

**Government Response
to the
Victorian Parliament Law Reform Committee's
Final Report on
*The Powers of Entry, Search, Seizure and
Questioning by Authorised Persons***

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The Government welcomes the Final Report of the Victorian Parliament Law Reform Committee ("the Committee") pursuant to its inquiry into the powers of entry, search, seizure and questioning by authorised persons. The inquiry was referred to the Committee by the Governor in Council on 18 April 2001. After publishing a Discussion Paper in October 2001, the Committee tabled its Final Report in the Legislative Assembly on 30 May 2002.

The powers of authorised persons to enter and search premises, to seize property, to question individuals and to require them to produce items (often known as inspection powers) are found across a wide range of areas. More than 120 Victorian Acts of Parliament contain inspection powers, covering such matters as consumer affairs, transport, and fisheries, amongst many others. Almost all Victorians will, at some stage, be engaged in activities that are subject to such powers. Sometimes police officers may exercise inspection powers under those Acts, but in most cases "authorised persons" are not police officers but are authorised to exercise inspection powers.

Inspection powers are important tools in law enforcement, helping the Government to properly regulate a wide range of activities for the benefit of all Victorians. Inspection powers can also involve significant intrusions upon people's rights to privacy, liberty and property. A just law enforcement system will carefully balance, on the one hand, the need for inspection powers being available to effectively combat various harms and, on the other, the need for due respect for people's rights. The Government is committed to ensuring that the people of Victoria may be confident that their laws strike the right balance in this regard.

The Committee's Report has done a great deal to clarify the many issues concerning the powers of entry, search, seizure, questioning and requiring the production of documents by authorised officers. In most cases, the Government is supportive in principle of the Committee's recommendation. For some recommendations, the Report will be of great assistance to the Government in its further consideration of the matters raised. The Government notes that among the recommendations for further consideration, the following are of particular interest: recommendations 3(b), 37, 38, 41-44, 71, 72, and 78. Once it has had the opportunity to consider those recommendations as well as the matters which it supports in principle, the Government will be best placed to consider the remaining matters noted for further consideration.

ORDERED TO LIE ON THE TABLE


Clerk of the Legislative Assembly 1

The Government takes this opportunity to thank the Committee for its efforts in undertaking a review of the powers of entry, search, seizure and questioning by authorised persons. The Government is grateful for the Committee's hard and careful work.

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Table of Government Responses to the Law Reform Committee's Recommendations

Number	Recommendation	Response
1	<p>That, as a matter of general principle, powers of entry, search, seizure and questioning only be conferred for the purposes of:</p> <ul style="list-style-type: none"> • monitoring compliance with the legislation; • investigating a suspected offence under the Act; and • responding to genuine and clearly defined emergencies. 	<p>The Government supports in principle that powers of entry, search, seizure, questioning and requiring production of documents or other items should generally be conferred for the purposes of monitoring compliance with relevant legislation, investigating suspected offences under the legislation, and responding to emergencies. An "emergency" includes, amongst other things, situations where there is a significant risk to one or more person's health and safety or to the environment. (This Government response refers to such powers when used for such purposes as "inspection powers".)</p> <p>In some cases, similar but more limited powers could be conferred on other classes of people for purposes that differ from those identified above but nevertheless serve some public good, such as land valuers or surveyors. The Report and this Government response do not address the principles applicable to powers that are not inspection powers.</p>
2	<p>That Victorian Acts conferring powers of entry, search, seizure and questioning on authorised persons:</p> <ul style="list-style-type: none"> - clearly state the purpose of every provision which confers powers on authorised persons; and - contain separate provisions for each identified purpose. 	<p>The Government supports in principle that the purpose of inspection powers should be readily ascertainable from the Act that creates them. To achieve this objective, it may not be necessary for the purpose of each power-conferring provision to be explicitly stated. It will often be clear from the relevant Act what the purpose is for any particular power. Similarly, where it is clear from the relevant Act which powers are available for a particular purpose, it is not necessary for separate provisions for each purpose to be created.</p>
3	<p>That the Department of Justice, with the relevant government departments, provide a response to the following proposals obtained in evidence:</p>	<p>In relation to recommendations 3(a) to 3(f), the Government will give further consideration to the matters raised. These involve</p>

