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LAW REFORM COMMITTEE

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

Melbourne – 12 December 2001

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Dr B. Perry, Ombudsman.

Necessary corrections to be notified to executive officer of committee

The CHAIRMAN — On behalf of the Victorian Law Reform Committee, I welcome you here today to the public hearing on the reference relating to the powers of entry, search and seizure. The evidence taken today is protected under the Parliamentary Committees Act. Should there be an issue that you would like to raise with the committee in camera, the recording of the proceedings will cease. You will receive a copy of the transcript, which you may amend as appropriate and return to the committee. I invite you to speak about some of the issues that are on your mind in relation to the reference. We will treat it as an interactive exchange.

Dr PERRY — I will refer to several issues. It is not a great issue for my office, but there are some problems I could raise with the committee. Firstly, with respect to the Ombudsman's own powers, as you may know basically the Ombudsman is really a standing royal commission. The Ombudsman has all the powers of a royal commission. He has the power to summons people to attend to give evidence, he can require people to give evidence under oath and he can summons or subpoena documents — and it is an offence to disobey the lawful requirements or directions of the Ombudsman.

Prior to the Longford royal commission the Ombudsman's powers were those existing in the Evidence Act for a royal commissioner. After the Longford royal commission an additional power was given to a royal commission which the Ombudsman's Act does not provide through the Evidence Act to the Ombudsman, and that is the power to compel people to answer or give self-incriminating answers to questions.

My point is — I may be too unkind to courts, and the judges may take me to task for it, but having been a lawyer for more than 30 years I can say it — that at times the focus of a judicial hearing is not necessarily to get to the truth of the matter, whereas the focus of an Ombudsman's inquiry is to get to the facts. The whole reason for the existence of the Ombudsman is to get to the facts. I put to the committee that it is an impediment to the powers of the Ombudsman, or the role and function and fundamentals of the Ombudsman, not to be able to get to the facts with certain impediments.

I also argue that it is not necessarily a great inroad into the civil liberties of a person who is required to answer questions, simply because a safeguard could always be inserted in the act, or be a condition upon the exercise by the Ombudsman of that particular power, stating that any answers given could not be used against the person in any criminal prosecution. Indeed if Parliament wished to go further it could also say 'not for any disciplinary action', but at the very least give the Ombudsman the power to get to the truth.

Keep in mind that the power would be directed primarily at people employed within the public sector. I suggest that people using public assets and public resources who are employed within the public sector have a particular requirement to provide facts and information to the Ombudsman in any inquiry he conducts, provided he is acting within his legislation. One can get a balance between the liberties of the witness and the function or primary role of the Ombudsman, which is to get to the facts. I put it to the committee that there is an impediment at the moment to the primary function of the Ombudsman.

In respect to the deputy ombudsman, I diverge from the main thrust of my evidence and go back to the structure that presently exists at the Ombudsman's office. Not only do I have the position of Ombudsman, but I also perform all the functions and powers of the Deputy Ombudsman (Police Complaints). So I have two hats — or as some have unkindly suggested, I have one big head and two hats. While the deputy ombudsman has similar powers to what I have just expressed as the Ombudsman, at least the Ombudsman has the power to enter premises at any reasonable time to inspect documents held thereon. The Deputy Ombudsman (Police Complaints) does not have that power. So if I, in performing the role of deputy ombudsman, wish to visit a police station, I must get the permission of the Chief Commissioner of Police. Of course it is never denied; nevertheless, it is a power which the deputy ombudsman does not have but which the Ombudsman has.

There is no power for the deputy ombudsman to inspect documents. Unless he issues a summons in respect of specific documents, he does not have powers to inspect those documents. It is a lack of consistency between the powers of the Ombudsman and the deputy ombudsman. There are many ways in which the deputy ombudsman gets around those difficulties. For example, under section 86Q of the Police Regulations Act the Ombudsman can require or direct police members to answer questions. That is not in respect to criminal matters but in respect to matters, if found proven, that amount to no more than disciplinary matters. In the course of that inquiry he may direct the police member to provide evidence and answer questions concerning documentation, but he does not have the power to search for and inspect documents.

