



POLICE OFFENCES

OF

WESTERN AUSTRALIA

*Being an
Extensive Annotation of and Commentary upon*

THE POLICE ACT
1892-1978

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FOREWORD

by

THE HONOURABLE SIR FRANCIS BURT, KCMG
Chief Justice and Lieutenant Governor of Western Australia

It is notoriously difficult to predict the acceptance of a new legal text, but my distinct impression is that this one is destined to become a standard work. It is two-dimensional.

The author has brought together all the decisions which throw light upon and reveal the meaning to be given to the very many and, to the layman, the obscure sections of the Police Act. As such it will be a work that will be found at the elbow of all who practice in or preside over courts of petty sessions. That is one dimension.

It is often said that history is best to be found in the rubbish tips. The Police Act is an active tip within which layer upon layer of the social history of our society can be found. And in this work it is found, revealed and discussed in a way which is both amusing and illuminating. And that is the work's other dimension.

It is a scholarly and learned work and the author is to be congratulated upon it.

Chief Justice's Chambers
Perth

PREFACE

This book is designed to provide those who have to work with the Police Act with a convenient reference and answer to all problems likely to arise. Its justification is found in the fact that the Police Act approximates much more closely to the Vagrancy Act 1824 and other English legislation than the comparable Acts of other States and that, therefore, no other textbook in Australia can deal adequately with more than a small part of the Police Act.

Indeed the Police Act is a remarkable statute for a number of reasons. Historically it preserves much of its English progenitors, and large sections of it are virtually unchanged from the Ordinance of 1849 which first introduced English vagrancy law to the State. Its drafting is quite uneven, some of the best drafted sections also being some of the oldest, and it has over its history been subjected to cover areas of crime and novel situations which might otherwise have called for a complete redrafting. Since it antedates the Criminal Code, the problems of the Code's application to the Police Act are still being solved, and in particular the difficulties of applying Ch V of the Criminal Code have not yet been resolved, as the cases reveal. Again, many of the sections preserve remnants of the petty sessions' procedure applicable before the passage of the Justices Act in 1902. To trace the course of amendments is to trace much of the State's social history.

Although there have been many suggestions for redrafting or repeal of the Police Act, it is unlikely that Western Australia's limited staff of parliamentary draftsmen will be called upon. For arguments for a more logical marshalling of Western Australian police offences have to some extent been eclipsed by another, wider issue. Inspired by Messrs Norval Morris' and Gordon Hawkins' 'The Honest Politician's Guide to Crime Control', certain interests are now toying with the idea of abolishing so-called "victimless crimes", such as public drunkenness. This *laissez-faire* approach to problems of social regulation often sits ill upon persons who in other spheres prefer socialistic solutions, but the logical fallacies inherent in the description "victimless crimes" and the carelessness some proponents for reform have for the liberty of the subject (are drunks to have any means of arguing about the decision to take them to "drying-out centres", for instance) need not prevent serious examination of the Police Act and the ideas behind the offences created thereunder. Although I believe that there is a justification for retaining most of the offences created under the Act, there are offences which exist quite without justification or logical excuse, and I have given my view on the subject in the appropriate places where there is some useful point to be made. Similarly, the modern legislative carelessness for the liberty of the subject, noticeable particularly in statutes regulating agriculture, also appears in the Police Act, along with a preference for averment clauses that is also without justification or excuse. One hopes that attention may be drawn to some of these deficiencies by this book.

This book is heavily modelled upon the stylistic approach adopted by the learned authors of *Toose, Watson and Benjafield on Divorce*, in that it seeks to present an expanded annotation, with, where necessary, expanded treatment of various subjects and concepts. The method of annotation is derived from *Dr Kennedy Allen's Justices Acts of Queensland* in preference to the method employed in that excellent work, *Bourke's Police Offences of Victoria* on the ground that the former method makes the disputed point easier and quicker to find, particularly when the book is being used in court. Each phrase, wherever it appears, is cross-referenced to other illustrative material. Illustrative material does not always appear where the phrase first appears in the Act, because this book, although it must deal with other matters, is primarily designed to deal with offences, and most of the commentary is for that reason concentrated in Pt. VI where most of the major offences appear. In this connection, it should be mentioned that my original intention was to omit all material not dealing with offences but this proved impossible. A glance at the Table of Contents will show that offences appear jumbled into sections containing administrative directions and procedural powers. However, although I have preferred to deal with all sections, I have refused to say anything about sections which deal purely with internal regulations of the Police Force, such as those concerned with the Police Appeal Board. Anything that has some impact upon the public, however, is given some attention.

