

Police Act Offences

Terms of Reference

In 1986 the Commission was asked to 'review offences created by Parts V, VI and VII of the *Police Act 1892* (WA) ("the Act") and to report:

- (a) as to whether any of those offences should be abolished; and
- (b) with regard to those offences which should be retained, what changes, if any, including changes to their description and definition, are desirable to make the law more readily understood and more relevant to modern condition'.

Background of Reference

The Act deals with the appointment, duties, discipline and dismissal of police officers and also with police powers (such as arrest, entry, search and seizure) and summary offences. The Act was derived from similar legislation existing in New South Wales, South Australia and England at the time of its enactment. Though it has often been amended, the drafting style of the Act remains old-fashioned and unchanged. Further, many of the offences contained within the Act are either out of date or duplicated in other legislation. A question was also raised as to whether rules regulating the police force and summary offences should properly be contained in the same statute.

The Commission engaged Michael Buss, a barrister in private practice, to research and draft a discussion paper on the subject. The discussion paper was issued in June 1989 and raised over a hundred separate issues for consideration.

Nature and Extent of Consultation

The discussion paper was widely distributed and attracted responses from 38 sources, including civil liberties groups, community legal services (such as the Aboriginal Legal Service, the Women's Advisory Council and the Youth Legal Service), the Police Department and the Police Union as well as individual police officers, the Law Society, individual legal practitioners, justices of the peace, and members of the public.

In preparing the final report, the Commission worked in consultation with the Victorian Law Reform Commission which was reviewing similar offences in Victoria. It also consulted representatives of the Western Australian Police Force, the Director of Public Prosecutions and the Attorneys-General of other Australian states and territories. The final report containing the Commission's recommendations was delivered in August 1992.¹

Recommendations

After extensive consideration of the issue, the Commission concluded that substantial reforms to the Act were required. The Commission made a total of 89 recommendations which were broadly grouped into five categories:

- Recommendations pertaining to the enactment of a separate summary offences Act drafted in contemporary form.
- Recommendations pertaining to summary offences contained in the present Act that should be retained² including:
 - (a) offences against public order;

¹ Law Reform Commission of Western Australia, *Police Act Offences*, Report No 85 (1992).

² In many cases, the Commission recommended that offences that are to be retained should be modified in certain substantive respects.

- (b) offences relating to the obstruction and hindering of police and escape from legal custody;
 - (c) offences against property;
 - (d) trespass;
 - (e) offences relating to the possession of crime-related property; and
 - (f) offences relating to solicitation and prostitution
- Recommendations pertaining to summary offences contained in the current Act that should be abolished.³ Reasons for recommended abolition of offences included:
 - (a) duplication of offences in other statutes or in the *Criminal Code 1913 (WA)*;
 - (b) lack of relevance to contemporary society;
 - (c) civil liberties implications of offences;
 - (d) inconsistency with established principles of criminal law; and
 - (e) the position of other Australian jurisdictions.
 - Recommendations pertaining to offences that should be repealed and re-enacted in other legislation such as certain gaming offences.⁴
 - Recommendations pertaining to police powers of arrest, entry, search and seizure.

A comprehensive outline of the recommendations may be found at pages 221–243 of the Commission's final report.

Legislative or Other Action Undertaken

In 1995 Parliamentary Counsel was asked to prepare a draft of various Bills to implement the recommendations contained in the Commission's final report.⁵ The Bills remain at the drafting stage and are yet to be introduced into Parliament for debate.⁶

Currency of Recommendations

The Commission's recommendations remain current.

Action Required

The Commission's recommendations may be readily implemented by directing Parliamentary Counsel to finalise the draft Bills for introduction into Parliament.

Priority – High

The *Police Act 1892 (WA)* remains the oldest of its kind in Australia. The incongruity of having police force regulations and summary offences contained in a single piece of legislation has been recognised by other Australian jurisdictions, most of which have reviewed and significantly reformed their equivalent legislation.⁷ It is also widely acknowledged that Acts creating offences should be as clear and certain as possible. In this regard, the archaic language and outdated provisions of the current Western Australian legislation may create unnecessary confusion.

³ For the complete list of offences recommended for abolition see the Commission's final report at pages 221–243.

⁴ Specifically, the Commission recommended that offences contained in ss 84C and 84D of the *Police Act 1892 (WA)* should be repealed and inserted by amendment to s 41 of the *Gaming Commission Act 1987 (WA)*. Sections 84D–F should be repealed and similar provisions be inserted into the *Betting Control Act 1954 (WA)*.

⁵ The proposed draft Bills were the Simple Offences Bill, the Criminal Investigation and Procedure Bill, the Simple Offences and Criminal Investigation (Consequential Provisions) Bill, and the Intoxicated Persons Bill.

⁶ Western Australia, *Parliamentary Debates*, Legislative Council, 8 August 2000, 4 (Mr MJ Criddle).

⁷ For a comprehensive review of reforms in other jurisdictions the Commission's final report at pages 18–20.