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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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.


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

1975
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.
APPENDIX II

THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 29

Special Constables

WORKING PAPER

JUNE 1974
INTRODUCTION

The Law Reform Commission has been asked to consider and report on the law relating to the appointment of special constables and the extent of their power.

The Commission having completed its first consideration of the matter now issues this working paper. The paper does not necessarily represent the final views of the Commission.

Comments and criticisms on individual issues raised in the working paper, on the paper as a whole or on any other aspect coming within the terms of reference, are invited. The Commission requests that they be submitted by 23 August 1974.

Copies of the paper are being sent to the -

Chief Justice & Judges of the Supreme Court
Citizens Advice Bureau of W.A.
Civil Defence and Emergency Service of W.A.
Civil Liberties Association of W.A.
Commissioner of Police of W.A.
Commissioners of Police of other Australian States
Department of Motor Vehicles
Director General of Transport
Fremantle Port Authority
Judges of the District Court
Law School of the University of W.A.
Law Society of W.A.
Magistrates’ Institute
Minister for Police
Port Hedland Port Authority
Royal Society for Prevention of Cruelty to Animals
Solicitor General
Under Secretary for Law
W.A. Government Railways
W.A. Police Union
Firms employing special constables
Law Reform Commissions and Committees with which this Commission is in correspondence

The Commission may add to this list.

A notice has been placed in The West Australian inviting anyone interested to obtain a copy of the paper and submit comments.
The research material on which the paper is based is at the offices of the Commission and will be made available there on request.
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TERMS OF REFERENCE

1. The Commission has been asked to consider and report on the law relating to the appointment of special constables and the extent of their power.

2. This project arose out of the case of De Vaney v. Moore (unreported, Court of Petty Sessions, Perth, 1970). In the course of his judgement the magistrate expressed doubt about the validity of Mr. De Vaney’s appointment as a special constable and about the purposes for which a special constable can be appointed. The relevant parts of the magistrate’s judgement, and an outline of the circumstances of the case, are set out in Appendix I to this paper.

PRESENT LAW AND PRACTICE IN WESTERN AUSTRALIA

Appointments under the Police Act

3. Two methods of appointment are provided for in the Police Act 1892 -

   (a) Under s.34 a magistrate or two justices may appoint special constables when he or they consider that there are insufficient ordinary members of the police force in the area for the preservation of the peace, the protection of the inhabitants or their property or the apprehension of any offenders.

   (b) Under s.35A the Commissioner of Police may appoint special constables. There is no express limitation on the circumstances in which he may exercise this power.

The relevant provisions of the Police Act are set out in Appendix II to this paper.

4. The Police Department has no record of a magistrate or justices having exercised the power under s.34 of the Police Act in recent times. The special constables used to control the riots in Kalgoorlie in January 1934 (140 in number) were appointed by the Commissioner of Police under s.35A of the Police Act.

5. There are at present twenty special constables appointed by the Commissioner of Police, 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 in connection with the pursuit of offenders across the border and to assist them in making enquiries in this State.

(b) Private security officers

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

(c) Officers of public or semi-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 Poisons Act 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 police the use of the Mall.

(d) Participants in social activities of police

Three are assistant supervisors of Police and Citizen’s Youth Clubs;

One is a member of the Police Pipe Band.
All of them have been appointed special constables so that they can perform their duties in police uniform. In the case of the member of the pipe band the appointment also entitles him to a small allowance.

**Appointments under other statutes**

6. (a) Under s.74(1) of the *Government Railways Act 1904*, the Railways Commission may, with the approval of the Governor, appoint special constables to act as such “within the limits of the Government Railways”.

There are at present -

**two** special constables appointed under this Act.

(b) Under s.15 of the *Prevention of Cruelty to Animals Act 1920*, a magistrate may appoint any servant or agent of the Society as a special constable to act as such for the purposes of that Act.

There are at present –

**eight** special constables appointed under this Act (five in the metropolitan area, one at Albany, one at Bunbury and one at Port Hedland).

(c) Under s.19(4) of the *Fremantle Port Authority Act 1902* and s.17(4) of the *Port Hedland Port Authority Act 1970*, the relevant Port Authority may appoint special constables to act as such within the limits of the port.

Neither Authority has any special constables at present. Until about ten years ago some employees of the Fremantle Port Authority were special constables, but since then their duties have been performed by the regular police. The Port Hedland Port Authority has informed the Commission that it may appoint its security officer a special constable if the Police Department undertakes to train him. The Commission understands that the Commissioner of Police is of the view that the training facilities available to the Police Department should not at present be used for this purpose.
Powers, responsibilities and immunities of special constables

7. Special constables have the same powers, are entitled to the same privileges and benefits and are subject to the same duties, as ordinary constables. This applies not only to special constables appointed under the Police Act but also to those appointed under the Government Railways Act (see s.74) and any that may be appointed under the Fremantle Port Authority Act (see s.19(4)) and the Port Hedland Port Authority Act (see s.17(4)). However the powers, responsibilities and duties of special constables appointed under the Prevention of Cruelty to Animals Act are limited to the purposes of that Act (see s.15), and the following two paragraphs must be qualified in their case.

