



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 29**

**Special Constables**

**REPORT**

**MARCH 1975**

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

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TO: THE HON. N. McNEILL M.L.C.  
MINISTER FOR JUSTICE

## **TERMS OF REFERENCE**

1. The Commission was asked to consider and report on the law relating to the appointment of special constables and on the extent of their powers.

## **WORKING PAPER**

2. The Commission issued a working paper on 14 June 1974. Comments on the paper were received from those listed in Appendix I to this report. A copy of the working paper is contained in Appendix II.

## **PRESENT LAW AND PRACTICE IN WESTERN AUSTRALIA**

### **Appointments of special constables**

3. Power to appoint special constables is contained in -

(a) The *Police Act 1892* (ss.34 and 35A);

(b) The *Government Railways Act 1904* (s.74 (1))

(c) The *Prevention of Cruelty to Animals Act 1920* (s.15);

(d) The *Fremantle Port Authority Act 1902* (s.19(4)) and the *Port Hedland Port Authority Act 1970* (s.17(4)).

4. At present there are thirty special constables in Western Australia -

**Twenty** appointed under the *Police Act* by the Commissioner of Police.

**One** appointed under the *Government Railways Act* by the Railways Commission.

**Nine** appointed under the *Prevention of Cruelty to Animals Act* by magistrates.

There are at present no special constables appointed under the *Fremantle Port Authority Act* or the *Port Hedland Port Authority Act*.

5. The twenty special constables appointed under the *Police Act* can be categorised as follows -

(a) *Police of other States*

**Two** are members of the Northern Territory Police;

**One** is a member of the South Australian Police;

All three are stationed near the borders of Western Australia, and have been appointed special constables to enable them to make enquiries in this State and, if necessary, to follow offenders across the border.

(b) *Private security officers*

**Five** are security officers of private organisations (one is employed by the Western Australian Turf Club, one by the Western Australian Trotting Association and one by Boans Ltd. Two are associated with two small firms specialising in security)

(c) *Officers of public instrumentalities*

**Four** are officers of the narcotics squad of the Australian Customs and Excise Department, and have been appointed special constables to assist in the enforcement of the anti-drug laws of this State.

**Four** are employed by the Perth City Council as parking inspectors in the Hay Street Mall. They have been appointed special constables to enable them to control the entry of motor vehicles to the Mall.

(d) *Participants in social activities organised by police*

**Three** are assistant supervisors of police and Citizens' Youth Clubs;

**One** is the principal instructor of the Western Australian Police Pipe Band.

All four have been appointed special constables so that they can perform their duties wearing police uniform or insignia. The member of the pipe band is entitled, by virtue of his membership, to a small allowance.

### **Powers, duties and immunities of special constables**

6. A special constable appointed under the *Police Act* possesses identical powers to those of a regular police constable. He thus has power to arrest any person found committing any offence (indictable or summary), and wide powers to arrest on suspicion and to stop and search persons and vehicles (see paragraph 8 of the working paper). In addition, he has a privileged position in actions against him in that, in the absence of direct proof of corruption or malice, he will not be liable in tort for carrying any of the provisions of the *Police Act* into effect (see paragraph 9 of the working paper).

The powers of a special constable appointed or to be appointed under the *Government Railways Act* or the Fremantle or Port Hedland Port Authority Acts are similar to those of a regular police constable, but limited to the applicable geographical area.

The powers of a special constable appointed under the *Prevention of Cruelty to Animals Act* are, however, stated to be limited to the purposes of that Act.

7. An ordinary citizen has only limited powers of arrest, and he has no power to stop and search (see paragraph 10 of the working paper). To succeed in an action for tort against an

ordinary citizen, a plaintiff does not have to prove directly corruption or malice on the part of the defendant.

8. A special constable also possesses, in strict law though not in modern practice, numerous legal duties derived from his status as constable, and for their breach he may be criminally liable (see s.173 of the *Criminal Code*). He must cause the peace to be kept, prevent crime and generally protect life and property (see 3 Halsbury's Laws, Vol. 30, p.129. See also Appendix III to this report which contains the form of the undertaking entered into by a special constable appointed under s.35A of the *Police Act*).

