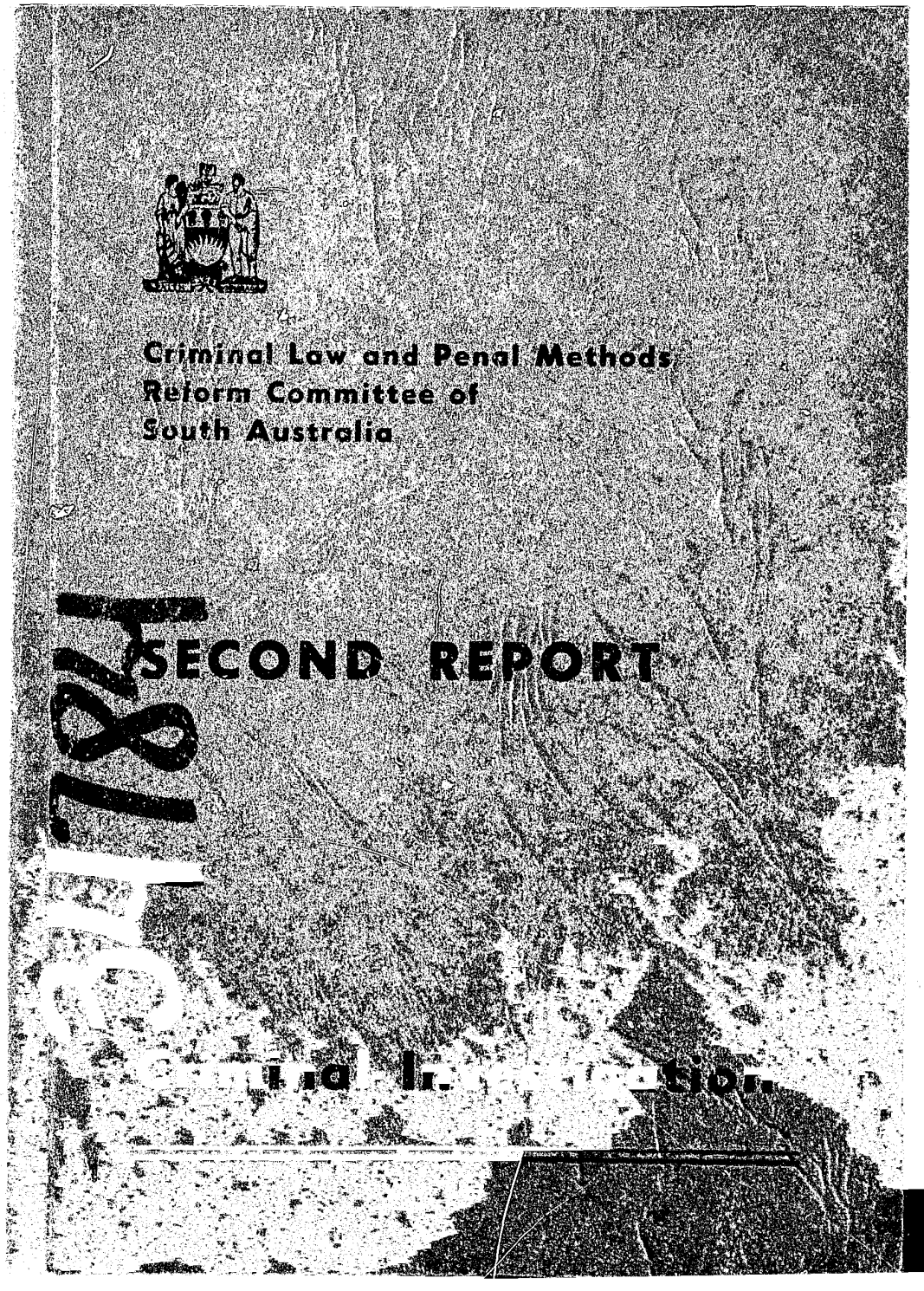

CRIMINAL LAW AND PENAL METHODS REFORM COMMITTEE OF SOUTH AUSTRALIA

SECOND REPORT

Criminal Investigation

July, 1974

Price $2·75

CRIMINAL LAW AND PENAL METHODS REFORM COMMITTEE OF SOUTH AUSTRALIA

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July, 1974

The Hon. L. J. King, Q.C., M.P.,
Attorney-General,
Parliament House,
ADELAIDE, S.A. 5000

Dear Mr. Attorney,

On the 14th December, 1971, you appointed us as the Criminal Law and Penal Methods Reform Committee with the following terms of reference:—

> "To examine and to report and to make recommendations to the Attorney-General in relation to the Criminal Law in force in the State and in particular as to whether any, and if so what, changes should be effected—
>
> (*a*) in the substantive law;
> (*b*) in criminal investigation and procedures;
> (*c*) in Court procedures and rules of evidence; and
> (*d*) in penal methods."

In July, 1973 we submitted to you our first report, that relating to penal methods. We now have the honour to submit to you our report on criminal investigation and procedures.

Yours sincerely,

ROMA MITCHELL, Chairman
COLIN HOWARD, Member
DAVID BILES, Member

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Hall *v.* The Queen [1971] All E.R. 322: **101.**
Harris *v.* The Queen [1967] S.A.S.R. 316: **85.**
Hay *v.* H.M. Advocate [1968] Scottish Law Times 334: **110-1.**
Hazell *v.* Parramatta C.C. [1968] 1 N.S.W.R. 165: **120.**

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R. *v.* Commissioner of Police of the Metropolis, *ex parte* Blackburn [1968] 2 Q.B. 118: **10.**
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R. *v.* Doyle [1973] 3 All E.R. 1151: **57.**
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R. *v.* Ryan (1966) 50 Cr. App. R. 144: **102.**
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S

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Samuels *v.* Stokes (1973) 47 A.L.J.R. 766: **12.**
Semayne's Case (1604) 5 Co. Rep. 91a; 77 E.R. 194: **58.**
Sinclair *v.* The King (1946) 73 C.L.R. 316: **85.**
Sykes *v.* Director of Public Prosecutions [1962] A.C. 528: **182.**

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Timothy *v.* Simson (1835) 1 C.M. & R. 757; 149 E.R. 1285: **116.**

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United States *v.* Wade (1966) 388 U.S. 218: **81.**

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Vale *v.* Louisiana (1970) 399 U.S. 30: **68.**

W

Walters *v.* W. H. Smith and Son Limited [1914] 1 K.B. 595: **115.**
Weeks *v.* United States (1913) 232 U.S. 383: **111.**
Wendo *v.* The Queen (1954) 109 C.L.R. 559: **97.**
Wheatley *v.* Lodge [1971] 1 All E.R. 173: **115.**
Woon *v.* The Queen (1964) 109 C.L.R. 529: **101.**

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BIBLIOGRAPHY OF MATERIAL CITED

AMERICAN LAW INSTITUTE, *Model Code of Pre-Arrangement Procedure, Tentative Draft No.* 3 (1970): **55**

AMERICAN LAW INSTITUTE, *Model Code of Pre-Arrangement Procedure, Tentative Draft No.* 4 (1971): **55**

AMERICAN LAW INSTITUTE, *Model Penal Code (Proposed Official Draft)* (1962): **14**

BLACKSTONE, *Commentaries,* Vol. 1: **6**

BRADY and MITCHELL, "Shoplifting in Melbourne" (1971) 4 *Australian and New Zealand Journal of Criminology* 154: **181-2**

CHAPPELL and WILSON, "Police in Australia" (1970) 46 *Current Affairs Bulletin (No.* 7); *The Australian Criminal Justice System* (1972) 245: **8**

Chief Commissioner's Rules for the Interrogation of Suspected Persons (Vic.): **87**

Criminal Law and Penal Methods Reform Committee (S.A.), *First Report: Sentencing and Corrections,* Government Printer, Adelaide, 1973: **1, 2, 4, 19-20, 34, 83-4, 116-7**

Criminal Law Revision Committee (Eng.), *Eleventh Report: Evidence (General),* Cmnd. 4991 (1972): **86, 93, 102**

Defence Force Disciplinary Code (1973 *Report of Working Party*): **70**

DEVLIN, *The Criminal Prosecution in England*: **90**

Economist, The, 13 April 1974, 25: **76**

FOSTER, *Crown Law* (3rd ed.) (1809): **67**

Hansard, South Australian House of Assembly, 26 August 1913: **60**

Hansard, South Australian House of Assembly, 15 November 1921: **60**

HAWKINS, *Pleas of the Crown,* Vol. 2: **6**

HOWARD, C., *Australian Criminal Law* (2nd ed.) (1970): **13**

Judges' Rules (Eng.): **86-7, 94, 193, 209-12**
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Rule 4: **88**

MARK, SIR ROBERT, Dimbleby Lecture (1973): **48**

NOTE: "Types of Activity Encompassed by the Offence of Obstructing a Police Officer" (1960) 108 *University of Pennsylvania Law Review* 388: **14**

PALING, "The Police Acts Amendment Bill 1973" (1973) *Criminal Law Review* 282: **47**

Police General Orders (South Australian Police Force): **47, 122, 122-3, 124**
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order 522(2): **39**
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READ, "Lawyers at Line-ups: Constitutional Necessity or Avoidable Extravagance?" (1969-70) 17 *University of California at Los Angeles Law Review* 363: **79-81**

Royal Commission on Police Powers and Procedure (Eng.), *Report* (1928-1929): **72-3**

Royal Commission on the September Moratorium Demonstration, *Report*, Government Printer, Adelaide, 1971: **11, 141**

Royal Commission on the Stuart Case, *Report*, Government Printer, Adelaide, 1959: **145**

ST. JOHNSTON, COL. SIR ERIC, *Report on the Victorian Police Force*, Government Printer, Melbourne, 1970-71: **25**

SALISBURY, "Tomorrow's Policeman," 7th biennial conference, Australian Crime Prevention Correction and After-Care Council, 11th-18th August 1973: **24, 37**

WILLIAMS, G., *The Proof of Guilt* (2nd ed.) (1958): **76**

CHAPTER 1

PRELIMINARIES

1 First Report. In July, 1973, The Criminal Law and Penal Methods Committee presented to The Honourable L. J. King, Q.C., M.P., Attorney-General, its first report which covered the fourth term of reference. The full terms of reference are as follows:—

> To examine and to report and make recommendations to the Attorney-General in relation to the Criminal Law in force in the State and in particular as to whether any, and if so what, changes should be effected:
>
> (*a*) in the substantive law;
>
> (*b*) in criminal investigations and procedures;
>
> (*c*) in Court procedures and rules of evidence; and
>
> (*d*) in penal methods.

2 Term Considered in This Report. With the concurrence of the Attorney-General the second stage of our inquiry has been devoted to the second term of reference. We have taken this term of reference up before court procedures and rules of evidence because it precedes them chronologically in the criminal law enforcement process and may therefore affect the conclusions which we shall reach in due course on those matters. We have taken it up before the substantive law because decisions as to the proper scope of the criminal law should take into account the practicalities of enforcement. In our first report we emphasized the interdependence of all stages of the correctional system, a consequence of which is that none of its parts can be adequately studied in isolation from the others. The effect on the present stage of our inquiry is to involve us to some extent in questions of evidence, for criminal investigation is necessarily influenced by restrictions on the types of evidence which may be tendered at trial. Questions as to the reliability of evidence which in itself is admissible begin to arise at this stage also.

3 Functions of the Police. Criminal investigation is for the most part carried out by an agency of the executive government: the police. Inquiry into the procedures of criminal investigation must therefore include consideration of the functions of the police force. A distinction

is to be drawn between the manner in which the police are required to perform those functions and the manner in which they in fact perform them. The former is within the scope of our inquiry and the latter is not. But the distinction is not absolute because the way in which the police behave is affected by the rules to which they are required to adhere in accomplishing the tasks which they are set. We therefore encounter questions of police recruitment, training and organization, although not in any detail. We examine those functions which are at present performed by the police but of which they might be relieved in the interests of efficiency and public relations. In our first report we recommended the continuation and possible extension of the police air service for the conveyance of prisoners.[1] In this report we do not discuss the police air service or other means of conveyance nor do we discuss topics such as the use of horses for ceremonial purposes or as an aid to the maintenance of public order. We regard these as matters of detailed organization of the police force which are outside the scope of this inquiry.

3.1 Limitations. The function of the police is to preserve civil order. The order which they are required to preserve is delimited by the criminal law. Part of their task is to discourage breaches of the criminal law by acting as a public presence. The mere fact of the existence of a police force prevents many offences. The other part of their task is to apprehend persons they believe to have committed offences. Since it is fundamental to our form of social organization that judicial and executive functions be exercised by different authorities, the police are neither required nor permitted to decide for themselves whether a given person has committed the offence of which he is suspected. They are limited to the collection and presentation to a judicial tribunal of the evidence in support of their accusation and to the arrest, if necessary, of the person accused. In our community the preservation of order by imposed force is not an absolute value. For philosophical reasons into which it is unnecessary for us to enter, Australians accept that as much scope for individual freedom of action should be allowed as is compatible with social coherence. Since ours is a basically orderly and self-regulating society which adheres to well-established conventions for

[1] Chapter 5, para. 12.

the transfer of political power, the degree of individual freedom compatible with public order is large. In so far as this state of affairs betokens general support for the police against the small minority of persons who seriously infringe the criminal law it makes their task easier; but in so far as it requires the police to exercise restraint in the pursuit of inquiry or suspicion it makes their task more difficult. This is the heart of our present inquiry: the point at which efficiency in the detection and prosecution of crime becomes inconsistent with, and therefore limited by, the degree of individual freedom of action which we wish to preserve. But the particular task of this committee is not to identify this point of accommodation between social values in general terms. The general principles we can take for granted. Our task is to apply them to the solution or, if that is not possible, the amelioration of certain well-known problems of practical law-enforcement which arise out of the accommodation between values.

3.2 Rules of Conduct. As a basis for our recommendations it is necessary to stress that no advantage is to be gained by formulating rules of conduct for police investigation or for the admissibility of evidence which fail to take account of the realities of police work. The inevitable result of such a failure is formal police compliance with the law but substantial evasion of it, which subverts the very values sought to be protected. Equally there must be recognition of the psychological advantage which police have over the ordinary citizen. Confronted by police inquiry, the ordinary person ignorant of the law needs more than usual resoluteness to stand upon his rights.

4 The Adversary Form of Trial. There is a difficult question of the relationship between criminal investigation and the adversary form of trial. The purpose of adversary trial is to test the evidence. It is a basic principle of justice in common law courts, and one which we have no intention of departing from, that a person accused of a criminal offence must be proved guilty before he can be lawfully convicted, as opposed to his being required to disprove the accusation before he can be lawfully acquitted. In our opinion no better way has yet been devised of testing the adequacy of the case advanced by the prosecution than subjecting it to adversary contest by the defendant before an impartial

tribunal. But the object of the proceeding is to decide whether the defendant is guilty as charged, not to set up a competition of wits to see who wins. A certain element of winning or losing probably is inherent in the process of adversary litigation, particularly under the dramatic circumstances of a criminal trial, although the tradition that it is the task of the prosecutor to present a case, not to secure a conviction, to some extent offsets this tendency. But the danger that the search for truth will be transformed into a technical battle of wits can be guarded against also in formulating the rules of criminal investigation. The less complex these rules are, the less the likelihood that technical acquittals will undermine the purposes of criminal investigation.

5 **Procedure.** The committee adopted the same method of work as it used for the first report. Persons and organizations appearing to have a special interest in criminal investigation and procedures were invited to send written submissions. The invitations were extended by advertisements in the press and by letters sent to 83 persons and organizations. As a result a number of written submissions were received from the Commissioner of Police and his officers, and submissions were received from 21 other persons or organizations. Schedule 1 to this report contains a list of the authors of submissions. The committee met on 24 occasions and interviewed some of the persons who had made or were party to the making of submissions or whom the committee wished to interview on certain aspects of the inquiry. The names of such persons are contained in Schedule 2 to this report.

6 **Visits.** The committee visited Police Headquarters Adelaide and the City Watchhouse, the Police Academy at Fort Largs, the Port Adelaide Police Station and police cells, the Elizabeth Police Station and police cells, and the Australian Mineral Development Laboratories. Two members of the committee and its research officers accompanied detectives and uniformed police officers on evening patrols and observed work at Police Headquarters. Before the presentation of its first report the committee had visited the police stations, the cells of which are listed in Schedule 3 to that report. At all the places which we visited we had informal discussions with staff.

7 **Other Sources of Information.** As it had done in relation to the first term of reference, the committee, in considering the second term,

consulted many overseas and Australian publications, and drew on these and on the collective experience and learning of its members, its consultant and its research officers.

8 **Acknowledgments.** The committee again records its appreciation of the consideration received from the Honourable the Attorney-General in matters relating to this report. We are grateful to the Commissioner of Police, Mr. H. H. Salisbury, whose ready co-operation enabled us to obtain promptly all information relevant to our inquiry which we sought from him or his officers. The Deputy Commissioner, the Assistant Commissioners and other commissioned officers were generous in giving up time to meet the committee and to answer our inquiries. We received valuable assistance from Superintendent J. B. Giles who, through the courtesy of the Commissioner, was made available to procure information sought by the committee and to arrange visits. We thank the Solicitor-General, Mr. B. R. Cox, Q.C., the Crown Solicitor, Mr. L. K. Gordon, and the Crown Prosecutor, Mr. K. P. Duggan, and those members of the legal profession who assisted in our deliberations. At our request Mr. Duggan gave us the benefit of knowledge which he had gained on a recent study tour in the United Kingdom. We thank Mr. Justice Muirhead, then Judge Muirhead, Acting Director of the Australian Institute of Criminology, who met and talked with the committee. In our inquiries into matters of forensic science we derived considerable benefit from our discussions with the various people who are named in Schedule 2. Through the good offices of Mr. K. V. Borick we were able to interview Mr. J. L. Fish and Mr. C. F. Tippett, both members of the United Kingdom Home Office Forensic Science Laboratories, who were in Adelaide to give evidence in a criminal trial. We thank them for their assistance. The committee is grateful to its consultant, Mr. W. B. Fisse who, in the brief time since his appointment, has made a valuable contribution to the work of the committee, and to its research officer, Mr. J. D. Claessen, and its secretary and research officer, Mr. Geoffrey L. Muecke, both of whom have assisted the committee in divers ways in its deliberations and the preparation of this report. We wish to record our thanks to all who made submissions, were interviewed by the committee or showed us institutions or police stations. We were encouraged by the interest which they displayed in the topics with which this report is concerned. Finally this committee records its appreciation of the assistance which it has received from the chairman's secretary, Miss P. D. Harvey.

CHAPTER 2

THE POLICE FUNCTION

1 General Duties. In its duty to preserve civil order the police force is the major law enforcement agency of South Australia. In the United Kingdom the appointment of constables preceded the existence of any statutory police force, although such appointments may have had statutory authority.[2] The first police force for the Province of South Australia was established under the Statute No. 3 of 1841.[3] The duties and powers of the police in South Australia at the present time are to be construed by reference to the Police Regulation Act, 1952-1973 and the regulations made thereunder. Section 22 (5) of the Act empowers the Governor to make regulations prescribing "the duties and functions of members of the police force"; and regulation 22 of the Police Regulations imposes upon every officer, non-commissioned officer and officer-in-charge of a police station obligations which include preventing crime and detecting offenders in the area in which such officer is required to work, and preserving peace and good order in that area. Although that regulation does not refer in specific terms to all members of the police force, the oath which every member of the force must take upon appointment contains a promise to "cause Her Majesty's peace to be kept throughout the said State and prevent the commission of offences against the said peace or against the laws of the said State".[4] In pursuance of those duties the police have an obligation to arrest suspected offenders, to institute prosecutions and to protect persons and property from criminal injury.[5]

2 Police Efficiency. What do the State and its citizens expect of its Police Force?

2.1 Prevention of Crime. It may be suggested that the first requisite is the prevention of crime. But this simple answer is not completely accurate. The Commissioner has power, subject to an

[2] Cf. 2 Hawkins, *Pleas of the Crown*, c. 10, s. 33; 1 Blackstone, *Commentaries*, 356.

[3] Statute No. 6 of 1839, which had the same purpose, was disallowed.

[4] Police Regulation Act, 1952-1973 (S.A.), s. 16.

[5] Cf. *Rice* v. *Connolly* [1966] 2 Q.B. 414, 419.

upper limit to be fixed by the Chief Secretary, to appoint "as many sergeants and constables of different grades or kinds as he deems necessary for the preservation of peace and order throughout the State".[6] A proliferation of members of the Force sufficient to ensure a constant watch upon the activities of citizens, or at least upon the activities of those believed by the police to be likely to offend against the law, might well prevent the commission of crime; but the repressions inherent in such a policy would not be tolerated in our community. If every person who drove his motor car away from licensed premises at closing time were followed by a uniformed policeman driving closely behind him it may be that the incidence of traffic accidents would decline, but the community at large would not be likely to endure such a surveillance if it were made a permanent police duty. We conclude that the task of the police in prevention is to assist in the control of the incidence of crime.

2.2 Solution of Crime. Police efficiency is sometimes assessed upon the basis of the percentage of reported crimes solved. This criterion is necessarily inconclusive. The decision to report a crime may be influenced by the trust which the person affected by it places in the police, as well as by other factors. The incidence of crime therefore does not necessarily correspond to the numbers of crimes reported. Nor is it an accurate guide to police efficiency to calculate the numbers of reported crimes in which proceedings are taken following police action. If the calculation includes prosecutions in which the charge is dismissed this is unsatisfactory as the dismissal of the charge may occur because the wrong person has been charged or because there is not sufficient evidence to establish guilt. In the first case the crime has not been solved, in the second it may or may not have been solved. If it excludes prosecutions which have not been followed by conviction it is not necessarily accurate, as some acquittals may have been due to a reasonable doubt as to guilt which police evidence could not dispel. It is impossible therefore to measure police efficiency solely by the rate of solution of crimes.

2.3 The Needs of the Public. It has been suggested that a police force is efficient to the extent that it meets the needs and expectations, in relation to law enforcement, of the public which it

[6] Police Regulation Act, 1952-1973 (S.A.), s. 11.

serves and of which it forms a part. Upon this basis a survey conducted in Australia in 1967 showed that in South Australia 76 per cent of the persons interviewed expressed great respect for the police, a considerably higher percentage than in the other States in which the survey was made.[7] We do not suggest that police efficiency can be judged entirely by the approval or disapproval of them by members of the public, but we do appreciate that the police must rely to a large extent upon the goodwill of the public which they serve. The South Australian Police Force itself recognizes the advantage of good public relations, and has in recent months appointed an information officer to supply to the public, through the news media, information concerning general police work. A corrupt or undisciplined or repressive police force is unlikely to find favour in the eyes of responsible citizens. The estimate which the majority of such citizens make concerning its police force is likely to have some basis in truth. Surveys of attitudes of the public to the police force where the sampling is wide and the questioning is extensive are therefore of value. Such surveys need to be made by trained people who have no personal interest in the result. They should not be instituted by any government agency.

3 Police Discretion. It is often said that the police have a duty to enforce the law without fear or favour. In so far as that statement may imply that the police have no discretion in law enforcement it is clearly incorrect. It should be recognized that the police have a discretion in many areas of law enforcement, and that it is essential to the welfare of the community that they have such a discretion and that they exercise it wisely. We discuss the discretion which reposes in the Police Force under two headings, namely, Administrative Discretion and Functional Discretion. The first relates to the organization of the Police Force, the second to its operation within the boundaries set by its organization.

3.1 Administrative Discretion. The numerical strength of the police force to some degree determines the extent to which laws will be enforced. The discretion as to numbers of police rests with the Commissioner of Police, subject to the overriding discretion of the

[7] Chappell and Wilson, "Police in Australia", (1970) 46 *Current Affairs Bulletin* (No. 7); *The Australian Criminal Justice System* (1972) 245.

Chief Secretary.[8] A further discretion exists in relation to the type of police officer assigned to investigate any particular crime or to work in crime prevention and the time to be allocated thereto. The discretion to be exercised is that of the appropriate police officer or officers, and, generally speaking, this involves a value judgment as to the seriousness of the crime or crimes to be investigated or against which preventive measures are to be taken. If it is believed that a mentally disturbed person is at large and in possession of a loaded firearm, the decision to attempt to apprehend him rather than to follow up a reported housebreaking offence is not one upon which there is likely to be a difference of opinion. But all situations which call for the exercise of police discretion are not so straightforward It is a necessary part of any police organization to have an administrative discretion as to priorities in tackling the investigation and prevention of crime.

3.2 Functional Discretion. The area of discretion which we describe as functional may give rise to more controversy. Before he intervenes in any situation a policeman must decide whether there is any basis for his intervention, and this decision not only calls for the exercise of discretion but may be affected considerably by the policeman's personal knowledge of the situation. Where a policeman is suspicious that an offence may have been or may be about to be committed he still must exercise a discretion as to the action to be taken which may range from questioning the person, warning him about his behaviour, requesting him to accompany the policeman to a police station, looking for evidence that crime has been committed or arresting the suspect. Police discretion does not end with arrest. There may be a discretion as to the precise charge to be laid against a person, as to whether to grant police bail, or subsequently whether to consent to or oppose bail being given by a court. It seems to us important that it should be realized that the police have and must exercise a discretion at all stages of police investigations and subsequently thereto. What is essential is that the discretion shall be exercised upon a proper basis, and that it shall be exercised honestly, wisely and fearlessly. It would be obviously improper that a warning only should be given to a person

[8] Chapter 2, para. 2.

merely because he is neatly dressed, well spoken and respectful to the policeman, whereas someone who is dirty in his person, loud voiced and rough in manner is for the same conduct arrested or summonsed to appear in court. Provided that they are carrying out their duty of enforcing the law, the police will not be subject to interference by the courts in the extent to which they exercise their discretion to pursue or not to pursue inquiries or to prosecute or not to prosecute.[9] The committee believes that it is desirable that this should be the position. The prevention of crime should always be the first aim of the members of the force, and there are many cases, for example a minor breach of the traffic laws, in which the abstention from prosecution of an offender may inculcate in him more respect for the law than would his prosecution. What is important is that there shall be no corruption or suspicion of corruption on the part of the police, and as a corollary thereto that police enforcement shall be without fear or favour. If the police were to be deprived of a discretion in relation to arrest or prosecution every breach of the law, however technical or trivial, would necessitate prosecution. We shall return later to the question of discretion to prosecute.[10] We believe that the recognition of the discretion which must at all times be available to the policeman, demonstrates the necessity for a policeman to be both well trained and well educated. His training enables him to recognize and apply the correct procedures in given situations. His wider education enables him, when faced with unusual problems, to use his discretion in the best interests of the community. The degree of discretion which rests in any member of the police force and the circumstances in which the discretion may be exercised must vary according to the rank and responsibilities of the individual.

4 Political Involvement and Offences in Public Places. One of the most essential qualities in any police force is that of neutrality in any question which may have or appear to have political overtones. Where the police are required to enforce laws which are unpopular with a substantial section of the public they are likely to encounter difficulties which

[9] *R.* v. *Commissioner of Police of the Metropolis, ex parte Blackburn* [1968] 2 Q.B. 118; *R.* v. *Commissioner of Police of the Metropolis, ex parte Blackburn (No. 3)* [1973] 1 Q.B. 241.

[10] Chapter 11.

may result in the police themselves appearing, to some citizens, to be partisan. Such difficulties in part led to the appointment on the 22nd September, 1970 of the Honourable Mr. Justice Bright as a Royal Commission to inquire into and report upon certain matters arising out of a moratorium demonstration in connection with the Vietnam War which occurred in Adelaide on the 18th September, 1970. The committee does not see it as its function to canvass the matters which were discussed in the report brought in by Bright J. which we have had the advantage of reading. We have noted, but, for the most part, do not comment upon the amendments to the legislation which have been made following that report. There are still some matters which merit the attention of the legislature. We deal with them in this report, although they relate to substantive or procedural law, because they are legislative provisions which in the main are an adjunct to the powers of the police. We point out that in his report the Commissioner drew attention to the fact that the South Australian Council for Civil Liberties had made wide submissions on various "street offences" and said:—"I do not think that I should enter this field, but I draw attention to the present state of the law on the subject and suggest that when the criminal law next comes under wide review the topic of street offences should be included". We discuss only those street offences which may have political implications and which in our view warrant amendment.

4.1 Loitering. The police have traditionally been given powers in relation to people who are "loitering". The first statutory power in South Australia was contained in the Police Act of 1841, and enabled a member of the police force "to apprehend all loose idle drunken and disorderly persons whom he shall find between sunset and the hour of eight in the forenoon lying or loitering in any street yard or other place within any city town or village or upon any highway or public road within the said Province and not giving a satisfactory account of himself". Until the passing of the Police Offences Act Amendment Act, 1972, the offence continued to be that of lying or loitering in a public place and failing to give a satisfactory account upon request by a member of the police force.[11] By an amendment added by the 1972 Act it has become an offence

[11] Police Offences Act, 1953-1967 (S.A.), s. 18.

not to comply with a request to cease loitering in certain circumstances, among which is the circumstance that a member of the police force holds a belief or apprehension on reasonable grounds that an offence has been or is about to be committed by other persons in the vicinity, or that the movement of pedestrians or vehicular traffic is obstructed by the presence of others in the vicinity, or that the safety of others in the vicinity is in danger.[12] A further offence of loitering was added by the Police Offences Act Amendment Act (No. 3), 1972, which constitutes as an offence loitering on any land comprised in a precious stones claim as defined in the Mining Act, 1971, between sunset and sunrise and failing to give a satisfactory reason for so loitering.[13] Section 63 of the Lottery and Gaming Act, 1936-1970, which made it an offence for a person standing in any street to refuse or object to move on when requested by a police constable so to do was repealed by the 1972 amendment to that Act. Section 18 (2) has enlarged the powers of the police to remove people from public places under threat of prosecution, and there are no categories of persons who cannot fall within that sub-section. A person may be loitering regardless of his reason for so lingering.[14] News reporters and cameramen are under pain of conviction if they fail to comply with a request to cease loitering. The police need power to clear the streets of persons who are interfering with the rights of free passage of others. The power to clear streets on the occasion of any mass demonstration or the like is contained in section 59 of the Police Offences Act, 1953-1973. Perhaps some extension of the power is warranted, but in our view the "loitering" provisions are at best a subterfuge and at worst an unwarranted interference with the liberty of all persons to use streets and other public places. In so far as section 18 is intended to cover persons who have the intention of committing an offence but who could not be charged with an attempt to commit the offence, then we would think it preferable to amend the law so as to make the preparation to commit an offence in itself an offence, provided that such preparation has passed beyond the stage of mere thought.

[12] Police Offences Act, 1953-1973 (S.A.), s. 18(2).
[13] Police Offences Act, 1953-1973 (S.A.), s. 18a.
[14] *Samuels* v. *Stokes* (1973) 47 A.L.J.R. 766.

4.2 Hindering a Member of the Police Force in the Execution of His Duty. This offence is covered in section 6 of the Police Offences Act, 1953-1973. We have two observations to make concerning this section. The first relates to the offence of assaulting a member of the police force in the execution of his duty.[15] It is probable that at common law words alone cannot amount to an assault. Some threats may be sufficiently grave to warrant the description of "assault", and in our view it should be possible to establish the offence of assault without necessarily proving any action indicating violence.[16] The second matter with which we deal under this section is in relation to s.s. (6) which reads:—"Where in the hearing of a member of the police force engaged in the execution of his duty a person uses offensive or abusive language to or concerning such member, he shall be deemed to have hindered such member in the execution of his duty". We do not see any necessity for the conclusive presumption raised by this sub-section. If offensive words are used in a public place or in a police station they constitute an offence under section 7 of the Police Offences Act, 1953-1973. Under that section it is not necessary to prove that some person was actually offended.[17] It is an artificial and not necessarily a correct assumption that every use of offensive or abusive language to a policeman hinders him in the execution of his duty. This may be the effect of such language. If so it can be established by evidence. But many a policeman arresting a drunken or infuriated person must be quite impervious to the language which such person is using.

4.3 Behaviour in a Disorderly Manner. Behaviour in a disorderly manner in a public place is an offence under s. 7 (1) (*a*) of the Police Offences Act, 1953-1973. Passive resistance to arrest can constitute disorderly behaviour.[18] There are many forms of behaviour which may be characterized as disorderly. Examples

[15] Police Offences Act, 1953-1973 (S.A.), s. 6(1).
[16] Cf. Howard, *Australian Criminal Law* (2nd ed.), 132.
[17] *Lafitte* v. *Samuels* [1972] 3 S.A.S.R. 1; *Ellis* v. *Fingleton* [1972] 3 S.A.S.R. 437.
[18] *Samuels* v. *Hall* [1969] S.A.S.R. 296.

are assault or battery;[19] fighting in a public place;[20] using offensive language;[21] disturbing the public peace.[22] It may be that a person who passively resists arrest could not be charged with any offence other than that of behaving in a disorderly manner. However the mere fact that a person does nothing to assist in his arrest does not seem to us to warrant a conviction for an offence.[23]

4.3.1 Detention. At common law any person may arrest without warrant anyone who has committed a breach of the peace in his presence or anyone who he has reasonable grounds to believe is about to commit or renew a breach of the peace. There may be occasions where the presence of a particular person in a crowded situation is likely to provoke hostility from other members of the crowd, but the police have no reason to believe that that particular person has committed or may be about to commit a breach of the peace. They should, in that situation, have the power to remove that person to a place of safety as a preventive measure, and to detain him for such time as is necessary for his protection from bodily harm or for the similar protection of other persons in the vicinity. This should not be regarded as an arrest of the person, nor should he have any right of action for unlawful arrest, provided that the police had a reasonable belief that the action of detaining him was necessary for his protection or for the protection of other persons and provided that he is not detained for longer than is reasonably necessary in the circumstances. If, in the view of the police, he cannot be safely released within one hour he should, upon his request, be brought before a special magistrate who should have power either to order his release forthwith or to order his further detention for such period not exceeding twelve hours in such place as the magistrate specifies.

[19] Criminal Law Consolidation Act, 1935-1972 (S.A.), s. 46.

[20] Police Offences Act, 1953-1973 (S.A.), s. 7(1)(*b*).

[21] Police Offences Act, 1953-1973 (S.A.), s. 7(1)(*c*).

[22] Police Offences Act, 1953-1973 (S.A.), s. 7(2).

[23] Cf. American Law Institute, *Model Penal Code (Proposed Official Draft)* (1962), s. 242.2, under which a person commits an offence, where, in order to prevent an arrest, he creates a substantial risk of bodily harm to the person attempting to effect the arrest or to anyone else, or employs means justifying or requiring substantial force to overcome his resistance; see generally Note, "Types of Activity Encompassed by the Offence of Obstructing a Police Officer" (1960) 108 *University of Pennsylvania Law Review* 388.

4.4 Distribution of Articles Without Written Permission of the Town Clerk of Adelaide. The prohibition against distribution of articles in any street or public place within Adelaide without the written permission of the Town Clerk is contained in s. 3 (19) of by-law IX of the City of Adelaide. In so far as the prohibition against distribution may limit the littering of the city streets, this is at most a side effect. Littering should be dealt with by anti-litter laws. Passers-by may object to being given handbills or the like. This could be dealt with by an appropriate by-law. It may be said that the permit system assists in the prevention of offences in that permission is not likely to be given to distribute material which incites to the commission of offences or which is in itself indecent. It seems to us that the Town Clerk is not the appropriate person to decide whether material published in a handbill may incite others to commit offences or may be indecent. In our view the handing out of handbills or other articles should not be restricted as at present, but the person authorizing the distribution of any such material should be required to affix to it his name and address.

4.5 Disrupting Meetings. Section 3 of the Public Meetings Act, 1912-1934, constitutes as offences actions which are likely to disrupt a public meeting, and gives the chairman of the meeting power, when he is of the opinion that any such offence has been committed, to direct any member of the police force to remove from the meeting place any person who behaves in a proscribed manner. In one respect we believe that section 3 gives too wide a power to the chairman of a public meeting. We recommend that the power given to him to direct a police officer to remove a person from the meeting should be available only where he has a reasonable belief that the person sought to be removed has been guilty of the forbidden behaviour. In our view the offences created under that Act should be extended to conduct of the like kind which may take place at any meeting, gathering, procession, performance or entertainment, and the chairman or person in charge on any such occasion should have the like powers to those held by the chairman of a public meeting, and we recommend accordingly.

4.6 Recommendations with respect to Offences in Public Places.

(*a*) *We recommend that the offence of loitering under ss.* 18 *and* 18*a of the Police Offences Act,* 1953-1973 *be abolished and that consideration be given to the enactment of a prohibition against any preparation to commit a crime which passes beyond the stage of mere thought.*

(*b*) *We recommend that assault punishable by law should be defined as including assault by the spoken word.*

(*c*) *We recommend that s.* 6 (6) *of the Police Offences Act,* 1953-1973 *making the use of offensive or abusive language to or concerning a member of the police force engaged in the execution of his duty conclusive evidence of the offence of hindering the police in the execution of their duty be repealed.*

(*d*) *We recommend the amendment of s.* 7 *of the Police Offences Act,* 1953-1973 *to delete the offence of behaviour in a disorderly manner.*

(*e*) *We recommend that the police be empowered upon reasonable grounds to remove to a place of safety any person whose presence arouses hostility in a crowd and to detain him for his own protection from bodily harm or for the similar protection of other persons in the vicinity. We recommend that such detention shall not be regarded as an arrest and that after one hour the detainee will, upon his request, be taken before a magistrate.*

(*f*) *We recommend that the attention of the Corporation of the City of Adelaide be drawn to the unsatisfactory features of s.* 3 (19) *of by-law IX.*

(*g*) *We recommend that s.* 3 *of the Public Meetings Act,* 1912-1934 *be amended to empower the chairman of a meeting to direct the removal of a person from the meeting only when the chairman has a reasonable belief that such person has committed an offence specified in the Act.*

(*h*) *We recommend the extension of s.* 3 *of the Act to any meeting, gathering, procession, performance or entertainment.*

5 Extraneous Duties. Over many years the police have been called upon to perform duties which are not directly related to their role as the main law enforcement agency of the State. The performance of some of these duties may derogate from the goodwill which it is desirable that the public generally hold towards the police. Equally if not more important is the fact that the performance of these additional duties encroaches seriously upon the time which the police give to their proper work. The Commissioner of Police and his officers wish to withdraw the police force from some at least of these tasks, and in our view they should be permitted to do so without delay. The following are the main areas from which police should be removed.

5.1 Testing of Drivers. Pursuant to sections 79 and 79a of the Motor Vehicles Act, 1959-1973, all members of the police force are examiners for the purpose of conducting a written examination of an applicant for a licence, and certain members appointed by the Commissioner of Police are examiners for the purpose of conducting a practical driving test. The Act makes a provision for other persons also to be appointed as examiners for written tests and for practical tests. Hitherto the police have conducted the majority of the tests. The table which is produced below is compiled from figures contained in the Annual Reports to Parliament of the Commissioner of Police.

Year	Driver Testing		
	Fail	Pass	Total
1968-69	29 068	65 325	94 393
1969-70	30 647	65 908	96 555
1970-71	31 388	71 891	103 279
1971-72	32 830	73 774	106 604
	123 933	276 898	400 831

The above table indicates that a substantial amount of police time must be spent in testing of drivers. If each driver testing operation took only an average of 10 minutes 17 766 police hours were used

to test 106 604 persons in 1971-72. It is probable that some proportion of the nearly 124 000 persons who failed in their tests during the four year period regarded the police thereafter with some disfavour.

5.2 Vehicle Testing. The following table from the same source shows the results of testing of vehicles by the police during the four years ending 1972.

Year	Vehicle Testing		
	Defect Notices	Safety Certificates	Total
1968-69	12 963	324	13 287
1969-70	11 193	371	11 564
1970-71	12 189	344	12 533
1971-72	8 931	351	9 282
	45 276	1 390	46 666

Although the testing of vehicles must occupy a considerable number of police hours we do not believe that this testing should be done by persons other than the police. The testing of a vehicle has a direct relationship to the prevention of an offence, namely the driving of a defective vehicle or the driving of a vehicle requiring a safety certificate without first obtaining such a certificate. It may be said that there is some relationship between the offence of driving without a licence and the testing for the licence, but in our view that link is sufficiently remote to make it unnecessary for the police to test for the purpose of drivers' licences. We recommend that all driver testing be undertaken by persons other than police officers, but that police officers continue to test vehicles.

5.3 Court Orderlies. Since 1972 wherever orderlies have been required in the Supreme Court or the Local and District Criminal Court these have been civilian court orderlies. Formerly the Police Force undertook such orderly duties as were carried out in these courts. The police continue to act as court orderlies in courts of summary jurisdiction. We have been supplied with the result of a survey conducted by the Police Department in relation to court orderlies engaged in the Adelaide Magistrates' Court between Monday the 14th August, 1972 and Sunday the 10th September,

1972. During this period 350 police officers of various ranks worked a total of 1 259¾ hours in orderly duties. Salaries paid to these men for this time amounted to $2 525·55. The total amount payable for civilian orderlies for the same period would have amounted to $1 977·80. On an average weekday 16 police officers worked 61·05 hours as court orderlies; the amount of salaries involved was $122·17. The appropriate salary for civilian court orderlies for the same time would have amounted to $95·85. We recommend that the police should be relieved of all court orderly duties.

5.4 Bailiff's Duties. The serving of civil process can as well be done by a civilian bailiff as by a policeman and it is desirable that it shall be done by the former. The Police Force sees the practice of service by police as undesirable. It is believed that it erodes the good relationship of the police with the public; that, although in the city area processes are served by the police outside normal working hours, in fact there is an intrusion into police time, and in some cases members of the Force, being satisfied with the additional money earned by serving of process, do not study with a view to promotion. In small country towns and in sparsely settled country areas it would be impracticable to engage civilian bailiffs, but, wherever possible, the serving of civilian process by police should be avoided.