8. Amongst the most important powers thus possessed by a special constable are the powers to -

(a) arrest without warrant any person found committing any offence, whether indictable or summary (Police Act s.49 (and see also ss.43 & 46); Criminal Code s.566(1));

(b) in cases where an offence is such that an offender may be arrested without warrant generally (that is, in the case of most crimes and some misdemeanours), arrest without warrant any person whom he believes on reasonable grounds has committed such an offence (Criminal Code s.564(a));

(c) stop and search any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained, and any vehicle in which there is reason to suspect that anything stolen or unlawfully obtained may be found (Police Act s.49);

(d) require any person with whom he is unacquainted to give him his name and address and to arrest such person if he refuses to give the information (Police Act s.50).

9. In the absence of direct proof of corruption or malice no action lies against a constable (ordinary or special) in carrying the provisions of the Police Act into effect against persons
offending or suspected of offending against it (Police Act s.138, which incorporates section H of the second schedule of the Interpretation Act; see also Trobridge v. Hardy (1955) 94 C.L.R. 147 and Luetich v. Walton [1960] W.A.R. 109, where this provision is discussed).

10. An ordinary citizen’s powers are much more limited, and he has no special immunity from court action. He has no power to stop and search any person or vehicle or require any person to give him his name and address. Although he has some powers of arresting on suspicion, these are more restricted than those of a constable. In particular, in cases where an offence is such that an offender may be arrested without warrant generally (see paragraph 8 (b) above), an ordinary citizen may arrest a person whom he believes on reasonable grounds has committed the offence only if the offence has in fact been committed, though not necessarily by the person he arrests (Criminal Code s.564(d)). However, the limitation that the offence must have been committed does not apply to the case where a citizen finds another person by night in such circumstances as to cause him to believe on reasonable grounds is committing the offence (Criminal Code s.564(e)). In other cases an ordinary citizen’s power of arresting without warrant is generally confined to cases where he finds another person actually committing a specified offence; see for example Code s.237 (person joining in a breach of the peace); Code ss.438 and 464 and Police Act s.49 (owner of property on which offence committed may arrest offender) and Code s.564(c) (person found committing an offence for which an offender may be arrested without warrant generally) and Code s.567 (person committing an indictable offence by night).

In practice, however, a citizen’s powers of arrest are very seldom exercised.

**Control of special constables**

11. Under s.5 of the Police Act the Commissioner of Police is charged with “general control and management” of special constables appointed under that Act and under s.37 of that Act he may suspend or determine the services of any special constable so appointed.

It is not clear whether special constables appointed under the Government Railways Act and the Prevention of Cruelty to Animals Act are also under the Commissioner’s control: the enactments are silent on the point. However, the question is clearer in respect to any special constables who may be appointed by the Fremantle Port Authority and the Port Hedland Port
Authority. The relevant enactments state that special constables under those Acts are not members of the police force but are servants of the port authority and under its direction and control (see the Fremantle Port Authority Act s.19(4) and the Port Hedland Port Authority Act s.17(5)).

Other persons involved in law enforcement

12. Special constables are one category of persons possessing special powers who are not members of the Police Force acting in the course of their regular duties. Other categories are -

(a) certain public officials;

(b) off-duty regular constables performing police duties as employees of private persons or organisations;

(c) certain persons employed in private security organisations.

13. It may help to place the question of special constables in context by first drawing attention to some important functions of these other categories.

Public officials with special powers

14. There are many examples. Fisheries inspectors may arrest without warrant anyone offending against the Fisheries Act (see s.40) and may search boats and premises for articles used in breach of that Act (s.41). Health surveyors have wide powers of entry onto private property (Health Act, s.349). Community Welfare Officers have powers of arrest and entry in a variety of situations (Child Welfare Act, ss.38, 109, 115, 132)

Regular constables performing special duties

15. A person who desires more police protection or assistance than the Police Department provides in the ordinary way can arrange for the hiring of off-duty constables through an officer designated by the Department for that purpose. The Commissioner of Police has issued a Routine Order prescribing the tasks that may be performed on special duties and the
minimum rate of pay therefore. This money is paid to the constable and is retained by him for his own use, less a commission which he pays to the officer who makes the arrangements.

This practice, which does not exist elsewhere in Australia, is of long standing in this State. It is widely utilised by private persons and organisations - for example in 1973 the number of such hirelings was 5,625. The hours spent by members of the police force on special duties totalled 22,128, the most common occasions being sporting functions (6,603 hours), escorts (5,152 hours), dances and concerts (4,120 hours).

16. The practice of members of the police force performing special duties is open to criticism but, although the matter is not free from doubt, the Commission believes that it is not unlawful (see Appendix III). Accordingly, any change would need to be by legislative prohibition. Some of the arguments against certain categories of special constable (see paragraphs 34 and 35 below) probably apply here also. There is the possibility of conflict of duty as public officer and as private employee. There is also the possibility of blurred lines of command. It is not unusual for constables on special duties to be employed in the same location and on similar tasks as those on regular duties. The former might look to their employer for orders, while the latter would look to the police officer in charge. Such a situation could cause difficulty.

17. The practice of members of the police force performing special duties raises the fundamental question of the propriety of being able to purchase extra police protection. On the one hand, it could be argued that it is no more objectionable to purchase police protection than to purchase any other service. On the other hand, it could be argued that law enforcement should be directed to the greatest need, and that this should be assessed by the Police Department having regard only to the interests of the community as a whole.