The last impediment, if I can call it that, for both the Ombudsman and deputy ombudsman insofar as evidence is concerned, is that neither has the power to seize documents. So while the Ombudsman may enter premises and

inspect documents, he has no power to photocopy or seize documents. I argue that it is an extremely important issue for an ombudsman to secure records and documentation that he discovers or ascertains in the course of an investigation. At the moment I rely entirely in the police jurisdiction on the chief commissioner securing the documentation for me. The chief commissioner has never refused to comply with the request, but nevertheless neither the Ombudsman nor the deputy ombudsman has that particular power.

If one is looking, I suppose, for what I would call administrative bodies carrying out administrative investigations, we are not a prosecuting body. So I would argue that it is not an inroad into the civil liberties of various witnesses who are being interviewed or are subject to investigation by the Ombudsman, because there are safeguards that currently exist and would continue to exist. My point is simply that these are additional powers that both the Ombudsman and deputy ombudsman could have that would enable them to carry out their functions more thoroughly and without the inroads into the civil liberties of the people subject to those additional powers.

The second area is really those matters that have come to my attention either as Ombudsman or as deputy ombudsman in the course of conducting the function of those positions. One of the problems in the police area is the seizure of items for evidence. In many cases it is not a problem, but one of the issues subject currently to investigation is the Victorian drug squad and the seizure of drugs. At the moment, because of the numerous requirements of defence counsel courts are requiring drugs to be presented as exhibits. I believe there is a far more practical way of doing this, and that is for an analysis to be made of the drugs and for that analysis to be presented to the court. I say that because there have been problems in the past with investigations both by the chief commissioner and my office involving drug exhibits that have gone missing.

My experience of corruption is that it ebbs and flows with opportunity. The more opportunity there is for corruption generally, the more corruption there will be; the less opportunity there is for corruption, the less corruption there will be. Having police holding large quantities of drugs for long periods is an opportunity for something to occur to those drugs. It has happened in the past, and I believe this is one way of reducing that opportunity.

While I think practically there is a solution to it, if courts insist upon the drugs being held to be presented as an exhibit for the trial, then there is this opportunity. My suggestion is that perhaps some legislative provision is required, provided sufficient safeguards are put in place. The safeguards are the analyses provided by the state forensic laboratory of the drugs that are seized, and the courts having sufficient confidence that those drugs are a fair representation of the total seizure.

The CHAIRMAN — Are you aware of any other jurisdictions which have that process?

Dr PERRY — Yes, New South Wales, for example, has that process.

Mr KATSAMBANIS — As a member of Parliament whose electorate spans St Kilda, that issue pretty much hits home. You say that New South Wales has provisions. Do those provisions contain some sort of intermediate step so that even on an administrative basis a judicial-type decision is taken that the product which is supposedly drugs is drugs, or is there a simple reliance on the forensic examination?

Dr PERRY — It is a matter of practice. The New South Wales courts do accept the forensic analysis, whereas Victoria has been far more reluctant to accept that, primarily on the basis of the claims and requests of defence counsel.

Mr KATSAMBANIS — I think you mentioned your 30 years experience as a lawyer. You would understand that court practice is difficult to alter other than by direct legislative intervention, and sometimes even then we do not get it right. I would be interested to look at the New South Wales provisions in light of what you have said.

Dr PERRY — I am not sure the actual provisions are there; it is simply a matter of what practice the courts are prepared to accept. In Victoria where it is not accepted as a matter of practice the only way to overcome that is by way of legislation. That is the point I am really making, and that is all I wish to raise with the committee.

Since I have been performing the role of deputy ombudsman in police complaints that has been the major problem. Being deputy ombudsman, I am more than anxious to reduce any opportunity there is for these matters to occur in respect of drug exhibits which are held for a long time and at times in large quantities.

Mr KATSAMBANIS — I have a series of questions, particularly on the issues you raised, relating to your powers in the investigatory sense. You talked about the changes to the Evidence Act that relate to

self-incrimination. That was a fairly fundamental shift in the basis of our legal system. You suggest that they are powers that could be extended to the Ombudsman. Playing the devil's advocate role, I could argue that equally they are probably excessive powers, and rather than being spread through our legislative regime they should be removed from the Evidence Act and from a couple of other acts they have also crept into, again in that realm of public officers fulfilling public duties. In the main they are the acts I can recall anyway. A few other acts also have those powers now. How would you respond to that?