## **DISCUSSION AND RECOMMENDATIONS**

### **GENERAL**

9. The Commission considers that persons whose occupation involves them in law enforcement should be properly qualified and trained, be subject to strict legal control, be required to act within clear and definite lines of authority and should possess no more powers than are reasonably necessary to fulfil their law enforcement functions.

10. The Commission is of the view that all categories of persons currently appointed as special constables fail to meet one or more of the above criteria. They all seem to have more legal power than is reasonably necessary to fulfil the purposes of their appointment, some of them (for example, private security officers) do not operate within clear and definite lines of authority, others (for example, R.S.P.C.A. inspectors) have little or no training in law enforcement, and all seem to have imposed upon them a wider legal responsibility for law enforcement than is either realistic or desirable.

11. The Commissioner of Police of Western Australia informed the Commission that he is very much aware of these problems. It appears to the Commission that the existence of such problems is one of the principal reasons why the incidence of appointment of special constables by the Commissioner of Police under the *Police Act* has remained relatively infrequent. Moreover, even where appointments have been made, it has usually been in circumstances of restrictive compromise - for example, appointment is typically confined to former members in good standing of the Western Australian Police Department or of some

other reputable Police Department. Appointments of special constables under other statutes (see paragraphs 3 and 4 above) have also been made sparingly.

12. Within the present legal framework, (see paragraph 3 above and paragraph 3 of the working paper), it is only possible to confer greater law enforcement powers than those of an ordinary citizen upon a special constable by conferring the comprehensive police powers of a constable. The Commission considers that this is unsatisfactory. The inflexibility of this system and the lack of sufficient safeguards appear to have produced, or at least to have contributed to, a situation where it has never been fully ascertained in practice whether the advantage of conferring special powers upon persons other than regular police outweighs the problems created by doing so. In New South Wales a statutory scheme possessing similar deficiencies has nevertheless been widely utilised, a fact which in turn caused the problem of the law relating to special constables to be referred to the Law Reform Commission of that State in August 1971. In July 1974 that Commission issued its *Report on Special Constables* (L.R.C. 19) which is referred to in this Report as "The New South Wales Report". That Report recommended that legislation be enacted to provide for a number of categories of special constables to which appointment could be made and for appropriate provision to be made as to the powers of special constables in each category (see paragraph 29 of the New South Wales Report).

13. In addition, there is some doubt as to the proper scope of s.35A of the *Police Act*. It has been suggested that it may be limited to cases of emergency set out in s.34 of the Act (see paragraph 42 of the working paper). Also the law is silent with regard to responsibility for the training of special constables, and for notifying the Commissioner of Police of the functions of each appointee and of his ceasing to hold the position which gave rise to his appointment (see paragraph 43 of the working paper) Such factors as these may also have inhibited the appointment of special constables.

14. Other important problems discussed in the working paper were:-

- (i) that of the scope, legality and propriety of "special duties" being performed by private arrangement by regular, off-duty police officers on behalf of persons who paid them directly for their services (see paragraphs 15 to 20 and Appendix III of the working paper);

- (ii) that of the proper scope and regulation of the private security industry.

## RECOMMENDATIONS

15. The Commission considers that the legal framework within which law enforcement powers are granted should be such as to enable persons and categories of persons involved in law enforcement to be authorised in such a way and to such an extent as is appropriate to the tasks they are to perform. In this way the principles laid down in paragraph 9 above would be able to be met fully, and the powers conferred would be appropriate to the functions of the officer concerned.

In paragraph 44 of the working paper the Commission posed a number of questions for discussion relating to the problems outlined above. Taking into account the comments received on the paper, the Commission's views are set out below.

### **(1) Should the legal power to appoint special constables be retained?**

16. All commentators who discussed the question agreed that there is a need to retain the power in some circumstances, and the Commission agrees with this view. The real problem is to identify and define, out of a wide variety of law enforcement situations, those circumstances where some powers beyond those of an ordinary citizen are required, and which of those circumstances, if any, require the full powers of a constable. It is this problem upon which the Commission has focussed its attention.

### **(2) In what circumstances should there be power to appoint special constables?**

#### *(a) In emergencies*

17. Under the present law the power of a magistrate or two justices to appoint special constables under s.34 of the *Police Act* is principally related to the existence of "tumult, riot or felony". The general power of the Commissioner of Police to appoint special constables under s.35A certainly extends to such emergency situations (see paragraph 13 above and paragraph 42 of the working paper).

