

PROOF VERSION ONLY

LAW REFORM COMMITTEE

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

Melbourne – 13 December 2001

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

The CHAIRMAN — On behalf of the Law Reform Committee I welcome you to today's hearing. Thank you for taking the time to attend and for your submission, together with some accompanying material. This dialogue will now be recorded by Hansard, and the transcript will be forwarded to you. You will have the opportunity to correct or amend it and then return it, once corrected as appropriate, to our staff.

I invite you to speak to any general points in your submission and to add any brief remarks that you would like to make. I will then invite questions.

Ms SHARMAN — Perhaps it would be best to see what kinds of areas you are interested in, because I have no idea if you are interested in anything in particular.

The CHAIRMAN — There is the training question.

Ms McCALL — On what sort of basis do you recruit the inspectors or officers? What sort of training is given? Is there a standard procedure right the way across? Can you give an outline of certain criteria, or do you assume they will gain it by osmosis?

Ms SHARMAN — No. The officers who carry out enforcement duties on trams and trains and buses are employed by the companies, not by the department, and their recruitment is carried out by those companies. Many of them were previously employed in the Public Transport Corporation, so quite a few of them have been doing the work for a long time. As part of the privatisation of enforcement, effectively the provisions in the Act allow the Secretary of the Department of Infrastructure to lay down requirements.

The people in the companies who are managing these inspectors have law enforcement backgrounds either in councils or in the police force, and they want people who do a reasonable job. They recruit them and then just use their normal arrangements. Some of them are perhaps more stringent about certain things than others.

The staff from the Department of Infrastructure who work for me and who are formerly prosecutors provide training which the inspectors are required to pass, and that relates to their duties and responsibilities under the Transport Act — the kinds of things that are necessary for prosecution. These inspectors are the witnesses if the cases go to court and there are prosecutions, so we give them training about the things that are necessary.

In addition, each company provides other training. I expected you to ask that question, so I have some information here which is not in my report. They do training in customer service, verbal and physical conflict management, company induction, public transport background, business knowledge, ticketing — how the machines work and all of that, so they understand what they are enforcing — safety and first aid, dealing with difficult people, occupational health and safety and equal opportunity — dealing with people with disabilities, such as the blind or those with other physical disabilities. Some of them have training that is described as minimum-force detention, which is how to — —

Ms HADDEN — Restrain them?

Ms SHARMAN — How to restrain them, yes, but not only that. There is also non-confrontational body language — that kind of thing. So they do a range of that kind of training.

We have been concerned to ensure consistency, and we have been working towards that. I recently appointed somebody to manage the process more closely. They are the kinds of things we are looking at standardising, but all the companies provide that kind of training. They also supervise them closely, and if there are complaints I can ask for the person's records — their monthly reports on how they have gone — and those kinds of things.

Ms McCALL — So you are perhaps recognising a lack of consistency?

Ms SHARMAN — Yes. I think they all provide good training, but we are not sure how consistent it is.

Mr KATSAMBANIS — Does the training have any assessment component, either the training that you provide — —

Ms SHARMAN — The training that we do does. They are required to pass an exam-based test, which I am unable to tell you the details of. Some people who are recruited do not pass the training, and they are not kept on. Those who pass are on probation, and even if they have the training their employment is terminated if their performance is not up to the standards of the company. That has happened to a number of people. We also do a police check and a fingerprint test Australia-wide. A few people have failed that test, and we have not authorised

them.

Ms HADDEN — The Consumer Law Centre has made submissions, as have some other groups, in relation to the powers under section 219 of the Transport Act — that is, the section which relates to the power of arrest without warrant and also enables any other person to be asked to assist the officer in that arrest. A number of submissions suggested that the section be amended so that the power to arrest and detain persons may be exercised only by a member of the Victoria Police. Does your department have any views on that position?

Ms SHARMAN — Part of the difficulty with the Victoria Police is that they are mostly not available. In the city they are often nearby and they do attend. The section requires an authorised officer who arrests somebody to give them into the charge of the police as soon as possible if they are not released, because probably the most common reason for initially detaining someone is their refusal to give their name and address. When the person understands that there is a power of arrest for the failure to comply with that request, they often comply, and the detention does not take place or stops.