5.5 Clerks of Court. In the smaller country towns police officers are appointed as clerks of local courts and courts of summary jurisdiction, although in the larger towns civilian clerks are employed in this capacity. It is undesirable that a police officer shall be a clerk of the court. The clerk is necessarily in close touch with the magistrate or justices of the peace sitting upon any case. He keeps all the necessary court records. In prosecutions either the police officer who occupies the position of clerk of the court or one of his colleagues has investigated the alleged offence, made the arrest and is prosecuting the accused. If the accused is convicted and a fine is imposed it is the duty of the clerk of the court to collect such fine. In our first report we said that it was undesirable that an offender should be placed in the custody of the police after his guilt was established; but we recognized that practical considerations require the maintenance of the police prison and lock-up in

remote areas.[24] While it is not practicable to employ a prison officer in a police prison or lock-up which for a good deal of the time will have no or very few prisoners, it may be practicable to engage part time clerks of court in some small country towns. We have in mind particularly married women who may have had training in typing and clerical work and who are not gainfully employed but may be willing to take part time work. Such women could fairly quickly be trained in the work of a clerk of the court and the hours at which the clerk would be in attendance at the court house could be limited. The clerk of the court would be required at the the court on court days. Wherever possible we recommend that a police officer should not occupy the position of clerk of court.

5.6 Miscellaneous Duties. Many duties formerly undertaken at police stations in country areas have now been assigned to members of Departments of the Public Service, Australian and State. Some duties are still undertaken for the Department of Agriculture, among them the issue of bull, dairy and bee licences. Although there may be no other agency in a small country town which can undertake the issue of such licences, the Police Force believes that country police could be relieved of some of the work if the licences were issued by post from a central office in Adelaide. We recommend that this should be done wherever possible.

5.7 Recommendations with respect to Extraneous Duties.

(*a*) *We recommend that all driver testing be undertaken by persons other than police officers.*

(*b*) *We recommend that the police continue to make all tests of vehicles which legislation requires.*

(*c*) *We recommend that civilian orderlies replace police orderlies in all courts.*

(*d*) *We recommend that wherever practicable service of civil process be undertaken by civilian bailiffs.*

[24] Chapter 5, para. 12.

(*e*) *We recommend that the police cease to act as clerks of court in all places in which it is possible to engage the services of an appropriate civilian to act in such capacity*

(*f*) *We recommend that government departments should be instructed to relieve the police of the obligation to attend to the issue of licences wherever practicable.*

CHAPTER 3

THE ORGANIZATION AND STRUCTURE OF THE POLICE FORCE

1 Numerical Strength. We have stated earlier in this report that we would take into account but not enter upon a detailed discussion of questions of police recruitment, training and organization.[25] Thus we do not regard it as being within our terms of reference to comment upon the re-organization of the police force under which the State is to be divided into geographical areas each of which will be under the control of a Superintendent of Police and to a certain extent autonomous. We do find it material to consider police numbers. The following table shows the comparative strength of the police forces of the Australian States and Territories as at the 30th June, 1971:—

	Total Police Force (*a*) (*b*)	General Population (*c*)	Police-Public Ratios
N.S.W.	7 470	4 640 813	1:621
Vic.	4 945	3 530 735	1:714
Qld.	3 197	1 848 611	1:578
S.A.	**2 360**	**1 184 571**	**1:502**
W.A.	1 616	1 045 755	1:647
Tas.	796	392 515	1:493
N.T.	259	87 442	1:338
A.C.T.	347	150 622	1:434
Total	20 990	12 881 064	1:614

(*a*) Excluding ancillary and civilian staff.
(*b*) *Australia Year Book*, 1972, No. 58, p. 462.
(*c*) *Ibid* p. 128.

According to that table South Australia ranks next after Tasmania and the Territories in police-public ratios. The table set out hereunder shows the composition of the various Australian Police Forces as at the same date, the percentage of the number in each rank to the total number in the particular force being shown in brackets:—

[25] Chapter 1, para. 3.

	Executive Officers	Inspectors	Sergeants	Constables	Police Women	Trainees and Cadets	Total
N.S.W.	33 (0·44)	145 (1·9)	1 832 (24·5)	5 185 (69·4)	99 (1·3)	176 (2·4)	7 470
Vic.	28 (0·6)	128 (2·6)	308 (6·2)	4 197 (84·9)	109 (2·2)	175 (3·5)	4 945
Qld.	13 (0·4)	80 (2·5)	851 (26·6)	2 077 (65·0)	30 (0·9)	146 (4·6)	3 197
S.A.	**13 (0·5)**	**47 (2·0)**	**234 (10·0)**	**1 648 (69·8)**	**37 (1·6)**	**381 (16·1)**	**2 360**
W.A.	21 (1·3)	28 (1·7)	323 (20·0)	1 162 (71·9)	34 (2·1)	48 (3·0)	1 616
Tas.	7 (0·9)	38 (4·8)	69 (8·7)	608 (76·3)	15 (1·9)	59 (7·4)	796
N.T.	3 (1·2)	4 (1·5)	46 (17·8)	200 (77·2)	6 (2·3)	—	259
A.C.T.	2 (0·6)	12 (3·5)	65 (18·7)	261 (75·2)	7 (2·0)	—	347
Total	120 (0·5)	482 (2·3)	3 728 (17·8)	15 338 (73·1)	337 (1·6)	985 (4·7)	20 990

The most striking difference between the South Australian Police Force and the forces of other States and Territories relates to trainees and cadets. These are shown to represent 16·1% of the total South Australian Police Force and only 2·4% of the New South Wales Police Force. To some extent this accounts for the favourable police-public ratio in South Australia shown in the first table. In order to complete the picture we set out hereunder a table showing the police-public ratios for the Australian States and Territories for the same period, but excluding trainees and cadets:—

	Total Police Force (*a*)	General Population	Police-Public Ratios
N.S.W.	7 294	4 640 813	1:636
Vic.	4 770	3 530 735	1:740
Qld.	3 051	1 848 611	1:606
S.A.	**1 979**	**1 184 571**	**1:599**
W.A.	1 568	1 045 755	1:667
Tas.	737	392 515	1:533
N.T.	259	87 442	1:338
A.C.T.	347	150 622	1:434
Total	20 005	12 881 064	1:644

(*a*) Excluding ancillary and civilian staff, trainees and cadets.

In this last table South Australia maintains its position, but its ratio is nearer to that in the other States than appears when trainees and cadets are included in the numbers.

1.1 Optimum. The Commissioner of Police and his senior officers believe that the strength of the Police Force in South Australia should be increased so that the police-public ratio should be in the region of 1 to 530. The committee understands that attempts are being made, particularly by the intake of adults into the Police Force, to increase the numbers towards that desired ratio. There are various facts which make it particularly desirable to increase the strength of the Force. As the Commissioner of Police pointed out in an address given by him in 1973 it must be anticipated that the rate of serious crime may increase in South Australia, and in addition the police should be able to be in more personal touch with the ordinary citizen than is possible at present.[26] Furthermore the

[26] Salisbury, "Tomorrow's Policeman", a paper presented at the Australian Crime Prevention Correction and After-Care Council 7th biennial conference, 11th-18th August 1973.

South Australian Force has to supply police over a wide area and sometimes in sparsely settled places. The need for specialists in certain fields becomes more urgent as the tools of the professional criminal become more sophisticated. For all these reasons and because we believe that the Police Force in South Australia is undermanned, although not seriously so, we believe that recruitment should, if possible, be increased so that the police-public ratio can be reduced to 1 to 530. We note that Colonel Sir Eric St. Johnston in his report on the Victoria Police[27] recommended "that there should be one police officer to 350 population in urban areas and one to 1 000 in rural areas", and that if this formula were applied to South Australia an even larger force would be required. In making this recommendation we are mindful of the fact that there are considerations other than population to be taken into account in determining the appropriate size of a police force. One important consideration is the extent to which specific duties are imposed upon the police by legislation. The scope of police work continues to grow as extra duties are imposed upon the Police Force from time to time under various statutes. One instance is the duty recently imposed upon the police under the Commercial and Private Agents Act, 1972, to report on applicants for licences.[28] The committee assumes that the Police Commissioner and his commissioned officers have taken into account such recent additional duties imposed upon the police in making the estimate of the appropriate strength of the Force.

1.2 Recommendation with respect to Numerical Strength.

We recommend that the strength of the Police Force in South Australia should be increased so that the police-public ratio does not fall below 1 *to* 530.

2 Recruitment and Training. Since 1932 it has been possible for males to enter the South Australian Police Force straight from school. For substantial periods it has been impossible for them to enter as adults. The present position is that approximately 130 each year graduate from three-year courses at the Police Academy at Fort Largs and in recent

[27] St. Johnston, *Report on the Victorian Police Force* (1970-71), 39.

[28] Chapter 12, para. 1.1.

years about 20 adults have been received into the Police Force, they having undertaken a seventeen weeks' training course of the Police Academy. In 1974 the intake of adults has been increased and it is expected that approximately 70 adults will be accepted into the Police Force in this and in subsequent years, thus making the proportion of adult intake to cadet intake in the region of approximately 1 to 1·8 in place of the intake of recent years of about 1 to 6·5.

2.1 Selection Criteria. We have been informed that those males selected as cadets must have undergone at least three years of secondary education. The departmental records are searched to screen the applicant, his family and associates. He is given a preliminary education or intelligence test after his school record has been seen. If he is regarded as promising material he is called before a selection panel for further testing in intelligence and for personal interviews and medical examination. His name is printed in the *Police Gazette* to enable any police officer, who has any knowledge which may be relevant, to report on the potential recruit. We assume that some regard is paid, in checking the school records, to the educational achievements of the applicant. However three years at secondary school is today a minimal requirement and we have been told that many cadets need additional training in basic literacy. This situation appears to be not limited to young men who aspire to become members of the Police Force. We believe that the pay and conditions of employment of members of the Police Force should be made sufficiently attractive to encourage entry from persons having sufficient ability to absorb the necessary training. We do not regard a discussion of the present rates of pay or conditions of employment of the members of the Police Force as coming within the scope of this inquiry, but it is necessary to remember that the Police Force is competing with a large variety of employers for the recruitment of its cadets. It rightly regards good character and a satisfactory record of behaviour as essential. It should be in a position to demand sufficient mental capacity to enable the recruit to absorb and apply all the knowledge which he must have as a member of the Police Force and to exercise a judgment appropriate to the situation in which his work may place him. Training for many careers no more demanding of intellectual capacity than is membership of the Police Force may be undertaken only by students

who have passed the Leaving examination. The committee believes that the Police Force should be able to demand and should demand as a minimum qualification for acceptance as a cadet the satisfactory completion of four years of secondary school education and recommends accordingly.

2.2 Recruitment of Adults. The rules relating to the appointment of adults are contained in Part III of the regulations made under the Police Regulation Act, 1952-1973. A male applicant must be between the age of 20 and 30, and a female applicant between the age of 21 and 30. To date no female cadets have been accepted. A married woman is not eligible for appointment, and a woman member of the Force requires the special approval of the Commissioner of Police to remain in the Force after her marriage. The committee understands however that widows and divorced women will be accepted into the Force. While the difficulties of sending a married woman to a post which is geographically distant from the place of employment of her husband are obvious, such difficulties have been encountered and contained in the case of married women employed by the Education Department as teachers, and it seems to the committee that the absolute prohibition against the appointment of married women as members of the Police Force is unnecessarily restrictive. We recommend the repeal of this regulation.[29] The regulations prescribe minimum height for applicants and minimum weight, expiration and inspiration which is related to that height. The Commissioner has a discretion to dispense with compliance with such requirements. Except for ceremonial purposes, the height of a policeman or a policewoman seems unimportant, although we recognize that it is sometimes argued that tall policemen are more likely to be able to control potential disturbances by their physical presence without the use of force. We also recognize that greater flexibility is achieved within the Force if minimal standards of physique are required, as physical strength may be important for a policeman or policewoman who is on patrol on foot, even though it is unimportant for one who is working in a clerical position or as a specialist in a police laboratory. We accept

[29] Reg. 15.

that it is desirable for individual policemen and policewomen to undertake a variety of duties during the course of their careers. For these reasons it would seem wise for the Commissioner to retain his discretion to dispense with compliance with minimal physical standards. The regulations prescribe an intelligence test and a written examination in educational subjects together with a medical certificate of physical fitness.[30] The candidate may be required to attend for personal interview before selectors appointed by the Commissioner. He or she is to be judged upon personal history together with personality, demeanour, initiative and general suitability, and the selectors are to inform the Commissioner whether the candidate is appropriate for appointment to the Police Force.[31] We believe that a personal interview should be a requisite to appointment both as a police cadet and as an adult police trainee. No one would deny that the effectiveness of any police force must depend above all else, on the personal qualities of its members, and selection procedures should include in them questions of attitudes and motivation. Such assessment can be readily conducted by a competent psychologist and for this purpose we recommend the appointment of at least one police psychologist. He should interview the applicants as part of the selection procedure. Personnel selection is one of the most firmly established areas of psychological practice. Psychological assessment of potential police recruits would be useful if it only identified likely misfits who were perhaps over-authoritarian or intolerant of deviance, and in so doing it might avoid some of the embarrassment caused by over-zealous policemen who are to be found in every force. In the long run psychologically based selection would identify those patterns of attributes which are found in successful policemen, and hence tend to find positive criteria for selection as well as negative criteria for exclusion. We recommend therefore the appointment to the Police Force of a psychologist, one of whose duties would be to interview aspiring cadets and adult applicants.

2.3 The Cadet System. In States other than South Australia adult recruits provide the bulk of the police numbers and cadet training plays a comparatively minor role. The cadet system in

[30] Reg. 18.
[31] Reg. 19.

force in South Australia is on the whole favoured by the senior commissioned officers of the Force.

2.3.1 Advantages. As we see it the main advantages of the training are as follows:—

(*a*) The three-year training period, interspersed as it is with temporary placements in police stations, provides sufficient time for young men to become thoroughly indoctrinated in the career of their choice. They emerge from training with a broad understanding of the policeman's role and with a high degree of confidence in their ability to fit the role.

(*b*) A very high level of physical fitness is developed over the three year period.

(*c*) Misfits are identified at a stage which is early enough for them to leave and start upon another career without serious risk to their subsequent adjustment.

(*d*) Although there is a wastage of about 20% throughout the course, this frequently is filled by the intake of older youths with special personal and academic qualifications who are inducted into the course about two fifths of the way through it, and who are able to reach the required standard in a shorter time than the average cadet. The wastage from the Police Force has been in the region of 3 to 3½ per cent per annum. This indicates that South Australian policemen, who for the main part have undertaken the cadet training, tend to continue in the occupation of policemen.

2.3.2 Disadvantages. These may be summarized as follows:—

(*a*) Cadet training is expensive, and some part of it could be more appropriately and efficiently undertaken by the Education Department.

(*b*) Although every effort is made to allow the boys to hear lectures from persons outside the Police Force, and although they meet others in certain community work

which they undertake and in sport, this form of training may have a tendency to produce policemen with little understanding of everyday problems or ordinary people in the world outside their own.

(*c*) Boys of 16 or 17 may lack the insight that is desirable before a commitment to a career is made. This argument may be used with regard to any school leaver who embarks upon a career at that age, but what the cadet is learning is necessarily geared to life as a policeman, and is not likely to fit him for other employment.

(*d*) Those who graduate at 19 are too young to handle many crisis situations.

2.3.3 Advantages and Disadvantages of Adult Training. In comparison with what we have said concerning cadet training we list the advantages and disadvantages, as we see them, of adult entry into the Force. The advantages are as follows:—

(*a*) The seventeen weeks training is considerably less expensive than cadet training.

(*b*) The adult recruits have had experience of work outside the Police Force in various occupations, and this may give them tolerance and understanding which the cadets may lack.

The disadvantages which may balance the advantages are as follows:—

(*a*) The skills and knowledge acquired during the shorter period may be insufficient to meet the needs of the task.

(*b*) The retention rates of persons who come into the Police Force as adults is lower, and this may lead to instability in the Police Force.

2.3.4 Conclusions. The committee has not found it appropriate, in the execution of the task set it, to inquire more deeply into the relative merits of the cadet system as opposed to the system of adult intake, nor could it have done so without considerably more expert guidance. We recommend that

the relative merits of the two pre-service training systems should be kept under review. We suggest that if a psychologist is attached to the Police Force he be required to research the comparative efficacy of both methods of selection. He should be able to devise tests for efficiency which will indicate the degree of satisfaction given by the two classes of recruits to the Police Force.

2.3.5 The Cadet Training Course. In our visit to the Police Academy we saw the cadets at work and were impressed with the facilities for work and for sport provided for them as well as with the quarters which they occupied. It would not be appropriate to this report to enter into questions of curriculum or method of training in any detail. We make only two recommendations concerning this matter. Police instructors who have undertaken a short course in instructional techniques give all the lectures including those on academic and general educational subjects. In some cases they are required to give additional instruction in basic literacy. We see it as an advantage that some teachers should be seconded from the Education Department to the Police Academy to undertake instruction in the general educational subjects. In this way the more able cadets may be encouraged to complete higher secondary school examinations. We shall return later to the question of tertiary education for policemen.[32] Suitable cadets should be prepared, while at the Police Academy, to undertake tertiary study.

2.4 Crisis Intervention. One additional aspect of training to which consideration may be given on an experimental basis is training for crisis intervention. Police, more than any other group of persons, are likely, in the course of their work, to be required to deal with cases of personal crisis. These may be caused by domestic disputes, drug addiction, alcoholism or mental breakdown. They will have to deal with people who are lost, abandoned or suicidal. In situations such as these police have a wide discretion in the way they handle the immediate crisis. It is necessary that the policeman knows that there is a crisis and what it is. He needs to

[32] Chapter 3, paras. 2.6.3-2.6.5.

understand the fundamentals of normal human development, to recognize the more obvious mental disorders, and must have elementary skills in handling distressed and disturbed people in such a way as to alleviate rather than to exacerbate the distress or disturbance. A course in basic or practical psychology would assist the policeman faced with a crisis situation. We recommend that consideration be given to the institution of a course to be run by psychiatrists, clinical psychologists and psychiatric social workers and to be given to third year cadets and, if it proves advantageous, to become a part of in-service training.

2.5 Recommendations with respect to Recruitment and Training.

(*a*) *We recommend that satisfactory completion of four years of secondary school education should be a minimum qualification for enrolment as a police cadet.*

(*b*) *We recommend that regulation 15 of the Regulations made under the Police Regulation Act, 1952-1973 be amended to enable married women to enter the Police Force.*

(*c*) *We recommend the appointment to the Police Force of a psychologist one of whose duties would be to interview aspiring cadets and adult applicants.*

(*d*) *We recommend that some of the instruction given at the Police Academy should be undertaken by teachers seconded from the Education Department.*

(*e*) *We recommend that those cadets who are academically suitable should be encouraged to complete higher secondary school examinations.*

(*f*) *We recommend that on an experimental basis a course of training for crisis intervention be given to third year cadets and that consideration be given to making such a course a part of in-service training.*

2.6 Further Training. The four types of further training which we consider are:—

(*a*) *Traditional in-service courses.* These are run by a police force exclusively for its own members and include technical training as well as general administrative training.

(*b*) *Training by other police agencies.* We instance the courses offered by the Australian Police College at Manly as well as the advanced training courses offered at Bramshill Police College in England and the F.B.I. Academy in America.

(*c*) *Courses for Police offered by other agencies.* This might include a course for a Diploma of Police Science offered by a College of Advanced Education. We have been informed that Queensland is the only Australian State which provides a course of this type but we understand that such courses are under consideration by other States.

(*d*) *University and other courses.* In some States police are encouraged to undertake studies for degrees or diplomas from Universities or Colleges of Advanced Education.

2.6.1 In-Service Courses. The following table taken from the 1972 report of the Commissioner of Police sets out the numbers of in-service training courses for members of the Police Force and the attendance at each during 1971-1972.

Nature of course	To whom available	Number of courses and length of each course	Numbers attending
Refresher course "A"	Constables in third year of service	Four—each of three weeks	109
Refresher course "B"	Constables in seventh year of service	Four—each of three weeks	103
Instructors course	Senior Constables 1st Grade or below	One—of one week .	11
Course for promotion to Sergeant 3rd Grade	Those whose promotion to this grade is imminent	One—of three weeks	13
Prosecutors course	Intending prosecutors	One—of three weeks	12
Detectives course	Those seeking appointment as detective	Two—of five weeks	35
Breath analysis course		One—of three weeks	8
Diving course	Aspirants to under-water recovery squad	One—of three weeks	12

As appears from the table the courses were each of short duration; for the most part they were presented by lecturers within the Force, although some lectures in the breath analysis course were given by a solicitor from the Crown Law Department, a pathologist and a member of the Chemistry Department. The

senior members of the Police Department see the need for improvement in in-service training. The courses offered appear to be of too short duration and it seems to us that stimulus would be given if more lecturers were drawn from outside the Force.

2.6.2 Training by Other Police Agencies. Some members of the South Australian Force have attended courses at the Australian Police College at Manly. These are courses usually of several months duration. A number of members of the Force have also attended and obtained qualifications at certificate courses at the South Australian Institute of Technology, particularly in fields which are useful in forensic science. We believe that all such additional education must prove beneficial to the South Australian Police Force as a whole. We believe that more active encouragement should be given to cadets to qualify while at the Police Academy or later for entry to University or College of Advanced Education and to members of the Force to undertake tertiary education at Universities and Colleges of Advanced Education. In our first report we recommended the creation of a three-year College of Advanced Education course leading to Diploma of Correctional Science as a minimum qualification for appointment to a senior position in the Correctional Service or to permanent probation or parole officer.[33] We there mentioned subjects of which senior correctional personnel and permanent probation and parole officers should have reasonable knowledge. We do not think it necessary to say more than that a number of subjects to which we there referred could constitute part of a Diploma of Police Science. In addition such a diploma should require study in further subjects specifically designed for those undertaking the police diploma. We do not repeat what we have said in our first report concerning the Diploma of Correctional Science but add that what we said there concerning the desirability of the establishment of a course along the line suggested for senior correctional personnel and permanent probation and parole officers applies with equal force to a course for senior police

[33] Chapter 5, paras. 5.3 and 5.12(*b*).

officers. The diploma course which we have in mind would be of three years duration. Within the South Australian Police Force considerable work has been done in attempting to formulate a scheme for external and internal study which would lead to a Certificate in Police Studies and an Advanced Certificate in Police Studies and, for certain persons, a Diploma in Police Science. It is unnecessary for us to discuss the proposal in detail but we view it with favour and believe that such a project could be undertaken through a College of Advanced Education.

2.6.3 Secondment to Universities or Colleges of Advanced Education. We have already said that suitable members of the Police Force should be encouraged to undertake University training. It would be difficult, if not impossible, for members of the Force to achieve University degrees or diplomas of Colleges of Advanced Education entirely by part time study. Suitable applicants, who have demonstrated their ability to pass some subjects part time, should be given study leave for specified periods of not less than one year to enable them to undertake full time study.

2.6.4 University Courses. While the possession of at least a Diploma of Police Science should be obligatory for appointment to the highest ranks in the Police Force, encouragement should be given in any event to police officers with University degrees or diplomas from Colleges of Advanced Education. This should be done by means of a salary loading.

2.6.5 Board of Studies in Police Education. With the expansion and diversification of police training and further education, the committee believes that there will be a need for a body to co-ordinate this area of activity. We therefore recommend the creation of a Board of Studies in Police Education and suggest that it should comprise an Assistant Commissioner, who would be the chairman, the two Superintendents who are responsible for cadet and in-service training, a representative of the Education Department, a representative of the Law School of the University of Adelaide, a representative of the

South Australian Institute of Technology or other College of Advanced Education, and the Police Psychologist the appointment of whom is recommended in paragraph 2.2 above. The function of the Board of Studies would be:

(*a*) to encourage the development of new courses of police training at a College of Advanced Education or elsewhere,

(*b*) to approve the curricula and award certificates for all existing courses,

(*c*) to determine the equivalence of qualifications awarded by agencies other than the South Australian Police Force which are held by applicants to the Force or by serving policemen,

(*d*) to recommend salary loadings to be paid to policemen with higher academic qualifications, and,

(*e*) to select police for University places and other scholarships.

2.6.6 Further Recommendations with respect to Training.

(*a*) *We recommend that in-service courses be of longer duration and include more sessions given by lecturers from outside the Police Force.*

(*b*) *We recommend the creation of a three year College of Advanced Education course leading to a Diploma of Police Science as a minimum qualification for appointment as a commissioned officer in the Police Force.*

(*c*) *We recommend that suitable members of the Force should be given study leave for periods of not less than one year to enable them to undertake full time study at a University or College of Advanced Education.*

(*d*) *We recommend that salary loadings should be given to members who hold University degrees or diplomas from Colleges of Advanced Education.*

(*e*) *We recommend the establishment of a Board of Studies in Police Education.*

3 **Promotion.** The Commissioner of Police has criticized the slow rate of promotion for the police in South Australia and pointed out that it is even slower in other States.[34] At present examinations are held to determine the suitability of members for promotion to the substantive rank of Constable 1st Class, Sergeant 3rd Grade and Sergeant 2nd Grade.[35] No member can sit for the examination for 1st Class Constable until he has had at least three years continuous service in the Force after his permanent appointment. There is no time limit upon his eligibility to sit for the examination for Sergeant 3rd Grade or Sergeant 2nd Grade, except that these examinations are open only to persons who have attained a substantive rank of 1st Class or Senior Constable 1st Grade.[36] No member can attend an Inspectors' Training Course until he has served for at least 13 years continuously.[37] The appointment to the rank of 1st Class Constable cannot be made until after the completion of five years continuous service, but then it is made automatically upon the passing of the appropriate examination. So too a senior constable who passes the examination for Sergeant 3rd Grade becomes a Senior Constable 1st Grade immediately upon passing the examination, and a 1st Class Constable who has passed that examination and has served continuously for four years also becomes a Senior Constable 1st Grade. Appointments to the permanent position of commissioned substantive rank are made only when vacancies occur, and then assessment is made of personal suitability in addition to academic qualifications and seniority.[38] It is believed by the senior members of the Police Force that it is desirable to consider something in the nature of the United Kingdom Accelerated Promotions Scheme. Under that scheme promising young constables are selected for a year's course at Bramshill College. Successful completion of the course entitles the member to be promoted to the substantive rank of Sergeant. After one year of

[34] Salisbury, "Tomorrow's Policeman', a paper presented at the Australian Crime Prevention Correction and After Care Council 7th biennial conference, 11th-18th August 1973.

[35] Reg. 48. Regulations made under the Police Regulation Act, 1952-1973 (S.A.).

[36] Reg. 51(2) and (3).

[37] Reg. 51(*a*)(3).

[38] Reg. 55.

satisfactory service in the rank of Sergeant the member is entitled to promotion to Inspector. Each year a number of officers who have attended the course are awarded University places under the Bramshill Scholarship Scheme and attend the University upon full pay. We have recommended that members of the Police Force should, where it is appropriate, be permitted to study full time at a University or College of Advanced Education. If this recommendation is adopted it will be some years before any member of the Police Force will graduate from a university, and the numbers of police who will do so will in any event be very limited. If it is accepted as appropriate that the Police Force will include among its members some who have completed tertiary education at a university, this can be effected in the short term only by recruiting graduates into the Force. Encouragement could be given to selected university graduates and to experts in specialist fields to enter the Police Force by enabling them to enter as commissioned officers after a short period of training and practical experience. We realize that the number of senior positions available in the Police Force are limited. Some balance must be kept between seniority and other qualifications. It may be that there should be two streams of entry into the Police Force, one set being destined for commissioned rank and the other for non-commissioned rank with the possibility of inter-change at a later stage. It may be, as has been suggested to us, that an earlier retiring age for higher ranks would leave more places open for younger men with bright ideas. We do not feel that we can embark upon a detailed study of the promotional system but we recommend that it be kept under review and that consideration be given to means of recognizing outstanding ability while not overlooking length of service.

3.1 Recommendations with respect to Promotion.

(*a*) *We recommend that selected university graduates and experts in specialist fields should be enabled to enter the Police Force as commissioned officers after a short period of training and practical experience.*

(*b*) *We recommend that the promotional system in the Police Force be kept under review and that consideration be given to means of recognizing outstanding ability while not overlooking length of service.*

4 Women Police Officers. On the 1st December, 1915, Miss Kate Cocks and Miss Ann Ross were sworn in as constables in the South Australian Police Force. We are informed that these two women were the first in the then British Empire to be given the full powers and responsibilities of members of a police force. Miss Cocks had been employed as the first social worker with the then State Children's Department in South Australia, and was invited to form a branch of Women Police within the Force. By 1917 there were five women police members and by 1973 there were 47, some of whom were stationed at Port Adelaide and Elizabeth and at certain country towns. Five members were doing specialist work, one as a prosecutor, one in the drug squad, one in the business agents section, one in the community affairs section and one in legal and in-service training. The Principal of the Women Police was paid at the rate appropriate for a Sergeant 2nd Class. Until 1974 there were no uniformed women police in South Australia. Theoretically the women could sit for promotional examinations, but because of the limited use to which they have been put there has been virtually no encouragement for them to do so. Emphasis has always been placed upon the preventive duties of the Women Police. This appears from Police General Orders which refer to the safeguarding of the moral welfare of women and children as a reason for the appointment of women police.[30] It has now been decided to expand the role of women within the Police Force. An adult class which graduated on the 20th February 1974 included women in uniform. They have been posted to various metropolitan stations for uniform duty on the same basis as male officers. It is intended that all positions which women can fill efficiently will be open to them. Girls are not being accepted as cadets. The duties which the women have performed in the past have been immeasurably valuable to the State. It would be unfortunate if the acceptance of women as uniformed police officers should cause any diminution in these services. We do not see any reason to believe that this will happen. There will always be a need for a body of women within the force readily available for preventive and general social work. That does not mean that other women cannot be usefully employed in the ordinary work of the Police Force. We recommend that all positions in the Police Force should be open to women capable of filling them.

[30] General Order 522(2).

Equal opportunity for advancement predicates equality in training. This will be achieved only when cadet training is available to young women as well as to young men. We recommend that female cadets be accepted into the Police Academy.

4.1 Recommendations with respect to Women Police Officers.

(*a*) *We recommend that all positions in the Police Force should be open to women.*

(*b*) *We recommend that the cadet system be enlarged to permit the training of female cadets at the Police Academy and that young women should be accepted for such training at the same age and with the same educational standard as is applicable to young men.*

5 Aborigine Police Officers. The Police Force generally finds considerable difficulty in its relations with the aboriginal population of South Australia. The Commissioner of Police and his commissioned officers recognize the desirability of improving such relations. The aborigine is likely to see the policeman as a representative of the white Australian and as not representing the aborigine. This situation might change if a sufficient number of aborigines became and remained members of the Police Force. To date there have been two aborigines who have trained as cadets in South Australia. One left the Police Force after three years' service; the other remains a member of the Force. It is probable that many aborigines would find it difficult to survive the original screening of recruits which includes a checking of the records of the recruit himself and of members of his family and associates because aborigines do not always have the same choice of associates as is given usually to members of the white population. We understand that there has been no attempt to recruit applicants for the Police Force specifically from among aborigines. We appreciate that such an attempt would raise many problems, and might lead to questions of racial discrimination. Nevertheless we believe that some attention should be given to the question of encouragement of suitable aborigines to join the Police Force.

5.1 Recommendation with respect to Aborigine Police Officers.

We recommend that suitable aborigines should be encouraged to join the Police Force.

6 Interchangeability of Police Officers. At present it would not be possible for police officers to move from one State to another and take up their employment in another police force. Nor is this possible for police officers coming to Australia from overseas. To a limited extent police officers in South Australia have been recruited for positions in the Territories and in the Commonwealth Police Force. There was an arrangement among some of the Australian States whereby their detectives worked on exchange duties for limited periods. This practice has fallen into disuse. Some South Australian police officers have served for periods in Cyprus without loss of seniority. We see two separate issues:—Firstly, should members of the Police Force in one Australian State be able to obtain similar employment and status if they move to another Australian State? As a corollary should that privilege be extended to policemen from other Commonwealth countries? Secondly, should there be a temporary interchange of police officers with those from other States and other countries?

6.1 Permanent Employment. While examinations for various ranks are undertaken entirely within the Police Force itself each Australian State sets its own standards and is unlikely to accept as equally valuable the standards set by another State. This situation could, of course, be met either by requiring the person coming from another Police Force to sit for an additional examination, or by giving him credit for only part of his service outside the South Australian Force. But while there is such a dearth of positions available for officers who may become qualified for commissioned rank there would justifiably be considerable opposition to the intrusion of persons from outside the South Australian Police Force. Where, however, there is not keen competition from within the Force for a particular position, then it seems to the committee that there would be considerable advantage in throwing the position open to persons who have had training and experience in other Police Forces. We recommend that the question of interchangeability of police within Australia upon a limited basis should be discussed with other States at the appropriate level.

6.2 Temporary Exchange. The infusion of new ideas into the Police Force could be to some extent achieved and an antidote to inbreeding supplied by the freer exchange of police officers, for

limited periods, within Australia and with countries outside Australia. This would not raise problems of status within the Force. Such exchanges would be of considerable value among staff engaged on various specialist tasks, but would also assist those whose duties relate to ordinary crime investigation. In considering with which countries an exchange system should be initiated, if practicable, we would suggest that attention be paid not only to the United Kingdom, Canada and the United States but also to the South East Asian countries and Hong Kong. We recommend that such a system of exchange be negotiated.

6.3 Recommendations with respect to Interchangeability of Police Officers.

(*a*) *We recommend that the question of permanent interchangeability of police officers within Australia upon a limited basis should be discussed with other States at the appropriate level.*

(*b*) *We recommend that a system of temporary exchange of police officers with other countries and with other States in Australia be negotiated.*

7 Special Constables and Peace Officers. The Commissioner of Police or a Special Magistrate may appoint any person to be a special constable either for the whole State or for a part of the State. The special constable is required to take an oath similar to that taken by members of the Police Force, and while performing his duties as a special constable he has all the powers and immunities and is subject to the duties and liabilities of a member of the Police Force. His appointment may be suspended or determined by the Commissioner and he may be removed from office for misconduct, neglect of duty or inability to perform his duty.[40] A municipal or district council may also appoint persons as constables and remove them from office. Such persons are peace officers within the area, and have, within the area and any adjoining area during the tenure of office, all the powers and privileges for the time being of members of the Police Force. They take an oath to serve within the area. The committee understands

[40] Police Regulation Act, 1952-1973 (S.A.), ss. 30-33.

that persons who act as railway detectives and as railway police are appointed under s. 30 (1) of the Police Regulation Act, 1952-1973 and that it is the practice of various councils to appoint constables under the Local Government Act, 1934-1972. We believe that it is desirable that all appointments of special constables or constables should be made by the Commissioner of Police or a Special Magistrate, and that s. 161 of the Local Government Act, 1934-1972 should be amended so that the actual appointment should be by the Commissioner of Police upon the recommendation of the Local Council. Further we believe that the powers of persons appointed should be restricted so that they are empowered to act only in those matters for which their appointment is desirable. A member of the police force is under constant supervision and undergoes considerable training to fit him for the important powers and duties which are entrusted to him. We do not think that other persons should ordinarily be given the same powers or duties. It should be in the discretion of the Commissioner of Police or a Special Magistrate to delimit their powers and duties.

7.1 Recommendations with respect to Special Constables and Peace Officers.

(*a*) *We recommend that all appointments of special constables or constables should be made by the Commissioner of Police or a Special Magistrate and that s.* 161 *of the Local Government Act,* 1934-1972 *should be amended to provide for the appointment to be made by the Commissioner of Police upon the recommendation of the appropriate Council.*

(*b*) *We recommend that the powers and duties of special constables and peace officers should be limited to those in respect of which their appointment is required.*

8 Equipment and Scientific Aids. We have not regarded it as within the scope of our inquiry to consider the detailed technological and scientific needs of a modern Police Force. We take the view that the quality of police personnel is more important than the availability of modern equipment, but we believe that the overall effectiveness of police work and the morale of the Force will be lowered if appropriate equipment and scientific aids are not on hand. In particular we believe that police communication systems, including the use of personal radios

and computers, which provide rapid access to criminal records, description of stolen property and the like should be kept under constant review.

9 Crime Statistics. The annual reports of the Commissioner of Police contain returns which attempt to compare the incidence of crime with that of the previous year. These tables are compiled from statistics kept by the police, and in a method which is doubtless convenient for their purposes. The committee understands that there has been intermittent consultation among the Australian Police Forces in an effort to achieve a standard method of keeping criminal statistics, but that little, if anything, has been achieved. Accurate crime statistics are an irreplaceable source of reliable information. To some extent they can be judged by reference to comparable statistics kept elsewhere. It is essential therefore that, at least in Australia, there should be a common method of keeping crime statistics. One of the functions of the new Australian Institute of Criminology is "to give advice in relation to the compilation of statistics relating to crime".[41] We have been informed that the Institute is working in conjunction with the Australian Bureau of Statistics in an attempt to establish a national system of uniform crime statistics. We recommend that the Police Force consult and co-operate with the Australian Institute of Criminology and with the Australian Bureau of Statistics as to the method of compilation of its crime statistics. We recommend further that the South Australian Government should consider the establishment of a Bureau of Criminology or Crime Statistics and Research, similar to that which is functioning in New South Wales, which would assist with the analysis and interpretation of statistical data relating to crime.

9.1 Recommendations with respect to Crime Statistics.

(*a*) *We recommend that the Police Force consult and co-operate with the Australian Institute of Criminology and with the Australian Bureau of Statistics as to the method of its crime statistics.*

(*b*) *We recommend that the South Australian Government consider the establishment of a Bureau of Criminology or Crime Statistics and Research similar to that which obtains in New South Wales.*

[41] Criminology Research Act, 1971 (Aus.), s. 6(*g*).

CHAPTER 4

POLICE DISCIPLINE AND COMPLAINTS AGAINST THE POLICE

1 Reporting of Complaints. Regulation 36 of the regulations made under the Police Regulation Act, 1952-1973 codifies the conduct on the part of a member of the Police Force which constitutes an offence against the regulations. It is sufficiently wide to cover not only matters of internal discipline but also matters which may be the subject of complaint by members of the public. There is an obligation upon any member of the Force who becomes aware of the commission of an offence against the regulations to report it, and the Commissioner of Police is obliged to have every such report investigated by a commissioned officer who, after investigation, is to report to the Commissioner of Police who in his turn may cause a charge to be laid against the person investigated.[42] There is no procedure regulating the making of a complaint by a member of the public. The committee believes that complaints by members of the public are usually made to a member of the Police Force either by the aggrieved party or by a Member of Parliament or some other person acting on behalf of the aggrieved party. If such a report is made then the Commissioner of Police is bound to have it investigated, but it remains within his discretion to decide, after receiving a report, whether a charge should be laid against the member whose conduct is the subject of the complaint.

1.1 Police Inquiry Committee. Such a committee was provided for in the original regulations. Its composition has been strengthened by a 1973 amendment to the regulations. Under that amendment the committee consists of a Special Magistrate appointed by the Governor to be Chairman, a Justice of the Peace appointed by the Chairman and a Commissioned Police Officer appointed by the Commissioner of Police. It is provided that a Commissioned Police Officer who has investigated a report of a suspected offence shall not act as a member of the committee on the hearing of any charge arising out of that report. Any charge to be investigated by the committee is to be reduced to writing and upon

[42] Reg. 40.

the hearing of the charge the practice and procedure of a court of summary jurisdiction on the hearing of a complaint for a simple offence is to be followed. The member charged is entitled to be represented or assisted by another member or by counsel employed by him. The hearings of the committee are to be in camera except as otherwise directed by the committee.[43]

1.2 Penalties. If a member is found guilty by the Police Inquiry Committee the penalty is for the Commissioner of Police who may, with the approval of the Chief Secretary, dismiss the member from the Force or may impose penalties which include reduction in rank, a fine, a reprimand or admonishment.[44]

1.3 Police Appeal Board. There is a right of appeal by a member of the Police Force against any finding of guilt against him by the Police Inquiry Committee and against any punishment inflicted on him by the Commissioner of Police.[45] There is no right of appeal against a failure to find a charge proved. The Police Appeal Board consists of a Judge of the Local and District Criminal Court appointed by the Governor to be Chairman, a person appointed by the Commissioner, and a member of the Police Force elected by the Police Force.[46] The Board acts in an advisory capacity to the Chief Secretary and may recommend that the appeal be dismissed or allowed and may recommend a variation of penalty. The Chief Secretary's decision after receipt of the report is final.[47] The Board may decline to hear any appeal which appears from the notice of appeal to be trivial, frivolous or vexatious.[48] The Police Appeal Board also hears appeals in relation to promotions.

2 The Preliminary Inquiry. The regulations are designed primarily to meet the case of a report by one member of the Police Force of the commission of an offence by another member, but must also meet the case of a complaint by a member of the public. In the case of

[43] Regs. 41, 44, 46.
[44] Reg. 38.
[45] Police Regulation Act, 1952-1973 (S.A.), s. 44.
[46] Police Regulation Act, 1952-1973 (S.A.), s. 38.
[47] Police Regulation Act, 1952-1973 (S.A.), ss. 47-49.
[48] Police Regulation Act, 1952-1973 (S.A.), s. 50.

reports from within the Force there can, as it seems to the committee, be no dissatisfaction that the investigation in the first place is undertaken by a commissioned officer within the Force, and that the decision whether to cause a charge to be laid rests solely with the Commissioner of Police. However an aggrieved member of the public who has made a complaint may be quite dissatisfied with an inquiry which takes place entirely within the Police Force, and the result of which is not required to be made known to him. If he claims to have suffered damage as a result of the wrongful act of a member of the Police Force he may have a civil remedy against that member. This may involve him in legal costs which he may be unwilling or unable to expend. There are offences covered by the regulations which would not give rise to a civil action by a member of the public but which may cause him grave concern and lack of confidence in the police. One instance is the soliciting of a gratuity or reward by a member of the Force.[49] There is no statutory obligation that the complaint of a member of the public be recorded, but General Orders require that the Officer in Charge of a police station shall enter full particulars of the complaint in the station journal and forward a report to the Divisional Officer.

2.1 The Investigation of Complaints in the United Kingdom. The Police Act, 1964 of the United Kingdom requires that the investigation of a complaint against a member of the Police Force shall, if the Secretary of State so directs, be made by an officer of the Police Force in another police area. After receiving the report of the investigation the Chief Officer of Police must, unless satisfied from the report that no criminal offence has been committed, send the report to the Director of Public Prosecutions.[50] It appears that the administration of that Act has not given complete satisfaction, and that there have been serious delays in investigating complaints.[51] In the absence of a direction from the Secretary of State it is for the Chief Officer of Police to decide by whom a complaint shall be investigated. Prior to 1st June, 1972 investigations of most complaints against members of the Metropolitan Police Force were under the control of the Officer-in-

[49] Reg. 36(33)
[50] Cf. Police Regulation Act, 1952-1973 (S.A.), s. 48.
[51] Cf. Paling, "The Police Acts Amendment Bill 1973", (1973) *Criminal Law Review* 282.

