. The preferable approach to overcome the difficulties raised by police is to facilitate easier or better access by the police to the independent issuing authority e.g. Telewarrants (covering warrants applied for by telephone, fax, radio etc.) in circumstances of urgency or remoteness.

8.9 Recommendation - No General Warrants

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.

SHOULD A SEARCH WARRANT BE AVAILABLE TO CONDUCT A COVERT SEARCH?

The Queensland Police Service in its submission to the Commission suggested that there was a need for special warrants to be available for covert searches. The following extract from the Queensland Police Service submission explains the problem:

It is often necessary in the case of serious offences to have a police surveillance team keep a suspect under observation in order that evidence of the offence may be gained or the suspect's accomplices located. For example, surveillance might be carried out on a person suspected of being a producer of and trafficker in illicit drugs in order that an illicit drug factory or other members of the drug ring are

located. In this situation, police may have cause to believe that the suspect has samples of the illicit drugs or evidence which might lead to the location of an illicit drug factory (e.g. a list of locations or contacts in drug trade) in his house.

Should police obtain a search warrant to search the house during the period when surveillance is being undertaken, the obvious result is that the person will become aware of the police interest in him. If this is the case one could not logically expect that the person will continue to allow the manufacture of illicit drugs to occur or for that matter place himself in a position where his factory or accomplices might be discovered. On the other hand, if police do not execute a warrant, evidence which might help in gaining a conviction against the person could be destroyed.

The simple solution to this problem is for police to obtain a search warrant for a covert search of the premises. This would entail police entering the house without the knowledge of the occupier, searching it and photographing anything which may later be of evidential value. It might also be necessary, should any illicit drug be found, to take a minute sample of that drug for analysis.

There is no explicit reference to the covert execution of a search warrant in any of the Queensland legislation.

The *Drugs Misuse Act 1986* section 18 allows for a police officer to apply for a search warrant to search premises if he or she reasonably suspects that a search of a place may reveal evidence of the commission of an offence under that Act. In the Regulations to that Act, there is a requirement that an officer executing such a warrant is to provide to the occupier or leave in a conspicuous place an Occupier's Notice unless to do so is likely to frustrate or otherwise hinder an investigation (Reg. 7(3) *Drugs Misuse Regulations*). This exception seems to contemplate the execution of *Drugs Misuse Act 1986* search warrants in a covert or surreptitious manner. However if this power exists, it does so by implication only and is not expressly conferred by the Act.

Section 679 of the *Criminal Code* (Qld) and the various search warrant provisions contained in other Acts do not impose a requirement that a police officer must provide a notice to the occupier. Therefore there is understandably no reference to an exception in cases of covert searches. Accordingly these Acts, unlike the *Drugs Misuse Act 1986*, do not implicitly recognise the covert execution of warrants. While it appears that there is authorisation under the *Drugs Misuse Act 1986* (at least implied authorisation) it is unclear as to whether the covert execution of a search warrant is authorised under other legislation.

Other Jurisdictions

New South Wales

The *Search Warrants Act 1985* (NSW) section 15(3) requires a person executing a search warrant to provide to the occupier an occupier's notice upon entry. If no such person is on the premises then the notice is to be served personally on the occupier as soon as practicable or is to be served in such other manner as the authorised justice who issued the warrant may direct. Subsection (4) of section 15 allows for service of the occupier's notice to be postponed by the authorised justice who issued the warrant if the authorised justice is satisfied that there are reasonable grounds for the postponement. Section 15(5) provides that there may be more than one postponement but no one postponement can be for a period of more than six months.

This appears to contemplate the covert execution of a search warrant as it is difficult to imagine other circumstances in which an issuing authority would authorise postponement of the service of the occupier's notice. No explanation of the reason for this subsection was provided by the Attorney-General in the Second Reading Speech following the introduction of these bills in the New South Wales Parliament. Note also that this provision is contained in the Act itself rather than the Regulations thereto, as in the Queensland *Drugs Misuse Act 1986*.

Canada

In its report *Search and Seizure*, the LRCC addressed the issue of police power to perform surreptitious intrusions, which are often referred to as "intelligence probes". They had been the subject of considerable public attention in Canada as a result of the inquiries into police activities conducted by the Keable and McDonald Commissions. The LRCC defined the objective of a surreptitious intrusion as:

to secure information in furtherance of an investigation without alerting the subject of the investigation to its existence. Achieving this objective usually depends in large part on the intrusion itself remaining invisible. (LRCC 1984, p. 61)

The LRCC concurred with the view expressed by the McDonald Commission that, with the possible exception of searches conducted under narcotics and drugs legislation, surreptitious entries are not legally authorised under present search and seizure law. While it might have been argued that the discretionary language in which the search and seizure powers of paragraph 10(1)(a) of the *Narcotic Control Act* and paragraph 37(1)(a) of the *Food and Drugs Act* permitted peace officers to enter premises, attempt to locate evidence and record it or take samples and then leave without disturbing the status quo, the LRCC recommendation to repeal those sections would eliminate it.

The LRCC clearly distinguished between the issue of surreptitious entry for the purpose of installing an electronic surveillance device and a more general power to enter surreptitiously for the purpose of gathering information in the wider context of search and seizure law.

The LRCC consulted widely with government representatives and police groups across Canada who argued that a power to conduct surreptitious intrusions would be a valuable investigative tool especially in drugs and white collar crime. However after careful consideration of the benefits and dangers the LRCC was persuaded that, as a matter of policy, the interests of criminal law enforcement did not justify the powers.

The main reason for our position is that the exercise of powers of surreptitious intrusion raises serious problems of accountability. The objective of a surreptitious intrusion may be to secure information or to confirm that an offence is in the planning stage, or if being or about to be committed, in circumstances where a search warrant cannot be obtained because there are not the requisite grounds of belief to support the issuance of a warrant. In some circumstances where a search warrant would issue, surreptitious entry without warrant may be seen as a means of ensuring that the evidence found upon the search will support a successful prosecution, without alerting the subject of the investigation. While the execution of a search pursuant to warrant is usually a physical and highly visible exercise of police power, it is apparent that the effectiveness of a surreptitious intrusion is likely to depend upon whether it is kept secret from the individual affected for a considerable period after entry. The procedural consequences which necessarily flow from this distinction would curtail accountability by creating conditions of "low visibility: for the exercise of powers of surreptitious intrusion." Many of our legislative recommendations concerning the scope of search, announcement of entry and the provision of certain documents to the individual affected, would have to be modified if surreptitious intrusions were to be effective under a search warrant regime. Such modifications would seriously compromise the degree of protection associated with warrant procedures by creating procedural impediments to the effective review of the legality of police conduct. (LRCC 1984, p. 63)

Accordingly the LRCC recommended against the enactment of such powers.

Conclusion

Information obtained from senior law enforcement officers indicates that although the need for covert searches does not regularly arise, they nevertheless are a valuable investigative tool. To combat the increasingly sophisticated approach of organised crime police and law enforcement agencies have had to develop increasingly sophisticated investigative techniques and investigations are often protracted and complex operations. In this environment this power has the potential to assist major crime investigations but the method also carries grave risks. The surreptitious nature of covert searches puts them at the most intrusive

end of the scale of police powers. A major concern is that the strict accountability processes recommended in respect of search warrants cannot be effective as safeguards in the exercise of surreptitious search powers. The very nature of such powers precludes the occupier from being informed of his or her rights and the extent of the police power to search authorised by the warrant.

It is the absence of these accountability mechanisms that has caused the greatest concern in this area and the Commission proposes 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 period of time within which the occupier must be informed in writing of the details of the search.

8.10 Recommendation - Covert Search Warrants

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.

SHOULD A WARRANT BE AVAILABLE TO SEARCH FOR PROPERTY THAT IS EXPECTED TO BE BROUGHT ONTO THE PREMISES IN THE NEXT 72 HOURS?

Currently in Queensland search warrants are generally only available in respect of property that is believed or suspected to be in premises at the time of applying for a search warrant. There are no general provisions allowing for an application to be made for a warrant to search for property that is expected to be brought onto the premises in the future. There are however three specific provisions, with the relevant time period noted as follows: section 135(2) *Nature Conservation Act 1992* (seven days), section 26(1) *Classification of Publications Act 1991* (72 hours), section 50(2) *Classification of Films Act 1991* (72 hours).

The Director of Prosecutions, in his submission to the Commission called for the introduction of such a provision to apply to a wider range of offences, based on that which is contained in section 10 of the Commonwealth *Crimes Act 1914*.

Other Jurisdictions

Commonwealth of Australia

Section 10 of the *Crimes Act 1914* was amended in 1987 to permit the grant of a search warrant not merely when the thing in question is then on the relevant premises but also when the Justice is satisfied that it will be brought onto the premises "within the next following 72 hours".

The Gibbs Committee considered this amendment and concluded that it did not unduly detract from the rights of individuals and was required for effective law enforcement action.

New South Wales

In 1991, section 5 of the *Search Warrants Act 1985* (NSW) was amended to allow a member of the police force to apply to an authorised justice for a search warrant if the thing is not at that time on the premises but there are reasonable grounds for believing that the thing will be on the premises within 72 hours. The amendment was said to be of particular significance in drug matters:

At present the police must wait for the drugs to be delivered to the premises before an application for a search warrant can be made. If the police can satisfy the justice on reasonable grounds that drugs will be on specified premises at a certain time, the amendment will allow the police to apply for the warrant in advance. (NSW Legislative Assembly 1991, p. 4424)

Other Considerations

One of the attractions of this type of legislative provision is that it may reduce the incidence of emergency searches without warrant, especially in drug matters. If police have information that drugs are to be brought onto premises, they may keep those premises under surveillance. Once the drugs arrive, police must determine whether to apply for a search warrant or whether the circumstances are sufficiently urgent to justify a search without warrant. One would hope that in most cases the former approach would be adopted. However, it is a difficult decision to postpone the search while a warrant is obtained. If the police were already in possession of a warrant to search for the drugs it would simply be a matter of executing the warrant.

The Commission considers it desirable that the facts of a particular situation be the subject of scrutiny by an authorised Justice and that a search of premises be attended by the safeguards which accompany the execution of a search warrant.

An argument against such an amendment is that a search warrant may be granted before a suspect has actually committed an offence. This is covered to some extent by the fact that although the warrant has been approved it would not be executed until the circumstances arise to prompt its execution. If the act about which the reasonable suspicion existed did not occur, then the warrant would lapse.

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

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.

WHAT METHODS SHOULD BE AVAILABLE FOR THE GRANTING OF A WARRANT E.G. TELEPHONE, FACSIMILE, RADIO OR OTHER MEANS OF REMOTE COMMUNICATION?

There is no general provision for search warrants to be issued by telephone, facsimile, radio, or other form of communication (hereinafter referred to as telewarrants). Reference must be made to each statute containing powers to issue warrants to determine the methods by which those warrants can be granted. Many recent statutes (Queensland, Commonwealth and other Australian states) provide for the issue of warrants in urgent or special circumstances by telephone, facsimile and radio which enables the issue of search warrants in even the most remote regions.⁶⁶ As an example, section 18 *Drugs Misuse Act 1986* relevantly provides:

- (6) For the purpose of obtaining a warrant under subsection (1) or (2) -
 - (a) an application for the warrant and submissions concerning the application may be made;
 - (b) any information concerning the application may be furnished; and
 - (c) an oath may be administered and made, in whole or in part by telephone, telex, radio or other similar facility.
- (7) Where an application for the issue of a search warrant is made pursuant to subsection (6) the following provisions apply -
 - (a) the application shall only be made to a stipendiary magistrate;
 - (b) the applicant shall inform the stipendiary magistrate of his name, rank and number (if any) in the Police Force, and the stipendiary magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer;
 - (c) the applicant shall inform the stipendiary magistrate of the facts on which he seeks the issue of the search warrant;
 - (d) if it appears to the stipendiary magistrate from the information furnished by the applicant that there are proper grounds for the issue of a search warrant, he shall inform the applicant of the facts on which he relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make a complaint in writing under oath verifying those facts;
 - (e) if the applicant gives such an undertaking, the stipendiary magistrate may make out, and sign, a search warrant, noting on the warrant the facts on which he relies as grounds for the issue of the warrant;
 - (f) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the stipendiary magistrate;

⁶⁶ Commonwealth: *National Crime Authority Act 1984*; *Proceeds of Crime Act 1987*. New South Wales: *Search Warrants Act 1985*. Queensland: s. 4(2) *Criminal Investigation (Extra-territorial Offences) Act 1985* (telephone); s. 47 *Dairy Industry Act 1989* (telephone, radio, telex or other facility for distance communication); s. 18(6) *Drugs Misuse Act 1986* (telephone, telex, radio or other similar facility).

- (g) the stipendiary magistrate shall inform the applicant of the terms of the warrant;
 - (h) the applicant shall, as soon as practicable after the issue of the search warrant, forward to the stipendiary magistrate a complaint in writing under oath verifying the facts referred to in paragraph (d).
- (8) When a warrant is issued by a stipendiary magistrate as the result of an application made pursuant to subsection (6), the stipendiary magistrate shall, unless otherwise requested by the applicant, send the warrant, within 7 days of its issue, to the Commissioner of Police.
- (9) When it is necessary for a police officer to satisfy any person that a warrant under this section was issued and, for reasonable cause, that member cannot at the time produce the warrant, he may produce a form of the warrant completed and endorsed in accordance with subsection (10) and that production shall be deemed to be a production of the warrant.
- (10) To comply with subsection (9), a police officer -
- (a) shall complete a form of warrant substantially in the terms of the warrant issued by the stipendiary magistrate; and
 - (b) shall write on that form of warrant a statement that a warrant in those terms was issued giving -
 - (i) the name of the stipendiary magistrate who issued the warrant;
 - (ii) the date on which and time and place at which the warrant was issued; and
 - (iii) the date on which and time at which the warrant expires.
- (11) The Police Officer who executes a warrant issued under this section shall endorse on the reverse side of the warrant or form of warrant such of the following particulars as are applicable -
- (a) the date and time of execution;
 - (b) the description of any thing seized;
 - (c) the name, rank, number (if any) in the Police Force of the police officer and his signature.

The procedure required in this section reflects many of the recommendations of the ALRC contained in its report *Criminal Investigation* issued in 1975 which supported the introduction of legislation enabling the issue of telewarrants.⁶⁷ The section provides:

- that the application material be prepared in the ordinary form on oath;
- that all relevant information be put to the magistrate;
- that the information is recorded by the magistrate;

⁶⁷ ALRC 1975, para. 210, detailed further below.

- the reasons for seeking the warrant are recorded; and
- that the warrant executed by the police officer is forwarded to the magistrate for endorsement to ensure it does reproduce the warrant granted by the magistrate.⁶⁸

However, the ALRC believed telewarrants should be available in circumstances where it was impracticable for a police officer to obtain a warrant in the normal manner. No such limitation is prescribed in section 18 of the *Drugs Misuse Act 1986*. A telewarrant is an available alternative in all instances.

The provision of a facility for the issue of search warrants at locations remote to the issuing authority was an area where there was widespread consensus among the public submissions. However, it was proposed by a number of organisations and individuals that the provisions allowing for applications by telephone etc. should be only used in emergency situations.

For example, QAILS endorsed the recommendations of the Gibbs Committee that telewarrants should only be available:

- (a) where a law enforcement officer urgently requires a search warrant in a remote area distant from a magistrate; or
- (b) where a law enforcement officer, while engaged in a police operation, urgently requires a warrant and the success of the operation would be prejudiced if the officer had to leave the scene to obtain a search warrant.

The Queensland Law Society echoed similar beliefs on the occasions when remote warrants should be used.

QAILS believes that remote applications for warrants should not be made by facsimile or telex where the police officer has access to a telephone or radio. It argues that verbal communication allows the magistrate to obtain further information from the applicant. On the other hand, another person proposed that the medium for granting a remote search warrant should be by written communication, such as telex or facsimile, and not verbal communication by telephone or radio. In this submission it was argued that this would ensure protection for the police officer who has written authorisation to carry out the search. A similar view is expressed by another individual who believed that search warrants should only be valid in a form which is an exact copy of the original complete with signature, for example, facsimile or photocopies but not telephone or telex warrants.

⁶⁸ Similar elements were outlined by the ALRC 1975, para. 201.

The Queensland Law Society says that a register of the search warrants granted by telephone, telex or facsimile should be kept and the person seeking the warrant should file with the register the appropriate material as soon as possible after the issuing and execution of the warrant for a permanent record on the register. The materials should contain the reasons for seeking the warrant by the specific means employed and the file should be open for inspection by an order of a court.

QAILS also argues that if provision is made for the issue of warrant by remote means such as telephone, radio and so on, then there should be no circumstances in which police should be entitled to enter and search premises without a warrant other than with the express consent of the occupier or for the purpose of making an arrest. They also consider that search warrants issued by telephone be valid for no longer than 48 hours.

Both the Queensland Police Service and the Queensland Police Union of Employees advocated the granting of warrants by telephone, facsimile, radio, telex and similar remote means of communication.

Other Jurisdictions

Commonwealth of Australia

As stated above, in 1975 the ALRC recommended that where it is impracticable to proceed in the normal manner search warrants should be able to be obtained by telephone and suggested certain guidelines for the issuing procedure. These included:

- Magistrates only and not justices of the peace should be authorised to issue telewarrants in order to maintain control over the process and avoid suggestions of forum shopping.
- When it is impracticable to proceed in the normal way:
 - * the police officer shall state his reasons for seeking the warrant, which the magistrate shall either accept or reject, keeping a written record of his reasons and of the date and time of approval where a warrant is granted;
 - * the police officer shall complete a warrant form in all respects but for the magistrate's signature, and use this as necessary in the search;
 - * as soon as reasonably practicable after the search is completed, the police officer shall forward the warrant to the magistrate for endorsement, attaching a signed statement of the reasons advanced in originally seeking the warrant; and

- * on receipt of the warrant and statement of reasons, the magistrate shall endorse them and file them with a court in the normal way.

The topic was again looked at by the Gibbs Committee. It noted that provisions along the lines of those recommended by the ALRC had been included in the Criminal Investigation Bill 1977 and the Criminal Investigation Bill 1981 although these Bills had not progressed to Acts. However, such provisions had since been included in the *National Crime Authority Act 1984* (s. 23) and the *Proceeds of Crimes Act 1987* (s. 37).

The submissions that the Gibbs Committee received on the topic all supported the granting of a power to issue search warrants by telephone although there was some variation in the guidelines (safeguards) which should apply to such a procedure. The Gibbs Committee considered that to be acceptable for the administration of justice, a procedure for grant of telewarrants must ensure, as far as practicable, that relevant information is put before the magistrate, that this information is duly recorded and that the warrant that is executed by the police officer or presented to the occupier of the premises searched accurately reproduces that warrant granted by the magistrate (Gibbs Committee 1990, para. 38.20). Section 37 of the *Proceeds of Crimes Act 1987* which contains such elements as these was approved by the Gibbs Committee. In addition, the Committee commended the additional requirement appearing in the *Search Warrants Act 1985* (NSW) that the justice must be satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

The Gibbs Committee recommended the inclusion of a power to issue a warrant by telephone provided the guidelines referred to above were incorporated and that serious penalties be applicable to persons who:

- place the name of a Magistrate on what purports to be a search warrant without the Magistrate's authority or on a form of warrant that to his or her knowledge departs in a material respect from that approved by the Magistrate; ...
- purport to execute, or to present to another person what purports to be, a search warrant which he or she knows has not been approved by the Magistrate or which he or she knows departs in a material respect from that approved by the Magistrate; or ...
- return to the Magistrate a form of warrant other than the form of warrant which he or she purported to execute. (Gibbs Committee 1990, para. 38.24)

The Committee recommended that, having regard to the special nature of the jurisdiction and the need to ensure the procedure provided in the legislation is meticulously carried out, the grant of search warrants by telephone should be reserved for a magistrate (Gibbs Committee 1990, para. 38.27).

New South Wales

In 1985 the New South Wales Parliament enacted the *Search Warrants Act 1985* which undertook a substantial consolidation of all statutory search provisions. That Act contains a provision permitting the grant of warrants by telephone and other communication devices (s. 12).

Features of legislation are:

- a telewarrant may only be issued by a magistrate or a justice of the peace employed in Local Courts Administration or the Attorney-General's Department (ss. 3 and 12);
- a telewarrant must not be issued unless the justice is himself or herself satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person (s. 12(3));
- the justice must complete and sign the warrant and inform the applicant of its terms including the date and time it was signed (s. 12(5));
- the applicant must complete a form of search warrant in the terms dictated by the justice and such form is deemed to be a search warrant issued in accordance with the Act (s. 12(6));
- a telewarrant is valid for a period of only 24 hours from the time of issue (s. 20); and
- the person obtaining a telewarrant must furnish a written report to the issuing justice within 10 days of execution or expiry of the warrant (whichever occurs first). The report must detail:
 - * whether or not the warrant was executed;
 - * if the warrant was executed what the result of the execution was, including a brief description of objects seized;
 - * if the warrant was not executed, brief reasons why it was not executed; and
 - * a copy of the form of search warrant.

Canada

The LRCC supported the availability of warrants to be issued by telephone in circumstances where it would be impracticable for a police officer to appear personally (LRCC 1983, Part 2). As with the Commission, it was a primary principle of the LRCC that powers to enter and search should be exercised by judicial warrant, issued before the event and upon particular information (LRCC 1983, p. 79). Following from this the LRCC stated:

If one is to encourage respect for, and indeed insist upon, a regime of judicially regulated powers of search and seizure, then some of the constraints upon access to the office of the justice of the peace must be removed.

We believe that access could best be facilitated by adapting the issuance of search warrants to the technology of telecommunications. In essence, this adaptation would entail nothing more than dispensing, in appropriate cases, with the usual requirement that the "information upon oath" be tendered personally and in writing. (LRCC 1983, p. 79)

The LRCC was concerned that a warrant issued by telephone depart as little as possible from a warrant issued in the ordinary manner. It believed that the issue of a telephone warrant should remain a judicial act. Accordingly it recommended that:

- the information be on oath;
- the information on oath be reduced to writing by the issuing authority. For this it proposed the conversation between the application and issuing authority be recorded and a transcript prepared and filed in an appropriate court;
- the information must describe the offence alleged, the items liable to seizure, and the premises to be searched as was the case for a warrant obtained in the ordinary manner;
- the information must include a statement of the circumstances that make it impracticable for the applicant officer to appear personally before the issuing authority;
- the issuing authority must complete the warrant noting the time, date and place of issue. The applicant police officer is to complete a duplicate as directed by the issuing authority;
- the warrant must state the offence to which the search relates, the items being searched for, and the premises to be searched; and

- within three days of the issue of the warrant a report be filed by the executing officer in the court where the warrant was filed. That report should detail:
 - * the time and date of execution, or if the warrant was not executed, a statement of the reasons why it was not executed;
 - * a statement of the objects of seizure seized pursuant to the warrant; and
 - * a statement of things seized in addition to those stated as objects of seizure in the warrant.

The last listed recommendation imports a time limit on the validity of a telewarrant of three days. The LRCC did this for a number of reasons. First, it said telewarrants were intended for use in urgent situations. Consequently, it did not consider it unreasonable to insist upon some reasonably brief time period. Second, if there was not a relatively brief period in which execution must be effected, the circumstances surrounding the search may be quite different from when the warrant was issued. Third, the LRCC's research had revealed that where an expiry date was specified, 97.1 per cent of such warrants were executed within only one day of issue.

Although the LRCC recommended a statement of the reasons why the officer cannot appear personally before the issuing authority, it specifically excluded any challenge to the validity of the warrant on those grounds. It said that such matters did not go to the core question of whether there were reasonable grounds to issue the warrant (LRCC 1983, p. 94).

Other Considerations

The Criminal Code Review Committee has recommended provision be made in the *Criminal Code* for the issuing of search warrants by remote means of communication. The Committee's draft section 259 dealing with the issue of search warrants adopts the wording of the existing subsections (6) to (8) and (11) of section 18 *Drugs Misuse Act 1986* (set out above). However, the Committee has omitted subsections (9) and (10) of section 18 of the *Drugs Misuse Act 1986*. The reason for this omission is not stated in the Committee's final report. The effect of the procedures stated in subsections (9) and (10) of section 18 is to enable the applicant officer to complete a form of warrant mirroring the warrant issued by the magistrate and not to have to obtain the original warrant or a copy of that warrant from the magistrate before executing it. It does this by deeming the production of the form of warrant completed and endorsed by the police officer in the terms of the warrant issued by the magistrate to be the production of the warrant.

In the Commission's view the omission of these provisions would make the other subsections which have been included in the draft section 259 of little value to an applicant officer in a remote location or in urgent circumstances. The officer would not be able to execute the warrant until he or she had received the original warrant or a copy of the warrant signed by the magistrate as he or she is obliged by subsection (4) of draft section 259 to provide a copy of the warrant to the occupier upon entry. The delay in receiving the original or copy warrant would seem to defeat the worth of being able to seek a warrant by remote means.

8.12 Recommendation - Telewarrants⁶⁹

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.

PERIOD OF VALIDITY OF A SEARCH WARRANT

The Present Position in Queensland

There is no general statutory provision limiting the period of validity of search warrants in Queensland. In some cases there is no time limit. Reference must be made to each statute providing for the issue of a search warrant in order to ascertain the period of validity of a warrant issued under each respective statute.

In the case of section 679 of the *Criminal Code*, there is no time limit to the validity of a warrant issued under that provision. Sections 131A and 168A of the *Health Act 1937* are similar. Section 18(3) of the *Drugs Misuse Act 1986* provides that the warrant is valid for the period stated in the warrant (no other limitation is specified). A warrant issued under section 5 of the *Criminal Investigation (Extra-territorial) Offences Act 1985* is valid for a period of one month (s. 5(7)) but under the *Poultry Industry Act 1988* a warrant is valid for a period of 21 days (s. 17(7)). By section 109(4) of the *Health Rights Commission Act 1991*, a warrant issued is to specify a day no later than seven days after the issue of the warrant on which the

⁶⁹ In other legislation these are described as 'telewarrants' and 'telewarrant' is defined to include warrants obtained by telephone, facsimile, and radio.

warrant ceases to have effect. In the case of the *Liquor Act 1992* (ss. 179 and 180) and the *Nature Conservation Act 1992* (ss. 134 and 135), the date specified for expiry is to be a day no later than 14 days after the date of issue.

Opinions differed in the submissions as to the desirable period of validity of a warrant.

One member of the public submitted that the magistrate who issues the warrant should decide the length of the warrant. QAILS considered that search warrants not issued by telephone be valid for a period of no more than seven days and warrants issued by telephone be valid for no longer than 48 hours.

Other submissions suggested that a warrant should be valid for a period of only 24 hours. Another queried whether a limit of 30 days would be appropriate. At the other extreme was a submission which argued that the initial period of a warrant should be up to a maximum of four hours only and if this period proves insufficient then application for a further and final period of four hours should be sought from a stipendiary magistrate.

The Queensland Law Society submitted that the circumstances of the case should determine the length of time a search warrant should remain valid - normally 24 hours. The duration of the warrant should be stated on it and any reason extending its validity beyond 24 hours should be stated. It submitted that in no circumstances should a search warrant continue for more than seven days.

Other Jurisdictions

Commonwealth of Australia

Section 10 of the *Crimes Act 1914* (Cwlth) is the same as section 679 of the *Criminal Code* in that it does not state a time limit on a warrant issued under its provisions. The ALRC proposed a statutory provision similar to section 109(4) of the *Health Rights Commission Act 1991* (Qld) outlined above, that is, that the warrant must state a date not more than seven days from the date of issue on which the warrant ceases to have effect (ALRC 1975, p. 204, draft clause 62(4)(d)).

The submissions to the Gibbs Committee favoured a time limit on a warrant issued for specific purposes (Gibbs Committee 1990, para. 39.4). The Gibbs Committee distinguished between a warrant issued in the ordinary course and a warrant issued by telephone, concluding:

... that a search warrant should not be of unlimited duration and a period of seven days would make a reasonable allowance for unexpected eventualities in respect of warrants not issued by telephone. If a warrant cannot be executed within this period, a fresh warrant can be sought.

A search warrant should only be sought from a Magistrate by telephone in circumstances of urgency and a much shorter duration for such a warrant is called for. The period of 48 hours suggested in some submissions seems appropriate and the Review Committee recommends accordingly. (Gibbs Committee 1990, paras 39.5 and 39.4)

England and Wales

The Philips Commission believed there should be a time limit placed upon the execution of a warrant and suggested a period of validity of seven days or such longer period, up to 28 days, as to the issuing authority may seem fit in the circumstances. It recommended that the warrant be returned to the issuing court if the warrant remained unexecuted at the expiry of the period of validity.

The *PACE Act 1984* provides in section 16(3) that entry and search under a warrant must be within one month of its date of issue. This period of validity is applicable to search warrants issued to police officers under all enactments.⁷⁰

Canada

At the time of the review of the law of search and seizure by the LRCC, the *Criminal Code* did not prescribe a period of validity of warrants. However, a survey conducted by the LRCC identified that some issuers did place time limits on warrants and that such warrants were executed more quickly than those without an expiry date.

The LRCC believed the elements of judiciality and particularity, considered essential by the LRCC for search warrants, required that there be a reasonable proximity in time between the issuing and execution of a warrant. It had recommended in its discussion paper that a warrant expire a period of eight days after its date of issue, but if a search could not be executed by its expiry, an applicant could apply for a new warrant if reasonable grounds for the search still existed. The LRCC stated that its intent with this recommendation was to ensure that the warrant was executed in substantially the same circumstances as those which prompted the issuer to grant it (LRCC 1984, p. 26).

During the consultation period, objections were raised to this proposal by the police and provincial governments. Those groups believed it would be preferable for a justice to be able to issue a warrant for a longer period if, having regard to the nature of the investigation, it appeared that the warrant applied for could not be executed within the general deadline. The LRCC accepted this proposal as being more convenient to police without abrogating the general principle which the LRCC wished to adopt. It also recognised that the converse may apply, that is,

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Section 15(1) provides that ss. 15 and 16 shall apply to warrants issued to constables under all enactments including an enactment contained in an Act passed after the *PACE Act 1984*. Schedules 6 and 7 to the Act make consequential amendments to other enactments which provided for alternative time limits.

that a deadline shorter than that generally provided for the execution of a warrant may be appropriate. The provision which the LRCC finally recommended is:

- (1) Subject to subsection (2), a search warrant shall expire after ten days.
- (2) Where a justice hearing an application to issue a warrant is satisfied that, having regard to the nature of the investigation
 - (a) an expiration period longer than ten days is reasonable, he may fix an expiration period not exceeding twenty days; or
 - (b) an expiration period shorter than ten days is reasonable, he may limit the expiration period to what is reasonable in the circumstances of the case. (LRCC 1984, p. 25)

Other Considerations

The Criminal Code Review Committee has recommended a period of validity of seven days or such other period as specified in the warrant (Criminal Code Review Committee 1992, p. 120, draft clause 259(6)).

8.13 Recommendation - Period of Validity of Search Warrants

The Commission recommends that a warrant be valid for a period of seven days or such other period as specified in the warrant.⁷¹ 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.

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⁷¹ Warrants issued by means of telephone etc. are discussed at Recommendation 8.12

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CHAPTER NINE

THE EXECUTION OF SEARCH WARRANTS

INTRODUCTION

Once a search warrant has been obtained a range of further issues arises concerning the manner of execution of the warrant. This is the area that has the most direct impact on citizens as it is the execution of search warrants that constitutes the physical intrusion on the person's premises. This chapter will address the following aspects of the execution of search warrants:

- Should there be a limitation on the times at which a search warrant can be executed?
- Who may execute a warrant?
- Should it be necessary to demand entry before entering premises and using force to do so?
- Rights of the occupier.
- Should things other than those named in the warrant be liable to seizure?
- Should persons in the relevant premises also be liable to be searched?
- Should an officer executing the warrant be permitted to leave the premises for a short period and then re-enter?

SHOULD THERE BE A LIMITATION ON THE TIMES AT WHICH A SEARCH WARRANT CAN BE EXECUTED?

The Present Position in Queensland

At common law, a search warrant issued by a justice of the peace authorising a police officer to enter and search premises for stolen goods authorised entry during the day time only. However statutes may provide for execution at times other than day time.

Statutes in Queensland vary in the manner in which they regulate the times when a warrant may be exercised.

Section 679 of the *Criminal Code* provides that a warrant issued under its provisions shall "be executed by day unless the justice, by the warrant, specially authorises it to be executed at night". Night is defined in the Code as the period

between 9pm and 6am. Section 231 of the *Racing and Betting Act 1980* authorised entry "by day or night" and section 18 of the *Drugs Misuse Act 1986* authorises entry "at any time". Many of the statutes do not specify the time during which the warrant may be executed. The effect of this silence has been the subject of little or no consideration by the courts in Australia. However, the issue has been considered in England where the Court of Appeal in *R v. Adams* [1980] Cr. App. R 149 at 155 seemed to suggest that where a statute is silent, the warrant may be executed at any time of the day or night.

The Queensland Police Service submission (1992, p. 27) recommends that the execution of a warrant be permitted at any time of the day or night. However, the Queensland Law Society opposes a warrant generally authorising entry of premises at night. It believes that authorisation to enter at night should have to be given specifically on the face of the warrant.

Other Jurisdictions

Commonwealth of Australia

The Williams Commission recommended that, in the case of drug trafficking, the warrant should authorise execution of the warrant at night (Williams Commission 1979, p. F32). For drug dependence offences, it said that it should be within the discretion of the magistrate issuing the warrant to authorise execution of the warrant at night, if it appears to him that the circumstances so require it (Williams Commission 1979, p. F109).

New South Wales

Section 19 of the *Search Warrants Act 1985* originally provided that a search warrant be executed by day (between 6am and 9pm) unless the issuing authority authorised execution by night. Amendments to section 19 were made in 1991 preventing the issuing authority from authorising execution by night unless satisfied that there are reasonable grounds for doing so. Those grounds include, but are not limited to, the following:

- (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.

England and Wales

Section 16(4) of the *PACE Act 1984* prescribes:

Entry and search under a warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

The term 'at a reasonable hour' is not defined in the Act. However the Code of Practice does provide some guidelines to determining what the term means in practice. Note 5A of the Code B states:

In determining at what time to make a search, the officer in charge should have regard, among other considerations, to the times of day at which the occupier of the premises is likely to be present, and should not search at a time when he, or any other person on the premises, is likely to be asleep unless not doing so is likely to frustrate the purpose of the search.

Canada

At the time of consideration of this issue by the LRCC many of the existing warrant provisions in the Canadian federal criminal law statutes permitted execution of warrants at night. The LRCC considered a night search was a particularly intrusive disruption to normal life but did recognise that a restriction of search to daytime may render a search ineffectual (LRCC 1984, p. 25).

It concluded and recommended that a search warrant should be exercisable only during the day unless the applicant can show to the issuing authority that there is reasonable cause for permitting the execution of the warrant at night (LRCC 1984, p. 25). The LRCC suggested that the onus of establishing a reasonable cause may be discharged by proof that the warrant cannot be executed in daytime or that the objects of seizure will be removed or destroyed if execution at night is not permitted.

Other Considerations

The Queensland Criminal Code Review Committee recommended that draft section 259 concerning warrants to enter and search for property include a requirement that no warrant issued under the section is to be executed between the hours of ten o'clock at night and six o'clock on the following morning unless the warrant authorises such execution (draft s. 259(3)). However the proposed section 268 concerning warrants to search for a person allows for execution at any time of the day or night.

9.1 Recommendation - Time of Executing Search Warrant

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 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.

WHO MAY EXECUTE A WARRANT?

The Present Position in Queensland

There is no consistent wording of statutory provisions authorising police officers to execute a warrant or authorising the use of private individuals to assist in the successful execution of a search warrant.

Section 679 of the *Criminal Code* as it currently exists provides that a justice may issue a warrant "directing and authorising a police officer or police officers named therein or all police officers, - [to enter and search]". On its face this provision appears to permit a justice to restrict the power to enter and search under the warrant to nominated officers only or to grant the power to police officers generally. However, section 679 must be read in conjunction with section 3.5 of the *Police Service Administration Act 1990* which provides that any officer may execute a warrant notwithstanding that the warrant is not addressed to that officer and the requirements of any other Act, law, or rule having the effect of law as to the person by whom the warrant is to be executed.