Number	Recommendation	Response
		<p>complex issues, involving the balancing of competing interests. The Committee's recommendations will assist in this consideration.</p> <p>See response to Recommendation 3.</p>
	<p>(a) The Environment Protection Act 1970</p> <ul style="list-style-type: none"> - enhanced information gathering powers; - the power to enter residential premises under warrant; - inspection and testing powers; and - the granting of expanded powers to Environmental Health Officers under the Environment Protection Act 1970. 	
	<p>(b) Re-consideration of the distinction between licensing and non-licensing Acts in the Fair Trading area and, in particular, consideration of the introduction of pro-active monitoring powers into the non-licensing Acts.</p>	<p>See response to Recommendation 3.</p>
	<p>(c) Local Government Act 1989</p> <ul style="list-style-type: none"> • introduction of arrest powers 	<p>See response to Recommendation 3.</p>
	<p>(d) Domestic (Feral and Nuisance Animals) Act 1994</p> <p>clarification of the definition of seizure in section 77 and the reasonable excuse provision in section 76(2).</p>	<p>See response to Recommendation 3.</p>
	<p>(e) Taxation Administration Act 1997</p> <p>introduction of positive mandatory injunctions.</p>	<p>See response to Recommendation 3.</p>
	<p>(f) Gaming No. 2 Act 1997</p> <p>amendment to reflect the distinction between professionally organised or promoted charities and church or local charities.</p>	<p>See response to Recommendation 3.</p>
4	<p>That the Department of Natural Resources and Environment provide a response to the proposals suggested by the RSPCA in evidence before the Committee.</p>	<p>The Government will give further consideration to the proposals noted in the VPLRC Report. Recent amendments to the <i>Prevention of Cruelty to Animals Act 1986</i> deal with some of the concerns raised, e.g. sections 21A, 24E, 24J.</p>
5	<p>That the Prevention of Cruelty to Animals Act 1986 be amended to:</p>	<p>In relation to Recommendations 5 to 12, the Government will give further consideration to the matters raised. These involve complex</p>

Number	Recommendation	Response
	<ul style="list-style-type: none"> • require inspectors to produce their identification automatically rather than merely on demand. • require inspectors automatically to produce a card setting out their name or identifying number, title, the organisation employing them and information on the relevant complaints mechanism. • provide that persons should not be found guilty of obstructing an inspector unless, as soon as practicable under the circumstances, the inspector has: <ul style="list-style-type: none"> - clearly identified him or herself; - informed the person of his or her rights; and - warned the person that a failure or refusal to comply with a request could constitute an offence. • differentiate more clearly between powers granted for the purpose of acting in emergencies and those which inspectors can exercise where they reasonably suspect that an offence under the Act has been committed. • require inspectors to obtain a warrant for the investigation of suspected offences except in clearly defined emergencies. • specifically preserve the privilege against self-incrimination in relation to questioning by inspectors. • make provision for an internal complaints mechanism and reporting requirements in accordance with recommendations 28 and 31-33. 	<p>issues, involving the balancing of competing interests. The Committee's recommendations will assist in this consideration.</p>
6	<p>That the Prevention of Cruelty to Animals Act 1986 and the internal practices of the RSPCA be further reviewed in the light of all general principles and relevant recommendations in this Report.</p>	<p>See response to Recommendation 5.</p>
7	<p>That the Government review the policy and process for the prosecution of offences under the Prevention of Cruelty to Animals Act 1986.</p>	<p>See response to Recommendation 5.</p>

Number	Recommendation	Response
8	That DNRE and council officers be trained in relation to companion animal issues so that such officers can effectively use the powers under the Prevention of Cruelty to Animals Act 1986.	See response to Recommendation 5.
9	That the Ombudsman Act 1974 be amended to ensure that the inspectorate function of the RSPCA is formally subjected to the oversight of the Ombudsman.	See response to Recommendation 5.
10	That the RSPCA publicise its complaints, reporting procedures and enforcement philosophy, in line with Recommendations 15 and 20.	See response to Recommendation 5.
11	That the Prevention of Cruelty to Animals Act 1986 be amended to specify that inspectors cannot be authorised until they have completed approved training and that the retention of authorisation be contingent upon an approved program of in-service and ongoing training.	See response to Recommendation 5.
12	That the Memorandum of Understanding between DNRE and the RSPCA be amended to specifically address the issue of training and to ensure ministerial and departmental oversight of the training of RSPCA inspectors.	See response to Recommendation 5.
13	That agencies that have not already done so develop an enforcement philosophy as a written document.	The Government supports in principle that it can be advantageous for agencies with a significant inspection role to develop a written enforcement philosophy where they have not already done so. Whether such a document is appropriate will vary from agency to agency. The nature and content of such a document will also likely depend on the nature and purpose of inspection powers that are exercised by particular agencies.
14	Evidence of compliance with recommendation 13 should be contained in the 2003/2004 annual report of agencies.	The Government supports in principle that an agency which has developed a written enforcement philosophy document in response to recommendation 13 should report on the development of the document in its subsequent annual report.