Charge of the Division to which the member belonged. On that date a section of New Scotland Yard known as A10 was formed by the Commissioner of the Metropolitan Police Force, Sir Robert Mark. It is under the direct supervision of the Deputy Commissioner to whom is delegated the responsibility for discipline in the force. It is staffed by officers from both criminal investigation and uniform departments. In August, 1972 its strength was 84. In December, 1972 the strength of the uniform branch and the Criminal Investigation Division were 17 525 and 3 257 respectively. There was a wide gulf between the Criminal Investigation Department on the one hand and the uniform branch on the other, and between the two there was not ordinarily an exchange of officers. One of the major criticisms of the investigation of complaints prior to the formation of the section A10 was that members of the Criminal Investigation Division at Scotland Yard, who tended to be regarded as the elite, investigated complaints against their fellow members. In the circular to members of the Metropolitan Police Force in which he announced the formation of A10 and explained its purpose Sir Robert Mark referred to the desirability of some exchange between the uniform, Criminal Investigation Division and traffic branches "for some of those destined for intermediate and higher rank". The committee understands that service in A10 is a prerequisite for promotion. This section investigates all serious complaints including allegations of crime by police officers. In 1972 members of outside forces were called in to investigate four cases. In the 1973 Dimbleby lecture Sir Robert Mark, while he claimed that A10 had been a success, said:—

> "We realize, however, the procedure has one major drawback. It looks like a judgment of policemen by other policemen. So long as this remains the case some of you will perhaps be, understandably, sceptical. No one likes to accept the verdict of a person thought to be a judge in his own cause. That is why the Home Office are trying to devise a system of outside review of such investigations which will have everyone's confidence."

We believe that no such scheme has yet been introduced.

2.2 Recommended Scheme for South Australia. Records are not kept in the South Australian Police Force of the number of complaints made against members of the Force. Records are kept of the number of charges of breaches of regulations made against policemen. During the year ending 30th June, 1972 fifty-one members were charged with breaches of regulations, but these included charges of negligence in the use of departmental vehicles. The committee has been unable to ascertain how many charges related to conduct of a member of the Police Force in relation to a member of the public. It appears that a special section to deal with complaints against the police is probably not justified in South Australia. We believe that to minimize the risk of suggestion of bias on the part of the investigating officer a complaint by a member of the public against a member of the Police Force should never be undertaken by an officer from his division. Ordinarily it should be the task of a commissioned officer from another division to investigate such a complaint, but there may be cases which should, if possible, be investigated by someone outside the South Australian Police Force. We have considered the argument that a complaint against a member of the police force should always be investigated by investigating officers who are independent of the police but who should have the same powers of inquiry as has the Commissioner of Police. It is clear that the Commissioner must have power to inquire into allegations of misconduct on the part of a member of the Force, and it seems to us that he is entitled to choose a commissioned officer from his own force whose capacity to make the inquiry he can gauge. Police officers are accustomed to investigate alleged crimes and probably the only other persons within the State who are equally experienced are retired police officers. It would not be appropriate to entrust the task of investigating allegations of misconduct against police officers to those who have retired through age or ill health or for other reasons. Even if other appropriate persons to undertake the task were to be found the committee sees no need in the first instance to set up a double inquiry. Not only the interest of the public but also the interest of the member of the Police Force has to be considered. A double inquiry might unduly harass members of the Police Force, sometimes on very

minor matters. Nor is the expense of a double inquiry always justified. When we say that in the case of some complaints it may be desirable in the interests of the public, the Police Force or the member charged that the investigation should be carried out by a person outside the South Australian Police Force, we have in mind that the assistance of a commissioned officer from another Police Force should be sought. On an occasion when there were rumours of possible involvement of members of the Police Force in an incident, as a result of which a man was drowned in the River Torrens, the Commissioner of Police wisely, as it seems to the committee, sought and obtained permission to have the death investigated by police officers from the United Kingdom. We have in mind that ordinarily assistance would be sought from among the commissioned police officers in other Australian States or Territories.

2.3 Recommendations with respect to the Preliminary Inquiry.

(*a*) *We recommend that in any event the person making a complaint against a member of the Police Force be advised by the Commissioner of Police through a commissioned officer from a division other than that of the member against whom the complaint is made the result of the police inquiry into the complaint.*

(*b*) *We recommend the amendment of regulation* 40 (2) *of the regulations under the Police Regulation Act,* 1952-1973 *to require that an investigation into an alleged offence by a member of the Police Force be undertaken by a commissioned officer from a division other than that of the member.*

(*c*) *We recommend that when a complaint of a serious offence is made against a member of the Police Force the Commissioner of Police should be empowered to seek and, where he believes it advisable, should seek the services of a commissioned officer from another Police Force to make the inquiry.*

(*d*) *We do not recommend that complaints against members of the Police Force should in the first instance be investigated by persons other than Police Officers.*

3 The Charge. The committee believes that a person complaining about the conduct of a member of the Police Force should be entitled, if the Commissioner of Police fails to cause a charge to be laid, himself to lay a charge and forward it to the Secretary of the Police Inquiry Committee, and that if this is done the Police Inquiry Committee should proceed to hear the charge in the same manner as it would hear a charge which the Commissioner of Police caused to be laid. However the Police Inquiry Committee should have the power, similar to that of the Police Appeal Board, of declining to hear any charge which appears on the face of it to be trivial, frivolous or vexatious. If the charge appears on the face of it to be appropriate for hearing the Secretary to the Committee should inform the Commissioner of Police who should then be obliged to forward to the Secretary copies of all statements taken during the course of his investigation. Copies of such statements should be made available to the complainant, and the Secretary to the Committee should be empowered, through an investigating officer who is not a member of the Police Force, to interview and take additional statements from the persons from whom statements have already been taken and any other member or members of the Police Force who, in the opinion of the Secretary, may be able to assist the Committee on the hearing of the charge. Copies of all such additional statements should be made available to the complainant and the member charged. If the charge is laid by an individual he should be entitled to be represented by counsel to prosecute the charge. If he is unable to afford counsel fees he should be legally assisted. The committee believes that it is preferable that the prosecution be not conducted by a member of the Police Force, and thinks it desirable that where the charge is laid by the Commissioner of Police he should be represented by counsel from the Crown Law Department or by outside counsel. If the charge is laid by the Commissioner of Police then the complainant should be supplied with a copy of the transcript and of the report of the Committee. The Committee should have the same discretion as to costs as has a court of summary jurisdiction on the hearing of a complaint for a simple offence.

3.1 Recommendations with respect to the Charge.

(*a*) *We recommend that a member of the public who complains of the conduct of a member of the Police Force*

should be entitled to lay a charge under regulation 41 (1) *of the regulations made under the Police Regulation Act,* 1952-1973 *if the Commissioner of Police declines to do so.*

(*b*) *We recommend that the Police Inquiry Committee should be empowered to refuse to hear any charge which appears on its face to be trivial, frivolous or vexatious.*

(*c*) *We recommend that where a charge is laid by a member of the public the Secretary to the Committee and the member of the public be supplied with copies of all statements taken during the course of the police investigations, and that the Secretary be empowered to take additional statements through an investigating officer and be required to supply copies of such statements to the complainant and to the member charged.*

(*d*) *We recommend that an individual laying a charge be entitled to be represented by counsel.*

(*e*) *We recommend that if the Commissioner of Police lays a charge he should be represented by counsel from the Crown Law Department or by outside counsel.*

(*f*) *We recommend that where a charge is laid by the Commissioner of Police following a complaint by a member of the public, such person be supplied with a copy of the transcript and the report of the Committee of Inquiry.*

(*g*) *We recommend that the Committee have a discretion to award costs.*

4 Appeal. If the charge is laid by the complainant and is dismissed he should have the same right of appeal against the dismissal of the charge as is given to the member of the Police Force against a finding that the charge has been proved. The committee believes that the Police Appeal Board is appropriate to decide questions of promotion, but inappropriate to hear an appeal against a decision on a charge against a police officer arising out of a complaint by a member of the public. Two out of the three members of the Board are members of the Police Force, and in these circumstances a member of the public would be likely to believe that the appeal was being determined by

interested persons. We recommend that the Chairman of the Board should sit alone to determine any appeal against the dismissal of a charge or the finding that a charge is proved. There should be a discretion to order costs to be paid to or against the complainant.

4.1 Penalty and Appeal Against Penalty. The committee can see no reason to interfere with the present situation whereby penalty for any proved charge is in the discretion of the Commissioner of Police, and the member penalized has a right of appeal to the Board. The complainant has no interest in the penalty, and should not be allowed to take any part in the determination of the penalty.

4.2 Recommendations with respect to Appeal.

(*a*) *We recommend that the complainant should have a right of appeal against the dismissal of his charge against a member of the Police Force.*

(*b*) *We recommend that the Chairman of the Police Appeal Board should sit alone to hear an appeal against the dismissal of a charge or the finding that a charge is proved.*

(*c*) *We recommend that the Chairman when sitting alone and the Board when sitting together should have a discretion to order costs.*

(*d*) *We recommend no change in the present provisions relating to penalty and appeal against penalty.*

5 Compensation. If the complainant has suffered damage or hurt for which he ought to be compensated there would in some cases be an advantage in having an amount of compensation assessed by the Police Inquiry Committee. The complainant should be permitted to elect whether to have the amount so assessed or to rely upon a claim for damages in a civil action. If he elects to have compensation fixed by the Committee both he and the member of the Police Force ordered to pay the compensation should have a right of appeal to the Chairman of the Police Appeal Board.

5.1 Recommendations with respect to Compensation.

(*a*) *We recommend that the Police Inquiry Committee will, if the complainant so elects, assess any compensation which the complainant ought to receive and determine how and by whom it is to be paid.*

(*b*) *We recommend that there be a right of appeal from any determination as to compensation, such appeal to be to the Chairman of the Police Appeal Board.*

CHAPTER 5

POWERS OF SEARCH AND SEIZURE

1 The Problems. The right of the individual to go about his lawful business unmolested by policemen or anyone else, and to limit the right of entry to his home or business premises to those to whom he expressly or impliedly authorizes admission, is one which is deeply enshrined in most communities. That right has to be balanced against the right of the general public to be protected from the dangerous or unlawful acts of the individual. The achievement of the proper balance is a task which should always be under consideration by the legislature.[52] In some countries, for example in England, the tendency has been to place so high a value on the rights of the individual as to limit greatly the right of entry to premises by law enforcement officers. In South Australia the tendency has been the reverse. Comparatively little complaint has been made here concerning the use of the wide powers of entry into private premises given to the police and to others by various statutes. The proper conclusion may be that the powers have, generally speaking, been used with discretion and with consideration for the rights of the individual. It is possible however that the rights of entry have been so long a part of our statute law that citizens, in general, recognize no other system.

2 The Power to Stop, Search and Detain. Apart from statute the police have no power to stop a vehicle, to search it, to detain it or to stop a person, search him or detain him, unless for the purpose of arrest. There is however statutory power to do all these things. The power was first given to the police in South Australia by the Police Act, 1844.[53] The power is now contained in s. 68 of the Police Offences Act, 1953-1973, which has as its basis s. 66 of the Metropolitan Police Act, 1839 (Eng). Section 68 reads:—

> "(1) Any member of the police force may do any or all of the following things, namely, stop, search and detain—
>
> (*a*) any vehicle in or upon which there is reasonable cause to suspect that there are any stolen goods;

[52] See generally, American Law Institute, *Model Code of Pre-Arraignment Procedure, Tentative Draft No.* 3 (1970), *Tentative Draft No.* 4 (1971).

[53] Sec. x.

(*b*) any person who is reasonably suspected of having or conveying in any manner, any stolen goods.

(2) In this section 'stolen goods' includes goods obtained by the commission of any felony or misdemeanour."

The power of the police to stop, search and detain a vehicle or a person without arresting that person is limited to the conditions set out in that section. In relation to the vehicle there must be reasonable cause to suspect that there are stolen goods as defined in the section. In relation to the person there must be a reasonable suspicion that he has or is conveying stolen goods. The power given by s. 68 is intended to be exercised in circumstances which may not justify an arrest. A bank robber who is being pursued may be seen to throw the proceeds of his robbery into the back of an unoccupied vehicle and to run off in another direction. If someone, who may not be connected with the robbery, subsequently gets into the vehicle and drives it away, he has no cause for complaint or cause of action if he is stopped by a member of the police force and if his vehicle is searched and detained. Similarly if a shoplifter, suspecting that he is about to be apprehended, slips the article which he has taken into the shopping bag of an innocent bystander that bystander has no redress if he is subsequently detained while his shopping bag is searched. Section 68 therefore gives to the Police Force immunity from actions which might otherwise lie at the suit of persons who are innocent of involvement in any crime.

2.1 Extent of Power. The description of the goods which attract the operation of the section is, in our view, too narrow. In a memorandum to the Chief Secretary, which has been forwarded to the committee for its consideration, the former Commissioner of Police drew attention to the fact that s. 68 did not enable police officers to search persons reasonably suspected of carrying or possessing any of the articles mentioned in s. 15 of the Act, and, there being no common law or statutory power enabling police officers to search persons who had not been arrested, the powers of the police to investigate offences against s. 15 were circumscribed. By that section the carrying of any offensive weapon, deleterious drug or article of disguise, the custody or possession of any implement of house breaking, or the possession of any prescribed drug, if the carrying, custody or possession is without

lawful excuse, constitutes an offence. The committee believes that the power to stop, search and detain should continue to be limited to cases of reasonable suspicion, but that the power should be extended beyond the power to search for stolen goods. We agree that it should be extended to cases where there is reasonable cause to suspect that a person is carrying articles which he is forbidden by law to carry. These include the articles proscribed by s. 15 of the Act. We draw attention to the comprehensive nature of things which may be classed as offensive weapons[51] or articles of disguise and recommend that the Act should carefully delimit what may be included under these heads. We believe that the power could properly be extended to anything used or intended to be used in the commission of an indictable offence. We believe that the necessity for a reasonable suspicion that the article has been so used or is intended to be so used should give sufficient protection against arbitrary and unwarranted interference with the right of the citizen to proceed about his business without police surveillance.

2.1.1 Length of Detention. Section 68 is silent as to the length of time for which either a vehicle or a person coming within the purview of the section can properly be detained. The committee believes that there should be a time limit after which either the vehicle or the person detained should be released from detention unless an order to the contrary is obtained from a special magistrate. We recommend that if it is desired to extend the detention pursuant to s. 68 for longer than two hours application should be made to a special magistrate who should be empowered to order that the detention be extended for a further period not exceeding twelve hours. If no such application is made or if the application is made and refused, the vehicle or the person, as the case may be, should be released at the expiry of two hours. In the case of a vehicle which is likely to be required for coronial inquiry or as an exhibit in legal proceedings the special magistrate should be empowered to make an order that it be held pending such inquiry or legal proceedings. In the case of a

[51] *Considine* v. *Kirkpatrick* [1971] S.A.S.R. 73; *R.* v. *Doyle* [1973] 3 All E.R. 1151.

person who is not arrested within the time fixed by the special magistrate he should be released. Goods seized from any person should be returned to him when he is released unless the special magistrate orders that they be retained by the police for further investigation or for use as exhibits in any coronial inquiry or court proceedings.

2.2 Recommendations with respect to the Power to Stop, Search and Detain.

(*a*) *We recommend that the powers contained in s.* 68 *of the Police Offences Act,* 1953-1973 *be extended to cases where there is a reasonable suspicion that a person is carrying without lawful excuse any of the articles proscribed by s.* 15 *of the Act and to cases where there is a reasonable suspicion that any vehicle contains or any person has or is conveying anything used or intended to be used in the commission of an indictable offence.*

(*b*) *We recommend that s.* 15 *be amended to include a delimitation of what may be classed as an offensive weapon or an article of disguise.*

(*c*) *We recommend that the detention pursuant to s.* 68 *shall not exceed two hours unless a longer period is authorized by a special magistrate.*

(*d*) *We recommend that goods seized from any person be returned to him upon his release unless otherwise ordered by a special magistrate.*

3 Search Warrants. The police have no greater right to enter and search premises without a warrant than has a private citizen. At common law the only exception to the declaration of Lord Coke "that the house of everyone is to him as his castle and fortress",[55] was that where information was laid before a magistrate on oath showing reasonable ground for believing that stolen goods were in a house, the magistrate could grant a search warrant authorizing a constable to enter the house and seize the goods.[56] The informant was required

[55] *Semayne's Case* (1604) 5 Co. Rep. 91a; 77 E.R. 194, 195.

[56] *Entick* v. *Carrington* (1765) 2 Wils. 275, 291; 95 E.R. 807, 817; *Chic Fashions (West Wales) Ltd.* v. *Jones* [1968] 2 Q.B. 299, 308.

to make a complaint on oath in order to found the granting of a search warrant. The common law right to grant a search warrant has been confirmed and extended by statute. In South Australia the first statutory provision was contained in the Police Act 1863 which authorized the issue by a justice of the peace of a warrant to search for goods of a specific kind reasonably suspected of having been taken or stolen and prescribed penalties which might be imposed upon persons found to be unlawfully in the possession of such goods.[57]

3.1 The General Search Warrant. In 1913 the South Australian Parliament, by the Police Act Further Amendment Act, gave to the Commissioner of Police the power to issue general search warrants to such members of the Police Force as he thought fit. Each such warrant was to remain in force for six months or for such shorter period as was specified therein. The member of the Police Force named in the warrant was empowered at any time in the day or night with such assistants as he thought necessary to break into and search any house, building, premises or place where he had reasonable cause to suspect that any stolen goods were, and to break open and search any cupboards, drawers, chests, trunks, boxes, packages or other things in which he had reasonable cause to suspect that any stolen goods might be found. The term "stolen goods" included goods obtained by any felony or misdemeanour.[58] During the debate on the Bill the following reasons were advanced in support of the decision to grant the police a general power of search:—

(*a*) The police needed absolute power to search in order to lessen the incidence of crime which was increasing; in particular the crime of burglary was rife; the public was alarmed, and needed protection against this crime;

(*b*) Before a justice of the peace issued a search warrant he had to be satisfied on reasonable grounds of the existence of a suspicion, and it was difficult for the police to discharge this onus;

(*c*) Frequently stolen goods were so treated as to make identification difficult, or stolen goods were disposed of before a warrant to search could be obtained.

[57] Sec. 75.

[58] Sec. 3.

In the debate the Chief Secretary claimed that the police had arrested 6 875 persons for 10 960 offences committed in the year ended 30th June, 1913. If this disclosed an accurate clear-up rate then the clear-up rate in 1913 compared more than favourably with any modern clear-up rate of offences.[59]

3.1.1 Extension of Powers. By the Police Act Amendment Act of 1921 the power to be given by general search warrant was expanded to include the power to search premises in which the person holding the warrant had reasonable cause to suspect that any felony or misdemeanour had been recently committed or was about to be committed, or in which there was anything which might afford evidence as to the commission of any felony or misdemeanour, or in which there was anything which might be intended to be used for the purposes of committing any felony or misdemeanour. The Attorney-General, in moving the second reading of the 1921 Bill, claimed that the enlarged powers of search were necessary in order to enable the police to enter suspected premises and search for instruments which might be relevant as evidence of the commission of the crime of attempting to procure abortion. By this means charges might be made in cases in which hitherto there was a lack of sufficient evidence to support them.[60]

3.2 The Present Position. Section 67 of the Police Offences Act, 1953-1973 repeats the provisions as to general search warrants which have been in force in South Australia since the 1921 amendment to the Police Act. Section 69 of the Act gives to members of the Police Force powers of entry upon and search of all vessels in any harbour, port, dock, river or creek, and the power to take measures for providing against fire and accident, and for preserving peace and good order and preventing or detecting the commission of offences on board vessels. Powers to stop and detain a vessel, to search and inspect and to seize are given by s. 70 to any member of the Police Force in charge of a police station or holding a rank not lower than sergeant, where he

[59] House of Assembly, 26 August 1913, *Hansard* 256-9, 277-9, 289-294.
[60] House of Assembly, 15 November 1921, *Hansard* 1344-5.

has reasonable cause to suspect that any offence has been or is about to be committed on board any vessel in any harbour, port, dock, river or creek or where any person who has committed an offence or against whom any warrant has been issued by any justice is on board any vessel. Section 318 of the Criminal Law Consolidation Act, 1935-1972 contains provisions empowering the police to search certain premises for stolen goods.

3.2.1 Earlier Provisions. In the earlier Police Acts there were provisions relating to entry of premises in certain specific cases. These included power to obtain a judicial warrant to search a house used for prostitution where there was reasonable suspicion that a male person was living wholly or in part on the earnings of a prostitute;[61] power to enter licensed premises upon the request of the occupier of those premises and without warrant to apprehend certain persons;[62] power to enter a lodging house to apprehend certain persons.[63] The miscellaneous powers of search upon warrant do not appear in the Police Offences Act, 1953-1973. The Police rely upon the general search warrant for all purposes of search and seizure.

3.3 The Situation in Other Places. By authorizing the general search warrant South Australian legislation has granted to its Police Force a complete discretion as to entry of premises and seizure of goods, provided that the police officer executing the warrant has reasonable cause to suspect that one of the conditions laid down in s. 67 exists. This is comparable with the power given to a customs officer under the Customs Act, 1901-1971 (Aus.).[64] The warrant given under that Act authorizes the customs officer to search any premises and to seize any forfeited goods or goods which he has reasonable grounds to believe are forfeited. In one respect the customs officer's powers are wider than those of a South Australian policeman who has a general search warrant in that he is not required to have reasonable grounds to

[61] Police Act, 1936 (S.A.), s. 57.
[62] Police Act, 1936 (S.A.), s. 64.
[63] Police Act, 1936 (S.A.), s. 140.
[64] Sec. 199 and schedule IV.

suspect the existence of forfeited goods in the premises before he makes his entry. The Commonwealth Police can act only upon a judicial warrant. Section 10 of the Crimes Act, 1914-1973 (Aus.) provides:—

> "If a Justice of the Peace is satisfied by information on oath that there is reasonable ground for suspecting that there is in any house, vessel, or place—
>
> (*a*) anything with respect to which any offence against any law of the Commonwealth or of a Territory has been, or is suspected on reasonable grounds to have been, committed;
>
> (*b*) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence; or
>
> (*c*) anything as to which there is reasonable ground for believing that it is intended to be used for the purpose of committing any such offence;
>
> he may grant a search warrant authorizing any constable named therein, with such assistance as he thinks necessary, to enter at any time any house, vessel, or place named or described in the warrant, if necessary by force, and to seize any such thing which he may find in the house, vessel, or place."

In most States other than South Australia the search warrant must be obtained judicially.[65] In Tasmania the search warrant must be issued by a Justice of the Peace, with the exception of a warrant to enter and search premises wherever a police officer has reasonable grounds for believing that stolen goods are on the premises, which warrant must be issued by the Commissioner of Police.[66]

3.4 Critique. The problem is one of balancing the right of the individual to resist and to prevent invasion of his premises, the breaking into and disturbance of his personal property and its

[65] Cf. Crimes Act, 1900 (N.S.W.), ss. 354, 355, 357; Crimes Act, 1958 (Vic.), ss. 464-6, 477; Queensland Criminal Code, s. 679; Western Australian Criminal Code, s. 711.

[66] Police Offences Act, 1935-1971 (Tas.), ss. 59, 60.

seizure with the attendant inconvenience, discomfort and distress which may be caused to him and to members of his family, against the requirement that the police shall not be impeded in the execution of their duty to solve crime and to bring criminal offenders to justice. The committee has no doubt that the power to issue a search warrant should not be limited to a power to search in relation to particular offences. In England where the power is limited to a search for stolen goods and a search in relation to certain statutory offences, there is no power to issue a search warrant even in relation to the suspected crime of murder.[67] It may be argued that the issue of a search warrant should be limited to the case where there is reason to suspect that evidence as to the commission of a serious offence would be revealed by such search. The committee has considered whether the power to issue a search warrant should be limited to a search in relation to an indictable offence, but has decided that such an artificial limitation is not desirable and that the discretion to issue a search warrant should not be limited to any particular classes of offence. The advantage to the police in the general search warrant lies in the fact that it enables the holder, without any formality or delay, to enter and search premises in respect of which he has reasonable cause to suspect that one or more of the conditions laid down in s. 67 exists, and the further fact that the suspicion need not relate to any particular offence or offences. Nor is he required to testify to his suspicion. The necessity to obtain a judicial warrant should not unduly delay the entry into the suspected premises; but the warrant is obtainable only upon proof upon oath of a reasonable suspicion that the search will supply evidence in relation to a particular offence. The advantage to the public in requiring a judicial warrant is apparent. It is a check upon an unwarranted intrusion into or interference with premises, and in appropriate cases the warrant is subject to review by a superior court. We therefore recommend that s. 67 of the Police Offences Act, 1953-1973 should be repealed and that it should be replaced by a section similar to s. 10 of the Crimes Act, 1914-1973 (Aus.); but because the person granting the search warrant has to exercise a discretion, and because that discretion requires some knowledge

[67] Cf. *Ghani* v. *Jones* [1970] 1 Q.B. 693, 705.

of the legal implications of the search warrant and of the authority to issue it, we recommend that the warrant should be issued upon the authority of a special magistrate and not of a justice of the peace, except in cases where a special magistrate cannot be found to hear the application. We do not mean by this that any application after court hours should be heard by a justice of the peace. We believe that this and other recommendations which we make in this report require that a special magistrate shall be made available to hear applications at all times, and that, if our recommendations are implemented, magistrates will have to be so rostered that one is on call in the metropolitan area at all hours. As however there are no resident special magistrates in cities or towns outside the metropolitan area it would on many occasions be impracticable to obtain a search warrant from a magistrate outside that area. In places outside the city area the issue of search warrants would necessarily have to be entrusted to justices of the peace.

3.5 Immunity in Cases of Urgency. There may be some cases in which there is an urgent need to enter and search property to avert possible danger to the life or safety of some person or persons, or the likelihood of the destruction of property which affords evidence of the commission of a crime. Any member of the Police Force who establishes that in making an entry, search or seizure he acted upon a reasonable belief that such circumstances existed and that it was impracticable for him to obtain a search warrant should be given legislative immunity against any prosecution or civil action, to the extent that such prosecution or civil action rests upon the failure of the police officer to obtain a search warrant.

3.6 The Judicial Warrant. The information placed before the magistrate or justice of the peace must invariably be given on oath. In some places it must be in writing, in others there is no necessity for writing. It appears desirable that there should be some written record either by the swearing of an affidavit or by the taking of a transcript of what is said, as the information, together with the warrant, forms the record of the proceeding before the justice. If the validity of the warrant is later impeached

then it is necessary for there to be some record of the basis upon which the warrant was issued. The offence in respect of which the warrant is sought should be specified in the information and the warrant should refer to a particular offence and authorize seizure by reference to that offence.[68] The name of the offender may be unknown, and need not be specified in the information or in the warrant. A judicial warrant may be quashed by a superior court on various grounds including fraud, jurisdictional error or error of law apparent on the face of the record. It is unnecessary for us in this report to discuss the grounds upon which, or the methods by which, judicial warrants can be set aside. It is sufficient to point out that such a power does exist in appropriate circumstances.

3.7 Recommendations with respect to Search Warrants.

(*a*) *We recommend that s.* 67 *of the Police Offences Act,* 1953-1973 *be repealed and that there be substituted for it a provision similar to that contained in s.* 10 *of the Crimes Act,* 1914-1973 (*Aus.*).

(*b*) *We recommend that a judicial warrant should be granted by a special magistrate except in localities where there is at the time of the application for the warrant no magistrate, when a justice of the peace may hear the application.*

(*c*) *We recommend that there be no limitations as to the type of offence in respect of which a search warrant may be issued.*

(*d*) *We recommend that police officers should be granted legislative immunity against prosecution or civil action where they enter, search or seize, acting on a reasonable suspicion as to the urgent need to protect a person or persons or to preserve property in circumstances in which it is impracticable to obtain a search warrant.*

(*e*) *We recommend that the information on oath to found the search warrant should be taken in writing as a permanent record of the basis for the issue of the warrant.*

[68] Cf. *R. v. Tillett, ex parte Newton* (1969) 14 F.L.R. 101, 112.

4 Statutory Provisions for Search and Seizure. We have referred to the powers to enter upon private property given to the police and others by various statutes. We set forth in schedule 3 to this report a list of sections in various South Australian statutes all of which give power to police officers or to other people to search premises, ships and vehicles and in some cases to detain persons and to seize articles. The list may not be exhaustive. For the most part the provisions authorize police officers and inspectors appointed under various Acts to enter premises for the purpose of enforcing regulatory statutes. No warrant or other specific authority, except such as is provided in the Act, is required, although in some cases a reasonable belief in the existence of a state of affairs for which the entry is authorized is a prerequisite to a valid entry. In many of these statutes the purpose of the inspection is to police statutory provisions which in some way relate to public health or public safety. The justification for the invasion of private property therefore is that it is in the general public interest, and that for that reason the right of the individual is abrogated in favour of the rights of all citizens. It is anomalous that many of the powers of entry, search and seizure contained in the statutes listed in the schedule may be exercised by officials without any authority other than their office, whereas a police officer may not lawfully enter private premises, search for evidence of a murder or seize a murder weapon without the authority of a search warrant. The powers of search and seizure given in the various statutes should be examined. We recommend that in general there should be no power of entry search or seizure without a judicial warrant but that officials should be given the like immunity to that to be afforded to police officers if they act without a warrant in circumstances which they reasonably believe necessitate urgent search or seizure for the protection of life or community health or property.

4.1 Recommendations with respect to Statutory Provisions for Search and Seizure.

(*a*) *We recommend that the powers of entry, search and seizure contained in the statutes set forth in schedule* 3 *be examined with a view to substituting for an absolute right of entry, search and seizure the requirement that a judicial warrant be first obtained for such purposes or any of them.*

(*b*) *We recommend that where there may be danger to person, community health or property, consideration be given to providing legislative immunity to any person entering, searching, or seizing property pursuant to the provisions of any statute without first obtaining a warrant, provided that such person had a reasonable belief as to the necessity for immediate action.*

5 Search and Seizure Incidental to Arrest. In chapter 8 of this report we deal with powers of arrest. The possession of a warrant for the arrest of a person entitles the holder of the warrant to follow the person onto private property and, if it be necessary, to break into that property for the purpose of making the arrest.[69] In some circumstances a person intending to make an arrest of another may follow that other onto private property although no warrant for arrest has been issued,[70] and may seize articles found on him.[71] We now consider to what extent a police officer who arrests a person on private premises and who is not in possession of a search warrant relating to those premises should be entitled to search them. If he is entitled to search should he be permitted to seize articles found in the search which may be relevant to an offence other than the offence for which the arrest was made? Should he be entitled to search for accomplices? We have recommended that the power to search premises should ordinarily be restricted to those premises in respect of which a search warrant has been issued.[72] If there were no limitation upon the powers of searching premises upon which a person was arrested the necessity to obtain a search warrant might be avoided in some cases, and the arrest of a person upon private premises might lead to a fishing excursion on the part of the police.[73] On the other hand the committee believes that the police should have limited power to search, without warrant, premises upon which a person has been lawfully arrested. They should have the power to search the premises for accomplices; if this power were denied to them they might be in danger of attack from such persons, and material evidence might be destroyed

[69] Foster, *Crown Law* (3rd ed.) (1809), 319-321.
[70] Cf. *Dinan* v. *Brereton* [1960] S.A.S.R. 101.
[71] Chapter 8, para. 6.1.
[72] Chapter 5, para. 3.7(*a*).
[73] Cf. *Chimel* v. *California* (1969) 395 U.S. 752.

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by such persons. They should have the power to search the area within the immediate control of the person arrested and to seize any articles in plain view which they have reasonable grounds to suspect may provide evidence relevant to the commission of any offence. This power of search and seizure would not replace the power contained in a search warrant which entitles the holder to ransack the premises. We have considered whether the power should be limited to accidental or unexpected finding[74] but believe that such a restriction is inadvisable. It would raise difficulties of interpretation. For example is the discovery of an article accidental or unexpected where a police officer has some inkling, which does not amount to a reasonable suspicion, that incriminating material may be found in plain view on the premises? If the answer is no, then the limitation of the right of seizure to articles found accidentally or unexpectedly may be too restrictive. We have considered further whether the power should be limited to seizing property which is in the process of destruction.[75] We believe that this limitation also is too restrictive. If articles are seized which do not relate to the offence for which the arrest was made they should be retained by the police only if an order to that effect is obtained from a special magistrate who should have power to order their detention for a specified period. Any person claiming to be entitled to the possession of such articles should be entitled to be heard in opposition to such an order.

5.1 Recommendations with respect to Search and Seizure Incidental to Arrest.

(*a*) *We recommend that the police should be empowered in arresting a person to search the premises upon which he is arrested for accomplices.*

(*b*) *We recommend that the police should have the power to search the area within the immediate control of the person arrested and to seize any articles in plain view which they have reasonable grounds to suspect may provide evidence relevant to the commission of any offence.*

[74] Cf. *Coolidge* v. *New Hampshire* (1971) 403 U.S. 443.
[75] Cf. *Vale* v. *Louisiana* (1970) 399 U.S. 30.

(*c*) *We recommend that articles so seized which do not relate to the particular offence with which the arrested person is charged should be retained by the police for such time as is authorized under the order of a special magistrate, and that any person claiming to be entitled to the possession of such articles should have the right to oppose the making of such order.*

6 Accidental Findings. The committee has considered a representation that when a police officer lawfully enters any premises under a search warrant he should then be empowered to seize any articles therein which he finds accidentally and suspects, on reasonable grounds, may be material as evidence in any charge laid or to be laid against any person, and to retain such articles for the purpose of any investigation and prosecution until its conclusion. In general we believe that a search warrant should be a warrant to enter and to search for and seize articles which are material to the investigation into a particular offence. If, in the course of a search so authorized, articles are seen in plain view which do not relate to the presumed offence in respect of which the search warrant was granted, but which the police officer suspects, on reasonable grounds, are material evidence of an offence committed by any person, the committee is of the opinion that he should be entitled to seize such articles but should be required to seek forthwith from the special magistrate who issued the search warrant, or, if he is not available, from some other magistrate, an order that the articles be retained for the purpose and the time above-mentioned; that the magistrate should be empowered to make such an order; and that any person laying claim to the articles or any of them should be entitled to be heard on an objection to the making of such order.

6.1 Recommendations with respect to Accidental Findings.

(*a*) *We recommend that a police officer who lawfully enters premises under a search warrant be entitled to seize any articles in plain view which do not relate to the offence in respect of which the warrant was issued but which he believes on reasonable grounds are material evidence of an offence committed by any person.*

(*b*) *We recommend that such articles may be lawfully retained by the police pending the investigation or prosecution of a charge for such an offence if a special magistrate so orders.*

(*c*) *We recommend that any person claiming to be lawfully entitled to any of such articles should be entitled to be heard in opposition to such order.*

7 Compensation for Damage. The powers of search and seizure given by search warrants necessarily contain powers which may cause serious damage to property. The suspicion to found a warrant may be reasonable, but the search may reveal no evidence of an offence although destruction of or damage to property may have ensued. It is probably rarely that a search by police results in destruction of or damage to property. Where this does happen and no evidence of an offence is found, or the suspected offender is not convicted of an offence, or the property destroyed or damaged belongs to a person other than the suspected offender, the person who has suffered the loss should be entitled to be compensated out of treasury funds.[76]

7.1 Recommendation with respect to Compensation for Damage.

We recommend that where a search authorized by warrant results in destruction of or damage to property and no evidence of an offence is found, or the suspected offender is not convicted of an offence, or the property destroyed or damaged belongs to a person other than a suspected offender, the person who has suffered the loss should be entitled to be compensated out of treasury funds.

[76] Cf. *Defence Force Disciplinary Code* (1973 *Report of Working Party*), s. 92(3).

CHAPTER 6

THE DETENTION AND INTERROGATION OF SUSPECTS

1 The Questioning of Witnesses and Suspects. One of the major tasks of the police in investigating crime is to question those who may have knowledge of the facts giving rise to the commission of the crime and the circumstances in which it was committed. Included among such persons are necessarily those who are or may be suspected of having committed the crime in question. In order that crime may be readily solved it is desirable that the police will have an opportunity of questioning all who can give information which may be relevant. On the other hand it has long been a tradition of British law that there should be no compulsion upon a person to incriminate himself. We shall discuss later in this report what is sometimes referred to as the right to silence.[77] If the police arrive upon the scene of a crime shortly after its commission a full inquiry may necessitate questioning all persons in the vicinity; for example if some one is stabbed in the bar of an hotel the police will probably wish to question all who were or appear to have been in the bar at the relevant time. If they are investigating a crime discovered some time after its commission, for example where a stabbed body is found in an unoccupied house apparently some days after the stabbing took place, they may have to make door to door inquiries. Whatever the circumstances the time usually arrives when it is desired to question more thoroughly some one from whom the police seek information. That person may be and often is a suspect.

1.1 At a Police Station. Many persons are requested to accompany police officers to a police station for the purpose of assisting the police in inquiries. Many of those persons are probably permitted to leave the police station after they have made statements. Many of them however remain at the police station for hours and are then arrested. The police have no power to detain a person unless he has been arrested. There seems no doubt that many persons must remain at police stations for long periods prior to arrest either because they do not know that they could leave if they wish, or because they fear that any expression of

[77] Chapter 7.

intention to leave will precipitate an arrest which they hope to avoid. The police have to rely upon the co-operation either actual or assumed of the person thus detained. The practice of detaining persons for the purpose of questioning them and testing the veracity of their answers has been the subject of concern and consideration over many years. The English Royal Commission on Police Powers and Procedure (1928-1929) referred to a practice in the Metropolitan Police Force of holding a suspect in serious crimes, particularly murder, while he is questioned as to his movements and subsequently the truth of his answers is tested. The report said:—

> "In this Force it is said to be of long standing and to have received the recognition, perhaps more tacit than explicit, of the courts. In the notable case of murder of Voisin[78] the period of detention prior to arrest and charging lasted as long as four days."

The report of the commission included the following recommendations:—

(*a*) That it is a principle inherent in the English law that no person shall be deprived of his liberty except by a magistrate or court;

(*b*) That detention as referred to above is in conflict with this principle;

(*c*) That detention as a separate procedure is an undesirable and unnecessary system which is liable to serious abuse and lays the police open to the charge of exceeding their strict powers;

(*d*) That there was no need to stop the practice whereby a suspect after being questioned by the police agrees voluntarily to come to or stay at the station while his story is being verified;

(*e*) That where the police after questioning a suspect are reluctant to release him at once they should ask him whether he is willing to stay voluntarily at the station until his statements have been verified, that as soon as he expresses a wish to leave they should either let him go or arrest him and adopt the procedure of the formal charge.

[78] A Frenchman convicted of murder in England in 1918.

In England the position remains, as it does in South Australia, that there is no formal power to detain without arrest, and that the police do continue to rely upon the assumed consent of the person to what is in fact an actual detention. In many cases it must be obvious that the person being questioned, or whose story is being verified, would not remain if he believed he had a free choice to stay or to go.

1.2 The Position of the Courts in relation to Detention for Interrogation. In Voisin's case the length of detention does not seem to have been argued as a ground for rejecting evidence when Voisin was charged with murder.[79] In Victoria the Full Court held that the detention of a man for 50 hours prior to arresting him and taking him before a magistrate was unlawful and constituted improper conduct on the part of the police. Nevertheless the court did not interfere with the discretion of the trial judge who admitted in evidence confessional statements made during the course of such detention.[80] The question whether a civil action for false imprisonment during the time of his unlawful detention was available to the appellant was not before the court, and such an action would have been of little benefit to a man convicted of murder. To say therefore that the courts tacitly approve the detention of persons without authority is, as it seems to us, to confuse the function of the courts. In the court before which a person is charged with a crime the question of his detention is material only if objection is raised to the admission of evidence obtained as a result of that detention. In chapter 7 we deal with questions of admissibility of illegally obtained evidence. In so far as the court at present has a discretion to reject illegally obtained evidence it does have to consider the question of the legality of detention if that question is raised. The argument that a person, who does not leave an interview room at police headquarters or demand to be allowed to leave, is consenting to remain

[79] *R.* v. *Voisin* [1918] 1 K.B. 531.
[80] *R.* v. *Banner* [1970] V.R. 240.

seems to the committee to be specious, and we believe that the police should not be required to rely upon such an argument to support the detention of a person for questioning. The police should not be forced into a position of reliance upon subterfuge or deceit in order to ensure the presence of persons whom they reasonably wish to interview concerning a suspected crime.

2 Powers of Detention. The committee believes that the police, when investigating serious crimes, should have the power to require any person who, they reasonably believe, can assist them in their inquiries, to accompany them to a police station and to remain for a reasonable time to enable the police to put questions relative to the inquiry and to check answers. For this purpose the police should be given power to convey any such person to the police station and to detain him for a period not exceeding two hours. If at the expiry of the two hours they wish to detain him at the police station for the purpose of questioning him further or of verifying his statement, they should be required so to inform him, and to inform him at the same time that he is free to leave unless an order is made by a special magistrate empowering the police to detain him for a further period to be specified by the magistrate. If the person questioned then expresses his unwillingness to remain at the police station he should either be released, or brought forthwith before a magistrate to whom application should be made for an order permitting the detention of the person, for such time as the magistrate thinks fit, to enable further inquiries to be made. The magistrate should be informed as to the reason for the requested detention, and, if the suggested detainee thinks fit, the reason for his refusal to remain. There may be occasions when the police do not need the presence of the person at the police station but believe that their inquiries would be impeded if he were free to have access to certain other persons and places. The magistrate should be empowered to make an order that the detainee be released upon bail to return to the police station for further questioning either at a stated time or upon notice, on condition that he resides in a particular place and does not approach certain persons or go to certain places. The magistrate, in the event of making an order for detention, should be able to give leave to the police to apply for an order for an extension of the detention and to the detainee to apply for an order releasing him at a time

earlier than that specified by the magistrate. Such detention should not be regarded as an arrest. One of the matters which has concerned the committee is the questioning of suspects hours after they have been in fact detained at a police station. If the detention is to be a lengthy one the magistrate should have power to make an order that there be no further questioning of the detainee until he had had an opportunity of proper rest and refreshment, and to order the place at which such rest and refreshment was to be taken. A detainee should, at all times, be entitled to have his solicitor present, and should be so informed before he is detained. He should be entitled to be represented by a solicitor or counsel on any application to a magistrate in relation to the continuation of detention.