This may be contrasted with an authority for police officers to take assistants with them when executing a warrant. It is necessary to refer to each statute to ascertain whether and on what terms a police officer executing a warrant may use assistants. For example, a warrant granted under section 679 does not of itself authorise and a justice has no power to authorise, the police to take with them private individuals to aid in the execution of the search. The following selection of extracts where assistants may be used illustrates the variety of provisions in other enactments:

- A search warrant authorizes any member of the Police Force with such assistants as he thinks necessary to enter and search . . . (s. 5 *Criminal Investigation (Extra-territorial Offences) Act 1985*)
- In any case in which a police officer is authorised by this Act to do any thing he may use such assistants, animals, vehicles and equipment as he considers necessary to do that thing. (s. 53 *Drugs Misuse Act 1986*)
- . . . such justice may grant a warrant to any member of the Police Force with or without assistants, to enter . . . (s. 131A and 168A *Health Act 1937*)
- The warrant is to specify that the authorised officer, with necessary and reasonable force and assistance . . . may enter. (s. 109(4) *Health Rights Commission 1991*)
- The warrant must authorise the investigator with such assistance and by such force as is reasonably necessary . . . to enter the place. (s. 179(4) and 180(4) *Liquor Act 1992*)
- For the purpose of enabling the member of the police force to whom the warrant is directed or any other member of the police force . . . [t]he warrant shall authorize the member so acting to . . . enter [and] to call to his assistance such . . . medical practitioners or other persons as he thinks fit . . . (s. 25(4) *Mental Health Services Act 1974*). In the execution of a warrant issued under this section the member of the police force by whom it is to be executed shall be accompanied by a medical practitioner and a designated authorised person . . . (s. 25(3) *Mental Health Services Act 1974*)
- A conservation officer who enters or boards a place under this Part may . . . take into or onto the place such persons, equipment and materials as the conservation officer reasonably requires for the purpose of exercising any powers in relation to the place. (s. 133(1)(d) *Nature Conservation Act 1992*)
- . . . justice may grant a warrant to any police officer to enter and search . . . A warrant may be executed at any time and shall be sufficient authority for any police officer and all persons acting in aid of him to enter. (s. 58 *Second-hand Dealers and Collectors Act 1984* and section 51 *Pawnbrokers Act 1984*)

- ... may issue a warrant directed to an inspector to enter the place specified in the warrant and [when read in conjunction with section 16(1) of the Act] take (such assistants, vehicles and equipment as he considers necessary for the discharge of his duties) ... (s. 17(7) *Poultry Industry Act 1988*)
- A warrant may be executed at any time and is sufficient authority for any police officer and for all persons acting in aid of the police officer to enter. (s. 4.8 *Weapons Act 1990*)

The Queensland Police Service (submission 1992, p. 27) and the Queensland Police Union of Employees (submission 1992, p. 16) believe that the executing officer should be permitted to use such assistance as is thought necessary by the holder of the warrant, e.g. an accountant where the matter relates to fraud.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee considered the question of who should be able to execute a search warrant and concluded that the issuing authority cannot be expected to make a selection of a police officer to execute the warrant and the only purpose in including the name of the officer on the warrant would appear to be to affix responsibility for the execution of the warrant on that officer.

It recommended that the occupier of the premises or, if the occupier was not present, anyone apparently representing the occupier, should be given a copy of the warrant stating the name of the officer in charge of the actual execution of the warrant. The warrant may be addressed to another officer and if this officer does not himself or herself intend to execute the warrant then he or she may insert, in an appropriate place in the warrant, the name of the officer in charge of the actual investigation (Gibbs Committee 1990, paras 38.55 and 38.56).

England and Wales

Section 16(1) of the *PACE Act 1984* provides that a warrant to enter and search premises may be executed by any constable. By section 15(1), section 16(1) is applicable to the exercise of any warrant to enter and search by police officers under any enactment. This overrode a number of existing Acts which required a warrant to be executed by the officer named in it.

A separate authorisation from the issuing authority is required before private individuals are permitted to accompany an officer executing a warrant. Where such authority is given section 16(2) of the *PACE Act 1984* requires the warrant to bear the authorisation for the person to accompany the officer executing it.

Canada

In 1984, the LRCC was faced with a situation of inconsistent provisions in federal laws dealing with which police officers were authorised to execute a warrant. A number of provisions permitted a warrant to be issued to and executed by all officers in a province. Others required the warrant to be executed by the officer named in it.

The LRCC believed no legitimate interest was served by restricting the execution of a search warrant to a named officer and recommended a provision permitting any police officer to execute a warrant. It said that a restriction did not lessen the intrusiveness of the search, nor did it represent an evaluation of the particular fitness of the named party to execute the warrant. Accordingly, the LRCC considered that the decision as to who should execute a warrant should be left to the police (LRCC 1984, p. 23).

It also recognised the assistance which may be afforded to a police officer executing a warrant by a private individual such as a witness or specialist of some kind such as a scientist. Consequently, the LRCC recommended a provision permitting an officer executing a search warrant to enlist the aid of a private individual whose presence he or she reasonably believes is necessary to the successful execution of the warrant (LRCC 1984, p. 24). In contrast to the English situation, the LRCC did not accept that the aid of a private individual should only be permitted with the authority of a justice. It said that the authority to enlist help where reasonably necessary should be available in all cases and did not consider that the assistance of a private individual represented a distinct intrusion upon the rights of the individual affected by the search.

Other Considerations

The Criminal Code Review Committee has retained the wording of section 679 *Criminal Code* (Qld) as it currently exists, permitting a justice to issue a search warrant to nominated police officers or to police officers generally. In addition, the draft provision of the Committee (s. 259) provides that the justice may also grant authorisation for "any person acting in good faith in aid of and under the direction of a police officer" to enter and search. This would permit the police to take private individuals with them on the search to assist them in execution of the search. Unlike the recommendation of the LRCC, there is no additional requirement that the officer must also reasonably believe that the presence of the private individual is necessary for the successful execution of the warrant.

9.2 Recommendation - Who May Execute a Search Warrant

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

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.

SHOULD IT BE NECESSARY TO MAKE A DEMAND FOR ENTRY BEFORE ENTERING THE PREMISES AND USING FORCE TO DO SO?

The Present Position in Queensland

In Australia, it is unclear whether the current law requires that entry by force under a warrant must be preceded by a demand for admittance and a refusal to admit or no answer being received in reply to the demand.

English cases on the point would appear to indicate that, at common law, it is generally accepted that the use of force by police officers to effect an entry pursuant

to a search warrant was conditional upon a demand being made and a refusal or no answer being received in reply (see *Swales v. Cox* (1981) 72 Cr. App. R 171 at 176).

However, the issue of warrants and the powers granted by them is regulated by statute in Queensland and not by the common law. Consequently, it is necessary to first refer to each statute to ascertain whether the statute permits entry by force and whether a demand for entry has to be made before force can be used to enter.

Table 4 lists the statutory provisions permitting search warrants to be issued and whether force may be used in the warrant's execution. Only one provision expressly states that the use of force is conditional upon admission being refused. That provision is section 168A of the *Health Act 1937*. The balance of the provisions permit the use of force but adopt differing expressions in so doing. These include:

- use such force as is reasonable in the circumstances (s. 63 *Art Unions and Amusements Act 1976*);
- enter place, using such force as is necessary (s. 19A *Commissions of Inquiry Acts 1950*);
- enter and re-enter by force if needful (s. 19 *Coroners Act 1958*);
- enter and re-enter place by force if needed (s. 29 *Coroners Act 1958*);
- enter place named in warrant using force if necessary (s. 679 *Criminal Code*);
- enter, if need be by force, any house or other place specified in the warrant (s. 684 *Criminal Code*);
- use such force as may be necessary to perform [entry] (s. 51 *Pawnbrokers Act 1984*; s. 58 *Second-hand Dealers and Collectors Act 1984*; s. 4.8 *Weapons Act 1990*);
- use such force as is reasonably necessary in making entry or re-entry (s. 231 *Racing and Betting Act 1980*); and
- use force as is necessary for [entry].

Stone (1989, p. 9) has suggested that the state of the law is that where a statutory power allows the use of force, no prior request and refusal is needed, even if there is someone on the property. If this is accepted, then police executing warrants issued under the provisions quoted above do not have to make a demand to enter and the demand be refused or unanswered before they would be entitled to use force to enter. However, with one exception, the above provisions also make reference to the use of force which is 'necessary' or 'needed'. The probable effect of these qualifications is the subject of an instructive passage by Donaldson L.J. of the English Court of

Appeal in *Swales v. Cox* ((1981) 72 Cr. App. R 171 at 176) where the court had to consider a statutory provision which permitted a constable to enter "if need be by force" and to search for a person who is wanted. The court said:

The first hurdle which he will have to overcome in justifying force will be providing an answer to the question: "Why did you not ask to be allowed in?" That "an Englishman's home is his castle" is perhaps a trite expression, but it has immense importance in the history of this country, and it still has immense importance. Anybody who seeks to enter by force has a very severe burden to displace. There will undoubtedly be cases where it can be displaced. One has only to think of the cases which occasionally do arise today where a criminal is at large and the public, for example, are warned not to approach him because he is known to be a very dangerous man. If a constable is following such a man into premises, it may be essential for his own protection that he shall give no warning of his approach by asking the leave of the criminal to enter the premises. That of course is an extreme case, and there will be all sorts of other circumstances in between.

For my part, I think it would be wholly wrong to add to the provisions of the statute. The statute says that force can be used "if need be." All I am saying is that those words are of immense weight and importance, and if the question arises of "Was it necessary?" the constable will have to prove that it really was necessary before he will be able to justify an entry by force in the sense which I have indicated.

Consequently, the effect of the qualifications of 'need' or 'necessity' may oblige a police officer executing a search warrant to make a demand for admission and have that demand refused or not answered before using force to enter. This will of course depend upon the circumstances.

Further illustration of the exercise of such powers is provided in the *Report of the Inquiry into the Death of David John Gundy*. In the circumstances leading to the death of David Gundy from a shot fired from a police officer's gun, the police were executing a search warrant under the provisions of section 17 of the *Search Warrants Act 1985* (NSW) which provided that a person executing a search warrant "may use such force as is reasonably necessary for the purpose of entering the premises". Commissioner Wootten said in his report:

Instruction 90.105 states:

'Police authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises or breaking open any receptacle in or on the premises for the purpose of the search . . . However, police are not legally justified in attempting to enter the premises by force, whether by breaking open doors or otherwise, until they have demanded admittance' (emphasis added)

It is clear that these Police Instructions are endeavouring to state the law, and in my opinion the Instruction is for practical purposes correct when it says in relation to the execution of search warrants that police are not legally justified in attempting to enter the premises by force until they have demanded admittance. The *Search Warrants Act* authorises the use of such force as is reasonably necessary 'for the purpose of entering the premises'. It does not expressly state that it is necessary to first demand admittance but this is implicit in the fact that the only authorisation of force is for the purpose of entering premises. Obviously it is not reasonably necessary to use force for the purpose of entering premises if there is someone inside who is prepared to open the door.⁷²

To suggest, as police did in the present case, that entry without demand for admittance to execute a search warrant is necessary if there is an armed offender inside who is likely to fire on police, confuses two different issues. The force is not then necessary for entering a premises to search for things. It may be necessary for the purpose of arresting a person who has committed a felony, or for exercising the common law power to arrest a person who is believed on reasonable grounds to be about to commit a breach of the peace . . . If there are reasonable grounds for believing that such a person is on the premises there is no need for a search warrant - the powers of arrest extend to the entry of the premises, and, in the obviously exigent circumstances of a person who is likely to shoot if not taken by surprise, they extend to forced entry without request for admission. (Royal Commission into Aboriginal Deaths in Custody 1991, pp. 93-94)

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee had cause to consider the use of force in the execution of search warrants issued under section 10 of the *Crimes Act 1914*. Section 10 authorised a police officer "with such assistance, and by such force, as is necessary and reasonable to enter at any time the premises". The Committee hoped that force would be used rarely but it did recognise that in some instances entry by force would be necessary. It concluded that the current terms of section 10 were an adequate and proper description of what force is permissible.

The Williams Commission considered the use of force in executing search warrants when the objects of seizure are prohibited drugs and related items. In relation to the more serious offences of drug trafficking, the Commission recommended that the use of force to effect entry be available if it is necessary (Williams Commission 1979, p. F32).

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Commissioner Wooten left aside the situation where notice might defeat the purpose of the search, e.g. where the search is for easily disposable drugs.

For the lesser offences of drug dependence the Commission said:

While the Commission believes that the 'knock-first' rule should generally be followed, the Commission recognises that the persons executing the warrant will require a discretion to depart from this rule in special circumstances. Drugs are notoriously easy to dispose of. Flushing down a toilet is a common expedient. (Williams Commission 1979, p. F109)

In light of this it recommended that a warrant should authorise the entry into premises 'if need be' by force.

England and Wales

The *PACE Act 1984* consolidates in section 117 the occasions when reasonable force may be used by police in the exercise of their powers under that Act. The section provides that a police officer may use reasonable force, if it is necessary, in the exercise of any power conferred by the Act which does not provide that it can only be exercised by consent. The effect of this is that force may be used where it is necessary in the following situations:

- powers of search and detention for the purposes of a search (ss. 1 and 2);
- entry and search of premises to execute a search warrant (s. 16);
- entry and search of premises to make an arrest (s. 17);
- entry and search of premises following arrest for an arrestable offence (s. 18);
- seizure of evidence (s. 19);
- arrest (ss. 24, 25, 27 and 31);
- search of the person on arrest (s. 32);
- detention of a person at a station (ss. 36 and 37);
- search of a detained person at a police force (s. 54);
- intimate searches of detained persons (s. 55);
- fingerprinting without consent (s. 61); and
- taking a non-intimate sample without consent (s. 63) (Zander, M. 1984, p. 259).

With respect to entry of premises Code of Practice B paragraph 5 sets out the officers' obligation in the following terms:

- 5.4 The officer in charge shall first attempt to communicate with the occupier or any other person entitled to grant access to the premises by explaining the authority under which he seeks entry to the premises and ask the occupier to allow him to do so, unless:
- (i) the premises to be searched are known to be unoccupied;
 - (ii) the occupier and any other person entitled to grant access are known to be absent; or
 - (iii) there are reasonable grounds for believing that to alert the occupier or any other person entitled to grant access by attempting to communicate with him would frustrate the object of the search or endanger the officers concerned or other persons.

The Code of Practice also provides (cl. 5.6) that reasonable force may be used if necessary to enter premises if the officer in charge is satisfied that the premises are those specified in any warrant, or in exercise of the entry without warrant powers and where:

- the occupier has refused a request to allow entry;
- it is impossible to communicate with the occupier; or
- any of the provisions of 5.4 apply.

Canada

The LRCC recommended a provision on the use of force in the following terms (LRCC 1984, pp. 44-45):

27. (1) A peace officer, before undertaking a search of private premises, shall make a demand to enter the premises unless the peace officer has reasonable grounds to believe that compliance with this requirement would result in the loss or destruction of objects of seizure or would endanger the life or safety of the officer or another person.
- (2) A peace officer may make a forcible entry into private premises
- (a) if a demand to enter is unnecessary under subsection (1); or
 - (b) if an occupant of the premises does not comply with a demand made pursuant to subsection (1) within a reasonable time.

The LRCC said that the above requirements should apply to all premises and not only dwelling houses. At the time of the recommendation, the law in Canada was that generally a police officer had to make a demand before entering a dwelling house but this was not the case for other premises. It thought that this distinction should be de-emphasised in favour of circumstantial factors which may, in individual cases justify unannounced entry (LRCC 1984, p. 45).

Other Considerations

The draft section 259 proposed by the Criminal Code Review Committee allows a police officer executing a warrant to "use such force as is reasonably necessary for those purposes" (draft s. 259(i)(iv)). It makes no specific reference to whether a demand to enter the premises need be made.

Consistently with the emphasis upon clarification of police powers of search the Commission recommends that legislation should require police to make a demand for entry prior to using force in all but the most exceptional cases. It is recognised that there may be some limited circumstances where a demand for entry would defeat the investigation or make it more dangerous. The Commission is cautious in allowing for an exception to the rule but is aware that the exigencies of criminal investigation require some carefully supervised discretion to reside with police officers. The difficulty lies in determining the circumstances in which such a discretion may be exercised. The Commission is of the view that where a demand for entry is likely to endanger the life or safety of any person, no such demand need be made prior to entry. The issue of whether this requirement should be waived where the making of the demand is likely to result in the loss or destruction of evidence is less easily resolved. The Commission has carefully considered the competing interests of the citizen's right to quiet enjoyment of his or her premises on the one hand and the need to prevent the loss or destruction of evidence of criminal offences. On balance, the Commission is of the view that the requirement of making a demand for entry prior to using force to enter premises may be waived where such a demand is likely to result in the loss or destruction of material evidence of an indictable offence.

In order to ensure that police officers carefully consider the circumstances in which they enter without demand, the Commission proposes a requirement that the reason for the waiver and the consequences of the subsequent use of force be recorded in the police officer's notebook or in some other appropriate manner and subsequently be entered on the Search Register (see Recommendation 11.5).

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

The Commission recommends that as a general principle demand is to be made before force is used to effect entry. 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 the circumstances require that force be used, the Commission recommends that it be "such force as is reasonably necessary". 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 Recommendation 11.5).

RIGHTS OF THE OCCUPIER TO INFORMATION CONCERNING THE IDENTITY OF THE OFFICER IN CHARGE

The execution of a search warrant upon a person's private property, especially a dwelling house is a significant intrusion. The Commission spoke to a number of people who had been subjected to a search of their premises and the majority of them expressed feelings of surprise and confusion, particularly at the initial encounter. Many of these people were in such a state that they could not recall what information, if any, was provided to them by the police at the time. One of the areas in which some people were unsure was as to the identity of the police officer in charge of executing the warrant.

The Present Position in Queensland

Very few Queensland statutes expressly require a police officer to give his or her name and details when executing a warrant issued under the provisions of that Act. An exception is the *Drugs Misuse Act 1986*, where section 19 requires an officer executing a warrant issued under that Act to provide to the occupier his or her name, rank, station and number in the Police Service.

Notwithstanding the limited legislative requirements, General Instruction 1.6 issued by the Commissioner of the Queensland Police Service currently provides:

When requested to do so, a member of the Police Force will immediately state his name, rank or grade, and registered number.

The Queensland Police Union proposes that police officers should be obliged to provide their name, rank and station to "any member of the public having a legitimate interest in any contact with the police". Although this statement appears in the Union's submission on the power to demand name and address, it appears to be a general proposal of the Union.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee considered this issue when it looked at the question whether a search warrant should be addressed to a named constable. It concluded that the "occupier of the premises, if present, or, if not present, anyone present apparently representing the occupier, should be given a copy of the warrant and this copy should clearly state the name of the officer in charge of the execution of the warrant" (Gibbs Committee 1990, para. 38.56) and that the officer in charge should identify himself or herself to the occupier (Gibbs Committee 1990, p. 318).

England and Wales

Section 16(5) and the associated Code of Practice B paragraph 5.5 require a police officer to identify himself and, if not in uniform, to show documentary evidence that he is a constable.

9.5 Recommendation - Identification to Occupier

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.

RIGHTS OF THE OCCUPIER TO DETAILS OF THE SEARCH WARRANT

As well as being unable to recall what information, if any, had been provided regarding the identity of the officer in charge of executing the warrant, there was also uncertainty among persons to whom the Commission officers spoke as to the details of the warrant under which police were authorised to enter and search.

The Present Position in Queensland

Currently there is no requirement in the law that the police leave a copy of the search warrant with the occupier of the premises. The police must show the warrant to the occupier however the manner in which this is done may not allow the occupier the opportunity to read and absorb its contents. This is often because of the state of mind of the occupier at the time. Some persons with whom the Commission spoke said that the warrant was held in front of them by a police officer. The occupier was not permitted to hold the document while reading it. Once the search is completed the warrant is taken by the police officers and in most cases the occupier has no written record of what occurred to peruse at his or her leisure.

The Drugs Misuse Regulations provide for the occupier of premises the subject of a search warrant to be issued with an occupier's notice which includes the following information:

OCCUPIER'S NOTICE

IMPORTANT INFORMATION FOR OCCUPIERS CONCERNING THE SEARCH WARRANT

A search warrant has been issued by a justice of the peace/stipendiary magistrate (1). You have the right to inspect the search warrant but you cannot retain it. You must not obstruct the police as to do so may be a criminal offence. The search warrant clearly specifies the powers and authorities given to the police officer executing the warrant. The police officer executing the search warrant must state his name, rank, station and number (if any) in the police force.

Name and address/and arrests:

In certain circumstances a police officer may also require from a person his name and address, date and place of birth, and other particulars that may enable the person to be readily located and identified.

Police also have the power to arrest persons for offences to which the warrant applies.

Limitations on the powers conferred:

1. The search warrant must be executed before _____ am/pm (1)
on the _____ day of _____ 19____
2. Any force used must be reasonably necessary, and if force is proposed to be used against a person, or the property of a person then present, the police officer shall, if practicable, first warn that person that he proposes to use that force.
3. Nothing other than the things mentioned in the warrant can be seized unless it is found by a police officer whilst executing the search and the officer reasonably believes that it will afford evidence as to the commission of an offence or may be liable to a forfeiture.
The search warrant was issued by (2) _____, a justice of the peace/ stipendiary magistrate.
The warrant was issued on the complaint of (name of police officer) _____, (rank) _____, (station) _____
(number, if any, in the Police Force)

Signed (2)
Police Officer

This is a relatively recent addition to search warrant provisions in Queensland.

Practitioners to whom the Commission has spoken have also expressed the desirability of providing warrants at the time of search. Currently, one of the remedies which may be sought by a person against whom a warrant has been issued is an order to review from a Judge of the Supreme Court. An application for such an order is brought under section 209 *Justices Act 1886* and the effect of such an order is to call upon the party interested in maintaining the warrant to show cause why the warrant should not be reviewed. The section requires that such an action be brought within 28 days of the issue of the warrant. It is important to have a copy of the warrant to consider whether such an order should be sought yet the Commission has been told that obtaining a copy of the warrant is often a slow process. The delays mean that often it is not possible to comply with the 28 day time limit.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee supported an obligation upon a police officer to provide a copy of the search warrant to the occupier of the premises but that it be limited to where the occupier or an adult person apparently representing the occupier is present (Gibbs Committee 1990, p. 318).

New South Wales

Section 15 of the *Search Warrants Act 1985 (NSW)* requires the issuing authority to prepare an occupier's notice and give it to the police officer who applied for a search warrant. The notice is to specify:

- (i) the name of the person who applied for the warrant;
- (ii) the name of the authorised justice who issued the warrant;
- (iii) the date and the time when the warrant was issued; and
- (iv) the address or other description of the premises the subject of the warrant;

and is to contain a summary of the nature of the warrant and the powers conferred by the warrant. The notice is to be served on the occupier or someone of or above 18 years upon entry or, where the premises are unoccupied, as soon as practicable after execution.

England and Wales

Section 16(5) of the *PACE Act 1984* provides that when an occupier is present at the time of execution of the warrant the occupier is to be provided with a certified copy of the warrant. Paragraph 5.8 of Code B of the Codes of Practice adds to this by stating:

If the occupier is present, . . . a copy of the warrant (if the search is made under warrant) should, if practicable, be given to the occupier before the search begins, unless the officer in charge of the search reasonably believes that to do so would frustrate the object of the search or endanger the officers concerned or other persons.

Canada

The recommendation of the LRCC on this issue was that prior to the commencement of a search pursuant to a warrant, or as soon as practicable thereafter, a copy of the warrant should be provided to a person present and in apparent control of the premises. If there is no one present at the premises at the time of execution the LRCC recommended that a copy of the warrant be left in a prominent location on the premises. It believed that this action would benefit both the officer and the individual affected by making the officer's authority visible as soon as practicable and providing the individual with information on the premises to be searched, the objects to be seized and the offence to which the search relates (LRCC 1984, p. 28).

The LRCC observed that the state of law was such that a police officer was only obliged to provide minimal information to the person about the search and to assure the person that the search is authorised. One provision of the Canadian *Criminal Code* did oblige a police officer to have the warrant with him or her at the time of its execution and to produce it when requested to do so but the LRCC considered this deficient in two respects. It said:

First, the requirement that the warrant be produced is a conditional one, depending upon both the feasibility of the peace officer having the warrant with him and the request of the individual affected. Second, the provision does not require that the warrant be produced at the commencement of the search, which is presumably when an assurance of legality would be most worthwhile. (LRCC 1984, pp. 27-28)

Other Considerations

The Criminal Code Review Committee proposal includes a requirement that a copy of the warrant be given into the possession of the occupier of the place or land so entered and searched and to any person searched therein or thereon or, if no such person is present, a copy of the warrant is to be left in a conspicuous place (draft s. 259(4)).

Conclusion

The Commission believes that it is important that an occupier whose premises are to be searched pursuant to a warrant be informed of his or her rights and of the extent of the search authorised by the warrant. This can be achieved by the provision to the occupier of an Occupier's Notice; by the provision to the occupier of a copy of the warrant; or by the provision to the occupier of both the notice and the warrant. Given the desirability of minimising the number of different forms required to be completed by police the Commission is of the view that the most appropriate solution is to provide the occupier with a copy of the search warrant which is drafted in simple language and includes the rights of the occupier (subject to Recommendation 8.10).

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

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).

SHOULD THINGS OTHER THAN THOSE NAMED IN THE WARRANT BE ABLE TO BE SEIZED?

The Present Position in Queensland

The common law may enable a police officer to seize property other than that named in the warrant if, in the course of a lawful search, the police officer stumbles upon things bearing upon the commission of another offence by the occupier. This is known as the chance discovery rule. Lord Denning in *Ghani v. Jones* ([1970] 1 QB 693 at 706) stated in obiter:

Where police officers enter a man's house by virtue of a warrant, or arrest a man lawfully, with or without a warrant . . . the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. If in the course of their search they come upon any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably and detain them no longer than is necessary.

The comments of Denning, L.J. were confirmed by the decision of the Court of Appeal in *Reynolds v. Commissioner of Police of the Metropolis* [1985] 2 WLR 93 at 105. In that case Slade L.J. stated:

that under the search warrant the police were entitled:

- (a) to search . . . for and seize any documents which on reasonable grounds at the time of seizure they believed to be forgeries; and
- (b) by a common law extension, if they came upon any documents which on reasonable grounds they believed to show other criminal offences, to seize them also.

The decision in *Ghani v. Jones* was followed by Burchett J. of the Federal Court of Australia in *Parker v. Churchill* [1985] 63 ALR 326 where he said:

In Australia, the decision in *Ghani v. Jones* has been followed on a number of occasions (*Marink v. Rames*, Hope J. unreported, 13/8/71; *Dixon v. Stephens*, Street J., unreported, 2/9/71; *G.H. Photography Pty Ltd v. McGarrigle* [1974] 2 NSWLR 635 at 645). As interpreted in *Reynold's* case, it provides a further answer to the applicants contentions in respect of documents evidencing any crime which may not . . . be covered by the terms of the warrants.

In addition, a number of statutory enactments permitting search with warrant specifically provide that the warrant shall authorise the seizure of things believed or suspected (as the case may be) of being connected with the commission of an offence other than that for which the warrant was issued. Examples of such enactments include:⁷³

- If, in the course of searching, under a warrant issued under this section, for a property tracking document in relation to a particular offence, a member of the police force finds -

(b) any thing that the member believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence,

and the member believes, on reasonable grounds, that it is necessary to seize that document or thing in order to prevent its concealment, loss or destruction, the warrant shall be deemed to authorise the member to seize that document or thing. (s. 31(7) *Crimes (Confiscation of Profits) Act 1989*)

- Where, in the course of searching, in accordance with the terms of a warrant issued under this section, for things of the relevant kind, the person executing the warrant finds a thing that he believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an offence . . . and the first-mentioned person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, that person may seize the thing . . . (s. 12(7) *National Crime Authority (State Provisions) Act 1985*)

The Queensland Police Service submission states that police currently rely upon the common law rule known as the 'chance discovery rule' to take possession of property discovered by police officers who are lawfully upon premises and who believe it would constitute evidence of the commission of an offence not related to their purpose for being on those premises. The Queensland Police Service seeks legislative statement of this rule in order to clarify their powers (Queensland Police Service submission 1992, p. 26).

The Queensland Law Society supports a statutory provision similar to the common law permitting a police officer to seize other articles found in the course of searching under a warrant if such articles provide evidence in relation to the offence under investigation or to other offences (Queensland Law Society submission 1992, p. 16). However, one member of the Society's Criminal Law Committee, in a private submission, was of the opinion that a police officer should be authorised to receive only articles which will assist them in providing evidence of the offence under investigation. The Queensland Police Union of Employees believes a warrant

73 See Table 4, 'associated powers' for further examples.

should authorise the seizure and retention of property which the warrant holder believes on reasonable grounds to be the subject of the commission of any indictable offence (Queensland Police Union of Employees submission 1992, p. 16). Other members of the public support such a power.

On the other hand, the QAILS argues that the warrant should specify the item being searched for and police officers should not be permitted to seize unspecified articles except where the nature of the item is such that delay in obtaining a warrant by telephone or radio poses some immediate danger (e.g. in the case of a weapon).

The Legal Aid Office is of the view that no other goods found should be able to be seized.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee looked at this question in light of then recent Commonwealth legislation which was in terms similar to section 12(7) *National Crimes Authority (State Provisions) Act 1985*⁷⁴ and in consideration that only two submissions to the Committee opposed the inclusion of such provisions in future consolidating legislation.

One of those opposing submissions was the submission from the Queensland Law Society which said:

There have been many instances of the execution of search warrants supposedly for something that is not found on the premises, but conveniently other items found on the premises are seized and used as evidence in the prosecution of charges of a totally different nature to those mentioned in the warrant and from the information given to the issuing Justice. The abuse of search warrant provisions in this way can be overcome by it not being permissible for a police officer to seize evidence relating to an alleged offence not referred to in the warrant. A police officer in any event upon sighting certain evidence and leaving a residence, would be able to obtain a fresh warrant at extremely short notice. It, however, must be recognised that there may be exceptional cases with exceptional circumstances which would justify the seizure under the conditions referred to in 1.5. It must also be conceded that those circumstances would in fact be few and far between. It is envisaged that they would be the subject of close judicial scrutiny immediately after the execution with the police officer being required to justify his actions. (Gibbs Fourth Interim Report 1990, p. 276)

74 Section 22(7) *National Crime Authority Act (1984)*; s. 36(9) *Proceeds of Crime Act (1987)*.

The Gibbs Committee (1990, p. 277) concluded:

it would seem unreal to suggest that an officer, having lawfully gained entry to premises should be required to ignore a thing found in the course of searching in accordance with the warrant that provided evidence of a serious offence, but was not of the kind of things described in the warrant and the officer reasonably believed that, unless he seized it, it would be concealed, lost or destroyed or used in committing the relevant offence.

The Gibbs Committee (1990, p. 277) went on to say there should be such a statutory provision in terms that:

if in the course of searching for things of the kind specified in the warrant the officer finds anything that he or she believes, on reasonable grounds, to be connected with the offence referred to in the warrant, although not of the kind specified in the warrant or to be connected with another offence which is a serious offence and it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in committing, continuing or repeating the offence or in committing the other offence, the warrant should be deemed to authorise seizure of that thing.

The Gibbs Committee defined a "serious offence" as an offence carrying a maximum term of imprisonment of three years or more.

New South Wales

Section 7 of the *Search Warrants Act 1985* permits the police officer executing the warrant to seize "the things mentioned in the warrant" and to also seize any other thing:

- (i) that the member of the Police Force finds in the course of executing the warrant; and
- (ii) that the member of the Police Force has reasonable ground for believing is connected with any offence.

The Honourable Mr Justice J.A. Lee, Royal Commissioner to the Blackburn Inquiry provided instructive comments on the operation of section 7 and related provisions:

The Act provides . . . for the justice to prepare an occupier's notice in the form prescribed. The prescribed form, Form 5, requires a list to be set out of the things the police are empowered to search for and also a statement (based upon s. 7) stating the additional items that can be seized in the course of the search, i.e. items which the officer believes on reasonable grounds relate to any offence.

In the present case the items specified related to three only of the attacks, but this would not restrict the police to taking only those items if they found other items relating to other offences in the course of the search for things mentioned. However, where a number of police attend the premises for the purpose of the search and their only knowledge of the items that could be seized derives from the list given in the warrant, then it follows that they will be limited to a seizure of those articles. (Blackburn Inquiry 1990)

England and Wales

The Philips Commission expressed similar sentiments to the Gibbs Committee. It did not consider it desirable to limit seizure only to prohibited goods or to the evidence specified in the warrant. However, at the same time, the Philips Commission wished to prevent or minimise a general ransacking of a premises pursuant to a warrant. Consequently, it proposed that when police have lawful authority to enter premises pursuant to a warrant, they should be entitled to seize the items specified in that warrant and any other prohibited goods (drugs, weapons etc.) or evidence of a grave offence (that is items for which they could have obtained a search warrant) which they find incidentally in the course of a lawful search. Items seized other than in this way may not be able to be used in evidence (Philips Commission 1981, para. 3.49).

The PACE Act 1984, section 19, takes up some of the recommendations of the Philips Commission but goes further by authorising the seizure by a police officer of anything on the premises (other than items exempt for being the subject of legal professional privilege) if the officer reasonably believes that it is evidence in relation to an offence he or she is investigating or any other offence 'and' it is necessary to seize the thing to prevent its concealment, loss, alteration or destruction. The Philips Commission had recommended that the incidental seizure power be restricted to grave offences only and not simply "any other offence" as the Act provides. The Philips Commission's recommendation of exclusion as evidence, of things seized other than in accordance with the prescribed procedure, was not followed in the Act. A person aggrieved of unlawful seizure is left to civil remedies.

Canada

The LRCC was of the general opinion that the objects capable of lawful seizure should be restricted to those named in the warrant. This is reflected in the LRCC's draft clause on the issue (clause 5) which provides that, where there are reasonable grounds to believe that 'an' object of seizure is to be found on the premises, a justice may issue a warrant authorising an officer to seize 'the' object of seizure. It is also reflected in its draft clause 14 which provides that an officer may only search those areas with the place mentioned in the warrant where it is reasonable for "the objects specified in the warrant" to be found.

However, the LRCC recognised that an officer exercising a lawful search for specific items may come across objects of seizure not covered by the justification for the original intrusion and the inability to seize such items may result in the loss or destruction of such items. The LRCC recognised that the case law and certain Canadian enactments permitted the warrantless seizure of those incidentally discovered objects. It also acknowledged that the obtaining of a telephone warrant may not be practicable in all circumstances. Nevertheless, the LRCC was prepared to grant only a limited power to seize items not specified in the warrant when they are in plain view. On this point the LRCC said:

Although the criminal law enforcement interest may be served by permitting the seizure of all objects of seizure found in the course of a search, such a power creates the danger that objects will be seized on a discretionary basis, rather than on reasonable grounds for believing they are legally seizable. It may also invite peace officers to conduct unconfined searches for objects of seizure which are totally unrelated to the original rationale for intrusion.

The Commission is of the view that the incorporation of the American "plain view" doctrine into Canadian law will provide a balanced solution to this dilemma. This doctrine, which limits the warrantless seizure of incriminating objects to those objects in "plain view" of a peace officer executing a lawful search or otherwise lawfully situated, would prevent any general or exploratory intrusion into the privacy of the individual concerned. The seizure of incriminating objects in "plain view" does not involve the peace officer in any distinct search activity outside that covered by his initial justification for intrusion; accordingly, the obtaining of a warrant specifically authorizing seizure of these objects is not necessary. (LRCC 1984, p. 43)

The LRCC further recommended that the officer be required to complete a report after such a seizure setting out its particulars and the reasons why it was made. This report is to be open for inspection by the occupier of the premises searched and the owner of the goods seized. The LRCC stated this was to provide some level of accountability of the officer. It would also provide to an aggrieved person an informed basis upon which to challenge the legality of the officer's actions.

Conclusion

The Commission accepts that a police officer exercising a lawful search under a warrant may come across items that may afford evidence as to the commission of another offence. However, the Commission is also mindful of the need to ensure that a warrant issued on one ground is not used to justify an unconfined search for items that are totally unrelated to the initial grounds for intrusion. The Commission is of the view that the Canadian approach appears to provide a balanced solution by authorising a police officer to seize items that are in 'plain view'.

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

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.

SHOULD PERSONS PRESENT IN PREMISES THE SUBJECT OF A SEARCH ALSO BE ABLE TO BE SEARCHED?

As a general rule, and certainly at common law, a warrant authorising the search of premises does not also authorise the search of persons present at those premises (*King v. R* [1969] 1 AC 304). At common law, the right to search a person arises only as an incident to arrest.

However, there are a number of statutory exceptions to the common law. For example, sections 18(3)(ba) and 18(4)(ba) of the *Drugs Misuse Act 1986* permit police to detain all or any of the persons found in premises the subject of a search and, by reference to section 15 of that Act, search them. In certain circumstances the police officer has authority to remove the person from the premises in order that he or she may be searched elsewhere. Other provisions allowing search of persons include section 19A *Commission of Inquiry Act 1950*, section 131A *Health Act 1937*, section 51 *Pawnbrokers Act 1984*, section 231 *Racing and Betting Act 1980*. (Refer to Table 1 for a more extensive list of the provisions.) The power to search persons present at premises searched are limited to those specific Acts and there is no general power of that nature.

The Police Service in its submission to the Commission contends that police should be given the authority to detain all persons found on the premises the subject of the search and to search those persons.

They said of the current position:

This situation is obtuse in that any person present can conceal evidence on their person and simply walk out of the house, defeating in one easy action the purpose for the search, i.e. the seizure of evidence of an offence. (Queensland Police Service submission, p. 24)

The Queensland Police Union of Employees also calls for such a power.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee noted that a warrant issued under section 82 of the *Crimes Act 1914* (Cwlth) authorised a search of persons found on the premises and also persons whom the officer reasonably believes are about to enter or to have recently left the premises.

A number of submissions received by the Gibbs Committee supported the granting of a power to search persons on premises although some of those submissions expressed the view that such a power should only be available in limited circumstances or under strict regulation (Gibbs Commission 1990, para. 38.58-38.60).

In the end the Committee recommended a general power be given but that the power to search persons on premises should not flow automatically. Instead, the Committee was of the view that power should be the subject of a special order of the magistrate issuing the search warrant. It believed such an order could be made where the magistrate was satisfied that the power to search persons was required in the circumstances of the case but that the exercise of the power should be limited to those persons whom the officer suspects on reasonable grounds have in their possession a thing referred to in the warrant (Gibbs Commission 1990, para. 38.63).