Dr PERRY — My response would be to raise the safeguards that could be put in place. First and foremost, the Ombudsman is not a judicial officer. The Ombudsman does not prosecute and does not play a judicial type of role. The Ombudsman, in investigating as a royal commissioner, is an administrative investigator. In those circumstances one is not looking at the judicial side of things at all — that is, the evidence provided to an ombudsman cannot be used in the judicial forum against that person.

In my opinion section 86Q of the Police Regulation Act has been a very handy weapon for both the Chief Commissioner of Police and for the Deputy Ombudsman (Police Complaints) when conducting his own investigations. At the end of the day it does not do anybody any good, in my opinion, when an investigation is left up in the air on the basis of, 'Don't know what the facts are'. If you are unable to get to the truth of the matter, it does not do any good for the persons against whom the allegations are made; it does not do any good for the chief commissioner or the deputy ombudsman to be told they are either a toothless tiger or incompetent or are hiding the facts; and it certainly does not do any good for the system. I believe the community should have faith that the system has at least all of the powers to fulfil the functions that the position is set up for, and the primary function of the Ombudsman and deputy ombudsman is to get to the facts.

There are two aspects to the administrative investigation — one is punitive and the other is remedial. The punitive aspect is a very short-term one, where if people have been committed disciplinary misbehaviour or criminal behaviour they are brought to account for that. But in the longer term the more important aspect of an investigation as far as an Ombudsman and deputy ombudsman are concerned is the remedial aspect. For example, if police misbehave one has to ask, 'How did it occur?', and invariably when the deputy ombudsman looks into that the answer is something like lack of supervision or inappropriate procedures.

If you are not able to get to the truth of the matter, how are you able to address the causes of misconduct if misconduct has occurred? Therefore the deputy ombudsman performs a beneficial function on the remedial side because he can identify causes of the problems and make recommendations to address that. In my opinion that is one of the most valuable functions, roles and effects that a deputy ombudsman and an ombudsman have — to be able to point out the remedial aspect, the cause of the problem and have that cause addressed.

If one cannot get to the facts of the matter, then one loses that very important tool. My opinion is that if you want proper management of public resources in Victoria, if you want a police force meeting high ethical standards, then you must rely upon management to be able to set, maintain and enforce high management performance and high ethical standards. If management is unaware of or is unable to determine why things are going wrong within their own organisations, then that is of detriment generally to the public sector management in Victoria. Therefore the remedial side of it is very important. It does not offset the rights of the person within the judicial environment, because that evidence cannot be used against them.

Mr KATSAMBANIS — Thank you. I am glad I asked that question.

The CHAIRMAN — Brian, are you aware of any other jurisdictions where the power and opportunity exists to inquire further with a moratorium on further prosecution?

Dr PERRY — For example, section 86Q of the Police Regulation Act gives the chief commissioner and the Deputy Ombudsman (Police Complaints) power to require police members to answer questions, but the questions they answer cannot be used in judicial proceedings against them unless they commit perjury in the course of providing those answers.

It seems to me that it has worked very well. Police members have been brought to account in the disciplinary area, and at the same time, and more importantly from my point of view, we have been able to address the remedial side. One of the areas I could point you to is the previous Bart investigation — the window shutters case. In that particular case we prepared various briefs of evidence for the Director of Public Prosecutions, and his advice to us was simply that, because of restrictions, current legislation and the particular common-law requirements for corruption-type issues and accepting bribes, criminal prosecutions would not succeed. We then went along what I

call the 86Q path, and at the end of the day 550 members were disciplined and over 20 members were dismissed from the police force.

In my opinion you require those powers. They already exist in the Victorian police area, but they do not exist for the Ombudsman in the general jurisdiction.

The CHAIRMAN — That is an extraordinary outcome, if I might make that remark in passing, that 550 people were disciplined and 20 were dismissed from the force. Had it been otherwise a brick wall might have been encountered in terms of pursuing the matter.

Ms HADDEN — Were any of those persons above senior constable level?

Dr PERRY — Yes, they were. As I mentioned in the three reports I tabled in Parliament on that, the conduct resulted because the supervisors unfortunately were either involved in it — when speaking of supervisors, I mean sergeants, senior sergeants — or they turned a blind eye to it. One of the benefits of that type of investigation is that at the end we looked at the cause of the problem, which was clearly lack of supervision. As a result of that amongst other things it is now a disciplinary offence for any members of the police force to fail to supervise people for whom they are responsible.

