CRIMINAL JUSTICE
COMMISSION

REPORT ON A REVIEW OF POLICE POWERS IN QUEENLAND

VOLUME III: ARREST WITHOUT WARRANT, DEMAND NAME AND ADDRESS AND MOVE-ON POWERS

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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 III.

Yours faithfully

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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. In May 1993, the Criminal Justice Commission released the first two volumes of its report on police powers. This is the third volume in that series. In this volume, the Commission makes a number of recommendations relating to police powers of arrest without warrant and the power of the police to demand a person's name and address. Consideration is also given to whether the police should be given a general power to require people to 'move-on'. 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 has been demonstrated and secondly, that at all times, increased accountability should accompany any increase in police powers.

These recommendations have been made after considerable research and contain proposals which the Commission believes are practical. The subject of police powers is controversial and involves many competing interests. It is hoped that the Commission's work in this area will contribute towards the introduction into Queensland of a scheme of police powers which reflects an appropriate balance between the competing interests involved.

The Commission proposes to release two further volumes on issues related to police powers. Volume IV will deal with issues relating to the power of the police to detain suspects after arrest and before charge. Volume V will cover other investigative issues, such as the power to take fingerprints and body samples, identification parades, crime scene preservation and electronic surveillance.

To assist the reader, the appendices to this volume reproduce the Executive Summary of Volume I, the Summary of Recommendations from Volume II and Tables 6, 9 and 11 from Volume I.

L F WYVILL QC
Acting 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.

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, and for the information which they provided to us.

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.

Susan Johnson, a Principal Research Officer in the Research and Co-ordination Division, has been primarily responsible for writing, and overseeing the research for, the first three volumes of this report. The Commission's review of police powers has been a lengthy and intellectually taxing project. We are grateful to Susan for the high quality of her work and her dedication to seeing the project through.

Special thanks are also due to Mary Burgess and Bronwyn Springer, who assisted in the writing of Volume III, and to Amanda Carter and Megan Atterton, who were responsible for preparing the volume for publication.

David Brereton
Director
Research and Co-ordination

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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

SUMMARY OF RECOMMENDATIONS: VOLUME III

CHAPTER THIRTEEN: ARREST WITHOUT WARRANT

13.1 Recommendation 591

The Commission recommends that a general power to arrest without warrant be granted to police in respect of the commission of any offence, subject to Recommendations 13.2, 13.3, 13.4 and 13.5.

13.2 Recommendation 593

The Commission recommends that the state of mind which a police officer must have prior to arresting a person without a warrant is a suspicion based on reasonable grounds (see Recommendations 13.3, 13.4 and 13.5).

13.3 Recommendation 596

The Commission recommends that the power to arrest without warrant should be restricted to the cases where a police officer has reasonable grounds to suspect that the person has committed or is committing an offence (subject to Recommendation 13.4). The power should not be available where the officer has reasonable grounds to suspect that the person is 'about to commit' an offence.

13.4 Recommendation 601

The Commission recommends that legislation should state that a police officer can only arrest a person without a warrant where the officer has reasonable grounds to suspect:

- that the person has committed or is committing an offence; and
- that arrest is necessary to achieve one of the purposes specified in Recommendation 13.5.

The provision should be drafted so as to impose a positive obligation on a police officer to first consider alternatives to arrest.

13.5 Recommendation 604

The Commission recommends that consistent with Recommendation 13.4 an arrest should only be made where a police officer has reasonable grounds to suspect that it is necessary to:

(i) establish the identity of the person;

(ii) ensure the appearance of the person before the court;

(iii) prevent the continuation or repetition of the offence or the commission of another offence;

(iv) obtain or preserve evidence relating to the offence;

(v) prevent the harassment of, or interference with, a person who may be required to give evidence in respect of the offence;

(vi) prevent the fabrication of evidence in respect of the offence; or

(vii) preserve the safety or welfare of any person.

13.6 Recommendation 610

The Commission recommends that consideration be given to implementing a Field Court Attendance Notice Scheme similar to that being implemented in New South Wales. Police should be authorised to issue a notice to suspects where arrest is not necessary to achieve one of the purposes outlined in Recommendation 13.5.

13.7 Recommendation 612

The Commission recommends that there be a specific legislative provision requiring a police officer to release an arrested person where the officer no longer has reasonable grounds for suspecting that the person committed the offence or that the arrest is necessary to achieve one of the purposes specified in Recommendation 13.5.

13.8 Recommendation 613

Existing legislative provisions which are inconsistent with the Commission's recommendations relating to the power to arrest without warrant should be amended or repealed, unless there are special circumstances justifying the retention of these provisions.

CHAPTER FOURTEEN: DEMAND NAME AND ADDRESS

14.6 Recommendation 633

The Commission recommends that the police should not be given a specific power to demand verification of the name and address of a person from whom a police officer has sought this information.

14.7 Recommendation 635

The Commission recommends that in all cases it should be a simple offence, subject to a monetary penalty, for a person to refuse to provide his or her name and address when required to do so by a police officer, or to provide a false name and address.

The Commission also recommends that police be authorised to arrest without warrant a person who has failed to provide his or her name and address or who the police officer has reasonable grounds to suspect has provided a false name and address.

14.8 Recommendation 637

The Commission recommends that each time the power to demand name and address is exercised by a police officer, the officer be required to:

(i) provide in writing his or her name, rank and station to the person whose name and address is requested;

(ii) inform the person of the offence that has been or is suspected of having been committed;

(iii) explain to the person the reason/s for suspecting that the person may have committed the offence or may be able to assist in inquiries in relation to the offence; and

(iv) inform the person that a failure to provide his or her name and address, or the provision of a false name and address, may result in the person being arrested and charged with failing to provide his or her name and address or with providing a false name and address.

CHAPTER THIRTEEN

ARREST WITHOUT WARRANT

INTRODUCTION

There are two sources of a police officer's power to arrest – the common law and statute. Within each of those sources there are two categories of arrest – arrest without warrant and arrest with warrant. It is the arrest without warrant power, conferred principally by statute in Queensland, that is the focus of this chapter. This power has been the subject of much comment throughout the Criminal Justice Commission's (Commission) review of police powers. As the Law Reform Commission of Canada (LRCC) (1985, p. 45) said:

> Powers of arrest without warrant are the most sensitive and potentially controversial aspect of the law of arrest since they authorise actions by individuals and police which profoundly affect individual liberty, but which are unsupervised by any process of prior authorisation or consultation, be it judicial or otherwise.

This chapter deals with the circumstances in which police in Queensland can arrest a person without warrant. The specific policy issues addressed are:

- Should there be a single general power to arrest without warrant?
- What degree of belief or suspicion should a police officer be required to hold before exercising a power to arrest without warrant?
- Should the power to arrest without warrant extend to cases where police suspect a person 'is about to' commit an offence?
- Should there be a statutory restriction on the availability of the power to arrest without warrant?
- To what purposes should the power to arrest without warrant be restricted?
- Should the complaint and summons procedure be replaced by another alternative to arrest?
- Should there be a power to 'unarrest' a person?

The Present Position in Queensland

In Queensland a police officer's power to arrest without warrant is largely found in the statute law. Table 6 in Appendix 7 identifies 39 statutes which give police the power to arrest without warrant in particular circumstances.

The provisions concerning arrest without warrant for the more serious offences are contained in the *Criminal Code*. The *Criminal Code* divides criminal offences into indictable offences and simple offences.[1] Indictable offences consist of crimes and misdemeanours, with the former being the more serious. Section 5 of the *Criminal Code* provides:

> **5. Arrest without warrant.** The expression "The offender may be arrested without warrant" means that the provisions of this Code relating to the arrest of offenders or suspected offenders without warrant are applicable to the offence in question, either generally or subject to such conditions, if any, as to time, place, or circumstance, or as to the person authorised to make the arrest, as are specified in the particular case.
>
> Except when otherwise stated, the definition of an offence as a crime imports that the offender may be arrested without warrant.
>
> The expression "The offender cannot be arrested without warrant" means that the provisions of this Code relating to the arrest of offenders or suspected offenders without warrant are not applicable to the crime in question, except subject to such conditions, if any, as to time, place, or circumstance, or as to the person authorised to make the arrest as are specified in the particular case.

Therefore, unless otherwise stated, an offender can be arrested without a warrant for a crime. In contrast, there is no such general rule for a misdemeanour or a simple offence. A police officer can only arrest without warrant for such an offence where it is specifically authorised. An example of such an authority is section 323 of the Code which creates the misdemeanour offence of 'Wounding and similar acts' and specifically states that the offender may be arrested without a warrant.[2]

Section 546 applies to offences which are such that "the offender can be arrested without warrant generally"[3] and states that it is lawful for a police officer to arrest without warrant a person:

- who has committed an offence that has been or is believed on reasonable grounds to have been committed or is found committing an offence (s. 546(a), (c) and (d))

---

1 A simple offence is defined in s. 4 of the *Justices Act 1886* as meaning "any offence (indictable or otherwise) punishable on summary conviction before a Magistrates Court, by fine, imprisonment, or otherwise".

2 Thus s. 323 is an offence "for which an offender may be arrested without warrant generally" - see s. 546.

3 These include crimes which do not specifically prohibit arrest without warrant and misdemeanours and simple offences which authorise arrest without warrant in the same terms as section 323 above.

- found by night under such circumstances as to afford reasonable grounds for believing that he or she is committing an offence (s. 546(e))

- found lying or loitering in any place by night under such circumstances as to afford reasonable grounds for believing he or she has committed or is about to commit an offence (s. 546(f)).

For offences where the offender may be arrested without warrant subject to certain conditions, section 547 extends the application of section 546 subject to those conditions. Some examples of such offences are the misdemeanours referred to in section 479 and those offences referred to in section 551.

Section 548 provides that a police officer can arrest without warrant any person who he or she finds committing:

- any indictable offence or

- any simple offence with respect to which it is provided that a person found committing it may be arrested by a police officer without warrant.

Examples of such simple offences are those referred to in section 450A and section 455.

The above discussion illustrates that the arrest without warrant provisions in the *Criminal Code* are complex and often circuitous. There is no unqualified rule that a particular type of offence is arrestable without warrant. The various sections that establish the circumstances in which an offender can be arrested without warrant are difficult to integrate and appear to overlap (see for example s. 546(c) and s. 548(2)).

As indicated, a large number of other statutes also empower police to arrest without warrant. Some examples are:

- *Animals Protection Act 1925*, section 15A – Where a person fails to give a name and address or evidence thereof when required by any police officer or gives a name and address or evidence thereof which in the opinion of the officer is false.

- *Bail Act 1980*, section 29 – Where a member of the police force believes on reasonable grounds that a defendant released on bail is likely to break, is breaking, or has broken, bail conditions; a defendant's surety is dead or for any reason security is no longer sufficient; or the officer is notified in writing by a surety of the belief that the defendant is likely to break bail conditions and the surety wishes to be relieved.

- *Crimes (Confiscation of Profits) Act 1989*, section 78 – Where a member of the police force believes on reasonable grounds that a person has committed an offence against the Act and proceedings by way of summons would be ineffective.

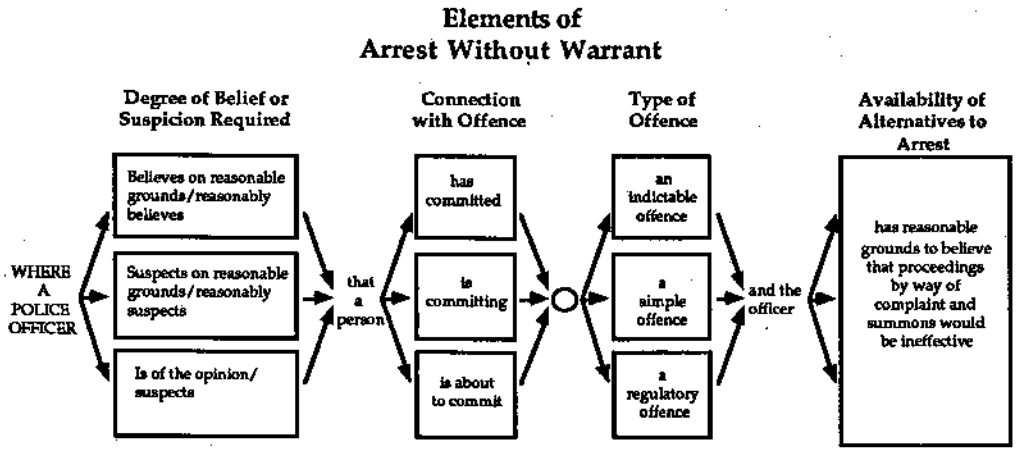
- *Gaming Machine Act 1991*, section 10.13 – Where any person has, or a police officer suspects on reasonable grounds that a person has, committed or attempted to commit an offence against section 3.27, section 6.6(1) or (2), section 6.23(1), section 10.11 or section 10.12 of the Act.

- *Law Courts and State Buildings Protective Security Act 1983*, section 26 – Where a person commits an offence against the Act by refusing or failing to state correctly his or her name and address in response to the demand of an officer; or where, in respect of any other offence against the Act, a police officer believes on reasonable grounds that proceeding against the person by summons would not be effective.

Summary

Essentially the present law of arrest without warrant in Queensland consists of various combinations of the elements set out in Figure 13.1:

Figure 13.1



An analysis of the various statutory provisions conferring a power to arrest shows that there is no clear logic or pattern in how the various elements of the power are defined and combined (see Table 6). Generally, a power to arrest without warrant will be available where a person is 'found committing' an offence. Other powers may be available in circumstances where a police officer 'believes on reasonable

grounds' (s. 78 *Crimes (Confiscation of Profits) Act 1989*) or 'suspects on reasonable grounds' (s. 106 *Casino Control Act 1982*) or 'reasonably suspects' (s. 10 *Animals Protection Act 1925*) that a person has committed an offence.[4] Under section 39 of the *Hawkers Act 1984*, a police officer simply has to be 'of the opinion that' a person 'has committed' an offence against sections 26, 33, or 34, and have 'reasonable grounds to believe' that proceedings by way of complaint and summons would be ineffective.

The power to arrest without warrant can also be exercised where a police officer has reasonable grounds for believing that a person is 'about to commit' a crime (s. 546 *Criminal Code*); has cause to suspect that any indictable offence is 'about to be committed' on board any vessel (s. 23 *Vagrants, Gaming and Other Offences Act 1931*); or, believes on reasonable grounds that a defendant released on bail 'is likely to' break the bail conditions (s. 29 *Bail Act 1980*).

Some provisions require that a police officer believe that proceeding by summons would be ineffective.[5] However, many other provisions which confer a power to arrest without warrant do not include such a requirement. Again, there is no obvious explanation for the inconsistency in approach.

SHOULD THERE BE A SINGLE GENERAL POWER TO ARREST WITHOUT WARRANT?

The complexity of the present law and the confusing array of arrest provisions make the work of the police difficult. It is virtually impossible for every police officer to know all of the arrest without warrant provisions and the distinctions between the various tests imposed by those provisions. Likewise it is difficult for citizens to be able to exercise their rights in a fully informed manner. There is a need to simplify and rationalise the current laws of arrest without warrant to produce a short, simple and comprehensive statement of police powers and obligations.

There was broad agreement in the submissions received by the Commission that the present law of arrest needed to be simplified. However, there was some disagreement over whether there should be a single general power to arrest or whether powers of arrest should be differentiated according to whether the offence is indictable, simple or regulatory.

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4 The distinction between these various threshold tests namely 'reasonable grounds for believing', 'reasonable grounds for suspecting' etc., has been discussed in Chapter Three of Volume I of the Commission's *Report on a Review of Police Powers in Queensland*.

5 Section 78 of the *Crimes (Confiscation of Profits) Act 1989* requires a police officer to believe on reasonable grounds 'that proceedings by way of summons would be ineffective'. A similar qualification is imposed under s. 160 of the *Racing and Betting Act 1989*, s. 42 of the *Recreation Areas Management Act 1988*, s. 42 of the *Traffic Act 1949* and s. 4 of the *Weapons Act 1990*.

The Queensland Police Service and Queensland Police Union of Employees both recommended a power to arrest without warrant in respect of all indictable offences and a slightly different power in respect of simple and regulatory offences. The Queensland Watchdog Committee recommended a hierarchy of offences with commensurate powers for police. According to the Committee, minor offences should be dealt with by summons, whereas the major offences could be dealt with by immediate arrest. The Committee also recommended that police be given sufficient training to ensure that discretionary powers are used legitimately. Other submissions argued that there should be one set of rules concerning arrest for indictable offences and another for summary offences.

Reviews in Other Jurisdictions

The Gibbs Committee (1991, pp. 18-19) in its review of Commonwealth Criminal Law, expressed the view that there should be a general power to arrest which should apply in relation to any offence against the law of the Commonwealth, subject to any qualifying conditions, such as the requirement that proceedings against the person by summons would not be effective:

> This course would make the provisions as comprehensive as possible and thereby simplify the law generally. The majority of the submissions agreed with the Review Committee. The Law Institute of Victoria and the Queensland Law Society submitted that arrest without warrant would not be appropriate in all cases, but should be restricted to serious cases, or cases where arrest could be seen to be necessary, but the Review Committee considers that the matter would be satisfactorily dealt with by the proposed conditions confining the circumstances in which the power may be exercised. . . . The Review Committee accordingly concludes that the general power should apply to any offence against commonwealth law, subject to the qualifying conditions. . . .

Similarly, in 1986 the LRCC (p. 22) said of the Canadian law:

> We think the present law makes distinctions between summary conviction and indictable offences which, though they may be understood by peace officers, are of little meaning to the general public. We wish to do away with the use of these distinctions for the purpose of authorising arrests.

Other Reviews in Queensland

The Lucas Inquiry described the law in Queensland with respect to arrest with or without warrant as "bewildering to say the least". According to the Inquiry (1977, p. 124):

> It is clear that something of a very fundamental nature needs to be done to provide a satisfactory situation not only for the public, but also for the police who have to administer these complicated laws. This would be, of itself, a very large task and its performance we felt would take us outside our terms of reference. It may well require that each and every offence in the Statute books be looked at, and that new methods of initiating criminal procedures be evolved.

The Criminal Code Review Committee took some steps towards simplifying the law when it recommended a general provision conferring a power to arrest without warrant in respect of all indictable offences where proceeding by way of complaint and summons would be ineffective (draft s. 248 and s. 251). The Committee (1992, p. 259) was of the view that the proposed provision would "avoid the complexities which are inherent in the present Queensland provisions and would relate to all indictable offences". The Committee was precluded by its terms of reference from looking beyond the *Criminal Code* provisions. However, when the Committee was reconstituted as the Vagrants, Gaming and Other Offences Act Review Committee it recommended a similar provision for simple offences – namely a power to arrest without warrant only where complaint and summons would be ineffective[6] (draft s. 38 of the proposed 'Summary Offences Act').