2.1 Use of Force. A police officer should be entitled to use such force as is reasonably necessary for the purpose of conveying to a police station a person who is reasonably required for questioning in relation to a suspected crime and of detaining him at the police station for such period of detention as is legally permitted.

2.2 Dangerous Materials. If a member of the Police Force believes, on reasonable grounds, that his safety, the safety of the person detained or the safety of others requires it, he should be entitled to search the person detained for any dangerous materials, and to confiscate any such materials including weapons.

2.3 Recommendations with respect to Powers of Detention.

(*a*) *We recommend that a police officer should be entitled to require a person whom he reasonably wishes to question concerning a suspected crime to accompany him to a police station and for that purpose to use such force as is reasonably necessary.*

(*b*) *We recommend that a person may be lawfully detained for questioning at a police station for a period not exceeding two hours.*

(*c*) *We recommend that a person so detained may, in appropriate circumstances, be searched for dangerous materials including weapons and that any such dangerous materials found upon him may be confiscated.*

(d) *We recommend that detention of a person for questioning for a period exceeding two hours may be ordered by a special magistrate who may determine the length of such further detention and where the person is to be detained, or who may release the person on bail to attend for further questioning, and who may order that further questioning be conditional upon prior rest and refreshment being made available for the detainee.*

(e) *We recommend that detention for questioning shall not be regarded as an arrest of the person so detained.*

(f) *We recommend that a person detained for questioning shall be entitled to have his solicitor present at all times and to be represented by solicitor or counsel on any application to a magistrate in relation to detention.*

3 **Identification of Suspects.** Where a suspect has been unknown to an intended witness prior to the episode out of which a charge is likely to arise, it would be extremely dangerous for a court to rely upon evidence of identification based upon an identification by the witness in a courtroom or any identification under circumstances which suggest to the witness the likely person to be identified. Wherever an accused person is identified by a witness to whom he was unknown prior to the incident out of which the charge arises, a jury must be warned of the dangers inherent in relying upon such identification.[81] There are two ways in which the police normally seek to check the identification of a suspect, namely by having the witness peruse a number of photographs and select, if he can, the photograph of the suspected person, or by having the witness pick the suspect from a number of persons viewed in an identification parade.

3.1 Photographs. The police are empowered to take photographs of all persons in lawful custody upon a charge of committing any offence.[82] According to the Police General Orders official photographs are taken of all persons charged with felony

[81] Even such a warning may be insufficient protection against wrongful conviction. For a recent case, *Virag*, see *The Economist*, 13 April 1974, at page 25. Another case, *Dougherty*, is also referred to there. See further Williams, *The Proof of Guilt* (2nd ed.) 99-116, esp. at 103-107.

[82] Police Offences Act, 1953-1973 (S.A.), s. 81(4).

or serious misdemeanours.[83] Such photographs remain in the custody of the police, and are kept in loose leaf binders which are available to be shown to intended witnesses for the purpose of identification. We discuss later in this report the propriety of police action in taking and retaining photographs of a person who is not subsequently convicted of any offence.[84]

3.1.1 Use at Trial. Sometimes the fact that an accused person has been identified from a photograph may become material evidence in a trial, and concern has been expressed as to whether a jury, the members of which are not ordinarily to be informed whether the accused has a record of convictions or not, may draw an inference adverse to the accused from the fact that the police were in possession of his photograph. It has been suggested to us that the police should have, in addition to its photographs of persons who have been charged and those who have been convicted, an equal number of photographs, taken in identical surroundings and circumstances, of persons who have not been so charged or convicted. The witness should then be asked to look at all the photographs, and in the witness box should merely give evidence of having identified a particular photograph. The committee does not see any advantage in this method. It seems to us that the mere fact that the witness has identified an accused person from a photograph is not of itself admissible evidence. If, owing to the course of the trial it becomes admissible, it is for the trial judge to decide whether any, and if so, what warning should be given to the jury against drawing any inference from the fact that a photograph of the accused was in the possession of the police.[85] If he chooses to give such a warning the jury will doubtless be told that they should have no interest in how the police came to have in their possession a photograph of the accused. Even if the suggestion of having photographs of other persons were implemented and the jury were told this, they may or may not draw the conclusion that the photograph of the

[83] General Order 580.

[84] Chapter 9, para. 2.1.3.

[85] Cf. *R.* v. *Goode* [1970] S.A.S.R. 69, 79-80.

accused which was identified by the witness happened to be a photograph of a person previously convicted. There is a further objection to the proposal. It would probably be comparatively simple to obtain photographs of police officers in civilian clothes, but the majority of other persons would have strong objection to being photographed for the purpose suggested.

3.2 The Identification Parade ("line-up"). The identification by photograph is most useful when the police are seeking a lead to the identity of the person to be questioned and possibly charged with the offence. The line-up procedure is most useful where the police have brought a suspect to the police station for questioning or have arrested a suspect and wish to check the identity of the suspect with witnesses to the crime.

3.2.1 Police Directions. These directions are contained in General Order 569. They may be summarized as follows:—

(*a*) the identification must be carried out fairly under the supervision of a senior member of the Police Force;

(*b*) the suspect must be placed among not less than seven persons who shall not include police officers, and who shall, if possible, be of similar age, height, appearance and position in life as the suspect;

(*c*) the suspect should be invited to stand where he pleases and not allotted a position;

(*d*) he should be asked if he has any objection to any of the arrangements made;

(*e*) witnesses must not be allowed to see the suspect or the persons with whom he is placed before being lined up for identification and must not be given any verbal or written description of the suspect;

(*f*) witnesses should be introduced one by one, and if they see a person who is the subject of the inquiry they should place their hand on that person;

(*g*) witnesses must not be permitted to communicate with each other in any way after the persons are lined up for identification;

(*h*) police should not hold communication with any witness;

(*i*) no person who has seen the suspect in position should be permitted to leave the place until all witnesses have attended the line-up;

(*j*) unauthorized persons must not be present or within view when witnesses are endeavouring to identify a suspected person;

(*k*) the name, address and occupation of each person in the line-up must be supplied to the officer in charge of the police station and must be entered in the station journal;

(*l*) photographs of persons under arrest or detained under suspicion should not be shown to persons who are asked to inspect with a view to identification.

3.2.2 Suggested Procedures. The committee has considered suggestions for the conduct of identification parades contained in a model regulation.[86] Most of the procedures there suggested are already contained in General Order 569. We comment upon some additional requirements set forth in the model regulation;—

(*a*) *Recommendation that all body movements, gestures or verbal statements that may be necessary shall be done at one time only by each person participating in the line-up and shall be repeated only at the express request of the identifying witness.* As far as we are aware it has not been the practice to require persons taking part in identification parades in this State to move, gesture or speak. The committee can see no value in permitting movement or gesture as an aid to identification. There may be occasions where a

[86] Read, "Lawyers at Line-ups: Constitutional Necessity or Avoidable Extravagance?" (1969-70) 17 *University of California at Los Angeles Law Review* 363, 388-393.

witness believes that he can identify the voice of a suspect. The likelihood of mistakes in identification by voice is a matter upon which a jury would have to be warned if the fact of such identification became admissible in evidence against an accused person, just as it must be warned concerning the dangers inherent in visual identification of a person not well known to the identifying witness. If the persons taking part in the identification parade are to be requested to speak then each person should be asked to say, in turn, the same words and if the identifying witness asks for the words to be repeated they should be spoken again by each person in turn.

(*b*) *Recommendation that prior to viewing a line-up an identifying witness shall be required to give a description of the person or persons to be identified, and such description shall be written down and a copy of the same shall be made available to the accused.* We recommend the adoption of this provision. The accused should have every reasonable opportunity of challenging his identification by a witness.

(*c*) *Recommendation that a visual recording of the conduct of the line-up for identification procedure shall be made by means of a moving picture, camera or a still photograph and the same should be made available to the accused or his counsel.* We have given serious consideration to this suggestion. If the photographic record were sufficiently good it would either confirm or disaffirm the fact that the police arranged in the line-up persons of similar age, height and appearance, but it would, we think, be unfair to the persons who have taken part in the line-up. It seems to us that it is not an imposition on him to ask an ordinary citizen to take part in an identification parade, but many persons who might be willing to do this would be most unwilling if a permanent record were kept. It might appear to

them that at a later date they might be mistakenly regarded as having been suspected of a serious crime. We believe that police in South Australia do not have undue difficulty in persuading people to take part in a line-up. It would be unfortunate if this position were reversed. Provided that the procedures laid down in General Order 569 are followed there should be no injustice to an accused person arising out of an identification parade.

3.2.3 Presence of Solicitor or Counsel. In one decision of the Supreme Court of the United States the majority were of the opinion that the accused's counsel should be present at any identification parade.[87] We do not see the advantage of having a solicitor or counsel present. If it were as a check against police abuse of power in the conduct of identification parades, then this does not seem to us to be the role of the accused's solicitor or counsel. If there were reason to fear abuse of power it would be preferable to require that identification parades be held in the presence of an independent person, such as a magistrate. The accused's solicitor or counsel should not be put into the position of a witness either for or against the police in a matter in which his client is implicated. The presence of an independent person at an identification parade might be a protection to the police against any charge of impropriety in the conduct of the parade, but the committee has received no submission to this effect and has no concluded view on the matter.

3.3 Recommendations with respect to Identification of Suspects.

(*a*) *We do not recommend that police be required to produce to any person seeking to identify a suspect photographs other than those properly kept in police records.*

(*b*) *We recommend that persons taking part in an identification parade be not asked to make any bodily movement or gesture.*

[87] *United States* v. *Wade* (1966) 388 U.S. 218.

(c) *We recommend that if the identifying witness wishes to hear the persons taking part in an identification parade speak as an aid to identification, all such persons be requested to speak, in turn, the same words, and if the witness wishes the words to be repeated each such person be asked to repeat them in turn.*

(d) *We recommend that prior to viewing an identification parade a witness be requested to give a description of the person to be identified and that such description be written down and a copy supplied to an accused person.*

(e) *We recommend that no visual recording be made of an identification parade.*

(f) *We do not recommend that the accused's solicitor be present at an identification parade.*

4 The "Holding" Charge. We have recommended that the police should have power to seek an order for detention of a person suspected of a crime.[88] One reason for this recommendation is that the police should not have to resort to deception in order to gain an opportunity of questioning persons or of checking facts. Because they have not such a power, it has become notorious that police in British countries arrest a person on a minor charge, and seek a remand of that person without bail while investigations are in fact proceeding concerning a major crime. The police may have sufficient evidence to justify charging a person with any one of a number of lesser offences; for example having insufficient lawful means of support;[89] loitering in a public place and failing to give a satisfactory reason for so loitering;[90] being on any premises without lawful excuse.[91] In the view of the committee this practice is to be deprecated. If there is evidence fit to charge him with the minor offence and he is so charged, then the charge should be proceeded with forthwith, subject to the availability of a court to hear it and subject to any application by the accused for a remand. The recommendation which we have made concerning the right to detain

[88] Chapter 6, para. 2.
[89] Police Offences Act, 1953-1973 (S.A.), s. 10.
[90] Police Offences Act, 1953-1973 (S.A.), s. 18.
[91] Police Offences Act, 1953-1973 (S.A.), s. 17.

should, to some extent, obviate the value of the "holding" charge. In any event we believe that if this practice has been used in the past by the South Australian Police Force it should be discontinued, and we recommend accordingly.

4.1 Recommendation with respect to the "Holding" Charge.

We recommend that the police should not charge a person with one offence and seek a remand without bail in order to gain time to proceed with inquiries into another offence.

5 The Place of Interrogation of Suspects. We have referred to the importance of interrogation by the police of suspects and other persons who may have knowledge material to a crime.[92] We have referred also to the necessity at times to detain suspects for long periods of time while further inquiries are made by the police or while statements made by the suspect are checked.[93] During the course of our inquiry we have inspected interview rooms at police headquarters. These are small, and bare of any furnishing with the exception of a table and two or three chairs. A person left alone in such a room for long periods may well experience feelings of claustrophobia. The committee is not able to judge whether such an experience will be likely to make him more amenable to answer questions subsequently put to him by the police officers investigating the matter. What is our concern is that any answers to questions shall be given voluntarily, and that the person questioned shall not be prevailed upon by fear or for any other reason to make admissions which are untrue. The committee feels a disquiet about the questioning of a person who has been held in a small interview room for a long period of time prior to the questioning. It has recommended that where the police wish to detain a person without arrest for a period of more than two hours, the magistrate who considers the application shall order where a person is to be detained.[94] We have in mind that the magistrate will consider, among other things, whether the detainee should remain in an interview room or in a place where he may have more space and more amenities, and more opportunity to occupy himself during the period of his enforced wait. In our first report we have recommended, as a matter of high priority,

[92] Chapter 6, para. 1.
[93] Chapter 6, para. 2.
[94] Chapter 6, para. 2.3(*d*).

that a pre-trial detention centre should be built which should be secure but should have a degree of freedom of movement and amenity appropriate to an unconvicted defendant as opposed to a convicted offender.[95] If any person is required to be detained for an extended period of time while further inquiries are made by the police then some part of such a pre-trial detention centre may well be an appropriate place in which to detain him. We believe that a suspected person should not be detained for a long period in a small interview room before interrogation.

5.1 Recommendation with respect to the Place of Interrogation of Suspects.

We recommend that a suspected person should not be detained in a small interview room for a long period before interrogation.

6 Interrogation Before a Magistrate. We have considered whether interrogation of a suspected or accused person should take place before a magistrate. There appears to be no agitation in this State for the replacement of the present system of interrogation by police officers by such a system which exists in some countries. If such a scheme were in operation what was said before a magistrate might be wholly inadmissible.[96] Alternatively everything said in the presence of the magistrate might be admissible, but no other statements made by the accused person be admissible. In the further alternative statements made in the absence of a magistrate might be admissible equally with statements made in his presence. The committee has not considered any such scheme in any detail but has found no reason to recommend the introduction of such a scheme.

6.1 Recommendation with respect to Interrogation Before a Magistrate.

We do not recommend that interrogation of a suspect or accused person should take place before a magistrate.

7 Confessions. Statements made by a suspected person or by an accused person may be material in securing a conviction either because they are confessional in nature or because, although the accused person denies the crime, the statements which he has made are

[95] Chapter 5, paras. 13.9 and 13.10.

[96] Cf. Evidence Act, 1872 (India).

demonstrably false. The advantage to the community in convicting the guilty will be outweighed if it is gained at the price of accepting in evidence statements which are made in circumstances in which the person is frightened because he is under duress or believes that he is under duress, or where he makes the statement in order to obtain some supposed advantage to himself. At common law a confessional statement made out of court could not be admitted in evidence against a person at his trial for the crime to which it related, unless it were shown to have been voluntarily made. A statement is not voluntary if it is made as a result of duress, intimidation or pressure, or if it is made following an inducement held out by a person in authority which inducement has not been removed before the making of the confession. A person in authority includes a police officer, and the inducement may be a hope of advantage or a fear of prejudice. A confession should be excluded from evidence if the will of the accused person has been overborne by some conscious and deliberate act or words of a person in authority; but it will not be excluded where there has been no impropriety on the part of the person in authority but the accused person has had some belief, to which the person in authority has not contributed by overt act or omission, that he might get some advantage out of confessing.[97] It is for the prosecution to establish that a confession was made voluntarily. If this is established nevertheless a judge may exclude a confessional statement, and should do if he believes that it has been improperly procured, although the Crown has satisfied the onus of establishing that the confession was voluntary. In such circumstances it is for the accused to satisfy the judge that he should exercise his discretion to exclude the confession. The basis upon which a confession which is not shown to have been voluntary is rejected is sometimes stated to be the danger that such a confession will be untrue or unreliable.[98] But it is accepted in Australia that the confessional statement is excluded where it is made under duress or through an inducement by a person in authority, not because there is any presumption that the statement is untrue, but because the due administration of justice requires that such a statement be excluded.[99]

[97] *Harris* v. *The Queen* [1967] S.A.S.R. 316.

[98] Cf. *R.* v. *Warickshall* (1783) 1 Leach 263; 168 E.R. 234, 235.

[99] Cf. *R.* v. *Jones* [1957] S.A.S.R. 118, 121, citing *Sinclair* v. *The King* (1946) 73 C.L.R. 316, 335; *Ibrahim* v. *The King* [1914] A.C. 599.

There is no provision in South Australia similar to s. 149 of the Evidence Act, 1958 (Vic.) which provides that:—

> "No confession which is tendered in evidence shall be rejected on the ground that a promise or threat has been held out to the person confessing, unless the judge . . . is of opinion that the inducement was really calculated to cause an untrue admission of guilt to be made; . . ."

The English Criminal Law Revision Committee decided that the rule that any threat or inducement held out to any accused person made a resulting confession inadmissible was too strict. It proposed that the threat or inducement must be "of a sort likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the accused in consequence thereof". The proposal would exclude any statement wholly or partly adverse to the accused whether made to a person in authority or not.[100] We believe that if a confession is made in consequence of a threat or inducement then that confession should be excluded. We do however favour the extension of the exclusion to cover the exclusion of any statement made as a result of a threat or inducement by any person.

7.1 The Judges' Rules. Because the admission in evidence of confessions is subject to judicial restraint, the police in England have found it expedient to act in accordance with rules which have from time to time been laid down by the Judges. In 1882 Hawkins J. was invited to write a foreword to the Police Code for England. In it he gave certain guidance to the police in relation to interrogation. In 1906 the Chief Constable of Birmingham requested the Lord Chief Justice to give a ruling clarifying the circumstances in which a caution to a person interrogated should be given. It was claimed that one judge had criticized a constable for giving a caution and another judge in similar circumstances had criticized the constable for not giving it. The Lord Chief Justice consulted the other Judges of the Queen's Bench and a ruling was given. Similar requests were made from time to time, and in 1912 the Judges issued four Judges' Rules. In 1918 another five Rules were formulated and in 1930 the Judges made a

[100] Criminal Law Revision Committee (Eng.), *Eleventh Report: Evidence (General)*, Cmnd. 4991, p. 173.

statement clarifying some points in the Rules. Supplementary Rules on Procedure were approved in 1947. On the 24th January 1964, at a sitting of the Court of Criminal Appeal, Lord Parker C.J. announced a revised edition of the Judges' Rules. They are set forth in schedule 4 to this report.

7.2 The Present Position. The Judges' Rules do not apply in South Australia.[101] In Victoria the Chief Commissioner of Police has issued what are known as the Chief Commissioner's Rules for the Interrogation of Suspected Persons which are adapted from the Judges' Rules in England.[102] No similar practice has been adopted in South Australia. The only guidance in relation to questioning of suspects given to police officers in their General Orders is contained in Order 783 which cautions members of the Force to use the utmost fairness when taking statements from suspects. While the South Australian courts do not apply the Judges' Rules in considering whether confessional statements should be accepted or rejected, to some extent the practice in the English and South Australian courts runs along similar lines.

7.3 The Caution. It is customary for a police officer in South Australia to administer a caution similar to that contained in Rule 2 before questioning a person, or before continuing questioning already begun, once he has a suspicion on reasonable grounds that the person being interviewed has committed an offence with which he is to be charged. Sometimes it is difficult to understand why the police officer decides that he has such a suspicion at a particular point in his interrogation. Nevertheless, if the caution were omitted altogether after the police officer had decided that the information in his possession warranted the arrest of the person being questioned, it is probable that the subsequent statement made by the accused person in answer to questions would be excluded from evidence. We discuss later the form of caution which should be given.[103]

[101] *R.* v. *Evans* [1962] S.A.S.R. 303, 306; *McDermott* v. *The King* (1948) 76 C.L.R. 501, 514-5.

[102] Cf. *R.* v. *Batty* [1963] V.R. 451, 452.

[103] Chapter 7, para. 2.2.3.

7.4 Questioning After Arrest. The limitation upon questioning a person after he has been charged with an offence, which is contained in Rule 3 (*b*) of the Judges' Rules, does not apply in South Australia. If a person has already been arrested he may be questioned further by a police officer on any additional matter concerning which he has not already been questioned or to ascertain from him, if he wishes to give it, what is his explanation of further information coming into the hands of the police. Before such further questioning he should be cautioned again. If an accused person has already been questioned upon a particular aspect of the matter and has either answered the questions or refused to answer them, then it would be oppressive to question him further on the same aspect at a later date.. Such further questioning would savour of cross-examination, and it is not the function of police officers to cross-examine a suspect or to continue to put to him questions which he has already answered or declined to answer. It is however another matter if he has answered questions and his answers have been checked and lead to further questions proper to be put to him, or if further evidence has been discovered. The committee can see no impropriety in further questioning in these circumstances and would therefore not recommend any limitation similar to that contained in Rule 3 (*b*) of the Judges' Rules. If the accused person is represented by a solicitor any further questioning should take place in the presence of that solicitor.

8 The Method of Taking a Statement. The Judges' Rules contain detailed directions as to the taking of written statements after a caution. Those rules require an accused person to be given an opportunity of writing out his own statement, and if he chooses to do so he must be asked to include words to the effect that he is making the statement of his own free will, and that he has received a caution to the effect that he is not obliged to make a statement. It may be that the Rules bring forcibly to a police officer's attention what he is required to do when obtaining a statement from an accused person. However, if any inducement were offered to an accused person to cause him to make a statement, that inducement, if it operated upon his mind, would doubtless cause him to write down what the Judges' Rules require him to write. The committee does not favour the introduction into South Australia of a rule similar to Rule 4 of the Judges' Rules.

8.1 The Present Method. There is no specific direction to police officers as to the method which they should adopt of recording statements; and the method of taking a note of a statement of an accused person or a suspect appears to vary from one case to another. It is usual to have two police officers present at any interview of a suspect in relation to any major offence. In recent years it seems to have become a frequent practice for a statement to be taken in the following way. A police officer types out a question, then reads it to the person interrogated and then types out the answer. So he proceeds from question to answer and on to the next question. The person questioned is ordinarily asked to read the statement after it has been completed and, if he is willing, to sign it as a true and correct account of the interview. The statement usually contains at the end an acknowledgment that it has been read by or to the accused, an acknowledgment that no inducement to make the statement was held out to him and an acknowledgment as to its accuracy. If the accused is committed for trial before a judge and jury there is a considerable advantage to the prosecution in having his signature upon the statement, because upon proof of signature the statement can be tendered as an exhibit in the trial, and the jury is entitled to have in the jury room while it is considering its verdict all the exhibits in the trial, whereas it is not entitled to have with it the transcript of evidence. If the accused is not willing to sign the statement (and quite a number of persons, particularly those with prior convictions, will apparently talk freely but refuse to sign anything) then the statement can be used only to refresh the memory of the police officer giving evidence. Sometimes an accused person is asked to write out his own statement. This is likely to happen only where he has already orally confessed to the crime concerning which he is being interrogated and appears willing to tell all that he claims implicated him in the crime. On other occasions the police officer who interrogates makes no notes at the time of the interrogation but makes notes afterwards, and may seek to refer to such notes in evidence on the ground that they were made while the matter was fresh in his mind and that he has no, or no adequate, recollection of the conversation. If a person is being interrogated at the scene of an accident or anywhere apart from the

police headquarters, as must necessarily sometimes happen, the police officer usually either takes brief notes at the time and expands them when he returns to police headquarters, or takes no notes at the time and makes his notes after he returns to headquarters.

8.1.1 The Taking of Notes by Police Officers. Although it is usual to have two police officers present at any interview of a suspect in relation to any major offence, the notes of interview, even if made after the interview, appear always to be made by only one police officer. They are then given to the other police officer to read and to check for accuracy. If the second police officer has perused the notes at the time when the interview was fresh in his mind and is later called upon to give evidence, he may, if he then claims to be unable to remember the conversation, be permitted to refresh his memory from the notes made by the first police officer which he perused immediately after they were taken. Probably the practice of only one police officer taking notes has grown up from the dilemma which policemen face as witnesses, depending upon whether their notes vary or coincide. This dilemma was described by Lord Devlin in the following words:—

> "If they are not precisely the same, counsel for the defence will seize upon small differences and suggest that one or other of the officers must be at fault. If on the other hand they resemble each other closely, counsel for the defence will stress every similarity so as to suggest to the jury that the police officers must have put their heads together in order to produce an agreed version. The police always seem to think it necessary to impale themselves on one horn or the other of this artificial dilemma; the two officers are often, if their evidence is to be believed, led by heavenly inspiration to arrive at just the same words, sentences, and phrases used by the accused as deserving of perpetuation."[104]

[104] *The Criminal Prosecution in England*, 41.

8.1.2 Unsigned Notes. Although a police officer, like any other witness, can use contemporaneous notes only for the purpose of refreshing his memory about what was said, once he is given permission to refresh his memory from the notes he tends simply to read from them, and in cross-examination merely to refer back to what the notes say and not in any other way to endeavour to recollect the conversation. The notes themselves may appear to a jury to have evidentiary value. This conclusion is drawn from questions asked by juries through their foreman while they are considering their verdict. It is not unusual for a police witness, who is being cross-examined on the *voir dire* when he seeks leave to refer to his notes, to claim that he has no independent recollection whatsoever of anything said by the accused at the interview. Although the police officer may not be expected to have a complete and accurate recollection of an interview held perhaps some months earlier, one would expect a person of ordinary memory to have some recollection of some of the things said at that interview. If, of course, the police officer says that he has some recollection of what was said at the interview he may be told to proceed without looking at his notes until he reaches a point where he can no longer remember, and then he may refresh his memory from his notes. In order to avoid such a situation he may readily say that he has no memory of the conversation, whereas if he applied his mind to it he would in fact have some recollection independent of his notes.

8.1.3 Selective Note Taking. Another matter which causes concern is in relation to the length of time occupied in the interview and the length of the notes. Frequently the police officer will claim that the notes, whether taken in question and answer form or otherwise, contain everything which was asked and which was answered, and, if this is accepted as being accurate, it is often difficult to understand why the questioning occupied the length of time which it is admitted to have occupied. Sometimes he will say that they contain all the conversation which was relevant to the issue. The fact that the police officer exercises a discretion to include

what seems to him to be relevant and to omit what appears to him not to be relevant to the case may, even though he acts quite honestly, cause the omission of something material either to the prosecution or to the defence. If the police officer has no memory of the interview apart from the memory that his notes are correct, then it is important that the notes shall be full. Sometimes things may be omitted in the interest of the accused. He may, in the conversation, mention some other occasion when the particular police officer arrested him for another offence, or simply questioned him about another offence. The fact that he may have previous convictions is, generally speaking, to be concealed from the jury. It may also be in his own interests that the jury should not know that he has been questioned about another offence. However if these matters do appear in the notes they can be excised from the evidence to be given before the jury. The fact that juries do appear to place considerable importance upon notes of interviews between a police officer and an accused person, even where such notes are not signed by the accused person, makes it essential that if notes are to be made they shall be full and accurate.

8.2 An Alternative Method. If an interview were fully recorded by means of an electronic device and that recording were produced to a court hearing a charge, then there would be a considerable diminution in the likelihood of an unsatisfactory confession or statement being acted upon. The possibility that the confession was obtained by inducement or threat could not be eliminated, because such an inducement or threat may have been made before the recording began. However any doubt as to the accuracy of the record would be dispelled, and it would not be for the police officer to decide which part of the interview was relevant to the charge. The whole of the interview could be placed before the court. These observations are subject to proof that the recording placed before the court is an accurate recording of all that had been said at the interview. Where there has been a tape recording of an interview, such a recording may be altered by the excision, substitution, or insertion of words, and technical experts

may not be able to detect the variations. Where tape recordings are submitted as being originals and unaltered, the trial judge may have to hear evidence on this issue before deciding whether the tapes should be allowed to be heard by the jury. In a 1972 English case the hearing by the judge of that issue occupied two weeks, at the expiry of which he admitted the tape recordings which then formed part of the evidence considered by the jury.[105] If satisfactory equipment were available any argument as to the authenticity of a tape might be diminished if the tape were played back to the accused person, immediately after the interview, in the presence of an independent person who then took the tape into his custody and produced it only to the court; but it might still be suggested that something had been erased by the person operating the equipment, and that the accused had not noticed the erasure when the tape was read back to him. Many suspects, who may be willing to talk freely in the presence of one or even two police officers, may become completely silent if what they say is being recorded. This silence may be from an instinct against self incrimination, but it may be due to other causes such as embarrassment at the prospect of having the suspect's voice and words reproduced to him. He might talk quite freely to a police officer before any formal interview took place, and then at the formal interview say nothing or say something which contradicted what he had already said. The question would then arise as to whether the earlier statements were admissible in evidence. The minority of the English Criminal Law Revision Committee recommended that provision should be made for the electronic recording of interrogations in police stations in the major centres of population, and that after such recording equipment had been installed statements made by suspected persons, when under interrogation in those police stations, should not be admissible in evidence unless they had been recorded. It did not discuss statements made before the suspect was taken to a police station. The majority of the committee was simply in favour of experiments being made in the tape recording of interviews by police officers.[106]

[105] *R.* v. *Robson* [1972] 2 All E.R. 699.

[106] Criminal Law Revision Committee (Eng.), *Eleventh Report: Evidence (General)*, Cmnd. 4991, pp. 28-34.

The committee believes that in South Australia it would not be practicable at the present time to require that all interviews of suspected or accused persons should be electronically recorded. It is not satisfied that such recording would necessarily eliminate doubts and disputes as to what was said and in what context. It believes that experiments should be made by the installation of equipment in interview rooms in police headquarters in Adelaide, and by the tape recording of interviews in those rooms. A transcript of the tape should be immediately made and a copy of the transcript handed to the accused. The tape should thereafter be sealed and remain sealed until the hearing of the charge against the accused.

8.3 The Production of a Record other than a Typed Record. Whenever a police officer takes notes of an interview either on a typewriter or by hand he should immediately after taking the notes permit the suspect or accused person to peruse them, and invite him to sign them as a true and correct record if he is willing to do so. If the person interrogated is illiterate the notes should be read to him and his agreement that the record is correct should be sought by a police officer senior to the one taking the notes. If the police officer makes no notes at the time of the interrogation but makes notes afterwards, he should, if the person interrogated has been charged with any crime, supply that person with a copy of the notes as soon as practicable after they have been made.

8.4 Recommendations with respect to the Method of Taking a Statement.

(*a*) *We do not recommend the adoption in South Australia of the Judges' Rules.*

(*b*) *We recommend that any confession made in consequence of any threat or inducement held out by any person should be excluded from evidence.*

(*c*) *We recommend that any second or subsequent interrogation of an accused person be limited to seeking answers to questions relating to further information which the police*

have obtained since his first interrogation and that if the accused is represented by a solicitor the interrogation be conducted in the presence of the solicitor.

(*d*) *We recommend that electronic equipment be installed in interview rooms at police headquarters and that the electronic recording of interviews be made on an experimental basis.*

(*e*) *We recommend that immediately after an interview is so recorded the record should be transcribed and a copy of the transcript handed to the accused.*

(*f*) *We recommend that after transcription the tape should be sealed and remain sealed until it is produced in court.*

(*g*) *We recommend that where notes of an interview by a police officer are taken either on a typewriter or by hand the accused should be permitted to peruse them and should be invited to sign them as a true and correct record of the interview if he is willing to do so.*

(*h*) *We recommend that if the person interrogated is illiterate the notes should be read to him and his agreement that the record is correct should be sought by a police officer senior to the one taking the notes.*

(*i*) *We recommend that if the police officer makes his notes after the completion of the interrogation and the person interrogated has been charged with any crime the police officer should supply such person with a copy of the notes as soon as practicable after they have been made.*

9 Foreigners, Aborigines and Illiterates. Wherever a person to be interrogated by the police has as his native tongue a language which is not English it is essential that the person interrogating him ensures that he understands the precise meaning of the questions which are put to him. This situation arises in the case of persons who may be naturalized Australians but who lack facility to express themselves in the English language and do not always understand shades of meaning of English words. It arises also in the case of some aborigines. To a lesser extent it arises with illiterate persons whose vocabulary is very limited. The police provide interpreters when interrogating persons whose knowledge of English appears to be imperfect. Wherever there

is any doubt as to whether the person to be interviewed has a complete comprehension of the English language an interpreter should be present at the interview. If the person to be interrogated wishes to have a second interpreter selected by him present to check the interpretation he should be permitted to do so. In the case of some aborigines who have lived remote from white men, their culture so differs from that of the average person of European extraction that it has to be remembered that they may have a difficulty not only in language but also in comprehending concepts which are usually understood even by the illiterate Australian. Police General Order 67 requires that an officer of the Department for Community Welfare be notified in the case of an allegation of a serious offence against an aborigine as soon as possible, so that the aborigine may receive any assistance which may be necessary. In accordance with this direction it is the practice of the police to give to an officer of the Community Welfare Department an opportunity to be present during any interrogation of an aborigine. In one matter in the Supreme Court in which the welfare officer had decided that he was unable to attend and that it would suffice if the Superintendent of a Mission Station upon which the accused resided was present at the interview, Bright J. suggested that consideration should be given to inviting the presence of a prisoner's friend, that is someone with whom the accused person could speak freely, whom he would understand and trust and with whom he could discuss, in the absence of any person in authority, the question whether the accused should make any statement at all to the police.[107] If the detainee can obtain advice from a solicitor with the assistance of an interpreter, if that be necessary, then the committee does not see the necessity for the presence of a prisoner's friend. The committee believes that an officer of the Community Welfare Department should always be present at the interrogation of an uneducated aborigine in regard to a serious crime, particularly an aborigine who has an imperfect knowledge of the English language. If the officer of the Community Welfare Department does not have a satisfactory knowledge of the dialect spoken by the aborigine, or if he doubts whether he can gain the confidence of the aborigine, he should be at liberty to bring with him some friend of the aborigine who can interpret and explain proceedings through the Community Welfare Officer.

[107] *R.* v. *Gibson*, unreported, 12 November 1973, Supreme Court of South Australia.

10 Legal Advice and the Right to Representation. The committee believes that the person suspected or accused of a crime should have the same right to advice from his solicitor, before or at any time during his questioning, as he has upon any proceeding being taken against him. If a suspect declines to answer questions except in the presence of his solicitor, then it is the duty of the police officer who wishes to question him to desist from so doing until the solicitor is present.[108] It is not infrequently a matter of conflict between the police and an accused person, when evidence of a confession alleged to have been made by the accused is sought to be tendered, as to whether the accused asked for the services of a solicitor before or at the time of being questioned. It might assist in eliminating such a conflict if the police were required, before interrogating a suspect, to ask him whether he wished the interrogation to be in the presence of a solicitor and if he does so wish to name the solicitor. If he wishes to be interrogated in the presence of a solicitor a telephone should be put at his disposal to enable him to endeavour to arrange the attendance of that solicitor or of some other solicitor. There is no reason why the telephone call could not be made in the presence of a police officer, in order to ensure that the call is made to a solicitor and not to an accomplice. The person being interrogated should also be permitted to communicate with his wife or with a relative or friend to say where he is and to request the attendance at the police station of a solicitor, relative or friend to arrange bail if this be necessary. To lessen the risk of a dispute as to whether the suspected or accused person was given the opportunity of communicating with a solicitor before being interrogated it would be advisable that the statement offering to permit him to communicate with a solicitor should be made to him by an officer senior to the officer who is intending to undertake the interrogation, and that a note be kept of the reply and of the attempt to communicate with a solicitor. If the services of a solicitor cannot be obtained then the person to be interrogated should be asked whether he wishes to allow the interrogation to proceed or to wait until he can obtain the services of a solicitor. If he elects the latter course then this may be a ground for obtaining an order for his prolonged detention, such as we recommend in paragraph 2.3 above.

[108] Cf. *R.* v. *Evans* [1962] S.A.S.R. 303, 307; *R.* v. *Lee* (1950) 82 C.L.R. 133; *Basto* v. *The Queen* (1954) 91 C.L.R. 628; *Wendo* v. *The Queen* (1954) 109 C.L.R. 559.

10.1 The Duty Solicitor. In some places it has become a part of legal aid to provide a duty solicitor to attend at the court before which persons are brought upon arrest, so that such persons may have an opportunity, before being brought into court, of seeing a solicitor and of being advised generally as to their rights to representation, to seek a remand, to obtain bail and the like. The committee believes that the Law Society of South Australia has under consideration the provision of duty solicitors for this purpose. The provision of a duty solicitor would be of considerable benefit, particularly to accused persons who are bewildered by the fact of their arrest, as some such persons appear to have an almost irresistible urge to get the court appearance over and done with, and therefore fail to give proper consideration to what the plea should be and *a fortiori* fail to put before the court facts which may be material on the question of penalty. We think that a duty solicitor is likely to be of most value to an accused person if the solicitor is not permanently employed as a public solicitor. If he is so employed he is likely to be looked upon with suspicion by the majority of those persons whom he is called upon to assist, who for the most part will be ill educated and often of low intelligence. It would require much greater resources of manpower than are at present available within the legal profession in South Australia to enable a duty solicitor to be on call at all hours of the day and night. It would obviously be impracticable to expect a duty solicitor to be available at all police stations where suspects might be being questioned even concerning serious crimes. While therefore we favour the proposition that a duty solicitor should be available to advise persons about to be interrogated by police officers, we believe that it is impracticable at present to require such a solicitor to be present at every interrogation. If therefore a suspect or accused person is unable or unwilling to obtain a solicitor to be present during his interrogation, he should be given the opportunity of having present, if he so wishes it, some one who may be termed a prisoner's friend. The police should have the right to refuse to allow any particular person to be present in this capacity, upon the ground that such person is or may be connected with the matter under investigation.

10.2 Recommendations with respect to Legal Advice and the Right to Representation.

(*a*) *We recommend that a person whose knowledge of the English language is limited should be entitled to have present at an interview an interpreter of his choice for the purpose of checking the work of the police interpreter.*

(*b*) *We recommend that where an aborigine, not fully conversant with the English language or the white person's culture, is interviewed the interview should be conducted in the presence of an officer of the Community Welfare Department and, if he deems advisable, of a friend of the aborigine.*

(*c*) *We recommend that a person who is to be interrogated be asked if he wishes to have a solicitor present and be given the opportunity of communicating with a solicitor by telephone before being interrogated.*

(*d*) *We recommend that the person to be interviewed be informed of his right to have a solicitor present at the interview by a police officer senior to the officer who is to interrogate him.*

(*e*) *We recommend that if the services of a solicitor cannot be obtained by the person to be interviewed he be given the option of waiting until a solicitor can be obtained before being interrogated, but that if he elects to wait he may be subject to an order for detention.*

(*f*) *We recommend that a person detained for questioning be permitted to telephone his wife or a relative or friend to explain his position and to request the attendance at the police station of a solicitor, relative or friend.*

(*g*) *We recommend that a person to be interrogated who does not have a solicitor present at his interrogation may have instead a person not connected with the matter under investigation.*

(*h*) *We recommend that consideration be given to the attendance at police stations of duty solicitors as part of legal aid.*

CHAPTER 7

THE RIGHT TO SILENCE AND ILLEGALLY OBTAINED EVIDENCE

1 Introduction. In this chapter we consider two important problems which, at first sight, may appear unrelated. We place them in juxtaposition because we believe that the limitations which we propose upon what has come to be referred to as the right to silence lead naturally to a consideration whether evidence illegally or improperly obtained should ever be admissible, and if so subject to what conditions. We believe further that, subject to the right of a person not to incriminate himself, the police should not be hampered in their investigations by a refusal to answer proper questions but they should not intentionally or carelessly use illegal or improper methods of obtaining evidence.

2 The Right to Silence. We referred earlier to the caution to be administered by a police officer before interrogating a person whom he suspects of having committed a crime.[109] That caution embodies the principle that no-one is bound to incriminate himself, a principle which is also embodied in the law of evidence. At the conclusion of the evidence of the prosecution in committal proceedings the court hearing the proceedings may ask the accused person whether he wishes to be sworn and give evidence or to say anything in answer to the charge. The accused must then be warned that he is not obliged to be sworn or to say anything, and further that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of guilt.[110] Although an accused person is competent to give evidence on his own behalf in the proceedings for committal and upon his trial, he may not be called as a witness except upon his own application, and his failure to give evidence may not be the subject of any comment by the prosecution.[111] We shall defer consideration of questions relating to the failure of an accused person to give evidence

[109] Chapter 6, para. 7.3.
[110] Justices Act, 1921-1972 (S.A.), s. 110.
[111] Evidence Act, 1929-1970 (S.A.), ss. 18 I and 18 II.

until we are reporting upon our third term of reference, because these questions seem to the committee to be more appropriately discussed in the context of court procedure. We deal with the effect of failure to answer questions and failure to mention facts relevant to the defence in this report because these matters are germane to the subject of police interrogation. We have considered in chapter 6 the limitations which should, in the view of the committee, be placed upon the interrogation by the police of suspects or accused persons. We now consider to what extent the failure of an accused person to answer questions put to him by the police, or to disclose to the police a fact relevant to his defence, should be the subject of comment at his trial. The extent to which it is to be the subject of comment will determine whether the words of the caution which is now given to him are appropriate.

