

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

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Deputy Chairman: Ms D. G. Hadden

Staff

Executive Officer: Ms M. Mason

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Witnesses

Ms A. Morton, Vice-President; and

Mr V. Williams, Secretary, Public Transport Users Association.

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

The CHAIRMAN — On behalf of the Law Reform Committee I would like to thank you very much for giving of your time to present a submission this afternoon. The evidence that you are giving is being recorded by Hansard and has the benefit of protection under the Parliamentary Committees Act. I would like to invite you to speak to the issues you have come along prepared to raise with us today. I would then like to allow my colleagues to raise with you any other issues that may be of help to us.

Ms MORTON — I would like to thank you for giving us the opportunity to speak today. I must apologise for not having a written submission, but we are a totally voluntary organisation with lots of things that people need to be doing. If there is anything that you do want presented in writing after this we will make an effort to do that.

Mr WILLIAMS — Essentially it is a very topical issue at the moment with the fare evasion crackdown that the private operators are trying to run. We have always been concerned, and increasingly so since the privatisation of public transport in Victoria, about police-like powers in the hands of employees of private companies. We have generally felt that that is not really appropriate, given that the employees of these private companies do not have the same sorts of training and accountability mechanisms that the police are required to have.

The biggest source of conflict, which again is topical, is ticketing offences. We have a dysfunctional ticketing system in Melbourne; it seems to work better on V/Line. As a result there is a lot of tension between inspectors and members of the travelling public. The majority of passengers are either successful in doing the right thing and have a ticket or act honestly and reasonably but due to the problems of the system are unable to buy a ticket. There are all sorts of very unpleasant altercations between passengers and ticket inspectors.

We would argue that as an initial step the government and the private operators need to move away from the culture of enforcement and forget about it until they have a ticketing system that works properly. The present approach that everybody, regardless of reason, should be fined \$100 for not having a ticket is really only going to drive people away from public transport.

In relation to the particular powers, at present they derive from the Transport Act. They are very broad and very discretionary in terms of what the inspectors can do. We have been concerned that they are applied in a fairly arbitrary and arguably discriminatory way. We have done some very unscientific surveys, we have not done it properly because we do not have the resources. There is a lot of anecdotal evidence that they tend to give young people in particular a very hard time. I have seen it myself on a tram, where there will be two people in precisely the same situation of having the wrong ticket, an unvalidated ticket or no ticket at all and a group of inspectors gets on and treats them completely differently. One person will be bailed up, screamed at and have their details taken and the other person will simply be invited to buy or validate a ticket — and that is with the same inspector on the same day at the same time. We think in response to that the powers should be codified very clearly, possibly made a little less discretionary and rolled back to a significant extent.

We would also argue that there should be a public transport ombudsman to supervise the exercise of those powers as well as provide comment on systemic issues such as the dysfunctional ticketing system. In every other essential public service that has been privatised such as banking, telecommunications, electricity and gas, in every one I can think of an ombudsman has been set up to regulate the system. As far as we know public transport is the only essential service where that has not been done. We would argue that the government should rectify the situation there.

There are two specific powers the ticket inspectors have which we are concerned about. One is arrest. We think it is not appropriate for people to be arrested over a \$2.60 tram fare. The first response to a person without a ticket should be an invitation to buy one. If the passenger continues to be uncooperative, the next step should be to ask them to leave the vehicle. Arrest should be a last resort, and we would say it should be carried out by the police rather than employees of private companies. In an emergency situation where somebody is violent or it is not practical to wait for the police, inspectors could rely on the citizen's arrest provisions of the Crimes Act and not have to have their own independent powers under the Transport Act.