Conclusion

The current Queensland provisions authorising police to arrest without warrant are inconsistent and complex and as a consequence are more likely to result in instances of unlawful arrest. Furthermore, because the arrest powers are contained in a vast array of disparate statutes, it is difficult for citizens to be fully informed of the powers of police and of the individual's rights. To deal with these problems, the Commission proposes that there be a single general power to arrest without warrant that applies in respect of all offences.

It was suggested in some of the submissions that there should be a distinction drawn between the power to arrest without warrant in relation to indictable offences and the power to arrest without warrant in relation to simple and regulatory offences. However, the Commission is of the view that the exercise of the power should not be determined by reference to the type of offence but, by the purpose of the arrest. There might be circumstances surrounding the commission of a simple offence which may make it more appropriate to arrest the offender than to proceed by some other means. This may occur, for example, where the offence is likely to continue unless the person is arrested. On the other hand, there may be some more serious indictable offences, such as forgery, where the circumstances do not justify an arrest. The issue of what should be the purposes of arrest is discussed later in this chapter.

13.1 Recommendation

The Commission recommends that a general power to arrest without warrant be granted to police in respect of the commission of any offence, subject to Recommendations 13.2, 13.3, 13.4 and 13.5.

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6 The circumstances under which the Committee considered that complaint and summons would be ineffective are set out at pp. 603-604 infra.

WHAT DEGREE OF BELIEF OR SUSPICION SHOULD A POLICE OFFICER BE REQUIRED TO HOLD BEFORE EXERCISING A POWER TO ARREST WITHOUT WARRANT?

The various existing legislative provisions conferring powers of arrest on police are not consistent in the degree of belief or suspicion required before an officer is entitled to exercise the power. The threshold tests for the exercise of the power range from 'believes on reasonable grounds' (s. 78 *Crimes (Confiscation of Profits) Act 1989*) to 'suspects on reasonable grounds' (s. 106 *Casino Control Act 1982*) to 'reasonably suspects' (s. 10 *Animals Protection Act 1925*) and 'is of the opinion that' (s. 39 *Hawkers Act 1984*). (Chapter Three of Volume I of this Report discusses in more detail the differences in the meaning of these terms).

Other Jurisdictions

There is no single test applied consistently in other jurisdictions. The New South Wales *Crimes Act 1900* arrest provision imposes a test of 'with reasonable cause suspects'. Both the Western Australian and Tasmanian *Criminal Code* arrest provisions require a 'belief on reasonable grounds', which is the same as the test imposed under the Queensland *Criminal Code*. Similarly the Northern Territory *Police Administration Act 1978* includes a general power to arrest without warrant subject to a test of 'believes on reasonable grounds'.

The Gibbs Committee in its review of Commonwealth Criminal Law recommended a test of 'believes on reasonable grounds'. The Committee noted that section 8A of the *Crimes Act 1914* (Cwlth) has employed this test without apparent difficulty. However, the Committee (1991, p. 20) also cited the judgement of the Privy Council in *Hussein v. Chong Fook Kam* [1970] A.C. 942 that the protection of the public was sufficiently safeguarded by the common law requirement of 'reasonable suspicion'. In addition, the Committee referred to the comments of Professor Glanville Williams who said:

> Although the rule is sometimes stated in terms of 'reasonable belief', 'suspicion' is a better word because the evidence before the officer need not be such as to cause him positively to believe that the accused is an offender. It is enough that there is sufficient cogency to justify an arrest. . . . The point will become clearer if it is realised that an arrest is not the same as the initiation of a prosecution against the offender. The task of formally charging the person arrested devolves on the station officer, and it is probable that the prosecution proper does not commence until the accused is brought before the magistrates. It is not lawful for anyone to prosecute unless he believes that the accused is guilty . . . but the constable who arrests has not reached that stage and need not believe that the accused is guilty or that he will probably be convicted.

The New South Wales Law Reform Commission (NSWLRC) in its discussion paper titled *Police Powers of Arrest and Detention* (1987) proposed that the test be a 'suspicion based on reasonable grounds'.

The Australian Law Reform Commission (ALRC) in its report *Criminal Investigation* (1975, p. 17) stated that in the context of the threshold test for a lawful arrest, there did not seem to be any significant legal distinction between reasonable grounds for 'believing' and reasonable grounds for 'suspecting' that the person is committing or has committed the offence.

Conclusion

There are divergent views amongst commentators concerning the extent of any difference between 'reasonable grounds to believe' and 'reasonable grounds to suspect'. However, most police officers with whom Commission staff spoke were unaware of any significant difference between the two tests. Any distinction appeared to be more semantic than practical. The focus of the police officers when deciding whether to exercise a power was upon whether there were 'reasonable grounds', rather than whether there was a 'belief' or a 'suspicion'.

Although the distinction may make little difference in practice, it is important that there be consistency. On this basis, the Commission considers that the test should be 'reasonable grounds to suspect'. That is the test which reflects the common law position; and is well known in the law and practice of policing. Moreover, the test is the same as that proposed by the Commission in respect of search powers (see Volume II of this Report).

13.2 Recommendation

The Commission recommends that the state of mind which a police officer must have prior to arresting a person without a warrant is a suspicion based on reasonable grounds (see Recommendations 13.3, 13.4 and 13.5).

SHOULD THE POWER TO ARREST WITHOUT WARRANT EXTEND TO CASES WHERE POLICE SUSPECT A PERSON 'IS ABOUT TO' COMMIT AN OFFENCE?

Existing law in Queensland generally restricts the exercise of the power to arrest to situations where an offence is being committed or has been committed. In the case of many simple offences, the power to arrest without warrant is only available where a police officer finds a person committing the offence, although there are other relatively minor offences where police may arrest if they suspect on reasonable grounds that a person has committed the offence concerned.

As argued above, the Commission considers that there should be a single general power to arrest which applies to all offences, regardless of their seriousness. In line with the current position in relation to most offences, this power should be exerciseable where a police officer has reasonable grounds to suspect that a person is committing or has committed an offence.

The more controversial question is whether the power to arrest without warrant should extend to the situation where a police officer has reasonable grounds to suspect that a person is 'about to commit' an offence.

Reviews in Other Jurisdictions

The question of whether the police should be able to arrest a person about to commit an offence was considered by the Gibbs Committee (1991). The Committee[7] was of the view that the person who is attempting to commit an offence, or has attempted to commit an offence, in fact has committed an offence according to the attempt provisions of the Commonwealth *Crimes Act 1914*.

The Committee (1991, p. 23) considered that it was unnecessary and inappropriate to give police a power to arrest at a stage any earlier than an attempt to commit an offence. According to the Committee, the power would be too wide and, if exercised, would lead to practical difficulties; for example, it is unclear what could be done with a person arrested at that early stage as there would be no offence with which to charge that person.

A different view on this issue was taken by the LRCC in its working paper, *Arrest* (LRCC 1985). At the time, the power to arrest without warrant in Canada extended to indictable offences to be committed in the future, i.e. a police officer could arrest a person where he or she believed on reasonable and probable grounds that the person, was 'about to commit' an indictable offence.

The LRCC (1985, pp. 78-79) said in its working paper:

> If the only purpose of an arrest were to compel the appearance of an accused in court, arrest for "future offences" would be objectionable. The criminal law does not normally punish or control people for their unlawful intentions, only for their unlawful acts. However, present law enlarges the scope of the police officer's arrest powers to encompass situations where the offence is to occur in the immediate future ("about to commit"). Such a preventive role for the criminal law is certainly justifiable in social policy terms, and the broad definition of the police officer's duties in respect of maintaining order and enforcing the law militates in favour of such an approach. As was mentioned in Chapter Four, this approach amounts to elevating the concept of public safety and order to the level of a primary purpose for arrest. Some might object that this creates a potential for unjustifiable police interference with individual liberty where there is no "unlawful" conduct. However, one must remember that it is an

7 For more detail on this see Gibbs Committee 1991, pp. 22-23.

SHOULD THERE BE A STATUTORY RESTRICTION ON THE AVAILABILITY OF THE POWER TO ARREST WITHOUT WARRANT?

Problems With the Use of the Arrest Power

Until September, 1993 General Instruction 1.23 of the Commissioner of Police provided that:

> members of the Police Force, even though authorised by law, should abstain, unless specially instructed to the contrary, from making an arrest for a minor offence where proceedings by complaint and summons against the offender would be effective.

Despite the existence of the General Instruction, the Police Complaints Tribunal, in its 1987 Annual Report, expressed concern regarding the police use of arrest without warrant in relation to minor offences under the *Vagrants, Gaming and Other Offences Act 1931* (such as obscene language, insulting words, unruly conduct etc.). The Tribunal said that the police officer's discretion to exercise a power to arrest without warrant was not being exercised as objectively as required. The report stated that there is:

> a perceived tendency to effect an arrest because the power to do so exists, irrespective of what real mischief has been caused by the mere uttering of words which in many respects have lost any power to offend or induce revulsion in any ordinary persons (which after all is the test of obscenity). (Police Complaints Tribunal 1987, p. 3)

The Tribunal expressed its concern at the potential flow-on effect of the exercise of these arrest powers:

> Frequently, the arrest for one of these offences triggers off allied offences, such as resisting arrest, and assault on a police officer in the execution of his duty. The offender, on many occasions, has been taken from or near his home; locked up for several hours; fingerprinted; searched; photographed and generally treated as a criminal. In addition to any trauma as far as the arrested person is concerned, there is the impact on and tension caused to the family. (Police Complaints Tribunal 1987, p. 3)

Furthermore, the Tribunal pointed out that the outcome of such cases was often the forfeiture of bail as a matter of convenience, which meant that there was no opportunity for the courts to review the officer's exercise of the power to arrest.

The Tribunal recognised that the police need powers of arrest to deal with situations that may cause concern to members of the public. However, it noted that many of the arrests which were the subject of a complaint occurred in or near a private residence where no public element was involved, or late at night on roads where the alleged misconduct had no effect on the public. The Tribunal suspected that, in those circumstances, the making of an arrest was often a 'knee-jerk' reaction, if not a 'get square' or 'teaching a lesson measure'.

The Tribunal recommended that the spirit and intent of the General Instruction be observed and that, if complaints continued in the same vein, there be legislative action to lay down clear guidelines stating when an arrest may be made. The Tribunal also proposed that there be some vetting by senior officers of the exercise of discretion by other officers.

These matters were again raised by the Tribunal in its Eighth Report (1989, p. 22). The Tribunal reported that it had considered instances where the power to arrest had been exercised mechanically, arbitrarily, without cause, or as a summary sanction. It referred to a pending case, in which there had been a formal statement by a member of the Queensland Police Service that the only reason why he arrested a person in the exercise of the power to arrest without warrant was because the person "was giving smart answers". The Tribunal said that it had received evidence from a very experienced and respected member of the force that it was probable that many arrests were made without warrant, merely because it was more convenient to arrest than serve a summons (Police Complaints Tribunal 1989, p. 22).

It was a widely expressed view in submissions to the Commission that the police use arrest more frequently than is necessary. One senior police officer wrote in his personal submission to the Commission that:

> Police over-use their power of arrest. This is the fault of training and attitude. There is a need to consider summons action in preference to arrest and also to consider the appropriateness of charges they prefer i.e. why should a heavily intoxicated person who is swearing/urinating in the street be charged with obscene language, wilful exposure, indecent behaviour and usually assault and resist police when their indicia [sic] is clearly that they are drunk.

However, he also pointed out that to effectively implement the use of summons action or 'notice to appear' instead of arrest, police must have the power to demand the name and address of a suspect.

The Commission obtained some quantitative data on the use of arrest by Toowoomba police, as part of its background research for the Toowoomba Beat Area Patrol Pilot Project.[10] Statistical data were compiled for February, May, August and November 1991 from the Toowoomba Police daily occurrence sheets. These sheets recorded offences for which a person was arrested, summonsed, or cautioned, and those for which no further action was taken.

Of those adults against whom proceedings were instituted, 178 (80%) were arrested and only 44 (20%) were summonsed. Data were also collected on proceedings for offences against juveniles. In proceeding against juveniles for offences during that period, 43 (91%) were arrested and only four (9%) were summonsed.

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10 For details of the project see the proposal outlined in Criminal Justice Commission 1992, *Beat Area Patrol: A Proposal for a Community Policing Project in Toowoomba.*

The Commission also undertook an analysis of the 'Watchhouse Books' for City Watchhouse in Brisbane for the month of August 1992. These books record a range of details about persons processed through the Watchhouse, including charges, arrival and release times, and bail requirements. Information was obtained on 446 arrests. This represented all persons processed through the Watchhouse during that month, apart from those arrested for less serious driving-related offences and drunkenness, and domestic violence detainees.

Of the 446 arrestees in the study, 159 (35.7%) were denied bail by the police. Of the 287 who were granted bail, 238 (82.9%) were released within one hour of being brought into the watchhouse. The median 'turn-around' time was just under 30 minutes. Of those granted bail, 249 (86.8%) were released on their own undertaking without any conditions attached, 25 (8.7%) were required to post 'cash bail'[11] and only 13 (4.5%) were given bail with conditions attached.

This study provides further evidence that the police are using the power to arrest in many instances where complaint and summons would be effective. A large proportion of people who were arrested by the police were charged and released almost immediately. The fact that bail conditions were rarely imposed suggests that very few of those who were released were seen as bail risks. In some instances it is possible that the arrest may have been required to confirm the identity of the person, but this is unlikely to account for the majority of cases. These days, most people carry some form of identity on their person. Moreover, the quick 'turn around time' for most arrests suggests that identity checks, if they were carried out at all, were of a cursory nature only. Another possibility is that some arrests may have been required to remove a person from a dangerous situation, or to protect the safety of others. However, again, this cannot account for the overall findings - the majority of persons arrested and released on bail were charged only with property offences, or minor public order or drug offences.

In its submission to the Commission, the Queensland Police Service listed the number of offenders arrested in Queensland from 1 January to 30 June 1991, as compared to those summonsed for the same type of offence. Their table reproduced in Appendix 8 (Table 13.1) shows that arrest is used far more often than summons, even in relation to minor offences.

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11 For relatively minor offences (e.g. disorderly behaviour) the defendant may be released without an undertaking. If this happens, the defendant will be required to make a deposit of money as security for his or her appearance. It is rare for the police to require 'cash bail' greater than $50 and often the amounts will be much smaller than this. If the defendant subsequently fails to appear in court, he or she forfeits the bail, but normally no conviction is recorded. It appears that forfeiture is commonplace.

On the basis of the above data, it appears that the Police Commissioner's General Instruction that the police should use summons where possible in relation to minor offences has made little difference to how police use their power to arrest. The fact that the power to arrest without warrant is used so frequently strongly suggests that police officers are not using it as a last resort. The Police Service's own figures indicate that police arrest in 90 per cent of cases. As previously observed, it is unlikely that all of those arrests would have been justified by the necessity to protect life and property or to prevent re-offending.

The Queensland Police Service (1992, p. 32) in its submission was totally opposed to legislation requiring police to take action by summons rather than arrest, describing this as:

> an artificial solution which does little but interfere with the discretion of a police officer to arrest where such a course is necessary in order to protect life and property or to prevent a person reoffending.

However, the new policy of the Queensland Police Service contained in the *Custody Manual*, which came into effect on 31 August 1993, recognises the need for firmer guidelines. It states:

> Wherever effective, practical and appropriate, officers should use their discretion and proceed by way of complaint and summons or by way of an attendance notice for an offence in preference to exercising a power of arrest. (Policy 2.0, p. 9)[12]

The submissions of the Queensland Council for Civil Liberties, the Queensland Law Society, the Queensland Association of Independent Legal Services (QAILS) and the Aboriginal and Torres Strait Islander Commission's (ATSIC) Cairns office were in favour of a statutory requirement that police consider alternatives to arrest. Both the Youth Affairs Network and the Juvenile Advocacy Centre recognised that arrest is a serious event and is especially significant in the lives of young people who may not understand the process and find it frightening. It can be their first 'criminalising' event, and may contribute to them being made to feel like criminals. The Juvenile Advocacy Service pointed out that, while the arrest rate continues at 90 per cent for juveniles, the detention rate for the refusal of police bail remains at under five per cent. The Service queried the need for the high arrest rate when there was no need to refuse bail. Both organisations strongly supported any moves to increase the use of summons and supported the formulation of specific legislative criteria which would limit the power to arrest.

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12 The Queensland Police Service in its submission to the Commission supported the use of an alternative to arrest where possible (see p. 605 infra).

Other Reviews in Queensland

The Lucas Inquiry recommended that police be issued with an administrative direction stating that arrest is to be regarded as a drastic course and that police should proceed by way of summons unless there are good reasons to the contrary.

More recently, the Criminal Code Review Committee, in recommending a simplification of the law concerning arrest, drafted a provision relating to arrest for indictable offences which required a person making an arrest to believe on reasonable grounds that proceedings by way of summons would not achieve one or more of the purposes specified in the draft provision (draft s. 251).

Similarly the Vagrants, Gaming and Other Offences Act Review Committee recommended the inclusion of a statutory requirement that police only arrest in relation to simple offences where the police officer believes on reasonable grounds that proceeding by way of complaint and summons would be ineffective. The Committee set out criteria for determining when it would be ineffective (draft s. 38).[13]

Conclusion

The Commission considers that police use of arrest rather than the complaint and summons procedure should be reduced. To make it clear that the discretion to arrest is to be used as a last resort, the Commission believes that the statutory power to arrest without warrant should also state that its use ought to be restricted to cases where proceeding by an alternative manner would not be effective. In making this recommendation the Commission recognises, as the Queensland Police Service has observed, that the police often find it more administratively convenient to arrest a person than to employ the summons procedure. This problem is addressed later in this chapter.

13.4 Recommendation

The Commission recommends that legislation should state that a police officer can only arrest a person without a warrant where the officer has reasonable grounds to suspect:

- **that the person has committed or is committing an offence; and**
- **that arrest is necessary to achieve one of the purposes specified in Recommendation 13.5.**

The provision should be drafted so as to impose a positive obligation on a police officer to first consider alternatives to arrest.

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13 See pp. 603-604 infra.

TO WHAT PURPOSES SHOULD THE POWER TO ARREST WITHOUT WARRANT BE RESTRICTED?

The authority to arrest a person is lawfully exercised for a number of purposes. Some might argue that the primary purpose of arrest is to compel a suspect's appearance at court. However, arrest is not the only way of achieving this end. As outlined earlier, our criminal justice system also provides for compelling the appearance of an accused by the issuing of a summons. A number of the existing arrest without warrant provisions authorise a police officer to arrest without warrant only where he or she has reasonable grounds to believe that proceeding by way of summons would be ineffective. The Police General Instruction also stated that in relation to minor offences, arrest should only be used where summons would be ineffective. This approach has been broadened in Policy 2.0 in the *Custody Manual* (1993).[14]

Other Jurisdictions

Regardless of whether it is considered that the compelling of a suspect's appearance before a court is the primary purpose of arrest, it is not the exclusive purpose. Legislative provisions in other jurisdictions recognise a range of other purposes. These include to:

- establish the identity of a person;
- ensure the appearance of a person before the court;
- secure or preserve evidence of or relating to the offence;
- prevent the continuation or repetition of the offence or the commission of another offence;
- prevent harassment of or interference with a person who may be required to give evidence in proceedings in respect of the offence;
- prevent the fabrication of evidence to be given or produced in proceedings in respect of the offence; and
- preserve the safety or welfare of the person or any other person.[15]

Another purpose that is recognised in the common law is the need for an arrest in order to preserve public order. This purpose is provided for in the Victorian *Crimes Act 1958*, section 458(1)(a)(ii).