2.1 The Present Position. No inference adverse to an accused person can be drawn from a refusal to answer questions which he has been told he is not bound to answer, or from his silence after he has been told that he is not obliged to speak. Where, however, an accused person under interrogation chooses to answer some questions and to refuse to answer others, a jury is entitled to look at the whole of the questions and answers in order to decide whether a consciousness of guilt can reasonably and properly be inferred therefrom.[112] Whether he has been given a caution or not, an inference of guilt cannot be drawn from the failure of a suspect to comment when told that some one else has accused him of an offence. He has a right to keep silent and the fact that he fails to answer the accusation may mean simply that he is exercising this right.[113] The limitations upon the inferences which may properly be drawn from an accused's failure or refusal to answer police questions, and his failure to disclose to the police before trial any answer which he may have to the accusation that he has committed a crime, stem from two sources. The first is the fact that he has no obligation to answer questions, and the second that the prosecution carries the onus of proof. This does not mean that the failure to disclose a fact material to his defence can never be the subject of comment to a jury. It is proper for a judge to direct a

[112] *Woon* v. *The Queen* (1964) 109 C.L.R. 529.
[113] *Hall* v. *The Queen* [1971] All E.R. 322.

jury that they may consider what weight should be given to an exculpatory statement first made by the accused at his trial, when he could have made the statement at the time he was being questioned by police, provided that the direction does not lead to an inference that the accused had a duty to answer questions or carried any onus of proof.[114]

2.1.1 The Proposals of the Criminal Law Revision Committee (Eng.). In its Eleventh Report the English committee presented a draft Bill which was stated to be, as to part thereof, to "amend, and in part, restate the law of evidence in relation to criminal proceedings". We are concerned at present with that part of the report and of the draft Bill which relates to the questioning of an accused person. The committee proposed that

(*a*) If the accused when being interrogated by any one charged with the duty of investigating offences or charging offenders, or when charged, fails to mention a fact which he afterwards relies on at the committal proceedings or the trial, the court may draw such inferences as appear proper in determining the question in issue, and that failure may be treated as corroborating any evidence given against the accused to which a failure is relevant.

(*b*) The caution should be abolished, as it is inconsistent with the proposed alteration in the law, but when the accused is charged with an offence he should be given a written notice advising him to mention any fact on which he intends to rely in his defence, and warning him that if he fails to disclose this fact before trial it may adversely affect his defence.[115]

The Bill was introduced into Parliament but met with considerable opposition and has not been proceeded with.

[114] *R.* v. *Ryan* (1966) 50 Cr. App. R. 144, 148.

[115] Criminal Law Revision Committee (Eng.), *Eleventh Report: Evidence (General)*, Cmnd. 4991, pp. 19-28, 172.

2.2 Recommended System. We have recommended that a suspected or accused person should be entitled to have his solicitor or a friend present at his interrogation.[116] We believe that police investigations might be seriously impeded if the effect of this recommendation were to encourage the person interrogated not to answer questions properly put to him concerning the matter under investigation. If however the failure to answer questions were likely to be the subject of comment at trial, the temptation not to answer questions would be tempered by the realization that the person interrogated might act to his detriment in refusing to answer. The committee believes that the common law right of an accused person not to answer questions should be subject to the qualification that the court or a jury should be entitled to take into account the failure to answer questions in determining guilt or innocence. This does not mean that the onus of proof resting upon the prosecution should be reversed, or that the standard of proof, namely proof beyond reasonable doubt, should be eroded. We are of the opinion however that the jury, in deciding whether the evidence for the prosecution has satisfied them beyond reasonable doubt that the charge has been proved, should be entitled, where it seems to them to be appropriate, to take into consideration not only the answers which the accused has given to any questions asked of him by the police but also his refusal or failure to answer any such questions. We think it probable that at present juries do take such matters into account notwithstanding that they are told of the right of the accused to refuse to answer questions. We think it only realistic that they should do so, and that the judge should be permitted to tell them that they may do so, while of course he must give them the necessary warnings about the onus of proof. The committee believes that juries are likely also to treat with scepticism any exonerating statement made by an accused person at his trial, which could have been but was not made when he was being questioned by the police. It is not unknown for an accused person to seek a further interview with police officers, after he has had legal advice, in order to acquaint the police with facts which he did not disclose at an earlier interview[117] It is apparent that such information is given

[116] Chapter 6, para. 10.

[117] Cf. *R.* v. *Ireland* (*No.* 1) [1970] S.A.S.R. 416, 419.

because, in the opinion of his adviser, the accused may suffer prejudice if he waits until his trial to disclose what he claims to be the truth in relation to the matters on which he has been questioned. Of course not every failure to mention to the police a fact relied upon by the defence should prejudice an accused person in his defence. At the time of questioning he does not necessarily know all the evidence which the prosecution will produce against him. He may not appreciate the significance of a fact, particularly if he is of low intelligence. He may and in our opinion should be entitled to choose not to disclose a fact which is irrefutable. We believe that a jury directed that it may draw inferences which seem to it proper from the failure of the accused to mention, during questioning by the police, a fact on which he relies in his defence, but apprised of any reasons suggested by the defence to account for such failure, and correctly instructed as to the onus of proof, is not likely to place undue emphasis on any such failure. We recommend that a court or jury should be entitled to draw such inferences as seem to it to be proper from the failure of the accused, when questioned by the police, to disclose any fact material to his defence. We believe that this recommendation does little, if anything, to alter the present law.

2.2.1 The Alibi. Section 11 of the Criminal Justice Act, 1967 (Eng.) requires an accused person who is tried on indictment to give notice of particulars of an alibi during or at the end of the committal proceedings, or by sending such particulars to the solicitor for the prosecutor within seven days of the committal proceedings. We are in favour of such a provision. The police should have the opportunity of investigating an alibi, and if it is produced only after the close of the prosecution case before the jury, the opportunity of so doing is very limited.

2.2.2 The Corroborative Effect of a Failure to Answer a Question. A false statement made by an accused person in answer to a question may, but does not necessarily, amount to corroboration where corroboration is required.[118] There may

[118] Cf. *Pitman* v. *Byrne* [1926] S.A.S.R. 207; *Credland* v. *Knowler* (1951) 35 Cr. App. R. 48; *R.* v. *Clynes* (1960) 44 Cr. App. R. 158.

be circumstances in which a jury may believe that a failure to answer a question confirms evidence connecting the accused person with the crime with which he is charged. In these cases, and provided that an appropriate warning is given as to the nature of corroboration, it seems to us that the failure to answer a question may be regarded by the jury as corroboration.

2.2.3 The Caution. The recommendations which we make as to the inferences which a court or jury may draw from the failure of the accused to answer questions or to disclose a fact material to his defence at his interrogation by police, if adopted, would render misleading the words of the caution which is used at present. That caution is to the effect that the person being interrogated is not obliged to say anything unless he wishes to do so, but that anything which he does say will be written down and may be given in evidence. The caution now used should be given before any questions are asked, if the police officer has decided to charge the person with the offence concerning which he is to be questioned. It is frequently given after the person has already been asked and has answered a number of questions, because the interrogating police officer claims that it was only after such questions had been asked and answered that he decided that the accused person should be charged with the offence. Sometimes it is difficult to understand why the police officer should have made the decision to charge when he gave the caution rather than at an earlier time, and there may be reason to suspect that he sought the answers without cautioning the accused because he did not wish to stem the flow of information. The committee believes that the accused should be cautioned that he is not obliged to answer any questions but that the questions and any answers thereto *will* be given in evidence if he is subsequently charged with an offence in relation to the matters concerning which he is being questioned and that if he is charged an inference adverse to him may be drawn from his failure to answer any question or from his failure to disclose at that stage any matter which may be material to his defence to the charge. We use the word "will" rather than the word "may" in

relation to giving the statement in evidence, because the person interrogated should be left in no doubt as to the intention to disclo'. to the court what he has said at his interrogation, and because he is entitled to have what he says put before the court, and it should not be left to the discretion of the prosecution to do so. The caution should be given as soon as the interrogating police officer believes that it is probable that the person questioned will be charged with an offence, so that there will be ample opportunity for that person to disclose matters of defence if he wishes to do so. It should not be open to a court or jury to draw any inference adverse to the accused from his failure to answer any question put to him, or to mention any matter of defence, before he is cautioned. There will thus be an encouragement to the interrogating police officer to caution the person interrogated at an early stage of the interview.

2.3 Recommendations with respect to the Right to Silence.

(*a*) *We recommend that the onus of proof in criminal charges be not reversed or varied and that the standard of proof be not lowered, but that a court or jury should be entitled to take into consideration, in deciding questions of guilt or innocence, the refusal or failure of the accused to answer any questions properly put to him by a police officer and to draw such inferences as seem to it to be proper from the failure of the accused, when questioned by the police, to disclose any fact material to his defence.*

(*b*) *We recommend that where the court or jury believes that failure to answer a question confirms evidence connecting the accused with the crime such failure may amount to corroboration.*

(*c*) *We recommend that accused persons who are committed for trial should be required to give to the Crown Prosecutor within seven days after committal particulars of any alibi intended to be relied upon as a defence, but that they should not be required to disclose any other fact material to the defence prior to presenting the defence.*

(*d*) *We recommend that as soon as an interrogating police officer believes that it is probable that a person questioned by him will be charged with an offence, he should caution such person that he is not obliged to answer any questions but that the questions and any answers thereto will be given in evidence if he is subsequently charged with an offence in relation to the matters concerning which he is being questioned, and that, if he is charged, an inference adverse to him may be drawn from his failure to answer any questions or from his failure to disclose at that stage any matter which may be material to his defence to the charge.*

(*e*) *We recommend that it should not be open to the court or a jury to draw any inference adverse to the accused from any failure to answer any question put to him or to mention any matter of defence before he is cautioned.*

3 Illegally Obtained Evidence. We have discussed the rejection from evidence of involuntary confessions.[119] The present rule with regard to confessions is to be contrasted with the rule with regard to evidence illegally obtained. The confession which is involuntary must be rejected. The confession which is proved to be voluntary may still be excluded from evidence if the judge, in the exercise of his discretion, decides that in all the circumstances it would be unfair to allow a statement to be given, regard being had to the propriety of the means by which the statement was obtained.[120] On the other hand the fact that evidence was illegally obtained does not necessarily lead to its rejection. The admissibility of evidence illegally obtained or obtained by means of a trick was discussed in *The Queen* v. *Ireland* where Barwick C.J. said:—

> "Evidence of relevant facts or things ascertained or procured by means of unlawful or unfair acts is not, for that reason alone, inadmissible. This is so, in my opinion, whether the unlawfulness derives from the common law or from statute. But it may be that acts in breach of a statute would more readily warrant the rejection

[119] Chapter 6, para. 7.
[120] *R.* v. *Lee* (1950) 82 C.L.R. 133.

of the evidence as a matter of discretion: or the statute may on its proper construction itself impliedly forbid the use of facts or things obtained or procured in breach of its terms. On the other hand evidence of facts or things so ascertained or procured is not necessarily to be admitted, ignoring the unlawful or unfair quality of the acts by which the facts sought to be evidenced were ascertained or procured. Whenever such unlawfulness or unfairness appears, the judge has a discretion to reject the evidence. He must consider its exercise. In the exercise of it, the competing public requirements must be considered and weighed against each other. On the one hand there is the public need to bring to conviction those who commit criminal offences. On the other hand there is the public interest in the protection of the individual from unlawful and unfair treatment. Convictions obtained by the aid of unlawful or unfair acts may be obtained at too high a price. Hence the judicial discretion."[121]

Ordinarily a Court of Appeal will not interfere with the exercise of the discretion by the trial judge to admit or reject evidence illegally or improperly obtained. Although in *The Queen v. Ireland*[122] Barwick C.J. expressed the view that the evidence illegally obtained should have been excluded by the trial judge in the proper exercise of his discretion, the judgment of the High Court proceeded upon the basis that the trial judge had not exercised a discretion, and the learned Chief Justice was at pains to point out that in the new trial it was for the trial judge to decide whether in the exercise of his discretion the evidence should be accepted or rejected. It is sometimes claimed that evidence illegally or improperly obtained is rarely rejected, and that the trial judge, magistrate or justice of the peace hearing the case usually exercises his discretion to accept the evidence.

3.1 Admission of Illegally Obtained Evidence. The committee has considered whether the admission or rejection of evidence illegally or unfairly obtained should remain at the discretion of the trial judge; whether evidence illegally or unfairly obtained should ipso facto be excluded, and if so what should be the criterion by which evidence should be held to be unfairly obtained; or whether

[121] (1970) 44 A.L.J.R. 263, 268.
[122] (1970) 44 A.L.J.R. 263, 268.

there should be some evidence illegally or unfairly obtained concerning which the judge has no discretion and some concerning which he has a discretion.

3.1.1 The Position in England and in Scotland. The English courts apply the principles laid down in the Privy Council case *Kuruma* v. *The Queen*.[123] The test of admissibility of evidence is whether it is relevant to the matters in issue. If it is relevant then it is admissible. Nevertheless the judge has a discretion to disallow evidence even if it is admissible, if its admission would operate unfairly against an accused person. In considering whether the admission of the evidence would operate unfairly against the accused a court will consider whether it has been obtained illegally or oppressively, by force, or against the wishes of the accused. This rule does not apply to the admissibility of statements, which must be proved by the prosecution to have been made voluntarily.[124]

3.1.2 The Approach to the Problem in Scotland. In Scotland the question whether evidence illegally or unfairly obtained by police officers should be received in evidence is treated as a question of admissibility or inadmissibility. In *H.M. Advocate* v. *M'Guigan*[125] there was an objection on the trial of a man charged with murder, rape and theft that evidence had been illegally obtained in that it was obtained by a search without a warrant. The Lord Justice-Clerk (Aitchison) held that, the matter being one of urgency, the police were entitled to act without obtaining a warrant but added:—

> "An irregularity in the obtaining of evidence does not necessarily make that evidence inadmissible."

The question of admissibility or inadmissibility of evidence obtained by an illegal search was further discussed by the High Court of Justiciary in *Lawrie* v. *Muir*[126] in which case the Lord Justice-General (Cooper) said:—

[123] [1955] A.C. 197; cf. *Callis* v. *Gunn* [1964] 1 Q.B. 495, 500-1.
[124] Chapter 6, para. 7.
[125] [1936] *Sessions Cases* 16.
[126] [1950] *Scottish Law Times* 36.

> "From the standpoint of principle it seems to me that the law must strive to reconcile two highly important interests which are liable to come into conflict—(a) the interest of the citizen to be protected from illegal or irregular invasions of his liberties by the authorities, and (b) the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from Courts of law on any merely formal or technical ground. Neither of these objects can be insisted upon to the uttermost. The protection of the citizen is primarily protection for the innocent citizen against unwarranted, wrongful and perhaps high-handed interference, and the common sanction is an action of damages. The protection is not intended as a protection for the guilty citizen against the efforts of the public prosecutor to vindicate the law. On the other hand the interest of the State cannot be magnified to the point of causing all the safeguards for the protection of the citizen to vanish, and of offering a positive inducement to the authorities to proceed by irregular methods. It is obvious that excessively rigid rules as to the exclusion of evidence bearing upon the commission of a crime might conceivably operate to the detriment and not the advantage of the accused, and might even lead to the conviction of the innocent; and extreme cases can easily be figured in which the exclusion of a vital piece of evidence from the knowledge of a jury because of some technical flaw in the conduct of the police would be an outrage upon common sense and a defiance of elementary justice."[127]

The problems to which Lord Cooper refers in the passage which we have cited remain real problems today. Lord Cooper adopted the above mentioned dictum of Lord Aitchison, and treated the question as one of admissibility or inadmissibility. In *Hay* v. *H.M. Advocate*[128] the High Court of Justiciary consisting of five judges continued to treat the question of illegally

[127] [1950] *Scottish Law Times* 36, 39-40.
[128] [1968] *Scottish Law Times* 334.

obtained evidence as one of admissibility or inadmissibility. *Kuruma's* case was not discussed. In Scotland irregularly obtained evidence has been held to be inadmissible if the irregularity was intentional, whereas it would have been admissible had it been obtained accidentally in the search for other material.[129] If the evidence was obtained without the legal formalities being observed in circumstances of urgency, particularly where the evidence might otherwise have been destroyed, then the evidence may be admissible. If the breach of regulations by police is trifling or technical and the offence is a serious one the evidence may be regarded as admissible.

3.1.3 The Position in the United States of America. In a variety of situations in the United States of America illegally obtained evidence has been held to be inadmissible. In the context of search and seizure the decisions proceed upon the interpretation of the Fourth and Fourteenth Amendments to the Constitution. The Fourth Amendment renders inviolable the right of security of persons, their houses, papers and effects against unreasonable search and seizure, and affirms that warrants shall be judicial warrants issued upon cause shown by oath or affirmation. The Fourteenth Amendment guarantees that a State shall not "deprive any person of life, liberty or property, without due process of law". Since 1914 evidence obtained as a result of search or seizure without lawful warrant has been inadmissible in Federal Courts.[130] In 1961 the Supreme Court held that all evidence obtained by search and seizure in violation of the Constitution was inadmissible in a criminal trial in a State Court.[131]

3.2 Recommended Rules. If inquiries properly made or search and seizure lawfully undertaken by the police result in the discovery of evidence relevant to the proof of the offence to which the inquiries or the search or seizure relate, no problem of admissibility of the evidence arises. Equally there is no problem if no relevant evidence is found. But what should be the consequence of unlawful

[129] *H.M. Advocate* v. *Turnbull* [1951] *Scottish Law Times* 409, 411.
[130] *Weeks* v. *United States* (1913) 232 U.S. 383.
[131] *Mapp* v. *Ohio* (1960) 367 U.S. 643.

or improper action as a result of which relevant evidence is discovered? Evidence may be obtained as a result of improper questioning, of detention, arrest, search or seizure improperly undertaken or of breach of some rule relating to police powers. The question of admissibility goes not only to evidence obtained directly in consequence of illegal or improper behaviour but also to evidence obtained as a result of information gleaned in the course of illegal or improper practices. An example of unlawful action would be the breaking into a house without first obtaining a search warrant, not in circumstances of urgency.[132] If, as a result, stolen property were found in the house should the fact that such property was found be admissible in evidence against the owner or occupier of such property? If the answer is, as at present, yes, it is admissible subject to the power of the judge to exclude it, we believe that the sanction against unlawful entry is thereby weakened. If the answer is no, it is inadmissible in any circumstances, some would argue that the evil of inhibiting proof of an offence is greater than the evil of permitting a breach of the rules relating to search and seizure. We do not agree with the latter argument. We believe that the police should be meticulous in their observance of the rules which protect the rights of private citizens. If it is known that evidence obtained as a result of an illegal search is inadmissible against the person whose property is searched, then the temptation to break the law relating to search and seizure will be minimal. A similar situation will prevail in relation to the breach of any other law. We believe that the position should be the same whether the evidence discovered relates to a suspected offence concerning which the police were inquiring, or some different offence by the person whose rights are infringed, and whether the evidence is obtained directly as the result of the illegal or improper act or is secured by means of information gained in consequence of such act. The police should not be entitled either to infringe the rules laid down for observance by them or to enter upon fishing expeditions which improperly impinge upon the rights of citizens. Nor should evidence obtained by means which are illegal or improper be available to impeach the credibility of the person against whom the evidence was so obtained or for any other purpose. If he could be subject, for

[132] Chapter 5, para. 3.5.

example, to cross-examination about such evidence then the effect of the exclusion might be nullified. But what should be the position if, in the course of an action which is unlawful in relation to any person the police discover evidence of an offence committed by another? An unlawful entry into one person's premises may disclose that a stranger to the premises has committed an offence. The committee recommends that the evidence should be admissible against the stranger. The unlawful action of the police was not in derogation of his rights and he should not be protected against the disclosure of the evidence obtained in consequence of the illegal act.

3.2.1 Urgent Action. We have recommended that where a search or seizure is made without warrant by a police officer acting upon a reasonable belief as to the urgent need to protect a person or persons or to preserve property, such police officer should be granted legislative immunity against prosecution or civil action.[133] We have also recommended that where there may be danger to person, community health or property, consideration be given to providing legislative immunity to any person entering, searching or seizing any property pursuant to the provisions of any statute without first obtaining a warrant.[134] Such search and seizure should not be regarded as illegal and any evidence obtained as a result should be admissible.

3.2.2 Accidental Breach. We have considered whether the court should have a discretion to accept evidence obtained as the result of an illegality which consists of the accidental breach of a statute or regulation. We have concluded that such evidence should be inadmissible, subject to the rules above-mentioned.[135] An accidental breach may betoken an inadequate system of instruction or supervision of the person responsible for the breach, and its repetition should be deterred.

3.2.3 Evidence Obtained Illegally by Persons other than Police Officers. We have considered suggestions that evidence obtained illegally by persons other than police officers should be more readily admissible than that so obtained by police

[133] Chapter 5, para. 3.7(*d*).
[134] Chapter 5, para. 4.1(*b*).
[135] Chapter 7, para 3.2.

officers. The basis for this suggestion seems to be that a higher standard of behaviour is to be called for from police officers than from ordinary citizens. Exemplary behaviour in a police force is to be encouraged. This does not mean that other persons should be encouraged to adopt a lower standard of behaviour. We do not favour any distinction in this matter between evidence obtained by the police or by other persons.

3.3 Recommendations with respect to Illegally Obtained Evidence.

(*a*) *We recommend that the legislature should declare what methods of obtaining evidence are illegal or improper, and the question whether evidence has been illegally or improperly obtained should be a question for determination by the court as though it were a matter of law.*

(*b*) *We recommend that evidence illegally or improperly obtained should, subject to the qualification mentioned in* (*d*), *be inadmissible for all purposes, and should not be available to impeach credit.*

(*c*) *We recommend that evidence obtained as a result of urgent entry by police or others*[136] *should be admissible.*

(*d*) *We recommend that where the illegality or impropriety is not directed against and does not relate to the person against whom the evidence is tendered the evidence should be admissible.*

(*e*) *We recommend that there should be no distinction, as regards evidence illegally or improperly obtained, between evidence obtained by police officers and that obtained by other persons.*

[136] Chapter 5, paras. 3.5 and 4.

CHAPTER 8

POWERS OF ARREST

1 The Meaning of Arrest. In this report we have recommended that the police be given power to detain persons for questioning. We have further recommended that such detention shall not amount to an arrest.[137] In speaking of arrest therefore we exclude permitted detention by a police officer for the purpose of questioning. Subject to this when we speak of arrest we mean the seizure or touching of a person's body with a view to his detention, or the use of words calculated to bring to the notice of the person that he is being arrested, in consequence of which he submits to compulsion.[138] The question whether a person has been arrested usually arises in an action for false imprisonment, but sometimes where the prosecution is required to prove a valid arrest in order to establish that tests made subsequent to an arrest were lawfully taken.[139]

2 The Powers of Arrest at Common Law. The common law powers of arrest without a warrant may be exercised by a police officer or by a private citizen. Where treason or felony has been committed anyone may, without warrant, arrest a person whom he has reasonable cause to suspect of having committed the crime. A police constable may lawfully arrest a person whom he reasonably suspects of having committed a felony, and is not obliged, in order to justify the arrest, to establish that a felony has actually been committed. But a private person acts at his peril if he arrests a person where a felony has not in fact been committed, even though he has reasonable cause to suspect that person of having committed a felony.[140] Anyone may arrest a person who is attempting to commit a felony, but once the attempt has ceased there is no power at common law to arrest.[141] The power to

[137] Chapter 6, para. 2.3.

[138] Cf. *Alderson* v. *Booth* [1969] 2 Q.B. 216, 220-1.

[139] Cf. *Wheatley* v. *Lodge* [1971] 1 All E.R. 173. In that case it was held that the arrest was valid although the accused person who was deaf and unable to lip-read did not hear what was said to him because the constable had done all that a reasonable person would have done in the circumstances.

[140] Cf. *Walters* v. *W. H. Smith and Son Limited* [1914] 1 K.B. 595, 602.

[141] Cf. *Allen* v. *The London and South Western Railway Co.* [1870-71] L.R. 6 Q.B. 65.

arrest a person attempting to commit an offence does not extend to a person attempting to commit a misdemeanour.[142] A person who observes the commission of a breach of the peace may arrest an offender and may detain him after the breach of the peace has ceased if he has a reasonable apprehension of its continuance.[143]

2.1 **Duty to Assist a Police Officer.** A police officer may call upon a private citizen for assistance in arresting an offender who is committing a breach of the peace, and if the person thus called upon fails, without lawful excuse, to give such assistance he is guilty of a common law misdemeanour.[144] The committee believes that when a private citizen reasonably assists a police officer in the execution of his duty, whether he is called upon by the police officer so to assist or not, and suffers injury or is killed in consequence of rendering such assistance, there should be a statutory provision for compensation for the injured person or for the dependants of the deceased person. Such compensation should be assessed as if the claim were for damages for assault or under Part II of the Wrongs Act, 1936-1972, as the case may be. The amount payable might be recoverable in the same manner as compensation ordered to be paid under the Criminal Injuries Compensation Act, 1969-1972, the provisions of which could, at the present time, be invoked to obtain some compensation for a person injured when assisting the police in the apprehension of a wrongdoer where the injury was suffered as a result of the commission of an offence by such wrongdoer. In our first report we recommended that the scope of that Act be extended to encompass a comprehensive scheme of compensation for loss or injury caused by crime and that consideration be given to paying to the victim full compensation out of general revenue and subrogating the Treasurer for the victim in any claim against the wrongdoer.[145] We now recommend that our proposals for compensating a person injured, or the dependants of a person killed, in assisting the policeman in the execution of his duty should be considered with those recommendations, and that the suggestion which we made that payment of compensation should be made out

[142] *Mathews* v. *Biddulph* (1841) 3 Man.&G. 390; 133 E.R. 1195.
[143] *Timothy* v. *Simson* (1835) 1 C.M.&R. 757; 149 E.R. 1285.
[144] *R.* v. *Brown* (1841) Car.&M. 314; 174 E.R. 522.
[145] Chapter 4, para. 12.

of general revenue and that there should be subrogation of the Treasurer for the victim in a claim against the wrongdoer should extend to compensation paid to a person injured or the dependants of a person killed in the above mentioned circumstances.

2.2 Recommendations with respect to Compensation for Injuries or Death Resulting from Assisting Police.

(*a*) *We recommend that persons assisting police officers in the execution of their duty receive compensation for injuries suffered by them and that the dependants of persons who have died as a result of lending such assistance be compensated.*

(*b*) *We recommend that the amount of such compensation be assessed by a court as though it were damages for a civil wrong payable by the wrongdoer.*

(*c*) *We recommend that consideration be given to paying such compensation out of the general revenue of the State and subrogating to the Treasurer all rights which the person compensated would have had against the wrongdoer.*

(*d*) *We recommend that the question of compensating persons who have assisted the police or their dependants be considered as part of a review of the scope of the Criminal Injuries Compensation Act,* 1969-1972.

3 **The Statutory Power of Arrest With or Without Warrant.** The common law powers of arrest have been extended by statute. Unless in the circumstances there is power to arrest without warrant then the person who makes the arrest has a defence to an action for wrongful arrest only if he has a warrant authorizing the arrest. A warrant for apprehension of a person must be issued by a justice of the peace or by a court, must state the offence with which the person is charged together with sufficient particulars to give reasonable information as to the nature of the charge, must name or otherwise describe the person to be apprehended and must order the person to whom it is directed to bring the person apprehended before a justice of the peace to answer the charge. A warrant may be directed especially to any constable or other person

by name, or generally to all constables and peace officers of the State. It may be executed by apprehending the person named or described therein at any place within the State.[146]

3.1 The Power of Arrest by Persons other than Police Officers. The common law rights of arrest by members of the public have been extended by the Police Offences Act, 1953-1973 to include a power in the owner of any property who finds any person committing any offence on or with respect to that property to apprehend him and hand him over to a member of the Police Force. Such power may be exercised by the servant of the owner or any person authorised by him. In the case of an offence on or with respect to land, buildings or other premises, the power of apprehension extends to any occupier or person resident on or in such land, building or premises.[147] A person to whom any property is offered to be sold, pawned or delivered may apprehend the person making such offer if he has reasonable cause to suspect that that person has committed any offence with regard to the property.[148] Power is given to any person to arrest without warrant by the Criminal Law Consolidation Act, 1935-1972 in respect of persons found committing any offence punishable by virtue of the Act; persons found in possession of property on or in respect of which there is reasonable cause to believe that a felony or misdemeanour has been committed where the person arrested is reasonably believed to have been a principal in the offence or a receiver of the property; and persons lying or loitering at night and suspected with good cause of having committed or being about to commit any felony.[149] The committee has no recommendations to make concerning such provisions in the Police Offences Act, 1953-1973 or the Criminal Law Consolidation Act, 1935-1972.

3.2 Power of Police Officers to Arrest Without Warrant. By section 75 of the Police Offences Act, 1953-1973 any member of the Police Force may without warrant apprehend any person whom he finds committing or has reasonable cause to suspect of having

[146] Justices Act, 1921-1972 (S.A.), ss. 14, 20, 22a.
[147] Police Offences Act, 1953-1973 (S.A.), s. 76.
[148] Police Offences Act, 1953-1973 (S.A.), s. 77.
[149] Criminal Law Consolidation Act, 1935-1972 (S.A.), ss. 271 and 272.

committed or being about to commit any offence. The power to arrest without warrant was given to the police in South Australia by s. 9 of the Ordinance 19 of 1844. That power was re-enacted in s. 43 of the Police Act, 1863 and included the power to arrest without warrant persons whom the police officer had just cause to suspect of having committed or being about to commit any felony, misdemeanour or offence or of having any evil designs. In that Act and in the various Acts which superseded it, up to and including the Police Act, 1936, the police were also given power to arrest without warrant certain specified types of persons including persons who were in some way or another provoking or likely to provoke a breach of the peace; but the power to arrest a person suspected of having committed or being about to commit any felony, misdemeanour or offence was constant, and remains in s. 75 of the present Statute. The provision appears to have been copied from English legislation which provided for the appointment and regulated the powers of constables to preserve peace on canals and rivers.[150]

3.2.1 Where Identity is Unknown. Section 75 further enables a police constable to require any person found committing or whom he has reasonable cause to suspect of having committed any offence to state his full name and address. The refusal to give a name and address or the giving of a false name or address is an offence.[151] The power to arrest, however, is not dependent upon failure to give a name or address or the giving of a false name or address. In this the section is to be contrasted with legislation giving a power of arrest without warrant in a case where there is a refusal or failure to give a correct name or address and the person is suspected of committing an offence. In commenting upon a statutory provision of the last mentioned type Scott L.J. said:—

> "In giving this power of arrest Parliament obviously contemplated that it was only to be used if it was necessary to ensure the suspect being brought before the court. If his name and address could be ascertained the police

[150] The Canals (Offences) Act, 1840 (Eng.), s. 10.
[151] Police Offences Act, 1953-1973 (S.A.), s. 75(2) and (3).

could proceed by summons, which is the proper course to take in the case of misdemeanours or summary offences unless, where there is power to arrest, there is reason to believe a summons would not be effectual."[152]

Under such legislation the power to arrest should not be exercised upon mere failure to give a correct name and address if the person is well known to the interrogator and there is no reasonable basis for a belief that a dispute as to identity will ensue if he is proceeded against by summons.[153]

3.2.2 Crimes Act, 1914-1973 (Aus.). The power to arrest without warrant contained in the Crimes Act, 1914-1973 (Aus.) is limited to a power to arrest where the arresting constable has reasonable ground to believe not only that the person has committed an offence but also that proceedings against the person by summons would not be effective.[154]

3.2.3 Use of Discretion. The South Australian Police Force recognizes that the wide powers of arrest given by s. 75 of the Police Offences Act, 1953-1973 should be used with discretion. General Order 512 says that where the offence is trifling or minor and the name of the offender can be obtained, the power of arrest should not ordinarily be exercised but the matter should be reported with a view to proceedings by summons. It lays down, as factors which may influence a member of the Force in deciding to arrest rather than to proceed by summons, the following:—

(*a*) The necessity to stop the continuation or recurrence of the offence,

(*b*) The desirability of gaining the offender's fingerprints or photograph,

(*c*) Where medical examination will afford evidence as to the commission of an offence,

[152] *Dunbell* v. *Roberts* [1944] 1 All E.R. 326, 332.
[153] Cf. *Hazell* v. *Parramatta C.C.* [1968] 1 N.S.W.R. 165, 175-6.
[154] Crimes Act, 1914-1973 (Aus.), s. 8A.

(*d*) Where a member, upon reasonable grounds, considers an offender could not be dealt with other than by arrest.

We shall speak later of the practice of fingerprinting and photographing suspects.[155] Section 81 (2) and (3) of the Police Offences Act, 1953-1973 regulates the examination of the person of anyone in lawful custody by a medical practitioner for the purpose of obtaining evidence of the commission of an offence. The criteria for arrest, as opposed to proceeding by summons, set out in the General Order appear to the committee to be reasonable, provided that such criteria relate to the offence for which the person has been arrested. It would be a matter for concern however if a person were to be arrested upon a charge such as that of walking along a carriageway of a road upon which there is a footpath,[156] merely because it was thought desirable that the fingerprints or the photograph of that person should be obtained. It seems to the committee that there should be some restraint upon the power to arrest for minor offences. At present a person who has committed an offence such as the one last mentioned would have no redress if he were arrested and brought before the court. If this were done the police might be subject to sharp criticism from the court, but this would not give the person arrested any cause of action. We believe that the power to arrest upon charges which may be disposed of summarily should be exercised only in special circumstances. In relation to such charges we favour a provision, such as that contained in section 8A of the Crimes Act, 1914-1973 (Aus.), limiting the power to arrest without warrant, but we think that the word "effective" in that section is not sufficiently explicit as to the conditions under which the power to arrest without warrant may be exercised. The committee recommends that the power to arrest for an offence which may be disposed of summarily should be limited to cases where the name or address of the person to be charged are unknown to the police officer, or he

[155] Chapter 9, para. 2.1.
[156] Road Traffic Act, 1961-1974 (S.A.), s. 88(1)(*a*).

has reasonable grounds to suspect that the person to be charged will continue or repeat the offence, or that he will not attend court in answer to a summons, or has reasonable grounds to believe that the arrest of the person may facilitate the obtaining of evidence relating to the charge.

3.3 Recommendations with respect to the Statutory Power to Arrest Without Warrant.

(*a*) *We make no recommendations concerning the powers of arrest contained in ss. 76 and 77 of the Police Offences Act,* 1953-1973 *or ss. 271 and 272 of the Criminal Law Consolidation Act,* 1935-1972.

(*b*) *We recommend that the power to arrest without warrant upon charges which may be heard and disposed of in a court of summary jurisdiction should be exercisable only if the person arresting believes on reasonable grounds that the offence is likely to be continued or repeated if an arrest is not made, or that the person arrested is not likely to attend at court in answer to a summons, or that the arrest may facilitate the obtaining of evidence to establish the guilt of the person in relation to the offence with which he is to be charged.*

4 Use of Force. Reasonable force may be used by any person lawfully arresting another. A constable who has a warrant to arrest a person may, if he is refused admission to premises after demanding to be admitted, break open doors for this purpose. A police constable may also break open doors, after entry has been refused to him, if it is necessary to keep the peace. The General Orders relating to the breaking into premises contain the warning that the breaking of outer doors is so dangerous that it should be resorted to only in extreme cases.

4.1 Handcuffs. Handcuffs are among the equipment to be issued according to the discretion of the Commissioner of Police.[157] The General Orders relating to the handcuffing of prisoners prescribe precautions to be exercised in deciding to use handcuffs

[157] Reg. 35 made under the Police Regulation Act, 1952-1973 (S.A.).

where other measures of security are inadequate. Members performing escort duty are required to endeavour to ascertain in advance the likelihood of the necessity for the use of this particular form of restraint.[158] There is a specific injunction against striking offenders with handcuffs.[159]

4.2 Batons. Members of the Police Force on duty and in uniform are required to carry batons except when orders to the contrary are given by the Divisional Officer. They are warned that the use of batons should be resorted to only in extreme cases, that no person is to be struck on the head with a baton, and that the use of the baton to strike any person must be reported to an officer on the first opportunity.[160]

4.3 Firearms. The South Australian Police appear to act with restraint in the use of firearms. The committee has had no complaint of the misuse of firearms. Nevertheless we have examined the General Orders and the practice within the South Australian Police Force in relation to firearms. The purposes for which firearms are issued to the police are said to be as follows:—

(*a*) The effectual protection of life and property, and the enforcement of law and order in certain circumstances;

(*b*) To place them on an equal footing with criminals who are likely to resort to the use of firearms; and,

(*c*) To prevent the escape of a felon who is fleeing from justice and who cannot be otherwise arrested.[161]

We shall discuss whether the use of firearms is justified in all the circumstances in which they may theoretically be used by the police in South Australia. In so far as their use is justified by the necessity to render harmless or to apprehend a person, it has been suggested to us that their use in the future may be limited by the technological development of non-lethal stopping devices such as tranquillizing darts, rubber bullets and paralysing gas. In so far as such devices may cause temporary and no permanent disablement

[158] General Order 846.
[159] General Order 641.
[160] General Order 641.
[161] General Order 645.

their value is apparent. In any event it is argued that they are not lethal and are to be preferred to the use of firearms which is likely to result in loss of life. The committee can make no recommendation concerning the use of such articles or experiments with them as it has insufficient information on the subject.

4.3.1 Police Directions. The use of firearms is justified under General Orders in three instances. The first is in defence of another against whose personal property serious felony is threatened or has taken place. The police are warned that this does not extend to felonies without force or to misdemeanours of any kind. The second is in self defence. To justify the use of a firearm in these circumstances the threatened danger must be real and impending and not doubtful or remote. The third is where a serious or atrocious crime amounting to felony has been committed, the felon is running away to avoid arrest, and there are no other means of preventing his escape.

4.3.2 Suggested Limitation Upon the Use of Firearms. The committee finds no basis upon which to support any argument denying the right to use firearms to protect a person's own life or the lives of others when they are in immediate danger. That right should extend to a situation where the person firing the shot has a reasonable apprehension that the person at whom he aims is likely, unless he is immobilized, to cause serious injury to some person. But to authorize the use of firearms to protect property or to effect the arrest of a felon is another matter. We believe that it should not be lawful for a householder to shoot an intruder who is posing no threat to the safety of a member of the household or anyone else. The right of a prison officer to fire upon an escaping prisoner should depend upon the danger which that prisoner, if at liberty, may constitute either to the community at large or to a particular person or persons. In the case of an escaping prisoner who has no record of violent acts either within or outside prison and who is not known to have made threats of violence towards anyone, it would not be reasonable to assume

that the protection of the community requires that he be prevented from escaping at all costs, even that of killing him. Where the escaping prisoner has made threats, while in prison, that he will kill a particular person if he is ever free to do so, or where he has been convicted of crimes involving violent behaviour which has caused serious injury, the prison officer may have a reasonable apprehension that, if that particular prisoner escapes, he is likely to kill or cause serious injury to some other person or persons; in that case the committee believes that shooting to prevent the escape should be justifiable. The mere fact that a prisoner, who is not reasonably regarded as dangerous, will escape unless fired upon should not make the shooting of him justifiable. Nor should a police officer be entitled to fire upon a felon who is running away to avoid arrest, unless the shot is fired in defence of a person or persons.

4.3.3 The Firing of a Warning Shot. General Order 645 requires a member of the Police Force to fire a warning shot whenever practicable before actually firing on a felon. It has been argued that this is a dangerous practice, that warning shots are likely to kill or injure innocent bystanders, and also likely to confuse and attract the fire of other police. The committee recommends that the Police Force gives consideration to rescinding this particular instruction and to requiring that firearms shall not be used at any time as a threat but only when the use is actually necessary. If our recommendation as to the circumstances in which firearms may properly be used is adopted, there will be few occasions in which a warning shot will be seen as having any usefulness.

4.3.4 The Issue of Firearms to Police Officers. In South Australia a detective is issued with his own firearm when he is admitted to the Criminal Investigation Branch. Firearms are issued to uniformed police only as they are needed for each period of duty; in practice we are informed that only night patrols and motor cycle police are issued with weapons. The uniformed policeman on duty in the daytime is usually unarmed and there is no public display of arms on the part of

the police. We commend this practice which is to be distinguished from that in some States where all police are issued with their own weapons. We are informed that firearms practice is arranged periodically for all serving policemen. We believe that the right to carry arms should be limited not only to those who show sufficient competence in the use of firearms but also to those whose health and vision are such as to render the use of firearms by them unlikely to be faulty. This is a matter of internal arrangement within the Police Force.

4.4 Recommendations with respect to the Use of Force.

(*a*) *We make no recommendations with regard to the use of handcuffs or batons.*

(*b*) *We recommend that the use of firearms be permitted only where it is reasonably necessary to protect life, or there is a reasonable apprehension of serious injury to a person.*

(*c*) *We recommend that consideration be given to the rescission of the instruction to police to fire a warning shot.*

5 Duty to Inform the Person Arrested of the Reason for the Arrest. A duty lies upon a police officer or a private citizen who arrests another to inform that other of the reason for his arrest. If the arrest is by warrant then the warrant itself must contain information concerning the nature of the charge.[162] If the arrest is without warrant then the person arrested should be informed of the true ground of the arrest. If, however, the circumstances are such that the person arrested must know the general nature of the alleged offence then that is sufficient. If a householder arrests an intruder whom he finds escaping through a window and carrying the householder's jewellery then it is idle to suggest that the person arrested need be informed of the reason for his arrest. The information need not be given in technical language; the precise charge to be laid may not be known at the time of the arrest. The person arrested cannot be heard to complain that he has not been informed of the reason for his arrest if he makes it impossible so to inform him either by attacking his arrestor or by running away.[163]

[162] Justices Act, 1921-1972 (S.A.), s. 22a.

[163] *Christie* v. *Leachinsky* [1947] A.C. 573; *Gelberg* v. *Miller* [1961] 1 All E.R. 291; *McLachlan* v. *Mesics* (1966) 40 A.L.J.R. 204.

6 Taking into Custody Persons Arrested. If a person is arrested upon warrant he must forthwith be taken into custody unless the justice issuing the warrant has ordered that he may be released upon bail. If that order has been made then he must be released upon bail being taken.[164] A private citizen exercising a power of arrest must, as soon as practicable, hand over the person arrested into the custody of a member of the Police Force.[165] Any person apprehended without a warrant must be delivered into the custody of the member of the Police Force who is in charge of the nearest police station.[166] The duty of the police officer into whose custody the person arrested is handed is outlined in General Order 954. If the Officer in Charge of the station is of the opinion that there is not sufficient evidence to make out a prima facie charge against the alleged offender he should not receive him into custody but should refer the facts to the Divisional Officer. We have no recommendations to make concerning the present method of receiving arrested persons into custody.

