

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 A. L. McCall
Ms D. G. Hadden	Mr R. E. Stensholt
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Executive Officer: Ms M. Mason
Research Officer: Ms K. Giles

Witnesses

Mr R. Warren, Chief Prosecutor, Offence Management Unit;
Mr R. Waters, Manager, Flora and Fauna Compliance and Utilisation;
Mr M. Donaldson, Chief Investigator, Fisheries Victoria;
Ms K. Regan, Manager, Pest Plant and Animal Program; and
Mr R. Walters, Senior Catchment Management Officer, Department of Natural Resources and Environment.

**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 public hearing on the reference of the powers of entry, search, seizure and questioning. Evidence taken today is being recorded by Hansard. Witnesses will be given the opportunity of perusing the transcript. Evidence given today is protected under the Parliamentary Committees Act. If evidence is to be given in camera the committee will go off the record for that part of the evidence.

Mr WARREN — We intend to talk on three parts. We have broken up the three parts into conservation and resource protection legislation, agricultural legislation, and legislation administered by the Environment Protection Agency.

The conservation and resource protection legislation is legislation that specifically deals with wildlife, fisheries and the catchment land protection acts. Members of the committee may be aware through their research that the department administers more than 100 acts of Parliament across the whole of the department activities. We will not focus on all those acts of Parliament but on those acts of interest to the inquiry today which, as I said, are the wildlife, fisheries and agriculture side of things.

If it is convenient I will talk on three parts during our presentation: firstly, relating to the nature of the legislation which uses the powers of interest to the inquiry in relation to conservation and resource issues; secondly, the use of the legislative powers and some examples of where powers are used through discussion notes; and finally, quality assurance for our use of legislative powers, which consist of guidelines and support for the legislative framework that the department works under.

I refer first to the nature of the legislation. Broadly, the protection of Victoria's natural environment and promotion of most sustainable natural-based industries are key objectives of the state government.

Mr STENSHOLT — You referred to certain acts as examples and mentioned there were more than 100 acts of Parliament, many of which deal with search, seizure and questioning. Do you have a compendium of those acts? We have acts listed in the discussion paper, but it is not comprehensive. Is it possible to have a listing of those acts and the sections dealing with the committee's reference?

Mr WARREN — We can provide that to the committee at a later stage. A number of acts do not deal with the search, seizure and questioning powers.

Ecologically sustainable development has to be built into the process of decision making across the whole of government and sustainable development rests upon the simultaneous pursuit of economic prosperity, environmental quality and social wellbeing. Essential to this development is the management of Victoria's biodiversity and natural resources undertaken by the Department of Natural Resources and Environment.

Effective risk management is a fundamental principle underlying the Wildlife Act, the Fisheries Act and the Catchment and Land Protection Act — that is, managing the economic environmental and safety risk should the species be legally or illegally kept or remain unchecked in the wild.

The Victorian community values the existence of a diverse range of native flora and fauna and expects to see these species survive for the enjoyment of future generations. In addition, natural resource-based industries, including the management of Victorian fisheries, are fundamental to Victoria's high quality of life.

I now refer to the areas of responsibility in relation to conservation and natural resource protection, for which these powers are relevant. I will not go into all the detail, because it is a bit wordy, but I will give a quick overview of the wildlife resources.

Australia is home to some of the most diverse ecosystems on our planet, as detailed in Victoria's biodiversity strategy. Victoria's ecosystems support at least 111 species of mammals, 447 birds, 133 reptiles and 33 amphibians. Our continent has a high proportion of species that are found nowhere else in the world.

In the fisheries resources area, Victoria combined commercial fisheries are valued at \$94.5 million per annum, making it an important contributor to the Victorian economy. Victoria's abalone fishery alone is worth \$58 million per annum. Theft, illegal processing and the distribution of fish is a significant threat to several product species, including abalone. Abalone fisheries around the world have collapsed due to overfishing. The fisheries compliance mission is to achieve optimal levels of compliance with fisheries laws by maximising voluntary compliance and creating an effective deterrent against illegal activities.

