

Special Constables

Terms of Reference

In 1972 the Committee was asked to consider and report on the law relating to the appointment of special constables and on the extent of their powers.

Background of Reference

The reference arose partly as a result of the case *De Vaney v Moore*¹ which raised issues about the circumstances in which special constables may be appointed.² At the time of the reference, special constables in Western Australia could be appointed under five separate pieces of legislation.³ However, the report focused primarily on appointments made under the *Police Act 1892 (WA)*, under which a special constable had identical powers to those of a regular police constable.⁴ In addition, a special constable had the privileged position of being protected against liability in tort actions except where there was direct proof of corruption or malice.

When the Committee was formally reconstituted as a Commission in January 1973 it took over the conduct of the project. The Commission issued a working paper in June 1974, in which it found that almost all special constables had more legal power than was reasonably necessary to fulfill the purposes of their appointment while having little or no training in law enforcement.

Nature and Extent of Consultation

The working paper was widely distributed for comment and responses were received from a diverse range of organisations and individuals. Those who commented on the working paper included: the Police Departments of Australian Capital Territory, New South Wales, South Australia, Victoria, Western Australia and New Zealand; the Citizens Advice Bureau of Western Australia; the Civil Defence & Emergency Service of Western Australia; the Fremantle Port Authority; the Institute of Legal Executives; the Law Society of Western Australia; the Retail Traders' Association of Western Australia; the Royal Society for the Protection of Cruelty to Animals (WA); a justice of the peace; a private security company; and six individuals.

The final report containing the Commission's recommendations was delivered in March 1975.⁵

Recommendations

After extensive consultation and consideration of the issues, the Commission recommended:

- That the power to appoint special constables be retained, but be exercisable only in civil emergencies, with regard to police of other states, or with regard to employees of certain statutory bodies set out in a schedule to the *Police Act*.
- That special constables appointed in an emergency have all the powers and immunities of a regular constable, but only while on duty.

1 Unreported, Perth Court of Petty Sessions, 1970, No 1261. An outline of the facts and excerpts from the judgment may be found in the working paper attached to the Commission's final report. See Law Reform Commission of Western Australia, *Special Constables*, Project No 29 (1975) app I.

2 For instance, the magistrate pointed out that the scope of s 35A of the *Police Act 1892 (WA)*, which empowered the Commissioner of Police to appoint special constables, was not clear as to what circumstances warranted such appointments. *Ibid*.

3 *Police Act 1892 (WA)* ss 34 and 35A; *Government Railways Act 1904 (WA)* s 74(1); *Prevention of Cruelty to Animals Act 1920 (WA)* s 15; *Fremantle Port Authority Act 1902 (WA)* s 19(4); *Port Hedland Port Authority Act 1970 (WA)* s 17(4).

4 These included the power to arrest a person found committing any offence, wide powers to arrest on suspicion and power to stop and search persons and vehicles.

5 Law Reform Commission of Western Australia, *Special Constables*, Project No 29 (1975).

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- That the Commissioner of Police:
 - (a) be solely empowered to appoint special constables and to delineate the power they should possess;
 - (b) be responsible for the training of employees of statutory bodies appointed as special constables and be entitled to exercise disciplinary authority over them;
 - (c) should formulate guidelines to be followed for appointing special constables in emergencies.

The Commission made further consequential recommendations regarding the payment of special constables, the identification of special constables while on duty, and the public provision of details of appointments of special constables by the Commissioner of Police.

Legislative or Other Action Undertaken

The Commission's recommendations were given effect with the passing of the *Police Amendment Act 1980* (WA).