Mr KATSAMBANIS — Earlier in your submission you suggested that it could be possible to examine whether the protection against prosecution in this area could be extended to a protection against disciplinary action. Based on what you have submitted now about the police and the window shutter situation, would you think that extending the protection from non-prosecution into the disciplinary area would be a good thing?

Dr PERRY — The power that I suggest to require witnesses to answer or to give self-incriminating answers to questions has that effect — that is, that the answers cannot be used in evidence against that person in a criminal matter but can be used in a disciplinary forum, and more importantly can be used to discover the causes of the problems, such as why the conduct occurred and how to set in place procedures and standards that may prevent a similar type of conduct recurring.

Mr KATSAMBANIS — Is there any risk that someone could utilise this protection to effectively protect themselves from prosecution? Early in an investigation they could walk in and provide evidence that they fear may well be uncovered by an investigation, and they could utilise this provision to put things on the record and effectively give themselves a nolle prosequi.

Dr PERRY — It is one of the most difficult judgments one has to make very early in the piece. I have discussed this with police investigators over a number of years: you have to make a decision very early in the investigation whether you are going to go the criminal path or the disciplinary path, because once you go the disciplinary path you are virtually excluded from criminal prosecution simply because witnesses can claim or use the privilege against self-incrimination. So investigators generally would not put themselves in a position where they could jeopardise a criminal prosecution, nor a disciplinary prosecution.

What would occur in the situation that you have just put to me is, if police were going down the criminal path, they would immediately comply with the provisions of the Crimes Act, which among other things gives a warning to the person being interviewed about what their rights are, and they also warn that they are not required to give self-incriminating evidence but that any evidence they do give will be used against them. So if that person then provides that evidence, it is voluntary in light of knowing what their rights are, and they had the opportunity at that time to claim the privilege. If they do not claim it, then the criminal path can be gone down and that person is provided with the facts.

So it is not an impediment to using that evidence against a person in a criminal prosecution, but I can assure you that in every case I have been associated with the normal practice in a criminal investigation is that the person has already been provided with legal advice from their legal counsel not to answer questions, and in those circumstances then you are forced either to pursue the criminal path on that basis or go down the disciplinary path, and that is a question of judgment that you make in a large number of police investigations, and the Ombudsman does in the general jurisdiction.

Mr KATSAMBANIS — My question was more to do with the general jurisdiction, because I understand the interplay in the deputy ombudsman situation between section 86Q of the Police Regulation Act and the Evidence Act and the Crimes Act. In a general investigation if you had these powers the sort of compartmentalisation that you described in the deputy ombudsman's role would not necessarily exist, because

when you undertook an investigation in your general ombudsman role you would not necessarily have precluded or excluded criminal prosecution or any civil remedy.

Dr PERRY — No, except again you would have to make a decision very early in the piece. The problem that arises is that until you get into an investigation at times you are not quite sure what you have.

Mr KATSAMBANIS — That is the point I was making initially when I started on this course, because you do not know where you are heading in some cases. You have an idea of what outcome you would like to achieve, but you are not even sure you can get there. However, one of your witnesses who clearly has some idea of what they do not want as an outcome can come in early and utilise a power like this.

Dr PERRY — If it was a purely criminal matter, if someone came to the Ombudsman in a general jurisdiction and that someone was very clearly alleging criminal conduct, then the Ombudsman may refer that to the Chief Commissioner of Police for a criminal investigation in the first place. It would normally only arise when the Ombudsman has commenced an investigation and suddenly — but one is attuned to it. All the investigators in my office are trained. They are all aware of crime act provisions. I think I have 12 lawyers in my office, and they are very au fait with the requirements of evidence and the question of fairness, so that one continuously has that in mind.

But at the end of the day it seems to me that there are two issues that one has to address. As I mentioned, one is the punitive aspect, and the other is the remedial aspect. In my view at times you are far better off forgoing the punitive to get to the truth of the matter so one can see the remedial aspect addressed, especially if it is a systemic type of issue and I think there is relevance in that and it can still be addressed in a disciplinary fashion. Indeed, depending on the evidence or how far down the track one goes, one can always suspend the investigation, pass it to the police and get the police to conduct a fresh investigation.