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14 See p. 600 supra.

15 See the *Crimes Act 1900* (NSW) in its application to the ACT, s. 352(2); *Crimes Act 1958*, (Vic.), s. 458(1).

An additional circumstance where it may be preferable to proceed by way of arrest rather than by issuing a summons is where arrest is necessary to conduct investigative tests that can only be carried out while the person is in custody (NSWLRC 1987, p. 96). This may well come under the earlier heading of securing or preserving evidence relating to the offence.

Both South Australia and the Northern Territory have had committees consider the issue. In both cases, recommendations made by the committees to restrict the power to arrest to specified purposes have not been acted upon.

Other Reviews in Queensland

The Lucas Inquiry considered that reasons for exercising a power to arrest should include the serious nature of the offence alleged, a real possibility that the alleged offender would not answer the summons, the need to protect the alleged offender from himself or herself or some other person, and the prospect of the offender continuing the offence or committing further offences.

The purposes of arrest recommended by the Criminal Code Review Committee are (draft s. 251):

(i) ensuring the appearance of the person before a court in respect of the offence;

(ii) preventing a repetition of the offence or the commission of another indictable offence;

(iii) preventing the concealment, loss or destruction of evidence relating to the offence;

(iv) preventing harassment of, or interference with, a person who may be required to give evidence in respect of the offence;

(v) preventing the fabrication of evidence in respect of the offence; or

(vi) preserving the safety or welfare of the person.

This proposed provision is similar to that recommended by the Gibbs Committee (1991) established to review the Commonwealth criminal law.

The Vagrants, Gaming and Other Offences Act Review Committee (draft s. 38) recommended that arrest be limited to circumstances where complaint and summons would be ineffective and set out the circumstances where that would be so:

(a) the identity of the person can not be established; or

(b) the person is likely to continue committing the offence, reoffend or commit a further offence or continue to breach the peace; or

(c) it is necessary to ensure the safety of some other person or the safety of the person arrested or secure or preserve evidence of an offence; or

(d) it is likely that the person will fail to appear or evade the service of a process if not arrested.

Conclusion

The Commission considers that a legislative statement of the purposes of arrest is needed to reduce reliance on arrest by the police, and to clarify the law in this area.

The Commission has reviewed the various purposes of arrest contained in the legislation of other jurisdictions and in the Reports of the Criminal Code and Vagrants, Gaming and Other Offences Act Review Committees. It appears that there are only minor distinctions between the various formulations. The Commission has also discussed the various options with police officers to ensure that the police would not be unnecessarily restricted by any proposed legislative requirement.

13.5 Recommendation

The Commission recommends that consistent with Recommendation 13.4 an arrest should only be made where a police officer has reasonable grounds to suspect that it is necessary to:

(i) establish the identity of the person;

(ii) ensure the appearance of the person before the court;

(iii) prevent the continuation or repetition of the offence or the commission of another offence;

(iv) obtain or preserve evidence relating to the offence;

(v) prevent the harassment of, or interference with, a person who may be required to give evidence in respect of the offence;

(vi) prevent the fabrication of evidence in respect of the offence; or

(vii) preserve the safety or welfare of any person.

SHOULD THE COMPLAINT AND SUMMONS PROCEDURE BE REPLACED BY ANOTHER ALTERNATIVE TO ARREST?

The Queensland Police Service in its submission supported an alternative to arrest wherever possible. However, it suggested that the present alternative of action by way of complaint and summons is not effective. It observed that an arrest may be made by a police officer for the same offence as that for which a summons could be issued, without the bother of having to first obtain the authority of a justice of the peace.

> It is ludicrous to think that a police officer is empowered to deprive a person of his/her liberty, albeit for a short period of time, yet the same police officer must seek the approval of a Justice of the Peace before he/she can obtain a summons requiring a person to present him/herself before a court. Surely it cannot be rationally argued that there must be this type of 'safeguard' where a person's liberty is not at stake. (Queensland Police Service submission 1992, p. 30)

The Queensland Police Service conceded that many police prefer arrest to summons because the former is seen as far less time consuming. Their submission estimated the time taken for summons compared with that taken for arrest. The average time for a summons was two hours and 32 minutes, while the average for arrest was 25 minutes (excluding fingerprints and photographs) and 40 minutes (including fingerprints and photographs) (see Table 13.2).

Table 13.2

Estimated Processing Time: Summons Compared with Arrest

Summons

Activity	Average Time Taken
Typing time to prepare summons	25 minutes
Signed by a J.P. and registered	50 minutes
Service time on offender	30 minutes
Oath of service and registered	37 minutes
Administrative matters	10 minutes
Total	**152 minutes (2 hours 32 mins)**

Table 13.2 (continued)

Arrest	
Activity	**Average Time Taken**
Travelling time after arrest	10 minutes
Search of prisoner	1 minute
Charging time	5 minutes
Undertaking	5 minutes
Bench charge sheets	4 minutes
Fingerprints, photograph	15 minutes
Total	**40 minutes**

(Source: Obtained by Queensland Police Service from records of an (unidentified) suburban police station and Juvenile Aid Bureau).

One submission from a former police officer argued that the statistics given in the police submission might be misleading. The writer suggested that summons action might be quicker than arrest during a busy shift. The officer could take the particulars of the alleged offender and then go on to the next job. There would be no need for the officer to be off the street for up to an hour or more processing the arrested person during that busy period. The summons and papers could be typed up at leisure during a quieter day shift, or, more likely these days, dictated to and typed by support staff. The writer also suggested that with courthouses usually located next to police stations, the police estimate of 50 minutes for registration of the summons was unrealistically long.

Irrespective of precisely how long it takes to obtain a summons, it is clearly a cumbersome and time consuming process. One way to reduce reliance on arrest is to simplify the summons procedure or to provide more practical alternatives. One frequently considered option is the use of a 'notice to appear' – a form of on-the-spot summons which could be completed by the police officer and served immediately on the suspect on the street or at the station. The notice could name the day that the person was to appear before the court to answer the charge. It could be similar to the existing notice issued for some offences under the *Traffic Act 1949*, except that the offender would not be able to pay a fine in order to avoid attendance at court. Such a notice would differ from the ordinary summons procedure only in that it would be issued by the police officer at the time of apprehension of the suspected offender, rather than by the court or justice of the peace prior to service on the suspect. Because this procedure would be much simpler, it should be more attractive for police officers.

Both the Queensland Police Service and the Queensland Police Union recommended the use of a notice to appear in lieu of the summons procedure. The Queensland Police Service suggested that it would be the preferred option to arrest in less serious matters. The Union said that a written acknowledgement of the notice by the defendant would serve as proof of service of a notice to appear. If the defendant refused to acknowledge the service of a notice, then arrest should be an option. The Union also argued that the issuing of a notice to appear in respect of indictable offences should empower police to detain the defendant for the purpose of obtaining fingerprints, photographs, and other identifying features, if the person was subsequently convicted of an offence.

The Queensland Law Society considered that there should be three processes by which a person is compelled to attend court – a notice to appear, summons and arrest. The Society argued that the notice to appear could be used in many minor criminal matters, public order and regulatory offences, especially where there is no reasonable prospect of the offence being immediately recommitted. The Society considered that the summons procedure could be used in relation to more serious criminal charges; the arrest power should be used only where the offence was so serious that the circumstances did not justify proceeding by any other means.

The Director of Prosecutions submitted that a notice to appear would be an excellent compromise alternative to the arrest option. The notice could set forth in plain language the offence and a date for appearance. The date should allow enough time for reconsideration of the decision to prosecute. The Director suggested implementing a procedure whereby the original notice would be conditional upon information being laid before a justice. A justice who considered that a case had been made out would have to confirm the appearance notice. This procedure would allow the police officer who issued the notice to confer with more senior officers. This might cause cases to be discontinued where there was not enough evidence to proceed to hearing before a magistrate. This would overcome the problem that too frequently people are charged where the evidence is insufficient to prove guilt beyond reasonable doubt.[16]

The Cairns office of ATSIC submitted that the power to arrest without warrant for a large number of street offences should be reviewed and modified with the aim of ensuring that alternative mechanisms are utilised. It was said that the notice to appear concept did not seem appropriate for Aboriginal and Torres Strait Islander suspects, but the ATSIC submission did not explain the basis for this statement.

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16 The Director referred to the New South Wales procedures and the Canadian procedures which are set out on pp. 608-609 infra.

Other Jurisdictions

The New South Wales *Justices Act 1902* (ss. 100 AA, 100 AB, 100 AC) provides that in relation to specified offences members of the Police Force may authorise the issue of a notice for the attendance of the suspected person before the Local Court. The notice, which includes a statement of the nature and particulars of the alleged offence, requires the accused person to appear at the time and place specified in the notice 'to be dealt with according to law'. A failure to appear in accordance with the terms of the notice may result in the person's arrest, or in the matter being dealt with in the person's absence. The notice must advise the consequences of non-compliance. Furthermore, when the notice is served on the person, the police officer must explain the consequences of non-compliance and the accused person must sign for receipt of the notice (NSWLRC 1987, p. 45).

In 1993 the *Justices Act 1902* (NSW) was amended to allow 'any' police officer to issue a Court Attendance Notice (previously it was restricted to the rank of Sergeant or the Officer in Charge of the station). This legislative change also makes it possible for any officer to issue a notice while out in the field. The new Field Court Attendance Notice (FCAN) is essentially a mini Court Attendance Notice capable of fitting into a police officer's top pocket. The New South Wales Police Force is piloting the FCAN scheme for a three month period from the end of October 1993 in five police districts. The scheme will be evaluated during that period.

The New South Wales Police Force informed the Commission that the pilot scheme will have the following features:

> On detecting an offence, the police officer in the field will be able to issue the FCAN to the offender, who will sign an agreement to attend Court. Police officers should issue the FCAN if:
>
> - the offence is included in the list of prescribed short titles detailed on the cover of the FCAN book[17]
> - they are satisfied with the identity of the alleged offender
> - they are of the opinion that after the alleged offender is released on the FCAN, the person will attend court

17 The trial will enable FCANs to be issued in respect of a number of offences under the *Crimes Act 1900; Summary Offences Act 1988; Drugs Misuse and Trafficking Act 1985; Liquor Act 1982; Local Government Act 1919; Enclosed Lands Protection Act 1901; Traffic Act 1909; Innkeepers Act 1968; Gaming and Betting Act 1912; Management of Waters and Waterside Lands Act 1935; Transport Licensing Regulations 1931; Poisons Act 1966; Transport Administration Act 1988; Sydney Cricket Ground and Sports Administration Act 1978; Prisons Act 1952; Police Offences Act 1901.*

- the evidence associated with the offence has been preserved or secured, and

- either
  - it is not necessary to remove the alleged offender to prevent a continuation of the offence or prevent a breach of the peace, or
  - it is not necessary to protect a victim, witness or the alleged offender, by the imposition of a bail condition.

Upon the issue of the FCAN, the officer will return to the station and charge sheets will be generated from the information on the FCAN. Should the offender be convicted, the Court may make an order for this person to be fingerprinted.

During the FCAN trial, the Fact Sheets will be made available to the defendant upon attendance at the information officer's station, at a mutually convenient time and in any event no later than seven days after the issue of the FCAN. Should the defendant not attend, the Fact Sheets will be made available at the Court at the first remand date.

In Canada, the alternatives to arrest include the summons procedure and the appearance notice. A summons issued by a justice of the peace in Canada might also require the accused person to go to a designated place for fingerprinting and photographing if the offence is indictable. An appearance notice is similar to the summons. However, it does not require the intervention of a justice; a police officer can issue it on the spot. The notice may also require the accused person to go to a designated place for the purposes of the *Identification of Criminals Act*. After the appearance notice has been issued by a police officer, he or she must as soon as practicable ensure that an information is laid before a justice of the peace before the date nominated in the appearance notice. The justice of the peace must confirm the notice in order for it to be effective. If the justice does not confirm the notice he or she may cancel it outright and give the suspect notice that this has been done (Griffith and Verdun-Jones 1989, pp. 98-100).

Other Reviews in Queensland

The Lucas Inquiry (1977, p. 125) recognised the difficulties associated with obtaining a summons from a justice of the peace and recommended that:

> with respect to all offences where police officers have the power to arrest without warrant, police officers be given the power to issue their own summons in a prescribed form to compel the appearance of persons suspected of having committed these offences before the court under penalty of arrest if they disobey.

The Vagrants, Gaming and Other Offences Act Review Committee gave guarded approval to the use of notices to appear or court attendance notices. However, it recognised that considerable further groundwork would need to be undertaken prior to the introduction of such a scheme.

In Queensland, the *Juvenile Justice Act 1992* has recently created a procedure of an 'attendance notice' with many similarities to that used in Canada. A police officer who believes on reasonable grounds that a child has committed an arrestable offence may serve an attendance notice on a child (s. 23(2)). That notice must be served personally on the child (s. 23(3)). Prior to the date nominated in the attendance notice, the notice must be lodged with the Clerk of the Children's Court at the place where the child is required to appear (s. 25(1)). There is a provision for arrest of a child who fails to appear, provided certain conditions are met (ss. 30 and 31). These provisions only commenced on 1 September 1993. As yet there is no information available on how they are working.

Conclusion

The Commission believes that the introduction of an effective alternative to the complaint and summons process would help reduce the reliance on the arrest power. The FCAN scheme operating as a pilot in New South Wales appears to be a worthwhile solution to the problem and its progress should be monitored closely.

Although the Queensland Police Service supports the use of alternatives such as the FCAN, individual police officers have expressed concern that their ability to fingerprint suspects might be severely limited by the implementation of such a scheme. However, the Commission does not accept that the police should be allowed to arrest people, rather than using alternatives, for no reason other than to build up more comprehensive fingerprint records. The Commission will address the issue of fingerprinting in Volume V of this Report. In the meantime, it considers that any FCAN or similar scheme should incorporate procedures to enable police to obtain the fingerprints and photographs of the suspect in specified circumstances. If the police do need to obtain a fingerprint immediately for evidentiary purposes (e.g. to match the print of a suspect with a print found at the crime scene), they can, if necessary, arrest that person on the grounds that arrest is required to obtain evidence relating to the offence (see Recommendation 13.5 (iv)).

13.6 Recommendation

The Commission recommends that consideration be given to implementing a Field Court Attendance Notice Scheme similar to that being implemented in New South Wales. Police should be authorised to issue a notice to suspects where arrest is not necessary to achieve one of the purposes outlined in Recommendation 13.5.

SHOULD THERE BE A POWER TO 'UNARREST' A PERSON?

Section 552 of the *Criminal Code* and section 69 of the *Justices Act 1886* require a police officer who has arrested a person to take that person before a justice 'forthwith' or 'as soon practicable'. In Queensland there do not appear to be any statutorily prescribed circumstances in which an arrest can be terminated where the reasons for the arrest have ceased to exist prior to taking the person before a justice. This situation has led to some uncertainty about whether the police have the power to 'unarrest' somebody.

The Director of Prosecutions suggested in his submission that it is possible to bring the arrest to an end where the person performing the arrest has discovered the arrested person is innocent.

Nonetheless, the Commission is aware from anecdotal evidence that police fear possible civil action against them if, following arrest, the person arrested is not subsequently charged with an offence. This has the unintended consequence that persons may be kept in custody unnecessarily until they can be taken before a magistrate for the charges to be withdrawn.

Other Jurisdictions

In the ALRC report *Criminal Investigation* (1975, p. 19) reference is made to the situation where the reason for the arrest ceases to exist or apply. According to the ALRC, in that case the custody of that person, if continued, will be unlawful. The Report asserts that a person detained in those circumstances should be released forthwith. Where the situation changes so that there is no difficulty in proceeding by summons, the person should be released from custody, whether or not a summons is subsequently issued against him or her.

The situation in England before the *Police and Criminal Evidence Act 1984* (PACE Act) was introduced was clearly stated by Lord Denning M.R. in *Wiltshire v. Barrett* [1965] 2 All E.R. 271 at 276:

> . . . it has been settled law that if, after arrest, a man is found on inquiry to be innocent, or at any time, or at any rate there is no sufficient case for detaining him he should at once be set free. There is no obligation to take him to the magistrate.

Other Reviews in Queensland

The Criminal Code Review Committee recommended the inclusion in a new *Criminal Code* of a provision allowing release of a person arrested for an indictable offence before the person is brought before the Court in relation to the offence, where the arresting officer ceases to believe on reasonable grounds that the person committed the offence.[18]

The Committee's recommendation is based on a provision recommended by the Gibbs Committee (1991).

Conclusion

The Commission is concerned by the uncertainty about whether the police can 'unarrest' a person. It is important that police are encouraged to release people from custody at the earliest possible opportunity if the reason for the arrest is no longer valid. If, prior to the person being taken before a justice, the arresting police officer no longer has reasonable grounds for suspecting that the person has committed the offence, or that the arrest is necessary to achieve one of the specified purposes, the police officer should be able to release the person. That principle should be clearly stated in the legislation authorising arrest without warrant.

The Commission agrees with draft section 252 of the *Criminal Code* concerning the release of a person. However, it should be expanded to apply to any offence. Furthermore, it should be stated that the provision requiring a police officer to take a person before a justice forthwith should be subject to a Release of Person Provision along the lines of proposed section 252.

13.7 Recommendation

The Commission recommends that there be a specific legislative provision requiring a police officer to release an arrested person where the officer no longer has reasonable grounds for suspecting that the person committed the offence or that the arrest is necessary to achieve one of the purposes specified in Recommendation 13.5.

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18 Draft s. 252. ***Release of person.***

If (a) a person has been arrested for an indictable offence, and
(b) before the person is brought before the court in relation to the offence the arresting police officer ceases to believe on reasonable grounds:
(i) that the person committed the offence; or
(ii) that holding the person in custody is necessary to achieve a purpose referred to in Section 251,
the police officer must release such person.

IMPLICATIONS OF RECOMMENDATIONS FOR CURRENT STATUTORY PROVISIONS

Table 6 shows that a number of existing arrest without warrant provisions are inconsistent with the recommendations made in this chapter concerning the circumstances in which police should be able to arrest without warrant.

The Commission recommends that a review be undertaken of all arrest without warrant provisions which are inconsistent with the recommendations of this chapter. As a general principle, the Commission considers that those provisions which are inconsistent with its recommendations should be amended or repealed, unless there are special circumstances justifying the retention of the provisions.

Examples of provisions which might be retained on the grounds that there are special circumstances are section 29 of the *Bail Act 1980* and section 94 of the *Corrective Services Act 1988*.