18. The Commission understands that the W.A. Police Union at its conference in May 1974 decided to ask the Police Commissioner that the practice be stopped, one reason being the apparent doubt as to who, if anybody, would be responsible for paying compensation to a constable injured while on special duty.

19. One alternative to the present practice is for the Police Department itself to contract with those seeking extra police assistance, constables being detailed as part of their regular
duties. This would avoid the criticism in paragraph 16 above, but not that of the impropriety of purchasing police protection. Another alternative is to adopt a system similar to that in England. There, special constables are used as auxiliary police, their functions including traffic duty and control of peaceful crowds (see paragraph 25 below). But in the Commission’s view the first step is to assess the real need for police services in these areas at all. The Commissioner of Police has informed the Commission that often the tasks performed on special duties are monotonous and require no special skill or powers and could be adequately performed by ordinary employees of those who contract for special duties (but see paragraph 21 below).

20. The Commission does no more at this stage than raise these matters in the most general terms and welcomes comment. It considers that an assessment of the law and practice relating to special constables has an important bearing on, and is in turn influenced by, the practice of “special duties”.

*Private security firms*

21. Private security firms offer protection against robbery and vandalism. Under Western Australian law these firms do not as such possess special status and powers, though employees or principals may acquire police powers through appointment as special constables (see paragraph 5(b) above). For the most part, however, their employees merely have the status and powers of ordinary citizens (see paragraph 10 above). Some firms claim that they have rigorous selection and training programmes for their staff, but there is no legal obligation in this regard, the matter being left to private business judgement. If the practice of members of the police force engaging in “special duties” is prohibited or curtailed, the growth of security firms may accelerate. They have in fact increased markedly in numbers, especially in New South Wales. In turn this would probably create a demand for their statutory recognition and control. Comparable security firms are already subject to control in some American jurisdictions (see *Current Regulation of Private Police: Regulatory Agency Experience and Views Vol. III*; Rand Corporation (1972)).

22. Although as stated above, private security firms possess no special status or powers under Western Australian law, they have been given special powers under a Determination under Regulation 82 of the Commonwealth Air Navigation Regulations. Under this
Determination every person proposing to board an aircraft departing from certain airports must submit himself and his carry-on baggage to be searched by any person authorised by the operator of the airline. The operators at Perth airport have authorised a private security firm to perform this function. Other security firms have been authorised at airports in other States.

SPECIAL CONSTABLES IN OTHER JURISDICTIONS

23. The following three paragraphs briefly summarise the law and practice in relation to special constables in other Australian jurisdictions, in England and in New Zealand.

24. Australia

(a) New South Wales is the only Australian jurisdiction which uses special constables extensively. According to the New South Wales Law Reform Commission, there were about 3,000 special constables in September 1971 (when the Commission’s working paper on special constables was issued). One hundred and sixty five were employed by the Police Department, 823 were members of the Police Force of other jurisdictions and 2,003 were employed as night-watchmen, inspectors and in similar capacities.

(b) In Victoria and Queensland power to appoint special constables is confined to civil disturbance, and has not been exercised for many years.

(c) In South Australia only specified employees of the Government Railways, R.S.P.C.A. inspectors, members of the police forces of other Australian jurisdictions and traffic inspectors are in practice appointed special constables.

(d) In Tasmania, the Commission has been informed that a small number of large industrial firms each have as an employee a special constable appointed by the Commissioner of Police.

(e) In the Australian Capital Territory and the Northern Territory only specified members of other police forces are appointed special constables.
25. **England**

Special constables are in two broad categories. The first is that of auxiliary police. Under s.16 of the *Police Act 1964* the Chief Officer of Police of each district may appoint special constables. The police authorities encourage the use of this power for the purpose of providing auxiliaries to assist the regular police on special occasions, such as traffic duty at weekends and control of crowds on holidays. The other category is that of special police in the employ of the Transport Commission, harbour and canal authorities and similar bodies. Their appointment is provided for in enactments relating to those bodies.

26. **New Zealand**

There, harbour boards are empowered to appoint employees as special constables within the limits of the board’s area. Apart from this, the power to appoint special constables is limited to emergencies.

**DISCUSSION OF SPECIAL CONSTABLES**

**General**

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

28. It would be generally accepted that members of the Police Force, acting in the exercise of their regular duties, conform to the criteria set out in the previous paragraph. Whenever other persons are involved in the law enforcement process (particularly when profit is the primary objective), the question can be asked whether the grant to them of special powers is justifiable in principle, and, if it is, whether their control, qualifications and training are sufficient to eliminate the likelihood of abuse.

29. The relevant issues are -
(a) Is it proper that persons and organisations should have available to them, as their own employees or under contract, persons invested with the status and powers of a constable? (cf. paragraph 17 above). This question arises in its most critical form about special constables privately employed or engaged, but can also be asked of those employed by public instrumentalities (e.g. Government Railways).

(b) Is the likelihood of abuse arising from the conflict of loyalty between the duty as constable and the duty as employee or contractor such that the practice of appointing such special constables should be prohibited altogether?

(c) Should special constables be replaced where appropriate by regular police? In considering this question it should be noted that, in the view of the Commissioner of Police, many of the tasks performed by special constables - as for example by those that had been employed by the Fremantle Port Authority (see paragraph 6(c) above) - were routine and required no special powers or training. If this is so it might be preferable to abolish the status of special constable altogether. Any residual powers required in any class of case could be specifically bestowed by legislation, as in the case of fisheries inspectors (see paragraph 14 above).