Mr KATSAMBANIS — So would you give a similar answer to a public policy question, framed along the lines of, 'If we know that someone has committed a criminal act why should we not prosecute them'?

Dr PERRY — As I mentioned, firstly, the Ombudsman is not a prosecuting authority, and secondly, at the end of the day you have to make a judgment whether you believe you will get the evidence. In many cases you know that unless people provide you with information you will not get the evidence, and the criterion for whether to initiate a charge and a prosecution is whether there is a reasonable prospect of gaining conviction. You would have to make that judgment as to whether on the path you are following you will get sufficient evidence. At times with an investigation you have a pretty good idea of where you are going and where you are going to get to; in other cases you do not. There is always the uncertainty of that aspect. Your question raises that difficulty, and I concede that, but there are many occasions when that can be avoided.

What I am putting to the committee is simply that at the end of the day if you have an administrative body such as the Ombudsman or the Deputy Ombudsman (Police Complaints) and you want that body to get to the truth of the matter, then this is an additional power that takes away that impediment. That is all I can say on that basis. The safeguard I put is that that evidence cannot be used against the person in the judicial environment. All future royal commissions, as well as the one that has just ceased, will have that power. If the Ombudsman is to continue as a standing royal commission, then it seems to me there is one additional power that is not being given to him that a royal commissioner has.

I also point out to the committee that at the end of the day Parliament has the power to refer any issue it chooses to the Ombudsman to investigate; and whether it is a matter over which the Ombudsman normally has jurisdiction or not, the Ombudsman must investigate it on behalf of Parliament and report back to Parliament. I would have thought if Parliament were to remit a matter to the Ombudsman for investigation, then the Ombudsman should have the powers that are available to a royal commissioner, simply because there are many issues that could be addressed by an ombudsman with those powers that otherwise may require investigation by a royal commission.

There have been many issues that the Ombudsman has addressed in the past in which there have been calls for royal commissions, whereas in fact the matter has been investigated by the Ombudsman or the Deputy Ombudsman (Police Complaints). I give the example of the World Economic Forum demonstrations of 11 September. That was a matter about which some hundreds of complaints were made to the Ombudsman, and a whole series of allegations were raised about police decisions and police tactics. The Ombudsman was able to complete that investigation, or the first aspect of it, within six months and report to Parliament on it.

I would argue that that is a very speedy and cost-effective way of addressing some very serious issues which are

out there, which are of interest to Parliament and into which royal commissions have been called for.

At the end of the day the only point I am making is that if Parliament wants an administrative investigator to have all the powers to get to the truth of the matter, there is one power that is available to at least one administrative inquiry — that is a royal commission — which the Ombudsman and deputy ombudsman do not have.

Mr KATSAMBANIS — One more tool, rather than the only weapon.

Dr PERRY — Yes.

Mr KATSAMBANIS — I have one more question on an issue that you have included in your written submission but did not cover this morning, and that is in relation to searches of prisoners. Without labouring the point about reasonable beliefs and all the other things that tie lawyers up, you talked about the misalignment between the powers to search people in cells and the duty of care that jailers owe to prisoners to ensure they do not harm themselves or others. Are you making any suggestion at all as to a legislative intervention in that duty of care?

Dr PERRY — At the moment there seems to me to be a conflict between the duty of care the common law places upon the police jailer and the powers the jailer has to search a person. It seems that unless they have reasonable grounds for searching a person they do not have that power, yet their common-law duty to protect that prisoner is paramount. It seems to me that unless police have a reasonable belief to justify using the legislative powers currently available to them, they cannot fulfil their civil common-law duty of care. The way the law stands at the moment, that conflict can be removed only by legislative provision — that is, as to what the powers of a police jailer are.

Mr KATSAMBANIS — Unless a court decided to read the civil power down based on — —

Dr PERRY — Yes, but the courts have not done that in the past.

Mr KATSAMBANIS — No, I know.

Dr PERRY — And we lawyers are very keen on precedent, I am told.

Mr STENSHOLT — You said a change was made — presumably in 1998 — to the Evidence Act. Can you give us a bit more specificity on that, or are you going to give us more specificity in a further submission?