Number	Recommendation	Response
15	That agencies ensure that their enforcement philosophies or strategies are as transparent and well publicised as possible, preferably by means of publication and distribution among those affected by the legislation.	The Government supports in principle that agencies' enforcement philosophies should be transparent and publicised. The appropriate form of publication and/or distribution would depend on the nature of the inspection powers and the people likely to be affected by the powers. It is open to agencies to decide that in certain cases, it may not be appropriate to publicise particular enforcement strategies where that might assist certain groups to evade prosecution.
16	That Acts clearly set out the process of authorisation of inspectors or cross-reference to the Act which does.	The Government supports in principle that, in terms of both effectiveness and fairness, relevant Acts should make clear the source of an inspector's authority.
17	<p>That authorisation provisions be as specific as possible. In particular that:</p> <ul style="list-style-type: none"> • legislation not confer inspectors' powers on a recipient categorised merely as a member of a particular Department or organisation. • inspectors' powers not be conferred on a particular recipient simply because it is the most economically or administratively advantageous option. • agencies have clear and appropriate qualification requirements and educational and training standards for their inspectors. 	<p>The Government supports in principle that specific individuals be authorised to exercise inspection powers (rather than categories of persons) and that the individuals so authorised should be chosen not merely because of economic or administrative ease.</p> <p>The Government also supports in principle that inspectors be appropriately qualified or trained before exercising inspection powers. The details of the required qualifications and training may not need to be specified in legislation, provided that there are process and policies in place to ensure that appropriate standards are met.</p>
18	That, where non-government employees are authorised as inspectors, strong safeguards relating to monitoring and reporting on inspectors' activities and access to complaints mechanisms must be included.	The Government supports in principle that monitoring, reporting and complaints mechanisms in relation to non-government employees who are authorised as inspectors should have parity with those regulating government employee inspectors.
19	That all Acts conferring relevant powers on inspectors require inspectors to produce identification automatically.	The Government supports in principle that when someone is to be subject to inspection powers they should be able to know that the person exercising those powers does so with authority. To that end, legislation should require that inspectors identify themselves

Number	Recommendation	Response
20	<p>That all Acts conferring relevant powers on inspectors require inspectors automatically to produce a card setting out their name or identifying number, title, the agency employing them as well as information on the relevant complaints mechanism.</p>	<p>before exercising inspection powers. The precise nature of that identification may need to vary with circumstances to take account of practicalities and privacy issues. For example, the most effective form of identification may not always be the production of a card.</p> <p>The Government supports in principle that where a person requests such information or where there is to be further activity following an exercise of inspection powers (e.g. information will be passed on to prosecutors), inspectors should, where practicable, provide written information about the inspector's name or identifying number, their agency and information on how to make a complaint or who to contact for information on how to do so. It may not be necessary for this requirement to be in legislation where an agency maintains an appropriate policy.</p>
21	<p>That all Acts conferring relevant powers on inspectors provide that persons should not be found guilty of obstructing an inspector unless, as soon as practicable under the circumstances the inspector has:</p> <ul style="list-style-type: none"> • clearly identified him or herself; • advised the person of the inspector's powers under the legislation as well as of the • person's rights; • warned the person that a failure or refusal to comply with a request could constitute an offence. 	<p>The Government is committed to protecting inspectors from being obstructed in exercising lawful powers. It supports in principle that an offence of obstructing an inspector should be conditional upon a person having had reasonable opportunity to form the belief that the person had authority to exercise inspection powers. To that end, legislation should in most cases specify that, before the offence can be committed, the inspector must, where practicable, identify him or herself as an inspector with authority to exercise certain powers and warn the person that obstruction is an offence. This requirement may be unnecessary where the person already has reasonable grounds to believe the person has authority to exercise the inspection powers.</p> <p>Where a person is under an obligation to assist an inspector (e.g. to answer questions), then the person's obligation and their relevant rights should also be explained so that the person knows what amounts to obstruction and what is a legitimate exercise of their rights (e.g. the right to rely on the privilege against self-</p>

