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REPORT 19 (1974) - SPECIAL CONSTABLES

Preface

The Law Reform Commission is constituted by the Law Reform Commission Act, 1967. The Commissioners are-

Chairman: The Honourable Mr Justice CLD Meares

Deputy Chairman: Mr RD Conacher

Mr C R Allen.

Mr D Gressier.

His Honour Judge R F Loveday, QC

Professor K C T Sutton

The officers of the Commission are in the Goodsell Building, 8-12 Chifley Square, Sydney. The Secretary of the Commission is Mr RJ Watt. Letters should be addressed to him.

This is the nineteenth report of the Commission on a reference from the Attorney-General. Its short citation is LRC 19.

REPORT 19 (1974) - SPECIAL CONSTABLES

To the Honourable KM McCaw, QC, MLA,
Attorney-General for New South Wales.

INTRODUCTION

1. This Commission has from you a reference in the following terms-

"To review the law relating to the appointment, control and discipline of special constables ;and incidental matters."

2. We published a working paper. We received valuable comments and information from many bodies and persons including Departments of Government, the Commissioner of Police, the Public Transport Commission of New South Wales, the Institute of Mercantile Agents Ltd, and the Council for Civil Liberties. The Public Service Board, the Police Association of New South Wales and the Public Service Association of New South Wales each considered the working paper and raised no objection to the proposals foreshadowed in it. Save as noted in this report, our recommendations remain, in substance, those foreshadowed in the working paper.

3. There are approximately 3,500 special constables for New South Wales. Appendix A is a dissection of persons holding the office as at 31st December, 1973. The number has increased year by year as the availability and advantages of the office have become better known.

4. The appointment, control and discipline of special constables is governed by part IV of the Police Offences Act, 1901-1973 (referred to hereafter as the Police Offences Act). Appendix B sets out this legislation. It is anachronistic and confused.

5. Some reference to history is necessary to an appreciation of how it has come about that the legislation takes its present form.

ORIGIN OF THE OFFICE OF SPECIAL CONSTABLE

6. The office of the special constable was created in England in the seventeenth century. "Their enrolment had always been one of the most peculiarly English ways of dealing with an

emergency. A statute passed in the reign of Charles II (13 and 14 Car.2, c.12) [The Poor Relief Act 1662] is, the foundation of the subsequent legislation for the appointment of special constables, that is of constables appointed not, as in the ordinary course ... but for a special emergency. As a general rule they acted under the immediate direction of the magistrates, either as an independent body or in conjunction with other branches of the civil force. They kept reappearing on the scene with remarkable regularity, for their enlistment became a matter of routine whenever the peace was seriously threatened." (Radzinowicz, *A History of English Criminal Law*, 1956, vol.2, p.215.) They performed useful service, particularly before the development in England and in Wales of regular police forces which were adequately organized and sufficient in numbers. In the troubled years of 1819-1820, for example, special constables were frequently called out to disperse mobs. In 1820 legislation, sometimes called the Appointment of Special Constables Act 1820, was enacted (1 Geo. 4, c.37) "under which the magistrates were given power to appoint special constables, not only in case of actual tumult riot or felony, but also as a preventive measure whenever they received information that any such emergency might be impending . . . Only when the new Metropolitan Police Force had become firmly established did this gallant branch of incidental police lose much of its former importance. But it never went entirely out of existence. It was used on many occasions in the provinces, where the new machinery for keeping the peace was built by a slower process. Fresh legislation was even passed to give new vigour to this ancient area of the civil power (Special Constables Act 1831; 1 and 2 Will. 4, c. 41 as amended by 5 and 6 Will. 4, c. 43). Little recourse, however, was made to these provisions, ("as bodies of undisciplined men are apt to do more harm than good in cases of riot". But just when it appeared that this useful force might be fading out of existence, there arose the occasion for their greatest mobilization. On 10th April, 1848, a vast army of special constables were sworn in to, protect London and elsewhere from the violence of Chartist demonstrators . . ." (*id.*, at pp. 223-224).

THE OFFICE OF SPECIAL CONSTABLE IN NEW SOUTH WALES

7. In 1855, legislation, embodying the substance of the English legislation as to special constables, was enacted in New South Wales (Police Act, 1855; 19 Vic. No. 24, ss. 12-18). By section 12:

In all cases where it shall appear to any Police Magistrate or any two Justices that any tumult riot or felony has taken place or may be reasonably apprehended in any city town or place and he or they shall be of opinion that the ordinary constables ... are not sufficient for the preservation of the peace ... it shall be lawful for any Police Magistrate or any two Justices to nominate an appoint. . . so many as he or they shall think fit of the householders or other persons residing in or near to such city, town or place to act as special constables for such time and in such manner as to the said Police Magistrate or Justices shall seem fit . . .

The power conferred by this section was power to conscript. It was an offence for any person who was appointed to refuse to take the oath of office or, having taken that oath, to refuse to serve when called out for service (s. 15). There was no provision enabling a special constable to resign his office. When called out for service he remained on duty until the Magistrate or the Justices "suspended" or "determined" his services (s. 16). By section 14:

Every constable appointed under this Act shall have exercise and enjoy all such powers authorities advantages and immunities and be liable to all such duties and responsibilities as any constable duly appointed . . .

But a special constable was bound, when called out for service, "to obey such lawful orders and directions as may be given to him by the Police Magistrate or any Justice of the Peace or any chief constable or Inspector of Police . . . under whose orders he may be placed" (s. 15).

8. The relevant sections of the Police Act, 1855, appear as appendix C. To avoid prolixity we hereafter use the word "Magistrate" as extending to any two justices.

9. It is noteworthy that the Act made little mention of the regular police force other than to recognize that it may be inadequate. This is not surprising. The regular police force of the Colony was then at a very early stage of its development (see Police Act, 1850; 14 Vic. No. 38; Police Regulation Act, 1852; 16 Vic. No. 33). It was not until 1853 that regular constables were empowered to act ;as constables throughout the whole of the Colony (Police Regulation (Amendment) Act, 1853; 17 Vic. No. 14). It may be accepted that it was considered appropriate to conditions in the Colony in 1855 that enlistment of special constables be in the discretion of the local magistrates, acting on their own initiative; that the occasion of their enlistment be a situation of emergency in the local district with which the regular police force could not cope; that the purpose of appointment be for preservation of the peace in the local district; that the power of control over them be vested in the: magistrates (although they could place them under the orders of a police officer) ; and that the magistrates alone be able to suspend or determine their services. In 1855, magistrates carried much of the burden of administration of the Colony-particularly in rural areas. They inherited the role of the Justices of the peace in England of being "the most important and the most ubiquitous organ of local government" (Holdsworth, *A History of English Law*, 1938, Vol. 10, P. 128). Indeed, the role of the magistrates included, in rural areas, the direction, not only of special constables, but of the regular police in the district. "Despite the enactment of the Police Act, 1856 (14 Vic, No. 38) which was intended to co-ordinate activities throughout the Colony under one central authority, it was not until the, Police [Regulation] Act of 1862 (25 Vic., No. 16) that the police in country districts ceased to be under the control of the Benches of Magistrates." (McLaughlin, *The Magistracy in New South Wales 1788-1850*, Master of Laws thesis, University of Sydney, 1973, at p. 443.)

10. Special constables were, on occasions, appointed and called out under the legislation of 1855. This is illustrated by a report in the *Sydney Morning Herald* of 28th September, 1890, that a riotous assembly "estimated to number quite 10,000" were cleared from the [Circular] Quay area, after several police had been injured by stone-throwing, by 36 mounted troopers, about 60 of the regular police and nearly 200 special constables. But it is not within the memory of the present Commissioner of Police that special constables have been appointed or called out to deal with any actual or apprehended "tumult, riot or felony".

11. The present legislation, part IV of the Police Offences Act, is substantially the legislation of 1855, amended from time to time to enlarge the power of magistrates to appoint special constables. The legislation of 1855 was in substance re-enacted as part IV of the Police Offences Act, 1901. This Act was a consolidation by Commissioner Heydon of several Acts dealing with offences punishable by magistrates. The probable explanation of the inclusion in

the consolidating Act of provisions as to the appointment and control of special constables is that the Police Act, 1855, in others of its sections, did deal with offences punishable by magistrates. Nevertheless the inclusion in the Police Offences Act, 1901, of provisions as to the appointment and control of special constables has perpetuated a separation of the statutory provisions as to them from those dealing with the regular police force (Police Regulation Act, 1899).

12. In 1908 a new provision, sub-section (1A) of section 101, was inserted in the Police Offences Act, 1901, by section 15 of the Police Offences (Amendment) Act, 1908. This new provision read:

(1A) A police magistrate or any two justices may, at the request of his employer, or of the council of a municipality or shire, and subject to the approval of the Inspector-General of Police, in like manner nominate and appoint any person employed as a caretaker, night watchman, or in any similar capacity, as a special constable for such time as such magistrate or justices may think fit.

The provisions of this Part relating to special constables who have been called out shall apply to all special constables appointed under this subsection from the time when such constables have taken the oath as in the next subsection provided.

The Inspector-General of Police may, whenever he thinks fit, suspend or determine the services of any such special constable. Notice of such suspension or determination of service shall be forthwith sent by the Inspector-General of Police to, the Colonial Secretary.

For ease of identification we hereafter refer to special constables appointed under this provision as "limited purposes constables".

13. The purpose of the appointment of limited purposes constables is different from that of appointment of special constables in case of actual or apprehended "tumult, riot or felony". Limited purposes constables are not appointed as an emergency measure to deal with a particular crisis. A person is appointed to, the office of limited purposes constable where the nature of his general employment is such that there is a co-incidence between the public interest in the maintenance of order, the protection of property, or the enforcement of law (such as local government ordinances) and the special interest of his employer that he be invested with the powers, authorities and privileges of a constable. These include power to arrest on suspicion that any offence under any Act (whether punishable on indictment or on summary conviction) has been committed (Crimes Act, 1901, s. 352: see generally Watson and Purnell, *Criminal Law in New South Wales*, 1971, vol. 1, paras 1041-1045). Thus the legislation enables the appointment of any person "employed as a caretaker, night watchman, or in any similar capacity" upon request therefor "of his employer, or of the council of a municipality or shire".

14. Provision for the appointment of limited purposes constables was not without precedent. The appointment of employees as special constables, where the appointment not only would enable the employees more effectively to serve the special interests of the employer but also would be in the public interest in the preservation of order, the protection of property, or the upholding or enforcement of the law, was a well-established practice in England before the development, in the nineteenth century, of regular police forces on modern lines. It has continued in England despite the existence of such regular police forces. "Under a number of enactments passed since the beginning of the nineteenth century constables may be appointed by justices of the peace on the application of various bodies for the purpose of providing special protection for the interests of the body in question, whose employees the constables normally are. These constables are sometimes termed 'special constables' and sometimes 'constables' *simpliciter*, but this is no more than a distinction of terminology." (Halsbury's *Laws of England*, 3rd ed. 1959, vol. 30, p. 49). Provision was made, for example, for the appointment of special constables on the application of municipal corporations, railway companies, proprietors of canals, and of harbour, dock or pier authorities. (See generally, Halsbury's *Laws of England*, 3rd ed. 1959, vol. 30, pp. 49-53; Radzinowicz, *A History of English Criminal Law*, 1956, vol. 2, pp. 202-207; 394-398.)

15. Section 101 (1A), whilst investing in magistrates the formal power of appointment, and of control and dismissal of limited purposes constables does recognize, to some extent, that in reality it is the regular police force, rather than magistrates, which in modern times is charged generally with the apprehension of criminals and the prevention and detection of acts which are subject to penal sanction. A magistrate cannot exercise the power of appointment of limited purposes constables without the approval of the Commissioner of Police (as the Inspector-General of Police has been renamed Police Regulation (Amendment) Act 5 1935, s. 7 (1)). The Commissioner, moreover, is empowered to "suspend or determine the services of any such special constable". But he is given no power himself to appoint or to control them. Although he may suspend or determine their "services", he has no other statutory power to discipline them: and it is, by no means clear that suspension of their "services", whatever this may mean, is removal from office (cf. Police Offences Act, ss. 102 and 106).

16. In 1941 the power of magistrates to appoint special constables was further enlarged. Section 101 (1A), the provision empowering the appointment of limited purposes constables, was amended by inserting in it, immediately before the last two paragraphs, the following words:

A Police Magistrate or any two Justices may,

(a) at the request of the Commissioner of Police nominate and appoint any person who, is a member of the police force of the Australian Capital Territory or of any State of the Commonwealth of Australia as a special constable for the State of New South Wales for such time as such Magistrate or Justices may think fit;

(b) at the request of the Commissioner of Police and subject to the approval of the Colonial Secretary nominate and appoint any person as a special constable for the State of New South Wales for such time as such Magistrate or Justices may think fit.

The place in section 101 (1A) where these words were inserted results in the relevant powers of the magistrates and of the Commissioner as to such special constables being the same as they are in respect of limited purposes constables (see para. 15).

17. The purpose of the appointment of special constables under paragraphs (a) or (b) of section 101 (1A) differs from the purpose of the appointment of special constables in case of actual or apprehended "tumult, riot or felony" and it differs also from that of the appointment of limited purposes constables.

18. The purpose of paragraph (a) is clear. It is not an uncommon occurrence that members of the other police forces referred to assist the police force of New South Wales-just as it is not uncommon for members of the police force of New South Wales to assist those other police forces. There are what may be termed "border" police that is, members of the police of another State or of the Australian Capital Territory stationed near the border of New South Wales. It is a long standing practice to appoint such persons special constables for New South Wales. This enables them to assist our police force, within New South Wales, as need arises. Likewise our "border" police assist, as need arises, those other police forces; and for this purpose they are appointed special constables for the appropriate State or territory under the legislation of that place. We are informed by the Commissioner that there is complete co-operation between the various police forces in this regard. The co-operation extends beyond the use of "border" police. It extends, for example, to assistance given by members of the consorting squads of the various police forces in on the spot identification of interstate professional criminals. Special sporting meetings and other activities attracting large numbers of inter-State, visitors are attractive to criminals seeking opportunities for gain. Apart from such interchange duty for the, Purposes of securing the, special knowledge, of visiting members of a police force, it is common, practice to have members of one police force on interchange duty with another police force for the purpose of broadening the training and experience of those members. Nationwide prevention and detection of the clearly requires collaboration between the police forces and where a member of the police force of the Australian Capital Territory or of another State is in New South Wales to collaborate with the New South Wales force it often is desirable that he have the powers and privileges of a member of the police force for this State. For this purpose, he is, when it is appropriate, appointed a special constable pursuant to paragraph (a) of section 101 (1A).

19. The purpose of paragraph (b) of section 101 (1A) is not self-evident. Scant reference is made to it in the debates in Parliament upon the relevant Bill. In terms, an unlimited power is conferred upon a magistrate or any two justices to appoint any person, whosoever, a special constable for New South Wales at the request of the Commissioner and subject to the approval of the Chief Secretary (as the Colonial Secretary was re-styled in 1959-Ministers of the Crown Act, 1959). The need for more extensive powers of appointment than those conferred by the Police Offences Act, apart from paragraph (b) of section 101 (1A), is demonstrated, however, by the circumstances in which the power of appointment conferred by that provision have been invoked. These may be considered under two headings international police co-operation, and special constables in regular service in the Police Department.

20. It is clearly desirable that there be international collaboration in the prevention and detection of crime and the apprehension of criminals. In some circumstances it is desirable that a member of a police force of another country, for example of New Zealand, who is in New South Wales in the course of such collaboration have conferred upon him, for this

purpose, the powers of a member of the police force of this State. Paragraph (b) of section 101 (1A) enables this to be done.

21. By far the most common occasion, however, of the exercise of the power conferred by paragraph (b,) of section 101 (1A) is the appointment of special constables to serve in the Police Department. Until the Police Regulation Act, 1899 (as amended) was amended by the Police Regulation (Women Police) Amendment Act, 1964, it was the practice to appoint to the office of special constable women engaged in work of the police force. This practice was discontinued in consequence of the amending Act empowering the appointment of women to membership of the police force. But persons are still appointed to the office of special constable to serve in the Police Department. They act as auxiliaries to the police force. Persons appointed are, in many cases, unable to meet the requirements, as to age or as to physical standards, for appointment as members of the police force. But they are able to perform selected duties which otherwise occupy the time of members of the police force. Parking police, readily distinguishable by their brown uniforms, are the most numerous of these special constables. The strength of the parking police is approximately 203. There are, in addition, about 42 other special constables in the service of the Police Department. These act as security attendants or inquiry officers at such places as Police Headquarters, Parliament House, and Government House. They wear the same blue uniform as an ordinary constable of the police force.

22. Special constables serving in the Police Department are not members of the police force within the meaning of the Police Regulation Act, 1899, as amended (hereafter referred to as the Police Regulation Act). The Police Rules for the government and discipline of members of the police force, made under the Police Regulation Act, do not apply to them. They are not entitled to superannuation and other benefits given specially to members of the police force (Police Regulation Act: Police Regulation (Superannuation) Act, 1906, as amended). But they are valuable auxiliaries to the police force.

