

PROOF VERSION ONLY

LAW REFORM COMMITTEE

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

Melbourne – 13 December 2001

Members

Mr R. H. Bowden
Ms D. G. Hadden
Mr P. A. Katsambanis
Mr T. Languiller

Ms A. L. McCall
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Mr M. H. Thompson

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

Staff

Executive Officer: Ms M. Mason
Research Officer: Ms K. Giles

Witnesses

Mr A. Driver, General Manager, User Safety;
Mr A. Padanyi, Legal Officer; and
Ms C. Wait, Legal Assistant, Office of the Chief Electrical Inspector.

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

The CHAIRMAN — On behalf of the Law Reform Committee I welcome you to the hearing today and thank you for the time you have taken to prepare and attend. The evidence being heard today is being reported by Hansard. You will have the opportunity to make any amendments to the transcript that you deem appropriate and then forward it to the committee staff, Ms Mason and Ms Giles. I invite you to speak to your submission.

Mr DRIVER — We have not actually put in a submission yet. We intend to. I understood we were here to answer some questions.

The CHAIRMAN — That is fine; we can make it interactive then.

Mr DRIVER — The office has prepared a submission, which we will forward to Ms Giles shortly.

The CHAIRMAN — What training is given to your authorised officers?

Mr DRIVER — First of all, under the Electricity Safety Act the Chief Electrical Inspector has the right to appoint enforcement officers. That is what we are talking about here: enforcement officers under the act.

The enforcement officers are there to enforce the requirements of the Electricity Safety Act to ensure compliance with the act and regulations. But also our enforcement officers are appointed to ensure the carrying out of any directions that are issued under the Electricity Industry Act as well — for example, where there is a requirement for electricity restrictions or where the Premier issues a direction, they are required to ensure that people, generation companies or distribution companies, supply electricity and workers are required to work.

As I said, the appointment of those enforcement officers is the responsibility of the Chief Electrical Inspector, and as such we have to ensure that those enforcement officers, as is laid down in the act, are of good repute, et cetera. There are two types of enforcement officers we can appoint. One is the direct employees or agents of the office. Currently we have a policy in place where we appoint enforcement officers who are direct employees for a maximum of five years, and we issue an identity card in that respect. Enforcement officers appointed who are not directly employed by the office are also given an identity card, but they are appointed for a maximum of only three years. This is to ensure that we have the opportunity to review everybody's performance over the three or five years as required. For example, in February 2000 when electricity restrictions were in force we appointed 20 enforcement officers outside the Office of the Chief Electrical Inspector to ensure the directions that the Premier required to be put in place were enforced.

Committee members may or may not have seen at that time newspaper articles about our activities. The actions taken by the office were to ensure that all those enforcement officers, whether employed directly or as agents of the office, were trained in understanding the enforcement activities or requirements under the act. Also we have recently carried out refresher training for our people to bring them up to speed with additional requirements, to ensure that they continue to understand the requirements of the act to be followed and to remind them that we regard it as a power which needs to be controlled carefully. Therefore the training reflects that requirement.

Mr LANGUILLER — I understand that they have to be trained according to the act, but can you elaborate on what the training is — what areas they cover, for what purpose and so on?

Mr DRIVER — The areas they cover include the requirements of the act; what procedures are laid down in the act; and ensuring that they understand there are controls in place in the act. They include ensuring that the act is followed correctly, and that includes making sure that the general managers and the Chief Electrical Inspector are kept fully informed of any actions that need to be undertaken or are undertaken. That would about cover it.

Ms McCALL — Given that the terms of reference tend to suggest to groups that we have met that there is some inconsistency as to what individual groups' powers are, how good is your public relations training to enforcement officers for explaining clearly to the public when they arrive what their powers are — I note they have to provide an identity card, although I am not aware of all the details in the act — and ensuring that the members of the public they meet, whether they speak English as a second language or see someone who is called an enforcement officer and panic and think, 'I am in trouble already', understand how far those powers extend and what rights the people have in return?

Mr DRIVER — So far as members of the general public are concerned, I am not clear how much they understand of what our enforcement officers' powers are.

Ms McCALL — That could be the problem.