Section 29 of the *Bail Act 1980* includes a power to arrest without warrant where a police officer believes on reasonable grounds that a defendant 'is likely to' break his or her bail conditions. Section 94 of the *Corrective Services Act 1988* provides a power to arrest without warrant where a person is 'preparing to commit' an offence against the Act.

In these cases, the power to arrest without warrant applies to people whose rights have been limited by virtue of the fact that they have been charged with a criminal offence, or convicted and sentenced to a term of imprisonment. In each of these cases the people against whom the power to arrest without warrant would be exercised have a different legal status from that enjoyed by members of the community generally.

The Commission does not have sufficient information available to it about the circumstances of the exercise of the other arrest powers in Table 6 to make specific recommendations for amendment or repeal.

13.8 Recommendation

Existing legislative provisions which are inconsistent with the Commission's recommendations relating to the power to arrest without warrant should be amended or repealed, unless there are special circumstances justifying the retention of these provisions.

SUMMARY OF RECOMMENDATIONS IN THIS CHAPTER

In summary, the Commission recommends a legislative provision that clearly states that a police officer can only arrest a person without a warrant where the officer has reasonable grounds to suspect that:

- the person has committed or is committing an offence (whether indictable, simple or regulatory); and
- arrest is necessary to achieve one of the following purposes:
  - (i) to establish the identity of the person;
  - (ii) to ensure the appearance of the person before the court;
  - (iii) to prevent the continuation or repetition of the offence or the commission of another offence;
  - (iv) to obtain or preserve evidence relating to the offence;
  - (v) to prevent the harassment of, or interference with, a person who may be required to give evidence in respect of the offence;
  - (vi) to prevent the fabrication of evidence in respect of the offence; or
  - (vii) to preserve the safety or welfare of any person.

The provision should be drafted so as to impose a positive obligation on a police officer to first consider alternatives to arrest. The Commission recommends that consideration be given to implementing a Field Court Attendance Notice scheme similar to that being implemented in New South Wales as an alternative to the Complaint and Summons procedure.

The Commission also recommends that there be a specific legislative provision requiring a police officer to release an arrested person where the officer no longer has reasonable grounds to suspect that the person has committed or is committing an offence.

Existing legislative provisions which are inconsistent with the Commission's recommendations relating to the power to arrest without warrant should be amended or repealed, unless there are special circumstances justifying the retention of these provisions.

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CHAPTER FOURTEEN

DEMAND NAME AND ADDRESS

INTRODUCTION

The power to demand a person's name and address in specified circumstances has long been sought by the police. Although in a sense it is one of the less intrusive powers of police, it is contentious because it directly infringes the common law right to silence – a fundamental right in our criminal justice system.

This chapter looks at the arguments for and against granting the police the power to demand a person's name and address. The chapter addresses the following questions:

- Should the police have a general power to demand the name and address of a person suspected of being involved in an offence?
- What degree of belief or suspicion should a police officer be required to hold before demanding a person to provide his or her name and address?
- Should the power to demand name and address extend to cases where a person is 'preparing to' or 'is about to' commit an offence?
- Should the police have a power to demand the name and address of a person who 'may be able to assist in the investigation of an offence'?
- Should police be given a power to demand name and address when serving summonses and executing warrants?
- Should the power to demand name and address include a power to demand verification?
- What should be the consequences where a person refuses to provide a name and address or provides a false name and address?
- What information should a police officer be required to provide to a person when requiring that person to provide his or her name and address?

The Present Position in Queensland

Common Law

The position at common law is that while a police officer is entitled to ask a person to divulge his or her name and address, the person is entitled to refuse to answer. This common law right to silence extends to any questions asked by a police officer.

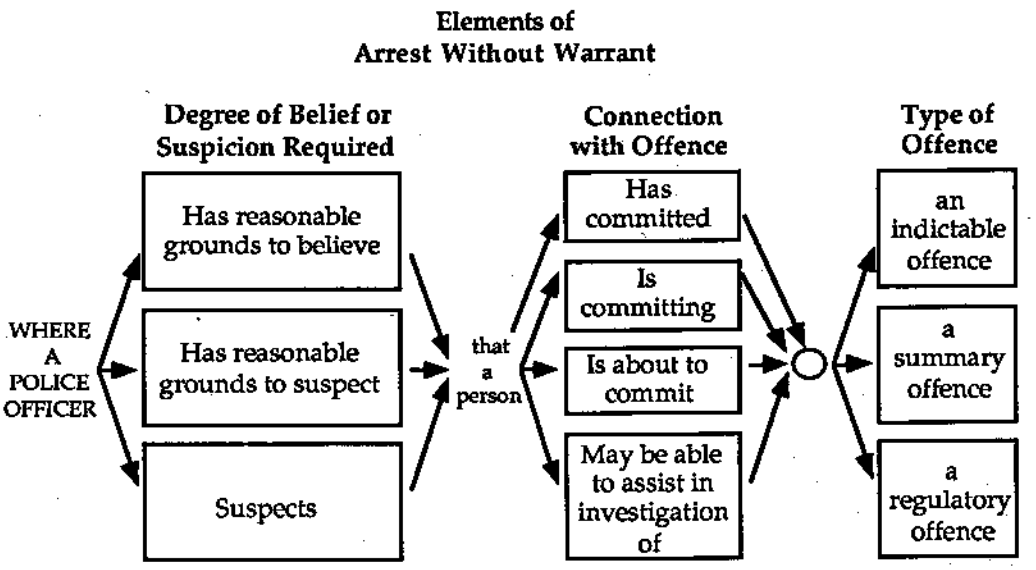
As Lord Parker C.J. said in *Rice v. Connelly* [1966] 2 Q.B. 414:

> . . . it seems to me quite clear that though every citizen has a moral duty or, if you like, a social duty to assist the police, there is no legal duty to that effect, and indeed the whole basis of the common law is the right of the individual to refuse to answer the questions put to him by persons in authority. . .

Statute Law

Approximately 20 Queensland statutes contain exceptions to the common law rule, authorising members of the Queensland Police Service to demand the name and address of people in a variety of circumstances. Figure 14.1 (below) sets out the elements of the power under three headings. Under each of the headings the various options are listed. Most Queensland provisions and similar provisions in other states can be classified according to the diagram.

Figure 14.1



The circumstances in which Queensland police are authorised to demand the name and address of a person include where a police officer:

- finds a person committing or reasonably suspects a person of having committed an offence against the *Animals Protection Act 1925*, or is making investigations to establish whether such an offence has been committed (s. 15A *Animals Protection Act 1925*);

- reasonably suspects that an offence under Part II of the *Drugs Misuse Act 1986* has been committed, and reasonably requires to know information about a person in order to assist him or her to investigate the offence (s. 22 *Drugs Misuse Act 1986*);

- believes on reasonable grounds that a person has committed or is committing or is about to commit an offence against the *Local Government (Chinatown Mall) Act 1984* or a Council ordinance made for the purpose of that Act (s. 41 *Local Government (Chinatown Mall) Act 1984*); and

- finds any person committing or reasonably suspects a person has committed an offence against the *Traffic Act 1949*, or is making inquiries to establish whether an offence has been committed, or is of the opinion that a person present at the scene of an accident may be able to give information, or is of the opinion that name and address are necessary for the purposes of the Act (s. 39 *Traffic Act 1949*).

(See Table 11 Appendix 7 for an exhaustive list of existing police powers to demand name and address).

Under some Acts the police can only demand the name and address of a person who 'is committing' or is suspected or believed to 'have committed' an offence. However, under other Acts the power extends to circumstances where the officer only suspects that the person is 'about to commit' an offence. Some provisions go further and authorise an officer to demand the name and address of a person who may be able to assist in inquiries relating to an offence – this may extend to witnesses as well as suspects.

Many of the provisions state that a person may be arrested without warrant for failing to provide a name and address or for providing a name and address which the police officer reasonably suspects is false.

The specific powers to demand a name and address of a person contained in Table 11 nearly all relate to simple offences. There is no power under the *Criminal Code* for an officer to require the name and address of a person who is suspected of committing an indictable or simple offence under the Code.[18]

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18 The Criminal Code Review Committee has recommended that a power be included in the new draft *Criminal Code* (draft s. 256) - see p. 623 infra.

Under the present law, particular difficulty is encountered in relation to offences for which there is no power to arrest without warrant. For example, a person reasonably believed to have obtained goods by false pretence (s. 427 *Criminal Code*) can only be summonsed or arrested with a warrant.[19] In order to obtain the summons or warrant the police require the name and address of the suspect, yet have no power to demand it if the suspect does not co-operate. This is one of the reasons that many police have sought a general power to demand names and addresses in specified circumstances.

SHOULD THE POLICE HAVE A GENERAL POWER TO DEMAND THE NAME AND ADDRESS OF A PERSON SUSPECTED OF BEING INVOLVED IN AN OFFENCE?

As with many other police powers, the individual provisions authorising police to demand the name and address of a person were drafted at different times and use different phraseology. The powers have developed incrementally, resulting in a confusing array of specific circumstances when a police officer has authority to demand name and address.

According to the Queensland Police Service an anomaly exists in Queensland law. The police can demand the name and address of persons who are suspected of involvement in a range of specified simple offences under different Acts, but are not empowered to do so for simple offences or indictable offences under the *Criminal Code*. The police see this as denying them useful investigative tools in areas where they are most needed, namely more serious offences. The Police Service sought a general power to demand name and address for any offence, rather than a series of specific powers related to specific offences under different pieces of legislation. It suggested a general power in the following terms:

> 1. Where a police officer finds a person committing an offence or suspects that a person has committed or is about to commit an offence that police officer be empowered to require the person to state his/her name, address, date and place of birth and, if considered necessary supply evidence thereof.
>
> 2. Where a police officer is making investigations with a view to establishing whether an offence has been committed, is being committed or is about to be committed that police officer be empowered to require any person who the police officer believes may be able to assist him/her in his/her enquiries to state his/her name, address, date and place of birth and, if considered necessary produce evidence thereof.
>
> 3. A failure, without reasonable excuse, to supply the required particulars or supplying false particulars should be an offence for which a person may be arrested. (Queensland Police Service submission 1992, p. 11)

19 See notes to s. 5 *Carter's Criminal Law of Queensland* for other examples.

The Queensland Council for Civil Liberties recognised the ad hoc development of the Queensland legislation but strongly opposed the call for a general power. It said in its submission to the Commission (Queensland Council for Civil Liberties submission 1992, p. 8):

> . . . part of the problem arising from the ad hoc piecemeal extension of police powers in Queensland over the last two decades is that a power granted in the Litter Act is now being used as justification for a call by the police lobby for an across the board application of that power.
>
> In the Litter Act, there is power to demand the name and address of a person who drops litter in a public place. This particular extension of police power was introduced with little or no public debate and was probably not even appreciated by the Members of Parliament at that time as containing such an extension of power. However, we are now hearing from the police lobby the argument that, whilst they have the power to demand name and address in relation to a person who has dropped litter, they have no power to demand the name and address of a person under investigation for murder. This simplistic example is currently being used by the police lobby to demand a general power of extracting names and addresses from citizens in all and any circumstances.[20]

The Council contended that a practical procedure has not been devised for preventing the abuse of a general power to demand name and address. It argued that the police will claim such a power is useless unless a consequential power is granted enabling police to detain a person until name and address are verified. The Council also said that many lawyers are aware of the significant amount of time frequently spent in custody by persons who have been arrested for drink driving where the arresting officer claims that further information is required to verify name and address. The Council submitted that, in any event, an overwhelming proportion of the population provide their name and address when requested, either out of ignorance of their right to refuse, or because of willingness to co-operate.

The Council (submission 1992, p. 12) put forward what it saw as a compelling practical reason why people are reluctant to provide information, particularly their address:

> Many disadvantaged people . . . have had experiences . . . where the provision of a name and address subsequently leads to intrusive and speculative drug raids often in the early hours of the morning and in circumstances where drugs are not found.

According to the Council, the very real concern of many people that the provision of a name and address will result in subsequent harassment is too easily discounted by others who, because of their social status, would not expect to be the subject of such harassment.

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20 It should be noted that the Queensland Police Service is not seeking a power to demand name and address in all circumstances; the circumstances they suggest are outlined above.

Queensland Advocacy Incorporated opposed the granting of a general power to demand name and address because it would be open to abuse against people with disabilities. Other organisations which were opposed to a general power included the Youth Affairs Network of Queensland and the Juvenile Advocacy Service. However, the Juvenile Advocacy Service agreed that such a power would be appropriate for certain specified indictable offences where the officer suspects on reasonable grounds that a person may be able to assist in investigations. In such cases Juvenile Advocacy believed that appropriate safeguards should be introduced requiring police to provide information to the person. The Youth Affairs Network argued that the police would use the power as a means to harass, intimidate and provoke young people. The Network believed that if such a power were given to the police, it should only be available in the case of certain specified offences.

The Queensland Bar Association did not oppose police having a power to demand name and address from a person in respect of indictable offences. However, the Association opposed extending the power to summary offences, on the basis that such a power would be open to abuse. The Association did not object to existing statutes which give police the power in such instances.

The Queensland Law Society's Criminal Law Committee believed that the police should only have a general power to demand the name and address of a person who is reasonably suspected of committing an offence.

QAILS, the Queensland Watchdog Committee and the Legal Aid Office supported a general power along the lines of Northern Territory legislation (see below), although with some qualifications.

Other Jurisdictions

The Northern Territory police have a general power to demand the name and address of a person in specified circumstances relating to any offence. Section 134 of the *Police Administration Act 1978* allows a police officer to require the name and address of a person whose name and address is unknown to the officer, where the police officer believes on reasonable grounds that the person may be able to assist the member in his or her inquiries in connection with an offence which has been, may have been or may be committed. The Act requires the police officer to inform the person of the reason for the request. If the person refuses or fails to comply with the request, or gives information which is false, it is an offence. Section 134 also provides that a police officer who requests a person to provide his or her name and address shall not refuse to give his or her own name and address of place of duty if requested to do so by that person. A penalty for refusal is provided in the Act.

In South Australia, a member of the Police Force is empowered to require a person to state his or her full name and address if the officer has reasonable cause to suspect:

- that a person has committed, is committing, or is about to commit an offence;[21] or

- that a person may be able to assist in the investigation of an offence or a suspected offence. (s. 74a *Summary Offences Act 1953*)

This section also provides that if the officer has reasonable cause to suspect that the name or address as stated is false, he or she may require the person making the statement to produce evidence that the name or address is correct.

In Victoria, police do not currently have a general power to demand the name and address of a person, although some statutes confer this power on a police officer in certain circumstances.[22] However, an amendment to the *Crimes Act 1958* has been proposed in the Crimes Amendment (No. 2) Bill 1993. If the Bill is passed in its current form, the police would be empowered to require the name and address of a person reasonably believed:

(a) to have committed or be about to commit any offence; or

(b) may be able to assist in the investigation of an indictable offence.

A police officer requesting the name and address of a person would be required to inform that person of the offence that he or she is suspected of having committed, or of being about to commit, or in respect of which he or she may be able to assist in the investigation.

It would be an offence for a person to refuse to provide his or her name and address when requested or to provide false information. When requested, a police officer would be required to inform the person of his or her name, rank and place of duty. A police officer who failed to comply with this request or gave false information would be guilty of an offence.

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21 The Coldrey Committee (?1988, p. 10) said that this power applies in respect of an indictable or summary offence.

22 For example *Court Security Act 1980* (s. 3); *Firearms Act 1958* (s. 27); *Liquor Control Act 1987* (s. 152 re minors) and *Road Safety Act 1986* (s. 59).

Other Reviews in Queensland

Both the Criminal Code Review Committee and the Vagrants, Gaming and Other Offences Act Review Committee have recommended a power to demand the name and address of a person involved in the commission of an offence.

The Criminal Code Review Committee's recommendation is contained in draft section 256:

> **256. Requirement to furnish name, etc.** (1) If a police officer believes on reasonable grounds that a person, whose name or address is, or whose name and address are, unknown to the police officer, may be able to assist the officer in inquiries in relation to an indictable offence that the officer has reason to believe has been, is being, or is about to be committed, the officer may request the person to provide his or her name or address, or name and address to the officer.
>
> (2) If a police officer–
>
> (a) requests a person under subsection (1) to provide his or her name or address, or name and address; and
>
> (b) identifies himself or herself as a police officer; and
>
> (c) informs the person of the reason for the request; and
>
> (d) complies with subsection (3) if the person makes a request under that subsection; then
>
> that person must comply with that request and give his or her correct name or address, or name and address.
>
> (3) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person:
>
> (a) his or her name or the address of his or her place of duty; or
>
> (b) his or her name and that address; or
>
> (c) if he or she is not in uniform – evidence that he or she is a police officer, then
>
> that police officer must comply with that request and give his or her correct name or address of his or her place of duty or his or her name and that address or evidence that he or she is a police officer.

The Vagrants, Gaming and Other Offences Act Review Committee recommended a new section 42 which confers a power in the following terms:

> Section 42(1) A police officer who –
>
> (a) finds a person committing, or has reasonable grounds for suspecting a person has committed an offence against this Act; or
>
> (b) believes on reasonable grounds that the name and address of a person is required to assist with the investigation of an offence against this Act;
>
> may require the person to state the person's name and address and date and place of birth and if the police officer believes on reasonable grounds that the name or address or date of birth is false, may require reasonable confirmation of the particular matter requested.
>
> (2) A person who is required under subsection (1) to state his or her name or address or date of birth and refuses to do so or who states a false name or address or date or place of birth, is guilty of an offence and liable to a fine of 8 penalty units.
>
> (3) A police officer may arrest any person suspected on reasonable grounds of committing a breach against this section providing the officer has first cautioned that person that he or she may be arrested for failing to comply with this section.
>
> (4) A police officer, must supply that person with his or her rank, surname and station/establishment.

The combined effect of the Committees' recommendations is to provide the power to demand name and address in respect of indictable and simple offences, although there are differences in the drafting. The Vagrants, Gaming and Other Offences Act Review Committee suggested that the provisions be standardised by Parliamentary Counsel after consideration of the Criminal Justice Commission's recommendations on the subject (1993, p. 31).

Conclusion

While the police may know the 20 different circumstances when they have this authority, it is unlikely that citizens will know the circumstances under which they are required to provide their names and addresses to a police officer. There is a need to simplify the law in this area, so that the police and public understand their rights and obligations. A general power authorising police to demand the name and address of a person in specified circumstances relating to 'any' offence will achieve this.

Under existing Queensland legislation, the powers to demand name and address generally only apply to summary offences and to some indictable offences in a few Acts.[23] A power to demand name and address is not available in relation to regulatory offences or to more serious indictable offences. There is no consistency in the seriousness of offences for which the power to demand name and address is available. It is inconsistent that the power can be exercised in relation to some summary offences but not the less serious regulatory offences or the more serious indictable offences.

In the Commission's view the police should be given a general but limited power to demand a person's name and address. The limits which should apply to the power are discussed later.

14.1 Recommendation

The Commission recommends that police be granted a general but limited power to demand the name and address of a person in specified circumstances relating to any offence.