In our pest plant and animal program, the Catchment and Land Protection Act provides a framework for the

protection of the state's natural resource, environment and economic assets. The powers of entry and search are used for the monitoring, evaluation and investigation of noxious species throughout the state. Pest plants and animals are a major problem in Victoria as they represent one of the most significant threats to economic, environmental and social values. Pests reduce farm and forestry productivity, displace native species and contribute significantly to land and water degradation. More than 1000 species of weeds in Victoria have been estimated to cause \$357 million per annum in lost production and direct costs for control in the agricultural industry. Pest animals have a significant impact on the value and quality of the state's resources.

Overarching all of this is the commonwealth and state government strategic framework. There is a recognition at the commonwealth, state and local government levels of the significance of biodiversity and the establishment of strategies to manage, protect and improve biodiversity assets. Various ministerial councils develop the broad framework on which state legislation is established and evolved to ensure the objectives are met. There are numerous examples of commonwealth and state agreements for which the department is responsible for the delivery on a statewide basis. The legislation may be different in different areas of operation, but often the legislation is consistent with those of other states as it reflects on these common objectives. A comprehensive list of policy for commonwealth and state agreements and memorandums of understanding can be provided to the committee at a later stage.

The second part of the discussion is the use of legislative powers. I will refer specifically to some examples that the committee may be interested in, particularly with wildlife and game management. Operations where vehicles and boats are stopped and searched are relatively frequent occurrences and complaints about such searches are either rare or non-existent. For instance, hunters leaving a duck hunting area may have their vehicles stopped for the purpose of checking the number and species of birds taken. Their game and firearms licences may be checked and the firearms inspected. Similar operations have been conducted recently to ensure compliance with new regulations to prevent hunting in areas closed to deer hunting for reasons of public safety and compliance with the game regulations.

It is often difficult to quantify the extent of illegal trade in wildlife. It appears to be an activity that is becoming increasingly associated with organised criminal elements within our community with sophisticated approaches and extensive resources at their disposal. Individual animals are worth many thousands of dollars in overseas markets. According to the United States Department of Justice the revenue from international illegal trade in wildlife is second only to that from the international drug trade.

Wildlife crime remains particularly difficult to detect. Many of the activities occur in remote localities where there is little risk of detection or apprehension. As we have little knowledge of the distribution and abundance of much of our wildlife, it is almost impossible to know whether wild fauna has been stolen or damaged until the issue comes to notice, often when it is too late for intervention. Many species are small and easily concealed.

Reptiles may be held for long periods without access to food and are illegally transported through the mail. Eggs are also easily transported without detection and are increasingly becoming the focus of poachers. As the original offences often occur in remote locations under covert circumstances, successful detection is often subsequently associated with the perpetrators' houses, premises or vehicles. A legitimate trade in wildlife is provided for under the Wildlife Act and there are approximately 10 000 licensees in Victoria. The presence of this legitimate trade makes the monitoring of illegal activity sometimes even more difficult, and offences are more readily concealed. Examples of the use of search and seizure powers have proved to be critical to detection of serious wildlife offences.

In 1999 in Operation Dynamite wildlife officers used their powers under section 59A of the Wildlife Act to search parcels without a warrant when TNT air freight reported the dispatch of a suspicious parcel at its Flemington depot. Officers found Dumerils boas — a Madagascan species listed under the convention of international trade endangered species — green pythons, carpet pythons and other reptiles in a parcel marked 'photographs' destined for another wildlife collector interstate.