Number	Recommendation	Response
		<p>incrimination). It will not be necessary to explain such obligations and rights if the inspector is merely seeking to enter premises.</p>
22	<p>That agencies have appropriately tailored training in place for their authorised officers.</p>	<p>The Government supports in principle that each agency is to ensure that its authorised officers are appropriately trained.</p>
23	<p>That a standards unit be established within Government to ensure that training offered by agencies meets agreed minimum standards.</p>	<p>The Government supports in principle the importance of maintaining appropriate minimum standards of training for inspectors, but is of the view that, given the wide range of inspection powers and the circumstances in which they are exercised, the relevant Ministers are best placed to determine the minimum standards of training appropriate to the inspection agencies within their portfolios and to ensure that those standards are met.</p>
24	<p>That all Acts conferring relevant powers on inspectors provide that inspectors should not be formally authorised until they have completed appropriate and monitored training.</p>	<p>The Government supports in principle that legislation require that before authorising a person to exercise inspection powers, the relevant Minister or authorising officer be satisfied that the person is trained or qualified. The legislation need not detail what such training or qualifications should be.</p>
25	<p>That all Acts conferring relevant powers on inspectors provide that the retention of authorisation be contingent upon approved programs of in-service and ongoing training.</p>	<p>Following on from the Government response to Recommendation 24, the Government supports in principle that the relevant Minister or authorising officer be satisfied that appropriate levels of training or qualification are maintained.</p>
26	<p>That powers of entry, search, seizure, questioning and to require the production of documents should only be contained in primary, not subordinate legislation.</p>	<p>The Government supports in principle that powers of entry, search, seizure, questioning and to require the production of documents should only be contained in primary, not subordinate legislation.</p>
27	<p>That the Government examine existing Acts and regulations to identify which provisions granting powers of entry, search, seizure, questioning and to require the production of documents are currently in subordinate legislation, with a view</p>	<p>The Government will conduct a review of such provisions.</p>

Number	Recommendation	Response
	to moving such provisions to the principal Act.	
28	That the requirement for internal complaints mechanisms relating to inspectors' powers be enshrined in legislation.	The Government supports in principle that internal complaints mechanisms relating to inspection powers should be made available where they are not already. The Government will give further consideration to whether it is necessary for this to be provided for in legislation or whether it is best dealt with at a policy level. For some agencies it may be appropriate that external forms of review be the main avenues for complaints.
29	That the standards unit within Government set minimum standards for internal complaints mechanisms.	The Government supports in principle the importance of maintaining appropriate minimum standards for internal complaints mechanisms, but is of the view that, given the wide range of inspection powers and the circumstances in which they are exercised, the relevant Ministers are best placed to determine minimum standards for internal complaints mechanisms appropriate to the inspection agencies within their portfolios.
30	That the Government give consideration to improving the transparency and effectiveness of the Victorian Ombudsman for complaints about inspectors.	The Government will give further consideration to ways of improving the Victorian Ombudsman's role in relation to complaints about inspectors.
31	That agencies be required to collect and maintain records of figures of usage of the inspectors' powers they administer.	The Government supports in principle that recording the use of inspection powers will be appropriate for agencies which exercise them, for the purposes of accountability and improving and/or reviewing enforcement efforts. In particular, such recording will be important where more intrusive or coercive types of powers are exercised. The appropriate level of detail and the manner of collection may vary from agency to agency, depending, among other things, on the inspection powers they administer, resources and privacy issues.
32	That agencies be required to report to Parliament annually, preferably as part of	The Government supports in principle that agencies' annual

Number	Recommendation	Response
	<p>their Annual Report, in relation to the use of inspectors' powers and complaints received.</p>	<p>reports should include a report on the information that is collected in relation to the use of inspection powers (see response to Recommendation 31).</p>
33	<p>That the government consider what information should be contained in the report and issue guidelines to agencies on this matter. The Committee recommends that the report on this issue include information and, as far as practicable, statistics on the following matters:</p> <ul style="list-style-type: none"> • the incidence of the use of inspectors' powers; • number of complaints against inspectors received and whether they were resolved, are still pending etc; • information on the type of complaints received (by use of case studies); and • statistics on penalty infringement notices and or prosecutions launched by the agency. 	<p>The Government will give further consideration to the benefits of guidelines to assist agencies in preparing reports on inspection powers.</p>
34	<p>That the following principles in relation to the privilege against self-incrimination be reflected in all legislation containing inspectors' powers:</p> <ol style="list-style-type: none"> a) Information as to rights <ul style="list-style-type: none"> • persons who are to be questioned by an inspector should, prior to such questioning, have their rights and obligations explained to them, including their right to rely on the privilege against self-incrimination. b) The privilege in relation to questioning <ul style="list-style-type: none"> • as a general principle, all legislation should specifically preserve the privilege against self-incrimination in relation to questioning. • without limiting the generality of the above, individuals should not be able to rely on the privilege to avoid giving a name and address and verifying information where the legislation gives the inspector the power to ask for 	<p>The Government supports as a general principle that the privilege against self-incrimination be preserved for persons under an obligation to answer questions, unless it is shown that its abrogation is justified. In deciding when such abrogation is justified, consideration should be given, amongst other things, to the seriousness of the harm being combated, the type of offence involved, the difficulties involved in prosecuting cases, the nature of the applicable penalties, the effectiveness of the proposed powers in adequately enforcing the law, and the rights of the individuals affected by those powers, so that an appropriate balance is struck between minimisation of the harm and people's rights. It may not be necessary for the privilege to be explicitly preserved in legislation where there is no implication that it had otherwise been abrogated.</p> <p>The Government also supports as a general principle that where a person is under a legal obligation to produce a document or item</p>

