

# THE LEGAL POWERS OF PRIVATE SECURITY PERSONNEL: SOME POLICY CONSIDERATIONS AND LEGISLATIVE OPTIONS

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*A decade into the 21st century, we find that there is no abatement of the 20<sup>th</sup> century trends towards private policing becoming more and more pervasive in Australia. The private sector has been quickly and eagerly filling a modern need for diverse policing services. But the legal powers that apply to private security personnel are still based upon ideas of policing that are rapidly becoming outdated. For the powers of and restraints upon 'private police' emerge from the general law that relates principally to the activities of officious private citizens and journalists. This paper explores the variety of roles that private security personnel now regularly undertake and provides an overview of the current legal bases upon which private security personnel operate when wielding coercive powers. The author critiques legal models that could apply to empower and regulate the activities of private sector police personnel in a manner that befits the new roles and tasks that are being undertaken by them and required of them.*

## I INTRODUCTION

Over the last quarter century there has been a widespread outsourcing of many policing activities. Many policing tasks have been picked up by privatised 'policing' agencies, a world-wide phenomenon that has attracted no little academic attention in recent years.<sup>1</sup> Today, private sector employees are globally recognised as vital players in preventing, detecting and investigating crime. The commercial demand for private contract security specifically, and private policing more generally, thus grows steadily upwards, and there is no part of the globe that has not been affected. Those who have invested in security industries have witnessed steady growth in their earnings. Paid security providers, in terms of numbers of personnel and annual expenditures at the very least,

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<sup>1</sup> L Johnston and CD Shearing, *Governing Security: Explorations in Policing and Justice* (Routledge, 2003); A Wakefield, *Selling Security: The Private Policing of Public Space* (Willan Publishing, 2003); T Jones and T Newburn, *Plural Policing: a Comparative Perspective* (Routledge, 2006); L Zedner, 'Liquid Security: Managing the Market for Crime Control' (2006) 6(3) *Criminology & Criminal Justice* 267; E McLaughlin, *The New Policing* (Sage, 2007); M Button, *Security Officers and Policing: Powers, Culture and Control in the Governance of Private Space* (Ashgate, 2007); R Van Steden, *Privatizing Policing* (BJU Legal Publishers, 2007).

now dominate the order maintenance landscape of most countries in the Western world and increasingly elsewhere as well.<sup>2</sup>

Large numbers of security organisations now offer a kaleidoscope of services and products including in person guarding (both ‘in-house’ and ‘contract’), alarm monitoring, security equipment production, transportation of cash, traffic monitoring, Closed Circuit Television (CCTV) surveillance, private investigation and provision of risk management and credit control services. But uniformed security guards are, by far, the most observable exponents of private security occupations.

As indicated in Figure 1, the presence of private personnel has considerably intensified in Australia alongside the police and police-like bodies in recent years. It is interesting to note the growth in number and rate of public police as well. Indeed, the growth of the private sector in the years 2001-2006 was matched by the growth of public police.