There is also the issue of requesting names and addresses. We think there are privacy issues there. Asking for a name and address should not be the first resort where somebody does not have a ticket; it should come much later where the person is being particularly unhelpful rather than applying simply because they do not have a ticket, often through no fault of their own. There is an issue of verification. Many public transport users use public transport because they do not drive. However, the drivers licence is the primary form of identification, and that is what inspectors want to see, so there can be problems there. We have had reports of ticket inspectors being

somewhat fundamentalist about it and insisting that unless the passenger could produce a drivers licence they would have to either ring up a friend to verify who they were or be arrested. They would not accept Medicare cards, credit cards, pension cards, those sorts of alternative forms of identification. One situation was reported to us where the passenger produced a passport, and that was not acceptable to the inspector as adequate identification. Of course there is no requirement in this country to carry identification everywhere you go. It smacks of some sort of police state where you are required to pull your licence out at a moment's notice. Often these details are asked for unreasonably when you have done nothing wrong.

We have also had reports of inspectors asking for more information than they are entitled to. They are very insistent on getting a date of birth, which could well be why they want to see a licence because if the passenger will not give their date of birth it can be transcribed off the licence, which is in violation of the Transport Act as there is no requirement to give a date of birth. They often ask for phone numbers and names and addresses of family members. We are concerned that conducting that sort of Spanish Inquisition over a \$2.60 tram fare is not appropriate from a civil liberties point of view. As a matter of good public transport policy and customer service it will only drive people away.

I have been going for a while, so I should probably stop there and see if there are any questions.

Mr KATSAMBANIS — You talked about what you described as dysfunctional ticketing arrangements. That is one side of the coin. From the other side of the coin we have heard very public comments from the highest levels of the franchisees and the organisations that own the franchise companies in Victoria that they believe, and I am paraphrasing here, that there is an endemic culture among public transport users in Victoria of fare evasion. Would you care to comment on that, because a lot of the operational side of these enforcement arrangements is predicated on that particular view.

Mr WILLIAMS — I think there are several categories of people who for whatever reason travel without a ticket. It is certainly true that there is a hard core of fare evaders. We certainly do not condone their activities, and if they run into trouble we do not have a great deal of sympathy for them. However, you get those in any public transport system in the world — there will always be a certain number of people who are going to be dishonest and not pay their fare. On top of those there are people with whom we do sympathise, people who deliberately but through no fault of their own travel without a ticket. We do not encourage people to break the law, but I can understand sometimes why many people simply do not bother.

If you have a zone 1 monthly that you use every day to get to work and then you need to go out into zone 2 for a meeting you need to buy a zone 2, 2-hour ticket as an extension, but you cannot validate that ticket in zone 1, so you then need to travel with the unvalidated ticket. We have been told by the franchisees and the director of public transport that technically what is required in that situation is to travel out to the zone boundary, get off the train, validate the ticket and get on the next train. That is an absurd situation, and I can certainly understand why passengers refuse to comply with that.

There is a requirement to constantly revalidate your ticket for the convenience of the bean counters running the system. We found that people who do that with a periodical ticket like a monthly wear it out very quickly. There are people who will only go to a certain amount of trouble, and beyond that point they will say they are sick of it and travel without a ticket. I think there is also an element of protest involved. There are people who do not pay because they are frustrated with the system or are upset that it has been sold off to private operators.

On top of that there is a significant number of people who try to do the right thing and buy a ticket but have problems with the ticket machines. There was an audit done recently that found that as many as half of the ticket machines on some lines are out of order at any one time. I suspect that that is driving a lot of people away because they are afraid of having an altercation with a ticket inspector. That would also be contributing significantly to fare evasion.

Ms MORTON — This morning in the paper there was an admission from Connex that the system does not work. Even the private companies are now starting to realise that it is not just the culture of fare evasion, the system is intrinsically flawed and something will have to be done about that.

Mr KATSAMBANIS — You made a comment in relation to a perception at least of discrimination against some people and you identified one of those groups as being young people. It jogged my mind about an article I read in one of the weekend newspapers. The headline screamed words to the effect of inspectors will now concentrate on well-dressed people. That probably tends to anecdotally bear out the comments you made, that there

might have been a perception from the inspectorate that certain types of people are more likely to fare evade than others.