I have not hesitated to go to other areas of law where it appears the judicial pronouncements might assist in interpretation of the Act, although I am fully conscious of the strictures of the High Court in *Bacon v Salamane* (1965) 112 CLR 85 and it should be remembered that until every contentious point has been the subject of judicial pronouncement from a Western Australian court, there must always be doubt about the applicability of all other cases. Because of this shortage of authority I have employed a number of reported Petty Sessions' decisions, and unreported decisions in the Supreme Court and District Court, and without these, I would have often been hard put to find suitable illustrative material.

This book was commenced in 1968. Since that time, new editions of *Bourke's Police Offences* and *Kennedy Allen's Police Offences* have appeared, and I have benefited from their existence, as well as from the existence of all other Australian and many English books dealing with this area. I found earlier editions of *Stone's Justices' Manual* of great assistance in locating cases dealing with the obscurer portions of the Town Police Clauses Act and other contemporary statutes, and dealing more particularly with the Police Act, I have been the beneficiary of the kindness of Mr D Brown of the University of Western Australia Law School whose article "Police Offences" (10 Uni WALR 254), though of necessity incomplete, was invaluable. I also have to thank Mr A W Gill for his unpublished thesis "Aspects of the Western Australian Police Force 1887-1905".

I am conscious of my own deficiencies and lack of experience in attempting a work of this kind, and what good there is to be obtained from it must often be attributed to the help and encouragement of the many friends who have assisted me. Mr Peter Sharkey, one of Her Majesty's Stipendiary Magistrates (now Director of Legal Aid, A.C.T.), kindly revised my first 100 pages and suggested many new ideas and a complete change in style. Mr Sharkey, along with his

brother magistrates Mr T Syddall and Mr R Burton, has also, in his professional capacity, contributed several judgments which have illuminated obscure sections, and I am deeply indebted to him for his encouragement and help.

I am more particularly and deeply indebted to the Hon Sir Francis Burt, KCMG, Chief Justice and Lieutenant Governor of Western Australia, for his generous Foreword, and also with respect to the example offered by his approach to legal problems as counsel, judge and Chief Justice.

I am also indebted to many of my friends and colleagues at the Western Australian Bar and in the legal profession at large and it is almost invidious to attempt to single out particular individuals but I would like to mention particularly Mr H A Wallwork, and also Messrs T A Walsh, I L K Marshall, R A Macknay and R E L Greaves. I would also like to thank the many members of the profession who supplied me with copies of unreported decisions.

For his encouragement and ready help I should like to thank the Editorial Director of Butterworths Pty Ltd, Mr Kingsley Siebel, and also Messrs R E Venn Brown and Thomas Garvey of the same Company. More particularly I gratefully acknowledge the expert editorial attention of Mrs Beryl Stapleton of the staff of Butterworths.

Finally, it soon became obvious, particularly during the second and third revisions of the manuscript, that unless I was to spend my whole time in supervision, I would have to find an amanuensis of exceptional intelligence and perception. I was fortunate to find one in Mrs W M Randall. Matters would not have reached this stage without equally careful preparatory work by others who took on the forbidding earlier drafts, and I gratefully acknowledge their help, mentioning in particular Mrs J Lewis.

The term "police offences" is preferred to "summary offences" for the reasons given by Sir Leon Radzinowicz in the opening chapter of his *History of the Criminal Law from 1750*. The term has no reference to the police force but to "the government of the city" or *polis*.

P W NICHOLS

Bar Chambers
Perth

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