18. The Commission suggested in its working paper that the power to appoint special constables should exist not only in circumstances of civil disturbance but also in other emergency situations, such as natural disasters. No commentator disagreed with this view, and the Commission accordingly recommends that the *Police Act* be amended so as to clarify that appointments may be made in all civil emergencies, not just those arising out of “tumult, riot or felony”.

19. The Commission also suggested that it might, for example, be thought appropriate to appoint civil defence workers as special constables, as can be done in New Zealand. However, the Civil Defence and Emergency Service of Western Australia informed the Commission that, in its view, it would be inappropriate to do so. The Service’s reason was that although at a time of disaster both police and civil defence are working to a common end, their spheres of responsibility differ.

In the Commission’s opinion, the power to appoint persons as special constables in emergencies should be wide and flexible enough to meet all possible contingencies, and it would be undesirable for any class of persons, such as civil defence workers, to be ineligible for appointment. The question of who should be appointed in any particular case is a distinct one for the occasion.

20. The Commission further recommends that special constables appointed to help deal with an emergency should have all the powers and immunities and be under the same obligations as constables, but only while actually on duty dealing with the emergency.

21. The Commission has noted the analogous case of persons who might be engaged under s.47(2)(k) of the *Fuel, Energy and Power Resources Act 1972* for comparable purposes. However, such persons would not, by force of such appointment, have the status of special constables, nor would they necessarily receive the same or similar powers as special constables. The Commission considered that at the present time, while the scope of the power to appoint, and the terms of such appointments, are still unknown, the matter should not be regarded as within the terms of reference.

(b) *With regard to police of other States*

22. This power has been sparingly utilised in the past, and there is nothing to suggest that it has been abused. However, when police stationed near the borders of this State cross into Western Australia for limited purposes (pursuit of offenders across the border and making enquiries in relation to those offenders), they do not actually require full powers, unlimited as to time and circumstance.

23. It is impracticable to spell out in a statute a general limitation on such a special constable's power or purposes. Accordingly, the Commission recommends that the appointing authority - viz., the Commissioner of Police (see paragraph 40 below) - should be empowered to limit the power of such special constables from time to time to whatever extent he thinks fit. In some cases, it would be appropriate for there to be no limitation at all, e.g. if police of other States were seconded to this State following some natural disaster such as a cyclone.

24. The New South Wales Report recommended in relation to what it called "external force constables" that the law of New South Wales should place a duty on them to refrain from doing any act or thing they are directed not to do by the New South Wales Police Commissioner or by any other police officer under whom they are placed for the purposes of their office. The Commission would go further, as was foreshadowed in the working paper, and recommend that police of other States who are appointed special constable should, subject to the terms of their appointment and while on duty as such, obey any direction of the Western Australian Commissioner of Police or other police officer under whom they might on any occasion be placed.

25. The New South Wales Report (see paragraph 53) considered it undesirable for the New South Wales Police Commissioner to be able to inflict a disciplinary penalty on an external force constable, and recommended instead that if such a constable disobeyed a direction he should have all such liabilities in tort as if he were not an external force constable. However, the Commission does not consider there is any difficulty or impropriety in providing that an external force constable could be liable to a disciplinary penalty for failure to comply with a direction, and to do this would be preferable to imposing merely an indirect sanction by way of tortious liability. Although the Commission should not be taken as necessarily approving of the very wide immunity from civil action which is given to police by

s.138 of the *Police Act* (see paragraph 6 above), it considers it is undesirable that such protection should be given to regular Western Australian policemen but denied to a policeman of another State who derives his authority from the law of Western Australia and is on law enforcement duties in this State. What constitutes “law enforcement duties” in this context will, of course, depend on the limitations contained in the appointment by the Commissioner (see paragraph 23 above). An external force special constable would lose his statutory protection in similar circumstances to an ordinary constable (cf. *Trobridge v. Hardy* (1955) 94 C.L.R. 147 and paragraph 9 of the working paper).

It is important to note, however, that while the New South Wales Report was written in the context of well over 1000 such special constables in that State, there are only three in Western Australia (see paragraph 5(a) above). Should the incidence of out-of-State police being appointed special constables grow substantially in this State, the situation may require re-examination.