I think the power is necessary for the enforcement of transport offences. I suppose there has to be a balance between customer service and revenue protection and the protection of customers on the tram or the train. The powers of arrest are most often threatened with respect to name and address, but usually they are not followed through. The power of arrest is normally used for more serious offences such as assaults or things of that nature. I am certainly of the view that the power is required.

I provided statistics in the second paragraph of the first page of my submission, because I wanted to give an indication of the numbers of people we are talking about.

Ms HADDEN — Is this in relation to complaints or arrest statistics?

Ms SHARMAN — No, just in reference to public transport offences. In the past financial year ended 30 June about 352 million trips were made on public transport and 59 000 infringement notices were issued. That is about 1 infringement notice for nearly 6000 trips. There were 190 prosecutions last year for unlawful assault against authorised officers or other officers. Therefore when you look at it in the context of the number of people we are talking about and the number of people who are fined, you can see that at present it appears likely that more people will be fined because of the enforcement blitzes that the operators have been having in recent weeks — but still we are talking about a very small percentage of people who use public transport. It seems to me that the power is in fact used very little in the context of that size of the operation.

Ms HADDEN — The Consumer Law Centre has submitted to this committee that an ombudsman specific to transport be established with powers to investigate all complaints relating to public transport. Does your department have a view on that?

Ms SHARMAN — I am not in a position to comment on that. I personally have no knowledge, but I understand there have been reports in the paper that the minister is considering whether to appoint a transport ombudsman. That is a policy issue for the department and the minister. If you were asking my view, I would say that at present — and in the days of the Public Transport Corporation — because of the number of people who travel it is very difficult for the Victorian Ombudsman to deal with that number. Even if less than one-tenth of 1 per cent of people complain daily, that is still hundreds of complaints a week, and they just do not have the resources to deal with it.

Ms HADDEN — Where do the complaints go to now?

Ms SHARMAN — At present?

Ms HADDEN — Yes.

Ms SHARMAN — Certainly the Ombudsman gets complaints, although he normally does not deal with complaints of this nature. The minister gets many letters, and a number of letters come to the department, to the revenue enforcement group and to the companies as well.

Ms HADDEN — Do you record complaints data relating to the use of inspectors powers under the Transport Act?

Ms SHARMAN — We are developing that as a result of an accreditation process, but the data is all there.

Copies of the minister's letters and statistics about those kinds of things are kept. I am not sure what kind of report you could get out of that data; I am not sure whether it would suit you or not.

It is a very serious issue. The companies regard it very seriously. For example, an argument with an authorised officer on a tram or train has a poor effect on customer relations. All the people around are disturbed by it and made very uncomfortable and sometimes even fearful, so they are keen to see that their officers perform appropriately. All those things are followed up.

Mr LANGUILLER — You spoke about training. Is there any provision to train the officers in relation to our culturally diverse community? You mentioned various things, but I do not recall your specifying that.

Ms SHARMAN — It is not in the list of things I have in front of me, no.

Mr LANGUILLER — Are you aware of the pay structure of officers and whether there are any incentives for them based on how many fines they impose, how successful they are and so on?

Ms SHARMAN — I am not aware of their pay structure, but I do not believe there is such a provision. I am happy to find out for you.

Mr LANGUILLER — Thank you. Do you think that the ticketing arrangements, given where the machines are usually based, are adequate? I will cite one example: a person arrives at Kensington station, rushes onto the train and does not get a ticket, presuming she will be able to fix that up in Footscray, but of course she cannot because she has to come out of the station before she can get a ticket. I am sure that happens hundreds of times every day.

Ms SHARMAN — It does.

Mr LANGUILLER — Should machines be made available inside stations for people who may have jumped onto trains without a ticket because they did not have time or were not able to get one? Sometimes the machines break down, I am informed.

Ms SHARMAN — Again, I cannot comment on that. That is subject to the contract with the Onelink company which provides the ticketing machinery, and that would be a policy decision for the operators in consultation with the department.

I am sure that if that were proposed it would be considered, but it might need to be considered in the light of the cost of extra machines and so on.

Mr KATSAMBANIS — We get a lot of comments as members of Parliament and certainly as members of the committee that the ticketing enforcement officers occasionally exceed their power and authority. We also get a lot of anecdotal evidence of confrontation which, as you suggested, is bad for public relations and bad for lots of other reasons.