6.1 Search. At common law the right to search a person arrested was based upon the principle that an arrested person could be searched either for reasons of safety or so that evidence of crime might not be destroyed or lost.[167] Section 81 (1) of the Police Offences Act, 1953-1973 gives a power to any member of the Police Force to search the person of any one in lawful custody upon a charge of committing any offence, to take from him anything found upon his person, and to use such force as is reasonably necessary for those purposes. The committee has received complaints of the removal from the person arrested of articles of personal property which are not likely to be dangerous to the person arrested or any one else, and which are in no way connected with the offence for which he has been arrested. The committee believes that the police should have the power to search a person in lawful custody, and to remove from him anything which may be used to harm that person or any other person, and anything which is or may be material as evidence of the offence with which the accused person has been charged. There may also be good reason to remove

[164] Justices Act, 1921-1972 (S.A.), s. 21.

[165] Cf. Police Offences Act, 1953-1973 (S.A.), ss. 76, 77.

[166] Police Offences Act, 1953-1973 (S.A.), s. 78.

[167] Cf. *Clarke* v. *Bailey* (1933) 33 S.R. (N.S.W.) 303, 310.

money from a person taken into custody lest he be tempted to use the money to bribe another person in custody for some unlawful purpose. We can see no reason why any other object should be removed from the person charged without his consent. If he is carrying valuables on his person he should be asked whether he wishes these to be deposited for safe custody with the officer in charge of the Police Station. Otherwise they should be left in his possession.

6.2 Physical Health. It is the practice of the police to inquire from any person arrested upon a charge of driving under the influence of alcohol or driving with the prescribed concentration of alcohol in his blood whether that person is suffering from any physical complaint. The purpose of such inquiry is to ascertain whether any signs of insobriety may be accounted for as signs of illness. We have no doubt that if any person arrested appears to the officer in charge of the Police Station into whose custody he is given to be suffering from any condition requiring immediate treatment, steps are taken to have him examined by the police medical officer or by some other medical practitioner. This case is covered by regulation.[168] However there are some conditions which, if a person does not take regular medication, may lead to fatal or at least very serious consequences. We recommend that every person who is received into custody after arrest should be asked whether he is suffering from any medical condition for which he requires periodic treatment, a note of the question and answer should be recorded, and, if it is necessary, medical treatment should be obtained for that person.

6.3 Recommendations with respect to Persons Taken into Custody.

(*a*) *We make no recommendations concerning the present method of taking persons into custody.*

(*b*) *We recommend that the only objects which should be removed from a person taken into custody should be articles which may be used to harm that person or any other person, articles which may be material as evidence of the offence with which the accused person has been charged, and money.*

(*c*) *We recommend that a person taken into custody should be permitted, if he so desires, to have any articles in his possession deposited for safe custody with the Officer in Charge of the Police Station.*

(*d*) *We recommend that a person taken into custody be asked if he is suffering from an illness requiring medication; that if he claims to have such an illness he be either permitted to take such medication or a doctor be called to examine him and to prescribe medication if he thinks fit.*

7 Offences Committed Outside South Australia. Section 75 of the Police Offences Act, 1953-1973 does not apply and does not purport to apply to offences committed outside the State of South Australia.[169] If it is intended to arrest any person who is within the State of South Australia for a crime alleged to have been committed outside the State and in another State the arrest must be made under the Service and Execution of Process Act, 1901-1968 (Aus.). If the offence is alleged to have taken place in a country outside Australia the arrest must be made either under the Extradition (Commonwealth Countries) Act, 1962-1972 (Aus.) or Extradition (Foreign States) Act, 1966-1972 (Aus.). The committee has considered the Crimes (Powers of Arrest) Act, 1972 of the State of Victoria under which a member of the Police Force may, without warrant, apprehend any person who he believes on reasonable grounds has committed an offence outside the State of Victoria which, if committed in Victoria, would be an indictable offence against the law of Victoria.[170] This is a significant extension of the powers of arrest without warrant. The committee has received a submission that police officers in South Australia be empowered to arrest a person reasonably suspected of having committed an indictable offence in another State and to hold that person in custody for such reasonable time as may be necessary to ascertain whether extradition is sought. We believe that it would be reasonable to permit the arrest of a person reasonably suspected of having committed in another State or Territory

[168] Regs. 113, 114(1) made under the Police Regulation Act, 1952-1973 (S.A.).

[169] Cf. *Brown* v. *Lizars* (1905) 2 C.L.R. 837.

[170] Crimes (Powers of Arrest) Act, 1972 (Vic.), s. 459.

of Australia an offence which, if committed in South Australia, would be an indictable offence against the law of South Australia, but that such person should be brought before the court within the time limited by s. 78 of the Police Offences Act, 1953-1973. The court should be empowered to remand him either on bail or in custody for a sufficient time to enable extradition proceedings to be brought against him in relation to the alleged offence.

7.1 **Arrest Followed by Release Without Action.** We refer to s. 458 (3) of the Crimes (Powers of Arrest) Act, 1972 (Vic.) under which it is provided that a person found committing an offence may be apprehended where the person apprehending believes on reasonable grounds that such apprehension is necessary either to ensure the appearance of the offender before a court of competent jurisdiction or to preserve public order, or to prevent the continuation or repetition of the offence, or the commission of a further offence, or for the safety or welfare of members of the public or of the offender. The section provides further that the person apprehended without warrant is to be held only so long as any reason for his apprehension continues, and that where, before the person is charged with any offence, it appears to the person arresting that the reason no longer continues, the person so arrested shall be released from custody whether or not a summons has been issued against him with reference to the offence alleged. We have been informed that this provision enables the police to arrest any demonstrator or other person committing an offence, remove him from the scene of the offence and then later release him without taking any further action. We have been informed further that in the United States of America in a large percentage of cases a person arrested is released without being brought before the court, and is released either unconditionally or conditionally upon attending some other agency such as an Alcoholics Treatment Centre. While many persons arrested would doubtless prefer, even if they were innocent of any offence, to be released prior to the time when it was necessary to bring them before a court, we believe that there would be considerable danger in allowing to the police and even more danger in allowing to private citizens a choice, after detaining in custody a person who has been found committing an offence, of

deciding whether to release that person or to bring him before a court. We can see an advantage however in enabling the police to bring before a special magistrate a person who has been detained and taken into custody at any time after he has been taken into custody, and to seek the leave of the magistrate to discharge that person without preferring any formal charge against him. If the person so arrested and taken into custody consents, and the magistrate is willing to permit it, he should be discharged. If this were done then he should not be designated in any police records as a person charged with committing an offence.

7.2 Recommendations with respect to Offences Committed Outside South Australia.

(*a*) *We recommend that a police officer should be empowered to arrest without warrant any person reasonably suspected of having committed in another State or Territory of Australia an offence which, if committed in South Australia, would be an indictable offence against the law of South Australia.*

(*b*) *We recommend that such person should be brought before the court within the time limited by s.* 78 *of the Police Offences Act,* 1953-1973 *and that the court be empowered to remand him either on bail or in custody for sufficient time to enable extradition proceedings to be brought against him in relation to the alleged offence.*

(*c*) *We recommend that any person taken into custody may, with his consent, be taken before a special magistrate for the purpose of being discharged without the preferment of any formal charge.*

(*d*) *We recommend that if a person is so discharged he should not be designated in any police records relating to the matter as a person charged with committing an offence.*

CHAPTER 9

PHYSICAL EXAMINATION OF ACCUSED PERSONS, THE USE OF LISTENING DEVICES AND POLICE BAIL

1 Introduction. In this chapter we discuss the invasion of the privacy of an accused person by fingerprinting, photographing and otherwise identifying his physical characteristics, by an inspection of him so that he will be known to members of the Police Force seeking to detect crime, and the monitoring of his conversations by means of listening devices. The last mentioned invasion of his privacy may be undertaken before he is arrested as well as after his arrest, but it has seemed to us convenient to discuss the questions arising therefrom at this stage of our report. We discuss also police bail which is unlikely to be granted until after all police examinations of the accused have been completed.

2 Physical Examination of Accused Persons. In particular we are concerned with the examination of the person by way of fingerprinting and the recording of the features by photographing. We discuss also the inspection of the accused person by police officers before whom he is paraded.

2.1 Fingerprinting and Photographing. Unless a person has been arrested the police have no right to force him to have his fingerprints taken against his will. If the fingerprints have been taken by false representation, by trick or by threats, then they have been improperly obtained and questions arise as to their admissibility in evidence.[171] There has been considerable judicial disagreement as to whether the taking of fingerprints without the consent of the person fingerprinted is a reprehensible practice which should be strongly discouraged, or whether it is so slight a physical invasion that it should not be objected to by any reasonable citizen. It appears that some persons would regard the compulsory fingerprinting of all citizens as an unwarranted interference, while others have no objection to this being done. It would be useful to have the fingerprints of all citizens filed in a Central Bureau. In

[171] Cf. *Callis* v. *Gunn* [1964] 1 Q.B. 495; *Adair* v. *M'Garry* [1933] *Scottish Law Times* 482.

the case of sudden death or national disaster or the like such fingerprints would be invaluable in speedy identification of the victim or victims. However this would be a very large undertaking, and doubtless an expensive one. A large proportion of the population would object to having their fingerprints taken because they would regard it as an invasion of privacy and would suspect that the fingerprints once taken might be used for some ulterior purpose. If fingerprints are to be taken on a selective basis then it is necessary to establish the criteria by which they are to be taken and the uses to which they may lawfully be put. Fingerprints and photographs have two separate uses in police investigations. The first is where a particular crime is being investigated. In that case the police should be enabled to take the fingerprints and photographs of all persons who may possibly be connected with the matter under investigation. The second is as forming part of a record of persons whose previous conduct makes them likely suspects when a crime is being investigated. That record should not contain the fingerprints or photographs of persons who have been charged with, but not convicted of an offence. It may properly contain the fingerprints and photographs of all persons who have been convicted of offences.

2.1.1 Present Legislation. Section 81 (4) of the Police Offences Act, 1953-1973 enables any member of the Police Force in charge of a Police Station or of or above the rank of sergeant to take the photograph and fingerprints of a person in lawful custody upon a charge of committing any offence.

2.1.2 Statutory Provisions in Other Places. In New South Wales, Queensland and Tasmania there are statutory provisions for the taking of fingerprints of persons in lawful custody.[172] The New South Wales and Queensland provisions are similar to those in force in South Australia except that there is a specific power to take palm prints in addition to fingerprints. In Queensland, if the person fingerprinted or photographed is found not guilty or the charge against him is

[172] Crimes Act, 1900 (N.S.W.), s. 353a(3); Vagrants Gaming and Other Offences Act, 1931-1971 (Qld.), s. 43; Criminal Code Act, 1924 (Tas.), s. 33(3).

not proceeded with, any fingerprints or photographs taken must be destroyed in his presence. In Tasmania the power to take fingerprints appears to be limited to those cases in which there are reasonable grounds for believing that an examination of the person's body will afford evidence as to the commission of the crime. In England, unless the fingerprints are taken by consent, they can be taken only by an order made in a magistrate's court on the application of a police officer not below the rank of Inspector. It is provided that if the person whose fingerprints have been taken in pursuance of an order is acquitted or is not committed for trial or if the information against him is dismissed the fingerprints and records of them shall be destroyed.[173] The Court of Criminal Appeal in New South Wales concluded that fingerprint evidence was admissible at common law provided that the fingerprints were not oppressively obtained, and that section 353a of the Crimes Act, 1900 merely gave statutory recognition to the taking of fingerprints by force in certain circumstances.[174] The court appears to have proceeded upon the basis that consent to the taking of fingerprints should be assumed unless it was proved otherwise.[175]

2.1.3 The Present Practice. The practice in the past has been to fingerprint and, in the metropolitan area, to photograph any adult person who is arrested for a serious offence and who is not well known to the police. The person concerned is not given any real choice in the matter, although the committee believes that it is only in a rare case that physical compulsion is used. Sometimes the fingerprinting or photographing is done as a check on the identity of the arrested person, but whether there is any necessity to fingerprint or to photograph or not in order to identify him, the fingerprints or photographs or both are taken and go into permanent police records where they may be referred to on other occasions. This practice appears to be in part unlawful and has led to a

[173] Magistrates Court Act, 1952 (Eng.), s. 40.
[174] *R.* v. *Carr* [1972] 1 L.R. (N.S.W.) 608, 612.
[175] Cf. *Carr* v. *The Queen* (1973) 47 A.L.J.R. 562.

suggestion by the Solicitor-General that an amendment to s. 81 (4) of the Police Offences Act, 1953-1973 is necessary. Under the present section there is a limitation upon the type of police officer who can order the photographing or the fingerprinting of a person, and he can give such order only if he deems it necessary for the identification of that person. The Solicitor-General has suggested an amendment to s. 81 (4) of the Police Offences Act, 1953-1973 so that it will read as follows:—

> "When a person is in lawful custody upon a charge of committing any offence, any member of the Police Force may take or cause to be taken his photograph and fingerprints, and may also take all such particulars as he deems necessary for his identification, and to those ends may use or cause to be used such reasonable force as may be necessary."

We believe that the police should have the power to photograph and fingerprint any person in custody upon a charge of committing an offence. We would recommend that there should be a further amendment whereby the police may apply to a special magistrate for an order for leave to take the fingerprints or photograph of a person not in custody whether he has been charged with a crime or not, where the fingerprints or the photograph may assist in solving the crime. We have in mind that it may assist the police to obtain fingerprints or a photograph not only of a suspect detained for questioning but also of other persons who are known to have been or who may have been at the scene of a crime. While the police would be likely to receive co-operation from most of the latter type of person, they should not have to rely upon co-operation or upon a ruse in order to fingerprint or to photograph a person where one or other process may assist in their work of detection. The order should contain a provision as to the destruction of the fingerprints or photographs at an appropriate time after they have ceased to be of use in the police inquiries. If fingerprints are taken of an accused person and he is subsequently acquitted, or if the charge against him

is not proceeded with, then the fingerprints and photographic records should be destroyed. The compulsory fingerprinting for police records should either apply to all citizens, or only to those who have been convicted of an offence.

2.1.4 Recommendations with respect to Fingerprinting and Photographing.

(*a*) *We recommend that s.* 81 (4) *of the Police Offences Act,* 1953-1973 *be amended to enable the police to fingerprint and photograph any person in lawful custody upon a charge of committing any offence.*

(*b*) *We recommend that if the accused is subsequently acquitted of an offence, or the charge is not proceeded with then his fingerprints and photographic records be destroyed.*

(*c*) *We recommend that a special magistrate be authorized upon application to permit the police to take the fingerprints or photograph or both of a person charged with a crime who is not in custody and of a person not charged with a crime where the fingerprints or the photograph may assist in solving the crime.*

(*d*) *We recommend that any order made under* (*c*) *shall contain provision for the destruction of the fingerprints or photographs at such time as they have ceased to be of use in the police inquiries.*

2.2 Parades of Accused Persons to Aid Identification by Police Officers. We have already discussed the identification parade the purpose of which is to allow a witness to attempt to identify the alleged perpetrator of the crime.[176] We now discuss an identification parade with a different purpose. The identification parade is also sometimes known as a line-up, and is a procedure which has been practised by the police in this State for many years and is a common practice in many Police Forces throughout the world. A room at police headquarters which is situate within the city

[176] Chapter 6, para. 3.2.

watchhouse has a small raised platform and space for a number of police officers in the body of the room. The accused person is taken into that room prior to his attendance in court upon the morning on which he is to appear on a charge. The police officers who are to view the accused person are already seated in the room. Bright lights are focused on the accused who is required to stand on the platform, and to whom some questions are directed probably for the purpose of voice identification. It is not the practice to inform an accused person that he need not take part in such a parade. The police regard the identification parade as an important adjunct to crime detection in that it provides members of the Criminal Investigation Branch with the opportunity of becoming familiar with the appearance and voice of a person charged with a serious crime. This is one of the situations under which the rights of persons not convicted of crime are to be balanced against the right and duty of the Police Force to be fully equipped to combat crime. In this particular matter the committee believes that the rights of the individual should be preferred. We can understand that many persons do regard the procedure as an indignity and a humiliation which plays no part in their conviction or acquittal upon the charge. While it may be easier to commit to memory the cast of feature and other physical attributes of a person when that person is viewed under bright lights in an otherwise darkened room, and while it may be convenient to get together at the one stated time a number of detectives who can, in fairly quick succession, view a number of suspected persons, we believe that this convenience should be sacrificed to the right of the individual to be treated as innocent of any crime until proved guilty. If the identification parade is not held the accused person will probably, from time to time during committal proceedings or trial, be subjected to the scrutiny of detectives who will come into court for the purpose of committing to memory the appearance and the voice of the accused. But we can see nothing in this which could give rise to any valid complaint on the part of the accused person. It is to the advantage of accused persons that proceedings against them shall be taken in open court. One consequence of this is that persons who wish

to view the accused may there do so. These persons can properly include detectives who come into court in order to become familiar with the appearance of the accused person. We therefore recommend the discontinuance of the identification parade for police officers.

2.2.1 Recommendation with respect to Parades of Accused Persons to Aid Identification by Police Officers.
We recommend that the practice of holding identification parades to assist in recognition of accused persons by members of the Police Force be discontinued.

3 The Use of Listening Devices. The use of a listening device within South Australia to overhear a private conversation, without the consent of the parties to that conversation, became an offence pursuant to s. 4 of the Listening Devices Act, 1972 which came into operation on the 2nd April, 1973. The interception of a telephone conversation is, of course, a matter for the Australian Parliament and such interception was made unlawful by the Telephonic Communications (Interception) Act, 1960-1966 (Aus.). Under that Act interception of telephone conversations is lawful only if authorized by warrant of the Attorney-General, upon a request from the Director-General of Security, and upon the Attorney-General being satisfied that the telephone service is being or is likely to be used by a person engaged in, or reasonably suspected by the Director-General of Security of being engaged in, or being likely to engage in activities prejudicial to the security of Australia, or for purposes prejudicial to the security of the country, and that the interception of communications may assist in the obtaining of intelligence relevant to the security of Australia.[177] Section 4 of the Listening Devices Act, 1972 prohibits the intentional use of any listening devices for the purpose of hearing any private conversation without the consent of the parties to that conversation. A member of the Police Force acting in the performance of his duty is excluded from the prohibition.[178] There is a prohibition against the publication by a police officer, otherwise than in the course of his duty, of any information gained as the result of a listening device, and a similar prohibition

[177] Telephonic Communications (Interception) Act, 1960-1966 (Aus.), s. 6.
[178] Listening Devices Act, 1972 (S.A.), s. 6(1).

imposed upon a person who uses a listening device at the direction of a member of the Police Force. The Commissioner of Police is required to furnish to the Minister administering the Act a report containing such particulars as the Minister from time to time requires of each use of any listening device by a member of the Police Force during the period to which the report relates, and there is provision for an Annual Report to Parliament by the Minister. Not only are the police given a blanket exclusion from the sanctions imposed by the Act, but the Act also excludes from its operations the use of a listening device in relation to any private conversation to which any person is a party, in the course of the duty of that person, in the public interest or for the protection of his lawful interests.[179]

3.1 Comparison with New South Wales Legislation. In some other places where there has been prohibition against the use of listening devices the powers of the police have been more circumscribed. We refer, as an illustration, to the Listening Devices Act, 1969 (N.S.W.). Under that Statute a conversation may be lawfully overheard by a member of the Police Force by means of a listening device only where the use of the listening device has been authorized by the Commissioner of Police or an Assistant Commissioner of Police or, in cases of urgency, by a police officer of the rank of Superintendent. The use of such device may not be authorized for a period exceeding 21 days. The police officer authorizing the use of a listening device must prepare and sign a certificate as to the authorization, which certificate shall contain particulars of the offence that has been committed or that he is satisfied is reasonably likely to be committed, the name of the member of the Police Force who has requested the authorization, the period for which the authorization is to operate, the names, if known, of the persons in respect of whose private conversations the use of the listening device has been authorized, and the name of the member of the Police Force, who must be of or above the rank of Sergeant, who is to have the general supervision of the use to which the listening device may be put.[180] It is further provided that as soon as practicable the Commissioner of Police shall cause

[179] Listening Devices Act, 1972 (S.A.), s. 7.
[180] Listening Devices Act, 1969 (N.S.W.), s. 8.

to be destroyed so much of any record of any information obtained by the use of the listening device under authorization as does not relate directly or indirectly to the commission of an offence.[181]

3.2 Recommended Legislation. The committee shares the view held by many in the community that the monitoring of private conversations by means of listening devices is a practice greatly to be deprecated, and that it should be available to the police only in circumstances in which there is reason to believe that it will enable the prevention of the commission of a serious crime or the detection of a serious crime already committed. We believe that the discretion to permit the use of a listening device should lie with the courts, and that, this being a grave intrusion into individual rights, the order should be made either by a Judge of the Supreme Court or by a Judge of the Local and District Criminal Court. The order should be made *ex parte* and in closed Chambers upon an application supported by evidence either oral or on affidavit, and the order should specify the names of the persons whose conversations are to be overheard, monitored or recorded if those names are known, the means by which they are to be overheard, monitored or recorded and the period for which this may be done. There should be power to order that the application, evidence and order be sealed up to prohibit inspection by any person, either for a specified time or until further order.

3.3 Recommendations with respect to the Use of Listening Devices.

(*a*) *We recommend that the Police be at liberty to use a listening device within the meaning of the Listening Devices Act,* 1972 *and for the purposes described in that Act only upon an order of a Judge of the Supreme Court or the Local and District Criminal Court.*

(*b*) *We recommend that the application for such an order be made in closed Chambers* ex parte *either on oral evidence or by affidavit.*

[181] Listening Devices Act, 1969 (N.S.W.), s. 11.

(*c*) *We recommend that the order specify the names of the persons whose conversations are to be overheard, monitored or recorded, if such names are known, the means by which the conversations are to be overheard, monitored or recorded and the period for which this may be done.*

(*d*) *We recommend that the order may contain a direction that the application, evidence and order be sealed up either for a stated time or until further order.*

4 Police Bail. We have seen that a justice who issues a warrant for the arrest of a person may include in that warrant a provision that he is to be admitted to bail after arrest.[182] The member of the Police Force who is in charge of a police station to which a person arrested without warrant is brought, may grant bail for the appearance of the accused in court at 10.00 a.m. the following day or, if the following day is Sunday or a Public Holiday, 10.00 a.m. on the next succeeding day. The directions as to police bail include the suggestion that persons charged with minor offences who need to be admitted to hospital may receive bail, that persons charged with drunkenness should be retained in custody until they regain control of their mental and physical faculties, but that persons charged with driving while under the influence of liquor or with having the prescribed concentration of alcohol in the blood may be bailed if the sergeant is satisfied that such persons will not drive motor vehicles upon being admitted to bail.[183]

4.1 The 1972 Amendment. In the report on the September Moratorium Demonstration the Royal Commissioner said:—

> "The present procedure relating to police bail is unsatisfactory. Most arrested demonstrators will get bail, and if a decision is made that they are not to get it as soon as the arrest procedures have been completed, they ought to be told so forthwith, allowed to send for their legal advisers, and acquainted with their right to be brought before a Justice."[184]

[182] Chapter 8, para. 6.
[183] General Orders 848, 898.
[184] Chapter 10, p. 82.

Subsequently s. 80 of the Police Offences Act, 1953-1967 was amended and now reads:—

> "(1) Where a person arrested without a warrant is delivered into the custody of a member of the police force at a police station who does not, on application, admit the arrested person to bail, the member of the police force—
>
> (*a*) shall inform the arrested person that he is entitled to make an application for bail to a justice; and
>
> (*b*) shall, if so requested by the arrested person, bring him as soon as practicable before a justice in order that an application for bail may be made to, and dealt with by, that justice.
>
> (2) Subsection (1) of this section does not apply where the person in custody was arrested upon suspicion of being a person in respect of whom a warrant of commitment has been issued."[185]

The amended section may meet the needs of demonstrators, if demonstrations are held, because such persons are usually well aware of their legal rights and active to promote them. The committee believes however that it does not assist the ignorant, ill-educated person who has no knowledge of his right to apply for bail. For such a person s. 80 is otiose in that it does not come into operation until there has been an application for police bail which has been refused. The committee recommends therefore that a person arrested without warrant should be immediately informed that he may apply for bail, and then, if he is not granted bail, he should be informed that he is entitled to make application for bail to a justice.

4.2 Application to a Justice. If the person arrested requires it he is to be brought before a justice "as soon as practicable". The previous requirement was that he should be brought forthwith before a justice, if there was one present. The amendment may have been intended to import the notion that a justice should be procured to hear applications for bail at any time, but if so it

[185] Cf. Police Offences Act Amendment Act, 1972 (S.A.), s. 7.

appears to the committee inept for this purpose. We have said previously in this report that it may be necessary to have a duty magistrate at other than ordinary court hours at least in the City of Adelaide. We believe that arrangements should be made to enable a person to make an application for bail if he wishes at any hour of the day or night.

4.3 Conditions upon which Police Bail may be Granted. The condition of the recognizance authorized under s. 78 (2) of the Police Offences Act, 1953-1973 is simply to attend at court at the hour of 10 o'clock in the morning. There may be occasions when the police would be willing to give an accused person bail overnight if satisfied that he would stay in a particular place or with a particular person. The committee believes that the police should be empowered to grant bail subject to conditions relating to overnight residence and, if it is thought advisable, subject to the condition that the accused person will not communicate with a named person, if that person is a witness or if the communication may impede the prosecution of the offence with which the accused has been charged.

4.4 Assistance in Obtaining Police Bail. The officer in charge of a police station is obliged to render to an accused person all possible assistance to communicate with friends in his endeavour to gain bail.[186] It is essential that the accused be permitted to communicate with his friends to seek sureties and that he be permitted to use a telephone for this purpose. If there is any doubt as to the purpose for which the accused intends to use the telephone, the accused should be required to conduct the conversation in the presence of a police officer.

4.5 Recommendations with respect to Police Bail.

(*a*) *We recommend that s.* 80 *of the Police Offences Act,* 1953-1973 *be amended to require a member of the Police Force, who takes into custody a person arrested without warrant, immediately to inform that person that he may*

[186] Reg. 114 made under the Police Regulation Act, 1952-1973 (S.A.).

apply for bail, and then, if he is not granted bail, to inform him that he is entitled to make application for bail to a justice.

(*b*) *We recommend that a justice of the peace should be made available at all times to hear an application for bail.*

(*c*) *We recommend that the police should be entitled to grant bail conditionally upon the compliance with terms relating to overnight residence and to the refraining from communication with named persons.*

(*d*) *We recommend that accused persons be at liberty to communicate by telephone with other persons to assist them in obtaining bail but that a member of the Police Force may, if he deems it necessary to prevent communication for ulterior purposes, be present while the accused makes telephone calls.*

CHAPTER 10

FORENSIC SCIENCE SERVICES

1 **History in South Australia.** In or about 1953 Dr. J. A. Bonnin, the present Director of the Institute of Medical and Veterinary Science, who had studied grouping of blood stains, scientific identification of hairs and other branches of forensic science in England, and who had observed the work which was being done at Scotland Yard, began a course of lectures for police officers. Under him they were trained in some of the work of laboratory technicians. The South Australian Police Forensic Science Laboratory did not come into existence until after the Royal Commission of Inquiry into the Stuart case, during which it had become apparent that a police officer in charge of investigating any crime was left to his own resources in collecting and evaluating scientific evidence, with some assistance from the Institute of Medical and Veterinary Science, the Mines Department and the Department of Chemistry. After the completion of the Stuart Commission suggestions were made that there should be established a new Government Department of Chemistry which would include a forensic science laboratory. That suggestion was not approved, but grants were made to the Police Force to enable it to obtain the services of government and semi-government laboratories for the purposes of forensic scientific inquiry. At the same time the South Australian Police Force established its own forensic science laboratory in which the personnel have been given a course of training lasting over five years, part of it being in-service training in subjects and procedures relating to ballistics, comparison of handwriting and typewriting, comparison of tool marks, comparison of footprints and tyre tracks, and physical matching of separated components. Some police officers from the laboratory undertake a three year certificate course at the South Australian Institute of Technology covering the following matters—

Year of course	*Subject*	*Scope*
1st Year	Forensic Science I	Crime scene investigation
	Photography I	Basic photography

Year of Course	*Subject*	*Scope*
2nd Year	Chemistry I	
	Photography II	Advanced photography
3rd Year	Biology I	
	Forensic Science II	Laboratory investigations

Some members of the laboratory have undertaken diploma courses at the Institute of Technology. There is no member of the laboratory who has a science degree from any university. The police officers who are trained as field and laboratory technicians are expected, at the end of their training, to be competent photographers and microscopists. They act as scene of crime officers, and are also considered sufficiently expert to give opinions on comparison of fibres and the like.

1.1 Use of Government and Semi-Government Departments by the Police Force. The Police Force frequently refers material to be used in evidence to various experts outside the Force. The Director of Forensic Pathology, who is employed by the Institute of Medical and Veterinary Science, is a forensic pathologist whose services are frequently called upon by the police. Blood, hair, semen and tissue may be examined at the Institute of Medical and Veterinary Science at the request of the police. The South Australian Department of Chemistry has a toxicology section in which chemical analyses and blood alcohol examinations are undertaken for the Police Force. The staff from this department assist in training police personnel in the use of the breathalyser and prepare the control samples for breath analysis. The Australian Mineral Development Laboratory, constituted under the Australian Mineral Development Laboratories Act, 1959-1963, undertakes analyses on paint, glass, ceramics, oil and metal, and the committee has been informed that information obtained as a result of the analysis of paints is now placed in the computer at Amdel, by which name we shall refer to this laboratory, with a view to obtaining a statistical determination of the probability of two identical paint samples being encountered at random. The committee was informed that the cost of investigations undertaken for the Police Force by Amdel was

substantial, and that for that reason some caution is used by the Police Force in obtaining the services of Amdel. From time to time assistance in plant identification, including plant fragments and seeds, has been obtained from employees at the Botanical Gardens and the State Herbarium; assistance in scientific questions relating to wood, timber and sawdust is sought from the Woods and Forests Department, and in questions relating to cereal crops and insects from the Department of Agriculture. Blood grouping is undertaken by the Director of Serology at the Australian Red Cross Society, and some assistance on odontology is given by the staff of the Adelaide Dental Hospital. Although, in theory, the services of the semi-governmental institutions are available to accused persons as well as to the police, the police necessarily are first in the field and are likely to have the pick of such services.

2 Overseas and Inter-State Services. There appears to be wide disparity in the organization of forensic scientific work in different places. The committee has been given information concerning some different types of forensic science establishments. For the most part these are set up primarily to assist police investigation and prosecution of offences, and, generally speaking, the services which may be obtained by an accused person from such establishments are very limited, so that the advisers to an accused have to seek evidence on forensic science matters from experts independently employed, for example at universities. In this regard the position in South Australia seems to be little different from that existing elsewhere.

2.1 England and Wales. With the exception of the London Metropolitan Police Forensic Science Laboratory, all the Forensic Science Laboratories are established by and under the control of the Home Office. The Metropolitan Police Laboratory has a staff of 150 and is part of and financed with the Police Force. The Home Office Laboratories are financed partly through central funds and partly through the Common Police Service Fund. The police do not pay for any services undertaken on their behalf by the Forensic Science Laboratories. Each laboratory has three sections, a biology section in which examinations are made of fibres, semen, and blood, a chemistry section which undertakes

chemical tests relating to such substances as paint, glass and liquids, and a toxicology section where poisons are identified and organs are analysed. The laboratory does not employ a pathologist but consults with pathologists occupying hospital positions or in private practice as and when it is necessary. The coroner engages a pathologist to undertake a post-mortem, but the laboratory may be called upon to give a scientific opinion as to the state of the organs or as to the foreign material found in the body. The laboratory at Nottingham specializes in ballistics and most of the ballistic work from throughout the country is sent to that laboratory. The comparison of handwriting has been a speciality of the laboratory at Cardiff. At Aldermaston there is a laboratory which is specialising in research into forensic science and which has a large library and a computer in which is stored reference to the major literature upon forensic science. This information is available to forensic scientists both within and outside the United Kingdom. In the Cardiff laboratory which services an area containing about two million people there is a staff of between 45 to 50, of whom the greater number are university graduates. In the case of investigation into crime the police have first call upon the services of the laboratory. Work for the defence may be undertaken only with the permission of the Home Office and for a fee. If the solicitor for an accused person wishes any examination to be made on his behalf then the Home Office requires that the object to be examined shall be submitted to the police, and the report to the defence will be made through the police. In these circumstances it appears to us that the forensic science laboratories of England and Wales are not, from a practical point of view, available to the defence. The comparatively large size of those laboratories is to be accounted for partly by the facts that English legislation requires blood testing for certain offences relating to driving under the influence of liquor, and that there is also a considerable amount of testing for drug offences. One advantage to police investigation is that, with the exception of pathology and ballistics, all the scientific testing is done within the one laboratory, whereby consultation between experts is facilitated. Although the police act as scene of crime investigators, they frequently consult the director of the laboratory

or one of his senior officers as to the material which should be collected and submitted for examination. Where it is deemed necessary an officer of the laboratory goes to the scene of the crime to direct the collection of materials. The scientists employed at forensic science laboratories are part of the Scientific Civil Service of the United Kingdom. The committee has been informed that it is rare for evidence concerning any matter of forensic science which does not consist merely of evidence of the collection of material to be given in the courts of England and Wales by any person who does not hold a science degree.

2.2 Other Overseas Laboratories. The committee has perused reports concerning laboratories in the United States of America and Canada, some being attached to police forces and some being government or semi-government institutions. One private laboratory which undertakes consultant work seems to be financed partly by fees for urine tests of drug addicts.

2.3 The Norman McCallum Police Forensic Science Laboratory in Victoria. This laboratory has a staff consisting of members of the Public Service and police officers. The Director and Deputy-Director are both members of the Public Service and the Assistant Director, whose status equals that of the Deputy-Director, is a member of the Police Force. The information supplied to the committee showed that the following staff was either actual or promised at February, 1972—

Field investigation	4 police; 1 public servant
Serology—biology	3 biochemists, 1 laboratory assistant; all public servants
Training methods	1 training officer, 1 librarian; both public servants
Firearms	3 police, 1 chemist

Breathalyser squad (in respect of which the director is responsible for scientific supervision only)	16 police
Chemistry	4 chemists, 1 laboratory assistant; all public servants
Photography	9 police, 7 dark room assistants—public servants
Documents	3 police, 1 chemist—public servant
Breathalyser maintenance . .	2 police, 2 chemists—both public servants

Of the staff, including the Director, four have higher university degrees, six others have ordinary degrees and five have diplomas.

The committee believes that the combination within the one department of members of the Public Service and the Police Force may lead to some difficulties. On the other hand the Victorian system has resulted in the employment of persons with university degrees, and more persons with diplomas than would otherwise have been available in the forensic science activities of the Police Force.

2.4 Proposal for a Forensic Division in the State Health Laboratories in Western Australia. The committee has been given an opportunity to peruse a proposal made by a forensic pathologist employed by the Public Health Department of Western Australia. He suggests that under the Director of State Health Laboratories there will be a forensic section containing divisions of biology, serology, toxicology and histology. Attached to the forensic section will be a clinical division, the mortuary, a research division and a teaching division.

3 Recommended Scheme for South Australia. The Parliamentary Standing Committee on Public Works has recommended the erection of a new building in Divett Place, Adelaide to cater for the needs of the Department of Chemistry, the Coroner's Department and the

Forensic Pathology Section of the Institute of Medical and Veterinary Science. It is intended that space and equipment be provided for all forensic pathology procedures with the exception of biochemical analysis of blood, fluid and stains, toxicological analysis of organs or tissues and bacterialogical examination of body tissue or fluids, all of which will for the most part be carried out in the Institute of Medical and Veterinary Science or by the Government Analyst. At present the staff of the Police Forensic Laboratory at Police Headquarters undertake the following procedures in connection with homicide and other criminal investigations namely the microscopic examination of clothing, hairs, tissues and organs and the examination of trace materials. It is claimed that the police staff is necessarily and essentially involved in this work because it is concerned wtih initial collection of scientific evidence at the scene of crime, searching of the clothing, vehicles and homes of possible suspects for trace evidence, subsequent sorting and separation of this material in the laboratory, and follow-up microscopic matching of possible trace evidence. It has been suggested that facilities and equipment be provided in the new building for use by a police forensic science laboratory team, and that where appropriate the police forensic laboratory personnel should work in the new building. It has been suggested further that consideration should be given to including in the new building a spectograph and an electron scanning microscope with probe analysis attachment. At present tests with this type of equipment are undertaken by the Institute of Medical and Veterinary Science. The committee had the opportunity of seeing the plans for the proposed building and discussing them with Mr. K. Hocking a senior architect in the Public Buildings Department. There is provision for some space for a police laboratory but it would be difficult, if not impossible, to provide an expanded police laboratory. However it is possible that other land in the vicinity might be made or become available if it were decided to implement any plan for an increased police forensic science laboratory.

4 Criticisms of the Present System. The committee believes that members of the Police Forensic Science Laboratory are dedicated men who have willingly undertaken additional studies, both within the service and at the Institute of Technology, to fit themselves for their important role in the investigation of crime. Unfortunately none has had university training, nor have they had direction from trained scientists, except

on the basis of an ad hoc consultation or where lectures have been given by scientists as part of the in-service training. Such police officers have regularly given evidence in the courts and it appears to the committee that some of them may have been too readily accepted by the courts as experts on matters in respect of which their expertise was not sufficiently great to qualify them. The danger is that the lack of expert knowledge may not be uncovered in cross-examination by a counsel who is not himself an expert in the field, and where the evidence is being given to a court lacking in expert knowledge in the subject. While it is and must remain the province of the trial judge to decide whether a witness has sufficient knowledge of a particular subject to enable his expert evidence on that subject to be received, it is desirable that the police should not be in the position of tendering as expert witnesses on scientific subjects persons who have not had scientific training at a university level. A further consequence of the failure to employ trained scientists within the Police Force is that the decision as to what tests are to be made and by whom is necessarily taken by a police officer who is not himself a trained scientist. Thus the police in South Australia are at a disadvantage in comparison with the police in Victoria or in England or Wales where the decision as to the scientific tests to be undertaken is made by a person with a degree in science. We now turn briefly to particular fields in which the work in forensic science in South Australia is not entirely satisfactory.

4.1 Pathology. Dr. C. H. Manock, the Director of Forensic Pathology at the Institute of Medical and Veterinary Science in Adelaide, is usually called to the scene of a crime when the police regard this as advisable, and subsequently undertakes post-mortem examinations. For example in the case of *The Queen* v. *Van Beelen*[187] he attended at the beach upon which the body of a deceased girl had been found, viewed the body and gave advice as to the manner in which the body should be handled. In the case of *The Queen* v. *Humphrey*[188] in which the prisoner was convicted of murdering his wife by the administration of cyanide, Dr. Manock gave evidence that he had been called from his home late at night after the police had inspected the body of the

[187] [1972] 4 S.A.S.R. 353.
[188] Unreported, 15 May 1973, Supreme Court of South Australia.

deceased, that he had seen the body *in situ*, had inspected various household utensils and given directions for some to be removed for further examination, had directed that certain photographs should be taken, and had then accompanied the body to the city mortuary where he undertook the post-mortem examination. But in the case of *The Queen* v. *Hissey*[189] where it would have been material, in a charge of murder, to establish the time of death, Dr. Manock was unable to give any estimate of the time of death because the police officer investigating the case had sent for an ambulance which took the body straight to the mortuary where it was refrigerated before any pathologist was called to make an examination. It appears therefore that proper liaison does not always occur between the police and the Director of Forensic Pathology.

4.1.1 The Post-Mortem Examination. The power to order a post-mortem examination appears to be limited to the Coroner.[190] The Coroner may direct any medical practitioner to make a post-mortem examination of the body of a deceased person in order to assist him in deciding whether or not an inquest ought to be held, or at any time before the termination of an inquest, and for that purpose he may issue a warrant to a member of the Police Force authorizing him to enter premises and take and remove the body for the purpose of the post-mortem examination.[191] We are informed that it is now customary to direct that a post-mortem examination be made by a pathologist.

4.2 Serology. All blood testing for identification purposes for the police is undertaken by Dr. Judith Hay, the Director of Serology with the Australian Red Cross Society in South Australia, who is also honorary serologist at the Queen Elizabeth Hospital, or by her assistant at the Australian Red Cross Society. Dr. Hay has a degree in medicine, but serology can as well be undertaken by a biochemist. At present the only tests which are done in South Australia in relation to blood grouping for forensic

[189] Unreported, 28 September 1973, Supreme Court of South Australia.
[190] Cf. Coroner's Act, 1935-1969 (S.A.), s. 25.
[191] Coroner's Act, 1935-1969 (S.A.), s. 25a.

purposes are first, the anti human globulin test and secondly the A B O blood grouping of stains. The former test demonstrates whether the blood is or is not of human origin. The latter is a simple blood grouping which shows whether a particular person's blood is in one of four groups, namely A, B, AB or O. Statistics show that the relevant percentage of Australians of European descent in the four blood groups are group A 40%, group B 8%, group AB 4%, group O 48%. It is not possible by any known method to establish that a particular blood stain comes from a particular person. However all methods of testing will eliminate certain persons from suspicion. There are two other methods of identifying blood stains. One is through MN grouping. The frequencies of these groups in the Australian population of European descent are approximately M 30%, MN 50%, N 20%. The third blood grouping is the Rh. If this system were used most of the population would fit into one of six groups containing the following respective proportions of the population—32%, 16%, 15%, 11%, 11% and 2%. It is apparent that, if all three methods of identification were used, a far larger percentage of persons than at present could be eliminated from suspicion of having produced a particular blood stain, and detection based upon this factor would be greatly assisted. The use of all three methods is favoured by Dr. Hay who reported, after a visit in 1973 to the Metropolitan Police Laboratories in London, upon methods of testing and identification of blood. If the more sophisticated forms of blood grouping are undertaken expensive equipment will be required, and it may be impossible or inconvenient to have the Director of Serology of the Australian Red Cross Society continue to be responsible for undertaking all serology tests.

4.3 Forensic Odontology. By forensic odontology we refer to the identification of teeth both natural and artificial as part of criminal investigation. This includes the reconstruction of the state of the mouth of a deceased person at the time of death or at the time of the last recorded dental examination, and may involve taking impressions and making cast and bite records, the collection and evaluation of pre-existing dental records and certain photographic work. It may include examination of the teeth of living persons and the comparison of bite marks with those teeth

or with the teeth of a deceased person. The committee has been informed that considerable research has been carried out in Great Britain, Scandinavia, Yugoslavia, Japan and South America into various aspects of forensic odontology. In South Australia records of teeth of persons who receive dental treatment are kept solely at the discretion of the dentist. In matters relating to odontology the Police Force relies upon voluntary assistance particularly from members of the dental school in the University of Adelaide.