DEFICIENCIES IN THE PRESENT LEGISLATION

23. The purpose, so far as relevant, of the Police Act, 1855, was to empower magistrates to deal with local outbreaks of lawlessness by conscripting citizens to serve as special constables (para. 9). In those times social conditions were rough, the regular police force was inadequate, and it was an accepted role of the magistracy to be an arm of local government, bearing responsibility for the maintenance of public order in the district (para. 9). By the end of the nineteenth century, however, the provisions made by that Act no longer were appropriate to the state of society, to the capacity of the police force, or to the role of the magistracy. Yet the present legislation (Police Offences Act, part IV) is comprised, in the main, of the provisions made originally by the Police Act, 1855. Upon those provisions have been grafted, by a series of amendments, commencing in 1908, provisions for the appointment, for purposes remote from the conditions of 1855 of limited purposes constables and the other new classes of special constables (paras 12-21). In the result the present legislation is an anachronistic and confused patchwork.

24. Part IV of the Police Offences Act is unsatisfactory, also, in that its language is not reasonably contemporary in expression. Consider, for example, section 103, which states the basic formula of the office of a special constable. It provides that "Every special constable

appointed under this Act shall have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities as any constable duly appointed now has or hereafter may have by virtue of the common law or of any Act or Imperial Act for the time being in force". In contemporary language the primary meaning of the word "constable" is a person who is a constable of police and, as such, is a member of the police force. But in section 103 of the Police Offences Act, the word "constable" in the phrase "as any constable duly appointed" has nothing to do with membership of the police force. It refers to a person holding the ancient office of constable—an office known to the law long before the establishment of police forces (*Lewis v. Cattle* [1938] 2 KB 454). Constables are "officers to whom the law commits the duty of maintaining the peace, and bringing to justice those by whom it is infringed" (Earl Jowitt, *The Dictionary of English Law*, 1959, at p. 462). Every member of the police force, be his rank that of a constable or any other non-commissioned or commissioned rank, even that of the Commissioner himself, holds this office of constable (*Attorney General for New South Wales v. Perpetual Trustee Co. (Ltd)* [1955] AC 457 at 480). But the converse is not the case. It does not follow that every person who holds the office of constable is a "member of the police force" where the expression "member of the police force" means, as is its usual meaning in legislation, a member of the police force constituted and regulated by the Police Regulation Act. Modern legislation reflects, increasingly, the contemporary trend of referring to members of the police force instead of to the "constables" in the sense of the holders of the ancient office. Thus, the practice has become for legislation, in the context of power or authority, to refer to a "member of the police force" rather than, as used to be, the case, to a "constable". This practice has the merit that it avoids confusion. But in the process, by accident, it would seem, rather than by design, the powers of special constables have become attenuated or rendered imprecise.

RECOMMENDATIONS: GENERAL

25. We recommend that part IV of the Police Offences Act, be repealed and that comprehensive new legislation, unshackled by the form or language of the old legislation, be enacted. We consider that the new legislation should be in harmony with the Police Regulation Act. It may be convenient that it take the form of amendments to that Act.

26. We recommend that magistrates should be divested of the powers which they now have under part IV of the Police Offences Act, and that appropriate powers to appoint, control, discipline, suspend and dismiss special constables be, conferred upon the Commissioner of Police. The role of the magistracy has changed. It is the police force, not the magistracy, which bears the responsibility of maintaining public order, preventing crime, and apprehending offenders. No longer do magistrates conscript citizens to serve as special constables in times of local emergency. The powers of magistrates to, control, discipline, suspend and dismiss special constables have long since fallen into disuse.

27. By the Police Regulation Act, the Commissioner shall, subject to, the direction of the Minister, be charged with the superintendence of the police force of New South Wales" (s. 4). We recommend that he be charged, subject to the direction of the Minister, also with the superintendence of special constables for this State.

28. By section 6 of the Police Regulation Act the Commissioner "may, subject to disallowance by the Governor, appoint so many sergeants and constables of police of different grades :as he deems necessary . . ." We recommend that he be empowered to appoint persons to the office of special constable. There has been a similar development in England where the traditional role of the justices in the appointment of special constables has, to a large extent, been superseded. By section 16 of the Police Act 1964 (UK) the chief officer of police of the police force maintained for any police area may appoint special constables for that area. We do not consider that magistrates should retain any role in the appointment of special constables. There should be only one appointing authority.

29. We do not consider, however, that the Commissioner should be empowered to appoint a person to the office of special constable for any reason which to the Commissioner seems sufficient. Questions of principle, worthy of Parliament's consideration, are involved. We consider that the legislation should indicate the purposes for which a person can be appointed a special constable. A convenient way of doing this is for the legislation to state a limited number of categories of special constables to which appointment can be made, these categories being formulated by reference to the purpose of appointment. Formulation of such categories also facilitates appropriate provisions being made in respect of matters other than appointment-for example, the extent of the powers which the appointee is to have.

30. We recommend that the legislation provide for four categories of special constables. These we go on to describe and consider. We do so by reference to the following titles-

- (a) regular auxiliary constables;
- (b) auxiliary constables on call;
- (c) external force constables; and
- (d) limited purposes constables.

REGULAR AUXILIARY CONSTABLES

31. This category comprises special constables who are employed, on a full-time basis, in the Police Department. "Blue uniform" special constables and parking police (para. 21) come within the category. The expression "regular" is appropriate to differentiate between special constables in this category and those who serve only when called upon to do so.

32. What should be the duties of regular auxiliary constables? Section 103 of the Police Offences Act imposes upon special constables "all such duties and responsibilities as any constable duly appointed now has or hereafter may have . . ." These extend, as appears from the present form of the oath of office of a special constable, to causing "the peace to be kept and preserved" and preventing "all offences against "all persons and properties of Her Majesty's subjects" (Police Offences Act, s. 101 (2)). Section 103 states a convenient, and traditional, formula. But for many regular auxiliary constables the duties are too, widely expressed by the formula. Parking police, for example, many of whom are physically

handicapped, should not be required to, break up brawls or to arrest armed bank robbers. On the other hand, the formula is not as comprehensive as, at first sight, it appears. As we have already noted, the word "constable", where used in the formula, is not a reference to a constable of police or other member of the police force (para. 24).

33. We recommend that:

(a) the Governor be empowered to, establish, by rule, such different classes of regular auxiliary constables as are, for the time being, appropriate to the functions which it is intended that such special constables perform;

(b) the Commissioner be empowered to, assign any regular auxiliary constable to any such class;

(c) the Governor be empowered to, make rules as to the duties of regular auxiliary constables or of any such class of them;

(d) subject to any rules as to duties made by the Governor, the duties of a regular auxiliary constable be "all the duties which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force".

We proceed to comment upon these recommendations.

34. We consider it wrong that a person appointed a regular auxiliary constable for the purpose of performing selected duties, have, in consequence of any general statutory formula or for any other reason, other duties even though it may not be the expectation of the Commissioner that he will perform those other duties. He should have only the duties which he is paid to perform and for which he is physically suitable and adequately trained. Our recommendations (para. 33) are intended to provide a convenient means of imposing upon any regular auxiliary constable only such duties as are appropriate. Rules made as to his duties may state directly what the duties are and provide that he has no other duty. On the other hand, it may not be practicable, in all cases, for the, duties of a regular auxiliary constable (or of some class of regular auxiliary constables) to, be stated exhaustively. It is for this reason that we recommend that subject to any rule as to his duties, a regular auxiliary constable have all the duties of a constable of police. This recommendation, if adopted, would enable duties to be defined, indirectly, by prescribing exclusions from the duties imposed by the general formula.

35. The provisions which we recommend be made in respect of the duties of regular auxiliary constables are similar to, provisions now contained in the Police Regulation Act in respect of female members of the police force. Section 12 of that Act, pursuant to, which the Police Rules are made, provides (*inter alia*):

Different rules may be made applying to different members of the police force, according to whether they are male members or female members.

Any such rule may specify the duties to, be performed by female members of the police force or by different classes of female members, of the police force, and may provide that any such member shall not be required or obliged to perform any specified duty, any other law to the contrary notwithstanding.

36. Section 103 of the Police Offences Act gives to special constables not only the duties but also the "powers, authorities, advantages, and immunities which any constable duly appointed now has or hereafter may have . . ." We recommend that, subject to two qualifications, the substance of this formula as to "powers, authorities, advantages, and immunities" be re-enacted in respect of regular auxiliary constables. The first of the qualifications is that the reference should be to, "any constable of police" and not to "any constable duly appointed". The second is that a regular auxiliary constable should have these powers and authorities only in the execution of his duties and should have those advantages and immunities only in respect of what he does in the execution of his duties. We have previously recommended that the duties of a regular auxiliary constable be confined (para. 34). Our recommendation as to, his powers, authorities, advantages and immunities is, in effect, that they be confined correlatively.

37. The police force is a cohesive, disciplined body which has a precise chain of command. A member of the police force is bound to obey any "lawful order" given to him (Police Regulation Act, s. 14). It is an offence for him to: neglect or refuse to do so (*id.*). But there is no analogous provision in respect of special constables who, serve in the Police Department. We consider that there should be. These special constables, who are in regular service as auxiliaries to the police force, should be no less subject to control than are members of the police force. We therefore recommend that it be provided that a regular auxiliary constable shall, in the execution of his duties, obey any lawful order given to him by a member of the police force (or regular auxiliary constable) under whom he is placed by or pursuant to any order of the Commissioner.

38. Powers of discipline in respect of regular auxiliary constables are considered later in this report (paras 92-94).

39. At this point in our report it is convenient that we deal with a problem which is common to all the proposed categories of special constables. The problem has been drawn to our attention by comments upon the working paper. It is that of applying to special constables legislation which does not, in terms, confer power or authority upon a member of the police force but which makes provision which is material to the exercise by him of his office. We consider that there are three important respects in which the problem arises.

40. The first respect is that an enactment may make the commission of some statutory offence dependent upon a demand having been made by a member of the police force or upon a member of the police force having had some reasonable suspicion. We recommend that the demand or suspicion by a special constable be as effective for this purpose as a like demand by or suspicion of a constable of police. This recommendation was not foreshadowed in the working paper. Our recommendation is subject to a qualification in respect of the offence of vagrancy (Summary Offences Act, 1970, s. 22). We deal later with this qualification (paras 84-91).

41. The second respect is that the jurisdiction or authority of a magistrate or other judicial officer under some enactment may depend upon some objection or complaint having been made or given to him by a "member of the police force". By "complaint" we include "information", "request" and "oath". We recommend that the objection or complaint of a special constable be as effective for this purpose as that of a constable of police. This recommendation was not foreshadowed in the working paper.

42. The third respect is that an enactment may empower a court, or a judge, or a Justice, to issue a warrant to a "member of the police force" or otherwise to, confer some power or authority upon him. We recommend that it be provided that in any such case the warrant may be issued to, or the power or authority conferred upon, a special constable. This does not require that the warrant be issued to the special constable or that the power or authority be conferred upon him. It only authorizes it to be done. This recommendation was not foreshadowed in the working paper.

AUXILIARY CONSTABLES ON CALL

43. The category of special constables on call comprises special constables who are not in regular service in the Police Department but who can be called upon for duty (including training) as need arises.

44. This category supplants the present category of special constables appointed and called out by magistrates in case of actual or apprehended "tumult, riot or felony". Although no occasion has arisen, within the experience of the present Commissioner, for the appointing and calling out of special constables in case of such emergency, it may be considered prudent to retain an immediately available statutory power to appoint auxiliary constables on call to serve where and when required. But the Commissioner, rather than magistrates, is in a position to know whether the police force is likely to require the aid of auxiliaries to deal with any actual or apprehended emergency whatever the nature of that emergency may be, and whether or not it be confined to a local district.

45. We draw attention also to the fact that in England it is common for the services of special constables to be availed of as auxiliaries to the police force during periods of such great demand for police services that the police force is temporarily over-burdened. The report of the Royal Commission upon the police forces of Great Britain, published in 1964, states:

Special constables form a valuable reserve of manpower-not only for use in times of emergency. It is the practice in some forces to employ special constables in traffic duty, particularly at week ends during the summer. We think that this should be encouraged, and that all chief constables should ensure that the best possible use is made of them. (Cmnd 1728, para. 360.)

We refer to this practice in Great Britain solely for the purpose of illustrating the use which could be made of auxiliary constables on call. We have not undertaken an investigation of administrative and other problems which may be involved in making a similar use, in this State, of auxiliary constables on call.

46. Save that the periods of service of auxiliary constables on call may be infrequent and of short duration, substantially the same considerations apply in respect of these special constables as only in respect of regular auxiliary constables. We make, in respect of auxiliary constables on call, the same recommendations which we have made, in paragraphs 32 to 41, in respect of regular auxiliary constables, save that:

- (a) an auxiliary constable on call should not have, by reason of that office, any power or authority unless he is on duty (pursuant to being called upon to serve) ;
- (b) he should have the duties of his office only where he is on duty; and
- (c) his office should not confer upon him any advantage or immunity in respect of anything which he does when he is not on duty.

47. Powers of discipline in respect of auxiliary constables on call are considered later in this report (paras 92-94).

EXTERNAL FORCE CONSTABLES

48. The category of external force constables comprises members of any police force other than the police force of New South Wales, who are border police, are on inter-change duty with the police force of New South Wales, or are in New South Wales, in the course of making investigations, and whom the Commissioner, in his discretion, appoints to the office of external force constable.

49. The Police Offences Act imposes upon special constables in this category, as it does upon all other special constables, all the duties of "any constable duly appointed . . ." (s. 103). But an external force constable is a member of another police force. The extent to which it is to be his duty to engage in police work in New South Wales, within the limits of the powers and authorities which he has under the law of this State, is a matter for his superiors in his own force. We recommend that legislation in respect of special constables do not impose duties of office upon external force constables.

50. We have recommended in respect of regular auxiliary constables and of auxiliary constables on call that their powers and authorities be correlative to, their duties, and that rules be made limiting these duties (paras 32, 33, 34, 46). Our recommendation that external force constables do not have duties imposed upon them, by the law of this State, precludes limitation of their powers and authorities by reference to their duties. But we do not consider that an external force constable should have conferred upon him power or authority which is

more extensive than what is appropriate to the police work for which he has been appointed to that office. It may be appropriate for an external force constable who is on inter-change duty in New South Wales for experience in all aspects of police work in this State, as if he were a member of the police force of this State, to have all the powers and authorities of a constable of police. But it would not be appropriate for a detective of the police force of New Zealand, who has come to New South Wales to make inquiries in respect of a particular crime committed in that country, to have without qualification, all the powers and authorities of a constable of police for this State. He is unlikely, for example, to need the power to arrest a motorist for failure to submit to a breath test (Motor Traffic Act, 1909, s. 4E). Moreover, such powers and authorities as he does need are powers and authorities for the purpose only of investigating the crime committed in New Zealand. We recommend that an external force constable be given the power and authority of a constable of police subject to direction by the Commissioner that the external force constable shall have, by his office, power or authority only for the purpose, in the place, or in the circumstance, specified by the Commissioner and subject also to any direction by the Commissioner that he shall not have, by his office, any power or authority specified by the Commissioner.

51. These recommendations as to limitations upon the powers and authorities of external force constables were not foreshadowed in the working paper. What was there attempted was, by definition of when it is that an external force constable is on duty, to create some safeguard against an external force constable acting in excess of the purpose for which he has been appointed. We consider, however, that the recommendations made in paragraph 50 enable a greater degree of control to be had in this respect over external force constables without impairment of their efficiency.

52. We recommend that in respect of any act or omission in the exercise of any of his powers or authorities as an external force constable any person have the same advantages and immunities as a constable of police.

53. The present law (Police Offences Act, part 1V) does not oblige a member of another police force who has, at the request of the Commissioner been appointed a special constable to obey any instruction given to him by a member of the police force of New South Wales, no matter how senior in rank that member may be. The Commissioner informs us that such a high level of co-operation exists between the several police forces that little difficulty has resulted. But we consider that the Commissioner should have, by the legislation of this State, some right of control in respect of external force constables. We recommend that it be provided that an external force constable shall not, in the exercise of any power or authority of his office as an external force constable, do any act or thing which he is directed not to do by any general or special order of the Commissioner or of any other member of the police force of this State under whom the Commissioner places him for the purposes of his office. This provision would enable some degree of control to be exercised over an external force constable in respect of what he does within the ambit of his power and authority. But it would not bind him to, do anything. What should be the sanction for obedience by an external force constable, to a direction, by which he is bound, not to do something We deal later in this report (paras 92-94) with the discipline, in general, of special constables. But it is pertinent, at this point, to foreshadow that we consider that, in general, it would not be appropriate for the Commissioner to inflict penalties upon external force constables. Discipline is, in general, better left to the superiors, in his own force, of the special constable. What we recommend is that it be provided that in respect of what he does in wilful contravention of a direction, by which he is bound, given by a member of the police force of this State, an external force constable shall have all such liabilities, in tort, as he would have if he were not an external force constable. Thus, if an external force constable took hold of a man in wilful contravention

of a direction to leave that man alone, he would be liable in damages to that person for the, tort of trespass notwithstanding that the arrest was within the ambit of the powers and authorities which his office, conferred upon him. We consider that it is reasonable that the external force constable be precluded from relying upon his office to justify what he has done. We anticipate that the provision may provide a useful means of deterring an external force constable, who is working in conjunction with members of the police force of this State, from acting officiously or inconsistently with practices of the police force.