(c) *Private security*

26. It is in regard to this category that the problems created by the lack of alternatives provided by the present law are clearly evident. No spokesman for any Australian Police Department who commented on this aspect accepted the desirability of granting full police powers (i.e. as a special constable) to persons engaged in such tasks. For example, Assistant Commissioner Nogelsand of the South Australian Police stated:

“Under no circumstances should persons engaged in private enterprise security activities be appointed as special constables”.

27. In the Commission’s view, to grant such persons the full status and powers of a constable would be likely to contravene the principles of responsible law enforcement set out in paragraph 9 above.

The Commission understands that those private security officers currently holding appointments as special constables are former members of the Western Australian Police Force and, to that extent, and depending on their length of service and type of experience in the Police Force, they are no doubt adequately trained. However, the very nature of their

position as private employees or contractors means that they are not subject to strict legal control or to clear and definite lines of authority. In any case, the Commission does not consider that it is reasonably necessary for such persons to possess the full powers and duties of a constable.

The only other Australian jurisdictions in which private security officers have been appointed special constables are New South Wales and Tasmania (see paragraph 24 of the working paper). In all other jurisdictions they have no special status or powers, and this is also the case in England and New Zealand.

28. The question then arises whether such private security officers should be legally recognised and authorised in some lesser way. Commissioner Wedd, Commissioner of Police for Western Australia, said that “perhaps special constables with limited and not general police authority would have a place in private security”. On the other hand, Commissioner Wilson, Commissioner of Police for the Australian Capital Territory, stated; “I am reluctant to give some vestige of police authority to private citizens.”

29. The New South Wales Report recommended that private security officers should be included in a category of “limited purposes constables”. The principles upon which eligibility should be based are set out in paragraph 57 of the New South Wales Report in the following terms:-

- “(1) that it is in the public interest for the prevention of crime (in the sense of any offence punishable upon conviction in any court) or the apprehension of criminals that the appointment be made; and
- (2) that the employer has a special interest, by reason of any activity, enterprise, undertaking or business which he carries on or of any statutory duty or power which he has, or of any land which he holds or occupies, in the appointment being made.”

The New South Wales Report also recommended (see paragraph 61) that any person so appointed should receive the power and authority of a constable of police subject to any

directions by the Commissioner of Police restricting those powers or limiting their exercise for specified purposes or in specified places or circumstances.

30. The Commission is not satisfied on the information presently available that persons involved in private security should be given any special status, powers or authority at all. If a case can be made out for giving special powers to such persons, however, the Commission considers that it would be preferable to spell out specifically those powers in a statute rather than give the Commissioner of Police discretion to prescribe in each case the powers to be given to the person concerned. This approach is one followed in other areas of law enforcement - for example, fisheries inspectors under the *Fisheries Act* and community welfare officers under the *Child Welfare Act*.

31. In Western Australia, while inquiry agents must be licensed under the *Inquiry Agents Licensing Act 1954*, the definition of such agents covers only persons who obtain evidence for the purposes of court proceedings and not persons engaged in activities relating to security (see section 3). The law of Western Australia is silent in relation to persons engaged in private security.

Legislation providing for the licensing of security guards has, however, been enacted in New Zealand (*Private Investigators and Security Guards Act 1974*); New South Wales (*Commercial Agent and Private Inquiry Agents Act 1963*); Victoria (*Private Agents Act 1966*); Queensland (*Invasion of Privacy Act 1971*) and South Australia (*Commercial and Private Agents Act 1972*). A Bill along similar lines was introduced into the Tasmanian Parliament in 1974.

Western Australia is thus the only Australian State which has not yet taken any legislative action with a view to regulating the private security industry.

It is not within the Commission's terms of reference to consider whether the industry should or should not be regulated and, if so, in what ways. The Commission recommends, however, that the whole question of regulation of private security should be thoroughly examined.

(d) *With regard to the responsibilities of certain statutory bodies*

32. The Commission considers that ideally the regular police force should accept full responsibility for policing areas controlled by statutory bodies. This should particularly be the case where the duties involve law enforcement in areas to which the public has access.

Such a practice is in fact being followed in the Fremantle Port area (see working paper, paragraph 6(c)). The Commission understands that the Western Australian Government Railways and the Police Department have come to an arrangement whereby a sergeant of the regular police has been seconded to the W.A.G.R. to take charge of its investigation section which includes one special constable.