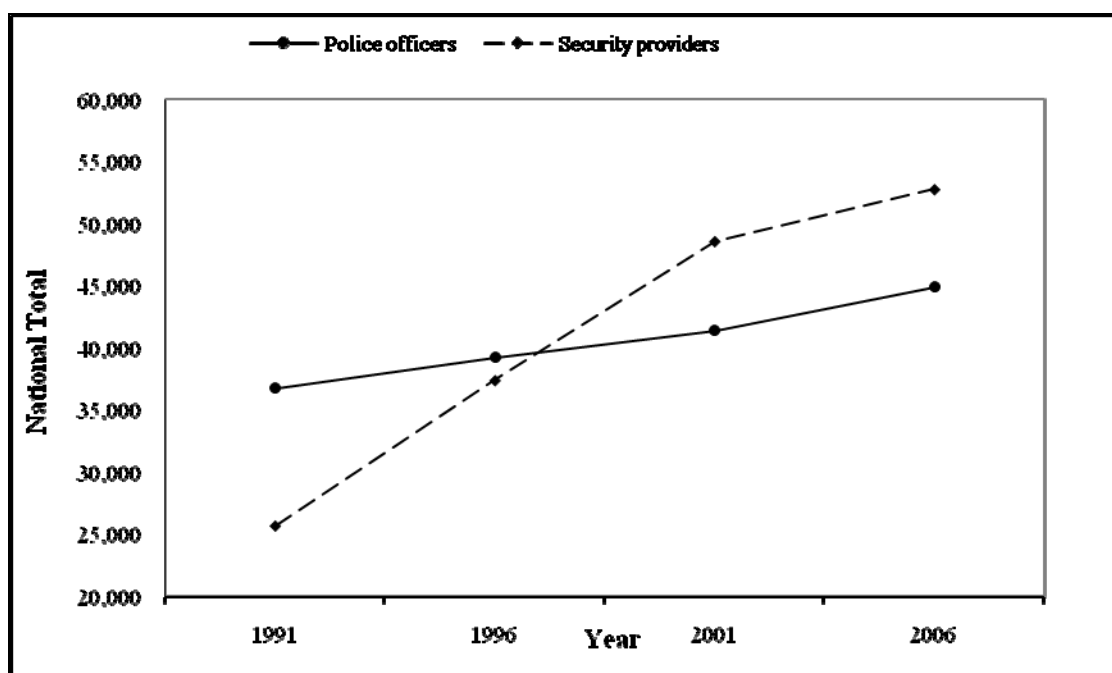


Figure 1: Police Officers and Security Providers, 1991 – 2006.<sup>3</sup>

The expansion of the industry has also been apparent in the turnover figures, published recently in the Costs of Crime study.<sup>4</sup> According to the Productivity Commission, for the 2005-2006 period, A\$4.48 billion (discounted for crimes listed) was spent on policing services. Over the same period, the hardware and software and manpower costs, discounted for the same types of criminal activity, were approximately A\$3.0 billion.<sup>5</sup>

<sup>2</sup> R van Steden and R Sarre, ‘The Growth of Privatized Policing: Some Cross-National Data and Comparisons’ (2007) 31(1) *International Journal of Comparative and Applied Criminal Justice* 51.

<sup>3</sup> Australian Bureau of Statistics 1991-2006. Combined and adjusted security-related functions from all relevant census reports. Note that these have been modified and expanded over time. Figure 1 was first published in T Prenzler, K Earle and R Sarre, ‘Developments in the Australian Security Industry’ (2007-8) 10(3) *Flinders Journal of Law Reform* 403, 406.

<sup>4</sup> K Rollings, *Counting the Costs of Crime in Australia: A 2005 Update*, Australian Institute of Criminology, Research and Public Policy Series No 91 (2008).

<sup>5</sup> Prenzler, Sarre and Earle, above n 3.

The fact that trends in private security continue upwards so strongly today is not particularly surprising, given that the publicly funded agencies of order maintenance that evolved and grew during the 19<sup>th</sup> century development of modern policing never really eradicated the private forms of policing that had preceded them.<sup>6</sup> The consequence of this resurgence is a modern mix of public and private options and roles. There is now far greater reliance than ever before on various private security industries as part of overall policing strategies.

It is remarkable, then, that the body of knowledge on the powers and impact of private security, although steadily evolving,<sup>7</sup> remains relatively small by comparison with the academic literature on public police officers. There is very little literature<sup>8</sup> that specifically critiques the issue of the legal powers that transnational private security providers may wield.

## II LEGAL FRAMEWORKS

Given the rapid expansion of the presence of private personnel in policing activities, one might assume that careful attention would have been paid to the legal framework within which these cooperative activities take place. Sadly, this has not been the case.

The consequence of this neglect is that the legal authority, rights and powers of private security providers is determined more by a piecemeal array of legal privileges and assumptions than by clear law. True, there has been legislation passed in all Australian jurisdictions concerning the registration, licensing, identification and training of private legal personnel, especially in the past decade.<sup>9</sup> However, the main aim of this legislation is to regulate those who operate within the industry, and to check those who wish to enter it against certain criteria and minimum training standards.<sup>10</sup> The legislation does not deal with powers *per se*. There is very little in Australian legislation, and even less in the common law, that permits security guards, even licensed guards, to wield specific powers. Indeed, in two jurisdictions this fact is specifically mentioned in security licensing legislation. Section 8 of the *Security Industry Act 1997* (NSW) says that the holder of any licence can carry out the functions authorised by the licence but that '[a] licence does not confer on the licensee any function apart from a function

<sup>6</sup> L Johnston, *The Rebirth of Private Policing* (Routledge, 1992).

<sup>7</sup> For example, see: M Mulone and B Dupont, 'Saisir la Sécurité Privée: Quand l'État, l'Industrie et la Police Négocient un Nouveau Cadre de Régulation' ['Encapsulating Private Security: When the State, Industry and the Police Force Negotiate a New Framework for Regulation'] (2008) 41 *Criminologie* 103.

<sup>8</sup> Compare the work of: P Stenning, 'Powers and Accountability of Private Police' (2000) 8(3) *European Journal on Criminal Policy and Research* 325; R Sarre and T Prenzler, *The Law of Private Security in Australia* (Thomson LBC, 2005) chapter 3; R Sarre, 'The Legal Powers of Private Security Personnel' in E Plywaczewski (ed), *Current Problems of the Penal Law and Criminology* (2009, in press).