Mr DRIVER — However, the enforcement officers are trained to ensure that they understand they are going to meet people with ethnic backgrounds, people who perhaps do not understand the English language properly or do not understand why we are there and that sort of thing. So when they are required to use their enforcement powers they would understand that need for people to understand why they are there and to explain carefully why they are there and so on.

We had that situation arise in the electricity restrictions back in February 2000. There was a lot of media activity around at that stage, and we used the media to ensure that the public understood why we were there and what powers enforcement officers had if they needed to use them.

Mr LANGUILLER — Do you see the need for undertaking any proactive public activity so members of the public understand what the officers do, what they have to do or what might be expected of them under certain circumstances? Does that happen proactively, or do you wait until something happens and then explain, 'This is why we are here.'?

Mr DRIVER — No, not at all. Although the office has the enforcement powers under the act, the only time we have ever come close to using them was back in February 2000 when the electricity restrictions were in force. So although we have a proactive public awareness campaign in relation to electricity safety, we do not have an active campaign to explain the use of enforcement powers. While we have the enforcement powers in the background and at times we have indicated to people that those powers are there, we have not had cause to use them as yet. I guess we would be a little concerned if we were required to advertise the fact that those enforcement powers are in place, because people could get concerned, because they are significant powers under the act, and we would rather carry out our work through cooperation and education.

Ms WAIT — I suppose another point to raise is not just in terms of the general public but within the industry that we are working in — which is doing compliance audits and things like that — a lot of the time the RACs or the electricians will know who we are and what our role is because they are registered through our office and we have constant contact with them, and during our auditing process our powers are brought to their attention. So they know that in future we may be able to issue infringement notices and things like that. We have not actually issued any infringement notices. The point is that it has been brought to their attention so they know that in future we may be able to do that.

Ms HADDEN — Can you describe how the requirement to report all entries to the Electrical Appeals Board works in practice?

Mr DRIVER — It is currently in theory because, as I said before, we have not used our enforcement powers since the Electricity Safety Act came into force. However, we have laid down procedures, including the written documentation or pro formas that we would use to provide details to the Electrical Appeals Board if required.

Ms HADDEN — Do you have a complaints data system relating to the use of your inspectors' powers?

Mr DRIVER — We have what is called a service centre, which records all letters, faxes and telephone calls that come into the office in relation to all sorts of things, including customer complaints. That service centre records all communications that require a response. We also have a web site which people can use to contact us at any time through letters, emails and so on. All that information is recorded.

We also use audit companies. A lot of our audit work is outsourced, and they have strict instructions that if they come across any issues where the public, contractors or electricians complain, under the contractual arrangements they are required to report that to us for us to handle.

The CHAIRMAN — Are you aware of any need to extend the powers of inspectors at all?

Mr DRIVER — Do you mean enforcement officers?

The CHAIRMAN — Yes.

Mr DRIVER — No, we are not. We believe that currently the act provides sufficient powers for us to undertake our actions. I notice in the discussion paper there is talk about arrest and so on. We do not believe that is appropriate. Our experience so far is that most — practically all — of the people we require information from and carry out investigations with provide that information cooperatively. So I do not believe at this stage we would see

a need to increase those powers.

The CHAIRMAN — There is a power under section 139 to request the assistance of a member of the police force. I take it that that circumstance has not arisen under the operation of the act?

Mr DRIVER — No.

Mr LANGUILLER — What would be the circumstances which would give rise to having to seek the assistance of the police in your case?

Mr DRIVER — The act provides us with a facility to enter a property at any time for emergency access. If we were being barred for any reason, by a security guard or whatever, from ensuring that an unsafe situation was made safe, that is the sort of situation where we may call on the police to assist.

Mr LANGUILLER — Has that ever happened?

Mr DRIVER — No. As people at the office, we have not really come across that situation. Currently we get good cooperation from the electricity industry and the public in general.

Ms WAIT — I just wanted to make the point also that the powers under the act are quite controlled, in that we are required to obtain the consent of the Chief Electrical Inspector before any power is exercised. As I understand it, our act was framed just after the Gas Safety Act was introduced in 1997, and a lot of the framework of our act was modelled on that gas act. There is no requirement for enforcement officers under the Gas Safety Act to obtain the consent of any point of authority within its organisation. In comparison it was decided during the drafting process to include in our act the requirement for us to go through the Chief Electrical Inspector. In some ways that can confine and restrict our actions: we cannot enforce on the spot; we are required to go back to the office, get consent, and then exercise the power.