Subsequently wildlife officers, police and Australian Customs officers conducted a search warrant at the consignor's residence where a substantial collection of illegal wildlife was found. These included green tree pythons, desert death adders, a Gillen's monitor, bearded dragons, ridge-tailed monitors, a black-headed monitor, knob-tailed geckoes, a ball python, two boa constrictors and two southern hog-nosed snakes in the bedroom of a house. None of the specimens were legally held. The court was told that the value of the animals on the black market exceeded \$20 000. The defendant was convicted and fined \$4000 and the seized animals forfeited.

Given the time left for discussion I will move to fisheries. Increasingly the emphasis on fisheries enforcement is shifting towards a task force approach to planned covert and overt operations. Major operations target illegal operators in the catching, processing and marketing sectors. These are often joint operations with Victoria Police and other state enforcement agencies. Investigations involve a detailed approval process and operate within a number of tight guidelines for informer management, surveillance devices, major operations and intelligence management. We have copies of these guidelines if you wish to peruse them. We can leave them on the basis that they are confidential documents within the department and cannot be photocopied. If you simply read them and hand them back, that would be most beneficial to us.

Current enforcement powers allow our authorised officers to effectively investigate and prosecute offenders and offer deterrence and maintain a high compliance rate. Some examples of successful compliance operations conducted by the department include Operation Churchill in September of 1998, which targeted an unlicensed processing operation where approximately 31 000 abalone were seized. The defendant received 18 months imprisonment and a pecuniary penalty order of \$978 275. At the time this was the largest pecuniary penalty order, or PPO, under the Confiscation Act from the assets confiscation office. I will hand out a small suite of documents for your perusal. They show more detail as to that particular operation, which involved a number of wildlife officers.

The CHAIRMAN — The photograph on the front of that makes it look like the minister is being seized!

Mr WARREN — The minister is making a statement about that seizure as part of the document from the assets confiscation office.

In Operation Orion in March 2000 a recidivist abalone thief with over 100 convictions was arrested in Tasmanian waters with 500 kilos of abalone through a joint operation between the Victorian and Tasmanian police departments. The apprehension resulted in the conviction of this individual, who was sentenced to a total of 27 months imprisonment and fined approximately \$250 000. Many of the boats he used in the operation have been seized and forfeited to the Crown.

This year as a result of Operation Texel two men were sentenced to terms of jail — one for 23 months and one for 33 months — for abalone theft. I understand there was an appeal and those sentences were slightly reduced. Both men were ordered by the magistrate under section 130 of the Fisheries Act not to be present within 4 kilometres of Victorian coastal waters and estuaries with commercial abalone equipment or in a vessel less than 20 metres in length in Victorian waters for the next two years. The abalone theft occurred during January and February this year in a remote area near Cape Otway. The men were charged with taking abalone illegally on five different occasions. Four vehicles, two motorcycles and a large quantity of equipment were also forfeited.

Also in the documentation you have are some photographs. In the first photograph you will see that in the very top corner are the basic tools used by people who take abalone. The second photograph is of a face mask with a light attached to it. The top photograph shows a basic tool consisting of a lever and a screw driver attached to a torch which is used by abalone thieves who can operate in shore-based areas with minimal equipment to take large quantities of fish. They are very mobile and obviously they are at the stage of coming to our attention. The operators are unknown. I guess their usual modus operandi, or MO, if they are seen by us is one of concealment or flight, and they would normally dispose of any ill-gotten produce immediately before detection to make sure that when we do investigate we do not have the evidence to proceed to court.

That second photograph shows hessian bags hidden at the back of a utility, once again, as a result of operation Texel. At the back of a McDonalds restaurant in Colac there were two utilities, one transferring fish to the other, and one utility was inspected. The immediate response was required before that fish disappeared on to the illegal markets.

The third photograph shows a boat. It demonstrates that the console of the boat was pot-riveted to the floor of the boat. It was removed and a large quantity of hessian bags all containing large quantities of shucked abalone was discovered. Once again only through an immediate response activity and use of the powers could these abalone be detected and the people brought before the courts.