<sup>9</sup> *Security and Investigation Agents Act 1995* (SA); *Security Industry Act 1997* (NSW) amended by the *Security Industry Amendment Act 2005* (NSW); *Private Security Act 1995* (NT); *Security Providers Act 1993* (Qld); *Security & Investigations Agents Act 2002* (Tas); *Private Security Act 2004* (Vic); *Security and Related Activities (Control) Act 1996* (WA); *Security Industry Act 2003* (ACT). There is no national licensing code in Australia although Council of Australian Governments (COAG) is moving, in 2009, to a national system of licensing guarding and manning services. See: COAG, <www.coag.gov.au> at 11 January 2009.

<sup>10</sup> R Sarre and T Prenzler, 'The Regulation of Private Policing: Reviewing Mechanisms of Accountability' (1999) 1(3) *Crime Prevention and Community Safety: An International Journal* 17.

authorised by the licence.’ The South Australian *Security and Investigation Agents Act 1995* s 15(1) goes a little further, stating that ‘[a] licence does not confer on an agent power or authority to act in contravention of, or in disregard of, law or rights or privileges arising under or protected by law.’ Section 15(2) then repeats the NSW legislative proscription upon those who would try to bluff the public, namely that ‘[a] licensed agent must not hold himself or herself out as having a power or authority by virtue of the licence that is not in fact conferred by the licence.’

The lack of legislation is confusing for security personnel and the public alike. Indeed, British academic Mark Button cites evidence that some security personnel (as many as 10 per cent in the United Kingdom) even believe that they possess the *same* powers as police officers.<sup>11</sup> Nowhere do specific ‘policing’ laws directly and consistently focus on the way that private security personnel are empowered to act or to be given immunity from civil suit or criminal charges. Moreover, there are few legal decisions and precedents emerging from the courts. Hence it is difficult for anyone to find a satisfactory body of law on the subject.<sup>12</sup>

In contrast, public police have coercive and intrusive powers that are delineated ‘in more or less clearly defined circumstances.’<sup>13</sup> These delineations reveal distinct differences between the powers of public and private officers and agents. For example, public police are given statutory immunity from civil suit in circumstances where their beliefs and acts are ‘reasonable.’ Private personnel are afforded no such luxury. Indeed, private security remain vulnerable and constantly run the risk of being sued in the torts of assault, false imprisonment, intentional infliction of mental distress, defamation, nuisance and trespass to land and to the person. This is not to say that police do not run these risks, but because they have immunities in place, the police are far less likely to find themselves on the losing end of a civil suit brought by an aggrieved person.

Moreover, public police may act to prevent the commission of an offence *before* it actually happens (acting upon a suspicion). This concession is not granted to private security personnel (or anyone else for that matter). Public police powers, duties, rights, responsibilities and immunities have been so often debated in the courts that there is now a large and continually expanding body of law on these issues. The same cannot be said for private security law.

#### A *Legal Authority*

The legal powers, rights and immunities of private security personnel are obscurely and confusingly located across a range of fields: the criminal law; the law of property; the law of contract (both in terms of contracts of employment, and the contracts that apply to paying customers whenever they enter a private sports or entertainment venue); and employment law. The consequence of this is that there are many bits and pieces of common law, general law and legislation that come together to form what could loosely be referred to as ‘the law of private security.’<sup>14</sup>

<sup>11</sup> M Button, ‘Assessing the Regulation of Private Security Across Europe’ (2007) 4 *European Journal of Criminology* 109.

<sup>12</sup> R Sarre, ‘Researching Private Policing: Challenges and Agendas for Researchers’ (2005) 18(3) *Security Journal* 57.

<sup>13</sup> Stenning, above n 8, 330.

<sup>14</sup> Sarre and Prenzler, *The Law of Private Security in Australia*, above n 8, 55-66.

Starting from first principles, and speaking generally, unless there is specific legislation that empowers specialised staff to undertake certain tasks for some particular event, such as the Olympic Games, the law confers no powers upon security personnel beyond the powers given to the ordinary citizen. That having been said, the powers of the private citizen are considerable. The law of property, for example, grants to the owner of private property the power to require visitors to leave the premises (using reasonable force if necessary), or to subject visitors to stipulations (such as a search) prescribed and advertised by the property owner. Similar powers exist for employers over employees. Each of these powers can be delegated to agents (private security) who are entitled to wear uniforms, and even to carry a firearm if they have the correct training and licence.

Moreover, the common law provides citizens with general powers that include the power to use force in self defence and in defence of one's property. In two States, legislation has extended these general powers to defence of others' property, but the justifications differ. In Queensland, a person has the right to defend another's property so long as they do not inflict 'grievous bodily harm' on the wrongdoer<sup>15</sup> but in a very similar provision in the Western Australian equivalent, the term used is merely 'bodily harm'<sup>16</sup> and there is no apparent reason for the difference.