LIMITED PURPOSES CONSTABLES

54. The category includes all the persons whom we, have hitherto described as limited purposes constables, (paras 12, 13, 14). But the present law as to who is eligible for appointment is unsatisfactory.

55. Paragraph (b) of section 101 (1A) of the Police Offences Act in terms enables any person to be appointed a special constable at the, request of the Commissioner and with the approval of the Chief Secretary. It seems unlikely, in view of the provisions made by the Police Offences Act specifically for the appointment of limited purposes constables, that it was in the contemplation of Parliament that section 101 (1A) (b) would be used for the appointment of special constables ,of this category. No assistance in this regard can be derived from the debates in Parliament upon the relevant Bill. We are informed that paragraph (b) has not been used to, appoint limited purposes constables. All the special constables appointed pursuant to it come within the category of external force constables or the category of regular auxiliary constables (paras 19, 20, 21, 31, 48). In further discussion of limited purposes constables we refer to other sources of power to, appoint them to office. Many persons are eligible for appointment without it being necessary to rely upon section 101 (1A) (b).

56. Section 101 (1A) of the Police Offences Act as originally enacted (by section 15 of the Police Offences (Amendment) Act, 1908) enabled the appointment, upon the request of his employer or of the council of a municipality or shire, of any person employed as a caretaker, night watchman, or in any similar capacity, as a special constable.

57. It is not, however, satisfactory to define persons eligible for appointment as a private special constable by reference to, specific capacities in which they are employed. Such a definition is likely to, turn out to be too narrow. No, matter how desirable it may be, both in the public interest and the interest of the employer, that a person be appointed to, the office of special constable, such a definition does not enable this to, be done unless the employee is employed in one of the stated capacities. The definition would have to be amended before the appointment could be made. This was done in 1943 when the definition was amended to enable the appointment of "an officer of the Royal Society for the Prevention of Cruelty to Animals, New South Wales" (Prevention of Cruelty to Animals (Amendment) Act, 1943, s.2 (2)). The definition was again amended in 1967 to allow the appointment of "an officer of any other association, organization, society or body which has as one of its objects the promotion of the welfare of or the prevention of cruelty to animals and which is registered as a charity under the Charitable Collections Act 1934, as amended by subsequent Acts" (Prevention of Cruelty to Animals (Amendment) Act, 1967). We consider that it is preferable that the condition of eligibility be stated by reference to the underlying principles. What are these principles? They are twofold. First that it is in the public interest that the appointment be made.

Second that the employer has a special interest in the appointment being made. Stated more fully we consider that the principles are-

(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.

We recommend that these principles be stated in the legislation as conditions of eligibility for appointment.

58. Such a statement by reference to principle dispenses with the need for intervention by the Legislature whenever unforeseen circumstances arise which might render it desirable, in the public interest, that a person not employed in a previously stated capacity be appointed to the office. We do, not recommend that satisfaction of the conditions referred to in the last paragraph confer any right to appointment. We recommend that it confer only eligibility for appointment.

59. A curious feature of the present law is that only an employee can be appointed a limited purposes constable. A person engaged in the business of providing a security service to storekeepers can obtain the appointment, as private special constables, of persons whom he employs as "watchmen" moving from store to store on security patrol. But he cannot, at least directly, obtain appointment of himself to the office-even if he personally undertakes the work of security patrol. Likewise a municipal council can have appointed, as a private special constable, a person whom it employs to manage a council swimming pool (*see Jobling v. Blacktown Municipal Council* [1969] 1 NSW 129) where that is desirable to discourage hooliganism. But the owner and manager of a swimming pool to which the public is admitted cannot obtain, at least directly his own appointment. We do not see why this is so. Perhaps it is because it is that so far Parliament has merely responded to particular cases and the case of a man whose own business furnishes grounds for appointment has not been brought before Parliament. It is true that in each instance, the self-employer may be able to obtain appointment indirectly. He may be able to persuade the local council, for example, to apply for his appointment. But the propriety of the council concerning itself in a matter so remote from the ordinary affairs of a council is at least open to question. Another course which he could take is to form a company and become an employee of it. It is absurd that the law requires such artifice. We recommend that provision be made for appointment of a self-employer, on his own application, where the conditions referred to in paragraph 57 are satisfied.

60. We did not, in the working paper, consider any departure from the long established requirement that, in respect of an employee, application for his appointment as a limited purposes constable be made by his employer and not by the employee himself. We recommend, however, that in all cases the application should be made by the person to be appointed, whether he is an employee or is a self-employer. No doubt, where it is in his interests to do so, an employer will encourage his employee to apply and will do such clerical work and furnish to the Commissioner any information which may assist in obtaining the

appointment. But the appointment, if made, is that of the employee and it is he, rather than his employer, who should be the applicant. We recommend, however, that where an employee applies for appointment, relying upon the special interest of his employer, the assent of his employer be required.

61. Limited purposes constables are appointed to meet special needs. An inspector of the RSPCA, for example, is appointed to the office of limited purposes constable for the purpose of the upholding of the law relating to the welfare of animals. He is not appointed for the purpose of the apprehending of thieves or of breaking up brawls in public places. We consider that the Commissioner should be empowered to restrict the powers and authority which any limited purposes constable shall have by reason of his office. We recommend that a limited purposes constable be given the power and authority of a constable of police subject to any direction by the Commissioner that the limited purposes constable shall have, by his office, power or authority only for the purpose, in the place, or in the circumstance, specified by the Commissioner and subject also to any direction by the Commissioner that he shall not have, by his office, any power or authority specified by the Commissioner. We further recommend that the advantages and immunities conferred upon a limited purposes constable, by his office, be that in respect of any act or omission in the exercise of any of his powers or authorities as a limited purposes constable, he have the same advantages and immunities as a constable of police.

62. Assume that circumstances arise in which it would be the duty of a constable of police, knowing those circumstances, to take some action. Should a limited purposes constable, who knows the circumstances, be bound by his office to take that action where the action is within his powers and authorities? We do not think so. A limited purposes constable obtains appointment to office so that he can further some special interest which he has or which his employer has. He may decide, in any particular case, that the circumstances do not involve that special interest. He may judge that the risk of serious injury to himself, if he does act, is disproportionate to the likely prejudice which he, or his employer, is likely to suffer if he does not act. If he is an employee, and he fails to act reasonably in the furtherance of his employer's interest, he no doubt risks losing his employment. That, we believe, is a sufficient sanction. We recommend that no duties of office be imposed, by the legislation in respect of special constables, upon limited purposes constables.

63. We do not consider that, in general, appointment of a person to the office of limited purposes constable should put him under the orders of members of the police force. But we consider that where both a member of the police force and a limited purposes constable are present at any incident, the member of the police force should have authority to restrain the limited purposes constable from taking, in the exercise of any power or authority of his office, any action which the member of the police force considers undesirable. We recommend that it be provided that a limited purposes constable shall not, in the exercise of any power or authority of his office, do any act or thing which he is directed not to do by a member of the police force. We recommend, further, that it be provided that, in respect of what he does in wilful contravention of such a direction, a limited purposes constable shall have all such liabilities in tort, as he would have if he did not hold that office.

64. Powers of discipline in respect of limited purposes constables are considered later in this report (paras 92-94).

SUBMISSION BY INSTITUTE OF MERCANTILE AGENTS LTD ON LIMITED PURPOSES CONSTABLES

65. The Institute of Mercantile Agents Ltd furnished a written submission. The membership of this Institute includes debt collection agents, repossession agents, process servers, private inquiry agents, night watchmen and security guards. The Institute has been active, apart from its submission to us, in advocating that comprehensive legislation be enacted in respect of all such "mercantile agents" (as it classes these persons), embodying licensing provisions for appropriate categories, fidelity bonds, trust account provisions and requirements as to qualifications. It is not for us to express any view, under our terms of reference in respect of special constables, on the merits of these proposals. But the written submission to us is to the effect that mercantile agents" should fall outside our recommendations in respect of limited purposes constables.

66. What the Institute submits is that the category of limited purposes constables should be confined to Government or semi-Government employees. It urges that in respect of self-employed or privately employed mercantile agents such as security investigators, security guards, armed pay escort guards and night watchmen, the only licensing necessary should be as licensed "security officers" under its general proposals in respect of "mercantile agents". The licensing of "security officers" would be, under those proposals, in the hands of a Registrar of Mercantile Agents. The role of the Commissioner of Police would be limited. The Institute's submission in this respect envisages that the grant by the Registrar of a licence as a "security officer" would be after reference to an Advisory Board and to the Commissioner.

67. But the Institute does urge that licensed "security officers" do have, as an incident of that status, some of the statutory powers of constables of police. The most significant of these specific statutory powers are the power to arrest, without warrant, any person on reasonable suspicion that the person has committed an offence (Crimes Act, 1900, s. 352) and the power to stop, search and detain a vehicle in which it is reasonably suspected that there is anything involved in the commission or intended commission of an indictable offence (Summary Offences Act, 1970, s. 59). The Institute argues that licensed "security officers" would need few of the statutory powers of a constable of police and that the few they would need are not such that it is appropriate that power to confer or to withhold, restrict or withdraw these powers be given to the Commissioner of Police.

68. We do not consider .that it is to the point that licensed "security officers" would not need all the powers of a constable of police. There are few, if any, limited purposes constables who will need all these powers. We do not envisage that, as a rule, they will receive them. Under our recommendations the Commissioner is empowered to direct that a limited purposes constable shall not have any power or authority which the Commissioner specifies (para. 61). Our recommendations, indeed, go further. Under them the Commissioner is empowered, in respect of the powers and authorities which a limited purposes constable does have, to direct that he shall have them only for the purpose, in the place, or in the circumstance, specified by the Commissioner (para. 61). Thus, for example, the Commissioner may limit, in respect of a particular limited purposes constable, the power to stop and search vehicles, to those found upon particular premises.

69. What is to the point is whether the statutory powers which the Institute suggests be conferred upon licensed "security officers" are such that the Commissioner of Police should have, in respect of "security officers" who are to be given these powers, the functions which he will have, under our recommendations, in respect of limited purposes constables generally.

70. The specific suggestion made by the Institute in respect of power to arrest upon suspicion is that the words "or licensed security officer" be inserted in section 352 (2) of the Crimes Act, 1900, so that, after the insertion, the provision will read (so, far as material):

"(2) Any constable or licensed security officer may without warrant apprehend,

(a) any person whom he, with reasonable cause, suspects, of having committed any such offence [an offence punishable, whether by indictment, or on summary conviction under any Act] or crime;

(b) any person lying, or loitering, in any highway, yard, or other place during the night, whom he, with reasonable cause, suspects of being about to commit any felony..."

This power to arrest on suspicion is a sweeping power which, unless exercised with moderation and discretion, can lead to, intolerable interference with liberty. It legally justifies arrest even where it is not certain that any offence, no matter how trivial, has been committed by anyone. The Institute suggests that what it proposes, at least insofar as it relates to paragraph (a) of the subsection, goes little further than conferring upon licensed "security officers" the right of "citizen's arrest" which exists under English law. We do, not consider that this is so,. The relevant English provision is that "Where an arrestable offence has been committed, any person may arrest without warrant anyone who, is, or whom he, with reasonable cause, suspects to be guilty of the offence." (Criminal Law Act 1967, s. 2 (3)). Under this provision it is not enough that the citizen reasonably suspects that an offence has been committed and that the person he is arresting is the wrongdoer. The citizen exposes himself to liability in damages to the person he arrests unless he is right in his suspicion that an "arrestable offence" has been committed and he can prove he is right. For the purposes of this English legislation moreover an "arrestable offence" is no trifling infringement of the law. It is, generally speaking, the commission or attempt to commit an offence for which the maximum penalty is not less than five years imprisonment (s. 2 (1)). The right of citizen's arrest, as it exists in England, does not, in our opinion, support the Institute's proposal.

71. We consider that it would be highly undesirable to amend section 352 (2) of the Crimes Act, 1900, so, as to confer upon every "security officer" (who is licensed as such by the Registrar pursuant to the Institute's general proposals as to, legislation in respect of "mercantile agents" an unqualified power to, arrest any person on reasonable suspicion that that person has committed an offence for which he may be fined or otherwise punished upon conviction in a court even upon summary conviction in a magistrate's court. No doubt there are persons whom the Institute classes as "security officers" who should have some power to arrest on reasonable suspicion. But few, if any, should have, without qualification, the power conferred by section 352 (2) of the Crimes Act, 1900, upon members of the police force. Restrictions are likely to be desirable as to the place or places where an arrest on suspicion can be made by the particular "security officer" or as to the circumstance or circumstances in which he can make such an arrest. The Institute's proposal, if adopted, would enable a

licensed "security officer" whose sole work is as a night watchman in a factory to, arrest a man on reasonable suspicion that he has committed an offence, for example, a minor driving infringement, which has no connection with the factory and to make the arrest anywhere in the State. We consider that not only should there be power to, impose restrictions but also that the most qualified person to impose restrictions which are appropriate and to keep them under review is the Commissioner of Police. This is what we have proposed in respect of limited purposes constables. We see no reason for any separate scheme for "security officers". We consider that it is appropriate that the Commissioner has, in respect of "security officers" all the powers which he has, under our proposals, in respect of limited purposes constables: and that insofar as "security officers" are to, have power to arrest on suspicion (or to have any other of the powers of a constable of police) this should be consequential appointment by the Commissioner to the office of limited purposes constable and not otherwise.

72. We consider that the power to arrest on suspicion is of cardinal importance. We do not go on, therefore, to deal specifically with the other powers of a constable of police which the Institute submits a licensed "security officer" should have by virtue of the licence granted to him by the Registrar of Mercantile Agents.

73. The Institute urges that ;an advantage of its proposal licensing by a Registrar of Mercantile Agents of "security officers" who would have by virtue of that status the power to arrest on suspicion and other particular "police" powers, is that eligibility for licensing could be made contingent upon completion of an appropriate course, at technical college level, for "mercantile agents" (para. 65). The Institute envisages that the course would include instruction in respect of these "police" powers. We are aware that the Institute has taken a commendable initiative in the provision of training courses for "mercantile agents". It may well be of value, where the work which any "mercantile agent" proposes to do is such that he may wish to apply for appointment as a limited purposes constable, for any course which he takes to include instruction in respect of the relevant "police" powers. But we remain of the view that the Commissioner of Police, rather than a Registrar of Mercantile Agents, is the appropriate person to decide whether a person who is not a member of the police force is to be given any of the powers of a constable of police and, if he is to be given any of these powers, which of the powers is he to be given and what limitations are to apply in respect of them. It may be anticipated that, in deciding these matters where the applicant is a "security officer", the Commissioner would take into account whether the applicant has completed any relevant "mercantile agents" course.

COMMENTS BY THE PUBLIC TRANSPORT COMMISSION UPON LIMITED PURPOSES CONSTABLES

74. The largest single body of special constables (who, under our proposals would become limited purposes constables) is the force of special constables (at present numbering about 160) in the Public Transport Security Service (hereafter referred to as Transport Security) of the Public Transport Commission of New South Wales (hereafter referred to as the Public Transport Commission). The organization of Transport Security and its membership, are, in substance, those of the Investigation Section of the Department of Railways prior to the amalgamation of public transport services effected by the Public Transport Commission Act, 1972. These special constables are either patrolmen or detectives. Despite the amalgamation of public transport services, these detectives are still commonly known as "Railway Detectives". All Railway Detectives (at present numbering about 53) are special constables. Some, but not all, patrolmen are special constables. Apart from the railway detectives and patrolmen, Transport Security is comprised of watchmen, but it is not the present practice to have these watchmen appointed special constables.

75. This force of special constables, in Transport Security is a cohesive, disciplined body which functions in close co-operation with the police force. It is equipped and organized in the same way as the police force. All its detectives have passed, at high level, the initial training course at the Police Academy for probationary constables and many of them also complete the detectives' course at the Academy. They are, of course, also extensively trained in public transport procedures and operations. "The work carried out by them at the present time is the end result of many years of organizational development directed to two ends: first, to ensure that the special problems of prevention and detection of crime relating to railway operations is carried out at the most efficient level possible and second, to remove from the State Police Force the burden of having to deal with these matters themselves, which would prove specially onerous because the Police Officers would not have had special training in railway procedures . . . Railway Detectives [also] are concerned . . . unlike other categories of special constables . . . with a great proportion of matters with which the State Police themselves are required to deal. Their work includes cases of armed robbery, criminal assaults of every degree, fraud, larceny in all its forms, sexual offences, malicious damage, besides many other activities peculiar to railway working . . ." (letter dated 29th October, 1971, from the then Acting Secretary for Railways). To some extent the special position of Railway Detectives is recognized by statute. Section 17 of the Police Regulation Act, 1899, authorizes any Railway Detective to use, with the approval of the Commissioner of Police, the designation "Detective" where "it is coupled with other words indicating his connection with" the Public Transport Commission: but it is made an offence for any other person who is not a member of the police force to use the word "detective" in connection with his occupation.

