

# PROOF VERSION ONLY

## LAW REFORM COMMITTEE

**Inquiry into powers of entry, search, seizure and questioning by authorised officers**

Melbourne – 12 December 2001

### Members

Mr R. H. Bowden

Ms D. G. Hadden

Mr P. A. Katsambanis

Mr T. Languiller

Ms A. L. McCall

Mr R. E. Stensholt

Mr M. H. Thompson

Chairman: Mr M. H. Thompson  
Deputy Chairman: Ms D. G. Hadden

### Staff

Executive Officer: Ms M. Mason

Research Officer: Ms K. Giles

### Witnesses

Dr K. Lamb, Director, Family and Community Support Branch, Community Care Division;

Dr J. Carnie, Director, Disease Control and Research;

Ms J. Bowman, Manager, Environmental Health Unit;

Ms D. Foy, Acting Assistant Director, Legal Services;

Ms L. Akenson, Acting Senior Legal Officer, Legal Services;

Ms W. Tabor, Legal Officer, Legal Services, Department of Human Services.

**Necessary corrections to be notified to  
executive officer of committee**

**The CHAIRMAN** — On behalf of the Victorian Law Reform Committee I welcome you to the hearing and thank you very much for taking the time to attend. The evidence you give today will be recorded by Hansard, and you will have the opportunity of perusing the transcript and sending it back with any corrections. That information will be helpful to us. Should you wish any of your comments to be made in camera, please feel free to let us know so we can note that for the record.

I now take the opportunity to introduce my parliamentary colleague, Dianne Hadden, who is the deputy chair of the committee. I anticipate that in the next 15 minutes or so a number of other members will arrive, and I will introduce them in due course. We have a full day's hearing in front of us. I thank you for the opportunity to commence proceedings at this point, and I invite you to commence your submission.

**Ms FOY** — Perhaps I can begin. My name is Deborah Foy. I am the acting assistant director, legal services, Department of Human Services (DHS). I thought I might start with our submission. As you know, we have not yet formally received the sign-off of our draft submission from the ministers to forward to this committee. We will do that as soon as possible. So I thought at the beginning I would outline what our submission will look like.

I start by saying that, as you know, the department administers an enormous number of acts, at least 20 to 30 of which have powers with respect to authorised officers in relation to entry, search, seizure and questioning. We have grouped the legislation into the following separate categories: acts which are directed towards the protection of personal and physical health and the safety of individuals, such as the Children and Young Persons Act and the Mental Health Act; acts directed towards the regulation of agencies which provide personal services, such as the Health Services Act, the Children's Services Act and the Community Services Act; and acts directed towards the regulation of health professionals such as doctors, nurses, psychologists, dentists and optometrists. The department administers 11 acts in relation to health professionals.

At this stage it might be useful to point out that the majority of the provisions in relation to authorised officer powers are identical in each of those acts, with the exception of the Pharmacists Act and acts which regulate the public health effects arising from commercial activities, such as the Food Act, the Tobacco Act, the Health Act, and the Building (Legionella) Act. I should point out that things like the regulation of the use of radiation equipment are found in the Health Act.

In other words, DHS legislation may have a universal effect in that it affects 38 000 food businesses in Victoria, or it may affect a very small group of individuals and families — that is, those families who receive some kind of intervention under the Children and Young Persons Act.

The next thing I will point out is that we perhaps think that the Children and Young Persons Act and the Mental Health Act are somewhat different in the extent of their powers, and we have treated those two acts as being in a separate category. One of the issues, of course, is that under the Children and Young Persons Act you can obtain a warrant from the Magistrates Court to remove a child from their home. That is significantly different to obtaining a warrant to search and inspect premises.

Generally our submission will indicate that we believe the department's legislation generally adheres to the principles outlined in the discussion paper. There are some exceptions. Generally we believe those exceptions are warranted, in the sense that the crucial principle that we believe needs to be adhered to is that the level of power should be matched to the risk of injury it is trying to prevent.

I am not sure whether you want to ask us questions or whether we should just keep talking.