The rules relating to citizen's arrest are confusing too. The arrest powers of citizens change from jurisdiction to jurisdiction in Australia. In some jurisdictions, the right of private citizens and security guards to make an arrest is limited to 'felonies' and not 'misdemeanours'. In other jurisdictions, it is limited to 'indictable' matters as opposed to 'summary' offences. In each pairing, the former term refers to more serious offences carrying more severe penalties, with the option of a jury trial for accused persons, while the latter are less serious offences.<sup>17</sup> It is highly unlikely that a citizen or security guard will know precisely which definitions apply in any given jurisdiction, and, if they do apply, what the consequences might be.

Other possibilities for confusion emerge from the common law rights of persons to sue others for breach of their rights of liberty. For example, store detectives who detain shoplifters and thieves upon reasonable suspicion of theft have had damages awarded against them (paid to wrongly accused suspects) in some cases, but not in others. The outcome, it seems, depends upon the level of restraint, the length of time involved, and the extent to which the accused person was given an opportunity to allay suspicion.<sup>18</sup> Sometimes the courts protect the public against invasions of privacy by private sector security personnel, but in other circumstances they do not. The legal reasoning is often unclear.

There are other examples in legislation in Australia that highlight the possibilities for confusion for private security officers seeking to exercise their powers. One of them can be found in s 17A of the *Summary Offences Act 1953* (SA). This section creates a criminal offence from what is simply a civil trespass. Section 17A(1) states that where a person trespasses on property such that the occupier's enjoyment of that property is threatened, and where the trespasser is asked to leave by an 'authorised person' 'the

<sup>15</sup> *Criminal Code 1988* (Qld) s 277(2).

<sup>16</sup> *Criminal Code Act 1913* (WA) s 254(3).

<sup>17</sup> R Sarre, 'Citizen's Arrest' (2008) 13(2) *Security Insider* 36.

<sup>18</sup> Sarre and Prenzler, *The Law of Private Security in Australia*, above n 8, 100-4.

trespasser is, if he or she fails to leave the premises forthwith or again trespasses within 24 hours of being asked to leave, guilty of an offence.’ The section goes on to say that ‘[a] person who, while trespassing on premises uses offensive language or behaves in an offensive manner is guilty of an offence.’

A trespasser must also give his or her name to an authorised person if asked, otherwise he or she is guilty of another offence.<sup>19</sup> Yet there is no explanation in the Act to instruct security personnel what their options are if their request is refused. What powers are they entitled to use once an offence has been committed? One assumes that they may make a citizen’s arrest, although that power is arguably present from the moment the person disobeys the order to leave private premises, which does not need legislation such as this. In other words, this type of statute adds little to our understanding of the sources of power that provide the legal basis for private security operations and operators. This law also varies from jurisdiction to jurisdiction, and thus is confusing for security officers who work across state borders.

The confusion generally stems from the fact that the laws that apply to private personnel have developed over the years to apply not to those doing police-type work but to private citizens, landowners and employers. They translate into something potentially quite different in the hands of the *agents* of these individuals. There are thus some justifiable concerns: ‘If private security personnel are in reality no different from ordinary citizens, a law which treats them alike seems most appropriate. But if in reality they are not, and the law still treats them as they are, it becomes inappropriate.’<sup>20</sup>

Private security personnel *are* different from the public in general. On a daily basis they search bags, forbid entry, bar exits, ask probing questions, detain people, confiscate property, carry out inquiries and operate covert surveillance equipment, most significantly CCTV. Yet the powers under which they operate were designed for other purposes. Is there another way forward that can remedy the malaise?

### III MANIFESTATIONS OF EMPOWERMENT

There has been, in the past decade or so, some attempts by governments to grant powers to persons other than to the sworn officers. Some of these may be able to provide a model of legislation that could settle some ambiguities.

#### A *Government-Hired Specialist Personnel*

A common manifestation of empowerment is where a parliament or legislative body creates specific legislation giving the right to certain trained operatives, who have been employed for *specific* tasks, to engage in a particular state-sponsored task or role. These tasks carry with them specific, albeit limited, powers. There are a number of current examples that come to mind internationally as well as nationally.

<sup>19</sup> Other jurisdictions have similar provisions; see, for example: the *Trespass Act 1987* (NT) s 8. A similar provision is found in the *Crimes Act 1914* (Cth) s 89, in relation to Commonwealth land.

<sup>20</sup> P Stenning and C Shearing, ‘Private Security and Private Justice’ (1979) 6 *British Journal of Law and Society* 261, 263, cited in Button, above n 11, 112.