76. The size of the operations of Transport Security is revealed by statistics. In 1971, for example, "No fewer than 947 persons were arrested . . . for serious crime, such as stealing, receiving, having stolen goods in custody, false pretences, assault and so on, and 576 persons were arrested on less serious charges, such as offensive behaviour, being under the influence of intoxicating liquor etc" (letter dated 17th February, 1972, from the Secretary for Railways).

77. The Public Transport Commission is properly concerned that nothing in our recommendations as to, limited purposes constables interferes with the efficiency of Transport Security. It has been put to us that "It is necessary to use Railway Detective Staff and other Investigation Staff throughout the whole of the State. The railway system extends to practically every major centre of population in New South Wales, and its activities extend to every place where commercial activities are carried on. It is obviously futile to try to limit the powers which its Detectives possess to any area other than the whole of the State . . ." (*id.*). We agree. But our recommendations do not require the Commissioner of Police to impose any limitations as to the place or places to which the powers and authorities of a limited purposes constable extend. It is within his discretion whether to, impose any limitation. As to imposing in respect of Railway Detectives, any limitation as to place, we have been advised on behalf of the Commissioner that "the nature of the duties and type of work carried out by Railway Detectives is, of course, well known to this Department and no reason can be seen why any action would be taken to, impose territorial restrictions upon these officers." Nor is there any reason of which we are aware to fear that the Commissioner would impose any other limitation detrimental to the efficiency of Transport Security in the prosecution and detection of crime relating to public transport operations.

78. But we do consider that in respect of any special constables in Transport Security the Commissioner should be no less empowered to impose limitations upon the powers and

authorities conferred by that office than he is empowered in respect of any other limited purposes constable.

79. We have been informed that "(m)any arrests are made by railway detectives or patrolmen in respect of such offences as breaking, entering and stealing, although the premises entered, and the property stolen, are not vested in the Commissioner for Railways. Railway Investigation Staff are engaged constantly on "Mobile Patrolling" work throughout the State, and its fleet of cars used for this work are on duty 24 hours a day for 7 days a week ... It is expected that these "mobile patrols" take action whenever appropriate as, for example, should they witness suspicious conduct in respect of business premises, or assaults committed in public streets, and to use their powers as special constables to apprehend offenders . . . It would be ludicrous to expect these patrolling officers, having had their suspicions aroused, to leave the scene and to seek out a member of the Police Force, or, perhaps, merely to ignore the incident altogether." (letter dated 17th February, 1972, from the Secretary for Railways).

80. These activities (referred to in the last paragraph) of special constables in Transport Security are not activities which relate to the public transport operations or to any criminal conduct in the control of which the Public Transport Commission has any special interest by reason of its statutory functions or otherwise. We have no reason to suppose that these activities of special constables in Transport Security have not been helpful in deterring and suppressing criminal conduct generally. But it is the Commissioner of Police, not the Public Transport Commission, who is charged with the overall responsibility for deterring and suppressing criminal conduct generally. It should be firmly and unequivocally established that should the Commissioner at any time consider that overall efficiency in crime control would be promoted by limiting for some time, or in some places, or in some respects, the activities of these limited purposes constables in general law enforcement, as distinct from law enforcement having some connection with the special interests of the Public Transport Commission, he may impose the restrictions he considers, desirable and that he may do so without the concurrence of the Public Transport Commission or any other authority. We do not suggest that there does not exist, at the present time, anything other than sensible and cordial co-operation between Transport Security and the Commissioner. Nor do we suggest that the Commissioner's wishes would not be heeded by Transport Security. But it is proper that the Commissioner's authority be as of right and that it does not remain dependent upon voluntary co-operation.

81. We have expressed, firmly, our view as to the authority which the Commissioner should have in respect of special constables in Transport Security. But, ultimately, the authority is that of the Government. The Commissioner is subject to ministerial direction (Police, Regulation Act, 1899, s. 4). The Government is responsible also for the activities of the Public Transport Commission. It too, is subject to ministerial direction (Public Transport Commission Act, 1972, s. 4). It will remain, on our recommendations, open to the Public Transport Commission to request the Government to resolve any conflict of opinion between it and the Commissioner in respect of any exercise by the Commissioner of his authority in respect of Transport Security.

82. The Public Transport Commission has drawn specifically to our attention two sections of the Summary Offences Act, 1970, which, it asserts, have created difficulty for Transport Security.

83. The first is section 42 which empowers a stipendiary magistrate to issue a search warrant to "any member of the police force". If the expression "member of the police force" is construed, as we consider it would be, as referring to a member of the police force within the meaning of the Police Regulation Act, the section does not extend to a limited purposes constable or any other special constable. The section replaces section 28 of the Police Offences Act, 1901, which empowered the issue of the warrant to "any constable" and which, therefore, did extend to a special constable. The Public Transport Commission states: "As a result of being deprived of the power to, obtain search warrants it is now necessary for a Railway Detective, who may have unimpeachable grounds for believing that stolen goods are located in a particular place, to seek out a member of the Police Force, take the latter from his own duties and acquaint him with the results of his own activities to a degree sufficient to place the Police Officer in a position of being able, himself, to go before a Justice and swear the necessary Information. The Railway Detective must then either a company the same or another Police Officer on the search so that the Warrant may be executed and the matter properly pursued. Not only is this obviously an unnecessary and costly handicap, but it imposes an added burden upon the State, Police Force. In all such cases the speed at which the search takes place before or after the arrest of a criminal is most important, and, indeed, may be essential not only to the recovery of stolen property but also as evidence of the complicity of a receiver. Many such arrests take place either late at night or in areas remote from a Police Station, and in ,the great majority of these arrests there could be no Police Officer accompanying the Railway Detectives ... Although it is, *ex hypothesis* impossible to calculate the number of occasions on which the opportunity of recovering stolen goods has been lost, it can be stated with confidence that many such opportunities have already been lost." (letter dated 17th February, 1972, from the Secretary for Railways). These difficulties, to which our attention has been drawn by the Public Transport Commission, illustrate the problems, to which we have already referred (para. 24), which arise from the practice, in modern legislation, of referring to members of the police force rather than to "constables". We have recommended that it be provided that where an Act authorizes a warrant to be issued to a constable of police, the warrant may be issued to a special constable as if the special constable were a constable of police (para. 42). A constable of police is a member of the police force. Our recommendation enables a warrant to be issued under section 42 of the Summary Offences Act, 1970, to a limited purposes constable in Transport Security.

84. The other section of the Summary Offences Act 1970, of particular concern to the Public Transport Commission is section 22. It provides:

22. (1) A person who is reasonably suspected by a member of the police force of having no visible lawful means of support or insufficient lawful means of support is guilty of an offence.

Penalty: Imprisonment for three months.

(2) It is a sufficient defence to a prosecution for an offence under subsection (1) if the defendant satisfies the court that he has sufficient lawful means of support.

Thus it is lawful for a member of the police force to arrest a person on no more examinable a basis than that he reasonably suspects that person of having no visible lawful means of support or insufficient lawful means of support (Crimes Act, 1900, s. 352 (2)). But the section

does not enable a limited purposes constable, or any other special constable, to make such an arrest where the special constable has this suspicion. The suspicion must be that of a member of the police force.

85. The section replaces section 4 (1) of the Vagrancy Act, 1902, so far as that section dealt with the offence of vagrancy. Section 4(1) of the Vagrancy Act, 1902, justified arrest by a special constable as well as arrest by a member of the police force. The Transport Commission urges that section 22 of the Summary Offences Act, 1970, be extended so that the suspicion of a Railway Detective justifies arrest as does the suspicion of a member of the police force.

86. Earlier in this report we have recommended that it be provided that where, in relation to the constituents, of an offence, an Act refers to any suspicion of a member of the police force, the like suspicion of a special constable shall have effect for that purpose as if the special constable were a constable of police (para. 40). This recommendation, if unqualified, operates in respect of section 22 of the Summary Offences Act, 1970. But we have foreshadowed (*id.*) that we consider that there should be an exception in respect of that section. We go on to state our reasons.

87. We consider that it would be naive not to recognize that the power to, arrest for vagrancy is one which, on occasions, has been seriously abused. A member of the police force, can if so minded, abuse any of his powers. Few do. But the power to, arrest for vagrancy gives, to an extent which we consider to be unique, opportunity for conduct which is an abuse of power without much risk of the abuse being exposed. Where a member of the police force would like to take a person, whom he suspects of being implicated in a crime but against whom he has no evidence, into custody to, interrogate him at the police station or to keep him under lock and key while investigations are pursued elsewhere he may find it very tempting to, affect to have the suspicion required by section 22 of the Summary Offences Act, 1970. There is nothing novel in a member of any police force, who, does have evidence that a person has committed a minor offence, arresting that person, for that minor offence, where he believes that by doing so he will facilitate inquiries in respect of a more serious offence (see, for example, the Report of the Royal Commission on Police Powers and Procedures, in England (1929) Cmd 3297, paras 159, 160). It is not within our terms of reference for us to consider the propriety, in general, of a member of the police force taking this course. What is relevant to this report is that the power to arrest for vagrancy gives a legal justification for arrest which is, to a unique extent, not reasonably examinable.

88. Putting aside use of section 22 of the Summary Offences Act, 1970, for the purposes described in the last paragraph, do Railway Detectives need the power which the section confers? We do not think so. Special constables in Transport Security have ample powers to deal with drunks and other persons who are making pests of themselves on premises, or vehicles of the Public Transport Commission. They can arrest, for example, for drunkenness in a public place (Summary Offences Act, 1970, s. 6) or for offensive behaviour (*id.*, s. 7).

89. We consider that the suggestion of the Public Transport Commission in respect of section 22 of the Summary Offences Act, 1970, should be rejected.

90. It is not within our terms of reference for us to consider whether section 22, as presently enacted, is a desirable provision. But we do, not think that it should be extended to give effect to the suspicion of any one who is not a member of the police force.

91. We recommend that it be provided that for the purposes of that section the suspicion of any special constable, no matter of what category, shall not have effect as if the special constable were a member of the police force.

DISCIPLINE OF SPECIAL CONSTABLES

92. We recommend that the Commissioner be empowered to suspend any special constable, in the sense of prohibiting him from exercising the powers and authorities of his office. We also recommend that he be empowered to terminate the appointment to, office of any special constable.

93. But we consider that the Commissioner should be able to impose punishment which is less severe than suspension or termination of appointment. We recommend that legislation in respect of special constables should extend to the making of rules for the general government and discipline of special constables, including the imposition, by the Commissioner, of fines for breach by any special constable (other than an external force constable) of any provision of the Act or of the rules.

94. We recommend that the rule making power be vested in the Governor as is the case in respect of the Police Rules (Police Regulation Act, s. 12). This means that the rules have to be published in the Gazette and laid before each House of Parliament and that they are subject to disallowance by either House (Interpretation Act, 1897, s. 41).

APPEALS AGAINST DECISIONS OF THE COMMISSIONER

95. We consider that it should be a general rule that where the livelihood of a person depends upon an administrative decision, there should be a right of appeal where the decision is adverse. We have already reported generally on Appeals in Administration (LRC 16). We go on to consider the particular case of special constables.

96. The livelihood of an external force constable is his membership of the police force to which he belongs. It does not depend upon whether he holds the office of external force constable. Nor is it at all likely that the livelihood of a person will turn upon whether he holds the office of auxiliary constable on call. But the position of regular auxiliary constables and of limited purposes constables requires consideration.

97. Regular auxiliary constables are employed in the Police Department. They are employees of the Crown. It is their employment by the Crown, not the holding of the office of regular auxiliary constable, which entitles them to pay. The office, of regular auxiliary constable, as such, is not employment and does not entitle the holder of it to any remuneration. Such protection of the employment of regular auxiliary constables as Parliament has seen fit to give, is provided by the Crown Employees Appeal Board Act, 1944,. Our recommendations do not, in any way, cut down this protection. We do not consider that this report which, in so far as it relates to regular auxiliary constables, deals with only a quite small group of Crown employees is a proper occasion for us to consider the adequacy of the protections afforded by the Crown Employees Appeal Board Act, 1944. We leave the present position unchanged But we consider that provision, in addition to the rights conferred by that Act, of an appeal in respect of the holding of the office of regular auxiliary constable, as distinct from continuance in employment by the Crown, would not result in any real benefit to these special constables. The likely result, in our opinion, would be to create confusion for them as to what the relevant rights of appeal are. We do not recommended that any right of appeal, in addition to the present rights under the Crown Employees Appeal Board Act, 1944, be conferred.

98. The office of limited purposes constable, like that of any other special constable, is not employment. But it may well happen that an employer will not be prepared to have a person in his employment unless he holds that office: and it will be the exception, rather than the rule, for that person to have any relevant right of appeal against the loss of his job. We consider, therefore, that a person should have a right of appeal against refusal to appoint him to the office of limited purposes constable, against refusal to, renew that appointment, against suspension of his powers under that office, and against termination of his appointment to that office. But in coming to the decision which he makes in respect of any of these matters, the Commissioner is likely to take into account considerations of policy. More than the worthiness of the particular person is involved. In our Report on Appeals in Administration (LRC 16) we recommended the establishment of a new tribunal with procedures designed to give due effect to any relevant policy of the public authority concerned. This tribunal has not yet been established. It is not for us to assume that it will be established. We recommend accordingly that in the absence of such a tribunal, the appeal, in respect of the office of limited purposes constable, should lie to the District Court. But it is necessary to limit the appeal. We recommend that the appeal be limited to appeal against a decision, on one of the matters we have mentioned, which the Commissioner has made on the ground that the appellant is unfit to hold the office of limited purposes constable by reason of mental or bodily infirmity, inadequacy of education or training, unsuitability of temperament or lack of proper character.

99. We have recommended that the Commissioner be empowered, by rule, to impose, fines upon special constables. We consider that an appeal should lie to the District Court in respect of any fine imposed by him.

100. Our recommendations as to new rights of appeal were not foreshadowed in the working paper.

CERTIFICATE

101. There is not, in our opinion, any ground for secrecy as to appointments to the office of special constable. We recommend that the Commissioner be obliged to furnish, upon request,

a certificate in respect of any special constable setting out material particulars as to, his appointment and as to his powers and authorities. We further recommend that a certificate furnished by the Commissioner should be evidence, although not conclusive evidence, in any court of the matters certified.

102. We foreshadowed, in the working paper, a proposal that the Commissioner be obliged to keep a public register in respect of all special constables, setting out the particulars referred to in the last paragraph. We have come to the view, however, that the keeping of this register might be an administrative burden and we consider that the purposes for the keeping of such a register are sufficiently met by our recommendation that the Commissioner be obliged to, furnish the certificate.

GENERAL

103. We recommend that legislation be enacted to the effect of the draft bill which is appendix D.

104. Notes on the draft bill appear as appendix E.

C L D MEARES

Chairman

C R ALLEN

Commissioner

15th July 1974.

REPORT 19 (1974) - SPECIAL CONSTABLES

Appendix A - Dissection of Person Holding the Office of Special Constable as at 31st December 1973

Special Constables Employed in the Police Department

Number	Capacity
203	Parking Police.
42	Attendants and Inquiry Officers at Police Headquarters, Government House, Parliament House, Premier's Department, Treasury.
245	Total

Employed by Other Government Departments, Statutory Bodies and Miscellaneous Organizations

542	Members of the Victoria Police Force who are attached to stations close to the NSW border and who performed interchange duty.
426	Members of the Queensland Police Force who are attached to stations close to the NSW border and who performed interchange duty.
60	Members of the South Australian Police Force who are attached to stations. close to the NSW border and who performed interchange duty.
31	Members of the West Australian Police Force performing interchange duty.
44	Members of the Tasmanian Police Force performing interchange duty.
20	Members of the New Zealand Police Force performing interchange duty.
6	Members of the Northern Territory Police Force performing interchange duty.
205	Members of the Australian Capital Territory Police Force performing interchange duty.
113	Sydney City Council as Watchmen and Attendants.
185	Department of Railways as Railway Detectives and Patrolmen.
25	Department of Public Works as Pay Escorts and Watchmen.
58	Department of Civil Aviation as Security Officers at Mascot Airport.