WHAT DEGREE OF BELIEF OR SUSPICION SHOULD A POLICE OFFICER BE REQUIRED TO HOLD BEFORE DEMANDING A PERSON TO PROVIDE HIS OR HER NAME AND ADDRESS?

As noted above, the existing legislative provisions conferring various powers on police officers to demand the name and address of a person have been drafted at different times and are not consistent in many areas. One area of inconsistency is the degree of belief or suspicion required before an officer is entitled to demand the name and address of a person. The tests imposed under the different Acts include 'reasonably suspects', 'suspects on reasonable grounds', 'reasonably believes' and 'believes on reasonable grounds'. (Chapter Three of Volume I outlines the differences in meaning of these terms.) A review of the powers conferred in other jurisdictions reveals that the tests applied also differ between jurisdictions.

In a practical sense, the distinction between 'belief' and 'suspicion' appears to be semantic rather than practical. As stated in Chapter Thirteen, most police with whom Commission officers spoke were unaware of the difference in practice. Their focus was upon whether there were 'reasonable grounds' rather than whether there was a 'suspicion' or a 'belief'. The submissions received by the Commission and the comments made at the public hearings did not indicate that the distinction between belief and suspicion was an area of concern. Many people often use the terms interchangeably, being unaware of the technical difference.

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23 For example, *Casino Control Act 1982* and *Gaming Machine Act 1991*.

Conclusion

The Commission, in earlier volumes of this report and in Chapter Thirteen of this volume, has emphasised the need for simplification and clarification of police powers and has made recommendations to standardise the requirements across the legislation. For the reasons outlined in Chapter Thirteen that standard should be a suspicion based on reasonable grounds.

14.2 Recommendation

The Commission recommends that the state of mind a police officer is required to have prior to exercising the power to demand the name and address of a person should be a suspicion based on reasonable grounds (see Recommendations 14.3, 14.4 and 14.5).

SHOULD THE POWER TO DEMAND NAME AND ADDRESS EXTEND TO CASES WHERE A PERSON IS 'PREPARING TO' OR 'IS ABOUT TO' COMMIT AN OFFENCE?

The majority of submissions received by the Commission supported the granting of a general power to demand name and address in cases where any offence 'has been committed' or 'is being committed'.

The Commission agrees that to facilitate the use of alternatives to arrest, the police should be granted the power to demand the name and address of a person where there are reasonable grounds to suspect that the person has committed or is committing an offence (whether indictable, simple or regulatory). This is consistent with the Commission's recommendations on arrest (see Chapter Thirteen).

The situation where police have reasonable grounds to suspect that a person is 'preparing to commit' or 'is about to commit' an offence requires closer consideration. In Queensland it is an offence to attempt to commit an indictable offence (s. 535 *Criminal Code*).[24] Therefore, if the person's actions fall within the definition of an 'attempt', the police would be entitled to demand his or her name and address on the grounds that he or she 'has committed' or 'is committing' an offence. The same argument does not apply in respect of many simple and regulatory offences because an attempt to commit such offences does not constitute an offence.

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24 See p. 595, Chapter Thirteen for a more detailed discussion of this.

Other Jurisdictions

The Gibbs Committee in its Review of Commonwealth Criminal Law (1991 Part VII, Draft Bill) recommended that the police be given a power to demand the name and address of a person who may be able to assist in inquiries in relation to an offence that the police officer has reason to believe has been, may have been, or is likely to have been committed. It did not recommend extending the power to offences 'about to be' committed.

The Northern Territory demand name and address provision (see above) applies to an offence that a police officer has reasonable grounds to believe may be committed. The South Australian provision[25] applies to a person who an officer has reasonable cause to suspect is 'about to commit' an offence. The 1993 Crimes Amendment (No. 2) Bill, Victoria, contains a power to demand the name and address of a person reasonably believed to be 'about to commit' an offence.

Other Reviews in Queensland

The Lucas Inquiry (1977, p. 162) recommended that the police be given a power to demand the name and address of a person who a police officer suspects on reasonable grounds may have been about to, or is preparing to, commit an indictable offence.

The Criminal Code Review Committee also proposed extending the power to a person reasonably believed to be about to commit an indictable offence. However, the Vagrants, Gaming and Other Offences Act Review Committee restricted its proposed power to a person 'found committing', or 'reasonably suspected of having committed', an offence against the Act.

Conclusion

The Commission does not consider that the police should be given a power to demand the name and address of a person reasonably suspected of being 'about to commit' an offence. The police should not be granted extended powers in this area unless there are good reasons for doing so. If a person's preparatory actions amount to an attempt to commit an indictable offence, then the power proposed by the Commission will be available. Where the person's act is more remote than that, the Commission is not satisfied that a power to demand name and address is justified. The further away an individual is from committing an offence, the more difficult it is to distinguish his or her actions and intentions from those of law-abiding citizens. It has been argued that such a power would deter the person from committing an offence. However, the Commission considers that a request from a police officer would normally be a sufficient deterrent as it would make a 'potential offender' aware of police interest in him or her.

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25 Section 74a *Summary Offences Act 1953*.

14.3 Recommendation

The Commission recommends that a limited power to demand name and address should be available in circumstances where a police officer has reasonable grounds to suspect that a person 'has committed' or 'is committing' an offence. The power should not extend to circumstances where a police officer suspects a person is 'about to commit' or is 'preparing to commit' an offence.

SHOULD THE POLICE HAVE A POWER TO DEMAND THE NAME AND ADDRESS OF A PERSON WHO 'MAY BE ABLE TO ASSIST IN THE INVESTIGATION OF AN OFFENCE'?

The Queensland Police Service submission sought a power to demand the name and address of a person who 'may be able to assist in the investigation of an offence'. The Queensland Police Union also sought a power in such cases. Such a proposal, if accepted, would widen the group of people potentially subject to the power to demand name and address to include not only suspects but possible witnesses to an offence. This is a controversial proposal because it would mean that persons not suspected of any offence would, in certain circumstances, be forced to provide their names and addresses and would be liable to arrest for a failure to do so.

A number of the submissions, while not specifically referring to witnesses, did support a power expressed in the same terms as section 134 of the *Police Administration Act 1978* (NT).[26] The Juvenile Advocacy Service and the Youth Affairs Network were of the view that if the police were to be given any power to demand the name and address of a person it should be limited to circumstances where the police suspect on reasonable grounds that the person may be able to assist in the investigation of certain specified indictable offences.

The Queensland Council for Civil Liberties was opposed to a power to demand the name and address of witnesses. It said that specific evidence was needed to show that crimes had gone unsolved because of the failure or refusal of a witness to supply name and address. In its view, it was relatively rare for a witness to refuse to provide his or her name and address. In most situations where a witness did refuse, other witnesses would be willing to assist police. The Council argued that there could be real non-criminal privacy reasons for a person not wishing to provide the information.

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26 See p. 621 infra for a summary of the section.

Other Jurisdictions

The ALRC (1975, p. 34) stated that the police needed a power to demand the name and address of potential witnesses to an offence. It cited some examples, such as where a crime has been committed and police wish to interview all those who may have been in the vicinity at the time; or where there has been a traffic accident and the police wish to interview those who are witnesses to determine whether an offence has been committed. It was suggested by the ALRC that in these circumstances some witnesses may not be willing to give their names and addresses voluntarily (for example, because of the potential inconvenience involved in attending court hearings). The ALRC considered that the taking of the names and addresses for subsequent follow-up by the police was far preferable to the police detaining what may possibly be a large number of people at the scene of the crime. It should be noted that the ALRC did not recommend a power for the police to question a person any further than that.

Both the Northern Territory and South Australian provisions[27] allow police to exercise the power to demand name and address of a person who may be able to assist in the investigation of an offence.[28] The provision proposed in the Victorian Bill[29] allows the police this power in respect of a person reasonably believed to be able to assist in the investigation of an indictable offence.

Other Reviews in Queensland

The Criminal Code Review Committee's draft section 256 of the *Criminal Code* extends the power to demand name and address to a person who the police officer believes may be able to assist in inquiries in relation to an indictable offence that the officer has reason to believe has been, is being, or is about to be committed. The Vagrants, Gaming and Other Offences Act Review Committee recommended that the power be available where a police officer believes on reasonable grounds that the name and address of a person is required to assist with the investigation of an offence against the proposed 'Summary Offences Act' (draft s. 42).

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27 Section 134 *Police Administration Act 1978* (NT) and s. 74a *Summary Offences Act 1953* (SA).

28 In the Northern Territory it is an offence 'that has been, may have been or may be committed' while in South Australia it is 'an offence or suspected offence'.

29 Set out at p. 622 above.

Conclusion

The Commission has had some difficulty in resolving this question. Arguably, there is little point in granting the police a power to demand the name and address of a witness where there is no power to compel that person to answer any further questions or to provide a statement. If witnesses are unwilling to give the police their names and addresses, it is unlikely that they will be willing to volunteer other information. However, some police officers and practitioners who spoke to the Commission argued that whilst some persons may initially be unco-operative, they may have second thoughts. If the police have the names and addresses of those people, they can be contacted at a later date when they may be more willing to provide further information. A particular example given involved the commission of a serious offence where people present at the scene did not wish to be seen to be co-operating with police, but probably would have provided their names and addresses if required by law. Such witnesses may be far more willing to provide information to the police at a later time when not in the presence of other people.

Another argument in favour of granting the power is that in some cases it may be clear to police that one of a group committed a particular indictable offence, but there is not sufficient information available to identify which of the group is the offender; or to establish reasonable grounds to suspect a particular member of the group. Under the present law, in such a case the police would have to allow the individuals to leave the scene of the offence without providing their names and addresses.

The Commission recognises that granting the power to demand the names and addresses of witnesses may infringe the right to privacy of individuals who are simply innocent bystanders. However, the Commission has weighed that against the wider collective interest of the community in equipping the police with the power necessary to investigate serious offences.

In the Commission's view, the police should have a limited power to demand the name and address of a person where there are reasonable grounds to suspect that the person may be able to assist in inquiries in relation to an offence. This power should also be subject to the following limitations:

- it should only be available in respect of an indictable offence
- it should only be exercised by a police officer involved in the investigation of the indictable offence
- it should only be available in respect of persons found at, or in close proximity to, the scene of the indictable offence.

14.4 Recommendation

The Commission recommends that where a police officer has reasonable grounds to suspect that an indictable offence has been, or is being, committed, a police officer involved in the investigation of that offence may demand the name and address of any person found at or in close proximity to the scene of the offence, who the police officer has reasonable grounds to suspect may be able to assist in inquiries in relation to that offence.

SHOULD POLICE BE GIVEN A POWER TO DEMAND NAME AND ADDRESS WHEN SERVING SUMMONSES AND EXECUTING WARRANTS?

Serving police officers have expressed frustration to the Commission about the difficulties experienced by police when attempting to serve warrants and summonses. Because police do not have a power to demand name and address, service of summonses and execution of warrants can become 'a game of cat and mouse' between the police and the person who is thought to be the subject of the summons or warrant.

In some cases, considerable police time is spent attempting to obtain information by independent means to verify the identity of the person they suspect is the subject of a warrant or summons. This situation affects the efficiency of police and hinders the speedy prosecution and resolution of criminal proceedings.

It is inconsistent to grant to the police a power to demand name and address to facilitate the use of the summons procedure as an alternative to arrest and then not equip them with the powers effectively to execute that process. For this reason, the Commission is of the view that where police are serving summonses and executing warrants they should have the power to demand the name and address of the person who they have reasonable grounds to suspect is the person to whom the summons is directed, or is the subject of the warrant.

14.5 Recommendation

The Commission recommends that a police officer, when executing a warrant or serving a summons, should be authorised to demand the name and address of a person who the police officer has reasonable grounds to suspect is the person named in the warrant or summons.

SHOULD THE POWER TO DEMAND NAME AND ADDRESS INCLUDE A POWER TO DEMAND VERIFICATION?

The Queensland Police Service in its submission proposed that a person be required to provide evidence of name, address, date and place of birth in certain circumstances. It argued that the power to demand and verify such information would assist police to identify offenders and enable subsequent prosecution.

The Queensland Police Union and the Queensland Watchdog Committee supported the view that police officers should be able to request verification of name and address.

The Queensland Council for Civil Liberties, QAILS, the Youth Affairs Network of Queensland and the Juvenile Advocacy Service were all strongly opposed to giving the police a power to demand verification of information provided to police.

The Council for Civil Liberties argued that the provision of a general power to demand name and address, coupled with a power to demand verification, would inevitably lead to police demands for, and the possible provision of, a further power to detain a person to enable verification of the information provided.

Other organisations opposed to a power to demand verification of name and address argued that such a requirement would lead to greater harassment and hardship for young people and members of disadvantaged groups who may not have driver's licences, bank accounts, credit cards etc. as evidence of identity.

Other Jurisdictions

In South Australia, a person is guilty of an offence if he or she refuses or fails without reasonable excuse to comply with a police request to provide name and address or verification. It is also an offence to state a false name and address or produce false verification. In contrast, the *Police Administration Act 1978* (NT) (s. 134) does not include a power to require the person to produce evidence of the correctness of the name and address. Similarly, the powers contained in the *Police Act 1892* (WA) (s. 50) and the *Police Offences Act 1935* (Tas.) (s. 55A) do not include a power to require verification.

Other Reviews in Queensland

In 1977 the Lucas Inquiry recommended that a power be granted to police to demand the name and address of a person who a police officer has reasonable grounds to suspect may have committed, or may have been about to commit, or preparing to commit, an indictable offence. The Inquiry also recommended a power to 'confirm' or verify the identity of persons required to give their names and addresses. It further proposed that if a person could not do so the police officer could require him or her to go to the nearest staffed police station (Lucas Inquiry 1977, p. 162).

The Criminal Code Review Committee in its Final Report (1992, draft s. 256) made no reference to the issue of requiring verification of name and address.

However, when this Commitee was reconstituted as the Vagrants, Gaming and Other Offences Act Review Committee, it recommended that if the police officer believes on reasonable grounds that the name and address or date of birth is false, he or she may require reasonable confirmation of the particular matter requested (draft s. 42). The Committee noted that its recommendation was different from and more onerous than that recommended by its review of the *Criminal Code*. It proposed that when Parliamentary Counsel drafts both Acts, the provisions be standardised to include the additional recommendations made with respect to the review of the *Vagrants, Gaming and Other Offences Act 1931* (1993, p. 31).

Conclusion

The main argument for giving the police a power to demand verification of name and address is that such a power is needed to ensure that people do not provide the police with false information. The Commission accepts that there is some merit to this view, but on balance it does not consider that the police should be given a specific power to demand verification. It has reached this conclusion for the following reasons:

- The Commission does not wish to see a situation develop where people are penalised simply because they fail to carry identifying information with them. This is a particular concern given the Commission's proposal that police be given the power to demand the name and address of witnesses.
- Where the police demand the name and address of a person reasonably suspected of committing, or having committed, an offence, a power to demand verification is not necessary. If the person fails to satisfy the police of his or her identity he or she will be liable to arrest for the substantive charge.
- As discussed below, the Commission considers that it should be an arrestable offence for a person to refuse to provide his or her name and address, or to provide a false name and address. If this provision were in force, the police would be able to arrest an unco-operative witness if they had reasonable grounds to suspect that the witness had given them a false name and/or address.

14.6 Recommendation

The Commission recommends that the police should not be given a specific power to demand verification of the name and address of a person from whom a police officer has sought this information.

WHAT SHOULD BE THE CONSEQUENCES WHERE A PERSON REFUSES TO PROVIDE A NAME AND ADDRESS OR PROVIDES A FALSE NAME AND ADDRESS?

The above recommendations of the Commission, if accepted, will authorise police to demand the name and address of three categories of people:

i) a person who a police officer has reasonable grounds to suspect has committed or is committing an offence;

ii) a person found at or in close proximity to the scene of an indictable offence who the investigating officer has reasonable grounds to suspect may be able to assist in inquiries in relation to the offence;

iii) a person who a police officer has reasonable grounds to suspect is the person named in a warrant or a summons.

In determining the consequences of a refusal[30] to provide the information required there are two questions to be addressed – should a refusal constitute an offence and, if so, should the police be authorised to arrest for that offence?

Other Jurisdictions

The Gibbs Committee (1991, Part VII, Draft Bill, s. 8) recommended that a failure to provide the required information, or the provision of false information, should constitute an offence for which a penalty of five penalty units should apply. Although the Committee did not specifically mention a power to arrest in that provision, the arrest power in draft section 8A would seem to allow police to arrest in such circumstances.

The Northern Territory *Police Service Administration Act 1978* provides a penalty of $200 for a failure or refusal to comply with a request for name and address or for providing false information. It would appear that the power to arrest is available for such an offence (see s. 123). The South Australian legislation also makes it an offence to refuse or fail to comply with the request. The penalty is a fine or imprisonment.

30 In this context the Commission considers a refusal to include the deliberate provision of false information.

Other Reviews in Queensland

The Criminal Code Review Committee recommended that a failure to comply with the police officer's request should amount to a simple offence against what is presently section 204 of the *Criminal Code* (Disobedience to statute law) and which the Review Committee recommended for inclusion in the proposed 'Simple Offences Act'. The Vagrants, Gaming and Other Offences Act Review Committee recommended an offence of failing to comply with the request, proposing a penalty of eight penalty units and a power to arrest after cautioning the person.

Conclusion

It follows logically that if the police are to be able to demand a person's name and address, there must be a sanction for non-compliance with the demand. The appropriate sanction in the Commission's view is a simple offence with a monetary penalty.

The next question is whether a person should be liable to arrest for the offence of refusing to provide a correct name and address. The very nature of the offence will generally preclude the police from dealing with an offender by any other method. Arrest needs to be an option where a person refuses to provide his or her name and address, or provides a name and address reasonably suspected of being false. It will normally make little sense to issue a court attendance notice or summons when the police officer is not satisfied as to the person's identity. In such a case, the police can exercise the arrest power recommended in Chapter Thirteen because one of the conditions is fulfilled – it is necessary to establish the offender's identity (see Recommendation 13.5(i)).

14.7 Recommendation

The Commission recommends that in all cases it should be a simple offence, subject to a monetary penalty, for a person to refuse to provide his or her name and address when required to do so by a police officer, or to provide a false name and address.

The Commission also recommends that police be authorised to arrest without warrant a person who has failed to provide his or her name and address or who the police officer has reasonable grounds to suspect has provided a false name and address.

WHAT INFORMATION SHOULD A POLICE OFFICER BE REQUIRED TO PROVIDE TO A PERSON WHEN REQUIRING THAT PERSON TO PROVIDE HIS OR HER NAME AND ADDRESS?

The Commission recognises that the proposals outlined above involve giving a power to police officers, many of whom may be junior officers, which infringes the rights of individuals in specified circumstances. The very nature of the power dictates that its use involves the exercise of a great deal of discretion. A requirement that police officers explain the basis for invoking the power and inform people of their rights in respect of the power, will encourage the police to think carefully about the exercise of the power. 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 risk of unjustifiable or indiscriminate use of the power.