1 *Van Traa Officers: Netherlands*

The City of Amsterdam has a Public Order and Safety Department, which operates in the Municipality of Amsterdam, especially in the ‘red light’ district and around the harbour. These officers are not part of the police structure but are employed as public administrators, coordinating partnerships, linking police, justice departments and the municipality in the fight against organized crime.<sup>21</sup>

2 *Auxiliary Police Forces: Singapore*

The British, during their colonial rule in Singapore, established what have become known as Auxiliary Police Forces (APFs) for the protection and peacekeeping of various localities. APFs continue to this day, and are empowered by the Commissioner of Police of the Singapore Police Force to act with limited police powers within the limits of their own districts.<sup>22</sup> APF personnel are known as Auxiliary Police Officers (APOs). Each APO takes an oath to the APF and is subject to disciplinary proceedings under the *Police Force Act 2006*.<sup>23</sup>

3 *The Australian Protective Service (APS)*

The Australian Protective Service (APS) was established in 1984 as a government agency that provides specialist protective security to government departments on a contractual ‘fee-for-service’ basis. Its core business responsibility was and still is to provide security services at, for example, parliaments and government residences, foreign diplomatic missions, the Australian Nuclear Science and Technology Organization (ANSTO) and defence establishments, and to staff counter-terrorism units at major airports. Australian Protective Service officers are invested with specific protective security law enforcement powers<sup>24</sup> beyond those enjoyed by private sector operatives. They are empowered under Commonwealth legislation<sup>25</sup> to arrest without warrant any person contravening specific laws; for example, relating to the protection of Internationally Protected Persons,<sup>26</sup> and the protection of Commonwealth Territories, establishments and functions.<sup>27</sup>

In 2004, by virtue of the *Australian Federal Police and Other Legislation Amendment Act 2004* (Cth), the responsibility for the APS was removed from the Federal Attorney-General’s Department and given to the Australian Federal Police (AFP), and thus the APS is now the responsibility of the AFP Commissioner. Federal APS officers are now formally referred to as Protective Service Officers (PSOs). There are approximately 1400 in Australia currently.

<sup>21</sup> City of Amsterdam, *The Administrative Approach to (Organised) Crime in Amsterdam* (Public Order and Safety Department, 2002).

<sup>22</sup> *Police Force Act 2006* (Cth) s 86.

<sup>23</sup> The author is grateful to Superintendent Hsu Sin Yun of Singapore Police for this information.

<sup>24</sup> J McCulloch, *Blue Army: Paramilitary Policing in Australia* (University of Melbourne Press, 2001) 63.

<sup>25</sup> *Australian Protective Service Act 1987* (Cth); the *Crimes Act 1914* (Cth); and the *Australian Federal Police Act 1979* (Cth).

<sup>26</sup> *Crimes (International Protected Persons) Act 1976* (Cth).

<sup>27</sup> *Public Order (Protection of Persons and Property) Act 1971* (Cth); *Crimes (Aviation) Act 1991* (Cth); *Air Navigation Act 1920* (Cth); *Defence (Special Undertakings) Act 1952* (Cth); and the *Nuclear Non-Proliferation (Safeguards) Act 1987* (Cth).

#### 4 *South Australia Police (SAPOL) Police Security Services Branch (PSSB)*

The PSSB began within SAPOL as a publicly-funded body employing public servants (not sworn police officers), competing in the same market-place with private security firms in providing fee-for-service security advice, protective security risk reviews, alarm monitoring, and patrol and personnel services. After a review in 2003, the PSSB no longer competed in the market place, and now focuses upon cost recovery protection of government clients such as school security. PSSB security officers are not, however, given any specific authority. From 2009, their role in South Australian policing, however, is being phased out, in favour of the *Protective Security Officers* (described below) and there is some discussion around creating more than one 'tier' of protective security officers, including a variety that will have the power to wear and to deploy firearms and to act more like a police officer than a security officer.<sup>28</sup>

#### 5 *Maritime and Aviation Security Officers*

Under the *Maritime Services Act 1935* (Cth) and the *Aviation Transport Security Act 2004* (Cth), security officers (appropriately trained) can assume the powers that are created by the Acts. These officers are licensed private operators who are contracted (through the owners of the airports and ports) to carry out security roles especially designed to preserve the integrity of critical infrastructure. This has been the driving force in the face of the recent terrorism threats.