28 Postmaster General's Department as Postal Investigators and Watchmen.

32 Explosives Department, Department of Mines as Inspectors and Watchmen.

33 Department of Public Health as Health Inspectors.

2 St Vincents Hospital as Caretakers.

101 Maritime Services Board of NSW as Patrolmen.

65 Metropolitan Water Sewerage and Drainage Board as Inspectors and Patrolmen.

12 Water Conservation.

21 Department of Education as Caretakers.

4 Department of Interior as Watchmen.

7 Sheriff's Department as Pay Escorts.

1 Department of Lands as Escort.

4 Repatriation Department as Gatekeepers.

3 Government Stores Department as Watchmen.

4 Department of Agriculture as Watchmen.

25 NSW Government Tourist Bureau as Guides.

4 Registrar General's Department, as Escorts.

8 Department of Main Roads as Pay Escorts.

23 Electricity Commission of NSW as Gatekeepers/Watchmen.

19 RSPCA as Inspectors.

31 Darling Island Stevedoring & Lighterage as Gatekeepers.

93 Australian Iron and Steel P/L as Watchmen and Pay Escorts.

42 Qantas as Watchmen and Security Officers at Mascot Airport.

28 Hawker DeHavilland as Watchmen at Bankstown Works.

32 Mayne Nickless Ltd, as Drivers and Pay Escorts.

2 John Fairfax and Sons Ltd, as Pay Escorts and Watchmen.

10 Australian Consolidated Press Ltd, as Watchmen.

15 Stewarts and Lloyds (Aust.) P/L as Watchmen.

5 Metal Manufacturers Ltd, Port Kembla as Watchmen.

6 Emmco P/L as Watchmen.

3 Taronga Park Zoological Trust as Watchmen.

1 Bank of NSW as Pay Escort.

2 Ministry of Transport as Pay Escorts.

2 Royal Prince Alfred Hospital as Patrolmen.

1 Royal Sydney Golf Club as Ranger.

16 Overseas Shipping Representatives Association as Inspectors.

21 Broken Hill Proprietary Ltd, as Watchmen.

1 Shell Co. of Australia as Watchman.

14 Metropolitan Meat Industry Board as Patrolmen.

5 Wollongong Traders Association as Watchmen.

10 Taubmans NSW Pty Ltd, as Watchmen.

1 Dalgety Co. Pty Ltd, as Gatekeeper.

4 Rylands Brothers Aust. Pty Ltd, as Watchmen.

6 Kosciusko State Park Trust as Rangers.

5 Prince Henry Hospital as Gatekeepers.

1 Bradford Cotton Mills as Watchman.

4 James Stedman Hendersons Sweets Ltd as Watchmen.

3 Wagga Wagga Chamber of Commerce as Watchmen.

10 Imperial Chemical Industries of Aust. and New Zealand as Watchmen.

3 Sydney Cricket Ground, Moore Park as Curators.

7 Newcastle City Council as Patrolmen.

7 Riverstone Meat Co. Pty Ltd, as Watchmen.

2 Burlington Mills Aust. Ltd, as Watchmen.

2 Ashfield Municipal Council as Rangers.

5 Leichhardt Municipal Council as Caretakers.

4 North Sydney Municipal Council as Caretakers.

5 Michael Naim and Co. as Watchmen.

1 Slazengers Australia Pty Ltd, as Watchman.

6 WD & HO Wills Ltd, as Watchmen.

- 4 Federal Match Co. as Watchmen.
- 5 Clyde Engineering Co. as Watchmen.
- 13 State Dockyard, Newcastle, as Watchmen.
- 24 Electrolytic Refining and Smelting Co. as Watchmen.
- 28 Sydney Farm Produce Market Inspectors.
- 446 Employed by local business people of various towns of the State of New South Wales as Night watchmen.

Appendix B - Part IV of the Police Offenders Act 1901

SPECIAL CONSTABLES

101. (1) In all cases where it appears to a Police, Magistrate, or any two Justices, that any tumult, riot, or felony has taken place, or may be reasonably apprehended in any city, town, or place, and he, or they are of opinion that the ordinary constables or officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of their property, or for the apprehension of offenders, any Police Magistrate, or any two Justices, may nominate and appoint by precept in writing under his or their hands, so many as he or they think fit of the householders, or other persons (not legally exempt from serving the, office of constable) residing in or near to such city, town, or place, to act as special constables for such time and in such manner as to the said Police Magistrate or Justices seems fit and necessary for the public peace, and for the protection of the inhabitants and the security of the property in or near such city, town, or place.

(1A) A Police Magistrate or any two Justices may, at the request of his employer, or of the council of a municipality or shire, and subject to the approval of the Commissioner of Police, in like manner nominate and appoint any person employed as a caretaker, night watchman, or in any similar capacity, or an officer of the Royal Society for the Prevention of Cruelty to Animals, New South Wales, or of any other association, organization, society or body which has as one of its objects the promotion of the welfare of or the prevention of cruelty to animals and which is registered as a charity under the Charitable Collections Act, 1934, as amended by subsequent Acts, as a special constable for such time as, such Magistrate or Justices may think fit. A Police Magistrate or any two Justices may:

(a) at the request of the Commissioner of Police nominate and appoint any person who is a member of the police force of the Australian Capital Territory or of any State of the Commonwealth of Australia as a special constable for the State of New South Wales for such time as such Magistrate or Justices may think fit;

(b) at the request of the Commissioner of Police and subject to the approval of the Colonial Secretary nominate and appoint any person as a special constable for the State, of New South Wales for such time as such Magistrate or Justices may think fit.

The provisions of this part relating to special constables who have been called out shall apply to, all special constables appointed under this subsection from the time when such constables have taken the oath as In the next subsection provided.

The Commissioner of Police may, whenever he thinks fit, suspend or determine the services of any such special constable. Notice of such suspension or determination of service shall be forthwith sent by the, Commissioner of Police to the Colonial Secretary.

(2) The Police Magistrate or Justices who appoint any special constables by virtue of this, Act are hereby authorized to administer to every person so appointed the following oath, that is to say:

I, AB, do swear that I will well and truly serve our Sovereign Lord the King in the office of special constable for the [city, town, or place, as the case may be] 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 His 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 - So help me GOD.

(3) Whenever it is deemed necessary to nominate and appoint such special constables, as aforesaid, notice thereof shall be forthwith transmitted by the said Police Magistrate or Justices to the Colonial Secretary.

102. The Police Magistrate or Justices who have appointed any special constables under this Act when such special constables have been called out shall have power to make such orders and regulations as may from time to time be necessary and expedient for rendering such special constables more efficient for the preservation of the public peace, and shall also have power to remove any such special constable from his office for any misconduct or neglect of duty therein.

103. Every special constable appointed under this Act shall have, exercise and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities as any constable duly appointed now has or hereafter may have by virtue of the common law or of any Act or Imperial Act for the time being in force.

104. Whosoever, being appointed a special constable as aforesaid, refuses to take the oath herein before mentioned when thereunto required by the Police Magistrate or Justices appointing him, shall be liable to a penalty not exceeding forty dollars.

105. Whosoever -

being appointed a special constable as aforesaid neglects to appear at the time and place for which he is summoned for the purpose of taking the said oath; or

having been appointed and sworn as a special constable as aforesaid, and being called upon to serve, neglects or refuses to serve as such special constable or to obey such lawful orders and directions as may be given to him by the Police Magistrate, or any Justice, or any chief constable, or inspector of police, or other officer under whose orders he may be placed for the performances of the duties of his office,

shall, unless he proves to the satisfaction of .the Justice that he was prevented by sickness or some other unavoidable cause such as shall in the judgment of the said Justice be a sufficient excuse, be liable to a penalty not exceeding twenty dollars.

106. The Police Magistrate or Justices who have appointed any special constables under this Act for any city, town, or place, may, if such special constables have been called out, suspend or determine the services of all such special constables or of so many as to the said Police Magistrate or Justices sitting in petty sessions in such city, town, or place shall seem meet.

Notice of such suspension or determination of the services of all or any of the, said special constables shall be transmitted forthwith by the said Police Magistrate or such Justices to the Colonial Secretary.

107. Every special constable shall forthwith after the expiration of his office or after he ceases to hold and exercise the same pursuant to this Act, deliver over to his successor, if any such has been appointed, or to such person and at such time and place as may be directed by the Police Magistrate or such Justices all arms, staves, weapons, and other articles which have been provided for such special constable under this Act.

Any such special constable who omits or refuses so to do shall be liable to a penalty not exceeding twenty dollars.

108. Whosoever assaults or resists any special constable whilst in the execution of his office, or promotes, incites, or encourages any other person so, to do shall be liable to a penalty not exceeding two hundred dollars or to imprisonment for any term not exceeding six months with or without hard labour.

Appendix C - Extract from the Police Act, 1855

12. In all cases where it shall appear to any Police Magistrate or any two Justices that any tumult riot or felony has taken place or may be reasonably apprehended in any city town or place and he or they shall be of opinion that the ordinary constables or officers appointed for preserving the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and the security of the property of the inhabitants thereof or for the apprehension of any offenders it shall be lawful for any Police Magistrate or any two Justices to nominate and appoint by precept in writing under his or their hands so many as he or they shall think fit of the householders or other persons (not legally exempt from serving the office of constable) residing in or near to such city town or place to act as special constables for such time and in such manner as to the said Police Magistrate or Justices, shall seem fit and necessary for the public peace and for the protection of the inhabitants and the security of the property in or near such city town or place and the Police Magistrate or Justices who shall appoint any special constables by virtue of this Act are hereby authorized to administer to every person so, appointed the following oath that is to say:

"I AB do swear that I will well and truly serve our Sovereign Lady the, Queen in the office of special constable for the *(city town or place as the case may be)* 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. So help me God"

Provided always that whenever it shall be deemed necessary to nominate and appoint such special constables as aforesaid notice thereof shall be forthwith transmitted by the said Police Magistrate or Justices to the Colonial Secretary of the Colony.

13. The Police Magistrate or Justices who shall have appointed any special constables under this Act when such special cons-tables shall have been called out shall have power to make such orders and regulations as may from time to time be necessary and expedient for rendering such special constables more efficient for the preservation of the public peace and shall also. have power to remove any such special constable from his office for any misconduct or neglect of duty therein.

14. Every special constable appointed under this Act shall have exercise and enjoy all such powers authorities advantages and immunities and be liable to all such duties and responsibilities as any constable duly appointed now has within his constablewick by virtue of the Common Law or of any Law Statute or Act of Council.

15. If any person so residing within the city town or place as aforesaid being appointed a special constable, as aforesaid shall refuse to take the oath hereinbefore mentioned when :thereunto required by the said Police Magistrate or Justices so appointing him he shall on conviction thereof in a summary way before a Justice of the Peace forfeit and pay any sum of

money not exceeding twenty pounds, and if any person being appointed a special constable as aforesaid shall neglect or refuse to appear at the time and place for which he shall be summoned for the purpose of taking the said oath or having been appointed and sworn as a special constable as, aforesaid and being 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 by the Police Magistrate or any Justice of the Peace or any chief constable or Inspector of Police or other officer under whose orders he may be placed for :the performances of the duties of his office every person so offending shall on conviction thereof in a summary way before any Justice of the Peace forfeit and pay for every such neglect any sum of money not exceeding ten pounds unless such person shall prove to, the satisfaction of the said Justice that he was prevented by sickness or some other unavoidable cause as shall in the judgment of the said Justice be a sufficient excuse.

16. The Police Magistrate or Justices who shall have appointed any special constable under this Act for any city town or place and if such special constable shall have been called out is hereby empowered to suspend or determine the services of all or any of the said special constables so called out as to the said Police Magistrate or Justices sitting in Petty Sessions in such city town or place shall seem meet and notice of such suspension or determination of the services of all or any of the said special constables shall be transmitted forthwith by the said Police Magistrate or such Justices to the Colonial Secretary of the said Colony.

17. Every special constable shall forthwith after the expiration of his office or after he shall cease to, hold and exercise the same pursuant to this Act deliver over to his successor (if any such shall have been appointed) or otherwise to such person and at such time and place as may be directed by the Police Magistrate or such Justices all arms staves weapons and other articles which shall have been provided for such special constable under this Act and if any such special constable shall omit or refuse so. to do he shall on conviction thereof in a summary way by any Justice of the Peace forfeit and pay for such offence any sum of money not exceeding ten pounds as to the convicting Justice shall seem meet.

18. If any person shall assault or resist any special constable whilst in the execution of his office or shall promote incite or encourage any other person so to, do every such person shall on conviction thereof in a summary way before any Justice of the Peace forfeit and pay for such offence any sum not exceeding ten pounds or it shall be in the discretion of the Justice before whom any such conviction shall take place to imprison the person so convicted for any term not exceeding six months with or without hard labour.

Appendix D

No. 1974.

A BILL

To provide for the appointment, control and discipline of special constables; to amend the Police Regulation Act, 1899, the Police Offences Act, 1901, and certain other Acts; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by Band with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:-

Short title	1. This Act may be cited as the "Police Regulation (Special Constables) Amendment Act, 1974".
Commencement	2. This Act shall commence upon such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
Amendment of act No. 20, 1899	3. The Police Regulation Act, 1899, is amended
Long title	(a) by omitting from the long title "Police Force." and by inserting instead "Police Force, and to, make provisions with respect to Special Constables";
Sec. 1. (Short title and contents)	(b) (i) by omitting from section 1 "Police Regulation Act, 1899," and by inserting instead "Police and Special Constables Regulation Act, 1899"; (ii) by inserting in section 1 next after the matter relating to Part III the following new matter-
	 PART IV - SPECIAL CONSTABLES - ss. 37-86. DIVISION 1 - Regular Auxiliary Constables - ss. 37-45. DIVISION 2 - Auxiliary Constables on Call - ss. 46-55. DIVISION 3 - External Force Constables - ss. 56-62. DIVISION 4 - Limited Purposes Constables - ss. 63-72. DIVISION 5 - General - ss. 73-86.
Sec. 3. (Interpretation)	(c) (i) by omitting from section 3 "constable of police;" and by inserting instead "constable of police, but does not include a special constable;" (ii) by omitting from section 3 "by him as the ordinary pay of his rank" and by inserting instead "by him as the ordinary pay of his rank; and the term 'constable of police' does not include a special constable or any other person who is not a member of the police force; and the term 'special constable' means a regular auxiliary constable, an auxiliary constable on call, an external force constable or a limited purposes constable, and the term 'office of special constable' has a corresponding meaning";
Sec. 4. (Appointment and authority of Commissioner)	(d) by omitting from section 4 (1) "New South Wales." and by inserting instead "New South Wales and of special constables";
Sec. 12D. (Enforcement of judgements)	(e) (i) by omitting from section 12D (1) "special constable" and by inserting instead "regular auxiliary constable" - (ii) by omitting from section 12D (3) "special constable" wherever occurring and by inserting instead

"regular auxiliary constable";

(iii) by omitting from section 12D (4) "special constable" wherever occurring and by inserting instead "regular auxiliary constable";

(iv) by omitting from section 12D (6) " special constable" wherever occurring and by inserting instead "regular auxiliary constable";

(v) by omitting from section 12D (9) "special constable" and by inserting instead "regular auxiliary constable";

(vi) by omitting from section 12D (10) ft special constable" and by inserting instead "regular auxiliary constable";

(vii) by omitting from section 12D (11) "special constable" wherever occurring and by inserting instead "regular auxiliary constable";

(viii) by omitting from section 12D (12) "special constable" means a special constable under the Police Offences Act, 190,1, as amended by subsequent Acts, employed by the Commissioner of Police";

Sec. 15

(f) by omitting section 15 and by inserting instead the following section-

Penalty for taking
a bribe, &c.

15. (1) Any member of the police force or special constable who takes or solicits any bribe, pecuniary or otherwise, either directly or indirectly shall, on conviction before two Justices, be liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both.

(2) Any member of the police force or special constable who, in any manner aids, abets, assists, or connives at the escape or any attempt or preparation to escape of any prisoner from any place in which such prisoner is legally confined or otherwise in lawful custody shall, on conviction before two Justices, be liable to, a penalty not exceeding one hundred dollars, or to. imprisonment with hard labour for a term not exceeding six months.

(3) Any member of the police force who deserts his post or assaults his superior officer shall, on conviction before two Justices, be liable to, a penalty not exceeding one hundred dollars, or to imprisonment with hard labour for a term not exceeding six months.

Sec. 16.
(Exemption from
tolls. 25 Vic No.
16, s,16)

(g) by omitting from section 16 (1) "member of the police force on actual duty" and by inserting instead "Person who is on actual duty as a member of the police force or as a special constable (other than a limited purposes constable)";

Sec. 17. (Penalty
for unlawful
possession of
accoutrements or
wearing uniform,
&c.)

(h) by omitting section 17 (2) and by inserting instead the following subsection-

(2) It is not an offence under this section for a limited purposes. constable who is an employee of the Public Transport Commission of New South Wales and who has the permission of the Commissioner of Police to. use the designation "Detective of the Public Transport Commission of New South Wales" to assume or use that designation or to assume or use the designation

"Detective" when it is coupled with another word or other words which indicate the connection of the limited purposes constable with that Commission or with some activity of that Commission.