**The CHAIRMAN** — Please keep going.

**Ms FOY** — As I said, generally the submission is likely to say, as it is a draft at the moment, that we believe the department's legislation accords with the principles outlined in the discussion paper. There are some exceptions. We also believe that some of those principles may have more relevance to areas of commonwealth legislation, unlike some of the legislation this department administers. As you know, commonwealth powers largely centre around acts dealing with taxation, customs and excise, immigration and the Corporations Law. Most of our legislation is designed to protect the most vulnerable and disadvantaged members of our community, such as aged people in supported residential services, children attending children's services during the day, people in hospitals, people who are mentally ill and children who are at risk of harm. We would suggest that in certain circumstances those powers are perhaps unique.

The discussion paper also raises questions about the consistency of powers across government legislation. We believe that our powers in general are consistent in relation to health and physical safety issues in the community. Whether there should be a standard of consistency across all powers, including those involving financial and trading regulation and physical health and safety, is a policy issue. I think there are some differences between our powers and those in the financial and trading acts.

We also thought that it might be helpful to illustrate some of the use of powers, particularly in the areas of public health and children's services — firstly, to illustrate the types of areas where powers would be used; and secondly, to discuss how the department conducts itself during an investigation. I am not sure whether anybody would like to add anything to the general preamble about any particular areas of legislation.

I should say that I think the department in general does not enter premises without consent unless allowed by legislation. There are a number of licensing and registration acts under which a power to inspect is implied as a condition of a licence. Any warrant powers the department has are seldom used. I believe we have some data on the number of times a warrant has been obtained to enter an unregistered children's services premises. Generally authorised officers are instructed that they must, of course, never use force. They do not use force, and they do not have powers of arrest under any piece of legislation that we administer. So some of the areas the committee has sought a response to are not relevant to our legislation at all.

**The CHAIRMAN** — What about in the case of mentally ill people; is force used in that circumstance?

**Ms FOY** — Reasonable force can be used to restrain a person when they are being admitted or when they are at home, if an authorised psychiatrist — —

Perhaps Wendy might be able to explain. I can check the reference.

**Ms TABOR** — There are powers in section 9 of the Mental Health Act which I think provide that such force may be used as may be reasonably necessary to enter premises and to restrain a person.

**The CHAIRMAN** — Would you mind speaking up a little, please.

**Ms TABOR** — There are powers, when a person is involuntarily admitted to an approved mental health service, for using such force as is reasonably necessary to restrain the person, and obviously to also enter the premises when there are reasonable grounds for believing the person may be found.

**The CHAIRMAN** — Thank you. Please repeat that once more for one of my colleagues.

**Ms TABOR** — As Deborah was outlining, the powers in the Mental Health Act in relation to persons who are ill are quite different from the normal search and entry powers. There are powers in section 9 of the Mental Health Act in relation to a person for whom there has been a recommendation that they be admitted as an involuntary patient. There is the power to use such force as is reasonably necessary to enter premises where they have a reasonable belief that the person will be found and to restrain that person. Our submission will outline that the powers in the Mental Health Act are consistent with international conventions in that area.

**Mr STENSHOLT** — Does the act also provide for mistakes being made and for restitution — in other words, if the wrong door has been bashed down?

**Ms FOY** — Only prescribed persons may use that force, and the use of force must be reported. Where restraint is applied under the act, the restraint and force must be reported. The Chief Psychiatrist has the power to inspect in relation to any complaint that is received about a mental health service or the way in which a patient has been treated. A person may also go to the mental health review tribunal or to the Ombudsman. But generally, the powers of the Chief Psychiatrist in investigating any complaints are extensive.

**Mr STENSHOLT** — So it is virtually self-regulation rather than independent regulation?

**Ms FOY** — A person could go to the Ombudsman or to the mental health review tribunal. Do we have the Mental Health Act here?

**Ms TABOR** — Yes.

**Ms HADDEN** — Going back a step, rather than bashing a door down, what training do you have for your inspectors, if I can use that generic term? Do you have in-house training? Do you send your investigators or

inspectors to Victoria Police? The police have special training that is conducted about four times a year for investigators under various sections so they know full well their obligations under section 464 of the Crimes Act.