#### 6 *Special Events 'Rangers'*

At the Sydney Olympics in 2000, private security personnel, with appropriate security licences, but without specialised training, were given specific powers that derived from the legislation creating the particular Olympic authority itself. The *Security Industry (Olympic and Paralympic Games) Act 1999* (NSW) allowed security personnel to act in accordance with the wide powers vested in them by the Australian Olympic Committee. The legislation expired on 1 December 2000. Other legislation remains in force, for example, the *Sydney Harbour Foreshore Authority Act 1998* (NSW). The creation of the Foreshore Authority was not linked to the Olympics and it continues to this day. The Foreshore Authority can appoint licensed security officers to be 'rangers'<sup>29</sup> and to empower them to exercise certain powers, including removal of unwanted persons from the Sydney Harbour Foreshore, search and seizure and 'move on' powers. These powers are found in Part 4 of the *Sydney Harbour Foreshore Authority Regulation 2006* (NSW). The important thing to note here is that rangers are not public servants, but operatives who have an appropriate licence and who are contracted to the Authority to carry out the role, subject to their undertaking further training.

Allied to these officers are the growing numbers of state-based specialist officers who are employed for specific tasks, such as transit officers whose powers vary from task to task and from State to State. The powers vary too. In Queensland, for example, from

<sup>28</sup> Other States have similar bodies, for example: VicPol has a protective security branch; NSW police have special constables (on an *ad hoc*, user-pays basis); and Queensland's *State Building Protective Security Act 1983* creates a State Government Protective Service that operates on a commercial basis too. The author is grateful to Superintendent Noel Bamford and Inspector Jim Carter of SAPOL (South Australian Police) for this information.

<sup>29</sup> *Sydney Harbour Foreshore Authority Act 1998* (NSW) s 32.



2009 transit officers will have power to handcuff and detain unruly passengers.<sup>30</sup> One might consider in this same context the various ‘policing’ operatives engaged in state security (such as immigration officials), special auxiliary constables (for example, transport security staff), departments of state officials (such as the fraud section of social security departments), municipal employees (for example, local authorities who regulate and manage waste disposal), and regulatory and investigative personnel employed by both public and private corporations.<sup>31</sup>

## B Government-Trained ‘2<sup>nd</sup> Tier Police’

A second manifestation derives from legislation that creates a ‘second tier’ of policing. Operatives are trained generally for policing roles. They are not tied to any specific task or any specific employment arrangement. The most obvious example is the United Kingdom’s system of Community Support Officers.

### 1 Community Support Officers (CSOs)

In the United Kingdom in 2003 4000 persons were appointed as CSOs under the *Police Reform Act 2002* (UK).<sup>32</sup> By March 2006, the London Metropolitan Police Service (the ‘Met’) had 2500 CSOs<sup>33</sup> and they are now found across every one of the 43 Home Offices police forces in England and Wales. A commitment has been made by the government to enlist 24 000 CSOs by the beginning of 2009.<sup>34</sup>

CSOs, carrying out ‘second-tier’ policing roles, have limited powers to deal with anti-social behaviour and disorderly conduct. These powers include the right to detain a person for up to 30 minutes.

Local authorities set down possible roles for CSOs, who are then empowered to carry them out, so long as the appropriate training has taken place. These roles include patrolling, collecting evidence, responding to low level incidents, advising on crime prevention, conducting house to house enquiries, giving witness support and undertaking CCTV surveillance.

The powers granted to CSOs are not standard, but are drawn from a list of over 40 powers. The evidence is that most police forces have delegated between 14-28 powers

<sup>30</sup> Refer press story: G Dunlevy and D Cratchley, ‘New Powers for Transit Officers Slammed as “Gung Ho”’ (Press Release, 1 May 2008).

<sup>31</sup> Johnston, above n 6, 115-17.

<sup>32</sup> Home Secretary, ‘New Community Support Officers Boost’ (Press Release 124/2003, 2 May 2003); L Johnston, ‘From “Community” to “Neighbourhood” Policing: Police Community Support Officers and the “Police Extended Family” in London’ (2005) 15 *Journal of Community and Applied Social Psychology* 241; L Johnston, ‘Diversifying Police Recruitment? The Deployment of Community Support Officers in London’ (2006) 45(4) *The Howard Journal of Criminal Justice* 388; L Johnston, ‘“Keeping the Family Together”: Police Community Support Officers and the “Police Extended Family” in London’ (2007) 17(2) *Policing and Society* 119; L Johnston, R Donaldson and D Jones, *Evaluation of the Deployment of Police Community Support Officers in the Metropolitan Police Service* (Unpublished Final Report, Institute of Criminal Justice Studies, University of Portsmouth, 2004).

<sup>33</sup> Sir I Blair, ‘Surprise News: Policing Works’ (2007) 8(2) *Police Practice and Research: An International Journal* 175, 175.

<sup>34</sup> C J Cooper et al, *A National Evaluation of Community Support Officers*, Home Office Research Study No 297 (2006).

to CSOs, the main ones being the confiscation of alcohol and tobacco from underage consumers, the power of entry to save life and limb, and the ability of CSOs to seek names and addresses from persons whom they see engaging in anti-social conduct.