In arriving at this recommendation, the Committee recognised the existing power under section 196 *Customs Act 1901* enabling a police officer to detain and search a person whom the officer suspects is unlawfully carrying certain prohibited items. It also recognised the existing power to search a person upon his or her arrest. Nevertheless, the Committee realised that these existing powers would not cover all situations where the ability to search persons on the premises was desirable (such as in a residence occupied by a small number of persons where the officer reasonably suspects that they have things the subject of the warrant in their possession). Accordingly, it was prepared to recommend the granting of the power. However, the Committee also recognised that there will be circumstances where it would be clearly inappropriate that an officer should have such a general power in respect of any person found on the particular premises and gave the example of a large shop open to the public, a theatre or a bank. Hence the Committee's requirement that the magistrate issuing the warrant must assess whether a power to search persons is appropriate in the circumstances and the officer must reasonably suspect that the person to be searched would have in his or her possession the thing searched for.

New South Wales

Section 8(a) of the *Search Warrants Act 1985* (NSW) authorises a police officer executing a search warrant to search a person found in or on the premises whom the officer reasonably suspects of having a thing mentioned in the warrant.

England and Wales

The *PACE Act 1984* did not alter the common law rule that a warrant authorising a search of premises does not of itself authorise the police to search persons found in or on those premises. A December 1985 Home Office Circular informed officers "Such persons may only be searched if they are arrested or if there is a specific power to search in the warrant (e.g. warrants issued under section 23 *Misuse of Drugs Act 1971* and section 46 of the *Firearms Act 1968*)".⁷⁵

Canada

The draft clause proposed by the LRCC in its *Report on Search and Seizure*, provides:

A person may be searched

- (b) if found in a place or vehicle specified in a search warrant, if the peace officer believes on reasonable grounds that the person to be searched is carrying or concealing an object of seizure specified in the warrant; . . . (LRCC 1984, p. 40)

The law under the Canadian *Criminal Code* at the time this was considered by the LRCC mirrored the general position in Queensland. That is, there had to be a separate authority to search a person found in the place the subject of a search warrant, even though the executing officer may wish to search the person for the same objects of seizure as specified in the search warrant. The LRCC was of the view that in this situation, the personal search was in the context of a search as a whole and not as a distinct intrusion requiring independent authorisation. Consequently, the draft clause provided a statutory power to search persons as an incident of a warranted search of premises.

As did the Gibbs Committee, the LRCC recognised that a general and unlimited power to search persons was not appropriate. While not requiring the issuing authority to make a separate order authorising search of persons, the LRCC believed that the justification for intrusion should be related to the specific individual whom the officer wishes to search. Consequently, the authority to search such a person is conditional upon the existence of reasonable grounds to believe that the person to be searched is carrying or concealing an object of seizure specified in the warrant. The option of having the issuing authority authorise the search of persons (as was recommended by the Gibbs Committee) was considered by the LRCC but was eliminated following a number of objections made during the

consultation period of the review and the recognition that the officer is in a far better position than the issuer of the warrant to ascertain the likelihood that an individual encountered in a place is carrying or concealing an object of seizure. The LRCC stated:

Indeed, there may be no basis upon which it can be predicted, at the stage of the application for the warrant, who may be in the place or vehicle, or which occupant, if any, might be in personal possession of the objects of seizure. The Commission recognises, therefore, that the judicial protections offered by the issuer's involvement would be, in this context, largely illusory ... (LRCC 1984, p. 42)

Other Considerations

The draft provision recommended by the Criminal Code Review Committee (s. 259) provides that the warrant issued by the justice empowers the executing police officer to search any person found in the premises the subject of the search.

There is no qualification of when that power may be exercised - for example, there is no requirement that the officer must believe on reasonable grounds that the objects of seizure are on the person. Subsection (5) of that draft provision requires that a person searched under the authority of a warrant issued under that section be searched by a person of the same gender. However, if this is not "immediately possible", the person to be searched may be:

- (a) detained for such period as is reasonably necessary to enable that requirement to be complied with; or
- (b) conveyed to a place where the requirement may be complied with and be detained for such period.

The draft clause 259 proposed by the Criminal Code Review Committee is wider in its potential application than section 18 of the *Drugs Misuse Act 1986*. The issue of a search warrant under section 18 and the commensurate power of police to search persons on premises when executing that warrant arise only in relation to drug offences. However, draft clause 259 applies to 'all' offences. The power to search persons under its provisions is not qualified. The power may be exercised whenever a search warrant issued under clause 259 is being executed.

The Criminal Code Review Committee state in their commentary on the draft clauses (Criminal Code Review Committee 1992, p. 262) that they adopted the form of provision recommended by Murray QC in his review of the Western

Australian Criminal Code (Murray, M.J. 1983). Murray's reasoning for the inclusion of the power to search persons on premises upon the issue of a warrant authorising search of premises was:

- 4 I have recommended that the warrant should empower entry and search, not only of the place in question, but also of persons and property found in such place. Such a power is now only conferred with respect to aircraft but I think it should be generally available . . .
6. I have perused the provision that a female may only be searched by another female but in this case ... I have thought it necessary to specifically add a power to detain the individual concerned, or transport her to such a place as will enable the search to be conducted by a person of the same sex. The period of detention may only be such as is reasonably required for the purpose in question and I think that is not an unreasonable qualification in the circumstances. If a proper degree of sensitivity is to be employed in this area it should not be at the expense of frustrating the purpose for which the warrant was issued. (Murray, M.J. 1983, p. 487)

Conclusion

The extension of the power to detain and search in draft clause 259 takes no account of the nature of the offence. At least with the *Drugs Misuse Act 1986* the searches are confined to offences where drugs are suspected. Due to the small size of drugs and the fact that concealment on or about persons is easy, the Commission can perceive the need for the power to search persons on premises where the objects of seizure are drugs (Williams Commission 1979, p. F32). However, it questions the need for the power in all instances.

The Commission does not see the need to search persons where the objects of seizure are of substantial size and incapable of concealment on the person, e.g. stolen electrical items. While it would be expected that police would exercise discretion in using the power to search persons, the Commission believes that it is preferable that there be some qualification incorporated into legislation indicating when the power may be exercised.

9.8 Recommendation - Search of Persons Present During Execution of Warrant

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.

SHOULD AN OFFICER EXECUTING A WARRANT BUT WHO HAS NOT YET COMPLETED ITS EXECUTION BE PERMITTED TO LEAVE THE PREMISES FOR A SHORT PERIOD AND THEN RE-ENTER?

The Present Position in Queensland

There is no general common law rule permitting entry pursuant to a warrant on more than one occasion. Once the police enter premises under a warrant its authority is expended. The warrant cannot be used again so that if the police leave the premises they must obtain a further warrant or the consent of the occupier in order to lawfully re-enter the premises.

There is no general statutory provision in Queensland prescribing that a warrant authorises one entry, re-entry or multiple entries. It is necessary to refer to each statutory enactment providing for the issue of a warrant and the authorities granted by such a warrant.

A review of those statutory provisions reveals that there is no consistency in the extent to which an officer is authorised to re-enter premises under each of the statutes. Some statutes, such as section 18(3)(a) *Drugs Misuse Act 1986*, permit entry and re-entry.⁷⁶ Other statutes are worded as simply authorising entry and do not specifically provide for re-entry.⁷⁷

While all statutes do not expressly authorise re-entry it may be that under the *de minimis* rule the absence from the premises for a very short period of all officers named in the warrant, will not affect the authority of the warrant if their intention is clearly to return to complete the execution of it (Gibbs Committee 1987, p. 28).

The Queensland Police Service called for a power in all cases of execution of a search warrant to enter and re-enter as required in order to remove anything seized.

76 Another statutory provision permitting entry and re-entry is s. 4.8 *Weapons Act 1990*.

77 Statutory provisions which do not specifically provide for re-entry include: s. 72 *Children's Services Act 1965*; s. 31(4) *Crimes (Confiscation of Profits) Act 1989*; s. 5(1) *Criminal Investigation (Extra-territorial Offences) Act 1985*; s. 679 *Criminal Code*; ss. 131A and 168A *Health Act 1937*; s. 109 *Health Rights Commission Act 1991*; ss. 179 and 180 *Liquor Act 1992*; ss. 134 and 135 *Nature Conservation Act 1992*; s. 12(2) *National Crime Authority (State Provisions) Act 1985*; s. 51 *Pawnbrokers Act 1984*; s. 58 *Second-hand Dealers and Collectors Act 1984*.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee was of the opinion that a police officer executing a warrant on premises must be able, having left the premises with the intention of returning in a very short time, to return in that time under the original warrant. The Gibbs Committee was of the opinion that the *de minimis* rule would entitle the officer to do this. It also said it would not ordinarily matter if all but one officer left for a short time for some reasonable cause. Further, the Gibbs Committee was in little doubt that the law as it then existed would permit re-entry of the officers where, with the agreement of the occupier, they had suspended the search on the understanding it would be resumed at a later time. However, beyond these situations the Committee stated the law would require amendment.

The Gibbs Committee was firm in the adoption of the principle that an occupier, having been subjected to an entry and search of premises under one warrant should not be subjected to a later entry and search under the same warrant. It thought that any suspension of the execution of a warrant beyond a very short time such as one hour should require the consent of the occupier. In light of these factors, the Gibbs Committee recommended that provision be made to clarify the right of a police officer executing a search warrant on premises to leave the premises for up to one hour or for such longer period as may be agreed to in writing by the occupier, and re-enter under the original warrant, if necessary by force, provided the officer informs the occupier (if present) of his or her intention to return.

England and Wales

No comment on this issue was made by the Philips Commission. However, section 15(5) of the *PACE Act 1984*, which applies to all search warrants issued to constables under any enactment, authorises entry pursuant to a warrant on one occasion only.

Other Considerations

Draft clause 259 of the *Criminal Code* proposed by the Criminal Code Review Committee specifically provides that a warrant issued under that provision authorises the entry and re-entry of the officers executing the warrant. This proposed section incorporates the current section 18 *Drugs Misuse Act 1986* which contained such a provision.

Conclusion

The Commission recognises that in practice when executing a search warrant, police may need to leave the particular building in order to search under or around it or for some other purpose connected with the search. In such a case, where the departure from the building is brief and is for the purposes of the search authorised under the warrant, re-entry to the building should be authorised by the original warrant. In other words 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 a further warrant should not be required.

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

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.

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CHAPTER TEN

ENTRY AND SEARCH WITHOUT A WARRANT

INTRODUCTION

An entry and search of premises without lawful authority is a trespass for which a person may be liable for civil action and damages. The lawful authority which may prevent such liability from attaching to a police officer is contained in the common law and in statutes. The earlier chapters dealt with the statutory powers to enter and search with a warrant. However, there are also some police powers of entry and search which do not require a search warrant. Some of these exist under the common law and others are contained in statutes.

THE COMMON LAW POWERS OF ENTRY AND SEARCH WITHOUT WARRANT

The common law power to enter and search premises in order to effect an arrest is unclear. The United Kingdom Philips Commission said in its report on law and procedure that the common law is as follows:

- A police officer has power to enter premises in order to effect an arrest pursuant to an arrest warrant where the accused is known to be on the premises (see *Launock v. Brown* (1819) 2 B and Ald 592) but it is less clear whether he or she has that power if he or she only has reasonable cause to believe that the wanted person is on the premises.
- No general power exists at common law to enter premises to effect an arrest without warrant (Philips Commission 1981a).

Courts have expressed different views on the common law. The clearest statement in relation to the common law power to enter premises to effect an arrest was provided by the Supreme Court of Canada in *Eccles v. Bourke* (1974) 50 DLR (3d) 753; 19 CCC (2d) 129. In that case a bench of nine justices considered the application of the common law rules of entry by constables holding a warrant to arrest to constables exercising statutory powers to effect arrests without warrant. Eight of them agreed with the judgement of Dixon J. who stated that there was nothing in section 450 of the Canadian *Criminal Code* which conferred a right to enter or to enter by force on a police officer exercising a power of arrest without warrant pursuant to that section and therefore in the absence of any common law power an

officer would be committing a trespass. His Honour looked to the common law and concluded that a person exercising a statutory power to arrest had a power to enter a house against the will of the householder but only if:

- a) there were reasonable and probable grounds for the belief that the person sought was within the premises; and
- b) proper announcement is made prior to entry.

The Full Court of NSW in *Lippl v. Haines and Others* (1989) 18 NSWLRC 620 stated that:

The law on this subject [trespass to land] is the same as the law as expounded by the Supreme Court of Canada in *Eccles v Bourke* (1974) 50 DLR (3d) 753; 19 CCC (2d) 129.

Gleeson C.J. (p. 622) said in that case:

If a police officer is authorised by the Crimes Act 1900, s. 352, to arrest a person without warrant then, according to common law principles, it may be lawful for him to engage in conduct that would otherwise amount to a trespass for the purpose of making, or endeavouring to make, such an arrest. His conduct will be lawful where the entry is reasonably necessary for the purpose mentioned provided two conditions are satisfied. First, he must believe on reasonable and probable grounds, prior to entry, that the person he is seeking to arrest is on the premises. Secondly, save in exigent circumstances, there must be a proper announcement prior to entry so that the occupier of the premises is made aware that a police officer claims authority to enter and is given an opportunity to permit entry without force.

Other common law powers of entry include the power to enter to deal with a breach of the peace. This common law power was established in the nineteenth century. The common law power to enter in order to prevent a breach of the peace was enunciated in *Thomas v. Sawkins* [1935] 2 KB 249. A further recognised common law power is to enter and search in fresh pursuit of an escaped prisoner. A common law power to enter to save life or limb, or to prevent serious damage to property also exists and it extends to persons other than constables. In exercising the power, entry must be made in a reasonable manner (Philips Commission 1981a, p. 14).

STATUTORY POWERS TO ENTER AND SEARCH WITHOUT WARRANT

In addition to the common law powers there are various statutory powers of entry and search without warrant.

The Queensland legislature has enacted 13 statutory provisions conferring power to enter and search without warrant directly upon police officers, as follows:

- *Drugs Misuse Act 1986*, section 18(12);
- *Weapons Act 1990*, section 4.5, 4.6;
- *Crimes (Confiscation of Profits) Act 1989*, section 32;
- *Domestic Violence (Family Protection) Act 1989*, section 32;
- *State Counter-Disaster Organization Act 1975*, section 25;
- *Public Safety Preservation Act 1986*, section 8;
- *Casino Control Act 1982*, section 113;
- *Auctioneers and Agents Act 1971*, section 56;
- *Pawnbrokers Act 1984*, section 50;
- *Second-hand Dealers and Collectors Act 1984*, section 57;
- *Noise Abatement Act 1978*, section 33;
- *Traffic Act 1949*, section 43; and
- *Art Unions and Amusements Act 1976*, section 62.⁷⁸

Table 4 sets out the details of the above provisions. The *Drugs Misuse Act 1986*, *Crimes (Confiscation of Profits) Act 1989* and *Weapons Act 1990* provisions confer a power to enter and search without warrant in emergency circumstances and provide that, except in such an emergency, a warrant should be obtained. The reasons for entry under the other Acts listed above vary and not all of them provide a power to search and or seize evidence of an offence. The provisions are explained in more detail later in this chapter.

Other statutory enactments authorise nominated officials to exercise powers of entry and search without a warrant. Under those enactments a particular police officer may be a nominated official by virtue of him or her being a police officer, or by reason of that particular officer's appointment as a nominated official. An example of the first situation arises under section 15 of the *Poultry Industry Act 1988* where every police officer is deemed to be an inspector under that Act. An

⁷⁸ 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.

example of the second is section 6 *Travel Agents Act 1988* where a particular police officer may be appointed as an "authorised officer" under the Act. Table 5 sets out the legislation under which police may be indirectly empowered to act.

In addition, the Commission has identified a vast range of provisions authorising government officials other than police officers to enter and search premises without warrant. These are also set out in Table 5. While this latter group of provisions do not directly confer power upon police to enter and search, such powers may attach to a police officer when assisting the government official. An example of this type of provision is section 46(1)(m) *Dairy Industry Act 1989* which provides that an inspector appointed under that Act may call a police officer to his or her aid where he or she is obstructed or has reasonable grounds to believe that he or she will be obstructed. When the police officer does assist he or she is deemed by the Act to also be an inspector and has all the powers of an inspector.

There has been a notable increase in the number of statutory provisions permitting search without warrant in the last 15 years. In 1974, about 16 provisions under various Queensland statutes permitted police officers and/or other public officers to search without warrant. In 1992, such provisions numbered more than 30. A major part of this increase has been in the authorisation of government officials (other than police) to enter premises for regulatory purposes of legislation. Often there are very few or no safeguards on the exercise of those powers other than the requirement that the entry be 'for the purposes of the legislation' (e.g. s. 46(1)) *Dairy Industry Act 1989*).

Since the statutes were enacted at different times and for different purposes, provisions reflecting the same intentions have been stated in a number of ways. There appears to be a lack of consistency in the wording of such statutory provisions and in the safeguards attached to the exercise of the power as is evident from Tables 4 and 5.

Notwithstanding the apparent breadth of these search powers, the privacy of the individual in a dwelling house has generally been protected by the qualification that an entry and search of a dwelling house (as opposed to other premises) without the consent of the owner or occupier is permitted only with a warrant. A notable exception to this are the 'emergency' provisions including those under the *Drugs Misuse Act 1986* section 18(12), the *Crimes (Confiscation of Profits) Act 1989* section 32 and the *Weapons Act 1990* section 4.5 which apply to 'any' place.

The Queensland Police Union of Employees has advocated a general statutory authority for all offences similar to that under section 18(12) of the *Drugs Misuse Act 1986* to provide police with a power to enter and search premises without warrant if there is a likelihood of unlawfully obtained property being concealed or disposed of. The Union submitted that the power should also be available if there is a danger of a person within the premises sustaining an injury. The Queensland Police Service supports the granting of a power to enter without warrant in these circumstances. The Queensland Police Service submitted to the Commission that

where a police officer suspects on reasonable grounds that evidence of an offence will be destroyed in the time that it would take to obtain a search warrant, that officer should be empowered to conduct the search as though he or she was in possession of a warrant. It said such a provision would be used rarely and the officer using it would need to be in a position to be able to justify to a court why a search warrant could not have first been obtained.

The Queensland Council for Civil Liberties proposed that provision for searches without warrant be contained in a consolidated Act dealing with all aspects of search and seizure. The Council submitted that the police officers undertaking a search without warrant should have to provide specific (as opposed to pro forma) grounds for the search. A copy of those reasons should be lodged with the Queensland Police Service and a periodic audit of the reasons conducted to ensure powers of search without warrant were not being abused.

The Queensland Law Society believed that the circumstances in which entry to premises without a warrant is justified should be specified in legislation and limited to emergency situations, that is, where there is reasonable suspicion that evidence may be destroyed in relation to serious offences, or in the pursuit of an offender. The Director of Prosecutions believed that entry without warrant should be allowed if a 'shooting' has taken place or where a police officer is reasonably satisfied that a grave offence will be committed. The Legal Aid Office (Queensland) is of the opinion that for more serious offences (i.e. those carrying life imprisonment as a maximum penalty), where there is a danger that evidence may be destroyed before a warrant could be obtained, search without warrant should be permitted.

Other Jurisdictions

Commonwealth of Australia

The Gibbs Committee identified a number of Commonwealth statutory provisions which authorised government officers without warrant to enter and search places, search persons on or in those places searched and, in some cases, seize things. Examples included sections 187, 196 and 197 of the *Customs Act 1901*, and sections 87 and 90 of the *Excise Act 1901*. Although the Gibbs Committee did not directly voice its disapproval of such provisions, it did hint at disapproval when it commented that it was pleased to note that the trend in recent Commonwealth legislation was not to include such provisions and in their place provided for the grant by a judicial officer of a search warrant to authorise entry and search (Gibbs Committee 1987, p. 8).

The Gibbs Committee also considered calls for legislation permitting searches without warrant in an emergency situation. It looked at the examination of the issue by the ALRC in its *Criminal Investigation Interim Report* (1975, para. 197) where the ALRC had recommended that search without warrant be permitted only

in response to circumstances of such seriousness and urgency as to require and justify immediate action without warrant. The ALRC had been reluctant to exhaustively define urgent circumstances although specifically nominated urgent circumstances as including situations where:

- the officer believed on reasonable grounds that it was necessary to do so to prevent loss or destruction of anything connected with an offence; or
- for searches of persons and vehicles suspected on reasonable grounds to be carrying an article which is an offensive weapon, or is either the fruit, instrument or material evidence of the commission of a serious offence (ALRC 1975, para. 198).

Notwithstanding the recommendations of the ALRC on urgent search provisions and following consideration of the submissions made to the Gibbs Committee on the issue, (Gibbs Committee 1990, paras 38.74 - 38.78) the Gibbs Committee was not satisfied that a new power was required to enter premises without a warrant in emergency situations. It said that a police officer could already enter premises in a variety of ways under the existing law. The officer could also enter by consent or in order to effect an arrest. Commonwealth law also provided for the issue of a general warrant under the *Customs Act 1901* which was usually relied upon for drugs offences which permitted an officer to enter 'any' premises. Finally, the Gibbs Committee had recommended in its report a mechanism for the issue of warrants by way of telephone and, presuming acceptance of that mechanism, it could see no need for the emergency power.

England and Wales

The law relating to search and seizure as it existed in England and Wales prior to the enactment of the *PACE Act 1984* was examined by the Philips Commission. The Philips Commission identified the existing common law and statutory powers permitting police to enter premises without warrant (Philips Commission 1981a, Appendix 6) and considered the submissions it had received on whether a general power of search without warrant should be granted.

It recommended that the common law rules of entry without warrant⁷⁹ continue but be placed on a statutory basis. In relation to this the Philips Commission said:

The common law powers to enter, without consent or a warrant, seem to us essential to deal with the situations for which they exist . . . We have received no evidence suggesting they should be altered. (Philips Commission 1981, p. 33)

79 The common law rules identified by the Commission were: to effect an arrest under warrant where the subject of the warrant is known to be on the premises to deal with or prevent a breach of the peace, to save life or limb or prevent serious damage to property, and in fresh pursuit of a person who has escaped lawful custody.

However, for other instances, it concluded that a warrant should always be required before entry and search is made, saying:

We have received little evidence arguing for coercive powers of entry and search before arrest to be available without warrant or other written authorisation. In our view such an intrusion upon the citizen's privacy should always require some form of prior or formal authorisation, whatever the purpose of the search. The existing powers are mainly confined to entry and search for items which it is an offence knowingly to possess (we refer to these as prohibited goods): for example, stolen goods, drugs, firearms, and explosives. We reaffirm the principle of the present law that such powers are justified and should be retained. This applies even where the owner or occupier of the premises to be searched is not himself suspected of knowingly possessing the prohibited goods, the justification being the need to restore stolen property to its rightful owner or to remove from circulation potentially dangerous weapons and substances. Warrants for these items should be issued only if it is shown to the issuing authority that there is suspicion based on reasonable grounds that the object of the proposed search is on the premises specified. (Philips Commission 1981, p. 33)

The Government adopted the recommendations of the Philips Commission which are today reflected in the *PACE Act 1984*.

Section 17 captures many of the rules of the common law, permitting entry and search of premises for persons without warrant for the purpose of:

- (a) executing a warrant of arrest or commitment;
- (b) arresting a person for an arrestable offence;
- (c) arresting a person for an offence against certain provisions of three nominated statutes;
- (d) recapturing a person who is unlawfully at large and whom he or she is pursuing; or
- (e) saving life or limb or preventing serious damage to property.

With the exception of the common law rules of power of entry to prevent a breach of the peace, all other common law rules under which a constable has power to enter premises without a warrant are abolished (s. 17(5)). Importantly, except for the purpose specified in (e), an entry and search by an officer under these statutory powers will be unlawful unless the officer has reasonable grounds for believing that the person whom he or she is seeking is on the premises. Upon entry, the power of search is limited to an extent that is reasonably required for the purpose for which the power of entry is exercised.

Canada

The LRCC has adopted as a general rule the principle that police powers of search and seizure in criminal law enforcement should be authorised by judicial warrant. As a corollary to this, the LRCC considers that entry without warrant should only be permitted where it can be established that resort to warrant is impracticable or unnecessary. The deficiencies of warrantless entry and search identified by the LRCC are contained in the following passage of its report on search and seizure:

... a warrantless power of search and seizure represents a relatively discretionary mode of authorization, legal control and review of which are substantially diminished. The exercise of warrantless powers is dependent solely on the status of the prospective intruder as a peace officer and his ascertainment of certain pre-conditions to the exercise of the power. Authorizing a peace officer to search without warrant admits the possibilities of biases in decision making that stem from a peace officer's interest in the outcome of the decision. Moreover, accountability for warrantless intrusions is impeded by the fact that no documentary record of any kind is presently available to an individual aggrieved by a warrantless search and seizure. (LRCC 1984, p. 10)

The LRCC accepted the proposition that respect for individual rights is a crucial social value and that discretionary intrusions by the state upon individual rights ought, therefore, to be carefully circumscribed (LRCC 1984). Nevertheless, the LRCC did recognise that in some instances proceeding by warrant may be impracticable or unnecessary. It limited those instances to:

- with consent (LRCC 1984, p. 33, draft clause 18);
- as an incident to arrest (LRCC 1984, p. 35, draft clause 19);
- in circumstances of danger to human life or safety (LRCC 1984, p. 37, draft clause 21); or
- in circumstances involving arrest of a person where the arrestee is in control of or an occupant in a moveable vehicle when the delay necessary to obtain a warrant to search the vehicle would result in the loss or destruction of objects of seizure (LRCC 1984, p. 38, draft clause 22).⁸⁰

However, the LRCC was mindful of the provisions of the Canadian *Charter of Rights and Freedoms* which, in section 8, provides the right to be secure against unreasonable search and seizure. It recommended a number of safeguards or checks and balances to the exercise of such powers. This chapter shall concentrate on the safeguards of the LRCC attached to search without warrant prior to arrest, i.e. with consent or in circumstances of danger to human life or safety.

Before exercising an entry and search without a warrant but with the consent of the occupier, the LRCC recommended that a police officer must inform (in writing or orally) the occupier of his or her right to refuse consent or withdraw consent at any time. The LRCC valued the notion of an informed consent rather than a consent obtained through intimidation or fear where persons were unsure of their rights as it believed the latter may lead to an undermining of public co-operation. Some police representatives, in submissions to the LRCC, felt that to require a documentary procedure of advising people of their rights in respect of entry and search would be an administrative burden. The LRCC acknowledged this and also recognised the fact that the production and completion of a consent form may not be practicable in all circumstances. Accordingly, the recommendation of the Commission provided that the information on rights could be given orally as well as in writing. However, to encourage the use of documentation which provides clear evidence of consent, the LRCC recommended that the signature of the occupier on a document advising them of their rights would be *prima facie* proof that the occupier was informed of his or her rights and gave his or her consent.

The LRCC defined criteria which it believed should be satisfied before police officers are able to enter and search premises without warrant in circumstances of danger to human life or safety. The officer must believe on reasonable grounds that an object of seizure is to be found in the premises to be entered and searched 'and' he or she must believe on reasonable grounds that the delay necessary to obtain a warrant would result in danger to human life or safety.

Concern to maintain levels of accountability led the LRCC to recommend that, in all circumstances where a warrantless entry and search is carried out and goods are seized, a post-seizure report must be completed. This includes where the entry and search is with the consent of the occupier of the premises. The LRCC said the post-seizure report should include the time and place of the seizure; the reasons for the seizure; and an inventory of things seized. A copy of the report should be provided to the occupier of the premises searched and to persons who the officer is aware have proprietary interests in the items seized.

Notably, the LRCC specifically declined to recommend that any register or report be completed where the warrantless entry and search did not result in the seizure of any goods, saying such a record would not be beneficial (LRCC 1984, p. 40). It reasoned first, that such a reporting requirement would unduly strain police resources. Second, the LRCC considered "the encroachment upon individual interests suffered as a result of warrantless intrusion is often limited and relatively fleeting, particularly when, in cases of searches of vehicles and persons, nothing is seized" (LRCC 1984, p. 40). In the circumstances, it doubted whether the benefits from mandatory reporting would in those instances justify the expenditure of resources to do that. Third, the LRCC also was concerned about the possible dangers to privacy which may result from increasing reporting requirements.

Criminal Code Review Committee

The Criminal Code Review Committee in its recommendations for the reform of the *Criminal Code* (Qld) included a draft provision empowering police to exercise a power of search and seizure in respect of offences generally (draft section 259) in order to preserve items which may afford evidence of an offence. The draft provision greatly increases the powers of police to exercise entry and search when compared to the existing general provision in the Code, section 679. For example, subsection (11) of the draft provision incorporates similar wording to section 18(12) of the *Drugs Misuse Act 1986* providing a power for police to enter and search premises without a warrant in urgent circumstances. The terms of the draft provision 259(11) are:

Notwithstanding the provisions of subsection (1)⁸¹ when a police officer believes on reasonable grounds that-

- (a) any thing that may afford evidence of the commission of an offence is, or is in possession of a person, in, on or about any place or land; and
- (b) it will be concealed or destroyed unless that place or land is entered and searched immediately,

the police officer may enter that place and exercise any of the powers he or she would be permitted to exercise if a warrant had been issued to him or her pursuant to the provisions of subsection (1).

By the Criminal Code Review Committee's draft section 260, a police officer who executes a search "pursuant to a warrant" issued under draft section 259 is obliged to issue a receipt describing things seized to the person who was in possession of the things seized. The police officer must also complete in a register details of:

- who or what was searched;
- the reason for the search; and
- a description of anything seized.

Failure to record these details is deemed to be prima facie evidence that the search was unlawful.

However, compliance with draft section 260 would not appear necessary if the search is conducted under the 'emergency' provision of section 259 (subsection (ii)) as the search is not conducted "pursuant to a warrant issued under section 259". This situation may be directly contrasted with the provisions of the *Drugs Misuse Act 1986* (s. 20) which provides that a register of search details must be completed

81 Subsection (1) details the requirements for the issue of a search warrant.

'except' where the search has been conducted pursuant to a warrant i.e. the register must be completed when the search is conducted under the emergency provision contained in that Act.

The commentary in the Criminal Code Review Committee's Report reveals that the Committee proposed that there be a requirement to register searches. Discussions with members of the Committee indicate that the Committee was of the view that 'all' searches under proposed section 259 should be registered and the omission of searches conducted without a warrant appears to have been an oversight in the drafting.

Legislative Guidelines

The Queensland Government recently enacted the *Legislative Standards Act 1992* (Act No. 26 of 1992) which gives statutory recognition to a number of fundamental legislative principles which are expressed in the Act to be principles relating to legislation that underlie a parliamentary democracy based on the rule of law (s. 4(1) *Legislative Standards Act 1992*). The Act states that those principles include a requirement that legislation has sufficient regard to the rights and liberties of individuals. The Act goes on to give a number of examples to assist in the determination of whether legislation has had sufficient regard to the rights and liberties of individuals. One of the examples included is whether the legislation:

confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer. (s. 4(3)(e))
Legislative Standards Act 1992)

The Act provides that, inter alia, it is a function of the Parliamentary Counsel and office to draft all Government Bills and to advise on the application of the fundamental legislative principles to proposed legislation.

Rights and Freedoms

Consideration of the Queensland law of entry, search and seizure without warrant in respect of premises would be incomplete without making mention of the issue of recognition of human rights which is currently the subject of a project by Electoral and Administrative Review Commission (EARC). Article 12 of the *Universal Declaration of Human Rights* states:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of law against such interference and attack.

This provision is expanded in Article 17 of the International Covenant on Civil and Political Rights:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

As the question of recognition of these rights and the appropriate mechanism for recognition of these rights is currently under review by EARC it is not appropriate for the Commission to comment further. However, it is useful to consider the comments of EARC in its issues paper on the matter. Refer to Appendix 6.

Other Considerations

Some would argue that warrantless powers to enter and search premises do not entail a reduction in the protection afforded to the individual because of the requirement in the legislation that there must be reasonable grounds for the entry and search. However, the concern with allowing warrantless searches is that they diminish 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 who may well have an interest in the outcome of the decision.

The Commission 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, it is of the view that these circumstances ought to be carefully circumscribed. The Commission is of the view that in all cases every effort should be made to obtain a warrant prior to entry and search and it is only where the delay necessary to obtain a warrant would seriously prejudice the execution of police duties that an entry be made without warrant in the following cases.

COMMON LAW POWERS

The Commission believes that legislation should specifically recognise the common law power to enter and search without a search warrant in order to effect an arrest where an officer has reasonable grounds to suspect, prior to entry, that the person he or she is seeking to arrest is on the premises. Save in exigent circumstances, there must be a proper announcement prior to entry so that the occupier of the premises is made aware that a police officer claims authority to enter and is given an opportunity to permit entry without force. The power to search in these circumstances is limited to a search for the person to be arrested. This provision will also encompass the common law power to enter and search in fresh pursuit of a person who has escaped from lawful custody.

In relation to the common law power to enter in order to prevent a breach of the peace, the Commission is of the view that it would be beneficial to embody this power in statute, although in a somewhat restricted form. A breach of the peace was defined in *R v. Howell* (1982) 1 QB 416 as follows:

... There is a breach of the peace whenever harm is actually done or is likely to be done to a person, or, in his presence, to his property, or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.

The Commission is of the view that this power should not authorise entry without warrant, with force if necessary, where the "harm" that is likely to be done to the property is of a minor nature. Accordingly, the Commission proposes that the statutory provision be restricted to a power to enter and search without warrant to enter to prevent injury to a person or to prevent serious damage to property.

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

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*.

STATUTORY POWERS OF ENTRY WITHOUT WARRANT

Statutory powers to enter premises without a warrant have been provided for in a wide variety of circumstances. The extent of the power varies also, according to the legislation and it is appropriate to consider each power separately.

Drugs Misuse Act 1986, section 18(12)

This is a provision which confers powers on police to enter premises without a warrant in special or urgent circumstances where, apart from those special circumstances, a warrant would be required. Such circumstances exist where a police officer reasonably believes that:

- (a) any thing that -
 - (i) may afford evidence of the commission of an offence defined in Part II; or
 - (ii) is liable to forfeiture under Part V, is, or is in possession of a person, in, on or about any place; and
- (b) ... will be concealed or destroyed unless that place is entered and searched immediately.

This power exists in many jurisdictions and recognises the particular dangers of the possession and distribution of drugs as well as the ease with which drugs may be concealed or disposed of.

10.2 Recommendation - Entry and Search for Drugs Without Warrant

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).

***Weapons Act 1990, section 4.5*⁸²**

Another emergency power is that contained in section 4.5 of the *Weapons Act 1990* which authorises a police officer who suspects on reasonable grounds that a person is in possession of and is threatening to use any weapon, such that death or injury to any person is likely to be caused to enter and search those premises. Again the Commission is satisfied that the threat of death or injury to a person posed by the presence of dangerous weapons is sufficiently great to justify the warrantless power as currently contained in the *Weapons Act 1990*. Accordingly the Commission recommends that this power be retained.

⁸² The power conferred by s. 4.6 of the *Weapons Act 1990* will be discussed at p. 453 *infra*.

10.3 Recommendation - Entry and Search for Weapons Without Warrant

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.

Crimes (Confiscation of Profits) Act 1989, section 32

This is another example of the power being granted to search without a warrant where apart from the special circumstances a warrant would be required. This power is restricted to the entry and search for tainted property in circumstances of "seriousness and urgency" such as to "require and justify immediate entry" and applies only to "serious offences" defined as indictable offences or offences contained within the regulations to that Act. As mentioned earlier, this power relates to the obtaining of evidence of 'tainted' property and is aimed at facilitating the operation of the recently introduced 'proceeds of crime' legislation. It reflects the underlying philosophy of modern law enforcement in that it aims to deter criminal behaviour by seeking to relieve criminals of the profits of their criminal activity. Similar legislation exists in Australia, Great Britain and the United States of America and the Commission is of the view that it should be retained in its present form.

10.4 Recommendation - Entry and Search for Tainted Property Without Warrant

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.

Domestic Violence (Family Protection) Act 1989, section 32

This section empowers an officer who reasonably suspects that domestic violence is occurring or has occurred before his or her arrival, on any premises to enter with such reasonable force as is necessary. The officer is empowered to remain upon the premises to verify the information, ensure that the imminent danger of domestic violence does not exist and to give or arrange such assistance as is reasonable in the circumstances. The officer is further empowered, having entered, to search the premises to establish whether anyone is in imminent danger of domestic violence and to search the premises for weapons or any person who may be in possession of a weapon suspected to have been or which may be used in domestic violence. The Commission is satisfied that the circumstances under which this power is exercised are sufficiently serious to justify the warrantless power.

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

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.

State Counter-Disaster Organization Act 1975, section 25

The power to enter under the *State Counter-Disaster Organization Act 1975* is exercisable where a state of disaster has been declared. This provision more specifically authorises entry without warrant to ensure the preservation of human life and or the prevention of injury to carry out the rescue of injured or endangered persons and to facilitate the carrying out of urgent measures to relieve suffering or distress. The Commission is of the view that it is appropriate that police have the ability to act immediately in such circumstances and recommend the retention of this power.

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

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.