The CHAIRMAN — I was just wondering what are the range of offences that enforcement officers would be looking to detect, other than during a tighter power regime where it was necessary to supervise people observing the law. Are there other issues your officers would be required to deal with?

Mr DRIVER — It is fairly clearly laid down in the act.

Ms WAIT — I suppose in that respect we are dealing with electrical installation work and that sort of thing. They need to be able to inspect that work. So maybe if you cannot access a property where you need to check that the installation is safe — because that is an offence under the act — ensure it is not unsafe, that everything is installed correctly, and things like that.

The CHAIRMAN — Is this work done on an audit basis or when you are called to look at something?

Mr DRIVER — Building on what Carolyn said, in general terms the conditions laid down, if I remember correctly, in the act are to ensure compliance with the act and the regulations, to investigate a serious electrical incident and also to — —

Mr PADANYI — Check enforcement with an electricity safety management scheme.

Mr DRIVER — That is right. They are essentially the three areas.

The CHAIRMAN — How many people are involved in the compliance aspect? Is there a staff of 100 or a staff of 3?

Mr DRIVER — Leaving aside enforcement for a minute, we use probably around 100 licensed electrical inspectors to carry out audit activities throughout Victoria. There are currently 290 licensed electrical inspectors throughout Victoria, and they carry out mandatory inspection.

The CHAIRMAN — Are they public servants or are they electricians who have this title after hours?

Mr DRIVER — No, they are licensed under the Electricity Safety Act. When the State Electricity Commission of Victoria was split up and privatised the act introduced what was called a licensed electrical inspector. Those licensed electrical inspectors are essentially private persons who can be employed by themselves, by an inspection company, or by current electricity distribution businesses. So to answer your question, they are not

public servants.

As I said, we use about 100 of those licensed electrical inspectors to carry out audit activities on our behalf, and we use around 20 of them to act as enforcement officers if required — for example, under the electricity restriction scenario. However, those people do not have access to their enforcement officer cards because they are all kept in the office until there is a requirement for them to do that. Our direct employees are a different kettle of fish. They carry their cards all the time. Does that answer your question?

The CHAIRMAN — Yes, thank you.

Mr LANGUILLER — What about issues of safety? Who does that kind of activity? You just mentioned safety.

Mr PADANYI — An electricity safety management scheme.

Mr LANGUILLER — Can you elaborate on that? What do you mean?

Mr PADANYI — In the context of enforcement, one of the instances in which enforcement powers can be exercised is not only to determine compliance with the act and the regulations but also to determine compliance by the scheme operator of what we call an electricity safety management scheme.

Mr DRIVER — Perhaps we need to explain what an electricity safety management scheme is. Any company in Victoria, whether an electricity distribution business or a major company, needs to ensure that the people carrying out their electrical work are licensed electricians or registered electrical contractors, and must comply with the requirements of the act, the regulations and any standards that are incorporated within those regulations. Under the act people can apply for what is called the electricity safety management scheme on a voluntary basis, which means that they must put a submission into our office to indicate how they will meet, or do better than, the requirements of the Electricity Safety Act or regulations in achieving safety outcomes. It enables companies to have certain flexibility in relation to compliance with the required standards.

Those electricity safety management schemes are approved by the Governor in Council based on our recommendations. However, we must have in place an audit and monitoring process to ensure that people are complying with the electricity safety management scheme as it has been advertised by the Governor in Council through the *Government Gazette*. Therefore, if need be, we need powers to go in and audit or investigate serious incidents, or whatever.

That is what Andrew was referring to. Enforcement officers can use the enforcement powers to enter onto a property to investigate any compliance with electricity safety management schemes. We have not done that yet, because currently there are very few electricity safety management schemes in place because it is a voluntary co-regulatory activity.

The CHAIRMAN — I think that rounds off our range of questions at this stage. Thank you. I appreciate the time you have taken to attend. We look forward to any further written follow-up you may wish to provide to the committee via its staff.

Mr DRIVER — Thank you very much.

Witnesses withdrew.