Mr WILLIAMS — It is subliminally what happens to everybody. There can be an aspect of credibility, in that if a well-dressed individual or a little old lady with her shopping jeep is on the tram without a ticket the inspector will tend to react differently than if it is a young person who is not dressed as well. There is a certain sector, particularly business travellers who wear suits and who travel to work every day on the tram, who are systematic fare evaders who never buy a ticket — or alternatively, buy a concession monthly and travel all the time on that ticket.

The barriers let them out and they are not asked to show a concession card. It is only when they are inspected that there is an issue. Some have done their sums and decided, ‘I can save \$40 a month by buying a concession ticket instead of buying the full fare, and I might get fined \$100 once every three months and still be ahead’. A small proportion of people do that.

Mr STENSHOLT — I was trying to go through the maze of the Transport Act, particularly sections 129, 218, 219 and 221, regarding who the authorised officers are; who authorises them; who can take names and addresses; who has the power to arrest, the power to detain, and the power to remove; the involvement of general members of the public to assist if asked to help in an arrest; and travelling without a valid ticket — section 221 — which does not make much reference to the issue of either questioning, detention or arrest. That is assumed, because it is part of that particular section of the act. Do you have any views on particular parts of the Transport Act?

Mr WILLIAMS — The act is complicated, because it has a lot of other regulatory material in it about accreditation and so on. With respect, if a parliamentary committee has a certain amount of difficulty in navigating it, as we certainly do, then members of the travelling public will have even more trouble. I know that the Consumer Law Centre has produced a brochure outlining people’s entitlements under the act. As you can see from the act, the powers are somewhat amorphous and discretionary. The power to arrest is for any offence under the act. If somebody has travelled two stops past the zone boundary on a short-trip ticket, technically the inspector could proceed to arrest them by bypassing the name-and-address procedure entirely. There should be a certain amount of rollback of those powers of arrest.

Perhaps those powers should even be removed. And if an arrest has to be made then the police should be called in, unless it is an emergency situation, in which case there is always, I think, section 458 of the Crimes Act for an ordinary citizen to make an arrest under.

Ms HADDEN — Given all of that, given the powers of arrest and detention under the Transport Act, given that your position is that that power of arrest should only be exercised by police, and given that the person who is travelling without a validated ticket should be removed from the train or the tram, I do not understand how that will occur, because they will have to be physically removed or given three orders to remove themselves and then may have to be arrested and removed. You would have to have 20 or 30 police officers in every carriage. Have would your proposal work?

Mr WILLIAMS — That is on the premise that there are conductors on trams, which is what we would argue should be a solution in the new ticketing system, which the task force is currently working on. Someone who gets on a tram without a ticket will in short order be approached by a conductor and asked to produce one. If they do not have one they will be invited to buy one, and if they do not have change for the ticket machine then the conductor can then take notes.

If the passenger is then recalcitrant about it they will then be asked by the conductor to leave the tram. If they are particularly nasty and refuse to move — an unusual situation — then the driver will stop the tram — this is the way it was successfully done for many years before the removal of conductors — with the conductor suggesting that the passenger might like to get off because the police have been called, or the other passengers, who have become so irritated at the person holding up the tram, could in short order make the person get off the tram. If not, the police will arrive, and they will presumably be taken away and dealt with severely.

Ms HADDEN — If your proposal is that only the police exercise the power of arrest, are there any lesser powers that you would be recommending?

Mr WILLIAMS — I would suggest retraining and giving powers to inspectors to ask for names and addresses. That should extend to probably more than the authorised persons, because it does not involve the use of

physical force. I do not think it requires as much training to exercise that power. As for enforcement where a person refuses to give a name and address, then it becomes a matter of bluff calling, which may come to a situation where the police should be called.

Mr STENSHOLT — You assume that you will have conductors on trams, which is a big ask. Trains do not have conductors and never have had.

Mr WILLIAMS — The train situation is different. The way international best practice works for trains is that the system is essentially fenced, so it is physically impossible to get into a railway station in order to get on a train without having a ticket. It is more difficult for Melbourne, which has one of the largest urban rail systems in the world and is almost entirely above ground. There would be closed barriers at major railway stations, and then employees at most of the other railway stations would ask for tickets as people get off the train, and if they do not have a ticket then they are invited to buy one.

