

PROOF VERSION ONLY

LAW REFORM COMMITTEE

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

Melbourne — 12 December 2001

Members

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Dr J. Galvin, Manager, Animal Health Operations, Department of Natural Resources and Environment.

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

Dr GALVIN — Thank you very much for the opportunity to address the committee today. My name is John Galvin, and I am the manager of animal health operations with the Department of Natural Resources and Environment. With me today to answer any questions are Mr Peter Bailey, who is the director of quality assurance; Dr Catherine Hollywell, manager of the chemical standards branch; Dr Stephen Tate, director of the bureau of animal welfare; and Dr Pat Sharkey, manager of the plant standards branch. We can answer any questions posed in relation to animals, plants, chemicals and animal welfare if the committee desires.

In the interests of time, instead of going through my prepared speech I would like to note some differences between what I have broadly called the agricultural legislation and the area covered by the previous presenters, who talked about fisheries and wildlife and the catchment and land protection legislation. The particular focus that we represent and want to advise the committee on today is the use of the agricultural legislation as it applies to agricultural industries.

A number of common themes run through the Livestock Disease Control Act, the Prevention of Cruelty to Animals Act, the Agricultural and Veterinary Chemicals (Control of Use) Act and the Plant Health and Plant Products Act which assist the Victorian agricultural industries to, in particular, protect the health of the general public; protect the environment; protect domestic and export markets; monitor, control and eradicate pests and diseases; avoid contamination of food; and prevent cruelty to animals.

If you look at the nature of the Victorian agricultural industries, you will see that an enormous amount of their value to the Victorian economy and to the regional and rural communities is their ability to maintain access to international markets because of the very high reputation that our agricultural products have domestically and overseas.

Another point I would like to make is the changes in international marketing that flowed through from the 1993 Uruguay round of General Agreement on Tariffs and Trade (GATT) negotiations, which were aimed at developing a level playing field where non-tariff trade barriers were removed and basing the international trade in agricultural products on scientific risk assessments and sound quarantine barriers. The legislation in place enables us to undertake those scientific risk assessments and the commonwealth in particular to develop sound quarantine measures.

Another aspect of international trade is that our international trading partners see Australia as one country — they do not look at Australia as Victoria, New South Wales or Queensland. We have had a number of instances over recent years where international auditors have come out, looked at the situation in Australia with respect to things like the use of hormonal growth promotants and our livestock identification systems. They are looking at the consistency of the programs that are delivered through state, territory and commonwealth jurisdictions and their legislative underpinning.

In recognition of that, a lot of the programs for the control of particular pests, diseases and chemical residues and for animal welfare are increasingly becoming consistent on a national basis. At a ministerial council level the principles for legislation, program development, program delivery and funding, et cetera, are increasingly being given a national focus because that is the focus that Australia wants to present to its major trading partners. We come under the same department but with a totally different use of the legislation from what the preceding speakers addressed you on.

Under agricultural legislation in all fields within the department authorised officers are required to have the appropriate technical skills. In the area of disease control it would be someone like myself with a veterinary degree, and in a regulatory area it might be someone with an agricultural science degree or diploma or with experience in a technical area. They then undergo a training program that involves more than just the use of regulatory powers; it also involves an understanding of the industries, the programs and the problems that they will have to deal with, of which one component is the use of regulatory powers, albeit an underpinning component.

Those people are only appointed as authorised officers on the completion of a training program, which for the people in my area consists of a minimum of 12 months working with experienced officers as well as undertaking courses, and then an assessment of their competency is made by senior officers before they are actually appointed. For all the programs there are standard operating procedures, and increasingly for a number of the branches those standard operating procedures are written into the International Standards Organisation (ISO) format to ensure consistency of program delivery.

Mr Warren gave a number of examples of the use of powers. I will mention briefly the powers that we used to control the outbreak of anthrax in the Goulburn Valley in 1997. While anthrax is not an exotic disease like

foot-and-mouth disease, it was certainly one that became a very severe problem for affected farmers in the Goulburn Valley. The sorts of powers we had to use in that instance included: the requirement for stock owners and veterinary surgeons to notify when they suspected that anthrax was present; the power to enter premises — obviously other than premises being used as a residence — to carry out the investigation for anthrax; the ability to collect samples for diagnosis; the ability to apply quarantine; the ability to collect information that allowed us to trace and track the movement of stock and stock products from affected properties; the ability to deal with and dispose of carcasses that had died of anthrax; the disinfection and decontamination of contaminated sites; and the ability to use vaccine on a wide area to control the outbreak. The wide use of powers under the Livestock Disease Control Act enabled us to deal with anthrax in 1997.

In the interests of brevity, I might leave my introductory comments at that.

The CHAIRMAN — Do you have any interface with the police in any of your enforcement activities?

Dr GALVIN — The only time our officers become involved with the police is where there is the potential for conflict. Mr Donaldson mentioned that local regional arrangements between our staff doing the work and the police would come into play — that is, they would seek out assistance from the police just to maintain order. It is a public safety issue.

Mr KATSAMBANIS — I have a couple of questions following on from Mr Bowden's question to the previous witnesses. Are any of your officers armed with firearms?

Dr GALVIN — Yes, most of the animal health officers, who are the only ones concerned, carry firearms for the destruction of diseased or suffering animals. We are talking about, usually, .22 rim-fire rifles or .22 magnum rifles. We do have a small number — I think 23 or 24 — of semiautomatic .22s that are kept under lock and key and used for large operations — for example, following a major bushfire where we need to destroy large numbers of stock.