33. Such matters as inadequacy of police manpower, however, may make it necessary to consider alternatives. The Commission therefore recommends that statutory provision should be made for employees of certain statutory bodies to be appointed as special constables. The statutory bodies whose employees would be eligible to be considered for appointment as special constables should be designated in a Schedule to the *Police Act*, and power conferred on the Governor to vary the Schedule from time to time. The criteria for eligibility for inclusion in the Schedule should be set out in the *Police Act*. In the Commission's view, no statutory body should be eligible to be included unless -

- (a) it possesses public duties and functions, the proper implementation of which necessarily involves the exercise of some law enforcement activities;
- (b) it bears responsibility for the safety or control of members of the public or their property or public property;
- (c) greater powers are needed to discharge the functions mentioned in (a) or (b) than are possessed by ordinary employees.

34. The Commission recommends that the authority of such special constables should be confined by law to the geographical areas over which the statutory body has jurisdiction and the spheres of activity in which it is involved. The Commission also recommends that the

immunity of such special constables from civil action should be the same as that of external force special constables (see paragraph 25 above).

35. The above recommendations, if implemented, would mean that some special constables appointed under the existing law should no longer possess such status. This would be because the body employing them would not meet the suggested criteria of a “statutory body” for the purposes of the *Police Act*. In such cases, if it is considered that such persons require powers beyond those of an ordinary citizen, the legislation dealing with the body in question could be amended so as specifically to confer the appropriate powers.

There are three such categories of persons who are at present special constables:-

- (a) parking inspectors appointed by the Perth City Council under the *City of Perth Parking Facilities Act 1956* to control the entry of motor traffic to the Hay Street Mall. The Council has advised that these inspectors are not required nor indeed permitted by the terms of their employment to help maintain law and order in the Mall area, and they thus do not require the wide powers now enjoyed by special constables;
- (b) R.S.P.C.A. inspectors. At present nine such inspectors are special constables for the purposes of the *Prevention of Cruelty to Animals Act*. This status empowers them, for example, to remove injured animals (s.13(2)) and to carry revealed firearms (for the mercy killing of animals);
- (c) security officers employed by the Western Australian Turf Club and the Western Australian Trotting Association, which are incorporated by the *Western Australian Turf Club Act 1892* and the *Western Australian Trotting Association Act 1946* respectively. One such employee of each of these organisations is a special constable. Although it was submitted to the Commission that general law enforcement powers are necessary - e.g. so that a special constable can arrest without warrant persons whom he reasonably believes to have committed certain offences - it appears that the ordinary police are able to discharge these functions. Indeed, Claremont Speedway Pty. Ltd., and the Canning Greyhound Racing Association, both private

organisations which deal with the general public in ways comparable to the W.A.T.C. and W.A.T.A., stated that they perceived no need for any of their employees to be special constables.

(e) *Other situations*

36. The power under s.35A of the *Police Act* to appoint special constables is not subject to any express legal limitation (but see paragraph 13 above). The Commissioner of Police, apart from using his powers to appoint as special constables a small number of police of other States, a few private security officers and some employees of certain instrumentalities, has utilised his legal powers with regard to members of the Narcotics Squad of the Customs Department, supervisors of Police and Citizens' Youth Clubs and a member of the Police Pipe Band.

(i) Narcotics Squad of the Australian Department of Customs and Excise

37. Insofar as the members of the narcotics squad are involved in the enforcement of Commonwealth law they are adequately empowered by the applicable Commonwealth statute (*Customs Act 1901* - Part XII: Division 1). Their participation in the enforcement of the law of Western Australia only occurs to the extent that it arises out of their ordinary employment - for example, information gained may reveal a situation where it is desirable for them to assist the Western Australian Police in enforcing the anti-drug laws of this State. The Commission considers that it would be preferable to create a specific statutory power to enable them to perform such functions, rather than to confer upon them the full status of special constable.

(ii) Police and Citizens' Youth Clubs; Police Pipe Band

38. The Commissioner of Police has also appointed persons as special constables to enable them to perform their duties in police uniform as supervisors of youth clubs and as a member of the Police Pipe Band wearing police insignia. The member of the Pipe Band also qualifies for a small allowance.