In an operation last year 11 identical Ford Falcon sedans had been converted to gas and the petrol tanks were converted to a concealment portion of the vehicle where both large quantities of abalone and evidence of abalone having been stored there was detected. In that operation 22 defendants were found as well as the 11 vehicles decked out for the taking of abalone. Again, it was only because of the immediate ability to search the vehicle at that time

that we could detect such an offence.

The next photograph demonstrates an illegal processing operation at a private premises. Over the last couple years two extremely significant cases have occurred. The real issues are twofold: one is the damage to the resources nationally, the other is the risks associated with the export trade as a result of these fish being handled unsafely in an environment that is not subject to health restrictions. That has the potential to affect our export markets, particularly of high quality species of abalone. Obviously to go into a dwelling house we exercised our powers under a search warrant to detect and apprehend that particular offender.

The last photograph in your folders is of an officer holding a hessian bag that has a ring attached to it. You probably cannot see the ring around his hand. An abalone poacher under water will take the meat out of the shell. The hole is designed so the meat can go straight into that hessian bag, and there is no chance for officers to see any evidence of the taking of abalone. At the very best we may see a hessian bag come on board a boat or being anchored to a particular point. At a later stage, not so much the diver who is taking the fish but particularly one of his operators will come along and collect that fish at a designated location.

Once again it is difficult in a fisheries context, because with abalone, rock lobster species and shellfish in particular, most of the activity occurs under water, which is inherently difficult to detect from an observation post on land. Obviously because of their training, our officers are able to flag the activities that belong in the suspicious basket.

You can also see in the next photograph quantities of dried abalone for sale at the Sydney market. You can see the prices there for kilos of dried abalone, which usually ends up in the international tourist trade and goes overseas.

That is an overview of the fisheries side of things. I will move briefly on to the pest, plant and animal issues.

As indicated earlier, a lot of the issues are about land degradation, et cetera — rather significant issues facing Landcare groups across Victoria. There is very strong support from the community for the department to not only maintain but increase its enforcement effort against these pests. That strong emphasis was reinforced by the 1998 Environment and Natural Resources Committee inquiry into weeds in Victoria, which found widespread support within the community and industry for the department's continued management and control of noxious weeds in the state but with a stronger enforcement focus.

In that context the department through its compliance program implements a targeted focus on priority weeds and locations to support the implementation of community development catchment management authority weed and rabbit action plans. The compliance program combines the initial extension effort to assist land-holders undertake control activities but then incorporates enforcement action against the non-compliant land-holders who refuse to meet their legislative responsibilities.

Under this program, in 1999–2000 the department carried out approximately 19 000 property inspections with approximately 24 000 land-holder contacts as an extension exercise. Following the extension component, 4500 enforcement actions ranging from issuing penalty infringement notices, directions, land management notices, works agreements, ultimately with some prosecutions, were carried out to ensure the required weeds were effectively treated. Weed invasion of agricultural land is one of the most critical land degradation issues in Victoria.

The CHAIRMAN — To balance the timing I want to make sure we have time for all issues to be canvassed. Who else will be speaking today?

Mr WARREN — John Galvin will look at the agricultural legislation, and there will be a representative from the Environment Protection Authority. I am not sure who that representative is.

The CHAIRMAN — That is in the next section. We have another half hour of time. I want to make sure we have the time to canvass the range of issues. That background information is certainly very helpful for our work and that could be rounded up if could you speak to some of the key points. I am interested to develop a situation where we can ask a range of questions on where your powers need to be strengthened or in the alternative where there may be concerns as to whether they are too strong. My colleagues might have some questions on those frontiers. We can have an interactive segment in part as well.

Mr WARREN — I have one brief section that relates to controls.

The CHAIRMAN — That is fine.

Mr WARREN — Finally I will move to the quality assurance of the use of legislative powers.