(d) If special constables in some categories are necessary, is adequate provision made for their selection, training and control?

Categories of special constables

Emergencies

30. The Commission is provisionally of the view that power to appoint special constables to deal with an emergency where insufficient regular constables are available should continue to exist, but that magistrates and justices should not retain primary responsibility for their appointment, no matter how justified the power may have been before the establishment of a regular police force (see 2 Radzinowicz: A History of English Criminal Law, 215-224 (1956)). The Commission is not aware of any case where magistrates or justices have ever exercised
this power in this State (see paragraph 4 above). The Commission thinks that primary responsibility for the appointment of special constables in emergencies should be with the Commissioner of Police, who should be able to delegate the power, either generally or in a particular case, to officers in charge of police districts (who are senior inspectors or above).

31. However, such factors as the large size of some police districts (the Northern District contains 219,000 square miles and the Eastern and Northern Coolgardie District contains 319,000 square miles) might make it desirable for magistrates and justices to retain power to appoint special constables in cases where there is no member of the police force available with power to appoint.

32. In any event, the Commission suggests it is desirable to ensure that special constables can be appointed not only in cases of civil disturbance, but also in cases of natural disaster. For example, it might be useful for there to be power to appoint civil defence workers as special constables to assist them in their general functions.

Police of other States

33. The justification for the appointment of members of the police force of other states as special constables is that it facilitates the pursuit of offenders across the border (see paragraph 5 (a) above). Western Australian police stationed near the border are correspondingly made special constables of adjoining jurisdictions. There would not appear to be any objection to such appointments, though, following the proposal of the New South Wales Law Reform Commission in paragraph 42 of its working paper on special constables, we suggest that the powers as special constable of this State should be exercisable only while on police duty here. It might also be desirable to give the Commissioner of Police express power to issue directions to them in their capacity as special constable.

Private security officers

34. The usual justification for appointing private security officers as special constables is that the prevention and detection of crime committed on private premises is facilitated by the presence of such persons on those premises, for example in the apprehension of shoplifters. But as against this there are the fundamental questions of possible conflict of loyalties and
abuse of power. In the case of *De Vaney v. Moore*, the magistrate held that Mr. De Vaney had demanded Mr. Moore’s name and address not for any purpose connected with the *Police Act*, but for the purposes of his employer (see Appendix I).

35. Other possibilities of abuse may occur. The Commission has been informed that it is the rule of members of the Store Protection Association (Inc.) to charge every person caught shoplifting. However, firms who are not members of this Association may not have the same strict rule. T.C.M. Gibbens and Joyce Prince found that there was no uniform practice in this regard in London (see *Shoplifting* Ch. 15 (1962)). A special constable’s duty to enforce the law could conflict with an employer’s rule not to prosecute shoplifters except in special cases.

36. It appears significant that there are few special constables in this category, and the number is declining. One reason may be that the Commissioner of Police will not appoint a private security officer a special constable unless the officer has had experience in the regular police, preferably in this State. Another reason may be that some security officers prefer to hand offenders over to the Police to deal with, rather than to prosecute them themselves (the latter is an undertaking which the Commissioner insists on as a condition of appointing a security officer a special constable). Whatever the reason, the Commission feels that there may be no real necessity for such appointments.

37. An alternative to the appointment of security officers as special constables might be to enact legislation authorising employees of business organisations, designated for that purpose by the Commissioner of Police, to detain suspected shoplifters for a limited period pending the arrival of the regular police. Such a law might create difficulty in that a designated period may be longer than is necessary in city areas and not long enough in country areas. A more flexible formula would be to authorise a person’s detention “for such time as may be reasonably necessary in order to give him into the custody of a police officer” (cf. s.237 of the *Criminal Code*). Some States of the United States have legislation which gives power along these lines to ‘merchants’ (see W.J. Markstrom 58 *Michigan Law Review* 429).

38. A drawback to the proposal outlined in the previous paragraph is that it would lead to a proliferation of persons possessing law enforcement powers greater than those of the ordinary citizen. In addition, untrained persons may behave in such a manner towards a detainee as to minimise the chance of a successful prosecution.
Officers of public and semi-public instrumentalities

39. Appointments are made under the Police Act (see paragraph 5(c) above) and under other statutes (see paragraph 6 above). The Commission thinks that it may be unnecessary to bestow on such officers the sweeping powers of a constable, and that consideration should be given instead to the enactment of legislation enumerating the specific powers required, as has been done in other similar cases (see paragraph 14 above). If this is impracticable, the Commissioner of Police should at least be given an active role in their appointment and supervision.

Participants in social activities of police

40. The reasons for appointing supervisors of youth clubs and members of the police band as special constables are given in paragraph 5(d) above, and are unconnected with any need to bestow police powers. The Commission suggests that, if it is desirable that such persons perform their duties in police uniform, the appropriate course would be to amend s.16 of the Police Act, which forbids the wearing of police uniform by persons other than members of the Police Force, to enable them to do so. An amendment to Part XVI of the Police Regulations would permit a member of the police band who is not a constable to receive an allowance.

Powers of Commissioner of Police

41. The Commission at this stage has no firm views as to whether the power to appoint special constables should be retained other than in emergencies. But if it is to be retained, the Commission considers that clarification and amendment of the existing law is required.