Number	Recommendation	Response
	<p>information where the legislation gives the inspector the power to ask for these details.</p> <p>c) The privilege in relation to documents</p> <ul style="list-style-type: none"> • as a general principle, a person who has been asked by an inspector to produce a document or other item should not be able to rely on the privilege against self-incrimination unless the production of the document would require the person to identify, locate, reveal the whereabouts of, or explain the contents of, the document or item. • in particular, the privilege should not allow natural persons to refuse or fail to produce documents which the person is required to keep pursuant to legislation. • persons who have exercised their right to rely on the privilege should not have that fact used in evidence against them in any subsequent criminal proceeding. • documents in relation to which privilege is claimed should be carried before a justice to be dealt with according to law and the privilege may be argued before that justice. <p>d) Abrogation of the privilege against self-incrimination</p> <p>The privilege may be abrogated only where:</p> <ul style="list-style-type: none"> • it has been shown to be absolutely necessary for the adequate functioning of the relevant law; and • any answers given or documents or items produced are not admissible in evidence in any subsequent criminal proceeding, except where false answers are given. 	<p>to an inspector, the privilege against self-incrimination will not apply. This will normally mean (particularly where the document or item is required to be kept pursuant to legislation) that a requirement to produce will include a requirement to identify or reveal the whereabouts of the document or item.</p> <p>However, the abrogation of the privilege against self-incrimination in relation to explaining the contents or significance of a document or item would not normally be justified.</p> <p>The Government also notes that the privilege against self-incrimination does not apply to prevent seizure of documents or items by persons authorised to do so.</p> <p>The Government also supports as a general principle that individuals should not be able to rely on the privilege against self-incrimination to avoid giving a name and address and verifying information where the legislation gives the inspector the power to ask for these details.</p> <p>The Government also supports as a general principle that if a person is under legal compulsion to answer questions and the privilege against self-incrimination has, after consideration of the factors referred to above, been preserved, then the person's right to rely on the privilege should be explained to them before the questioning begins.</p> <p>The Government supports in principle that where the privilege has been abrogated it will often be appropriate to provide for a "use immunity" in relation to the incriminating answers given or documents produced. In deciding when such immunity is appropriate, consideration should again be given, amongst other things, to the seriousness of the harm being combated, the effectiveness of the proposed powers, and the rights of the individuals affected by those powers, so that an appropriate</p>

Number	Recommendation	Response
		balance is struck between minimisation of the harm and people's rights. In addition, persons who have exercised their right to rely on the privilege should not have that fact used in evidence against them in any subsequent criminal proceeding.
35	That, as a general principle, the application of legal professional privilege (whether it applies or is abrogated) be clarified in statutes containing inspectors' powers.	The Government recognises that legal professional privilege is an important protection. The privilege will apply unless expressly abrogated by legislation.
36	That agencies ensure that they have a protocol in place for the seizure of documents over which legal professional privilege is claimed.	The Government supports in principle that agencies regularly exercising seizure powers in situations where legal professional privilege may apply have a protocol in place to deal with claims of the privilege.
37	That the Government immediately clarify the operation of section 464 of the Crimes Act 1958 in relation to whether and when inspectors without any power of arrest must nevertheless comply with the section.	<p>The Government will give further consideration as to whether it is necessary to make any amendment to the Crimes Act 1958 to make it clearer that the protections afforded by subdivision 30A of Division 1 of Part 3 of that Act apply where an investigating official has no power of arrest.</p> <p>The case law on this question makes it clear that the safeguards provided by subdivision 30A apply in circumstances where the investigating official has no power of arrest. See <i>McCormack v Silberman</i> (unreported, Supreme Court of Victoria, Ashley J, 17 December 1993).</p>
38	That, where relevant, the obligation of inspectors to comply with section 464 be enshrined in legislation.	The Government will give further consideration as to whether it is necessary to amend any legislation to clarify that the protections afforded by subdivision 30A of the Crimes Act apply to all inspectors.
39	That agencies ensure that education on the requirements of section 464 of the Crimes Act 1958 is part of their training programs for relevant authorised	The Government supports in principle that the requirements of subdivision 30A become part of the training program of relevant