Sec. 17A.
(Penalty for
unlawful
possession of
police wireless
code)

(i) by omitting from section 17A (7) "and a special constable appointed under the Police Offences Act, 1901 , as amended by subsequent Acts, who is employed in the Police Department" and by inserting instead "a regular auxiliary constable, and an auxiliary constable on call";

Sec. 26. (For
protection of
constables. 25 Vic
No. 16, s.28)

(j) by omitting from section 26 (1) "police force" wherever occurring and by inserting instead "police force or special constable".

Further
amendment of Act
No. 20, 1899

4. The Police Regulation Act, 1899, is further amended by inserting next after Part III the following new Part-

PART IV.

SPECIAL CONSTABLES.

DIVISION 1 - *Regular Auxiliary Constables.*

Appointment

37. The Commissioner may appoint any person who is not a member of the police force but who is employed in the Police Department to the office of regular auxiliary constable.

Oath

38. (1) The appointment pursuant to section 37 of a person to the office of regular auxiliary constable shall not take effect until he has taken and subscribed the following oath-

I, (name) of (address) do swear that, so long as I hold the office of regular auxiliary constable, I will well and truly serve our Sovereign Lady the Queen in that office, without favour or affection, malice or ill-will, and will to the best of my skill and knowledge exercise the office faithfully according to law. So help me GOD.

(2) The oath shall be administered by a Justice.

(3) The Justice by whom the oath is administered shall, upon the oath being subscribed by the person who takes it, forward the subscribed oath to the Commissioner.

Class	39. The, Commissioner may assign any regular auxiliary constable to any prescribed class of regular auxiliary constables and may terminate the assignment.
Duties	40. Subject to any rule made pursuant to section 86, the duties of a regular auxiliary constable shall be all the duties which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force.
Powers and authorities	41. A regular auxiliary constable shall, by his office, have, in the execution of his duties, all the powers and authorities which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force.
Advantages and immunities	42. (1) Any person shall, in respect of any act or omission by him in the execution of his duties as a regular auxiliary constable, have all the advantages and immunities which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force. (2) This section is subject to section 76.
Control	43. A regular auxiliary constable shall, in the execution of his duties, obey any lawful direction given to him by the Commissioner or by any other member of the police force under whom he is for the time being placed, by or pursuant to any general or special order of the Commissioner, or by any other regular auxiliary constable under whom he is so placed.
Resignation	44. A regular auxiliary constable shall not, without the consent of the Commissioner, resign his office or withdraw from the duties of it unless he has given seven days' notice of his intention to resign.
Transition	45. Any person who immediately before the commencement of the Police Regulation (Special Constables) Amendment Act, 1974, was employed in the Police Department with the authority of the Premier or other Minister of the Crown and held the office of special constable to which office he was appointed, at the request of the Commissioner, pursuant to section 101 (1A) (b) of the Police Offences Act, 1901, is, upon the commencement of the Police Regulation (Special Constables) Amendment Act, 1974, appointed to the office of regular auxiliary constable and the appointment thereupon takes effect.

DIVISION 2 - Auxiliary Constables on Call.

Appointment

46. The Commissioner may appoint any person who is not a member of the police force to the office of auxiliary constable on call.

Appointment in acute emergency

47. Any member of the police force may appoint any person who is not a member of the police force to the office of auxiliary constable on call where that member:

- (a) is of or above the rank of inspector and considers that a state of acute emergency exists; or
- (b) is acting by the authority of a member of the police force, of or above that rank, who considers that such a state exists.

Oath

48. (1) The appointment of a person to the office of auxiliary constable on call shall not take effect until he has taken and subscribed the following oath:

I, (name) of (address) do swear that, so long as I hold the office of auxiliary constable on call, I will well and truly serve our Sovereign Lady the Queen in that office, without favour or affection, malice or ill-will, and will to the best of my skill and knowledge exercise the office faithfully according to law. So help me GOD.

(2) The oath shall be administered by a Justice.

(3) The Justice by whom the oath is administered shall, upon the oath being subscribed by the person who takes it, forward the subscribed oath to the Commissioner.

Class

49. The Commissioner may assign any auxiliary constable on call to any prescribed class of auxiliary constables on call and may terminate the assignment.

Periods of duty

50. (1) The Commissioner, or any member of the police force authorized by the Commissioner, may, by general or special order, direct that an auxiliary constable on call be on duty forthwith, or from a time fixed by the order, until a time fixed by the order or to be fixed by later order.

(2) The Commissioner, or any member of the police force authorized by the Commissioner, may, by general or special order, direct that an auxiliary constable on call cease to be on duty.

(3) An auxiliary constable on call shall not be bound by any order made under subsection (1) or subsection (2) until he is notified of the order.

(4) An auxiliary constable on call shall be on duty in accordance with orders, made under subsection (1) or subsection (2) by which he is bound.

(5) Where any member of the police force who is of or above the rank of inspector considers that a state of acute emergency exists, he may confer any authority or give any order which the Commissioner may confer or may give under subsection (1) or sub-section (2), and any authority so, conferred and any order so given shall have effect, for the purposes of this section, as if it were conferred or were given by the Commissioner.

Duties

51. Subject to any rule made pursuant to section 86, the duties of an auxiliary constable on call who is on duty shall be all the duties which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force.

Powers and
authorities

52. (1) An auxiliary constable on call shall, by his office, have, in the execution or his duties, all the powers and authorities which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force.

(2) An auxiliary constable on call, when not on duty, shall not have, by his office, any power or authority.

Advantages and
immunities

53. (1) Any person shall, in respect of any act or omission by him in the execution of his, duties as an auxiliary constable on call, have all the advantages and immunities which any constable of police now has or hereafter may have, by virtue of the common law or of any Act for the time being in force.

(2) This section is subject to section 76.

Control

54. An auxiliary constable on call shall in the execution of his duties, obey any lawful direction given to him by the Commissioner or by any other member of the police force under whom he is for the time being placed, by or pursuant to any general or special order of the Commissioner, or by any regular auxiliary constable under whom he is so placed.

Resignation

55. An auxiliary constable on call shall not, without the consent of the Commissioner, resign his office or withdraw from the duties of it unless he has given seven days' notice of his intention to resign.

DIVISION 3 - External Force Constables

Appointment

56. The Commissioner may appoint any person who is not a member of the police force of New South Wales but is a member of the police force of the Commonwealth or of a State or Territory of the Commonwealth or is a member of a police force of or within a country other than Australia to the office of external force constable.

Oath

57. (1) The appointment pursuant to section 56 of a person to, the office of external force constable shall not take effect until he has taken and subscribed an oath as provided by this section.

(2) In the case of a British subject the form of the oath shall be:

I, (name) of (address) do swear that, so long as I hold the, office of external force constable, I will well and truly serve our Sovereign Lady the Queen in that office, without favour or affection, malice or ill-will, and will to the best of my skill and knowledge exercise the office faithfully according to law. So help me GOD.

(3) In the case of a person who is not a British subject the form of the oath shall be:

I, (name) of (address) do swear that, so long as I hold the office of external force constable, I will to the best of my skill and knowledge, exercise the office faithfully according to law, without favour or affection, malice or ill-will. So help me GOD.

(4) The oath shall be administered by a Justice.

(5) The Justice by whom the oath is administered shall, upon the oath being subscribed by the person who takes it, forward the subscribed oath to, the Commissioner.

Powers and authorities

58. (1) Subject to any direction given pursuant to subsection (2) or (3) an external force constable shall have, by his office as an external force constable, all the powers and authorities which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force.

(2) The Commissioner may, at the time of appointing any person to the office of external force constable or at any time while any person holds that office by notice in writing to that person give any one or more of the following directions:

- (a) that he shall not have, by his office, the power or authority specified in the notice;
 - (b) that he shall not have, by his office, the power or authority specified in the notice, except for the purpose, in the place, or in the circumstance specified in the notice;
 - (c) that he shall have no power or authority, by his office, except for the purpose, in the place, or in the circumstance specified in the notice.
- (3) The Commissioner may, by notice in writing to an external force constable revoke or vary any direction given in respect of him pursuant to subsection (2).

Advantages and
immunities

59. (1) Any person shall, in respect of any act or omission by him in the exercise of any of his powers or authorities as an external force constable, have all the advantages and immunities which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force.

(2) This section is subject to section 60 and section 76.

Prohibited acts

60. (1) An external force constable shall refrain from doing any act or thing in the exercise of any power or authority of his office as an external force constable where he is directed not to do that act or thing by any general or special order of the Commissioner or of any other member of the police force of New South Wales under whom he is placed, for the purposes of that office, by or pursuant to any general or special order of the Commissioner.

(2) Where an external force constable does any act or thing in wilful contravention of a direction given to him pursuant to subsection (1) he shall have, in respect of that act or thing, all such liabilities, if any, in tort as he would have if he were not an external force constable.

Resignation

61. An external force constable may at any time, by notice in writing to the Commissioner, resign his office.

Transition

62. Any person who, immediately before the commencement of the Police Regulation (Special Constables) Amendment Act, 1974, was a member of the police force of the Commonwealth or of a State or Territory of the Commonwealth or was a member of a police force of or within a country other than Australia and who, immediately before the commencement of that Act, held the office of special constable to which office he was appointed, at the request of the Commissioner, pursuant to section 101 (1A) of the Police Offences Act, 1901, is, upon the commencement of the Police Regulation (Special Constables) Amendment Act, 1974, appointed to the office of external force constable and the appointment thereupon takes effect.

DIVISION 4 - Limited Purposes Constables

Appointment

63. (1) The Commissioner may, on the application of any person who is not a member of the police force, and on payment of the prescribed fee, appoint that person to the office of limited purposes constable where he is satisfied that:

(a) it is in the public interest for the prevention of crime or the apprehension of criminals that he make the appointment; and

(b) either:

(i) the applicant 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 being appointed to the office; or

(ii) the applicant is an employee and his employer assents to, the appointment and 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.

(2) In this section "crime" includes any offence punishable upon conviction in any court.

Oath

64. (1) The appointment pursuant to section 63 of a person to the office of limited purposes constable shall not take effect until he has taken and subscribed the following oath-

I, (name) of (address) do, swear that, so long as I hold the office of limited purposes constable, I will well and truly serve our Sovereign Lady the Queen in that office, without favour or affection, malice or ill-will, and will to the best of my skill and knowledge exercise the office faithfully according to law. So help me GOD.

(2) The oath shall be administered by a Justice.

(3) The Justice by whom the oath is administered shall, upon the oath being subscribed by the person who takes it, forward the subscribed oath to the Commissioner.

Term of office

65. (1) The term of the appointment of any person to the office of limited purposes constable shall, subject to this Act, be twelve months commencing upon the day the appointee subscribes the oath as provided by section 64.

(2) The Commissioner may, on application made by any limited purposes constable and payment

of the prescribed fee, renew the appointment of that person to, that office.

(3) The term of any renewed appointment to the office of limited purposes constable shall, subject to this Act, be twelve months commencing upon the expiration of the previous term or upon such later day as the Commissioner, by notice in writing to the applicant, appoints.

Events terminating
appointment

66. (1) The Commissioner may, at the time of appointing any person to the office of limited purposes constable or at any time while any person holds the office, by notice in writing to that person direct that the appointment shall terminate upon the occurrence of any event specified in the notice.

(2) The Commissioner may, by notice in writing to any limited purposes constable, revoke or vary any direction given pursuant to this section in respect of the office of that limited purposes constable.

(3) The appointment of any person to the office of limited purposes constable shall, unless it terminates sooner, terminate in accordance with any direction given pursuant to this section.

Powers and
authorities

67. (1) Subject to any direction given pursuant to subsection (2) or (3) a limited purposes constable shall have, by his office, all the powers and authorities which any constable of police now has or hereafter may have by virtue of the common law or of any Act for the time being in force.

(2) The Commissioner may, at the time of appointing any person to the office of limited purposes constable or at any time while any person holds that office, by notice in writing to that person give any one or more of the following directions:

(a) that he shall not have, by his office, the power or authority specified in the notice;

(b) that he shall not have, by his office, the power or authority specified in the notice, except for the purpose, in the place, or in the circumstance specified in the notice;

(c) that he shall have no power or authority, by his office, except for the purpose, in the place, or in the circumstance specified in the notice.

(3) The Commissioner may, by notice in writing to a limited purposes constable, revoke or vary any direction given in respect of him pursuant to subsection (2).

Advantages and
immunities

68. (1) Any person shall, in respect of any act or omission by him in the exercise of any of his powers or authorities as a limited purposes constable, have all the advantages and immunities which any constable of police now has or hereafter may have by virtue of the common law or of

any Act for the time being in force.

(2) This section is subject to section 69 and section 76.

Prohibited acts

69. (1) A limited purposes constable shall refrain from doing any act or thing in the exercise of any power or authority of his office where he is directed not to do that act or thing by a member of the, police force.

(2) Where a limited purposes constable does any act or thing in wilful contravention of a direction given to him pursuant to subsection (1) he shall have, in respect of that act or thing, all such liabilities, if any, in tort as he would have if he were not a limited purposes constable.

Notification to
Commissioner of
termination of
appointment

70. Where any person becomes aware of the occurrence of any event which, in accordance with any direction given pursuant to section 66, terminates his appointment to the office of limited purposes constable, he shall forthwith notify the Commissioner of the occurrence of the event.

Resignation 71. A limited purposes constable may at any time, by notice in writing to the Commissioner, resign his office.

Transition 72. Any person who immediately before the commencement of the Police Regulation (Special Constables) Amendment Act, 1974, held the office of special constable to which office he was appointed, at the request of his employer, or of the council of a municipality or shire, pursuant to section 101 (1A) of the Police Offences Act, 1901, and who immediately before the commencement of the Police Regulation (Special Constables) Amendment Act, 1974, was employed as a caretaker, night watchman, or in any similar capacity or as an officer of the Royal Society for the Prevention of Cruelty to Animals, New South Wales, or of any other association, organisation, society or body which has as one of its objects the promotion of the welfare of or the prevention of cruelty to animals is, upon the commencement of the Police Regulation (Special Constables) Amendment Act, 1974, appointed to the office of limited purposes constable for the term of twelve months commencing upon the day of the commencement and the appointment thereupon takes effect.

DIVISION 5 - General

Special constables not employed under this Act 73. For the purposes of any Act or of any instrument made under an Act, now or hereafter in force, a special constable, whether or not he is a servant of the Crown employed in the Police Department, is not employed under this Act.

References in certain Acts and statutory instruments 74. (1) Where in relation to the constituents of an offence, any Act or any instrument made under an Act, now or hereafter in force, refers to any request, direction, demand, order, or like thing by a member of the police force (not being the person by whom the offence is committed) the like request, direction, demand, order, or thing by a special constable shall have effect for that purpose as if the special constable were a constable of police.

(2) Where in relation to the constituents of an offence, any Act or any instrument made under an Act, now or hereafter in force, refers to any suspicion, opinion, belief, or other state of mind of a member of the police force (not being the person by whom the offence is committed), the like suspicion, opinion, belief, or state of mind of a special constable shall have effect for that purpose as if the special constable were a constable of police.

(3) Where in relation to what is a condition of or an occasion for the exercise of any jurisdiction, power or authority of any court, judge, mining warden or Justice, any Act or instrument made under any Act, now or hereafter in force, refers to, any complaint, information, request, oath, objection, or like thing by a member of the police force the like complaint, information, request, oath, objection, or thing by a special constable shall have, effect for that purpose as if the special constable were a constable of police.

(4) Where any Act or any instrument made under an Act, now or hereafter in force, empowers or authorizes any court, judge, mining warden or Justice to issue any warrant to or confer any other power or authority upon, a constable of police the court, judge, mining warden or Justice may

issue the warrant to, or confer the power or authority upon, a special constable as if the special constable were a constable of police.

(5) This section does not take away, limit or restrict any power, authority, advantage or immunity which a special constable would have if this section were not enacted.

Associated obligations

75. Where any constable of police is bound, by virtue of the common law or of any Act, now or hereafter in force, to do any act or thing where, in the execution of his duty, he does some other act or thing, a special constable shall not, in the execution of his office, do that other act or thing unless he does also, the first-mentioned act or thing.

Suspension

76. (1) The Commissioner may, by notice in writing to any special constable, direct that he refrain, while the direction remains in force, from exercising any power or authority of his office.

(2) A direction given pursuant to subsection (1) shall remain in force until it is withdrawn by the Commissioner by notice in writing to the special constable or the special constable ceases to hold his office or his appointment to that office is terminated.

(3) A special constable shall comply with any direction given to him pursuant to subsection (1).

(4) Where a special constable does any act or thing in wilful contravention of a direction given to him pursuant to subsection (1) he shall have, in respect of that act or thing, all such liabilities, if any, in tort as he would have if he were not a special constable.

Termination

77. The Commissioner may, by notice in writing to any special constable, terminate the appointment of that person to the office of special constable.

Powers and authorities to cease upon special constable ceasing to hold office

78. When a special constable, ceases to hold his office or his appointment to that office is terminated, all powers and authorities vested in him as a special constable shall immediately cease.