4.4 Testing for Blood Alcohol Content. The Road Traffic Act Amendment Act, 1967 was proclaimed to come into operation on the 23rd November, 1967. Since that Act has been in force it has been an offence to drive a motor vehicle, or attempt to put a motor vehicle in motion, while there is present in the blood a concentration of ·08 grams of alcohol in 100 millilitres of blood, which is described in the Act as "the prescribed concentration of alcohol".[192] Under section 47e of the Act the police can require a person to submit to an analysis of his breath by a breathalysing instrument where a member of the Police Force believes on reasonable grounds that a driver or person who has attempted to drive a motor vehicle has behaved in a manner which indicates that his ability to drive the motor vehicle is impaired, or he has been involved in an accident. They have no power to make random breath tests of persons driving motor vehicles, or to require a motorist to submit to a breath test even where the police officer knows that that person has consumed a considerable quantity of liquor, except under the conditions prescribed in that section. A person properly required to submit to an analysis of his breath, who fails to do so, commits an offence.[193] The breath analysing instrument must be one approved by the Governor by notice published in the Gazette.[194] The Commissioner of Police is empowered to authorize persons to operate the breath analysing instrument, and the person whose breath has been analysed is to receive a statement in writing containing particulars of the day and time of day at which the analysis was made and the concentration of alcohol indicated as having been present in his

[192] Road Traffic Act, 1961-1974 (S.A.), ss. 47a, 47b.
[193] Road Traffic Act, 1961-1974 (S.A.), s. 47e(3).
[194] Road Traffic Act, 1961-1974 (S.A.), s. 47h.

blood. Provided that there has been due compliance with these requirements of the Act, it is to be presumed, in the absence of proof to the contrary, in any proceedings for an offence against the Act, that the concentration of blood proved in evidence to have been shown on the breath analysis was as so shown then and throughout the period of two hours immediately preceding the analysis.[195]

4.4.1 The Alcotest. This test was introduced by the Road Traffic Act Amendment Act (No. 2), 1972 which came into operation on the 9th August, 1973. The apparatus for the alcotest must be approved by the Governor. It indicates the presence of alcohol in the blood of a person by the discolouration of a reagent contained in the apparatus upon contact with the breath exhaled by that person.[196] A member of the Police Force may require a person to submit to an alcotest in the same circumstances in which he may require him to submit to a breath analysis, and may require him to submit to an alcotest and to a breath analysis. Failure to submit to an alcotest constitutes a similar offence to failure to submit to a breath analysis.[197] An alcotest requires only a simple apparatus and provides a check which may exclude the presence of alcohol. If the presence of alcohol is not excluded then the alcotest must be followed by a breathalyser test to determine the concentration of alcohol in the blood.

4.4.2 Right to Demand Blood Tests. Compulsory blood tests under the Road Traffic Act may be taken only where injury has been suffered by any person apparently of or above the age of 14 years who, after an accident in which a motor vehicle is involved, attends at or is admitted into a hospital for the purpose of receiving treatment for the injury.[198] The results of such blood tests are admissible in evidence. The police are not entitled to require a person suspected of driving under the influence of alcohol or of being drunk to submit to a blood test; but the person who is required to submit to an

[195] Road Traffic Act, 1961-1974 (S.A.), s. 47g(1).
[196] Road Traffic Act, 1961-1974 (S.A.), s. 47a.
[197] Road Traffic Act, 1961-1974 (S.A.), s. 47e.
[198] Road Traffic Act, 1961-1974 (S.A.), s. 47i.

alcotest or a breath analysis is entitled to have a sample of his blood taken from him, at his expense, by a medical practitioner nominated by him.[199]

4.4.3 Training of Operators for Breath Analysing. We have been informed that the first police officer trained in the use of the breath analysis instrument was instructed at a course of three weeks' duration at Police Headquarters in Victoria. Since then courses for South Australian officers have been designed by him and, as we have said, in the year 1971-1972 eight officers attended a three weeks' course in which lectures were given not only by members of the Police Force but also by a member of the Crown Law Department, a pathologist and a member of the Chemistry Department.[200]

4.4.4 Criticism of the Use of Breath Analysis. As we have pointed out, the Home Office Laboratories in England and Wales undertake blood testing for the police.[201] This blood testing is usually for the purpose of determining the concentration of alcohol in the blood. In the United Kingdom the alcotest is used, but the breath analysis has not been introduced as a method of detecting the degree of alcohol present in the blood. A similar position exists in other countries. The Full Court of Tasmania pointed to some difficulties in the testing by breath analysis in *Peterson* v. *Mitchell*.[202] The committee has been informed that since that decision the police in Tasmania have not prosecuted where a breath analysis shows the concentration to be less than ·10, although the Tasmanian Statute prescribes a concentration of ·08.[203] The committee has considered the objections made by certain analytical chemists to the use of the breathalyser on the grounds that the breathalyser instrument is primarily a screening instrument of limited accuracy; that its accuracy

[199] Road Traffic Act, 1961-1974 (S.A.), s. 47f(1).
[200] Chapter 3, para. 2.6.1.
[201] Chapter 10, para. 2.1.
[202] Unreported, 13 December 1972, Full Court of the Supreme Court of Tasmania.
[203] Road Safety (Alcohol and Drugs) Act, 1970 (Tas.), ss. 6, 23.

depends in part upon an operation which is undertaken by technicians who are not under direct professional supervision and who do not follow established laboratory control procedures; and an incorrect assumption that the ratio for alcohol between blood and air in the lungs is constant at 2100 : 1. The committee does not regard it as its function in this report to discuss the criticisms which are made of the method of testing by breath analysis. We merely mention the criticisms made by analytical chemists. It has been suggested to us that the Royal Australian Chemical Institute should be invited to appoint a panel to advise as to the most accurate method of measuring the quantity of alcohol in the blood at any given time, and to report upon the accuracy of the breath analysis instrument and the advisability or otherwise of its use by technicians as opposed to scientists. Compulsory blood testing for persons injured in vehicular accidents and receiving treatment at hospital having now been introduced into the Statute, it may be felt advisable to consider whether the compulsory blood test should replace the breath analysis test. The committee has not thought it appropriate to inquire more deeply into this matter but draws attention to the problems which exist.

4.4.5 The Case for Blood Alcohol Testing of a Wider Group of Drivers. We have referred to the fact that a police officer has no power to require a driver of a motor vehicle to submit to an alcotest or breath analysis unless he believes upon reasonable grounds that such driver has behaved in a manner that indicates that his ability to drive the motor vehicle is impaired, or he has been involved in an accident.[204] It is sometimes argued that the power to conduct random tests for alcohol might significantly reduce the incidence of driving while under the influence of liquor, and thereby reduce the numbers of people killed on the roads. This argument must be balanced against the argument that the taking of such tests is an infringement of human rights. We have been informed that when random breath alcotests were taken in England

[204] Chapter 10, para 4.4.

about two years ago there appeared to be a significant decrease in the offence of driving under the influence of liquor for some time, but that such decrease was of short duration. If full statistics are kept relating to the compulsory blood tests taken under s. 47i of the Act it may be that a pattern will emerge showing when and where is the greatest risk of injury through drunken driving, and a case may be made out for permitting random testing for alcohol of persons driving at times and places indicated as being of high risk. The problem is a complex one. The compulsory submission to tests by persons who displayed no aberration from normal driving standards would be liable to arouse animosity in them, and to detract from good public relations of the Police Force with the community. It appears that the resultant detection of offenders might be minimal. Upon the information before it the committee does not recommend an amendment to section 47 of the Road Traffic Act, 1961-1974.

4.4.6 Recommendations with respect to Testing for Blood Alcohol Content.

(*a*) *We recommend further inquiry into the accuracy of breath analysis and into the methods of breath analysis and the desirability or otherwise of having breath analysis taken by persons who are neither trained scientists nor working under the direction of trained scientists.*

(*b*) *We recommend that in such inquiry the desirability or otherwise of substituting compulsory blood testing for breath analysis be considered.*

(*c*) *We recommend that full statistics be kept in relation to blood tests compulsorily made upon accident victims, and in particular the times and places of such accidents, to ascertain whether accidents in which the victim has consumed alcohol are more likely to occur at particular times and in particular places.*

5 The Future of Forensic Science in South Australia. Ideally all the resources in a forensic science unit should be open equally to the police and to the private citizen. Some scientists argue that this is so

in certain laboratories because, it is claimed, any differences of opinion are ironed out in the laboratory itself. A solution along these lines comes into conflict with the present adversary system of criminal litigation. Under that system the tribunal to decide the facts, be it judge or jury, is entrusted with the task of assessing the evidence and of deciding what is accurate and what is inaccurate. Scientists, like other persons, have varying personalities and varying views. The more forceful may over-ride the less forceful, but may not necessarily be correct. The consultation and the dissolution of difficulties within the laboratory may result in a compromise which is not the full truth. Certainly it is difficult for juries and for judges to determine some scientific questions. Nevertheless the committee believes that it is more appropriate for them to make the determination, having heard all the evidence including differences of opinion among experts, than to allow the experts among themselves to determine what bowdlerized version of the scientific matters shall be placed before the court. At present it seems to us inevitable that the police will have the first use of scientific facilities as they are the first to investigate any particular crime. The defence must explore avenues, such as the universities, to obtain experts who are independent of the police and have not already been engaged by them. This does not mean that the police should not offer assistance in scientific examination of objects at the request of the defence; but if such assistance is given it must necessarily be upon the basis that the evidence resulting from such examination will be available to the prosecution as well as to the defence. There will still be many cases where the solicitor for the defence will be loath to take the responsibility of advising his client to submit to a scientific examination, the results of which may prove adverse to him; and many clients, even if they have a consciousness of their own innocence of the crime with which they are charged, will not have sufficient confidence in the scientific processes to submit to an examination in such circumstances. The committee believes that there is need for a national institute in Australia which should have the resources to undertake more extensive research into matters of forensic science than is possible in laboratories already in existence. As an illustration the committee refers to the use of voice prints as a means of identification, in which it understands that research is progressing in other countries but, as far as we know, not in Australia. A national institute of forensic science could contribute to such

research as well as have immediate access to the results of research elsewhere. But further than that, such an institute might well be able to undertake for an accused person scientific examinations which an institute within the State could not undertake. The only small institution catering for the needs of the accused to which the committee has been referred is the one which we mentioned earlier in this chapter.[205] We cannot envisage such an institution in South Australia, but we can envisage one on a national level. The committee has had correspondence with the National Forensic Institute Committee of Inquiry. We believe that it is not our province to discuss in any detail what work should be undertaken by such an institution. We do recommend co-operation by the South Australian Government in the foundation of such an institute.

5.1 Recommendation with respect to a National Forensic Institute.

We recommend that the South Australian Government co-operate in the establishment of a national institute of forensic science.

5.2 Present Lack of Adequate Forensic Science Facilities for the Police Force. The committee believes that the time has come to take stock of the forensic science services available to the police in South Australia. Over the past twenty years since the instruction of police officers in forensic work began here, the use of scientific and technological aids in the solution of crime has become increasingly important. Sophisticated instruments have enabled examination of particles with results which would have been thought impossible twenty and even ten years ago. There are constantly new developments in the analysis of substances, and the uses to which such analyses can be put. The Police Force in South Australia has struggled along with an inadequate laboratory, with no trained scientists, relying upon police officers trained as technicians and upon such help as can be obtained from government departments and outside agencies. To some extent the committee believes that the amount of help is conditioned by the cost which the Police Force regards itself as able to incur in any particular case. Sometimes the police officer may not be certain

[205] Paragraph 2.2.

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to whom he should turn for help. Although he can obtain advice of a general nature from scientists in government departments, and of a particular nature from specialist scientists at places like Amdel, those scientists are not primarily interested in forensic science and may not be aware of the latest developments taking place elsewhere. One example of this occurred in the case *The Queen* v. *Van Beelen (No. 2)*[206] in which a more sophisticated test than that undertaken by an analytical chemist employed in the government chemistry department was successfully performed by a witness for the defence, who was director of a forensic science laboratory in the United Kingdom and who came to South Australia as an expert witness for the defence. The result supported the claim of the prosecution concerning the particle so tested, but the tests had not been made in South Australia because the scientific witness here, who held a university degree, was unaware that it could be successfully performed upon particles of fibres as small as those which were available. The witness who made the test was permanently engaged upon forensic science, but the primary duties of the other witness were unrelated to forensic science. There is therefore, as it seems to the committee, an advantage in having directly attached to forensic work scientists who will, as part of their primary duties, keep up to date with modern forensic methods. Nevertheless we do not see it as practicable to set up a police forensic science unit in which all the more sophisticated work will be done. Some of the work undertaken at Amdel and at the Institute of Medical and Veterinary Science on behalf of the police requires the use of expensive equipment which is used only occasionally for police purposes and frequently for purposes which have nothing to do with police investigation. We can see no value in duplicating the provision of expensive equipment or in seeking to attach to a police forensic science laboratory scientists with higher degrees who may be called upon to use their particular specialty only occasionally, and who would for the most part have to be occupied in general scientific work. We do not regard this as the best use of the nation's most highly qualified scientists, nor is it likely to produce satisfactory results as it would lead to discontent on the part of the particular scientist.

[206] Unreported, 15 October 1973, Supreme Court of South Australia.

5.2.1 Forensic Pathology, Serology and Odontology. It appears to be generally accepted as desirable that a forensic pathologist should maintain contact with general pathology, and that he should not have any closer links with a forensic science laboratory than does the present Director of Forensic Pathology at the Institute of Medical and Veterinary Science. We therefore do not recommend that the pathologist be a member of the forensic science laboratory. It appears appropriate for the Police Force to continue to use the services of the Director of Forensic Pathology. We recommend that the three methods of blood testing to which we have referred[207] be undertaken. This will require the purchase of expensive equipment. The committee does not have a preference as to where the equipment shall be situate, or whether the work shall be undertaken by a serologist in the employ of the Australian Red Cross Society, the Institute of Medical and Veterinary Science or of the Police Forensic Science Laboratory. This is a matter in which considerations outside the scope of the committee's inquiry may play some part. It has been suggested to the committee that considerably more should be done in the field of forensic odontology than is at present being undertaken in South Australia where there is no organized research on this topic. The committee believes that forensic odontology could not properly be undertaken within the Police Forensic Laboratory. The work of forensic odontology should be under the direction of a person with a degree in dentistry and with an interest in this field. It may be practicable for a forensic odontological service to be set up within the Department of Oral-Biology at the University of Adelaide where some lectures on forensic odontology are at present given to under-graduate students. This would be a matter of further inquiry and negotiation. Wherever the service is to be situate it should be empowered to consider the establishment of a system of recording of the distinctive features of the jaw and of teeth both natural and artificial, research into the identification of teeth, and the training of

[207] Chapter 10, para. 4.2.

members of the Police Forensic Science Laboratory in the technician's work involved in odontology.

5.3 The Future Administration of the Forensic Science Laboratory. We have said that we do not favour the forensic science laboratory undertaking all forensic science work. In particular we do not favour the installation of expensive equipment which will duplicate equipment available in government departments or semi-government agencies. Nor do we favour the employment of specialist scientists who will not be fully occupied in their specialty. We do not believe that the present situation is entirely satisfactory. One alternative would be to take all forensic science work from the Police Force and set up a forensic science laboratory which would be independent but would be government funded. We have in mind a body with an independent council of the nature of the Institute of Medical and Veterinary Science. If such a body were formed none of its employees would be members of the Police Force, and it would take over much of the work at present done by the Police Forensic Science Laboratory. The police would continue to act as scene of crime investigators and would collect exhibits, but the rest of the work, including technicians' work, would be done by the forensic science institute. One advantage of such an institute would be that it could engage scientists and appoint them to appropriate positions without regard to the police promotions' system. It would be difficult, if not impossible, to inject into the Police Forensic Science Laboratory as at present established trained scientists who were also police officers. Were the question one of starting *ab initio* a forensic science laboratory to undertake investigation for the police, then the committee would be inclined to favour this method, although we realize it would have the inherent weakness of limiting the amount of criminal investigation under the direct control of the police. However we believe that the loss of the skill and experience of those police officers who are at present attached to the Police Forensic Science Laboratory would outweigh any advantage to be gained by the setting up of such a laboratory. It would, in the committee's view, be uneconomic and unproductive to leave the police laboratory as it is and to set up elsewhere or, assuming that the police laboratory

moves to the proposed new building at Divett Place, in the same building a second laboratory to undertake the scientific work leaving the police to undertake the present technicians' work. Technicians and scientists must work side by side in a laboratory for this to produce effective results. We have come to the conclusion therefore that the present laboratory should be developed along similar lines to the Norman McCallum Police Forensic Science Laboratory. We believe that in such laboratory the Director should hold a higher university degree in science and that the Deputy-Director should also hold a university degree in science. There should be a chemistry department and the person in charge would be required to hold a university degree. So too would the person in charge of serology if that was to be undertaken at the institute. It seems to the committee that, given the present system of ranks within the Police Force and the pay structure, a number of the persons holding higher positions within the institute could not be members of the Police Force but would be public servants perhaps seconded from other departments. The pay structure should be such as to attract persons of adequate capacity, particularly in the case of the Director of the laboratory who must be a person of high calibre in the scientific community. He should be able to initiate forensic investigation, to direct training of personnel including in-service training, and to direct what matters can properly be undertaken within the laboratory and what should be sent elsewhere for further investigation. He must decide where and under whose direction scientific investigations outside the laboratory should be undertaken. It should be his responsibility, perhaps after consultation with the Coroner if that be thought advisable, to direct when and by whom an autopsy shall be performed upon the body of a person whom the police suspect to have been the victim of a crime. On the statistics which were given to the committee such bodies are in the ratio of about one to ninety-three of the autopsies performed each year, so that there would be very little interference with the present power of the Coroner in relation to autopsies.

5.4 The Location of the Police Forensic Science Laboratory. The committee believes that the laboratory should be located in the new building to be erected in Divett Place or in a building

adjacent thereto. It is proposed to house in the new building government departments with the members of which the members of the proposed laboratory would work in close liaison. It would be convenient for the laboratory to be near to the mortuary. The in-service training of members of the laboratory would be facilitated by the juxtaposition with the government departments.

5.5 Recommendations with respect to the Police Forensic Science Laboratory.

(*a*) *We recommend that the laboratory should be serviced by members of the Public Service and by members of the Police Force.*

(*b*) *We recommend that the Director of the laboratory should hold a higher university degree in science and should be a person capable of initiating forensic investigation, of directing the training of personnel including in-service training, and of directing what matter can properly be undertaken within the laboratory and what should be sent elsewhere for further investigation, and, as to matters to be sent outside, where and to whom they are to be sent.*

(*c*) *We recommend that the laboratory should not undertake pathological examinations but that the Director should, after consultation with the Coroner if necessary, direct when and by whom an autopsy shall be performed upon the body of a person whom the police suspect to have been the victim of a crime.*

(*d*) *We recommend that the Deputy-Director of the laboratory should hold a degree in science.*

(*e*) *We recommend that the laboratory should have a chemistry department the head of which should hold a university degree.*

(*f*) *We recommend that future tests of blood stains should be by the A B O method, the MN method and the Rh method. We make no recommendation as to which would be the most appropriate authority to make these tests.*

(*g*) *We recommend that a forensic odontological service be set up within the State and that consideration be given to the appropriate institution to undertake a forensic odontological service.*

(*h*) *We recommend that where expensive equipment is necessary for scientific examinations and the use of such equipment is available outside the Police Forensic Laboratory it be not duplicated within the laboratory.*

(*i*) *We recommend that the Police Forensic Laboratory should not employ specialist scientists who will not be fully employed within their speciality where the services of such specialists can be obtained by sending work to a government department or outside agency.*

(*j*) *We recommend that the Police Forensic Laboratory be housed in the building proposed to be built in Divett Place or, if that is not possible, in a building adjacent thereto.*

CHAPTER 11

THE DISCRETION TO PROSECUTE AND THE CONDUCT OF THE PROSECUTION

1 The Discretion to Prosecute. We discussed earlier the existence of discretion in law enforcement which rests with the police.[208] The present discretion to prosecute rests with the appropriate member of the Police Force, subject ultimately to ministerial control,[209] and also subject to any statutory provision which may require a prosecution to be authorized by some other body or with the consent of the Attorney-General or some other Minister. A private individual may institute a prosecution, subject to the same limitations. The Police Force may set up an internal committee to advise whether prosecutions should be launched. In the case of prosecutions arising out of the use of motor vehicles a traffic adjudicatory panel consisting of police officers from the Prosecutions Branch of the Police Force is entrusted with the decision whether to prosecute, and, if so, for what offence. Where there has been no arrest but a report that a person has been suspected of committing a crime within the Metropolitan area has been received and investigated a committee considers the report and the results of the investigation and decides whether a summons should issue. In country areas such a decision is made by the Divisional Inspector. There are no qualified solicitors attached to the Police Force but the Police Force does, as it thinks necessary, obtain from the Crown Solicitor's Department advice and assistance in relation to prosecutions which may affect the decision to prosecute. Such advice and assistance is sought in two ways. A formal memorandum may be sent to the Crown Law Department with a request for advice on a particular point of law or a request that an officer of that department prosecute for a particular offence. Sometimes a police officer, who is engaged in investigating an alleged offence, seeks advice from the Crown Law Department in an informal manner as to the appropriate charge, if any, to be laid or as to the manner in which an investigation should proceed. The informality with which the approach for advice has frequently been made has the approval of both the Crown Law Department and

208 Chapter 2, para. 3.
209 Police Regulation Act, 1952-1973 (S.A.), s. 21.

of the Police Force. Nevertheless with the growth of work and the more frequent changes in legal staff in the Crown Law Department, it may become more difficult to achieve satisfactory results upon an informal basis. Whatever advice the police may receive from the Crown Law Department, they alone make the decision to prosecute or not to prosecute.

1.1 Decision as to Trial. Where a person has been committed for trial it is the duty of the Attorney-General to present an information against that person for him to be tried before a jury unless he is of opinion that there is no reasonable ground for putting the person on trial.[210] In practice the depositions taken upon the hearing at which the person is committed for trial are sent to the Crown Law Department whose duty it is to advise the Attorney-General whether the matter should proceed, in which case an information is laid in the name and by the authority of the Attorney-General,[211] or whether a *nolle prosequi* should be entered. This is equally the position where the prosecution has been initiated by a private person. Such person ceases to be a party to the prosecution after the accused has been committed for trial. If the person against whom a charge has been laid is not committed for trial there is no obligation upon the police to seek advice from the Crown Law Department as to whether the Attorney-General should nevertheless lay an information. The committee has been informed that as a matter of practice the police do seek such advice if they are dissatisfied with the refusal of the magistrate or justice of the peace to commit the accused for trial. A private person who has instituted the prosecution in respect of which the court has refrained from committing the accused for trial may submit the depositions to the Attorney-General with a request that an information be laid. In practice such a request would doubtless be placed before the Crown Law Department for advice as to whether the depositions disclose a *prima facie* case against the accused.

1.2 Commercial Prosecutions. There appears to be a growth of such prosecutions in complex cases where the facts can be elicited only with the help of experts, and where the evidence is

210 Criminal Law Consolidation Act, 1935-1972 (S.A.), s. 276.
211 Criminal Law Consolidation Act, 1935-1972 (S.A.), s. 275.

likely to be lengthy and to include many documents the import of which can be fully comprehended only with the assistance of experts. By inter-departmental arrangements prosecutions in difficult commercial cases are investigated by members of the Police Force under the direct supervision of the Commercial Prosecutions Officer who is a solicitor employed in the Crown Law Department. They have the assistance of a qualified accountant, and another legal officer is available to assist in advising upon investigations and the institution of prosecutions. To date this facility has not been extended to prosecutions in other than commercial matters. Where such co-operative work is undertaken the decision to prosecute remains that of the Police Force, but expert assistance is available at an early stage of the investigations, and the Commercial Prosecutions Officer usually conducts the prosecution both in the lower and the higher court. This practice is likely to produce efficiency in prosecution, and has the advantage of injecting into all the decisions relating to the prosecution the views of persons not directly connected with the Police Force and therefore not directly responsible for the investigation. The committee believes that the extension of this arrangement to other types of criminal prosecution is highly desirable.

1.3 Police Prosecutions. There are at present thirty police prosecutors within the Prosecution Section, six times as many as there were twenty-one years ago. As we have seen, in the year 1971-1972, a three weeks' in-service course for intending prosecutors was attended by twelve police officers.[212] There is little opportunity for promotion within the Police Prosecution Section, and this has seriously hampered the retention of police prosecutors with a disposition and ability to undertake this type of work. Officers from this Section prosecute in all but a small proportion of summary offences and minor indictable offences heard and determined in a summary way in the Metropolitan Area. The section also provides prosecutors for most committal proceedings in that area. The Crown Law Department occasionally provides prosecutors for preliminary hearings likely to involve difficult questions of law or fact; but owing to shortage of staff it has had

[212] Chapter 3, para. 2.6.1.

to decline to provide such assistance on a number of occasions when it would have wished to give assistance. The result is that a police prosecutor, with only a cursory training in the law of evidence and procedure, and with little knowledge of common law but a detailed knowledge of most of the statutes material to the prosecution, may be required to prosecute in cases involving difficult questions of law and of fact where he may be opposed by counsel of skill and experience. Some of the larger country cities have the services of police prosecutors who are members of the Police Prosecution Section. In others the prosecuting officer has been trained as such. But in some of the smaller towns the prosecutions are, of necessity, undertaken by police officers who are not so trained. If such a police officer believes that a prosecution involves difficult questions of law or fact or both he may seek the services of an officer from the Police Prosecution Section.

1.3.1 Committal Proceedings. Since the 30th November, 1972, the procedure upon committal proceedings has been changed. Prior to then the ordinary procedure was that witnesses were examined upon oath and could be cross-examined. The depositions of a witness were to be read over to him and signed by him and by the justice before whom the evidence was taken.[213] By the Justices Act Amendment Act, 1972 a new practice was introduced. The statement of a witness for the prosecution may be reduced to writing and verified by affidavit and may then be tendered, subject to the right of the accused to require the person to be called for cross-examination.[214] This amendment saves the time not only of the courts but also of witnesses, and causes a great saving of expense. It is essential however to the efficacy of the system that all facts upon which the prosecution intends to rely at the trial shall be properly proved in the lower court. The position is even more crucial where the accused pleads guilty in the higher court. If he pleads not guilty and the Crown Prosecutor realizes that the statements tendered in the lower

[213] Justices Act, 1921-1969 (S.A.), ss. 160, 108.
[214] Justices Act Amendment Act, 1972 (S.A.), s. 9.

court are defective, or that there are witnesses from whom statements should have been but were not obtained and tendered, he can, between committal proceedings and the trial, obtain the requisite statements and supply copies of them to the accused, and at the trial to the trial judge. If the plea is one of guilty the trial judge may be at a disadvantage in assessing penalty if the depositions do not contain all the information which they should contain. It is essential that careful consideration be given, prior to the hearing of the committal proceedings, to the selection of appropriate witnesses and to the preparation of statements so that such statements shall contain all proper material but shall not contain inadmissible evidence. The committee has been informed that in the United Kingdom the selection of witnesses and the preparation of statements for committal proceedings is undertaken by prosecuting solicitors. In Adelaide it is usually undertaken by the police.

1.4 The Office of Director of Public Prosecutions for England and Wales. This office was created by the Prosecution of Offences Act, 1874 (U.K.). In 1884 the Treasury Solicitor took over the duties of the Director, and the office went into abeyance until 1908 when it was revived. The Director is a civil servant appointed by the Home Secretary and responsible to the Attorney-General. His powers and duties are delimited in the Prosecution of Offences Regulations, 1946. He must institute, undertake or carry out the criminal proceedings in the case of any offence punishable with death; in any case referred to him by a government department in which he considers that criminal proceedings should be instituted; and in any case which appears to him to be of importance or difficulty or which for any other reason requires his intervention. The regulations set out in detail matters which must be reported to the Director. In cases which he regards as of a serious nature or as having some difficulty he undertakes the prosecution through his department. In other cases the conduct of the prosecution may be left in the hands of the police. Where a prosecution is abandoned, withdrawn or not proceeded with within a reasonable time a report is made to the Director so that he may consider whether any steps should be taken. There are

a number of offences in which the prosecution must be taken by or with the consent of the Attorney-General or the Director of Public Prosecutions. It is difficult to extract any policy from the diverse statutes in which such a consent is made a prerequisite to prosecution. The committee has been supplied with figures showing that in 1968 of 276 805 persons prosecuted for indictable offences the Director prosecuted 1 247, and of 1 387 724 persons prosecuted for non-indictable offences he prosecuted 1 949. It is apparent therefore that the actual prosecutions undertaken by the Director have been comparatively few in number. Under regulation 2 of the Prosecution of Offences Regulations the Director gives advice, either on application or on his own initiative, to government departments, clerks to justices who are solicitors having a duty to advise lay justices on matters of law, chief officers of police and other persons in any criminal matter. This is regarded as a very important part of the work of the Director of Public Prosecutions. The committee sought the views of the Solicitor-General, the Crown Law Department, the Law Society of South Australia and the Police Force as to whether the office of Director of Public Prosecutions should be established in South Australia. Neither from any of these nor from any other section of the community have we received any submission in favour of such an office.

1.5 Decisions in Relation to the Prosecution. The committee believes that the decision whether to prosecute or not to prosecute is one which should, except in so far as it relates to questions of law, be taken by the police, subject always to ministerial control. We use as an illustration of the operation of such a discretion traffic offences which come before the traffic adjudicating panel. That panel may consider that, although technically a person appears to have committed an offence, there are extenuating circumstances which make it proper not to take proceedings. It may warn the alleged offender, and may invite him to attend a lecture on road safety given by a member of the Police Force. The warning may take the form of a statement that proceedings will be instituted in the event of there being any further offence of a similar nature committed by the alleged offender. The committee believes that

this practice is reasonable, and is likely to foster a better relationship between the members of the Police Force and the person to whom the warning is directed and other members of the public who are aware of the practice, than if every technical breach of the law relating to motor vehicles were to be prosecuted. We have considered whether there should be any superintendence of the prosecution of major offences or of offences alleged to have been committed by police officers, such as is exercised by the Director of Public Prosecutions. While there is considerable merit in the notion of an examination by some one outside the Police Force of decisions to prosecute in such offences, we do not favour the creation of a new office or the appointment of any person with general powers of superintendence over the institution of prosecutions by the police. We have made recommendations as to how complaints by members of the public against the police should be dealt with.[215] If our recommendations on this matter are followed, we believe that there is no necessity for any other person to be apprised of or to take proceedings concerning offences alleged to have been committed by members of the Police Force. As for the decision to prosecute in the case of serious crimes the experience in England has shown that it is difficult, if not impossible, for an outside body to supervise the prosecution of any but a very small percentage of such crimes. In any event a prosecution for a serious crime is less likely to be undertaken without due consideration than a prosecution for what may be regarded as a minor crime. There would be more likelihood of public outcry if a person were shown to have been prosecuted for murder upon evidence which was slender or where the facts were not properly investigated, than if a person were prosecuted for shoplifting in the like circumstances; yet the second person might feel as deeply aggrieved as the first. Initially the decision to prosecute must be taken when the alleged offender is arrested and charged. The committee believes that this decision should be left to the Police Force.

2 The Conduct of the Prosecution. Ideally the conduct of the prosecution should be in the hands of a legal practitioner. If it were

[215] Chapter 4, paras. 2.3 and 3.1.

practicable to employ sufficient competent legal practitioners to undertake the work of police prosecutors the committee believes that they should not be or become members of the Police Force. We think that it would be preferable for all proceedings in court to be conducted on behalf of the Police Force by legal practitioners who were not subject to the discipline of the Force and who were therefore much more independent than can be a police prosecutor who is also a member of the Police Force. The superiority in rank of a witness, who may be a commissioned police officer, to that held by the police prosecutor may give rise to difficulties for both if the police prosecutor believes that the witness is less than frank with the court. Further, the desirability that he who acts as counsel in any matter shall not be personally involved in the cause or personally affected by its result cannot be over emphasized. Imputations upon members of the Police Force which may be made during a prosecution must give concern and may evoke emotions of anger or distress in any police prosecutor who is also a loyal member of the Force, thereby rendering him less efficient. However the committee realizes that it would not be practicable now or in the foreseeable future to require all prosecutions instituted by a police officer to be conducted by a legal practitioner. We do believe that, subject to the ability of the Crown Law Department to obtain sufficient numbers of competent legal staff, the scheme which is now in operation in relation to commercial prosecutions should be extended first to all prosecutions for offences triable in the Supreme Court, and later to all offences triable in the Local and District Criminal Court. This would mean that a member of the Crown Law Department would advise upon matters of fact and of law from an early stage in the investigation. He would, if he thought it necessary, conduct the committal proceedings, and, in any event, before the committal proceedings he would give advice upon evidence and advise as to the topics to be covered in statements to be obtained from witnesses. He would peruse such statements in order to ensure that they covered the proposed topics and that inadmissible evidence was not included. When the Crown Law Department has available sufficient staff to enable the type of consultation which we have envisaged, then it should become the duty and the practice of the Police Force to refer to the appropriate solicitor in the Crown Law Department for his consideration any report concerning an indictable offence in relation to which the

police are not satisfied, after investigation, that there is sufficient evidence to launch a prosecution.

2.1 Interchange of Staff Within the Crown Law Department. The committee has been informed by both the Solicitor-General and the Crown Solicitor that they favour the interchange of legal practitioners employed in the Crown Law Department between what may be termed the civil side of the work and the criminal side of the work. The recommendations which we make concerning the conduct of police prosecutions should not inhibit the practice of enlarging the experience of the Crown Law Department officers in this manner.

3 Recommendations with respect to the Discretion to Prosecute and the Conduct of the Prosecution.

(*a*) *We do not recommend the establishment of an office of Director of Public Prosecutions.*

(*b*) *We recommend that the decision to prosecute remain at the discretion of the Police Force, except where Parliament may provide otherwise in particular statutes.*

(*c*) *We recommend that the liaison between the Crown Law Department and the Police Force which now exists in relation to complex commercial prosecutions be extended, as soon as sufficient numbers of competent legal practitioners can be recruited into the Crown Law Department, to all prosecutions for offences triable in the Supreme Court, and, as soon as practicable thereafter, for offences triable in the Local and District Criminal Court.*

(*d*) *We recommend that it should become the duty and practice of the Police Force to refer to the appropriate solicitor in the Crown Law Department for his consideration any report concerning an indictable offence in which the police are undecided whether the evidence is sufficient to warrant prosecution.*

CHAPTER 12

PRIVATE SECURITY SERVICES

1 The Use of Private Security Services. Under present conditions of living the use of the private security service appears inevitable. Goods are so displayed in stores that the larceny of them is a simple feat. It would be neither practicable nor desirable to deploy the police force of a city so that police officers acted as store detectives. The owners of factory and other business premises which are closed for part of the day or night and for the whole or part of the weekend cannot rely, nor should they be able to rely upon the services of the police force to patrol those premises and to keep a sufficient surveillance over the valuable equipment and goods contained therein. Nor can the police supply protection wherever large sums of money or other valuables are being transported. As the offences of housebreaking and office breaking become more rife with the expansion of a city, the owners of houses and offices find an advantage in engaging the services of someone who will include such premises in a patrol during periods when breakings are most likely to occur. The committee sees the use of the security agent in all the above mentioned circumstances as naturally concomitant with population growth. But it would view with concern any development of any security service into a type of vigilance committee. The formation of such a committee indicates that the vigilantes and their supporters lack confidence in the capacity of the Police Force to maintain the peace and to enforce the laws of the community. Such persons may be ordinary concerned citizens in a community in which the police force is weak or inefficient, or they may be bigoted and obstinate persons who can see nothing but vice in any conduct of which they personally disapprove. If a vigilance committee is formed for the first reason then it indicates fault in the police force requiring immediate remedial measures; if for the second then the operations of the committee should be forthwith suppressed. The powers and duties of security agents must in any event be contained within the framework of measures necessary and proper to be taken for the protection of the property which or person whom the security agent has been engaged to protect. A member of the Police Force has undergone rigorous training prior to his appointment, and continues

to receive training during his service as a police officer. The security guard may receive no particular training and, until the Commercial and Private Agents Act, 1972 came into operation on the 12th April, 1973, he was subject to no restraints additional to those imposed upon all citizens under the law. A watchman or store detective, in the direct employ of someone, having the duty to guard that person's goods and to detect any interference with them is not within the purview of the Act.[216]

1.1 The Commercial and Private Agents Act, 1972. This Act provides for the licensing of, among others, security agents and security guards. A security agent is defined by the Act as meaning a person who for monetary or other consideration performs the function of guarding property or keeping property under surveillance. The security guard is one who performs the same function but does it in the employment of or as agent for a security agent.[217] The Act makes it an offence for any unlicensed person to act as or to hold himself out as a security agent or security guard, or to perform any of the functions of a security agent or a security guard unless he holds the appropriate licence.[218] The application for the licence is to be made to the Commercial and Private Agents Board, which application is determined not less than one month after publication of an advertisement in a daily newspaper giving notice of the intention to apply for such licence.[219] In practice the police investigate and report to the Board upon every person who applies for such a licence.[220] The statute gives to the holders of licences under the Act no powers or authorities other than those given to them under the general law, so that a security agent or security guard has no greater powers of arrest than a private citizen.[221] A licence is subject to annual renewal, and the Board may take disciplinary action, including the cancellation of the licence and the disqualification of the person

[216] Commercial and Private Agents Act, 1972 (S.A.), s. 6(1)(*h*).

[217] Commercial and Private Agents Act, 1972 (S.A.), s. 5.

[218] Commercial and Private Agents Act, 1972 (S.A.), s. 14.

[219] Commercial and Private Agents Act, 1972 (S.A.), ss. 7, 15; regulations 4, 5, 6 made under the Act.

[220] Commercial and Private Agents Act, 1972 (S.A.), ss. 39, 40.

[221] Commercial and Private Agents Act, 1972 (S.A.), s. 31; see also Chapter 8, paras. 2 and 3.1.

from holding the licence either temporarily or permanently, upon an application made by any person or of its own motion.[222] The committee has been informed that since the coming into operation of the Act licences have been granted to 14 security agents and to 360 security guards. The active strength of the Police Force as at the 28th February, 1974 was 2 189.[223] The licensed security agents and security guards are therefore in a ratio of approximately 1 : 6 to the members of the Police Force on active duty. In addition there are employees actively engaged in crime detection the numbers of whom are unknown to the committee. The committee realizes that every new investigation placed upon the Police Force strains its resources, but believes that it is particularly desirable that those who are employed in crime detection and prevention should be subject to some control. In this connection it draws attention to the absence of control, other than that which may be exercised by the employer, upon retail store detectives and watchmen who are directly employed by the employer.

1.2 Comparison with the Police Force. There is a danger that in the eyes of the public a security guard may be seen as a type of policeman. The former must be discouraged from fostering any confusion which may exist. The committee received a submission that security guards should be invited to join a reserve police force to be used in times of emergency. We would regard this as undesirable. Particular security guards may be appropriately appointed as special constables when the need arises,[224] but the acceptance of security guards *qua* security guards as being members of a reserve police force would be, in the view of the committee, to elevate their function beyond that for which their training and experience fits them. The committee noted that in the rules for its employees which one security organization submitted for our perusal, detailed instructions were given, the effect of which was to prohibit an employee from wearing a uniform which might be mistaken for that of a policeman, or from acting in such a way as to give the appearance of having an unlimited

[222] Commercial and Private Agents Act, 1972 (S.A.), ss. 17, 41.

[223] In arriving at this figure we have excluded 21 officers seconded for service out of the State, 98 probationary constables and 364 cadets.

[224] Chapter 3, para. 7.

authority. He was reminded that his authority was limited to a particular place and a particular purpose. The giving of such directions is to be encouraged. We may expect an increase in the numbers of security guards; we should not expect an increase in their powers.

1.3 **The Use of Firearms by Security Guards.** A security guard may carry a firearm only if he holds a licence under the Firearms Act, 1958, and if the firearm is registered under the same Act. In the rules for employees of the security service to which we referred in the preceding paragraph the employee is warned that a security guard may be armed only during the hours of his duty at the area he is assigned to protect, but he is told that "a police officer is required to go armed at all times". The last statement is not accurate in relation to the South Australian Police Force.[225] We have recommended that the use of firearms be permitted only where it is reasonably necessary to protect life or where there is reasonable apprehension of serious injury to a person.[226] This recommendation applies to all persons. It does not inhibit the carrying of firearms by security guards but they should be carried only as a protection against attack upon the person of the guard and not as a means of attack by the guard.

2 **The Discretion to Prosecute.** We have discussed the discretion resting in the Police Force in relation to prosecutions.[227] We have recommended that the decision to prosecute should remain at the discretion of the Police Force.[228] The exercise of the discretion arises only where the police themselves detect the commission of an offence, or where they receive a report that an offence has been committed. Members of the public may choose not to report an offence. It may have been committed by a member of the family or a close friend of the person aggrieved. An employer may have suffered loss in consequence of the dishonest acts of an employee, but may elect not to report the matter to the police because the employee has been in his service for many years, or from motives of sympathy with the

[225] Chapter 8, para. 4.3.4.
[226] Chapter 8, para. 4.4.
[227] Chapter 2, para. 3; Chapter 11, para. 1.
[228] Chapter 11, para. 3(*b*).

employee's wife or children. There may be a variety of reasons which cause the person affected by or having knowledge of the commission of a crime not to report it, and it would be draconic to suggest that the police must, in all circumstances, be informed where a private citizen believes that a crime has been committed. However the committee views with concern the likelihood that in some cases members of private security services may be usurping the function of the police in deciding whether prosecutions shall be launched or not. We refer particularly to the offence known as shoplifting. A research project was undertaken in Melbourne in which the researchers were supplied with the records relating to persons, other than members of the staff, apprehended for larceny of goods from a store during a period of nine months.[229] The records disclosed that store detectives had apprehended 614 shoplifters during that period. In all but 152 of the cases, that is in more than 75% of the total number, the staff of the store dealt with the matter in some way other than by placing it in the hands of the police. The following table divides the persons so apprehended into various age groups, and indicates the numbers within each age group in respect of whom the police were contacted, the numbers in respect of whom parents, spouse or other persons were contacted, and the numbers in which no contact was made.