Number	Recommendation	Response
40	<p>officers.</p> <p>That the standards unit referred to in Recommendation 23 ensure that agencies are providing certain minimum standards of training to their inspectors on compliance with section 464.</p>	<p>inspectors, or remain so where it is already a part of their training.</p> <p>The Government supports in principle the importance of training inspectors in relation to obligations under subdivision 30A, but is of the view that, given the wide range of inspection powers and the circumstances in which they are exercised, the relevant Ministers are best placed to ensure that the inspection agencies within their portfolios provide appropriate training in this regard.</p>
41	<p>That the Magistrates' Court review the Register required to be kept pursuant to section 57 of the Magistrates' Court Act 1989, to allow warrants issued under particular Acts to be more readily identifiable.</p>	<p>The Government will consult with the Magistrates' Court with regard to whether and how the practice in relation to the registering of search warrants may be improved.</p>
42	<p>That the Department of Justice consider the possibilities for enhancing the clarity and transparency of search warrant provisions in Victorian legislation conferring powers on authorised persons by listing them in the Magistrates' Court Act 1989 or in new stand-alone legislation, giving particular consideration to the model of the Search Warrants Act 1985 (NSW).</p>	<p>The Government will give further consideration as to whether any legislative reforms might improve the operation of search warrants.</p>
43	<p>That search warrant provisions contain protections including, but not limited to:</p> <ul style="list-style-type: none"> • announcement before entry; and • that a copy of the warrant is to be given to the occupier. 	<p>The Government supports in principle that persons executing search warrants make an announcement before entry and give a copy of the warrant to the occupier. The Government will give further consideration as to what matters need to be put in legislation or whether they are best left to the issuing magistrate to specify.</p>
44	<p>That Statutes conferring coercive powers on authorised officers contain other common protections, including:</p> <ul style="list-style-type: none"> • exactly what matters the search warrant must cover; • a sun-set clause on warrant validity; • procedures for dealing with disputed seizures; • time limits for the return of material seized. 	<p>The Government supports in principle that it be clear what matters a search warrant covers, when it expires, and when seized material must be returned. The Government will give further consideration as to what matters need to be put in legislation or whether they are best left to the issuing magistrate to specify.</p> <p>Where a seizure under warrant is disputed, this can be argued before the court to which the seized material is returned. Where a</p>

Number	Recommendation	Response
		seizure is not under warrant, the Government supports in principle that there should be clear procedures for dealing with disputed seizures (such as is found in, for example, s. 125 of the <i>Police Regulation Act</i>).
45	That, as a matter of general principle, all Acts should contain provisions which make it an offence to obstruct or impersonate authorised officers.	The Government supports in principle that inspectors and their authority should be protected by making it an offence to obstruct or impersonate them.
46	That, where it is envisaged that the assistance of the police may be necessary, the Act specifically name the police rather than merely make a general reference to "such other assistance as is necessary" or similar words.	The Government supports in principle that where it is envisaged that the assistance of the police may be necessary, the relevant Act specifically name the police. It will sometimes be appropriate, however, to retain an expression such as "such other assistance as is necessary" where other kinds of specialist help may be needed by inspectors.
47	That Acts specify that inspectors may seek assistance from police if they are obstructed or believe on reasonable grounds that they will be obstructed in the exercise of their functions.	The Government will give further consideration as to whether Acts should specify that inspectors may seek assistance from police if they are obstructed or believe on reasonable grounds that they will be obstructed in the exercise of their functions. Consideration needs to be given, in particular, to when it may be appropriate for police to refuse such a request.
48	That, as a matter of general principle, mandatory police assistance provisions are inappropriate.	The Government supports in principle that mandatory police assistance provisions are generally not appropriate unless they can be justified in individual cases, after consultation with Victoria Police.
49	That the Government develop a protocol for agencies dealing with suspected offences not related to the legislation covering their operations.	The Government supports in principle that agencies have appropriate protocols for dealing with suspected offences not related to the legislation covering their operations. It may be appropriate that the details of the protocols vary from agency to