Obviously the framework provided by Parliament has been further supported by a number of guidelines to be read by authorised officers in conjunction with the legislative framework. These guidelines form the basis on which officers perform the functions in the field and are listed as the legal systems training manual; compliance guidelines Fisheries Act and regulations; compliance guidelines Wildlife Act and regulations; information management guidelines; Surveillance Devices Act guidelines; major operations guidelines; intelligence management guidelines; administration and management of offence files guidelines; search, seizure and disposal guidelines; and the guidelines for the issue of infringement notices.

Since 1987 the department has ensured consistency of standards through vigorous training of staff in both the technical and enforcement areas. All authorised department staff performing enforcement activities are required to undertake and successfully complete designated training courses.

In 1987 the departments introduced two subjects, Legal Systems 1 and Legal Systems 2, which were adopted by the TAFE colleges as part of the Associate Diploma of Resource Management. Those subjects were designed to prepare authorised officers in the knowledge of the legislation, powers of authorised officers, the gathering of evidence, the questioning of suspects, statement taking, the preparation of briefs of evidence and courtroom practices and procedures. Implicit in the exercise of powers was the specific training in relation to search, seizure and arrest.

The training staff delivering the courses come from fields of experience relative to the training and have the expertise to deliver to the highest standards. Further to the in-house training provided, external training is required to complete the professional training. All authorised officers primarily working under the fisheries and wildlife and the catchment and land protection legislation require competence in conflict avoidance and defensive tactics. This course has evolved from the police Beacon training, where officers of the department were trained as instructors to train internal staff to the equivalent accreditation level of Victoria Police. This training is now undertaken by a specialist group within the Department of Justice. All authorised staff on these courses must pass to a satisfactory standard to engage in enforcement activities. Specialist staff also undertake police training through the detective training school and the police academy.

That is a brief overview of the guidelines and training that all authorised officers must be familiar with and must complete to perform their functions in the field. It goes without saying that it is also within the hierarchy of the department that there are supervisory and management processes all the way to the highest level, which is the secretary, for the purpose of our exercise of the powers of warrants under the Surveillance Devices Act.

So that in short covers the three points that I wish to get across today. I am happy to leave my submission as further background to the inquiry if it is of assistance.

The CHAIRMAN — We will arrange for an immediate copy of that to assist Hansard in their work.

Mr WARREN — I have not presented all of it because it is a bit wordy, but nevertheless I am happy to have the full background used.

Mr KATSAMBANIS — Mr Warren, thank you for your presentation. In particular I had a keen interest in finding out what sort of training your staff undertake and I thank you for providing us with a pretty full description of that. Also, congratulations for implementing what I understand is compulsory training, which is good to see. You mentioned that your guidelines are confidential to the department; under what head of legislative authority are the guidelines drawn?

Mr WARREN — The guidelines are simply that — guidelines for the use of technical officers in the field. There is no head of power; they are an aid to the legislative process and they are to be read as a practical guide for field officers to use in interpreting that legislation and gaining the knowledge they need from the practical guides contained within those guidelines as to what they should do in the field in certain circumstances.

Mr KATSAMBANIS — If they are confidential, how can compliance be assessed?

Mr WARREN — When you say they are confidential, they are confidential insofar as there are some things in those guidelines that might demonstrate to the community how enforcement officers carry out their duties. They are confidential to the point of the provisions of the Freedom of Information Act in respect of those enforcement-related issues and to that point only.

Mr STENSHOLT — I assume they are available to the Ombudsman if required?

Mr WARREN — I am sure they would be. I am more than happy to leave them for the perusal of the members here.

The CHAIRMAN — That would be good.

Ms HADDEN — The issue of training is of particular interest to the Victoria Police, which is scheduled to give us a submission tomorrow in particular in relation to fisheries and abalone. Do you have statistics on the number of times you require police to assist your investigating officers?