Public Safety Preservation Act 1986, section 8

This provision also empowers police to act immediately in respect of an emergency situation in the interest of preserving public safety. It empowers police to enter any premises using such force as is reasonably necessary, to search those premises and anything found therein and to remove or cause to be removed from any premises any animal or thing. This power is only to be used at the direction of the incident co-ordinator who is responsible for directing the efforts of people assisting to preserve public safety. It is appropriate that the exercise of police powers in assisting such operation be subject to the instructions of that person. The Commission is of the view that such a power is appropriate in the interests of preserving public safety.

10.7 Recommendation - Entry Without Warrant to Preserve Public Safety

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.

Casino Control Act 1982, section 113

Section 113 enables a police officer to enter any area open to the general public and, with the authority of an inspector appointed under the Act on duty at the casino, to enter any other part of the casino. The power does not extend to the use of force or to the capacity to search. By sections 87 and 88 "Casino Control Inspectors" have wide powers of entry and search at the Casino. Thus section 113 contemplates that inspectors at the casino can authorise police officers to enter those areas to which the public would normally be denied access, such as the chip cash transactions room or the patrons' account room in order for police to carry out their duties. The inspector may conduct whatever search or investigation is required and the police officer's presence ensures that powers of arrest etc. are available if required.

This power is subject to the safeguard that it is not available to police officers generally but only to an officer who is 'authorised' by an inspector to enter that particular area. The Commission recognises the difficulty of maintaining control of the casino industry and the need at times for spontaneous entry.

10.8 Recommendation - Entry to Casino Without Warrant

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.

Second-hand Dealers and Collectors Act 1984, section 57 and Pawnbrokers Act 1984, section 50

The powers in these sections are virtually identical in their terms, differing only in that one relates to second-hand dealers' premises and the other concerns pawnbrokers' premises. Similar considerations arise with these powers and so they shall be discussed together.

The above sections contain a twofold power relating to forced entry at any time and entry when open during business hours.

The first head of this power⁸³ (section 57(1)(a) *Second-hand Dealers and Collectors Act 1984* and section 50(1)(a) *Pawnbrokers Act 1984*) empowers a police officer who suspects on reasonable grounds that an offence against this Act has been committed to, at any time by day or night, demand entry to a dealer's (pawnbroker's) premises using reasonable force to enter if necessary. The

83 The second head of this power will be discussed at p. 453 *infra*.

Commission believes that the circumstances in which the need for this power arise are not sufficiently urgent or serious to justify its retention in its current form. Given the Recommendation 8.12 for telewarrants and the recommendation that there be an emergency power in respect of evidence of offences carrying a maximum of seven years imprisonment (see Recommendation 10.14 infra) the Commission believes that this power to enter should be subject to the existence of a search warrant.

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

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.

Noise Abatement Act 1978, section 33

Section 33 empowers a police officer to enter premises from which sound is emitting to an extent that it is "clearly audible within a part of the residential premises of the complainant". He or she may enter without the authority of a warrant, together with such assistants as he or she considers necessary, using reasonable force if necessary and direct abatement of the noise. He or she may also seize stereo equipment etc. or remove part of it so as to render it inoperable.

The power is regularly used in residential areas to enable police to preserve the quiet enjoyment of the residents' homes. A safeguard against its indiscriminate use is provided by the existence of the complainant and the pre-requisite that the police officer must first satisfy himself or herself that the noise can be clearly heard from within the living area of the complainant's residence. Further, he or she is required to be of the opinion that as well as the noise being clearly audible, it is "excessive noise". The power is strictly circumscribed, relating only to an authorisation to enter for the purposes of noise abatement and not to search or seize in any way anything that does not relate to the source of the excessive noise. The circumstances in which it is used would render it impracticable to require a warrant to be issued. The Commission believes that this power must be preserved in its current form in order to be effective.

10.10 Recommendation - Entry Without Warrant to Prevent Excessive Noise

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.

Traffic Act 1949, section 43

Section 43 of the *Traffic Act 1949* provides a wide ranging power to enter a person's premises or land or a place to make enquiries, examinations etc. which an officer is authorised or required to make under the *Traffic Act 1949*. Further, if the officer is the Commissioner or District Superintendent or is instructed by such an officer he or she may use reasonable force to effect such entry.

The Commission considers that in relation to offences under the *Traffic Act 1949*, it may well be unsatisfactory that police be empowered to enter premises without prior judicial authority. Provisions of the *Traffic Act 1949* confer a power of arrest without warrant upon police officers in relation to a number of offences under that Act such as driving whilst disqualified or driving under the influence of alcohol or drugs. As Recommendation 10.1 (supra), states there should be a power to enter premises without warrant in order to effect an arrest and this will ensure that police can enter without warrant in appropriately serious circumstances without relying on section 43 of the Act. In other cases, the Commission considers that the use of this power be examined further to assess whether a search warrant should be required especially in light of the recommendation for telewarrants in urgent circumstances or remote areas (Recommendation 8.12 *infra*).

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

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.

Art Unions and Amusements Act 1986, section 62⁸⁴

This is a twofold power which authorises a police officer to enter premises which he or she knows or suspects is being used to conduct an art union, or entertainment machines or billiard tables, and secondly to enter premises where an officer knows or suspects there are books of account or records of any person who conducts bingo sessions in bingo premises.

⁸⁴ 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.

The officer is further empowered to take assistants, make relevant enquiries and seize and remove relevant documents etc. and machines which have not been shown to have a current permit.

In relation to these powers the Commission is of the view that the grounds for the entry do not justify a power to enter without a warrant. They appear to be powers directed toward regulating the activities and ensuring compliance with the regulatory framework in the Act and the Commission is not satisfied that there are special circumstances such as to justify a departure from the requirement for prior judicial authority. The entry is not related to a particular offence but rather is for the purpose of monitoring compliance with the legislation.

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

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

POWERS TO ENTER DEALERS' PREMISES WITHOUT WARRANT TO INSPECT REGISTERS ETC.

A study of this area of legislation reveals a group of police powers which has as its central theme the right of a police officer to enter dealers' premises and monitor the registers of their activities which the relevant Acts require them to keep.

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

Section 57(1)(b) and (2) of the *Second-hand Dealers and Collectors Act 1984* and section 50(1)(b) and (2) of the *Pawnbrokers Act 1984* provide a police officer with power to enter at any time when the dealer's (pawnbroker's) premises are open for business. The Stolen Property Investigation Unit reports that this power is used on a daily basis by its members for two purposes. Firstly it is used to "spot check" property which is on the premises of second-hand dealers and pawnbrokers and secondly, to monitor compliance with the provisions concerning the keeping of

registers of transactions at the premises. The squad reports that since November 1991, approximately 1400 charges of dishonesty relating to the stealing/receiving of property worth in excess of \$800,000 have been laid as a direct result of these "spot checks". They report further that there have been a number of charges laid and many cautions administered in relation to breaches of the register provisions. The squad submits that their strict policing of the dealers' registers and stock is an integral part of their attempt to recover stolen property. The squad believes that by strictly monitoring these traditional avenues for disposal of stolen goods it will make it more difficult for offenders to dispose of the property or more likely that they will be apprehended.

The Commission notes that this power is limited to entry when the premises are open for business, does not allow for forced entry and does not allow for entry to residential premises. These powers in section 57(1)(b) and (2) *Second-hand Dealers and Collectors Act 1984* and section 50(1)(b) and (2) *Pawnbrokers Act 1984* are frequently used, appear to be effective in detecting property crimes and are comparatively limited in their intrusiveness. Furthermore, their effectiveness would be severely restricted if the entry were to be made subject to the obtaining of a search warrant. For these reasons the Commission is of the view that the powers should be retained, with the police being required to record the use of these powers.

The Commission does not wish to create an administrative burden in relation to this frequently used power. Nevertheless, consistent with the recommendation made in relation to all other police powers, a record should be kept of searches. Such record can be made in the police officers' official notebook, except where property is seized, when the police officer should be required to complete a list of property seized as in Recommendation 11.7 (infra). The Commission believes that as well as ensuring some accountability in the exercise of the powers, a helpful information management system will be created by placing onto a computer register available to all police, details of places inspected and any property recovered.

Another power police used to assist in the detection of stolen property is contained in section 56 of the *Auctioneers and Agents Act 1971*. That section empowers police to enter the premises of 'motor dealers' and inspect vehicles at any reasonable time. Section 55 of that Act, while providing no power to enter, provides for police to demand the production of and carry out the inspection of the register which records all relevant transactions.

Submissions from the Auto Theft Squad state that the powers are used frequently and successfully to detect allegedly stolen motor vehicles and associated offences. (In the month of January 1993 a total of twelve stolen vehicles were discovered, four using information obtained by searching the register and eight by inspecting the vehicles themselves).

Police appear to have been granted this power in the 1971 Act yet the reason for conferring such powers on police is not stated in the second reading speech at the introduction of the legislation. It is quite clear that the police are successfully using these powers to detect offences under the *Criminal Code* and the Commission is of the view that the power to enter and inspect vehicles as currently contained in section 56 should be expanded to allow entry and inspection of vehicles at the premises of motor vehicle repairers. While the Commission is of the view that such a power ought to be retained without the need for a warrant, its use should be restricted to when the premises are open for business as is the case under the *Second-hand Dealers and Collectors Act 1984* and *Pawnbrokers Act 1984*.

The last power in this group is directed toward weapons rather than stolen goods and is contained in section 4.6 of the *Weapons Act 1990*.

That section relates to the entry to a shooting gallery, premises of collector, dealer etc. to inspect, examine and test any weapon found there and/or to inspect premises, equipment, records etc. and take same if required. The Commission acknowledges that it is important for police to monitor compliance with the provisions of the *Weapons Act 1990* and that entry to the relevant premises will be required in order to carry this out. Such monitoring involves police entering the premises of dealers etc. to make "spot checks". The Commission has been informed that this is a regular function of the Firearms Section of the Queensland Police Service and is important in ensuring that the availability of weapons is restricted. The effectiveness of this power would be severely restricted if it were to be the subject of a search warrant.

However, the Commission believes that such a power to enter without a warrant should be restricted to business hours rather than being exercisable 'at any time' as is currently the case.

Conclusion

These powers appear to have a dual effect. One is to monitor compliance with the regulatory provisions of the Act. The other is to enable police to detect stolen property and weapons. With respect to the first i.e. the regulatory effect, the Fitzgerald Inquiry proposed that the responsibility for regulating such areas could be transferred to Government Departments who could have their own enforcement staff and call for police assistance where necessary. The *Auctioneers and Agents Act 1971* is already the responsibility of the Justice Department and the *Justices Legislation (Miscellaneous Provisions) Act 1992* transfers responsibility for enforcement of the *Second-hand Dealers and Collectors Act 1984* and the *Pawnbrokers Act 1984* to the Justice Department. While it seems appropriate that the Police Service be relieved of the responsibility for ensuring compliance with the regulatory aspects of these Acts, the Commission is of the view that police

should retain the powers similar to those outlined above to enter and inspect dealers' premises during business hours because of their apparent effectiveness in detecting offences relating to stolen property. Similarly the Commission is of the view that the power to enter dealers' premises etc. under the *Weapons Act 1990* should be preserved.

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

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.

FURTHER POWERS OF ENTRY WITHOUT WARRANT

In respect of any further powers of entry, the Commission does not agree with the extension proposed by the Criminal Code Review Committee which is to allow for emergency entry and search without warrant where a police officer believes on reasonable grounds that anything which may afford evidence of an offence is in a place and it will be concealed or destroyed unless that place is entered and searched immediately. The Commission is of the view that while there may be a case to extend the provision beyond only drug offences, the proposed extension to 'any offence' is too broad. The Commission proposes that the emergency entry and search without warrant power be extended to indictable offences carrying a maximum penalty of seven years imprisonment or more.

10.14 Recommendation - Emergency Power to Enter and Search Without Warrant

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*.

REFERENCES

ALRC. *See* Australian Law Reform Commission.

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Gibbs Committee. *See* Review of Commonwealth Criminal Law.

Law Reform Commission of Canada 1984, *Report on Search and Seizure*, Report 24, Ottawa.

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CHAPTER ELEVEN

ACCOUNTABILITY FOR SEARCHES: INFORMATION-GIVING AND RECORD-KEEPING

INTRODUCTION

The previous chapters in this volume have contained recommendations for a comprehensive scheme of police powers to search persons, vehicles and premises with or without warrant and seize property. These powers are considered necessary for the police to carry out their duties of detecting criminals and preventing crime. They may however cost members of society some of the freedom that they may otherwise have. On the other hand, most crimes pose a significant threat to the rights or liberty of the individual who may be the victim of crime. The scheme that the Commission has proposed for search and seizure necessarily involves giving power to police officers, many of whom may be junior officers, to impinge upon the rights of individuals under specified circumstances. The very nature of these powers dictates that their use involves the exercise of a great deal of discretion. It is imperative therefore that there be some method of monitoring the use of these powers. It is incumbent upon police to establish an ongoing review mechanism that will monitor the use of police coercive powers and the appropriateness of the circumstances in which the powers are invoked.

The focus in this chapter is upon a scheme of accountability. It pulls together a number of recommendations from earlier chapters and supplements them with further record-keeping requirements in order to develop a scheme that aims to enhance the visibility of the police exercise of powers. It is the Commission's view that more effective monitoring and review of police exercise of powers can be achieved by making police work more readily the subject of inspection and supervision.

The accountability requirements proposed fall into two broad categories. The first is the requirement for information to be given to the person who is to be the subject of the exercise of police power. By requiring a police officer to explain the basis for invoking a particular power and to inform the person of his or her rights in respect of that power, a police officer will be encouraged to think clearly about the reasons for the stop or search etc. Police officers will be obliged to turn their minds to the objective grounds upon which the power can be invoked. It is hoped that this will reduce the incidence of unjustifiable or indiscriminate use of the powers.

The second category is the record-keeping requirements proposed once the power has been exercised. The aim of these proposals is to make officers accountable for their actions and open their actions to scrutiny by senior officers and, where appropriate, the public. When police officers know that they must account for their actions it is expected that they will turn their minds more carefully to the grounds upon which they act. The registers etc. proposed in this chapter will also provide a useful supervisory and educative tool in that senior officers can more easily review the exercise of police discretion by junior officers and take action where appropriate to encourage the proper exercise of police discretion.

Since the Commission commenced this review the Queensland Police Service has been reviewing its operational procedures and policies. The Commission is aware that the Service is developing a comprehensive scheme for the receipt and registration of property coming into the possession of police. While this covers a broader area than this report in that it includes property other than that 'seized' by police (such as lost property) the emphasis is upon ensuring the safe-keeping of the property. The Commission's focus, while restricted to 'seized' property, attempts to ensure accountability for the grounds upon which property is seized. The Commission recognises that the scheme proposed in this chapter may overlap in some areas with the proposals of the Queensland Police Service and recommends that consultation occur with the service before these proposals are implemented in order to ensure that an integrated scheme is put in place to achieve both aims.

11.1 Recommendation - Consultation with Queensland Police Service

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.

This chapter addresses the information-giving and record-keeping requirements in relation to searches of the person, vehicles and premises without warrant and then in relation to searches conducted pursuant to a warrant. Were these to be the only circumstances in which the police were required to be accountable, a great deal of their activities would not be subject to the same desired scrutiny. This is because the police often rely on the consent of the person, especially in the area of search and seizure. The final part of this chapter points out the difficulties in excluding consent searches from the scheme proposed and ultimately concludes that these searches should also require that the information-giving and record-keeping requirements be applied.

SEARCHES CONDUCTED PURSUANT TO A WARRANT

Current Practice in Execution of Warrants

In Queensland only one copy of the search warrant is issued by the issuing authority. This copy is taken by the police officer who intends to conduct the search. After identifying himself or herself the contents of the warrant are read to the occupier. The warrant is shown to the occupier but retained at all times by the police officer. During the conduct of the search, usually an officer will record any property seized and upon returning to the police station will endorse the back of the search warrant with details concerning the search. The endorsement of a warrant may be described as a certification on the back of the warrant by the police officer involved in the execution of a warrant that it has been executed and the date, time, place of execution and the name, rank, number and signature of the officer in charge of the execution.

Where the warrant was not executed the endorsement is to the effect that it has expired without having been executed.

The endorsed warrant is taken back to the issuing authority and if property has been seized, the issuing authority will note on the warrant a direction as to what is to happen to the seized property e.g. that it is to be detained by a specified police officer until the completion of the investigation.

Although this is the practice, there is no statutory provision which provides for the registration of or recording the execution of search warrants.

The former Police Complaints Tribunal expressed the view that there should be (Queensland Police Complaints Tribunal 1989, p. 20). In addressing this issue the Tribunal said:

There is an historical reason for the present unsatisfactory state of affairs. In Queensland, and in many other parts of the common law World, Justices of the Peace sat in petty sessions whenever two or more Justices attended for the transaction of business. This system of Courts of Petty Sessions existed in Queensland until 1964. Each Court of Petty Sessions was not a court of record (in that by law it was not necessary to make formal records of its proceedings) and its jurisdictions and powers related to matters only of lesser importance and local significance.

In matters preliminary to Petty Sessions hearings, a Justice acting alone was empowered, at his discretion, to issue any summons or warrant (including a search warrant). In this way it came to be the established practice prior to 1964 in Queensland that no formal record was made or maintained of the issue of any warrant (including a search warrant) which was issued, or of what happened to it after its issue. ...

This Tribunal has had brought before it police files which contain warrants which have been executed, warrants which were never executed because it was perceived that there was no need to execute them after they had been issued, and executed search warrants not all of which were endorsed with "returns". There is no record available either to the public or the Court in relation to any of these warrants. There should be.

The Commission is of the view that the record of execution of the search warrant and what has been seized should be available to the the occupier and to the court and that there should be a statutory requirement to this effect.

The following will outline the Commission's view as to what information is to be provided to the occupier at each stage of the process and in what form.

Copy of the Search Warrant

As stated in Chapter Nine the Commission believes that it is important that an occupier whose premises are to be searched pursuant to a warrant be informed of his or her rights and of the extent of the search authorised by the warrant. Accordingly the Commission recommended that the occupier be provided with a copy of the search warrant which is drafted in clear terms and includes the rights of the occupier (see Recommendation 9.6), subject to Recommendation 8.10 concerning the covert execution of a warrant.

For practical purposes this would involve the search warrant being issued in duplicate by the issuing authority and the copy then can be given to the occupier upon entry to the premises after the officer has identified himself or herself and prior to reading out the terms of the warrant.

The copy should have on its back a summary of the rights of the occupier and the authority conferred by the warrant.

11.2 Recommendation - Copy of the Search Warrant

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.

Recording the Result of the Search

There is currently no general requirement for police officers who search premises and seize property to provide the occupier at the time of taking the property with a list of the property which is taken. An exception to this is provided in the *Weapons Act 1990* section 4.9(2) which requires a police officer seizing weapons etc. pursuant to the Act "wherever practicable, to deliver or cause to be delivered within a reasonable time to:

- i) the owner of the thing;
- ii) if the owner of the thing is unknown, the person from whose possession the thing was removed, seized or retained;

a written receipt . . .".

The receipt is to contain details of the police officer who seized the thing, the address of the place where the thing is held and a brief description of the thing.

The Criminal Code Review Committee in the draft *Criminal Code* proposed a requirement that if anything is seized and retained by a police officer pursuant to the draft sections allowing for search, the police officer shall issue to the person who had been in possession of the thing seized a receipt containing a description of the thing (draft section 260(4)).

The submissions received by the Commission including that of the Queensland Police Union of Employees revealed wide support for the requirement to issue receipts for property seized. Some individual officers however, argued that the additional paperwork would be unworkable.

The Philips Commission and the LRCC both supported the need for receipts to be issued however they differ in respect of the time at which a person should be provided with a receipt. The Philips Commission commented upon the issue of receipts saying:

[W]e recommend that the property taken in a search should be fully recorded and a receipt given, as, we believe, is general practice; and that the warrant should be endorsed with the result and returned to the court when executed. (Philips Commission 1981, p. 36)

Subsection 16(9) and section 21 of the *PACE Act 1984* incorporate the recommendations of the Philips Commission.

Subsection 16(9) provides that a police officer executing a search warrant must endorse on the warrant whether the articles sought were found and whether any articles other than those sought were seized. Subsection 16(12) provides that an occupier may inspect the warrant during a period of 12 months following the return of the executed warrant to the court registry.

By operation of section 21 of the *PACE Act 1984*, at the request of the occupier of the premises the subject of the search or of a person who shows himself or herself as having custody and control of the items immediately before seizure, a record of what is seized in the search is required to be prepared and provided within a reasonable time of receipt of the request. This requirement is reinforced by Code B clause 6.8 of the Codes of Practice which provides that where property is retained, "the person who had custody or control of it immediately prior to its seizure must on request be provided with a list or description of the property within a reasonable time".

At the time of the LRCC undertaking its review of the law on search and seizure, there was no statutory obligation on a police officer to provide an inventory of the items seized to the occupier of the premises searched. It believed this situation should change and the exercise of police powers be as visible as possible. Consequently, the LRCC recommended a draft statutory provision which obliges a police officer making a search pursuant to a warrant to provide to the occupier of the premises searched an inventory of the goods seized in the course of the search. However, the LRCC considered that the obligation of the officer to provide such information should arise only where the person requests such an inventory, as it reasoned that in some cases the person may not want to receive an inventory (for example, where the objects seized were illegal to possess). The right to obtain an inventory was to be brought to the person's attention by way of notice incorporated into the prescribed form of warrant proposed by the LRCC.

Where the police became aware that the owner of the items seized is different from the occupier of the premises, the LRCC considered that the provision of an inventory to the owner should be mandatory as the owner would not be in receipt of the notice of his or her rights to request an inventory.

The Commission is of the view that the LRCC recommendation and the Criminal Code Review Committee's draft provision are preferable to the *PACE Act 1984* provision and *Weapons Act 1990* in that the former provide for an inventory to be given to the occupier at the time of the search being conducted, rather than at some later time. As the LRCC reasoned, the objective of informing the occupant of the exact items being seized from him or her enhances the visibility of the search and seizure process (LRCC 1983, p. 224). However, the Commission recognises that in some cases the volume of material seized or the circumstances surrounding the seizure may make the compilation of a list at the scene impracticable. In such cases the Commission is of the view that the occupier should be notified that property has been seized and that a list of the property will be provided to him or her as soon as is reasonably practicable (subject to Recommendation 8.10).

The Commission however, does not agree that the inventory should be provided only upon request. Interviews conducted with persons whose premises had been searched pursuant to a warrant and submissions received by the Commission revealed that many of those persons suffered varying degrees of shock or surprise caused by the search. Many stated that they were not thinking clearly at the time because of this and people in this position rarely have the benefit of legal advice at the time. For these reasons the Commission is of the view that the issuing of a receipt should not be dependent upon the request of a person in that situation but should be mandatory.

As noted earlier in relation to Recommendation 11.1 the Queensland Police Service is developing a comprehensive scheme for the receipt and registration of property coming into the possession of police.

11.3 Recommendation - Recording the Result of the Search

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.

Report to Issuing Authority

As outlined earlier, the current practice is for the officer in charge of the execution of the warrant to report to the issuing authority upon the result of the execution or attempted execution or upon the lapsing of the warrant. The Commission believes

that this also should be a statutory requirement and that it should require a report to be made within ten days of the execution or expiry of the warrant.

Upon such report being made, the issuing authority is to make an order as to the custody of any seized property.

11.4 Recommendation - Report to Issuing Authority

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.

Computerised Search Register

The Commission has borne in mind the concerns expressed by many operational police that the paperwork currently associated with policing is already too great and that it should not be increased. This scheme of computerised registers aims to consolidate the requirements and minimise duplication of effort. The Commission is concerned that the process of recording and the establishment of these registers be as simplified as possible. One of the major concerns of police who are operating under the current regime is the time taken by police officers to complete the various records and registers following a search.

One point that is made by many officers is that there is unnecessary duplication in the record-keeping and in the current environment where there is very little computerisation of these requirements one can understand how police officers become concerned about the paperwork that is imposed upon them.

The requirements imposed by the Commission's recommendations act not only to simplify procedures but also as safeguards upon the police exercise of power if there is strict monitoring by senior officers of the officers' compliance with these requirements.

During research in relation to this report, Commission officers had occasion to inspect a Search Register provided for use under the *Drugs Misuse Act 1986*. This inspection revealed varying quality of the entries in the register and an apparent lack of understanding by some officers as to the purpose of the register. For example, where officers were required to enter the reason for the search, entries included "suspicion", "reasonable suspicion" and "suspect persons". A number of others simply wrote "physical indicia". Rather than writing that the suspicion existed, the officers should have written the basis for the suspicion. This would

enable senior officers to monitor the grounds upon which officers exercise their powers and the appropriateness of the exercise of their discretion. It would also provide the suspect and his or her legal representative with an opportunity to assess the lawfulness or otherwise of the search.

In light of the benefits to be gained from an accurately completed register the Commission is of the view that the requirement to keep a register should not be restricted to particular offences.

Rather than there being separate registers established under separate pieces of legislation, there should be a requirement that all searches conducted by police be entered into a centrally located Search Register, which is computer controlled.

In this way there will be a readily accessible centralised database that will be of use to officers in their investigations. This database can be used to check previous searches made and as recommended in Chapter Eight any previous applications for warrants, so as to enable police to present the most comprehensive case to any authorised justice when applying for warrants.

The computerised register will also enable the police to quickly provide to persons who have or whose property has been searched and/or their legal representatives, details of the search and of the order made with respect to any property seized.

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. Provision should be made to allow the person who has been searched or his or her legal representative access to information on the register concerning their matter, if required. The aim is to provide a level of confidentiality and protection from unauthorised access.

Where the details of the search are to be kept confidential from other police officers, the details can be secured on the register so that access is only available to authorised officers.

Further, a request should be made formally to other agencies or bodies who are likely to execute search warrants in Queensland such as the National Crime Authority and the Australian Federal Police, to participate in this system by entering the details of search warrants executed in Queensland into the Queensland Police Service Search Register.

11.5 Recommendation - Computerised Search Register

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.

SEARCHES CONDUCTED WITHOUT A WARRANT

The Commission is of the view that a person who is about to be searched or who is in control of a vehicle or premises about to be searched without a warrant, should be informed of details concerning the search, regardless of whether the search is conducted with or without the consent of the person and regardless of whether or not anything is found. It is especially important that information be provided to the person and records of the search be kept because these searches are not subject to prior judicial scrutiny.

A set procedure to be followed in relation to this should be established and made a part of the legislation. The procedure proposed by the Commission is outlined below.

The police officer who holds the relevant suspicion should detain the suspect by announcing to him or her that he or she intends 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 the 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 that the person or his or her legal representative will be entitled to access to that information.

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.

SPECIAL PROVISIONS RE ENTRY OF DEALERS' PREMISES ETC.

As stated in Chapter Ten, the Commission is of the view that in relation to a special category of legislation, police should retain the right to enter premises without warrant subject to particular record-keeping requirements which will allow their exercise to be monitored. The category comprises those Acts which create a statutory duty to maintain a register of the dealers' transactions in order to enable police to detect possession of misappropriated property or unlicensed or misappropriated weapons. These requirements are included in the following Acts:

- *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
- *Weapons Act 1990* section 4.6

The Commission recommended that police retain the power to enter these premises and conduct 'spot checks' to monitor compliance with the Act although it ought to be limited to during business hours (see Recommendation 10.13). Submissions to the Commission report that these powers are used on an almost daily basis by the stolen property investigation unit (*Pawnbrokers Act 1984*, *Second-hand Dealers and Collectors Act 1984*), the Auto Theft Squad (*Auctioneers and Agents Act 1971*) and are regularly used by the members of the Firearms Section of the Queensland Police Service (*Weapons Act 1990*).

Further the use of these powers has resulted in the detection of a large amount of stolen property⁸⁶, numerous stolen vehicles and parts and breaches of the *Weapons Act 1990*. The Commission is of the view that because of the frequency of their use they should be subject to the following record keeping requirements:

1. where no property is seized the following details are to be entered into the police officer's official notebook or in some other appropriate manner:

date and time of entry;

name and address of premises entered; and
2. where property is seized, a list of property is to be completed and a copy given to the occupier. 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.

11.7 Recommendation - Special Provisions re Entry of Dealers' Premises

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.

86 Property valued at approximately \$800,000 has been recovered in the 12 months since the Stolen Property Investigation Unit was established.

CONSENT SEARCHES

In the preceding sections of this chapter and earlier chapters, the Commission has made a number of recommendations which, if accepted, will establish a strict regime to govern the conduct of police in respect of search and seizure. Although there may be some differences in respect of searches conducted pursuant to a warrant and those conducted without the authority of a warrant in emergency circumstances, generally the aim has been to ensure accountability by police officers for the exercise of their powers. These accountability proposals include the requirement that where a search is to be conducted without the authority of a warrant, a police officer must have the "reasonable suspicion" required by the relevant Act. Where an officer has neither the requisite suspicion nor a warrant, there is no legal authority for him or her to search a person, vehicle or premises against the will of the person. However, if the police officer obtains the person's 'consent' the officer may conduct a search.⁸⁷

Furthermore, even where a police officer has lawful authority to conduct a search with or without a warrant, the 'consent' of the suspect may be sought and, if granted, may enable a police officer to avoid some of the procedural requirements currently contained in the legislation. For example, if a suspect consents to a search for drugs, there is no requirement to enter the details of the search in the register provided under the *Drugs Misuse Act 1986*.

Any regime which seeks to impose safeguards and accountability mechanisms upon police conduct of searches and seizure of property cannot be effective unless the provisions imposed apply also in respect of "consent" searches. Perhaps more importantly the emphasis should be upon ensuring that suspects do give informed consent to the search that is to be conducted.

The historical common law approach to the giving of consent by a suspect was that it converted the procedure into one of a private transaction between individuals, those individuals being the suspect and the police officer. In so doing the criminal law requirements as to the sufficiency of the officer's grounds for carrying out the search and for the adherence to the procedural requirements may be rendered irrelevant. Furthermore, the use of consent as the basis for authorising a search and seizure is less likely to result in a review of the search.

The trend more recently has been to view consent searches as an intrinsic part of the scheme of police procedures rather than as a privately sanctioned transaction which is outside the concern of public law and policy makers.

87 See Chapter Three for a discussion of the concept of 'consent'.

One difficulty is that no-one wants to discourage police from seeking co-operation from members of the public. On one view it is seen as preferable for police to elicit the co-operation of a suspect rather than for police to rely on coercive powers. However, as was mentioned previously, reliance on such consent might be encouraged if one could be sure that the consent of the suspect was an informed and voluntary consent. If not, police may be tempted to rely on 'consent' and thereby avoid many of the procedural safeguards that have been thought by the legislature to be necessary in the exercise of police powers.

Other Jurisdictions

The LRCC summarised the difficulty in dealing with consent searches in the following terms:

If an individual is prepared to give consent to another person to enter his premises or touch his person, why should the law make the second individual subject to special constraints by virtue simply of his identity as a peace officer? The answer is that it is misleading to view a peace officer's requests for permission to enter and search premises, frisk persons and take away items consequently found, on the same footing as hypothetical requests of a similar nature from private individuals. Peace officers do not only exercise special powers; they hold a special and imposing office. Accordingly a factor of potential intimidation is presented when a private individual is confronted with a police request. As "consent obtained by show of authority is no consent" the danger arises that the compliance obtained from the individual is not truly consensual. (LRCC 1983, pp. 160-161)

The LRCC also referred to the Philips Commission's report, which recommended that the fact of consent be recorded in the officer's notebook and signed by the person concerned. Ultimately the LRCC recommended that a scheme similar to that recommended in the ALRC report be adopted in Canada.

The ALRC looked at the practice of consent searches as it was at the time of their review of criminal investigation. They found from the material placed before them that in practice, very many of the searches conducted by Federal Police officers were not made in reliance upon a warrant but were consent searches. The ALRC was told (without having specific figures supplied) that 'most' of the searches conducted in the Northern Territory and the Australian Capital Territory were conducted on the basis of consent. Specific figures supplied by the former Narcotics Bureau of the Customs Department supported this view revealing that in the six-month period from January to June 1975, 62 per cent of the searches they conducted were conducted by consent (ALRC 1975, p. 91).

The ALRC ultimately recommended that in searches and seizures made at the invitation, or with the consent, of the person occupying the premises or in charge of the vehicle in question, a signed acknowledgement would be prima facie evidence that such an invitation was made or consent given, while the absence of such acknowledgement would be prima facie evidence that it was not (ALRC 1975, p. 92).

The ALRC concluded that consent searches should be permitted, provided that such consent is entirely voluntarily and is made after being informed of the right to refuse consent. They said:

Although we do not wish to multiply unduly the number of pieces of paper that police officers must carry about with them, we think that the rights in question here are sufficiently important of protection to require that any consent on which the police rely in conducting a search should be acknowledged in writing. The absence of any such written acknowledgement would be *prima facie* evidence that no such notification was made or consent given.

Other Considerations

The Lucas Inquiry commented in 1977 that the whole system of search warrants had become so rundown that many police often disregarded it entirely and later claimed in court that the search was by consent (Lucas Inquiry 1977, p. 113).

The Lucas Inquiry 1977 (p. 119), recommended that when the sole authority for the search of a person or property is the consent of the person, the searcher must ask that consent be given in writing before the search is commenced.

From submissions received and interviews conducted with a number of police officers throughout Queensland it is clear to the Commission that there is reliance by police officers upon the 'consent' of the suspect in order to conduct searches which would be otherwise unauthorised. There is also evidence that some police officers authorised to search persons etc. without a warrant under the *Drugs Misuse Act 1986* who obtain the consent of the suspect, are of the view that they no longer have to comply with the register requirements that are established under that *Act*.

Currently, even in cases where police may be in possession of a warrant, some officers will request the consent of the occupier of premises prior to conducting a search. It has been alleged to the Commission officers that on one occasion the consent of the occupier was sought on the basis that if consent was not given "I'll have to execute the warrant". If so, it may well be that an occupier feels that he or she has no option but to consent to the search, knowing that the police officer has a warrant that he or she may execute if necessary. There have been occasions where, upon such consent being given, the warrant has not subsequently been executed and therefore no record is made of the search conducted on the premises.

Similarly with emergency searches which are conducted under the provisions of the *Drugs Misuse Act 1986*; normally such searches would require an entry to be made in the Search Register, however, many police are of the view that if such a search is conducted with the 'consent' of the suspect then the 'power' has not been exercised and there is accordingly no requirement for them to enter details of the search in the register.

In relation to the use of consent to allow what would otherwise be an unauthorised search, the Commission recognises this as a legitimate option that allows for people to co-operate with police. However, the Commission is mindful of the need to ensure that it is an informed consent. Accordingly, the Commission recommends that 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.

11.8 Recommendation - Procedures for Consent Searches

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.

REFERENCES

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CHAPTER TWELVE

CONSOLIDATION OF SEARCH AND SEIZURE

INTRODUCTION

This chapter will consider the question of the consolidation of police powers relating to search and seizure. The issue of the consolidation of all police powers will be considered in the final report on police powers.

It is appropriate to consider the consolidation of search and seizure powers separately at this point as there has been a persistent call from many bodies over a period of time for consolidation.

The Lucas Inquiry in 1977 expressed doubt as to whether, putting some police and lawyers to one side, any one person in the community would have a correct understanding of the law's requirements and limitations with respect to police powers of search. In their view this was unsatisfactory, giving endless opportunities for argument and imposition. The Inquiry recommended that the law in relation to search be gathered together and placed within a single statute in order that the powers receive public scrutiny, for obvious reasons of convenience and in order to carry into effect the new matters they were shortly to recommend (Lucas Inquiry 1977, p. 115).

The Police Service has expressed a strong view that there should be a purely statutory consolidated scheme of law in this area. Other submissions have also argued in favour of a codification and rationalisation of the powers of search and seizure including the imposition of generally applicable safeguards.

In its submission to the Commission the Bar Association also supported the concept of consolidation of search provisions and the application of general procedures to all searches. The Queensland Law Society argued for consolidation with different requirements applying for warrants based on the seriousness of the alleged offences being investigated.

The Queensland Council for Civil Liberties also stated:

A Search Warrants Act should be enacted, laying down specifically the procedure to be employed in obtaining search warrants and the lessons learned from the Blackburn Inquiry and the inquiry into the Gundy shooting in NSW forming its basis. This Act should also contain provisions for searching without warrant and there should be specific provision for police to have to provide specific (not pro forma) grounds for such a search. Police should be required to lodge a copy of such reasons within the Police Department and these should be periodically audited to ensure that searches without warrant were not abused.

A review of the many powers provides further cause for concern in relation to the existing state of the legislation in this area. The preceding five chapters of this volume and the associated tables reveal that the law relating to entry, search and seizure in Queensland is contained in a disparate range of statutes and has little consistency or coherence. There has been a consistent trend in the growth of search powers that provide the State with more and more powers to intrude into the privacy of the individual. As the tables reveal, this growth has not been restricted to the powers of police but has extended and in fact been exceeded by the growth in the powers of other public officials.

The growth in the search and seizure powers also represents a move away from reactive policing to preventive policing. Historically the police powers of entry, search and seizure were limited to achieving the purpose of recovering stolen goods and arresting the offender. The powers were expanded to include circumstances where it was suspected that items were intended to be used for the commission of an offence, representing a move into preventive policing. A broader development is that which allows entry and search where a specific offence is not contemplated; for example, in the case where entry and search is authorised in order to see whether an Act is being complied with.