Your department is in a unique position, because you essentially authorise these officers. They come under the auspices and direction of the franchisees, but when it comes to enforcement the details come back to the Department of Infrastructure. I believe they do not necessarily have to, but in practice they do come back to the Department of Infrastructure for enforcement.

Ms SHARMAN — That is right.

Mr KATSAMBANIS — From that perspective, can you give us some sort of indication as to whether you have encountered any practical or legal impediments based on the actions of the authorised officers which render prosecutions impossible or difficult?

Ms SHARMAN — The statistics I have provided show that in the last financial year there were nearly 4000 prosecutions and about 59 000 infringement notices issued. They would not relate to the same figures, because some of the prosecutions would have related to infringements issued in earlier years, but a relatively small percentage of infringement notices go to prosecution. However, the Children's Court matters are not processed through the PERIN court, and if the fines are not paid they are processed through the Children's Court, which in a way makes the number of prosecutions appear higher, because if they had been adults who were fined they would have gone through the PERIN court and perhaps eventually been paid rather than prosecuted.

Many of the 4000 cases are undefended, so there is no appearance. Cases are prosecuted every week, of course, to get through that number. From time to time the evidence of the person who has been fined shows that the enforcement officer acted unreasonably, and the magistrate dismisses the claim. I certainly do not have any statistics about the number of cases where the behaviour of enforcement officers contributed to the case.

Mr KATSAMBANIS — I understand that, but have you detected any patterns of behaviour that are of concern?

Ms SHARMAN — No, we have not. We follow the officers up on an individual basis; I meet with their managers and sometimes with them, and we talk to them. I look at their personnel records before that. Letters of complaint come to my area, and I and my staff deal with the ministerial letters too, and all those things are reviewed. The files are reviewed.

Mr KATSAMBANIS — But it appears to me from the statistics that about 10 per cent of all infringement notices are rescinded upon this informal administrative appeal process, which of itself is a pretty high number — but I do not expect you to comment on that. What also concerns me is that further on in your presentation on page 5 you say that:

Over 50 per cent of ticket infringements are issued to children under 17 ...

Fifty per cent is 30 000, so that means that in more than 30 000 cases a year a child under the age of 17 is confronted by an officer and issued with an infringement notice. Certainly in the Crimes Act and in the operations of the Victorian police force there are specific requirements relating to children as far as questioning, evidence, detention and all sorts of other matters are concerned. But it appears that in the Transport Act there are no particular provisions relating to children.

Ms SHARMAN — No, that is right.

Mr KATSAMBANIS — Is that of concern to the department?

Ms SHARMAN — Well, the department would certainly be concerned if it had any evidence to suggest that there was a pattern which, as you talked about before, indicated that enforcement staff were targeting children. We get those allegations from time to time.

Mr LANGUILLER — I get them often.

Mr KATSAMBANIS — I get them all the time.

Ms SHARMAN — Do you?

Mr KATSAMBANIS — Yes.

Ms SHARMAN — We have regular meetings with them and we raise these issues.

The CHAIRMAN — Could it be said that 50 per cent of patrons are under the age of 17, or do you have any demographic breakdown in terms of usage patterns?

Ms SHARMAN — I do not have it with me, but I am sure that information is available. I can find that out and let you know.

The CHAIRMAN — Thank you.

Ms SHARMAN — I think that is right. Schoolchildren particularly are heavy users of public transport, and young people in general are prolific users of public transport because they do not have many other ways of getting around. They are also short of money, which is one reason why they do not have tickets, I guess.

Mr KATSAMBANIS — Young people would be the largest group of people buying periodic tickets, so although they are regular users you would imagine that the number of them ordinarily travelling without tickets would be reduced.

Ms SHARMAN — I am sure that is right.

Mr KATSAMBANIS — That is the point that parents make to me all the time in my office.

Ms SHARMAN — You are probably aware because of your experience that children who have periodical tickets but do not have them with them when asked to produce them are given 14 days to produce them at the local station and then they are not issued with a travel infringement notice, so those statistics do not include those children.

Mr KATSAMBANIS — I understand that. This is an issue that concerns me, and I have to express that because, as I said, the powers of arrest available to police for children under 17 are significantly limited as opposed to their powers for adults.