42. Section 35A of the Police Act gives the Commissioner of Police power to appoint special constables (see paragraph 3 above). Although the section does not expressly limit the circumstances under which the power of appointment can be exercised, it has been suggested that it may be limited to cases of emergency set out in s.34 (see the magistrate’s comments in De Vaney v. Moore Appendix I). It is apparent that s.35A was not intended to be confined in this way. It was enacted in 1915 principally to deal with war-time conditions by enabling the appointment of special constables to perform escort and other police duties and to guard water
supplies and bridges (50 Parl. Deb. 1109-1114). It was also a ratifying measure, validating appointments which the Commissioner had already made for these purposes (ibid; at p.1114). The Commission considers that the legal position is not as clear as it might be, and that if the Police Commissioner’s power to appoint special constables is to extend beyond civil disturbance or other emergency, s.35A should be redrafted accordingly.

43. The Commissioner of Police has general control over special constables appointed under the Police Act (see paragraph 11 above). The Commission suggests that to the extent that the power to appoint special constables is to be retained, this general power should be supplemented by detailed regulations covering -

(a) Selection and training procedures. These must of course be adapted to each category of special constable.

If the practice of appointing private security officers as special constables is to continue, it would seem preferable to introduce proper selection and training procedures rather than rely on the availability of former policemen (see paragraph 36 above).

(b) Adequate notification to the Commissioner of Police of the functions of each appointee, and of his ceasing to hold the position which gave rise to his appointment.

The Commission is of opinion that, if appointments under statutes other than the Police Act (see paragraph 6 above) are to continue, the Commissioner of Police should have a role in such appointments and should have the right to control the appointees. He should also train them. It does not seem desirable that persons with the powers of a constable should be entirely outside the Commissioner’s responsibility.

**QUESTIONS FOR DISCUSSION**

44. The Commission would welcome comment on any matter arising out of this paper, and in particular on the following -

(a) Should the legal power to appoint special constables be retained?
(b) If so, in what circumstances should it be able to be exercised? -

(i) in emergencies? If so, what kinds of emergency?

(ii) with regard to police of other States?

(iii) with regard to the carrying out of private security?

(iv) with regard to the discharge of their duties by officers of public or semi-public instrumentalities?

(v) with regard to any other situations? If so, what types?

(c) Who should have the power of making such appointments? -

(i) The Commissioner of Police?

(ii) Magistrates or Justices?

(iii) Statutory authorities?

(d) Should there be legal restrictions on who can be appointed a special constable and should there be legal requirements as to the training of special constables?

(e) Should the Commissioner of Police, regardless of who else is permitted to participate in the decision as to the appointment of any category of special constables, have the ultimate power of command and control over them?

(f) Should special constables have the same powers as regular constables, or should their powers be limited as to time and function?

(g) Should the existing practice of off-duty regular police engaging in special duties be permitted to continue?
(h) To what extent should provision be made for specific statutory powers to be granted to statutory officers?

(i) If the power to appoint special constables is not to be retained, what degree of control should be exercised, and by whom, over peripheral official and unofficial law enforcement bodies?
De Vaney v. Moore (Court of Petty Sessions, Beaufort Street, Perth. No. 1261 - 4/70)

1. Mr. De Vaney was a special constable employed by Charlie Carter Pty. Ltd., a company which operates a chain of supermarkets, and was acting as a parking attendant in the grounds of one of them. Mr. Moore had parked his car in those grounds, although he did not intend to shop there. On returning to his vehicle he was questioned by Mr. De Vaney who asked him for his name and address. Mr. Moore at first refused to give the information but later did so. Mr. De Vaney charged Mr. Moore with refusing to give his name and address, resisting Mr. De Vaney in the execution of his duty, escaping from legal custody, and aggravated assault.

2. In the course of his judgement the magistrate said -

“It was submitted by the defence that s.35A [of the Police Act ] does not empower the Commissioner of Police to invest employees of private organisations with the powers of police officers for the purposes of fulfilling their engagements with their employers. In developing this submission it was said that the section does not empower the Commissioner to endow the employee of a private organisation with the same powers as a police officer not merely to cause the peace to be kept and preserved and prevent all offences but to protect and promote his employer’s civil interests.

When the history of s.35A of the Police Act is examined there appears to be much to be said for this submission. Section 34 enables magistrates or justices to appoint special constables when any tumult riot or felony had taken place or was reasonably apprehended. Before s.35A was enacted it appears that the Commissioner of Police at that time without proper authority had appointed a number of special constables, for purposes connected with the first World War and perhaps for other purposes. One of the objects of the amending section was to ratify such appointments.

Section 35A which was introduced in 1915 does not expressly limit who may be appointed nor for what purpose although in the context it may be argued that such appointments should be limited to the circumstances set out in s.34. It appears that in England special constables may only be appointed in cases of emergency. It seems therefore somewhat odd if Parliament intended that in Western Australia the Commissioner should be empowered to appoint special constables merely to protect or promote an employer’s civil interests. This doubt is strengthened further by the fact that all Police officers including special constables undertake to serve Her Majesty. However, in view of the wording of s.35A. I am not prepared to find that the appointment of the present complainant is invalid, and will content myself by saying that I do not think the matter is entirely free from doubt.”