Dr PERRY — No, it was simply that under the Ombudsman Act and the Police Regulation Act, the Ombudsman is given specified powers, and it is from section 17 onwards of the Evidence Act. The Ombudsman Act was established in 1973, and that provision has applied ever since. In 1998, because of the Longford royal commission, section 18 of the Evidence Act was amended to include that additional power. Being a later act, the Ombudsman Act did not encompass that power, and I would have assumed that, given the spirit of the legislation, had that power existed at the time the Ombudsman Act was enacted — —

Mr STENSHOLT — You are saying there is a doubt as to whether new section 19 applies?

Dr PERRY — It does not apply. The new section does not give power to the Ombudsman simply because that specific provision is not referred to in either the Ombudsman Act or the Police Regulations Act, which are the powers that are conferred upon the Ombudsman and the deputy ombudsman.

Mr STENSHOLT — So it is a matter of amending those acts?

Dr PERRY — Yes. What had arisen was a later amendment to the Evidence Act.

Mr STENSHOLT — Which covers a whole lot of things, including, in section 19E, powers of entry, inspection and possession.

Dr PERRY — Yes. They are the powers that the Ombudsman and deputy ombudsman do not have.

Mr BOWDEN — I am not a lawyer, and not being a lawyer I will not ask you any technical questions. My background is in corporate governance technology, and having listened very carefully to your submission to our committee I have a couple of questions, and I would find your answers helpful. One is about the word ‘ombudsman’, which is a Scandinavian term and a Scandinavian concept which, in the main, we have successfully translated and adopted here. You made the very important comment that you do not have a judicial role

but you have a public investigatory role. As I heard the discussion this morning a question came to me about whether a change of title should be considered, such as 'Royal Commissioner (Ombudsman's Office)'.

When you go to do an investigation for the Parliament and for the community, there should be no question about your having the seniority, the prestige and the ability to do so. I wonder whether at times some members of the community fail to understand the importance of the Ombudsman's role and whether that is a question of title. That is the first thing. I would be comfortable in recommending a change of title, because there is no question that you need to have that prestige.

The second thing is: shouldn't the powers of the deputy ombudsman be the same as the Ombudsman, but with a clear delineation of seniority? I would value your views on that.

Dr PERRY — To answer the first question: in Queensland, for example, the Ombudsman's correct title under the legislation is Parliamentary Commissioner for Administrative Investigations, to be known as the Ombudsman.

Mr BOWDEN — So there is no question as to the prestige and seniority?

Dr PERRY — There is no question about that, and in my annual reports I continue to emphasise that there is a close affinity between the Ombudsman and Parliament, given that the Ombudsman is required to report directly — not through a minister — to Parliament annually; that the Ombudsman and the deputy ombudsman have the power to report directly to Parliament on any specific investigation; that neither the Ombudsman nor the deputy ombudsman can be removed from office without the vote of both houses of Parliament; and that the Parliament may refer any matter it chooses to the Ombudsman to investigate, provided it is within the Parliament's constitutional power.

So there is a close affinity between Parliament and the Ombudsman, and indeed many ombudsmen are referred to as parliamentary ombudsmen. Recently I appeared before another committee of Parliament where the question was raised as to whether the Ombudsman should be an officer of Parliament.

Mr BOWDEN — Would you be prepared to make that as a formal submission to the committee?

Dr PERRY — The point I made to the other committee was simply that there is this close affinity, and if there were to be an office of Parliament with a number of officers then I would argue very strongly that the Ombudsman would be one of those, simply because of the close affinity between the two. I do not mean 'office' in the small sense but simply that if Parliament were to decide that there are certain independent officers who are not associated with the executive — in other words, who are not subject to the direction of the executive, which the Ombudsman is not — then that would be an argument to say that an ombudsman is much closer to Parliament than he or she is to the executive.

Mr BOWDEN — It sounds like we are in heated agreement on this.

Dr PERRY — That point is made in a number of jurisdictions, both in Australia and overseas, where as I said the title is parliamentary commissioner, to be known as the Ombudsman. As I mentioned at a conference I attended between ombudsmen in Brisbane, it has got to the stage where in Victoria we used to have Tom, Dick and Harry but where we now have Tom, Dick, Harry and the ombudsman, because almost every institution that wants to create an oversight body wants to refer to an ombudsman. We now have a whole range of ombudsmen in Victoria. We have the Legal Ombudsman, we have industry ombudsmen — for example, a banking ombudsman, a telecommunications industry ombudsman — and every university has an ombudsman.