The Commission's review of the powers of search and seizure has revealed that the shift in justification for the expansion of such powers has not been accompanied by a general assessment of the overall impact upon the balance between the individual's rights and police powers. This is not to say that the question of striking a balance between those competing interests was not given due consideration at the time of enactment. However, consideration does not appear to have been given to the effect on the 'big picture' and this review has attempted to recognise that impact and review the individual powers in context.

The present powers of search and seizure are complicated by the fact that some exist at common law and others under statute. To a great extent the uncertainty of the present state of the law stems from the tendency to allow individual crime-related problems to dictate the adoption of individual procedures. The Commission has taken the view that the procedural rules and safeguards must cut across distinctions based on offences and focus upon general principles applicable to all offences.

The major focus is to try and keep the number and ambit of search and seizure powers controllable.

The goal of simplification must be balanced against the need to take account of the variables such as the object of the search, the subject of the search (e.g. person, premises, vehicle), the urgency of the situation, the attitude of the individual affected, the seriousness of the offence under investigation, other particular circumstances of the case, the likely extent to which the particular provisions will be relied upon and the potential for abuse.

A number of further matters should be borne in mind. Firstly, it is again stressed that these recommendations and indeed the recommendations of this volume, are made largely in the complete absence of official police records which document the nature, frequency and circumstances of use of existing police powers. The problem of altering the law in the absence of such records has been adverted to earlier.

Secondly, the recommendations generally pertain to those powers conferred on police officers directly. The anomalies created by reforming and consolidating the law as it related to police powers, leaving unaffected the powers of other public officials have been raised earlier, in Chapter Six of Volume I.

In respect of the application of the proposed procedural codes etc., there are a number of different options:

- They could apply only to police officers exercising a power conferred directly upon police;
- They could apply to the above category and to police officers exercising a power conferred indirectly on police i.e. where a police officer acts in some other official capacity; or
- They could apply both to police officers exercising directly and indirectly conferred powers and to non-police public officers at any time they purport to exercise the powers.

Although it can be persuasively argued that the same guidelines and safeguards should apply to both police and other public officers where a similar power is being exercised, it is beyond the scope of this report to formulate specific recommendations in respect of public officers other than police officers. However, clear anomalies arise if a choice is made between options 1 and 2, which have been explored in Chapter Six, Volume I. The Commission has taken the view that the procedural codes should apply to police officers acting in either capacity. Further information is required on the exercise of public officers' powers. However, the tentative view of the Commission is that they should be subject to the same procedural requirements.

The detailed consideration of the prospect of consolidating or at least rationalising the existing powers of entry, search and seizure will be addressed under the following headings:

- Search Warrants;
- Entry and Search of Premises Without Warrant;
- Monitoring Warrants;

- Stop and Search of Persons;
- Stop and Search of Vehicles; and
- Roadblocks.

SEARCH WARRANTS

In the opinion of the Commission, it is neither feasible nor desirable to attempt to consolidate the whole of the law relating to entry and search under warrant into a single Act which would allow a repeal of all other legislative provisions conferring or regulating a power to enter and search premises under warrant.

The power to enter and search premises (with or without warrant) is conferred under a variety of enactments, for purposes as diverse as searching for a corpse (under s. 19 of the *Coroners Act 1958*) to intervening in a domestic violence incident (under s. 32 of the *Domestic Violence (Family Protection) Act 1989*), as well as for the more conventional purposes as searching for illegal drugs (s. 18 of the *Drugs Misuse Act 1986*) and illegal weapons (s. 4.8 of the *Weapons Act 1990*).

This diversity in the purpose of the power is closely related to the differences in the circumstances which are grounds for the exercise of the power. For example, in order to obtain a warrant to search pawnbrokers' premises under section 51 of the *Pawnbrokers Act 1984*, the officer must "believe" that there are goods on the premises which are stolen or unlawfully obtained, whereas under section 18 of the *Drugs Misuse Act 1986*, the officer need only "reasonably suspect" the presence of evidence of an offence or property liable to forfeiture under the Act.

Accordingly, the Commission recommends only a partial scheme of consolidation in respect of the power to enter and search under warrant, where such power is conferred directly on police officers. It would not be possible to draft a consolidated provision which covers all the purposes for and circumstances in which such a power may be necessary. Under such a scheme, most of the provisions which at present confer the power would remain in the various enactments.

During the review of search and seizure in other states, the Commission's attention was drawn to the *Search Warrants Act 1985* of New South Wales. The Commission is of the view that it provides a useful model of partial consolidation and it was proposed as such by some of the submissions to the Commission. Accordingly, it will be described in some detail in this chapter and will then provide some focus to the ensuing discussion.

The *Search Warrants Act 1985* (NSW) was introduced in 1985. The scheme of the Act is as follows:

- It creates a general search warrant provision enabling an application to be made for a warrant to search for a thing connected with an indictable, drugs or firearms offence or for stolen goods (s. 5). To this extent it partially consolidates the pre-existing provisions for search warrants.
- It defines "search warrant" to include the warrants referred to above as well as search warrants provided for in numerous other Acts such as the *Gaming and Betting Act 1912*, *Egg Industry Act 1983* etc.
- It creates procedural requirements in relation to the application for, issue and execution of search warrants which are to apply to all search warrants.

The then Attorney-General in the second reading speech on the Search Warrants Bill and the Miscellaneous Acts (Search Warrants) Amendment Bill described them thus:

The bills' most outstanding feature is the creation of one single system for the issuing of search warrants. All Acts containing provisions for the issuing of search warrants are either being repealed or amended to comply with the provisions. The only provisions not affected are those contained under the Companies Code and the Securities Industry Code. . . . This one single system rests on the bills' four main proposals, which are that: only magistrates and justices of the peace employed by the local courts administration of my department, will be able to issue warrants; all applications for search warrants must satisfy standardized tests to be successful; all occupiers of premises upon which a search warrant is executed will receive a notice concerning the nature of the search and the powers of the warrant; warrants may be obtained by telephone. (NSW Legislative Assembly 27 Feb. 1985, pp. 3859-3860)

The problems which the New South Wales legislation was designed to address are similar to those identified in Queensland - namely the piecemeal development of the sections and the lack of consistency and coherency.

12.1 Recommendation - Proposed Legislation for Search Warrants

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:

All police officers as defined in section 2.2(2) of the *Police Service Administration Act 1989* are authorised to execute search warrants and conduct searches (Recommendation 9.2).

2. Persons authorised to issue search warrants:

The power to issue a search warrant should be restricted to stipendiary magistrates, justices of the peace (Magistrates Courts) and justices of the peace (qualified) as defined in section 1.04 of the *Justices of the Peace and Commissioners for Declarations Act 1991*, subject to clause 8 concerning telewarrants (Recommendation 8.2).

3. Search warrants in respect of indictable offences, drug offences, weapons offences, stolen goods, detained persons and other specified offences:

There should be a search warrant provision allowing for an application for a warrant to search for:

- 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; or
- 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 for believing has been or is to be committed (Recommendation 8.7).

The effect of this provision is that provisions for applying for search warrants under the *Criminal Code*, the *Drugs Misuse Act 1986*, the *Weapons Act 1990* and the power under *Pawnbroker's Act 1984* and *Second-hand Dealers and Collectors Act 1984*⁸⁸ to apply for a warrant to search for stolen goods will be replaced by this one provision. To this extent it is a partial consolidation of the law. It also allows for a search warrant to be issued to search for a person unlawfully detained.

There should be a provision listing the specific search warrant sections of other Acts to which the procedures outlined in this Act apply, including the remaining search warrant provisions in Table 4. It is proposed that the exercise of the powers contained in section 57(1) *Second-hand Dealers and Collectors Act 1984* and section 50(1)(a) *Pawnbrokers Act 1984*⁸⁹ which currently allow entry without warrant, should be made the subject of search warrants (Recommendation 10.9). These proposed provisions should be included in the schedule. If it is determined that section 43 *Traffic Act 1949* should be the subject of a search warrant, it should be included in the schedule (Recommendation 10.11).

There should also be a provision which sets out the Acts whereby public officers are authorised to apply for search warrants. Many of these also allow police officers to apply for warrants as "inspectors" under the Act. The relevant sections of these Acts should be listed and it should be expressly stated that they will also be subject to the procedures under this Act. Table 5 contains these provisions and each of them should be assessed to determine whether its retention is justified. If so, the section should be listed in the proposed Act.

4. Grounds for the warrant:

The issuing authority must be satisfied that there are reasonable grounds to suspect:

- that the objects of search are to be found on the premises for which the warrant is sought (Recommendation 8.3 *supra*) or will be on the premises within the next 72 hours (Recommendation 8.11 *supra*); and
- that the objects of search are connected with an offence which has been, is being or may be committed (Recommendation 8.3 *supra*);

before issuing the warrant.

88 It should be noted that under the *Justice Legislation (Miscellaneous Provisions) Act 1992* the power to apply for a search warrant conferred directly upon police officers under the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984* are to be conferred upon "authorised police officers". The relevant provisions of the Act have not yet been proclaimed although it is expected that they will be proclaimed by the end of 1993.

89 Under the *Justice Legislation (Miscellaneous Provisions) Act 1992* the power to enter without a warrant conferred directly upon police officers under the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984* are to be conferred upon "authorised officers" (see footnote 88).

5. Authority to be advised of previous applications:

The applicant must advise the issuing authority of any previous applications for a warrant, whether successful or unsuccessful and whether concerning the same circumstances or not, made in the previous 12 months in respect of the subject person or property. Where the circumstances make it impracticable to obtain this information the officer should 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 (Recommendation 8.4).

6. Where initial application for warrant is refused:

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 should be an exception to this where the initial refusal is by an authorised justice (not being a stipendiary magistrate); one further application may be made to a magistrate without the need for additional information to be obtained. 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 (Recommendation 8.5).

7. Particularity of objects of search:

There should be a provision that requires the applicant for a warrant to identify so far as is practicable the objects of search (Recommendation 8.8).

8. Telewarrants etc.:

Provision should be made for warrants to be available from stipendiary magistrates by telephone, radio or facsimile only in urgent circumstances or where remoteness of the location precludes obtaining a warrant in the ordinary manner (Recommendation 8.12).

9. Covert Execution of Search Warrants:

Provision should be made for warrants to be available to covertly enter and search premises in 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 (Recommendation 8.10).

10. Period of validity of warrant:

There should be a provision which states that an ordinary search warrant is only valid for seven days or for such other period as is specified in the warrant (Recommendation 8.13). A warrant obtained by telephone etc. is only to be valid for 48 hours (Recommendation 8.12).

11. What may be seized during the search:

A provision should be included to allow a police officer executing a warrant to seize anything mentioned in the warrant and to seize:

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

where they are discovered in the course of a reasonable search pursuant to the terms of the original warrant (Recommendation 9.7).

12. Search of persons on premises:

Provision should be made to allow a police officer 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 search are being carried on or concealed upon the person (Recommendation 9.8).

13. Copy of the search warrant to be given to the occupier:

Provision should be made to require a police officer executing a warrant to provide a copy of the search warrant to the occupier upon entry to the premises or where the premises are unoccupied, to leave a copy in a conspicuous place (Recommendation 9.6). This is to be done immediately after the officer identifies himself or herself and prior to reading out the terms of the warrant (Recommendation 9.5). However, this requirement is subject to Recommendation 8.10 concerning covert search warrants.

14. Demand for entry and use of force to enter premises:

As a general principle a demand for entry is to be made before force is used to effect entry. No demand for entry need be made prior to using force where:

- to make a demand for entry is likely to endanger the life or safety of any person;
- to make a demand for entry is likely to result in the loss or destruction of material evidence of an indictable offence; or
- the warrant authorises a covert search.

Where the circumstances require that force be used, the police officer shall only use such force as is reasonably necessary. Where entry is made by force the police officer must record the reasons for using such force in his or her official police notebook or in some other appropriate manner and subsequently enter the reasons on the Search Register (Recommendation 9.4).

15. Use of assistants to execute warrant:

The issuing authority may authorise the attendance of a person acting in good faith and in aid of a police officer and, where a class of individuals is named, the assistance is to be limited to those who are necessary for the execution of the warrant. Provision should be made for a police officer to call for additional assistance in exceptional circumstances where the presence of a particular person is necessary but was not foreseen at the time of applying for the warrant (Recommendation 9.3).

16. Time of execution of warrant:

A search warrant is to be executed between 6am and 10pm unless specifically authorised by the issuing authority. The grounds upon which the issuing authority may authorise execution outside those hours include, but are not limited to the following:

- 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;
- there is likely to be less risk to the safety of any person if it is executed at night; or
- an occupier is likely to be on the premises only at night to allow entry without the use of force.

Where the warrant has been issued to search for a person unlawfully detained, it can be executed at any time of the day or night (Recommendation 9.1).

17. Re-entry to premises:

The power to enter premises authorised by a 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 (Recommendation 9.9).

18. Recording the result of the search:

Provision should be made to require the police officer to complete a list of any property seized and give a copy to the occupier (or leave it in a conspicuous place if the premises are unoccupied) prior to leaving the premises. This requirement would of course be subject to Recommendation 8.10, where the search has been conducted covertly. 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.

The police officer is also to make a written record on the back of the search warrant of the result of execution, including:

- 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 (Recommendation 11.3).

19. Report to Issuing Authority:

The police officer in charge of the execution of the search warrant is to report the outcome to the issuing authority within 10 days of execution or expiry of the warrant. (In the case of covert searches, the report must be made no later than 72 hours after execution of the warrant, 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 (Recommendation 11.4).

20. Search Register:

The police officer, as soon as is reasonably practicable after the completion of a search, is to enter the details of the search, including the result of the search onto a secure computerised Search Register. Any order made by the issuing authority with respect to the custody of seized property, should also be entered on the register. The only persons to have access to information on the Search Register will be police officers and the person the subject of the search or his or her legal representative subject to Recommendation 8.10. Details of all applications for search warrants should also be entered into the Search Register (Recommendation 11.5).

ENTRY AND SEARCH OF PREMISES WITHOUT WARRANT

The New South Wales *Search Warrants Act 1985* does not attempt to consolidate the law concerning entry and search without warrant. Its primary focus is upon the issuing of search warrants. The Commission is considering the extension of the framework to the law of entry and search without warrant so as to ensure a standardised approach to the exercise of these powers. The Queensland Council for Civil Liberties suggested the inclusion of searches without warrant in an Act similar to the New South Wales model.

The enactments which confer a power to enter and search premises without warrant are not as numerous as those which confer a power to enter and search under warrant. Nor should they be; the absence of a warrant requirement constitutes an absence of significant safeguards on the rights and liberties of the individual. There are however 13 such enactments authorising police to enter and search without a warrant in their primary capacity and a number of others which allow police to aid other public officers or exercise the powers of other public officers to enter and search premises without a warrant. As with the search warrant provisions, there is significant diversity in the purposes of entry and search without warrants as outlined at in Chapter Ten. The matter is further complicated by the existence of some common law powers of entry without warrant such as the power to enter premises without warrant in order to effect an arrest.

Having regard to this, the Commission is of the view that it is not feasible to incorporate the variety of circumstances under which police can enter and search without warrant into one statutory provision. However the Commission believes that a partial consolidation could be achieved in a similar manner to that proposed with respect to searches with warrant. It also is of the view that the common law powers should be given statutory recognition in order to clarify the law.

The scheme proposed has the following features:

- it creates a general search without warrant provision that gives statutory recognition to the common law entry without warrant provisions;
- it provides for certain other emergency circumstances where entry without warrant may be permitted;
- it lists the other specific statutory provisions authorising entry without warrant and to which the proposed procedural requirements are to apply; and
- it creates a set of standardised procedural requirements that are to apply in all cases of entry and search without warrant, regardless of the source of the power.

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

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:

Provision should be made to allow police to enter and search premises without warrant in the following circumstances:

- to arrest a person where the police officer has reasonable grounds to suspect that the person is on the premises (Recommendation 10.1);
- where a police officer has reasonable grounds to suspect that entry is necessary in order to prevent injury to a person or to prevent serious damage to property (Recommendation 10.1);
- where a police officer has reasonable grounds to suspect that anything that may afford evidence of the commission of a drug offence⁹⁰ is, or is in possession of a person, in, on or about any place or land and that it will be concealed or destroyed unless that place or land is entered and searched immediately (Recommendation 10.2);
- where a police officer has reasonable grounds to suspect that a person is in possession of and is threatening to use any weapon such that death or injury to any person is likely to be caused unless the premises are entered immediately (Recommendation 10.3); and
- where a police officer has reasonable grounds to suspect that material evidence of an offence carrying a maximum period of seven years imprisonment or more is, or is in possession of a person, in, on or about any place or land and that it will be concealed or destroyed unless the premises are entered immediately without the order of the court (Recommendation 10.14).

The effect of this provision is that the current provisions to enter without warrant that are contained in section 18(12) *Drugs Misuse Act 1986* and section 4.5 *Weapons Act 1990* will be combined with the common law powers in a single provision. To this extent it is a partial consolidation of the law. It also confers on police an emergency search without warrant power in relation to serious indictable offences.

There should also be a schedule listing the specific entry without warrant provisions of other Acts to which the procedures outlined in this Act are to apply. In relation to the powers contained in Table 4 which are conferred

90 That is an offence under Part II of the *Drugs Misuse Act 1986*.

directly on police the Commission recommends that the following provisions should be included in the schedule, in accordance with the Recommendations of Chapter Ten:

- *Crimes (Confiscation of Profits) Act 1989*, section 32 (Recommendation 10.4);
- *Domestic Violence (Family Protection) Act 1989*, section 32 (Recommendation 10.5);
- *State Counter-Disaster Organization Act 1975*, section 25 (Recommendation 10.6);
- *Public Safety Preservation Act 1986*, section 8 (Recommendation 10.7);
- *Casino Control Act 1982*, section 113 (Recommendation 10.8); and
- *Noise Abatement Act 1978*, section 33 (Recommendation 10.10).

The provisions of Table 5 confer a wide range of powers to enter without warrant upon public officers. These powers may also be exercised by police officers in a secondary capacity. As recommended in Chapter Ten they should be the subject of a more in depth review in order to determine whether they should be retained. Where they are recommended for retention, the provisions should also be included in the schedule to the proposed Act.

22. Information to be given concerning the search:

The police officer should upon entering the premises identify himself or herself (including proof that he or she is a police officer) and before conducting the search, the officer should inform the occupier of the reason for the search (including the Act under which the search is authorised).

On completion of the search the officer should inform the occupier that details of the search will be entered into the Search Register and information concerning the search will be provided to the person or his or her legal representative upon request at the police station (Recommendation 11.6).

23. Result of Search:

A police officer who enters and searches premises without a warrant must record the following information in his or her official notebook or in some other appropriate manner as soon as practicable after the search:

- whether any property was seized and, if so, a description of that property;
- whether any force was used and, if so, the reason for using force;
- whether any injury or damage occurred or allegedly occurred and, if so, the details of such injury or damage;
- the date, time and place of the search; and
- the name, rank and station of the officer in charge of the search (Recommendation 11.6).

Where property is seized the police officer should provide the occupier with a list of property seized or if the premises are unoccupied, leave it in a conspicuous place. Where the volume of material seized or the circumstances surrounding the seizure make it impracticable to complete the list at the scene this is to be noted and a list is to be provided as soon as is reasonably practicable.

24. Search Register:

The following details of the search are to be entered onto the computerised Search Register as soon as is reasonably practicable:

- the reason for the search (including the Act under which it is authorised);
- a description of the premises searched;
- whether any property was seized and, if so, a description of that property;
- whether any force was used and, if so, the reason for using force;
- whether any injury or damage occurred or allegedly occurred and, if so, the details of such injury or damage;
- the date, time and place of the search; and
- the name, rank and station of the officer in charge of the search (Recommendation 11.6).

25. Special provisions re entry of dealers' premises during business hours without a warrant:

Provision should be made to require police officers who enter dealers' premises without a warrant under any of the following provisions as amended in accordance with Recommendation 10.13 namely:

- *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;
- *Weapons Act 1990*, section 4.6;

to record the entry in the following manner:

- where property is seized a list of property is to be completed and a copy given to the occupier. 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. The information should be entered onto the computerised Search Register by the police officer as soon after the seizure as is reasonably practicable; or
- where no property is seized a record is to be made in the officer's official notebook or in some other appropriate manner of the name and address of the premises searched and the date and time of entry (Recommendation 11.7).

26. Application of other provisions:

The provisions of the clauses dealing with what may be seized (clause 11), the search of persons on premises (clause 12), the demand for entry and use of reasonable force (clause 14), the use of assistants (clause 15) and the re-entry to premises (clause 17) should apply to a lawful entry and search conducted without warrant.

MONITORING WARRANTS

Monitoring warrants are a relatively recent innovation in Queensland legislation. They differ from usual search warrants in that they do not require the applicant to nominate particular objects of search and the reason for the search does not have to relate to a particular offence that the applicant suspects to have been committed. Rather they are available where the magistrate is satisfied that it is 'reasonably necessary' that the applicant have access to a nominated place to find out if the

Act is being complied with. The *Classification of Films Act 1991* and *Classification of Publications Act 1991* allow for such warrants to have effect for up to six months and the *Nature Conservation Act 1992*⁹¹ allows for them to have effect for up to 14 days. A traditional warrant expires after one entry whereas a monitoring warrant can be used as often as is considered necessary by the officer during the period of its validity.

The Commission recognises that these warrants do not fulfil the particularity requirements recommended in Chapter Eight and does not advocate their use in circumstances which are currently governed by the traditional form of search warrant. However, the Commission is of the view that they are preferable to the current provisions in many Acts which authorise entry and search without warrant in order to monitor compliance with an Act.

12.3 Recommendation - Proposed Legislation for Monitoring Warrants

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

27. Monitoring warrants:

The power to enter and search without warrant contained in section 62 of the *Art Unions and Amusements Act*⁹² should be replaced by a provision that allows for the issuing of monitoring warrants similar to those contained in the *Nature Conservation Act 1992* (Recommendation 10.12).

There should be a general provision setting out the nature of monitoring warrants and the manner in which they are applied for and issued. There then should be a list of the statutory provisions which contain the circumstances in which a monitoring warrant should be required. Currently that list would include the police officer's powers in the above two Acts and the current provisions in the *Nature Conservation Act 1992*, *Classification of Publications Act 1991* and *Classification of Films Act 1991*.

The Commission's review has revealed that there are over 30 other Acts allowing public officers to enter premises without a warrant in certain circumstances (see Table 5) many of which may allow police officers to exercise the powers contained therein. The Commission believes that these should be assessed in order to

91 Although the legislation has been passed, the particular provision allowing for monitoring warrants have not yet been proclaimed to have effect.

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

determine how many of them can be repealed and how many of them could be included in the list of Acts for which monitoring warrants should be available in lieu of powers to enter without warrant.

STOP AND SEARCH OF PERSONS

Another area to be considered for inclusion in a consolidated 'Search and Seizure Act' is that of stopping and searching persons without a warrant. The powers currently available to police to conduct pre-arrest searches of the person are surprisingly numerous, given the intrusiveness of the power; there are some dozen Acts of the Queensland parliament which confer such a power.

As explored in Chapter Seven of this report, the power has been conferred for the investigation and detection of a variety of offences, of varying degrees of seriousness. The Acts conferring the power can be broadly classified according to their purpose as follows:

- those Acts which confer the power in relation to drug and weapon offences (the *Drugs Misuse Act 1986* and the *Weapons Act 1990*), which are arguably the most serious of the offences for which the power is conferred;
- those Acts which confer the power in relation to detecting offences relating to stolen and otherwise unlawfully obtained goods (the *Pawnbrokers Act 1984*, the *Hawkers Act 1984*, the *Second-hand Dealers and Collectors Act 1984*, the *Vagrants, Gaming and Other Offences Act 1931*);
- those Acts which deal with betting and gaming offences (the *Casino Control Act 1982*, the *Racing and Betting Act 1980*, the *Vagrants, Gaming and Other Offences Act 1931*); or
- those Acts which confer a power to search persons who are found on premises which have been entered under authority of a warrant (s. 51 *Pawnbrokers Act 1984*, s. 58 *Second-hand Dealers and Collectors Act 1984*, s. 4.8 *Weapons Act 1990*). These Acts do not require the police officer who is exercising the power to satisfy any further test, for example, that the officer reasonably suspects that the person found on the premises is concealing on his or her person any object of search.

The remaining miscellany of Acts confers the power for a number of unrelated purposes, such as the detection of "tainted property" under the *Crimes (Confiscation of Profits) Act 1989* or certain poisons under the *Health Act 1937* and the prevention of domestic violence incidents under the *Domestic Violence (Family Protection) Act 1989*.

It is the view of the Commission that the power to search persons prior to arrest cannot suitably be made the subject of a complete consolidation. However the Commission believes that these powers could be the subject of partial consolidation in the same manner as proposed for other search powers in this chapter.

12.4 Recommendation - Proposed Legislation for Stop and Search of Persons

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

28. Circumstances in which police may stop and search a person:

There should be a provision allowing for the detention and search of a person where a police officer has reasonable grounds to suspect that:

- the person is in possession of anything that may afford evidence of an offence under the *Drugs Misuse Act 1986* (Recommendation 7.1);
- the person is in unlawful possession of a weapon under the *Weapons Act 1990* (Recommendation 7.1);
- the person is in possession of anything stolen or reasonably suspected of being stolen or otherwise unlawfully obtained (Recommendation 7.2); or
- 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 (Recommendation 7.5).

The effect of this general provision would be to encompass the provisions currently contained in the *Drugs Misuse Act 1986*, the *Weapons Act 1990*, the *Vagrants, Gaming and Other Offences Act 1931* (as amended according to Recommendations 7.2). It also encompasses the proposal to allow for a search in relation to evidence of a serious indictable offence as referred to in Recommendation 7.5. To this extent it is a partial consolidation.

As Recommendation 7.3 states, the following specific search without warrant provisions should be reviewed in more depth in order to ascertain their usefulness:

- *Casino Control Act 1982*, section 106;
- *Racing and Betting Act 1980*, section 235;

- *Health Act 1937*, section 131;
- *Vagrants, Gaming and Other Offences Act 1931*, section 31; and

If it is determined that they should be retained, they should be specifically listed in a schedule to the proposed Act to ensure that the procedural requirements set out in the proposed Act apply to officers exercising those powers. The schedule should contain section 32(1)(a) of the *Crimes (Confiscation of Profits) Act 1989* which has been recommended for retention (Recommendation 7.4).

29. Power to stop and detain:

There should be a clear statutory provision that authorises a police officer to stop and detain a person for so long as is reasonably necessary to provide the information required by clauses 35 and 36 and to conduct a search of the person (Recommendation 7.6).

30. Search of the person's property:

A provision should allow the police officer to also search the property of a person if there are reasonable grounds to suspect that the object of search is contained therein (Recommendation 7.7).

31. The extent of the search:

The search is to be conducted with a minimum of intrusion to individual privacy governed by what is the object of search and, where conducted in the street or other public place, should not require the removal of more than outer clothing. 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 is to be conducted where the person is detained or elsewhere if it is reasonably requested by the suspect to avoid embarrassment (Recommendation 7.7).

32. Strip searches:

A search requiring the removal of more than outer clothing should be conducted as a matter of last resort. It should be conducted in a private place by an officer of the same sex as the suspect. No member of the opposite sex is to be present at the search or within view of the place where the search is to be conducted except at the express request of the suspect. Due regard is to be paid to the intrusive nature of the search and consideration is to be given as to whether the particular circumstances of the case warrant such an intrusion (Recommendation 7.8).

33. Body Cavity Searches:

As Recommendation 7.10 states a provision is to be included in the Act to allow a police officer of or above the rank of inspector who reasonably suspects that a person has secreted within his or her body cavities a dangerous drug, to request the person to submit to an internal examination by a medical practitioner. Where the person does not consent to such an examination, the police officer should apply to a stipendiary magistrate for an order that the person be examined. This provision for application to a magistrate should be in similar terms to that contained in the current section 259 of the *Criminal Code*.

The effect of this is to incorporate the power contained in section 17 of the *Drugs Misuse Act 1986* with the amendments as recommended in Chapter Seven, (Recommendation 7.10).

34. Use of reasonable force:

A police officer may use reasonable force only 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 (Recommendation 7.9).

35. Information to be given concerning the search:

The police officer should after detaining the person and prior to conducting the search identify himself or herself (including proof that he or she is a police officer) and explain the reason for the search. 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 (Recommendation 11.6).

36. Result of Search:

A police officer who stops and searches a person without a warrant must record the following information in his or her official notebook or in some other appropriate manner as soon as is practicable after the search:

- whether any property was seized and if so a description of that property;
- whether any force was used and if so, the reason for using force;

- a note of any actual or alleged damage to property or injury resulting from the search, if applicable;
- date, time and place of search; and
- the officer's name, rank, station and signature.

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

37. Search Register:

The following details are to be entered onto the computerised Search Register as soon as is reasonably practicable:

- the reason for the search (including the Act under which it is authorised);
- the name of the person or a description of the person searched;
- whether any property was seized and if so a description of that property;
- whether any force was used and if so, the reason for using force;
- a note of any actual or alleged damage to property or injury resulting from the search, if applicable;
- date, time and place of search; and
- the name, rank and station of the officer in charge of the search (Recommendation 11.6).

STOP AND SEARCH OF VEHICLES

The final area to be considered for inclusion in the proposed Act is the law concerning the stop and search of vehicles. There are some 14 Acts in Queensland which confer the power to stop, detain and search vehicles (including vessels and aircraft) directly upon police, and over 20 further Acts which confer the power on other public officers, which may be exercised by police in certain circumstances (e.g. where the police officer has been appointed as a public officer, or because the police officer is acting in aid of a public officer).

The Acts conferring a power to detain and search a vehicle without warrant can be classified as follows:

- where the objects of search are those which relate to more serious offences such as prohibited drugs (s. 14 *Drugs Misuse Act 1986*) and prohibited weapons (s. 4.3 *Weapons Act 1990*);
- where the objects of search are stolen or unlawfully obtained goods (s. 38 *Hawkers Act 1984*, s. 52 *Pawnbrokers Act 1984*, s. 59 *Second-hand Dealers and Collectors Act 1984* and s. 24 of the *Vagrants, Gaming and Other Offences Act 1931*); and
- a range of Acts which defy classification, as diverse as the *Coroners Act 1958* which confers the power in order to allow police officers to apprehend and bring before an inquest a person who has failed to appear when summoned; the *Litter Act 1971* which empowers police to stop a vehicle from which litter has been dropped in order to enforce the provisions of the Act; and section 679B(1)(b) of the *Criminal Code* which allows a police officer to stop and search a vehicle for the purpose of searching for or inspecting any animal in respect of which an offence may have been committed.

The Commission is of the view that it is not feasible to effect a complete consolidation of the power to stop, detain and search vehicles, but that a partial scheme of consolidation could be implemented. The general features of such a scheme as envisaged by the Commission would be:

- A consolidation of the powers relating to the search for prohibited drugs, prohibited weapons and stolen or otherwise unlawfully obtained goods, which would allow a repeal of existing provisions which confer these powers directly upon police officers
- A series of procedural safeguards and restrictions on the exercise of the power, which would apply in any circumstance in which a police officer exercises the power, regardless of the source of the power, or whether the power is conferred directly or indirectly upon police officers
- A schedule to a consolidated Act which lists all the Acts of the Queensland legislature which confer the power both directly upon police officers and indirectly, in circumstances where police officers exercise the power as another public officer. This schedule of Acts would be expressed in the consolidated Act to be subject to the procedural safeguards referred to above.

12.5 Recommendation - Proposed Legislation for Stop and Search of Vehicles

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:

There should be a provision allowing for a police officer without a warrant who 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* (Recommendation 7.11);
- there is in a vehicle or in anything in it a weapon liable to seizure under the *Weapons Act 1990* (Recommendation 7.11);
- there is in a vehicle or in anything in the vehicle anything stolen or reasonably suspected of being stolen or otherwise unlawfully obtained (Recommendation 7.11); or
- a search of the vehicle or anything in it 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 (Recommendation 7.13);

to stop and detain the vehicle and search it and anything in it.

The effect of this general provision is to encompass the provisions contained in the *Drugs Misuse Act 1986*, the *Weapons Act 1990*, the *Vagrants, Gaming and Other Offences Act 1931* (as amended according to the Recommendation 7.11). It also encompasses the proposal to allow for the stopping and searching of vehicles for evidence of a serious indictable offence as Recommendation 7.13 states.

The other specific powers to stop and search a vehicle without a warrant that are conferred directly on police are for the purpose of searching for instruments of betting (under the *Racing and Betting Act 1980*, s. 235) and searching for or inspecting animals (under the *Criminal Code* s. 679B). The Commission has recommended in Chapter Seven that there be further information sought as to the use of these powers in order to ascertain

whether their retention is justified (Recommendation 7.12). If it is, then the provision under the *Racing and Betting Act 1980* should be listed in a schedule to which the procedural provisions of the Act are to apply.

Because the scheme of this proposed Act so far has encompassed many of the powers currently under the *Criminal Code*, it may be that it is inappropriate to list section 679B *Criminal Code* in a schedule to this Act. The better approach may be to insert into the Act a specific provision to cover the area if it is considered proper to retain the power to stop and search vehicles without warrant in those circumstances.

The public officers powers to stop and search vehicles contained in Table 3 should also be reviewed and those to be retained should be listed in the schedule so as to be subject to the proposed procedural requirements.

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

The information-giving and record-keeping provisions of clauses 35, 36 and 37 outlined earlier in respect of search of persons without warrant should also apply to searches of vehicles without warrant.

40. Search without a warrant of an unattended vehicle:

Police officers should 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 s.25 of the *State Counter-Disaster Organization Act 1975* applies (Recommendation 7.14).

ROADBLOCKS

12.6 Recommendation - Proposed Legislation for Roadblocks⁹³

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

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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.

41. The establishment of a roadblock:

The establishment of a roadblock may be authorised in writing by a police officer of or above the rank of inspector where there are reasonable grounds to suspect that there is in a vehicle or any vehicle:

- a person whose arrest is sought in connection with an offence carrying a maximum period of imprisonment of 14 years or more;
- a person who has escaped from lawful custody; or
- the victim of an abduction.

In cases of urgency, a roadblock can be authorised by an officer of any rank provided it is reported to an officer of or above the rank of inspector as soon as is practicable.

The Commissioner of Police or the Deputy Commissioner (Operations) may 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 its frequency in his or her opinion warrants the establishment of a roadblock (Recommendation 7.15).

42. Information to be provided to all drivers stopped:

The police officer who stops a vehicle at a roadblock is 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 (Recommendation 7.15).

CONCLUSION

In conclusion the Commission recommends that an Act, based on the New South Wales *Search Warrants Act*, but expanded to include provisions relating to searches without warrant, should be drafted. The Commission has outlined generally the types of provisions that should be included in that legislation. It recognises however, that there may be other provisions needed in order to make suitable amendments to or to repeal sections of other Acts. The Commission is not in a position to be specific in relation to this which in any event is a matter for the Parliamentary Counsel.

REFERENCES

Lucas Inquiry. *See Committee of Inquiry into the Enforcement of Criminal Law in Queensland 1977.*

Committee of Inquiry into the Enforcement of Criminal Law in Queensland 1977, (Commissioners: Mr Justice Lucas, D.G. Sturgess, D.M. Becker).

New South Wales, Legislative Assembly 27 February 1985.

APPENDICES

APPENDIX 5

TABLES 1 TO 5

The following tables 1 to 5 which are referred to throughout this volume have been reproduced from Appendix 3, Volume One.

The tables appearing at Appendix 3 of Volume One list the Acts containing police powers which, to the best of the Commission's knowledge, were current as at 1 July 1992. However, since that time, a number of significant Acts have been passed by the Queensland Parliament which affect this position.

The Acts appearing in the tables which have since been repealed are denoted in the tables by an asterisk (*), and are as follows:

- The *Art Unions and Amusements Act 1976* (repealed by the *Art Unions and Public Amusements Act 1992*);
- The *Bread Industry Authority Act 1990* (repealed by the *Bread Industry Authority Repeal Act*);
- The *Elections Act 1983* (repealed by the *Electoral Act 1992*); and
- The *Hide, Skin and Wooldealers Act 1958* (repealed by the *Justice Legislation (Miscellaneous Provisions) Act 1992*).

The Acts which have been significantly amended in relation to the manner in which they confer powers upon police and the nature of the powers so conferred are denoted in the tables by a double asterisk (**), and are as follows:

- The *Domestic Violence (Family Protection) Act 1989*, sections 31 and 32 of the Act, which deal respectively with the power to take a violent spouse into custody and the power to enter and search premises have been amended by the *Domestic Violence (Family Protection) Amendment Act 1992*. However, the original nature of the powers remain largely intact.
- The *Hawkers Act 1984*, *Pawnbrokers Act 1984*, *Second-hand Dealers and Collectors Act 1984*

These Acts have been amended by the *Justice Legislation (Miscellaneous Provisions) Act 1992*. However, the operation of the amendments have not yet been proclaimed; it is anticipated that the amendments will take effect at the end of 1993. The powers which are conferred upon police officers in

their primary capacity under these Acts will be conferred upon "authorised officers". The Acts will allow for police officers to be appointed as authorised officers, and in fact, a number of the powers under the Acts may only be exercised by those authorised officers appointed from police ranks. Accordingly, these pieces of legislation will more appropriately be designated as "second level" legislation, rather than as "first level" legislation when the amendments are proclaimed to come into effect.