**Ms FOY** — There are obviously a number of types of inspectors under various acts. Under the public health acts the persons who inspect are environmental health officers who have received training during their tertiary training as environmental health officers. Perhaps John could speak to the others.

**Dr CARNIE** — I would like to address that in the context of the sort of work I do, which is in relation to infectious diseases investigation under the Health Act and the infectious diseases regulations. We have teams of professionals in the department, and these teams are usually composed of doctors, nurses and environmental health officers. The composition of a team is dependent on the nature of the investigation at the time. To give you some examples of this, if there is an outbreak of food-borne infection such as occurred in Springvale some years ago, when there was a major outbreak of gastrointestinal disease due to infected pork rolls, we would send a doctor who would try to get the extent of the illness in the community at the time. The environmental health officers would inspect the food premises to determine the nature and type of whatever contamination there is, and we might also send out a public health nurse to interview some of the staff at the time. In those instances time is of the essence.

If we are dealing with large numbers of people presenting to a public hospital on any one day, we have to get into those premises and try to determine the nature of this outbreak and the possible source of it. When we talk of inspectors, these are people who are undertaking investigations. The nature of their training is what gives them the capacity to undertake those investigations — whether, as I said, they are public health doctors, public health nurses or environmental health officers.

**Ms HADDEN** — Is there any accreditation of those investigators and inspectors? Do they have ongoing training, or updating of training?

**Dr CARNIE** — They do. When they come into the department they usually go through what might be regarded as an apprentice sort of program, where they are provided with ongoing, on-the-job training by more experienced staff. They are also sent to courses and so on to update their skills and knowledge all the time. It is ongoing training, but the basic training they get is in the process of getting their professional qualifications.

**Mr STENSHOLT** — So there is no specific training in terms of how to deal with certain situations of search and entry beyond whoever they go out with on the first job?

**Ms FOY** — No, the department provides specific training in relation to investigations and evidence.

**Mr STENSHOLT** — What is the nature of that training?

**Ms FOY** — Usually it is provided by legal services. We are currently working on an improved pilot. We are considering developing a new module of training for investigations for those people who perhaps have not recently attended training on prosecutions, investigation and evidence gathering.

**Mr STENSHOLT** — What is the nature of that? Is it 2-hour training?

**Ms FOY** — No. It will probably be weekly training. We are considering how best to organise it to ensure that numbers of persons are able to attend and that we have the appropriate staff. It is probably fair to say that one-off training is not as effective as regular updates.

**Mr KATSAMBANIS** — Will this training encompass any form of assessment of the outcomes of the program?

**Ms FOY** — That is yet to be decided. A number of issues have yet to be resolved. Certainly child protection, for example, provides extensive training for its staff. I believe people are required to attend.

**Ms AKENSON** — That is correct. They are required to attend induction, and then they are required to attend a range of other training on particular issues, depending on the client group they work with. If they are working primarily with adolescents, for example, they will do training on drug and alcohol issues and on working with people who are violent. If they are working mainly with babies and young children, they will do specialist infant training. There is a range of training, and it is ongoing. There is a training calendar.

**Mr STENSHOLT** — Do you have a training catalogue or manual that you can make available?

**Ms AKENSON** — It is not a catalogue, it is a program which is put out each year by the department in various areas such as disability services and child protection and which says what training courses will be run that year. It is quite an extensive program, and we can provide a copy of that.

**Ms FOY** — We could certainly attach a copy of that.

**Mr STENSHOLT** — I guess we are interested in the content of it. It is not just the issue of enforcement, it is also an issue of how people manage themselves. It is not just a matter of knowing that they do not put their foot in it, it is also about how to handle certain people with the obvious and necessary firmness and the required humanitarian approach for those particular sensitivities.

**Ms FOY** — Perhaps I could add that areas such as children's services area have published extensively. All staff have extensive three-volume manuals which indicate how they are to conduct their business and what the departmental standards are expected to be. As you would appreciate, many of the areas of our activities are subject to scrutiny by the Children's Court and VCAT and very often the Magistrates Court in relation to the conduct of prosecutions.