		AGE							
		-14	15-19	20-29	30-39	40-49	50-59	60+	
	Parents	92	198	20	—	—	—	—	310
Extra	Spouse	—	3	2	3	7	3	4	22
Store	Police	25	37	25	28	15	14	8	152
Contacts	Other	4	17	2	1	—	1	3	28
	None	2	9	30	20	14	11	16	102

The researchers claimed that overseas studies indicated that storekeepers seem willing to accept shoplifting as a normal trading risk, and take such action as they deem appropriate without reference to the police. If the sample examined by them is representative of the position in Australia, then the same situation prevails here. The study to which we have referred indicates that the store detectives took steps other than that of putting the matter in the hands of the police, for example

[229] Brady and Mitchell, "Shoplifting in Melbourne", (1971) 4 *Australian and New Zealand Journal of Criminology* 154.

in communicating with the parents or the spouse or with some other person or persons. The committee has been informed that it has been known for the store detectives to treat offenders by means of counselling and home visits. While this is doubtless undertaken with the best of intentions and in the belief that what is being done is in the interests of the offender as well of the owners of the store, the committee believes that it is undesirable that any such discretion should rest with employees of the store. Technically in failing to report a known case of larceny to the police a store detective may be guilty of the crime of misprision of felony, but it is highly unlikely that he would be prosecuted for this offence.[230] The committee believes that the discretion to prosecute in cases of shoplifting should be that of the police and not of the individual storekeeper through his servants. It recommends that warnings should be given against such an exercise of discretion on the part of store owners, and that if such warnings be disregarded consideration be given to the enactment of a statutory provision making the failure to report an offence of shoplifting of which the storekeeper is cognizant an offence punishable summarily. This offence is one to the prevalence of which the storekeeper is said to contribute by the display of goods so as to provide a temptation for those whose standards of honesty are not absolute. The storekeeper regards it as the lesser of two evils to suffer losses which are likely to be passed onto the purchasers, rather than to secure his goods from pillage. It may be thought that in advocating that the storekeeper should have no discretion to refrain from reporting offences of shoplifting we are making a recommendation which is too harsh towards the shoplifter in comparison with the employee who embezzles his employer's money. We have said that the requirement that every suspected crime must be reported to the police would be draconic. This does not imply an approval of the substitution for the police of some other body of persons, such as store detectives, as the repository of a general discretion to prosecute in relation to any class of offence. We have had no notice of any type of offence other than shoplifting in which the discretion to prosecute has been to a substantial extent removed from the police by private citizens. In recommending that all such offences be reported to the police we do not imply that prosecutions should be launched in all cases. We expect the police to

[230] *Sykes* v. *Director of Public Prosecutions* [1962] A.C. 528.

take into consideration not only whether there is evidence to justify the charge but also all matters of extenuation in deciding whether a charge should be laid.

2.1 Recommendations with respect to the Discretion to Prosecute.

(*a*) *We recommend that store owners should be warned that they should report to the police all offences of larceny from the store detected by their store detectives and should not themselves deal with the offenders by admonition or otherwise.*

(*b*) *We recommend that if such warning appears to be disregarded consideration be given to the enactment of a statutory provision making the failure by a store owner to report to the police an offence of larceny from the store of which he has cognizance an offence punishable summarily.*

CHAPTER 13

SUMMARY OF RECOMMENDATIONS

Recommendations with respect to Offences in Public Places.

1 We recommend that the offence of loitering under ss. 18 and 18a of the Police Offences Act, 1953-1973 be abolished and that consideration be given to the enactment of a prohibition against any preparation to commit a crime which passes beyond the stage of mere thought.

2 We recommend that assault punishable by law should be defined as including assault by the spoken word.

3 We recommend that s. 6 (6) of the Police Offences Act, 1953-1973 making the use of offensive or abusive language to or concerning a member of the police force engaged in the execution of his duty conclusive evidence of the offence of hindering the police in the execution of their duty be repealed.

4 We recommend the amendment of s. 7 of the Police Offences Act, 1953-1973 to delete the offence of behaviour in a disorderly manner.

5 We recommend that the police be empowered upon reasonable grounds to remove to a place of safety any person whose presence arouses hostility in a crowd and to detain him for his own protection from bodily harm or for the similar protection of other persons in the vicinity. We recommend that such detention shall not be regarded as an arrest and that after one hour the detainee will, upon his request, be taken before a magistrate.

6 We recommend that the attention of the Corporation of the City of Adelaide be drawn to the unsatisfactory features of s. 3 (19) of by-law IX.

7 We recommend that s. 3 of the Public Meetings Act, 1912-1934 be amended to empower the chairman of a meeting to direct the removal of a person from the meeting only when the chairman has a reasonable belief that such person has committed an offence specified in the Act.

8 We recommend the extension of s. 3 of the Act to any meeting, gathering, procession, performance or entertainment.

Recommendations with respect to Extraneous Duties Performed by the Police.

9 We recommend that all driver testing be undertaken by persons other than police officers.

10 We recommend that the police continue to make all tests of vehicles which legislation requires.

11 We recommend that civilian orderlies replace police orderlies in all courts.

12 We recommend that wherever practicable service of civil process be undertaken by civilian bailiffs.

13 We recommend that the police cease to act as clerks of court in all places in which it is possible to engage the services of an appropriate civilian to act in such capacity.

14 We recommend that government departments should be instructed to relieve the police of the obligation to attend to the issue of licences wherever practicable.

Recommendation with respect to Numerical Strength of the Police Force.

15 We recommend that the strength of the Police Force in South Australia should be increased so that the police-public ratio does not fall below 1 to 530.

Recommendations with respect to Recruitment and Training in the Police Force.

16 We recommend that satisfactory completion of four years of secondary school education should be a minimum qualification for enrolment as a police cadet.

17 We recommend that regulation 15 of the Regulations made under the Police Regulation Act, 1952-1973 be amended to enable married women to enter the Police Force.

18 We recommend the appointment to the Police Force of a psychologist one of whose duties would be to interview aspiring cadets and adult applicants.

19 We recommend that some of the instruction given at the Police Academy should be undertaken by teachers seconded from the Education Department.

20 We recommend that those cadets who are academically suitable should be encouraged to complete higher secondary school examinations.

21 We recommend that on an experimental basis a course of training for crisis intervention be given to third year cadets and that consideration be given to making such a course a part of in-service training.

Further recommendations with respect to Training in the Police Force.

22 We recommend that in-service courses be of longer duration and include more sessions given by lecturers from outside the Police Force.

23 We recommend the creation of a three year College of Advanced Education course leading to a Diploma of Police Science as a minimum qualification for appointment as a commissioned officer in the Police Force.

24 We recommend that suitable members of the Force should be given study leave for periods of not less than one year to enable them to undertake full time study at a University or College of Advanced Education.

25 We recommend that salary loadings should be given to members who hold University degrees or diplomas from Colleges of Advanced Education.

26 We recommend the establishment of a Board of Studies in Police Education.

Recommendations with respect to Promotion in the Police Force

27 We recommend that selected university graduates and experts in specialist fields should be enabled to enter the Police Force as commissioned officers after a short period of training and practical experience.

28 We recommend that the promotional system in the Police Force be kept under review and that consideration be given to means of recognizing outstanding ability while not overlooking length of service.

Recommendations with respect to Women Police Officers

29 We recommend that all positions in the Police Force should be open to women.

30 We recommend that the cadet system be enlarged to permit the training of female cadets at the Police Academy and that young women should be accepted for such training at the same age and with the same educational standard as is applicable to young men.

Recommendation with respect to Aborigine Police Officers.

31 We recommend that suitable aborigines should be encouraged to join the Police Force.

Recommendations with respect to Interchangeability of Police Officers.

32 We recommend that the question of permanent interchangeability of police officers within Australia upon a limited basis should be discussed with other States at the appropriate level.

33 We recommend that a system of temporary exchange of police officers with other countries and with other States in Australia be negotiated.

Recommendations with respect to Special Constables and Peace Officers.

34 We recommend that all appointments of special constables or constables should be made by the Commissioner of Police or a Special Magistrate and that s. 161 of the Local Government Act, 1934-1972 should be amended to provide for the appointment to be made by the Commissioner of Police upon the recommendation of the appropriate Council.

35 We recommend that the powers and duties of special constables and peace officers should be limited to those in respect of which their appointment is required.

Recommendations with respect to Crime Statistics.

36 We recommend that the Police Force consult and co-operate with the Australian Institute of Criminology and with the Australian Bureau of Statistics as to the method of its crime statistics.

37 We recommend that the South Australian Government consider the establishment of a Bureau of Criminology or Crime Statistics and Research similar to that which obtains in New South Wales.

Recommendations with respect to the Preliminary Inquiry in Complaints Against the Police.

38 We recommend that in any event the person making a complaint against a member of the Police Force be advised by the Commissioner of Police through a commissioned officer from a division other than that of the member against whom the complaint is made the result of the police inquiry into the complaint.

39 We recommend the amendment of regulation 40 (2) of the regulations under the Police Regulation Act, 1952-1973 to require that an investigation into an alleged offence by a member of the Police Force be undertaken by a commissioned officer from a division other than that of the member.

40 We recommend that when a complaint of a serious offence is made against a member of the Police Force the Commissioner of Police should be empowered to seek and, where he believes it advisable, should seek the services of a commissioned officer from another Police Force to make the inquiry.

41 We do not recommend that complaints against members of the Police Force should in the first instance be investigated by persons other than Police Officers.

Recommendations with respect to the Charge in Complaints Against the Police

42 We recommend that a member of the public who complains of the conduct of a member of the Police Force should be entitled to lay a charge under regulation 41 (1) of the regulations made under the Police Regulation Act, 1952-1973 if the Commissioner of Police declines to do so.

43 We recommend that the Police Inquiry Committee should be empowered to refuse to hear any charge which appears on its face to be trivial, frivolous or vexatious.

44 We recommend that where a charge is laid by a member of the public the Secretary to the Committee and the member of the public be supplied with copies of all statements taken during the course of the police investigation, and that the Secretary be empowered to take additional statements through an investigating officer and be required to supply copies of such statements to the complainant and to the member charged.

45 We recommend that an individual laying a charge be entitled to be represented by counsel.

46 We recommend that if the Commissioner of Police lays a charge he should be represented by counsel from the Crown Law Department or by outside counsel.

47 We recommend that where a charge is laid by the Commissioner of Police following a complaint by a member of the public, such person be supplied with a copy of the transcript and the report of the Committee of Inquiry.

48 We recommend that the Committee have a discretion to award costs.

Recommendations with respect to Appeal in Complaints Against the Police.

49 We recommend that the complainant should have a right of appeal against the dismissal of his charge against a member of the Police Force.

50 We recommend that the Chairman of the Police Appeal Board should sit alone to hear an appeal against the dismissal of a charge or the finding that a charge is proved.

51 We recommend that the Chairman when sitting alone and the Board when sitting together should have a discretion to order costs.

52 We recommend no change in the present provisions relating to penalty and appeal against penalty.

Recommendations with respect to Compensation in Complaints Against the Police

53 We recommend that the Police Inquiry Committee will, if the complainant so elects, assess any compensation which the complainant ought to receive and determine how and by whom it is to be paid.

54 We recommend that there be a right of appeal from any determination as to compensation, such appeal to be to the Chairman of the Police Appeal Board.

Recommendations with respect to the Power to Stop, Search and Detain.

55 We recommend that the powers contained in s. 68 of the Police Offences Act, 1953-1973 be extended to cases where there is a reasonable suspicion that a person is carrying without lawful excuse any of the articles proscribed by s. 15 of the Act and to cases where there is a reasonable suspicion that any vehicle contains or any person has or is conveying anything used or intended to be used in the commission of an indictable offence.

56 We recommend that s. 15 be amended to include a delimitation of what may be classed as an offensive weapon or an article of disguise.

57 We recommend that the detention pursuant to s. 68 shall not exceed two hours unless a longer period is authorized by a special magistrate.

58 We recommend that goods seized from any person be returned to him upon his release unless otherwise ordered by a special magistrate.

Recommendations with respect to Search Warrants.

59 We recommend that s. 67 of the Police Offences Act, 1953-1973 be repealed and that there be substituted for it a provision similar to that contained in s. 10 of the Crimes Act, 1914-1973 (Aus.).

60 We recommend that a judicial warrant should be granted by a special magistrate except in localities where there is at the time of the application for the warrant no magistrate, when a justice of the peace may hear the application.

61 We recommend that there be no limitation as to the type of offence in respect of which a search warrant may be issued.

62 We recommend that police officers should be granted legislative immunity against prosecution or civil action where they enter, search or seize, acting on a reasonable suspicion as to the urgent need to protect a person or persons or to preserve property in circumstances in which it is impracticable to obtain a search warrant.

63 We recommend that the information on oath to found the search warrant should be taken in writing as a permanent record of the basis for the issue of the warrant.

Recommendations with respect to Statutory Provisions for Search and Seizure.

64 We recommend that the powers of entry, search and seizure contained in the statutes set forth in schedule 3 be examined with a view to substituting for an absolute right of entry, search and seizure the requirement that a judicial warrant be first obtained for such purposes or any of them.

65 We recommend that where there may be danger to person, community health or property, consideration be given to providing legislative immunity to any person entering, searching, or seizing property pursuant to the provisions of any statute without first obtaining a warrant, provided that such person had a reasonable belief as to the necessity for immediate action.

Recommendations with respect to Search and Seizure Incidental to Arrest.

66 We recommend that the police should be empowered in arresting a person to search the premises upon which he is arrested for accomplices.

67 We recommend that the police should have the power to search the area within the immediate control of the person arrested and to seize any articles in plain view which they have reasonable grounds to suspect may provide evidence relevant to the commission of any offence.

68 We recommend that articles so seized which do not relate to the particular offence with which the arrested person is charged should be retained by the police for such time as is authorized under the order of a special magistrate, and that any person claiming to be entitled to the possession of such articles should have the right to oppose the making of such order.

Recommendations with respect to Accidental Findings During Search.

69 We recommend that a police officer who lawfully enters premises under a search warrant be entitled to seize any articles in plain view which do not relate to the offence in respect of which the warrant was issued but which he believes on reasonable grounds are material evidence of an offence committed by any person.

70 We recommend that such articles may be lawfully retained by the police pending the investigation or prosecution of a charge for such an offence if a special magistrate so orders.

71 We recommend that any person claiming to be lawfully entitled to any of such articles should be entitled to be heard in opposition to such order.

Recommendations with respect to Compensation for Damage Occasioned by Search and Seizure.

72 We recommend that where a search authorized by warrant results in destruction of or damage to property and no evidence of an offence is found, or the suspected offender is not convicted of an offence, or the property destroyed or damaged belongs to a person other than a suspected offender, the person who has suffered the loss should be entitled to be compensated out of treasury funds.

Recommendations with respect to Powers of Detention of Persons for Questioning.

73 We recommend that a police officer should be entitled to require a person whom he reasonably wishes to question concerning a suspected crime to accompany him to a police station and for that purpose to use such force as is reasonably necessary.

74 We recommend that a person may be lawfully detained for questioning at a police station for a period not exceeding two hours.

75 We recommend that a person so detained may, in appropriate circumstances, be searched for dangerous materials including weapons and that any such dangerous materials found upon him may be confiscated.

76 We recommend that detention of a person for questioning for a period exceeding two hours may be ordered by a special magistrate who may determine the length of such further detention and where the person is to be detained, or who may release the person on bail to attend for further questioning, and who may order that further questioning be conditional upon prior rest and refreshment being made available for the detainee.

77 We recommend that detention for questioning shall not be regarded as an arrest of the person so detained.

78 We recommend that a person detained for questioning shall be entitled to have his solicitor present at all times and to be represented by solicitor or counsel on any application to a magistrate in relation to detention.

Recommendations with respect to Identification of Suspects.

79 We do not recommend that police be required to produce to any person seeking to identify a suspect photographs other than those properly kept in police records.

80 We recommend that persons taking part in an identification parade be not asked to make any bodily movement or gesture.

81 We recommend that if the identifying witness wishes to hear the persons taking part in an identification parade speak as an aid to identification, all such persons be requested to speak, in turn, the same words, and if the witness wishes the words to be repeated each such person be asked to repeat them in turn.

82 We recommend that prior to viewing an identification parade a witness be requested to give a description of the person to be identified and that such description be written down and a copy supplied to an accused person.

83 We recommend that no visual recording be made of an identification parade.

84 We do not recommend that the accused's solicitor be present at an identification parade.

Recommendation with respect to the "Holding" Charge.

85 We recommend that the police should not charge a person with one offence and seek a remand without bail in order to gain time to proceed with inquiries into another offence.

Recommendation with respect to the Place of Interrogation of Suspects.

86 We recommend that a suspected person should not be detained in a small interview room for a long period before interrogation.

Recommendation with respect to Interrogation Before a Magistrate.

87 We do not recommend that interrogation of a suspect or accused person should take place before a magistrate.

Recommendations with respect to the Method of Taking a Statement.

88 We do not recommend the adoption in South Australia of the Judges' Rules.

89 We recommend that any confession made in consequence of any threat or inducement held out by any person should be excluded from evidence.

90 We recommend that any second or subsequent interrogation of an accused person be limited to seeking answers to questions relating to further information which the police have obtained since his first interrogation and that if the accused is represented by a solicitor the interrogation be conducted in the presence of the solicitor.

91 We recommend that electronic equipment be installed in interview rooms at police headquarters and that the electronic recording of interviews be made on an experimental basis.

92 We recommend that immediately after an interview is so recorded the record should be transcribed and a copy of the transcript handed to the accused.

93 We recommend that after transcription the tape should be sealed and remain sealed until it is produced in court.

94 We recommend that where notes of an interview by a police officer are taken either on a typewriter or by hand the accused should be permitted to peruse them and should be invited to sign them as a true and correct record of the interview if he is willing to do so.

95 We recommend that if the person interrogated is illiterate the notes should be read to him and his agreement that the record is correct should be sought by a police officer senior to the one taking the notes.

96 We recommend that if the police officer makes his notes after the completion of the interrogation and the person interrogated has been charged with any crime the police officer should supply such person with a copy of the notes as soon as practicable after they have been made.

Recommendations with respect to Legal Advice and the Right to Representation During Interrogation.

97 We recommend that a person whose knowledge of the English language is limited should be entitled to have present at an interview an interpreter of his choice for the purpose of checking the work of the police interpreter.

98 We recommend that where an aborigine, not fully conversant with the English language or the white person's culture, is interviewed the interview should be conducted in the presence of an officer of the Community Welfare Department and, if he deems advisable, of a friend of the aborigine.

99 We recommend that a person who is to be interrogated be asked if he wishes to have a solicitor present and be given the opportunity of communicating with a solicitor by telephone before being interrogated.

100 We recommend that the person to be interviewed be informed of his right to have a solicitor present at the interview by a police officer senior to the officer who is to interrogate him.

101 We recommend that if the services of a solicitor cannot be obtained by the person to be interviewed he be given the option of waiting until a solicitor can be obtained before being interrogated, but that if he elects to wait he may be subject to an order for detention.

102 We recommend that a person detained for questioning be permitted to telephone his wife or a relative or friend to explain his position and to request the attendance at the police station of a solicitor, relative or friend.

103 We recommend that a person to be interrogated who does not have a solicitor present at his interrogation may have instead a person not connected with the matter under investigation.

104 We recommend that consideration be given to the attendance at police stations of duty solicitors as part of legal aid.

Recommendations with respect to the Right to Silence.

105 We recommend that the onus of proof in criminal charges be not reversed or varied and that the standard of proof be not lowered, but that a court or jury should be entitled to take into consideration, in deciding questions of guilt or innocence, the refusal or failure of the accused to answer any questions properly put to him by a police officer and to draw such inferences as seem to it to be proper from the failure of the accused, when questioned by the police, to disclose any fact material to his defence.

106 We recommend that where a court or jury believes that failure to answer a question confirms evidence connecting the accused with the crime such failure may amount to corroboration.

107 We recommend that accused persons who are committed for trial should be required to give to the Crown Prosecutor within seven days after committal particulars of any alibi intended to be relied upon as a defence, but that they should not be required to disclose any other fact material to the defence prior to presenting the defence.

108 We recommend that as soon as an interrogating police officer believes that it is probable that a person questioned by him will be charged with an offence, he should caution such person that he is not obliged to answer any questions but that the questions and any answers thereto will be given in evidence if he is subsequently charged with an offence in relation to the matters concerning which he is being questioned, and that, if he is charged, an inference adverse to him may be drawn from his failure to answer any questions or from his failure to disclose at that stage any matter which may be material to his defence to the charge.

109 We recommend that it should not be open to the court or a jury to draw any inference adverse to the accused from any failure to answer any question put to him or to mention any matter of defence before he is cautioned.

Recommendations with respect to Illegally Obtained Evidence.

110 We recommend that the legislature should declare what methods of obtaining evidence are illegal or improper, and the question whether evidence has been illegally or improperly obtained should be a question for determination by the court as though it were a matter of law.

111 We recommend that evidence illegally or improperly obtained should, subject to the qualification mentioned in 113, be inadmissible for all purposes, and should not be available to impeach credit.

112 We recommend that evidence obtained as a result of urgent entry by police or others[231] should be admissible.

113 We recommend that where the illegality or impropriety is not directed against and does not relate to the person against whom the evidence is tendered the evidence should be admissible.

[231] Chapter 5, paras. 3.5 and 4.

114 We recommend that there should be no distinction, as regards evidence illegally or improperly obtained, between evidence obtained by police officers and that obtained by other persons.

Recommendations with respect to Compensation for Injuries or Death Resulting from Assisting Police.

115 We recommend that persons assisting police officers in the execution of their duty receive compensation for injuries suffered by them and that the dependants of persons who have died as a result of lending such assistance be compensated.

116 We recommend that the amount of such compensation be assessed by a court as though it were damages for a civil wrong payable by the wrongdoer.

117 We recommend that consideration be given to paying such compensation out of the general revenue of the State and subrogating to the Treasurer all rights which the person compensated would have had against the wrongdoer.

118 We recommend that the question of compensating persons who have assisted the police or their dependants be considered as part of a review of the scope of the Criminal Injuries Compensation Act, 1969-1972.

Recommendations with respect to the Statutory Power to Arrest Without Warrant.

119 We make no recommendations concerning the powers of arrest contained in ss. 76 and 77 of the Police Offences Act, 1953-1973 or ss. 271 and 272 of the Criminal Law Consolidation Act, 1935-1972.

120 We recommend that the power to arrest without warrant upon charges which may be heard and disposed of in a court of summary jurisdiction should be exercisable only if the person arresting believes on reasonable grounds that the offence is likely to be continued or repeated if an arrest is not made, or that the person arrested is not likely to attend at court in answer to a summons, or that the arrest may facilitate the obtaining of evidence to establish the guilt of the person in relation to the offence with which he is to be charged.

Recommendations with respect to the Use of Force.

121 We make no recommendations with regard to the use of handcuffs or batons.

122 We recommend that the use of firearms be permitted only where it is reasonably necessary to protect life, or there is a reasonable apprehension of serious injury to a person.

123 We recommend that consideration be given to the rescission of the instruction to police to fire a warning shot.

Recommendations with respect to Persons Taken into Custody.

124 We make no recommendations concerning the present method of taking persons into custody.

125 We recommend that the only objects which should be removed from a person taken into custody should be articles which may be used to harm that person or any other person, articles which may be material as evidence of the offence with which the accused person has been charged, and money.

126 We recommend that a person taken into custody should be permitted, if he so desires, to have any articles in his possession deposited for safe custody with the Officer in Charge of the Police Station.

127 We recommend that a person taken into custody be asked if he is suffering from an illness requiring medication; that if he claims to have such an illness he be either permitted to take such medication or a doctor be called to examine him and to prescribe medication if he thinks fit.

Recommendations with respect to Offences Committed Oustide South Australia.

128 We recommend that a police officer should be empowered to arrest without warrant any person reasonably suspected of having committed in another State or Territory of Australia an offence which, if committed in South Australia, would be an indictable offence against the law of South Australia.

129 We recommend that such person should be brought before the court within the time limited by s. 78 of the Police Offences Act, 1953-1973 and that the court be empowered to remand him either on bail or in custody for sufficient time to enable extradition proceedings to be brought against him in relation to the alleged offence.

130 We recommend that any person taken into custody may, with his consent, be taken before a special magistrate for the purpose of being discharged without the preferment of any formal charge.

131 We recommend that if a person is so discharged he should not be designated in any police records relating to the matter as a person charged with committing an offence.

Recommendations with respect to Fingerprinting and Photographing of Persons by the Police.

132 We recommend that s. 81 (4) of the Police Offences Act, 1953-1973 be amended to enable the police to fingerprint and photograph any person in lawful custody upon a charge of committing any offence.

133 We recommend that if the accused is subsequently acquitted of an offence, or the charge is not proceeded with then his fingerprints and photographic records be destroyed.

134 We recommend that a special magistrate be authorized upon application to permit the police to take the fingerprints or photograph or both of a person charged with a crime who is not in custody and of a person not charged with a crime where the fingerprints or the photograph may assist in solving the crime.

135 We recommend that any order made under 134 shall contain provision for the destruction of the fingerprints or photographs at such time as they have ceased to be of use in the police inquiries.

Recommendation with respect to Parades of Accused Persons to Aid Identification by Police Officers.

136 We recommend that the practice of holding identification parades to assist in recognition of accused persons by members of the Police Force be discontinued.

Recommendations with respect to the Use of Listening Devices.

137 We recommend that the Police be at liberty to use a listening device within the meaning of the Listening Devices Act, 1972 and for the purposes described in that Act only upon an order of a Judge of the Supreme Court or the Local and District Criminal Court.

138 We recommend that the application for such an order be made in closed Chambers *ex parte* either on oral evidence or by affidavit.

139 We recommend that the order specify the names of the persons whose conversations are to be overheard, monitored or recorded, if such names are known, the means by which the conversations are to be overheard, monitored or recorded and the period for which this may be done.

140 We recommend that the order may contain a direction that the application, evidence and order be sealed up either for a stated time or until further order.

Recommendations with respect to Police Bail.

141 We recommend that s. 80 of the Police Offences Act, 1953-1973 be amended to require a member of the Police Force, who takes into custody a person arrested without warrant, immediately to inform that person that he may apply for bail, and then, if he is not granted bail, to inform him that he is entitled to make application for bail to a justice.

142 We recommend that a justice of the peace should be made available at all times to hear an application for bail.

143 We recommend that the police should be entitled to grant bail conditionally upon the compliance with terms relating to overnight residence and to the refraining from communication with named persons.

144 We recommend that accused persons be at liberty to communicate by telephone with other persons to assist them in obtaining bail but that a member of the Police Force may, if he deems it necessary to prevent communication for ulterior purposes, be present while the accused person makes telephone calls.

Recommendations with respect to Testing for Blood Alcohol Content.

145 We recommend further inquiry into the accuracy of breath analysis and into the methods of breath analysis and the desirability or otherwise of having breath analysis taken by persons who are neither trained scientists nor working under the direction of trained scientists.

146 We recommend that in such inquiry the desirability or otherwise of substituting compulsory blood testing for breath analysis be considered.

147 We recommend that full statistics be kept in relation to blood tests compulsorily made upon accident victims, and in particular the times and places of such accidents, to ascertain whether accidents in which the victim has consumed alcohol are more likely to occur at particular times and in particular places.

Recommendation with respect to a National Forensic Institute.

148 We recommend that the South Australian Government co-operate in the establishment of a national institute of forensic science.

Recommendations with respect to the Police Forensic Science Laboratory.

149 We recommend that the laboratory should be serviced by members of the Public Service and by members of the Police Force.

150 We recommend that the Director of the laboratory should hold a higher university degree in science and should be a person capable of initiating forensic investigation, of directing the training of personnel including in-service training, and of directing what matters can properly be undertaken within the laboratory and what should be sent elsewhere for further investigation, and, as to matters to be sent outside, where and to whom they are to be sent.

151 We recommend that the laboratory should not undertake pathological examinations but that the Director should, after consultation with the Coroner if necessary, direct when and by whom an autopsy shall be performed upon the body of a person whom the police suspect to have been the victim of a crime.

152 We recommend that the Deputy-Director of the Laboratory should hold a degree in science.

153 We recommend that the laboratory should have a chemistry department the head of which should hold a university degree.

154 We recommend that future tests of blood stains should be by the A B O method, the MN method and the Rh method. We make no recommendation as to which would be the most appropriate authority to make these tests.

155 We recommend that a forensic odontological service be set up within the State and that consideration be given to the appropriate institution to undertake a forensic odontological service.

156 We recommend that where expensive equipment is necessary for scientific examinations and the use of such equipment is available outside the Police Forensic Laboratory it be not duplicated within the laboratory.

157 We recommend that the Police Forensic Laboratory should not employ specialist scientists who will not be fully employed within their speciality where the services of such specialists can be obtained by sending work to a government department or outside agency.

158 We recommend that the Police Forensic Laboratory be housed in the building proposed to be built in Divett Place or, if that is not possible, in a building adjacent thereto.

Recommendations with respect to the Discretion to Prosecute and the Conduct of the Prosecution.

159 We do not recommend the establishment of an office of Director of Public Prosecutions.

160 We recommend that the decision to prosecute remain at the discretion of the Police Force, except where Parliament may provide otherwise in particular statutes.

161 We recommend that the liaison between the Crown Law Department and the Police Force which now exits in relation to complex commercial prosecutions be extended, as soon as sufficient numbers of competent legal practitioners can be recruited into the Crown Law Department, to all prosecutions for offences triable in the Supreme Court, and, as soon as practicable thereafter, for offences triable in the Local and District Criminal Court.

162 We recommend that it should become the duty and practice of the Police Force to refer to the appropriate solicitor in the Crown Law Department for his consideration any report concerning an indictable offence in which the police are undecided whether the evidence is sufficient to warrant prosecution.

Recommendations with respect to the Discretion to Prosecute by Private Security Services.

163 We recommend that store owners should be warned that they should report to the police all offences of larceny from the store detected by their store detectives and should not themselves deal with the offenders by admonition or otherwise.

164 We recommend that if such warning appears to be disregarded consideration be given to the enactment of a statutory provision making the failure by a store owner to report to the police an offence of larceny from the store of which he has cognizance an offence punishable summarily.

SCHEDULE 1

ORGANIZATIONS AND INDIVIDUALS FURNISHING SUBMISSIONS

Australian Mineral Development Laboratories
Chequer Security Service
Churches of Christ Department of Social Service
Forensic Science Society, South Australian Branch
Good Neighbour Council of South Australia Inc.
Law Society of South Australia Incorporated
Police Association of South Australia
South Australian Council for Civil Liberties
South Australian Police Department
Mr. K. V. Borick
Dr. K. A. Brown
Mr. B. R. Cox, Q.C.—Solicitor-General
Mr. C. R. Curtis
Mr. K. P. Duggan—Crown Prosecutor
Mr. L. K. Gordon—Crown Solicitor
Dr. H. Harding
Mr. A. S. Hodge
Mr. A. W. Jamrozik
Mr. A. J. Jones
Mr. P. J. Norman
Mr. M. P. O'Callaghan
Professor L. E. Smythe

SCHEDULE 2

PERSONS INTERVIEWED

Mr. H. H. Salisbury, South Australian Police Commissioner
Mr. L. D. Draper, Deputy Commissioner of Police
Mr. E. L. Calder, Assistant Commissioner (Operations)
Senior Chief Superintendent N. R. Lenton, Criminal Investigation Branch
Dr. H. Harding, Biochemistry Department, University of Adelaide

Mr. P. J. Norman, Solicitor
Mr. J. L. Fish, Home Office, Forensic Science Laboratories
Mr. K. V. Borick, Barrister
Dr. J. Hay, Red Cross Blood Centre
Mr. C. F. Tippett, Home Office, Forensic Science Laboratories
Dr. J. H. Bonnin, Director, Institute of Medical and Veterinary Science
Dr. Earle Hackett, Deputy-Director, Institute of Medical and Veterinary Science
Miss J. A. Richardson, then Principal of Women Police Branch, South Australian Police Department
Mr. L. K. Turner, Director, Norman McCallum Police Forensic Science Laboratory, Melbourne
Professor D. J. M. Bevan, Professor of Chemistry, Flinders University of South Australia
Mr. K. Hocking, Senior Architect, Public Buildings Department

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SCHEDULE 3

STATUTORY PROVISIONS FOR ENTRY, SEARCH AND SEIZURE

Abattoirs Act, 1911-1950—ss. 68, 69 and 74
Aboriginal and Historic Relics Preservation Act, 1965—ss. 12 and 31
Agricultural Chemicals Act, 1955—s. 24
Agricultural Seeds Act, 1938-1957—s. 10
Aircraft Offences Act, 1970-1971—s. 18
Apiaries Act, 1931-1964—ss. 8 and 12
Barley Marketing Act, 1947-1972—s. 10
Benefit Associations Act, 1958—s. 7 (4)
Boilers and Pressure Vessels Act, 1968-1971—s. 24 (1)
Brands Act, 1933-1969—ss. 21 and 59
Branding of Pigs Act, 1964-1966—s. 11
Builders Licensing Act, 1967-1973—s. 22 (1)
Building Act, 1923-1971—ss. 16 and 48

Building Operations Act, 1952—s. 5
Bush Fires Act, 1960-1972—ss. 86 and 92
Cattle Compensation Act, 1939-1974—s. 14 (*a*)
Chaff and Hay (Acquisition) Act, 1944—s. 11
Chaff and Hay Act, 1922-1938—s. 5
Citrus Industry Organization Act, 1965-1972—s. 27
Coal Act, 1947-1950—s. 15
Coast Protection Act, 1972—s. 23 (1) and (2)
Community Welfare Act, 1972—ss. 44 (4), 45, 55 (1), 64 (1), 71, 79 (1) and 89 (1)
Coroners Act, 1935-1969—s. 25a
Criminal Law Consolidation Act, 1935-1974—ss. 67, 236 and 318
Dairy Cattle Improvement Act, 1921-1972—s. 12
Dairy Industry Act, 1928-1972—s. 11
Dairy Produce Act, 1934-1946—s. 19
Dangerous Drugs Act, 1934-1972—ss. 9 (*a*), 11 (2) and 12
Discharged Soldiers Settlement Act, 1934-1940—s. 40
Dog-Racing Control Act, 1966-1967—s. 7
Dog Fence Act, 1946-1969—s. 23
Dried Fruits Act, 1934-1972—s. 33 (1)
Egg Industry Stabilization Act, 1973—s. 10 (1) and (3)
Employees Registry Office Act, 1915-1966—s. 11a
Explosives Act, 1936-1972—s. 42
Farmers Assistance Act, 1933-1943—s. 35
Fees Regulation Act, 1927—s. 4
Firearms Act, 1958—ss. 31 and 32
Fire Brigades Act, 1936-1974—ss. 46, 73 and 75
Flammable Clothing Act, 1973—s. 5 (1)
Fisheries Act, 1917-1938—ss. 8-11
Fruit Cases Act, 1949—s. 7
Fruit and Plant Protection Act, 1968—s. 24 (1)
Fruit and Vegetables (Grading) Act, 1934—s. 7
Fruit and Vegetables (Prevention of Injury) Act, 1927—s. 4
Gas Act, 1924-1974—s. 20
Harbours Act, 1956-1974—s. 134
Hide and Leather Industries Repeal Act, 1956—s. 17
Hide Skin and Wool Dealers Act, 1915-1965—s. 11
Honey Marketing Act, 1949-1964—s. 33

Housing Improvement Act, 1940-1971—s. 67
Inflammable Liquids Act, 1961—s. 20
Industrial Safety, Health and Welfare Act, 1972—ss. 16 (3) and 19 (1)-(4)
Juvenile Courts Act, 1971-1974—s. 60
Land Acquisition Act, 1969-1972—s. 27 (1)
Land Commission Act, 1973—s. 20 (1) and (2)
Landlord and Tenant (Control of Rents) Act, 1942-1960—ss. 39 and 105
Land Settlement Act, 1944-1974—s. 32
Licensing Act, 1967-1974—ss. 66 (17), 92, 136 (1) and (2), 152, 174, 180 (1), 184, 185 and 171 (3)
Liquified Petroleum Gas Act, 1960—s. 9
Liquid Fuel Act, 1941—s. 9
Local Government Act, 1934-1972—ss. 416 (1), 417 (1), 421, 496 (2), 511, 639 and 652
Long Service Leave Act, 1967-1972—s. 14 (1)
Lottery and Gaming Act, 1936-1972—ss. 71, 73, 87 and 115
Margarine Act, 1939-1973—s. 6
Marine Act, 1936-1973—ss. 66 and 71
Marine Stores Act, 1898-1963—ss. 22 and 23
Meters and Gas Act, 1881—s. 20
Metropolitan Milk Supply Act, 1946-1971—s. 26
Metropolitan Taxi-Cab Act, 1956-1972—s. 38
Mines and Works Inspection Act, 1920-1970—ss. 7 and 10
Mining Act, 1971-1972—s. 15 (1)
Motor Fuel Distribution Act, 1973—s. 24 (1)
Motor Vehicles Act, 1954-1972—ss. 52 and 139
Murray New Town (Land Acquisition) Act, 1972—s. 10 (1)
Narcotic and Psychotropic Drugs Act, 1934-1972—ss. 11 and 12
National Parks and Wildlife Act, 1972—ss. 22 and 23
Noxious Trades Act, 1943-1965—s. 16
Oats Marketing Act, 1972—s. 22 (1)
Oriental Fruit Moth Control Act, 1962-1967—s. 9 (*b*)
Packages Act, 1967-1972—s. 8 (1)
Petroleum Products Subsidy Act, 1965—s. 12
Petroleum (Submerged Lands) Act, 1967-1969—s. 126 (1)
Phylloxera Act, 1936-1969—s. 35

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SCHEDULE 4

THE JUDGES' RULES

1 When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

2 As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:

"You are not obliged to say anything unless you wish to do so but what you may say may be put into writing and given in evidence."

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

3 (*a*) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:

"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence."

(*b*) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:

"I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence."

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

(*c*) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

4 All written statements made after caution shall be taken in the following manner: (*a*) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:

"I, ..., wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(*b*) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

(*c*) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(*d*) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters; he shall not prompt him.

(*e*) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:

"I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

(*f*) If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

5 If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that

he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by rule 3 (*a*).

6 Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these rules.

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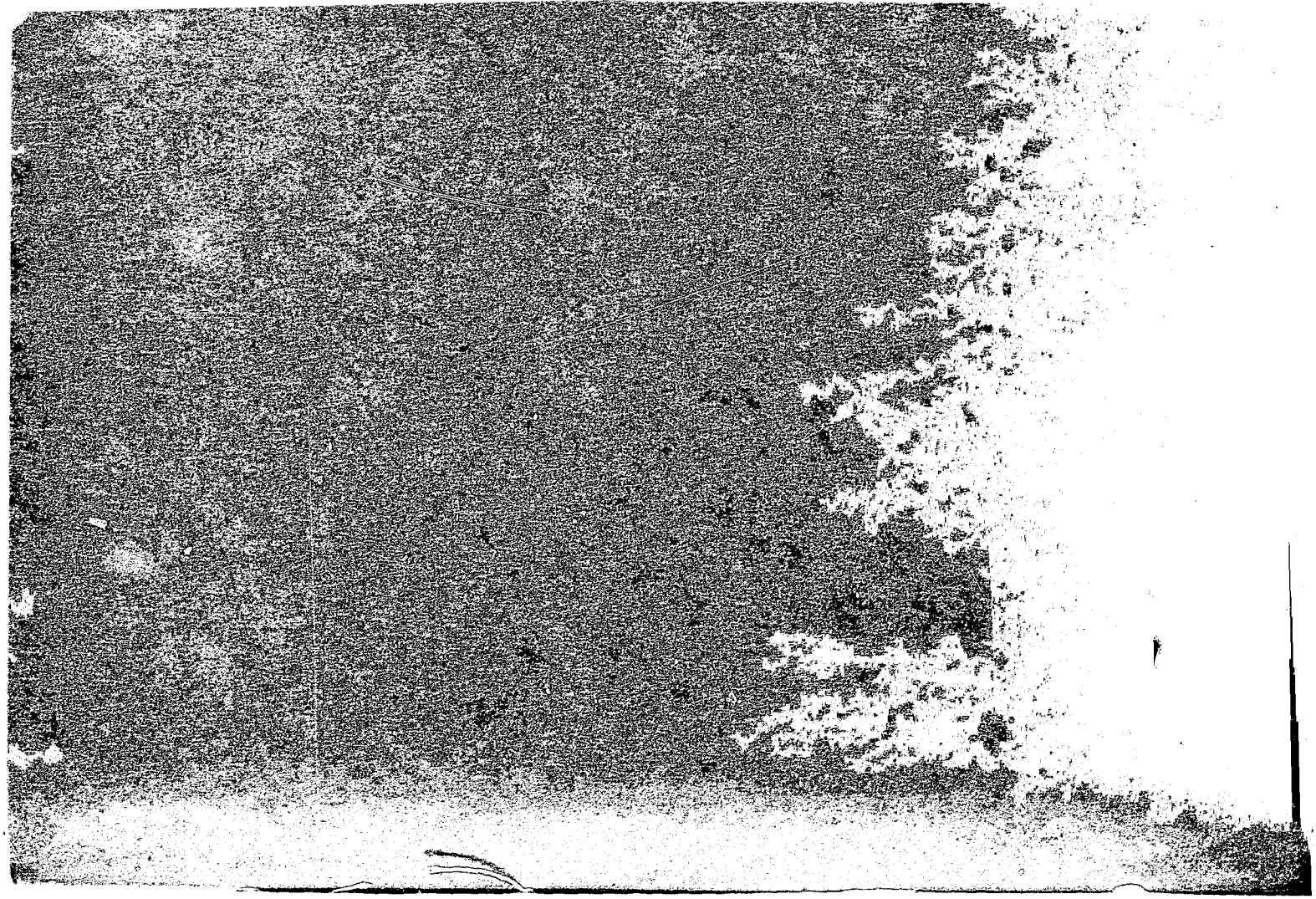

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