Mr DONALDSON — I can answer that. Insofar as their assistance is required for major operations, yes, I can provide data on that. I am the Department of Natural Resources and Environment liaison person for the Victoria Police, and if we require specialist resources from the police I am required to provide them with an operational plan which is to police standard. I have a copy of that here which I can leave for the committee.

Most of the staff within the fisheries agency have been trained to police standard. They have attended detective training schools and they have attended analyst courses run by Victoria Police so as to become familiar with the standards of Victoria Police. We have a reliance on the support of Victoria Police because of officer safety, particularly when we are involved in major operations with identified organised crime.

I could certainly provide data on the number of occasions where we have been assisted by Victoria Police, but there are ad hoc arrangements in place in regional areas where there are relationships between fisheries officers and the local police, who may need to conduct road blocks or intercept someone on the highway and that sort of thing. Those arrangements are undertaken locally and I would have no access to records of those. I could put a call out to the regions and get some indication, but it would by no means be definitive of the number of occasions those things occur.

Ms HADDEN — Is that training ongoing or is it one-off training for your investigators, inspectors and authorised officers?

Mr WARREN — We have two levels of training: there is the initial qualifying training for officers and there is refresher training, particularly with our conflict management and defensive tactics training which is conducted every six months, as I understand it. We do further refresher training on a needs basis for all our authorised officers when there are changes to legislation or significant changes of that nature.

Ms HADDEN — Is that done internally and externally?

Mr WARREN — Mainly internally, but we do use external providers obviously where the expertise is required.

Mr WATERS — May I add that it is two-way training. We provide training to Victoria Police in some cases as well, because Victoria Police officers are authorised under certain sections of fisheries and wildlife legislation and we provide training to them for that, including at detective training school.

Ms HADDEN — You actually run courses at the detective training school?

Mr WATERS — Yes, as well as on an ad hoc basis. For instance, today one of my officers is providing a game management and firearms-related training course to Victoria Police out at Knox district.

Mr BOWDEN — I have a quick question on firearms. Are your inspectors armed with conventional firearms: yes or no? Also, have they considered the use of non-firearm or non-lethal disabling weapons?

Mr WATERS — We are no longer armed with firearms at all, but we do carry ASP batons, and I believe there is a current proposal to use oleocapsicum, or OC, spray for those sorts of operations.

Mr BOWDEN — Have you looked at the latest generation of non-lethal but remote-throw stun guns?

Mr WATERS — Some officers have done research in that area and provided advice to senior management on it, but to my knowledge there has been no progress on the use of those weapons as all.

Mr BOWDEN — Is there an application before the government or anything being considered in the use of firearms?

Mr WATERS — Not as far as I am aware.

Mr STENSHOLT — Section 80(4) of the Catchment and Land Protection Act states:

In exercising a power under this section an authorised officer must comply with any prescribed procedures.

Do you have these procedures? Are they in the nature of your guidelines under the Fisheries Act, or what are they? You can take that question on notice, if you like.

Mr WARREN — If I could. Normally those prescribed procedures would be ones that would be regulated, I should imagine.

Mr STENSHOLT — You can take that on notice and check it out. I notice that section 102 of the Fisheries Act states that authorised officers may, without any further or other authority, do a whole lot of things, but I also notice that further on they can actually get warrants. What is your practice: do you go in without warrants in the normal course of events or do you normally seek warrants? Can you also give us some indication of the incidence of both, as that would be quite useful. You can take that question and the other question on notice.

Looking at the various acts and the various powers for entry, search, seizure and questioning, there are different procedures in each of these acts. Do you have any comment to make on that, because they obviously provide different parts of your department with different sets of powers. We are interested as a committee in your comparative analysis of that, because we do not have any so far. We would like some feedback on how it works for one part of your department as opposed to another part of the department, and whether anything needs to be changed or added, et cetera. That would be very useful for our work.

The CHAIRMAN — You may like to take that on notice.

Mr STENSHOLT — You will get it from the Hansard transcript. They are really good at that.

Witnesses withdrew.