**Ms HADDEN** — In your training do you work with the police? I come back to this: they have a civil investigators course that I think would probably be relevant, especially for the mental health and the children and young persons legislation. It is a two-week course that covers areas such as the law of evidence, forensic science, interviewing skills, arrest, search and seizure, custody investigation and confessional evidence. The police have stated that civil investigators or inspectors lack awareness of custody investigation and confessional evidence requirements and that that adds to problems down the track when the police are asked to prosecute because of the lack of consistency across the departments and the legislation that affects you. Do you work with the police on this?

**Ms FOY** — We have. Police officers have certainly attended training courses that are run for some areas of the department. More recently public health has provided training run by an ex-police prosecutor who is now at the bar and is also working on a draft guide on investigations and prosecutions for departmental staff. Staff may have attended the particular course you are referring to. I am not aware of any, but we certainly use resources from the police department.

**Ms AKENSON** — That same person who is an ex-police officer has also provided training to children's services in relation to investigations and evidence gathering.

**The CHAIRMAN** — We have just under half an hour remaining, although we do not necessarily need to use the full time, so to speak, if you have a formal submission coming. I was wondering if you could outline what else you had to cover by way of material to convey to us. We are happy to keep it interactive for a period of time, but I want to make sure you have the chance to round off your comments.

**Ms FOY** — The other thing I should add is that our submission will actually describe every act that contains the relevant powers, and it will address the questions that are in the discussion paper in relation to those acts, perhaps not slavishly in the sense that we have not put every question with its answer, but I believe that in our commentary we have attempted to cover the critical questions about each of the acts. We do talk about whether consent is required for entry or whether being licensed in our view implies a right to inspect. We have addressed the questions about use of identification. Our submission will be fairly large. We address the questions about powers of seizure, inspection and so on generally or specifically depending on the area.

Generally I am not sure there is very much more to say, other than we do think that our powers are consistent with those principles. There is certainly no area where the issue of having insufficient power has arisen. That may be an issue as more communication occurs on an electronic basis, but particularly at the moment there does not appear to be a problem about electronic means and us not having access. We believe that our powers are sufficient and necessary.

**The CHAIRMAN** — Do any of your colleagues have any comments they would like to make at this juncture?

**Dr CARNIE** — I would like to reiterate what I said earlier in relation to the speed by which we are expected to act, because the work that my area does for instance in disease control is very much subject to intense media and legal scrutiny. Very often questions arise as to what time did you hear about an outbreak or an incident and how long did it take you to act. An example is the Melbourne Aquarium outbreak of legionnaire's disease, where from the time of noting that there was an incident of any kind to taking action at the aquarium in terms of

disinfecting the cooling towers was about 2 hours, and even that was questioned — that it had taken 2 hours for the department to act.

There is the need to act extremely urgently in order to protect the public health. Whether it is seizing articles of contaminated food or disinfecting a cooling tower or disinfecting a swimming pool in relation to an outbreak of cryptosporidiosis, there is a need to act immediately. The issue about having to get consent or to make appointments and so on does not really arise in the context of urgent public health investigations of the sort that we are involved in for most of the time.

**Ms FOY** — It would be fair to say that the department obviously recognises that there needs to be a balance between the rights of particular individuals and the rights of the community and the public interest at large. However, sometimes the threat and the risks that are posed to members of the public are very drastic — one only has to read the criticism by the coroner in South Australia of the lack of action by the then South Australian Health Commission in relation to the Garibaldi salami case. You would be aware that a six-year-old girl died on the Sunday, and it appears that the health commission knew that the product was risky on Friday. I am not absolutely certain of those facts, but I believe the story is akin to that. Urgent action under public health legislation or the Children and Young Person's Act can prevent fatalities. Given that fatalities are the consequence of impossible delay or inaction, sometimes it is important that in public health legislation and the sorts of legislation we administer the balance be tilted towards the public's interest rather than the individual's.

**Ms BOWMAN** — Can I just give an example of that and perhaps talk about legionnaire's disease again? We might get notification of a cluster of cases late on a Friday evening, and we may not be able to go and inspect those premises and have action taken in those premises that we believe might be the possible source of the disease within normal business hours, but there is a public expectation that we would take action, particularly if it is in the central business district, over a weekend where there are potentially thousands of people who may be exposed to the legionella from that cooling tower. There is a reasonable expectation that we would go in outside of business hours and have appropriate action being taken to provide public confidence that they are not being exposed unnecessarily.