A good ticketing system would make it so difficult to travel without a ticket that you would not have to have a hide-and-seek mentality. When somebody did not have a ticket the solution would be for them to buy one, not to be fined \$100. That would not be as open to rorting as it is now. Obviously the present system is such that if you adopt the practice of getting anybody who does not have a ticket to buy one, then that would be rorted because people would buy a ticket when an inspector asks them to and then travel free for the rest of the time.

Mr STENSHOLT — Would you be in favour of a queuing system like the buses — in other words, restricted entry?

Mr WILLIAMS — We support the recommendations of the 1991 MET ticketing task force with respect to trams on quieter routes and times, such as the route which goes from Moonee Ponds to Footscray, which is a low-patronage route. Certainly on weekends and possibly other than at peak hour, the driver could be responsible for ticketing, because it would not unacceptably delay the tram, given that we would also aim to try to get more passengers on periodicals, and then it would be a matter of showing the ticket to the driver.

On the busy tram routes we say the only solution is conductors. The approach of ticketing inspectors playing hide and seek with passengers and relying on machines will not work. We say that it is demonstrably unfair. It is as absurd as saying, 'If you want to go to the cinema you cannot buy your cinema ticket at the cinema, you have to go to the milk bar first'. If you said that to a cinema patron they would give you a funny look. The same is true of public transport. The ticketing should be primarily on the system.

The CHAIRMAN — What other countries in the world have ticketing primarily on the system?

Mr WILLIAMS — The only country that aims at off-system purchasing is the United States of America, which we say is not a good example of public transport policy. The majority of the European system is based on purchasing on the system, and they tend to make successful use of machines partly because their machines work and partly, particularly in German-speaking countries, because people are said to be reluctant to behave dishonestly and break the law. Vandalism and fare evasion do not seem to be a problem in Germany and Switzerland. We are at a loss to explain why. Certainly the Netherlands and Scandinavia have attempted to adopt a system where their staff sell tickets.

Mr BOWDEN — Does the minister have a ministerial consumer-based or mixed-advisory committee, and if so do you have a seat on such a committee?

Mr WILLIAMS — There is an advisory committee that the minister describes as his key advisory body on public transport. We have a position on the committee. That committee is, frankly, dysfunctional. Together with other community organisations represented on it, we have been considering leaving it, because we believe our presence gives it a credibility that it should not have. I could go on all day about how dysfunctional the committee is. The former government said that the committee is meant to supervise compliance and also to give the minister other advice. The committee does not work very well.

Mr BOWDEN — It is in place but dysfunctional?

Mr WILLIAMS — That is right.

Mr BOWDEN — When asked by an inspector to provide his name and address and so on, does the passenger have the equivalent right to properly and reasonably ask for the identity, identification, name and address

or location details of an inspector?

Mr WILLIAMS — They do. The inspector is obliged to — I think it is around section 221 of the act — provide the name and operating depot. We have received reports that inspectors are reluctant to do that. Inspectors are also required to carry identification, but that identification is of poor quality. It is the sort of thing I could produce at home in 5 minutes with a publishing package. There have also been reports of people doing precisely that — that is, imitating an inspector and saying to a passenger, ‘You have not got a ticket. You have to pay \$100 to me now’. Those people are not genuine inspectors, but it is relatively easy to do that.

Mr BOWDEN — The identification of inspectors is inadequate, is it?

Mr WILLIAMS — That is right, particularly where there is currently a trend towards plain-clothes ticket inspectors. One fundamental principle of policing generally is that if you are trying to deter then you should be present in uniform, but we think having plain-clothed inspectors is unnecessarily sneaky, and it creates a lot of confusion about whether in fact the person is an inspector.

The CHAIRMAN — If the transport system were fully state owned and operated, what range of questions would you think would be reasonable to allow inspectors to ask of an individual, in addition to their name and address, and should they have any additional powers — or if they were aware that the person was giving wrong or false information, would that be the end of the matter?