Other available powers include the power to issue penalty notices for truancy, disorder (curfews, property damage, and fireworks), dog fouling, graffiti, littering, riding on footpaths and so forth. CSOs may have bestowed upon them the power to disperse groups and to detain a person for up to 30 minutes pending the arrival of police. According to Cooper *et al*, 14 police forces have granted these special powers to CSOs.<sup>35</sup>

The list of tasks available to some CSOs also includes the power to seize vehicles, to use reasonable force, to do road checks of car road-worthiness, to control traffic, to enforce cordons under specific anti-terrorism laws and to stop and search under these laws.

## 2 *Protective Security Officers (South Australia)*

The model closest to the CSO in Australia is the foreshadowed ‘protective security’ officer due for implementation in the foreseeable future. In March 2007, the Rann Labor government introduced, and the South Australian parliament later passed, the *Protective Security Act 2007* (SA). The new position of Protective Security Officer (PSO) has been created by this legislation. PSOs are not linked to any specific body of police, nor are they engaged for a specific event. They are not sworn police officers. Unlike PSSB officers, however, PSOs are appointed and managed by the Police Commissioner, who has power to discipline them. They are empowered to provide a first response to terrorist incidents and to protect buildings, vehicles, officials and designated places. Consequently they are resourced with a range of tactical options that can include the use of firearms, batons and capsicum spray. PSOs will not be expected, nor be required, to become involved in complex police activities or investigations. But they do not have powers of a constable. Under the new arrangements, PSOs will have the authority to give reasonable directions, refuse entry, or direct a person to leave certain locations, require persons to state their reason for being at a certain location and require persons to state their name and address and to provide identification when requested. They will be able to conduct searches on persons, vehicles or property (under certain circumstances), seize certain items and evidence; and detain a person for a ‘Protective Security Offence.’

Such an offence will have been committed if a person is caught failing to obey reasonable directions, failing to state his or her reason for being on certain premises, failing to give his or her correct name and address, failing to produce identification, hindering or assaulting or resisting a PSO in the execution of protective security duties, and impersonating a PSO.

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<sup>35</sup> Ibid.

C *Commandeered Volunteer 'Quasi-Police'*

A third manifestation is where a jurisdiction enacts specific legislation that is designed to set out limited private security personnel rights and powers which are then matched with the specific training that has been undertaken, leaving specially-trained officers 'on call' should the need for specialised policing duties arise.

1 *Project Griffin*

One manifestation that comes to mind is Project Griffin,<sup>36</sup> where certain privately-based security personnel are 'on call' for emergency responses. These officers remain employed principally in other 'security' occupations, usually as security managers of selected Central Business District (CBD) buildings. Project Griffin was developed by the City of London Police in 2004. The idea of the project was to have, at the ready, a significant number<sup>37</sup> of private security officers, specifically 'Griffin-trained', available to help police if there was a major incident, such as a terrorist attack. The managers of these officers regularly exchange information during scheduled telephone hook ups. The powers of these officers (and they are very limited powers indeed) only come into play when a terrorism incident occurs and they are called up for 'critical incident management' duty, principally to man police cordons and control access to areas affected by terrorist acts.

A variety of Project Griffin has been launched by Victoria Police (VicPol) and operates, in a limited fashion, around the Melbourne CBD under the auspices of VicPol's Counter-terrorism Coordination Unit which was set up in 2005. In a similar move, SAPOL has initiated a Project Griffin Steering Group (made up of SAPOL representatives and a selection of private security managers) to progress the implementation of the initiative in the Adelaide metropolitan area. The Steering Group has identified about 20 major security providers plus the security from the three universities that might be interested in participating in the first round of training sessions for their security officers.

Other than these variations on a Griffin theme, there are no Griffin-style programs currently running in Australia.

## IV DISCUSSION

When exceptional authority is bestowed upon those who administer and enforce the law, it requires legislative action through parliamentary debate. For that reason, the rules regulating public policing are set out prospectively to authorise the taking of particular action, and also retrospectively to show interested others, such as the courts, parliaments and other accountability forums, that the action was justified in the circumstances.<sup>38</sup> The public police have considerable powers to arrest, search and interrogate. Liberty is at stake if these powers are abused; hence they have been debated in parliaments and tested in courts for decades.

<sup>36</sup> The name is taken from the fictitious creature of eagle/lion that is the symbol of the City of London.

<sup>37</sup> According to anecdotal reports, there could be up to 4000 security officers working privately in the London CBD on any given day.

<sup>38</sup> R Ericson, *Reproducing Order: A Study of Police Patrol Work* (University of Toronto Press, 1982) 15.