**The CHAIRMAN** — But you have strong powers of entry in that case, do you?

**Ms FOY** — The powers of entry under the Health Act allow us to enter premises at any reasonable time.

**The CHAIRMAN** — And 'reasonable' could be 4 o'clock in the morning?

**Ms FOY** — No. It would normally be the evening and perhaps a Saturday, and on occasions Sundays such as the outbreak in Thomastown. Normally our inspectors will only enter premises with consent and if consent is not given then they would seek the assistance of the police to enter premises. That has happened on occasions. To my knowledge there has no complaint about those powers. They are used in a judicious way. Inspectors do not force their way into premises but explain the need for action to be taken, which is usually accepted.

**The CHAIRMAN** — Would they need the power to force their way in if there was, for example, a legionella outbreak and they were not sure which cooling towers were causing the problem near Flinders Street station and had to act swiftly in the early hours?

**Ms FOY** — In those situations the police would be involved to ensure that the inspectors had sufficient backup. They would not normally force their way in at 2 o'clock in the morning — that would not be an expectation.

**Mr KATSAMBANIS** — Given the powers are analogous with the public health imperative you have described, what complaint mechanisms exist for anyone who considers action is inappropriate, and do those complaint mechanisms work, or are they appropriate?

**Ms FOY** — The Ombudsman is one complaint mechanism. A complaint to the secretary of the department is obviously another complaint mechanism, or to the manager of the person who has undertaken the action. There are opportunities to review decisions of that abuse of power in the Victorian Civil and Administrative Tribunal under a number of acts that we administer. Generally we do not get many complaints either because we do not have sufficient complaint mechanisms, which I do not think is the case, or receive many complaints. Investigations result in prosecutions, but I cannot recall a prosecution in three years where we have been admonished by a court, or any reference has been made to improper use of our powers.

**The CHAIRMAN** — Are there complaints in the mental health area regarding compulsory detention or transportation in relation to the psychiatric unit?

**Ms FOY** — Obviously people receiving involuntary treatment are unhappy about that treatment. There are extensive safeguards in the act for review of involuntary treatment. Perhaps we could take that on notice and put it in our submission. Certainly there are requirements for review by the Mental Health Review Tribunal where anybody who is involuntarily detained can make application. That is an independent body, which is apart from the department. They can also appeal to the chief psychiatrist for investigation of their treatment.

**The CHAIRMAN** — Are there any areas where you think the laws should be adjusted, because it would be disappointing from our point of view if we embarked upon a six month journey with no recommendations to make regarding the modification or extension of powers?

**Ms BOWMAN** — About 18 months ago there was a review of the Health Act, and most of the comments were that the powers of entry and seizure were adequate for that task. We would not seek to be extending those powers.

**Ms FOY** — We would agree that they are required in the act and not in the regulations. That is the principle expressed in the discussion paper. That is an issue to be considered and has been considered in the review. Again that is a matter for the government and parliamentary counsel.

**Mr KATSAMBANIS** — What examples are there of those powers contained in regulations rather than the principal acts?

**Ms FOY** — I believe the Health Act is the only one where those powers are not found in the 1958 principal act, which was omnibus legislation. Many provisions have been removed from the Health Act and been incorporated into their own acts, such as the Children's Services Act, the Food Act and the Meat Industry Act. All of those areas were once in the Health Act 1958 but have now become legislation in their own right.

**Mr KATSAMBANIS** — I put it to you that there may be reason to examine whether we should reconsolidate the Health Act?

**Ms FOY** — That is up to Parliament — it is a policy issue.

**Mr BOWDEN** — I understand that you were reasonably satisfied with the way in which the act allows you to have access to people. Do you think it is worthwhile for the committee to consider safeguards and mechanisms that are available for people who are involuntarily exposed to the system?

**Ms FOY** — Do you mean under the Mental Health Act?

**Mr BOWDEN** — Yes.

**Ms FOY** — I cannot speak about that from the perspective of the mental health policy area, but it is a question that we can refer back to them for comment. That act is subject to extensive scrutiny by a number of people. Perhaps we should refer your question to them for inclusion in the submission.