Number	Recommendation	Response
50	That consideration be given to conferring on inspectors a limited power to preserve a scene for a set period of time if they encounter clear evidence of crimes which are not within the scope of their own powers.	agency, depending on the powers and resources of those agencies. The Government will give consideration to conferring on inspectors a limited power to preserve a scene for a set period of time if they encounter clear evidence of crimes which are not within the scope of their own powers. The appropriateness of time and inter-agency budgetary issues will need to be addressed.
51	That Transport Companies ensure that they maintain a consistent and even-handed approach to the enforcement of the Transport Act 1983, in particular by training transport inspectors not to target particular groups of the Community.	In relation to Recommendations 51 to 69, the Government has already responded by commissioning a broad-ranging review to examine the engagement, training, authorisation, powers and accountability of authorised officers in the area of public transport.
52	That Transport Companies ensure that transport inspectors receive training in how to deal appropriately with people who do not speak English as a first language, people with an intellectual disability, and those who rarely use the public transport system.	See response to Recommendation 51.
53	That the Office of the Director of Public Transport commission independent research to establish the extent of fare evasion.	See response to Recommendation 51.
54	That the distinction between detention and arrest in the Transport Act 1983 be clarified to differentiate the circumstances under which the powers can be exercised and to more clearly define the persons who can exercise these powers.	See response to Recommendation 51.
55	That, the Transport Act 1983 be amended to allow inspectors to detain persons only for the purpose of asking for their names and addresses where the inspector suspects on reasonable grounds that an offence against the Act has been or will be committed, and for obtaining verifying information.	See response to Recommendation 51.
56	That, the Transport Act 1983 be amended to require that inspectors use the	See response to Recommendation 51.

Number	Recommendation	Response
57	<p>power of arrest rather than detention , on the grounds that the person has committed an offence under the Act, where a person refuses to give a name and address or where the inspector suspects on reasonable grounds that the information is false and it is not subsequently verified.</p> <p>That Transport Company inspectors receive mandatory training prior to accreditation on the use of detention and arrest powers, including the application of section 464 of the Crimes Act 1958 to arrest situations, and that they receive ongoing training as a condition for retaining accreditation.</p>	See response to Recommendation 51.
58	That Transport Companies develop or improve transport system design and procedures to assist people to comply with their obligation to buy a ticket under the Transport Act 1983.	See response to Recommendation 51.
59	That Transport Companies develop or improve procedures which provide inspectors access to frequently updated lists of out of order ticket machines.	See response to Recommendation 51.
60	That only where reasonable attempts have been made to verify a passenger's claim that a machine is not functioning should inspectors ask for a name and address.	See response to Recommendation 51.
61	That existing transport network communications systems, including the red button security arrangements in operation throughout the metropolitan train network, be adapted for use by members of the public to report malfunctioning ticket machines and that consideration be given to utilising the same system to record the names of people who endeavoured to purchase a ticket but were unable to do so.	See response to Recommendation 51.
62	That the Transport Act 1983 be amended to allow authorised officers to demand verification of names and addresses of passengers where they believe on reasonable grounds that the passenger has given a false name and / or address.	See response to Recommendation 51.
63	That, subsequent to the Act being amended as per Recommendation 62, signs be placed at stations, tram and bus stops informing passengers of their	See response to Recommendation 51.

Number	Recommendation	Response
	obligation to verify their name and address if they are found without a valid ticket on public transport.	
64	That any verification information establishing true identity be sighted only and not recorded.	See response to Recommendation 51.
65	That the public transport ticketing system be improved urgently in order to enhance ticket availability and reduce fare evasion opportunities.	See response to Recommendation 51.
66	That the Ombudsman Act 1974 be amended to ensure that the inspectorate function of the Transport Companies is formally subjected to the oversight of the Victorian Ombudsman.	See response to Recommendation 51.
67	That a separate public transport unit be set up within the Office of the Victorian Ombudsman to consider complaints concerning the public transport system, including complaints relating to the actions of authorised officers employed by Transport Companies.	See response to Recommendation 51.
68	That the Government give consideration to introducing a common identification badge for authorised officers employed by the Transport Companies.	See response to Recommendation 51.
69	That the Transport Act 1983 be amended to preserve specifically the privilege against self-incrimination with the exception of the requirement to give a correct name and address and verifying information.	See response to Recommendation 51.
70	That reference to a system of national co-operation, whether formal or informal, should not operate as a complete or automatic justification for failure to comply with the principles set out in Chapter 2.	The Government supports in principle that, while it is often desirable to promote consistency across States, Victorian laws concerning inspection powers should not automatically be made to conform with a uniform national system.
71	That, as a matter of general principle, warrants be required for the investigation of suspected offences and for entry into residential premises.	The Government will give further consideration to the question of when it is appropriate for warrants to be required for the exercise of inspection powers. It may also be appropriate to further consider the notion of "residential premises" so that there is a clearer distinction between a "dwelling house" and those parts of a