Mr KATSAMBANIS — But operationally, other than for the destruction of stock, firearms are not authorised to be used?

Dr GALVIN — Not for self-protection, under any circumstances.

Mr KATSAMBANIS — You mentioned GATT and the internationalisation of trade: are you aware of any international best practices or powers that may assist you in your work here in Victoria that currently are not available to you?

Dr GALVIN — In part I will take that on notice, because the others may have additional comments. In the animal area a lot of the protocols, rules, et cetera, are set by the World Animal Health Organisation, which is a French, Paris-based organisation that sets conditions for things like disease surveillance, testing standards, et cetera, and our policies and procedures must very much mirror those because they are the basis upon which a lot of international trade is based.

Mr STENSHOLT — In terms of the relationships at the federal level and also with other states, particularly in relation to the various powers of entry, search, seizure and questioning, there are federal bodies — for example, the Australian Quarantine and Inspection Service (AQIS) — which parallel you and obviously there are state bodies as well. Is it a unified system operating on international protocols?

Dr GALVIN — By and large the answer to that is yes. The way the division of responsibilities rests is that the commonwealth maintains its responsibility up to and maintaining the quarantine barrier; the control of pests and diseases within the country is the responsibility of each jurisdiction, and that is the way it has operated forever; and looking once again at the animal area, the powers of search and entry are to the best of my knowledge equivalent across jurisdictions because they are the basis for similar programs that operate in Queensland and Western Australia, as they do in Victoria.

Mr STENSHOLT — If we have an outbreak of foot-and-mouth disease, presumably AQIS and you would be involved. You have similar powers in terms of entry, search, seizure and questioning?

Dr GALVIN — AQIS would be involved to the extent of negotiating and handling the relationships with Australia's external bodies. If it was in Victoria, the state of Victoria would be responsible for the response within Victoria; if in New South Wales, it would be a case for New South Wales, and so on. The Department of Natural

Resources and Environment in this case would be the combat agency for foot-and-mouth disease if it was here.

In terms of the legislation, there have been two major reviews of the powers to deal with emergency disease, the latest being what is known as the Kaney review. All states have agreed nationally to pick up the powers that Kaney was recommending back in the early 1990s. They are certainly in the Victorian legislation at present, and that is the national standard. It is now being reviewed in light of the problems the United Kingdom has had in the past 8 or 10 months to make sure all states have the powers recommended for 8 or 10 years.

Mr STENSHOLT — You could take this question on notice: I assume there are a number of different acts in your area. Do you have model legislation with regard to entry, search, seizure and questioning? Or do you have differences between the various acts that you and your part of the Department of Natural Resources and Environment are responsible for? If so, is it possible to examine them to see whether they need changes or upgrading.

Dr GALVIN — Yes, I will take that on notice.

Ms HADDEN — What about the department's complaints process in relation to search, entry and seizure? The Ombudsman told the committee this morning that most complaints are received about DNRE across government departments in relation to seizure powers and mainly against fisheries and agriculture.

Dr GALVIN — I would be surprised about the addition of agriculture to that list, at least in my area. I will take that on notice to find out about instances. But in the animal health area my involvement with the Ombudsman would total about half a dozen in the last 10 years. The majority of them would be people against whom we have initiated prosecutions. In some cases, where the prosecution was successful, they were looking for another point of grievance.

Ms HADDEN — What is your complaints procedure at DNRE?

Dr GALVIN — The complaint will either come into the minister's office or the secretary's office. Generally in the animals area I would look at the basis of the complaint and give advice to senior management on what were the issues, what was the basis for the complaint, what needs to be done or does not need to be done to address the problems; and if it went to the Ombudsman, he would write to the secretary and I would have to provide advice up to the secretary on what had happened in that particular instance.

Ms HADDEN — Do you have a complaints data system?

Dr GALVIN — Not as such.

Mr STENSHOLT — Unlike freedom of information?

Dr GALVIN — Apart from FOI; obviously the department has its own FOI group. It is over and above FOI.

Mr STENSHOLT — Could you take that on notice and check it out?

Dr GALVIN — Okay.

The CHAIRMAN — Mr Warren, to clarify at what point your officers might more actively liaise with the police rather than doing their own investigative work, would there be an occasion where they call the police into proactively assist them in the arrest of people who are breaching the legislation?

Mr WARREN — If there is an immediacy aspect and an offence is under way, perhaps with multiple offenders and there may be a need for back-up assistance from the police to detain the people, there would be a local request from field staff to the police to get that immediate backup. Also, as Mr Donaldson said before, with our major plant operations we would prepare an operational plan consistent with the police operational plan. That would be married together and there would be a conjoint operation managed from the early stages of the investigation right through to its completion.

The CHAIRMAN — That is a process of happy collaboration with the police?

Mr WARREN — Yes.

The CHAIRMAN — There is sufficient cooperation from the police to give you the support you need in your work?

Mr WARREN — Yes.

Dr GALVIN — At the rear of the document Mr Warren provided to the committee are some notes on agricultural legislation. I advise that is an earlier draft. I will get back to the committee with the draft it should have contained.

The CHAIRMAN — Yes, thank you for your contributions, and I thank everybody else who has attended this afternoon.

Witnesses withdrew.