Most of the public submissions received by the Commission agreed that if a power to demand name and address was to be granted to police, it should be accompanied by a reciprocal requirement upon police to provide details of their identity, and to state the reason for making the demand for the name and address of the person. The requirement that a police officer provide his or her particulars to the person of whom a demand is made is already imposed in many other jurisdictions, although there are some variations in the circumstances; for example, in some cases police are only required to provide particulars 'upon request'.[31]

Other Reviews in Queensland

The Criminal Code Review Committee recommended that the police officer should provide his or her name and address of place of duty upon request and should inform the person of the reason for requiring the person's name and address. The Vagrants, Gaming and Other Offences Act Review Committee recommended that in all cases the officer should supply rank, surname and station.

Conclusion

The Commission is of the view that a police officer should provide his or her own name, rank and station in situations where that officer demands the name and address of a person. However, because people who are approached by police officers frequently are unaware of their rights, the requirement that police officers disclose their surname, rank and station or establishment should not depend upon the request of the person, but should be mandatory in all cases. Where possible, the information should be provided in writing. The provision by police officers of their names, ranks and stations to members of the public with whom they are dealing is a

31 Section 74a *Summary Offences Act 1953* (SA); s. 134 *Police Administration Act 1978* (NT).

matter of ordinary courtesy and should be a standard feature of the daily dealings of police with the public. It is understood by the Commission that such a procedure is already quite commonly employed by Queensland police officers. Police officers are also required to wear an identification badge bearing their name and rank.

The Commission considers that a police officer authorised to demand the name and address of a person should also be required to notify the person of the reason for making the demand. That means that the officer must inform the person of the offence that has been or is suspected of having been committed and of the reasons for suspecting that the person may have committed the offence or may be able to assist in inquiries in relation to the offence. The officer should also inform the person of the consequences of a failure to provide the particulars or of providing false particulars.

14.8 Recommendation

The Commission recommends that each time the power to demand name and address is exercised by a police officer, the officer be required to:

(i) provide in writing his or her name, rank and station to the person whose name and address is requested;

(ii) inform the person of the offence that has been or is suspected of having been committed;

(iii) explain to the person the reason/s for suspecting that the person may have committed the offence or may be able to assist in inquiries in relation to the offence; and

(iv) inform the person that a failure to provide his or her name and address, or the provision of a false name and address, may result in the person being arrested and charged with failing to provide his or her name and address or with providing a false name and address.

IMPLICATIONS OF RECOMMENDATIONS FOR CURRENT STATUTORY PROVISIONS

Table 11 contains the legislative provisions in Queensland under which police currently have a power to demand a person's name and address. Many of those provisions are inconsistent with the recommendations made in this chapter about the circumstances in which police should be able to exercise such a power.

The Commission recommends that a review be undertaken of all those provisions which are inconsistent with the recommendations of this chapter concerning the circumstances in which police should be able to demand a person's name and address. As stated in Chapter Thirteen, the Commission is of the view that, as a general principle, legislative provisions which are inconsistent with Commission recommendations should be amended or repealed unless there are special circumstances justifying a departure from the recommendations.

At the same time, the Commission accepts that there are some provisions which are intended to operate in situations which could amount to special circumstances which may justify retention of those provisions.

Section 25 of the *Law Courts and State Building Security Act 1983* is one example. This section grants to members of the Police Service the power to demand the name and address of a person who is in a 'building' as that is defined in the Act. That provision is designed to provide security in defined buildings for the persons employed in, and visitors to, those buildings. Recent incidents involving sieges in office and government buildings have highlighted the need for greater security. Accordingly, the Commission recognises the need for a power to identify people who enter such buildings. It concedes that there are special circumstances justifying retention of the provision.

The Commission does not have sufficient information available to it about the circumstances of the exercise of the other powers to demand a person's name and address in Table 11 to make specific recommendations for amendment or repeal.

14.9 Recommendation

Existing legislative provisions which are inconsistent with the Commission's recommendations relating to the power to demand name and address should be amended or repealed, unless there are special circumstances justifying the retention of these provisions.

SUMMARY OF RECOMMENDATIONS IN THIS CHAPTER

In summary, the Commission recommends that:

- a police officer be able to demand the name and address of a person who the police officer has reasonable grounds to suspect is committing or has committed an offence;
- a police officer investigating an indictable offence be able to demand the name and address of a person who is found at, or in close proximity to, the scene of the offence and who the officer has reasonable grounds to suspect may be able to assist in inquiries in relation to the indictable offence;

- a police officer executing a warrant or serving a summons be able to demand the name and address of a person who the police officer has reasonable grounds to suspect is the person named in a warrant or summons.

In all cases it should be a simple offence, subject to monetary penalty, for a person deliberately to refuse to provide his or her name and address when required to do so by the police officer, or to provide a false name and address. Police should be authorised to arrest without warrant a person who has failed to provide his or her name and address or who the police officer has reasonable grounds to suspect has provided a false name and address.

The Commission recommends that each time the power to demand name and address is exercised the police officer be required to:

(i) provide in writing his or her name, rank and station to the person whose name and address is requested;

(ii) inform the person of the offence that has been or is suspected of having been committed;

(iii) explain to the person the reason/s for suspecting that the person may have committed the offence or may be able to assist in inquiries in relation to the offence; and

(iv) inform the person that a failure to provide his or her name and address, or the provision of a false name and address, may result in the person being arrested and charged with failing to provide his or her name and address or with providing a false name and address.

Existing legislative provisions which are inconsistent with the Commission's recommendations relating to the power to demand name and address should be amended or repealed, unless there are special circumstances justifying the retention of these provisions.

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CHAPTER FIFTEEN

MOVE-ON POWER

INTRODUCTION

In our society there appears to be an increasing desire to regulate and control the behaviour of individuals in public places. Present concerns about 'law and order' have focused attention on particular groups who are highly visible such as the young, the homeless and demonstrators. Against the background of media and political campaigns to 'clean up the streets', tensions between some groups and the police have increased as the police attempt to deal with perceived problems concerning public conduct. While the conduct concerned generally does not involve serious offences, the behaviour of individuals and groups in public places is highly visible to many members of the community.

One of the suggested methods of dealing with the policing of public space is the introduction of a move-on power. This power may take a variety of forms but its essential feature is a power to require persons in a public place who may not have committed an offence to leave that public place, if the police officer believes that the person is likely to commit a breach of the peace or an offence. It is also argued that a move-on power would be useful for preventing individuals from committing crime e.g. where a person is observed loitering outside a warehouse in an industrial area late at night.

This chapter considers whether a move-on power is necessary in Queensland. It outlines the current law, including relevant public order offences, and proposals for reform of the law in that area. It also examines other jurisdictions in which a move-on power exists.[32]

The Present Position in Queensland

In Queensland there is no power at common law for police to require a person in a public place who is not committing any offence or breach of the peace to move on. The police are entitled to request a person to move on, but they cannot require that person to do so.

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32 A related issue is whether the police should be able to require people to move on as part of a power to preserve a crime scene. This issue will be dealt with in Volume V of this Report.

Currently, two Queensland statutes contain provisions which give police the power to direct the movement of people in public places in certain situations. The first of these is the *Public Safety Preservation Act 1986* which, upon an 'emergency situation'[33] being declared in an area, empowers a police officer to direct the evacuation and exclusion of persons from that area (s. 8). The second is the *Traffic Act 1949*. Section 35 of this Act permits a police officer to give to pedestrians on any road such directions, signals and orders as may in his or her opinion be necessary for the safe and effective regulation of traffic, and section 36 requires those pedestrians to obey the officer.

Other provisions which are relevant to the policing of public order are contained in the *Criminal Code*, the *Vagrants, Gaming and Other Offences Act 1931* and the *Liquor Act 1992*.

Chapter IX of the *Criminal Code* relates to unlawful assemblies and breaches of the peace. Section 61 of the Code provides for an offence of unlawful assembly and allows a police officer to arrest without warrant any person taking part in an unlawful assembly:

> When three or more persons, with intent to carry out some common purpose, assemble in such a manner, or, being assembled, conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.

The penalty for taking part in an unlawful assembly is imprisonment for one year. When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot (s. 61 *Criminal Code*). A police officer may arrest without a warrant a person taking part in a riot (s. 63 *Criminal Code*). The penalty for taking part in a riot is three years imprisonment.

Whether the assembly is acting tumultuously is a question of degree:

> ... the impression is that the assembly should be of considerable size; that it should be an assembly in which the persons taking part are indulging in agitated movement; an excited, emotionally aroused assembly; and generally, though not necessarily, accompanied by noise. (per Lyell J. in *J.W. Dwyer v. Metropolitan Police District Receiver* [1967] 2 All ER 1051)

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33 'Emergency situation' is defined in s. 4 of the Act to mean any explosion or fire; any oil or chemical spill; any escape of gas, radioactive material or flammable or combustible liquids; any accident involving an aircraft, or a train, vessel or vehicle; any incident involving a bomb or other explosive device or a firearm or other weapon; or any other accident that causes or may cause a danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment.

Section 64 of the *Criminal Code* provides that where 12 or more persons are riotously assembled together, it is the duty of the sheriff, under-sheriff, a justice of the peace or the mayor to make the following proclamation to the crowd:

> Our Sovereign Lady the Queen charges and commands all persons here assembled immediately to disperse themselves and peaceably to depart to their habitations or to their lawful business, or they will be guilty of a crime, and will be liable to be imprisoned for life. God Save the Queen!

If the crowd does not disperse within the hour, the persons are guilty of a crime for which they are liable to imprisonment for life.

Section 72 of the *Criminal Code* creates the offence of affray, that is, fighting in a public place by one or more persons in such a manner that reasonable persons might be frightened or intimidated.

Section 260 of the *Criminal Code* provides that a police officer may arrest any person 'found committing' a breach of the peace or any person whom he or she believes on reasonable grounds to be about to join in or renew the breach of the peace. The Court of Appeal in *R v. Howell* [1982] 1 QB 416 at 427 said that:

> . . . 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.

Other public order offences are included in the *Vagrants, Gaming and Other Offences Act 1931*:

- having no visible means of support (s. 4(1)(i))
- being an habitual drunkard behaving in a riotous, disorderly or indecent manner in a public place (s. 4(1)(iv))
- playing or betting in a public place (s. 4(1)(vii))
- loitering in a public place to beg or solicit alms (s. 4(1)(xii)
- using obscene or indecent language, using threatening, abusive or insulting words and behaving in a riotous, violent, disorderly, indecent, offensive threatening or insulting manner (s. 7)
- disturbing a public meeting (s. 35).

Section 164(2) *Liquor Act 1992* creates the offence of public drunkenness.[34]

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34 This provision ceases to operate on 30 June 1994.

The combined effect of the *Vagrants, Gaming and Other Offences Act 1931*, *Criminal Code* and *Liquor Act 1992* is to give police wide powers to control public conduct in their role as the preservers of public order. However, with the limited exception of section 260 of the *Criminal Code*, which deals with breaches of the peace, these provisions only apply where an offence has been committed. The proponents of a move-on power argue that additional powers are necessary to deal with persons who have not committed offences. It is this proposition which has caused most debate.

Other Jurisdictions

A move-on power was proposed in the Australian Capital Territory in June 1989, when Mr Stefaniak MLA, presented a Private Member's Bill which would give members of the police force the power to 'move-on' persons in a public place if the police officer believed on reasonable grounds that:

(a) an offence against a law of the Territory has been, or is likely to be, committed in the vicinity by that person or by another person;

(b) the movement of pedestrians or traffic is being, or is likely to be, obstructed by the presence in the vicinity of that person or of another person; or

(c) the safety of that person, or of another person in the vicinity, is in jeopardy.

The penalty for contravening the direction was to be $1000 or three months imprisonment.

The Bill was the subject of much debate. It was eventually re-drafted in line with recommendations of a Select Committee established to examine the issue. The power to move-on ultimately enacted related to persons believed to be likely to engage in crimes of violence, intimidation of a person, fighting in a public place or damage to property (s. 35 *Police Offences Act 1930*).

South Australia has had a move-on power since 1972. Section 18(2) is perhaps the most controversial provision of the *Summary Offences Act 1953* (SA). This provision allows the police to demand that people move from a public area, even if those people are acting quite lawfully and properly.

In the High Court judgement of *Samuels v. Stokes* (1973) 130 CLR 490 at 503-504, Gibbs J. (as he then was) said of the section:

> In my opinion the context of Section 18(2) makes it clear that a person may be loitering although he is standing about with a perfectly lawful purpose. The words of the section make it clear that a person may be requested to leave the area notwithstanding that he is lawfully there and that there is no suggestion that he has done or will do anything wrong.

The Criminal Law and Penal Methods Reform Committee (Mitchell Committee 1974, p. 12) described the provisions as "at best a subterfuge and at worst an unwarranted interference with the liberty of all persons to use the streets and other public places". It said that if behaviour is to be outlawed then it should be proscribed in the substantive law. The Committee recommended the abolition of the provision. Despite the strong criticisms which have been made of this provision, it has not yet been repealed or modified.

Other Reviews in Queensland

In its Final Report the Criminal Code Review Committee (1992) proposed that the provisions of the *Criminal Code* relating to the offence of unlawful assembly (i.e. ss. 61 and 62) be included in a proposed 'Simple Offences Act' because the offence was not sufficiently serious to be included in the *Criminal Code*.[35]

The Criminal Code Review Committee recommended retention of the offence of riot in the *Criminal Code*, and of the existing penalty of three years imprisonment (draft s. 126). However, it proposed the repeal of section 64 which created the offence of "Rioters remaining after proclamation ordering them to disperse" (1992, p. 212). This recommendation appears to have been based on the Electoral and Administrative Review Commission's *Report on Review of Public Assembly Law* (1991), which found that the provision was outdated. The Committee also recommended the retention of the offence of affray (renamed "public fighting") with some minor amendments to update the language in the section (draft s. 128).

Public order offences have also recently been considered by the Vagrants, Gaming and Other Offences Act Review Committee. In its Final Report (1993, pp. 5-10) the Committee recommended the rationalisation of the offences in section 4. The Committee also recommended that section 7, "Obscene and abusive language etc.", be replaced by an offence prohibiting the use of offensive language, the display of offensive material, and offensive behaviour. The Committee proposed that offensive behaviour include indecent, obscene, threatening, insulting, riotous or disorderly behaviour (1993, p. 11-12).

One of the terms of reference of the Vagrants, Gaming and Other Offences Act Review Committee (1993, p. 2) was to "recommend legislative provisions to address police/community problems which are identified to the Committee and fall within the general ambit of the *Vagrants, Gaming and Other Offences Act 1931*". The terms of reference of the Criminal Code Review Committee also included the introduction of new provisions to meet the needs of a modern society (*Carter's Criminal Law of Queensland*, Bulletin No. 7, p. 1). Both of these Committees were established to consider, among other things, whether there were community problems or needs requiring the creation of new offences to deal with these problems. Neither Committee identified a need for new public order offences.

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35 The Vagrants, Gaming and Other Offences Act Review Committee has recommended that the penalty for Unlawful Assembly be two penalty units.

Submissions to the Criminal Justice Commission

Strong views were expressed against the introduction of a move-on power in a number of submissions. The Queensland Watchdog Committee described it as "a fundamental breach of the civil and human rights of the individual"; QAILS described the power as "... being closely linked with 'a police state'"; and the Youth Affairs Network of Queensland characterised it as "abhorrent".

The Legal Aid Office of Queensland (submission, 1992, p. 7) said it was:

> entirely inconsistent with the freedoms inherent in our society for the police to have some vague power to specify a particular activity as a 'problem' and then to provide a general power to deal with it.

It was frequently stated that the current laws against offensive behaviour and other public order offences are sufficient to deal with the problems.

The majority of the organisations opposing the power suggested that it would be used most often against the unemployed, homeless, juveniles, aborigines, political dissidents and other socially disadvantaged groups. The Youth Affairs Network of Queensland pointed out that in the case of many young people it was culturally normal to congregate in public places.

The Juvenile Advocacy Service cited a case where, in 1989, a number of young people who frequented the Brisbane City Mall were told by police officers at 8.30 pm to vacate the Mall. This was an effort by the police to respond to media reports focusing on the public's fear of violence in the Mall. No reasonable explanations were given, and the young people were threatened with arrest if they did not comply. When the young people asked where they could go, they were told the Botanical Gardens. The effect of the police efforts to stop violence and offending in the Mall was to move these young people from an area which was well-lit and easily observed to one which was dark and unsafe.

The Cairns ATSIC said that such a power would give further opportunity for harassment of Aboriginal and Torres Strait Islander people, whose behaviour may not be unlawful but a reflection of a different cultural lifestyle which may offend certain groups in the community. ATSIC said that the question of 'unacceptable behaviour' is relative. According to the submission it should be possible to negotiate appropriate local agreement and protocols between police and relevant organisations, both Aboriginal and non-Aboriginal on this issue.

The Juvenile Advocacy Service expressed the view that if a move-on power was introduced, the criteria a police officer would use to judge potential offenders might be based on behaviour, fashion, hairstyle, wealth, race or culture. What was "unacceptable" behaviour would largely be based on subjective interpretations and would be open to misinterpretation and abuse.

Similar views were expressed by the Queensland Council for Civil Liberties. The Council pointed out that such a power would involve police in predicting future events concerning people of whom they would have little or no knowledge. It argued that it would be extremely dangerous to empower police to determine what is 'anti-social' or 'unacceptable' behaviour before it occurs:

> The use of the move-on power in the Traffic Act during the march ban of 1977-1980 provides a very real practical example as to why we are so concerned with the potential for abuse of such a general power . . . Police used this power . . . originally designed to enable police to move people on from the site of a traffic accident, for overt political purposes. Persons . . . gathered outside particular state government buildings where they were not posing a threat to pedestrian or vehicular traffic were moved on ostensibly for traffic purposes. (Queensland Council for Civil Liberties submission 1992, p. 17)

Another writer proposed that there should not be a move-on power because the possibility of abusing the power would outweigh any benefits. One person submitted that:

> Behaviour which one finds unacceptable but is not an offence should be dealt with by minding one's business or turning one's head the other way.

Both the Director of Prosecutions and the Queensland Law Society were of the view that any move-on power should be limited to situations involving public safety. The Director said that the power should be available only where there is independent evidence that the power should be exercised in the interests of public safety. The Council for Civil Liberties referred to the existence of the *Public Safety Preservation Act 1986* which it argued provides more than ample powers to police to move on persons in a real public emergency.

Some of the serving police officers with whom the Commission spoke agreed that they have sufficient powers under present legislation to deal with any problems which are likely to arise in the policing of public order.

The Queensland Police Service and the Queensland Police Union of Employees were the major organisations in favour of a move-on power. The proposal also received support from a number of individuals within the community.

The Queensland Police Service recommended that police be given the "legislative authority to request" any person who a police officer suspects on reasonable grounds is loitering with intent to commit an offence, to give that police officer a satisfactory explanation for that person's presence in that place. A failure to provide such an explanation should enable police to direct the person to move on. It was also submitted that a police officer should also be given the authority to arrest a person who fails to comply with a direction to move on.