3. The magistrate did not find it necessary to decide whether Mr. De Vaney’s appointment was valid. He held that since Mr. Moore had not committed an offence in parking his car in the grounds the purpose behind Mr. De Vaney’s request for Mr. Moore’s name and address could only have been in connection with a possible civil action against Mr. Moore. Since this was not a purpose for which the power conferred by s.50 of the Police Act could be used, the magistrate dismissed all charges on that ground except that of aggravated assault. That charge was reduced to common assault and dismissed for insufficient evidence.
APPENDIX II

POLICE ACT, 1892

PART III - AS TO THE APPOINTMENT AND REGULATION OF
SPECIAL CONSTABLES

34. In all cases where it shall be made to appear to any Stipendiary Magistrate or any two or more Justices, upon the oath of any credible person, that any tumult, riot, or felony has taken place, or may be reasonably apprehended in any place in the said State, and any such Magistrate or Justices shall be of opinion that the ordinary constables or officers appointed for preserving the peace are not sufficient for the preservation thereof, and for the protection of the inhabitants, and the security of the property of such place, or where, without such oath or evidence as aforesaid, any such Magistrate or Justices shall be of opinion that the constables or officers aforesaid are not sufficient for the preservation, protection, or security as aforesaid, or for the apprehension of any offenders, it shall be lawful for any such Magistrate or Justices to appoint, by precept in writing under his or their hand or hands, so many as they may think fit of the persons (not legally exempt from serving the office of constable), residing in such place as aforesaid, to act as special constables for such time and in such manner as to the said Magistrate or Justices shall seem fit and necessary for the public peace, and for the protection of the inhabitants, and the security of property in such place; and any Justice of the Peace is hereby authorised to cause every person so appointed to subscribe the following engagement:-

I, A.B., engage and promise that I will well and truly serve Her Majesty The Queen in the office of special constable for the (City, town, or district of) without favour or affection, malice, or ill-will, and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty’s subjects, and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

Provided always, that whenever it shall be deemed necessary to appoint such special constables as aforesaid, the notice of such appointments, and of the circumstances which have rendered such appointment necessary, shall be forthwith transmitted by the Magistrate or Justices making such appointment to the Minister.

35. All persons willing to act as special constables under the provisions of this Act, shall be capable of being appointed and acting, and may be appointed and act, as such special constables, notwithstanding they may not be resident in such place as aforesaid, or in the neighbourhood thereof; and any person appointed and acting as special constable under the provisions of this section, shall have all the same powers, and be entitled to and enjoy all the same privileges and benefits, and be subject to all the same duties and obligations, as any constable duly appointed under the other provisions of this Act.

35A. (1) The Commissioner of Police may appoint special constables.
(2) Any person appointed a special constable shall have all the same powers and be entitled to and enjoy all the same privileges and be subject to the same duties and obligations as any constable duly appointed under this Act.

(3) Any special constable may receive such payment for his services, and may be provided with such equipment and necessaries as may be allowed and provided to a special constable appointed under the provisions of this Act.

(4) All appointments of special constables made by the Commissioner of Police before the commencement of the \textit{Police Act Amendment Act, 1915}, are hereby ratified and confirmed, and this section shall apply to such appointments as if it had been enacted by this Act.

36. If any person residing within any place in the said State, being appointed a special constable, shall refuse to subscribe the engagement aforesaid when thereunto required by the Magistrate or Justices so appointing him, he shall, on conviction thereof, before any two or more Justices, forfeit and pay any sum of money not exceeding forty dollars and if any person being appointed a special constable shall neglect or refuse to appear at the time and place for which he shall be summoned for the purpose of subscribing such engagement or having been appointed as special constable and called upon to serve, shall neglect or refuse to serve as such special constable or to obey such lawful orders and directions as may be given to him for the performance of the duties of his office every person so offending shall on conviction thereof before any two or more Justices, forfeit and pay for any such neglect or refusal any sum of money not exceeding forty dollars, unless such person shall prove, to the satisfaction of the said Justices, that he was prevented by sickness, or other such unavoidable cause as shall in the judgement of the said Justices be a sufficient cause.

37. The Commissioner of Police may suspend or determine the services of all or any of the said special constables, as to the Commissioner of Police shall seem meet, and notice of such suspension or determination shall be forthwith transmitted to the Minister, and to the Magistrate or Justice appointing them.

38. The Minister may, upon the recommendation of the Commissioner of Police, order from time to time such reasonable allowances for their trouble, loss of time, and expenses, to be paid to such special constables who shall have served or be then serving as he may deem proper; and he may further order the payment of such expenses as may have been incurred in providing arms, equipment, and necessaries for such special constables.
APPENDIX III

“SPECIAL DUTIES”

1. In Western Australia the practice of off-duty policemen performing special police duties for reward is well established. It has continued for a long time and with the consent of the Commissioner of Police. By this practice, some off-duty members of the police force offer themselves for employment by private persons to perform tasks in the nature of police duties required by that person. For this purpose a roster of available policemen is kept by a member of the police force. That member allocates the jobs to available policemen and in return is paid, as a commission, a percentage of the money paid to each policeman who performs those off-duty tasks.

2. The police force in this State, like those in England, is a creature of statute. It is regulated by the Police Act 1892. That Act establishes an organised force of policemen to maintain the peace. However, its members, although having numerous statutory duties, derive their status from the common law and not the statute establishing the force.