The Commission commented adversely upon this practice in paragraph 40 of the working paper, but the Commissioner of Police submitted that it should be possible to appoint such persons as special constables.

The Commission does not agree with this view. In both cases mentioned above, the status of special constable has been conferred for reasons completely unconnected with law enforcement. The Commission accordingly recommends that s.16 of the *Police Act* be amended to permit the activities in question to be carried out in police uniform by persons approved by the Commissioner of Police, even though they do not possess the status of constable. The Commission also recommends that Part XVI of the Police Regulations be amended to enable a bandsman who is not a constable to receive an allowance.

(iii) Auxiliaries

39. The Commission drew attention in paragraph 25 of its working paper to the English practice of having a force of special constables appointed to assist in crowd control and similar peace-keeping activities. The Commissioner of Police has indicated to us that it was contrary to Australian police custom to utilize auxiliaries and that he was not in favour of such appointments. Although the Western Australian Police Union did not make a formal submission on the working paper, the Commission understands that it does not favour the English practice. The Civil Liberties Association submitted that such a system “would have the tendency to create a quasi-police force comprising persons who would be inadequately trained”.

Whether the fears of the Civil Liberties Association are justified or not, the Commission can see no real need in this State for the appointment of special constables to constitute a form of reserve or supplement to the regular police force.

**(3) Who should have the power to appoint special constables?**

*(a) Commission's recommendations*

40. In its working paper the Commission asked who should have the power of appointing persons as special constables. The Commission suggested that the primary power should be

that of the Commissioner of Police, but that for appointments in emergencies (see paragraph 17 above) there should be a residual power vested in magistrates. It is now the Commission's view that for all categories of special constables only the Commissioner of Police, or in limited circumstances his delegate, should be empowered to appoint special constables and to delineate the powers which they should possess, and it so recommends.

41. The reasons for this recommendation are set out below. First, the Commission noted that except in the case of appointments under the *Prevention of Cruelty to Animals Act 1920*, there is no known example of magistrates having exercised the power. This fact would, in itself, tend to indicate its obsolescence. The Commission agrees with the argument contained in paragraph 26 of the New South Wales Report that the function of magistrates (and justices) has evolved to the point where it is essentially judicial, and that the peace-keeping residue of that office is anachronistic. Secondly, the Commission had previously contemplated the possibility that in an emergency the need for speed might be so great or the difficulties of communication so severe that it would be desirable that a responsible man on the spot should be able to exercise the power. Taking into account the comments that were made to it, the Commission is now less persuaded by this argument. In the sort of emergency envisaged where communications had broken down or become severely disrupted, it would be far from certain that the man on the spot would in fact be a magistrate (and no one suggested that the power should be retained by justices). A provision that the Commissioner of Police could delegate his power to appoint to the officer-in-charge of the district should provide sufficient flexibility to meet any eventuality.

42. As for other types of special constables, the Commission considers that it is desirable to provide for a unified system of appointment to enable policy to be consistently applied. The Commissioner of Police is the person properly vested with law enforcement functions in our community, and anything relatively central to those functions should be within his control. Because of this he alone should have the power to appoint. A similar view is expressed in paragraph 28 of the New South Wales Report. The Commission considers that there is a distinction to be drawn between special constables, on the one hand, and persons who have only specific limited powers bestowed for limited purposes, on the other. The Commissioner of Police is not, for example at present involved in the appointment of fisheries inspectors or health surveyors, and the Commission sees no need for his involvement in the appointment of other persons with defined and limited powers (see paragraph 30 above). Consequently, if

such persons as Western Australian Turf Club officials or Perth City Council employees controlling traffic in the Mall were enabled, by legislation, to have conferred upon them powers beyond those of an ordinary citizen, the machinery by which such powers would be conferred could be set out in such legislation.

(b) *Consequences of Commission's recommendations*

43. Several consequences follow from the recommendation that the Commissioner of Police should alone have power to appoint special constables -

- (i) a statutory body eligible to have employees appointed as special constables would be required to satisfy the Commissioner of Police that it has a reasonable and genuine need to do so at the time of application. Otherwise, there could be an excessive number of special constables employed by a statutory authority;
- (ii) the Commissioner of Police should assess the character and qualifications of each proposed special constable (see paragraph 45 below);
- (iii) the Commissioner of Police should undertake responsibility for training all employees of statutory bodies appointed as special constables. It may well be that such training should or could be done in conjunction with the employing body, but the ultimate responsibility for training should be with the Commissioner of Police.