The Queensland Police Service argued that the following safeguards should be put in place in order to prevent abuse of the power:

- a police officer should provide the reason for his or her suspicions to the person from whom the explanation is sought; and

- the police officer should upon request be required to provide his or her name, rank and station to the person.

The Queensland Police Service said that under the present law police were unable to take appropriate action to prevent the commission of an offence or to allay the fears of people in the community that an offence may be perpetrated against them. The Queensland Police Service (submission 1992, p. 82) cited two examples:

> The first relates to gangs of youths who in past months have been widely reported in the media for creating disturbances or committing offences in areas such as Malls. The groups tend to congregate initially in a central location within a Mall. From that location they harass passers-by or leave to commit offences either against persons using the Mall or in shops adjacent to the Mall. Due to the fact that police have very little authority to take early preventative action, the Police Service is left with an option to increase the police presence to such an extent that it becomes very difficult for a person to commit an offence and remain undetected. In real terms this means that police must be taken from other areas in order to maintain the level of presence in one particular place. Consequently, those other areas must suffer.
>
> The second scenario relates to a person who is observed, for instance, sitting in a vehicle parked across from a children's playground. Whilst the person's presence or intentions may be innocent, there may equally be a cause for concern that the person might intend to cause harm to any one of the children.
>
> Obviously, in this situation police need to question the person to ascertain what his reason for being in that area is. Irrespective of this need, the person is under no obligation to answer any question put to him by police nor are police empowered to direct the person to move out of the area.

The Queensland Police Union did not advocate a power as broad as that sought in the Police Service submission. It argued that the police must be given a move-on power in order to prevent breaches of the peace or more serious incidents, for example, serious assaults or property damage. These powers, it stated, must not be available for dispersing groups of persons who are assembling to express political views or who have other ordinarily recognised reasons for gathering in a group situation. According to the Union, the power should only be available where police believe on reasonable grounds that an offence will result if the person does not move on. The Union cited examples of behaviour which is presently difficult for the police to deal with, including where patrons gather outside hotels, discos or other similar public places for extended periods of time, usually after cessation of business on the premises. The Union argued that the lack of a move-on power has limited the ability of the police to deal with these potentially dangerous and inflammatory situations.

The Union proposed that police be empowered to direct a person to move on if that person was engaging in 'unacceptable behaviour' in a public place, or the circumstances were such that a police officer believed on reasonable grounds that an offence would be committed if the person or persons did not move on. A failure to obey this direction without lawful excuse would constitute an offence. The Union proposed a definition of 'unacceptable behaviour' as any behaviour being engaged in by any person or persons which under all the circumstances falls short of the standard expected by an ordinary reasonable member of the community.

Other individuals who made submissions supported police being granted a power to move-on in circumstances where:

- persons are being disruptive, noise makers or trouble makers;
- any group of three or more persons are in any street or public place following a complaint by two or more members of the public of unruly, rowdy, offensive or violent conduct;
- a person is suspected of loitering;
- there is reasonable concern for public safety, the quiet amenity of the neighbourhood and the destruction of property.

As previously noted, many of those who made submissions suggested that a police officer was not in a position to predict the behaviour of any individual. However, some were of the view that the police can assess whether an incident is likely to occur. According to this view a move-on power would preclude many situations from developing into serious confrontations or incidents.

Conclusion

Proponents of a move-on power argue that such a power would make it easier for the police to maintain public order and would assist them to prevent crime. However, for the reasons set out below, the Commission does not consider that there is sufficient justification at this stage for granting the police this power.

- As discussed above, Queensland has a wide range of 'public order' offences defined in legislation. These various provisions, along with the 'breach of the peace' provision in section 260 of the *Criminal Code*, should be sufficient to deal with most instances of unruly behaviour in public settings. Significantly, neither the Criminal Code Review Committee nor the Vagrants, Gaming and Other Offences Act Review Committee considered it necessary to recommend any additional public order offences.
- If the community considers that certain forms of public behaviour are undesirable, the proper response is to create additional offences proscribing that behaviour. A discretionary move-on power should not be used as a 'back door' way of regulating behaviour in public places.

- In the great majority of cases where the police approach individuals who they suspect may be planning to commit an offence, that will be sufficient to deter those persons, or to persuade them to leave the scene. A specific move-on power will normally not be required to achieve this result.
- It was put to the Commission that a move-on power would be particularly useful for dealing with situations where groups of youths gather in public places (for example shopping malls) and engage in unruly behaviour or harass other members of the public. However, if in such circumstances the police were to require these groups to move on, they may simply re-congregate somewhere else, perhaps where there are no police present. Further, there is nothing to stop such gangs or groups from re-assembling in the same place after the police have left the scene. If there are concerns about the behaviour of groups in particular areas, the more appropriate response is for the police to allocate more resources to those areas.
- The proposed move-on power would be highly discretionary, as it would require police officers to make judgements about who does and does not have a legitimate reason for being in a particular locality. The Queensland Police Service said in its submission to the Commission that the proposed power was not aimed at affecting the rights of honest citizens to move freely about the state and would not be used for any such purpose. However, it is difficult to determine on what basis the police will be in a position to know who is, or is not, an honest citizen when exercising this power.
- More generally, the Commission is concerned that the move-on power may be used to the detriment of those who make most use of public space, such as the young, the homeless and aboriginal people. The Commission recognises the pressure on police to 'clean up the streets'. However, these social problems will not be alleviated and may be exacerbated by the application of coercive powers, especially when these powers are exercised in circumstances where no offence has been committed.

In summary there is not sufficient reason at the present time to justify conferring on police a general power to direct people to move on, or to grant police further powers to maintain order in public places. There are sufficient powers currently available under legislation to maintain public order and to move people if there is an emergency, if they constitute an impediment to traffic, or if there is a breach of the peace. In all other cases, police should only be empowered to act where an offence has been or is being committed. Where there is an offence, the power to arrest without warrant and the proposed power to demand name and address will be adequate to serve the needs of police and the community.

15.1 Recommendation

The police should not be given a general move-on power.

REFERENCES

Criminal Law and Penal Methods Reform Committee of South Australia 1974, *Second Report: Criminal Investigation*, Government Printer, South Australia.

Mitchell Committee. *See Criminal Law and Penal Methods Reform Committee.*

Criminal Code Review Committee 1992, *Final Report of the Criminal Code Review Committee to the Attorney-General.*

Electoral Administrative Review Committee 1991, *Review of Public Assembly Law, Report.*

Vagrants, Gaming and Other Offences Act Review Committee 1993, *Final Report of the Vagrants, Gaming and Other Offences Act Review Committee to the Minister for Police and Emergency Services.*

Carter's Criminal Law of Queensland, Bulletin No. 7.

APPENDICES

APPENDIX 7

TABLES 6, 9 AND 11

The following tables 6, 9 and 11 which are referred to throughout this volume have been reproduced from Appendix 3, Volume One with some minor amendments.

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" legisation, 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 fom 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 6

POLICE OFFICERS' POWERS TO ARREST WITHOUT WARRANT

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
* Art Unions and Amusements Act 1976 s. 63	Where police officer finds any person on premises entered pursuant to Act whom officer has reasonable cause to believe to be committing, to have committed or to be about to commit an offence against Act.	- Search person.
Animals Protection Act 1925 s. 10	Where a member of the police force upon his own view or on complaint and information by another person finds any person committing or reasonably suspects any person of having committed an offence against Act.	- Bring the person before a justice to be dealt with according to law.
s. 15A	Where a person fails to give name and address or evidence of correctness when required by any police officer or gives name and address or evidence which in opinion of officer is false.	- Take person arrested as soon as practicable before a court to be dealt with according to law.
Bail Act 1980 s. 29	Where a member of the police force believes on reasonable grounds that a defendant released on bail is likely to break, is breaking or has broken bail conditions, or that a defendant's surety is dead or for any reason security is no longer sufficient, or if officer is notified in writing by a surety of belief that defendant is likely to break bail conditions and surety wishes to be relieved of obligations.	- Nil.
Casino Control Act 1982 s. 114	Where a person fails to give name and address and date of birth or produce evidence of correctness on lawful request of any police officer or gives a name and address which in opinion of officer is false.	- Nil.
s. 106	Where any member of the police force suspects on reasonable grounds that a person has committed or attempted to commit an offence against s. 103 or s. 104.	- Nil.
Children's Services Act 1965 s. 70	Where a person within the sight of a police officer commits an offence against s. 69 of Act, when name and address are unknown and cannot be forthwith ascertained, or who has or whom police officer believes on reasonable grounds has committed an offence against s. 69 and officer believes on reasonable grounds the person will abscond or name and address of the person is unknown.	- Nil.
Corrective Services Act 1988 s. 94	Where a prisoner escapes lawful custody or fails to comply with conditions of leave of absence or home detention or is preparing to become unlawfully at large (police or correctional officer may instead make application to a justice for issue of warrant of apprehension).	- Take prisoner to and detain at a prison or police gaol until prisoner can conveniently be taken to prison.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
s. 85	Where as a result of any error a prisoner is released from prison as if the prisoner were eligible to be discharged.	- Shall take prisoner to and detain in a prison or a police gaol until prisoner can conveniently be taken to a prison.
s. 107	Where there are reasonable grounds to believe that a person has committed, is committing or is about to commit an offence defined in s. 104 or any other offence that may threaten the security or management of a prison or security of a prisoner.	- Search the person and anything in the person's possession. - Seize and retain anything that officer believes on reasonable grounds is connected with or affords evidence of the commission or intended commission of an offence.
Crimes (Confiscation of Profits) Act 1989 s. 78	Where a member of the police force believes on reasonable grounds that a person has committed an offence against the Act and proceedings by way of summons would be ineffective.	- Nil.
Criminal Code s. 260	Where a police officer who witnesses a breach of the peace (and any person assisting officer) finds any person committing the breach or whom officer believes on reasonable grounds to be about to join in or renew the breach of the peace.	- Nil.
s. 323	Where a person unlawfully wounds, the offender may be arrested without warrant.	- Nil.
s. 450A	Where a police officer finds any person committing any of the offences in ss. 445, 446, 447, 448 and 448A, being offences relating to animals punishable on summary conviction.	- Nil.
s. 455	Where a police officer finds any person committing any of the offences in ss. 451, 452, 453 and 454 contained in Chapter XLIVB dealing offences analogous to stealing with a maritime connection.	- Nil.
s. 546	(a) Where police officer believes on reasonable grounds that an offence (which is such that a person can be arrested without warrant generally) has been committed. (c) Where police officer finds a person committing an offence. (d) Where an offence has been committed, to arrest a person believed on reasonable grounds to have committed such offence.	- Nil.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
s. 546 cont'd...	(f) Where a police officer finds any person lying or loitering in any place by night under such circumstances as to afford reasonable grounds for believing the person has committed or is about to commit the offence, and who does in fact so believe.	
s. 548	Where a police officer finds any person committing any indictable offence or committing a simple offence with respect to which it is provided that a person may be arrested without warrant if found committing the offence.	- Nil.
s. 549	Any person who finds another person by night committing an indictable offence.	- Nil.
s. 551	Any person may arrest another person when that person offers to sell, pawn, or deliver, any property, and who believes on reasonable grounds, that the property has been acquired by means of an offence with respect to which it is provided that a person found committing it may be arrested without warrant to arrest that other person without warrant.	
Drugs Misuse Act 1986 s. 10	Where a person is found committing an offence against s. 10 of the Act i.e. offences of possession of anything for use in connection with the administration, consumption, or smoking of a dangerous drug.	- Nil.
s. 10A	Where a person is found committing an offence against s. 10A by having possession of any property other than a dangerous drug, hypodermic syringe or needle, having been acquired to commit an offence against Pt. II (being the proceeds of such offence etc.).	- Nil.
s. 22(3)	Where a police officer suspects on reasonable grounds that a person stated false particulars or failed to provide particulars of name and address and proof thereof etc.	- Nil.
Electricity Act 1976 s. 386	Where a member of the police force finds any person committing an offence against: s. 383: Persons found in buildings or enclosures housing electrical equipment, forming part of works of Electricity Authority, or climbing a structure (using a ladder or not) carrying an electrical line. s. 384: Discharging firearm or using other projectile in a manner likely to damage an electric line. s. 385: Wilfully and unlawfully interfering with any works of electricity authority.	- Nil.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
s. 386 cont'd...	s. 391(3): Where a member of the police force has been called to the aid of an electrical inspector, and that police officer observes a person: - assaulting resisting or obstructing the inspector; - preventing another person from appearing before or being questioned by an inspector; - using any threat, abusive or insulting language.	
s. 404(2)	Where a member of the police force observes a person assaulting, resisting or obstructing an installation inspector, where that member of the police force has been called to the aid of the installation inspector, pursuant to s. 187.	- Nil.
Explosives Act 1952 s. 37	A member of the police force may arrest without warrant any person committing offence under s. 36 of trespassing on a government magazine or a factory or magazine licensed under Act or who commits an act tending to cause explosion of a railway, harbour, vehicle etc.	- Nil.
Gaming Act 1850 s. 2	Where police officer has entered premises suspected of being a common gaming house under warrant and finds a person in such a place.	- Search person. - Bring person before any two justices of the peace.
Gaming Machine Act 1991 s. 10.13	Where any person has or police officer suspects on reasonable grounds has committed or attempted to commit an offence against s. 3.27, s. 6.6(1) or (2), s. 6.23(1), s. 10.11 or s. 10.12 of Act.	- Search person and their possessions. - Seize anything found which may afford evidence of commission of an offence. - Use such force as is reasonable in the circumstances for the purpose of detention and search of persons and things
** Hawkers Act 1984 s. 36	Where a person fails upon demand of any police officer to give name and address, evidence of correctness of name and address or gives name and address which in officer's opinion is false.	- Take person before a justice to be dealt with according to law as soon as is practicable.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
s. 39	Where any police officer is of the opinion that any person has committed or attempted to commit an offence against s. 26, s. 33 or s. 34, and has reasonable grounds to believe that proceedings by way of complaint and summons would be ineffective.	- Nil.
Health Act 1937 s. 130F and s. 130H	Where Director-General authorises a member of police force to arrest person named in certificate, who fails to comply with a condition of leave of absence or parole, or is absent without leave from an institution for drug dependent persons.	- To convey person named in certificate to institution specified in certificate.
s. 131	Any member of the police force may arrest without warrant a person who has or has attempted to commit offence against section (possession of inorganic salts of hydrocyanic acid without a licence), or is reasonably suspected of committing or attempting to commit such an offence.	- Search any place at 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.
s. 168	Where a person found committing a breach of provisions of Act refuses to state his name and place of abode when requested to do so by any police officer.	- To take the person before a justice, to be dealt with according to law.
Industrial Relations Act 1990 s. 18.12	Where a person is found committing an offence against section in respect of conducting a secret ballot, by resisting or obstructing, threatening or intimidating.	- To institute proceedings in respect of the offence.
Invasion of Privacy Act 1971 s. 48A	Where a police officer or any other person finds another person committing an offence by entering a dwelling house without consent of person in lawful occupation or owner, or who gains entry by force, threats, deceit, false representations etc.	- To take proceedings in respect of the offence, which may be taken by any police officer, whether or not that officer made the arrest.
Land Act 1962 s. 373, s. 373A	Where a person fails to state name and address or fails to provide evidence of correctness of name and address or gives a false name and address.	- Take the person arrested as soon as is practicable before a justice to be dealt with according to law.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
Law Courts and State Buildings Protective Security Act 1983 s. 26	Where a person commits an offence against Act by refusing or failing to state correct name and address in response to demand of officer or where in respect of any other offence against Act, police officer believes on reasonable grounds that proceedings against person by summons would not be effective.	- Take person arrested before a justice to be dealt with according to law. - Take or cause to be taken all particulars considered necessary for identification, including voiceprint, photograph, fingerprints, palmprints, footprints, toeprints and handwriting.
Liquor Act 1992 s. 184	Where a person is found by an investigator committing an offence against Act or whom investigator believes on reasonable grounds of having committed an offence against Act, if investigator believes on reasonable grounds that proceedings by way of complaint and summons would be ineffective.	- Nil.
Local Government (Chinatown Mall) Act 1984 s. 41	Where a person refuses or fails to state true name or address in response to request by a police officer.	- Take the person arrested before a justice to be dealt with according to law.
s. 43	Where a person who is found committing an offence against Act or council ordinance is warned by a member of police force to desist and continues to commit an offence of same or similar nature on same day.	- Take person before a justice to be dealt with according to law.
Local Government (Queen Street Mall) Act 1981 s. 35	Where a person refuses or fails to state true name or address in response to request by a police officer.	- Take the person arrested before a justice to be dealt with according to law.
s. 37	Where a person who is found committing an offence against Act or council ordinance is warned by a member of police force to desist and continues to commit an offence of same or similar nature on same day.	- Take person before a justice to be dealt with according to law.
Noise Abatement Act 1978 s. 40	Where any person fails to comply with s. 39(2) or contravenes s. 38(1).	- Have the person dealt with according to law.
** Pawnbrokers' Act 1984 s. 48	Where a person fails upon demand by any police officer to give name and address or evidence of correctness or who gives a name and address which in opinion of officer is false.	- Take the person arrested as soon as practicable before a justice to be dealt with according to law.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
Police Act 1937 s. 64	Where a person commits an offence against s. 34, s. 59 or s. 62(1) of Act.	- Officer in charge of police at police station may take or cause to be taken particulars for identification.
Police Dogs Act 1984 s. 9	Where a member of the police force has reasonable grounds to believe that a person has committed an offence against the Act.	- Take the person as soon as practicable before a justice to be dealt with according to law.
Prisoners (Interstate Transfer) Act 1982 s. 31	Where a person in custody of an escort escapes from that custody.	- May take person who has escaped or attempted to escape from custody before a justice (who may make order for return of person to participating state and delivery of person to an escort).
Public Safety Preservation Act 1986 s. 12	Where a person fails to give name and address or evidence of correctness when demanded by any police officer or who gives a name and address which in opinion of officer is false.	- Take person arrested as soon as practicable before a justice to be dealt with according to law.
s. 14	Where a member of the police force believes on reasonable grounds that any person has committed or is committing an offence against the Act.	- Take the person as soon as is practicable before a justice to be dealt with according to law.
Police Service Administration Act 1990 s. 10.22	Where a person is found committing an offence against s. 10.19 or s. 10.20 of the Act.	- Take fingerprints, palmprints and photograph of arrested person. - Use such reasonable force as is necessary to obtain identifying particulars.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
Racing and Betting Act 1980 s. 232	Where a member of the police force: - finds a person committing an offence against s. 216, s. 217, s. 222, s. 225, s. 227 or s. 228; - believes on reasonable grounds that a person has recently been betting in a public place contrary to Act; - has requested a person's name and address and that person fails to state correct name and address or provide evidence of correctness; or - believes on reasonable grounds that proceedings by way of summons for an offence against Act would not be effective.	- Nil.
s. 160	Where a person has been removed by a police officer or other authorised person from venue earlier on same day or who has been warned not to enter venue on the day.	- Nil.
Recreation Areas Management Act 1988 s. 42	Where a person commits an offence against Act by refusing to state name and address when requested by a police officer, or where a member of the police force investigating an offence believes on reasonable grounds that proceedings against a person by way of summons would not be effective.	- Take person arrested before a justice to be dealt with according to law.
Regulatory Offences Act 1985 s. 8	Where a member of the police force suspects on reasonable grounds that any person has committed any offence against Act.	- Nil.
Second-hand Dealers and Collectors Act 1984 s. 55	Where a person fails to give name and address or evidence of correctness when required, or gives name and address which in officer's opinion is false.	- Take person arrested as soon as practicable before a justice to be dealt with according to law.
Traffic Act 1949 s. 42	Where any member of the police force: - finds any person committing an offence against s. 12E, s. 12F, s. 12G, s. 16, s. 16A, s. 17, s. 18, s. 19, s. 20A, s. 30, s. 31, s. 36, s. 37, s. 39, or s. 60; or - is of the opinion that a person has committed an offence against s. 16, s. 16A, s. 17, s. 18, s. 19, s. 20A, s. 31 or s. 60; or - has reasonable grounds to believe that the person has committed an offence against Act and proceedings by way of summons would not be effective.	- Nil.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
Transport Infrastructure (Railways) Act 1991 s. 7.13	Where a person refuses or fails to state name and address or to provide evidence of correctness of name and address when requested to do so by a police officer under authority of Act.	- Nil.
Vagrants Gaming and Other Offences Act 1931 s. 23	Where any police officer, authorised in writing by an inspector of police, has cause to suspect that any indictable offence has been or is about to be committed on board any vessel and reasonably suspects a person found of being concerned in such offence.	- Enter vessel at any time. - Search person arrested. - Take all necessary steps to prevent or detect offence.
s. 24	Where any person is 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.
s. 35	Where any person by noise, obstruction etc. prevents holding of a public meeting or wilfully disturbs proceedings of a public meeting so as to prevent orderly conduct of meeting, police officer may arrest at own discretion or upon oral or written order of Chairman.	- Nil.
s. 38	Where any person is found offending against s. 4, s. 4A, s. 4B, s. 5, s. 7, s. 11, ss. 17-21, ss. 23-26, ss. 28-31, s. 35, s. 42, or s. 45 or where a police officer suspects on reasonable grounds a person has offended against s. 4B or s. 29.	- Nil.
Weapons Act 1990 s. 4.1	Where a person unreasonably fails upon demand to give particulars required to identify the person (including name and address) or evidence of particulars, or where police officer suspects on reasonable grounds particulars given are false.	- Take the person arrested without warrant forthwith before a court to be dealt with according to law.
s. 4.10	Where police officer believes on reasonable grounds that a person has committed or has attempted to commit an offence against Act and proceedings by way of complaint and summons would be ineffective against that person.	- Nil.
Weekend Detention Act 1970 s. 16	Where a person sentenced to weekend detention escapes out of a place of legal confinement.	- Nil.
Workplace Health and Safety Act 1989 s. 86	Where a person is found committing or is reasonably suspected to have committed an offence against the Act consisting of failure to supply or stating false name or place of residence, assaulting or resisting inspector, using any threat to inspector or an employee connected with an inspection examination or inquiry under Act.	- Take the person before a justice to be dealt with according to law.