3. The Police Act expressly recognises that a policeman’s powers are based on the common law. Section 7 provides (inter alia) that the Commissioner of Police may appoint constables and non-commissioned officers “who shall have all such powers and privileges, and be liable to all such duties and obligations as any constable duly appointed now or hereafter may have, or be liable to, either by the common law or by virtue of any statute law”. Furthermore, the High Court in Ennever v. R. (1906) 3 C.L.R. 969 confirmed that the Tasmanian Police Regulation Act 1898, which for present purposes is identical with the Western Australian Act, in essence merely dealt with the appointment and disciplining of policemen, “leaving the nature of their powers and duties… to be governed by the common law as modified by the Statutes (if any) dealing with that subject” (p.979). That decision was followed by the Privy Council in Attorney General for N.S.W. v. Perpetual Trustee Company Ltd. (1955) 92 C.L.R. 113, 120.

4. There is no statutory provision in this State expressly prohibiting the practice of private employment of off-duty constables for police type duties. It is therefore necessary to consider whether the practice is sanctioned by the common law, which so far as it regulated the powers and duties of peace officers for the preservation of peace and the apprehension of offenders was introduced into Western Australia on settlement of the colony (Ennever v. R (supra) at p.977). There is no Australian or English decision touching directly on the matter.

5. As early as 1840 it was decided that a policeman could lawfully claim a reward offered for the detection of criminals even though it was done in the course of his duties (see England v. Davidson (1840) 11 Ad. & El. 856; Smith v. Moore (1845) 1 C.B. 438; Neville v. Kelly (1862) 12 C.B. (N.S.) 740; Bent v. Wakefield and Barnsley Union Bank (1878) 4 C.P.D. 1; Gibbons v. Proctor (1891) 64 L.T. 594; see also Thatcher v. England (1846) 3 C.B. 250).

6. The House of Lords in the case of Glasbrook Brothers Ltd. v. Glamorgan County Council [1925] A.C. 270 considered the matter of policemen working to perform police duties under an arrangement entered into by the police at the request of an individual. In that case the appellant, a collier, sought additional police protection from the respondent to overcome the problems associated with picketing by striking employees. The appellant requested that police be billeted on the site for the purpose of protecting it. The respondent refused on the
ground that it was able to protect the collieries adequately without installing police. At the insistence of the appellant the respondent brought in extra police for the “special duty” after the appellant had agreed to pay the respondent police authority for the extra protection. At the end of the strike the appellant refused to pay the bill sent to it by the respondent on the grounds that the payment was without consideration and the agreement to pay contrary to public policy. The House of Lords by a majority held that the agreement did not fail for want of consideration nor was it contrary to public policy. The House of Lords in an obiter dictum appeared to reject the suggestion that in taking payment for police services policemen were exacting money through their official office to which they were not entitled (pages 278, 285, & 287).

Referring to the provision in the English Police Act empowering the Chief Constable and, on the application of any person, the justices to appoint additional constables for the purposes of carrying out duties usually performed by regular police officers (cf. W.A. Police Act, ss.34, 35A, 38) the Lord Chancellor stated obiter:

“It is true that the provisions of this section are confined to the appointment of ‘additional’ constables; but it would seem somewhat absurd to require that, if in any case where constables are required for special duty there are members of the existing force who can be spared for the purpose, the service of those constables shall not be utilized but additional constables shall be appointed.” (p.279).

If it is lawful for persons appointed as special constables to receive remuneration from their employers for their work, it would seem also to be lawful for regular constables who are not required for normal duties to receive remuneration from the same source for doing what a special constable might otherwise have to be employed to do.

7. Although the decisions referred to above suggest that the practice is not unlawful at common law, they do not involve directly the matter now under review. It is therefore necessary to consider the historical developments of the police force so far as it relates to this matter.

8. The principal peace officer in England was the constable. At first his was an annual and unpaid office, but by the late 18th Century a number of police stations, each independent of the other and under the supervision of a magistrate, were established with paid constables. The salary then paid to constables was considered to be very low. However, it was only a small part of the inducement which a reasonably efficient policeman could expect to get when joining the office. It has been said that “if a police officer were indolent or unresourceful or perhaps unlucky, he might return home from duty having earned no more than his day’s wages.” (2 Radzinowicz A History of English Criminal Law p.255). Radzinowicz reports that police officers commonly demanding payments from owners for returning lost dogs or bringing back stray cattle, from local authorities for informing them of fires, and for calling to wake people early in the morning (p.255).

9. Police officers, after becoming established, actively sought special employment by those willing to pay for extra protection. They were employed by opera companies and by private individuals at public meetings, balls and similar occasions. One of the most sought after employers was the Bank of England. Senior police officers even sub-hired junior officers to perform the work they obtained.
10. There were three courses open to anyone who wanted to hire a police officer. The hirer could apply through the local authority, which acted as an intermediary. This course was usually adopted where the hiring was sought to detect some offence or recover property. If the local authority considered the offence serious enough, the local authority, rather than the individual, paid the police officer. Even so it was not uncommon for these officers also to receive gratuities from the hirer for a job well done. Secondly the hirer could apply to one of the police offices. In this case the magistrate selected the officer and usually fixed the terms of his employment but “there was nothing to prevent this private person from showing his gratitude for particularly valuable services by giving additional gratuities.” (2 Radzinowicz A History of English Criminal Law p.262). The third method was to by-pass all officialdom and “enter into a purely private agreement with a police officer” (Radzinowicz, (supra) p.262). He was then paid by the person who hired him and according to that person’s private disposition.