In addition, a number of Acts have been passed which add to police powers. These include:

- The *Gaming Machine Amendment Act 1992* (amending the *Gaming Machine Act 1991*), which confers powers upon police officers to require suspected minors to provide evidence of age, to seize documents suspected of being false evidence of age and to prohibit suspected minors from playing machines on licenced premises.
- The *Domestic Violence (Family Protection) Amendment Act 1992* (amending the *Domestic Violence (Family Protection) Act 1989*), which confers upon police officers a power to demand name and address.
- The *Prostitution Laws Amendment Act 1992*, which amends the *Criminal Code* and the *Vagrants, Gaming and Other Offences Act 1931*, by including in those Acts specific provisions relating to prostitution offences, and conferring powers on police for the enforcement of such provisions including powers to demand name and address and to arrest.

TABLE 1

POLICE OFFICERS' POWERS TO SEARCH PERSONS

ACT	OFFICERS AUTHORISED; AUTHORITY REQUIRED	CIRCUMSTANCES AND PURPOSE OF EXERCISE OF POWER	PERIOD OF DETENTION; ASSOCIATED POWERS
Casino Control Act 1982 s. 106	Any member of the police force without further authority.	Where police officer suspects on reasonable grounds any person has contravened s. 103 or s. 104 of Act.	- Detain the person at a suitable place for a reasonable time. - Search the person and anything in possession of the person. - Seize anything found as a result of search that may afford evidence of an offence. - Use such force as is reasonably necessary for purpose of detention and search.
Crimes (Confiscation of Profits) Act 1989 s. 31	Police officers, where a warrant is issued by a stipendiary magistrate, on application of a member of the police force.	Where person is found in or on premises entered under warrant and officer suspects on reasonable grounds that the person has property of the kind described in the warrant.	- Search the person - Direct a legally qualified medical practitioner to search the person.
s. 32	A member of the police force, without further authority.	Where officer believes on reasonable grounds that it is necessary in order to prevent concealment, loss or destruction of tainted property and search is made in circumstances of such seriousness and urgency as to require and justify immediate search without authority of an order of the court or warrant issued under Act.	- Search a person for tainted property. - Seize tainted property found in course of search.
Criminal Code s. 259	A police officer of the same sex as the person in custody or a legally qualified medical practitioner acting at the direction of a police officer.	Where a person is in lawful custody upon a charge of committing an offence.	- Search the person of the person in custody. - Take from the person anything, including clothing, the police officer believes on reasonable grounds may afford evidence of the commission of the offence.
s. 679	Warrant issued by a justice, on complaint on oath, directed to a police officer.	Where complaint is of an offence involving the safety of an aircraft, and warrant directs search of person.	- Search any person on board or about to board aircraft.

ACT	OFFICERS AUTHORISED; AUTHORITY REQUIRED	CIRCUMSTANCES AND PURPOSE OF EXERCISE OF POWER	PERIOD OF DETENTION; ASSOCIATED POWERS
•• Domestic Violence (Family Protection) Act 1989 s. 31	A member of the police force without further authority.	Where a police officer on premises, where domestic violence is occurring or occurred before arrival to premises, reasonably suspects that an aggrieved person is in imminent danger of personal injury by their spouse.	- Take spouse into custody. - Use reasonable force as is necessary. - Detain spouse for up to four hours, or until a protection or interim order is earlier made. - Search the spouse of the person and take possession of anything found on the spouse, using such reasonable force as is necessary.
Drugs Misuse Act 1986 s. 15	Any police officer without further authority.	Where a police officer reasonably suspects a person to have in his possession anything that may afford evidence of a Pt. II offence or is liable to forfeiture under Pt. V, police officer may detain that person and search person and/or person's possessions. A person shall not be detained longer or taken further than is reasonable in the circumstances to search the person and their possessions.	- Search or direct a search of the person or anything in possession of that person (N.B. person and clothing worn by the person may be searched only by a police officer of the same sex or by a medical practitioner). - Take person and anything in their possession to another place for purpose of search. - Seize anything found as a result of search reasonably suspected will afford evidence of commission of Pt. II offence, for purpose of examining it for such evidence. - Retain anything seized if reasonably believes it will afford evidence of a Pt. II offence, for purpose of use as evidence. - Seize anything found as result of search if reasonably suspects it may be liable to forfeiture under Pt. V.
s. 17	Police officer of or above the rank of Inspector.	Where reasonably suspects a person has secreted within body or body cavities a dangerous drug	- Require a medical practitioner and a person acting in aid of the medical practitioner to make examination of internal parts or cavities of person's body. - Use such force as is reasonably necessary if person refuses permission for such search.
•• Hawkers Act 1984 s. 38	Any police officer without further authority.	Where officer suspects on reasonable grounds that any article in possession of a hawker to have been stolen or otherwise unlawfully obtained.	- Stop, detain and search the person of the hawker. - Seize and detain article.

ACT	OFFICERS AUTHORISED; AUTHORITY REQUIRED	CIRCUMSTANCES AND PURPOSE OF EXERCISE OF POWER	PERIOD OF DETENTION; ASSOCIATED POWERS
Health Act 1937 s. 131	Any member of the police force without further authority.	Where a person is found in or upon any place, including any road, street or other public place, or found travelling whom is reasonably suspected to have in his or her possession any substance that is an inorganic salt of hydrocyanic acid contrary to provisions of Act.	- Search any place on which the person may be. - Search such person. - Open and search any package apparently in possession of such person. - Seize any substance that is or is reasonably suspected to be an inorganic salt of hydrocyanic acid.
** Pawnbrokers Act 1984 s. 51	Warrant to enter premises, issued by any justice on complaint on oath of any police officer.	Where person is found at premises entered pursuant to warrant.	- Search person.
s. 52	Any police officer without further authority.	Where officer suspects on reasonable grounds that any article in the possession of a pawnbroker has been stolen or otherwise unlawfully obtained.	- Search person of a licensed pawnbroker. - Seize and detain articles.
Racing and Betting Act 1980 s. 235	A member of the police force, without further authority.	Where officer suspects on reasonable grounds that a person has breached s. 214, s. 216, s. 217, s. 219, s. 222, s. 223, s. 224, s. 225 or s. 230 of the Act.	- Stop, detain and search person. - Seize any instrument of betting, article or other thing found. - Use force as is reasonably necessary to conduct search of person.
s. 234	A member of the police force without further authority.	Where a person has been arrested under Act.	- Search clothing of person. - Seize, detain and remove instruments of betting, money, documents or other things found on person or in or under person's possession or control, including anything that in opinion of officer will afford evidence of commission of offence against Act at time of or immediately before arrest (power is addition to and not in substitution of s. 239 Code).
** Second-hand Dealers and Collectors Act 1984 s. 58	Warrant to enter premises, issued by any justice on complaint on oath of any police officer.	Where person is found at premises entered pursuant to warrant.	- Search person.

ACT	OFFICERS AUTHORISED; AUTHORITY REQUIRED	CIRCUMSTANCES AND PURPOSE OF EXERCISE OF POWER	PERIOD OF DETENTION; ASSOCIATED POWERS
s. 59	Any police officer without further authority.	Where officer suspects on reasonable grounds that any goods in the possession of a dealer or collector have been stolen or otherwise unlawfully obtained.	- Stop, detain and search the person of a dealer or collector. - Seize and detain goods.
Vagrants, Gaming and Other Offences Act 1991 s. 24(b)	Any police officer of the rank of sergeant of police or of higher rank, and the police officer in charge of the relevant police station.	Where any person may be reasonably suspected of having in their possession or conveying in any manner anything stolen or unlawfully obtained or suspected of being stolen or unlawfully obtained.	- Search person. - Arrest person.
s. 31(1)	Any police officer without further authority.	Where officer reasonably suspects a person of having in their possession any battery or similar appliance or a hypodermic needle, vessel, tislite or other substance containing narcotic or poisonous drugs.	- Stop, search and detain any trainer or jockey. - Stop, search and detain any person on any racetrack, when requested to do so by the stipendiary stewards of a racing club.
s. 31(2)		Where a person is in or attempting to enter with, or has thrown a container or like article in a stadium or other place of public amusement or resort, in contravention of section; or where officer reasonably suspects a person of having in his or her possession or under his or her control a bottle or container or like article in contravention of section.	- Seize and take or cause to be seized and taken any bottle, container or like instrument. - Stop, search and detain any person where officer has relevant reasonable suspicion.
Weapons Act 1990 s. 4.3	A police officer, without further authority.	Where a police officer suspects on reasonable grounds that any person is in physical possession of any weapon liable to seizure under Act or any other Act.	- Stop, detain and search person.
s. 4.5		Where a police officer enters a place or premises on suspicion on reasonable grounds that a person there is in possession of and is using or threatening to use any weapon or thing such that death or injury is or is likely to be caused.	- Detain any person found at premises or place so entered for such time as is reasonably necessary for police officer to establish whether an offence has been committed. - Search any person found at premises or place so entered.

ACT	OFFICERS AUTHORISED; AUTHORITY REQUIRED	CIRCUMSTANCES AND PURPOSE OF EXERCISE OF POWER	PERIOD OF DETENTION; ASSOCIATED POWERS
s. 4.7		Where a police officer is lawfully in any premises or finds any person at those premises in circumstances that officer has reasonable grounds to suspect that the person is in possession of any weapon, licence or register in contravention of the Act.	- Search person. - Detain the person and possessions of the person. - Search the premises or place where the person is found. - Call for aid of other persons. - Use force as is necessary for the purposes of the section.
s. 4.8	A police officer, under authority of a warrant issued by a justice.	Where police officer obtains warrant of justice to enter place or premises.	- Search persons found at place or premises entered pursuant to warrant.

TABLE 2

POLICE OFFICERS' POWERS TO STOP, ENTER AND SEARCH VEHICLES, VESSELS OR AIRCRAFT AND ASSOCIATED POWERS

ACT	PERSON AUTHORISED AND ANY AUTHORITY REQUIRED	PURPOSE AND GROUNDS	ASSOCIATED POWERS
Coroners Act 1958 s. 29	Warrant issued by coroner for apprehension of person failing to attend inquest when summonsed, directed to any member of the police force (or other person).	Any aircraft, vehicle or vessel, for purpose of executing warrant.	- Enter and re-enter place, by force if needed.
Criminal Code s. 679	Warrant issued by justice on complaint on oath.	Any vessel, vehicle or aircraft referred to in warrant, when there are reasonable grounds for suspecting that there is in or on the vessel etc., anything which will afford evidence of commission of any offence (among other things).	- Enter vessel etc. named in warrant using force if necessary. - Search vessel etc. - Seize any such thing referred to on section, and take it before a justice to be dealt with according to law. - Search any person on board or about to board an aircraft, where warrant so directs.
s. 679B	A police officer, without further authority.	Any vehicle or vessel, for purposes of exercising powers conferred by section (see Table 4).	- Stop any vehicle or vessel.
Criminal Investigation (Extra-territorial Offences) Act 1985 s. 4 and s. 5	Warrant issued by a stipendiary magistrate, on application of a member of the police force.	Where there are reasonable grounds to believe that an offence to which Act applies has been or is intended to be committed, and there is an object at the premises relevant to investigation of the offence.	- Enter and search premises to which warrant relates. - Search anything in those premises. - Take such assistants as thought necessary. - Seize and remove any object believed on reasonable grounds to be relevant to the investigation of the offence. - Use such reasonable force as is necessary for the execution of the warrant.

ACT	PERSON AUTHORISED AND ANY AUTHORITY REQUIRED	PURPOSE AND GROUNDS	ASSOCIATED POWERS
Drugs Misuse Act 1986 s. 14	A police officer, without further authority.	Where police officer reasonably suspects a vehicle or anything in it may afford evidence as to commission of a Pt. II offence or may be liable to forfeiture under Pt. V.	- Stop and detain vehicle and search it and anything in it. - Remove vehicle detained under Act and anything in it to another place for purpose of carrying out search, if reasonably believes that it is not practicable to carry out search at the place vehicle is stopped. - Seize (for purpose of examination for evidence of a Pt. II offence) anything found as result of search, including vehicle, on reasonable suspicion it will afford evidence of Pt. II offence. - Retain anything seized, if reasonably believes it will afford evidence of Pt. II offence, for purpose of using it in evidence. - Seize anything found as a result of search, including vehicle, if reasonably suspects it may be liable to forfeiture under Pt. V. - Use such force as is reasonably necessary to do such things as Act authorises (s. 53).
^{v*} Hawkers Act 1984 s. 38	A police officer, without further authority.	Any vehicle in possession of a hawker, where officer suspects on reasonable grounds that any article in possession of hawker has been stolen or otherwise unlawfully obtained.	- Stop, detain and search vehicle. - Seize and detain any article suspected on reasonable grounds to have been stolen or otherwise unlawfully obtained. - Search the person of a hawker.
[*] Hide, Skin and Wood Dealers Act 1958 s. 9	A police officer, without further authority.	Any vehicle used, whether by a licensee or not, for the purposes of carrying hides, skins or wool or which police officer has reasonable cause to believe is used for such purpose.	- Stop and search vehicle. - Inspect hides, skins or wool found in or on vehicle.
Litter Act 1971 s. 3A	A member of the police force, without further authority.	Where a contravention of s. 6 of Act consists of putting, dropping or leaving litter in a public place from a vehicle.	- Require driver of vehicle to stop vehicle for the purpose of enforcing the provisions of the Act.

ACT	PERSON AUTHORITY REQUIRED	PURPOSE AND GROUNDS	ASSOCIATED POWERS
National Crime Authority (State Provisions) Act 1985 s. 12	Warrant issued by a judge of a prescribed court on application of Authority, addressed to members of the police force of the States, to search for things connected with a special investigation of the Authority.	Where warrant authorises entry and search of vessel, aircraft or vehicle.	- Enter vessel aircraft or vehicle. - Take such assistants as thought necessary. - Search for things of the relevant kind. - Seize any things of the relevant kind found, and deliver them to the Authority. - Seize things, other than relevant things, found in course of search, if officer believes on reasonable grounds to be evidence of an offence against law of Commonwealth, State or Territory and that it is necessary to seize the thing to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.
** Pawnbrokers Act 1984 s. 52	Any police officer, without further authority.	Any vehicle in possession of a licensed pawnbroker, where officer suspects on reasonable grounds that any article in possession of a pawnbroker has been stolen or otherwise unlawfully obtained.	- Stop, detain and search vehicle. - Seize and detain any article suspected on reasonable grounds to have been stolen or otherwise unlawfully obtained. - Search person of pawnbroker.
Racing and Betting Act 1980 s. 235	A member of the police force, without further authority.	Where officer suspects on reasonable grounds that an instrument of betting or article or anything capable of being used in contravention of s. 216, s. 217 or s. 228 of Act is in or on a vehicle.	- Stop, detain and search vehicle. - Seize any instrument of betting, article or other thing found in contravention of Act. - Use reasonable force in effecting entry to vehicle.
** Second-hand Dealers and Collectors Act 1984 s. 59	Any police officer, without further authority.	Any vehicle in possession of a dealer or collector, where officer suspects on reasonable grounds that any goods in possession of dealer or collector have been stolen or otherwise unlawfully obtained.	- Stop, detain and search vehicle. - Seize and detain any goods suspected on reasonable grounds to have been stolen or otherwise unlawfully obtained. - Search person of dealer or collector.

ACT	PERSON AUTHORISED AND ANY AUTHORITY REQUIRED	PURPOSE AND GROUNDS	ASSOCIATED POWERS
State Counter-Disaster Organization Act 1975 s. 25	A police officer, without further authority.	Where a vehicle or vessel is impeding counter-disaster operations.	- Remove vehicle or vessel from any place. - Use such force as is reasonably necessary to break into vehicle, to facilitate its removal.
Traffic Act 1949 s. 39	Any member of the police force, without further authority.	Where any police officer finds any person committing or reasonably suspects a person has committed an offence against Act or is making inquiries to establish whether an offence has been committed or is of the opinion that a person present at scene of an accident may be able to give information or is of the opinion that name and address are necessary for purposes of Act, or for the purposes of giving effect to s. 16A(2) of Act.	- Require person to stop motor vehicle or vessel, tram or animal.
Vagrants Gaming and Other Offences Act 1931 s. 23	Any police officer, authorised in writing by an Inspector of police.	Where police officer has reasonable cause to suspect that any indictable offence has been or is about to be committed on board any vessel.	- Enter vessel at any time. - Take all necessary measures for preventing or detecting such offence. - Arrest all persons suspected of being concerned in such offence. - Take charge of all property suspected of being stolen.
s. 24	Any police officer of the rank of sergeant of police or of higher rank and an officer in charge of a station within the limits of the police division assigned to the station.	Where there is cause to suspect that anything stolen or unlawfully obtained or suspected of being stolen or unlawfully obtained may be found on or in any vessel, boat or vehicle.	- Search such vessel, boat or vehicle.
Weapons Act 1990 s. 4.3	Any member of the police force.	Where police officer suspects on reasonable grounds that there is any weapon liable to seizure under the Act or any other Act in the vehicle.	- Stop, detain and search vehicle.

TABLE 3

PUBLIC OFFICERS' POWERS TO STOP, ENTER AND SEARCH VEHICLES, VESSELS OR AIRCRAFT AND ASSOCIATED POWERS

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Artificial Breeding of Stock Act 1979 s. 30	Inspector appointed under Act may call for the aid of a member of the police force where inspector is obstructed or has reasonable grounds to believe will be obstructed in the exercise of powers or discharge of duties. Police officer shall have duty to assist as required and member assisting shall have same powers and authorities as inspector under Act.	Nil.	Where inspector believes on reasonable grounds that vehicle or vessel is being or is likely to be used for carriage of semen or ova of stock or any materials used in processing thereof.	- Stop, detain and search such vehicle or vessel. - Open or order to be opened any place or container used for carriage of goods, believed on reasonable grounds to contain semen and ova of stock or materials used in processing thereof. - Seize and take without payment any sample of or any package containing semen or ova of stock or materials used in processing for examination, testing and analysis. - Call for the aid of another inspector a member of the Queensland Police Force where inspector is obstructed or has reasonable grounds to believe will be obstructed in exercise of powers or discharge of duties, and call for the aid of a person thought competent to assist in exercise of powers or discharge of duties. - Use such force as is reasonably necessary in exercise of powers or discharge of duties. - After inspection, give notice in writing to owner of premises, vehicle or vessel to comply with every direction or order in notice.
Banana Industry Protection Act 1989 s. 21	Person authorised by the Board, who may call for the assistance of police officers, where person is being or has reasonable grounds to believe will be obstructed.	Nil.	In order to obtain information in relation to levying an assessment under Act, to ascertain whether Act has been complied with or to investigate an offence.	- Stop and detain any vehicle. - Direct a person in charge of vehicle to remove it to some other place. - Remove vehicle to some other place.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Classification of Films Act 1991 s. 46	Chief Executive of Department may with agreement of Commissioner of Police appoint police officers to be inspectors.	Warrant to enter issued under s. 49 by a magistrate, unless occupier consents or the place is open for admission by the public.	Any vehicle, vessel or aircraft, for the purpose of finding out whether the requirements of the Act are being complied with.	- Enter or board the vehicle, vessel or aircraft. - Stop and detain vehicle, vessel or aircraft for purpose of effecting the entry or boarding. - Search any part of place. - Inspect or examine anything in or on place. - Take extracts from and copies of any documents in or on the place. - Take such equipment and materials as required for purpose of exercising any powers in relation to place. - Require occupier to give inspector reasonable assistance.
s. 47		Warrant issued under s. 50 of Act, unless occupier consents to entry or exercise of power.	Where inspector has reasonable grounds for suspecting that there is in the place a particular thing which will afford evidence of the commission of an offence against the Act.	- Enter or board the vehicle, vessel or aircraft. - Search any part of the place. - Inspect or examine anything in or on the place. - Take onto place such equipment and materials as inspector requires for purpose of exercising any powers in relation to the place. - Require occupier to give reasonable assistance. - Seize evidence found.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 47 cont'd...				- Seize a thing other than the particular thing sought that will afford evidence of the offence or that will afford evidence of the commission of another offence against Act, and Inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction or its continued use in committing or repeating the offence. - Keep evidence for 60 days or until completion of proceedings for offence. - Take extracts and copies of evidence which is a document.
Classification of Publications Act 1991 s. 22	Chief Executive of Department may with agreement of Commissioner of Police appoint police officers to be inspectors.	Warrant to enter issued under s. 25 by a magistrate, unless occupier consents or the place is open for admission by the public.	Any vehicle, vessel or aircraft, for the purpose of finding out whether the requirements of the Act are being complied with.	- Enter or board the vehicle, vessel or aircraft. - Stop and detain vehicle, vessel or aircraft for purpose of effecting the entry or boarding. - Search any part of place. - Inspect or examine anything in or on place. - Take extracts from and copies of any documents in or on the place. - Take such equipment and materials as required for purpose of exercising any powers in relation to place. - Require occupier to give inspector reasonable assistance.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 23		Warrant issued under s. 26 of Act, unless occupier consents to entry or exercise of power.	Where inspector has reasonable grounds for suspecting that there is in the place a particular thing which will afford evidence of the commission of an offence against the Act.	- Enter or board the vehicle, vessel or aircraft. - Search any part of the place. - Inspect or examine anything in or on the place. - Take onto place such equipment and materials as inspector requires for purpose of exercising any powers in relation the place. - Require occupier to give inspector reasonable assistance. - Seize evidence found. - Seize a thing other than the particular thing sought that will afford evidence of the offence or that will afford evidence of the commission of another offence against Act, and inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction or its continued use in committing or repeating the offence. - Keep evidence for 60 days or until completion of proceedings for offence. - Take extracts and copies of evidence which is a document.
Community Services (Aborigines) Act 1984 s. 45B	Authorised officers appointed by an Aboriginal Council, who may call to their aid any police officer.	Nil.	Where officer suspects on reasonable grounds vehicle or vessel to be used in commission of breach of Act.	- To search and examine vehicle or vessel all containers and other receptacles for evidence of breach of Act. - To require owner or person in charge to open such vehicle, vessel, container or other receptacle and expose its contents to view.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Community Services (Torres Strait) Act 1984 s. 43B	Authorised officers appointed by an Islander Council, who may call to their aid any police officer.	Nil.	Where officer suspects on reasonable grounds vehicle or vessel to be used in commission of breach of Act.	- To search and examine vehicle or vessel and all containers and other receptacles for evidence of breach. - To require owner or person in charge to open such vehicle, vessel, container or other receptacle and expose its contents to view. - Stop, detain and search any vehicle or vessel so used.
Dairy Industry Act 1989 s. 46	Inspector employed or engaged under Act may call to aid a member of the police force where Inspector is or reasonably believes will be obstructed. "Inspector" includes a person acting in aid of an inspector.	Nil.	Where inspector believes on reasonable grounds that vehicle or vessel is being or is likely to be used for the carriage of dairy produce or ingredients used in the manufacture of dairy produce.	
s. 51		Nil.	Where, after inspection under Act, Inspector believes on reasonable grounds that vehicle or vessel is being or has been used for storage, carriage removal or supply of dairy produce contrary to Act.	- Seize and detain vehicle or vessel for a period of 12 months, or less, if established that no offence against Act has been committed in relation to the vehicle or vessel.
Diseases in Timber Act 1975 s. 6	Commissioner may authorise a member of the police force to conduct inquiries, who shall be deemed an investigating officer for purposes of Act.	Nil.	Any ship, vessel, vehicle or aircraft.	- Enter any ship, vessel, vehicle or aircraft. - Make investigation and inquiry with respect to vehicle or vessel etc. - Inspect, examine and test any article or timber found in any vehicle or vessel etc. - Select and remove for inspection or testing any article or timber found in any vehicle or vessel etc. - Seize and detain any article or timber inspector suspects on reasonable grounds to be infested with disease.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Exotic Diseases in Animals Act 1981 s. 21	Inspector under Act may call for the aid of any police officer; "Inspector" includes any police officer acting under the direction of an inspector.	Nil.	For the purpose of enabling an inspector to exercise powers conferred by Act, upon production by inspector of evidence of appointment.	- Display a traffic sign at a place at or near a boundary of or in a quarantine, infection etc. zone, requiring vehicles and vessels to stop. - Enter vehicle or vessel stopped, (upon production of evidence of appointment, if demanded). - Search and inspect vehicle or vessel and open any part of it for purpose of ascertaining whether vehicle or vessel or animal etc. in vehicle or vessel is infected with an exotic disease or is being or has been conveyed contrary to provisions of Act or any notification, licence etc. issued under Act. - Take specimens, open containers, packages or other things in or on vehicle or vessel and do such other things as inspector may consider necessary or expedient for purpose of preventing importation, transmission, spread etc. of exotic disease or a thing likely to cause exotic disease within or outside quarantine or control etc. zone.
Explosives Act 1952 s. 14	Inspector employed or engaged under Act may call for the aid of any member of the police force where inspector has reasonable cause to apprehend any obstruction in exercise of powers or execution of duties. s. 34: Every member of the police force shall have and may exercise all the powers of an inspector where it appears to the officer that the Act has been contravened or not complied with in relation to sale of explosives.	Nil.	Where inspector finds explosive or ingredient in a vehicle, hulk or vessel, where such explosive or ingredient is unauthorised or which appears to inspector to otherwise be in contravention of or not to comply with Act.	- Seize, remove and detain any vehicle, hulk or vessel in which explosive or ingredient is found. - Direct occupier or person in control of the place entered to detain the vehicle, vessel or hulk in that place, instead of removing it. - Use without seizing any vehicle, vessel or hulk in which any explosive or ingredient is found, for the purpose of removal and detention of such explosive or ingredient.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Fisheries Act 1976 s. 18	Inspector appointed under Act may call for the aid of a member of the police force if Inspector is being or has reasonable grounds to believe will be obstructed. "Inspector" includes a person acting in aid of an Inspector.	Nil.	Inspector may exercise power at any time.	- Stop any person, vessel or vehicle. - Search any place, if suspects on reasonable grounds that an offence against Act has been, is likely to be or is about to be committed or that there is likely to be at the place any fish, marine products etc. connected with offence or which will afford evidence of offence. - Break open and search every bag, package, bottle or other receptacle at the place. - Seize and detain any vehicle, vessel etc. used or kept in contravention of Act or believed on reasonable grounds will afford evidence of contravention. - Remove any vessel or vehicle etc. seized by Inspector to such place as determined or make arrangements for its protection at the place seized.
Food Act 1981 s. 28	An authorised officer appointed under Act may call for aid of a member of the Queensland Police Force, in a case where Inspector is obstructed or believes on reasonable grounds may be obstructed in the exercise of powers or duties. A police officer called upon to assist shall have the same powers and authorities as an authorised officer under the Act.	Nil.	Where authorised officer believes on reasonable grounds vehicle is being or is likely to be used for conveyance of articles or in which any article is sold, or prepared, packed, stored handled, served or supplied for sale.	- Stop, detain and search any such vehicle. - Exercise any of the powers conferred by s. 28(1) of Act in respect of vehicle (see Table 5).

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Forestry Act 1959 s. 18	A forest officer appointed under Act may call for the aid of any member of the police force where forest officer has reasonable cause to apprehend any obstruction in the exercise of powers.	Nil.	Where vehicles or vessels are used or are reasonably suspected of being used for holding or transporting any forest products or quarry materials, or where forest products or quarry materials got or interfered with contrary to Act are found in vehicles or vessels.	- Search and examine vehicles and vessels. - Require owner or person in charge of vehicle or vessel to open it and expose its contents to view. - Seize, take away and detain vehicles or vessels which are reasonably suspected of containing forest products or quarry materials in contravention of Act.
Gaming Machines Act 1991 s. 93	Inspector appointed under Act may call for the aid of a police officer. A person acting in aid of an inspector shall have all the powers and authorities of an inspector.	Nil.	Where inspector believes on reasonable grounds that any vehicle or vessel has been, is being or is likely to be used for the conveyance of any article, record or thing the inspector considers will afford evidence of the commission of an offence.	- Stop and search vehicle.
Liquor Act 1992 s. 175	"Investigator" includes any police officer.	Nil.	Where investigator suspects on reasonable grounds that a vehicle, boat or aircraft is being or has been used in the commission of an offence against Act or that it or anything in or on it may afford evidence of the commission of an offence against Act.	- Enter or board vehicle, boat or aircraft. - Exercise powers in s. 178: * Search any part of the vehicle etc. * Inspect, examine, photograph or film anything in or on the place. * Take extracts from and make copies of any documents in or on the vehicle etc. * Take onto vehicle etc. such persons, equipment and materials as the investigator reasonably requires for purpose of exercising powers. * Require occupier to give reasonable assistance to investigator.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 175 cont'd...				• Require name and address and evidence of correctness of a person in accordance with s. 182. • Question a person and require answers to questions in accordance with s. 183. • Exercise powers under s. 184: • Require production of licence or other document and inspect and take copies and extracts from and keep documents. • Require a person or minor to leave premises and to remove person or minor from premises if direction not complied with. • Arrest without warrant a person found committing an offence or whom investigator suspects on reasonable grounds of having committed an offence against Act. • Seize liquor together with bottles or containers in which it is contained. • Signal person driving or in command or control to stop or not to move the vehicle, boat or aircraft. • Require driver or person in command or control to provide reasonable assistance as to enable vehicle etc. to be boarded or entered. • Direct driver or person in control or command of vehicle, boat or aircraft to bring it to a specified place and remain in control until investigator permits person to leave.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 175 cont'd.				• Seize and keep for six months or until completion of proceedings a thing found in course of search of vehicle etc. which investigator believes on reasonable grounds will afford evidence of commission of an offence against Act. • Take extracts from and copies of documents seized in course of a search of vehicle etc. • Seize and keep for six months or until completion of proceedings the vehicle, boat or aircraft if, after searching it, investigator believes on reasonable grounds that vehicle, boat or aircraft will afford evidence of commission of an offence against Act. • Use such assistance and such force as is necessary and reasonable in exercising powers.
Meat Industry Act 1965 s. 118	Inspector appointed or deemed to be appointed under Act may call for the aid of any member of the police force where Inspector has reasonable cause to apprehend obstruction in exercise of powers or execution of duties. "Inspector" includes any member of the police force acting under direction or in aid of an inspector.	Nil.	Where vehicle is used or which inspector has reason to believe is being used in connection with any place as an abattoir etc. or is being or is reasonably believed to be used in conveying any carcass of stock or poultry for human consumption or pet food.	- Stop, inspect and examine any such vehicle. - Inspect and examine all appliances and the carcass, meat or flesh of any stock or poultry found in the vehicle.
Mineral Resources Act 1989 s. 10.7	Mining officer, field officer and any person authorised by Minister may call for the aid of a member of the police force, who shall have the same powers and authorities conferred by the Act as the person the police officer is assisting (s. 10.7).	Nil.	Where vehicle or vessel is used or believed on reasonable grounds to be used for prospecting, exploring or mining.	- Stop, detain and search vehicle or vessel.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Nature Conservation Act 1992 s. 130	All police officers are conservation officers by virtue of their office.	Nil.	A vehicle, boat or aircraft where officer suspects on reasonable grounds that the vehicle, boat or aircraft is being or has been used in commission of an offence against Act or that it or anything in it may afford evidence of commission of an offence against Act.	- Use such assistance and such force as is necessary and reasonable in exercise of powers. - Enter or board vehicle, boat or aircraft. - Signal driver or person in control of vehicle, boat or aircraft to stop or not to move it. - Require driver or person in command or control of vehicle, boat or aircraft to provide such reasonable assistance as officer requires to board or enter it or to bring it to a specified place and remain in control of it. - Seize, keep and take extracts and copies of things found while searching vehicle, boat or aircraft which officer believes on reasonable grounds will afford evidence of the commission of an offence against Act. - Seize and keep the vehicle, boat or aircraft, if after searching it, officer believes on reasonable grounds that it will afford evidence of the commission of an offence against Act. - Exercise powers under s. 133 in relation to vehicle, boat or aircraft: • Search any part of the vehicle, boat or aircraft. • Inspect, examine, photograph or film anything in or on the vehicle, boat or aircraft. • Take extracts from or make copies of any documents in or on the place.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 130 conf'd...				* Take such persons, equipment and materials as the officer reasonably requires for purpose of exercising powers. * Require occupier or any person in or on vehicle, boat or aircraft to give reasonable assistance in exercise of powers. * Require name and address. * Question persons and require answers to questions. - Exercise powers under s. 140 in relation to vehicle, boat or aircraft. * Require production of licence or other document held or required to be kept under a regulation. * Inspect, take extracts and copies of such documents. * Arrest without warrant a person found committing or whom officer suspects on reasonable grounds of having committed an offence against the Act, if officer believes on reasonable grounds that complaint and summons would be ineffective.
Plant Protection Act 1989 s. 19	Inspector appointed under Act, where obstructed or has reasonable grounds to believe will be obstructed, may call for the aid of a member of the Queensland Police Force, who shall assist as required and in accordance with the Act.	Where inspector proposes to enter a vehicle used as a dwelling house, must first obtain warrant to enter from a justice.	May exercise power to enter in order to ascertain whether the provisions of Act have been complied with or to investigate any offence against Act or to perform a duty or exercise a power under Act.	- Stop and detain any vehicle. - Enter vehicle. - Direct a person in charge of vehicle to remove it to some other place for purposes of performance of a duty or exercise of power imposed or conferred by Act.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 19 cont'd...				- Remove vehicle to some other place for purposes of performance of a duty or exercise of power imposed or conferred by Act. - Search vehicle entered to make investigation, inspection or inquiry as necessary for purposes of Act, including breaking open and searching receptacle or enclosed place, conducting tests and taking samples without payment for testing or as evidence.
Poultry Industry Act 1988 s. 16	Every member of the police force shall by virtue of office be deemed to be an inspector appointed under Act.	Where inspector proposes to enter a vehicle, vessel or aircraft used as a dwelling house, must first obtain a warrant to enter from a stipendiary magistrate.	Where inspector wants to inspect poultry etc. carried by vehicle, vessel or aircraft, or in order for inspector to ascertain whether Act is being or has been complied with or for purpose of exercising powers under Act.	- Enter and remain in any vehicle, vessel or aircraft. - Search and make inspection, investigation or inquiry as necessary for purposes of Act, including breaking open and searching any receptacle, conducting tests and taking samples for testing or as evidence. - Stop any vehicle for purposes of exercising powers conferred by Act. - Require person in possession of vehicle to remove it as directed. - Remove or authorise removal of vehicle to any place as determined.
Queensland Marine Act 1958 s. 18	Each member of the police force is a shipping inspector for purposes of Act.	Nil.	Any vehicle or vessel, for purposes of exercising powers under Act.	- Require person in charge of vehicle or vessel to stop the vehicle or vessel and enter for purpose of exercising powers under Act. - Go on board any vessel to which Act applies at all necessary or reasonable times. - Call for the aid of any person thought competent to assist inspector in making inspection or examination.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 18 cont'd...				- Take on board such assistants as deemed necessary. - Inspect vessel, and its equipment and machinery, cargo and any property or articles on board.
Queensland Marine (Sea Dumping) Act 1985 s. 24	Each member of the police force is an inspector for the purposes of the Act.	Nil.	Where any vessel or aircraft is in the State and any vessel, aircraft or platform is in coastal waters.	- Board such vessel, aircraft or platform for purposes of exercising any powers, authorities or duties under Act, if believes on reasonable grounds that there is any matter or thing to be dumped or incinerated at sea or any matter or thing which will afford evidence of an offence against Act. - Stop and detain aircraft or vessel for such purpose. - Require a person on board whom inspector finds committing or whom is suspected on reasonable grounds of having committed an offence against Act to state their full name and usual place of residence. - Bring or require the person in charge of a vessel in coastal waters to bring it to a safe and practicable port in Queensland, when inspector believes on reasonable grounds that the vessel has been used or involved in the commission of an offence against Act. - Require a person in charge of a vessel, aircraft or platform to give information concerning the vessel and its crew and any other person on board.
Radioactive Substances Act 1958 s. 20	"Inspector" includes any member of the police force.	Nil.	Where vehicle is used or suspected to be used for holding or transport of any radioactive substance.	- Search and examine all vehicles. - Require owner or person in charge of vehicle to open vehicle and expose its contents to view.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Recreation Areas Management Act 1988 s. 23	All members of the police force are authorised officers for purposes of Act, by virtue of their office.	Nil.	Where vehicle or vessel is suspected on reasonable grounds to be used for taking or conveying land or marine resources.	- Stop any vehicle or vessel. - Search and examine vehicle or vessel and all containers or other receptacles used for conveying land or marine resources. - Require owner or person in charge of vehicle or vessel, container or other receptacle to expose its contents to view.
s. 36		Nil.	Where authorised officer believes on reasonable grounds that vehicle, vessel or thing within a Recreation Area has been used or obtained in connection with an offence against s. 26, s. 34 or s. 40 of the Act.	- Seize, remove and detain the vehicle, vessel or thing.
s. 37		Nil.	Where there are reasonable grounds for suspecting that vehicle, vessel or thing within a Recreation Area has been abandoned.	- Remove and detain the abandoned property and deal with it in accordance with section.
State Transport Act 1960 s. 70	Members of the police force are "authorised officers" by virtue of their office.	Nil.	Any vehicle, if the authorised officer has reason to believe that any person carries on business of carrying goods or passengers or vehicle is used in connection of such business and any vehicle where officer has reason to believe goods are in the course of business being loaded for carriage or unloaded after carriage by road.	- Enter, search and inspect vehicle. - Stop, enter and search and inspect vehicle which is, or which officer has reason to believe is carrying, has carried or is about to carry goods or passengers by road. - Inspect and examine any goods found upon entry and goods' containers, and labels, brands or marks on containers. - Call for the aid of any person thought competent to assist in such examination and inquiry.