Another issue I want to address is this seeming impasse between enforcement and revenue collection. Given that we now have the franchisees in place, the franchisees have an interest in protecting their revenue streams. There may be some relationship between enforcement and the protection of the revenue stream, but I submit that in Victoria, since World War II anyway, that nexus has been very slight. We have been enforcing transport infringement ever since I can remember, yet we have never been able to protect this revenue stream through enforcement mechanisms. That was a nexus that tenuously existed when the government was running the system; today, the revenue from enforcement does not go to the public transport operators at all, so the nexus is even further broken. Are we pursuing the right tactic? Is enforcement the right way to go? I know it is the \$64-million question.

Ms SHARMAN — I do not think I am in a position to give an opinion in response to your question. If it were recommended that the department look at that issue, I am sure it would. Perhaps somebody is doing that; I do not know. The nexus between enforcement and the revenue stream — I will follow your example and talk anecdotally — is that as soon as revenue enforcement appears many more people buy tickets. I had lunch with someone recently who said they had been on a tram with no seats vacant when suddenly everybody got off at the next stop and they could not understand why. Suddenly they were asked for their ticket, and they presumed that all those people got off because they did not have tickets — or most of them; I am sure not all.

Mr KATSAMBANIS — They may all have been going to that stop.

Ms SHARMAN — It did seem highly unlikely. Someone else I know who works for a local council said even if he gets on the tram in his local council uniform the number of people who immediately get up and buy tickets always surprises him.

It is not so much the revenue stream from the fines that the department and the operators are interested in. What they are interested in is having people buy tickets. That is about the only comment I could make.

Mr KATSAMBANIS — I find it bizarre: we have a public transport system that does not even recoup 50 per cent of its operational costs from fares, yet apart from planning matters, transport infringement issues are the no. 1 issue in my office and, I submit, in the offices around me as well.

Again, I understand you cannot comment on this issue, but the powers these inspectors have create a lot of angst, and our inquiry is about those powers. Anecdotally and in submissions made to this committee we continue to hear that there is — and I use the words in inverted commas — ‘misuse’ of these powers almost on a systemic basis. In my limited experience I would say that there is some evidence to back that up.

Mr LANGUILLER — I will add that I concur with my colleague’s comments. If I were to form a view on the popularity or otherwise of these authorised officers based on the anecdotal evidence I collect in my office, it would be that they are not very popular in the community, and I suggest that there is either something wrong or that their public relations is not up to scratch.

If I may be somewhat provocative about your submission, I note with interest that the fourth paragraph reads, in part:

There are approximately 4000 cases prosecuted annually including Children’s Court offences. Last year about 190 of the prosecutions involved charges of unlawful assault against officers of the operators.

I find it interesting that those two sentences are together, because if one listens to the children or teenagers who have been approached they would say they have sometimes been mishandled and abused by officers — true or false. I also note that you have listed the number of prosecutions that have involved unlawful assaults against officers. Is there any register of incidents involving officers assaulting members of the public, including children

and teenagers, or any data you may be able to share with us?

Ms SHARMAN — I do not know of any, but I am happy to find out. There have been occasional cases where officers have been prosecuted for various offences, and in almost every case — probably not every case, but almost every case — when that happens the person's employment is terminated, so I may not necessarily have the data about the outcome. Most of those prosecutions are handled not by the Department of Infrastructure but by the police, so it is police information. Indeed, some of the prosecutions involving offences on public transport are also handled by the police and not by the staff in the department, so these figures only deal with the department's statistics. The police tend to handle the more serious matters, but there has been nothing like 190 or anything like that. I will find that out for the committee.

Mr KATSAMBANIS — On a related issue, the department authorises these officers initially; upon their selection by the franchisee, the department authorises them after undertaking training. Other than the grounds that you mentioned in relation to successful prosecution for a criminal offence, what other provisions are there for the removal of that authorisation at a departmental level as opposed to a franchisee level?

Ms SHARMAN — In my total folder, which I understand some of the committee does not have, I put in the secretary's requirement for authorisation and for accreditation, because the companies are accredited also. I will just refer to that.

There is the police check of course, and also included in the folder are some policy guidelines which are based on the police guidelines about whether or not past offences will make somebody not suitable to be authorised. And I have refused authorisation in a number of cases, and sometimes that has been accepted and sometimes — in the past 12 months I have had a couple of VCAT applications in opposition to my decision.