This reasoning is not applicable to out-of-State police, for they have been trained already, or to special constables appointed in emergencies, for the circumstances of their appointment would probably be such that there would be no time for training them;

- (iv) the Commissioner of Police should have the right to exercise disciplinary authority over special constables while acting in that capacity. This seems to follow naturally from the nature of their status and is essential if the criteria set out in paragraph 9 are to be met. The Police Discipline Code applicable to

regular police would not necessarily be suitable but there should be power to make appropriate regulations;

- (v) the Commissioner of Police should have power to limit the powers of special constables employed by statutory bodies so that each one will have only the powers he needs in the context of his own particular employment.

44. Other consequential matters of detail would need to be considered - for example the circumstances in which there would be a right to resign as a special constable, the duty of an employer to notify the Commissioner of Police if a special constable employee ceases his employment, and possibly the duty to notify the Commissioner if such an employee misconducts himself. However the resolution of all such problems should flow naturally from the principles set out in paragraphs 42 and 43 above.

#### **(4) Qualifications of special constables**

45. Clearly, character suitability must be taken into account when applications for appointment as a special constable are being considered. The Commissioner of Police suggested that the reference and interview system used for regular police would be appropriate. This is an administrative matter for the Commissioner of Police.

46. Different considerations of course apply to persons appointed special constables to deal with an emergency. It does not seem possible to lay down detailed rules as to qualifications or procedures for appointment in such cases, for these would depend on the nature of the particular emergency. The Commission suggests, however, that the Commissioner of Police should formulate guidelines to be followed in making emergency appointments.

#### **(5) Power to control special constables**

47. This matter has already been dealt with in paragraph 43(iv). There is, however, the further question of the relationship between the powers of a statutory authority employing a constable and the powers of the Commissioner of Police. It is implicit in our view of the scope of appointment of special constables that the Commissioner of Police should retain at

all times the ultimate right to control such persons, even though he would not actually exercise such right in normal circumstances. It is not expected that this would give rise to any conflict or other complexity.

A necessary corollary is that, when regular police and special constables are on duty with regard to the same situation, special constables should be within the regular police line of command.

**(6) Other matters**

*(a) Payment*

48. This is of significance only in respect of special constables appointed in an emergency. The Commission recommends that they should receive payment on the same basis as ordinary constables, and that they should receive the same allowances. The question of payment does not arise in relation to the other categories of special constables which the Commission recommends, namely, out-of-State police and special constables employed by statutory bodies as they would receive their regular salaries.

*(b) Evidence of authority*

49. Persons appointed special constables should readily be able to demonstrate that they possess the status and authority which they are purporting to exercise. Members of the public who come into contact with a special constable carrying out law enforcement duties should be entitled, in reasonable circumstances, to satisfy themselves that he possesses the status and authority he claims. The Commission accordingly recommends that:-

- (i) every special constable should be issued with a certificate of appointment;
- (ii) the certificate should specify the limitations contained in his warrant of appointment;
- (iii) a special constable should carry the certificate with him whenever he is performing his duties as a special constable;

- (iv) he should, on reasonable demand, produce it for inspection by any person (cf. s.13(4)(e) of the *Road Traffic Act 1974*).

(c) *Public Information*

50. The foregoing certificate provisions are designed to meet situations involving special constables and individual members of the public. There is also general public interest in knowing the extent and manner of the utilisation by the Commissioner of Police of his power to appoint special constables. This information should be available to the public. The New South Wales Law Reform Commission had foreshadowed in its working paper that it would recommend that a public register of special constables be kept. In the Report, however, this idea was abandoned because of the administrative burden it would have created in a State where there were some 3,500 special constables.

In this State, the administrative burden would be trivial, but the Commission nevertheless considers that it is not necessary that a public register should be kept. It recommends instead that the Commissioner of Police be required to set out, in his Annual Report, the numbers of each category of special constable appointed during the year and as at the date of the Report. The Report should also identify the external Police Departments or statutory bodies whose officers have been appointed special constables, and in each case the numbers of such officers. The Commission considers that the foregoing, in conjunction with the provisions set out in paragraph 49 above, should adequately protect the public interest in relation to the appointment of special constables.