**Mr BOWDEN** — There are two parts, one is the powers you have available to process complaints and persons who are brought to your attention on an involuntary basis, and the other is the rights of the person involuntarily involved, which are important also. There have to be checks and balances, and maybe the department has adequate, proper and sensible mechanisms available for its process, but what about the rights of the person involuntarily involved?

**Ms FOY** — By way of preliminary response, the act was reviewed extensively in 1996 and was the subject of much consultation, particularly on the question of involuntary treatment, which is the principal part of the act. We believe the act represents the best balance in Australia between the rights and protections of those with a mental illness.

**Mr BOWDEN** — I am not suggesting that there is anything wrong, but what I am concerned about is that I believe both sides of the political equation in the state are committed to a broad policy of deinstitutionalisation. If deinstitutionalisation is the broad policy the community is following, then there has to be a careful and constant review and evaluation of both sides of the equation — powers and rights.

**Ms FOY** — We will take that on notice. I am sorry that nobody from the mental health area is present to address that issue, but we could not bring people from all of the departments. Certainly people from the mental health area have been involved in preparing the text in the submission on the Mental Health Act.

**Ms HADDEN** — Do you keep internal complaint data about the powers under the various acts?

**Ms FOY** — Yes, absolutely.

**Ms BOWMAN** — Records are kept of all complaints that are made. Under the Children and Young Persons Act complaints can be made to a number of places within the department, either directly to the workers involved in the particular department or to their supervisors, to the protective services managers or to the regional directors. There is now a central complaints person in the department. Complaints are made to the minister's office and to the Ombudsman on a regular basis. Complaints are always followed up. Protection applications are dealt with immediately by the court. The first complaint mechanism is to the magistrate the next day, or on the same day if it is a protection order taken out in the early hours of the morning.

**Dr LAMB** — Since implementation of the Children's Services Act in 1996, some 60 children aged between one and five years have been involved in incidents in licensed children's services where an investigation using the powers of search, seizure and questioning has been undertaken. We considered these children were put at an incredible risk. They were children as young as 1 year and 11 months who have escaped and been found near swimming pools or creeks or faced heavy traffic hazards and been found some distance from the centre. The children were left alone and unsupervised. Three of the children have additional needs, and two children were picked up by concerned motorists who were not known to them. During the investigations of those 60 incidents, some 38 formal cautions and 21 prosecutions occurred.

**Ms HADDEN** — Prosecutions by whom?

**Ms AKENSON** — The department conducts those prosecutions, and we deal with them through the Magistrates Court.

**The CHAIRMAN** — Can you outline in more detail the nature of those prosecutions that were followed through?

**Ms AKENSON** — Almost all would be initially because a child has gone missing from a centre. The department does not generally prosecute unless it is a serious incident, and that usually involves a young child escaping. Any young child escaping is at significant risk. A three-year-old on any road is in significant danger. Some have involved children crossing railway lines, major highways and so on.

**The CHAIRMAN** — Trying to escape from home or a child-care centre?

**Ms AKENSON** — From licensed child-care centres. The department will prosecute those centres. When we receive a complaint, usually from a parent — the centres are required under the act to notify us of an injury or incident, and a child escaping is always a serious incident — the department will investigate, and will go into the centre and examine the records, because centres are required to record, for example, the medication they give children, how much and when they give it. They must have the parents' consent for that medication. We must check that the centres are following those procedures to ensure that there are no safety hazards for the children — for example, we had a significant one where there was an open sewage gully for children to fall into — such as broken glass and hazards where children's fingers can get squashed or cut off. Other infringements under the act can be prosecuted, but usually it will be a primary safety and failure to supervise issue, such as an escaping child. That is done before proceeding.

Some centres have significant safety issues which require regular checks. All centres have to be regularly checked to ensure the safety of the vulnerable children in them. When there are significant safety hazards, such as the sewage gully, broken glass and so on, we would prosecute, but that is the majority of them involving an escaped child or more than one child.

**Mr STENSHOLT** — The powers of inspection for the child to undergo regular checks are undertaken by whom, the regional officers?