ACT	PERSONS AUTHORISED	AUTHORITY REQUIRED	PURPOSE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Tobacco Products (Licensing) Act 1988 s. 34	Commissioner may authorise a member of the police force to conduct inquiries, who shall be deemed an investigating officer for purposes of Act.	Nil.	A vehicle, vessel or aircraft on which or in which the officer reasonably suspects that there is any relevant material.	- Enter and search vehicle, vessel or aircraft. - Give directions as to movement of vehicle or vessel etc. - Break open and search any package or receptacle in premises entered. - Secure any relevant material against interference or seize any relevant material and deliver it to Commissioner or person authorised to receive it. - Use such force as is reasonably necessary.
Tow-truck Regulations 1988 Reg. 44	Members of the police force are "authorised officers" under Act.	Nil.	Any tow-truck, for the purpose of determining whether it complies with requirements of Act and Regulations.	- Enter tow-truck, to determine, whether it complies with Act and Regulations.
Traffic Act 1949 s. 39	Any member of the police force.	Nil.	Where any police officer finds any person committing or reasonably suspects a person has committed an offence against Act or is making inquiries to establish whether an offence has been committed or is of the opinion that a person present at scene of an accident may be able to give information or is of the opinion that name and address are necessary for purposes of Act.	- Require driver to stop vehicle, tram or animal. - Produce any licence issued under the Act. - Require name and address. - Require evidence of correctness of name and address if officer has reasonable grounds to suspect that name and address given are false.

TABLE 4

POLICE OFFICERS' POWERS TO ENTER AND SEARCH PLACES AND LAND AND ASSOCIATED POWERS

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
Art Unions and Amusements Act 1976 s. 62	Nil.	Premises which officer knows or suspects is being used to conduct an art union, or any commercial amusement entertainment machine or billiard table is to be found, or where officer knows or suspects to be kept books of account or records of any person who conducts or has conducted bingo sessions in bingo premises.	- Enter and remain on premises. - Take persons as considered competent to assist. - Make inquiry, examination and inspection as thinks necessary or desirable to establish whether Act is complied with in relation to any art union, commercial amusement entertainment machine or billiard table. - Seize and remove any document, money or item of value, any commercial amusement or contents thereof or any other thing officer has reason to believe may be required as evidence in proceedings for an offence or for any other purpose of Act. - Seize and remove any commercial amusement etc. unless it is shown to officer's satisfaction that permit subsists or exemption applies.
s. 63	Warrant issued by a justice of the peace, on complaint on oath, directed to a police or authorised officer.	Premises used solely as a private residence or part of premises used as a private residence, specified in warrant, when there are reasonable grounds for suspecting that an offence against Act is being, is about to be or has been committed there.	- Enter premises specified in warrant. - Exercise powers under s. 62. - Use such force as is reasonable for those purpose. - Arrest and search any person found on premises whom officer has reasonable cause to believe to be committing, have committed or to be about to commit an offence against Act.
Auctioneers and Agents Act 1971 s. 56	Nil.	Premises to which motor vehicle dealers licence relates, for purpose of examining any used or second-hand vehicle or prescribed spare parts/accessories.	- Accompanied by such persons as may be required to assist. - Power exercisable at all reasonable hours.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
Casino Control Act 1982 s. 113	Nil, where area of casino to be entered is open for public access. Authorisation of inspector on duty at a casino, to enter any other area of a casino.	Any area of a casino.	- Exercise powers and discharge duties which may be exercised or discharged in a public place under any Act or law.
Children's Services Act 1965 s. 72	Warrant issued by a stipendiary magistrate or a magistrate of Children's Courts, directed to all officers of the Department and all police officers.	Any premises or place where the person executing the warrant reasonably suspects will find a child who is concerned in an offence against s. 69 of the Act.	- Enter premises or place, using such force as is reasonable, together with any person lawfully accompanying officer. - Search for child. - Take child into custody and take to and keep child at a place of safety until child can be lawfully dealt with pursuant to Act.
Commissions of Inquiry Acts 1950 s. 19A	Warrant issued by Chairman of Commission to enter any place (issued where reasonable grounds to suspect that any book, document, record, writing or property or thing relevant to an offence under Act is at such a place).	Any place, building, vehicle, vessel or aircraft, named in the warrant.	- Enter place, using such force as is necessary. - Search such place. - Search all persons found at place. - Seize any such book, document, writing or record or property or thing found at place and bring it before Commission.
Coroners Act 1958 s. 19	Warrant issued by coroner, which is authority for member of the police force to whom it is directed, where post-mortem examination has been ordered.	Any land, house, building, premises, or other place and any aircraft, vehicle or vessel, where officer has reasonable cause to suspect that the body referred to in warrant is at that place.	- Enter and re-enter, by force if needed. - Search place. - Take and remove the body found at place if necessary, to the morgue or some other suitable place for the post-mortem or examination. - Use for any such purpose such force as is reasonably necessary.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
s. 29	Warrant issued by coroner for apprehension of person failing to attend inquest when summarised, directed to any member of the police force (or other person).	Any land, house, building, premises or other place and any aircraft, vehicle or vessel, for purpose of executing warrant.	Enter and re-enter place by force if needed.
Crimes (Confiscation of Profits) Act 1989 s. 30 and s. 31	Warrant issued by a stipendiary magistrate, on application of member of the police force, unless consent of occupier is obtained.	Land or premises specified in warrant.	- Enter land or premises. - Take such assistance as is necessary and reasonable. - Search for property-tracking documents or any tainted property. - Seize any document or property found in course of search, believed on reasonable grounds to be a document in relation to an indictable offence or tainted property. - Seize any document not specified in warrant found in course of search, believed on reasonable grounds to be a property-tracking document in relation to the offence or another serious offence under Act, or will afford evidence as to commission of a criminal offence, and it is believed on reasonable grounds that seizure is necessary to prevent its concealment, loss or destruction. - Search any person found in or on premises.
s. 32	Nil.	Any land or premises, if officer believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of tainted property and that entry, search or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate entry search or seizure without the authority of an order of the court or a warrant issued under Act.	- Enter upon land or premises and search for tainted property. - Seize tainted property found in course of search.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
Criminal Code s. 679	Warrant issued by justice on complaint on oath.	Any house, vessel, vehicle or aircraft or place referred to in warrant when there are reasonable grounds for suspecting that there is at the place, inter alia, anything which will afford evidence of commission of any offence.	- Enter place named in warrant using force if necessary. - Search place. - Seize any such thing referred to in section, and take it before a justice to be dealt with according to law.
s. 679B	No authority required to enter a "holding" (defined to exclude any place used for human habitation).	Any holding, if it appears to police officer there are reasonable grounds for suspecting that any offence relating to a horse, bull, cow, ewe etc. has been, is about to be or is being committed.	- Enter upon and leave holding as often as considered necessary. - Search for and inspect any animals and their young, and any brand, mark, branding instrument, pliers. - Stop travelling animals and young and any vehicle or vessel for purpose of exercising powers. - Muster, yard, detain, clip and otherwise deal with animals and young as considered necessary for proper carrying out of investigations. - Seize and detain animals and young where officer suspects on reasonable grounds that owner has committed an offence. - Seize and detain any other thing in respect of which officer suspects on reasonable grounds that an offence has been or is being committed by any person. - Use such force as is reasonably necessary to exercise powers.
s. 684	Warrant issued by a justice on complaint on oath, directed to a police officer.	House or place specified in warrant, where there is reasonable cause to suspect that a woman or girl is being detained there for immoral purposes.	- Enter, if need be by force, any house or other place specified in the warrant. - Search for woman or girl. - Remove woman or girl from place.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
•• Domestic Violence (Family Protection) Act 1989 s. 32	Nil.	Premises where the police officer reasonably suspects that domestic violence is occurring or occurred before arrival at premises.	- Enter premises. - Use reasonable force as necessary to effect entry. - Remain on premises as long as considered necessary in order to verify grounds for suspicion, give or arrange assistance etc.
Drugs Misuse Act 1986 s. 18	Warrant issued by a justice on complaint of a police officer. Warrant issued by a stipendiary magistrate where application is made by telephone, telex, radio etc. or where the warrant is for the purpose of search for property liable to forfeiture under Pt. V.	The place named in the warrant (warrant may be issued where police officer reasonably suspects that a search of the place may reveal evidence of commission of a Pt. II offence, or where police officer reasonably suspects that a search of the place will reveal property liable to forfeiture).	- Enter or re-enter at any time the place specified in the warrant. - Search the place so entered or re-entered. - Detain all or any of the persons found in the place entered/ re-entered and exercise s. 15 powers in respect of such persons (to search persons and their possessions). - Pass through, from, over and along any other place for purpose of making entry/re-entry. - Seize anything found which is reasonably suspected to afford evidence of Pt. II offence, for purpose of having it examined for such evidence. - Retain anything seized if reasonably believed will afford evidence of a Pt. II offence, so as to use it as such evidence. - Use such force as is reasonably necessary to exercise powers (s. 53).
s. 18(12)	Nil.	Any place, when police officer reasonably believes that anything that may afford evidence of commission of Pt. II offence or is liable to forfeiture under Pt. V is in or is in the possession of any person in, on or about any place and that the thing will be concealed or destroyed unless place is entered and searched immediately.	Enter the place and exercise any of powers police officer would have had if warrant issued (see above).

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
Family and Youth Services Act 1987 s. 47	Warrant issued by a justice, directed, inter alia, to all police officers.	Where permanent head or a police officer suspects that an offence against s. 43 or s. 53 of Act has been committed, enter premises specified in warrant in order to examine or interview any child or interview any other person on premises or search premises.	- Take a medical practitioner onto the premises. - Use such force as is necessary for execution of warrant. - Search premises. - Examine or interview any child on premises. - Remove child from premises or direct a person entitled to custody of child to so remove child, if officer believes an offence against s. 43 or s. 53 has been committed.
Gaming Act 1850 s. 1	Special warrant of a justice of the peace, directed to any constable or peace officer.	Any premises or place where there is reason to suspect that it is kept or used as a common gaming house.	- Enter place with such assistance as necessary and with the use of force if necessary. - Arrest and search all persons found at the place. - Seize all tables, instruments of gaming, moneys and securities for moneys found. - Search areas within the place where officer suspects that tables and instruments of gaming are concealed.
Health Act 1937 s. 76L	Order for detention of a child suspected to have been maltreated or neglected, endorsed by prescribed medical officer that police assistance is considered necessary; and warrant issued by a justice on complaint of member of police force.	Where order has been made by a prescribed medical officer in respect of a child, and that child has left or been removed from the hospital without permission of prescribed medical officer, enter any place or premises where the officer executing the warrant reasonably suspects the child to be for the purpose of searching for the child.	- Search such premises. - Take child into custody and convey the child to hospital. - Use such force as is reasonably necessary to exercise powers conferred by Act. - Call to the aid of the officer persons as thought necessary (who shall have a like power of entry).

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
s. 82	Order of justices to whom complaint of a nuisance has been made, authorising any police officer to enter place or premises.	Premises authorised to be entered under order of justices, for purpose of examining premises for nuisance.	- Do all things necessary for executing order. - Recover all expenses from person against whom order is made. - Exercise like powers as if police officer were an officer of the Local Authority authorised to enter premises and do acts thereon.
s. 131A	Warrant issued by a justice of the peace on complaint of any member of the police force.	Premises or place to which warrant relates where police officer believes that an inorganic salt of hydrocyanic acid is in or upon or in the possession of any person on premises, contrary to Act.	- Enter premises or place to which warrant relates, by force if necessary. - Search premises or place and all persons found therein. - Open and search any package apparently in possession of persons found on premises. - Seize any substance that is or is reasonably suspected to be an inorganic salt of hydrocyanic acid.
s. 168A	Warrant issued by justice of the peace, on complaint on oath by any member of the police force.	Place referred to in warrant, where it is reasonably suspected that any female is in or upon such place, who has been reported as a missing person, or who is there for the purpose of procuring a miscarriage or whose dead body is in or upon premises.	- Enter and search place specified in warrant for female or dead body. - Break into place if admission is refused. - Require any person found at such place to give their name, occupation and place of abode and their reasons for being at such place. - Seize and detain any instrument or thing believed to be capable of being used to procure a miscarriage or which may afford evidence thereof.
* Hide, Skin and Wool Dealers Act 1958 s. 9	Any member of the police force, without further authority.	Any premises used, whether by a licensee or not, for purpose of storing hides, skins or wool or which officer has reasonable cause to believe is being used for such purpose.	- Enter and search premises. - Inspect any hides, skins or wool found on premises. - Inspect any record book referred to in s. 4(2) of Act.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
National Crime Authority (State Provisions) Act 1985 s. 12	Warrant issued by a judge of a prescribed court on application of Authority, addressed, inter alia, to members of the state police force, to search for things connected with a special investigation of the Authority.	Any land, premises, vessel, aircraft or vehicle referred to in warrant.	- Enter land, premises, vessel aircraft or vehicle. - Take such assistance as thought necessary. - Search land, premises etc. for things of the relevant kind. - Seize any things of the relevant kind found, and deliver them to the Authority. - Seize things, other than relevant things, found in course of search, if officer believes on reasonable grounds that the things are evidence of an offence against Commonwealth, State or Territory law and that it is necessary to seize the things to prevent concealment, loss, mutilation or destruction or use in committing such an offence.
s. 20	Warrant issued by a judge of the Supreme Court on application of Authority, addressed, inter alia, to members of police force of the States where there are reasonable grounds to believe that the person subject to the warrant is likely to leave Australia for purpose of avoiding giving evidence before Authority.	Any premises, vessel, vehicle or aircraft, for purpose of executing warrant.	Break and enter place, for purpose of executing warrant.
Noise Abatement Act 1978 s. 33	Nil.	Premises from which noise is emitted, if upon complaint police officer is satisfied that noise is clearly audible within complainant's premises and that the noise is excessive.	- Enter premises, using such force as is reasonable. - Direct occupier or persons who appear responsible for causing or permitting noise to abate excessive noise.
s. 36	Nil.	Premises in relation to which a second complaint is made within 12 hours after first direction to abate excessive noise.	- Exercise powers conferred by s. 33. - Enter premises using such force as is reasonable. - Take assistants as considered necessary onto premises.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
s. 36 cont'd...			- Deal with property used to produce noise, by seizure and removal of property, rendering property inoperable by removal of any part (but not so as to damage it), locking, sealing or masking property so it cannot be used.
** Pawnbrokers Act 1984 s. 50	Nil.	Pawnbroker's premises, where police officer suspects on reasonable grounds that an offence against Act is being or is about to be committed and at any time the premises are open for business.	- Enter pawnbroker's premises. - Enter premises, using such force as is necessary if admittance to closed premises is requested and is refused or unreasonably delayed. - Inspect any articles held by pawnbroker as pawns or pledges. - Require production and delivery of and inspect register of articles and any record, licence, notice or other writing and take copies or extracts. - Make such other search or inquiry as officer considers necessary to establish whether provisions of Act are being complied with.
s. 51	Warrant issued by any justice on complaint on oath of any police officer.	Any place or premises referred to in warrant, where officer applying for warrant believes that pawnbroker has on such place goods which have been stolen or otherwise unlawfully obtained.	- Enter place specified in warrant. - Call for the aid of such persons as officer thinks necessary for purpose of gaining entry. - Search place and any person found there. - Exercise all powers conferred upon a police officer by Act. - Use such force as may be necessary to perform any of the things referred to in section.
Public Safety Preservation Act 1986 s. 8	Instructions of the Incident Co-ordinator.	Any premises.	- Enter or cause to be entered any premises, using force as is reasonably necessary. - Search or cause to be searched any premises and anything found therein, using such force as is reasonably necessary. - Remove or cause to be removed from any premises any animal or thing, using such force as is reasonably necessary.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
Racing and Betting Act 1980 s. 23i	Warrant issued by a justice on complaint on oath of a member of the police force.	Any place, where there are reasonable grounds for suspecting that the place is used as a common betting house or that a person has committed, is committing or is about to commit an offence against Act at the place.	- Enter or re-enter by day or night the place specified in warrant. - Use assistance of other members of the police force or other persons as thought fit. - Search place entered and every person found in or about the place. - Use such force as is reasonably necessary in making entry or re-entry. - Pass through, from etc. any other place for purpose of entering or re-entering. - Break open, search and examine any bag, box, etc. found in or about the place, where officer has reasonable grounds for suspecting that the thing contains instruments of betting, money etc. suspected on reasonable grounds of being connected with an offence against Act or which may reasonably be expected to afford evidence of offence against Act. - Seize, detain and remove instruments of betting, money, documents etc. found at the place or on any person at the place. - Make copies of or take extracts from any book, card etc. found at the place, without seizing it. - Arrest any person found in, on or about the place.
** Second-hand Dealers and Collectors Act 1984 s. 57	Police officer may not enter dealer's premises or location which is closed for business, unless officer has first requested admittance and admittance is refused or unreasonably delayed.	Any dealer's premises or location where business of dealer is carried on, if police officer suspects on reasonable grounds that an offence against Act has been, is about to be or is being committed. Any such premises which are open for business.	- Use such reasonable force as is necessary to enter premises which are closed and to which admittance has been refused or unreasonably delayed. - Inspect any second-hand goods. - Inspect Register of Transactions and any record, licence, notice or other writing and take copies and extracts, and record in Register the date and hour of visit. - Make such search and inquiry as considered necessary to establish whether Act or licence is being complied with.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
s. 58	Warrant issued by any justice on complaint on oath of any police officer.	Any place or premises referred to in warrant, where officer applying for warrant believes that dealer or collector has on such place goods which have been stolen or otherwise unlawfully obtained.	- Enter place specified in warrant. - Call for the aid of such persons as officer thinks necessary for purpose of gaining entry. - Search place and any person found there. - Exercise all powers conferred upon a police officer by Act. - Use such force as may be necessary to perform any of the things referred to in section.
State Counter-Disaster Organization Act 1975 s. 25	Nil.	Any place, where police officer believes on reasonable grounds it is necessary to enter to save human life or prevent injury to persons or to rescue injured or endangered persons or to facilitate carrying out urgent measures to relieve suffering or distress.	- Enter place by reasonable force if necessary.
Traffic Act 1949 s. 43	Nil.	Any land, premises or place, for purposes of making any seizure, inquiry, investigation, inspection, examination or test officer is authorised or requested to make under Act.	- Enter land, premises or place. - Make inquiry, investigation, inspection, examination or test which officer is authorised or requested to make under Act, in respect of any person or such land premises or place or anything therein or thereon, or which in officer's opinion is necessary or desirable to give proper effect to Act. - Use reasonable force if necessary for making entry, where officer is acting under the instruction of the Commissioner or District Superintendent.
Weapons Act 1990 s. 4.5	Nil.	Any place, where any police officer suspects on reasonable grounds that a person is in possession of and is threatening to use any weapon, such that death or injury to any person is or is likely to be caused.	- Enter any premises or place. - Detain any person found there, for such time as is reasonably necessary to establish whether an offence has been committed. - Search premises or place and every person found there. - Seize and detain any weapon or other thing which may be found at place or on any person.

ACT	AUTHORITY REQUIRED	PLACE AND PURPOSE/GROUNDS OF ENTRY	ASSOCIATED POWERS/LIMITS ON POWERS
s. 4.5 cont'd...			- Use force as is necessary for purposes specified. - Call for aid of other persons.
s. 4.6	Nil.	Any range or premises of any club requiring approval under Act, shooting gallery, premises of collector, dealer, armourer, or theatrical ordnance supplier.	- Enter at any time. - Inspect, examine and test any weapon found there. - Inspect, examine and test any place, premises, equipment or materials of construction thereof. - Inspect any record, licence, approval, register or other writing and take copies and extracts.
s. 4.8	Warrant issued by justice upon complaint to enter and search place and persons.	Where police officer believes that any thing is in the possession of any person in or upon any place or premises contrary to provisions of Act.	- Enter and re-enter place or premises specified in warrant. - Search place and any person found there. - Exercise powers conferred on police officers by Act. - Use such force as may be necessary to perform things referred to in section. - Pass through, from, along, over any other place for purpose of making entry or re-entry.