ACT	CIRCUMSTANCES OF EXERCISE OF POWER	ASSOCIATED POWERS/ LIMITS ON POWERS
s. 86 cont'd...	Where a person fails to comply with a lawful direction given by an inspector and it appears to the inspector that failure to comply is likely to cause death or serious injury or damage to property.	- Arrest person found committing or suspected on reasonable grounds of committing offence of failure to comply with direction.

TABLE 9

POLICE OFFICERS' POWERS TO DIRECT PERSONS TO LEAVE PLACES, REMOVE PERSONS

ACT	PERSONS AUTHORISED	PURPOSE AND GROUNDS	POWERS
Building Act 1975 s. 60	Police officer acting on the request of a Local Authority or when called to aid an officer of a Local Authority.	Where building or structure is to be demolished and it is necessary or expedient to remove any person from such building or structure.	- Enter upon building or structure and the land upon which it stands for purpose of removing a person from it. - Use such force as is reasonably necessary for the purpose of removing person.
Casino Control Act 1982 s. 94	Commissioner of Police.	To exclude specified persons from entering casinos.	- Direct a casino owner in writing to exclude a specified person from entering casino. - Give notice of direction to person excluded.
Explosives Act 1952 s. 36	Any police officer.	Where a person enters without permission or otherwise trespasses upon a government magazine or licensed factory or magazine.	- Forthwith remove the person from the magazine or factory or place where such is situated. - Arrest without warrant a person so found.
Forestry Act 1959 s. 75	Any member of the police force, to whom warrant issued by justices on complaint of a forest officer is addressed.	Where a person in respect of whom warrant is issued is in unlawful occupation of any State Forest, Timber Reserve or Forest Entitlement Area or part thereof.	- Remove person in respect of whom warrant is issued from the land. - Take possession of the land which was unlawfully occupied on behalf of the Crown.
Industrial Relations Act 1990 s. 18.5	Any police officer.	Where a person commits an offence against Act by wilfully insulting or disturbing an industrial commissioner, magistrate or registrar in exercise of powers or duties or interrupts proceedings of an industrial authority.	- Enforce order made by industrial authority to exclude the person from where industrial authority is sitting. - Use such force as is reasonably necessary to enforce the order.

ACT	PERSONS AUTHORISED	PURPOSE AND GROUNDS	POWERS
Land Act 1962 s. 372	Police officer to whom warrant of magistrate is directed. Warrant may be issued where magistrate enters a conviction under Act against a person for trespass against Crown Land, a road or reserve.	Where a person against whom a conviction is entered under Act for trespass against Crown Land, a road or reserve.	- Remove the offender and all persons claiming under or through him or her and their goods and effects. - Use such force as is reasonably necessary in order to comply with requirements of warrant. - Call for the aid any other member of the police force.
s. 373	Police officer to whom warrant of magistrate is issued, on the application of a Commissioner or authorised officer under Act or a lessee, licensee or permittee of land held from Crown.	Where a person is in unlawful occupation of Crown Land or a road or reserve.	- Remove the person named in the warrant and all persons claiming through that person, together with their goods and effects. - Use such force as is reasonably necessary in order to comply with requirements of warrant. - Call for the aid any other member of the police force.
s. 373A	Police officers nominated by the Police Commissioner, on the request of the Minister.	To prevent entry upon or to remove from Crown Land or reserve of three or more persons not claiming lawfully to be thereon, where Minister believes on reasonable grounds that the assembly is likely to cause a breach of the peace, a nuisance or a risk to public health or safety or is adverse to public interest.	- Do all things contained in the direction from Minister. - Prevent entry upon Crown Land or reserve, in accordance with order. - Remove persons from Crown Land or reserve in accordance with order. - Require name and address of a person re-entering or suspected on reasonable grounds of re-entering and evidence of correctness thereof if officer suspects on reasonable grounds that name and address given is false.

ACT	PERSONS AUTHORISED	PURPOSE AND GROUNDS	POWERS
Public Safety Preservation Act 1986 s. 8	The Incident Co-ordinator, acting Incident Co-ordinator and any other member of the police force acting on his or her instructions.	Where actions are required to comply with instructions of Incident Co-ordinator or Acting Incident Co-ordinator.	- Direct evacuation and exclusion of any persons from any premises. - Remove or cause to be removed any person who does not comply with direction to evacuate or any person who enters, attempts to enter or is found in or on any premises in respect of which direction has been given. - Use reasonable force as necessary to remove persons.
Racing and Betting Act 1980 s. 160	A member of the police force on request of the committee having control of a racing venue.	To remove a person as requested, who is believed on reasonable grounds by committee to be carrying on bookmaking etc.	- Remove person from venue. - Arrest without warrant a person who re-enters the venue on day of removal or who enters venue after receiving warning under s. 161.
State Counter Disaster Organization Act 1975 s. 25	A police officer involved in counter-disaster operations.	Where officer is of the opinion that such action is necessary for the preservation of human life.	- Direct the evacuation and exclusion of persons from any place. - Remove or cause to be removed a person who does not comply with a direction to evacuate, or who is found in a place in respect of which a direction for exclusion of persons has been given.
Traffic Act 1949 s. 36	Any police officer.	To allow safe and effective regulation of traffic on any road.	- To give all drivers of an passengers upon vehicles, animals, trains and trams on or about to enter any road, directions, signals, orders as necessary.

TABLE 11

POLICE OFFICERS' POWERS TO DEMAND NAME AND ADDRESS

ACT	CIRCUMSTANCES OF EXERCISE	ASSOCIATED POWERS
Animals Protection Act 1925 s. 15A	Where any police officer finds any person committing or reasonably suspects any person of having committed an offence against the Act or is making investigations to establish whether an offence under Act has been committed.	- Require name and address. - Require evidence of correctness of name and address if reasonable grounds to suppose that name and address given are false. - Arrest without warrant a person who fails to give name and address or evidence of correctness when required or gives name and address or evidence which in opinion of officer is false.
Casino Control Act 1982 s. 114	Any member of the police force, in connection with exercise of powers or discharge of duties under Act.	- Require name and address and date of birth. - Require evidence of correctness of name and address if suspects on reasonable grounds that name and address given are false. - Arrest without warrant a person who fails to give name and address when required or gives a name and address which in officer's opinion is false.
Drugs Misuse Act 1986 s. 22	Where police officer reasonably suspects that a Pt. II offence has been committed and reasonably requires to know information about a person in order to assist him to investigate the offence.	- Require name and address. - Require date and place of birth. - Require evidence of correctness of such particulars, where reasonably suspects particulars given are false, and such other particulars as officer reasonably believes will enable that person to be readily located and identified.
Gaming Machine Act 1991 s. 10.17	Where any police officer is acting in connection with the exercise of any powers or discharge of duties under the Act, in relation to any person.	- Request person to state full name and address and date of birth. - Request evidence of correctness if police officer suspects on reasonable grounds that any particulars are false.
** Hawkers Act 1984 s. 36	Where any police officer finds any person committing or reasonably suspects any person of having committed or being about to commit an offence against Act or is making investigations to establish whether an offence against Act has been or is about to be committed and believes on reasonable grounds that information will assist.	- Demand name and address. - Demand evidence of correctness of name and address given if reasonable grounds to suspect that name and address given are false.

ACT	CIRCUMSTANCES OF EXERCISE	ASSOCIATED POWERS
s. 36 cont'd...		- Arrest without warrant a person who fails to give name and address when required or gives name and address which in opinion of officer is false.
Health Act 1937 s. 168	Where a police officer finds any person committing a breach of any of provisions of Act.	- Require name and place of abode. - Arrest without warrant a person who refuses to state his or her name and place of abode when required to do so.
s. 168A	Where any police officer finds any person at a place entered under authority of warrant issued under section.	- Require name, occupation and place of abode of such person, and reasons for being at such place.
Land Act 1962 s. 373	Where a police officer called to the assistance of a person to whom an order of the Minister is directed (for the removal of structure, improvement etc. from Crown Land, a road or reserve), finds a person obstructing or believes on reasonable grounds may obstruct the person to whom Minister's order is directed.	- Require name and address. - Require evidence of correctness of name and address given. - Arrest without warrant a person who refuses to state name and address or produce evidence of correctness or who gives false name and address.
s. 373A	Where a police officer nominated by the Police Commissioner, on the request of the Minister finds or reasonably suspects any person of re-entering Crown Land or reserve from which they have been removed.	- Require name and address. - Require evidence of correctness if suspects on reasonable grounds that the name and address given are false. - Arrest without warrant a person who fails to state name and address or provide evidence of correctness or who gives a false name and address.
Law Courts and State Buildings Protective Security Act 1983 s. 25	Where a person is in any "building".	- Require name and address. - Require evidence of name and address. - Require person's reason for being in or in precincts of building. - Arrest without warrant a person who commits an offence against Act by refusing or failing to state true name and address in response to a demand by police officer.

ACT	CIRCUMSTANCES OF EXERCISE	ASSOCIATED POWERS
Local Government (Chinatown Mall) Act 1984 s. 41	Where a member of the police force believes on reasonable grounds that a person has committed or is committing or is about to commit an offence against Act or Council ordinance made for purpose of Act.	- Require name and address. - Arrest without warrant a person who fails or refuses to state correct name and address.
Local Government (Queen Street Mall) Act 1981 s. 35	Where a member of the police force believes on reasonable grounds that a person has committed, is committing or is about to commit an offence against Act or Council ordinance made for purposes of Act.	- Require name and address. - Arrest without warrant a person who fails or refuses to state correct name and address.
Noise Abatement Act 1978 s. 39	Where any member of the police force gives a direction under s. 33 of Act to a person.	- Require name and usual place of residence of the person to whom s. 33 direction is given. - Take person to a police station and detain him or her there until identity and usual place of residence are established, if officer reasonably suspects the person has failed to state correct name and address.
** Pawnbrokers Act 1984 s. 48	Where any member of the police force finds any person committing or reasonably suspects any person of having committed or being about to commit an offence against Act, or is making investigations to establish whether an offence against Act has been or is about to be committed and believes on reasonable grounds that the information will assist in investigations.	- Demand name and address. - Require evidence of correctness if has reasonable grounds to suspect that name and address given are false. - Arrest without warrant a person who fails to give name and address or gives name and address which in officer's opinion is false.
Police Dogs Act 1984 s. 10	Where a member of the police force finds a person committing or reasonably suspects a person of having committed or being about to commit an offence against Act or is making investigations to establish whether an offence has been or is about to be committed and believes on reasonable grounds that information will assist or arrests a person in exercise of powers under Act.	- Require name and address. - Require evidence of correctness if believes on reasonable grounds that any particular given is false.
Public Safety Preservation Act 1986 s. 12	Where any member of the police force finds any person committing or reasonably suspects any person of having committed or being about to commit an offence against Act, or is making investigations to establish whether an offence against Act has been or is about to be committed.	- 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.

ACT	CIRCUMSTANCES OF EXERCISE	ASSOCIATED POWERS
s. 12 cont'd...		- Arrest without warrant a person who fails to give name and address when required or who gives a name and address which in officer's opinion is false.
Racing and Betting Act 1980 s. 233	Where any police officer finds any person committing or reasonably suspects a person of having committed or being about to commit an offence against Act or is making inquiries to establish whether an offence has been committed or finds a person in company of a person committing or suspected of committing an offence or is of the opinion that name and address are required for purposes of Act or arrests a person in exercise of a power under Act.	- Require name and address. - Require evidence of correctness of name and address where officer suspects on reasonable grounds that name and address given are false. - Arrest without warrant a person who fails to provide correct name and address or evidence of correctness of name and address (s. 232).
** Second-hand Dealers and Collectors Act 1984 s. 55	Where any police officer finds any person committing or reasonably suspects any person of having committed or being about to commit any offence against Act or is making investigations to establish whether an offence against Act has been or is about to be committed and believes on reasonable grounds that information will assist.	- Demand name and address. - Demand evidence of correctness if officer has reasonable grounds to believe that name and address given are false. - Arrest a person who fails to give name and address or evidence of correctness when required or gives name and address which in officer's opinion are false.
Traffic Act 1949 s. 39	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 person to stop vehicle, tram or animal. - Produce any licence issued under Act. - Require name and address. - Require evidence of correctness of name and address given if officer has reasonable grounds to suspect that name and address given are false.
Transport Infrastructure (Railways) Act 1991 s. 7.13	Where a police officer finds any person committing or believes on reasonable grounds any person has committed or is about to commit an offence against Act on land under control of Queensland Railways.	- Require name and address. - Require evidence of correctness of name and address if officer believes on reasonable grounds that name and address stated are false.

ACT	CIRCUMSTANCES OF EXERCISE	ASSOCIATED POWERS
s. 7.13 cont'd...		- Arrest without warrant a person who refuses or fails to state name and address or produce evidence of correctness of name and address.
Vagrants Gaming and other Offences Act 1931 s. 31	Where a police officer finds any person committing or reasonably suspects a person has committed an offence against s. 31.	- Require name and address. - Require evidence of correctness of name and address if officer believes on reasonable grounds that name and address stated are false.
Weapons Act 1990 s. 4.1	Where a police officer finds any person committing or reasonably suspects a person of having committed or being about to commit an offence against the Act.	- Demand such particulars as officer requires to identify the person, including name and address. - Require evidence of correctness if the officer has reasonable grounds to suspect that the particulars given are false.

APPENDIX 8

TABLE 13.1

Queensland Police Service: Use of Arrest and Summons 1 January to 30 June 1991

Offence	Arrested	Summonsed	% Summonsed
Murder	23	0	0.0
Attempted Murder	52	0	0.0
Manslaughter	6	1	14.2
Driving causing death	8	9	52.9
Serious Assault	1350	323	19.3
Minor Assault	1198	393	24.7
Rape and Attempted Rape	136	1	0.7
Other sexual offences	933	155	14.2
Armed robbery	85	2	2.2
Steal with violence	68	2	2.8
Extortion	14	0	0.0
Kidnap	93	0	0.0
Break and Enter	3485	109	3.0
Arson	53	4	7.0
Property damage	1837	286	13.4
Vehicle theft	1417	87	5.7
Stealing	4972	1824	26.8
Fraud	3400	640	15.8
Other serious	707	310	30.4
Possession of property	286	40	12.2
Receiving stolen property	669	32	4.5
Drug offences	7425	82	1.0
Good order offences	3303	632	16.0
Resist arrest	1660	23	1.3
Evade taxi fare	223	10	4.3
Evade rail fare	6	4	40.0
Stock offences	9	53	85.4
Vagrancy	52	6	10.3
Dangerous Driving	235	69	22.6
Drink Driving	11734	382	3.1
Disqualified driving	1193	90	7.0
Interfere with mechanism of motor vehicle	29	6	17.1
Miscellaneous	225	67	22.9
Total	46886	5642	10.7

(Source: Queensland Police Service submission to the Commission)

APPENDIX 9

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 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.

7.7 Recommendation - Extent of Pre-Arrest Search of Person 325

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.

7.15 Recommendation - Roadblocks[1] 346

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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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

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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).

8.7 Recommendation - Objects of Search 370

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.

8.8 Recommendation - Description of Objects of Search 375

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

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

8.9 Recommendation - No General Warrants 378

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

8.10 Recommendation - Covert Search Warrants 382

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

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

8.11 Recommendation - Objects to be brought onto premises within the next 72 hours 384

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

8.12 Recommendation - Telewarrants[3] 393

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

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

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

8.13 Recommendation - Period of Validity of Search Warrants 396

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

CHAPTER NINE: THE EXECUTION OF SEARCH WARRANTS

9.1 Recommendation - Time of Executing Search Warrant 402

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

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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.

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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

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 Roadblocks[6] 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

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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.

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