**Ms AKENSON** — The authorised children's services advisers are authorised officers and are authorised under section 35 of the act by the secretary. They carry identity cards with photographs and must show them before they enter licensed children's services or unlicensed centres. Unlicensed premises are slightly different, in

that consent is required in writing of the personnel occupying the residence, and if it is inappropriate then a warrant must be obtained from the court to enter unlicensed premises, whereas with licensed premises it is implied in the licence that we have the capacity to enter and inspect to ensure that the regulations under the act are complied with.

Usually each children's services centre is inspected on an annual basis, but some centres are checked more often. It depends on whether complaints have been made against them and what the last inspection showed. If the inspection showed a range of safety hazards, then regular inspections are booked with the primary nominee of the licensee, and we will say, 'We will come back on the such a day to check all these things'. Tables are set up where they are required to carry out X, Y and Z before the next day to ensure that children are maintained in a safe environment.

**Mr STENSHOLT** — That is child-care centres, is it?

**Ms AKENSON** — Yes.

**Mr STENSHOLT** — With child protection in other areas of looking after children, what powers or requirements are there or are seen as necessary? For example, there is supported accommodation where children are often in the care of their parents or designated carers and so on. Have you any powers or responsibility in that area?

**Ms AKENSON** — Those powers can be divided into two parts: firstly, under the initial powers provided to the secretary and through the secretary to authorised officers, protective officers are called in to investigate issues of child maltreatment and risk to children. A range of provisions are provided in the act about taking out protection applications, either by giving notice to the family to go to court on a particular day in relation to a child or by taking the child into safe custody, which can involve entering a home or talking to a family when a child is in hospital with non-accidental injuries, with or without a warrant. Child protection workers obtain warrants from the Children's Court, and only the police can execute them.

Secondly, once children have been dealt with by the Children's Court, if they are on orders that require that their safety must be provided for by placing them out of home, then there is a range of options, such as foster care, small residential units, family group homes and so on. There are no large institutions, but under the act the secretary has powers to inspect community services to ensure that those children are being cared for.

If the children are being cared for appropriately, it depends on whether it is an urgent situation. If it is an urgent situation, most of those children will be under the care of the secretary, and the secretary can remove them and place them in another place, and then investigations occur in relation to safety issues in that particular facility. In relation to foster care, foster care agencies are monitored by the department and complaints come through the department in relation to the care provided for children by all non-government agencies.

**Ms HADDEN** — I am interested in the department's services and powers with respect to women's refuges. They may have up to half a dozen adult females and 18 to 20 children in small accommodation.

**The CHAIRMAN** — The committee has reached the end of its time for submissions, and I wonder whether you would take that issue on notice.

**Ms HADDEN** — It would be an unlicensed premises, would it not

**Ms FOY** — It is not regulated under any legislation.

**Ms AKENSON** — I should point out that the children are there with their parents, so they do not come under the Children's Services Act. If the staff were concerned about the safety of children, they would notify the department and then child protection would be involved.

**The CHAIRMAN** — I am happy for my colleagues to note down any further questions and pass them on. Perhaps you would like to comment on the reasons and background for inspectors' powers under the medical registration acts and whether issues have emerged through that process. I will leave that for you as a question on notice.

**Ms FOY** — When you say the medical practices act, do you mean all health services and not just the doctors?

**The CHAIRMAN** — The medical registration acts, all the health services.

**Mr STENSHOLT** — I am interested in the issue of questioning, particularly of parents in relation to the alleged abuse of children.

**Ms AKENSON** — The crimes part of it is the police, not us. We have a protocol with the police which sets out how we will deal with joint investigations.

**Mr STENSHOLT** — I am more interested in the guidelines given for child-care workers when questioning parents.

**Ms AKENSON** — Are you are talking about non-criminal matters?

**Mr STENSHOLT** — They end up being criminal matters. There have been some cases in the past where clearly the guidelines have certain presumptions of guilt built in.

**The CHAIRMAN** — Thank you very much for coming this morning. We look forward to receiving your written submission.

**Ms FOY** — It will need to be approved by the ministers, but it is on its way.

**Witnesses withdrew.**