TABLE 5

PUBLIC OFFICERS' POWERS TO ENTER AND SEARCH PLACES AND LAND AND ASSOCIATED POWERS

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Agricultural Chemicals Distribution Control Act 1966 s. 34	Inspectors and standard officers appointed under Act may call police officers to their aid, where they have reasonable cause to apprehend obstruction.	Warrant issued by a justice of the peace required if place is a dwelling house, unless permission of occupier to enter is obtained.	Any place, if reasonable grounds to believe that aircraft or ground equipment has been or will be used or that aerial or ground distribution is being or has been carried out.	- Search for any crop, aircraft, equipment etc. - Inspect and examine any crop etc. found therein. - Open/cause to be opened any package, container etc. - Select, take, remove for analysis samples of any crop or material which is not human. - Question and require answers to questions. - Call for aid of any member of the police force if inspector or officer apprehends obstruction, or of any person thought competent to assist.
Animals Protection Acts 1925 s. 9	Every member of the police force is an officer under Act.	Nil.	Any place.	- Enter any place for purpose of inspecting any animal and accommodation for such animal or to ascertain whether provisions of Act have been or are being contravened.
Artificial Breeding of Stock Act 1979 s. 30	Inspector appointed under Act may call for the aid of a member of the police force where inspector is obstructed or has reasonable grounds to believe will be obstructed in the exercise of powers or discharge of duties. Police officer shall have a duty to assist as required and member assisting shall have same powers and authorities as inspector under Act.	Warrant issued by a justice required if place is a dwelling house, unless permission of occupier to enter is obtained.	Any place.	- Enter any place. - Search, investigate and inquire with respect to any place as necessary to ascertain whether provisions of Act are being complied with. - Inspect any premises registered under Act or any other place inspector believes on reasonable grounds is being or is likely to be used for any purpose connected with artificial breeding of stock. - Examine any equipment, apparatus, utensils etc. found on any premises registered under Act or found at place inspected. - Seize, detain and remove the semen and ova of stock or any equipment, apparatus, etc. found on any premises registered under Act or other place inspected by inspector.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 30 cont'd...				- Open or order to be opened any place or container used for carriage of goods, believed on reasonable grounds to contain semen and ova of stock or materials used in processing thereof. - Seize and take without payment any sample of or any package containing semen or ova of stock or materials used in processing for examination, testing and analysis. - Call for the aid of another inspector or a member of the Queensland Police Force where inspector is obstructed or has reasonable grounds to believe will be obstructed in exercise of powers or discharge of duties, and call for the aid of a person thought competent to assist in exercise of powers or discharge of duties. - Use such force as is reasonably necessary in exercise of powers or discharge of duties. - By order in writing require a person to remedy non-compliance with Act. - Exercise such other powers as may be prescribed. - After inspection, give notice in writing to owner of premises, vehicle or vessel to comply with every direction or order in notice.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Banana Industry Protection Act 1989 s. 21 and s. 22	Persons authorised by Board under Act may call to their aid police officers where they are being or have reasonable grounds to believe they will be obstructed. Police officer so called shall assist authorised person as required and in accordance with Act.	Warrant issued by a stipendiary magistrate required before entering a place which is a dwelling house, unless permission of occupier to enter is obtained. Warrant must specify which of the powers can be exercised in respect of the dwelling house.	Enter any place, including any vehicle, in order to obtain information relating to levying assessment under Acts, to ascertain whether Act has been complied with or to investigate an offence against Act.	- Take such assistants, vehicles or equipment as necessary. - Search place and make investigation, inspection and inquiry. - Stop and detain any vehicle and direct any person in charge of such vehicle. - Direct any person to furnish for inspection records or copies or extracts of records. - Take notes, copies and extracts of such records. - Question any person and require answers (but not so as to require self-incrimination).
Brands Act 1915 s. 23	Every police officer is an inspector for purposes of Act by virtue of office.	Nil.	May enter any holding, as often as considered necessary.	- Search for and inspect any stock, brand, branding implement etc. - Stop any vehicle, vessel or travelling stock for purpose of exercising powers under section. - Muster, yard, detain clip and otherwise deal with stock as considered necessary - Seize and detain stock, where owner is reasonably suspected of committing an offence against Act. - Seize and detain anything reasonably suspected of being involved in commission of offence. - Use such force as is reasonably necessary in exercise of powers. - Question and require answers and a statutory declaration as to truth of answers from owner or person in charge of stock, or any person found on holding or employed on holding within last year. - Direct the owner, occupier or person in charge of holding to cause stock to be mustered, with written authority of Minister.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Bread Industry Authority Act 1990 s. 3.31	Inspectors appointed under Act may call for the aid of any member of the police force, whose duty it is then to assist inspector as required and in accordance with Act.	Warrant issued by a stipendiary magistrate required before entering a dwelling house unless permission of occupier to enter is obtained.	May enter any place, to ascertain whether Act is being complied with, or where inspector has reasonable belief that place is used for manufacture, storage or sale of bread.	- Make necessary investigations and inquiries. - Inspect place. - Question any person and require answers to questions. - Require name and address of a person found committing an offence or whom inspector reasonably believes has committed an offence and evidence of correctness thereof, if inspector reasonably suspects a false name and address has been given - Require production of receipts, books, accounts, records and documents relevant to the Act. - Inspect, examine, make copies, take extracts of such documents. - Use reasonable force as is necessary to exercise powers. - By order in writing, require a person who has failed to comply with the Act to take steps to remedy breach.
Classification of Films Act 1991 s. 46	Chief Executive of Department may with agreement of Commissioner of Police appoint police officers to be inspectors.	Warrant issued under s. 49 of Act by a magistrate, unless occupier consents, or place is open to the public.	Enter or board any place for the purpose of finding out whether the requirements of the Act are being complied with.	- Enter or board place. - Search any part of place. - Inspect or examine anything in or on place. - Take extracts from and copies of any documents in or on the place. - Take such equipment and materials as required for purpose of exercising any powers in relation to place. - Require occupier to give inspector reasonable assistance.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 47		Warrant issued under s. 50 of Act, unless occupier consents to entry or exercise of power.	Enter the place where Inspector has reasonable grounds for suspecting that there is in or on a place a particular thing which is evidence of the commission of an offence against Act.	- Enter place. - Search any part of the place. - Inspect or examine anything in or on the place. - Take onto place such equipment and materials as Inspector requires for purpose of exercising any powers in relation the place. - Require occupier to give reasonable assistance. - Seize evidence found. - Seize a thing other than the particular thing sought that will afford evidence of the offence or that will afford evidence of the commission of another offence against Act, where Inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction or its continued use in committing or repeating the offence. - Keep evidence for 60 days or until completion of proceedings for offence. - Take extracts and copies of evidence which is a document.
Classification of Publications Act 1991 s. 22	Chief Executive of Department may with agreement of Commissioner of Police appoint police officers to be inspectors.	Warrant issued under s. 25 of Act by a magistrate, unless occupier consents, or place is premises which is open for admission to the public.	Enter or board any place for the purpose of finding out whether the requirements of the Act are being complied with.	- Enter or board place. - Search any part of place. - Inspect or examine anything in or on place. - Take extracts from and copies of any documents in or on the place. - Take such equipment and materials as required for purpose of exercising any powers in relation to place. - Require occupier to give Inspector reasonable assistance.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 23		Warrant issued under s. 50 of Act, unless occupier consents to entry or exercise of power.	Enter the place where inspector has reasonable grounds for suspecting that there is in or on a place a particular thing which is evidence of the commission of an offence against Act.	- Enter or board place. - Search any part of the place. - Inspect or examine anything in or on the place. - Take onto place such equipment and materials as Inspector requires for purpose of exercising any powers in relation the place. - Require occupier to give reasonable assistance. - Seize evidence found. - Seize a thing other than the particular thing sought that will afford evidence of the offence or that will afford evidence of the commission of another offence against Act, where Inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction or its continued use in committing or repeating the offence. - Keep evidence for 60 days or until completion of proceedings for offence. - Take extracts and copies of evidence which is a document.
Criminal Justice Act 1989 s. 32	Police officers whose services are utilised by the Commission under s. 2.54 are officers of the Commission.	Written authority of the Chairman of the Commission or his delegate.	Enter and search premises occupied or used by or for the official purposes of a unit of public administration.	- Search premises. - Inspect any record or thing found that is/might be relevant to an actual/proposed investigation. - Seize and remove from premises any record or thing relevant to actual/proposed investigation. - Make copies of or extracts from such records and remove such copies/extracts.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 33		Warrant issued by a Judge of the Supreme Court of Qld, on application of the Chairman or delegate, and addressed to all officers of the Commission, for the purposes of an investigation or a proposed investigation.	Enter and search premises other than public premises.	- Use such reasonable force as is necessary for exercise of authority under warrant. - Break any door, window, lock or receptacle, if appears necessary to do so. - Search premises specified in warrant. - Search any person found on such premises, if necessary. - Seize any record or thing found and to bring it before the Commission. - Make copies and extracts of such records.
Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 s. 48 and s. 49	s. 51: Police officer requested by Landscapes Queensland Protector or officer appointed under Act to assist shall have and may exercise the powers of a protector or officer.	Warrant issued by a justice on complaint of a protector or officer and directed to the protector or officer must be obtained before entry and search of a place which is a dwelling house.	Any land and any place, where it becomes necessary in the discharge of duty/ exercise of power by protector or officer.	- To search any place lawfully entered for the purposes of the Act. - To search the baggage and effects of any person found at the place.
Dairy Industry Act 1989 s. 46	Inspector employed or engaged under Act may call for the aid of a member of the police force where the inspector is obstructed or has reasonable grounds to believe will be obstructed. "Inspector" includes a person who is called to the aid of an inspector employed or appointed under Act.	Warrant issued by a stipendiary magistrate must be first obtained before entering a place which is a dwelling house, unless permission of occupier to enter is obtained.	Any place for the purposes of the Act.	- Investigate and make inquiries in respect of such a place to ascertain whether the Act is being complied with. - Inspect dairy produce premises believed on reasonable grounds to be used or are likely to be used for receipt, storage etc. of dairy produce. - Examine machinery equipment etc. found in any dairy produce premises or other place. - Seize and detain dairy produce, related machinery and equipment and vehicles and vessels.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 46 cont'd...				- Remove or require removal of dairy produce or other things seized, and to make arrangements to protect such things. - Open or order to be opened any place, container, tank etc. reasonably believed to contain dairy produce. - Seize and take without payment for grading, testing etc. any sample or package containing dairy produce or used in connection with manufacture of dairy produce. - Question and require answers from any person to ascertain whether the Act is being complied with. - Require name and address of a person found committing or believed on reasonable grounds to have committed an offence against Act, or where necessary for the purposes of the Act and to require evidence of correctness, where reasonably suspects name and address supplied are false. - Require production of licence, permit, certificate or authority under Act, and any books, accounts, records or documents relevant to the Act. - Inspect, examine, take copies and extracts of such licence, documents etc. - Call for aid of a person employed by Authority or a member of the police force. - Use reasonable force as is necessary in exercise of powers and discharge of duties under Act. - By written order, require a person in breach of Act to remedy breach. - Exercise other powers and authorities as are prescribed and powers of an inspector under Stock Act.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Diseases in Timber Act 1975 s. 6	Forest officer (under Forestry Act 1959) may call for the aid of any member of the police force to assist in the exercise of his powers and discharge of duties. Member assisting shall have the same powers as are conferred upon forest officer under Act.	Where place or part of a place to be entered is used exclusively as a dwelling house, inspector must obtain warrant of a justice to enter, unless permission of occupier to entry is obtained.	Any place, including any house, office room, tent, building, erection, premises, ship vessel, vehicle, aircraft etc.	- Enter any place. - Make investigation and inquiry with respect to place. - Inspect, examine and test any article or timber found in any place. - Select and remove for inspection or testing any article or timber found in any place. - Seize and detain any article or timber Inspector suspects on reasonable grounds to be infested with disease. - Remove any article or timber seized and make arrangements considered necessary to protect it. - Call for the aid of any member of the police force to assist in the exercise of powers or discharge of duties. - Exercise such other powers and discharge other duties as are prescribed.
Electricity Act 1976 s. 24	Electrical inspector employed, licensed or authorised by Commission may call to his aid any member of the police force where inspector has reasonable cause to anticipate any obstruction in the exercise of powers or performance of duties.	Nil.	Any works or premises, to enable electrical Inspector to exercise his powers and perform duties under Act.	- Enter and remain on any works or premises to enable inspector to exercise powers and perform duties, at any reasonable hour of the day or night. - Inspect and examine all electrical installation work found upon entry. - Make examination and inquiry as is necessary to ascertain whether work done in prescribed manner, the identity and qualifications of persons performing the work. - Require production of any certificate, permit or licence and of any book, notice, record, list, or writing required to be kept under Act. - Examine and take copies of such documents. - Exercise such other powers as may be prescribed.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 186 and s. 187	Installation Inspector employed, authorised or licensed under Act may call for aid of any member of the police force, where has reasonable cause to anticipate any obstruction in exercise of powers or performance of duties.	Nil.	Consumer's premises, to enable Inspector to exercise powers and perform duties.	- Enter and remain on a consumer's premises to enable exercise of powers or performance of duties, at any reasonable hour of the day or night. - Call for aid of any member of the police force or any person thought competent to assist to investigate an electrical accident on consumers' premises. - Inspect and test consumers' electrical installations and connect or leave unconnected the installations - Investigate and report any electrical accident occurring on a consumer's premises.
Exotic Diseases in Animals Act 1981 s. 21	Inspector under Act may call for the aid of any police officer; "Inspector" includes any police officer acting under the direction of an Inspector.	Warrant issued by a justice where premises or part of premises to be entered is used exclusively as a dwelling house, unless permission of occupier to entry is obtained.	Any premises, holding or place, for the purposes of Act.	- Enter premises, holding or place at any time. - Take assistants, vehicles, vessels, equipment, disinfectant, tools and stores as considered necessary. - Inspect premises, holding or place in which Inspector suspects on reasonable grounds that any animal, carcass, animal product etc. is infected. - Inspect, examine, test and treat for exotic disease any animal, carcass, animal product etc. - Count animals upon any premises or holding and inspect records kept in relation to such animals. - Destroy any animal which is or which is suspected on reasonable grounds to be infected with rabies. - Impound or quarantine any animal which in opinion of inspector is or is suspected of being infected or where there is a risk of animal straying or coming into contact with uninfected animals. - Impound or detain any animal product, carcass etc. which in the opinion of inspector is or is suspected of being infected. - Search for, trap and destroy vectors of exotic disease.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 21 cont'd...				- Call for the aid of any police officer where inspector has reasonable apprehension of obstruction and any person thought competent to assist in exercise of powers or discharge of duties. - Search any premises or holding if inspector suspects on reasonable grounds that an offence against Act has been or is being committed, or that there is any animal, animal product etc. in relation to which an offence was or is being committed which will afford evidence of commission of offence and may break open and search every box, package etc. upon premises or holding. - Seize and detain any animal, animal product etc. in respect of which an offence has been or is being committed or in respect of which the inspector suspects on reasonable grounds that such an offence has been or is being committed or believes will afford evidence as to commission of offence. - Remove or cause to be removed any animal, animal product etc. - Use such force as is reasonably necessary in exercise of powers and discharge of duties. - Make orders to owners, including orders to muster animals, present animals, animal products etc. for inspection, treatment or testing, hunt and destroy any domesticated animals specified in order etc.
Explosives Act 1952 s. 14	Inspector employed or engaged under Act may call for the aid of any member of the police force where inspector has reasonable cause to apprehend any obstruction in exercise of powers or execution of duties.	Nil.	Any place where or in which inspector has reasonable grounds for believing any explosive or explosives ingredient is situated.	- Enter and inspect any place on reasonable belief that explosive or explosives ingredient is situated there. - Make inquiries as to observance of Act. - Inspect and examine explosives or explosives ingredient at any place. - Remove explosives, ingredients or samples thereof for examination/testing.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 14 cont'd...	s. 34: Every member of the police force shall have and may exercise all the powers of an Inspector where it appears to the officer that the Act has been contravened or not complied with in relation to sale of explosives.			- Seize, remove and detain any explosive or ingredient in inspector's opinion which is unauthorised, and any vehicle, vessel, container etc. in which it is found. - Use without seizing any vehicle, vessel etc. for the purpose of removing or detaining seized goods. - Require the name and address of any person in possession of any explosive or ingredient, and the name and address of person who supplied such explosive or ingredient. - Require production of any invoice or other document given by supplier, and to take copies and extracts. - Destroy, render harmless or dispose of any explosive or ingredient (with the consent of Minister, or without consent, if there is imminent danger). - Direct persons to cease acts or practices considered dangerous and to do or omit to do anything in relation thereto. - Require production of any licence, book, record or writing kept pursuant to the Act. - Inspect, examine and take copies and extracts of such documents. - Supervise and control the loading and unloading of explosives from or onto any vessel. - Direct any person having control of explosive or ingredient who appears to be in breach of Act to do acts necessary for compliance with Act.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Factories and Shops Act 1960 s. 11	An inspector appointed under the Act may at any time call to his aid any member of the police force where the inspector has reasonable cause to apprehend any obstruction in the exercise of his powers or duties.	Nil.	Any place used or intended to be used or which the inspector has reason to believe is used or intended to be used as a factory or shop.	- Enter inspect and examine any such place. - Take onto any place a medical practitioner or inspector under Health Act. - Question and require answers and a signed declaration of truth from any person found at the place or reasonably believed to have been an employee. - Make examinations and inquiries as are necessary to ascertain whether Act or any public health Act are being complied with. - Require production of any permit, certificate or other authority under Act or any book, record, list or other document required under Act. - Inspect and examine and take copies and extracts of such licences, documents etc. - Require name and address of any person who is found committing or is reasonably suspected of having committed an offence under Act or which is reasonably required for a purpose of the Act and to require evidence of correctness, where reasonably suspects name and address given is false. - Take and remove samples and articles connected with business carried on in factory or shop, for the purposes of analysis. - Institute proceedings. - Exercise powers conferred by the Health Act or any other public health Act.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Fisheries Act 1976 s. 18	Inspector appointed under Act may call for the aid of a member of the police force if inspector is being or has reasonable grounds to believe will be obstructed; "inspector" includes a person acting in aid of an inspector.	Where place to be entered is used as a dwelling house, warrant to enter issued by a justice must first be obtained, unless permission of occupier to enter is obtained.	Any place.	- Enter any place. - Enter upon and pass along banks or borders of any river, creek etc. and all tributaries, dams, weirs etc. - Make examination, investigation or inquiry with respect to place as necessary to ascertain whether Act is being complied with. - Make examination or inquiry as thought necessary to ascertain whether conditions of licence, permit or authority in respect of area to which licence, permit etc. relates. - Question and require answers from any person found at place or found in possession of any apparatus, to ascertain whether Act is being complied with. - Search any place, if suspect on reasonable grounds that an offence against Act has been, is likely to be or is about to be committed or that there is likely to be at the place any fish, marine products etc. connected with offence or which will afford evidence of offence. - Break open and search every bag, package, bottle or other receptacle at the place.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Food Act 1981 s. 28	An authorised officer appointed under Act may call for aid of a member of the Queensland Police Force, where authorised officer is obstructed or believes on reasonable grounds may be obstructed in the exercise of powers or performance of duties. A police officer called upon to assist shall have the same powers and authorities as an authorised officer under the Act, and shall have a like power of entry to premises when called to aid an authorised officer to gain entry of premises.	Where place intended to be entered is a dwelling house, a warrant to enter must first be obtained from a justice unless permission of occupier to enter is obtained	Any premises or other place where it is believed on reasonable grounds that any article is sold, or prepared, packed, stored, handled, served or supplied for sale therein or in respect of which a warrant has been issued.	- Enter premises or other place. - Investigate and inquire as necessary to ascertain compliance with Act. - Question and require answers from any person to ascertain whether the Act is being complied with. - Use such force as is reasonably necessary in exercise of powers. - Require name and address (and evidence of correctness thereof, if officer believes false one given) where finds a person committing an offence or reasonably believes has committed an offence or where officer is of the opinion that it is reasonably necessary. - Stop, detain and search any vehicle and exercise powers conferred by Act in respect of such vehicle. - Inspect and examine articles etc. believed on reasonable grounds to be used in connection with sale, supply etc. in any vehicle. - Take and remove any article or sample of any article. - Open or order to be opened any container, package etc. reasonably believed to contain any article. - Require production of any licence, registration, permit, approval, certificate or authority under Act or any books, accounts, records or documents. - Make copies and extracts of such documents or remove documents for the purposes of taking such copies and extracts. - Seize and detain articles believed on reasonable grounds to be involved in contravention of the Act. - Mark, fasten, secure or seal any article or door, gate or opening believed to afford access to any article.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 28 cont'd...				- Take and remove any sample reasonably believed will be used in evidence in respect of any offence under Act. - Take photographs/films/audio/visual recordings as considered necessary. - Purchase food by paying market value. - Exercise such other powers or authorities as are prescribed.
Forestry Act 1959 s. 18	A forest officer appointed under Act may call for the aid of any member of the police force where officer has reasonable cause to apprehend any obstruction in the exercise of his powers.	Where place intended to be entered is a dwelling house, a warrant issued by a justice must first be obtained, unless permission of occupier to enter is obtained.	Between sunrise and sunset, any place wherein forest officer reasonably suspects there are any forest products or quarry material got or interfered with contrary to the Act, and a dwelling house in respect of which a warrant has issued.	- Enter and inspect such place. - Seize, take away and detain forest product or quarry material found at the place. - Seize, take away and detain the vehicle or vessel in which such products and materials are found, and any equipment or gear reasonably suspected of being used in getting or interfering with products or materials. - Secure items seized, taken away or detained pending proceedings.
Gaming Machine Act 1991 s. 9.3	Inspector appointed under Act may call for the aid of a police officer. A person acting in aid of an inspector shall have all powers and authorities of an inspector.	Nil.	Licensed premises, where inspector believes on reasonable grounds that it is necessary in the performance of his or her functions and where inspector believes on reasonable grounds any article is manufactured or sold or records are made, kept etc.	- Enter and remain on premises. - Make investigations and inquiries as necessary to ascertain whether Act is being complied with. - Inspect licensed premises and any articles, records, fittings and fixtures or things connected with gaming equipment. - Open any container or other receptacle believed on reasonable grounds to contain any articles or records. - Search for and seize and retain any article, record or other thing considered will afford evidence of the commission of an offence against Act. - Open or order to be opened any gaming equipment.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 9.3 cont'd...				- Inspect and test any gaming equipment and order withdrawal from use any equipment considered unsatisfactory. - Take photographs, films or audio or visual recordings considered may afford evidence of commission of an offence against Act or any other Act or law. - Require production of licence, registration, permit, approval, certificate or authorisation under Act. - When required by Director, provide gaming machines to a licensee; alter a gaming machine or take possession of or remove gaming machines or related equipment. - Use such force as is reasonable in the circumstances for the purpose of gaining entry to any place.
Health Rights Commission 1991 s. 107 and s. 108	s. 24: Commissioner may authorise a police officer to exercise a power conferred by Act. s. 106: An authorised person may call on a police officer to provide aid. For the purpose of providing aid, the police officer is an authorised person.	Consent of occupier of premises to enter or exercise powers, or where no consent is given, a warrant issued by a magistrate on application of an authorised person (s. 109).	Any premises where the Commissioner has reasonable grounds for suspecting that there is a person on the premises whose health or safety is at risk or that there is on the premises a record or thing that may afford evidence in relation to an inquiry.	- Enter premises. - Search any part of premises. - Make inquiries on premises. - Take extracts from and make copies of a record on premises. - Take onto premises anything the authorised person requires for purpose of exercising powers. - Make arrangements to secure the health and safety of a person as necessary. - Require occupier or any person on premises to give reasonable assistance. - Seize record or thing which is believed on reasonable grounds may afford evidence. - Keep such evidence for 60 days or until the completion of a prosecution instituted in that period.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 107 and s. 108 cont'd...				- Make copies of or take extracts from evidence which is a record.
Industrial Relations Act 1990 s. 14.6	Industrial Inspector appointed under Act may call on police officer to provide aid if reasonably apprehends any obstruction in exercise of powers or performance of duties.	No authority required. However, an Industrial Inspector is not empowered to enter premises used as a private dwelling house unless there is carried on some calling in which at least one employee is employed.	Any place (except a private dwelling where no employee is employed) in or on which the Inspector believes on reasonable grounds that a calling is, has been or is about to be carried on.	- Inspect and examine place. - Make examination and inquiry as necessary to ascertain whether Act, any relevant award, industrial agreement, permit or order is being complied with. - Require production of time sheets, pay sheets and other employee records for examination at any time during business operations. - Make copies or extracts of such sheets and records. - Question and require answers from employer or any person found on place and require signing of statutory declaration of truth of answers, to ascertain whether Act, award etc. is being or has been complied with, (but not so as to require self-incrimination). - Require name and address of any person whom inspector is authorised to question or whose name and address are reasonably required for purposes of Act, and to require evidence of correctness.
Land Act 1962 s. 373	Police officer called to aid the person to whom the Minister has directed an order, where the person is or believes on reasonable grounds will be obstructed in exercise of powers. Police officer shall have same powers and authorities as person to whom order of Minister is directed.	Order of Minister.	Crown land, a road or reserve from which a structure, improvement or work is ordered by Minister to be removed.	- Enter Crown land, road or reserve at any time. - Take onto land, road or reserve such assistants, vehicles, materials, machinery and equipment as considered necessary. - Remove by demolition or otherwise the structure, improvement, work or other thing specified in order. - Use such force as is reasonably necessary in exercise of powers. - Require name and address of any person obstructing or who is believed on reasonable grounds may obstruct the person to whom the order is directed, and require evidence of correctness thereof.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 373 cont'd...				- Arrest without warrant any person who refuses or fails to state name and address or evidence of correctness when requested.
Liquor Act 1992 s. 176	"Investigator" includes police officer.	Warrant issued pursuant to s. 179 (monitoring warrant), unless: - occupier of place consents to entry and exercise of power; or - the place is a public place open for admission by public; or - premises are licensed and are open for entry or investigator suspects on reasonable grounds that an offence is being committed against Act in or on the place.	Any place, for the purposes of monitoring compliance with Act.	- Enter any place at any reasonable time of the day or night. - Search any part of the place. - Inspect, examine, photograph or film anything in or on the place. - Take extracts from and make copies of any documents in or on the vehicle etc. - Take onto place such persons, equipment and materials as the investigator reasonably requires for purpose of exercising powers. - Require occupier to give reasonable assistance to investigator. - Require name and address and evidence of correctness of a person in accordance with s. 182. - Question a person and require answers to questions in accordance with s. 183. - Exercise powers under s. 184: • Require production of licence or other document and inspect and take copies and extracts from and keep documents. • Require a person or a minor to leave premises and to remove person or a minor from premises if direction not complied with. • Arrest without warrant a person found committing an offence or whom investigator suspects on reasonable grounds of having committed an offence against Act. • Seize liquor together with bottles or containers in which it is contained.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 177	"Investigator" includes police officer.	Warrant issued pursuant to s. 180, unless occupier consents to entry or exercise of power.	Where investigator has reasonable grounds for suspecting that there is in a place a particular thing that may afford evidence of commission of an offence against Act.	- Enter place. - Exercise powers under s. 178: * Search any part of the place. * Inspect, examine, photograph or film anything in or on the place. * Take extracts from and make copies of any documents in or on the vehicle etc. * Take onto place such persons, equipment and materials as the investigator reasonably requires for the purpose of exercising powers. * Require occupier to give reasonable assistance to investigator. * Require name and address and evidence of correctness of a person in accordance with s. 182. * Question a person and require answers to questions in accordance with s. 183. - Exercise powers under s. 184: * Require production of licence or other document and inspect and take copies and extracts from and keep documents. * Require a person or a minor to leave premises and to remove person or a minor from premises if direction not complied with. * Arrest without warrant a person found committing an offence or whom investigator suspects on reasonable grounds of having committed an offence against Act. * Seize liquor together with bottles or containers in which it is contained.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 177 cont'd...				* Seize evidence found. * Keep evidence for six months or until completion of proceedings for an offence and any related appeal. * Take extracts from and make copies of evidence which is a document. * Seize, keep and take extracts and copies from: - a thing which investigator believes on reasonable grounds that is other than the evidence suspected to exist, which will afford evidence of the commission of the offence; or - a thing that will afford evidence of the commission of an other offence against Act; - where investigator believes on reasonable grounds that it is necessary to seize the thing to prevent its concealment, loss or destruction or its use in committing, continuing or repeating the offence.
Meat Industry Act 1965 s. 118	Inspector under Act may call to his aid any member of the police force where reasonable cause to apprehend obstruction in exercise of powers or execution of duties. "Inspector" includes any member of the police force acting under direction or in aid of an inspector.	Where place to be entered is a dwelling house, inspector must first obtain the permission of the occupier to entry, or a warrant issued by a justice.	Any place licensed under Act as, or used or intended to be used or which inspector has reason to believe is used or intended to be used as an abattoir, slaughter house, butcher shop etc.	- Inspect and examine place and all appliances, vehicles used or apparently used in connection with the place. - Inspect and examine any stock, poultry or other animals and any carcass or meat and to take samples from such carcasses found there. - Open any appliance found. - Inspect, examine, select and retain samples of water supplied to or used by the place. - Stop, inspect and examine any vehicle used or which inspector has reason to believe to be used in connection with the place.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 118 cont'd...				- Inspect and examine all appliances, and take samples of carcasses, meat and flesh found in such vehicle. - Inspect and examine and take samples of any carcass, meat or flesh of stock, poultry or other animal which is being carried or delivered and may stop any vehicle or person for the purpose of such inspection. - Question any person whom is found at a place or in any vehicle stopped by him under authority of Act or whom inspector has reason to suspect of being an employee within the preceding two months, with respect to matters under Act, and require answers to questions and a signed declaration of truth of answers. - Question employee out of hearing of employer or manager, foreman or other superior officer. - Make examination and inquiry to ascertain whether Act is being complied with in respect of any place, vehicle, occupier or employee. - Require production of any licence, certificate, approval, consent, permission or other authority held under Act or any book, record, receipt or other document required by Act to be kept. - Inspect and examine and make copies and extracts of such documents. - Call for the aid of any member of the police force where reasonable apprehension of obstruction of any person thought competent to assist in making inspection or examination. - Require owner of animal, carcass, meat or flesh to retain it in his or her custody and possession at place specified.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Medical Act and Other Acts (Administration) Act 1966 s. 14	Inspector under Act may call for the aid of any member of the police force if inspector has reasonable cause to believe will be obstructed in exercise of powers, or performance of duties.	When place to be entered is a dwelling house or part of a building used exclusively for residential purposes, inspector must first obtain warrant to enter (valid for one month from issue) from a justice.	Any place where or where inspector has reason to believe the practice of medicine, nursing, dentistry, pharmacy, etc. is being carried contrary to provisions of prescribed Acts.	- Inspect and examine equipment and appliances found. - Call for the aid of any member of the police force if apprehends obstruction, or any person considered competent to assist in inspection or examination. - Make examination and inquiry as necessary to ascertain whether prescribed Acts have been or are being contravened. - Question and require answers and a signed declaration of truth of answers from occupier of any place, owner of equipment or appliances, and any person found at any place, with respect to matters under prescribed Acts. - Require production of certificate of registration required to be kept under prescribed Acts, and inspect, examine and take copies and extracts. - Other powers as are prescribed.
Mineral Resources Act 1969 s. 10.7	Mining officer, field officer and any person authorised by Minister may call for the aid of a member of the police force, who shall have the same powers and authorities conferred by the Act as the person the officer is assisting.	Warrant issued by a justice must first be obtained where place to be entered is used exclusively as a dwelling house, unless occupier consents to entry.	Any land.	- Drill, dig, take samples of soil, air etc. and carry out such investigations and do other acts connected with mining as thought fit. - Remove or cause to be removed any post, cairn or other thing if satisfied that it does not relate to any existing mining claim or application. - Make such investigation and inquiry as necessary to ascertain whether provisions of Act, permit etc. are being complied with. - Stop, detain and search any vehicle or vessel used or believed on reasonable grounds to be used for prospecting, exploring or mining. - Question and require answers from any person found in any place, to ascertain whether Act is being complied with.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 10.7 cont'd...				- Require name and address of any person found committing or believed on reasonable grounds to have committed an offence or whose name and address are in officer's opinion reasonably required, and evidence of correctness if suspected on reasonable grounds to be false. - Require production of any permit or other authority granted under Act and any books, accounts etc., inspect and examine and make copies or take extracts of such documents. - Call for the aid of a police officer or a mining registrar, field or other officer if reason to believe will be obstructed, or any person thought competent to assist as required. - Use such force as is reasonably necessary in exercise of powers, or discharge of duties. - Require by order in writing that a person in breach of Act take specified steps to remedy breach.
Mining (Fossicking) Act 1985 s. 32	A warden under Act may require aid of any member of the police force in discharge of duties and exercise of powers.	Before entry of any place which is used exclusively as a dwelling house by a person who is not a warden, the warrant of a justice must be first obtained.	Within a designated area, where warden suspects on reasonable grounds that an offence against Act has been or is about to be committed.	- Search any place and inspect any articles found there. - Make such inquiry as considered necessary to establish whether Act is being complied with.
Motor Vehicles Safety Act 1980 s. 16	Any inspector, accredited officer or other person authorised by the Commission may call for the aid of any member of the police force where has reasonable cause to apprehend any obstruction in exercise of powers or performance of duties.	Before entry of any part of premises which is used as a dwelling house, inspector must first obtain permission of occupier or warrant of justice.	Any place where there is or where inspector has reason to believe that there is any motor vehicle.	- Enter place. - Inspect and examine any motor vehicle found upon entry. - Call for the aid of any member of the police force where apprehends obstruction and any person thought competent to assist in such inspection and examination.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 16 cont'd...				- Make such examination and inquiry as necessary to ascertain whether provisions of Act have been or are being complied with in respect of any motor vehicle, the owner of the vehicle, and the names of persons in any way employed in connection with the vehicle. - Question with respect to matters under the Act the occupier of any place, the owner of any motor vehicle, every person found in any place and every person employed in any place in the preceding six months, to ascertain compliance with Act, and may require answers and a signed declaration of truth of answers.
Nature Conservation Act 1992 s. 131	All police officers are conservation officers by virtue of their office.	Warrant issued under s. 134, unless occupier consents to entry, or the place is open for admission by the public or place is licensed under regulation, are open for business and are not used exclusively for residential purposes.	Any place, other than a vehicle, boat or aircraft, for the purpose of finding out whether the Act is being complied with.	- Enter any place at any reasonable time of the day or night. - Search any part of the place. - Inspect, examine, photograph or film anything in or on the place. - Take extracts from and make copies of any documents in or on the place. - Take such persons, equipment and materials as officer reasonably requires for the purpose of exercising powers. - Require name and address. - Ask questions and require answers. - Require production of any licence, permit or other authority held under a regulation or any document required to be kept under a regulation. - Inspect, take extracts from and copies of such documents produced. - Arrest without warrant a person found committing an offence against Act or whom officer suspects on reasonable grounds of having committing an offence, and officer believes on reasonable grounds that complaint and summons would be ineffective.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 132		Warrant issued under s. 135, unless the occupier consents to entry or exercise of power.	Any place, other than a vehicle, boat or aircraft, if officer has reasonable grounds for suspecting that there is in a place a particular thing that may afford evidence of commission of an offence against Act.	- Enter place. - Seize evidences found. - Keep evidences for six months or until completion of proceedings. - Take extracts from and make copies of evidence which is a document - Seize, keep and take extracts from and copies of a thing found, other than the particular thing sought, which officer believes on reasonable grounds will afford evidence of the offence or of another offence against Act and that it is necessary to seize the thing to prevent its concealment, loss or destruction or its continued or repeated use in the offence. - Search any part of the place. - Inspect, examine, photograph or film anything in or on the place. - Take extracts from and make copies of any documents in or on the place. - Take such persons, equipment and materials as officer reasonably requires for the purpose of exercising powers. - Require name and address. - Ask questions and require answers. - Require production of any licence, permit or other authority held under a regulation or any document required to be kept under a regulation. - Inspect, take extracts from and copies of such documents produced. - Arrest without warrant a person found committing an offence against Act or whom officer suspects on reasonable grounds of having committing an offence, and officer believes on reasonable grounds that complaint and summons would be ineffective.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Plant Protection Act 1989 s. 19	Inspector appointed under Act, where obstructed or has reasonable grounds to believe will be obstructed, may call for the aid of a member of the Queensland Police Force, who shall assist as required and in accordance with the Act.	Warrant issued by a stipendiary magistrate where permission of occupier has not been obtained to entry.	Any place, including any vehicle, in order to ascertain whether Act is being complied with or to investigate any offence against Act or to perform a duty or exercise a power under Act.	- Enter any place, including vehicle. - Take assistants, vehicles and equipment as considered necessary. - Search any place entered and make investigation, inspection or inquiry as necessary, including opening and searching receptacles or enclosed space, conducting tests, taking samples without payment. - Seize any matter or thing with respect to which Inspector has reasonable grounds for believing that an offence against Act has been or is being committed or believes will afford evidence of commission of offence or is infested by pests. - Remove any such matter or thing, and make arrangements as considered necessary. - Direct a person to take steps to remedy matters with respect to which non-compliance has occurred. - Call for the aid of a member of the Queensland Police Force or any person considered competent to assist.
Poultry Industry Act 1988 s. 16	Every member of the police force shall by virtue of office be deemed to be an inspector appointed under Act.	Before inspector enters a place which is a dwelling house for purpose of exercising powers, must first obtain warrant to enter from a stipendiary magistrate.	Any place, in order to inspect poultry etc. believed or suspected to be there or to ascertain whether provisions of Act are being complied with or to exercise powers under Act.	- Take assistants, vehicles and equipment as considered necessary for the discharge of duties onto any place. - Search place entered and make inspection, investigation or inquiry as necessary for purposes of Act. - Break open and search any receptacle, conduct tests, take samples for testing or as evidence. - Stop any vehicle and require person in possession of vehicle to remove it as directed or to move or authorise moving of vehicle. - Seize any eggs or egg products or any thing in respect of which it is believed on reasonable grounds an offence has been or is being committed.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 16 cont'd..				- Remove to another place anything seized or allow it to remain and give directions necessary to protect it. - Call for the aid of a member of the police force if it is or reasonably believes will be obstructed, or any person thought competent to assist in exercise of powers. - Question and require answers from any person found at any place entered to ascertain whether Act has been or is being complied with. - Require any person to furnish for inspection records of any kind or copies of records in the possession of the person prepared or kept under Act.
Private Employment Agencies Act 1963 s. 9	Inspector appointed under Act may call for aid of a member of the police. A person acting in aid shall have all powers conferred on inspector by Act.	Warrant to enter any place used exclusively as a dwelling house, issued by a justice.	Any place that inspector has a bona fide interest in entering for the purposes of the Act.	- Enter premises, using such force as is necessary. - Make such examination or inquiry as considered necessary to ascertain whether Act is being complied with. - Interview any employee found in place entered, in presence of licensee or alone. - Search for and require production of any register, record, book, document, correspondence or other writing with respect to business of a private employment agency. - Inspect, examine and make copies of such documents. - Seize and retain such documents as considered will afford evidence of commission of offence suspected on reasonable grounds to have been committed. - Question an employer/ person in charge of place entered and require answers. - Call for the aid of another inspector, a member of the police force or any person competent in opinion of inspector.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Queensland Marine Act 1958 s. 18	Each member of the police force is a shipping inspector for purposes of Act.	Nil.	Any premises.	- Enter and inspect any premises at all reasonable times, where it appears requisite for the purposes of making a report or otherwise under Act. - Call for the aid of any person thought competent to assist in making examination or inquiry.
Queensland Marine (Sea Dumping) Act 1985 s. 24	Each member of the police force is a shipping inspector for purposes of Act.	Nil.	Where any vessel or aircraft is in the State and any vessel, aircraft or platform is in coastal waters.	- Board any vessel, aircraft or platform inspector believes on reasonable grounds that there is any matter or thing which is to be dumped or incinerated at sea or which may afford evidence of commission of an offence against Act. - Use such assistance as thought necessary. - Stop and detain vessel or aircraft for such purpose. - Require full name and usual place of residence of any person on board a vessel, aircraft or platform where is found committing or whom inspector suspects on reasonable grounds has committed an offence against Act. - Require person in charge of vessel in coastal waters to bring it into port in Queensland, where inspector believes on reasonable grounds that vessel has been used or otherwise involved in commission of an offence against Act. - Require person in charge of a vessel, aircraft or platform to give information concerning vessel etc. and its crew and any other person on board.
s. 26	"Inspector".		Where inspector boards a vessel, aircraft or platform under s. 24 or enters premises under s. 25.	- Search for and take possession of any matter or thing that may afford evidence as to commission of an offence against Act. - Search for, inspect and take copies of and extracts from any document that relates to the loading for dumping or incineration at sea of any matter or thing. - Inspect and take samples of any wastes or other matter.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 26 cont'd...				- Observe the loading on a vessel or aircraft under a permit any matter or thing to be dumped or incinerated at sea, or the dumping in or incineration at sea in accordance with a permit of any matter or thing. - Break open any hold or compartment or any container or other receptacle in a vessel, aircraft or platform or on any premises, for purposes of carrying out functions.
Radioactive Substances Act 1958 s. 20(1)	"Inspector" includes any member of the police force (s. 4).	Nil.	Any place between sunrise and sunset for purpose of searching for radioactive substance etc.	- Search for any radioactive substance or any irradiating apparatus or other apparatus reasonably suspected of having been used, prepared for use or had in possession contrary in any respect to the Act. - Seize, take away, detain and secure the same pending proceedings.
s. 20(2)			Any place where the inspector has reasonable grounds to suspect that there is kept or stored or had in possession of any person any radioactive substance or irradiating apparatus contrary to Act.	- Enter and search any place at any time and any box or receptacle there. - Seize any such thing found there. - Arrest any person found there or who is apparently in charge of the place or in possession of the thing.
Stamp Act 1894 s. 29	Commissioner for Stamp Duties may authorise a member of the police force to conduct inquiries into a particular matter, such member is deemed to be an investigating officer for purposes of Act.	Nil.	Any land and any place, building or premises in Queensland, for purposes of conducting inquiries.	- Enter and remain upon land, place etc. for as long as necessary for purpose of inquiries.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
State Transport Act 1960 s. 70	Members of the police force are "authorised officers" by virtue of their office.	No authority other than Act required, but if place is used for residential purposes, officer may only enter between 8am and 5pm on any day other than Christmas Day, Good Friday or a Sunday.	Any place where the authorised officer has reason to believe that any person carries on business of carriage of goods or passengers, or place is used in connection of such business and any place where officer has reason to believe goods are in the course of business being loaded for carriage or unloaded after carriage by road.	- Enter, search and inspect place. - Inspect and examine any goods found at place on entry and goods' container and labels, brands and marks on containers. - Call for aid of any person thought competent to assist in such examination and inquiry. - Question and require answers from any person, inter alia, found at any place, and a statutory declaration of truth of answers. - Search the place in question, upon a failure by a person to produce documents required by officer, and to examine, and make copies and extracts of and seize documents.
Stock Act 1915 s. 29	Inspector may call for the aid of any police officer where has reasonable cause to apprehend obstruction in exercise of powers.	Warrant issued by a stipendiary magistrate where place to be entered is a dwelling house.	Any premises or holding.	- Enter premises or holding, with such assistants, vehicles, equipment, plant and instruments as considered necessary for proper discharge of duties. - Count stock on premises.
Stock Regulations 1988 Reg. 45	Every member of the police force shall be ex officio an honorary inspector.	Nil.	Any place other than a dwelling house, to inspect stock or carcass in respect of which, in inspector's opinion an offence against Act has been or is being committed, or in order to count or inspect any stock, flock or herd book.	- Enter holding or premises other than a dwelling house at any time. - Inspect stock, carcass flock or herd book. - Count stock.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Tobacco Products (Licensing) Act 1988 s. 34	Commissioner may authorise a member of the police force to conduct inquiries, who shall be deemed an investigating officer for purposes of Act.	Warrant issued by a stipendiary magistrate where premises to be entered is a dwelling house.	Any premises on which investigating officer reasonably suspects there is any relevant material.	- Enter and search such premises at all reasonable times. - Break open and search any package or receptacle in premises entered. - Use such force as is necessary in exercise of powers.
Tow-truck Regulations 1988 Reg. 44	Members of the police force are "authorised officers" under Act.	Warrant issued by a justice on complaint of officer must be obtained before entry of premises used for residential purposes, unless permission of occupier to enter is obtained.	Any tow-truck, building or place. Premises maintained by a tow-truck operator as a holding yard. Premises from which tow-truck operator conducts his business.	- Inspect any tow-truck to determine whether it complies with requirements of Act. - Inspect yard for compliance with Regulations. - Give notice to repair, modify or alter holding yard to holder of licence or permit in relation to yard. - Seize and make copies of records held at business premises.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Trading Hours Act 1990 s. 33	Inspector appointed under Act may call for aid of a police officer if reasonably apprehends obstruction.	Warrant issued by justice on complaint of an industrial inspector must be obtained prior to entry of premises used as a private dwelling house.	Any place used or suspected to be used or intended to be used as a shop or in respect of which inspector reasonably suspects Act is being contravened.	- Enter, inspect and examine such places. - Carry out investigations considered necessary for purposes of Act. - Call for the aid of a police officer if reasonably apprehends obstruction. - Question and require answers and signed declaration of truth of answers from any person found in any place entered or any person reasonably believed to be the occupier or an employee of occupier. - Make investigations, inquiries and examinations considered necessary to ascertain whether Act is being or has been complied with. - Require production for examination of any time-sheets, pay-sheets or other employee records and records relating to entitlements to occupy building, identity of business proprietors and financial arrangements, and to examine and make copies or extracts. - Require name and address of person found committing or reasonably suspected to have committed an offence against Act, or whom inspector is authorised to question or whose name and address are reasonably required for purposes of Act in inspector's opinion, and evidence of correctness if reasonably suspects information to be false.
Travel Agents Act 1988 s. 45	"Authorised officer" includes a member of the police force carrying out an investigation at the request of the Commissioner for Consumer Affairs.	A warrant issued by a justice must be obtained before entry of premises which is a dwelling house.	Premises where business as a travel agent is being carried on or in which it is believed on reasonable grounds that records relating to business are kept.	- Require production of records kept or required to be kept under Act. - Inspect and require explanations of records. - Take notes, copies and extracts from any record produced. - Remove and detain records to enable notes, copy or extract to be taken.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
Workplace Health and Safety Act 1989 s. 81	Inspector may call for aid of any member of the police force where has reasonable cause to apprehend obstruction. Police officer called to aid is deemed to be and have the functions of an Inspector (s. 86).	Consent of occupier or warrant issued by a justice on complaint of an Inspector must be obtained before entering a place which is a domestic premise, not being a "project".	Any premises.	- Inspect and examine as necessary to ensure compliance with Act. - Call for the aid of any person thought competent to assist in exercise of powers. - Call for the aid of any member of the police force where reasonable cause to apprehend obstruction. - Control, restrict or prohibit movement of any person (except an employer, principal contractor etc.), where a work-related illness, serious bodily injury or dangerous occurrence has or is likely to occur. - Question and require answers from any person found at premises or whom Inspector has reasonable cause to believe to be or have been an employee at the premises. Inspector may question employee out of hearing of employer. - Make examination and inquiry as necessary to establish whether provisions of Act or any related public health and safety act are being complied with in regard to any workplace etc. - Require production of any permit, certificate or other authority any book, record, list, or document required to be kept under Act and any contracts or other documents relating to work being performed. - Inspect and examine and take copies and extracts from documents. - Require name and place of residence of any person found committing or suspected on reasonable grounds of having committed an offence against Act or whom Inspector is authorised to question. - Take and remove for purposes of analysis samples of materials, substances etc. - Conduct surveys including tests necessary to assess the degree of risk or health and safety standards existing in a workplace.

ACT	HOW POLICE ARE EMPOWERED UNDER ACT	AUTHORITY REQUIRED	PLACE AND GROUNDS OF ENTRY	ASSOCIATED POWERS
s. 81 cont'd..				- Take photographs, measurements, sketches or recordings. - Exercise other powers as are prescribed.

APPENDIX 6*

- 9.157 It is often argued that any general right to privacy of the individual must be balanced against the collective rights of the society, whether for the prevention of crime and the enforcement of criminal law, or for the protection of the revenue raising powers of the State:

"At the heart of the concern to protect 'privacy' lies a conception of the individual and his or her relationship with the society".

If collective rights are to be enforced by the State, some infringement of individuals' rights to privacy will necessarily follow.

- 9.158 Thus in the criminal law jurisdiction, police engaged in criminal investigations require the power to conduct searches of people and their property. Similarly, customs officials require the power to search people and property entering Australia if they are to carry out their function of enforcing laws regarding the import and export of goods from Australia. There are many situations where the powers of law enforcement agencies to search and seize property will lead them into conflict with the right to privacy of individuals affected by the search. The question in this area, as in many other areas of the law, is where the law should draw the line between the competing interests of law enforcement and the right to privacy. Dionisopoulos and Ducat make the point:

"While the interest in effective law enforcement sometimes collides with the individual's interest in privacy, the assailant or thief violates privacy too, and by the very nature of his acts, even more so than the police. This, of course, does not excuse official illegality or permit more than constitutional deference to police discretion. It does make the rule of law tougher to live up to and tantalizes us by inviting us to weight the rights of the victim against those of the defendant, as if somehow we were weighing the competing interests of plaintiff and defendant in a civil suit."

- 9.159 The argument about balancing individual's rights to privacy against the collective rights of society becomes quite heated in the context of the right to freedom from arbitrary arrest and seizure, a corollary to the right to privacy. Because this right, recognised in the Fourth Amendment of the United States, has generated much controversy in America, it warrants closer consideration.

* Extract from Electoral Administrative Review Commission 1992.

9.160 The Fourth Amendment guarantees that:

"The right of the people to be secure in their persons, papers and effects shall not be violated by unreasonable searches and seizures and no warrants shall issue, but upon probable cause supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized."

The US Supreme Court has struggled for a long time in attempting to lay down legal principles guiding the application of the Fourth Amendment; this struggle is evidenced by the frequent number of conflicting judgements that are difficult to reconcile.

9.161 The crux of the debate has been the requirement for "probable cause" before a search is considered to be reasonable. The Fourth Amendment has been invoked to exclude evidence obtained through police searches which have been held to be random or without reasonable foundation. The cases demonstrate considerable disagreement within the US Supreme Court as to whether the Fourth Amendment means that all search and seizures without warrant are unreasonable *per se* and therefore unconstitutional, or whether generally it simply imposes an obligation that each particular search or seizure must be reasonable having regard to the circumstances of the case. On this latter view, obtaining a warrant is not necessarily a precondition in all circumstances. There is authority for both views, *Coolidge v. New Hampshire* (1971) 403 US 433 supporting the former view, and *US v. Rabinovitz* (1950) 399 US 56 supporting the latter, although the trend of the Supreme Court over the last decade has reflected a movement "away from the warrant requirement in practice if not in theory" toward a "vague ad hoc test of general reasonableness".

9.162 The uncertainty of the Fourth Amendment is further muddled by the numerous exceptions to the general rule developed by the Court. For example, the right to search as an incident to lawful arrest (*Chimel v. California* (1969) 395 US 752), the search of abandoned property (*Abel v. US* (1959) 362 US 217), of open fields (*Main v. Thorton* (1984) 105 S.Ct 1735) and of objects in plain view (*Coolidge v. New Hampshire*) have all been situations confirmed by the Court as not requiring a warrant. The more obvious example is the "stop and frisk rule" whereby a police officer may stop a citizen if there is a reasonable suspicion that "criminal activity may be afoot and may search the outer clothing in an attempt to discover weapons if there is reasonable suspicion that the suspect is armed and presently dangerous" (*Terry v. Ohio* (1968) 392 US1 at 30).

- 9.163 More complicated is the "automobile exception" where the Supreme Court, in a succession of cases commencing with *Carroll v. US* (1925) 267 US 132, has held that a police officer:

"... may search an automobile without a warrant so long as there is a probable cause to believe that the automobile contains evidence of some crime on the basis that such a vehicle is sufficiently mobile so as to permit its removal or the destruction of evidence found therein before a warrant can be obtained".

- 9.164 In a list of subsequent cases, the Court has further complicated the area by finding "exceptions to the exception", often giving rise to questionable practical results and inconsistencies (contrast *New York v. Belton* (1981) 453 US at 54 with *US v. Ross* (1982) 466 US 798). The problem with interpreting the Fourth Amendment has given rise to a maze of complicated jurisprudence on the powers of search and seizure. However, in considering that controversy it must be remembered that the rights set out in the American Constitution are unqualified in their application. Many of the issues which have arisen concerning the interpretation of the Fourth Amendment to the United States Constitution might have been avoided by the inclusion of a provision such as that contained in section 1 of the Canadian Charter.

- 9.165 The Canadian Charter contains a provision in terms similar to the Fourth Amendment to the American Constitution. That provision, one of the most litigated of all of the provisions of the Canadian Charter, states:

"Everyone has the right to be secure against unreasonable search or seizure." (s. 8)

- 9.166 But cases concerning this provision have been decided in the light of section 1, which allows for restrictions of the rights contained in the Charter provided that those restrictions are demonstrably justifiable in a free and democratic society. In *re Reich and College of Physicians and Surgeons of the Province of Alberta* (1984) 8 DLR (4th) 696, the Court considered that the term "unreasonable" (in s. 8 of the Charter) should be interpreted by reference to the meaning of the term "reasonable" in section 1, and therefore meant "without a rational basis". The Court held that even if the relevant invasion of privacy infringed the right conferred by section 8, the validity of the provision would be saved by section 1 of the Charter.

- 9.167 It should be noted also that there is no express mention of a warrant requirement in the Canadian provision. As Connelly argued, although in one case there was a movement toward the strict warrant pre-condition standard, the majority tendency is toward the application of the general reasonableness test whereby "the existence of a warrant is merely one factor

among many . . . in determining whether the particular search or seizure was unreasonable" (1985, p. 200). The tendency of the Canadian Courts has been to balance the individual's legitimate expectation of privacy against the governments legitimate law enforcement interests (Ward 1986, p. 41). So, for example, in *R v. Rao* (1984) 12 CCC (3d) 97, it was held that a warrant is necessary for the search of dwelling houses or business "where no circumstances exist which make the obtaining of a warrant impracticable and when the obtaining of a warrant would not impede effective law enforcement" (at 123).

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