Handling over equipment

79. (1) A special constable shall, forthwith after he ceases to hold his office or his appointment to that office is terminated, deliver over all the arms, ammunition, accoutrements, and other appointments and things supplied to him by a member of the police force or by the Police Department, for the execution of his office, to such person as is appointed by any special or general order of the Commissioner.

(2) Any Justice may and shall issue his warrant to search for and seize to the use of Her Majesty all and every the arms, ammunition, accoutrements and other appointments and things not so

delivered over wherever the same are found.

Appeal against fine
imposed by
Commissioner

80. (1) Where the Commissioner, in the exercise of any power conferred upon him pursuant to section 86, imposes a fine upon any person, that person may, within 28 days after notification to him of the imposition of the fine, appeal to the District Court.

(2) During the pendency of the appeal the fine shall not be enforced.

(3) The appeal shall be in the nature of a rehearing.

(4) The court may confirm or set aside the fine or vary the amount of the fine and may make such order as to the costs of the appeal as it sees fit.

(5) The determination of the court on the appeal shall have effect as the determination of the Commissioner and shall be final and be binding on the appellant and on the Commissioner.

(6) Where an appeal lies under this section, in respect of the imposition of a fine, an appeal shall not lie under the Crown Employees Appeal Board Act, 1944, in respect of the decision or determination of the Commissioner for the imposition of the fine.

Enforcement of
fine by
Commissioner

81. (1) In this section "fine for misconduct" means a fine imposed by the Commissioner in the exercise of any power conferred upon him pursuant to section 86, or, where the District Court on appeal varies that fine, the fine as varied by the District Court.

(2) A fine for misconduct shall be a debt due to the Crown by the person fined.

(3) The registrar of any court of petty sessions (other than a court of petty sessions specified in an order made under section 77 (3) of the Courts of Petty Sessions (Civil Claims) Act, 1970) shall, upon the filing with him of a certificate by the Commissioner stating that:

(a) the person named in the certificate is indebted to the Crown in the amount stated in the certificate being the amount unpaid by that person of a fine for misconduct imposed upon him;

(b) no appeal to the District Court pursuant to section 80 against the fine is pending; and

(c) the indebtedness has existed for not less than 28 days;

enter up judgment against that person in that amount for the "Commissioner of Police" as

judgment creditor.

(4) The person for the time being holding the office of Commissioner may enforce, as if he were the judgment creditor, any judgment entered up pursuant to subsection (3).

(5) A court of petty sessions in which a judgment is entered up pursuant to subsection (3) may, on such terms as it thinks fit, set aside the judgment where, at the time it was entered up, the material facts were not as stated in the certificate by the Commissioner.

Appeal as to
fitness for the
office of limited
purposes
constable

82. (1) In this section "unfitness" means, unfitness, to hold the office of limited purposes constable by reason of mental or bodily infirmity, inadequacy of education or training, unsuitability of temperament or lack of proper character.

(2) Where the Commissioner refuses an application by any person for appointment to the office of limited purposes constable or for renewal of his appointment, or gives a direction to him pursuant to section 76, or terminates his appointment, that person may, within 28 days after he is notified of the Commissioner's decision, request the Commissioner to state whether that decision was on the ground of unfitness of that person.

(3) Where a request is made as provided by sub-section (2) the Commissioner shall make the statement in writing and furnish it to the person requesting it.

(4) Where the Commissioner states that his decision was on the ground of unfitness of the person requesting the statement:

(a) he shall include in the statement particulars of the alleged unfitness; and

(b) that person may, within 28 days after the statement was furnished to him, appeal to the District Court against the decision.

(5) The court shall allow the appeal of, but only if, it is satisfied that the Commissioner's decision was not one which was open to a reasonable man correctly informed as to all facts relevant to the particulars stated by the Commissioner.

(6) Where the court allows the appeal it shall set aside the Commissioner's decision and it may substitute for that decision such decision as it considers the Commissioner ought, on correct information as to all facts relevant to the particulars stated by him, to have made.

(7) Where the court gives a substituted decision that decision shall have effect as the decision of the Commissioner.

(8) The court may make such order as to the costs of the appeal as it sees fit.

(9) The determination of the court on the appeal shall be final and shall be binding on the appellant and on the Commissioner.

Certificate

83. (1) In any proceedings in any court a certificate purporting to be signed by a member of the police force of or above the rank of inspector and stating:

(a) whether or not, throughout the day stated in the certificate, the person whose name is stated in the certificate was a special constable;

(b) where that person was, throughout that day, a special constable, whether he held the office of regular auxiliary constable or of auxiliary constable on call or of external force constable or of limited purposes constable;

(c) where that person was, throughout that day, a regular auxiliary constable, whether he was assigned to a prescribed class of regular auxiliary constables and, if so, the class to which he was assigned;

(d) where the person was, throughout that day, an auxiliary constable on call, whether he was assigned to a prescribed class of auxiliary constables on call and, if so, the class to which he was assigned;

(e) where the person was, throughout that day, an auxiliary constable on call, whether he was on duty at any time on that day and, if so, the starting and finishing time of each period of duty;

(f) where the person was, throughout that day, an external force constable, whether any direction pursuant to section 58 was in force in respect of him and, if so, the terms of the direction;

(g) where the person was, throughout that day, a limited purposes constable, whether any direction pursuant to section 67 was in force in respect of him and, if so, the terms of the direction;

(h) whether, throughout that day, a direction pursuant to section 76 was in force in respect of that person,

is evidence of each of the matters stated.

(2) Where any person applies for a certificate as provided by subsection (1) in respect of a named person for a specified day or period within six years of the making of the application, the Commissioner shall, on payment of the prescribed fee, furnish the certificate.

Penalty for
unlawful use of
designation

84. A person who is not a special constable shall not assume or use any designation which is or includes the word "constable" in association with any one or more of the words "special", "auxiliary", "external", or "limited". Penalty : \$100.

Penalty for bribery
of special
constable

85. A person shall not give or offer, or promise to give, any bribe, recompense or reward to, or make any collusive agreement with a special constable for the purpose of inducing him to neglect his duty, or to conceal or connive at any act whereby any rule made by the Governor under the provisions of this Act may be evaded. Penalty : \$200 or imprisonment for six months.

Rules

86. (1) The Governor may make rules not inconsistent with this Part prescribing all matters which are necessary or convenient to be prescribed for carrying into effect the objects and purposes of this Part.

(2) In particular and without prejudice to the generality of subsection (1) such rules may provide for:

- (a) the general government and discipline of special constables;
- (b) preventing neglect or abuse;
- (c) rendering special constables efficient in the performance of their office;
- (d) the establishment of classes of regular auxiliary constables;
- (e) the establishment of classes, of auxiliary constables on call;
- (f) the duties of regular auxiliary constables or of any class of such special constables;
- (g) the duties of auxiliary constables on call or of any class of such special constables;
- (h) the calling for duty of auxiliary constables on call or of any class, of such special constables;
- (i) the release from duty of auxiliary constables on call or of any class of such special constables;
- (j) the imposition by the Commissioner of fines not exceeding \$200 for any breach found by him to have been committed by any person, other than an external force constable, of any provision of this Part or of the rules.

(3) Different rules may be made applying to different special constables according to whether they are regular auxiliary constables, or members of a prescribed class of regular auxiliary constables, or auxiliary constables on call, or members of a prescribed class of auxiliary constables on call, or external force constables or limited purposes constables, according to whether they are male or female, and, in the case of limited purposes constables, according to the person by whom they are employed and according to the nature of their employment by that person.

Amendment of

5. Each Act specified in Column 1 of the Schedule is amended in the manner specified opposite

certain Acts that Act in Column 2 of the Schedule.

SCHEDULE

AMENDMENT OF ACTS

	Column 1	Column 2
Year and number of Act	Short title of Act	Amendment
1973, No. 38	Firearms and Dangerous Weapons Act, 1973	Section 4- Insert next after subsection (1) the following new subsection- (1A) A person who holds the office of regular auxiliary constable, auxiliary constable on call, or external force constable, to which office he is appointed by or pursuant to the Police and Special Constables Regulation Act, 1899, is not guilty of an offence under this Act or the regulations by reason only of any thing done in or in connection with that office.
1919, No. 41	Local Government Act, 1919	Section 289A (1)- Omit from paragraph (b) of the definition of "authorised person" the words "under Part IV of the Police Offences Act, 1901", insert instead "by or pursuant to the Police and Special Constables Regulation Act, 1899".
1900, No. 8 ...	Metropolitan Traffic Act, 1900	Section 4- Insert at the end of the section the following new subsection- (2) Where any member of the police force is authorised, in the execution of his duty under this Act or the regulations, to do any act or thing and that act or thing is done by a special constable appointed to that office by or pursuant to the Police and Special Constables Regulation Act, 1899, in the performance of that office, the act or thing done by the special constable shall have effect, for the purposes of this Act and the regulations, as if done by a member of the police force in the execution of his duty under this Act or the regulations.
1909, No. 5 ...	Motor Traffic Act, 1909	Section 2- Insert at the end of the section the following new subsection-

(3) Where any member of the police force is authorised, in the execution of his duty under this Act or the regulations, to do any act or thing and that act or thing is done by a special constable appointed to that office by or pursuant to the Police and Special Constables Regulation Act, 1899, in the performance of that office, the act or thing done by the special constable shall have effect, for the purposes of this Act and the regulations, as if done by a member of the police force in the execution of his duty under this Act or the regulations.

1901, No. 5	Police Offences Act, 1901	Section 1- Omit "PART IV.-Special Constables-ss. 101-108." Part IV- Omit the Part.
1906, No. 28	Police Regulation (Superannuation) Act, 1906	Section 1- Omit "The terms "member of the police force," "pay and salary," "pay," or "salary" in this Act shall receive the same interpretation as that ascribed to them by section three of the Principal Act as amended by the Police Regulation (Amendment) Act, 1927."
1901, No. 64	Prevention of Cruelty to Animals Act, 1901	Section 3- Omit from the definition of "Officer" the words "with the approval of the Commissioner of Police", insert instead "by or pursuant to the Police and Special Constables Regulation Act, 1899".
1970, No. 96	Summary Offences Act, 1970	Section 22- Insert next after subsection (1) the following new subsection- (1A) Notwithstanding section 74 of the Police and Special Constables Regulation Act, 1899, the suspicion of a special constable that a person has no visible lawful means of support or insufficient lawful means of support shall not have effect, for the purposes of this section, as if the special constable were a member of the police force. Part II- Insert next after section 54 the following new section-

1967, No. 96

Transport Employees
Retirement Benefits Act,
1967.

54A. A person who assaults, resists, hinders or delays or incites any person to assault, resist, hinder or delay a special constable, appointed to that office by or pursuant to the Police and Special Constables Regulation Act, 1899, in the execution of that office is guilty of an offence. (Assaulting or hindering special constables)

Penalty: \$200 or imprisonment for 3 months.

Section 3(1)-

Omit from paragraph (b) of the definition of "employee" the word "Premier", insert instead "Premier or other Minister of the Crown".

Omit from paragraph (e) of the definition of "employee" the words "Public Service Act, 1902;", insert instead "Public Service Act, 1902, or has duties only as an auxiliary constable on call".

Appendix E - Notes on the Draft Bill

In these notes references to amendments of sections are except where otherwise indicated, references to amendments to the Police Regulation Act, 1899, as amended. The Police Regulation Act, 1899, as amended, is referred to as the Police Regulation Act. The Police Offences Act, 1901, as amended, is referred to as the Police Offences Act. References to paragraph's are references to paragraphs of the report.

Sec. 3 (c)-Amendment of sec. 3-Interpretation

These amendments are intended to ensure that there is no confusion between the office of constable of police and the office of special constable. It is expressly provided that although a constable of police is a member of the police force, a special constable is not a member of that force. The amendments also enable the generic term "special constable" to be used for a special constable of any category.

Sec. 3 (d)-Amendment of sec. 4-Appointment and authority of Commissioner

See paragraph 27.

Although the Bill gives to the Commissioner power to appoint, discipline and dismiss special constables, the effect of this amendment is that the Commissioner is subject to the direction of the Minister in respect of superintendence of special constables as he is in respect of the superintendence of members of the police force.

Sec. 3 (e)-Amendment of sec. 12D--Enforcement of Judgments

Section 12D of the Police Regulation Act empowers the Commissioner to apply, to a limited extent, moneys due to any special constable, employed by him, towards satisfaction of unsatisfied judgments against the special constable. The purpose of the amendments is to adapt the section to the new categories of special constables. The effect of them is to apply the section to regular auxiliary constables. The section is not applied to auxiliary constables on call as their employment would be of an intermittent nature and the provisions of the section as to minimum pay would be inappropriate.

Sec. 3 (f)-Amendment of sec 15-Penalty for taking a bribe, &c.

This amendment extends to special constables the offences referred to in section 15 of the Police Regulation Act other than assault and desertion of "post". These last mentioned offences are not, in general, apt in respect of special constables. Appropriate offences, if thought necessary, may be established by rule.

Sec. 3 (g)-Amendment of sec. 16-Exemption from tolls

Section 16 exempts from road, bridge and ferry tolls any member of the police force on actual duty. The amendment extends the exemption to any special constable, other than a limited purposes constable, who is on actual duty.

Sec. 3 (h)-Amendment of sec. 17-Penalty for unlawful possession of accoutrements or wearing uniform, &c.

The title "Detective of the Public Transport Commission of New South Wales" is that chosen by that Commission to replace the title "Railway Detective". We would have preferred a shorter title such as "Public Transport Detective".

Sec. 3 (i)-Amendment of sec. 17A-Penalty for unlawful possession of police wireless code

Section 17A of the Police Regulation Act provides penalties for offences relating to the police wireless code by "a special constable appointed under the Police Offences Act, 19,01, as amended by subsequent Acts, who is employed in the Police Department". The amendment substitutes the appropriate new categories of special constables, namely "a regular auxiliary constable and an auxiliary constable on call".

Sec. 3 (j)-Amendment of sec. 26-For protection of constables

Section 26 of the Police Regulation Act protects members of the police force from liability for any act done in obedience to a warrant of any justice issued irregularly or without jurisdiction. The amendments extend this protection to special constables.

Sec. 4-New PART IV - SPECIAL CONSTABLES

Section 4 inserts a new Part, Part IV, into the Police Regulation Act. Part IV relates exclusively to special constables. It is divided into five Divisions, namely-

DIVISION 1 - *Regular Auxiliary Constables-ss. 37-45.*

DIVISION 2 - *Auxiliary Constables on Call-ss. 46-55.*

DIVISION 3 - *External Force Constables-ss. 56-62.*

DIVISION 4 - *Limited Purposes Constables-ss. 63-72.*

DIVISION 5 - *General-ss. 73-86.*

DIVISION 1 - *Regular Auxiliary Constables*

See paragraphs 16, 21, 22, and 31 to 42.

New sec. 37 - Appointment

See paragraph 28.

The Commissioner is, by section 4 of the Police Regulation Act as amended by section 3(d) of the draft bill, charged with the superintendence of special constables but is subject, in that superintendence, to the direction of the Minister. We do not consider it necessary to provide that the appointment of a special constable be "subject to disallowance by the Governor" (as is the case in respect of the appointment of members of the police force - Police Regulation Act, s.6). No like provision is contained, in respect of the appointment of special constables, in the present legislation (Police Offences Act, Part IV). Appointment to the office of special constable is, in comparison with appointment which, especially in the case of appointment to the office of external force constables, may be short duration.

New sec. 38 - Oath

Compare the form of the oath with that required to be taken by members of the police force (Police Regulation Act, s.9). The form of oath is simpler and takes into account that the duties of a regular auxiliary constable may be limited by rules made under the new section 86.

New sec. 39 - Class

See paragraph 32 to 35.

Classes may be prescribed pursuant to the new section 86.

New sec. 40 - Duties

See paragraphs 32 to 35.

New sec. 41 - Powers and authorities

See paragraph 36.

It is doubtful whether a special constable, even if he is employed in the Police Department and is a regular auxiliary constable, is a "member of the Police Force" of New South Wales within the meaning of the Commonwealth extradition legislation - the Extradition (Commonwealth Countries) Act 1966-73, the Extradition (Foreign States) Act 1966-1973. Further Commonwealth legislation would be needed to extend to special constables, at least clearly, the powers of arrest conferred by these Acts.

But new section 41 gives a regular auxiliary constable the power and authorities, in the execution of duties, of a constable of police. Where a crime has been committed abroad and the offender flees to New South Wales, he may offend, in New South Wales, against the criminal law of this State. For example, a thief, who brings into New South Wales any of the stolen goods is guilty of crime, in New South Wales, of being in possession of stolen goods (Crimes Act, 1900, s. 189A) and is susceptible to arrest for this breach of the law of this State. He may be arrested, on reasonable suspicion that he has committed this offence, by a constable of police even without warrant (Crimes Act, 1900, s. 352).

New sec. 42-Advantages and immunities

See paragraph 36 and the notes to new section 76.

New sec. 43-Control

See paragraph 37.