Private security personnel and private operatives are now undertaking many of the same roles, but the laws that apply to empower and restrict them are not in the same league. They are, for the most part, vague and inconsistent. Private security legal issues rarely come before the courts and there is little legislation that applies. This situation creates a rather opaque ‘policing’ world.

It is worrisome to many commentators that, in the private sector, many companies and firms engage in private justice (such as demotion of an officer caught in fraudulent activities) rather than engage in the time-consuming task of having the police (or other investigative agency) inquire into the conduct, with its attendant bad publicity for the company or firm.<sup>39</sup>

Where should we proceed from here? How can we best make more public the vast amount of policing that is now conducted by ‘private’ police? There is no broadly-based legislation giving specific powers to all licensed agents. Parliaments have avoided legislation other than to set up licensing regimes. They have not specifically set out immunities, preferring to infer that they apply once the powers under legislation<sup>40</sup> have been exercised appropriately. One can sympathise. It is a difficult task to specify private police powers across the board, given the many forms and varieties of private operatives and the multitude of activities in which they may be engaged at any one time or over a period of time. In addition, many private security firms are, or are becoming, national and transnational corporations, and thus any general attempt to set legislated rules which transcend national and international boundaries would be difficult to do, let alone to implement and enforce.

This would explain why the most common option is the ‘do nothing’ option. There are common law provisions and ad hoc legislation that applies to issues such as citizen’s arrest, use of force, trespass to land, defence of property and defence of another’s property, search and seizure, covert surveillance, and breach of privacy which apply now to all people including security personnel. Leaving these areas legally ambiguous encourages fewer suits against ‘private’ police, forcing those aggrieved to negotiate more and litigate less.

But for those who find the level of uncertainty and anomaly unsettling there are other options. The most interesting development is the last one discussed above, that is the option based upon the ‘commandeering’ model. If such a model were to become more widespread, law-makers could place guidelines in the legislation setting out where and when ‘Griffin-trained’ personnel can safely rely upon immunities from suit more generally, for example, where they can demonstrate that they were engaging in a *bona fide* act of crime prevention. The idea of a person being protected from legal suit when exercising good faith is not novel. For example, s 74(2) of the *Civil Liability Act 1936* (SA) states that ‘[a] good Samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance.’ Perhaps a ‘reasonable suspicion and good faith immunity’ could be installed by legislation for all people who engage in ‘higher level’ licensed security functions.

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<sup>39</sup> R Sarre, ‘Keeping an Eye on Fraud: Proactive and Reactive Options for Statutory Watchdogs’ (1995) 17(2) *Adelaide Law Review* 283, 294.

<sup>40</sup> Such as the *Aviation Transport Security Act 2004* (Cth).

Specifically-designed legislation for ‘Griffin-trained’ personnel (or other special emergency response personnel) has some appeal. It may be appealing to those seeking to set guidelines for monitoring private security sector activity; although one could note that the creation of specific legislation for public police does not guarantee their accountability.

Would it be possible for ‘2<sup>nd</sup> tier’ or ‘Griffin-style’ empowerment legislation to be enacted to apply over and above the anti-terrorism activities that Project Griffin, for example, is designed to accommodate? It is possible to envisage legislation capable of matching and accommodating all of the circumstances in which private personnel could be called upon to assist and to specify what they can or should do in certain circumstances, what they are required to *avoid* doing, and when they can safely rely upon immunity from legal suit. There are, one should add, some concerns related to the often inadequate levels of training of private security personnel.<sup>41</sup> Clearly, any such legislation could only be activated once there was satisfaction that the required levels of training and accountability would accompany implementation.<sup>42</sup>

## V CONCLUSION

As policing moves more and more into private hands, the traditional legal powers that apply to ‘policing’ are becoming outdated. The powers and immunities of private security personnel are often unclear and inconsistent, dependent upon fine distinctions and differ markedly from those of the public police even though they are often carrying out many of the same tasks.

What should be done to remedy this situation? There is a good argument to continue to explore the development of ‘2<sup>nd</sup> tier’-style private security laws with specific powers and immunities granted to certain personnel who have been suitably trained, whether as UK-style Community Support Officers or the Australian permutation, Protective Security Officers. There are also very good grounds to continue to expand the concept of ‘Griffin-trained’ personnel, drawn from the ranks of private personnel who could wear two security ‘hats’. Whatever path is chosen, the exercise in making the choices and debating the required legislation would, arguably, lift the profile of private operators and their associations, bolster training standards and accountabilities, improve public confidence, and enhance policing effectiveness and cooperation generally.

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<sup>41</sup> Sarre and Prenzler, *The Law of Private Security in Australia*, above n 8, 213.

<sup>42</sup> *Ibid* 202.