Number	Recommendation	Response
		residential property which are not used as a residence.
72	That, as a matter of general principle, warrants not be required for the monitoring of compliance with primary legislation or in responding to genuine and clearly defined emergencies.	The Government will give further consideration to the question of when it is appropriate for inspection powers to be exercised without a warrant and without consent. These issues will need to be considered in conjunction with the issues raised by Recommendation 71.
73	That the absence of a licence not automatically exclude any possibility for monitoring compliance with legislation.	The Government supports in principle that the absence of a licence should not automatically exclude any possibility for monitoring compliance with legislation.
74	That all provisions which allow inspectors to exercise their powers with the consent of the occupier contain the legislative safeguards contained in section 119(2) of the Fair Trading Act 1999.	The Government supports in principle that, where legislation provides that occupier's consent is a condition of the exercise of inspection powers, the provision should also contain the sorts of safeguards contained in section 119(2) of the Fair Trading Act 1999, which are intended to inform occupiers of their rights.
75	That, where entry is gained with consent pursuant to any Act, that Act should not impose any penalty or disadvantage: <ul style="list-style-type: none"> • if an occupier fails to co-operate in the search • where an occupier subsequently withdraws consent. 	The Government supports in principle that, where inspection powers are exercised by consent, penalties or disadvantages should not be imposed for non-cooperation or subsequent withdrawal of consent.
76	That, as a general principle, where the powers of inspectors are comparable to the powers of police such as when they are investigating a suspected offence, their powers be no greater than the police powers contained in the Victorian Crimes Act 1958.	The Government supports in principle that, as a general principle, where inspectors are investigating a suspected offence, the powers to be granted to them should be identified with reference to the powers exercisable by Victoria Police in similar circumstances. Other relevant factors to which reference should be made would include the seriousness of the harm being combated, the type of offence involved, the difficulties involved in prosecuting cases, the nature of the applicable penalties, the effectiveness of the proposed powers in adequately enforcing the

Number	Recommendation	Response
77	That authorised persons' powers of entry, search, seizure and questioning and the power to require the production of documents conform with the set of principles set out in Chapter 2.	<p>law, and the rights of the individuals affected by those powers.</p> <p>Subject to the Government's responses to the Report's other recommendations, the Government supports in principle that the creation and exercise of authorised persons' powers of entry, search, seizure and questioning and the power to require the production of documents be guided by the set of principles set out in Chapter 2 of the Report, as they apply to the details of agencies' particular circumstances.</p>
78	That those principles relevant to determining the content of legislation be contained in stand-alone legislation.	The Government will give further consideration to the recommendation that those principles relevant to determining the content of legislation be reflected in stand-alone legislation.
79	That those principles relevant to the policy and procedure of agencies be developed into a set of procedural guidelines by each agency and that these guidelines be assessed by the standards unit to ensure consistency across agencies wherever possible.	Subject to the Government's responses to the Report's other recommendations, the Government supports in principle that, where appropriate, individual agencies develop procedural guidelines that reflect those principles relevant to their policies and procedures.
80	That all new Acts conferring coercive powers on authorised persons adhere to the principles, unless there is a compelling reason for departure from the principles.	Subject to the Government's responses to the Report's other recommendations, the Government supports in principle that new legislation conferring inspection powers be guided by the principles.
81	That whenever Acts containing inspectors' powers are reviewed or amended in the future, the inspectors' powers provisions are specifically reviewed with reference to the principles.	The Government supports in principle that whenever provisions in legislation relating to inspection powers are reviewed or amended in the future, those provisions should be specifically reviewed with reference to the principles (subject to the Government's responses to the Report's other recommendations). Where other provisions in such legislation are reviewed or amended in the future, this may also, where appropriate, provide an opportunity to review the provisions relating to inspection powers.

Number	Recommendation	Response
82	That in developing their enforcement philosophies agencies give consideration to matters addressed in the UK Enforcement Concordat.	The Government supports in principle that agencies, in developing their enforcement philosophies, give consideration to matters addressed in the UK Enforcement Concordat.