Mr KATSAMBANIS — I am not so much interested in the original process but once authorised, under what grounds can the department remove authorisation? Is there a procedure?

Ms SHARMAN — We have not removed authorisation from anybody that I know of. We have not removed anybody's authorisation. The circumstances where people have ceased to become authorised officers: first of all, if they are no longer employed or engaged by the company their authorisation ceases. So there have been a number of people in that category, and some of those terminated of course. I understand a number of people, although they may have passed the police check and so on, have had their employment terminated because the companies have found them unsuitable.

Complaints — they are required under the authorisation to let us know if they have been the subject of any charge. You may not expect them to do so, but we follow that up with the company.

Mr KATSAMBANIS — If they do become subject to a charge, is their authorisation removed?

Ms SHARMAN — It would be if the charge were a relevant charge.

Mr KATSAMBANIS — Assault, for instance?

Ms SHARMAN — Yes, assault, that kind of thing.

Mr KATSAMBANIS — So there are provisions to do that?

Ms SHARMAN — There is a power to do that. The secretary has quite wide powers with respect to authorisation and investigation of things, including calling for information. As I said, upon receipt of complaints I have called for somebody's personal records to see how their supervisor has reported on their performance and so on. All that kind of information is available.

Ms HADDEN — We have had a submission from Victoria Police about this reference, and in a nutshell, among other things they say any increase in an inspector's or authorised officer's powers means an increase in Victoria Police being called to assist. There is legislation to say they must assist, but Victoria Police says that section 464 of the Crimes Act is something that inspectors should be made aware of, as well as the correlating section 565(2) of the Crimes Act, which deals with an investigating official being a member of the police force or a person appointed by or under an act whose functions or duties include functions or duties in respect of the prevention or investigation of offences, which includes authorised officers.

Given all that, and especially given section 464E, which deals with persons aged under 17, how do authorised

officers deal with children, especially given that they will not be carrying identification?

Ms SHARMAN — Who will not be carrying the identification?

Ms HADDEN — The child.

Ms SHARMAN — Children normally do not have identification.

Ms HADDEN — How will an authorised officer determine they are aged under 17 and therefore require a parent or guardian to be present during investigation and questioning? You may like to take that on notice.

Ms SHARMAN — I will take that on notice. At present they are in a public place on public transport and they ask people their names and addresses to establish whether they are juveniles — that is, whether they are under 17 years of age, which puts them outside PERIN. If they are not satisfied that the person is being truthful, they ask for some proof. I understand they ask children if they could ring their parent to confirm their age and their address.

Ms HADDEN — Which means they are under arrest, because to make a telephone call from a train or tram you have to exit the carriage?

Ms SHARMAN — No, the officers carry mobile phones.

Mr LANGUILLER — We heard in an earlier submission from an environmental health officer that in that jurisdiction, as I understood it, based on an enormous amount of work along the lines of public relations they have improved their compliance and decreased the number of prosecutions. In other words, they say, 'By improving communication with the public in our jurisdiction, if we were to make a comparison between our performance today and some years back, we are certainly doing better today'.

To be fair and to return to the other question of popularity and the judgment of authorised officers, my anecdotal experience in relation to those officers is that they are doing reasonably well, the community understands them and they are becoming more and more part of the community and, consequently, the compliance with the law and so forth is better.

Ms SHARMAN — Could you tell me what their job is?

Mr LANGUILLER — They are health officers. Do you think the transport officers may need to draw a lesson from that jurisdiction and the way other officers work? I understand the public and the job may be somewhat different, but at the end of the day we are dealing with people and the reports are totally different on success stories or otherwise.

Ms SHARMAN — I do not think there is any doubt that communication with the public about powers, rights and responsibilities could be improved. The department and the companies are working on that on a wide front. One example is that Yarra Trams now has a brochure that the authorised officers hand out to explain the powers in the Act, responsibilities for having tickets and so on. I think that is right.

The Department has an education group in transport that visits schools, but it mainly deals with safety. It is helping primary and secondary schoolchildren become used to public transport and how it works, so that they do not get into a situation of danger. It does not deal with these sorts of things. I agree with you. The companies and the department are looking at improving the communication and the understanding in the community about the powers and responsibilities on both sides.