Mr WILLIAMS — A state-owned system would be a lot easier to implement reform through, because there are no private operators with which to negotiate. The fundamental issue is to have proper training and accountability for employees from the private companies or agents of the government. If they are agents of the government and are properly trained and accountable, then it should work. Many overseas systems, particularly in Canada, swear in their inspectors as special constables so that they have to go to, for example, the Glen Waverley academy and do the courses. If it were felt that a special force of ticket inspectors were required, we would argue for the transit division of the Victoria Police to fill that role. I emphasise that we do not think there should be a large number of people employed in that role.

The CHAIRMAN — Is that the most effective use of policing resources?

Mr WILLIAMS — Probably not, which is why we think the need for it should be increased by having adequate staff on the system.

Mr STENSHOLT — What do you have to say about the complaints process against the actions of authorised persons?

Mr WILLIAMS — I was not aware of that process existing, but in general people are expected to complain to the franchisees. The complaint-handling processes are somewhat deficient, and the next area is to complain to the director of public transport. That process is also totally deficient, which is why we argue for an ombudsman.

Mr STENSHOLT — My reading of the act is that the department or the secretary signs the authorisations and that therefore the process of complaint has to go to the secretary, who has to hold an inquiry, but I am not certain what triggers the inquiry.

Mr WILLIAMS — The process seems to be that if someone is unhappy with the response from the franchisee they can make a complaint to the director of public transport. In practice, the director’s staff will telephone whoever handled the complaint and make cursory checks and ratify the franchisee’s decision.

Mr STENSHOLT — Have any authorised people been suspended or has an inquiry into them been held by the secretary?

Mr WILLIAMS — I am not sure about inquiries by the secretary. I am aware that ticket inspectors have sometimes been suspended when allegations have been made against them. It is an unscientific process. With the types of complaints that come to us, inspectors tend to back each other up. The passenger will have a story of what happens, and then four inspectors will have a remarkably consistent alternative explanation. That is the problem with all forms of policing.

The CHAIRMAN — If there were a transit policeman enforcing ticket acquisition on the part of the travelling public, or someone who received special training, what range of powers would be appropriately

accorded a person of that nature in following up whether a person had or had not acquired a ticket?

Mr WILLIAMS — Those powers should be exercised, or if all else fails, an invitation to buy a ticket or leave the vehicle. If there is inadequate verification of the name and address, or the name and address is not provided, then perhaps an arrest may be necessary. I emphasise that the first response to someone without a ticket should not be, 'I need your name and address so I can fine you'; it should be via the department.

The CHAIRMAN — Wouldn't independent verification be a better avenue, so that you at least have the details established rather than arresting someone?

Mr WILLIAMS — That is right. Certainly the arrest should be a last resort where details cannot be established.

The CHAIRMAN — Therefore it would be valid to ask a wider range of questions of an individual to try to ascertain proof of residency and identity?

Mr WILLIAMS — If the inspector is not reasonably satisfied with the identification produced, then the response of asking for name of a family member or a friend who can verify who they are may then be appropriate.

The CHAIRMAN — If there were a good training regime in place so that the people who had that power exercised it appropriately and without stepping outside any reasonable guidelines, would that be a solution to the matter?

Mr WILLIAMS — Not a complete solution, because it still does not cover the issue of moving away from a culture of enforcement until we have a ticketing system that works. The volume of cases that ticket inspectors handle should be reduced by probably a factor of 10 or more by a ticketing system that works. It would be only the most uncooperative and recalcitrant people that they would have to deal with.

Ms HADDEN — You mentioned that requesting names and addresses was perhaps a privacy breach, is that right?

Mr WILLIAMS — We think there are issues of privacy, particularly where private companies have an interest in this day and age in building up marketing databases and so on. We are dubious about having private companies having names and addresses, particularly if they add dates of birth, telephone numbers and so on. We have not had any reports that they might end up on the telemarketing lists or whatever.

The CHAIRMAN — Thank you very much.

Witnesses withdrew.