11. It has been said of the police officer “well into the nineteenth century, he was much more a member of a liberal profession, whose fortune and standing in life depended on the goodwill of his private clients” (2 Radzinowicz A History of English Criminal Law p.255). One magistrate is reported to have said in 1821 that while thieves were prowling about the metropolis “officers in abundance are loitering about police offices, waiting for hire. Protection is reserved for individuals who will pay individually for it.” (2 Radzinowicz, (supra) p.262).

12. The Home Office apparently had some doubts concerning the practice of police officers taking portions of fines and participating in forfeiture as reward for their services, and in 1811 sought the advice of the English Law Officers. The Law Officers advised that even though police officers had no strict right to any share of the forfeiture it was considered just that they should receive it. The Home Office apparently accepted the advice (Radzinowicz, (supra) p.248).

13. In 1831 the Home Office issued a Police Order requiring all persons who wanted to hire a police constable to apply to the Police Commissioner. A further Police Order in June 1837 said that only “sergeants and constables were to be employed at public meetings, balls, dinner parties and similar occasions. The employment of superior officers was forbidden except in special circumstances.” (Radzinowicz, (supra) p.259).

14. It would appear therefore that the practice of policemen, whether off-duty or not, being employed by private persons had gone on unchallenged for so long as to be part of the common law of England. Until the Police Order of 1831 it appears to have been positively encouraged by the authorities as a means of ensuring adequate remuneration for policemen; and indeed there appears to have been no attempt to prohibit the practice until 1920.

15. In 1920 the English police authorities took steps to prohibit all policemen earning extra money outside their normal salary (Police Regulations 1920, Reg.8; cf. County Police Act 1839 (U.K.) (repealed), s.10; and Police Act 1890 (U.K.) (repealed), s.23(3)). No member of any English police force is now permitted without the consent of the Chief Officer of Police to carry on any business or hold any other office of employment for hire or gain (Police Regulations 1971, Reg.11). Further, any payments made for the private hire of police constables must be paid to the police authority (Police Act 1964 (U.K.), s.15; Police Regulations 1971, Reg. 41).

16. No similar provisions exist in this State, although s.9 of the W.A. Police Act gives the Commissioner power to make rules for the “control, management and discipline” of the police.
force and for the purpose of “preventing neglect or abuse” of the force. The only enactment directly touching on the practice under review is Police Standing Order 601. That Order provides (inter alia) that any member of the police force who “directly or indirectly” receives “any reward, gift or gratuity” without the Commissioner’s sanction commits an offence against the Police Act. The Commissioner has sanctioned the practice under review and has fixed the minimum rate police officers are to be paid when performing such duties and has prohibited them from carrying out duties other than police duties on such occasions (Police Routine Order 1.8.67). In this respect the Routine Order to some extent follows the order made by the English Home Office in July 1831.

17. It is interesting to note that so far as payment for hiring the Police Band is concerned the Commissioner requires the “Hon. Treasurer of the Band to pay it into the Police Band Account for operational expenses” (Police Standing Order 1604 (3)). Similarly, fees paid for “escort or guarding money or other property” must be paid “into Headquarters” (Police Standing Order 1716 (1)).

18. Section 10 of the Police Act provides that no person shall be eligible for appointment in the police force until he subscribes to an undertaking to (inter alia) “see and cause Her Majesty’s peace to be kept and preserved”. By Section 11 every person on subscribing in such manner is “thereupon bound to serve Her Majesty as a member of the Police Force at the current rate of pay for such member”. The New South Wales equivalent of both those sections were considered at some length by the Privy Council in Attorney General for New South Wales v. Perpetual Trustee Company Ltd. (1955) 92 C.L.R. 113 which decided that the “fundamental character of a constable’s office has not altered with the organisation of the police force and the imposition of various statutory duties”. Merely because s.11 binds a policeman “to serve Her Majesty as a member of the Police Force” he is not thereby prohibited from serving someone else. In any event a policeman performing duties connected with keeping the peace for a private person is not serving these persons “as a member of the police force” but rather as an individual. His authority is original, not delegated, and is exercised at his own discretion (see Attorney General for New South Wales v. Perpetual Trustee Company Ltd. (supra)).

19. There appears to be no other legislation in this State touching on the practice now under review. Members of the police force are expressly excluded from the provisions of the Public Service Act which prohibits public servants performing duties for reward outside of the service (see Public Service Act s.6). There is nothing in the Police Standing Orders other than those referred to which could be construed as prohibiting policemen from working outside normal duty hours.

20. It seems clear that the powers, rights and duties of a policeman are derived from the common law. Except as is otherwise provided in the Police Act, the organisation of policemen into a police force has not affected those powers rights and duties nor the nature of a policeman’s office. In the absence of any legislative enactment prohibiting the practice of off-duty policemen entering into private contracts of employment to perform duties connected with keeping the peace, it would appear that such practice is lawful.
APPENDIX III

POLICE, WESTERN AUSTRALIA

ENGAGEMENT OF SPECIAL CONSTABLES

I, engage
and promise that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Special Constable for the State of Western Australia without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty’s subjects; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

……………………………………………

Place  …………………….

Date  …………………19

Before me  …………………………………………….
Commissioner of Police.

Service determined.

……………………………………………
Commissioner of Police.

Date  …………………19