In commenting further, the place where adults in particular come most often into contact with enforcement officers is motor car traffic situations. With public transport, children and adults often travel on public transport twice a day, often five days a week. The opportunities are much greater. There is a far greater number of interactions, which would no doubt partly account for the popularity or otherwise. That needs to be taken into account when looking at what appears to be a large number of complaints. When they are seen in perspective of the number of contacts between public transport and the public the percentage is not quite as bad as it appears. But I agree with you, there is no doubt that communication can always be improved.

Mr LANGUILLER — To be fair to the officers, one of the fundamental areas that may need to be improved is the provision of ticketing machines and making it as easy as possible for people to be able to comply with the acquiring of tickets. Anecdotally, through my office there appears to be a section of the community that attempts to purchase a ticket but is not always successful. If I hear so many stories, and so do my colleagues, it

appears that a significant number of people may wish to do the right thing by the community and the law and so on, but may not necessarily be able to. Consequently, the authorised officers may end up having to do jobs that, were the system better, they would not necessarily have to do.

Ms SHARMAN — I agree with you, and I think that the Department and the Minister in particular have been very keen to make tickets very freely available because that reduces the amount of arguments about enforcement. The ticket machines are under contract with Onelink, and the Minister has been talking with the companies about other steps to make tickets available, because there are other ways of making tickets available. The retail outlets, the small businesses, and so on at railway stations can all have tickets, and the companies have been working on that because, as you say, that underpins the basis on which they can complain about people evading fares. They need to make it very easy for people to buy tickets before they can argue too strongly that they have a difficulty with the enforcement.

The CHAIRMAN — For the record, the Public Transport Users Association is of the view that the power to arrest should only be undertaken by an authorised police officer. Would you care to respond to that view?

Ms SHARMAN — I think the power of arrest needs to be retained by authorised officers. If you are going to have revenue enforcement and you have the power to ask for a name and address and somebody refuses, the power of arrest is the only way you can make sure you get a truthful name and address in the end. Of course, many people tell the truth. But if an authorised officer is unable to say, 'I have further powers if you do not provide your name and address', I think that many people who do not buy tickets will just say, 'My name is Mickey Mouse', and there is nothing you can do about it. The matter would never be able to be taken further.

If the government or Parliament decided that was the appropriate approach, that is fine, but at the moment that is not the situation. People are required to have a ticket. I think the whole ability to enforce the ticket requirement would disappear if they were not able to exercise the power of arrest. On the other hand, I think it is very important that the Department and the government monitor its use very carefully. The companies are well aware that it is a very wide power and that it needs to be exercised carefully. We want to keep on working on that basis. But I do think the power is necessary.

The CHAIRMAN — We covered elements of the work of the Ombudsman earlier on. Just to clarify it for the record, would you support an ombudsman being established specifically to deal with transport complaints?

Ms SHARMAN — I personally do not have an opinion on it, because I think you need to look at the models that are available, and I am not sure whether it would be suitable or not. I have not actually looked at it myself. But I understand there have been reports in the newspaper that the government or the Minister has been looking at whether or not there should be a transport ombudsman, so I presume it is being looked at.

The CHAIRMAN — I had the circumstance where a constituent, who is aged over 60, advised my office recently that she undertook a citizen's arrest of two 14 or 15-year-old graffiti artists on board a train. When the train arrived at the station she took them to the station personnel, who declined firstly to detain the people and secondly to take names and addresses from the people, so their artwork remained preserved and their identities remained unknown. Is there a legal explanation why the station staff may have adopted that approach?

Ms SHARMAN — There may be a legal explanation. I assume the station staff are not authorised officers and are not familiar with the way in which they can exercise those kinds of powers. Citizens' arrests are fraught with difficulties and although, depending on where and who you are, people may be tempted, it is probably best not to exercise those powers. I presume it is just because the station staff did not see it happening and they were afraid of exercising the power of arrest, which people recognise as being quite powerful.

The CHAIRMAN — Thank you very much for giving your time to attend today. Should you have any further comments please feel free to liaise with the committee staff.

Ms SHARMAN — Thank you. I will take steps to obtain the information I have promised you. I will forward it to you.

Witness withdrew.