

Alternatives to Cautions

Terms of Reference

In 1975 the Commission was asked to consider alternative ways of dealing with offenders charged with offences which, in the past, may have been dealt with by way of a caution.

Background of Reference

It had long been the practice of magistrates and judges, if they found a charge proved but considered that there were extenuating circumstances, to convict an offender and merely "caution" him. The purported legal effect of a caution was that, whether or not the offender was ordered to pay the complainant's costs or some other order was made against him, he was unconditionally discharged.

As a result of the 1975 Supreme Court decision *Walsh v Giumelli; White v Gifford*,¹ which held that a Court of Petty Sessions had no power to impose a caution on a convicted offender, the Attorney-General referred the matter to the Commission for consideration of possible alternatives to the use of cautions.

Nature and Extent of Consultation

The Commission issued a working paper in August 1975 which was widely distributed for comment. The Commission received submissions in response to the working paper from the Crown Law Department, the Department for Community Welfare, the Law Society of Western Australia, the Parliamentary Commissioner for Administrative Investigations, the Western Australian Alcohol and Drug Authority, the Western Australian Police Department and four individuals. The final report containing the Commission's recommendations was delivered in November 1975.²

Recommendations

Following extensive examination of the issues and submissions, the Commission recommended that:

- Courts of Petty Sessions and superior courts should be able to dismiss a proven charge without conviction where the offence carries a maximum penalty that does not exceed three years' imprisonment.
- Courts of Petty Sessions and superior courts should be able to convict an offender and discharge him conditionally or unconditionally except in respect of those offences where there is a mandatory or minimum sentence.
- The power to discharge offenders without penalty, whether with or without conviction and whether conditionally or unconditionally, should not be limited to first offenders.
- Dismissal without conviction or discharge following conviction should not be a bar to civil proceedings, and should not affect the power of a court to make any other order, such as a compensation order or an order as to costs payable by the defendant.

The Commission made several other consequential recommendations outlining a court's discretion to impose conditions on the dismissal or discharge, and the criteria to be considered by the courts when deciding whether or not a dismissal or discharge should be granted.³

Legislative or Other Action Undertaken

In 1979 Parliament enacted the *Criminal Code Amendment Act 1979 (WA)* to implement the Commission's recommendations.

¹ [1975] WAR 114.

² See Law Reform Commission of Western Australia, *Alternatives to Cautions*, Project No 60 (1975).

³ *Ibid* 16–18.