**(7) Private hiring of off-duty regular police**

51. In the working paper (paragraphs 15 to 20) the Commission drew attention to the practice whereby private persons could hire the law enforcement services of off-duty regular constables. This raised the fundamental question of whether it was proper for private individuals to be able to purchase extra police protection. The legality of this practice was not free from doubt, but in any case the Commission considered that it was open to criticism on the grounds of possible conflict between duty as a public officer and duty to a private employer and on the question of the propriety of being able to purchase police protection.

52. Since the issue of the working paper, the Commission has been advised by the Commissioner of Police that the former practice (known as special duties) has ceased.

The Commission has also been advised by the Commissioner of Police that in future, when a request is made for police attendance, District Officers will assess the situation and, if a good case is made out, police will be supplied without charge. Police would not be available for private security, either free or on a paying basis.

53. While the Commission welcomes the change of practice discussed in paragraph 52, it considers it desirable to make legislative provision to prevent the revival of the former practice. Accordingly the Commission recommends that the *Police Act* be amended so as to render unlawful the private hiring of off-duty regular police.

#### **SUMMARY OF RECOMMENDATIONS**

54. The Commission recommends -

- (a) that power to appoint special constables be retained;  
(see paragraph 16 above)
- (b) that such power should be exercisable only
  - (i) in civil emergencies;  
(see paragraph 18 above)
  - (ii) with regard to police of other States;  
(see paragraph 23 above)
  - (iii) with regard to employees of certain statutory bodies which should be designated in a Schedule to the *Police Act*;  
(see paragraph 33 above)
- (c) that special constables appointed in an emergency have all the powers and immunities of a regular constable, but only while on duty;  
(see paragraph 20 above)

- (d) that the Commissioner of Police of Western Australia be empowered to limit the power of those police of other States who are appointed special constables, that such special constables be required to obey any direction of the Commissioner and that they be given the same immunity from civil action as members of the Police Force of Western Australia;

(see paragraphs 23 & 24 above)

- (e) that other categories of persons presently appointed as special constables should no longer possess that status;

(see paragraphs 27, 35, 37 & 38 above)

- (f) that to the extent that the categories referred to in (e) above require powers greater than those of an ordinary citizen to carry out their duties, such powers should be conferred specifically by statute;

(see paragraphs 35, 37 & 38 above)

- (g) that the Commissioner of Police -

- (i) be solely empowered (except in limited circumstances) to appoint special constables and to delineate the power which they should possess;

(see paragraphs 40 & 41 above)

- (ii) be responsible for the training of employees of statutory bodies appointed as special constables and be entitled to exercise disciplinary authority over special constables while acting in that capacity;

(see paragraph 43 above)

- (iii) should formulate guidelines to be followed for appointing special constables in emergencies;

(see paragraph 46 above)

- (h) that special constables appointed in emergencies should receive payment on the same basis as ordinary constables;

(see paragraph 48 above)

- (i) that every special constable should carry with him whenever performing his duties a certificate of appointment;  
(see paragraph 49 above)
- (j) that the Commissioner of Police should set out details of appointments of special constables yearly in his Annual Report;  
(see paragraph 50 above)
- (k) that the *Police Act* be amended to render unlawful the now dormant practice of special duties;  
(see paragraph 53 above)
- (l) that the whole question of private security should be thoroughly examined.  
(see paragraph 31 above).

CHAIRMAN

MEMBER

MEMBER

## **APPENDIX I**

*List of those who commented on the working paper*

The following Police Departments -

Australian Capital Territory

New South Wales

New Zealand

South Australia

Victoria

Western Australia

Blight, M.G.

Burton, R.H. (S.M.)

Citizens Advice Bureau of W.A. Inc.

Civil Defence & Emergency Service of Western Australia.

Civil Liberties Association of W.A.

Fremantle Port Authority

Hassell, B.N. (J.P)

Institute of Legal Executives (Western Australia) (Incorporated)

Law Society of Western Australia

McColl, D.

McHugh, E.H.

Retail Traders' Association of Western Australia (Inc.)

Royal Society for the Prevention of Cruelty to Animals Western Australia Inc.

Swan Contract Security

Tennant, E.G.

Vann, D. Dr.