New sec. 44-Resignation

Compare section 18 of the Police Regulation Act which requires a member of the police force to give four weeks' notice.

New sec. 45-Transition

Parking police and "blue uniform" special constables (see para. 21) are ministerial employees - that is, servants of the Crown employed by the authority of a Minister of the Crown. They are appointed special constables, pursuant to section 101 (1A) (b) of the Police Offences Act, upon request by the Commissioner. The effect of the new section 45 is that they become, upon the commencement of the Act, regular auxiliary constables.

DIVISION 2.-Auxiliary Constables on Call

See paragraphs 7 to 10, and 43 to 47.

New sec. 46-Appointment

See the notes to new section 37.

New sec. 47-Appointment in acute emergency

It is conceivable that in an acute emergency, one result of which is a breakdown of communications, the Commissioner may not be aware of an urgent need, in some part of the State, to appoint and call out auxiliary constables on call; or he may be unable to have done the things necessary to, have responsible persons, who are in that part of the State, appointed to that office or called out for service. The new section 47 enables the Inspector in that part of the State (or any officer superior to him) to have the necessary appointments made; and new section 50 (5) enables him to have auxiliary constables called up for duty. It would be fanciful to suppose that the Inspector would not first obtain the permission of the Commissioner, if he can communicate with him, or that he would act contrary to any guide-lines previously laid down by the Commissioner. The police force is a disciplined body. In any event, as soon as communications are restored, the Commissioner can, if he wishes, have the auxiliary constables on call released from duty (new s. 50,) or have their appointment to office terminated (new s. 77).

New sec. 59-Advantages and immunities

See paragraph 52.

New sec. 60-Prohibited acts

See paragraph 53.

New sec. 61-Resignation

It is not appropriate to enforce upon an external force constable any requirement as to, length of notice or resignation. He is a member of another police force and should be free to resign whenever, as a member of that police force, he is instructed to resign.

New sec. 62-Transition

The effect of this section is that any member of another police force who is a special constable for New South Wales becomes, upon the commencement of the Act, an external force constable.

DIVISION 4 - Limited Purposes Constables

See paragraph 12 to 15, and 54 to 64.

New sec. 63-Appointment

See paragraph 57.

New sec. 64-Oath

See the notes to new section 38. The form of oath does not refer to "duties". A limited purposes constable has no duties of office (see para. 62).

New sec. 65-Term of office

The purpose of this section is to ensure an annual review, in respect of each limited purposes constable, as to whether the circumstances concerning him remain such that he should continue to hold office.

Subsection (3) meets the case where a limited purposes constable applies, near to the end of his then current term of office, for renewal, and the Commissioner is unable to deal with the application until after that term has expired. In that event the renewal term should commence from the date of renewal by the Commissioner. It should not be back-dated to the date of expiry of the former term. The effect of back-dating the appointment could be to make lawful acts which, when done, were an unlawful infringement of the rights of other people.

New sec. 66-Events terminating appointment

A limited purposes constable is appointed because of special interests (see new s. 63). The tenure of office of a private special constable should come to an end when those special interests cease to exist. It is not sufficient to confer upon the Commissioner power to terminate the appointment of any person to the office of special constable (see new s. 77). The Commissioner may be unaware, or not immediately aware, of the cessation of the special interests by reason of which a person has been appointed to the office of limited purposes constable. For example, if a person has been appointed because he is an inspector of the RSPCA, he should cease to hold the office of limited purposes constable forthwith upon ceasing to be an inspector of that body. He should not continue to have the powers and authorities of a limited purposes constable until the Commissioner becomes aware that he has ceased to be an inspector of the RSPCA and terminates his appointment to the office of private special constable. The new section 66 enables the period of office to be appropriately defined. Thus in the case of the RSPCA inspector, it should be defined so as to ensure only until he ceases to be an inspector of that body.

New sec. 67-Powers and authorities

See paragraph 61.

New sec. 68-Advantages and immunities

See paragraph 61.

New sec. 69-Prohibited acts

See paragraph 63.

New sec. 70-Notification to Commissioner of termination of appointment

This new section is intended to ensure that the Commissioner is not left unaware that a person has ceased to hold the office of limited purposes constable. An appropriate penalty can be fixed by rule (new s. 86).

New sec. 71-Resignation

There is no advantage in imposing upon a limited purposes constable any requirement as to length of notice of resignation. The office does not impose upon him any duty to act in law enforcement (see para. 62).

New sec. 72-Transition

The appointment is for a term of twelve months (new s. 65).

DIVISION 5 - General

New sec. 73-Special constables not employed under this Act

Section 10 of the Police Regulation Act, 1899, provides that every member of the police force who takes and subscribes the oath of his office "shall be deemed to have thereby entered into a written agreement with and shall be thereby bound to serve Her Majesty as a member of the police force . . . at the current rate of pay for such member But the ordinary relationship of master and servant does not exist between the Crown and a member of the police force. "If ever he is called a servant, it is in the same sense in which any holder of a public office may be called a servant of the Crown or of the State." (*Attorney General for New South Wales v. Perpetual Trustee Co. (Ld)* [1955] A.C. 457 at 481, Privy Council).

It has become a practice in legislation, where it is intended to refer to a member of the police force in the context of his "employment", to refer to him by the convenient formula of a "person employed under the Police Regulation Act, 1899" (see Public Service Act, 1902, s. 5; Transport Employees Retirement Benefits Act, 1967, s. 3 (1), paragraph (e) of the definition of "employee"; New South Wales Retirement Benefits Act, 1972, Schedule 1). The purpose of

the new section 73 is to preclude an argument that special constables, although not members of the police force, are embraced by this standard expression.

New sec. 74-References in certain Acts and statutory instruments

See paragraphs 40, 41, and 42.

Subsection (2) does not apply in respect of the offence of vagrancy (see para. 91 and the draft amendment to section 22 of the Summary Offences Act, 1970).

The provisions made by the new section apply in respect of all special constables. But the provisions which are made by other sections enable limits to be imposed as to what any special constable is empowered, by his office, to do. Limits can be imposed which prevent, where this is desired, the provisions of the new section having the effect that a special constable has some power or authority which he would not otherwise have. Assume, for illustration, that, contrary to our recommendations, the new section applies to the offence of vagrancy. It is convenient to take this illustration as that offence is discussed in the report (paras 84-91). If the special constable is a limited purposes constable, the Commissioner can direct that he shall not have the power of a constable of police to arrest a person for vagrancy. Or he can direct that the limited purposes constable shall have this power only for the purpose, in the place, or in the circumstance, which the Commissioner specifies (new s. 67). In respect of an external force constable, the Commissioner can give like directions (new s. 58). The duties of any regular auxiliary constable can be prescribed (new ss. 40, 86). Duty to arrest for vagrancy can be excluded from the duties which the regular auxiliary constable would have: and the powers and authorities which his office gives him are powers and authorities only in the execution of his duties (new s. 41). An auxiliary constable on call does not have, by his office, any power or authority unless he is on duty (new s. 52 (2)): and the powers and authorities which his office gives him when he is on duty can be limited in the same way as those of a regular auxiliary constable can be limited (new ss. 52 (1), 51, 86).

New sections 43, 54, 60 and 69, which deal with the control of special constables and directions to them to refrain from doing any act or thing, also provide some assurance against abuse.

Subsection (4) empowers any judge or magistrate to issue a warrant to a special constable where he may issue it to a constable of police. The issue to any special constable of a warrant confers upon that special constable some power or authority which he does not have by his office. But the subsection does not require a judge or Justice to issue any warrant to a special constable. It may be thought likely that, in general, he would not do so. But cases may arise where it is desirable that the warrant be issued to some particular special constable or special constables (see para. 83). Subsection (4) enables the judge or Justice to take this course.

Instead of enacting a general provision of the type of the new section 74, the problem to which it is addressed could be met by identifying, and amending as is appropriate, every statutory

provision which raises the problem. We have not taken this course for two reasons. The first is that we consider that, if proper care is taken that no relevant provision is overlooked, the labour would be disproportionate. The second is that a general provision along the lines of the new section 74 avoids the need for special provision in every future enactment in which the problem occurs.

New sec. 75-Associated obligations

An external force constable is not, by his office, bound to concern himself in law enforcement in New South Wales (para. 49). Nor is a limited purposes constable (para. 62). The duties of a regular auxiliary constable or of an auxiliary constable on call may be limited by rule (paras 32, 33, 34, 46). But where a special constable does participate in law enforcement, he should be bound to, do all that the law requires in respect of that participation. If, for example, he arrests a man, there should be no doubt that he is bound by the common law, unless the reason for the arrest is obvious, to inform that man of the reason for the arrest (*Christie v. Leachinsky* [1947] AC 573, House of Lords). An example of an -associated statutory obligation is. to be found in section 81 (3) of the Child Welfare Act, 1939. This requires a constable of police who arrests a child to cause the child's parent to, be warned to attend at the court before which the child will appear. There should be no doubt that, where the child is arrested by a special constable, the special constable is obliged to see to it that the parent receives the warning.

New sec. 76 - Suspension

See paragraph 92.

A person is not, while a direction under the section is in force, in respect of him, deprived of his office as a special constable. But, he is forbidden, while the direction is in force, from exercising any power or authority of his office. The sanction is imposed that he is precluded from relying upon his office to justify any tortious conduct which occurs while the direction is in force. Compare sections 60 and 69.

New sec. 77-Termination

See paragraph 92.

New sec. 78-Powers and authorities to cease upon special constable ceasing to hold office

This new section is the counterpart, in respect of special constables, of the provision made by section 19 (1) of the Police Regulation Act in respect of members of the police force.

New sec. 79-Handing over equipment

This new section is the counterpart, in respect of special constables, of the provision made by subsections (2) and (3) of section 19 of the Police Regulation Act in respect of members of the police force, save that the amount of penalty is left to be fixed by the rules (see new s. 86). Subsection (2) adopts, for conformity, the, clumsy wording of section 19 (3).

New sec. 80-Appeal against fine imposed by Commissioner

See paragraph 99.

A fine imposed by the Commissioner is a fine for breach of a provision of the new Part IV of the Act or of a rule made pursuant to section 86. It is arguable that it relates to the office of the special constable and not to, his employment and that accordingly a special constable who is a servant of the Crown, employed in the Police Department, would have no right of appeal against it under the Crown Employees Appeal Board Act, 1944. Such a special constable is entitled, under the new section 80, to, appeal to the District Court against the fine-as is any other special constable. To avoid a possible duplication of remedies it is provided that where an appeal lies to the District Court, an appeal does not lie to the Crown Employees Appeal Board.

New sec. 81-Enforcement of fine by Commissioner

Compare section 25 of the Consumer Claims Tribunals Act, 1974.

New sec. 82-Appeal as to fitness for the office of limited purposes constable

See paragraphs 95, 96, and 98.

New sec. 83-Certificate

See paragraphs 101 and 102.

New sec. 84-Penalty for unlawful use of designation

Compare section 17 of the Police Regulation Act.

We make no positive recommendation as to the amount of the penalty.

New sec. 85-Penalty for bribery of special constable

Compare section 17 of the Police Regulation Act.

We make no positive recommendation as to the amount of the penalty.

New sec. 86-Rules

See paragraphs 33, 34, 35, 46, 93, and 94.

The rule-making power extends to the making of rules providing for the imposition by the Commissioner of penalties for breach by a special constable of any provision of the new Part IV of the Act, such as new section 79 or of a rule. We make no positive recommendation as to the amount of the penalties. Matters of procedure, to be followed in inquiring into an alleged breach, including the rights in that regard of a person charged, can be prescribed by rule as conditions precedent to the imposition of a penalty. The new section 86 does not authorize the making of any rule for the imposition by the Commissioner of a fine upon an external force constable. Such a constable is answerable to his superiors in the police force of which he is a member.

Subsection (3) enables different rules to be made for limited purposes constables according to the person by whom they are employed and according to the nature of their employment by that person. The employer may have statutory powers of discipline. In such a case it may be convenient to make special provision in rules made under the new section 86.

Sec. 5-Amendment of certain Acts

(a) Firearms and Dangerous Weapons Act, 1973

The powers of control and discipline which the Bill confers upon the Commissioner in respect of regular auxiliary constables and auxiliary constables on call are such that it is, appropriate that section 4 of the Firearms and Dangerous Weapons Act, 1973, be extended to them. This will enable the Commissioner, should he, on occasion, see fit to do so, to have arms issued to them, as he may do in respect of members, of the police force, without the formality of first issuing the appropriate licence under that Act.

The amendments also exclude from the application of the offence provisions of that Act any person who, is an external force constable where the, act or thing done is in or in connection with that office. In its present form, section 4 excludes "a member of the police force of any . . . State of the Commonwealth" where: the act or thing done is in or in connection with "the performance of his duties as such a member". This exception is too narrow. It does not include, for example, a member of the New Zealand Police Force who is in New South Wales on interchange duty with the police force of New South Wales.

The Bill does not, however, extend the exclusion to limited purposes constables. We share the view put to us by the Council for Civil Liberties that the use by limited purposes constables of firearms needs to be tightly controlled.

(b) Local Government Act, 1919

This is a formal amendment.

(c) Metropolitan Traffic Act, 1900

See the notes to the Motor Traffic Act, 1909.

(d) Motor Traffic Act, 1909

Section 2c of the Motor Traffic Act, 1909, provides that the Act and regulations "shall be enforced by . . . members of the police force". This does not impose upon any special constable any duty to enforce the Act and regulations. Such a duty, moreover, does not necessarily arise because of the provisions of the Bill. For example, the Bill does not impose duties upon an external force, constable (para. 49).

Difficulty may arise where a provision of the Act or of the regulations made under it refers to a member of the police force acting in his duty to enforce the Act and the regulations. Consider, for example, section 5 (1) of the Motor Traffic Act, 1909. It provides:

(1) Any driver of a motor vehicle who, when required by a member of the police force in the execution of his duty under this Act or the regulations to produce his licence and state his name and place of abode refuses to do so, or, when so required, states a false name or place of abode, shall be guilty of an offence under this Act.

The Bill provides that the request of a special constable shall have effect, in relation to, the constituents of an offence as if the special constable were a constable of police (new s. 74). But section 5 (1) of the Motor Traffic Act, 1909, does not refer simply to a request by a member of the police force. It refers to a request by a member of the Police force in the execution of his duty under the Act and regulations. This can found an argument that (despite new section 74) the offence under section 5 (1) of the Motor Traffic Act, 1909, is not committed where the special constable does not have imposed upon him by that Act or the Police and Special Constables Regulation Act, 1899, the duty to enforce the Motor Traffic Act, 1909, and the regulations under it. The amendment precludes this argument.

The amendment to the Metropolitan Traffic Act, 1900, precludes a like argument in respect of provisions of that Act (see, particularly, sections 6 and 11 of that Act).

(e) Police Offences Act, 1901

Part IV of the Police Offences Act deals only with special constables.

(f) Police Regulation (Superannuation) Act, 1906

This is a formal amendment. The words omitted are surplusage.

(g) Prevention of Cruelty to Animals Act, 1901

This is a formal amendment.

(h) Summary Offences Act, 1970

As to the amendment to section 22 see paragraphs 84 to 91.

As to the proposed new section 54A, compare section 10-8 of the Police Offences Act.

Section 54 of the Summary Offences Act, 1970, refers not to a "constable" (as did its predecessor, s. 14 of the Vagrancy Act, 1902) but to a "member of the police force". The new section 54A makes provision in respect of a "special constable". It refers, however, to, the special constable being in the execution of his "office" rather than of his "duty". A special constable, for example, an external force constable, may exercise the powers of a constable of police although he does not have the duties of a constable of police.

The new section 54A is not restricted to occasions where the special constable is acting in enforcement of the Summary Offences Act, 1970.

The new section is wider than section 54 in that it extends to assaults (which are not necessarily of the nature of resistance or hindrance), to conduct occasioning delay, and to incitement to conduct occasioning delay. In the case of members of the police force, there are provisions in many Acts, other than the Summary Offences Act, 1970, which are available for the punishment of those who, hinder police work. But these sections, in the main, refer specifically to something done in respect of a "member of the Police force", rather than in respect of a constable" and, therefore, are not available in respect of a special constables. The comprehensiveness of section 54A is intended to overcome this difficulty.

(i) Transport Employees Retirement Benefits Act, 1967

The amendment to paragraph (e) precludes the possibility of a person who is not ordinarily employed in the Police Department but who is called up for service as an auxiliary constable on call becoming, by reason of that service, entitled to the benefits of the Act.

Workers' Compensation Act, 1926

We foreshadowed in the working paper an amendment to the Workers' Compensation Act, 1926, to leave no doubt that a special constable can be a "worker" within the meaning of that Act. The recent decision of the Privy Council in *Finemore's Transport Pty Ltd v. Cluff* ([1974] 1 WLR 142) removes such doubt as -there may have been. "(T)he question whether A is a "worker" and therefore eligible in certain circumstances to receive compensation from B turns not on his status but solely upon the nature of his contractual relationship with B." (at p. 144).