I encouraged local councils to set up their own internal complaints-handling systems, and among other things I offered them placements for their own staff in my office for training in handling complaints. At that stage there had been opposition — there still is — to the title of parliamentary ombudsman being used by non-parliamentary or non-legislative bodies. Unfortunately over my Weetbix at breakfast one morning I opened the local paper and there was the headline 'New local government ombudsman appointed'. That referred to my own local council, which I had encouraged to send staff to my office for training, who went back and, instead of having an internal complaint-handling system, used the title of ombudsman. One of my colleagues from interstate came roaring down to Victoria, saying, 'There is yet another ombudsman in Victoria!', and I did not have the courage to advise her that it was all my fault.

Mr BOWDEN — It seems to me that we should consider rebadging your office, as I mentioned, with

another title.

Mr KATSAMBANIS — You would be entitled to an action for defamation on that basis!

Ms HADDEN — Dr Perry, the terms of our reference relate specifically to complaints data. What data does the Ombudsman have in relation to complaints about the use of an inspector's powers — for example, under the Mental Health Act and the Children and Young Persons Act?

Dr PERRY — Very little. Some of the bodies that have inspection powers are excluded from the jurisdiction of the Ombudsman — for example, the Auditor-General, and quite correctly, I submit. So very few bodies that have those powers are subject to the jurisdiction of the Ombudsman. My office receives very few complaints about bodies within jurisdiction using coercive powers. The most common would be complaints about the Department of Natural Resources and Environment and the powers of seizure of its fisheries section, for example, and those types of things.

Some of the agricultural bodies have powers of seizure, but again, complaints are very rare. Off the top of my head I would say that the Department of Natural Resources and Environment is probably the one about which most complaints are made.

Ms HADDEN — And not the Department of Human Services in relation to child protection under the Children and Young Persons Act?

Dr PERRY — Those matters have to be sanctioned by the court, and the placing of children in the custody of the department is done with a custody or supervision order from the court or an order is sought shortly afterwards.

Occasionally I receive complaints about the use of the power and the evidence that may be given to the court, but again the Ombudsman draws a distinction very clearly between the province of the courts and what is open to the Ombudsman. If evidence is given before a court and the court decides that children are at risk and issues an order to that effect, then the Ombudsman will not interfere at all unless there is a question about the process — for example, the court may have been misled. But even in those circumstances the parents have the ability to go back to court to seek a review of the order.

At the end of the day there is a question of jurisdiction, because section 13(4) of the Ombudsman Act says that where a person has a legal remedy — I am paraphrasing — the Ombudsman has no jurisdiction unless he believes the matter merits investigation to avoid an injustice.

Ms HADDEN — What about complaints in respect of fare evasion under the public transport regulations?

Dr PERRY — That is initially a matter for the director of public transport; it is his province. If people remain dissatisfied then they may complain to my office, but I get very few complaints in that area. Alternatively I increased the workload of my office when I simply suggested in my last annual report to Parliament that if people believe they have been unfairly fined in respect of parking infringements they should not pay the fines immediately but should instead complain to the council, seek a review and, if they remain dissatisfied, come to my office.

The headline was 'Ombudsman says do not pay fines', but there were qualifications to that. I might say that the following day we had 90 telephone calls concerning parking offences, and of those parking fines that have been referred to my office we are resolving probably 50 per cent. The same is not happening with matters of fare evasion on public transport, as they are dealt with by the department; but the Ombudsman does have jurisdiction over the director of public transport, and people may complain. If, for example, the director issues an infringement notice then the person has the opportunity to go to court or, alternatively, seek a review by the Ombudsman.

The CHAIRMAN — I might make the comment in passing that I have a colleague who views the role of a member of Parliament as being from time to time analogous with the role of an ombudsperson in the wider world by virtue of having the opportunity to take up an issue, raise it in Parliament and ask a range of questions.

I will ask about one matter off the record.

Hearing suspended.

The CHAIRMAN — On behalf of the committee I thank Dr Perry for giving us his time and his evidence

today. It has been most helpful and worth while for our inquiry.

Witness withdrew.